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PATTON BOGGS LLP

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

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IN RE: 2011 REDISTRICTING CASES:)
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Case No. 4FA-11-2209CI

Order on the Plaintiffs' Motion for Summary Judgment: Invalidity of House District 38

A. Motion Practice Background

The Riley/Dearborn Plaintiffs filed a motion for summary judgment: Invalidity of House District 38. The Board filed its opposition on 16 December 2011. The Plaintiffs replied on 21 December 2011. Oral argument, requested by the Plaintiffs, was held on 22 December 2011.

B. General Arguments

The Plaintiffs seek summary judgment that House District 38 is not justified by the Voting Rights Act. The Plaintiffs argue that the Board did not make adequate findings to justify House District 38. The Plaintiffs request the court remand the case back to the Board to make findings that would allow meaningful judicial review.

The Board contends that House District 38 is justified by the Voting Rights Act. The Board argues that it did make appropriate and legally sufficient findings in the Board Record and Proclamation Report that the Voting Rights Act required the configuration of House District 38.

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.¹ In determining whether there is a genuine issue of material fact, all “reasonable inferences of fact from proffered materials must be drawn against the moving party ... and in favor of the non moving party.”² “Once the moving party has established a prima facie case, 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.”³ Mere assertions of fact in pleadings and memoranda cannot raise genuine issues of fact.⁴

C. Voting Rights Act

The court has already ruled that House District 38 is not socio-economically integrated.⁵ The parties have already stipulated and the court has agreed that the Board has the burden of proving that the configuration of House District 38 was required by the Voting Rights Act.⁶ Both parties have made conclusory statements that House District 38 either is or is not required by the Voting Rights Act. Neither party has proven their argument by specific facts or admissible evidence. There is clearly a genuine issue of material fact whether House District 38

¹ Alaska R. Civ. P. 56.

² *Kiester v. Humana Hosp. Alaska, Inc.*, 843 P.2d 1219, 1222 (Alaska 1992) (quoting *Sea Lion Corp. v. Air Logistics of Alaska*, 787 P.2d 109, 116 (Alaska 1990)).

³ *Philbin v. Matanuska-Susitna Borough*, 991 P.2d 1263, 1265–66 (Alaska 1999) (quotations omitted).

⁴ *Lord v. Wilcox*, 813 P.2d 656, 658 n. 4 (Alaska 1991) (citing *State, Dep't of Highways v. Green*, 586 P.2d 595, 606 n. 32 (Alaska 1978)). Nor can unverified pleadings be relied on. See *Jennings v. State*, 566 P.2d 1304, 1309-10 (Alaska 1977).

⁵ See the court's 25 October 2011 Order.

⁶ See the court's 23 December 2011 Order.


is required by the Voting Rights Act. This issue will proceed to trial. Summary Judgment is DENIED.

D. Findings by the Board

The Plaintiffs argue that the Board did not make adequate findings regarding House District 38. The Board argues that it did. There is clearly a genuine issue of material fact as to whether there are adequate findings to support the configuration of House District 38. If at trial the court finds that the Board did not make adequate findings, the court will have the option of remanding the case back to the Board to make adequate findings. However, as stated earlier, the burden is on the Board to prove that House District 38 is required by the Voting Rights Act. If the Board's findings are inadequate for judicial review, they will not have met their burden.

The Board's Motion for Summary Judgment: Invalidity of House District 38 is DENIED.

DATED at Fairbanks, Alaska, this 23rd of December 2011.



Michael P. McConahy
Superior Court Judge

Notice Regarding Reconsideration

Given the expedited process and the impending trial on the merits, timelines are necessary for reconsideration motions. Therefore any motion for reconsideration of this order must be filed and served no later than noon on 30 December 2011. Responses will be allowed without further order and must be filed and served no later than noon on 3 January 2012. If no order is issued by this court by the close of business on 6 January 2012 then any motion for reconsideration shall be deemed denied.