

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

Nick, et al.

Plaintiff,

vs.

Bethel, et al.

Defendants.

Case No. 3:07-cv-0098 TMB

**ORDER**  
Re: the Plaintiff's Motion for a Preliminary  
Injunction Against the Bethel Defendants

**I. MOTION PRESENTED**

At Docket 202, Plaintiffs seek a preliminary injunction requiring the Bethel Defendants to adopt certain measures related to the minority language and voter assistance rights guaranteed by the Voting Rights Act of 1965 ("VRA"). Specifically, the Plaintiffs urge the Court to order mandatory relief in connection with Bethel's October 7, 2008 municipal election to ensure that Yup'ik-speaking voters in the Bethel Census area receive effective language assistance under sections 203<sup>1</sup> and (4)(f)(4)<sup>2</sup> of the VRA , and that eligible voters receive assistance during the voting process, including in the voting booth, as guaranteed by section 208<sup>3</sup> of the VRA. Defendants oppose the motion, on which oral argument was heard July 8, 2008.

Because the Plaintiffs have not satisfied the heavy burden of proof required to obtain mandatory injunctive relief, the Court DENIES the Plaintiffs' motion with regard to the Bethel Defendants.<sup>4</sup>

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<sup>1</sup> 42 U.S.C. § 1973aa-1a.

<sup>2</sup> 42 U.S.C. § 1973b(f)(4).

<sup>3</sup> 42 U.S.C. § 1973aa-6.

<sup>4</sup> The Court previously granted the Plaintiffs' motion against the State Defendants, ordering the State to adopt a number of measures in connection with the August 26, 2008 state-wide primary election. *See* Dkt. No. 327.

## II. BACKGROUND

On June 11, 2007, the Plaintiffs initiated this action seeking declaratory and injunctive relief with respect to election-related policies and procedures used by the state of Alaska and the city of Bethel in the Bethel census area. The original complaint asserted violations of the VRA's bilingual language and voter-assistance guarantees. The Plaintiffs later amended their complaint to add an additional cause of action, alleging that the Defendants violated the "preclearance" requirements of Section 5<sup>5</sup> of the VRA. A three-judge panel was then appointed to hear the Section 5 claim, as required by federal law.<sup>6</sup>

On May 22, 2008, the Plaintiffs filed the motion at issue here, along with a 29-page proposed order detailing the injunctive relief sought against both the State<sup>7</sup> and Bethel Defendants.<sup>8</sup> Following a Court-convened status conference, the Plaintiffs submitted a much-reduced list of actions sought as injunctive relief against the Defendants. The pared-down list includes: the appointment of federal election observers, the hiring of a bilingual elections coordinator fluent in English and Yup'ik, the development of a Yup'ik glossary of common election terms, the airing of pre-election publicity and announcements in Yup'ik, consultation with Plaintiffs' counsel and tribal leaders to ensure the accuracy of any materials translated into Yup'ik, mandatory poll worker training on the VRA's bilingual language requirements, and pre- and post-election reports summarizing the State's efforts to comply with these measures. The Plaintiffs also seek, for each polling place within the Bethel census area, the provision of a sample ballot translated into Yup'ik

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<sup>5</sup> 42 U.S.C. § 1973c.

<sup>6</sup> 42 U.S.C. § 1973c; 28 U.S.C. § 2284.

<sup>7</sup> The "State Defendants" include Sean Parnell, in his official capacity as state Lieutenant Governor; Whitney Brewster, in her official capacity as Director of the state Division of Elections; Becka Baker, in her official capacity as Elections Supervisor of the Nome Regional Elections Office; and Michelle Speegle, in her official capacity as Elections Supervisor of the Fairbanks Regional Elections Office.

<sup>8</sup> The "Bethel Defendants" include Bethel, Alaska and Lori Strickler, in her official capacity as municipal clerk of Bethel.

and the display of a poster written in Yup'ik and English notifying voters of the availability of language and voting assistance.

The State and Bethel Defendants have offered starkly different responses to the Plaintiffs' motion. In a nutshell, the Bethel Defendants contend their language assistance efforts satisfy the VRA and allow Yup'ik-speaking voters to meaningfully participate in elections. By contrast, the State Defendants – while opposing the motion – undertook an overhaul of their minority language assistance program (MLAP) for Alaska Native voters in response to this litigation. The State's revised MLAP includes many – but not all – of the actions sought by the Plaintiffs in their status report. The State objected, however, to the provision of written election materials in Yup'ik, contending the VRA exempts Yup'ik from this requirement because it is a “historically unwritten” language. On July 8, 2008, the Court orally granted summary judgment for the Defendants on this issue, followed by a written order on July 23, 2008. In that order, the Court noted that the Defendants may still need to produce some written election-related materials in minority languages in order to meet the VRA's basic requirement that “covered jurisdictions” provide “effective” language assistance.<sup>9</sup>

Because it initially appeared that the Plaintiffs' original motion for a preliminary injunction implicitly involved the Section 5 claim, the three-judge panel appointed to hear that claim participated in the July 8, 2008 hearing. But the parties' arguments at the hearing, and the Plaintiffs' filing of a separate motion for a preliminary injunction on the Section 5 claim shortly before the hearing, made clear that the issues raised in this motion are distinct from the Section 5 claim. Because of this, Judge Burgess, to whom this case was originally assigned, retained jurisdiction over the Plaintiffs' original motion for a preliminary injunction. The Plaintiffs' second motion seeking injunctive relief – which deals exclusively with the Section 5 claim – remains pending before the three-judge panel.

### **III. LEGAL STANDARDS**

A party moving for preliminary injunction must show that a legal remedy is inadequate, meaning that the moving party is faced with an immediate and irreparable injury for which they

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<sup>9</sup> 28 C.F.R. § 55.2.

cannot be compensated with money damages.<sup>10</sup> “[A] preliminary injunction should issue...upon a clear showing of either (1) probable success on the merits and possible irreparable injury, or (2) sufficiently serious questions going to the merits to make them fair grounds for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.”<sup>11</sup> Under this second test, “even if the balance of hardships tips decidedly in favor of the moving party, it must be shown as an irreducible minimum that there is a fair chance of success on the merits.”<sup>12</sup> Thus, the standard for a preliminary injunction balances the moving party’s likelihood of success against the relative hardship to the parties.<sup>13</sup> “If the harm that may occur to the [moving party] is sufficiently serious, it is only necessary that there be a fair chance of success on the merits.”<sup>14</sup>

In the instant case, the Court must also consider the nature of the relief sought by the Plaintiffs. Where a party seeks mandatory relief that “goes well beyond maintaining the status quo *pendente lite*, courts should be extremely cautious about issuing a preliminary injunction.”<sup>15</sup> Mandatory preliminary relief is to be issued only where “the facts and law clearly favor the moving party.”<sup>16</sup>

#### **IV. DISCUSSION**

The Ninth Circuit has stated that the “critical element” in determining which legal standard or test to apply on a preliminary injunction is the relative hardship to the parties. “If the balance of harm tips decidedly toward the plaintiff, then the plaintiff need not show as robust a likelihood of

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<sup>10</sup> See *Dymo Industries, Inc. v. Tapeprinter, Inc.*, 326 F.2d 141, 143 (9th Cir. 1964).

<sup>11</sup> *Aguirre v. Chula Vista Sanitary Serv. & Sani-Trainer, Inc.*, 542 F.2d 779, 781 (9th Cir. 1976) (citing *Gresham v. Chambers*, 501 F.2d 687, 691 (2nd Cir. 1974)); *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999).

<sup>12</sup> *Martin v. Int’l. Olympic Comm.*, 740 F.2d 670, 675 (9th Cir. 1984).

<sup>13</sup> See *Sun Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1118 (9th Cir. 1999)

<sup>14</sup> *William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc.*, 526 F.2d 86, 88 (9th Cir. 1975).

<sup>15</sup> *Id.*; *Martin*, 740 F.2d at 675.

<sup>16</sup> *Stanley v. University of Southern Calif.*, 13 F.3d 1313, 1320 (9th Cir. 1994).

success on the merits as when the balance tips less decidedly.”<sup>17</sup> Here, the right at stake is considered fundamental. Voting “for the candidate of one’s choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.”<sup>18</sup> Therefore, the Plaintiffs have established the possibility of an irreparable injury.

The Court further finds that the balance of hardships tips in favor of the Plaintiffs. While the Court recognizes that as a practical matter, the proximity of the October 7, 2008 municipal election might make it difficult for the Bethel Defendants to accomplish the full spectrum of measures imposed on the State Defendants as injunctive relief, the burden of such an order would pale in comparison to the hardship the Plaintiffs would face if denied the right to meaningfully participate in the municipal election. Having found that the balance of hardships favors the Plaintiffs, the Court turns next to the merits of the Plaintiffs’ claims against the Bethel Defendants. Under the standard preliminary injunction analysis, the Plaintiffs must show, at a minimum, that they have a fair chance of success on the merits. But because the Plaintiffs are seeking mandatory relief, they also have a heightened burden to meet, and must show that the facts and law clearly favor them.

#### **A. The Language Assistance Claims**

The requirements of sections 4(f)(4) and 203 of the VRA are essentially identical. They bar covered jurisdictions from providing English-only voting instructions and materials in any public election; all “voting materials” provided in English must also be provided in each language triggering coverage under the VRA. Specifically, the VRA’s provisions direct that whenever a State or political subdivision “provides any voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language . . .” Both sections also include the following exemption:

*Provided, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan Natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is*

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<sup>17</sup> *Comm. of Cent. American Refugees v. I.N.S.*, 795 F.2d 1434, 1437 (9th Cir. 1986).

<sup>18</sup> *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

only required to furnish oral instructions, assistance, or other information relating to registration and voting.<sup>19</sup>

Because the Court has ruled that Yup'ik is a “historically unwritten” language, this exemption applies and the Defendants are required to provide only oral assistance to Yup'ik-speaking voters.

Compliance with the VRA’s bilingual provisions is measured by an “effectiveness” standard. The critical question is whether materials are provided in such a way that voters from applicable language groups are “effectively informed of and participate effectively in voting-connected activities” and whether a covered jurisdiction has taken “all reasonable steps to achieve that goal.”<sup>20</sup> In addition, the U.S. Attorney General has issued regulations on oral assistance and election-related publicity, which state:

(a) General. Announcements, publicity, and assistance should be given in oral form to the extent needed to enable members of the applicable language minority group to participate effectively in the electoral process.

(b) Assistance. The Attorney General will consider whether a jurisdiction has given sufficient attention to the needs of language minority group members who cannot effectively read either English or the applicable minority language and to the needs of members of language minority groups whose languages are unwritten.

(c) Helpers. With respect to the conduct of elections, the jurisdiction will need to determine the number of helpers (i.e., persons to provide oral assistance in the minority language) that must be provided. In evaluating the provision of assistance, the Attorney General will consider such facts as the number of a precinct’s registered voters who are members of the applicable language minority group, the number of such persons who are not proficient in English, and the ability of a voter to be assisted by a person of his or her own choice. The basic standard is one of effectiveness.<sup>21</sup>

It is undisputed that the state of Alaska is a “covered jurisdiction” under Section 4(f)(4) for Alaska Natives, and that the Bethel census area, which includes the city of Bethel, is a “covered jurisdiction” under Section 203 for Alaska Natives and the Yup'ik language.<sup>22</sup> Section 208 of the VRA applies to all jurisdictions, and not just those deemed “covered” for the language assistance provisions. It provides that voters who need assistance because they are blind, disabled, or unable to

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<sup>19</sup> 42 U.S.C. §§ 1973b(f)(4) and 1973aa-1a(c) (emphasis added).

<sup>20</sup> 28 C.F.R. § 55.2.

<sup>21</sup> 28 CFR § 55.20.

<sup>22</sup> See 28 C.F.R. Pt. 55, App.

read or write, may receive assistance from a person of their choice, other than their employer, agent of their employer, or an agent of their union.<sup>23</sup>

In support of their motion, the Plaintiffs offer two types of evidence against the Bethel Defendants: statements by Billy McCann and Arthur Nelson, the only Plaintiffs who reside in Bethel, about difficulties they have experienced in voting; and “systemic” evidence purporting to show that the city’s language assistance efforts are generally ineffective. The Court will address each type in turn.

Both McCann and Nelson assert that they have had problems understanding ballot questions, particularly longer ballot measures, because of their limited abilities to read and speak English. McCann’s declaration states: “There are usually no Yup’ik speakers working at my polling place for non-tribal elections in Bethel who can translate the ballot for me. I am not able to . . . fully understand the English ballot on my own.”<sup>24</sup> He adds:

Everything in non-tribal elections in Bethel is written in English, so I do not understand what the ballot says and can’t choose for myself what to vote for. Sometimes I recognize the proper names of candidates, and so sometimes I can vote for one of them, but I almost never understand the initiatives, what I call the ‘yes-no questions.’<sup>25</sup>

This leads McCann to occasionally skip answering ballot questions.<sup>26</sup> Similarly, Nelson asserts that he does not always understand what is being asked on the ballot and that the voting process “can be very confusing.”<sup>27</sup> Nelson’s declaration indicates that the availability of translators at his polling place within Bethel has been inconsistent. He states: “I have not always seen translators at the polls during my previous experiences voting. I think only recently have they started doing this.”<sup>28</sup> He

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<sup>23</sup> 42 U.S.C. § 1973aa-6.

<sup>24</sup> McCann Decl. ¶ 11.

<sup>25</sup> *Id.* ¶ 12.

<sup>26</sup> *Id.* ¶ 15.

<sup>27</sup> Nelson Decl. ¶ 11.

<sup>28</sup> *Id.* ¶ 8.

adds: “During my last experience voting, the only translator who was available just gave me summaries of what was on the ballot.”<sup>29</sup>

Yet neither McCann nor Nelson have explicitly linked difficulties obtaining language assistance to an election run by the city of Bethel, rather than the State. McCann asserts that he tries “to vote whenever there is a non-tribal election.”<sup>30</sup> But the only specific election referenced in McCann’s declaration and deposition testimony is the State-run general election that was held in November 2006. Nelson’s declaration, by contrast, asserts that he has “voted in city elections before,” and specifically references a May 2006 ballot measure related to alcohol.<sup>31</sup> Yet Nelson does not state that translators were absent from his polling place that election or any other city-run election, or that he received an inadequate or incomplete translation of a municipal ballot. Even if translators were sometimes unavailable in the past, Nelson’s declaration indicates that they have been present during the most recent elections.<sup>32</sup> Like McCann, Nelson has failed to offer specific evidence that his rights under sections 4(f)(4) and 203 of the VRA have been violated during past city-run elections. Because of this, their statements do not establish that the Plaintiffs have a fair chance of success on the merits of their language-assistance claims, and thus cannot serve as the basis for injunctive relief.

In addition to the statements of McCann and Nelson, the Plaintiffs argue that the city of Bethel fails to provide adequate notice in Yup’ik of upcoming elections and voter registration efforts, or to properly train bilingual poll workers on the VRA’s guarantee of “effective” language assistance for language minorities. These purported failures, the Plaintiffs contend, amount to ineffective language assistance in violation of the VRA. Or, as the Plaintiffs argue in their reply brief, “[a] plan lacking in so many key areas cannot be considered effective under the VRA.”<sup>33</sup>

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<sup>29</sup> Nelson Decl. ¶ 9

<sup>30</sup> McCann Decl. ¶ 9.

<sup>31</sup> Nelson Decl. ¶ 6.

<sup>32</sup> *Id.* ¶ 8.

<sup>33</sup> Pls.’ Reply 15.

With regard to election publicity, the Plaintiffs take issue with the city's reliance on radio station KYUK in Bethel to broadcast election-related notices. As they point out, it is undisputed that: the city relies entirely on radio station personnel to translate election-related public service announcements (PSAs) into Yup'ik; the city makes no efforts to confirm the accuracy of KYUK's translations; and the city fails to confirm whether and how often PSAs are aired in Yup'ik prior to an election. The Defendants counter with a declaration from KYUK manager Ron Daugherty asserting that the radio station always translates the city's election-related PSAs, in full, into Yup'ik and "regularly broadcast[s] the entire notice in Yup'ik as well as well as English."<sup>34</sup> In addition, Daugherty states that the notices are generally translated by KYUK staff member John Active and that KYUK's board of directors and community members "regularly provide generally positive feedback on Mr. Active's Yup'ik-language abilities."<sup>35</sup> The Defendants also point to a statement by McCann that he once heard a radio host on KYUK remind listeners, in Yup'ik, to vote in an upcoming "primary non-tribal election."<sup>36</sup>

Neither the VRA nor its implementing regulations specifically require governmental entities to translate their own PSAs, verify the accuracy of outsourced translations, or keep logs on when PSAs are broadcast in minority languages. Rather, the regulations require that public notices provide members of language minority groups an "effective opportunity to be informed about electoral activities." While the city's hands-off approach to pre-election publicity and its lack of record keeping on the frequency with which notices are broadcast are hardly a model for outreach to a minority language population, the Defendants' evidence creates a significant dispute as to whether the city's publicity program is truly ineffective. Even if the Plaintiffs could show problems with KYUK's translation or broadcast schedule, the Defendants' evidence makes the issuance of a preliminary injunction on this basis inappropriate.<sup>37</sup>

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<sup>34</sup> Daugherty Decl. ¶ 4.

<sup>35</sup> *Id.* ¶ 6.

<sup>36</sup> McCann Decl. ¶ 32.

<sup>37</sup> *See Southwest Voter Registration Education Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003).

The Plaintiffs have made a stronger showing on their arguments related to bilingual poll workers and election-day translators. As noted above, the Plaintiffs contend the Bethel Defendants provide an insufficient number of translators for municipal elections, and inadequately screen and train those recruited to work at the polls. The Plaintiffs rely, in part, on a survey conducted by their expert witness, Louise Leonard, of poll workers identified by the State and Bethel Defendants as speaking both Yup'ik and English. According to Leonard's survey, five of 11 city poll workers surveyed are not fluent in Yup'ik.<sup>38</sup> However, as the Defendants point out, two of the five have never worked as Yup'ik translators, according to Leonard's report.<sup>39</sup>

The Plaintiffs also note that the city, like the state, does not require poll workers to attend mandatory training nor does it keep track of which workers have voluntarily attended training.<sup>40</sup> That the city does not require training, they contend, contributes to Bethel's "lack of language assistance and poor quality of assistance."<sup>41</sup> Of the 11 bilingual poll workers surveyed, only three reported to Leonard that they had attended training, while two others were unsure if they had attended training.<sup>42</sup> The Defendants do not directly dispute this point.

Plaintiffs also contend that the city has failed to provide fluent Yup'ik translators during some municipal elections. In particular, the Plaintiffs assert that during the October 3, 2006 municipal election, the city did not have a fluent Yup'ik translator working at any of the city's three polling locations. The Plaintiffs reach this conclusion indirectly by comparing a list of Yup'ik translators identified by the city as having worked at the polls during 2006 with a list of all the poll workers at the city's three precincts during the October 3, 2006 election. Of the ten translators identified by the city, only three were listed as having worked during the October 3, 2006 election. And none of those, the Plaintiffs assert, are fluent in Yup'ik, as determined by Leonard through

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<sup>38</sup> Leonard Decl., Ex. M.

<sup>39</sup> *Id.*

<sup>40</sup> *See* Modigh Dep., 103:1-3.

<sup>41</sup> Pls.' Reply Br. 7.

<sup>42</sup> Leonard Decl., Ex. M.

interviews and personal observations.<sup>43</sup> The Bethel Defendants do not directly dispute this assertion, but evidence they have submitted raises questions about the Plaintiffs' argument on the lack of translators during city-run elections. Specifically, Louise Leonard's notes from her interview with Margaret Guinn, who was identified by the city as a Yup'ik translator, indicate that Guinn told Leonard that an interpreter was always available "in the building" when she served as a precinct chair.<sup>44</sup> Similarly, a declaration from Bing Santamour, another poll worker identified as a Yup'ik translator but lacking in fluency, states that when he served as a poll worker for municipal elections during the 2005, 2006 and 2007, "there was always at least one bilingual Yup'ik-English speaker available at my precinct at any given time on election day specifically for the purpose of interpreting."<sup>45</sup> The declaration adds: "[I]f for some reason there had been no Yup'ik translator available when a voter required assistance, the election co-chair or chair had [the city municipal clerk's] cellular phone number to obtain a translator immediately."<sup>46</sup> In addition, the Defendants assert that the city has never received a complaint about the effectiveness or accuracy of the language assistance it provides.<sup>47</sup>

Without question, the Plaintiffs have pointed to significant weaknesses in the city'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. Based on this, the Plaintiffs have established a fair chance of success on the merits of their claims under sections 4(f)(4) and 203 of the VRA. Ultimately, though, the type of relief they seek requires the Plaintiffs to meet a higher standard. As noted above, they must show that the law and facts are clearly in their favor. Given the absence of direct evidence that McCann and Nelson have been harmed during a city-run election,

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<sup>43</sup> Pls.' Reply 3.

<sup>44</sup> Goodman Aff., Ex. B.

<sup>45</sup> Santamour Decl. 2.

<sup>46</sup> *Id.*

<sup>47</sup> Modigh Decl. ¶¶ 10-12.

and the declarations of Guinn and Santamour, the Plaintiffs have failed to carry their heavy burden on the language-assistance claims.

**B. The Section 208 Claim**

Section 208 of the VRA applies to all jurisdictions, and not just those deemed “covered” for the language assistance provisions. It provides that voters who need assistance because they are blind, disabled, or unable to read or write, may receive assistance from a person of their choice, other than their employer, agent of their employer, or an agent of their union.<sup>48</sup>

The Plaintiffs argue that the city violates Section 208 by denying voters the right to bring an assistor of their choice into the voting booth, and by failing to inform voters of this right. They rely, in part, on the declarations of McCann and Nelson. McCann recalls asking for language assistance during the November 2006, state-run election. An individual who identified himself as an interpreter offered short summaries in Yup’ik of the ballot questions, some of which McCann did not understand. The translator then handed McCann his ballot, but did not accompany him into the booth. While this anecdote raises questions as to the State Defendants’ compliance with Section 208, it has no bearing on the Bethel Defendants because the November 2006 election was not run by the city. McCann’s declaration further states:

I would like to bring someone with me into the booth, but no one has ever told me that I am allowed to do that. I recall being told at the polls at least once by a poll person that for non-tribal elections my vote had to be private and that I had to go into the voting booth or tent alone. No one has ever told me, and there have not been any signs that I saw and could understand, that said for non-tribal elections I was allowed to bring anyone I wanted to help me vote.<sup>49</sup>

Similarly, Nelson’s declaration suggests that when he does receive translations, they are inadequate or incomplete. Sometimes Nelson forgets which explanation goes with which ballot question and has to walk back and forth between the voting booth and the table where the poll workers sit.<sup>50</sup>

Notably, the declarations do not say that McCann and Nelson explicitly asked poll workers to accompany them into the voting booth, or that they were prohibited from bringing an assistor of

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<sup>48</sup> 42 U.S.C. § 1973aa-6.

<sup>49</sup> McCann Decl. ¶ 24.

<sup>50</sup> Nelson Decl. ¶ 10.

their choice into a voting booth. Rather, McCann simply says that poll workers have never informed him of this right, though he has testified that he believes a more active form of assistance is needed.<sup>51</sup> Nelson’s declaration merely states that he has sought help from translators while voting, and been given short summaries of ballot questions.<sup>52</sup> He does not assert that he has been barred from bringing an assistor of his choice into the voting booth during a city-run election. Moreover, Nelson’s proposed solution – the written and oral translation of voting materials into Yup’ik – is directed at the state, and not the city. His declaration states: “I would like the State to translate all voting materials into written Yup’ik and also onto audio tapes. That would help me because then I would get more than a summary of what is on the ballot . . .”<sup>53</sup>

Because the VRA and its implementing regulations do not specifically require poll workers to affirmatively instruct voters on their rights under Section 208, and the evidence does not show that the Bethel Defendants actually denied McCann and Nelson their rights under section 208, their declarations provide no support for injunctive relief on this claim.

The Plaintiffs also point to a statement in a poll worker training pamphlet used by the Bethel and State Defendants. The pamphlet states: “If requested, an election worker may assist the voter. The election workers should maintain a reasonable distance from the ballot box to ensure the secrecy of the voter’s ballot . . .”<sup>54</sup> The Plaintiffs argue that “reasonable distance” means poll workers cannot accompany voters into voting booths, even when assistance is requested. The Plaintiffs take this as proof that the Defendants’ poll workers are improperly trained on Section 208's guarantees. The Defendants respond that the quoted statement refers to the provision of assistance inside the ballot booth. This reading is plausible when the quoted statement is read in the

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<sup>51</sup> See McCann Dep. 26:13-22 (“[W]hat would be best is for an individual like myself to walk into a voting booth and to be guided and assisted with the document before me, explained to me in that document within our Native language . . . and leave after the proceeding of a clear understanding. That’s the type of assistance that would be better and that is needed. Currently, there is none.”).

<sup>52</sup> Nelson Decl. ¶ 10.

<sup>53</sup> *Id.* ¶ 13 (emphasis added).

<sup>54</sup> Dkt. 151, Ex. 110, Pt. 1 at 93.

context of the paragraph in which it appears. The paragraph continues: “It is recommended that you stand to the side of the ballot box where the LCD of the optical scan voting unit is located. This allows you to easily read messages that may appear.”<sup>55</sup> If the poll worker were to stand anywhere other than in the voting booth or right next to it, the worker would not be able to read messages on the optical scan voting unit. Therefore, the poll worker training pamphlet fails to support the Plaintiffs’ motion. Given this, and McCann and Nelson’s lack of specificity as to a city-run election, the Court concludes that the Plaintiffs have not established a fair chance of success on the merits of their Section 208 claim against the Bethel Defendants.

**V. CONCLUSION**

For the reasons set out above, the Plaintiff’s Motion for a Preliminary Injunction at Docket 202 against the Bethel Defendants is DENIED.

Dated at Anchorage, Alaska, this 3rd day of October 2008.

/s/ Timothy Burgess  
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TIMOTHY M. BURGESS  
UNITED STATES DISTRICT JUDGE

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<sup>55</sup> *Id.*