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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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Case No. 4FA-11-2209CI

***Order Regarding the Law of the Case and the Splitting of the Excess Population of the Fairbanks North Star Borough***

**A. Motion Practice Background**

The Riley/Dearborn Plaintiffs filed a motion for partial summary judgment<sup>1</sup> and the law of the case on 5 December 2011 that the Board split the excess population of the Fairbanks North Star Borough ("FNSB") between two districts, and therefore, the Board has the burden of proof to establish that such decisions are necessary for legitimate, non-discriminatory purposes. The Board filed its limited non-opposition on 16 December 2011. The Plaintiffs replied on 20 December 2011. Oral argument was held on 22 December 2011.

<sup>1</sup> While the Plaintiffs have used the words "summary judgment," the court agrees with the Board that this is a motion regarding the law of the case and has treated it as such.

The decision set forth below is based upon the evidence adduced by the parties in support of their respective positions as well as the extensive Board record required to be filed both with the trial and supreme court.<sup>2</sup>

### **B. General Arguments**

The Plaintiffs contend that the Board split the excess population of the FNSB between two districts and therefore, the Board has the burden of proof to establish that such decisions are necessary for legitimate, non-discriminatory purposes. The Plaintiffs additionally argue that based on the court's previous ruling that House District 38 is not socio-economically integrated, the Board has the burden of proof to show a legitimate non-discriminatory reason for why House District 38 is not socio-economically integrated.<sup>3</sup>

The Board agrees that the burden of proof is on the Board to provide legitimate, non-discriminatory reasons for the splitting of the excess population of the FNSB between two house districts and the deviation from the socio-economic integration standard of the Alaska Constitution for House District 38.

### **C. Excess Population**

The Alaska Supreme Court has addressed the issue of excess population of boroughs as follows:

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<sup>2</sup> See Alaska R. Civ. P. 90.8(d). A summary of the extensive Board Transcript will be incorporated into the post-trial findings.

<sup>3</sup> The Plaintiffs filed a motion for partial summary judgment that House District 38 is not socio-economically integrated. The court granted the motion in part on 25 October 2011.

“We recognize that it may be necessary to divide a borough so that its excess population is allocated to a district situated elsewhere. However, where possible, all of a municipality's excess population should go to one other district in order to maximize effective representation of the excess group.<sup>4</sup> This result is compelled not only by the article VI, section 6 requirements, but also by the state equal protection clause which guarantees the right to proportional geographic representation.”<sup>5</sup>

Each district created by the Board must contain a population as near as practicable to the quotient obtained by dividing the population of the state by 40. The ideal district based upon the 2010 census consists of 17,555 residents. According to the U.S. Census Data, the FNSB has a population 97,581 residents. The Board's plan created five house districts (Districts 1-5) wholly within FNSB's boundaries and divided the excess population between two other districts (District 38 and 6).

In its report accompanying the proclamation, the Board stated the following with respect to District 38 and FNSB's excess population:

“Compliance with the federal Voting Rights Act had ripple effects across the state. Population from rural areas had to be combined with population from urban areas to allow for the creation of Alaska Native districts. For example, in order to bring House District 38 to within constitutional one-person one-vote standards, it had to pick up population from the more rural areas of the Fairbanks North Star Borough. As a result, the excess population in the Fairbanks North Star Borough had to be split across two districts rather than placed into a single district, because District 38 could not absorb all of Fairbanks excess population and still maintain the necessary Alaska Native voting age population required by the federal Voting Rights Act. The balance of the Fairbanks North Star Borough's

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<sup>4</sup> Dividing the municipality's excess population among a number of districts would tend to dilute the effectiveness of the votes of those in the excess population group. Their collective votes in a single district would speak with a stronger voice than if distributed among several districts.

<sup>5</sup> *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1369, 1372-73 (Alaska 1987) (stating that a primary indication of intentional discrimination against a geographic region was a lack of adherence to established political subdivision boundaries).

remaining excess population was placed into House District 6, which closes resembles the configuration of House District 12.”<sup>6</sup>


Since the parties agree and have cited the correct law of the case regarding excess population, the court grants the Plaintiff’s motion with respect to this point.

**D. Socio-Economic Integration of House District 38**

The parties correctly agree that the Board has the burden to provide legitimate, non-discriminatory reasons for its configuration of House District 38. While there is some minor argument over the language used, the court finds that this is merely semantics and does not affect the Board’s burden or the law of the case. The court ruled on 25 October 2011 that “House District 38 does not comprise a relatively integrated socio-economic area within the meaning of Article VI, Section 6 of the Alaska Constitution.”

The Plaintiffs’ Motion on the Law of the Case is GRANTED.

**DATED** at Fairbanks, Alaska, this 23<sup>rd</sup> of December 2011.



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Michael P. McConahy  
Superior Court Judge

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<sup>6</sup> The Plaintiffs note that the Board was instructed that, “In the event the Board determines it is necessary to split a borough’s excess population due to other legal requirements, the Board should make a record to support that its decision was the result of legitimate, non-discriminatory process.” ARB00005934-5939.

***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.