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**UNITED STATES DISTRICT COURT
DISTRICT OF GUAM**

-----X

Arnold Davis, on behalf of himself and all others	:	
similarly situated,	:	
	:	
Plaintiff,	:	Civ No. ____ - _____
	:	
v.	:	Civil Action
	:	
Guam, Guam Election Commission, Alice M. Taijeron,	:	COMPLAINT
Martha C. Ruth, Joseph F. Mesa, Johnny P. Taitano,	:	
Joshua F. Renorio, Donald I. Weakley, and	:	
Leonardo M. Rapadas,	:	
	:	
Defendants.	:	

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Introduction

1. This is a civil rights action alleging discrimination in voting in violation of Section 2 of the Voting Rights Act of 1965 and various other civil rights laws, constitutional provisions, and the Organic Act of 1950. The scheme defendants are implementing is simple and straightforward. Under Guam law, a plebiscite is to be held concerning Guam's future relationship to the United States. Only "Native Inhabitants of Guam" will be permitted to vote, and only those meeting the statutory definition of that phrase are currently being registered to vote. Plaintiff and all those similarly situated – those who do not meet the definition of Native Inhabitant of Guam – are precluded from registering to vote. Further, unless this Court enjoins defendants from pursuing their current course of action, plaintiff and all those similarly situated will not be permitted to vote in this crucial election concerning the future of Guam and, indeed, their own future.

Jurisdiction And Venue

2. This action alleges discrimination in violation of federal law. This Court has jurisdiction pursuant to 42 U.S.C. §§ 1331 and 1343, and 48 U.S.C. § 1424(b).

3. Defendants are Guam, an entity that is part of the government of Guam, and officials of that entity. Their actions are taking place on Guam. Accordingly, venue is appropriate in this Court.

Parties

4. Defendant Guam is a Territory of the United States. The structure of its government was set forth in the Organic Act passed by Congress in 1950.

5. Defendant Guam Election Commission is an agency of the government of Guam formed pursuant to Guam law.

6. Defendants Alice M. Taijeron, Martha C. Ruth, Joseph F. Mesa, Johnny P. Paitano, Joshua Tenorio, and Donald I. Weakley are members of the Guam Election Commission. Leonardo M. Rapadas is the Attorney General of Guam and responsible for the enforcement of the criminal law on Guam. All of the defendants listed in this paragraph are sued in their official capacities for injunctive and declaratory relief.

7. Plaintiff Arnold Davis is a resident of Guam.

Facts

8. Title 1, Chapter 21, Section 2110 states that the defendant Guam Election Commission (the “Election Commission”) shall conduct a Political Status Plebiscite in which voters will vote on Guam’s future relationship with the United States. The options available in this plebiscite will be independence, free association, and statehood.

9. As codified by the Official Compiler of Guam laws, Title 1, Chapter 21 is entitled as follows: “Commission on Decolonization for the Implementation and Exercise of Chamorro Self Determination.” “Chamorro” is a racial group that is usually defined by connections to and

lineage with the groups of native peoples that inhabited Guam prior to the influx of people from Western Europe and the United States.

10. Section 2110 further provides that “[p]ersons eligible to vote in the plebiscite shall include those persons designated as Native Inhabitants of Guam, as defined within this Chapter . . . , who are eighteen (18) years of age or older on the date of the ‘Political Status Plebiscite’ and are registered voters on Guam.”

11. Title 1, Chapter 21, Section 2102 defines “Native Inhabitants of Guam” as “those persons who became U.S. Citizens by virtue of the authority and enactment of the 1950 Organic Act of Guam and descendants of those persons.”

12. Section 4 of the 1950 Organic Act of Guam amended the Nationality Act of 1940 to add sections declaring that certain individuals who were born on Guam or who were inhabitants of Guam at various points of time, and meeting certain other requirements, were United States citizens as of the date of the Act’s enactment (August 1, 1950). Act of August 1, 1950, § 4, 64 Stat. 384.

13. The Nationality Act of 1940 (including the parts added by the 1950 Organic Act of Guam) was repealed in 1952. Act of June 27, 1952, § 403(a)(42), 66 Stat. 280. Accordingly, the status as United States citizens of those born on Guam after June 27, 1952 is governed by a successor statute, codified at 48 U.S.C. § 1407, not the Organic Act.

14. The definition of “Native Inhabitants of Guam” thus excludes, *inter alia*, (1) those living on Guam on August 1, 1950 who already were United States citizens, (2) most of those

who immigrated to Guam before August 1, 1950 (the vast majority of whom were not covered by the Organic Act's declaration of citizenship), (3) those who immigrated to Guam after August 1, 1950 who either already were United States citizens or who became United States citizens by authority other than the Organic Act, and (4) those born on Guam after June 27, 1952 (unless they were descendants of Native Inhabitants of Guam).

15. As the reference in the name of Title 1, Chapter 21, as codified by the Official Compiler of Guam Law, to "Chamorro Self-Determination" suggests, the definition of "Native Inhabitants of Guam" excludes, and was designed to exclude, most non-Chamorros, including most black, Korean, Chinese, and Filipino citizens of the United States currently living on Guam.

16. Guam law generally permits United States citizens over the age of 18 years of age residing in Guam to register to vote at any election held in Guam.

17. Guam law creates a Guam Decolonization Registry. The purpose of the Decolonization Registry is to delineate the list of qualified voters for the plebiscite.

18. Although Title 1, Chapter 21, § 2110 does not specifically preclude anyone from voting in the plebiscite, the Election Commission has refused to register those who do not meet the definition of Native Inhabitants of Guam for the Decolonization Registry, and it will not permit those not on the Decolonization Registry and/or who do not meet the definition of "Native Inhabitants of Guam" to vote in the plebiscite.

19. Guam law makes it a crime for anyone to register for the Decolonization Registry who is not entitled to do so. Those who knowingly allow such individuals to register are also

guilty of a crime under Guam law.

20. Plaintiff is a white, non-Chamorro male. He is a United States citizen, a resident of Guam, and a registered voter who has voted in the past in many Guam general elections.

21. Plaintiff does not meet the definition of “Native Inhabitant of Guam.” He applied to register for the plebiscite, but was not permitted to do so because he does not meet the definition of “Native Inhabitant of Guam.”

Class Action Allegations

22. Plaintiff seeks to represent a class, pursuant to Rule 23(b)(2), of all registered voters on Guam who do not meet the definition of “Native Inhabitants of Guam.” As a consequence of defendants' policies, members of this class cannot register for, and will be unable to vote in, the plebiscite.

23. The class is sufficiently numerous and diffuse that joinder of all members is impracticable.

24. There are questions of law common to the class, *viz.*, whether the policy of precluding those who do not meet the definition of “Native Inhabitants of Guam” from registering for the plebiscite, or voting in it, is legal.

25. Plaintiff's claims are typical of those of the class he seeks to represent, and he is an adequate representative of that class.

26. Defendants have acted and/or threaten to act on grounds generally applicable to the class thereby making appropriate final injunctive or corresponding declaratory relief.

**First Claim for Relief (Against Guam and the Guam Election Committee
For Violations Of Section 2 of the Voting Rights Act)**

27. Plaintiff incorporates all previous allegations of this complaint.

28. The definition of “Native Inhabitants of Guam” is designed, in purpose and effect, to exclude most non-Chamorros and results in a denial or abridgement of the right of citizens of the United States to vote on account of race, color, or national origin.

29. Accordingly, defendants Guam and Guam Election Committee are violating Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973.

Second Claim for Relief (Against The Official Capacity Defendants)

30. Plaintiff incorporates all previous allegations of this complaint.

31. The official capacity defendants are preventing plaintiff and others similarly situated from registering to vote for the plebiscite, and, if they are not enjoined from doing so, will prevent those who do not meet the definition of “Native Inhabitants of Guam” from voting in the plebiscite.

32. The official capacity defendants are acting under color of Guam law.

33. The official capacity defendants are engaging in discrimination on the basis of

race, color, and/or national origin in violation of the following laws: (1) 42 U.S.C. § 1971, (2) various provisions of the bill of rights contained within (or added to) the Organic Act of 1950, including those currently codified at 48 U.S.C. §§ 1421b(m), 1421b(n) and 1421b(u), and (3) the Fifth, Fourteenth, and Fifteenth Amendments to the United States Constitution.

34. Each of the laws listed in the last paragraph provides rights that can be enforced through 42 U.S.C. § 1983. Accordingly, the official capacity defendants are violating Section 1983.

35. Alternatively, each of the laws identified in paragraph 33 permits those whose rights are being violated to seek direct redress and equitable relief to halt the violations.

Third Claim for Relief (Against The Official Capacity Defendants)

36. Plaintiff incorporates all previous allegations of this complaint.

37. The official capacity defendants are discriminating against plaintiff and others similarly situated on the basis of their failure to meet the definition of “Native Inhabitants of Guam.” Based on this discrimination, they are precluding plaintiff and others from registering, and will prevent them from voting, in the plebiscite.

38. The official capacity defendants are acting under color of Guam law.

39. The official capacity defendants are discriminating against plaintiff and others similarly situated with respect to the fundamental right to vote in violation of the following laws: (1) various provisions of the bill of rights contained within (or added to) the Organic Act of

1950, including those currently codified at 48 U.S.C. §§ 1421b(m), 1421b(n) and 1421b(u), and (2) the Fifth and Fourteenth Amendments to the United States Constitution.

40. Each of the laws listed in the last paragraph provides rights that can be enforced through 42 U.S.C. § 1983. Accordingly, the official capacity defendants are violating Section 1983.

41. Alternatively, each of the laws identified in paragraph 39 permits those whose rights are being violated to seek direct redress and equitable relief to halt the violations.

WHEREFORE, Plaintiff seeks a judgment:

A. Enjoining defendants from engaging in their current policy of preventing plaintiff, and all others similarly situated, from registering for, and voting in, the plebiscite;

B. Enjoining defendants from using the Decolonization Registry, or any voter registry other than the general voter registry for general elections in Guam, in determining who is eligible to vote in the plebiscite;

C. Enjoining defendant Rapadas from enforcing that provision of criminal law making it a crime to register, or allow anyone else to register, for the plebiscite who does not meet the definition of Native Inhabitant of Guam;

D. Declaring that defendants' conduct has been, and would be if continued, a violation of law;

- E. Awarding costs and attorneys' fees as authorized by all relevant provisions of law;
and
- F. Awarding any other appropriate relief.

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