

**SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS
UNDER §§ 203, 4(f)(4), 5, and 208 OF THE VOTING RIGHTS ACT**

I. Release of Claims

A. For and in consideration of the State's agreed to actions with respect to Federal Voting Rights Act (VRA) Sections 203, 4(f)(4), 5, and 208 minority language assistance and preclearance, which actions are described below in Section III of this Agreement, and for other valuable consideration received, the Plaintiffs on their own behalf and on behalf of their assigns, attorneys, agents and heirs, (hereinafter "Plaintiffs"), do hereby fully, completely, and forever release, discharge, and acquit defendants Governor Sean Parnell, Lieutenant Governor Craig Campbell, Gail Fenumiai, Director of Elections, Becka Baker, Elections Supervisor, and Mickey Speegle, Elections Supervisor, and the State of Alaska, Division of Elections, and all of their respective agents, employees, representatives, successors, assigns, and attorneys, (hereinafter collectively referred to as "the State"), of and from all claims, demands, rights, actions, and causes of action which Plaintiffs now have or claim to have, or which have accrued to date against the State, arising out of or relating in any way to Plaintiffs' complaint and amended complaint in this action, including claims relating to Sections 203, 4(f)(4), 5, and 208 of the VRA as alleged in the lawsuit entitled *Anna Nick, et al., v. Bethel, Alaska, et al.* case no. 3:07-cv-00098-TMB, (hereafter the "Litigation").

B. To avoid protracted and costly litigation, Plaintiffs and the State (collectively “the Parties”) have agreed that all of Plaintiffs’ §§ 203, 4(f)(4), 5, and 208 claims against the State should be resolved through the terms of this Settlement Agreement and Release (hereafter “Release,” “Agreement,” or “Settlement”).

C. The State has denied and continues to deny that it is liable for the §§ 203, 4(f)(4), 5, and 208 claims alleged by Plaintiffs. The Agreement set out herein by or on behalf of the State hereunder is in settlement and compromise of a disputed claim. The State does not in any way admit liability on the part of the State for any claims made by Plaintiffs. No promise has been made to provide further or other consideration for this Release other than that set forth herein.

D. This Release is entered into in good faith by both Plaintiffs and the State for the purpose of settling a disputed claim. This Release contains the entire agreement between the parties. The terms of this Release are contractual, and not a mere recital.

E. Plaintiffs declare that they are of legal age and are under no mental disability, they have carefully read or had read to them each page of this Release, and they understand the terms of this release, which they voluntarily accept for the purpose of making a full and final compromise and settlement of any and all of their claims.

F. Plaintiffs do hereby declare and warrant that no promise or inducement has been offered or made except as herein set forth, and that this

Release is executed without reliance upon any other statement or representation by the State, or by any attorney, agent, servant or employee of the State, concerning the nature and extent of the claims asserted by them, or the legal liability therefore.

G. Plaintiffs declare and represent that they understand that the consideration described in this Settlement Agreement and Release is all they will receive from the State on their §§ 203, 4(f)(4), 5, and 208 claims.

II. Background

A. On December 31, 2007, at dockets 58 and 58-2, Plaintiffs filed a motion to amend their Complaint in the Litigation, along with a proposed Amended Complaint. The Court granted Plaintiffs' motion to amend complaint on May 19, 2008, at docket 199, and Plaintiffs filed their amended complaint on May 22, 2008, at docket 201. The State filed its Answer to the Amended Complaint on June 6, 2008, docket 237. The State generally denied all allegations, and continues to maintain those denials. The State denies liability.

B. State Defendants are committed to providing and implementing procedures that provide effective assistance to limited-English proficient Yup'ik speaking voters to enable them to participate fully in the electoral process.

III. Settlement Agreement

A. State's Language Assistance Program in the Bethel Census Area

1. The State describes its current language assistance program in the Bethel Census Area (BCA) as follows:

a. in accordance with AS 15.10.107, poll workers in the BCA are trained in even-numbered years at in-person training sessions held in the hub city of Bethel, with the State providing transportation and lodging for all poll workers in the outlying villages to attend training; those few poll workers who are unable to attend the formal training session for reasons beyond the State's control receive training either by telephone from Division of Elections staff, or in-person from the election board chairperson; all poll workers receive training materials including a poll worker handbook, with poll workers serving as bilingual translators also receiving training materials; all poll workers are instructed on the guarantees in the Voting Rights Act (VRA) for language and voter assistance; poll workers serving as translators are trained on the methods and tools for providing complete and accurate translations;

b. bilingual outreach workers who provide voter registration and public notice of elections to all communities in the BCA with a polling place for State-conducted elections; these outreach workers are trained poll workers;

c. Yup'ik sample ballots are provided in all polling places for poll workers to use to provide language assistance – in future elections, the sample ballot will also be available to Section 208 assistors;

d. a comprehensive Yup'ik/English glossary of election terms setting out words and phrases commonly used in elections; a copy of the glossary is provided at each polling place for poll workers to use in providing oral language assistance, an audio and written version have been distributed by the State to the

village councils in the BCA, and the audio version has been posted on the Division of Elections' website;

e. radio ads broadcast in Yup'ik on KYUK and KDLG of public notices concerning State-conducted elections (primary, general, REAA/CRSA, and special), – these radio ads conform with the deadlines set forth in applicable State law and the information required to be translated under the precleared 1981 minority language assistance plan;

f. video broadcasts in Yup'ik aired on the Alaska Rural Communications Service (ARCS) for public notices concerning State-conducted primary and general elections;

g. a toll-free number for voters to call an election worker fluent in English and in Yup'ik for election-related questions and assistance;

h. a full-time staff person, fluent in Yup'ik and English, to provide language assistance to voters, outreach to tribes and other organizations in the BCA, to translate elections materials into Yup'ik, and to coordinate the operations of and serve on the Yup'ik Translation Panel, convened by the State to assist in providing translation of election materials into Yup'ik;

i. a Yup'ik Translation Panel, a group of seven experts on the Yup'ik language, to assist in providing translation of election materials into Yup'ik. The panel members include bilingual college professors who teach the Yup'ik language, retired bilingual teachers of the Yup'ik language, and bilingual individuals who are translators.

j. a language assistance log procedure to track requests for Yup'ik language assistance in the BCA and training provided to poll workers on when and how to complete the log;

k. a post-election assessment program in which the State's bilingual staff person obtains feedback on language assistance from village councils or other village contacts to use in continuing to make improvements to the availability and effectiveness of Yup'ik assistance for voters in the BCA;

l. in future elections, the State's electronic "touch screen" voting machines will include Yup'ik audio for voters providing a clear, complete, and accurate Yup'ik translation of the English audio ballot; and

m. a poster for display in each polling place in the BCA informing voters of their right to receive assistance during the voting process.

B. Additional Language Assistance Measures for the BCA.

Plaintiffs have requested additional language assistance measures for the BCA, and the State agrees to continue all of the above and to provide these additional measures as follows:

1. **Training.** In addition to the training described in paragraph A.1.a. above, the State will provide a video of the training session to workers unable to attend. Further, in odd years the State will continue to make all training materials available to workers (including the video and poll worker materials described in paragraph A.1.a), as well as any additional materials pertinent to the specific election (e.g., information about ballot questions, new election

procedures, etc.).

2. **Outreach.** The State's Yup'ik Language Assistance Program Coordinator (currently Dorie Wassilie) will travel to Bethel to be part of a meeting hosted by the State in odd-numbered years for representatives of all of the villages in the BCA to attend, at the State's cost, to provide outreach on language assistance.

3. **Language Ability Verification.** The State will verify the Yup'ik and English language ability of bilingual poll workers by either having the State's Yup'ik Language Program Coordinator test them or having the local village council confirm the poll workers' language ability.

4. **Willingness to Serve.** The State will verify the bilingual poll workers' willingness to provide language assistance by having the poll workers provide a signed agreement, or by the State contacting the poll worker to secure verbal confirmation of willingness to serve.

5. **Trained Poll Workers/Interpreters.** The State will continue to staff each polling place with at least one trained bilingual poll worker or on call interpreter, at least one of whom will be at the polls during polling hours. In addition, in the event of unforeseen emergencies or no-shows, the State will maintain a list of alternative interpreters and will provide contact information for the State's Yup'ik Language Program Coordinator.

6. **Yup'ik Sample Ballots Distribution.** The State will provide copies of the written Yup'ik sample ballot to the village council offices and

outreach workers in BCA communities 30 days before a State-conducted election.

7. **Radio Ad Distribution.** The State will provide bilingual outreach workers in BCA communities with the English and Yup'ik text of the Yup'ik radio ads broadcast by KYUK and KDLG, with instructions for the outreach workers to broadcast those announcements over their village's VHF radio.

8. **Composition of Yup'ik Translation Panel (YTP).** The State will endeavor to ensure the YTP will continue to be composed of individuals who represent the minor variations in dialects within the Central Yup'ik language, i.e., "upriver vs. downriver, and coastal." At present, the YTP composition is: Coastal: Alyce Fredson, Elsie Jimmie; Downriver: Dorie Wasillie, Lincoln Enoch, Oscar Alexie; Upriver: Frank Chingliak; Akula (Tundra villages): Sophie Alexie.

9. **Distribution of Glossary.** The State will distribute the printed version of the Yup'ik/English glossary of election terms to the bilingual outreach workers in the BCA for the purpose of using that glossary to assist them in providing, clear, complete, and accurate Yup'ik translations.

10. **Translating candidate statements.** The State will provide Yup'ik audio translations of the candidate statements (except for judicial candidate statements) set out in the Official Election Pamphlet (OEP) to the village councils in the BCA, and, the State will post the audio on the Division of Elections' website.

11. **Translating Ballot Measure “For and Against”**

Statements and Neutral Summary. In order to enhance the ability of the State’s bilingual outreach workers to provide effective oral language assistance, the State will provide to all outreach workers the Yup’ik audio and written translations of the “for and against” statements and neutral summary for each ballot measure appearing on State election ballots. The State will also provide this information to the BCA village councils and post this audio on the Division of Elections’ website.

12. **Translation of Summary of Special Needs and Absentee**

Voting Process. The State will provide Yup’ik audio translations of a summary explaining the special needs and the applicable absentee voting processes to the BCA village councils 30 days before a State-conducted election, and post this audio on the Division of Elections’ website 30 days before a State-conducted election. The State will provide training information to the bilingual outreach workers on these subjects.

13. **Translation of Summary of Process to Register to Vote.**

The State will provide Yup’ik audio translations of a summary explaining the voter registration process to the BCA village councils, and post this audio on the Division of Elections’ website. The State will provide training information to the bilingual outreach workers on this subject.

14. **Outreach for Annual List Maintenance.**

In addition to the protocols described in paragraph A.1.b. above, the State will send list maintenance announcements to: a) bilingual outreach workers in the villages that do not

receive the KYUK broadcast, with instructions for the outreach workers to broadcast those announcements over their village's VHF radio; and to b) all village councils in the BCA.

C. Availability of Information

Through December 31, 2012 the State will, upon Plaintiffs' written request, make available to Plaintiffs at no expense to them, the following materials according to the schedule below.

1. **Training materials.** Handbooks and training materials for language assistance and voter assistance, once finalized and printed by the State will be provided to Plaintiffs no later ten days after receipt of written request. Once finalized, the video of the training session that will be provided to poll workers unable to attend in-person training will be provided to Plaintiffs no later than ten days after receipt of written request.

2. **Training attendees.** A list of those BCA workers attending in-person training will be provided to Plaintiffs no later than ten days after receipt of written request.

3. **Bilingual Outreach Worker Materials.** Once finalized, the training materials, and packet of information provided to BCA bilingual outreach workers will be provided to Plaintiffs no later than ten days after receipt of written request.

4. **Translated radio announcements.** A packet of translated announcements containing the audio and written version of audio announced

under paragraph III.B.7 and a listing of the air times for each State conducted election in the BCA will be provided will be provided to Plaintiffs no later than ten days after receipt of written request. The State anticipates providing one packet after each election.

5. **Sample ballots.** Once finalized and printed, a copy of the Yup'ik sample ballots will be provided to Plaintiffs no later than ten days after receipt of written request.

6. **Election Day materials.** After each State conducted election, copies of the language assistance logs maintained at each BCA polling place, election worker timesheets, bilingual outreach worker certificates and post-election assessments will be provided to Plaintiffs within thirty days of receipt of written request.

7. **Yup'ik/English glossary of election terms and updates thereto.** Once finalized and printed, a copy will be provided to Plaintiffs no later than ten days after receipt of written request.

8. **Translation of ballot measure information.** Once finalized, copies of the Yup'ik audio and written translations of the "for and against" statements and neutral summary for each ballot measure appearing on State election ballots will be provided to Plaintiffs no later than ten days after receipt of written request.

D. Termination of Coverage under VRA.

1. The State's agreement relating to language assistance under §§ 203 and 4(f)(4) as set out in this Settlement and Release continues only so long as the BCA is subject to Sections 4(f)(4) and 203 of the Voting Rights Act. The State will have no further obligations under this Agreement if: (1) the State "bails out" of statewide Section 4(f)(4) coverage and the BCA bails out from Section 203 coverage; OR (2) Section 203 and Section 4(f)(4) of the VRA are found unconstitutional by a court of competent jurisdiction; OR (3) for any reason the BCA is no longer covered by Sections 203 and 4(f)(4) of the VRA.

2. The State's agreement relating to preclearance under § 5 as set out in this Settlement and Release continues only so long as the BCA is subject to Section 5 of the Voting Rights Act. The State will have no further obligations under this Agreement if: (1) the State "bails out" of statewide Section 5 coverage; OR (2) Section 5 of the VRA is found unconstitutional by a court of competent jurisdiction; OR (3) for any reason the BCA is no longer covered by Section 5 of the VRA.

E. DOJ Preclearance Conclusive.

The Parties agree that Plaintiffs may not bring an action to enforce this Agreement, or challenge under Section 5, any action by the State for which the State has received DOJ preclearance.

F. Preclearance of this Settlement Agreement and Release.

Within 14 calendar days of the date on which this Agreement is fully

executed, the State shall submit this Agreement for preclearance under Section 5 of the VRA. The State will do so in case this Agreement is construed to include changes in the procedures for the State's submission of language assistance voting changes that might require preclearance, such as changes that may reflect the State's policy decisions. The State will copy the Plaintiffs on the preclearance request. Within the same period, the Plaintiffs will submit a letter to DOJ in support of this Agreement and in support of preclearance of this Agreement. The Plaintiffs agree that the changes requiring preclearance contained within this Agreement, if any, have neither the purpose nor effect of discriminating against minority language voters in the Bethel Census Area. If the DOJ refuses to preclear any of the language assistance measures set out in this Agreement, the State is not required to implement those measures. The State will make good faith efforts to work with DOJ to obtain preclearance.

G. Remedy in Event of Dispute Over Compliance With This Agreement.

If a Party believes that the other side has failed to satisfy the terms of this Agreement, that Party will notify the other side promptly and in writing. Thereafter, within 21 calendar days of the receipt of the written notice, the Parties will confer at a mutually agreeable time (by telephone or in person). The Parties will then undertake their best efforts to resolve the issue. Should discussions between the parties fail to lead to resolution one or both of the parties shall refer the matter to mediator Dan Hensley, Alaska Superior Court Judge (retired), or

another mediator jointly selected by the parties. Only upon written certification by the mediator that the parties' dispute is irreconcilable, one or more of the parties may file a motion with the U.S. District Court (Anchorage) to enforce the dispute regarding compliance with the Settlement Agreement. The parties have agreed, in accordance with *Kokkonen v. Guardian Life Insurance Company*, 114 S.Ct. 1673 (1994), that the U.S. District Court, Anchorage, retains jurisdiction over the enforcement of this settlement agreement until December 31, 2012.

H. Dismissal of Section 203, 4(f)(4), 5, and 208 Claims, With Prejudice.

The litigation from which this Settlement Agreement arises, case number 3:07-cv-00098, has been bifurcated so that Section 5 VRA claims contained in Plaintiffs' December 31, 2007 amended complaint are before a three-judge panel of the U.S. District Court, whereas all other claims including Sections 203, 4(f)(4) and 208 are before Judge Burgess only. The parties agree that upon the Court's (Judge Burgess's) approval of this Settlement Agreement the parties will execute a stipulation for dismissal with prejudice as to any and all §§ 203, 4(f)(4), 208, and other claims solely before Judge Burgess, in *Anna Nick, et al., v. Bethel, Alaska, et al.* case no. 3:07-cv-00098-TMB. The parties further agree that upon the Court's (three-judge panel) approval of this settlement Agreement, the parties shall execute a stipulation for dismissal with prejudice as to the Section 5 claim and any other claims solely before the three-judge panel in *Anna Nick, et al., v. Bethel, Alaska, et al.* case no. 3:07-cv-00098-TMB-MMM-

JKS. The stipulations for dismissal with prejudice will not prevent the Court from exercising jurisdiction as provided in paragraph III.G. of this Agreement, above. The parties hereby authorize and agree that their attorneys may on their behalves execute all documents necessary to effectuate the stipulated dismissals with prejudice as described herein.

I. Voluntary Release.

All of the terms and conditions of this Agreement have been reflected upon without haste. Neither Party is under any disadvantage and no representations other than those set forth in this Agreement have been made. Plaintiffs and the State have had the opportunity to consult with their respective attorneys and are signing this Agreement without any coercion.

J. Attorneys' Fees.

1. Subject to paragraph 3 below, in consideration of this Settlement Agreement, the State will pay \$850,000.00 representing attorneys' fees and costs incurred by Plaintiffs with respect to their Section 4(f)(4), 203, and 208 claims as described in this Agreement.

2. Subject to paragraph 3 below, in consideration of this Settlement Agreement, the State will pay \$125,000.00 representing attorneys' fees and costs incurred by Plaintiffs with respect to their Section 5 claims as described in this Agreement.

3. The fee payments described in paragraphs 1 and 2 above are subject to review by the Mediator, Dan Hensley, Alaska Superior Court Judge

(retired). The fees shall be payable only upon the Mediator's written certification (after his review of Plaintiffs' counsels' attorney fee records) that the fees and costs to be paid are reasonable. If the Mediator determines the fees and costs are not reasonable, this will signify the existence of an irreconcilable dispute, subjecting the attorneys' fees and costs issue to court jurisdiction as described in paragraph III.G. of this Agreement.

4. The attorneys' fees and costs payments described in paragraphs 1 and 2 above are subject to legislative appropriation. Upon execution of this Agreement by the parties' counsel and the Mediator's certification (as described in paragraph 3 above), the State will submit a request to the Alaska Legislature for such appropriation.

5. Except as described above in paragraphs 1 through 4, all attorneys' fees and costs will be borne by the respective parties.

K. State's Right to Challenge U.S. Attorney General's Certification Regarding Federal Observers.

This Settlement Agreement is without prejudice to and does not affect the State's right, under applicable law, to pursue a claim for relief from the U.S. Attorney General's October 1, 2009 Certification Regarding Federal Observers for the BCA, 74 Fed. Reg. 51,320 (published Oct. 6, 2009), nor does it affect the Plaintiffs' right to oppose any claim by the State for relief from that Certification.

L. Signing in Counterparts.

This Agreement may be signed in counterparts and facsimile signatures will

be considered as effective to bind the parties hereto.


M. Agreement Effective Upon Court Approval.

1. The parties agree to submit a joint motion to Judge Burgess, sitting as single-judge, for Court approval of this Agreement as to Plaintiffs' claims under Sections 4(f)(4), 203, and 208 of the VRA. This joint motion will specify that the Court should rescind its July 30, 2008 Order of Preliminary Injunction, Document No. 327. This Settlement Agreement as to Plaintiffs' claims under Sections 4(f)(4), 203, and 208 of the VRA will take effect upon Judge Burgess's approval.

2. The parties agree to submit a joint motion to the three-judge panel for Court approval of this Agreement as to Plaintiffs' claims under Section 5 of the VRA. This Settlement Agreement of Plaintiffs' claims under Section 5 of the VRA will take effect upon the three-judge Court's approval.

AGREED TO:

Dated: _____

Anna Nick, Plaintiff 


Dated: _____

Billy McCann, Plaintiff 

Dated: _____


David O. David, Plaintiff 

Dated: _____

Arthur Nelson, Plaintiff 


Kasigluk Traditional Council,
Plaintiff

Dated: _____

By: _____
Steven Nicholas 


Kwigillingok I.R.A. Council,
Plaintiff

Dated: _____

By: _____
Peter Jimmie 

Tuluksak Tribal Council,
Plaintiff

Dated: _____

By: _____
Joseph Alexie 

Tuntutuliak Traditional Council,
Plaintiff

Dated: _____

By: _____
Henry Lupie 

APPROVED AS TO FORM

Dated: 2/3/10

By:  on behalf of all plaintiffs

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Dated: February 4, 2010

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