

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-11-02213 CI**
) **1JU-11-00782 CI**

MOTION TO DISMISS FOR LACK OF STANDING

COMES NOW Defendant, the Alaska Redistricting Board (the "Board"), by and through counsel, Patton Boggs LLP, and hereby moves to dismiss Plaintiffs, the Fairbanks North Star Borough and the City of Petersburg for lack of standing. Article VI, § 11 of the Alaska Constitution specifically allows only "qualified voters" to bring redistricting challenges. The Fairbanks North Star Borough and the City of Petersburg are not qualified voters and therefore lack standing to participate as parties in this action.

This Motion is supported by the attached Memorandum of Points and Authorities in Support of Motion to Dismiss for Lack of Standing.

DATED at Anchorage, Alaska this 9th day of September 2011.

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: 

Michael D. White
Alaska Bar No. 8611144
Nicole A. Corr
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CERTIFICATE OF SERVICE

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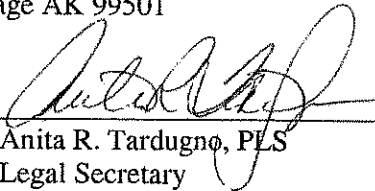
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FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.

) **CONSOLIDATED CASE NO.:**
) **4FA-11-2209-CI**
) 4FA-11-2213 CI
) 1JU-11-782 CI

[PROPOSED] ORDER

Upon careful consideration and review, Defendant Alaska Redistricting Board's Motion to Dismiss for Lack of Standing is hereby GRANTED. Plaintiffs Fairbanks North Star Borough and the City of Petersburg are dismissed from the above-entitled lawsuit as parties for they lack standing to bring such action.

DATED at Anchorage, Alaska this _____ day of September 2011.

MICHAEL P. McCONAHY
Superior Court Judge

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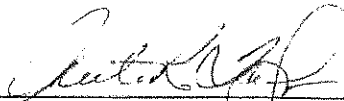
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ORDER

In Re 2011 Redistricting Cases v. Alaska Redistricting Board; Consolidated Case No. 4FA-11-02209 CI
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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-11-02213 CI
) 1JU-11-00782 CI

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEFENDANT ALASKA REDISTRICTING BOARD'S
MOTION TO DISMISS FOR LACK OF STANDING**

**I.
INTRODUCTION**

The Alaska Constitution expressly allows “any **qualified voter**...to apply to the superior court to compel the Redistricting Board...to correct any error in redistricting.” Alaska Const. Art. 6, § 11 (emphasis added). Obviously, plaintiffs the Fairbanks North Star Borough (“FNSB) and the City of Petersburg (“City) are not qualified voters. They are governmental entities, not individuals authorized by law to exercise the right to vote in Alaska. Accordingly, they lack standing to bring this action and must be dismissed as plaintiffs from this case.

**II.
ARGUMENT**

The Alaska Constitution expressly reserves the right to challenge a redistricting plan to “qualified voters.” Alaska Const. Art. 6, § 11. The Alaska Constitution defines a qualified voter as a citizen of the United States who is at least eighteen years of age, who meets the residency requirements as prescribed by law, and who is otherwise qualified to vote. Alaska Const. Art. 5, § 1. The minutes from the Alaska

Constitutional Convention make it very clear the constitutional framers intended for 'qualified voter' to have this same meaning throughout the Constitution. [See Minutes of Alaska Constitutional Convention, Day 65 at pp. 80-81, Day 71 at p. 6¹ (defining qualified voter as actual, bona fide, and continuous resident that meets the qualifications set up for voters, and noting "throughout our constitution we have used the term 'qualified voter' and we described that in the constitution so there is no doubt what it means".)]

Likewise, the bill sponsors responsible for amending Article VI, § 11 of the Alaska Constitution to create the Redistricting Board in 1999 also understood a 'qualified voter' to be an individual citizen with the right to vote. [See House Judiciary Committee Minutes, HJR 44, February 6, 1998, Tape 98-11, Side A, at No. 0725 (p. 8), 1009 (p.11), 1731 (p.16), 1908 (p. 18), 2077 (pp. 19-20), 2170 (p. 20); Side B, at 0050 (p.24)² ("if a *qualified voter* wants to challenge the adoption of a reapportionment plan done by the reapportionment board, that *person* has 30 days within which to bring the suit in the superior court"; "[w]hether a *qualified voter* . . ."; ". . . a *citizen* could attack the constitutionality of a decision"; ". . . if a *qualified voter* wanted to challenge that decision"; ". . . if a *qualified voter* appealed"; "if a *qualified voter* were to bring a lawsuit"; ". . . *citizens* have a right to challenge the plan"; ". . . if a *citizen* challenged";

¹ A copy of the relevant pages from the minutes of Day 65 and 71 of the Alaska Constitutional Convention are attached hereto as Exhibit A.

² A copy of the relevant pages from the 2/6/98 House Judiciary Committee meeting is attached hereto as Exhibit B. The "No." references refer to the tape counter numbers. The page numbers refer to the page numbers of the transcript.

“. . . there would only be an opportunity for a *citizen* to challenge a proclamation” (emphasis added).]

Even under the rules of statutory construction, it is obvious a ‘qualified voter’ is an individual, registered voter. Alaska courts interpret a statute or constitutional provision by considering “the meaning of the language, the legislative history, and the purpose of the statute.” *Enders v. Parker*, 66 P.3d 11, 13-14 (Alaska 2003). The court then “adopt[s] the rule of law that is most persuasive in light of precedent, reason, and policy.” *Id.* Here, the language of Article XI, § 6 unequivocally states that only a “qualified voter” has the right to raise challenges to a redistricting plan. The legislative history makes it equally patent that a ‘qualified voter’ is an *individual citizen* who is authorized to vote in Alaska.

The Alaska Supreme Court has only considered the meaning of “qualified voter” as used in Article VI, Section 11 on one previous occasion in *Carpenter v. Hammond*, 667 P.2d 1204 (Alaska 1983). In that case, the Court found the plaintiff, an individual citizen, was a qualified voter, based on the unambiguous text of the Constitution and the minutes from the Constitutional Convention. *Id.* The court agreed with the plaintiff that she was a qualified voter “as a registered voter in Alaska.” *Id.* at 1208-09. The Alaska Supreme Court has not, however, addressed the issue of whether a governmental

or any entity other than an individual, registered voter in Alaska can challenge a redistricting plan.³ Other jurisdictions have, however.

In particular, the Pennsylvania Supreme Court has held that an entity other than an individual voter lacks standing to challenge a reapportionment plan. *Albert v. 2001 Legislative Reapportionment Comm'n*, 790 A.2d 989 (Pa. Super. Ct. 2002); *Erfer v. Commw.*, 794 A.2d 325 (Pa. Super. Ct. 2002).

In *Albert*, the court considered whether a number of governmental entities, including a school district and township Board of Commissioners, were aggrieved persons entitled to challenge a reapportionment plan under the Pennsylvania Constitution. 790 A.2d at 678. The Reapportionment Commission maintained these “non-voting” entities were not aggrieved persons under the constitution and therefore lacked standing to challenge the commission’s reapportionment plan. *Id.* The court agreed, reasoning that “*it is the right to vote and the right to have one’s vote counted that is the subject matter of a reapportionment challenge.*” *Id.* at 679 (emphasis added). The court relied on the United States Supreme Court’s view of the right to vote, noting “[t]he right to vote is personal and the rights sought to be vindicated in a suit challenging an apportionment scheme are personal and individual.” *Id.* (quoting *Reynolds v. Sims*, 377 U.S. 533, 554-555 (1964)). Thus, the court found “any entity not

³ The issue of entity (non-qualified voter) standing was raised at the superior court level in the 2001 redistricting challenges but not appealed to the Alaska Supreme Court. The superior court in 2001 denied the Redistricting Board’s lack of standing motion as to the non-voter challengers without issuing a written opinion. To the extent that decision has any applicability here, the superior courts decision in 2001 was simply wrong.

authorized by law to exercise the right to vote in this Commonwealth lacks standing to challenge the reapportionment plan.” *Id.*

In *Erfer*, the petitioners argued that only the State Democratic Party and not individual voters had standing to raise political gerrymander claims. 794 A.2d at 329. The court rejected this argument out of hand holding that “any entity not authorized by law to exercise the right to vote in this Commonwealth lacks standing to challenge the reapportionment plan.” *Id.* Accordingly, the Democratic Committee was “specifically denied standing to assert such a challenge.” *Id.*

Here, the Alaska Constitution could not be clearer – only a qualified voter may challenge a redistricting plan. The constitutional framers and the Alaska legislature have made it plain the term “qualified voter” is an individual who has the right to vote in Alaska. Since the language is unambiguous, as is its meaning, the query ends there. The FNSB and the City are not individual citizens. They are governmental entities who do not possess the individual right to vote. Since it is the right to vote and the right to have one’s vote counted that is the subject matter of a redistricting challenge, these entities lack standing to challenge the Board’s plan under the Alaska Constitution. Accordingly, they must be dismissed as parties of this lawsuit for lack of standing.

Even if this Court were to apply a traditional standing test, the governmental entities still lack standing. Although Alaska courts broadly interpret the concept of standing to favor increased accessibility to judicial forums, a party must have “a ‘sufficient personal stake in the outcome of the controversy’” to have standing to sue.

Mat-Su Valley Med. Ctr., LLC v. Advanced Pain Ctrs. of Alaska, Inc., 218 P.3d 698, 704 n. 24 (Alaska 2009) (quoting *Keller v. French*, 205 P.3d 299, 304 (Alaska 2009)). See also *Moore v. State*, 553 P.2d 8, 23 (Alaska 1976)). This test is similar to the standing test used by the Pennsylvania Supreme Court. The inquiry in both Pennsylvania and Alaska is whether the plaintiff has a personal stake, or “substantial, direct and immediate” interest in the matter.

Here, as in *Albert and Erfer*, the subject matter of this case involves challenges to a redistricting plan. In both cases, it is an individual’s right to vote and the right to have that vote count that is at the heart of the redistricting process. A borough or city does not have a right to vote. Only an individual citizen does. It was for this exact reason the constitutional framers used the term of art “qualified voter” instead of another all-encompassing phrase.

III. CONCLUSION

When Alaska’s constitution was written, it used the most sparing language possible in order to clearly convey the ideas that were going to become the highest law of our state. If the framers had intended for governmental or other entities to have the right to challenge a redistricting plan, they certainly would have said so. The same is true of the legislators who drafted the constitutional amendments in 1999. Instead, they expressly limited that right to “qualified voters.” Alaska Const. Art. 6, § 11.

The FNSB and the City are not “qualified voters” and thus do not have a personal stake in the outcome of this matter – only the voters of the borough and the

city do. Thus, they lack standing to challenge the Board's plan under Article VI, Section 11 of the Alaska Constitution and must be dismissed as parties to this law suit.

DATED at Anchorage, Alaska this 9th day of September 2011.

PATTON BOGGS LLP
Counsel for Defendant
Alaska Redistricting Board

By: 

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

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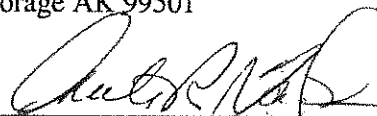
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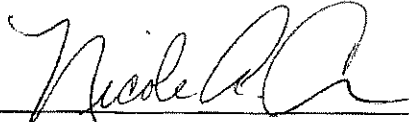
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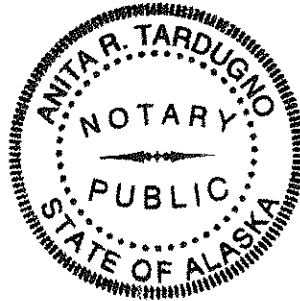
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FURTHER YOUR AFFIANT SAYETH NAUGHT.



Nicole A. Corr

SUBSCRIBED AND SWORN TO before me this 9th day of September 2011.





NOTARY PUBLIC in and for Alaska
My Commission Expires: 01/01/2012

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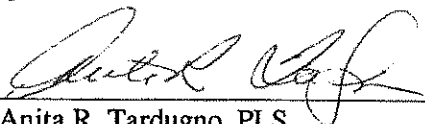
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