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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

1 residents of military bases, have a historic lower
 2 voter turnout than the civilian population?
 3 **A** You know, I remember that coming up in
 4 relationship to Anchorage, but not in the terms that
 5 you're saying. Fundamentally they have a very high
 6 voter turnout during presidential elections. And when
 7 they're deployed, defending our nation, they have a
 8 pretty low voter turnout, which would be absentee
 9 vote. And yes, I'm aware of those kind of situations.
 10 **Q** You have a similar issue with the Aleutians,
 11 the Naval station in the Aleutians, correct?
 12 **A** Is there a Naval station down there?
 13 **Q** I think there is, isn't there?
 14 **A** I don't think so. But that's your story, not
 15 mine.
 16 **Q** So in terms of the -- so that at least it can
 17 be said that you were aware that, and other than in a
 18 presidential election, military voter turnout is lower
 19 than civilian turnout?
 20 **A** By military personnel, yes.
 21 **MR. WALLERI:** Why don't we go ahead and take
 22 a break. I think I'm done. I just need to go over a
 23 couple of other things. We'll come back, and I think
 24 that's going to be it.
 25 (Recess.)

1 whatever. A couple times, anyway. And that in order
 2 for us to do this, we should have clear justification
 3 for -- if you're required, to, I'll say split excess
 4 population, that you want to have clear justification
 5 for your reasons for doing so.
 6 **In the case of Fairbanks, our justification**
 7 **we clearly laid out, in the resolution form at the end**
 8 **of the session, that we created certain districts to**
 9 **meet the requirements of the Voting Rights Act.**
 10 **And so in my mind, our justification -- I**
 11 **really don't know how many times we might have -- or**
 12 **how many districts we shifted excess population to**
 13 **anywhere, so whatever that number is. But we clearly**
 14 **discussed it, reasoning, and I'll say solidified that**
 15 **discussion by passing a resolution saying that this is**
 16 **why we have to do this.**
 17 **Q** In other words, the idea that -- it's
 18 sometimes referred to as "busting the boundaries more
 19 than once." Have you ever heard that term?
 20 **A** I've never heard of that, no.
 21 **Q** So just to clarify: You were aware that
 22 there was population from the -- that there was
 23 population -- of the Fairbanks districts, District 6
 24 goes outside the Fairbanks North Star Borough,
 25 correct?

1 **MR. WALLERI:** Back on record. A couple of
 2 questions, actually.
 3 **BY MR. WALLERI:**
 4 **Q** Are you familiar -- going back to the notion
 5 of proportionality, when you have -- let's say in the
 6 case of Fairbanks, you were aware that the Fairbanks
 7 population was equal to about 5 1/2 ideal house
 8 districts, correct?
 9 **A** Yes. Roughly, yep.
 10 **Q** And that half is oftentimes considered
 11 surplus population?
 12 **A** I'm not familiar with that term.
 13 **Q** In other words, at a half of a district, it's
 14 got to go someplace?
 15 **A** It has to go somewhere, yes.
 16 **Q** It has to go someplace outside to make an
 17 ideal district?
 18 **A** Yes.
 19 **Q** Now, when you do that, was there any thoughts
 20 in your mind as to how many pairings of districts can
 21 you put that surplus population in?
 22 **A** There was discussion. And several times, on
 23 advice of counsel, we had -- and I don't think the
 24 Fairbanks area so much, but other areas we might have
 25 taken some population and divided it more than

1 **A** It goes outside of Fairbanks North Star
 2 Borough.
 3 **MR. WHITE:** We'll stipulate that there's
 4 population in 6A from the Fairbanks North Star
 5 Borough, if that's what you're asking him.
 6 **MR. WALLERI:** 6C.
 7 **THE WITNESS:** 6C. Oh, yeah. Well, you said
 8 outside, and that's what threw me.
 9 **MR. WALLERI:** Well, the population is --
 10 **MR. WHITE:** We'll also stipulate that we
 11 split the excess population two ways.
 12 **BY MR. WALLERI:**
 13 **Q** And that it was split and that 38 includes --
 14 **A** I knew it was split multi-ways, yes.
 15 **Q** And your contention is that this was
 16 required?
 17 **A** "Required" is a term of it's own right, I
 18 guess. In order for us to produce a plan that was --
 19 met the Voting Rights standards, as told to us by Lisa
 20 Handley, Dr. Handley, that it was necessary for us to
 21 do that.
 22 **Q** Okay. So there's something in a report that
 23 said that you had to split the Fairbanks North Star
 24 Borough surplus population into two districts, and
 25 that was required?

1 A That's not what I said.

2 Q Okay. I'm not understanding, then.

3 A What I said was that we took some of the
4 excess population and put it into more than one
5 district. One district, the justification for one
6 district, in this case 38, is that we needed to
7 develop it or we needed that population to meet the
8 requirements of the Voting Rights Act.

9 Q And the -- and this -- well, let's make this
10 clear: But in your discussions with Dr. Handley, she
11 didn't actually say that it was necessary to split the
12 surplus population of Fairbanks into two districts in
13 order to comply with the Voting Rights Act?

14 A I don't remember any conversation about
15 excess population with Dr. Handley in any venue.

16 Q That's fair enough.

17 A That wasn't really the point.

18 Q So she never really talked about that aspect
19 and how it relates to the Voting Rights Act?

20 A My thought is, is no. No, she didn't talk
21 about that.

22 MR. WALLERI: Okay. That's it. We're done.

23 (Proceedings concluded at 12:40 p.m.)

24 (Signature reserved.)

25 -000-

1 CERTIFICATE

2

3 I, LISA L. SHAFFER, Certified Shorthand
4 Reporter, and Notary Public in and for the State of
5 Alaska, do hereby certify that the witness in the
6 foregoing proceedings was duly sworn; that the
7 proceedings were then taken before me at the time
8 and place herein set forth; that the testimony
9 and proceedings were reported stenographically by
10 me and later transcribed by computer transcription;
11 that the foregoing is a true record of the
12 testimony and proceedings taken at that time;
13 and that I am not a party to nor have I any
14 interest in the outcome of the action herein
15 contained.

16 IN WITNESS WHEREOF, I have hereunto set
17 my hand and affixed my seal this 1st day
18 of December, 2011.

19

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LISA L. SHAFFER, CSR
My Commission Expires 9/26/15

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IN THE SUPERIOR COURT OF 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 JIM HOLM

Tuesday, November 15, 2011
11:05 a.m.

Taken by Counsel for Fairbanks North Star Borough
at
Patton Boggs, LLP
601 West 5th Avenue, Suite 700
Anchorage, Alaska

Page 86

1 pair Senator Stevens and Senator Hoffman because it may
 2 raise concerns with the Voting Rights Act?
 3 **A. No, I don't recall that.**
 4 **Q.** That was never -- you do not remember that
 5 discussion taking place at all?
 6 **A. No, I do not.**
 7 **Q.** Okay. So in terms of -- so at least with regard
 8 to the pairing of Senator Stevens -- Senator Thomas and
 9 Senator Paskvan -- well, that's asked and answered.
 10 I'll object to my own question.
 11 **Do you know of any requirement under the Voting**
 12 **Rights Act -- excuse me. That's already been asked and**
 13 **answered too.**
 14 **MR. WHITE:** I'm not going to agree to give
 15 up my fee just because you're doing both sides of the
 16 deposition here.
 17 Remember the Woody Allen movie where he
 18 cross examines himself?
 19 **MR. WALLERI:** We wouldn't want to interfere
 20 with Mr. White's fee in any way, shape or form.
 21 **BY MR. WALLERI:**
 22 **Q.** Since -- oh, now, turning our attention to
 23 District 38, you know which District 38 is?
 24 **A. Yes.**
 25 **Q.** Did you think that that was -- you're aware that

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1 the Court has held that that's not a socioeconomically
 2 integrated district, correct?
 3 **MR. WHITE:** Object to the clarification.
 4 Stipulate that -- it's a stipulation, but go ahead and
 5 answer, Jim.
 6 **A. That the Court declared it as socioeconomically**
 7 **not integrated?**
 8 **Q.** Correct. The Court has issued an order.
 9 **A. Which Court?**
 10 **Q.** The Fairbanks Superior Court, Judge McConahy in
 11 this case. Were you aware of that?
 12 **A. No.**
 13 **Q.** Let's put it this way: Did you think that
 14 District 38 -- you understand that this is a district
 15 including Ester, Goldstream, McGrath, St. Mary's and
 16 Emmonak?
 17 **A. Uh-huh.**
 18 **Q.** Did you believe that was a socioeconomically
 19 integrated district?
 20 **A. I knew that --**
 21 **MR. WHITE:** Let me object. Since you're
 22 claiming this issue has already been decided, what's the
 23 relevance of asking him questions about it? I'll object
 24 based on relevance.
 25 **A. It was drawn not by me, so I was not involved in**

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1 **the actual drawing of that district. That district was**
 2 **given to me at the border, if you will, of 5-C and 38**
 3 **was given to me to work from based upon the boards's**
 4 **need to comport with the Voting Rights Act.**
 5 **Q.** Do you know who drew the district?
 6 **A. Yes.**
 7 **Q.** And who drew the district?
 8 **A. Marie Green with Peggy Ann McConnochie, two board**
 9 **members.**
 10 **Q.** And do you know if they had any assistance from
 11 anybody?
 12 **A. Staff, I'm sure. I don't know who else.**
 13 **Q.** When you saw the district, did you have any
 14 judgment -- did you form, for the first time, did you
 15 have any general opinion at that time about whether or
 16 not it was a socioeconomically integrated area?
 17 **A. No, because I have lived in Fairbanks for**
 18 **60 years, and Fort Yukon used to be representing**
 19 **Fairbanks. So I don't -- I don't know what that really**
 20 **means.**
 21 **Q.** So you're not exactly sure what socioeconomic
 22 integration means?
 23 **A. With regard to Fairbanks I don't, no.**
 24 **Q.** Well, aside from its legal implications, what did
 25 you think -- did you think that there is a lot of

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1 connection between Emmonak and Ester?
 2 **A. I never gave it a thought.**
 3 **Q.** And did you think it was at all relevant?
 4 **A. To what?**
 5 **Q.** To the process. You said you didn't give it a
 6 thought.
 7 **A. Well, since I didn't draw it and since I didn't**
 8 **put Numonic there, I assume that the other folks who did**
 9 **the drawing had taken into consideration the folks that**
 10 **lived in the areas from all the testimony they had and**
 11 **drew the best plan that they could draw.**
 12 **Q.** Do you know of anybody that actually -- in the
 13 hearings that you attended, do you know of anybody that
 14 actually -- let's put it this way: Do you recall any
 15 testimony saying that Emmonak and Ester should be in the
 16 same district?
 17 **A. No.**
 18 **Q.** In fact, when you were in Fairbanks on the 19th,
 19 you heard a number of people complain about putting
 20 Ester and Goldstream into a rural district, correct?
 21 **A. That's correct.**
 22 **Q.** And with regard to your involvement in drawing
 23 the Fairbanks district, did you ever raise this issue
 24 with the other members of the board?
 25 **A. Raise what issue?**

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1 Q. That people in Fairbanks, at least at the
 2 Fairbanks hearing did not want Ester and Goldstream to
 3 be in a rural district?
 4 **A. I don't recall.**
 5 Q. So you don't recall ever raising it with them,
 6 with the other members of the board?
 7 **A. I don't think so.**
 8 Q. But in fact, you did vote to adopt the rural
 9 plan, including that District 38, as it appeared in
 10 Proclamation, you voted for it, correct?
 11 **A. Yes.**
 12 Q. And in casting that vote, were you -- I gather
 13 from your testimony so far, that you were relying on the
 14 work of McConnochie and Green, correct?
 15 **A. Correct.**
 16 Q. And that you didn't provide any independent
 17 thought as to whether or not that district was an
 18 appropriate district under the plan?
 19 **A. I don't recall, no.**
 20 Q. You don't recall that you ever gave it an
 21 independent thought, or that you just don't recall
 22 whether you even thought about it?
 23 **A. You're asking if -- restate your question.**
 24 Q. Well, did you ever -- did you ever give it an
 25 independent thought or analysis, from your perspective,

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1 as to whether or not 38 was an appropriate district?
 2 **A. I'm not sure I can answer that question. I**
 3 **looked at all of the districts, whether it be in the**
 4 **Southeast, whether it be in the -- in some areas, I**
 5 **couldn't make any -- I couldn't make that kind of a**
 6 **judgment.**
 7 Q. But you were pretty familiar with Ester, correct,
 8 and Goldstream?
 9 **A. Well, yeah, sure.**
 10 Q. And you had earlier testified that you were
 11 relying on Ms. McConnochie and Ms. Green, correct?
 12 **A. Uh-huh.**
 13 Q. What I'm asking you is: Did you do any
 14 independent analysis on your part as to whether or not
 15 38 was an appropriate district?
 16 **A. Not particularly, no.**
 17 Q. Now, do you understand the rationale for District
 18 38, why District 38 was drawn in the way that it was
 19 drawn?
 20 **A. Not really. I mean, I think so. It was drawn**
 21 **for the purpose of comporting with the Voting Rights**
 22 **Act.**
 23 Q. Do you remember Dr. Hanley ever saying that you
 24 had to have a district like that, a district drawn in
 25 the manner in which District 38 was drawn?

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1 **A. She never talked about us drawing any district.**
 2 **She was only involved in giving us counsel after**
 3 **districts were drawn, as far as I know.**
 4 Q. So you were not aware of any, prior to June 30th
 5 -- or I mean June 13th, were you aware that she had
 6 provided any advice to you as a board member as to the
 7 necessity to draw District 38 in the way in which it was
 8 drawn under the Proclamation?
 9 **A. No.**
 10 Q. In terms of -- obviously, you were traveling
 11 around a great deal in redistricting process, correct?
 12 **A. I didn't travel a great deal. I traveled some.**
 13 Q. How often do you think you met with the chairman,
 14 Mr. Torgerson, over the process?
 15 **A. I wouldn't have a clue. I have no idea how many**
 16 **times we met.**
 17 Q. Did you ever discuss the senate pairings with him
 18 off the record?
 19 **A. I don't believe so.**
 20 Q. Did you ever discuss the -- did you ever discuss
 21 the political implications of the next election with
 22 Mr. Torgerson?
 23 **A. Not to my knowledge.**
 24 Q. Did you ever see plans that were put together by
 25 a Mary Jackson?

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1 **A. I don't know who Mary Jackson is.**
 2 Q. I tell you what, why don't we take a quick break,
 3 and then I think I'm going to be done. I'm just going
 4 to go over my notes.
 5 (There was a break.)
 6 (Proceedings concluded at 2:49 p.m.)
 7 (Signature reserved.)
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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 TAYLOR BICKFORD

Pages 1 - 127
Thursday, November 17, 2011
10:06 A.M.

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

Page 102

1 that help you?
 2 **A** Aggregating a number. For example, if you
 3 are packing Republicans into a district, you would be
 4 putting as many Republicans in a district as you
 5 possibly could in order to make them not available to
 6 put into other districts.
 7 **Q** Okay. And you've heard the term "cracking
 8 and spreading," correct?
 9 **A** Yes.
 10 **Q** What's does "cracking and spreading" mean?
 11 **A** I suppose that would be sort of the opposite.
 12 You're -- you would be spreading a group amongst
 13 various districts in order to diminish their potential
 14 impact on any one district.
 15 **Q** So in looking at a plan -- now, at those
 16 trainings, they talk about trying -- do they encourage
 17 people to engage in packing and cracking?
 18 **A** I think that would be illegal, in most cases.
 19 **Q** So you're not supposed to do that?
 20 **A** Not intentionally, no.
 21 **Q** Okay. So if you -- and the purpose of
 22 packing is -- let me help you with that -- it's the
 23 aggregation of people of political cohesion into an
 24 area in excess of the number to control the district
 25 in order to minimize their voting effectiveness in

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1 other districts?
 2 **A** That's a very nice definition. I like it
 3 better than mine.
 4 **Q** I've been trained by them too.
 5 **A** You read your notes, I didn't.
 6 **Q** Okay.
 7 Now, cracking, cracking is the fractioning of
 8 salient political groups in order to spread the vote
 9 in more than one district, to give them a greater
 10 effective voting power, correct?
 11 **A** My understanding would be that it would be to
 12 give them less voting power, but I could be wrong.
 13 **Q** You could do both, couldn't you?
 14 **A** Sure.
 15 **Q** So if you had a district that was 50 percent
 16 Democratic and 50 percent Republican, and you cracked
 17 it in such a way as to put -- so that's 75 percent --
 18 you have two districts, 50/50, okay? And you cracked
 19 it so that 75 percent of one district was -- well, it
 20 would have to be more than that.
 21 But cracking, you can diminish people's
 22 voting power as well as enhance people's voting power
 23 by cracking geographically concentrated voting groups?
 24 **A** I remember reading about that in a seminar or
 25 reading about it.

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1 **Q** And you're not supposed to do it, why?
 2 **MR. WHITE:** I object to the characterization.
 3 **A** I guess -- well, I don't -- in my mind, those
 4 are acts of political gerrymandering.
 5 **BY MR. WALLERI:**
 6 **Q** So it's to avoid partisan political
 7 gerrymandering, if you're cracking and packing based
 8 upon party affiliation?
 9 **A** At the conference, I remember discussions of
 10 examples of that happening and how that would
 11 generally be something to avoid, or -- yeah.
 12 **Q** Okay. Let's take a look at 38. You're
 13 familiar with 38?
 14 **A** Yeah.
 15 **Q** And as I understand it, do you know what the
 16 voter turnout here is in terms of who they vote for in
 17 Ester and Goldstream, historically?
 18 **A** I believe that those are historically
 19 Democratic-leaning areas.
 20 **Q** They're a little bit more than Democratic
 21 leaning, aren't they?
 22 **MR. WHITE:** Not according to your requests
 23 for admission.
 24 **A** It depends on what you mean. To me, they're
 25 Democratic-leaning areas.

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1 **BY MR. WALLERI:**
 2 **Q** Do you remember anybody ever actually doing
 3 an analysis of what precinct voting was in areas?
 4 **A** I know that that would have been done at some
 5 point, only because our Voting Rights Act expert had
 6 advised us that that was something that would increase
 7 the effectiveness, potential effectiveness of a
 8 district, and vice versa, that adding Republicans to a
 9 district like that would potentially decrease the
 10 effectiveness, and especially considering that that
 11 district contained parts of old District 6, which was
 12 more polarized, that that was something to look at.
 13 So I do remember someone looking at that. I don't
 14 remember who, though.
 15 **Q** Did anyone take a look at the voting precinct
 16 and history of McGrath?
 17 **A** We had the election results available in the
 18 board's library.
 19 **Q** Do you remember any staff person doing that?
 20 **A** Doing what?
 21 **Q** Taking a look at the voting history of
 22 McGrath?
 23 **A** At this time, I don't recall.
 24 **Q** How about Aniak -- or, excuse me --
 25 St. Marys?

1 A I am quite sure that that was looked at by
2 someone at some point. I don't recall at this time
3 when that would have been.

4 Q Do you recall who most likely to have looked
5 at that?

6 A It could have been me. It could have been
7 anybody.

8 Q Did you -- do you know, do you have any
9 general impressions of whether or not -- what the
10 perceived perception as to what percentage of people
11 in 38 are Democratic?

12 A I would assume that it's not a very high
13 percentage if you're talking about voting
14 registration.

15 Q How about voting pattern?

16 A If you're talking about voting pattern, I,
17 off the top of my head, can't give you a number, but
18 like I said, I know it's Democratic leaning.

19 Q Okay. Is that across all elections?

20 A I don't know.

21 Q Did anybody take a look at that, other than
22 Ms. Handley?

23 A I believe that I would have taken a look at
24 that at some point, or potentially Eric Sandberg.
25 Like I said, we had election histories available.

1 techniques. They didn't talk about that at the
2 conference.

3 Q Okay. But if you have low voter turnout
4 among a particular group of people, and you put them
5 into an area that's got a high concentration of
6 partisan voting pattern and a high voter turnout, or a
7 relatively high voter turnout, isn't that going to
8 result in enhancing the strength of a population that
9 has the higher voting turnout?

10 MR. WHITE: I object. It calls for
11 speculation. And also I'll just take a continuing
12 objection. Since you've made no political
13 gerrymandering claim, I don't think any of this is
14 relevant, but I'm not going to try to stop you. I
15 preserve my objection for trial. And you're agreed I
16 can have a continuing on this, Mike?

17 MR. WALLERI: Absolutely.

18 MR. WHITE: Great.

19 A So you're asking me if adding an area of low
20 voter turnout to an area of high voter turnout would
21 increase the --

22 BY MR. WALLERI:

23 Q Voting effectiveness of the area of high
24 voter turnout.

25 A I think it certainly depends on -- it

1 They were there, people looked at them.

2 Q How about Fairbanks City 4 and 1, did anybody
3 take a look at their election history in terms of
4 partisan leaning?

5 A Not that I can recall. Those really weren't
6 an issue in terms of Voting Rights Act.

7 Q So as far as you know, nobody took a look at
8 what the voting history of 4 and 1 were, as far as you
9 know?

10 A I can tell you that I would have known that,
11 for example, I would probably have a lower voter
12 turnout because it's military. Beyond that, I don't
13 recall.

14 Q Well, do you recollect anybody talking about
15 Fairbanks, in talking about the Fairbanks district,
16 that the conservative voting bloc in Fairbanks has
17 greater strength in the North Pole area?

18 A That does not ring a bell.

19 Q So nobody mentioned that?

20 A I'm not saying nobody did. I just don't
21 recall that right now.

22 Q Okay. If you -- in terms of packing and
23 cracking strategies, don't you also take a look at
24 voter turnout?

25 A I'm really not experienced with those

1 certainly depends on a number of factors, but that it
2 could potentially do that.

3 Q And you indicated just a couple of seconds
4 ago that you were aware that the military bases have a
5 relatively lower voter turnout?

6 A Well, that's really only true, it depends on
7 when the election is held.

8 Q But in elections where there is no national
9 candidate, no federal office up for election, other
10 than the congressman --

11 MR. WHITE: You're referring to off-year
12 elections?

13 MR. WALLERI: Yeah, they're oftentimes
14 referred to as off-year.

15 BY MR. WALLERI:

16 Q The president runs every four years, right?

17 A Right.

18 Q Okay. So if you're having elections other
19 than when the president is up, we will refer to those
20 as off-year, all right?

21 A Uh-huh.

22 Q So the military generally votes in lower
23 rates in those elections?

24 A As does everybody else.

25 Q Okay. But in a relative sense, isn't it true

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FOURTH JUDICIAL DISTRICT
3

4 _____)
5 IN RE 2011 REDISTRICTING CASES)
6 _____)

7 Case No. 4FA-11-1935 CI
8
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11 DEPOSITION OF LISA HANDLEY, Ph.D.

12 Washington, D.C.

13 Tuesday, November 22, 2011
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Reported by:

24 John L. Harmonson, RPR

25 Job No. 43926

1 L. HANDLEY
 2 about something along the lines of a tipping
 3 point. But it's unclear from your description.
 4 Q. Okay. So you wouldn't understand what
 5 his hypothesis was?
 6 A. I might understand what his hypothesis
 7 is. I don't understand your explanation.
 8 Q. What is his hypothesis?
 9 A. I don't know which hypothesis you're
 10 referring to. I simply cannot guess from your
 11 description.
 12 Q. That's fair.
 13 A couple of quick questions. In terms
 14 of our exhibits, if you'll take a look at
 15 Exhibit 6. Now, as I understand it, you did not
 16 do any alternative plans yourself?
 17 A. Do you mean did I draw any plans?
 18 Q. Yeah.
 19 A. I did not draw any plans.
 20 Q. Can you tell me, was it necessary to
 21 draw District 38 in that configuration in order
 22 to comply with the Voting Rights Act?
 23 A. I can tell you that District 38 as
 24 drawn does comply with Section 5 of the Voting
 25 Rights Act. As to the exact configuration --

1 L. HANDLEY
 2 That's the configuration I analyzed.
 3 Q. In your professional opinion, was it
 4 necessary to draw District 38 in this
 5 configuration in order to comply with the Voting
 6 Rights Act?
 7 MR. WHITE: Object to the relevance of
 8 that question. It's also ambiguous.
 9 A. I don't know the answer to that. All
 10 I can tell you is that this does comply with
 11 Section 5, and we got preclearance on the basis
 12 of that. So that's my answer.
 13 Q. I understand that. If you're not able
 14 to answer, say I don't know. That's fine. I
 15 think you answered, but just let me make sure.
 16 Is it your understanding you do not
 17 know whether or not it was necessary to draw
 18 District 38 in this configuration to comply with
 19 the Voting Rights Act?
 20 A. That's the only configuration I
 21 analyzed. So I can only answer for this. I
 22 can't answer for another conceivable reiteration
 23 of this plan.
 24 Q. Okay. In terms of Exhibit 7, do you
 25 see the Senate pairings between 4-B and 3-B? You

1 L. HANDLEY
 2 understand that that's a Senate pairing?
 3 A. Okay.
 4 Q. In other words, House District 4 and
 5 House District 3 are combined to form Senate
 6 District B?
 7 MR. WHITE: We'll so stipulate.
 8 Q. Correct?
 9 A. Yes.
 10 Q. Is that Senate pairing required by the
 11 Voting Rights Act?
 12 A. I can't answer that question.
 13 Q. So you don't know the answer to that
 14 question?
 15 A. It would involve looking at all of the
 16 other possibilities and why this ended up -- I
 17 mean, this isn't even a minority district, so why
 18 this particular configuration ended up, I would
 19 have to look at the whole set of possibilities, I
 20 suppose.
 21 Q. Okay. But you don't know of any
 22 reason that the Voting Rights Act would require
 23 that from everything that you've done so far?
 24 A. Well, the Voting Rights Act doesn't
 25 require -- Repeat the question.

1 L. HANDLEY
 2 Q. There isn't anything that you know of
 3 from the analysis that you've done that would
 4 require -- that would say that the Voting Rights
 5 Act requires the pairing of House District 4 with
 6 House District 3 to create Senate District B?
 7 A. I don't know if this is the only
 8 possibility that exists. I just don't know.
 9 Q. So you don't know whether or not there
 10 is another possibility?
 11 A. That's correct.
 12 Q. You don't know if there is another
 13 possibility to draw District 38 that might comply
 14 with the Voting Rights Act?
 15 A. That's correct. District 38, it could
 16 be that a different shape could also comply. I
 17 don't know. I didn't look at a different shape.
 18 I mean, I did look at one different shape, and
 19 that's Demonstration District 38, and that
 20 doesn't comply.
 21 Q. But you don't know whether or not
 22 there is another alternative that could?
 23 A. I do not know.
 24 Q. And when you take a look at House
 25 District 5 and House District 6, pairing these

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

IN RE 2011 REDISTRICTING CASES

**ORDER GRANTING RILEY ET. AL.
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT: INVALIDITY
OF HD 38**

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 summary judgment 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 is hereby GRANTED.

DATED this _____ of December, 2011.

Michael P. McConahy
Superior Court Judge

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

Order: Sum Jud. HD 38 Invalid
Riley, et. al. v Redistricting Board
Case No. 4FA-11-02209 Ci

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