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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 SUMMARY JUDGMENT:
INVALIDITY OF HD 38

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 summary judgment holding that the 2011 Final Plan for the redistricting of Alaska's legislative districts is invalid because Proclamation House District 38 is not justified by the Voting Rights Act. 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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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 SUMMARY JUDGMENT:
INVALIDITY OF HD 38

Case No. 4FA-11-02209 CI.

Plaintiffs seek summary judgment holding that the 2011 Final Plan for the redistricting of Alaska's legislative districts is invalid because Proclamation House District 38 is not justified by the Voting Rights Act.

1) **Summary Judgment Standard.** On summary judgment, if the record presents no genuine issue of material fact the movant is entitled to judgment as a matter of law.¹ The moving party has the burden of proving the absence of issues of material fact.² The movant may rely upon admissions under Rule 36 (whether express or deemed) as well as the non-Rule 36 admissions of the non-movant party to establish a *prima facie* showing that he is entitled to summary judgment.³ "If the movant makes a *prima facie* showing that he or she is entitled to judgment on the established facts as a matter of law, the opposing party must demonstrate that a

¹ *Beegan v State, Dept. of Trans. & Pub. Facilities*, 195 P.3d 134, 138 (Alaska, 2008); *Matanuska Elec. Ass'n v Chugach Elec. Ass'n*, 152 P. 3d 460, 465 (Alaska 2007)

² *Lincoln v Interior Reg. 'l Housing Auth.*, 30 P.3d 582, 586 (Alaska, 2001)

³ *Molitor v ATZ Travel*, 550 P.2d 810 (Alaska, 1976)

genuine issue of fact exists to be litigated by showing that it can produce admissible evidence reasonably tending to dispute the movant's evidence."⁴ To determine whether the non-moving party can produce admissible evidence creating a genuine factual dispute, (the Court) will "consider the affidavits, depositions, admissions, answers to interrogatories and similar material."⁵

2) **Standards Applicable To VRA Excuse of State Constitutional Violation.**

Previously, this Court has held "that House District 38 does not comprise a relatively integrated socio-economic area within the meaning of Article VI, Section 6 of the Alaska Constitution."⁶ This Court reserved upon the issue of whether the Board was required to deviate from the Alaska Constitution in order to comply with the Voting Rights Act. This was important because the Board has argued that the violation of the Alaska Constitutional requirement of socio-economic integration is excused by the Board's need to comply with the VRA.

In both *Hickel* and the *2001 Redistricting Cases*, districts found to be violative of Alaska's constitutional requirements were held to be justified by the necessity to

4 *French v Jadon, Inc.* 911 P.2d 20, 23 (Alaska 1996)

5 *Broderick v King's Way Assembly of God Church*, 808 P.2d 1211, 1215 (Alaska 1991)

6 Order Granting the Riley Plaintiff's Motion for Summary Judgment in Part (October 25, 2011)

comply with the Voting Rights Act.⁷ However, the VRA does not excuse a failure to comply with the Alaska Constitution where compliance with the VRA is possible without violating the Alaska Constitution.⁸ A reapportionment plan may minimize article VI, section 6 requirements when minimization is the only means available to satisfy Voting Rights Act requirements.”(emphasis added)⁹

Once a violation of Alaska's Constitutional standards is established, the Board has the burden of proof to demonstrate that compliance with the Alaska Constitution “would have been impracticable in light of competing requirements imposed under either federal or state law.”¹⁰ In making this argument, the Board must “make findings justifying the district on this basis.”¹¹ In particular to any specific district, the findings must specifically find that the district's current configuration is required by the Voting Rights Act..¹² Such findings must be adequate and capable of meaningful judicial review.¹³ In answering that question, “[t]he test of sufficiency is . . . a

7 *Hickel v Southeast Conference*, 846 P.2d 38, 52 n 23 (Alaska, 1992); *In re 2001 Redistricting Cases*, 47 P. 3d 1098, 1092 (Alaska 2002)

8 *Hickel*, 846 P 2d , at 51-52

9 *Hickel v. Southeast Conference*, 846 P.2d 38, 52 n 22 (Alaska 1992).

10 *In re 2001 Redistricting Cases*, 44 P. 3d 141, 146 (Alaska 2002); See also, *Kenai Peninsula Borough v State*, 743 P.2d 1352, 1361 (Alaska, 1987)

11 *In re 2001 Redistricting Cases*, 44 P. 3d 141, 143 (Alaska 2002)

12 *Id.*

13 *Faulk v. Board of Equalization*, 934 P.2d 750, 751 Alaska 1997)

functional one: do the [board's] findings facilitate this court's review, assist the parties and restrain the [board] within proper bounds?"¹⁴ Of course, if the record is inadequate to allow judicial review, the Court may remand to the Board to make adequate findings.¹⁵

3) ARGUMENT.

a) The Board Failed To Make Adequate Findings To Justify District 38. The Board made no formal findings during its deliberation on any topic. This included a failure to make any finding that the VRA compliance necessitated any particular configuration of District 38. At best, in over 13,000 pages of record, there are only two statements that come close to such findings. Specifically, in the Proclamation, the Board "proclaimed" that

Second, the configuration of House Districts 34, 36, 37, 38 and 39 were necessary in order to avoid retrogression and comply with the requirements of the Federal Voting Rights Act;....¹⁶

Additionally, the Board passed one resolution, which "resolved and declared" that

First, in order to comply with the requirements of the federal voting rights act

14 Id. Cited in *Faulk v. Kenai Board of Equalization*, 934 P 2d 750 (Alaska, 1997)

15 In *re 2001 Redistricting Cases*, 44 P. 3d 141, 143 (Alaska 2002). Of course, the Court may allow the parties to supplement the record and consider the matter *de novo*. *Groh v Eagan*, 526 P.2d 863, 867 (Alaska, 1974) In this case, the Court and the parties have assumed that the record will be supplemented, which invokes *de novo* review.

Considerations of this supplemental material are discussed below.

16 ARB00006017

and Avoid retrogression, the board was required in certain instances to depart from strict Adherence to certain state constitutional redistricting requirements such as Contiguity, compactness and socio-economic integration in creating house districts; And

Second, the configuration of house districts 34,36,37,38, and 39 in the proclamation Plan was required in order to comply with the federal voting rights act and avoid Retrogression; and

Third, creating federal voting rights act compliance districts and avoiding Retrogression affected the configuration of other house districts in the proclamation Plan throughout (sp) the state.¹⁷

These proclamations, resolves and declarations are not findings. Rather, the statements are simply conclusionary and totally incapable of review by this Court.

The Board did not make critical findings of facts and that would be necessary

respecting a conclusion that the VRA required that District 38 be configured in the

fashion chosen by the Board. In particular, the Board never made any findings

respecting the VRA Benchmark:¹⁸ i.e. the presence or absence of racial bloc voting in

17 ARB00006033

18 The "benchmark" against which a new plan is compared is the last legally enforceable redistricting plan in force or effect. *Riley v. Kennedy*, 553 U.S. 406 (2008); 28 CFR 51.54(b)(1). In this case, the Benchmark Plan is plan in effect for the 2010 election. The relevance of the benchmark to the operation of Sec. 5 of the VRA, which is explained in the DOJ guidance as follows:

A covered jurisdiction has the burden of establishing that a proposed redistricting plan "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in [Section 4(f)(2) of the Act]" (i.e., membership in a language minority group defined in the Act). 42 U.S.C 1973c(a). A plan has a discriminatory effect under the statute if, when compared to the benchmark plan, the submitting jurisdiction cannot establish that it does not result in a "retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States*, 425 U.S. 125, 141 (1976)

DOJ Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act. 76 Fed. Reg. 7470 (Feb. 9, 2011) (hereinafter referred to as "DOJ Guidance") Retrogression means "a decrease... in the absolute number of representatives which a minority group has a fair chance to elect." *Ketchum v Byrne*, 740 F.2d 1398, 1402 n. 2 (7th Cir. 1984) Retrogression is measured by comparing minority voting strength under the new plan with the minority voting strength

the state or portions of the state, the number of Native "effective" districts needed to avoid retrogression, the relative Native VAP necessary to make a district "effective", and the number of "effective" districts present in the Proclamation Plan.¹⁹ In the absence of such findings by the Board, this Court is incapable, based upon the Board's record, to conduct a meaningful review of the Board's actions.²⁰

The reasons for the deficiencies in the Record are simple. The Board hired a VRA expert (Dr. Lisa Handley). Her report is part of the Board Record.²¹ But that report was not finalized until August 4, 2011,²² which was nearly two months after the Board issued its Proclamation on June 13, 2011.²³ Simply stated, the Board did not have the benefit of Dr. Handley's review of the plan prior to its adoption, and

under the immediately preceding plan using current (2010) census numbers. *Id.*, at 1417

19 The significance of "effective" and "influence" districts in Sec. 5 VRA analysis is discussed in the Petersburg Plaintiffs' Combined Opposition to Alaska Redistricting Board's Cross Motion For Summary Judgment, (Nov. 18, 2011) at 7 et. seq.

20 The Report accompanying the Proclamations does mention District 38 and states

(I)n order to bring House District 38 to within constitutional one-person one-vote standards, it had to pick up population from the more rural areas of the of the Fairbanks North Star Borough. As a result, the excess population in the Fairbanks North Star Borough had to be split across two districts rather than placed into a single district, because District 38 could not absorb all of Fairbanks excess population and still maintain the necessary Alaska Native voting age population required by the federal Voting Rights Act. The balance of the Fairbanks North Star Borough's remaining excess population was placed into House District 6, which closely resembles the configuration of current House District 12. Under the Proclamation Plan, the Fairbanks North Star Borough retains five House districts wholly within its boundaries.

ARB00006024-00006025 But again, the report is rather conclusionary, and fails make the necessary findings discussed above. In addition, there is no discussion as to why the population from Fairbanks needed to be added to Dist. 38, and other areas of the state with surplus population less than 50% of an ideal district size and discrete Native villages (e.g. Kenai) were not considered. As a minor point, it should be noted that the Report was not actually formally adopted by the Board.

21 ARB00013329-00013369

22 See Board Record Index.

23 ARB00006017

therefore lacked any ability to make the necessary findings to establish that compliance with the Alaska Constitution “would have been impracticable in light of competing requirements imposed under” the VRA. Consequently, this Court is unable to undertake meaningful judicial review of the Board's actions. On these grounds alone, this Court should remand the plan to the Board to make proper determinations that would allow meaningful judicial review.

b) **The Record Is Devoid Of Justifications For District 38.** There is nothing in the record in the way of a justification for the configuration of District 38. The record, particularly the later Board hearings leading up to the issuance of the proclamation, is devoid of any analysis respecting this issue. For example, the discussion at the June 6, 2011 Board Meeting, at which the Board adopted the Draft Final Plan that became the Proclamation Plan, there is no discussion as to why it was necessary to join Ester/Goldstream into an otherwise rural district.²⁴ Rather, this fundamental aspect of the plan was assumed. There is no discussion at this Board meeting or at any subsequent Board meeting acknowledging that the Board was aware that Dist. 38 violated the Alaska Constitutional standards. Consequently, there is no serious Board

²⁴ See ARB00003456 et. seq.

discussion that such violations are unavoidable and necessary to comply with the VRA.

c) Neither Board Members Nor Dr. Handley Are Able To Justify District 38.

In their depositions, neither Chairman Torgerson, Board member Jim Holm (who drew the Fairbanks Districts), nor the Executive Director Taylor Bickford were not able to explain why it would have been impracticable to comply with the Alaska Constitution in light of competing requirements imposed under the VRA, except to refer to Dr. Handley. For example, after repeated questioning, Chairman Torgerson was simply unable to explain why District 38 as configured in the Proclamation Plan was needed to comply with the VRA.²⁵ Torgerson stated that he never talked to Handley about this directly,²⁶ but messages were relayed to the Chairman about this from Staff Counsel White and Executive Director Bickford.²⁷ Thus, Chairman Torgerson only had a general understanding of the matter and referred to the Report.²⁸ However, he believed that taking some of Fairbanks population to add to HD 38 was justified because “ we needed to develop it or we needed that population to meet the 8

25 Exhibit 1 (Torgerson Depo) at pp 34-45; This is not entirely accurate. Chairman Torgerson knew that the plan required 40 districts, which meant that there had to be a District 38. In his words, “You can't leave one out.” Id., at 37:3-6 Other than that, Chairman Torgerson was unable to explain a need for District 38 as configured in the plan.

26 Id. at 35:2-8

27 Id. at 42:4-18

28 Id., at 89:17-25

requirements of the Voting Rights Act.”²⁹ While Chairman Torgerson could not explain why, he admitted that there was no discussion with Dr. Handley about the need to use Fairbanks “surplus population” to meet the needs of the VRA.³⁰

Equally, Mr. Holm knew very little about HD 38 because it was the only Fairbanks District that he did not draw.³¹ Specifically, he did not give HD 38 “any independent thought as to whether or not that district was an appropriate district under the plan.”³² He was aware that Dist. 38 was generally “drawn for the purpose of comporting with the Voting Rights Act” but did not understand the rationale for the district.³³ Mr. Holm stated that Dr. Handley, “never talked about drawing any district. She was only involved in giving us counsel after districts were drawn....”³⁴

Mr. Bickford's understanding of the rationale behind HD 38 was particularly partisan. He stated that the Ester/Goldstream areas were placed in HD 38 because they were Democratic leaning.³⁵

29 Id. at 90:5-8

30 Id. at 90: 9-15

31 Exhibit 2, (Holm Depo) at 87:13-88:9

32 Id., at 90:16- 91:15

33 Id., at 91:17-22

34 Id., at 92:1-3

35 Exhibit 3 (Bickford Depo) at 104:12-109:1

Dr. Handley confirmed that she did not draw any part of the Proclamation Plan but only reviewed plans after they had been drawn.³⁶ While there are serious problems with Dr. Handley analysis,³⁷ when asked to offer an opinion on the ultimate question raised by this motion, Dr. Handley was unable to opine whether it was necessary to draw District 38 in the configuration used in the Proclamation Plan, as illustrated in the following exchange:

Q. (WALLERI) In your professional opinion, was it necessary to draw District 38 in this configuration in order to comply with the Voting Rights Act?

MR. WHITE: Object to the relevance of that question. It's also ambiguous.

A. (HANDLEY) I don't know the answer to that. All I can tell you is that this does comply with Section 5, and we got preclearance on the basis Of that. So that's my answer.

Q. I understand that. If you're not able to answer, say I don't know. That's fine. I think you answered, but just let me make sure. Is it your understanding you do not know whether or not it was necessary to draw District 38 in this configuration to comply with the Voting Rights Act?

A. That's the only configuration I analyzed. So I can only answer for this. I can't answer for another conceivable reiteration of this plan.³⁸

As illustrated above, the Board members and staff were unable to explain why it

36 Exhibit 4 (Handley Depo) 206:17-19 99:4-7

37 These issues are addressed in Plaintiffs accompanying motion respecting the treatment of influence districts.

38 Id. at 207: 3-23

would have been impracticable to comply with the Alaska Constitution in light of competing requirements imposed under" the VRA, except to defer to Dr. Handley. But upon examination, Dr. Handley is unable to explain why it would have been impracticable to comply with the Alaska Constitution in light of competing requirements imposed under" the VRA. Thus, neither the board members nor Dr. Handley are able to justify HD 38.

CONCLUSION.

Previously, this Court has held "that House District 38 does not comprise a relatively integrated socio-economic area within the meaning of Article VI, Section 6 of the Alaska Constitution." As a consequence, the Board has the burden of proof to demonstrate that it made findings of facts justifying variance from the State Constitution, or that such variance may be justified in its Record or supplemental evidence. However, as noted above, this is not possible because, 1) the board failed to make adequate findings to justify HD 38, 2) the record is devoid of justifications for HD 38, and neither board members nor Dr. Handley are able to justify HD 38. the Court should grant summary judgment and hold that the 2011 Final Plan for the redistricting of Alaska's legislative districts is invalid because Proclamation House

District 38 is not justified by the Voting Rights Act.

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

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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-11-2213 CI
1JU-11-782 CI

DEPOSITION OF JOHN TORGERSON

Pages 1 - 91
Wednesday, November 16, 2011
10:03 A.M.

Taken by Counsel for Riley, et al., Plaintiffs
at
Patton Boggs, LLP
601 West Fifth Avenue, Suite 700
Anchorage, Alaska

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1 frame of May is when the three or four or five
 2 third-party proposers, lobbyists as you called them,
 3 brought back their suggestions for the new maps -- or
 4 new boundaries, I mean.
 5 And as far as the percentages, I remember
 6 35 percent was the Native VAP on the previous as an
 7 effective district. And that moved to, I believe 41.8
 8 or 42.8 or something like that. But I don't know. I
 9 can't tell you exactly without --
 10 Q That's 35 to --
 11 A 41.
 12 I can't tell you exactly without reviewing
 13 the record, but it was a change.
 14 Q And so in order to have an effective
 15 district, you needed to have 41 Native VAP?
 16 A That's my memory.
 17 Q Did that change in different areas?
 18 A Pretty substantially probably three. It
 19 didn't affect the North Slope, 40 or 39, I don't
 20 believe. Maybe it did 39. 39 and 40 were basically
 21 one person/one vote. We were looking for population
 22 to make it work.
 23 But clearly the Chain, the Aleutian Chain,
 24 Kuskokwim, Bethel, Wade Hampton, and parts of old
 25 House District 6 were very substantially impacted by

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1 that.
 2 Q But before you adopted the plan, in other
 3 words, the final plan, did you ever talk to
 4 Dr. Handley and have her tell you that 38 would --
 5 that drawing 38 the way it was drawn in the final
 6 proclamation plan was necessary in order to comply
 7 with the Voting Rights Act?
 8 A I personally didn't talk to Dr. Handley,
 9 but -- and I can't remember if we had her submit in
 10 writing or if our counsel and the executive director
 11 called her. They were calling her quite frequently
 12 and giving her different scenarios to have her weigh
 13 in on the possibilities of those passing DOJ muster,
 14 and I can't remember which one it was.
 15 But Dr. Handley was involved in that. She
 16 footnotes it in her report. And I can't quote you
 17 what that says either, other than that 38 is -- I
 18 think that's what she said, that she believed 38
 19 needed to be, because of the polarized voting, that
 20 Republicans historically have not supported a
 21 Native-preferred candidate, which primarily is
 22 Democrat, which you pointed out. And the Democrats
 23 primarily will support a Native-preferred candidate.
 24 Q I guess what I'm asking is a little bit more
 25 narrower question than that.

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1 In your recollection, did you ever -- let's
 2 break it down. You never talked directly to
 3 Dr. Handley about whether or not a District 38 was
 4 necessary to pass VRA standards, Section 5 VRA
 5 standards?
 6 A Maybe in executive session, because we -- but
 7 I don't remember. When we had executive sessions, we
 8 talked to her about some of that stuff during periods
 9 of time. But myself personally, I never picked up the
 10 phone and called Dr. Handley myself. I have staff to
 11 do that, and many of this has legal ramifications, so
 12 I also made sure that we had counsel when we talked to
 13 Dr. Handley in dealing with Voting Rights Act issues.
 14 So I'm almost positive that I did not myself, and I'm
 15 just as positive that counsel and possibly the
 16 executive director did.
 17 MR. WHITE: Mike, let me know when we can
 18 take a break.
 19 MR. WALLERI: We'll just finish up with this,
 20 and then take a break.
 21 MR. WHITE: That's fine.
 22 BY MR. WALLERI:
 23 Q So prior to June 13th, I think, you don't
 24 remember Dr. Handley saying that you needed a
 25 District 38 to comply with the Voting Rights Act? You

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1 have no specific recollection of her saying that
 2 orally to you?
 3 A Well, if I was to answer the question the way
 4 it's asked, it's just improper. Of course you need a
 5 District 38. You have to have 40 districts. You
 6 can't leave one out.
 7 Q No. I'm not asking you about your opinion.
 8 I'm asking you, did Dr. Handley, prior to June 13th,
 9 orally tell you -- and you individually or you and the
 10 rest of the board, not going through staff -- that you
 11 needed a District 38 to comply with Section 5 of the
 12 Voting Rights Act?
 13 A I'll say again that it's footnoted in her
 14 report.
 15 Q The report was drafted after June 13th.
 16 A It talks about --
 17 Q And I'm asking you --
 18 A -- her interaction with the board.
 19 Q -- about what you --
 20 A The answer is yes.
 21 MR. WHITE: Objection. Let him answer the
 22 question.
 23 A It's in the report.
 24 BY MR. WALLERI:
 25 Q If he starts talking, we have to stop. Okay.

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1 Let me try one more time.
 2 Do you have a specific recollection of
 3 Dr. Handley either orally telling you individually or
 4 you and the board collectively or other members of the
 5 board, prior to June 13th, that it was necessary to
 6 draw District 38 in order to comply with Section 5 of
 7 the Voting Rights Act?
 8 A Yes.
 9 Q And when was that?
 10 A **Back to what I said earlier: You have to**
 11 **have 38 of 40 districts. Your question is not on**
 12 **base. It is not on point.**
 13 Q I'm asking you about what --
 14 A **I understand what you're asking, but go**
 15 **ahead.**
 16 Q I'm asking you about what Dr. Handley advised
 17 you. Did she advise you that you needed a
 18 District 38 --
 19 A Yes.
 20 Q -- prior to June 13th, 2011?
 21 A Yes.
 22 Q And when was that?
 23 A **I don't recall, but it was prior to**
 24 **June 13th.**
 25 Q Was it on the record, in your recollection?

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1 A **She footnoted it in her report, is the only**
 2 **record that I'm familiar with.**
 3 Q Okay. Was it in executive session?
 4 A I don't recall.
 5 Q So you don't have a specific recollection of
 6 her saying this to you?
 7 A **Yes, I do.**
 8 Q Okay. When was it?
 9 A **Before June 13th.**
 10 Q And how is it that you know it was before
 11 June 13th?
 12 A **Because we finished our process on June 13th.**
 13 **We adjourned. We adopted the plan and went home.**
 14 Q Okay. But I'm asking you: Do you have a
 15 specific recollection of her talking to you and saying
 16 this?
 17 **MR. WHITE:** I'm going to object. Asked and
 18 answered like seven times.
 19 **MR. WALLERI:** He's not answering the
 20 question. He's evading the question.
 21 **MR. WHITE:** I disagree with your
 22 characterization.
 23 A Yes.
 24 **BY MR. WALLERI:**
 25 Q You do remember her saying that?

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1 A Yes.
 2 Q But you indicated earlier that you never
 3 talked directly to her. Which is true, Mr. Torgerson?
 4 **MR. WHITE:** I object. It mischaracterizes
 5 testimony.
 6 **MR. WALLERI:** He said right back here, "I
 7 never talked directly to Dr. Handley. I had staff do
 8 that."
 9 **MR. WHITE:** Dr. Handley was at a public
 10 meeting three times.
 11 **BY MR. WALLERI:**
 12 Q Was that your understanding, that it was at a
 13 public meeting?
 14 A I don't recall.
 15 Q So if it's not in the record at a public
 16 meeting, it didn't happen?
 17 **MR. WHITE:** Objection. It assumes facts not
 18 in evidence.
 19 A I don't recall when it was. Your question
 20 was, did I --
 21 **MR. WHITE:** "Recall her" was the exact
 22 question.
 23 **MR. WALLERI:** Please, Mr. White.
 24 A I'm just saying back what you said earlier.
 25 You said if I had direct recollection from Dr. Handley

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1 prior to June 13th, and I said yes, I do. I told you
 2 I didn't call her directly. There are other means of
 3 communications, which I indicated to you six, seven
 4 times --
 5 **BY MR. WALLERI:**
 6 Q Okay. Well, let's get into that.
 7 A -- is footnoted in her report.
 8 Q Her report was written after. What I'm
 9 asking you, let's talk about written. Did you receive
 10 a written report from her prior to June 13th that said
 11 that District 38 was necessary in order to comply with
 12 Section 5 of the Voting Rights Act?
 13 A I don't recall, so I guess -- I just don't
 14 recall.
 15 Q Okay. The last point is that you said that
 16 you communicated with Dr. Handley through staff. Did
 17 staff tell you that Dr. Handley had said that
 18 District 38 was necessary as drawn, in order to comply
 19 with Section 5 of the Voting Rights Act?
 20 A **Again, your question is really about**
 21 **District 38, and I think you're asking about whether**
 22 **mixing South Anchorage with others to create**
 23 **District 38 was ever discussed.**
 24 Q No, that's not what I'm asking.
 25 A **But District 38 is a constitutional**

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1 requirement. We have to have 40 districts, right? So
 2 when you say was it important to have District 38, if
 3 we didn't, we'd only have 39, wouldn't we?
 4 Q Oh, no. Proclamation District 38 as drawn,
 5 did any of your staff tell you, prior to June 13th,
 6 that the District 38, as indicated in the proclamation
 7 plan, was necessary in order to comply with Section 5
 8 of the VRA, based upon the recommendation of
 9 Dr. Handley?
 10 A Yes.
 11 Q And who was that?
 12 A Either counsel, which is not my staff, I
 13 understand, or the executive director.
 14 Q Do you have a specific recollection of who?
 15 A No. But my recollection is that they called
 16 jointly when the call was made. I really don't know
 17 either one of them calling independently of each
 18 other.
 19 Q And how soon was that before you adopted the
 20 plan on June 13th?
 21 A I don't recall, but I would say after
 22 June 1st. Somewhere between June 1st and the time the
 23 plan was drawn.
 24 Q So --
 25 A It could have been -- I don't really know

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1 when we actually adopted the rural plan. I'd have to
 2 go back and review the record to get that date, but it
 3 was before we actually adopted the rural plan.
 4 Q And in terms of that conversation, I gather
 5 from your answer that it occurred on the phone?
 6 A Yes.
 7 Q That it was your counsel and your executive
 8 director on the phone?
 9 A Yes.
 10 Q And was any other member of the board present
 11 at that time?
 12 A I was not there. I don't know if anybody
 13 else was present.
 14 Q I didn't quite catch that. What was that?
 15 A I can only respond for myself, and I was not
 16 there. I can't respond if any other board member was
 17 there.
 18 Q No. I'm talking about you receiving the
 19 message.
 20 A Oh, I got you. I'm sorry.
 21 Yes, I'm confident we were in a public
 22 meeting when we discussed it.
 23 Q Okay. So we should be able to find that on
 24 the board record?
 25 A Yes.

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1 Q And if it's not on in the board record?
 2 MR. WHITE: Objection. Is that a question?
 3 MR. WALLERI: Yes.
 4 MR. WHITE: I object to the form.
 5 BY MR. WALLERI:
 6 Q If it's not on the board record, is it your
 7 understanding that it occurred outside the board,
 8 public process?
 9 A No.
 10 Q So if it's not on the public record, it
 11 didn't happen?
 12 A If it's not on the public record, maybe I
 13 didn't push the record button at the proper time.
 14 MR. WALLERI: Okay. Let's that a break.
 15 (Recess.)
 16 MR. WALLERI: Back on record.
 17 BY MR. WALLERI:
 18 Q Getting back to why -- accepting the idea for
 19 a moment that some population had to come out of the
 20 rural areas, which, you know, we may disagree about --
 21 or from the urban areas, and we may disagree about
 22 that, but accepting that for a moment, why did the
 23 population -- why did the board choose to take it out
 24 of Fairbanks, as opposed to someplace else?
 25 MR. WHITE: Asked and answered.

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1 A We had proposed different areas of the state,
 2 and other third-party entities had proposed different
 3 areas of the state. The only one that passed
 4 Dr. Handley's analysis was the Fairbanks district,
 5 District 38, which included some of Fairbanks with
 6 some of rural Alaska. The other ones, including
 7 third-party entities, did not meet muster or whatever,
 8 qualifications.
 9 BY MR. WALLERI:
 10 Q Do you know whether or not Dr. Handley
 11 analyzed these other ideas -- let me strike that.
 12 In the board, as I understand it, of the
 13 board options, the only options that the board ever
 14 adopted or came up with on their own had urban
 15 population coming out of Fairbanks, correct,
 16 forgetting the third party?
 17 A Yes.
 18 Q Did the board -- and you're familiar with the
 19 term "proportionality" or "proportional
 20 representation"?
 21 A Yes.
 22 Q And you're aware that Fairbanks,
 23 proportionally, was entitled to roughly 5 1/2 seats?
 24 A Yes.
 25 Q Do you know what the proportional

