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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT ALASKA REDISTRICTING BOARD'S MOTION FOR SUMMARY JUDGMENT RE: RILEY PLAINTIFFS' OBJECTIONS TO TRUNCATION PLAN FOR SENATE DISTRICTS

I. INTRODUCTION

Plaintiffs Riley and Dearborn ("Riley Plaintiffs") claim the Alaska Redistricting Board's ("Board") truncation plan for the Senate Districts under the 2013 Proclamation Plan takes into consideration improper factors and "has the effect of denying and abridging the rights of residents within the Ester/Goldstream area the right to vote in Senate Districts elections in 2014."[1] The Riley Plaintiffs simply do not understand truncation. The Board's truncation plan clearly complies with the standards set forth in *Egan v. Hammond* and upheld in *Groh v. Egan*, which require truncation of a Senate term when resulting changes either exclude substantial numbers of constituents previously represented by incumbent or include numerous other voters who did not have a voice in selection of that incumbent. The Board truncated only those districts that substantially changed from the Amended Proclamation Plan, which was used for the

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[1] First Amended Renewed Application to Correct Errors in Alaska State Legislative Redistricting Plan After Remand at ¶¶ 25, 26 (July 25, 2013).

2012 elections as ordered by the Alaska Supreme Court. Accordingly, the Board is entitled to summary judgment as a matter of law.

II.
FACTS

The Board truncated four senators' terms, who but for redistricting, would not have had to stand for election until 2016.[2] These four Senate Districts are C, G, P, and S.[3] The Board unanimously voted to truncate all Senate seats whose constituency population had changed by 25% or more from the Amended Proclamation Plan to the 2013 Proclamation Plan as a result of reconfigured district boundaries, or contained less than 75% of the same population.[4] Senate District C had only 46.8% of the same population as the Amended Proclamation Senate district, Senate District G had only 50.9% of the same population, Senate District P had 51.3%, and Senate District S had 54.3%.[5] Because of the substantial change in the population of these Senate districts, the senators who currently represent these districts will have to run for election in 2014 instead of 2016.[6]

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[2] ARB00017352.

[3] *Id.*

[4] *Id.*

[5] ARB00017354.

[6] *Id.*; *see also* ARB00017352.

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After the Board determined which Senate districts to truncate, it assigned the term length for the new Senate districts in the 2013 Proclamation Plan.[7] The Alaska Constitution requires half the senators stand for election every two years.[8] Therefore, at the general election in 2014, fourteen Senate districts will be up for election: the ten senators assigned two year terms by the Amended Proclamation Plan and the four senators whose terms must be truncated.[9] The Board assigned two year terms to the remaining six Senate districts, requiring the senators from these six Senate districts to run for election in 2016.[10] The Board assigned four Senate districts two year terms, requiring these senators run for election in 2016 as well.[11] The Board assigned the remaining ten Senate districts four year terms, having these senators stand for election in 2018.[12] Thus, ten senators will stand for election in 2016 and ten senators will stand for election in 2018, complying with the Alaska constitutional requirement that ten senators stand for election every two years.[13]

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[7] ARB00017352.

[8] Alaska Const. art. II, § 3.

[9] ARB00017352.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

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III.
LEGAL STANDARD

Rule 56 of the Alaska Rules of Civil Procedure provides that summary judgment should be granted if there is no genuine dispute as to material facts, and if the moving party is entitled to judgment as a matter of law.[14] The moving party has the burden of showing that there are no genuine issues of material fact.[15]

Once the moving party has met this burden, the non-movant "is required, in order to prevent the entry of summary judgment, to set forth specific facts showing that [he] could produce admissible evidence reasonably tending to dispute or contradict the movant's evidence, and thus demonstrate that a material issue of fact exists."[16] Any allegations of fact by the non-movant must be based on competent, admissible evidence.[17] The non-movant may not rest upon mere allegations or denials, but must show that there is sufficient evidence supporting the claimed factual dispute to require a fact-finder to resolve the parties' differing versions of the truth at trial.[18]

There is no factual dispute about the Board's truncation plan. The plan fully complies with the law. The allegations in the Riley Plaintiffs' Renewed Application

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[14] Alaska R. Civ. P. 56; *e.g., Reeves v. Alyeska Pipeline Serv. Co.*, 926 P.2d 1130, 1134 (Alaska 1996); *Zeman v. Lufthansa*, 699 P.2d 1274, 1280 (Alaska 1985).

[15] *Id.*

[16] *Still v. Cunningham*, 94 P.3d 1104, 1108 (Alaska 2004) (internal quotation omitted).

[17] Alaska R. Civ. P. 56(c), (e); *Still*, 94 P.3d at 1104, 1108, 1110.

[18] *Christensen v. NCH Corp.*, 956 P.2d 468, 474 (Alaska 1998) (*citing to Shade v. Anglo Alaska*, 901 P.2d 434, 437 (Alaska 1995)).

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that the Board "improperly considered improper factors" are false. Moreover, the Riley Plaintiffs cannot rely upon mere allegations to create a factual dispute. The Board is entitled to summary judgment.

IV.
ANALYSIS

Article II, section 3 of the Alaska Constitution establishes four year terms for senators.[19] This same constitutional provision requires half the senators stand for election every two years.[20] During redistricting, a need to truncate the terms of incumbents may arise "when reapportionment results in a permanent change in district lines which either excludes substantial numbers of constituents previously represented by the incumbent or includes numerous other voters who did not have a voice in the selection of that incumbent."[21]

In the 1970 redistricting cycle, the governor, who was responsible for redistricting at that time, truncated all but two senators' terms because the redistricting plan called for substantial changes to many of the districts.[22] The Alaska Supreme Court upheld the truncation plan, finding the governor has the discretionary authority to require mid-term elections when necessary.[23] The Supreme Court reaffirmed its

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[19] Alaska Const. art. II, § 3.

[20] *Id.*

[21] *Egan v. Hammond*, 502 P.2d 856, 873-874 (Alaska 1972).

[22] *Id.* at 873-74.

[23] *Id.* at 874.

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findings in *Grog v. Egan*, upholding the governor's plan to truncate four senators' terms whose districts either no longer existed or the new districts had vastly changed boundaries.[24] The Supreme Court found these were valid reasons for truncating the terms, again relying upon the "well established" discretionary authority of the governor to require mid-term elections when necessary.[25]

Alaska courts have likewise recognized the redistricting board's discretionary authority to require mid-term elections when necessary. For example, in the 2000 redistricting cycle, the first redistricting cycle since the 1998 constitutional amendment establishing the redistricting board, the Board truncated the terms of seven sitting senators.[26] The Board relied upon the "substantial change" criteria set forth in *Egan v. Hammond* and reaffirmed in *Groh v. Egan*.[27] No truncation challenge was raised and the redistricting plan was approved. This Court itself has recognized "it is well established that redistricting may require truncation of senate terms."[28] Thus, even though there is no specific law expressly granting the Board the power to truncate a

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[24] *Groh v. Egan*, 526 P.2d 863, 880-881 (Alaska 1974).

[25] *Id.* at 881.

[26] *See* Exhibit A. Attached as Exhibit A is an excerpt from the 2001 Proclamation Plan Report and a copy of the chart showing the population distribution from the benchmark Senate districts to the 2001 Proclamation Senate districts and a chart identifying the 2001 Proclamation Senate district terms and percent population change from the relevant benchmark Senate districts.

[27] *Id.* at pg. 1.

[28] Memorandum Decision and Order Re: 2011 Proclamation Plan at 38 (February 3, 2012).

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senator's term, that authority is plainly vested in the Board as the constitutionally ordained body responsible for redistricting.

1. The Board Only Considered Legally Proper Factors in Creating its Truncation Plan, and Adopted an Objective Threshold for Defining Substantial Change In Accordance with the Criteria Set Forth in *Egan v. Hammond.*

Truncation affects only those mid-term Senate districts which have been substantially changed by redistricting.[29] If a newly drawn Senate district is substantially changed from the old district, and that district is mid-term, then the terms of the sitting senators in those districts must be truncated and new elections required.[30] If a Senate district is not substantially changed, and the incumbent will be mid-term in 2014, no new election is required.[31] What constitutes a substantial change, however, is not defined by law or court decision.

When adopting the 2013 Proclamation Plan, the Board voted unanimously to adopt a 75% threshold in order for the Board to have an objective guideline to use during the process of identifying Senate terms for truncation.[32] Senate Districts C, G, P, and S all had a substantial change in population from the Amended Proclamation Plan, the plan the Alaska Supreme Court ordered the 2012 elections be conducted under, and

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[29] *See Egan v. Hammond*, 502 P.2d at 873-74 (recognizing need to truncate terms of incumbents when such changes either exclude substantial numbers of constituents previously represented by incumbent or include numerous other voters who did not have a voice in selection of that incumbent).

[30] *Id.*

[31] *Id.*

[32] ARB00016829 at 114:11-115:12.

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would not have been up for re-election until 2016.[33] Senate District C had only 46.8% of the same population from the Amended Proclamation Plan, while Senate District G had 50.9%, Senate District P had 51.3%, and Senate District S had 54.3%.[34] Since these four Senate districts had less than 75% of the same population from the Amended Proclamation Plan and would not be up for re-election until 2016, the Board truncated the term of the senators who currently represent these districts, requiring re-election in 2014 in those districts.[35]

The Board discussed at length the truncation issue at its July 7, 2013 Board meeting.[36] In addition to the four Senate Districts ultimately truncated, the Board also discussed a potential fifth Senate district for truncation – Senate District B.[37] This particular district had 77% of the same population as the Amended Proclamation Plan.[38] The Board discussed whether or not this district should be truncated and whether a 23% change in population qualified as a "substantial change" warranting truncation.[39] Board member PeggyAnn McConnochie moved to adopt a 75% threshold so that the Board

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[33] ARB00017354.

[34] *Id.*

[35] *Id.*

[36] *See* ARB00016820-ARB00016832.

[37] *Id.*

[38] ARB00017354.

[39] *See* ARB00016820-ARB00016832.

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had an objective guideline to determine which senators' terms to truncate.[40] The Board had used a similar threshold when it created its truncation plan in 2011 and 2012.[41] The Board voted unanimously to adopt this guideline and truncated Senate Districts C, G, P, and S which were all under the 75% threshold and did not truncate Senate District B, which was above the 75% threshold.[42]

Although the Board did not formally adopt a threshold when it adopted the original Proclamation Plan in 2011 and the Amended Proclamation Plan in 2012, the Board did apply a similar rationale, only truncating those districts that had much less than 75% of the same population as the previous district.[43] For example, the Board truncated Senate Districts D, F, H, J, L, N, P, R, and S under the old system of identification.[44] The population in each of these districts had changed by more than 25% from the previous Senate district configurations.[45] Specifically, each district only had 49.0%, 53.5%, 55.5%, 53.4%, 42.6%, 51.5%, 50.1%, 44.9%, and 49.8% of the same population from the previous Senate district, respectively.[46]

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[40] *Id.*

[41] ARB00006023, ARB00006031-6032; ARB00015388-15389, ARB00015166-15167.

[42] ARB00017352; *see also* ARB00016820-ARB00016832.

[43] *See* ARB00006031; ARB00015166.

[44] ARB00006023.

[45] ARB00006031.

[46] *Id.*

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The Board followed the same pattern when it adopted its 2012 Amended Proclamation Plan on remand.[47] The 10 mid-term Senate seats not scheduled for election in 2012 (under the old system of identification) were Senate districts B, D, F, H, J, L, N, P, R and S.[48] The Board analyzed these seats for potential truncation.[49] Based on this analysis, the Board determined that the one mid-term senator whose senate seat was not substantially changed and therefore did not need to be truncated was Senate District B (under the old system of identification), Senate District P in the Amended Proclamation Plan.[50] This Senate District contained 86.8% of the same population as the previous Senate District.[51]

After determining truncation, the Board was required to assign term lengths to the 19 Senate districts up for election in 2012.[52] Pursuant to the alternating election requirements of Article II, section 3, the Board was required to assign two year terms to half of the Senate seats and four year terms to the other half.[53] Because no election was required in Senate District P in 2012, it is up for election in 2014 in the normal course.[54]

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[47] *See* ARB00015388-15389; ARB00015166-15167.

[48] ARB00015388-15389.

[49] *Id.*

[50] *Id.*

[51] *Id.*; ARB00015166.

[52] ARB00015389; Alaska Const. art. II, § 3.

[53] ARB00015389.

[54] *Id.*

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Accordingly, Senate District P was required to be designated as two-year seat in the pattern of alternating two and four year seats, otherwise the term of that seat would be improperly extended to six years.[55] Senate term lengths were then randomly assigned to the remaining districts in alphabetical order based on the location of SD-P within the framework of the twenty seats.[56] This is the exact same process used by the Board in the original Proclamation Plan, without objection, and the exact same process the Board followed in the 2013 Proclamation Plan.[57]

The Riley Plaintiffs' claim that the Amended Proclamation Plan provides incumbency protection to Senate District B because the Board chose not to truncate this district and instead truncated Senate Districts C, G, P, and S, completely ignores the stated reason that the Board did not truncate Senate District B.[58] As thoroughly explained above and on the record, Senate District B had 77.0% of the same population as the previous Senate district A.[59] The Board chose to quantify a "substantial change" as a population change of 25% or more in a district that had been assigned four year

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[55] *Id.*

[56] *Id.* In other words, if the 20 senate seats are numbered, Senate District P is the 16th seat, an odd number, and must be assigned a two year term. As a result, all "even" numbered Senate seats (SD-B, D, F, H, J, L, N, P, R & S) were assigned two year terms and all "odd" numbered Senate seats (A, C, E, G, I, K, M, O, Q & T) were assigned four year terms.

[57] *See* ARB00006023-6024, ARB00006031-6032; ARB00017352.

[58] First Amended Renewed Application at ¶ 25.

[59] ARB00017354.

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terms in 2012.[60] This is consistent with the Board's previous truncation plans in 2011 and 2012, as all of the Senate districts the Board truncated in both 2011 and 2012 had population changes exceeding 25%.[61] The Board simply applied this objective threshold, which Senate District B did not meet. Thus, the Board did not truncate Senate District B. The Board was not influenced by any ulterior or improper motives in choosing not to truncate Senate District B as the Riley Plaintiffs allege. Once again, the Riley Plaintiffs assert baseless allegations of partisan gerrymandering in the face of clear facts to the contrary.

2. The Riley Plaintiffs' Claims that the Board Considered Improper Factors in Adopting its Truncation Plan Are False and Have No Basis in Law or Fact.

The Riley Plaintiffs' allegation that the Board created incumbency protection by not truncating Senate District B is false, as are their claims that the Board improperly used the districts "from an unconstitutional Interim Plan" and that the Board improperly considered "previously considered partisan voting patterns of persons within the Ester/Goldstream area."[62]

First, the Riley Plaintiffs again argue the Board should use the 2002 redistricting plan as its "benchmark" when comparing previous districts to the current configurations, despite the fact that the districts in the 2002 redistricting plan are vastly

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[60] ARB00017352.

[61] ARB00006031; ARB00015166.

[62] First Amended Renewed Application at ¶ 25.

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under and overpopulated given the ten year change in population. The Riley Plaintiffs again ignore the cornerstone of redistricting – one person, one vote – in favor of their own agenda.

The Alaska Supreme Court ordered the state to use the 2012 Amended Proclamation Plan for the 2012 elections.[63] The elections took place under this plan in 2012. The *Egan v. Hammond* criteria, which require truncation when such changes either exclude substantial numbers of constituents previously represented by incumbent or include numerous other voters who did not have a voice in selection of that incumbent, only make sense when comparing those districts used in the previous election – 2012 – to the current configurations. If the Board were to follow the ridiculous suggestion of the Riley Plaintiffs, the Board would have to ignore the 2012 elections, and the voices of the voters, as though they never happened in favor of a grossly disproportionate plan the Alaska Supreme Court has already rejected.[64] This is

[63] *See* Order Regarding Interim Plan for 2012 Elections (May 10, 2012); Order (May 22, 2012).

[64] *See id.* The Alaska Supreme Court approved the use of the 2012 Amended Proclamation Plan for the 2012 elections, thereby rejecting the Riley Plaintiffs' proposal that the state use the district configurations from the 2002 redistricting plan with the 2010 population instead. *See* Opposition to Alaska Redistricting Board's Petition for Review for an Order Implementing the Proclamation Plan (As Amended) as the Interim Redistricting Plan for the 2012 Elections and Response to Order to Show Cause (May 8, 2012).

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not only contrary to the reasoning for truncation as set forth in *Egan v. Hammond*, but to the purpose of redistricting.[65]

Second, as explained in great detail above, the only factors the Board considered in adopting its truncation plan were election cycles and population change. These are the only relevant factors for truncation and the only factors the Board considered. The Board did not consider voting patterns, of Ester/Goldstream or any other area of the state, when deciding which Senate districts needed to be truncated. The Board simply applied the objective threshold set forth above. The Riley Plaintiffs' continued implication that the Board had improper, partisan motivations when creating its truncation plan is baseless. The Board Record, on the other hand, is replete with evidence of the precise factors the Board considered when formulating the truncation plan, all of which fully comply with the requirements of *Egan v. Hammond.*

The Board is entitled to summary judgment as there is no genuine issue of material fact that the Board considered legally proper factors in creating its truncation plan. The Riley Plaintiffs' allegations are nothing more than pure conjecture of counsel devoid of any basis in fact or support in the record. The Riley Plaintiffs' claims regarding the Board's truncation plan are without merit and must be dismissed.

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[65] The Board finds it important to acknowledge the 2012 Amended Proclamation Plan was never found unconstitutional. The Alaska Supreme Court refrained from making any substantive decisions as to the constitutionality of any of the districts in the 2012 Amended Proclamation Plan, claiming the Court could not determine whether the challenged districts met the constitutional criteria until the Board had drawn a map that followed the *Hickel* process. *See In re 2011 Redistricting Cases*, 294 P.3d 1032 (Alaska 2012).

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V.
CONCLUSION

The Board considered legally proper factors that fully comply with the criteria set forth in *Egan v. Hammond* when creating its truncation plan, adopting a purely objective threshold consistent with its prior truncation plans. The Board compared the current Senate district configurations against those districts under which the last elections were held, the 2012 Amended Proclamation Plan, as ordered by the Alaska Supreme Court. The Board did not consider any improper factors as alleged by the Riley Plaintiffs. The Board is entitled to summary judgment as a matter of law and the Riley Plaintiffs' baseless claims must be dismissed.

DATED at Anchorage, Alaska this 12th day of September, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of September, 2013, a true and correct copy of the foregoing document was served on the following via:

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