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

ANNA NICK, BILLY MC CANN, DAVID O.
DAVID, and NELLIE MOSES,

Plaintiffs,

v.

BETHEL, ALASKA, a political and geographical
subdivision of the State of Alaska; SEAN
PARNELL, in his official capacity as Lieutenant
Governor for the State of Alaska; WHITNEY
BREWSTER in her official capacity as Director of
the Division of Elections for the State of Alaska;
BECKA BAKER in her capacity as Elections
Supervisor of the Nome Regional Elections Office;
SANDRA MODIGH in her capacity as municipal
clerk of Bethel

Defendants.

Case No.

COMPLAINT

INTRODUCTION

1. This is an action to enforce the statutory guarantees of language materials and assistance for limited-English proficient (“LEP”) Alaska Native United States (“U.S.”) citizens under Section 4(f)(4) of the Voting Rights Act of 1965 (“VRA”), as amended, 42 U.S.C. § 1973b(f)(4) (“Section 4(f)(4)”), Section 203 of the VRA, 42 U.S.C. § 1973aa-1a (“Section 203”), and voter assistance opportunities under Section 208 of the VRA, 42 U.S.C. § 1973aa-6 (“Section 208”), to obtain injunctive and declaratory relief pursuant to Section 3 of the VRA , 42 U.S.C. § 1973a, and 28 U.S.C. § 2201. Sections 4(f)(4) and 203 are collectively referred to herein as the “Bilingual Election Requirements.”

2. Plaintiffs for their Complaint against Defendants allege as follows:

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1343(a)(3)-(4), and 42 U.S.C. § 1973j(f). In accordance with the provisions of 28 U.S.C. § 2284, the Section 203 claim must be heard and determined by a court of three judges.

4. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims occurred in this district and defendants reside in this district.

PARTIES

5. Plaintiff Anna Nick is a 69 year-old Alaska Native U.S. citizen and registered voter who resides in the village of Akiachak, Alaska, which is within the Bethel Census Area. Her first and primary language is Yup’ik. She is illiterate as defined by the U.S. Census Bureau because she only finished fifth grade in primary school. She can read Yup’ik and some English.

Plaintiff Nick formerly served as a poll worker at Akiachak but resigned that position because she was unable to understand fully the English voting materials and accordingly found herself unable to assist others to understand the materials. Because of her limited-English proficiency, and because Defendants fail to comply with the Bilingual Election Requirements of the VRA, Plaintiff Nick is unable to participate meaningfully in the electoral process.

6. Plaintiff Billy McCann is a 78 year-old Alaska Native U.S. citizen and registered voter who resides in Bethel, Alaska, which is within the Bethel Census Area. His first and primary language is Yup'ik. He is illiterate as defined by the U.S. Census Bureau because he only finished second grade in primary school. Because of his limited-English proficiency, and because Defendants fail to comply with the Bilingual Election Requirements of the VRA, Plaintiff McCann is unable to participate meaningfully in the electoral process.

7. Plaintiff David O. David is a 74 year-old Alaska Native U.S. citizen and registered voter who resides in Kwigillingok, Alaska, which is within the Bethel Census Area. His first and primary language is Yup'ik. He is illiterate as defined by the U.S. Census Bureau because he only finished the fourth grade in primary school. Because of his limited-English proficiency, and because Defendants fail to comply with the Bilingual Election Requirements of the VRA, Plaintiff David is unable to participate meaningfully in the electoral process.

8. Plaintiff Nellie Moses is a 72 year-old Alaska Native, U.S. citizen who resides in Akiachak, Alaska, which is within the Bethel Census Area. She has registered to vote but in 2004 she discovered that her name was not on the list at her precinct for reasons unknown at this time. Because all voting materials are in English, she has been discouraged from attempting to re-register to vote. Her first and primary language is Yup'ik. She is illiterate as defined by the U.S. Census Bureau because she only finished third grade in primary school. Because of her

limited-English proficiency, and because Defendants fail to comply with the Bilingual Election Requirements of the VRA, Plaintiff Moses is unable to participate meaningfully in the electoral process.

9. Defendant Bethel, Alaska, is a political and geographical subdivision of the State of Alaska.

10. 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. ALASKA STAT. § 15.10.105.

11. Defendant Whitney Brewster is the Director of Elections for the State of Alaska. Defendant Brewster 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.

12. 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 the Bethel Census Area. ALASKA STAT. § 15.10.110.

13. Defendant Sandra Modigh is the municipal clerk of Bethel, Alaska and is responsible for conducting all municipal elections in the city of Bethel. ALASKA STAT. § 29.20.380.

FACTS RELEVANT TO ALL CLAIMS

A. The Bethel Census Area is Covered by the Bilingual Election Requirements of the VRA for Alaska Native Languages.

14. The Bethel Census Area is located in southwest Alaska. According to the 2000 Census, the Bethel Census Area has a total population of 17,127 persons, 81.6% of whom are

Alaska Native or American Indian. The city of Bethel, the most populous municipality of the Bethel Census Area, has a total population of 5,471 persons, 61.8% of whom are Alaska Native or American Indian.

15. 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 elections. The Bethel Census Area is a political subdivision of Alaska that has been separately covered under Section 203 since the 1980 Census, when the Census Bureau first used census areas to define political subdivisions.

16. The Bethel Census Area, as a political subdivision of the State of Alaska, is subject to the requirements of Section 4(f)(4) 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. § 55.5(b). The determination that the Bethel Census Area is covered by Section 4(f)(4) for Alaska Native languages is final and non-reviewable. 42 U.S.C. § 1973b(a)(9)(b); 28 C.F.R. § 55.4(a)(1).

17. The Bethel Census Area has been continuously covered under Section 4(f)(4) to provide bilingual elections in Alaska Native languages since October 22, 1975. 40 Fed. Reg. 49,422 (Oct. 22, 1975); 28 C.F.R. § 51, App. The Department of Justice has notified Bethel Census Area election officials regarding the bilingual election requirements of the Voting Rights Act. Upon information and belief, in 2002 and 2004 and at other times, the Department of Justice sent letters to Bethel Census Area election officials to remind those officials of their duties under the Voting Rights Act to provide language assistance.

18. In the most recent Section 203 determinations made on July 26, 2002, the Census Bureau listed Eskimo as a covered minority language group in the Bethel Census Area. *See*

Voting Rights Act Amendments of 1992, Determinations Under Section 203, 67 Fed. Reg. 48,871 (July 26, 2002) (to be codified at 28 C.F.R. pt. 55) (“2002 Census Determinations”).

19. According to the 2002 Census Determinations, the Bethel Census Area has 9,510 voting age U.S. citizens. Among all voting age U.S. citizens in the Bethel Census Area, 20.82%, or 1,980 persons, are LEP in the covered Eskimo language. The illiteracy rate among the Eskimo LEP voting age U.S. citizen population is 21.46%, nearly sixteen times the national illiteracy rate of 1.35%.

20. According to the 2002 Census Determinations, the Bethel Census Area includes a total of 24 Alaska Native Village Statistical Areas (“ANVSAs”) that are separately covered under Section 203 for an Eskimo language. Attachment A shows the identified LEP rates among voting age U.S. citizens and illiteracy rates among LEP voting age U.S. citizens in the Bethel Census Area ANVSAs.

B. Defendants Have Failed to Comply with the Bilingual Election Requirements of the VRA for the Alaska Native Language Covered in the Bethel Census Area.

21. Because the Bethel Census Area is subject to the requirements of Section 4(f)(4) and Section 203, “any voter registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” that Defendants provide in English also must be furnished in the covered Alaska Native language to voters who speak that language, so that those voters can be effectively informed of and participate fully in all voting-connected activities. 42 U.S.C. § 1973aa-1a.

22. The predominant language used by Alaska Natives in the Bethel Census Area is the Eskimo language of Yup’ik. More than 10,000 persons in the Bethel Census Area speak Yup’ik.

23. Yup'ik is a historically written language. In recognition of its widespread use among LEP Yup'ik residents of the Bethel Census Area, the State of Alaska, including but not limited to the Department of Fish and Game, has disseminated non-election related public service announcements written in Yup'ik. Upon information and belief, written Yup'ik has been taught in state schools for more than 25 years. Furthermore, Yup'ik society has developed a cultural practice wherein younger Yup'ik speakers read written Yup'ik to the elders who are not literate and who do not speak English.

24. Defendants must provide written voting materials in the Yup'ik language because it is historically written. Defendants must provide oral language assistance for all voting materials in the Alaska Native language covered in the Bethel Census Area. 42 U.S.C. § 1973aa-1a(c).

25. In conducting elections in the Bethel Census Area, Defendants have failed to furnish in the covered Alaska Native languages, the information, assistance, and voting materials needed by Alaska Native, voting age U.S. citizens to participate effectively in the electoral process, including, but not limited to, the following:

- a) Defendants have failed to translate fully all written voting materials into the Yup'ik language, including, but not limited to: publicity and advertisements for voter registration; poll worker recruitment; candidate qualifying; election dates; absentee voting opportunities; polling place locations and assignments; voting machine instructions; the official ballot for federal, state, and local elections; the annual register form used to gather information for voter lists; signage at the polls; absentee voting materials; voter information posted on the Internet by the Division of Elections; and voter information guides and sample

ballots required by state law for those general and primary elections where there is a ballot proposition scheduled to appear on the ballot.

b) Defendants have failed to provide effective oral language assistance for voting materials and other election information in the covered Alaska Native languages, including oral language assistance for the written voting materials described in the preceding paragraph.

c) Defendants have failed to recruit, appoint, train, and maintain an adequate pool of bilingual poll officials on a consistent basis to provide covered Alaska Native LEP voters with effective language assistance, or provide for an alternative means of oral language assistance.

d) Defendants have failed to train adequately the existing pool of election officials and poll officials concerning language assistance requirements in the covered Alaska Native languages.

e) Defendants have failed to mail voting materials to households with registered voters in Alaska Native villages as required by law. ALASKA STATS. §§ 15.58.010 and 15.58.080.

C. Defendants Have Failed to Comply with the Voting Assistance Requirements of the VRA.

26. Section 208 of the VRA provides that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.” 42 U.S.C. § 1973aa-6.

27. In violation of Section 208 of the VRA, defendants, their employees, and agents have failed to allow Alaska Native LEP voters the assistants of their choice through the following practices:

- a) By falsely informing LEP voters that they must go into the voting booth alone and that no one is allowed to see their votes.
- b) Denying voters their right to select their assistant of choice, other than the voter's employer or agent or agent of that employer or officer or agent of the voter's union.
- c) Denying voters their right to receive assistance from the person of their choice at any stage of the voting process, including in the voting booth.
- d) Requiring Alaska Native LEP voters to be assisted by poll workers who do not speak Yup'ik fluently.
- e) Requiring all assistance to take place outside of the voting booth, including but not limited to translations of ballot questions and candidates and instructions on how to cast a ballots.

FIRST CAUSE OF ACTION

(Violation of Sections 4(f)(4) and 203 of the VRA)

28. Plaintiffs restate and incorporate herein the allegations in Paragraphs 1 through 27 of this Complaint.

29. Defendants' failure to provide Alaska Native LEP voting age U.S. citizens with language election assistance and information, as described above, constitutes a violation of Sections 4(f)(4) and 203 of the VRA.

30. Unless enjoined and monitored by this Court, Defendants will continue to violate Sections 4(f)(4) and 203 of the VRA by failing to provide the LEP Alaska Native language-speaking voting age U.S. citizens of the Bethel Census Area with the language election information and assistance necessary for their effective participation in the electoral process.

SECOND CAUSE OF ACTION

(Violation of Section 208 of the VRA)

31. Plaintiffs restate and incorporate herein the allegations in Paragraphs 1 through 30 of this Complaint.

32. Defendants' failure to allow voters to receive necessary assistance from a person of their choice, other than their employers or union officials, including in the voting booth, as described herein, is a violation of Section 208 of the VRA.

33. Unless enjoined by this Court, Defendants will continue to violate Section 208 by failing to provide the Bethel Census Area's voters the opportunity to receive assistance from persons of the voters' choice and by limiting the scope of the assistance voters can receive from their chosen assistors.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment against Defendants which:

(1) Declares that the practices of Defendants set forth above violate Section 208 of the VRA, 42 U.S.C. §1973aa-6;

(2) Declares that Defendants have failed to provide in an effective manner Alaska Native language election information and assistance necessary for the political participation of LEP Alaska Native language-speaking voters, in violation of sections 4(f)(4) and 203 of the VRA, 42 U.S.C. §§ 1973b(f)(4), 1973aa-1a;

(3) Enjoins the Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from engaging in any act or practice that denies the rights secured by Section 208 of the VRA, 42 U.S.C. § 1973aa-6;

(4) Enjoins the Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing to provide in an effective manner Alaska Native language election information and assistance to LEP voters as required by Sections 4(f)(4) and 203 of the VRA, 42 U.S.C. §§ 1973b(f)(4), 1973aa-1a;

(5) (6) Requires Defendants to develop and implement a remedial plan to ensure that the voters in the Bethel Census Area are permitted assistance from persons of their choice when they cast their ballots, in compliance with Section 208 of the VRA, 42 U.S.C. § 1973aa-6;

(7) Requires Defendants to develop and implement a remedial plan to ensure that Alaska Native language-speaking voters with limited English proficiency are able to understand, learn of, and participate in all phases of the electoral process as required by Sections 4(f)(4) and 203 of the VRA, 42 U.S.C. §§ 1973b(f)(4), 1973aa-1a;

(8) Authorizes the appointment of federal observers for elections held in the Bethel Census Area pursuant to Section 3(a) of the VRA, 42 U.S.C. § 1973a(a).

Plaintiffs further pray that this Court order such additional relief as the interests of justice may require, together with the fees, costs, and disbursements incurred in maintaining this action in accordance with the provisions of the Voting Rights Act.

DATED this 11th day of June 2007.

Respectfully submitted,

s/nlandreth

Natalie A. Landreth (Bar no. 0405020)
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Certificate of Service

I hereby certify that on the 11th day of June 2007, a true and correct copy of the foregoing Complaint was mailed via first-class mail upon the following: Anchorage, AK, 99501-3657.

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