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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 Summary Judgment: Invalid Process***

**A. Motion Practice Background**

The Riley/Dearborn Plaintiffs filed a motion for summary judgment: invalid process. 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.

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>1</sup>

**B. General Arguments**

The Plaintiffs contend that the 2011 Final Plan for the redistricting of Alaska's legislative districts adopted by the Board is invalid because the Board followed an invalid

<sup>1</sup> Alaska R. Civ. P. 90.8(d). A summary of the extensive Board Transcript will be incorporated into the post-trial findings.

process in developing the plan. The Plaintiffs ultimately argue that the Board did not attempt to draft a plan that complied with the Alaska Constitution prior to pursuing other alternatives. The Plaintiffs ask the court to remand the matter back to the Board to undertake the correct process that they argue is mandated by a footnote in *Hickel*.<sup>2</sup>

The Board does not deny that it started by drawing the minority districts, on the advice of their Voting Rights Act expert, Dr. Handley. The Board argues that the Plaintiffs take the footnote in *Hickel* out of context and argue that the language does not create a “mandate” that a certain methodology be followed. The Board also argues that it is free to adopt its own procedures. The Board additionally argues that the Board in *Hickel* was under a completely different timeline,<sup>3</sup> so even if the process were mandated, it is no longer good law given the shortened timeline under the 1998 amendments to Article VI, Section 10.<sup>4</sup>

The Plaintiffs rely on the following footnote from *Hickel* that the Board is required to look at the Alaska Constitution first,

“Our conclusion underscores the error in the Board's methodology in reconciling the requirements of the Voting Rights Act with the requirements of the Alaska Constitution. The Board was advised to expect that any challenges to the reapportionment plan would come under the

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<sup>2</sup> The Plaintiffs also argued at oral argument that the Alaska redistricting cases always go to court because the Board always fails to start with the Alaska Constitution.

<sup>3</sup> As amended in 1998, Article VI, Section 10 of the Alaska Constitution required the Board to adopt a proposed plan or plans within thirty days of receiving the official census report, to then hold hearings on those proposed plans, and to adopt a final plan within ninety days of receiving the census reports. Former Article VI, Section 10 required the Board to adopt a proposed plan and submit it to the governor within ninety days of receiving census data; the governor then had an additional ninety days during which he could notify the Board's proposal and issue the final proclamation of redistricting. No public hearings were required. The Plaintiffs argue that the Board had time to start with the Alaska Constitution because they were able to create two board option plans.

<sup>4</sup> The Board also argued that other private groups drawing plans also started drawing the Alaska Native districts first.

newly amended section 2 of the Voting Rights Act. Consequently, the Board accorded minority voting strength priority above other factors, including the requirements of article VI, section 6 of the Alaska Constitution. This methodology resulted in proposed district 3, a district which does not comply with the requirements of the Alaska Constitution. However, proposed district 3 is not required by the Voting Rights Act, either.

Article VI, cl. 2 of the United States Constitution provides that “This Constitution, and the laws of the United States which shall be made in pursuance thereof ... shall be the supreme law of the land....” This mandates that provisions of state law, including state constitutional law, are void if they conflict with federal law. To the extent that the requirements of article VI, section 6 of the Alaska Constitution are inconsistent with the Voting Rights Act, those requirements must give way. However, to the extent that those requirements are not inconsistent, they must be given effect. The Voting Rights Act need not be elevated in stature so that the requirements of the Alaska Constitution are unnecessarily compromised.

The Board must first design a reapportionment plan based on the requirements of the Alaska Constitution. That plan then must be tested against the Voting Rights Act. A reapportionment plan may minimize article VI, section 6 requirements when minimization is the only means available to satisfy Voting Rights Act requirements.<sup>5</sup>

The court agrees with the Board. The court does not find that the footnote in *Hickel* created a mandate or a claim for invalid process. The *Hickel Court* discussed the principal that even though the Federal Voting Rights Act ultimately trumps the Alaska Constitution when there is a conflict, the requirements under the Alaska Constitution may not be compromised unless it is actually required. The court has previously ruled that House District 38 violates the Alaska Constitution.<sup>6</sup> The burden is on the Board to show that the configuration of the district is required by the Voting Rights Act. If the Board

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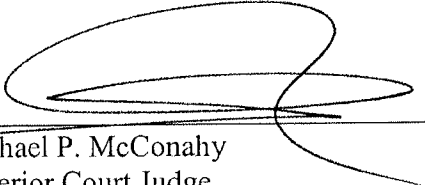
<sup>5</sup> *Hickel v. Southeast Conference*, 846 P.2d 38, 51 nt. 22 (Alaska, 1992).

<sup>6</sup> See the court’s 25 October 2011 Order.

cannot prove that the Voting Rights Act required the configuration of House District 38, the plan will be remanded back to the Board. This is the exact same approach the *Hickel Court* and the *2001 Redistricting Court* used when they concluded that districts violated the Alaska Constitution. The court finds that the Plaintiffs request to remand the entire plan back to the Board to start over is impractical and unnecessary.

The Plaintiffs' Motion for Summary Judgment: Invalid Process is DENIED.

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



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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 2011. If no order is issued by this court by the close of business on 6 January 2011 then any motion for reconsideration shall be deemed denied.