

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

MIKE TOYUKAK et al.,

Plaintiffs,

v.

BYRON MALLOTT,<sup>1</sup> et al.,

Defendants.

Case No. 3:13-cv-00137-SLG-LCL

**STIPULATED JUDGMENT AND ORDER**

**I. PREAMBLE AND REMEDIES**

WHEREAS, Plaintiffs filed this action to enforce the statutory guarantee of language assistance for limited-English proficient (LEP) Alaska Native, United States (U.S.) voting-age (18 years of age and older) citizens under Section 203 of the Voting Rights Act (VRA), 52 U.S.C. § 10503 (redesignated from 42 U.S.C. § 1973aa-1a) (Section 203), and the voting guarantees of the Fourteenth and Fifteenth Amendments of the United States Constitution, and to obtain injunctive and declaratory relief pursuant to Section 3 of the VRA, 52 U.S.C. § 10302 (redesignated from 42 U.S.C. § 1973a), and 28 U.S.C. § 2201; and

WHEREAS, Plaintiffs contend that Defendants have failed to provide effective language assistance to LEP Alaska Native voting-age citizens in the Dillingham Census Area (DCA), Wade Hampton Census Area (WHCA), and Yukon-Koyukuk Census Area (YKCA) of Alaska; and

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d), Lieutenant Governor Byron Mallott was automatically substituted as a party defendant as the successor in office to Mead Treadwell.

WHEREAS, the Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1343(a)(3)-(4), and 52 U.S.C. § 10308(f) (redesignated from 42 U.S.C. § 1973j(f)) and venue is appropriate under 28 U.S.C. § 1391(b); and

WHEREAS, Plaintiffs are two individual LEP Yup'ik-speaking Alaska Native U.S. citizens of voting-age who are registered to vote or are eligible to register to vote and reside in the DCA and WHCA and four tribal councils in the DCA, WHCA, and YKCA that are the elected governments for their respective villages, which include LEP Yup'ik-speaking or Gwich'in-speaking Alaska Native voting-age U.S. citizens who are registered to vote or are eligible to register to vote in federal and state elections; and

WHEREAS, Defendants, in their official capacities, are the Lieutenant Governor of the State of Alaska, the Director of the Division of Elections for the State of Alaska, and the Region III and Region IV Supervisors who are responsible under Alaska law for conducting elections in the DCA, WHCA, and YKCA and are collectively referred to as “the Division of Elections” or “the Division”; and

WHEREAS, the Division administers all federal, statewide, and Regional Educational Attendance Area (REAA) elections in the DCA, WHCA, and YKCA; and

WHEREAS, this Stipulated Judgment and Order (“Stipulated Judgment” and/or “Order”) is entered into by and between Plaintiffs and Defendants, hereinafter referred to jointly as the “Parties;”

WHEREAS, this Order takes effect upon issuance by this Court (the “Effective Date”);  
and

WHEREAS, the DCA, WHCA, and YKCA have been continuously covered under either Section 4(f)(4) of the VRA and/or Section 203 of the VRA since October 22, 1975, 40 Fed. Reg. 49,422 (Oct. 22, 1975); 28 C.F.R. § 51, App.; and

WHEREAS, it is undisputed that Section 203 applies to the villages in these three census areas for the Yup'ik (in the DCA and WHCA) and Gwich'in (in the YKCA) languages; and

WHEREAS, in the most recent Section 203 coverage determinations, coverage for Yup'ik was triggered in the DCA (*see* Dep't of Commerce, Bureau of the Census, Voting Rights Act Amendments of 2006, Determinations Under Section 203 (2011 Coverage Determinations), 76 Fed. Reg. 63,602 (Oct. 13, 2011) (to be codified at 28 C.F.R. pt. 55)), and on November 1, 2011, the United States Department of Justice notified Defendants that Section 203 coverage of the DCA was triggered by the villages of Aleknagik, Clarks Point, Dillingham, Ekwok, Manokotak, Koliganek, New Stuyahok, Togiak, and Twin Hills; and

WHEREAS, the most recent Section 203 coverage determinations triggered coverage for Yup'ik in the WHCA (*see* 2011 Coverage Determinations), and on November 1, 2011, the United States Department of Justice notified Defendants that Section 203 coverage of the WHCA was triggered by the villages of Alakanuk, Algaaciq, Andreafsky (St. Mary's), Chevak, Emmonak, Hooper Bay, Kotlik, Marshall, Mountain Village, Nunam Iqua, Pilot Station, Pitkas Point, Russian Mission, and Scammon Bay; and

WHEREAS, the most recent Section 203 coverage determinations triggered coverage for Alaskan Athabascan (including Gwich'in) in the YKCA (*see* 2011 Coverage Determinations), and on November 1, 2011, the United States Department of Justice notified Defendants that Section 203 coverage of the YKCA was triggered by the villages of Allakaket, Beaver, Fort Yukon, Galena, Grayling, Holy Cross, Hughes, Huslia, Kaltag, Koyukuk, Minto, Nenana,

Nulato, Ruby, Shageluk, and Tanana all for Alaskan Athabascan, and Defendants acknowledge and agree that Section 203 coverage applies to Arctic Village and Venetie; and

WHEREAS, according to the census data underlying the 2011 Coverage Determinations, the DCA has 2,050 U.S. citizens of voting-age who speak Yup'ik, approximately 18.3 percent of whom are LEP, and the illiteracy rate among those LEP voters is about 32 percent; and

WHEREAS, according to the census data underlying the 2011 Coverage Determinations, the WHCA has 3,195 U.S. citizens of voting-age who speak Yup'ik, approximately 16.1 percent of whom are LEP, and the illiteracy rate among those LEP voters is about 21.4 percent; and

WHEREAS, according to the census data underlying the 2011 Coverage Determinations, the YKCA has 2,665 U.S. citizens of voting-age who speak Alaskan Athabascan, approximately 6.4 percent of whom are LEP, and the illiteracy rate among those LEP voters is about 14.7 percent; and

WHEREAS, the 2011 Coverage Determinations were “effective upon publication in the Federal Register” and are not “subject to review in any court” (52 U.S.C. § 10503(b)(4) (redesignated from 42 U.S.C. § 1973aa-1a(b)(4))); and

WHEREAS, the DCA, WHCA, and YKCA have not bailed out from coverage under Section 203 pursuant to Section 203(d) of the VRA, 52 U.S.C. § 10503(d) (redesignated from 42 U.S.C. § 1973aa-1a(d)); and

WHEREAS, following the Court’s decision on the law of the case [Dkt. 124], this case proceeded through a two-week trial that concluded on July 3, 2014, and resulted in a partial Decision on Record issued by the Court on September 3, 2014 [Dkt. 223], and an Interim Order issued by the Court on September 22, 2014, to implement relief for the November 4, 2014

General Election [Dkt. 226], with the pertinent portions of those rulings provided in appendices A-C and incorporated by reference into this Order; and

WHEREAS, the Parties want to collect reliable information about the conduct of elections in Alaska and the language assistance provided and to provide this information to the Court; and

WHEREAS, Defendants do not admit and specifically deny liability on all claims and do not concede the Court's holdings were correct, but to avoid protracted and costly litigation, the Parties have conferred in good faith and agreed that this lawsuit should be resolved through the terms of this enforceable Order. Accordingly, the Parties hereby freely and voluntarily consent to the entry of this Order, after having an opportunity to confer with legal counsel, as indicated by the signatures of the Parties and/or their respective counsel; and

WHEREAS, Defendants enter into this Order in good faith and will take all reasonable actions to accomplish the goals specified herein; and

WHEREAS, in exchange for the terms of this Order, Plaintiffs agree to dismiss their claim under the Fourteenth and Fifteenth Amendments to the United States Constitution and their request for relief under Section 3(c) of the Voting Rights Act, and waive further hearings and entry of findings of fact on the constitutional claim and on their request for Section 3(c) relief, without prejudice to Plaintiffs' right to rely on the underlying facts and findings of this case; and

WHEREAS, the Parties stipulate that each provision of this Order is appropriate and necessary;

**It is hereby ORDERED, ADJUDGED, AND AGREED that:**

1. The Court finds this Order is “fair, reasonable and equitable and does not violate the law or public policy,” *Sierra Club v. Elec. Controls Design, Inc.*, 909 F.2d 1350, 1355 (9th Cir. 1990), including the requirements of the Voting Rights Act, and the Court is “satisfied that the [Order] represents a ‘reasonable factual and legal determination,’” *United States v. Oregon*, 913 F.2d 576, 581 (9th Cir. 1990) (internal cite omitted), consistent with the Court’s previous decisions in this case including the Decision on the law of the case, the partial Decision on Record, and the Order re: Interim Remedies (Interim Order) after a trial on the merits of Plaintiffs’ claims. [Dkts. 124, 223, 226]

2. The Court adopts the background and terms as set forth herein and enters the relief as set forth herein.

3. Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Defendants, the Division, its agents, employees, contractors, successors, and all other persons acting in concert with or on behalf of the Division, are permanently enjoined from violating the requirements of Section 203 in the DCA, WHCA, and YKCA and are ordered to implement the remedial terms identified in this Order.

4. The terms of this Order are final and binding and shall apply to all federal, state, and local elections administered by Defendants, the Division, and its agents, employees, contractors, successors, and all other persons acting in concert with or on behalf of the Division. Whenever Defendants or the Division enter into an election services contract with any other person, entity, political subdivision, or political party to conduct an election on behalf of that entity, Defendants shall require such person or entity to agree to abide by the terms of this Order

as if such person or entity were a party to this Order, and consistent with the responsibility of each person or entity to comply fully with Section 203 of the Voting Rights Act.

5. The terms of this Order shall supersede any and all conflicting and inconsistent policies, practices, or procedures pertaining to the subject matter of this Order that are used by Defendants, the Division, and its agents, employees, contractors, successors, and all other persons acting in concert with or on behalf of the Division.

6. No term of this Order shall be construed for or against either party because it has been negotiated by the Parties and represents the Parties' mutual agreement.

7. This Order shall remain in effect from the Effective Date through December 31, 2020, unless the Court modifies that term. The requirements of this Order shall apply in the DCA, WHCA, and YKCA (as to Gwich'in only in the YKCA) from the Effective Date through December 31, 2020, without regard to any changes in Section 203 coverage as a result of any determinations that may be made by the Director of the Census and/or the Attorney General of the United States or the U.S. Department of Justice during the Order's term.

8. Notwithstanding the Effective Date, the remedies ordered herein do not apply to the 2015 REAA election,<sup>2</sup> except that: (a) the 2015 REAA election will be conducted in substantial compliance with the Court's Interim Order of September 22, 2014 [Dkt. 226)]; (b) Defendants shall submit a post-election report pursuant to Paragraph III(R)(2)(b) that covers all of the information required in the Interim Order, identifying by paragraph all information being reported; and (c) Paragraph I(10), providing for appointment and authorization of Election Observers, goes into effect as of the Effective Date.

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<sup>2</sup> The 2015 REAA election will occur on October 6, 2015, approximately one month after the Effective Date. The Parties agree that the Division will not have sufficient time to implement the other remedies in this Order by the 2015 REAA election.

9. At any time after entry of this Order, either party may petition this Court for an Order to enforce the terms of this Order, request clarifications or instructions, and/or apply for any other appropriate relief.

10. Pursuant to Section 3(a) of the VRA, 52 U.S.C. § 10302(a) (redesignated from 42 U.S.C. § 1973a(a)), during the term of this Order, Election Observers are appointed and are authorized to attend and observe elections and election activities that federal law authorizes, including training, in the DCA, WHCA, and YKCA.

11. Entry of this judicially approved settlement agreement is considered a final judgment on the merits.

12. Defendants shall implement the improvements in language assistance identified in this Order.

13. This Stipulated Judgment represents the entire agreement between the Parties. Any other oral or written representations or agreements of any kind concerning the subject matter of this Stipulated Judgment are of no force or effect.

14. This Stipulated Judgment may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

15. The Court shall retain jurisdiction of this action through December 31, 2020 to enter further relief or such other orders as may be necessary to effectuate the terms of this Order and to ensure compliance with Section 203 of the Voting Rights Act and the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution.

16. If any party, before December 31, 2020, shall commence proceedings either to seek compliance with this Order or to seek other relief pursuant to this Order, including but not limited to relief necessary to implement the Order, to modify one or more of its terms, or to

extend the term (duration) for which the Order is in effect, the Court shall retain jurisdiction over this case until all issues relating to such proceedings have been fully resolved.

## **II. THE COURT'S PRIOR DECISIONS IN THIS CASE**

On July 19, 2013, Plaintiffs filed their Complaint. On June 4, 2014, before trial of this matter, the Court issued a Decision on Record to establish the law of the case to be applied in its consideration of Plaintiffs' claims, provided in Appendix A.<sup>3</sup> [Dkt. 124] On September 3, 2014, after a two-week trial of this matter, the Court issued a partial Decision on Record in favor of Plaintiffs on their claim under Section 203 of the Voting Rights Act. The Court took under advisement Plaintiffs' constitutional claim under the Fourteenth and Fifteenth Amendments. That decision is provided in Appendix B. [Dkt. 223] At the Court's direction [Dkt. 223 at 22], Defendants [Dkt. 224] and Plaintiffs [Dkt. 225] each provided input on the scope of interim relief to be implemented for the November 4, 2014 General Election. On September 22, 2014, after considering the Parties' respective submissions, the Court entered an Order granting interim relief for that election. [Dkt. 226] The Court's Interim Order is provided in Appendix C.

## **III. REMEDIES AGREED TO BY THE PARTIES**

### **A. Adjustments to the Interim Order of September 22, 2014 [Dkt. 226]**

1. Paragraph 4 of the Interim Order [Dkt. 226] is modified to include in the Official Election Pamphlet (OEP) the following information:

- (a) Language assistance is available for all information in the OEP;
- (b) Voters are entitled to help, in their village dialect, with all information in the OEP;
- (c) A summary of pre-election language assistance available,

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<sup>3</sup> Where applicable, authority referenced by the Court in its bench ruling has been supplemented with complete citations.

including VHF radio announcements, community meetings, voter registration and absentee ballot assistance opportunities;

(d) An explanation to voters that help is available both on and before Election Day; and

(e) A toll-free number for voters to determine the identity of bilingual workers in the voter's village and when events are scheduled. The identity of all bilingual workers, listed by village, shall be on a document that can be referenced by Division staff for any calls that they receive, and this information will be made available to any voter upon request.

2. Paragraphs 5 and 19 of the Interim Order [Dkt. 226] are modified as follows:

(a) Certificates of Outreach will be modified to add in confirmation that the outreach worker has made himself or herself available to translate the OEP, knows how to translate and agrees to translate the OEP, and has conducted at least one informational meeting with voters in their village or met with voters on a one-on-one basis;

(b) The Division will provide outreach workers with a list of dates by which each of their assigned tasks should be completed;

(c) Each outreach worker will complete and return the Certificate of Outreach; and

(d) If the outreach worker fails to complete the Certificate of Outreach, the Division may confirm by telephone the tasks that the outreach worker has completed and the dates of completion, preparing their confirmation under penalty of

perjury.

3. Paragraph 6 of the Interim Order [Dkt. 226] providing for a cover letter to the tribal councils accompanying election materials and asking that tribal members be informed is modified to also require that the Division:

(a) Disseminate all written voting materials identified in the Order;  
and

(b) Explain how the voting materials are to be used or disseminated by the tribal council.

4. Paragraphs 7-10 of the Interim Order [Dkt. 226] shall be completed at least thirty days before each election. The dates on the posters will be modified to cover the specific election.

5. Paragraphs 11-13 of the Interim Order [Dkt. 226] are modified to reflect that those materials will be included with the Election Day supplies sent to poll workers approximately three weeks before each election.

6. Paragraph 14 of the Interim Order [Dkt. 226] is modified as follows:

(a) Shall include the Gwich'in audio and materials as well as Yup'ik audio and materials that have been prepared by the Division; and

(b) Shall be posted on the website at least three weeks before the election.

7. Paragraph 15 of the Interim Order [Dkt. 226] is modified as follows:

(a) The identified election materials shall be disseminated before each primary, general, or special election for which the Division disseminates an OEP;

(b) The entire OEP must be translated into written Gwich'in and Yup'ik (with the dialectical differences identified in Paragraph III(B)(1) noted) and distributed at least twenty-two days before any election for which the Division disseminates an OEP, except that candidate statements (federal and state offices and judicial candidates) and Judicial Council recommendations will be translated only if they are received by the Division at least thirty days before the applicable statutory deadline. The Division shall include an instruction to candidates and to the Judicial Council that:

(a) encourages candidate statements and Judicial Council recommendations be provided to the Division according to this schedule for candidates running for offices that are on the ballot in the DCA, WHCA, and YKCA; and (b) states that the statements or recommendations must be filed with the Division at least thirty days before the applicable statutory deadline if they wish to have their statement or recommendation translated.

8. Paragraph 17 of the Interim Order [Dkt. 226] shall be modified to require at least one trained bilingual outreach worker and one bilingual poll worker required for each village and to also provide:

(a) Defendants shall verify the language abilities of each bilingual outreach worker or poll worker to confirm they are fluent and literate in English and the covered language/dialect, both oral and written, but it shall be sufficient verification for Defendants, without limitation, to obtain written confirmation from the tribal council that the outreach worker or poll worker has these qualifications;

(b) Defendants will endeavor to use workers recommended by the tribal council. If no worker is identified by the tribal council, then Defendants will identify and recruit a worker who is bilingual and literate in English and the covered

language/dialect, both oral and written;

(c) To the extent it has not already determined the language abilities of a bilingual worker, the Division will confirm the worker's language abilities by: (1) having a qualified person who speaks the language/dialect converse with the worker in the language/dialect; and (2) ask the worker to read out loud voting materials translated into the language/dialect;

(d) Each worker shall agree in writing their willingness to serve as a bilingual worker and indicate that they feel comfortable providing the translations and language assistance. If the worker fails to agree in writing, the Division may confirm by telephone the worker has agreed to serve as a bilingual worker, preparing their confirmation under penalty of perjury;

(e) The tribal councils may recommend to the Division that a bilingual poll worker be replaced;

(f) The Division and the tribal council shall collaborate in determining whether the person recommended by the tribal council will be used as a bilingual worker; and

(g) Subparagraph (a) above does not absolve the Division of any obligations it has under Section 203 of the VRA.

## **B. Dialects**

1. Yup'ik in the DCA and WHCA. The Yup'ik Translation Panel (YTP) shall accommodate the following dialects of Yup'ik in its translation of all voting materials and election information in the DCA and WHCA: Bristol Bay Yup'ik (BB); Central Yup'ik (GCY); Hooper Bay/Chevak Yup'ik (HBC); Norton Sound Yup'ik (NS); and Yukon Yup'ik (Y). In

addition, if a tribal council in the WHCA requires materials in the Nunivak dialect, it must inform Defendants by March 1 of the same year and the Defendants shall provide such materials. The dialect to use for each village in the DCA and WHCA shall be determined by the YTP, and the tribal council(s) in the WHCA may also request the dialect(s) they believe are most understandable for their village(s). Tribal council requests are limited to the dialects specified in this paragraph and, if submitted to Defendants by June 1 of the same year, shall be honored.

2. Gwich'in in the YKCA. The Gwich'in Translation Panel (GTP) shall use Gwich'in in its translations of all voting materials and election information.

**C. Glossaries of Election Terms**

1. The Yup'ik glossary shall be updated to include common election terms that appear on forms and instructions or on ballots that do not presently appear in the glossary. On or about January 15, 2016, Plaintiffs shall provide the Division with a list of any other terms they believe should be included in the glossary. The YTP shall review updates to the glossary and identify any additional words to be added to the glossary. The Division shall complete the initial update on or about June 1, 2016, with additional updates to follow as the YTP determines appropriate.

2. A glossary shall be prepared by the GTP in Gwich'in using the same set of common election terms in the updated Yup'ik glossary. This requirement shall be completed on or about July 1, 2016.

**D. Toll-Free Number for Language Assistance**

1. Defendants' voting materials shall reflect that language assistance is available in the covered languages and dialects as identified in Paragraph III(B).

2. Defendants will have available at least one bilingual translator for each language and dialect spoken in the DCA, WHCA, and YKCA as identified in Paragraph III(B) to provide language assistance by phone.

3. Defendants shall promptly arrange a call between the voter and an appropriate translator, depending upon the language and dialect of the voter who is calling.

4. The Division shall document the translator's name, their language and dialect, date and duration of the call with the voter calling the toll-free number.

#### **E. Translation Panels**

1. The YTP shall have at least eight members that shall represent a knowledge, collectively, of all Yup'ik dialects identified in Paragraph III(B)(1). On or about January 15, 2016, Plaintiffs shall suggest to the Division the names of people qualified to serve on the YTP, to include the Yup'ik dialects they speak. On or about February 15, 2016, the Division shall appoint the members of the YTP.

2. A GTP shall be created with at least three bilingual speakers who are proficient in performing oral and written translations into Gwich'in. On or about January 15, 2016, Plaintiffs shall suggest to the Division the names of people qualified to serve on the GTP. On or about February 15, 2016, the Division shall appoint the members of the GTP.

3. The Division will pay each member of the two Translation Panels \$50-\$75 an hour.

#### **F. Procedures for Translations**

1. All translations identified in the Interim Order [Dkt. 226 ¶¶ 3, 7-12, 15] shall:

(a) For Yup'ik, include adjustments for any differences in the dialects

identified in Paragraph III(B)(1). If minor, they can be done through footnotes. If more numerous or substantial adjustments are necessary for a particular dialect, they can be done through a separate document for that dialect which identifies the dialect. The YTP shall determine whether the dialectical differences are sufficient to warrant using a separate document instead of footnotes; and

(b) Be in writing, to facilitate complete, accurate, and uniform oral translations.

2. Translations of the official ballot, sample ballot, and glossary shall be completed by a quorum (majority) of the members of each of the two translation panels described in Paragraph III(E) of this Order. For example, if the YTP has eight members, at least five members may be used to complete the translations as long as those members can identify and adjust for the dialectical differences identified in Paragraph III(B)(1). If the GTP has three members, at least two members may be used to complete the translations.

3. Translations of the pro/con statements, neutral summaries, and summary of statement of costs may be completed by one translator and shall be verified by at least one additional translator, as long as the Yup'ik translators can identify and adjust for the dialectical differences identified in Paragraph III(B)(1).

4. Translations of other voting materials and election information shall be completed by translation panel members to the maximum extent feasible, provided that all Yup'ik translations are adjusted for the dialectical differences identified in Paragraph III(B)(1). Whenever feasible, each translation shall be verified by at least one other translator.

5. The Division shall make all reasonable efforts to recruit bilingual recorders to provide audio of the translations identified in paragraphs 14-15 of the Interim Order

[Dkt. 226] and an audio translation of the glossaries. On or about January 15, 2016, Plaintiffs shall suggest to the Division names of people qualified to serve as bilingual recorders, to include for Yup'ik-speakers the Yup'ik dialects they speak. The Division will pay a bilingual recorder \$50-\$75 an hour, will have the bilingual recorder sign an agreement of their willingness to work, and will give the bilingual recorder a deadline for each recording. If a bilingual recorder misses the first deadline by more than five days, the Division will endeavor to replace the bilingual recorder and will have the replacement bilingual recorder sign an agreement of their willingness to work.

**G. Bilingual Outreach Workers and Poll Workers, and Language Assistance Compliance Manager**

1. The Division shall recruit and retain a full-time employee responsible for administrating and coordinating all activities necessary for the Division to comply with Section 203 of the VRA (“Language Assistance Compliance Manager”).

2. The Division shall provide Yup'ik language assistance in all villages in the DCA and WHCA. The Division shall provide Gwich'in language assistance in the following villages in the YKCA: Arctic Village, Beaver, Birch Creek, Chalkyitsik, Circle, Fort Yukon, and Venetie.

3. In each village, the Division shall provide at least ten hours of outreach for each election in which there is no pamphlet, and between twenty to thirty hours of outreach for each election for which there is a pamphlet. Thirty is the maximum number of hours authorized to be paid to an outreach worker unless the outreach worker first obtains the Division's approval.

4. In the Division's initial communication with the tribal councils about upcoming election information, the Division shall include a statement that the tribal council may

recommend a bilingual outreach worker or poll worker, and may request at any time that a bilingual outreach worker or poll worker be replaced.

5. The Division will consult with the tribal councils in the DCA, WHCA, and YKCA and ask that the tribal councils provide the Division with a list of names and contact information of persons who have been identified by the tribal councils as being bilingual and literate in English and the covered language/dialect.

6. The Division shall secure the written agreement of replacement bilingual workers. If the replacement bilingual worker fails to agree in writing, the Division may confirm by telephone the worker has agreed to serve as a bilingual worker, preparing their confirmation under penalty of perjury.

7. If the Division learns that a person scheduled to work as a bilingual outreach worker has not performed or cannot perform their assigned tasks, where feasible the Division shall recruit and train a replacement bilingual outreach worker.

#### **H. Mandatory Training**

1. The Division will make all poll workers aware of language assistance requirements in its regular training sessions.

2. Mandatory in-person training. All bilingual election workers are required to receive the training identified in this Order. If a bilingual outreach worker or bilingual poll worker fails to attend in-person training, wherever feasible the Division must reschedule training for that worker or replace that worker who will be scheduled to attend the next in-person training.

3. Frequency. In-person training shall be done every even-numbered year and for elections in odd-numbered years in which a special ballot measure appears, at the time

identified in this Order. During odd-numbered years in which there is no special ballot measure, telephonic training shall be conducted.

4. Duration of Bilingual Outreach Worker and Bilingual Poll Worker Training. Training for bilingual election workers must be for a reasonable amount of time sufficient to cover the topics in paragraph 5 below. The Division shall make travel arrangements for those election workers who must travel to the training location that are sufficient to ensure that all bilingual election workers attend all of the mandatory in-person training. The Division shall pay for all associated costs of travel, lodging, and per diem.

5. Content of language training. Language assistance training shall be in addition to any training provided for election procedures and Alaska elections law; the training will focus exclusively on language assistance and practicing available translations. The Division may schedule this language training to be on a day consecutive to its more general training provided to all poll workers. The language training shall adequately cover the following topics:

- (a) Summary of language assistance required under the VRA;
- (b) Procedures for identifying and assisting voters who may need language assistance;
- (c) Advising all voters of the availability of translation assistance;
- (d) Instructions for providing assistance on voter registration;
- (e) Instructions for providing assistance in completion of absentee ballot applications or their equivalent (e.g., vote by fax, etc.);
- (f) Special instructions for workers covering Permanent Absentee Voting (PAV) locations;
- (g) Instructions on early voting procedures and schedule;

(h) Instructions for casting a ballot on a voting machine, including how to use the audio translation feature;

(i) Instructions on assisting voters who need to cast a challenged ballot;

(j) Translations on the content of the OEP available at the time of training, which shall be provided to workers in writing in the applicable language and dialect as identified in Paragraph III(B);

(k) How to use written translations to provide complete, accurate, and uniform translations in the covered language and dialect;

(l) Instructions on how to translate procedural voting materials (forms and instructions);

(m) Instructions on conducting informational meetings before the election to discuss the ballot and registration and voting procedures;

(n) Practice performing available translations;

(o) Translation of the entire ballot into the language/dialect;

(p) Practicing the translation of the ballot with each translator; and

(q) A checklist summarizing all of the workers' assigned duties under the Order and the expected dates of completion for pre-election and post-election activities.

6. Training materials. Training materials provided to bilingual outreach workers and poll workers shall facilitate training on all of the topics listed above. Bilingual workers shall be provided with copies of all written translations available at the time of the training to use for practice during the training, a training handbook, a checklist of their assigned

duties and expected completion dates, Election Day materials, and any other materials covering the training topics. Written translations not available at the time of this training shall be provided by mail to the bilingual worker when they become available.

7. Additional in-person training for bilingual poll workers for the General Election. After all remaining materials for the General Election become available, but before the General Election, the Division will conduct three in-person training sessions, one each for the DCA, WHCA, and YKCA, for the bilingual poll workers in those areas. The training shall cover any voting materials, ballot, ballot measures, pro/con statements, neutral summaries, bond questions, statements of costs, candidate statements, etc. not available during the earlier training session. Emphasis will be placed on practicing translations of ballot measures, ballots, and other information not provided in the initial training.

8. Distance training only to be provided in emergencies. Distance or phone training shall only be provided in exceptional cases, including if travel is not possible for any of the mandatory in-person training sessions due to inclement weather or if a bilingual outreach worker or bilingual poll worker is unable to perform their duties and there is insufficient time to provide in-person training to a replacement worker. Distance training must be done at least one (1) day before the election and can be by conference call. The training must be at least two (2) hours in duration and cover the topics from the regular training.

9. Documentation of training. Defendants shall maintain records of the following through the term of this Stipulation and Order:

- (a) The training agenda, to include all of the topics listed above;
- (b) Training materials disseminated to bilingual workers;
- (c) Audiovisual and other materials used during the presentation;

(d) Written role-playing scenarios covered during the training;

(e) Attendance list with the bilingual worker's printed name and village and their signature and sign-in and sign-out times. If one or more bilingual workers did not attend the complete training, then the Division must identify that fact and explain why their partial attendance was unavoidable; and

(f) Documentation of travel provided for training, to include Division employees and workers who attended.

10. Notice of Training. Defendants shall endeavor to provide notice of all trainings to bilingual election workers, to include the call-in information for distance training, at least fifteen days prior to training. If fifteen days' notice is not possible, notice shall be given as soon as practicable.

#### **I. Mandatory Pre-election Outreach**

1. Mandatory informational meetings. Pre-election outreach must include informational meetings. Performance of this requirement by outreach workers may be through one or more community-wide informational meeting(s), small group meeting(s), or one-on-one meetings. The informational meetings shall be to register voters and to cover the following election topics before the election:

(a) Announce all upcoming election deadlines (including registration, absentee ballots, etc.);

(b) Announce all upcoming election dates and a summary of what will appear on the ballot to include:

(i) Federal, state, or local offices;

(ii) Ballot questions: and

- (iii) Bond questions;
- (c) Provide an opportunity to register to vote and provide language assistance for filling out registration forms;
- (d) Explain the absentee ballot application and voting process when the applications or ballots are being disseminated or accepted by the State;
- (e) Explain the early voting process including dates and locations;
- (f) Explain voter identification requirements to include the acceptable forms of identification;
- (g) Review in the covered language and dialect all of the information in the OEP;
- (h) Review in the covered language and dialect the sample ballot;
- (i) Describe the availability of language assistance before Election Day and on Election Day, including the name of the person(s) and dates and locations where it will be provided;
- (j) For other informational meetings, if any, identify the dates, times, and locations for other meetings to discuss the election information and the name of the person(s) to contact if the voters have any questions about the meetings;
- (k) Provide the name and toll-free number of the person available for assistance in their language/dialect; and
- (l) Have a question and answer session in the language and dialect regarding the election or voting process.

2. Mandatory follow-up. At least twenty-five days before an election, the Division shall follow up with the outreach workers to confirm that they have received the

outreach materials and that they agree that they will perform the outreach in a timely manner.

**J. Pre-election and Election Day Publicity**

1. The Division shall provide publicity that includes all of the announcements described in the Interim Order [Dkt. 226].

2. In addition to the publicity specified in the Interim Order [Dkt. 226], the following terms will be implemented:

(a) Radio broadcasts. The Division shall request that the following radio stations broadcast PSAs, using the language and dialect identified in parentheses:

- (i) KDLG – Dillingham (Bristol Bay Yup'ik);
- (ii) KYUK – Bethel (Central Yup'ik);
- (iii) KICY – Nome (Yukon Yup'ik);
- (iv) KCUK – Chevak (Hooper Bay/Chevak); and
- (v) KZPA – Fort Yukon (Gwich'in).

(b) Frequency. The Division shall request that beginning at least five days before each election and each deadline (e.g., absentee voting, voter registration, list maintenance), the radio station make at least three announcements a day on weekdays for three days in the language and dialect identified above in Paragraph III(J)(2)(a).

(c) Content (in the language and dialect identified above in Paragraph III(J)(2)(a)). The following topics shall be included in the PSAs:

- (i) Date and time of the next election;
- (ii) Opportunities to register to vote and the deadline for registering before the next election;
- (iii) Availability of absentee voting and the deadline for

submitting an application;

(iv) Early voting dates and the Division's telephone number to find the voter's early voting location;

(v) General description of the subject matter of the ballot including if there are federal/state/local offices, bond questions, ballot propositions, etc.;

(vi) Availability of language assistance before Election Day and on Election Day; and

(vii) Toll-free number for language assistance or to find out the name of the bilingual outreach worker in the voter's village.

(d) List maintenance announcements. The following topics shall be included:

(i) A summary of what list maintenance is and why it is important;

(ii) Steps to take to ensure the voter remains on the active voter list; and

(iii) Toll-free number for language assistance for any questions.

(e) Documentation. The Division shall keep documentation of its correspondence with the radio stations, including if it is provided information by the radio station that identifies the dates, times, and content of the ads aired.

**K. Language Assistance for List Maintenance to be Provided to Tribal Councils.**

Within two weeks of when the Division sends list maintenance inactivation notices to voters it shall provide to tribal councils a written translation in the applicable language and dialect identified in Paragraph III(B) of the list maintenance radio ad.

**L. Touch-screen Voting Machines**

1. Touch-screen voting machines shall be available at all polling places on Election Day when there are federal races on the ballot. If more than one language and dialect for a village is identified pursuant to the procedure in Paragraph III(B), then the audio translation on the touch-screen voting machine shall be provided in one language and dialect identified by the YTP in consultation with the appropriate tribal council. Audio translations shall be included in the applicable language and dialect identified pursuant to Paragraph III(B) for all audio information and instructions provided on the machine in English. All poll workers shall be trained on how to use the audio language assistance available on the machines.

2. If placing audio translations on the touch-screen voting machines is not technologically feasible, the Division will provide the voter with access to the audio translation in another format and will make available to the voter the translated sample ballot.

**M. Sample Ballots and their Use**

1. The Division shall continue to post on its webpage and to provide written bilingual sample ballots to tribal councils, outreach workers, and poll workers. The tribal councils or outreach workers may provide copies of the written bilingual sample ballots to voters before the election. Voters are free to bring in their marked-up sample ballot to assist them in casting a ballot on Election Day.

2. Written bilingual sample ballots shall be available to voters at the Division's four Regional Offices and at the Division's Mat-Su office.

**N. Voter Registration**

1. Voter registration forms. The Division shall ensure that each tribal council has an adequate supply of voter registration forms and instructions.

2. Sign. A sign shall be posted in the applicable language and dialect identified in Paragraph III(B) in the village identifying the availability of voter registration forms, language assistance to register, and the name and phone number of the bilingual registrar, if any. If there is no bilingual registrar, the sign shall provide the Division's toll-free number for language assistance.

**O. Permanent Absentee Voting (PAV)**

1. PAV sites in the three census areas must have resident bilingual workers available during the entire time that absentee voting is occurring with a notice posted in public places in the applicable language and dialect identified in part III(B) advertising the name, phone number, location of the bilingual worker and that language assistance is available. The bilingual worker must be trained in-person and be fully bilingual and literate in English and the language/dialect spoken in the village.

2. No village in the three census areas that is not currently a PAV site shall be designated as a PAV site without providing the Plaintiffs with at least sixty days' notice of Defendants' intention to designate the village as a PAV site.

**P. Voters Provided Questioned Ballots**

The Division shall provide all voters who vote a questioned ballot instructions on the questioned ballot process in the applicable language and dialect identified in Paragraph III(B). Information and notices about the questioned ballot process may be provided by the bilingual poll worker orally, to include information on how the voter determines whether their vote was

counted via a toll-free number. Language assistance as described in Paragraph III(D) shall be provided to voters calling the toll-free number.

**Q. Record-Keeping**

Defendants must maintain all records pertaining to their language assistance program, consistent with 28 C.F.R. § 55.21. Complete records must be maintained for the term of this Stipulation and Order to identify the Division's efforts under it.

**R. Reporting requirements**

1. Thirty days before each election, the Division shall inform Plaintiffs if they do not believe they will be in compliance with any requirement under this Order.

2. Defendants will submit reports and records to the Court, consistent with the terms of the Order and as previously ordered by the Court [Dkt. 226, ¶¶ 17, 21]. The reports shall cover all of the information required in this Order, identifying by paragraph all information being reported. These reports shall be provided on the following schedule:

- (a) 45 days after each Primary Election;
- (b) in odd-numbered years, 60 days after the REAA Election; and
- (c) in even-numbered years, 60 days after the General Election for the REAA Election and the General Election.

3. Plaintiffs will have an opportunity to file a response within 60 days after Defendants file their report.

**IV. ENFORCEMENT**

A. The Court may enforce the terms of this Order through contempt proceedings. *See United States v. Sandoval County*, 797 F. Supp. 2d 1249, 1254 (D.N.M. 2011).

B. If Defendants or the Division do not have the intent or means to comply with the terms of this Order, Plaintiffs shall have the right to seek such relief as may be necessary to enforce the terms of this Order. Before seeking such relief from the Court, Plaintiffs shall notify Defendants, in writing, of Plaintiffs' understanding or belief that Defendants lack the intent or means to comply with this Order. Such notice shall specify any grounds for such understanding or belief.

## V. AMENDMENTS TO THE ORDER

A. **Modification.** The Court may, either on request of a party or acting *sua sponte*, modify one or more of the provisions of this Order if the Court finds that such modification is necessary to achieve the purposes of the Order or in the interests of justice.

1. *Sua Sponte.* Before modifying a term *sua sponte*, the Court will give the Parties notice and an opportunity to be heard on the issue. The Court will make specific findings on the record to support any decision to modify a term.

2. *Upon request of a Party.* Pursuant to the "flexible approach" to be applied to motions to modify a final judgment pursuant to Fed. R. Civ. P. 60(b)(5), the Court will consider two factors in determining whether a requested modification is warranted. First, the party seeking modification must establish "a significant change either in factual conditions or in law" that would "make compliance with the decree substantially more onerous" or "unworkable because of unforeseen obstacles" or that "enforcement of the decree without modification would be detrimental to the public interest." *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992). Second, the Court will "consider whether the proposed modification is suitably tailored to the changed circumstance." *Id.* at 383. The party seeking such a modification must establish a "significant" change in circumstance, and not merely that "it is no longer convenient" to use the

existing term for which modification is sought. *Id.* Any proposed modification is limited to resolution of “the problems created by the change in circumstances. A court should do no more, for a[n order such as this Order] is a final judgment that may be reopened only to the extent that equity requires.” *Id.* at 391.

**B. Extension of the term of the Order.** This Order shall terminate on December 31, 2020. Either by agreement between the Parties or pursuant to a determination by the Court, the term of the Order shall be extended if “time and experience have demonstrated” that the Order “has failed to accomplish the result” that it was “specifically designed to achieve.” *United States v. United Shoe Mach. Corp.*, 391 U.S. 244, 249 (1968); *see also Holland v. New Jersey Dep’t of Corr.*, 246 F.3d 267 (3d Cir. 2001) (collecting citations). Plaintiffs bear the burden of proving that extension is warranted.

## **VI. ATTORNEYS’ FEES AND COSTS UNDER THE ORDER**

A. The Court’s review and approval of this Order does not alter Plaintiffs’ status as prevailing parties pursuant to the Court’s partial Decision on Record [Dkt. 223].

B. Defendants shall pay Plaintiffs their attorneys’ fees and costs in the amount of \$1,898,695.80 subject to legislative appropriation.

C. Plaintiffs may recover their reasonable attorneys’ fees and costs for postjudgment enforcement of this Order, which includes extending the term of the Order, monitoring the Order, and other work aimed at compliance. This provision supplements, but does not replace or modify, the attorneys’ fees and costs to be paid to Plaintiffs identified above in Paragraph VI(B) of this Order. Any motion for attorneys’ fees shall comply with D.Ak. L.R. 54.3. Any application for costs shall comply with D.Ak. L.R. 54.1.

**AGREED TO BY THE PLAINTIFFS:**

Dated: 9/8/2015

Mike Toyukak  
Mike Toyukak, Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Fred Augustine, Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Artic Village Council, Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Native Village of Hooper Bay, Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Traditional Village of Togiak, Plaintiff

Dated: \_\_\_\_\_

\_\_\_\_\_  
Venetie Village Council, Plaintiff

**APPROVED AS TO FORM BY PLAINTIFFS' COUNSEL:**

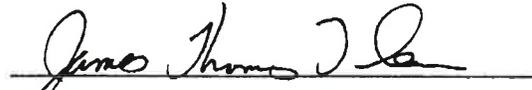
Dated: 9/8/2015



Natalie Landreth  
Alaska Bar No. 0405020

Heather Kendall-Miller  
Erin Dougherty  
Matthew Newman  
NATIVE AMERICAN RIGHTS FUND  
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Dated: 9/8/2015



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Dated: 9/8/2015

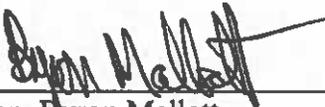


Richard de Bodo (*pro hac vice*)  
MORGAN, LEWIS & BOCKIUS LLP  
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Santa Monica, CA 90404-4082

**AGREED TO BY THE DEFENDANTS:**

**OFFICE OF THE LIEUTENANT GOVERNOR**

Dated: Sept. 9, 2015

  
\_\_\_\_\_  
Hon. Byron Mallott  
Lieutenant Governor  
State of Alaska

**APPROVED AS TO FORM BY DEFENDANTS' COUNSEL:**

**CRAIG W. RICHARDS  
ATTORNEY GENERAL**

Dated: Sept. 8, 2015

  
\_\_\_\_\_  
Elizabeth M. Bakalar  
Assistant Attorney General  
Alaska Bar No. 0606036

Dated: Sept. 8, 2015

  
\_\_\_\_\_  
Aesha R. Pallesen  
Assistant Attorney General  
Alaska Bar No. 1205021

*Counsel for Defendants*

**APPROVED, ORDERED, AND ADJUDGED:**

This \_\_\_\_\_ day of September, 2015.

\_\_\_\_\_  
HONORABLE SHARON L. GLEASON  
U.S. District Judge

## APPENDIX A (Docket 124)

The starting point for the analysis of the case is the Fifteenth Amendment to the United States Constitution, which provides that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or any state on account of race, color, or previous condition of servitude.” U.S. CONST. AMEND. XV § 1. As the United States Supreme Court has recognized, “the right to vote freely for a candidate of one’s choice is the essence of a democratic society and any restrictions on that right strike at the heart of representative government.” *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

The Court has considered the position of the State that the Fifteenth Amendment does not apply in this case because this is a case that is focused primarily on limited-English proficiency and yet, given that specific language that is at issue here, one that is addressed solely to Native Alaskans and American Indians, the Court does see that the strictures of the Fifteenth Amendment do apply. The Court finds that *United States v. Blaine County*, 363 F.3d 897 (9th Cir. 2004), made it clear that the Ninth Circuit recognized applicability of that Amendment to the rights of Native Alaskans and American Indians to exercise the right to vote.

There are certainly many cases that have addressed the Voting Rights Act far more frequently in the context of rights of other minority citizens as opposed to Native Alaskans and American Indians. One of the cases the Court found helpful was *United States v. Berks County*, talking about issues with respect to Spanish-speaking voters. There the court held, “the right to vote encompasses more than the right to gain physical access to a voting booth to mark a ballot or pull a lever. Persons must have an opportunity to comprehend the registration and election

forms and the ballot, itself, to cast an informed and effective vote.” 277 F. Supp. 2d 570, 579 (E.D. Pa. 2003).

The Fifteenth Amendment does have a provision as well that accords to Congress the power to enforce this Article by appropriate legislation. *See* U.S. CONST. AMEND. XV § 2. As the Court sees it, the goal is to provide all citizens, without regard to race or color, including in this case limited-English proficient Alaskan Natives, with an equal opportunity to participate in the electoral process. It is against this Constitutional backdrop that Congress enacted the Voting Rights Act in 1965, Pub. L. No. 89-110, 79 Stat. 437 (1965), which was most recently reauthorized in 2006. *See* Pub L. No. 109-246, 120 Stat. 577 (2006). A portion of the Act that is at issue here, Section 203, was enacted in 1975 as an amendment to the Act. *See* Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400 (1975).

As the Court has indicated, there are really very few cases dealing with historically unwritten languages and the voting rights of American Indians and Alaska Natives under Section 203. The parties did cite to *United States v. McKinley County*, 941 F. Supp. 1062 (D.N.M. 1996) (three-judge panel), which was out of the southwest relating to the Navajo language, as well as *United States v. Sandoval County*, 797 F. Supp. 2d 1249 (D.N.M. 2011) (three-judge panel). The Court reviewed as well *Apache County High School District No. 90 v. United States*, Civ. Act. No. 77-1515 (D.D.C. 1980) (three-judge panel) (unpublished), that was provided by the plaintiffs at Exhibit 325 in the filings.

The Court will say as an aside here, that about a year ago, to the month, the United States Supreme Court did hold that one part of the Voting Rights Act was unconstitutional. *See Shelby County v. Holder*, 133 S.Ct. 2612 (2013). That is a portion of Section 4 of the Act. It deals with

pre-clearance and that is not an issue that is before the Court in this case at this time. Instead, what we are focused on is Section 203, as the Court indicated, enacted in 1975.

In the opening part of Section 203, Subsection A, Congress set forth its findings and declaration of policy and that states that, “through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process.” 52 U.S.C. § 10503(a) (redesignated from 42 U.S.C. § 1973aa-1a(a)). That section of the statute goes on to say that the goal of that section is to “eliminate such discrimination by prohibiting these practices and by prescribing other remedial devices.” *Id.*

Section 203(c) includes what would appear Congress intended to be a remedial device designed to allow language minorities that had limited-English proficiency, certain language minorities, the opportunity to fully participate in the electoral process. That section applies whenever any state has certain limited-English proficient categories, including more than five percent of the Alaska Native citizens of voting age that are members of a single language minority and are limited-English proficient. *See* 52 U.S.C. § 10503(c) (redesignated from 42 U.S.C. § 1973aa-1a(c)). It is undisputed here, the Court believes, that the three census areas of issue in this case fall within that category of Section 203: the census areas for Dillingham, Wade Hampton, and Yukon-Koyukuk.

So that then triggers the Section 203(c) requirements which set out certain requirements for voting notices, forms, instructions, assistance, and other materials and ballots and requires them to be in the minority language. When it is a written language such as Spanish, then the statute quite clearly provides that for “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” the State is directed that it “shall provide them in the language of the applicable minority group,

as well as in the English language.” U.S.C. § 10503(c) (redesignated from 42 U.S.C. § 1973aa-1a(c)).

The particular language in the statute relating to written minority languages has been interpreted quite broadly. As an example, in *United States v. Metropolitan Dade County*, 815 F. Supp. 1475 (S.D. Fla. 1993), the county had prepared an information pamphlet for a special election but it had not translated that pamphlet into Spanish, even though there was an area that was covered by Section 203. The county had argued that it was not covered, that it did not need to translate this particular pamphlet because it was not a necessary procedural document that had been issued prior to and during an election and said, “Well, this does not give notice of the polling place, it is not a sample ballot, it is just an informative pamphlet.” *See id.* at 1478. But the court there disagreed and granted injunctive relief to the Government and indicated that the pamphlet was covered by Section 203 and needed to be translated into Spanish. *See id.* There, the court indicated that it would be sufficient to translate it into a Spanish newspaper and post it either on a poster or in pamphlets in the Spanish language. *See id.* at 1479. The point of the case really was, at least for written materials, it made it quite clear that any material, voting or election material, would be covered by Section 203. *See id.* at 1478.

In that case, as in the other cases that the Court reviewed, there was really no assessment of the effectiveness regarding – or testimony about the need for translation by Spanish voters. There were no individuals evident from the record as the Court reviewed it, that came forward and said, “We’re not going to be able to meaningfully participate in this election because we don’t have a translation of this pamphlet.” Instead, what really seemed to be the law was looking at this as a per se violation because the material had not been translated, and then looking at

reasonable steps of how to remedy this violation, how to get this information disseminated to the voters so as to enable their meaningful participation in that upcoming race.

And in this regard, the Court will digress here to say that some of the cases that the Alaska Division of Law has cited address a different part of the Voting Rights Act, Section 4(e). *See* U.S.C. § 10303(e) (redesignated from 42 U.S.C. § 1973b(e)). That is a standard that was put in place for Puerto Ricans who were educated in Spanish in Puerto Rico and that statute, unlike the one at issue here, said the person cannot be denied the right to vote “because of his inability to read, write, understand, or interpret any matter in the English language.” *See id.*

In a case that addressed that particular law, *Perez-Santiago v. Volusia County*, the court denied summary judgment because there was a dispute in factual issue there under that particular statute as to whether that particular plaintiff was limited-English proficient. No. 6:08-cv-1868-Orl-28KRS, 2010 WL 917872, at \*3 (M.D. Fla. Mar. 11, 2010). That statute would support the type of position advocated by the Division here that would require a showing that a person could not understand the election materials because of an inability to read, write, or understand. But those cases, as the Court sees them, are different because the statute at issue there is really worded quite differently from the statute here. Section 203 directs that a state shall provide all election materials in the language of the applicable minority group and without consideration of a particular plaintiff's ability to read, write, or understand English. *See* U.S.C. § 10503(c) (redesignated from 42 U.S.C. § 1973aa-1a(c)).

And then we get to the real crux of this dispute, which is the proviso at the end of this sentence of Section 203(c), which states that: “Provided that in the case of Alaska Natives and American Indians, if the predominant language is historically unwritten, the state or political subdivision is only required to furnish oral instructions, assistance, or other information relating

to registration and voting.” U.S.C. § 10503(c) (redesignated from 42 U.S.C. § 1973aa-1a(c)). When you put that half of the sentence of 203(c) next to the first half of the sentence in 203(c), Congress deleted the terms “notices, forms, and materials” from the second half. Basically, anything that would be in writing, but left in all the other components of “instructions, assistance, or other information.”

The Court has strived to understand each side’s interpretation of the statute. As the Court understands the Division’s interpretation, the use of the term “only” in that proviso would permit the State to offer less in the way of voting assistance to LEP Alaska Natives with an historically unwritten language than to other minority groups that fall within the Act’s coverage that have a written language. The State has pointed to excerpts from the regulations that they assert support that reading. For example, there is a reference repeatedly in 28 C.F.R. § 55.2 that states that the goal of assistance should be “to enable members of applicable language minority groups to participate effectively in the electoral process.”

Where the Court parts ways with the State is that the regulation does not say the assistance that is to be provided is to enable members to participate effectively. Rather, what the regulation says is that it is the objective of the Act’s provisions to enable members to participate. One could say that perhaps the Court is mincing words, but what the Court sees is that the congressional intent was an objective of enabling members to participate effectively in the electoral process and the means of doing it was what was set out in 203(c).

As the Court stated at the outset, the goal of Section 203(a) of the Voting Rights Act is to accord equal opportunity for all citizens to participate in elections and it would be, in the Court’s mind, inconsistent with that goal to have a lower level of assistance provided to limited-English proficient Alaska Native and American Indian citizens than is provided to other individuals that

fall within the category that Congress identified as needing assistance in elections. So as the Court sees it, to achieve the goal of equal opportunity here in the election process, the proviso clause in Section 203(c) for historically unwritten languages should be interpreted as altering only the means by which information relating to registration and voting is communicated to limited-English proficient Alaska Natives but it does not permit the Division to diminish the content and extent of the information that must be provided.

So stated differently, the Court interprets Section 203(c) to require the Division to provide the same or at least substantially equivalent election information to LEP Alaska Natives with an historically unwritten language within these three census districts as would be provided or as is provided to other applicable minority groups with a written language that fall within the statute and as provided to English-speaking citizens. This was the approach that was discussed in *United States v. Sandoval County*. There, the three-judge panel found that there were continuing violations of both the Voting Rights Act and the consent decree that had been put in place because the county had “failed to furnish to covered voters all oral instructions, assistance, and other information related to voting” to the LEP American Indians at issue. 797 F. Supp. 2d at 1251.

Such an interpretation, the Court believes, is also consistent with another section of the VRA set out in 42 U.S.C. § 1973(a), which provides that a violation of the Voting Rights Act is established if it is shown by a totality of the circumstances “that the political processes leading to the nomination or election in the ... public subdivision are not equally open to participation by members of the class of citizens” due to one’s race or color “in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” U.S.C. § 10301(b) (redesignated from 42 U.S.C. §

1973(b)). That is to accord the same opportunity to participate that is the key to the Division's obligation under Section 203(c). That interpretation avoids putting state election officials in the position of having to determine what may or may not be most important or more important to a limited-English proficient Alaska Native voter to know about a particular election.

So based on all of the foregoing, the Court will find that the rule of law for this case will be as follows. First, step one of the analysis would have the initial inquiry as whether the State's standards, practices, and procedures provide substantially equivalent registration and voting information to limited-English proficient Alaska Natives in the three census districts at issue here as is communicated in the English language to citizens in this state. The burden of proof would be on the plaintiff to demonstrate that those standards, practices, and procedures for the dissemination of election information in place for the three census areas at issue here are not substantially equivalent with those for English-speaking citizens in the state.

And the second step, assuming that such standards, practices, and procedures were in place that provided substantially equivalent information in the three census districts here, then would put the burden of proof on the plaintiff to demonstrate that the State is not in substantial compliance in its implementation of those standards, practices, and procedures. Or stated differently, as provided by 28 C.F.R. § 55.2, the State has not taken all reasonable steps to try to implement its standards, practices, and procedures in this regard. That is the same basic approach that is set up in the *Sandoval* case from New Mexico.

In this regard, in looking specifically at step two, the Voting Rights Act does not require perfection from a Division to implement its standards and policies. Challenges in rural Alaska, such as the small number of speakers in a particular language, as was addressed in oral argument with respect to Gwich'in, can help assess whether or not there has been substantial compliance,

or stated differently, whether all reasonable steps have been taken. And it is in that regard that the effectiveness of the implementation could be a consideration in that second step, where a sick poll worker or another unexpected mishap could certainly still allow the Division to demonstrate substantial compliance if concerted efforts to try to hire or to train poll workers were presented and those efforts were ultimately, for whatever reason, frustrated.

## **APPENDIX B (Docket 223)**

The trial in the case was concluded in July, 2014. The Court received the last of the official transcripts just a few weeks ago. The Court reviewed the transcripts and the several thousand pages of exhibits that the parties submitted, as well as their proposed findings of fact and conclusions of law. As the parties are well aware, there is a general election scheduled in approximately two months, and in light of the foregoing, the Court has decided to issue the following partial Decision on Record that will be focused today solely on issues associated with the upcoming general election. The Court does intend to issue a written decision to follow that will address all issues that are pending before the Court with respect to the plaintiffs' claims.

But today, the Court will address the violation that plaintiff has alleged against the defendants, Section 203 of the Voting Rights Act, and specifically, with regard to the three census areas that are included in plaintiffs' Complaint.

To back up, Section 203 of the Voting Rights Act was enacted by Congress in 1975, and basically, the provision at issue here is that portion of the Act that requires that in certain designated areas of the country that have a high percentage of limited English proficient voters, that whenever a state provides any registration or voting information in English, the state must also provide the same information in the language of the applicable minority group to voters in those areas.

But the statute also contains an important proviso that's applicable here, the so-called Stevens Proviso that was inserted by Alaska's former senator, Ted Stevens, and that provides that in the case of Alaska Natives, "if the predominant language is historically unwritten", the state and other political subdivisions, "is only required to furnish oral instructions, assistance, or

other information relating to registration and voting.” And so that is the proviso that has caused considerable litigation here because unlike other areas where there is a language that falls within the Act in a community such as areas of the state in Tagalog or Spanish and other areas of the country, the state can comply with this provision of the Voting Rights Act by simply doing a written translation of all the applicable election materials and that would satisfy its obligation under the statute, but the provision is far less clear for the languages at issue here.

At issue in this case are three particular census areas, the Dillingham, Wade Hampton and Yukon-Koyukuk Census Areas. In the Dillingham and Wade Hampton Census Areas, the applicable minority language is Yup’ik. And in the Yukon-Koyukuk Census Area, the applicable language is Gwich’in. And it appears to be undisputed that Section 203 of the Voting Rights Act applies to the communities in these three census areas.

The plaintiffs in the case are two individual Alaska Native voters and four Alaska Native tribal entities from those census areas. The defendants are the Lieutenant Governor and several officials with the State Division of Elections that the Court is going to try to refer to today simply as the Division.

As an aside, as the parties are well aware, there was a separate case that was brought against the Division in federal court several years ago, the so-called *Nick* case, named for the lead plaintiff, and that case focused solely on the Bethel Census Area. The parties settled that case in early 2010. It is not involved or before the Court in this case, which deals with three different census areas.

Before the case went to trial, the parties each presented extensive briefing as to the appropriate standard this Court should apply when reviewing plaintiffs’ claims under Section 203 of the Voting Rights Act. Shortly before trial, the Court held in the case of historically

unwritten languages such as the Alaska Native languages at issue here, then there should be two inquiries to determine if there is compliance with Section 203. First, are the Division standards, practices, and procedures in the three census areas at issue here designed to transmit substantially equivalent information regarding voter registration and election information to the limited English proficient voters in these areas as is provided to English-speaking citizens in the state; and second, if the first requirement has been met, is the Division in substantial compliance in its implementation of those standards, practices, and procedures, meaning has the Division taken all reasonable steps to implement the standards, practices, and procedures that it has put in place. And the Court also held prior to trial that the burden of proof would be on the plaintiffs to establish that these two requirements had not been met.

Here, based upon the considerable evidence that was presented by both parties at trial, the Court does find that plaintiffs have demonstrated by a preponderance of the evidence that the Division's standards, practices, and procedures that are in place for the three census areas at issue here are not designed to transmit substantially equivalent information in the applicable minority languages to the limited English proficient Alaska Natives in the three census areas.

And specifically, the Court finds as follows. At trial, the defendants testified and their lawyers maintained in closing arguments that the Division is relying primarily on outreach workers in the village, who are typically also poll workers on election day, to provide most of its oral language assistance in these communities. In addition, the Division has had certain election materials translated into Central Yup'ik, makes public service announcements over the radio or the VHF about some election information.

Before the Court turns to the outreach workers, which as the Court indicated is a primary component of the Division's position here in court, the Court will address the other efforts that

the Division has made to provide language assistance in these census areas to limited English proficient voters.

The public service announcements and the translated materials are only a limited subset of the election materials that the Division provides to English-speaking citizens. Those materials do not comprise a substantial equivalent of information that's made available to English-speaking citizens and the Division did not assert that to be the case. The Division does have bilingual poll workers at the polls on election day that can assist voters. And in the two Yup'ik census areas in dispute, Dillingham and Wade Hampton, the poll workers should have access to a ballot that has been translated into the Central Yup'ik language to which they can refer to assist LEP voters. There is also a glossary of election terms that's been translated into Central Yup'ik that the Division prepared several years ago that is sent to each polling place. There is also a touch-screen voting machine available at the polling places with the ballot translated into Central Yup'ik.

In the Yukon-Koyukuk Census Area at issue here, there are no sample ballots or touch-screen voting machines that translate into Gwich'in, apart from in 2008. Two of the four ballot measures in that year were translated into Gwich'in. Although the Court will say at trial it appeared that the Division has been working diligently in 2014 to get Ballot Measure 1 from the primary translated into Gwich'in.

In all three census areas, there was limited evidence to show the extent to which it was made known to limited English proficient voters that language assistants would be available to assist them on election day.

But significant to the Court that the English version of the official election pamphlet that is mailed in English to every household in the state with a registered voter a few weeks before

the election is not available in any language, English or otherwise, at the polling sites due to statutory restrictions on campaigning at the polling place. So what you have at the polling place is the ballot language and the list of candidates but not the material that is distributed in English in the official election pamphlet, such as the pro/con statements and the neutral summaries for ballot measures, the candidate statements, and other information in the official pamphlet.

The Division's position in this litigation has been that it's relying primarily on the outreach workers that it has hired in certain communities to provide the bulk of the election information that's in the official election pamphlet to the limited English proficient voters prior to each election. The Division maintains that the outreach workers are bilingual speakers who are available prior to the election to answer any and all questions that an LEP voter might have about an upcoming election, including reviewing and translating the official election pamphlet. This is the primary means by which the Division asserts it is meeting its obligation to meet the needs of limited English proficient voters under the Voting Rights Act in these census districts, but the weight of the evidence persuasively demonstrated that these outreach workers are not providing the types of services that the Division has maintained that they are available to provide, and the Court does not find that the outreach workers are providing substantially equivalent information to LEP voters in these three census areas.

The Court bases this determination on the following: First, the Court finds it more likely than not that the Division does not appear to be providing any outreach workers for language assistance to those communities in which a tribal administrator in that community has returned a survey to the Division indicating that that community doesn't need language assistance. So although the Division certainly appears to have bilingual poll workers on election day in many

communities, there is no evidence that the outreach workers that have been hired to work prior to the elections in some communities are present in communities in which a tribal administrator submitted a form saying that that service was not necessary. The Court should not say no evidence. There was no persuasive evidence on that topic.

The Court does find that the approach that to rely on a survey that said, “We don’t need this translation service,” would violate the statutory mandate under the Voting Rights Act to provide language assistance in each of these designated communities. Although a survey could certainly be helpful to determine the best means by which to deliver language assistance, it should not be used as a basis to eliminate language assistance in a community that has been designated as needing services under the Voting Rights Act.

Second, in those communities in which there are outreach workers, those outreach workers are paid for no more than five hours of work at \$10 per hour for the work they perform in their communities before each election. This hourly rate is substantially less than the rate paid by the Division to interpreters and supports the Court’s finding that the outreach workers have not been hired to be, nor are they intended to be comprehensive translators and interpreters.

And the certificates of outreach that the outreach workers are expected to complete at the end, after the election cycle, do not direct the outreach workers to offer to translate the official election pamphlet to LEP voters. There is no indication that a copy of the official election pamphlet has been sent to the outreach worker informing him or her that the job expectation is to be available to translate that pamphlet for anyone that is LEP in the community that needs assistance. Rather, the certificate of outreach form makes it clear that the expectation for that job is principally for the worker to post notices, make an announcement over the VHF that the

worker is available to provide voter registration and language assistance and make other announcements about the voter registration deadline and election day information.

Third, the written training materials that were introduced at trial support the conclusion that the outreach workers are not providing the substantial equivalent of voter information to LEP voters in their community. Plaintiffs introduced Exhibit 57 into evidence, which was the DVD for election worker training. The Court did review the portion of the training video on language assistance. It is actually about four minutes long, followed by two minutes of other [information] – providing assistance to other types of voters in need, such as disabled voters. But the portion on language assistance for these census areas is about four minutes long. It is focused entirely on providing language assistance on the day of the election in the form of helping the LEP voter to sign in and to read the ballot. There was no evidence presented that the local outreach workers were either trained in or expected to translate the official election pamphlet into the applicable Native language to LEP voters in their communities.

Likewise, Exhibit M, the handbook for the language assistance training, does not appear to contain any indication that outreach workers are expected to be available to translate the OEP, the official election pamphlet, and all other election materials to LEP voters in their villages.

Fourth, there was a suggestion that bilingual poll workers on election day could fill in any gaps and provide any additional needed translation and interpreting services to LEP voters on election day while at the polls, but the Court finds that suggestion to be unsupported by the evidence. As the Court has indicated, while the election workers may assist a voter to translate a ballot, the evidence was undisputed that on election day, the poll workers could not have available in any language the official election pamphlet. And there, the Court is referring to, in particular, Ms. Growden's testimony at transcript page 885.

All the election workers can do on that day is translate the ballot, itself, not the candidate statements, pro/con statements, and other materials in the pamphlet because the Division cannot make that available in the polling area or within 200 feet, under State law.

Further, the Court finds that the plaintiffs have demonstrated that there are different dialects in Dillingham and Wade Hampton from the Central Yup'ik dialect in Bethel. Although different individuals have raised this concern with the Division over the past several years and there were references in the exhibits to that issue being raised in 2008, the Division has only translated its Yup'ik materials solely into the Central Yup'ik dialect and has not attempted to include Yup'ik speakers from either the Dillingham or Wade Hampton Census Areas on the Division's Yup'ik Translation Panel.

As a result, the Court finds that while developing a tool for election workers in the form of a Yup'ik sample ballot is a sound idea for the provision of language assistance services, its value outside of the Bethel Census Area is limited.

At trial, the Director of the Division of Elections, Ms. Fenumiai, candidly acknowledged that LEP Alaska Native voters are entitled to the same election information as English-, Tagalog- and Spanish-speaking voters in the state and the Court does find that the Division is making some progress toward that end. There was evidence at trial that the Division of Elections has had a rocky road with the Federal Department of Justice and now in light of the Supreme Court's holding last summer in 2013, there is no longer a need to get preclearance from the Department of Justice before the State can proceed. Although there was quite a bit of conflicting evidence on this, it appears likely that the Division plans to disseminate more materials in Yup'ik in the Dillingham and Wade Hampton Census Areas, although it still intends to disseminate, or at least

as of trial, only in Central Yup'ik dialect which appears to have limitations for the LEP voters in the Dillingham and Wade Hampton Census Areas.

Although the Court finds that the Division has, during this year, approached with some renewed energy the goal of providing meaningful oral language assistance to Gwich'in LEP Alaska Natives, it has not yet provided the substantial equivalent there. The Court will say on the Gwich'in language that the evidence was persuasive to the Court that oral language assistance would be considerably more helpful with respect to that language, in particular, than written for LEP voters in that area. Even if written materials should be prepared in either Yup'ik or Gwich'in, they – they can be helpful as tools for those providing oral assistance.

In any event, for the foregoing reasons, the Court finds that the plaintiffs have persuasively demonstrated that the standards, practices, and procedures that the Division has put in place are not permitting limited English proficient speakers in the three applicable census areas to receive information about elections from the Division that is substantially equivalent to that provided by the Division to English-speaking voters, and so based on these findings, the Court does find that the Division failed to meet step one of the analysis and plaintiffs have established a violation under Section 203. At least at this juncture, the Court will not go to the second step in light of that finding.

The Court also declines today to reach the Fourteenth and Fifteenth Amendment issues and the related federal observer issue, and instead, will focus solely on what remedies, if any, are warranted with respect to the upcoming general election in November. The Court will be seeking input from the parties as to the appropriate remedies that are feasible for that election.

The Court does agree with the Division's observation that there are many different options that a state could take under the Voting Rights Act to achieve substantial equivalency,

particularly when the language at issue is historically unwritten and the statutory proviso for oral language assistance is the relevant criteria. But the Court will, then, give the Division an opportunity to address first where we go from here and then allow plaintiffs the opportunity to weigh in.

It certainly was made clear to the Court during the course of the trial that the task that the Division faces is not an easy task for oral languages and for that, with that in mind, what the Court will do at this juncture is give some suggestions, which are in no particular order, as follows.

First, the Court has concern regarding the readability of the public service announcements and would suggest that having the English versions of the public service announcements reviewed for clarity and readability or understandability to people with limited formal education could be helpful. For example, Exhibit X, one of the PSAs, says only if you need language or other assistance while voting, ask the election board or bring a person of your choice to assist you. It does not mention the fact that you could get assistance prior to the election from a local outreach worker.

And also, the Court thinks the concept of “election board” might not be comprehensible to people that are not involved with the Division of Elections.

It also says call the phone number for Yup’ik language assistance, which is a positive point, except for one could read that as to the exclusion of seeking assistance at the voting booth or prior to the election from an outreach worker.

It was not clear to the Court that the posters at the voting areas explain that language assistance is available in the applicable language, in Yup’ik or Gwich’in, which would seem to be helpful for limited English proficient individuals. Likewise, the buttons, “Can I help,” that

election workers wear, seems it could be quite helpful for the bilingual poll workers to have one that was in the applicable language, Gwich'in or Yup'ik.

At Dillingham, it was unclear to the Court why the interpreter was always on call and not present at the voting site, and that there could be a PSA, a public service announcement that would indicate the interpreter will be present at the polling place on election day to assist voters.

It would seem it could be quite helpful to have the sample ballot that is prepared in Central Yup'ik reviewed by Yup'ik speakers from Dillingham and Wade Hampton that would make necessary changes to address dialect differences or perhaps add footnotes, as has been suggested by individuals in the past.

The Court is not here to opine, at this stage in any event, on whether a use of outreach workers, as the Division has intended to put in place, could meet the Division's statutory election responsibilities under the Voting Rights Act. The Court is finding that the outreach workers, as presently instructed, are not meeting those responsibilities, but it could be that that is a viable method to meet with the obligations under the Act, first of all, but there's several questions or areas that should be addressed.

First, it is not clear that the outreach workers are in all of the covered communities.

Second, it does not appear that the outreach workers are receiving adequate training and that they have not been trained that they are expected to provide substantial equivalent information to limited English proficient Native Alaska voters in these census areas, and are not trained on how to do that.

It seems it could be clearly communicated to the the outreach workers that they are expected to translate this official election pamphlet and that that is provided, that document is provided specifically to them, not just as a household with a voter that receives it but as part of

their training materials and it did not, as best as the Court could discern, appear to be provided in the training materials that were sent to the outreach workers.

It appears that in some communities, particularly larger ones, that a meeting of some sort at which an outreach worker would be available to discuss the official election pamphlet – not to weigh in on it but to essentially translate it – could be helpful in communities with a larger population of LEP voters.

A survey after the election of the outreach workers, in particular, could be quite helpful as to what additional tools would be helpful for them in order to better meet this statutory responsibility.

Here again, even if the statute does not require written materials, are there circumstances in which written materials would be preferable to oral, or in conjunction with oral, to be provided to voters or is that not a good tact to take to meet this 203 obligation.

## APPENDIX C (Docket 226)

Having reviewed the State of Alaska's Proposal in Response to Court's Order of September 3, 2014, filed September 5, 2014 (Docket 224), and Plaintiffs' Proposed Remedies (November 2014 Election), filed September 10, 2014 (Docket 225), IT IS ORDERED that:

1. To the extent certain tasks relate to the upcoming 2014 General Election and whether or not specifically addressed in this Order, the Division of Elections ("Division") shall perform each of the tasks set forth in the Division's 2014 Language Assistance Program Tasks list, which was admitted as an exhibit at trial as Exhibit CC, in the three census areas at issue in this litigation.

2. For all oral and written translations required by this Order, for both the Dillingham and the Wade-Hampton census areas, the Division shall retain one or more Yup'ik language experts to review the translation and confirm that it is in a dialect that will be understood in that census area. If the dialectical differences for a particular translation from Central Yup'ik are minor (e.g., a few words or phrases), those differences may be noted through a footnote that identifies the dialect and the differences. The translation for the Limited English Proficient ("LEP") voters in the communities in the Yukon-Koyukuk census area shall be into Gwich'in.

3. On or before September 26, 2014, the Division shall distribute a pre-election announcement to be read by outreach workers in Yup'ik or Gwich'in, as applicable, over the VHF radio stating the voter registration deadlines and the availability of the outreach worker to assist in the completion of voter registration applications.

4. On or before September 26, 2014, the Division shall rewrite the language assistance instructions in the Official Election Pamphlet to explain more clearly that LEP voters may ask their outreach workers for pre-election help in translating the pamphlet.

5. On or before September 26, 2014, the Division shall change the Certificate of Outreach form so that outreach workers are asked to report the number of hours spent assisting voters in pre-election outreach efforts and the number of voters the outreach worker assisted.

6. On or before September 26, 2014, the Division shall prepare a revised cover letter to accompany the election materials sent to tribal councils in the three census areas that directly encourages each council to inform tribal members that it has the materials available for tribal members to review.

7. On or before October 3, 2014, the Division shall draft, translate, and record a new public service announcement for local radio stations in the three census areas at issue in this litigation to notify voters (1) that outreach worker(s) are available to provide language assistance before the election and (2) that bilingual poll workers will be available to assist voters on Election Day. This public service announcement shall also instruct voters that they can call the Yup'ik assistance hotline for general language assistance and identify the name, location, and telephone number of their local in-person outreach worker(s).

8. On or before October 3, 2014, the Division shall draft and translate a written version of a public service announcement that contains the same information described in paragraph 7 above, for outreach workers to broadcast over VHF in their communities.

9. On or before October 3, 2014, the Division shall also distribute the following translated pre-election announcements to be read by outreach workers over the VHF radio that include the following information:

- a. absentee ballot application deadlines and the availability of the outreach worker to assist in the completion of absentee ballot applications;
- b. early voting information including the dates, times, and locations;
- c. the date, time, and location for the General Election, and other requirements for voting including voter identification;
- d. the subject matter to be included on the General Election ballot (e.g., what offices are to be filled, bond measures, identification of the subject of each ballot question);
- e. the availability of language assistance before Election Day and on Election Day, including the name of the person(s) and dates and locations when it will be provided; and
- f. the dates, times, and locations for community meetings to discuss the election information and the name of the person(s) to contact if voters have any questions about the meetings.

10. On or before October 3, 2014, the Division shall include in the outreach worker packets for the 2014 General Election in the three census areas five copies of a pre-election poster advertising the availability of pre-election language assistance in Yup'ik or Gwich'in, as applicable, with instructions that they post them in public locations such as the school, tribal council office, community store, etc. The posters shall be translated into Yup'ik or Gwich'in, as applicable, and shall state the following:

- a. You can receive help voting or with any voting-related activity in your Native language;

b. The person(s) available to help you is [blank for the name(s) and telephone number(s) to be filled in by the outreach worker];

c. Help will be provided in your Native language before the election on [blank for the time and date to be filled in by the outreach worker] at [blank for the location to be filled in by the outreach worker];

d. Help will be provided in your Native language during early voting, which begins on October 20, 2014. Contact [blank for the name(s) and telephone number(s) to be filled in by the outreach worker] for more information; and

e. Help will be provided to you at the polling place in your Native language during the General Election, which is scheduled for November 4, 2014 and will be held at [blank for the location to be filled in by the outreach worker] from 7:00 a.m. to 8:00 p.m.

11. On or before October 3, 2014, for each of the LEP communities in the applicable census areas, the Division shall include in Election Day packets buttons for poll workers saying “Can I help?” translated into Yup’ik or Gwich’in, as applicable, and Election Day posters translated into Yup’ik and Gwich’in announcing the availability of language assistance.

12. The Election Day posters shall state the following, in English and also translated into the applicable language:

a. You can receive help voting or with any voting-related activity in your Native language;

b. The person(s) available to help you are [blank for the names to be filled in by the outreach worker]; and

c. You also have the right to receive help voting from any person of your choice.

13. In each of the three census areas, the Division shall provide each poll worker with at least two copies of the Election Day poster described above, with instructions that the poll workers are to post them in conspicuous places inside the polling place where they can be seen by voters before they vote.

14. On or before October 10, 2014, the Division shall make available on its website the written Central Yup'ik translations of election materials that the Division already routinely posts as individual audio files on the website, as well as written Yup'ik translations of those same election materials that are (1) in a Yup'ik dialect that is understandable in the Dillingham census area; and (2) in a Yup'ik dialect that is understandable in the Wade-Hampton census area.

15. On or before October 10, 2014, the Division shall send to each of the outreach workers in the three census areas (in addition to the audio translations of ballot measure neutral summaries, pro/con statements, and candidate statements) written translations of the following so as to assist the outreach workers in providing oral translations to LEP voters:

- a. Sample ballots including ballot questions;
- b. Neutral summaries of each ballot question prepared by the State;
- c. Statements of cost associated with ballot questions;
- d. Summary of bond measures;
- e. Pro and con statements for ballot questions and bond measures;
- f. Candidate statements (federal and state offices and judicial candidates);
- g. A copy of the Official Election Pamphlet;<sup>4</sup> and

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<sup>4</sup> To the extent the Division maintains it is unable to translate the entire Official Election Pamphlet for the 2014 General Election, it shall make all reasonable efforts to translate as much as possible in accordance with this Order, and shall be prepared to detail in its November 28, 2014 report to the Court the reasons why, despite all reasonable efforts, it was unable to translate the entire pamphlet for the General Election.

h. A cover letter and updated instruction packet to the outreach workers that emphasizes to each outreach worker that she/he is expected to be available to assist voters to understand all voting information and that encourages workers to call the Division with any questions about performing these tasks.

16. On or before October 10, 2014, the Division shall provide all translations required by this Order to the Plaintiffs' attorneys for their feedback, and the Division shall strive to incorporate any such feedback to the maximum extent feasible.

17. The Division shall make a concerted effort to provide at least one local outreach worker and one in-person poll worker in each of the covered communities in the three census areas for the 2014 General Election and shall file a preliminary report with the Court on its efforts to do so that addresses each of the covered communities by October 10, 2014.

18. The Division shall increase to no fewer than thirty the number of hours for which outreach workers may be paid in the 2014 General Election.

19. On or before October 10, 2014, the Division shall update the outreach worker instructions and list of duties so that the workers are fully informed of their language assistance responsibilities, including all of the duties identified in this Order, such as the translation of the Official Election Pamphlet.

20. On or before October 24, 2014, the Division shall provide a minimum of two teleconference training sessions of at least 30 minutes each for each outreach worker in the three census areas. If an outreach worker is unable to attend both training sessions, then the Division shall provide one-on-one training to that outreach worker. The training shall be mandatory for all outreach workers and shall include:

a. Instructions to provide the same information available to English-speaking voters in the Official Election Pamphlet, including how to use the written translations to provide complete, accurate, and uniform translations in the covered language and dialect;

b. Instructions on how to translate procedural voting materials (forms and instructions); and

c. Instructions on conducting community outreach meetings before the election to discuss the ballot and voting procedures.

21. On or before November 28, 2014, the Division shall file a comprehensive report to the Court detailing its compliance with this Order.