

**IN THE SUPREME COURT FOR THE STATE OF ALASKA**

In Re 2011 Redistricting Cases.

) **Supreme Court Case No. S-14721**  
)  
) Trial Court Case No. 4FA-11-2209-CI  
) (Consolidated Cases)  
) 4FA-11-2213 CI  
) 1JU-11-782 CI

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**ALASKA REDISTRICTING BOARD'S  
RESPONSE TO ORDER TO SHOW CAUSE**

**INTRODUCTION**

COMES NOW the Alaska Redistricting Board ("Board"), by and through counsel Patton Boggs LLP, and responds to this Court's Order to Show Cause, issued on May 4, 2012. While the Board strongly believes its Amended Proclamation Plan adopted on April 5, 2012, fully complies with both this Court's March 14, 2012 Order and the Trial Court's February 3, 2012 Order, and therefore should be approved by this Court as the final redistricting plan for Alaska, the Board has concerns that there is insufficient time to obtain preclearance of the Amended Proclamation Plan in time to allow for its implementation for the 2012 elections.

Under section 5 of the federal Voting Rights Act ("VRA"), any new redistricting plan must be precleared by the Department of Justice ("DOJ") before such plan may be used in an election. 42 U.S.C. § 1743c. The Amended Plan, adopted by the Board on April 5, 2012 in compliance with this Court's March 14 Order, has not yet even been submitted to DOJ for preclearance. The Alaska Native districts in the Interim Plan, on the other hand, have already received preclearance. Because preclearance can take up to 60 days, there is simply insufficient time to obtain preclearance of the Amended

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Proclamation Plan and still meet the statutory election deadlines necessary in order to allow the Alaska Division of Elections (“DOE”) to complete its work. Accordingly, the Board believes the only viable option at this juncture is for this Court to approve the Interim Plan for use in the 2012 election cycle.

### ARGUMENT

The Amended Proclamation Plan fully complies with this Court’s March 14 Order, as well as the Trial Court’s February 3 Order, and should therefore be approved as the final redistricting plan.<sup>1</sup> However, even if this Court approved the Plan within days of the May 10 oral argument in this case, preclearance could not be obtained in time to allow for its implementation for the 2012 elections. As a result, the Interim Plan with Alaska Native districts that have already been precleared by DOJ, is the only plan that can be safely implemented for the 2012 election cycle.<sup>2</sup>

Shortly after the Board filed its Notice of Compliance with Order of Remand and Request for Entry of Final Order on April 10, 2012, the Board began preparing a

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<sup>1</sup> See Board’s Petition for Review from the Superior Court of the State of Alaska Fourth Judicial District at Fairbanks, the Honorable Michael J. McConahy, Presiding, May 1, 2012 (“Board Petition”) and Jt. Exc. 1-460, 627-684.

<sup>2</sup> The Interim Plan adopted by the Board on April 5, 2012, and submitted to this Court for approval on May 3, 2012 is essentially the original Proclamation Plan adopted on June 13, 2011. The only differences between the two plans are configuration changes to the House districts within the Fairbanks North Star Borough (“FNSB”) as required by this Court. The Interim Plan makes no alterations to the Alaska Native districts, which are of concern to the DOJ. The DOJ has already precleared the configuration of the Alaska Native districts present in both the Interim Plan and Proclamation Plan, and therefore the Board does not anticipate the DOJ objecting to the Interim Plan. [See ARB13493.]

submission to the DOJ for preclearance of the Amended Proclamation Plan. Board counsel communicated with Dr. Handley, the Board's VRA expert, and requested she incorporate her analysis of the Amended Proclamation Plan into a final written report to accompany the submission. However, before Board counsel and staff could complete the submission, the Superior Court rejected the Amended Proclamation Plan, finding the Board did not comply with the first step of this Court's mandated *Hickel* process.<sup>3</sup> The Trial Court remanded the Plan back to the Board to essentially start from scratch.<sup>4</sup> The Superior Court also required the Board to resubmit its new *Hickel* Plan for preapproval before the Board could move to the next steps in the *Hickel* Process.<sup>5</sup>

The Board immediately appealed the Superior Court's Order, filing a Petition for Review with this Court on May 1, 2012. However, given the uncertainty as to final court approval of the Amended Proclamation Plan, the Board opted not to submit the Amended Proclamation Plan for preclearance until litigation over the plan had been resolved. It did not make sense for the Board to proceed with submitting a plan for preclearance when that plan could still potentially be rejected.

While the Board believes the Amended Proclamation Plan fully complies with this Court's March 14 Order and meets all Alaska constitutional requirements, the

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<sup>3</sup> Superior Court 4/20/12 Order. The Trial Court issued a scheduling order on April 12, 2012, permitting any party who wished to object until April 16 to file such objections. The Board had until April 18 to respond to any and all objections. On April 20, the Trial Court rejected the Board's Amended Proclamation Plan.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

Board is concerned about using a plan that has not yet been reviewed and precleared by the DOJ. Even if this Court were to immediately approve the Amended Proclamation Plan as an interim plan, preclearance could not be obtained in time to meet the DOE deadlines. By federal regulation, the DOJ has 60 days from submission to interpose an objection to preclearance.<sup>6</sup> Failure by the DOJ to object to a complete submission within 60 days constitutes preclearance.<sup>7</sup> Although there are procedures to request expedited consideration, there is no requirement that the DOJ honor such a request.<sup>8</sup>

There also exists the possibility that the DOJ will not preclear the Amended Proclamation Plan. If this Court were to implement the Amended Proclamation Plan as an interim plan for use in the 2012 elections, and the DOJ denies preclearance in the middle of July, Alaska would find itself in a crisis situation requiring extraordinary measures to rectify. In order to avoid this possibility, the Board requests this Court approve the Interim Plan submitted with its Petition filed on May 3, 2012 as the redistricting plan to be used for the 2012 elections.

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<sup>6</sup> 28 C.F.R. § 51.42. DOJ routinely takes the full 60 days for preclearance. For example, the Board's preclearance submission on its Proclamation Plan was considered lodged by the DOJ on August 11, 2011, and received preclearance exactly 60 days later, on October 11, 2011.

<sup>7</sup> *Id.*

<sup>8</sup> The 2000 Board asked for expedited consideration of the submission of its Amended Final Plan which it lodged with the DOJ on April 25, 2002. Despite the request for expedited consideration, it took the DOJ until June 10, 2002 (46 days) to issue its preclearance on an amended plan with little to no change to the Alaska Native Districts. Since the current Board had to redraw a number of the Alaska Native district in its Amended Proclamation Plan in order to comply with this Court's Order, the Board expects it will take the DOJ close to, if not the entire 60 days to render its preclearance decision.

The Interim Plan is essentially the original Proclamation Plan adopted by the Board on June 13, 2011, and precleared by the DOJ on October 11, 2011. The Interim Plan makes configuration adjustments in the FNSB districts to rectify the compactness issues, but makes no alterations to the Alaska Native districts from the Proclamation Plan. DOJ is concerned only with whether a redistricting plan is retrogressive, and the Alaska Native districts in the Interim Plan are the same as those already precleared. Preclearance should therefore be routine, and the DOE can move forward with its statutory election requirements with the understanding that preclearance will inevitably be forthcoming.<sup>9</sup>

### CONCLUSION

The Board is confident the DOJ will preclear the Interim Plan. While the Board and its DOJ expert believe the Amended Proclamation Plan complies with the VRA, it is less clear whether the DOJ will agree. The Board would therefore suggest this Court, out of caution, approve the Interim Plan for use in the 2012 elections, and approve the Amended Proclamation Plan as the final redistricting plan for use beginning in 2014.

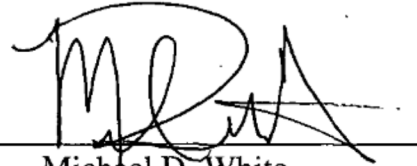
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<sup>9</sup> In fact, a very similar situation occurred during the 2000 redistricting cycle, when the court approved the Board's Amended Final Plan as the final redistricting plan to be used in the 2002 elections on May 24, 2002. The Board submitted the amended plan to the DOJ on April 25, 2002, but did not receive preclearance until June 10, 2002. The 2002 Board's Amended Final Plan, just like the current Board's Interim Plan, made no changes to the Alaska Native districts from the original proclamation plan already precleared by the DOJ. The DOJ posed no objection to the 2002 Board's Amended Final Plan. It is the Board's understanding that the DOE supports implementation of the Interim Plan and will be submitting its position in writing to the Court.

DATED at Anchorage, Alaska this 8<sup>th</sup> day of May 2012.

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By: \_\_\_\_\_



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 8th day of May 2012, a true and correct copy of the foregoing document was served on the following via **US Mail with a courtesy copy via Electronic Mail on:**

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