

Advisory Memorandum

To: The U.S. Commission on Civil Rights

From: The Alaska Advisory Committee to the U.S. Commission on Civil Rights

Date: March 27, 2018

Subject: Alaska Native Voting Rights

On August 24, 2017, the Alaska Advisory Committee (Committee) to the U.S. Commission on Civil Rights (Commission) convened a public meeting to hear testimony regarding Alaska Native voting rights. The Committee's inquiry was two-fold: 1) to determine whether the State of Alaska is providing access to language minority Alaska Natives in accordance with the *Toyukak v. Mallott* settlement and court order (Toyukak Order), and 2) to determine the potential impact of mail-in voting on Alaska Native voters.

The following advisory memorandum results from the testimony provided during the August 24, 2017, meeting of the Committee, as well as related testimony submitted to the Committee in writing during the thirty-day public comment period. It begins with a brief background of the issue to be considered by the Committee, identifies primary findings as they emerged from this testimony, and recommendations for addressing related civil rights concerns. This memo focuses specifically on the effectiveness of the implementation of the Toyukak Order and identifies the potential impact of mail-in voting. While other important topics surfaced throughout the Committee's inquiry, those matters that are outside the scope of this specific civil rights mandate are left for another discussion. This memo and the recommendations included within it were adopted by a majority of the Committee on March 27, 2018, by majority vote.

Background

Alaska has a long history of problems with guaranteeing the rights of Alaska Natives to vote. In its early days, Alaska disenfranchised Alaska Natives by imposing a pre-registration process on Natives seeking citizenship¹ and required a literacy test as a qualification for voting.² These practices had a profound impact on Alaska Native voter participation.³ Despite the passage of key laws that sought to remedy discrimination against Alaska Natives such as the Indian Citizenship Act of 1924, Alaska Equal Rights Act of 1945, and the Voting Rights Act of 1975 (VRA) and its language minority requirements, Alaska continues to face challenges with providing its residents equitable access to the polls.

¹ Chapter 24, Session Laws of Alaska, 1915

² Stephen Haycox, *William Paul, Sr. and the Alaska Voters' Literacy Act of 1925*, 2 ALASKA HIST. 17 (1986–1987), available at http://www.alaskool.org/native_ed/articles/literacy_act/LiteracyTxt.html.

³ See Tova Wang, *Ensuring Access to the Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy*, DEMOS (2012), available at <http://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>.

At issue in this memorandum is the state of Alaska's compliance with Section 203 of the VRA,⁴ which mandates that the State's election "standards, practices and procedures" for limited English proficient voters equal those for English-speaking voters. There are two criteria under Section 203's coverage formula which must be satisfied for the provision to apply in a given state or jurisdiction. First, the limited English proficient citizens of voting age in a single protected language group must: (1) number more than 10,000; (2) comprise more than five percent of all citizens of voting age; or (3) comprise more than five percent of all American Indians of a single language group residing on an Indian reservation. Second, the illiteracy rate of the citizens of the limited English proficient group must exceed the national illiteracy rate.⁵ In Alaska, there are 14 census areas that are covered jurisdictions, and each must provide language assistance in at least one Alaska Native language.⁶

On July 19, 2013, two Alaska Native citizens and four federally recognized tribes in Alaska sued the Lieutenant Governor of the State of Alaska and the Division of Elections,⁷ alleging violations of Section 203 of the VRA and the U.S. Constitution⁸ due to the State's failure to provide translations of voting materials to voters whose primary language is Gwich'in or Yup'ik in the Dillingham, Kusilvak,⁹ and Yukon-Koyukuk Census Areas. On September 22, 2014, the United States District Court issued a decision that found that the state of Alaska failed to provide limited English proficient Alaska Native voters with voting information substantially equivalent to what voters receive in English and ordered a series of remedies that included translation of all voting information available to English-speaking voters.¹⁰ In the Toyukak Order effective until 2020, the parties reached a settlement agreement that includes:¹¹

- Increasing information provided to voters about the availability of language assistance and a requirement that there be at least one trained bilingual outreach worker and poll worker in each village;
- Providing the translations and language assistance in five additional Yup'ik dialects;
- Providing glossaries of election terms in the Yup'ik dialects and Gwich'in to assist outreach workers and poll workers with their translations;
- Providing a toll-free number for voters to receive language assistance in all dialects;

⁴ Section 203 was adopted in 1975 and extended in 1982, 1992, and 2006.

⁵ 42 U.S.C. §§ 1973aa-1a(b)(2).

⁶ See Appendix B.

⁷ Alaska Stat. §§ 44.19.020.

⁸ *Toyukak v. Mallott*, No. 3:13CV137 (D. Alaska Sept. 8, 2015) (noting that the plaintiffs originally made constitutional claims under the Fourteenth and Fifteenth Amendments, but under the terms of the Stipulated Judgement and Court Order, the plaintiffs agreed to dismiss those claims).

⁹ In 2015, Governor Bill Walker requested the U.S. Census Bureau to rename the Wade Hampton Census Area to Kusilvak Census Area in response to requests from Bethel residents.

¹⁰ *Toyukak v. Mallott*, No. 3:13CV137 (D. Alaska Sept. 8, 2015), Dkt. No. 226.

¹¹ See Appendix A.

- Instituting a Yup'ik translation panel comprised of eight members and a Gwich'in translation panel comprised of at least three;
- Implementing additional procedures to ensure translations are accurate;
- Requiring that the State maintain a full-time employee to oversee the language assistance program;
- Requiring that there be language assistance in all villages in the Dillingham and Kusilvak Census Areas, and in seven villages in the Yukon-Koyukuk Census Area;
- Mandating training for poll workers and outreach workers;
- Mandating pre-election outreach to voters to explain what will be on the ballot;
- Providing Election Day publicity translations on all radio stations in the impacted census areas; and
- Providing translated sample ballots and touch-screen voting machines.

Toyukak v. Mallott came three years after the state of Alaska settled a similar lawsuit filed by Alaska Native voters from the Bethel Region in *Nick, et al. v. Bethel, et al* that required the State to provide meaningful language access to Alaska Native voters in future elections.¹²

Effective September 22, 2017, the Division of Elections was required to implement the settlement terms and the September 2014 Toyukak Order. The mandate of this Committee is to examine the quality of the implementation by the State and Division of Elections to date.

In addition to the examination of the implementation of the Toyukak Order, the Committee seeks to determine the potential impact of the State's plan to shift to a vote-by-mail system. The suggested policy change was largely prompted by a 2017 internal audit of the Division of Elections' current and impending fiscal and policy challenges. The Division of Elections urges consideration of a vote-by-mail system because the current, aging precinct-based ballot tabulation system is nearing its end-of-life and will require eventual replacement. The Division of Elections acknowledges that adopting a vote-by-mail system may have cost-savings benefits but discloses that "unique considerations of mail service in rural Alaska would need to be carefully considered."¹³ To advance policy discussions about the future of the State's election administration, Lieutenant Governor Mallot convened a new body called the Election Policy Work Group. At this writing, the Election Policy Work Group has been meeting and performing research for more than six months and has discussed the potential impact of a vote-by-mail system and its effect on language access.

¹² *Nick, et al. v. Bethel, et al*, 3:07CV98(TMB), 2010 WL 4225563, at *2 (D. Alaska Jan. 13, 2010) (noting that the preliminary injunction was issued on July 30, 2008 and is at docket number 327. The final decision and settlement order was issued on February 16, 2010 and is at docket number 787).

¹³ Div. of Elections, *2017 Fiscal & Policy Challenges*, ELECTIONS.ALASKA.GOV (May 16, 2017), <http://www.elections.alaska.gov/doc/info/Fiscal%20Challenges.pdf>.

In addition to the requirements of Section 203 of the VRA, Title VI of the Civil Rights Act of 1964 and Executive Order 13,166 (“Improving Access to Services for Persons with Limited English Proficiency”), issued in 2000, establish specific compliance standards that require agencies and recipients of federal funding to ensure that limited English proficient individuals receive “meaningful access” to federal programs and activities through appropriate assistance. Federal funding to state and local governments involved in election administration triggers Title VI compliance. Executive Order 13,166 guidelines identify four factors that must be considered: (1) the number or proportion of limited English proficient persons to be served; (2) the frequency with which these individuals come in contact with the program; (3) the nature and importance of the program or service to people’s lives; and (4) the costs and resources available to the recipient.¹⁴

The Committee notes that Section 203 of the VRA, Title VI and Executive Order 13166 constitute federal law and, despite the potential expiration of the specific terms of the Toyukak Order in 2020 (should it not be extended as recommended below), these three laws remain fully enforceable.

Findings

The section below provides findings received and reflects views of the cited panelists. While each assertion has not been independently verified by the Committee, panelists were chosen to testify due to their professional experience, academic credentials, subject expertise, and firsthand experience with the topics at hand.

Findings regarding the implementation of the Toyukak Order:

1. While the Toyukak Order requires language assistance and election materials in Yup’ik and Gwich’in in the Dillingham, Kusilvak, and Yukon-Koyukuk Census Areas, the State is also obligated to comply with Section 203 covered languages¹⁵ in other regions within the state.¹⁶
2. Federal observers present during the 2016 Primary and General Elections documented the following training deficiencies under Section 203 and the Toyukak Order:

¹⁴ Angelo N. Ancheta, *Language Accommodation and the Voting Rights Act*, DIGITALCOMMONS.LAW.SC.U.EDU (2007), <https://digitalcommons.law.scu.edu/facpubs/623>.

¹⁵ See Appendix B for Section 203 covered languages in Alaska.

¹⁶ Justin Levitt, Associate Dean for Research and Professor of Law, Loyola Law School, Public Meeting on Alaska Native Voting Rights: Hearing Before the Alaska Advisory Committee to the U.S. Commission on Civil Rights, hearing transcript, p. 29 (2017), available at <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234> (hereinafter *Transcript*).

- a. Although training for poll workers is supposed to be mandatory, and is supposed to emphasize in-person training, it fell short of that goal. In 2016, 46 percent (55 poll workers) received training, 4 percent (5 poll workers) received training at least a year earlier, 10 percent (12 poll workers) received training two or more years earlier, and 39 percent (47 poll workers) had never been trained.¹⁷
 - b. Trainings were conducted exclusively in English by a non-Native instructor from the Division of Elections.
 - c. Bilingual poll workers were not trained on how to translate contents of the ballot or how to provide procedural instructions in Yup'ik and Gwich'in.¹⁸
3. Inadequate staffing of bilingual poll workers in the three Census Areas suggests that some limited English proficient voters may have not received bilingual assistance and translations necessary to cast their ballot on Election Day. For example, federal observers found that some villages had no bilingual poll worker available,¹⁹ bilingual poll workers were only available on call or available for a limited time,²⁰ poll workers left the polling location with no assistance available during their absence,²¹ or poll workers left early before the polls closed and did not return.²²
 4. Translated written materials required under the Toyukak Order were unavailable in numerous locations. Federal observers monitoring the 2016 Primary and General Elections identified the following deficiencies:
 - a. During the 2016 Primary Election, no translated voting materials were available in 6 of the 19 villages; the "I voted" sticker was the only material in an Alaska Native language in Marshall and Mountain Village; in Emmonak, the Yup'ik glossary was the only translated material available; and only two villages, Koliganek and Manokotak, had written translations of the candidate lists.

¹⁷ James Tucker, Co-Counsel, Wilson, Elser, Moskowitz, Edelman, & Dicker LLP, written testimony submitted to the Alaska Advisory Committee to the U.S. Commission on Civil Rights, hearing transcript, p. 4 (2017), available at <https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234> (hereinafter *Written Testimony*).

¹⁸ *Id.*

¹⁹ Tucker, *Written Testimony* at 5 (noting that during the 2016 Primary Election, no bilingual poll worker was available at any time at 3 out of 19 villages and in November during the General Election, no bilingual poll worker was available at any time in one out of the 12 villages observed).

²⁰ *Id.* (noting that during the 2016 Primary Election, a bilingual poll worker was only available "on call" and was not present in the polling place in Koliganek. In the November 2016 General Election, there was no language assistance available for at least 80 minutes in Fort Yukon).

²¹ *Id.* (noting that during the 2016 Primary Election, the bilingual poll worker left the polling place during a portion of the time the polls were open and there was no assistance available during their absence in Dillingham, Kotlik, and Marshall).

²² *Id.* (noting that during the 2016 General Election, the only bilingual poll worker in Venetie left the polling place 3 ½ hours before the polls closed and did not return).

- b. During the 2016 General Election, half of polling places observed had a translated sample ballot available for voters. Five of those villages had no sample ballot at all²³ or if a translated ballot did exist, it was not made available for voter use.²⁴
5. In comparison with New Mexico, a state with a high number of limited English proficient voters requiring American Indian language accommodations, it employs eight full-time language coordinators, whereas Alaska²⁵ has just two full-time bilingual workers to carry out the implementation of the Toyukak Order. Alaska also relies on Yup'ik and Gwich'in language panels and part-time outreach workers.²⁶ While the Toyukak Order requires hiring one permanent elections language compliance manager to implement it, there is concern that current language access efforts may be insufficient to accomplish meaningful implementation.
6. The Division of Elections has no procedures in place to assess the effectiveness of poll worker training or outreach worker training.²⁷
7. While the Division of Elections reported to the Committee that it had implemented most of the remedies in the Toyukak Order and even expanded the language panels to include the Inupiat panel,²⁸ testimony indicates that the Division of Elections still falls short on quality and usefulness of translations. For example:
 - a. A voter indicated that she could not understand the Official Election Pamphlet (OEP) because it was not translated into her village dialect of Koliganek Yup'ik²⁹ and;
 - b. Some voters indicated they had difficulty reading the Yup'ik ballot due to small font size.³⁰
8. There is a statutory inconsistency regarding the rights of voters to receive the OEP in that one statute requires that it is sent to each household and another states that it should be sent to each voter. A Koliganek voter official reported that she never received an OEP in advance of the general election and state elections³¹ but according to Alaska Statute

²³ *Id.* (noting that no sample ballot was available at New Stuyakok, Alakanuk, Hooper Bay, Arctic Village, and Venetie).

²⁴ *Id.* (noting that Fort Yukon had a Gwich'in sample ballot that was kept at the poll worker's table and not made available for voter use).

²⁵ Alaska is one-fifth the size of the contiguous U.S.

²⁶ Tucker, *Written Testimony* at 2.

²⁷ Arriaga, *Transcript* at 56

²⁸ Arriaga, *Transcript* at 42-53.

²⁹ Mulipola, *Written Testimony* at 1 (noting that Koliganek Yup'ik is not a required dialect under the settlement and court order. Togiak and Manokotak Yupik voters were able to understand the Yup'ik translation on the Division of Election's materials. Rose Wassillie, a Togiak resident was able to understand the ballot, but Tatiana Kapatak, a Koliganek resident was unable to).

³⁰ Merlino, *Transcript* at 119 (noting that requiring a specific font size in the translated ballots was not mandated by the Toyukak Order).

³¹ Mulipola, *Written Testimony* at 2.

15.58.010, the Division of Elections must mail “at least one election pamphlet to each *household* identified from the official registration list.”³² However, Alaska Statute 15.58.080 requires that the Division of Elections must mail to every registered *voter* one copy of the pamphlet prepared for the region in which the voter resides at least 22 days before the general election.³³

9. There is an unequal distribution of election equipment among urban and rural polling stations. Some panelists expressed concern that equipment lacked privacy and was inadequate to serve rural voters.³⁴
10. Although the *Nick, et al. v. Bethel, et al* case alleged the State of Alaska had been out of compliance with the VRA since the language assistance provisions were passed in 1975, testimony by Alaska Federation of Natives³⁵ and individuals³⁶ indicated that Governor Walker’s Administration was making efforts to comply.

Findings concerning the potential impact of implementing a vote-by-mail system:

1. Voters expressed grave concern over the State’s interest in implementing a vote-by-mail system due to slow mail delivery that often takes up to 2-3 weeks.³⁷ Mail delivery relies on air service but, according to testimony, villages may be inaccessible by air for several weeks due to inclement weather, and at times flights may be cancelled even in good weather conditions. To compound the issue further, the Regional Educational Attendance Areas elections and statewide general elections are held in October and November, when weather conditions are usually the most challenging, and delays in mail service are likely to disenfranchise rural voters.³⁸
2. There has been no study examining the impact of vote-by-mail on Alaska Natives, limited English proficient voters, geographically and linguistically isolated communities, and voters who receive mail exclusively by P.O. Box.³⁹
3. A recent study conducted on reservations in Arizona, New Mexico, Nevada and South Dakota indicated that native voters have a very low level of trust in mail-in voting.⁴⁰

³² Alaska Stat. §§ 15.58.010 (2014).

³³ Alaska Stat. §§ 15.58.080 (2000).

³⁴ Mulipola, *Written Testimony* at 2; *See also* Appendix C.

³⁵ Borromeo, *Transcript* at 90.

³⁶ Hayton, *Transcript* at 130.

³⁷ Mulipola, *Written Testimony* at 1.

³⁸ Tucker, *Written Testimony* at 7.

³⁹ Rich, *Transcript* at 89 and 170-174.

⁴⁰ Rich, *Transcript* at 83-84; *See* Jean Schroedel, *Voting Barriers Encountered by Native Americans in Arizona, New Mexico, Nevada and South Dakota*, NATIVE AMERICAN VOTING RIGHTS COALITION (2018), *available at*

4. At a recent hearing in North Dakota, a tribal member who is also a current member of the Montana House of Representatives testified that offering only mail-in voting disenfranchises voters in native communities because they have irregular mail and inconsistent or nontraditional addresses.⁴¹
5. Some rural Alaska Native villages lack access to broadband internet or have unreliable service⁴² that may be necessary to meaningfully participate in the election process. Internet access would allow voters to access the Division of Election’s website to download election forms and the OEP.⁴³ According to testimony, an Alaska Native elder walked two miles from her home to the nearest public library that had internet access to download the necessary election forms to participate in early voting.⁴⁴
6. Testimony indicated the following concerns with implementing a vote-by-mail system:
 - a. There are challenges with employing and retaining postmasters residing in rural parts of the State.⁴⁵ This poses a concern as voters rely heavily on postmasters to keep post offices open to receive mail and obtain mail services.
 - b. Since rural residents often share P.O. boxes, sometimes multiple families sharing one P.O. box,⁴⁶ voters may not be receiving all election-related material. This is critical to ensuring privacy and enfranchisement.
7. Adopting a hybrid model that consists of a vote-by-mail and in person voting system is seen more favorably rather than implementing a vote-by-mail system exclusively.⁴⁷ In-person voting and service locations known as “voting centers” which allow a voter to obtain a ballot, replace a mismarked or otherwise spoiled ballot, obtain language assistance, or vote in an accessible manner, are argued to make a vote-by-mail approach successful.⁴⁸ Testimony indicated that the application of a hybrid model may only work if the Division of Elections established a voting center in each of the over 200 Alaska Native villages and required that each of them be open for the same period as other early voting locations.⁴⁹

<https://www.narf.org/wordpress/wp-content/uploads/2018/01/2017NAVRCsurvey-summary.pdf>.

⁴¹ Tucker, *Written Testimony* at 7.

⁴² Hayton, *Transcript* at 88; Tucker, *Written Testimony* at 1-2; Merlino, *Transcript* at 119-20.

⁴³ Merlino, *Transcript* at 120-121.

⁴⁴ Borromeo, *Transcript* at 88.

⁴⁵ Haberman, *Transcript* at 213.

⁴⁶ Medicine-Crow, *Transcript* at 210.

⁴⁷ Bahnke, *Transcript* at 151.

⁴⁸ Gronke, *Transcript* at 203-04; Steele, *Written Testimony* at 2.

⁴⁹ Tucker, *Written Testimony* at 1.

8. Panelists noted that when considering a vote-by-mail system, the State is still required to abide by the terms of the Toyukak Order. Those terms require significant in-person assistance and therefore vote-by-mail can only potentially work if there was a “voting center” in each village covered by Section 203 of the VRA.⁵⁰
9. According to a vote-by mail expert, developing a remedy process and signature verification system is a necessary component when considering a vote-by-mail system.⁵¹
10. Panelists suggested strong and ongoing collaboration among the Alaska Native community, rural community,⁵² state election officials, and the U.S. Postal Service⁵³ to deter voter disenfranchisement especially among Alaska Native voters in need of language assistance.
11. According to the U.S. Postal Service, when inclement weather impacts delivery to rural areas, passengers and luggage are the priority, not mail. This means that election-related mail is considered secondary in importance.⁵⁴
12. Because the U.S. Postal Service transfers mail from villages to the Anchorage central hub, where it is postmarked,⁵⁵ there is concern that rural residents who vote in a village may not have their ballots counted due to the possibility of late postmarking.
13. Testimony indicated that U.S. Postal Service training on handling election-related material is inadequate due to the high number of U.S. Postal Service employees who need to be trained.⁵⁶
14. Presently, state election officials have not yet determined how to directly distribute ballots and the translated OEPs to Section 203-covered households⁵⁷ due to limited data sources that indicate languages spoken at home. Efforts to circulate the OEP were done through respective regional tribes, local governments, online, the Alaska Federation of Natives’ conference, and other advocacy organizations prior to the 2016 presidential election and will continue to be circulated in this fashion.⁵⁸

⁵⁰ Tucker, *Transcript* at 7-8.

⁵¹ Gronke, *Transcript* at 196.

⁵² Patrick, *Transcript* at 159-60.

⁵³ Gronke, *Transcript* at 179; Patrick, *Transcript* at 162.

⁵⁴ Haberman, *Transcript* at 189-90.

⁵⁵ *Id.* at 190.

⁵⁶ *Id.* at 186-87.

⁵⁷ Bahnke, *Transcript* at 202-03.

⁵⁸ Arriaga, *Transcript* at 47-48.

15. Testimony indicated the following potential impacts of implementing a vote-by-mail system:

- a. It may have the potential for improving voter registration rolls.⁵⁹
- b. It has increased voter turnout in state and local elections among certain demographics in other states.⁶⁰

Recommendations

Among their duties, advisory committees of the Commission are authorized to advise the Agency (1) concerning matters related to discrimination or a denial of equal protection of the laws under the Constitution and the effect of the laws and policies of the Federal Government with respect to equal protection of the laws; and (2) upon matters of mutual concern in the preparation of reports of the Commission to the President and the Congress.⁶¹ In keeping with these responsibilities, and in consideration of the testimony heard on this topic, the Alaska Advisory Committee submits the following recommendations to the Commission:

1. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a formal request to the U.S. Department of Justice to:
 - a. Vigorously enforce Section 203 of the Voting Rights Act in Alaska.
 - b. Continue to send federal observers to monitor state of Alaska elections even after the Toyukak Order expires, to ensure its implementation remain in place.
2. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a recommendation to the U.S. Postal Service to:
 - a. Require specific training of all Alaska postal service employees to handle election material to ensure prompt delivery.
 - b. Ensure prompt postmarking of election mail, especially in rural areas of the state. This may include proactive recruitment of postmasters in rural post offices to ensure adequate support to rural residents.

⁵⁹ Gronke, *Transcript* at 179.

⁶⁰ Paul Gronke, Thad Kousser & Megan Mullin, *Does Voting by Mail Increase Participation? Using Matching to Analyze a Natural Experiment*, 15(4) *POLIT. ANAL.* 428-45 (2007), available at <http://www.jstor.org/stable/25791905>; Justin Burchet & Priscilla Southwell, *The Effect of All-mail Elections on Voter Turnout*, 28(1) *AM. POLIT. RES.* 72-79 (2000), available at <https://doi.org/10.1177/1532673X00028001004>; Alan S. Gerber, Gregory A. Huber & Seth J. Hill, *Identifying the Effect of All-Mail Elections on Turnout: Staggered Reform in the Evergreen State*, 1 *PRSM* 91-116 (2013).

⁶¹ 45 C.F.R. § 703.2 (a).

- c. Prioritize handling election mail as among other mail.
3. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a recommendation to the Alaska Congressional Delegation to:
 - a. Provide appropriations from the Help America Vote Act to support language assistance efforts in Alaska.
4. The U.S. Commission on Civil Rights should send this advisory memorandum and issue a recommendation to the State of Alaska Legislature urging the State to:
 - a. Provide appropriations to ensure the Division of Elections has the funding to continue complying with Section 203 of the Voting Rights Act, the Toyukak Order, and Title VI of the Civil Rights Act.
 - b. Consider improving broadband service in rural areas of the State, to ensure that voters have access to all online election material, including translated official election pamphlets provided by the Division of Elections.
 - c. Consider enacting legislation resembling Title VI of the Civil Rights Act to help ensure statewide access to voting materials for voters who speak an Alaska Native language.
5. The U.S. Commission on Civil Rights should send this advisory memorandum and issue the following recommendations to the Alaska Governor, Lieutenant Governor, and the State of Alaska Division of Elections:
 - a. Conduct analyses on the vote-by-mail system and its potential impact on the following communities: (i) Alaska Natives, (ii) rural residents, (iii) linguistically isolated and limited English proficient residents, and (vi) the illiterate voting age population.
 - b. Pause plans to move forward with a vote-by-mail system in any census area covered by the *Toyukak v. Mallott* settlement agreement, unless the Division of Elections can ensure that all terms of the Toyukak Order will be fully complied with.
 - c. Continue providing language assistance in Gwich'in and Yup'ik because these languages continue to be covered by Section 203 despite the 2020 expiration of the Toyukak Order.
 - d. Implement a hybrid voting system that includes: a strong early voting option; in-person voting both in early/absentee voting and on Election Day; and a vote-by-mail system to avoid voter disenfranchisement.

- e. Continue to convene community speaker-based language panels to strengthen language access efforts and consider identifying additional panel members from the University of Alaska Fairbanks, Alaska Native Language Center, if available.
- f. Consider implementing recommendations and best practices from the President's Commission on Election Administration regarding access to the polls and polling place management.⁶²
- g. Review Title VI language access requirements to ensure compliance.
- h. Evaluate the effectiveness of poll worker and outreach worker training to identify areas for improvement.
- i. Based upon testimony heard regarding the substantial undertaking to implement a state-wide language assistance program and the testimony indicating that problems and challenges remain, the State should extend the Toyukak Order past 2020.
- j. Given the lack of broadband access in most parts of rural Alaska,⁶³ require alternative methods for receiving election materials such as sending election material directly to voting centers and inform voters by broadcasting informational commercials on radio and television.

⁶² *The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration*, PRESIDENTIAL COMMISSION ON ELECTION ADMINISTRATION (Jan. 2014), <https://www.eac.gov/assets/1/6/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

⁶³ Hayton, *Transcript* at 88; Tucker, *Written Testimony* at 1-2; Merlino, *Transcript* at 119-20.

Appendix

- A. *Toyukak v. Mallott* Stipulated Judgement and Court Order
- B. Federal Register Notice for Voting Rights Act Amendments of 2006, Determinations Under Section 203
- C. Photos of Rural Voting and Urban Voting Experiences
- D. Briefing Agenda & Minutes
- E. Briefing Transcript
- F. Written Testimony

Appendix A

Toyukak v. Mallott Stipulated Judgement and Court Order

<http://bit.ly/AK-voting>

Appendix B

<u>Alaska Political Subdivision</u>	<u>Language Minority Group</u>
Aleutians East Borough	Filipino.
Aleutians East Borough	Hispanic.
Aleutians East Borough	Yup'ik.
Aleutians West Census Area	Filipino.
Aleutians West Census Area	Aleut.
Bethel Census Area	Inupiat.
Bethel Census Area	Yup'ik.
Dillingham Census Area	Yup'ik.
Kenai Peninsula Borough	Yup'ik.
Kodiak Island Borough	Yup'ik.
Lake and Peninsula Borough	Yup'ik.
Nome Census Area	Inupiat.
Nome Census Area	Yup'ik.
North Slope Borough	Inupiat.
Northwest Arctic Borough	Inupiat.
Southeast Fairbanks Census Area	Alaskan Athabascan.
Valdez-Cordova Census Area	Alaskan Athabascan.
Kusilvak Census Area	Inupiat.
Kusilvak Census Area	Yup'ik.
Yukon-Koyukuk Census Area	Inupiat.

Appendix C

Urban Voting vs. Rural Voting



Voting in the City



Voting in rural Alaska

Appendix D

Briefing Agenda and Minutes:

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234>

Appendix E

Briefing Transcript:

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234>

Appendix F

Written Comment:

<https://facadatabase.gov/committee/meetingdocuments.aspx?flr=155497&cid=234>



**Alaska Advisory Committee to the
United States Commission on Civil Rights**



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