IN THE SUPREME COURT OF THE STATE OF ALASKA

In Re 2011 Redistricting Cases	)	Supreme Court case no. S-15201
	)	Superior Ct. case no. 4FA-11-2209-CI

BRISTOL BAY NATIVE CORPORATION'S AND CALISTA CORPORATION'S OPPOSITION TO REDISTRICING BOARD'S PETITION FOR REVIEW

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Filed in the Supreme Court of the State of Alaska, this _____ day of July 2013.

Marilyn May, Clerk

By: _____
Deputy Clerk

I. INTRODUCTION

Amici curiae Bristol Bay Native Corporation ("BBNC") and Calista Corporation ("Calista," collectively "Amici") submit this Opposition to the Redistricting Board's Petition for Review on the question of whether new parties may file challenges after the Board adopts its final redistricting plan.

Amici agree with the Opposition filed by the Riley Plaintiffs on July 3, 2013 that the Board's motion is premature and, even if appropriate at this time, its argument is heavily flawed and would result in the wholesale inability of Alaskan citizens to challenge a redistricting plan. This would serve to insulate the Board and its plans from any review and could result in the implementation of an unconstitutional plan until the 2020 census. Amici also agree with the arguments set forth by the Fairbanks North Star Borough on July 5, 2013 that the language and intent of the relevant Constitutional provision clearly allow for a new party to challenge the next "final" redistricting plan to be issued this month.

II. THE BOARD'S PETITION IS PREMATURE

The Riley Plaintiffs are correct that the Board is requesting this Court issue an advisory opinion. As this Court has recently reiterated, "standing is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions." *Ahtna Tene Nene v. State, Dep't of Fish and Game,* 288 P.3d 452, 460 n.28 (Alaska 2012) (citing *Harrod v. State, Dep't of*

Revenue, 255 P.3d 991, 1002 (Alaska 2011)). Standing is closely intertwined with the concept of advisory opinions because the former helps determine the latter. Here, the Board is asking this Court to rule that no one may challenge the final redistricting plan to be submitted later this month without actually knowing who that "qualified voter" is or what their particular objections are to the new plan. That voter's standing largely determines whether the objections to the plan can go forward. Yet the Board would have this Court skip that step in favor of a categorical rule that such challenges are not allowed. For the reasons described below, such a categorical rule is wholly unsupported by precedent. Thus the only avenue to challenge the addition of a new party and new objections is when such a qualified voter brings his or her claims to the court.

III. ANY QUALIFIED VOTER MAY OBJECT TO THE FINAL REDISTRICTING PLAN YET TO BE RELEASED

A. The plain language does not limit challenges to the first plan.

The Board asserts that any and all challengers to the final redistricting plan (even one that would not appear until July of 2013 or even later) would had to have done so by June 13, 2011. For practical and policy reasons discussed below, this makes absolutely no sense. First, however, the Constitutional provisions themselves do not support this interpretation. The entirety of Article 6, section 11 provides:

> Any qualified voter may apply to the superior court to compel the Redistricting Board, by mandamus or otherwise, to perform its duties under this article or to correct any error in redistricting. Application to compel the board to perform must be filed not later than thirty days following the expiration of the ninety-day period specified in this article. 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. Original jurisdiction in these matters is vested in the superior court. On appeal from the superior court, the cause shall be reviewed by the supreme court on the law and the facts. Notwithstanding section 15 of article IV, all dispositions by the superior court and the supreme court under this section shall be expedited and shall have priority over all other matters pending before the respective court. Upon a final judicial decision that a plan is invalid, the matter shall be returned to the board for correction and development of a new plan. If that new plan is declared invalid, the matter may be referred again to the board.

As the Riley Plaintiffs point out, the Board focuses solely on the second sentence of this section, ignoring the rather clear statement in the following sentence. The Board had ninety days to issue a final redistricting plan – a task at which they have repeatedly failed and have now inexplicably been given a third bite at the apple – and thus voters are still in that period before the final plan. Once that is issued, according to this section, qualified voters then have 30 days to file challenges. This provision says nothing more and Board's attempt to squeeze a 2011 deadline out of this is strained at best.

B. Precedent does not limit challenges to the first plan.

There is also no precedent to support the Board's interpretation. In *Groh v. Egan,* 526 P.2d 863 (Alaska 1974), it appears from the procedural history that the original redistricting resulted in one lawsuit (*Egan v. Hammond,* 502 P.2d 856

(Alaska 1972)), then after remand it was challenged anew by Plaintiff Groh in 1973. The same is true for the 1980 redistricting cycle. The original case was *Carpenter v. Hammond,* 667 P.2d 1204 (Alaska 1983) but after remand "the Kenai Peninsula Borough and several residents of House District 7 … filed suit against the state alleging that the new plan failed to comply with our order in Carpenter and violated both the Alaska and Federal Constitutions." *Kenai Peninsula Borough v. State,* 743 P.2d 1352, 1355 (Alaska 1987). Although no categorical rule is stated, in both cycles the court allowed new parties to file new lawsuits related to the same redistricting cycle.

The same did not occur in the 1990 cycle, likely because this Court appointed masters and limited the mischief that might occur on remand. Equally as likely is simply that no qualified voter filed a new challenge. In the 2000 cycle, there were no new lawsuits and no need for masters, but the Court did remand for some specific limited corrections to the final plan. Again, no new qualified voter appears to have challenged that plan. The fact that new voters did not challenge the plans does not translate into a rule that new challenges may not be made after the 90 day time period set forth for the Board to complete its work. Quite simply, there is precedent for later challenges and there is no categorical rule limiting challenges to that first plan.

C. Policy considerations do not limit challenges to the first plan.

Although the plain language and precedent leave room for a new qualified

voter to challenge the yet-to-be-released plan, the strongest argument is a practical and policy one. The Board is asserting is has free reign to set forth any plan it wishes on this third bite at the apple and only persons that may challenge it are the Riley Plaintiffs. Should the Riley Plaintiffs not take issue with the plan, or not have standing to challenge it for any reason, then the rest of voters in Alaska have no recourse. For example, if Cordova is placed in an Inside Passage district in violation of previous cases, voters in Cordova can do nothing. More broadly, if the deviations in a final plan exceed the allowable percentage and rise to the level of a one person- one vote violation, the voters outside the Riley Plaintiffs' district can do nothing. In other words, all Alaskans are now dependent on the Riley Plaintiffs' willingness and ability to continue even if they do not question the upcoming final plan. Even if the Riley Plaintiffs are willing to challenge districts outside their own, all Alaskans are now dependent on this Court to apply a very liberal definition of standing to allow this to go forward. This makes no sense.

If the Board were correct, qualified voters would have had to file challenges without knowing what district they are in or what their claims are by June 11, 2011. This creates a terrible incentive for hundreds, even thousands, of voters to file just to get their foot in the door in case they do not agree with the district in which they are ultimately placed years from now. This would be a true waste of judicial resources and the least efficient way to manage redistricting.

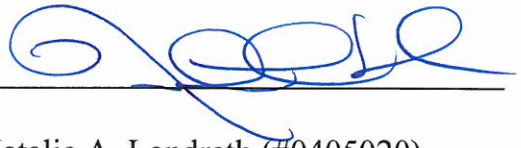
If the Board were correct, it would encourage mischief. To explain,

redistricting is an inherently political process and it is highly party driven. If a Redistricting Board knew it was insulated from new claims after the 90-day period as it claims here, it could "game the system" by adopting a final plan that it knows is flawed and on remand adopt a drastically different plan affecting completely different voters knowing full well those newly affected voters will be able to do nothing about it. Here, for example, Fairbanks plaintiffs could be accommodated on remand while Anchorage voters are gerrymandered along party lines but because 90 days had passed as the Board urges, those Anchorage voters could not bring a claim under any theory. Surely the law does not countenance such a result.

IV. CONCLUSION

Neither the plain language, precedent, nor reason provides that no new challenges may be brought to the upcoming final redistricting plan. The Alaska Constitution states the opposite: any qualified voter has 30 days after a final redistricting plan to challenge it. This Court should deny the petition for review and should any new voter challenge the final plan, the Board would be free to challenge their standing at that time.

Respectfully submitted this 5th day of July 2013 at Anchorage, Alaska.

By: 

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Certificate of Service

The undersigned hereby certifies that the on the 5th day of July 2013, a true and correct copy of the **BRISTOL BAY NATIVE CORPORATION'S AND CALISTA CORPORATION'S OPPOSITION TO REDISTRICING BOARD'S PETITION FOR REVIEW** was sent by first class mail to:

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