IN THE SUPREME COURT FOR THE STATE OF ALASKA

In Re 2011 Redistricting Cases	Supreme Court No. 14721
Trial Court Case No. 4FA-11-2209 CI	

PETITION FOR REVIEW FROM THE SUPERIOR COURT
FOURTH JUDICIAL DISTRICT AT FAIRBANKS
THE HONORABLE MICHAEL P. MCCONAHY

RESPONSE OF PETERSBURG PLAINTIFFS
TO ALASKA REDISTRICTING BOARD'S PETITION FOR REVIEW

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for the State of Alaska,
this 8th day of May 2012.

MARILYN MAY, CLERK

By: _____
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The City of Petersburg, Mark L. Jensen and Nancy C. Strand ("Petersburg Plaintiffs") submit the following response to the Petition for Review of the Alaska Redistricting Board ("Board").

I. INTRODUCTION.

This Court's remand order directed the Board in this manner:

> On remand, the Board ***must follow*** the *Hickel* process. If deviation from the Alaska Constitution is the ***only*** means available to satisfy the Voting Rights Act's requirements, the Board must endeavor to adopt a redistricting plan that includes the ***least deviation reasonably necessary*** to satisfy the Act, thereby preserving the mandate of the Alaska Constitution to the greatest extent possible.[1]

The Board did not follow this direction in districting Southeast Alaska on remand.[2] The Board's districting of Southeast Alaska in its initial Proclamation Plan plainly gave priority to obtaining preclearance under § 5 of the Voting Rights Act of 1965 ("VRA"),[3] rather than compliance with the Alaska Constitution. Notwithstanding its earlier focus on compliance with the VRA in districting Southeast Alaska, the Board also failed to follow the *Hickel* process in its Amended Proclamation Plan, simply adopting the original Proclamation Plan's districting of Southeast Alaska on the assumption that it complied with the Alaska Constitution.

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[1] Supreme Court Order No. 77 (March 14, 2012) ¶ 11 (emphasis added, footnotes omitted).

[2] Both the original Proclamation Plan and the Amended Proclamation Plan divide Southeast Alaska into the same four house districts: Districts 31 through 34. Exc. 2000, 2001. These districts in either plan are referred to herein as HD 31 through HD 34. Although for the sake of brevity the Petersburg Plaintiffs refer to the districting of Southeast Alaska, their concerns focus on HD 32 and HD 34. They have not raised any issues regarding HD 31 (Juneau) or HD 33 (Wrangell and Ketchikan).

[3] 42 U.S.C. § 1973c.

The Superior Court correctly held that HD 32 was "compact enough" under the Alaska Constitution only after taking VRA compliance into account, and the Board has not effectively refuted this holding. Moreover, as the Board itself acknowledged in the findings supporting its Amended Proclamation Plan, there in fact is no VRA justification for any deviation from compliance with the Alaska Constitution in districting Southeast Alaska. Thus, this Court either should direct the Board to adopt districting for Southeast Alaska that is relatively compact, *i.e.*, compact in comparison to alternative plans, such as the Modified RIGHTS Plan districting that the Petersburg Plaintiffs have advocated,[4] or in the interest of the expeditious completion of the redistricting process adopt such a plan itself.

II. ARGUMENT.

A. VRA Compliance Drove the Board's Creation of HD 32.

In its initial districting Southeast Alaska, including the creation of HD 32, the Board plainly gave priority to obtaining Department of Justice ("DOJ") preclearance of the Proclamation Plan under §5 of the VRA over the *Hickel* process prescribed by this Court. The Board stated explicitly that its districting of Southeast Alaska was driven by VRA concerns—maintaining an Alaska Native "influence" district in Southeast Alaska, and avoiding the pairing of an incumbent Alaska Native legislator with a non-Alaska Native incumbent:

> Southeast Alaska lost significant population (for example Benchmark District 5 was under populated by 22.02%) thus requiring the region to losse one House district and half of a Senate district. The

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[4] *See,* 8-9 below.

> Board was still able to maintain a district with a significant Alaska Native population which is likely an Alaska Native "influence" district. [Proclamation] House District 34 has a total Alaska Native population of 36.96% and an Alaska Native VAP of 32.85%. While several of the alternative plans had a Southeast Alaska Native District with a slightly higher (0.5 to 2.5%) total Alaska Native and Alaska Native VAP, the Board determined that it was more important to keep the incumbent Alaska Native Legislator from the Benchmark Alaska Native District in the Proclamation Alaska Native District and avoid pairing him with a non-Alaska Native incumbent.[5]

The Board's report accompanying its initial Redistricting Proclamation also acknowledged this priority:

> Another difficult challenge faced by the Board was caused by the significant population loss in Southeast Alaska. This required the region to lose one House district and half of a Senate district. ***It was also necessary to create an Alaska Native "influence" district in the region, House District 34, in order to comply with the federal Voting Rights Act.***[6]

The Superior Court also recognized the priority given to VRA concerns in the creation of HD 32: "While the court previously did rule that House District 32 in Southeast was 'compact enough,' 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."[7]

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[5] Excerpt of Record from Case No. S-14441 ("Orig. Exc.") 1241.
[6] Orig. Exc. 1136 (emphasis added).
[7] Exc. 688 (footnotes omitted).

B. The Board Did Not Follow the Hickel Process in Districting Southeast Alaska.

In its Amended Proclamation Plan the Board retained its initial districting of Southeast Alaska. Rather than reexamining the districting of Southeast Alaska for compliance with the Alaska Constitution, the Board relied on the facile assumption that the prior districting of Southeast Alaska met the requirements of the Alaska Constitution because nobody had successfully challenged it.[8]

Hastily glossing over compliance with the Alaska Constitution in this manner certainly does not amount to the "hard look" that the Board is required to take at issues returned to it on remand from this Court. This Court made the "hard look" requirement explicit in the 2001 redistricting litigation:

> Because the board was mistaken in its interpretation of the doctrine of proportionality, the board's range of choices [for redistricting Southcentral Alaska] was unduly limited. We therefore remand so the board can revisit the question of redistricting Southcentral Alaska unencumbered by this mistaken assumption.
>
> We do not direct the board to join parts of the Municipality of Anchorage and the Matanuska-Susitna Borough in a single district. We merely hold on the record before us that the doctrine of proportionality does not bar joinder. ***The board must take a hard look at options that it may have ignored based on its misinterpretation of the law.***[9]

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[8] Exc. 630.

[9] *In re 2001 Redistricting Cases*, 44 P.3d 141, 143-44 (Alaska 2002) (emphasis added). This "hard look" standard originated in judicial review of administrative decisions regarding environmental issues, particularly those involving "best interest" determinations required for sales or leases of state land under AS 38.05.035(e). This Court has described the application of this standard as follows:

> Where an agency fails to consider an important factor in making its decision, the decision will be regarded as arbitrary. As one distinguished judge has put it, the role of the court is to ensure that the agency "has

Districting based on an assumption that unchallenged Southeast Alaska districts in the initial Proclamation Plan met the requirements of Alaska Const. art. VI, § 6 fell far short of taking the "hard look" that compliance with the *Hickel* process required.

Moreover, in developing its Amended Proclamation Plan, the Board appears to have forgotten the priority that it gave to the VRA in the initial Proclamation Plan's districting of Southeast Alaska. The Board states that its "*Hickel* template" from which the Amended Proclamation Plan was derived "...does not change those election districts from the initial Proclamation Plan that: (1) were constructed to comply [with] Alaska constitutional redistricting requirements ***without reference to the VRA***..."[10] The Board included the initial Proclamation Plan's Southeast districts in this category: "The Board decided to use the districts in Anchorage, Southeast, and the North Slope as the starting point for a new plan based on the Supreme Court's mandate that the Board draw a plan whose districts complied with the Alaska Constitution without considerations to the VRA."[11] This revision in the Board's rationale for the districting of Southeast Alaska further supports the

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> given reasoned discretion to all the material facts and issues." The court exercises this aspect of its supervisory role with particular vigilance if it "becomes aware, especially from a combination of danger signals, that the agency has not really taken a '***hard look***' at the salient problems and has not genuinely engaged in reasoned decision making."

Southeast Alaska Conservation Council v. State, 665 P.2d 544, 548-49 (Alaska 1983), *quoting* Leventhal, Environmental Decision Making and the Role of the Courts, 122 U.Pa.L.Rev. 509, 511 (1974) (emphasis in original, footnotes omitted).

[10] Exc. 27 (emphasis added).

[11] Exc. 630. *See also*, Board Petition for Review, 3. However, despite its repeated disclaimers of concern for VRA compliance in districting Southeast Alaska, the Board argued in defense of the Amended Proclamation Plan that "[r]egardless of whether an influence district in Southeast is necessary for meeting the benchmark, ***the Board must still present the strongest plan possible to the DOJ***." Exc. 675 (emphasis added).

conclusion that the Board sidestepped the *Hickel* process in districting Southeast Alaska despite this Court's mandate.

C. HD 32 Is Not Relatively Compact.

The Superior Court correctly concluded that the Board needed to reexamine the compliance of HD 32 with the compactness requirement of art. VI, § 6 of the Alaska Constitution.[12] Such a reexamination would have revealed that HD 32 does not meet the compactness requirement.

This Court has prescribed a geometric definition of compactness. The term "compact," as used in the Alaska Constitution means, "'...having a small perimeter in relation to the area encompassed.'"[13] The Court has explained that:

> The most compact shape is a circle. Since it is not possible to divide Alaska into circles, it is obvious that the constitution calls only for relative compactness."[14]

Although one cannot divide Alaska into circles, "this does not mean that the compactness requirement is without substantive content."[15] The standard's substantive content is comparative: "[w]here there are two or more districts in a given area they can be compared on compactness grounds with other possible districts encompassing the same area."[16] Thus, a court should "look to the relative

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[12] Exc. 688.
[13] *Carpenter v. Hammond*, 667 P.2d 1204, 1218-1219 (Alaska 1983) (Matthews, J. concurring) Justice Matthews' discussion of compactness in *Carpenter* was adopted by the full court in *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1361 n. 13 (Alaska 1987).
[14] 667 P.2d at 1218-1219 (Matthews, J. concurring)
[15] *Id.*
[16] *Id.*

compactness of proposed and possible districts in determining whether a district is sufficiently compact."[17]

Significantly, Justice Matthews accompanied his discussion of compactness in *Carpenter* with a citation to a law review article that describes a quantitative method for comparing compactness.[18] Quantitative comparisons of compactness avoid the arbitrariness inherent in a visual approach to determine a district's relative compactness. The following tests directly compare the compactness of a district to the ideally compact shape of a circle, and thus measure compactness in a manner consistent with the definition of compactness under the Alaska Constitution:[19] (1) the Roeck Test,[20] (2) the Schwartzberg test,[21] (3) the Polsby-Popper test,[22] and (4) the Ehrenburg Test.[23] In contrast, other tests do not compare the shape of a district to that of a circle, and thus do not reflect the definition of compactness under the Alaska Constitution.[24] The Perimeter Test computes the sum of the perimeters

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[17] *Id.*
[18] Schwartzenberg, Reapportionment, Gerrymanders, and the Notion of "Compactness," 50 Minn.L.Rev. 443-446 (1966), Exc. 2002-2006; *Carpenter*, 667 P.2d at 1218 n. 3 (Matthews, J. concurring).
[19] Each of these tests is described in Exc. 2008-2009.
[20] The Roeck Test computes the ratio of the area of a district to the area of the smallest circle that encompasses the district. Exc. 2008.
[21] The Schwartzberg test (described in the article cited by Justice Matthews in his concurring opinion in *Carpenter*) computes the ratio of a simplified perimeter of a district to the perimeter of a circle having the same area as that which is encompassed by the simplified perimeter. *Id.*
[22] The Polsby-Popper Test computes the ratio of the area of a district to the area of a circle with the same perimeter. *Id.*
[23] The Ehrenburg Test computes the ratio of the largest inscribed circle divided by the area of the district. Exc. 2009.
[24] Each of these tests also is described in Exc. 2008-2009.

of all districts in a plan.[25] It thus is a tool for comparing plans rather than for comparing individual districts, and in any case does not compare a district's compactness to an ideally compact circle. The Population Polygon Test computes the ratio of the population of a district to the population of a polygon containing the district.[26] In contrast to the test for compactness under the Alaska Constitution, it is based on the distribution of a district's population rather than its geometric compactness. The Population Circle Test computes the ratio of the population of a district to the population of the minimum circle enclosing the district.[27] Again, in contrast to the test for compactness under the Alaska Constitution, it is based on the distribution of a district's population rather than its geometric compactness.

The Petersburg Plaintiffs have presented an alternate districting of Southeast Alaska (the "Modified RIGHTS Plan") that replaces HD 32 and 34 in the Proclamation Plan with two districts, Modified RIGHTS Plan Districts 2 and 4,[28] that are more compact under each of the relevant quantitative measures of compactness.[29] These tests consistently show that each of Modified RIGHTS Plan Districts 2 and 4 is more compact than HD 32. The following table displays the results of each test for each of these districts:

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[25] Exc. 2008.
[26] Exc. 2009.
[27] *Id.*
[28] Exc. 2014-2017; Exc. 2019.
[29] Exc. 2010-2013.

District	Measures of Compactness			
	Reock Test (Range 0-1, with 1 most compact)	Schwartzenburg Test (Range greater than 1, with 1 most compact)	Polsby-Popper Test (Range 0-1, with 1 most compact)	Ehrenburg Test (Range 0-1, with 1 most compact)
Proclamation 32	0.18	2.71	0.09	0.17
Mod. Rights 2	0.32	2.34	0.13	0.38
Mod. Rights 4	0.53	1.64	0.26	0.40

In addition to not being relatively compact under an appropriate quantitative comparison, HD 32 fails the "visual" test for compactness. While necessarily subjective, this test includes at least the following elements:

> Odd-shaped districts may well be the natural result of Alaska's irregular geometry. However, "corridors" of land that extend to include a populated area, but not the less-populated land around it, may run afoul of the compactness requirement. Likewise, appendages attached to otherwise compact areas may violate the requirement of compact districting.[30]

HD 32 has both of the described attributes. Moving from southeast to northwest, the district extends from Petersburg into the southern part of the City and Borough of Juneau. It then detours around downtown Juneau with a corridor of relatively unpopulated territory to the west of Juneau that connects with Skagway to the north, but excludes Haines. In between, it includes two narrowly attached appendages that incorporate Gustavus and Tenakee Springs. The district selectively collects isolated pockets of population, while excluding other adjacent populated areas,

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[30] *Hickel,* 846 P.2d at 45-46.

resulting in a district with an unnecessarily elongated and irregular—indeed serpentine—shape.

D. Gerrymandering Is Implicated in the Creation of HD 32.

The Board's justifications for its districting of Southeast Alaska in the initial Proclamation Plan[31] acknowledge that HD 34 was drawn explicitly for the purpose of gerrymandering—to "keep the incumbent Alaska Native Legislator from the Benchmark Alaska Native District in the Proclamation Alaska Native District and avoid pairing him with a non-Alaska Native incumbent."[32] This fits precisely the definition of gerrymandering in *Hickel*, "the dividing of an area into political units 'in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others:'"

> The requirements of contiguity, compactness and socio-economic integration were incorporated by the framers of the reapportionment provisions to prevent gerrymandering. 3 PACC 1846 (January 11, 1956) ("[The requirements] prohibit[ ] gerrymandering which would have to take place were 40 districts arbitrarily set up by the governor.... [T]he Committee feels that gerrymandering is definitely prevented by these restrictive limits."). Gerrymandering is the dividing of an area into political units "in an unnatural way with the purpose of bestowing advantages on some and thus disadvantaging others." The constitutional requirements help to ensure that the election district boundaries fall along natural or logical lines rather than political or other lines.[33]

The configuration of HD 34 clearly determined the configuration of the other House districts in Southeast Alaska, including HD 32. Thus the Board's gerrymandering

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[31] *See* 2-3, above.
[32] Orig. Exc. 1241.
[33] *Hickel,* 846 P.2d at 45 (footnote and citations omitted).

purpose in drawing HD 34 also is implicated in the failure of HD 32 to meet the compactness requirement.

E. VRA Compliance Does Not Justify Any Deviation from the Alaska Constitution in Districting Southeast Alaska.

1. The VRA Does Not Require Protection of an Incumbent Native Legislator.

Nothing in the VRA requires that a redistricting plan protect an incumbent legislator, whether or not a minority group member, from pairing with another incumbent:

> The Voting Rights Act does not protect minority incumbents; it protects minority voters. It is thus a dangerous business to conflate a politician's assessment of her own continued electoral prospects with the genuine protection of African American voting strength.[34]

Moreover, nothing in the Voting Rights Act requires the placement of a particular incumbent, minority or otherwise, in a "minority influence" district. "In sum, the Voting Rights Act protects the minority voters' opportunity to elect their candidate of choice, not just a minority incumbent and not just the minority's opportunity to elect an incumbent of any race."[35]

Indeed, the Board's assertion of this requirement was contradicted by its VRA expert, Dr. Lisa Handley. As it directly contradicts the Board's position, that advice warrants quotation at length:

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[34] *Georgia v. Ashcroft*, 195 F. Supp. 2d 25, 101 (D.D.C. 2002), judgment vacated on other grounds, 539 U.S. 461, 123 S. Ct. 2498, 156 L. Ed. 2d 428 (2003).
[35] *Colleton County Council v. McConnell*, 201 F. Supp. 2d 618, 643 (D.S.C. 2002).

CHAIRMAN TORGERSON: So along that lines, as long as we make the benchmark, we're not trying to protect any current district as it stands today. Is that a true statement?

MR. WHITE: Mr. Chairman, the Department of Justice...

DR. HANDLEY: You can get there any way you want to get there. ***I don't think the justice department cares if you try and save incumbents or not. All they're going to look at is have you retrogressed or not.***

CHAIRMAN TORGERSON: Well, by saying incumbents, I'm not meaning by name. I'm talking about existing C, for example. If we rearrange that – and you just said we could make others combinations for influence districts – and we had the same – we met the benchmark but there was not senator out of Southeast that – that was in District C, then as long as we meet the benchmark, we have no other – other issues associated with that.

DR. HANDLEY: ***Not as far as the justice department is concerned. They're – I mean, they are just going to look and see if this is retrogressive.*** Now in terms of a Section 2 voting rights case, well, there's a possibility – let's say, for example, your benchmark was five Native districts and you went – you drew five completely new Native districts in which you can run incumbent out of every seat, well that would be, you know, maybe evidence in a Section 2 case of intentional discrimination, but...

CHAIRMAN TORGERSON: Well, I bring that up because apparently in one of the – or at least my understanding was from one of the conversations with Taylor, we were – we were required to protect that senate seat because it has a Native in it. But that's why I asked the question. It seems like a moving target. I mean...

DR. HANDLEY: Well – what?

CHAIRMAN TORGERSON: I said it seems like a...

DR. HANDLEY: (Indiscernible).

CHAIRMAN TORGERSON: ...moving target.

DR. HANDLEY: What are the Native groups doing with that particular senate seat? If, for example, the AFFR is supported by the Natives, they – they're not protecting that district. ***So, I mean, what the justice department is going to do,*** is they're going to talk to not just the incumbents, they're going to talk to – in fact, they're not – they're not particularly interested in talking to a single incumbent. ***They're much more interested in talking to the Native groups that are more representative of voters rather than incumbents.*** No incumbent wants to lose a seat, but you know, a pattern of drawing incumbents out of their seats would not look good. [36]

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[36] Exc. 2020:7–2022:3 (emphasis added).

Dr. Handley's advice that DOJ is not concerned with protecting Native incumbents is supported by DOJ's own publications on this subject. Neither the DOJ's preclearance regulations,[37] nor its Guidance Concerning Redistricting under VRA §5[38] identifies the pairing of minority incumbents as a factor that it will consider in determining whether to preclear a redistricting plan.[39] Thus, nothing in the VRA requires a deviation from the Alaska Constitution's compactness standard to avoid pairing an incumbent Alaska Native legislator with a non-Alaska Native incumbent.

2. The VRA Does Not Require the Creation of Proclamation District 34 as an "Influence District."

VRA §5 in its present form does not require the creation of influence districts. In its 2006 amendment of VRA §5 Congress clarified that the statute focuses on effective districts, rather than influence districts:

> A proposed plan is retrogressive under Section 5 if its net effect would be to reduce minority voters' "effective exercise of the electoral franchise" when compared to the benchmark plan. *Beer v. United States* at 141. In 2006, Congress clarified that this means the jurisdiction must establish that its proposed redistricting plan will not have the effect of "diminishing the ability of any citizens of the United States" because of race, color, or membership in a language minority group defined in the Act, "to elect their preferred candidate of choice."[40]

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[37] 28 C.F.R. Part 51.
[38] 79 Federal Register 7470 (February 9, 2011), Orig. Exc. 1003 ("DOJ Guidelines").
[39] The opinion of Superior Court Judge Larry Weeks appended to the decision in *Hickel* states that pairing of Native incumbents is something that the courts have considered under the VRA. 846 P.2d at 96-97. In support of this statement Judge Weeks cited *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). However, the *Thornburg v. Gingles* opinion makes no reference to the pairing of minority incumbents; instead it concerned a claim under VRA §2 that the use of multi-member districts in North Carolina resulted in the dilution of black citizens' votes. 478 U.S. at 34, 106 S.Ct. at 2758.
[40] DOJ Guidelines, 76 F.R. at 7471, Orig. Exc. 1004.

The U.S. District Court for the District of Columbia also has adopted this interpretation.[41] In the face of Congress' direction that DOJ focus its preclearance analysis on retrogression in the ability of Natives "to elect their preferred candidates of choice," *i.e.,* on retrogression in the number of effective districts, the Board's concern about influence districts did not justify deviation from the compactness standard in the Alaska Constitution.

Dr. Handley, whose advice regarding the need for an "influence" district in Southeast Alaska became the cornerstone for the Board's configuration of HD 34 and 32, recanted that advice in her trial testimony:

> Q. Part of the report here, section 4.0, deals with the benchmark plan, and as you're writing this report for submission to DOJ, what nomenclature are you still using at this point in time in July and August, early part of August of 2011?
>
> A. I am still using effective and equal opportunity to indicate, again, places on a continuum of ability to elect.
>
> Q. Now, at some point in time, based upon your other work in this redistricting cycle, did you come to learn that your use of this continuum or how you were describing that was not correct?
>
> A. I did.
>
> Q. And can you explain for us and help the judge understand how you came, you, yourself, came to that understanding?
>
> A. I was retained by the Justice Department to assist in the Section V litigation involved with the Texas plans. Texas, rather than going straight to the Department of Justice, made the decision to go to the District Court [for the District] of Columbia to seek pre-clearance for the plan.
>
> The Justice Department felt that the plans – two of the four plans submitted, the state House plan and the congressional plan, they would object to, and they hired me, first of all, to do the analysis to see if I

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[41] *Shelby County, Ala. v. Holder*, 811 F.Supp.2d 424, 437-438 (D.D.C. 2011). *See also, Texas v. United States*, ___ F.Supp.2d ___; 2011 WL 6440006, 5 (D.D.C. December 22, 2011).

would also object to it, and then to be the expert witness in the trial that begins next week.

Q. And as part of the work that you performed in that case, as the voting rights expert for the Department of Justice, did you come to learn -- what did •you come to learn about what the proper nomenclature was?

A. ***I was told quite specifically that actually the Justice Department was going to interpret the amendment to Section V to mean that ability -- a district either had an ability to elect or did not have an ability to elect, so it was basically a thumbs up and a thumbs down.***

Q. So the dichotomy then was, you didn't look at whether it was performed 90 percent of the time or 30 percent of the time, just looked at whether it was effective, thumbs up, or not effective, thumbs down?

A. Whether usually elected the minority-preferred candidate or whether it usually did not.

THE COURT: So usually being what, 50 percent?

THE WITNESS: Never had to decide whether it 50 percent or not, always found that it was more than 50 percent. I suspect the Justice Department would say maybe not on 50 percent. Again, I, myself, have never had to make that call.

THE COURT: Go ahead.

BY MR. WHITE:

Q. And if part of this analysis, if you look at it and you determine that it's less than 50 percent or it's a thumbs down, what does that mean in terms of the benchmark?

A. ***That it's not a protected district and that there is not an obligation on the part of the jurisdiction to create an effective minority district to represent that district in the count, so to speak.***

Q. Now, as part of your advice to the Board in determining how it should best go about attempting to obtain pre-clearance, did you advise them that you thought it was a good idea for them to meet with the Department of Justice and make a presentation to them?

A. I did. I felt that, because we were going in with a plan that was complicated and that we actually had some districts that were less than 50 percent minority in voting age population, that we should explain the circumstances to the Department of Justice.

Q. And did you attend this meeting with the representatives of the Board?

A. I did.

Q. And at the end of this meeting, or after this meeting was completed, did you learn from DOJ what they thought the benchmark in Alaska was?

A. ***Yes. It was relayed to me that they saw the plan as five protected districts in House and three in the Senate, and they did not comment on the Southeast.***[42]

Thus, Dr. Handley testified at the trial of this action that her advice to create an "influence" district in Southeast Alaska to comply with the VRA was incorrect.

Even assuming that an "influence district" must be maintained in Southeast Alaska to secure DOJ preclearance of a redistricting plan, the more compact districting of Southeast Alaska in the Modified RIGHTS Plan serves this purpose equally well. Modified RIGHTS Plan District 2 contains 32.45% Alaska Native voting age population,[43] varying by only a de minimis amount from the 32.85% Alaska Native voting age population in Proclamation House District 34.[44]

III. CONCLUSION.

With the districting of Southeast Alaska no longer constrained by requirements of the VRA, the Board failed to take the required "hard look" to produce the districting of Southeast Alaska best met the requirements of Alaska Const. art. VI, § 6. The initial Proclamation Plan's districting of Southeast Alaska and the Superior Court's initial decision regarding the compactness of HD 32 both depended on the erroneous premise that the VRA required the Board to create a Native "influence" district in Southeast Alaska. For the reasons stated above, there are other possible districting plans for Southeast Alaska that yield more compact districts than HD 32. This Court either should remand this matter to the Board with

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[42] Exc. 2023 (809:11)–2024 (812:16).
[43] Exc. 2018.
[44] Exc. 91.

instructions to adopt such a plan, or in the interest of the expeditious completion of the redistricting process, adopt such a plan itself.

DATED this 8th day of May 2012.

BIRCH HORTON BITTNER & CHEROT
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By: _____
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CERTIFICATE OF SERVICE and TYPE STYLE

The undersigned hereby certifies that on the 8th day of May 2012, a true and correct copy of the foregoing *RESPONSE OF PETERSBURG PLAINTIFFS TO ALASKA REDISTRICTING BOARD'S PETITION FOR REVIEW* and *PETERSBURG PLAINTIFFS' EXCERPT OF RECORD* were served on the following in the manner indicated:

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