IN THE SUPREME COURT FOR THE STATE OF ALASKA

IN RE 2011 REDISTRICTING CASES	Supreme Ct No. S-15201 Superior Ct Case No. 4FA-11-2209

Case No. 4FA-11-02209 CI

RILEY PLAINTIFF'S RESPONSE TO ALASKA REDISTRICTING BOARD'S PETITION FOR REVIEW (Third)

The Alaska Redistricting Board's third petition for review is functionally requesting that this Court slam shut the doors to the Courthouse in the face of Alaska voters who may be offended by the Final Redistricting Plan before the Final Plan is actually adopted and before any such persons have actually filed an application to seek corrections. It is unclear how the Board's legal position would impact the Riley Respondents, because they were original parties. Nonetheless, the Riley Respondents oppose the Petition, because 1) the petition is inappropriate in that it seeks an advisory opinion respecting a hypothetical question, and 2) the Board's position is legally incorrect in that other parties are not necessarily barred from seeking judicial review and corrections of a Final Redistricting plan. The Court should deny the petition.

I. Procedural History and Statement of the Issue. For the purposes of this petition, the Riley Respondents accept the Board's statement of the procedural history and posture of the case. In addition, it is important to note that the Board has not adopted a final plan, and, of course, no applications have been filed by any party (including Riley et. al.) seeking corrections of the Final Plan.

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II. The Board Misinterprets The Superior Court's Order. The Board seems to interpret the Court's order as ruling on whether a party may file an application to correct errors in a final redistricting plan. The Riley Respondents do not interpret the order as such. As the Board notes in its Petition, both the Riley and Petersburg Plaintiffs mentioned in briefing on the need to hold hearings to accommodate judicial review the possibility of new parties that might file applications to correct errors in the Final Redistricting plan. Neither party requested an order allowing such applications. The Order in question merely notes that any qualified voter may file an application to correct errors in redistricting within 30 days following the adoption of a Final Plan., but advising potential parties that the Court would appreciate such objections to be filed within 10 days of such adoption to expedite judicial review. The Riley Respondents do not view this as any kind of mandate, but rather see it as a judicial "nudge" to potential parties urging filing such claims earlier rather than later. The Board's petition appears to be an over-reaction.

III. The Petition Is Premature And Seeks An Advisory Opinion Respecting A Hypothetical Question. Generally, this Court refrains from responding to hypothetical claims. *Jefferson v Asplund,* 458 P.2d 995, 998-999 (Alaska, 1969) Rather, this Court decides live controversies, "affect(ing) the legal rights of a party; it is "definite and concrete ... *admitting of specific relief* through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts." *Kodiak Seafood Processors Ass'n v State,* 900 P.2d 1191, 1191 (Alaska, 1995).

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In the present matter, the Board has not adopted a final plan. It is not clear when a final plan would be adopted.[1] It is therefore uncertain if the Final Plan would have any errors in need of correction, how many such errors may exist, and the nature and quality of such errors. Moreover, there are no parties before the Court seeking to correct errors in a plan that has not yet been adopted. The petition is therefore premature.

It is also speculative because there are no specific facts at issue. For example, one might speculate that the Board may join Spenard, Talkeetna, and Homer into a single district, which would be neither compact, contiguous nor socioeconomically integrated, and justify such a district by a desire to create a packed Democratic district. While the Riley and Petersburg may have no specific objection to such a plan, the voters in the affected communities may disagree. Clearly, it might not be fair for this Court to pre-judge the standing of persons not currently before the Court in the absence of any claims for relief nor presenting facts.

III. Other Parties Are Not Barred From Seeking Corrections In A New Redistricting Plan. Finally, assuming that the Superior Court's order is construed and interpreted in the manner urged by the Board, the Court's holding is a correct statement of the law. Specifically, the Alaska Constitution states

> Application to compel correction of any error in redistricting must be filed within thirty days following the adoption of the final redistricting plan and proclamation by the board.

AK CONST. Art. VI, Sec. 11. The Final Plan has not been proclaimed, and the plain

[1] To date that Board has not identified any projected deadline on when a Final Plan might be forthcoming. The Riley Plaintiffs have filed a motion before the Superior Court to set a deadline. The Board has opposed any Court ordered deadline.

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meaning of the sentence clearly holds that a party has thirty (30) days to file an application to make corrections. Indeed the order directly quotes the relevant Constitutional passage, which is the core of the Board's ire.

The Board escapes the plain meaning of the third sentence in Art VI, Section 11 by quoting from the second sentence in the section. The Board's petition quotes Section 11 but omits that portion of the section that is most relevant to the the issue presented:[2] i.e. the third sentence in Section 11 quoted by the Court and set out above. Rather, the Board quotes the second sentence of Section 11 which deals with applications to compel the Board to perform its duties. This second sentence deals with circumstances where a Board simply fails to perform. In this case, the Board performed its initial duties to proclaim a plan within the proscribed time frame and is irrelevant to the circumstances presented here: i.e. where the initial proclamation is reversed and remanded.

The Board's petition incorrectly asserts that new applications to correct redistricting errors was not allowed in past redistricting cycles. Specifically, this is exactly how subsequent challenges to Final Plans produced after remand were handled in both the 1970 and 1980 redistricting cycle. See *Grow v Egan,* 526 P.2d 863 (Alaska, 1974) and *Kenai Peninsula Borough v State,* 743 P.2d 1352 (Alaska, 1987). In both cases, the Court allowed new parties to bring new challenges to the Final Plan developed on remand that had not been part of the original litigation that gave rise to the remand. In the 1980's cycle, the Defendant also changed because the governor had changed. (Hammond to Sheffield) That a different process was used in *In re 2001 Redistricting*

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[2]ARB Petition at 10

Cases,[3] does not suggest that that such process was a mandated process. Rather, that process reflected the nature of the parties and claims before the Court at that time. As noted above, it is more common in redistricting cycles that a plan resulting from a remand is subjected to new claims and claimants.

IV. CONCLUSION.

The Board misinterpreted the Superior Court's "order" because it did not state a mandate. The Board's petition is premature in that no Final Plan has been adopted. Nonetheless, the Superior Court's order merely quotes verbatim the Constitutional provision relevant to applications to make corrections in redistricting, and its holding is a correct statement of the law.

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[3] 47 P.3d 1089, 1092-1093 (Alaska 2002)

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