IN THE SUPREME COURT FOR THE STATE OF ALASKA

| IN RE 2011 REDISTRICTING CASES | Supreme Ct No. S-14721<br>Superior Ct Case No. 4FA-11-2209CI |
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**PARTIAL OPPOSITION TO BOARD'S MOTION FOR CLARIFICATION AND SUGGESTION FOR THE COURT TO CLARIFY OTHER ISSUES NOT PREVIOUSLY ADDRESSED**

The Alaska Redistricting Board (hereinafter "Board") has asked for clarification on two questions that do not require any clarification. First, the Board asks "...whether the 'new plan'..." (which the Court ordered the Board to draw) refers to a new *Hickel* plan or a new final plan adopted by the Board. Second, the Board asks "...whether the Board is prohibited from using the current configuration of any district (in the invalidated plan) in any 'new plan'..." The Court has previously addressed both of these issues. There is no need for clarification except as to issues not previously addressed by the Court: (1) whether constitutionally-mandated hearings need to take place; (2) whether the Board needs to have timelines to meet its constitutional and statutory obligations; and (3) the need for masters.

**A. <u>"The New Plan" Ordered By The Court Is A New Final Plan, Which Will Also Require The Drafting Of A New *Hickel* Plan.</u>** Justice Carpeneti's decision was written in plain and understandable English, and the remand was crystal clear. This Court affirmed the Superior Court's ruling invalidating the Amended Proclamation Plan, and remanded the case to the Board to "draft a new plan based on strict adherence to the *Hickel* process." (Op. at 16.) The Court's various orders in this case clearly describe the steps of the *Hickel* process. Any point of ambiguity was clarified in the dissent which stated that this Court's opinion "sends the

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redistricting process … back to ground zero". (Op. at 42.) The Board's request is transparently argumentative and employees a logical fallacy (equivocation) by creating ambiguity where none exists. As Socrates noted, the trouble with sophistical rhetoric is that it is deceptive speech designed to obscure truth, and its only virtue is providing meaningless intellectual pleasure.[1]

**B. The Court Should Not Render Piecemeal Advice To The Board.** The Board's second question is also a thinly disguised rhetorical device that seeks to resurrect the Board's arguments in its Petition for Review, asserting that it should be allowed to incorporate 16 districts in whole or in part within the Anchorage Municipality and one Rural District, which incorporates the North Slope Borough and Northwest Arctic Borough. The Board pretends to misunderstand the Court's holding which clearly stated that by fixing 22 districts from the prior plan, that the Board predetermined the configuration of other districts bordering on the static districts (Op. at 12-13.) Additionally, the rhetorical question presumes a false premise: that maintaining districts that reflect socio-economic integration of the Anchorage population will result in a constitutional plan without regard to other factors, such as proportionality. For example, the Anchorage plan may force fragmentation and multiple splits of both the Mat-Su Borough and the Kenai Peninsula Borough that are presumptively unconstitutional.[2] As this Court has noted in the past, the Alaska Constitutional redistricting process considers the totality of the plan in light of all State Constitutional standards. It would be unwise for this Court to render piecemeal "advice" to the Board as requested.

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1 See generally, Plato, *Gorgias* (380 BC).

2 See Jt. Exc. 520-528. If socio-economic integration were a priority in a plan, the Mat-Su Borough would have five (5) house districts completely within its boundaries, because the Mat-Su Borough has no "surplus population" within the meaning of that term as used in the "*Hickel*" process. Equally, by removing the Mat-Su population from HD 11, the Board could also pair the excess populations in Anchorage and the Kenai Peninsula Borough and eliminate or minimize multiple splits of the Kenai Peninsula Borough that destroy the proportional representation of that borough.

**C. Issues Not Previously Addressed By The Court.** Recent actions by the Board suggest that there are issues that the Court may wish to address at this time. Specifically, the Board met on February 12, 2013 and made two decisions which are important to proceedings on remand and if unaddressed, will likely result in the same morass that currently faces Alaska's voting population. First, the Board decided that no future public hearings would be held.[3] A timeline was also developed by the Board with the goal of producing a final plan by January 14, 2014.[4] These decisions raise critical issues that this Court needs to address in the interests of judicial economy.

1) **The Board Is Required To Hold Public Hearings.** The Alaska Constitution requires that the Board hold hearings on all plans proposed by the Board. Art. VI § 10 says, "The board shall hold public hearings on the proposed plan, or, if no single proposed plan is agreed on, on all plans proposed by the board." The language is mandatory. The Board is required to hold public hearings on any proposed plan. To not do so, will result in unnecessary and protracted litigation.

2) **The Board Should Produce A Plan In Time To Allow Judicial Review.** The Board proposed it first plan on June 13, 2011, which was twenty-two months prior to the 2012 election. Under the Board's current work schedule, there would be less than half that time available for judicial review prior to the 2014 election. Given the Board's proclivity to ignore its constitutional and statutory mandates, a month is almost certainly not enough time to deal with the challenges that will be presented to the Board's plan. According to the Court's order, the Board is to start over with the *Hickel* process. The Alaska Constitution mandates a ninety day process. If the board acted in accord with the constitution, a plan would be proposed by May 15,

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3 Tr. (attached) 53:15-19
4 Id. 56:22

2013. That would allow 18 months prior to the 2014 election for judicial review.

Of greater concern, is the Board's apparent belief that it might delay producing a plan and thus inhibit judicial review. As the Court may remember, the Board complained that a new plan needed to be in place prior to the 2012 election. That compelled this Court to adopt an interim plan, notwithstanding its acknowledged state constitutional defects. It is not clear that the Riley Respondents will challenge the new Final Plan; however, it is highly likely that some party may bring a challenge to the Final plan in either the state or federal courts. This Court should permit adequate time for citizen participation followed by informed judicial review.

3) **The Court's Remand To The Superior Court Should Address The Issue Of Masters.** As noted above, it is not clear that the Riley Respondents will participate in further legal proceedings in this Redistricting cycle. The Riley Respondents appreciate the restraint exercised by the Courts to date; however, judicial restraint is only a virtue if it does not restrain the doing of justice. Given the tone of the recent actions by the Redistricting Board, it is not unreasonable that some qualified voter may bring an enforcement action in the State or Federal Courts. If such a challenge were brought in the State Courts and if such a challenge were successful, the Board's current timeline may preclude meaningful remand to the Board prior to the 2012 election, and may necessitate the appointment of masters. The Court should provide guidance to the Superior Court as to the use of masters as may be necessary.

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