

GOODBYE YELLOW BRICK ROAD: ENFRANCHISEMENT AMONG NATIVE AMERICAN VOTERS AND *NICK V. BETHEL*

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ABSTRACT

This Comment documents the limited impact of Nick v. Bethel and proposes legislative and electoral reforms to increase enfranchisement among Alaska Natives. The Voting Rights Act (VRA) of 1965 made significant progress in protecting minority voting rights. In 2007, a federal district court interpreted the “historically unwritten” exemption in Section 203 of the VRA for the first time in Nick. While the court found Yup’ik to be historically unwritten, the court also reasoned that written translations of election materials should be prepared in order to ensure that oral translations were effective in accommodating voters. The state responded through various actions to ensure the effectiveness of the language assistance program in the Bethel Census Area. Nick set up a roadmap for future successful litigation to bring the state into compliance with the VRA. However, since the U.S. Supreme Court held parts of the VRA unconstitutional in Shelby County v. Holder, the litigation strategy outlined in Nick has dissolved. In turn, the call for new federal and state policies addressing the geographic and language obstacles for voters in Alaska has never been clearer.

I. INTRODUCTION

Voting is critical to a democratic society because it is “preservative of all rights.”¹ And in Alaska, the state’s constitution provides that all political power is inherent in Alaska’s people and “founded upon their will only.”² Yet, Alaska Natives continue to face political, geographic,

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1. Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

2. ALASKA CONST. art. I, § 2 (“All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.”).

social, and language impediments in attempting to exercise their right to vote. This Comment addresses language barriers to voting. In *Nick v. Bethel*,³ a federal district court in Alaska considered claims by Yup'ik-speaking voters and tribes which alleged the state election officials violated the Voting Rights Act (VRA) by failing to provide translations of all voting information and assistance in Yup'ik for voter registration, absentee voting, and Election Day activities.⁴ The plaintiffs also contended that state election officials violated another section of the VRA, which requires that voters are allowed to receive voting assistance from the person of their choice.⁵ The court issued two substantive decisions. First, the court granted summary judgment to the state's Division of Elections (DOE) and held that while Yup'ik was "historically unwritten," the VRA may still require the state to publish translated versions of election materials.⁶ Second, the court determined that the plaintiffs had met their burden of proving the likelihood of success on their claims that Alaska had violated Sections 203 and 208 of the VRA, and issued an injunction.⁷ This litigation ended in 2010 with a settlement that prescribed several remedies for improving voting accessibility for Alaska Natives in the Bethel Census Area.⁸

This Comment addresses the limited impact of *Nick v. Bethel* and focuses on additional policy actions that can increase enfranchisement among Alaska Natives. While the outcome of *Nick* led to Alaska's swift response to the dire electoral situation in the Bethel Census Area in time for the 2008 Election, the electoral conditions outside of the Bethel Census Area remained unchanged. As such, we should look to federal solutions, such as the Native American Voting Rights Act of 2019,⁹ and other state-

3. Consent Decree And Settlement Agreement As To Plaintiffs and Bethel Defendants at 2, *Nick v. Bethel*, No. 3:07-cv-00098 (D. Alaska 2010), https://www.acluak.org/sites/default/files/nick_v._bethel_settlement.pdf.

4. *Id.*; see also Michael Krauss, Gary Holton, Jim Kerr, & Colin T. West, *Indigenous Peoples and Languages of Alaska*, ALASKA NATIVE LANGUAGE CENTER AND UAA INSTITUTE OF SOCIAL AND ECONOMIC RESEARCH (2011) <http://www.alaskool.org/language/languagemap/index.html> (noting that Alaska is home to twenty indigenous languages, along with a multitude of regional dialects).

5. Consent Decree And Settlement Agreement As To Plaintiffs and Bethel Defendants at 2, *Nick v. Bethel*, No. 3:07-cv-00098 (D. Alaska 2010), https://www.acluak.org/sites/default/files/nick_v._bethel_settlement.pdf.

6. Summary Judgment Order at 7, *Nick v. Bethel*, No. 3:07-cv-00098-TMB (D. Alaska July 23, 2008), No. 319.

7. Order Re: Plaintiffs' Motion for a Preliminary Injunction Against the State Defendants at 7-9, *Nick v. Bethel*, No. 3:07-cv-00098-TMB (D. Alaska July 30, 2008), No. 327.

8. Settlement Agreement and Release of All Claims at 1-3, *Nick v. Bethel*, No. 3:07-cv-00098-TMB (D. Alaska Feb. 16, 2010), No. 787-2.

9. H.R. 1694, 116th Cong. (2019).

level solutions, for remedies that can increase enfranchisement among Alaska Natives. In making this argument, Part II outlines challenges for improving voting accessibility for Alaska Natives and bringing Alaska into compliance with the VRA. Part III then describes *Nick* in more detail to contextualize the significance of the court's substantive decisions the remedies within the settlement agreement. Finally, Part IV discusses several potential federal and state policy solutions for increasing enfranchisement among Alaska Natives.

II. BACKGROUND

Voting obstacles are prevalent in America's "Last Frontier." Geographic isolation is common, as many villages are "roadless" and only accessible by boat or air.¹⁰ Language barriers provide an equally difficult obstacle, with some regions experiencing high illiteracy rates and limited-English proficiency (LEP).¹¹ Notably, Alaska has the largest percentage of legally-recognized indigenous voters of any state.¹²

Originally enacted in 1965 and reauthorized in 1970, 1975, 1982, and 2006, the VRA seeks to protect racial minorities from state and local discriminatory voting laws and practices.¹³ The VRA primarily operates through Section 2, which applies nationwide, and Section 5, which applies only to select states and jurisdictions identified by Sections 3 and 4.¹⁴ Section 5, the "preclearance provision," froze certain states' election laws of 1972 in place to stop discriminatory laws from being implemented.¹⁵ As such, Section 5 operates as a preventative measure and does not burden voters to sue in order to stop the implementation of law.¹⁶ Section

10. Jeanette Wolfley, *You Gotta Fight for the Right to Vote: Enfranchising Native American Voters*, 18 U. PA. J. CONST. L. 265, 281 (2015).

11. See U.S. CENSUS BUREAU, SECTION 203 DETERMINATIONS DATASET – CENSUS 2010, <https://www.census.gov/data/datasets/2010/dec/rdo/section-203-determination-pums.html> (last visited October 8, 2020) (noting the highest LEP rates in Alaska to include: the Bethel Census Area (31.3 percent); the Kusilvak Census Area (14.1 percent); the Dillingham Census Area (12.9 percent); the North Slope Census Area (11.8 percent); the Northwest Arctic Census Area (9.8 percent); and the Nome Census Area (9.5 percent)); see also 42 U.S.C. §§ 1973aa-1a(b)(3)(E) (2018) (noting the VRA defines "illiteracy" as less-than fifth-grade education).

12. See James Thomas Tucker, Natalie A. Landreth, & Erin Dougherty Lynch, *Why Should I Go Vote Without Understanding What I Am Going to Vote For?* *The Impact of First Generation Voting Barriers on Alaska Natives*, 22 MICH. J. RACE & L. 327, 334 (2017) (noting that the 2010 estimates of the U.S. Census identified American Indians and Alaska Natives as comprising 17.7 percent of Alaska's citizen voting-age population).

13. *Shelby Cty. v. Holder*, 570 U.S. 529, 564 (2013) (Ginsburg, J., dissenting).

14. 42 U.S.C. § 1973(b) (2018); see also 52 U.S.C. § 10202 (2018).

15. Tucker et al., *supra* note 12, at 333–34.

16. 42 U.S.C. § 1973c(a) (2018) (Section 5 provides that any "voting

4, the “coverage formula”, observes (1) whether a state or jurisdiction relied on a “test or device” as a prerequisite to registering to vote as of November 1, 1964,¹⁷ and (2) whether less than 50 percent of persons of voting age had voted in the 1964 presidential election.¹⁸

Congress later expanded the definition of “test or device” in Section 4.¹⁹ This update included Section 203, which ensured that all voting materials provided in English are also provided to voters in the languages of all groups or sub-groups that triggered coverage under Section 4.²⁰ Despite the intention of expanding access to the ballot for minority groups, Section 203 was qualified with an provision that limited the required modes of translation to only oral translations for “historically unwritten” languages.²¹ Many in Alaska were left unsure of the implications of the “historically unwritten” provision as “[a]lmost all . . . Alaska Native languages were at one time historically unwritten and, therefore, the exception would essentially swallow the rule.”²² This uncertainty set the stage for *Nick v. Bethel*.

III. NICK V. BETHEL

Voter turnout in regions of Alaska with predominately Yup'ik speakers was more than 20 percent below the statewide average turnout rate in the 2004 election.²³ In preparation for the renewal of the VRA in

qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect in a jurisdiction or its subdivisions on November 1, 1972,” cannot be implemented unless it “has been submitted . . . to the [U.S.] Attorney General, and the Attorney General has not interposed an objection within sixty days . . .” or the jurisdiction obtains a declaratory judgment from the U.S. District Court for the District of Columbia that the change “neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color” or membership in a language minority group).

17. 42 U.S.C. § 1973b (2018).

18. *Id.*

19. Voting Rights Act Amendments of 1975, Pub. L. No. 94-73, 89 Stat. 400 (1975) (noting that English-only voting materials could not be implemented where the Census has determined that more than 5 percent of the voting age population are members of a “single language minority”).

20. See 52 U.S.C. § 10503(c) (2018) (defining “voting materials” to include voter registration materials, voting notices such as information about opportunities to register, registration deadlines, polling place information, absentee voting, voting materials provided by mail, all election forms, polling place activities and materials, instructions, publicity, and ballots).

21. 42 U.S.C. §§ 1973aa-la(c) (2018).

22. Natalie Landreth & Moira Smith, *Voting Rights in Alaska: 1982-2006*, 17 S. CAL. REV. L. & SOC. JUST. 79, 117 (2007).

23. JAMES THOMAS TUCKER, *THE BATTLE OVER BILINGUAL BALLOTS: LANGUAGE MINORITIES AND POLITICAL ACCESS UNDER THE VOTING RIGHTS ACT* 239, 261 (David Schultz, ed., 2009).

2006, the Native American Rights Fund (NARF) began to investigate the state's compliance with Section 203. NARF collected interviews that reflected several failures within the electoral system, such as a lack of trained poll workers fluent and literate in English and Alaska Native languages.²⁴ This investigation by the NARF was included in a report supporting the reauthorization of the VRA.²⁵ In response, the state's Lieutenant Governor, Loren Leman, authored a letter rejecting the report and asserting that Alaska was in full compliance with the VRA.²⁶

With no signs of change for the 2008 Election, four Yup'ik-speaking voters and tribes from the Bethel Census Area (Bethel) brought suit against the Lieutenant Governor and Department of Election officials in 2007.²⁷ The plaintiffs asserted two claims against the state and requested relief in the form of a preliminary injunction that would require the state to adopt policies aligned with the minority assistance rights under the VRA.²⁸ First, the plaintiffs alleged that state election officials violated Section 203 of the VRA by failing to provide translations of all voting information and assistance in Yup'ik for voter registration, absentee voting, and Election Day activities.²⁹ Second, the plaintiffs alleged that officials violated Section 208 of the VRA, which requires that voters be allowed to receive voting assistance from the person of their choice.³⁰

The state advanced three arguments in response to the litigation in *Nick*. First, DOE officials criticized the plaintiffs for failing to inform the DOE that the state was violating federal law,³¹ while simultaneously not explaining why the DOE had not responded to the voters' previous complaints.³² Second, the state began to develop a language program in Yup'ik in the Bethel Census Area, and only the Bethel Census Area.³³ Third, the state posited that Yup'ik falls into the "historically unwritten" exemption and that the state has a precedent for conducting English-only

24. Landreth & Smith, *supra* note 22, at 110–19.

25. *Voting Rights Act: Evidence of Continued Need, Hearing Before the Subcommittee on the Constitution of the House Committee on the Judiciary*, 109th Cong., 2d Sess. 1308–62 (2006) (appendix to the statement of Wade Henderson, Exec. Dir., Leadership Conf. on Civ. Rts.).

26. See TUCKER, *supra* note 23, at 262.

27. See ALASKA STAT. § 15.10.020–15.10.150 (2020). The state's Division of Elections is responsible for voter registration, absentee and early voting, ballot and voting machine preparation, poll worker recruitment and training, Election Day activities, and vote tabulation.

28. Complaint at ¶ 28–33, *Nick v. Bethel*, No. 3:07-cv-00098-TMB (D. Alaska June 11, 2007).

29. *Id.* at ¶ 25.

30. *Id.* at ¶ 27.

31. See Landreth & Smith, *supra* note 22, at 82.

32. See TUCKER, *supra* note 23, at 262–63.

33. See *id.* at 274–75 (noting the failure of the state to provide adequate training, materials, or translations of the Yup'ik language).

elections.³⁴

The court issued two substantive decisions in *Nick*. In the court's first substantive decision, summary judgment was granted to the DOE, and Yup'ik was determined to be historically unwritten under Section 203's exemption for written translations.³⁵ In reaching this decision, the court rejected the state's argument that all indigenous languages fall into the Section 203 exemption. Then, without discussing the legislative history behind the exemption,³⁶ the court reasoned that a language should be classified as "historically unwritten" if evidence indicates that the 'unwritten' aspect of the language extends at least several generations into the past.³⁷ The court found that the Yup'ik language should be considered "historically unwritten" because the language became common after the modern version of Yup'ik was developed in the 1960s.³⁸ Despite holding the Yup'ik language to be historically unwritten, the court reasoned that the VRA establishes that, regardless of whether a minority group's language is historically written or unwritten, all jurisdictions covered by the VRA are required to provide bilingual language assistance. The court concluded, "no covered State or political subdivision shall provide voting materials only in the English language."³⁹

Second, the court found evidence to support the conclusion that the state violated Sections 203 and 208 of the VRA.⁴⁰ In particular, evidence that poll workers were regularly preventing voters from bringing an individual of their choice into the voting booth to assist them in the voting process supported the Section 208 violation claim.⁴¹ Likewise, the court held there were several instances of the state violating Section 203, such as failing to "... provide print and broadcast public service announcements (PSA's) in Yup'ik."⁴²

34. See *id.* at 280-84 (describing the history of the written aspects of the Yup'ik language).

35. Summary Judgment Order, *Nick v. Bethel*, No. 3:07-cv-00098-TMB (D. Alaska July 23, 2008), No. 319.

36. See 121 CONG. REC. 24,208 (1975) (noting that Senator Stevens, who introduced the "historically unwritten" exemption for Section 203, suggested that a language had to be written for at least 15 years in order to meet the statutory requirement).

37. Summary Judgment Order at 10, 12, *Nick v. Bethel*, No. 3:07-cv-00098-TMB (D. Alaska July 23, 2008), No. 319.

38. *Id.*

39. *Id.* (quoting 42 U.S.C. § 1973aa-1a(c) (2018)).

40. Order Re: Plaintiffs' Motion for a Preliminary Injunction Against the State Defendants at 7-10, *Nick v. Bethel*, No. 3:07-cv-00098-TMB (D. Alaska July 30, 2008), No. 327.

41. *Id.* at 9-10.

42. *Id.* at 7-8.

The court noted the importance accorded to an individual's constitutional right to vote and found that the plaintiffs satisfied the "irreparable harm" prong of the first preliminary injunction standard.⁴³ The court ordered several remedies to be in place for the 2008 elections.⁴⁴ In total, eight remedies were ordered, requiring the state to: (1) provide mandatory poll worker training;⁴⁵ (2) hire a language assistance coordinator fluent in Yup'ik;⁴⁶ (3) recruit bilingual poll workers or translators;⁴⁷ (4) provide sample ballots in written Yup'ik;⁴⁸ (5) provide pre-election publicity in Yup'ik;⁴⁹ (6) ensure the accuracy of translations;⁵⁰ (7) provide a Yup'ik glossary of election terms;⁵¹ and (8) submit pre-election and post-election progress reports.⁵² Overall, the court cited three reasons for its injunction: (1) Alaska had been required to provide language assistance to voters "for many years;" (2) "the State lacks adequate records to document past efforts to provide language assistance to Alaska Native voters;" and (3) Alaska's post-litigation efforts to come

43. *Id.* at 5.

44. *Id.* at 10.

45. *Id.* ("Poll workers shall be instructed on the VRA's guarantees of language and voter assistance. In addition, poll workers serving as translators should be trained on the methods and tools available for providing complete and accurate translations.").

46. *Id.* ("In addition to implementing the State's revised language assistance program in the Bethel region, the coordinator should act as a liaison to the tribal councils and Yup'ik-speaking community to ensure the State's efforts result in effective language assistance.").

47. *Id.* ("At least one poll worker or translator fluent in Yup'ik and English shall be assigned to each polling place within the Bethel census area for the upcoming State-run elections.").

48. *Id.* ("At least one such ballot shall be available at each precinct within the Bethel census area to aid poll workers in translating ballot materials and instructions for Yup'ik-speaking voters with limited English proficiency.").

49. *Id.* ("Election-related announcements provided in English shall be broadcast or published in Yup'ik as well. Pre-election publicity should specifically inform Yup'ik speakers that language assistance will be available at all polling locations within the Bethel census area.").

50. *Id.* at 11 ("The State must consult with Yup'ik language experts to ensure the accuracy of all translated election materials.").

51. *Id.* ("During oral argument, counsel for the State Defendants indicated that the State has already compiled a draft version of a Yup'ik glossary of election-related terms. At least one copy of this glossary shall be provided to each polling place within the Bethel census area to assist bilingual poll workers and translators.").

52. *Id.* ("The State Defendants shall submit information on the status of efforts to comply with this Court-ordered program of relief and, more generally, the VRA's language and voter assistance provisions. The information should be specific and provided in a verifiable form, e.g., a precinct-by-precinct list of the names of designated bilingual poll workers or translators for the upcoming fall elections. Progress reports must be filed with the Court 15 days before each election (beginning with the August 26, 2008 statewide primary), and again 30 days after each election.").

into compliance were “relatively new and untested.”⁵³

IV. FEDERAL AND STATE SOLUTIONS

Nick represented the first interpretation of the “historically unwritten” exemption in Section 203 of the VRA. The court’s holding indicated that even if the exemption applied, a state covered by the VRA must still generate print materials in order to ensure that oral translations are effective for voters.⁵⁴ As such, *Nick* is a litigation key for unlocking Section 203 of the VRA and reducing language obstacles for voters.

The Bethel Census Area was an attractive plaintiff for this type of litigation because this region has the largest concentration of voters with limited-English proficiency in Alaska.⁵⁵ In response to the *Nick* litigation, the Alaskan government swiftly responded and accommodated voters, albeit only those in the Bethel Census Area, in time for the 2008 Election.⁵⁶ Inexplicably, the state did not extend the remedies found in *Nick* to similarly situated regions.⁵⁷ As such, similar litigation developed between the state and voters from other regions of Alaska,⁵⁸ with *Nick* establishing a yellow brick road, a strategic course of action for election law litigation for Alaska Natives. In 2013, voters from the Dillingham Census Area and the Wade Hampton Census Area filed suit against the state alleging that DOE officials failed to provide language assistance for Yup’ik-speaking voters in a case known as *Toyukak v. Treadwell*.⁵⁹ Here, the plaintiffs relied on the state’s Official Election Pamphlet, published exclusively in English and circulated to every household with a registered voter, as evidence of non-compliance with the VRA.⁶⁰ Unsurprisingly, the voters prevailed.⁶¹

Nick established a litigation framework for achieving piecemeal improvements for voters in Alaska, region by region. Around the same time that *Toyukak* was resolved, litigation between a county in Alabama and the federal government on the constitutionality of Sections 4(b) and

53. *Id.* at 8.

54. *Id.* at 6–7.

55. See TUCKER, *supra* note 23, at 359–61 (noting the number of LEP voters in each region of Alaska according to the Section 203 coverage determinations from 2002 that were in effect at the time the litigation was brought).

56. See TUCKER, *supra* note 23, at 274–75.

57. *Id.*

58. See, e.g., *Toyukak v. Treadwell*, No. 3:13-cv-00137-SLG (D. Alaska July 22, 2013).

59. No. 3:13-cv-00137-SLG (D. Alaska July 22, 2013).

60. *Id.*; see also TUCKER, *supra* note 23, at 358–59 (detailing the pamphlet evidence and additional evidence in *Toyukak*).

61. Stipulated Judgement and Order, *Toyukak v. Mallott*, No. 3:13-cv-00137-SLG, at 10–14 (D. Alaska 2015), https://www.narf.org/nill/documents/20150930_alaska_voting_order.pdf.

5 of the VRA appeared before the Supreme Court. In *Shelby County v. Holder*,⁶² the U.S. Supreme Court held that the preclearance coverage formula of Section 4(b) was unconstitutional, and thus could “no longer be used as a basis for subjecting jurisdictions to preclearance.”⁶³ In turn, the VRA’s cornerstone, its deterrence against new discriminatory electoral laws and institutions, was swept away. As such, jurisdictions that were previously subject to Section 4 of the VRA, like Alaska, are now able to adopt new and arguably more restrictive changes to their election system, such as limiting early voting and heightening voter-identification requirements.⁶⁴

Consequently, the call for new state and federal policies protecting the voting rights of Alaska Natives has never been clearer. The recently introduced Native American Voting Rights Act of 2019,⁶⁵ authored by Representative Ben Ray Luján of New Mexico, has gained significant traction in Congress with 107 cosponsors from over thirty states.⁶⁶ This legislation recognizes and seeks to remedy electoral barriers for Native Americans, from vote dilution to intentional malapportionment of electoral districts and beyond.⁶⁷ This law addresses the geographic barriers which limit enfranchisement among voters in Alaska by providing additional polling places and would expand voter registration sites at the request of a tribe.⁶⁸ Further, this legislation develops funds so that each state with a federally recognized tribe could establish and operate a Native American Voting Task Force, whose duties and responsibilities would include providing language assistance and reducing inconsistencies in the voting process for Native Americans.⁶⁹

Any federal program addressing the geographic and language barriers for voting in Alaska will likely incur significant costs related to its implementation, continued maintenance, and oversight. That said,

62. 570 U.S. 529 (2013).

63. *Id.* at 557 (detailing the impact of modern voting rights with Section 4(b) of the VRA and declining to issue a holding on the constitutionality of Section 5 of the VRA).

64. Abhay P. Aneja & Carlos F. Avenancio-León, *Disenfranchisement and Economic Inequality: Downstream Effects of Shelby County v. Holder*, 109 AEA PAPERS AND PROCEEDINGS 161 (2019); see also Brad Bennett, *55 Years After ‘Bloody Sunday,’ Voting Rights are Still Under Attack*, S. POVERTY L. CTR. (Feb. 29, 2020), <https://www.splcenter.org/news/2020/02/29/weekend-read-55-years-after-bloody-sunday-voting-rights-are-still-under-attack>.

65. H.R. 1694, 116th Cong. (2019).

66. *Cosponsors: H.R.1694 – Native American Voting Rights Act of 2019, 116th Congress (2019-2020)*, CONGRESS.GOV, [https://www.congress.gov/bill/116th-congress/house-bill/1694/cosponsors?q={%22search%22:\[%22H.+R.+83%22\]}&r=62&s=1&searchResultViewType=expanded](https://www.congress.gov/bill/116th-congress/house-bill/1694/cosponsors?q={%22search%22:[%22H.+R.+83%22]}&r=62&s=1&searchResultViewType=expanded) (last visited October 9, 2020).

67. H.R. 1694 § 2(a)(7)–(8).

68. *Id.* § 5–6.

69. *Id.* § 4.

there are other, less-costly, activities that Alaska could take on to improve enfranchisement among Alaska Natives and all voters more generally. Specifically, improving internet connectivity in communities across Alaska would increase the accessibility of voter registration and provide an affordable and reliable mechanism for disseminating election-related information. While Alaska has an online voter registration portal, it is English-only.⁷⁰ Likewise, publishing translated election materials online is a fraction of the costs of printing and mailing the same materials. Further, increased internet connectivity may lead to several positive reverberations such as improved access to voting information for all voters. While the costs for remedying voter disenfranchisement may be high, so are the stakes.

Recently, Alaska changed its election procedures in response to the COVID-19 pandemic. In preparation for the primary election in August 2020, all registered voters over the age of 65 in Alaska were mailed an absentee ballot application.⁷¹ This approach does not parallel the behavior of other western-states such as Washington and Oregon, along with Hawaii, the other non-contiguous state, who conduct their elections almost entirely by mail.⁷² As such, Alaska may want to consider implementing an automatic mailing of ballots, not just an absentee ballot applications, in order to diminish some of the barriers to voting within the state.

V. CONCLUSION

Nick v. Bethel served as important litigation in determining the scope of the “historically unwritten” exemption in Section 203 of the VRA. The remedies ordered in *Nick* drew the Bethel Census Area into compliance with the VRA for the 2008 Election, but only the Bethel Census Area. At first, *Nick* appeared to set up a roadmap for additional regions to pursue litigation and encourage the state to comply with the VRA. Still, in the wake of *Shelby County v. Holder*, voters can no longer follow the litigation strategies established in *Nick*. As such, now is the time for federal and state action to address the geographic and language barriers that lead to low rates of voter registration and voter turnout by Alaska Natives.

70. See Morgan E. Saunders, *Digital Age Discrimination: The Voting Rights Act, Language Minorities, and Online Voter Registration*, 50 COLUM. J.L. & SOC. PROBS. 449, 472 (2017) (displaying table of states with non-compliant online voter registration systems).

71. *Lieutenant Governor's Over 65 Voting Initiative*, DIV. OF ELECTIONS, <https://www.elections.alaska.gov/Core/COVID19faq.php> (last visited November 5, 2020).

72. *How to Vote by Mail in Every State*, WALL ST. J. (Sept. 18, 2020, 3:08 pm ET), <https://www.wsj.com/articles/how-to-vote-by-mail-in-every-state11597840923>.