

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

**ALASKA REDISTRICTING BOARD'S OPPOSITION
TO RILEY PLAINTIFFS' MOTION FOR RECONSIDERATION OF ORDER
REGARDING HEARING ON BOARD PLANS AND
PROPOSED BOARD TIME FRAME (MAY 30, 2013)**

**I.
INTRODUCTION**

COMES NOW, the Alaska Redistricting Board ("Board"), by and through counsel Patton Boggs LLP, and hereby opposes the Riley Plaintiffs' renewed request for court-ordered deadlines for the Board to adopt a new plan. First, there is no legal basis for the Riley Plaintiffs' Motion for Reconsideration under Civil Procedure Rule 77(k). Second, even if this Court should entertain the Riley Plaintiffs' motion, their request is moot because the Board has already adopted a schedule that will allow sufficient time for judicial review and provides for public hearings.

**II.
ARGUMENT**

1. There is No Proper Legal Basis for the Riley Plaintiffs' Motion for Reconsideration.

The Riley Plaintiffs fail to even identify the applicable civil rule, let alone identify an allowable reason for seeking reconsideration of this Court's May 30, 2013,

While this Court's May 2, 2013 "Order Regarding Request for Hearing" does denote that the Court believed overall jurisdiction of this action remained with the Alaska Supreme Court, it clearly provides that the public hearing and board timeline issues can properly be "heard before this court."⁵ Nothing in the Alaska Supreme Court's May 30, 2013 "Notice"⁶ regarding jurisdiction provides a legal or factual basis for reconsideration or changes the rationale for this Court's decision. By declining "to set specific deadlines for the Board,"⁷ this Court did not overlook or misapply controlling law, or overlook or misconceive a material fact or material question, nor did this Court apply any law this has since been changed by a court decision or statute.

In short, the Riley Plaintiffs' Motion for Reconsideration is nothing more than another request that this Court order specific deadlines for the Board's schedule, something this Court has already declined to do. The Riley Plaintiffs offer no legal or factual basis justifying their request for the Court to second guess itself. The Riley Plaintiffs' motion should therefore be denied.

2. The Riley Plaintiffs' Request for Court Ordered Deadlines and a Court Order for Public Hearings is Moot.

Even if the Riley Plaintiffs could state a proper justification for reconsideration, their motion must still be denied as moot as the Board has already adopted an expeditious work schedule that includes public hearings. On June 7, 2013, the Board

⁵ 5/2/13 Order at 1. Likewise, the Alaska Supreme Court's April 24, 2013 Order unambiguously states that these issues were "not properly before" it, but that any "party can seek to have these matters heard in the superior court." Supreme Court Order No. S-14721 (4/24/13).

⁶ Supreme Court No. S-14721, Notice (May 30, 2013).

⁷ 5/30/13 Order at 4.

held a public meeting to discuss this Court's May 30, 2013 order and to discuss scheduling issues.⁸ While the Board respectfully disagrees with this Court's interpretation of Article VI, Section 10 of the Alaska Constitution and its characterization of the Board's motives and actions, the Board recognizes the need to have a new redistricting plan in place in time for the 2014 elections.⁹ Accordingly, the Board voted 4-0¹⁰ to adopt a work schedule that provides for public input, public hearings, and a deadline of June 21, 2013 for adoption of its draft *Hickel* plans and July 12, 2013 as the latest for adoption of its final *Hickel* Plan.¹¹

The Board's schedule provides that it shall formally begin work on June 12, 2013, the soonest date by which it could properly notice the work sessions under the Open Meetings Act. Work sessions are scheduled for the next nine days, culminating in a Board meeting on June 21, where the Board will formally adopt its draft *Hickel* Plan(s). *Hickel* Plans from third party groups are due by noon of that same day.¹² This

⁸ See Ex. A (Transcript of Board Meeting, June 7, 2013). The Board held this meeting as soon as it was able to gather a quorum and properly notice the meeting.

⁹ While the Board has not yet decided whether to pursue an interlocutory appeal of this Court's May 30, 2013 order, the Board has chosen to move forward with drafting and adopting a *Hickel* plan rather than wait for appellate review on the matter. The Board does, however, believe it is important to have a clearly identified process for future Redistricting Boards and will evaluate whether to seek clarification and review from the Alaska Supreme Court simultaneously with its work schedule.

¹⁰ Board Member Marie Greene was unavoidably unavailable due to a travel conflict. [See Ex. A at 3:11-17.]

¹¹ Ex. A at 47:24-50:5; Ex. B (Board Work Schedule); Exhibit C (Board Press Release).

¹² See Ex. B; Ex. C.

part of the Board's schedule was designed to provide the public with sufficient time to draft and submit *Hickel* Plan(s) proposals.¹³

The *Hickel* Plan(s) adopted by the Board, as well as all third party plans will be uploaded to the Board's website to allow for public input and comment. On June 28, the Board will hold a public hearing in Anchorage, which will be teleconferenced statewide. At this hearing, the Board will take presentations on third party plans and allow public testimony. Public hearings (and regional teleconferences) are also scheduled on July 1 in Fairbanks and July 2 in Juneau. After the 4th of July holiday, the Board has scheduled meetings for the entire week of July 8 to consider and adopt its final *Hickel* Plan, which will be accomplished by July 12 at the latest.¹⁴

The Board's adopted schedule tracks very closely to the deadlines this Court recommended to the Alaska Supreme Court in footnote 12 of its May 30, 2013 order.¹⁵ Of course, the schedule must remain somewhat flexible to account for unforeseeable conflicts and unavailable public hearing locations.¹⁶ The Board is, however, committed

¹³ The Board provided notice to the public regarding its intent to accept and consider third party plans as well as the deadline for those submissions on the record at its June 7 meeting, as well as in its press release published later that same day. [See Ex. A at 40:15-43:2; Ex. B; Ex. C.]

¹⁴ Ex. A at 41:12-18; Ex. B; Ex. C.

¹⁵ 5/30/13 Order at 5 n.12 (recommending the Alaska Supreme Court order the Board to promulgate *Hickel* plan(s) within 10 days, allow third party plan submissions within 10 days, public hearings thereafter, and a *Hickel* plan adopted 10 days after commencing public hearings).

¹⁶ See Ex. C. The Board is moving forward with all deliberate speed. It notes, however, that some flexibility is required for finding accommodations for the Board members, none of whom reside in Anchorage. Given the busy summer tourist season, it is difficult to coordinate and accommodate the schedules of five busy professionals with jobs and personal commitments. For example, the Board may well move the meetings to adopt its final *Hickel* plan to the weekend of July 7-9 to accommodate Board member(s) schedules. Proper notice of any schedule changes will of course be provided.

to adopting a *Hickel* plan in an expeditious manner and intends to follow is adopted schedule as closely as practicable.

The Board's adopted work schedule moots the Riley Plaintiffs' request for reconsideration. The schedule sets a 30 day timeline, allows for public comment and third party plan submissions, and provides for public hearings on the adopted draft *Hickel* plan(s). Proponents of the third party plans shall have an opportunity to present their plans on the record and answer any questions the Board may have. Members of the public will have ample opportunity to not only attend the public Board meetings and public hearings, but also participate telephonically. The Board has always been cognizant of the important role the public voice has in the redistricting process and has always strived to ensure that voice is heard and put to use. The Board's adopted schedule is a continued recognition of this important input.

The Board's adopted schedule is for Step 1 of the *Hickel* process. Once a final *Hickel* plan is adopted, the Board will then begin to evaluate the need for compliance with Section 5 of the Voting Rights Act ("VRA").¹⁷ As discussed at the June 7, 2013 Board meeting, Dr. Lisa Handley has been retained to continue her work as the VRA expert for the Board.¹⁸ The Board has also retained Eric Sandberg and another GIS expert from the Department of Labor to assist the Board members with the GIS software and mapping.¹⁹ Dr. Handley has already begun analyzing the necessary data should the

¹⁷ Ex. C.

¹⁸ Ex. A at 37:7-18.

¹⁹ *Id.* at 36:14-25.


United States Supreme Court uphold Section 5 of the VRA and will be ready to advise the Board on her findings, if necessary, immediately upon the Board's adoption of a final *Hickel* plan.²⁰ Just as the Board has set forth an aggressive schedule for Step 1 of the *Hickel* process, the Board intends to follow an equally expeditious schedule for Steps 2 and 3 if necessary.

III. CONCLUSION

For the foregoing reasons, this Court should deny the Riley Plaintiffs' Motion for Reconsideration. The motion is not properly made under Alaska Rule of Civil Procedure 77(k). Even if it were, the Riley Plaintiffs' request for a court mandated schedule is moot since the Board has already adopted a sufficient work schedule that closely reflects this Court's recommended schedule that provides for public input, schedules public meetings, and will allow sufficient time for judicial review.

DATED at Anchorage, Alaska this 10th day of June 2013.

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²⁰ *Id.* at 37:19-38:13. If Section 5 of the VRA does not withstand legal challenge, then the Board's adopted *Hickel* Plan would become its new proclamation plan, which the Board would submit for court approval as soon as possible thereafter.

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of June 2012, a true and correct copy of the foregoing document was served on the following via:

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