

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

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR
SUMMARY JUDGMENT RE: RILEY PLAINTIFFS' AND THE ALASKA
DEMOCRATIC PARTY'S GEOGRAPHIC PROPORTIONALITY CLAIMS**

**I.
INTRODUCTION**

Plaintiffs Riley and Dearborn (“Riley Plaintiffs”) and the Alaska Democratic Party (“ADP”) claim the Board failed to afford proportional representation to voters inside and outside the Matanuska-Susitna Borough (“Mat-Su Borough”) and the Kenai Peninsula Borough (“KPB”) by placing voters from the Mat-Su Borough with voters outside the Mat-Su Borough to create House District 9, House District 12, Senate District E, and Senate District F, and by placing voters from the KPB with voters who reside outside the KPB to create House District 32.¹ As the Board Record clearly shows, the Board did not intentionally discriminate – the legal standard for a proportional representation claim – against the voters of the Mat-Su Borough by placing them in House Districts 9 and 12, and Senate Districts E and F, or against the voters of

¹ See First Amended Renewed Application to Correct Errors in Alaska State Legislative Redistricting Plan After Remand at ¶¶ 21, 24 (August 15, 2013) (“First Amended Renewed Application”); Complaint and Application to Compel Correction of Errors in Proclamation of Redistricting at ¶¶ 14, 18 (August 15, 2013) (“ADP Complaint”).

the KPB by placing them in House District 32. The Board had a legitimate, non-discriminatory reason for doing so – to accommodate excess population. The Alaska courts, including this Court, have recognized on multiple occasions that the need to accommodate excess population is a valid, non-discriminatory reason to place voters within certain districts.² Thus, the Board is entitled to summary judgment on this issue as a matter of law.³

II. FACTUAL BACKGROUND

The Riley Plaintiffs assert in their First Amended Renewed Application that the Board’s 2013 Proclamation Plan “establishes six House Districts (i.e. House Districts 7 – 12) and three Senate Districts (i.e. Senate Districts D-F) containing voters residing within the Matanuska-Susitna Borough, and including populations outside the Matanuska-Borough in two of such house districts (HD 9 and 12) and two such senate districts (SD E and F).”⁴ They claim as a result, “the Third Final Plan fails to afford

² See Memorandum Decision and Order Re: 2011 Proclamation Plan at 42-43, 107-108 (February 3, 2012) (“McConahy Order”).

³ The Riley Plaintiffs appear to challenge the proportional representation rights of the voters in Senate Districts E and F. See First Amended Renewed Application at ¶¶ 19, 21. Senate District E is comprised of House Districts 9 and 10, while Senate District F is comprised of House Districts 11 and 12. ARB00017353. House Districts 10 and 11 are wholly contained within the Mat-Su Borough and therefore no geographic proportionality claim applies. To the extent the voters within House District 9, comprised of population from the Mat-Su Borough, the cities of Delta Junction, Valdez, Whittier, and communities along the Richardson Highway, including Glennallen, have a proportional representation claim, the arguments set forth below, which establish the Board did not violate their right to fair and effective representation, also applies to them as voters of Senate District E. The same rationale applies to Senate District F and the voters located within House District 12. The Board denies any and all allegations raised by the Riley Plaintiffs and the ADP not otherwise specifically addressed herein.

⁴ First Amended Renewed Application at ¶ 19.

proportional representation to the voters residing outside the Matanuska-Susitna Borough.”⁵ The ADP asserts a similar claim, arguing “according to the 2010 census, the Matanuska-Susitna Borough (Mat-Su Borough) has a population of 88,995. That population is equal to the ideal population of 5.01 house seats, enabling the Board to create five house seats entirely within the boundaries of the Borough without including population from outside the Borough and without including Borough residents in house districts outside Mat-Su Borough boundaries.”⁶ As a result, they argue “the Board’s third redistricting plan fails to afford proportional representation to voters residing both inside and outside the Mat-Su Borough.”⁷

The 2010 Census revealed a population of 88,995 in the Mat-Su Borough, equal to 5.01 ideal districts.⁸ In the 2013 Proclamation Plan, this population is split between six districts – House District 7, 8, 9, 10, 11, and 12.⁹ The population in House Districts 7, 8, 10, and 11 is 100% from the Mat-Su Borough.¹⁰ The Mat-Su Borough population in House District 9 is 45%, while 27% is from the Delta Junction area, 4% from the Copper Basin area, and 24% from the Valdez/Prince William Sound area, mainly

⁵ *Id.* at ¶ 21.

⁶ ADP Complaint at ¶ 11.

⁷ *Id.* at ¶ 14.

⁸ ARB00017357.

⁹ *Id.*

¹⁰ *Id.*

Valdez and Whittier.¹¹ The population in House District 12 is 56% Mat-Su Borough voters and 43% Municipality of Anchorage (“MOA”) voters.¹²

House District 9 is a result of the ripple effect caused by the Board’s decision to add the excess population from the MOA, which had enough population for 16.436 ideal House districts, to population from the Mat-Su Borough to create House District 12.¹³ House District 12 combines 56% population from an ideal Mat-Su Borough House district with 43% population from an ideal MOA House district.¹⁴ Since the Mat-Su Borough has enough population for 5.01 House districts, the extraction of 56% from one ideal district to combine with the MOA’s excess population left about 45% of an ideal district from Mat-Su residents that needed placement.¹⁵ To create House District 9, the Board chose this 45% from the east side of the Mat-Su Borough and combined it with similar communities along the Richardson Highway corridor to

¹¹ *Id.*; see also Exhibit A, a map created by the Board’s GIS specialist, Eric Sandberg, of House District 9 that illustrates the location of the population and the percentage of population from the various areas that create House District 9. See Affidavit of Eric Sandberg at ¶¶ 4, 5 (“Aff. of Sandberg”).

¹² ARB00017357.

¹³ ARB00017357; ARB00017348-17350.

¹⁴ ARB00017357; ARB00017348-17349.

¹⁵ ARB00017357.

Valdez, including Whittier, just as this Board had done in the 2011 and 2012 redistricting plans, and just as the Board did in 2002.¹⁶

The Board considered several options for accommodating the excess population in the MOA, none of them ideal, before choosing to combine it with Mat-Su population to create House District 12.¹⁷ The available options were: (1) spread the population evenly over the 16 other MOA districts, thereby increasing the deviations within the MOA; (2) push the population south to create a shared Anchorage/Kenai district, thereby breaching the Kenai Peninsula Borough a second time; (3) create a district which combined the excess population from Anchorage with Whittier, Valdez, and other communities along the Richardson Highway north to the Fort Greely area; or (4) push the population north to create a shared Anchorage/Mat-Su district.¹⁸ After much discussion and deliberation, the Board determined that the most reasonable way to accommodate the MOA excess population that best balanced all redistricting requirements was by creating House District 12, a shared Anchorage/Mat-Su district.¹⁹ House District 12 places 7,739 residents of the MOA, or 43% of an ideal district, with

¹⁶ ARB00016727-16728 at 56:3-58:15; *see also* Exhibit B, a comparison of the boundaries of House District 9 in the current 2013 Proclamation Plan against the boundaries of a similar district in the Board's original 2011 Proclamation Plan, the Board's 2012 Amended Proclamation Plan, and a very similar district in the final 2002 Amended Proclamation Plan upheld by the Alaska Supreme Court, created by Eric Sandberg. *See* Aff. of Sandberg at ¶ 6.

¹⁷ ARB00017349-17350.

¹⁸ ARB00017349.

¹⁹ *Id.*

9,932 people from the Mat-Su Borough.²⁰ The Mayor of the Mat-Su Borough submitted public comment and public testimony in favor of the Anchorage/Mat-Su combination, which has been a feature of both previous proclamation plans which no party objected to or challenged.²¹

The Mat-Su Borough Assembly submitted a letter in support of the Board's 2013 Proclamation Plan, including House District 9 and House District 12.²² The Mat-Su Borough Assembly specifically emphasized "the partial District on the northern end of the Municipality of Anchorage is an excellent fit with the Mat-Su population south of the Palmer & Wasilla core areas. These contiguous areas are highly integrated in socio-economic terms. These citizens share electric and telephone utilities as well as the Glenn Highway as their primary transportation link."²³ The Mat-Su Borough Assembly likewise supported the placement of 56% population from an ideal district within House District 12, thereby giving Mat-Su Borough voters control of a fifth House district.²⁴ The Assembly also favored the Senate pairings, especially the pairing of the historic Richardson Highway district, House District 9, with House District 10, a district

²⁰ ARB00017349; ARB00017357.

²¹ ARB00017350; ARB00017585; *see* ARB00006079, ARB00006568, ARB00015127, ARB00015103.

²² ARB00017854-17855.

²³ *Id.*

²⁴ *Id.*

containing 100% Mat-Su Borough population, and providing the Mat-Su Borough with a third Senator.²⁵

The Riley Plaintiffs also assert that the 2010 Census data for the KPB “establishes a total population of 55,400. The Third Final Plan establishes four House Districts (i.e. House Districts 29-32) containing voters residing within the Kenai Peninsula Borough, and needlessly includes populations outside the Kenai Peninsula in one such house district. (HD 32).”²⁶ The Riley Plaintiffs claim, as a result, “the Third Final Plan fails to afford proportional representation to the voters residing outside the Kenai Peninsula Borough.”²⁷ The ADP makes a similar allegation, arguing “the Board could have drawn three house seats entirely within the Kenai Peninsula Borough boundaries without including population from outside the Borough and without including Borough residents in house districts outside the Kenai Borough boundaries.”²⁸ The ADP takes issue with the Board’s decision to “separate[] the communities of Halibut Cove, Nanwalek, Port Graham, Seldovia, and Tyonek from the Kenai Peninsula Borough and include[] them in House District 32 with other communities” with which, the ADP argues, the KPB communities are not socio-economically integrated.²⁹ The

²⁵ *Id.*

²⁶ First Amended Renewed Application at ¶ 22.

²⁷ *Id.* at ¶ 24.

²⁸ ADP Complaint at ¶ 16.

²⁹ *Id.* at ¶ 17.

ADP claims the Board's 2013 Proclamation Plan therefore "fails to afford proportional representation to voters residing both inside and outside the Kenai Peninsula Borough."³⁰

The 2010 Census reported a population of 55,400 in the KPB, which is equal to 3.12 ideal districts.³¹ After discussion and deliberation on the record, the Board chose to take the excess population from the rural areas of KPB that are off the road system and add it to a single House district that contains Kodiak and other off the road, coastal communities to create House District 32.³² The population in the resulting district, House District 32, is 75.2% from the Kodiak Borough, 7.6% from the KPB, 13.5% from Cordova in the Prince William Sound area, and 3.7% from Yakutat.³³ House District 32 also closely resembles House District 35 in the Board's 2011 Proclamation Plan and 2012 Amended Proclamation Plan which included population from the KPB, specifically, Seldovia, Halibut Cove, Nanwalek, and Port Graham, with Kodiak, Cordova, and Yakutat.³⁴ No party, including the Riley Plaintiffs who challenged a

³⁰ *Id.* at ¶ 18.

³¹ ARB00017349-17350.

³² ARB00017351; *see also* ARB00017372, ARB00017425.

³³ Attached as Exhibit C is a map of House District 32, created by Eric Sandberg, that illustrates the location of the population and the percentage of population from the various areas that create House District 32. *See* Aff. of Sandberg at ¶¶ 4, 5.

³⁴ *See* Ex. B; ARB00006044-6045, ARB00006054.

number of aspects of the Board's 2011 Proclamation Plan and 2012 Amended Proclamation Plan, challenged House District 35's combined population.

III. LEGAL STANDARD

Rule 56 of the Alaska Rules of Civil Procedure provides that summary judgment should be granted if there is no genuine dispute as to material facts, and if the moving party is entitled to judgment as a matter of law.³⁵ The moving party has the burden of showing that there are no genuine issues of material fact.³⁶

Once the moving party has met this burden, 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 material issue of fact exists."³⁷ Any allegations of fact by the non-movant must be based on competent, admissible evidence.³⁸ The non-movant may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties' differing versions of the truth at trial.³⁹

³⁵ Alaska R. Civ. P. 56; e.g., *Reeves v. Alyeska Pipeline Serv. Co.*, 926 P.2d 1130, 1134 (Alaska 1996); *Zeman v. Lufthansa*, 699 P.2d 1274, 1280 (Alaska 1985).

³⁶ *Id.*

³⁷ *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (internal quotation omitted).

³⁸ Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110.

³⁹ *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (citing to *Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

IV. ARGUMENT

The Riley Plaintiffs claim the Board's 2013 Proclamation Plan "fails to afford proportional representation to the voters residing *outside* the Matanuska-Susitna Borough"⁴⁰ and "to the voters residing *outside* the Kenai Peninsula Borough."⁴¹ The ADP claims the Board's plan "fails to afford proportional representation to voters residing both *inside and outside* the Mat-Su Borough"⁴² and "to voters residing both *inside and outside* the Kenai Peninsula Borough."⁴³ Significantly, neither Plaintiff can assert any facts, disputed or otherwise, that the Board discriminated against any politically salient class of voters in any of these districts because no such facts exist.

⁴⁰ First Amended Renewed Application at ¶ 21.

⁴¹ *Id.* at ¶ 24. The Riley Plaintiffs have failed to state a legally cognizable claim. None of the communities outside the Mat-Su Borough or outside the KPB in House District 12 or 32 have enough population to support their own House district. *See In re 2001 Redistricting Cases*, 44 P.3d 141, 145 (Alaska 2002). As such, they must be added to other populations. The Board did not split any of the political subdivisions in House District 9 or 32 other than the Mat-Su Borough and the KPB. While the Board did split the MOA and place the excess population in House District 12, the Board did so for the legitimate, non-discriminatory reason of accommodating excess population. The Board kept intact the organized cities of Delta Junction, Valdez, and Whittier, none of which are part of any borough, and placed their entire population in House District 9. The Board also kept intact the Kodiak Island Borough, the Yakutat Borough, and the incorporated city of Cordova, which is not part of any borough, and placed their entire population in House District 32. The Board has not disproportionately diluted any of the votes from these communities, which is required for there to even be a geographic proportionality claim. *See Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987). The only voters with a potential proportional representation claim are, therefore, those from the Mat-Su Borough placed in House District 9 and 12, and those from the KPB placed in House District 32. Irrespective of the fact that the Riley Plaintiffs have failed to plead a legally valid claim, the Board did not discriminate against any voters in House District 9, 12, or 32, and the Riley Plaintiffs' claims likewise fail on the merits.

⁴² ADP Complaint at ¶ 14 (August 13, 2013).

⁴³ *Id.* at ¶ 18.

The Board had legitimate, non-discriminatory reasons for combining population from the Mat-Su Borough with population from outside the Borough in House Districts 9 and 12, as it did for combining population from the KPB with other populations to create House District 32 – accommodation of excess population. The Alaska Supreme Court and this Court have already held that “the need to accommodate excess population would be sufficient justification to depart from the anti-dilution rule.”⁴⁴ The Plaintiffs’ claims fail as a matter of law.

There are two principles of equal protection in the context of voting rights in redistricting litigation: (1) one person, one vote (or the right to an equally weighted vote), and (2) fair and effective representation (or the right to group effectiveness or an equally powerful vote).⁴⁵ The first is quantitative in nature, or purely numerical, while the second is qualitative.⁴⁶ For there to be a violation of the second principle, fair and effective representation, a plaintiff must prove both intentional discrimination against a group and a discriminatory effect on that group.⁴⁷ Mere lack of proportional representation is insufficient.⁴⁸

⁴⁴ *In re 2001 Redistricting Cases*, 44 P.3d at 144, n.7; McConahy Order at pg. 108.

⁴⁵ *Kenai Peninsula Borough v. State*, 743 P.2d at 1366.

⁴⁶ *Id.*

⁴⁷ *Hickel v. Southeast Conference*, 846 P.2d 38, 49 (Alaska 1992).

⁴⁸ *Id.*

The Alaska Equal Protection Clause is more stringent than its federal counterpart, but the analysis in determining whether a violation has occurred is very similar.⁴⁹ First, the court determines what weight to afford the constitutional interest that is impaired by the challenged action.⁵⁰ Second, the court looks at the purposes served by the challenged action.⁵¹ Third, the court considers the state's interest in the particular means used to achieve those purposes.⁵²

The Alaska Supreme Court recognizes that although a voter's right to an equally geographically effective or powerful vote is not a fundamental right, it is a significant constitutional interest.⁵³ Thus, individual members of a geographic group or community have a significant constitutional interest in having their votes protected from disproportionate dilution by the votes of another geographic group or community.⁵⁴ The Alaska Redistricting Board ("Board") therefore "cannot *intentionally* discriminate against a borough or any other 'politically salient class' of voters by *invidiously* minimizing that class's right to an equally effective vote."⁵⁵ Political subdivisions and

⁴⁹ *Kenai Peninsula Borough v. State*, 743 P.2d at 1372.

⁵⁰ *Id.* at 1371; *see also Braun v. Denali Borough*, 193 P.3d 719, 731 (Alaska 2008).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at 1371-72.

⁵⁴ *Id.* at 1371.

⁵⁵ *In re 2001 Redistricting Cases*, 44 P.3d at 144 (emphasis added).

groups of voters are not, however, entitled to control a particular number of seats based on populations, or proportional representation, absent invidious discrimination.⁵⁶

Alaska courts apply a neutral factor test in determining whether the Board had a legitimate purpose in designing challenged districts, unless of course, the Board's intent was discriminatory on its face.⁵⁷ The courts look at both the process followed by the Board in formulating its decision and to the substance of the Board's decision.⁵⁸ If the evidence shows, based on a totality of the circumstances, that the Board acted intentionally to discriminate against the voters of a particular geographic area, then the Board has the burden of proving any intentional discrimination will lead to more proportional representation.⁵⁹

Intentional discrimination can be inferred where a redistricting plan "unnecessarily divides a municipality in a way that dilutes the effective strength of municipal voters."⁶⁰ Indications of discrimination include the lack of adherence to established political subdivision boundaries, the failure to keep a borough's house

⁵⁶ *Id.* at 143-144, 146-147.

⁵⁷ *Kenai Peninsula Borough v. State*, 743 P.2d at 1372.

⁵⁸ *Id.*

⁵⁹ *Id.*; see also *Hickel v. Southeast Conference*, 846 P.2d at 49.

⁶⁰ *In re 2001 Redistricting Cases*, 44 P.3d at 144.

districts together when forming senate districts, and “failure to keep all of a borough’s excess population in the same house district.”⁶¹

When a borough falls far short of having enough population to support an election district, however, there is no indication of gerrymandering.⁶² In the 2001 redistricting case, the Supreme Court found no equal protection violation when the Board divided the Lake and Peninsula Borough among two house districts.⁶³ The high court concluded that “because the Lake and Peninsula Borough falls far short of having enough population to support an election district,” there was no indication of gerrymandering.⁶⁴ Moreover, the court found the board had an uncontroverted, non-

⁶¹ *Kenai Peninsula Borough v. State*, 743 P.2d at 1369, 1372-73; *In re 2001*, 44 P.3d at 146-47.

⁶² *In re 2001 Redistricting Cases*, 44 P.3d at 145. The Alaska Supreme Court did remand this Court’s previous ruling that the anti-dilution rule cannot be violated if the City of Fairbanks cannot support a Senate district based on its population. *See In re 2011 Redistricting Cases*, 274 P.3d 466, 469 (Alaska 2012). The high Court reasoned since the Supreme Court had previously permitted a group of Anchorage voters who made up 51 percent of an ideal Senate district to bring an anti-dilution claim, then the City of Fairbanks, which made up 89 percent of an ideal Senate district, should be permitted to bring a similar claim. *Id.* The Supreme Court reversed this Court’s decision and remanded to evaluate the voter dilution claim on the merits. *Id.* However, only the Mat-Su Borough voters within House District 12 constitute more than 50 percent of the population. ARB00017357. The communities outside the Mat-Su Borough in House District 9 and 12 are far less, constituting 27%, 24%, and 4% behind the Mat-Su with 45% in House District 9. Ex. A. Only the Kodiak Island Borough has more than 50 percent in House District 32 with 75.2%, and is wholly within House District 32, while the other communities wholly within House District 32 contribute only 13.5% and 3.7%. Ex. C. The KPB contributes 7.6%. Ex. C. Since all of these communities, except for Mat-Su Borough in House District 12 and the Kodiak Island Borough in House District 32, fall short of having enough population to support an election district, much less than the 51 percent and 89 percent the Alaska Supreme Court has identified as sufficient, there is no indication of gerrymandering. *See In re 2001 Redistricting Cases*, 44 P.3d at 145.

⁶³ *Id.*

⁶⁴ *Id.*

discriminatory motivation for its action – “it needed the population to complete District 36.”⁶⁵

The Alaska Supreme Court, as well as this Court, recognize, however, that even an inference of intentional discrimination may be rebutted by valid non-discriminatory justifications.⁶⁶ Such justifications include the necessity of compliance with the federal one person, one vote mandate, the Article VI, section 6 requirements in the Alaska Constitution of compactness, contiguity, and socio-economic integration, as well as, notably, the need to accommodate excess population.⁶⁷

1. The Board Had Legitimate, Nondiscriminatory Reasons for Adding Population from the Mat-Su Borough to Communities Outside the Borough and for Adding Population from the KPB to Communities Outside the Borough.

The ADP claims the Board’s plan fails to afford proportional representation to the voters inside the Mat-Su Borough and inside the KPB in House Districts 9, 12, and 32 because the Board combines population from either the Mat-Su Borough or the KPB with population outside the respective Boroughs.⁶⁸ The Plaintiff’s claims fail as a

⁶⁵ *Id.*

⁶⁶ *In re 2001 Redistricting Cases*, 44 P.3d at 144; McConahy Order at 108.

⁶⁷ *In re 2001 Redistricting Cases*, 44 P.3d at 144, n.7.

⁶⁸ ADP Complaint at ¶¶ 14, 18. The Riley Plaintiffs claim only that the Board’s plan fails to afford proportional representation to those who reside *outside* the Mat-Su Borough and *outside* the KPB. However, as explained herein, the only voters with a potential proportional representation claim are those who reside *inside* the Mat-Su Borough in House District 9 and *inside* the KPB in House District 32. *See infra* at n.41; *see also Kenai Peninsula Borough v. State*, 743 P.2d at 1371. Therefore the Riley Plaintiffs’ claims are invalid and must be dismissed. Irrespective of this distinction, however, both the Riley Plaintiffs’ and the ADP’s claims likewise fail on the merits because the Board did not discriminate against any of the voters in House District 9, 12, or 32.

matter of law because the Board did not discriminate, intentionally or otherwise, against the voters in House District 9, House District 12, or House District 32. The Board simply had to make hard choices in order to accommodate excess population in the MOA and the KPB. The results of those choices are House Districts 9, 12, and 32. Since the Board had legitimate, nondiscriminatory reasons for combining these populations, the Board's 2013 Proclamation Plan does not violate the geographic proportionality rights of the Mat-Su Borough or KPB voters. This Court should therefore grant the Board summary judgment and dismiss the Plaintiffs' claims.

a. House District 9.

House District 9 combines 7,987 people from the east side of the Mat-Su Borough with the Delta Junction area and communities along the Richardson Highway, including Glennallen, and Valdez and Whittier.⁶⁹ This configuration is similar to the Richardson Highway district in the 1994 redistricting map, the 2002 redistricting map, the original 2011 Proclamation Plan, and the 2012 Amended Proclamation Plan.⁷⁰ House District 9 is the result of the ripple effect caused by the Board's need to accommodate the excess population of the MOA with the creation of House District 12.⁷¹

⁶⁹ Ex. A; ARB00017362-17363; ARB00017402.

⁷⁰ See ARB00016727-16728 at 56:3-58:15; *see also* Ex. B.

⁷¹ See ARB00017349-17350.

The MOA has enough population for 16.436 ideal House districts.⁷² After considering several options for accommodating this excess population, none of them ideal, the Board opted to combine the excess population from the MOA with population from the Mat-Su Borough, creating House District 12.⁷³ As is inherent in redistricting, this had a ripple effect on the rest of the Mat-Su Borough House districts. The Mat-Su Borough had enough population for 5.01 ideal House districts.⁷⁴ After taking 56% of an ideal district from the Mat-Su Borough and combining it with the excess population from the MOA to form House District 12, the Board was left with essentially 45% of an ideal district comprised of Mat-Su residents.⁷⁵

The Board chose to take this population from the east side of the Mat-Su Borough and combine it with “the most strongly integrated economic corridor in the state, the pipeline corridor, the Richardson Highway corridor from the south region of the North Star Borough to Valdez.”⁷⁶ The Board kept the Delta Junction area together which has always expressed their desire to remain together in a House district, and avoided pairing Valdez with Anchorage, an option the Board seriously considered in several different configurations but ultimately decided against because of socio-

⁷² ARB00017348.

⁷³ ARB00017349-17350.

⁷⁴ ARB00017357.

⁷⁵ *Id.*; see also ARB00016727 at 56:3-57:6.

⁷⁶ ARB00016727 at 56:3-12.

economic integration concerns.⁷⁷ The Board also included a number of Athabascan villages along the Richardson Highway that have strong, socio-economic ties to the eastern villages of the Mat-Su Borough.⁷⁸

The Board recognized by taking this population from the Mat-Su Borough, the Board would be splitting the Mat-Su Borough twice – once to create House District 9 and once to create House District 12.⁷⁹ However, the Board felt this was the most reasonable choice that most closely followed the mandates of the Alaska Constitution in order to accommodate the excess population in the MOA.⁸⁰ As explained in greater detail below, had the Board pushed the excess population from the MOA south into the KPB, the Board would have had to split the KPB at least twice.⁸¹ Since the KPB only had an excess population of 2,135, or 12% of an ideal district, the Board would have needed to include additional population from other areas outside of both the MOA and the KPB, thereby creating a ripple effect that would have resulted in bigger issues.⁸²

The Mat-Su Borough effectively controls five House districts – House District 7, 8, 10, 11, and 12, and could possibly control House District 9 given the Mat-Su

⁷⁷ *Id.* at 56:13-21; ARB00017350.

⁷⁸ *Id.* at 56:22-57:6.

⁷⁹ *Id.* at 57:14-58:15; ARB00017349-17350.

⁸⁰ *Id.*; ARB00017349-17350.

⁸¹ ARB00017349-17350.

⁸² *Id.*; ARB00016764-16769 at 11:21-31:7.

Borough voters are the largest group of voters in House District 9 at 45%, and the Mat-Su Borough is the fastest growing area of the State.⁸³ This is proportional to the number of House districts justified by the population of the Mat-Su Borough, which is enough for 5.01 House districts.⁸⁴ The Board paired House District 9, which is 45% Mat-Su Borough voters, with House District 10, a House district with 100% of its population residing in the Mat-Su Borough, to create Senate District E.⁸⁵ Senate District D is comprised of House District 7 and House District 8, House districts wholly within the Mat-Su Borough and therefore controlled by Mat-Su voters.⁸⁶ House District 11, a district wholly within the Mat-Su Borough, and House District 12, which contains 43% MOA voters and 56% Mat-Su Borough voters, make up Senate District E.⁸⁷ Thus, the Mat-Su Borough also arguably controls three Senate districts, Senate District D, E, and F.⁸⁸

Both the Mat-Su Borough Mayor and the Mat-Su Borough Assembly support the Board's 2013 Proclamation Plan, and specifically, the creation of House District 9 and

⁸³ ARB00017350. Attached as Exhibit D is a chart showing the change in population of Alaska by economic region, borough, and census area from 2010-2012 with the Mat-Su Borough highlighted.

⁸⁴ ARB00017357.

⁸⁵ ARB00017353.

⁸⁶ *Id.*; *see also* ARB00017357.

⁸⁷ *Id.*

⁸⁸ ARB00017353.

House District 12.⁸⁹ In their letter of support, the Mat-Su Borough Assembly emphasized:

- The remaining Mat-Su population is included in the historic Richardson Highway District, which also provides the Mat-Su with its third senator.
- The Richardson Highway District consists of socio-economically similar modest sized communities on the road system like the Eastern Mat-Su communities on the Glenn Highway.
- The 1994 and 2002 Redistricting Board Maps contained a similar Richardson Highway District.
- This Richardson Highway District is more compact than the 2002 District which included FNSB communities.
- The pairing of the Northwest Mat-Su District with the Richardson Highway Districts keeps all the mat-Su residents in three senate seats.
- This map serves the Mat-Su Borough better than other options which paired Mat-Su Districts with an MOA district or an Fairbanks North Star Borough district to dilute the Mat-Su Borough impact in the Alaska Senate.⁹⁰

Mat-Su Borough residents are the only voters in House District 9 with even a potential proportional representation claim. However, as explained above, the Board did not discriminate against them, intentionally or otherwise, by combining them with other voters outside the Mat-Su Borough to create House District 9, nor is there any discriminatory effect on the Mat-Su residents in House District 9. None of the communities outside the Mat-Su Borough have enough population to support their own House district, and, therefore, must be added to other populations in order to create a

⁸⁹ ARB00017585; ARB00017854-17855.

⁹⁰ ARB00017854-17855.

House district as near as practicable to the ideal district size in order to achieve the cornerstone of redistricting – one person, one vote. The resulting district has 17,739 people, only 16 people short of an ideal district with the second lowest deviation in the entire 2013 Proclamation Plan at -0.09%.⁹¹ The deviation of House District 9 is second only to House District 22, which is exactly equal to the ideal population of 17,755.⁹²

After the Mat-Su Borough, the Delta Junction area contributes the second largest population percentage to House District 9 with 27%, or 4,797 people.⁹³ The remaining population comes from Whittier and Valdez, for a combined contribution of 24%, and the communities along the Parks Highway in the Copper Basin area, including Glennallen, which contribute only 4% of the population.⁹⁴ The Board did not divide any of these communities, keeping intact the organized cities of Valdez and Whittier, the city of Delta Junction and the Delta Junction area, as well as the majority of the communities along the Richardson Highway.⁹⁵ There is simply no evidence the Board discriminated against any of these communities because none exists.

The Board did not intentionally discriminate against the Mat-Su Borough voters by placing 45% of them in House District 9. While the Board did split the Mat-Su

⁹¹ ARB00017353.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ The Delta Junction area is an unorganized area that has no constitutional right to be placed in a single House district. *See In re 2001 Redistricting Cases*, 44 P.3d at 144-145.

Borough in creating House District 9, it did so only to accommodate the excess population of the MOA, a reason recognized by the Alaska Supreme Court as a legitimate and nondiscriminatory purpose.⁹⁶ The Plaintiffs' proportional representation claim regarding the voters of the Mat-Su Borough in House District 9 fail as a matter of law. The Board is therefore entitled to summary judgment and the Plaintiffs' claim should be dismissed.

b. House District 12.

House District 12 consists of population from two areas – the Mat-Su Borough and the MOA.⁹⁷ The MOA constitutes 43% of the population in House District 12,⁹⁸ with population from the Mat-Su Borough providing the remaining 57%.⁹⁹ The Board did not intentionally discriminate against either the MOA voters or the Mat-Su Borough voters by creating House District 12. The Board's sole reason for configuring

⁹⁶ See *In re 2001 Redistricting Cases*, 44 P.3d at 145.

⁹⁷ ARB00017380; ARB00017364-17365; ARB00017405.

⁹⁸ The Mat-Su Borough has enough population for 5.01 ideal House districts, the KPB has enough population for 3.12 ideal House districts, and the MOA has enough population for 16.43 House districts. However, the Plaintiffs only take issue with the fact the Board placed the population from the Mat-Su Borough into six House districts and that the Board placed the population from the KPB into four House districts. They do not challenge the Board's decision to place the population of MOA, equal to 16.43 ideal districts, into 17 districts. Regardless, the Board did not discriminate against the MOA voters. The Board simply had to accommodate the excess population of the MOA, a legitimate non-discriminatory reason. The Board placed the entire excess MOA population into a single House district, House District 12.

⁹⁹ ARB00017356-17357.

House District 12 as it did was to accommodate the excess population of the MOA, which is a legitimate non-discriminatory reason.¹⁰⁰

The Board struggled with how to handle this excess population nearly equal to half of a House district in the MOA.¹⁰¹ The Board had to balance competing constitutional requirements due to the ripple effects inherent in the shift of that amount of population.¹⁰² The Board considered several options, none of them ideal.¹⁰³ The available options were: (1) spread the population evenly over the 16 other MOA districts, thereby increasing the deviations within the MOA; (2) push the population south to create a shared Anchorage/Kenai district, thereby breaching the Kenai Peninsula Borough a second time; (3) create a district which combined the excess population from Anchorage with Whittier, Valdez, and other communities along the Richardson Highway north to the Fort Greely area; or (4) push the population north to create a shared Anchorage/Mat-Su district.¹⁰⁴ After discussion and deliberation, the Board determined that the most reasonable way to accommodate the MOA excess population that best balanced all redistricting requirements was by creating House

¹⁰⁰ See ARB00017349-17350.

¹⁰¹ ARB00017348-17350.

¹⁰² *Id.*

¹⁰³ ARB00017349-17350.

¹⁰⁴ *Id.*

District 12, a shared Anchorage/Mat-Su District.¹⁰⁵ House District 12 places 7,739 residents of the MOA (43% of an ideal district) into a district with south Mat-Su.¹⁰⁶

The Board chose this as the best option based on several factors as well as other evidence in the Board Record.¹⁰⁷ First, overpopulating all of the MOA districts with 7,739 voters spread evenly over the other 16 districts was not a desirable option as it increased the deviations within the MOA by 2.72%, pushing the total deviation range within the MOA to over 4% which the Board considered unacceptable in an urban area under Alaska Supreme Court precedent.¹⁰⁸ Second, creating an Anchorage/Kenai district was not a desirable option as that combination would require that the Board split the population of the KPB twice.¹⁰⁹ Additionally, the KPB has a population of 55,400, which is equal to 3.12 ideal districts.¹¹⁰ With an excess population of only 2,135 (12% of an ideal district), population from other areas outside the MOA and the KPB would need to be added, thereby creating a ripple effect that made any such district constitutionally troublesome and unworkable as a whole.¹¹¹

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

The Board seriously considered a Valdez/Anchorage option in several different configurations, including configurations proposed by third parties.¹¹² However, the Board did not find an Anchorage-Valdez/Richardson Highway district desirable because it created a district that the courts would likely not consider socio-economically integrated.¹¹³ The Board also had concerns that the district might not meet the compactness requirements due to the large appendage that had to be created to geographically combine Anchorage and Whittier into one district.¹¹⁴

The Board ultimately chose to combine the excess population from the MOA with population from the Mat-Su Borough, even though it split the Mat-Su Borough twice, because it was the most reasonable option.¹¹⁵ The resulting House District 12 maximized socio-economic integration as the Mat-Su Borough and the MOA are closely tied geographically, economically, socially, and recreationally.¹¹⁶ In fact, the Alaska Supreme Court has already approved a district that combines portions of the MOA with the Mat-Su Borough, noting “any neighboring areas north, east, or south of the combined municipalities would meet the constitutional requirements of relative

¹¹² ARB00017350.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

socio-economic integration.”¹¹⁷ The Mat-Su Borough still has four districts completely within its boundaries and a majority of the population in House District 12, thereby giving it effective control of five House districts, the amount justified by its population of 88,995 (5.01 ideal districts).¹¹⁸ The Mat-Su Borough is also the fastest growing area of the State, and contains areas that were among the fastest growing in the country over the last decade, ensuring the Mat-Su Borough will have the population to effectively control that district throughout the decade.¹¹⁹

The Board received no objections or public comments against this option and, in fact, the Mayor of the Mat-Su Borough submitted public comment and public testimony on the record in favor of the Anchorage/Mat-Su combination.¹²⁰ Shortly after the Board adopted its final plan, the Mat-Su Borough Assembly submitted a letter in favor of the Board’s plan, including the creation of House District 9 and House District 12.¹²¹ Specifically, the Mat-Su Borough Assembly emphasized the following:

- Mat-Su Borough Assembly concurs with the Alaska Redistricting Board July 14, 2013 Proclamation.

¹¹⁷ *In re 2001 Redistricting Cases*, 47 P.3d 1089, 1091, n.9, 1093-94 (Alaska 2002), quoting *In re 2001 Redistricting Cases*, 44 P.3d 141, 144 n.7 (Alaska 2002) (upholding House District 16 as socio-economically integrated because it combines communities within the MOA with areas north and east of the municipality).

¹¹⁸ ARB00017350.

¹¹⁹ *Id.*; see also Ex. C.

¹²⁰ *Id.*; ARB00017585.

¹²¹ ARB00017854-17855.

- Mat-Su Borough Assembly finds the July 14, 2013 Proclamation map provides the six compact districts and three senate seats for the borough population and our neighbors.
- The partial District on the northern end of the Municipality of Anchorage is an excellent fit with the Mat-Su population south of the Palmer & Wasilla core areas. These contiguous areas are highly integrated in socio-economic terms. These citizens share electric and telephone utilities as well as Glenn Highway as their primary transportation link.
- The 1994 and 2002 Redistricting Boards recognized the same socio-economic integration and created similar Southern Mat-Su/Northern MOA Districts.
- This 2013 map has four house districts and one senate district are fully within the Mat-Su Borough.
- This Southern Mat-Su Borough Districts is the fifth house district controlled by Mat-Su voters. The 2010 census shows 56% of the population resides in the Mat-Su borough. AS the Mat-Su Borough population grows, this Mat-Su control percentage will grow during the decade.
- The pairing of this Southern Mat-Su Borough District with the Palmer District provides the Mat-Su Borough its second senator...
- This map serves the Mat-Su Borough better than other options which paired Mat-Su Districts with an MOA district or a Fairbanks North Star Borough district to dilute the Mat-Su Borough impact in the Alaska Senate.
- This 2013 Proclamation provides the Mat-Su Borough an opportunity to draw Assembly districts within these district boundaries and precincts. Current local boundaries are comprised of precincts split no less than 3 times causing an administrative nightmare for staff and confusion with the public.¹²²

Plainly, the Board did not intentionally discriminate against either the MOA voters or the Mat-Su Borough voters by creating House District 12. The Board had to

¹²² ARB00017845-17855.

put the excess population from the MOA, which equaled nearly half of an ideal district, somewhere. After considering several options, the Board chose to add the all of the excess population from the MOA into a single district along with population from the Mat-Su Borough, creating a House district only 84 people short of an ideal district with a deviation of -0.47%.¹²³ The overall deviation in the sixteen districts contained wholly within the MOA is a mere 1.59%.¹²⁴ Had the Board chosen to overpopulate all sixteen MOA districts with the excess population, the total deviation range within the MOA would have been over 4%.¹²⁵ The MOA contributes 43% to House District 12, the exact amount the MOA had to shed, while the Mat-Su Borough contributes 56%.¹²⁶ The Mat-Su Borough effectively controls five House districts, which its population justifies.¹²⁷

The Board's plan does not violate the proportional representation of either the MOA voters or the Mat-Su Borough voters in House District 12. The Board created House District 12 in order to accommodate the excess population of the MOA, a valid non-discriminatory reason, and placed all of the MOA's excess population into a single district. The Board is entitled to summary judgment and the Plaintiffs' claims should be dismissed.

¹²³ ARB00017353.

¹²⁴ *Id.*

¹²⁵ ARB00017349.

¹²⁶ ARB00017349-17350.

¹²⁷ *Id.*

c. House District 32.

The configuration of House District 32 is a result of the Board's need to accommodate excess population, the same dilemma the Board faced when creating House District 12. The KPB has enough population for 3.12 ideal House districts.¹²⁸ After discussion and deliberation, the Board chose to take the 12% excess population from Tyonek, Beluga, Seldovia, Nanwalek, Halibut Cove, and Port Graham, and placed it into a single House district along with other off the road coastal communities.¹²⁹ The resulting district, House District 32, has 322 people greater than the ideal district, or a deviation of 1.81%.¹³⁰ The Board had a legitimate, non-discriminatory reason for placing the voters of the KPB in House District 32 – to accommodate the KPB's excess population. The Board placed all of the KPB's excess population into a single district, negating any inference of intentional discrimination. The Board's plan therefore does not violate the proportional representation rights of the voters within the KPB in House District 32.

The Board struggled with where to place that portion of the KPB located across Cook Inlet from the Kenai Peninsula where Tyonek and Beluga, with 379 total people, are located.¹³¹ Historically, this section of the KPB has been placed in different regions,

¹²⁸ ARB00017357.

¹²⁹ ARB00017351.

¹³⁰ ARB00017353.

¹³¹ ARB00017351.

sometimes with the rest of the KPB, other times with an Aleutian Chain or Kodiak district.¹³² In the original 2011 Proclamation Plan, the Board placed the KPB communities of Seldovia, Halibut Cove, Nanwalek, and Port Graham in House District 32 along with Kodiak Island Borough, Cordova, Chenega, Tatitlek, Whittier, and the Yakutat Borough.¹³³ The Board put Tyonek and Beluga in House District 36 along with the Lake and Peninsula Borough, the Aleutians East Borough, and the Bristol Bay Borough.¹³⁴ No party challenged the configuration of House District 35, nor did they challenge the inclusion of Tyonek and Beluga from the KPB in House District 36.¹³⁵

When the Board adopted the 2012 Amended Proclamation Plan, the Board removed Seldovia and Halibut Cove from House District 35 and placed them into a House district contained wholly within the KPB.¹³⁶ The Riley Plaintiffs objected to the Board removing these communities from House District 35 and placing them into a district with other KPB communities rather than placing them into House District 36 with Tyonek and Beluga, and other non-KPB communities.¹³⁷ Now the Riley Plaintiffs

¹³² *Id.*

¹³³ See Exhibit E, which are maps created by Eric Sandberg comparing boundaries of House District 32 in the current 2013 Proclamation Plan against the boundaries of a similar district in the Board's original 2011 Proclamation Plan and the Board's 2012 Amended Proclamation Plan. See Aff. of Sandberg at ¶ 6.

¹³⁴ ARB00006053.

¹³⁵ See ARB00006438-6446; ARB00006447-6451; ARB0006452-6456.

¹³⁶ ARB00015109, ARB00015146.

¹³⁷ Riley Plaintiffs' Objections to the Board's Notice of Compliance at pgs. 12-13 (April 16, 2012).

and the ADP complain about the Board reuniting these communities along with other non-KPB communities.¹³⁸

The Board received public comments that Nanwalek and Port Graham do not like being in a House district with other KPB communities.¹³⁹ Other options split the KPB twice, placing Tyonek into a Bristol Bay district and placing Halibut Cove, Nanwalek, and Port Graham with the other coastal communities outside the KPB such as Cordova.¹⁴⁰ If the Board had moved Tyonek back into a district with other KPB communities, it would have pushed the deviations up to between 6 and 7 percent.¹⁴¹ The plan submitted by Joe McKinnon, counsel for the ADP, for example, overpopulated the KPB House districts rather than accommodating the excess population elsewhere.¹⁴² The resulting House districts under the ADP's proposed plan ("McKinnon Plan") had deviations of 4.05%, 4.05%, and 3.93%.¹⁴³ These high deviations cause the overall deviation of the McKinnon Plan to come in at 9.6%, just under the federal threshold of

¹³⁸ First Amended Renewed Application at ¶¶ 22-24; ADP Complaint at ¶¶ 15-18.

¹³⁹ ARB00016719 at 24:14-20.

¹⁴⁰ *Id.* at 23:11-25:3; ARB00016726 at 50:17-52:10. The Board heard public testimony that Port Graham, Nanwalek, and Seldovia are not connected to the rest of the KPB by road. They are strictly coastal villages with marine transportation, much like Kodiak Island, Cordova, and Yakutat, which are all within House District 32. *See* ARB00016727 at 54:9-18.

¹⁴¹ ARB00016720 at 27:8-21.

¹⁴² *See* ARB00017323-17331.

¹⁴³ ARB00017324.

10%.¹⁴⁴ The Board's plan, on the other hand, has an overall deviation of 4.24% for the House districts, the lowest in redistricting history.¹⁴⁵

After discussion and deliberation, the Board determined that the most reasonable alternative was to incorporate the KPB communities of Tyonek and Beluga, along with Seldovia, Halibut Cove, Nanwalek, and Port Graham, into House District 32 in order (1) to avoid splitting the excess population of the KPB twice; and (2) to keep all of the rural areas of the KPB off the road system on both sides of Cook Inlet together in one district, which the Riley Plaintiffs requested in their objections to the Board's 2012 Amended Proclamation Plan.¹⁴⁶

Likewise, there is no evidence whatsoever that the Board discriminated against any of the other communities, outside the KPB, in House District 32. None of the communities in House District 32 outside the KPB have enough population to support their own House district and must therefore be combined with other voters to create as near as practicable a House district of ideal size.¹⁴⁷ For example, the Kodiak Island

¹⁴⁴ *Id.*

¹⁴⁵ ARB00017351.

¹⁴⁶ *Id.*; Riley Plaintiffs' Objections to the Board's Notice of Compliance at pgs. 12-13.

¹⁴⁷ In 2001, the Alaska Supreme Court found it permissible to add population from either the Lake and Peninsula Borough or KPB with Kodiak because Kodiak did not have enough population to support a House district. *In re 2001 Redistricting Cases*, 44 P.3d at 145. The 2001 Board had split the Lake and Peninsula Borough and added a portion of this population with the Kodiak Island Borough to create House District 36. *Id.* The 2001 Board chose this combination rather than split the KPB twice. *Id.* The Supreme Court found no equal protection violation because the Lake and Peninsula Borough fell far short of having enough population to support an election district and the Board had offered an uncontroverted, nondiscriminatory motivation – it needed population to create a district as close as practicable to the ideal district size. *Id.* This exact same scenario exists today.

Borough is short 4,163 people from an ideal district.¹⁴⁸ Thus, additional population had to be added to the Kodiak Island Borough to create a House district as near as practicable to the ideal district. The Board chose to add other off the road coastal communities such as Cordova, Tatitlek, Chenega, and Yakutat.¹⁴⁹ The KPB had enough population for 3.12 ideal House districts.¹⁵⁰ Since this excess population needed placement, the Board chose to add similar off the road coastal communities from the KPB into House District 32 to create as near as practicable an ideal House district that was also compact, contiguous, and socio-economically integrated.¹⁵¹ The resulting House District 32 has 18,077 people, a deviation of 1.81% from the ideal district.¹⁵²

The entire Kodiak Island Borough is in House District 32, providing 75.2% of the population, as is the entire Yakutat Borough providing 3.7% of the population.¹⁵³ Cordova is an incorporated city, but not part of any borough, and is entirely contained within House District 32, providing 13.5% of the population along with Tatitlek and

¹⁴⁸ See Ex. E.

¹⁴⁹ See ARB00017351; ARB00017372; ARB00017425.

¹⁵⁰ ARB00017357.

¹⁵¹ ARB00017351.

¹⁵² ARB00017353.

¹⁵³ *Id.*

Chenega in the Prince William Sound area.¹⁵⁴ The only borough the Board divided in House District 32 is the KPB, which provides 7.6% of the population.¹⁵⁵

The Board did not intentionally discriminate against the voters of the KPB by placing 12%, the exact number of the KPB's excess population, into House District 32, nor did it discriminate against any of the other communities in House District 32. It simply had to accommodate the KPB's excess population, as well as the insufficient population of the other communities, to create, as near as practicable, an ideal House district, both of which are legitimate non-discriminatory reasons. The Board's plan does not violate the proportional rights of the KPB voters in House District 32. Thus, the Board is entitled to summary judgment as a matter of law.

2. In Addition, All Proportional Representation Challenges with Respect to House District 9 and House District 32 Should Be Dismissed as Untimely.

The Riley Plaintiffs filed their first Application to Correct Errors in Redistricting on July 12, 2011, thirty days after the Board adopted its original 2011 Proclamation Plan as required by Article VI, section 11 of the Alaska Constitution.¹⁵⁶ The ADP never

¹⁵⁴ *Id.*

¹⁵⁵ Ex. E.

¹⁵⁶ ARB000064526456; Alaska Const. art. VI, § 11.

filed an application to correct any alleged error in the Board's 2011 Proclamation Plan, despite the opportunity to do so.¹⁵⁷

House District 6 in the Board's 2011 Proclamation Plan and in the Board's 2012 Amended Proclamation Plan is substantially similar to the current House District 9, combining population from the Mat-Su Borough with Delta Junction, Valdez, Glennallen, and other communities along the Richardson Highway.¹⁵⁸ Likewise, House District 35 in the Board's 2011 Proclamation Plan and 2012 Amended Proclamation Plan is essentially the same configuration as the current House District 32, combining population from the KPB with Kodiak, Cordova, and Yakutat.¹⁵⁹ Neither the Riley Plaintiffs nor the ADP challenged these previous districts. Their attempt to do so now is untimely and should be dismissed.

In the 2001 round of redistricting, the trial court rejected challenges to an amended plan, which had been reconfigured upon remand, that could have been made against the original plan but were not.¹⁶⁰ Judge Rindner held such challenges could not

¹⁵⁷ Article VI, section 11 of the Alaska Constitution permits "any qualified voter...[to] apply to the superior court to compel the Redistricting Board, by mandamus or otherwise,...to correct any error in redistricting." Alaska Constitution, art. VI, § 11. The ADP did appear as amicus curiae before the Alaska Supreme Court in the previous proceedings, but did not challenge any aspect of the Board's 2012 Proclamation Plan. *See* Brief of Amicus ADP Regarding AS 15.10.120 (April 16, 2012); Response of Amicus Alaska Democratic Party to Order to Show Cause (May 8, 2012). The ADP simply stated "the constitutional defects in the Board's proposed interim plan will be addressed in detail by other parties or amici", and focused instead on the election deadlines. *See id.*

¹⁵⁸ *See* Ex. B.

¹⁵⁹ Ex. E.

¹⁶⁰ *In re 2001 Redistricting Cases*, 47 P. 3d 1089, 1090 (Alaska 2002).

be raised for the first time at this late date, because an “application to compel correction of any error in redistricting must be filed within thirty days following the adoption of the final redistricting plan and proclamation by the board.”¹⁶¹ The trial court concluded that the errors alleged regarding the KPB and statewide deviations challenged in the amended plan concerned aspects of the amended plan that were largely carried over from the original June 18, 2001 Proclamation Plan, and accordingly, the relevant deadline for these claims was July 18, 2001, thirty days after the Board adopted its original Proclamation Plan, as set forth in the Alaska Constitution.¹⁶² However, since the parties did not raise these claims until after the Board promulgated the amended plan, on April 25, 2002, the trial court rejected the parties’ challenges as untimely.¹⁶³

This Court should reach the same conclusion as to all proportional representation challenges pertaining to House District 9 and House District 32 for the following reasons. First, House District 6 in the Board’s 2011 Proclamation Plan was substantially similar to the current House District 9, combining population from the Mat-Su Borough with Valdez, Glennallen, and Delta Junction.¹⁶⁴ The notable difference was the inclusion of population from the Fairbanks North Star Borough

¹⁶¹ *Id.* at 1090, n.5.

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *See* ARB00006084; Ex. B at pg. 2.

(“FNSB”).¹⁶⁵ The Riley Plaintiffs challenged the inclusion of voters from the FNSB in House District 6, but never took issue with the addition of population from the Mat-Su Borough.¹⁶⁶ The Board eliminated the FNSB population from House District 6 in the Board’s 2012 Amended Proclamation Plan and included Whittier, as well as several other villages along the Richardson Highway, creating a district almost identical to the current House District 9.¹⁶⁷ Neither the Riley Plaintiffs nor any other party objected to the proportional representation of the Mat-Su Borough voters in the amended House District 6.¹⁶⁸

Second, House District 35 in the Board’s 2011 Proclamation Plan, and in the Board’s 2012 Amended Proclamation Plan, is also substantially similar to the current House District 32, combining the KPB communities of Seldovia, Halibut Cove, Nanwalek, and Port Graham with Kodiak, Cordova, and Yakutat.¹⁶⁹ Again, the Riley Plaintiffs did not challenge the configuration or the population make-up of House

¹⁶⁵ *Id.*; Ex. B at pg. 2.

¹⁶⁶ ARB00006452-6456.

¹⁶⁷ Ex. B at pg. 3.

¹⁶⁸ Riley Plaintiffs’ Objections to the Board’s Notice of Compliance at pgs. 13-14. The Riley Plaintiffs’ did take issue with the Board splitting the surplus population of the Mat-Su Borough into two districts, House District 6 and 11. But they specifically stated, “as noted previously, the splits in Kenai and Mat-Su do not have the same dilution effect on proportional representation as the previous split in the FNSB. The Mat-Su multiple splits and the severe underpopulation of HD6 combine to have a negative effect upon the proportional representation of FNSB voters.” *Id.* The Riley Plaintiffs did not challenge the proportional representation rights of the Mat-Su voters.

¹⁶⁹ *See* Ex. E.

District 35, nor did they assert any geographic proportionality challenge regarding the voters who resided inside or outside the KPB.¹⁷⁰

The Board maintained the configuration of House District 35, which no one challenged, in the 2012 Amended Proclamation Plan except for the exclusion of the KPB communities of Nanwalek, Seldovia, and Halibut Cove, which the Board placed into a House district with other KPB voters.¹⁷¹ The Riley Plaintiffs did challenge the configuration of House District 35 in the Board's 2012 Amended Proclamation Plan, despite having failed to do so in its original complaint, but only as to compactness, contiguity, and socio-economic integration.¹⁷² They specifically took issue with the Board placing the KPB communities of Seldovia and Nanwalek into a House district with other KPB voters.¹⁷³ They argued the Board should have instead included them in House District 36, a Bristol Bay district, along with Tyonek and Beluga.¹⁷⁴ However, they never challenged the proportional representation rights of the KPB voters.¹⁷⁵

The Riley Plaintiffs have failed not once, but twice, to timely challenge the proportional representation rights of the Mat-Su Borough and KPB voters in current

¹⁷⁰ ARB00006452-6456.

¹⁷¹ Ex. E at pg. 2.

¹⁷² Riley Plaintiffs' Objections to the Board's Notice of Compliance at pgs. 12-13.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *See id.*

House Districts 9 and 32. The ADP failed to even file a complaint with this Court, despite its constitutional right to do so, to correct any alleged errors that existed in the Board's 2011 Proclamation Plan. This Court should reject as untimely all proportional representation challenges that could have been made against the original plan, or the Amended Proclamation Plan, but were not. Allowing either of these parties a third bite at the apple is contrary to legal precedent.

V. CONCLUSION

The Board did not discriminate against any of the voters in House District 9 or 12, nor did the Board discriminate against any of the voters in House District 32, intentionally or otherwise. The Board had legitimate, non-discriminatory reasons for placing the Mat-Su Borough and KPB population in House districts with population from outside these boroughs – to accommodate the excess population of the MOA and the KPB. Since the Board did not discriminate against any politically salient class of voters, the Board did not violate any voter's right to proportional representation. The Plaintiffs' claims to the contrary fail on the merits. Additionally, the Plaintiffs' proportional representation claims against House District 9 and House District 12 are untimely and should be dismissed. The Board is entitled to summary judgment as a matter of law.

DATED at Anchorage, Alaska this 12th day of September, 2013.

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CERTIFICATE OF SERVICE

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