THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

KAREN L. LOEFFLER
United States Attorney
GARY GUARINO
Assistant U.S. Attorney
District of Alaska
222 West Seventh Avenue, Rm. 253 #9
Anchorage, Alaska 99513-7567
Telephone: (907) 271-5071
Facsimile: (907) 271-3224
E-mail: gary.guarino@usdoj.gov

T. CHRISTIAN HERREN, JR.
SARABETH DONOVAN
E-mail: sarabeth.donovan@usdoj.gov
Attorneys, Voting Section
Civil Rights Division, U.S. Department of Justice
950 Pennsylvania Avenue, NW, NWB 7254
Washington, D.C. 20530
Tele: (202) 305-2552
Fax: (202) 307-3961
Counsel for United States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

H.ROBIN SAMUELSEN, JR., et al. Plaintiffs, v. MEAD TREADWELL, in his official capacity as Lieutenant Governor for the State of Alaska, et al. Defendants.	)	Case No. 3:12-cv-00118-RRB-AK-JKS

STATEMENT OF INTEREST OF THE UNITED STATES UNDER SECTION 5 OF THE VOTING RIGHTS ACT OF 1965

INTEREST OF THE UNITED STATES

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending suit.

On June 25, 2012, this Court, pursuant to 28 U.S.C. § 2403, certified that the constitutionality of an Act of Congress had been raised in a case to which the United States was not a party. Docket # 76-77. Although such a certification provides the United States with the right to intervene, the exigencies of time and the particular facts presented here, which have rendered the case moot, make the filing of this Statement of Interest most appropriate. If the Court desires further briefing or action from the United States, we will certainly oblige.

This case presents questions regarding Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, which precludes covered jurisdictions from implementing voting changes without receiving "preclearance" for those changes from the United States Attorney General or the United States District Court for the District of Columbia. The Attorney General has primary responsibility for enforcing this preclearance requirement. *See* 42 U.S.C. §§ 1973c(a), 1973j(d).

ARGUMENT

THIS ACTION IS MOOT BECAUSE THE ATTORNEY GENERAL PRECLEARED THE AMENDED PROCLAMATION REDISTRICTING PLAN

In this action, the private plaintiffs' request that the Court find the State in violation of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, because they have implemented election administration procedures pursuant to the Amended Proclamation redistricting plan ("the Plan"), prior to the Plan receiving preclearance from the United States Attorney General or the United States District Court for the District of Columbia under Section 5 of the Voting Rights Act. Complaint, Docket 1 at 5-8. The Plaintiffs further request that the Court enjoin the Defendants

from implementing the Plan unless and until Section 5 preclearance is obtained. Complaint, Docket 1 at 8. In an action such as this one, the "three-judge district court may determine only whether § 5 covers a contested change, whether § 5 's approval requirements were satisfied, and if the requirements were not satisfied, what temporary remedy, if any, is appropriate." *Lopez v. Monterey County*, 519 U.S. 9, 23 (1996).

The Alaska Redistricting Board submitted the Plan to the United States Attorney General for review under Section 5 of the Voting Rights Act by letter dated May 25, 2012, and requested expedited review. Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction, Docket 25, Exhibit M. The Plan was precleared by the Department on June 27, 2012. See Letter dated June 27, 2012, from the Department of Justice to counsel for the Alaska Redistricting Board, attached hereto, as Exhibit A.

Therefore, the Plaintiffs' Section 5 claims are moot and this matter should be dismissed. Administrative determinations to preclear a voting change under Section 5 are final and not subject to further judicial review. *Morris v. Gressette*, 432 U.S. 491, 506-07 (1977) ("Where the discriminatory character of an enactment is not detected upon review by the Attorney General, it can be challenged in traditional constitutional litigation. But it cannot be questioned in a suit seeking judicial review of the Attorney General's exercise of discretion under § 5, or his failure to object within the statutory period."); *Georgia v. Holder*, 748 F. Supp. 2d 16, 17 (D.D.C. 2010) (three-judge court) ("There is no judicial review of the Attorney General's decision not to interpose an objection to the proposed change. …Thus, once the Department of Justice grants administrative preclearance, any pending judicial preclearance action becomes necessarily moot.").

Once a voting change is administratively precleared by the Attorney General or judicially precleared by the D.C. District Court, Section 5 provides no other or further remedy. *Lopez*, 519 U.S. at 23 ("Once a covered jurisdiction has complied with these preclearance requirements, § 5 provides no further remedy."); *Allen v. State Board of Elections*, 393 U.S. 544, 549-550 (1969) ("Once the State has successfully complied with the § 5 approval requirements … there is no further remedy provided by § 5.").

As a consequence, once preclearance is obtained for a voting change, any Section 5 enforcement action in a local district court seeking to enjoin enforcement of that voting change under Section 5 is thereby rendered moot. *See Berry v. Doles*, 438 U.S. 190, 192-93 (1978) ("the District Court should enter an order allowing appellees 30 days within which to apply for approval of the 1968 voting change under § 5. If approval is obtained, the matter will be at an end."); *Lopez v. Merced County*, 2008 WL 4467383 at * 6 (E.D. Cal. 2008) (three-judge court) ("Plaintiffs' [First Amended Complaint] was dismissed as to Los Banos on mootness grounds after Los Banos received preclearance from the DOJ on December 4, 2006 with respect to the 26 annexations alleged to violate Section 5."); *Myers v. City of McComb*, 2008 WL 1366112 at * 1 (S.D.Miss. 2008) (three-judge court) ("as the City of McComb has obtained the requisite preclearance from the Department of Justice, the November 23, 2005, injunction entered in this case is now moot, and should be vacated."); *Dobbs v. Crew*, 1996 WL 497060 at * 4 (E.D.N.Y. 1996) (three judge court) ("This Court agrees that the Section 5 claim, 42 U.S.C. § 1973c, has been rendered moot by the grant of preclearance.").

As a consequence, the plaintiffs' Section 5 enforcement claim, and the State's defenses, are both moot.

CONCLUSION

Because the Attorney General precleared the State of Alaska's Amended Proclamation Redistricting Plan on June 27, 2012, the Plaintiffs' claims in this action, as well as the State's defenses, are moot.

Date: June 27, 2012

Respectfully submitted,

UNITED STATES OF AMERICA,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

KAREN L. LOEFFLER
United States Attorney
GARY GUARINO
Assistant U.S. Attorney
District of Alaska
222 West Seventh Avenue, Rm. 253 #9
Anchorage, Alaska 99513-7567
Telephone: (907) 271-5071
Facsimile: (907) 271-3224
Email: gary.guarino@usdoj.gov

_/s/_ *SaraBeth Donovan*__
T. CHRISTIAN HERREN, JR.
SARABETH DONOVAN (NE Bar # 19798)
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW, NWB 7254
Washington, D.C. 20530
Tele: (202) 305-2552
Fax: (202) 307-3961
Email: chris.herren@usdoj.gov
Email: sarabeth.donovan@usdoj.gov

Counsel for United States of America

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing was sent via the Court's electronic notification system and/or email to the following counsel of record on June 27, 2012 to:

MICHAEL C. GERAGHTY
ATTORNEY GENERAL
State of Alaska

Margaret Paton-Walsh, Esq.
Assistant Attorney General
Alaska Bar No. 0411074
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
Phone: (907) 269-6612
Fax: (907) 258-4978
Email: margaret.paton-walsh@alaska.gov

Natalie A. Landreth, Esq.
Erin C. Dougherty, Esq.
Native American Rights Fund
801 B Street, Suite 401
Anchorage, AK 99501
Phone: (907) 276-0680
Fax: (907) 276-2466
Email: landreth@narf.org
dougherty@narf.org

By: /s/ SaraBeth Donovan

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

JUN 27 2012

Michael D. White, Esq.
Patton Boggs
601 West 5th Avenue, Suite 700
Anchorage, Alaska 99501

Dear Mr. White:

This refers to the 2012 House of Representatives and Senate redistricting plans for the State of Alaska, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on May 25, 2012; additional information was received through May 29, 2012.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.41.

Sincerely,

Thomas E. Perez
Assistant Attorney General

Exhibit A