

Natalie Landreth
NATIVE AMERICAN RIGHTS FUND
420 L Street, Suite 505
Anchorage, Alaska 99501
Phone: (907) 276-0680
Facsimile: (907) 276-2466
Email: landreth@narf.org

Jason Brandeis
ACLU OF ALASKA FOUNDATION
P.O. Box 201844
Anchorage, Alaska 99520
Phone: (907) 258-0044
Facsimile: (907) 258-0228
Email: jbrandeis@akclu.org

Neil Bradley (*Pro hac vice*)
Brian Sutherland (*Pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
2600 Marquis One Tower
245 Peachtree Center Avenue
Atlanta, Georgia 30303
Phone: (404) 523-2721
Facsimile: (404) 653-0331
Email: nbradley@aclu.org

James Thomas Tucker (*Pro hac vice*)
AMERICAN CIVIL LIBERTIES UNION
915 15th Street, N.W., 6th Floor
Washington, D.C. 20005-1313
Phone: (202) 675-2318
Facsimile: (202) 546-0738
E-mail: jtucker@dcaclu.org

Attorneys for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

ANNA NICK, *et al.*,

Plaintiffs,

v.

BETHEL, ALASKA; *et al.*

Defendants.

Case No. 3:07-cv-0098-TMB

**MOTION FOR FURTHER RELIEF
UNDER THE COURT'S JULY 31, 2008
ORDER**

I. INTRODUCTION

The State has now had three opportunities to comply with the Court's July 31, 2008 Order and take some of the steps necessary to bring its elections into compliance with the Voting Rights Act (VRA). The State – relying almost solely upon its own employees' self-serving commentary and their hearsay statements about what others purportedly have said – has painted a rather rosy picture of its efforts and the results. In contrast, the Plaintiffs are submitting first-hand observations of what actually transpired during those elections. Plaintiffs' evidence demonstrates that the State's

elections have changed little from past years. While modest improvements have been made in certain areas, the State's overall efforts are inadequate. The State has fallen far short of providing effective language and voter assistance for LEP voters in the Bethel Census Area, as required by Sections 203 and 208 of the VRA and the Court's Order granting Plaintiffs' request for injunctive relief.

The State's own submissions to the Court agree with the U.S. Census Bureau's findings that Yup'ik language assistance is widely needed in nearly every village in the Bethel Census Area.¹ The Bureau's findings are not subject to judicial review. *See* 42 U.S.C. § 1973aa-1a(b)(4); *Doi v. Bell*, 449 F. Supp. 267, 272-74 (D. Haw. 1978). The Bethel Census Area has been covered by language assistance under the VRA continuously since 1975. *See* 40 Fed. Reg. 49,422 (Oct. 22, 1975). Yet, it was not until 2008 that the State, through its new language assistance coordinator Dorie Wassillie, conducted a limited survey confirming the Bureau's findings and Plaintiffs' evidence of the widespread need for Yup'ik language assistance. *Wassillie Aff.*, Attach. 4 (Dkt. 362-5, 362-6, 362-7). Tellingly, the State's survey revealed that many voters in the Bethel region read the Yup'ik language and would like to receive effective assistance in written Yup'ik. *Id.*

Remedying the State's three decades of neglect cannot be done overnight. Plaintiffs submitted a detailed proposed order based on what has worked in similar Native language speaking jurisdictions to correct systemic violations. (Dkt. 202-2). At the hearing on July 8, 2008, the Court asked Plaintiffs to identify the most pressing remedies that could be implemented in time for three fast-approaching elections, including the August 2008 election that was just weeks away. Pls. Ex. 349, Oral Arg. Tr. 6:24-7:9 (describing "interim relief"); 22:4-24 (describing what can be

¹ *See* Dkt. 145-8, Pls. Ex. 10, 67 Fed. Reg. 48,871, 48,872 (July 26, 2002); Dkt. 188-14, Pls. Ex. 164, Special Tabulation of Section 203 Determination Data for Villages in the Bethel Census Area. Both of these exhibits were attached to the first version of the preliminary injunction, which was later refiled within the requested page limits, but it is Plaintiffs' understanding that the Court retained the exhibits. Dkt. 208.

accomplished in the six weeks before the election). Plaintiffs provided a “reduced” list of interim remedies, with the understanding that more comprehensive relief would be implemented after the three elections to meet the broad mandate of Section 203. *See* 42 U.S.C. § 1973aa-1a; 28 C.F.R. Pt. 55. The ongoing failure of the State to fulfill that mandate in the past three elections highlights exactly why a comprehensive remedy is necessary for future elections.

The absence of federal observers placed the burden on Plaintiffs to secure first-hand reports of the extent to which, if any, the State fulfilled the requirements under the Preliminary Injunction. The declarations filed with this Motion have been submitted by 37 witnesses in 17 different villages in the Bethel Census Area. The declarants are poll workers, LEP voters, English-speaking voters and tribal council representatives. *See* Pls. Ex. 352 (listing declarants by village). The uncontradicted evidence from those declarants who, unlike the State’s elections officials, actually were in the villages on Election Day to observe the limited progress and continuing problems, demonstrates that LEP Yup’ik voters are not receiving effective language assistance. Accordingly, the State should be provided with more detailed and comprehensive direction. The deficiencies in the State’s practices are organized according to the eight requirements in the Court’s July 31, 2008 Order. They are followed by additional remedies that should now be implemented to ensure that Yup’ik-speaking voters in the Bethel Census Area receive effective language assistance.

II. THE STATE’S WIDESPREAD VIOLATIONS OF THE COURT’S ORDER

Plaintiffs have set out insets with the verbatim language from the Court’s injunctive Order. That is followed by a summary of the State’s failure to comply with those mandates and requirements under Sections 203, 208, and other federal laws. For the Court’s convenience, Plaintiffs have identified each declarant’s village in parentheses where they are cited.

1. **Provide mandatory poll worker training.** Poll workers shall be instructed on the VRA’s guarantees of language and voter assistance. In addition, poll workers serving as translators should be trained on the methods and tools available for

providing complete and accurate translations.

State Defendants claim to have trained “nearly all” the poll workers (Dkt. 421 at 4). However the State’s own evidence reveals that just over half of all poll workers were trained in person, and this percentage actually decreased from the primary to the general election, when turnout was highest.² Based on the State’s pre and post-election reports, Plaintiffs have compiled three tables demonstrating the failure to train the poll workers. According to the State’s records, about 64% of all poll workers who worked in the primary election attended training. Pls. Ex. 345. That number decreased to 57% for the REAA election, and then it fell further to 53% for the general election. Pls. Exs. 346, 347. In some villages, only one poll worker was trained. N. Nicholai Decl. (Atmautluak) ¶ 17; Friend Decl. ¶ 5. Thus, the State fell far short of ensuring that all its poll workers receive the mandatory training ordered by the Court.

The City of Bethel is illustrative of the State’s noncompliance. Paradoxically, although the State conducted all of its training in the City, few trained translators were available at the City’s three precincts. In the primary election, *no* Precinct 1 translator received training, despite the presence of four complicated measures on the ballot. (Dkt. 357-3, Ex. B pages 2-3). For Precinct 2, Frank Mojin was the only interpreter to receive training. For Precinct 3, Luther Oscar received training, but was unable to work on Election Day due to health issues. *Id.* The end result was that for all three of the City of Bethel precincts, the only translator to receive training for the primary election was Frank Mojin. This is particularly unfortunate given that according to the State, there were more than 100 requests for language assistance in the three precincts in Bethel on that one day. (Dkt. 426-3, Attach 2 to Ex. E, Bates numbers 12064-12072).

The training for poll workers also was grossly inadequate. The State’s training failed to

² The State now apparently contends that it has trained all poll workers by providing training by telephone. Dkt. 514 and Dkt. 514-2.

specifically instruct the poll workers about providing complete and accurate translations, including an opportunity to practice the translations in advance. Tellingly, many individual voters commented that their own poll workers seemed to lack training in language assistance. Paul John, the Second Chief of the entire AVCP region, observed that although the poll worker offered him help this time, she did not have the training necessary to explain the ballot:

The one who helped me seemed to understand but she did not explain everything (like I said, she skipped the bond question). She also seemed to skip over some other parts of the ballot but I could not tell you what they are. She did not have any information in Yup'ik that I saw. I am sure the pollworkers would like to help, but they should receive better training and material so they understand the rules and know how to translate ballots and use the materials in Yup'ik that we are supposed to have.

John Decl. (Toksook Bay) ¶ 12. In addition, “the pollworkers need to have enough training so they understand these new papers in Yup'ik and how to use them.” Berlin Decl. (Nunapitchuk) ¶ 12; *see also* N. Nicholai Decl. (Atmautluak) ¶ 11, 19. Moreover,

The State does not train our pollworkers in Quinhagak so that they can understand the voting papers and ballot and be able to help voters in Yup'ik. The State must train the poll workers so that they give Yup'ik voters the same information English [speaking – sic] voters get.

Sharp Decl. (Quinhagak) ¶ 12.

Some voters were quite specific that poll workers still do not or cannot assist them. Chaliak Decl. (Nunapitchuk) ¶ 10. Pollworkers “did not seem to completely understand the voting ballot either.” Alexie Decl. (Tuluksak) ¶ 12. Even when a poll worker in Chefornak made an effort, the purported translation was unintelligible:

When I went to vote, the pollworker did not use anything written in Yup'ik. Instead, she tried to translate it herself for me. I did not understand the translation she gave me and in particular I did not understand that the yes/no question was a “bond measure.” I'm not sure what that is and I'm not sure if I voted the way I meant to vote.

Jimmy Decl. (Chefornak) ¶ 10. Some poll workers provided incomplete translations and skipped

the ballot questions altogether. Nicholas Decl. (Kasigluk) ¶ 12. In other villages, voters noted that the poll workers still do not offer any help. Phillip Decl. (Kwigillingok) ¶ 10. Some voters in Bethel simply said that the ballot was not fully translated for them. Jacobs Decl. ¶ 11 (Bethel); A. Nelson Decl. ¶¶15-16 (Bethel). Even when poll workers did attend the State's training, they did not receive the information necessary to perform their jobs adequately and effectively.

The State's training materials likewise are inadequate. Language assistance training comprises a single page of the training materials. Baker Aff., Attach. A (Dkt. 359-2, pages 34-5). One poll worker who attended training and who had attended training in past years specifically said that the substance of the training was no different this year:

I have been to training before and this was the first time the training was translated. Other than that, the training was the same as it was in past years.... Although the training was in Yup'ik and English, there was nothing in the training about translation or how to translate. Almost the entire training was about technical things, mostly the voting machines and how to count and record ballots. The people leading the training did tell us about the written ballot in Yup'ik but they told me that was just for me to keep. They told me not to show it to anyone else so I didn't.

Friend Decl. (Kwigillingok) ¶ 7. The State must make significant changes to its training and written materials if it is going to make any meaningful progress towards providing effective language assistance. Its current approach is geared towards satisfying some requirements of the Court's Order for training, while violating the obvious spirit of that mandate.

The State's lack of training extends to voter assistance. It appears that the State is still not informing voters of their right to bring a person of their choice into the voting booth to assist them as protected by Section 208 of the VRA. Voters had no idea they could bring a person of their choice to help him. John Decl. (Toksook Bay) ¶¶ 2, 7; Lincoln Decl. (Toksook Bay) ¶ 9; Panruk Decl. (Chefornak) ¶ 6; Nicholas Decl. (Kasigluk) ¶ 7. A voter in Chefornak explained:

I generally have someone in my family read mail and other papers that are in English and translate them for me. I would have had them do the same thing at election [sic] but I never knew I could bring someone with me to translate like they do for my

mail. I have never heard that and pollworkers never told me that. I thought only pollworkers were allowed to help you. Now that I know, I will probably bring someone with me to the next election.

Jimmy Decl. (Chefornak) ¶ 6. Even mandatory training does little good if it does not give pollworkers the tools they require to provide effective language assistance.

2. **Hire a language assistance coordinator who is fluent in Yup'ik.** In addition to implementing the State's revised language assistance program in the Bethel region, the coordinator should act as a liaison to the tribal councils and Yup'ik speaking community to ensure the State's efforts result in effective language assistance.

The State hired Dorie Wassilie in 2008. Plaintiffs will assume, for the sake of argument, that she is in fact fluent in Yup'ik. However, many tribal leaders did not know who she is and had no idea the State employed someone for the specific task of outreach to Yup'ik-speaking voters. Lincoln Decl. (Toksook Bay) ¶ 11; Sharp Decl. (Quinhagak) ¶ 18. Tribal councils were unaware the State had hired Ms. Wassilie to oversee Yup'ik language assistance, and requested that she come to their villages to meet with them. N. Nicholai Decl. (Atmautluak) ¶¶ 28-29; E. Chimiugak Decl. (Toksook Bay) ¶ 16; John Decl. (Toksook Bay) ¶ 17.

Many problems described in this Motion can be alleviated or remedied if the coordinator makes a concerted effort to develop personal contacts with tribal leadership and physically travel to villages to explain the State's new election assistance endeavors and solicit their input. Given the proximity of the villages to one another, that is not a difficult task. Plaintiffs previously described ways to engage in in-person outreach in their proposed remedial order derived from other consent decrees. (Dkt. 202-2) Plaintiffs respectfully request that the Court order the State to take these more specific steps.

3. **Recruit bilingual poll workers or translators.** At least one pollworker or translator fluent in Yup'ik and English shall be assigned to each polling place within the Bethel census area for the upcoming State-run elections.

As discussed under Point 1, the State did not provide at least one bilingual poll worker in

each polling place. That problem was exacerbated by the State's lack of recruitment and training of qualified translators. Yup'ik translation requires a particular skill that not every bilingual Yup'ik-speaker has. The State has submitted a chart that purports to show the list of poll workers and translators for each polling place for the August primary. (See e.g. Dkt. 427-7, Ex. G, Attach. 6 at pages 1-3). However, the State has identified many people to serve as translators who did not indicate an ability or willingness to translate:

- The State identifies Elena Peterofsky as the interpreter to Akiachak, but in her appointment letter she did not check the box to serve as an interpreter nor even list that she speaks an Alaska Native language. (Dkt. 357-8, Ex. M at page 2).
- The charts lists Leanna Isaac as an interpreter and she did check the box but she is patently unqualified as she "speaks little Yup'ik." (Dkt. 357-8, Ex. M at page 26). This is not satisfactory to translate a college level English ballot into Yup'ik.
- Out of the 16 persons who signed letters of appointment to serve as poll workers in Bethel, only two (Frank Mojin and Daisy Barrera) indicated that they would serve as interpreters. (Dkt. 357-8 through 357-11 Ex. M at pages 15-31). There are three precincts in Bethel.
- The State listed Lucy Simeon as an interpreter for Chuathbaluk but she did not indicate on her letter of appointment that she speaks any Native language. (Dkt. 357-11, Ex. M at page 35).
- The State listed Christine Sakar as the interpreter for Crooked Creek but her letter of appointment is unsigned and indicates no Native language. (Dkt. 357-11, Ex. M at page 41).
- The State listed Willie Pitka as the interpreter for Kalskag but there is no letter of appointment or any paperwork for him showing he agreed to serve as an interpreter or that he speaks Yup'ik.
- The State listed Agnes White as an interpreter for Kipnuk but she did not indicate that she would serve as an interpreter. (Dkt. 357-13, Ex. M at page 54). The same is true for Caroline Egoak (Dkt. 357-13, Ex. M at 55). Neither woman indicates that she speaks a Native language.
- The State listed Mildred Lupie as an interpreter for Kongiganak but she did not indicate an ability to serve as an interpreter or that she speaks a Native language. (Dkt. 357-13, Ex. M at 58)

- The State listed Jennie Friend as an interpreter for Kwigillingok but she did not indicate an ability or willingness to serve. (Dkt. 357-14, Ex. M at page 64) She submitted a declaration saying she cannot translate ballots. Friend Decl. (Kwigillingok) ¶ 11.
- The State listed two people as interpreters for Nunapitchuk but there are in fact *no* letters of appointment for Nunapitchuk where any person has indicated the willingness or ability to serve as an interpreter. (Dkt. 357-16, Ex. M at pages 88-90).
- The State listed five interpreters for Toksook Bay when only one agreed to serve as an interpreter. (Dkt. 357-17, Ex. M at page 96).
- The chart itself indicates that only those persons whose names are in bold agreed to serve as interpreters (even those are incorrect), and it is plain from the face of the chart that the State Defendants are listing people as interpreters who have not indicated an ability or willingness to serve as a translator.

The State's approach is problematic for several reasons. First, not all Native or bilingual poll workers can be considered translators. Defendants' own expert, Professor Oscar Alexie, admitted there is a vast difference between a bilingual person and a trained translator. Pls. Ex. 348, Alexie Dep. 39:5-44:20 (describing "horror stories" of Yup'ik speakers who were not trained translators and who provided mistranslations in medical and legal settings). He described how his father's medical care was affected by the lack of a good translator. He also noted that a co-worker who did not understand the label of her medicine (and to whom it had not been explained) ended up taking it improperly. Pls. Ex. 348, Alexie Dep. 40:12-41:16, 42:6-21. One of the poll workers identified by the State as a translator said she did not have the skills to translate:

I am bilingual in Yup'ik and English but I cannot translate for people so I do not offer to do that; it is very, very difficult to translate the ballot so I don't think I could do that.

Friend Decl. (Kwigillingok) ¶ 11. Professor Alexie said he would not translate ballots on-the-spot if asked. Alexie Dep. 81:16-19, 86:6-8. Bilingual persons are not the same as translators and polling places cannot merely be staffed with bilingual people. On the contrary, there are classes and rules that govern translators and the State must make the commitment to train interested bilingual poll workers to become translators. Pls. Ex. 348, Alexie Dep. 44:4-20 (describing some of the guidelines

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and rules for interpreters). The Court's Order should accordingly be amended to require qualified and trained translators at each polling place, rather than just bilingual persons.

Because the State stereotypically assumed that everyone who speaks at least some Yup'ik is qualified to translate, many voters complained about the poor language abilities of their poll workers. Paul John said that some of the people working at the polling place in Toksook Bay were not fluent in both languages and the poll worker who aided him was likely one of these (and may have needed language assistance herself) because she did not translate anything on the ballot except the candidates' names. She skipped the ballot question, leading Mr. John to conclude that "the elections were the same as in past years; they still only explain some." John Decl. (Toksook Bay) ¶ 15. Similarly, Mr. Berlin in Nunapitchuk said the poll workers were not fluent enough to assist him even though they had the sample ballot:

In the polling place where I voted, there were pollworkers who spoke English and Yup'ik. However, they were not fluent in both languages. They read me the sample ballot, but it was clear to me that they were not fluent in Yup'ik to the degree that they could fully understand what was on the sample ballot and what they were telling me. Because of that, I could not ask them any questions about it or what certain words meant; the pollworkers did not know either.

Berlin Decl. (Nunapitchuk) ¶ 11. There were similar complaints from other villages. Jimmy Decl. (Chefornak) ¶ 10; Jimmie Decl. ¶ 11 (Kwigillingok). Others even noted specifically that there was *no* translator available at all when they went to vote. C. Alaska Decl. ¶¶ 6-8 (Bethel).

One final but critical consideration is ensuring that the polls are staffed with translators who work the entire time the polling place is open. Some translators indicated they worked less than the full day for the November general election even though they were the only translator recruited by the State. This means that some polling places were left at times with no translators. Roland Lewis in Kwigillingok, for example, served as a translator but because he holds a full time job, he could only work for 3 or 4 hours; however, the State identified him as the translator for Kwigillingok as

though he worked the entire Election Day. Lewis Decl. (Kwigillingok) ¶ 4. He was the only translator in Kwigillingok, leaving that village without a translator for most of the day. Friend Decl. (Kwigillingok) ¶ 12; Jimmie Decl. ¶ 11 (Kwigillingok). The State must take this into account in future elections and must specifically schedule translators for the entire time the polling place is open.

4. **Provide sample ballots in written Yup'ik.** At least one such ballot shall be available at each precinct within the Bethel census area to aid poll workers in translating ballot materials and instructions for Yup'ik speaking voters with limited English proficiency.

The State created sample ballots for all three elections; however, they were so flawed that they were of little use even in the rare case where they were available. They were poorly translated and many poll workers simply set them aside and created their own on-the-spot translations. And because the State restricted their use to poll workers only, and their distribution was so limited, they were not useful and did not provide “effective assistance.” Poll workers were not even trained how to use them. In the confusion, some voters marked the sample ballots instead of their official ballots and presumably had their votes thrown out. It is a hollow exercise to create unintelligible sample ballots that either are unavailable or unusable and wholly fail to provide clear, complete, and accurate translations as required by Section 203 and the Court’s Order.

The State refused to make the sample ballots available to Section 208 assistants, voters or the general public. Instead, the State instructed its poll workers to withhold the sample ballots. This issue already has been briefed in the Plaintiffs’ motion for clarification. Dkt. 367. Plaintiffs are requesting exactly what Senator Stevens, quoting an Alaska election official, described as the proper way to use sample ballots written in a native language:

As an Election Supervisor, I wish to suggest a possible alternative. Perhaps printing “sample” bilingual ballots would be a plausible solution. Sample ballots printed in all those languages which are in written form could be effectively disseminated to the public through a number of ways – the news media, posted in public gathering

places, election offices, registrars, city and borough clerk's offices, village and minority leaders, as well as the candidates themselves. Here would be a means whereby the voter would have the opportunity to study, discuss, and decide, prior to all elections in the privacy and leisure of his own time and language, what and how he will vote.... Sample bilingual ballots can be the only logical means of reaching this small percentage of our population, without implementing a burdensome, unnecessary and somewhat more confusing feature to our voting system – and still obtain the same objective!

121 Cong. Rec. S13368 (daily ed. July 23, 1975) (statement of Sen. Stevens) (quoting letter dated May 28, 1975 from Lory B. Leary, Southeast Election Supervisor, State of Alaska). The written sample ballot was *intended* to be distributed widely to increase voter understanding.

Voters and their helpers need access to the sample ballot to comply with Section 208 of the VRA. In nearly every location, voters were not given the option of whether they would prefer to have someone else assist them or to read the Yup'ik sample ballot themselves. E. Phillip Decl. (Kwigillingok) ¶ 13; Lincoln Decl. (Toksook Bay) ¶¶ 7-8; E. Chimiugak Decl. (Toksook Bay) ¶ 9; C. Chimiugak Decl. (Toksook Bay) ¶ 7:

Some Yup'ik voters in Quinhagak bring their own helper with them to translate the English ballot and other voting papers. Their helpers need to be able to use the written Yup'ik ballot to be able to give good help and accurate translations.

Moore Decl. (Quinhagak) ¶ 9. Failure to allow anyone other than an official poll worker forces voters to choose between rights protected under Sections 203 and 208.

Several voters who speak some English asked to use the sample ballot because they do not understand English well enough to understand the technical, legal language typically found on a ballot. E. Chimiugak Decl. (Toksook Bay) ¶¶ 6, 8; C. Chimiugak Decl. (Toksook Bay) ¶ 6; N. Nicholai Decl. (Atmautluak) ¶ 7. Voters have asked to receive the sample document to achieve a greater understanding of the ballot based on how it is translated. There is no justifiable basis on which they should be denied access to this material.

In some villages, voters need to use the written ballot because monolingual poll workers

may not read Yup'ik: "It is important that the voters themselves be able to use it because otherwise it would be useless because our pollworkers do not read Yup'ik enough to be able to use it themselves." Moore Decl. (Quinhagak) ¶ 8. Some hearing impaired Yup'ik-speaking voters require access to the written Yup'ik ballot instead of a translator or recording they cannot hear:

I do not have good hearing, so reading the written ballot is very important to me. I would not be able to hear a machine with audio tapes or CDs (unless it was very, very loud) and I also have a hard time hearing others speak unless they are right beside me.

Phillip Decl. (Kwigillingok) ¶ 11. An English speaker in the same situation surely would not be required to use an audio ballot.

Voters have asked to see the sample ballot in advance of the election because the first time they learn what is on the ballot is when they actually walk into the voting booth. Lincoln Decl. (Toksook Bay) ¶ 20; John Decl. (Toksook Bay) ¶ 16. As a voter explained, "We do not have any of the voting information in Yup'ik before the election, so we do not know much about issues or candidates. It is difficult to be sure that I am voting the way I want to." Nicholai Decl. (Atmautluak) ¶ 12. Tuluksak Tribal Council requested the ballot two weeks or more before the election to let their voters know what will be up for a vote: "Right now, the first time we hear what is on the ballot is when we walk into the voting tent to vote. We have no chance to meet as a council or talk about these issues with others in our community." Alexie Decl. (Tuluksak) ¶ 15. As with wide distribution of the sample ballots, advance mailing of the sample ballots was also contemplated by those who crafted the language assistance provisions of the VRA. Unrestricted access to the Yup'ik sample ballot in advance is necessary to assist LEP voters.

While there were problems caused by the State's restrictive policy, most voters did not see the sample ballot and therefore were unable to benefit from the portions of it that were

understandable.³ In Atmautluak, the poll workers either did not have the sample ballot or did not feel it was useful because they did not use it on Election Day. N. Nicholai Decl. (Atmautluak) ¶ 19; O. Nick Decl. (Atamautlauk) ¶ 16. Poll workers in many villages did not even see the written Yup'ik sample ballot. Lewis Decl. (Kwigillingok) ¶ 7; Ashepak Decl. (Akiak) ¶ 12; Nelson Decl. (Napakiak) ¶ 12; White Decl. (Lower Kalskag) ¶ 12; Michael Decl. (Kwethluk) ¶ 12.

There also were problems caused by the State's lack of training about how to use the sample ballot. Even if the sample ballots had been translated accurately, in some areas their effectiveness was totally negated because some poll workers were instructed or believed *they should not bring the translated sample ballots to the polling place*. Evon Decl. (Goodnews Bay) ¶ 12; Friend Decl. (Kwigillingok) ¶ 10. The restrictive policy therefore resulted in confusion and non-use of the sample ballot. Elsewhere, some voters actually voted on the sample ballot:

I did not hear any information before the election that there would be a Yup'ik ballot or voting assistance in Yup'ik so I was surprised.... I asked "can I use this one?" and the poll workers gave me the Yup'ik ballot to use. I read this one in Yup'ik and I am pretty sure I actually voted on it (put my mark on it) and then I turned it in.

Phillip Decl. (Kwigillingok) ¶¶ 6-7. That is particularly unfortunate because it likely means that the voter's ballot was discarded. Other voters also read and used the written ballot when the poll worker offered no language assistance. Panruk Decl. (Chefornak) ¶ 10. The Court's requirement was not intended to result in inaccurate and unused sample ballots, or sample ballots that disenfranchised voters on the rare occasions when they were used.

5. **Provide pre-election publicity in Yup'ik.** Election-related announcements provided in English shall be broadcast or published in Yup'ik as well. Pre-election publicity should specifically inform Yup'ik speakers that language assistance will be available at all polling locations in the Bethel census area.

³ Nevak Decl. ¶ 9; Lincoln Decl. (Toksook Bay) ¶¶ 16, 19. E. Chimiugak Decl. (Toksook Bay) ¶ 12; C. Chimiugak Decl. (Toksook Bay) ¶ 7; John Decl. (Toksook Bay) ¶¶ 9, 13; Chaliak Decl. (Nunapitchuk) ¶ 9; N. Nicholai Decl. (Atmautluak) ¶ 18; O. Nick Decl. (Atmautlauk) ¶ 15; Jimmy Decl. (Chefornak) ¶¶ 8, 10; David Decl. (Kwigillingok) ¶ 14; Nelson Decl. (Napakiak) ¶ 14; Alexie Decl. (Tuluksak) ¶ 10; Nicholas Decl. (Kasigluk) ¶ 9; Jimmie Decl. ¶ 10 (Kwigillingok); Anvil Decl. ¶ 11 (Bethel); Raphael Decl. ¶ 8 (Bethel).

The State appears to have purchased at least some time to air Yup'ik announcements on KYUK, something it did for the first time after Plaintiffs filed this case. N. Nicholai Decl. (Atmautluak) Decl. ¶ 15. However, KYUK does not reach many villages in the Bethel Census Area. Toksook Bay, which has largest Yup'ik speaking population outside of the City of Bethel, does not receive KYUK broadcasts and voters there received no publicity of any kind. Lincoln Decl. (Toksook Bay) ¶ 12; E. Chimiugak Decl. (Toksook Bay) ¶ 10; John Decl. (Toksook Bay) ¶ 8. Poll workers in other villages also did not hear any elections announcements in Yup'ik. Evon Decl. (Goodnews Bay) ¶ 6; Jimmy Decl. (Chefornak) ¶ 7; Panruk Decl. (Chefornak) ¶ 7. The State did not contact any of the villages outside of KYUK's range to provide voting registration and elections information in Yup'ik through the VHF radios that are the main means of communication.

Voters in villages that receive KYUK said that the State did not provide any radio announcements about the voter registration deadline, the offices on the ballot, the yes-no questions on the ballot, or how to contact the State for help in Yup'ik. Berlin Decl. (Nunapitchuk) ¶ 9; Chaliak Decl. (Nunapitchuk) ¶ 8; N. Nicholai Decl. (Atmautluak) Dec. ¶¶ 15-16. Voters in Quinhagak said, "The State is not giving us any information in Yup'ik about ballots or ballot questions." Sharp Decl. (Quinhagak) ¶ 14. In Tuluksak:

There were no radio announcements of any kind that we heard that provided the voter registration deadline, the polling place hours, information about the ballot questions, information about how to contact the State if a voter needs help voting or any other information.

Alexie Decl. (Tuluksak) ¶ 8. The State's lack of publicity disenfranchised many voters who did not even know there was an REAA election:

The announcements are important because otherwise people do not even know there is an election coming up or what will be on the ballot. This happened in the October 2008 REAA election. There were no announcements about it and so people in our community had no idea there was an REAA election. Most people did not vote in it as a result. Some of us saw a sign that said "vote today" or something like that and

went over to see what it was about, but people only voted if they happened to see the sign out that day. This is a very big problem because REAA elections are in many ways the most important election in this region. The people on the REAA make a lot of important decisions about the school in our village and the funding that it receives. The people elected to that board are very important to us and people in Tuluksak are upset that they did not know there was an election.

Alexie Decl. (Tuluksak) ¶ 9. Some poll workers likewise reported that they did not hear Yup'ik announcements about the August primary. Lawrence Decl. (Nightmute) ¶ 6; White Decl. (Lower Kalskag) ¶ 6; Ashepak Decl. (Akiak) ¶ 6.

Because of the State's inadequate publicity, tribal councils resorted to self-help either through use of their own VHF signals with their own announcements or by making their own election signs in English and Yup'ik. N. Nicholai Decl. (Atmautluak) ¶¶ 20-21. Others had to locate a translator to ensure that there was at least one available. O. Nick Decl. (Atamautlauk) ¶ 19. The State, not the tribes, is responsible for complying with the VRA. *See* 42 U.S.C. § 1973aa-1a(c).

The Court also required the State to inform voters that Yup'ik language assistance would be available. However, across the region, there were no signs in any language informing voters that assistance was available in Yup'ik, and there was no information provided about how to contact the State for Yup'ik assistance.⁴ Some poll workers acknowledged this as well. Evon Decl. (Goodnews Bay) ¶ 9; E. Phillip Decl. (Kwigillingok) ¶ 9; Ashepak Decl. (Akiak) ¶ 9; White Decl. (Lower Kalskag) ¶ 9; Michael Decl. (Kwethluk) ¶ 9; Anvil Decl. (Bethel) ¶ 10; Raphael Decl. ¶ 8 (Bethel).

6. **Ensure the accuracy of translations.** The State must consult with Yup'ik language experts to ensure the accuracy of all translated election materials.

The State's translations of the ballot generally were unintelligible. It appears that the translations were completed by Mary Gregory who indicated to Ms. Wassilie that she had limited

⁴ Nevak Dec. ¶¶ 8-9; Lincoln Decl. (Toksook Bay) ¶ 9; E. Chimiugak Decl. (Toksook Bay) ¶¶ 11-12; C. Chimiugak Decl. (Toksook Bay) ¶ 7; John Decl. (Toksook Bay) ¶ 9; Berlin Decl. (Nunapitchuk) ¶ 10; Chaliak Decl. (Nunapitchuk) ¶ 9; O. Nick Decl. (Atamautlauk) ¶ 15; Jimmy Decl. (Chefornak) ¶ 8; Panruk Decl. (Chefornak) ¶ 8; Alexie Decl. (Tuluksak) ¶ 10; Nicholas Decl. (Kasigluk) ¶ 9.

time to work on it. Dkt. 362, Wassilie Aff. ¶ 10. As a result, the sample ballots contained numerous spelling errors, grammatical errors, dialectical bias, and the word order was so unusual that it prompted Plaintiffs' expert Marie Meade to refer to the translations as "jumbled." Meade Decl. ¶¶ 20, 25.⁵

Although Yup'ik is one language, over time different sub-regions have developed different words for certain nouns or verbs. A person may not know all the different dialects and can easily become confused by a single word on the ballot. For example, in primary measure number 2, the predator control initiative, the ballot used the word "[takukaq]" which means "brown bear" in one dialect but "seal" in the coastal dialect. Meade Decl. ¶ 36. As a result, voters on the coast (a predominately Yup'ik-speaking area) read a ballot that indicated seals would be shot because they had been consuming too many moose calves and were depleting the population – a nonsensical prospect. Some poll workers complained about the dialectical bias and requested that next time all dialects be included. They also suggested that words with dialectical distinctions each be written on the ballot separated by a slash so voters from different regions would know the word before the slash applied to them. Tunuchuk Decl. ¶ 18.

In addition, the word choice was poor or inaccurate. For example, the gaming initiative actually used the word for "playing with toys" rather than the word for games of chance. This bizarre word choice led voters to think that playing with toys would now be regulated by a special commission. Meade Decl. ¶ 27. There are many examples of this in the sample ballot:

The sentence that begins with "tunglia" is again an unusual translation which is almost impossible to understand: "the second one that will be used they don't want to happen, those who are pulling up metal from below the land, digging, not to let them, what they have dug up the remnants of stuff that is not good."

⁵ Both of Marie Meade's declarations regarding the quality of the translations are being filed herewith, and they describe problems with the sample ballots in the primary, general and REAA elections; the audio materials; and the videotape scripts. See First and Second Declarations of Marie Meade.

Meade Decl. ¶ 46 (describing how measure 4 reads in Yup'ik). These problems caused the wording of the sample ballot to be inaccurate, misleading, and confusing.

The few voters who did see the sample ballot also noted that the translations were “strange and hard to understand.” Panruk Decl. (Chefornak) ¶¶ 11, 13. Mr. Panruk noted that some terms like “bond” were not explained at all, preventing him from understanding the translation. Panruk Decl. (Chefornak) ¶ 11. Referring to the August primary ballot, Roland Phillip said that while he was grateful to have any translation (something the State had not done before), “some of the words were strange” and “it was not written so that I was certain whether the vote ‘yes’ or ‘no.’” He added, “It was not clear to me what was being asked exactly.” Phillip Decl. (Kwigillingok) ¶ 8. Even though Mr. Phillip understood the subject of the measure, the call of the question was vague and he was not sure how to vote. Translators preparing ballots must pay careful attention to the wording of the question at the end of the ballot measure.

Translators also commented on the poor quality of translations. Walter Nelson and George Berry from Napakiak, said the translations on the August primary ballot were too long (referring to convoluted explanations) and “confusing for voters.” Nelson/Berry Decl. (Napakiak) ¶ 18. Another translator echoed Marie Meade’s explanation that translations cannot be just slavish word-for-word affairs, but must accurately translate and explain the concept in a way voters can understand. Moore Decl. (Quinhagak) ¶ 11. The difficulty in providing effective on-the-spot translations is why poll worker-translators strongly prefer using a Yup'ik sample ballot that accurately translates concepts, something the State has yet to produce. A poll worker who did not have the sample ballot described the August primary ballot measures as “very hard to translate ... because the English words are hard to understand (some of them are legal words) and even if you understand the English word it is hard to find the right word in Yup'ik.” Lewis Decl. (Kwigillingok) ¶ 6. Professor Alexie, the State’s expert, agreed with that assessment. *See* Pls. Ex. Nick v. Bethel, 3:07-cv-0098-TMB

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348 Alexie Dep. 17:5-14 (stating that written materials are a good idea to account for variations in understanding and translation); 87:4-9 (stating that one should not trust a ballot measure translated in less than a day). Without a sample ballot to guide him, Mr. Lewis had to skip parts of the ballot he did not understand. Lewis Decl. (Kwigillingok) ¶ 7. He added that translating the ballots off the cuff in this manner “takes a long time.” Lewis Decl. (Kwigillingok) ¶ 6. All of the poll workers and voters interviewed preferred the written Yup’ik sample ballots that provided clear, complete, and accurate translations of what can be difficult concepts to understand. The State continues to fail to prepare Yup’ik ballots that do so.

Similarly, the translations in the Yup’ik glossary of election terms confused poll workers and voters alike. Nelson Nicholai from Atmautluak reviewed a copy of the glossary and pointed out the inaccurate translation for “absentee voting official.” He said it “does not mean what the State says it does.” N. Nicholai Decl. (Atmautluak) ¶ 22. He also identified misspelled words, as did Lillian Michael, a poll worker from Kwethluk. Referring to the glossary, she noted that there was “a lot misspelled” and that she “had to do [her] own translation.” Michael Decl. (Kwethluk) ¶ 14. Marie Meade identified a particularly egregious example: voting by absentee was referred to as “the gone machine.” Meade 2nd Decl. ¶ 7. There were many other examples of misspellings and poor translations. *Id.* at ¶ 4.

As discussed in Point 1, oral and written translations provided by poll workers were incomplete and inaccurate. John Decl. (Toksook Bay) ¶¶ 11-12; Jimmy Decl. (Chefornak) ¶ 10; Alexie Decl. (Tuluksak) ¶ 10; Nicholas Decl. (Kasigluk) ¶ 12 (“Three of the four elders I spoke with did not completely understand the ballot in the November election. [Two] said the bond question was not translated for them at all and they were not sure of their vote.”).

Audio assistance generally was absent altogether. In the few places where it was available it was inadequate. One polling place claimed to have had the CDs of the ballot, but they complained

that “The CD translations of the ballot measures were also not understood and voters say that they were too long and confusing to understand.” Nelson/Berry Decl. (Napakiak) ¶ 18. Moreover, Marie Meade identified many unusual translations in the audio advertisements, although most were better than the State’s written Yup’ik translations. Meade Decl. ¶¶ 17-23.

Plaintiffs already have provided the Court with examples of a comprehensive framework used by other jurisdictions covered by Section 203 to remedy the State’s many translation errors. Dkt. 202-2. In the Apache County litigation in Arizona, the Justice Department’s experts detailed at length the methods accepted by professional linguists to accurately translate ballots. Pls. Ex. 351, p. 11-14 (describing how a bond measure was translated into Navajo), which corroborate Alfred Yazzie’s explanation in this case. Dkt. 189, ¶¶ 116-131. Specifically, translations must be completed by a panel of trained, qualified, and professional translators familiar with election and legal terminology necessary for effective translation. The translators should check each other’s work and discuss how to effectively communicate concepts in Yup’ik that are lost in literal, word-for-word translations. Moreover, this panel should consist of persons from different parts of the Yup’ik speaking population (for example, at least one qualified Yup’ik translator from the Kuskokwim region, the Yukon region, and Bristol Bay region, and one Cup’ik speaker) to ensure that there is no dialectical bias. The translators should not be limited to self-interested employees or contractors of the State who have provided unintelligible translations, particularly on ballot measures. Pursuant to the Justice Department’s guidelines, the State also should consult with tribal officials about all translations before finalizing them. *See* 28 C.F.R. § 55.19(b). The State has taken none of these steps.

7. **Provide a Yup’ik glossary of election terms.** During oral argument, counsel for the State Defendants indicated that the State has already compiled a draft version of a Yup’ik glossary of election-related terms. At least one copy of this glossary shall be provided to each polling place within the Bethel census area to assist bilingual poll workers and translators.

Most people did not see a glossary or if they did they did not know what it was for or how to use it.⁶ Some poll workers said that the glossary was for their eyes only, and not to be shared with anyone who might be translating for a friend or family member. Berry/Berry/Nelson Decl. (Napakiak) ¶ 14; Nelson Decl. (Napakiak) ¶ 14. Other poll workers did not see it at all. Lewis Decl. (Kwigillingok) ¶ 8; E. Phillip Decl. (Kwigillingok) ¶ 14; White Decl. (Lower Kalskag) ¶ 14; Ashepak Decl. (Akiak) ¶ 14. Moreover, the glossary was poorly translated as noted under Point 6.

8. **Submit pre-election and post-election reports.** The State defendants shall submit information on the status of efforts to comply with this Court-ordered program of relief, and, more generally, the VRA's language and voter assistance provisions. The information should be specific and provided in verifiable form, e.g., a precinct-by-precinct list of the names of designated bilingual poll workers or translators for the upcoming fall elections. Progress reports must be filed with the Court 15 days before each election (beginning with the August 26 statewide primary), and again 30 days after each election.

State Defendants have provided the requested reports. Given the substantial discrepancies between the hearsay assertions of the State's employees and the statements in this Motion from voters and poll workers with first-hand knowledge of what actually transpired in polling places, the State's information requested by the Court is neither "verifiable" nor reliable.

III. THE STATE'S ELECTIONS HAVE NOT CHANGED SIGNIFICANTLY

The common opinion of voters in the Bethel Census Area was that generally "[t]he way things were on November 4, 2008 was not any better than they were before" the lawsuit.⁷ In Tuluksak, President Alexie said "the elders and people like me who speak mostly Yup'ik do not understand the ballot any better than we did before. We still vote without full understanding."

⁶ Nevak Decl. (Toksook Bay) ¶ 9; Lincoln Decl. (Toksook Bay) ¶ 16; John Decl. (Toksook Bay) ¶ 9; Berlin Decl. (Nunapitchuk) ¶ 10; Chaliak Decl. (Nunapitchuk) ¶ 9; N. Nicholai Decl. (Atmaitluak) ¶ 18; O. Nick (Atmaitluak) ¶ 15; Jimmy Decl. (Chefornak) ¶ 8; Panruk Decl. (Chefornak) ¶ 8; David Decl. (Kwigillingok) ¶ 16; Nelson Decl. (Napakiak) ¶ 16; Alexie Decl. (Tuluksak) ¶ 10; Nicholas Decl. (Kasigluk) ¶ 9.

⁷ Lincoln Decl. (Toksook Bay) ¶ 21; E. Chimiugak Decl. (Toksook Bay) ¶ 15; C. Chimiugak Decl. (Toksook Bay) ¶ 13; John Decl. (Toksook Bay) ¶ 15; Charlie Decl. (Toksook Bay) ¶ 13; Alexie Decl. (Tuluksak) ¶ 10; Jimmie Decl. ¶ 10, 12 (Kwigillingok).

Alexie Decl. (Tuluksak) ¶ 14. Another voter explained:

There have not been any significant changes between how voting was on November 4, 2008 and previous elections. The State did not provide any more election information in Yup'ik for this election than it did in the past.... The radio announcements said "voting is now easier," but I do not agree.

Chaliak Decl. (Nunapitchuk) ¶¶ 11, 13. A voter in Kasigluk commented that the village elders did not notice any changes in the November election; the situation is still such that some elders received absolutely no assistance at all. Nicholas Decl. (Kasigluk) ¶¶ 14-17.

There were modest improvements in pockets. For example, a voter in Atmautluak was grateful that at least now there is a translator: "Since the lawsuit against the State was brought, we do get a translator in our polling place who speaks English and Yup'ik. Everything else is like it was before the lawsuit." Nick Decl. (Atmautluak) ¶ 23. There appear to be at least some announcements on the radio in some villages, although they still did not provide all the basic information voters receive in English. Nicholas Decl. (Kasigluk) ¶ 16; O. Nick Decl. (Atamautlauk) ¶ 23. In Quinhagak, apart from the poorly translated sample ballots, the State's elections are the same as they were before this litigation: no effective language assistance is provided. Moore Decl. (Quinhagak) ¶ 12. In fact, after the October 2008 REAA election, Quinhagak even called the State's regional election administrator, Defendant Becka Baker, to complain:

After the October 2008 REAA election run by the State, I called Becka Baker at the State's regional elections office in Nome to complain about the lack of help that the State was providing our Yup'ik-speaking poll workers and voters. It had been bothering me for a while, and I called her after I saw that the State was not doing anything to fix the problem.... I told Ms. Baker that Quinhagak's three poll workers do not read English very well. None of them have completed high school. One of those pollworkers is an elder who can speak Yup'ik but does not speak English fluently.

Moore Decl. (Quinhagak) ¶¶ 13-14. Ms. Moore suggested that the State require at least one poll worker be able to read and write in Yup'ik as the public schools do. Moore Decl. (Quinhagak) ¶ 15.

Additional modest improvements are evident in some of the declarations, but in general voters have said that the State is still not providing anything remotely close to effective language assistance.

IV. ADDITIONAL RELIEF IS WARRANTED TO REMEDY THE VIOLATIONS

Three elections have now passed since the State first began taking any steps to provide language assistance in the Bethel Census Area, pursuant to the Court's Order. The State's progress under the Order has been limited. As described in the attached declarations, Yup'ik voters are disappointed that the preliminary relief they fought so hard to obtain resulted in election procedures that continue to mirror past State neglect and ineffective assistance. The State's lackluster performance confirms the need for a more comprehensive permanent injunction, such as the one previously provided by Plaintiffs. (Dkt. 202-2). This section highlights some of those areas where additional relief is needed.

Federal observers are necessary to get past the "he said, she said" reports and focus on curing identified deficiencies. Federal observers will provide an objective, more comprehensive view of the situation. They serve as the eyes and ears of the Court to measure progress and identify areas where continued improvement is needed. *See* 42 U.S.C. § 1973f. As a federal court explained under similar circumstances, "It is impossible for the court to satisfactorily resolve many irreconcilable evidentiary disputes without resort to the federal observers' reports. These reports... were compiled by disinterested persons almost immediately following the election; they were submitted in the regular course of official duty and are regarded as highly credible." *James v. Humphreys County Bd. of Election Comm'rs*, 384 F. Supp. 114, 125 (N.D. Miss. 1974). If the State continues to fall short of compliance, then observers will document that fact. *See United States v. Berks County*, 277 F. Supp.2d 570, 575-76 (E.D. Pa. 2003). If the State achieves substantial compliance in future elections that will be evident in observer reports and can provide the basis for terminating their coverage. *See United States v. McKinley County*, 941 F. Supp. 1062 (D.N.M.

1996).

The State also should be ordered to provide the audio assistance it previously described to the Court. The State has described its audio materials produced in conjunction with the Institute for Social and Economic Research (ISER) as the centerpiece of its assistance. However, these materials were not distributed or used for the past three elections, making them worthless.⁸

Additional materials also must be translated into written Yup'ik. Most commonly, voters requested candidate statements and the “for and against” statements that accompany ballot measures. Lincoln Decl. (Toksook Bay) ¶ 17; E. Chimiugak Decl. (Toksook Bay) ¶¶ 13-14; O. Nick Decl. ¶¶ 17-18; Berlin Decl. (Nunapitchuk) ¶ 7; Panruk Decl. (Chefornak) ¶ 13; Phillip Decl. (Kwigillingok) ¶ 12. Pollworkers in Napakiak also noted that the voters asked for information about candidates as well as photographs (such as those that appear in the English voter booklets). Nelson/Berry Decl. ¶ 18. At council meetings, elders ask many questions about the candidates, where they are from, and their positions on various issues. N. Nicholai Decl. (Atmautluak) ¶¶ 9-10. Much of this information is provided to English speakers through candidate statements; this information should be translated into Yup'ik as well. *Id.* ¶ 13.

The State must disseminate information about special needs voting. The State describes special needs voting in this way: “If you had planned on going to your polling place on election day but become ill or are homebound, you can vote by having a personal representative bring you a ballot.” (<http://www.elections.alaska.gov/voting.php>) The voters are not provided this information. Many elderly voters who cannot walk to the poll on Election Day have not been voting. Moore Decl. (Quinhagak) ¶¶ 18-19; John Decl. (Toksook Bay) ¶ 13. This information must be

⁸ John Decl. (Toksook Bay) ¶ 9; Berlin Decl. (Nunapitchuk) ¶ 10; Jimmy Decl. (Chefornak) ¶ 8; Panruk Decl. (Chefornak) ¶ 8; David Decl. (Kwigillingok) ¶¶ 18-19; Nelson Decl. (Napakiak) ¶¶ 18-19; Alexie Decl. (Tuluksak) ¶ 10; Nicholas Decl. (Kasigluk) ¶ 9; Lewis Decl. (Kwigillingok) ¶ 9; Lawrence Decl. (Nightmute) ¶ 16; White Decl. ¶¶ 16-17; Ashepak Decl. (Akiak) ¶¶ 16-17; Michael Decl. (Kwethluk) ¶ 17.

disseminated through training, published materials and announcements. The State's lack of audio assistance, combined with its wholesale lack of special needs voting, violates not only Section 203 of the VRA, but the Voting Accessibility for the Elderly and Handicapped Act, 42 U.S.C. §§ 1973ee, *et seq.*, and the public accommodations provisions of the Americans with Disabilities Act.

Several voters also requested that information about registration and absentee voting be provided in Yup'ik because they do not understand the English-only information. Berlin Decl. (Nunapitchuk) ¶ 8. Others described confusion about how to "get on the list," i.e., how to register to vote in the first place. Berlin Decl. (Nunapitchuk) ¶ 8; Alexie Decl. (Tuluksak) ¶ 16. One voter in Kasigluk had not voted in many years before the November 4, 2008 election because she did not know how to re-register after her name disappeared from the list until Plaintiffs' counsel told her. Nicholas Decl. (Kasigluk) ¶¶ 10-11. In a village that experiences a lower registration rate, it is not just due to the forms but also due to the general lack of election information available in Yup'ik. N. Nicholai Decl. (Atmautluak) ¶ 26.

V. CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant additional relief under the July 31, 2008 Order to remedy the State's numerous violations.

Respectfully submitted this 27th day of January 2009.

s/nlandreth

Natalie A. Landreth (Bar no. 0405020)
NATIVE AMERICAN RIGHTS FUND
420 L Street, Suite 505
Anchorage, Alaska 99501
Phone: (907) 276-0680
Facsimile: (907) 276-2466
Email: landreth@narf.org

Certificate of Service

I hereby certify that on the 27th day of January 2009, a true and correct copy of the foregoing **MOTION FOR FURTHER RELIEF UNDER THE COURT'S JULY 31, 2008 ORDER** was served electronically pursuant to the Court's electronic filing procedures upon the following:

Counsel for Defendants City of Bethel and Lori Strickler:

Louisiana W. Cutler akfedecf@klgates.com

Stephen A. Smith steve.smith@klgates.com

Counsel for Defendants Sean Parnell, Becka Baker, Gail Fenumiai and Michelle Speegle

Michael Barnhill michael.barnhill@alaska.gov

Margaret A. Paton-Walsh margaret.paton-walsh@alaska.gov

Sarah J. Felix sarah.felix@alaska.gov

s/nlandreth