IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT

IN RE 2011 REDISTRICTING CASES

Case No. 4FA-11-02209 CI

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

Riley et. al. moved for an order establishing a deadline for the proclamation of a Final Redistricting Plan, and the Board has opposed the motion. Riley's request is made to assure adequate time for meaningful judicial review. The Board's principle point in opposition is mootness. The Board claims that it is working on the plan and no deadline is needed.

Noticeably absent from the Board's opposition, however, is any evidence that the Board has actually adopted a proposed deadline to issue a proclamation for a final plan. Additionally, the Board does not offer any possible deadline. Rather, the Board vaguely argues that "the Board's work should be completed and its new plan presented to the Court for approval in the next several weeks …."[1] The Board's response clarifies that the Board has no deadline for issuing a Final Plan Proclamation, and that the motion is clearly not moot.

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1 ARB's Op, at 5

During the June 21, 2013 Board meeting, opposing counsel raised this issue to the Board and advised the Board that it needed to consider dates and deadlines for adoption of a final plan.[2] The Board ignored opposing counsel's advice.[3]

Both Riley et. al. and the Board extensively discussed how the decision in *Shelby County v Holder*[4] might or does affect the Board's schedule. However, the Board admits that the decision means that pre-clearance under Sec. 5 of the VRA is no longer an excuse to delay the Board's proclamation of a Final Plan.

The Board correctly notes that the Board must comply with Section 2 of the Voting Rights Act, however, these are not new concerns. In March, Board Counsel advised the Board that if pre-clearance were not a concern, the Board would still have to comply with Sec. 2 claims.[5] However, Dr. Handley remains the Board's VRA expert, and the undersigned requested supplemental disclosure of all of Dr. Handley's draft reports, and were informed that the Board has not requested any Section 2 analysis from Dr. Handley.[6] In short, it appears that the Board is not sufficiently concerned about a Section 2 analysis to actually obtain a Section 2 analysis from Dr. Handley.

Finally, the Board argues that the undersigned is not paying attention to the Board's website, and that the undersigned should have waited to file the present motion. It is rather obvious that the undersigned is actually paying attention at the risk of being perceived as "picky," and has noticed that the Board has never adopted a deadline to

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2 Tr. (6/ 21/ 13) at 19-20 (attached)
3 Id.
4 570 U.S. ------ (June 25, 2013)
5 Tr. (3/13/13) at 5-6 (attached)
6 White/Walleri e-mail exchange (attached)

proclaim a final plan. As the Court and the public have commented, the Board has a history of dilatory and reluctant action, which is counterproductive to accommodate meaningful judicial review and remedy. The Court will not be surprised by the plaintiffs' and amicii's allegation that the Board is "dragging it's feet" to the effect of forcing the Court's to accept a second unconstitutional interim plan. The most recent Board announcement – made on the same day the Board filed it's opposition to this motion --- fails to articulate even a soft target for completing its work.[7] The Board's suggestion that the present motion is premature simply ignores the fact that the Board continues to be vague about its schedule and possible reasons that might legitimately justify any delays.

For these reasons, the Court should grant the motion and establish a deadline for the Board to issue a proclamation adopting a Final Redistricting Plan.

Date: July 3rd, 2013

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7 See http://www.akredistricting.org

Certificate of Service
I certify that a true and correct copy of the foregoing
was served by e-mail on this July 3rd, 2013 to:

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about 15 that we haven't had fans running. The silence is deafening, but it's -- anyway, we did start this process on the 12th and of course today is the 21st.

Our next meeting will be the public hearing, which will be June 28th at the Anchorage LIO. And then Monday, July 1st, will be in Fairbanks at the Fairbanks LIO. And Juneau will be July 2nd in the Beltz room of the capital, which I understand they use as an LIO during the interim time, so that's the next meeting times.

And then the board will start drawing -- meeting after the public hearings on July 5th. Those have been noticed. That is Friday, of course, right after the 4th, but it was the only time we could get the full board together, was working over the weekend. So we will be working the 5th, 6th and 7th. I have noticed through the 12th, as we have a majority, but not all members, so if we need to continue on then, we will continue on until we finish this process.

Mr. White?

MR. WHITE: Mr. Chairman, the only thing that I see that hasn't been covered is that the board needs to start considering dates and deadlines for if it's required to remove step two and three of the Hickel process. The court order did indicate that the board

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should timely set that schedule, so I know it's been a really busy time. I know I hated coming over here this week. It was like walking into a sauna, and I saw everybody doing the hard work and the dedication.

So I wanted to thank everybody for that, but just wanted to put it to mind for people to start looking and thinking about the schedule, so we can get that announced as we move forward with the process sooner rather than later.

MR. TORGERSON: No other discussion or things to discuss, we will adjourn this meeting. The time is 12:26. As I said, anybody wants to wait around for the Calista map to be printed, I will go check with Eric right now and get a timeline on it. Thank you, Peggy Ann. I will see you a little later on this afternoon.

With that, we are adjourned. Thank you.

(Proceedings concluded at 12:26 p.m.)

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of the decision and the likelihood that there will be (indiscernible) different opinion (indiscernible).

So what does that mean for us? Well, if Section 5 is declared unconstitutional, that would have a very (indiscernible) effect on (indiscernible). They would then not have to comply with Section 5 (indiscernible).

There would be no benchmark, if you would. The board would still, of course, have to comply with Section 2 (indiscernible) discrimination. There is a different standard, though, for Section 2. And in order to qualify for Section 2 protection, you have to have at least a protected class (indiscernible) Alaska Natives have to be at least 50 percent of the voting age population in a compact district.

What does "compact" mean? The U.S. Supreme Court's version of that is different than -- than ours. But the bottom line is that if that case gets thrown out, then there will have to be -- you would have to take a look at what exactly is done and how that would affect (indiscernible). So it could have an effect.

Also wanted to note that the administration did one thing (indiscernible) the news story (indiscernible). This board is not the state. We

have no dog in the hunt on the Voting Rights Act. We are just here to apply whatever law is put before us.

But the administration has, in fact, filed a -- their own constitutional challenge to the Voting Rights Act back in the district court for the district (indiscernible). That case is currently stayed pending a decision on the Voting Rights Act -- on the Shelby County case.

If Shelby County throws out Section 5, so that would no longer apply to Alaska, I'm assuming that that case would (indiscernible) and the state would dismiss it.

And I think that (indiscernible). I'm assuming the state would probably move forward. They've done both a facial challenge and (indiscernible) applied challenge, meaning that (indiscernible) unconstitutional as applied to Alaska for all various and sundry reasons that they have placed in their brief.

So at this point in time, we're just waiting for the supreme court to come down on a decision. It may have an effect; it may not have an effect. We do know our conversations with other people that (indiscernible) still in effect (indiscernible) would have (indiscernible) benchmarks. The benchmarks here

EXHIBIT 2
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From: "White, Michael" <MWhite@PattonBoggs.com>
Subject: RE: 2011 Redistricting Cases- Request for Supplemental Discovery
Date: June 26, 2013 1:23:50 PM AKDT
To: Michael Walleri <walleri@gci.net>
Cc: "Jason Gazewood (jason@fairbanksaklaw.com)" <jason@fairbanksaklaw.com>, "Tom Klinkner (tklinkner@bhb.com)" <tklinkner@bhb.com>, "Jill Dolan (jdolan@co.fairbanks.ak.us)" <jdolan@co.fairbanks.ak.us>, "Carol J. Brown (cbrown@avcp.org)" <cbrown@avcp.org>, "Joe Levesque (joe@levesquelawgroup.com)" <joe@levesquelawgroup.com>, "Natalie Landreth (landreth@narf.org)" <landreth@narf.org>, "Marcia Davis (mdavis@calistacorp.com)" <mdavis@calistacorp.com>, "scottb@kgbak.us" <scottb@kgbak.us>, "Thomas E. Schultz (tschulz235@gmail.com)" <tschulz235@gmail.com>, "jmckinn@gci.net" <jmckinn@gci.net>, "James Sheehan (jsheehan@stsl.com)" <jsheehan@stsl.com>, Brooks Chandler <bchandler@bcf.us.com>, "clundberg@hk-law.com" <clundberg@hk-law.com>, "Tardugno, Anita" <ATardugno@PattonBoggs.com>, "Corr, Nicole A." <ncorr@pattonboggs.com>, "Clemens, Tara L." <TClemens@PattonBoggs.com>

Mike:

"You're picky." No parsing fine or otherwise. I am not sure who "Hanley" is, but I can tell you that Board has not received **any** report from Dr. Handley since her VRA analysis for the Second Amended Proclamation Plan submitted to the DOJ in April/May of 2012.

As you know the *Shelby* decision is only a day old. The Board has not yet had a meeting so obviously it has not yet had any discussions regarding terminating Dr. Handley's contract. Not sure when that will happen or how the board will proceed. I am sure that it will not be receiving and report from Dr. Handley related to Section 5 as to quote Justice Ginsberg, without the formula, "Sec. 5 is immobilized." If for any unexpected reason a written report is needed for Dr. Handley on any other issues, which I do not anticipate at this time, that report would of course be timely produced.

As to your OMA allegations. Neither I nor the board have to apologize for anything. All of the plans except Calistia and Board Draft G were posted prior to the meeting. The latter two were posted less than a half hour after the Board meeting. I have a computer "screen shot" of the Board computer that verifies the postings.

Plan A was posted at 1:26 p.m. on 6/20/13;
Plan B at 1:27 p.m. on 6/21/13,
Plan D at 1:28 p.m. on 6/20/13;
Plan E at 1:28 p.m. on 6/20/13
Plan F at 2:06 p.m. on 6/20/13.

The KGB plan was posted at 8:15 a.m. on 6/21/13;
Plan C was posted at 8:29 p.m. on 6/21/13;
The Wiener plan was posted at 10:10 a.m. on 6/21/13;
The AFFER plan was posted at 10:10 a.m. on 6/21/13.

The Calistia Plan (which was not received until shortly before the Board meeting commenced at 12 p.m.), was posted at 12:30 p.m. on 6/21/13; within 20 minutes or so of the end of the meeting.

I was mistaken regarding Board Plan G, I thought it was posted before the Board meeting as there was a hard copy of that map on the wall at the Board office at the start of the meeting. I am informed that due to some last minute changes, the plan did not get posted until 12:39 p.m. on 6/21/13.

As to your comments re a Sealaska plan, there is no Sealaska Plan and there never has been. The only document the Board received from Sealaska was a 6/13/13 "comment" letter from Jaeleen J. Araujo VP and General Counsel setting forth Sealaska's input. I spoke with Jim Sheehan, counsel for Sealaska this morning and he confirmed that

Sealaska has not submitted any maps or draft plan(s) and that the letter mentioned above is the only document Sealaska has submitted to the Board related to the current process.

Your claim that the Board somehow violated AS AS 44.62.310(a) has an additional flaw: you obviously overlook two very important qualifying words in the language of the statute: "If practicable" The language you quote in your OMA motion leaves of these two words. The full text of the applicable language states: "[a]gency materials that are to be considered at the meeting shall be made available at teleconference locations **if practicable**." Under the circumstances set forth above it was not practicable to have the Calistia and Plan G posted prior to the Board meeting. They were posted as soon as practicable thereafter.

Simply put, the Board posted all of its draft plans as well as the third party plans well prior to your motion and not in reaction to it. Moreover, it had been making arrangements for all along to have hard copies of 8x11 individual packets of all the draft plans and their population numbers made by a vendor that would be available at the three public hearings, as well as to have all of the draft plans sent electronically to every LIO location in the State so that they could be printed out and made available at there. It is my understanding that all 11 of the draft plans were sent to the LIO's yesterday. I appreciate your admission that your motion is not well taken and that you plan to withdraw your motion. Please note that the Board may still be filing a response to ensure the record is set straight.

On another note, given the *Shelby* decision can I assume you will be withdrawing your other motion as well?

As always, don't hesitate to contact me if you have questions or wish to discuss anything redistricting related.

Regards

Michael D. White

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From: Michael Walleri [mailto:walleri@gci.net]
Sent: Tuesday, June 25, 2013 2:35 PM
To: White, Michael
Cc: Jason Gazewood (jason@fairbanksaklaw.com); Tom Klinkner (tklinkner@bhb.com); Jill Dolan (jdolan@co.fairbanks.ak.us); Carol J. Brown (cbrown@avcp.org); Joe Levesque (joe@levesquelawgroup.com); Natalie Landreth (landreth@narf.org); Marcia Davis (mdavis@calistacorp.com); scottb@kgbak.us; Thomas E. Schultz (tschulz235@gmail.com); jmckinn@gci.net; James Sheehan (jsheehan@stsl.com); Brooks Chandler; clundberg@hk-law.com; Tardugno, Anita; Corr, Nicole A.; Clemens, Tara L.
Subject: Re: 2011 Redistricting Cases- Request for Supplemental Discovery

Call me picky about the supplementation re Hanley but I notice that your words are parsed rather fine. Are you representing to me that

1) the Board has not received any report from Handley, and
2) the Board has terminated her contract, and therefore will not receive any report.

Please confirm before we withdraw our request for supplementation.

As for the loading of the plans on the website, I think you are misinformed, but I have noticed that after we filed our motion, the Board posted the plans on the Website (except for the SeAlaska Plan, which is nowhere to be found). I think the Board has remedied the problem, and we will withdraw our motion. Your apology is accepted.

On Jun 25, 2013, at 11:33 AM, White, Michael wrote:

Good morning Mike:

I am in receipt of your email below. While I had some questions and disagreements with parts your of interpretation of the Supplementation requirements, given the SCOTUS opinion in the *Shelby* case, there is no need for us to start a dialogue to see if we could reach a mutually agreeable understanding on that topic.

To-date, Dr. Handley has not provided the Board with any new draft or final reports . While I am still analyzing the *Shelby* Case, based on my initial review of the case, discussion with informed individuals and published commentaries regarding same, it sure appears to me that Alaska is no longer needs to worry about preclearance requirements. Accordingly, there is more likely than not no need for Dr. Handley to formalize here VRA analysis into a report because Section 5 is no longer an issue in this case. If you disagree, feel free to give me a call to discuss.

Additionally, I am completely perplexed by your recent "Motion for Order to Remedy Violation of Open Meeting Law." Your assertions are simply incorrect. There was no OMA violation. Board Draft Plan A, B and D were posted on June 20, Draft Plans C, E, F & G were posted between 8 and 9 am on June 21 as were your plan, the AFFER plan and the KGB plan. The only plan that was not posted prior to the Board's meeting was the Calista plan which was not received by the Board until minutes before the meeting started. That plan was, however posted by 1 p.m. that same day. All of the plans and their population information were posted on the wall of the Board's conference room where its public meeting was held. News reports from 6/21 and 6/22 both report on the Board's adoption of the draft plans and have links to those plans **in their stories.** Obviously you have received some bad information. Your motion does not indicate that your assertions are based on your and/or your colleagues inability to access the plan – you simply declare that "no plans were or have been loaded onto the Google Drive site" - which is completely untrue and which we can irrefutably establish with the Court with documents and affidavits of the person who posted the plans.

A it did in its previous public hearings the Board will have not only oversized maps of all its and the third party plans at each public hearing, but also individual 8x11 packages that will contain all of the maps and their population data for distribution. The Board staff has been coordinating the efforts to have an outside vendor make those hard copies for well over a week. Accordingly, I request you withdraw your motion immediately in order that the Board need not be forced to go to the time and expense to complete a response that will clearly establish there is no factual or legal basis for your motion. I am of course available to discuss this matter if you so desire.

Regards

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-----Original Message-----
From: Michael Walleri [mailto:walleri@gci.net]
Sent: Monday, June 24, 2013 8:48 AM
To: White, Michael
Cc: Jason Gazewood (jason@fairbanksaklaw.com); Tom Klinkner (tklinkner@bhb.com); Jill Dolan (jdolan@co.fairbanks.ak.us); Carol J. Brown (cbrown@avcp.org); Joe Levesque (joe@levesquelawgroup.com); Natalie Landreth (landreth@narf.org); Marcia Davis (mdavis@calistacorp.com);scottb@kgbak.us; Thomas E.

Schultz (tschulz235@gmail.com);jmckinn@gci.net; James Sheehan (jsheehan@stsl.com); Brooks Chandler;clundberg@hk-law.com; Tardugno, Anita
Subject: 2011 Redistricting Cases- Request for Supplemental Discovery

This is a request to supplement discovery related to Dr. Handley's VRA analysis. Our Request for Production No. 1 (July 27, 2011) sought

All communication from any employee, consultant or contractor, including any final or draft reports, respecting the Voters Rights Act as it applies to the 2011 Redistricting process or any proposed plan for redistricting, including any public plan submitted to the Board, provided by any regardless of whether such report was provided to the Board, its members or staff.

In particular, we would note that in the Board has indicated that it has retained Dr. Handley to do a VRA analysis on the 1) status of benchmark, and 2) update her report on the effectiveness of projected Native effective districts. As you will note, our request related to "draft" reports, as well as final reports. Under Civ. R. 26(e)(1) I believe supplementation is required. Please advise if Dr. Handley has provided you with a draft or final report, if not, when do you expect such, and when we can expect supplementation.

The pre-trial order in this case did not provide specific deadlines for supplementation this case, however, I think that we should agree that expert reports (both final and draft) should be supplemented within two (2) working days of receipt. I will be glad to draft a stipulation to that effect if you concur. Please advise as to your thoughts on this.

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