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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the

2021 Redistricting Plan

Case No. 3AN-21-08869 CI
(Consolidated)

Non-Anchorage Case No: 3PA-21-02397 CI

MATANUSKA-SUSITNA BOROUGH'S AND MICHAEL BROWN'S
OPPOSITION TO MOTION TO DISMISS

Plaintiffs Matanuska-Susitna Borough and Michael Brown (collectively hereinafter referred to as “MSB”), by and through their counsel of record, Holmes Weddle & Barcott, P.C., hereby file their Opposition to Alaska Redistricting Board’s (hereinafter “ARB”) Motion to Dismiss Count III for Failure to State a Claim. MSB respectfully requests the court deny ARB’s Motion.

I. PROCEDURAL BACKGROUND AND ISSUES

On December 15, 2021, the court issued the Pretrial Order in the above-captioned action. Pursuant to such order at paragraph 10, the court advised the parties that the court will permit no motions for summary judgment.¹ Dismissal motions must be decided on the

¹ This order makes logical sense given the extremely expedited timelines due to the impacts of COVID-19 which resulted in a delayed sentence, followed by a delayed proclamation, which results in an extremely limited time to litigate the ARB’s Final Plan and very little time to conduct discovery ahead of the trial in this matter.

pleadings and may not consider information outside of the same, where it is necessary to consider such outside information, the motion must be converted to a motion for summary judgment.² Because the ARB's Motion contains facts which MSB maintains are in dispute and require additional discovery, MSB asserts that this court must consider facts outside of the pleadings.³ MSB submits that ARB's Motion must be converted to a motion for summary judgment, and thus is therefore disallowed by this court's Order.

II. NECESSITY TO CREATE RECORD

MSB submits *arguendo* that even if the court were to consider the Motion, which MSB maintains the court should not based on the foregoing, this court must still hear the underlying case with regard to the due process issues given the deadlines in the instant litigation.⁴ This will allow a full record to go to the Supreme Court in the event the Motion was granted and the Court found the same to be error.

III. ARGUMENT

Alaska R. Civ. P. 12(b)(6) provides for dismissal only in those cases where Plaintiffs have failed to state a claim upon which relief may be granted. In considering such motion, the court must "deem all facts in the complaint true and provable."⁵ Such motions are disfavored and must only be granted in rare circumstances.⁶ Indeed the same should only be granted where

² See e.g., *Martin v. Mears*, 602 P.2d 421 (Alaska 1979).

³ This particularly as the ARB has submitted additional evidence through its website, which it has advised that the court should not visit during a prior procedural hearing in this matter.

⁴ See e.g., *Pruitt v. Office of Lt. Gov.*, 498 P.3d 591 (Alaska 2021).

⁵ *Guerrero v. Alaska Housing Finance Corp.*, 6 P.3d 250, 253 (Alaska 2000).

⁶ *Id.*

“it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”⁷

The ARB concedes in its motion that the Final Plan is not identical to any one proposed plan.⁸ There is a genuine dispute of material fact as to whether or not due process was afforded to the public through the ARB’s process. To accept the ARB’s Motion to Dismiss, this court would head down the slippery slope of finding that the ARB could select any final plan that was not previously disclosed as long as they had participated in a public comment process, i.e., the ARB could hold in its pocket an entirely different plan than those on which it receives public comment. The facts leading up to the proclamation of the Final Plan are critical and must be considered by this court, therefore dismissal is not proper.

In support of its motion, the ARB relies heavily on the underlying decision by the superior court in the 2001 Redistricting Cases, as it was found by the Supreme Court that the due process challenges in that case were without merit. However, in doing so, the ARB ignores the careful consideration the underlying court gave the facts that were presented as evidence to weigh whether or not due process was afforded to the public. The facts developed may demonstrate that plans were considered after public hearing was completed and private groups or individuals may have had contact and influence over individual Board members which deprived the public of due process. In considering the 2001 process, the court ultimately concluded that the process “was not perfect and could be improved,” but went on to find that “the evidence does not indicate that the public was deprived of a meaningful opportunity to be

⁷ *Id.* citing *Martin v. Mears*, 602 P.2d 421, 429 (Alaska 1979) (quoting *Schaible v. Fairbanks Med. & Surgical Clinic, Inc.*, 531 P.2d 1252, 1257 (Alaska 1981)).

⁸ ARB Motion to Dismiss for Failure to State a Claim, p. 4.

heard or to be involved in the process.”⁹ Indeed, ultimately the court made its decision as to whether or not there was a due process violation “on balance,” meaning it took into consideration all the relevant facts, and the decision was not just a matter of law.¹⁰

As this case is at its infancy, the record is rapidly being developed but no discovery has yet been obtained by MSB or any Plaintiffs for that matter, save the record which contains public material which was already available. Thus, Plaintiffs MSB submit that any dismissal at this time would be in error and premature.¹¹

IV. CONCLUSION

In sum, Plaintiffs MSB respectfully request this court deny ARB’s Motion to Dismiss as Plaintiffs MSB have met the initial threshold in law asserting a case for which relief may be granted.

DATED this 27th day of December 2021, at Anchorage, Alaska.

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⁹ In re 2001 REDISTRICTING CASES, Plaintiffs, v. REDISTRICTING BOARD, et al., Defendant., 2002 WL 34119573 (Alaska Super.).

¹⁰ *Id.*

¹¹ See Alaska R. Civ. P. 56(f).

CERTIFICATE OF SERVICE

The undersigned certifies that on this 27th day of December, 2021, a true and correct copy of the foregoing document was served via Email to:

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