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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:
INVALID PROCESS

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 that the 2011
Final Plan for the redistricting of Alaska's legislative districts adopted by the Alaska
Redistricting Board is invalid because the Alaska Redistricting Board followed an
invalid process in developing the Proclamation Plan. 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:
Mr. Michael D. White Mr. Thomas F. Klinker
Patton Boggs, LLP Birch, Horton, Bittner, & Cherot
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Michael J. Walleri

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

Michael J. Walleri
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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:
INVALID PROCESS**

Case No. 4FA-11-02209 CI.

The Riley Plaintiffs¹ seek summary judgment holding that the 2011 Final Plan for the redistricting of Alaska's legislative districts adopted by the Alaska Redistricting Board is invalid because the Alaska Redistricting Board ("Board") followed an invalid process in developing the Proclamation Plan. In summary, the process used by the Board was fundamentally flawed because the Board failed to attempt to draft a plan that complied with the Alaska Constitution prior to pursuing other alternatives.

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."² In companion motions for summary judgment, the Riley Plaintiffs also claim that Proc. House District 37 violates the Alaska Constitutional

1 George Riley and Ron Dearborn

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

requirements of compact and contiguous districts. And the Petersburg Plaintiffs and the Board have cross-motions for summary judgment pending that challenges the compactness of Proc. HD 32. The Board has or is anticipated to argue that the violations of the Alaska Constitutional are excused by the Board's need to comply with the Voting Rights Act. However, the record clearly establishes that the Board never seriously took a "hard look" at options to comply with the Alaska Constitution.

In *Hickel v Southeast Conference*,³ the Court invalidated a Southeastern Island district that violated the Alaska Constitution.⁴ In that case, as in this case, Board claimed that the district, and violation of the Alaska Constitution, was required by the Voting Rights Act. In rejecting this argument, the Court explained that the Board undertook an erroneous methodology, that is remarkably similar to the one employed by the Board in the case at bar. Specifically, the Court stated,

Our conclusion underscores the error in the Board's methodology in reconciling the requirements of the Voting Rights Act with the requirements of the Alaska Constitution. The Board was advised to expect that any challenges to the reapportionment plan would come under the newly amended section 2 of the Voting Rights Act. Consequently, the Board accorded minority voting strength priority above other factors, including the requirements of article VI, section 6 of the Alaska Constitution. This methodology resulted in proposed district 3, a

³ 846 P.2d 38 (Alaska 1993)

⁴ *Hickel v Southeast Conference*, 846 P.2d at, 51

district which does not comply with the requirements of the Alaska Constitution. However, proposed district 3 is not required by the Voting Rights Act, either.

Article VI, cl. 2 of the United States Constitution provides that "This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land...." This mandates that provisions of state law, including state constitutional law, are void if they conflict with federal law. To the extent that the requirements of article VI, section 6 of the Alaska Constitution are inconsistent with the Voting Rights Act, those requirements must give way. However, to the extent that those requirements are not inconsistent, they must be given effect. The Voting Rights Act need not be elevated in stature so that the requirements of the Alaska Constitution are unnecessarily compromised.

The Board must first design a reapportionment plan based on the requirements of the Alaska Constitution. That plan then must be tested against the Voting Rights Act. A reapportionment plan may minimize article VI, section 6 requirements when minimization is the only means available to satisfy Voting Rights Act requirements.⁵

It is undisputed that the Board did not follow the process mandated by the Court in *Hickel*. A review of the record illustrates that the Board never undertook an effort to draw a plan which complied with the Alaska Constitution, but rather, viewed the VRA as a license to avoid the strictures of Alaska's Constitutional protections against gerrymandering.⁶

⁵ *Hickel v Southeast Conference*, 846 P.2d at, 51-52 n 22

⁶ The purpose of the compactness requirement is to prevent gerrymandering. *Hickel v Southeast Conference*, 846 P.2d at, 44, quoting Proceedings of the Alaska Constitutional Convention ("[The requirements] prohibit[] gerrymandering which would have to take place were 40 districts arbitrarily set up by the governor... [T]he Committee feels that gerrymandering is definitely prevented by these restrictive limits." 3 PACC 1846 [January 11, 1956])

Specifically, when asked, Chairman Torgerson stated that the Board did not attempt to draft a plan complying with the Alaska Constitution. The exchange in his deposition was crystal clear:

Q. [Walleri] Now, in this process, do you remember the board trying to come up with a plan whose first priority was compliance with the Alaska State constitution?

A [Torgerson] No.⁷

Mr. Holm agreed. When questioned on this matter, he stated as follows:

Q. [Walleri] So in your understanding, before you started taking a look at the Alaska Constitution requirements, it was your understanding you first had to come up with a plan that would comply with the Voters Rights Act, correct?

A. [Holm] That was the charge by the chairman of the Redistricting Board, and that was correct.⁸

Thus, there is no genuine dispute that the Board engaged in the same methodology that the *Hickel* Court found to be error, and did not follow the process that the *Hickel* Court prescribed as the correct process to develop a redistricting plan. As a result, this Court should grant the motion for summary judgment, and remand

7 Exhibit 1 (Torgerson Depo) 49:7-11

8 Exhibit 2 (Holm Depo) 49:20- 50:1

the matter to the Board to undertake the correct process as mandated in *Hickel*.

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

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

IN RE 2011 REDISTRICTING CASES

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT: INVALID PROCESS**

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 that the 2011 Final Plan for the redistricting of Alaska's legislative districts adopted by the

Alaska Redistricting Board in invalid because the Alaska Redistricting Board

("Board") followed an invalid process in developing the Proclamation Plan. 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:

Mr. Michael D. White	Mr. Thomas F. Klinker
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Michael J. Walleri

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

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 representation for the Kenai was?
 2 **A I'm guessing 3 plus something. I really**
 3 **don't know. 3.2. I don't know the balance.**
 4 **Q Yeah, about 3.2. Is there a reason why -- so**
 5 **that extra .2 percent or 2/10s of a district coming**
 6 **out of the Kenai, is there a reason that nobody**
 7 **considered taking the population out of the Kenai,**
 8 **from a rural, to help both numbers for a rural**
 9 **district?**
 10 **A I believe it was considered.**
 11 **Q Do you know when it was considered?**
 12 **A Somewhere between April and June 13th.**
 13 **Q And why, in your mind, wasn't that selected?**
 14 **A On board-adopted issues, it was not high**
 15 **enough VAP. Or not board-adopted, but**
 16 **board-considered issues.**
 17 **Q Native VAP?**
 18 **A No. Not up to the required 41 or whatever.**
 19 **Q How about Anchorage?**
 20 **A Would you ask the question again?**
 21 **Q Well, did the board consider taking**
 22 **population out of Anchorage to include in a rural**
 23 **district?**
 24 **A Yes.**
 25 **Q And when was that?**

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1 **A Somewhere during the process.**
 2 **Q Okay. And why wasn't that chosen?**
 3 **A It didn't meet the Native VAP, nowhere near**
 4 **it.**
 5 **Q And that would be in the record, I suspect?**
 6 **A I have no recollection.**
 7 **Q It's just your impression that that was the**
 8 **case?**
 9 **A There was some discussion about that. Now,**
 10 **whether or not it was a map or something, I don't**
 11 **know. I don't remember.**
 12 **Q Well, taking the population from Fairbanks,**
 13 **the Ester/Goldstream is over 90 percent white,**
 14 **correct?**
 15 **A I don't know.**
 16 **Q Okay. So the areas of Anchorage were higher**
 17 **than that?**
 18 **A I don't know that either.**
 19 **Q Okay. Is it fair to say that that was never**
 20 **really a serious consideration, to take population out**
 21 **of Anchorage for a rural area?**
 22 **A No, it was considered.**
 23 **Q Okay. But you're not exactly sure why it was**
 24 **discarded?**
 25 **A It was -- didn't come near meeting any Native**

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1 **requirements, a minority voting district requirement.**
 2 **Q But I'm just thinking of this mathematically.**
 3 **Would that mean that the concentration of white**
 4 **population in the area was so high that it couldn't**
 5 **make a Native VAP mark?**
 6 **A Well, I don't know for sure, but that's a**
 7 **logical conclusion. Either that way or reverse it,**
 8 **there wasn't enough minorities.**
 9 **Q But taking an area of 90 percent white out of**
 10 **Fairbanks made that number?**
 11 **A When mixed with the rest of the district, it**
 12 **qualified for passage by the Voting Rights votes.**
 13 **Q And Dr. Handley advised you on all of these**
 14 **alternatives?**
 15 **A Define "all of these."**
 16 **Q In other words, did Dr. Handley advise you**
 17 **that you couldn't do a -- move Kenai population to get**
 18 **enough population to create a viable rural district?**
 19 **A No. It was obvious, when we looked at the**
 20 **computer-generated numbers of minority versus**
 21 **nonminority, that it wasn't going to make the**
 22 **minimums.**
 23 **Q And you remember doing that?**
 24 **A Yes.**
 25 **Q Isn't it true that at one point in**

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1 Dr. Handley's report -- you're familiar with that
 2 report, correct?
 3 **A Define "familiar."**
 4 **Q Okay. Let me put it this way: Are you aware**
 5 **that -- well, let's forget about that. We'll go on to**
 6 **something else.**
 7 **Now, in this process, do you remember the**
 8 **board trying to come up with a plan whose first**
 9 **priority was compliance with the Alaska State**
 10 **constitution?**
 11 **A No.**
 12 **Q In terms of the RIGHTS plan -- you're**
 13 **familiar with what I mean by the RIGHTS plan, right?**
 14 **A No.**
 15 **MR. WHITE: Which one?**
 16 **MR. WALLERI: The second RIGHTS plan.**
 17 **MR. WHITE: This is his expertise on**
 18 **compactness that's assisting you in this deposition,**
 19 **is that right?**
 20 **MR. WALLERI: Yeah, we'll get to compactness.**
 21 **MR. WHITE: But you're asking him questions**
 22 **about noncompact matters, are you not? For the**
 23 **record, I'd like you to --**
 24 **MR. WALLERI: Yeah.**
 25 **MR. WHITE: Okay. For the record, he's**

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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

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1 any significant borders. So it was not a final product.
 2 It was just a beginning product.
 3 Q. So at least in April, it made sense to you to
 4 have the two house seats inside the city paired together
 5 as a single senate?
 6 A. I don't know if that's a proper characterization.
 7 Q. But that's what the plan that you produced
 8 provides for, correct?
 9 MR. WHITE: You keep saying "you." Do you
 10 mean him or do you mean the board?
 11 MR. WALLERI: I mean him.
 12 MR. WHITE: I think he testified he didn't
 13 do the senate pairings.
 14 BY MR. WALLERI:
 15 Q. Do you know who did the senate pairings?
 16 A. No, I do not. It would be on the record. Maybe
 17 we did it together. I suspect we did. I don't know.
 18 Q. Do you know -- okay.
 19 Now, you were -- on April -- or let's see.
 20 After April 13th, there was a hearing in
 21 Fairbanks, correct, April 19th?
 22 A. Okay.
 23 Q. Did anybody during the hearing testify that they
 24 thought it was a bad idea, in your recollection, that it
 25 was a bad idea to have the two house districts inside

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1 the city paired as a senate district?
 2 A. To my recollection, no.
 3 Q. Did anybody on -- did anybody -- do you know --
 4 as I understand it, on June 2nd, going forward to
 5 June 2nd, there was a board meeting.
 6 And do you know at that time how this plan was
 7 being considered by the board?
 8 MR. WHITE: By "this plan," meaning Board
 9 Option 2, District 9?
 10 MR. WALLERI: Option 1 or Option 2.
 11 MR. WHITE: On June 2nd?
 12 MR. WALLERI: On June 2nd.
 13 A. I don't believe this was presented at all on
 14 June 2nd, but I may be wrong.
 15 Q. Do you know why the board didn't go with Option 1
 16 or Option 2 for Fairbanks?
 17 A. Because it was preliminary.
 18 Q. Understanding that it was preliminary, but why
 19 didn't they go forward with Option 1 or Option 2, in the
 20 final?
 21 MR. WHITE: You mean just for Fairbanks or
 22 for the plan as a whole?
 23 A. For Fairbanks, I assume.
 24 Q. For Fairbanks.
 25 A. Do I know why the board did not go through,

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1 follow through with this plan?
 2 Q. Correct.
 3 A. It didn't comport with the western -- prior to
 4 this plan, we didn't have what we thought was going to
 5 be satisfying the Voting Rights Act.
 6 Q. So --
 7 A. So until we got to that, this plan was not ever
 8 going to be finalized.
 9 Q. And who said that Board Option 1 and Board Option
 10 2 did not comply with the Voting Rights Act?
 11 A. I don't know that anybody specifically said that.
 12 We just knew that until we had drawn the districts that
 13 we felt complied with the Voting Rights Act, we could
 14 not get specific outer limits, if you will, of the area
 15 around Fairbanks.
 16 Q. Well, let's -- what's your understanding of the
 17 Voting Rights Act requirements that you needed to comply
 18 with in order to have a successful redistricting plan?
 19 A. Well, we relied upon our own expert witness. We
 20 relied upon our attorney. We had to have, as we
 21 understood it, five effective districts and -- or six
 22 effective -- or what's the other term, could be
 23 effective anyway, and then three senate districts.
 24 Q. Are you familiar with any place in the process
 25 where on the record Dr. Hanley -- when you refer to your

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1 expert witness, I suspect you are talking about
 2 Dr. Hanley?
 3 A. That's correct.
 4 Q. Did Dr. Hanley ever tell you directly, either on
 5 the record or off the record, that you needed six
 6 effective districts and three senate districts?
 7 A. I don't recall. It's on the record.
 8 Q. But that was your understanding of what you
 9 needed to do?
 10 A. That was my understanding; we needed nine.
 11 Q. Okay. Now, when you said "effective districts,"
 12 what was your understanding of what an effective
 13 district is in terms of Native population?
 14 A. That they couldn't retrogress, that they couldn't
 15 lose representation, that they had the opportunity to
 16 elect whomsoever they wanted to elect.
 17 Q. The "they" you're talking about, the Native
 18 voters?
 19 A. That's correct.
 20 Q. So in your understanding, before you started
 21 taking a look at the Alaska Constitution requirements,
 22 it was your understanding you first had to come up with
 23 a plan that would comply with the Voters Rights Act,
 24 correct?
 25 A. That was the charge by the chairman of the

Page 50

1 **Redistricting Board, and that was correct.**
 2 Q. Now, we can take a look at --
 3 (Exhibit No. 2 marked.)
 4 Q. I have a couple of questions. If you could take
 5 a look at Exhibit No. 1 and Exhibit No. 2. Now, I'll
 6 represent to you that this is again taken off the
 7 redistricting site.
 8 **MR. WHITE:** Part of the board record, but no
 9 board record cite?
 10 **MR. WALLERI:** Correct.
 11 **BY MR. WALLERI:**
 12 Q. This is the Proclamation house districts, and
 13 this -- does that make -- I mean, is that your
 14 understanding of what this represents?
 15 A. Yes.
 16 Q. Exhibit No. 2. Okay. Now, I noticed that there
 17 is some changes here between your plan and the
 18 Proclamation plan.
 19 Now, I'll suggest to you, as I understand it,
 20 there were three critical meetings here; you had
 21 June 2nd and June 6th. Okay.
 22 A. Okay.
 23 Q. Do you recollect which -- on June 2nd, is it --
 24 do you know which one of these proposals you were
 25 supporting on June 2nd before the final adoption?

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1 **MR. WHITE:** I'm going to have to object to
 2 that question, just because I think you said three dates
 3 and referenced two.
 4 **MR. WALLERI:** I know. I'll get to the third
 5 date.
 6 **MR. WHITE:** I object to the form of the
 7 question.
 8 Q. As to the two dates, I'll rephrase it.
 9 A. **The intimation is that I supported one or the**
 10 **other. This one was not even created. This one was not**
 11 **supported until this one was created.**
 12 I mean, it was -- I knew it was not a finished
 13 product. I created this one.
 14 Q. You created Exhibit No. 2?
 15 A. **That's correct.**
 16 Q. The final Proclamation?
 17 A. **That's correct.**
 18 Q. Isn't it true that you also created Exhibit
 19 No. 1?
 20 A. **That's correct, but what you have to understand**
 21 **is I didn't know how to use the system very well when I**
 22 **created the first one. I spent a lot of time figuring**
 23 **out how to create the second one.**
 24 Q. It's kind of complicated.
 25 A. **It's very complicated, but this was done**

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1 **mathematically. This is a mathematical fix.**
 2 Q. What do you mean by "mathematical"?
 3 A. **We tried to get the closest deviation possible.**
 4 Q. So this had a higher deviation than -- Exhibit
 5 No. 1 had a higher deviation than Exhibit No. 2?
 6 A. **I don't know. I didn't spend any time even**
 7 **looking at that one.**
 8 Q. But you're the one that did these, correct?
 9 A. **Uh-huh. This was done back in April when we**
 10 **first started our process.**
 11 Q. But I notice that there are a couple of
 12 interesting changes.
 13 A. **Uh-huh.**
 14 **MR. WHITE:** Object to the characterization.
 15 Q. Well, I'm going to ask you about this and see if
 16 they are interesting. Now, if you take a look down at
 17 the south --
 18 A. **Tanana River.**
 19 Q. Yeah, southeast corner of Exhibit No. 1, that's
 20 pretty close to -- that's almost the same line south of
 21 the, I believe that's the Mitchell Expressway, correct?
 22 **MR. WHITE:** Where are you referring to?
 23 A. **Mitchell Expressway is up here. It's up in the**
 24 **middle, way up. It's up here.**
 25 Q. It's right -- but --

Page 53

1 A. **It's above --**
 2 Q. That's pretty close to -- I mean, the two are
 3 pretty close, correct?
 4 A. **Similar. I mean there is a big chunk off the**
 5 **west side that isn't in there, but there also is a piece**
 6 **that goes to the Chena River or goes to -- takes all of**
 7 **the piece along the New Steese Highway up to the Chena**
 8 **River and takes in all of downtown Fairbanks. That was**
 9 **the reason it was done.**
 10 Q. Can you explain that again to me?
 11 A. **Can you look to -- this is the New Steese and**
 12 **this is downtown Fairbanks. This is all the stuff that**
 13 **was --**
 14 Q. Let's just do this. Where you're pointing, if
 15 you could just, on the exhibit --
 16 A. **The east side of Cushman.**
 17 Q. Okay.
 18 A. **That used to be in 9.**
 19 Q. How about if we just mark it where you're talking
 20 about.
 21 A. **This piece here.**
 22 Q. So you're talking about -- so you were talking
 23 about bringing in portions of downtown Fairbanks into
 24 District 4 or District 1?
 25 A. **Into 4, with the current 4. We had to add 1500**