

IN THE SUPREME COURT FOR THE STATE OF ALASKA

IN RE: 2011 REDISTRICTING CASES

Supreme Court No. S-15201

Trial Court Case # 4FA-11-02209CI

**FAIRBANKS NORTH STAR BOROUGH'S MOTION FOR LEAVE TO
PARTICIPATE *AMICUS CURIAE***

Comes now the Fairbanks North Star Borough, by and through its undersigned attorney, and pursuant to Alaska Rule of Appellate Procedure Rule 212(c)(9), requests an order allowing its participation as an *amicus curiae* in this proceeding. This motion is supported by the accompanying memorandum.

DATED at Fairbanks, Alaska this 5th day of July, 2013.

FAIRBANKS NORTH STAR BOROUGH



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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.

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By: Andrea Fields 7/5/13
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**FAIRBANKS NORTH STAR BOROUGH'S MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO PARTICIPATE *AMICUS CURIAE***

The Fairbanks North Star Borough ("FNSB") requests that it be granted leave to submit a brief as *amicus curiae* in this matter. The superior court correctly ruled that any qualified voter can file a lawsuit seeking to compel the Alaska Redistricting Board to correct any error in redistricting within thirty days of the Board adopting a final redistricting plan.

FNSB is a second class borough in the state of Alaska and participated as an *amicus curiae* in the superior court. It has a significant interest in these proceedings because the outcome will determine the ability of any voter in the state of Alaska to challenge potentially unconstitutional legislative districts. FNSB's participation as *amicus curiae* will not unduly delay these proceedings nor cause additional costs to be incurred by the parties.

For the reasons presented herein, FNSB respectfully requests that the Court grant its motion for leave to participate as *amicus curiae* in the Supreme Court proceedings and accept the brief filed simultaneously with this request.

DATED at Fairbanks, Alaska this 5th day of July, 2013.

FAIRBANKS NORTH STAR BOROUGH



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FNSB Department of Law Date

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Supreme Court No. S-15201

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BRIEF OF THE FAIRBANKS NORTH STAR BOROUGH
AS AMICUS CURIAE

FROM THE SUPERIOR COURT OF THE STATE OF ALASKA,
FOURTH JUDICIAL DISTRICT AT FAIRBANKS,
THE HONORABLE MICHAEL P. MCCONAHY, PRESIDING

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

Clerk Marilyn May

By: _____
Deputy Clerk

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CONSTITUTIONAL PROVISIONS

Article VI, Section 10 2

Article VI, Section 11 1, 2, 3, 4

I. Introduction

The Alaska Redistricting Board (“Board”) is on its first attempt to draft a redistricting plan in accordance with the criteria set forth in the Alaska Constitution, and petitions this Court for an order precluding meaningful challenges to such plan if and when it has completed its work. For the reasons set forth below, the public interest is best served by denying the petition for review and allowing any qualified voter in the state of Alaska to challenge a plan promulgated by the Board if there are errors in redistricting.

II. Denial of the Board’s Petition for Review will not result in injustice nor compromise an important public interest.

The Redistricting Board incorrectly argues that the superior court misinterpreted Article VI, Section 11 of the Alaska Constitution, and states the superior court invited challenges to the Board’s final adopted plan on remand, starting the litigation process anew.¹ The superior court’s order states only:

“Under the Alaska Constitution any qualified voter may apply to the superior court to compel the Board to perform its duties under Article VI or to correct any error in redistricting. 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. This court urges any qualified voter with an objection to the redistricting plan to file within 10 days of the adoption of the final redistricting plan in order to expedite the judicial review process.”²

The Board’s objection overstates the actual language of the order. Article VI, Section 11 expressly allows any qualified voter to file an application to correct errors in

¹ Alaska Redistricting Board’s (“ARB’s”) Petition for Review, page 8.

² ARB’s Petition for Review, Appendix A, pages 4-5.

redistricting. The superior court order simply repeated the language in the Alaska Constitution.

The Board did not follow the *Hickel* process when it promulgated its initial Proclamation Plan³ and its Amended Proclamation Plan.⁴ It therefore was ordered to start anew.⁵ The Board argues that, “The legislature provided tight deadlines to ensure that only one redistricting plan is effective for the whole census cycle, only permitting challenges to the plan within 30 days following the adoption of the plan.”⁶ Clearly the 2011 redistricting process has not proved to have adhered to the timeframes set forth in the constitution, nor has it resulted in only one redistricting plan that is effective for the whole census cycle. The Board was required to promulgate a final redistricting plan ninety days after it received the official decennial census data.⁷ That time has long passed, and there is no doubt that the plan under which the 2012 elections were conducted will not be used again because of its constitutional infirmities.

The public interest to be served here is the preservation of the right of Alaskan voters to challenge a plan that has yet to be completed in accordance with the process mandated by the laws of the state of Alaska.⁸ It is not as though the Board is simply amending districts on remand. The Board was given clear instructions to fulfill its

³ *In Re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

⁴ *In Re 2001 Redistricting Cases*, 47 P.3d 1089 (Alaska 2002).

⁵ *Id.*

⁶ ARB’s Petition for Review, p. 9 of 15.

⁷ Alaska Const. Art. VI, sec. 10.

⁸ Alaska Const. Art. VI; *In Re 2011 Redistricting Cases*, 274 P.3d 466 (Alaska 2012); *In re 2011 Redistricting Cases*, 294 P.3d 1032 (Alaska 2012).

constitutional mandate, and it neglected to do so on the first two remands.⁹ The Board's comparison to the 2001 redistricting cases is therefore misplaced. In those cases, the Board was not ordered to start over from the beginning, but rather, was required to make changes to correct specific errors found by this Court, and it in fact corrected those errors on the first remand and in time for the 2002 elections.¹⁰ Even then the challenges that were precluded were those which were largely carried over from the previous plan.¹¹ In the present matter, the Board was ordered to start over, and the *In re 2001 Redistricting Cases* are therefore not controlling.

The Board did not act expeditiously on remand. In fact, it took motion practice by the Riley¹² and Petersburg¹³ plaintiffs and a scheduling order by the superior court¹⁴ for the Board to start work almost six months after this Court returned the plan to them.¹⁵ A slight delay to allow voters their constitutional right to review the Board's plan and file an application to correct errors will do nothing more than ensure that legislative districts are in accordance with Alaska Constitutional principles. Furthermore, the parties are afforded expediency in redistricting matters,¹⁶ so no unreasonable delay will occur.

The Board has not promulgated a plan within ninety days of receipt of the decennial census data, nor has it promulgated a plan within ninety days from the time the

⁹ *Id.*

¹⁰ See *In Re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002) and *In Re 2001 Redistricting Cases*, 47 P.3d 1089 (Alaska 2002).

¹¹ *In Re 2001 Redistricting Cases*, 47 P.3d at 1090, n. 5.

¹² ARB's Petition for Review, Appendix D.

¹³ ARB's Petition for Review, Appendix E.

¹⁴ ARB's Petition for Review, Appendix A.

¹⁵ ARB's Petition for Review, Appendix A, p. 3 of 5 ("the Board will formally begin work on 12 June 2013").

¹⁶ Alaska Const. Art. VI, sec. 11.

plan was remanded to it for the second time from this Court. It is this same Board that now suggests its process might be delayed if this Court does not issue a decision by July 19, 2013. This Court should deny the petition for review.

III. The Superior Court decision is not erroneous and is in accordance with the intent and purpose of the Alaska Constitution.

As explained above, the superior court's decision accurately recites the language set forth in Article VI, Section 11 of the Alaska Constitution. The order does not set forth the lengthy litigation process that the Board complains about in its petition for review, and the litigation process is allowed to start if there are errors in the next plan the Board promulgates.

On December 28, 2012, this Court completely remanded this case to the Board to draft a new plan based on strict adherence to the *Hickel* process.¹⁷ This Court acknowledged that most districts were not drawn with the Alaska Constitution as the primary consideration.¹⁸ Just as the Board's failures prevented meaningful judicial review of its previous plans, the Board's failures also prevented meaningful review by voters in this state. The Board was ordered to start over. Therefore, the process is just as it was in 2011 before the Board ever promulgated in initial proclamation plan. Currently, there is no final redistricting plan and proclamation by the Board to even start the thirty day period from which applications to compel errors must be filed in superior court.¹⁹

¹⁷ *In re 2011 Redistricting Cases*, 294 P.3d 1032, 1038 (Alaska 2012).

¹⁸ *Id.*

¹⁹ Art. VI, sec. 11.

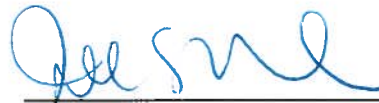
The Board is now on its third attempt to draft a plan in accordance with the Alaska Constitution. Certainly if the Board is given three tries to get things right, the voters in the state of Alaska get a “second bite at the apple”²⁰ if they believe the Board failed on its third attempt.

IV. Conclusion.

Based on the foregoing, FNSB respectfully asks this Court to deny the petition for review.

DATED at Fairbanks, Alaska this 5th day of July, 2013.

FAIRBANKS NORTH STAR BOROUGH



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²⁰ ARB’s Petition for Review, page 8.

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