

MEMORANDUM OF UNDERSTANDING

BETWEEN

BENNETT COUNTY, SOUTH DAKOTA AND THE UNITED STATES

This Memorandum of Understanding (“MOU”), effective this 16th day of August 2024, is entered into by and between the United States of America (“United States”) and Bennett County, South Dakota (“Bennett County”), the Bennett County Board of Commissioners (“Board of Commissioners”) and the Bennett County Auditor (“Auditor”), in her official capacity (collectively referred to as “the County”). The United States and the County are collectively referred to as “the Parties.”

On July 15, 2024, the United States notified the County of its intent to pursue an enforcement action in the United States District Court for the District of South Dakota pursuant to Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 based on its finding that the County has not made in-person voter registration and absentee voting opportunities equally open to American Indian citizens in Bennett County during the State’s 46-day absentee voting period. Specifically, the United States alleged that, under the totality of the circumstances, Bennett County’s failure to provide in-person voter registration and absentee voting opportunities in the community of Allen denies American Indian voters in the County an equal opportunity to participate in the political process.

To avoid protracted and costly litigation, and to bring about immediate relief, the Parties agree to resolve this matter through the terms in this Memorandum of Understanding.

Accordingly, it is hereby AGREED as follows:

1. This MOU applies to federal, state and county elections administered by the County and is binding on the County, its agents, employees, contractors, successors, and all other persons representing the interests of the County. The Parties agree that the term “the County” binds only the party who has authority or responsibility under South Dakota law with respect to each specific obligation set forth in this MOU.
2. Bennett County is a political and geographical subdivision of the State of South Dakota.
3. The Board of Commissioners is the body established under the laws of South Dakota that is responsible for establishing voting locations for statewide and county elections in Bennett County.

4. The Auditor is the official designated in charge of all elections held in Bennett County except for certain local elections, as provided by the laws of South Dakota.

5. South Dakota's Help America Vote Act (HAVA) Grant Board makes state HAVA funds available to eligible counties to open satellite registration and voting offices during the state-mandated absentee voting period. The HAVA Grant Board has acknowledged that distances to in-person absentee voting locations disproportionately impact American Indian voters.

6. Through its parameters, the HAVA Grant Board has expressed the state's interest in remedying distance barriers in American Indian communities that are disproportionately impacted by poverty and the lack of "affordable, regular, convenient public transportation" to travel to the county seat for election services. Since 2015, the HAVA Grant Board has made state HAVA funds available for counties to open satellite offices that provide in-person voter registration and absentee voting opportunities.

7. The usual and appropriate remedy for unequal in-person voter registration and absentee voting opportunities resulting from distance and transportation barriers is to provide one or more locations in the impacted community to provide those opportunities.

8. The County will operate a satellite office in the community of Allen ("Satellite Office") to provide in-person registration and absentee voting services during regular business hours for the full 46-day absentee voting period prior to federal, state, and county elections. The Satellite Office will be staffed by at least one trained election worker and will be open Monday through Friday from 10 a.m. to 4 p.m. The Satellite Office will be closed on federal holidays.

9. In selecting the location for the Satellite Office, the County shall consult with the Oglala Sioux Tribe and may consider previous voting location(s) the County has used in Allen, including the location to be used as a polling place for the Allen Precinct in the General Election scheduled for November 5, 2024. The County is responsible for contracting with the owner and paying any associated costs for renting space for the Satellite Office.

10. The Satellite Office shall be compliant with Title II of the Americans with Disabilities Act of 1990, as amended ("ADA"), 42 U.S.C. § 12132; 28 C.F.R. § 35.130(a), and Title II's program access requirements, 28 C.F.R. §§ 35.149-35.151; and the 2010 ADA Standards for Accessible Design (28 C.F.R. § 35.104, as set forth in appendices B and D to 36 C.F.R. Part 1191 and the requirements contained in 28 C.F.R. § 35.151) (collectively, "ADA Standards") on the days that the Satellite Office is open for voting or election services, whether such compliance is achieved through permanent architectural modifications or through the use of temporary measures.

11. If no ADA-compliant location is available in Allen for the Satellite Office, the County shall inform the United States in writing and describe the steps the County will take to make the services provided by the Satellite Office in Allen accessible to voters or voter registrants with disabilities. The County may propose reasonable, temporary measures consistent with the ADA Standards, subject to the review and written approval of the United States.

12. At least 15 days before the 46-day absentee voting period, the County shall post notices at public locations in Allen including at the CAP Office, provide copies of the notices to the Oglala Sioux Tribe, and use the same methods of communication it uses for other election notices to advertise to the public the location, hours of operation, and election services available at the Satellite Office.

13. The County may apply to the HAVA Grant Board for state HAVA funds to cover the costs of the Satellite Office. However, neither the MOU nor any of its terms is contingent upon the County's receipt of funding from the HAVA Grant Board.

14. Throughout the duration of this MOU, the County shall make and maintain written records of all actions taken pursuant to this MOU and shall produce copies of such records to the United States upon reasonable notice, upon its request. Such records shall include all documents, lists, and printed materials related to any provision of this MOU.

15. Throughout the duration of this MOU, at least 60 days before each election administered by the County, the County shall provide to counsel for the United States: (a) the name and address of the Satellite Office location; (b) the identity and contact information of the individual(s) from the Oglala Sioux Tribe with whom the County consulted about the Satellite Office location; (c) confirmation that the Satellite Office location is ADA-compliant as provided in this MOU; (d) the name(s) and title(s) of the election worker(s) assigned to the Satellite Office; (e) written confirmation of the training provided to election worker(s) assigned to the Satellite Office; and (f) copies of any public notices or other written information regarding the Satellite Office.

16. No later than August 23, 2024, the County shall confirm to the United States in writing that it has secured the requisite funding and approvals necessary to establish a Satellite Office pursuant to the terms of this MOU and shall provide the location of the intended location for the Satellite Office.

17. Any written notices or communications to the United States under the MOU shall be sent electronically to Timothy.F.Mellett@usdoj.gov and James.T.Tucker@usdoj.gov. If the written notices or communications are voluminous, the County shall notify the United States through the e-mail addresses provided in this paragraph to arrange for express mail delivery.

18. This MOU is final and binding between the Parties and their successors in office regarding the claims described in the July 15, 2024 letter. It shall remain in effect through December 31, 2028.

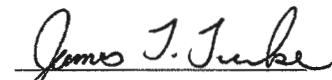
19. The U.S. District Court for the District of South Dakota shall have exclusive jurisdiction over any action to enforce the MOU.

AGREED AND CONSENTED TO:


For the United States:

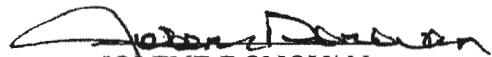
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