

1 LOUISIANA W. CUTLER
K&L GATES LLP
2 420 L Street, Suite 400
Anchorage, AK 99501-1971
3 T: (907) 276-1969
F: (907) 276-1365
4 E: louisiana.cutler@klgates.com

5 STEPHEN A. SMITH (*Pro Hac Vice*)
MARLA GOODMAN (*Pro Hac Vice*)
6 K&L GATES LLP
925 Fourth Avenue, Suite 2900
7 Seattle, WA 98104-1158
T: (206) 623-7580
8 F: (206) 623-7022
E: steve.smith@klgates.com

9 Attorneys for Defendants
10 City of Bethel, Alaska and Lori Strickler,
in her capacity as municipal clerk of Bethel
11

12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ALASKA

15 ANNA NICK, et al.,
Plaintiffs,

16 v.

17 BETHEL, ALASKA, et al.,
18 Defendants.

No. 3:07-CV-0098 (TMB)

19 CONSENT DECREE AND
20 SETTLEMENT AGREEMENT
21 BETWEEN PLAINTIFFS BILLY
McCANN AND ARTHUR NELSON
AND DEFENDANTS BETHEL,
ALASKA AND LORI STRICKLER, IN
HER CAPACITY AS MUNICIPAL
CLERK

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26 CONSENT DECREE AND SETTLEMENT
AGREEMENT AS TO PLAINTIFFS AND
BETHEL DEFENDANTS - 1
Case No. 3:07-CV-0098 (TMB) (three-judge court)

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K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 A. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 &
2 1343(a)(3)-(4) and 42 U.S.C. § 1973j(f). Venue is proper under 28 U.S.C. § 1391(b).

3 B. Plaintiffs filed this action under Sections 4(f)(4), 42 U.S.C. § 1973b(f)(4), and
4 203, 42 U.S.C. § 1973aa-1a, (collectively, the “minority language provisions”) and under
5 Section 208, 42 U.S.C. § 1973aa-6, of the Voting Rights Act of 1965, as amended. Plaintiffs
6 later amended their complaint to include claims under Section 5, 42 U.S.C. § 1973c, of the
7 Voting Rights Act (the “preclearance provisions”).

8 C. Billy McCann and Arthur Nelson are limited-English proficient voters whose
9 first and primary language is Yup’ik. Both reside within the City of Bethel. Plaintiffs
10 McCann and Nelson are the only two Plaintiffs in this action who maintain claims against the
11 City of Bethel and the City Clerk in her official capacity; all other plaintiffs’ claims against
12 the City and Clerk have been voluntarily dismissed.

13 D. Defendant City of Bethel, Alaska (“Bethel” or “the City”) is a political
14 subdivision of the State of Alaska and is subject to the minority language election
15 requirements, Section 208 requirements, and preclearance requirements listed in paragraph B
16 above. Defendant Lori Strickler is the City Clerk for the City of Bethel. Collectively, they
17 are “Bethel Defendants.”

18 E. Bethel Defendants admit that they are subject to Sections 5, 203 and 208 of the
19 VRA. Bethel Defendants deny all other substantive allegations set forth in the complaint and
20 amended complaint. In this action, Bethel Defendants have contended that the City has
21 complied with the Voting Rights Act since the 1970s in at least the following regards:

22 i. Yup’ik-English translators are available at the polling location(s) on election
23 day to assist voters with voting-day procedures and voting;

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CONSENT DECREE AND SETTLEMENT
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K&L GATES LLP
925 FOURTH AVENUE
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SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

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- ii. Voters are permitted to use assistors of their choice, other than their employer or an agent of their employer or their employer’s union, including in the voting booth;
- iii. Training is provided for poll workers, including translators, on election-day procedures;
- iv. Election-related notices and announcements are aired over local radio in Yup’ik in equal or substantially equal time and content to English-language announcements that are aired on the same radio station;
- v. The City Clerk is available on election day and otherwise to respond to needs that arise relating to elections or voting;
- vi. Yup’ik-language assistance is available or readily accessible as needed at or through City Hall for election-related inquiries or needs;
- vii. The City and/or its Clerk maintains general contact or outreach with local Native Alaskan organizations, as applicable; and
- viii. The City maintains general contact or outreach with the Native Alaskan population in Bethel.

Plaintiffs do not admit Bethel defendants’ contentions. Plaintiffs contend that the City has not complied with the minority language assistance provisions of the Voting Rights Act. As the Court stated in its denial of Plaintiffs’ Motion for Preliminary Injunction, “Plaintiffs have pointed to significant weaknesses in the [C]ity’s language assistance efforts. These include: the lack of mandatory training, the failure to confirm the bilingual abilities of poll workers designated to serve as translators, and the failure to provide written translations of complex ballot questions for use by translators.” (Docket No. 440 at 11). The Court finds that the Parties’ claims are worthy of compromise and resolution by this Decree.

CONSENT DECREE AND SETTLEMENT
 AGREEMENT AS TO PLAINTIFFS AND
 BETHEL DEFENDANTS - 3
 Case No. 3:07-CV-0098 (TMB) (three-judge court)

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K&L GATES LLP
 925 FOURTH AVENUE
 SUITE 2900
 SEATTLE, WASHINGTON 98104-1158
 TELEPHONE: (206) 623-7580
 FACSIMILE: (206) 623-7022

1 F. Bethel Defendants filed a motion for summary judgment on April 25, 2008
2 (Docket No. 127). The Court denied this motion on July 23, 2008 (Docket No. 320) on the
3 grounds that the Bethel Defendants “failed to establish that McCann and Nelson lack
4 standing, that their claims are time-barred, or that there is an absence of factual issues as to
5 the City’s compliance with the VRA.” Plaintiffs filed a motion for preliminary injunction
6 against Bethel Defendants on May 22, 2008 (Docket No. 202). The Court denied this motion
7 on October 3, 2008 (Docket No. 440) on the grounds that although “Plaintiffs have
8 established a fair chance of success on the merits of their claims under Sections 4(f)(4) and
9 203 of the VRA,” they “failed to carry the heavy burden” required for the type of relief
10 sought. In the same order, the Court also found that Plaintiffs did not establish a fair chance
11 of success on the merits of their claims under Section 208.

12 G. By signing this Decree, Bethel Defendants do not admit liability as to any of
13 the claims in the complaint or amended complaint. Plaintiffs and Bethel Defendants
14 (collectively, “the Parties”) acknowledge that each took reasonable positions that are
15 sufficient for this Court to have jurisdiction over this decree under *Lawyer v. Department of*
16 *Justice*, 521 U.S. 567 (1997).

17 H. Bethel Defendants are committed to providing and implementing procedures
18 that provide effective assistance to limited-English proficient Yup’ik speaking voters to
19 enable them to participate fully in the electoral process.

20 I. To avoid protracted and costly litigation, the Parties have conferred in good
21 faith and have agreed that this lawsuit should be resolved through the terms of this Consent
22 Decree and Settlement Agreement (the “Decree”). Accordingly, the Parties hereby consent to
23 the entry of this Decree, as indicated by the signatures of counsel at the end of this Order.
24 The Parties waive a hearing and entry of findings of fact and conclusions of law on all issues
25 involved in this matter.
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CONSENT DECREE AND SETTLEMENT
AGREEMENT AS TO PLAINTIFFS AND
BETHEL DEFENDANTS - 4
Case No. 3:07-CV-0098 (TMB) (three-judge court)

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K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 Accordingly, it is hereby ORDERED AND DECREED that:

2 1. Duration. The duration of this Decree shall be limited to four (4) years from
3 the date this Court enters this Decree, unless sooner terminated by this Court. After
4 termination of this Decree, the Plaintiffs and the Bethel defendants are not bound by its terms
5 and the City will be bound only by the applicable provisions of the Voting Rights Act, if any.

6 2. Translators at Polls. The City shall ensure that at least one trained translator-
7 pollworker (hereinafter just "translator") is available during City elections at each polling
8 place at all times when the polling place is open. Accordingly, the City will keep a record of
9 which translator is assigned to each polling place along with the hours that each translator
10 worked. The Parties understand that on occasion, through no fault of the City's, a translator
11 may be unavailable at the polling place or may not show up as planned, in which instances the
12 City shall also keep a list of backup or roving translators to fill in as needed. Translators on
13 this list shall comply with the training requirements described in paragraph 3.

14 3. Translator Training Program. Training shall be mandatory for all translators
15 who work at City elections. The Parties agree that this training is satisfied by participation in
16 the State of Alaska (the "State")'s training program. In the event that the State is not holding
17 a training session in Bethel within the 5 months prior to a particular City election, the City
18 will hold its own session based upon the State's materials. In-person training is preferred and
19 the City will convey this to its translators, but in the event a translator(s) cannot or does not
20 attend in-person training, the City will require that he or she view a video recording that the
21 City has made of the State's training (provided that the State consents to this recording). One
22 trained translator shall be present at each polling place on election day. In the unlikely event
23 that a translator does not attend in-person training or video training, despite the fact that the
24 City has informed him or her that training is mandatory, the City may nonetheless employ that
25 person on election day, *provided that* any such person (1) may only serve without having
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1 attended in-person or video training only once and must thereafter secure training before
2 working any additional elections, and (2) must sign a certificate attesting that they have read
3 and understand the poll worker training handbook, including the manual specifically geared
4 toward providing election assistance at the polls.

5 4. Confirmation Procedure of Translators. The Parties understand that the State's
6 training program includes an opportunity to confirm the language abilities of the translators.
7 The translators who work at City elections will have their language abilities confirmed by the
8 State's training program. If the State does not confirm the language abilities of translators as
9 part of its training, the City shall use the Division of Elections' Yup'ik Language Coordinator
10 to do so, or the City may rely upon a Qualified Yup'ik-English Translator as described in
11 Paragraph 9.

12 5. Yup'ik-English Election Glossary. The Parties understand that the State has
13 prepared and will continue to refine a Yup'ik-English glossary of election terms (the
14 "Glossary"). With permission of the State, the City will provide the Glossary to its translators
15 in advance of City elections. The City will review the Glossary and propose City-specific
16 terms (in English) for the State to include, if such terms are not already contained in the
17 Glossary. The City will review and propose terms, if any, sufficiently in advance of the
18 October 2009 election to enable the State to add the terms. The City will provide updated or
19 new City-specific terms to the State for use in the Glossary from time-to-time if needed. In
20 the event that the State ceases to use the Glossary for any reason, the City will have no further
21 obligations under this provision.

22 6. Broadcast of Yup'ik-language Election Announcements. The City shall make
23 any election-related announcements that it makes on KYUK in English available in oral
24 Yup'ik as well. For example, if the City airs only one announcement in English about an
25 upcoming election, it shall air one in Yup'ik as well. If, however, it airs daily announcements
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1 for a week in English, it will do the same in Yup'ik. The City may provide the
2 announcements to KYUK in English and rely on the translators at KYUK to translate and
3 make the announcements.

4 7. Advance Publication of Translator Services. The City posts written notices of
5 elections in certain locations and in the local newspapers. For any such notices, the City shall
6 include (in English) the following statements or something similar: (1) Assistance in Yup'ik
7 will be available at the polls on election day, and (2) voters may bring someone with them to
8 help them vote, including inside the voting booth. To ensure that the local Yup'ik population
9 is aware of these options the City will include such information explicitly in those election-
10 related announcements broadcast in Yup'ik over KYUK radio, in accordance with Paragraph
11 6.

12 8. Translations of Initiatives and Referenda. The City shall translate all
13 initiatives and referenda (also known as "yes/no questions") into written Yup'ik in accordance
14 with paragraph 9 of the Consent Decree. One copy of the translation(s) shall be available at
15 each polling place on election day, and one copy posted in the City Office at least two weeks
16 prior to election day, or as soon as the written translation is available. The translations each
17 shall be laminated or have some marking on it such as "do not write on this ballot" to ensure
18 voters do not accidentally write on it. This provision applies *only* when there is an initiative
19 or referendum measure on the ballot.

20 9. Verification of Yup'ik Translations. In preparing any Yup'ik translations
21 referenced in this Decree, the City will rely upon an individual with experience in Yup'ik-
22 English translations, recommendations from members of the local Yup'ik community, and
23 knowledge of the various Yup'ik dialects (a "Qualified Yup'ik-English Translator"), such as
24 an instructor in Yup'ik at the University of Alaska's Kuskokwim campus, a Yup'ik
25 broadcaster at KYUK radio, or another individual with sufficient qualifications and
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1 experience in Yup'ik-English translations. The Parties understand that the State has
2 assembled and employed a panel of Yup'ik linguistic and/or translation experts to assist it
3 with election-related translations (the "Translation Panel"). The City will request that the
4 State permit the City to use the Translation Panel, at no cost to the City, to verify written
5 translations of initiatives and referenda prepared under paragraph 8 of the Consent Decree.
6 Plaintiffs will also request that the State permit the City to make use of its Translation Panel.
7 If the City is unable to use the Translation Panel for any reason or would have to pay a fee to
8 use the Translation Panel, the City may verify its translations of initiatives and referenda
9 through one or more Qualified Yup'ik-English Translators as described at the beginning of
10 this paragraph.

11 10. Record-Keeping. The City will retain written copies of election
12 announcements posted in accordance with paragraph 7 or broadcast over KYUK in
13 accordance with paragraph 6, a record of who served as the translators for each election, the
14 polling place to which each translator was assigned, whether the language ability of each
15 translator was confirmed, the method through which each translator received training and the
16 date of such training for the duration of this Decree. The City will provide copies of these
17 records to Plaintiffs or Plaintiffs' counsel within a reasonable time after they become
18 available. The City will request that KYUK provide the City with an audio copy of the
19 announcements; copies of those audio files received from KYUK shall also be made available
20 to Plaintiffs or Plaintiffs' counsel. If there is any cost associated with procuring or copying
21 audio files, Plaintiffs shall pay the costs associated with their audio copies.

22 11. Dismissal of All Claims Against Bethel Defendants. All Plaintiffs' claims
23 against Bethel Defendants are dismissed in full with prejudice, subject only to the Court's
24 retention over this Decree as provided in paragraph 13.
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CONSENT DECREE AND SETTLEMENT
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K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 12. Release of Bethel Defendants. Plaintiffs release Bethel Defendants from any
2 and all claims, known or unknown, that in any way arise out of the City's conduct of
3 elections, which claims have been or could have been asserted against Bethel Defendants as
4 of the date this Decree is entered by the Court, subject only to the Court's retention over this
5 Decree as provided in paragraph 13.

6 13. Retention of Jurisdiction. This Court will retain jurisdiction over this case
7 during the duration of this Decree to enter such other orders as may be necessary for the
8 effectuation of the terms of this Decree.

9 14. Meet and Confer. The Parties seek to obviate any need to return to the Court
10 during the duration of this Decree. If a party believes that the other side has failed to satisfy
11 the terms of this Decree, that party will notify the other side promptly and in writing and the
12 Parties will find a mutually agreeable time to confer (by telephone or in person) within 21
13 days of receipt of the notice. The Parties will undertake their best efforts to resolve the issue
14 without resorting to the Court. The Parties will make their best efforts to continue this
15 practice after the duration of this Decree. If a motion in this Court nonetheless remains
16 necessary to resolve the issue under the Decree, the filing party is required to provide the
17 Court with a sworn declaration that the Parties have complied with the provisions of this
18 paragraph. In the event a motion is filed with the Court under this Decree by one of the
19 Parties, the Court may take into consideration the Side Agreement, the Parties' compliance
20 with this meet and confer provision, and any evidence of violations of this Decree when
21 determining whether to award attorney's fees and costs associated with such a motion.

22 15. Information Sharing. If, during the duration of this decree, Plaintiffs or
23 Plaintiffs' counsel learn of any complaints or concerns regarding the City's provision of
24 minority language assistance Plaintiffs or Plaintiffs' counsel will alert the City Clerk (and it is
25 agreed this shall not constitute impermissible contact with a represented party) within a
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1 reasonable time to allow the City to cure the defect. If, during the duration of this decree, the
2 City Defendants intend to make changes to their election procedures in accordance with
3 Section 5 of the VRA, they will alert Plaintiffs' counsel and share such information with them
4 prior to submission to the Department of Justice to allow for feedback. This provision is
5 intended to facilitate information sharing and may not be construed to impose a legal duty
6 upon the Parties or their counsel. This provision is intended to apply to concerns that may not
7 be actionable under this Decree.

8 16. Preclearance. Within 14 days of the date on which the Court enters this
9 Decree, Bethel Defendants shall submit the voting changes in this Decree for preclearance
10 pursuant to Section 5 of the Voting Rights Act. The City will copy the Plaintiffs on the
11 preclearance request. The Plaintiffs agree that the voting changes contained within this
12 Decree have neither the purpose nor will they have the effect of discriminating against
13 minority language voters in the City of Bethel in accordance with Section 5 of the VRA.

14 17. Final and Binding. This Decree is final and binding between the Parties and
15 their agents and successors regarding the claims raised in this action.


16 AGREED AND CONSENTED TO:

17 For Plaintiffs:

For Bethel Defendants:

18
19
20 By 

K&L GATES LLP

21 By 

21 Natalie Landreth
22 Heather Kendall Miller
23 Dr. James T. Tucker
24 NATIVE AMERICAN RIGHTS FUND
801 B Street, Suite 401
Anchorage, AK 99501

Stephen A. Smith (Pro Hac Vice)
Marla Goodman, (Pro Hac Vice)
925 Fourth Avenue, Suite 2900
Seattle, WA 98104-1158

25 Jason Brandeis
26 ACLU OF ALASKA FOUNDATION

CONSENT DECREE AND SETTLEMENT
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925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 P.O. Box 201844
2 Anchorage, AK 99520

3 M. Laughlin McDonald (Pro hac vice)
4 Brian Sutherland (Pro hac vice)
5 AMERICAN CIVIL LIBERTIES UNION
6 230 Peachtree Street, NW, Suite 1440
7 Atlanta, GA 30303

8
9 PROPOSED ORDER

10 This Court having considered the terms of the above Settlement Agreement between
11 Plaintiffs McCann and Nelson and the Bethel Defendants and it appearing that there are
12 reasonable grounds for entering this relief, now hereby:

13 ENTERS the relief set forth above and incorporates those terms herein.

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15 DATED this _____ day of _____, 2009.

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17 HONORABLE TIMOTHY M. BURGESS
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26 CONSENT DECREE AND SETTLEMENT
AGREEMENT AS TO PLAINTIFFS AND
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925 FOURTH AVENUE
SUITE 2900
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