IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

IN RE 2011 REDISTRICTING CASES

Case No. 4FA-11-02209 CI

MEMORANDUM IN SUPPORT OF RILEY PLAINTIFF'S MOTION FOR ORDER ESTABLISHING DEADLINES ON FINAL PLAN

Once again, the Riley Plaintiffs request that the Court establish a deadline for the Redistricting Board to issue a Proclamation for a new redistricting plan because of the unwillingness of the Board to establish a schedule that may accommodate timely judicial review of the resulting plan.

This is the Riley Plaintiff's third such request, the first of which was filed on May 15, 2013.[1] On May 30, 2013, this Court issued an order proposing a timeline, but did not order a deadline because this Court did not believe that full jurisdiction had been remanded to this Court. On the same day, the Supreme Court issued an order clarifying that jurisdiction over this matter had been returned to the Superior Court. On June 4, 2013, the Riley Plaintiffs filed a motion for reconsideration of the Court May 30, 2013 Order. The Board responded with a proposed schedule for the adoption of a "*Hickel*" plan, which this Court approved and ordered on June 11, 2013.

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1 That first request included a request for this Court to clarify that the Board must hold hearings on its proposed plans. The Court granted this portion of the motion in its May 30, 2013 Order.

Notably, this Court did not order a deadline for the issuance of a Final Plan Proclamation as requested by the Riley Plaintiffs. Rather, this Court found that the "Board **shall** begin work on the VRA portion of the plan immediately after its adoption of its *Hickel* Plan."(emphasis added)[2] In a moment of unwarranted hope, it appears that the Court presumed that its use of the word "shall" would be understood by the Board in its usual and customary sense, but cautioned that "If the Board fails to propose a schedule for the VRA portion of the plan in a timely manner, the parties may file a motion with the court and the court will address the issue at that time."[3]

Patience and restraint is not always rewarded, and in this case, the Board has responded with the hubris of Sisyphus and the contrived reluctance of Helen. Specifically, the Board has posted on its web-site the following notice:

> (T)he Board intends to hold a meeting at its Anchorage office on July 8, 2013 to adopt a final Hickel Plan. The Board's schedule thereafter is dependent upon the status of Section 5 of the VRA, which will determine if the Board's adopted Hickel Plan becomes the new final plan or whether further changes must be made to balance Alaska constitutional requirements with the requirements of the VRA, in accordance with the Hickel Process.[4]

In other words, the Board has failed "to propose a schedule for the VRA portion of the plan." This motion merely follows up on the Court's invitation to request a deadline in that eventuality.

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2 Order, at 4 (June 11, 2013)
3 Id.
4 See http://akredistricting.org

The Court is well aware of the time constraints upon the Board necessary to accommodate proper judicial review.[5] The Boards' notice harkens to the Board's oft argued, but never explained, belief that the VRA process must await the U.S. Supreme Court's decision in *Shelby County v Holder.*[6] That case presents the question as to whether Congress's twenty-five year extension of § 5 (pre-clearance) and § 4 (bailout) of the VRA the Voting Rights Act exceeded its power to enforce the protections of the Fourteenth and Fifteenth Amendments.[7] Notably, the claim in *Shelby County,* is not about the constitutionally of § 5 pre-clearance standards *per se*, but is actually about the more narrow issue respecting the terms, conditions and process for § 4 "bail out" of a covered jurisdiction pre-clearance obligations under § 5. The Board's dilatory actions are not justified given the speculative nature of a potential decision, Alaska's articulated interests in the case, and any prospective impact the decision may have upon Alaska's redistricting process.

First, the *Shelby County* decision may or may not affect Alaska redistricting, but forecasting the nature of that decision as a justification for a no-action agenda is an exercise in speculation rather than the diligent execution of a constitutionally mandated process.

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5 See generally, this Court's Order of May 30, 2013.

6 See Case No 12-96 (U.S. Supreme Court, Current Docket) [Petitioner's Opening Brief found at https://docs.google.com/file/d/0BxeOfQQnUr_gLUs0UGE2RHp3T00/edit?pli=1)

7 Id.

Second, Alaska's interest in the case is clearly articulated in the State's Amicus Brief filed in the case.[8] Specifically, Alaska is arguing that Alaska was improperly captured by the "new" § 5 coverage standards, and that the § 4 bailout standards do not allow Alaska a meaningful opportunity to rebut the presumption of § 5 coverage.[9] In other words, the litigation is not about coverage per se, but rather the processes to rebut coverage decisions (i.e. bail out). Regardless of whether the Shelby County prevails in it claims, the net result is not a wholesale invalidation of § 5, because that is not at issue in the case. Rather, if Shelby County prevails on it claims, the remand will require a new § 4 bailout processes. Thus, should Shelby County prevail, new standards for bailout (administrative and/or judicial) would have to be developed, the State of Alaska would have to apply for bailout and prosecute its application to completion. It is highly unlikely that such a process could be revised and completed by the State prior to any meaningful Board's deadline that might accommodate judicial review.

Third, it is likely that any decision in *Shelby County* will be applied prospectively.[10] What that means in Alaska is that the decision in this case will not have serious effect on any plan adopted by the Board prior to the decision or the effective date of any changes in the administration of the VRA.

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8 See at State of Alaska Brief at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-96_pet_amcu_alaska.authcheckdam.pdf

9 Id.

10 *Teague v Lane,* 489 U.S. 288 (1989) (new constitutional rules do not generally apply retroactively on collateral cases); See also *State ex. rel. Reynolds v Zimmerman,* 22 Wis. 2d 544, 126 N.W. 2D 551 (1964); See also *State ex. rel. Sonneborn v Sylvester,* 26 Wis. 2d 43, 132 N.W. 2d 249 (1964)

This Court has previously found that the "Board shall begin work on the VRA portion of the plan immediately after its adoption of its *Hickel* Plan."[11] The Board has once again ignored the subtle restraint exercised by this Court in advising the Board to proceed with its constitutionally mandated duties. The Board's dilatory actions are as transparent as Sisyphus's disingenuous contrivances. While the judgment of the gods may wait upon that moment that all humans find themselves upon the shore of the River Styx, Alaskans' need for a legal redistricting plan in a more constrained timeline required by the State election code. The Riley Plaintiffs respectfully request that the Court once again change its advise to an order, and require the Board to immediately commence the VRA portion of the redistricting process and establish a deadline for the Proclamation of a Final Redistricting Plan that allows adequate time for judicial review.

Date: June 21, 2013

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11 Order, at 4 (June 11, 2013)

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