

that the Board failed to comply with the *Hickel* process mandated by the Alaska Supreme Court. The court agrees.

The Alaska Supreme Court ordered the Board to draw a plan under what is now being referred to as the *Hickel* process. The instructions for the *Hickel* process are as follows: "[t]he 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."³

Instead of redrawing a new plan that focused on the Alaska Constitution, there is no dispute that the Board used most of the districts from the Proclamation Plan, with the exception of the districts in Fairbanks and districts that were created to satisfy the Voting Rights Act.⁴ The Board did not make specific findings, by district, that each of the unchanged Proclamation Plan districts satisfied the requirements of the Alaska Constitution. The court finds that the Board's method did not comply with either the spirit or the letter of the Alaska Supreme Court's order and the *Hickel* process.

The Alaska Supreme Court order is clear: "It is undisputed that the Board began redistricting in March and April of 2011 by focusing on complying with the Voting Rights Act, thereby ignoring the process we mandated in *Hickel*."⁵ The effect of ignoring this process was clear both generally and specifically: "Because it did not follow the *Hickel* process, the Board cannot meaningfully demonstrate that the Proclamation Plan's Alaska constitutional deficiencies were necessitated by Voting Rights Act compliance,

³ Alaska Supreme Court Order No. 77 S-14441; *Hickel v. Southeast Conference*, 846 P.2d 38, 52 n.22 (Alaska 1992).

⁴ The Board also made adjustments to the districts in Kenai and Mat-Su due to population shift.

⁵ Alaska Supreme Court Order No. 77 S-14441, p. 3, ¶ 6.

nor can we reliably decide that question.”⁶ The Board was explicitly advised that the Alaska Supreme Court needed to be able to measure *each* district for constitutional compliance: “But these difficulties do not limit the Board’s responsibility to create a constitutionally compliant redistricting plan, nor do they ‘absolve this court of its duty to *independently measure each district against constitutional standards.*”⁷ (emphasis added; footnotes omitted).

The court finds the Board did not comply with the directive of the Alaska Supreme Court to draw and provide support for a *Hickel* plan. The argument that it adopted its previous plan to the extent there was no objection to various districts rings hollow in light of the Alaska Supreme Court’s finding the Board started with the VRA process first. The Board consistently advanced the VRA first approach below⁸, and this court erroneously accepted that methodology.⁹ Against this record, an assertion by the Board that its *Hickel* template does not change those elections districts that were not subject to direct or indirect successful legal challenge¹⁰ is insufficient, as is the conclusory assertion that all districts comply with the Alaska Constitution.¹¹ This court, like the Alaska Supreme Court, cannot reliably decide the preliminary question of state constitutionality on the instant record.

Additionally, the court finds that the Board did not comply with the *Hickel* process because the Board did not redraw Southeast Alaska based on the requirements of

⁶ Alaska Supreme Court Order No. 77 S-14441, p. 3, ¶ 7.

⁷ *Id.*, p. 5, ¶10.

⁸ *See, e.g.*, the Board’s December 16 2011 opposition to the plaintiff’s Motion for Summary Judgment Regarding Invalid Process.

⁹ Court’s December 23 2011 Order.

¹⁰ Board’s April 5 2012 Findings of Fact re Adoption of *Hickel* Plan, Notice of Compliance, Exhibit A, p. 4, ¶2.

¹¹ *Id.* Exhibit A, p. 5, ¶9.

the Alaska Constitution. While the court previously did rule that House District 32 in Southeast was “compact enough,”¹² this was in light of the Board’s argument that departure from strict adherence to the compactness requirement is justified by its need to draw a redistricting plan that avoids retrogression and complies with the Voting Rights Act.¹³ The court’s 12 December 2011 Order took into account the Board’s arguments that it needed to have an influence district in Southeast Alaska (House District 34), and that it needed to avoid pairing an Alaska Native Legislator (Representative Bill Thomas).¹⁴ In order to comply with the *Hickel* process, the Board must first redraw Southeast Alaska without any deviations based on the Voting Rights, specifically without an influence district and without any deviations based on avoiding the pairing of minority incumbents.

The court is aware of various deadlines in the electoral process; however, compliance with the *Hickel* process is necessary in order to move forward. The Alaska Supreme Court presaged that the 2012 elections may well need to be conducted under an interim redistricting plan.¹⁵ The immediacy of election deadlines does not excuse meaningful judicial review of constitutional issues. The plan is remanded back to the Board to comply with the *Hickel* process¹⁶ as follows:

1. The matter is REMANDED to the Board to draw a redistricting plan solely compliant with the Alaska Constitution and to make findings of fact sufficient to

¹² Court’s 12 December 2011 Order, pgs 14-15.

¹³ Court’s 12 December 2011 Order, pgs 6-7.

¹⁴ Concern about the Southeast districts were noted both by this court in its memorandum decision , pgs 104-105; 124-125; and 135-136, and the Alaska Supreme Court, Order No. 77 S-1444, p. 3, ¶6.

¹⁵ Alaska Supreme Court Order No. 77 S-14441, p. 6, ¶12.

¹⁶ The court notes that the Riley/Dearborn Plaintiffs suggest that the court should consider the appointment of masters. The court may consider this option if the Board is not able to follow the *Hickel* process on remand.

allow this court, and the Alaska Supreme Court, to “independently measure *each* district against constitutional standards.”

2. As part of drawing a plan compliant with the Alaska Constitution, the Board must draw house districts in Southeast Alaska without regard to influence districts or any VRA consideration. This court reiterates that its prior conclusion that the Southeast districts were “compact enough” was premised on considerations of the need for an influence district and to avoid pairing Native incumbents.

3. This court retains jurisdiction of the case pending the submission of the redistricting plan set out in #1 above.

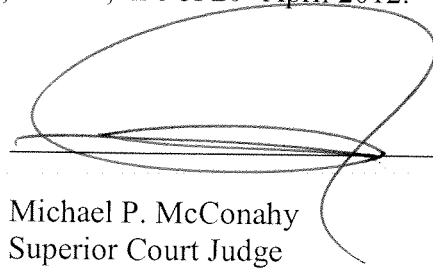
4. The timeframe to submit a plan compliant with this order is left to the Board. It is aware of the pending election deadlines and can compose its deadlines accordingly.

5. The intent of this order is to receive a plan from the Board that complies with the Alaska Constitution before considering any need to meet any VRA requirements. Given the advances of data and technology, this *Hickel* plan should be capable of quick determination, and should not be delayed because of VRA considerations. Once a *Hickel* plan is approved the matter will be remanded again to the Board to “endeavor to adopt a redistricting plan that includes the least deviation reasonably necessary to satisfy the Act, thereby preserving the mandates of the Alaska Constitution to the greatest extent possible.”¹⁷

¹⁷ Alaska Supreme Court Order No. 77 S-14441, p. 6, ¶ 12.

6. This remand order is STAYED for five business days, commencing from the distribution of this order, to allow the Board or any party or amicus presently before the court to seek emergency review from the Alaska Supreme Court.

DATED at Fairbanks, Alaska, this of 20^h April 2012.



Michael P. McConahy
Superior Court Judge

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