

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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**DEFENDANT ALASKA REDISTRICTING BOARD'S LIMITED
 NON-OPPOSITION TO RILEY ET AL. PLAINTIFFS' MOTION FOR
 LAW OF THE CASE REGARDING DISTRICT 38,
 SPLITTING THE EXCESS POPULATION OF THE FAIRBANKS
 NORTH STAR BOROUGH, AND BURDEN OF PROOF**

It appears George Riley and Ronald Dearborn ("Riley Plaintiffs") have moved the Court to establish the burden of proof is on Defendant Alaska Redistricting Board ("Board") to provide legitimate and non-discriminatory reasons for (1) deviation from the socio-economic integration standard of the Alaska Constitution for House District 38, and (2) splitting the excess population of the Fairbanks North Star Borough between two House districts. Although the Plaintiffs sometime refer to summary judgment in the motion and proposed order, they make no such argument in the accompanying memorandum for summary judgment. The Board therefore treats their motion as a request for a determination of a ruling for "the law of the case" on the two points outlined above, and shall address the Riley Plaintiffs' arguments with this understanding.

First, the Board does not dispute that under Alaska law it has the burden to provide legitimate and non-discriminatory reasons for its configuration of House District 38.¹ The Board does, however, dispute the Riley Plaintiffs' characterization of this Court's order regarding House District 38. Since litigation began, the Board has never denied and even

¹ *Hickel v. Southeast Conference*, 846 P.2d 38, 46-52 (Alaska 1992).

admitted “District 38, as a whole, probably does not consist of a relatively integrated socio-economic area.” [See Board’s Answer to Complaint of Plaintiffs Fairbanks North Star Borough and Timothy Beck, ¶ 16.] The Board does, however, dispute the Riley Plaintiffs’ claim that House District 38 “does not comprise ‘as nearly as practicable’ a relatively socio-economically integrated area.” [Riley Memo. at 3.] The Board was justified in the configuration of House District 38 due to its need to comply with the federal Voting Rights Act. Therefore, House District 38 is “as nearly as practicable” socio-economically integrated.

The Court has reserved this issue for trial, and the Riley Plaintiffs do not substantively dispute that the Voting Rights Act required the configuration of House District 38 in their motion. To the extent the Riley Plaintiffs are asking this court to rule it is the Board’s burden of proof that the Voting Rights Act did in fact require deviation from constitutional standard of socio-economic integration, the Board does not oppose their motion. If the Riley Plaintiffs are trying to obtain summary judgment without making such an argument, the Board vehemently opposes such a tactic.

Second, the Board does not dispute that under Alaska law it has the burden to provide legitimate and non-discriminatory reasons for its decision to divide the Fairbanks North Star Borough’s (“FNSB”) excess population.² The Board has acknowledged this in the record, which includes the confidential legal memorandum cited by the Riley Plaintiffs. According to that memorandum:

² *Hickel v. Southeast Conference*, 846 P.2d at 46-52 (Alaska 1992).

In the event the Board determines it necessary to split a borough's excess population due to other legal requirements, the Board should make a record to support that its decision was the result of legitimate, non-discriminatory polices.³

The parties, therefore, do not dispute that the Board has the burden of proof with respect to providing non-discriminatory reasons for the decision to divide the FNSB's excess population.

The Board does not, however, agree with the remainder of the Riley Plaintiffs' arguments, which have nothing to do with the Riley Plaintiffs' "rule of law" argument. The title of the Riley Plaintiffs' motion is "Riley et al. Plaintiff's [*sic*] Motion for Rule of Law of the Case Regarding District 38, Splitting the Excess Population of the Fairbanks North Star Borough, and Burden of Proof." But the Riley Plaintiffs' motion includes references to a request for summary judgment. In the first sentence of the motion, the Riley Plaintiffs state that they are moving for "summary judgment that [*sic*] and the law of the case." [Riley Memo. at 1.] The footer calls the Riley Plaintiffs' motion a summary judgment motion. [*Id.* at footer.]

The Riley Plaintiffs' proposed order requests summary judgment and the law of the case:

...Plaintiffs (*sic*) motion for summary judgment that (*sic*) and the law of the case that the Alaska Redistricting Board split the excess population of the Fairbanks North Star Borough between two districts and, therefore, the Alaska Restricting Board has the burden of proof to establish that such decisions are necessary for legitimate, non-discriminatory purposes..."

[*Id.* at Proposed Order.]

The Riley Plaintiffs did not cite to the Alaska Civil Rule 56 standard for summary judgment, and did not include substantive arguments regarding the Board's configuration of House District 38 as justified by the Voting Rights Act or the Board's decision to divide the FNSB's excess population. It is possible that the reference to the summary judgment is an

³ Confidential Legal Memorandum from Michael D. White to the Alaska Redistricting Board, dated May 13, 2011 at 5 [ARB00005934-ARB00005939.]

inadvertent mistake by the Riley Plaintiffs. Out of an abundance of caution, the Board states that it indeed disputes all arguments that the Riley Plaintiffs are entitled to summary judgment as to the configuration of House District 38 and the Board's decision to divide the FNSB's excess population. The Riley Plaintiffs are not entitled to summary judgment in this respect.

The Board requests that this Court enter its proposed order, outlining the Board's burden with respect to its configuration of House District 38 and decision to divide the FNSB's excess population, as well as the justifications for House District 38. The Riley Plaintiffs are not entitled to summary judgment on either point.

DATED at Anchorage, Alaska this 16th day of December 2011.

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CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of December 2011, a true and correct copy of the foregoing document was served on the following via:

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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

**ORDER REGARDING RILEY PLAINTIFFS' MOTION FOR
RULE OF LAW OF THE CASE REGARDING HOUSE DISTRICT 38
AND BURDEN OF PROOF**

The Court having reviewed the Riley Plaintiffs' "Motion for Rule of Law of the Case Regarding District 38, Splitting the Excess Population of the Fairbanks North Star Borough, and Burden of Proof" ("Motion"), the Alaska Redistricting Board's Limited Opposition, any reply thereto, and all other matters in the record, and otherwise being fully advised in the premises, finds and hereby **ORDERS** as follows:

The Motion is **GRANTED** with respect to the arguments that

1. Under Alaska law, the Board has the burden at trial to provide legitimate and non-discriminatory reasons for its decision to divide the Fairbanks North Star Borough's excess population; and

2. Under Alaska law, the Board has the burden at trial to establish that its configuration of House District 38 was necessitated by the Board's need to create a plan that was not retrogressive and therefore would comply with Section 5 of the federal Voting Rights Act; and

3. Any and all remaining arguments in the Motion are **DENIED**.

DATED at Fairbanks, Alaska this ____ day of _____, 2011.

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Hon. Michael P. McConahy
Superior Court Judge

CERTIFICATE OF SERVICE

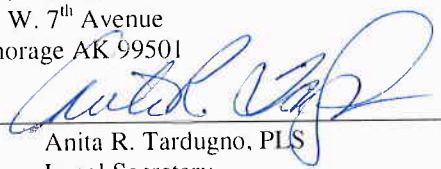
I hereby certify that on the 16th day of December 2011, a true and correct copy of the foregoing document was served on the following via:

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