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**Attorneys for Plaintiffs**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA**

H. ROBIN SAMUELSEN, JR., RUSSELL S. NELSON,  
VICKI OTTE, MARTIN B. MOORE, SR.

Plaintiffs,

v.

MEAD TREADWELL, in his official capacity as  
Lieutenant Governor for the State of Alaska; and GAIL  
FENUMIAI, in her official capacity as Director of the  
Division of Elections for the State of Alaska,

Defendants.

Case No. 3:12-cv-00118-SLG

**COMPLAINT**

**(Three-Judge District Court  
Requested)**

## **INTRODUCTION**

1. This is an action to enforce the Voting Rights Act of 1965 (“VRA”), as amended, including: requirements for preclearance of voting changes under Section 5, 42 U.S.C. § 1973c (“Section 5”); and to obtain injunctive and declaratory relief pursuant to Section 3 of the VRA, 42 U.S.C. § 1973a, and 28 U.S.C. § 2201.

2. Plaintiffs allege:

## **JURISDICTION AND VENUE**

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3)-(4), and 42 U.S.C. § 1973j(f).

4. In accordance with the provisions of 42 U.S.C. § 1973c and 28 U.S.C. § 2284, the Section 5 claim must be heard and determined by a court of three judges. The three-judge District Court may, in its discretion, exercise supplemental jurisdiction to consider any remaining claims in this case or allow them to proceed before a single judge. *See* 28 U.S.C. § 1367.

5. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this District and Defendants reside in this District.

## **PARTIES**

6. Plaintiff H. Robin Samuelsen, Jr. is a registered voter, or a voter eligible to register, residing in Dillingham, Alaska. He has served on the Bristol Bay Native Corporation Board of Directors since 2009, in which capacity he serves on the Finance Committee, Legal and Policy Committee, and the Construction Services Operations Committee. Plaintiff Samuelsen is also currently President, Chief Executive Officer and Chairman of the Board of the Bristol Bay Economic Development Corporation (BBEDC) and Chief of the Curyung Tribal Council, a

federally recognized tribe based in Dillingham, Alaska. 75 Fed. Reg. 60810 (Oct. 1, 2010). He is a shareholder of Bristol Bay Native Corporation and Choggiung Limited. Plaintiff Samuelsen is a lifelong subsistence and commercial fisherman.

7. Plaintiff Russell S. Nelson is a registered voter, or a voter eligible to register, residing in Dillingham, Alaska. Plaintiff Nelson has served on the Board of Directors for Bristol Bay Native Corporation since 2005. In this capacity, he sits on the Compensation Committee, the Finance Committee, the Executive Committee, and the Strategic Planning Committee. He also serves as chair of the Land Committee and Chair of the Construction Services Operations Committee. Plaintiff Nelson is currently employed as Director of Facilities of the Dillingham School District. Plaintiff Nelson is a member of the Curyung Tribe, a federally recognized tribe based in Dillingham, Alaska. 75 Fed. Reg. 60810 (Oct. 1, 2010), and is a shareholder of Bristol Bay Native Corporation and Choggiung Limited.

8. Plaintiff Vicki Otte is a registered voter, or a voter eligible to register, residing in Anchorage, Alaska. She is currently Chief Executive Officer and Chairman of the Board for MTNT, Limited, an Alaska Native Corporation for McGrath, Takotna, Nicolai and Telida villages. In this capacity, she represents and advocates for the shareholders from these four villages. Plaintiff Otte has previously served as Executive Director of the ANCSA Regional Association and as President and Chief Executive Officer of the Alaska Native Justice Center. She also served as a member of the Alaska Redistricting Board during the 2001 redistricting cycle. Plaintiff Otte is Athabascan and an enrolled member of McGrath Village, a federally recognized tribe. Plaintiff Otte is a shareholder in MTNT, Limited and the Doyon Corporation.

9. Plaintiff Martin Moore is a registered voter, or a voter eligible to register, residing in Emmonak, Alaska. He currently serves as City Manager for Emmonak, a position that he has

held for almost 15 years. Plaintiff Moore also serves on the Board of the Calista Elders Council, a 501(c)(3) non-profit organization whose mission is to perpetuate the cultural, traditional and linguistic knowledge of the Yukon-Kuskokwim region of Yup'ik peoples. Plaintiff Moore is a member of Emmonak Village, a federally recognized tribe based in Emmonak, Alaska. 75 Fed. Reg. 60810 (Oct. 1, 2010).

10. Plaintiffs live in districts in which Defendants have implemented candidate qualifying procedures and closed candidate qualifying under the Amended Proclamation Plan.

11. Candidates whose names will appear on the ballot for the primary election in Plaintiff's districts will be limited to those individuals who qualified under the unprecleared and therefore unlawfully implemented Amended Proclamation Plan. As such, Plaintiffs have standing to bring their claim. *See Allen v. State Bd. of Elections*, 393 U.S. 544, 555 (1969); *Janis v. Nelson*, 2009 U.S. Dist. LEXIS 109593 (D.S.D. 2009).

12. Defendant Mead Treadwell is the Lieutenant Governor of Alaska and is responsible for the control and supervision of the Division of Elections in the State of Alaska. ALASKA STAT. § 15.10.105.

13. Defendant Gail Fenumiai is the Director of Elections for the State of Alaska. Defendant Fenumiai is responsible for the administration of all state elections. ALASKA STAT. § 15.10.105.

14. Both Defendants are sued in their official capacities only.

### **FACTS**

15. Section 5 of the VRA provides that any “voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting” different from that in force or effect in the State of Alaska or its subdivisions on November 1, 1972, may not be lawfully

implemented unless such change has been submitted to the U.S. Attorney General, and the U.S. Attorney General has not interposed an objection within sixty days, or the jurisdiction obtains a declaratory judgment from the U.S. District Court for the District of Columbia that the change “neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color” or membership in a language minority group. 42 U.S.C. § 1973c(a).

16. Pursuant to Section 5, any changes in Defendants’ election standards, practices, or procedures must be precleared by the U.S. Attorney General or the U.S. District Court for the District of Columbia before being implemented. 42 U.S.C. § 1973c(a); 28 C.F.R. § 55.22.

17. The State of Alaska has been continuously covered under Section 5 since October 22, 1975. 40 Fed. Reg. 49,422 (Oct. 22, 1975); 28 C.F.R. § 51, App.

18. On June 13, 2011 the Alaska Redistricting Board adopted what it refers to as the “Proclamation Plan,” which is the redistricting plan for Alaska’s state legislative districts. That plan was submitted to the U.S. Department of Justice (“DOJ”) for Section 5 preclearance two months later on August 11, 2011. It received Section 5 preclearance on October 11, 2011. No elections were held under that plan.

19. On July 12, 2011, two individual plaintiffs filed a Complaint in Alaska Superior Court alleging several violations of the Alaska Constitution.

20. On February 3, 2012, four districts in the Proclamation Plan (1, 2, 37 and 38) were held unconstitutional by the Alaska Superior Court in Fairbanks. The Alaska Redistricting Board appealed as to only two of those districts (37 and 38).

21. The Alaska Supreme Court issued an order on March 14, 2012 remanding the redistricting plan back to the Alaska Redistricting Board to redraw a plan that complies with the Alaska Supreme Court’s decision in *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992).

22. On April 5, 2012, the Alaska Redistricting Board adopted what it refers to as the “Amended Proclamation Plan.” It did not immediately submit that plan for preclearance.

23. On May 22, 2012 the Alaska Supreme Court issued an order directing that the Amended Proclamation Plan be used as an “Interim Plan” for the 2012 election cycle. On May 30, 2012, the Alaska Supreme Court further ordered that the Plaintiffs in the redistricting case could renew a motion for stay of the May 22 order “if the Department of Justice fails to pre-clear the interim plan before the 2012 primary election.”

24. The Alaska Redistricting Board submitted the Amended Proclamation Plan to the DOJ for Section 5 preclearance on May 25, 2012, seven weeks and one day (or 50 days) after the Plan had been adopted by the Board. That submission has been assigned the number 2012-3149.

25. Submission 2012-3149 has not received Section 5 preclearance.

26. Despite the fact that the Amended Proclamation Plan has not received Section 5 preclearance, the Alaska Division of Elections has begun to implement the Amended Proclamation Plan.

27. On or about May 31, 2012 the webpage for the Alaska Division of Elections indicated that the candidate filing deadline would be June 1, 2012. That same page stated “the division will be certifying candidates using the April 5, 2012 Amended Proclamation of Redistricting.” The candidate filing deadline passed on June 1, 2012. Approximately 139 persons filed for candidacy in the new districts under the Amended Proclamation Plan, including candidates in districts where the Plaintiffs reside.

28. On or about June 1, 2012, the webpage for the Alaska Division of Elections posted emergency regulations, a public notice and maps of the districts and precincts under the Amended Redistricting Plan. The webpage indicated that the “Amended Proclamation Plan”

will be used “for the state’s house and senate districts” in the 2012 elections. The webpage further stated that “The Division of Elections has adopted emergency regulations outlining the precinct boundary descriptions. The regulations are “pending preclearance by the U.S. Department of Justice.”

29. Defendants’ failure to follow their precleared standards, practices, or procedures and specifically its use of the Amended Proclamation Plan, a redistricting plan that has not been precleared, constitutes a change affecting voting under Section 5 of the VRA. 42 U.S.C. § 1973c.

30. Defendants have not received preclearance from the U.S. Attorney General for the change in their standards, practices, or procedures prior to implementing this change, nor did the Defendants obtain a declaratory judgment from the U.S. District Court for the District of Columbia that the change would be free of the proscribed discriminatory purpose or retrogressive effect.

31. In violation of Section 5 of the VRA, Defendants, their employees, and agents have failed to obtain preclearance from the U.S. Attorney General or the U.S. District Court for the District of Columbia before implementing changes in their standards, practices, or procedures.

### **FIRST CAUSE OF ACTION**

#### **(Violation of Section 5 of the VRA)**

32. Plaintiffs restate and incorporate herein the allegations in Paragraphs 1 through 31 of this Complaint.

33. Defendants’ failure to obtain either administrative or judicial preclearance prior to implementing the change in their standards, practices, or procedures is a violation of Section 5 of

the VRA, 42 U.S.C. § 1973c. Defendants' change in their standards, practices, or procedures is therefore legally unenforceable.

34. Unless enjoined by this Court, Defendants will continue to violate Section 5 by implementing legally unenforceable standards, practices, or procedures and possibly even conduct an illegal election in August 2012.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendants which:

(1) Declares that Defendants' failure to follow their standards, practices, or procedures constitutes a change affecting voting within the meaning of Section 5 of the VRA, 42 U.S.C. § 1973c, and that the implementation of new standards, practices, or procedures – by way of a new redistricting plan – is legally unenforceable because Defendants have not received the requisite preclearance under Section 5 of the VRA; and

(2) Permanently enjoins the Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from implementing the Amended Proclamation Plan or any future voting change unless and until Section 5 preclearance for such change is obtained.



Plaintiffs further pray that this Court order such additional relief as the interests of justice may require, together with the fees, costs, and disbursements incurred in maintaining this action in accordance with the provisions of the Voting Rights Act.

DATED this 6th day of June 2012.

Respectfully submitted,

s/nlandreth

s/edougherty

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