

IN THE SUPREME COURT FOR THE STATE OF ALASKA

In Re 2011 Redistricting Cases.)
) Supreme Court Case No. S-14721
)
) Trial Court Case No. 4FA-11-2201 CI
) (Consolidated Cases)
) 4FA-11-2213 CI
) 1JU-11-782 CI



ALASKA REDISTRICTING BOARD'S PETITION FOR REHEARING OF OPINION NO. 6741

INTRODUCTION

Pursuant to Alaska R. App. P. 506(a)(1), (2), and (3), the Alaska Redistricting Board (“Board”) petitions this Court for a rehearing of its Opinion No. 6741, dated December 28, 2012. Specifically, the Board petitions this Court to reconsider the portion of its decision that the Board failed to follow the *Hickel* process in the adoption of its *Hickel* Plan. The Board seeks rehearing because this Court, in finding the Board failed to follow the *Hickel* process and in failing to answer whether the Board’s *Hickel* plan meets the Alaska constitutional criteria, misconceived material facts, overlooked a material question in the case, and misapplied a directly controlling principle. For the reasons set forth below, the Board respectfully requests the Court reconsider its finding that the Board did not comply with the *Hickel* process.

ARGUMENT

A. The Court Overlooked and/or Misconstrued Material Facts and Questions in this Case.

The Court overlooked and misconstrued several material facts in finding the Board failed to follow the *Hickel* process “therefore preclude[ing] meaningful judicial

review.”¹ First, contrary to the Court’s opinion, the Board did not start with, nor did it adopt a *Hickel* plan that left thirty-six (36) House districts unchanged. The Board’s *Hickel* template, which was nothing more than a beginning point for its *Hickel* Plan, used only twenty-two (22) unchallenged, constitutional House districts from the original Proclamation Plan: Anchorage HD 12-27, Southeast HD 31-35, and HD 40. A side-by-side comparison of the *Hickel* template and the *Hickel* plan clearly shows the district configurations are vastly different.

Second, the Court also misconstrues the material fact that the configuration of the House districts used in the *Hickel* template somehow limited the configuration of the Board’s final *Hickel* plan. While it is true the Board used a number of the House districts from its original Proclamation Plan as a starting point in drawing a map that complied only with the Alaska Constitution, this was but a starting point, or “template,” and was not the final plan adopted by the Board as compliant with the Alaska Constitution. The four *Hickel* Plans drafted and considered by the Board crossed the template boundaries in various ways.

Third, the Court also misconstrues the material fact that by first drawing districts that complied with the federal Voting Rights Act (“VRA”) in its original Proclamation Plan, the contours of the entire map were affected. Only four districts – House Districts 36, 37, 38, and 39 – were originally drawn to comply with the VRA. While the configuration of these districts may have had some ripple effect on the bordering

¹ Opinion No. 6741 at 13.

districts, they did not impact the contours of every district in the state. For example, the configuration of the House districts in Anchorage, Kenai, and the Mat-Su Borough were not in any manner influenced by VRA considerations.² The Court misconstrues and overlooks these material facts.³

The Court also overlooked a material question in this case by declining to decide whether the Board's *Hickel* plan complies with the Alaska Constitution. The Court required the Board on remand to start by designing a "reapportionment plan based on the requirements of the Alaska Constitution."⁴ If the *Hickel* plan adopted by the Board complies with the constitutional requirements, then the Board did what the Court asked. This Court reviews the Board's plan to ensure it is not unreasonable and meets the Alaska constitutional requirements.⁵ The Court ignores its duty by failing to answer this material question.

B. The Court Violates the Separation of Powers Doctrine By Dictating the Redistricting Process Vested in the Board By the Alaska Constitution.

The Court misapplied a controlling principle, the Separation of Powers doctrine, by invalidating the Board's chosen process in its attempt to comply with the Court's order on remand. The Separation of Powers doctrine, recognized as part of the constitutional

² Jt. Exc. 131 at 41:2-5; Tr. Tran. at 677:5-684:8; Bd. Rec. ARB753-55. Additionally, in its Amended Proclamation Plan, the Board departed from strict adherence to the Alaska Constitution in the configuration of only two House Districts, HD38 and 39. [Jt. Exc. 37-38.]

³ Org. Bd. Exc. 1128-1144.

⁴ *In re 2011 Redistricting Cases*, 274 P.3d 466, 467 (Alaska 2012).

⁵ *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1358 (quoting *Carpenter v. Hammond*, 667 P.2d 1204, 1214 (Alaska 1983)).

framework of Alaska, is derived from the distribution of power among the three branches of government, and limits the authority of each branch to interfere in the powers that have been delegated to the other branches.⁶ The main purpose of the Separation of Powers is to safeguard the independence of each branch of government.⁷

The Alaska Constitution vests in the Board the authority to reapportion Alaska's election districts.⁸ This Court's review of the Board's reapportionment plan is limited to ensure the final plan is not unreasonable and is constitutional.⁹ This Court reviews a redistricting plan just as it does a regulation adopted by an administrative agency by giving deference to the factual or policy determinations of the Board and refraining from substituting its judgment for that of the Board except on questions of law.¹⁰

In its opinion in this case, the Court violated the Separation of Powers doctrine by mandating the Board's *process*. This Court rejects the Board's chosen *process* of reapportionment, a task exclusively given to the Board by the Alaska Constitution, by implying the Board should have changed more districts than it did despite the Board's rationale and reasoning exhibited in its explicit detailed findings. The Court also seems to imply that the Board should have considered a wider range of plans, perhaps some that addressed the undisputed rural population shortfall by extracting the needed

⁶ *Alaska Pub. Interest Research Group v. State of Alaska*, 167 P.3d 27, 34-35 (Alaska 2007).

⁷ *Id.* at 35.

⁸ Alaska Const. art. 6, §§ 3, 8, 11 (2012).

⁹ *Kenai Peninsula Borough v. State*, 743 P.2d at 1358 (*quoting* *Carpenter v. Hammond*, 667 P.2d at 1214).

¹⁰ *Id.* at 1357; *State v. Lundgren Pac. Constr. Co.*, 603 P.2d 889, 898 (Alaska 1979) (Matthews, J., concurring).

population from multiple urban districts despite the voter dilution problems such practice would create. It is the Board, however, who is vested with the authority to choose between reasonable, constitutional alternative plans, not this Court. This Court's teachings in *Hickel* were designed to ensure that the requirements of the Alaska Constitution "are not unnecessarily compromised" by the VRA,¹¹ not to create a mandatory process that must be strictly followed even if the final adopted redistricting plan is completely constitutional. This Court mandating the *Hickel* Process violates the Separation of Powers Doctrine and should be reconsidered by this Court.

CONCLUSION

For the foregoing reasons, the Board respectfully requests this Court grant rehearing in this case and revise its opinion to find that the Board properly followed the *Hickel* Process except as to the Southeast election districts.

DATED at Anchorage, Alaska this 7th day of January 2013.

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¹¹ *Hickel v. Southeast Conference*, 846 P.2d 38, 51 n. 22 (1992). The Court also overlooks the fact that *Hickel* was decided prior to the 1998 amendments to the Alaska Constitution which created a completely new entity, time line and methodology for redistricting Alaska. It is instructive that the *Hickel* process mandated by this Court was not followed (nor even considered) in the 2000 redistricting cycle. See *In re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002). Indeed, that process was not even followed on remand in the *Hickel* case itself.

CERTIFICATE OF TYPEFACE

Pursuant to Alaska Rule of Appellate Procedure 513.5(c)(2), I hereby certify that the foregoing document was prepared in typeface 13 point Times New Roman for the text and 13 point Garamond for footnotes.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of January 2013, a true and correct copy of the foregoing document was served on the following via **US Mail with a courtesy copy via Electronic Mail**:

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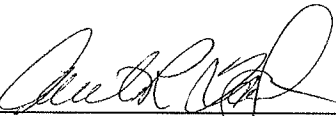
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