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.

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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."[1]

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)).

[1] 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.

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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

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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

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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.[2]

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.][3]

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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[2] 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.

[3] 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.]

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look" at two other alternative plans for the Alaska Native districts created by the Board and/or its staff between May 19th and June 6th 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

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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,

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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

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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

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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).[4] 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.")].[5] 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.");[6] Affidavit of John Torgerson at ¶ 3 ("Torgerson Aff.");[7] Bickford Aff. at ¶ 9-11).]

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[4] 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).

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

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

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

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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 <u>when you redraw you want to keep Native incumbents who are also Native-preferred candidates of choice</u>, candidates of choice of Native voters, in a <u>district in which they have a chance to win</u>. <u>You don't want to pair them if you can avoid it</u>.** 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. **<u>But you want to avoid that if possible</u>. 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

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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

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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

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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.

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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 THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

IN RE 2011 REDISTRICTING CASES)

Case No. 4FA-11-1935 CI

DEPOSITION OF THEODORE S. ARRINGTON, Ph.D.

Washington, D.C.

Wednesday, November 23, 2011

Reported by:

John L. Harmonson, RPR

Job No. 43927

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

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

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

A. I do.

Q. That was done after the fact?

A. That's correct.

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

A. That's correct.

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

A. That's correct.

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