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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

**DEFENDANT ALASKA REDISTRICTING BOARD'S OPPOSITION TO PLAINTIFFS  
GEORGE RILEY AND RONALD DEARBORN'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT: CONTIGUITY HD 37**

**I.  
INTRODUCTION**

Plaintiffs George Riley and Ronald Dearborn ("Riley Plaintiffs") ask this Court to find House District 37 is not contiguous and therefore unconstitutional for no other reason than the Plaintiffs' misinterpretation of Alaska case law. The Riley Plaintiffs conveniently fail to cite the complete *Hickel* finding that the Aleutians should be kept together *unless* the split was required in order to comply with federal law. *Hickel v. Southeast Conference*, 846 P.2d 38, 61 (Alaska 1992).

As established below, the Alaska Redistrict Board ("Board") was required to split the Aleutians for this very reason: in order to create a non-retrogressive plan that would obtain preclearance under Section 5 of the federal Voting Rights Act. Thus, despite the Riley Plaintiffs' poor attempts to argue House District 37 is facially invalid, the undisputed evidence before this Court establishes the Board's configuration of HD-37 was both reasonable and legally justified. The Riley Plaintiffs' "open seas" argument fails for the same reason. Thus, it is the Board, rather than the Riley Plaintiffs who are actually entitled to summary judgment. At a minimum, there are genuine issues of material fact on this issue which require the Riley Plaintiffs' Motion be denied.

## II. SUMMARY JUDGMENT STANDARD

Rule 56 of the Alaska Rules of Civil Procedure provides that summary judgment should be granted if there is no genuine dispute as to material facts, and if the moving party is entitled to judgment as a matter of law. Alaska R. Civ. P. 56; *e.g.*, *Reeves v. Alyeska Pipeline Serv. Co.*, 926 P.2d 1130, 1134 (Alaska 1996); *Zeman v. Lufthansa*, 699 P.2d 1274, 1280 (Alaska 1985). The moving party has the burden of showing that there are no genuine issues of material fact. *Id.* Moreover, Alaska R. Civ. P. 56(c) makes clear that “[s]ummary judgment, when appropriate, may be rendered against the moving party.”<sup>1</sup>

Once the moving party has met this burden, the non-movant “is required, in order to prevent the entry of summary judgment, to set forth specific facts showing that [he] could produce admissible evidence reasonably tending to dispute or contradict the movant’s evidence, and thus demonstrate that a material issue of fact exists.” *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (internal quotation omitted). Any allegations of fact by the non-movant must be based on competent, admissible evidence. Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110. The non-movant may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties’ differing versions of the truth at trial. *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (*citing to Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

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<sup>1</sup> While the dispositive motion deadline in this case has passed, under Rule 56(c) summary judgment can be granted against the “moving party” without the need for a cross-motion “where appropriate.” The Board asserts this exact situation exists here.

Here, the undisputed evidence before this Court establishes that summary judgment for the Board, rather than the Riley Plaintiffs is appropriate because the configuration of HD-37 was necessary in order to comply with Section 5 of the VRA. Conversely, the Riley Plaintiffs have completely failed to meet their burden to establish there are no genuine issues of material fact on the contiguity issue and thus their motion must fail. As established below, at a minimum there is a genuine issue of material fact as to whether Proclamation HD-37 meets the constitutional standard of contiguity because of the Board's need to comply with the Voting Rights Act.

### III. ARGUMENT

#### A. Proper Standard of Review

As with the majority of their arguments, the Riley Plaintiffs once again get the proper standard of review of a redistricting plan wrong. This Court's review of a redistricting plan "is meant to ensure that the reapportionment plan is not unreasonable and is constitutional under Article VI, § 6 of Alaska's constitution." *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1358 (Alaska 1987). The Board has the constitutional authority to reapportion Alaska's House and Senate districts, not the courts. *Groh v. Egan*, 526 P.2d 863, 866 (Alaska 1974); *see also Braun v. Borough*, 193 P.3d 719, 726 (Alaska 2008). As such, the Board has discretion in choosing its plan, and "the court will not lightly interfere with the reapportionment process." *In re 2001 Redistricting Cases*, 44 P.3d at 149 (Carpeneti, J., dissenting); *Braun v. Borough*, 193 P.3d at 726. The courts do not have the constitutional authority to decide what is preferable between alternative rational plans for legislative reapportionment. *Id.*

Instead, the courts view a plan in the same light as it would "a regulation adopted under a delegation of authority from the legislature to an administrative agency to formulate policy



and promulgate regulations.” *Id.*; see also *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1357-1358 (Alaska 1987). While courts have the authority to ensure the Board’s choices did not violate the constitution, they cannot substitute their independent judgment for that of the Board, as the Plaintiffs suggest. *Kenai Peninsula Borough v. State*, 743 P.2d at 1357-1358.

The Riley Plaintiffs have challenged whether Proclamation House District 37 (“HD-37”) meets the contiguity requirement of Article VI, § 6. Thus, this Court reviews the configuration of HD-37 for constitutional compliance. In doing so, the Court does not have the authority to determine which plan was the best option. The Alaska Constitution authorized the Board to make this decision, and much like an agency, it possesses the specialized knowledge necessary to complete this task. As established below, the Board fulfilled its task. The Board acted reasonably, within its authority, and within the confines of federal law and the Alaska Constitution. The Court should therefore give deference to the Board’s choice.

**B. The Board Split the Aleutians in Order to Avoid Retrogression and Therefore Obtain Preclearance Under Section 5 of the Voting Rights Act.**

The Riley Plaintiffs fail to provide this Court with the complete finding in *Hickel*, perhaps in an attempt to hoodwink the court into thinking HD 37 is facially invalid and prevent any further analysis. However, a complete reading of *Hickel* actually finds the Board’s configuration of HD 37 is both reasonable and legally sufficient.

During the 1990 redistricting, the Governor was charged with drawing a redistricting plan for Alaska. *Hickel*, 846 P.2d at 41. Numerous plaintiffs challenged his final plan, with seven lawsuits filed, two of which were dismissed and the remaining five consolidated in Juneau before Judge Weeks. *Id.* As pertinent here, the Governor’s plan separated Adak, Shemya and Attu from the rest of the Aleutian Islands and paired it with the Wade Hampton Census Area. *Id.* at 70. The Supreme Court found this was a clear error, holding “unless the

severance of the Western Aleutians from the Eastern Aleutians is mandated by federal law, the areas must be joined in one district.” *Id.* at 61 (emphasis added). The Court remanded the plan back to the trial court, who appointed three masters to redraw the plan based on the Supreme Court’s mandates and guidelines. *Id.* at 62. The masters rejoined Adak with Attu, proving it was possible to keep the Aleutians together and still comply with the Voting Rights Act. *Id.*, at 70-71.<sup>2</sup>

In the case at bar, the Board was faced with the practical realities of extraordinary time constraints and significant demographic changes which made constructing a non-retrogressive redistricting plan exceedingly difficult. A number of complicating factors made this task even more arduous, including the (1) under-population of Benchmark Alaska Native Districts; (2) lack of Alaska Native population concentrations adjacent to the Benchmark Alaska Native districts; and (3) inability to create minority districts in urban Alaska. [ARB00013482-13483; ARB00013351-13356.]<sup>3</sup>

The Board worked extremely hard to construct a plan that would protect Alaska Native voting rights. Prior to adopting its Proclamation Plan, the Board came up with and took a “hard

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<sup>2</sup> Interestingly enough, the superior court in *Hickel* found Adak, Shemya and Attu, the far Western Aleutian Islands, “[had] little or no socio-economic integration with any place else on the Aleutians.” *Hickel*, 846 P.2d at 70.

<sup>3</sup> The difficulty of drafting a plan that met the requirements of Section 5 of the VRA is evidenced by the fact that every proposed redistricting plan submitted to the Board by third parties was retrogressive and failed to meet the requirements of Section 5. [ARB00013353-13356.] Indeed, despite having four additional months after the adoption of the Proclamation Plan in which to construct a non-retrogressive plan, the Riley Plaintiffs were unable to do so. The Plaintiffs’ own VRA expert, Dr. Ted Arrington, agreed with Dr. Handley, that the “Demonstrative Plan” is retrogressive, and therefore violates Section 5 of the Voting Rights Act. [Exhibit A (Excerpts from November 23, 2011 Deposition Testimony of Theodore S. Arrington, PhD (“Arrington Depo.”) at 89:5-11; 104:22-105:19; 107:13-15; 107:23-108:16; 109:5-8; 132:19-135:9; 154:9-155:25; 157:6-13; 157:25-159:10; 162:21-165:6; 168:19-169:15; 178:20-24; 179:2-21; 178:20-23; 206:6-207:2; Exhibit B, (Dr. Lisa Handley’s Rebuttal Report to “Expert’s Report of Dr. Theodore S. Arrington, PH.D.” at 1, 9.)]

look” at two other alternative plans for the Alaska Native districts created by the Board and/or its staff between May 19<sup>th</sup> and June 6<sup>th</sup> that did not split the Aleutians. [ARB0004149-4166; ARB0004431-4489; ARB0004524-4542; ARB0004548-4613; ARB0005217-5270; ARB00013484; Affidavit of Taylor R. Bickford at ¶ 2. (“Bickford Aff.”)]

One plan created by staff with the input of Board members, generally referred to as the TB Plan, took the unique approach of changing the historical makeup of House District 40 by dividing the North Slope Borough and the Arctic Northwest Borough into separate districts. [Bickford Aff. at ¶ 3.] The plan picked up population from more urban areas in and around the northeast area of the FNSB and along the southeast border of the state. This plan was ultimately abandoned by the Board due to concerns raised by the Alaska Native community that some of the districts, particularly the newly configured North Slope district would not offer the ability to elect Alaska Native-preferred candidates of choice due to the Native VAP percentage, the lack of registered Alaska Native voters and low voter turnout in the area. [ARB0004158-4166; ARB0004477-4489; ARB0004536-4542; ARB0004548-4550; ARB0005246-5270; ARB00005969-ARB00005970; ARB00005971-ARB00005972; ARB00005973; ARB00013484; Bickford Aff. at ¶ 6.]

A second plan which also did not split the Aleutians was created by Board members Greene and McConnochie, with input from staff and other Board members, referred to as the “PAME Plan,” was adopted in concept by the Board on May 28, 2011. [ARB0004149-4157; ARB0005217-5245; ARB0004431-4476; ARB0004524-4536; ARB0004550-4613; ARB00013484; Bickford Aff. at ¶ 4.] This plan, however, was also eventually rejected by the Board due to concerns about the inclusion of a Senate district that combined Kodiak with Bethel. The major problem with this configuration was that it paired one of the most powerful

Alaska Native incumbent Senators, Lymon Hoffman, with the current Senate president, Gary Stevens. This pairing was severely criticized by a number of Alaska Native groups in both the Bethel and Kodiak areas. [ARB00005855-ARB00005857; ARB00005969-ARB00005970; ARB00005977; ARB00005981-ARB00005982; ARB00005984-ARB00005985; ARB00006009; ARB00013484; Bickford Aff. at ¶ 6.]

Faced with this criticism, the Board, led by Board members Greene and McConnochie, continued to try and create a plan that would not have the problems of the TB and PAME Plans outlined above and met the Benchmark. [ARB00013484, Bickford Aff. at ¶ 7.] This meant finding a way to avoid a Bethel/Kodiak Senate district while at the same time creating a House district in Southwest with an Alaska Native voting age population percentage high enough to exceed the VAP of Senate C in the Benchmark Plan and maintain an effective Senate district. [Bickford Aff. at ¶ 8.]

After considerable effort, the Board determined that the only way to accomplish this was to separate the communities in the Western Aleutians with large, non-Alaska Native populations, from the Eastern Aleutians and add the Western Aleutians population to the Bethel region. [ARB00003326; ARB00003339; ARB00003430; ARB00003433; Bickford Aff. at ¶ 8.] This configuration avoided pairing Bethel and Kodiak in a Senate district while at the same time creating the necessary effective Senate district, Proclamation Senate District S, in order to avoid retrogression and comply with Section 5. [ARB00003328; ARB00003431; ARB00013485.]

The Board did not *sua sponte* come up with the idea of splitting the Aleutians as an option for complying with the VRA. In fact, a number of third party plans, including the Fairbanks North Star Borough who actually raised the Aleutian split in their complaint,



submitted plans to the Board that split the Aleutians. [See Exhibit C, Fairbanks North Star Borough, May 5, 2011; Exhibit D, the RIGHTS Coalition, May 6, 2011; Exhibit E, the RIGHTS Coalition, May 24, 2011; Exhibit F, Begich Split Aleutian Plan.] Although it was not the Board's first choice, after considering all the options including the suggestion of a number of third parties, the Board determined that the current configuration of HD-37 was the only way to create a plan that was not retrogressive and therefore was the plan most likely to obtain preclearance under Section 5 of the Voting Rights Act. [ARB00003341; ARB00003348; ARB00003440-ARB00003441.] The Board's choice was imminently reasonable under the circumstances faced by the Board and is entitled to deference.

Despite the Riley Plaintiffs' attempts to confuse this Court, the *Hickel* decision does *not* hold the Board's configuration of House District 37 violates the Alaska Constitution's contiguity requirement. On the contrary, the *Hickel* decision actually finds House District 37 is legally justified because the separation of the Western Aleutians from the Eastern Aleutians was mandated by federal law. *Hickel*, 846 P.2d at 54, n. 30. Thus, the Plaintiffs are wrong in their legal conclusion – House District 37 is not facially invalid.

Both Dr. Handley, the Board's Voting Rights Act expert, and Dr. Arrington, the Plaintiffs' Voting Rights Act expert, agree the Proclamation Plan adopted by the Board was the only plan considered by the Board that was not retrogressive and complied with Section 5 of the Voting Rights Act. [ARB000013351-ARB00013359; ARB00013484-13485; Exhibit A, Arrington Depo. at 40:9-41:24.] In other words, splitting the Aleutians and combining the Western Aleutians across water with the Bethel areas was required in order to create a plan that was not retrogressive and therefore complied with Section 5 of the Voting Rights Act. Since splitting the Aleutians was required in order to comply with federal law, it was both reasonable

and justified for the Board to depart from strict adherence to the contiguity requirements of Article VI, Section 6 in its configuration of HD-37. The Riley Plaintiffs' attempt to claim otherwise is ineffectual.

The undisputed evidence before the Court establishes that the Board was legally and reasonably justified in splitting the Aleutians and configuring HD-37 in the manner it did. Accordingly, this Court should grant the Board summary judgment. At the very least, the evidence before this Court establishes that there is a genuine issue of material fact as to whether the configuration of HD-37 was required in order to avoid retrogression and obtain preclearance under Section 5. Accordingly, the Riley Plaintiffs' Motion must be denied.

**B. The Department of Justice Considers how a Redistricting Plan Effects Alaska Native Incumbents in its Preclearance Review.**

It is expected that the Riley Plaintiffs in their Reply will attempt to argue that a redistricting plan's treatment of Alaska Native incumbents is irrelevant to Section 5 compliance. Any such argument is wrong as a matter of law.

As Dr. Handley has so eloquently illustrated, complying with the Voting Rights Act and receiving preclearance from the Department of Justice is an art, not a science. [ARB00003879 at 38:5-6.] Since Alaska is a Section 5 state that requires preclearance from the Department of Justice, the Board's plan cannot "[have] the purpose nor...the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c (2006), *as amended by* Pub. L. No. 109-246, sec. 5, 120 Stat. 577, 580 (2006). A redistricting plan satisfies the effect prong if the electoral change does not lead to retrogression in minority voting strength. *Beer v. United States*, 425 U.S. 130, 141 (1976).

The Department of Justice measures retrogression by comparing minority voting strength under the new plan *in its entirety* with minority voting strength under the immediately

preceding or “benchmark” plan. *Beer v. United States*, 425 US at 141; Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice, 76 Fed. Reg. 7470-7471 (Feb. 9, 2011) (hereinafter “DOJ Section 5 Guidance”). The Department of Justice may consider a number of factors when determining whether the submitted electoral change satisfies the intent and effect prongs. 28 C.F.R. §§ 51.57-51.61 (2008).<sup>4</sup> The list of factors is not, however, exhaustive. *Id.*

One such factor that is considered by the DOJ but is not expressly listed in the regulations, is whether minority incumbents were paired against each other or paired against non-Alaska Native incumbents. [Exhibit A, Arrington Depo. 204:8-205:2; Affidavit of Lisa Handley at ¶¶ 6-7 (“Handley Aff.”)].<sup>5</sup> The Board was therefore aware that the effect on Alaska Native incumbents of any plan it adopted was of particular concern for the DOJ when reviewing submissions for preclearance under Section 5 of the VRA. In fact, when the Board met with the DOJ to explain and defend its plan prior to preclearance, the only substantive question the DOJ asked the Board was how the Proclamation Plan affected Alaska Native incumbents. [Affidavit of Marie Greene at ¶ 3 (“Greene Aff.”);<sup>6</sup> Affidavit of John Torgerson at ¶ 3 (“Torgerson Aff.”);<sup>7</sup> Bickford Aff. at ¶ 9-11].]

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<sup>4</sup> Included among these factors is “the extent to which the jurisdiction afforded members of racial and language minority groups an opportunity to participate in the decision to make the change; [and] the extent to which the jurisdiction took the concerns of members of racial and language minority groups into account in making the change.” 28 C.F.R. §§ 51.59 (2011).

<sup>5</sup> The Affidavit of Lisa Handley was filed in the above-captioned case on November 4, 2011; a copy is attached as Exhibit G.

<sup>6</sup> The Affidavit of Marie Greene was filed in the above-captioned case on November 4, 2011; a copy is attached as Exhibit H.

<sup>7</sup> The Affidavit of John Torgerson was filed in the above-captioned case on November 4, 2011; a copy is attached as Exhibit I.

The Plaintiffs' own VRA expert, Dr. Ted Arrington, admitted in his deposition that the incumbency status of a district affects the ability of a minority to elect their preferred candidate of choice and that pairing minority incumbents should be avoided. Dr. Arrington testified:

Q: Does the incumbency status of districts have any effect on the Native's ability -- minority ability to elect a preferred candidate of choice?

A. Yes.

Q. Can you tell me how?

A. **Well, generally when you redraw you want to keep Native incumbents who are also Native-preferred candidates of choice, candidates of choice of Native voters, in a district in which they have a chance to win. You don't want to pair them if you can avoid it.** You certainly don't want to pair two Natives if you can avoid it.

Q. But you also don't want to pair a Native incumbent with -- [a non-native incumbent?]

A. Well, sometimes you have to. **But you want to avoid that if possible. You want to give some deference to existing minority reps who are candidates of choice.**

[Exhibit A, Arrington Depo. at 204:8-205:2 (emphasis added). *See also* Exhibit G, Handley Aff. at ¶¶ 6-7.]

The Board also knew the DOJ would pay particular attention to the public comments the Board received from Alaska Natives, whether they approved or disapproved of the plan, and whether or not the Board took Alaska Native concerns into consideration when drawing the plan. 28 C.F.R. § 51.57-51.59. [*See also* Exhibit H, Greene Aff. at ¶ 7.] Dr. Handley had also advised the Board that the DOJ would be very interested in knowing how the Alaska Native groups felt about particular incumbents, as opposed to the views of the incumbents themselves. [ARB00003902-ARB00003903 at 61:18-62:3.] For these groups better represent the minority voters, and could assist the DOJ in determining whether certain decisions by the Board either protected the Alaska Native voice or had a discriminatory effect. [*Id.*] The Plaintiffs' own VRA expert, Dr. Arrington agrees:

Q. So if the Native groups are coming to you and saying, "Look, don't pair our incumbents, we don't like that, we think that affects us," in your opinion was it

reasonable for the Board to say, "Okay, we'll take those concerns into account when we draw our plans"?

**A. It's reasonable for them to say that, and it's also reasonable for them to do it.**

[Exhibit A, Arrington Depo. at 200:18-25 (emphasis added).]

As a result, the Board actively sought input from the Alaska Native community throughout the redistricting process and took their concerns into account when drafting election districts. [Exhibit H, Greene Aff. at ¶ 7; Exhibit I, Torgerson Aff. at ¶ 7.] The Alaska Native community in general consistently informed the Board that one of their major concerns was the importance of protecting Alaska Native incumbents and to avoid pairing them so as not to reduce the Alaska Native influence in the legislature. [*Id.*; ARB00012253; ARB00012264-ARB00012266; ARB00012279-ARB00012282.] In fact, the Board received considerable input requesting it not pair Senator Hoffman from Bethel with Senator Stephens from Kodiak. [*Id.*; ARB00005855-ARB00005857; ARB00005969-ARB00005970; ARB00005977; ARB00005981-ARB00005982; ARB00005984-ARB00005985; ARB00006009.]

In light of these concerns, the Board felt it was necessary to avoid pairing the two most powerful members of the Alaska Senate. Thus, they had to split the Aleutians in order to comply with the federal Voting Rights Act. The DOJ agreed, and precleared the Proclamation Plan on October 11, 2011. [ARB00013493.] Any attempt by the Riley Plaintiffs to claim otherwise is without merit.

**C. The Configuration of House District 37 in the Board's Proclamation Plan Does Not Offend the Limits of Contiguity by Open Sea and to the Extent it Might Stretch Those Limits, Strict Compliance.**

As the Riley Plaintiffs admit, the Alaska Supreme Court has made it clear that it would be impossible to redistrict Alaska unless contiguity allowed for some amount of open sea. Thus, "[a]bsolute contiguity of land masses is impossible in Alaska, considering her numerous

archipelagos[;] [a]ccordingly, a contiguous district may contain some amount of open sea.” *Hickel*, 846 P.2d at 45. While the “open sea” contiguity rule is not without limitations, for “[i]f it were, then any part of coastal Alaska could be considered contiguous with any other part of the Pacific Rim,” the configuration of HD-37 does not go beyond acceptable limits for several reasons.

First, the Riley Plaintiffs’ claim that “if there is any limitation to contiguity over open seas in Alaska, it would have to apply in this case” [Riley Memo. at 5], fails to take into consideration the unique geography of Alaska’s west coast. Yes, this area does pose the most extreme example of the need to include open sea in a contiguous district, but not because House District 37 violates the limits on this permission. Alaska’s geography simply requires it. The Aleutian Islands occupy an area of 6,821 square miles and extend westward from the Alaska Peninsula about 1,200 miles. [Exhibit J.] This area also includes two islands, Saint Paul and Saint George, which are essentially “suspended” almost halfway between the tip of the Aleutian Chain and the closest section of the mainland. In fact, the Board included these two islands in HD 37 for the specific purpose of maintaining contiguity. [ARB00003328.]

It is because of these types of geographical abnormalities that the Alaska Supreme Court has time and again recognized the need for flexibility when drawing districts in Alaska. E.g. *Hickel*, 846 P.2d at 50. Indeed, every district in the Proclamation Plan on the west coast of Alaska contains “open sea” as does every plan submitted by a third party, including the Fairbanks North Star Borough and the RIGHTS Coalition. [Exhibit C; Exhibit D; Exhibit E.] This is simply one more unique attribute of Alaska that makes redistricting in Alaska a task of Herculean proportions. The Board is permitted to draw districts that contain open sea. House

District 37 is an example of why the Alaska Supreme Court allows this. The Board did not abuse this flexibility.

Second, as demonstrated in Section III, A & B above, the configuration of HD-37 was necessary in order for the Board to create a redistricting plan that avoided retrogression and complied with the requirements Section 5 of the Voting Rights Act. The Board made this clear on the record. [ARB00006017; ARB00006033.] Since splitting the Aleutians and combining the Western Aleutians across “open seas” with the Bethel areas was the only method the Board found that allowed it to create a plan that avoided a Kodiak/Bethel Senate pairing and the problems it caused in pairing the most powerful Alaska Native Senate incumbent with the President of the Senate, while at the same time meeting the Benchmark requirement of three effective Senate districts, it was both reasonable and justified for the Board to depart from strict adherence to the contiguity requirements of Article VI, Section 6 in its configuration of HD-37.

#### IV. CONCLUSION

The undisputed evidence before this Court establishes that the configuration of HD-37 does not violate the constitutional contiguity requirement of Article VI, § 6 because its configuration was required by the Board’s need to avoid retrogression and obtain preclearance under Section 5 of the VRA. Accordingly, it is the Board, not the Riley Plaintiffs who are entitled to summary judgment on this issue under Alaska R. 56(c) which allows “where appropriate” that summary judgment be entered against the moving party. At the very least, the evidence before this Court establishes that there is a genuine issue of material fact as to whether the configuration of HD-37 was required in order to avoid retrogression and obtain preclearance under Section 5. Accordingly, the Riley Plaintiffs have failed to meet their burden and thus their Motion must be denied.

DATED at Anchorage, Alaska this 13th day of December 2011.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of December 2011, a true and correct copy of the foregoing document was served on the following via:

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IN RE 2011 REDISTRICTING CASES )

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Case No. 4FA-11-1935 CI

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DEPOSITION OF THEODORE S. ARRINGTON, Ph.D.

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Washington, D.C.

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Wednesday, November 23, 2011

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Reported by:

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John L. Harmonson, RPR

25

Job No. 43927

1 T. ARRINGTON

2 party can be different? You do different things,  
3 right?

4 A. You do do different things. But I  
5 disagree with your notion that I have to look at  
6 every plan that was submitted to the Board in  
7 order to judge the proclamation plan, the demo  
8 plan and the benchmark. That can be done without  
9 looking at 10 or 11 other plans.

10 Q. Sure. But you understand that the  
11 demonstrative plan was not proposed during the  
12 actual process itself?

13 A. I do.

14 Q. That was done after the fact?

15 A. That's correct.

16 Q. That was a plan that was created by  
17 the plaintiffs specifically for you to analyze?

18 A. That's correct.

19 Q. And it was never a plan that was  
20 actually proposed or something that the Board was  
21 given an opportunity to look at during the  
22 process?

23 A. That's correct.

24 Q. But there were a number of other plans  
25 that parties who were involved in the process,

1 T. ARRINGTON

2 including minority groups, did actually propose?

3 A. I understand that.

4 Q. But you're not offering any opinions  
5 on any of those plans in this case?

6 A. I am not.

7 Q. And you were not asked to do that --  
8 Strike that.

9 A. I was asked to do that and then --

10 Q. You were asked to do that and then  
11 they told you to stop?

12 A. Yeah.

13 Q. When you were asked to do that, did  
14 you tell them anything about those plans prior to  
15 them telling you to stop looking at them?

16 A. I didn't tell them anything about it  
17 because they had the same evidence that I did.  
18 They had Dr. Handley's report. So I knew  
19 something about those other plans, or at least I  
20 knew what she thought about those other plans.

21 Q. And did you disagree with her analysis  
22 of those other plans?

23 A. I can't think of any specific place in  
24 which I disagreed, no.

25 It bothers me when I can't remember a

1 T. ARRINGTON

2 the benchmark, District 6, and you have a really  
3 crappy district in the demonstration plan. So  
4 you've got comparable plans.

5 Q. And you would agree with me that the  
6 proclamation plan does a better job than the  
7 demonstrative plan in that what you've termed  
8 crappy district?

9 A. Based on the numbers that Dr. Handley  
10 and I typically use in this kind of a case, the  
11 answer to that question is yes.

12 Q. We'll get into that a little later  
13 about how you've done that actual analysis.

14 If I can ask you to turn to page 3 in  
15 Paragraph 6. You kind of give some of your  
16 previous history there and it talks about some of  
17 your experience. You say most of the works that  
18 you've written about concern the effects of party  
19 and race on voting behavior.

20 You would agree with me, Doctor,  
21 wouldn't you, that race affects voting behavior  
22 in the United States?

23 A. Of course.

24 Q. Can you give me the cliff notes  
25 version of why that is?

1 T. ARRINGTON

2 Q. If you add more Democrats to the  
3 district, that's going to potentially increase  
4 the effectiveness of that district?

5 A. That's correct.

6 Q. If I could ask you to look back at  
7 your report, Doc, and go to page 3 now,  
8 Paragraph 8. That's where you talk about your  
9 review of Dr. Handley's report and testimony.  
10 And there is where you make the comment about  
11 regression is a legal term and the semantics that  
12 we talked about. I don't want to talk too much  
13 about that.

14 But what I want to ask you is this:  
15 Given your opinion that you've stated here, you  
16 cannot say, can you, whether or not DOJ would  
17 consider the demonstrative plan to be  
18 retrogressive?

19 A. I can say that. Whether it has any  
20 probative value or not depends on whether it's a  
21 legal term or a semantic difference.

22 Q. I notice that nowhere in your report  
23 do you say that you believe that this plan would  
24 be precleared by the Department of Justice. By  
25 "this plan," I mean the demonstrative plan.

1 T. ARRINGTON

2 A. That's correct.

3 Q. So you express no opinion on that  
4 point?

5 A. That's correct. I think you're making  
6 an assumption that I'm an advocate of the  
7 demonstration plan and that I think that the  
8 Board should adopt that plan and submit it to  
9 DOJ. I'm not saying that. I'm not advocating  
10 that.

11 Q. In fact --

12 A. Not that anybody cares what I  
13 advocate, but I'm not advocating that.

14 Q. Let me ask you this: If you were in  
15 Lisa's position, let's assume you're advising the  
16 Board now, would you recommend to them that they  
17 submit to the Department of Justice the  
18 demonstrative plan?

19 A. No.

20 Q. That's because in your opinion you  
21 don't believe that it's a strong enough plan to  
22 receive preclearance from the Department of  
23 Justice?

24 A. I wouldn't put it that way. I would  
25 say that I think a stronger plan could be drawn

1 T. ARRINGTON

2 that at trial?

3 A. Well, I will if I'm asked.

4 Q. Well, you haven't given any opinion in  
5 your report on that, correct?

6 A. Well that's --

7 Q. Doc, I only get one chance to talk to  
8 you, you understand that?

9 A. I understand. And if you object and  
10 the court says Arrington's opinion -- we're in  
11 depo. You're trying to find out information  
12 about me, and I'm giving you information.

13 And you asked did I opine in here that  
14 the demonstration plan should be sent to the DOJ.  
15 And the answer is no, I didn't.

16 Q. If you were just looking at the  
17 demonstrative plan -- the demonstration plan --

18 A. We've both done that.

19 Q. I've got that in my brain and it  
20 sticks.

21 MR. WALLERI: And I'm trying to avoid  
22 that sticking in everybody's brain.

23 Q. Let's call it the demo plan.

24 Purely for DOJ purposes, between the  
25 demo plan and the proclamation plan, if those



1 T. ARRINGTON

2 were the only two choices, you would recommend to  
3 your client in a hypothetical situation that it  
4 go with the proclamation plan and not the  
5 demonstration plan?

6 A. Based on the evidence, the numbers  
7 that Dr. Handley and I have looked at, the answer  
8 to that question is yes.

9 If I have additional information,  
10 which I don't currently have, I might conclude  
11 that District 38 is not an effective district.  
12 District 38 in the proclamation plan is not an  
13 effective district.

14 But based on the evidence that I have,  
15 the numbers that Dr. Handley and I have produced,  
16 the answer to your question is yes.

17 Q. So based upon if you had this other  
18 information, you might opine that Proclamation  
19 District 38 is not effective, then clearly  
20 Demonstrative District 38 is not effective,  
21 correct?

22 A. No, I don't think that that's clear.  
23 And let me finish.

24 Section 5 as amended by the Congress,  
25 as I understand it as an expert trying to apply

1 T. ARRINGTON

2 the law to what I do, makes it a dichotomy. It  
3 is or it isn't. As political scientists, we know  
4 that these things are not dichotomies; they vary.

5 Is 38 in the demo plan a strong  
6 district? No.

7 Based on numbers, is it as strong as  
8 38 in the proclamation plan? No, it isn't.

9 Is it in fact so weak that it falls  
10 down below the reelection? I frankly don't know.  
11 Moreover, I'm not sure that we should count 6 in  
12 the benchmark as a benchmark minority district.

13 I have the same problems that  
14 Dr. Handley was fighting with when she was trying  
15 to evaluate 6, and she came out in the end, after  
16 a long series of memos and e-mails in which she  
17 was considering it, to say okay, yes, I'm going  
18 to count 6 as a minority district in the  
19 benchmark. Okay?

20 I'm saying I'm not certain. And I  
21 wouldn't recommend to the Board -- you asked me  
22 if I was working for the Board. I wouldn't want  
23 to recommend a plan which I wasn't certain had at  
24 least as many effective districts as the  
25 benchmark.

1 T. ARRINGTON

2 she would characterize it as a 50/50 district.

3 Q. She doesn't say that in her report,  
4 does she?

5 A. I don't remember whether she says  
6 it -- I've read both her testimony and her  
7 report.

8 Q. So your opinion could be based on  
9 either one of those?

10 A. Yeah, it could be based on either one  
11 of those.

12 Q. Okay.

13 A. But in my view, it's about a 50/50  
14 district. And I would say that a district that  
15 is slightly less, not really bad but slightly  
16 less than 50/50, might be nevertheless one that I  
17 would say okay, that's an ability to elect  
18 district.

19 Q. So in your opinion, does Demonstrative  
20 District 38 have the ability to elect?

21 A. Let me first of all say that I am not  
22 certain about it. My understanding of the role  
23 of an expert is to testify about what they are at  
24 least 50 percent certain of.

25 Q. Okay.

1 T. ARRINGTON

2 A. All right? I mean, that's just my  
3 understanding from doing this work.

4 Q. All right.

5 A. I can't say that I'm 50 percent  
6 certain that the district is a 50/50 district.  
7 If you follow that.

8 Q. All right.

9 A. I think it is possible that it's a  
10 district that would work, but I'm not -- As I sit  
11 today and have thought some more about it, I  
12 forget what I say in here, think it might be.

13 Q. But you're not sure?

14 A. But I'm not sure.

15 Q. You wouldn't bet the farm on it?

16 A. Well, as I said to you earlier, if I  
17 was recommending to the Board, I would not  
18 recommend that they submit the demo district to  
19 the Justice Department.

20 I think it's close, but remember what  
21 I'm doing here. I'm not comparing it to the  
22 proclamation plan. I'm comparing it to the  
23 benchmark, and I'm uncertain about the Benchmark  
24 6 as well. So since I'm uncertain about both of  
25 them, do I think they're both pretty crappy iffy

1 T. ARRINGTON

2 districts? I think the answer to that is yes.

3 Q. And you base that pretty crappy on  
4 your recompiled election results, correct?

5 A. That's correct.

6 Q. Because Benchmark District 6 is over  
7 50 percent, as you heard yesterday when you were  
8 here in Dr. Handley's testimony, over 50 percent  
9 Native pop and just below 50 percent Native VAP,  
10 right?

11 A. That's correct. And Demo 38 is I  
12 think 7 percent or something like that below  
13 that.

14 Q. 17 percent?

15 A. 17 percent?

16 Q. 33 percent?

17 A. I would have to look at my numbers.  
18 Whatever it is, it's much below it. That gives  
19 me -- that gives me very real pause, yeah.

20 Q. Let me ask you this just to make sure  
21 I clarify. You're not certain on Proclamation  
22 House District 38 but you made the choice on  
23 Benchmark District 6, you said yes, it's  
24 effective? You went up on that, correct?

25 A. That's correct. But I did that only

1 T. ARRINGTON

2 with reservations. Because it's my job to come  
3 up yes or no on that. So I did. But it's not --

4 Q. And it's your job to come up with yes  
5 or no on Proclamation 38 as well and you came  
6 down?

7 A. Yeah, I came down.

8 Q. I'm sorry, Demo 38.

9 A. Let's stick with demo.

10 Q. All right, good. We'll do demo and  
11 that will help us both.

12 So let's look at Paragraph 20. You  
13 say: "Determining whether proposed districts  
14 provide Natives with the ability to elect is  
15 difficult, because these districts have not been  
16 used in actual elections for the House and  
17 Senate."

18 But you talk about there being several  
19 reliable methods for testing potential districts,  
20 and then mention that Dr. Handley uses some and  
21 one that she does not.

22 I want to talk about the first ones  
23 that she uses. You note them both in your report  
24 there.

25 You say: "First, one can compare the

1 T. ARRINGTON

2 A. That's correct.

3 Q. And the proclamation you have at 46  
4 percent?

5 A. That's correct.

6 Q. And the demo plan you have at  
7 33 percent?

8 A. That's correct.

9 Q. So just doing math, obviously the demo  
10 plan is 17 percent lower Native VAP than the  
11 benchmark plan and 13 percent lower than the demo  
12 plan?

13 A. That's correct.

14 Q. You also have, if you look up at the  
15 top there, your comparison of Benchmark 38 with  
16 Proclamation 36 and Demonstrative 36. And the  
17 VAP number in that district is 83 percent.

18 Did you look for any evidence of  
19 packing in the demonstrative plan?

20 A. Let me briefly make clear what we're  
21 talking about here. Packing in the sense that  
22 there is a higher concentration of Natives in  
23 that district than are necessary for them to  
24 elect a candidate of their choice, then the  
25 answer is that is true.

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2 But packing is also used as an active  
3 verb, meaning that it was done for a particular  
4 nefarious purpose. And I don't think that when  
5 Leonard drew the plan he was trying to pack. I  
6 think that's the way it fell out in terms of  
7 geography and so forth.

8 Q. Is there any reason that you're aware  
9 of why you couldn't take some of the population  
10 in House District 38 and put it down into --  
11 excuse me, Demo District 36 and put it into  
12 Demonstrative District 38 in order to increase  
13 the Native VAP in that district?

14 A. As I said earlier, I'm not advocating  
15 a demo plan. If I were to sit down at a GIS  
16 system to draw the districts, that is one thing I  
17 would attempt to do.

18 Q. Because you don't need 83 percent in  
19 Demo District 36 in order for it to be effective?

20 A. You do not. You don't need 71 percent  
21 in the proclamation plan.

22 Q. But in the proclamation plan, all the  
23 other districts are effective, correct, and in  
24 the demonstrative district they are not, right?

25 A. I agree.



1 T. ARRINGTON

2 A. Right.

3 Q. There are four elections and the  
4 Native-preferred candidate won three of them?

5 A. Okay.

6 Q. So based upon that, and just assume  
7 that's true for purposes of this question, how  
8 does that affect your analysis of how effective  
9 Benchmark District 6 is?

10 A. Well, I've said that I count it as an  
11 election district.

12 Q. But three out of four is much  
13 different than 50/50, isn't it?

14 A. I was using Dr. Handley's terminology,  
15 either in her report or in her testimony.

16 Q. So you do not actually look at the  
17 election results, the endogenous election results  
18 for Benchmark District 6?

19 A. No, I did look at them. I just didn't  
20 remember them off the top of my head. I don't  
21 have it in front of me, and I don't want to say  
22 it's six of one and five of another if I don't  
23 have it in front of me. I don't keep numbers in  
24 my head very well.

25 Q. So we can look at Lisa's report and

1 T. ARRINGTON

2 you would be able to tell that, right?

3 A. You say it's three to one. I take  
4 your word for it.

5 Q. Okay.

6 A. And you're probably going to tell me  
7 it was the 2010 where the candidate of choice  
8 lost.

9 Q. You're absolutely correct.

10 A. That happens all the time across the  
11 country.

12 Q. In fact, you agree with Lisa's  
13 statement yesterday that you can't really  
14 determine or analyze the effectiveness of a  
15 minority district based on one single election,  
16 can you?

17 A. One robin does not make a spring.

18 Q. I like that. Particularly in Alaska.

19 So you also agree with her statement,  
20 wouldn't you, that the 2010 election was rough on  
21 minority districts, right?

22 A. Indeed.

23 Q. And in fact, I think in Texas even a  
24 lot of the minority districts did not perform  
25 in 2010, right?



1 T. ARRINGTON

2 A. Indeed.

3 Q. But that did not change your opinion  
4 on the effectiveness of those districts, did it?  
5 Some of them?

6 A. It didn't affect Lisa's opinion, and I  
7 took her opinion as the basis for my report.

8 Q. And you have no reason to dispute her  
9 opinion?

10 A. No, not at all.

11 Q. So when you talk -- I think you might  
12 do it in this report -- about election proximity,  
13 that's a relative term as well, right?

14 I think you go on later to talk in  
15 some of the things we'll talk about later on your  
16 recompiled election results, that elections more  
17 recent to the time you're actually analyzing it  
18 tend to have more probative value.

19 A. That's correct.

20 Q. But they also can be an anomaly,  
21 right?

22 A. That's correct.

23 Q. And in 2010, it's fair to say that  
24 pretty much across the country there were a lot  
25 of anomalies in minority districts given the

1 T. ARRINGTON

2 Paragraph 29: "Both Benchmark District 6 and  
3 Demonstration District 38 are just barely  
4 adequate in providing Native voters with an  
5 ability to elect a representative of their  
6 choice."

7 And you're basing that on your  
8 recompiled election results, correct?

9 A. No. I'm basing that on the various  
10 terms that Dr. Handley used to describe District  
11 6 in her testimony and in her reports where she  
12 always talked about it in terms of a district  
13 that she's not as confident about as she is about  
14 the others.

15 And indeed, in her deposition  
16 yesterday, she reiterated that she had some  
17 question about District 6 until the very last  
18 moment.

19 Q. I'll accept your understanding. I  
20 don't think we're disputing anything here.

21 But you say, for example, in --  
22 looking at Paragraph 29, you say: "Exactly the  
23 50/50 pattern found in endogenous elections in  
24 Benchmark District 6."

25 What is that based on?

1 T. ARRINGTON

2 A. That's a mistake on my part.

3 Q. So it was not 50/50, right? Three to  
4 four is not 50/50?

5 A. That sentence is not correct.

6 Q. Okay. And like you told me earlier,  
7 you don't have any reason to disagree that in  
8 those election results, and we can go back and  
9 look at Lisa's report if you want to do that,  
10 that in that district the Native-preferred  
11 candidate won three of the four elections, the  
12 only anomaly, if you will, was in 2010.

13 A. I believe you. I simply took the  
14 50/50 and didn't edit that sentence correctly.

15 Q. So the fact that in the endogenous  
16 elections in Benchmark House District 6, the fact  
17 that they are 75 percent Native-preferred  
18 candidate, with the one anomaly being in 2010,  
19 does that change your opinion on the  
20 effectiveness of Benchmark District 6?

21 A. No. I knew that before. I misread  
22 this, and my memory is not very good on something  
23 of that kind. But I'm telling you that in terms  
24 of the language that Dr. Handley used in  
25 describing this district in her testimony, in her

1 T. ARRINGTON

2 report and in her deposition yesterday, she  
3 talked about it in terms of being a questionable  
4 district. That's all I meant to say here.

5 But I also agree that if they won  
6 three out of the four and the one that they lost  
7 was a terrible election in 2010, that shows in  
8 terms of endogenous elections that it's an  
9 election district.

10 Q. So that would make your up on District  
11 5, which you did anyway, a stronger up?

12 A. No, I'm not going to give you a  
13 stronger up. I'm going to give you an up. It's  
14 a dichotomy.

15 Q. But you already gave me an up, didn't  
16 you?

17 A. I already gave you an up.

18 Q. And you talked earlier about how even  
19 though there is an up, you might have some  
20 doubts, you know, there's some things you talk  
21 about. But here your opinion in your report is  
22 exactly the 50/50 pattern found but it's not a  
23 50/50 pattern.

24 So how can a district that wins three  
25 out of the four with the only anomaly that we've

1 T. ARRINGTON

2 all agreed in 2010 are anomalies nationwide for  
3 minority districts, how can District 6 not be an  
4 effective district, two thumbs up?

5 A. I already said it's an effective  
6 district. I already said my question about it is  
7 based on Dr. Handley's discussion of that  
8 district in several different venues. It's one  
9 that she's uncertain about, in part because we  
10 know that the crossover there is very low, the  
11 white crossover, and that always gives one kind  
12 of a pain.

13 Q. Is it unusual for an expert like  
14 yourself and Dr. Handley to have an evolving  
15 standard of what might meet DOJ standards as you  
16 learn more information and go through a process  
17 like you do and like Dr. Handley did this time in  
18 advising the Board?

19 A. One of the things I hope I am able to  
20 do is to evolve.

21 Q. So you're a true believer in  
22 evolution?

23 A. I need it. Yes, of course. My  
24 opinion about the things in this case evolve. As  
25 I read Dr. Handley's rebuttal, as I listened to



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2 see that?

3 A. Yes.

4 Q. And then towards the bottom you say  
5 that Benchmark District 6, the preferred  
6 candidate carried the district five times and  
7 failed three times.

8 A. Uh-huh.

9 Q. "In Proclamation 38 the  
10 Native-preferred candidate carried the district  
11 six times and failed twice..."

12 A. Uh-huh.

13 Q. And you made some comments on there.

14 A. Two were very close.

15 Q. And then you say that the  
16 demonstrative district -- where the heck do you  
17 see that? You say it's four to four there?

18 A. Yeah.

19 Q. In Paragraph 29. "In the eight  
20 statewide elections analyzed by Dr. Handley, the  
21 Native-preferred candidate carried Demonstration  
22 District 38 four times and lost four times.  
23 Exactly the 50/50 pattern found in endogenous  
24 elections in Benchmark District 6."

25 You would agree with me that five to

1 T. ARRINGTON

2 three is not 50/50 either, right?

3 A. I've already said that sentence is  
4 bad.

5 Q. But even in your results, that's for  
6 the endogenous elections. The numbers that  
7 you're talking about above are for your  
8 recompiled election results, aren't they?

9 A. That's correct.

10 Q. And the benchmark was five to three  
11 and the demo district was four to four under your  
12 analysis?

13 A. That's correct. And as I said  
14 earlier, the Demonstration District 38 based on  
15 our numerical-only analysis is a better district.

16 Q. So continuing on in Paragraph 29  
17 there, Doc, then you list the actual results that  
18 are -- You say the Native candidate in Demo 38  
19 carried the following districts, and then you  
20 list four of them, right? 2006 general U.S. rep,  
21 2010 Democratic primary.

22 A. That's correct.

23 Q. 2006 Democratic primary, et cetera.  
24 There's four there. And then in the next  
25 paragraph you say they failed to carry both of

1 T. ARRINGTON

2 A. Yes, of course.

3 Q. But you don't draw any distinction  
4 between any probative value between primaries and  
5 generals here, do you?

6 A. And I didn't draw any probative things  
7 when I said four to six. I'm telling the reader  
8 what it says, and I'm pointing out to you that  
9 it's in all three kinds of elections. Because I  
10 understand that they have different value.

11 Q. Okay. But you don't put any  
12 quantitative value here?

13 A. No. I didn't try to do that.

14 Q. Why didn't you do that?

15 A. Because all I'm trying to demonstrate  
16 there is that despite the low concentration of  
17 Native voters, in fact the Native candidate of  
18 choice has won some of these elections. That's  
19 it, that's all.

20 Q. It doesn't affect your other  
21 conclusions that you gave the thumb down to  
22 Demonstrative District 38?

23 A. I already said that three or four  
24 times. It doesn't change that.

25 Q. Just want to make sure.

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2 And then you kind of -- Do you agree  
3 with Dr. Handley's conclusion that there is no  
4 probative value in the examination of elections  
5 that are not polarized?

6 A. Yes.

7 Q. But you do include in your election  
8 results some elections that were not polarized?

9 A. Yes. I mean, a famous secretary of  
10 defense once said you go to war with the army you  
11 have, not the army you wish you had. Well, you  
12 examine the data you have, not the data you wish  
13 you had. And it is the case that the data that I  
14 examined here has less probative value than data  
15 I wished I had.

16 Q. But you don't say that anywhere in  
17 your report, right?

18 A. Well, I didn't think it was necessary.  
19 I'm not going to argue that demonstration plans  
20 should be submitted to the Justice Department or  
21 should be adopted by the court or the Board.

22 Q. And would you agree with Dr. Handley's  
23 analysis and conclusions that it's not really  
24 probative to consider Republican primaries in  
25 Alaska for determining the effectiveness of a

1 T. ARRINGTON

2 something called intent to retrogress.

3 Q. That's one of the new standards,  
4 right?

5 A. Yes.

6 Q. Because the Bartlett case said there's  
7 no such thing, I don't think.

8 Does the incumbency status of  
9 districts have any effect on the Native's  
10 ability -- minority ability to elect a preferred  
11 candidate of choice?

12 A. Yes.

13 Q. Can you tell me how?

14 A. Well, generally when you redraw you  
15 want to keep Native incumbents who are also  
16 Native-preferred candidates of choice, candidates  
17 of choice of Native voters, in a district in  
18 which they have a chance to win. You don't want  
19 to pair them if you can avoid it. You certainly  
20 don't want to pair two Natives if you can avoid  
21 it.

22 Q. But you also don't want to pair a  
23 Native incumbent with --

24 A. Well, sometimes you have to. But you  
25 want to avoid that if possible. You want to give

1 T. ARRINGTON

2 some deference to existing minority reps who are  
3 candidates of choice.

4 Q. Because that can affect the  
5 effectiveness of a district, right?

6 A. Well, it can affect the outcome. But  
7 you really should consider the effectiveness of  
8 the district regardless of whether an incumbent  
9 is running or not.

10 Q. So if the Board had a policy or drew  
11 plans in order to, one, keep Natives incumbents  
12 in the actual Native district, in your opinion  
13 would that be reasonable?

14 A. Yes.

15 Q. And if they had two plans, one of  
16 which -- and they're fairly similar, they're  
17 roughly similar as to the terms that you assert,  
18 you assert that you think both would pass DOJ,  
19 one plan paired one of the most powerful Native  
20 incumbents with the president of the senate and  
21 another plan got rid of that pairing, would you  
22 think that would be a reasonable choice made by  
23 the Board?

24 A. All other things being equal, it would  
25 be.

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T. ARRINGTON

MR. WHITE: Let's take a short break  
and then I should be able to wrap it up.

(Recess taken.)

BY MR. WHITE:

Q. Let's talk about the rebuttal report.  
Do you have Lisa's rebuttal report in front of  
you? I think it's Exhibit P.

A. Exhibit P as in pneumonia, correct.

Q. And you've indicated you've had a  
chance to review this, is that right, Doc?

A. I have several days ago.

Q. And can you just tell me what  
conclusions or findings, analysis of  
Dr. Handley's that you disagree with?

A. I believe she says that the  
reconstructed data is irrelevant, and I don't  
agree with that. I think it tells us something.  
It's not the ideal that I would like.

And it doesn't give us enough  
information that I would be confident in sending  
the demonstration district to DOJ and say this  
meets the benchmark. So there is very little in  
which I actually disagree with her on except the  
bottom line that says I used the data I had

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2 available.

3 Q. Is that it, then?

4 A. (Nodding head.)

5 Q. All right, that's good enough for me.

6 Let's see if I can find what exhibit  
7 this is. Let me hand you back your report and  
8 we're going to spend a little time talking  
9 about --

10 A. There is one other point in the report  
11 with which I did disagree.

12 Q. What is that?

13 A. And that is the question about Senate  
14 District S where she, I think, indicated in the  
15 report that that was not an effective district.  
16 I don't usually use the term, but it's not a  
17 reelection Senate district. I disagree with  
18 that.

19 I think the concentration of Natives  
20 in that area, which is mostly an area where the  
21 voting is not polarized, is high enough that it  
22 indeed is an election district.

23 Q. Let's take a look --

24 A. There is no math to do with that  
25 because it's, of course, a Senate district, so



**Rebuttal Report to  
"Expert's Report of Theodore S. Arrington, PH.D."**

Prepared by Dr. Lisa Handley  
Principal, Frontier International Electoral Consulting

**1.0 Introduction**

I have reviewed the Demonstration Plan proposed by the plaintiffs in the context of this litigation and have determined that this plan is retrogressive and therefore violates Section 5 of the Voting Rights Act. This conclusion is based upon the extensive analyses I performed on behalf of the Alaska Redistricting Board (the Board) during the 2011 redistricting process (and the 2001 redistricting process), as well as a comparison of the Demonstration Plan to the Benchmark and Proclamation Plans.

**Scope of Project** I was asked by counsel to the Alaska Redistricting Board to review the report of Theodore S. Arrington, PH.D., and the Demonstration Plan proposed by the Riley/Dearborn plaintiffs in this litigation.

**Professional Background and Experience** My professional experience is summarized in the original report I prepared for the Alaska Redistricting Board (dated July 2011).<sup>1</sup> In addition, it should be noted that I did extensive analyses in order to be able to provide guidance to the Board during this round of redistricting. Included in this work was an analysis of the state House and Senate plan in place prior to adoption of the Proclamation Plan to determine the benchmark any proposed plan must meet. I also evaluated the state House and Senate plans adopted by the Board (Proclamation Plan) to ensure that the proposed plans would satisfy the requirements of Section 5 of the Act.

**2.0 Demonstration Plan**

As was mentioned in the expert report of Dr. Arrington, the Demonstration Plan is very similar to the "Borough Integrity and Voting Rights Act Plan" presented to the Board by the RIGHTS Coalition on May 24, 2011. I previously reviewed this plan and commented on it to the Board and in the report I prepared for the Board.<sup>2</sup>

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<sup>1</sup>"A Voting Rights Analysis of the Proclamation Alaska State Legislative Plans: Measuring the Degree of Racial Bloc Voting and Determining the Effectiveness of Proposed Minority Districts," July 2011. ("Handley Report") This report was included in the preclearance submission to the US Department of Justice.

<sup>2</sup> Handley Report, pages 25-27.

### 3.0 Composition of Districts with Significant Minority Populations

The table below provides a comparison of the percentage of Alaska Native voting age populations ("VAP") for the Benchmark, Proclamation and Demonstration Plans for state house and state senate districts with sizeable minority populations.<sup>3</sup>

Table 1 Comparison of Alaska Native Districts in the Benchmark, Proclamation and Demonstration Plan

<i>Benchmark District</i>	Benchmark Plan Percent Alaska Native VAP	<i>Proclamation and Demonstration District</i>	Proclamation Plan Percent Alaska Native VAP	Demonstration Plan Percent Alaska Native VAP
<i>6</i>	49.97	<i>36</i>	71.45	83.04
<i>37</i>	37.79	<i>37</i>	46.63	45.55
<i>38</i>	82.67	<i>38</i>	46.36	33.63
<i>39</i>	83.44	<i>39</i>	67.09	58.61
<i>40</i>	63.60	<i>40</i>	62.22	63.60
<i>C</i>	42.41	<i>R</i>	43.75	43.97
<i>S</i>	58.32	<i>S</i>	46.85	39.83
<i>T</i>	72.38	<i>T</i>	65.05	61.05

As illustrated by Table 1, the Demonstrative Plan has fewer state House and state Senate districts with significant minority population percentages than the Benchmark or the Proclamation Plans. Although some decrease in the Alaska Native population from the Benchmark Plan districts was necessary given the loss of Alaska Native population in the rural area, two districts in the Demonstration Plan have a significantly lower percentage of Alaska Natives than the Proclamation Plan: State House District 38 and State Senate District S.<sup>4</sup> (State House District 39 also has a lower percentage Alaska Native population but this decrease is not likely to adversely affect the electoral performance of the district.)

Paralleling the much lower Alaska Native population in District 38 in the Demonstration Plan compared to the Proclamation Plan is an over-concentration of

<sup>3</sup> Although I have not included Benchmark District 5 in this table, I advised the Board there was a need to retain the Alaska Native influence district in Southeast Alaska to avoid the possibility of an objection under Section 5 of the Act. The Proclamation Plan and the Demonstration Plan both include an influence district in Southeast Alaska.

<sup>4</sup> State House Districts 37 and 38 are combined in the Demonstration Plan (as in the Proclamation Plan) to produce State Senate District S.

Alaska Natives in District 36 in the Demonstration Plan – a percentage much higher than necessary to elect a minority-preferred candidate to office.

Although a decrease in the number of minority districts with significant Alaska Native populations – specifically the Alaska Native population in Demonstration House District 38 and Senate District S relative to Proclamation Districts 38 and S – does not necessarily mean that the Demonstration Plan offers minorities less of an opportunity to elect candidates of their choice; further analysis indicates that this is in fact the case.

#### **4.0 Percentage of Alaska Native Needed to Elect an Alaska Native-Preferred Candidate<sup>5</sup>**

My analysis of voting patterns by race conducted for the Board produced estimates of minority and white turnout rates, as well as the average degree of minority cohesion and white crossover voting that a minority-preferred candidate might expect. Given these percentages, I determined that districts with Alaska Native VAP percentages greater than 41.8% are necessary to provide Alaska Native voters with the ability to elect candidates of their choice to office.<sup>6</sup>

The Proclamation Plan offers five state House districts over 41.8% Alaska Native VAP and three state Senate districts over this target Alaska Native percentage. The Demonstration Plan, however, offers only four state House districts and two Senate districts that meet this threshold target.

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<sup>5</sup>Because the term “effective” is commonly used in the voting rights literature and by the US Department of Justice to indicate a district that provides minority voters with the ability to elect candidates of their choice to office, I use the term “effective district” interchangeably with an “ability to elect district.” See, for example, “Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence” Bernard Grofman, Lisa Handley, and David Lublin, 79 *North Carolina Law Review* 1383 (2000-2001).

<sup>6</sup>While this is true in general, it is not true in the area of House District 6 or House District 37 in the Benchmark Plan. However, the reconfiguration of the House districts in both the Proclamation and the Demonstration Plan suggest that the higher percentage required for Benchmark House District 6 need not be met to produce an effective minority district in these plans. The best estimate of the percentage Alaska Native voting age population required is therefore 41.8% for all districts in the Proclamation and Demonstration Plans.

The Benchmark Plan contained five state House districts and three state Senate districts that offered Alaska Native voters the ability to elect candidates of choice.<sup>7</sup> Therefore, in order to avoid retrogression, any proposed legislative plan must offer at least five state house and three state senate districts that provide Alaska Native voters with the ability to elect candidates of their choice. The Demonstration Plan does not meet this benchmark and therefore violates Section 5 of the Voting Rights Act.

### 5.0 Recompiled Election Results to Determine Effectiveness

Another means of determining if proposed minority districts are likely to elect minority-preferred candidates to office is to examine recompiled election results for past primary and general elections that included minority candidates that are preferred by minority voters. The two sets of elections must be examined separately: recompiled primary results will indicate whether the minority-preferred candidate can win the party nomination (in the political party of minority preference) in the district and general election results will determine if the minority-preferred candidate can go on to win the seat.

Although I often use recompiled election results to assist in ascertaining the effectiveness of a proposed district, in Alaska this approach was not possible. This is because in neither of the statewide general elections was the Alaska Native candidate the minority-preferred candidate: the 2006 contest for US Representative included a very popular white Republican incumbent (Don Young) that the majority of both Alaska Native and white voters supported thus the Alaska Native candidate (Diane Benson) was not the candidate of choice of Alaska Native voters; and in the 2002 race for Governor, the Alaska Native candidate (Diane Benson) ran as the Green Party candidate and received very few votes, including very few Alaska Native votes. As I noted in my report:<sup>8</sup>

The lack of a Native-preferred Alaska Native candidate competing statewide has implications for conducting an analysis of the potential effectiveness of

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<sup>7</sup>Four of the five House districts protected by the Voting Rights Act I referred to as “effective” in my report and the fifth (House District 6) as an “equal opportunity” district because it did not always succeed in electing the minority-preferred candidate. This district did, however, elect the minority-preferred Alaska Native candidate to the state House in three out of the four elections since 2004. (The Alaska Native candidate who ran in 2002 was unopposed and therefore could not be analyzed.) It therefore clearly provides Alaska Native voters with the ability to elect candidates of their choice to office.

<sup>8</sup> Handley Report, page 14, Footnote 10.

proposed minority districts; recompiling election results to determine if the Alaska Native candidate preferred by Alaska Native voters is simply not possible.

Dr. Arrington, however, ignored the fact that there was not a minority-preferred Alaska Native candidate in these two general elections and examined recompiled election results for these contests.

A second problem with his examination of recompiled general election results was that one of the two contests was also not racially polarized: in the 2006 race for US Representative, Don Young was very popular and garnered a majority of both Alaska Native and white votes. Recompiling election results for a contest that is not polarized provides no information about the effectiveness of a proposed minority district in instances when the electoral is racially polarized. (The majority of contests, albeit not all contests, are racially polarized in Alaska).<sup>9</sup>

The third problem with Dr. Arrington's approach is that he appears to have accorded equal weight to all of the election contests – not only polarized and not polarized contests, but Democratic and Republican primaries. Since very few Alaska Natives choose to participate in Republican primaries,<sup>10</sup> it does not inform the analysis to consider these primaries when determining if proposed districts will provide minority voters with the ability to elect minority-preferred candidates to office.

In summary, included in Dr. Arrington's single table of the eight recompiled elections relied on for his conclusions are:

- Two Republican primaries in which very few Alaska Natives participated;
- Two Democratic primaries that were not racially polarized; and
- One general election that was not racially polarized.

In the analysis that follows, I rely upon only the elections that are at least somewhat meaningful in assessing the effectiveness of a proposed district. I examine first the Democratic primary phase of the election process, looking only at the two Democratic primaries that were polarized. I also examine the one general election

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<sup>9</sup> A candidate preferred by both white and minority voters would, of course, carry every conceivable proposed district – even if there were no minority voters in it at all.

<sup>10</sup> The percentage of Alaska Natives who turned out to cast a vote in the Republican primary was inevitably less than 5% of the voting age population. Alaska Natives, however, cast a vote at considerably higher rates in Democratic primaries – in fact, at rates several times that of white voters.

that was polarized but I do this with the caveat that it cannot be accorded the same weight as an election in which the minority-preferred candidate is an Alaska Native.

**Democratic Primary Analysis** In my original report I analyzed four statewide Democratic primaries – the only four that included Alaska Native candidates in the past decade. Two of these primaries were not polarized: the candidate of choice of both Alaska Natives and whites in the Democratic primaries for Lieutenant Governor in 2010 and for US Representative in 2006 was Diane Benson (an Alaska Native).<sup>11</sup> The other two contests, however, were racially polarized: the 2008 primary for US Representative (Benson was the Alaska Native-preferred candidate but whites supported Ethan Berkowitz), and the 2006 primary for Lieutenant Governor (Donald Olson, an Alaska Native, was the Alaska Native-preferred candidate but the white-preferred candidate was Berkowitz).

As illustrated in Table 2, below, recompiled election results for the two polarized Democratic primary elections indicate that the Alaska Native-preferred candidate carried each of the eight Benchmark minority districts at least 50% of the time. (The raw data on which this table is based can be found in Appendix A.) The Alaska Native-preferred candidate also carried the eight Proclamation Plan minority districts at least 50% of the time.

The Demonstration Plan, however, includes a district that does not provide Alaska Native voters with an ability to elect candidates of choice in Democratic primary elections. State House District 38 scores a zero – that is, the Alaska Native-preferred candidate was not able to carry this district in either of the racially polarized Democratic primary elections. This indicates that the Alaska-Native preferred candidate would not even make it past the Democratic primary in this proposed district.

**Table 2 Percentage of Racially Polarized Primary Election Contests in which the Alaska Native-Preferred Candidate Carried the District: Benchmark, Proclamation and Demonstration Plans**

<i>District</i>	Benchmark Plan	<i>District</i>	Proclamation Plan	Demonstration Plan
6	50%	36	100%	100%
37	50%	37	100%	100%
38	100%	38	100%	0%
39	50%	39	100%	100%
40	50%	40	50%	50%

<sup>11</sup>Although Benson won these Democratic primaries, she was defeated in the general election.

<i>District</i>	Benchmark Plan	<i>District</i>	Proclamation Plan	Demonstration Plan
<i>C</i>	50%	<i>R</i>	50%	50%
<i>S</i>	100%	<i>S</i>	100%	50%
<i>T</i>	50%	<i>T</i>	50%	50%

**General Election Analysis** As mentioned above, in neither of the two statewide general elections analyzed was the Alaska Native candidate the minority-preferred candidate. Moreover, only one of these two contests was racially polarized – the 2002 election for governor. In this contest, a clear majority of Alaska Native voters supported Fran Ulmer, the Democratic candidate. A majority of the white voters, however, supported her Republican opponent, Frank Murkowski (who won the contest).

Although the 2002 gubernatorial contest does not include an Alaska Native candidate who was preferred by Alaska Native voters, Table 3, below, presents the recompiled election results for this contest to determine if the Alaska Native-preferred candidate, Ulmer, would have carried Demonstration District 38 in the general election.<sup>12</sup> For comparison purposes, I have also included the recompiled results for Proclamation District 38 and Benchmark District 6 in the table.<sup>13</sup> However, this recompile of election results differs from Dr. Arrington's in several ways. For example, I recompile results for all of the candidates, not simply the top two candidates. Also, in order to make a direct comparison possible across all three plans, the Absentee/Early/Questioned votes have been removed from the tally for Benchmark District 6 since they cannot appear in the tallies for the Proclamation or Demonstration districts.<sup>14</sup>

As Table 3, below, illustrates, the minority-preferred candidate carries both Benchmark District 6 and Proclamation District 38, but does not win in Demonstration District 38.<sup>15</sup>

<sup>12</sup> A percentage calculation like the one produced for the primary elections cannot be done for the general election given that there is only one statewide general election that included an Alaska Native candidate and was racially polarized.

<sup>13</sup> As Dr. Arrington indicates in his report, a direct comparison between Benchmark District 6, Proclamation District 38 and Demonstration District 38 is probably the most appropriate district comparison because of the overlap in population in this area across the three plans.

<sup>14</sup> Early/Absentee votes are reported only at the district level, not at the precinct level. These votes cannot, therefore, be reassigned to a proposed district.

<sup>15</sup> The minority-preferred candidate, Ulmer, does carry all of the other proposed minority districts, including Senate District S, in the Demonstration Plan.

**Table 3 Recompiled Election Results for 2002 General Election for Governor  
Benchmark, Proclamation and Demonstration Plans**

2002 General Election: Governor	Benchmark District 6		Proclamation District 38		Demonstration District 38	
	Votes	Percent	Votes	Percent	Votes	Percent
Fran Ulmer (Dem)	1915	47.9	2835	58.4	1988	44.5
Frank Murkowski (Rep)	1880	47.0	1763	36.3	2326	52.1
Don Wright (AI)	88	2.2	109	2.2	59	1.3
Diane Benson (GRN)	53	1.3	84	1.7	44	1.0
Billy Toien (LIB)	29	.7	34	.7	21	.5
Raymond Vinzant (MOD)	33	.8	32	.7	28	.6

On the basis of this general election contest, as well as the two primary elections examined, Demonstration District 38 is not comparable to Benchmark District 6. Benchmark District 6 is certainly more than “just barely adequate in providing Native voters with an ability to elect a representative of choice” as Dr. Arrington claims (Arrington report, page 11). Most importantly, Benchmark District 6 elected the Alaska Native-preferred candidate to the state House in 75% of the contests examined in my original report. In addition, the Alaska-Native preferred candidate won 50% of the racially polarized statewide Democratic primaries in which the Alaska Native candidate was the candidate of choice of Alaska Native voters. And although Ulmer did not, in actuality, carry Benchmark District 6 when the early/absentee ballots were included in the recompilation of the 2002 general election for governor, Ulmer did considerably better in Benchmark District that she would do in Demonstration District 38.<sup>16</sup>

Demonstration District 38, on the other hand, is not effective. It does not offer Alaska Native voters the ability to elect candidates of choice to office in any of three racially polarized election contests examined.

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<sup>16</sup> Dr. Arrington also finds that Native-preferred candidate do better in Benchmark District 6 (where they won five out of the eight contests considered) than in Demonstration District 38 (where they would win four out of the eight contests). Of course, I believe that five of the eight contests Dr. Arrington includes in his analysis should not have been included and provide no useful information about the potential effectiveness of proposed Alaska Native districts.



## 6.0 Conclusion

When analyzed correctly, it is evident that the Demonstration Plan proposed by the plaintiffs is retrogressive. Neither Senate District 5 nor House District 38 meet the target percentage Alaska Native VAP required to create an effective minority district. Moreover, recompiling election results for the racially polarized Democratic primaries and the polarized general election indicate that the Alaska Native-preferred candidate would not carry Demonstration Plan House District 38 in any of the three contests. I, therefore, conclude that the Demonstration Plan offers at least one, and possibly two fewer districts that offer Alaska Natives the ability to elect candidates of their choice than either the Benchmark or the Proclamation Plan. The Demonstration Plan violates Section 5 of the Voting Rights Act and would not be precleared by the US Department of Justice.

Appendix A

Benchmark Plan: 2006 Democratic Primary for Lieutenant Governor

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollison	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
6	494	218	188	70	<b>50.9</b>	22.5	19.4	7.2
37	456	312	178	84	<b>44.3</b>	30.3	17.3	8.2
38	301	624	241	92	23.9	<b>49.6</b>	19.2	7.3
39	187	1491	90	44	10.3	<b>82.3</b>	5.0	2.4
40	168	1018	84	32	12.9	<b>78.2</b>	6.5	2.5
C	1037	473	469	221	<b>47.1</b>	21.5	21.3	10.0
S	757	936	419	176	33.1	<b>40.9</b>	18.3	7.7
T	355	2509	174	76	11.4	<b>80.6</b>	5.6	2.4

Proclamation Plan: 2006 Democratic Primary for Lieutenant Governor

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollison	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
36	503	555	266	107	35.2	<b>38.8</b>	18.6	7.5
37	351	412	139	75	34.0	<b>40.0</b>	18.7	7.3
38	624	625	195	77	41.0	<b>41.1</b>	12.8	5.1
39	426	1237	140	62	22.8	<b>66.3</b>	7.5	3.3
40	159	928	81	31	13.3	<b>77.4</b>	6.8	2.6
R	893	693	398	173	<b>41.4</b>	32.1	18.5	8.0
S	975	1037	388	152	38.2	<b>40.6</b>	15.2	6.0
T	585	2165	221	93	19.1	<b>70.7</b>	7.2	3.0

Demonstration Plan: 2006 Democratic Primary for Lieutenant Governor

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollison	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
36	352	780	229	88	24.3	<b>53.8</b>	15.8	6.01
37	484	502	226	97	37.0	<b>38.3</b>	17.3	7.4
38	397	305	166	65	<b>42.6</b>	32.7	17.8	7.0
39	421	1160	148	62	23.5	<b>64.8</b>	8.3	3.5
40	168	1018	84	32	12.9	<b>78.2</b>	6.5	2.5
R	930	873	378	161	<b>39.7</b>	37.3	16.1	6.9
S	881	807	342	162	<b>40.2</b>	36.8	15.6	7.4
T	589	2178	232	94	19.0	<b>70.4</b>	7.5	3.0

Benchmark Plan: 2008 Democratic Primary for US House of Representatives

District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
6	497	740	40.2	<b>59.8</b>
37	458	546	45.6	<b>54.4</b>
38	678	1195	36.2	<b>63.8</b>
39	798	792	<b>50.2</b>	49.8
40	652	645	<b>50.3</b>	49.7
C	1208	1429	45.8	<b>54.2</b>
S	1136	1741	39.5	<b>60.5</b>
T	1450	1437	<b>50.2</b>	49.8

Proclamation Plan: 2008 Democratic Primary for US House of Representatives

District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
36	659	925	41.6	<b>58.4</b>
37	560	942	37.3	<b>62.7</b>
33	894	946	48.6	<b>51.4</b>
39	910	919	49.8	<b>50.2</b>
40	608	589	<b>50.8</b>	49.2
R	1350	1406	49.0	<b>51.0</b>
S	1454	1888	43.5	<b>56.5</b>
T	1518	1508	<b>50.2</b>	49.8

Demonstration Plan: 2008 Democratic Primary for US House of Representatives

District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
36	679	1274	34.8	<b>65.2</b>
37	601	748	44.6	<b>55.4</b>
38	714	585	<b>55.0</b>	45.0
39	895	901	49.8	<b>50.2</b>
40	652	645	<b>50.3</b>	49.7
R	1498	2151	41.1	<b>58.9</b>
S	1315	1333	49.7	<b>50.3</b>
T	1547	1546	<b>50.0</b>	50.0

**Tardugno, Anita**

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**From:** Lisa Handley [lrhandley.frontier@gmail.com]  
**Sent:** Thursday, November 17, 2011 3:16 AM  
**To:** White, Michael  
**Cc:** tbickford@akredistricting.org; Tardugno, Anita; Lisa Handley  
**Subject:** Proof Read Report  
**Attachments:** Handley Rebuttal Report\_final.DOC; ATT00001.htm

Hi Mike,

Attached is my final report, including most of the edits you proposed.

Regarding my availability to sit in on Arrington's deposition, I currently have an appointment scheduled on Wed morning and family arriving on Wed. afternoon. I will see on Monday if I can reschedule the Wed. morning appointment but I cannot stay late on Wed, afternoon. What time is his deposition scheduled and how long do you think it will last?

(NB please reply to my AOL address - I sent this from Gmail because it was the only way I could send the attachment, since Nigeria is apparently on a global email blacklist.)

Best,  
Lisa

Dr. Lisa Handley  
tel: ++1.301.765.5024  
email: LRhandley@aol.com; LRHandley.Frontier@gmail.com

-----Original Message-----

From: White, Michael <MWhite@PattonBoggs.com>  
To: lrhandley <lrhandley@aol.com>  
Cc: Taylor Bickford <tbickford@akredistricting.org>; Tardugno, Anita <ATardugno@PattonBoggs.com>  
Sent: Wed, Nov 16, 2011 9:18 pm  
Subject: Proof Read Report

Lisa:

I have had your report proof read and there were some minor grammatical edits made. See the attached red line version.  
Please advise if your kosher with the grammatical changes. Our deadline is Friday, but I would like to get this to the Riley/Dearborn Plaintiffs tomorrow if I can.

Hope all goes well in Nigeria.

Safe travels home.

Regards

*Michael (D) White*  
Patton Boggs LLP  
[mwhite@pattonboggs.com](mailto:mwhite@pattonboggs.com)

11/17/2011

RFPRFI010309

Exhibit B  
Page 12 of 24

**White, Michael**

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**From:** White, Michael  
**Sent:** Wednesday, November 16, 2011 5:18 PM  
**To:** lrhandley@aol.com  
**Cc:** 'Taylor Bickford'; Tardugno, Anita  
**Subject:** Proof Read Report  
**Attachments:** ANCHORAGE-#72653-v2-DOC\_-\_Lisa\_Handley\_s\_Report\_Version\_5\_from\_11\_11\_2011.DOC  
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Regards

*Michael D. White*  
Patton Boggs LLP  
[mwhite@pattonboggs.com](mailto:mwhite@pattonboggs.com)

11/16/2011

RFPRFI010310

Exhibit B  
Page 13 of 24

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"Expert's Report of Theodore S. Arrington, PH.D."**

Prepared by Dr. Lisa Handley  
Principal, Frontier International Electoral Consulting

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40	63.60	40	62.22	63.60
C	42.41	R	43.75	43.97
S	58.32	S	46.85	39.83
T	72.38	T	65.05	61.05

As illustrated by Table 1, the Demonstrative Plan has fewer state House and state Senate districts with significant minority population percentages than the Benchmark or the Proclamation Plans. Although some decrease in the Alaska Native population from the Benchmark Plan districts was necessary given the loss of Alaska Native population in the rural area, two districts in the Demonstration Plan have a significantly lower percentage of Alaska Natives than the Proclamation Plan: State House District 38 and State Senate District S.<sup>4</sup> (State House District 39 also has a lower percentage Alaska Native population but this decrease is not likely to adversely affect the electoral performance of the district.)

Paralleling the much lower Alaska Native population in District 38 in the Demonstration Plan compared to the Proclamation Plan is an over-concentration of

<sup>3</sup> Although I have not included Benchmark District 5 in this table, I advised the Board there was a need to retain the Alaska Native influence district in Southeast Alaska to avoid the possibility of an objection under Section 5 of the Act. The Proclamation Plan and the Demonstration Plan both include an influence district in Southeast Alaska.

<sup>4</sup> State House Districts 37 and 38 are combined in the Demonstration Plan (as in the Proclamation Plan) to produce State Senate District S.

Alaska Natives in District 36 in the Demonstration Plan – a percentage much higher than necessary to elect a minority-preferred candidate to office.

Although a decrease in the number of minority districts with significant Alaska Native populations – specifically the Alaska Native population in Demonstration House District 38 and Senate District 5 relative to Proclamation Districts 38 and 5 – does not necessarily mean that the Demonstration Plan offers minorities less of an opportunity to elect candidates of their choice; further analysis indicates that this is in fact the case.

#### 4.0 Percentage of Alaska Native Needed to Elect an Alaska Native-Preferred Candidate<sup>5</sup>

My analysis of voting patterns by race conducted for the Board produced estimates of minority and white turnout rates, as well as the average degree of minority cohesion and white crossover voting that a minority-preferred candidate might expect. Given these percentages, I determined that districts with Alaska Native VAP percentages greater than 41.8% are necessary to provide Alaska Native voters with the ability to elect candidates of their choice to office.<sup>6</sup>

The Proclamation Plan offers five state hHouse districts over 41.8% Alaska Native VAP and three state sSenate districts over this target Alaska Native percentage. The Demonstration Plan, however, offers only four state hHouse districts and two sSenate districts that meet this threshold target.

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<sup>5</sup>Because the term “effective” is commonly used in the voting rights literature and by the US Department of Justice to indicate a district that provides minority voters with the ability to elect candidates of their choice to office, I use the term “effective district” interchangeably with an “ability to elect district.” See, for example, “Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence” Bernard Grofman, Lisa Handley, and David Lublin, 79 *North Carolina Law Review* 1383 (2000-2001).

<sup>6</sup>While this is true in general, it is not true in the area of House District 6 or House District 37 in the Benchmark Plan. However, the reconfiguration of the hHouse districts in both the Proclamation and the Demonstration Plan suggest that the higher percentage of required for Benchmark House District 6 need not be met to produce an effective minority district in these plans. The best estimate of the percentage Alaska Native voting age population required is therefore 41.8% for all districts in the Proclamation and Demonstration Plans.



The Benchmark Plan contained five state House districts and three state Senate districts that offered Alaska Native voters the ability to elect candidates of choice.<sup>7</sup> Therefore, in order to avoid retrogression, any proposed legislative plan must offer at least five state house and three state senate districts that provide Alaska Native voters with the ability to elect candidates of their choice. The Demonstration Plan does not meet this benchmark and therefore violates Section 5 of the Voting Rights Act.

### 5.0 Recompiled Election Results to Determine Effectiveness

Another means of determining if proposed minority districts are likely to elect minority-preferred candidates to office is to examine recompiled election results for past primary and general elections that included minority candidates that are preferred by minority voters. The two sets of elections must be examined separately: recompiled primary results will indicate whether the minority-preferred candidate can win the party nomination (in the political party of minority preference) in the district and general election results will determine if the minority-preferred candidate can go on to win the seat.

Although I often use recompiled election results to assist in ascertaining the effectiveness of a proposed district, in Alaska this approach was not possible. This is because in neither of the statewide general elections was the Alaska Native candidate the minority-preferred candidate: the 2006 contest for US Representative included a very popular white Republican incumbent (Don Young) that the majority of both Alaska Native and white voters supported; thus the Alaska Native candidate (Diane Benson) was not the candidate of choice of Alaska Native voters; and in the 2002 race for Governor, the Alaska Native candidate (Diane Benson) ran as the Green Party candidate and received very few votes, including very few Alaska Native votes. As I noted in my report:<sup>8</sup>

The lack of a Native-preferred Alaska Native candidate competing statewide has implications for conducting an analysis of the potential effectiveness of

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<sup>7</sup>Four of the five House districts protected by the Voting Rights Act I referred to as "effective" in my report and the fifth (House District 6) as an "equal opportunity" district because it did not always succeed in electing the minority-preferred candidate. This district did, however, elect the minority-preferred Alaska Native candidate to the state House in three out of the four elections since 2004. (The Alaska Native candidate who ran in 2002 was unopposed and therefore could not be analyzed.) It therefore clearly provides Alaska Native voters with the ability to elect candidates of their choice to office.

<sup>8</sup> Handley Report, page 14, Footnote 10.

proposed minority districts; compiling election results to determine if the Alaska Native candidate preferred by Alaska Native voters is simply not possible.

Dr. Arrington, however, ignored the fact that there was not a minority-preferred Alaska Native candidate in these two general elections and examined compiled election results for these contests.

A second problem with his examination of compiled general election results was that one of the two contests was also not racially polarized: in the 2006 race for US Representative, Don Young was very popular and garnered a majority of both Alaska Native and white votes. Compiling election results for a contest that is not polarized provides no information about the effectiveness of a proposed minority district in instances when the electoral is racially polarized. (The majority of contests, albeit not all contests, are racially polarized in Alaska).<sup>9</sup>

The third problem with Dr. Arrington's approach is that he appears to have accorded equal weight to all of the election contests -- not only polarized and not polarized contests, but Democratic and Republican primaries. Since very few Alaska Natives choose to participate in Republican primaries,<sup>10</sup> it does not inform the analysis to consider these primaries when determining if proposed districts will provide minority voters with the ability to elect minority-preferred candidates to office.

In summary, included in Dr. Arrington's single table of the eight compiled elections relied on for his conclusions are:

- Two Republican primaries in which very few Alaska Natives participated;
- Two Democratic primaries that were not racially polarized; and
- One general election that was not racially polarized.

In the analysis that follows, I rely upon only the elections that are at least somewhat meaningful in assessing the effectiveness of a proposed district. I examine first the Democratic primary phase of the election process, looking only at the two Democratic primaries that were polarized. I also examine the one general election

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<sup>9</sup> A candidate preferred by both white and minority voters would, of course, carry every conceivable proposed district -- even if there were no minority voters in it at all.

<sup>10</sup> The percentage of Alaska Natives who turned out to cast a vote in the Republican primary was inevitably less than 5% of the voting age population. Alaska Natives, however, cast a vote at considerably higher rates in Democratic primaries -- in fact, at rates several times that of white voters.

that was polarized but I do this with the caveat that it cannot be accorded the same weight as an election in which the minority-preferred candidate is an Alaska Native.

**Democratic Primary Analysis** In my original report I analyzed four statewide Democratic primaries – the only four that included Alaska Native candidates in the past decade. Two of these primaries were not polarized: the candidate of choice of both Alaska Natives and whites in the Democratic primaries for Lieutenant Governor in 2010 and for US Representative in 2006 was Diane Benson (an Alaska Native).<sup>11</sup> The other two contests, however, were racially polarized: the 2008 primary for US Representative (Benson was the Alaska Native-preferred candidate but whites supported Ethan Berkowitz), and the 2006 primary for Lieutenant Governor (Donald Olson, an Alaska Native, was the Alaska Native-preferred candidate but the white-preferred candidate was Berkowitz).

As illustrated in Table 2, below, recompiled election results for the two polarized Democratic primary elections indicate that the Alaska Native-preferred candidate carried each of the eight Benchmark minority districts at least 50% of the time. (The raw data on which this table is based can be found in Appendix A.) The Alaska Native-preferred candidate also carried the eight Proclamation Plan minority districts at least 50% of the time.

The Demonstration Plan, however, includes a district that does not provide Alaska Native voters with an ability to elect candidates of choice in Democratic primary elections. State House District 38 scores a zero – that is, the Alaska Native-preferred candidate was not able to carry this district in either of the racially polarized Democratic primary elections. This indicates that the Alaska-Native preferred candidate would not even make it past the Democratic primary in this proposed district.

**Table 2 Percentage of Racially Polarized Primary Election Contests in which the Alaska Native-Preferred Candidate Carried the District: Benchmark, Proclamation and Demonstration Plans**

<i>District</i>	Benchmark Plan	<i>District</i>	Proclamation Plan	Demonstration Plan
6	50%	36	100%	100%
37	50%	37	100%	100%
38	100%	38	100%	0%
39	50%	39	100%	100%
40	50%	40	50%	50%

<sup>11</sup>Although Benson won these Democratic primaries, she was defeated in the general election.

<i>District</i>	Benchmark Plan	<i>District</i>	Proclamation Plan	Demonstration Plan
<i>C</i>	50%	<i>R</i>	50%	50%
<i>S</i>	100%	<i>S</i>	100%	50%
<i>T</i>	50%	<i>T</i>	50%	50%

**General Election Analysis** As mentioned above, in neither of the two statewide general elections analyzed was the Alaska Native candidate the minority-preferred candidate. Moreover, only one of these two contests was racially polarized -- the 2002 election for governor. In this contest, a clear majority of Alaska Native voters supported Fran Ulmer, the Democratic candidate. A majority of the white voters, however, supported her Republican opponent, Frank Murkowski (who won the contest).

Although the 2002 gubernatorial contest does not include an Alaska Native candidate who was preferred by Alaska Native voters, Table 3, below, presents the recompiled election results for this contest to determine if the Alaska Native-preferred candidate, Ulmer, would have carried Demonstration District 38 in the general election.<sup>12</sup> For comparison purposes, I have also included the recompiled results for Proclamation District 38 and Benchmark District 6 in the table.<sup>13</sup> However, this recompilation of election results differs from Dr. Arrington's in several ways. For example, I recompile results for all of the candidates, not simply the top two candidates. Also, in order to make a direct comparison possible across all three plans, the Absentee/Early/Questioned votes have been removed from the tally for Benchmark District 6 since they cannot appear in the tallies for the Proclamation or Demonstration districts.<sup>14</sup>

As Table 3, below, illustrates, the minority preferred candidate carries both Benchmark District 6 and Proclamation District 38, but does not win in Demonstration District 38.<sup>15</sup>

<sup>12</sup> A percentage calculation like the one produced for the primary elections cannot be done for the general election given that there is only one statewide general election that included an Alaska Native candidate and was racially polarized.

<sup>13</sup> As Dr. Arrington indicates in his report, a direct comparison between Benchmark District 6, Proclamation District 38 and Demonstration District 38 is probably the most appropriate district comparison because of the overlap in population in this area across the three plans.

<sup>14</sup> Early/Absentee votes are reported only at the district level, not at the precinct level. These votes cannot, therefore, be reassigned to a proposed district.

<sup>15</sup> The minority-preferred candidate, Ulmer, does carry all of the other proposed minority districts, including Senate District 5, in the Demonstration Plan.

**Table 3 Recompiled Election Results for 2002 General Election for Governor  
Benchmark, Proclamation and Demonstration Plans**

2002 General Election: Governor	Benchmark District 6		Proclamation District 38		Demonstration District 38	
	Votes	Percent	Votes	Percent	Votes	Percent
Fran Ulmer (Dem)	1915	47.9	2835	58.4	1988	44.5
Frank Murkowski (Rep)	1880	47.0	1763	36.3	2326	52.1
Don Wright (AI)	88	2.2	109	2.2	59	1.3
Diane Benson (GRN)	53	1.3	84	1.7	44	1.0
Billy Toren (LiB)	29	.7	34	.7	21	.5
Raymond Vinzant (MOD)	33	.8	32	.7	28	.6

On the basis of this general election contest, as well as the two primary elections examined, Demonstration District 38 is not comparable to Benchmark District 6. Benchmark District 6 is certainly more than the “just barely adequate in providing Native voters with an ability to elect a representative of choice” that Dr. Arrington claims (Arrington report, page 11). Most importantly, Benchmark District 6 elected the Alaska Native-preferred candidate to the state hHouse in 75% of the contests examined in my original report. In addition, the Alaska-Native preferred candidate won 50% of the racially polarized statewide Democratic primaries in which the Alaska Native candidate was the candidate of choice of Alaska Native voters. And although Ulmer did not, in actuality, carry Benchmark District 6 when the early/absentee ballots were included in the recompilation of the 2002 general election for governor, Ulmer did considerably better in Benchmark District that she would do in Demonstration District 38.<sup>16</sup>

Demonstration District 38, on the other hand, is not effective. It does not offer Alaska Native voters the ability to elect candidates of choice to office in any of three racially polarized election contests examined.

## 6.0 Conclusion

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<sup>16</sup> Dr. Arrington also finds that Native-preferred candidate do better in Benchmark District 6 (where they won five out of the eight contests considered) than in Demonstration District 38 (where they would win four out of the eight contests). Of course, I believe that five of the eight contests Dr. Arrington includes in his analysis should not have been included and provide no useful information about the potential effectiveness of proposed Alaska Native districts.

When analyzed correctly, it is evident that the Demonstration Plan proposed by the plaintiffs is retrogressive. Neither Senate District 5 nor House District 38 meet the target percentage Alaska Native VAP required to create an effective minority district. Moreover, recombining election results for the racially polarized Democratic primaries and the polarized general election indicate that the Alaska Native-preferred candidate would not carry Demonstration Plan House District 38 in any of the three contests. I, therefore, conclude that the Demonstration Plan offers at least one, and possibly two fewer districts that offer Alaska Natives the ability to elect candidates of their choice than either the Benchmark or the Proclamation Plan. The Demonstration Plan violates Section 5 of the Voting Rights Act and would not be precleared by the US Department of Justice.

Appendix A

Benchmark Plan: 2006 Democratic Primary for Lieutenant Governor

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollinson	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
6	494	218	188	70	50.9	22.5	19.4	7.2
37	456	312	178	84	44.3	30.3	17.3	8.2
38	301	624	241	92	23.9	49.6	19.2	7.3
39	187	1491	90	44	10.3	82.3	5.0	2.4
40	168	1018	84	32	12.9	78.2	6.5	2.5
C	1037	473	469	221	47.1	21.5	21.3	10.0
S	757	936	419	176	33.1	40.9	18.3	7.7
T	355	2509	174	76	11.4	80.6	5.6	2.4

Proclamation Plan: 2006 Democratic Primary for Lieutenant Governor

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollinson	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
36	503	555	266	107	35.2	38.8	18.6	7.5
37	351	412	139	75	34.0	40.0	18.7	7.3
38	624	625	195	77	41.0	41.1	12.8	5.1
39	426	1237	140	62	22.8	66.3	7.5	3.3
40	159	928	81	31	13.3	77.4	6.8	2.6
R	893	693	398	173	41.4	32.1	18.5	8.0
S	975	1037	388	152	38.2	40.6	15.2	6.0
T	585	2165	221	93	19.1	70.7	7.2	3.0

Demonstration Plan: 2006 Democratic Primary for Lieutenant Governor

District	Votes for Berkowitz	Votes for Olson	Votes for Rollins	Votes for Rollinson	Percent Berkowitz	Percent Olson (Native-Preferred)	Percent Rollins	Percent Rollinson
36	352	780	229	88	24.3	53.8	15.8	6.01
37	484	502	226	97	37.0	38.3	17.3	7.4
38	397	305	166	65	42.6	32.7	17.8	7.0
39	421	1160	148	62	23.5	64.8	8.3	3.5
40	168	1018	84	32	12.9	78.2	6.5	2.5
R	930	873	378	161	39.7	37.3	16.1	6.9
S	881	807	342	162	40.2	36.8	15.6	7.4
T	589	2178	232	94	19.0	70.4	7.5	3.0

Benchmark Plan: 2008 Democratic Primary for US House of Representatives

District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
6	497	740	40.2	<b>59.8</b>
37	458	546	45.6	<b>54.4</b>
38	678	1195	36.2	<b>63.8</b>
39	798	792	<b>50.2</b>	49.8
40	652	645	<b>50.3</b>	49.7
C	1208	1429	45.8	<b>54.2</b>
S	1136	1741	39.5	<b>60.5</b>
T	1450	1437	<b>50.2</b>	49.8

Proclamation Plan: 2008 Democratic Primary for US House of Representatives

District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
36	659	925	41.6	<b>58.4</b>
37	560	942	37.3	<b>62.7</b>
38	894	946	48.6	<b>51.4</b>
39	910	919	49.8	<b>50.2</b>
40	608	589	<b>50.8</b>	49.2
R	1350	1406	49.0	<b>51.0</b>
S	1454	1888	43.5	<b>56.5</b>
T	1518	1508	<b>50.2</b>	49.8

Demonstration Plan: 2008 Democratic Primary for US House of Representatives

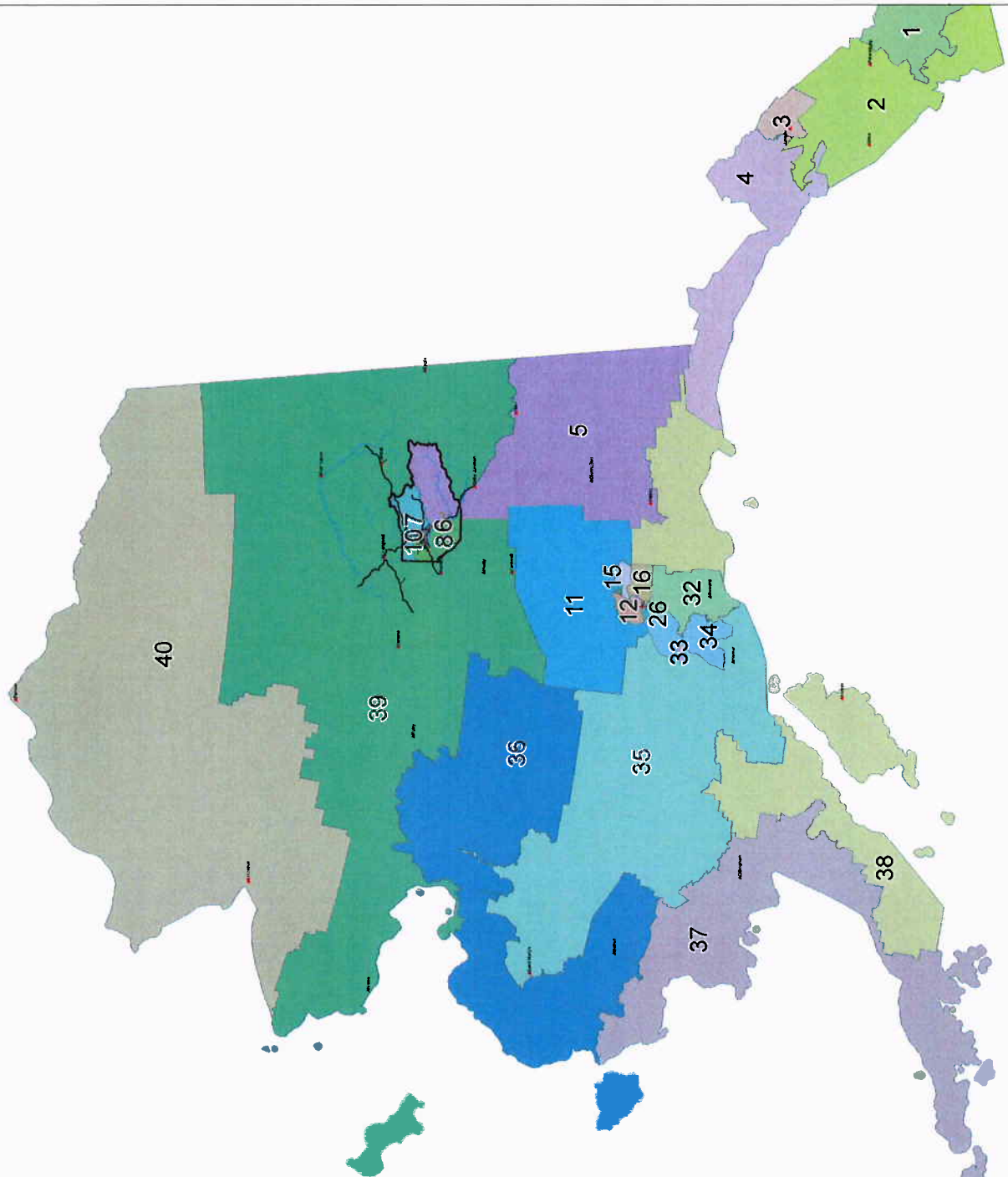
District	Votes for Berkowitz	Votes for Benson	Percent Berkowitz	Percent Benson (Native-Preferred)
36	679	1274	34.8	<b>65.2</b>
37	601	748	44.6	<b>55.4</b>
38	714	886	55.0	45.0
39	895	901	49.8	50.2
40	652	645	<b>50.3</b>	49.7
R	1498	2151	41.1	<b>58.9</b>
S	1315	1333	49.7	<b>50.3</b>
T	1547	1546	<b>50.0</b>	50.0



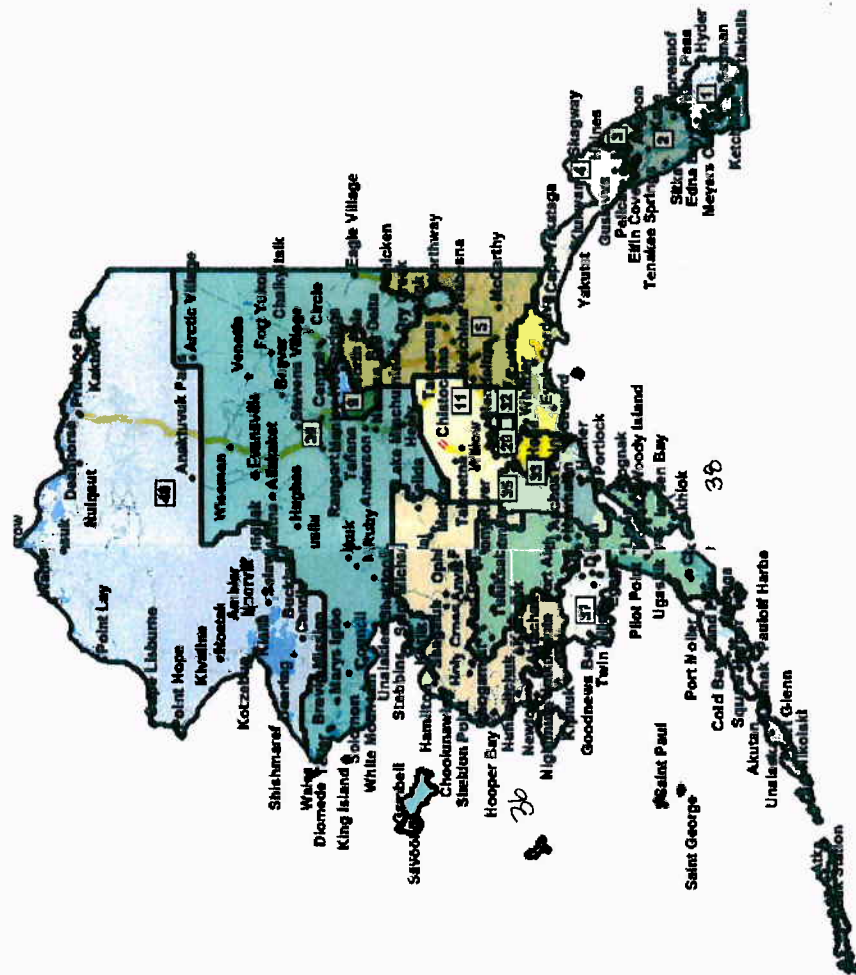
**FAIRBANKS NORTH STAR BOROUGH  
PROPOSED LEGISLATIVE REDISTRICTING  
BASED ON 2010 CENSUS**

**Statewide View**

Prepared for Fairbanks North Star Borough Mayor Luke Hopkins  
Prepared by FNSB Dept. of Community Planning TD  
May 5, 2011

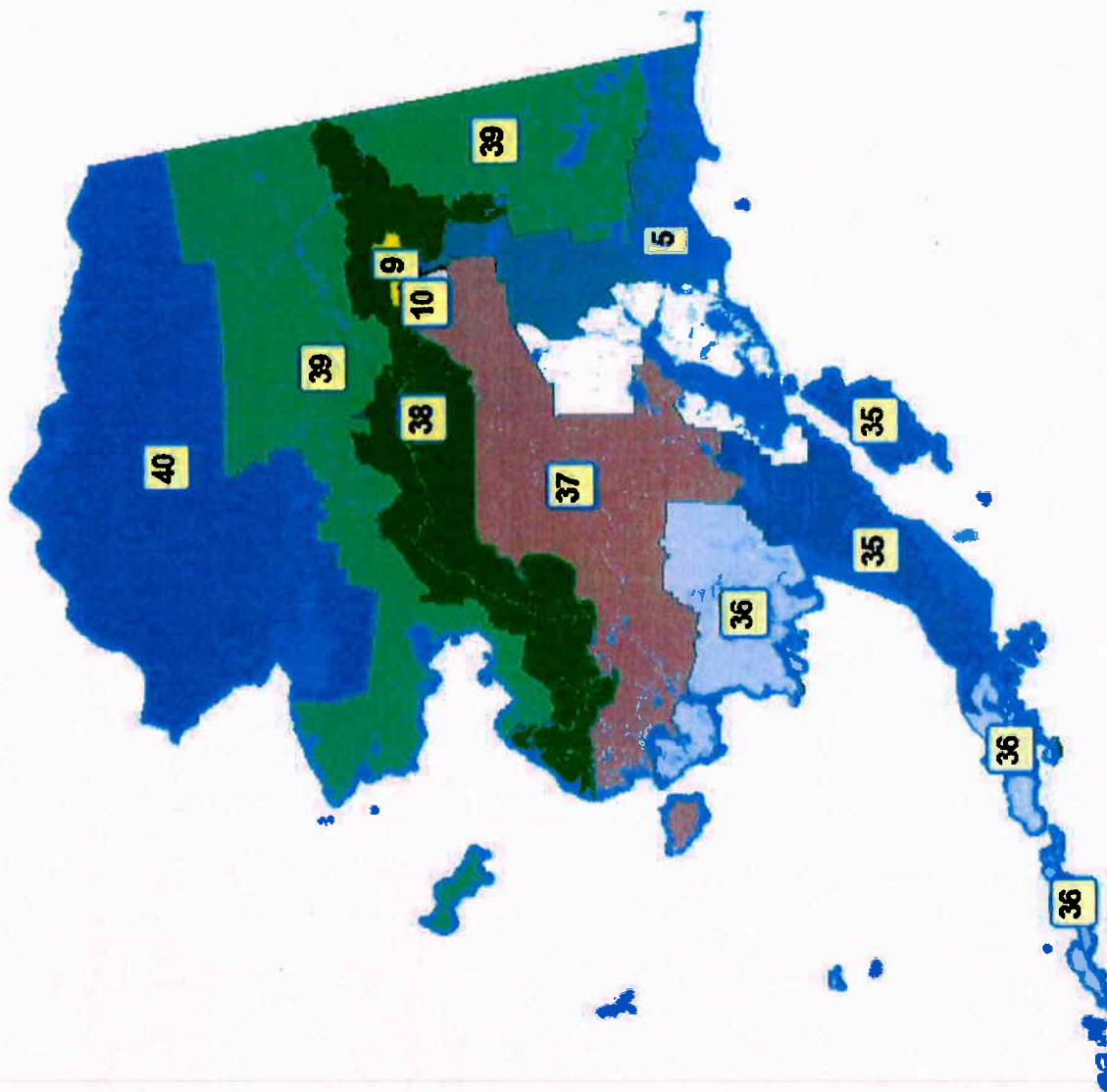






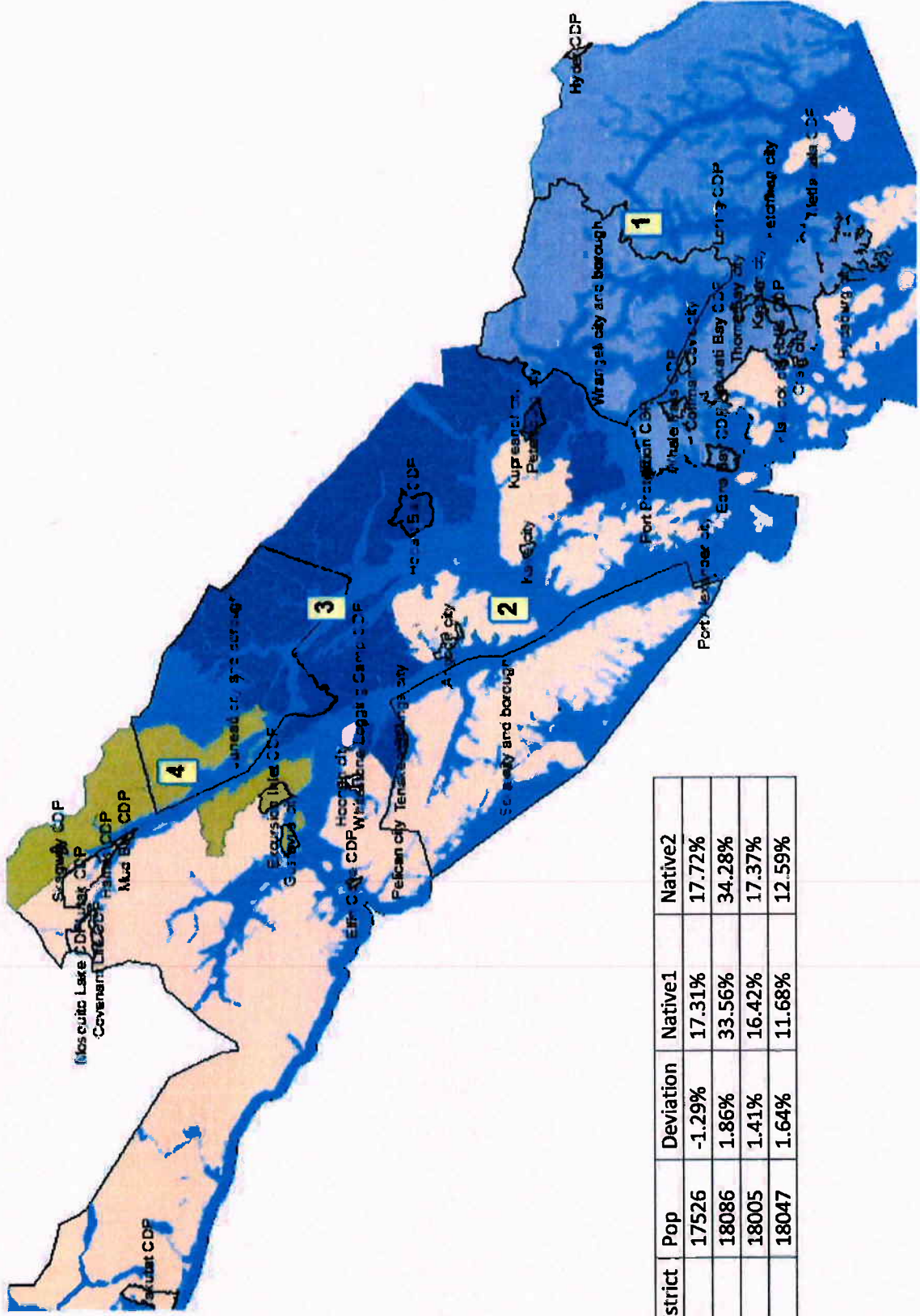
District	Pop	Dev	Native1	Native2
35	17515	-1.35%	25.52%	25.81%
36	16887	-4.89%	47.35%	47.77%
37	16985	-4.34%	66.35%	66.70%
38	17119	-3.58%	41.62%	41.76%
39	17180	-3.24%	62.17%	62.39%
40	16953	-4.52%	62.22%	62.71%

District	Pop	Dev	Native1	Native2
R	34402	-3.12%	36.39%	36.75%
S	34104	-3.96%	53.92%	54.17%
T	34133	-3.88%	62.20%	62.55%









District	Pop	Deviation	Native1	Native2
1	17526	-1.29%	17.31%	17.72%
2	18086	1.86%	33.56%	34.28%
3	18005	1.41%	16.42%	17.37%
4	18047	1.64%	11.68%	12.59%

**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**  
)  
)

**AFFIDAVIT OF DR. LISA HANDLEY**

STATE OF MARYLAND            )  
  )        ss.  
COUNTY OF MONTGOMERY    )

I, DR. LISA HANDLEY, being first duly sworn, depose and state as follows:

1. I am the Voting Rights Act expert for Defendant the Alaska Redistricting Board (“the Board”). The Board hired me to conduct an analysis of Alaska voting patterns by race, and using this information, to provide guidance to the Board in meeting the standards established by Section 5 of the Voting Rights Act of 1965.

2. I hold a Ph. D. in Political Science from George Washington University, and am a principal of Frontier International Electoral Consulting. I have been actively involved in researching, writing and teaching on subjects relating to voting rights, including minority representation, electoral system design, and redistricting. I have advised numerous jurisdictions and other clients on voting rights-related issues, including the U.S. Department of Justice, whom I am currently assisting in Section 5 litigation over Texas redistricting plans.

3. Alaska, a covered jurisdiction under Section 5 of the Voting Rights Act, is required to seek preclearance from either the Department of Justice or the DC Circuit Court before it can implement any electoral changes it has adopted. In order to obtain preclearance from the Department of Justice, Alaska must prove that its plan will not result in a retrogression of minority voting strength relative to the current, or benchmark, redistricting plan.

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4. The main objective of Section 5 is to ensure that minority voters have the opportunity to participate in the electoral process and to elect candidate of their choice to office. In reviewing a proposed redistricting plan, the Department of Justice analyzes the effect of the proposed plan on minority voting strength and looks for evidence of intentional discrimination on the part of the plan drawers. Such evidence includes, among other things, whether the jurisdiction took into consideration the concerns of the minority community when drawing the proposed plan.

5. The 2010 redistricting cycle posed an interesting challenge for Voting Rights Act experts, including myself. One reason for this is that Congress redefined retrogression after the 2003 *Georgia v. Ashcroft* case, and no one knew how this would affect preclearance reviews by the Department of Justice. In addition, it was unclear whether *Bartlett v. Strickland*, a Section 2 case, might also be applied to Section 5. This uncertainty made it particularly important that a jurisdiction make every effort to protect the minority voters' ability to elect candidates of choice and not retrogress.

6. A minority group's ability to elect its candidate of choice is impacted by whether the district is already held by a minority-preferred candidate, is an open seat without an incumbent, or is a seat held by an incumbent who is not the minority's candidate of choice. Inevitably, a lower minority population concentration is required to elect a minority-preferred incumbent; a higher minority population concentration is necessary to unseat an incumbent who is not the minority-preferred candidate.

7. Thus, for purpose of preclearance under Section 5 of the Voting Rights Act, the jurisdiction should retain minority incumbents who are also minority-preferred candidates in the district where they have the best opportunity to win. The jurisdiction should also avoid

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pairing minority-preferred incumbents, whenever possible, to maximize the effectiveness of minority districts. Failure of a jurisdiction to do this will make it more difficult to elect minority-preferred candidates to office. Moreover, the pairing of minority-preferred incumbents could be seen by the Department of Justice as evidence of intentional discrimination against a covered minority under the "purpose" prong of a Section 5 analysis. It may also be seen as evidence of a Section 2 violation.

**FURTHER YOUR AFFIANT SAYETH NAUGHT.**

\_\_\_\_\_  
Dr. Lisa Handley

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_,  
2011.

\_\_\_\_\_  
Notary Public in and for the State of Maryland  
My Commission Expires: \_\_\_\_\_

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AFFIDAVIT OF DR. LISA HANDLEY  
*In Re 2011 Redistricting Cases, Consolidated Case No. 41-A-11-02209 C1*  
Page 3 of 3

Exhibit G  
Page 3 of 3

**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

**AFFIDAVIT OF MARIE N. GREENE**

STATE OF ALASKA                                 )  
  )         ss.  
SECOND JUDICIAL DISTRICT                 )

I, MARIE N. GREENE, being first duly sworn, depose and state as follows:

1. I am a member of the Defendant the Alaska Redistricting Board ("the Board") and have personal knowledge of and can testify to all of the facts set forth below.

2. On Wednesday, September 14, 2011, myself, along with Board Chair John Torgerson, Board Executive Director Taylor Bickford, Board Counsel Michael White and the Board's Voting Rights Act expert, Dr. Lisa Handley, met with representatives of the Voting Section of the Civil Rights Division of the United States Department of Justice ("DOJ") at their offices in Washington D.C. to discuss the Board's Preclearance Submission under Section 5 of the federal Voting Rights Act ("VRA") and answer any questions.

3. At that meeting, Chair Torgerson led a presentation to DOJ explaining the Board's Preclearance Submission and advocating for preclearance. At the end of our presentation, the only substantive questions asked by the DOJ representatives related to the treatment of Native Incumbents by the Proclamation Plan, including whether any Alaska Native incumbents were removed from a Benchmark Alaska Native District or paired with other incumbents.

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4. In our response to DOJ's questions, we informed them that in our proposed Proclamation Plan, every current Alaska Native incumbent or Alaska Native Preferred Candidate was kept in an Alaska Native District and with one unavoidable exception no Alaska Native incumbents were paired.

5. We further explained to DOJ that due to the significant population loss in Southeast Alaska, that region lost one house district and half of a senate district. As such, it was impossible to recreate Benchmark Senate District C (in which Alaska Native Senator Al Kookesh, of Angoon is the incumbent) or any other Alaska Native effective or influence Senate District which includes a Southeast Alaska district. Unfortunately, pairing Senator Kookesh with incumbent Senator Bert Stedman of Sitka in Proclamation Senate District Q was unavoidable. We pointed out to DOJ that no other viable redistricting plan presented to or consider by the Board was able to avoid pairing Senator Kookesh.

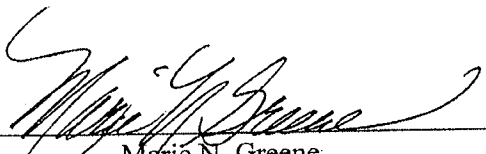
6. We also informed DOJ that (as indicated in our Preclearance Submission material) the Board drew its plan in Southeast Alaska in order to ensure the incumbent Alaska Native Legislator from the Benchmark Alaska Native Influence House District in Southeast Alaska (Representative Bill Thomas of Haines in Benchmark HD-5) was kept in the Proclamation Alaska Native Influence District (Proclamation House District 34) and was not paired. Every other viable alternative plan presented to the Board either paired Representative Thomas with a non-Alaska Native incumbent from the same party, or drew him out of the Alaska Native District. Some did both.

7. It is my understanding that two of the factors DOJ considers when reviewing a redistricting plan for preclearance under Section 5 of the VRA is (a) the extent to which the Board afforded members of the affected racial and language minority group the opportunity to

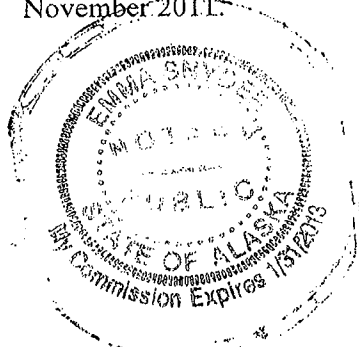
participate in the redistricting process; and (b) the extent to which the Board took the concerns of members of the affected racial and language minority groups into account in drafting its redistricting plan. The affected racial/language minority groups in Alaska are Alaska Natives. From the beginning of the redistricting process, the Board actively sought input from the Alaska Native community and took their concerns into account when drawing election districts.

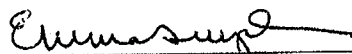
8. I am an Inupiat Alaska Native, a shareholder of, and currently the CEO of the NANA Regional Corporation, an Alaska Native Corporation. I am also a shareholder of KIC, the Alaska Native Village Corporation for Kotzebue, where I reside. Throughout the redistricting process I received input from a number of Alaska Native leaders and groups. One point consistently made was the importance of avoiding election districts that paired Alaska Native Incumbent Legislators wherever possible. This is particularly true in Southeast where a number of the proposed plans paired several Alaska Native Incumbents which was a major concern to the Southeast Alaska Native Community.

**FURTHER YOUR AFFIANT SAYETH NAUGHT.**

  
Marie N. Greene

SUBSCRIBED AND SWORN to before me at Kotzebue, Alaska this 14 day of November 2011.



  
Notary Public in and for the State of Alaska  
My Commission Expires: 11/31/2013

PATTON BOGGS LLP  
601 West Fifth Avenue  
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Anchorage, AK 99501  
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AFFIDAVIT OF MARIE N. GREENE  
In Re 2011 Redistricting Cases, Consolidated Case No. 4FA-11-02209 CI  
Page 3 of 4

Exhibit H  
Page 3 of 4

CERTIFICATE OF SERVICE

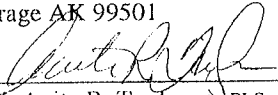
I hereby certify that on the 4th day of November 2011 at 2:45  
am/pm, a true and correct copy of the foregoing document was  
served on the following via:

**Electronic Mail on:**

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By: \_\_\_\_\_

  
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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**

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**AFFIDAVIT OF JOHN C. TORGERSON**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, JOHN TORGERSON, being first duly sworn, depose and state as follows:

1. I am the Chair of the Defendant the Alaska Redistricting Board ("the Board") and have personal knowledge of and can testify to all of the facts set forth below.

2. On Wednesday, September 14, 2011, I participated in a meeting with representatives of the Voting Section of the Civil Rights Division of the United States Department of Justice ("DOJ") at their offices in Washington D.C. to discuss the Board's Preclearance Submission under Section 5 of the federal Voting Rights Act ("VRA").

3. Board Member Marie Greene, the Board's Executive Director Taylor Bickford, Board Counsel Michael White and Dr. Lisa Handley, the Board's VRA expert, also attended this meeting on behalf of the Board.

4. At this meeting, I led a presentation to DOJ explaining the Board's Preclearance Submission and advocating for preclearance. Upon completion of our formal presentation, the DOJ's only substantive questions related to the treatment of Native Incumbents by the Proclamation Plan, including whether any Alaska Native incumbents were removed from a Benchmark Alaska Native District or paired with other incumbents.

5. In response to DOJ's questions, we informed DOJ that in the Board's Proclamation Plan every current Alaska Native incumbent or Alaska Native Preferred Candidate was kept in an Alaska Native District. We also advised that with one unavoidable exception no Alaska Native incumbents were paired in our Plan.

6. As to the one Alaska Native Incumbent who was paired, we explained to DOJ that due to the significant population loss in Southeast Alaska, that region lost one House district and half of a Senate district and therefore it was impossible to (a) recreate Benchmark Senate District C in which Alaska Native Senator Al Kookesh, of Angoon is the incumbent; and (b) create any other Alaska Native effective or influence Senate District which included a Southeast Alaska District. As a result, pairing Senator Kookesh with incumbent Senator Bert Stedman of Sitka in Proclamation Senate District Q was unavoidable. We pointed out to DOJ that no other viable redistricting plan presented to or consider by the Board was able to avoid pairing Senator Kookesh.

7. We also pointed DOJ to that portion of our Preclearance Submission regarding Southeast. We explained that the Board drew the Southeast Alaska districts in order to ensure that Representative Bill Thomas of Haines, who was the Alaska Native Incumbent in Benchmark HD-5, (the Benchmark Alaska Native Influence House District in Southeast) was kept in the Proclamation Alaska Native Influence District (Proclamation HD-34) and was not paired. We explained to DOJ that every other viable alternative plan presented to the Board either paired Representative Thomas with a non-Alaska Native incumbent from the same party, or drew him out of the Alaska Native District. Some did both.

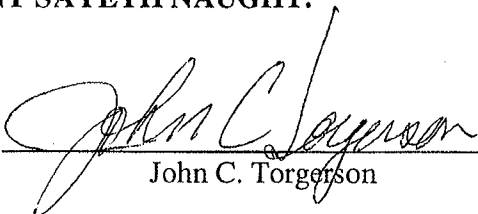
8. I served as an Alaska State Senator representing the Kenai area from 1995-2003. During my tenure, among other duties, I served as the Co-Chair of the Senate Finance



Committee from 1999-2000 and am familiar with its functions and importance as well as its counter-part committee in the House, the House Finance Committee. Representative Thomas currently serves as the Co-Chair of the House Finance Committee of the Alaska Legislature. The House Finance Committee is generally considered one of if not the most powerful and influential house committees due to its control of the budgeting process. The Co-Chair of Finance is considered one of the five leadership positions among the organization that controls the House. The Co-Chair is joined in this leadership roll by the other Co-Chair of Finance, the Speaker of the House, the Rules Chairman, and the Majority Leader. Accordingly, a legislator who serves as a co-chair of the House Finance Committee is one of the most influential and powerful House members in the Alaska legislature.

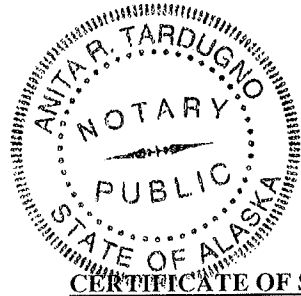
9. It is my understanding that two of the factors DOJ considers when reviewing a redistricting plan for preclearance under Section 5 of the VRA are: (a) the extent to which the Board afforded members of the affected racial and language minority group the opportunity to participate in the redistricting process; (b) the extent to which the Board took the concerns of members of the affected racial and language minority groups into account in drafting its redistricting plan. The affected racial/language minority group in Alaska is the Alaska Native community. From the beginning of the redistricting process, the Board actively sought input from the Alaska Native community and took their concerns into account when drawing plans. During the public hearing process, the Board received considerable input from the Alaska Native community in Southeast Alaska to not pair Alaska Native Incumbents where avoidable.

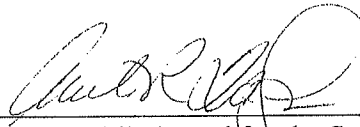
**FURTHER YOUR AFFIANT SAYETH NAUGHT.**

  
\_\_\_\_\_  
John C. Torgerson

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601 West Fifth Avenue  
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Anchorage, AK 99501  
Phone: (907) 263-6300  
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SUBSCRIBED AND SWORN to before me at Anchorage, Alaska this 1st day of November 2011.



  
\_\_\_\_\_  
Notary Public in and for the State of Alaska  
My Commission Expires: January 1, 2012

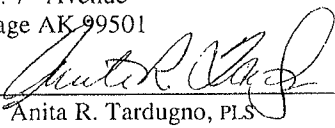
**CERTIFICATE OF SERVICE**

I hereby certify that on the 1<sup>st</sup> day of November 2011 at 2:45 am/pm, a true and correct copy of the foregoing document was served on the following via:

**Electronic Mail on:**

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By:   
\_\_\_\_\_  
Anita R. Tardugno, PLS  
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# Aleutian Islands

## Aleutian Islands



Geography	
Location	Pacific Ocean, Bering Sea
Total Islands	>300
Major Islands	Unalaska Island
Area	6821 sq mi (17666 km <sup>2</sup> )
Length	1200 mi (1900 km)
Country	
 United States	
State	 Alaska
Largest city	Unalaska (pop. 4,283)
Demographics	
Population	8,162 (as of 2000)
Ethnic groups	Aleut

The **Aleutian Islands** (English pronunciation: /əˈl(j)uːʃən/; possibly from Chukchi *aliat*, "island") are a chain of more than 300 small volcanic islands, forming part of the Aleutian Arc in the Northern Pacific Ocean, occupying an area of 6,821 sq mi (17,666 km<sup>2</sup>) and extending about 1200 mi (1900 km) westward from the Alaska Peninsula toward the Kamchatka Peninsula thus marking a line between the Bering Sea and the Pacific Gulf of Alaska. Crossing longitude 180°, they are the westernmost part of the United States (and by one definition the easternmost; *see Extreme points of the United States*). Nearly all the archipelago is part of Alaska and usually considered as being in the "Alaskan Bush", but at the extreme western end the small, geologically-related, and remote Commander Islands are in Russia. The islands, with their 57 volcanoes, are in the northern part of the Pacific Ring of Fire. The Alaska Marine Highway passes through the islands.

Physiographically, they are a distinct section of the larger Pacific Border province, which in turn is part of the larger Pacific Mountain System physiographic division.

## Geography

The islands, known before 1867 as the Catherine Archipelago, comprise five groups (east to west): the Fox, Islands of Four Mountains, Andreanof, Rat, and Near island groups (with Buldir Island halfway between Favian and Diana Islands, but part of neither group). They are all located between 51° and 55°N latitude and 172°E and 163°W longitude. The largest islands in the Aleutians are Attu (also the nearest to the mainland), and Unalaska, Umnak and Akun in the Fox Islands.

The axis of the archipelago near the mainland of Alaska has a southwest trend, but near the 179th meridian east its direction changes to the northwest. This change of direction corresponds to a curve in the line of volcanic fissures that have contributed their products to the building of the islands. Such curved chains are repeated about the Pacific Ocean in the Kuril Islands, the Japanese chain, and in the Philippines. All these island arcs are at the edge of the Pacific Plate and experience much seismic activity, but are still habitable; the Aleutians lie between the Pacific and North American tectonic plates. The general elevation is greatest in the eastern islands and least in the western. The island chain is a western continuation of the Aleutian Range on the mainland.

The great majority of the islands bear evident marks of volcanic origin, and there are numerous volcanic cones on the north side of the chain, some of them active; many of the islands, however, are not wholly volcanic, but contain crystalline or sedimentary rocks, and also amber and beds of lignite. The coasts are rocky and surf-worn, and the approaches are exceedingly dangerous, the land rising immediately from the coasts to steep, bold mountains.

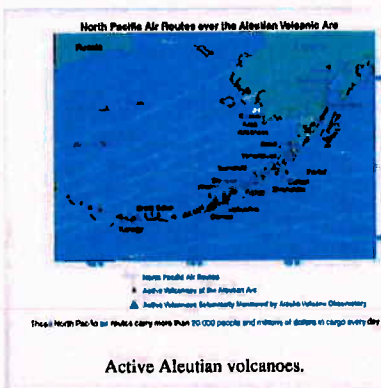
These volcanic islands reach heights of 6200 feet (1900 m). Makushin Volcano (5691 feet (1735 m)) located on Unalaska Island, is not quite visible from within the town of Unalaska, though the steam rising from its cone is visible on a (rare) clear day. Denizens of Unalaska need only to climb one of the smaller hills in the area, such as Pyramid Peak or Mt. Newhall, to get a good look at the snow-covered cone. The volcanic Bogoslof and Fire Islands, which rose from the sea in 1796 and 1883 respectively, lie about 30 miles (50 km) west of Unalaska Bay.



Unalaska Island in the Aleutian Islands.



the Aleutian Islands from 32,000 feet.



Active Aleutian volcanoes.

### The Aleutians seen from space

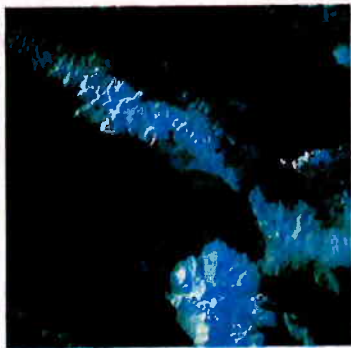
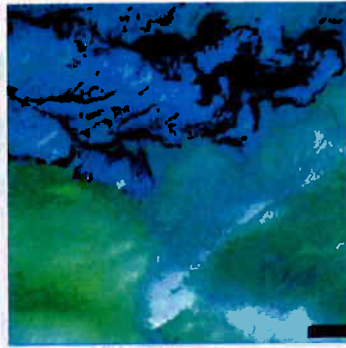


Image of the islands taken by the STS-56 crew.



These cloud formations were seen over the western Aleutian Islands.



ASTER image of the islands.

### Climate

The climate of the islands is oceanic, with moderate and fairly uniform temperatures and heavy rainfall. Fogs are almost constant. Summer weather is much cooler than Southeast Alaska (Sitka), but the winter temperature of the islands and of the Alaska Panhandle is very nearly the same. During the winter time the islands are the center for the semi-permanent low-pressure area called Aleutian low.

The mean annual temperature for Unalaska, the most populated island of the group, is about 38°F (3°C), being about 30°F (-1°C) in January and about 52 °F (11 °C) in August. The highest and lowest temperatures recorded on the islands are 78°F (26°C) and 5°F (-15°C) respectively. The average annual rainfall is about 80 inches (2000 mm), and Unalaska, with about 250 rainy days per year, is said to be one of the rainiest places within the United States.

### Flora

The growing season lasts about 135 days, from early in May until late in September, but agriculture is limited to the raising of a few vegetables. With the exception of some stunted willows, the vast majority of the chain is destitute of native trees. On some of the islands, such as Adak and Amaknak, there are a few coniferous trees growing, remnants of the Russian period. While tall trees grow in many cold climates, Aleutian conifers—some of them estimated to be two hundred years old—rarely reach a height of even 10 feet (3 m), and many of them are still less than 5 feet (1.5 m) tall. This is because the islands, much like the Falklands and other islands of similar latitudes, experience such strong winds that taller trees are vulnerable to snapping off.

Instead of trees, the islands are covered with a luxuriant, dense growth of herbage and shrubs, including crowberry, bluejoint, grasses, sedges, and many flowering plants. There are areas of peat bog near the coasts. Endemic plants include the endangered Aleutian Shield Fern.



Cape Promontory, Cape Lutkes on Unimak Island in the Aleutian Islands, Alaska.

## Fauna

The Aleutians are home to many large colonies of seabirds, including Buldir Island, with 21 breeding seabird species, including the Bering Sea-endemic Red-legged Kittiwake. Large seabird colonies are also present at Kiska, Gareloi, Semisopochnoi, Bogoslof, and others. The islands are also frequented by vagrant Asiatic birds, including Common Rosefinch, Siberian Rubythroat, Bluethroat, Lanceolated Warbler, and the first North American record of Intermediate Egret<sup>[1]</sup>

The habitats of the Aleutians are largely unspoiled but wildlife is affected by competition from introduced species such as cattle, caribou, and foxes. Radioactivity is still present in the environment following the nuclear testing on Amchitka in 1971. Today almost all the aleutians are protected as part of the Alaska Maritime National Wildlife Refuge and the Aleutian Islands Wilderness.<sup>[2]</sup>

## Economy

On the less mountainous islands, the raising of sheep and reindeer was once believed to be practicable. There are Bison on islands near Sand Point. Sheep raising seems to have died off with the advent of synthetic fibers which lowered the value of wool. During the 1980s, there were some llama being raised on Unalaska. Today, the economy is primarily based upon fishing, and, to a lesser extent, the presence of American military. The only crop is potato. Chickens are raised in barns under protection from cold.

## Demographics

The native people refer to themselves as Unangan, and are now generally known by most non-natives as the "Aleut".

The Aleut language is one of the two main branches of the Eskimo–Aleut language family. This family is not known to be related to any others.

In the 2000 census, there was a population of 8,162 on the islands, of whom 4,283 were living in the main settlement of Unalaska.

## History

### Prehistory

Because of the location of the islands, stretching like a broken bridge from Asia to America, many anthropologists believe they were a route of the first human occupants of the Americas. The earliest known evidence of human occupation in the Americas is much farther south; the early human sites in Alaska have probably been submerged by rising waters during the current interglacial period. People living in the Aleutian Islands developed fine skills in hunting, fishing, and basketry. Hunters made their weapons and watercraft. The baskets are noted for being finely woven with carefully shredded stalks of beach rye.

### Russian period

Explorers, traders and missionaries arrived from Russia beginning in 1741.

In 1741 the Russian government sent Vitus Bering, a Dane in the service of Russia, and Aleksei Chirikov, a Russian, in the ships *Saint Peter* and *Saint Paul* on a voyage of discovery in the Northern Pacific. After the ships were separated by a storm, Chirikov discovered several eastern islands of the Aleutian group, and Bering discovered several of the western islands, finally being wrecked and losing his life on the island of the Komandorskis (Commander Islands) that now bears his name (Bering Island). The survivors of Bering's party reached the Kamchatka Peninsula in a boat constructed from the wreckage of their ship, and reported that the islands were rich in fur-bearing animals.

Siberian fur hunters flocked to the Commander Islands and gradually moved eastward across the Aleutian Islands to the mainland. In this manner, Russia gained a foothold on the northwestern coast of North America. The Aleutian Islands consequently belonged to Russia, until that country transferred all its possessions in North America to the United States in 1867.

During the consolidation of the Russian-American Company there was sporadic conflict with the native population (frequently disastrous to the poorly-armed and vastly-outnumbered Russians). The colonies soon entered a relatively stable state based on cooperation, intermarriage, and official policies that provided social status, education, and professional training to children of mixed Aleut-Russian birth.<sup>[3]</sup> Within a generation or two the day-to-day administration of the Russian-American colonies was largely in the hands of native-born Alaskans. Reversing the usual trend in colonization where indigenous technologies are replaced, the Russians adopted the Aleut kayak, or baidarka, sea otter hunting techniques, and the working of native copper deposits. The Russians instituted public education, preservation of the Aleut language through transliteration of religious and other texts into Aleut via an adaptation of the Cyrillic alphabet, vaccination of the native population against smallpox, and science-based sea mammal conservation policies that were far ahead of their time.<sup>[4]</sup>

By 1760, the Russian merchant Andrian Tolstykh had made a detailed census in the vicinity of Adak and extended Russian citizenship to the Aleuts.

During his third and last voyage, in 1778, Captain James Cook surveyed the eastern portion of the Aleutian archipelago, accurately determined the position of some of the more important islands, and corrected many errors of former navigators.

#### **Christian influences**

Among the first Christian missionaries to arrive in the Aleutian Islands was a party of ten Russian Orthodox monks and priests, who arrived in 1793. Within two years, a monk named Herman was the only survivor of that party. He settled on Spruce Island, near Kodiak Island, and often defended the rights of the Aleuts against the Russian trading companies. He is now known in the Orthodox Church as Saint Herman of Alaska.

Another early Christian missionary of the Russian Orthodox Church was Father Veniaminov who arrived in Unalaska in 1824. He was named Bishop Innokentii in 1840 and moved to Sitka. He is now known in the Orthodox Church as Saint Innocent of Alaska.

The principal settlements were on Unalaska Island. The oldest was Iliuliuk (also called Unalaska), settled in 1760-1775, with a customs house and an Orthodox church.

#### **U.S. possession**

After the American purchase of Alaska from Russia in 1867, further development took place. New buildings included a Methodist mission and orphanage, and the headquarters for a considerable fleet of United States revenue cutters which patrolled the sealing grounds of the Pribilof Islands. The first public school in Unalaska opened in 1883.

The U.S. Congress extended American citizenship to all Natives (and this law has been held to include the indigenous peoples of Alaska) in 1924.

A hospital was built in Unalaska in 1933 by the U.S. Bureau of Indian Affairs.

## World War II

During World War II, small parts of the Aleutian islands were occupied by Japanese forces, when Attu and Kiska were invaded in order to divert American forces away from the main Japanese attack at Midway Atoll. The U.S. Navy, having broken the Japanese naval codes, knew that this was just a diversion, and it did not expend large amounts of effort in defending the islands. More than 90 Americans were taken to Japan as prisoners of war. Most of the civilian population (over 800) of the Aleutians and Pribilofians were interned by the United States in camps in the Alaska Panhandle. During the Aleutian Islands Campaign, American and Canadian forces invaded Japanese-held Attu and defeated the Japanese, and subsequently regained control of all the islands. The islands were also a stopping point for hundreds of aircraft sent from California to Russia as part of the war effort.

Monday, June 3, 2002 was celebrated as Dutch Harbor Remembrance Day. The governor of Alaska ordered state flags lowered to half-staff to honor the 78 soldiers who died during the two-day Japanese air attack in 1942. The Aleutian World War II National Historic Area Visitors Center opened in June 2002.

## Recent and miscellaneous developments

The Alaska Native Claims Settlement Act became law in 1971. In 1977, the Ounalashka Corporation (from Unalaska) declared a dividend. This was the first village corporation to declare and pay a dividend to its shareholders.

In 1906 a new volcanic cone rose between the islets of Bogoslof and Grewingk, near Unalaska, followed by another in 1907. These cones were nearly demolished by an explosive eruption on September 1, 1907.

## Nuclear Testing on Amchitka

The United States Department of Energy (DOE) conducted underground tests of nuclear weapons on Amchitka Island from 1965 to 1971 as part of the Vela Uniform program. The final detonation, the *Cannikin*, was the largest underground nuclear explosion by the United States.

## References

- [1] <http://www.mun.ca/serg/Buldir/buldirbirds.html>
- [2] [http://www.worldwildlife.org/wildworld/profiles/terrestrial/na/na1102\\_full.html](http://www.worldwildlife.org/wildworld/profiles/terrestrial/na/na1102_full.html)
- [3] [http://www.edge.org/q2008/q08\\_9.html](http://www.edge.org/q2008/q08_9.html)
- [4] [http://www.edge.org/q2008/q08\\_9.html](http://www.edge.org/q2008/q08_9.html)

- This article incorporates text from a publication now in the public domain: Chisholm, Hugh, ed (1911). *Encyclopædia Britannica* (11th ed.). Cambridge University Press.

Total area of 6821 sq mi (17670 km<sup>2</sup>) from Encyclopædia Britannica Online (<http://www.britannica.com/ebi/article-9272796>)

## Further reading

- Gibson, Daniel D., and G. Vernon Byrd. *Birds of the Aleutian Islands, Alaska*. Cambridge, Mass: Nuttall Ornithological Club, 2007. ISBN 978-0-943610-73-3
- Ivanov, Viacheslav Vsevolodovich. *The Russian Orthodox Church of Alaska and the Aleutian Islands and Its Relation to Native American Traditions—An Attempt at a Multicultural Society, 1794-1912*. Washington, DC: Library of Congress, 1997. ISBN 0-16-048781-1
- Jochelson, Waldemar. *Archaeological Investigations in the Aleutian Islands*. Washington: Carnegie Institution of Washington, 1925.



### **External links**

- Seattle to Aleutian Island Expedition (<http://www.groundtruthtrekking.org/WildCoast.php>)
- U.S. Coast Pilot 9, Chapter 7, Aleutian Islands ([http://www.nauticalcharts.noaa.gov/nsd/coastpilot/files/cp9/CP9-27ed-Ch07\\_9.pdf](http://www.nauticalcharts.noaa.gov/nsd/coastpilot/files/cp9/CP9-27ed-Ch07_9.pdf))

## Article Sources and Contributors

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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

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**AFFIDAVIT OF TAYLOR R. BICKFORD**

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, TAYLOR BICKFORD, being first duly sworn, depose and state as follows:

1. I am the Executive Director of Defendant the Alaska Redistricting Board (“the Board”) and have personal knowledge of and can testify to all of the facts set forth below.
2. Prior to adopting its Proclamation Plan, between May 19<sup>th</sup> and June 6<sup>th</sup>, the Board carefully considered a number of alternative plans that did not split the Aleutians.
3. One plan, generally referred to as the “TB Plan,” was created by staff with the input of Board members; it took the unique approach of changing the historical makeup of House District 40 by dividing the North Slope Borough and the Arctic Northwest Borough into separate districts.
4. A second plan, referred to as the “PAME Plan” was created by Board members Greene and McConnochie, with input from staff and other Board members.
5. The Board also carefully considered the various alternative plans submitted by those groups who were actively involved in the redistricting process.
6. All of these plans were ultimately rejected due to the problems outlined in the Board’s preclearance submission statement.

7. The Board, led by Board members Green and McConnochie, continued to try and create a plan that would pass DOJ scrutiny.

8. For reasons outlined in the Board record, it was determined that the only way to meet DOJ criteria and avoid retrogression was to draw a plan that included a House district that combined the communities of the Western Aleutians with the Bethel region.

9. On Wednesday, September 14, 2011, Board Chair John Torgerson, Board Member Marie Greene, Board Counsel Michael White, the Board's VRA expert Lisa Handley, and I met with representatives of the Voting Section of the Civil Rights Division of the United States Department of Justice ("DOJ") at their offices in Washington D.C.

10. The purpose of that meeting was to discuss the Board's Preclearance Submission under Section 5 of the federal Voting Rights Act and answer any questions.

11. At that meeting the Board representatives, led by Board Chair Torgerson, made a presentation to DOJ explaining its Preclearance Submission and advocating for preclearance. At the end of the Board's presentation, the only substantive questions asked by the DOJ representatives related to the treatment of Alaska Native incumbents by the Proclamation Plan, including whether any Alaska Native incumbents were removed from a Benchmark Alaska Native District or paired with other incumbents.

**FURTHER YOUR AFFIANT SAYETH NAUGHT.**



Taylor R. Bickford

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601 West Fifth Avenue  
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Anchorage, AK 99501  
Phone: (907) 263-6300  
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SUBSCRIBED AND SWORN to before me at Anchorage, Alaska this 13<sup>th</sup> day of December, 2011.



Anita R. Tardugno  
Notary Public in and for the State of Alaska  
My Commission Expires: 1/1/2012

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of December 2011, a true and correct copy of the foregoing document was served on the following via:

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**ORDER RE CONTIGUITY OF HOUSE DISTRICT 37**

Upon careful review and consideration of Plaintiffs George Riley and Ronald Dearborn's Motion for Summary Judgment: Contiguity HD 37, Defendant Alaska Redistricting Board's Opposition thereto and all other Matters in the Record, the Court hereby finds and **ORDERS** as follows:

1. The configuration of House District 37, including the splitting of the Aleutians Islands, was necessitated and is justified by the Boards need to comply with the federal Voting Rights Act by creating a plan that was not retrogressive and would be precleared by the Department of Justice under Section 5. The Riley Plaintiffs' Motion is therefore **DENIED**. The record before this Court actually establishes that there are no genuine issues of material fact and that the non-moving party, the Alaska Redistricting Board is entitled to summary judgment as a matter of law regarding splitting the Aleutian Islands. Accordingly, it is hereby **ORDERED** that House District 37 is constitutional and justified by the need to comply with the federal Voting Rights Act and summary judgment is hereby **GRANTED** in favor of the Board under Alaska R. Civ. P. 56(c).

2. House District 37 meets the contiguity requirements of Article VI, Section 6 of the Alaska Constitution and is therefore constitutional. The Riley Plaintiffs' Motion is therefore **DENIED**. The record before this Court actually establishes that there are no genuine issues of material fact and that the non-moving party, the Alaska Redistricting Board is entitled

to summary judgment as a matter of law on the issue of contiguity. To the extent the Board was required to depart from strict adherence to the contiguity requirements of the Alaska Constitution, that departure was necessitated and justified by its need to comply with the federal Voting Rights Act. Accordingly, it is hereby **ORDERED** that House District 37 meets the contiguity requirements of the Alaska Constitution and summary judgment is hereby **GRANTED** in favor of the Board under Alaska R. Civ. P. 56(c).

DATED at Fairbanks, Alaska this \_\_\_\_ day of December 2011.

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MICHAEL P. McCONAHY  
Superior Court Judge

**CERTIFICATE OF SERVICE**

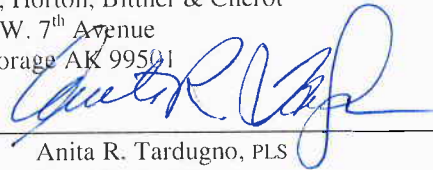
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**ORDER RE CONTIGUITY OF HOUSE DISTRICT 37**  
**[ALTERNATIVE]**

Upon careful review and consideration of Plaintiffs George Riley and Ronald Dearborn's Motion for Summary Judgment: Contiguity HD 37, Defendant Alaska Redistricting Board's Opposition thereto and all other Matters in the Record, the Court hereby finds and **ORDERS** as follows:

1. There are genuine issue of material fact regarding whether the configuration of House District 37, including the splitting of the Aleutians Islands, was necessitated by the Boards need to comply with the federal Voting Rights Act by creating a plan that was not retrogressive and would be precleared by the Department of Justice under Section 5. The Riley Plaintiffs' Motion regarding the contiguity of House District 37 as to splitting the Aleutian Islands is therefore **DENIED**.

2. There are genuine issue of material fact regarding whether the configuration of House District 37 meets the contiguity requirements of Article VI, Section 6 of the Alaska Constitution. The Riley Plaintiffs' Motion regarding the "open seas" contiguity of House District 37 is therefore **DENIED**.

DATED at Fairbanks, Alaska this \_\_\_\_ day of December 2011.



**CERTIFICATE OF SERVICE**

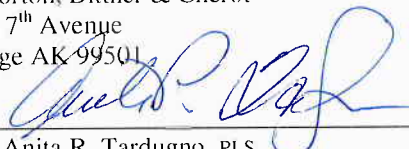
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