

Preclearance of Court-Ordered Redistricting in Alaska

Samuelsen v. Treadwell
(*Sharon L. Gleason, D. Alaska 3:12-cv-118*)

Six days after the candidate filing deadline for Alaska’s legislature, four voters filed a federal complaint in the District of Alaska claiming that although Alaska’s initial 2011 redistricting had been precleared pursuant to section 5 of the Voting Rights Act, modifications ordered by Alaska’s supreme court in May had not. On the day before a three-judge district court was to hear the case, the modifications were precleared.

Subject: District lines. *Topics:* Section 5 preclearance; three-judge court; recusal; case assignment; primary election.

Six days after the June 1, 2012, candidate filing deadline for Alaska’s legislature, four voters filed a federal complaint in the District of Alaska challenging legislative districting as not precleared pursuant to section 5 of the Voting Rights Act.¹ According to the complaint, June 13, 2011, redistricting had been precleared, but changes that Alaska’s supreme court determined were required by Alaska’s constitution had been submitted for preclearance but not yet precleared.² With their complaint, the plaintiffs filed motions for a temporary restraining order,³ a preliminary injunction,⁴ and the designation of a three-judge district court to hear their section 5 claim.⁵

At a proceeding on Monday, June 11, Judge Sharon L. Gleason granted the motion for a three-judge court,⁶ set a hearing on the temporary restraining-order motion for June 14,⁷ and ordered briefing on the preliminary-injunction motion completed by June 25.⁸

On June 15, Judge Gleason denied the plaintiffs a temporary restraining order.⁹

1. Complaint, *Samuelsen v. Treadwell*, No. 3:12-cv-118 (D. Alaska June 7, 2012), D.E. 1; *see* Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge district court).

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013).

2. Complaint, *supra* note 1, at 5–6.

3. Temporary-Restraining-Order Motion, *Samuelsen*, No. 3:12-cv-118 (D. Alaska June 7, 2012), D.E. 3.

4. Preliminary-Injunction Motion, *id.* (D. Alaska June 7, 2012), D.E. 4.

5. Three-Judge-Court Motion, *id.* (D. Alaska June 7, 2012), D.E. 6.

6. Order, *id.* (D. Alaska June 11, 2012), D.E. 13.

7. Amended Minutes, *id.* (D. Alaska June 11, 2012), D.E. 15.

8. *Id.*

9. Opinion, *id.* (D. Alaska June 15, 2012), D.E. 19, 2012 WL 2236637.

[T]his single-judge court has authority to consider the plaintiffs' pending Motion for Temporary Restraining Order (TRO) and to enter a TRO if necessary to prevent "specified irreparable damage" until the three-judge court convenes to determine the plaintiffs' Motion for Preliminary Injunction. . . .

...

[A] temporary restraining order must be supported by findings of specified actual and immediate irreparable damage that necessitate action by [a] single judge before a three-judge panel can convene and determine the issues.

...

[T]he primary election is not scheduled to occur until August 28, 2012. On May 22 the Alaska Supreme Court ordered the Division [of Elections] to use the "Interim Plan" for the 2012 election cycle, a plan that had not been precleared by DOJ. The plaintiffs did not file this action until June 7, 2012—16 days later and after the June 1, 2012 candidate filing deadline had passed. The approximate two week delay at this time until the three-judge panel convenes is comparable.¹⁰

That same day, Chief Circuit Judge Alex Kozinski named himself and District Judge James K. Singleton to join Judge Gleason as the three-judge court.¹¹ On June 19, Judge Gleason recused herself: "I have just been informed that a person within [the third] degree of relationship to me has on this date, June 19, 2012, accepted an employment offer to work on the election campaign of an individual who is a political party candidate for the August 28, 2012 Primary Election."¹² The court reassigned the case to Judge Ralph R. Beistline.¹³

Two days before the scheduled June 28 hearing,¹⁴ the three-judge court provided the parties with four questions to address at the hearing.¹⁵ On the following day, the defendants notified the court that the redistricting plan had been precleared.¹⁶ On that day, the court dismissed the action.¹⁷

10. *Id.* at 3, 6, 8.

11. Order, *id.* (D. Alaska June 15, 2012), D.E. 20.

Judge Kozinski retired on December 18, 2017. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

12. Recusal Order, *Samuelson*, No. 3:12-cv-118 (D. Alaska June 19, 2012), D.E. 22.

13. Order, *id.* (D. Alaska June 20, 2012), D.E. 23.

14. Order, *id.* (D. Alaska June 18, 2012), D.E. 21.

15. Order, *id.* (D. Alaska June 26, 2012), D.E. 89.

16. Notice, *id.* (D. Alaska June 27, 2012), D.E. 98.

17. Order, *id.* (D. Alaska June 27, 2012), D.E. 101.