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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

MICHAEL MILLER, KENNETH KIRK, and )  
CARL EKSTROM, )  
 )  
Plaintiffs, )  
v. )  
 )  
CHIEF JUSTICE WALTER CARPENETI, in )  
his official capacity as *ex officio* Member of the )  
Alaska Judicial Council, et al., )  
 )  
Defendants. )

Civil No. 3:09-cv-00136 (JWS)

**DEFENDANTS' REPLY TO OPPOSITION TO MOTION TO DISMISS**

**I. INTRODUCTION**

Defendants' motion to dismiss the complaint for failure to state a claim should be granted. Plaintiffs' opposition relies on judicial holdings taken out of context and applied to

facts far removed from the circumstances addressed by the Supreme Court. No case supports plaintiffs' basic premise that appointments to a council or commission that nominates judicial candidates may only be made by an individual or group elected in a popular election in which all citizens could participate. Plaintiffs have not shown that Alaska's appointive judicial selection process violates the Fourteenth Amendment in any way.

## II. ARGUMENTS

### **THE FOURTEENTH AMENDMENT DOES NOT REQUIRE THAT ALL REGISTERED VOTERS BE PERMITTED TO VOTE FOR THE INDIVIDUAL OR BOARD THAT SELECTS THE MEMBERS OF THE JUDICIAL COUNCIL.**

#### **A. Plaintiffs' Claims Rest On The One Person, One Vote Principle.**

In their Opposition to the Motion to Dismiss, as in their Memorandum in Support of a Preliminary Injunction, Plaintiffs rely almost exclusively on the Supreme Court's one person, one vote cases. These cases establish requirements that a state must follow when it decides to select officials or make other decisions through a popular election.<sup>1</sup> However, the cases shed no light on when an election must be held and, as discussed further below, they do not require that a one person, one vote election precede any particular nominating process.

Plaintiffs assert in Argument B of their Opposition that their challenge is based on the Equal Protection Clause broadly and not just on one person, one vote principles, but even in that section they cite no applicable case using any other Fourteenth Amendment-based analysis. [Doc. 42 at 11-13] They argue in passing that their claim is about the denial of the right to

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<sup>1</sup> See generally *Reynolds v. Sims*, 377 U.S. 533 (1964); *Kramer v. Union Free School Dist. No. 15*, 395 U.S. 621 (1969); *Hadley v. Junior College Dist. of Metro. Kansas City*, 397 U.S. 50 (1970); see also Defendants' Memo. in Support of Motion to Dismiss [Doc. 35] at 11-13.

vote based on occupation [Doc. 42 at 6, 12], but they also concede that the only election at issue here that is based on occupation -- the election of the attorney members of the Alaska Bar Association Board of Governors -- constitutionally may be limited to bar members. [Doc. 42 at 7; Doc. 4 at 24]<sup>2</sup>

**B. The One Person, One Vote Rule Does Not Apply To Judicial Selection.**

Plaintiffs do not contest defendants' point that the one person, one vote principle does not apply to judicial elections. [See Doc. 35 at 18] If judges may be chosen for the bench in an election that does not conform to one person, one vote principles, no logic supports the conclusion that, in a system where the governor appoints judges, the nominees for appointment must be named by an individual or group chosen directly or indirectly in an election meeting the one person, one vote standard.

The Alaska Constitution and statutes establish minimum qualifications for judges.<sup>3</sup> Plaintiffs do not challenge these. Having to be nominated by the Judicial Council is a qualification that a would-be judge must meet. In a pure appointment system, the governor may choose to limit his or her selections to candidates nominated by any group on whom the

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<sup>2</sup> Plaintiffs assert that a state could not restrict voting for judges on the basis of occupation. [Doc. 42 at 12-13] Alaska does not restrict voting for judges on the basis of occupation, since in Alaska, no one votes to elect a judge to the bench, and all registered voters may vote in retention elections. See Alaska Const. art. IV, §§ 5, 6; AS 15.35.030-.130, 22.05.080, 22.05.100, 22.07.060, 22.07.070, 22.10.100, 22.10.150, 22.15.170, 22.15.195 (constitutional and statutory provisions establishing procedures for gubernatorial appointment of judges and public voting in retention elections).

<sup>3</sup> See Alaska Const. art. IV, § 4 (requiring that Supreme Court Justices and superior court judges be citizens of the U.S. and Alaska, licensed to practice law in Alaska, and possessing any other qualifications prescribed by law); AS 22.05.070 (establishing minimum residency and legal practice requirements for Alaska Supreme Court justices and requiring that a justice be licensed to practice law in Alaska at the time of appointment), AS 22.07.040, 22.10.090, 22.15.160 (comparable provisions for judges in other state courts).

governor wishes to rely.<sup>4</sup> The Judicial Council system provides a more open screening process that informs the public who nominates judicial applicants and what criteria they apply.<sup>5</sup>

Plaintiffs cite no law that requires the judicial nominating process to be conducted only by persons selected consistent with one person, one vote principles, or any case law that applies any Fourteenth Amendment principles to a judicial nomination process. This is an independent basis for dismissing plaintiffs' claims.

**C. The One Person, One Vote Rule Applies Only To Elections, Not Appointments.**

**1. The Fourteenth Amendment does not require that nominations be made by people elected in a one person, one vote election.**

The Supreme Court consistently has granted states "latitude in determining whether certain public officials shall be selected by election or chosen by appointment."<sup>6</sup> When a state chooses an appointive process, one person, one vote rules do not apply. It is only "once the franchise is granted to the electorate" that "lines may not be drawn that are inconsistent with

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<sup>4</sup> For example, the governor could accept nominations only from his or her own political party, or only from the people who contributed the most to the campaign, or may choose to appoint only those approved by a political action group such as the National Rifle Association or the American Civil Liberties Union. Reliance by the governor on one of these groups would not create a constitutional right in the general public to vote for members of the group's governing board.

<sup>5</sup> See Alaska Const., art. IV, § 8 (defining membership of the Judicial Council); Bylaws of the Judicial Council, art. I, § 1 (setting the Council's criteria for selecting judicial nominees), available in the Judicial Council's Twenty-Fourth Report: 2007-2008 to the Legislature and Supreme Court, Appendix B; Alaska Judicial Council Procedures for Nominating Judicial Candidates, available in the Twenty-Fourth Report, Appendix D. Both the Bylaws and Procedures are also available on the Alaska Judicial Council website: [www.ajc.state.ak.us](http://www.ajc.state.ak.us).

<sup>6</sup> *Kramer*, 395 U.S. at 629; see *Sailors v. Board of Education of the County of Kent*, 387 U.S. 105, 108 (1967) ("We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, or by some other appointive means rather than by an election.").

the Equal Protection Clause of the Fourteenth Amendment.”<sup>7</sup> Alaska chose not to grant the franchise to the electorate to determine the members of the Alaska Judicial Council. Therefore, the one person, one vote cases that plaintiffs rely on do not apply to the appointive process by which Judicial Council members are selected.

Plaintiffs attempt to circumvent the problem posed by the lack of an election by positing a theory that any appointment to a position with any official responsibilities violates the Fourteenth Amendment unless it can be traced back to an individual or group that was elected under one person, one vote principles. [Doc. 42 at 3-8; Doc. 4 at 10-11] Thus, in plaintiffs’ view, the lay members of the Judicial Council are constitutionally selected because they were appointed by a governor who was elected in a general election; and the Chief Justice of the Alaska Supreme Court who serves *ex officio* as a member of the Judicial Council is constitutionally selected because he or she was appointed to the Supreme Court by a governor who was elected in a general election<sup>8</sup>; but the attorney members of the Council are not constitutionally selected because they are appointed by the Bar Association Board of Governors to which a majority of members were neither elected in a general election nor appointed by a

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<sup>7</sup> *Kramer*, 395 U.S. at 629; *see also Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 10 (1982) (“To be sure, when a state . . . has provided that its representatives be elected, a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction.” (emphasis added; internal quotes omitted)); *Sailors*, 387 U.S. at 108 (observing that prior cases invalidating election procedures that did not comply with one person, one vote principles “were all cases where elections had been provided and cast no light on when a State must provide for the election of local officials”).

<sup>8</sup> Additionally, Plaintiffs attach importance to the fact that Justices are subject to retention in a popular election. If the retention vote makes a Justice’s continued tenure constitutional, then that same logic applies to any newly-appointed Justice. Plaintiffs illogically do not complain that the Chief Justice’s appointment by the governor was preceded by the same nominating process that Plaintiffs contend is too flawed to be used for future nominations.

person elected in a general election.<sup>9</sup> [Doc. 42 at 5; Doc. 4 at 2, 4]

Plaintiffs provide no legal support for their theory, which they made up from whole cloth. The two key cases they rely on, *Kramer v. Union Free School District No. 15*<sup>10</sup> and *Sailors v. Board of Education of County of Kent*,<sup>11</sup> establish no such rule.

In *Kramer*, the Supreme Court examined a state statute that provided that only certain people in the geographically affected area -- mostly property taxpayers and parents of school-aged children -- could vote for members of the school board.<sup>12</sup> In considering this selection system, where the state provided for a popular vote, the Court examined whether the franchise could be limited to only some voters, and held that it could not.<sup>13</sup> *Kramer* is strictly an election case. It applies the rule that “once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”<sup>14</sup> Plaintiffs latch onto the highlighted phrase in the following paragraph and give it a significance unsupported by the opinion:

For example, a city charter might well provide that the elected city council appoint a mayor who would have broad administrative powers. *Assuming the council were elected consistent with the commands of the Equal Protection Clause*, the delegation of power to the mayor would not call for this Court’s

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<sup>9</sup> Plaintiffs, however, concede that the procedure for electing the attorney members of the bar Board of Governors is constitutional for all the functions that Board fulfills except for the Board’s naming of a Judicial Council member approximately once every two years. [Doc. 4 at 2, 13-14; Doc. 42 at 5-7]

<sup>10</sup> 395 U.S. 621 (1969).

<sup>11</sup> 387 U.S. 105 (1967).

<sup>12</sup> See 395 U.S. at 622-23.

<sup>13</sup> See *id.* at 632-33.

<sup>14</sup> *Id.* at 629, quoting *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 665 (1966).

exacting review. On the other hand, if the city charter made the office of mayor subject to an election in which only some resident citizens were entitled to vote, there would be presented a situation calling for our close review.<sup>15</sup>

First, the entire paragraph is dictum; it does not explain the Court's holding but suggests how the Court would view future cases presenting different facts. Second, the phrase "consistent with the commands of the Equal Protection Clause" does not mean that one person, one vote principles must govern the election of the people who make an appointment of another official; as Plaintiffs note, the Fourteenth Amendment has multiple aspects. Third, because *Kramer* discussed legislative and executive positions, it has no evident application to the selection of individuals who will participate in nominating candidates for the governor to choose among for judicial appointment. Finally, if the highlighted passage applies to the bar Board of Governor's selection of a Judicial Council member, it is satisfied. Plaintiffs concede that the bar Board of Governors is elected consistent with the commands of the Equal Protection Clause, since it is rational to allow only members of a profession to participate in electing the members of its governing board who represent the profession. [Doc. 4 at 24; Doc. 42 at 8]<sup>16</sup>

That plaintiffs err in their reading of *Kramer* is clear from *Sailors*, a case quoted approvingly in *Kramer*.<sup>17</sup> In *Sailors*, by state statute, citizens elected the members of their local school boards in a general election. Each local school board then sent a delegate to a meeting. Those delegates nominated and elected a five-member county school board.<sup>18</sup> Because of inequalities in the population among the local school districts, the nominating group

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<sup>15</sup> *Id.* at 629-30 (emphasis added); *see* Doc. 42 at 3, 6 (quoting italicized portion).

<sup>16</sup> *See also* Defendants' Memo. in Support of Motion to Dismiss [Doc. 35] at 22-23.

<sup>17</sup> *See Kramer*, 395 U.S. at 629 n.12, quoting *Sailors*, 387 U.S. at 111.

<sup>18</sup> *See Sailors*, 387 U.S. at 106-07.

was not chosen consistent with one person, one vote principles. But the Supreme Court rejected the argument that the county school board selection process violated the Fourteenth Amendment. The Court characterized the system for selecting members of the county school board as “basically appointive rather than elective.”<sup>19</sup> Because the school board, while performing important administrative functions, was not a “legislative body in the classical sense,” the Court held there was no requirement that it be elected.<sup>20</sup> And, “[s]ince the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of ‘one man, one vote’ has no relevancy.”<sup>21</sup> *Sailors* is strong precedent for recognizing that the process of selecting the attorney members of the Alaska Judicial Council is “basically appointive rather than elective,” that this is constitutionally acceptable because the Council is not a “legislative body in the classical sense” (or, indeed, in any sense), and that the one person, one vote principle therefore “has no relevancy.”

*Rodriguez v. Popular Democratic Party*<sup>22</sup> is another decision that demonstrates that plaintiffs misread *Kramer* as establishing that the one person, one vote rule governs who may make an appointment to a position in state government. *Rodriguez* examined the system that Puerto Rico used to fill vacancies in its House of Representatives. After a representative who was a member of the Popular Democratic Party died, Puerto Rico held an election in which only members of that Party could participate, and the winner of that primary was then

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<sup>19</sup> *Id.* at 109.

<sup>20</sup> *See id.* at 110.

<sup>21</sup> *Id.* at 111.

<sup>22</sup> 457 U.S. 1 (1982).



appointed to the empty seat.<sup>23</sup> The Court held that this selection process did not violate the Fourteenth Amendment, explicitly rejecting the argument that the authority to make appointments “must be vested in an elected official.”<sup>24</sup> The Court did not apply the strict scrutiny that would be applied if one person, one vote principles were at stake.<sup>25</sup>

**2. The test whether an entity has general governmental powers or only a limited, special purpose does not apply to the Judicial Council because the test only applies to an entity whose members are elected, not appointed.**

Even when a state decides to select members of a governing body by election, one person, one vote principles do not always apply. In cases such as *Salyer Land Co. v. Tulare Land Basin Water Storage District*,<sup>26</sup> the Supreme Court distinguished between groups that exercise “normal governmental” authority and those that serve only a “special, limited purpose” and whose acts therefore disproportionately affect one group of people. One person, one vote principles do not apply to electing the leaders of a special-purpose group; voting may be restricted to members of the group that is primarily affected.<sup>27</sup> Absent discrimination against a suspect class, courts apply only minimal, rational basis scrutiny when examining the criteria for who may participate in electing the leaders of such special purpose groups.<sup>28</sup>

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<sup>23</sup> See *id.* at 3-5.

<sup>24</sup> *Id.* at 12.

<sup>25</sup> See *id.* at 9-14.

<sup>26</sup> 410 U.S. 719, 727-29 (1973).

<sup>27</sup> See *id.* at 730; see also *Ball v. James*, 451 U.S. 355, 362-66 (1981); see generally *Hadley v. Junior College Dist. of Metropolitan Kansas City*, 397 U.S. 50, 56 (1970) (recognizing that there may be situations where a state elects “certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds* might not be required”).

<sup>28</sup> See *Ball*, 451 U.S. at 364 & n.8; *Salyer*, 410 U.S. at 730-31.

Plaintiffs apply the *Salyer* test to the Alaska Judicial Council and argue that the Judicial Council cannot be considered a special-purpose governmental body because it exercises general governmental powers that do not disproportionately affect just one group of people. [Doc. 42 at 14-19] Plaintiffs' analysis is doubly misguided. First, and most important, the analysis applies only when a court is considering the constitutionality of an *election* in which only some people may vote.<sup>29</sup> Thus, the analysis is irrelevant as applied to the Judicial Council, because there is no election of Judicial Council members.

Second, if the analysis were applicable, the Judicial Council would qualify as a special-purpose entity without general governmental powers. The Judicial Council levies no taxes, enacts no laws, and makes no appointments to other governmental organizations. Plaintiffs assert conclusorily that nominating potential judges is a "normal function of government," but no precedent supports this claim. [Doc. 42 at 4] The "normal function of government" cases all refer to typical legislative functions.<sup>30</sup> The attempted parallel to the President [Doc. 42 at 14], who nominates judges for confirmation by the Senate, fails; in the words of the U.S.

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<sup>29</sup> See *Sailors*, 387 U.S. at 108.

<sup>30</sup> See, e.g., *Ball*, 451 U.S. at 366 (finding that a power district "does not exercise the sort of governmental powers that invoke the strict demands of *Reynolds*" where the district did not impose property taxes, enact laws, or administer "such normal functions of government as the maintenance of streets, the operation of schools, or sanitation, health, or welfare services"); *Salyer*, 410 U.S. at 728-30 (finding that a water storage district had "some typical governmental powers" but not enough to classify it as a general-purpose governmental entity where it provided no general public services such as schools, housing, or transportation); see also *Bradley v. Work*, 916 F. Supp. 1446, 1457 (S.D. Ind. 1996) (concluding that a judicial nominating commission "serves no traditional governmental functions at all").

Constitution, the President both “nominate[s], and, by and with the advice and consent of the Senate, . . . appoint[s]” judges.<sup>31</sup> The Judicial Council has no appointment power.

Plaintiffs allege that, even if the Council does not exercise normal governmental powers, it is a general purpose entity because its decisions affect the general public, not just a particular subgroup. [Doc. 42 at 14] Again, the analysis is seriously muddled. Plaintiffs treat the Supreme Court’s cases as if they established two unrelated inquiries, but in fact the cases do not articulate a test with two independent prongs for determining whether an entity is a special-purpose body. Rather, the two questions the Court asks -- whether the entity’s functions are general or narrow and whether the entity’s decisions disproportionately affect one subgroup or the general public -- are two aspects of the same inquiry.<sup>32</sup> The Court has never found that a governmental entity passed one test and not the other.

Finally, the Judicial Council would meet the requirements for a special-purpose entity, *if* the general government vs. special-purpose test applied to it and *if* it were necessary to show both that the Council has a limited purpose and that its decisions disproportionately affect lawyers. As the nominator of candidates for judgeships, the Judicial Council unquestionably affects lawyers disproportionately, since only lawyers may apply to the Council to be nominated to become a judge.<sup>33</sup> Plaintiffs’ arguments about the Council’s effect on the general public rely on the powers of judges, who, of course, make decisions that affect the general public. [Doc. 42 at 17-18] Council members, however, are not judges, nor do they decide

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<sup>31</sup> U.S. Const. art II, § 2.

<sup>32</sup> *See Ball*, 451 U.S. at 370 (observing that “an aspect of that limited purpose is the disproportionate relationship the District’s functions bear to the specific class of people whom the system makes eligible to vote”); *Salyer*, 410 U.S. at 728-30.

<sup>33</sup> *See supra* n.3 (citing provisions establishing minimum qualifications for judges).

who will be judges. The Council's role in screening and nominating candidates for judgeships gives Council members at most a *very* attenuated, indirect role in the decisions that judges make -- though, because judges decide cases based on precedent and legal analysis, not on their personal views, it is impossible to say that even the appointment of one person rather than another to be a judge determines the decision in any particular case. No Supreme Court case has characterized a governmental body as not a special-purpose entity based on the kind of extremely indirect effect on the general public that the Judicial Council has.

**3. The Fourteenth Amendment does not require that all citizens have a right to vote for the bar Board of Governors.**

The only entity involved in any stage of Alaska's judicial selection process that conducts an election that is not open to the general public is the Alaska Bar Association. Plaintiffs concede that "the Board of Governors may satisfy the qualifications for an office or entity of limited purpose that may be elected exclusively by those who are disproportionately affected by its activities." [Doc. 42 at 8]<sup>34</sup> This concession is clearly well-founded.<sup>35</sup>

Because the bar Board of Governors is constitutionally selected (in part through an election in which only bar members participate and in part by gubernatorial appointment), there is no constitutional barrier to having the bar Board of Governors select some members for another board. As discussed above, no case requires that members of a nonlegislative board, such as the Judicial Council, either be elected in a one person, one vote election or

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<sup>34</sup> See also Doc. 4 at 24 (stating that Plaintiffs do not challenge the constitutionality of permitting only attorneys to vote for the members of the bar Board of Governors).

<sup>35</sup> See generally Doc. 35 at 19-21 (further explaining why the Alaska Bar Association is a special-purpose entity whose elections may be limited to attorneys and citing cases holding that bar association board elections are not subject to the one person, one vote requirement).

selected by an individual or group that was elected in accordance with one person, one vote principles. Alaska's basically appointive judicial selection process satisfies the sentence from *Kramer* on which plaintiffs rely: Because the bar Board of Governors is "elected consistent with the commands of the Equal Protection Clause," giving it the power to name the three members of the Judicial Council who constitutionally must be members of the bar "[does] not call for this Court's exacting review."<sup>36</sup>

The selection of the lawyer members of the Judicial Council by the bar Board of Governors is constitutionally no different from

- the selection of county school board members approved in *Sailors*, despite the fact that the group making the selection did not proportionately represent the citizens in the county<sup>37</sup>;
- the appointment of a legislator to fill an unexpired term approved in *Rodriguez*, despite the fact that the nomination was based on a primary election in which only members of one political party could vote<sup>38</sup>;
- the process for filling a legislative vacancy established by Alaska statutes, where the legislative members of just one political party have the final say on who is chosen<sup>39</sup>; or
- the method used by at least twelve other states to nominate judges.<sup>40</sup>

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<sup>36</sup> See *Kramer*, 395 U.S. at 629-30.

<sup>37</sup> See *Sailors*, 387 U.S. at 108-11.

<sup>38</sup> See *Rodriguez*, 457 U.S. at 9-14.

<sup>39</sup> See AS 15.40.330(a).

<sup>40</sup> See Doc. 35 at 4 n.3; Doc. 42 at 21 n.1.

No authority supports Plaintiffs' contention that Alaska's judicial selection process is unconstitutional because the governor receives nominations from a group that was not appointed or elected in accordance with one person, one vote principles.

**4. Plaintiffs offer no sound bases for rejecting the analyses of the other courts that have found Judicial Council-style nominating processes constitutional.**

Plaintiffs do not deny that all other courts that have examined whether commissions that nominate judges must be chosen in an election adhering to one person, one vote principles have rejected the claim.<sup>41</sup> Plaintiffs' critique of the two on-point district court cases is unpersuasive. [Doc. 42 at 8-11]

Reviewing the steps that the judges in *Bradley* and *African-American Voting Rights* followed demonstrates, contrary to Plaintiffs' claims, that these courts' analyses are entirely sound. The courts correctly understood that the one person, one vote principle applies only when a state has chosen to make decisions through popular election.<sup>42</sup> Further, the courts correctly recognized that an election in which only state bar members may participate is, by definition, not a popular election; thus, they turned to the Supreme Court cases that control whether a popular election is required and, under those cases, they determined that a judicial nominating commission has such narrow powers that the one person, one vote rule is not

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<sup>41</sup> See *African-American Voting Rights Legal Defense Fund, Inc. v. State of Missouri*, 994 F. Supp. 1105 (E.D. Mo. 1997), *aff'd*, 133 F.3d 921 (8th Cir. 1998) (unpublished opinion); *Bradley v. Work*, 916 F. Supp. 1446 (D.D. Ind. 1996), *aff'd without reaching equal protection issues*, 154 F.3d 704 (7th Cir. 1998).

<sup>42</sup> See *African-American Voting Rights*, 994 F. Supp. at 1128; *Bradley*, 916 F. Supp. at 1456.

implicated in the selection of the members of the commission.<sup>43</sup> The courts also examined whether the voting rules the state used discriminated against any suspect class; because they did not, the courts then applied a deferential Fourteenth Amendment review to be sure that the selection process bore a reasonable relationship to the statutory objectives.<sup>44</sup>

*Bradley* and *African-American Voting Rights* adhered to controlling Supreme Court principles and are sound precedent for this court to follow.

#### IV. CONCLUSION

Because Plaintiffs have failed to demonstrate any constitutional flaw in Alaska's judicial selection process, they have failed to state a claim upon which relief may be granted, and this Court therefore should grant Defendants' motion to dismiss the complaint.

DATED: August 27, 2009

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#### CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2009, a copy of the foregoing document was served electronically on Kenneth P. Jacobus, James Bopp, Jr., Joseph A. Vanderhulst, and Margaret Paton-Walsh.

s/Jeffrey M. Feldman

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<sup>43</sup> See *African-American Voting Rights*, 994 F. Supp. at 1128 n.49; *Bradley*, 916 F. Supp. at 1156-57.

<sup>44</sup> See *African-American Voting Rights*, 994 F. Supp. at 1127-28; *Bradley*, 916 F. Supp. at 1455-59.