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

PATTON BOGGS LLP

IN RE 2011 REDISTRICTING CASES

RILEY ET. AL. PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT:
CONTIGUITY HD 37

Case No. 4FA-11-02209 CI.

COMES NOW, Plaintiffs George Riley and Ron Dearborn, by and through counsel, Michael J. Walleri, to move the Court for partial summary judgment that District 37 of the 2011 Final Plan for the redistricting of Alaska's legislative districts adopted by the Alaska Redistricting Board, violates the contiguity requirement of Article VI, Section 6 of the Alaska Constitution. The motion is supported by the accompanying memorandum.

Date: December 5, 2011



Michael J. Walleri

Attorney for Plaintiffs
Alaska Bar No. 7906060

Certificate of Service

I certify that a true and correct copy of the foregoing was served by e-mail on this December 5, 2011 to:
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Michael J. Walleri

Motion: Sum Jud. Contiguity HD 37
Riley, et. al. v Redistricting Board
Case No. 4FA-11-02209 Ci

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

IN RE 2011 REDISTRICTING CASES

MEMORANDUM IN SUPPORT OF
RILEY ET. AL. PLAINTIFF'S MOTION
FOR PARTIAL SUMMARY JUDGMENT:
CONTIGUITY HD 37

Case No. 4FA-11-02209 CI.

Plaintiffs George Riley and Ron Dearborn seek partial summary judgment that Proclamation House District 37 violates the contiguity requirement of Article VI, section 6 of the Alaska Constitution as a matter of law.

I. THE CONTIGUITY REQUIREMENT

The Alaska State Constitution requires that “[e]ach house district shall be formed of contiguous and compact territory....”¹ The Alaska Supreme Court has accorded this provision priority importance in constitutional analysis.² The purpose of the constitutional requirements is to prevent gerrymandering, which is the “dividing of an area into political units “in an unnatural way with the purpose of bestowing

¹ AK CONST. Art. VI, Sec. 6.

² “The requirements of Article VI, Sec. 6 (of the Alaska Constitution) shall receive priority *inter se* in the following order: (1) continuous and compactness, (2) relative socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.” *In re 2001 Redistricting Cases*, 44 P.3d 141, 143 n.2 (Alaska, 2002), quoting *Hickel v Southeast Conference*, 846 P.2d 38, 62 (Alaska, 1992)

advantages on some and thus disadvantaging others.”³ Compactness and contiguity rank higher in importance for “good reason;” namely “[t]he fear that politicians would attempt to carve out little pieces of geography and move them around the map for apportionment purposes has caused 34 states to add requirements for compactness and contiguity to their constitutions.”⁴

The Alaska Supreme Court defines contiguous territory as “territory which is bordering or touching,” adopting the interpretation that “[a] district may be defined as contiguous if every part of the district is reachable from every other part without crossing the district boundary (i.e., the district is not divided into two or more discrete pieces).”⁵ While “a contiguous district may contain some amount of open sea . . . the potential to include open sea in an election district is not without limits.”⁶ In considering these limits, the Court expressly and unequivocally held that “the separation of the Aleutian Islands into two districts violates article VI, section six of the Alaska Constitution.”⁷

³ *Hickel v Southeast Conference*, 846 P.2d at 44

⁴ *Hickel*, *supra*, at 71

⁵ *Hickel*, 842 P.2d at 45 (quoting Grofman, *Criteria for Districting: A Social Science Perspective*, 33 UCLA L.Rev. 77, 84 (1985))

⁶ *Id.*

⁷*Id.* at 54.

II. STANDARD OF REVIEW

On this constitutional issue, the Court exercises its independent judgment rather than deferring to the Redistricting Board.⁸

III. ARGUMENT

Proclamation District 37 violates the Article VI, section 6 of the Alaska Constitution in two distinct ways: 1) the district separates the Aleutian Islands between two districts, and 2) the Aleutians in the district are separated from the remainder of the District by hundreds of miles of open sea.

a. Proc. HD Separates The Aleutian Islands Between Two Districts.

It is undisputed that Proclamation District 37 divides the Aleutian Islands. In its formal description of House districts, the Board stated that Proc. HD 37 includes “all islands of the Aleutian Chain west of Unimak Pass,”⁹ and that Proc. HD 36 “Includes all islands of the Aleutian Chain east of Unimak Pass.”¹⁰ Thus, it is

⁸ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1357-58 (Alaska 1987) (“Of course, additionally, we always have authority to review the constitutionality of the action taken . . .”) (quoting *Carpenter v. Hammond*, 667 P.2d 1204, 1214 (Alaska 1983)).

⁹ ARB 00006578 (District Descriptions)

¹⁰ *Id.*

undisputed that the plan divides the Aleutians between two districts.

This division of the Aleutians is precisely the proposal declared unconstitutional in *Hickel*.¹¹ Specifically, the Court stated

The Board's plan divides the Aleutian Islands between two districts. The eastern Aleutians are in District 39, and the western Aleutians in District 37. On its face this severance violates the contiguous territory requirement of article VI, section six of the Alaska Constitution. Although the parties did not raise this issue, the separation of the Aleutian Islands is so plainly erroneous that we address the issue *sua sponte*. Thus, in exercise of our authority under article IV, section two of the Alaska Constitution, we hold that the separation of the Aleutian Islands into two districts violates article VI, section six of the Alaska Constitution.¹²

As the Court noted, the dividing the Aleutians is a violation of the the contiguity requirement. Thus, on its face, Proclamation District 37 violates the express holding of *Hickel v. Southeast Conference* by dividing the Aleutians.¹³

b. The Aleutians Are Separated From The Remainder Of HD 37 By Hundreds Of Miles Of Open Sea.

In addition to dividing the Aleutians , there is no contiguity via land between western Aleutians (including Akutan) and the remainder of the District. Rather the

¹¹*Hickel v Southeast Conference*, 846 P.2d 38 (Alaska, 1992)

¹² *Id.*, at 55

¹³ The District also divides the Aleutians East Borough, the majority of which is in Proc. HD 36, but severs Akutan from the rest of the Borough and locating that island in Proc. HD 37.

only “contiguity” between these two parts of the district is hundred of miles of open sea across the Bering Sea. This configuration violates any reasonable understanding of contiguity. While “open sea” may provide some sense of contiguity, as the *Hickel* Court noted, “the potential to include open sea in an election district is not without limits.”¹⁴ The case at bar presents a clear challenge as to when these limits might apply. Distances between the Aleutians and the closest other parts of the District range between 500 and 800 miles of separation over open sea. There is few, if any, other expanses of open sea in Alaska between two islands or an island and mainland that present greater than the expanse of open sea. Thus, if there is any limitation to contiguity over open sea in Alaska, it would have to apply in this case.

IV. CONCLUSION

Because Proclamation House District 37 is not contiguous and violates the express holding of *Hickel v. Southeast Conference*, this Court should grant summary judgment that Proclamation District 37 violates the contiguity requirement of Article VI, section six of the Alaska Constitution.

¹⁴ *Hickel v Southeast Conference*, 846 P.2d , at 45

Date: December 5, 2011



Michael J. Walleri

Attorney for Plaintiffs
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Michael J. Walleri

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

IN RE 2011 REDISTRICTING CASES

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT: CONTIGUITY HD 37**

Case No. 4FA-11-02209 CI.

Upon motion of Plaintiffs Riley, et. al. , and the Court being apprised of the premises therein,

IT IS HEREBY ORDERED, that Plaintiffs motion for partial summary judgment that District 37 of the 2011 Final Plan for the redistricting of Alaska's legislative districts adopted by the Alaska Redistricting Board, violates the contiguity requirement of Article VI, Section 6 of the Alaska Constitution is hereby GRANTED.

DATED this _____ of December 2011.

Michael P. McConahy
Suprior Court Judge

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Order: Sum Jud. Contiguity HD 37
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