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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

H. ROBIN SAMUELSEN, JR., RUSSELL S. NELSON, VICKI OTTE, MARTIN B. MOORE, SR.,

Plaintiffs,

v.

MEAD TREADWELL, in his official capacity as Lieutenant Governor for the State of Alaska; and GAIL FENUMIAI, in her official capacity as Director of the Division of Elections for the State of Alaska,

Defendants.

Case No.: 3:12-cv-00118-RRB-AK-JKS

MEMORANDUM OF *AMICUS CURIAE* THE ALASKA REDISTRICTING BOARD RE: MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The Alaska Redistricting Board ("Board") is the constitutionally created independent board responsible for redistricting Alaska's House and Senate districts every ten years following the official decennial census of the United States. Alaska Const. art. VI, § 3, 8. The Board operates separately from any other branch of state government, is

represented by its own legal counsel, and is the entity legally responsible for seeking preclearance of its redistricting plan from the United States Department of Justice ("DOJ"). Alaska Const. art, VI § 9; AS 15.10.220.

The Alaska Constitution mandates the Board must draw forty House districts with a population "as near as practicable to the quotient obtained by dividing the population of the state by forty." Alaska Const. art. VI, § 4. The House districts must be contiguous, compact, and as nearly as practicable relatively socio-economically integrated. *Id*. at § 6. The Board must also draw twenty Senate districts, each composed of two contiguous House districts. *Id* at § 6.

In addition to state constitutional compliance, the Board is also required to comply with federal laws concerning redistricting. The Board must ensure each new House and Senate district contains as nearly as practicable an equal population to meet the US Constitution mandate of "one person, one vote". U.S. Const. art. I, § 2. The Board must also comply with the federal Voting Rights Act ("VRA"), and in particular, Section 5 since Alaska is a covered jurisdiction that must submit any and all election changes to either the DOJ or a three-judge panel of the District Court of the District of Columbia for preapproval, or preclearance. 42 U.S.C. § 1973c (2006); 28 C.F.R. Part 51, Appendix.

Under Section 5, the Board must maintain the same number of districts in which Alaska Natives have the ability to elect their candidates of choice as the previous plan, or avoid retrogression. Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act; Notice, 76 Fed. Reg. 27, 7470-7471 (Feb. 9, 2011) ("DOJ Guidelines").

These federal requirements add another complex layer to the Board's already Herculean task, and require a delicate balancing act between the often times competing state and federal requirements.

As the entity directly responsible for redistricting in Alaska, the Board believes it can assist this Court in understanding the background and process leading up to the current action, as well as the status of preclearance and the surrounding circumstances. These issues are directly relevant to this Court's decision as to whether a preliminary injunction enjoining the Alaska Department of Election ("DOE") from preparing for the upcoming primary election is an appropriate remedy for the alleged Section 5 violation in this case. The following memorandum is intended to accomplish this purpose.

FACTUAL BACKGROUND

On April 5, 2012, the Alaska Redistricting Board adopted its Amended Proclamation Plan in compliance with the Alaska Supreme Court's order dated March 14, 2012.[1] On April 11, 2012, the Board filed a Notice of Compliance with the trial court seeking approval of its Amended Proclamation Plan. The Board purposefully did not file

[1] On March 14, 2012, the Alaska Supreme Court remanded the original Proclamation Plan, adopted on June 13, 2011, and precleared by the DOJ on October 11, 2011, back to the Board to draw a new plan first focusing on the requirements of the Alaska Constitution without any consideration of the federal Voting Rights Act ("VRA"). [*See* Exhibit J to Defendants' Opposition to Motion for Preliminary Injunction ("Def. PI Opp."), Docket 25-10.] The Alaska Supreme Court held the Board was required to first draw a plan that complied with the Alaska Constitution as outlined in a footnote in *Hickel v. Southeast Conference*, 846 P.2d 38, 51 n.22 (Alaska 1992). The Court found "because [the Board] 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, nor can we reliably decide that question." [*Id.* at ¶ 7.]

for preclearance at that time because it would have been premature to seek preclearance of its Amended Proclamation Plan prior to state court approval.[2]

After expedited briefing on the objections, the trial court refused to approve the Amended Proclamation Plan on April 20 on procedural grounds, finding the Board had not complied with the first step of the "*Hickel* Process." The Board immediately appealed this decision to the Alaska Supreme Court, lodging its Petition for Review on May 1.[3] Two days later, on May 3, the Board also moved the Alaska Supreme Court to approve its original Proclamation Plan as the interim redistricting plan because it did not appear that litigation over the Amended Proclamation Plan would be resolved in time for

[2] Plaintiffs' assertion that the Board was "dilatory" in submitting the Amended Proclamation Plan for preclearance is completely misplaced. Shortly after the Board filed its Notice of Compliance with the trial court, the Board began preparing a 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 preclearance submission, the Superior Court rejected the Amended Proclamation Plan, remanding the Plan back to the Board to essentially start from scratch. 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. Seeking preclearance of a plan that had been rejected by the trial court would have been an exercise in futility as the Board could not have predicted that the Alaska Supreme Court would approve it for use as an interim plan. It is expensive and time consuming to file for preclearance. Preclearance submissions are lengthy and detailed, requiring the submission of thousands of pages of documents as well as large amounts (i.e., hundreds of megabytes) of electronic data such as text block equivalency files. Once the Amended Proclamation Plan had been rejected, it was imminently reasonable for the Board to hold off on filing for preclearance on the Amended Proclamation Plan until after the Alaska Supreme Court approved its use.

[3] In its appeal, the Board requested the Alaska Supreme Court not only reverse the trial court's order related to the *Hickel* Process, but to take jurisdiction over the matter and approve the Amended Proclamation Plan as fully compliant with all state constitutional requirements. The Board's appeal remains under advisement.

its implementation prior to the 2012 election cycle.[4]

In response to the Board's "Petition for an Order Implementing the Proclamation Plan (as amended) as the Interim Redistricting Plan for the 2012 Elections" ("Interim Plan Petition"), the Alaska Supreme Court issued an "Order to Show Cause" the following day requesting the parties respond as to why the Amended Proclamation Plan should not be used as the interim redistricting plan. The Board urged the Alaska Supreme Court to approve the original Proclamation Plan (as amended) as the interim plan because the Alaska Native districts in that Plan had already been precleared by DOJ, whereas the Amended Proclamation Plan had not. The Board feared preclearance of the Amended Proclamation Plan could not be obtained in time to meet the various state and federal election deadlines.[5]

On Thursday, May 10, shortly after oral argument on the Board's appeal and Interim Plan Petition, the Alaska Supreme Court issued its "Order Regarding Interim Plan for 2012 Elections" denying the Board's request to implement the original Proclamation Plan (as amended) as the interim redistricting plan. The Court instead ordered "the Board's Amended Proclamation Plan be adopted as an interim plan to

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[4] Recognizing the severe time constraints under which the Board must perform its work, the Alaska Supreme Court noted in its March 14 Order that if "the Board is unable to draft a plan that complies with this order in time for the 2012 elections, it may petition this court for an order that the 2012 elections be conducted using the Proclamation Plan as an interim plan" after modification of House Districts 1 and 2 to fix the compactness problems found by the Superior Court and not contested by the Board. [Def. PI Opp., Ex. J at ¶ 12 & n.16.]

[5] *See* Def. PI Opp. at 8, n.22.

govern the 2012 elections" except that the Plan was first remanded to the Board "for reformulation of the districts in Southeast Alaska" without consideration to the requirements of the VRA because "there is no justification for deviating from Alaska constitutional requirements in Southeast Alaska." [Def. PI Opp., Ex. K at 2.][6]

Pursuant to the Alaska Supreme Court's order, the Board quickly reconvened on Monday, May 14, 2012, to consider and develop a new plan of redistricting for Southeast Alaska. At that meeting, the Board reviewed and considered five different configurations of the Southeast districts prepared by Board staff with individual Board member input over the weekend. After discussion and deliberation on the record, the Board unanimously adopted the plan it determined best met the contiguity, compactness, and relative socioeconomic integration requirements of the Alaska Constitution. The Board also unanimously voted to incorporate its reformulated Southeast election districts into its Amended Proclamation Plan for submission to the Alaska Supreme Court for approval.

The Board lodged its "Notice of Compliance with May 10, 2012 Order Re: Reconfiguration of Southeast Alaska Election Districts" with the Alaska Supreme Court the next day, May 15. On May 18, several entities objected to the Board's reconfigured

[6] The Supreme Court also required (1) the Board to resubmit the reconfigured Southeast districts to it for approval by May 15, and (2) any objections to be filed by May 18. [Def. PI Opp., Ex. K at 2.] The Board's Petition for Review was taken under advisement. [*Id*.]

Southeast Alaska districts, including four different Alaska Native Groups who primarily took issue with the Court's conclusion the VRA did not apply in Southeast.[7]

On Friday, May 22, the Alaska Supreme Court issued an order reversing its May 10 decision requiring the reconfiguration of the Southeast election districts, and approved the use of the Board's Amended Proclamation Plan as a whole as the interim redistricting plan for the 2012 elections. [Def. PI Opp., Ex. L.] The Alaska Supreme Court opined:

> [w]hile "the reconfigured districts may comply with the redistricting criteria of article VI, section 6 of the Alaska Constitution, there is a risk that the United States Department of Justice would decline to pre-clear them under the Voting Rights Act. Notice of the failure of the Department of Justice to preclear the new districts would come so late in the 2012 election cycle that a great disruption to the election process would result. In order to avoid this possibility, the court will not require the use of the May 15, 2012 reconfigured districts for the 2012 elections.

[*Id*. at 1-2.][8]

Three calendar and one workday after the Supreme Court's order approving its use as the interim redistricting plan, the Board submitted the Amended Proclamation Plan for

[7] The Alaska Native groups who raised VRA concerns were (1) the Metlakatla Indian Community; (2) Sealaska Corporation; (3) the Central Tlingit & Haida Indian Tribes; and (4) the Chilkoot Indian Association. Neither the Plaintiffs in this case nor the Native American Rights Fund ("NARF") filed any objection.

[8] On May 22, the Riley Plaintiffs in the state court litigation requested the Alaska Supreme Court enter a preliminary injunction, preventing the DOE from implementing the Amended Proclamation Plan prior to the commencement of the current action. [*See* Exhibit H to Defendants' Opposition to Motion for Temporary Restraining Order, Docket 11-8.] On May 30, the Supreme Court denied the request without prejudice, allowing a renewed motion to stay if the DOJ fails to pre-clear the Amended Proclamation Plan before the 2012 primary election.

preclearance with the DOJ on Monday May, 25.[9] The Board requested expedited consideration of the Plan pursuant to 28 C.F.R. § 51.34(a), asking the DOJ issue its preclearance decision "as soon as possible and no later than June 30, 2012 so the Alaska Division of Elections can meet the advance deadlines for the August 28, 2012 primary election." [Def. PI Opp., Ex. M at 2.] The DOJ is under no legal obligation to grant requests for expedited consideration, and by federal regulation has 60 days to render a decision or the preclearance occurs as a matter of law. 28 C.F.R. § 51.42. The 60-day deadline for the Amended Proclamation Plan runs on July 24, 2012.[10]

On June 4, the Board also met in-person with DOJ representatives in Washington D.C. to discuss its preclearance submission and to answer any questions. [Declaration of Taylor Bickford ("Bickford Decl.") at ¶ 3.] At this meeting, the DOJ raised no substantive concerns regarding the Amended Proclamation Plan. DOJ's only questions related to the request for expedited consideration, specifically asking for the latest date the Board felt Alaska had to have a preclearance decision. [*Id*. at ¶ 4.] The Board informed the DOJ representatives it preferred a decision as soon as possible and noted its written submission asked for a decision by June 30. However, the Board felt the absolute

[9] A copy of the narrative portion of the Board's preclearance submission for its Amended Proclamation Plan is attached hereto as Exhibit 1. In addition to this narrative, the preclearance submission also included an additional 760 pages of documents and 466 MB of electronic information. [*See* Ex. 1 at 21-22.]

[10] The DOJ could restart the 60-day clock if it were to request additional information. 28 CFR § 51.37. DOJ did not request additional information from the Board in regards to its preclearance submission of the original Proclamation Plan, and has, to date, not requested any additional information regarding the submission of the Amended Proclamation Plan. [Bickford Decl. at ¶ 7.]

latest date it needed preclearance was July 10, 2012 in consideration of the 45 day requirement of the federal Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") and the Military and Overseas Voter Empowerment Act ("MOVE") amendments to UOCAVA.[11] [*Id*. at ¶ 4.]

DISCUSSION

A. The Amended Proclamation Plan Is Not Retrogressive and Complies With the Requirements of Section 5 of the VRA and Should Therefore Receive Preclearance from the DOJ.

The Board's constitutionally mandated redistricting tasks are, for the moment, completed. It has constructed a redistricting plan, obtained the Alaska Supreme Court's approval for use of that plan for the 2012 election cycle, and submitted its Amended Proclamation Plan to DOJ for Section 5 preclearance. The Board has no further role in the implementation of the Amended Proclamation Plan or in any other type of election preparations. That is the role of the DOE. However, the Board believes it is important for this Court to know the Board fully expects the DOJ to preclear its Amended Proclamation Plan in the next few weeks for a number of reasons.

First, Dr. Lisa Handley, one of the worlds' foremost Voting Rights Act experts, has analyzed the Board's Amended Proclamation Plan and concluded it "is not retrogressive" and therefore provides Alaska Native voters the same opportunity to elect

[11] It is the Board's understanding that UOCAVA now requires the Alaska DOE to prepare and distribute ballots to overseas and military voters 45 days prior to an election. [*See* Def. PI Opp., Ex. D at 3.] Given the primary election in Alaska is currently scheduled to take place on August 28, 2012, the DOE is federally mandated to comply with the Act by July 14, 2012. [*Id*.]

their preferred candidates to office as the Benchmark Plan. [Ex. 2 at 1, 15.] [12] Dr. Handley's analysis makes clear:

> the 2002 Benchmark Plan included eight effective Alaska Native districts, five in the state house and three in the state senate. The Amended Proclamation Plan also offers five effective Alaska Native districts in the state house and three in the state senate.

[*Id*. at 15.]

Second, the majority of the Amended Proclamation Plan relevant to a Section 5 analysis is nearly identical to the original Proclamation Plan, which received preclearance from the DOJ on October 11, 2011. [Ex. 1 at 12; Ex. 2 at 6, App. B.] Those Alaska Native districts that have somewhat different configurations still maintain their effectiveness according to Dr. Handley. [Ex. 2 at 1, 6-11, 15.]

Third, none of the alternative plans provided to the Board by third parties provided Alaska Natives with a better opportunity to elect their candidates of choice. In fact, two of the three plans were retrogressive on their face. [Ex. 1 at 16-17; Ex. 2 at 11-15.] The third plan was not a viable alternative because it contained several districts with an Alaska Native Voting Age Population hovering at the 41.8% effectiveness target and all with significantly less than provided in the Amended Proclamation Plan. [Ex. 1 at 16.] Moreover, at least six, and possibly nine, of its districts violate the Alaska constitutional

[12] Dr. Handley's May 25, 2012 report, "A Voting Rights Analysis of the Alaska Amended Proclamation State Legislative Plan" is attached hereto as Exhibit 2. Dr. Handley, who was also the VRA expert for the 2000 Redistricting Board, is regularly used by DOJ as an expert in VRA litigation. For example, Dr. Handley was retained by and testified for DOJ in the recent Section 5 case *Texas v. U.S.*, 831 F.Supp.2d 244 (D.D.C. December 22, 2011). Dr. Handley's *curriculum vitae* is attached hereto as Exhibit 3.

requirements of compactness, contiguity, and/or socio-economic integration. The DOJ has made clear in its Section 5 guidelines that when "evaluating alternative or illustrative plans," it "relies upon plans that make the least departure from a jurisdiction's stated redistricting criteria needed to prevent retrogression." DOJ Guidelines at 7472.

Fourth, based on its June 4 meeting and subsequent communications with DOJ representatives, the Board believes the DOJ will honor the Board's request for expedited consideration and issue its preclearance determination in the next several weeks. [Bickford Decl. at ¶ 4, 5.][13] In any event, DOJ must issue its preclearance decision (absent a request for additional information which the Board believes is highly unlikely) by July 24, more than a month before the primary election.

In short, the Board is confident its plan is not retrogressive and fully complies with Section 5 of the VRA and will receive preclearance from DOJ in the very near future. This Court should take these facts into account as it considers whether or not to grant a preliminary injunction until preclearance.

[13] DOJ's historical response to requests for expedited consideration from Alaska supports the Board's optimism. DOJ honored the 2000 Redistricting Board's request for expedited consideration of its Amended Final Plan submission, which it lodged with the DOJ on April 25, 2002. The Plan received preclearance 46 days later on June 10, 2002. If the DOJ follows a similar time frame, DOJ should issue its preclearance decision on or about July 10, 2012. [Bickford Decl. at ¶ 6.]

B. It is Not Necessary or Appropriate for This Court to Begin Drawing a "Contingency" Interim Plan at This Time.

In this Court's order identifying the scope of the oral argument scheduled for June 28, 2012, this Court poses the following question: "would it be appropriate for the court and the parties to begin drafting an interim redistricting plan, as described in Perry v. Perez, 132 S. Ct. 934 (2012), in preparation for the possibility that the Department of Justice will not preclear the Amended Proclamation Plan?" [Order, Docket 89-2 (June 26, 2012).] The Board feels it is necessary to specifically address the merits of this question as it directly impacts the Board and its constitutionally prescribed duties.

The Board believes it is neither appropriate nor necessary for this Court to "begin drafting" a contingency interim plan for the following reasons. First, this Court is in a completely different position than the district court in *Perry v. Perez.* Unlike the situation before this court, the federal District Court of the Western District of Texas had no choice but to draw an interim plan for the 2012 Texas primary elections. 132 S. Ct. at 940. The new plans drawn by the Texas legislature, the body responsible for redistricting in Texas, had not yet received preclearance and was involved in a highly volatile litigation with the Department of Justice before the District Court of the District of Columbia. *Id.* Only when it became clear these new plans would not receive preclearance in time for the primary elections did the Texas federal court act. *Id.*

Here, it is highly likely the Board's Amended Proclamation Plan will receive preclearance from DOJ well before the 2012 Alaska primary elections. In fact, the Board

reasonably believes DOJ will preclear the Plan less than two weeks from the date of the hearing in this case as discussed above. This Court is therefore not faced with a situation where drawing an interim plan is a practical necessity. Any efforts made towards drawing an interim plan would simply be a waste of judicial resources at this time.

Moreover, unlike the situation in Alaska, in *Perry v. Perez*, the only other viable option for an interim plan was the current redistricting plan based on the 2000 census population, which could not be used "because population growth had rendered them inconsistent with the Constitution's one-person, one-vote requirement." 132 S.Ct. at 940. Thus, the court was left with no other option but to draw an interim plan. Alaska, however, actually has a viable alternative plan – the Board's original Proclamation Plan (as amended) which the Board requested the Alaska Supreme Court use as the interim plan in order to avoid preclearance issues because the Alaska Native districts in that plan had already been precleared.[14]

The original Proclamation Plan (as amended) as the interim plan is a far better alternative than this Court starting from scratch to develop a redistricting plan because: (1) the Plan is not retrogressive and complies with Section 5 of the VRA as established by the fact DOJ has already precleared this Plan; (2) with the compactness "fix" to House

[14] In its March 14 Order, the Alaska Supreme Court indicated its willingness to use the original Proclamation Plan as an interim plan after modification of House Districts 1 and 2 to fix the compactness problems found by the Superior Court if "the Board is unable to draft a plan that complies with this order in time for the 2012 elections." [Def. PI Opp., Ex. J at ¶ 12 & n.16.] The Board rectified the compactness issues in that Plan and petitioned the Alaska Supreme Court for an order implementing the Plan as the interim plan. The Alaska Supreme Court, however, chose to use the Amended Proclamation Plan as the interim plan without explanation. [Def. PI Opp., Ex. K.]

Districts 1 and 2, the Plan contains no election districts that currently have been rejected on state constitutional grounds by the Alaska Supreme Court; and (3) the Plan implements the Board's policy decisions which complies with the teachings of *Perry v. Perez* that federal courts should avoid "displacing legitimate state policy judgments with the court's own preferences." 132 S. Ct. at 941.

Second, none of the parties have requested this Court draw an interim plan nor presented any evidence as to the appropriateness for this Court to do so. The Defendants cite *Perry v. Perez* not in support of this Court drawing an interim plan, but for a general standard of review, giving deference to the state of Alaska and in arguing a preliminary injunction is not the proper remedy in this case. [Def. PI Opp. at 9-10, 52-53, 59.] The Plaintiffs only refer to *Perry v. Perez* in their reply memorandum, and raise no substantive challenges to the Amended Proclamation Plan. They seek only to enjoin the DOE's election preparations. The United States Supreme Court has made it clear redistricting is "primarily the duty and responsibility of the State." *Id*. at 941 (*quoting Chapman v. Meier,* 420 U.S. 1, 27 (1975)). Accordingly, "the failure of a State's newly enacted plan to gain preclearance prior to an upcoming election does not, by itself, require a court to take up the [Board's] . . . task." *Perez*, 132 S. Ct. at 941. Under the circumstances of this case, there is no need for the Court to "take up the Board's task" especially when a viable alternative that can be easily implemented already exists.

Third, it would be completely inappropriate for this Court to allow the "current parties" to this litigation be the exclusive parties who assist this Court in drafting an

interim plan. The Alaska Constitution assigns the task of redistricting to an independent redistricting board. Alaska Const. art. VI, § 8. As DOE itself has noted, it "has no authority to create or seek preclearance of any plan; its responsibility is to hold elections using whatever plan the board adopts and the courts and DOJ approve." [Def. PI Opp. at 7.] Moreover, DOE has no expertise or experience in redistricting.[15] The policy judgments reflected in Alaska's redistricting plan are those of the five Board members, not the state or the DOE.[16] Likewise, allowing the Plaintiffs such exclusive and important influence over any interim plan rewards individuals who by their own admission have not raised a single substantive challenge to the Amended Proclamation Plan. They seek only to enjoin election preparations by the DOE until DOJ preclears the Amended Proclamation Plan, making generalized claims of harm to the public and electoral candidates. They make no argument that the Amended Proclamation Plan is somehow retrogressive or is unlikely to receive preclearance from the DOJ.[17]

[15] In fact, the Board understands the DOE does not even have the redistricting software necessary to create redistricting plans.

[16] Should this Court choose to enjoin the Defendants from continuing to implement the Amended Proclamation Plan and order the "parties" to assist this Court in drawing a contingency interim plan of redistricting, the Board would seek to intervene in the case at that time since it is, by law, solely responsible for redistricting in Alaska.

[17] The Plaintiffs' claim there are "numerous objections from the Native community" [Pls. Reply at 15] to the Amended Proclamation Plan is both misleading and irrelevant. The "numerous objections" referred to by the Plaintiffs consist of one letter from Plaintiffs' counsel. [*Id*.; Landreth Decl., Docket 87 at ¶ 3, Ex. A, Docket 87-1.] Citizens and special interest groups filed objections with DOJ regarding the original Proclamation Plan and that plan still received preclearance.

In short, it is simply not necessary for this Court to start drawing a contingency interim redistricting plan at this juncture. Moreover, it would be inappropriate to consider drawing an interim plan without input from the Board, who has the expertise and experience in redistricting Alaska and whose "policy judgments" must be the starting point for any court drawn plan. *Perez*, 132 S. Ct. at 940-44. The Board is confident the Amended Proclamation Plan will receive preclearance, and expects such a decision in the very near future, and in any event, more than a month before any election. [Bickford Decl. at ¶ 5.] If DOJ should deny preclearance, the state of Alaska already has a viable alternative plan, the original Proclamation Plan (as amended), that can easily be implemented in time for the 2012 election cycle.

CONCLUSION[18]

Based on the foregoing, the Board is confident its Amended Proclamation Plan meets the requirements for preclearance under Section 5 of the VRA and will receive preclearance from the DOJ. The Board also believes that DOJ will honor its request for expedited consideration, and will issue its preclearance decision in the next couple of weeks. Under these circumstances, there is no need for this Court to work on a

[18] In its Opposition, the DOE argues the Amended Proclamation Plan is not subject to preclearance because Section 5 of the VRA is unconstitutional, both facially and as applied to Alaska. [*See* Def. PI Opp. at 10-49.] The Board, as an independent constitutionally created entity, takes no position on DOE's argument. Under the current legal framework, the Board is required to comply with Section 5 of the VRA and ensure a new redistricting plan is not retrogressive to Alaska Natives. The Board worked extremely hard to preserve the Alaska Native voice in the state legislature and is proud of the results of its efforts: a non-retrogressive plan that complies with Section 5 of the VRA.

"contingency plan" in the unlikely event the Amended Proclamation Plan is rejected by DOJ. Alaska already has a legally enforceable redistricting plan, the original Proclamation Plan (as amended), which the DOJ has already precleared and reflects the policy judgments of the Board, the entity responsible for redistricting in Alaska, which this Court can order be used if necessity so dictates.

DATED at Anchorage, Alaska this 27th day of June 2012.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of June 2012, a true and correct copy of the foregoing was served via CM/ECF upon:

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