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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

STATE OF ALASKA, c/o Alaska Department )  
of Law, 1031 W. 4th Avenue, Suite 200, )  
Anchorage, AK 99501 )  
Plaintiff, )  
)  
v. )  
)  
ERIC H. HOLDER, JR., in his official capacity )  
as Attorney General of the United States of )  
America, 950 Pennsylvania Avenue, NW, )  
Washington, DC 20530-0001, )  
)  
Defendant. )

Case No. 1:12-cv-1376-RLW

**FIRST AMENDED  
COMPLAINT FOR  
DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF**

**I. INTRODUCTION**

1. The State of Alaska brings this civil action seeking a declaratory judgment that Sections 4 and 5 of the Voting Rights Act of 1965, as amended in 2006 (the “VRA”) are unconstitutional, both facially and as applied to Alaska. Alaska seeks injunctive relief preventing enforcement of these Sections of the VRA. Alaska alleges as follows:

## **II. PARTIES**

2. Defendant Eric H. Holder, Jr. is the Attorney General of the United States of America and, as head of United States Department of Justice, has responsibilities that include enforcement of the VRA. The Attorney General is sued in his official capacity.

3. The State of Alaska is a sovereign state of the United States of America.

## **III. JURISDICTION AND VENUE**

4. This Court has jurisdiction under Article III of the Constitution of the United States and pursuant to 28 U.S.C. § 1331 because this action presents a federal question arising under the VRA and the Tenth, Fourteenth, and Fifteenth Amendments of the Constitution.

5. This Court also has jurisdiction pursuant to 28 U.S.C. § 1346 because an officer of the United States is the defendant.

6. The State of Alaska is seeking relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201, 2202.

7. Venue is proper in the United States District Court for the District of Columbia pursuant to 42 U.S.C. § 19731(b).

#### **IV. DECLARATORY JUDGMENT**

8. This case presents an actual controversy of sufficient immediacy and concreteness relating to the legal rights and duties of the State of Alaska and its legal relationship with the Attorney General to warrant relief under 28 U.S.C. §§ 2201, 2202.

9. The harm to the State of Alaska as a direct result of the actions and threatened actions of the Attorney General is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment and related injunctive relief.

10. A declaratory judgment is appropriate pursuant to 42 U.S.C. § 1973b(a)(1).

#### **V. BACKGROUND**

11. Congress enacted the VRA in 1965 to enforce the Fifteenth Amendment in the face of persistent voting discrimination against African-Americans, primarily in the southern states. Pub. L. No. 89-110, 79 Stat. 437 (1965); U.S. Const. amend. XV § 2.

12. Section 2 of the VRA prohibits any state or municipality from putting in place a “standard, practice or procedure” that denies or abridges the right of United States citizens to vote based on race or color. Pub. L. No. 89-110, 79 Stat. 437 (1965).

13. As described by the Supreme Court of the United States in *South Carolina v. Katzenbach*, 383 U.S. 301, 315 (1966), the remainder of the VRA is a

“scheme of stringent remedies aimed at areas where voting discrimination has been most flagrant.”

14. Section 4 established a factual test to determine which states or political subdivisions within a state were covered by Section 5’s remedial provisions. It included all states and political subdivisions where (A) a test or device was used as a prerequisite for voting and (B) less than fifty-percent of voting age residents voted in the 1964 presidential election. Voting Rights Act, Pub. L. 89-110, Title I, § 4, 79 Stat. 438-39 (1965).

15. Section 5 requires that the “covered jurisdictions” must submit any changes in their voting laws or procedures to the Department of Justice for “preclearance” before the change can be implemented. The purpose of this section is to prevent covered jurisdictions from replacing discriminatory and invalid voting laws with new discriminatory enactments.

16. The VRA included “bailout” provisions that permit a covered jurisdiction to escape the requirements of Section 5 if specified criteria are met.

17. The State of Alaska bailed out of coverage pursuant to 42 U.S.C. 1973(b) in 1966 without objection from the Department of Justice.

18. The VRA was renewed in 1970, and the coverage formula was updated to include data from the 1968 election. Alaska again became a covered jurisdiction, but again bailed out without objection from the Department of Justice.

19. The VRA was renewed again in 1975. Congress also amended the VRA to expand the scope of the act's protections to "language minorities."

20. Section 4 of the 1975 VRA designated as a covered jurisdiction any state for "which (i) the Attorney General determine[d] maintained on November 1, 1972, any test or device, and with respect to which (ii) the Director of the Census determine[d] that less than 50 per centum of the citizens of voting age were registered on November 1, 1972, or that less than 50 per centum of such persons voted in the Presidential election of November 1972." 42 U.S.C. § 1973b(b).

21. Section 4 of the 1975 VRA also defined "test or device" as used in the first part of this test to include "any practice or requirement by which any State or political subdivision provided any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language, where the Director of the Census determines that more than five per centum of the citizens of voting age residing in such State or political subdivision are members of a single language minority." 42 U.S.C. § 1973b(f)(3).

22. Pursuant to the 1975 VRA, the Attorney General and the Director of the Bureau of the Census determined that under §§ 4(b) and 4(f)(3), Alaska was a covered jurisdiction based on the Alaska Native population of the state and the fact that "English only" voting materials were used in 1972.

23. The determination that Alaska had provided “English only” voting materials was premised on the idea that written materials should have been provided to voters in Alaska Native languages. But Alaska Native languages are historically unwritten. Although some nineteenth century missionaries attempted to develop orthographies for some of the twenty or so Alaska Native languages spoken in Alaska, it was not until the 1960s that linguists at the University of Alaska developed modern orthographies for these languages. In 1972, few, if any, Alaska Natives could read their native language but could not read English.

24. A determination by the Attorney General and the Director of the Census that a jurisdiction should be covered by the preclearance requirements of the VRA is completely unreviewable. 42 U.S.C. 1973b(c).

25. The VRA was reauthorized in 2006. Congress reauthorized the 1975 Section 4(b) coverage formula that had swept Alaska within its reach. But Congress had almost no evidence of discriminatory voting practices in Alaska. The scant evidence about Alaska that did exist in the congressional record is manifestly insufficient to justify Congress’s inclusion of Alaska as a covered jurisdiction. No evidence before Congress indicated that Alaska should be counted among those jurisdictions where voting discrimination has been most flagrant. Indeed, no such evidence exists.

## **VI. ALASKA’S VOTING RECORD**

26. Alaska’s largest minority population is Alaska Native. According to 2010 census data, there are 104,871 American Indian and Alaska Native residents of

Alaska. At least twenty distinct Alaska Native languages are spoken in Alaska; according to a 2007 estimate, the largest language group consists of approximately 10,400 speakers.

27. Alaska is committed to ensuring that every eligible voter can effectively participate in Alaska's elections.

28. Even before passage of the VRA, Alaska was committed to ensuring that every eligible voter can effectively participate in its elections.

29. State and federal laws continue to require Alaska to ensure that every eligible voter can effectively participate in Alaska's elections.

30. Alaska's commitment and responsibility to ensure that every eligible voter can effectively participate in Alaska's elections is independent of Section 5 of the VRA.

31. Alaska Natives vote at comparable rates to non-Natives.

32. Alaskans have been electing Alaska Native candidates to legislative office since before statehood.

33. The proportion of Alaska Native elected officials in Alaska closely corresponds to the proportion of Alaska Native voters in the population. In 2006, when the VRA was reauthorized, seven Alaska Native legislators sat in a body of sixty, making the ratio of the proportion of Alaska Native legislators (11.6%) against the Alaska Native share of voting-age population (13.7%) almost one-to-one (.847).

34. No lawsuit against Alaska under Section 2 of the VRA has ever been successful.

35. In 2006, the record before Congress showed that the Department of Justice had objected to only one of Alaska's preclearance submissions in more than thirty years.

36. In 2006, the record before Congress showed that only one Section 5 lawsuit had been filed in Alaska—against the Municipality of Anchorage, a jurisdiction over whose elections the state exercises no control—and that no federal observers had ever been certified for an election in Alaska.

37. Alaska provides oral language assistance to voters who speak historically unwritten minority languages.

38. Alaska provides written language assistance to voters who read and write historically written minority languages.

39. Alaska's commitment and responsibility to provide language assistance to voters is independent of Section 5 of the VRA.

40. The requirement that Alaska comply with Section 5 of the VRA is neither a congruent nor a proportional response to Alaska's record with respect to voting.

41. Alaska's coverage under Section 4 of the VRA is neither a congruent nor a proportional response to Alaska's record with respect to voting.



## **VII. BURDEN ON ALASKA**

42. Over the past thirty years, the Alaska Division of Elections has made nearly 500 preclearance submissions, some major, some minor, in order to secure the necessary federal approval to implement changes in state election laws and practices.

43. Section 5's preclearance requirement is onerous and time-consuming, creates uncertainty and delay, and places Alaska's elections at the mercy of Department of Justice attorneys in Washington, D.C.

44. Alaska cannot make the smallest change to its election procedures, even those that do not affect minority voting, without prior permission of the Department of Justice.

45. Section 5's preclearance requirement denies Alaska the flexibility and autonomy necessary to run its elections in a manner that best accounts for local conditions and circumstances.

46. Section 5's preclearance requirement prevents Alaska from adjusting its election procedures as necessary to respond to urgent, unforeseen circumstances.

47. For example if a polling location is damaged or inaccessible due to weather conditions on election day, the need to obtain preclearance would prevent Alaska from lawfully moving the polling place to an accessible, safe location.

48. Instead of efficiently and timely responding to emergent local conditions, Section 5 instead requires Alaskan election officials to petition officials in Washington D.C. for permission. The Department of Justice attorneys who potentially

have veto power over all details of Alaska's elections are not required to have any knowledge about Alaska, or even to have ever set foot in the state.

49. Further, Section 5's preclearance process operates to delay or prevent Alaska from improving its election procedures.

50. For example, in 2012, Alaska sought to improve the delivery method initially proposed for sending its voter information pamphlet to Spanish- and Tagalog-speaking voters. The state's practice is to send *one* voter information pamphlet to each registered voter household. The household mailing file is produced using the mailing addresses in the voter registration database, and each mailing address in the voter registration database is sent one pamphlet. Because many of the Spanish- and Tagalog-speaking voters are housed at the seafood processing plants where they are employed, they use the same P.O. Box as their mailing address and therefore do not receive individual copies of the election pamphlet.

51. On May 3rd, 2012, the state sought preclearance to deliver the Spanish/Tagalog translation of the voter information pamphlet to voters by making multiple copies of the pamphlet available in a few centralized locations, specifically the plants where many Spanish- and Tagalog-speaking voters worked and the municipal clerk's office in each community. This would have prevented a shortage of voter information pamphlets for these voters. The Department of Justice declined to preclear the change in time for the 2012 elections, however, because it wanted additional information related to the Spanish-speaking community. This bureaucratic delay

prevented Alaska from implementing its proposed change during the 2012 election cycle and blocked the state's attempt to more readily provide election information to language-minority voters in their own languages.

52. Section 5's preclearance requirement imposes significant, ongoing administrative burdens on the state that are not warranted by Alaska's voting rights history.

53. The onerous and time-consuming preclearance requirement has even jeopardized Alaska's ability to hold timely elections.

54. The 2012 redistricting process provides a glaring example of this. After the 2010 decennial census the Alaska Redistricting Board redrew all of Alaska's electoral districts, as mandated by the Alaska Constitution. The Alaska Constitution requires that its electoral districts be contiguous, compact, and socio-economically integrated. Alaska law further requires that these bedrock redistricting principles be compromised to the least extent necessary for VRA compliance.

55. The 2012 redistricting plan was challenged in Alaska's state courts. The Alaska Supreme Court was unable to determine whether the Alaska Redistricting Board had compromised state constitutional requirements only as minimally as necessary to comply with the requirements of Section 5 of the VRA. The court therefore ordered the Board to start over and draw a redistricting plan compliant with Alaska law.

56. Because the Board feared that preclearance of the new plan could not be obtained in time for the 2012 election cycle, it asked the Alaska Supreme Court to approve the use of an interim plan. But, due to disputes over which interim plan was least likely to draw an objection from the Department of Justice, the Alaska Supreme Court did not issue a final ruling on a plan for the 2012 elections until May 22, 2012. That plan was submitted for preclearance on May 25, 2012.

57. The Alaska Division of Elections was then torn between its obligations under state and federal law to prepare for its elections and to comply with statutory election deadlines, on one hand, and Section 5's prohibition on implementing any voting changes prior to preclearance, on the other. Section 5 placed Alaska in an untenable position. Either course of action the state took—preparing for the election, or not preparing for the election—violated the law. The state faced massive disruption and disenfranchisement if the scheduled primary elections were not held. With no good choices available to it, the state moved forward with initial preparatory steps for the election.

58. Even though Alaska's redistricting plan did not violate the substantive requirements of the Fourteenth Amendment, the Fifteenth Amendment, or the VRA, and even though Alaska had submitted the plan for preclearance as required by Section 5, private parties sued the Alaska Division of Elections for implementing the plan without preclearance on June 7, 2012, a week after the candidate filing deadline. The plaintiffs demanded an injunction against any further preparations until preclearance was

obtained. The plaintiffs did not allege that the plan itself was unconstitutional or discriminatory toward minority voters; they argued only that Alaska was in violation of Section 5's preclearance requirement.

59. Even without any allegations that the redistricting plan actually abridged or denied the right to vote to any Alaskan, the Section 5 lawsuit jeopardized the state's ability to hold its elections.

60. The lawsuit was mooted only when the Department of Justice granted preclearance for the interim plan two days before the deadline to send advance absentee ballots to voters. Had the plaintiffs succeeded in obtaining the injunction they sought and had the Department of Justice not precleared the plan when it did, Alaska likely would not have been able to hold a timely 2012 primary or general election.

61. The Alaska Redistricting Board must still draw a permanent plan, and it remains caught between the commands of Section 5 of the VRA and the commands of the U.S. and Alaska constitutions.

### **VIII. COUNT I – Violation of the Fourteenth and Fifteenth Amendments**

62. When it reauthorized the VRA in 2006, Congress lacked sufficient evidence to allow it to reasonably conclude that Section 5 remained a congruent and proportional—or even a rational—response to the problem of voting discrimination in the United States. In particular, Congress lacked sufficient evidence to justify Alaska's coverage under Section 5.

63. When Congress reauthorized Sections 4 and 5 of the VRA in 2006, it exceeded its authority under the Fourteenth and Fifteenth Amendments because it lacked sufficient evidence of voting discrimination to justify Section 5's intrusion on state sovereignty.

64. Section 4's coverage formula fails to accurately identify states with the worst voting discrimination problems and therefore violates principle of equal sovereignty. As a result, the formula wrongfully includes Alaska as a covered jurisdiction.

65. Section 5, as reauthorized in 2006, created an even more onerous preclearance standard that requires covered jurisdictions to engage in race-conscious decision-making prohibited by the Fifteenth Amendment.

66. Section 5's bailout provisions are insufficient to ensure that Section 5 is a congruent and proportional response to the problem of voting discrimination in the United States.

67. Section 5 of the VRA violates the Fourteenth and Fifteenth Amendments to the United States Constitution on its face.

68. Section 5 of the VRA violates the Fourteenth and Fifteenth Amendments to the United States Constitution as applied to Alaska.

**IX. COUNT II – Violation of Equal Sovereignty and the Tenth Amendment**

69. Section 5's preclearance requirement is inconsistent with principles of federalism and the United States Constitution's acknowledgement that the administration of elections is generally reserved to the states.

70. Section 4's coverage formula violates the principle of equal sovereignty.

71. Section 5's preclearance requirement is inconsistent with Alaska's sovereign right to run its state elections.

72. Section 5 of the VRA violates the Tenth Amendment to the United States Constitution on its face.

73. Section 5 of the VRA violates the Tenth Amendment to the United States Constitution as applied to Alaska.

WHEREFORE, plaintiff respectfully requests that the court:

1. Issue a declaratory judgment that Sections 4 and 5 of the VRA are facially unconstitutional.

2. Issue a declaratory judgment that Sections 4 and 5 of the VRA are unconstitutional as applied to the State of Alaska.

3. Permanently enjoin defendant against enforcement of Sections 4 and 5 of the VRA.

4. In the alternative, permanently enjoin the defendant from enforcing Sections 4 and 5 of the VRA against the State of Alaska and its political subdivisions.

5. Grant such other and further relief as the court deems proper.

Respectfully submitted August 21, 2012 by:

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