

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

IN RE: 2011 REDISTRICTING CASES.)
)
)

CASE NO. 4FA-11-2209CI

**OPPOSITION OF CITY OF PETERSBURG TO
BOARD'S MOTION TO DISMISS FOR LACK OF STANDING**

I. INTRODUCTION

Plaintiff City of Petersburg ("Petersburg") opposes the motion of Defendant Alaska Redistricting Board ("Board") to dismiss plaintiffs in these consolidated cases who are not qualified voters. The City fully meets the traditional criteria for standing under governing case law and nothing in Alaska Constitution art. VI, §11 or the intent behind that article *excludes* parties with traditional standing from challenging the Board's redistricting decision. Accordingly, the Board's Motion to Dismiss must be denied.

II. ARGUMENT

A. Under Traditional Standing Criteria, the City Has Standing to Maintain This Action

Petersburg has standing to maintain this action under the criteria for standing adopted in decisions of the Alaska Supreme Court. Those decisions establish standing not as a constitutional doctrine, but as a rule of judicial self-restraint based

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on the principle that courts should not resolve abstract questions or issue advisory opinions.¹ The basic requirement for standing in Alaska is adversity.²

In *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) the court described the criteria for "interest-injury" standing, the form of standing that applies to the city and borough plaintiffs here, as follows:

The concept of standing has been interpreted broadly in Alaska. We have "departed from a restrictive interpretation of the standing requirement," *Coghill v. Boucher*, 511 P.2d 1297, 1303 (Alaska 1973), adopting instead an approach "favoring increased accessibility to judicial forums." *Moore v. State*, 553 P.2d at 23; *see also State v. Lewis*, 559 P.2d 630, 634 n. 7 (Alaska) (and cases cited therein), *cert. denied*, 432 U.S. 901, 97 S.Ct. 2943, 53 L.Ed.2d 1073 (1977). Our cases have discussed two different kinds of standing. One is interest-injury standing; the other is citizen-taxpayer standing.

Under the interest-injury approach, a plaintiff must have an interest adversely affected by the conduct complained of. Such an interest may be economic, *Moore*, 553 P.2d at 24; *Wagstaff v. Superior Court, Family Court Division*, 535 P.2d 1220, 1225 (Alaska 1975), or it may be intangible, such as an aesthetic or environmental interest. *Lewis*, 559 P.2d at 635. The degree of injury to the interest need not be great; "[t]he basic idea ... is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation." *Wagstaff*, 535 P.2d at 1225 & n.7 (*quoting Davis, Standing: Taxpayers and Others*, 35 U.Chi.L.Rev. 601, 613 (1968)).

¹ *Moore v. State*, 553 P.2d 8, 24 n. 25 (Alaska 1976) (*quoting Flast v. Cohen*, 392 U.S. 83, 100-01, 88 S.Ct. 1942, 1952-53, 20 L.Ed.2d 947, 961 (1968)).

² *Id.*

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The allegations in Petersburg's Complaint establish that Petersburg has an interest in this litigation that is adversely affected by the redistricting plan.³ As a municipal government, the City of Petersburg:

Provides a variety of facilities and services to its residents. A substantial part of the funding for these facilities and services comes from appropriations of State [of Alaska] funds made by the Alaska Legislature. The economic and social development of the Petersburg community also depends in many instances on the enactment of supportive State legislation. Petersburg's efforts to obtain such funding and legislation require effective legislative representation of its interests, which depends upon adequate representation of the Petersburg area, and the inclusion of Petersburg in a House and Senate district that constitute a relatively integrated socio-economic area.⁴

Historically, Petersburg and its residents have been related to, and have interacted with, residents of other small communities such as Ketchikan and Sitka rather than with those in Juneau.⁵ District boundaries affecting representation of the interests of Petersburg fail to meet the criteria for house districts in art. VI, §6 of the Alaska Constitution because these boundaries place Petersburg in House District 32 with part of the City and Borough of Juneau, a municipality with which Petersburg does not share common socio-economic interest and separates Petersburg from communities which were historically represented in the same House district, including

³ These allegations are treated as true for the purpose of considering the Board's motion to dismiss. *J & L Diversified Enterprises v. Municipality of Anchorage*, 736 P12d 340, 351 (Alaska 1987).

⁴ Petersburg Plaintiff's First Amended Complaint ("Complaint"), paragraph 7, Case No. 4FA-11-2009CI.

⁵ Complaint, paragraph 12.

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Sitka, with which Petersburg does share socio-economic interests.”⁶ Thus, Petersburg has economic and intangible interests in sufficient legislative representation, which are injured by district boundaries adopted in the redistricting plan. These interests certainly exceed the “identifiable trifle” that is enough for standing to fight out a question of principle, such as the questions raised in Petersburg’s Complaint. Petersburg therefore has standing to challenge the redistricting plan under traditional standing criteria.

Even if Petersburg was not found to have “interest-injury” standing, it undoubtedly has “associative standing.” Most qualified voters residing in Petersburg would not have the means and resources necessary to challenge the redistricting plan. Thus, these voters must rely upon the city to represent them on matters affecting all such voters much like an association might represent certain interests of its members. The Alaska Supreme Court has recognized the right of an association to represent the interests of its members in certain circumstances. *Alaskans for a Common Language, Inc. v. Kritz*, 3 P.3d 906 (Alaska 2000). Specifically, an association has standing to bring suit on its member’s behalf where:

- (1) its members would otherwise have standing to sue in their own right;
- (2) the interests it seeks to protect are germane to the organization’s purpose, and
- (3) neither the claim asserted nor the relief requested required participation of individual members in the law suit.

See *Alaskans for a Common Language, Inc.*, 3 P.3d at 915. Petersburg meets this three-part test without question. Its residents have the ability to sue in their own right;

⁶ Complaint, paragraph 6.

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Petersburg's ability to represent its municipal interests and its ability to obtain funding and legislative support is germane to the city's purpose; and the participation of individual voters is wholly unnecessary to the claims asserted or the relief sought. In reality, full participation by all Petersburg voters would place a great burden upon the court given the sheer number of residents and potential plaintiffs.

B. Petersburg Need Not Establish Qualified Voter Standing under Alaska Const. Art. VI, §11 to Challenge the Redistricting Plan

In addition to the traditional standing criteria discussed above, Alaska Constitution art. VI, §11 addresses the matter of standing in redistricting litigation, providing in its first sentence, "[a]ny qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting." This sentence guarantees the right of any qualified voter to bring suit to correct an error in redistricting of any district rather than just a person residing in the area subject to the challenged redistricting. It also ensures that the voter may raise all potential legal claims and not just those affecting a particular district. Thus, the reference to "[a]ny qualified voter" in art. VI, §11 serves to subject redistricting to greater challenges given the importance of the redistricting process rather than to insulate redistricting from such challenges. This intention has been repeatedly affirmed and expressly recognized by the Alaska court.

In *Carpenter v. Hammond*, 667 P.2d 1204 (Alaska 1983), the Alaska Supreme Court rejected the argument that art. VI, §11 imposes any restrictions on standing in

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redistricting cases.⁷ On the contrary, the court held that art. VI, §11 expands upon traditional standing criteria by conferring standing on all registered voters to challenge redistricting plans, regardless of their qualification under traditional standing criteria. In *Carpenter*, the plaintiff claimed that her status as a registered voter of Alaska was sufficient to establish her standing to attack the redistricting plan, relying on the first sentence of art. VI, §11. The court described the defendant's response to this argument as follows:

The Governor contends that the phrase "any qualified voter" was intended to establish "a jurisdictional threshold, a first step, *in addition to which one must establish standing*" in order to raise a reapportionment challenge.⁸

The court further described the defendant's argument against the plaintiff's standing in the following terms:

The Governor cites the rule of construction that constitutions should be read, whenever possible, in harmony with the common law, and argues that *the language of Article VI, section 11 should be interpreted as supplementing rather than repealing the traditional standing requirement.*⁹

However, the court held that art. VI, §11, rather than imposing any additional restrictions on standing, conferred standing on any registered voter to challenge any

⁷ The 1999 amendments to the Alaska Constitution concerning redistricting made no substantive change to this sentence of art. VI, §11 with respect to standing and thus pre-amendment interpretation of this part of art. VI, §11 with respect to standing continues to apply. Before amendment, the first sentence of art. VI, §11 stated, "[a]ny qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment."

⁸ 667 P.2d 1204, 1209 (emphasis added, footnote omitted).

⁹ 667 P.2d 1204, 1209, n.11 (emphasis added).

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aspect of a redistricting plan, regardless of her qualification under traditional standing criteria:

We hold that Article VI, section 11 of the Alaska Constitution is dispositive of the standing issue, for it is clear that under the provisions of Article VI, section 11 "[a]ny qualified voter" is authorized to institute and maintain a reapportionment suit seeking "to correct any error in redistricting or reapportionment." Nothing in the text of Article VI, section 11, or the relevant portions of the record of the constitutional convention, furnishes justification for a judicial construction departing from the section's unambiguous text. Thus, Carpenter has standing to raise both the military exclusion and the Cordova inclusion issues.¹⁰

Further refuting the argument that art. VI, §11 provides the exclusive basis for standing in redistricting cases, the court in *Carpenter* held that the plaintiff also had standing to challenge the redistricting plan under traditional standing criteria:

Additionally, **and apart from Article VI, section 11**, we hold Carpenter has standing to challenge the reapportionment plan under this court's decisions pertaining to standing.¹¹

Similarly, redistricting challenges in the State of Alaska have almost categorically included municipal parties. See *In Re: 2001 Cases v. Alaska Redistricting Board, et al.*, Consolidated No. 3AN-01-8914CI; *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992) and *Kenai Peninsula Borough v. State*, 743 P.2d 1352 (Alaska 1987). Not only was the Kenai Peninsula Borough a party to a redistricting challenge in 1987, the Matanuska Susitna Borough and the "Southeast Conference," which was comprised of a collection of local governing bodies from

¹⁰ 667 P.2d 1204, 1210 (emphasis added, footnote omitted).

¹¹ 667 P.2d 1204, 1210 (emphasis added).

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Southeast Alaska, were both parties in *Hickel*. In *Kenai Peninsula Borough*, the Alaska Supreme Court found that the municipal plaintiff, the Kenai Peninsula Borough, had a "significant constitutional interest" in an "equally geographically effective or powerful vote." See *Kenai Peninsula Borough*, 743 P.2d at 1372. The court also noted that:

The interest asserted [by the Kenai Peninsula Borough] is the right to an equally powerful and geographically effective vote in the state legislature. In this connection, we note that it is implicit in our constitutional structure that **similarly situated communities be treated in a similar manner.** 743 P.2d at 1371-1372 (emphasis added).

Perhaps most importantly, the Alaska Superior Court expressly denied a motion by the Board seeking to dismiss city and borough plaintiffs who were not qualified voters during the 2001 redistricting case. This decision was made after exhaustive briefing by the Redistricting Board, the State of Alaska, and numerous municipal plaintiffs. In that case, the court denied Defendant's motion to dismiss plaintiffs that were not "qualified voters" and the Board made no effort to appeal this decision. See *In re: 2001 Redistricting Cases v. Redistricting Board, et al.*, Consolidated Case No. 3AN-01-8915CI, Memorandum and Order, p. 22, n.12, attached hereto as Exhibit A. In the Judge's Memorandum and Order, he stated:

The Alaska Supreme Court has broadly interpreted the concept of standing, favoring the increased accessibility to judicial forums. Accordingly, "any qualified voter" is authorized to institute and maintain a reapportionment suit seeking to correct any errors in redistricting. *Carpenter*, 667 P.2d at 1209-10. In a pretrial decision, this court held that the right to bring such a suit was not limited to individuals but included governmental entities and certain organizations as well.

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Thus, the Alaska court has unequivocally rejected the Board's arguments in its motion.

C. The Legislative History and Intent of the Framers of the Alaska Constitution in No Way Support a Restrictive Interpretation of Standing Under Alaska Constitution Art. VI, §11

The Board argues in its Memorandum in Support of Motion to Dismiss for Lack of Standing that the legislative history supports restricting standing to challenge a redistricting plan to qualified voters. Memorandum in Support of Motion to Dismiss for Lack of Standing ("Motion to Dismiss"), p. 2. Despite this claim, the Board fails to provide any statement by the legislature or the framers of the Alaska Constitution expressly or even impliedly excluding municipalities from challenging redistricting. Instead, the Board refers only to legislative references to what constitutes a "qualified voter." See Motion to Dismiss, pp. 2-3. Petersburg is not claiming to be a "qualified voter," it is simply claiming that art. VI, §11 in no way restricts municipalities from bringing suit when such municipalities have standing under common law. The legislative history fully supports liberal and broad municipal powers and, to that end, Petersburg's ability to represent the interests of its residents in this action against the Board. See Alaska Const., art. X, §1; *Liberati v. Bristol Bay Borough*, 584 P.2d 1115, 1120 (Alaska 1978) (court recognizes legislature's awareness that municipalities in other states did not have strong systems of local government and the framer's intent to provide more power to Alaska municipalities).

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III. CONCLUSION

For the reasons stated above, Petersburg has standing to maintain this action, and the Board's motion to dismiss should be denied.

DATED this 19th day of September, 2011.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19th day of September, 2011, at 3:00 p.m. a true and correct copy of the foregoing was served on the following in the manner indicated:

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IN RE: 2011 REDISTRICTING CASES
OPPOSITION OF CITY OF PETERSBURG TO BOARD'S
MOTION TO DISMISS
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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE



IN RE 2001 REDISTRICTING CASES,

Plaintiffs,

vs.

REDISTRICTING BOARD, et al.,

Defendant.

Consolidated Case No. 3AN-01-8914 CI

MEMORANDUM AND ORDER

I. INTRODUCTION

In accordance with Article VI of the Alaska Constitution, the Alaska Redistricting Board (the "Board") is required to reapportion Alaska's House of Representatives and the Senate immediately following the official reporting of each decennial census of the United States.¹ Under Article VI, Section 8 of the Alaska Constitution, the Board consists of five members, two of whom are appointed by the Governor, one of whom is appointed by the Speaker of the House of Representatives, one of whom is appointed by the Senate President, and one of whom is appointed by the Chief Justice of the Alaska

¹ An Amendment to Article VI of the Alaska Constitution, effective January 3, 1999 (the "1998 Amendment"), changed the composition and responsibilities of the Board. Prior to the 1998 Amendment, the governor set the boundaries of election districts and senate districts with the advice of a board selected entirely by the governor. The 1998 Amendment created the Alaska Redistricting Board, and set forth procedures and other deadlines for the redistricting process. See 1998 Ballot Measure No. 3 (1998 Legislative Resolve 74; 20th Legislature's SCS CSHJR 44(JUD)). These changes are discussed in this opinion to the extent they are relevant to the legal challenges against the current Proclamation of Redistricting.

chosen by the Board to these problems have been challenged in every aspect of this litigation.

III. LEGAL PROCEEDINGS

The Alaska Constitution allows challenges to the Final Plan. Article VI, section 11 states, “[a]ny qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting...”¹² In accordance with Article VI, section 11, nine lawsuits were filed in superior courts throughout the State, and were consolidated under the caption, In Re 2001 Redistricting Cases v. Redistricting Board, et al., Consolidated Case No. 3AN-01-8914CI.¹³ All of these lawsuits named the Board as a Defendant. Some cases also named the individual Board members as defendants. Plaintiffs all have standing to bring these lawsuits and this court has original jurisdiction under the Alaska Constitution.

The State moved and was allowed to participate as a Defendant-Intervenor. In addition, the court granted a motion to intervene submitted by several Alaska Native

¹² The Alaska Supreme Court has broadly interpreted the concept of standing, favoring the increased accessibility to judicial forums. Accordingly, “any qualified voter” is authorized to institute and maintain a reapportionment suit seeking to correct any errors in redistricting. Carpenter, 667 P.2d at 1209-10. In a pretrial decision, this court held that the right to bring such a suit was not limited to individuals but included governmental entities and certain organizations as well.

¹³ The consolidated lawsuits are: Aleutians East Borough v. Alaska Redistricting Board, Case No. 3AN-01-8914CI; Halvarson v. Alaska Redistricting Board, Case No. 4FA-01-1608CI; City of Valdez v. Alaska Redistricting Board, Case No. 3VA-01-0040CI; City of Craig v. Otte, Case No. 1KE-01-0316CI; City of Wasilla v. State of Alaska, Alaska Redistricting Board, Case No. 3AN-01-8995CI; Ruedrich v. Redistricting Board, Case No. 3AN-01-9026CI; Luper v. Alaska Redistricting Board, Case No. 3AN-01-8908CI; City of Cordova v. Alaska Redistricting Board, Case No. 3AN-01-8996CI; City of Delta Junction v. State of Alaska, Case No. 4FA-01-1592CI.