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**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

**PLAINTIFFS' STATEMENT OF  
FACTS IN SUPPORT OF THEIR  
MOTION FOR A PRELIMINARY  
INJUNCTION**

**TABLE OF CONTENTS**

<b><u>Subject</u></b>	<b><u>Page</u></b>
Geography of the Bethel Census Area	1
Population of the Bethel Census Area	3
Socio-Economic Conditions in the Bethel Census Area	4
Yup'ik Language Usage in the Bethel Census Area	6
Education Discrimination against Alaska Natives in the Bethel Census Area	9
Educational Attainment and Illiteracy Rates of Yup'iks in the Bethel Census Area	12
Plaintiffs' Need for Language Assistance and Voting Experiences	15
Anna Nick	15
Billy McCann	17
David O. David	20
Arthur Nelson	21
Section 203 and Section 5 Coverage of the Bethel Census Area and City of Bethel	22
Defendants' Abandoned Language Program	24
Defendants' Responsibility for Elections in the Bethel Census Area	28
Defendants' Knowledge of the Need for Language Assistance in the Bethel Census Area	32
Defendants Shift their Responsibility for Providing Language Assistance to Others	33
Defendants Provide English-Only Voting Materials in the Bethel Census Area	37
Yup'ik is a Historically Written Language	37
Written Yup'ik is Commonly Used in the Bethel Census Area	40
Defendants' Failure to Determine if Yup'ik is Historically Written or Commonly Used	43
Defendants Have No Full-Time Elections Employees Fluent in Yup'ik	45

<b><u>Subject</u></b>	<b><u>Page</u></b>
Defendants' Lack of Yup'ik Language Assistance for Election Information	45
Defendants' Failure to Make Yup'ik Language Assistance Accessible to Voters	49
Defendants' Lack of Yup'ik Translators at Polling Places	51
Need for Voting Materials Written in Yup'ik for Translators	54
Defendants' Lack of Translator Training	57
Poor Quality of Defendants' Training	61
Importance of Defendants Providing Complete and Accurate Translations	64
Defendants' Failure to Confirm Completeness and Accuracy of Yup'ik Translations	65
Defendants' Failure to Confirm Translators' Abilities	68
Defendants' Lack of Yup'ik Language Assistance on Ballot Questions and Voter Materials	73
Defendants' Poor Quality of Yup'ik Translations	76
Defendants' Failure to Provide any Audio Tape Language Assistance	81
Defendants' Lack of Quality Control Measures	83
Defendants' Lack of Travel to the Native Villages in the Bethel Census Area	85
Defendants' Lack of Outreach to Yup'ik Community and Native Organizations	87
Defendants' Lack of Voter Education Opportunities	90
Defendants' Lack of Voter Registration Opportunities in Yup'ik	91
Defendants' Failure to Use Federal HAVA Funding for Language Assistance	93
Defendants' Inadequate Resources Committed to Language Assistance	94
Defendants' Failure to Investigate and Remedy Language Assistance Complaints	95
Defendants' Denial of Voter Assistance in Violation of Section 208 of the VRA	98
Depressed Yup'ik Voter Turnout in the Bethel Census Area	99

<b><u>Subject</u></b>	<b><u>Page</u></b>
Defendants' Failure to Maintain Records	101
Additional Remedies for Defendants' Violations	103

### Geography of the Bethel Census Area

1. The Bethel Census Area is located in southwest Alaska. [First Am. Complaint ¶ 24; Complaint ¶ 14 and Answers thereto]

2. The U.S. Bureau of the Census (“Census Bureau”) defines a “Census Area” as the “statistical equivalent of a county in Alaska. Census areas are delineated cooperatively by the state of Alaska and the Census Bureau for statistical purposes in the portion of Alaska not within an organized borough.” [Pls.’ Ex. 182, Plaintiffs’ First Set of Requests for Admission to Defendants Sean Parnell, Whitney Brewster, and Becka Baker (“State Defs.”) and State Defs.’ response thereto, (“RFA 1”) ¶ 1]

3. According to the 2000 Census, the Bethel Census Area has a land area of 40,631.31 square miles, approximately the size of the State of Tennessee.<sup>1</sup> [Pls.’ Ex. 182, RFA 1 ¶¶ 10-11; Pls.’ Ex. 2]

4. According to the 2000 Census, the Bethel Census Area has a population density of 0.4 persons per square mile, the fourteenth lowest population density of county-level jurisdictions in the United States. [Pls.’ Ex. 182, RFA 1 ¶¶ 10-11; Pls.’ Ex. 2; U.S. CENSUS BUREAU, COUNTY AND CITY DATA BOOK: 2000, Table B-1, *available at* <http://www.census.gov/statab/ccdb/tus01041.txt>]

5. The Bethel Census Area includes several of what the Census Bureau calls “Alaska Native village statistical areas” (ANVSAs). The Census Bureau defines ANVSAs as constituting “tribes, bands, groups, villages, communities, or associations in Alaska that are recognized pursuant to the Alaska Native Claims Settlement Act of 1972, Public Law 92-203. Because ANVs do not have legally designated boundaries, the Census Bureau has established...

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<sup>1</sup> According to the 2000 Census, the State of Tennessee has a land area of 41,217.12 square miles. [U.S. Census Bureau, Tennessee Quickfacts, *available at* <http://quickfacts.census.gov/qfd/states/47000.html>]

ANVSAs for statistical purposes.... ANVAs for the 1990 Census replace the ANVs that the Census Bureau recognized for the 1980 census.” [First Am. Complaint ¶ 23; H.R. REP. NO. 102-655, at 10 (1992)]

6. The Census Bureau further defines ANVSAs as a “statistical entity that represents the densely settled extent of an Alaska Native village, which is a local governmental unit in Alaska. An ANVSA is delineated for the Census Bureau by officials of the Alaska Native village or Alaska Native Regional Corporation in which the ANVSA is located for the purpose of presenting decennial census data.” [Pls.’ Ex. 182, RFA 1 ¶ 2]

7. Just 19 miles of paved roads exist in the Bethel Census Area, all of which are located in the City of Bethel or connecting to several nearby subdivisions. [State of Alaska, Alaska Economic Information System – Department of Commerce, Community, and Economic Development, Bethel Census Area: Transportation, under the headings “At-A-Glance,” “Land Transportation: General” and “Winter Trails and Regional Roads,” *available at* <http://www.dced.state.ak.us/dca/aeis/AEISMainFrame.cfm?CensusArea=Bethel&Industry=Transportation&IndexItem=TransportationOverview>]

8. “The region is not accessible by road, so residents and visitors must travel to Bethel by water or air.... People travel to the villages by air or boat along the waterways in the summer and by snow machine or all terrain vehicles on the frozen rivers and trails in the winter.” [State of Alaska, Department of Commerce, Community, and Economic Development, Bethel Census Area: Tourism, under the heading “Transportation and Access,” *available at* [http://www.dced.state.ak.us/dca/aeis/Bethel/Tourism/Bethel\\_Tourism\\_Narrative.htm](http://www.dced.state.ak.us/dca/aeis/Bethel/Tourism/Bethel_Tourism_Narrative.htm)]

9. “Bethel is located at the mouth of the Kuskokwim River, 40 miles inland from the Bering Sea. It lies in the Yukon Delta National Wildlife Refuge, 400 air miles west of

Anchorage.... The area encompasses 43.8 sq. miles of land and 5.1 sq. miles of water.” [State of Alaska, Division of Commerce, Alaska Community Information Services (CIS), “Bethel: Location and Climate,” *available at* <http://www.commerce.state.ak.us/dca/commdb/CIS.cfm>]

### **Population of the Bethel Census Area**

10. According to the 2000 Census, the Bethel Census Area has a total population of 16,006 persons. [Pls.’ Ex. 182, RFA 1 ¶¶ 5-6; Pls.’ Ex. 1]

11. According to the 2000 Census, there are 13,680 American Indian and Alaskan Native persons of one or more races comprising 85.5 percent of the total population in the Bethel Census Area. [Pls.’ Ex. 182, RFA 1 ¶¶ 5, 8, 53-56; Pls.’ Exs. 14A-14B]

12. According to the 2000 Census, there are 13,114 American Indian and Alaskan Native persons of a single race comprising 81.9 percent of the total population in the Bethel Census Area. [Pls.’ Ex. 182, RFA 1 ¶¶ 5, 7; Pls.’ Ex. 1]

13. According to the 2000 Census, the Bethel Census Area has a citizen voting age population (that is, U.S. citizens 18 years of age and older, or “CVAP”) of approximately 9,512 persons, or 98.93 percent of the 9,615 persons of voting age. [Pls.’ Ex. 182, RFA 1 ¶¶ 16-17; Pls.’ Ex. 4]

14. According to the 2000 Census, approximately 7,728 (81.24 percent) of the CVAP in the Bethel Census Area are American Indian and Alaska Native persons of one or more races. [Pls.’ Ex. 182, RFA 1 ¶¶ 16, 18-19; Pls.’ Ex. 4]

15. According to the 2000 Census, the Bethel Census Area has the seventh highest percentage of American Indian and Alaska Native populations among all county-level jurisdictions in the United States. [U.S. CENSUS BUREAU, COUNTY AND CITY DATA BOOK: 2000, Table B-2, *available at* <http://www.census.gov/statab/ccdb/tus02131.txt>]

16. According to the 2000 Census, the Bethel Census Area has the twenty-fifth largest population of American Indian and Alaska Native populations among all county-level jurisdictions in the United States. [U.S. CENSUS BUREAU, COUNTY AND CITY DATA BOOK: 2000, Table B-2, *available at* <http://www.census.gov/statab/ccdb/tus02130.txt>]

17. According to the 2000 Census, the City of Bethel is the most populous municipality of the Bethel Census Area, with a total population of 5,471 persons, of whom 3,719 (67.98 percent) are American Indian and Alaskan Native persons of one or more races. [First Am. Complaint ¶ 26; Complaint ¶ 14]

18. According to the 2000 Census, the City of Bethel has a CVAP of approximately 3,429 persons, or 97.19 percent of the 3,528 persons of voting age. [First Am. Complaint ¶ 26]

19. According to the 2000 Census, approximately 2,097 (61.2 percent) of the CVAP in the City of Bethel are American Indian and Alaska Native persons of one or more races. [First Am. Complaint ¶ 26]

#### **Socio-Economic Conditions in the Bethel Census Area**

20. Plaintiffs' Exhibits 18A-18G are maps that depict 2000 Census data showing the percent of families below the poverty line in 1999 in the Bethel Census Area. [Pls.' Ex. 182, RFA 1 ¶¶ 99-112; Pls.' Exs. 18A-18G]

21. According to 2004 Census data, 20.7 percent of all persons in the Bethel Census Area are below the poverty line, over twice the State of Alaska's poverty rate of 10.0 percent. [Pls.' Ex. 164, Census Special Tabulation]

22. According to the 2000 Census, 23.2 percent of all families in the Bethel Census Area that are comprised of American Indian and Alaska Native persons of one or more races are below the poverty line. [Pls.' Ex. 165, Table DP-3]

23. According to 1999 Census data, the per capita income of persons in the Bethel Census Area is \$12,603, a little more than half the State of Alaska's per capita income of persons statewide of \$22,660. [Pls.' Ex. 164, Census Special Tabulation]

24. According to the 2000 Census, the per capita income of persons in the Bethel Census Area who are American Indian and Alaska Native persons of one or more races is \$9,040. [Pls.' Ex. 165, Table DP-3]

25. According to the 2000 Census, 34.3 percent of the 3,050 households in the Bethel Census Area with American Indian and Alaska Native persons of one or more races receive public assistance. [Pls.' Ex. 165, Table DP-3]

26. According to the 2000 Census, 49.5 percent of the 4,226 occupied households in the Bethel Census Area, or 2,091 occupied households, lack complete plumbing facilities. [Pls.' Ex. 166, 2000 Census Tenure by Plumbing Facilities]

27. According to the 2000 Census, 44.5 percent of the 4,226 occupied households in the Bethel Census Area, or 1,879 occupied households, lack complete kitchen facilities. [Pls.' Ex. 167, 2000 Census Tenure by Kitchen Facilities]

28. According to the 2000 Census, 10.8 percent of the 4,226 occupied households in the Bethel Census Area, or 457 occupied households, lack telephone service. [Pls.' Ex. 168, 2000 Census Tenure by Telephone Service]

29. According to the 2000 Census, 3,035 out of the 4,226 occupied household in the Bethel Census Area are occupied by American Indian and Alaska Native persons of one or more races. Among those 3,035 occupied households, 14.1 percent, or 429 occupied households, lack telephone service. [Pls.' Ex. 168, 2000 Census Tenure by Telephone Service]

30. According to the 2000 Census, occupied households with American Indian and Alaska Native persons of one or more races account for approximately 93.8 percent of all occupied households in the Bethel Census Area without telephone service. [Pls.’ Ex. 168, 2000 Census Tenure by Telephone Service]

### **Yup’ik Language Usage in the Bethel Census Area**

31. According to the 2000 Census, of the 13,586 American Indian and Alaskan Native persons in the Bethel Census Area, 9,132 (67.2 percent) of persons five years and older speak a language other than English at home. [Pls.’ Ex. 164, Census Special Tabulation; Pls.’ Ex. 182, RFA 1 ¶¶ 57-70; Pls.’ Exs. 15A-15G]

32. According to the 2000 Census, only one percent of all county-level jurisdictions in the United States (including those located in Puerto Rico) have a population in which sixty percent or more of persons five years and older speak a non-English language at home. In the “Bethel Census Area, Alaska, 66 percent of the population spoke a language other than English at home, and 97 percent of the non-English-language speakers spoke a Native North American language.” [U.S. CENSUS BUREAU, CENSUS 2000 BRIEF: LANGUAGE USE AND ENGLISH-SPEAKING ABILITY 2000, at 7 (Oct. 2003), *available at* <http://www.census.gov/prod/2003pubs/c2kbr-29.pdf>]

33. According to the 2000 Census, the Bethel Census Area is one of just three county-level jurisdictions in the United States in which a majority of persons five years and older speak an American Indian or Alaskan Native language at home.<sup>2</sup> [See U.S. Census Bureau, Table GCT-P11, Language, School Enrollment, and Educational Attainment: 2000 Data Set: Census

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<sup>2</sup> The others are the Wade Hampton Census Area, Alaska with 50.3 percent speaking an Alaska Native language at home and Apache County, Arizona with 61.7 percent speaking an American Indian language at home. The North Slope Borough, Alaska just missed having a majority, with 49.9 percent speaking an Alaska Native Language at home. See U.S. Census Bureau, Table GCT-P11, Language, School Enrollment, and Educational Attainment: 2000 Data Set: Census 2000 Summary File 3 (SF 3) - Sample Data, United States – County by State.

2000 Summary File 3 (SF 3) - Sample Data, United States – County by State, *available at* [http://factfinder.census.gov/servlet/GCTTable?\\_bm=y&-context=gct&-ds\\_name=DEC\\_2000\\_SF3\\_U&-mt\\_name=DEC\\_2000\\_SF3\\_U\\_GCTP11\\_US25&-CONTEXT=gct&-tree\\_id=4001&-redoLog=true&-geo\\_id=&-format=US-25&-lang=en](http://factfinder.census.gov/servlet/GCTTable?_bm=y&-context=gct&-ds_name=DEC_2000_SF3_U&-mt_name=DEC_2000_SF3_U_GCTP11_US25&-CONTEXT=gct&-tree_id=4001&-redoLog=true&-geo_id=&-format=US-25&-lang=en)

34. Plaintiffs' Exhibits 16A-16G are 2000 Census maps depicting the percent of persons 5 years and over who speak a language other than English at home and speak English less than "very well" in the Bethel Census Area. [Pls.' Ex. 182, RFA 1 ¶¶ 71-84; Pls.' Exs. 16A-16G]

35. Section 203 of the Voting Rights Act ("VRA") defines "Limited-English proficient" ("LEP") as "unable to speak or understand English adequately enough to participate in the electoral process." [Pls.' Ex. 182, RFA 1 ¶ 3]

36. The Census Bureau determines whether a person is LEP through responses to a Census question "inquiring how well they speak English by checking one of the four answers provided – 'very well,' 'well,' 'not well,' or 'not at all.' The Census Bureau has determined that most respondents over-estimate their English proficiency and therefore, those who answer other than 'very well' are deemed LEP." [H.R. REP. NO. 102-655, at 8 (1992), *reprinted in* 1992 U.S.C.C.A.N. 766, 772]

37. According to the July 26, 2002 Determinations by the Census Bureau under Section 203 of the VRA ("2002 Determinations"), among the Bethel Census Area's CVAP, 20.82 percent, or 1,980 persons, are LEP in the covered Eskimo language. [First Am. Complaint ¶ 34 and Attach. A; Complaint ¶ 19 and Attach. A, and Answers thereto; Pls.' Ex. 182, RFA 1 ¶¶ 37-43, 46-47; Pls.' Exs. 11A-11D, 13; Pls.' Ex. 164, Census Special Tabulation]

38. According to the 2002 Census Determinations, among the City of Bethel's CVAP, 9.31 percent, or 195 persons, are LEP in the covered Eskimo language. [First Am. Complaint ¶ 34 and Attach. A; Complaint ¶ 19 and Attach. A. and Answers thereto; Pls.' Ex. 182, RFA 1 ¶¶ 37-43, 46-47; Pls.' Exs. 11A-11D, 13; Pls.' Ex. 164, Census Special Tabulation]

39. According to the 2002 Census Determinations, the Bethel Census Area includes at least 29 ANVSAs that are covered under Section 203 for an Eskimo language. [Pls.' Ex. 164, Census Special Tabulation]

40. According to the 2002 Census Determinations, the Bethel Census Area includes at least eight ANVSAs in which 50 percent or more of the village's CVAP is LEP in an Eskimo language: Atmautluak (51.22 percent, or 105 persons); Cheforak (58.33 percent, or 105 persons); Eek (53.33 percent, or 80 persons); Kwinhagak/Quinahagak (53.03 percent, or 175 persons); Newtok (52.78 percent, or 95 persons); Toksook Bay (65.45 percent, or 180 persons); Tuntutuliak (50.0 percent, or 80 persons); and Tununak (60.61 percent, or 100 persons). [Pls.' Ex. 182, RFA 1 ¶¶ 37-43, 46-47; Pls.' Ex. 164, Census Special Tabulation]

41. According to the 2002 Census Determinations, the Bethel Census Area includes at least an additional ten ANVSAs in which 20 to 49.9 percent of the village's CVAP is LEP in an Eskimo language: Akiachak (23.44 percent, or 75 persons); Goodnews Bay (32.14 percent, or 45 persons); Kasigluk (38.89 percent, or 105 persons); Kipnuk (45.95 percent, or 170 persons); Kwethluk (25.71 percent, or 90 persons); Kwigillingok (39.39 percent, or 65 persons); Napakiak (27.03 percent, or 50 persons); Napaskiak (44.90 percent, or 110 persons); Nunapitchuk (43.75 percent, or 105 persons); and Tuluksak (25.45 percent, or 70 persons). [Pls.' Ex. 182, RFA 1 ¶¶ 37-43, 46-47; Pls.' Exs. 11A-11D, 13; Pls.' Ex. 164, Census Special Tabulation]

42. According to the 2002 Census Determinations, the Bethel Census Area includes an additional six ANVSAs in which 5 to 19.9 percent of the village's CVAP is LEP in an Eskimo language: Akiak (17.24 percent, or 25 persons); Aniak (6.98 percent, or 15 persons); Bethel (9.31 percent, or 195 persons); Kongiganak (14.0 percent, 35 persons); Lower Kalskag (7.14 percent, or 20 persons), Mekoryuk (16.67 percent, or 20 persons). [Pls.' Ex. 182, RFA 1 ¶¶ 37-43, 46-47; Pls.' Exs. 11A-11D, 13; Pls.' Ex. 164, Census Special Tabulation]

43. According to the 2000 Census, Yup'ik is the predominant language used by American Indian and Alaska Native CVAP for every ANVSA in the Bethel Census Area for which data is available, comprising at least 6,060 voting age citizens. [First Am. Complaint ¶ 37; Complaint ¶ 22 and Answers thereto; Pls.' Ex. 164, Census Special Tabulation]

44. According to the 2000 Census, there are at least 1,155 voting age citizens who speak Yup'ik in the City of Bethel. [Pls.' Ex. 164, Census Special Tabulation]

45. According to the 2000 Census, Yup'ik also is the predominant non-English language spoken in the Bethel Census Area among all voting age citizens, with just three other non-English languages having 40 or more speakers: Spanish, Korean, and an undefined Eskimo language. [Pls.' Ex. 164, Census Special Tabulation]

#### **Education Discrimination against Alaska Natives in the Bethel Census Area**

46. In 1972, several Alaska Native villages throughout Alaska, including most in the Bethel Census Area, sued the State for failing to provide any secondary schooling in native villages. According to the complaint in *Molly Hootch v. Alaska State Operated School System*, all but two of the native villages in the Bethel Census Area outside of the City of Bethel had "a predominantly Alaska Native population (50 per cent or more)," "more than eight children eligible to attend elementary and secondary school," and the State defendants did "not operate

and maintain a secondary school or provide daily transportation to a secondary school.” [Pls.’ Ex. 170, Complaint, *Molly Hootch v. Alaska State Operated School System*, No. 72-2450 (Alaska 3d Jud. Cir. Oct. 5, 1972) (“Hootch Complaint”)] In contrast, several public secondary schools were built in non-Native areas with smaller numbers of non-Native students. [See Pls.’ Ex. 171, Agreement of Settlement in *Tobeluk v. Lind* (“Hootch Settlement”) at ¶ 25]

47. From the late nineteenth century until 1976, when the State settled the Molly Hootch lawsuit, a dual and segregated system of education that separated white and Native American students existed in Alaska, including segregated public schooling in the City of Bethel. [Pls.’ Ex. 171, Hootch Settlement, at ¶ 9]

48. As the federal government took control of Native American education, it instituted a policy of sending Native Alaskans to vocational secondary boarding schools outside of the state while allowing white residents to educate their children locally. [Pls.’ Ex. 171, Hootch Settlement, at ¶ 11]

49. By the time that a BIA boarding school was established at Mt. Edgecumbe in Sitka in 1947, “Rural Native students were presented with the choice of either staying at home and forgoing attendance at a secondary school or leaving home and attending Mt. Edgecumbe. When enrollment at Mt. Edgecumbe exceeded the school’s capacity, the BIA began admitting Native Alaskans to Indian boarding schools in other states. Hundreds of Alaska Natives entered boarding schools in Chemawa, Oregon, and Chilocco, Oklahoma.” [Pls.’ Ex. 171, Hootch Settlement, at ¶ 11]

50. After 1966, the State began creating in-state boarding schools for Native Alaskans. However, “these efforts did not completely eradicate the pattern – generated by the former dual school system established prior to statehood – of requiring a large proportion of

Native children to board away from home if they wished to attend a secondary school.” [Pls.’ Ex. 171, Hootch Settlement, at ¶ 15]

51. By the late 1960s, Department of Education officials determined that regional boarding schools “had detrimental effects upon some of the students which outweighed the benefits,” such as “accelerated drop-out rates, psychological and social problems, including disruption of family life and loss of sense of identity, and failure to live up to educational potential.” [Pls.’ Ex. 171, Hootch Settlement, at ¶¶ 17, 20]

52. The State stipulated that “Some children who have finished the eighth grade in their villages have never gone away to attend secondary school. Others, while enrolled in a boarding program... transferred... without attaining discernible educational benefits from any program.” [Pls.’ Ex. 171, Hootch Settlement, at ¶ 20]

53. By 1976, there were 2,783 secondary school age children residing in communities that had primary but not secondary schools. More than 95 percent of these children were Native Alaskans. [Pls.’ Ex. 171, Hootch Settlement, at ¶ 19]

54. In 1999, an Alaska Court held that Alaska continued to have a dual, arbitrary, unconstitutional, and racially discriminatory system for funding school facilities. [Pls.’ Ex. 172 *Kasayulie v. State of Alaska*, Case No. 3AN-97-3782-CIV (Alaska Super. Ct. 1999)]

55. Even today, the State does not fully meet the educational standards for Native Alaskan students under the federal No Child Left Behind Act. A 2004 study found that four times as many Native Alaskan students are below the reading proficiency levels as non-Native students. Only 43.5 percent of Alaska Native students received a passing proficiency score on standardized reading exams while over eighty percent of white students earned proficiency on

the same exams. [Pls.' Ex. 173, Decision and Order, *Moore v. State of Alaska*, Case No.3AN-04-9756-CIV (Alaska Super. Ct. June 21, 2007) ("Moore Order") at 30, 32, 37].

56. Alaska has violated its "constitutional responsibility to maintain a public school system" by failing to sufficiently oversee the quality of secondary education in many Alaska Native villages and to provide a "meaningful opportunity to learn the material" on a graduation exam. The State violated the due process rights of Alaska Native students when it conditioned high school graduation on passing that exam. [Pls.' Ex. 173, Moore Order, at 194-96]

#### **Educational Attainment and Illiteracy Rates of Yup'iks in the Bethel Census Area**

57. Plaintiffs' Exhibits 17A-17G are 2000 Census maps depicting the percent of persons 25 years and over with less than a 9<sup>th</sup> grade education in the Bethel Census Area. [Pls.' Ex. 182, RFA 1 ¶¶ 85-98; Pls.' Exs. 17A-17G]

58. According to the 2000 Census, 34.7 percent (2,682 persons) of the 7,728 American Indian and Alaskan Native persons aged eighteen and older in the Bethel Census Area have not graduated from high school. That is nearly 3.5 times the rate of the 1,887 non-American and Alaskan Native persons, among whom only 10.8 percent (203 persons) have not graduated from high school. [Pls.' Ex. 174, Declaration of Dr. Claudia Dybdahl, at table 3 and Attach. to Declaration C]

59. According to the 2000 Census, 18.2 percent (1,405 persons) of the 7,728 American Indian and Alaskan Native persons aged eighteen and older in the Bethel Census Area have less than a ninth grade education, including 9 percent (699 persons) who have less than a fifth grade education. In comparison, only 3.1 percent (58 persons) of the 1,887 non-American Indian and Alaskan persons aged eighteen and older have less than a ninth grade education, with

just 0.6 percent (11 persons) who have less than a fifth grade education. [Pls.' Ex. 174, Declaration of Dr. Claudia Dybdahl, at table 3 and Attach. to Declaration C]

60. Low levels of educational attainment are present throughout the ANVSAs located in the Bethel Census Area, as shown in maps depicting the percentage of persons aged 25 and older with less than a ninth grade education. [Pls.' Ex. 182, RFA 1 ¶¶ 85-98; Pls.' Exs. 17A-17G]

61. According to the 2000 Census, Yup'ik elders (the 947 persons aged sixty and older) have the lowest level of educational attainment among all American Indian and Alaskan Native persons in the Bethel Census Area, with the following percentages: 86.3 percent (817 persons) have less than the ninth grade; 5.4 percent (51 persons) have a ninth to twelfth grade education but without a high school diploma; 3.8 percent (36 persons) are high school graduates; and 4.1 percent (43 persons) have at least some college education. In total, 91.7 percent do not have a high school diploma. [Pls.' Ex. 174, Declaration of Dr. Claudia Dybdahl, at tables 4a-4b and Attach. to Declaration C]

62. According to the 2000 Census, among the 1,718 American Indian and Alaskan Native persons in the Bethel Census Area aged 45 to 59 years, 40.7 percent (700 persons) do not have a high school diploma and 27.7 percent (476 persons) have less than a ninth grade education. [Pls.' Ex. 174, Declaration of Dr. Claudia Dybdahl, at tables 4a-4b and Attach. to Declaration C]

63. Section 203 of the VRA defines "illiteracy" as "the failure to complete the 5th primary grade." [42 U.S.C. § 1973aa-1a(b)(3)(B)]

64. According to the 2002 Census Determinations, the illiteracy rate among the Eskimo LEP CVAP in the Bethel Census Area is 21.46 percent, nearly sixteen times the national

illiteracy rate of 1.35 percent. [First Am. Complaint ¶ 34 and Attach. A; Complaint ¶ 19 and Attach. A and Answers thereto; Pls.' Ex. 182, RFA 1 ¶¶ 37-47; Pls.' Exs. 11A-11D, 12-13; Pls.' Ex. 164, Census Special Tabulation]

65. According to the 2002 Census Determinations, the illiteracy rate among the Eskimo LEP CVAP in the City of Bethel is 20.51 percent, over fifteen times the national illiteracy rate of 1.35 percent. [First Am. Complaint ¶ 34 and Attach. A; Complaint ¶ 19 and Attach. A and Answers thereto; Pls.' Ex. 182, RFA 1 ¶¶ 37-47; Pls.' Exs. 11A-11D, 12-13; Pls.' Ex. 164, Census Special Tabulation]

66. According to the 2002 Census Determinations, at least five ANVSAs have illiteracy rates among Eskimo LEP CVAP of forty percent or greater, including: Akiak (40.0 percent, over 29 times the national illiteracy rate); Aniak (66.7 percent, over 49 times the national illiteracy rate); Kongiganak (42.9 percent, over 31 times the national illiteracy rate); Lower Kalskag (100 percent, over 74 times the national illiteracy rate); and Mekoryuk (75.0 percent, over 55 times the national illiteracy rate). [First Am. Complaint ¶ 34 and Attach. A; Complaint ¶ 19 and Attach. A and Answers thereto; Pls.' Ex. 182, RFA 1 ¶¶ 37-47; Pls.' Exs. 11A-11D, 12-13; Pls.' Ex. 164, Census Special Tabulation]

67. According to the 2002 Census Determinations, at least nineteen of the 24 ANVSAs for which illiteracy data is available have illiteracy rates among Eskimo LEP CVAP of 15.0 percent or greater, which is a minimum of at least eleven times the national illiteracy rate. [First Am. Complaint Attach. A; Complaint Attach. A; Pls.' Ex. 164, Census Special Tabulation]

68. Statistics for students currently enrolled in the Bethel area schools (Lower Kuskokwim School District) have the following proficiency levels: only 45% of students in grades 3-10 in 2006-2007 were proficient in language arts, as measured by No Child Left

Behind; 46.3% of grade 9 students were below or not proficient in reading in 2007 according to State of Alaska Standards Based Assessment Data; and 51.2% of the grade 9 students were not proficient as measured by the 2007 High School Graduation Qualifying Exam. [Pls.' Ex. 174, Declaration of Dr. Claudia Dybdahl, at 24-25]

69. It is most likely "that the average reading level of the VAP in the Bethel Census Area is considerably lower than their grade level of educational attainment." [Pls.' Ex. 174, Declaration of Dr. Claudia Dybdahl, at 25]

### **Plaintiffs' Need for Language Assistance and Voting Experiences**

#### **Anna Nick**

70. Plaintiff Anna Nick is a 69 year-old Alaska Native U.S. citizen and registered voter residing in Akiachak, Alaska, in the Bethel Census Area. [Pls.' Ex. 185, Declaration of Anna Nick, ("Nick Decl.") ¶ 3]

71. Plaintiff Nick was raised speaking Yup'ik and that is her first and primary language. She can read and write fluently in Yup'ik. [Pls.' Ex. 185, Nick Decl. ¶ 4]

72. Plaintiff Nick only finished the fifth grade in primary school. [Pls.' Ex. 185, Nick Decl. ¶ 7; First Am. Complaint ¶ 6; Pls.' Ex. 154, Deposition of Anna Nick, ("Nick Dep.") 7:9-16]

73. Plaintiff Nick cannot read or write much English. Plaintiff Nick did not learn how to read or speak English in school. The little English she knows she learned from her children. [Pls.' Ex. 185, Nick Decl. ¶¶ 5-8; First Am. Complaint ¶ 6; Pls.' Ex. 154, Nick Dep., 7:17-25, 9:11-13, 10:2-12]

74. Voting is very important to Plaintiff Nick and she has been voting since the 1960s. [Pls.' Ex. 154, Nick Dep., 15:3-5, 42:20-44:3]

75. Plaintiff Nick has difficulty voting because all voting materials and information - ballots, signs, ballot initiative explanations, and instructions - are in English. [Pls.' Ex. 185, Nick Decl. ¶¶ 11, 24-26,29]

76. Plaintiff Nick cannot completely understand an English language ballot and believes that at the last election she made some mistakes and may not have voted the way would have if she were able to understand the whole ballot. [Pls.' Ex. 185, Nick Decl. ¶ 12]

77. Plaintiff Nick has particular difficulty with ballot measures that require a "yes" or "no" response. Plaintiff Nick can understand some English words, and based on what she understands she will choose "yes" or "no," but if she really does not understand what the ballot measure is asking, she will just vote "no." [Pls.' Ex. 185, Nick Decl. ¶ 13]

78. Plaintiff Nick has heard poll workers tell voters to ask for help if they need it, but during the 2006 election, Plaintiff Nick asked a poll worker in Akiachak for translation help and was not given a full translation. [Pls.' Ex. 185, Nick Decl. ¶ 15] The poll worker only translated Ballot Measure No. 2. The poll worker did not translate Ballot Measure No. 1 or provide any translation related to individual candidates on the ballot. Plaintiff Nick was told "to vote the way you understand the document that's presented to you." [Pls.' Ex. 154, Nick Dep., 27:17-28:18]

79. It would help Plaintiff Nick to vote if a trained poll worker was available to come into the voting booth with her to translate the ballot into Yup'ik. [Pls.' Ex. 154, Nick Dep., 33:21-36:24]

80. Plaintiff Nick worked as a poll worker in Akiachak for approximately eight years. She resigned because she was having difficulty reading and writing in English, could not translate English to Yup'ik, and did not understand many of the duties of her position. She also did not understand many of the forms she was asked to sign which resulted in her storing ballots

and a voting machine in her home without her knowledge. [Pls.' Ex. 154, Nick Dep., 18:1-7, 21:3-22:11, 30:1-31:20, 47:23-48:10; Pls.' Ex. 185, Nick Decl. ¶¶ 17-18]

81. During all of her years as a poll worker, Plaintiff Nick only received training once. That training was limited to how to operate the voting machine. [Pls.' Ex. 154, Nick Dep., 31:25-32:15, 48:11-21]

82. When she was a poll worker, Plaintiff Nick was unable to help Yup'ik speakers with translation because of her limited English skills. No other poll workers were translators capable of fully translating the whole ballot. [Pls.' Ex. 185, Nick Decl. ¶¶ 17, 21; Pls.' Ex. 154, Nick Dep., 18:22-25, 36:25-37:8]

### **Billy McCann**

83. Plaintiff Billy McCann is a 78 year-old Alaska Native U.S. citizen and registered voter born in the village of Tununak and currently residing in Bethel, Alaska. [First Am. Complaint ¶ 7; Pls.' Ex. 186, Declaration of Billy McCann, ("McCann Decl.") ¶ 3]

84. Yup'ik is Plaintiff McCann's first and primary language. He understands Yup'ik and speaks it fluently, but cannot read Yup'ik. [First Am. Complaint ¶ 7; Pls.' Ex. 186, McCann Decl. ¶¶ 5, 8; Pls.' Ex. 153, Deposition of Billy McCann, ("McCann Dep.") 10:3-6]

85. Plaintiff McCann understands very little English and relies on interpreters to translate English to Yup'ik. He does not read or write English. [Pls.' Ex. 186, McCann Decl. ¶¶ 4, 6-7; Pls.' Ex. 153, McCann Dep., 10:7-10]

86. Plaintiff McCann did not go beyond the second grade in primary school and is considered illiterate as defined by the U.S. Census Bureau. [First Am. Complaint ¶ 7; Pls.' Ex. 186, McCann Decl. ¶ 6; Pls.' Ex. 153, McCann Dep., 9:14-21]

87. Plaintiff McCann has been a registered voter for as “long as [he] can remember” and tries to vote in every election. [Pls.’ Ex. 186, McCann Decl. ¶ 9] He has been voting since the 1970s. [Pls.’ Ex. 153, McCann Dep., 59:19-25]

88. Voting is difficult for Plaintiff McCann because voter registration forms, polling place signs, voting instructions, voter information books, ballots, and all information about ballot measures are in English, which he does not understand. [Pls.’ Ex. 186, McCann Decl. ¶¶ 10, 27,29]

89. Plaintiff McCann cannot understand what a ballot written in English says and he cannot choose what or whom to vote for without assistance. [Pls.’ Ex. 186, McCann Decl. ¶¶ 11-12, 28] Plaintiff McCann marks the ballots to the best of his ability, even if he does not understand how he is voting. [Pls.’ Ex. 153, McCann Dep., 24:1-7]

90. Plaintiff McCann has never seen any voting materials, information, or signs in Yup’ik and has never heard any information relating to the availability of translation services. [Pls.’ Ex. 186, McCann Decl. ¶¶ 29, 31-32; Pls.’ Ex. 153, McCann Dep., 33:21-23]

91. There are usually no Yup’ik speakers working at Plaintiff McCann’s polling place in Bethel, so no translation assistance is available to him. [Pls.’ Ex. 186, McCann Decl. ¶ 11]

92. Sometimes, without assistance, Plaintiff McCann can recognize the proper name of a candidate written in English, so he can vote for that person. [Pls.’ Ex. 186, McCann Decl. ¶ 12]

93. Plaintiff McCann has particular difficulty with “yes-no questions,” or ballot measures. These questions are very confusing to him, so he skips them because he is afraid he will vote in a way that he does not intend to. Plaintiff McCann is especially fearful that he would

accidentally hurt his people if he voted for a “yes-no question” that was bad for them without knowing what he was voting for. [Pls.’ Ex. 186, McCann Decl. ¶¶ 13,15]

94. In the past, Plaintiff McCann may have voted in a way he did not intend because he did not understand the questions on the ballot. Other Yup’ik speakers have complained of the same problem. [Pls.’ Ex. 186, McCann Decl. ¶14]

95. At the 2006 election in Bethel, Plaintiff McCann voted at the City of Bethel offices. [Pls.’ Ex. 186, McCann Decl. ¶16; Pls.’ Ex. 153, McCann Dep., 22:4-7]

96. At the 2006 election, Plaintiff McCann’s friend told the poll workers that Plaintiff McCann needed assistance from someone who could translate the ballot into Yup’ik. [Pls.’ Ex. 186, McCann Decl. ¶ 17; Pls.’ Ex. 153, McCann Dep., 22:25-23:5]

97. A translator was provided who spoke Yup’ik and gave Plaintiff McCann a short summary of some of the ballot measures at a table outside the voting booth. This was the first time Plaintiff McCann has ever been aware of a translator available at his voting location. [Pls.’ Ex. 186, McCann Decl. ¶¶ 18, 20; Pls.’ Ex. 153, McCann Dep., 25:13-19]

98. Even though the ballot measures were lengthy, the translator gave a very short Yup’ik translation that was only a few sentences long. [Pls.’ Ex. 186, McCann Decl. ¶ 21]

99. Plaintiff McCann did not understand all of the translation because the translator “did not speak Yup’ik very good.” [Pls.’ Ex. 186, McCann Decl. ¶ 19]

100. The translator did not accompany Plaintiff McCann into the voting booth, nor did the translator inform him that he could bring someone into the booth to help him. [Pls.’ Ex. 186, McCann Decl. ¶ 23; Pls.’ Ex. 153, McCann Dep., 72:25-73:15]

101. Plaintiff McCann wants ballots translated into Yup'ik for him so that he can have the same voting information and choices that English-speaking voters get. [Pls.' Ex. 153, McCann Decl. ¶13]

**David O. David**

102. Plaintiff David O. David is a 74 year-old Alaska Native U.S. citizen and registered voter born, raised, and still living in the village of Kwigillingok, Alaska, in the Bethel Census Area. [First Am. Complaint ¶ 8; Pls.' Ex. 187, Declaration of David O. David, ("David Decl.") ¶ 2]

103. Yup'ik is Plaintiff David's first and primary language. [Pls.' Ex. 187, David Decl. ¶ 4]

104. Plaintiff David is fluent in Yup'ik, but has very limited understanding of English. He did not learn to read much English in school, and when he looks at written English he does not understand it. [Pls.' Ex. 187, David Decl. ¶¶ 4-5; Pls.' Ex. 152, Deposition of David O. David, ("David Dep.") 11:2-6]

105. Plaintiff David is illiterate as defined by the U.S. Census Bureau, having only finished the fourth grade in primary school. [First Am. Complaint ¶ 8; Pls.' Ex. 187, David Decl. ¶ 7; Pls.' Ex. 152, David Dep. 8:9-9:1]

106. Every time Plaintiff David has voted in an election he has had difficulty because he was unable to completely understand the English words on the ballot. And all voting information, including signs and ballot initiative questions, were in English. [Pls.' Ex. 187, David Decl. ¶ 11; Pls.' Ex. 152, David Dep., 18:15-23]

107. For most of his life, Plaintiff David has had difficulty voting because of the lack of Yup'ik translation. [Pls.' Ex. 152, David Dep., 28:24-29:8]

108. Ballot measures are particularly difficult for Plaintiff David to understand and he finds this part of the voting process very frustrating. [Pls.' Ex. 187, David Decl. ¶ 13]

109. Plaintiff David has asked poll workers to translate the ballot and ballot measure questions for him, but their translations are limited - they do not translate everything on the ballot, nor do they translate ballot measures word-for-word. Plaintiff David only receives a short translated summary of the ballot measure, even if it is very long. [Pls.' Ex. 187, David Decl. ¶ 15; Pls.' Ex. 152, David Dep., 19:17-21:2, 28:5-23]

110. Plaintiff David needs voting materials to be translated word-for-word in written form. [Pls.' Ex. 152, David Dep., 23: 11-21:1]

**Arthur Nelson**<sup>3</sup>

111. Plaintiff Arthur Nelson, born in the Village of Kwigillingok, is a 74 year-old Alaska Native U.S. Citizen and registered voter residing in Bethel, Alaska. [First Am. Complaint ¶ 9; Pls.' Ex. 188, Declaration of Arthur Nelson, ("Nelson Decl.") ¶ 3]

112. Plaintiff Nelson had a very limited education and is illiterate as defined by the U.S. Census Bureau, completing, at most, the second grade. [First Am. Complaint ¶ 9; Pls.' Ex. 188, Nelson Decl. ¶ 4]

113. Plaintiff Nelson can read Yup'ik, but does not fully understand English, and is therefore very confused by the ballots and other materials he encounters when he votes. [Pls.' Ex. 188, Nelson Decl. ¶ 5, 10-11]

114. Plaintiff Nelson has rarely seen translators at the polling locations where he has voted. [Pls.' Ex. 188, Nelson Decl. ¶ 8]

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<sup>3</sup> Plaintiff Nelson is one of five plaintiffs who seek to join this action through Plaintiffs' Motion for Leave to File First Amended Complaint, filed within the time period set by agreement of the parties and the Court's Scheduling Order. Plaintiffs' Motion remains pending.

115. When translators have been available in the City of Bethel, Plaintiff Nelson would tell a poll worker that he needed help, and a translator will give him a short oral summary of the ballot questions. However, Plaintiff Nelson is never able to remember all of the translated summaries, so he would have to go back-and-forth from the voting booth to the translator several times for translations. [Pls.' Ex. 188, Nelson Decl. ¶ 10]

**Section 203 and Section 5 Coverage of the Bethel Census Area and City of Bethel**

116. The entire State of Alaska has been subject to the requirements of Section 4(f)(4) of the VRA since October 22, 1975. [Pls.' Ex. 182, RFA 1 ¶¶ 27-28; Pls.' Ex. 8]

117. The determination that the State of Alaska, including the Bethel Census Area and villages municipalities within it, is covered by Sections 4(f)(4) and 5 for Alaska Native languages is final and non-reviewable by any court. 42 U.S.C. § 1973b(a)(9)(b); 28 C.F.R. § 55.4(a). [First Am. Complaint ¶ 30; Complaint ¶ 16]

118. The Bethel Census Area, as a political subdivision of the State of Alaska, is subject to the bilingual election requirements of Sections 4(f)(4) and preclearance requirements of Section 5 with respect to Alaska Native languages and has been continuously covered since October 22, 1975. 42 U.S.C. § 1973b; *see also* 40 Fed. Reg. 49,422 (Oct. 22, 1975); 28 C.F.R. § 55.5(b); 28 C.F.R. § 55.2(d) (“jurisdictions covered under section 4(f)(4) of the Act are subject to the preclearance requirements of Section 5”); 28 C.F.R. § 55.8 (“Jurisdictions subject to the requirements of section 4(f)(4) ... are also subject to the Act’s special provisions, such as section 5 ... and section 6”). [First Am. Complaint ¶¶ 29, 31; Complaint ¶¶ 16-17 and Answers thereto; Pls.' Ex. 182, RFA 1 ¶¶ 30-31; Pls.' Ex. 9; Pls.' Ex. 94, at STATE 201]

119. The Bethel Census Area has not bailed out from coverage under Section 4(f)(4) of the VRA pursuant to Section 4(a) of the VRA and continues to be required to provide language

assistance pursuant to Section 203 of the VRA and obtain preclearance for its voting changes pursuant to Section 5 of the VRA. [Pls.' Ex. 182, RFA 1 ¶ 32; Pls.' Exs. 8-9]

120. The City of Bethel, as a political subdivision of the State of Alaska within the Bethel Census Area, is subject to the bilingual election requirements of Sections 4(f)(4) and preclearance requirements of Section 5 with respect to Alaska Native languages. 42 U.S.C. § 1973b; *see also* 40 Fed. Reg. 49,422 (Oct. 22, 1975); 28 C.F.R. § 55.9 (“all political units that hold elections within” covered political subdivisions, including municipalities, “are subject to the same requirements as the political subdivision”). [First Am. Complaint ¶¶ 29, 31; Complaint ¶¶ 16-17 and Answers thereto; Pls.' Ex. 182, RFA 1 ¶ 32; Pls.' Exs. 8-9]

121. The City of Bethel has not bailed out from coverage under Section 4(f)(4) of the VRA pursuant to Section 4(a) of the VRA and continues to be required to provide language assistance pursuant to Section 203 of the VRA and obtain preclearance for its voting changes pursuant to Section 5 of the VRA. [Pls.' Ex. 182, RFA 1 ¶ 32; Pls.' Exs. 8-9]

122. In the 2002 Determinations, the Census Bureau listed Eskimo, American Indian (tribe not specified), and American Indian (other tribe specified) as the languages covered under Section 203 of the VRA in the Bethel Census Area. 67 Fed. Reg. at 48,872 (July 26, 2002). [First Am. Complaint ¶ 32; Complaint ¶ 18; Pls.' Ex. 182, RFA 1 ¶¶ 33-34; Pls.' Ex. 10]

123. The determination that the Bethel Census Area is covered by Section 203 for Eskimo is final and non-reviewable by any court. 42 U.S.C. § 1973aa-1a(b)(4); 28 C.F.R. § 55.4(a). [First Am. Complaint ¶ 33; Pls.' Ex. 182, RFA 1 ¶ 33]

124. Since the 2002 Determinations, neither the Bethel Census Area nor the City of Bethel has bailed out from coverage pursuant to Section 203(d) of the VRA, and accordingly

both continue to be required to provide language assistance pursuant to Section 203 of the VRA. [Pls.' Ex. 182, RFA 1 ¶ 35; Pls.' Exs. 9-10]

### **Defendants' Abandoned Language Program**

125. In 1981, the State of Alaska submitted its language assistance program for Section 5 preclearance after the U.S. Department of Justice requested more information about it in a related Section 5 submission. [First Am. Complaint ¶¶ 43-44; Pls.' Ex 52, at STATE 560-79]

126. The State of Alaska responded by submitting a language assistance program for all covered languages in the State of Alaska that included several components that neither the State nor the City of Bethel uses today. The City of Bethel relies upon the State's precleared 1981 language plan. [First Am. Complaint ¶¶ 45-46, 49-53, Attachs. B-C; Pls.' Ex. 52, at STATE 560-65; Pls.' Ex. 191, Deposition of Whitney Brewster, ("Brewster Dep.") 145:19-154:16]

127. The City of Bethel has not made a separate Section 5 submission for a language assistance program. [Pls.' Ex. 189, Deposition of Sandra Modigh, ("Modigh Dep.") 27:25-28:4]

128. The U.S. Department of Justice precleared the State's language assistance program for the Bethel Census Area on October 5, 1981. [First Am. Complaint ¶ 47; Pls.' Ex. 52, at STATE 559]

129. The State's precleared 1981 language plan requires Defendants to provide "oral assistance to the minority language groups who cannot read English or the minority language" in the Bethel Census Area. [First Am. Complaint Attach. B, at STATE 562; Pls.' Ex. 52 at STATE 562] As described in SOF ¶¶ 369 to 381, Defendants do not provide effective oral language assistance to Yup'ik-speaking voters.

130. The State's precleared 1981 language plan requires that voter registration officials be "appointed in the rural areas of the state speak the minority language spoken in that particular area" and "information requested on the voter registration form may be translated into the minority language." [First Am. Complaint Attach. B, at STATE 562; Pls.' Ex. 52 at STATE 562] As described in SOF ¶¶ 451 to 460, the State does not have Yup'ik-speaking voter registration officials in all precincts and the State does not translate the voter registration information into Yup'ik.

131. The State's precleared 1981 language plan requires Defendants to provide "a minority language interpreter" in precincts in the Bethel Census Area and "at least one member of the [elections] board must speak the minority language spoken in that area." [First Am. Complaint Attach. B, at STATE 563; Pls.' Ex. 52 at STATE 563] As described in SOF ¶¶ 258 to 274, Defendants do not have a fluent Yup'ik language interpreter who is capable of translating all English-only voting materials in every precinct in the Bethel Census Area where one is needed.

132. The State's precleared 1981 language plan requires Defendants to use interpreters in the Bethel Census Area whose "only responsibility is to assist minority language voters." [First Am. Complaint Attach. B, at STATE 563; Pls.' Ex. 52 at STATE 563] As described in SOF ¶¶ 465 to 473, Defendants do not have interpreters whose sole function is translating voting materials into Yup'ik.

133. The State's precleared 1981 language plan requires Defendants to allow voters in the Bethel Census Area who wish to "to bring a person of his or her choice to assist in the reading or marking of the ballots. If a voter brings a person to assist, the assistant is asked to take an oath not to divulge how the voter's ballot is marked." [First Am. Complaint Attach. B, at

STATE 563; Pls.' Ex. 52 at STATE 563] As described in SOF ¶¶ 229 to 248, Defendants do not permit LEP voters to receive assistance from the person of their choice for every stage of the voting process.

134. The State's precleared 1981 language plan for the Bethel Census Area requires that "[i]nstructions and information are provided to the public through public service announcements and short programs which are prepared in the minority languages. The material will be supplied in Yupik, Inupiaq, Siberian Yupik, Koyukon, Tlingit, and Tsimshian. The matters to be covered in these materials include the availability of minority language assistance for both voter registration and the election day procedures, filing deadlines, absentee balloting procedures and deadlines, requirements for identification at the polls, the types of identification required and the frequency and length of time for voting in order to remain on the list of registered voters." [First Am. Complaint Attach. B, at STATE 563-64; Pls.' Ex. 52 at STATE 563-64] As described in SOF ¶¶ 325 to 331, Defendants do not provide all voting instructions and information in Yup'ik public service announcements.

135. The State's precleared 1981 language plan for the Bethel Census Area requires that Defendants provide "publicity in minority languages for elections. Through the Alaska Native Language Center at the University of Alaska in Fairbanks, the names of persons who can speak the minority languages are provided to the Division of Elections. Those persons are then contacted and asked to assist in the preparation of audio and video tapes for use by radio and television stations." [First Am. Complaint Attach. B, at STATE 564; Pls.' Ex. 52 at STATE 564] As described in SOF ¶¶ 393 to 401, Defendants do not prepare audio and video tapes of Yup'ik language information.

136. The State's precleared 1981 language plan for the Bethel Census Area requires that an "employee of the Division of Elections travels to each locality to work with the interpreters in preparing the tapes." [First Am. Complaint Attach. B, at STATE 564; Pls.' Ex. 52 at STATE 564] As described in SOF ¶¶ 417 to 424, Defendants do not have any employees who travel to each locality to assist interpreters in preparing tapes.

137. The State's precleared 1981 language plan for the Bethel Census Area provides that if "the facilities are not available for preparation of the tapes in that locality the interpreter may be transported to the facility for tape preparation. Upon completion of the tape preparation process, the tapes are distributed for use by the stations. Several tapes are prepared covering various election procedures and information." [First Am. Complaint Attach. B, at STATE 564; Pls.' Ex. 52 at STATE 564] As described in SOF ¶¶ 393 to 401, Defendants do not follow this procedure.

138. The State's precleared 1981 language plan for the Bethel Census Area requires that information in tapes distributed by Defendants in the covered languages for use by radio and television stations include information: "(1) that assistance in the minority language is available during the registration and election process; (2) that the voter may bring a person of his or her choice to the polls to assist during voting; (3) the availability of registrars including names and locations; (4) the voting procedures that are followed at the polls; (5) the questioned ballot procedures; and (6) identification requirements and types of documents that may need to be brought at the time of registration and voting." [First Am. Complaint Attach. B, at STATE 564-65; Pls.' Ex. 52 at STATE 564-65] As described in SOF ¶¶ 226 to 248, Defendants do not provide this information in Yup'ik on radio and television stations.

139. Defendants have not obtained Section 5 preclearance for any changes to their 1981 language assistance program for the Bethel Census Area. [First Am. Complaint ¶ 49]

140. After Plaintiffs filed their lawsuit, the State of Alaska started taking steps to “update” its precleared 1981 language plan. [Pls.’ Ex. 191, Brewster Dep., 28:8-19]

141. The State of Alaska did not make any other submissions pertaining to its language assistance program in the Bethel Census Area until March 20, 2008. [First Am. Complaint ¶ 48 Pls.’ Ex. 175, State’s Mar. 2008 Section 5 submission]

### **Defendants’ Responsibility for Elections in the Bethel Census Area**

142. The Bethel Census Area is part of an unorganized borough. As such, it lacks any form of centralized government and its residents must depend on the State of Alaska for their government services, including voter registration and the conduct of federal, state elections, and certain local elections. [First Am. Complaint ¶ 27; Complaint ¶ 15 and Answers thereto; Pls.’ Ex. 191, Brewster Dep., 105:22-106:15]

143. The State of Alaska “operates a bit differently than other states... We conduct all statewide elections and Federal elections at the State level versus in other states, where they are conducted at the county” level. [Pls.’ Ex. 191, Brewster Dep., 105:14-19]

144. Defendant Sean Parnell is the Lieutenant Governor of Alaska and is responsible for the control and supervision of the Division of Elections in the State of Alaska including the appointment of the Director of Elections and the conduct of elections in the Bethel Census Area. ALASKA STAT. § 15.10.105. [First Am. Complaint ¶ 16; Complaint ¶ 10 and Answers thereto; Pls.’ Ex. 190, Deposition of Sean Parnell, (“Parnell Dep.”) 9:7-21, 11:3-10, 20:22-21:2]

145. Lieutenant Governor Parnell is responsible for reviewing initiative and referenda petitions, with the assistance of legal advice obtained from the State Attorney General. [Pls.' Ex. 190, Parnell Dep., 36:8-38:12]

146. Pursuant to Alaska Statute § 15.10.105, Lieutenant Governor Parnell delegates the responsibilities for conducting the State's elections to the State Director of Elections. The duties delegated to the State Director of Elections include authority to implement the State's language assistance program, such as hiring and training bilingual poll workers, outreach, and making any changes to the program. [Pls.' Ex. 190, Parnell Dep., 35:6-11, 46:2-48:15, 50:8-15] Lieutenant Governor Parnell allows the State Director of Elections to "run the election entirely free of my influence or input." [Pls.' Ex. 190, Parnell Dep., 20:5-10]

147. Defendant Gail Fenumiai is the Director of Elections for the State of Alaska.<sup>4</sup> Defendant Fenumiai was appointed by Lieutenant Governor Parnell and is responsible for the supervision of regional election offices, all matters related to the employment and training of election personnel, and the administration of all State elections, as well those municipal elections that the State is required to conduct. ALASKA STAT. § 15.10.105. [First Am. Complaint ¶ 17; Complaint ¶ 11 and Answers thereto; *see* Pls.' Ex. 190, Parnell Dep., 11:21; Pls.' Ex. 191, Brewster Dep., 19:23-22]

148. The State Director of Elections is responsible for supervising the State's language assistance program, including language assistance for LEP Yup'ik-speaking voters in the Bethel Census Area. [Pls.' Ex. 191, Brewster Dep., 20:23-21:21] The State Director of Elections also participates in the submission of voting changes to the U.S. Department of Justice under Section

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<sup>4</sup> Defendant Fenumiai replaced Whitney Brewster as the Director of Elections, after Ms. Brewster was transferred to another position following her deposition in November 2007. Pursuant to Federal Rule of Civil Procedure 25(d), Defendant Fenumiai has been automatically substituted as a party defendant.

5 of the VRA. [Pls.' Ex. 191, Brewster Dep., 24:19-25:7] The State Director of Elections, through her designee Hanna Stickel, is responsible for issuing all public service announcements for the Bethel Census Area. [Pls.' Ex.159, Deposition of Becka Baker, ("Baker Dep.") 30:22-31:9]

149. Defendant Becka Baker is the Election Supervisor of the Nome Regional Elections Office IV. Defendant Baker is responsible for assisting the administration of elections in 27 voting precincts in the Bethel Census Area. ALASKA STAT. § 15.10.110. [First Am. Complaint ¶ 18; Complaint ¶ 12 and Answers thereto; Pls.' Ex. 191, Brewster Dep., 21:25-22:17]

150. Defendant Baker's responsibilities include "election worker recruitment, polling site accessibility, compiling... election materials... and "for all activities at the Region IV office in regards to voter registration, providing materials... [f]or local Government elections, [and] working with the City clerks." [Pls.' Ex.159, Baker Dep., 41:14-42:10; *see* Pls.' Ex.159, Baker Dep., 101:16-25; Pls.' Ex. 189, Modigh Dep., 17:10-17; Pls.' Ex. 101, Bethel Defs.' Response to Interrogatory No. 9]

151. Defendants Parnell, Fenumiai, and Baker are responsible for managing the bilingual voting assistance provided by the State of Alaska under Section 203. [Pls.' Ex. 94, at STATE 201]

152. Defendant Michelle Speegle is the Election Supervisor of the Fairbanks Regional Elections Office III. Defendant Speegle is responsible for assisting the administration of elections in five voting precincts in the Bethel Census Area.<sup>5</sup> ALASKA STAT. § 15.10.110. [First

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<sup>5</sup> Plaintiffs' First Amended Complaint includes a typographical error. Defendant Speegle is responsible for assisting in the administration of elections in five voting precincts in the Bethel Census Area, and not the four alleged in the First Amended Complaint.

Am. Complaint ¶ 19; *see* Pls.' Ex. 191, Brewster Dep., 21:25-22:17; Pls.' Ex.159, Baker Dep., 39:2-5]

153. The four regional supervisors for the State Division of Elections report to the State Director of Elections, who reports directly to the Lieutenant Governor. [Pls.' Ex. 191, Brewster Dep., 19:23-21:24, 156:17-157:5; *see* Pls.' Ex.159, Baker Dep., 42:11-43:6]

154. The State is responsible for conducting all of the public elections in the City of Bethel, except for the City of Bethel's municipal elections. [Pls.' Ex. 191, Brewster Dep., 157:12-25]

155. The City of Bethel is responsible for conducting its municipal elections. It also conducts federal and state elections on behalf of the State of Alaska. [First Am. Complaint ¶ 28]

156. Defendant Lori Strickler is the municipal clerk of Bethel, Alaska and is responsible for conducting all municipal elections in the city of Bethel.<sup>6</sup> ALASKA STAT. § 29.20.380. [First Am. Complaint ¶ 20; Complaint ¶ 13 and Answers thereto; Pls.' Ex. 191, Brewster Dep., 157:12-21; Pls.' Ex. 189, Modigh Dep., 14:16-15:1]

157. The municipal clerk of the City of Bethel has duties for Bethel municipal elections that include: election official recruitment and training, preparing ballot questions, producing the layout for the printed ballot, ensuring precincts are set up and are running smoothly, closing down elections, recruiting the canvas board, and providing the certificate to the city council that certifies the election. [Pls.' Ex. 189, Modigh Dep., 15:12-16:1, 16:16-17:1, 51:22-25, 52:20-24, 53:13-17, 54:21-25, 55:22-56:2, 57:24-58:23]

158. The municipal clerk, with the assistance of legal counsel, is responsible for submitting the City of Bethel's voting changes for the conduct of municipal elections to the U.S.

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<sup>6</sup> Defendant Strickler replaced Sandra Modigh as the City Clerk for the City of Bethel, after Ms. Modigh resigned following her deposition in November 2007. Pursuant to Federal Rule of Civil Procedure 25(d), Defendant Strickler has been automatically substituted as a party defendant.

Department of Justice pursuant to Section 5 of the VRA. [Pls.' Ex. 189, Modigh Dep., 26:21-27:24]

159. The municipal clerk of the City of Bethel also serves “in a capacity to assist the Division of Elections... in providing voting services to the people in the City of Bethel,” including as a voting registrar. [Pls.' Ex. 191, Brewster Dep., 157:6-11; *see* Pls.' Ex. 189, Modigh Dep., 14:16-15:1, 17:2-9, 28:5-16; Pls.' Ex. 33, State Defs.' Response to Interrogatory Nos. 3-4] The municipal clerk assists the Region IV office “in recruiting workers for the State conducted elections in the Bethel Census Area,” serving as an “intermediary” for the office including calling poll workers in the City of Bethel. [Pls.' Ex.159, Baker Dep., 63:22-64:18; *see* Pls.' Ex. 189, Modigh Dep., 17:2-5, 72:11-22, 73:2-17]

160. With the exception of ballots that are printed for City elections, the State provides the City of Bethel “with all the materials and the directions to conduct their election.” [Pls.' Ex.159, Baker Dep., 56:14-57:6; *see* Pls.' Ex. 189, Modigh Dep., 16:2-24, 50:5-51:21; Pls.' Ex. 45]

#### **Defendants' Knowledge of the Need for Language Assistance in the Bethel Census Area**

161. The State Director of Elections has seen a letter from the U.S. Department of Justice following the July 2002 Census Determinations indicating the scope of language assistance coverage in Alaska under Section 203 of the VRA. [Pls.' Ex. 191, Brewster Dep., 177:20-178:4; Pls.' Ex. 88]

162. The State identifies the precincts that need language assistance under Section 203 by using the information published in the Federal Register and Census data. [Pls.' Ex. 191, Brewster Dep., 98:18-99:6; Pls.' Ex. 94, at STATE 202]

163. State elections employees “look at what areas require language assistance and then... look at in the community what is the percentage of voters who speak English less than very well.” [Pls.’ Ex. 191, Brewster Dep., 99:7-16]

164. The State has relied upon the Census data identifying the LEP and illiteracy rates for villages in the Bethel Census Area similar to what is included in Attach. A of the Complaint, although it was in a different format and from a State source. [Pls.’ Ex. 191, Brewster Dep., 99:22-100:16, 193:16-194:2; Complaint Attach. A]

165. The State Division of Elections also “requested guidance from the DOJ in the Spring of 2006, and received color coded maps which visually depict the information provided in the Federal Register.” [Pls.’ Ex. 191, Brewster Dep., 101:25-102:12; Pls.’ Ex. 94, at STATE 202]

166. According to the State Director of Elections, all but two precincts in the Bethel Census Area need language assistance. [Pls.’ Ex. 191, Brewster Dep., 103:12-104:1]

**Defendants Shift their Responsibility for Providing Language Assistance to Others**

167. The State of Alaska and City of Bethel do not have a language assistance program. Instead, they only have what could be a partial foundation of a language program: many poll workers who speak Yup’ik. However, Defendants’ lack of confirmation of their skills, failure to provide mandatory training on language assistance, and failure to provide the tools needed for complete, clear, and accurate translations of voting materials from English into Yup’ik has resulted in ineffective language assistance. [Pls.’ Ex. 176, Yazzie Decl. ¶¶ 12-136]

168. In preparation for the 2006 General Election, each regional office of the State Division of Elections was supposed to send voter registration packets to every tribal government in the State, including in the Bethel Census Area, that included a “request for the tribal

governments to provide as much assistance to the LEP applicants as needed.” [Pls.’ Ex. 94, at STATE 205; Pls.’ Ex. 191, Brewster Dep., 112:12-24]

169. For State elections, bilingual poll worker recruitment is done by “word of mouth” by the election chairperson who is appointed for the precinct. “That person is responsible for gathering the entire board and then within that community to provide poll worker assistance on election day.” [Pls.’ Ex. 191, Brewster Dep., 118:17-119:6; Pls.’ Ex. 94, at STATE 206]

170. According to the State, “elders that need this [language] assistance, do not vote in person at the polls, they have a family member deliver a ‘special needs’ ballot to their homes for voting purposes or have a family member assist them in the polls.” [Pls.’ Ex. 94, at STATE 206]

171. With the exception of two Yup’ik radio advertisements purchased by the State in 2006, all information for public service announcements is sent out to media organizations and stations in English. “What the Division of Elections does is send the public service announcements in written form to the local radio station where the local radio station makes the announcement in English and then translates into the local Native language... The written format goes out in English...” [Pls.’ Ex. 191, Brewster Dep., 127:21-128:6; Pls.’ Exs. 46, 49-50, 57; Pls.’ Ex. 33, State Defs.’ Response to Interrogatory No. 10]

172. When the State sends out ads, public service announcements, and pamphlets, it does not provide any written or audio translations of those materials into Yup’ik. Instead, it sends them out in English with a notation of “Local Native Language Requested,” placing the burden on the media outlet to translate. [Pls.’ Exs. 46, 50; Pls.’ Ex. 191, Brewster Dep., 130:19-131:11, 145:19-146:20]

173. The State has voter purges yearly and makes a public service announcement about those purges “in English that we send to a radio station that we ask to translate into Yup’ik.” [Pls.’ Ex. 191, Brewster Dep., 148:7-25]

174. For all of that English-only elections information, the broadcast station only translates it if it is able to do so. [Pls.’ Ex. 191, Brewster Dep., 133:14-19]

175. When the City of Bethel sends its public service announcements to local radio station KYUK, those announcements are in English only. The City relies on a KYUK employee, John Active, to translate those announcements into Yup’ik. The City “is not involved in KYUK’s translations.” [Pls.’ Ex. 189, Modigh Dep., 29:19-30:19, 59:12-21; *see* Pls.’ Ex. 101, Bethel Defs.’ Response to Interrogatory No. 10]

176. The City of Bethel places the burden for translating all voting materials into Yup’ik on its “Yup’ik polling officials... and KYUK AM/TV.” [Pls.’ Ex. 101, Bethel Defs.’ Response to Interrogatory No. 8; *see id.* at Response to Interrogatory No. 10]

177. The State places the burden for translating all English voting materials onto its Yup’ik-speaking translators at the polls. [Pls.’ Ex. 33, State Defs.’ Response to Interrogatory Nos. 8-9; Pls.’ Exs. 47-48]

178. The State places the burden on getting language assistance on the voter. The State’s voter information guide for the 2006 election, which is in English only, states that “Alaska Native... language assistance is available at many polling places throughout the state. Let the Division of Elections know ahead of time if you’ll need the service when you vote.” [Pls.’ Ex. 191, Brewster Dep., 141:1-17; Pls.’ Ex. 69; *see* Pls.’ Ex.159, Baker Dep., 32:9-12]

179. If an LEP voter is unable to read the State's voter information guide, then the State expects the voter "might know this through a friend or family member." [Pls.' Ex. 191, Brewster Dep., 141:18:25]

180. For the villages outside of the City of Bethel, the State places the burden of conducting HAVA polling place accessibility determinations on the tribal governments, but does not place a similar burden on the three precincts in the City of Bethel. [Pls.' Ex.159, Baker Dep., 22:3-25:17]

181. The State also places the burden on voters to identify whether their Yup'ik translators are actually providing complete and accurate translations of voting information into Yup'ik. As the Region IV Supervisor explained, "I believe that if I had an issue where I had a poll worker who wasn't fluent in the Yup'ik language who could not provide assistance to a voter in the Yup'ik language, that I would hear back from that community member or that voter stating that that poll worker was of no help to them." The Region IV Supervisor makes an "assumption" that the poll workers will give the voter the telephone number for the Region IV elections office to make a complaint. [Pls.' Ex.159, Baker Dep., 69:12-70:17, 77:19-25] As the Region IV Supervisor explained, "I think that if a voter had an issue where effective language assistance was not being provided in their precinct, then yes, they would... need to contact us to let us know." [Pls.' Ex.159, Baker Dep., 85:8-15]

182. The State places the burden on other poll workers to identify whether a poll worker does not speak English fluently. However, poll workers are not given any instructions during their training to contact the Region IV elections office if they know about a non-English speaking poll worker. The Region IV Supervisor admits that "it's a good idea" for poll workers to be able to read English. [Pls.' Ex.159, Baker Dep., 76:6-77:5]

**Defendants Provide English-Only Voting Materials in the Bethel Census Area**

183. The State admits that “only oral assistance is provided.” [Pls.’ Ex. 94, at STATE 208]

184. All ballots provided by Defendants in the Bethel Census Area are in English-only. [Pls.’ Ex. 94, at STATE 207; Pls.’ Ex.159, Baker Dep., 54:25-55:1; Pls.’ Ex. 101, Bethel Defs.’ Response to Interrogatory Nos. 6, 9]

185. All voter information that is mailed in the Bethel Census Area is in English only. [Pls.’ Ex.159, Baker Dep., 26:1-5]

186. Defendants have not considered providing any written Yup’ik election materials because it is their conclusion that Yup’ik is historically unwritten. [Pls.’ Ex. 191, Brewster Dep., 33:3-7]

187. All materials that the State sends to tribal governments in the Bethel Census Area, including its language assistance survey, voter registration information, and poll worker recruitment materials, are in English and not in Yup’ik. [Pls.’ Ex. 191, Brewster Dep., 112:12-113:7, 114:1-11, 119:7-21]

188. The City of Bethel posts public notices about elections at three locations within the community that are in English only. [Pls.’ Ex. 189, Modigh Dep., 29:19-30:5, 40:6-21, 47:1-48:5]

**Yup’ik is a Historically Written Language**

189. Yup’ik was written and widely used in written form prior to the 1970s. [Pls.’ Ex. 184, Jacobson Decl. ¶¶ 10-11] Yup’ik has been a written language in a form similar to written European languages since at least the nineteenth century. [Pls.’ Ex. 184, Jacobson Decl. at ¶¶ 6-8]

190. In the nineteenth century, a Yup'ik shaman named Uyaquq (Helper Neck) developed a writing system for Yup'ik that evolved from pictographs to symbols based on word sounds to a true alphabetic or phonological writing. This development was accomplished very rapidly. According to Professor Michael Krauss, this orthography “was the most accurate for Yup'ik before the development of the modern writing system, more precise than any developed by the missionaries from outside.” [Pls.' Ex. 184, Jacobson Decl. ¶ 6]

191. Also in the nineteenth century, church missionaries began writing Yup'ik to encourage religious learning. The Russian church, employing the Cyrillic alphabet, published two Yup'ik prayer books in 1896. A 50 page manuscript dated 1887 written in Yup'ik and Russian consisting of stories from the Old and New Testaments is in the Library of Congress. [Pls.' Ex. 184, Jacobson Decl. ¶ 7]

192. The Moravian Church published and distributed Yup'ik books in large numbers that resulted in a considerable amount of adult literacy, with several books published in written Yup'ik beginning in 1902. Pls.' Ex. 184 , [Jacobson Decl. ¶ 8]

193. Many Yup'ik people learned to read Yup'ik from these books. As a result, as documented by Wendall Oswald, who researched his book in the 1950s and published it in 1963, there are people in the villages who can read only in Yup'ik. Oswald's book observed that “between villagers, letters are commonly written in Yup'ik. The laws of the community and some of the council minutes are recorded in Eskimo.” [Pls.' Ex. 184, Jacobson Decl. ¶ 9]

194. State's Exhibit G states that there was a tradition of literacy in written Yup'ik before the development of modern orthography, and before the 1970s, “with letters, town ordinances, and similar material being written in the Native language,” along with other secular uses. [Pls.' Ex. 184, Jacobson Decl. ¶¶ 9-10; State Defs.' Ex. G at 6]

195. Professor Jacobson describes “a considerable amount of adult literacy” in the older form of written Yup’ik. [Pls.’ Ex. 184, Jacobson Decl. ¶ 8] “[M]any” Yup’ik people learned to read from the older form of written Yup’ik religious texts. [Pls.’ Ex. 184, Jacobson Decl. ¶ 9]

196. Plaintiff David, who is 74 years old, learned to read the Moravian version of written Yup’ik in Bible school when he was a child. He does not read English “very much. Even if I look at English, I don’t understand it.” [First Am. Compl. ¶ 8; Pls.’ Ex. 152, David Dep. 8:9-9:11, 11:2-6, 12:11-20; Pls.’ Ex. 187, David O. David Decl. ¶ 5-7]

197. Plaintiff Anna Nick, who is 69 years old, began learning to read the Moravian version of written Yup’ik at church when she was six years old. She writes “in Yup’ik” and will “only write in English with the knowledge that I have, not very much.” [First Am. Compl. ¶ 6; Pls.’ Ex. 154, Nick Dep., 7:17-25, 9:11-10:4; Pls.’ Ex. 185, Nick Decl. ¶ 5-7]

198. Yup’ik is a single written language that has been developed and improved upon, like other written languages. [Pls.’ Ex. 184, Jacobson Decl. ¶ 11]

199. Professor Jacobson and his academic colleagues were not the first to write Yup’ik. In the 1970s, Professor Jacobson helped develop a “modern orthography [that] built upon and used the good points of the previous systems.” The modern Yup’ik orthography simply rendered written Yup’ik more precise, easier to learn, and easier to type on an English keyboard. “[T]here was a significant tradition of literacy within the Yup’ik community for both religious and secular purposes” before Professor Jacobson and his “colleagues began to work on developing the modern orthography.” [Pls.’ Ex. 184, Jacobson Decl. ¶¶ 10-11]

### **Written Yup’ik is Commonly Used in the Bethel Census Area**

200. Yup'ik is commonly used in written form. Professor Jacobson observes, "given the tradition of religious and secular writing that existed before the modern orthography combined with the fairly widespread use of Yup'ik in the State's bilingual education system in the Bethel Census Area over the past 30 years, as well as what I have observed over the course of several decades, written Yup'ik can be described as commonly used." [Pls.' Ex. 184, Jacobson Decl. ¶¶ 12-13]

201. "There are over 10,000 Yup'ik speakers in Alaska, and in approximately one quarter of the 68 villages children still grow up speaking and reading Yup'ik as their first language." [Pls.' Ex. 184, Jacobson Decl. ¶ 12]

202. "In addition, the schools in the Lower Kuskokwim School District, among others, have bilingual education programs and regularly teach written Yup'ik." [Pls.' Ex. 184, Jacobson Decl. ¶ 12]

203. "There are numerous story books and other educational materials published in Yup'ik." Other documents are written "in Yup'ik, such as government publications, religious literature, story collections, works of fiction, and sometimes even forms, such as the Key Bank loan application reprinted on page 190 of the grammar book." [Pls.' Ex. 184, Jacobson Decl. ¶ 12]

204. Interviews of Defendants' own translators demonstrate that written Yup'ik is commonly used in the Bethel Census Area and would be helpful in the translation of election information into Yup'ik.

205. Nearly all of the 89 interviewed State election workers who have worked as Yup'ik translators in the native villages in the Bethel Census Area reported that they read written Yup'ik. Seventy of the election workers (78.7%) reported that they read written Yup'ik fluently,

and an additional nine election workers (10.1 %) reported that they read some or a little Yup'ik. Ten election workers (11.2%) reported that they did not read written Yup'ik. [Pls.' Ex. 177, Leonard Decl. ¶ 47, Attach. B]

206. Of the ten interviewed State election workers who reported that they do not read written Yup'ik, two election workers (20%) either were not fluent in Yup'ik or Cup'ik, or it was unclear whether they were fluent: Delilah Amos in Mekoryuk and Linda George of Tununak. In addition, two of the ten election workers (20%) who reported that they do not read written Yup'ik reported that they had not worked as Yup'ik translators: Irene Kerr of Kwethluk and Josephine George of Nightmute. Three election workers, or about one-third of the ten election workers who reported that they do not read written Yup'ik, work in the Lower Kalskag voting precinct. One of those, Annie Kameroff, reported that she only completed the third primary grade (which is illiterate, as defined by the Census Bureau), and could read very little in English. Molly White, one of the other two Lower Kalskag election workers, reported that she had only completed the tenth grade. [Pls.' Ex. 177, Leonard Decl. ¶¶ 48-49, Attach. B]

207. In 28 out of the 29 voting precincts in the native villages, there was at least one interviewed State election worker who reported that they could read written Yup'ik for every State election between 2000 and 2007 for which there was a translator identified by the State and for which an interview was completed. Lower Kalskag was the only voting precinct where none of the three interviewed State election workers reported that they read written Yup'ik. [Pls.' Ex. 177, Leonard Decl. ¶ 50, Attachs. B, G]

208. Of the 79 interviewed State election workers in the native villages who reported that they read written Yup'ik, 71 (89.9%) reported that they read the modern form of written Yup'ik. Overall, 48 election workers (60.8%) reported that they read both the modern and

Moravian forms of written Yup'ik, 23 election workers (29.1%) reported that they read only the modern form of written Yup'ik, and just 7 election (8.9%) reported that they read only the Moravian form of written Yup'ik. One election worker (1.3%) did not report the form of written Yup'ik that they read. [Pls.' Ex. 177, Leonard Decl. ¶ 51, Attach. B]

209. Of the five interviewed State election workers from Bethel who are fluent in Yup'ik, four reported that they read written Yup'ik. Of those, all four reported that they read modern Yup'ik and one (Victor Bell) reported that he reads both modern and Moravian Yup'ik. [Pls.' Ex. 177, Leonard Decl. ¶ 72, Attach. L]

210. Of the seven interviewed City of Bethel election workers who are fluent in Yup'ik, four reported that they read written Yup'ik. Of those, three reported that they read modern Yup'ik and one (Victor Bell) reported that he reads both modern and Moravian Yup'ik. [Pls.' Ex. 177, Leonard Decl. ¶ 77, Attach. M]

211. Defendants have seen written Yup'ik signs. When Lieutenant Governor Parnell has visited the Bethel Census Area and the native villages, he has seen signs written in Yup'ik. [Pls.' Ex. 190, Parnell Dep., 45:15-24] Sandra Modigh, the former municipal clerk for the City of Bethel, has seen signs in the City that are written in Yup'ik at the hospital and "Quyana," the Yup'ik word for "thank you," on the sides of some cabs. [Pls.' Ex. 189, Modigh Dep., 59:24-61:1]

212. The State of Alaska through its departments (other than the Division of Elections) has admitted the common usage of written Yup'ik in the Bethel Census Area by preparing and disseminating information and materials written in Yup'ik, including information for domestic violence victims, guides for parents of special needs children (including a glossary translating English terms into Yup'ik), information on bird flu, text books and other materials for the local

school district, a handbook for crime victims, and fish and game notices, among others. [Pls.’ Composite Ex. 151]

213. Plaintiffs have produced to the State hundreds of pages of illustrative examples of written Yup’ik (Bates stamped 336-582), some of which are attached hereto. [Pls.’ Composite Ex. 151]

**Defendants’ Failure to Determine if Yup’ik is Historically Written or Commonly Used**

214. According to the State of Alaska, “[a]ll of the Alaska Native languages listed are considered ‘unwritten.’” The State made that determination based upon its interpretation of the VRA and “the precedent set by the State.” The City of Bethel takes a similar position. [Pls.’ Ex. 94, at STATE 203; Pls.’ Ex. 191, Brewster Dep., 107:18-22; *see* Pls.’ Ex. 33, State Defs.’ Response to Interrogatory Nos. 12, 14; Pls.’ Ex. 101, Bethel Defs.’ Response to Interrogatory No. 12]

215. The State of Alaska, Division of Elections has not surveyed Yup’ik-speaking voters in the Bethel Census Area to determine whether written Yup’ik voting materials would be helpful to them. [Pls.’ Ex. 183, RFA 2 ¶ 234]

216. After Plaintiffs filed this lawsuit, two of the State’s elections employees contacted elections officials in other states “to get an idea, particularly in light of the litigation, what other states are doing and do they... consider their languages historically unwritten.” They did so even though none of those jurisdictions have Yup’ik speakers in them. [Pls.’ Ex. 191, Brewster Dep., 26:25-28:7] The State Director of Elections admitted that what works well in other states might not work well in Alaska, and that even within the State, the assistance that might be effective for one language group might not be effective for another language group. [Pls.’ Ex. 191, Brewster Dep., 89:25-16]

217. The State Director of Elections admitted that she does not “pretend to be an expert in language assistance or Alaska Native languages,” and does not have any first hand knowledge, education, or background on the Yup’ik language and whether it is historically written. [Pls.’ Ex. 191, Brewster Dep., 109:20-110:9]

218. Lawrence Kaplan at the Alaska Native Languages Center (ANLC) is the only person with whom the State has consulted about whether Yup’ik is a historically written language. However, Professor Kaplan is the ANLC’s linguist for the Inupiaq Eskimo language, which is not at issue in this case. Professor Jacobson is the ANLC’s linguist for the Yup’ik Eskimo language.<sup>7</sup> [See Pls.’ Ex. 162, Biography of Lawrence Kaplan from ANLC website; Pls.’ Ex. 191, Brewster Dep., 110:19-111:1; Pls. Ex. 90, E-mails in June 2006 regarding Yup’ik contacts and translators; Pls.’ Ex. 184, Jacobson Decl. ¶ 1]

219. Lieutenant Governor Parnell admitted that “whether or not” Alaska Native languages “are unwritten or historically unwritten, that’s for somebody else probably to say than me,” including his knowledge about the Yup’ik language. He further admitted that “when they became written and what was considered historical or unwritten, I don’t know.” [Pls.’ Ex. 190, Parnell Dep., 44:1-17] Lieutenant Governor Parnell would leave the question of whether to provide written Yup’ik voting materials up to the State Director of Elections, “rather than make that personal call.” [Pls.’ Ex. 190, Parnell Dep., 19:19-24]

220. The State Director of Elections briefed municipal clerks, including the Bethel City Clerk, about this litigation, which might result in changes in the way they do elections. “If they are required to provide these languages written in Yup’ik, they would need translation services to

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<sup>7</sup> Moreover, for the reasons already summarized in Plaintiffs’ Separate Statement of Disputed Facts, Defendants have mischaracterized the nature of Professor Kaplan’s statements on written Yup’ik.

provide that... language and they need to start coordinating their efforts.” [Pls.’ Ex. 191, Brewster Dep., 174:20-176:3; Pls.’ Ex. 77]

**Defendants Have No Full-Time Elections Employees Fluent in Yup’ik**

221. None of the State’s full-time elections employees is fluent in Yup’ik. [Pls.’ Ex. 191, Brewster Dep., 173:11-21; Pls.’ Ex. 39; Pls.’ Ex. 33, State Defs.’ Response to Interrogatory Nos. 1-2

222. None of the State’s elections recruiters is fluent in Yup’ik. [Pls.’ Ex. 191, Brewster Dep., 158:1-5; Pls.’ Ex. 41; *see* Pls.’ Ex.159, Baker Dep., 48:18-49:7; Pls.’ Ex. 189, Modigh Dep., 18:20-21, 72:11-22]

223. None of the State’s elections trainers is fluent in Yup’ik. [Pls.’ Ex. 191, Brewster Dep., 158:1-5; Pls.’ Ex. 42; *see* Pls.’ Ex.159, Baker Dep., 48:18-49:7, 95:12-23; Pls.’ Ex. 189, Modigh Dep., 14:16-15:1, 85:8-22; Pls.’ Ex. 101, Bethel Defs.’ Response to Interrogatory No. 4; Pls.’ Ex. 33, State Defs.’ Response to Interrogatory No. 4]

224. The Region IV Supervisor and her two employees neither speak nor read Yup’ik. [Pls.’ Ex.159, Baker Dep., 50:20-51:3]

225. Sandra Modigh, the former Bethel municipal clerk responsible for conducting elections including poll worker recruitment and training, does not speak Yup’ik. [Pls.’ Ex. 189, Modigh Dep., 18:20-21; *see* Pls.’ Ex. 189, Modigh Dep., 14:16-15:1, 86:1-14]

**Defendants’ Lack of Yup’ik Language Assistance for Election Information**

226. “Any elections information that is going to be broadcast must be given to the radio station in Yup’ik, either with the information written in Yup’ik if the station has a proficient Yup’ik speaker or in an audio recording already translated into Yup’ik. The State of

Alaska and the City of Bethel need to provide the proper material or recordings to the stations.”  
[Pls.’ Ex. 176, Yazzie Decl. ¶ 105]

227. The State has not included information in any of its public service announcements about the availability of language assistance at the polls. The Region IV Supervisor has not discussed including that information in the announcements. [Pls.’ Ex.159, Baker Dep., 31:25-32:17; Pls.’ Ex. 183, RFA 2 ¶ 223]

228. Between January 1, 2000 and the present within the Bethel Census Area, except for the information contained in the two radio announcements included as Plaintiffs’ Exhibit 57, the State has not aired any radio or television announcements in Yup’ik about the following information pertaining to elections the State administers: (a) procedures for nominating or qualifying for candidacy for offices filled by elections; (b) voter registration opportunities, including eligibility to register to vote, how to register to vote, where to register to vote, and the deadline for registering to vote to participate in elections; (c) voter purges, including what a recipient of a voter purge notice must do to remain a registered voter; (d) the time, places, and subject matter of elections; (e) information included in voter information guides; (f) polling place notices or voting instructions; (g) content of ballots; (h) the right of voters who are blind, disabled, or unable to read or write to receive assistance to vote from a person of the voter’s choice; (i) services for disabled voters; (j) the absentee voting process; (k) provisional ballot procedures; (l) questioned ballot procedures; (m) election results; and (n) the State of Alaska’s proposed voting changes in the Bethel Census Area or requests to comment on those changes.  
[Pls.’ Ex. 183, RFA 2 ¶¶ 216-22, 224-30]

229. The State must offer a “telephone number for Yup’ik voters to call for assistance” that is “either... toll-free or the voters must be told that they can call collect. Yup’ik voters also

need to be told about the telephone number and the availability of language assistance when they call, or else any phone number the State of Alaska has is useless to them.” Election officials providing Yup’ik language assistance over the telephone must be trained on how to do so. [Pls.’ Ex. 176, Yazzie Decl. ¶¶ 76-79]

230. The State does not provide a dedicated telephone line in which LEP voters can utilize to obtain information about the election process. [Pls.’ Ex. 94, at STATE 205; Pls.’ Ex. 191, Brewster Dep., 64:7-20, 65:4-5]

231. As of late November 2007, the State Director of Elections testified that getting a dedicated telephone line for LEP voter inquiries was “something that we have begun looking at. We are in the process of possibly replacing that and utilizing a new system that would provide language... assistance in addition to English.” [Pls.’ Ex. 191, Brewster Dep., 64:19-65:3]

232. Lieutenant Governor Parnell has not discussed with the State Director of Elections about establishing a dedicated bilingual elections telephone line. [Pls.’ Ex. 190, Parnell Dep., 46:10-16]

233. The State provides a polling place locator system that is conducted in English only. [Pls.’ Ex. 51; Pls.’ Ex. 183, RFA 2 ¶ 231]

234. Although the State used early voting in the 2006 General Election and subsequent elections, it has not provided bilingual voting assistance during that early voting process. The State’s explanation is that the “four regional offices are not within areas of the state where bilingual voting assistance is required.” [Pls.’ Ex. 94, at STATE 205]

235. The State did not provide bilingual voting assistance for absentee voters during the 2006 General Election or any subsequent elections. [Pls.’ Ex. 94, at STATE 206]

236. Except for two announcements that the State purchased in 2006, the State has not provided Yup'ik radio announcements about election information in the Bethel Census Area. [Pls.' Exs. 46, 49-50, 57; Pls.' Ex. 191, Brewster Dep., 126:5-128:9; Pls.' Ex.159, Baker Dep., 127:11-128:4]

237. The State Director of Elections admitted that prior to 2006, the State had not purchased radio advertisements in Yup'ik. [Pls.' Ex. 191, Brewster Dep., 132:6-22]

238. When the State sent out a notice requesting public comments on its HAVA State Plan, that notice was sent out in English only. As a result, LEP Yup'ik voters "likely would not" know about the request for comments. [Pls.' Ex. 191, Brewster Dep., 136:23-138:3; Pls.' Ex. 54]

239. The State sends out public announcements about absentee and vote by mail ballots in English-only. [Pls.' Ex. 191, Brewster Dep., 138:10-24; Pls.' Ex. 59]

240. When there was a polling place change in the Bethel Census Area for the August 2006 primary election, the State sent out a card to every registered voter in the affected area in English-only. The State Director of Elections is unsure whether that information was also provided in Yup'ik to LEP voters through radio ads. [Pls.' Ex. 191, Brewster Dep., 144:18-145:8; Pls.' Ex. 70]

241. The State's voter registration cards are in English. [Pls.' Ex.159, Baker Dep., 50:15-17]

242. The State's announcements about its annual voter purges pursuant to the National Voter Registration Act (NVRA) are in English only. The State has no information about whether those announcements are translated in Yup'ik and if so, whether those translations are accurate

and complete. [Pls.' Ex. 191, Brewster Dep., 148:9-149:17, 190:23-192:11, 193:1-11; Pls.' Ex. 62]

243. All voter notification cards that the State sends out to voters in the Bethel Census Area regarding purges made pursuant to the NVRA are in English. None goes out in Yup'ik. [Pls.' Ex. 191, Brewster Dep., 192:9-14; Pls.' Ex. 62]

244. The State does not produce any video tapes with elections information in Yup'ik for use by television stations. According to the State Elections Director, "I don't know that... the Division had done that in elections before and based on precedent, it hadn't been done." [Pls.' Ex. 191, Brewster Dep., 151:25-152:13]

245. When the State changed over to new voting equipment in 2006, it included information in the official election pamphlets that was in English only. None of that information was provided to Yup'ik speakers in Yup'ik. [Pls.' Ex.159, Baker Dep., 26:20-27:24]

246. The State's poll worker recruitment flyers are in English. [Pls.' Ex.159, Baker Dep., 50:17-19]

247. When the City of Bethel has advertised that language assistance is available for voters, it does so in documents written in English. [Pls.' Ex. 189, Modigh Dep., 65:22-66:5]

248. Any public notices posted on election day by the City of Bethel about the availability of language assistance are posted in English. "The City of Bethel does not provide notices in Yup'ik..." [Pls.' Ex. 189, Modigh Dep., 66:6-17]

**Defendants' Failure to Make Yup'ik Language Assistance Accessible to Voters**

249. Although it would be helpful to voters who need language assistance to have a public service announcement informing them that language assistance is available at the polls, the State Director of Elections is "not certain if that line is explicitly stated in a PSA." The State

would consider providing notice of language assistance at the polls in future public service announcements. [Pls.' Ex. 191, Brewster Dep., 142:4-14; *see* Pls.' Ex.159, Baker Dep., 31:25-32:2]

250. The State provides only “passive” language assistance at polling places; that is, “poll workers were instructed to wait until a voter asked for assistance before providing it.” [Pls.' Ex. 94, at STATE 208; Pls.' Ex. 191, Brewster Dep., 121:18-122:5; Pls.' Ex.159, Baker Dep., 104:17-19; *see* Pls.' Ex. 33, State Defs.' Response to Interrogatory No. 14]

251. The State provides passive assistance because “the assumption is made that someone does not need assistance until they ask for it.” [Pls.' Ex. 191, Brewster Dep., 122:14-21]

252. The State Director of Elections has no experience working with the Yup'ik culture and does not know whether that assumption is true in the Bethel Census Area. [Pls.' Ex. 191, Brewster Dep., 122:22-123:4]

253. “Elders in most native cultures, like the Yup'ik culture, expect to have assistance offered to them; that is, assistance must be active and not passive, with the poll worker [initiating] a communication with the Yup'ik voter to ask whether they need assistance.” [Pls.' Ex. 176, Yazzie Decl. ¶ 73]

254. “Native elders, who typically are the LEP voters in need of language assistance, generally avoid confrontation and will not ask for it.... They feel powerless and many will try to vote on their own the best they can without getting the help that they need.” [Pls.' Ex. 176, Yazzie Decl. ¶ 37]

255. The State Director of Elections admitted that the State would be willing to explore whether language assistance would be more effective if it was active instead of passive; that is, if

a Yup'ik speaker “were asked immediately when they come in to the polling place, do you want assistance with voting.” [Pls.’ Ex. 191, Brewster Dep., 123:5-12]

256. The City of Bethel also uses “passive” language assistance to its polling places. According to Bethel, a voter must request assistance before it is offered. [*See* Pls.’ Ex. 101, Bethel Defs.’ Response to Interrogatory No. 15]

257. “[P]assive language assistance is not language assistance at all. It is not the voter’s burden to ask for help. Language assistance should be directly offered to the voter throughout the entire voting process.” The failure to offer active language assistance “results in disenfranchisement of LEP voters who are confused about the voting process and are not sure what is on the ballot and whether they have voted how they intended.” [Pls.’ Ex. 176, Yazzie Decl. ¶¶ 36-38, 40]

#### **Defendants’ Lack of Yup’ik Translators at Polling Places**

258. The State has had a problem with no-shows among its Yup’ik translators in the Bethel Census Area. It is in the process of preparing a list of stand-by translators. [Pls.’ Ex.159, Baker Dep., 34:22-36:22]

259. Overall, Yup’ik translators have not been available 34.3 percent of the time at voting precincts for statewide elections in the Bethel Census Area administered by the State between 2000 and 2007. [Pls.’ Ex. 178, Statewide elections for which no translator was available; Pls.’ Ex. 183, RFA 2 ¶¶ 155-73]

260. Four of the 32 voting precincts in the Bethel Census Area have not had any Yup’ik translators for any of the nine statewide elections administered by the State between 2000 and 2007: Aniak, Crooked Creek, Sleetmute, and Stony River. [Pls.’ Ex. 178, Statewide elections for which no translator was available; Pls.’ Ex. 183, RFA 2 ¶¶ 155-73]

261. Thirteen of the 32 voting precincts in the Bethel Census Area have not had any Yup'ik translators for four or more statewide elections administered by the State between 2000 and 2007. [Pls.' Ex. 178, Statewide elections for which no translator was available; Pls.' Ex. 183, RFA 2 ¶¶ 155-73]

262. Only twelve of the 32 voting precincts in the Bethel Census Area have had a Yup'ik translator for every statewide election administered by the State between 2000 and 2007. [Pls.' Ex. 178, Statewide elections for which no translator was available; Pls.' Ex. 183, RFA 2 ¶¶ 155-73]

263. The three voting precincts located in Bethel have not had a Yup'ik translator for nearly all of the nine statewide elections administered by the State between 2000 and 2007: Bethel #1 has only had a translator once; Bethel #2 has only had a translator three times; and Bethel #3 has only had a translator twice. [Pls.' Ex. 178, Statewide elections for which no translator was available; Pls.' Ex. 183, RFA 2 ¶¶ 155-73]

264. Overall, Yup'ik translators have not been available at voting precincts 35.9 percent of the time for the eight Regional Educational Attendance Area (REAA) elections administered by the State. [Pls.' Ex. 179, REAA elections for which no translator was available; Pls.' Ex. 183, RFA 2 ¶¶ 174-97]

265. Four of the 32 voting precincts in the Bethel Census Area have not had any Yup'ik translators for any of the eight REAA elections administered by the State between 2000 and 2007: Aniak, Crooked Creek, Sleetmute, and Stony River. [Pls.' Ex. 179, REAA elections for which no translator was available; Pls.' Ex. 183, RFA 2 ¶¶ 174-97]

266. Twelve of the 32 voting precincts in the Bethel Census Area have not had any Yup'ik translators for four or more REAA elections administered by the State between 2000 and

2007. [Pls.' Ex. 179, REAA elections for which no translator was available; Pls.' Ex. 183, RFA 2 ¶¶ 174-97]

267. Only fourteen of the 32 voting precincts in the Bethel Census Area have had a Yup'ik translator for every REAA election administered by the State between 2000 and 2007. [Pls.' Ex. 179, REAA elections for which no translator was available; Pls.' Ex. 183, RFA 2 ¶¶ 174-97]

268. The three voting precincts located in Bethel each have not had a Yup'ik translator for seven of the eight REAA elections administered by the State between 2000 and 2007. In each case, the 2007 REAA election was the only election during that period for which a translator was available. [Pls.' Ex. 179, REAA elections for which no translator was available; Pls.' Ex. 183, RFA 2 ¶¶ 174-97]

269. Not all of the election workers identified by the State as Yup'ik translators have worked as translators. Nine out of the 89 interviewed State election workers from the native villages reported that they had not worked as a translator: Crystal Padilla in Atmautluak; Irene Kerr in Kwethluk; Jennie Friend in Kwigillingok; Theresa Williams in Mekoryuk; Josephine George in Nightmute; Grace Mochin in Nunapitchuk; Katherine Felix and Merline Felix in Toksook Bay; and Nastasia Lupie in Tuntutuliak. [Pls.' Ex. 177, Leonard Decl. ¶ 35, Attach. B]

270. Three of the 89 interviewed State election workers identified by the State as Yup'ik translators in the native villages reported that they worked less than a full day at their assigned precinct. Another thirteen either were unsure or did not respond to the question. [Pls.' Ex. 177, Leonard Decl. ¶¶ 38-39]

271. Four of the 9 interviewed State election workers identified by the State as Yup'ik translators for the Bethel voting precincts either are not fluent in Yup'ik or have not worked as Yup'ik translators. [Pls.' Ex. 177, Leonard Decl. ¶¶ 64-67, 80, Attach. L]

272. Five of the 11 interviewed City of Bethel election workers identified by the City as Yup'ik translators for Bethel municipal elections either are not fluent in Yup'ik or have not worked as Yup'ik translators. [Pls.' Ex. 177, Leonard Decl. ¶¶ 68-71, 80, 84, Attach. M]

273. Two of the interviewed City of Bethel election workers reported that they worked less than a full day for one or more municipal elections. Gladys Jung reported that in the later years that she worked as a City election worker, she only worked for half the time the polls were open. Luther Oscar reported that he worked as a translator during three elections, but only worked about six hours each time. [Pls.' Ex. 177, Leonard Decl. ¶ 81]

274. Two interviewed City of Bethel election workers reported that the City needed more reliable translators and poll workers because many of the ones the City uses are inexperienced and cause frustration with the Yup'ik-speaking elders. [Pls.' Ex. 177, Leonard Decl. ¶¶ 82-83]

#### **Need for Voting Materials Written in Yup'ik for Defendants' Translators**

275. "Voting materials written in the covered native language will allow translators to provide complete, clear, and accurate translations of voting materials and information into Yup'ik, even for translators who don't read and understand English very well. It also overcomes the problems created by just relying upon translators and/or the use of audio recorded translations." [Pls.' Ex. 176, Yazzie Decl. ¶ 116]

276. A good translator must understand all of the election terminology and be able to accurately translate not only those terms into the covered language, but their concept in a way

that the LEP voter can understand. Often, written election terms that are provided in English cannot be translated literally into the native language and must instead use a concept to explain that term. A written glossary of common election terms translated from English into the covered language facilitates that required understanding by the translator. [Pls.' Ex. 176, Yazzie Decl. ¶¶ 22-24, 125-130]

277. “Translators also should be given a complete training guide that is written in Yup’ik. That will remove any confusion the translators might have in trying to understand the English-only materials they get now.” [Pls.' Ex. 176, Yazzie Decl. ¶ 131]

278. All training materials provided by Defendants to poll workers are in English. [Pls.' Ex.159, Baker Dep., 57:7-9]

279. The State Director of Elections admitted that voting materials written in Yup’ik that would be read “from the poll worker to the voter” would provide a uniform translation. [Pls.' Ex. 191, Brewster Dep., 43:5-22]

280. The Yup’ik Language Center of the University of Alaska-Fairbanks, Kuskokwim Campus in Bethel, publishes a glossary of English-to-Yup’ik terms commonly used in judicial proceedings. [Pls.' Ex. 95]

281. The State Director of Elections was on the U.S. Election Assistance Commission Standards Board and was aware that the Commission was preparing English-to-Spanish and Spanish-to-English glossaries of common election terms. [Pls.' Ex. 191, Brewster Dep., 203:18-204:10; Pls.' Exs. 98-99]

282. The State Director of Elections has seen glossaries of common election terms that are translated from English into the covered native language. She has considered doing something like that by creating a Yup’ik-to-English and English-to-Yup’ik elections glossary.

[Pls.' Ex. 191, Brewster Dep., 195:3-196:8, 197-1-19; Pls.' Exs. 96-97] Any elections glossary that is prepared by the State would have to be tailored to whatever election terms are common in Alaska. [Pls.' Ex. 191, Brewster Dep., 199:4-20; Pls.' Exs. 96-97]

283. Providing pictures to illustrate certain words might be an effective way of communicating an English word into Yup'ik. [Pls.' Ex. 191, Brewster Dep., 196:17-25; Pls.' Exs. 96-97]

284. Nearly all of the approximately 100 interviewed election workers identified by the State and the City of Bethel as Yup'ik translators in the native villages expressed enthusiastic support for having translations of voting materials written in Yup'ik that would allow them to be more effective. [Pls.' Ex. 177, Leonard Decl. ¶¶ 16, 79, Attachs. B-C]

285. Of the 88 interviewed State election workers in the native villages who provided an opinion on whether written Yup'ik voting materials would help them translate, nearly all said that it would: 80 (90.9%) reported that written Yup'ik voting materials would help them translate, and just 8 (9.1%) said that written Yup'ik voting materials would not be helpful. One election worker did not state any opinion. [Pls.' Ex. 177, Leonard Decl. ¶ 52, Attachs. B-C]

286. Six of the 8 interviewed State election workers (75%) in the native villages who reported that written Yup'ik voting materials would not help them translate also reported that they do not read written Yup'ik. Three of these election workers came from Lower Kalskag, which was the only native village in which none of the three interviewed State workers identified as translators read Yup'ik. [Pls.' Ex. 177, Leonard Decl. ¶ 53, Attach. B]

287. All four of the interviewed State election workers from Bethel who read Yup'ik reported that it would help them translate if the State of Alaska and/or the City of Bethel provided voting materials written in Yup'ik. In addition, Luther Oscar, the fifth election worker

who is fluent in Yup'ik, said that it would help him translate if he had written Yup'ik materials.

[Pls.' Ex. 177, Leonard Decl. ¶ 73, Attach. L]

288. Of the four interviewed City of Bethel election workers who read written Yup'ik, all four reported that it would help them translate if the State of Alaska and/or the City of Bethel provided voting materials written in Yup'ik. In addition, Luther Oscar said that it would help him translate if he had written Yup'ik materials. [Pls.' Ex. 177, Leonard Decl. ¶ 78, Attach. M]

289. Many of the approximately 100 interviewed election workers identified by the State and the City as Yup'ik translators in Bethel and the native villages expressed support for the Plaintiffs' lawsuit to ensure that all Yup'ik speakers get all of the English-only election information in their own language, with the assistance of translators who can read it to them. [Pls.' Ex. 177, Leonard Decl. ¶ 23, Attach. C]

290. Sharon Lindley and Victor Bell, two of the more educated Yup'ik translators in Bethel who have worked in both State and City of Bethel elections, reported that translating common election terms and ballot questions was difficult for them to do. [Pls.' Ex. 177, Leonard Decl. ¶ 86, Attachs. N-O]

### **Defendants' Lack of Translator Training**

291. Defendants' use of optional, and not mandatory, training that covers general election responsibilities and is not designed to address the particular skills needed to provide language assistance, has contributed to the lack of language assistance and poor quality of that assistance. [Pls.' Ex. 176, Yazzie Decl. ¶¶ 41-44]

292. The State and the City of Bethel conduct their translator training together. "They're held on the same day by the same election officials...." [Pls.' Ex. 189, Modigh Dep., 86:15-87:3]

293. Some of the election workers identified by the State and the City as Yup'ik translators requested training on how to provide language assistance from a fluent Yup'ik speaker. [Pls.' Ex. 177, Leonard Decl. ¶ 22, Attach. C]

294. The State Director of Elections acknowledged the importance of providing language assistance training that trains “the individual poll workers to offer that assistance on the touch-screen, but also letting them know that is not the only way people who are limited English proficient have to vote.... That they also have the option of bringing someone in with them to translate for them or there will be a poll worker available to provide that assistance should they need it. So, just making sure that the poll worker is trained to know that there are all of these different options available to someone who may not speak English very well.” [Pls.' Ex. 191, Brewster Dep., 18:15-19:12]

295. Poll worker training for State and City elections is optional and not mandatory. Mandatory training is something that State is “willing to consider.” According to the Region IV Supervisor, making training mandatory for State elections is “a question for the Director” because it is “a policy call.” [Pls.' Ex. 191, Brewster Dep., 169:8-10, 170:9-11, 171:5-9; Pls.' Ex.159, Baker Dep., 60:10-20; Pls.' Ex. 189, Modigh Dep., 95:12-14]

296. In response to a question of how often poll workers must attend training, the Bethel municipal clerk responded, “There's not a requirement.” [Pls.' Ex. 189, Modigh Dep., 97:20-21]

297. There have been election boards in precincts for which no poll worker has received training. [Pls.' Ex. 183, RFA 2 ¶¶ 198-99; Pls.' Ex. 144] The lack of training of an entire elections board concerns the Region IV Supervisor. [Pls.' Ex.159, Baker Dep., 63:3-9]

298. Among the 726 election workers for elections administered by the State from 2000 to 2007, just 10.47 percent (76) received training during that period. [Pls.' Ex. 183, RFA 2 ¶¶ 198-99; Pls.' Ex. 144]

299. Among the 135 elections workers identified as Yup'ik translators for elections administered by the State from 2000 to 2007, just 31.85 percent (43 election workers) received training during that period. [Pls.' Ex. 183, RFA 2 ¶¶ 198-99; Pls.' Ex. 144]

300. Eight out of the 32 voting precincts in the Bethel Census Area have not had a trained Yup'ik translator for any statewide elections administered by the State between 2000 and 2007. [Pls.' Ex. 183, RFA 2 ¶¶ 198-99; Pls.' Ex. 144]

301. The 135 elections workers identified as Yup'ik translators for elections administered by the State from 2000 to 2007 have only attended training for approximately 8.1 percent of all election shifts that that they have covered (61 training sessions out of 754 elections shifts covered). [Pls.' Ex. 48; Pls.' Ex. 180, Training Received and Number of Elections Worked]

302. Thirty-five of the election workers identified as Yup'ik translators for elections administered by the State from 2000 to 2007 have worked four or more elections and have not received any training during that period. [Pls.' Ex. 48; Pls.' Ex. 180, Training Received and Number of Elections Worked]

303. Six of the election workers identified as Yup'ik translators for elections administered by the State from 2000 to 2007 have worked twelve or more elections and have not received any training during that period: Martina Matthew of Cherornak (13 elections); Nellie Roberts of Goodnews Bay (13 elections); Winifred Olick of Kwethluk (12 elections); Annie Kameroff of Lower Kalskag (13 elections); Molly White of Lower Kalskag (12 elections); and

Mary Ann Andrew of Tuluksak (15 elections). [Pls.' Ex. 48; Pls.' Ex. 180, Training Received and Number of Elections Worked]

304. Although the State conducts its training in the City of Bethel, only four of the twelve Bethel elections workers identified as Yup'ik translators for elections administered by the State from 2000 to 2007 have attended training. [Pls.' Ex. 48; Pls.' Ex. 180, Training Received and Number of Elections Worked]

305. Many of the 135 elections workers identified as Yup'ik translators for elections administered by the State from 2000 to 2007 have worked ten or more elections before receiving training for the first time in 2006, including the following translators: Anna Nick in Akiachak; Elizabeth Ashepak of Akiak; Lillian Pavilla of Atmautluak; Carl Evon of Goodnews Bay; Julia Hill and Pauline Pleasant of Quinhagak; Rith Napoka of Tuluksak; and Elias Inakak of Tununak. [Pls.' Ex. 48; Pls.' Ex. 180, Training Received and Number of Elections Worked]

306. The training that the State provides to bilingual poll workers is "the same training as non-bilingual poll workers." The State and City of Bethel do not provide separate training just for translators providing language assistance. [Pls.' Ex. 94, at STATE 206; Pls.' Ex. 191, Brewster Dep., 120:25-17; Pls.' Ex. 159, Baker Dep., 122:1-7; Pls.' Ex. 189, Modigh Dep., 101:16-21; Pls.' Ex. 177, Leonard Decl. ¶ 75]

307. The State does "hub training" within the Bethel Census Area "where we bring in election workers from the outlying areas into that location for training" in the City of Bethel. [Pls.' Ex. 191, Brewster Dep., 168:17-24]

308. The low percentage of poll workers and translators who have received training from the State is the result of inconvenient training location and time. Training needs to be

offered in villages closer to where the translators reside and at multiple times that will make it more convenient for them. [Pls.' Ex. 176, Yazzie Decl. ¶¶ 45-48]

### **Poor Quality of Defendants' Training**

309. Comprehensive translator training must be provided by instructors trained in language assistance. Much of that training, which should last as long as one day, should be done in the covered native language to ensure that effective language assistance is provided in the polls and include things such as: training in English and in Yup'ik to ensure understanding of voting procedures and information; training in Yup'ik on the proper election terms; how to greet voters and guide them through the elections process; "providing terms in both English and the native language; going over procedures for how to provide voter assistance; discussions of how to provide language assistance; review of all voting materials and especially each office and question that appears on the ballot, in both English and the native language, to make sure the translators understand the materials and will provide clear, complete, and accurate translations; role-playing in English and the native language, both to allow confirmation of translator's skills, to assess whether the translator wants to/feels comfortable translating, and to provide substantive instruction; and questions and answers in the language in which the translators feel most comfortable, which is usually their native language." [Pls.' Ex. 176, Yazzie Decl. ¶¶ 49-59]

310. The Region IV Supervisor responsible for conducting language assistance training in the Bethel Census Area has not received any training on providing language assistance to voters, including through on-the-job training. [Pls.' Ex.159, Baker Dep., 12:10-16] She has not received any instruction on the State's language assistance program. Instead, she has reviewed the program and receives some guidance from Regional Supervisors Shelly Growden and Pam Crow. [Pls.' Ex.159, Baker Dep., 14:11-22]

311. The Region IV Supervisor has not consulted with other Section 203 covered jurisdictions about their language assistance programs. [Pls.' Ex.159, Baker Dep., 47:1-6] Instead, she has talked with Division of Elections employee Hanna Stickel about conversations Ms. Stickel has had with elections officials in other covered jurisdictions, but the Region IV Supervisor does not recall any of the information about which of those other jurisdictions do to comply with Section 203. [Pls.' Ex.159, Baker Dep., 47:7-23]

312. A copy of the election official agenda for the training that was jointly conducted by the State and the City in the City of Bethel on September 29, 2007 does not identify any items regarding language assistance. The accompanying packet, which is "just a guide for training," does not include any information about language assistance or precinct staffing for Yup'ik translators. [Pls.' Ex. 189, Modigh Dep., 94:12-95:11]

313. Language assistance training cannot be covered by merely throwing translators in "with the other poll workers in a training session that is really only focused on going over the information in the poll worker training book. That's not really training at all, at least not language assistance training." [Pls.' Ex. 176, Yazzie Decl. ¶ 62]

314. The training provided to poll workers in the Bethel Census Area is largely modeled around the poll worker handbook and tracks the handbook's content. As the Region IV Supervisor explained, "the training sessions follow the handbooks." [Pls.' Ex.159, Baker Dep., 120:20-24, 121:11-12; Pls.' Ex. 189, Modigh Dep., 87:11-25, 90:2-6, 98:7-99:7; *see* Pls.' Ex. 33, State Defs.' Response to Interrogatory No. 5; Pls.' Ex. 43]

315. The State's handbook that is distributed to training session attendees in the Bethel Census Area does not include any information on providing language assistance. The

handbook's discussion on assistance is limited to general voter assistance only. [Pls.' Ex.159, Baker Dep., 96:1-98:16; Pls.' Ex. 72]

316. The handbooks that the State has used for poll worker training in the City of Bethel since 2003 have never included information specifically on language assistance. [Pls.' Ex.159, Baker Dep., 99:1-5] According to the Region IV Supervisor, "I do know that language assistance is inclusive.... in the future copies that we will be providing." The State is considering adding that information "[b]ecause it's clearly not in there now." [Pls.' Ex.159, Baker Dep., 98:17-25, 99:25-100:1]

317. The Region IV Supervisor is unsure of how much training time is spent on language assistance, estimating that it could be as little as fifteen minutes. [Pls.' Ex.159, Baker Dep., 106:1-107:12]

318. Cultural training and sensitivity to the Yup'ik people should be included, particularly in the City of Bethel. [Pls.' Ex. 176, Yazzie Decl. ¶¶ 71-75]

319. Although the poll worker training includes individuals who are not Yup'ik, Defendants do not provide training on the Yup'ik culture. The Region IV Supervisor is not an expert on the Yup'ik culture and would not know whether there might be cultural barriers to voters who participate in the Bethel Census Area. [Pls.' Ex.159, Baker Dep., 107:13-20, 109:4-15; Pls.' Ex. 189, Modigh Dep., 100:12-17]

320. The Region IV Supervisor and Bethel municipal clerk do not use a PowerPoint presentation as part of the poll worker training. The Region IV Supervisor has considered using one, "but I just haven't had the time to put one together." [Pls.' Ex.159, Baker Dep., 115:14-20; Pls.' Ex. 189, Modigh Dep., 99:25-100:2]

321. Language assistance training must include role-playing. Role-playing allows confirmation of the translator's English and Yup'ik skills. "It also gives the trainer an opportunity to give pointers in the native language for better options of how to handle a situation or how to translate. It allows the trainer to reinforce what the translator has been told through hands-on training that gives the translator the opportunity to practice their translation skills before the election." [Pls.' Ex. 176, Yazzie Decl. ¶¶ 32-33, 60-61]

322. The poll worker training has at times included some role-playing, but the Region IV Supervisor cannot confirm whether language assistance or first-time voter assistance was covered in that role-playing. [Pls.' Ex.159, Baker Dep., 116:6-24]

323. According to the Bethel municipal clerk, who attended the State's training in 2005 and jointly conducted the training with the State in 2006 and 2007, "There's no role-playing" on how language assistance should be provided to voters who need it. [Pls.' Ex. 189, Modigh Dep., 85:8-86:14, 100:25-101:3]

324. The poll worker training does not include any video or audio tape presentations. [Pls.' Ex.159, Baker Dep., 120:25-121:4; Pls.' Ex. 189, Modigh Dep., 101:9-11]

#### **Importance of Defendants Providing Complete and Accurate Translations**

325. The State Director of Elections admitted the importance of providing translations that are "understandable to the people in that community." [Pls.' Ex. 191, Brewster Dep., 18:15-25]

326. The State Director of Elections recognizes that for pre-recorded translations, it is necessary to find "the voice talent to provide those translations and then testing those translations by someone who understands the language... making sure that it's understandable to the people

in that community.” It is important to ensure for purposes of providing language assistance that translations are complete, accurate, and uniform. [Pls.’ Ex. 191, Brewster Dep., 18:15-19:22]

327. The State Director of Elections is concerned that some translations given to voters might not be complete and accurate. [Pls.’ Ex. 191, Brewster Dep., 54:23-55:1]

328. It “would be a problem” if a translator did not translate the candidate’s party affiliation to a voter because that is something that many voters consider to be important. [Pls.’ Ex. 191, Brewster Dep., 55:2-5, 55:12-14]

329. An instruction on the number of offices for which a person can vote is something that is important to be translated, which is possible in local elections in Alaska. [Pls.’ Ex. 191, Brewster Dep., 55:15-56:1]

330. It is important to have an accurate translation of a ballot question. [Pls.’ Ex. 191, Brewster Dep., 56:23-57:1]

331. The State Director of Elections acknowledged that it “would be possible” for the State to ask a Yup’ik tribe in Bethel about the accuracy of a translation written in Yup’ik, but the State has not done that. [Pls.’ Ex. 191, Brewster Dep., 44:24-45:8]

### **Defendants’ Failure to Confirm Completeness and Accuracy of Yup’ik Translations**

332. For elections between January 1, 2000 and the present, the State has not assessed whether clear, complete, and accurate translations of all public service announcements are being provided to Yup’ik voters in the Bethel Census Area. [Pls.’ Ex. 183, RFA 2 ¶ 213]

333. The State’s intent in its two 2006 Yup’ik radio announcements was “[t]o get information across to voters who do not speak English,” including “[v]oter registration, deadlines, date of election, absentee voter deadline, that there’s an election.” [Pls.’ Ex. 191, Brewster Dep., 128:14-21] The radio announcements also were “supposed to” include

information about election day procedures, filing deadlines, and absentee ballot procedures.

[Pls.' Ex. 191, Brewster Dep., 147:10-21] The State Elections Director does not know if the two 2006 Yup'ik radio announcements included information about the availability of language assistance. [Pls.' Ex. 191, Brewster Dep., 147:7-9]

334. The State does "not have confirmation" about the contents of its two 2006 Yup'ik radio announcements. [Pls.' Ex. 191, Brewster Dep., 147:17-18]

335. The radio announcement included as track 4 of the Compact Disc, labeled "Primary" and indicating that Vernon Chimegalrea translated and delivered the PSA into Yup'ik, states the following: "On August 22nd, from 7 in the morning until 8 o'clock in the evening there will be voting for leaders. When you vote [unknown, something like all your choices] are written in the Division of Elections. Also [unknown]. And be sure to bring your ID when you go to vote. For those who need more information, call 888-383-8683." [Pls.' Ex. 177, Leonard Decl. ¶ 89]

336. The radio announcement included as track 9 of the Compact Disc, labeled "General" and indicating that Vernon Chimegalrea translated and delivered the PSA into Yup'ik, states the following: "On November 7, from 7 in the morning until 8 o'clock in the evening voting will take place for the last time. If your voting [unknown] needs to be filled or needs to be changed, they can be fixed before October 8th. Also, if you want to vote [unknown] or to have them [unknown] faxed to you [unknown]. When you go vote bring your ID. For more information call 888-383-8683." [Pls.' Ex. 177, Leonard Decl. ¶ 90]

337. According to a Yup'ik translator, the State's two 2006 Yup'ik radio announcements were given in an English diction, inflection, and intonation difficult for a native speaker to understand. It took the translator nearly an hour to translate the two announcements

because they were difficult to follow, making them “almost useless” to any native Yup’ik speakers who would have heard them when they were broadcast. [Pls.’ Ex. 177, Leonard Decl. ¶¶ 92-93; *see also* Pls.’ Ex. 176, Yazzie Decl. ¶ 106]

338. The State Director of Elections is not sure whether the announcer who made the two radio announcements is a native Yup’ik speaker and she did “not recall” whether the State had taken any steps to confirm the accuracy of his translations. [Pls.’ Ex. 191, Brewster Dep., 129:7-18]

339. When the State sends out voter information to broadcast stations with the notation of “Local Native Language Requested,” it does not confirm whether any of that information is actually broadcast or whether the Yup’ik translations are accurate. As the State Director of Elections admitted, “With the media, you never know what is accurate and uniform, frankly.” [Pls.’ Ex. 191, Brewster Dep., 131:12-17, 133:20-22; Pls.’ Exs. 46, 50]

340. Broadcast stations that are provided with voter information “pick and choose what information they choose to pass along, if at all.” [Pls.’ Ex. 191, Brewster Dep., 131:23-132:5]

341. The municipal clerk for the City of Bethel does not speak Yup’ik and is “not sure exactly what was translated” by local radio station KYUK after she forwarded public announcements about the municipal elections to the station. “The City of Bethel is not involved in KYUK’s translations. [Pls.’ Ex. 189, Modigh Dep., 40:22-41:4, 59:12-21]

342. The municipal clerk for the City of Bethel has heard English broadcasts of the public service announcements by local radio station KYUK and “I’m assuming that was Yup’ik as well in translation.” [Pls.’ Ex. 189, Modigh Dep., 45:15-24]

### **Defendants' Failure to Confirm Translators' Abilities**

343. Neither the State nor the City of Bethel takes any steps to identify whether they have Yup'ik translators who are able to perform effectively in that role. "A good native language translator must have four qualities: (a) fluency in the covered native language; (b) a clear understanding of English and the covered native language to be able to provide the same concept in the covered language, so the idea is apparent in the translation; (c) the ability to read and understand the English language well enough to provide that same information to LEP voters in the covered native language; and (d) a complete understanding of the meaning of all election terms, as well as the proper translation of those terms into the covered native language." [Pls.' Ex. 176, Yazzie Decl. ¶¶ 15-16]

344. The State Director of Elections described the importance of providing translations that include "the appropriate language and dialect for the precincts" and are provided "by someone who understands the language." [Pls.' Ex. 191, Brewster Dep., 18:15-23]

345. The Region IV Supervisor admits that it is important to confirm that poll workers are capable of performing their responsibilities. [Pls.' Ex.159, Baker Dep., 133:9-11]

346. The Region IV Supervisor admits that "it's a good idea" for poll workers to be able to speak English. [Pls.' Ex.159, Pls.' Ex.159, Baker Dep., 75:11-15]

347. Native speakers often overstate their ability to understand spoken English, which makes it important to confirm their English language abilities. However, the State does not conduct any "specific evaluation" to see if poll workers "speak English." [Pls.' Ex. 176, Yazzie Decl. ¶¶ 17-19; Pls.' Ex. 191, Brewster Dep., 165:7-13; *see* Pls.' Ex.159, Baker Dep., 73:15-18]

348. Native translators also overstate their ability to read, understand, and translate English voting materials into the covered language. Therefore, it is important to confirm that the

translator can perform each of these tasks by having someone fluent in English and the covered to evaluate the translator's abilities by asking the translator to read an entire ballot question in English and translate it into the covered language. [Pls.' Ex. 176, Yazzie Decl. ¶¶ 20-21]

349. For elections the State has administered between January 1, 2000 and the present, the State has not requested that election workers who serve as Yup'ik translators in the Bethel Census Area to identify their level of educational attainment and has not obtained that information from other sources. [Pls.' Ex. 183, RFA 2 ¶¶ 208-09]

350. The Region IV Supervisor admits that "it's a good idea" for poll workers to be able to read English because all of the State's "documentation is in English.... Everything that we provide them is in English. [Pls.' Ex.159, Baker Dep., 75:16-23, 132:5-8] She admits that "it would be difficult" for translators "if they didn't read English to be able to translate that ballot into Yup'ik" because "that ballot is in English." [Pls.' Ex.159, Baker Dep., 90:19-91:1] If a translator cannot read a ballot written in English, a voter "[q]uite possibly" would not get an accurate translation of what is on the ballot. [Pls.' Ex.159, Baker Dep., 91:2-4]

351. Twenty-six of the 89 interviewed State election workers (29.2%) reported that they have less than a high school education, and a few of those stated that they had later earned a high school equivalency. Five additional election workers (5.6%) reported that they had not completed high school but had earned a GED. The lowest reported education level of all election workers was the third grade. [Pls.' Ex. 177, Leonard Decl. ¶ 44, Attach. B]

352. Several native villages had multiple election workers among the 89 interviewed State election workers who reported educational attainment levels of less than high school: Atmautluak had two, including one who only completed the eighth grade; Kipnuk had three, including one who only completed the ninth grade; Kongiganak had two, one of whom only

completed the seventh grade and the other only the eighth grade; Napaskiak had three, including one who only completed the seventh grade; Newtok had two, including one who only completed the ninth grade; Lower Kalskag had two, including one who only completed the third grade; and Tuluksak had two, both of whom only completed the eighth grade. Elizabeth Ashepak, the only election worker identified by the State of Alaska as a translator in Akiak, reported that she only completed the eighth grade. [Pls.' Ex. 177, Leonard Decl. ¶¶ 45-46, Attach. B]

353. Defendants do not confirm whether their poll workers are literate. [Pls.' Ex. 191, Brewster Dep., 39:16-40:1, 166:4-18; Pls.' Ex.159, Baker Dep., 24-76:2; Pls.' Ex. 189, Modigh Dep., 24:2-25:2, 82:14-16; Pls.' Ex. 183, RFA 2 ¶ 210]

354. For the poll workers who attend training, the State of Alaska tries “to make sure that they understand what is in the [poll worker] handbook.” The State assumes “that they are understanding those documents and can read” based solely on poll workers “signing the documents, that they are agreeing that they understand, that they are attending training.” [Pls.' Ex. 191, Brewster Dep., 39:16-40:1; *see* Pls.' Ex.159, Baker Dep., 73:19-74:5, 93:6-13, 132:9-23]

355. The State assumes poll workers attending training are literate and “understand their responsibilities if they do not speak up,” even though the State Elections Director heard Plaintiff Nick testify that “she signed documents that she didn't understand.” [Pls.' Ex. 191, Brewster Dep., 40:16-41:12]

356. The ability of translators to provide short oral statements in English and to complete simple forms written in English, such as writing their address, tells nothing about their ability to speak, read, and understand English. The best way to confirm their skills is through a role-playing exercise that requires a translator to translate a form or ballot question from English

into the covered language, the accuracy of which is assessed by a speaker fluent in both languages. [Pls.' Ex. 176, Yazzie Decl. ¶¶ 29-32]

357. The Region IV Supervisor does not ask translators to read any of the ballot questions or other information in English to confirm that they are literate can actually read English. Instead, she claimed, "I think it would be disenfranchising my coworkers to ask them to read in front of a whole group of people..." She had no first hand knowledge of whether it would actually make the translators uncomfortable, basing it on her speculation. [Pls.' Ex.159, Baker Dep., 88:12-89:1]

358. Getting confirmation of a translator's English reading skills is not "some kind of literacy test that disenfranchised them.... Election officials are hiring translators to perform a job, and demonstrating the ability to read, understand, and translate English voting materials into the covered native language is merely assessing them to see if they are capable of doing that job." [Pls.' Ex. 176, Yazzie Decl. ¶ 26]

359. The Region IV Supervisor acknowledged that it having one-on-one conversations with poll workers to ask them to read to her is something "that could be done," but she has not done it. [Pls.' Ex.159, Baker Dep., 89:2-10]

360. When translators give language assistance, it is important that they be able to communicate in Yup'ik. [Pls.' Ex.159, Baker Dep., 53:17-20] There are several things that a Yup'ik translator must be able to accurately translate, including the availability and scope of voter assistance, information about voter qualifications for closed primary elections, how to use a voting machine, the names and offices on the ballot, special instructions, and ballot questions, among others. [Pls.' Ex.159, Baker Dep., 53:21-55:11]

361. Poll workers come “from every walk of life with all sorts of different abilities.” As a result, the quality of Yup’ik translations would vary from translator to translator. [Pls.’ Ex. 191, Brewster Dep., 59:24-60:13; Pls.’ Ex. 176, Yazzie Decl. ¶ 27]

362. The State does not independently confirm whether their translators speak Yup’ik fluently or provide accurate and complete translations. Their sole basis for designating the translators as Yup’ik speakers is that they inform elections officials that they speak the language by indicating it on a form. [Pls.’ Ex. 191, Brewster Dep., 162:19-165:1; Pls.’ Ex.159, Baker Dep., 67:4-21; Pls.’ Exs. 67A, 67B; Pls.’ Ex. 183, RFA 2 ¶ 211] The State does not have anyone in the Yup’ik communities who speaks Yup’ik fluently confirm the language abilities of the Yup’ik poll workers. [Pls.’ Ex.159, Baker Dep., 69:12-15]

363. Three of the 89 election workers identified by the State as Yup’ik translators for State elections in the villages outside of Bethel do not speak Yup’ik fluently. There may have been two additional election workers who also were not fluent in Yup’ik. [Pls.’ Ex. 177, Leonard Decl. ¶¶ 36-27, Attach. B]

364. Four of the 9 interviewed State election workers identified by the State as Yup’ik translators for the Bethel voting precincts are not fluent in Yup’ik. [Pls.’ Ex. 177, Leonard Decl. ¶¶ 64-67, Attach. L]

365. The City of Bethel determines whether a poll worker speaks Yup’ik because either the municipal clerk has heard “them speaking Yup’ik or the election Chair that helps recruit them is aware that they’re Yup’ik speaking.” [Pls.’ Ex. 189, Modigh Dep., 79:14-23; Pls.’ Ex. 101, at 7-9]

366. The City’s election chairs do not take steps to confirm the language abilities of the City’s bilingual poll workers, “Other than them being able to speak it...” The election chairs do

not ask the bilingual poll workers to translate a matter from English to Yup'ik to confirm their abilities. [Pls.' Ex. 189, Modigh Dep., 80:20-81:4] Instead, the City takes the bilingual poll workers at their word that they speak Yup'ik. [Pls.' Ex. 189, Modigh Dep., 81:9-15]

367. Four of the 11 interviewed City of Bethel election workers identified by the City as Yup'ik translators for Bethel municipal elections either are not fluent in Yup'ik or have not worked as Yup'ik translators. [Pls.' Ex. 177, Leonard Decl. ¶ 71, Attach. M]

368. Defendants' failure to confirm the Yup'ik language skills of their translators is one of the reasons that both the State and the City of Bethel fail to offer effective language assistance. The lack of confirmation "raises doubts about whether the assistance is being helpful or is providing the same information to every LEP Yup'ik [voter] that English-speaking voters get." [Pls.' Ex. 176, Yazzie Decl. ¶ 25]

#### **Defendants' Lack of Yup'ik Language Assistance on Ballot Questions and Other Voter Materials**

369. The State of Alaska's Department of Law is responsible for performing a readability analysis of all statewide questions submitted to appear on the ballot. No readability analysis is performed on other voting materials. [Pls.' Ex. 190, Parnell Dep., 38:8-21; Pls.' Ex. 183, RFA 2 ¶¶ 202, 205]

370. The Department of Law determines the readability of ballot questions by ascertaining "that it is readable at a certain level for the voters of Alaska and then in conjunction with that, the Division of Elections provides oral assistance at the polls." [Pls.' Ex. 190, Parnell Dep., 40:5-10]

371. Lieutenant Governor Parnell has not consulted with language experts to evaluate what readability score is necessary for a non-English speaking voter to understand ballot

questions. Instead, that is something he “would expect that the Division of Elections would do or has done.” [Pls.’ Ex. 190, Parnell Dep., 40:11-18; Pls.’ Ex. 183, RFA 2 ¶ 203]

372. The State of Alaska has conducted its readability analysis of draft language of ballot questions, and not on the language that has actually appeared on the ballot. This trend has resulted in more complex ballot questions and has become particularly pronounced in more recent elections starting in 2004. [Pls.’ Ex. 174, Declaration of Dr. Claudia Dybdahl, at 18]

373. For example, the State performed its readability analysis on the cruise ship taxation question in 2003 that yielded a readability score of 52.733, requiring approximately a tenth to twelfth grade education to understand it. However, the language used in the question that actually appeared on the ballot in 2006 yielded a readability score of 35.4, requiring approximately a thirteenth to sixteenth grade (college graduate) education to understand it. [Pls.’ Ex. 174, Declaration of Dr. Claudia Dybdahl, at 18-19]

374. “In explaining why some ballot proposition language scored lower than 60 on the test of readability [the standard used under State law], certain letters (Department of Law) referred to the presence of multi-syllabic words as justification for the lower scores. This explanation... seems to miss the point that by definition the Flesch Reading Ease Formula evaluates text with multi-syllabic words as more difficult and harder to read.” [Pls.’ Ex. 174, Declaration of Dr. Claudia Dybdahl, at 20]

375. The City of Bethel had the most difficult ballot question to understand of all of the ones examined by Dr. Dybdahl. The May 16, 2006 alcohol ballot question required a 16.7 grade level to understand it, equivalent to a college graduate. [Pls.’ Ex. 174, Declaration of Dr. Claudia Dybdahl, at 17]

376. Comparing the low level of educational attainment and high LEP rates of voters in the Bethel Census Area with the high levels of education required to understand ballot questions used by the State of Alaska and the City of Bethel demonstrates that “voter confusion is a real possibility.” One quarter or more of Bethel’s voters have not attained the level of education required to read and understand those ballot questions. [Pls.’ Ex. 174, Declaration of Dr. Claudia Dybdahl, at 23-25]

377. The State Director of Elections acknowledged that it is challenging to provide an accurate translation to ballot questions because “[t]here are some very technical terminology.” [Pls.’ Ex. 191, Brewster Dep., 57:2-7]

378. The State Director of Elections has “had complaints about ballot questions” from both English-speaking and non-English speaking voters about “the way that the question is worded. A yes vote would mean no or a no vote would mean yes, for instance.” [Pls.’ Ex. 191, Brewster Dep., 58:14-59:3]

379. In light of voter complaints about the difficulty of understanding ballot questions, it is particularly important to have a complete and accurate translation of the ballot question. [Pls.’ Ex. 191, Brewster Dep., 59:8-11]

380. Many of the approximately 100 interviewed election workers identified by the State and the City as Yup’ik translators reported that they do not understand many of the English voting materials themselves, especially the “yes-no” ballot questions, which makes it difficult for them to translate those materials into Yup’ik. Providing written Yup’ik translations would make it easier for them to lessen voter confusion and provide uniform and accurate translations. [Pls.’ Ex. 177, Leonard Decl. ¶¶ 17-21, Attach. C]

381. A similar problem is present for the readability of several documents commonly used by the State of Alaska and the City of Bethel in the administration of their elections, as shown by the grade levels required to understand those documents: a 13.83 grade level to understand the State's voter registration form; a 13.89 grade level to understand the 2008 absentee by mail ballot application; a 12.49 grade level to understand the type and name of an election; a 15.93 grade level to understand the notice to questioned ballot voters; a 16.64 grade level to understand the letter from the Lieutenant Governor in the April 3, 2007 State Special Election voter information pamphlet; a 11.58 grade level to understand the voter eligibility and polling place explanation in the April 3, 2007 State Special Election voter information pamphlet; a 13.49 grade level to understand the voter rights and assistance while voting explanation in the April 3, 2007 State Special Election voter information pamphlet; and a 13.81 grade level to understand the absentee voting explanation in the April 3, 2007 State Special Election voter information pamphlet. [Pls.' Ex. 174, Declaration of Dr. Claudia Dybdahl, at 27-28]

#### **Defendants' Poor Quality of Yup'ik Translations**

382. Defendants' failure to provide their Yup'ik translators with the tools they need to translate on election day results in translations that are not clear, complete, and accurate. The translations that follow were for the identified common English election terms and two ballot questions. Pauses are noted in parentheses, the underlined term "unknown" indicates the Plaintiffs' translator could not understand the word, and where poll worker-translator used an English word instead of a Yup'ik one is indicated in bold type. [Pls.' Ex. 177, Leonard Decl. ¶¶ 85-87, Attach. N]

383. Victor Bell, who has worked as a translator for both the State and the City of Bethel, provided the following Yu'ik translations for the identified terms

- a. “**Republican:** (pause) Using those things of long ago, the words that were made, following them.”
- b. “**Democrat:** “The new ones, unknown, that were made, that have to be followed.”
- c. “**Independent:** By itself, the one who goes along by itself. Solely dependent on itself.”
- d. “**Polling place: Voting** place, a **voting** place.”
- e. “**Assistance:** help, it wants to offer help, the helper.”
- f. “**Voting Machine: voting machine.**”
- g. “**Instructions:** the words that need to be followed, the ones that have to be followed.”
- h. “**Voter Registration:** the **voting** place where they write their name where they are to be, making it known.”
- i. “**Ballot:** papers that have in them the things they are going to **vote** for.”
- j. “**Should this initiative become law?:** should This one they are asking about become, (pause) these things that need to be followed, these, towards the laws.” [Pls.’ Ex. 177, Leonard Decl. ¶¶ 85-87, Attach. N]

384. State and City of Bethel translators Victor Bell and Sharon Lindley translated the following ballot question that appeared on the ballot in the State of Alaska’s November 5, 2002 general election: “**Initiative on Gas Pipeline Development Authority.** This bill would create the Alaska Natural Gas Development Authority (Authority) as a public corporation of the State. The Authority would acquire and condition North Slope natural gas, and construct a pipeline to transport the gas. The Authority's powers would include buying property or taking it by eminent

domain, and to issue state tax-exempt revenue bonds. The gasline route would be from Prudhoe Bay to tidewater on Prince William Sound and the spur line from Glennallen to the Southcentral gas distribution grid. The Authority would operate and maintain the gas pipeline, ship the gas, and market the gas. Should this initiative become law?" [Pls.' Ex. 177, Leonard Decl. ¶ 85, Attach. J]

385. Victor Bell, who graduated from high school, provided the following translation of the November 2002 State ballot question into Yup'ik: **This Initiative on Gas Pipeline Development Authority.** This thing that needs to be made, this, that needs to be followed, this the path for the **gas**, this the **gas**, the one that is not water, but is a... gas in the stomach, that can be used to the point where it can become fire. This, to our big lands authority and to the whole population, it will get (pause). These leaders will be able to take and finish from the place to our North, this gas in the stomach, **gas**, they'll be able to take from there and take it to the place where it will be stored, where it will be its place. Those leaders power will include the purchase of land or (pause) it will take the things that are underground, they will take away from that person. They will work till completion, this our lands **tax** (pause) **tax, tax, tax**, will be non-**taxable** towards this thing. These things that will be gotten. The path of the pipeline, from the point on **Prudhoe Bay** to the beach, the sandy place, of **Prince William Sound**. And over the mountains from there, Glenallen to, through the mountains, its path, to the end of our ocean. (pause) Those leaders workers on the pipeline, and also the gas in the stomach, the **gas**, they will be able to oversee, that. Like this! They will take it out, work on it, store it (pause) and then they will take it to the place where they will sell it. All that, they are deeming it important to be completed. [Pls.' Ex. 177, Leonard Decl. ¶¶ 85-86, Attachs. J, L-N]

386. Yup'ik translator Louise Leonard described Victor Bell's translation as using "a lot of words to try to describe an English concept and the end result was very hard to follow. He also used a word for 'gas' that means the bodily function, rather than the natural resource." [Pls.' Ex. 177, Leonard Decl. ¶ 87]

387. Sharon Lindley, who possesses a Masters Degree, provided the following translation of the November 2002 ballot question into Yup'ik: "**Initiative on Gas Pipeline Development Authority.** This LAW will make the **Alaska Natural Development Authority** (pause) this, the one that will be the property of the people, the **corporation** (pause) This **Authority** (pause) will be able to make the **NorthSlope Natural Gas**, (pause) and the pipeline that will transport the **gas** – it also will be able to make. The **Authority's** work, including the unknown (pause) will be able to purchase land, or be able to take by what the Kassaq call **Imminent Domain**. They will also be able to give out these things our **State's Tax Exempt Revenue Bonds**. These **untaxable** ones that make paper money. They will be able to construct the **gas** pipeline from **Prudhoe Bay** to the **tidewaters**, it's beaches, **of the Prince William Sound** (pause). From the **spurline** (@) of **Glennallen** to the **South Central Distribution Grid**. This Authority will be the one to work on, and maintain the **gas pipeline**. They will be able to move the **gas** and also be able to sell the **gas** they got. And this is the question: Will this **initiative** become law?" [Pls.' Ex. 177, Leonard Decl. ¶¶ 85-86, Attachs. J, L-M, O]

388. Yup'ik translator Louise Leonard described Sharon Lindley's translation as pausing "a great deal and used a fair number of English words that people might not know." [Pls.' Ex. 177, Leonard Decl. ¶ 87]

389. State and City of Bethel translators Victor Bell and Sharon Lindley translated the following ballot question that appeared on the ballot in the City of Bethel's May 16, 2006 special

election: “Be it enacted, effective immediately. No alcohol delivery site as provided for in AS 04.11.491(f) will be operated within the City of Bethel, unless such as site is approved, by ballot measure, by a simple majority of the voters who vote on that specific measure.” [Pls.’ Ex. 177, Leonard Decl. ¶ 85, Attach. J]

390. Victor Bell’s translation of the May 2006 Bethel ballot question into Yup’ik was as follows: “Can I translate this city of Bethel question, that is in paper, to English & Yupik, translating it. This become available this spring on the 26<sup>th</sup> of unknown during elections. Unknown (pause) So then, trying to make it primary, trying to make it the single most thing, they worked on it: That it was to be completed right away. (pause) This, the one that refers to the sale of liquor (pause) This the one that refers to the sale of liquor (pause) In this the one they refer to, in this the one they have completed – in these words, this the state [government] **AS04.11.491** (pause) they will not provide near, at, or in Bethel, but the other one, the one that is to be opened, before it is approved by the people, after they have filled out the papers in regards to the things they want, like this, by **voting**, if they did it like this. (pause) If the majority want it, they can take it or they go against it, they cannot let it become.” [Pls.’ Ex. 177, Leonard Decl. ¶¶ 85-86, Attachs. J, N]

391. Sharon Lindley’s translation of the May 2006 Bethel ballot question into Yup’ik was as follows: “**And the second question.** (pause) **The City of Bethel Ballot Question**, it starts (pause) From this day forward alcohol (pause) the **delivery site** (pause) written as **ASA04.611.491.(F)** (pause) will not be open in Bethel but (pause) if its beginning is approved by the votes (pause) or through the will of the people.” [Pls.’ Ex. 177, Leonard Decl. ¶¶ 85-86, Attachs. J, O]

392. Yup'ik translator Louise Leonard concluded about the translations of both ballot questions, "If I were a Yup'ik speaker listening to this, I would not understand what these measures were about, nor would I know how to vote. To me, this illustrates just how difficult it is to translate these ballot measures 'on the spot' without any materials or preparation. Both Victor and Sharon are quite educated, yet this was difficult even for them." [Pls.' Ex. 177, Leonard Decl. ¶ 87]

**Defendants' Failure to Provide any Audio Tape Language Assistance**

393. "Yup'ik audio recordings of all elections information should be given to all of the translators to assist them in properly translating all voting materials. Listening to the recordings allows translators to learn the correct terms and pronunciation and is an important supplement to the detailed language assistance training they should be receiving." Those audio recordings "should be prepared by bilingual outreach coordinators fluent in English and Yup'ik, in consultation with the tribes and some of the more proficient Yup'ik translators. The audio recordings should be provided as early as possible to the translators." [Pls.' Ex. 176, Yazzie Decl. ¶¶ 109, 111]

394. "Audio recordings by themselves are insufficient to provide effective language assistance. They tend to be better when used as a training tool for translators, along with written translations, to help the translators understand how to provide a clear, complete, and accurate translation." "Interaction with a trained and qualified translator is much more helpful to native voters because they can stop the translator at any time and ask questions. You can't ask questions of an audio recording." [Pls.' Ex. 176, Yazzie Decl. ¶¶ 112, 115]

395. The State does not provide its poll workers with audio-taped recordings of translations of ballot questions. [Pls.' Ex.159, Baker Dep., 122:8-10]

396. The Region IV Supervisor has not considered providing an oral Yup'ik translation for ballot questions to poll workers on either an audio tape or compact disc. The Region IV Supervisor acknowledged that if she were to do so, "I also need to be providing the means for the poll worker to play that CD." [Pls.' Ex.159, Baker Dep., 123:7-20]

397. Audio ballots for the disabled, which require the use of headphones with the touch-screen voting units, are provided by the State in English only in the Bethel Census Area. [Pls.' Ex.159, Baker Dep., 123:23-124:23] However, the State does not provide an audio version of the ballot for LEP voters. [Pls.' Ex. 94, at STATE 207; Pls.' Ex.159, Baker Dep., 125:20-24]

398. The State Division of Elections considered providing audio-taped translations of ballots on the touch-screen voting units in late 2006, "float[ing] that idea around as an improvement for future elections." The Director considered doing so even though "we believe that the State of Alaska is fulfilling its language assistance requirements." [Pls.' Ex. 191, Brewster Dep., 17:8-18]

399. The State Director of Elections took no action on that idea until the U.S. Department of Justice contacted her office in approximately October 2007 and asked the State to enter into a consent decree to provide audio translations on the State's touch-screen voting units. [Pls.' Ex. 191, Brewster Dep., 13:24-16:16. 16:23-17:7]

400. Although the State Director of Elections had previously considered providing audio-taped translations on the touch-screen voting units a year earlier, she had "not yet" consulted with any members of the Yup'ik community in Bethel because she said it was "all a pretty recent development." [Pls.' Ex. 191, Brewster Dep., 16:17-22, 17:8-18]

401. Several of the State's Yup'ik translators said that they would like to have audio tapes with oral Yup'ik translations in addition to translations written in Yup'ik that they can have

available on election day to provide clear, complete, and accurate translations. [Pls.' Ex. 177, Leonard Decl., Attach C]

### **Defendants' Lack of Quality Control Measures**

402. The State of Alaska has not used information on best practices or lessons learned from other election jurisdictions or outside organizations in formulating its approach to providing bilingual voting assistance. [Pls.' Ex. 191, Brewster Dep., 106:16-22; Pls.' Ex. 94, at STATE 202]

403. Before this lawsuit was filed, Defendants had not taken any steps to confirm whether the language assistance available in the Bethel Census Area offered accurate, complete, and clear translations or was effective. [Pls.' Ex. 94, at STATE 208; Pls.' Ex. 191, Brewster Dep., 123:13-124:7; Pls.' Ex. 183, RFA 2 ¶ 235]

404. Between January 1, 2000 and December 1, 2007, the State of Alaska, Division of Elections had not surveyed Yup'ik or Cup'ik-speaking voters, tribal councils, or other Yup'ik community organizations located within the Bethel Census Area to determine the extent to which the language assistance it offers is effective. [Pls.' Ex. 183, RFA 2 ¶ 235]

405. The State was planning on sending out a survey in "early January of 2008, to all local officials asking them to identify people within their communities who speak the language." The State planned on using that information to establish a contact "who speaks the language and can provide" language services, such as voter registration. [Pls.' Ex. 191, Brewster Dep., 31:20-32:12; 71:19-72:6, 183:4-10; Pls.' Ex. 94, at STATE 208; Pls.' Ex. 83]

406. Prior to the January 2008 survey, the Region IV Supervisor had not conducted any outreach to voters in the Bethel Census Area to ask whether or not they believed the State's

language assistance program was effective because “I haven’t seen the need to do that.” [Pls.’ Ex.159, Baker Dep., 84:5-10]

407. The State has concluded that what it is doing is effective without conducting any evaluation to determine whether that conclusion is accurate. [Pls.’ Ex. 191, Brewster Dep., 125:1-6]

408. The Region IV Supervisor did not take any of the lessons learned from the federal oversight of Tagalog language assistance in Kodiak and apply it to other language groups in other parts of the State. [Pls.’ Ex.159, Baker Dep., 15:20-16:8]

409. Since 2003, no changes have been made to program for providing language assistance in Region IV, which includes the Bethel Census Area. [Pls.’ Ex.159, Baker Dep., 16:20-25]

410. The Region IV Supervisor has not made any changes to the language assistance program in the Bethel Census Area because “we have election workers who speak fluent Yup’ik. I didn’t see the need to make any changes to that.” [Pls.’ Ex.159, Baker Dep., 48:3-10]

411. For elections between January 1, 2000 and the present, the State has not assessed whether clear, complete, and accurate translations of all voting materials are being provided to Yup’ik voters in the Bethel Census Area. [Pls.’ Ex. 183, RFA 2 ¶ 212]

412. “Observing the actual conduct of elections is important because otherwise the State has no way of knowing whether language and voter assistance is being provided, the quality of what is being provided, and improvements that are needed.” [Pls.’ Ex. 176, Yazzie Decl. ¶ 132]

413. Neither the Region IV Supervisor nor the employees in her office has been present at any of the voting precincts in the Bethel Census Area during an election that would

allow her to observe how language assistance is being provided to Yup'ik speaking voters.

According to the Region IV Supervisor, it would be “a policy call from the Director’s office” on whether to have state elections employees present to observe language assistance. [Pls.’ Ex.159, Baker Dep., 70:18-72:18, 123-11:14; Pls.’ Ex. 183, RFA 2 ¶ 207]

414. To the knowledge of the Region IV Supervisor, the Division of Elections has not had any full-time employee in a polling place in the Bethel Census Area during an election. [Pls.’ Ex.159, Baker Dep., 73:8-14]

415. Sandra Modigh, the municipal clerk for the City of Bethel between June 2005 and early December 2007, only observed language assistance being provided at the Senior Center, one of the three polling places in Bethel. [Pls.’ Ex. 189, Modigh Dep., 11:22-12:2, 21:15-21:24, 22:23-23:9]

416. According to several election workers who have worked as Yup'ik translators, the State or the City of Bethel have not contacted them to ask them for their opinion on what was necessary to provide effective Yup'ik language assistance. [Pls.’ Ex. 177, Leonard Decl. ¶ 14]

**Defendants’ Lack of Travel to the Native Villages in the Bethel Census Area**

417. The State does not have any Division of Elections employees travel to each locality to work with the interpreters in preparing Yup'ik tapes. The State Director of Elections admitted, “No, that... is not happening. That has not happened.” [Pls.’ Ex. 191, Brewster Dep., 152:14-19; *see* Pls.’ Exs. 75-76]

418. Between January 1, 2000 and late November 2007, three Division of Elections employees had traveled to the Bethel Census Area a combined total of five times. [Pls.’ Exs. 75-76; Pls.’ Ex. 191, Brewster Dep., 186:5-19]

419. Each of the five trips to the Bethel Census Area was made solely to the City of Bethel and none to the surrounding villages. [Pls.' Exs. 75-76]

420. Four of the five trips to the Bethel Census Area were to conduct election board training. The remaining trip was to conduct HAVA polling site accessibility surveys and observe City of Bethel municipal election official training. [Pls.' Exs. 75-76]

421. The State has conducted an in-person HAVA polling site accessibility survey for the three precincts in the City of Bethel, but not in any of the villages outside of the City of Bethel. Instead, all of those required accessibility surveys for the villages outside of the City of Bethel are conducted over the telephone. [Pls.' Ex.159, Baker Dep., 22:3-23:19]

422. No full-time Division of Elections employee has visited villages outside of the City of Bethel between January 1, 2000 and December 31, 2007 for election related purposes. [Pls.' Ex. 183, RFA 2 ¶ 206]

423. The Region IV Supervisor, who has been responsible for elections in most of the voting precincts in the Bethel Census Area since 2003, has never traveled to any of the native villages outside of the City of Bethel. [Pls.' Ex.159, Baker Dep., 19:25-20:7; Pls.' Exs. 75-76] She has never considered taking a flight out to the villages outside of the City of Bethel to see the conditions of the polling place or for other reasons, such as voter registration or community outreach. [Pls.' Ex.159, Baker Dep., 25:6-25]

424. Monica Giang, who is the Region IV Administrative Clerk responsible for assisting the Supervisor with bilingual poll worker recruitment and training, has not traveled to any of the villages outside of the City of Bethel “[b]ecause she doesn’t serve in the capacity of the Region IV Supervisor.” [Pls.' Ex.159, Baker Dep., 40:5-24]

**Defendants' Lack of Outreach to Yup'ik Community and Native Organizations**

425. The State Director of Elections believes that voter outreach is one of the key components of an effective language assistance program. [Pls.' Ex. 191, Brewster Dep., 86:9-19]

426. It is important to reach out to each of the covered language groups to ensure that what is being provided is effective. "Working with the tribal governments seemed to be the most effective approach in reaching out to LEP voters in areas where Alaska Native languages are spoken." [Pls.' Ex. 94, at STATE 205; Pls.' Ex. 191, Brewster Dep., 90:17-20, 116:14-23; Pls.' Ex. 176, Yazzie Decl. ¶ 94]

427. "A comprehensive effort at community outreach is absolutely essential to any good language assistance program for native languages. Natives have only been allowed to vote in many parts of the United States for less than 50 years. There isn't a long tradition of voting, and it's not something that is passed down from generation to generation." [Pls.' Ex.176, Yazzie Decl. ¶ 96]

428. Effective outreach to native communities includes: traveling to native villages; going to tribal council meetings and other places where native speakers come together; in-person voter registration efforts; meeting with tribal leaders about language assistance for voting when they are in Anchorage for meetings; consulting with tribal councils about their language program and whether it is effective. [Pls.' Ex. 176, Yazzie Decl. ¶¶ 93-103]

429. As of the end of November 2007, the State's outreach to tribal governments in the Bethel Census Area was limited to a single mailing of a voter registration form and instructions in English, with no follow-up mailings or phone calls. [Pls.' Ex. 191, Brewster Dep., 114:1-15, 117:20-118:13]

430. The State has not reached out to Native organizations such as the Native American Rights Fund and the National Congress of American Indians to determine what is needed to provide effective language assistance. [Pls.' Ex. 191, Brewster Dep., 91:12-92:6]

431. Native American meetings are held in Anchorage and Juneau that are attended by tribal leaders. The State Director of Elections has not used those meetings as an opportunity to schedule meetings with those tribal leaders to find out what would be necessary to provide a more effective language assistance program. [Pls.' Ex. 191, Brewster Dep., 92:7-25]

432. Division of Elections employees have not tried to schedule meetings with tribal leaders while they are in town to focus on language assistance issues, even though "it would be helpful to have the opportunity to meet face-to-face with some of these leaders..." It is something that the State would be interested in doing in the future. [Pls.' Ex. 191, Brewster Dep., 93:10-22]

433. Lieutenant Governor Parnell has attended Alaska Native or American Indian meetings in Anchorage or in Juneau, but has not discussed language assistance with them. [Pls.' Ex. 190, Parnell Dep., 49:17-24]

434. When the Alaska Federation of Natives held its convention in Anchorage in 2004, the State provided an absentee polling site but did not include any information in voter packets about language assistance. [Pls.' Ex. 191, Brewster Dep., 92:20-93:14]

435. The State has not contacted the tribal councils in the Bethel Census Area to determine the most effective way to conduct a survey about the State's language assistance program. [Pls.' Ex. 191, Brewster Dep., 74:15-19, 79:14-80:4]

436. The State Director of Elections did not know why her predecessor had not surveyed tribes in the Bethel Census Area to determine whether the State's language assistance program was effective. [Pls.' Ex. 191, Brewster Dep., 80:21-24]

437. Other than the 2006 voter registration packets for which the State has not produced records indicating were sent to the Bethel Census Area, the Region IV Supervisor was unable to recall any other community outreach materials sent to the villages in the Bethel Census Area. [Pls.' Ex. 94, at STATE 205; Pls.' Exs. 79, 82; Pls.' Ex. 191, Brewster Dep., 182:20-22; Pls.' Ex.159, Baker Dep., 83:9-15]

438. The Region IV Supervisor has not attended any tribal council meetings in the Bethel Census Area since she assumed her position in 2003. According to the Supervisor, "My job is to conduct elections and... that's what I'm focused on. I'm not focused on attending tribal council meetings in all of these communities." [Pls.' Ex.159, Baker Dep., 86:8-20]

439. The Region IV Supervisor admitted that going to a tribal council meeting "quite possible may" provide a good opportunity to meet with local leaders to find out how effective her language program is, "but I wouldn't know that unless I attended one." [Pls.' Ex.159, Baker Dep., 86:21-25]

440. The Region IV Supervisor has not talked to educators or reached out to any of the public schools in the Bethel Census Area to determine whether or not her language assistance program is effective. [Pls.' Ex.159, Baker Dep., 87:1-8]

441. Although Ms. Modigh, the former Bethel municipal clerk, attended about eight to twelve meetings of a joint task force that meets with the Orutsaramiut Native Council (ONC), the local tribal council, the clerk and others "have not discussed elections at any meetings I've attended." [Pls.' Ex. 189, Modigh Dep., 68:12-69:3]

442. Ms. Modigh had not suggested an agenda item for any of the ONC joint task force meetings she has attended. [Pls.' Ex. 189, Modigh Dep., 69:4-11]

443. Ms. Modigh has not met with any tribal leaders about elections in the City of Bethel. [Pls.' Ex. 189, Modigh Dep., 69:12-14]

444. Ms. Modigh has visited the cultural center run by the Kuskokwim University Campus for the University of Alaska-Fairbanks, but has not met with anyone there about elections or left information about elections. [Pls.' Ex. 189, Modigh Dep., 69:24-70:12]

445. Ms. Modigh has visited the senior center in Bethel, one of the City's polling places, "on several occasions" other than election day, but "[n]one of it was based around elections." [Pls.' Ex. 189, Modigh Dep., 70:16-71:1]

446. "The statements of the election officials from the State of Alaska and the City of Bethel in their depositions indicate that they don't do any of that sort of community outreach for four reasons: (a) they don't do any in-person outreach; (b) they don't have any training materials or presentations on language assistance; (c) they don't provide any written translations of any voting materials; and (d) they don't provide audio (tape or radio) translations of any elections information. They are not doing any community outreach." [Pls.' Ex. 176, Yazzie Decl. ¶ 103]

#### **Defendants' Lack of Voter Education Opportunities**

447. The State of Alaska did not attempt to reach out to LEP voters to educate them about the election process for the 2006 General Election or any subsequent elections regarding the following information: polling place locations, sample ballots, early voting, instructions for use of voting machines and marking ballots, or provisional voting procedures. [Pls.' Ex. 94, at STATE 203-04]

448. The Region IV Supervisor has not conducted any voter education meetings, even when she visited the City of Bethel. [Pls.' Ex.159, Baker Dep., 26:6-11, 26:17-19] She has not considered conducting any voter education meetings because "that would take a policy decision from the Director's office." [Pls.' Ex.159, Baker Dep., 26:14-16]

449. The State implemented touch-screen voting units in 2006, but did not engage in any community outreach to explain to voters how to use the new equipment. [Pls.' Ex.159, Baker Dep., 26:20-27:2]

450. The municipal clerk of the City of Bethel has not held separate voter education and training sessions. [Pls.' Ex. 189, Modigh Dep., 101:22-24]

#### **Defendants' Lack of Voter Registration Opportunities in Yup'ik**

451. Nineteen of the 89 State election workers (21.3%) identified by the State as Yup'ik translators and voting registrars reported that the State of Alaska had not informed them that they could register unregistered people coming into the polls on Election Day. Three of the election workers (3.4%) reported that they did not know if the State of Alaska had informed them that they could register unregistered people coming into the polls on Election Day. [Pls.' Ex. 177, Leonard Decl. ¶ 43, Attach. B]

452. Lieutenant Governor Parnell agrees that the most effective approach to providing language assistance during the voter registration process is to work with the local tribal governments and reaching out to LEP voters in areas where Alaska Native languages are spoken. [Pls.' Ex. 190, Parnell Dep., 47:12-23]

453. Although the State's Section 5 plan requires that registration officials in the rural areas "speak the minority language spoken in that particular area," there are many registrars in

the Bethel Census Area who do not. [Pls.' Ex. 52, at STATE 562; Pls.' Ex. 191, Brewster Dep., 29:16-30:25]

454. The State only provides its voter registration forms in English and Tagalog. [Pls.' Ex. 191, Brewster Dep., 32:22-33:2; Pls.' Ex.159, Baker Dep., 50:15-17]

455. The Region IV elections office did not send voter registration packets to all of the tribal governments in the Bethel Census before the 2006 election, unlike packets that were sent out to tribal governments in other parts of the State. The State has not produced any records indicating that the packets were sent to the Bethel Census Area. [Pls.' Ex. 94, at STATE 205; Pls.' Exs. 79, 82; Pls.' Ex. 191, Brewster Dep., 182:20-22]

456. The State has not provided any of the voter registration information it sent out in some parts of the State in 2006 in oral Yup'ik because "[a]ll our communications are done in English." [Pls.' Ex.159, Baker Dep., 28:24-29:4]

457. The State did not send out any voter registration packets to tribal councils in the Bethel Census Area in 2007, even though the State conducted two elections there. [Pls.' Ex.159, Baker Dep., 30:8-21]

458. The State has not targeted any voter registration efforts specifically at the Bethel Census Area. The State only has engaged in statewide efforts through the packet sent out in 2006 to places other than the Bethel Census Area. [Pls.' Ex. 191, Brewster Dep., 182:20-22, 188:18-189:2; Pls.' Ex. 94, at STATE 205; Pls.' Exs. 79, 82]

459. No Division of Elections employee has attended a tribal council meeting in the Bethel Census Area for purposes of increasing voter registration. [Pls.' Ex. 191, Brewster Dep., 189:3-6]

460. “Community outreach by election officials also needs to include in-person voter registration efforts.... [E]lection officials need to travel to the community before voter registration deadlines and set up in areas that are convenient for natives. In-person voter registration efforts should be at least one day every year in places convenient for each community.... Registration booths can be set up in native communities during cultural events, such as dances or regional meetings of tribal councils. In-person voter registration is very important to help overcome language, cultural, and transportation/accessibility barriers.” [Pls.’ Ex. 176, Yazzie Decl. ¶ 99]

#### **Defendants’ Failure to Use Federal HAVA Funding for Language Assistance**

461. The State of Alaska has several million dollars in unspent federal Help America Vote Act (HAVA) funding. [Pls.’ Ex. 191, Brewster Dep., 205:25-206:3]

462. Although Lieutenant Governor Parnell acknowledged that the State of Alaska has “several millions of dollars” in unspent federal HAVA funding, he has not had any discussions with the State Director of Elections about using those funds for the State’s language assistance program. [Pls.’ Ex. 190, Parnell Dep., 24:12-21]

463. As of late November 2007, the State of Alaska had spent a combined total of \$5,584.70 in federal HAVA funds for *all* languages covered in the State. All but \$51.86 of that money was spent on advertising during State Fiscal Year 2007. [Pls.’ Ex. 64, at STATE 722; Pls.’ Ex. 191, Brewster Dep., 205:10-24]

464. Lieutenant Governor Parnell has not considered using federal HAVA funding to open a satellite office in the Bethel Census Area. Instead, the State “is in the process of decreasing the number of satellite offices with HAVA funding...” [Pls.’ Ex. 190, Parnell Dep., 23:19-24:2]

**Defendants' Inadequate Resources Committed to Language Assistance**

465. The State Director of Elections has not asked Lieutenant Governor Parnell for more funding for the State's language assistance program. [Pls.' Ex. 190, Parnell Dep., 21:3-23]

466. In the State's current fiscal year (at the end of November 2007), the State did not have any funds specifically allocated for its language assistance program. [Pls.' Ex. 191, Brewster Dep., 207:9-16]

467. The State of Alaska's Division of Elections does not have anyone with the sole responsibility of working on the State's language assistance program. [Pls.' Ex. 191, Brewster Dep., 22:24-23:4] Hannah Stickle, the State's HAVA project coordinator "has that function underneath" her position. However, only "about half" of Ms. Stickle's work schedule is dedicated to language assistance. [Pls.' Ex. 191, Brewster Dep., 23:3-19]

468. Ms. Stickle is responsible for coordinating the language assistance for all the languages in the State of Alaska, including not only Yup'ik, but Athabascan, Tagalog, and the other languages for which Alaska is covered under Section 203 of the VRA. [Pls.' Ex. 191, Brewster Dep., 24:4-10]

469. At the time of Ms. Brewster's deposition in late November 2007, Ms. Stickle was out on maternity leave through the end of January 2008. [Pls.' Ex. 191, Brewster Dep., 23:3-19, 24:16-18]

470. The State "has recently considered" having a full-time staff worker whose only responsibility is providing language assistance, including translations and outreach. The State "started thinking seriously about it when we were contacted by the... Department of Justice..." in around August 2007. [Pls.' Ex. 191, Brewster Dep., 96:7-97:2]

471. The State Director of Elections knew “that New Mexico and Arizona definitely have [bilingual] coordinators,” but “the State of Alaska has not had a coordinator” even though “it would be a good idea.” [Pls.’ Ex. 191, Brewster Dep., 97:10-24]

472. The State “started looking in April 2006” at improving its language assistance program. However, the State “put it aside as we were conducting our major Statewide election as well as our REAACSRA election... and we picked it back up after the election and then we were hit with another statewide special election in April of 2007.” [Pls.’ Ex. 191, Brewster Dep., 70:8-18, 80:25-81:2]

473. In making its determinations on the resources it provides for language assistance, “there are a number of things that the Division of Elections has to balance... Language assistance is not the only assistance that the Division of Elections provides.... We have... the demands of every voter in the state. I think it would [be] important to balance all of those needs and our resources to be able to make that determination.” [Pls.’ Ex. 191, Brewster Dep., 113:12-25]

#### **Defendants’ Failure to Investigate and Remedy Language Assistance Complaints**

474. The State is aware of the evaluation of its language assistance program by the Native American Rights Fund (NARF) entitled “Voting Rights in Alaska: 1982-2006.” [Pls.’ Ex. 94, at STATE 209; Pls.’ Ex. 53]

475. When Lieutenant Governor Parnell met with outgoing Lieutenant Governor Loren Leman, he became aware of complaints about the quality of language assistance offered by the State of Alaska that were included in the NARF report that was submitted into the congressional record during the VRA reauthorization hearings. Mr. Leman brought the NARF report to his attention. [Pls.’ Ex. 190, Parnell Dep., 50:22-51:4, 53:17-22; Pls.’ Ex. 53]

476. Lieutenant Governor Parnell reviewed a letter written by Mr. Leman to Rep. Steve Chabot, then-Chairman of the Subcommittee on the Constitution of the House Judiciary Committee, responding to the NARF report. [Pls.' Ex. 190, Parnell Dep., 51:19-52:4; Pls.' Ex. 53]

477. Lieutenant Governor Parnell was concerned about at least some of the issues in the NARF report. He did not take any steps to address the complaints in that report after receiving Mr. Leman's assurance "that they had been addressed" and an assurance from the State Director of Elections that "we are in compliance with applicable federal law." He also did not direct the State Elections Director to investigate the concerns noted in the NARF report. [Pls.' Ex. 190, Parnell Dep., 51:5-12, 53:12-22]

478. During Lieutenant Governor Parnell's initial briefing after he assumed office, the State Director of Elections just noted "that we provide language assistance and there was a mention of Tagalog and the oral assistance." [Pls.' Ex. 190, Parnell Dep., 18:1-24]

479. After Plaintiffs sued the State of Alaska, Lieutenant Governor Parnell did not direct any employees of the Department of Elections, including the State Director of Elections, to investigate Plaintiffs' allegations. Instead, he asked the State Director of Elections whether she believed the State's language assistance program "was in compliance and she expressed... that she believed that it was." [Pls.' Ex. 190, Parnell Dep., 15:8-16:9]

480. The State of Alaska does not have any signs or information posted in polling places indicating that if a voter has a complaint they can contact the Division of Elections through a toll-free telephone number. [Pls.' Ex. 191, Brewster Dep., 67:10-68:4; Pls.' Ex.159, Baker Dep., 80:8-12]

481. The Region IV Supervisor admitted that while it was a “policy call” to place a voter complaint poster up in polling places in the Bethel Census Area, that she “could be persuasive in asking that this be done,” but she has not done so. [Pls.’ Ex.159, Baker Dep., 81:6-13]

482. The State Director of Elections admitted that it “would be a good idea” to have voter complaint forms in the polls on election day “because if there was an issue, they would have the ability right then and there to... write out...their complaint...” It is something that the State “could implement.” However, the Division of Elections does not currently make voter complaint forms available at the polls. [Pls.’ Ex. 191, Brewster Dep., 52:20-53:11, 67:14-23]

483. The State Director of Elections admitted that it would be important to have someone available at the polls to translate and record any complaints received from limited English proficient voters and illiterate voters such as Plaintiff Nick, Plaintiff McCann, and Plaintiff David who cannot write it out themselves. [Pls.’ Ex. 191, Brewster Dep., 53:12-54:17]

484. The State does not advertise a toll free number for making voter complaints, except for publishing its toll-free HAVA hotline on the Division of Elections webpage. Instead, voters with concerns typically have to call the Regional elections office on a toll number. [Pls.’ Ex. 191, Brewster Dep., 65:6-66:23; Pls.’ Ex.159, Baker Dep., 78:5-13]

485. The State Director of Elections is aware that there are socio-economic barriers to Yup’ik-speaking voters being able to access a website. There “are certain constraints... particularly within rural Alaska when it comes to those sorts of things.” [Pls.’ Ex. 191, Brewster Dep., 69:12-18]

**Defendants' Denial of Voter Assistance in Violation of Section 208 of the VRA**

486. Accurate training on voter assistance is “crucial.” Defendants are not providing proper training to their translators on the requirements for providing language assistance. “If a translator can’t go into the voting booth with a voter who wants language or voter assistance, that is no assistance. What results instead is an uninformed voter who has no idea whether they are voting the way they intended.” [Pls.’ Ex. 176, Yazzie Decl. ¶¶ 63-70]

487. “The translator needs to be where the voter they are assistance is voting.... The translator needs to be in the voting booth to provide complete, clear and accurate translations of ballot questions.” If a voter is unclear on the meaning of a ballot question, the translators must be “trained to elaborate on the language of the question by giving analogies and presenting information in a way that the voter can understand.” [Pls.’ Ex. 176, Yazzie Decl. ¶¶ 68-70]

488. One of the poll worker training pamphlets used by the State and the City of Bethel includes the following statement about voter assistance: “If requested, an election worker may assist the voter. The election workers should maintain a reasonable distance from the ballot box to ensure the secrecy of the voter’s ballot....” [Pls.’ Ex. 110, at B000093; *see* Pls.’ Ex. 189, Modigh Dep., 94:12-95:11]

489. Poll workers in Akiachak provide translation assistance only at the voting table. They do not go into the booth to assist voters with translation. [Pls.’ Ex. 185, Nick Decl. ¶ 19; Pls.’ Ex. 154, Nick Dep. 19:17-20:12, 25:16-26:4]

490. Poll workers in Akiachak tell voters that they cannot bring another person of their choice into the voting booth to help them vote. [Pls.’ Ex. 185, Nick Decl. ¶¶ 19-21]

491. Yup’ik speakers like Plaintiffs Nick and McCann would be able to fully understand their voting choices if voting materials were translated into Yup’ik and if they could

bring a friend or family member or a poll worker with them into the voting booth to translate. [Pls.' Ex. 185, Nick Decl. ¶¶ 21-22; Pls.' Ex. 186, McCann Decl. ¶¶ 24-25; Pls.' Ex. 153, McCann Dep., 25:21-23, 26:13-22, 69:17-71:2]

492. In Bethel, Plaintiff McCann has never been told, nor has he seen any signs indicating, that he is allowed to bring someone into the voting booth to assist him. Plaintiff McCann has been told that his vote had to be in private and that he had to go into the voting booth alone because voting is confidential. [Pls.' Ex. 186, McCann Decl. ¶ 24; Pls.' Ex. 153, McCann Dep., 26:25-27:3]

493. Elena Gregory, a resident of Tuluksak, "voted in an election where the poll worker told [her] that elders could not have help interpreting or reading the ballots, and that everyone had to be 50 feet away from the person voting. A poll worker also told [her] that [she] could not help the others vote if they did not understand." [Pls.' Ex. 181, Elena Gregory Declaration ("Gregory Decl.") ¶ 8]

494. According to Ms. Gregory, the "ballots are not translated at the elections in Tuluksak because we had no idea we were allowed to do that. No one ever told me I could help others vote and translate for them; in fact they have said the opposite." [Pls.' Ex. 181, Gregory Decl. ¶ 9]

#### **Depressed Yup'ik Voter Turnout in the Bethel Census Area**

495. Lower turnout in the Bethel Census Area does not surprise the State Director of Elections "[b]ecause that has been the trend of that area." [Pls.' Ex. 191, Brewster Dep., 83:11-19]

496. For statewide elections held from 2000 to 2006, the average turnout in the 32 voting precincts located in the Bethel Census Area is 43.91 percent, which is over 13 percent

lower than the statewide average of 57.11 percent for those elections. [Pls.' Ex. 183, RFA 2 ¶¶ 113-50; Pls.' Ex. 141]

497. For statewide elections held from 2000 to 2006, of the 32 voting precincts located in the Bethel Census Area, all but five had voter turnout rates below the statewide average of 57.11 percent for those elections. [Pls.' Ex. 183, RFA 2 ¶¶ 113-50; Pls.' Ex. 141]

498. For every statewide election held from 2000 to 2006, the three voting precincts located in the City of Bethel not only fell below the statewide average turnout rate, but also the average turnout rate for the Bethel Census Area. [Pls.' Ex. 183, RFA 2 ¶¶ 113-50; Pls.' Ex. 141]

499. In the most recent Presidential Election in 2004, of the 32 voting precincts located in the Bethel Census Area, all but four had voter turnout rates below the statewide turnout rate of 66.06 percent. Overall, the turnout rate for the Bethel Census Area for that election was 45.86 percent, more than twenty percent lower than the statewide turnout rate. [Pls.' Ex. 183, RFA 2 ¶¶ 116-18, 129-32, 143-50; Pls.' Ex. 141]

500. In the most recent Presidential Election in 2004, each of the three voting precincts located in the City of Bethel had a turnout rate that was more than twenty percent lower than the statewide turnout rate of 66.06 percent: Bethel #1 had a turnout rate of 41.15 percent, or 24.91 percent lower than the statewide turnout rate; Bethel #2 had a turnout rate of 43.54 percent, or 22.52 percent lower than the statewide turnout rate; and Bethel #3 had a turnout rate of 41.38 percent, or 24.68 percent lower than the statewide turnout rate. [Pls.' Ex. 183, RFA 2 ¶¶ 116-18, 129-32, 143-50; Pls.' Ex. 141]

501. For the statewide special election held in April 2007, the average turnout in the 32 voting precincts located in the Bethel Census Area was 12.73 percent, which is roughly half the

statewide turnout rate of 24.79 percent for that election. All but three of the voting precincts in the Bethel Census Area fell below the statewide turnout rate for that election. [Pls.' Ex. 183, RFA 2 ¶¶ 116-18, 137-42, 151-54; Pls.' Ex. 142]

502. For the statewide special election held in April 2007, the three voting precincts in the City of Bethel had among the lowest turnout rates in the Bethel Census Area: Bethel #3, located at the Eddie Hoffman Senior Center, had a turnout rate of 7.47 percent, which was the third lowest turnout rate among the 31 precincts; Bethel #1 had a turnout rate of 9.93 percent, which was the fifth lowest turnout rate among the 31 precincts; and Bethel #2 had a turnout rate of 11.08 percent, which was the twelfth lowest turnout rate among the 31 precincts. [Pls.' Ex. 183, RFA 2 ¶¶ 116-18, 137-42, 151-54; Pls.' Exs. 142, 145]

#### **Defendants' Failure to Maintain Records**

503. The State of Alaska does not maintain records of registrars who speak covered languages such as Yup'ik. The State does not plan on having such a system in place until early 2009. [Pls.' Ex. 191, Brewster Dep., 31:1-15, 32:13-17]

504. The State does not have "confirmation or a CD to produce to indicate that indeed" translation of a public service announcement into Yup'ik "does happen." The State does not have any material to produce to Plaintiffs indicating whether any of the English-only materials it sends to broadcast stations are actually translated and are accurate. [Pls.' Ex. 191, Brewster Dep., 148:19-149:-17]

505. Plaintiffs' Exhibit 57 is the only record of audio tape announcements made in Yup'ik that the State has. [Pls.' Ex. 191, Brewster Dep., 149:7-10; Pls.' Ex. 183, RFA 2 ¶¶ 214-15]

506. The Region IV Supervisor does not have any phone records of calls made to native villages in the Bethel Census Area and is not sure whether she has spoken to members of tribal councils such as the Akiachak Tribal Council. [Pls.' Ex.159, Baker Dep., 19:13-24]

507. The Region IV Supervisor does not maintain a list of Yup'ik translators who are no-shows for scheduled election work. [Pls.' Ex.159, Baker Dep., 36:23-24]

508. The Region IV Supervisor does not maintain records of the number of new poll workers she recruits in each election. [Pls.' Ex.159, Baker Dep., 49:25-50:3]

509. The Region IV Supervisor does not keep records on the amount of time she spends on language assistance training, role-playing, or voter assistance during the general poll worker training and does not "keep track of the time spent on each topic." [Pls.' Ex.159, Baker Dep., 106:1-107:12, 118:24-119:4, 120:1-5]

510. Although the Region IV Supervisor claimed that some of the trained elections board workers trained new poll workers who had not gone to Bethel for training, she does not have any records indicating that training was actually conducted. [Pls.' Ex.159, Baker Dep., 113:5-21, 114:9-11]

511. The Region IV Supervisor does not keep any records for messages that she places with radio stations to go out in their daily telegram show, and has no knowledge of whether those messages are sent in Yup'ik. [Pls.' Ex.159, Baker Dep., 128:21-129:3]

512. The municipal clerk of the City of Bethel does not have any written documentation or recorded audio records of public service announcements made about city elections by local radio station KYUK. [Pls.' Ex. 189, Modigh Dep., 29:19-31:2, 41:10-11, 42:7-11, 46:11-12, 67:25-68:3]

513. The municipal clerk of the City of Bethel does not retain any records indicating which poll workers have completed training. [Pls.' Ex. 189, Modigh Dep., 96:7-11]

#### **Additional Remedies for Defendants' Violations**

514. Defendants need to have full-time outreach coordinators fluent in Yup'ik "who reach out in-person (and not by telephone or mail) to the native community for feedback." [Pls.' Ex. 176, Yazzie Decl. ¶ 80]

515. "Full-time and fully trained bilingual outreach coordinators are one of the most crucial parts of an effective language assistance program for native languages. Outreach coordinators are the key source of ensuring that all elections information is effectively communicated by elections officials to all native voters. They also help recruit translators, including: confirming their ability to serve as translators; providing translator training in English and the covered native language; preparing written and audio aids in the covered native language to help ensure translations are clear, complete, and accurate; trouble-shooting language assistance issues on Election Day; and identifying areas where language assistance can be improved based upon feedback from election officials, translators, voters, and what they observe. Outreach coordinators translate oral and written materials into the native language, work with native organizations and individuals to confirm those translations are accurate, and help distribute those materials to translators, poll workers, and the community." [Pls.' Ex. 176, Yazzie Decl. ¶ 82]

516. "Outreach coordinators need to be bilingual and fully fluent and literate in both English and the covered native language. They must be fully trained and certified in federal, state, and local election procedures, as well as in ways to provide effective training. They also

need to know, understand, and be able to translate and effectively communicate English election terms into the covered native language.” [Pls.’ Ex. 176, Yazzie Decl. ¶ 83]

517. “The full-time bilingual outreach coordinator should be assisted by additional bilingual outreach employees who the full-time coordinator hires and supervises. The number of those assistant bilingual outreach coordinators depends a great deal on the size of the jurisdiction because those coordinators have to travel a lot.... The number of assistant bilingual outreach employees needed for the Bethel Census Area should be determined based upon a realistic assessment of how many villages each can reasonably be expected to cover to perform their many duties. The assistants will have to travel a lot to provide the in-person community outreach and work with the tribes that the Defendants are not currently doing. There also will be a lot more work for the first few years building up a developing the language program that currently does not exist in the Bethel Census Area.” [Pls.’ Ex.176, Yazzie Decl. ¶¶ 89-90]

518. “The bilingual outreach coordinators also need to be given a separate travel budget, especially in a place like the Bethel Census Area, where the villages are so far apart.” [Pls.’ Ex.176, Yazzie Decl. ¶ 91]

519. “The bilingual coordinators also need to document all of their travel, including the dates of travel, who they met with, and a description of what they did. That documentation will help identify the community outreach that has been done, as well as how it can be improved.” [Pls.’ Ex. 176, Yazzie Decl. ¶ 92]

520. Federal observers need to be included as part of the remedy to act as “an independent check on the availability and quality of language assistance that Defendants are providing.” [Pls.’ Ex. 176, Yazzie Decl. ¶ 139]

DATED this 2<sup>nd</sup> day of May 2008.

s/jtucker

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### Certificate of Service

I hereby certify that on the 2<sup>nd</sup> day of May 2008, a true and correct copy of the foregoing Plaintiffs' Statement of Facts in Support of their Motion for a Preliminary Injunction was served electronically pursuant to the Court's electronic filing procedures upon the following:

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