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

IN RE 2011 REDISTRICTING CASES

**RILEY ET. AL. PLAINTIFF'S MOTION
FOR LAW OF THE CASE REGARDING
DISTRICT 38, SPLITTING THE EXCESS
POPULATION OF THE FAIRBANKS
NORTH STAR BOROUGH, AND
BURDEN OF PROOF**

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 and the law of the case that the Alaska Redistricting Board split the excess population of the Fairbanks North Star Borough between two districts and, therefore, the Alaska Redistricting Board has the burden of proof to establish that such decisions are necessary for legitimate, non-discriminatory purposes. The motion is supported by the accompanying memorandum.

Date: December 5, 2011



Michael J. Walleri

Attorney for Plaintiffs
Alaska Bar No. 7906060

Certificate of Service

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

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Michael J. Walleri

Motion: Sum Jud. Split Excess Population

Riley, et. al. v Redistricting Board
Case No. 4FA-11-02209 Ci

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In accordance with the Alaska Constitution, the Defendant Alaska Redistricting Board (hereinafter "the Board") was established in order to set the boundaries of the state house and senate districts.¹ On June 13, 2011, the Board adopted its Proclamation of Redistricting and issued its "Report to Accompany Redistricting Proclamation of June 13, 2011."²

Each house district created by the Board must contain a population as near as practicable to the quotient obtained by dividing the population of the state by forty; this "ideal" district, based upon the 2010 census, consists of 17,755 residents.³ The Fairbanks North Star Borough (hereinafter "FNSB") has a population of 97,581

¹FNSB Plaintiffs' Complaint, ¶3; Alaska Redistricting Board's Answer to FNSB Plaintiffs' Complaint (hereinafter "ARB Answer"), ¶3.

²FNSB Plaintiffs' Complaint, ¶6; ARB Answer, ¶6.

³FNSB Plaintiffs' Complaint, ¶8; ARB Answer, ¶8.

according to the decennial U.S. Census.⁴ The Board's plan creates five house districts wholly within FNSB's boundaries, designated as Districts 1 through 5.⁵ The Board's plan divides FNSB's excess population between two other house districts, designated as District 38 and District 6.⁶ The Board was instructed that, "In the event the Board determines it is necessary to split a borough's excess population due to other legal requirements, the Board should make a record to support that its decision was the result of legitimate, non-discriminatory policies."⁷

In its Report to Accompany Redistricting Proclamation of June 13, 2011, the Board stated the following with respect to District 38 and FNSB's excess population⁸:

Compliance with the federal Voting Rights Act had ripple effects across the state. Population from rural areas had to be combined with population from urban areas to allow for the creation of Alaska Native districts. For example, in 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 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

4FNSB Plaintiffs' Complaint, ¶10; ARB Answer, ¶10.

5FNSB Plaintiffs' Complaint, ¶11; ARB Answer, ¶11.

6FNSB Plaintiffs' Complaint, ¶12; ARB Answer, ¶12.

7ARB00005934-5939, Confidential Legal Memorandum dated May 13, 2011, from Michael D. White to Alaska Redistricting Board.

8ARB00006024-ARB00006025.

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.

The court granted Plaintiffs motion for summary judgment on this issue on October 25, 2011, and determined that House District 38 in the Proclamation Plan does not consist of a relatively integrated socio-economic area within the meaning of Article VI, Section 6 of the Alaska Constitution.

ARGUMENT

A. The Burden Of Proof Is On The Board To Show A Legitimate, Nondiscriminatory Reason For District 38'S Noncompliance With The Alaska Constitution.

In order to prevent gerrymandering, the Alaska Constitution requires that house districts be composed of compact, contiguous and relatively integrated socio-economic areas.⁹ District 38, which consists of a geographic area extending from west Fairbanks all the way to the Bering Sea, does not comprise "as nearly as practicable a relatively socio-economically integrated area."

⁹Alaska Constitution, Article VI, Section 6.

The *Hickel* court discussed the requirement that districts comprise a relatively socio-economically integrated area in detail, explaining that, "Inherent in the concept of geographical legislative districts is a recognition that areas of a state differ economically, socially and culturally and that a truly representative government exists only when those areas of the state which share significant common interests are able to elect legislators representing those interests. Thus, the goal of reapportionment should not only be to achieve numerical equality but also to assure representation of those areas of the state having common interests."¹⁰

Proposed District 38 does not comply with the Alaska Constitution, and the burden of proof is therefore on the Board to show a legitimate, nondiscriminatory reason for this noncompliance. The Board must first create a plan which complies with Article VI, section 6, and then test it 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.¹¹ The Board disregarded the requirement that Fairbanks residents be in a district with

¹⁰*Hickel v. Southeast Conference*, 846 P.2d 38, 46 (Alaska, 1992)(citing *Groh v. Egan*, 526 P.2d 863, 890 (Alaska 1974) (Erwin, J., dissenting)).

¹¹*Hickel*, 846 P.2d 38, 52 fn. 22.

other areas of the state with which it has common interests, and it is therefore the Board's burden to show the necessity of this action.

B. The Burden Of Proof Is On The Board To Show A Legitimate, Nondiscriminatory Reason For Splitting The Fnsb's Excess Population Into More Than One District.

The population of the Fairbanks North Star Borough is sufficient to comprise approximately 5.5 house districts. While there are five districts wholly within FNSB boundaries in the Proclamation Plan, the remaining half district is split between two districts.

Where possible, all of a borough's excess population should be placed into a single district, thereby maximizing the effective representation of the excess group.¹² The Alaska Supreme Court has clearly indicated that splitting a borough's excess population into multiple election districts raises an inference of intentional discrimination.¹³ The *Hickel* court reasoned that splitting a borough's excess population "would tend to dilute the effectiveness of the votes of those in the excess

¹²*Hickel*, 846 P.2d at 52.

¹³*In re 2001 Redistricting Cases*, 44 P.3d 141, 143-44, 150 (Alaska 2002); *Hickel v. Southeast Conference*, 846 P.2d 38, 52, n. 26 (Alaska 1992).

population group. Their collective voices would be louder in a single district than if they were distributed among several districts.”¹⁴

Intentional discrimination can be inferred when a redistricting plan splits a borough’s excess population into multiple districts.¹⁵ The excess population of the FNSB is split into two districts; this is further compounded by the combining of the excess population with areas which are not socio-economically integrated in proposed District 38. In order to negate the inference of intentional discrimination raised by these actions, the Board must justify its actions by proof of a legitimate, non-discriminatory purpose.¹⁶

CONCLUSION

Based on the foregoing, Plaintiffs are entitled to an order regarding the law of the case that the Alaska Redistricting Board has the burden of proof to show that the failure of District 38 to meet the standards set forth in Alaska Constitution Article VI, Section 6 was necessitated by compliance with the Voting Rights Act. Further, the Board split

¹⁴*Hickel*, 846 P.2d at 52, n. 26.

¹⁵*In Re 2001 Redistricting Cases*, 44 P.3d at 144; *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1370-73 (Alaska 1987).

¹⁶*In re 2001 Redistricting Cases*, 44 P.3d at 144.

the excess population of the Fairbanks North Star Borough between two districts and, therefore, the Alaska Redistricting Board has the burden of proof to establish that such decisions are necessary for legitimate, non-discriminatory purposes.

Date: December 5, 2011


Michael J. Walleri

Attorney for Plaintiffs
Alaska Bar No. 7906060

Certificate of Service

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Michael J. Walleri

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**ORDER GRANTING RILEY ET. AL.
PLAINTIFF'S MOTION FOR LAW OF
THE CASE REGARDING DISTRICT 38,
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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 and the law of the case that the Alaska Redistricting Board split the excess population of the Fairbanks North Star Borough between two districts and, therefore, the Alaska Redistricting Board has the burden of proof to establish that such decisions are necessary for legitimate, non-discriminatory purposes is hereby GRANTED.

DATED this _____ of December, 2011.

Michael P. McConahy
Superior Court Judge

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