IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

In Re 2011 Redistricting Cases.	**CONSOLIDATED CASE NO.: 4FA-11-2209-CI** 4FA-11-2213 CI 1JU-11-782 CI 4FA-13-2435 CI

ALASKA REDISTRICTING BOARD'S REPLY TO RILEY ET AL. PLAINTIFFS' OPPOSITION TO BOARD'S MOTION FOR SUMMARY JUDGMENT: TRUNCATION

The Riley Plaintiffs' representation of the Board's truncation process in their Opposition is inaccurate and reveals a lack of understanding of the process. Indeed, the bulk of the Riley Plaintiffs' arguments are irrelevant to both the truncation process as well as the Board's decisions. The Riley Plaintiffs concede, as they must, that the Board is constitutionally responsible for redistricting and has the authority to truncate Senate terms as required by the redistricting process. In this regard, the Board is required to truncate the term of a Senate district, including incumbent senators, where a newly redrawn district has substantially changed in population from the old district.[1] The Board reasonably exercised its constitutional authority to formulate the truncation plan for the 2013 Proclamation Plan, which complies in all respects with the standards set forth in *Egan v. Hammond*, and upheld by *Groh v. Egan*. Accordingly, the Board is entitled to summary judgment as a matter of law.

The Board has the same reapportionment powers as those vested in the

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[1] *Egan v. Hammond*, 502 P.2d 856, 873-574 (Alaska 1972).

Governor prior to the 1998 constitutional amendment establishing the Board, including the discretionary power to require mid-term elections.[2] The Board must truncate a Senate term when resulting changes to the Senate district through redistricting either exclude substantial numbers of constituents previously represented by an incumbent or include numerous other voters who did not have a voice in the selection of that incumbent.[3] What constitutes substantial change is not defined by law or court decision, but is within the Board's reasonable discretion.[4]

In 2011, ten senators would not be up for re-election until 2014, and were therefore mid-term in 2012: B, D, F, H, J, L, N, P, R, and S.[5] As a result of redistricting, 86.8%, 49.0%, 53.5%, 55.5%, 53.4%, 42.6%, 51.5%, 50.1%, 44.9%, and 49.8% of the population base remained the same in these Senate districts, respectively.[6] The Board determined that all but one of these districts qualified as having "substantially changed," and truncated the terms of these senators, requiring them to

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[2] *See* Alaska Const. art. VI, §§ 3, 8. *See also* Board's Motion for Summary Judgment re: Truncation at pgs. 5-7.

[3] *Egan v. Hammond*, 502 P.2d at 873-874, *upheld by Groh v. Egan*, 526 P.2d 863, 880-881 (Alaska 1974).

[4] *See Groh v. Egan*, 526 P.2d at 881 (affirming the trial court's decision upholding the truncation plan of the reapportionment plan because "valid reasons were presented for truncating the terms").

[5] ARB00006468; ARB00006031-6032.

[6] ARB00006031.

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stand for re-election in 2012 rather than 2014.[7] The Board reasonably determined Senate District B had not substantially changed given that 86.8% of the population remained the same.[8] The Board adopted this same truncation plan for the 2012 Amended Proclamation Plan.[9]

In 2013, the Board again followed the same process, first determining which Senate districts would not be up for re-election based on the 2012 Amended Proclamation Plan until 2016: A, C, E, G, I, K, M, O, Q, and S.[10] Then, Eric Sandberg determined where the population from the previous Senate districts resided after the Board redrew the map on remand.[11] From this chart, the Board was able to determine

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[7] ARB0006023.

[8] *Id.*; ARB00006031-6032.

[9] ARB00015388-15389; ARB00015166.

[10] ARB000015166.

[11] ARB00017355. The Riley Plaintiffs claim the Board's math is wrong, and that it is "mathematically impossible for one former district to comprise more than 50% of two new districts." However, as the chart created by Eric Sandberg clearly shows, it is entirely possible for the population from one former district to comprise more than 50% of each of two new districts given population deviations. ARB00017355. For example, 17,778 people from the old District N now reside in new District N, which has 35,456 people in it. ARB00017353, ARB00017355. Thus, the old District N population makes up 50.1% of new District N (17,778/35,456). In the new District O, 18,136 people came from the old District N. ARB00017353, ARB00017355. Since the new District O contains 36,047 people, the population from old District N makes up 50.3% (18,136/16,047). The Riley Plaintiffs simply do not understand the truncation process and their calculations are incorrect.

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the population percentage that remained the same in the new Senate districts.[12] Of those Senate districts eligible for truncation (A, C, E, G, I, K, M, O, Q, S), i.e., those districts not up for re-election until 2016, 77.0%, 46.8%, 96.9%, 100.0%, 100.0%, 100.0%, 50.9%, 51.3%, 90.7%, 54.3% of the population had remained the same, respectively.[13] The Board struggled with whether a 23.0% change in population amounted to a "substantial change" requiring redistricting.[14] Ultimately, the Board decided to objectively define "substantial change" as a population change of more than 25%.[15] The Board's decision was reasonable and logical, well within the boundaries of its inherent powers.[16] Because Senate District A changed by only 23%, the Board did not truncate

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[12] ARB00017354, 17355.

[13] ARB00017354.

[14] *See* ARB00016820-16832.

[15] *Id.* As established in the Board's Global Opposition, the Board did not receive "an education" from Mr. Ruedrich off the record about which Senate districts it should truncate. Mr. Ruedrich simply offered to explain the lettering process AFFER and Calista used in their draft plans. The Riley Plaintiffs' accusations are without merit and mischaracterize the Board Record.

[16] The Board's adoption of a 25% threshold was neither arbitrary nor inconsistent with its previous process as alleged by the Riley Plaintiffs. In 2011, and again in 2012, the Board did not adopt an objective threshold as it did in 2013. Instead, the Board looked at each district independently and determined whether or not it had substantially changed. The Board, within its discretion, determined a 13.2% change in population was not substantial enough to warrant truncation. The remaining Senate districts eligible for truncation had all changed by nearly, or in some cases more than, 50%. The Board determined all of these qualified as substantial changes and therefore truncated these seats. In 2013, the Board opted for a more objective approach, adopting a threshold to define substantial change. It is wholly within the Board's discretion and inherent in its general redistricting powers to define substantial change.

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this Senate term, now identified as Senate District B in the Board's 2013 Proclamation Plan.[17]

After the Board determined which Senate districts were required to be truncated, the Board randomly assigned Senate terms. Consequently, fourteen Senate districts will stand for re-election in 2014: the ten Senate districts scheduled for re-election in 2014 by the 2012 Amended Proclamation Plan: A, E, F, I, K, M, N, O, Q, and T (as identified in the 2013 Proclamation Plan), plus the four Senate districts truncated by the Board: C, G, P, and S (as identified in the 2013 Proclamation Plan).[18]

The fact that fourteen out of the twenty Senate districts will have an election in 2014 does not violate the constitutional mandate that one/half of the Senate seats shall stand for re-election every ten years, as asserted by the Riley Plaintiffs.[19] Pursuant to the 2012 Amended Proclamation Plan, under which the 2012 elections were held as mandated by the Alaska Supreme Court, ten Senate districts are up for re-election in 2014: A, E, F, I, K, M, N, O, Q, and T (as identified in the 2013 Proclamation Plan). This is consistent with the Alaska constitutional requirement that one/half of the Senate districts are up for re-election every two years.[20] Because of redistricting, four additional Senate districts will be up for election in 2014: C, G, P, and S (as identified in

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[17] ARB00017352; *see also* ARB00016820-16832.

[18] ARB00017352.

[19] *See* Riley Plaintiffs' Opposition at pg. 7.

[20] *See* Alaska Const. art. II, § 3.

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the 2013 Proclamation Plan).[21] This is the result of the redistricting process and the Board's need to truncate these four Senate districts because the population base had substantially changed. It is simply the reality of the redistricting process that the election year following the redistricting process may have more elections in more districts than in other years as a result of redistricting. The Board's truncation plan is consistent with the law and is wholly within the Board's reapportionment powers.

The remaining six Senate districts: B, D, H, J, L, and R (as identified in the 2013 Proclamation Plan), do not stand for re-election until 2016.[22] Accordingly, the Board assigned two year terms to these six Senate districts following the 2014 elections.[23] The Board then randomly assigned the remaining Senate districts either two-year or four-year terms based on the district letter, i.e., since Senate District B was assigned a two-year term, Senate Districts A and C were assigned four-year terms; since Senate District D was assigned a two-year term, Senate District E was assigned a four-year term, then Senate District F was assigned a two-year term, and so forth.[24] As a result, ten Senate districts are up for election in 2016, and ten Senate districts will be up for election in 2018, satisfying the requirement of Article II, section 3 of the Alaska Constitution.[25]

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[21] ARB00017352.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] Alaska Const. art. II, § 3.

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The Riley Plaintiffs' recitation of the Board's process, or "what the Board did," is incorrect.[26] Plainly, the Riley Plaintiffs confuse the truncation process with the term assignment process, which are two completely separate processes. The record clearly reflects that the Board reasonably exercised its constitutionally authorized discretion to truncate only those Senate districts necessary to produce a fair redistricting plan. Significantly, contrary to the Riley Plaintiffs' version of the truncation process, the Board considered only the residence of the prospective voter population for new districts created by redistricting, not the residence of the incumbent senators. In fact, the Board has no idea where any particular incumbent legislator resides. As Mr. Sandberg testified at trial, he never provided incumbent residence information to any of the Board members.[27]

The Riley Plaintiffs argue the Board used the wrong process and exceeded its authority by "prospectively truncating" incumbent senators, or incorrectly assigning the incumbent's current district's voter population to a new district.[28] The Plaintiffs' arguments are both incorrect and inapt because truncation examines the population change between districts, not whether an incumbent's residence changes from one district to another. Indeed, the residence of incumbents is irrelevant to the truncation process. The Board properly used the population data compiled by Eric Sandberg to

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[26] Riley Plaintiffs' Opposition at pgs. 4-5.

[27] Tr. Tran. at 736:9-23 (January 16, 2012).

[28] Riley Plaintiffs' Opposition at pgs. 8-12, Ex. 11.

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determine the percentage change in population between the current Senate districts and the new Senate districts.[29] The Board then looked at which Senate districts, not incumbents, would not stand for re-election until 2016 based on the term assignments in the 2012 Amended Proclamation Plan. From there, the Board determined which districts had a "substantial change" in population, the correct inquiry, requiring truncation of that Senate district's term, necessitating a 2014 election regardless of when the incumbent senator had been elected. The Board then assigned two-year and four-year terms to the Senate districts, not incumbents, as set forth above.

The Board's truncation plan fully complies with the standards set forth in *Egan v. Hammond*, and upheld in *Groh v. Egan*, truncating only those Senate districts whose population had substantially changed and where a Senate election would not otherwise be held until 2016. The Board formulated this plan, using its reasonable discretion granted by its general reapportionment powers. The Riley Plaintiffs' have presented only unfounded accusations which do not create a factual dispute, thereby entitling the Board to summary judgment as a matter of law. Accordingly, the Riley Plaintiffs' challenges to the Board's truncation plan must be dismissed.

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[29] ARB00017354-55.

DATED at Anchorage, Alaska this 26th day of September 2013.

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CERTIFICATE OF SERVICE

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