

VOTING RIGHTS ACT: SECTION 203—
BILINGUAL ELECTION REQUIREMENTS
(PART 1)



HEARING
BEFORE THE
SUBCOMMITTEE ON THE CONSTITUTION
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED NINTH CONGRESS
FIRST SESSION

NOVEMBER 8, 2005

Serial No. 109-83

Printed for the use of the Committee on the Judiciary



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**VOTING RIGHTS ACT: SECTION 203—
BILINGUAL ELECTION REQUIREMENTS
(Part I)**

TUESDAY, NOVEMBER 8, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 2:04 p.m., in Room 2141, Rayburn House Office Building, the Honorable Steve Chabot (Chair of the Subcommittee) presiding.

Mr. CHABOT. The Committee will come to order.

This is the Subcommittee on the Constitution of the Judiciary Committee. I would like to welcome everyone for being here today. This is the sixth in a series of hearings that the Committee is holding examining the impact and effectiveness of the Voting Rights Act over the past 40 years.

Today and again tomorrow, this Committee will focus on section 203, the provision authorizing bilingual language assistance to American citizens who are members of covered language minority groups and who have limited English proficiency.

Section 203 has not been revisited by Congress since 1992 and, like the sections that we have discussed in previous hearings, is set to expire in 2007, unless reauthorized.

I'd like to take a moment again to thank my colleagues for the time that they've devoted to this issue. I also would like to thank our witnesses for being here today. We have another expert panel. We've been very fortunate thus far in these hearings that we have had such experts, and we appreciate you all being here today.

The Voting Rights Act was enacted in 1965 in response to a history of racial discrimination against some of our Nation's citizens. In 1975, Congress expanded the Voting Rights Act to include section 203 and its companion, section 4(f).

Section 203 requires certain jurisdictions to provide bilingual election assistance—including notices, instructions, information, and ballots—to citizens who are members of a designated language minority group and who have limited English proficiency.

As cited in the 1975 House Report, section 203 was added in response to "an extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities." This record revealed that similar discrimination patterns and practices that had been used to prevent African-Americans from voting were being administered against Asian-

Americans, American Indians, Native Alaskans, and citizens of Hispanic origin. These citizens are more than likely to live in environments in which the dominant language is other than English.

Section 203 breaks down these barriers by providing citizens in a language minority group with the assistance necessary to participate in the political process.

Section 203 has enabled an increased number of minority citizens to register and cast ballots, as revealed in the last Census and latest election records. Section 203 has also been instrumental in increasing the number of Federal, State, and local elected officials who are of Asian-American, Hispanic, Native American, or Native Alaskan descent.

Today's hearing will focus on the impact that section 203 has had on all citizens and on the electoral process, as well as examining the continued need for section 203 in the future. We look forward to hearing from our witnesses on this topic this afternoon. And I now yield to the gentleman from New York, Mr. Nadler, the Ranking Member, for the purpose of making an opening statement.

Mr. NADLER. Thank you, Mr. Chairman. Mr. Chairman, let me begin by welcoming our witnesses today, especially my constituent and neighbor, Margaret Fung, of the Asian American Legal Defense and Education Fund, who has really been in the forefront of ensuring that all Americans are able to exercise the franchise.

Language barriers have long hindered the ability of American citizens who are duly qualified to vote to exercise their franchise. I hope we are beyond the point where anyone would seriously suggest that any American citizen who is legally entitled to vote should be denied that fundamental right.

There was a time when literacy tests were touted as a necessary prerequisite for voting. No one today would try to defend that disgraceful practice.

I believe that in the future, language barriers that serve only to exclude eligible voters from meaningful participation in our democracy will be viewed retroactively in the same way as disgraceful memories.

We are a nation of immigrants. Every group in its time was abused and excluded because of different customs, because they spoke different languages. And today, as in the past, those intent on discrimination would explain that past generations of immigrants are somehow different and better than today's immigrant generation. That hasn't changed.

Part of becoming an American is getting involved in our democratic system. It is the common values of freedom and democracy that bind this nation together; not facility with the English language. I defy anyone to tell me that my Russian constituents, or my Chinese constituents, or my Latin American constituents aren't just as American as those of us whose families arrived here in earlier generations and as our grandparents were.

These new Americans, if anything, may value the right to vote more than some of those who were born here and could be tempted to take this right for granted. We are strengthened as a nation by doing all we can to help them participate fully in the life of our nation.

There are also native-born Americans who need protection under section 203. Native Americans have a perhaps greater claim to being American than anyone else in this country; yet their rights at the polls have historically been abused.

The Puerto Rican voters in my city are native-born Americans, but the common language of the Commonwealth is Spanish. The Puerto Ricans, members of our society, serve in our military and our Government and in business. They are no less American than anyone else in this room.

Section 203 is an enforcement mechanism. I hope that our panel will help enlighten us as to how the needs have changed over the years, and how we can do more to ensure that all Americans can exercise their vote in a meaningful manner.

I thank you, and I look forward to the testimony of the witnesses. And I thank you, Mr. Chairman, and yield back.

Mr. CHABOT. Thank you very much. Would the gentleman from Alabama, Mr. Bachus, like to make an opening statement?

Mr. BACHUS. I have no statement. I will just say that the right to vote is actually the right to participate in our democracy. If you take away the right to vote—and really, not only the vote, but to have your vote counted—and you basically take away the ability to participate in electing your Government and in policy decisions and whatever. So I can't think of anything more fundamental to a democracy than the right to vote is.

Mr. CHABOT. Thank you very much. The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT OF VIRGINIA. Thank you, Mr. Chairman. Mr. Chairman, in the 40 years since its passage, the Voting Rights Act has guaranteed millions of minority voters the chance to have their voices heard and their votes counted. The number of Black elected officials has increased from just 300 nationwide in 1964 to over 9,100 today. Poll taxes, literacy tests, and other discriminatory barriers that once closed the ballot box to Blacks and other minorities have been dismantled.

The process also opened the political process for nearly 6,000 Latinos who now hold public office, including more than 250 who serve at the State or Federal level.

Section 203 was added to the Voting Rights Act in 1975, and requires certain jurisdictions to make language assistance available at polling locations for citizens with limited English proficiency. These provisions apply to four language groups. The community with one of those language groups will qualify for language assistance if more than 5 percent of the voting-age citizens in a jurisdiction belong to a single language minority community and have limited English proficiency, or LEP, or more than 10,000 voting-age citizens in a jurisdiction belong to a single language minority community and are LEP, and the illiteracy rate of the citizens in the language minority is higher than the national illiteracy rate.

Registration and voting materials in all jurisdictions in all elections must be provided in the minority language, as well as in English. All translation during all phases of the voting process, from voter registration to voting, is also required. Jurisdictions are permitted to target their language assistance to specific voting precincts or areas.

It is crucial that everyone in our democracy have the right to vote. Yet having the right legally is meaningless if certain groups of people are unable to accurately cast their ballots at the poll.

Voters may be well informed about the issues and candidates, but to make sure their vote is accurately counted, language assistance is necessary in certain jurisdictions with concentrated populations of limited English-proficient voters.

Even though new citizens are required to speak English, they still may not be sufficiently fluent to participate fully in the voting process without this much needed assistance. Before the language assistance provisions were added to the Voting Rights Act in 1975, many Spanish-speaking American citizens did not register to vote because they could not read the election materials or could not communicate with poll workers. Language assistance has encouraged these and other citizens of different language minority groups to register and vote and participate more fully in the election process.

Language assistance is not costly. According to two separate GAO studies, as well as independent research conducted by academic scholars, when implemented properly, language assistance accounts for only a small fraction of total election costs. The most recent studies show that compliance with section 203 accounts for approximately 5 percent of total election costs.

Section 203 and other expiring provisions are essential to ensure fairness in our election processes and equal opportunity for minorities in American politics. It's important that we work together to strengthen this provision.

And I look forward to the testimony that will create the record that we need to extend this provision. I yield back.

Mr. CHABOT. I thank the gentleman very much. And the gentleman from Wisconsin, Mr. Green, is recognized, if he'd like to.

Mr. GREEN. I have no opening statement.

Mr. CHABOT. Okay. Mr. Jenkins, are you interested in making an opening statement?

Mr. JENKINS. Not at this time.

Mr. CHABOT. Okay. The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I'll try not to take 5 minutes. I do want to thank the Chairman again for the series of hearings, and thank the Chairman of the full Committee again for his commitment to creating a record for reauthorization of the Voting Rights Act provisions that are expiring.

One of those provisions is section 203, which imposes an obligation on certain States and political subdivisions to provide voting materials and assistance in languages other than English. This requirement applies to jurisdictions with significant language minority populations who are of limited English proficiency, or where the illiteracy rate of that language minority is higher than the national literacy average rate.

I know that our witnesses today will address the origin, operation, and costs of complying with section 203, as well as present evidentiary materials to substantiate or refute the need for its continued use. However, I think it's important to emphasize where

section 203 fits into the Voting Rights Act and into our scheme of democracy.

This is America. We are the most open country in the world, the most diverse country in the world. Our population is multicultural, consisting of people of various races, ethnicity, and national origin. And while I can understand concerns raised by some that this provision might lead to “Balkanization” of America, I do not share that view.

To the contrary, I believe that providing meaningful access to the ballot for limited English proficient citizens can only enhance political participation and incentivize hundreds of thousands of Americans to engage more actively into the mainstream of society, while retaining their cultural identities.

Without that access, scores of American citizens will continue to feel alienated in the country they call home. It would be ironic if during this time where we are pushing cultural tolerance and inclusion that we didn’t—if we didn’t extend this provision of the Voting Rights Act. Citizens of all language minority communities are required to pay taxes, abide by the law, cooperate with law enforcement; and many volunteer to serve in the military, notwithstanding their ability to speak English, or speak English well.

Section 203 fosters civic responsibility by making the opportunity to be heard by Government officials at all levels available to all Americans, including those Americans who are distinguished only by their inability to speak fluent English; not by their contributions to, and sacrifices on behalf of, this country.

Section 203 completes the purpose of the Voting Rights Act to ensure full participation in the electoral process by any American, without regard to race, ethnicity, or membership in a language minority group. It’s vital to our democracy that all our citizens who shoulder the burdens of citizenship also share in the benefits of citizenship on a non-discriminatory basis, and I believe that section 203 makes this possible.

I would just add, outside the framework of my prepared comments, Mr. Chairman, that one of the wonderful things that I still have posted in my home is the ballot that was used in the first elections in South Africa. It wasn’t in different languages, but the ballot had pictures of the people who were running for office and the party symbols, for people who couldn’t read at all. It was to give them the ability to be able to participate fully, as well as people who could read.

And it just seems to me that this section 203 provision is of that same kind of philosophy, to encourage participation, enhance participation, allow people who may not have all of the conveniences or skills of speaking English to participate fully. They are American citizens, they are United States citizens, and they should be allowed to vote just like anybody else is.

So I encourage—appreciate the witnesses being here, and thank the Chairman for this hearing, and yield back the balance of my time.

Mr. CHABOT. The gentleman yields back. Mr. Feeney, I understand you do not need to make an opening statement; is that correct?

Mr. FEENEY. Yes.

Mr. CHABOT. Okay. Thank you. I would note the presence on the panel here of three other distinguished Members of the House, although the three are not Members of this particular Committee: Mr. Honda from California, Ms. Sánchez from California, and Mr. Scott from Georgia.

We've extended the privilege of giving each of these Members 5 minutes, which they can use for making an opening statement or asking questions. It's my understanding that Mr. Honda would make an opening statement, and Ms. Sánchez and Mr. Scott would use that time for questions. Is that correct?

Ms. SÁNCHEZ. [Nods affirmatively.]

Mr. SCOTT OF GEORGIA. Yes.

Mr. CHABOT. Okay. So Mr. Honda, you are recognized for the purpose of making an opening statement. Better make it a good one. [Laughter.]

Mr. HONDA. Thank you, Mr. Chairman, and I appreciate this opportunity. Chairman, Ranking Member Nadler, and Members of the Subcommittee, thank you for allowing me to make this opening statement at this important hearing on the Voting Rights Act.

Earlier this year, I had the honor of being with our distinguished colleague, Congressman John Lewis, and others in Alabama, to commemorate the 40th anniversary of "Bloody Sunday." On that day in March 1965, on a bridge outside of Selma, Alabama, the civil rights movement continued its unwavering steps forward.

Civil rights activists, led by Dr. King, took to the streets in a peaceful protest for voting rights for African-Americans. They were met with clubs and violence. The terrible event helped the Nation, however, to understand what was at stake.

What were these non-violent activists seeking? We all know that the cornerstone of our Government is based on the right to vote. Voting is the most basic and vital tool Americans have to shape our Government's policies.

I'm here to underscore the point that the right to vote is keenly felt by the Asian- and Pacific-American community. Chinese-Americans could not vote until the Chinese Exclusion Acts of 1882 and 1892 were repealed in 1943. First-generation Japanese-Americans could not vote until 1952, because of the racial restrictions contained in a 1790 naturalization law.

We are here today reviewing section 203 of the Act, which has been vital to the APIA community's ability to participate in the electoral process. Language-minority citizens were often denied needed assistance at the polls. In the 1975 amendments to the Voting Rights Act, such an assistance became required in certain situations.

I'm looking forward to hearing from our distinguished panel today. I am especially looking forward to the important testimony from Margaret Fung, Executive Director of the Asian American Legal Defense and Education Fund. The work of Ms. Fung and AALDEF has been instrumental in increasing civic participation among APIAs. The record of evidence established by AALDEF will clearly show the importance of section 203 and related provisions.

And Mr. Chairman, since I don't think I took 5 minutes yet, very quickly, as Chairman of the Board of Supervisors of Santa Clara County, we had the critical number of folks needed to have a Chi-

nese ballot. And the young people used to complain that they had to explain things to their parents for them to be able to vote with some comprehension.

After we passed the bilingual ballot for Chinese in our county, the participation of Chinese went up 11 percent. And the complaints of the young people went up, also; because they said that their parents didn't need them any more for translation. And this just depicts the importance of what I call inclusion; an inclusion that allows all people with different language backgrounds who want to participate as citizens in this country to perform—to have a more perfect union; participate.

And so comprehension and knowledge are essential for an informed decision. Whether you speak English fluently or not, if you're citizens, you should not be denied the ability to cast your ballot with comprehension, with knowledge. I thank you, Mr. Chairman.

Mr. CHABOT. Thank you very much. The gentleman's time has expired.

I'd like to introduce the panel at this time. Before I do that, I would make note that, without objection, all Members will have 5 legislative days to submit additional materials for the record.

As I say, we have a very distinguished panel this afternoon. Our first witness will be the Honorable Bradley J. Schlozman, the Acting Attorney General for Civil Rights at the United States Department of Justice. As the Acting Attorney General, Mr. Schlozman is responsible for enforcing all Federal civil rights statutes, including those that prohibit discrimination on the basis of race, sex, disability, religion, and nation of origin, in education, housing, credit, public accommodation, voting, and certain federally funded and conducted programs.

Prior to assuming his duties as Acting Attorney General, Mr. Schlozman served as Deputy Assistant Attorney General, directing supervising the Criminal, Voting, Employment, and Special Litigation Sections of the Civil Rights Division.

Mr. Schlozman is a former law clerk to Judge G. Thomas Van Bebber, Chief U.S. District Judge for the District of Kansas; and U.S. Circuit Judge Mary Beck Briscoe, of the U.S. Court of Appeals for the Tenth Circuit.

We welcome you back this afternoon, Mr. Schlozman.

Our second witness will be Ms. Margaret Fung. Ms. Fung currently serves as the Executive Director of the Asian American Legal Defense and Education Fund, AALDEF. In her work with AALDEF, Ms. Fung has successfully defended the civil rights of members of the Asian-American community nationwide in areas such as housing, voting, and economic justice for workers.

In 1986, in *Chinese Staff and Workers Association v. City of New York*, Ms. Fung successfully argued that the impact of new development on low-income tenants and small businesses must be considered under State environmental laws.

In 1988, Ms. Fung organized AALDEF's first exit poll of Asian-American voters in New York City; and in 1992, testified before the full House Judiciary Committee on the need to continue section 203.

Ms. Fung also testified before the New York State Legislative Taskforce for Demographic Research and Reapportionment in 2001, presenting information on the dilutive impact that previous redistricting plans had on language-minority voters.

Ms. Fung serves on the board of directors of the National Asian Pacific American Legal Consortium, the National Association of Public Interest Law, the National Committee on Responsive Philanthropy, and as an advisor in the rebuilding of the World Trade Center. I welcome back Ms. Fung.

And our third witness will be Ms. Linda Chavez, President of One Nation Indivisible. In addition to her work with One Nation Indivisible, Ms. Chavez serves as President of the Center for Equal Opportunity, is a Fox News political analyst, and hosts a nationally-syndicated daily radio show on Liberty Broadcasting.

Ms. Chavez previously held a number of political appointments, including Chairwoman of the National Commission on Migrant Education, from 1988 to '92; White House Director of Public Liaison, in 1985; staff director for the United States Commission on Civil Rights, from 1983 to 1985; and was a member of the Administrative Conference of the United States, from 1984 to 1986.

Ms. Chavez is the author of a number of award-winning publications, including "Out of the Barrio: Toward a New Politics of Hispanic Assimilation," and her memoir "An Unlikely Conservative: The Transformation of an Ex-Liberal." We welcome you here, Ms. Chavez.

Our fourth and final witness will be Ms. Rebecca Vigil-Giron. Ms. Vigil-Giron currently serves as the Secretary of State for the State of New Mexico, the State's Chief Election Officer; and is an *ex officio* member of the New Mexico Public Employees Retirement Board. As Secretary of State and chief elections officer, she is the highest-ranking elected Hispanic woman State official to currently serve in the United States.

In addition, Ms. Vigil-Giron serves as President of the National Association of Secretaries of State, where she has been a leader in election reform.

Ms. Vigil-Giron played an instrumental role in the development and enactment of the Help America Vote Act, HAVA; and is a member of the U.S. Election Assistance Commission Standards Board, and Board of Advisors, and EAC's Working Group for State-wide Data-Based Voter Registration Systems.

Ms. Vigil-Giron is the recipient of many honors and awards for her work in Government. We welcome you here this afternoon, Ms. Vigil-Giron.

And for those who may not have testified before the Committee, we have what's called the 5-minute rule. Each of you will have 5 minutes to testify. We have a lighting system: the green light will be on for 4 minutes; the yellow light comes on, lets you know you have 1 minute to wrap up; the red light comes on, and we'd appreciate it if you'd wrap up your testimony about that time, if at all possible. I won't gavel you down immediately. We'll give you a little leeway, but we hope you'll stay within the 5 minutes as much as possible.

It's also the practice of this Committee to swear in all witnesses appearing before it. So if you would, please rise and raise your right hand.

[Witnesses sworn.]

Mr. CHABOT. All witnesses have indicated in the affirmative.

And we again welcome you here this afternoon. Mr. Schlozman, we'll begin with you. You're recognized for 5 minutes.

TESTIMONY OF BRADLEY J. SCHLOZMAN, ACTING ASSISTANT ATTORNEY GENERAL, CIVIL RIGHTS DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. SCHLOZMAN. Chairman Chabot, Ranking Member Nadler, distinguished Members of the Subcommittee, thank you again for the opportunity to appear before you today.

Let me say at the beginning that, as I underscored in my testimony a couple of weeks ago, the President has directed the full power and might of the Justice Department to enforcing the Voting Rights Act and to preserving the integrity of our voting process. The Administration continues to look forward to working with Congress on the reauthorization of this important legislation.

It's my privilege this morning to provide you with an overview of the Justice Department's enforcement of the language minority provisions of the Voting Rights Act. The language minority provisions of the Voting Rights Act, which have been in effect since 1975, are found in sections 203 and 4(f)(4) of the Act.

These provisions mandate that covered jurisdictions which provide any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, must provide such information and materials in the language of the applicable minority group, as well as in the English language.

Now, the determination of which States or political subdivisions are subject to the dictates of the Voting Rights Act minority language requirements is based on a formula that the Census Bureau data invokes regarding ethnicity figures, English proficiency rates, and literacy rates.

The only language minority groups that are covered under these provisions are American Indians, Asian-Americans, Alaskan Natives, and citizens of Spanish heritage. Currently, there are a total of 496 jurisdictions that are subject to the requirements of either section 203 or section 4(f)(4).

And I've put together some charts here on the placards, and I believe each of the Members was given a copy. And if you haven't been, then we can make that available to you, as well.

Under the Bush Administration, the Justice Department's Civil Rights Division has undertaken the most extensive section 203 and 4(f)(4) enforcement activity in history. The initiative began immediately following the Census Bureau's July 2002 determinations as to which jurisdictions were covered under section 203.

The Civil Rights Division not only mailed formal notice and detailed information on section 203 compliance to each of the 296 covered jurisdictions across the country, but it also initiated face-to-face meetings with State and local election officials and minority community members in the 80 newly covered jurisdictions, to ex-

plain the law, answer questions, and work to foster the implementation of effective legal compliance programs.

I've undergone many of these outreach activities myself, and traveled a good distance to encourage individuals and communities to comply vigorously with the law.

In addition, the division's Voting Section has been systematically requesting voter registration lists and bilingual poll official assignment data from all covered jurisdictions, beginning with the largest in terms of population. The lists are then reviewed to identify polling places with a large number of minority-language voters, and to ascertain whether the polling places are served by a sufficient number of bilingual poll officials who can provide the assistance to new voters.

Not surprisingly, the extraordinary efforts of our division have borne substantial fruit. Since 2001, this Administration has filed more minority language cases under sections 4 and 203 than in the previous 26 years in which these provisions have been applicable. Each and every case has been successfully resolved, with comprehensive relief for affected voters.

And the pace is accelerating, with more cases filed in 2005 than in any previous year. We've already broken the previous record that was set in 2004. The lawsuits filed in 2004 alone provided comprehensive minority language programs to more citizens than all previous section 203 and 4(f)(4) suits combined.

We've had suits in Florida, California, Massachusetts, New York, Pennsylvania, Texas, and Washington. And among these cases were the first suits ever filed under section 203 to protect Filipino and Vietnamese voters.

The lawsuits discussed have significantly narrowed gaps in electoral participation. In Yakima County, Washington, for example, Hispanic voter registration is up over 24 percent since the division's section 203 lawsuit. In San Diego County, Spanish and Filipino registrations are up over 21 percent, and Vietnamese registration is up over 37 percent since the division's enforcement action.

These language enforcement efforts have made a tremendous difference in enhancing minority representation in politically elected ranks. The Civil Rights Division is extraordinarily proud of its accomplishments, and we look forward to continuous vigorous enforcement of these provisions. Thank you.

[The prepared statement of Mr. Schlozman follows:]

PREPARED STATEMENT OF BRADLEY J. SCHLOZMAN

Chairman Chabot, Ranking Member Nadler, distinguished members of the Subcommittee:

I am Brad Schlozman, the Acting Assistant Attorney General of the Civil Rights Division at the Department of Justice. Thank you for the opportunity to appear before you again today. As I underscored in my prior testimony two weeks ago, the President has directed the full power and might of the Justice Department to enforce the Voting Rights Act and to preserve the integrity of our voting process. This Administration looks forward to working with Congress on the reauthorization of this important legislation.

It is my privilege this morning to provide you with an overview of the Justice Department's enforcement of the language minority sections of the Voting Rights Act. As you know, these provisions, like Section 5, are due to expire in August 2007.

The minority language provisions of the Voting Rights Act, which have been in effect since 1975, are found in Sections 203 and 4(f)(4) of the Act. These provisions mandate that any covered jurisdiction which "provides any registration or voting no-

tices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” must provide such materials and information “in the language of the applicable minority group as well as in the English language.”¹

The determination of which States or political subdivisions are subject to the dictates of the Voting Rights Act’s minority language requirements is based on a formula that utilizes Census Bureau data regarding ethnicity figures, English proficiency rates, and literacy rates. Section 203, for example, is triggered if, in a particular jurisdiction: (i) more than 5% of the citizen voting age population, or 10,000 citizens of voting age, are members of a single language minority, and (ii) the illiteracy rate of the citizens in the language minority group is higher than the national illiteracy rate.² With respect to Section 4(f)(4), a jurisdiction is subject to the translation obligations if: (i) less than 50% of the citizen voting age population was either registered to vote, or actually voted, in the November 1972 presidential election, (ii) the jurisdiction provided certain specified election materials exclusively in English in November 1972, and (iii) more than 5% of the citizen voting age population in November 1972, as determined by the then-latest available Census Bureau figures, were members of a single language minority.³ The only language minority groups covered under Sections 4(f)(4) and 203 are American Indians, Asian Americans, Alaskan Natives, and citizens of Spanish heritage.⁴ Currently, there are a total of 496 jurisdictions that are subject to the requirements of either Section 203 or Section 4(f)(4).⁵

Under the Bush Administration, the Justice Department’s Civil Rights Division has undertaken the most extensive Section 203 and Section 4(f)(4) enforcement activity in its history. The initiative began immediately following the Census Bureau’s July 2002 determinations (using 2000 Census data) as to which jurisdictions were covered under Section 203. The Civil Rights Division not only mailed formal notice and detailed information on Section 203 compliance to each of the 296 covered jurisdictions across the United States, but it also initiated face-to-face meetings with State and local election officials and minority community members in the 80 newly covered jurisdictions to explain the law, answer questions, and work to foster the implementation of effective legal compliance programs.

In addition, the Division’s Voting Section has been systematically requesting voter registration lists and bilingual poll official assignment data from all covered jurisdictions, beginning with the largest in terms of population. These lists are then reviewed in order to identify polling places with a large number of minority language voters, and to ascertain whether the polling places are served by a sufficient number of bilingual poll officials who can provide assistance to voters.

The Division also is systematically looking at the full range of information provided by covered jurisdictions to voters in English—not just the ballot and election pamphlets themselves, but also newspaper notices required by State law, web site information, and other election materials—and determining whether: (i) the same information is being made available to each minority language community, and (ii) the translated materials are actually provided in polling places.

In August 2004, the Assistant Attorney General mailed letters to the 496 jurisdictions covered by Sections 203 and/or 4(f)(4) reminding them of their obligations to provide minority language assistance in the November 2004 general election, and offering them guidance on how to achieve compliance. Ironically, the 2004 mailing to the Section 4(f)(4) counties was the first blanket mailing to these political subdivisions since shortly after their original designations as covered jurisdictions in 1975.

Not surprisingly, the extraordinary efforts undertaken by the Civil Rights Division in this area have borne abundant fruit. Indeed, since 2001, this Administration has filed more minority language cases under Sections 4 and 203 than in the entire previous 26 years in which these provisions have been applicable.⁶ Each and every case has been successfully resolved with comprehensive relief for affected voters. And the pace is accelerating, with more cases filed and resolved in 2005 than in any previous year, breaking the previous record set in 2004. The lawsuits filed in

¹ Section 203(c), 42 U.S.C. 1973aa-1a(c).

² Section 203(b)(2), 42 U.S.C. 1973aa-1a(b)(2)(A).

³ Section 4(f)(3-4), 42 U.S.C. 1973c(3-4). Essentially, Section 4(f)(4) applies the 1972 Section 5 coverage trigger to language translation obligations.

⁴ Section 203(e), 42 U.S.C. 1973aa-1a(e).

⁵ There are 296 jurisdictions throughout the United States covered by Section 203. There are approximately 298 jurisdictions covered by Section 4(f)(4). Some coverage overlaps, which explains the 496 figure in the text above.

⁶ Fourteen of the 27 minority language cases filed by the Department of Justice since the adoption of Sections 203 and 4(f)(4) have been commenced since 2001.

2004 alone provided comprehensive minority language programs to more citizens than all previous Section 203 and 4(f)(4) suits combined.

The enforcement actions include cases in Florida, California, Massachusetts, New York, Pennsylvania, Texas, and Washington. Among these cases were the first suits ever filed under Section 203 to protect Filipino and Vietnamese voters.

The Civil Rights Division recognizes of course that States and municipalities do not have unlimited budgets, and we have thus designed our enforcement strategy to minimize unnecessary costs for local election officials. For example, the Division urges covered jurisdictions to avoid costly and unhelpful expenditures such as publishing Spanish language notices in English language newspapers that are not read by those who rely on the Spanish language. Election officials are instead encouraged to identify the most effective and efficient channels of communication that are used by private enterprise, service providers, tribal governments, and the like to get information effectively to the language minority community at low cost. In a similar vein, the Division encourages the use of fax and e-mail "information trees," whereby bilingual election notices are sent at no cost to a wide array of businesses, unions, social and fraternal organizations, service providers, churches and other organizations with a request that these entities make announcements or otherwise disseminate the information to their membership's language minority voters. And the Division has incorporated "best practices" from around the country to help jurisdictions recruit sufficient numbers of bilingual poll workers.

I might add at this point that the Civil Rights Division's protection of minority language voters has not been limited to those individuals residing in jurisdictions covered under Sections 203 and 4(f)(4). The Division has also used Sections 2 and 208 of the Voting Rights Act to protect the rights of Hispanic, Chinese, Vietnamese, and Haitian voters from disparate treatment, and we have aggressively monitored and obtained additional relief to protect Arab American and Native American voters. In fact, from the time the Bush Administration began in 2001, the Civil Rights Division has filed three of the only four Section 208 cases brought in the history of the Voting Act, and the Division initiated first-ever Section 2 case to protect Vietnamese voters in Boston, Massachusetts.

The lawsuits discussed above have significantly narrowed gaps in electoral participation. In Yakima County, Washington, for example, Hispanic voter registration is up over 24% since the Division's Section 203 lawsuit. In San Diego County, California, Spanish and Filipino registration are up over 21%, and Vietnamese registration is up over 37% since the Division's enforcement action.

The Division's minority language enforcement efforts likewise have made a tremendous difference in enhancing minority representation in the politically elected ranks. A Section 203 lawsuit in Passaic, New Jersey, was so successful for Hispanic voters that a Section 2 challenge to the at-large election system was subsequently withdrawn. A Memorandum of Agreement in Harris County, Texas, helped double Vietnamese voter turnout, and the first Vietnamese candidate in history was elected to the Texas legislature—defeating the incumbent chair of the appropriations Committee by 16 votes out of over 40,000 cast.

I would be remiss if I did not state for the record that none of these accomplishments would have been possible without both the tremendous emphasis placed on this issue by President Bush, and the extraordinary enforcement program developed by the chief of the Civil Rights Division's Voting Section, John Tanner. Mr. Tanner has logged hundreds of thousands of miles and spent countless hours away from his family developing, implementing, and refining our Section 203 program. We all owe him a debt of gratitude for his work.

Let me say in conclusion that the Civil Rights Division made the vigorous enforcement of the Voting Rights Act's language minority requirements one of its primary missions. I think everyone would agree that we have been enormously successful in this task. Naturally, the real beneficiaries of our work have been the millions of American citizens who desire to be full participants in our electoral process despite their lack of English proficiency.

At this point, I would be happy to answer any additional questions from the Committee.

Mr. CHABOT. Thank you very much.

Ms. Fung, you are recognized for 5 minutes.

**TESTIMONY OF MARGARET FUNG, EXECUTIVE DIRECTOR,
ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND**

Ms. FUNG. Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Margaret Fung, and I am Executive Di-

rector of the Asian-American Legal Defense and Education Fund. AALDEF is a 31-year-old organization based in New York City that promotes the civil rights of Asian-Americans through litigation, advocacy, and community education.

For over a decade, we've monitored elections on a regular basis for compliance with section 203 of the Federal Voting Rights, and we've seen that section 203 is a success story. Our most recent election monitoring efforts, in 2004, were conducted in eight States, in which we polled 11,000 Asian-American voters and found that they were using bilingual ballots and assistance.

I'm glad to speak today about the significance of section 203 because 13 years ago, when I came before the Subcommittee on Civil and Constitutional Rights, there was no numerical trigger of 10,000 or more language minority citizens. I argued for the establishment of this alternative numerical trigger because large concentrations of Asian-Americans in urban areas, such as New York City and Los Angeles, would otherwise not have been covered under the existing 5 percent threshold.

And at that time, in New York, no Asian-American had ever been elected to Congress, to the New York State Legislature, or to the New York City Council—after 100 years of residing in New York City.

We found in our exit polls that four out of five voters in Asian-American neighborhoods—in New York City, Manhattan, and in Flushing, Queens—that four out of five did not speak or read much English; and that they would vote more often if bilingual assistance were provided.

Well, there was wide bipartisan support in Congress in 1992 to expand section 203 to include an alternative numerical benchmark of 10,000. And as a result, over 200,000 Asian-Americans nationwide, in ten counties in California, Hawaii, and New York became eligible to receive language assistance under section 203.

After the Census 2000, expanding language assistance now reaches over 672,000 Asian-Americans, residing in 16 counties, in seven States, with some jurisdictions providing more than one Asian language.

The Asian population remains one of the fastest-growing communities of color in the United States. Asian citizens of voting age numbered 3.9 million in 1996; they are now 6.7 million in 2004. Asian-American voter turnout has also been steadily increasing, from 1.7 million in 1996, to nearly 3 million in 2004.

In New York City, we've also seen some important gains in Asian-American electoral representation. New York City now has its first Asian-American City Council member, John Liu, and it has its first Asian-American member of the New York State Assembly, who was elected only in 2004. They were both elected in Queens County, one of the three covered jurisdictions in New York City covered under section 203.

In California, the State with the largest Asian-American population, there were no Asian-Americans serving on the State legislature in 1990; now there are nine. In Houston, Texas, the first Vietnamese-American, Hubert Vo, was elected to the State legislature in 2004, within years after Vietnamese was required under section 203 for Harris County, Texas.

Unfortunately, voter discrimination still does exist against Asian-Americans. We monitored poll sites, and in one Queens neighborhood in Jackson Heights, New York, in 2004, we heard one poll inspector say, “You Oriental guys are taking too long to vote.” He told one of our monitors, “Why don’t you tell your people to hurry up?”

At that poll site, there was also a Chinese-American voter who asked for language assistance, and he was directed to a Korean interpreter, who obviously couldn’t help.

In Annandale, Virginia, Poe Middle School, a poll worker told a Laotian-American voter, “Your name is the longest I’ve ever seen.” That voter felt so uncomfortable, he reported it to one of our monitors.

And in Edison, New Jersey, where the Justice Department has today sent observers and attorneys, we complained about the treatment of Asian-American voters. There was a Korean-American candidate who was running for mayor of Edison. He was the subject of a lot of anti-Asian remarks by talk radio hosts. And the Justice Department observers found that some Gujarati- and Hindi-speaking voters appeared, and they were told by poll workers, “Go to the nearest gas station.”

So there’s still much more to be done. One way in which section 203 could be improved would be to lower the trigger, the numerical trigger, to at least 7,500. That would pick up a large sector of the Asian-American population that is currently excluded, the Southeast Asian community, which includes Americans from Vietnam, Cambodia, and Laos. This is the group that continues to have high levels of limited English proficiency and low levels of educational attainment; which are the very characteristics that the citizens of Congress—characteristics of citizens that Congress intended to protect under section 203.

The Voting Rights Act has been called one of the most effective pieces of civil rights legislation in American history. For Asian-Americans, section 203 is the provision that most directly removes barriers to voting.

It enables the Asian-American community to participate effectively in the electoral process. And at a time when the Voting Rights Act is beginning to have real significance for our community, we hope that section 203 will be reauthorized, and also expanded. Thank you very much.

[The prepared statement of Ms. Fung follows:]

PREPARED STATEMENT OF MARGARET FUNG

Testimony of Margaret Fung,
Asian American Legal Defense and Education Fund
Before the U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution

Oversight Hearing on the Voting Rights Act:
Section 203-Bilingual Election Requirements, Part I
November 8, 2005

Good afternoon, Mr. Chairman and Members of the Subcommittee. My name is Margaret Fung, and I am the executive director of the Asian American Legal Defense and Education Fund (AALDEF). Thank you for the invitation to testify today on the topic of minority language assistance under section 203 of the Voting Rights Act. AALDEF is a 31-year old New York-based national organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy and community education. Our programs focus primarily in the areas of immigrant rights, economic justice for workers, hate violence and police misconduct, language access to services, youth rights and educational equity, and voting rights and civic participation.

For over a decade, AALDEF has monitored elections on a regular basis for compliance with section 203 of the federal Voting Rights Act. Our most recent election monitoring efforts in 2004 were conducted in eight states: New York, New Jersey, Massachusetts, Pennsylvania, Virginia, Rhode Island, Michigan and Illinois. AALDEF led the campaign to secure the first fully-translated Chinese-language ballots in New York City in 1994, and we have filed section 5 comments in the Justice Department, objecting to redistricting plans that diluted minority voting strength and a limited voting scheme that discriminated against Asian Americans in the New York City school board. AALDEF represented Asian American voters who intervened in Diaz v. Silver, 978 F. Supp. 96 (E.D.N.Y. 1997)(per curiam), aff'd, 522 U.S. 801 (1997), a constitutional challenge to New York's 12th Congressional District, and established that Asian Americans in Manhattan and Brooklyn constitute a "community of interest" that should be kept together within a single legislative district. We also represented Asian American voters who sought to intervene in U.S. v. City of Boston, Civ. Action No. 05-11598 (D. Mass. 2005) on behalf of Chinese and Latino voters in Boston who were denied equal access to the electoral process. AALDEF has conducted the largest multilingual exit polls of Asian Americans voters in the nation, polling 11,000 Asian American voters in 8 states in 2004, and over 5,000 Asian New Yorkers in the 2000 elections.

I am speaking today about the significance of section 203 of the Voting Rights Act in promoting Asian American civic participation and in particular, the special importance of section 5 of the Voting Rights Act to secure effective implementation of Asian language assistance under section 203 in three counties in New York City.

Under Section 203, a jurisdiction must provide minority language assistance if the Census Director certifies that:

1. More than 5% of citizens of voting age in the jurisdiction are members of a single language minority and are limited English proficient; or
2. More than 10,000 citizens of voting age in the jurisdiction are members of a single language minority and are limited English proficient; or
3. More than 5% of American Indian or Alaskan Native citizens of voting age within an Indian reservation are members of a single language minority and are limited English proficient; and
4. The illiteracy rate of the group is higher than the national illiteracy rate, as defined by educational attainment.

Language assistance includes the translation of written voting materials at all stages of the electoral process, including voter registration forms, ballots, notices and instructions, as well as oral language assistance, such as interpreters and bilingual poll workers. Section 203 applies to Alaskan Natives, American Indians, Asian Americans, and persons of Spanish heritage.

Thirteen years ago, I testified before the House Judiciary Subcommittee on Civil and Constitutional Rights, in support of the Voting Rights Act Language Assistance Act of 1992. AALDEF supported the creation of the new, alternate numerical benchmark of 10,000 language minority citizens to trigger section 203 coverage, because large concentrations of Asian Americans in urban areas, such as New York City and Los Angeles, would not have been covered under the existing 5% threshold.* At that time, no Asian American in New York had ever been elected to Congress, the New York State Legislature or the New York City Council. We found in our multilingual exit polls of Asian American voters in New York that 4 out of 5 voters in Manhattan's Chinatown and Flushing, Queens did not speak or read much English, and that they would vote more often if bilingual assistance were provided.

There was widespread bipartisan support in Congress in 1992 to expand coverage through an alternative numerical benchmark of 10,000 voting age citizens of a single language minority. As a result, over 200,000 Asian Americans nationwide, in 10 counties in California, Hawaii and New York, became eligible to receive minority

*Number of Limited English Proficient Voting Age Citizens from a Single Language Minority Community Needed To Meet The 5% Threshold in 1990. Data provided by APALC.

	<u>Urban</u>		<u>Non-Urban</u>
Los Angeles County, CA	443,158	Napa County, CA	5,538
San Francisco County, CA	36,198		
Cook County, IL	255,253	Peoria County, IL	9,141
Kings County, NY	115,033	Orange County, NY	15,382
New York County, NY	74,377	Albany County, NY	14,629
Queens County, NY	97,579		
Honolulu County, HI	41,812	Kauai County, HI	2,559

language assistance under section 203. The number of covered jurisdictions increased again after Census 2000, expanding language assistance to over 672,000 Asian Americans residing in 16 counties in 7 states, with some jurisdictions providing assistance in one or more Asian languages.*

The Asian American population remains one of the fastest growing communities of color in the United States. According to Census 2000, Asian citizens of voting age numbered 3.9 million in 1996, and rose from 4.7 million in 2000 to 6.7 million in 2004. Asian American voter turnout is also steadily increasing, from 1.7 million in 1996, to nearly 3 million in 2004. (U.S. Census Bureau, Current Population Survey).

Section 203 of the Voting Rights Act: A Success Story

Section 203 has removed barriers to voting and opened up the political process to thousands of Asian Americans, many of them first-time voters and new citizens. According to AALDEF's 2004 exit poll of 11,000 Asian American voters, almost one-third of all respondents needed some form of language assistance in order to vote, and the greatest beneficiaries of language assistance (46%) were first-time voters. Of those polled, over 51% of Asian American voters got their news about politics and community issues from the Asian-language media.**

At the most fundamental level, translated ballots in voting machines have enabled Asian American voters to exercise their right to vote independently and privately inside the voting booth. The availability of interpreters in polling places provides additional oral language assistance for Asian American voters who are not fully proficient in English.

Since the 1992 amendments to section 203, there have been important gains in Asian American electoral representation. In New York City, the municipality with the nation's largest Asian American population, the first Asian American, John Liu, was elected to the New York City Council in 2001. Jimmy Meng was elected the first Asian American member of the NY State Assembly in 2004. Both Liu and Meng were elected in Queens County, one of three counties in New York City covered by section 203. In California, the state with the largest Asian American population, there were no Asian Americans serving on the state legislature in 1990, and now, there are nine. In Houston, Texas, the first Vietnamese American, Hubert Vo, was elected to the state legislature in 2004, within years after Vietnamese language assistance was required in Harris County under section 203.

*Alaska: Kodiak Island Borough-Filipino. California: Alameda County-Chinese; Los Angeles County-Chinese, Japanese, Korean Filipino, Vietnamese; Orange County-Chinese, Korean, Vietnamese; San Diego County-Filipino; San Francisco County-Chinese; San Mateo County-Chinese; Santa Clara County-Chinese, Filipino, Vietnamese. Hawaii: Honolulu County-Chinese, Filipino, Japanese; Maui-Filipino. Illinois: Cook County-Chinese. New York: Kings County (Brooklyn)-Chinese; New York County (Manhattan)-Chinese; Queens County-Chinese, Korean. Texas: Harris County-Vietnamese. Washington: King County-Chinese.

**Asian American Legal Defense and Education Fund, The Asian American Vote 2004: A Report on the Multilingual Exit Poll in the 2004 Presidential Election (2005) (http://www.aaldef.org/images/04-20-05_exit_poll_report.pdf).

Section 203 has also aided grass-roots efforts to increase voter registration among eligible Asian Americans. As compared to a decade ago, when only a small number of nonpartisan groups did voter registration, there are now scores of new Asian American groups and coalitions throughout the country doing voter education and registration in the Korean, Filipino, Asian Indian, Pakistani, Bangladeshi, Cambodian, Laotian, and Vietnamese communities.

Voter Discrimination Against Asian Americans Still Exists

Despite the growing political participation of Asian Americans, racism against Asian Americans, both overt and subtle, is alive and well at the polling place. These are just a few examples from the 2004 and 2005 elections:

-In the Queens neighborhood of Jackson Heights, NY, at P.S. 69, one poll inspector said, "You Oriental guys are taking too long to vote," and told an AALDEF monitor to tell "his people"-implying "Asian Americans"-to vote faster, because others were waiting on line. Other poll workers commented that there were too many bilingual materials on the tables: "If they [Asian American voters] need it, they can ask for it." At that poll site, a Chinese American voter who asked for language assistance was directed to a Korean interpreter, who could not help. And several hostile white voters at this poll site made remarks such as, "You all are turning this country into a third-world waste dump," "You can't have anyone go inside the booth with you," and "You should prepare and learn English at home before you come out to vote." At another site in Queens, PS 184, a poll inspector, when asked about the availability of translated materials, sarcastically replied: "What, are we in China? It's ridiculous."

-In Falls Church, VA at Baileys Elementary School, a Pakistani American voter politely refused an offer of candy from a poll worker, noting that she was fasting in observance of Ramadan. Another poll worker commented: "If you think certain cultures are weird, you should read about *them*. They're really weird."

-At the Poe Middle School in Annandale, VA, a poll worker told a Laotian American voter: "Your name is the longest I've ever seen." Although this seems like an innocuous comment, it had the effect of making the voter feel uncomfortable enough to report it to our election monitors.

-In Edison, New Jersey, the Justice Department dispatched federal observers to monitor the 2005 primary elections, following complaints by AALDEF and other community groups about anti-Asian remarks made by talkradio hosts on NJ 101.5 FM about a Korean American candidate for Mayor. Federal observers found that poll workers told voters they should learn English in order to vote, and one poll worker said that when a Gujarati or Hindi-speaking voter appeared, she would "send them to the nearest gas station." As a result of many such incidents, the Justice Department has sent attorneys and observers to Edison to monitor the New Jersey elections on Nov. 8, 2005. See Jerry Barca, "Feds to Watch Edison Vote," New Brunswick Home News Tribune, Nov. 2, 2005, <http://www.thnt.com/apps/pbcs.dll/article?AID=/20051102/NEWS/511020421/1001>.

The Critical Role of Section 5 In Securing Effective Minority Language Assistance

In jurisdictions covered under both sections 5 and 203 of the Voting Rights Act, minority language assistance programs established or changed under section 203 must be submitted to the Justice Department for preclearance before they can take effect. Section 5 played a pivotal role in shaping New York City's Chinese Language Assistance Program, which was first adopted after the 1992 language assistance amendments to section 203.

Although the Board of Elections had agreed to provide sample ballots and voting instructions in Chinese in the 1994 primary elections, it claimed that New York's mechanical-lever voting machines did not have space for the candidates' names in Chinese. AALDEF met on numerous occasions with local election officials to convince them that candidates' names must be transliterated into Chinese, because this was the single most important piece of information to the voter. During one lively meeting of the election commissioners, over a hundred Asian Americans packed the hearing room, carrying banners and Chinese-language signs demanding their right to fully-translated bilingual ballots. An August 19, 1994 *New York Times* editorial delivered a scathing rebuke to the Board of Elections's inaction under the Voting Rights Act: "That sounds like the foot-dragging bureaucratic arguments that have been raised all over America at one time or another against giving minorities their rights. It is no excuse for not obeying the law."

Ultimately, it was the Justice Department's oversight under section 5 that forced the recalcitrant Board of Elections to provide fully-translated machine ballots with candidates' names in Chinese, bringing New York City into compliance with section 203. Section 5 gave community groups and individuals an opportunity to shape the local language assistance program and provide their comments to the Justice Department. Over the past decade, federal observers have been sent by the Justice Department to monitor local elections in New York City and other cities, and they have helped to improve compliance with section 203.

Lowering the Numerical Trigger to Improve the Effectiveness of Section 203

Although the language assistance provisions were enacted in 1975, section 203 has had its most significant impacts on Asian American political participation only after the 1992 amendments, when Congress created the alternative numerical trigger of 10,000 voting age citizens of a single language minority.

The current formula of section 203 still excludes a large sector of the Southeast Asian community, which includes Americans from Vietnam, Cambodia and Laos. Many came to the United States as refugees after the Vietnam War or are the children of refugees. They number over 1.8 million and have become U.S. citizens at rates higher than the national average. Southeast Asian American communities have high levels of limited English proficiency and low levels of educational attainment, which are the very characteristics of the citizens that Congress intended to protect under section 203.

Congress recognized in 1992 that educational disparities significantly affect the ability of language minorities to participate in the electoral process. According to Census 2000, 79% of Asian American children aged 5 and over spoke a language other than English at home. These numbers are even higher for newer immigrant groups, with over 90% of

Cambodians, Hmong, Laotian, Pakistanis and Vietnamese speaking a language other than English at home. * Educational attainment remains low for Southeast Asian American communities: 26% of Cambodians, 45% of Hmong and 23% of Laotians have had no formal schooling, compared to 1.4% of the overall population. Similarly, Census data show that only 9% of Cambodians, 7% of Hmong and 8% of Laotians obtain a bachelor's degree or higher, compared to 24% of the overall U.S. population. In five cities with large Southeast Asian American populations, there are high numbers of elementary and secondary school students who are defined as English Language Learners (ELL's)--persons who are in the process of acquiring English and have a first language other than English. In St. Paul, Minnesota, 54.4% of Hmong students are ELL's; 44.9% of Vietnamese students in Westminster, CA; 44.3% of Lao students in Sacramento, CA; 39.6% of Cambodians in Long Beach, CA, and 30% of Cambodian students in Lowell, MA are ELL's.

In AALDEF's 2004 multilingual exit poll of 654 Southeast Asian Americans, we found that 47% of Southeast Asian Americans said they were limited English proficient, and over one-third of all respondents needed some form of language assistance in order to vote.

The effect of lowering the numerical trigger to 7,500 would be to remove language barriers for at least 77,955 limited English proficient Asian American citizens eligible to vote.** This increase of 9 jurisdictions would affect counties in California, Illinois, New York, and Washington, in which all but one county are already mandated to provide voting assistance in one or more Asian languages.***

AALDEF is preparing a more detailed report on the impacts of expanding section 203 coverage to Asian American communities and the effect of using American Community Survey data to establish future section 203 determinations. We will submit this report and other recommendations to the Committee at a later date.

*T. Reeves and C. Bennett, The Asian American and Pacific Islander Population in the United States: March 2002, Current Population Reports (Census Bureau 2003), 20-540.

**California: Alameda County-Filipino; Los Angeles County-Cambodian; Sacramento County-Chinese; San Diego County-Vietnamese; San Francisco County-Filipino; San Mateo County-Filipino. Illinois: Cook County-Korean. New York: Queens County-Asian Indian. Washington: King County-Vietnamese.

Lowering the numerical trigger to 7,500 would also require Spanish language assistance in 6 new jurisdictions in NJ, WI, TX, VA, OH, and IL, totaling 49,845 limited English proficient Latino citizens.

***For the Asian American community, it would actually be more meaningful to lower the section 203 numerical trigger to 5,000 citizens of voting age with limited English proficiency. An additional 79,170 limited English proficient Asian American citizens would receive language assistance if the numerical trigger were 5,000. Two new East Coast jurisdictions (Vietnamese and Korean in Fairfax County, VA and Chinese in Montgomery, MD) would be covered, in addition to the following counties: California: Alameda County-Vietnamese; Contra Costa County-Chinese; Los Angeles County-Asian Indian and Thai; Sacramento County-Vietnamese; San Diego County-Chinese. Hawaii: Honolulu County-Korean. Illinois: Cook County-Asian Indian, Filipino. Texas: Harris County-Chinese.

Conclusion

The Voting Rights Act of 1965 has been called one of the most effective pieces of civil rights legislation in American history. Section 203 is the provision of the Voting Rights Act that most directly removes barriers to voting for Asian Americans, Latinos, and Native Americans, who are limited English proficient and in need of language assistance in order to participate effectively in the electoral process. At a time when the Voting Rights Act is beginning to have real significance for the growing population of Asian Americans, it is essential that section 203 be extended for 25 years and also expanded, so that Asian Americans can overcome a legacy of institutional racism and participate fully in the democratic process.

Mr. CHABOT. Thank you very much.

Ms. Chavez, you're recognized for 5 minutes.

**TESTIMONY OF LINDA CHAVEZ, PRESIDENT,
ONE NATION INDIVISIBLE**

Ms. CHAVEZ. Thank you, Mr. Chairman, Mr. Nadler, and distinguished Members of the Subcommittee. I am Linda Chavez. I am President of One Nation Indivisible, and President of the Center for Equal Opportunity.

First of all, let me just apologize in advance, that I will have to leave this meeting at 3:15. So I'm hoping to be here for your questions. If not, my General Counsel is here to address some of the issues I'm going to talk about.

I'd also like to say that in that very long and generous introduction, Chairman Chabot, that you gave, only one item was missing. And I will mention it here because it is relevant to some of what I'm going to discuss. And that is that, from 1972 to 1974, I was a member of the Judiciary Committee staff, working on the House Constitutional and Civil Rights Subcommittee.

And it is relevant because that was, in fact, the period in which section 203 was, in fact, being drafted and discussed. And so I will talk about that in just one moment.

First of all, let me just say at the outset that the Voting Rights Act is the most important and the most successful civil rights law enacted in the United States. It has done an enormous world of good to enfranchise literally millions of Americans who had been disenfranchised for decades; indeed, with respect to African-Americans, from the passage of the 15th amendment forward.

Nonetheless, I am going to sound a discordant note at the hearing today, and tell you that I am opposed to extension of section 203. I have submitted written testimony which I hope will be included in the record in full. And in that testimony, I give four basic reasons why I believe section 203 should not be reauthorized.

The first is that I believe it helps move the Nation toward "Balkanization" into separate ethnic groups. The second reason is that I believe it is both wasteful and expensive—wasteful in the sense that it is not widely used, even where it is available. Third, that it facilitates fraud. And fourth, and I believe most importantly, unconstitutional; and that is where I'm going to devote my remarks now.

And this is why I bring up my history on this civil rights sub-commission. At the beginning, Chairman Chabot, you mentioned that there had been an extensive evidentiary record for the establishment of the necessity for bilingual election requirements under the law. In fact, that is not the case. And a clear reading of the House Judiciary Committee proceedings in 1975 I think will demonstrate that.

I have written about this extensively in my book, "Out of the Barrio"; as has Abigail Thernstrom, the Vice Chairman of the U.S. Commission on Civil Rights, in her book, "Whose Votes Count?: Affirmative Action and Minority Voting Rights."

Now, I say that there was not an extensive evidentiary hearing on this issue because, in fact, MALDEF, which was the leading promoter of the bilingual ballot requirements, in fact, came and met

with the Judiciary Committee and Judiciary Committee staff, as did the Leadership Conference on Civil Rights and other groups. And I can tell you that while I was present and a member of this staff, the position of the Leadership Conference on Civil Rights, the Assistant Attorney General for the Civil Rights Division, the Chairman of the U.S. Commission on Civil Rights, was all opposed to inclusion of a bilingual voting mechanism in the extension of the Voting Rights Act of 1975. And that is clear in the evidentiary record.

They were opposed to it because, in fact, discrimination against Hispanics, who were the primary beneficiaries of this legislation when passed—while there was scattered and sporadic discrimination, it was nothing comparable to the discrimination that Blacks faced in the Deep South in those covered jurisdictions that became part of the Act in 1965 in the temporary provisions.

In fact, at the time that the provision was enacted, there were two sitting U.S. governors who are Hispanic: Governor Raul Castro of Arizona, and Jerry Apidacca of New Mexico. In addition, five Members of the Congress, whose districts became included under this provision under the assumption that there was a denial of the right to vote, were also elected at that time.

There was also an opposition to this measure by the State legislature of the State of New Mexico, which noted that representation and voting in predominantly Hispanic districts in New Mexico was in fact the most extensive in the State.

I believe that under the 14th and 15th amendments of the Constitution, one must show either a denial of equal opportunity, denial of due process, or one must show discriminatory practices; and that in the case of language minorities in 1975, that evidentiary record simply is lacking. Therefore, I believe that there is neither a legal basis nor an evidentiary record that would support extension of this Act.

That is not to say that States could not, of their own accord, decide to provide language minorities ballots in their own languages; nor is it to say that those persons who are eligible to vote, who are citizens, and who lack proficiency in English, should not be provided assistance.

The question is what form that assistance should take, and whose responsibility it is to provide that assistance; whether it should be congressionally mandated, or whether this should be a voluntary act; whether it should be the printing of ballots and other materials in other languages, or whether it should be through other methods, including oral assistance. Thank you.

[The prepared statement of Ms. Chavez follows:]

PREPARED STATEMENT OF LINDA CHAVEZ

TESTIMONY OF

LINDA CHAVEZ

PRESIDENT, ONE NATION INDIVISIBLE

BEFORE THE

HOUSE JUDICIARY COMMITTEE'S

SUBCOMMITTEE ON THE CONSTITUTION

REGARDING THE

BILINGUAL BALLOT PROVISIONS OF

THE VOTING RIGHTS ACT

November 8, 2005

Introduction

Thank you, Mr. Chairman, for the opportunity to testify before you today regarding the reauthorization of the bilingual ballot provisions of the Voting Rights Act, 42 U.S.C. 1973aa-1a, commonly referred to as Section 203.

My name is Linda Chavez, and I am president of One Nation Indivisible. I am also president of the Center for Equal Opportunity, a nonprofit research and educational organization that focuses on public policy issues that involve race and ethnicity, such as civil rights, bilingual education, and immigration and assimilation.

I have served as Staff Director of the U.S. Commission on Civil Rights (1983-1985), and Chairman of the National Commission on Migrant Education (1988-1992). In 1992, I was elected by the United Nations' Human Rights Commission to serve a four-year term as U.S. Expert to the U.N. Sub-commission on the Prevention of Discrimination and Protection of Minorities, and I was Co-Chair of the Council on Foreign Relations' Committee on Diversity from 1998-2000. Finally, I am the author of *Out of the Barrio: Toward a New Politics of Hispanic Assimilation* (Basic Books 1991), the second chapter of which is entitled, "Hispanics and the Voting Rights Act."

Section 203 requires certain jurisdictions to provide all election-related materials, as well as the ballots themselves, in foreign languages. The jurisdictions are those where more than 5 percent of the voting-age citizens are members of a particular language minority, and where the illiteracy rate of such persons is higher than the national illiteracy rate. The language minority groups are limited to American Indians, Asian Americans, Alaskan Natives, and those "of Spanish heritage." Where the language of the minority group is oral or unwritten, then oral voting assistance is required in that language.

There are basically three policy problems with Section 203 that I would like to discuss today. First, it encourages the balkanization of our country. Second, it facilitates voter fraud. And, third, it wastes the taxpayers' money. In addition to these policy problems, in my view Section 203 is unconstitutional because, although Congress asserts it has enacted this law pursuant to its enforcement authority under the Fourteenth and Fifteenth Amendments, in fact this statute actually exceeds that authority.

Section 203 Balkanizes Our Country

America is a multiethnic, multiracial nation. It always has been, and this is a source of national pride and strength. But our motto is *E pluribus unum*--out of many, one--and this means that, while we come from all over the globe, we are also united as Americans.

This unity means that we hold certain things in common. We celebrate the same democratic values, for instance, share the American dream of success through hard work, cherish our many freedoms, and champion political equality. Our common bonds must also include an ability to communicate with one another. Our political order and our economic health demand it.

Accordingly, the government should be encouraging our citizens to be fluent in English, which, as a practical matter, is our national language. And, in any event, the government certainly should not discourage people from mastering English, and should not send any signals that mastering English is unimportant.

Inevitably, however, that is what the federal government does when it demands that ballots be printed in foreign languages. It also devalues citizenship for those who have mastered English as part of the naturalization process. As Boston University president John Silber noted in his 1996 congressional testimony, bilingual ballots "impose an unacceptable cost by degrading

the very concept of the citizen to that of someone lost in a country whose public discourse is incomprehensible to him.” **Quoted in John J. Miller, *The Unmaking of Americans: How Multiculturalism Has Undermined America’s Assimilation Ethic* (1998), page 133.**

Section 203 Facilitates Voter Fraud

Most Americans are baffled by the bilingual ballot law. They know that, with few exceptions, only citizens can vote. And they know that, again with only few exceptions, only those who speak English can become citizens. So why is it necessary to have ballots printed in foreign languages?

It’s a fair question, and there really is no persuasive answer to it. As a practical matter, there are very few citizens who need non-English ballots.

There are, however, a great many noncitizens who can use non-English ballots. And the problem of noncitizens voting is a real one. The Justice Department has brought numerous criminal prosecutions regarding noncitizen voting in Florida, as documented in a recent official report. **Criminal Division, Public Integrity Section, U.S. Department of Justice, *Election Fraud Prosecution and Convictions, Ballot Access & Voting Integrity Initiative, October 2002 - September 2005***. This problem has also been extensively reported on in the press. **See Ishikawa Scott, “Illegal Voters,” *Honolulu Advertiser*, Sept. 9, 2000; Dayton Kevin, “City Steps Up Search for Illegal Voters,” *Honolulu Advertiser*, Sept. 9, 2000; Audrey Hudson, “Ineligible Voters May Have Cast a Number of Florida Ballots,” *Washington Times*, Nov. 29, 2000 (“A sizable number of Florida votes may have been cast by ineligible felons, illegal immigrants and noncitizens, according to election observers. ...This would not be the first time votes by illegal immigrants became an issue after Election Day. Former Republican**

Rep. Robert K. Dornan of California was defeated by Democrat Loretta Sanchez by 984 votes in the 1996 election. State officials found that at least 300 votes were cast illegally by noncitizens.”); “14 Illegal Aliens Reportedly Voted,” KSL NewsRadio 1160, Aug. 8, 2005; Associated Press, Untitled (first sentence: “Maricopa County Attorney Andrew Thomas has charged 10 legal residents who are not U.S. citizens with fraudulently registering to vote, and more residents are being investigated, he said.”), Aug. 12, 2005; Joe Stinebaker, “Loophole Lets Foreigners Illegally Vote,” *Houston Chronicle*, Jan. 17, 2005; Lisa Riley Roche & Deborah Bulkeley, “Senators Target License Abuses,” *Desert Morning News*, Feb. 10, 2005; Teresa Borden, “Scheme To Get Noncitizens on Rolls Alleged,” *Atlanta Journal-Constitution*, Oct. 28, 2004; Associated Press, “Harris County Cracking Down on Voting by Non-U.S. Citizens,” *Houston Chronicle*, Jan. 16, 2005; John Fund’s Political Diary, *Wall Street Journal*, Oct. 23, 2000 (voter fraud a growing problem since “47 states don’t require any proof of U.S. residence for enrollment”); Doug Bandow, “Lopez Losing,” *American Spectator*, Oct. 28, 2005 (Nativo Lopez’s Hermandad Mexicana Nacional “registered 364 non-citizens to vote in the 1996 congressional race in which Democrat Loretta Sanchez defeated incumbent Republican Bob Dornan”).

Section 203 Wastes Government Resources

As I just noted, there are few citizens who need ballots and other election materials printed for them in languages other than English. The requirement that, nonetheless, such materials must be printed is therefore wasteful.

On the one hand, the costs of printing the additional materials is high. It is a classic, and substantial, unfunded mandate. For example, Los Angeles County had to spend over \$1.1

million in 1996 to provide Spanish, Chinese, Vietnamese, Japanese, and Filipino assistance. **General Accounting Office, *Bilingual Voting Assistance: Assistance Provided and Costs* (May 1997), pages 20-21.** Six years later, in 2002, it had to spend \$3.3 million. **Associated Press, “30 States Have Bilingual Ballots,” Sept. 25, 2002.** There are 296 counties in 30 states now that are required to have such materials, and the number is growing rapidly. **See “English Is Broken Here,” *Policy Review*, Sept-Oct. 1996.** Frequently the cost of multilingual voter assistance is more than half of a jurisdiction’s total election costs. **GAO May 1997, pages 20-21.** If corners are cut, the likelihood of translation errors increases. (Indeed, the inevitability of some translation errors, no matter how much is spent, is another argument for why all voters need to master English. **See *The Unmaking of Americans*, page 133; Amy Taxin, “O.C.’s Foreign-Language Ballots Might Be Lost in Translation: Phrasing Is Found To Differ by County, Leading to Multiple Interpretations and Possibly Confusion for Some Voters,” *Orange County Register*, Nov. 3, 2005; “Sample S.J. Ballot Contains Error: Spanish Translation Doesn’t Make Sense,” *Stockton Record*, Feb. 27, 2003; Jim Boulet, “Bilingual Chaos,” *National Review Online*, Dec. 19, 2000; English First Foundation Issue Brief, *Bilingual Ballots: Election Fairness or Fraud?* (1997), available at <http://www.englishfirst.org/ballots/efbb.htm>.)**

On the other hand, the use made of the additional materials is low. According to a 1986 General Accounting Office study, nearly half of the jurisdictions that provided estimates said *no one*--not a single person--used oral minority-language assistance, and more than half likewise said *no one* used their written minority-language assistance. Covered jurisdictions said that generally language assistance “was not needed” by a 10-1 margin, and an even larger majority said that providing assistance was either “very costly or a waste of money.” **General**

Accounting Office, *Bilingual Voting Assistance: Costs of and Use During the November 1984 General Election, Sept. 1986, pages 25, 32, 39.* According to Yuba County, California's registrar of voters: "In my 16 years on this job, I have received only one request for Spanish literature from any of my constituents." Yet in 1996 the county had to spend \$30,000 on such materials for primary and general elections. *The Unmaking of Americans, page 134.*

What's more, to quote from John J. Miller's excellent book, *The Unmaking of Americans: How Multiculturalism Has Undermined America's Assimilation Ethic (1998), pages 242-243:* Getting rid of bilingual ballots "does not mean that immigrant voters who still have difficulty communicating in English would not be without recourse. There is a long tradition in the United States of ethnic newspapers--often printed in languages other than English--providing political guidance to readers in the form of sample ballots and visual aids that explain how to vote. It would surely continue." I should add that Mr. Miller concluded that "Congress should amend the Voting Rights Act to stop the Department of Justice from coercing local communities to print election materials in foreign languages."

In sum, as a simple matter of dollars and sense, bilingual ballot are just not worth it. The money would be much better spent on improving election equipment and combating voter fraud.

Section 203 Is Unconstitutional

Finally, Mr. Chairman, I would suggest that Section 203 raises serious constitutional problems, and, if it is reenacted, may well be struck down as unconstitutional. It certainly should be.

The Supreme Court has made clear that only purposeful discrimination--actually treating people differently on the basis of race or ethnicity--violates the Fourteenth and Fifteenth

Amendments. See *Washington v. Davis*, 426 U.S. 229 (1976); *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1976); *City of Mobile v. Bolden*, 446 U.S. 55 (1980). The Court has ruled even more recently that Congress can use its enforcement authority to ban actions that have only a disparate impact only if those bans have a “congruence and proportionality” to the end of ensuring no disparate treatment. *City of Boerne v. Flores*, 521 U.S. 507 (1997); see also *United States v. Lopez*, 514 U.S. 549 (1995). This limitation is likely to be even stricter when the federal statute in question involves areas usually considered a matter of state authority. See, e.g., *Board of Trustees of the University of Alabama v. Garrett*, 531 U.S. 356 (2001).

Now, it seems to me very unlikely that the practice of printing ballots in English and not in foreign languages would be a violation of the Fourteenth or Fifteenth Amendments—that is, it is very unlikely that this practice could be shown to be rooted in a desire to deny people the right to vote because of race or ethnicity. See *Out of the Barrio*, page 46; see also Abigail Thernstrom, *Whose Votes Count?: Affirmative Action and Minority Voting Rights* (1987), pages 40, 57. Rather, it has perfectly legitimate roots: To avoid facilitating fraud, to discourage balkanization, and to conserve scarce state and local resources. Accordingly, Congress cannot assert that, in order to prevent discrimination in voting, it has authority to tell state and local officials that they must print ballots in foreign languages.

The rather garbled text of Section 203, however, apparently says that Congress was concerned not with discrimination in voting per se, but with educational disparities. That is, the poorer education that, say, Latinos receive is what makes bilingual ballots necessary. Of course, if these disparities are not rooted in discrimination, then there remains a problem with Congress asserting its power under Section 5 of the Fourteenth Amendment or Section 2 of the Fifteenth

Amendment to require bilingual ballots. But let us assume that Congress did have in mind unequal educational opportunities rooted in educational discrimination, presumably by the states.

Even here, I think there are insurmountable problems. There is, in short, a lack of congruence and proportionality between the asserted discrimination in education and the bilingual ballot mandate in Section 203. Are all the language minorities covered by Section 203 subjected to government discrimination in education--and, if not, then why are all of them covered? Are there language minorities that are subject to government discrimination that are not covered by Section 203--and, if so, then why aren't they covered? How often does education discrimination result in an individual not becoming fluent enough in English to cast a ballot? Isn't it much more likely that this lack of fluency has some other cause (like recent immigration, most obviously, or growing up in an environment where English is not spoken enough)? Finally, is it a congruent and proportional response to education discrimination to force states to make ballots available in foreign languages? How likely is Section 203 to result in the elimination of education discrimination? Does this "remedy" justify Congress's overruling of the legitimate reasons that states have for printing ballots in English and not in foreign languages?

Mr. Chairman, I am frankly skeptical that Congress can answer these questions satisfactorily. But if you think you can, you must create such a record, with thorough hearings before the full committee.

I hope the full committee will go into these hearings with an open mind, and not with a verdict-first-hearings-later mindset. Does anyone really believe that the reason for Section 203 has anything to do with remedying state discrimination in education? Of course not. As I discuss in *Out of the Barrio*, the Voting Rights Act of 1965 was motivated by a desire to stop discrimination; the later expansion of the Voting Rights Act at the behest of Latino special

interest groups was simply about politics. There was little factual record established even to show that Hispanics were being systematically denied the right to vote. This disenfranchisement would have been particularly difficult to demonstrate in light of the number of Hispanics who had previously been elected to office, which included Governors, U.S. Senators, Members of the House of Representatives, as well as numerous state legislators and local officials, many of these officials serving in jurisdictions that would soon be subject to the special provisions of the Voting Rights Act. **See also Thornstrom, chapter 3.** There is no credible way to equate the discrimination that African Americans in the South suffered to the situation of Latinos, who had voted--and been elected to office--in great numbers for decades. That was true when Section 203 was first enacted, and it is even more true now, which is what matters for purposes of reauthorization. The reason for the bilingual ballot provision is not and never has been about discrimination--it is about identity politics.

Conclusion

Let me conclude, Mr. Chairman, by saying again that, even if Section 203 were not unconstitutional, it would still be unwise legislation, because it encourages balkanization, facilitates voter fraud, and wastes the taxpayers' money. Congress should not reenact it.

Mr. CHABOT. Thank you.
Ms. Vigil-Giron.

**TESTIMONY OF THE HONORABLE REBECCA VIGIL-GIRON,
SECRETARY OF STATE, STATE OF NEW MEXICO**

Ms. VIGIL-GIRON. Good afternoon. Mr. Chairman, distinguished Members of the Committee, thank you for your invitation to address you today.

My name is Rebecca Vigil-Giron. I currently serve as Secretary of State for New Mexico, and Chief Elections Official, as well. I am Past President—just turned over the reins to the new President—of the National Association of Secretaries of State. And I'm also a proud member of the National Association of Latino Elected and Appointed Officials, better known as NALEAO.

I am here to express my strong support for the reauthorization of section 203 of the Voting Rights Act. New Mexico's experience with section 203 is an enduring validation of the Act's importance to voter participation. New Mexico has the distinction of being the only State in the Union to adopt two official languages in its State constitution: English and Spanish.

New Mexico is home to half of the Navajo Nation, the largest Indian tribe and reservation in the United States. It is the dwelling place of the Jicarilla and Mescalero Apache Nations, and 19 Pueblo Indian tribes.

On a per capita basis, New Mexico still has the largest Hispanic population in the United States, 42 percent. The Native-American population in New Mexico is 10 percent.

The 19 Pueblo Indian nations in New Mexico speak five distinctly different languages. They are Tiwa, Tewa, Towa, Zuni, and Keres.

Section 203 of the Voting Rights Act is the legal foundation of our ability to protect the voting rights of Native-Americans and Hispanic-Americans who speak another language besides English.

In 1987, I established the first Native-American election information program in the secretary of State's office. This division of my office is responsible for assisting all the Indian tribes in New Mexico with every aspect of our elections. Television and radio spots inform the public, in English, Spanish, and Navajo languages, on issues ranging from voter registration, rules, and deadlines, to early voting, absentee, and provisional voting.

Total voter turnout in the 2004 presidential election increased by over 26 percent over the election of 2000. About 70 percent of all registered New Mexicans voted in the presidential election. San Ildefonso Pueblo voted 75 percent; Jemez Pueblo voted 78 percent; Sandia Pueblo voted 83 percent. This rate of success would not have been possible without the language provisions of the Voting Rights Act.

Are we better off than we were 40 years ago? I know that the answer is "Yes." However, it would be a serious mistake to underestimate the tenacious grip of racism that is always working against minorities in our country.

On August the 6th, 1965, when the Voting Rights Act was signed into law by President Johnson, a new era of civil rights began in our country. I hope that our Congress today will continue that tra-

dition. It is a worthy goal for all of us, and one that we can be proud to fight for.

At the end of this hearing, I will be more than happy to answer any of your questions. And this is not a complete testimony. I will be submitting more testimony for you all in the future, to be submitted within the 5-day period.

Again, I want to thank you for your invitation to participate in this hearing, and thank you for your service to our country.

[The prepared statement of Ms. Vigil-Giron follows:]

PREPARED STATEMENT OF THE HONORABLE REBECCA VIGIL-GIRON

Good afternoon.

Mr. Chairman; distinguished members of the committee; thank you for your invitation to address you today.

My name is Rebecca Vigil-Giron.

I currently serve as Secretary of State for New Mexico and I am Past President of the National Association of Secretaries of State.

I am here to express my strong support for the re-authorization of Section 203 of the Voting Rights Act.

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Are we better off than we were 40 years ago?

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On August 6, 1965 when the Voting Rights Act was signed into law by President Johnson, a new era of civil rights began in our country.

I hope that our Congress today will continue that tradition.

It is a worthy goal for all of us and one that we can be proud to fight for.

Again, thank you for your invitation to participate in this hearing, and thank you for your service to our country.

Mr. CHABOT. Thank you very much for your testimony. Thank you, all of the witnesses. I now recognize myself for 5 minutes.

And Mr. Schlozman, I'll start with you, if I can. How does the Justice Department monitor and enforce section 203? And why has the enforcement picked up so much over the last 3 years?

Mr. SCHLOZMAN. Thank you for the question. We have placed tremendous emphasis on this area of the Voting Rights Act. In terms of how we enforce it, as I mentioned in my opening remarks, we contact jurisdictions, not only to work with them on ensuring their own compliance, but we also are constantly trying to gather information to make sure that our own records are up to date, to understand whether any particular jurisdiction has crossed the threshold into coming under the purview of section 203.

We do a massive amount of outreach. Both the Section Chief of our Voting Section, John Tanner, who has really been instrumental in bringing this program forward, and myself, we have traveled throughout the United States, advising jurisdictions.

A lot of the problems that we see are really more attributable to a lack of familiarity with these requirements than they are any refusal to comply. We have that on occasion, of course, where there's recalcitrant jurisdictions; but most of them simply don't understand what the legal obligations are, and we work actively to educate them on those things.

Mr. CHABOT. And to what do you attribute the increase over the last 3 years?

Mr. SCHLOZMAN. This has been a major priority of Attorney General Ashcroft, of the President. We've put extra resources on this issue. And I think that both the increased emphasis and the real leadership that the Attorney General and the White House have shown on this issue have borne some real dividends, and we're tremendously proud of those accomplishments.

Mr. CHABOT. Okay. Thank you. Ms. Fung, let me turn to you next, if I can. You had mentioned the 10,000 threshold and the proposal or idea by some that it be decreased to 7,500. What would be the impact of this change on citizens and the electoral process, if that threshold was brought down to 7,500?

Ms. FUNG. Well, it would open up the process and remove barriers for a large number of limited-English-proficient citizens. We have done some analysis of the figures, and we'll be submitting additional information. But we believe that if the numerical trigger is lowered to 7,500, it would enable at least another 78,000 Asian-Americans who would be able to get access to language assistance.

And it would include an increase of nine jurisdictions that would affect counties in California, Illinois, New York, and Washington. But all of these counties, with the exception of one, are already providing language assistance in at least one Asian language.

Mr. CHABOT. Okay. Thank you very much. Ms. Chavez, let me turn to you next. You had indicated clearly from the outset that you're opposed to the reauthorization of section 203. If there was one point that you wanted to emphasize over and above all the other points, what would be your strongest argument against it?

Ms. CHAVEZ. Well, my strongest argument is I think that Congress lacks the authority to, in fact, require States to print material in languages other than English, because it does not satisfy the requirements under either the 14th or the 15th amendment that

gives Congress the authority to intervene into what would otherwise be State matters.

I think you would have had to have established an evidentiary record that showed that an English-language ballot was in fact discriminatory and did not provide due process to voters. And that evidentiary record was not established in 1975. It has never been seriously established since.

And I say that having, as I said, been a part of the process and very familiar with the negotiations that went on to include this provision, which, frankly, had very little to do with whether or not there were a large number of Latinos who were being denied the right to vote because they could not understand an English-language ballot.

And I think that record not having been established in 1975 does not let this Committee off the hook to establish it today. And I'd love to see hearings that try to establish the necessary requirements to satisfy the constitutional intrusion into the right of States to determine their own election laws.

Mr. CHABOT. Okay. Thank you very much. And before I run out of time, Ms. Vigil-Giron, let me turn to you. Could you discuss briefly the costs associated in your State, for example, New Mexico, with implementing section 203?

Ms. VIGIL-GIRON. Thank you, Mr. Chairman and Members of the Committee. Actually, the costs are really minimal. The printing of ballots, the hiring of translators to translate the issues—the bond issues, the constitutional amendment issues, the various offices that people are running for—in Spanish, for example—it's a minimal cost to the State of New Mexico.

We have done it since statehood, actually, since 1912. We have never had—that's never been the issue, costs that would be associated with it.

We have over 30—well, 37 States that the Justice Department identified, or the Census Bureau identified as having high language-minority populations. And so we've known this since the year 2000.

The Justice Department did contact all of our States, and said, "You must print, you must do all of these in the various languages in your States." And most of those States—over 30 of them—asked for an extension period to not do that until 2007; knowing that the reauthorization was going to be taking place in 2007. So they have denied, they have refused—States have refused to go that extra step based on the high population of language-minority population within their State, to print in other languages.

Mr. CHABOT. Thank you very much. Thank you, all of the panel.

The gentleman from New York, Mr. Nadler, is recognized for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman. Ms. Sánchez particularly would like to question Ms. Chavez. And since she's going to have to leave in 15 minutes, would it be okay to have her go first, and I'll come after that?

Mr. CHABOT. Yes. Without objection, we'll do that. At this time, Ms. Sánchez, you're recognized for 5 minutes.

Ms. SÁNCHEZ. Thank you. I want to thank all the panelists, first of all, for providing testimony. And I've had a chance to review

some of the written testimony in addition to hearing the oral testimony today.

And for the record, I just want to set one thing straight that I found in written testimony that was submitted by Ms. Chavez about the 1996 Dornan-Loretta Sánchez congressional race. In that written testimony, she states that there were 300 ineligible voters that participated in that race. And in fact, that list of supposedly bad voters was never released; so there was never an ability to verify that there were in fact 300 voters who were ineligible that voted. And that is a myth that, quite frankly, is perpetuated, unfortunately, and pops up from time to time, and is not supported by fact. So I just want to make that clear for the record.

Secondly, the premise to me that people who prefer election materials in a language other than English are somehow not citizens, or not eligible to vote, or even not worthy of voting, I find highly insulting. And I'm going to give a perfect example here.

Both of my parents are citizens of this country, but both acquired English fluency later in life. My mother, who is an elementary school teacher to this day, and who has raised seven college graduates, is more comfortable oftentimes having her voting materials in Spanish, because she values the right to vote so highly that she doesn't want to inadvertently make a mistake. So she prefers to have both English and Spanish ballot materials.

And for some of us who grew up speaking English and English is our first—or for some people, English is their only language—oftentimes, election materials can be confusing using double negatives. So why we would want to prevent people from getting election materials that will help them be informed voters is a mystery to me.

Now, Ms. Chavez, you allege that non-English voting materials somehow facilitate or induce voter fraud. And you also insist that it can lead to all kinds of mischief in terms of people participating in elections when they are in fact not eligible to participate in elections. And you cited some articles and, of course, the 1996 congressional race.

In that race, it is true that there were some voters—a small handful of voters—who believed, in fact, that they were eligible to vote because they were in the process of becoming citizens. They had received a letter from the INS stating, "Congratulations, you have passed your citizenship test," so they honestly believed that they were eligible to vote. They didn't realize that had they not been sworn—that they were ineligible to vote. And it was an honest mistake.

So my question to you—I have two, but the first is, given that you're advocating this position of providing the materials in English only, it would seem to me that that would increase the risk of ineligible voters voting; because if they don't understand the election laws and don't understand the eligibility requirements, they could in fact be in the position where they think that they are eligible to vote.

So I'm wondering, you know, is it your testimony today that providing information in Spanish to voters who prefer Spanish-language materials in voting, that that will increase voter fraud?

Ms. CHAVEZ. Well, first of all, let me clarify a couple of things. There are numerous instances cited of non-eligible persons voting and using Spanish-language materials. I also cite others, including a 1982 case in San Francisco, in my book. But let's put that side for a moment.

The question you ask is whether or not I—it sounds like you are implying that I oppose providing materials to non-English-speaking persons who are eligible to vote in languages other than English. I do not oppose—

Ms. SÁNCHEZ. Pardon me—

Ms. CHAVEZ. I do not oppose—

Ms. SÁNCHEZ. The question was, do you believe that providing materials in languages other than English increases voter fraud? That was the question.

Ms. CHAVEZ. Okay. Having material provided in languages other than English, in my view, is permissible, so long as the person is eligible to vote; and might even be desirable. The question is whether or not Congress has the authority to mandate the provision of those materials under the Constitution, and therefore is section 203 in fact constitutional.

It has not been challenged. I suggest that it may in the future be challenged, and that, based on my reading, it will be declared unconstitutional.

I would also say, though, that nothing I have said suggests that there is anything wrong with providing materials to voters in languages other than English. I happen to head up a political action committee. We print up material in Spanish and do Spanish-language communication with potential voters.

That is using private money for political purposes, and is quite different than the State mandating the printing of those election materials in languages other than English and Congress requiring the States to do that.

Mr. CHABOT. The gentlelady's time has expired.

Ms. SÁNCHEZ. Mr. Chairman, if I could ask for unanimous consent for just one additional minute—

Mr. CHABOT. Without objection.

Ms. SÁNCHEZ. —I have one other quick question that I'd like to ask Ms. Chavez.

Native-Americans have lived in this country long before English was ever spoken on this continent. And for Native-Americans, language identity is very much a part of their cultural preservation and their survival. And sadly, this country has a history of killing off substantial numbers of Native-American populations, taking away their land, and decreasing their opportunities.

So I just want clarification. Is it your testimony that Native-American populations should not be given language assistance in voting, or oral assistance in voting?

Ms. CHAVEZ. Again, I am not opposing giving language assistance to eligible voters who speak a language other than English. What I am objecting to is Congress mandating that materials be printed in languages other than English, because I think it is not within the purview of the Congress to require States to do that.

Ms. SÁNCHEZ. Well, if section 3 [sic] is not reauthorized, then how would they get those materials in the languages?

Ms. CHAVEZ. Well, number one, States could on their own decide to provide those materials. Organizations such as Asian Legal Defense Fund, Mexican American Legal Defense Fund, or all of the various Native-American groups, could provide that—

Ms. SÁNCHEZ. You don't believe that it's an important Federal interest to have those materials provided to voters who want to be informed voters, who vote in national elections?

Ms. CHAVEZ. As I said, I do not believe that section 203 satisfies the requirement under the Constitution to show discrimination on the basis of an English-language ballot, or lack of due process.

Mr. CHABOT. The gentlelady's time has expired.

Ms. SÁNCHEZ. Thank you, Mr. Chairman.

Mr. CHABOT. You're welcome. The gentleman from Iowa is recognized for 5 minutes. Mr. King?

Mr. KING. Thank you, Mr. Chairman. And I want to thank you for holding this hearing. And I want to thank all the witnesses for your testimony. It is a subject of great interest, I think, to everyone up here on this panel.

And as I sit here and listen to this testimony, I'll say the thing I have the most difficulty with: it's hard for me to get down into the minutiae of this testimony, when I'm sitting back here realizing that there's an English-language proficiency required with naturalization. And so therefore, if you're proficient enough with English to be naturalized as a citizen, then it would be rational to think that the only way you could justify being an American citizen and not being proficient in English in order to vote would be if you were raised in an ethnic enclave where you weren't exposed to the English, didn't learn English, therefore would have that difficulty of getting informed and going to understand a ballot.

But it seems to me like I'm hearing the voices of people who have been naturalized citizens, people who have plenty of access to English and have not, apparently, chosen to use it.

So I'll just tell you that fundamentally I think it's wrong for us as the Federal Government to require English language proficiency for naturalization, but not have the same standard for voting.

It also would seem to me that if you're not proficient enough in English to pick up the information, then it's hard to be qualified, hard to be educated, and we're taking away that incentive. And how can you understand the American culture and American body politic, without understanding the English language?

I think we're going absolutely the wrong way with section 203. And that's my little monologue, and it doesn't really necessarily have a question with it.

But I would pose my question then to the gentlelady from New Mexico. And I saw your returns here, up to 78 percent and 83 percent, I think, in the one area. And does New Mexico—do you have same-day registration there?

Ms. VIGIL-GIRON. Mr. Chairman, Member King, no, we do not.

Mr. KING. Okay. Do you have a voter identification, a picture identification requirement?

Ms. VIGIL-GIRON. Mr. Chairman, Member King, no, we do not.

Mr. KING. If you're an election poll worker there and someone comes through and seeks to vote for an individual, can you chal-

lenge them and ask for their identification if you happen to believe they are not the person that they presented themselves to be?

Ms. VIGIL-GIRON. Mr. Chairman, Member King, no, we do not. They are not challenged. They are basically presenting themselves. Now in New Mexico, we passed election laws where they must state their name, their address, the last four digits of their Social Security number, and their date of birth, in order to vote.

Mr. KING. And if they get that number wrong, can they vote?

Ms. VIGIL-GIRON. If they get that number wrong, then they will be asked to provide some type of identification, whether it's a Government document or a driver's license; not necessarily a picture ID, but something that matches with the address on the roster.

Mr. KING. But even you, as Secretary of State, or a poll worker, if you knew that person to not be the person they represented them to be, could you challenge them?

Ms. VIGIL-GIRON. Mr. Chairman, Member King, you can ask them for that type of identification that I've just mentioned.

Mr. KING. The verbal identification.

Ms. VIGIL-GIRON. The verbal—

Mr. KING. And if they memorize the last four digits of a Social Security number, and they get that data correct, then you can't challenge them?

Ms. VIGIL-GIRON. That's correct.

Mr. KING. Okay. So they, in fact, can legally be an imposter and present themselves with that information and legally vote, and it's prohibited to challenge them?

Ms. VIGIL-GIRON. Mr. Chairman, Member King, that is—that's being discussed everywhere throughout the United States. And there have never been any cases or incidences in New Mexico that have come before me or the attorney general or the local district attorneys.

Mr. KING. Yes, thank you. I wanted to get that clarified.

And then, as I listened to Ms. Fung's testimony, I had just—you saw me probably smile a little up here. And you have a nice presentation; you do the same. And that "Asians are taking too long to vote," you know; and we have some of those remarks get made where I come from. We say that to different ethnic groups, and it's done in a humorous way; and the same with the length of the names. And I don't know if that's what you'd call empirical data that would indicate that we ought to be investing Federal dollars in facilitating more language instruction to vote.

But I'll say another thing I bring to mind is, are you familiar with Proposition 209 that California passed in 1995?

Ms. FUNG. Can you remind me what is in Proposition 209?

Mr. KING. I can try: the State of California shall not discriminate against or grant preferential treatment to any individual or group on the basis of race, creed, sex, religion, ethnicity, or national origin.

Ms. FUNG. Yes.

Mr. KING. And would you happen to—I will just tell you this. The Asian study body population in the University of California, Berkeley, under their "goals system," was 12 percent in 1995. Five years later, it was 46 percent, because it was merit rather than, I'll say, de facto quota.

And I think that's an astonishing accomplishment for the Asians, and I think it's a tremendous thing. And I think it would be a very good thing if those kind of positives were emphasized here. But I'd ask you, can you further justify and answer for me the question of—

Mr. CHABOT. The gentleman's time has expired, but I'll give him unanimous consent for an additional minute, since we did it on this side; do it over here.

Mr. KING. Thank you, Mr. Chairman.

The justification for other than English-language ballots, when naturalized citizens have an English proficiency requirement, and American-born citizens have an access to free English education?

Ms. FUNG. Yes. First of all, bilingual assistance is needed because, in order to exercise the right to vote effectively to certain limited-English-proficient citizens, it removes the barriers to voting. For naturalized citizens, I just want to remind you that, especially for senior citizens, there is an exemption, an English-language exemption for people over 55 who've resided here for 20 years or more.

Not everyone who is a naturalized citizen is fluent enough in English to cast an effective ballot, and that is the reason why language assistance is needed.

Mr. KING. Thank you. Thank you, Mr. Chairman.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from New York, Mr. Nadler, is recognized for 5 minutes.

Mr. NADLER. Thank you. First, before I begin questioning, I'd remind Mr. King that there is a large number of people in this country who are citizens of the United States, who come from the Commonwealth of Puerto Rico, where the language is Spanish. So you cannot say that they've taken an exam to become naturalized, and if they pass that exam in English, etcetera—what you said before. Because the original language of the Commonwealth of Puerto Rico is Spanish, and people who come from Puerto Rico and reside in New York or California—or Iowa, even—are entitled to vote without any showing of proficiency in English.

Let me ask any member of the panel quickly, does any member of the panel believe that literacy tests that used to be required helped people become literate?

Ms. FUNG. No.

Mr. NADLER. Nobody. I thought so. Thank you. [Laughter.]

Mr. Schlozman, in your experience, does language assistance promote voter fraud, or impose excessive costs, as Ms. Chavez stated in her testimony? And what is the view of the Administration on this issue?

Mr. SCHLOZMAN. We've been enforcing this statute very vigorously, as I discussed. I would have no idea if any of these translation requirements have had any impact on fraud, though. Certainly, we have not—

Mr. NADLER. You have not, in your very vigorous enforcement of this provision, you haven't observed that it promoted voter fraud?

Mr. SCHLOZMAN. That is correct.

Mr. NADLER. Or imposed excessive costs? Has this been one of the more expensive Federal Government programs?

Mr. SCHLOZMAN. Well, it is an unfunded mandate, to be sure. But on the other hand, we have been working with jurisdiction across the country to make this requirement as easy as possible to implement.

Mr. NADLER. Would you call this one of our larger unfunded mandates?

Mr. SCHLOZMAN. Congressman, I'm just not in a position to be able to comment on that. I wouldn't have that—

Mr. NADLER. Okay. Thank you. Ms. Fung, could you expand on your thoughts about updating the triggers? You mentioned from 10,000 to 7,500. Do you have any research that you might be able to share with the Committee that would provide greater insight into the current needs, and how those needs may have changed in the last—what is it?—13 years?

Ms. FUNG. Yes. We can provide some charts which would show the impact of lowering the trigger to 7,500 and why it's important because it would help to pick up several Southeast Asian populations. In fact, if you lowered the numerical trigger to 5,000, you would also pick up certain South Asian populations that are in need of language assistance, as well. And while it would increase the number of jurisdictions required to provide Spanish, that number is still relatively small. So we will be glad to provide you that information.

Mr. NADLER. Thank you. Ms. Fung, Ms. Chavez said in her testimony that, "nearly half of the jurisdictions that provided estimates said no one, not a single person, used oral minority language assistance, and more than half likewise said no one used their written minority language assistance."

I know that's certainly not our experience in New York. Are you aware of other jurisdictions where that is the experience?

Ms. FUNG. I'm not aware of any jurisdictions where no one is using the language—the translated materials provided. Obviously, jurisdictions have the option to target. They are not required to translate every piece of voting information, if they can demonstrate that it's not needed.

There are certain—for example, in Queens County in New York, there are large Asian-American populations, Latino populations. There are also many neighborhoods where there are not that many language minority citizens. The New York City Board of Elections has been able to target and decide where language assistance is needed, and that flexibility is actually what makes it a workable program.

Mr. NADLER. Thank you. One more question for Ms. Fung, and then I have a question for Ms. Chavez. Ms. Fung, you mentioned in your testimony that the Board of Elections of New York had argued that information in Chinese would not fit onto our old, clunky, mechanical voting machines in New York. Were they ultimately able to find a way to deal with that problem?

Ms. FUNG. Yes, indeed. When pressed with respect to that matter—actually, New York City is one of the—three of the counties in New York City are also covered under section 5. And I just want to point out that it was very important that section 5 was available after the 1992 amendments came into place.

When there was a Chinese language program, we thought that the board ought to be translating the ballots in the machines. These are the old, 40-year-old, mechanical voting machines. They said it wasn't possible. But we approached the Justice Department and said, "You should not preclear this program, because it's clear that the language——"

Mr. NADLER. So in other words, they found it possible, when they had to.

Ms. FUNG. Absolutely.

Mr. NADLER. I have often observed that, when dealing with the transit agencies in New York, that when the politics changes, so does the physics. And apparently, that's true of the Board of Elections, too.

Ms. Chavez, you've argued in testimony that I quoted a moment ago that very few people use this in certain instances—I won't quote the testimony again—and it's also very expensive. So even though it's not used, it's very expensive; which seems to be a slight contradiction.

But in light of this—in light of this—you have your reasoning here as to why you think it's unconstitutional. But it's been in effect since 1975. That's 30 years. No one has, I think you said—I was going to ask you if anyone had challenged this. You said no one had challenged this, had brought a constitutional challenge to the courts in 30 years.

Doesn't that argue that, if no one has brought a constitutional challenge, that in fact nobody is finding it so terribly burdensome as to look for legal recourse?

Mr. CHABOT. The gentleman's time has expired, but you can answer the question.

Ms. CHAVEZ. If I can quickly answer, first of all, the testimony which you cited was not my testimony. This was taken directly from the General Accounting Office study of the implementation of the Voting Rights Act. The General Accounting Office, last time I checked, was an arm of Congress; so this was a congressionally mandated and funded study that provided that information. And there is also substantial information of the two GAO studies done of the bilingual balance that show the costs.

Those costs are expensive. In 1992, I believe—I'm sorry, 2002, Los Angeles County alone spent more than \$3 million. When you say it's inconsistent to say it is both costly and not used, in fact, that is why it is wasteful. Because the printing up of the materials and the providing of the materials in multiple languages is expensive, and then in some jurisdictions these materials are not used.

And this, again, is not my word. This is the word of the General Accounting Office.

Mr. NADLER. But the question I asked you was if it's so—why has nobody challenged this, if it's so burdensome and expensive? No one has challenged this for 30 years.

Ms. CHAVEZ. Well, Mr. Nadler, maybe it's because I've been busy for the last 20 years.

Mr. NADLER. So you're the only one who finds it burdensome?

Ms. CHAVEZ. No, it may be that there simply has not been someone who has been aggressively interested in challenging it. And I

would suggest that it will, in fact, probably be challenged if it is reauthorized.

Mr. CHABOT. The gentleman's time has expired. I know Ms. Chavez indicated she has to leave. I'd ask unanimous consent that Roger Clegg, who is the General Counsel for the Center for Equal Opportunity, be able to take her place at the dais. He was already sworn in, and was one of our witnesses at a previous Voting Rights Act hearing.

So thank you very much for your testimony, Ms. Chavez. If there's no objection, Mr. Clegg, you're welcome to come forward. I don't know if there will be any questions, but it's probably helpful to have a similar viewpoint espoused at the table, in case members want to ask questions.

[Mr. Roger Clegg, being previously sworn, took a seat at the witness table.]

Mr. CHABOT. The gentleman from Florida, Mr. Feeney, is recognized for 5 minutes.

Mr. FEENEY. Well, thank you. And actually, I wanted to ask a question. I'm glad Mr. Clegg stepped in, because I didn't feel like I got a complete, direct answer last time. So, same question. [Laughter.]

Fortuitous timing. Ms. Chavez did a great case, making a number of arguments. And she thought her most important argument was the constitutionality case.

And I asked last time with respect to the power of Congress to legislate in a different part of the Voting Rights Act, whether or not at least with respect to congressional elections, article I, section 4, which says that the times, place, and manners are subject to legislation from the State legislatures, but that Congress may at any time, by law, make or alter such regulations.

Presuming that a State could, if it wanted to, decide to print ballots in two languages, for example—and I don't think you would quarrel that a State could, if it wanted to—well, at least with respect to congressional elections, under article I, section 4, couldn't Congress regulate, aside from the equal protection language, wouldn't we have potentially the power under article I, section 4, to regulate the language in ballots with respect to congressional elections?

Mr. CLEGG. Potentially. But let me elaborate on that. First of all, I think you're acknowledging quite correctly that this would give Congress power only to apply something like section 203 to congressional elections. And of course, the vast majority of elections—

Mr. NADLER. Would the gentleman yield on that specific point for half a second?

Mr. FEENEY. I will.

Mr. NADLER. Yes. There were a number of cases in the early '70s after Congress legislated the 18-year-old vote, before the 18-year-old vote amendment, in which the courts held that that provision means congressional elections or cases affecting congressional elections; which implicates a lot of other things. Like members of the Democratic or Republican county committee could have a role in who the nominee may be. So I'm just bringing that to your attention.

Mr. CLEGG. Most elections that State and local governments hold are not Federal elections; and therefore, would not be covered by article I, section 4.

I think that even with respect to congressional elections, there would be an issue—and I'm not an expert on this particular issue, and I don't know if you've got—I anticipated your question, Mr. Feeney, because I know that, as you say, this was something that you asked about last time I was up.

When I read article I, section 4, this morning, it seemed to me that it's not crystal clear that legislation as broad as section 203 would be within article I, section 4.

Mr. FEENEY. There's not a lot of law on this section.

Mr. CLEGG. Right.

Mr. FEENEY. I would grant you that. But the language to me seems pretty clear.

I wanted to ask—by the way, I'm guarding congressional prerogatives here; which is different from saying we ought to exercise those prerogatives. But I do believe we have some powers under article I, section 4, that may not have been used regularly. That doesn't mean we don't still have those powers.

You know, Ms. Fung, on the issue of assimilation, is it your experience—number one, I want to suggest that you said that California has a lot more Asian-American representatives at the State legislative and State senatorial level than they did pre—you know, pre-section 203 enactment. But you did have a pretty famous Senator. Senator Hiyakawa was an Asian-American; was he not? He was elected Statewide long before 203. And by the way, he was an English professor, and pretty darn fluent in at least two languages, maybe a lot more.

Assimilation is something that I'm very interested in. What does 203 do? Does it adversely or positively affect assimilation? I mean, we watched, you know, in Ottawa just a half decade ago, literally, a peaceful civil war, virtually, break out. By 1 percent, they could have changed their language. We're watching the French Muslim ghettos.

And one of the things that we've been proud of is that, whether you came from Eastern Europe or Italy or Germany, that one of the ways we assimilated you was not just through the public education system, but through participating in voting.

And having four or 104—in Dade County, we have 150 different primary languages spoken in our K-12 schools. And if you're going to argue that if there are 10,000 voters in a district that have a primary language other than English, they're being denied the right to effectively cast their vote, it does seem to me—you know, we give individual rights in America—at least, I believe—not group rights. It seems to me like everybody whose primary language is something other than English in the country—including 150 different languages in Miami—may have an argument.

What do you believe is happening to the goal of assimilating people as a consequence of section 203, I guess is my question.

Ms. FUNG. Well, I think section 203 actually helps to promote inclusion. If anything, you want people who are limited-English-proficient to be able to participate in the political process. And they can, through the assistance of language assistance at the polls.

I think that's—the reason that it's important is that, as a group, Asian-Americans, Latinos, have faced a history of discrimination, and some of it has stemmed from the fact that they are not proficient in English. And so I think that's what makes it slightly different; there is a documented history of discrimination, especially for Asian-Americans. We were not even able to vote until 1943.

So to your question, I think it actually promotes inclusion when you have more people participating in the political process and feeling welcome to do so.

I mean, I think we've had so much experience going to various polling places. And what we've seen is, if you're not fully proficient in English, you don't necessarily know where to go if you're at the wrong polling site. You don't know exactly how to use the machine. And think about HAVA, which now requires new voting machines that will meet certain standards. How are people who are not fully proficient in English going to be using—changing over from a mechanical voting machine to an electronic voting machine?

I think all of—language assistance is supplemental to what, hopefully, will happen; which is that everyone will learn English. And I think that is certainly our experience, is that people want to learn English. Hopefully, there will be more funding for English programs.

But until the time that people are fully proficient in English, and as long as there are citizens who are limited-English-proficient, but want to vote, section 203 fills that need very well.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Virginia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT OF VIRGINIA. Thank you. Madame Secretary, there are two theories of voter registration, from an official capacity. Some just sit back and wait for people to show up, and others do outreach. Is it anything wrong with outreach, in terms of voter registration?

Ms. VIGIL-GIRON. Mr. Chairman, Member Scott, of course not. We have so many third-party registration groups out there that pounced on all of our States during this last presidential election, and we saw large numbers of voter registrations within our States. And they brought in a lot of good voter registrations.

The fact that we were funded with the Help America Vote Act—I think \$3.9 billion distributed throughout the States to assist in voter education—was also a major factor in bringing up those numbers and teaching people how to register and vote.

Mr. SCOTT OF VIRGINIA. What if the outreach could mean using material printed in different languages?

Ms. VIGIL-GIRON. Mr. Chairman, yes, Member Scott, that is true. And that's what we do in New Mexico.

Mr. SCOTT OF VIRGINIA. Okay. Mr. Clegg, if they can do this voluntarily, would a requirement to do that be subject to strict scrutiny under the Constitution?

Mr. CLEGG. It would not be subject to strict scrutiny.

Mr. SCOTT OF VIRGINIA. It would not be subject to strict scrutiny?

Mr. CLEGG. It would not be, but I—

Mr. SCOTT OF VIRGINIA. If you've got a constitutional argument, what standard would you be using, if it's not strict scrutiny? Rational basis?

Mr. CLEGG. Well, no, I think that we're not dealing with a suspect classification here. I think the framework that the Supreme Court has set out is whether that congressional law is congruent and proportional to preventing a violation of the 14th or 15th amendment, if I'm understanding your question correctly.

Mr. SCOTT OF VIRGINIA. So congruent and proportional would be the test?

Mr. CLEGG. That's correct. That's from the *City of Boerne* case.

Mr. SCOTT OF VIRGINIA. Why are not ballots in different languages congruent and proportional to the problem that people can't understand English?

Mr. CLEGG. They are congruent and proportional to that problem. But the point is, that problem is not a violation of the 14th or 15th amendment. What the Supreme Court has—

Mr. SCOTT OF VIRGINIA. So? So what?

Mr. CLEGG. The Supreme Court has said that in order for Congress to have authority to legislate under the enforcement clauses of the 14th and the 15th amendments—

Mr. SCOTT OF VIRGINIA. How about the provision you all just were reading, article I, section 4?

Mr. CLEGG. That would apply only—you know, arguably, would give Congress authority only to pass something like section 203 for congressional elections. It would not apply to State elections.

Mr. SCOTT OF VIRGINIA. Well, wouldn't it apply to—well—

Mr. CLEGG. It would not apply to State elections, because article I, section 4, has to do only with congressional—

Mr. SCOTT OF VIRGINIA. So we could do it for congressional elections? There's no question that we could do it for congressional elections?

Mr. CLEGG. No, no, no, I think there is a question. That was the other point that Mr. Feeney and I were discussing, whether the—and as Mr. Feeney says, and I think he's right, there's not a lot of case law on this—whether a law like section 203 is within article I, section 4.

Because what article I, section 4 is, that Congress can regulate—I think it's the time, place, and manner, something like that, of elections, doesn't really say whether—your argument would have to be that the manner of elections includes things like printing ballots in languages other than English. And I don't know whether a court would uphold that assertion of congressional authority or not.

Mr. SCOTT OF VIRGINIA. Mr. Schlozman, do you see any constitutional problem with requiring ballots to be printed in different languages?

Mr. SCHLOZMAN. Congressman, I wouldn't want to opine on the constitutional issues. I'm not qualified to do that. As a law enforcement agency, we would enforce any law that Congress passes. And as long as the Supreme Court says that it's constitutional, we'll continue to enforce it.

Mr. SCOTT OF VIRGINIA. Well, has anybody brought any fraud—people have alleged—we had a suggestion that there's all this fraud

going on. Have you investigated any of these fraud allegations and come up with any convictions?

Mr. SCHLOZMAN. Well, the fraud issues are dealt with at the Department of Justice by the Criminal Division, not by the Civil Rights Division. There have been a significant number of fraud convictions over the last few years, and I think the Department actually even issued a press release. But that's outside of our bailiwick. That belongs to the Criminal Division.

Mr. CLEGG. Mr. Scott, if I may, that report that Mr. Schlozman refers to is cited in Ms. Chavez's testimony on page 4.

Mr. SCOTT OF VIRGINIA. Thank you. And before my time ends, Ms. Fung, could you talk about the expense in complying with the bilingual sections of the Voting Rights Act?

Ms. FUNG. Actually, I don't have that information. I'm only aware of the GAO report. But I know that other reports—other surveys have been taken of various registrars. I don't have information about that.

Mr. SCOTT OF VIRGINIA. Ms. Secretary, could you answer the question?

Mr. CHABOT. The gentleman's time has expired, but you go ahead and answer the question, if you can.

Ms. VIGIL-GIRON. Thank you, Mr. Chairman. Member Scott, the reason why we don't know are States that are not doing it right now translating election materials into those various languages is because they asked for extension periods through 2007. They didn't even want to attempt to put a pencil to paper to figure out how much they are going to have to spend for translators and for the printed materials themselves.

And now that we have HAVA, that will require the one for polling place voting machines to translate into those languages, as well, so that they can hear the audio version of their ballot as they're voting.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from Alabama, Mr. Bachus, is recognized for 5 minutes.

Mr. BACHUS. Thank you, Mr. Chairman. My question is this. I understand the basis for section 203 was unequal educational opportunities for certain citizens. Since its passage, have those opportunities grown? Is there still a disparity?

Ms. VIGIL-GIRON. Mr. Chairman, Member Bachus, as I mentioned, since 2000 election and the Census, other States besides me—California, Florida, I believe, also, prints their election materials in other languages. New Mexico has always done this.

But the other States that have been identified as having high minority language populated States, we don't know—we don't know what kind of an impact; other than those minority populations are not voting. They're not registering to vote, and they're not going out to vote, because they don't want to vote on something that they don't understand. I mean, Native-Americans, who have always been here—this is not just an immigrant population to be naturalized.

Mr. BACHUS. Yes. I guess my question is, when it was first passed, we said that a lot of our citizens are simply not afforded

the opportunity to learn English, I would suppose, because it was unequal educational opportunities. And are we addressing that?

And I think what I'm talking about, are we teaching people English, or the predominant language? Or do you see it as that's not a goal? Do you understand what I'm saying?

Ms. VIGIL-GIRON. Of course.

Mr. BACHUS. Like for instance, let's say a population that's been in our country for 25 years. Are they making progress toward learning English? You know, it was seen, I would think, when it was passed as, at least for some groups, until folks are assimilated.

Ms. VIGIL-GIRON. Mr. Chairman, Member Bachus, I think that as elections officials we're not there to teach people English. We're there to give every citizen who is a citizen of the United States the right to vote. And giving them that information in the language of their choice is what we're trying to achieve here.

Mr. BACHUS. Okay.

Ms. FUNG. And if I could just add, I'm, of course, very proud of the fact that many Asian-Americans succeed in the educational process and are graduate students and are achieving all kind of success. But that, unfortunately, is not true for all Asian-American groups; and specifically, for Southeast Asians. There's very low educational attainment.

For example, 26 percent of Cambodians have never had any formal schooling. There are many such statistics which show the disparities. And so even though we have made progress over the last 25 years, we still do not have educational equality. And that's why there's still a need for bilingual assistance.

Mr. BACHUS. Okay.

Mr. CLEGG. Mr. Bachus, I think you've put your finger on what Ms. Chavez points out in her testimony is the fundamental problem with the constitutionality of section 203. Section 203 does not even talk about voter intimidation or anything like that. It hinges entirely on a claim that educational disparities have created these hurdles to voting.

And I think that that means that what Congress apparently is asserting—and has to remake the record for, since it's reauthorizing this statute—is that State discrimination, official State discrimination is, A, the cause of disparities in voter turnout and things like that, and that, B, this law is a congruent and proportional response to the educational discrimination that still exists.

I think that you're right. I think anybody would have to agree that there is much less State-sponsored discrimination in 2005 than there was in 1965. And I think that that's one of the things that this Subcommittee has to come to grips with, if it's thinking about reauthorizing section 203.

Mr. BACHUS. Would anyone else like to comment?

[No response.]

Mr. BACHUS. When this was first passed, there was not an opportunity, say, for a certain group of our citizens who spoke a different language to—if programs for them to learn English weren't available, then obviously there may have been a need for this. But if those programs are available—I mean, Ms. Vigil-Giron and—if those programs are available in a community, and are readily accessible, does that satisfy section 203?

Ms. VIGIL-GIRON. Mr. Chairman—

Mr. CHABOT. The gentleman's time has expired, but go ahead and answer the question.

Ms. VIGIL-GIRON. —Member Bachus, thank you. You've got a very, very large population of people. And of course, you know, the Latino population is the fastest growing minority right now in the country. And what you're having is a lot of older citizens who only want to speak in their native language, who only want to read in their native language, who only want to watch television in their native languages.

What is wrong with extending that extra effort within our States? Because our States are not taking responsibility to translate into those various languages. We're not volunteering. As I mentioned, New Mexico has always had that in place. We didn't cross the border; the border crossed us in New Mexico. And so we've got a lot of older American citizens, Hispanic-Americans, who would much rather vote in their Spanish language than in English language, and understand it much better if it's explained.

So this is just an opportunity for us to keep going in that direction, as the United States of America, to provide more information—and education—in whatever language we need to provide it in. But we have to do it.

Mr. CLEGG. See, this is the problem. If the reason that these individuals do not speak English has nothing to do with discrimination, then I don't see—I mean, that's not what section 203 says. And I don't know where Congress' enforcement authority under the 14th amendment and the 15th amendment comes from, then.

Mr. BACHUS. Yes, you know, 203 says they hadn't had the opportunity to learn English, so we're going to supply them a ballot in their native tongue. It doesn't say that because they don't want to learn English, we're going to supply them a ballot in their own—as I understand it.

I'm not saying that we don't decide that the basis is going to be something else. But I'm just saying that the law as it now exists, 203, the basis is that they don't have an opportunity to learn English. Am I wrong about that?

Mr. CHABOT. The gentleman's time has expired. Does anybody think he's wrong in that?

Ms. FUNG. I do believe you're wrong.

Mr. BACHUS. Okay.

Mr. CHABOT. Does anybody think he's right in that?

Mr. CLEGG. I think he's right. I mean, just read section 203. It says, among other factors, the denial of the right to vote of such minority citizens is ordinarily directly related to the unequal educational opportunities afforded them.

Mr. BACHUS. That's what it says, the basis is unequal educational opportunities.

Mr. CLEGG. And I think it's even clearer in section 4(f).

Mr. CHABOT. The gentleman's time has expired.

Mr. NADLER. Mr. Chairman? Mr. Chairman?

Mr. CHABOT. Yes.

Mr. NADLER. Can I ask unanimous consent that Ms. Fung have a minute to finish answering that question?

Mr. CHABOT. Yes, without objection. I want to get to Mr. Watt down there, though. I don't want to be unfair to him and drag this out too long. So Ms. Fung, if you'd like to respond there?

Ms. FUNG. I just think you need to look at the Census data, which shows that there is a very large proportion of limited-English-proficient individuals. There is a high degree of linguistic isolation.

Mr. BACHUS. Oh, no, I understand all that. I understand there are a lot of people that can't speak English, that would have difficulty voting, if not that. But what I'm saying is, when you look at the law itself, it just says that the reason we're supplying these ballots in their tongue is because they have not had an opportunity to learn English. But maybe we'd even disagree over what the law says.

Ms. FUNG. I think we would disagree that everyone has equal opportunity to learn English. But beyond that, I think that the purpose of section 203 is to enable citizens who may not speak English very well to be able to effectively cast a ballot.

And I think there's no question that, first of all, people use language assistance—bilingual materials and oral assistance; and in fact, more people are voting. I think that's a laudable goal that Congress should be promoting.

Mr. CHABOT. The gentleman's time has expired.

The gentleman from North Carolina, Mr. Watt, is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. Let me just say on this issue I think we may be focusing on the past, rather than looking at what we're trying to do here.

And for that purpose, I want to try to focus this in a different direction; not that I accept that we have to create a legislative record of prior discrimination and intimidation, but let's suppose for the moment that we do, as a basis for section 203 or as a basis for renewing section 203. We don't have to do it to justify section 203 in the past, because nobody has contested it in the courts. And unless somebody contests it between now and 2007, it will become a moot point.

But let's pick up right here. And I'm sorry Mr. King left because—and I don't want to leave the impression that I'm picking on him, but I think we need to clean up the record on the one thing that he said that was offensive to some of us; probably not offensive to him, not even intended to be offensive on his part.

But I don't want the record to go unchallenged there. The fact that some people engage in joking references, ethnic references, racial references, may be funny to some people; but for this purpose, Ms. Fung, I want to be clear about you and the Secretary's impression about whether that also creates a discriminatory and intimidating environment that discourages people from voting.

Has it historically, does it now, will it, in your estimation, in the future? And if you can give me an example or two. I thought you gave some good examples in your testimony, Ms. Fung.

This not about slamming Mr. King and his jocular references. It's about building the record about what impact that funny thing to him has on racial and ethnic minorities. Ms. Fung, and then the Secretary.

Ms. FUNG. Thank you. Well, actually, I do regret that he's not here, as well, because "Oriental"—the use of the term "Oriental" is considered a racist term. And the fact that people feel unwelcome at the polling place means that they're less likely to vote. And that, to me, constitutes discrimination.

And this happens very frequently. This is not a matter of long ago. I only cited a few examples because they were from the 2004 election, but there are many other such examples that could be cited. And I will provide that information to you. It creates an unwelcome atmosphere, where people don't feel that they should go back to vote.

Mr. WATT. I would appreciate your providing those [sic] additional information, because we need to build the record on that. If this is about proving the impact of discrimination, or what impact it has on voting patterns, then we need to document that. Then let's document it.

Madame Secretary?

Ms. VIGIL-GIRON. Mr. Chairman and Member Watt, you know, even in New Mexico, where we have a large minority population—we're more than 52 percent minority population—you know, to have poll workers—and I think that's at the very, very root, where we have poll workers mistreating individuals who come and present themselves to vote.

Mr. WATT. And I presume that's State action; is it not?

Ms. VIGIL-GIRON. That's correct. That's correct.

Mr. WATT. Okay. Go ahead.

Mr. WATT. And so, poll worker training etiquette is extremely, extremely important for all of our States to take advantage of. You all gave us the money to do it. And so, when you reauthorize section 203, that will give States—you're empowering the States to move in that direction, to be more sensitive to minority populations.

Even in the 2004 election—I'm not talking about 2000 or the election before that. But at every Federal election, it's crucial that we get people out to vote and we're inclusive of all people.

Mr. WATT. Now, let me take this one—if I might, Mr. Chairman. I'm out of time.

Mr. CHABOT. The gentleman's time has expired, but would he like an additional minute?

Mr. WATT. Yes, let me have an additional minute.

Mr. CHABOT. Without objection.

Mr. WATT. Because I think we're onto something here: the point that the Secretary made about the Government crossing New Mexico—the United States came to New Mexico; the point that we made, that was made in the testimony earlier, about Native-Americans being there first.

Now, the whole notion that we have taken over this thing—New Mexico and Native-Americans—and then requiring them to cast ballots in English, is that in and of itself an intimidating factor that suggests to those people an element of discrimination and intent to exclude them from voting?

Ms. VIGIL-GIRON. Mr. Chairman, Member Watt, as a matter of fact, you know, before New Mexico became part of the United States in 1911, when they were discussing it behind closed doors,

they were saying things like, “Well, they don’t look like us, they don’t talk like us, they speak other languages in that State.” And then, on the floor of Congress, they were saying to us, to our face, “You don’t have the population to become part of the United States.”

And we adopted our motto, “*E pluribus unum*: We will grow as it goes.” And we have. We have a population of over 1.9 million people, bigger than the State of Vermont, bigger than the States of North Dakota, South Dakota, in population.

And so, in terms of crossing the border, they thought that we were all coming from Mexico. They think that we are Mexicans. I would be proud to call myself Mexican, but I’m not. I’m a New Mexican. And I’ve been a New Mexican, and my family, for over 300 years in New Mexico.

Mr. WATT. Would it be fair to say the bottom line on this is that the discrimination, if we had to build a record, against Native-Americans, limited-English-proficient people, would probably—would be; not probably—would be just as dramatic as the historical discrimination against African-Americans?

Mr. CHABOT. The gentleman’s time has expired, but you can answer the question.

Ms. VIGIL-GIRON. Thank you very much. Member Watt, as a matter of fact, yes, I have to answer “Yes.” Because our Native-American population out there—we have a lot of elderly Navajos. They can’t—they will not have a photo ID taken of them. So they can’t even present a photo ID, should we impose that photo ID requirement in the State of New Mexico.

It is—we have to reauthorize section 203 because—I welcome the Justice Department, by the way, coming into my State, setting up observers, watching those poll workers, making sure that there are translators at those various polling places. And it’s every year, every Federal election, every 2 years, or whatever it is—that they come and they make sure that our Native-American citizens do and are treated in the right manner.

Mr. CHABOT. The gentleman’s time has expired.

The gentleman from Georgia, who we want to again welcome to this Committee and thank him for his studiousness in attendance. And he’s been, even though not a Member of this Committee, a very welcome addition to it. So he’s recognized for 5 minutes.

Mr. SCOTT OF GEORGIA. Well, thank you very much, Mr. Chairman. I want to thank you for your kindness, and this Committee for being so generous. And I also want to say, Mr. Chairman, how much I enjoyed traveling with you to Detroit to attend Ms. Rosa Parks’ funeral, enjoyed being there with you.

And it’s within that spirit that I want to direct a question, because I really think, again, the issue here is: what is constitutional, and what is not constitutional? And I think to get at that, I believe we need to revisit what this intent was, and is, in this effort.

And that is, it clearly states in the 15th and 14th amendment a very essential passage. The words are “to ensure,” “to ensure that the right to vote is not denied or abridged by the United States or by any State.” That in and of itself, the words “to ensure,” means to make sure; means to, in effect, give Congress that authority.

Now, in the effort to do that, clearly, this section 203 states, "Documenting a systematic pattern of voting discrimination and exclusion against minority group citizens who are from environments in which the dominant language is other than English, and based on the extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities, Congress acted to broaden its special coverage of new geographic areas, in order to ensure protection of the voting rights of language minority citizens." I think that's important.

Because I think that that gets off the table this issue: is it constitutional, is it not constitutional? Because the operative words here are action, "to ensure." That is why this has been done.

And I just call, for historical reference, that back in the turn of the century, there was a case that evolved from an effort on the part of two groups in New York City the Tammany Hall had put together to increase the vote. At that time at the turn of the century, there was huge migration—immigration in this country, between two distinct groups. One was Jewish, from Eastern Europe, that were coming into this country in great numbers. And the other were Italians.

And there was one group, called "The Five Pointers," down in Lower Manhattan that Tammany Hall used, as well as another group by a fellow by the name of "Monk Eastman." And in order to communicate and get that vote out for Tammany Hall, they had to print those instructions and those ballots in the respective languages of those people. And when the case was brought again, it was used in the Constitution, section 14, 15, of "to ensure."

And so, Mr. Clegg, I come to you and to the others on the panel to state, particularly in view of the fact if it was good then, and if it was good 30 years ago in 1975, my God, now we have increased our immigration and the flow of people from other countries into this country over 2,000 percent.

So it builds a case not only that it's constitutional, but that there is even a greater need to make sure that we ensure that the right for these individuals to vote is not abridged on the point of race, color, or minority language status.

Don't you agree with that now, Mr. Clegg?

Mr. CLEGG. No.

Mr. SCOTT OF GEORGIA. Did we not take that off the table?

Mr. CLEGG. No, no, I do not agree. You've just amended the 15th amendment. You have added the term "language minority" to the words of the 15th amendment. The 15th amendment doesn't say anything about language minorities.

Mr. SCOTT OF GEORGIA. No, I did not—

Mr. CLEGG. Yes, you did.

Mr. SCOTT OF GEORGIA. The words I'd add to the amendment were "to ensure," and the fact of the matter is—

Mr. CLEGG. Race, color, and then you added "language minority," which is not in the 15th amendment.

Mr. SCOTT OF GEORGIA. But it was put into it as a result of the amendment for 203.

Mr. CLEGG. That's my point. Congress does not have authority to change the meaning of the 15th amendment through a statute. You have to—

Mr. SCOTT OF GEORGIA. But it does have the authority to ensure.

Mr. CLEGG. Right, but my point is that what you all need to do, if you want to reenact section 203, and if you don't want it to be struck down as unconstitutional, is connect the dots between the denial or abridgement of voting rights on the basis of race or color, and having ballots printed in languages other than English. I don't think that you can connect those dots.

Mr. CHABOT. The gentleman's time has expired. Does he seek an additional minute? It looks like he hasn't got a finish there. If you'd like?

Mr. SCOTT OF GEORGIA. Yes. I wanted to make sure that the other witnesses at the table have given ample evidence of how this has worked in a discriminatory manner. And I'd like to give just a final minute to see if any of them would like to counter and put forward those examples at this time to Mr. Clegg's point.

Ms. VIGIL-GIRON. Mr. Chairman, Member Scott, it's kind of hard to convince someone that—extending the opportunity for other language minority populations the right to vote in their own languages. So it's almost—it's beating a dead horse with them; so, you know, to try to convince them of it being constitutional or not.

We're citizens of the United States. Those of us that are citizens take great pride in being citizens of the United States. And if we want to do that in another language other than English, exercising our right to vote, then we should.

Mr. NADLER. Mr. Chairman?

Mr. CHABOT. The gentleman's time has expired.

The gentleman from New York?

Mr. NADLER. Can I have unanimous consent to ask Mr. Clegg a question?

Mr. CHABOT. Yes, without objection. And then the gentleman from Alabama.

Mr. NADLER. Thank you. I just want to comment and question on your last comment about joining the dots between language minority and race, color—or previous condition of servitude, or race, or color. Make two points. Number one, with respect certainly to Asians, the connection is direct, because you're talking about a different—about people who, if you discriminated against them on the basis of language, you would be discriminating against an identifiable racial group. So that would seem to me direct.

And I would also observe and ask you to comment on both that and the following. That certainly in the 19th century, when the 15th amendment was written, the word "race" had a slightly different meaning that it does today. And people spoke all the time—and you can look at the newspapers of the time—about the "American race," the "German race," the "French race;" which we wouldn't do today. Today we talk about Blacks and Hispanics, you know, and different racial groups. We don't talk about nationalities as races, but they did in the 19th century.

And so that the language discrimination, if there is language discrimination, would simply be—would certainly be racial in the sense of the common understanding of the time—in the common understanding of this time, with respect, let's say, to Asians; or the common understanding at the time the amendment was written, with respect to any language group. Why am I wrong on that?

Mr. CHABOT. The gentleman's time has expired, but go ahead and answer.

Mr. CLEGG. Well, I agree with the first point you make, that the term "race" in the 1860's certainly had a broader meaning than it does now. And in fact, there's Supreme Court cases on that; that, for instance, Jews were considered a race; and that therefore, in terms of the coverage of some of the Reconstruction era amendments that prohibit discrimination on the basis of race, that anti-Semitic violence is something that's within the language of the Reconstruction Acts.

But I think that, Mr. Nadler, you're making a leap from Germans and Asians and so forth perhaps being considered a race, and it being racial discrimination to print ballots in English and not to print ballots in languages other than English.

I think then maybe the problem that you're running into is you're making kind of a disparate impact type argument, that, you know, the failure to print—or the decision to print a ballot only in the English language has a disparate impact on certain racial groups; and therefore, that makes it racial discrimination. The Supreme Court has rejected that kind of disparate impact approach.

Also, if I can add, I mean, you're assuming that all Asians, for instance—and I know this may be not fair, but you're assuming that all Asians have problems with being discriminated—

Mr. NADLER. No, obviously not.

Mr. CLEGG. Obviously, you're not suggesting that. But one point I wanted to make—

Mr. NADLER. Let me just clarify the question, the thing you were just saying, when you said the Supreme Court has rejected the disparate impact, that disparate impact approach.

Mr. CLEGG. Right.

Mr. NADLER. The Supreme Court rejected disparate impact approach as a constitutional argument requiring something, or as giving power to Congress to enact something?

Mr. CLEGG. Both. The *Washington v. Davis* and the *Arlington Heights* case, and a number of other cases, have confirmed that the 14th amendment bans only disparate treatment; it does not ban disparate impact. And a plurality of the Court said the same thing with respect to the 15th amendment, in the *City of Mobile* case. And then, the *City of Boerne* case struck down a statute of Congress that—

Mr. NADLER. Which I helped write. I'm very well aware of that.

Mr. CLEGG. Well, I'm sorry to bring up painful memories, but you recall that basically what Congress was doing there, the Supreme Court had said in the *Oregon v. Smith* case that the free exercise clause covered disparate treatment, but not disparate impact. And you all tried to change that through statute, and the Supreme Court said, "No, you can't do that."

Mr. CHABOT. The gentleman's time has expired.

I'd ask unanimous consent that the gentleman from Alabama be given a minute. And in fact, since this ended up being 3 minutes, we'll make it 2 minutes. But let's keep it within that, if we can. The gentleman is recognized.

Mr. BACHUS. Actually, Mr. Nadler's series of questions was what I was—

Mr. CHABOT. It was already brought up?

Mr. BACHUS. I would basically ask the same question. I'd just say this. Mr. Scott read the 15th amendment, and then I read over it again. And it does seem to say on account of race you can't abridge someone's voting right. And I never thought of it in that regard, but you could—I guess "race," "ethnicity," are those pretty interchangeable, or are they not?

Mr. CLEGG. I think that was Mr. Nadler's point just now, that race in the 1860's had a broader meaning than it does now.

Mr. BACHUS. Sort of like "ethnicity"?

Mr. CLEGG. Yes. So I think "ethnicity" generally probably would be—although I mean that's—

Mr. BACHUS. And if you take, you know, your ethnic background, obviously, certain ethnic backgrounds wouldn't have English proficiency, or might not have the same level of English proficiency. So if you did offer a ballot just in English to Hispanic citizens, say, or newly arrived Asian citizens or something, couldn't that fall under the 15th amendment?

Mr. CLEGG. Well, I think that, you know, let's suppose that, you know, the State of New Mexico—

Mr. BACHUS. I mean, obviously it is because of their ethnicity, their ethnic background, that they don't speak English, I mean, they speak another language and they're not proficient in English. So by offering a ballot just in English, it would appear that you're denying them a right to vote, or you're certainly limiting their ability.

Mr. CLEGG. I think that whether it's disparate treatment or disparate impact in that case is going to hinge on intent.

And in the case of New Mexico, for instance, suppose that for years and years New Mexico had made ballots available in Spanish; and you could show in the record that the State legislature got together, part of the State legislature, and said, "You know, we need to keep Mexican-Americans from voting; and the way we're going to do that is we are no longer going to provide ballots in Spanish any more." That might be a violation of the 15th amendment.

But the decision, without regard to race or ethnicity, to print ballots in English and not in foreign languages, if there was no such showing of intent, would not be a violation of the 14th or 15th amendment.

Mr. BACHUS. Yes, let me come at it a different way.

Mr. CHABOT. The gentleman's time has expired.

Mr. BACHUS. Could I have an additional 1 minute?

Mr. CHABOT. If you'll stay within the 1 minute, I won't object.

Mr. BACHUS. We've been arguing about constitutional basis for saying you've got to provide ballots in Spanish or in Vietnamese. Wouldn't this be a basis, the fact that Congress—I mean, the right of citizens to vote shall not be denied or abridged on account of the ethnic background.

Mr. CLEGG. Well, I don't think that it—

Mr. BACHUS. Couldn't you say because of that, the 15th amendment because of that statement, that it would naturally flow that you would provide ballots in other—

Mr. CLEGG. I don't think so.

Mr. BACHUS. You don't?

Mr. CLEGG. I don't think so.

Mr. BACHUS. Okay.

Mr. CHABOT. Ms. Vigil-Giron?

Ms. VIGIL-GIRON. Mr. Chairman, Member Bachus, I think you're going to the right place, okay? That definitely, if you do not take that extra step—and Congress is the only one, by the way, who will do it. The States are not going to do it.

State legislators are moving in another direction, and they don't want to move in this direction here. Because we might go out and vote, and we might vote them out of office, or whatever the case might be.

But we will go out and vote if it's provided to us in other than English languages out there, and advertised in other than English that there's an election going on, and proclamations in other languages. We may just go out and vote.

That's what we're trying to do. We're trying to be represented. We're trying to exercise our right to vote in other than English languages. So we have to have you all and your power to reauthorize section 203.

Mr. CHABOT. The gentleman's time has expired. All time has expired. And I want to thank the panel for their very helpful testimony here this afternoon.

We're not finished yet. We're finished for today, but we have two more hearings tomorrow—I believe, at 2 and 4. So anybody who is here today is welcome back; and anybody who is not here is welcome back, as well.

But if there's no further business to come before the Committee, we're adjourned. Thank you.

[Whereupon, at 4:05 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND MEMBER, SUBCOMMITTEE ON THE CONSTITUTION

**Oversight Hearing on “The Voting Rights Act:
Section 203 – Bilingual Election Requirements, Part I”**

November 8, 2005

Statement of Congressman Steve King

Mr. Chairman:

I strongly oppose Section 203, the Bilingual Election Assistance section of the Voting Rights Act because this provision divides our country, diminishes the importance of learning the English language, facilitates voter fraud, and is simply a waste of taxpayer money.

The English language is the carrier of liberty and freedom throughout history and the world. For centuries, our common tongue, English, has been the uniting force in this great nation, knocking down ethnic and religious barriers to make us truly one nation. In our nation’s past, immigrants once took pride in becoming more “American” by learning the English language.

Today, the need for unity and patriotism is at an all-time high, and anything that divides our country by facilitating language barriers and racial divisions should be staunchly opposed. Only through a common means of communication will our great nation be propelled toward the goal of: "E Pluribus Unum"- out of many, one.

A common language has encouraged generations of Americans to realize the dream of American opportunity and freedom. Studies continue to prove those who learn English get better jobs, earn more money and receive better health care than those who cannot speak the language. As a result, an emphasis on the English language decreases reliance on the federal government. Unfortunately, this provision of the Voting Rights Act encourages reliance on the federal government. For instance, the cost of multilingual voter assistance is often more than half of a jurisdiction's total election costs. This is a wasteful expense that can easily be alleviated.

Additionally, since it is typically a requirement that to become a U.S. citizen you must speak English, why is section 203 even necessary, since only U.S. citizens can vote in federal elections?

Regardless of race, gender or citizenship status, Americans have declared their support for an official English language. A survey conducted by the nationally recognized Tarrance Group (January 2002) found that 84 percent of Americans favor making English the official language of the United States. Other polls taken on a state-by-state basis have indicated a similar threshold of support. Section 203 is opposed to the will of the people of the United States who want a strong unified America. It should be acknowledged in plain language: Section 203 of the Voting Rights Act discourages immigrant assimilation. Because of these overwhelming reasons, I am strongly opposed to Section 203, the Bilingual Election Assistance section of the Voting Rights Act.

I am looking forward to this hearing, and I hope the witnesses address these concerns I presented. Thank you Mr. Chairman.

PREPARED STATEMENT OF THE HONORABLE LINDA T. SÁNCHEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND MEMBER, COMMITTEE ON THE JUDICIARY

Congresswoman Linda T. Sánchez
Judiciary Committee Subcommittee on the Constitution
Oversight Hearing:
The “Voting Rights Act: Section 203: Bilingual Election
Requirements, Part I”
November 7, 2005

Thank you Chairman Chabot and Ranking Member Nadler for convening this important hearing today on “Section 203 of the Voting Rights Act, the Bilingual Election Requirements.”

I am a Latina Member of Congress who represents a Congressional district with a substantial Latino and Asian population. Since the year 2000 in Los Angeles County, where my district lies, Hispanic, Chinese, Filipino, Japanese, Korean, and Vietnamese language minorities have been covered by Section 203 of the Voting Rights Act.

It is because of my first hand experience that I believe that Section 203 is an essential provision of the Voting Rights Act, and that it needs to be reauthorized and amended to cover all language minority communities.

In jurisdictions where large numbers of language minorities reside, Section 203 requires bilingual election materials and ballots, to ensure these communities can fully participate in the electoral process.

Without the protections of Section 203, thousands of eligible Latino and Asian citizens would be discouraged from participating in the electoral process, and the advances toward political and social empowerment they have made over the last 3 decades would come to a halt.

Take, for example, the progress Latinos have made in elections nationwide. In 1974, the year before Section 203 of the Voting Rights Act was enacted there were approximately 1,200 Latino elected officials in the United States. Today there are over 6,000 local, state, and federal electeds, including the 22 Members of the Congressional Hispanic Caucus.

Moreover, those Members of the CHC who represent “majority-minority” districts drawn as a direct result of the Voting Rights Act – such as Congressmen Ed Pastor from Arizona and José Serrano from New York, rely on the ability of all voters, including those whose primary language is Spanish, to get to the polls and cast their votes.

If Spanish-speaking voters can’t read the voter registration materials, they may miss a filing deadline and be ineligible to vote. If they can’t fully understand their absentee ballot or the instructions on the voting machine, they may inadvertently cast their vote for the wrong candidate or initiative.

Any voting practice that results in Latino and other minority voters failing to elect the candidates of their choice is at odds with the intent and the spirit of the Voting Rights Act, and the purpose of Section 203.

As recently as 1992, Section 203 was reauthorized because evidence was presented to Congress that discrimination against language minorities persisted, and that discrimination diminished those citizens from participating fully and effectively in the electoral process.

Section 203 not only minimizes purposeful discrimination, it also encourages full participation by all voters.

Critics of Section 203 argue that the provision should be eliminated because only citizens are eligible to vote, and English proficiency is a prerequisite to attaining citizenship. Therefore, the critics argue, Section 203 is not needed.

This argument is without merit and should be ignored.

U.S. citizens who have immigrated to the United States but are more comfortable with a language other than English are no less entitled to participation in the voting process than English-speaking citizens for whom English is their first language.

After all they pay taxes like every other citizen.

Voting ballots at times can be confusing for people whose first or only language is English. Some citizens who have acquired English fluency later in life, such as my parents, may be greatly assisted by having materials in their first language.

Furthermore, we also need to recognize Native American communities who have lived here before English was ever spoken on this continent. Our voting system should not impose any language barriers on Native American communities' participation in elections.

I strongly believe that Section 203 should be reauthorized, and the numerical trigger to require language assistance should be reduced from 10,000 to 7,500 to ensure that more language minority voters, especially Asian Americans, have election materials and ballots they can fully understand.

Again, I thank Chairman Chabot and Ranking Member Nadler for the courtesy of allowing me to participate in this hearing and including my remarks in the record.

I also thank our witnesses on both Section 203 hearing panels for their informative testimony.

I yield back the balance of my time.

APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: COPIES OF COMPLAINTS, CONSENT DECREES, AND ORDERS IN ENFORCEMENT ACTIONS FILED BY THE UNITED STATES UNDER THE LANGUAGE MINORITY PROVISIONS OF THE VOTING RIGHTS ACT (SECTIONS 4(E), 4(F)(4), AND 203)

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ORIGINAL FILED

APR 13 1995

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAW

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15 UNITED STATES OF AMERICA,
 16 Plaintiff,
 17 v.
 18 ALAMEDA COUNTY, CALIFORNIA;
 BOARD OF SUPERVISORS OF ALAMEDA COUNTY;
 19 GAIL STEELE, Chairperson; EDWARD R.
 CAMPBELL; KEITH CARSON; WILMA CHAN; and
 20 WILMA CHAN, Supervisors; and BRADLEY
 J. CLARK, Registrar of Voters,
 21 Defendants.
 22

CIVIL ACTION No.

COMPLAINT
THREE-JUDGE COURT

The United States of America alleges:

24 1. The Attorney General files this action pursuant to
 25 Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as
 26 amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a,
 27 and 28 U.S.C. 2201, and to enforce rights guaranteed by the
 28

1 Fourteenth and Fifteenth Amendments to the United States
2 Constitution.

3 JURISDICTION

4 2. The Court has jurisdiction of this action pursuant to
5 28 U.S.C. 1345, 42 U.S.C. 1973j(f) and 42 U.S.C. 1973aa-2. The
6 claim pursuant to Section 203 of the Voting Rights Act requires
7 that the action be heard and determined by a court of three
8 judges in accordance with the provisions of Section 2284 of
9 Title 28 of the United States Code.

10 PARTIES

11 3. Defendant Alameda County is a political subdivision of
12 the State of California and exists under the laws of that state.
13 The defendant Board of Supervisors of Alameda County is the
14 general governing and managing body of Alameda County.

15 4. Defendant Gail Steele is an elected county supervisor
16 and the present chairperson of the board. Defendant Steele
17 resides in Alameda County, California, and is sued in her
18 official capacity. Defendants Edward R. Campbell, Keith Carson,
19 Wilma Chan, and Mary King, are duly elected members of the
20 Alameda County Board of County Supervisors and are sued in their
21 official capacity. Each resides in Alameda County, California.

22 5. Defendant Bradley J. Clark is the Alameda County
23 Registrar, with responsibility for the conduct of elections held
24 in Alameda County. Defendant Clark is a resident of Alameda
25 County, California, and is sued in his official capacity.

ALLEGATIONS.

1
2 6. According to the 1990 Census, Alameda County had a
3 total population of 1,279,182 persons of whom 184,813 (14.45%)
4 are Asian Americans. Chinese Americans comprise the largest
5 share of the Asian American population in Alameda County with
6 68,184 persons in 1990 and 30,120 citizens of voting age.

7 7. Alameda County is subject to the requirements of
8 Section 203 of the Voting Rights Act as a result of a
9 determination by the Director of the Census that there are more
10 than 10,000 voting age citizens in Alameda County, of a single
11 language minority, Chinese, who do not speak or understand
12 English well enough to participate in the English-language
13 election process and further has determined that the illiteracy
14 rate of such persons as a group is higher than the national
15 illiteracy rate. 57 Fed. Reg. 43213 (September 18, 1992). Such
16 determination requires the defendants to furnish information
17 relating to all phases of the voting process, including
18 registration and voting, in the Chinese language.

19 8. In addition to the provisions of Section 203, the
20 defendants also are prohibited by Section 2 of the Voting Rights
21 Act from applying or imposing any voting qualification or
22 prerequisite to voting or standard, practice, or procedure which
23 results in a denial or abridgement of the right of Asian American
24 residents to vote.

25 9. Asian Americans in California have suffered a long
26 history of official discrimination, including discrimination
27 affecting the right to vote. Many Chinese Americans in Alameda
28

1 County continue to bear the effects of past discrimination in
2 such areas as education and employment, so that this history
3 burdens their current access to the franchise.

4 10. In conducting elections within Alameda County,
5 defendants have failed to furnish effectively, in the Chinese
6 language, the information and assistance necessary to allow
7 Chinese American residents a fair opportunity for effective
8 political participation, including the following:

9 (a) Defendants have failed to recruit, hire and train
10 effectively an adequate number of bilingual poll officials,
11 including interpreters, to provide language minority
12 citizens with effective minority language assistance.

13 (b) Defendants have failed to translate fully and
14 accurately all election-related materials into the
15 Chinese language.

16 (c) Defendants have failed to inform language minority
17 citizens residing in Alameda County effectively of the
18 availability of minority language election information, and
19 voting materials and assistance, and have failed to
20 provide effective access to such information materials and
21 assistance.

22 (d) Defendants have failed to recruit, hire and train an
23 adequate number of bilingual personnel in the office of the
24 Alameda County Registrar to provide language minority
25 citizens residing in Alameda County with effective oral
26 assistance in the election process.

CLAIM FOR RELIEF

1
2 11. The defendants' failure to provide Chinese American
3 residents of Alameda County with the information and assistance
4 relating to registration and voting necessary for effective
5 political participation by these Chinese Americans in Alameda
6 County constitutes a violation of Section 203 of the Voting
7 Rights Act, 42 U.S.C. 1973aa-1a, and the Fourteenth and Fifteenth
8 Amendments to the United States Constitution.

9 12. The defendants' English election process, as applied to
10 Chinese-speaking citizens, implemented under the totality of
11 circumstances described herein, constitutes a denial of the right
12 of Chinese American citizens to participate in the political
13 process effectively and on an equal basis with other citizens in
14 violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973,
15 and the Fourteenth and Fifteenth Amendments to the United States
16 Constitution.

17 13. Unless enjoined by this Court, defendants will continue
18 to enforce voting standards, practices, and procedures in a
19 manner which denies Chinese American citizens an opportunity to
20 participate effectively and on an equal basis with other citizens
21 in violation of Sections 2 and 203 of the Voting Rights Act,
22 42 U.S.C. 1973 and 1973aa-1a, and the Fourteenth and Fifteenth
23 Amendments.

RELIEF

24
25 WHEREFORE, the plaintiff United States prays for an order:

- 26 1. Declaring that the defendants have failed to
27 provide effective oral instructions,
28

- 1 assistance and other information relating to
2 registration and voting in the Chinese
3 language in violation of Sections 2 and 203
4 of the Voting Rights Act, as amended, 42
5 U.S.C. 1973 and 1973aa-1a, and the Fourteenth
6 and Fifteenth Amendments to the United States
7 Constitution;
- 8 2. Declaring that the defendants' standards,
9 practices, and procedures relating to the
10 election process deny Chinese American
11 citizens in Alameda County an opportunity
12 equal to that enjoyed by other citizens to
13 participate in the political process in
14 violation of Section 2 of the Voting Rights
15 Act, as amended, 42 U.S.C. 1973, and the
16 Fourteenth and Fifteenth Amendments to the
17 United States Constitution;
- 18 3. Requiring the defendants to devise a plan to
19 assure that Chinese American citizens of
20 Alameda County have an opportunity equal to
21 that of other members of the electorate to
22 register to vote and otherwise to participate
23 effectively in the Chinese language in all
24 phases of the election process;
- 25 4. Requiring the defendants to implement the
26 remedial plan promptly upon approval by this
27 Court;
- 28

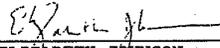
- 1 5. Designating Alameda County for federal
2 examiners pursuant to Section 3(a) of the
3 Voting Rights Act, 42 U.S.C. 1973a(a) for a
4 period of 10 years; and
- 5 6. Designating Alameda County pursuant to
6 Section 3(c) of the Voting Rights Act, 42 U.S.C.
7 1973a(c), for a period of 10 years and requiring
8 that during that period no alteration of any
9 voting qualification or prerequisite to voting or
10 any standard, practice, or procedure with respect
11 to voting may be implemented without prior
12 clearance from this Court or from the Attorney
13 General of the United States.

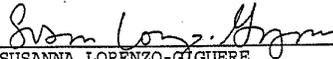
1 Plaintiff further prays that this Court order such other
2 relief as the interests of justice require along with the costs
3 and disbursements in maintaining this action.

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 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

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 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES DISTRICT COURT
 13 NORTHERN DISTRICT OF CALIFORNIA
 14
 15 UNITED STATES OF AMERICA, **095 1266**
 16 Plaintiff,)
 17 v.) CIVIL ACTION No.
 18 ALAMEDA COUNTY, CALIFORNIA;) SETTLEMENT AGREEMENT
 BOARD OF SUPERVISORS OF ALAMEDA COUNTY;) AND ORDER
 19 GAIL STEELE, Chairperson; EDWARD R.) THREE-JUDGE COURT
 CAMPBELL; KEITH CARSON; WILMA CHAN, and)
 20 MARY KING, Supervisors; and BRADLEY J.)
 CLARK, Registrar of Voters,)
 21)
 22 Defendants.)

23 The United States initiated this action pursuant to Sections
 24 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended,
 25 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and
 26 28 U.S.C. 2201, alleging violations of the Voting Rights Act and

1 the Fourteenth and Fifteenth Amendments arising from Alameda
2 County's election practices and procedures as they affected
3 Chinese American citizens of the county, including those Chinese
4 American voting age citizens who are "unable to speak or
5 understand English adequately enough to participate in the
6 election process," 42 U.S.C. 1973aa-1a (hereafter "Chinese-
7 speaking citizens").

8 The claim under Section 203 of the Voting Rights Act
9 ("Section 203") must be heard and determined by a court of three
10 judges in accordance with the provisions of 42 U.S.C. 1973aa-2
11 and 28 U.S.C. 2284.

12 The plaintiff alleges in its complaint that various election
13 standards, practices and procedures of the defendants unlawfully
14 deny or abridge the voting rights of Chinese American citizens
15 residing in Alameda County. The challenged practices touch on
16 the failure of the defendants to implement, as required by
17 Section 203, effective bilingual election procedures, including
18 the complete and timely translation and effective dissemination
19 of election information in the Chinese language. The challenged
20 practices also concern the failure of defendants to provide for a
21 sufficient number of adequately trained bilingual persons to
22 serve as poll workers, including interpreters, for Chinese-
23 speaking voters needing bilingual assistance at the polls on
24 election day.

25 The defendants do not admit the allegations of the
26 complaint, or that there has been intentional discrimination

1 against any of its citizens. The defendants do not contest,
2 however, that in the 1994 general election the county failed to
3 ensure that Chinese-speaking poll officials and Chinese language
4 election information and materials were present at all polling
5 sites where they were needed in order for Chinese-speaking
6 citizens to cast their ballots effectively and on an equal basis
7 with other citizens.

8 This Court has jurisdiction over the parties and the subject
9 matter of this litigation. This Agreement is final and binding
10 between the parties and their successors in office regarding the
11 facts, claims and issues raised in the complaint and resolved
12 herein.

13 In settlement of this matter, the parties stipulate as to
14 the following facts:

15 1. Alameda County has been subject to Section 203 of the
16 Voting Rights Act, 42 U.S.C. 1973aa-1a, since August 1992 with
17 respect to the Chinese language based upon the determinations by
18 the Director of the Bureau of the Census pursuant to the Act.
19 The Director determined that Alameda County is a political
20 subdivision that contains more than 10,000 Asian American
21 citizens of voting age that are members of the Chinese language
22 minority group who do not speak or understand English adequately
23 enough to participate in the electoral process, and further that
24 the illiteracy rate of such persons as a group is higher than the
25 national illiteracy rate. Based on this determination, Alameda
26 County is subject to Section 203 of the Voting Rights Act with

1 respect to the Chinese language. This determination was
2 published in the Federal Register on September 18, 1992, and
3 became effective upon publication.

4 2. Section 203 requires that all information that is
5 provided by Alameda County in English about voter "registration
6 or voting notices, forms, instructions, assistance, or other
7 materials or information relating to the electoral process,
8 including ballots," must be provided in the Chinese language for
9 Chinese-speaking citizens. 42 U.S.C. 1973aa-1a(c). See also, 28
10 C.F.R. 55. (the Attorney General's Procedures for the
11 Implementation of the Provisions of the Voting Rights Act for
12 Minority Language Groups).

13 3. Section 2 of the Voting Rights Act requires that
14 citizens be allowed to participate equally in all phases of the
15 election process without regard to race, color or membership in a
16 language minority group.

17 4. According to the 1990 Census, the population of Alameda
18 County includes 68,184 Chinese Americans and 30,120 Chinese
19 American citizens of voting age. The 1990 Census reports that
20 11,394 persons, or 37.83 percent of the Chinese citizen voting
21 age population in Alameda County, and 1.3 percent of the total
22 citizen voting age population in Alameda County do not speak
23 English well enough to participate effectively in English
24 language elections. Thus, over 11,000 Chinese American citizens
25 in Alameda County cannot function effectively in the electoral
26 process except in the Chinese language.

1 5. The Congress has found that voting discrimination
2 against citizens of language minorities is pervasive and national
3 in scope. 42 U.S.C. 1973b(f)(1). Many Chinese Americans now
4 residing within Alameda County continue to bear the effects of
5 past discrimination in such areas as voting, education and
6 employment, so that this history burdens their current access to
7 the franchise. Alameda County and the United States are
8 committed to removing the current effects of past discrimination.

9 To assure compliance with the Voting Rights Act and the
10 Fourteenth and Fifteenth Amendments, the parties have agreed upon
11 the following provisions and have agreed to the entry of this
12 Settlement Agreement and Order. Entry of this Order shall be
13 final and binding on all of the parties and their successors as
14 to all issues raised in the complaint and resolved herein.

15 Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that:

16 1. The defendants, their agents and successors in office,
17 and all other persons acting in concert or participation with
18 them, are hereby permanently enjoined from failing to comply with
19 the requirements of Sections 2 and 203 of the Voting Rights Act
20 and the Fourteenth and Fifteenth Amendments.

21 2. It is the intent of Alameda County to provide to
22 Chinese-speaking voters full and complete information about all
23 stages of the electoral process, "including, for example the
24 issuance, at any time during the year, of notifications,
25 announcements, or other informational materials concerning the
26 opportunity to register, the deadline for voter registration, the

1 time, places and subject matters of elections, and the absentee
2 voting process" 28 C.F.R. 55.15, and that all information that
3 is provided by Alameda County in English about "registration or
4 voting notices, forms, instructions, assistance, or other
5 materials or information relating to the electoral process,
6 including ballots" 42 U.S.C. 1973aa-1a(c) shall be provided in
7 the Chinese language. It is the further intent of Alameda County
8 to assure that its Chinese American population, including its
9 Chinese-speaking population does not "have less opportunity than
10 other members of the electorate to participate in the political
11 process." 42 U.S.C. 1973.

12 3. To assist in the effectiveness of this agreement and to
13 protect the Fifteenth Amendment rights of citizens of Alameda
14 County, the appointment of federal examiners for elections in
15 Alameda County is authorized pursuant to Section 3(a) of the
16 Voting Rights Act, 42 U.S.C. 1973a(a), through December 31,
17 2000, however, such designation shall be extended to ensure full
18 and ongoing protection of the rights Chinese American voters
19 either upon written agreement of the parties or order of the
20 Court. The parties agree that such court order should issue if
21 the court determines that reports of federal observers present at
22 the polls during elections in Alameda County evince the denial or
23 abridgment of any rights of Chinese American voters under the
24 Voting Rights Act and Fourteenth and Fifteenth Amendments of the
25 Constitution, and determines that the County has failed to take
26 all reasonable steps to remedy such denial or abridgment and to

1 prevent such violations in the future.

2 4. Alameda County is designated pursuant to Section 3(c)
3 of the Voting Rights Act, 42 U.S.C. 1973a(c) so that no changes
4 to the Chinese Language Election Information Program, as set
5 forth herein beginning on page 8, including amendments to the
6 Program, procedures adopted pursuant to it, and other changes
7 involving dissemination of information to Chinese-speaking
8 citizens of Alameda County regarding state-mandated changes
9 affecting voting, may be implemented without prior clearance from
10 this Court or from the Attorney General of the United States
11 pursuant to Section 3(c). Such Section 3(c) designation
12 terminates on December 31, 1998, provided that such designation
13 shall be extended by order of this Court either upon written
14 agreement of the parties or order of the Court. The parties
15 agree that such court order should issue if the court determines
16 that the county has failed to satisfy the "bailout" provisions of
17 the Voting Rights Act, 42 U.S.C. 1973b(a)(1)(E).

18 5. In light of the complexity of the issues involved and
19 the evolving nature of the Program, this Agreement shall remain
20 in effect through December 31, 2000. The parties shall meet and
21 confer subsequent to the 1998 general election to determine
22 whether an earlier termination is warranted.

23 6. Alameda County has adopted the following Chinese
24 Language Election Information Program which the Court hereby
25 approves as part of this Order, as set forth below. The purpose
26 of the Chinese Language Election Information Program is to ensure

1 the dissemination of election-related information to the Chinese-
2 speaking citizens of Alameda County, and to make the election
3 process equally accessible to Chinese American citizens. This
4 program is intended to improve the effective access of Chinese
5 Americans in Alameda County to the electoral process and to
6 counter the results of past discrimination against Chinese
7 Americans, and to provide a procedure by which this program may
8 be improved and modified in the future.

9 THE CHINESE LANGUAGE ELECTION INFORMATION PROGRAM

10 A. Coordination

11 The county shall meet with representatives of the Chinese
12 community, including representatives of each organization on the
13 list attached as Attachment A and solicit their views in the
14 development of all phases of the Chinese Election Information
15 Program. The list of organizations shall not be exclusive but
16 may be expanded to include new or additional organizations
17 representing the Chinese community in Alameda County. To assist
18 in the effective dissemination of election information, the
19 County shall develop, with the participation of these
20 representatives of the Chinese community, counsel for the United
21 States, an Outreach and Publicity Plan by September 1, 1995,
22 which shall include procedures for the dissemination of
23 translated election information, including registration
24 information, to identified Chinese print media, broadcast media,
25 community groups and any other appropriate sources utilized by
26 the Chinese community for dissemination of information. The

1 Outreach and Publicity Plan shall include a schedule for regular
2 meetings between the county and the representatives of community,
3 including the community election liaisons, to assess the
4 effectiveness of the program. The county shall record on audio
5 tape or keep a written record of all comments made by the
6 representatives of the Chinese community held at regularly
7 scheduled meetings regarding the publicity plan and selection of
8 polling places, and the county's response to the comments.

9 B. Voting Rights Coordinator

10 1. Alameda County shall assign an employee to act as
11 Chinese Voting Rights Coordinator and to coordinate the Chinese
12 Election Information Program in Alameda County. The voting
13 rights coordinator shall be bilingual at least in English and in
14 Cantonese.

15 2. The voting rights coordinator shall be trained in all
16 aspects of the election process and shall be provided all
17 election information and attend appropriate election meetings and
18 summits conducted by the Secretary of State and by the Alameda
19 County Registrar. The voting rights coordinator shall be fully
20 briefed by the county registrar concerning the coordinator's
21 duties and responsibilities under this Program. The voting
22 rights coordinator shall be hired by July 1, 1995; shall be fully
23 briefed by August 1, 1995; and have developed the Outreach and
24 Publicity Plan by September 1, 1995 pursuant to Section A.

25 3. The voting rights coordinator shall oversee the
26 county's Chinese Election Information Program generally and

1 attend on a regular basis meetings of the Chinese communities
2 within the county consistent with the Outreach and Publicity
3 Plan. The voting rights coordinator shall provide election
4 information to the community, including each community election
5 liaison, consistent with the Outreach and Publicity Plan.

6 4. Within 30 days after each primary, general, school, and
7 special election affecting targeted precincts, the voting rights
8 coordinator shall prepare a written report detailing the
9 coordinator's election-related activities in implementing the
10 goals and provisions of the Chinese Election Information Program.
11 The report shall include Chinese American voter participation as
12 shown by available statistics in each subsection of this
13 agreement, together with an assessment of the effectiveness of
14 each phase of the program and a recommendation of the steps to be
15 taken, if any, to improve Chinese voter participation. Copies of
16 the report shall be provided to the United States and each
17 community election liaison.

18 5. The voting rights coordinator shall conduct the
19 training of all registration outreach workers, poll officials and
20 other election-related personnel, which may include interpreters,
21 who will participate in the Chinese Language Election Information
22 Program. Training sessions shall be open to the public.
23 Training shall be conducted at least in part in the Chinese
24 language, so that the election-related personnel shall be
25 familiar with Chinese terminology for all aspects of their
26 election duties.

1 C. Community Election Liaison

2 1. Alameda County shall invite each organization listed in
3 Attachment A to identify at least one individual to serve as a
4 community election liaison between the county and the
5 organization. All such liaisons shall be residents of Alameda
6 County.

7 2. County election officials shall inform each liaison
8 about all aspects of the election process, including the schedule
9 of elections, election-related deadlines, absentee and early
10 voting, the voter registration processes, candidate qualification
11 requirements and procedures, election day activities, and the
12 availability of information regarding proposed constitutional
13 amendments and other ballot measures.

14 3. To assist in the selection of convenient polling
15 places, the county shall meet with each community election
16 liaison, and shall provide them with a reasonable opportunity to
17 review and comment concerning the location of polling places.

18 D. Translations

19 1. All election-related materials and announcements,
20 shall be translated into the Chinese language. Alameda County
21 shall meet and confer with community election liaisons, counsel
22 for the United States and a broad range of persons with
23 information and expertise in options for ballot formats to study
24 the feasibility of printing the ballot itself in both Chinese and
25 English, and shall do so if feasible; said study shall be
26 completed by December 1, 1995. The county shall not be required

1 to purchase new voting machines to comply with this provision,
2 but shall, in any change to a new voting system or device, insure
3 that a bilingual Chinese-English ballot be accommodated. The
4 translations of election information should be made available and
5 be provided to the public at the same time the English text is
6 provided to the public.

7 2. The translation of election materials and information
8 by Alameda County shall begin as soon as the English text for an
9 item is known, and translation and review of any election-related
10 material shall be completed promptly and dissemination thereof
11 shall be consistent with the Outreach and Publicity Plan.

12 3. Names of candidates shall be translated into Chinese
13 characters on the sample ballots and any ballot created pursuant
14 to section D(1), supra, of this Agreement. The translation into
15 Chinese characters will be the responsibility of Alameda County.
16 The county shall provide the candidates with a copy of how their
17 names will appear in Chinese characters in election material, and
18 will provide them with a reasonable opportunity to review and
19 substitute a different translation of their names. Any candidate
20 may, on written request, be permitted to decline to have her or
21 his name printed in Chinese characters.

22 4. Upon request, Alameda County shall make available all
23 translations and election materials prepared pursuant to this
24 Program to all governmental entities within Alameda County.

25 E. Targeting

26 1. Alameda County shall identify all election precincts

1 which contain 3 percent or greater Chinese-speaking voting age
2 population according to the 1990 Census, and shall designate such
3 precincts as the targeted precincts for the purpose of this
4 Program. Alameda County shall consult with the community,
5 including each community election liaison, in identifying any
6 additional precincts to target, which, according to the 1990
7 Census, may not have reached the 3 percent targeting standard set
8 forth herein, but which, based on all available information, come
9 to contain sufficient Chinese-speaking voting age population to
10 warrant receiving bilingual materials and assistance.

11 2. Alameda County shall continue to maintain and seek to
12 expand a registry of persons to receive Chinese language election
13 materials. All registered voters in Alameda County who listed or
14 list their place of birth as China, Hong Kong, or Taiwan shall be
15 added to such registry and shall receive election materials in
16 English and Chinese. The county may notify voters of their
17 inclusion on such registry and voters may remove their names from
18 such registry by written request.

19 3. Language assistance and all bilingual materials,
20 including ballots, shall be provided on election day in each
21 targeted precinct. At least two weeks prior to each election,
22 Alameda County shall prepare and make available to the public the
23 list of the targeted precincts and a notice of the availability
24 of bilingual assistance and materials at those precincts,
25 including the names of the bilingual election officials. Alameda
26 County shall provide initially at least three bilingual sample

1 ballots at all other precincts in the county in which, at the
2 time of the 1990 Census, there were no Chinese-speaking voters,
3 and shall provide initially at least eight bilingual sample
4 ballots at all other non-targeted precincts in the county.

5 F. Voter Registration

6 1. Consistent with the Outreach and Publicity Plan, the
7 county shall: request the community, including each community
8 election liaison, to recommend persons qualified to serve as
9 registration outreach workers in Alameda County; invite school
10 personnel, including each high school principal and parent-
11 teacher organization officer for schools serving targeted
12 precincts, to become registration outreach workers; and encourage
13 organized political parties to recommend additional registration
14 outreach workers for targeted election precincts. Alameda County
15 shall train all qualified persons who desire to serve as
16 registration outreach workers.

17 2. Training for registration outreach workers for any
18 targeted election precinct in the county shall be conducted by
19 the county voting rights coordinator, including instruction in
20 Chinese as to election-related terminology. The county shall
21 develop a glossary of election terms in Chinese and English. In
22 addition to training as to registration standards, regulations,
23 and forms, registration outreach workers shall be trained fully
24 regarding absentee and early voting processes and requirements
25 and polling place locations. Chinese language materials,
26 including ballots as they become available, shall be used in the

1 training process to ensure the uniformity of translations, and
2 copies of such bilingual materials shall be maintained as
3 provided generally in this agreement.

4 3. The county voting rights coordinator, consistent with
5 the Outreach and Publicity Plan, shall conduct special voter
6 registration drives in the targeted precincts. The county shall
7 confer with each community election liaison to identify the best
8 time and location for each registration drive, and shall notify
9 said liaisons prior to the scheduled registration drives.

10 G. Absentee and Early Voting

11 1. The county shall supply applications for absentee
12 ballots to all registration outreach workers serving the targeted
13 election precincts and each community election liaison prior to
14 the deadline for absentee or early voting in each election
15 conducted by Alameda County. All registration outreach workers
16 serving the targeted election precincts, shall be provided
17 training in assistance for completing absentee ballot
18 applications and absentee ballots as set forth in subsection
19 G(2).

20 2. The voting rights coordinator shall provide notice
21 concerning the availability of absentee and early balloting
22 options to the Chinese community, including the Chinese media and
23 at sites identified by the Voting Rights Coordinator and
24 community election liaisons, consistent with the Outreach and
25 Publicity Plan.

26

1 H. Election Day Procedures

- 2 1. Election officials assigned to each targeted election
3 precinct in Alameda County shall include persons who are
4 bilingual in the appropriate dialect(s) of Chinese and in
5 English. The number of bilingual personnel, which may include
6 interpreters, at each polling place shall vary from targeted
7 precinct to targeted precinct according to the percentage of the
8 Chinese voting age population to the total voting age population
9 of the targeted precinct. In each precinct in which over 50
10 percent of the population is of Chinese heritage, initially at
11 least 4 election officials or interpreters shall be bilingual in
12 English and in the appropriate dialect(s) of Chinese. This
13 number may be modified by agreement of the parties based on
14 numbers of absentee and early voters in prior elections and the
15 reports of federal observers and other information.
- 16 2. Alameda County shall recruit qualified bilingual
17 individuals to work at the polls in targeted precincts by
18 utilizing a broad range of sources, consistent with the Outreach
19 and Publicity Plan, which may include providing notices to the
20 Chinese print media, Chinese broadcast media, schools, churches,
21 senior citizen centers and voting age residents within the
22 targeted precincts in connection with registration activities.
- 23 3. All election officials and all other election-related
24 personnel, including interpreters, assigned to work in targeted
25 precincts shall receive instructions on the county's provision of
26 oral assistance and bilingual materials at targeted polling

1 places as provided for in this Program.

2 4. All bilingual election officials and all other
3 election-related personnel, including interpreters, assigned to
4 work in targeted precincts shall be fully trained, including
5 instruction in Chinese on terminology related to the voting
6 process, concerning election day procedures at the polling
7 places, provision of assistance to voters in Chinese, the
8 availability of bilingual materials, the contents of the ballot,
9 i.e., all contests, parties, and ballot measures, and the
10 procedures for locating voters' correct polling places. Training
11 shall include translation of the entire ballot in the Chinese
12 language so that poll officials will be able to provide a full
13 and accurate translation of any part of the ballot. The county
14 shall develop and implement procedures to assure the bilingual
15 skills of poll officials and the effectiveness of their training.
16 All election-related personnel shall be instructed not to engage
17 in electioneering on election day at the polls, but that minority
18 language voters are entitled to a full, oral translation of the
19 ballot at the polls.

20 5. Each inspector shall complete a short polling place
21 checklist provided by the county, in which they shall confirm the
22 availability and posting of all bilingual materials. A bilingual
23 election official or interpreter shall complete a short form, as
24 attached as Attachment B, provided by the county, in which he or
25 she shall report any requests for additional oral assistance or
26 bilingual materials at their polling place, identify and record

1 each instance in which unreasonable delays occur related to the
2 particular needs of Chinese American voters including Chinese-
3 speaking voters. Where such delays occur, the county shall take
4 appropriate steps, such as providing additional bilingual
5 election-related personnel, materials and voting machines, to
6 avoid such delays in future elections. The voting rights
7 coordinator and Alameda County shall review the polling place
8 checklist early on election day in order to take remedial action
9 and shall review the journals promptly after each election in
10 order to gain information on the effectiveness of the program.

11 I. Records

12 Copies of all materials or records mentioned in this
13 agreement shall be maintained by Alameda County, and shall be
14 available to the public for inspection and copying on the same
15 basis as other public records in Alameda County.

16 J. Adjustments to Program

17 1. It is the goal of Alameda County to provide that the
18 entire election process is equally accessible to Chinese American
19 citizens, and the procedures set forth above are designed to
20 achieve that goal, particularly for Chinese-speaking citizens.
21 Alameda County shall evaluate its programs on an ongoing basis
22 through meetings with the community election liaisons and counsel
23 for the United States.

24 2. The parties shall confer in good faith if any party
25 believes that a particular aspect of the Program has proven
26 ineffective. The parties shall confer at least annually in a

1 good faith effort to improve any aspect of the program which has
 2 proven ineffective, in accordance with the Settlement Agreement
 3 and Order. In the event of changes in Chinese American
 4 population patterns in Alameda County, as indicated in section
 5 E(1), supra, the parties promptly shall confer and develop a
 6 program for meeting fully the language needs of such population.

7 III. CONCLUSION

8 This agreement represents the commitment of the parties
 9 to provide equal voting rights to all citizens of Alameda County,
 10 and the county intends fully and faithfully to implement this
 11 Chinese Language Election Information Program. The parties
 12 recognize that regular and ongoing reassessment of the above
 13 outlined Program by the responsible officials will be necessary
 14 in order to provide Chinese American voters access to all phases
 15 of the political process in Alameda County.

16 The Court shall retain jurisdiction of this case to enter
 17 further relief or such other orders as may be necessary for the
 18 effectuation of the purposes of this Settlement Agreement and
 19 Order and to ensure compliance with Sections 2 and 203 of the
 20 Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth
 21 and Fifteenth Amendments.

22 Entered this JAN 22 1996 day of JAN, 1996.

23 Mary M Schwab
 UNITED STATES CIRCUIT JUDGE

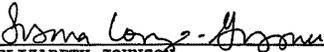
24 [Signature]
 UNITED STATES DISTRICT JUDGE JAN 22 1996

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 UNITED STATES DISTRICT JUDGE

1 Approved as to form and content:

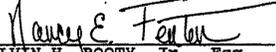
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3 UNITED STATES OF AMERICA

4 DEVAL L. PATRICK
5 Assistant Attorney General

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15 FOR THE DEFENDANTS
16 ALAMEDA COUNTY, ET AL.

17 

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21 Deputy County Counsel
22 County of Alameda
23 1221 Oak Street, Room 463
24 Oakland, California 94612
25 (510) 272-6700
26

ATTACHMENT A

OAKLAND CHINESE COMMUNITY COUNCIL
ASIAN HEALTH SERVICES
CHINESE AMERICAN CITIZENS ALLIANCE
ORGANIZATION OF CHINESE AMERICANS
EAST BAY ASIAN CONSORTIUM
ASIAN LAW CAUCUS
EAST BAY ASIAN DEVELOPMENT CORPORATION
ASIAN COMMUNITY MENTAL HEALTH SERVICES
ASIAN IMMIGRANT WOMEN ADVOCATES
ASIAN LIBRARY
ASIAN NEIGHBORHOOD DESIGN
ASIAN PACIFIC AMERICAN LABOR ALLIANCE
ASIAN PACIFIC ENVIRONMENTAL NETWORK
ASIANS & PACIFIC ISLANDERS FOR REPRODUCTIVE
CAREER RESOURCES DEVELOPMENT CENTER
EAST BAY ASIAN YOUTH CENTER
INTERNATIONAL INSTITUTE OF THE EAST BAY
LEGAL AID SOCIETY OF ALAMEDA COUNTY
LEGAL ASSISTANCE FOR SENIORS
OAKLAND ASSOCIATION OF ASIAN EDUCATORS
ORGANIZATION OF ALAMEDA ASIANS
VIETNAMESE FISHERMAN ASSOC. OF AMERICA
YUK YAO CHILD DEVELOPMENT CTR
BING KONG TONG ASSN
CHINATOWN LIONS CLUB OAKLAND
CONSOLIDATED CHINESE ASSOC
GEE HOW OAK TIN ASSN
KEE YING CHINESE SR CITIZENS CTR
LEE FAMILY BENEVOLENT ASSN.
LOONG KONG TIEN YEE ASSN.
SOO YUEN BENEVOLENT ASSN.
TAIAND LINS FAMILY ASSN.
VETERANS OF FOREIGN WARS
EAST BAY CHINATOWN POST
WA SUNG SERVICE CLUB
WONG FAMILY ASSN.
WA YI FAMILY ASSN.
YING HO BENEVOLENT ASSN.
YING ON BENEVOLENT ASSN.
ALAMEDA IMMANUEL BAPTIST CHURCH
BAY AREA CHINESE BIBLE CHURCH
BERKELEY CHINESE BAPTIST CHURCH
BERKELEY CHINESE COMMUNITY CHURCH
CHINESE CATHOLIC PASTORAL CTR
CHINESE CHRISTIAN CENTER
CHINESE COMMUNITY UNITED METHODIST CHURCH
CHINESE FOR CHRIST BERKELEY CHURCH
CHINESE INDEPENDENT BAPTIST CHURCH
CHINESE PRESBYTERIAN CHURCH
EB CHINESE ALLIANCE CHURCH
EPISCOPAL CHURCH OF OUR SAVIOR
LIGHT BUDDHA TEMPLE
TRINITY EVANGELICAL LUTHERAN CHURCH

ALAMEDA CHINESE SCHOOLS
CHINESE CHRISTIAN SCHOOLS
EB CHINESE SCHOOLS
LINCOLN ELEMENTARY SCHOOL
MILTON SCHOONG CHINESE CULTURAL CENTER
PACIFIC RIM INTERNATIONAL SCHOOL

FILED

MAY 22 1989

(31)

CLERK OF THE DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
BY
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

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UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIV 88-1989 PHX EHC
)	
v.)	
)	
STATE OF ARIZONA,)	CONSENT DECREE
et al.,)	
)	
Defendants.)	

The United States filed its complaint on December 8, 1988, to enforce Sections 2 and 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973 et seq. Section 2 provides, in pertinent part, that: "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color..." Section 4(f)(4) is a special provision of the Act which, as it applies to this case, requires that the defendants provide oral instructions, assistance, or other information relating to registration and voting in the Navajo language.

The plaintiff alleged in its complaint that various election standards, practices, and procedures of the defendants unlawfully deny or abridge the voting rights of Navajo citizens residing in the defendant counties. The challenged practices include alleged

1 discriminatory voter registration, absentee ballot, and voter
2 registration cancellation procedures, and the alleged failure of
3 the defendants to implement, as required by Section 4(f)(4),
4 effective bilingual election procedures, including the effective
5 dissemination of election information in Navajo and providing for
6 a sufficient number of adequately trained bilingual persons to
7 serve as translators for Navajo voters needing assistance at the
8 polls on election day.

9 On January 20, 1989, the defendants¹ served their answer to
10 the complaint. In their answer, the defendants denied that their
11 registration, absentee ballot, registration cancellation, and
12 bilingual election procedures violate the Voting Rights Act. The
13 defendants affirmatively alleged that the plaintiff's failure to
14 fulfill its treaty and trust responsibility to the Navajo tribe
15 is responsible for the alleged poor road conditions, poor mail
16 service, and limited availability of telephones and automobiles
17 on the Navajo Reservation which the plaintiff claimed contributes
18 to the defendants' alleged violations of the Voting Rights Act.
19 The defendants also asserted a counterclaim alleging that the
20 United States has continuously violated various provisions of an
21 1868 treaty between the United States and the Navajo tribe, and
22 that, but for its breach of those treaty obligations, the Navajo
23

24
25 ¹ The defendants include the State of Arizona and the
26 members of the Apache County Board of Supervisors, a majority of
27 whom are Navajo, and the members of the Navajo County Board of
28 Supervisors, two out of five of whom are also Navajo.

1 people would be sufficiently bilingual that this action would be
2 moot.

3 On March 24, 1989, the plaintiff moved to dismiss the
4 defendants' counterclaim. On April 25, 1989, the defendants
5 filed a motion for summary judgment on all of the plaintiff's
6 claims in this action.

7 The parties to this litigation, without in any way
8 derogating from their respective positions as to the merits of
9 the claims asserted, have conferred and agree that it is in the
10 best interest of all the parties that the controversy should be
11 settled without the necessity and extraordinary expense of a
12 trial. Accordingly, the plaintiff and the defendants have agreed
13 to the entry of this Consent Decree, which resolves the
14 plaintiff's claims, and ensures that the defendants' election
15 practices and procedures provide Navajo citizens with an equal
16 opportunity to participate effectively in the electoral process.
17 For purposes of this litigation only, the parties further agree
18 that, upon entry of a final order implementing the Consent Decree
19 as provided in paragraph 2 below, the defendants' counterclaim,
20 the plaintiff's motion to dismiss the counterclaim, and the
21 defendants' motion for summary judgment will become moot. In the
22 interim, the parties have requested that all further responses to
23 the pending motions and responses to pending discovery be stayed.

24 Entry of this Decree shall not be construed as evidence of a
25 violation of the Voting Rights Act in any future litigation.
26 This Decree shall not constitute an adjudication or admission by

1 the defendants of any violation of the Voting Rights Act or the
2 Attorney General's regulations implementing that Act, or an
3 adjudication or admission by the plaintiff of any violation of
4 the Treaty of 1868 or any other treaty or trust obligation to the
5 Navajo tribe. The parties also waive any findings of fact and
6 conclusions of law on all of the issues raised by the plaintiff's
7 complaint.

8 This Court has jurisdiction over the parties and the subject
9 matter of the plaintiff's complaint. This Decree is final and
10 binding between the parties and their successors regarding the
11 facts, claims, and issues raised in or underlying the plaintiff's
12 complaint and resolved herein.

13 ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
14 FOLLOWS:

15 1. The counties have adopted, and the State of Arizona has
16 agreed to subscribe to, the following Navajo Language Election
17 Information Program which the Court hereby provisionally
18 approves, as set forth below.

19 2. Within thirty (30) days of the entry of this Decree, the
20 defendants will submit this program to the Attorney General of
21 the United States for review pursuant to the requirements of
22 Section 5 of the Voting Rights Act, 42 U.S.C. §1973c. If the
23 requisite Section 5 preclearance is obtained, the parties will
24 promptly notify this Court of such preclearance and the Court
25 will enter an Order granting final approval to this Consent
26 Decree. Upon entry of such Order, the defendants will forthwith

1 begin to implement the Navajo Language Election Information
2 Program to which they have agreed in this Decree.

3 3. All further proceedings in this action are hereby stayed
4 pending the Attorney General's preclearance determination. If
5 the requisite Section 5 preclearance is not obtained, this
6 Consent Decree will be withdrawn and the parties will proceed to
7 prepare for trial. The Court will thereafter enter an Order
8 governing responses to all pending motions and discovery.

9
10 I. THE NAVAJO LANGUAGE ELECTION INFORMATION PROGRAM

11 A. Introduction.

12 1. The purpose of the Navajo Language Election Information
13 Program is to ensure the dissemination of election-related
14 information to the Navajo language speaking populations of the
15 counties. This program is intended to be an effort to deal with
16 the deficiencies or to build on the successful programs that are
17 already in place in said counties and to provide a structure by
18 which a developing and improving program may be implemented in
19 the future. In developing this program, the parties sought and
20 obtained the assistance of the Navajo Elections Administration,
21 the agency of the Navajo Nation that is responsible for
22 conducting tribal elections on the Reservation.

23 2. It is the intent of the state and the counties to
24 provide full and complete information as to all election-related
25 matters including, but not limited to, registration, election
26 dates, candidate information, proposition information, absentee

1 voting information, and registration cancellation and
2 reinstatement information. Most of all, this program is intended
3 to improve the understanding of the electoral process among the
4 Navajo populations of the counties and to ensure an equal
5 opportunity to participate in the electoral process.

6 B. Elections Outreach Workers.

7 1. The counties will each employ at least two full time,
8 bilingual², permanent elections outreach workers who will be
9 appointed as deputy registrars for purposes of voter
10 registration. The board of supervisors and recorder's office of
11 the counties, through and with the active advice and
12 recommendations of the election outreach workers, will be
13 responsible for the development and implementation of the Navajo
14 Language Election Information Program. The elections outreach
15 workers will be trained and qualified in election procedures
16 through the state's certification program and through county
17 programs. They will visit on a regular basis each precinct which
18 includes any part of the Navajo Reservation and chapter houses
19 within those precincts. The counties will maintain a record of
20 the date and purpose of each election-related visit by the
21 outreach worker or other county personnel to any location on the
22 Navajo Reservation or off the reservation if it is related to the
23 Navajo Language Election Information Program.

24
25
26 ² Bilingual, as used herein, means fluent in the Navajo and
English languages.

1 2. The counties, by and through the elections outreach
2 workers and other staff, will conduct the training of all deputy
3 registrars and election board officials, including the training
4 of translators and other election-related personnel who will
5 participate in the Navajo Language Election Information Program.
6 The Navajo Elections Administration will be notified reasonably
7 in advance of each scheduled training session and invited to send
8 representatives to attend said training. Such representatives
9 will be invited to make suggestions to county training officials
10 as to appropriate training measures or how to improve the
11 training measures, and all training sessions will be open to the
12 public.

13 C. Voter Registration and the Appointment and Training of
14 Deputy Registrars.

15 1. The counties will seek to increase voter registration
16 information and opportunities for Navajo citizens by increasing
17 both the number and practical availability of Navajo-speaking
18 deputy registrars. The counties will request Navajo chapter and
19 Navajo tribal officials and staff to become deputy registrars;
20 request assistance from the Navajo Elections Administration in
21 identifying potential deputy registrars; and, subject to state
22 and tribal law, seek to coordinate state voter registration with
23 tribal voter registration through, among other things, reciprocal
24 deputation of registrars for state and tribal elections;
25 inviting school personnel, including each high school principal
26 and each community liaison specialist, to become deputy
27 registrars; and encouraging political parties recognized under
28

1 Arizona Law to recommend additional deputy registrars for
2 reservation precincts.

3 2. The counties will deputize and train all qualified
4 persons who desire to serve as deputy registrars and will attempt
5 to do informal testing throughout their training to ensure the
6 effectiveness of the sessions, but will not conduct any formal
7 oral or written testing. A list identifying the names, addresses
8 and telephone numbers (if available) of all deputy registrars on
9 the reservation will be delivered to each chapter house and other
10 public locations on the reservation with an explanation of the
11 purpose and functions of the deputy registrar and will be
12 accompanied by a request that the list of deputy registrars be
13 permanently posted at the chapter houses and other public
14 locations on the reservation.

15 3. The counties will take all reasonable steps in an
16 attempt to appoint and train as deputy registrars at least three
17 persons who are fluent in English and Navajo in each county
18 precinct situated entirely or in part on the Navajo Reservation.
19 The counties will attempt to appoint and train an additional
20 bilingual deputy registrar as such appointments appear necessary
21 in the larger precincts. Tribal chapter managers and other full
22 time chapter employees and staff of each tribal chapter will be
23 requested to serve as deputy registrars if qualified under state
24 law and will be requested to be available to register voters at
25 pre-determined regular locations during regular business hours.
26 They will also be requested to attend tribal chapter meetings and

1 register voters at those locations and at any other opportunities
2 where there is a gathering of Navajo citizens. All deputy
3 registrars will also be requested to be present outside the polls
4 on election day to register voters who are found not to be
5 registered at that time. Such registrars will not interfere in
6 any way with the polling process nor shall they be present within
7 the polling place. Deputy registrars will be provided with
8 current voter registration lists and detailed precinct maps as
9 required for their particular areas at the time they receive
10 their training, and after such training they will be provided
11 periodically with updated precinct maps and voter registration
12 lists. For Navajo tribal chapters that include portions of both
13 Navajo County and Apache County, the chapter managers or other
14 designated persons who are residents of either county will be
15 appointed, if they are willing, as special deputy recorders
16 solely for the purpose of registering voters in both counties as
17 authorized by A.R.S. §16-132(F).

18 4. Within thirty days of their agreement to serve, deputy
19 registrars will be appointed and trained at convenient sites and
20 times on the Navajo Reservation and will be given such additional
21 training as from time to time may appear necessary or may be
22 requested.

23 5. Training will also be provided to deputy registrars
24 about all phases of the election process, including voter
25 registration, candidate qualification procedures and deadlines,
26 election day activities in general, the pertinent differences

1 between state and tribal election regulations and procedures, the
2 voter registration cancellation and reinstatement process, and
3 absentee voting processes. Deputy registrars will be requested
4 but not required to undergo such additional training.

5 6. The training of all deputy registrars will be conducted
6 in Navajo and/or English as requested by the deputy registrars
7 present except that the deputy registrars will be trained in the
8 Navajo translation of all voter registration materials including
9 voter registration cancellation and reinstatement procedures.
10 The deputy registrars will be trained using appropriate audio
11 visual materials and/or graphics such as audio tapes, slide
12 presentations and/or video tapes, along with posters or graphics
13 of other kinds in order to facilitate their training. The
14 training material will be based on a current registrar training
15 manual approved by the county recorder's office.

16 7. Telephone inquiries from these deputy registrars to
17 county offices respecting election-related matters will be
18 considered official government business, and the telephone
19 charges may be reversed.

20 8. The counties will adopt recognition programs for deputy
21 registrars to encourage registration activity.

22 9. The county recorder's office will conduct periodic voter
23 registration drives at chapter houses determined by the counties
24 and at meetings that include areas that cover more than one
25 chapter. Such registration drives will be advertised in advance
26 and also include registration drives conducted at fairs, rodeos,

1 supermarkets and other gatherings of a significant population on
2 the Navajo Reservation.

3 10. The translation of any materials necessary for the
4 training of deputy registrars or election poll workers will be
5 done by county personnel and approved by the county board of
6 supervisors.

7 11. Any audio tape or video tape translations of election
8 materials or explanations in the Navajo language of election
9 procedures (such as voter registration, registration cancellation
10 and reinstatement procedures, absentee voting, sample ballots,
11 and ballot propositions) will be prepared by personnel of the
12 counties or state personnel in consultation with the Navajo
13 Elections Administration. Any unresolvable disputes as to the
14 accuracy of a given translation will be resolved by a mutually
15 agreed upon third party.

16 D. Dissemination of Election-Related Information.

17 1. The counties will inform and provide reasonable notice
18 to the Navajo Elections Administration of their planned
19 publicity, election related-announcements, materials, and other
20 election information. The Navajo Elections Administration will
21 also be requested to disseminate all such information through
22 public service announcements on the radio stations that broadcast
23 on the Navajo Reservation.

24 2. The counties, with the advice and recommendations of the
25 outreach workers, will plan and publicize meetings at chapter
26 houses or other sites convenient to voters on the reservation

1 that may cover more than one chapter at which an outreach worker
2 will make an oral presentation in Navajo with appropriate audio
3 visual aids to be held at the following four times:

4 a. Between January 1 and April 1 following each general
5 election to explain the voter registration cancellation and
reinstatement process.

6 b. Prior to the deadline for filing candidacy petitions for
7 the primary election to explain voter registration
procedures, including registration cutoff dates, and
candidate qualification procedures.

8 c. After the primary election sample ballot is finalized
9 and by the Friday before the primary election.

10 d. After the general election sample ballot is finalized
and by the Friday before the general election.

11 The meetings will be planned to cover all areas of the Navajo
12 Reservation in each county.

13 3. The counties, through the elections outreach workers,
14 will request of each tribal chapter serving any portion of the
15 Navajo population in each county that the elections outreach
16 workers be permitted to make announcements at appropriate chapter
17 and other meetings referred to above. At such meetings, the
18 elections outreach workers, if permitted, will explain election
19 materials or election-related announcements orally in Navajo
20 and/or through the use of appropriate audio visual materials such
21 as graphics, slides, or posters. This information, both oral and
22 in the graphic form, will also be made available in any areas
23 containing Navajo population concentrations off the reservation,
24 including Winslow and Holbrook in Navajo County, Sanders in
25 Apache County, and any other areas of Navajo population

1 concentrations identified by the counties in consultation with
2 the Navajo Elections Administration.

3 4. Audio tapes will be prepared by the appropriate
4 governmental entity to identify briefly the nature and
5 significance of each referendum, proposed constitutional
6 amendment, or ballot proposition to be decided. Such tapes will
7 be provided to each chapter house as soon as possible after the
8 information is available and as long as possible before the time
9 of the election so that the chapter officials may review the
10 information contained therein and provide such announcements or
11 training sessions regarding the content thereof as they deem
12 appropriate. Such tapes need not be used for general
13 broadcasting to the public. Preparation and distribution of
14 these tapes will fulfill the state's obligation to translate and
15 disseminate the publicity pamphlet orally in Navajo.

16 5. The counties will establish booths or displays at tribal
17 fairs, functions, shopping centers, and other locations to be
18 identified in consultation with the Navajo Elections
19 Administration. Such booths or displays will be staffed by
20 election outreach workers when it will further assist the
21 dissemination of election information to Navajo citizens.

22 6. Radio announcements in the Navajo language and English
23 language newspaper announcements will be made of the election
24 information identified in paragraphs D-6a through D-6d below.
25 Radio announcements in Navajo County will be conducted over KTNB
26 (Window Rock) and KAFF (Flagstaff). Radio announcements in

1 Apache County will be over KTNN (Window Rock), and over KNDN
2 (Farmington) or an alternate radio station selected by the county
3 to reach the greatest number of Navajo voters in the county.
4 Public service announcements of the same information identified
5 below will be provided as frequently as possible over other radio
6 stations in coordination with and through the Navajo Elections
7 Administration.

8 a. Deadlines for state voter registration, with
9 explanations of any different deadlines for participation in
10 state and federal elections and identification of regularly
11 available registration sites in each chapter house or other
12 location on the reservation. Radio announcements of such
13 information will be made twice a day during the four weeks
14 preceding the state and federal registration deadlines for
15 each primary, general, and special election.

16 b. Procedures and deadlines for becoming a candidate.
17 Radio announcements of such information will be made twice a
18 day during the two week periods preceding the opening and
19 closing of each candidate filing period for the primary
20 election and general election and on a semi-weekly basis
21 between those dates.

22 c. Dates of primary elections, general elections, and
23 special elections, a list of the offices to be elected, and
24 the availability of trained translators at the polls and the
25 rights of each voter who requires assistance in casting a
26 ballot to be assisted by a person of his or her choice in
27 accordance with state and federal law. Radio announcements
28 of such information will be made semi-weekly during the six
week period prior to each primary, general, and special
election.

d. Each of the announcements referred to in paragraphs D-6a
through D-6c will be published in English on a weekly basis
in the Navajo Times and in the Gallup Independent during the
publicity periods described above, and English language
signs with appropriate graphics will be distributed to each
chapter house and other public locations on the reservation
with a specific request that the graphics be permanently
posted at the beginning of each publicity period and remain
posted during the relevant period. Such requests shall
emphasize the importance of these announcements to the
Navajo voters.

1 sufficiently, and shall take such additional steps as are
2 reasonably necessary to cure such deficiencies.

3 E. Absentee Voting.

4 1. The counties will supply absentee ballot request forms
5 including forms which may be used to request special election
6 boards pursuant to A.R.S. §16-549 to all deputy registrars,
7 chapter managers, state and county offices on the reservation, as
8 well as to the Navajo Elections Administration.

9 2. Colored posters explaining the procedures for absentee
10 voting, including the standards of eligibility for voting
11 absentee, the availability of absentee ballot request forms at
12 tribal chapter houses, and the availability of persons to
13 translate the ballot will be provided to each chapter house and
14 any other public facility on the reservation within the counties,
15 accompanied by a request that the posters be prominently
16 displayed at such facility. Such request will emphasize the
17 importance of the announcements to the Navajo voters. Such
18 announcements will also be made either live in the Navajo
19 language by the outreach workers or by Navajo language tapes
20 prepared by the counties in consultation with the Navajo
21 Elections Administration over the radio stations identified in
22 paragraph D-6 and through public service announcements twice a
23 day during the two week periods preceding the opening and closing
24 of absentee voting, and semi-weekly between those dates.

25 3. As previously indicated, the outreach workers will
26 provide absentee ballot request forms and information and

1 encourage absentee voting, and will inform prospective absentee
2 voters that Navajo language translations of the ballot are
3 available upon request.

4 F. Election Day Procedures.

5 1. The counties will take all reasonable steps to ensure
6 that an adequate number of effectively trained precinct election
7 board officials fluent in Navajo and English are present at the
8 polls on election day for each precinct in which five percent or
9 more of the total population is Navajo. The counties will invite
10 the Navajo Elections Administration and tribal chapter officials
11 to identify bilingual individuals who are qualified under state
12 law to serve as precinct election board officials and willing to
13 work at the polls.

14 a. Navajo County.

15 In addition to the number of precinct election board
16 officials required at each polling place by state law during each
17 election, Navajo County, in accordance with its present policy,
18 will take all reasonable steps in an attempt to ensure that at
19 least two bilingual translators are present or available at each
20 polling place serving a portion of the Navajo Reservation to
21 further assist Navajo speaking voters. Two poll workers will be
22 fully trained as alternate translators at each polling place.

23 b. Apache County.

24 The county will train all bilingual precinct election board
25 officials to provide Navajo language translations of the ballot
26 and will assign at least two such officials to provide

1 translation services to Navajo speaking voters. The county will
2 use precinct registration lists as well as turnout in prior
3 elections to determine whether additional election board workers
4 are necessary beyond the minimum number required by state law.

5 c. Nothing contained herein shall preclude either county
6 from adopting and implementing in accordance with Section 5 of
7 the Voting Rights Act the policy of the other regarding the
8 assignment of translators to the polls on election day.

9 2. Poll officials and other county employees will monitor
10 the polls during the course of the election to identify and
11 record each instance in which unreasonable delays in voting or
12 translation of the ballot occur. Where such delays occur, the
13 counties will take steps, such as establishing additional voting
14 booths, as are reasonably necessary to ensure that such delays do
15 not recur in future elections.

16 3. The precinct election board officials and translators
17 will be trained in Navajo and/or English as requested by the
18 officials or translators to ensure that they understand polling
19 place procedures, the contents of the ballot, and voter
20 registration cancellation procedures. Training in translating
21 the ballot language will be in Navajo and such training will
22 include the use of appropriate audio visual materials including
23 audio and/or video tapes and graphics. Training sessions shall
24 be followed by oral testing in Navajo to ensure their
25 effectiveness.

1 radio stations identified in paragraph D-6 and through the public
2 service announcements specified therein. Such announcements are
3 to be broadcast three times a day beginning January 20 and
4 continuing through January 30, on a daily basis continuing
5 through February 20, and thereafter twice a week through the
6 close of the registration cancellation and reinstatement period
7 on April 1. From January 20 through the close of the
8 registration cancellation and reinstatement period, a similar
9 announcement will be published weekly in English in the Navajo
10 Times and in the Gallup Independent and will be provided in
11 colored poster or graphic form to each chapter house and other
12 public location on the Navajo reservation with a request that the
13 posters be prominently posted at such locations. Such request
14 will emphasize the importance of the posters to Navajo voters.
15 Such information will also be disseminated at meetings identified
16 in paragraph D-2 above and at other locations deemed to be
17 effective by the election outreach workers and shall be
18 disseminated in a timely manner.

19 3. The counties will develop a program in coordination with
20 the Navajo Elections Administration, other counties with Navajo
21 populations, and with the state, to provide colored postcards
22 indicating the voter's registration has been cancelled so that
23 the voter may realize by the color of the postcard received that
24 he or she must return the postcard or reregister in order to
25 participate in the next election.

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2 **H. Records and Reports.**

3 1. The state and counties will maintain copies of all
4 tapes, graphics, and other materials provided for voter
5 information purposes pursuant to this program along with records
6 of how those materials were used and on what dates, and the
7 locations and dates of all training sessions held pursuant to
8 this program. In addition, the counties will maintain
9 statistical records including but not limited to:

10 a. Voter Registration

- 11 -- Voter registration for each precinct
12 on a quarterly basis as specified by the
13 schedule set forth in A.R.S. §16-168
14 (G).
15 -- Number of voters registered during each quarter
16 by precinct, as specified by the schedule set
17 forth in A.R.S. §16-168 (G).
18 -- Number of voters by precinct who are registered at
19 voter registration drives conducted pursuant to
20 this program.

21 b. Voter Registration Cancellation

- 22 -- Number of voters whose registration was cancelled
23 for failure to vote by precinct.
24 -- Number of voters retained due to possession of a
25 current drivers license by precinct.
26 -- Number of voters reinstated by returning prepaid
27 post cards by precinct.
28 -- Number of voters registered during the
 registration cancellation period (January 1-
 April 1) by precinct.

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c. Absentee Voting

- Number of requests for absentee ballots per precinct, with a breakdown of the number of requests received through the mail and the number received through deputy registrars pursuant to the provisions of this agreement, the total number of absentee ballot requests made in person at the county recorder's office, and the total number of absentee votes cast per precinct.
- Number of absentee ballots cast per precinct before special election boards.
- Number of absentee ballots cast per precinct in person at the county courthouse.
- Number of absentee ballots cast per precinct by mail.

d. Publicity

- Records of all paid radio announcements and public service announcements as those records may be available and of newspaper publications and posters of election-related information pursuant to this program.

2. The state and counties will maintain such other records as may be appropriate to permit review of the effectiveness of the program and to assist the state and counties in further developing the effectiveness of this program. Such records shall be available to the public upon request. Copies of any or all such records shall be forwarded to the United States upon request.

3. On June 1 of each year the counties or each of them will send to the United States a report showing by precinct the

1 following: (a) the number of registered voters; (b) the number of
2 voters who registered during the preceding year; (c) the number
3 of voters whose registration was cancelled for failure to vote in
4 the last general election; (d) the number of voters retained due
5 to possession of a current drivers license; (e) the number of
6 voters who were reinstated because they returned the postcard
7 notice during the registration cancellation period; (f) the
8 number of absentee ballots cast in each election; and (g) a brief
9 explanation of any contemplated modifications or changes to the
10 Navajo Language Election Information Program. Because of the
11 detailed nature of this Consent Decree, the data included in the
12 report are not intended to be the measure of compliance with this
13 Consent Decree.

14 I. Adjustments to the Program.

15 1. The state and counties will have the authority to
16 eliminate or modify any aspect of this program if shown to be
17 unproductive or inefficient in furthering the goals of the
18 program, subject to the preclearance requirements of Section 5 of
19 the Voting Rights Act, 42 U.S.C. §1973c.

20 II. RETENTION OF JURISDICTION AND COSTS

21 It is the intention of the parties that this Decree
22 constitute a complete and full resolution of all claims made in
23 this case. Accordingly, the parties adopt the following
24 provisions relating to termination of this Decree and continuing
25 Court supervision hereunder:

1 1. This Court shall retain jurisdiction to enter such
2 further relief or other orders as may be necessary to effectuate
3 the terms of this Decree.

4 2. The United States agrees, for a period of four years, not
5 to seek any further or additional relief with respect to the
6 Navajo Language Election Information Program prescribed herein
7 for Apache and Navajo counties. It is contemplated by the
8 parties that this four year period will be used to implement
9 fully the bilingual election program set out in this Decree, and
10 to make adjustments to that program as necessary in accordance
11 with the provisions of paragraph I-1 above. At the end of such
12 four year period, the United States will have 120 days within
13 which to advise the Court whether, for good cause shown, this
14 Decree or any of its provisions should remain in effect for an
15 additional period of not more than two years. Absent such a
16 showing by the United States, this Decree will then be terminated
17 and the case will be dismissed.

18 3. Nothing contained herein shall preclude any party from
19 moving to modify any provision of this Decree pursuant to the
20 provisions of Fed. R. Civ. P. 60(b), nor is any provision of this
21 Decree intended to limit this Court's enforcement authority in
22 any future proceedings between the parties.

23 4. The parties agree to bear their own costs and attorneys
24 fees in this litigation.

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Entered this 20 day of May, 1989

Earl H. Lewis

UNITED STATES DISTRICT JUDGE

Approved as to form
and content:

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIV 88-1989 PHX EHC
)	
v.)	
)	
STATE OF ARIZONA,)	
et al.,)	
)	
Defendants.)	

FIRST AMENDED CONSENT DECREE

The United States filed its complaint on December 8, 1988, to enforce Sections 2 and 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. {1973 et seq. Section 2 provides, in pertinent part, that: "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color...."

Section 4(f)(4) is a special provision of the Act which, as it applies to this case, requires that the defendants provide oral instructions, assistance, or other information relating to registration and voting in the Navajo language.

On January 20, 1989, the defendants served their answer to the complaint and also asserted a counterclaim. The parties to this litigation, without in any way derogating from their

1 respective positions as to the merits of the claims asserted,
2 then conferred and agreed that it was in the best interest of all
3 the parties that the controversy should be settled without the
4 necessity and extraordinary expense of a trial. Accordingly, the
5 plaintiff and the defendants agreed to the entry of a Consent
6 Decree, which resolves the plaintiff's claims, and ensures that
7 the defendants' election practices and procedures provide Navajo
8 citizens with an equal opportunity to participate effectively in
9 the electoral process.

10 On May 22, 1989, a Consent Decree was entered establishing
11 the Navajo Language Election Information Program.

12 After a review of the implementation by Apache and Navajo
13 Counties and the State of Arizona of the Consent Decree and an
14 evaluation of the effectiveness of its provisions, the parties
15 have conferred and agree that it is in the best interest of the
16 parties to agree to the entry of this First Amended Consent
17 Decree which provides for the continuation and modification of
18 the bilingual election program to ensure that the election
19 process is fully and effectively accessible to Navajo citizens.

20 Entry of this First Amended Consent Decree shall not be
21 construed as evidence of a violation of the Voting Rights Act in
22 any future litigation. This decree shall not constitute an
23 adjudication or admission by the defendants of any violation of
24 the Voting Rights Act or the Attorney General's regulations
25 implementing that Act.

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1 This Court has jurisdiction over the parties and the subject
2 matter of the plaintiff's complaint. This Decree is final and
3 binding between the parties and their successors regarding the
4 facts, claims, and issues raised in or underlying the plaintiff's
5 complaint and resolved herein.

6 ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS
7 FOLLOWS:

8 1. The counties have adopted, and the State of Arizona has
9 agreed to subscribe to, the following Navajo Language Election
10 Information Program which the Court hereby provisionally
11 approves, as set forth below.

12 2. Within thirty (30) days of the entry of this First
13 Amended Consent Decree, the defendants will submit the changes in
14 this program to the Attorney General of the United States for
15 review pursuant to the requirements of Section 5 of the Voting
16 Rights Act, 42 U.S.C. {1973c. If the requisite Section 5
17 preclearance is obtained, the parties will promptly notify this
18 Court of such preclearance and the Court will enter an Order
19 granting final approval to this First Amended Consent Decree.
20 Upon entry of such Order, the defendants will amend the ongoing
21 Navajo Language Election Information Program by implementing the
22 changes to which they have agreed in this Decree. This First
23 Amended Consent Decree will then be in effect for the prescribed
24 period of two more years.

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1 I. THE NAVAJO LANGUAGE ELECTION INFORMATION PROGRAM
2 A. Introduction.
3 1. The purpose of the Navajo Language Election Information
4 Program is to ensure the dissemination of election-related
5 information to the Navajo language speaking populations of the
6 counties. This program is intended to be an effort to deal with
7 the deficiencies or to build on the successful programs that are
8 already in place in said counties and to provide a structure by
9 which this program may continue to develop and improve in the
10 future. In developing this program, the parties sought and
11 obtained the assistance of the Navajo Elections Administration,
12 the agency of the Navajo Nation that is responsible for
13 conducting tribal elections on the Navajo Reservation.
14 2. It is the intent of the state and the counties to
15 provide full and complete information as to all election-related
16 matters including, but not limited to, registration, election
17 dates, candidacy information, proposition information, absentee
18 voting information, and registration verification information.
19 Most of all, this program is intended to improve the
20 understanding of the electoral process among the Navajo
21 populations of the counties and to ensure an equal opportunity to
22 participate in the electoral process.
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1 B. Elections Outreach Workers.

2 1. The counties will each employ at least two full time,
3 bilingual¹, permanent elections outreach workers who will be
4 appointed as deputy registrars for purposes of voter
5 registration. The board of supervisors and recorder's office of
6 the counties, through and with the active advice and
7 recommendations of the election outreach workers, will be
8 responsible for the development and implementation of the Navajo
9 Language Election Information Program. The elections outreach
10 workers will be trained and qualified in election procedures
11 through the state's certification program. The recorder's office
12 and the elections director will coordinate their implementation
13 of this election program and the outreach workers will be cross-
14 trained by each office. During both election years and off-
15 election years, the outreach workers will visit on a regular
16 basis each precinct which includes any part of the Navajo
17 Reservation and chapter houses within those precincts to provide
18 election information in the Navajo language. The counties will
19 continue to maintain a record of the date and purpose of each
20 election-related visit by the outreach worker or other county
21 personnel to any location on the Navajo Reservation or off the
22 reservation if it is related to the Navajo Language Election
23 Information Program.
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26 _____
27 ¹ Bilingual, as used herein, means fluent in the Navajo and
English languages.

1 2. The counties, by and through the elections outreach
2 workers and other staff, will conduct the training of all deputy
3 registrars and precinct election board officials, including the
4 training of translators and other election-related personnel who
5 will participate in the Navajo Language Election Information
6 Program. The Navajo Elections Administration will be sent a
7 schedule which shall give ten days advance notice of each
8 regularly scheduled poll worker and translator training session.
9 The Navajo Elections Administration may send representatives to
10 attend said training. Such representatives may make suggestions
11 that comply with applicable election laws to county training
12 officials as to appropriate training measures or how to improve
13 the training measures. All training sessions will be open to the
14 public. The Navajo Elections Administration will be notified
15 promptly of any necessary makeup or additional training sessions.

16 3. Each county will maintain two satellite offices on the
17 Navajo Reservation which shall be available as necessary for the
18 outreach workers. Such offices may be in county district offices
19 or in Justice of the Peace offices, or the counties may arrange
20 to share space with other offices. The satellite offices shall
21 be available as necessary during office hours for the outreach
22 workers and serve as a distribution point for disseminating
23 election information. Any information and audio-visual materials
24 required to be disseminated pursuant to this Decree shall be
25 available at the satellite offices. A county employee, trained
26 in election procedures and appointed as a deputy registrar, shall
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1 be available at one satellite office in each county during
2 regular office hours on work days. The counties shall advertise
3 the dates and times when an outreach worker or other county
4 employee trained in election procedures will be available at the
5 second satellite office in each county.

6 C. Voter Registration and the Appointment and Training of
7 Deputy Registrars.

8 1. The counties will seek to increase voter registration
9 information and opportunities for Navajo citizens by increasing
10 both the number and practical availability of Navajo-speaking
11 deputy registrars. The counties will request Navajo chapter and
12 Navajo tribal officials and staff to become deputy registrars;
13 request assistance from the Navajo Elections Administration in
14 identifying potential deputy registrars; and, subject to state
15 and tribal law, seek to coordinate state voter registration with
16 tribal voter registration through, among other things, reciprocal
17 deputization of registrars for state and tribal elections;
18 inviting school personnel, including each high school principal
19 and each community liaison specialist, to become deputy
20 registrars; and encouraging political parties recognized under
21 Arizona law to recommend additional deputy registrars for
22 reservation precincts.

23 2. The counties will deputize and train all qualified
24 persons who desire to serve as deputy registrars and will attempt
25 to do informal testing throughout their training to ensure the
26 effectiveness of the sessions. A list identifying the names,
27 addresses and telephone numbers (if available) of all deputy
28

1 registrars on the reservation will be delivered to each chapter
2 house, satellite office and other public locations on the
3 reservation with an explanation of the purpose and functions of
4 the deputy registrar and will be accompanied by a request that a
5 poster listing the deputy registrars residing in the precincts
6 located in the area of the chapter house be permanently posted at
7 the chapter house and other public locations on the reservation.

8 3. The counties will take all reasonable steps in an
9 attempt to appoint and train as deputy registrars at least three
10 persons who are fluent in English and Navajo in each county
11 precinct situated entirely or in part on the Navajo Reservation.
12 The counties will attempt to appoint and train additional
13 bilingual deputy registrars as such appointments appear necessary
14 in the larger precincts. Tribal chapter community service
15 coordinators and other full time chapter employees and staff of
16 each tribal chapter will be offered the opportunity to serve as
17 deputy registrars if qualified under state law and will be
18 requested to be available to assist in the registration of voters
19 at pre-determined regular locations during regular business
20 hours. They will also be requested to attend tribal chapter
21 meetings and assist in the registration of voters at those
22 locations and at any other opportunities where there is a
23 gathering of Navajo citizens, including, but not exclusively,
24 Navajo tribal voter registration drives. Deputy registrars will
25 be provided with current voter registration lists, including the
26 list of inactive voters, and detailed precinct maps as required
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1 for their particular areas at the time they receive their
2 training, and after such training they will be provided
3 periodically with updated precinct maps and voter registration
4 lists. For Navajo tribal chapters that include portions of both
5 Navajo County and Apache County, the chapter community service
6 coordinators or other designated persons who are residents of
7 either county will be appointed by the appropriate county
8 recorder pursuant to A.R.S. { 16-131(D), if they are willing, as
9 deputy registrars for the purpose of assisting in the
10 distribution of registration forms and in the registration of
11 voters in both counties and to accept completed registration
12 forms for return to the appropriate county recorder pursuant to
13 A.R.S. { 16-134(B).

14 4. Within thirty days of their agreement to serve, deputy
15 registrars will be appointed and trained at convenient sites and
16 times on the Navajo Reservation and will be given such additional
17 training as from time to time may appear necessary or may be
18 requested.

19 5. Deputy registrars will be requested but not required to
20 undergo additional training about all phases of the election
21 process, including voter registration; candidate qualification
22 procedures and deadlines; election day activities in general; the
23 pertinent differences between state and tribal election
24 regulations and procedures, with the assistance of the Navajo
25 Elections Administration; the voter registration verification
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1 notice, inactive list, reinstatement and cancellation process;
2 and the absentee voting process.

3 6. The training of all deputy registrars will be conducted
4 in Navajo and/or English as requested by the deputy registrars
5 present except that the deputy registrars will be trained in the
6 Navajo translation of all voter registration and absentee voting
7 materials. The training of deputy registrars will utilize
8 appropriate audio visual materials and/or graphics such as audio
9 tapes, slide presentations and/or video tapes, along with posters
10 or graphics of other kinds in order to facilitate their training.
11 The training material will be based on a current registrar
12 training manual approved by the county recorder's office.

13 7. Telephone inquiries to county offices respecting
14 election-related matters will be considered official government
15 business, and the telephone charges may be reversed.

16 8. The counties will adopt recognition programs for deputy
17 registrars to encourage registration activity.

18 9. The county recorder's office will conduct periodic
19 voter registration drives at chapter houses determined by the
20 counties and at meetings that include areas that cover more than
21 one chapter. Such registration drives will be advertised in
22 advance, with notice given to the Navajo Elections
23 Administration, and also include registration drives conducted at
24 fairs, rodeos, supermarkets and other gatherings of a significant
25 population on the Navajo Reservation.
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1 D. Translations

2 1. Any audio tape or video tape translations of election
3 materials or explanations in the Navajo language of election
4 procedures (such as voter registration; deputy registrar
5 training; the registration verification notice, inactive list,
6 reinstatement and cancellation process; absentee voting; sample
7 ballots; and ballot propositions) will be prepared by personnel
8 of the counties, state personnel, or by a qualified person
9 contracted with for that purpose, after consultation with the
10 Navajo Elections Administration. Any unresolvable disputes as to
11 the accuracy of a given translation will be resolved by a
12 mutually agreed upon third party; notice of such disputes and/or
13 their resolution shall be provided to the United States.

14 Translations shall be available for review prior to public
15 dissemination; however, where a dispute cannot be resolved in a
16 timely fashion or where, after a timely request for consultation
17 has been made, no comments from the Navajo Elections
18 Administration have been received by the defendants, the
19 preparation and dissemination of time-sensitive materials shall
20 not be delayed.

21 2. The State of Arizona shall coordinate the development of
22 a joint translations committee to develop an English/Navajo
23 language glossary of election terms. The joint translations
24 committee shall be comprised of five members appointed as
25 follows: one by the Arizona Secretary of State, one by Apache
26 County, one by Navajo County, one by the Navajo Board of Election
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1 Supervisors and the Navajo Elections Administration, one by the
2 Navajo Nation Council. Additional members may be appointed as
3 follows: one by any of the other Navajo Reservation counties in
4 Arizona, Utah or New Mexico that wish to participate. The joint
5 translations committee shall meet as soon as possible to review
6 all work that has already occurred on a proposed glossary by an
7 ad hoc committee comprised of outreach workers, NEA officials and
8 other interested parties. The committee shall work with those
9 who have been involved with the proposed glossary to finalize it.
10 This joint committee may also be used to review translations of
11 election material, such as the state publicity pamphlet.

12 3. The translation and review of any election-related
13 material shall be completed promptly. Preparation of
14 translations shall begin as soon as the English language text for
15 an item is determined. Whenever possible, tapes should be
16 available before the date that English language announcements or
17 other publications are made available to the public.

18 E. Dissemination of Election-Related Information.

19 1. The counties will inform and provide reasonable notice
20 to the Navajo Elections Administration of their planned
21 publicity, election-related announcements and materials, and
22 other election information. The Navajo Elections Administration
23 will also be requested to disseminate all such information
24 through public service announcements on the radio stations that
25 broadcast on the Navajo Reservation.
26

1 2. The counties, with the advice and recommendations of
2 the outreach workers, will plan and publicize meetings at chapter
3 houses or other sites convenient to voters on the reservation
4 that may cover more than one chapter at which an outreach worker
5 will make an oral presentation in Navajo with appropriate audio-
6 visual aids to be held at the following four times:

7 a. Between April 1 and July 1 prior to each general
8 election in presidential election years to explain the
9 process for voter registration verification notices,
10 inactive voter lists, reinstatement and cancellation.

11 b. Prior to the deadline for filing candidacy petitions
12 for the primary election to explain voter registration
13 procedures, including registration cutoff dates, absentee
14 voting and candidate qualification procedures.

15 c. After the primary election sample ballot is finalized
16 and by the Friday before the primary election to explain
17 election procedures, including absentee voting procedures
18 and to identify the offices on the ballot and the names of
19 the candidates for nomination for those offices.

20 d. After the general election sample ballot is finalized
21 and by the Friday before the general election to review the
22 contents of the ballot and to explain election procedures,
23 including absentee voting procedures, to identify the
24 offices on the ballot and the names of the candidates for
25 those offices and to identify the measures on the ballot by
26 the descriptive title, "yes/no" phrase and short title
27 prepared by the Arizona Secretary of State.

28 Presentation by outreach workers must be neutral, not involve any
discussions of the merits of any candidates or measures and not
advocate the election, passage or defeat of any candidate or
measure. The meetings will be planned to cover all precincts on
the Navajo Reservation in each county.

3. The information described in the preceding paragraph,
both oral and in graphic form, will also be made available in any
areas containing Navajo population concentrations off the

1 reservation, including Winslow and Holbrook in Navajo County,
2 Sanders in Apache County, and any other areas of Navajo
3 population concentrations identified by the counties in
4 consultation with the Navajo Elections Administration.

5 4. Audio tapes of the sample ballot for primary, general
6 and special elections shall be prepared by the governmental
7 entity responsible for printing and distributing sample ballots.
8 Such tapes will be provided to each chapter house as soon as
9 possible after the information is available, but no later than
10 when the sample ballots are disseminated in English. These tapes
11 will also be used for purposes of training translators serving on
12 election day.

13 5. Long and short audio tapes will be prepared by the
14 governmental entity responsible for preparing and printing the
15 publicity pamphlet to identify briefly each initiative,
16 referendum, proposed constitutional amendment, or other ballot
17 proposition to be decided. The long audio tape may consist of
18 only the descriptive title, "yes/no" phrase, Legislative Council
19 analysis and any short title together with the number used to
20 designate the proposition on the ballot. The short audio tape
21 may consist of only the proposition's number, the "yes/no" phrase
22 and any short title. These tapes will be provided to the
23 counties for dissemination to chapter houses and for purposes of
24 training translators serving on election day. For the purpose of
25 broadcasting the information as described in paragraph E-9, a
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1 broadcast tape will be prepared identifying each proposition by
2 its number and short title.

3 Such tapes will be provided to each chapter house as soon as
4 possible after the information is available, but no later than by
5 the second week of September prior to the general election so
6 that the chapter officials may review the information contained
7 therein and provide such announcements or training sessions
8 regarding the content thereof as they deem appropriate.
9 Preparation and distribution of these tapes, as described in this
10 numbered paragraph, will fulfill the appropriate governmental
11 entity's obligation to translate and disseminate the publicity
12 pamphlet orally in Navajo.

13 The governmental entity responsible for accepting the filing
14 of publicity pamphlet ballot arguments shall provide to the
15 Navajo Elections Administration the name, address and telephone
16 number of those committees (or their chairmen) filing arguments
17 for or against any ballot proposition so that they may be
18 contacted to provide additional information or answer questions
19 concerning the nature and significance of the proposition. In
20 addition, each such committee shall be provided with the name,
21 address and telephone number of the Navajo Elections
22 Administration Executive Director and notified of the
23 availability of Navajo translators, other than county employees,
24 to translate campaign information concerning the nature and
25 significance of the ballot propositions.

1 6. The counties will establish booths or displays at
2 tribal fairs, functions, shopping centers, and other locations to
3 be identified in consultation with the Navajo Elections
4 Administration. Such booths or displays will be staffed by
5 election outreach workers or trained volunteers when it will
6 further assist the dissemination of election information to
7 Navajo citizens.

8 7. As to only those elections which are the responsibility
9 of the defendants, radio announcements in the Navajo language and
10 English language newspaper announcements will be made of the
11 election information identified in paragraph E-7a through E-7f
12 below. Radio announcements in Navajo County will be conducted
13 over KTNN (Window Rock), and over KAFF (Flagstaff) or an
14 alternate radio station selected by the county to reach the
15 greatest number of Navajo voters in the county. Radio
16 announcements in Apache County will be over KTNN (Window Rock),
17 and over KNDN (Farmington) or an alternate radio station selected
18 by the county to reach the greatest number of Navajo voters in
19 the county. Public service announcements of the same information
20 identified below will be provided as frequently as possible over
21 other radio stations in coordination with and through the Navajo
22 Elections Administration.

23 a. Deadlines for state voter registration, with
24 explanations of any different deadlines for participation in
25 state and federal elections and identification of regularly
26 available registration sites in each chapter house or other
27 location on the reservation. Radio announcements of such
28 information will be made twice a day during the four weeks
preceding the state and federal registration deadlines for
each primary, general, and special election.

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2 b. Procedures and deadlines for becoming a candidate.
3 Radio announcements of such information will be made twice a
4 day during the two week periods preceding the opening and
closing of each candidate filing period for the primary
election and general election and on a semi-weekly basis
between those dates.

5 c. Dates of primary elections, general elections, and
6 special elections, a list of the offices to be elected, and
7 the availability of trained translators at the polls and the
8 rights of each voter who requires assistance in casting a
9 ballot to be assisted by a person of his or her choice in
accordance with state and federal law. Radio announcements
of such information will be made semi-weekly during the six
week period prior to each primary, general, and special
election.

10 d. A listing of referenda, initiatives, proposed
11 constitutional amendments, or other ballot propositions, as
12 required by paragraph E-9. Radio announcements of such
13 information will be made semi-weekly beginning with the
initial dissemination of the publicity pamphlet in English
and continuing until the election.

14 e. Procedures for voting by absentee ballot, including an
15 explanation of the standards of eligibility for absentee
16 voting, the availability of absentee ballot request forms at
tribal chapter houses, and the availability of absentee
17 voting on the Navajo Reservation pursuant to paragraph F-4.
Radio announcements of such information will be made twice a
18 day during the two week periods preceding the opening and
closing of absentee voting, and semiweekly between those
dates.

19 f. The voter registration verification process, including a
20 brief explanation of the notice sent to registered voters.
Radio announcements of such information will be made semi-
21 weekly between April 1 and July 1 of presidential election
years.

22 Each of the announcements referred to in paragraphs E-7a
23 through E-7f will be published in English on a weekly basis in
24 the Navajo Times and in the Gallup Independent during the
25 publicity periods described above, and English language signs
26 with appropriate graphics will be distributed to each chapter
27 house and other public locations on the reservation with a

1 specific request that the graphics be permanently posted at the
2 beginning of each publicity period and remain posted during the
3 relevant period. Such requests shall emphasize the importance of
4 these announcements to the Navajo voters.

5 8. Audio tapes of other election information, such as
6 voter registration; registration verification notices, inactive
7 lists, reinstatement and cancellation procedures; and absentee
8 voting will be prepared pursuant to the procedures set forth in
9 paragraph D-1 and provided to radio stations identified in
10 paragraph 7.

11 9. Neither the state nor the counties will be required to
12 ensure radio broadcasts of the full text of lengthy election
13 material such as the sample ballots and publicity pamphlet.
14 Rather, the broadcasts may consist of a listing of the offices
15 and the proposition numbers and short titles of the initiatives,
16 referenda, proposed constitutional amendments and other ballot
17 propositions and identify the times and locations including the
18 chapter and other meetings and public gatherings where detailed
19 Navajo language information will be available through county
20 outreach workers or other county officials, or through the Navajo
21 Elections Administration or other Navajo officials. The Navajo
22 language publicity period for the publicity pamphlet and other
23 election materials and the information not specifically
24 referenced herein shall commence with their initial dissemination
25 in English and end with the election itself, or other appropriate
26 ending date.
27

1 will be provided to each chapter house and any other public
2 facility on the reservation within the counties, accompanied by a
3 request that the posters be prominently displayed at such
4 facility. Such request will emphasize the importance of the
5 announcements to the Navajo voters.

6 3. As previously indicated, the outreach workers will
7 provide absentee ballot request forms and information and
8 encourage absentee voting, and will inform prospective absentee
9 voters of the sites, dates and times that Navajo language
10 translations of the ballot are available upon request and of the
11 availability of special election boards.

12 4. The counties will provide opportunities for casting
13 absentee ballots at sites on the Navajo Reservation by allowing
14 voters to cast absentee ballots at fixed sites, including but not
15 limited to satellite county offices, and by using the outreach
16 workers to visit sites on the reservation on designated dates and
17 times designed to reach the largest number of Navajo voters in
18 the most effective manner. Such absentee voting opportunities
19 shall be publicized prior to and during the period for absentee
20 voting.

21 G. Election Day Procedures.

22 1. The counties will take all reasonable steps to ensure
23 that an adequate number of effectively trained precinct election
24 board officials fluent in Navajo and English are present at the
25 polls on election day for each precinct in which five percent or
26 more of the total population is Navajo, for the purpose of
27

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1 ensuring that election information available to voters in English
2 is available for translation in Navajo for voters with limited
3 English proficiency needing assistance. The precinct election
4 board shall include one clerk who is a duly appointed deputy
5 registrar to assist unregistered persons in filling out the
6 registration form. Such assistance shall not interfere with
7 voting at the polling place. The counties will invite the Navajo
8 Elections Administration and tribal chapter officials to identify
9 bilingual individuals who are qualified under state law to serve
10 as precinct election board officials and willing to work at the
11 polls.

12 a. Navajo County.

13 In addition to the number of precinct election board
14 officials required at each polling place by state law during each
15 election, Navajo County, in accordance with its present policy,
16 will take all reasonable steps to ensure that at least two
17 bilingual translators are present or available at each polling
18 place serving a portion of the Navajo Reservation to further
19 assist Navajo speaking voters. Two poll workers will be fully
20 trained as alternate translators at each polling place.

21 b. Apache County.

22 The county will train all bilingual precinct election board
23 officials to provide Navajo language translations of the ballot
24 and will assign at least two such officials whose primary
25 responsibility will be to provide translation services to Navajo
26 speaking voters. The county will use precinct registration lists
27

1 as well as turnout in prior elections to determine whether
2 additional election board workers are necessary beyond the
3 minimum number required by state law.

4 c. Nothing contained herein shall preclude either county
5 from adopting and implementing in accordance with Section 5 of
6 the Voting Rights Act the policy of the other regarding the
7 assignment of translators to the polls on election day.

8 2. Poll officials and other county employees will monitor
9 the polls during the course of the election to identify and
10 record each instance in which unreasonable delays in voting or
11 translation of the ballot occur. Where such delays occur, the
12 counties will take steps, such as establishing additional voting
13 booths, as are reasonably necessary to ensure that such delays do
14 not recur in future elections.

15 3. The precinct election board officials and translators
16 will be trained in Navajo and/or English as requested by the
17 officials or translators to ensure that they understand polling
18 place procedures, the contents of the ballot, and voter
19 registration verification notices, inactive lists, reinstatement
20 and cancellation procedures. Training in translating the ballot
21 language will be in Navajo and such training will include the use
22 of appropriate audio visual materials including audio and/or
23 video tapes and graphics. Each translator will be provided with
24 a copy of the training tape used. Training sessions for
25 translators shall be completed at least ten days prior to the
26 date of the election, although supplemental training sessions or
27

1 makeup sessions may be held after that time. Training sessions
2 shall be followed by oral testing in Navajo to ensure their
3 effectiveness.

4 4. Precinct election board officials will take all
5 reasonable steps without disrupting the orderly and timely
6 casting of ballots to maintain a record of all persons who come
7 to the polls but are not allowed to vote, indicating the reason
8 the person thought she or he was eligible to vote and the reason
9 for not allowing the person to vote.

10 5. The counties will coordinate with the Navajo Elections
11 Administration in the establishment of polling places in
12 locations where the same buildings may be used for tribal and
13 state elections.

14 H. Registration Verification Process.

15 The counties will inform voters of the process for voter
16 registration verification notices, inactive lists, reinstatement
17 and cancellation through radio announcements, chapter
18 presentations and appropriate posters and graphics, as set forth
19 in paragraphs E-2 and E-7.

20 I. Records and Reports.

21 1. The state and counties will maintain copies of all
22 tapes, graphics, and other materials provided for voter
23 information purposes pursuant to this program along with records
24 of how those materials were used and on what dates, and the
25 locations and dates of all training sessions held pursuant to
26

- 1 this program. In addition, the counties will maintain
 2 statistical records including but not limited to:
- 3 a. Voter Registration
- 4 -- Voter registration for each precinct on a
 5 quarterly basis as specified by the schedule set
 6 forth in A.R.S. {16-168 (G).
 7 -- Number of voters registered during each quarter by
 8 precinct, as specified by the schedule set forth
 9 in A.R.S. {16-168 (G).
 10 -- Number of voters by precinct who are registered at
 11 voter registration drives conducted pursuant to
 12 this program.
- 13 b. Voter Registration Verification
- 14 -- Number of voters placed on the inactive voters
 15 list by precinct.
 16 -- Number of persons on the inactive voters list who
 17 came to the polls on election day, voted and were
 18 reinstated to the general register by precinct.
- 19 c. Absentee Voting
- 20 -- Number of requests for absentee ballots per
 21 precinct, with a breakdown of the number of
 22 requests received through the mail, the total
 23 number of absentee ballot requests made in person
 24 at the county recorder's office and at satellite
 25 offices, and the total number of absentee votes
 26 cast per precinct.
 27 -- Number of absentee ballots cast per precinct
 28 before special election boards.
 -- Number of absentee ballots cast per precinct in
 person at the county courthouse or on the
 reservation pursuant to paragraph F-4.
 -- Number of absentee ballots cast per precinct by
 mail.
- d. Publicity
- Records of all paid radio announcements and public
 service announcements as those records may be
 available and of newspaper publications and

1 posters of election-related information pursuant
2 to this program.

3 2. The state and counties will maintain such other records
4 as may be appropriate to permit review of the effectiveness of
5 the program and to assist the state and counties in further
6 developing the effectiveness of this program. Such records shall
7 be available to the public upon request. Copies of any or all
8 such records shall be forwarded to the United States and to the
9 Navajo Elections Administration upon request.

10 3. On April 1 of each year the counties or each of them
11 will send to the United States and to the Navajo Election
12 Administration a report of the efforts taken pursuant to this
13 Decree during the preceding (12) twelve months. Such report
14 shall include election returns, the records of the election-
15 related visits of the outreach workers, records of publicity, and
16 the following statistics by precinct: (a) the number of
17 registered voters; (b) the number of voters who registered during
18 the preceding year; (c) the number of voters placed on the
19 inactive list; (d) the number of absentee ballots cast in each
20 election; and (e) a brief explanation of any contemplated
21 modifications or changes to the Navajo Language Election
22 Information Program. Because of the detailed nature of this
23 Consent Decree, the data included in the report are not intended
24 to be the measure of compliance with this Consent Decree.

25 J. Consultation With Navajo Representatives

26 Upon preclearance of the changes in this program and final
27 approval of the First Amended Consent Decree from this Court, the

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1 United States and defendants will consult with the Navajo Board
2 of Election Supervisors ("NBOES"), the Navajo Elections
3 Administration ("NEA") and other representatives of the Navajo
4 Nation and will provide to the NEA and such other representatives
5 a list of the provisions in this agreement that contemplate
6 participation by the NEA or any other Navajo Nation entity. The
7 defendants will make good faith efforts to encourage the NEA to
8 work with the counties regarding these provisions, but where the
9 NEA is unable to or determines not to participate, the counties
10 shall not be deemed in noncompliance with the provisions for NEA
11 participation because of a lack of participation. The United
12 States and defendants will also request that the NEA inform the
13 appropriate county ten days in advance of any meeting or activity
14 that the NEA is conducting and in which the NEA would like one or
15 both of the counties to participate.

16 K. Adjustments to the Program.

17 The state and counties will have the authority to eliminate
18 or modify any aspect of this program if shown to be unproductive
19 or inefficient in furthering the goals of the program, subject to
20 the preclearance requirements of Section 5 of the Voting Rights
21 Act, 42 U.S.C. {1973c.

22 II. RETENTION OF JURISDICTION AND COSTS

23 It is the intention of the parties that this First Amended
24 Consent Decree constitutes a complete and full resolution of all
25 claims made in this case. Accordingly, the parties adopt the
26

1 following provisions relating to termination of this Decree and
2 continuing Court supervision hereunder:

3 1. This Court shall retain jurisdiction to enter such
4 further relief or other orders as may be necessary to effectuate
5 the terms of this Decree.

6 2. The United States agrees, for a period of two years
7 from preclearance of the changes to this program, not to seek any
8 further or additional relief with respect to the Navajo Language
9 Election Information Program prescribed herein for Apache and
10 Navajo Counties. It is contemplated by the parties that this two
11 year period will be used to implement fully the bilingual
12 election program set out in this Decree, and to make adjustments
13 to that program as necessary in accordance with the provisions of
14 paragraph K above. At the end of such two year period, this
15 Decree will then be terminated and the case will be dismissed.
16 The Navajo Language Election Information Program in effect when
17 this Decree terminates will remain in effect until any
18 modifications to that program constituting voting changes have
19 been precleared in compliance with Section 5 of the Voting Rights
20 Act, 42 U.S.C. (1973c. The annual report required in paragraph
21 I-3 shall be prepared and sent to the United States and the
22 Navajo Elections Administration through April 1, 1997. After
23 1997, such reports will not be required as part of the Navajo
24 Language Election Information Program.

25 3. Nothing contained herein shall preclude any party from
26 moving to modify any provision of this Decree pursuant to the
27

1 provisions of Fed. R. Civ. P. 60(b), nor is any provision of this
2 Decree intended to limit this Court's enforcement authority in
3 any further proceedings between the parties.

4 4. The parties agree to bear their own costs and attorneys
5 fees in this litigation.

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Entered this 27 day of SEPTEMBER, 1993

Earl H. Canale
UNITED STATES DISTRICT JUDGE

Approved as to form
and content:

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COPY
 OF
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DEC 08 1988
 RICHARD H. WEARE, CLERK
 UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA

14 UNITED STATES DISTRICT COURT
 15 DISTRICT OF ARIZONA

16 UNITED STATES OF AMERICA,)
)
 17 Plaintiff,)
)
 18 v.)
)
 19 STATE OF ARIZONA; JAMES SHUMWAY,)
 Secretary of State of the State)
 20 of Arizona; APACHE COUNTY,
 ARIZONA; APACHE COUNTY BOARD OF)
 SUPERVISORS; ARTHUR LEE,)
 21 Chairman; AMBROSE SHEPHERD and)
 JOE SHIRLEY, JR., members;)
 22 CECELIA ROBERTS, Apache County)
 Elections Director; MARY CHAVEZ,)
 23 Apache County Recorder; NAVAJO)
 COUNTY, ARIZONA; NAVAJO COUNTY)
 24 BOARD OF SUPERVISORS; PERCY)
 DEAL, Chairman; MARLIN GILLESPIE,)
 25 LARRY LAYTON, PETER SHUMWAY and)
 DAVID TSOSIE, members; CAROL SUE)
 26 CAIN, Navajo County Elections)
 Director; JAY H. TURLEY, Navajo)
 County Recorder,)
)
 Defendants.)

CIVIL 8-1988-1111-10
 COMPLAINT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Civil Action No.
)	
v.	)	<u>COMPLAINT</u>
)	
STATE OF ARIZONA; JAMES SHUMWAY,)	
Secretary of State of the State of)	
Arizona; APACHE COUNTY, ARIZONA;)	
APACHE COUNTY BOARD OF SUPERVISORS;)	
ARTHUR LEE, Chairman; AMBROSE)	
SHEPHERD and JOE SHIRLEY, JR.,)	
members; CECELIA ROBERTS, Apache)	
County Elections Director; MARY)	
CHAVEZ, Apache County Recorder;)	
NAVAJO COUNTY, ARIZONA; NAVAJO)	
COUNTY BOARD OF SUPERVISORS; PERCY)	
DEAL, Chairman; MARLIN GILLESPIE,)	
LARRY LAYTON, PETE SHUMWAY and)	
DAVID TSOSIE, members; CAROL SUE)	
CAIN, Navajo County Elections)	
Director; JAY H. TURLEY, Navajo)	
County Recorder,)	
)	
Defendants.)	

The United States of America alleges:

1. This action is brought by the Attorney General, on behalf of the United States, pursuant to Sections 2, 4(f)(4), and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 1973b(f)(4) and 1973j(d), and also is brought pursuant to 28 U.S.C. 2201.
2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1973j(f) and 28 U.S.C. 1345.
3. Defendant State of Arizona is one of the fifty states comprising the United States. The state, acting through its public officials and its political subdivisions, conducts elections within Navajo and Apache Counties as well as within

other areas of the state, and provides information and materials respecting such elections for distribution to voters.

4. Defendant James Shumway is the Secretary of State of Arizona. The Secretary of State is the state's chief election officer and has overall responsibility for the administration of election laws, the education and training of county election officers and the supervision of all elections in the state. Defendant Shumway is sued in his official capacity.

5. Defendant Apache County is a political subdivision of the State of Arizona and exists under the laws of that state. Defendant Apache County Board of Supervisors is the governing body of Apache County and has general authority over the conduct of elections in Apache County. Defendant Arthur Lee is the chairman of the county board of supervisors, and defendants Ambrose Shepherd and Joe Shirley, Jr., are members of the Apache County Board of Supervisors. Each defendant is sued in his official capacity.

6. Defendant Cecelia Roberts is the Director of Elections for Apache County. Under the direction of the county board of supervisors, she is responsible for the administration of elections in the county. Her duties include, but are not limited to, the selection and training of poll officials and the dissemination of election-related notices, information and instructions. Defendant Roberts is sued in her official capacity.

7. Defendant Mary Chavez is the County Recorder for Apache County. As county recorder Ms. Chavez has responsibility related to the registration of voters, the dissemination of information and instructions relating to voter registration, the appointment and training of deputy registrars, the cancellation of registration for failure to vote, and the conduct of the absentee voting process. Defendant Chavez is sued in her official capacity.

8. Defendant Navajo County is a political subdivision of the State of Arizona and exists under the laws of that state. Defendant Navajo County Board of Supervisors is the governing body of Navajo County and has general authority over the conduct of elections in Navajo County. Defendant Percy Deal is the chairman of the county board of supervisors, and defendants Marlin Gillespie, Larry Layton, Pete Shumway, and David Tsosie are members of the Navajo County Board of Supervisors. Each defendant is sued in his official capacity.

9. Defendant Carol Sue Cain is the Director of Elections for Navajo County. Under the direction of the county board of supervisors, she is responsible for the administration of elections in the county. Her duties include, but are not limited to, the selection and training of poll officials and the dissemination of election-related notices, information and instructions. Defendant Cain is sued in her official capacity.

10. Defendant Jay H. Turley is the County Recorder for Navajo County. As county recorder Mr. Turley has responsibility

related to the registration of voters, the dissemination of information and instructions relating to voter registration, the appointment and training of deputy registrars, the cancellation of registration for failure to vote, and the conduct of the absentee voting process. Defendant Turley is sued in his official capacity.

11. The State of Arizona, according to the 1980 Census, has a total population of 2,718,425, of whom 152,498 (5.6%) are American Indians; Apache County has a total population of 52,108, of whom 39,024 (74.9%) are American Indians; and Navajo County has a total population of 67,629, of whom 32,122 (47.5%) are American Indians. A large majority of the American Indians in each county are Navajos.

12. The Navajo population in Apache and Navajo Counties is concentrated, in the sense that Navajos live in an area where the overwhelming majority of the population are Navajos, on or near the Navajo Indian Reservation in the northern section of each county. At the same time, the Navajo population is dispersed over a vast area within the reservation boundaries, and Navajo citizens live in a state of profound isolation from the processes of election and government as conducted by defendants. This isolation is manifested in terms of language and culture, and in terms of sheer distance, exacerbated by poor road conditions and by Navajos' relative lack of access to automobiles, telephones and the mails.

13. Navajo citizens in Apache and Navajo Counties have suffered a long history of official discrimination including discrimination affecting the right to vote. American Indians in Arizona were denied the right to register and vote until 1948. In more recent years, federal courts have held that various voting devices and procedures implemented within Arizona have denied Indian citizens a fair opportunity for effective political participation. Navajo citizens in Apache and Navajo Counties continue to bear the effects of past discrimination in such areas as education, health, housing and employment.

14. The Navajo language, which historically is an unwritten language, is the primary means of communication among Navajo citizens of Apache and Navajo Counties. A majority of the Navajo residents of the two counties are unable to participate effectively in the electoral process when conducted in the English language.

15. In conducting public elections within Apache County and Navajo County, the defendants have failed to furnish the information and assistance in the Navajo language necessary to allow Navajo residents a fair opportunity for effective political participation.

- (a) Although the defendants provide a significant amount of information regarding the election process in the English language, such information is not provided in the Navajo language. Examples of election-related information provided in English but not in Navajo

include information regarding the voter registration process, the absentee voting process, the voter purge process, candidate filing procedures, polling place locations, candidates for public office, and issues to be voted upon at the election.

- (b) Defendants have failed to provide a sufficient number of adequately trained bilingual persons to serve as translators for Navajo voters needing assistance at the polls on election day.

16. In addition to failing to provide election-related information and assistance in the Navajo language defendants have failed to implement procedures to afford the residents of the isolated Navajo residential areas an opportunity, comparable to that afforded other citizens, to register to vote, to obtain and cast absentee ballots, and to avoid registration cancellation.

17. Defendants' voting standards, practices, and procedures, implemented under the totality of circumstances described herein result in a denial of the right of Navajo citizens to participate in the political process effectively and on an equal basis with other citizens in violation of Sections 2, and 4(f)(4) of the Voting Rights Act, as amended, 42 U.S.C. 1973 and 1973b(f)(4).

18. Unless enjoined by this Court, defendants will continue to enforce existing voting standards, practices, and procedures in a manner which denies Navajo citizens an opportunity to participate in the electoral process effectively and on an equal

basis with other citizens in violation of Sections 2 and 4(f)(4) of the Voting Rights Act, as amended, 42 U.S.C. 1973 and 1973b(f)(4).

WHEREFORE, the plaintiff United States prays for an order:

1. Declaring that the defendants' standards, practices, and procedures relating to registration, registration cancellation, and absentee voting deny Navajo citizens an opportunity equal to that enjoyed by other citizens to participate in the political process and elect representatives of their choice, in violation of Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973;
2. Declaring that the defendants have failed to provide effective oral instructions, assistance and other information relating to registration and voting in the Navajo language in violation of Sections 4(f)(4) and 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973b(f)(4), 1973;
3. Requiring the defendants to devise a plan to assure that Navajo citizens in Apache and Navajo Counties have an opportunity equal to that of other members of the electorate to register to vote, avoid cancellation of registration, and cast an absentee ballot, and an opportunity to participate effectively in the Navajo language in all phases of the election process; and

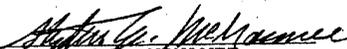
4. Requiring the defendants to implement the remedial plan promptly after the necessary preclearance is obtained pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c.

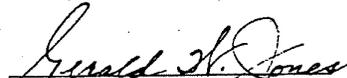
Plaintiff further prays that this Court order such other relief as the interests of justice requires along with the costs and disbursements in maintaining this action.

RICHARD L. THORNBURGH
Attorney General

By:


WM. BRADFORD REYNOLDS
Assistant Attorney General


STEPHEN M. MCNAMEE
United States Attorney


GERALD W. JONES
Attorney, Voting Section
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U.S. Department of
Civil Rights Division

JPT:RJW:RBJ:tlb
DJ 166-012-3
93-4003

Voting Section
P.O. Box 66128
Washington, D.C. 20035-6128

NOV 29 1993

Robert B. Carey, Esq.
First Assistant Attorney General
State of Arizona
1275 West Washington
Phoenix, Arizona 85007-2926

Dear Mr. Carey:

This refers to the Navajo language election procedures adopted pursuant to the First Amended Consent Decree in United States v. State of Arizona, No. CIV 88-1989 PHX EHC, for Apache County, Arizona, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on October 15, 1993.

The Attorney General does not interpose any objection to the Navajo language election procedures. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

In addition, certain provisions of the Navajo language election procedures, as incorporated in the consent decree, are enabling. Therefore, Apache County is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting (e.g., changes in or modifications of the consent decree, changes in polling places and voting precincts) adopted pursuant to the consent decree. See also 28 C.F.R. 51.15.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

By:


Steven H. Rosenbaum
Chief, Voting Section



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2928

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

October 14, 1993

VOTING RIGHTS ACT SUBMISSION

AIRBORNE EXPRESS MAIL/OVERNIGHT DELIVERY TO:

Steven H. Rosenbaum
Chief, Voting Section
Civil Rights Division
U.S. Department of Justice
320 First Street N.W., Room 716
Washington, D.C. 20001

CIVIL RIGHTS DIVISION
VOTING SECTION
93 OCT 25 AM 11:51

Re: Submission, under Section 5 of the Voting Rights Act, Navajo Language Election Information Program, First Amended Consent Decree, U.S. v. Arizona and Apache and Navajo Counties, No. CIV 88-1989 PHX EHC

Dear Mr. Rosenbaum:

The following submission is made pursuant to Section 5 of the Voting Rights Act of 1965, as amended. For your convenience, the information is set forth as prescribed by 28 C.F.R. § 51.27 as follows:

A. COPY OF ENACTMENT:

A copy of the First Amended Consent Decree as provisionally entered by the U.S. District Court for the District of Arizona is attached as Exhibit A.

B. COPY OF EXISTING STATUTE:

A copy of the existing Navajo Language Election Information Program in this matter is attached as Exhibit B.

C. EXPLANATION OF CHANGES:

The changes affecting voting are readily apparent by comparing the foregoing documents. The essential changes

Mr. Steven H. Rosenbaum
October 14, 1993
Page 2

can be summarized as providing for better coordination with Navajo representatives; establishing two satellite offices in each county to be available for outreach workers; conforming aspects of the program to statutory changes in absentee balloting and voter registration, cancellation and reinstatement procedures (see your file nos. 91-1663 and 91-4160); providing for the development of a joint translations committee to develop an English/Navajo glossary of election terms; and providing for more meaningful dissemination of appropriate information regarding ballot measures.

D. PERSON MAKING THE SUBMISSION:

Grant Woods, Arizona Attorney General
Robert Carey, First Assistant Attorney General
*Lisa T. Hauser, Assistant Attorney General
1275 West Washington
Phoenix, Arizona 85007
(602) 542-4266: Lisa T. Hauser

E. SUBMITTING AUTHORITY:

The State of Arizona, Apache and Navajo Counties.

F. COUNTY AND STATE OF SUBMITTING AUTHORITY:

Not applicable since the submission is from a state or county.

G. PARTY RESPONSIBLE FOR CHANGE:

These changes are the result of a negotiated settlement and the resulting First Amended Consent Decree entered into by Plaintiff United States and Defendants State of Arizona, Apache County and Navajo County in U.S. v. Arizona, et al., No. CIV 88-1989 PHX EHC. The person or bodies responsible for making these changes on behalf of defendants are:

The Honorable Richard D. Mahoney
Arizona Secretary of State
For Defendant State of Arizona

The Apache County Board of Supervisors
For Defendant Apache County

The Navajo County Board of Supervisors
For Defendant Navajo County

Mr. Steven H. Rosenbaum
October 14, 1993
Page 3

H. AUTHORITY FOR MAKING CHANGE:

The authority under which the State and Apache and Navajo Counties undertake these changes exists pursuant to the First Amended Consent Decree in U.S. v. Arizona, et al., No. CIV 88-1989 PHX EHC.

I. DATE OF ADOPTION:

Provisional approval and entry of the First Amended Consent Decree was granted by the Court on September 27, 1993.

J. EFFECTIVE DATE:

Following preclearance of the voting changes contained in the First Amended Consent Decree, the parties will promptly notify the Court of such preclearance and will request an Order granting final approval to the First Amended Consent Decree. Upon entry of the final Order, the defendants will amend the ongoing Navajo Language Election Information Program contained in the 1989 Consent Decree by implementing these changes.

K. ENFORCEMENT OF CHANGE:

The changes contained in the First Amended Consent Decree have not been enforced or administered.

L. SCOPE OF CHANGE:

These changes affect the Navajo language assistance to be provided by the State of Arizona, Apache County and Navajo County in Apache and Navajo Counties.

M. REASONS FOR THE CHANGE:

These changes were made without discriminatory intent. The changes are those the parties agreed upon as necessary to ensure more effective dissemination of election-related information to the Navajo language speaking populations of Navajo and Apache Counties.

N. ANTICIPATED EFFECT ON MEMBERS OF RACIAL OR LANGUAGE MINORITY GROUPS:

These changes will have no discriminatory effect.

Mr. Steven H. Rosenbaum
October 14, 1993
Page 4

O. PAST OR PENDING LITIGATION:

This office is not aware of any past or pending litigation concerning these changes other than the matter giving rise to this First Amended Consent Decree. For further information regarding this litigation, you may contact Richard B. Jerome, Attorney, Voting Section, Civil Rights Division, U.S. Department of Justice at (202)514-8696.

P. PRECLEARANCE OF PRIOR PRACTICE:

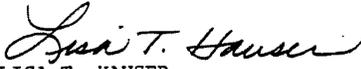
The Navajo Language Election Information Program contained in the 1989 Consent Decree in this matter constitutes the prior practice and precleared on September 8, 1989 (see your file nos. Y9608 and Y9609).

* * *

If you have any questions regarding this submission or if you require any additional information, please contact me as soon as possible.

Very truly yours,

GRANT WOODS
The Attorney General
ROBERT B. CAREY
First Assistant Attorney General


LISA T. HAUSER
Assistant Attorney General
(602) 542-4266

cc: Richard B. Jerome
D. Rand Henderson
Russell H. Burdick, Jr.
Margaret Stears

LTH/bjw

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIV-88-1989-PHXEHC
vs.	)	MOTION TO DISMISS
)	
STATE OF ARIZONA, et al.,)	
)	
Defendants.)	
_____)	

The parties hereby file a joint motion to dismiss.

This motion is based upon the expiration of two (2) years from the preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of the voting changes contained in the first amended consent decree.

This case dates back to December 8, 1988. On May 22, 1989 the court entered a consent decree which established the Navajo Language Election Information Program. On September 27, 1993, an amended consent decree was entered, extending the Navajo Language Election Information Program. As part of the amended consent decree the parties stipulated that the decree could terminate and the case be dismissed two years after the date the amended decree was precleared. The parties also stipulated that the Navajo Language Election Information Program would continue unless and until changes to the bilingual program were precleared pursuant to Section 5 of the Voting Rights Act, and that the annual report required by the decree would continue through April 1, 1997, notwithstanding the termination of the decree and the dismissal of the case.

The parties hereby reaffirm their intention that the Navajo Language Election Information Program will continue, and that the annual reporting requirement under the decree shall continue through April 1, 1997. Defendants also acknowledge that their obligation to comply with Sections 2 and 4(f)(4) of the Voting Rights Act, 42 U.S.C. 1973, 1973b(f)(4), continue.

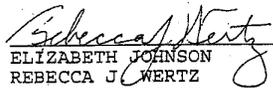
Pursuant to the First Amended Consent Decree, and this Court's November 22, 1994 Order, the parties to this suit agree to the dismissal of this case.

The parties therefore respectfully request that the Court dismiss this case.

Respectfully submitted this 13th day of December, 1995.

For the Plaintiff:
UNITED STATES OF AMERICA

DEVAL L. PATRICK
Assistant Attorney General


ELIZABETH JOHNSON
REBECCA J. WERTZ
RICHARD B. JEROME
Attorneys, Voting Section
Civil Rights Division
P.O. Box 66128
Washington, D.C. 20035-6128

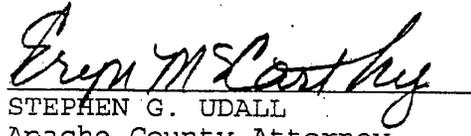
For the Defendants:

GRANT WOODS
Attorney General



ERYN MCCARTHY
Assistant Attorney General
State of Arizona
1275 West Washington
Phoenix, Arizona 85007

APACHE COUNTY, ARIZONA

for 

STEPHEN G. UDALL
Apache County Attorney
RUSSELL H. BURDICK, JR.
Chief Deputy County Attorney
P.O. Box 637
St. Johns, Arizona 85936

NAVAJO COUNTY, ARIZONA

for 

MELVIN R. BOWERS, JR.
Navajo County Attorney
D. Rand Henderson
Deputy County Attorney
P.O. Box 668
Holbrook, Arizona 86025

FILED	✓	LOGGED
RECEIVED	✓	COPY
DEC 13 1995		
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA		

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIV-88-1989-PHXEHC
vs.	)	MOTION TO DISMISS
)	
STATE OF ARIZONA, et al.,)	
)	
Defendants.)	

Upon consideration of the parties' Motion to Dismiss filed December _____, 1995, and good cause appearing therefore,

IT IS ORDERED that the case is dismissed.

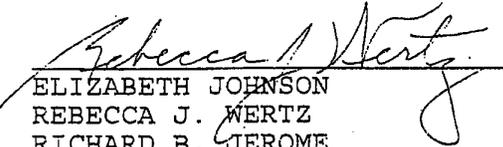
DATED this ____ day of _____, 1995.

HONORABLE EARL H. CARROLL
United States District Court Judge

Approved:

For the Plaintiff:
UNITED STATES OF AMERICA

DEVAL L. PATRICK
Assistant Attorney General


ELIZABETH JOHNSON
REBECCA J. WERTZ
RICHARD B. JEROME
Attorneys, Voting Section
Civil Rights Division
P.O. Box 66128
Washington, D.C. 20035-6128

For the Defendants:

GRANT WOODS
Attorney General



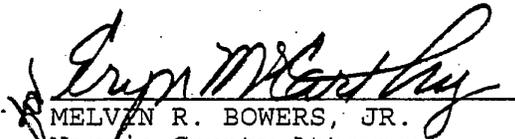
ERYN MCCARTHY
Assistant Attorney General
State of Arizona
1275 West Washington
Phoenix, Arizona 85007

APACHE COUNTY, ARIZONA

for 

STEPHEN G. UDALL
Apache County Attorney
RUSSELL H. BURDICK, JR.
Chief Deputy County Attorney
P.O. Box 637
St. Johns, Arizona 85936

NAVAJO COUNTY, ARIZONA



MELVIN R. BOWERS, JR.
Navajo County Attorney
D. Rand Henderson
Deputy County Attorney
P.O. Box 668
Holbrook, Arizona 86025

FILED _____ LODGED _____
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 DEC 13 1995
 CLERK U.S. DISTRICT COURT
 DISTRICT OF ARIZONA
 BY _____ E. DEPUTY

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 DEC 15 1995
 CLERK U.S. DISTRICT COURT
 DISTRICT OF ARIZONA
 BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA
 UNITED STATES OF AMERICA,)
 Plaintiff,)
 vs.)
 STATE OF ARIZONA, et al.,)
 Defendants.)

CIV-88-1989-PHXHC
 MOTION TO DISMISS

Upon consideration of the parties' Motion to Dismiss filed
 December 13, 1995, and good cause appearing therefore,

IT IS ORDERED that the case is dismissed.

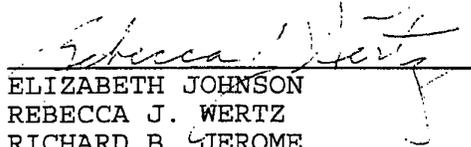
DATED this 14 day of December, 1995.

Earl H. Carroll
 HONORABLE EARL H. CARROLL
 United States District Court Judge

Approved:

For the Plaintiff:
UNITED STATES OF AMERICA

DEVAL L. PATRICK
Assistant Attorney General


ELIZABETH JOHNSON
REBECCA J. WERTZ
RICHARD B. JEROME
Attorneys, Voting Section
Civil Rights Division
P.O. Box 66128
Washington, D.C. 20035-6128

For the Defendants:

GRANT WOODS
Attorney General


ERYN MCCARTHY
Assistant Attorney General
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1275 West Washington
Phoenix, Arizona 85007

APACHE COUNTY, ARIZONA

for 
STEPHEN G. UDALL
Apache County Attorney
RUSSELL H. BURDICK, JR.
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P.O. Box 637
St. Johns, Arizona 85936

NAVAJO COUNTY, ARIZONA


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Navajo County Attorney
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P.O. Box 668
Holbrook, Arizona 86025

FILED

1 BRADLEY J. SCHLOZMAN
 Acting Assistant Attorney General

2

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 MICHELE C. MARCHAND
 Assistant United States Attorney (#93390)
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 Telephone: (213) 894-2727
 6 Facsimile: (213) 894-7177

7 JOHN TANNER, Chief
 SUSANA LORENZO-GIGUERE, Special Litigation Counsel
 8 AVNER SHAPIRO, Trial Attorney
 ALBERTO RUISANCHEZ, Trial Attorney
 9 Voting Section
 Civil Rights Division
 10 United States Department of Justice
 950 Pennsylvania Ave., N.W. - NWB-7254
 11 Washington, D.C. 20530
 Telephone: (202) 305-1840
 12 Facsimile: (202) 307-3961

13 Counsel for Plaintiff
 United States of America

2005 JUL 14 PM 3:24
 CLERK, U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF.
 LOS ANGELES

PSY _____

14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 16 WESTERN DIVISION

17 UNITED STATES OF AMERICA,)
 18 Plaintiff,)
 19 v.)
 20 CITY OF AZUSA, CALIFORNIA;)
 21 and VERA MENDOZA, in her)
 22 official capacity as)
 Azusa City Clerk,)
 23 Defendants.)

No. CV05-5147

GAF (SS)

THREE-JUDGE COURT

COMPLAINT

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 28

1 The United States of America, Plaintiff herein, alleges:

2 1. The Attorney General files this action pursuant to
3 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
4 amended, 42 U.S.C. § 1973aa-1a; 42 U.S.C. § 1973aa-2; and
5 28 U.S.C. § 2201.

6 2. The Court has jurisdiction of this action pursuant to
7 28 U.S.C. § 1345 and 42 U.S.C. § 1973aa-2. In accordance with
8 the provisions of 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284, the
9 Section 203 claim must be heard and determined by a court of
10 three judges. The events relevant to this action occurred in
11 the City of Azusa, which is located in the United States
12 District Court for the Central District of California.

13 3. Defendant THE CITY OF AZUSA ("Azusa" or "the City") is
14 a political and geographical subdivision of the County of Los
15 Angeles and the State of California.

16 4. Defendant VERA MENDOZA is Azusa's City Clerk. In this
17 capacity, Defendant MENDOZA has responsibilities concerning the
18 administration of voting and elections in Azusa. Defendant
19 MENDOZA is sued in her official capacity.

20 5. The 2000 Census reported that the City of Azusa had a
21 total population of 44,712, of whom 28,522 were Hispanic
22 (63.8%). The City had a total voting age population ("VAP") of
23 30,667, of whom 17,981 (58.6%) were Hispanic. The total citizen
24 voting age population ("CVAP") for the City was 21,667, of whom
25 10,144 (46.8%) were Hispanic.

26 6. The Census Bureau has designated the County of Los
27 Angeles as subject to the requirements of Section 203 of the
28 Voting Rights Act for Chinese, Filipino, Japanese, Korean,

1 Spanish, and Vietnamese. See 42 U.S.C. § 1973aa-1a(b)(2); see
2 also 67 Fed. Reg. 48,871 (July 26, 2002). As a political unit
3 within the County of Los Angeles, the City of Azusa is also
4 subject to the requirements of Section 203 for these languages.
5 See 28 C.F.R. § 55.9. The coverage determination of the Census
6 Bureau is final and non-reviewable. See 42 U.S.C. § 1973aa-
7 1a(b)(4). Significant numbers of Spanish-speaking citizens with
8 limited English proficiency ("Spanish-speaking citizens") who
9 need assistance in the election process in the Spanish language
10 reside in the City.

11 7. As a political subdivision of Los Angeles County,
12 Azusa has been continuously subject to Section 203's
13 requirements to provide election materials and information in
14 Spanish since September 18, 1992. See 57 Fed. Reg. 43,213
15 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002). The
16 United States Department of Justice has directly notified
17 election officials, including Azusa and Los Angeles County
18 election officials, of their jurisdictions' responsibilities
19 under Section 203, and Los Angeles County separately has
20 provided such information to City of Azusa officials.

21 8. Because Azusa is subject to the requirements of
22 Section 203, "any registration or voting notices, forms,
23 instructions, assistance, or other materials or information
24 relating to the electoral process, including ballots" that
25 Defendants provide in English must also be furnished in Spanish,
26 for its Spanish-speaking citizens. 42 U.S.C. § 1973aa-1a(c).

27

28

1 CAUSE OF ACTION

2 9. In conducting elections in Azusa, Defendants have
3 failed to provide notices, forms, instructions, and other
4 materials and information relating to the electoral process, by:
5 failing to translate fully into Spanish written election-day
6 materials and information, including but not limited to the
7 official ballot, certain voting instructions, forms for voters
8 with disabilities, signs identifying a polling place's location,
9 absentee ballot forms, signs indicating the hours that polling
10 places are open, and various documents relating to voting by
11 provisional ballot.

12 10. Defendants' failure to provide Spanish language
13 election information to Spanish-speaking citizens, as described
14 above, constitutes a violation of Section 203.

15 11. Unless enjoined by this Court, Defendants will
16 continue to violate Section 203 by failing to provide Azusa's
17 Spanish-speaking citizens with the Spanish language election
18 information necessary for their political participation.

19 ///
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1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff the United States of America prays that
3 this Court enter an order:

- 4 (1) Declaring that Defendants have failed to provide
5 Spanish language election information to Spanish-
6 speaking citizens in violation of Section 203 of the
7 Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- 8 (2) Enjoining Defendants, their employees, agents, and
9 successors in office, and all persons acting in
10 concert with them, from failing to provide Spanish
11 language election information to Spanish-speaking
12 citizens as required by Section 203,
13 42 U.S.C. § 1973aa-1a;
- 14 (3) Requiring Defendants to devise and implement a
15 remedial plan to ensure that Spanish-speaking citizens
16 are able to participate in all phases of the electoral
17 process as required by Section 203 of the Voting
18 Rights Act, 42 U.S.C. § 1973aa-1a;
- 19 (4) Requiring Defendants to devise and implement a
20 remedial plan to ensure that, in the event that the
21 need for materials and assistance arises in other
22 languages subject to the requirements of Section 203,
23 the City will provide election-related information and
24 materials to residents needing such assistance.
- 25 (5) Requiring Defendants to publicize the remedial plan
26 and programs addressing violations of Section 203 in
27 such a manner as to ensure its widespread
28 dissemination to Azusa's voters; and

1 (6) Authorizing the appointment of federal examiners for
2 elections held in Azusa pursuant to Section 3(a) of
3 the Voting Rights Act, 42 U.S.C. § 1973a(a), through
4 August 6, 2007.

5 Plaintiff further prays that this Court order such
6 additional relief as the interests of justice may require,
7 together with the costs and disbursements in maintaining this
8 action.

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1. Date: 14th day of July, 2005

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 CENTRAL DISTRICT OF CALIFORNIA
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7 JOHN TANNER, Chief
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13 Counsel for Plaintiff
 United States of America

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 U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
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IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

17 UNITED STATES OF AMERICA,
 18 Plaintiff,
 19 v.
 20 CITY OF AZUSA, CALIFORNIA;
 and VERA MENDOZA, in her
 21 official capacity as
 Azusa City Clerk,
 22 Defendants.
 23

No. **CV05-5147 GAF (SSx)**
 THREE-JUDGE COURT
PROPOSED CONSENT DECREE,
 ORDER, AND JUDGMENT

24 The United States of America filed this action pursuant to
 25 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
 26 amended, 42 U.S.C. § 1973aa-1a; 42 U.S.C. § 1973aa-2; and 28
 27 U.S.C. § 2201, alleging violations of Section 203 arising from
 28 the City of Azusa's election practices and procedures in the

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1 March 2005 municipal election as they affect Spanish-speaking
2 citizens of the City.

3 The Complaint's cause of action under Section 203 of the
4 Voting Rights Act, 42 U.S.C. § 1973aa-1a, must be heard and
5 determined by a court of three judges pursuant to 42 U.S.C.
6 § 1973aa-2 and 28 U.S.C. § 2284.

7 According to the 2000 Census, the City of Azusa ("the
8 City") had a total voting age population ("VAP") of 30,667, of
9 whom 17,981 (58.6%) were Hispanic. The total citizen voting age
10 population ("CVAP") for the City was 21,667, of whom 10,144
11 (46.8%) were Hispanic.

12 The Census Bureau has designated the County of Los Angeles
13 as subject to the requirements of Section 203 of the Voting
14 Rights Act, for the Chinese, Filipino, Japanese, Korean,
15 Spanish, and Vietnamese languages. See 42 U.S.C. § 1973aa-
16 1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). As a
17 political subdivision within the County of Los Angeles, the City
18 of Azusa is also subject to the requirements of Section 203 for
19 these languages. See 28 C.F.R. § 55.9. The City currently has
20 significant numbers of Spanish-speaking voters who need
21 assistance and materials in the election process in the Spanish
22 language.

23 The City of Azusa conducts its own municipal elections,
24 while the County of Los Angeles conducts county, state, and
25 federal elections in which voters in the City also vote. The
26 allegations in the Complaint and the terms of this Consent
27 Decree apply to the City's municipal elections, and any other
28 elections over which the City has authority to conduct.

SCANNED

1 The Complaint states that Defendants have failed to comply
 2 with the requirements of Section 203 by failing to translate
 3 certain written election materials and information into Spanish
 4 including but not limited to the official ballot, certain voting
 5 instructions, forms for voters with disabilities, signs
 6 identifying a polling place's location, absentee ballot forms,
 7 signs indicating the hours that polling places are open, and
 8 various documents relating to voting by provisional ballot.

9 To avoid protracted and costly litigation, the parties have
 10 agreed that this lawsuit should be resolved through the terms of
 11 this Consent Decree (the "Decree"). Accordingly, the United
 12 States and Defendants hereby consent to the entry of this
 13 Decree, as indicated by the signatures of counsel at the end of
 14 this document. The parties waive a hearing and entry of
 15 findings of fact and conclusions of law on all issues involved
 16 in this matter.

17 Defendants have attempted to comply with Section 203, but
 18 admit that they have failed to provide certain Spanish language
 19 election information as required by Section 203 to limited
 20 English proficient Hispanic citizens in the City of Azusa.
 21 Defendants are committed to complying fully with all of the
 22 requirements of Section 203 in future elections and stipulate
 23 that each provision of this Consent Decree is appropriate and
 24 necessary.

25 Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED
 26 that:

- 27 1. Defendants, their agents, employees, contractors,
 28 successors, and all other persons or government entities

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1 representing the interests of Defendants are hereby PERMANENTLY
 2 ENJOINED from failing to provide in the Spanish language any
 3 "registration or voting notices, forms, instructions, assistance,
 4 or other materials or information relating to the electoral
 5 process, including ballots" that they provide in the English
 6 language, as required by Section 203 of the Voting Rights Act,
 7 as amended. 42 U.S.C. § 1973aa-1a(c). The terms of this Decree
 8 apply to all municipal elections in the City of Azusa and any
 9 other elections over which the City has authority to conduct.
 10 Whenever Defendants enter into an election-related services
 11 contract with another entity - whether it be a company,
 12 political subdivision, political party, or some other entity -
 13 to conduct an election on behalf of the City, Defendants shall
 14 require such other entity to agree to abide by the terms of this
 15 Decree as if such entity were a party to this Decree with the
 16 United States.

Translation of Election-Related Materials

17
 18 2. All information that is disseminated by the City of
 19 Azusa in English about "registration or voting notices, forms,
 20 instructions, assistance, or other materials or information
 21 relating to the electoral process, including ballots," 42 U.S.C.
 22 § 1973aa-1a(c), shall also be provided in the Spanish language.
 23 Defendants shall ensure that English and Spanish language
 24 election information, materials, and announcements are made
 25 equally available to voters, including information on the City's
 26 website.

27 3. Defendants shall consult with trained translators who
 28 are familiar with election terminology in Spanish, to produce

1 written Spanish language translations of English language
2 election information. Defendants may satisfy this obligation by
3 using terminology and translations provided by the Los Angeles
4 County Registrar-Recorder/County Clerk or the Elections Division⁵
5 of the Office of the Secretary of State of California.
6 Defendants shall also consult in a timely manner with the
7 Spanish Language Advisory Group, discussed below, regarding the
8 translation of any written and audio-recorded materials.

9 4. Defendants shall adopt a checklist identifying each
10 material and written item containing Spanish that the City makes
11 available to the public at each precinct. The checklist shall
12 include with respect to each item an attestation that the poll
13 workers at the precinct posted or made available to voters these
14 Spanish language materials, or a detailed written explanation as
15 to why individual items were not posted or made available. The
16 inspectors for each precinct must complete and sign this
17 document before the inspectors receive payment for work in the
18 election, subject to applicable state and federal law.
19 Defendants shall maintain a record of each such failure to
20 complete and sign the checklist.

21 Dissemination of Spanish Language Information

22 5. Defendants shall ensure that Spanish language election
23 information, materials, and announcements are provided to the
24 same extent as they are provided in English. Spanish language
25 information shall be distributed in media that regularly
26 publishes or broadcasts information in the Spanish language such
27 as the City's bilingual newsletter. These announcements need
28 not be identical in all respects to English language

1 announcements, but shall be in the form, frequency, and media
2 best calculated to achieve notice and understanding equal to
3 that provided to the English-speaking population and to provide
4 substantially the same information.

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5 6. Any voting system used by the City shall be bilingual,
6 as described below. If the City uses electronic voting
7 machines, these machines shall offer the readily apparent
8 options of a Spanish ballot, and any audio version of the ballot
9 on such machines shall be available in Spanish. Any paper
10 ballots used by the City, including the official ballot, the
11 provisional ballot, and the absentee ballot, shall be bilingual,
12 in both English and Spanish.

13 7. Whatever information the City provides in the voting
14 booth, including instructions on the casting of a ballot, shall
15 appear in the booth bilingually in both Spanish and English.

16 8. The City shall adopt a bilingual sample ballot booklet
17 that provides all information in English and Spanish. The
18 booklet's cover must include readily visible Spanish language
19 translations of all the information provided on the cover in the
20 English language.

21 Spanish Language Assistance

22 9. The City shall continue to recruit, hire, and assign
23 election officials able to understand and speak Spanish fluently
24 to provide assistance to Spanish language voters at all polling
25 places in the City on election days.

26 Program Coordinator

27 10. The City of Azusa shall designate its City Clerk or
28 his/her designee as the Spanish Language Program Coordinator to

1 coordinate the City's election-related Spanish language
 2 materials and assistance. The City may coordinate with other
 3 governmental or non-governmental entities in providing a Spanish
 4 Language Program Coordinator for its election program, and the
 5 Coordinator may perform other duties in addition to his or her
 6 election-related duties. The Spanish Language Program
 7 Coordinator shall speak, read, and write Spanish and English.
 8 The City shall provide the Spanish Language Program Coordinator
 9 with support sufficient to meet the goals of the Program. The
 10 Spanish Language Program Coordinator's responsibilities shall
 11 include coordination of the translation of ballots and other
 12 election information; development and oversight of Spanish
 13 language publicity programs, including selection of appropriate
 14 media for notices and announcements; training, recruitment and
 15 assessment of Spanish language proficiency of bilingual poll
 16 officials and interpreters; and managing all other aspects of
 17 the City's compliance with Section 203.

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18 Spanish Language Advisory Group

19 11. The City shall form a Spanish Language Advisory Group
 20 concerning Spanish language election-related materials and
 21 assistance. Among the steps the City will take in order to
 22 convene the first meeting of an Advisory Group are: the City
 23 will publish a bilingual notice that it is seeking volunteers to
 24 participate in a Spanish Language Advisory Group and shall send
 25 anyone who responds to its notice an invitation to participate
 26 in the Advisory Group at least two weeks prior to the convening
 27 of said Group. The Advisory Group shall provide the City with
 28 information and assistance concerning how to provide election-

1 related materials and assistance for its Spanish-speaking
2 citizens.
3 12. The Advisory Group shall be chaired by the Spanish
4 Language Program Coordinator. The Program Coordinator shall
5 invite participation from all interested individuals and
6 organizations that work with or serve Azusa's Spanish-speaking
7 community to determine how to provide effectively election
8 materials, information, and assistance to Spanish-speaking
9 voters, and how to fill any gaps in public awareness about the
10 City's Spanish language election program. The Group shall be
11 open to all interested persons. The Program Coordinator shall
12 provide notice of all planned meetings to each member, including
13 the time, location, and agenda for the meeting, at least 14 days
14 in advance, although members of the Advisory Group may agree to
15 waive or shorten this time period as necessary. Within five
16 working days following each meeting, the Program Coordinator
17 shall provide a written summary to all members and to the City
18 Clerk of the discussion and any decisions reached at the
19 meeting. If the City Clerk decides not to implement the Spanish
20 Language Advisory Group's suggestion with respect to Spanish
21 language assistance or information, the Clerk shall provide to
22 the Advisory Group through the Program Coordinator and maintain
23 on file a written statement of the reasons for rejecting such
24 suggestion.
25 13. The City shall transmit to all interested Advisory
26 Group members copies of all election information, announcements,
27 and notices that are provided to the electorate and general
28

SCANNED



1 public and request that Group members share this information
2 with others.

3 Other Language Minority Groups

4 14. Although the Spanish language minority group is the
5 only language minority group in the City of Azusa currently
6 requiring election-related materials and assistance, as a
7 political unit within the County of Los Angeles, the City is
8 also subject to the requirements of Section 203 for Chinese,
9 Filipino, Japanese, Korean, and Vietnamese. To ensure future
10 compliance with Section 203, the City shall monitor changes in
11 the City population and voter registration, and develop
12 contingency plans to provide election information and materials
13 to Chinese, Filipino, Japanese, Korean, and Vietnamese voters
14 should the need for language assistance in these communities
15 arise in the future. Any language assistance and materials
16 provided to these additional language minority groups shall be
17 provided in a manner consistent with the requirements of this
18 Decree.

19 Federal Examiners and Observers

20 15. To monitor compliance with and ensure effectiveness of
21 this Decree, and to protect the Fourteenth and Fifteenth
22 Amendment rights of the citizens of the City of Azusa, the
23 appointment of a federal examiner is authorized for the City of
24 Azusa pursuant to Section 3(a) of the Voting Rights Act,
25 42 U.S.C. § 1973a(a), as long as this Decree is in effect.

26 16. Defendants shall recognize the authority of federal
27 observers to observe all aspects of voting conducted in the
28 polls on election day.

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Evaluation of Plan

17. Defendants shall evaluate the Program after each of its municipal elections to determine which aspects of the Program are functioning well, whether any aspects need improvement, and how to effect needed improvements. The Program may be adjusted at any time upon joint written agreement of the parties.

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Retention of Documents and Reporting Requirements

18. During the duration of this Decree, the City shall make and maintain written records pertaining to this Decree and shall provide copies of such records to the United States upon request.

19. During the duration of this Decree, at least thirty (30) days before each municipal election held in the City, Defendants shall provide to counsel for the United States, (a) the name, address, and precinct designation of each consolidated precinct; and (b) copies of any signs or other written information provided at polling places. Within thirty (30) days after each election, Defendants shall provide to counsel for the United States (a) information about any complaints the City Clerk's office received at the election regarding Spanish language materials or assistance; and (b) copies of the checklists prepared by poll workers referred to in Paragraph four of this Decree. Copies may be provided electronically.

Other Provisions

20. This Decree is final and binding between the parties and their successors in office regarding the claims raised in this action. This Decree shall remain in effect through August

1 6, 2007, and the parties further stipulate that the Decree shall
2 extend through December 31, 2009, if Defendants remain under a
3 continuing federal statutory obligation to provide minority
4 language materials and assistance.

SCANNED

5 21. The Court shall retain jurisdiction of this case to
6 enter further relief or such other orders as may be necessary
7 for the effectuation of the terms of this agreement and to
8 ensure compliance with Section 203 of the Voting Rights Act.

9 22. Each party shall bear its own costs and fees.

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1 Agreed to this 14th day of July, 2005.

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AGREED AND CONSENTED TO:

For Plaintiff:
UNITED STATES OF AMERICA

For Defendants:


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Acting Assistant Attorney General
Civil Rights Division


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Civil Rights Division
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Washington, D.C. 20530

SCANNED

1 Agreed to this _____ day of _____, 2005.

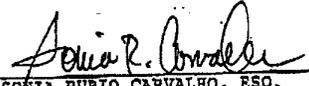
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3 AGREED AND CONSENTED TO:

4 For Plaintiff:
5 UNITED STATES OF AMERICA

For Defendants:

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9 Acting Assistant Attorney General
10 Civil Rights Division

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SCANNED

JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 and 42 U.S.C. § 1973aa-2 to consider the United States' claim under Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, and hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this 22nd day of August, 2005.

[Signature]
UNITED STATES CIRCUIT JUDGE

[Signature]
UNITED STATES DISTRICT JUDGE

[Signature]
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.	)	CIVIL ACTION NO.
)	
BERKS COUNTY, PENNSYLVANIA;)	
BERKS COUNTY COMMISSION;)	
BERKS COUNTY BOARD OF)	
ELECTIONS; TIMOTHY REIVER,)	
MARK SCOTT, and JUDITH)	
SCHWANK, in their)	
official capacities)	
as County Commissioners and)	
Members of the Board of)	
Elections; and KURT BELLMAN,)	
in his official capacity as)	
Director of Elections,)	
)	
Defendants.)	

COMPLAINT

The United States of America, Plaintiff herein, alleges:

1. The Attorney General files this action seeking injunctive and declaratory relief pursuant to Sections 2, 3(a), 4(e), 11(a), 12(d), and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973a(a), 42 U.S.C. 1973b(e), 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-6, and 28 U.S.C. 2201, and to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. 1345 and 42 U.S.C. 1973j(f).

3. Defendant Berks County is a county within the State of Pennsylvania and is governed by the laws of that State.

4. Defendant Berks County Commission is the governing body of Berks County with statutory powers, duties, and responsibilities to effect local governmental functions, including the capacity to make contracts for carrying into execution the laws relating to counties and for all lawful purposes, and to make appropriations for any purpose authorized by Act of the General Assembly, including the conduct of elections. Defendant Berks County Board of Elections has statutory powers, duties, and responsibilities concerning the conduct of elections in Berks County and Reading City, Pennsylvania. Its members consist of the Berks County Commissioners, Timothy Reiver, Mark Scott, and Judith Schwank. Defendants Reiver, Scott and Schwank reside in Berks County and are sued in their official capacities.

5. Defendant Kurt Bellman is the Director of Elections, with duties, powers, and responsibilities concerning the administration of elections held in Berks County. Defendant Bellman is a resident of Berks County and is sued in his official capacity.

6. According to the 2000 Census, Reading City has a total population of 81,207 persons and a voting-age population of 56,913 persons. Reading City has a total Hispanic population of 30,302, representing 37.3% of the City's total population. There are 17,278 Hispanic persons of voting age, representing 30.4% of the City's voting age population (hereafter referred to as "VAP"). The number and proportion of Hispanic persons in the City have doubled since 1990, when Hispanic persons comprised 14,486 (18.5%) of the total population and 7,988 (13.7%) of the voting age population.

7. The 2000 Census reports that of Reading City's Hispanic population, 19,054 are of Puerto Rican descent, an increase of over 60% compared to 1990 Census data, which reported that 11,705 residents of Reading City were Hispanic of Puerto Rican descent.

8. Of the 19,054 Hispanic persons of Puerto Rican descent residing in Reading City, a significant number were educated in American flag schools in which the predominant classroom language was other than English.

9. The 2000 Census reported that Reading City had a total of 10,929 Spanish-speaking residents over age five who were limited English proficient, constituting 14.7 percent of Reading City persons over age five. This represents an increase of 84% over the number of limited English proficient persons reported by the 1990 Census, which was 5,936 Spanish-speaking residents over

age five who were limited English proficient, or 8.3 percent of Reading City residents over age five.

10. Hispanic persons residing in Reading City have suffered and continue to suffer discrimination, including a history of discrimination and neglect in voting-related activities, and bear the effects of that discrimination today.

11. Defendants Berks County election officials have knowledge of the need for Spanish language assistance among Reading citizens of Puerto Rican descent.

12. Reading City has a total of 48 election districts. Of these 48, 40 contain a minimum of 10% Spanish-surname registered voters, 18 contain a minimum of 30% Spanish-surname registered voters, and 12 contain a minimum of 40% Spanish-surname registered voters.

13. In conducting elections in Reading City, Berks County Defendants have denied Hispanic citizens with limited English proficiency an equal opportunity to participate in the political process and to elect the representatives of their choice. The actions that contributed to this denial include, but are not limited to, the following:

a. Poll officials have directed hostile remarks at, and have otherwise acted in a hostile manner toward, Hispanic voters, to deter them from voting and to make them feel unwelcome at the polls; and

b. Poll officials have engaged in election practices including, but not limited to, failing to communicate effectively with Spanish-speaking voters regarding necessary information about their eligibility to vote, voter registration status, identification requirements, and polling place changes and assignments, and turning away Hispanic voters and not allowing them to cast a ballot at the 2001 and 2002 elections.

14. Moreover, Hispanic voters in Reading City, Berks County have also been deterred or prevented from voting by the following practices:

a. Defendants have failed to recruit, appoint, train, and maintain an adequate pool of Hispanic and bilingual poll officials, despite their knowledge of the needs of limited English proficient Hispanic voters. For example, defendants have maintained a pool of poll workers that contains, on average, only 3 percent with Spanish surnames, even though Hispanics comprise approximately 35 percent of registered voters in Reading. As a result, some Hispanic voters with limited English proficiency are unable to obtain effective assistance at certain polling places because most polling places are not staffed with bilingual polling officials; and

b. Defendants have failed to provide adequate notification to the Spanish-speaking population of the availability of bilingual assistance at the few sites where it

has been available; and

c. Defendants have failed to translate into Spanish election materials including the ballot, instructions for casting a ballot on election day, general election notices concerning participation in the political and electoral process, polling place changes, letters to voters regarding registration and election-day issues, voter assistance information, and information on Berks County's elections internet site, despite their knowledge of the needs of limited English proficient voters. As a result, some Hispanic voters with limited English proficiency have had difficulty voting because election materials have been provided in English only.

15. Some Hispanic voters with limited English proficiency have requested that other persons of their choice, including family members, friends, or poll watchers, assist them in casting their ballots because they were illiterate in English. Berks County Defendants would not permit these persons to assist Hispanic voters, and the voters did not receive such assistance from other persons.

16. Poll workers are trained that if questions arise at the polls on election day, they must follow the Election Procedures Guide, which provides in relevant part: "Voter may select a voter from his or her own district to assist." Poll workers are further instructed that a voter qualifies to receive assistance

only if the need is documented on the voter's registration card.

FIRST CAUSE OF ACTION

17. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 16 above.

18. Section 2 of the Voting Rights Act prohibits Defendants from imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" which results in a denial or abridgement of the right to vote on account of race or color, or membership in a language minority. 42 U.S.C. 1973(a).

19. The "totality of circumstances" of Defendants' actions, as described in ¶¶ 10-14, has resulted in Hispanic voters having "less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice." 42 U.S.C. 1973.

20. Unless enjoined by this Court, Defendants will continue to violate Section 2 of the Voting Rights Act, 42 U.S.C. 1973, by enforcing standards, practices, or procedures that deny limited English proficient Hispanic voters an opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

SECOND CAUSE OF ACTION

21. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 20 above.

22. Section 208 of the Voting Rights Act provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 42 U.S.C. 1973aa-6.

23. Defendants' actions described above in ¶¶ 15-16 constitute a failure to ensure that voters who are unable to read the ballot and who need voting assistance are permitted to have the person of their choice assist them at the polls, in violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6.

24. Unless enjoined by this Court, Defendants will continue to violate Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6, by failing to ensure that voters are permitted to receive assistance from the person of their choice.

THIRD CAUSE OF ACTION

25. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 24 above.

26. Section 4(e)(1) prohibits Defendants from "conditioning the right to vote . . . on the ability to read, write, understand, or interpret" the English language by persons educated in American Flag classrooms, including the Commonwealth

of Puerto Rico, where the predominant language is not English.
42 U.S.C. 1973b(e) (1).

27. Defendants knowingly conduct English-only elections as described in ¶¶ 10-16, and the failure to provide Reading's Puerto Rican citizens with limited English proficiency with the election information and assistance necessary for their effective political participation constitutes a violation of Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b.

28. Unless enjoined by this Court, Defendants will continue to violate Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b(e), by failing to provide election information and assistance necessary to effectively participate in the political process to Spanish-language minority citizens educated in American flag schools and currently residing in Reading City.

WHEREFORE, the Plaintiff, United States, prays for an order:

- (1) With respect to Plaintiff's First Cause of Action:
 - (a) Declaring that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. 1973 because they have provided Hispanic and Spanish-language minority citizens with less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice;
 - (b) Preliminarily and permanently enjoining

Defendants, their agents and successors in office, and all persons acting in concert with them, from implementing practices and procedures which deny Hispanic and Spanish-language minority citizens an opportunity to participate effectively in the political process on an equal basis with other members of the electorate in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and

- (c) Requiring Defendants to devise and implement a remedial program that provides Reading City's Hispanic and Spanish-language minority citizens the opportunity to participate in the political process on an equal basis with other members of the electorate consistent with Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
- (2) With respect to Plaintiff's Second Cause of Action:
- (a) Declaring that Defendants have violated Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6 by failing to ensure that Reading City voters who are unable to read the ballot and who need voting assistance are permitted to have the person of their choice assist them at the polls;
 - (b) Preliminarily and permanently enjoining Defendants, their agents and successors in office,

and all persons acting in concert with them, from not allowing Reading City voters the right to have the person of their choice assist them at the polls in violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6; and

- (c) Requiring Defendants to devise and implement voter assistance procedures and practices which will ensure that Reading City voters are permitted to have the person of their choice assist them at the polls, consistent with Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6.
- (3) With respect to Plaintiff's Third Cause of Action:
- (a) Declaring that Defendants have violated Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b(e) by failing to provide election information and assistance necessary to effectively participate in the political process to Spanish-language minority citizens educated in Puerto Rico and currently residing in Reading City;
 - (b) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from failing to provide election information and assistance to Spanish-language minority citizens

educated in Puerto Rico and currently residing in Reading City, in violation of Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b(e); and

- (c) Requiring Defendants to devise and implement a remedial plan to ensure that Spanish-language minority citizens educated in Puerto Rico and currently residing in Reading City are provided election information and assistance consistent with Section 4(e) of the Voting Rights Act, 42 U.S.C. 1973b(e).

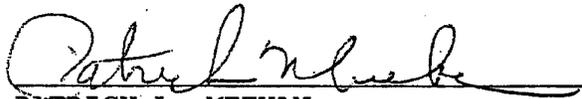
Plaintiff further requests that this Court:

1. Authorize the Director of the Office of Personnel Management to appoint federal examiners for Berks County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), and the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution;
2. Award Plaintiff the costs and disbursements associated with the filing and maintenance of this action;
3. Award such other equitable and further relief as the Court deems just and proper.

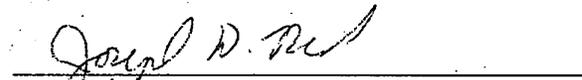
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H**Motions, Pleadings and Filings**

United States District Court,
 E.D. Pennsylvania.
 The UNITED STATES of America, Plaintiff,
 v.
 BERKS COUNTY, PENNSYLVANIA; Berks County
 Commissioners; Berks County Board of
 Elections; Timothy Reiver; Mark Scott; Judith Schwank, in
 their official
 capacities as members of the Board of Elections; Mary Ann
 Campbell; Karen A.
 Rightmire; Jeffrey L. Schmehl, in their official capacities as
 members of the
 Board of Elections; Kurt Bellman, in his official capacity as
 Director of
 Elections, Defendants.
 Civil Action No. 03-1030.

Aug. 20, 2003.

United States brought action alleging that county's election practices and procedures with regard to Spanish-speaking voters of Puerto Rican descent violated Voting Rights Act. Following granting of preliminary injunction, 250 F.Supp.2d 525, the District Court, Baylson, J., held that: (1) Spanish-speaking voters were denied their right effectively to register political choice; (2) county denied Spanish-speaking voters their right to bring assistor of choice into voting booth; and (3) county's practices resulted in system in which Hispanic voters had less opportunity than other members of electorate.

Judgment for plaintiff.

West Headnotes

[1] Injunction ⇨14
212k14 Most Cited Cases

Congress' specific provision for injunctive relief in statute establishes Congress' determination that irreparable harm will result if proscribed acts are not enjoined.

[2] Elections ⇨12(9.1)

144k12(9.1) Most Cited Cases

Denial of right to participate in election is by its nature "irreparable injury," as may engender relief under Voting Rights Act. Voting Rights Act of 1965, § 2 et seq., as amended, 42 U.S.C.A. § 1973 et seq.

[3] Injunction ⇨9

212k9 Most Cited Cases

In deciding whether permanent injunction should issue, trial court must consider whether: (1) moving party has shown actual success on merits; (2) denial of injunctive relief will result in irreparable harm to moving party; (3) granting of permanent injunction will result in even greater harm to defendant; and (4) injunction serves public interest.

[4] Citizens ⇨10.1

77k10.1 Most Cited Cases

As United States citizens, Puerto Ricans are entitled to unrestricted migration to the mainland states.

[5] Citizens ⇨10.1

77k10.1 Most Cited Cases

Unlike naturalized citizens, who must demonstrate facility with English in order to gain citizenship, Puerto Ricans residing in United States need not speak or read English to exercise full benefits of citizenship.

[6] Elections ⇨106

144k106 Most Cited Cases

[6] Elections ⇨216

144k216 Most Cited Cases

Persons must have opportunity to comprehend registration and election forms and ballot itself to cast informed and effective vote.

[7] Elections ⇨12(3)

144k12(3) Most Cited Cases

If voters cannot understand English-only ballot language, such as offices for which candidates are running, propositions, bond authorizations, and constitutional amendments, as well as printed advertisements of polling place locations and sample ballots, their right to vote effectively is diminished.

[8] Elections ⇨12(9.1)

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144k12(9.1) Most Cited Cases

United States demonstrated success on merits of claim that county's use of English-only election process effectively conditioned right to vote for county's Spanish-speaking voters of Puerto Rican descent on ability to read, write, and understand English, as required for permanent injunction to issue against county under Voting Rights Act; county's failure to provide Spanish-language oral and written assistance for Puerto Rican population denied group their right effectively to register political choice. Voting Rights Act of 1965, § 4(e), as amended, 42 U.S.C.A. § 1973b(e).

19] Elections ⇌ 12(9.1)144k12(9.1) Most Cited Cases

United States demonstrated success on merits of claim that county election board denied Spanish-speaking voters of Puerto Rican descent their right to bring assistant of choice into voting booth, as required for permanent injunction to issue against county under Voting Rights Act; due to such denial, Spanish-speaking voters felt uncomfortable with election process, did not understand ballot, did not know how to operate voting machine, and could not cast meaningful vote. Voting Rights Act of 1965, § 208, as amended, 42 U.S.C.A. § 1973aa-6.

110] Elections ⇌ 12(3)144k12(3) Most Cited Cases

Critical question in claim brought under Section 2 of Voting Rights Act is whether use of contested electoral practice or structure results in members of protected group having less opportunity than other members of electorate to participate in political process and to elect representatives of their choice. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

111] Elections ⇌ 12(3)144k12(3) Most Cited Cases

Section 2 of Voting Rights Act applies nationwide, and wherever totality of circumstances demonstrates that jurisdiction's political processes are not equally open to participation by minority voters, in that its members have less opportunity than other members of electorate to participate in political process, violation of Section 2 has occurred. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

112] Elections ⇌ 12(9.1)144k12(9.1) Most Cited Cases

United States demonstrated success on merits of claim that county election board's practices and procedures resulted in electoral system in which Hispanic voters had less opportunity than other members of electorate to participate in electoral process, as required for permanent injunction to issue against county under Voting Rights Act; Hispanics in county suffered from significant socioeconomic inequality, election officials permitted poll officials to express hostility toward Hispanic voters, Hispanic voters were subjected to unequal treatment at polls, including being required to show photo identification, and Hispanics were severely under-represented as poll workers. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

113] Elections ⇌ 12(9.1)144k12(9.1) Most Cited Cases

United States, in bringing action against county election board, stemming from electoral processes that discriminated against Spanish-speaking voters, demonstrated that denial of injunctive relief would result in irreparable harm to voters, as required for permanent injunction to issue against county under Voting Rights Act; impact of discouragement of equal participation in democratic system could not be redressed by money or any remedy other than order halting discriminatory practices. Voting Rights Act of 1965, § 2 et seq., as amended, 42 U.S.C.A. § 1973 et seq.

114] Elections ⇌ 12(9.1)144k12(9.1) Most Cited Cases

United States, in bringing action against county election board, stemming from electoral processes that discriminated against Spanish-speaking voters, demonstrated that county would not suffer irreparable harm in event of injunction halting discriminatory practices, as required for permanent injunction to issue against county under Voting Rights Act; any small additional monetary expense to county to conduct elections in compliance with federal law would have been far outweighed by voters' fundamental right to participate in electoral process. Voting Rights Act of 1965, § 2 et seq., as amended, 42 U.S.C.A. § 1973 et seq.

115] Elections ⇌ 12(9.1)144k12(9.1) Most Cited Cases

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United States, in bringing action against county election board, stemming from electoral processes that discriminated against Spanish-speaking voters, demonstrated that public interest would be served by entry of injunction halting discriminatory practices, as required for permanent injunction to issue against county under Voting Rights Act; ordering county to conduct elections in compliance with federal law, so that all citizens could participate equally in electoral process, served public interest by reinforcing core democratic principles. Voting Rights Act of 1965, § 2 et seq., as amended, 42 U.S.C.A. § 1973 et seq.

*572 Ralph F. Boyd, Jr., Amy H. Nemko, Joseph D. Rich, Washington, DC, Patrick L. Meehan, Philadelphia, PA, for Plaintiffs.

*573 Maxwell E. Davison, Duane Morris LLC, Allentown, PA, for Movant.

Gregory M. Harvey, Montgomery, McCracken, Walker & Rhoads, Philadelphia, PA, for Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
 [ENL]

FN1. The Court has jurisdiction pursuant to 28 U.S.C. § 1345, as this action was commenced by the United States, and pursuant to 42 U.S.C. § 1973(f) as the action concerns an alleged deprivation or attempted deprivation of secured rights. Venue is appropriate under 28 U.S.C. § 1391.

BAYLSON, District Judge.

I. Findings of Fact

A. Background

1. This action was brought on February 25, 2003 by the United States against Defendants Berks County; the Berks County Commissioners; the Berks County Board of Elections; Berks County Commissioners in their official capacities; members of the Berks County Board of Elections in their official capacities; and the Director of Elections in his official capacity.

2. Berks County is a County within the Commonwealth of

Pennsylvania and is governed by the laws of that State. (Joint Stipulation of Facts ("Joint Stip.") ¶ 1.)

3. The Berks County Board of Elections has statutory powers, duties, and responsibilities concerning the conduct of elections within the City of Reading, Pennsylvania (referred to in Census listings as "Reading City" and sometimes referred to herein as "Reading City"). *Id.* ¶ 2.

4. Defendants Chairman Timothy Reiver, and Commissioners Mark Scott and Judith Schwank, are County Commissioners and reside in Berks County. *Id.* ¶ 3.

5. At the time the Complaint was filed, County Commissioners Reiver, Scott, and Schwank also served as members of the Board of Elections. Because each Commissioner is running for re-election this year, none can serve on the Berks County Board of Elections, pursuant to 25 PA.STAT. § 2641(c). As a result, Karen A. Rightmire, Mary Ann Campbell, and Jeffrey L. Schmehl have been appointed to serve as members of the Board of Elections and reside in Berks County. (Ex. 49.) As successors in office, they have automatically been substituted as parties pursuant to Federal Rule of Civil Procedure 25(d).

6. Defendant Kurt Bellman is Chief Clerk of the Board of Elections, with statutory duties, powers, and responsibilities concerning the conduct of elections in Berks County. He is also "Director of Elections." Defendant Bellman is a resident of Berks County. (Joint Stip. ¶ 4.)

7. The United States' Complaint alleges that Defendants' election policies and practices deny Hispanic and Spanish-speaking citizens from having an equal opportunity to participate in the election process, in violation of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 et seq., and the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution. (Pl.'s Compl. ¶ 13.)

8. Specifically, the United States alleges that Berks County employs poll officials who have regularly expressed hostility toward Hispanic and limited English proficient voters, made discriminatory remarks to such voters, prevented or discouraged such voters from participating in

the electoral process, and treated Hispanic voters differently than other voters with regard to voter identification requirements, in violation of Section 2 of the Voting Rights Act. *Id.* ¶¶ 13(a), 13(b), 17-20.

*574 9. The United States further alleges that Defendants' election policies and practices illegally condition the right to vote of United States citizens educated in Puerto Rico on such persons' ability to read, write, understand, or interpret matters in English, in violation of Section 4(e) of the Voting Rights Act. *Id.* ¶¶ 13(b), 14(a)-(c), 25-28.

10. The United States further alleges that Defendants have prevented eligible voters from receiving assistance in voting from a person of their choice, in violation of Section 208 of the Voting Rights Act. *Id.* ¶¶ 15, 16, 21-24.

11. This Court, on March 18, 2003, granted Plaintiffs Motion for Preliminary Injunction to prevent Defendants from conducting the May 20, 2003 primary election using practices and procedures that would violate Sections 2, 4(e), and/or 208 of the Voting Rights Act. *United States v. Berks County*, 250 F.Supp.2d 525 (E.D.Pa.2003); *United States v. Berks County*, No. 03-1030 (E.D.Pa. Apr. 4, 2003) (order supplementing March 18, 2003 preliminary injunction order).

B. Hispanic Population and Language Ability

12. According to the 2000 Census, the City of Reading has a total population of 81,207 persons and a voting-age population of 56,913 persons. (Joint Stip. ¶ 5.)

13. According to the 2000 Census, there are 30,302 Hispanic persons in Reading, representing 37.3 percent of the City's total population. *Id.* ¶ 7.

14. According to the 2000 Census, there are 17,278 Hispanic persons of voting age in Reading, representing 30.4 percent of the City's voting age population. *Id.* ¶ 8.

15. According to the 2000 Census, of the 30,302 Hispanic persons in Reading City, 19,054 are of Puerto Rican descent. The 1990 Census reported that 11,705 residents of Reading City were Hispanic of Puerto Rican descent. *Id.* ¶ 9.

16. According to the 2000 Census, approximately half of Reading's Puerto Rican population is first generation, born in Puerto Rico. (Table PCT63H (Reading City, PA), Ex. 4).

17. Some of the 19,054 Hispanic persons of Puerto Rican descent residing in Reading were educated in American-flag schools in which the predominant classroom language was other than English. (Joint Stip. ¶ 10.)

18. The primary language of classroom instruction in Puerto Rico is Spanish. The Puerto Rico Department of Education has promulgated regulations that specify that the language of classroom instruction will be Spanish, the vernacular language of the Commonwealth of Puerto Rico. See Department of Education of Puerto Rico, General Regulations of Students, Article III, Section 3.2 (1997) (available at www.de.gobierno.pr/EDUPortal/Estudiantes/RegEst/Articulo03, Ex. 5).

19. Many of Reading's Hispanic residents do not speak English sufficiently well to participate in the electoral process. According to the 2000 Census, almost half of Reading's Hispanic residents of voting age, 8,504 persons, speak Spanish at home and speak English "less than very well." See (Custom Table, (Reading City, PA), Ex. 37).

20. The United States analyzed registered voter lists for 2003 for the City of Reading. Based on that analysis, the Court finds that 45 out of 48 precincts in Reading presently contain more than five percent Hispanic registered voters. In addition, 15 precincts contain five to 20 percent registered Hispanic voters, ten precincts contain 20 to 30 percent registered Hispanic voters, seven precincts contain 30 to 40 percent Hispanic registered voters, *575 and 13 precincts contain over 40 percent Hispanic registered voters. See Transcript of Hearing Before Special Master, March 25, 2003, at 10:19-25, 11:1-6 (stipulation by Defendants to Spanish surname methodology and to United States' analysis of 2003 voter registration list).

C. Socioeconomic Inequity

21. According to the 2000 Census, in 1999 dollars, Hispanics in Reading have a per capita income of only

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\$8,077. Joint Stip. ¶ 12.

22. According to the 2000 Census, non-Hispanic white persons in Reading have a per capita income of \$17,317 (in 1999 dollars). *Id.* ¶ 13.

23. According to the 2000 Census, 40.6 percent of Hispanics in Reading live below the poverty line. *Id.* ¶ 14.

24. According to the 2000 Census, 13.9 percent non-Hispanic whites in Reading live below the poverty line. *Id.* ¶ 15.

25. According to the 2000 Census, 58 percent of Hispanics in Reading age 25 or older have not graduated from high school. *Id.* ¶ 16.

26. According to the 2000 Census, 29.1 percent of non-Hispanic whites 25 years or older have not graduated from high school. *Id.* ¶ 17.

27. According to the 2000 Census, Hispanics in Reading are unemployed at a rate of 7.8 percent. *Id.* ¶ 18.

28. According to the 2000 Census, non-Hispanic whites in Reading are unemployed at a rate of 3.4 percent. *Id.* ¶ 19.

29. Some voters in Reading, who have a very low level of literacy, sign their names with an "X." *Id.* ¶ 34.

D. Berks County Election Practices

30. As set forth below, the Court finds that there is substantial evidence of hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll officials.

31. Poll officials in the City of Reading turned away Hispanic voters because they could not understand their names, or refused to "deal" with Hispanic surnames. (Lee Decl. ¶¶ 9, 10, Ex. 15; Negron Decl. ¶¶ 10-11, 14-15, Ex. 16).

32. Poll officials in the City of Reading made hostile statements about Hispanic voters attempting to exercise their right to vote in the presence of other voters, such as "This is the U.S.A.—Hispanics should not be allowed to have two last names. They should learn to speak the

language and we should make them take only one last name," and "Dumb Spanish-speaking people ... I don't know why they're given the right to vote." (Lee Decl. ¶ 9 Ex. 15; Colon Decl. ¶ 7, Ex. 43); *see also* Elkin Decl. ¶ 9, Ex. 17; Caro-Lopez Decl. ¶ 9, Ex. 18; Cruz Decl. ¶ 9, Ex. 44; Aponte Decl. ¶ 7, Ex. 41; Federal Observer Report of Ward 9, Precinct 2 at 19, Ex. 38K; Joint Stip. ¶ 31.

33. Poll officials in the City of Reading placed burdens on Hispanic voters that were not imposed on white voters, such as demanding photo identification or a voter registration card from Hispanic voters, even though it is not required under Pennsylvania law. (Colon Decl. ¶ 9, Ex. 43; Rodriguez Decl. ¶ 10, Ex. 19; Luna Decl. ¶ 9, Ex. 20; Pereyra Decl. ¶ 7, Ex. 46; Arroyo Decl. ¶ 9, Ex. 42; Federal Observer Reports of Ward 6, Precinct 1 at 19, Ex. 38G, and Ward 13, Precinct 2 at 19, Ex. 38T.)

34. Poll officials in the City of Reading required only Hispanic voters to verify their address and told Department staff that they did so because Hispanics "move a lot within the housing project." (Lee Decl. ¶ 10, Ex. 15); *see also* Federal Observer Report of Ward 13, Precinct 4 at 19b, Ex. 38U.

35. Poll officials in the City of Reading boasted of the outright exclusion of Hispanic *576 voters to Voting Section staff during the May 15, 2001 municipal primary election. (Lee Decl. ¶ 9, Ex. 15).

36. Hispanic voters stated that this hostile attitude and rude treatment makes them uncomfortable and intimidated in the polling place, and discourages them from voting. (Martinez Decl. ¶ 11, Ex. 21; M. Viruet Decl. ¶ 11, Ex. 48; Oquendo Decl. ¶ 9, Ex. 45; Pereyra Decl. ¶ 7, Ex. 46).

E. Lack of Bilingual Poll Officials

37. Under the Constitution and laws of Pennsylvania, three of the polling place officers in each precinct, the election judge, the majority inspector and the minority inspector, are elected by the registered voters of the precinct through partisan elections, and a fourth officer is appointed by one of the elected officers. 25 P.S. § 2671; Joint Stip. ¶ 32. In practice, the Berks County Board of Elections appoints this

fourth official itself on some occasions (in consultation with the appropriate elected officer having the legal appointing authority). In addition, in polling places in which more than one voting machine is used, a fifth poll official is appointed by the County Board of Elections. (Joint Stip. ¶ 32.)

38. Under the laws of Pennsylvania, the Berks County Board of Elections has the authority to appoint clerks and machine operators, and to fill vacancies when the elected positions go unfilled. 25 P.S. § 2674 (clerks), 25 P.S. § 2675 (vacancies); Joint Stip. ¶ 32.

39. The United States analyzed Reading city poll worker lists for the years 1998-2001 for persons with Spanish surnames.

40. The Court finds that in 1998, on the basis of this Spanish surname analysis, approximately 2.7 percent of poll officials in the city of Reading were Hispanic. (Joint Stip. ¶ 22.)

41. In 1999, based on this Spanish surname analysis, approximately 1.3 percent of poll officials in the city of Reading were Hispanic. *Id.* ¶ 23.

42. In 2000, based on this Spanish surname analysis, approximately 4.3 percent of poll officials in the city of Reading were Hispanic. *Id.* ¶ 24.

43. In 2001, based on this Spanish surname analysis, approximately 4.2 percent of poll officials in the city of Reading were Hispanic. *Id.* ¶ 25.

44. Some poll officials have acknowledged that they cannot effectively communicate with limited English proficient voters. (Martinez Decl. ¶ 9, Ex. 21).

45. Of the 407 voting machines used in Berks County, 395, including all of the voting machines designated for polling places in Reading City, have an instruction pertaining to machine operation inside the voting machine that is provided by the machine manufacturer, Shouptronix, in both English and Spanish. (Joint Stip. at ¶ 26.)

46. All other written election-related materials, including the ballot sheets that are inserted into the voting machine, sample ballots, absentee ballots, voting instructions posted

outside the voting machines, declarations of assistance, and other written election-related materials, were not provided in any language other than English prior to this Court's preliminary injunction. *Id.* ¶ 26.

47. Defendants make available at the County Elections Services office voter registration forms that are provided by the Commonwealth of Pennsylvania in English and Spanish. *Id.* ¶ 27.

48. The Commonwealth of Pennsylvania has developed a computerized statewide voter registration system ("SURE") that generates all correspondence and notices to voters in English and Spanish. *577 The Berks County Board of Elections instructed Berks County Director of Elections Bellman in June 2001 to accept the SURE statewide voter registration system, including its bilingual capacity, and to seek its implementation in Berks County at the earliest possible date. The SURE system is projected to be operational in Berks County by September 2003 and run in parallel with the existing system for the November 2003 election. The SURE system is not yet implemented in Berks County. *Id.* ¶ 27.

49. Berks County did not provide bilingual oral assistance at the polls prior to this Court's preliminary injunction ordering Defendants to appoint bilingual interpreters. *Id.* ¶ 28.

50. Many limited English proficient voters in Reading are unable to read English-only election materials. (Luna Decl. ¶ 14, Ex. 20; Maldonado Decl. ¶ 12, Ex. 30; Pazmino Decl. ¶ 11, Ex. 29; Rodriguez Decl. ¶ 14, Ex. 19; A. Viruet Decl. ¶ 10, Ex. 47).

51. Many Reading voters attempt to bring a bilingual friend or family member to the polls to assist them in voting. (Arroyo Decl. ¶ 7, Ex. 42; Luna Decl. ¶¶ 10-11, Ex. 20; Maldonado Decl. ¶ 9-11, Ex. 30; Pazmino Decl. ¶ 11, Ex. 29; Rodriguez Decl. ¶ 8 Ex. 19; A. Viruet Decl. ¶ 6, Ex. 47).

52. Poll officials have barred voters from bringing their assistants of choice into the voting booth to assist them. (Luna Decl. ¶ 12, Ex. 20; Maldonado Decl. ¶ 11, Ex. 30; Rodriguez Decl. ¶¶ 13, 15, Ex. 19; Joint Stip. ¶ 29.)

53. The United States brought various examples of the

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above facts, and others, to the attention of Defendants Reiver, Scott, Schwank, Bellman, and to county counsel, several times over the course of its ongoing two-year investigation. (Joint Stip. ¶¶ 39-47.)

54. Hispanic residents of Reading communicated similar concerns about unequal treatment in the polls to Defendants as early as 1999. (Zayas Decl. ¶ 12, Ex. 32; Joint Stip. ¶ 33.)

55. Numerous articles have appeared in local newspapers outlining Hispanic residents' concerns about equal treatment at the polls. (Exs. 33, 34.)

56. Subsequent to this Court's preliminary injunction order requiring bilingual poll officials, Defendants presented an interpreter recruitment plan that contained a criminal background check to which interpreters would be subjected, despite the lack of a criminal background check for other poll officials. See Attachment A to Defendants' Letter to Special Master. Even after this Court ordered that any background checks for interpreters be consistent with and no more extensive than those required for existing Berks County poll officials, Defendants circulated a three-page written application for interpreters. Although there is no written application process for other appointed poll official positions, the interpreter application asked, "Have you ever been arrested or convicted of a felony?" (Ex. 39 at 2.) Applicants were asked to "please explain," and all applicants were asked to sign and affirm the county's authority to investigate "all statements contained in this application for volunteer service as may be necessary for arriving at an acceptance decision." *Id.*

II. Conclusions of Law

A. Permanent Injunction

1. The United States is authorized by statute to seek permanent relief for Voting Rights Act violations. 42 U.S.C. § 1973j(d).

2. The Voting Rights Act authorizes the Attorney General to seek "preventative *578 relief, including an application for a temporary or permanent injunction" whenever any person has engaged or there are reasonable grounds to believe that a person is about to engage in a violation of the Voting

Rights Act. 42 U.S.C. § 1973j(d).

[1] 3. It is well established that Congress' specific provision for injunctive relief in a statute establishes Congress' determination that irreparable harm will result if proscribed acts are not enjoined. See, e.g., *Instant Air Freight v. C.F. Air Freight*, 882 F.2d 797, 803 (3d Cir.1989) (citing *Government of Virgin Islands, Dept. of Conservation and Cultural Affairs v. Virgin Islands Paving*, 714 F.2d 283, 286 (3d Cir.1983) ("a statutory provision authorizing preliminary injunctive relief upon a showing of probable cause to believe that the statute is being violated may be considered a substitute for a finding of irreparable harm"); see also *United States Postal Service v. Beamish*, 466 F.2d 804, 806 (3d Cir.1972).

4. The "right to vote freely 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." *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

[2] 5. Denial of the right to participate in an election is by its nature an irreparable injury. See *id.* at 585, 84 S.Ct. 1362, (once it has been established that Section 2 has been violated in legislative apportionment context, "it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan").

6. Congress has determined that irreparable injury occurs and permanent relief should be provided when a protected class will have "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973.

[3] 7. The Third Circuit requires that, in deciding whether a permanent injunction should issue, the trial court must consider four factors: (1) whether the moving party has shown actual success on the merits; (2) whether denial of injunctive relief will result in irreparable harm to the moving party; (3) whether granting of the permanent injunction will result in even greater harm to the defendant; and (4) whether the injunction serves the public interest. See *Shields v. Zuccarini*, 254 F.3d 476, 482 (3d Cir.2001).

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8. Courts in this District have treated preliminary injunction hearings as final hearings on the merits permitting entry of a permanent injunction when additional proceedings were unnecessary to rule on plaintiff's claims. *See, e.g., QVC, Inc. v. Tauman*, No. CIV.A.98-1144, 1998 WL 156982 (E.D.Pa. Apr.3, 1998) (Dalzell, J.) (converting preliminary injunction hearing into final hearing on merits, with parties' consent, pursuant to Fed.R.Civ.P. 65(a)(2)); *Savin Corp. v. Chud*, No. CIV.A.94-4551, 1994 WL 421309 (E.D.Pa. Aug.8, 1994) (Poliak, J.) (same); *see also Calhoun v. Horn*, No. CIV.A.96-350, 1997 WL 672629 (E.D.Pa. Oct. 29, 1997) (Shapiro, J.) (converting preliminary injunction hearing into non-jury trial on merits).

9. The United States has demonstrated success on the merits of its claims, as set forth in paragraphs 10-47 *infra*; and the standard for issuance of a permanent injunction is satisfied.

B. Section 4(e)

10. Section 4(e) of the Voting Rights Act of 1965 protects the right to vote of United States citizens educated in American-flag schools in any state, territory, the District of Columbia, and Puerto Rico, in a language other than English because of *579 such citizens' inability to read, write, understand, or interpret English. 42 U.S.C. § 1973b(e)(1,2).

11. The purpose of Section 4(e), according to its main sponsor, Sen. Robert F. Kennedy, was to bring the citizen of "Puerto Rican origin into a status of equality with his fellow citizen[s]." 111 CONG. REC. 11160.

12. The plain language of Section 4(e) is clear and unambiguous, and has been interpreted broadly by federal courts to prohibit both the explicit conditioning of the right to vote on the ability to speak English, and the conduct of English-only elections. *Arroyo v. Tucker*, 372 F.Supp. 764, 766 (E.D.Pa.1974); *PROPA v. Kusper*, 350 F.Supp. 606 (N.D.Ill.1972), *aff'd*, 490 F.2d 575 (7th Cir.1973); *Torres v. Sachs*, 381 F.Supp. 309, 311 (S.D.N.Y.1974). *See also Katzenbach v. Morgan*, 384 U.S. 641, 645, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966) (upholding constitutionality of Section 4(e)).

13. Persons born in Puerto Rico are citizens of the United States *ipso jure*. 8 U.S.C. § 1402.

[4] 14. As United States citizens, Puerto Ricans are entitled to unrestricted migration to the mainland states. *Arroyo*, 372 F.Supp. at 766; *PROPA*, 490 F.2d at 578.

[5] 15. Unlike naturalized citizens, who must demonstrate a facility with English in order to gain citizenship, Puerto Ricans residing in the United States need not speak or read English to exercise the full benefits of citizenship. *PROPA*, 350 F.Supp. at 609.

16. This case is analogous to *Arroyo v. Tucker*, in which the Court held that Section 4(e) was violated based on finding the following salient facts: the plaintiff class consisted of United States citizens of Puerto Rican descent residing in the City of Philadelphia; such citizens were eligible to vote, but did not read, write, speak, nor comprehend English; English was the sole language in which Philadelphia conducted its election process; and the plaintiffs' affidavits demonstrated that they were unable to participate in the electoral process unless they received assistance in Spanish. 372 F.Supp. at 767-768.

[6] 17. The right to vote encompasses more than the right to gain physical access to a voting booth, to mark a ballot or pull a lever. Persons must have the opportunity to comprehend the registration and election forms and the ballot itself to cast an informed and effective vote. *Id.* at 767.

[7] 18. The meaningful right to vote extends beyond the four corners of the voting machine. If voters cannot understand English-only ballot language such as the offices for which candidates are running, propositions, bond authorizations, and constitutional amendments, as well as printed advertisements of polling place locations and sample ballots, their right to vote effectively is diminished. *Berks County*, 250 F.Supp.2d at 527.

19. Voters who cannot speak or understand English may have difficulty establishing their right to vote and their right to assistance in voting under Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6. *Berks County*, 250

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F.Supp.2d at 527.

[8] 20. Defendants' use of an English-only election process effectively conditions the right to vote for Reading's sizeable Puerto Rican community, many of whom attended school in Puerto Rico, on the ability to read, write, and understand English.

21. Defendants' failure to provide Spanish-language oral and written assistance for Reading's large Puerto Rican population denies this group their right to *580 effectively register a political choice, in violation of Section 4(e).

C. Section 208

22. Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6, provides: "[A]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union."

[9] 23. The legislative history of Section 208 reveals that Congress viewed Section 208, as it applied to illiterate voters, as a corollary to the nationwide ban on literacy tests. See S.Rep. No. 97-417, at 63 (1982), U.S.Code Cong. & Admin.News 1982, at 177, 241-242. Congress concluded that "the only kind of assistance that will make fully 'meaningful' the vote of the blind, disabled, or those who are unable to read or write, is to permit them to bring into the voting booth a person whom the voter trusts and who cannot intimidate him." *Id.* at 62, U.S.Code Cong. & Admin.News 1982, at 241.

24. When Defendants deny Spanish-speaking voters in Reading the right to bring their assistant of choice into the voting booth, voters feel uncomfortable with the process, do not understand the ballot, do not know how to operate the voting machine, and cannot cast a meaningful vote, in violation of Section 208.

D. Section 2

25. Section 2(a) of the Voting Rights Act, as amended in 1982, prohibits any state or political subdivision from imposing or applying any "qualification or prerequisite" to

voting or any "standard, practice, or procedure" which "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" or membership in a language minority group. 42 U.S.C. § 1973(a). A violation of Section 2(a) is established where, "based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b).

[10] 26. Section 2 ensures that minority voters are free from any election practice "which operate[s], designedly or otherwise" to deny them the same opportunity to participate in all phases of the political process as other citizens. S.Rep. No. 97-417, at 28 (1982), U.S.Code Cong. & Admin.News 1982, at 177, 205. The critical question in a Section 2 claim is "whether the use of a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Thornburg v. Gingles, 478 U.S. 30, 63, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986).

27. Congress extended the Voting Rights Act in 1975 to cover certain language minority groups, including persons of Spanish heritage. 42 U.S.C. § 1973(c)(3); 1973aa 1a(e). When expanding the Voting Rights Act to cover these language minority groups, Congress found that "voting discrimination against citizens of [such] minorities is pervasive and national [in] scope." 42 U.S.C. § 1973b(f)(1).

[11] 28. Section 2 applies nationwide, and wherever the totality of circumstances demonstrates that a jurisdiction's political processes are not equally open to participation by minority voters in that its members have less opportunity than other *581 members of the electorate to participate in the political process, a violation of Section 2 has occurred. Courts have found that Section 2 claims may be brought to challenge election officials' failure to provide language assistance, Hernandez v. Woodard, 714 F.Supp. 963 (N.D.Ill.1989), and election officials' failure to appoint

minority poll workers, *Harris v. Graddick*, 593 F.Supp. 128, 132 (M.D.Ala.1984).

[12] 29. Hispanics in Reading suffer from significant socioeconomic inequality, which is ordinarily linked to lower literacy rates, unequal educational opportunities, and depressed participation in the political process. See, e.g., *Gingles*, 478 U.S. at 69, 106 S.Ct. 2752.

30. Election officials have permitted poll officials to express hostility toward Hispanic and Spanish-speaking voters.

31. Hispanic voters have been subject to unequal treatment at the polls, including being required to show photo identification where white voters have not been required to do so.

32. Hispanic residents in Reading have been severely under represented as poll workers. *Berks County*, 250 F.Supp.2d at 539.

33. The only impediment to Defendants' appointment of bilingual persons to serve as clerks or machine inspectors, and to fill vacant elected poll worker positions, was Defendants' apparent unwillingness to ensure that poll workers included persons reflective of the community. *Id.*

34. The adverse impact of hostility toward minority voters on equal access to polling places is severe. See *Harris*, 593 F.Supp. at 131 n. 3 (finding support for Section 2 violation in substantial evidence of "recent unpleasant encounters" between non-minority poll workers and minority voters).

35. Spanish-speaking voters in Berks County faced several substantial barriers to casting an effective ballot prior to issuance of the preliminary injunction: English-only election notices and materials; a dearth of bilingual poll officials; and barriers to voters' ability to receive assistance from the person of their choice.

36. The lack of minority poll officials alone is a serious impediment to Hispanic voters gaining equal access to the polls. In *Harris*, the court found that there was gross underrepresentation of black persons among poll officials across the state of Alabama, and that such underrepresentation substantially "impede[d] and impair[ed]

the access of black persons to the state political process" in violation of Section 2. 593 F.Supp. at 137. The dearth of minority poll workers was found to be an independent Section 2 claim when accompanied by evidence of past or present discrimination against the minority voters. See *id.*

37. The totality of the circumstances in this case demonstrates that Defendants' practices and procedures result in an electoral system in which Hispanic and Spanish-speaking voters have less opportunity than other members of the electorate to participate in the electoral process.

E. Federal Examiners

38. The Voting Rights Act expressly permits the Court to appoint Federal examiners as a part of a final judgment. Section 3(a), 42 U.S.C. § 1973a(a), provides:

Whenever the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth and fifteenth Amendment ... the court shall authorize the appointment of Federal examiners by the Director of the Office of Personnel Management in accordance with [section 1973d of this title] to serve for such period of time ... as the court *582 shall determine is appropriate to enforce the voting guarantees of the fourteenth and fifteenth amendment ... as part of any final judgment if the court finds that violations of the fourteenth and fifteenth amendment justifying equitable relief have occurred in such State or subdivision.

39. The Director of the Office of Personnel Management, when authorized by the Court to appoint a Federal examiner pursuant to Section 3(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973a(a), may assign federal observers pursuant to Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f.

40. Federal observers have the authority to enter and attend any place where elections are administered, in accordance with Section 6 of the Voting Rights Act, 42 U.S.C. § 1973d, and Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f, for the purpose of observing whether persons who are entitled to vote are being permitted to vote, and to enter and

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attend at any place for tabulating the votes cast at any election held in such subdivision for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated. 42 U.S.C. § 1973f.

F. Conclusion

41. The United States has demonstrated that Reading's Hispanic voters have enjoyed less opportunity than other voters to participate in the political process in past elections. The harm suffered by Reading's Hispanic voters in past elections will occur in future elections if Defendants follow their past policies and practices. Berks County, 250 F.Supp.2d at 541.

[13] 42. The impact of the discouragement of equal participation in the democratic system cannot be redressed by money or any other remedy and constitutes irreparable harm. *Id.*

[14] 43. Defendants will not suffer irreparable harm if a permanent injunction is issued. Any small additional monetary expense to Defendants to conduct the election in compliance with the Voting Rights Act is far outweighed by the important fundamental right involved in this case. *Id.*; see also Johnson v. Halifax County, 594 F.Supp. 161, 171 (E.D.N.C.1984) (administrative and financial burdens on defendant not undue in light of irreparable harm caused by unequal opportunity to participate in county election).

[15] 44. The public interest is served by entry of a permanent injunction. Ordering Defendants to conduct elections in compliance with the Voting Rights Act so that all citizens may participate equally in the electoral process serves the public interest by reinforcing the core principles of our democracy. Berks County, 250 F.Supp.2d at 541 (citing Harris, 593 F.Supp. at 136).

45. A permanent injunction is warranted that prohibits further use of English-only elections in the City of Reading; and requires Defendants to comply with Sections 4(e), 208, and 2 of the Voting Rights Act; and authorizes the appointment of Federal examiners to serve through 2007.

46. Defendants' knowledge of these violations and reluctance to remedy them absent court orders further

demonstrates the need for a permanent injunction.

47. Judgment will be entered in favor of the United States and against Defendants.

ORDER

AND NOW, this 20th day of August, 2003, upon consideration of Plaintiff's Motion for Permanent Injunction and Entry of Final Judgment, all evidence in the record, the parties' stipulation that all evidence submitted in support of the preliminary *583 injunction is submitted for purposes of the Motion for Permanent Injunction, Defendants' waiver of their right to a trial on the merits, and the interests of justice, this Court enters this Order as a final judgment in the instant action.

Accordingly, it is hereby ORDERED as follows:

1. Defendants Berks County, Pennsylvania; the Berks County Commissioners; the Berks County Board of Elections; Timothy A. Reiver; Mark C. Scott; Judith L. Schwank; Mary Ann Campbell; Karen A. Rightmire; Jeffrey L. Schmehl; Kurt Bellman; and their successors in office, are enjoined from conducting any further elections that fail to comply with the Voting Rights Act of 1965, as amended, specifically Sections 2, 4(e), and 208; and the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution.

2. To enforce the voting guarantees of the Fourteenth and Fifteenth amendments to the United States Constitution, the Director of the Office of Personnel Management is authorized to appoint Federal examiners in accordance with section 42 U.S.C. § 1793d to serve through June 30, 2007, in the City of Reading, County of Berks, Pennsylvania. During the service of the examiner, the Director of the Office of Personnel Management, at the request of the Attorney General, may assign one or more persons, who may be officers of the United States, to enter and observe election and ballot tabulation procedures pursuant to Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f; and Department of Justice personnel, including attorneys and staff members, shall be permitted into the polling places for the purpose of coordinating the work of the federal observers. The United States shall give notice of its intent to

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monitor a particular election.

3. Defendants shall provide in English and Spanish all written election-related materials, including the official ballot, sample ballots, absentee and alternative ballots, voter registration applications, candidate qualification information, notification of elections, polling place changes, polling place signage, any voter information guides or pamphlets provided by the county, voting instructions and procedures at the polls, and other election materials used at the polls, in every precinct in which registered Hispanic voters constitute more than five percent of the registered voters.

4. In each precinct in which registered Hispanic voters constitute at least five percent of the registered voters, Defendants shall appoint and assign at least one poll official or interpreter bilingual in Spanish and English. In each precinct in which registered Hispanic voters constitute 40 percent or more of the registered voters, Defendants shall appoint at least two poll officials or interpreters bilingual in Spanish and English.

5. Defendants are required to use all practicable means to recruit, engage as temporary County employees, and train persons to serve as bilingual poll officials or interpreters in all elections in the City of Reading. If necessary to recruit a sufficient number of bilingual poll officials to satisfy the requirements of this Order, Defendants shall utilize the methods set forth in paragraph 10, *infra*.

6. Defendants shall train the bilingual poll officials, including interpreters, in the translation of the entire ballot, all election-related forms used in the polls on election day, and the voting process (e.g. how to operate voting machines) so that bilingual election officials will be able to provide a full and accurate translation.

7. Bilingual poll officials shall be present in all designated polling places for the standard time expected of an elected or appointed poll official, i.e., twelve hours of the thirteen hours that polls are open, thus *584 allowing one hour for breaks. Bilingual poll officials shall be treated equally to other elected and appointed poll officials in all other respects and shall not be subject to additional application

requirements, background checks, or other disparate conditions of employment.

8. Defendants shall ensure that voters are permitted to have assistance in voting, including assistance in the voting booth, by a person of their choice as provided by 42 U.S.C. § 1973aa-6. The voter may choose anyone to provide assistance as long as the assistor is not the voter's employer or union officer or agent of the voter's employer or union. 42 U.S.C. § 1973aa-6. The assistor will be permitted to assist in all aspects of the voting process. Defendants shall not construe 25 P.S. § 3058 to limit a voter's choice of assistor or to prevent an assistor from assisting more than one voter.

9. Defendants shall maintain at least two dedicated telephone lines for use on election day answered in the Spanish language by a trained bilingual employee and shall provide adequate bilingual staffing on these telephone lines throughout the day while polls are open. Poll workers shall provide and/or post information in each polling place within the City of Reading describing the availability of telephone assistance.

10. Defendants shall publicize in Spanish and English prior to the election the availability of bilingual election materials, interpreters at the polling places, Spanish language telephone assistance by calling the dedicated telephone lines as described in paragraph 9 above, and the right of voters to bring their assistor of choice under the allowances provided for in Section 208 of the Voting Rights Act. Publicity methods shall include providing notices in English and Spanish to the Spanish-language media, Hispanic community organizations (e.g., voting organizations, businesses, churches, senior citizen centers, etc.), Hispanic elected officials, Hispanic candidates, and the county election Director's website.

11. Defendants' training of all poll officials shall include making them aware that all eligible citizens have the right to cast a ballot; making them aware and advising eligible voters of the right of certain voters to have assistance in Spanish by a person of their choice, including inside the voting booth; and making them aware of their obligation to comply with all other applicable provisions of the Voting

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Rights Act of 1965, including Section 11, 42 U.S.C. § 1973i.

12. Defendants shall assign one or two employees to act as the Spanish Language Assistance Coordinator(s), for at least three months prior to a federal, state, county, or municipal election, including primary elections, to help carry out the requirements of this Order. The Coordinator(s) shall be bilingual in English and Spanish, and shall be trained in all aspects of the election process by the Berks County Director of Elections.

13. The Coordinator(s) and the Berks County Director of Elections shall meet with representatives of the Hispanic community at least one month prior to each election and solicit their views on how to ensure the effectiveness of bilingual assistance for Spanish speaking voters. While not required to adopt any views or suggestions made in any such meetings, the Coordinator and the Berks County Director of Elections shall consider these views and/or suggestions in good faith.

14. The responsible Coordinator(s) shall investigate all allegations of poll worker hostility toward Hispanic and/or Spanish speaking voters, and shall report the results of all such investigations to the Berks County Board of Elections, the Director of Elections, and counsel of record *585 for the United States. Such hostile conduct shall include but is not limited to occasions on which a poll worker has failed or refused to permit any person to vote who is entitled to vote; intimidated, threatened, coerced, or attempted to intimidate, threaten or coerce any person for voting or attempting to vote or any person for urging or aiding any person to vote or attempting to vote. Copies of complaints and relevant documentation shall be provided to the United States within 30 calendar days after being received, and shall include the complainant's name and contact information, language spoken, nature of the request and complaint, and how the matter was resolved.

15. At least ten calendar days before each federal, state, county, and municipal election, including primary elections, in the City of Reading, Defendants shall provide to counsel for the United States: (a) the name and polling place of each precinct designation; (b) the name and title of each poll

official elected or appointed to serve at each polling place (including identification of those who are bilingual in English and Spanish); (c) a copy of the most recent voter registration list on computer disk in a format to be agreed upon; and (d) a set of all written materials to be provided to voters at the upcoming election. Within 30 calendar days after each such election, Defendants shall provide to counsel for the United States an updated report regarding any changes in items (a)-(d) above that occurred at the election, as well as copies of documents pertaining to the hiring and training of bilingual poll officials in the preceding election.

16. This Order shall remain in effect through June 30, 2007. Plaintiff may move the Court for good cause shown to extend this Order.

17. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this Order and to ensure compliance with Sections 2, 3(a), 4(e), 11(a), 12(d) and 208 of the Voting Rights Act.

18. The Clerk shall enter final judgment in favor of Plaintiff and against Defendants.

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Motions, Pleadings and Filings (Back to top)

- 2003 WL 23906010 (Trial Motion, Memorandum and Affidavit) Defendants' Response to Plaintiff's Motion for Permanent Injunction and Entry of Final Judgment (Jul. 30, 2003)
- 2003 WL 23905997 (Trial Motion, Memorandum and Affidavit) United States' Memorandum Commenting on Special Master's Report (Apr. 02, 2003)
- 2003 WL 23905987 (Trial Motion, Memorandum and Affidavit) Defendants' Memorandum in Opposition to Plaintiff's Motion for Preliminary Injunction (Mar. 11, 2003)
- 2003 WL 23905961 (Trial Pleading) Answer of Defendants to Plaintiff's Complaint (Mar. 07, 2003)

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- [2:03cv01030](#) (Docket) (Feb. 25, 2003)
- 2003 WL 23905974 (Trial Motion, Memorandum and Affidavit) Memorandum of Points and Authorities in Support of Plaintiff's Motion for Preliminary Injunction (2003)

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United States District Court,
E.D. Pennsylvania.

The UNITED STATES of America, Plaintiff,
v.
BERKS COUNTY, PENNSYLVANIA; Berks
County Commission; Berks County Board of
Elections; Timothy Reiver; Mark Scott; Judith
Schwank, in their official
capacities as members of the Board of Elections;
Kurt Bellman, in his official
capacity as Director of Elections, Defendants.

Civil Action No. 03-1030.

March 18, 2003.

United States brought action alleging that county's election practices and procedures with regard to limited-English proficient citizens of Puerto Rican descent violated Voting Rights Act. On United States' motion for preliminary injunction, the District Court, Baylson, J., held that issuance of preliminary injunction was warranted.

Motion granted.

West Headnotes

[1] Injunction ⇨138.1
212k138.1

In ruling on motion for preliminary injunction, court must consider: (1) likelihood that moving party will prevail on merits; (2) extent to which moving party is irreparably harmed; (3) extent to which non-moving party will suffer irreparable harm if injunction is issued; and (4) public interest.

[2] Injunction ⇨147
212k147

Moving party bears burden to prove that all elements required for preliminary injunction are met.

[3] Elections ⇨12(9.1)
144k12(9.1)

It was likely that United States would prevail on its claim that county's use of English-only election process violated § 4(e) of Voting Rights Act by conditioning right to vote for county's sizeable Puerto Rican community, many of whom attended schools in Puerto Rico, on ability to read, write, and understand

English, and thus United States was entitled to preliminary injunction requiring county to provide limited-English proficient United States citizens of Puerto Rican descent in voting precincts where five percent or more of registered voters were Hispanic with election information and assistance necessary for their effective participation in electoral process. Voting Rights Act of 1965, § 4(e), as amended, 42 U.S.C.A. § 1973b(e).

[4] Elections ⇨12(9.1)
144k12(9.1)

It was likely that United States would prevail on its claim that county's use of English-only election process violated § 208 of Voting Rights Act by failing to ensure that limited-English proficient voters of Puerto Rican descent who were unable to read ballot received voting assistance at polling place from assistants of their choice, and thus United States was entitled to preliminary injunction requiring county to provide assistance in voting precincts where five percent or more of registered voters were Hispanic. Voting Rights Act of 1965, § 208, as amended, 42 U.S.C.A. § 1973aa-6.

[5] Elections ⇨12(9.1)
144k12(9.1)

It was likely that United States would prevail on its claim that county's use of English-only election process violated § 2 of Voting Rights Act by failing to provide language assistance to limited-English proficient voters of Puerto Rican descent who were unable to read ballot and by failing to appoint minority poll workers, and thus United States was entitled to preliminary injunction requiring county to work with special master in preparing for primary election, in light of evidence that election officials permitted poll workers to openly express hostility to Hispanic voters, Hispanic voters were treated differently and discriminated against at polling places, and Hispanic residents in county were severely underrepresented as poll workers. Voting Rights Act of 1965, § 2, as amended, 42 U.S.C.A. § 1973.

[6] Elections ⇨12(9.1)
144k12(9.1)

Holding of upcoming election in manner that will violate Voting Rights Act constitutes irreparable harm to voters sufficient to support injunctive relief. Voting Rights Act of 1965, § 2 et seq., as amended,

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42 U.S.C.A. § 1973 et seq.
*526 Amy H. Nemko, Joseph D. Rich, Ralph F. Boyd, Jr., United States Department of Justice, Washington, DC, Patrick L. Meehan, United States Attorney Office, Philadelphia, PA, for Plaintiff.

Gregory M. Harvey, Montgomery, McCracken, Walker & Rhoads, Philadelphia, PA, for Defendants.

MEMORANDUM

BAYLSON, District Judge.

I. Introduction

This action arises from the election practices and procedures of Berks County, Pennsylvania, that plaintiff the United States of America ("Plaintiff" or "the Government") alleges violate the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 *et seq.*, and the guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution. For the reasons that follow, Plaintiff's Motion for Preliminary Injunction will be granted.

Expansion of the right to vote has been steady: today it often falls upon the courts to enforce the will of Congress. As Alexis de Tocqueville perceptively wrote in the 1830s, when the right to vote was highly restricted:

There is no more invariable rule in the history of society: the further electoral rights are extended, the greater is the need of extending them; for after each concession the strength of the democracy increases, and its demands increase with its strength.

¹ ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 59 (1835).

At the heart of this case is Section 4(e) of the Voting Rights Act of 1965, 42 U.S.C. § 1973b(e), an act of Congress which mandates protection of the voting rights of non-English speaking United States citizens. A substantial portion of the citizens of Berks County, particularly the City of Reading, were born in Puerto Rico and educated in Spanish-speaking schools. Anyone born in Puerto Rico is automatically a United States citizen, and has unrestricted migration rights within the entire United States. Congress mandated protection of their right to vote in a language other than English if they are illiterate in English.

*527 Although there have been three prior judicial decisions enforcing this law in cases brought by

private parties, the United States acknowledges that this is the first case it has filed under Section 4(e). However, that fact is legally irrelevant. This Court has the obligation to follow Congress' mandates if the facts warrant granting the relief which the Government seeks.

Voting without understanding the ballot is like attending a concert without being able to hear. Even if the voter, illiterate in English, may be able to distinguish one candidate's last name from another, the voter illiterate in English may not understand the office for which the various candidates are running, and surely cannot understand the various propositions, ranging from bond authorizations to constitutional amendments. But the meaningful right to vote extends beyond the immediate four corners of the voting machine. Advertisements of the location of polling places and sample official ballots are meaningless if a large segment of the voters in a particular precinct cannot read the material. Voting officials who cannot communicate with Spanish-speaking voters cannot discharge their duties. The voters themselves may have difficulty establishing their right to vote and to exercise their right to special assistance at the polling place under Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6.

II. Background

On February 25, 2003, the Government filed a Complaint seeking declaratory and injunctive relief against defendants Berks County, Pennsylvania; Berks County Commission; Berks County Board of Elections; Timothy Reiver; Mark Scott; Judith Schwank, in their official capacities as members of the Board of Elections; and Kurt Bellman, in his official capacity as Director of Elections (collectively "Defendants"). The filing of the Complaint was prompted by a two-year investigation conducted by the Department of Justice ("Department") during which Department employees monitored elections in Berks County. Based on this investigation, the Government found evidence of hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll workers in the City of Reading.

The United States filed its Motion for Preliminary Injunction on March 10, 2003, and Defendants filed a verified response on March 11, 2003. The Court held a hearing on March 13, 2003 and has expedited the issuance of this Memorandum and Order so as to give the parties as much time as possible to prepare for the May 20, 2003 primary election. Counsel are to be

commended for their diligence and cooperation in this process.

Defendants, who conduct elections in the City of Reading, have a municipal primary election scheduled for May 20, 2003, and the Government alleges that Defendants will continue to violate federal law unless enjoined by the Court. The Government requests that the Court preliminarily enjoin Defendants from conducting further elections in a manner that violates the Voting Rights Act until the Court issues a final determination and order.

The following facts are taken from exhibits entered into evidence by the Government without objection by Defendants for the purposes of this Motion, a Joint Stipulation of Facts, and the facts stated in Defendants' verified response.

A. Hispanic Population and Language Ability

In the last ten years, the Hispanic population in Berks County has more than *528 doubled. [FN1] The vast majority of Hispanic citizens reside within the city limits of Reading. (Tables QT-PL (Reading City, PA), QT-PL (Berks Co., PA) (U.S. Census 2000), Pl.'s Mot. Prelim. Inj., Exs. 1-2). Reading's Hispanic population in 2000 was 30,302 persons, constituting 37.3 percent of the total population. *Id.* Ex. 1. The majority of the Hispanic population, 63 percent, or 19,054 persons, are United States citizens of Puerto Rican descent. (Table PCT011005 (Reading City, PA) (U.S. Census 2000), Pl.'s Mot. Prelim. Inj., Ex. 3).

FN1. The parties have stipulated that Berks County does not meet the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a. (Joint Stipulation of Facts ¶ 49). Under Section 203, any state or political subdivision in which U.S. Census data shows more than five percent of its eligible voting population belongs to a single language minority and in which the illiteracy rate exceeds the national average, must provide all voting notices, forms, instructions, assistance, or other materials and ballots in the applicable minority language.

The 2000 Census also indicates that about half of Reading's Puerto Rican population is first generation, born in Puerto Rico. (Table PCT63H (Reading City, PA) (U.S. Census 2000), Pl.'s Mot. Prelim. Inj., Ex. 4). Many of these persons were educated in Puerto Rico, where the primary language of classroom instruction is Spanish. The Puerto Rico Department of Education has promulgated regulations that specify

that the language of classroom instruction will be Spanish, the vernacular language of the Commonwealth of Puerto Rico. (Dept. of Educ. of Puerto Rico, General Regulations of Students, Art. III, § 3.2, Pl.'s Mot. Prelim. Inj., Ex. 5).

Almost one-third of Reading's Hispanic citizens do not speak English sufficiently well to participate in the electoral process. The 2000 Census indicates that 23,214 Reading residents over age five speak Spanish at home, and of those, 10,929 speak English "less than very well." (Table DP-2 (Reading City, PA) (U.S. Census 2000), Pl.'s Mot. Prelim. Inj., Ex. 6). This limited-English proficient group constitutes nearly 15 percent of the total Reading population of persons over age five. *Id.*

The Government has analyzed registered voter lists for persons with Spanish surnames for the year 2001 for precincts in the City of Reading. Based on this analysis, the Government has determined that 45 of 48 polling places in Reading contain more than five percent Hispanic registered voters. (Joint Stipulation of Facts ¶ 21). In addition, 18 polling places contain at least 30 percent Hispanic registered voters, and 12 contain over 40 percent Hispanic registered voters. *Id.*

Finally, substantial evidence exists to demonstrate that Hispanics in Reading suffer from significant socioeconomic inequality, which is ordinarily linked to lower literacy rates, unequal educational opportunities, and depressed participation in the political process. In 1999 dollars, Hispanics in Reading had a per capita income of only \$8,077; less than half the per capita income of whites, who earned \$17,317. (Tables PL157H, PL157I (U.S. Census 2000), Pl.'s Mot. Prelim. Inj., Exs. 7-8). According to the 2000 Census, a very high level, 40.6 percent, of Reading's Hispanic citizens live below the poverty line, compared to 13.9 percent of whites. (Table PL159H, PL159I (U.S. Census 2000), Pl.'s Mot. Prelim. Inj., Exs. 9-10). With regard to education, the Census indicates that 58 percent of Hispanics in Reading age 25 or older have not graduated from high school, while only 29 percent of whites have failed to achieve this level of education. (Table PL148H, PL148I (U.S. Census 2000), Pl.'s *529 Mot. Prelim. Inj., Exs. 11-12). Finally, the Census indicates that Hispanics in Reading suffer unemployment at twice the rate of whites (7.8 percent compared to 3.4 percent). (Table PL150H, PL150I (U.S. Census 2000), Pl.'s Mot. Prelim. Inj., Exs. 13-14).

B. Berks County Election Practices**1. Hostile and Disparate Treatment of Hispanic and Spanish-Speaking Voters**

In the course of monitoring elections in Berks County over the past two years, the Government found substantial evidence of hostile and unequal treatment of Hispanic and Spanish-speaking voters by poll workers in Reading. Poll workers turned away Hispanic voters because they could not understand their names, or refused to "deal" with Hispanic surnames. (Lee Decl. ¶¶ 9-10; Negron Decl. ¶¶ 10-11, 14-15, Pl.'s Mot. Prelim. Inj., Exs. 15-16). Poll workers made hostile statements about Hispanic voters attempting to exercise their right to vote in the presence of other voters, such as "This is the U.S.A.-Hispanics should not be allowed to have two last names. They should learn to speak the language and we should make them take only one last name." (Lee Decl. ¶ 9, Pl.'s Mot. Prelim. Inj., Ex. 15); and "They can't speak, they can't read, and they come in to vote." (Elkin Decl. ¶ 10, Pl.'s Mot. Prelim. Inj., Ex. 17). Poll workers made discriminatory statements concerning Hispanics to Department personnel monitoring the polls, such as "No Hispanics wake up before 9:30 a.m." and so would not come to the polling place until later in the day. (Caro-Lopez Decl. ¶ 9, Pl.'s Mot. Prelim. Inj., Ex. 18).

Poll workers placed burdens on Hispanic voters that are not imposed on white voters. They demanded photo identification from Hispanic voters, even though that is not required under Pennsylvania law. (Rodriguez Decl. ¶ 10; Luna Decl. ¶ 9, Pl.'s Mot. Prelim. Inj., Exs. 19-20). Poll workers required only Hispanic voters to verify their addresses and told Department staff they did so because Hispanics "move a lot within the housing project." (Lee Decl. ¶ 11, Pl.'s Mot. Prelim. Inj., Ex. 15).

Hispanic voters have stated that this hostile attitude and rude treatment makes them uncomfortable and intimidated in the polling place, and discourages them from voting. (Martinez Decl. ¶ 11, Pl.'s Mot. Prelim. Inj., Ex. 21). The aforementioned declarants are a representative sample of Hispanic citizens in Reading who have endured similar treatment. [FN2]

FN2. The Government claims that it is aware of many people who have been treated in a hostile manner, based on its ongoing investigation and newspaper accounts. See, e.g., Merav Bushlin, *Beyond the Ballot Battle: Latino Voters Complain of Discrimination at Berks Polls*, READING EAGLE,

Jan. 5, 2003, at A1. (Pl.'s Mot. Prelim. Inj., Ex. 22). The Government asserts that it will be prepared after discovery to present additional evidence concerning Hispanic voters who have experienced hostile treatment at the polls and the adverse effect this treatment had on their right to vote.

2. Lack of Bilingual Poll Workers

Despite knowledge of the large community of Hispanic citizens and limited-English proficient voters, Defendants do not recruit, appoint, train, or maintain a pool of Hispanic poll workers or poll workers with Spanish-language skills. [FN3] (Joint Stipulation *530 of Facts ¶ 32). To determine the percentage of Hispanic poll workers, the Government analyzed Berks County's poll worker lists for persons with Spanish surnames for the years 1998 through 2001 for precincts in the City of Reading. Based on this analysis, the Government has determined that an extremely low number of Spanish-surnamed poll workers serve at Reading polling places. In November 1998, six out of 226 total poll workers, or 2.7 percent, had Spanish surnames; in November 1999, three out of 226 total poll workers, or 1.3 percent, were Spanish-surnamed; in November 2000, nine out of 233 poll workers, or 4.3 percent, had Spanish surnames; in May 2001, 10 out of 237 poll workers, or 4.2 percent, were Spanish-surnamed. (Joint Stipulation of Facts ¶¶ 22-25). This averages to approximately three percent of poll workers in Reading precincts with Spanish surnames, compared to a voting-age population that is over 30 percent Hispanic. *Id.* ¶ 8. The lack of bilingual ability has led some poll workers to recognize that they cannot effectively communicate with limited-English proficient voters. (Martinez Decl. ¶ 9, Pl.'s Mot. Prelim. Inj., Ex. 21).

FN3. Although the Election Judge, Majority Inspector, and Minority Inspector are elected positions under Pennsylvania law, Defendant Berks County Board of Elections has the authority to appoint clerks and machine operators, and to fill vacancies if the elected positions are not filled. 25 Pa. Cons.Stat. Ann. §§ 2674-2675.

3. Lack of Bilingual Materials

Defendants provide bilingual voter registration forms; 395 of the 407 voting machines used in Reading have some bilingual instructions on machine operation inside the voting machines. (Joint Stipulation of Facts ¶¶ 26-27). Otherwise, Defendants refuse to provide bilingual written

election-related materials, including the ballot. The following are all printed exclusively in English: signs inside and outside the polling places and voting booths; sample ballots posted inside the polling places; posters instructing voters how to use the electronic voting machines before voting; the text of referenda and charter amendments on the ballot posted in the polling places for voters to view before voting; the elector's affidavit where challenged voters affirm their eligibility to vote; and the declaration of assistance, where voters declare that they need assistance in marking their ballots or operating the voting machines. (Pl.'s Mot. Prelim. Inj., Exs. 23-28).

The impact of the lack of bilingual materials and poll workers on limited-English proficient voters is severe. Many limited-English proficient voters are unable to read these English-only materials. When a voter who was born in Puerto Rico and who speaks little English entered the voting booth on November 5, 2002, she was unable to read the English-language ballot, and simply "pushed all kinds of buttons" on the machine, and in the end was "not sure who [she] voted for." (Rodriguez Decl. ¶ 14, Pl.'s Mot. Prelim. Inj., Ex. 19).

4. Denial of Assistor of Choice

Due to the lack of bilingual materials and assistance available at the polling places, many voters attempt to bring bilingual friends or family members to the polling places to assist them. *Id.* ¶ 8; Pazmino Decl. ¶ 11; Maldonado Decl. ¶¶ 9-11; Luna Decl. ¶¶ 10-11, Pl.'s Mot. Prelim. Inj., Exs. 19, 29-30, 20. However, in certain instances, poll workers have not permitted voters to bring their assistors of choice with them. (Rodriguez Decl. ¶ 13; Maldonado Decl. ¶ 11; Luna Decl. ¶ 12, Pl.'s Mot. Prelim. Inj., Exs. 19, 30, 20). One voter had accompanied to the polling place her elderly mother, who was born in Puerto Rico and speaks little English, and attempted to enter the voting booth to assist her, but was told by a poll worker *531 that she could not enter the booth. (Luna Decl. ¶ 12, Pl.'s Mot. Prelim. Inj., Ex. 20).

Another voter attempted to assist his brother, who had recently moved to Reading from Puerto Rico, and who did not speak much English, when poll workers told him that he could not assist. (Maldonado Decl. ¶ 11, Pl.'s Mot. Prelim. Inj., Ex. 30). The man repeatedly asked his brother in Spanish what to do, and was upset when his English-speaking brother was not allowed to help him. *Id.* ¶ 12.

Luis Pazmino is the president of the Reading Housing Authority Resident Council at the Oakbrook Housing Project, and in that capacity, he often drives residents to the polls on election day and helps those who are limited-English proficient once inside. (Pazmino Decl. ¶ 7, Pl.'s Mot. Prelim. Inj., Ex. 29). On November 5, 2002, he attempted to translate for some of his residents, and was physically pushed by the election judge who told him, "You're not supposed to be here." *Id.* ¶¶ 8, 13.

5. County Officials' Knowledge and Refusal to Remedy

The Government has brought various examples of the above facts, and others, to the attention of Defendants several times over the course of its ongoing two-year investigation. Department staff members monitored four elections: May 15, 2001; November 6, 2001; May 21, 2002; and November 5, 2002. After monitoring these elections, Department attorneys contacted the named Defendants before and after each election to inform them of the election practices and procedures that raised their concerns. (Letter to Defs. on October 22, 2001, Pl.'s Mot. Prelim. Inj., Ex. 31).

The Government also is aware that Reading residents have communicated similar concerns to Defendants as early as 1999. (Zayas Decl., Pl.'s Mot. Prelim. Inj., Ex. 32). Numerous articles have appeared in local newspapers outlining Hispanic residents' concerns about equal treatment at the polls. [FN4] Hispanic residents also have raised concerns in county council meetings.

FN4. See, e.g., Dan Kelly, *Berks to Fight Order to Help Latino Voters*, READING EAGLE, Dec. 20, 2002, at A1; George Strawley, *Berks County to Devise Spanish-language Ballot*, PATRIOT-NEWS, Oct. 14, 2001. (Pl.'s Mot. Prelim. Inj., Exs. 33-34).

III. Legal Standard and Jurisdiction

[1][2] In ruling on a motion for a preliminary injunction, the Court must consider the following four factors: (1) the likelihood that the moving party will prevail on the merits; (2) the extent to which the moving party is irreparably harmed; (3) the extent to which the non-moving party will suffer irreparable harm if the injunction is issued; and (4) the public interest. *AT & T Co. v. Winback and Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir.1994),

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cert. denied, 514 U.S. 1103, 115 S.Ct. 1838, 131 L.Ed.2d 757 (1995). Issuing a preliminary injunction is an " 'extraordinary remedy' and should be restricted to 'limited circumstances.' " *Moscony v. Quaker Farms, LP*, No. CIV.A.00-2285, 2000 WL 1801853, at *1 (E.D.Pa. Dec.8, 2000) (quoting *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 800 (3d Cir.1989)). A district court should endeavor to balance these four factors to determine whether an injunction should issue. See *BP Chemicals Ltd. v. Formosa Chemical & Fibre Corp.*, 229 F.3d 254, 263 (3d Cir.2000). All four factors must weigh in favor of granting the preliminary injunction. See *Pappan Enter., Inc. v. Hardee's Food Sys., Inc.*, 143 F.3d 800, 803 (3d Cir.1998). The moving party clearly bears *532 the burden to prove that all elements required for a preliminary injunction are met. See *Adams v. Freedom Forge Corp.*, 204 F.3d 475, 486 (3d Cir.2000).

The Court has jurisdiction pursuant to 28 U.S.C. § 1345, as this action was commenced by the United States, and pursuant to 42 U.S.C. § 1973j(f) as the action concerns an alleged deprivation or attempted deprivation of secured rights. Venue is appropriate under 28 U.S.C. § 1391.

IV. Summary of Issues

A. Government's Arguments

The Government has brought claims under Sections 4(e), 208, and 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973b(e), 1973aa-6, and 1973. The Berks County election practices and procedures, discussed in Part II.B, *supra*, form the factual basis for these alleged violations.

1. Section 4(e)

Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e), states:

(1) Congress hereby declares that to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English, it is necessary to prohibit the States from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.

(2) No person who demonstrates that he has successfully completed the sixth primary grade [FN5] in a public school in, or a private school accredited by, any State or territory, the District of

Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English, shall be denied the right to vote in any Federal, State, or local election because of his inability to read, write, understand, or interpret any matter in the English language, except that in States in which State law provides that a different level of education is presumptive of literacy, he shall demonstrate that he has successfully completed an equivalent level of education in a public school in, or a private school accredited by, any State or territory, the District of Columbia, or the Commonwealth of Puerto Rico in which the predominant classroom language was other than English.

FN5. In 1970, Congress amended the Voting Rights Act to prohibit all states from using any literacy tests for a period of five years. 42 U.S.C. § 1973a(e). The 1970 provision was upheld in *Oregon v. Mitchell*, 400 U.S. 112, 91 S.Ct. 260, 27 L.Ed.2d 272 (1970). As a result of the 1970 amendment, the sixth-grade education requirement in Section 4(e) was eliminated.

The Government alleges that Defendants knowingly conduct English-only elections and fail to provide limited-English proficient United States citizens of Puerto Rican descent with election information and assistance necessary for their effective participation in the electoral process. (Pl.'s Compl. ¶ 27). The Government asserts that Defendants' conduct violates Section 4(e) by conditioning the right to vote of United States citizens educated in American-flag schools in Puerto Rico, where Spanish is the predominant language, on such persons' ability to read, write, understand, or interpret any matter in English, and unless enjoined, such conduct will continue. *Id.* ¶¶ 27-28.

2. Section 208

Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6, states:

*533 Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union.

The Government claims that Defendants have violated Section 208 by failing to ensure that voters who are unable to read the ballot receive voting assistance at the polling place from assistants of their

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choice, and unless enjoined, such conduct will continue. (Pl.'s Compl. ¶¶ 23-24).

3. Section 2

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, states:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: *Provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Finally, the Government contends that Defendants' election policies and practices violate Section 2 because the "totality of the circumstances" of Defendants' actions has denied limited-English proficient Hispanic voters the opportunity to participate effectively in the electoral process on an equal basis with other members of the electorate, and unless enjoined, such conduct will continue. (Pl.'s Compl. ¶¶ 19-20).

B. Defendants' Arguments

Defendants assert that the Government fails to establish a probability that it will prevail on the merits under any section of the Voting Rights Act.

1. Section 4(e)

Defendants argue that the principal cases upon which the Government relies for its Section 4(e) claims,

discussed in Part V.A.1, *infra*, are overreaching and distinguishable from the instant case. (Def.'s Mem. Resp. Pl.'s Mot. Prelim. Inj. at 14). They assert that "there is no contested judicial decision in which a court has granted the sweeping relief sought by the Government in this case." *Id.* at 13-14.

2. Section 208

Defendants assert that they are fully compliant with Section 208 because they gave forms for assistance and instructions to all polling place officers at the November 5, 2002 election, including an official form called "Declaration of Assistance" that stated:

Any elector who is entitled to receive assistance in voting shall be permitted by the judge of election to select a person *534 of the elector's choice to enter the voting compartment or voting machine booth with him/her to assist him/her in voting. Exceptions are that the elector's employer or an agent of the employer or an officer or agent of the elector's union shall not be eligible to assist the elector. (Def.'s Mem. Opp. Pl.'s Mot. Prelim. Inj. at 11).

Defendants assert that poll officials were also given a form called "Important Changes for this Election" that stated:

1. Declaration of Assistance can be taken at polls for electors requiring assistance and does not have "ATV" marked on the Poll Book, assistance may be provided by anyone at the elector's choosing expect [sic] the elector's employer or an agent of the employer or an officer or agent of the elector's union, or a candidate. Assistant NEED NOT be from the same voting precinct, but assistant's name must be recorded on list provided. *Id.* at 12 (emphasis in original).

Defendants also assert that they provided a form for declaration of assistance to be used if the "elector does not have anything marked in the disability column of the voter book" and which explicitly referred to the "nature of disability, including illiteracy" to be declared at the polling place, and that the form included the same definition under federal law of persons able to render assistance. *Id.* All of these forms were printed exclusively in English. (Joint Stipulation of Facts ¶ 26).

3. Section 2

Defendants contend that they have not violated Section 2 because Hispanic citizens, including limited-English proficient Hispanic citizens, have

participated in the political process and have cast votes "that have elected representatives of their choice." [FN6] (Defs.' Mem. Opp. Pl.'s Mot. Prelim. Inj. at 4). They assert that they have "already provided Spanish- language instructions at the two most important parts of the election process-- voter registration and voting machine balloting." *Id.* at 5. Of the 407 voting machines used in Berks County, 395, including all of the voting machines designated for polling places in Reading, have instructions in English and Spanish pertaining only to machine operation inside the voting machine. (Joint Stipulation of Facts ¶ 26; Defs.' Ex. 1). Voter registration forms are available from the County Elections Services office upon request in either English or Spanish. (Joint Stipulation of Facts ¶ 27). Additionally,*535 Defendants point out that they have accepted a computerized voter registration system ("SURE") that will generate correspondence and notices to voters in English and Spanish. (Defs.' Mem. Opp. Pl.'s Mot. Prelim. Inj. at 6). Defendants expect the SURE system, which they have not yet implemented, to be operational by September 2003 and to run parallel to the existing system for the November 2003 election. (Joint Stipulation of Facts ¶ 27).

FN6. Defendants list the following Hispanic citizens of Reading elected to various positions in recent years:

- (i) Angel F. Figueroa, of Puerto Rican descent, nominated in a contested primary election and elected in a contested November election to Reading City Council, 1st District, in 2001;
 - (ii) Alicia Montoya, nominated by both major parties and elected to the Reading School Board, at large (Citywide) in 2001;
 - (iii) Nytza Santiago, an incumbent member of the Reading School Board by appointment by that Board to fill a vacancy, and previously elected to one term of the Reading School Board at a prior election;
 - (iv) Aixa Hernandez elected as Judge of Election for Reading Precinct 3-1 (Third Ward, First Precinct) in November 2001;
 - (v) Ruth D. Herrera elected as Majority Inspector for Reading Precinct 1-1 (First Ward, First Precinct) in November 2001;
 - (vi) Jose A. Diaz elected as PA State Constable for Reading First Ward in November 1997;
 - (vii) Adalberto Rivera elected as PA State Constable for Reading Fifth Ward in November 1997;
 - (viii) Andres Ortiz elected as PA State Constable for Reading Sixth Ward in November 1997
- (Defs.' Mem. Opp. Pl.'s Mot. Prelim. Inj. at 4-5).

Defendants further claim that the Government has

provided "equivocal" evidence that Hispanic voters with limited English proficiency have been turned away and not allowed to cast a ballot. (Defs.' Mem. Opp. Pl.'s Mot. Prelim. Inj. at 10).

V. Plaintiff Has Satisfied the Requirements for a Preliminary Injunction

The Court, relying on the relevant statutes, case law, the parties' briefs, and the evidence introduced at the evidentiary hearing, finds that the Government has met its burden for the issuance of a preliminary injunction.

A. Likelihood of Success on the Merits

1. Section 4(e)

Federal courts, including this Court, have broadly interpreted Section 4(e) to prohibit both the explicit conditioning of the right to vote on the ability to speak English and the conduct of English-only elections. *See Arroyo v. Tucker*, 372 F.Supp. 764, 766 (E.D.Pa.1974) (Lord, C.J.); *Torres v. Sachs*, 381 F.Supp. 309 (S.D.N.Y.1974) (Stewart, J.); *PROPA v. Kuser*, 350 F.Supp. 606 (N.D.Ill.1972), *aff'd*, 490 F.2d 575 (7th Cir.1973). *See also Katzenbach v. Morgan*, 384 U.S. 641, 645, 86 S.Ct. 1717, 16 L.Ed.2d 828 (1966) (upholding constitutionality of Section 4(e)).

Since 1917, persons born in Puerto Rico have been citizens of the United States *ipso jure*. *Arroyo*, 372 F.Supp. at 766 (citing 8 U.S.C. § 1402). As United States citizens, Puerto Ricans are entitled to unrestricted migration to the mainland states. *Id.* Although Puerto Rico maintains both English and Spanish as official languages, Spanish is the primary language spoken by Puerto Ricans and used in American-flag schools in Puerto Rico. (Dept. of Educ. of Puerto Rico, General Regulations of Students, Art. III, § 3.2, Pl.'s Mot. Prelim. Inj., Ex. 5). Unlike naturalized citizens, who must demonstrate a facility with English to gain citizenship, Puerto Ricans residing in the United States need not speak or read English to exercise the full benefits of citizenship. *PROPA*, 350 F.Supp. at 609. As a result, "thousands of Puerto Ricans have come to live in New York, Chicago, and other urban areas; they are eligible, as residents and U.S. citizens, to vote in elections conducted in a language many of them do not understand." *PROPA*, 490 F.2d at 578.

This case is similar to *Arroyo*, which was brought by private plaintiffs in Philadelphia nearly 30 years. In *Arroyo*, two Puerto Rican citizens, on behalf of the class of Puerto Rican citizens living in Philadelphia, brought a Section 4(e) action to compel Philadelphia County Commissioners to prepare all written election materials in English and Spanish, and to provide bilingual personnel at all polling places falling within a 1970 Census tract containing five percent or more persons of Puerto Rican birth or parentage. 372 F.Supp. at 765.

The Court granted preliminary injunctive relief and issued an order on October 12, 1973, eight days after the complaint was filed, "to insure that Puerto Rican voters will be able to fully and effectively *536 participate in the forthcoming November 6, 1973 elections in the City of Philadelphia." *Arroyo v. Tucker*, No. 73-2247 (E.D.Pa. Oct.12, 1973) (order granting preliminary injunction) (Pl.'s Mot. Prelim. Inj., Ex. 36). The order required the city defendants to provide Spanish translations of election materials at every polling place in the City of Philadelphia; to staff bilingual personnel at all polling places in Philadelphia Census tracts containing five percent or more persons of Puerto Rican birth or parentage; and to affix Spanish translations of all propositions, amendments, and retention of judges appearing on the ballot in each voting booth in all election districts in Philadelphia containing one or more residents of Puerto Rican birth or parentage. *Id.*

The Court later granted the plaintiffs' motion for summary judgment based on the following facts, all of which are present in the instant case: the plaintiffs were United States citizens of Puerto Rican birth residing in the City of Philadelphia; such citizens were eligible to vote but did not read, write, or comprehend English; English was the sole language in which Philadelphia conducted its election process; and the plaintiffs' affidavits demonstrated that they were unable to participate in the electoral process unless they received assistance in Spanish. *Arroyo*, 372 F.Supp. at 767-68.

Chief Judge Lord found that:

[T]he 'right to vote' means more than the mechanics of marking a ballot or pulling a lever. Here, plaintiffs cannot cast an 'informed' or 'effective' vote without demonstrating an ability to comprehend the registration and election forms and the ballot itself. The English-only election materials therefore constitute a device 'conditioning the right to vote' of plaintiffs on their ability to 'read, write, understand,

or interpret any matter in the English language.' Such an election process cannot withstand scrutiny under the Voting Rights Act. *Id.* at 767 (footnote omitted).

Arroyo followed several other decisions with similar facts. In *Torres*, limited-English proficient Puerto Rican citizens living in New York City brought a class action pursuant to Section 4(e) challenging the defendants' English-only elections. 381 F.Supp. at 311. The United States District Court for the Southern District of New York entered a preliminary injunction on September 6, 1973 concerning the November 6, 1973 election, by which the city defendant was ordered to conduct all elections on bilingual ballots and seek to provide bilingual poll workers for all election precincts having at least five percent Spanish-speaking voters. *Id.* Judge Stewart later granted summary judgment for the plaintiffs, finding "New York City's past English-only election system constitutes a condition on the plaintiffs' right to vote based on their ability to 'read, write, understand, or interpret any matter in the English language' as presently proscribed by Section 4(e) and the 1970 Voting Rights Amendment." *Id.* at 312.

In *PROPA*, the plaintiffs were four limited-English proficient United States citizens who were educated in Puerto Rico, resided in Chicago, and who were registered and entitled to vote. 350 F.Supp. at 608. The defendant, the City of Chicago, was planning to conduct an English-only election for the November 7, 1972 general election. *Id.* After the class action complaint was filed, the defendants announced that certain election materials would be printed in Spanish, and that bilingual election judges would be assigned where needed, but that these actions were voluntary rather than obligatory under federal law. *Id.* The United States District Court for *537 the Northern District of Illinois granted the plaintiffs' motion for a preliminary injunction, finding that Section 4(e) required that persons in the plaintiffs' class be permitted to vote, and that "[i]f voting instructions and ballots or ballot labels are printed only in English, the ability of the citizen who understands only Spanish to vote effectively is seriously impaired." *Id.* at 610. The Seventh Circuit affirmed the district court's decision, noting that a "Spanish-speaking Puerto Rican is entitled to assistance in the language he can read or understand." 490 F.2d at 575.

Defendants argue that the above cases all can be distinguished from the instant case. They claim

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Arroyo is distinguishable because in that case the Philadelphia Board of Elections failed to file an answer to the plaintiff's complaint or submit any papers in opposition to the private plaintiff's motions for a preliminary injunction and class certification. (Defis.' Mem. Opp. Pls.' Mot. Prelim. Inj. at 14).

Defendants assert that the decision in *Torres*, like *Arroyo*, resulted from an acquiescent Board of Elections that had earlier resolved to provide bilingual ballots and Spanish-speaking inspectors in election districts having at least five percent Spanish-speaking voters, and that the defendants only opposed summary judgment on the grounds that the relief sought was moot. [FN7] *Id.* at 14-15. Defendants also point out that *Arroyo* and *Torres* "were decided on percentage-of-voter grounds that Congress later adopted as Section 203 of the Voting Rights Act in 1975, but with criteria that both side[s] in the instant case agree do not apply to Berks County." *Id.* at 15.

FN7. Judge Stewart noted:

The fact that the defendants have resolved to take some steps in the direction of giving Spanish-speaking citizens an effective vote is an inadequate assurance for such a fundamental right in a free society. It is also significant that the defendants took no step to provide election assistance in Spanish prior to this Court's orders ... and prior to the commencement of this action on September 12, 1973.

Torres v. Sachs, 381 F.Supp. 309, 312-13 (S.D.N.Y.1974).

Defendants note that in *PROPA* the defendants in that case, during conferences, agreed to take actions sought by the plaintiffs to assist Spanish-speaking voters but refused to enter into a formal agreement to that effect, which led to the court's order requiring the defendants to honor their promises to the plaintiffs and the court. *Id.* Defendants note that the Seventh Circuit affirmed the lower court's decision but only required the defendants to use "reasonable efforts" concerning the appointment of judges of election. *Id.*

The Court rejects Defendants' efforts to distinguish these three cases. All three, despite some procedural anomalies, speak with a united and consistent voice in upholding and enforcing the provisions of Section 4(e). The Court considers them as persuasive a precedent for finding that the Government will likely succeed on the merits of its claim.

Defendants suggest that granting injunctive relief to the Government would be an expansive interpretation

of Section 4(e) and could lead to the eventual result that bilingual ballots and voting materials be provided in every voting precinct in the country with even a single limited-English proficient voter of Puerto Rican descent, educated in Spanish in an American-flag school in Puerto Rico. However, that argument is belied by the fact that the Government only seeks injunctive relief in 45 of the 48 voting precincts in Reading where five percent or more of the registered voters are Hispanic. Although it is unlikely *538 that Defendants' envisioned scenario would occur, the Government does have wide discretion to bring test cases and enforce federal statutes in any jurisdiction it believes to be in violation of federal law. The instant action is not frivolous or *de minimus*, and the Court is guided by the plain language of Section 4(e). *See, e.g., United States v. Knox*, 32 F.3d 733, 744 (3d Cir.1994). The Court finds the statutory language to be clear, and therefore the words must be interpreted in accordance with their ordinary meaning. *See id.* As the Supreme Court has explained, when confronted with a statute which is unambiguous on its face, courts "ordinarily do not look to legislative history as a guide to its meaning." *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 185 n. 29, 98 S.Ct. 2279, 57 L.Ed.2d 117 (1978).

[3] The court finds it is likely that the Government will prevail on its claim that Defendants' use of an English-only election process violates Section 4(e) by conditioning the right to vote for Reading's sizeable Puerto Rican community, many of whom attended schools in Puerto Rico, on the ability to read, write, and understand English.

2. Section 208

The Government has presented evidence showing that Spanish-speaking voters in Reading who are unable or have limited ability to read or write English often bring a friend or family member with them to the polling place to assist them. In numerous instances, as discussed in Part II.B.4, *supra*, poll workers have told limited-English proficient voters that their friend or family member may not accompany them inside the voting booth. One limited-English proficient voter, who wanted her husband to assist her, was told by a poll worker that he could not help her because only one person was allowed in the booth, but the same poll worker did not stop four elderly white women from entering one voting booth together. (Rodriguez Decl. ¶¶ 12-13, Pl.'s Mot. Prelim. Inj., Ex. 19). When voters are denied the right to bring their assistant of choice into

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the voting booth, they feel uncomfortable with the process, do not understand the ballot, and cannot cast a meaningful vote.

Although the Court expressed some concern at the hearing about the use of Section 208 as a pretext for illegal assistance, the Court has no basis to assume that illegal assistance will take place, and must give deference to the provisions of Section 208. The elected polling officials must adhere to Section 208, but have discretion to prevent what would otherwise be illegal assistance.

[4] The Government is likely to prevail on its claim that Defendants' conduct violates Section 208.

3. Section 2

Section 2 ensures that minority voters are free from any election practice "which operate[s], designedly or otherwise" to deny them the same opportunity to participate in all phases of the political process as citizens. S.Rep. No. 97-417, at 28 (1982, U.S.Code Cong. & Admin.News 1982, pp. 177, 205). The critical question in a Section 2 claim is "whether the use of a contested electoral practice or structure results in members of a protected group having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Thornburg v. Gingles*, 478 U.S. 30, 63, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986).

Congress extended the Voting Rights Act in 1975 to cover certain language minority groups, including persons of Spanish heritage. See *Hernandez v. Woodard*, *539 714 F.Supp. 963, 967 (N.D.Ill.1989) (citing 42 U.S.C. §§ 1973(c)(3), 1973aa-1a(e)). Upon "finding that voting discrimination against citizens of [such] minorities is pervasive and national [in] scope," Congress brought these groups within the protection of Section 2, which previously had applied only to racial minorities. *Id.* at 967 (citing 42 U.S.C. § 1973b(f)(1)). Federal courts have held that Section 2 claims may be brought to challenge election officials' failure to provide language assistance, see *Hernandez*, 714 F.Supp. at 967, as well as election officials' failure to appoint minority poll workers, see *Harris v. Graddick*, 593 F.Supp. 128, 133 (M.D.Ala.1984). [FN8]

FN8. Although the parties have stipulated that Berks County is not subject to the requirements of Section 203, (Joint Stipulation of Facts ¶ 49), Section 2

applies nationwide, and wherever the totality of the circumstances indicates that a jurisdiction's political processes are not equally open to participation by minority voters because its minorities have less opportunity than other members of the electorate to participate in the political process, a violation of Section 2 has occurred.

The totality of the circumstances demonstrates that Hispanic and Spanish-speaking voters have less opportunity than other members of the electorate to participate in the electoral process. First, election officials have permitted poll workers to openly express hostility to Hispanic voters. Non-Hispanic poll workers boasted of the outright exclusion of Hispanic voters to Department staff during the May 15, 2001 primary election. (Lee Decl. ¶ 9, Pl.'s Mot. Prelim. Inj., Ex. 15). Poll workers made rude, hostile, and racist comments to Department staff in the presence of Hispanic and Spanish-speaking voters. (*Id.* ¶¶ 8-11; Caro-Lopez Decl. ¶ 9; Elkin Decl. ¶¶ 8-9, Pl.'s Mot. Prelim. Inj., Exs. 15, 18, 17). The adverse impact of such hostility may prevent equal access to the electoral process for all voters. See *Harris*, 593 F.Supp. at 131 n. 3 (finding support for Section 2 violation in substantial evidence of "recent pleasant encounters" between minority voters and non-minority poll workers and noting that the result of such encounters may lead minority voters to "not venture to vote again.").

Hispanic voters have been treated differently and discriminated against at polling places. Poll workers have required Hispanic voters to prove their residency while non-Hispanic voters have not been required to do so. (Luna Decl. ¶ 9, Pl.'s Mot. Prelim. Inj., Ex. 20). Poll workers prevented Hispanic voters from bringing an assistor of their choice into the voting booth while permitting non-Hispanic voters to do so. (Rodriguez Decl. ¶¶ 12-13, Pl.'s Mot. Prelim. Inj., Ex. 19).

The lack of minority poll workers also is a serious impediment to Hispanic voters gaining equal access to the electoral process. In *Harris*, the United States District Court for the Middle District of Alabama found that there was gross underrepresentation of black persons among poll officials across the state of Alabama, and that such underrepresentation substantially "impede[d] and impair[ed] the access of black persons to the state political process" in violation of Section 2. 593 F.Supp. at 137. Based on the totality of the circumstances, the court held that the plaintiffs, black Alabama citizens, were likely to succeed on the merits of their Section 2 claim at trial

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and granted a preliminary injunction, ordering each of the defendant counties to appoint and assign black poll officials in numbers that reasonably corresponded to the percentage of black registered voters in that precinct. *Id.* at 138.

Hispanic residents in Reading are severely underrepresented as poll workers. Although Hispanics currently constitute *540 37.3 percent of Reading's total population and 30.4 percent of the voting population, Hispanics, on average, constitute only 3.1 percent of poll workers hired from 1998 to 2001. (Joint Stipulation of Facts ¶¶ 7-8, 22-25).

Defendants argue that *Harris* can be distinguished from the instant case because in *Harris*, polling place officers all were appointed by a central authority, rather than elected by the voters in the precinct, as required in Berks County under Pennsylvania law. *See* 25 Pa. Cons.Stat. Ann. §§ 2674- 2675. However, while three of the polling place officers are elected by the registered voters of the precinct through partisan election, a fourth officer is appointed by one of the elected officers and has, on some occasions, been appointed by Defendant Berks County Board of Elections. (Joint Stipulation of Facts ¶ 32). In polling places where more than one voting machine is used, a fifth poll official is appointed by Defendant Berks County Board of Elections, and vacancies are also filled by appointment. *Id.* The only impediment to Defendants' appointing bilingual poll workers for these fourth and fifth positions and potential vacancies is their apparent unwillingness to ensure that poll workers include persons reflective of the community.

[5] The Court finds that the Government is likely to prevail on the merits of its claim that the totality of the circumstances demonstrates that Defendants' election practices and policies result in an electoral system that denies equal access to Hispanic voters in violation of Section 2.

B. Irreparable Harm

In order for a preliminary injunction to be granted, plaintiffs must establish that they will suffer irreparable harm if an injunction is not issued. The "requisite is that the feared injury or harm be irreparable—not merely serious or substantial. The word means that which cannot be repaired, retrieved, put down again, atoned for the injury must be of a peculiar nature, so that compensation in money cannot atone for it..." *A.O. Smith Corp. v. Federal*

Trade Comm'n, 530 F.2d 515, 525 (3d Cir.1976) (quoting *Gause v. Perkins*, 56 N.C. 177, 3 Jones Eq. 177, 69 Am.Dec. 728 (1857)).

[6] The Supreme Court has recognized that the "right to vote freely 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." *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). Federal courts have recognized that the holding of an upcoming election in a manner that will violate the Voting Rights Act constitutes irreparable harm to voters. *See, e.g., United States v. Metropolitan Dade County*, 815 F.Supp. 1475, 1478 (S.D.Fla.1993) (granting temporary restraining order to prevent violation of Section 203); *Dillard v. Crenshaw County*, 640 F.Supp. 1347, 1363 (M.D.Ala.1986) (granting preliminary injunction to prevent violation of Section 2); *PROPA*, 350 F.Supp. at 611 (granting preliminary injunction to prevent violation of Section 4(e)).

Hispanic voters denied equal access to the electoral process cannot collect money damages after trial for the denial of the right to vote. *See Casarez v. Val Verde County*, 957 F.Supp. 847, 864-65 (W.D.Tex.1997) (granting preliminary injunction because monetary damages could not redress Voting Rights Act violation). Moreover, denial of equal access to the electoral process discourages future participation by voters. *See, e.g., Gomez v. City of Watsonville*, 863 F.2d 1407, 1416 n. 4 (9th Cir.1988) (discussing how voting discrimination *541 may result in depressed voter registration).

The Government has presented evidence that Reading's Hispanic voters have had less opportunity than other voters to effectively participate in Reading's political process in past elections, and it is likely that such harm will continue if Defendants continue to follow their current policies and practices. The impact of the discouragement of equal participation in the democratic system cannot be redressed by money, or any other remedy, following trial. Thus, the Court finds that the irreparable nature of the harm to Reading's Hispanic voters requires preliminary relief.

C. Whether the Non-Moving Party Will Suffer Irreparable Harm if the Injunction Is Issued

The Court finds that Defendants will not suffer irreparable harm. The Government requests that

Defendants engage in reforms necessary to provide equal access to the electoral process for Hispanic and Spanish-speaking citizens. Although these reforms may result in some administrative expenses for Defendants, such expenses are likely to be minimal and are far outweighed by the fundamental right at issue. See *Johnson v. Halifax County*, 594 F.Supp. 161, 171 (E.D.N.C.1984) (administrative and financial burdens on defendant not undue in light of irreparable harm caused by unequal opportunity to participate in county election).

Additionally, there are still nearly two months until the scheduled primary election. Courts have ordered the type of relief requested by the Government within far shorter time periods for defendants to comply. See *Harris*, 593 F.Supp. at 138 (18 days); *Arroyo*, 372 F.Supp. at 765 (24 days); *PROPA*, 350 F.Supp. at 606 (eight days). The Government notes that in Berks County, candidate qualification has not yet closed, and ballots and other election materials have not been printed. (Pl.'s Mem. Supp. Mot. Prelim. Inj. at 31). Defendants still have ample time to make modifications.

D. The Public Interest

The Court finds that the public interest will be served by the issuance of a preliminary injunction. "[U]ndoubtedly, the right of suffrage is a fundamental matter in a free and democratic society." *Reynolds*, 377 U.S. at 561-62, 84 S.Ct. 1362. Ordering Defendants to conduct elections in compliance with the Voting Rights Act so that all citizens may participate equally in the electoral process serves the public interest by reinforcing the core principles of our democracy. "In cases such as the present one, where the continued presence of [] barriers [to equal protection in the political process] is strongly evident, the public interest commands all appropriate relief necessary to effect the immediate and complete removal of these barriers." *Harris*, 593 F.Supp. at 136.

VI. Relief

The United States has requested sweeping relief, including requiring bilingual poll workers in 45 of Reading's precincts for the entire 13-hour primary election day, bilingual ballots, extensive training and publication, before election day, of sample ballots, and bilingual advertisements of the location of polling places, availability of assistance, etc. The Court does not have sufficient facts on the record to ascertain

whether all of the items of relief requested by the United States are necessary, or even achievable in the 60 days remaining until the primary election. Although the Government, as to some aspects of relief, only asks that Defendants perform on a "best efforts" basis, other requested items of relief are mandatory. In addition, the *542 Court finds that there has not been sufficient attention paid to the logistics and location of the various polling precincts in the City of Reading or to a cost-benefit analysis.

For all these reasons, and particularly in view of the short time remaining, the Court has decided to appoint, after consultation with and consent from counsel for the parties, a Special Master to work with the parties and their counsel in ascertaining the detailed relief that is necessary and appropriate to carry out the intent of Congress in the context of the realities of Reading.

VII. Conclusion

For the reasons discussed above, Plaintiff's Motion for Preliminary Injunction will be granted. Additionally, a Special Master will be appointed to work with the parties in preparing for the primary election on May 20, 2003, and to ensure that Defendants comply with the Court's Order. [FN9]

FN9. Federal Rule of Civil Procedure 53(b) provides in relevant part:

A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it.

The Supreme Court has stated that masters may be appointed only "to aid judges in the performance of specific judicial duties, as they may arise in the progress of a cause." *La Buy v. Howes Leather Co.*, 352 U.S. 249, 256, 77 S.Ct. 309, 1 L.Ed.2d 290 (1957). The Third Circuit has found referral to a master improper where the matter referred presented "relatively simple questions of fact and law." *Apex Fountain Sales, Inc. v. Kleinfeld*, 818 F.2d 1089, 1096 (3d Cir.1987). However, the Third Circuit also has recognized that appointment of a master may be appropriate where implementing the court's order would be "a complex and lengthy process, probably involving monitoring, dispute resolution, and development of detailed enforcement mechanisms." *Id.* at 1097. Of significance is the fact that the primary election is approximately 60 days from the issuance of this Court Order, which will require

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prompt diligence by the Master, the parties, and their counsel. The Court believes that the sweeping injunctive relief sought in the Government's six-page, detailed proposed order (Doc. No. 9) calls for the expertise of a Special Master knowledgeable about election procedures to work with the parties to determine the most feasible way for Defendants to comply with the Court's Order.

An appropriate Order follows.

ORDER

And now, this 18th day of March, 2003, upon consideration of Plaintiffs' Motion for Preliminary Injunction (Doc. No. 9), Defendants' opposition thereto (Doc. No. 12), and an evidentiary hearing held on March 13, 2003, it is hereby

ORDERED that Plaintiff's Motion is GRANTED.

It is further ORDERED as follows:

1. That Defendants Berks County, Pennsylvania; Berks County Commission; Berks County Board of Elections; Timothy Reiver; Mark Scott; Judith Schwank, in their official capacities as members of the Board of Elections; and Kurt Bellman, in his official capacity as Director of Elections, are preliminarily enjoined until further Order of the Court after final hearing, from conducting any further elections that fail to comply with the Voting Rights Act, specifically Sections 4(e), 208, and 2, 42 U.S.C. §§ 1973b(e), 1973aa-6, and 1973; and the guarantees of the Fourteenth and Fifteenth *543 Amendments to the United States Constitution;
2. That until further Order of this Court, the Director of the Office of Personnel Management is authorized to appoint a federal examiner pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a, to enter and observe election procedures and ballot tabulation pursuant to Section 8 of the Voting Rights Act, 42 U.S.C. § 1973f; and that Department of Justice personnel, including attorneys and staff members, shall be permitted into the polling places for the purpose of coordinating the work of the federal observers;
3. That Defendants shall provide in English and Spanish all written election-related materials, including the official ballot, sample ballots, absentee ballots, voter registration applications,

candidate qualification information, notification of elections, polling place changes, polling place signage, any voter information guides or pamphlets provided by the county, voting instructions and procedures at the polls, and other election materials used at the polls, in every precinct in which the registered Hispanic voters constitute more than five percent of the registered voters;

4. After consultation with the parties, and in order to carry out the details of the Court's Preliminary Injunction Order, the Court will appoint a Special Master to work with the parties and their counsel in preparing for the primary election on May 20, 2003, and to ensure that the Court's Order is followed;

5. The Master shall review the pleadings, meet with the parties and/or their counsel, and review the demographics for the City of Reading in terms of those election precincts in which more than five percent of the electorate are Spanish-speaking, and recommend to the Court, after considering logistics, timeliness, and cost-benefit analysis, the following:

A. Those precincts in which one or more bilingual English-Spanish interpreter(s) should be present for the entire day;

B. Those precincts in which such an interpreter need be present for only those hours in which the most heavy voting will occur, and intermittent coverage of those precincts during the remaining hours of the day;

C. The Master shall also review the availability of such bilingual interpreters within the City of Reading, and Defendants' efforts to hire sufficient interpreters to meet the objectives of the Court's Order;

D. The Master shall also review all other relief requested by Plaintiff, including the training and bilingual publicity which the Defendants intend to provide;

E. The Master shall report back to the Court no later than March 27, 2003 with recommendations. The parties will have seven (7) days to confer and file either a stipulation or comments on the Master's recommendations, following which the Court will issue a detailed Order for the conduct of the May 20, 2003 primary election.

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END OF DOCUMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	CIVIL ACTION
	:	
Plaintiff	:	
	:	
v.	:	
	:	
BERKS COUNTY, PENNSYLVANIA;	:	
BERKS COUNTY COMMISSION;	:	
BERKS COUNTY BOARD OF ELECTIONS;	:	
TIMOTHY REIVER, MARK SCOTT, and	:	
JUDITH SCHWANK, in their official capacities	:	
as County Commissioners and Members of the	:	
Board of Elections; and KURT BELLMAN, in	:	
his official capacity as Director of Elections,	:	
	:	
Defendants.	:	NO. 03-1030

ORDER

AND NOW, this 4th day of April, 2003, upon consideration of the Report of Special Master Maxwell E. Davison entered April 1, 2003 (Doc. No. 16), the comments of the parties thereon, Plaintiff's Motion for Preliminary Injunction, and all documents filed in support and in opposition thereto, it is hereby ORDERED that this Court's Order (Doc. No. 14) granting Plaintiff's Motion for Preliminary Injunction is supplemented as follows:

1. Defendants are required to use all practicable measures to recruit, engage as temporary County employees, and train persons to serve as bilingual interpreters on primary election day, May 20, 2003.
The Defendants' "Recruitment Plan" (the "Recruitment Plan") presented in writing to the Special Master on March 25, 2003 and attached to the Special Master's Report as Exhibit A is approved, except as set forth in paragraph 3 hereof.

2. The Special Master's recommendation (Report at page 3, n.2) that background checks, if any, be consistent with and no more extensive than those presently required for all existing Berks County poll officials is APPROVED. Accordingly, the proposed "Criminal Background Check" referred to in the Recruitment Plan is DISAPPROVED because no such "Criminal Background Check" is presently required for existing Berks County poll officials.
3. The persons engaged as interpreters need not be registered voters of the City of Reading or of the precinct to which the interpreter is assigned, and the use of high school and college students who are not yet eighteen years of age (and hence not yet eligible to vote) is expressly APPROVED.
4. The persons engaged as interpreters may provide assistance to voters who require assistance to vote by reason of blindness, disability, or inability to read or write, if so requested by such a voter, pursuant to Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6.
5. Defendants shall direct and train the persons engaged as interpreters to be inside the polling place to which each such person is assigned for the normal time expected of an elected or appointed polling place officer, to wit, twelve hours of the thirteen hours that the polls are open, thus allowing one hour for breaks.
6. Defendants' request for a conference on Friday, April 18, 2003, at which Defendants shall report their progress in implementation of the Recruitment Plan is granted, and the Special Master is directed to schedule such a conference (in person or by telephone) and thereafter to report to the Court concerning the

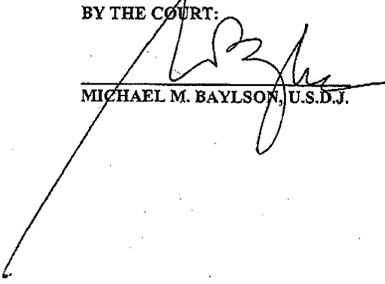
implementation of the Recruitment Plan.

7. One interpreter shall be assigned to each polling place in the 45 precincts of the City of Reading identified by the United States as having five percent or more registered Hispanic voters, and an additional interpreter shall be assigned to the 13 precincts of the City of Reading identified by the United States as having 40 percent or more registered Hispanic voters.
8. Defendants shall train the interpreters in the translation of the entire ballot, all election-related forms used in the polls on election day, and the voting process (e.g., how to operate voting machines) so that the interpreters will be able to provide a full and accurate translation.
9. The Special Master's recommendation in paragraph 6(D) is APPROVED, and accordingly Defendants' training of all poll officials should include making them aware that all eligible citizens have the right to cast a ballot; making them aware of the available Spanish-language election materials; making them aware and advising eligible voters of the right of certain voters to be assisted by a person of their choice, including inside the voting booth; and making them aware of the need to comply with all other applicable provisions of the Voting Rights Act.
10. Defendants shall maintain at least two dedicated telephone lines for use on election day answered in the Spanish language by trained bilingual employees and shall provide adequate bilingual staffing on these telephone lines throughout the day while polls are open, and shall ensure that poll workers provide and/or post information describing the availability of telephone assistance in each

polling place within the City of Reading.

11. Defendants shall publicize, by timely press releases in Spanish and English to the local English-language and Spanish-language news media, the availability of bilingual election materials, interpreters at the polling places described in paragraph 8 hereof, and Spanish-language telephone assistance by calling the dedicated telephone lines as described in paragraph 10 hereof.

BY THE COURT:


MICHAEL M. BAYLSON, U.S.D.J.

cc Amy Nemko (Fax)
Gregory Harvey (Fax)
Max Davison (Fax)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BERNALILLO COUNTY, NEW MEXICO; JUDY)
 WOODWARD, Bernalillo County Clerk;)
 and the BERNALILLO COUNTY BOARD OF)
 COUNTY COMMISSIONERS; TOM RUTHERFORD,)
 Chairperson of the Bernalillo County)
 Board of Commissioners; STEVE GALLEGOS,)
 LES HOUSTON, BARBARA J. SEWARD, KEN)
 SANCHEZ, Members of the Bernalillo)
 County Board of Commissioners,)
)
 Defendants.)

CIVIL ACTION NO.

CX-98-156 BB/LCS

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

APR 27 1998

R. H. ...
CLERK

CONSENT DECREE

The United States initiated this action pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973, 42 U.S.C. §1973j(d), 42 U.S.C. §1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the Constitution arising from Bernalillo County's election practices and procedures as they affected Native American citizens of the county, including those Native American citizens who rely in whole or in part on the Navajo language.

The claim under Section 203 of the Voting Rights Act ("Section 203") must be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C. §1973aa-2 and 28 U.S.C. §2284.

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Plaintiff alleged in its complaint that various election practices and procedures of defendants unlawfully deny or abridge the Voting Rights of Native American citizens residing in Bernalillo County. The challenged practices concern the failure of defendants in particular areas to implement effective bilingual election procedures, as required by the Voting Rights Act, in the following areas: dissemination of election information, voter registration, voter registration cancellation procedures, absentee voting, language assistance at the polls, and training of polling officials.

Defendants do not contest that more than five percent of voting age Navajos, within the Cañoncito Navajo Reservation, speak Navajo and are limited-English proficient, and further agree that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. 57 Fed. Reg. 43213 (September 18, 1992). Such determinations subject Bernalillo County to the requirements of Section 203(c) of the Voting Rights Act. 42 U.S.C. §1973 aa-1a(c), and thus the defendants must furnish oral instructions, assistance and other information relating to voter registration and voting, in the Navajo language.

Defendants do not contest that in past elections the county has failed in particular areas to make the election process as accessible to Native American citizens as it was to non-Native American citizens as is required by Section 203, Section 2, and the Fourteenth and Fifteenth Amendments. Bernalillo County

agrees in the future to comply with Section 203, Section 2, and the Fourteenth and Fifteenth Amendments.

This Court has jurisdiction over the parties and the subject matter of this litigation. This agreement is final and binding between the parties and their successors in office regarding the facts, claims, and issues raised in the Complaint and in this document.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants, their agents and successors in office, and all other persons acting in concert or participation with them, are hereby permanently enjoined from failing to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the Constitution.

2. It is the intent of Bernalillo County to make all phases of the election process as accessible to the Navajo population of Bernalillo County as they are to the remainder of the county's population. Therefore, Bernalillo County shall provide information, publicity, and assistance in the Navajo language in voter registration, voter registration cancellation, absentee voting, early voting, procedures at the polls including translation of the ballot, and training of polling officials/translators. Bernalillo County, in consultation with the United States and the Cañoncito Chapter, has developed a manual of procedures for incorporating the Navajo language in elections that address the type of information, publicity and assistance to be provided and the manner in which they will be provided (copy

attached as Exhibit I).

3. To ensure the dissemination of election-related information to the Navajo speaking population of Bernalillo County, and to make the election process equally accessible to Native American citizens, Bernalillo County, by March 16, 1998, shall hire a Native Language Coordinator (hereinafter "NLC"). The NLC shall be bilingual in Navajo and English. The primary responsibility of the NLC, a full-time employee of Bernalillo County, shall be to carry out the county's Navajo language election procedures, publicity and assistance, including assisting the county to carry out the procedures in the manual referenced in paragraph two. The NLC shall also carry out other duties included in his or her job description as assigned.

4. Bernalillo County shall establish a travel, supply, and telephone call budget for the NLC which shall be sufficient to cover expenses incurred in carrying out the NLC's duties, obligations, and responsibilities.

5. Poll officials selected to work the majority Native American election precinct in Bernalillo County shall be, if at all possible, persons who are bilingual in the Native American language and in English. The County shall use its best efforts to secure said personnel. In any precinct where registered Native American voters comprise at least five percent of the voters in the precinct, there shall be a number of such bilingual poll officials or translators sufficient to accommodate the voters who need to use the Native American language to

effectively cast their ballots. The county shall assess the need for language assistance in these precincts after each election and, in accordance with Paragraph 11, adjust the number of bilingual assistants up or down as is efficient to provide effective language assistance. Tapes of Native American language translations of all the information on the ballot shall be made available to the poll officials prior to the election.

6. At locations on the Cañoncito Reservation, the NLC shall conduct the training of poll officials and any other election related personnel who will be working at the Cañoncito precinct.

7. Thirty (30) days prior to an election, the County will establish a satellite election office for two days each week on the Cañoncito reservation. The NLC shall consult with the tribal representative for space to set up the temporary office.

8. This satellite office shall have the necessary materials and personnel available during regular office hours to allow an individual to cast an absentee ballot. A person may apply for, receive, and cast an absentee ballot all on the same day during a single visit to the satellite election office.

9. Nothing in this Decree shall preclude Bernalillo County from contracting with other governmental agencies to carry out the terms and conditions specified herein. However, should Defendants exercise this option, Defendants herein shall nevertheless maintain prime responsibility for compliance with the terms and conditions hereof.

10. To assist in the effectiveness of this Agreement and to protect the Fifteenth Amendment rights of citizens of Bernalillo County, the appointment of federal examiners for elections in the county is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. §1973(a), for the period of this Agreement.

11. Bernalillo County is designated pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. §1973(c) for the period of this Agreement regarding changes that may affect the county's compliance with the Voting Rights Act as set forth in paragraphs two through nine.

12. The parties to this Agreement and the NLC will be in contact semi-annually for the duration of this order to discuss the effectiveness and efficiency of the county's actions in complying with the Voting Rights Act. Bernalillo County has the authority to eliminate or modify any aspect of its program if it is unproductive or inefficient in furthering the goals of this decree, subject to the requirements listed in paragraph 11 above.

13. This Agreement shall remain in effect through June 30, 2003, unless plaintiff moves the court for good cause shown to extend this Agreement.

The Court shall retain jurisdiction of this case through June 30, 2003 to enter further relief or such other orders as may be necessary for the effectuation of the terms of this Agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. §§1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments of the Constitution unless the parties petition the Court to end the decree sooner.

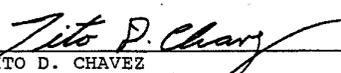
Entered this 22 day of April, 1998.

For Plaintiff:
UNITED STATES OF AMERICA



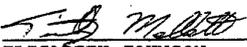
JOHN J. KELLY
United States Attorney

For Defendants:
BERNALILLO COUNTY



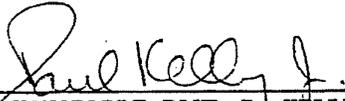
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Albuquerque, New Mexico 87102

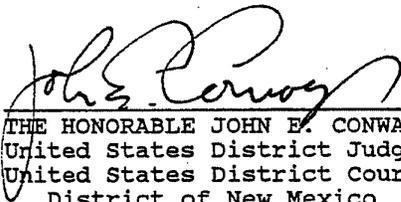
BILL LANN LEE
Acting Assistant Attorney
General

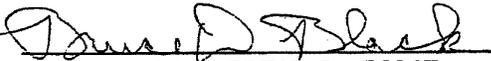


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Washington, D.C. 20035-6128

Entered this 22^d day of April, 1998.


THE HONORABLE PAUL J. KELLY, JR.
United States Circuit Judge
for the Tenth Circuit
United States Court of Appeals


THE HONORABLE JOHN E. CONWAY
United States District Judge
United States District Court for the
District of New Mexico


THE HONORABLE BRUCE D. BLACK
United States District Judge
United States District Court for the
District of New Mexico

BERNALILLO COUNTY
BUREAU OF ELECTIONS

NATIVE AMERICAN ELECTION INFORMATION PROGRAM

OPERATIONS MANUAL

I. OVERVIEW

Bernalillo County, New Mexico contains a portion of four Indian Reservations or Pueblos: The Sandia Pueblo to the north, Isleta Pueblo to the south, and the Canoncito Navajo chapter and Laguna Reservation on the western boundary of the county. Maps are attached to more exactly define and identify Indian lands.

1. Sandia Pueblo: This pueblo extends across the northern portion of Bernalillo County. It contains all or portions of three voting precincts: 6, 86 and 567. There are no pueblo residents or households in precinct 567. There are approximately 60 households in precincts 6 and 86.
2. Isleta Pueblo. This pueblo extends across the southern portion of Bernalillo County. Within its boundaries, lie precinct 93 and a portion of precinct 552. However, there are no residents living in the precinct 552 portion of the pueblo. For the 1996 general election, there were 672 registered voters in precinct 93.
3. Canoncito: A chapter of the Navajo Nation, located on the western edge of Bernalillo County. It is identified as voting precinct 31. For the 1996 general election, there were 317 registered voters in precinct 31.
4. Laguna: This reservation is actually two parcels, divided by Canoncito Chapter. We do not believe there are any households within the Laguna Reservation that are in Bernalillo County. However, should this not be the case, those residents will be afforded the same services as described herein.

The City of Albuquerque also contains a significant number of Native American voters.

Bernalillo County is subject to Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a. The act requires that information which is provided in English about voter registration, including voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, be provided in the minority language to the extent that it is needed allow minority members to be effectively informed of and participate in the electoral process. Where the language of the applicable minority group is oral or unwritten, oral information and instruction in the appropriate native language is required.

EXHIBIT I

II INTRODUCTION

This manual establishes a comprehensive Native American Election Information Program (NAEIP) to disseminate election related information and services to the Native American population of Bernalillo County. It details the procedures for voter registration, voter registration cancellations, absentee and early voting, training of election day poll officials, language assistance at the polls, and for the dissemination of information about elections. The program is administered by the Native Language Coordinator (NLC), a full-time Bernalillo County employee. This manual also describes coordination between the NLC, tribal representatives, and the Native American Voting Rights Office under the New Mexico Secretary of State.

1. The NLC will work under the supervision of a designated deputy Clerk of Bernalillo County.
2. The NLC will be trained by the county clerk in all aspects of the Election process.
3. The NLC will maintain currency with state and federal statutes relating to election process.
4. The NLC must be fluent in English and the Native Language.
5. The NLC's work will be funded by county resources and the county will provide for transportation and supplies needed in carrying out the NLC's duties and responsibilities in implementing the NAEIP.

III PROCEDURES

The NLC is responsible for the administration of the Bernalillo County NAEIP.

1. COORDINATION WITH STATE AND OTHER COUNTIES:
 - a. The NLC will maintain direct contact with the State NAEIP representatives to assure coordinated services and avoid duplication of effort.
 - b. The NLC will work, as far as practicable, with counterparts in Valencia and Sandoval Counties, to coordinate election activities and Tewa translation for the Sandia and Isleta Pueblos.
 - c. The NLC will work, as far as practicable, with the counterparts in Socorro, McKinley, and San Juan Counties, to coordinate election translation for the Canonicito chapter.
 - d. The NLC will work, as far as practicable, with the Navajo

Election Administration, in an effort to achieve uniformity and accuracy in the translation of election material.

2. TRIBAL REPRESENTATIVES:

It is the desire of the county to have an individual in the tribe that the county may contact about election-related issues. In addition, the county would like to have a tribal member to be available on a permanent basis who can explain the voting procedures in case the NLC is not available at the moment.

- a. The deputy county clerk, or other designated representative, will request the Canonicito chapter president to identify and/or appoint one individual to serve as tribal representative for communications between the county and the chapter about voting and elections. The vice president of the Navajo chapter will serve as the representative in the event that a separate tribal representative is not chosen or is vacated. The tribal representative must be proficient in both English and Navajo.
- b. The deputy county clerk, or other designated representative will request each pueblo governor whose lands are wholly or in part in Bernalillo County, to identify and/or appoint one individual to serve as tribal representative for communications between the county and each pueblo about voting and elections. The tribal representative must be proficient in both English and the native language of the tribe.
- c. The NLC will familiarize tribal representatives with the election process, including absentee and early voting, voter registration and purge process, statutory qualifications to hold elective office; election related deadlines, election day activities, and poll official duties.
- d. The NLC will serve as the county's point of contact with the pueblo or chapter for election related matters. Telephone inquiries from tribal representatives are encouraged and treated as official government business.

3. TRANSLATIONS:

- a. The following election-related material and announcements, if made available in English, shall be translated into Tewa and Navajo, made available on audio or video tape, and provided to the appropriate tribal representative:
 - (1) Election calendar for the year (by January 15 of each year);
 - (2) State, county, and where applicable, school district election proclamations (10 days after receipt);

- (3) Constitutional amendments and other issues on the ballot, along with a brief description of each (within 30 days of the date the English text is determined). Care must be used in wording the brief description so as to avoid even the hint or suggestion as to how the listener/viewer should vote on the issue;
 - (4) Statutory qualifications and requirements (age, residency, etc.) for candidates to be on the ballot (60 days prior to statutory filing deadlines);
 - (5) Instructions for filling out absentee ballot applications, and explaining the absentee voting process and deadlines (30 days before absentee balloting begins);
 - (6) Details on early voting and voting satellite locations in Bernalillo County (30 days before early voting begins);
 - (7) The date voter registration closes for each election (30 days before registration closes);
 - (8) The candidates for each office and their political parties for each election (within 10 days after the ballot is printed); and
 - (9) Explanation of voting procedures, to include the operation of voting machines and how to cast a write-in ballot (30 days before the election).
- b. All election related translations might be made by a state or county employee fluent in the appropriate language, or by a tribal representative.
- (1) It is important that translations be accurate. The county will provide an opportunity for the tribal representative to review and comment on any material translated.
 - (2) If a dispute as to the accuracy of a given translation cannot be promptly resolved by mutual agreement between county officials and Native American leaders, the Office of the New Mexico Secretary of State and the United States Department of Justice will be consulted about the dispute.
- c. The county shall provide separate recordings for each election-related subject matter and should not exceed ten (10) minutes in length.
- d. The NLC should have the tapes played during at least one chapter or pueblo meeting. The NLC should also encourage the pueblo or chapter house to maintain a library of current applicable tapes.

- (1) The NLC, and if possible, the tribal representative should be present when tapes are played at pueblo or chapter meetings and answer questions which may be raised.
 - (2) The NLC should make available county-owned tape-playing equipment to the site in case equipment is not available at the site.
- e. Upon request, the county shall make tapes and material available to governmental entities, which have an interest in the Bernalillo County NAEIP.
 - f. The county shall keep translations archived for five years.
4. DISSEMINATION OF ELECTION RELATED MATERIAL:
- a. The County shall coordinate publicity efforts with the state NAEIP office and the tribal representatives.
 - b. The NLC will work with Bernalillo County Public Affairs to offer public service announcements in Navajo and/or Tewa to local radio/TV stations. Potential broadcasting material includes any of the tapes made pursuant to Section III. The NLC will request that announcements be made at a time calculated to reach the largest possible chapter and/or pueblo audience.
 - c. The NLC will work with Bernalillo County Public Affairs to identify and provide public service notices to publications, which are tailored to the pueblos and Canoncito chapter. Notices may be printed therein in the language traditionally used by the publications. The frequency of paid announcements shall be subject to available financial resources.
 - d. During the sixty (60) days preceding an election, the NLC will plan and publicize meetings at sites convenient to voters of the chapter and pueblos. At the meetings, the NLC, tribal representatives, and other trained personnel will make oral presentations using Navajo or Tewa, as appropriate, with the concurrence of tribal officials. Presentations should incorporate audio and visual aids as appropriate, and should include:
 - (1) Statutory qualifications for candidates to hold office, (e.g., age, residency requirements, etc.). If anyone expresses an interest in running for an elected office, explain procedures for getting on the ballot, (e.g., petition signatures, filing fee, etc.);
 - (2) Voter registration procedures, to include voter registration cut-off dates. Voter registration forms should be available;

- (3) Sample ballots, when they are available. Go over offices to be filled, to include names and party affiliation of each candidate. Review each ballot issue, and the speaker should be careful to avoid suggesting how the voter should vote;
 - (4) Detail the absentee voting process, to include procedures on how a voter may obtain an absentee ballot, how to make a write-in vote, and how the ballot should be returned;
 - (5) Detail the early voting process, to include the location of satellite polling locations; and
 - (6) An actual voting machine, or enlarged photograph of a voting machine should be used to instruct how the voter is to cast a ballot.
- e. On the weekend preceding an election in which the pueblo or chapter is voting, the NLC and/or tribal representatives shall travel through the reservation and let the residents of the chapters and pueblos know the day and date of the election, where the polling location is situated and hours of operation.
 - f. Election related announcements, materials, tapes and other election information should be made available to the high schools attended by Native American students in the county to familiarize students with all phases of the election process.

VOTER REGISTRATION

- a. The NLC shall conduct an active voter registration program in coordination with each Pueblo governor, Navajo chapter president, or other tribal officials.
 - (1) Work with community leaders, to identify chapter or pueblo residents to receive training on voter registration and who will serve as a point of contact for members who may wish to register to vote. The chapter house or pueblo community center must be kept supplied with voter registration forms.
 - (2) At least annually, conduct a special voter registration drive. This requires coordination with tribal leaders for adequate space and publicity for the drive.
 - (3) Assure that an adequate supply of voter registration forms are available in community facilities. This may include schools, post office, chapter house, pueblo government buildings, etc.

- b. The NLC shall provide each tribal representative with current voter registration lists for the appropriate Bernalillo County precinct (s) within the tribal boundary, and shall encourage each tribal representative to establish regular hours for registration at set locations on the reservations. Tribal leaders shall be encouraged to post the time (s) and location (s) at each chapter house or pueblo community center and to announce this information at each tribal meeting.
- c. The NLC shall assess, on an on-going basis, the effectiveness of the voter registration program.

6. ABSENTEE AND EARLY VOTING:

- a. The NLC will ensure that "Requests for Absentee Ballot" forms are supplied to the tribal representatives, pueblo governors, Navajo chapter presidents and other tribal officials who may have frequent contact with residents.
- b. The opportunity to cast an absentee or early ballot will be publicized by announcements, with the concurrence of tribal officials, during chapter or pueblo meetings attended by the NLC and by posting notices at conspicuous places such as the pueblo community center, Navajo chapter house, post office on reservation, etc.
- c. The county shall provide an opportunity for Native American citizens who are registered to vote to cast absentee or early ballots by ensuring that the NLC attends the last tribal meeting prior to the deadline for returning the ballots for each election so that the eligible persons may obtain, and if they desire, cast absentee ballots in person at that time.
- d. The NLC shall be authorized to deliver absentee ballots, to witness absentee ballots, and to accept completed absentee ballots from eligible voters for delivery to the county clerk.

7. POLLING PLACE OFFICIALS AND INTERPRETERS

- a. The county shall determine the number of bilingual assistants necessary in the precinct to provide effective language information and assistance to Native American voters. This determination will focus on the election precincts where registered Native American voters of the precinct. The county will make up a list of all election precincts where Native American voters comprise at least five percent of the registered voters of the precinct. This list will be changed whenever new census data or other, equally reliable data become available.
- b. After each election the need for language assistance in each precinct where Native American voters comprise at least five percent of the

registered voters will be assessed. This assessment will include discussions with the poll officials and/or translators at those sites, the NLC, and any other interested persons to determine the frequency with which a Native American language was used during the election, and how the voting experience could be made more effective for voters who need to use the Native American language.

- c. The county shall ensure that fully trained poll officials and translators are present on election day for each election precinct where Native American voters comprise at least five percent of the registered voters of the precinct. The NLC shall consult with tribal representatives and other appropriate tribal officials to identify qualified individuals to work at the polls.
- d. The NLC will schedule a special training session with poll workers and interpreters selected to work the polls on election day. The Tribal representative, the poll officials and interpreter shall be notified of the training session scheduled at the pueblo or Navajo chapter at least one week before the scheduled training. Topics and procedures to include in the training sessions include:
 - (1) Setting up the polls;
 - (2) Opening the voting machine and preparing it for voting;
 - (3) Ensuring that the person requesting to vote is listed on the voter registration list. This will include instructions on how to resolve problems if the person requesting to vote does not appear on the voter registration list;
 - (4) Updating voter registrations lists with name changes, address changes, etc.;
 - (5) Conducting the election;
 - (6) Providing instruction on how to translate offices, candidates, and referenda;
 - (7) Providing the Native American language translation for each office, candidate, and referenda;
 - (8) Closing the polls;
 - (9) Getting voting machine tallies;
 - (10) Reporting precinct results;
 - (11) Securing the voting machine; and

- (12) Providing rules applicable to poll watchers and challengers.
 - b. The NLC will provide polling officials with a telephone number should problems arise on election day.
 - c. Polling officials selected to work the pueblo/chapter precincts on election day must be fluent in English and Tewa or Navajo, as appropriate.
 - d. Polling officials will be instructed on procedures for giving assistance to voters. Poll officials should be instructed to ask individuals whether they need ballot translation or other assistance in their native language.
8. ELECTION DAY PROCEDURES
- a. The NLC will be assigned a county vehicle and a radio or mobile telephone for election day. Problems reported to the county from the voting precincts at the pueblo and Canoncito chapter will be relayed to the NLC for appropriate action. Additionally, the NLC will visit each precinct on tribal land at least once on election day to ensure that voters are obtaining information and assistance in the Native American language when it is needed.
 - b. Polling officials shall keep a record of all persons who requested to vote, but were not allowed to vote. This record should include each voter's name, address, the reason the person thought he or she was eligible to vote at that site, and the reason for not permitting the person to vote.
 - c. A list of persons not permitted to vote will be provided to appropriate tribal officials. Registration forms will be provided at the polls, and these persons will be added to the voter registration list as soon as practical.
9. THE VOTER REGISTRATION ROSTER PURGE PROCESS:
- a. State law in accordance with federal law under the National Voter Registration Act controls the voter registration purge process. When a purge is authorized and implemented, the following additional procedures shall apply for precincts located on Indian lands;
 - (1) The NLC will inform tribal leaders of the pending purge and ask that validation or re-registration procedures be explained at tribal meetings. The NLC may make the presentations with the concurrence of tribal officials.
 - (2) Tewa and Navajo language audio tapes describing the

purge process and validation or re-registration procedures shall be made available to each pueblo community center or Navajo chapter house.

- (3) The NLC shall provide to the tribal representative a list of voters in the precinct that have been identified to be purged. The tribal representative will be requested to contact persons on the list and notify them of the fact of the pending purge and procedures for validating their registration or re-registration.
- (4) At the close of the purge period, the NLC will meet with Tribal officials to review the list of purged voters and ascertain what further action, if any, should be taken to validate or re-register voters.

12. RECORDS:

- a. In addition to copies of audio/video tapes the NLC shall keep track of records that include:
 - (1) On a monthly basis, the number of registered voters in each precinct where Native American voters comprise at least five percent of the registered voters, and the number of newly registered voters in each precinct.
 - (2) Time and media of each broadcast, if available, or publication.
 - (3) Following a purge, the total number of voters purged, by precinct.
 - (4) Following each election, the total number of ballots casts absentee and the number of those voting at an early voting satellite office.
- b. By July 1, 1999, and July 1st of each succeeding odd numbered year thereafter, the NLC will compile a report of efforts taken during the preceding twelve-month period in furtherance of the county NAEIP. Conclusions may be drawn concerning the effectiveness of the various aspects of the program.
- c. The NLC will attempt to determine the cost of conducting the county NAEIP.

13. ADJUSTMENTS TO PROGRAM:

- a. It is the goal of Bernalillo County to make the entire election process fully and effectively accessible to our Native American citizens according to federal law. Regular and on going reassessment of the county NAEIP is necessary by responsible participants. Meetings with tribal officials shall occur at least once each year to discuss the NAEIP.
- b. The county, in consultation with the NLC, state NAEIP Officials, tribal officials, and federal officials, shall evaluate the county NAEIP on an on going basis. When adjustments to the program are suggested, they will be made only after full discussion among the interested parties, and where necessary to ensure that Native American voters are able to enjoy equal access to all phases of the political process.
- c. The Deputy County Clerk will submit, prior to their implementation, any agreed upon changes in this manual to the United States Department of Justice for preclearance as provided in the consent decree, United States v. Bernalillo County.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIVIL ACTION NO.
)	
v.)	
)	
BERNALILLO COUNTY, NEW MEXICO;)	
BERNALILLO COUNTY BOARD OF)	
COMMISSIONERS; TOM RUTHERFORD,)	
Chairperson of the Bernalillo County	)	<u>COMPLAINT</u>
Board of County Commissioners; STEVE)	
GALLEGOS, LES HOUSTON, BARBARA J.)	
SEWARD, KEN SANCHEZ, Members of)	
the Bernalillo County Board of County)	
Commissioners; and JUDY WOODWARD,)	
Bernalillo County Clerk,)	
)	
Defendants.)	

1. The Attorney General files this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973, 42 U.S.C. §1973j(d) and 42 U.S.C. §1973aa-1a, and 28 U.S.C. §2201, and to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

2. The Court has jurisdiction of this action pursuant to 28 U.S.C. §1345, 42 U.S.C. §1973j(f) and 42 U.S.C. §1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act requires that the action be heard and determined by a court of three judges in accordance with the provisions of Section 2284 of Title 28 of the United States Code.

3. Defendant Bernalillo County is a political subdivision of the State of New Mexico and exists under the laws of that

state. The Defendant Bernalillo County Board of County Commissioners is the general governing and managing body of Bernalillo County. The County Commissioners have statutory powers, duties and responsibilities with regard to the conduct of elections in Bernalillo County.

4. Defendant Tom Rutherford is an elected county commissioner and the present chairperson of the board. Defendant Valdez resides in Bernalillo County, New Mexico, and is sued in his official capacity. Defendants Steve Gallegos, Les Houston, Barbara J. Seward, and Ken Sanchez are duly elected members of the Bernalillo County Board of Commissioners and are sued in their official capacity. Each resides in Bernalillo County, New Mexico.

5. Defendant Bernalillo County Clerk Judy Woodward has state statutory powers, duties and responsibilities with regard to the conduct of elections held in Bernalillo County. Among her powers and duties, defendant Woodward is responsible for disseminating information relating to elections, registration and voting; implementing voter assistance procedures; appointing and training polling place officials and interpreters; and conducting early and absentee voting in Bernalillo County. Defendant Woodward is a resident of Bernalillo County, New Mexico, and is sued in her official capacity.

6. The Canoncito Chapter of the Navajo Nation is a noncontiguous part of the Navajo reservation, with the population dispersed throughout the Canoncito Navajo Chapter. The chapter

is located in Bernalillo, Cibola and Sandoval counties, although very small portions of the chapter are located in the latter two counties. The Navajo language is the primary means of communication among the residents of Canoncito Navajo Chapter. Navajo is an historically unwritten language.

7. According to the Navajo Tribal Census, approximately 1,700 Navajos are members of the Canoncito Navajo Chapter. Virtually all of these individuals reside in Bernalillo County.

8. American Indians constitute a language minority group within the meaning of Section 203(e) of the Voting Rights Act, 42 U.S.C. §1973aa-1a(e).

9. The Director of the Census has determined that more than five percent of voting age Navajos, within the Canoncito Navajo Reservation, speak Navajo and are limited-English proficient, and further has determined that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. 57 Fed. Reg. 43213 (September 18, 1992). Such determinations subject Bernalillo County to the requirements of Section 203(c) of the Voting Rights Act, 42 U.S.C. §1973aa-1a(c), and thus the defendants must furnish oral instructions, assistance and other information relating to voter registration and voting, in the Navajo language.

10. In addition, the defendants are prohibited by Section 2 of the Voting Rights Act, 42 U.S.C. §1973, from applying or imposing any voting qualification or prerequisite to voting or

standard, practice, or procedure which results in a denial or abridgement of the right of Navajo citizens to vote.

11. American Indians in Bernalillo County have suffered a long history of official discrimination, including discrimination affecting the right to vote. American Indians in New Mexico were denied the right to register and vote until 1948. Polls were not located on Navajo reservation land in New Mexico until after 1962, and a poll was not placed in Canoncito until after 1980. In more recent years, federal courts have held that various voting devices and procedures implemented within New Mexico have denied Native American citizens a fair opportunity for effective political participation. Navajo citizens in Bernalillo County continue to bear the effects of past discrimination in such areas as education, health, housing and employment.

12. In conducting public elections within Bernalillo County, defendants have failed to furnish, in the Navajo language, the information and assistance necessary to allow Navajo citizens an equal opportunity for effective political participation, including the following:

- (a) the same voting and election-related information which is provided in English, including information regarding voter registration deadlines and the registration process, the early voting and absentee voting process, candidate filing procedures, the identity of candidates for public office,

election dates and issues to be voted upon at the election; and

- (b) adequately trained persons to serve as translators for Navajo voters needing assistance at the Canoncito poll on election day.

13. Defendants have failed to provide an opportunity for the residents of Canoncito Navajo Chapter to participate in the political process, comparable to that afforded non-Indian citizens in the county. Among other things, defendants have not provided an opportunity for residents of Canoncito to cast early and absentee ballots or to file for candidacy, and have not trained poll officials to give effective assistance at the Canoncito poll.

14. Defendants have intentionally deprived the Navajo residents of Canoncito of information relating to voter registration and voting, and of the opportunity to participate in the political process on a basis comparable to that afforded to non-Indian citizens in the county.

15. The defendants' failure to provide Navajo residents of Canoncito with effective oral instructions, assistance and other information relating to voter registration and voting in the Navajo language constitutes a violation of Section 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution.

16. The defendants' actions, under the totality of circumstances described herein, constitute a denial and abridgement of the right of Navajo citizens to vote in violation of Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution.

17. Unless enjoined by this Court, defendants will continue to enforce voting standards, practices, and procedures in a manner which denies and abridges the right of Navajo citizens in Bernalillo County to participate effectively and on an equal basis with other citizens in violation of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution.

WHEREFORE, the United States prays for an order:

1. Declaring that the defendants have failed to provide effective oral instructions, assistance and other information relating to voting and voting procedures in the Navajo language, in violation of Section 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution;
2. Declaring that the defendants' standards, practices, and procedures relating to dissemination of election information, early and absentee voting, filing for candidacy and training poll officials to give effective

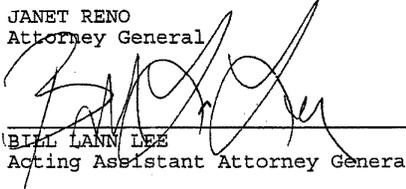
assistance at the Canoncito poll violates Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution;

3. Requiring the defendants to implement procedures to assure that Navajo citizens of Canoncito Navajo Chapter have an opportunity equal to that of non-Indian citizens in the county to obtain election information, file for candidacy, cast early and absentee ballots, receive effective assistance at the poll and otherwise to participate effectively in the Navajo language in all phases of the election process; and
4. Designating Bernalillo County for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. §1973a(a).

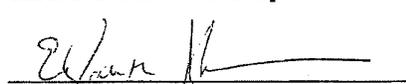
Plaintiff further requests that this Court order such other relief as the interests of justice requires along with the costs and disbursements in maintaining this action.

JANET RENO
Attorney General

By:


BILL LANN LEE
Acting Assistant Attorney General

JOHN KELLY
United States Attorney


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Washington, D.C. 20035-6128
(202) 616-2350

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
BERNALILLO COUNTY, NEW MEXICO;)
BERNALILLO COUNTY BOARD OF)
COMMISSIONERS; TOM RUTHERFORD,)
Chairperson of the Bernalillo County)
Board of Commissioners; STEVE)
GALLEGOS, ALAN ARMIJO, E. TIM CUMMINS,)
MICHAEL BRASHER, Members of)
the Bernalillo County Board of)
Commissioners; and MARY HERRERA,)
Bernalillo County Clerk,)
)
Defendants.)

03 JUN 17 PM 3:27
CA NO. 98-156BB

Rafael M. March
CLERK ALTERNATIVE

JOINT MOTION FOR AND MEMORANDUM IN SUPPORT OF
ENTRY OF STIPULATION

The United States, Bernalillo County, and remaining defendants, through their undersigned counsel, respectfully request this Court to enter the attached Stipulation. In support of this motion the parties state the following:

1. Bernalillo County became subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a ("Section 203"), in 1992. The county failed to comply with these requirements, and the United States brought this lawsuit. The lawsuit was resolved by entry of the Consent Decree on April 27, 1998. In 2002, the Director of the Census determined that Bernalillo County remains subject to the requirements of Section

203. See 67 Fed. Reg. 48,871 (July 26, 2002).

2. After entry of the Consent Decree in this case, Bernalillo County administered an election program that made all phases of the election process as accessible to the Native American population of Bernalillo County as they are to the remainder of the county's population from 1998 through the 2002 primary election.

3. Beginning July 1, 2002, the county failed to provide a budget for the Native Language Coordinator as required by Paragraph 4 of the Consent Decree. Federal observers at the November 2002 general election determined that translation and other assistance provided by the poll workers were inaccurate in many cases.

4. Paragraph 13 of the Consent Decree permits extension of the Consent Decree for "good cause." The county agrees that failing to provide a budget for Fiscal Year 2003 as required by Paragraph 4 of the Consent Decree constitutes "good cause."

5. It is settled that a court has inherent power to enforce a consent decree in response to a party's non-compliance, and to modify a decree in response to changed conditions. See, e.g., Spallone v. United States, 493 U.S. 265, 276 (1990) (courts have inherent power to enforce compliance with their consent decrees); David C. v. Leavitt, 242 F.3d 1206, 1210 (10th Cir.) cert. denied 534 U.S. 822 (2001) ("a court's equitable modification power

extends to material provisions in a consent decree").

6. A court also has broad equitable power to fashion a remedy in its exercise of its compliance enforcement and modification powers when a consent decree is aimed at remedying discrimination, as is the Consent Decree in the case at bar. See Spallone, 493 U.S. at 276 (court can exercise "broad equitable powers" when enforcing compliance with a decree aimed at remedying past discrimination).

7. This broad remedial power can be used to extend the effective time period of a consent decree. See Chrysler Corp. v. United States, 316 U.S. 556 (1942) (consent decree extended via exercise of modification power); David C. v. Leavitt, 242 F.3d at 1212-1213 (State of Utah's non-compliance with consent decree permitted extension of the term of the consent decree).

8. As explained in Paragraphs 3 and 4 above, the parties agree that there was non-compliance with the Consent Decree in 2002 that justifies extension of portions of the Consent Decree until January 31, 2005.

9. Extending portions of this consent decree through the 2004 elections will guarantee that all phases of the election process are as accessible to the Native American population of Bernalillo County as they are to the remainder of the county's population and will allow the United States to monitor the 2004 elections to ensure compliance with Section 203.

WHEREFORE, the parties pray that this motion be granted.

For Plaintiff:

UNITED STATES OF AMERICA

DAVID C. IGLESIAS
United States Attorney

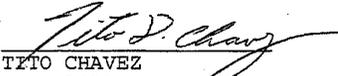
RALPH F. BOYD, JR.
Assistant Attorney General
Civil Rights Division



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For Defendants:

BERNALILLO COUNTY



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Bernalillo County Attorney
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Albuquerque, NM 87102
505-314-0180

FILED
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JUL - 1 2003

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BERNALILLO COUNTY, NEW MEXICO;)
 BERNALILLO COUNTY BOARD OF)
 COMMISSIONERS; TOM RUTHERFORD,)
 Chairperson of the Bernalillo County)
 Board of Commissioners; STEVE)
 GALLEGOS, ALAN ARMIJO, E. TIM CUMMINS,)
 MICHAEL BRASHER, Members of)
 the Bernalillo County Board of)
 Commissioners; and MARY HERRERA,)
 Bernalillo County Clerk,)
)
 Defendants.)

Robert M. March
 CLERK
 CA NO. 98-156BB

ORDER ENTERING STIPULATION

The United States initiated this action on February 6, 1998, pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973, 42 U.S.C. §1973j(d), 42 U.S.C. §1973aa-1a, and 28 U.S.C. §2201, alleging violations of the Voting Rights Act arising from Bernalillo County's election practices and procedures as they affect Native American citizens of the county, including those Native American citizens who rely in whole or in part on the Navajo language. The county admitted these violations and agreed to remedy them by entering into a consent decree. On April 27, 1998, the three-judge court in this case entered the consent decree.

In a Stipulation filed with this court, Bernalillo County

9

has conceded that it violated the terms of the consent decree by not providing funding for the Native Language Coordinator's budget in 2002. The parties agree that this constitutes good cause to extend the portions of the Consent Decree enumerated in the Stipulation.

After consideration of the Joint Motion for and Memorandum in Support of Entry of Stipulation and good cause appearing, the court finds the terms of the Stipulation fair and reasonable, and it is hereby ORDERED that the attached Stipulation is approved for entry this 20th day of June, 2003.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42

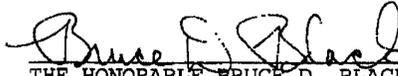
U.S.C. §§1973, 1973aa-1a, and the Fourteenth and Fifteenth
Amendments to the Constitution.



THE HONORABLE PAUL J. KELLY, JR.
United States Circuit Judge
United States Court of Appeals
For the Tenth Circuit



THE HONORABLE JOHN E. CONWAY
United States District Judge
United States District Court for
The District of New Mexico



THE HONORABLE BRUCE D. BLACK
United States District Judge
United States District Court for
The District of New Mexico

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 BERNALILLO COUNTY, NEW MEXICO;)
 BERNALILLO COUNTY BOARD OF)
 COMMISSIONERS; TOM RUTHERFORD,)
 Chairperson of the Bernalillo County)
 Board of Commissioners; STEVE)
 GALLEGOS; ALAN ARMIJO, E. TIM CUMMINS,)
 MICHAEL BRASHER, Members of)
 the Bernalillo County Board of)
 Commissioners; and MARY HERRERA,)
 Bernalillo County Clerk,)
)
 Defendants.)

03 JUN 17 PM 3:27
CA NO. 98-156BB
Rosemary M. ...
CLERK

STIPULATION

The United States, Bernalillo County, and remaining defendants, agree through their undersigned counsel to the following Stipulation. The parties respectfully request this Court to enter this Stipulation.

Bernalillo County initially became subject to the minority language provisions of the Voting Rights Act in 1992, and for the following four years, the county failed to furnish, in the Navajo language, the information and assistance necessary to allow Navajo citizens an equal opportunity for effective participation in all aspects of the political process. The United States initiated this action on February 6, 1998, pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended,

42 U.S.C. §1973, 42 U.S.C. §1973j(d), 42 U.S.C. §1973aa-1a, and 28 U.S.C. §2201, alleging violations of the Voting Rights Act arising from Bernalillo County's election practices and procedures as they affect Native American citizens of the county, including those Native American citizens who rely in whole or in part on the Navajo language.

The county admitted these violations and agreed to remedy them by entering into a consent decree and by writing an operations manual detailing the county's procedures for providing assistance and information under Section 203 of the Voting Rights Act. On April 27, 1998, the three-judge court in this case approved the consent decree.

Pursuant to the consent decree, the United States has assigned federal observers to monitor Bernalillo County elections, and the United States has conducted extensive investigations of the actions of Bernalillo County in complying with the consent decree and Section 203 of the Voting Rights Act. Federal observers have monitored and the United States has investigated elections held from 1998 through 2002. For a majority of this time period, Bernalillo County has administered an election program that has made all phases of the election process as accessible to the Native American population of Bernalillo County as they are to the remainder of the county's population.

On August 23, 2002, the United States learned that Bernalillo County had eliminated the budget for the Native Language Coordinator for Fiscal Year 2003, which began on July 1, 2002. The coordinator was unable to carry out her duties under the county's election program. The United States noted that the county's elimination of the budget for the program violated paragraph four of the consent decree and requested that the county restore funding immediately. Funding for the Coordinator's budget was partially restored three months after the fiscal year began. Full funding of the coordinator's budget was restored eleven days prior to the November 2002 election.

The reports of federal observers who monitored the election and an investigation by the United States demonstrated that Bernalillo County failed to comply with Section 203 for the 2002 general election. Both parties agree that this constitutes good cause under paragraph 13 of the consent decree which permits the extension of the consent decree. The parties further agree that a fully funded Native American election program had been successful in the past and likely would be successful in the future.

Both parties agree to stipulate to the following:

- 1) It is the intent of Bernalillo County to make all phases of the election process as accessible to the Navajo population of Bernalillo County as they are to the remainder of the county's

population. . Therefore, Bernalillo County shall continue to provide information, publicity, and assistance in the Navajo language in voter registration, voter registration cancellation, absentee voting, early voting, procedures at the polls including translation of the ballot, and training of polling officials and translators as outlined in the county's Native American Election Information Program Operations Manual.

2) To ensure the dissemination of election-related information to the Navajo speaking population of Bernalillo County, and to make the election process equally accessible to Native American citizens, Bernalillo County shall continue to employ a Native Language Coordinator (hereinafter "Coordinator"). The Coordinator shall be bilingual in Navajo and English. The primary responsibility of the Coordinator, a full-time employee of Bernalillo County, shall be to carry out the county's Native American language program.

3) Bernalillo County shall fully fund a budget for the Coordinator which shall be sufficient to cover expenses incurred in carrying out the Coordinator's duties, obligations, and responsibilities.

4) To assist in the effectiveness of this Stipulation and to ensure the continued enforcement of the voting guarantees of the Fourteenth and Fifteenth Amendments, Bernalillo County will remain designated for federal examiners pursuant to Section 3(a)

of the Voting Rights Act, 42 U.S.C. §1973(a), which enables the appointment of federal observers. Bernalillo County recognizes the authority of the federal observers to observe all aspects of the voting process conducted in the polls on election day, including the provision by the county of assistance to voters in the voting booth provided that the voter does not object to being observed.

5) This Stipulation shall remain in effect through January 31, 2005.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. §§1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the Constitution.

Entered this 17th day of June, 2003.

For Plaintiff:
UNITED STATES OF AMERICA

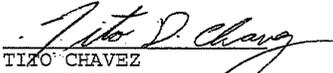
For Defendants:
BERNALILLO COUNTY

DAVID C. IGLESIAS
United States Attorney

RALPH F. BOYD, JR.
Assistant Attorney General
Civil Rights Division



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GAYE L. TENOSO
TIMOTHY F. MELLETT
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202-307-6262



TITO CHAVEZ
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Albuquerque, NM 87102
505-314-0180

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON,)
 MASSACHUSETTS; THOMAS M.)
 MENINO, in his official capacity as)
 Mayor of the City of Boston;)
 BOSTON CITY COUNCIL:)
 MICHAEL F. FLAHERTY, PAUL J.)
 SCAPICCHIO, JAMES M. KELLY,)
 MAUREEN E. FEENEY,)
 CHARLES C. YANCEY, ROB)
 CONSALVO, JOHN TOBIN,)
 CHUCK TURNER, MICHAEL P.)
 ROSS, JERRY P. MCDERMOTT,)
 FELIX D. ARROYO, MAURA)
 HENNIGAN, STEPHEN J.)
 MURPHY; BOSTON ELECTION)
 DEPARTMENT; GERALDINE)
 CUDDYER, in her official capacity)
 as Chair of the Boston Election)
 Department,)
)
 Defendants.)
 _____)

CIVIL ACTION No.

COMPLAINT

THREE-JUDGE COURT

05 - 11598 WGY

COMPLAINT

The United States of America, Plaintiff herein, alleges:

1. The Attorney General files this action seeking injunctive and declaratory relief pursuant to Sections 2, 3, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973a(a), 1973j(d), 1973aa-1a, 1973aa-2, and 28 U.S.C. § 2201.

JURISDICTION

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 1973j(f), 1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act requires that the action be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

PARTIES

3. Defendant City of Boston (“City” or “Boston”) is a geographical and political subdivision of the Commonwealth of Massachusetts (“Commonwealth” or “Massachusetts”) and exists as a charter city organized pursuant to the laws of Massachusetts.

4. Defendant Thomas M. Menino is the Mayor of Boston, with the responsibility of serving as the chief executive officer of the City, appointing the members of the Election Department and selecting election officers. Defendant Menino is a resident of Boston and is sued in his official capacity.

5. Defendant City Council is the legislative body of the City of Boston, with responsibilities which include adopting appropriations and making bylaws or ordinances, including those which impose duties of the City on departments and department heads.

6. Defendant Michael F. Flaherty is the City Council President. Defendant Flaherty is a resident of the City and is sued in his official capacity.

7. Defendants Paul J. Scapicchio, James M. Kelly, Maureen E. Feeney, Charles C. Yancey, Rob Consalvo, John Tobin, Chuck Turner, Michael P. Ross, Jerry P. McDermott, Felix D.

Arroyo, Maura Hennigan, and Stephen J. Murphy are Members of the City Council. Each of these Defendants is a resident of the City and is sued in his or her official capacity.

8. Defendant Election Department is the City department responsible for the conduct of voter registration and elections held in the City. The Election Department conducts all municipal, state, and federal elections within the City and is responsible to ensure that elections are properly managed and conducted in accordance with municipal, state, and federal laws.

9. Defendant Geraldine Cuddyer is the Chair of the Election Department, with duties, powers, and responsibilities concerning the administration of elections held in Boston. Defendant Cuddyer is a resident of the City and is sued in her official capacity.

ALLEGATIONS

10. According to the 2000 Census, Boston has a total population of 589,141, and a citizen voting-age population of 388,579 persons. Boston's Hispanic population is 85,089, representing 14.4% of the City's total population. There are 33,596 Hispanic voting age citizens, representing 8.6% of the City's citizen voting age population. Boston's Chinese population is 19,885 and the Vietnamese population is 11,126, representing 3.4% and 1.8% respectively of the City's total population. There are 9,825 and 4,220 Chinese and Vietnamese voting age citizens respectively among whom 50.1% of the Chinese citizen voting age population and 61.2% of the Vietnamese citizen voting age population are limited English proficient.

11. Boston is subject to the requirements of Section 203 for the Spanish language, pursuant to the designation by the Director of the Census. The Director has determined that more than 10,000 of Boston's voting-age citizens are members of a single language minority group

(Spanish heritage or Hispanic) who do not speak or understand English well enough to participate in the English-language election process and have an illiteracy rate that is higher than the national illiteracy rate. 42 U.S.C. § 1973aa-1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). The determination of the Census Bureau that the City of Boston is covered by Section 203 for Spanish is final and non-reviewable. 42 U.S.C. § 1973aa-1a(b)(4).

12. The City of Boston has been continuously covered under Section 203 to provide bilingual elections in Spanish since September 18, 1992. 57 Fed. Reg. 43,213 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002). The Department of Justice has directly notified election officials, including Boston election officials, in all jurisdictions covered under Section 203 and has provided information regarding the requirements of Section 203. The Department of Justice directly notified Boston election officials of its Section 203 responsibilities in meetings between Civil Rights Division attorney and the City's Election Department Chairs subsequent to the 1990 and 2000 Census designations, respectively, and in letters dated September 21, 1992, July 26, 2002, and August 31, 2004.

13. Because the city of Boston is subject to the requirements of Section 203, "any registration or voting notice, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that Defendants provide in English must also be furnished in Spanish. 42 U.S.C. § 1973aa-1a.

FIRST CAUSE OF ACTION

14. Plaintiff hereby realleges and reincorporates by reference paragraphs 1-13 above.
15. In conducting elections in Boston, Defendants have failed to provide election-

related materials, information, and/or assistance in Spanish including, but not limited to, the following:

- (a) Failing to recruit, appoint, train, and maintain an adequate pool of bilingual poll officials capable of providing effective language election information and assistance to limited English proficient Hispanic citizens; and
- (b) Failing to translate into Spanish all election-related announcements, instructions, and notices at election sites; and in particular, failing to translate into Spanish information available in English on the Election Department's website, or to have any effective alternate method of disseminating such information in Spanish.

16. Defendants' failure to provide assistance at all of the polls when such assistance is needed, to recruit, train and assign bilingual poll workers and to translate election information in Spanish and provide adequate bilingual assistance, as described herein, constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

17. Unless enjoined by this Court, Defendants will continue to violate Section 203 by failing to provide limited English proficient Hispanic citizens of Boston with Spanish-language election information and assistance necessary for their effective political participation.

SECOND CAUSE OF ACTION

18. Plaintiff hereby re-alleges and reincorporates by reference to paragraphs 1-17 above.

19. Section 2 of the Voting Rights Act prohibits Defendants from applying or imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" which

results in a denial or abridgment of the right to vote on account of race or color, or membership in a language minority group, including Asian American citizens and citizens of Spanish heritage.

20. In conducting elections in Boston, Defendants have abridged the right of limited English proficient members of language minority groups to vote, in their actions:

- (a) Treating limited English proficient Hispanic and Asian American voters disrespectfully;
- (b) Refusing to permit limited English proficient Hispanic and Asian American voters to be assisted by an assistor of their choice;
- (c) Improperly influencing, coercing or ignoring the ballot choices of limited English proficient Hispanic and Asian American voters;
- (d) Failing to make available bilingual personnel to provide effectively assistance and information needed by minority language voters; and
- (e) Refusing or failing to provide provisional ballots to limited English proficient Hispanic and Asian American voters.

21. Under the totality of the circumstances that exist in Boston, Defendants' conduct has had the effect of denying limited English proficient Hispanic and Asian American voters an equal opportunity to participate in the political process and to elect candidates of their choice on an equal basis with other citizens in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

22. Unless enjoined by this Court, Defendants will continue to violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by enforcing standards, practices, or procedures that deny limited English proficient Hispanic and Asian American voters the opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, United States, prays that this Court enter an order:

1. With respect to Plaintiff's First Cause of Action:
 - (a) Declaring that Defendants have failed to provide Spanish language election information and assistance necessary to those who require it in Spanish in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 19733aa-1a;
 - (b) Enjoining Defendants, their employees, agents and successors in office, and all persons acting in concert with them, from failing to provide Spanish language election information and assistance to persons with limited English proficiency as required by Section 203, 42 U.S.C. § 19733aa-1a; and
 - (c) Requiring Defendants to devise, publicize and implement a remedial plan to ensure that Spanish-speaking citizens are able to participate in all phases of the electoral process as required by Section 203, 42 U.S.C. § 19733aa-1a.
2. With respect to Plaintiff's Second Cause of Action:
 - (a) Declaring that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, because their actions have resulted in the denial or abridgement of the rights of limited English proficient Hispanic and Asian American voters;
 - (b) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from implementing practices and procedures that deny or abridge the rights of limited English proficient Hispanic and Asian American citizens in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973; and
 - (c) Requiring Defendants to devise and implement a remedial program that provides

Boston's limited English proficient Hispanic and Asian American citizens the opportunity to fully participate in the political process consistent with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

3. Plaintiff further requests that this Court:

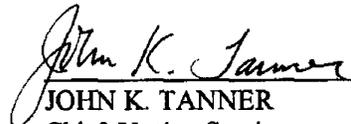
- (a) Authorize the appointment of federal examiners for elections held in Boston pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a) until December 31, 2007;
- (b) Award Plaintiff the costs and disbursements associated with the filing and maintenance of this action; and
- (c) Award such other equitable and further relief as the Court deems just and proper.

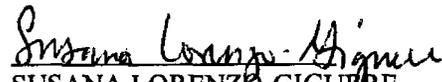
Date: ___ day of July, 2005

ALBERTO GONZALES
Attorney General


BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General


MICHAEL J. SULLIVAN
United States Attorney


JOHN K. TANNER
Chief, Voting Section


SUSANA LORENZO-GIGUERE
Special Counsel
Civil Rights Division - NWB
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530
(202) 514-9822

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No.
05-11598-WGY

UNITED STATES OF AMERICA,

Plaintiff,

v.

CITY OF BOSTON, MASSACHUSETTS, ET AL.

Defendants

October 18, 2005

ORDER

The parties have filed a joint motion to enter a revised order concerning their Memorandum of Agreement and Settlement.

The three-judge court heard argument concerning this joint motion on October 17, 2005. The court understands from representations made by the City of Boston and from the United States that paragraphs 22 through 25 of the Memorandum of Agreement and Settlement are intended to and will have the effect of obtaining meaningful consultation from relevant community groups (through the Task Force and by other means) as to pre-election procedures and materials as well as to post-election critiques.

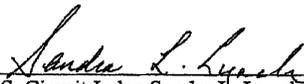
Based upon these representations and our review of the documents, we hereby order, adjudge, and decree that:

(1) The appointment of federal examiners is authorized for the City of Boston pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through December 31, 2008.

(2) The parties have entered into a comprehensive Memorandum of Agreement and Settlement resolving the disputes between them, a copy of which is attached, with the following modification: the last sentence of Paragraph 25 of the Agreement is stricken. The court further orders, without objection from the parties, that any substantial

modification of the Memorandum of Agreement and Settlement shall be filed contemporaneously with the court. This matter shall be placed on the Court's inactive docket, and the Court shall retain jurisdiction, through expiration of said Agreement and the Court's interlocutory order authorizing appointment of federal examiners, both to occur on December 31, 2008, at which time this matter shall be dismissed.

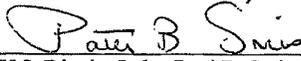
(3) Should there be a need to do so prior to December 31, 2008, the Department of Justice or the City of Boston, separately or together, may return to this court to resolve disputes under the Memorandum of Agreement and Settlement.



U.S. Circuit Judge Sandra L. Lynch



U.S. District Judge William G. Young



U.S. District Judge Patti B. Saris

MEMORANDUM OF AGREEMENT AND SETTLEMENT

Whereas Section 2 of the Voting Rights Act of 1965 requires that citizens be allowed to participate equally in all phases of the election process without regard to race, color or membership in a language-minority group, 42 U.S.C. § 1973, and said Section applies to all areas of the United States; and

Whereas the City of Boston has been subject to the requirements of Section 203 of the Voting Right Act, 42 U.S.C § 19733aa-1a, with respect to the Spanish language, since 1992, *see* 57 Fed. Reg. 43,213-02 (Sept. 18, 1992); and

Whereas the Voting Rights Act protects those language-minority groups against which there has been a history of discrimination in voting in the United States, and specifically defines “language minorities” or “language minority group” as including only persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage, 42 U.S.C. § 19731(c)(3); 42 U.S.C. § 1973aa-1a(e); and

Whereas the Director of the Census determined on July 26, 2002, that the City of Boston continued to be subject to Section 203 coverage under the Voting Rights Act for Spanish-heritage citizens, based on a determination that more than 10,000 citizens in the City are members of a language-minority group, specifically of Spanish heritage, who do not speak English well enough to participate effectively in an English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate, *see* 67 Fed. Reg. 48,871 (July 26, 2002); and

Whereas the Department of Justice has, since 1992, sent the City of Boston and other jurisdictions covered under Section 203 information regarding Section 203’s requirements and

has met with City officials and officials of other jurisdictions to further explain these requirements; and

Whereas the City maintains that since 1992 it has undertaken to provide full and fair access to its elections to language-minority groups, including citizens of Spanish heritage, in accordance with its obligations and responsibilities under Section 203 of the Voting Rights Act, including providing minority-language assistance at a number of polling places, bilingual signage and literature relevant to the City's voting practices and procedures, and bilingual ballots; and

Whereas the Department of Justice filed a civil complaint against the City of Boston on July 29, 2005, captioned *United States of America v. City of Boston, et al.*, Civil Action No. 05-11598, claiming violations of the Voting Rights Act in regard to the City's covered language-minority voting population; and

Whereas the Department of Justice's Civil Rights Division, which has primary enforcement responsibility for the Voting Rights Act, has alleged that the City of Boston is not in compliance with Sections 2 and 203 of the Voting Rights Act and needs to take steps to ensure that all minority-language voters covered by the Act, including Spanish-speaking, Chinese-speaking, and Vietnamese-speaking voters, have equal access to the City's electoral process for all city, state, and federal elections administered in whole or in part by the City; and

Whereas the City of Boston disputes the Justice Department's allegations, and asserts it is committed to increasing its current efforts to provide covered language-minority voters equal access to the election process and to resolving whatever differences there may be with the Department of Justice regarding the manner in which it has endeavored to provide the franchise to covered language-minority groups in the City, and has entered into discussions and negotiations with the Department of Justice intent on reaching agreement as to what

improvements the City might adopt so as to satisfy the Department of Justice that the City's voting practices and procedures will fully and fairly apply to citizens of covered language-minority groups, in the same manner as they are applied to English-speaking citizens, as required by the Voting Rights Act; and

Whereas the City of Boston and the Department of Justice have reached agreement with respect to the matters set forth herein, and are desirous of working together in the future so as to ensure that covered language-minority citizens of voting age in the City of Boston are provided the same opportunity to participate in the franchise as are other voting-age citizens to the fullest extent possible;

NOW THEREFORE, for full, fair and adequate consideration given and received, it is hereby agreed as follows:

1. The City of Boston, its employees, agents, successors in office, and all persons acting in concert with it, agree to continue, as they have since at least 2002, to provide in Spanish all of those "registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots" that the City provides in English, so that such materials are equally available in Spanish and English, as required by Section 203 of the Voting Rights Act, as amended, 42 U.S.C. § 1973aa-1a(c), and also provide such materials and information the City may have recently begun providing, and all future such materials and information. In similar fashion, the City further agrees henceforth to provide such election materials in Chinese and Vietnamese as it provides in English in accordance with the terms of this Agreement.

2. The terms of this Agreement shall apply to all federal, state, and local elections administered by the City of Boston to the fullest extent permitted by law, which shall include elections run in whole or in part by the City for the Commonwealth of Massachusetts or any political subdivision of the Commonwealth. To insure the City's full authorization to perform its obligations and responsibilities hereunder, the City of Boston commits to seek passage by the Legislature of the Commonwealth of Massachusetts, before the next scheduled state elections on September 19, 2006, of Home Rule Legislation pursuant to the Home Rule Amendment to the Massachusetts Constitution and the Massachusetts Home Rule Procedures Act, G.L. c.43B, s.1, *et seq.*, authorizing use by the City of Chinese and Vietnamese bilingual ballots as required by this Agreement in all federal and state elections administered by the City. If said Home Rule Legislation has not been obtained 90 days prior to the September 19, 2006 elections, the City, together with the Department of Justice, will immediately file with the Court a joint petition for a declaratory order regarding the City's authority to print and distribute such bilingual ballots in said state election, while continuing the City's Home Rule initiative to similar effect. The parties agree that such an order would be necessary and appropriate under all of the circumstances.

3. The City of Boston, its employees, agents, successors in office, and all persons acting in concert with it, agree not to engage in any act or practice which has as its purpose or result the denial or abridgment of the right to vote on the basis of membership in a language-minority group in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

4. The United States agrees to move to dismiss its complaint against the City of Boston based on the City's willingness to enter into this Agreement, and, to that end, the parties hereto agree to jointly move for conditional dismissal pursuant to Rule 41(a)(2), Fed. R. Civ. P.

Minority Language Assistance

5. The City of Boston agrees to continue to make available by telephone, without cost, trained bilingual election personnel able to speak Spanish to answer voting-related questions during normal business hours, and while the polls are open on election days. In addition, the City agrees to provide like telephone assistance, without cost, through trained bilingual election personnel able to speak Chinese and Vietnamese to assist members of those language-minority groups on election days.

6. The City of Boston agrees to recruit, hire, and assign available bilingual election officers able to understand, speak, read, and write Spanish fluently to provide assistance to Spanish-speaking voters at the polls on election days. In addition, the City agrees similarly to recruit, hire, and assign available bilingual election officers to assist Chinese-speaking and Vietnamese-speaking voters at the polls on election days.

7. The City of Boston agrees to survey City employees to identify those who speak Spanish, Chinese, or Vietnamese fluently, and to allow and encourage such employees, as they can be made available to provide assistance, to serve at the polls on election day. The City further agrees to strive to find and utilize qualified bilingual persons fluent in Spanish, Chinese, or Vietnamese to serve as election officers, and, to that end, shall, among other outreach efforts, invite recommendations of names from each major political party, request each educational entity within or proximate to the City to allow and encourage selected bilingual students (as allowed by state law and as part of an educational program) to serve as election officers, even on election days that fall on school days, and receive academic credit appropriate to their service as well as all pay and benefits of election officers, and urge eligible members of the Mayor's Advisory Task Force (including its Community Liaisons and the individuals and organizations with which they

are in contact, as discussed below), also to serve as and help recruit election officers.

8. The City of Boston agrees to increase substantially its pool of bilingual election officers so as to serve all voters who need assistance in Spanish to vote. In 2000, the Census Bureau, based on data it collected, determined that 35 out of every 100 voting-age citizens of Spanish heritage in Boston were unable to speak English well enough to participate in a political process administered in English. With that information-base, and applying the Census Bureau Spanish surname list to the City's voter registration rolls -- the best current measure of the likely need for assistance by Spanish-speaking voters in Boston -- the City agrees to supplement its existing targeting program, so that any polling place in which there are, according to the Census Bureau Spanish surname list:

- (a) 100-249 registered voters with Spanish surnames, shall be staffed by at least one Spanish-speaking election officer;
- (b) 250-499 registered voters with Spanish surnames, shall be staffed by at least two Spanish-speaking election officers;
- (c) 500-999 registered voters with Spanish surnames, shall be staffed by at least three Spanish-speaking election officers; and
- (d) 1,000 or more registered voters with Spanish surnames, shall be staffed by at least four Spanish-speaking election officers.

The parties may by written agreement adjust these requirements in light of reliable information that the actual need for language assistance in a particular polling place is lesser or greater than these standards.

9. The City of Boston further agrees to provide bilingual election officers to assist at polling places serving Chinese and Vietnamese voters on a basis suited to the differing needs of

these language-minority groups. The Census Bureau reports higher rates for Chinese (50%) and Vietnamese (61%) citizens of voting age who are unable to speak English well enough to participate in elections conducted in English than it reports for their counterparts of Spanish heritage (35%). Moreover, surname lists compiled of Asian-American citizens, such as the Lauderdale-Kestenbaum List, by necessity exclude common but ethnically ambiguous surnames (such as "Lee"), so that such lists understate the actual numbers of Chinese and Vietnamese citizens. Accordingly, the Department of Justice uses a separate formula for each minority-language group, as appropriate, to measure the likely need of that group of voters for language assistance at the polls. With that information-base and to better serve the needs of its Chinese and Vietnamese citizens, the City of Boston agrees to the following commencing with the November 8, 2005 Citywide election:

- (a) any polling place in which there are, according to the Lauderdale and Kestenbaum surname list:
- (1) 35-84 registered voters with Chinese surnames, shall be staffed by at least one Chinese-speaking election officer;
 - (2) 85-169 registered voters with Chinese surnames, shall be staffed by at least two Chinese-speaking election officers;
 - (3) 170-339 registered voters with Chinese surnames, shall be staffed by at least three Chinese-speaking election officers; and
 - (4) 340 or more registered voters with Chinese surnames, shall be staffed by at least four Chinese-speaking election officers.
- (b) any polling place in which there are, according to the Lauderdale and Kestenbaum surname list:

- (1) 30-74 registered voters with Vietnamese surnames, shall be staffed by at least one Vietnamese-speaking election officer;
- (2) 75-149 registered voters with Vietnamese surnames, shall be staffed by at least two Vietnamese-speaking election officers;
- (3) 150-299 registered voters with Vietnamese surnames, shall be staffed by at least three Vietnamese-speaking election officers; and
- (4) 300 or more registered voters with Vietnamese surnames, shall be staffed by at least four Vietnamese-speaking election officers.

The parties may by written agreement adjust these requirements in light of reliable information that the actual need for language assistance in a particular polling place is lesser or greater than these standards.

10. The City of Boston agrees to have available on election days bilingual persons, trained in Spanish-language election terminology and all election procedures, as appropriate, who shall be on call to travel to polling places not staffed by a bilingual election officer to provide any necessary assistance to any Spanish-speaking voter. Similarly, the City agrees to have bilingual persons trained in Chinese and Vietnamese on call on election days to provide like services as needed to assist Chinese-speaking or Vietnamese-speaking voters.

11. The City of Boston agrees to post signs prominently in English and Spanish at all polling places in the City, indicating that Spanish-speaking assistance is available by a telephone in the polling place. Similarly, the City agrees to post signs prominently in English and Chinese and in English and Vietnamese indicating that assistance in either Chinese or Vietnamese, as appropriate, is available by a telephone in the polling place.

Election officer training

12. Prior to each election, in addition to any other required state or city training, the City of Boston agrees to increase existing training of all election officers and other election personnel to be present at the polls on the legal requirements of Sections 2 and 203 of the Voting Rights Act, including making minority-language assistance and materials available to voters in an appropriate manner, applying all voting standards and practices equally, allowing voters their assistor of choice consistent with and as limited by Section 208 of the Voting Rights Act, provisional voting, the need to enforce state law prohibitions against campaigning in or near the polls, and other election-related issues, and being respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities. In addition to the general training for election officers, the City of Boston agrees to train all bilingual election officers (whether they be Spanish, Chinese or Vietnamese speakers) on election terminology and voting instructions for their specific language. The City of Boston further agrees to maintain a record of which election officers attend training sessions, including the time, location, and training personnel involved.

13. In order to be eligible to serve as an election officer, an individual must commit orally or in writing that he or she will: (1) treat all voters equally and with respect; (2) honor the candidate and other ballot choices of all voters who receive assistance in marking their ballots, and avoid making any statement or allowing any person to make any communication within or near the polls to influence any voter's ballot choice; (3) allow voters requiring assistance to choose a person to assist, consistent with Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6; and (4) offer voters provisional ballots who are entitled to such ballots under Massachusetts law and the Help America Vote Act of 2002, 42 U.S.C. § 15482(a). The Election Department shall maintain records to demonstrate that each election officer has made this

commitment.

Response to Complaints About Election Officers

14. The City of Boston agrees, at the request of and on the responsibility of the Department of Justice, to remove from the polls any election officer who the Department of Justice advises has, in its judgment, knowingly violated the requirements set forth in items one and two in Paragraph 13 of this Agreement.

15. The City of Boston, upon receipt of complaints by voters, or their representatives or agents, whether oral or written, agrees to investigate expeditiously any allegations of election-officer hostility toward minority-language voters in any election. Where there is credible evidence that election officers have engaged in inappropriate treatment of voters, the City of Boston shall continue its practice of discipline, to include termination and removal of such election officers for future elections, where appropriate.

Translation of Election Materials

16. The City of Boston agrees to employ trained translators who are familiar with Spanish-language election terminology to produce clear and accurate written translations, and also to employ trained translators who are familiar with Chinese-language and/or Vietnamese-language election terminology for the same purposes.

17. The City of Boston agrees to compile a checklist identifying each written or printed item of election information that the City of Boston makes available to the public at each polling place. The checklist shall include for each item an attestation that the election officers at the polling place posted or made available to voters these materials in each minority language, as required in this Agreement, and shall also include sufficient space for insertion of a detailed written explanation of why individual items were not posted or available. The Wardens for each

polling place must complete and sign this checklist or, where appropriate, provide written explanation for a failure to do so, before the Warden receives payment for work in the election, subject to applicable state and federal law. The City of Boston agrees to maintain a record of each failure to complete and sign the checklist.

Dissemination of Minority Language Information

18. The City of Boston agrees to disseminate all bilingual election information, materials, and announcements produced hereunder (whether in Spanish, Chinese or Vietnamese) to the same extent and on comparable terms as they are disseminated by the City in English, including distributing said bilingual election information, materials, and announcements in newspapers, radio, and/or other media that exclusively or regularly publish or broadcast information in Spanish, Chinese, or Vietnamese, as appropriate. Such election information and materials, except for ballots, need not be identical in all respects to English-language materials, but shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information.

19. The official ballot and absentee ballots shall continue to be provided bilingually in English and Spanish or, on any electronic voting machine, shall be readily available in Spanish as an option. Any audio version of the ballot on such machines shall be available in English and Spanish. Beginning January 1, 2006, official and absentee ballots shall also be provided bilingually in Chinese and English and Vietnamese and English, and on any electronic voting machine shall be readily available in Chinese and Vietnamese as an option, consistent with this Agreement. Any audio version of the ballot on such machines shall be available in Chinese and Vietnamese, as well as in English and Spanish.

20. Beginning with elections after January 1, 2006, the City agrees to provide ballots bilingual in English and Chinese and/or English and Vietnamese as agreed in Paragraph 19 above at each of the polling places staffed with at least one Chinese-speaking election officer (in the case of English-Chinese ballots) or Vietnamese-speaking election officer (in the case of English-Vietnamese ballots) as described in Paragraph 9(a) and (b) above, the number of such ballots to be equal to the number of Chinese or Vietnamese surnamed registered voters, as appropriate. After each election, the parties will evaluate whether the English and Chinese and English and Vietnamese bilingual ballots should be distributed to additional or different polling places, and make appropriate changes. For the November 8, 2005 City election, the City agrees to produce and affix a sample or facsimile ballot, as nearly identical in size and layout to the official ballot, in the Chinese language inside each voting booth in the polling places identified in Paragraph 9(a)(1) – (4) above and in Vietnamese inside each voting booth in the polling places identified in Paragraph 9(b)(1) – (4) above. The City agrees to solicit the assistance of the Advisory Task Force in the production of said sample ballots.

21. To the extent the City of Boston provides sample ballots in English to voters who request them, the City of Boston shall also provide sample ballots in Spanish to voters who request them. For the November 8, 2005 Citywide election, the City also agrees to the extent it provides sample ballots in English to use its best efforts to provide sample ballots in Chinese and Vietnamese in similar fashion to voters who request them, and agrees to provide such sample ballots on the same basis as for English for all elections thereafter.

City Elections Language Coordinator

22. The City of Boston agrees to employ an individual to coordinate the City's minority-language election programs (the "City Elections Language Coordinator") for all

elections administered in whole or in part by the City of Boston. The employment of a permanent City Elections Language Coordinator consistent with the City's employment procedures shall be completed no later than January 1, 2006, and in the interim the Election Department will consult with the Office of New Bostonians and the linguistics liaisons of Neighborhood Services to address the needs as enumerated in this Paragraph. The City of Boston further agrees to provide the City Elections Language Coordinator with all the support necessary to meet the goals of the Program. The City Elections Language Coordinator shall work under the supervision of the Chair of the Election Department. The City Elections Language Coordinator's oversight responsibilities shall include: training of bilingual election officers; recruitment and assessment of the minority-language proficiency of bilingual election officers and interpreters; coordination of translation of election information, including the Election Department's website; development of an election glossary to insure uniform use of election terminology in Spanish, Chinese, and Vietnamese; development, selection and oversight of minority-language media and other election notices, announcements and information, including effective notices of poll site information and voter assignments; and managing other aspects of the Program. To accomplish these tasks, the City shall appoint from among the members of the Mayor's Advisory Task Force a Community Liaison for each of the three language-minority communities covered by this Agreement -- the Spanish-speaking community, Chinese-speaking community, and Vietnamese-speaking community. The City of Boston further agrees to assign a full-time City employee, fully familiar with the election process within the City of Boston, who speaks Spanish to work with the Spanish Community Liaison, a comparable City employee who speaks Chinese to work with the Chinese Community Liaison, and a comparable City employee who speaks Vietnamese to work with the Vietnamese Community Liaison. These employees

shall assist the Community Liaisons in conducting outreach to their respective communities and partner with the Liaisons in aiding the City Elections Language Coordinator's achievement of his or her responsibilities.

Advisory Task Force

23. The City Elections Language Coordinator and each Community Liaison shall be members of the Mayor's Advisory Task Force that has been established to coordinate and assist efforts of the City of Boston to address concerns of the City's language-minority groups, including concerns relating to the distribution and dissemination of bilingual election materials. To fully effectuate this Agreement and to serve effectively and efficiently the varying needs of each covered language-minority group, the designated Community Liaison shall be fully able to read, write, and speak fluently the language of the language-minority group he or she has been appointed to represent. The Community Liaison, along with his or her City employee counterpart whenever possible, shall meet periodically with interested individuals and organizations that work with or serve that Community Liaison's particular covered minority-language group in the City of Boston to receive comments, input and guidance on how more effectively the City might be able to provide election materials, information, and assistance to those minority-language voters, and to publicize the City's minority-language election programs. Said meetings shall occur at least monthly through 2006, and as frequently thereafter as the Community Liaison determines is necessary to insure that the language-minority community served is being heard and its comments, input and guidance are being fully considered by the Mayor's Task Force. The Advisory Task Force shall meet regularly throughout the year to review with the City Elections Language Coordinator and the Community Liaisons the City's performance under this Agreement, and to consider comments and recommendations made by

the City Elections Language Coordinator and the Community Liaisons. At least one such meeting of the Task Force shall occur within 45 days of any city, state or federal election administered by the City, following which the City Elections Language Coordinator shall provide a written summary to the Mayor, the Chair of the Election Department, and all members of the Task Force of the discussion and any decisions reached at the meeting. Said written summary shall include a statement of reasons supporting any decision made by the Chair of the Election Department not to implement a Task Force suggestion regarding any particular voting practice or procedure.

24. The City of Boston agrees to transmit, by electronic mail, facsimile or other means, to all interested persons and organizations, copies of all bilingual election information, announcements, and notices that are provided to the electorate and general public, together with an election glossary containing accepted election terminology in Spanish, Chinese and Vietnamese, and request that they share such information with their members, clientele, and representative language-minority groups. The Election Department shall maintain a separate list of persons and organizations interested in receiving materials and information in each language.

Evaluation of Plan

25. The parties to this Agreement recognize that regular and ongoing cooperation and reassessment may be necessary to provide the most effective and efficient bilingual election program. The City of Boston therefore agrees to evaluate each bilingual program after each election (e.g., following the 2005 preliminary election) to determine which aspects of such programs are functioning well, whether any aspects need improvement, and, if improvements are needed, how to address them. The Department of Justice shall be available to meet with the City of Boston following each election to share information it learns through its federal examiners,

and to assist the City of Boston in its ongoing assessment of its bilingual election program. This Agreement may be adjusted at any time upon written agreement of the parties.

Retention of Documents and Reporting Requirements

26. During the duration of this Agreement, the City of Boston agrees to make and maintain written records of all actions taken pursuant to this Agreement, and to make copies of such records available to the Department of Justice upon request.

27. During the duration of this Agreement, at least 30 days before each election held in whole or in part within the City of Boston, the City of Boston agrees to provide to the Assistant Attorney General, Civil Rights Division, Department of Justice, or his designee, a list of polling places to be used for such election, the precincts voting at each such polling place, the number of election officers to be appointed and assigned to serve at each polling place who are bilingual and the language(s) spoken by each such officer, and an electronic copy of the list of registered voters for such election, as known at that time. Within 30 days following certification of election results for each election, the City of Boston agrees to provide to the Assistant Attorney General, Civil Rights Division, Department of Justice, or his designee, any updated report regarding the aforesaid polling information, and further to advise said Department official on all complaints the City of Boston received before, on, or after election day concerning language or voter assistance issues. Unless otherwise specified, or as may be changed from time to time, all reports, notices or any other written communications required to be submitted under this Agreement shall be sent to the undersigned counsel at the Department of Justice, at the following address:

Voting Section
U.S. Department of Justice

Civil Rights Division
950 Pennsylvania Ave., N.W. – NWB-7254
Washington, D.C. 20530

Facsimile: (202) 307-3961

E-mail: John.K.Tanner@usdoj.gov

Preliminary Measures for the September 27, 2005 Preliminary Election

28. Given the limited amount of time between execution of this Agreement and the September 27, 2005 preliminary election, this Paragraph sets forth the City of Boston's obligations for that election and that election only. The other provisions of this Agreement will apply to all future elections, commencing with the November 8, 2005 final election, or as soon as otherwise provided in this Agreement, through expiration of this Agreement. The City of Boston shall undertake the following initial, reasonable, and practicable steps for the September 27, 2005 preliminary election:

Bilingual Election Officers

(a) While the City of Boston shall make best efforts to recruit and hire the number of bilingual, Spanish-speaking, Chinese-speaking, and Vietnamese-speaking election officers set forth in Paragraphs 8(a) - (d), 9(a)(1) - (4), and 9(b)(1) - (4) above, the City of Boston agrees to appoint at least one Spanish-speaking election officer to each polling place in the City of Boston with 100 or more Spanish-surnamed registered voters; at least one Chinese-speaking election officer to each polling place with 35 or more Chinese-surnamed registered voters; and at least one Vietnamese-speaking election officer to each polling place with 30 or more Vietnamese-surnamed voters. The parties recognize the time constraints and appreciate the challenges

involved in meeting the appointment goals set forth in this Paragraph and agree to meet and confer on a frequent basis to facilitate achievement of these requirements, and make adjustments, if necessary.

Election Officer Training

(b) Prior to the September 27, 2005 preliminary election, the City of Boston agrees to continue its existing training for all election officers to be respectful and courteous to all voters regardless of race, ethnicity, or language abilities, and to provide provisional ballots to those voters who are eligible to vote by provisional ballot.

(c) The City of Boston further agrees to instruct its wardens and bilingual election officers during election officer training that the bilingual election officers must be available to assist voters needing language assistance at all stages of the voting process – including at the sign-in table, during voting demonstrations, and while voting at the voting booths. The City of Boston also agrees to include in its instruction of all its election officers that voters needing language assistance may be given assistance by a person of the voters' choice consistent with and as limited by Section 208 of the Voting Rights Act, and that all applicable state law prohibitions against campaigning in or near the polls shall be enforced.

Signs and Ballots

(d) Signs in English and Spanish shall be posted prominently at all polling places in the City of Boston, indicating that Spanish-speaking assistance is available by a telephone in the polling place.

(e) Signs in English and Chinese shall be posted prominently at those polling places identified in Paragraph 9(a)(1) - (4) stating that Chinese-language assistance is available, if in

fact the particular polling place has bilingual staff, or explaining how voters can obtain assistance in Chinese if there is no bilingual election officer present.

(f) Signs in English and Vietnamese shall be posted prominently at those polling places identified in Paragraph 9(b)(1) - (4) stating that Vietnamese-language assistance is available, if in fact the particular polling place has bilingual staff, or explaining how voters can obtain assistance in Vietnamese if there is no bilingual election officer present.

(g) The City of Boston shall continue to provide a bilingual ballot in English and Spanish to each of the City's polling places. As time and circumstances permit, the City of Boston shall also use its best efforts to produce and affix a sample or facsimile ballot, as nearly identical in size and layout to the official ballot, in the Chinese language inside each voting booth in the polling places identified in Paragraph 9(a)(1) - (4) above and in Vietnamese inside each voting booth in the polling places identified in Paragraph 9(b)(1) - (4) above. The City agrees to solicit the assistance of the Advisory Task Force in the production of said sample ballots.

Other Provisions

29. This Agreement is final and binding between the parties and their successors in office regarding the claims raised in this action. This Agreement shall remain in effect through December 31, 2008. Either party may move this Court for such orders as may be necessary for the effectuation of the terms of this Agreement and to ensure compliance with the Voting Rights Act.

30. Each party shall bear its own costs and fees.

Agreed to this 15th day of September, 2005.

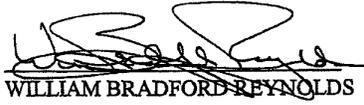
AGREED TO

For UNITED STATES OF AMERICA:

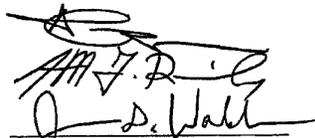
For CITY OF BOSTON:



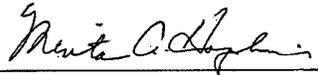
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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON,)
 MASSACHUSETTS; THOMAS M.)
 MENINO, in his official capacity as)
 Mayor of the City of Boston;)
 BOSTON CITY COUNCIL:)
 MICHAEL F. FLAHERTY, PAUL J.)
 SCAPICCHIO, JAMES M. KELLY,)
 MAUREEN E. FEENEY,)
 CHARLES C. YANCEY, ROB)
 CONSALVO, JOHN TOBIN,)
 CHUCK TURNER, MICHAEL P.)
 ROSS, JERRY P. MCDERMOTT,)
 FELIX D. ARROYO, MAURA)
 HENNIGAN, STEPHEN J.)
 MURPHY; BOSTON ELECTION)
 DEPARTMENT; GERALDINE)
 CUDDYER, in her official capacity)
 as Chair of the Boston Election)
 Department,)
)
 Defendants.)

CIVIL ACTION No. 05-11598

ORDER

THREE-JUDGE COURT

*September 22, 2005,
 as agreed by the parties, the
 three judge court follows paragraph (1)
 of the proposed interlocutory order. The
 remainder of the proposed order
 remains under advisement.*

*For the Court,
 William A. Young
 District Judge*

INTERLOCUTORY ORDER AND ORDER OF DISMISSAL

It is hereby ORDERED, ADJUDGED, AND DECREED that:

- (1) The appointment of federal examiners is authorized for the City of Boston pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through December 31, 2008.

- (2) Pursuant to Rule 41(a)(2) of the Fed. R. Civ. P., this matter is dismissed, subject to substantial compliance by the City of Boston, et. al., with the Agreement reached by the parties, and the contingency set forth in Paragraph 2 of the Agreement.
- (3) This matter shall remain on the Court's inactive docket for enforcement of the terms of the Memorandum of Agreement by either party through expiration of the Court's interlocutory order authorizing the appointment of federal examiners on December 31, 2008.

ENTERED and ORDERED this ____ day of September 2005.

THE HONORABLE WILLIAM G. YOUNG
UNITED STATES DISTRICT JUDGE

THE HONORABLE SANDRA L. LYNCH
UNITED STATES CIRCUIT JUDGE

THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

D & F
CM

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

EV 003 2775

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE BRENTWOOD UNION FREE SCHOOL DISTRICT; LES A. BLACK, Superintendent of the Brentwood Union Free School District; THE BRENTWOOD BOARD OF EDUCATION; STEPHEN E. COLEMAN, President, SUZANNE M. BELANGER, ANTHONY PALUMBO, BERNARD PHILLIPS, TOMAS DEL RIO, Trustees of the Brentwood Board of Education; ANGELA T. PISANO, Brentwood Union Free School District Clerk,

Defendants.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 14 2003 ★
BROOKLYN OFFICE

PLATT, J.

GREENSTEIN, M.J.
CIVIL ACTION NO. 03-2775

CONSENT DECREE

The United States of America files this action pursuant to Sections 203 of the Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 42 U.S.C. § 1973aa-2, and 28 U.S.C. § 2201, alleging recent violations of the Voting Rights Act arising from the Brentwood Union Free School District's ("Brentwood School District") election practices and procedures as they affect Spanish-speaking citizens of the Brentwood School District.

The claim under Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, must be heard and determined by a court of three judges pursuant to 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

The Brentwood School District has been subject to the requirements of Section 203 of the

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Voting Rights Act, 42 U.S.C. § 1973aa-1a, since September 18, 1992 with respect to the Spanish language. The School District's coverage is based upon a determination by the Director of the Census that in Suffolk County there are more than 10,000 citizens of voting age who are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate effectively in the English-language election process, and that the illiteracy rate of these persons as a group is higher than the national illiteracy rate. 28 C.F.R. pt. 55, Appendix; 57 Fed. Reg. 43,213 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002). The Brentwood School District, as a political unit that holds elections within Suffolk County, is subject to Section 203. See 28 C.F.R. § 55.9.

The United States alleges in its complaint that Defendants have failed to comply with the requirements of Section 203 with regard to Spanish-speaking citizens residing in the Brentwood School District. The challenged practices concern, inter alia, the alleged failure of Defendants to provide for an adequate number of bilingual poll workers trained to assist Hispanic voters on election day and the alleged failure of Defendants to translate written election materials into Spanish.

The parties, by agreeing and consenting to the entry of this Decree, stipulate to the jurisdiction of the Court, and waive a hearing and the entry of findings of fact and conclusions of law on all issues involved in this matter. Defendants do not contest the United States' factual allegations with respect to the issue of Defendants' compliance with the bilingual requirements of Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a; however, this Decree shall constitute neither an admission by Defendants nor an adjudication by the Court on the merits of the allegations by the United States.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants shall comply with the bilingual requirements of Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a, as a covered political subdivision under 42 U.S.C. § 1973aa-1a(b)(2)(A). The provisions of this Decree are applicable only to those elections and stages of the electoral process which are the responsibility of the Defendants to conduct and administer under applicable provisions of the New York Education Law and New York Election Law.

2. Defendants shall provide to Spanish-language minority citizens full and complete information about all stages of the electoral process, "including, for example, the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." 28 C.F.R. § 55.15. All registration and voting notices, forms, instructions, assistance, and other materials or information relating to the electoral process, including ballots, 42 U.S.C. § 1973aa-1a (c), shall be disseminated by the Brentwood School District in both the English and the Spanish language and shall be made equally available.

3. Defendants shall designate a person, either a present employee or a person hired by Defendant Board of Education for such purpose, to act as Spanish Language Assistance Coordinator ("Coordinator"), for at least three months prior to any election conducted by the Brentwood School District, to help carry out the requirements of this Consent Decree. The Coordinator shall act only at the direction of the School District Clerk ("Clerk"), and report to and be supervised by the Clerk, who shall be responsible for ensuring the effective

implementation of the Coordinator's duties. The Coordinator shall be bilingual in English and in Spanish and shall be trained by the Clerk in all aspects of the voting and registration process.

4. The translations into Spanish of the written election-related material shall be clear, accurate and complete, see 28 C.F.R. § 55.19 (b), and, in this regard, the Clerk and/or the Coordinator will consider the demographics of the Hispanic community and solicit comments of the Hispanic community with respect to the accuracy of said translations and, upon consideration of said comments, make any necessary modifications.

5. The Clerk and/or the Coordinator(s) shall meet with representatives of the Hispanic Community and other concerned groups and individuals at least two months prior to each election and solicit their views on what steps are needed to ensure the effectiveness of bilingual assistance for Hispanic voters. Defendants shall consider the views solicited, but are not bound by this Decree to accept or implement any particular view expressed. The Clerk, with the assistance of the Coordinator, shall determine which organizations, groups or individuals within the Hispanic community may assist beneficially in the development and maintenance of an effective bilingual election program. The Clerk and/or the Coordinator are not required by this Decree to solicit the view so such organizations, groups or individuals for purposes other than to develop and maintain the effective bilingual election assistance program required under this Decree. The Clerk and/or the Coordinator shall keep records of their consultations and outreach activities which shall include a description of the suggestions proposed during said consultations.

6. Materials available to voters at polling places shall be conspicuous and available equally in English and Spanish. All signs that the School District posts at polling places on

election day shall be written in English and in Spanish. The ballot on the voting machines shall appear in English and in Spanish.

7. At least one poll official at each polling place shall be bilingual in Spanish and English. At the Oak Park Elementary School, Pine Park Elementary School, Laurel Park Elementary School, and Northeast Elementary School polling places, at least two polling officials shall be bilingual in Spanish and English if the number of registered voters with Spanish surnames increases by 200 or more from the number of registered voters with Spanish surnames as of March 2003. Clearly visible Spanish language signs shall be posted outside and inside the polling place indicating that Spanish language assistance is available. Clearly visible Spanish language sign(s) shall be posted inside the polling places identifying the bilingual official(s) and his/her station(s).

8. The requirements of paragraph 7 are predicated on the school zone boundaries used to assign voters to polling places in the Brentwood School District on the date of execution of this Decree. Defendants shall not, for the duration of this Decree, alter school zone boundaries in any way affecting the assignment of voters to polling places.

9. If, despite its diligent recruitment efforts, the District is unable to hire and assign the requisite number of bilingual poll officials, the District shall hire and train qualified bilingual translators to satisfy the numeric requirements for bilingual poll officials provided in this Decree. Any such bilingual translators shall be hired and trained only to provide language assistance to limited English proficient Hispanic voters and shall be employed in addition to, rather than in place of, the full complement of poll officials ordinarily assigned by Defendants.

10. Defendants will monitor the levels of Spanish language assistance needed inside

the polling site and will, where needed, provide additional bilingual personnel to provide the needed assistance to Spanish-speaking voters. See 28 C.F.R. § 55.20.

11. Defendants shall use their best efforts to secure bilingual poll officials and Spanish-language translators, and to notify voters that this assistance will be available on election day. Prior to elections, the School District shall provide notices in English and Spanish through the Spanish-language media, Hispanic community organizations (e.g., voting organizations, businesses, churches, senior citizens centers, etc.), in addition to any other recruitment methods the School District presently uses, to recruit bilingual election officials and to publicize the availability of bilingual poll workers to assist Spanish-speaking voters at the polls on election day.

12. The Clerk and/or the Coordinator shall conduct the training of poll officials and any other election related personnel who will be working at the polls on election day regarding the importance of all eligible citizens being able to cast a ballot at the polls, the right of voters to have assistance in Spanish (including inside the voting booth), and the right of certain voters, with limited English proficiency, to be assisted by the person of their choice pursuant to Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6.

13. Defendants shall promptly transmit to the Clerk any complaints they receive, whether oral or written, of any allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. All complaints received by the Clerk shall be investigated by the Clerk expeditiously. The Clerk shall utilize the Coordinator in such investigations as necessary or appropriate including in instances in which the Coordinator's bilingual skills or contacts within the Hispanic community would assist in the investigation. Where it reasonably

has been found that any poll worker has engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, the Clerk shall remove that poll worker, and that poll worker shall not be eligible to be a poll worker in future elections in the School District.

14. Bilingual poll officials shall be afforded an opportunity to be trained in the Spanish language translation of the entire ballot, all election related forms used in the polls on election day, and the voting process so that bilingual election officials will be able to provide a full and accurate translation.

15. Nothing in this Decree shall preclude Defendants from the use of contracting to carry out any of the terms and conditions specified herein, including the establishment of the Coordinator position. However, should Defendants exercise this option, they shall nevertheless maintain responsibility for compliance with the terms and conditions herein.

16. At least five (5) days before each election conducted by the School District, the Clerk shall provide by fax to counsel for the United States a report containing the following information: (a) the name and precinct designation of each polling place; (b) the name and title of each poll official or translator appointed and assigned to serve at each polling place; (c) indication of which poll officials are bilingual in English and Spanish; and (d) a copy of the most recent voter registration lists on computer disk. Within thirty (30) days after each such election, the Clerk shall provide to counsel for the United States any updated report regarding changes in items (a)-(d) above that occurred at the election, and provide information about all complaints the School District received regarding language or assistance issues.

17. The parties recognize that a regular and ongoing reassessment may be necessary in order to provide Spanish-language minority voters equal access to all phases of the electoral

process in the Brentwood School District. The Clerk, with the assistance of the Coordinator, shall evaluate the Section 203 bilingual assistance program after each election and through meetings with representatives of the Hispanic community, and counsel for the United States. After the 2003 elections, the School District and counsel for the United States shall meet to evaluate the effectiveness of the Spanish Language Assistance Coordinator.

18. The parties agree that to assist in carrying out the purposes of this Consent Decree, a federal examiner for the Brentwood School District shall be authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through January 31, 2007.

19. In addition to the provisions of federal observers permitted under Section 6 of the Voting Rights Act, 42 U.S.C. § 1973d, the parties agree that Department of Justice attorneys and staff shall be permitted to monitor elections conducted by the School District from the date of the entry of this Consent Decree until January 31, 2007.

20. The parties agree that with respect to the monitoring of elections conducted by the School District as provided for in paragraphs 18 and 19 above, the United States will give timely notice by fax to the Clerk at least five (5) days prior to any election it intends to monitor and will in such notice provide Defendants with the name of such monitors, including federal observers and/or Department of Justice attorneys and staff.

21. This Consent Decree shall expire on January 31, 2007, unless Plaintiff moves the Court for good cause shown to extend this Consent Decree.

22. Each party shall bear its own costs and fees.

23. This Decree is binding upon Defendants, by and through their officials, agents, employees, and successors.

24. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 203 of the Voting Rights Act.

Agreed to this day of , 2003.

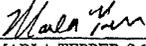
AGREED AND CONSENTED TO:

For Plaintiff:

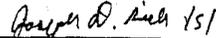
UNITED STATES

ROSLYNN R. MAUSKOPF
United States Attorney

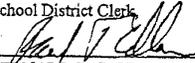
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950 Pennsylvania Ave., N.W.
Voting Section, NWB
Washington, D.C. 20530

For Defendants:

THE BRENTWOOD UNION FREE
SCHOOL DISTRICT; LES A. BLACK,
Superintendent of the Brentwood Union
Free
School District; THE BRENTWOOD
BOARD
OF EDUCATION; STEPHEN E.
COLEMAN, President,
SUZANNE M.
BELANGER, ANTHONY
PALUMBO, BERNARD PHILLIPS,
TOMAS DEL RIO,
Trustees of the Brentwood Board of
Education;
ANGELA PISANO, Brentwood Union Free
School District Clerk,

BERNARD T. CALLAN, P.C.
(BC 4390)
Counsel for Defendants

JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree set forth above, and incorporates those terms herein.

ENTERED and ORDERED this 11th day of July, 2003.

[Signature]
UNITED STATES CIRCUIT JUDGE

[Signature]
UNITED STATES DISTRICT JUDGE

[Signature]
UNITED STATES DISTRICT JUDGE

M. Tepper, Esq.

THIS ORDER IS TO BE MAILED BY ~~MOVANT~~
TO ALL COUNSEL IMMEDIATELY UPON RECEIPT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
THE UNITED STATES OF AMERICA

CV 003 2775

Plaintiff,

v.

THE BRENTWOOD UNION FREE SCHOOL DISTRICT; LES A. BLACK, Superintendent of the Brentwood Union Free School District; THE BRENTWOOD BOARD OF EDUCATION; STEPHEN E. COLEMAN, President, SUZANNE M. BELANGER, ANTHONY PALUMBO, BERNARD PHILLIPS, TOMAS DEL RIO, Trustees of the Brentwood Board of Education; ANGELA T. PISANO, Brentwood Union Free School District Clerk,

Defendants.

CIVIL ACTION NO.

PLATT, J.

ORENSTEIN, M.J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
JUN 14 2003
BROOKLYN OFFICE

-----x
COMPLAINT

The United States of America alleges:

1. The Attorney General brings this action on behalf of the United States pursuant to Section 203 of the Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 42 U.S.C. § 1973aa-2, and 28 U.S.C. § 2201.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973aa-2. In accordance with the provisions of 28 U.S.C. § 2284, the Section 203 claim must be heard and determined by a court of three judges.
3. Defendant Brentwood Union Free School District ("Brentwood School District") is a political unit within Suffolk County and exists as a school district, organized pursuant to the laws of New York. The Brentwood School District is located in

the Town of Islip in Suffolk County.

4. Brentwood School District is responsible for conducting its own school district elections. Matters voted upon at School District elections include the school budget, bond initiatives, and the election of school district officers.

5. Defendant Les A. Black is Superintendent of the Brentwood School District and exercises responsibility with regard to school district elections. He is sued in his official capacity.

6. Defendant Brentwood Board of Education ("School Board") is the elected governing body of the Brentwood School District and is responsible for the School District's policies and procedures regarding school district elections. Stephen E. Coleman is President of the School Board, and Suzanne M. Belanger, Anthony Palumbo, Bernard Phillips, and Tomas del Rio are the current Trustees of the School Board. They are sued in their official capacity.

7. Defendant Angela T. Pisano is the District Clerk in the Office of the Clerk of the Brentwood School District and has responsibilities with regard to the administration of School District elections. She is sued in her official capacity.

8. Suffolk County, New York, in which the Brentwood School District is contained, is a political subdivision covered by Section 203 of the Voting Rights Act of 1965, as amended, 42

U.S.C. § 1973aa-1a, with respect to the Spanish language. 28 C.F.R. 55, Appendix. The determination by the Director of the Bureau of the Census that Suffolk County is a covered political subdivision has been in effect since September 18, 1992.

9. Because the Brentwood School District is a political unit that holds elections within Suffolk County, it is subject to the requirements of Section 203 that "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that Defendants provide in English must be furnished in the Spanish language to allow Spanish-speaking voters to be effectively informed of and participate in all voting-connected activities. 42 U.S.C. § 1973aa-1a.

10. In conducting school district elections, Defendants have failed to furnish effectively, in the Spanish language, the information and assistance needed by limited English proficient Hispanic citizens to participate effectively in the electoral process, including, but not limited to, the following:

- a. Defendants have failed to translate into Spanish all election-related information, including information about election dates, voter registration, the absentee ballot process, polling place assignment, and poll worker recruitment;
- b. Defendants have failed to translate into Spanish all election-related information at election sites including

ballots, announcements, instructions, notices, and signs; and

c. Defendants have failed to recruit, appoint, train, and maintain an adequate pool of bilingual poll officials capable of providing limited English proficient Hispanic citizens with effective language assistance.

11. Defendants' failure to provide the Brentwood School District's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

12. Unless enjoined by this Court, Defendants will continue to violate Section 203 by failing to provide the Brentwood School District's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation.

WHEREFORE, Plaintiff United States prays for an order:

- (1) Declaring that Defendants have failed to provide the Brentwood School District's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (2) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons

acting in concert with them, from failing or refusing to provide the Brentwood School District's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation, as required by Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;

- (3) Requiring Defendants to take such actions as will ensure that the Brentwood School District's limited-English proficient Hispanic citizens are effectively informed of and able to participate effectively in all phases of the electoral process, in compliance with Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a; and
- (4) Requiring Defendants to publicize effectively the remedial plans and programs addressing the Section 203 violations enumerated herein to ensure widespread dissemination to the Brentwood School District's limited English proficient Hispanic citizen voters.

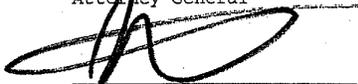
Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

dissemination to the Brentwood School District's limited English proficient Hispanic citizen voters.

Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

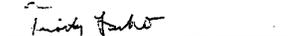
Dated: May 29, 2003
Brooklyn, New York

JOHN ASHCROFT
Attorney General

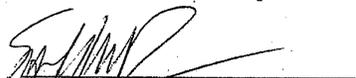


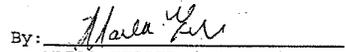
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Assistant Attorney General


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ROSLYNN R. MAUSKOPF
United States Attorney


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By: 
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COPY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

93 SEP 27 AM 9:35

UNITED STATES OF AMERICA,

Plaintiff, CIVIL ACTION NO. 93-1134-SC

v.

CIBOLA COUNTY, NEW MEXICO;
CIBOLA COUNTY BOARD OF COUNTY
COMMISSIONERS; STEVE BARELA,
Chairperson of the Cibola County
Board of County Commissioners;
BENNIE COHOE, WILLIAM R. DAWSON,
FRED J. SCOTT, and RALPH MCQUEARY,
Members of the Cibola County Board of
County Commissioners; and PATRICIA
ARAGON, Cibola County Clerk,

LORENZO F. GARCIA
U.S. MAGISTRATE JUDGE

COMPLAINT

Defendants.

The United States of America alleges:

1. The Attorney General files this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, and to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.
2. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973j(f) and 42 U.S.C. 1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act requires that the action be heard and determined by a court of three judges in accordance with the provisions of Section 2284 of Title 28 of the United States Code.
3. Defendant Cibola County is a political subdivision of the State of New Mexico and exists under the laws of that state.

The Defendant Cibola County Board of County Commissioners is the general governing and managing body of Cibola County. The County Commissioners have statutory powers, duties and responsibilities with regard to the conduct of elections in Cibola County, including the designation of voting precincts and polling places therefor.

4. Defendant Steve Barela is an elected county commissioner and the present chairperson of the board. Defendant Barela resides in Cibola County, New Mexico, and is sued in his official capacity. Defendants Bennie Cohoe, William R. Dawson, Fred J. Scott, and Ralph McQueary are duly elected members of the Cibola County Board of County Commissioners and are sued in their official capacity. Each resides in Cibola County, New Mexico.

5. Defendant Cibola County Clerk Patricia Aragon has statutory powers, duties and responsibilities with regard to the conduct of elections held in Cibola County. Among her powers and duties, defendant Aragon is responsible for consolidation of precincts and selection of polling places for certain elections; registering voters; disseminating information relating to registration and voting; implementing voter assistance procedures; appointing and training deputy registrars, polling place officials and interpreters; cancelling registration for failure to vote; and conducting the absentee voting in Cibola County. Defendant Aragon is a resident of Cibola County, New Mexico, and is sued in her official capacity.

6. According to the 1990 Census, Cibola County had a total population of 23,794 persons of whom 9,155 (38.5%) are Native Americans. The Native American population of Cibola County is comprised primarily of Pueblos who reside on the Acoma and Laguna Public Trust Lands and Navajos who reside on the Navajo Nation lands. According to the 1990 Census, 2,590 of the Pueblos residing in Cibola County are members of the Acoma Pueblo, and 3,718 are members of the Laguna Pueblo; the reported number of Navajos residing in the county is 1,821.

7. Members of the Acoma and Laguna Pueblos speak different dialects of Keres, and these dialects of the Keres language are a common means of communication among Pueblo Indians within Cibola County. The Navajo language is a common means of communication among the county's Navajo residents. Both Navajo and Keres are historically unwritten languages.

8. In 1984, Cibola County became subject to the requirements of Section 203 as a result of a determination by the Director of the Census pursuant to the minority language provisions of the Voting Rights Act. 49 Fed. Reg. 25887 (June 25, 1984). Such determination required the defendants to furnish oral instructions, assistance and other information relating to registration and voting in the Keres language.

9. In 1992, Cibola County became subject to the requirements of Section 203 for Navajo as well as Pueblo voters as a result of a determination by the Director of the Census pursuant to the Voting Rights Language Assistance Act of 1992.

57 Fed. Reg. 43213 (September 18, 1992). The determination of the Director of the Census requires Cibola County to furnish oral instructions, assistance and other information relating to registration and voting, in both the Navajo and Keres languages.

10. In addition to the provisions of Section 203, the defendants also are prohibited by Section 2 of the Voting Rights Act from applying or imposing any voting qualification or prerequisite to voting or standard, practice, or procedure which results in a denial or abridgement of the right of Navajo and Pueblo residents to vote.

11. The Navajo, Acoma, and Laguna populations in Cibola County are geographically concentrated. Navajo citizens tend to live in the Ramah area of the Navajo Nation, where the overwhelming majority of the population is Navajo. Acoma citizens tend to live in the Acoma Pueblo, where the overwhelming majority of the population is Acoma. Laguna citizens tend to live in the Laguna Pueblo, where the overwhelming majority of the population is Laguna. At the same time, while the Acoma and Laguna populations are concentrated in several villages scattered within the Pueblo boundaries, the Navajo population is dispersed throughout the Ramah Navajo Chapter.

12. Native Americans in Cibola County have suffered a long history of official discrimination, including discrimination affecting the right to vote. Native Americans in New Mexico were denied the right to register and vote until 1948. In more recent years, federal courts have held that various voting devices and

procedures implemented within New Mexico and Cibola County have denied Native American citizens a fair opportunity for effective political participation. Native Americans in Cibola County continue to bear the effects of past discrimination in such areas as education, health, housing and employment.

13. Navajo and Pueblo citizens live in a state of isolation from the processes of election and government, as conducted by defendants. This isolation is manifested in terms of language and culture, and in terms of sheer geographical distance, exacerbated by poor road conditions and by the Navajos' and Pueblos' relative lack of access to automobiles and telephones.

14. In conducting public elections within Cibola County, defendants have failed to furnish, in the Keres and Navajo languages, the information and assistance necessary to allow Pueblo and Navajo residents a fair opportunity for effective political participation, including the following:

- (a) Although the defendants provide a significant amount of information regarding voting and the election process in the English language, such information is not provided in the Keres and Navajo languages. Examples of voting and election-related information provided in English but not in Keres or Navajo include information regarding the voter registration process, the absentee voting process, the voter purge process, candidate filing

procedures, polling place locations, identity of candidates for public office, and issues to be voted upon at the election.

- (b) Defendants have failed to provide a sufficient number of adequately trained bilingual persons to serve as translators for Pueblo and Navajo voters needing assistance at the polls on election day.

15. In addition to failing to provide election-related information in the Navajo language and in the Keres language, defendants have failed to implement practices and procedures which would afford Native American citizens in the isolated Navajo and Pueblo residential concentrations an opportunity, equal to that afforded to other county residents, to register to vote, to obtain and cast absentee ballots, and to avoid registration cancellation, or purge. Defendants also have made polling places less accessible to Native American voters in Cibola County than to voters outside the Navajo Nation and the Acoma and Laguna Pueblos by eliminating and consolidating polling places in Native American areas.

16. The defendants' failure to provide Navajo, Acoma, and Laguna residents of Cibola County with the oral instructions, assistance and other information relating to registration and voting necessary for effective political participation constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a.

17. The defendants' English election process, as applied to Navajo and Keres speaking citizens, as well as the remaining voting standards, practices and procedures as described in paragraph 15 above, implemented under the totality of circumstances described herein, constitutes a denial of the right of Pueblo and Navajo citizens to participate in the political process and elect candidates of their choice on an equal basis with other citizens in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

18. Defendants' actions described in paragraphs 14 and 15 above, were undertaken for the purpose of discriminating on the basis of race and membership in a language minority group in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution.

19. Unless enjoined by this Court, defendants will continue to enforce voting standards, practices, and procedures in a manner which denies Pueblo and Navajo citizens an opportunity to participate effectively and on an equal basis with other citizens in violation of Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973 and 1973aa-1a, and the Fourteenth and Fifteenth Amendments.

WHEREFORE, the plaintiff United States prays for an order:

1. Declaring that the defendants have failed to provide effective oral instructions, assistance and other information relating to registration and voting in the Keres and

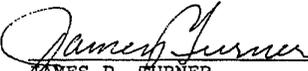
Navajo languages in violation of Sections 2 and 203 of the Voting Rights Act, as amended, 42 U.S.C. 1973 and 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the United States Constitution;

2. Declaring that the defendants' standards, practices, and procedures relating to registration, registration cancellation, absentee voting, and assistance at the polls deny Pueblo and Navajo citizens in Cibola County an opportunity equal to that enjoyed by other citizens to participate in the political process in violation of Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments to the United States Constitution;
3. Requiring the defendants to devise a plan to assure that Pueblo and Navajo citizens of Cibola County have an opportunity equal to that of other members of the electorate to register to vote, avoid cancellation of registration, cast an absentee ballot, and otherwise to participate effectively in the Keres and Navajo languages in all phases of the election process;

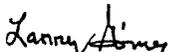
4. Requiring the defendants to implement the remedial plan promptly upon approval by this Court;
5. Authorizing the appointment of federal examiners for elections in Cibola County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), for a period of 10 years; and
6. Designating Cibola County pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c) and for a period of 10 years and requiring that during that period no alteration of any voting qualification or prerequisite to voting or any standard, practice, or procedure with respect to voting may be implemented without prior clearance from this Court or from the Attorney General of the United States.

Plaintiff further prays that this Court order such other relief as the interests of justice requires along with the costs and disbursements in maintaining this action.

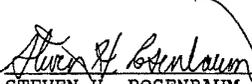
JANET RENO
Attorney General

By: 

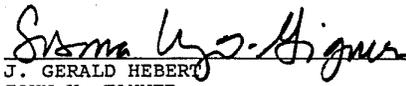
JAMES P. TURNER
Acting Assistant Attorney General



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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
CIBOLA COUNTY, NEW MEXICO;)	
CIBOLA COUNTY BOARD OF COUNTY)	
COMMISSIONERS; STEVE BARELA,)	
Chairperson of the Cibola County	)	NO. CIV 93 1134 LH/LFG
Board of County Commissioners;)	
BENNIE COHOE, WILLIAM R. DAWSON,)	
FRED J. SCOTT, and RALPH MCQUEARY,)	
Members of the Cibola County Board of)	
County Commissioners; and PATRICIA)	
ARAGON, Cibola County Clerk,)	
)	
Defendants.)	

STIPULATION AND ORDER

The United States initiated this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act and the Fourteenth and Fifteenth Amendments arising from Cibola County's election practices and procedures as they affected Native American citizens of the county, including those Native American citizens who rely in whole or in part on the Navajo and Keresan languages.

The plaintiff alleged in its complaint that various election standards, practices and procedures of the defendants unlawfully deny or abridge the voting rights of Native American citizens residing in Cibola County. The challenged practices touch

on voter registration, absentee voting, voter registration cancellation procedures, the selection of polling places, and the failure of the defendants to implement, as required by Section 203, effective bilingual election procedures, including the effective dissemination of election information in the Navajo and Keresan languages. The challenged practices also concern the failure of defendants to provide for a sufficient number of adequately trained bilingual persons to serve as translators for Navajo and Pueblo voters needing assistance at the polls on election day.

Cibola County is determined and committed to make the election process equally available to Native American citizens, and agrees in the future to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments.

This Court has jurisdiction over the parties and the subject matter of this litigation. This Decree is final and binding between the parties and their successors in office regarding the facts, claims, and issues raised in the Complaint and resolved herein. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this Decree and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments.

In settlement of this matter, the parties stipulate as to the following facts:

1. Cibola County has been subject to Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, since 1984 with respect to the Keresan language. In 1992, pursuant to the Voting Rights Language Assistance Act of 1992, the County's coverage under Section 203 with respect to the Keresan language was extended based upon the determinations by the Director of the Bureau of the Census pursuant to the Act. The Director determined that Cibola County is a political subdivision that contains all or part of Indian reservations, wherein more than 5 percent of the American Indian citizens of voting age within the reservations are members, respectively, of the Keresan and Navajo language minority groups who do not speak or understand English adequately enough to participate in the electoral process, and further that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. Based on this determination, Cibola County is subject to Section 203 of the Voting Rights Act with respect to the Keresan and Navajo languages, both of which are oral languages. This determination was published in the Federal Register on September 18, 1992, and became effective upon publication.

2. Section 203 requires that all information that is provided by Cibola County in English about voter "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," must be provided in the Navajo and Keresan languages to the extent that it is needed to allow language minority group

members to be informed of and participate effectively in the electoral process and all voting-connected activities. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." Attorney General's Procedures for the Implementation of the Provisions of the Voting Rights Act for Minority Language Groups, 28 C.F.R. 55.15. Because the Navajo and Keresan languages are historically unwritten languages, defendants are required to furnish oral instructions, assistance and other information relating to registration and voting in the Navajo and Keresan languages. 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12(c).

3. Section 2 of the Voting Rights Act requires that citizens be allowed to participate equally in all phases of the election process without regard to race, color or membership in a language minority group.

4. According to the 1990 Census, Cibola County has a population of 23,794 persons, of whom 9,135 (38.5%) are Native Americans. The Native American population of Cibola County includes 6,308 Keres speakers and 1,821 Navajo speakers. The remaining 1,006 Native Americans are not identified in the census by language group. There are 2,590 Native Americans living in the Acoma Pueblo and 3,718 Native Americans living in the Laguna

Pueblo. There are 1,821 Native Americans living within the Ramah Navajo Chapter.

5. According to the 1990 Census, 57.8 percent of the Navajo voting age population and 18.1 percent of the Pueblo voting age population in Cibola County do not speak English well enough to participate effectively in English language elections. Thus, a significant proportion of the Native American population of Cibola County, and a significant majority of Navajos, cannot function in the electoral process except in the Navajo or Keresan languages.

6. The Navajo and Keres populations of Cibola County live in circumstances of significant isolation from the non-Native American population of the county. Cibola County is unusually large in physical terms, and covers a geographic area roughly the size of the State of Connecticut. Over four-fifths of the non-Native American population live clustered within or near the adjacent incorporated communities of Grants and Milan, close to the county courthouse. The Acoma and Laguna population centers are between 25 and 50 miles away from Grants, the county seat, while the Ramah Chapter House is approximately 50 miles from Grants. The isolation of the Native American population of Cibola County burdens their access to the franchise.

7. The problems associated with the geographical isolation of this area are exacerbated by depressed socioeconomic conditions. The 1990 per capita income of Native Americans in Cibola County was only \$4,705, a little over half of the per capita income of non-Native Americans (\$8,343). While 23.3% of other

families live below the poverty line, 43.5 percent of Native American families are impoverished. Native American households are more than three times as likely not to have a car or truck as non-Native American households. The lack of vehicles places a special burden on travel to the county courthouse. The 1990 Census shows similar disparities for access to telephones. Within Cibola County, 38.7 percent of households on the reservation areas (Ramah, Acoma and Laguna) lack telephones, compared to 19.2 percent of off-reservation households.

8. Native American citizens in the State of New Mexico, including those living within Cibola County, suffer from a history of discrimination touching their right to register, to vote, and otherwise to participate in the political process. Until 1948, Native American citizens of New Mexico were not permitted to vote in state and local elections. Trujillo v. Garley, C.A. No. 1350 (D.N.M., August 11, 1948). Native Americans residing on reservations were prevented from registering and voting until 1962. Montoya v. Bolack, 70 N.M. 196 (1962). In 1984, the court in Sanchez v. King, C.A. No. 82-0067-M (D.N.M. 1984), held that the New Mexico state legislative redistricting plan discriminated against Native Americans.

9. The level of political participation by Native American citizens of Cibola County is depressed. Voter registration rates in the predominantly Native American precincts have been less than half the rate in non-Native American precincts, and Native Americans are affected disproportionately by voter purge

procedures. Although Native Americans comprise over 38 percent of the county population, fewer than eight percent of all absentee ballots have been from the predominantly Native American precincts. There is a need for election information in the Navajo and Keresan languages, and a need for publicity concerning all phases of the election process for voters in Ramah, Acoma and Laguna. The rate of participation by Native Americans on such issues is less than one third of the participation rate among non-Native Americans. There is a need for polling places staffed with trained translators conveniently situated for the Native American population.

Cibola County does not admit that the county has caused or intended the social and economic conditions of the Native American population, their physical location, the need for election information in the Navajo and Keresan languages, or the history of discrimination which Native Americans have suffered. Cibola County recognizes, however, the impact of these conditions on the access of its Native American citizens to the franchise, and their rights under the Voting Rights Act and the Fourteenth and Fifteenth Amendments.

To bring about compliance with the Voting Rights Act and the Fourteenth and Fifteenth Amendments, the parties have agreed upon the following remedial provisions and have agreed to the entry of this order. Entry of this Decree shall be final and binding on all of the parties and their successors as to all issues raised in the complaint and resolved herein. Accordingly, the Court approves

the parties' Stipulation, and it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The defendants, their agents and successors in office, and all other persons acting in concert or participation with them, are hereby permanently enjoined from failing to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments.

2. It is the intent of Cibola County to provide to Native American voters full and complete information as to all election-related matters including, but not limited to, registration, election dates, polling place locations, candidate information, referendum information, absentee voting information, and voter purge procedure information. It is the further intent of Cibola County, recognizing the particular circumstances of the Native American population of the county, to make all phases of the election process as accessible to the Navajo and Pueblo populations of Cibola County as they are to the remainder of the county's population.

3. To assist in the effectiveness of this agreement and to protect the Fifteenth Amendment rights of citizens of Cibola County, the appointment of federal examiners for elections in Cibola County is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), for at least the period of this agreement.

4. Cibola County is designated pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c) for the period of this

agreement, so that during that period no alteration of any voting qualification or prerequisite to voting or any standard, practice, or procedure with respect to voting, may be implemented by Cibola County without prior clearance from this Court or from the Attorney General of the United States. Such changes include but are not limited to amendments to the Native American Election Information Program and changes in polling places within Cibola County, and, as to state-mandated changes affecting voting, those practices and procedures with respect to which Cibola County has discretion in implementation or administration. Cibola County shall notify counsel for the United States within ten days of notification to the county by the Secretary of State of enactment of any changes affecting voting mandated by the state, and provide a copy of the pertinent statute, regulation or order. Pursuant to this provision, Cibola County shall be permitted to move the Court under Section 3(c) for any modification of the terms of the Native American Election Information Program.

5. In light of the complexity of the issues involved and the evolving nature of the Program, this Stipulation and Order shall remain in effect through March 15, 2004. Subsequent to March 15, 1999, either party may move for an extension or modification of the terms of the Stipulation and Order. At least 60 days prior to filing any such motion, the moving party shall give written notice to opposing counsel, and shall engage in good faith negotiations to arrive at a mutually agreeable resolution prior to filing the motion. If contested, such a motion shall be determined on the

basis of whether the county has complied fully with all of the provisions of this Stipulation and Order.

6. Cibola County has adopted the following Native American Language Election Information Program which the Court hereby approves as part of this Decree, as set forth below. The purpose of the Native American Language Election Information Program is to ensure the dissemination of election-related information to the Navajo and Keres speaking population of Cibola County, and to make the election process equally accessible to Native American citizens. This program is intended to provide procedures for disseminating election-related information to the Navajo and Pueblo populations of Cibola County, and to provide procedures by which this program may be improved and modified in the future.

7. The parties recognize the separate powers and authority of the tribal governments, and nothing in this agreement limits or infringes tribal powers or authority. Accordingly, where this Stipulation and Order provides for Cibola County to perform acts in consultation and cooperation with the governments of Acoma, Laguna and Ramah, the county is obligated to undertake all good faith efforts to perform such consultation and obtain such cooperation. The county shall not, however, be required to perform such acts in the face of the refusal of a tribal government after all reasonable efforts by the county. In the event of any such refusal, the county promptly, and prior to the date for performance of the act or event to be performed by the county, shall notify

counsel for the United States of the refusal or noncooperation. To avoid misunderstanding, the Cibola County Commission and the Cibola County Clerk agree to seek, within 10 days of the date of this Stipulation and Order and at least annually thereafter, meetings on the respective reservation areas with representatives of each tribal government to discuss their respective governmental structures, schedules, and decision-making processes.

THE NATIVE AMERICAN ELECTION INFORMATION PROGRAM

A. Intergovernmental Coordination

1. Cibola County and the voting rights coordinators shall request and accept all training, materials and services available from the State of New Mexico in furtherance of the implementation of this program, and shall encourage the production of such materials by the state. The voting rights coordinators shall stay in regular contact with state personnel, including personnel of the Office of the Secretary of State, Bureau of Elections, Office of Indian Rights and the New Mexico Office of Indian Affairs, in order to coordinate state and county activities and efforts, and for advice and assistance associated with the Native American Election Information Program. Cibola County shall encourage the assistance of such state personnel, and shall at all times welcome their presence in the county to assist in implementation of this Program or to assist Native American in any phase of the election process.

2. Cibola County is encouraged to work with other counties in New Mexico and neighboring states which have programs

for Native American language minorities to coordinate election activities, including the development of standard terminology for the translation of election materials into Navajo and Keres, and to obtain cost savings in the implementation of effective Native American language programs.

3. The county shall invite representatives of the All Indian Pueblo Council (AIPC), the Navajo Elections Administration (NEA) and officials of the Ramah Navajo Chapter, the Acoma Pueblo, and the Laguna Pueblo to assist in all phases of the Native American Election Information Program. To assist in uniformity and accuracy in the translation of election materials, prior to dissemination of any translation, the county shall make available such translations to tribal officials within Cibola County and to representatives of the AIPC or the NEA, as appropriate, and shall provide them with a reasonable opportunity to review and comment concerning any matter translated. The county shall keep a written record of such comments and the county's response to the comments.

B. Satellite Elections Offices

1. Cibola County shall establish three Satellite Election Offices to be staffed in accordance with this agreement. One office shall be established at a location within the Ramah Navajo Chapter convenient to the population of the Ramah Chapter. One office shall be established at a location within the Acoma Pueblo convenient to the population of the Acoma Pueblo. One office shall be established at a location within the Laguna Pueblo convenient to the population of the Laguna Pueblo. The

establishment of satellite offices within the Chapter and Pueblo boundaries shall be with the cooperation and consent of the appropriate tribal authorities.

2. Each Satellite Elections Office shall serve as the principal place for office hours for the voting rights coordinators provided for in part C of the Program below, as a library of written and recorded election information, as a distribution point for the dissemination of election information, and as a site for the performance of functions related to the election process that can be performed at the county courthouse, including but not limited to registering to vote or updating voter registration information; and casting an absentee ballot. The Satellite Elections Offices may be used for other governmental purposes as agreed upon in writing by the parties.

3. Delivery of a voter registration application or performance of any other election-related task at a Satellite Elections Office shall be effective in terms of all time deadlines and requirements as if the application had been delivered to, or the task performed at, the county courthouse.

4. A supply of all forms and materials necessary to complete these functions shall be maintained at each Satellite Elections Office. Copies of all materials, information and audio-visual tapes required to be disseminated pursuant to this Decree, including all election-related materials prepared by the state, likewise shall be available in each office, together with appropriate audio-visual equipment.

5. A voting rights coordinator or tribal elections liaison or other personnel comparably trained in election procedures and appointed as a deputy registrar, shall be available at each satellite office during regular office hours on work days.

C. Voting Rights Coordinators

1. Cibola County shall employ at least three Native American Voting Rights Coordinators who will coordinate the Native American Election Information Program in Cibola County. One of the voting rights coordinators shall be bilingual in Navajo and English, and shall serve primarily the area of the Ramah Chapter of the Navajo Nation. Two of the voting rights coordinators shall be bilingual in Keres and English, and one shall serve primarily the area of the Acoma Pueblo, while the other shall serve primarily the area of the Laguna Pueblo.

2. The Navajo and Pueblo voting rights coordinators shall be hired by Cibola County after consultation with the officials of the Ramah Navajo Chapter, the Acoma Pueblo, the Laguna Pueblo, and counsel for the United States. Cibola County recognizes that the ability of the voting rights coordinators to work closely and cooperatively with Chapter and Pueblo officials is an important job-related requirement for the position. Copies of all applications for these positions shall be provided to the appropriate Chapter or Pueblo officials as such applications are received by the county. Cibola County shall invite such officials to review all applications and to recommend the names of at least four qualified persons fluent in English and in Navajo or

Keres, as appropriate. In the event that fewer than four names of qualified persons are recommended, Cibola County shall consult with the appropriate tribal officials and the United States. Cibola County shall select the voting rights coordinators from among the names recommended, or shall provide to the Chapter or Pueblo officials and to counsel for the United States prior to the hiring decision a detailed written statement of the basis for its selection. The two coordinators currently employed by the county may be retained to implement the provisions of this Program.

3. Cibola County shall develop a job description for each voting rights coordinator in consultation with the officials of the Ramah Navajo Chapter, the Acoma Pueblo, the Laguna Pueblo, and counsel for the United States. The duties of the voting rights coordinators shall be limited to those specified in the Native American Elections Information Program, and closely related election activities, except as may be provided in a separate written agreement of the parties.

4. Each of the three voting rights coordinators shall be employed on a full-time basis at least through the February, 1995, school elections, with their time devoted to the Native American Election Information Program. The parties agree that throughout the life of this Agreement the voting rights coordinators should be active in their employment, and that their time as employees should be fully and productively devoted to the Program or other governmental tasks. The parties anticipate that subsequent to February 1995, while it will be necessary to employ

the voting rights coordinators on a full-time basis during a portion of each year, it likely will be possible for the voting rights coordinators to perform all tasks under the Program on less than a full-time basis, especially in years in which no election is scheduled. For each year after February 1995, Cibola County shall devise and adopt a specific schedule detailing the tasks, goals and specific functions to be performed by the coordinators, and time of employment under the Program and under each additional public employment or responsibility for each voting rights coordinator. The schedule shall be adopted by the county after close consultation with officers of the Ramah Navajo Chapter, Acoma Pueblo and Laguna Pueblo and their designees, and with counsel for the United States. The parties recognize the governmental interest in maintaining these positions in a way that maximizes their effectiveness. The defendants agree to explore fully other governmental tasks which would be performed by the voting rights coordinators, especially on the reservation areas, so that the county can attract and retain fully qualified personnel.

5. The voting rights coordinators shall be trained in all aspects of the election process, shall attend all election seminars conducted by the Secretary of State and the Cibola County Clerk, and shall be appointed county deputy registration officers. Voting rights coordinators shall be fully briefed by the county clerk and the state Director of the Bureau of Elections (or the Director's designee), as appropriate, concerning the coordinators' duties and responsibilities under this Program. Representatives of

the Ramah Navajo Chapter, the Acoma Pueblo, and the Laguna Pueblo, the AIPC and the NEA shall be invited to attend these briefings by written notice 10 days in advance of each training session, and representatives of the United States shall be permitted to attend these briefings to assist state and local election officials in explaining the requirements of this Program. All voting rights coordinators shall be hired by March 15, 1994, and all county briefings completed by March 28, 1994. Cibola County shall contact the New Mexico Secretary of State by March 15, 1994, to arrange for state training of the voting rights coordinators as soon as possible.

6. The voting rights coordinators shall oversee the county's Native American Election Information Program generally and attend on a regular basis meetings of their respective communities. The coordinator for the Ramah Navajo Chapter shall attend each Ramah Chapter meeting and chapter officers meeting, the coordinator for the Acoma Pueblo shall attend each tribal council meeting and each general meeting, and the coordinator for the Laguna Pueblo shall attend each tribal council meeting and each village meeting. Each voting rights coordinator shall seek to attend and make a presentation of election information at all other public meetings (such as school assembly, parent-teacher organization and senior citizen group meetings) and gatherings (such as for commodity distribution) within their Chapter or Pueblo, consistent with the schedule set forth within.

7. The county shall establish booths or displays at all tribal functions where their presence is permitted by the tribal officers, and at shopping centers and other locations identified by the voting rights coordinators in consultation with tribal officials. The county shall staff such booths or displays with the voting rights coordinators, tribal election liaisons, or deputy registration officers.

8. Each county voting rights coordinator shall identify other opportunities to disseminate election information to Native Americans. Each coordinator shall contact each officer of the appropriate Pueblo or Chapter in January and June of each year of this agreement to identify all groups or meetings before which presentations might be made or displays and booths established. The coordinators shall provide lists of such groups or meetings to each other, to the county clerk, the NEA, and the AIPC, by the close of the relevant month. Within 30 days thereafter, the voting rights coordinators shall notify the Pueblo and Chapter officers, the NEA, the AIPC, and the United States, in writing of the meetings and groups before which the coordinators will appear.

9. Each voting rights coordinator shall conduct voter education programs concerning each election within Cibola County which involves any portion of the coordinator's Chapter or Pueblo. Such voter education programs shall include instruction and dissemination of information on at least the following topics: voter registration; absentee voting procedures; voter purge; candidate qualification; voting procedures and operation of voting

machines; the contents of the ballot; and all time deadlines and requirements. The voting rights coordinators shall work primarily out of the respective Satellite Election Offices. The voting rights coordinator for Ramah Navajo Chapter shall not be required to be present in the county courthouse for more than five working days in any month, and the voting rights coordinators for the Acoma Pueblo and Laguna Pueblo shall not be required to be present in the county courthouse for more than eight working days in any month, except as provided by separate written agreement of the parties. The parties recognize that to the greatest extent possible, during the month prior to any election, the voting rights coordinator should be present in the Satellite Elections Office. Circumstances may arise from time to time that require the voting rights coordinator to be present in the county courthouse. In the event that the voting rights coordinator cannot be at the Satellite Elections Office, the county shall insure that the functions of the voting rights coordinator shall be performed by other trained personnel.

10. The voting rights coordinators, or other county officials, shall maintain a written record of the date and purpose of each visit made for election-related purposes to each meeting held at a Pueblo tribal building, Navajo chapter house, or other sites in the Pueblos and/or the Ramah Navajo Chapter. Within 30 days after each primary, general, school, and special election, each voting rights coordinator shall prepare a written report detailing the coordinator's election-related activities in

implementing the goals and provisions of the Native American Election Information Program.

11. The voting rights coordinators shall conduct the training of all deputy registration officers, poll officials and other election-related personnel who will participate in the Native American Election Information Program under the supervision of the county clerk. Each Pueblo governor and Navajo chapter president whose chapter is in whole or in part within Cibola County shall be notified, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at convenient locations on the respective reservations, as permitted by tribal officials. Training shall be conducted at least in part in the Navajo or Keresan languages, as appropriate, so that the election-related personnel shall be familiar with Navajo or Keres terminology for all aspects of their election duties.

12. Cibola County shall establish a travel and supply budget for the voting rights coordinators which shall be sufficient to cover their travel and supply expenses incurred in carrying out their duties, obligations and responsibilities to effectively implement this Native American Election Information Program on the same basis as for other county travel and supplies. The parties anticipate that, since the coordinators will be based in their respective geographic areas of responsibility, the need for travel other than for state-sponsored training will involve primarily

short trips to sites within the Chapter or Pueblo, with trips as necessary and appropriate to the county courthouse.

D. Tribal Election Liaisons

1. Cibola County shall request each Pueblo Governor and the Ramah Navajo Chapter President to identify and/or appoint at least one individual in each Navajo chapter and Pueblo reservation to serve as an election liaison between the county and each Pueblo and Navajo chapter for purposes of federal, state and local elections. In the event that tribal election liaisons are not identified and/or appointed, Cibola County shall immediately notify and consult with counsel for the United States to confer on procedures to encourage such appointments.

2. Tribal election liaisons shall be qualified as deputy registration officers and county election officials shall train these liaisons in all aspects of the federal, state, and local election process, including the schedule of elections, election-related deadlines, absentee voting, the voter registration and purge processes, candidate qualification requirements and procedures, election day activities, and the text and significance of proposed constitutional amendments and other referenda. In the event of a vacancy in the office of voting rights coordinator, the tribal elections liaison for that Chapter or Pueblo shall succeed to that position as a temporary employee, and shall receive all responsibilities, pay and benefits of the position consistent with state law until a new coordinator takes office. In the event that any tribal election liaison fails to participate in any portion of

the training, the voting rights coordinators shall immediately notify the appropriate Chapter or Pueblo officials and counsel for the United States.

3. Telephone inquiries from voting rights coordinators, tribal election liaisons, deputy registration officers on the reservations, and tribal officials involved in election activities, to the county clerk's office and the secretary of state's office respecting election-related matters, are encouraged and shall be considered official government business, and telephone charges associated with any such calls shall be paid by the county.

E. Translations

1. The following election-related materials and announcements shall be translated into the Keresan and Navajo languages, made available on audio tapes, and provided to the voting rights coordinators at the Satellite Elections Offices by the dates specified:

a.) Detailed election calendar for each year (by April 1, 1994, and for each succeeding year, within 10 days of receipt by the county of information from the state);

b.) State, county and school district election proclamations (by the statutory date of proclamation within 10 days of receipt by the county of information from the state);

c.) Constitutional amendments and other referenda issues on the ballot (within 30 days of the date the English text is determined, and no later than the date of proclamation),

d.) A brief description of each constitutional amendment and other referendum issue on the ballot (by the date of each election proclamation within 10 days of receipt by the county of information from the state);

e.) Candidate qualification requirements and deadlines (60 days prior to the respective qualification deadlines for primary elections for state and federal offices, primary elections for other offices, independent candidates, and write-in candidates);

f.) The duties, functions and compensation for each office filled by election involving any part of Cibola County (by April 1, 1994, and for each succeeding year, within 10 days of receipt by the county of information from the state);

g.) Voter registration deadlines with separate tapes containing deadlines for each type of election (by April 1, 1994, and for each succeeding year, within 10 days of receipt by the county of information from the state);

h.) Instructions relating to voting by absentee ballot (by April 1, 1994), an explanation of the voter purge process as provided by this Decree (by April 1, 1994);

i.) The candidates for office and their political parties for each election (by the date on which the ballot is printed); and

j.) Explanations of voting procedures including the operation of voting machines and how to cast a write-in ballot (by April 1, 1994).

2. The county may substitute and/or supplement video tapes for audio tapes covering at least the subjects listed above. All

tapes will be edited or new tapes shall be made within 10 days of enactment of any change in election requirements or procedures, so as to reflect and incorporate the new information. Copies of all tapes and other materials prepared pursuant to this agreement shall be provided to the Acoma Pueblo, Laguna Pueblo, Ramah Navajo Chapter, the NEA, the AIPC, and the United States.

3. Separate recordings shall be provided for each election-related subject matter so as to avoid lengthy tape recording, and the county shall make every effort to ensure that tape recordings do not exceed five minutes in length. Separate tapes shall be made, for example, for each separate constitutional amendment or bond issue to be voted on at a given election. A library of currently applicable tapes, together with English transcripts or text, shall be maintained at each Satellite Elections Office.

4. The county, through the voting rights coordinators and liaisons, shall engage in all reasonable efforts to see to it that each tape is played in at least one tribal council meeting and one general meeting of the Acoma Pueblo, at one meeting of each village and one meeting of the tribal council of the Laguna Pueblo, and at two Ramah Navajo Chapter meetings, as well as at other public meetings and gatherings during the appropriate publicity period. The county voting rights coordinator, tribal election liaison or other trained bilingual person shall be present to answer any questions concerning the subject matter of the tape, and each voting rights coordinator shall make a formal request to the appropriate tribal official or officials regarding such

presentation in a timely manner. If appropriate tape-playing equipment is not available on the site visited, the county shall provide such equipment to the voting rights coordinators for this purpose.

5. Native American language audio and/or video tapes described in this agreement shall be available generally to individuals and organizations at each Satellite Election Office, the Pueblo of Laguna Tribal offices, the Acoma Tribal office building, and the Ramah Navajo chapter house.

6. The voting rights coordinators shall provide accurate translations of election information. In the event that accurate translations are not provided by the voting rights coordinators, the county shall enter into written contracts with qualified persons so that accurate translations are made. The county may use tapes provided by the state, and may coordinate with other counties of the State of New Mexico in the production of tapes; but Cibola County shall be responsible for addressing promptly and, if necessary, correcting or clarifying any translation upon report from any voting rights coordinator or official of the Ramah Navajo Chapter, the Acoma Pueblo, or the Laguna Pueblo, or any other Navajo or Keres speaker. Disputes as to the accuracy of a given translation which are not promptly resolved by mutual agreement between county officials and Native American leaders will be resolved by a mutually agreed upon third party, and the United States shall be notified of each such dispute. The county shall seek the assistance of the state in identifying and retaining any

necessary translators or subject matter experts to assist in translation of technical or complicated election-related materials. In the event that the state fails to provide such translators or subject matter experts, the county shall request the assistance of the Navajo Elections Administration (NEA) for Navajo language assistance, or the All Indian Pueblo Council (AIPC) for Keresan language assistance.

7. The translation shall begin as soon as the English text for an item is known, and translation and review of any election-related material shall be completed promptly. The county's responsibility to ensure prompt and accurate translation of election materials and information, and dissemination thereof, shall extend to materials and information relating to statewide issues, including those published in each Election Proclamation, and to elections of subdivisions of Cibola County, including but not limited to the Cibola County School District.

8. The voting rights coordinators shall, in consultation with the tribal election liaisons and other tribal officials, develop a series of posters suitable for public display to accompany translated and written notices respecting election matters.

9. Upon request, Cibola County shall make available all translations and election materials prepared pursuant to this Program to all governmental entities within Cibola County and other counties which endeavor to provide election information to Native American citizens.

F. Dissemination of Election-Related Information

1. The county shall plan and publicize meetings at pueblo offices, chapter houses, schools, and other sites convenient to voters of Ramah, Acoma and Laguna at which the voting rights coordinators, tribal election liaisons and other trained personnel will make oral presentations in the Keresan or Navajo languages with appropriate audio and visual aids, as provided in part E above, according to the following schedule:

a. During the 45 days prior to each separate deadline for candidate qualification for any federal, state, county, or school office: the qualifications, duties and compensation of each office and the procedures for qualifying as a candidate.

b. During the 45 days prior to each separate deadline for registering to vote in any primary, general, school or special election: the voter registration procedures, including the names of local deputy registrars, voter registration cutoff dates, and voter registration locations.

c. During the 60 days prior to each separate election: the offices to be filled including the duties of each office; the names and party affiliation of each candidate; each ballot proposition, including a brief summary of each proposition and an explanation that detailed information on the ballot proposition is available at each Satellite Elections Office and other locations.

d. During the absentee voting period for each election: the absentee balloting process, including explanation of what persons are eligible to vote absentee and absentee voting locations;

polling place procedures, including the operation of voting machines; procedures for casting a write-in ballot (if and only if there is a write-in candidate); the availability of detailed election information at each Satellite Elections Office; and the availability of trained translators at the polls.

2. The county shall coordinate publicity efforts with Pueblo and Navajo tribal officials, and with the NEA and the AIPC. The NEA and AIPC will be requested to disseminate all such information through public service announcements on radio and television stations. All publicity shall be made available to any areas containing Native American population concentrations within Cibola County off the reservation areas identified in consultation with the NEA and AIPC.

3. Election-related announcements, materials, tapes and other election information shall be made available to all high schools serving residents of the Ramah Navajo Chapter, the Acoma Pueblo, and the Laguna Pueblo to familiarize students with all phases of the election process.

4. Facsimiles of voting machines or devices shall be made available to the voting rights coordinators for their use in training election-related officers and conducting voter education programs on their respective reservations.

5. The New Mexico Legislative Council Service publication of Constitutional Amendments Proposed by the Legislature and Arguments for and Against shall be provided to each voting rights coordinator, tribal elections liaison, and deputy registration

officer of Cibola County by September 1 of each even-numbered year of the agreement. Cibola County shall be under no obligation to translate the publication.

6. Radio and/or Television: The obligation of Cibola County to make radio and television announcements in the Keresan and Navajo languages shall be satisfied by "notice" announcements providing a brief general description of the subject matter and an identification of all sites where detailed information is available, including each Satellite Elections Office. Cibola County shall not be required to broadcast in the Navajo or Keresan languages the full text of constitutional amendments, election proclamations or other lengthy election-related announcements. Cibola County shall distribute tapes for broadcast on all public broadcast stations serving the Navajo and Keres speaking populations of Cibola County, such as to KTDB (Ramah-Navajo); KTNN (Window Rock-Navajo); KGAK (Gallup-Navajo); KUNM (Albuquerque-Keres and Navajo); KNME T.V. ("Pueblo Viewpoints" Keres) and to other available stations or programs for broadcast in the Keresan and/or Navajo language, as appropriate, regarding:

a. Deadlines for voter registration for participation in all primary, general, school and special elections involving portions of the Ramah Navajo Chapter, the Acoma Pueblo, and the Laguna Pueblo within Cibola County, including identification of regularly available voter registration sites in each Pueblo or the Ramah Navajo Chapter. These announcements, shall be made at least twenty times each week for the four weeks preceding the deadlines

for both state and federal election registration for each primary and general election. The announcements shall include a description of the offices to be filled in the election to which the registration deadline applies.

b. Candidate qualification. Announcements detailing procedures and deadlines for becoming a candidate shall be made daily during the two weeks preceding each candidate filing date, including school board elections.

c. Dates of special, primary, general, and school board elections, a list of the offices to be elected, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements shall be made twice a week during at least the three weeks prior to each of the foregoing elections.

d. An explanation of the ballot identifying each office to be filled, each candidate with the candidate's political affiliation, and the nature and significance of each referendum, proposed constitutional amendment(s), or ballot proposition to be decided. Announcements shall be made twice a week for at least the three weeks prior to each special, primary, general and school board election. Separate announcements shall be made for (1) federal, statewide and multi-county offices (2) county and local offices, and (3) constitutional amendments and other referenda. Cibola County may coordinate announcements respecting federal,

statewide and multi-county offices and constitutional amendments and other referenda with other New Mexico counties.

e. The county shall request that the broadcasters make the above identified announcements times calculated to reach the largest possible Native American audience. Each announcement shall refer the audience to the Satellite Elections Offices for detailed information.

7. Print Media: Cibola County shall not be required to publish in the Navajo or Keresan languages the text of election announcements which are published in English in local newspapers. Announcements detailed in paragraph F.6 shall be published on a weekly basis in newspapers of wide readership in the reservation areas, such as the Navajo Times, and in newspapers of wide readership in the reservation areas, such as the Gallup Independent, on a twice-weekly basis for the publicity periods noted in that paragraph. Cibola County may coordinate such publication with other New Mexico counties. Each announcement also shall be published in the weekly advertising supplement to the Grants Beacon on the same basis that it is published in the local newspaper of record.

G. Voter Registration

1. The county shall: request each Pueblo governor, Navajo chapter president and other tribal officials to recommend six persons qualified to serve as deputy registration officers in Cibola County; request assistance from the NEA and the AIPC in identifying potential deputy registration officers; seek to

coordinate state voter registration with Navajo tribal voter registration through reciprocal deputization of deputy registration officers for state and tribal elections; invite school personnel, including each high school principal and parent-teacher organization officer, to become deputy registration officers; and encourage organized political parties to recommend additional deputy registration officers for election precincts on the reservations. Cibola County shall deputize and train all qualified persons who desire to serve as deputy registrars.

2. Training for deputy registration officers for majority Pueblo and Navajo election precincts in the county shall be conducted on the reservations by the county voting rights coordinators in both English and the Keresan and Navajo languages, as appropriate. In addition to training as to registration standards, regulations and forms, deputy registration officers shall be trained fully regarding the voter purge and absentee voting processes, standards and regulations. Keresan and Navajo language tapes and English transcripts shall be used in the training process, and copies of such materials shall be maintained as provided generally in this agreement.

3. Cibola County shall appoint and train a minimum of six deputy registration officers fluent in English and in Navajo or Keres, as appropriate, in each county precinct which includes any part of the Acoma Pueblo, Laguna Pueblo, or the Ramah Navajo Chapter by April 1, 1994. In the event that fewer than six interested persons are identified by the county, the county shall

immediately notify the appropriate tribal officials and counsel for the United States.

4. The names of all deputy registration officers available at each Pueblo or Navajo chapter shall be prominently posted at the Pueblo of Laguna Tribal offices, the Acoma Tribal office building, the Ramah Navajo chapter house, as permitted by Native American leaders, and at each trading post and/or post office. Such lists shall be updated within one week of any change in deputy registration officers. Copies of all lists, and updates thereof, shall be provided to the AIPC, the NEA and the United States within 10 days of posting.

5. County voting rights coordinators, as part of their outreach efforts, shall conduct special voter registration drives at the Pueblo reservations and Navajo chapters in the county. The NEA, the AIPC, the appropriate Pueblo and Navajo chapter officers, as well as the tribal election liaisons, shall be consulted as to the best time and place for each registration drive, and notified prior to the scheduled registration.

6. The county shall monitor, on an ongoing basis, the performance of deputy registration officers. Each voting rights coordinator shall maintain a record of the number of persons, by tribal affiliation, registered for each month by each deputy registration officer. The voting rights coordinator shall encourage inactive or unproductive deputy registration officers, and the voting rights coordinator shall promptly appoint and train a replacement for any deputy registration officer who fails to

respond to such encouragement. The county will adopt recognition programs for deputy registrars to encourage registration activity.

7. The county shall provide each voting rights coordinator and tribal election liaison with current voter registration lists and forms, lists of voters to be purged from the voter registration lists, and detailed election precinct maps for his or her precinct. Copies of the maps and registration lists shall be maintained and available to the public in each Satellite Elections Office.

H. Absentee Voting

1. The county shall supply applications for absentee ballots to all deputy registration officers on the reservations, county voting rights coordinators, tribal election liaisons, Pueblo governors and lieutenant governors, and Navajo chapter managers and presidents.

2. The county is committed to maximizing absentee voting opportunities at the Satellite Elections Offices. For the forty days immediately preceding the June, 1994 primary election, each voting rights coordinator shall have available an adequate supply of absentee ballot applications and absentee ballots. The voting rights coordinators shall be available at the Satellite Election Offices no fewer than two days per week during this period, and no fewer than three days per week during the last two weeks before the election, and at other sites agreed upon by the parties to assist persons in correctly completing the absentee ballot applications and, where assistance is needed and requested by the voters, completing the absentee ballots. The application and absentee

ballot shall immediately be sealed in the proper envelope and, at the voter's option, mailed by the voter or the voting rights coordinator, or shall be delivered to the county clerk's office at the end of the day by the voting rights coordinator.

3. For forty days immediately preceding the June, 1994 primary election, the county voting rights coordinators shall be notified daily by the county clerk of other voters for their respective areas whose absentee ballot applications have been rejected. County voting rights coordinators shall assist those persons whose absentee ballot applications have been rejected, in correctly completing a new application and absentee ballot.

4. From the date of this agreement through the June 1994 primary election, the county shall undertake an intensive campaign of publicity regarding absentee and early balloting, including but not limited to the following: each voting rights coordinator shall post prominently information concerning the availability of absentee voting for the June, 1994 primary at the Pueblo of Laguna Tribal offices, the Acoma Tribal office building, the Ramah Navajo chapter house and at trading posts or post offices on the reservations and at other sites identified by the tribal election liaisons. The voting rights coordinators shall attend the last two tribal council, general and village community meetings, and the last two Navajo Chapter meetings, prior to the deadline for absentee voting in the June 1994 primary, and at said meetings the coordinators shall: be available with materials at the meetings to

assist persons in completing applications for absentee ballots; and shall announce the dates, times and place where voters can cast their absentee ballots with appropriate assistance in the Satellite Elections Offices. At such meetings, the voting rights coordinators shall explain that all persons are eligible to cast absentee ballots.

5. The regular casting of absentee ballots at the Satellite Offices on a daily basis shall be contingent upon the availability of locked rooms or spaces to store ballots and other materials. In the event that such spaces are not available or will not be available for the entire absentee voting period, Cibola County shall immediately contact counsel for the United States in an effort to identify and implement alternate locations or procedures so as to permit the casting of absentee ballots at convenient sites on each of the reservation areas.

6. Each voting rights coordinator shall post information concerning the availability of absentee balloting prominently at the Pueblo of Laguna Tribal offices, the Acoma Tribal office building, the Ramah Navajo chapter house and at trading posts or post offices on the reservations and at other sites identified by the tribal election liaisons.

7. County voting rights coordinators shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk and to accept completed absentee ballots from eligible voters for delivery to the county clerk.

I. Election Day Procedures

1. Cibola County shall, after consultation with and subject to the consent of officials of the Ramah Navajo Chapter, the Acoma Pueblo and the Laguna Pueblo, and upon the recommendation of the respective voting rights coordinators, establish a minimum of two polling places within the boundaries of the Ramah Navajo Chapter; one polling place within the boundaries of the Acoma Pueblo; and six polling places within the boundaries of the Laguna Pueblo. At least two voting machines shall be provided for the polling place for Acoma. For each election after the June, 1994, primary election, Cibola County shall provide at least one voting machine shall be for each such precinct for every 150 persons casting ballots on election day, or fraction thereof, at the preceding election. The parties anticipate that no additional voting machines will be required in order to comply with the provisions of this section in 1994. If as a result of the June 1994 primary elections, it is necessary to purchase additional voting machines, the parties agree to meet and negotiate in good faith to modify the voter-machine ratio so as to minimize or lessen the financial costs to the county.

2. Cibola County shall cooperate with the NEA in the establishment of polling places so that the same buildings can be used for Navajo tribal and state elections in separate areas of the same buildings.

3. Poll officials assigned to each majority Native American election precinct in Cibola County shall be persons who are

bilingual in Navajo or Keres, as appropriate, and in English. The county shall consult with the tribal election liaisons, the NEA and/or Navajo tribal officials of Cibola County, the AIPC and/or other appropriate tribal officials to identify bilingual individuals qualified to work at the polls. Alternate translators shall be designated as required by state law.

4. Poll officials and the voting rights coordinators shall monitor the polls during the course of each election to identify and record each instance in which unreasonable delays occur either in voting or in translation of the ballot. Where such delays occur, the county shall take whatever steps are necessary, such as providing additional translators and voting machines, to ensure that such delays do not recur in future elections.

5. Poll officials and translators shall be fully trained, at locations on the Acoma and Laguna Pueblos and the Ramah Navajo Chapter, in the Keresan and Navajo languages, as appropriate, concerning election day procedures at the polling places, the contents and issues appearing on the ballot, and voter purge procedures. Training shall include translation of the entire ballot and related information in the Keres and Navajo languages. Such training shall include the use of audio and/or video tapes of the entire ballot. A copy of each such tape or set of tapes shall be provided to each poll official along with an English language sample ballot at least 30 days prior to the election, and the county shall ensure that the poll officials have access to appropriate equipment for playing the tapes during this period.

Training sessions shall be followed by oral testing in Navajo or Keres to ensure their effectiveness.

6. For each voting machine required by state law at each polling place on election day, the county shall appoint at least one trained translator.

7. Poll officials shall specifically advise each voter who is eligible under state or federal law to receive assistance in casting a ballot that the voter may choose any person to provide that assistance, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6. After the voter has indicated to a poll official a need for assistance in voting or in reading the ballot in English, the voter's request for assistance shall be noted in the signature roster and it shall be unnecessary for the voter to execute an affidavit of assistance.

8. Poll officials or other designated county officials shall maintain a record of all persons who come to the polls but are not allowed to vote in each precinct of Cibola County. This record shall include each voter's name, race, address, the reason the person thought she or he was eligible to vote at that site, and the reason for not permitting the person to vote.

9. A list of the persons not permitted to vote shall be provided to the appropriate tribal officials, voting rights coordinators, tribal election liaisons, and deputy registration officers of each precinct involving a portion of the Acoma or Laguna Pueblos or the Ramah Navajo Chapter. The county shall contact each such person and provide an opportunity for that person

to register to vote at the earliest possible time. The voting rights coordinator shall make a report of the list of persons not permitted to vote, the dates on which they were contacted and registered to vote, and identify such additional training, publicity, or other steps that the coordinator believes would be useful to prevent similar ineligibility among the Native American population in the future.

J. Purge Process

1. No voter shall be removed from the list of eligible voters or denied the right to vote for failure to vote in any subsequent election.

2. With regard to voters removed from the list of eligible voters for a failure to vote in 1992, Cibola County shall implement an intensive program to identify persons in Ramah, Acoma and Laguna who were removed from such list, but who still reside in Cibola County. The county shall provide to the voting rights coordinators, tribal election liaisons, tribal officials, and deputy registrars copies of lists of all persons purged from the voting list for failure to vote in 1992 for their respective precincts. Copies of the lists shall be sent to Pueblo of Laguna Tribal offices, the Acoma Tribal office building and the Ramah Navajo chapter house in Cibola County with a request that it be posted. The county voting rights coordinators, tribal election liaisons, tribal officials, and deputy registrars shall review such lists to identify persons still eligible to vote in Cibola County but for their failure to vote in 1992. It shall be the

responsibility of the voting rights coordinators to contact such persons and assist them in becoming registered to vote for the 1994 elections.

K. Records

1. Copies of all tapes and other materials or records mentioned in this agreement shall be maintained by the defendants. Cibola County also shall maintain statistical records including but not limited to:

a. Voter Registration

- Voter registration, by precinct, on a monthly basis.
- Number of voters, by precinct, who are registered at each Satellite Elections Office, by each deputy registrar, and at each voter registration drive conducted pursuant to this agreement.

b. Voter Purge

- Total number of voters purged, by precinct, for failure to vote.
- Total number of voters retained on the voter registration rolls based on certification of eligibility by the voting rights coordinators.
- Total number of voters, by precinct, reinstated by returning post cards.
- Total number of voters validated by other means during the purge period by precinct.

c. Absentee Voting

- Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.
- Total number of absentee ballots cast, per precinct, in person at the county courthouse.
- Total number of absentee ballots cast in person at each Satellite Elections Office.

--Total number of absentee ballots cast, per precinct, in person before a deputy clerk and/or voting rights coordinator on the reservations.

d. Publicity

--Time and medium of each broadcast (where records are available) or publication pursuant to this agreement.

--Time, place and occasion of presentation by a voting rights coordinator, the subject matter(s) addresses, and the approximate number of persons in attendance.

--Time, place and occasion of each instance in which each election-related video and audio tape was played, and the approximate number of persons in attendance.

The county shall update these records on an ongoing basis and these data shall be maintained for all precincts of Cibola County at the county clerk's office and records pertinent to each reservation area at the appropriate Satellite Elections Office. All tapes, materials and records prepared or maintained pursuant to this Program shall be available for public inspection and copying upon request.

2. Beginning on January 1, 1994, and quarterly during each year for the life of the Settlement Agreement, the county shall compile a Quarterly Report of the efforts taken pursuant to this agreement during the preceding three months. The report shall include the status of Native American voter participation as shown by records in each area addressed in this agreement, together with an assessment of the effectiveness of each phase of the program and a recommendation of the steps to be taken, if any, to improve Native American voter participation. Copies of the report shall be provided to the United States, the Governors of the Acoma and

Laguna Pueblos, the President of the Ramah Navajo Chapter, the AIPC, and the NEA.

L. Adjustments to Program

1. It is the goal of Cibola County to provide that the entire election process is fully and effectively accessible to Native American citizens, and the procedures set forth above are designed to achieve that goal. Cibola County shall evaluate its programs on an ongoing basis through consultation with the tribal election liaisons, the AIPC, Pueblo tribal officials, the NEA and/or Navajo tribal officials of Cibola County, and counsel for the United States.

2. The parties shall confer in good faith if any party believes that a particular aspect of the Program has proven ineffective. The parties shall confer at least annually in a good faith effort to improve any aspect of the program which has proven ineffective, in accordance with the Settlement Agreement. In the event of changes in Native American population patterns in Cibola County, including the development of any new Native American population concentration within the county, the parties promptly shall confer and develop a program for meeting fully the Native American language needs of such population.

III. CONCLUSION

This agreement represents the commitment of the parties to provide equal voting rights to all citizens of Cibola County, and the county intends fully and faithfully to implement this Native American Election Information Program. The parties recognize that

regular and ongoing reassessment of the above outlined Program by the responsible officials will be necessary in order to ensure that Native American voters are able, and will continue to be able, to enjoy equal access to all phases of the political process in Cibola County.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this Decree and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments.

Entered this ___ day of March, 1994.

UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

Approved as to form and content:

FOR THE PLAINTIFF
UNITED STATES OF AMERICA

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ACCEPTED AND AGREED TO:

Steve Barela
STEVE BARELA
Chair, Cibola County Commission
for the Commission

Patricia Aragon
PATRICIA ARAGON
Cibola County Clerk

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

MAY - 3 2004

Norman H. Meyer, Jr., CLERK

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CIBOLA COUNTY, NEW MEXICO;)
 CIBOLA COUNTY BOARD OF)
 COMMISSIONERS; FREDDIE JOHN SCOTT,)
 ISAAC F. PADILLA, W. FRANK EMERSON,)
 ARTURO CANDELARIA and BENNIE COHOE,)
 Members of the Cibola County Board)
 of Commissioners; and EILEEN)
 MARTINEZ, Cibola County Clerk,)
)
 Defendants.)

NO. CIV 93 1134 LH/LFG

ORDER EXTENDING AND MODIFYING STIPULATION AND ORDER

The United States initiated this action on September 27, 1993, pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act arising from Cibola County's election practices and procedures as they affect Native American citizens of the County, including those Native American citizens who rely in whole or in part on the Navajo and Keresan languages. The County did not contest these allegations and agreed to remedy them by entering into a Stipulation and Order. On April 21, 1994, the three-judge court in this case entered the Stipulation and Order

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("Order") which, by its terms, is otherwise set to expire on March 15, 2004.

In the Stipulation filed with this Court, defendants concede that they violated the terms of the Order by failing to furnish all instructions, assistance and other information relating to voting orally in the Navajo and Keresan language. See 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12. The parties agree that this constitutes good cause to extend portions of the Order. The parties have agreed to certain modifications of the Native American Election Information Program as provided in the parties' Stipulation.

After consideration of the Stipulation and Joint Motion for Modification and Extension of Stipulation and Order, and good cause appearing, the Court finds the terms of the Stipulation fair and reasonable, and it is hereby ORDERED that this Court's April 21, 1994 Order, as modified, is hereby extended until December 31, 2006, and the Native American Election Information Program is modified as provided in the parties' Stipulation.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the Constitution.

Entered this 22nd day of April, 2004.

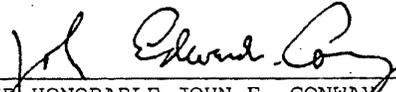


THE HONORABLE BOBBY R. BALDOCK
United States Circuit Judge
United States Court of Appeals
for the Tenth Circuit



Sonnie's

THE HONORABLE C. LEROY HANSEN
~~Chief~~ United States District Judge
United States District Court for
the District of New Mexico



THE HONORABLE JOHN E. CONWAY
United States District Judge
United States District Court for
the District of New Mexico

SUBMITTED BY:

DAVID C. IGLESIAS
United States Attorney
R. ALEXANDER ACOSTA
Assistant Attorney General

/s/ (electronically submitted 03-15-04)

JOSEPH D. RICH
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SADA MANICKAM
For Plaintiff

CIBOLA COUNTY, et al.

Approved by e-mail 03-15-04

JOSEPH DIAZ

Modrall, Sperling, Roehl, Harris

& Sisk, P.A.

For Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	NO. CIV 93 1134 LH/LFG
)	
v.)	
)	
CIBOLA COUNTY, NEW MEXICO;)	
CIBOLA COUNTY BOARD OF)	
COMMISSIONERS; FREDDIE JOHN SCOTT,)	
ISAAC F. PADILLA, W. FRANK EMERSON,)	
ARTURO CANDELARIA and BENNIE COHOE,)	
Members of the Cibola County Board)	
of Commissioners; and EILEEN)	
MARTINEZ, Cibola County Clerk,)	
)	
Defendants.)	

JOINT STIPULATION

The United States, Cibola County ("County"), and remaining defendants, agree through their undersigned counsel to the following Joint Stipulation.

Cibola County has been subject to Section 203 of the Voting Rights Act ("Act"), 42 U.S.C. 1973aa-1a, since 1984 for the Keresan language. In 1992, the County's coverage under Section 203 was extended to the Navajo language. In 2002, the Director of the Bureau of the Census determined that coverage under Section 203 of the Voting Rights Act should be continued for both languages.

Section 203 requires that all information that is provided by Cibola County in English about voter registration or voting notices, forms, instructions, assistance, or other materials or

information relating to the electoral process, including ballots," must be provided in the Keresan and Navajo languages to the extent that they are needed to allow language minority group members to be informed of and participate effectively in the electoral process and all voting-related activities. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." *Attorney General's Procedures for the Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups*, 28 C.F.R. 55.15. Because the Keresan and Navajo languages are historically unwritten, defendants are required to furnish oral instructions, assistance and other information relating to registration and voting in the Keresan and Navajo languages. 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12(c).

The United States initiated this action on September 27, 1993, pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act arising from Cibola County's election practices and procedures as they affected Native American citizens of the

County, including those Native American citizens who rely in whole or in part on the Keresan and/or Navajo language.

Defendants do not contest that prior to 1994, the County failed to make the election process in Cibola County equally available to Native American and non-Native American citizens as required by Section 2 and the Fourteenth and Fifteenth Amendments, nor do defendants contest that in past elections the County had failed to comply fully with the minority language requirements of Section 203. On April 21, 1994, this Court entered a Stipulation and Order ("Order") between the parties instituting the Native American Election Information Program ("Program") in Cibola County to remedy past non-compliance with the above-mentioned provisions of federal law. The Order, by its current terms, remains in effect until March 15, 2004.

Pursuant to the Order, the United States has assigned federal observers to monitor Cibola County elections, and the United States has conducted extensive investigations of the actions of Cibola County in complying with the Order and Section 203 of the Voting Rights Act from 1994 through 2003. During this period, Cibola County has made some progress in making the election process accessible to the Native American population of the County. Reports of federal observers who monitored elections have demonstrated, however, that Cibola County has failed to furnish all instructions, assistance and other information

relating to voting orally in the Keresan and Navajo languages, in violation of the Order. Cibola County neither admits nor denies the information set forth in the federal observer reports. The parties agree, however, that this constitutes good cause under paragraph 5, page 9, of the Order to permit the extension of the Order. The parties further agree that modifications in the Program are necessary to ensure full compliance with the relevant provisions of federal law in the future.

Accordingly, the parties stipulate to the following:

1. Defendants shall make all phases of the election process as accessible to the Native American populations at the Acoma, Laguna and Ramah reservations within Cibola County as they are to the remainder of the County's population. Accordingly, Cibola County shall continue to provide information, publicity, and assistance in the Keresan and Navajo languages in voter registration, voter registration cancellation, absentee voting, early voting, procedures at the polls including translation of the ballot, and training of polling officials and translators as outlined in the attached Program.

2. To assist in the effectiveness of this Stipulation and to ensure the continued enforcement of the voting guarantees of the Act and the Fourteenth and Fifteenth Amendments of the Constitution, Cibola County should remain designated for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42

U.S.C. 1973(a), which enables the appointment of federal observers. Cibola County recognizes the authority of federal observers to observe all aspects of the voting process conducted in the polls on election day, including assistance to voters in the voting booth provided that the voter does not object to being observed.

3. The parties agree that it shall not be necessary to extend the time that the County is required to seek preclearance of voting changes pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c).

4. The parties stipulate to changes in Cibola County's Program to simplify its provisions, decrease its burdens, and increase its efficacy. The revised version of the Program is attached to this Joint Stipulation.

5. Defendants acknowledge that permanent procedures need to be instituted in order to ensure ongoing compliance with Sections 2 and 203 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the Constitution. During 2004, defendant county commissioners shall enact into local law the revised Program for use in future elections in Cibola County.

6. This Stipulation shall remain in effect through December 31, 2006.

7. The Court shall retain jurisdiction to enter further relief or such other orders as may be necessary for the

effectuation of the terms of this Joint Stipulation and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the Constitution.

8. The amended Program attached to this Joint Stipulation supercedes the prior Program ordered by this Court.

Agreed and stipulated to on this 15th day of March, 2004.

For Plaintiff:
UNITED STATES OF AMERICA

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/s/ (filed electronically
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THE NATIVE AMERICAN ELECTION INFORMATION PROGRAMI. Native American Voting Rights Coordinators

A. Cibola County shall employ three Native American Voting Rights Coordinators ("Coordinator(s)") who will coordinate the Native American Election Information Program ("Program") in Cibola County. One of the Coordinators shall be bilingual in Navajo and English, and shall serve primarily the area of the Ramah Chapter of the Navajo Nation. Two of the Coordinators shall be bilingual in Keresan and English, and one shall serve primarily the area of the Acoma Pueblo, while the other shall serve primarily the area of the Laguna Pueblo.

B. In the event of a vacancy in a Coordinator position, the County shall invite officials of the appropriate Pueblo and/or Chapter to recommend at least four qualified applicants. The County may also solicit applicants through its normal job selection process and shall select the most qualified candidate, who otherwise satisfies any County employment requirements, from all available applicants.

C. The County shall train the Coordinators in all aspects of the election process. The Coordinators shall attend all election seminars held by the New Mexico Secretary of State and the Cibola County clerk. The Coordinators shall be fully briefed by County officials regarding the Coordinators' role in ensuring the County's compliance with Section 203 of the Voting Rights Act and the provisions of this Program.

D. The Coordinators shall oversee the Program generally and regularly attend meetings of their respective communities. The Coordinator for the Ramah Navajo Chapter shall attend Ramah Chapter and Chapter officials meetings. The Coordinator for the Acoma Pueblo shall attend tribal council and tribal officers meetings. The Coordinator for the Laguna Pueblo shall attend tribal council and village meetings. Each Coordinator shall attend all other such public meetings, gatherings, tribal fairs, and public functions held at their respective communities as his or her schedule shall permit. During these events, each Coordinator shall, as appropriate, (1) announce the date of the next scheduled election, the offices, if any, open for election, and any non-candidate provisions which shall appear on the ballot; (2) announce the availability of voter registration and the deadlines for registration; (3) provide an opportunity to register to vote by making voter registration applications available and offering language assistance in filling out the applications; (4) announce any scheduled training for election translators and invite the public to attend; and (5) conduct at least one voter registration drive prior to each election.

E. The Coordinator for the Ramah Navajo Chapter shall post the election schedule and all other election-related information at the Chapter House; the Coordinators for the Acoma Pueblo and the Laguna Pueblo shall post the election schedule and all other

election-related information at the relevant tribal office building. The Coordinators shall ensure that voter registration applications are available in plain view to interested individuals at each location.

F. Beginning sixty days before any election and continuing through election day, the Coordinators shall ensure that at least three announcements a day are made on the radio station KTDB, in the Navajo language, and radio station KUNM, in the Keresan language. These announcements shall contain information on (1) the date of the next election; (2) the offices and/or propositions on the ballot; (3) opportunities to register to vote and the deadline for registering before the election; (4) the availability of absentee balloting; (5) the availability of trained translators at the polls on election day; (6) the right of each voter to oral assistance in their native language from either the County's translators or a person of the voter's choice provided that person is not the voter's employer, an agent of that employer, or officer or agent of the voter's union (42 U.S.C. 1973aa-6); and 7) the name(s) and telephone number of the Coordinator(s) who can be contacted to receive more detailed information about the election. In addition, the Coordinators shall ensure that at least once a day during this period taped translations of the ballot made by either the New Mexico Office of the Secretary of State or the Coordinator are broadcast on

radio station KTDB, for the Navajo language, and radio station KUNM, for the Keresan language.

G. Before any election, the Coordinator for the Ramah Chapter shall organize and conduct translation training for all election workers who may provide Navajo language assistance at the Ramah Chapter polling place on election day ("translators"). The Coordinators for the Acoma and Laguna Pueblos shall similarly organize and conduct translation training for all election workers who may provide Keresan language assistance at the Acoma or Laguna Pueblo polling places on election day. The training shall include: 1) how to translate the entire ballot into the appropriate language, 2) practicing the translation of the ballot with each translator, and 3) correcting any errors in translation. The translation of the ballot by each translator shall be made according to the taped translations made by the Office of the New Mexico Secretary of State, if such tapes are available. If standardized translations by the Office of the Secretary of the State are not available prior to the training session conducted by the Coordinator, the Coordinator shall record a taped translation of the entire ballot, make the tape available to the translators, and train them in this translation at the training session. If the ballot contains offices or ballot proposition(s) specific to Cibola County for which the Office of the Secretary of State has not provided a Navajo or

Keresan language translation, the Coordinator shall record a taped translation of the offices and/or proposition(s), make the tape available to the translators and train them in this translation at the training session. Training sessions shall be held at convenient locations within the appropriate community, as permitted by tribal officials, and shall be open to the public.

H. The Coordinator shall be available as needed at the Ramah Chapter House, in the case of the Navajo Coordinator, and the appropriate tribal offices in the case of the Keresan Coordinators, to assist in voter registration or to answer election-related questions when not engaged in the other activities required under this Program.

I. The County shall establish a travel, supply, and telephone budget for the Coordinator sufficient to cover expenses incurred in carrying out the Coordinator's duties in fulfilling the objectives of this Program.

II. Intergovernmental Coordination

In administering the Program, Cibola County and its Coordinators shall:

A. Request and accept all training, materials, and services available from the State of New Mexico in furtherance of the implementation of this program. The Coordinators shall attend all election-related seminars or training sessions conducted by the New Mexico Office of the Secretary of State,

including the Coordinator and/or County Clerk meetings sponsored by the New Mexico Native American Election Information Program.

B. Encourage contact and collaboration with other counties engaged in similar language assistance programs.

C. Invite assistance of tribal officials and the Navajo Elections Administration and the All Indian Pueblo Council as needed to administer effectively the Program.

D. The parties recognize the separate powers and authority of the tribal governments, and nothing in this amended agreement limits or infringes tribal powers or authority. Accordingly, where this Agreement requires Cibola County to perform acts in consultation and cooperation with tribal governments, the County is obligated to undertake its obligations using all good faith efforts. The County shall not be required to perform such acts if a tribal government refuses the County's efforts. In the event of any such refusal, the County shall promptly, and prior to the date for performance of the act or event to be performed by the County, notify counsel for the United States of the refusal or noncooperation.

III. Satellite Election Offices

A. Within ten days of the effective date of this Agreement, the County shall contact tribal officials at the Acoma and Laguna Pueblos and the Ramah Chapter to discuss the possibility of

establishing Satellite Election Offices convenient to the populations of the respective communities.

B. Each Satellite Election Office shall serve as the principal place for office hours for the voting rights coordinators, as a distribution point for the dissemination of election-related information, and as a site for the performance of functions related to the election process that can be performed at the County courthouse, including, but not limited to, registering to vote or updating voter registration information, early voting, and the casting of absentee ballots.

C. Delivery of a voter registration application or performance of any other election-related task at a Satellite Election Office shall be effective in terms of all time deadlines and requirements as if the application had been delivered to, or the task performed at, the County courthouse.

D. A supply of all forms and materials necessary to complete these functions shall be maintained at each Satellite Election Office.

IV. Translations

A. The County shall ensure that taped versions of the Navajo and Keresan language translations of the statewide offices and ballot propositions to appear on the ballot provided by the Office of the New Mexico Secretary of State are delivered to the Coordinator as soon as they are available. Taped versions of the

translations and playback equipment shall be made available to the translators during their translation training and on election day at the Acoma, Laguna and Ramah polling places.

B. The County shall provide each Coordinator with tape recording and playback equipment and a sufficient supply of blank tapes for use in translator training.

C. During elections, translations of the ballot into Navajo and Keresan shall be provided according to the written and/or taped translations made by the Office of the New Mexico Secretary of State, to the extent such translations are available.

V. Election Day Procedures

A. The County shall assign at least one trained translator to the polling places at the Acoma and Laguna Pueblos and the Ramah Chapter for every voting machine.

B. Polling place translators shall orally advise voters of the availability of language assistance.

C. Any voter receiving language assistance from polling place translators shall be provided a full and complete translation of each office, the party (when appropriate) of each candidate, all ballot propositions, and relevant instructions on how to cast a ballot and the use of the voting machine (including, when appropriate, instructions on write-in votes), and shall be read all candidates' names for each office.

VI. Voter List Maintenance

At least 30 days before any registrants from the Ramah Chapter or the Acoma or Laguna Pueblos, are sent notice of the potential cancellation of their registration in accordance with Section 8(d)(2) of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg-6(d)(2), a list of the names of these registrants shall be provided to the appropriate Coordinator. If the Coordinator or tribal officials identify any registrant on the list within the thirty day period who remains eligible to vote in Cibola County, that registrant shall not be sent a notice of potential cancellation and shall be maintained on the list of eligible voters provided that the Coordinator or tribal officials provide the current registration address of the registrant. The Program does not otherwise prohibit the proper authorities from removing from the voter list those ineligible to vote by reason of a change of address, assuming that the requirements of the National Voter Registration Act of 1993, 42 U.S.C. 1973gg, et seq., are met.

VII. Records

For each election, the Coordinator shall record each activity that is performed in fulfillment of this Program on a copy of the Summary of Activities Form appended herein. Within 30 days after each election, the Coordinator shall submit the

completed form to the County Clerk and shall make copies available, upon request, to the United States.

VIII. Adjustments to the Program

Before making any adjustments in this Program, the County shall endeavor to safeguard future compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the Constitution, shall consult in good faith with tribal officials from the Acoma and Laguna Pueblos and the Ramah Chapter, and shall provide notice to counsel for the United States of any proposed changes.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

FILED by *[Signature]*
APR 8 1993
T. G. CHILLOUS
CLERK U.S. DIST. CT.
S.D. OF FLA.-MIAMI

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.	)	Case No. 93-0485
	)	CIV-HIGHSMITH
METROPOLITAN DADE COUNTY,	)	FAY
FLORIDA, et al.,	)	MARCUS
)	
Defendants.	)	(three-judge court)
)	
_____		CONSENT JUDGMENT AND DECREE

The United States initiated this action on March 11, 1993, pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act arising from Metropolitan Dade County's ("Dade County") publication and dissemination, in English only, of an informational pamphlet related to the March 16, 1993, special election of county commissioners. The United States sought a temporary restraining order requiring defendants to take steps in advance of the March 16 special election to disseminate in Spanish the information contained in the pamphlet, which the County had already distributed in English.

The claim under Section 203 of the Voting Rights Act ("Section 203") must be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C. 1973aa-2 and 28 U.S.C. 2284, and this panel was so designated on March 12, 1993.

As provided in 28 U.S.C. 2284(b)(3), plaintiff's application for a temporary restraining order was heard by a single judge on March 13, 1993. Following an evidentiary hearing, the Court (Highsmith, J.) issued an order that same day granting in part and denying in part plaintiff's application for a temporary restraining order. The Court ruled that Dade County's failure to publish the pamphlet in Spanish violates Section 203 of the Voting Rights Act and, while denying the entirety of the relief sought by the United States, ordered Dade County to take certain steps to remedy the irreparable harm to the County's Hispanic community caused by the violation.

The ruling by the single judge with respect to defendants' violation of Section 203 on plaintiff's application for a temporary restraining order leaves issues adjudicated which the parties desire be settled by appropriate order of this Court without the burden of further litigation. In consideration of the court's March 13 order, Dade County agrees in the future to comply with the requirements of Sections 2 and 203 of the Voting Rights Act. Accordingly, the parties hereby waive, for purposes of this Decree, further proceedings as to the claims asserted in this action, and agree that, contingent upon entry of a final order approving this Decree, defendants are not required to serve an Answer to the Complaint.

This Court has jurisdiction over the parties and the subject matter of this litigation. This Decree is final and binding between the parties and their successors in office regarding the

facts, claims, and issues raised in the Complaint and resolved herein.

In settlement of this matter, the parties stipulate as to the following facts:

A. Dade County's Coverage under Section 203 of the Voting Rights Act

1. According to the 1990 Census, the Hispanic voting age population in Dade County is 50.5 percent of the total County voting age population. 1990 Census data provides that the County contains 350,499 Hispanic citizens of voting age, of whom 330,493 (94 percent) speak the Spanish language. Of the Hispanic citizen voting age population, 152,886 (44 percent) were less than proficient in English, according to 1990 Census data.

2. Dade County has been subject to Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, since 1975 with respect to the Spanish language. That coverage was extended when new determinations were issued by the Census in 1984. In 1992, pursuant to the Voting Rights Language Assistance Act of 1992, the County's coverage under Section 203 with respect to the Spanish language was extended again based upon the determination by the Director of the Bureau of the Census that in Dade County the number of Hispanic voting age citizens who do not speak or understand English adequately enough to participate in the electoral process constitutes more than five percent of the citizens of voting age in the County and further determined that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. This most recent determination was

published in the Federal Register on September 18, 1992, and became effective upon publication.

3. Also in 1992, pursuant to the Voting Rights Language Assistance Act of 1992, the Director of the Bureau of the Census determined that Dade County is a political subdivision that contains all or part of an Indian reservation, wherein more than 5 percent of the American Indian citizens of voting age within the reservation are members of the Mikasuki language minority group who do not speak or understand English adequately enough to participate in the electoral process and further determined that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. Based on that determination, Dade County is also subject to Section 203 of the Voting Rights Act with respect to the Mikasuki language, which is an oral language. This determination was published in the Federal Register on September 18, 1992, and became effective upon publication.

4. Section 203 requires that all information that is provided by Dade County in English about voter "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," must be provided in the Spanish and Mikasuki languages to the extent that it is needed to allow language minority group members to be informed of and participate effectively in the electoral process and all voting-connected activities. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for

example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." Attorney General's minority language guidelines, 28 C.F.R. 55.15. Because the Mikasuki language is an historically unwritten language, defendants are required to furnish oral instructions, assistance and other information relating to registration and voting in the Mikasuki language. 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12(c).

B. The Claims in the Litigation

5. On March 16, 1993, Dade County conducted special elections for county commissioners. In commissioner districts where a candidate did not receive a majority of the vote, run-off elections will be held on April 20, 1993. The special elections are being held as a remedy for the federal district court's ruling that the prior at-large county commissioner method of election violated Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973, by diluting black and Hispanic voting strength. Meek v. Metropolitan Dade County, 805 F. Supp. 967 (S.D. Fla. 1992), aff'd, ___ F.2d ___ (11th Cir. Feb. 26, 1993).

6. In February 1993, Dade County "determined that it would benefit voters to print and disseminate a pamphlet explaining the changes in the new election system that resulted from the Meek decision." United States v. Metropolitan Dade County, No. 93-0485, slip op. at 2 (S.D. Fla. March 13, 1993) (order granting in

part, denying in part temporary restraining order) (hereafter Order of March 13). The Dade County Department of Communications produced a voter information pamphlet entitled "Metropolitan Dade County Special Election March 16, 1993," in only the English language and during the first week of March 1993, the County mailed the pamphlets to over 400,000 voter households in Dade County. The County determined that it would not publish and disseminate the pamphlet in Spanish, relying on its interpretation of Dade County Local Ordinance Sec. 2-11.18, which declares English to be the official language in the County and prohibits "the expenditure of county funds for the purpose of utilizing any language other than English . . . ," but which specifically exempts application of the ordinance "where a translation is mandated by state or federal law".

7. The United States alleges that the voter information pamphlet disseminated by the Dade County Department of Communications contains "voting notices . . . instructions . . . or other materials or information relating to the electoral process" as those terms are used in Section 203 and thus the County's dissemination of the pamphlet and the information therein only in English constitutes a violation of the requirements of Section 203.

8. In addition to the provisions of Section 203, the Complaint alleges that the dissemination of the voter informational pamphlet in English but not in Spanish violates Section 2 of the Voting Rights Act, which prohibits applying or

imposing any voting qualification or prerequisite to voting or standard, practice, or procedure which results in a denial or abridgement of the right of Hispanic citizens to vote. 42 U.S.C. 1973. The United States contends that defendants' dissemination of the informational pamphlet in English, but not in Spanish, to over 400,000 voter households in Dade County, implemented under the totality of circumstances described in the Complaint, affords Hispanic citizens, a large number of whom do not speak or understand English adequately enough to participate in the electoral process, less opportunity to participate in the political process and elect candidates of their choice than other members of the electorate, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

9. By way of relief, the United States requested that the Court issue a temporary restraining order requiring Dade County to: (1) immediately translate the information provided in the pamphlet into Spanish and distribute a sufficient number of copies to county offices, public libraries, post offices, and other public places, and to Hispanic community organizations; (2) have a sufficient number of copies of the Spanish-language version of the pamphlet available at all polling places on election day; (3) place advertisements of the Spanish-language version of the pamphlet in Spanish-language newspapers and English-language newspapers of general circulation to run on Sunday, Monday, and Tuesday, March 14, 15, and 16, 1993; and

(4) place advertisements or public service announcements on Spanish-language radio and television stations to run from the time the court issues the order until the polls have closed on election day, informing the voters of the contents of the pamphlet and where Spanish-language versions are available.

10. In its response to the United States' application, Dade County denied that the pamphlet was covered by Section 203 and argued that the County was prohibited by its local ordinance, Sec. 2-11.18, from publishing the pamphlet in Spanish. The County also stated it planned to publish a verbatim translation of the pamphlet in Spanish in El Nuevo Herald and El Diario Las Americas on Sunday, March 14, 1993. Dade County contended that it would not be able to comply with the entire request for relief of the United States prior to the March 16, 1993, election date.

C. The March 13, 1993 Temporary Restraining Order

11. On March 13, 1993, after hearing evidence which included live testimony, the Court granted in part and denied in part the relief requested by the United States. The Court held that "the pamphlet is covered under the plain language of Section 203 "as assistance or other materials or information relating to the electoral process." Order of March 13 at 6-7. Specifically, the Court found that "the pamphlet distributed by Dade County not only explains the changes in the election format, but it also informs voters when to register, when to vote, and where to vote in the election," and thus the County violated Section 203 by its failure to publish the pamphlet in Spanish. Id. at 7.

12. The Court also found that Dade County's failure to disseminate the pamphlet in Spanish will cause irreparable harm to the Hispanic community absent some measure of relief from the Court, although the "injury will not be severe, because of Dade County's plans to publish a Spanish-language version of the pamphlet on March 14 in Dade County's two largest local Spanish-language newspapers." Id. at 7-8.

13. Finally, the Court found that the harm to voters protected by the Voting Rights Act outweighed the harm to the County to comply with the relief ordered, and that the relief ordered was in the public interest, where the special elections were being conducted to remedy the long-standing vote dilution of Hispanics and blacks in Dade County. Id. at 8.

14. Pursuant to the March 13 order, Dade County was required to go forward with the planned publication of the Spanish-translation of the pamphlet in the Sunday, March 14, 1993, editions of El Nuevo Herald and El Diario Las Americas, and to make every attempt to extend the publications to the Monday, March 15, 1993, and Tuesday, March 16, 1993, editions of El Nuevo Herald, and the Monday-distribution edition of El Diario Las Americas. The Court further ordered Dade County to choose one of the following measures:

- (1) Print a Spanish-language version of the pamphlet and deliver sufficient copies of the translated pamphlet to every precinct in Dade County prior to the opening of the polls on Tuesday, March 16, 1993. Dade County shall

instruct the precinct clerk to display these pamphlets in a prominent place, with a sign that alerts voters of their availability; or (2) prepare posters, not less than three feet by five feet, containing an enlarged Spanish-language version of the pamphlet and deliver one poster to every precinct in Dade County prior to the opening of the polls on Tuesday, March 16, 1993. Dade County shall instruct the precinct clerk to place the poster in a prominent place.

Order of March 13 at 9.

The Court ruled that the remaining relief requested by the United States in its motion for temporary restraining order was not necessary and denied the temporary restraining order as to the further relief requested.

15. On March 16, 1993, Dade County filed a Notice of Compliance with the Court's Order with accompanying affidavits. The County's Notice states that: (1) the County delivered 500 copies of the verbatim Spanish translation of the pamphlet to each precinct during working hours on Monday, March 15, 1993; and (2) the County was able to extend the publication of the Spanish-language translation of the pamphlet in El Nuevo Herald and El Diario Las Americas for the additional days identified in the Court's order.

16. The actions listed in the March 16, 1993 Notice of Compliance and accompanying affidavits constitute Dade County's compliance with the Court's March 13, 1993 Order.

17. Dade County may provide additional election-related information to voters with respect to the April 20, 1993 run-off elections for county commissioners. In the event such information is provided, it will be provided to voters within the eight county commission districts in which run-off elections are scheduled. Such information will be provided in both the English and Spanish languages and, as necessary, in the Mikasuki language.

Accordingly, it is hereby **ORDERED, ADJUDGED AND DECREED** that:

1. The voter informational pamphlet entitled "Metropolitan Dade County Special Election March 16, 1993," produced and disseminated by Dade County, constitutes "assistance or other materials or information relating to the electoral process" within the meaning of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a. The dissemination of the pamphlet by Dade County in English and not in Spanish constitutes a violation of Section 203.

2. The defendants, their agents and successors in office, and all other persons acting in concert or participation with them, are hereby permanently enjoined to comply with the requirements of Sections 2 and 203 of the Voting Rights Act. Specifically, defendants are enjoined to provide all "voting notices, forms, instructions, assistance, or other materials relating to the electoral process, including ballots" whenever such information is provided in English, in the Spanish and

Mikasuki languages as required by Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a(c). Such materials shall include any voter information pamphlet of the type produced by Dade County prior to the March 16, 1993 special election, as well as all information disseminated at any stage of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." See Attorney General's minority language guidelines, 28 C.F.R. 55.15.

3. Dade County shall meet with representatives of the Miccosukee language minority group to determine what steps are necessary to ensure that election-related information is provided effectively in the Mikasuki language.

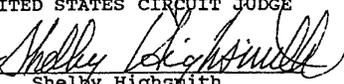
4. Nothing in Dade County Local Ordinance Section 2-11.18, shall preclude or impede defendants from providing voting-related information in the Spanish and Mikasuki languages as required by Section 203 of the Voting Rights Act.

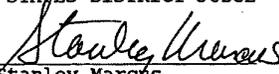
5. This Decree shall remain in effect through December 31, 1997, unless plaintiff moves the Court for good cause shown to extend this Decree. The motion shall be granted if the defendants have not substantially complied with the provisions of the Decree.

6. The Court shall retain jurisdiction of this case to enter further relief or other orders as may be necessary for the effectuation of the terms of this Decree and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a.

Entered this 8th day of April, 1993.


Peter T. Fay
UNITED STATES CIRCUIT JUDGE

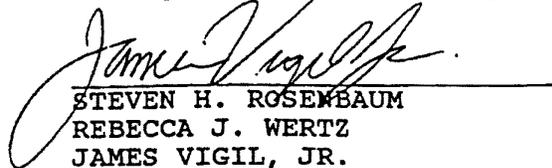

Shelby Highsmith
UNITED STATES DISTRICT JUDGE


Stanley Marcus
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

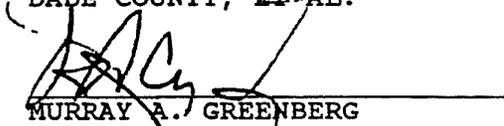
FOR THE PLAINTIFF
UNITED STATES OF AMERICA

JAMES P. TURNER
Acting Assistant Attorney General



STEVEN H. ROSENBAUM
REBECCA J. WERTZ
JAMES VIGIL, JR.
ELIZABETH JOHNSON
Attorneys, Voting Section
Civil Rights Division
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P.O. Box 66128
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FOR THE DEFENDANTS
DADE COUNTY, ET AL.



MURRAY A. GREENBERG
R.A. CUEVAS, JR.
Metro-Dade Center, Suite 2810
111 N.W. 1st Street
Miami, Florida 33128-1993
(305) 375-5151

MAGISTRATE JUDGE
JOHNSON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIV-HIGHSMITH

93-0485

UNITED STATES OF AMERICA,)
 Plaintiff,)
 v.)
 METROPOLITAN DADE COUNTY,)
 FLORIDA; METROPOLITAN DADE)
 COUNTY BOARD OF COUNTY)
 COMMISSIONERS; STEVEN P. CLARK,)
 Mayor of Metropolitan)
 Dade County; MARY COLLINS,)
 CHARLES DUSSEAU, JOSEPH GERSTEN,)
 LARRY HAWKINS, ALEXANDER)
 PENELAS, ARTHUR TEELE and)
 SHERMAN WINN, Members of the)
 Metropolitan Dade County Board)
 of County Commissioners;)
 DAVID LEAHY, Supervisor of)
 Elections for Metropolitan)
 Dade County; PAULA MUSTO,)
 Director of the Department of)
 Communications for Metropolitan)
 Dade County,)
 Defendants.)

CASE NO.
CIV-
MAGISTRATE JUDGE

FILED BY _____ B.C.
2003 MAR 11 PM 3:22
T. A. CHESTNUT
CLERK U.S. DISTRICT
COURT SOUTHERN DISTRICT
OF FLORIDA

COMPLAINT

The United States of America alleges:

1. The Attorney General files this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201.

2. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973j(f) and 42 U.S.C. 1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act requires that the

action be heard and determined by a court of three judges in accordance with the provisions of 28 U.S.C. 2284.

3. Defendant Metropolitan Dade County ("Dade County") is a political subdivision of the State of Florida and exists under the laws of that state. The Defendant Dade County Board of County Commissioners is the general governing and managing body of Dade County, an organized political subdivision of the State of Florida. The County Commissioners have statutory powers, duties and responsibilities with regard to the conduct of elections in Dade County.

4. Defendant Steven P. Clark is the elected county mayor. He resides in Dade County, Florida, and is sued in his official capacity. Defendants Mary Collins, Charles Dusseau, Joseph Gersten, Larry Hawkins, Alexander Penelas, Arthur Teele and Sherman Winn are duly elected members of the Dade County Board of County Commissioners and each is sued in his or her official capacity. Each of the members resides in Dade County, Florida.

5. Defendant David Leahy is Supervisor of Elections for Dade County and has statutory powers, duties and responsibilities with regard to the conduct of elections held in Dade County. He is a resident of Dade County, Florida, and is sued in his official capacity.

6. Defendant Paula Musto is Director of the Department of Communications for Dade County and has responsibility for the production and dissemination of public information, including certain election-related information, by Dade County.

7. According to the 1990 Census, Dade County had a total population of 1,937,094 persons, of whom 953,407 persons (49.2 percent) were Hispanic. The county voting age population was 1,469,084, of whom 741,846 persons (50.5 percent) were Hispanic. The county citizen voting age population is 987,346, of whom 350,499 (35 percent) are Hispanic.

8. The Metropolitan Dade County population contains a large number of Hispanic citizens of voting age who speak the Spanish language. According to the 1990 Census, of the 350,499 Hispanic citizens of voting age ("HCVAP"), 330,493 (94 percent) speak the Spanish language. A large percentage of Hispanic citizens of voting age are less than proficient in the English language. 1990 Census data reveal that 152,886 Hispanic citizens of voting age (44 percent of the HCVAP) speak English less than very well.

9. Dade County, Florida, first became subject to Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a ("Section 203"), in 1975 with respect to the Spanish language as a result of a determination issued by the Director of the Bureau of the Census. Such coverage continued when new determinations were issued by Census in 1984.

10. In 1992, pursuant to the Voting Rights Language Assistance Act of 1992, the Director of the Bureau of the Census determined that in Dade County the number of Hispanic voting age

citizens who do not speak or understand English adequately enough to participate in the electoral process constitutes more than five percent of the citizens of voting age within the county and further determined that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. Based upon that determination, Dade County is subject to Section 203 of the Voting Rights Act with respect to the Spanish language. This most recent determination was published in the Federal Register on September 18, 1992, and became effective upon publication.

11. In 1992, pursuant to the Voting Rights Language Assistance Act of 1992, the Director of the Bureau of the Census determined that Dade County is a political subdivision that contains all or part of an Indian reservation, wherein more than 5 percent of the American Indian citizens of voting age within the reservation are members of the Mikasuki language minority who do not speak or understand English adequately enough to participate in the electoral process and further determined that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. Based on that determination, Dade County is also subject to Section 203 of the Voting Rights Act with respect to the Mikasuki language, which is an oral language. This determination was published in the Federal Register on September 18, 1992, and became effective upon publication.

12. Section 203 requires that all information that is provided by Dade County in English about voter "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," must be provided in the covered languages to the extent that it is needed to allow these language minority group members to be informed of and participate effectively in the electoral process and all voting-connected activities. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." Attorney General's minority language guidelines, 28 C.F.R. 55.15.

13. On March 16, 1993, Dade County is holding special elections for county commissioners ("special elections"). The special elections are to elect county commissioners for thirteen single-member districts. In commissioner districts where a candidate does not receive a majority of the vote, run-off elections will be held on April 20, 1993.

14. The special elections are being held as a remedy for the federal district court's ruling that the prior at-large county commissioner method of election violated Section 2 of the

Voting Rights Act, as amended, 42 U.S.C. 1973, by diluting black and Hispanic voting strength. Meek v. Metropolitan Dade County, 805 F. Supp. 967 (S.D. Fla. 1992), aff'd, ___ F.2d ___ (11th Cir. Feb. 26, 1993).

15. The Dade County Department of Elections has produced certain election-related materials, including sample ballots, in both the English and Spanish languages for the special elections.

16. In advance of the special commissioner elections scheduled for March 16, 1993, the Dade County Department of Communications produced a voter informational pamphlet in only the English language and, during the first week of March 1993, the county mailed the pamphlets to over 350,000 voter households in Dade County. The pamphlet describes the new system of electing county commissioners in Dade County and provides answers to the following 12 questions about the special elections: (1) Why are there 13 districts instead of the previous nine member Board of County Commissioners?; (2) How many county commissioners will I be voting for?; (3) Will I be voting for a mayor?; (4) Didn't Dade County voters recently approve an executive mayor form of government?; (5) Will there be a runoff election after the March 16 vote?; (6) When will the new system take effect?; (7) How long will the terms of office be for the newly elected Board of County Commissioners?; (8) Have county commission elections been

permanently changed to March and April?; (9) Can I still register to vote for this special election?; (10) I'm registered as an independent. Will I be able to vote for a district commissioner?; (11) How do I know what county commission district I'm in?; and (12) Are there any other countywide issues on the March 16 special election ballot? A copy of the pamphlet is included as an attachment to this complaint.

17. Information contained in the pamphlet produced and mailed by the Department of Communications is not replicated by information otherwise provided by the Department of Elections in the Spanish language.

18. The informational pamphlet disseminated by the Dade County Department of Communications only in English contains "voting notices . . . instructions . . . or other materials or information relating to the electoral process" as those terms are used in Section 203. Thus, the county's dissemination of the pamphlet and the information therein only in English constitutes a violation of the requirements of Section 203.

19. In addition to the provisions of Section 203, the defendants also are prohibited by Section 2 of the Voting Rights Act from applying or imposing any voting qualification or prerequisite to voting or standard, practice, or procedure which results in a denial or abridgement of the right of Hispanic citizens to vote. 42 U.S.C. 1973.

20. Section 2(b) provides that a violation is established if based on the "totality of circumstances" the "political processes leading to nomination or to election are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. 1973.

21. The court in Meek v. Metropolitan Dade County, *supra*, found that political campaigns in Dade County have been characterized by overt and subtle appeals to racial and ethnic prejudice and that the effect of such racial appeals "is to reduce the opportunity of Hispanics to participate in the political process." 805 F. Supp. 967, 992.

22. The federal district court in De Grandy v. Wetherell, No. TCA 92-40015-WS, slip op. at 51-52 (N.D. Fla. July 17, 1992), found evidence of language-based discrimination against Dade County Hispanics, citing testimony that "[t]he fear of an anti-Spanish backlash has been reinforced by English only initiatives, at both the county and state level, which seem to be specifically aimed at Miami's Latin population."

23. Both the De Grandy court and the Meek court found that elections in Dade County were polarized along racial and ethnic

lines. See De Grandy v. Wetherell, *supra*, slip. op. at 47-51; Meek v. Metropolitan Dade County, *supra*, 805 F. Supp. 967, 989-991.

24. The defendants' dissemination of the informational pamphlet only in English to over 350,000 voter households in Dade County, implemented under the totality of circumstances described herein, affords Hispanic citizens, a large number of whom do not speak or understand English adequately enough to participate in the electoral process, less opportunity to participate in the political process and elect candidates of their choice than other members of the electorate, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

25. Unless enjoined by this Court, defendants will continue to provide election-related information within the meaning of Section 203 only in English in a manner which denies members of the Hispanic language minority group an opportunity to participate effectively and on an equal basis with other citizens in violation of Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973 and 1973aa-1a.

WHEREFORE, the plaintiff United States prays for temporary, preliminary and permanent relief in orders:

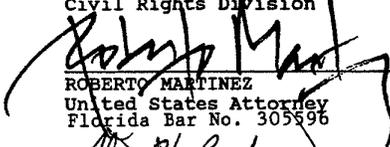
1. Declaring that the defendants have failed or refused to provide certain election-related information about the March 16, 1993 special election in the Spanish language as required by Section 203 of the Voting Rights Act, as amended, 1973aa-1a;
2. Declaring that the defendants' provision of certain election-related information only in English denies Hispanic citizens an opportunity equal to that enjoyed by other citizens to participate in the political process in violation of Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973;
3. Requiring the defendants immediately to devise and seek court approval of a plan to provide the indicated election-related information in Spanish in a timely and effective manner prior to the March 16, 1993 special elections; and
4. Requiring the defendants to implement the remedial plan promptly upon approval by this Court.

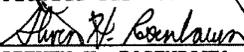
Plaintiff further prays that this Court order such other relief as the interests of justice requires along with the costs and disbursements in maintaining this action.

STUART M. GERSON
Acting Attorney General

By: 

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

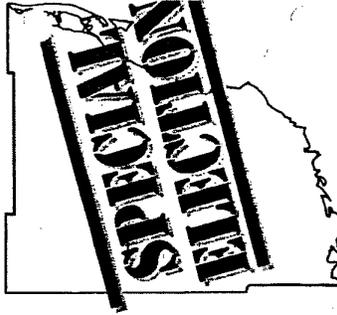

ROBERTO MARTINEZ
United States Attorney
Florida Bar No. 305596


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VERONICA HARREL-JAMES
Assistant U.S. Attorney
Florida Bar No. 644791
155 South Miami Avenue
Miami, Florida 33130
(305) 536-4238

METROPOLITAN DADE COUNTY



MARCH 16, 1993

BULK RATE
CAR-T-SORT
Miami, FL
U.S. POSTAGE PMD
Permit No. 877

XXXXXXXXXXXXXXXXXXXXGAP-RT-SORT** CR24
HARRELL - JAMES HOUSEHLD
306 NE 119TH ST
MIAMI FL 33161-6618

Metropolitan Dade County
Communications Department
111 N.W. 1st Street, Suite 2510
Miami, Florida 33128-1986

How To Fill Your District:
Look for your precinct number on your voter's registration card. Check the chart below to see what county commission district you live in. You will vote for one commission candidate from this district.

DISTRICTS BY PRECINCTS

DISTRICT 1	19	DISTRICT 8	627	DISTRICT 11	412-420
117	21-25	631, 632	441	441	
122	27-46	745-752	701-708	701-708	
128-131	48	805-812	732	732	
132-144	503	819-825	734-740	734-740	
145-152	524	830	744	744	
153-155	533	832	757	757	
161-162	541-543	833			
163-164	544-546	837			
165-166	547-549	839			
167-168	550-551	839			
169-170	552-553	902	201	201	304
171-172	554-555	908-918	309	309	
173-174	556-557	924-927	321	321	
175-176	558-559		322	322	
177-178	560-561		327	327	
179-180	562-563		347-350	347-350	
181-182	564-565		352, 353	352, 353	
183-184	566-567		354-355	354-355	
185-186	568-569		403-411	403-411	
187-188	570-571		442, 443	442, 443	
189-190	572				
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If you have any questions call the Dade County Elections Department at 375-4000.

Metro-Dade County provides no refund on postage and mail opportunity is

Metro-Dade County: A New System of Electing County Commissioners

The way Dade voters elect the Board of County Commissioners has been changed by Federal Court order. Commissioners will no longer be elected countywide. Each commission candidate will run in one of 13 districts and will be elected only by voters in that district.

For more than two decades, Metro-Dade County has had an at-large system of electing commissioners. Under the at-large system every voter could cast a ballot for each of the nine members of the board (a mayor and eight commissioners). All commissioners were elected by a countywide vote, although they were required to reside in a particular district.

On August 14, 1982 the U.S. District Court found that this at-large system violated Section 2 of the Voting Rights Act by diluting the voting power of Black and Hispanic voters. To remedy this violation the court approved a 13 single-member districting plan. A special election was ordered by the court. This special election will be held March 16. If a runoff election is required in any of the districts it will be held on April 20.

Why are there 13 districts instead of the previous nine members of County Commissioners?
The court instructed the Board of County Commissioners to devise a plan for electing commissioners by districts. The final proposal submitted, and approved by the court, calls for 13 district commissioners.

How many county commissioners will I be voting for?
Each voter will vote for one county commission candidate.

Will I be voting for a mayor?
No. The court eliminated the mayor's position. A chairperson may be selected by the Board of County Commissioners.

Didn't Dade County voters recently approve an executive mayor form of government?
Yes. Last year voters approved a change to the Dade County Charter for an executive mayor form of government to take effect in 1996. The court ruling on district elections does not affect this charter change.

Will there be a runoff election after the March 16 vote?
To be elected to the Board of County Commissioners, candidates must receive a majority vote (50% plus 1 vote) in districts where the majority is achieved in the March 16 election, the two top vote getters will face each other in a runoff on April 20.

When will the new system take effect?
The 13 member Board of County Commissioners will take office on April 20.

How long will the terms of office be for the newly elected Board of County Commissioners?
Terms for commissioners from odd number districts (Districts 1, 3, 5, 7, 9, 11, 13) will expire in 1996. Terms for commissioners from even number districts (Districts 2, 4, 6, 8, 10, 12) will expire in 1994.

Have county commission elections been permanently changed to March 16 and April?
No. These are special elections. Subsequent elections will be held on the State's first primary election in September, and any runoff elections will be held on the State's second primary election. In subsequent elections, commissioners will serve staggered four-year terms, with elections scheduled every two years.

Can I still register to vote for this special election?

To be eligible to vote in the March 16 special election, Dade citizens must have registered by 5 p.m. February 16. To be eligible to vote in the April 20 special runoff election, Dade citizens must register by 5 p.m. March 22. Call 375-4600 for registration site in your neighborhood.

I'm registered as an Independent. Will I be able to vote for a district commissioner?

Yes. The 13 commissioners will be chosen in a non-partisan election. No matter what your party affiliation, you will be able to vote for a county commission candidate.

How do I know what county commission district I'm in?

It depends on your precinct number. You can find your precinct number on your voter's registration card. Check the "Districts by Precincts Chart" in this brochure to find your county commission district. If you have any questions, call the Dade County Elections Department at 375-4600.

Are there any other countywide issues on March 16 special election ballot?

Yes. There are two proposed amendments to the Home Rule Charter. They are:

- An amendment requiring voter approval prior to development of county and some municipal parks.
- An amendment to create eight elected planning and zoning boards in unincorporated Dade County to decide zoning and land use which would be reviewed by the Board of County Commissioners and the County Commission make these decisions. Also, this amendment provides an alternative method for creating cities and modifying municipal boundaries.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 93-0485-CIV-HIGHSMITH

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DEFENDANTS' NOTICE OF
COMPLIANCE

METROPOLITAN DADE COUNTY,
FLORIDA, et al.,

Defendants.

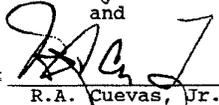
Pursuant to this Court's order granting in part and denying in part Plaintiff's Motion for a Temporary Restraining Order dated March 13, 1993, the Defendants file this Notice of Compliance which contains the affidavits of David Leahy, Dade County Supervisor of Elections, and Martha Pantin, Assistant Director of Dade County Department of Communications, showing that the Defendants have complied with the ruling of this Court.

Respectfully submitted,

ROBERT A. GINSBURG
Dade County Attorney
Metro-Dade Center
Suite 2810
111 N.W. 1st Street
Miami, FL 33128-1993
(305) 375-5439

By: 
Murray A. Greenberg
First Assistant County Attorney
Fla. Bar No. 111419

and

By: 
R.A. Cuevas, Jr.
Assistant County Attorney
Fla. Bar No. 122833

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Compliance was delivered by me this 6 day of March, 1993, to: STEVEN H. ROSENBAUM, ESQ., JAMES VIGIL, ESQ. AND ELIZABETH JOHNSON, ESQ., AND REBECCA J. WERTZ, ESQ., Attorneys, Voting Section, Civil Rights Division, Department of Justice, P.O. Box 66128, Washington, D.C. 20035-6128 and ROBERTO MARTINEZ, ESQ., United States Attorney, and VERONICA HARRELL-JAMES, ESQ., Assistant U.S. Attorney, 155 South Miami Avenue, Miami, FL. 33130.



First Assistant County Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 93-0485-CIV-HIGHSMITH

UNITED STATES OF AMERICA,

Plaintiff,

vs.

METROPOLITAN DADE COUNTY,
FLORIDA, et al.,

Defendants.

AFFIDAVIT OF DAVID LEAHY

STATE OF FLORIDA :
 : SS.
COUNTY OF DADE :

BEFORE ME the undersigned authority, personally
appeared DAVID LEAHY, Supervisor of Elections for Dade County,
and being duly sworn states on oath as follows:

1. I am of legal years.
2. I am the Supervisor of Elections of Metropolitan Dade
County and have held that position since 1981. Prior to that,
from 1977 to 1981 I served as Assistant Supervisor of Elections
of Dade County.
3. Pursuant to this Court's order of March 13, 1993, I
have taken the following actions:
 - (a) determined to the best of my ability the largest
potential voter turnout for the March 16, 1993, election to be
21% overall;
 - (b) determined to the best of my ability the largest
potential voter turnout for the March 16, 1993, election in the
most predominantly Hispanic precincts to be 30%;

(c) determined that the average number of registered voters per precinct is 1500 persons and that all 517 precincts are relatively uniform in size;

(d) concluded that to get the individual pamphlets distributed to each of the 517 precincts prior to the opening of the polls at 7:00 a.m., delivery had to be made during working hours on Monday, March 15, 1993; and

(e) determined in consultation with Martha Pantin, Assistant Director of the Dade County Department of Communications, that since the largest number of pamphlets that could be printed and packaged for delivery on Monday, March 15, 1993, was approximately 250,000, and that since the average precinct turnout is anticipated not to exceed 300 voters, and that since the largest number of registered voters in the most heavily Hispanic precincts is not anticipated to exceed 450 voters, to have delivered to the clerk of each precinct, 500 copies of the verbatim translation of the subject brochure.

FURTHER AFFIANT SAYETH NAUGHT.

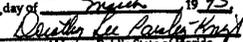


DAVID LEAHY

SWORN TO AND SUBSCRIBED before me
this 16 day of March, 1993.



Notary Public, State of Florida at Large
My Commission Expires:

Sworn to and subscribed before me this
16 day of March, 19 93


Signature of Notary Public, State of Florida
DOROTHY LEE PARSLEY-KNIGHT
Print, Type or Stamp Name of Notary Public
 Personally known to me, or
 Produced identification: _____
Type of identification

OFFICIAL NOTARY SEAL
DOROTHY LEE PARSLEY-KNIGHT
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC228785
MY COMMISSION EXP. OCT. 17, 1996

(b) In the issue of Diario Las Americas distributed March 15, 1993, but dated March 16, 1993, I have placed a verbatim translation in Spanish of the subject brochure.

(c) Having determined that the largest number of brochures which could be translated and packaged for timely delivery to the precincts was approximately 250,000 and having been advised by the Supervisor of Elections that that number would be sufficient in light of the highest anticipated voter turnout (see Affidavit of David Leahy attached to this Notice of Compliance), I took all steps necessary to obtain 250,000 copies in Spanish of the subject brochure. These translations were delivered in packages of 500 to each of the 517 precincts on Monday, March 15, 1993.

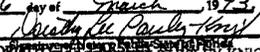
4. Additionally, as agreed to by the County prior to the entry of this Court's order, a verbatim translation in Spanish of the subject brochure appeared in the Sunday, March 14, 1993, editions of El Nuevo Herald and Diario Las Americas.

FURTHER AFFIANT SAYETH NAUGHT.


MARTHA PANTIN

SWORN TO AND SUBSCRIBED before me
this 16 day of March, 1993.


Notary Public, State of Florida at Large
My Commission Expires:

Sworn to and subscribed before me this
16 day of March, 1993.

DOROTHY LEE PARSLEY-KNIGHT
Print, Type or Stamp Name of Notary Public
 Personally known to me, or
 Produced identification: _____
Type of Identification

OFFICIAL NOTARY SEAL
DOROTHY LEE PARSLEY-KNIGHT
NOTARY PUBLIC STATE OF FLORIDA
COMMISSION NO. CC228745
MY COMMISSION EXP. OCT. 17, 1996

U.S. v. METROPOLITAN DADE COUNTY, FLA.

1475

Cite as 815 F.Supp. 1475 (S.D.Fla. 1993)

(2) The defendants' Motion for Summary Judgment is DENIED.

DONE AND ORDERED.



UNITED STATES of America, Plaintiff,

v.

METROPOLITAN DADE COUNTY,
FLORIDA, et al., Defendants.

No. 93-0485-CIV.

United States District Court,
S.D. Florida.

March 13, 1993.

United States brought action challenging county's publication of election pamphlet only in English. United States moved for temporary restraining order. The District Court, Highsmith, J., held that: (1) voter information pamphlet was "assistance or other materials or information relating to the electoral process" within meaning of statute requiring certain states or political subdivisions to provide assistance or other materials or information relating to the electoral process in language of applicable minority group, and (2) factors of irreparable injury, relative harm, and public interest supported temporary restraining order.

Motion granted in part and denied in part.

1. Injunction ⇐150

To obtain temporary restraining order, moving party must demonstrate that there is substantial likelihood of prevailing on merits, that moving party will suffer irreparable injury if injunction is not granted, that threatened injury outweighs threatened harm that proposed injunction may cause to opposing party, and that injunction would not be adverse to public interest.

2. Elections ⇐12(1)

Voter information pamphlet explaining changes in election format, registration and voting times, and voting places was "assistance or other materials or information relating to the electoral process" within meaning of statute requiring certain states or political subdivisions to provide assistance or other materials or information relating to the electoral process in language of applicable minority group. Voting Rights Act of 1965, §§ 203, 203(c), as amended, 42 U.S.C.A. §§ 1973 et seq., 1973aa-1a(c).

See publication Words and Phrases for other judicial constructions and definitions.

3. Counties ⇐38

County's failure to disseminate election pamphlet in Spanish would irreparably injure Hispanic community, thus supporting temporary restraining order requiring county to print Spanish version of pamphlet, even though county planned to publish Spanish version of pamphlet in county's two largest Spanish newspapers. Voting Rights Act of 1965, § 203, as amended, 42 U.S.C.A. § 1973aa-1a(c).

4. Counties ⇐38

Harm to voters protected by Voting Rights Act and public interest supported temporary restraining order requiring county to publish Spanish election pamphlet and to prepare posters with enlarged Spanish version of pamphlet; harm to voters outweighed harm to county from complying with order, and public interest was best served by seeing that all voters were fully informed about new system of election. Voting Rights Act of 1965, § 203, as amended, 42 U.S.C.A. § 1973aa-1a(c).

5. Elections ⇐12(9.1)

Where impending election is imminent and election machinery is already in progress, court may take into account equitable considerations when prescribing immediate relief under Voting Rights Act. Voting Rights Act of 1965, §§ 2, 203, 203(c), as amended, 42 U.S.C.A. §§ 1973, 1973 et seq., 1973aa-1a(c).

1476

815 FEDERAL SUPPLEMENT

6. Counties ⇐38

Postponing election for county commissioners was unnecessary as part of temporary restraining order for county's failure to publish Spanish version of election pamphlet; county planned to publish translated pamphlet in community's primary Spanish newspapers. Voting Rights Act of 1965, § 203, as amended, 42 U.S.C.A. § 1973aa-1a(c).

Stuart M. Gerson, Acting Atty. Gen., James P. Turner, Acting Asst. Atty. Gen., Steven H. Rosenbaum, Chief, Voting Sect., Civ. Rights Div., Rebecca J. Wertz, James Vigil, Elizabeth Johnson, Attorneys Voting Sect., Civ. Rights Div., Dept. of Justice, Washington, DC, Roberto Martinez, U.S. Atty., Veronica Harrell-James, Asst. U.S. Atty., Miami, FL, for plaintiff.

Robert A. Ginsburg, Dade County Atty., Murray A. Greenberg, First Asst. County Atty., R.A. Cuevas, Jr., Asst. County Atty., Miami, FL, for defendants.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER

HIGHSMITH, District Judge.

THIS CAUSE comes before the Court upon Plaintiff United States of America's ("United States") motion for a temporary restraining order, filed March 11, 1993.

BACKGROUND

Metropolitan Dade County ("Dade County") has scheduled special elections for county commissioners ("special elections") for March 16, 1993. These special elections are being held in response to a federal district court's ruling that Dade County's prior at-large county commissioner election system violated Section 2 of the Voting Rights Act, as amended, 42 U.S.C. § 1973, by diluting black and Hispanic voting strength. *Meek v. Metropolitan Dade County*, 805 F.Supp. 967 (S.D.Fla.1992), *aff'd*, 985 F.2d 1471 (11th Cir. 1993).

The special elections will result in the election of county commissioners for thirteen

single-member districts. In districts where a candidate does not receive a majority vote, run-off elections will be held on April 20, 1993. In February, 1993, Dade County determined that it would benefit voters to print and disseminate a pamphlet explaining the changes in the new election system that resulted from the *Meek* decision. After substantial research and consultation between Dade County's Election Department, Communications Department, and the Office of the County Attorney, Dade County reached the conclusion that it was prohibited from publishing and disseminating the proposed pamphlet in Spanish by Dade County Local Ordinance Sec. 2-11.18. Consequently, the Dade County Department of Communications only produced an English-language voter information pamphlet. This pamphlet was mailed to over 400,000 voter households during the first week of March, 1993.

The pamphlet describes the new system of electing county commissioners in Dade County and provides answers to the following twelve questions about the special elections:

- (a) Why are there 13 districts instead of the previous nine member Board of County Commissioners?;
- (b) How many county commissioners will I be voting for?;
- (c) Will I be voting for a mayor?;
- (d) Didn't Dade County voters recently approve an executive mayor form of government?;
- (e) Will there be a runoff election after the March 16 vote?;
- (f) When will the new system take effect?;
- (g) How long will the terms of office be for the newly elected Board of County Commissioners?;
- (h) Have county commission elections been permanently changed to March and April?;
- (i) Can I still register to vote for this special election?;
- (j) I'm registered as an independent. Will I be able to vote for a district commissioner?;
- (k) How do I know what county commission district I'm in?;

U.S. v. METROPOLITAN DADE COUNTY, FLA.

1477

Cite as 815 F.Supp. 1475 (S.D.Fla. 1993)

(1) Are there any other countywide issues on the March 16 special election ballot? The pamphlet provides brief answers to each of these questions, and it also provides a chart listing the precincts that fall under each new district.

On March 11, 1993, the United States filed a complaint challenging Dade County's publication of the pamphlet in English only and requested the entry of a temporary restraining order against Dade County. The United States contends that Dade County's failure to publish and distribute a Spanish-language voter information pamphlet is a violation of Section 203 of the Voting Rights Act of 1965, as amended. The United States has not asked the Court to enjoin the March 16th election. The United States, however, requests that the Court issue a temporary restraining order requiring Dade County and the other named defendants (collectively, "Dade County") to:

(1) translate, publish and distribute copies of the pamphlet to county offices, public libraries, post offices and Hispanic community organizations;

(2) have a sufficient number of copies of Spanish-language versions of the pamphlet available at all polling places on election day;

(3) place advertisements of the Spanish-language version of the pamphlet in Spanish-language newspapers and English-language newspapers of general circulation to run on Sunday, Monday and Tuesday, March 14, 15, and 16, 1993; and

(4) place advertisements or public service announcements on Spanish-language radio and television stations to run from the time the Court issues the order until the polls have closed on election day, informing the voters of the contents of the pamphlet and where Spanish-language versions are available.

In its response to the United States' Motion, Dade County states that it plans to publish a verbatim translation of the pamphlet in Spanish in *El Nuevo Herald* and *Diario Las Americas* on Sunday, March 14, 1993. These two Spanish-language newspapers have a combined local circulation of approximately 191,000 readers. On the same

date, Dade County is publishing a bilingual sample ballot in a variety of English and Spanish-language newspapers in Dade County. Dade County argues, however, that it will not be able to comply with the entire request of the United States prior to the March 16 election date.

On March 12, 1993, the undersigned District Judge requested the designation of a three-judge panel, pursuant to 28 U.S.C. § 2284(b)(1), for the ultimate adjudication of this case. Later that same day, United States Chief Circuit Judge Gerald B. Tjoflat convened a three-judge panel consisting of the undersigned District Judge, United States District Judge Stanley Marcus and United States Circuit Judge Peter T. Fay. The Court determined that the three-judge panel was not necessary for the disposition of the plaintiff's motion for a temporary restraining order. An evidentiary hearing was held by the undersigned District Judge on March 13, 1993.

STANDARD OF REVIEW

[1] To grant a temporary restraining order, the moving party must demonstrate that:

(1) there is a substantial likelihood that the moving party will prevail on the merits;

(2) the moving party will suffer irreparable injury if the injunction is not granted;

(3) the threatened injury to the moving party outweighs the threatened harm the proposed injunction may cause the opposing party; and

(4) the injunction, if issued, would not be adverse to the public interest.

Johnson v. U.S. Department of Agriculture, 734 F.2d 774, 781 (11th Cir.1984). See also *Levas and Levas v. Village of Antioch*, 684 F.2d 446, 448 (7th Cir.1982) (Noting that the standard of review for a temporary restraining order is the same as the standard of review for a preliminary injunction).

FINDINGS

A. Substantial Likelihood of Prevailing on the Merits

The purpose of the Voting Rights Act of 1965 was and is to "promote practical imple-

mentation of the Fifteenth Amendment, and to ensure that no citizen's right to vote is denied or abridged on account of race." *NAACP v. New York*, 413 U.S. 345, 93 S.Ct. 2591, 37 L.Ed.2d 648 (1973). In interpreting provisions of the Voting Rights Act, the Supreme Court has directed that it be given a broad construction. *Allen v. State Board of Elections*, 398 U.S. 544, 565, 89 S.Ct. 817, 831, 22 L.Ed.2d 1 (1969).

[2] Section 203 of the Voting Rights Act of 1965 provides that:

Whenever any State or political subdivision subject to the prohibition of subsection (b) of this section provides any registration or 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.

42 U.S.C.A. § 1973aa-1a(c) (West 1981 & Supp.1992) (emphasis added).

Dade County essentially contends that the pamphlet is not subject to Section 203 of the Voting Rights Act because the pamphlet is not a necessary procedural document issued prior to and during an election, such as a notice of polling places or a sample ballot. The Court concludes, however, that the pamphlet is covered under the plain language of Section 203 as "assistance or other materials or information relating to the electoral process." *Id.* Moreover, an administration interpretation of the pertinent language suggests that:

The quoted language should be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matter of elections, and the absentee voting process.

28 C.F.R. § 55.14 (1987). Although this interpretation is only suggestive, and not a mandatory interpretation, it is consistent

with the central purpose of Section 203 of the Voting Rights Act. In this instance, the pamphlet distributed by Dade County not only explains the changes in the election format, but it also informs voters when to register, when to vote, and where to vote in the election. Consequently, the Court finds, for the purposes of the United States' motion for temporary restraining order, that Dade County's failure to publish the pamphlet in Spanish violates Section 203 of the Voting Rights Act. Accordingly, the Court finds that the United States has demonstrated a substantial likelihood of prevailing on the merits.

B. Irreparable Injury

[3] Dade County's failure to disseminate the election pamphlet in Spanish will cause irreparable injury to the Hispanic community in Dade County. Such injury will not be severe, because of Dade County's plans to publish a Spanish-language version of the pamphlet on March 14 in Dade County's two largest local Spanish-language newspapers. Nevertheless, the Court finds that the United States has demonstrated that Dade County's Hispanic community will suffer irreparable harm absent some measure of relief from this Court.

C. Relative Harm

[4] The Court finds that the harm to the voters who are protected by the Voting Rights Act outweighs the harm that the County must bear in complying with the measures of relief that the Court will prescribe.

D. Public Interest

In Dade County, where the special elections are being held to remedy the longstanding vote dilution of Hispanics and blacks, the public interest is best served by seeing that all voters are fully informed about the new system of election. The Court finds, therefore, that the Court's Order is in the public interest.

DISCUSSION

[5,6] Where an impending election is imminent and the election machinery is already

U.S. v. \$68,580.00 IN U.S. CURRENCY

1479

Cite as 815 F.Supp. 1479 (M.D.Ga. 1993)

in progress, a Court may take into account equitable considerations when prescribing immediate relief. *Reynolds v. Sims*, 377 U.S. 533, 585, 84 S.Ct. 1362, 1393, 12 L.Ed.2d 506 (1964). Accordingly, the Court finds that drastic steps are neither required nor appropriate at this juncture. Specifically, the Court does not find it necessary to postpone the March 16th election. Moreover, the potential harm arising from the violation has been partially cured by Dade County's planned publication of the translated pamphlet in the community's primary Spanish-language newspapers—*El Nuevo Herald* and *Diario Las Americas*—presently scheduled for Sunday, March 14, 1993. These scheduled publications shall take place as planned. In addition, Dade County shall make every attempt to extend these publications to the Monday, March 15, 1993 and the Tuesday, March 16, 1993 editions of *El Nuevo Herald*, as well as the Monday-distribution edition of *El Diario Las Americas*.

Finally, Dade County shall elect one of the following steps:

(1) Print a Spanish-language version of the pamphlet and deliver sufficient copies of the translated pamphlet to every precinct in Dade County prior to the opening of the polls on Tuesday, March 16, 1993. Dade County shall instruct the precinct clerk to display these pamphlets in a prominent place, with a sign that alerts voters of their availability; or

(2) Prepare posters, not less than three feet by five feet, containing an enlarged Spanish-language version of the pamphlet and deliver one poster to every precinct in Dade County prior to the opening of the polls on Tuesday, March 16, 1993. Dade County shall instruct the precinct clerk to place the poster in a prominent place.

Because the Court finds that these measures are sufficient, the Court denies the other relief requested by the United States in its motion for temporary restraining order. All other relief sought in this action shall be addressed by the three-judge panel designated for the ultimate adjudication of this case.

CONCLUSION

Based on the foregoing considerations, the United States's motion for temporary re-

straining order is GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to the relief prescribed by this order, and the motion is DENIED as to the remaining relief sought by the United States.

DONE AND ORDERED.



UNITED STATES of America, Plaintiff,

v.

SIXTY-EIGHT THOUSAND FIVE HUNDRED EIGHTY DOLLARS (\$68,580.00) IN UNITED STATES CURRENCY, Defendant.

Civ. A. No. 91-168-3-MAC (WDO).

United States District Court,
M.D. Georgia,
Macon Division.

March 15, 1993.

Government brought action for forfeiture of currency taken from claimant's automobile. The District Court, Owens, Chief Judge, held that: (1) claimant had standing to contest forfeiture, and (2) United States did not have probable cause to seize currency.

Forfeiture denied.

1. Forfeitures €=5

To challenge forfeiture action, individual must first demonstrate interest in seized item sufficient to satisfy court of his standing as claimant. Comprehensive Drug Abuse Prevention and Control Act of 1970, § 511(a)(6), 21 U.S.C.A. § 881(a)(6).

2. Forfeitures €=5

To challenge forfeiture action, one must claim ownership or possessory interest in

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,)	
	)	Case No. <u>93-0485</u>
Plaintiff,	)	CIV-
)	
v.	)	Magistrate Judge <u>Johnson</u>
)	
METROPOLITAN DADE COUNTY,)	
FLORIDA, et al.,)	
)	
Defendants.)	
	)	PLAINTIFF'S APPLICATION FOR
	)	TEMPORARY RESTRAINING ORDER
_____)	

Plaintiff United States moves, pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a temporary restraining order requiring defendants to take steps in advance of the March 16, 1993, special election to disseminate information contained in a pamphlet already distributed by the county in English, in the Spanish language. Because the pamphlet, written in English, contained information relating to the electoral process, the county is required by Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa-1a, to provide the information in Spanish.

Specifically, the United States requests the Court to order the defendants to:

- (1) immediately translate the information provided in the pamphlet into Spanish and distribute a sufficient number of copies to county offices, public libraries, post offices, and other public

places, and to Hispanic community organizations;

(2) have a sufficient number of copies of the Spanish-language version of the pamphlet available at all polling places on election day;

(3) place advertisements of the Spanish-language version of the pamphlet in Spanish-language newspapers and English-language newspapers of general circulation to run on Sunday, Monday, and Tuesday, March 14, 15, and 16, 1993; and

(4) place advertisements or public service announcements on Spanish-language radio and television stations to run from the time the court issues the order until the polls have closed on election day, informing voters of the contents of the pamphlet and where Spanish-language versions are available.

Additionally, the United States requests that the defendants be enjoined to hereinafter provide all information relating to the electoral process, as required by the Voting Rights Act, in Spanish as well as in English.

The United States does not request the Court to enjoin the March 16, 1993, election. The United States is simply requesting that the county be ordered to fulfill its obligations under the Voting Rights Act to provide voting-related material in Spanish.

Pursuant to 42 U.S.C. 1973aa-2 and 28 U.S.C. 2284, a three-judge court is required to hear and determine this action. However, plaintiff requests, in accordance with 28 U.S.C. 2284(b)(3) that a single judge hear the application for a temporary restraining order due to the urgency of the situation. The United States has provided notice of this application for preliminary

relief to counsel for the defendants and has served defendants, through their counsel, with copies of this motion and supporting documents.

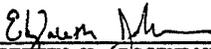
A proposed order and a memorandum in support of this Application for Temporary Restraining Order are attached.

WHEREFORE, this Application for Temporary Restraining Order should be granted.

Respectfully submitted,

ROBERT MARTINEZ
United States Attorney

JAMES P. TURNER
Acting Assistant Attorney General



STEVEN H. ROSENBAUM
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,)	
	)	Case No. <u>93-0485</u>
Plaintiff,	)	CIV-
)	
v.	)	Magistrate Judge <u>Johnson</u>
)	
METROPOLITAN DADE COUNTY,)	
FLORIDA, et al.,)	
	)	MEMORANDUM IN SUPPORT OF
Defendants.	)	PLAINTIFF'S APPLICATION FOR
	)	TEMPORARY RESTRAINING ORDER
)	

I. INTRODUCTION

The United States respectfully requests this Court to enter a temporary restraining order to remedy violations of Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa-1a (hereinafter "Section 203"), by Metropolitan Dade County, Florida.¹ Contrary to the dictates of Section 203, the county has disseminated a pamphlet related to the special election of county commissioners scheduled for March 16, 1993, in English only. See Pamphlet entitled "Metropolitan Dade County Special Election March

¹ The complaint alleges as an alternate basis for relief a claim under Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973. Section 2 also provides an alternate basis for granting the preliminary relief requested here. There is a substantial probability that plaintiff will succeed on the merits of its Section 2 claim. In this instance, Section 2 is violated because the county's failure and refusal to disseminate the information in Spanish, means that the substantial number of Spanish-speaking citizens with limited English proficiency, have less opportunity to participate in the political process than other members of the electorate and to elect candidates of their choice. See 42 U.S.C. 1973(b).

16, 1993," attached as Exhibit A. Because under Section 203 the county is required to provide all election-related materials in Spanish, including the pamphlet at issue, the county should be enjoined to immediately disseminate in Spanish, in an effective manner, the information contained in the pamphlet.

The United States is not asking the court to enjoin the March 16 election. What the United States is asking, however, is that the county be ordered to fulfill its obligations under Section 203 of the Voting Rights Act to disseminate in an effective manner all voting-related information, including the pamphlet at issue, in Spanish.

In accordance with the provisions of 42 U.S.C. 1973aa-2 and 28 U.S.C. 2284, a three-judge court is required for the ultimate adjudication of the complaint. However, due to the urgency of this matter, plaintiff requests a single judge to hear this application for a temporary restraining order as provided for in 28 U.S.C. 2284(b)(3).

The United States informed Dade County, through its counsel, of the Section 203 violation alleged herein, and good faith discussions to resolve this matter were unsuccessful. Because the parties have been unable to reach an agreement, the county has been notified of the plaintiff's intent to file an application for preliminary relief and plaintiff has hand-delivered copies of these papers to counsel for the defendants.

II. STATEMENT OF FACTS

According to the 1990 Census, Dade County had a total

population of 1,937,094 persons, of whom 953,407 (49 percent) were Hispanic. See 1990 Census of Population, General Population Characteristics, Florida, 189, attached as Exhibit B. The total voting age population for the county was 1,469,084 persons, of whom 741,846 (51 percent) were Hispanic. Id. The citizen voting age population for the county was 987,346 persons, of whom 350,499 (35 percent) were Hispanic. See 1990 Tabulations for Dade County, Florida, Bureau of the Census, attached as Exhibit C. Of the Hispanic citizen voting age population, 152,886 (44 percent) were less than proficient in English. Id.

Dade County first became subject to the provisions of Section 203 of the Voting Rights Act in 1975 with respect to the Spanish language, see 40 Fed. Reg. 41,827 (1975), and such coverage continued when new determinations were issued in 1984. See 49 Fed. Reg. 25,887-25,888 (1984). In 1992, pursuant to the Voting Rights Language Assistance Act of 1992, the county's coverage under Section 203 with respect to Spanish was extended once again. This determination was published in the Federal Register on September 18, 1992, and became effective upon publication. See 57 Fed. Reg. 43,213-43,214 (1992), attached as Exhibit D.

As a result of successful federal litigation challenging the method of election for the Dade County Commission under Section 2 of the Voting Rights Act, Meek v. Metropolitan Dade County, 805 F.Supp. 967 (S.D. Fla. 1992), aff'd in part, rev'd in part, ___ F.2d ___ (11th Cir. Feb. 26, 1993), the county is holding special elections on March 16, 1993. Elections will be held from single-

member districts for all thirteen of the county commission seats. Seven of the thirteen districts have Hispanic voting age population majorities and three have black voting age population majorities.

During the week of March 1, 1993, the Dade County Department of Communications mailed a pamphlet in only the English language entitled "Metropolitan Dade County Special Election March 16, 1993," to over 400,000 registered voters in the county. See "County pamphlets offer election data in English only," The Miami Herald, March 7, 1993, at 2B, attached as Exhibit E. The pamphlet describes the new system of electing county commissioners in Dade County and provides answers to the following 12 questions about the special elections: "(1) Why are there 13 districts instead of the previous nine member Board of County Commissioners?; (2) How many county commissioners will I be voting for?; (3) Will I be voting for a mayor?; (4) Didn't Dade County voters recently approve an executive mayor form of government?; (5) Will there be a runoff election after the March 16 vote?; (6) When will the new system take effect?; (7) How long will the terms of office be for the newly elected Board of County Commissioners?; (8) Have county commission elections been permanently changed to March and April?; (9) Can I still register to vote for this special election?; (10) I'm registered as an independent. Will I be able to vote for a district commissioner?; (11) How do I know what county commission district I'm in?; and (12) Are there any other countywide issues on the March 16 special election ballot?"

On March 8, 1993, the Department of Justice sent a letter by

facsimile to the Dade County Attorney informing the county that the pamphlet was covered by Section 203 of the Voting Rights Act. The Department urged the county to take immediate action to disseminate in Spanish, in an effective manner, the information contained in the pamphlet. A copy of the March 8, 1993, letter is attached as Exhibit F.

The county has since stated that it disagrees that the pamphlet is covered by Section 203 of the Voting Rights Act, and because it is not covered by federal law, the county's anti-bilingual ordinance prohibits the county from disseminating the pamphlet in any language other than English.²

III. ARGUMENT

Under the standards enunciated by the Eleventh Circuit, when ruling on a motion for preliminary relief, the trial court must

² Dade County Ordinance Section 2-11.18 provides, in pertinent part:

(a) English is hereby declared to be the official language of Dade County.

(b) The expenditure of county funds for the purpose of utilizing any language other than English, or promoting any culture other than that of the United States, is prohibited.
...

(e) The provisions of this section shall not apply where a translation is mandated by state or federal law.

Because the ordinance provides for an explicit exception when federal law requires a translation, constitutionality and supremacy clause questions are not at issue here. The issue is simply one of whether the pamphlet is covered by federal law, thus excepting it from the county ordinance's proscriptions.

examine four factors:

- (1) a substantial likelihood that plaintiff will prevail on the merits;
- (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted;
- (3) that the threatened injury to the plaintiff outweighs the threatened harm the injunction may do to defendant; and
- (4) that granting the preliminary injunction will not disserve the public interest.

Johnson v. U.S. Department of Agriculture, 734 F.2d 774, 781 (11th Cir. 1984); see Haitian Refugee Center, Inc. v. Nelson, 872 F.2d 1555, 1561-1562 (11th Cir. 1989), aff'd sub nom., McNary v. Haitian Refugee Center, Inc., 498 U.S. 479 (1991).

The United States' application for preliminary relief satisfies each of these elements.

A. There is a Substantial Probability that the United States Will Succeed on the Merits

In order to succeed on the merits, the United States must show that the pamphlet disseminated by Dade County is covered by the provisions of Section 203 of the Voting Rights Act, thus obligating the county to disseminate the information in the applicable languages. A straightforward application of the plain language of the statute demonstrates that the pamphlet contains election-related information within the meaning of Section 203.

In interpreting the provisions of the Voting Rights Act, the Supreme Court has directed that it be given a broad construction. "[T]he Act gives a broad interpretation of the right to vote, recognizing that voting includes 'all action necessary to make a vote effective.'" Allen v. State Board of Elections, 393 U.S. 544,

565-566 (1969)(citation omitted). Additionally, the Attorney General's construction of the Act is to be given considerable deference. See United States v. Sheffield Board of Commissioners, 435 U.S. 110, 131-132 (1978); but see, Delgado v. Smith, 861 F.2d 1489 (11th Cir. 1988), cert. denied, 492 U.S. 918 (1989).

Section 203 of the Voting Rights Act requires that whenever a political jurisdiction covered by the Act provides information in English about voter "registration or voting notices, forms instructions, assistance, or other materials or information relating to the electoral process, including ballots," it must provide the information in the applicable languages to the extent that it is needed to allow language minority group members to be informed of and participate effectively in the electoral process and all voting-connected activities. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for example the issuance at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." Attorney General's minority language guidelines, 28 C.F.R. 55.15, attached as Exhibit G.

The information contained in the pamphlet easily falls within the plain language of the statute. The pamphlet informs voters that a special election is to be held and why, what offices will be on the ballot, registration dates for that election, the dates of

the election, and which district a voter lives and votes in. Clearly, directions to a voter about when to register, and when and where to vote, are "voting notices ... instructions ... or other materials or information relating to the electoral process." 42 U.S.C. 1973aa-1a. Indeed, nothing could be more basic to ensuring an effective vote than to inform a voter when and where to vote. Thus, the county's dissemination of the pamphlet and the information therein in English only violates Section 203.

**B. Irreparable Injury Will Result From
the Clear Violation of Section 203**

In failing to disseminate the pamphlet in Spanish, the county has failed to effectively communicate with over 150,000 of its citizens in a manner required by the Voting Rights Act. The harm to these potential voters is obvious. The March 16, 1993, special election is being held as a remedy for the federal district court's ruling that the prior at-large county commissioner method of election violated Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973, by diluting black and Hispanic voting strength. Meek v. Metropolitan Dade County, supra. While the introduction of any new election system may have a tendency to create some confusion in the community, which the county sought to eliminate for English-speaking voters by the distribution of the English language pamphlet, Spanish-speaking voters are irreparably harmed by the county's refusal to provide the same information in Spanish. See Yvonne Soler Declaration at 2-3 (hereinafter "Soler Decl."); Wilfredo Blanco Declaration at 3 (hereinafter "Blanco Decl."); Lillian Lopez Declaration at 2 (hereinafter "Lopez Decl."). The

county's failure to distribute the pamphlets in Spanish has done little to alleviate the confusion in the Hispanic community, putting Hispanic citizens who do not speak English very well at a severe disadvantage. Blanco Decl. at 3. In the very elections that were aimed at offering Hispanics an equal opportunity to participate in the political process, the county's failure to provide critical election-related information in Spanish will unnecessarily impede that opportunity for many of the Hispanic citizens who do not speak English very well. See, e.g., Blanco Decl.; Lopez Decl.; Soler Decl.

C. Any Injury to Dade County that Would Ensur From the Requested Injunction is Far Out-weighed By the Harm to Voters and the Public Interest

Dade County would not suffer any cognizable harm by complying with Section 203 by disseminating voting-related information to Spanish-speaking members of its electorate. At most, the county will encounter some costs and administrative inconveniences in preparing and disseminating the information. Any such burdens, however, are far out-weighed by the national interest in protecting the right of minority citizens to vote, and by the individual interests of the members of the language minority group in having an equal opportunity for full and effective participation in the electoral process.

Moreover, Congress made the judgment in enacting the language minority provisions of the Voting Rights Act that political jurisdictions were to bear the costs of providing multi-lingual information to its citizens. See S. Rep. No. 315, 102d Cong., 2d

Sess. 15-16 (1992), attached as Exhibit H. Any extra financial burden Dade County must bear in disseminating the information in Spanish at this date is an inconvenience and expense that could have and should have been avoided had the county complied with the requirements of the Act initially.

D. The Public Interest Will Be Served By the Issuance of the Injunction

The public interest is a critical consideration in deciding whether the preliminary relief should be ordered. In enacting Section 203 of the Voting Rights Act, Congress sought to eliminate the barriers faced by the country's language minority citizens as a result of use of English only election procedures. When Congress first amended the Voting Rights Act in 1975 to add the minority language provisions, it found that:

voting discrimination against citizens of language minorities is pervasive and national in scope. Such minority citizens are from environments in which the dominant language is other than English. In addition they have been denied equal educational opportunities by State and local governments, resulting in severe disabilities and continuing illiteracy in the English language. The Congress further finds that, where State and local officials conduct elections only in English, language minority citizens are excluded from participating in the electoral process. In many areas of the country, this exclusion is aggravated by acts of physical, economic, and political intimidation.

42 U.S.C. 1973b(f)(1); see 42 U.S.C. 1973aa-1a(a).

Just last year, Congress reaffirmed and extended the protections of Section 203 to language minorities, including Spanish-speaking citizens in Dade County. The House Committee on the Judiciary, in its report on the amendments, found that:

The inability of members of language minority populations to comprehend the ballot and voting related information provided solely in English prevented and continues to prevent them from casting an effective vote...[T]he use of English, as the sole language throughout the electoral process, continues to be discriminatory and has a direct and invidious impact upon the ability of such populations to participate actively in the electoral process.

H.R. Rep. No. 655, 102d Cong., 2d Sess. 5 (1992).

Congress, in enacting the language minority provisions of the Voting Rights Act, recognized the strong public interest in ensuring access to the electoral process by all eligible citizens, including those who require language assistance. Granting the requested relief would protect and vindicate this national public interest, particularly since the defendants' violations of the Voting Rights Act are clear.

In Dade County in particular, where special elections are being held to remedy the long-standing vote dilution of Hispanics and blacks, the public interest would be best served in seeing that all voters are fully informed about the new system of election, particularly members of the minority groups for which the remedy was ordered.

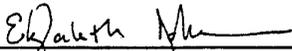
IV. CONCLUSION

For all the above reasons, the Court should issue a temporary restraining order enjoining the defendants to disseminate, in advance of the March 16, 1993, special election, in an effective

manner, the information in the pamphlet in Spanish to its Spanish-speaking citizens.

ROBERT MARTINEZ
United States Attorney

Respectfully submitted,
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Acting Assistant Attorney General


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(202) 514-6340

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	Case No. <u>93-0485</u>
	)	CIV-
v.)	
)	
METROPOLITAN DADE COUNTY,	)	Magistrate Judge <u>Johnson</u>
FLORIDA, et al.,)	
)	
Defendants.)	
_____)	

ORDER

Plaintiff United States' application for a temporary restraining order, having been heard by a single judge pursuant to 28 U.S.C. 2284(b)(3), and plaintiff having established entitlement to the requested relief, this Court specifically finds that irreparable harm caused by defendants' violations of Section 203 of the Voting Rights Act, as amended, 42 U.S.C. 1973aa-1a, will result if the requested relief is not granted.

IT IS HEREBY ORDERED:

(1) Defendants, their agents and successors in office, and all persons acting in concert with them are enjoined to disseminate forthwith, in Spanish, in advance of the March 16, 1993, special election, the information contained in the pamphlet "Metropolitan Dade County Special Election March 16, 1993," to members of the Spanish language minority group.

(2) Defendants shall disseminate the information in an

effective manner, including, but not limited to the following methods:

(a) immediately translate the information provided in the pamphlet into Spanish and distribute a sufficient number of copies to county offices, public libraries, post offices, and other public places, and to Hispanic community organizations;

(b) have a sufficient number of copies of the Spanish-language version of the pamphlet available at all polling places on election day;

(c) place advertisements of the Spanish-language version of the pamphlet in Spanish-language newspapers and English-language newspapers of general circulation to run on Sunday, Monday, and Tuesday, March 14, 15, and 16, 1993; and

(d) place advertisements or public service announcements on Spanish-language radio and television stations to run from the time the court issues the order until the polls have closed on election day, informing voters of the contents of the pamphlet and where Spanish-language versions are available.

This _____ day of March, 1993.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing pleadings were sent via facsimile this 11th day of March, 1993 to Robert A. Ginsburg, Esq. and Murray Greenberg, Esq., Dade County Attorney, Metro Dade Center, Suite 2810, 111 NW First Street, Miami, Florida, 33128. Counsel intends to hand-deliver on the morning of the following day, copies of the exhibits and declarations.


Rebecca J. Wertz
Attorney, Voting Section

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FILED

AUG 26 2005

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
ECTOR COUNTY, TEXAS;)
SHARON WILSON, the)
ELECTIONS ADMINISTRATOR, in)
her official capacity; the)
ECTOR COUNTY COMMISSIONERS)
COURT; and JERRY D. CADDEL,)
the COUNTY JUDGE, in his)
official capacity,)
)
Defendants.)

No.)
CLERK U.S. DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)
BY)
DEPUTY CLERK)

PROPOSED CONSENT DECREE,
JUDGMENT, and ORDER

M005CV131

The United States of America filed this action pursuant to Section 4(f) (4) of the Voting Rights Act of 1965 ("Section 4(f) (4)"), as amended, 42 U.S.C. § 1973b(f) (4); 42 U.S.C. § 1973j; and 28 U.S.C. § 2201, over violations of Section 4(f) (4) arising from Ector County's election practices and procedures as they affect Spanish-speaking citizens of the County.

Ector County is covered under Section 4(f) (4) to provide Spanish-language written materials and assistance to voters. See 42 U.S.C. § 1973b(f) (4). The State of Texas, including Ector County, has been subject to the requirements of Section 4(f) (4) since September 23, 1975. See 40 Fed. Reg. 43,745; see also 28 C.F.R. pt. 51, Appendix. Since 1992, the Department has sent Ector County and other covered jurisdictions information

regarding the bilingual election requirements of the Voting Rights Act.

According to the 2000 Census, Ector County had a total population of 121,123 persons, of whom 51,306 (42.4%) were Hispanic. The total citizen voting-age population was 77,460, of whom 24,840 (32.1%) were Hispanic. Finally, the number of Hispanic voting-age citizens who were limited-English proficient ("LEP") was 6,775.

Defendants have not complied with the requirements of Section 4(f)(4) for Spanish-speaking citizens residing in Ector County by failing to provide an adequate number of bilingual poll workers trained to assist Spanish-speaking voters on election day, and by failing to provide in an effective manner certain election-related information to Spanish-speaking voters.

To avoid protracted and costly litigation, the parties have agreed that this lawsuit should be resolved through the terms of this Consent Decree (the "Decree"). Accordingly, the United States and Defendants hereby consent to the entry of this Decree, as indicated by the signatures of counsel at the end of this document. The parties waive a hearing and entry of findings of fact and conclusions of law on all issues involved in this matter.

Defendants admit that they have not fully complied with all of the provisions of Section 4(f)(4); however, Defendants are committed to comply fully with all of such requirements in future elections. Defendants stipulate that each provision of this Consent Decree is appropriate and necessary.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants, their agents, employees, contractors, successors, and all other persons representing the interests of the Defendants are hereby PERMANENTLY ENJOINED from failing to provide in Spanish "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," that they provide in English, as required by Section 4(f)(4) of the Voting Rights Act. 42 U.S.C. § 1973b(f)(4). The terms of this Decree apply to all federal, state, and local elections administered by the County, including County-run elections for city, school district, and other political subdivisions of the County. Whenever Defendants enter into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, Defendants shall require such other entity to agree to abide by the terms of this Decree as if such entity were a party to this Decree

with the United States, and consistent with the responsibility of each such entity to comply fully with Section 4(f)(4).

Translation of Election-Related Materials

2. All information that is disseminated by Ector County in English about "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," 42 U.S.C. § 1973b(f)(4), shall also be provided in the Spanish language. Defendants shall ensure that both English and Spanish language election information, materials, and announcements provided by Ector County are made equally available.

Dissemination of Spanish-Language Information

3. Defendants shall ensure that Spanish-language election information, materials, and announcements are provided to the same extent as they are provided in English. Spanish-language information shall be distributed in newspapers, radio, and/or other media that exclusively or regularly publish or broadcast information in Spanish. These announcements need not be identical in all respect to English-language announcements, but shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information.

Spanish-Language Assistance

4. Spanish-language assistance shall be available at all locations where election-related transactions are conducted. Trained bilingual (Spanish/English) election personnel shall be available to answer voting-related questions by telephone without cost during normal business hours and while the polls are open on election days.

5. Defendants shall recruit, hire, and assign election officials able to understand and speak Spanish fluently to provide assistance to Spanish-speaking voters at the polls on election days. The County shall survey its employees to identify personnel who speak Spanish fluently and, to the extent such employees can be made available to provide assistance, allow and encourage such employees to serve at the polls on election day. As part of its obligation to ensure that entities on whose behalf the County conducts elections are fully compliant with Section 4(f)(4) in their elections, the County shall request that each entity for which it conducts elections perform similar surveys of its employees, and the County shall request each school district or other educational entity within the County to devise and implement an educational program that allows and encourages selected bilingual students (as permitted by state law and as part of an educational program devised by such district) to serve as poll officials on election day for

all County elections, including election days that fall on school days, with such students receiving academic credit appropriate to their service as well as all pay and benefits of poll officials. The County shall advise counsel for the United States of any entity that does not participate fully. The County shall also invite eligible members of the Advisory Group, discussed below, to serve as poll officials and to encourage other bilingual voters to do so.

6. In addition to the requirements of state law,

(a) any election precinct in which there are 100-249 registered voters with Spanish surnames shall be staffed by at least one bilingual election official;

(b) any election precinct in which there are 250-499 registered voters with Spanish surnames shall be staffed by at least two bilingual election officials;

(c) any election precinct in which there are 500 or more registered voters with Spanish surnames shall be staffed by at least three bilingual election officials; and

(d) Defendants shall employ bilingual personnel, trained in Spanish-language election terminology, who shall be on call and available to travel to an election precinct not staffed by a bilingual poll worker to provide any necessary assistance to any Spanish-speaking voter.

7. Signs in both English and Spanish shall be posted prominently at polling places stating that Spanish-language assistance is available. At sites without bilingual staff, signs in both English and Spanish shall be posted that explain how voters can obtain Spanish-language assistance.

Election official training

8. Prior to each election, in addition to any required state or county training, the County shall train all poll officials and other election personnel present at the polls regarding the following: The provisions of Section 4(f)(4) of the Voting Rights Act, including the legal obligation and means to make Spanish-language assistance and materials available to voters, and the requirement that poll officials be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities and to avoid inappropriate comments. In addition to the general training for poll officials, the County shall train all bilingual poll officials on Spanish-language election terminology, voting instructions, and other election-related issues. The County shall maintain a record of which poll officials attend training sessions, including the time, location, and training personnel involved.

Response to Complaints About Poll Workers

9. Defendants, upon receipt of complaints by voters, whether oral or written, shall investigate expeditiously any

allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. The results of the investigation(s) conducted by the Defendants shall be reported to the United States. Where there is credible evidence that poll workers have engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, Defendants shall remove the poll workers.

Program Coordinator

10. The County shall employ an individual to coordinate the County's bilingual election Program ("the Coordinator") for all elections within the County. The County shall provide that individual with support sufficient to meet the goals of the Program. The Coordinator shall be able to understand, speak, write, and read fluently both Spanish and English. The Coordinator's responsibilities shall include coordination of the translation of ballots and other election information; development and oversight of Spanish publicity programs, including selection of appropriate Spanish-language media for notices and announcements; training, recruitment and assessment of Spanish-language proficiency of bilingual poll officials and interpreters; and managing other aspects of the Program.

Advisory Group

11. The Coordinator shall establish and chair an Advisory Group to assist and inform the bilingual Program. The

Coordinator shall invite participation from all interested individuals and organizations that work with or serve the Spanish-speaking community in Ector County, to determine how most effectively to provide election materials, information, and assistance to Spanish-speaking voters and to fill any gaps in public awareness about the County's bilingual election program due to past failures to provide accessible election-related information to Spanish-speaking voters. The Group shall be open to all interested persons. The Coordinator shall provide notice of all planned meetings to each member, including the time, location, and agenda for the meeting, at least 14 days in advance, although members of the Advisory Group may agree to waive or shorten this time period as necessary. Within five working days following each meeting, the Coordinator shall provide a written summary to all members and to the County Elections Administrator of the discussion and any decisions reached at the meeting. If the County Elections Administrator decides not to implement an Advisory Group suggestion or a consensus cannot be reached respecting such suggestion, he or she shall provide to the group through the Coordinator and maintain on file a written statement of the reasons for rejecting such suggestion.

12. The County shall transmit to all interested members of the Advisory Group copies, in English and Spanish, of all

election information, announcements, and notices that are provided to the electorate and general public and request that they share with their members.

Federal Examiners and Observers

13. To monitor compliance with and ensure effectiveness of this Decree, and to protect the Fourteenth Amendment rights of the citizens of Ector County, the appointment of a federal examiner is authorized for Ector County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), as long as the Decree is in effect.

14. Defendants shall recognize the authority of federal observers to observe all aspects of voting conducted in the polls on election day, including the authority to view County personnel providing assistance to voters during voting, except where the voter objects.

Evaluation of plan

15. The parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient Spanish-language Program. Defendants shall evaluate the bilingual Program after each election to determine which aspects of the bilingual Program are functioning well; whether any aspects need improvement; and how to affect needed improvements. The Program may be adjusted at any time upon joint written agreement of the parties.

Retention of Documents and Reporting Requirements

16. During the duration of this Decree, the County shall make and maintain written records of all actions taken pursuant to this Decree and shall produce such records to the United States upon its request.

17. During the duration of this Decree, at least thirty (30) days before each County-administered election held in the County, Defendants shall provide to counsel for the United States, (a) the name, address, and precinct designation of each polling place; (b) the name and title of each poll official appointed and assigned to serve at each polling place, as of the date the materials are sent; (c) a designation of whether each poll official is bilingual in English and Spanish; and (d) an electronic copy of the voter registration list to be used in such elections. Within thirty (30) days after each election, Defendants shall provide to counsel for the United States any updated report regarding changes in items (a)-(c) above that occurred at the election, and provide information about all complaints the County received at the election regarding language or assistance issues.

Other Provisions

18. This Decree is final and binding between the parties and their successors in office regarding the claims raised in

this action. This Decree shall remain in effect through August 6, 2007, and the parties further stipulate that the Decree shall be extended through December 31, 2009, if Defendants remain under a continuing federal statutory obligation to provide minority language materials and assistance after August 6, 2007.

19. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Section 4(F)(4) of the Voting Rights Act.

20. Each party shall bear its own costs and fees.

Agreed to this 22nd day of August, 2005.

AGREED AND CONSENTED TO:

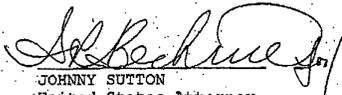
For Plaintiff:

ALBERTO R. GONZALES
Attorney General

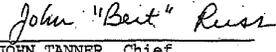

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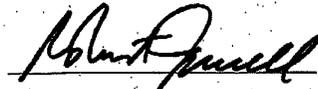

JERRY D. CADDE
Ector County
County Judge


JOHN TANNER, Chief
SUSANA LORENZO-GIGUERE, Special Litigation Counsel
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JUDGMENT AND ORDER

This Court, having considered the United States' claim under Section 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973b, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this 26 day of August, 2005.


UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
MIDLAND-ODESSA DIVISION

FILED

AUG 23 2005

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY *[Signature]*
DEPUTY CLERK

UNITED STATES OF AMERICA,)	
	)	No.
Plaintiff,)	
)	
v.	)	<u>COMPLAINT</u>
)	
ECTOR COUNTY, TEXAS;)	
SHARON WILSON, the)	
ELECTIONS ADMINISTRATOR, in)	
her official capacity; the)	
ECTOR COUNTY COMMISSIONERS)	
COURT; and JERRY D. CADDEL,)	
the COUNTY JUDGE, in his)	
official capacity,)	
)	
Defendants.)	

M005CV131

The United States of America, Plaintiff herein, alleges:

1. The Attorney General files this action pursuant to Section 4(f)(4) of the Voting Rights Act of 1965 ("Section 4 (f)(4)"), as amended, 42 U.S.C. § 1973b; 42 U.S.C. § 1973j; and 28 U.S.C. § 2201.
2. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973j. The events relevant to this action occurred in Ector County, which is located in the United States District Court for the Western District of Texas, Midland-Odessa Division.
3. Defendant ECTOR COUNTY is a political and geographical subdivision of the State of Texas.
4. Defendant SHARON WILSON is the Elections Administrator of Ector County. In her capacity as Elections Administrator,

Defendant Wilson has responsibilities concerning the administration of voting and elections in Ector County. Defendant Wilson is sued in her official capacity.

5. Defendant ECTOR COUNTY COMMISSIONERS COURT is the primary budgetary authority for the County and for the Elections Administrator of Ector County.

6. Defendant JERRY D. CADDEL is the County Judge of Ector County and has budgetary and administrative responsibilities in the County. Defendant Caddel is sued in his official capacity.

7. According to the 2000 Census, Ector County had a total population of 121,123 persons, of whom 51,306 (42.4%) were Hispanic persons; and a total citizen voting-age population of 77,460 persons, of whom 24,840 (32.1%) were Hispanic persons.

8. According to the 2000 Census, 6,775 Hispanic voting-age citizens in Ector County were limited English proficient.

9. Ector County, as a political subdivision of the State of Texas, is subject to the requirements of Section 4(f)(4) with respect to the Spanish language. See 42 U.S.C. 1973b; see also 40 Fed. Reg. 43,746 (Sept. 23, 1975); 28 C.F.R. § 55.5(b). The determination that Ector County is covered by Section 4(f)(4) for Spanish language is final and non-reviewable. See 42 U.S.C. § 1973b(a)(9)(b); 28 C.F.R. § 55.4(a)(1).

10. Ector County has been continuously covered under Section 4(f)(4) to provide bilingual elections in Spanish since

September 1975. See 40 Fed. Reg. 43,746 (Sept. 23, 1975). The Department has directly notified Ector County election officials regarding the bilingual election requirements of the Voting Rights Act.

11. Because Ector County is subject to the requirements of Section 4(f)(4), "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that Defendants provide in English must also be furnished in Spanish to Spanish-speaking voters. 42 U.S.C. § 1973b(f)(4).

CAUSE OF ACTION

12. Defendants have failed to provide effective election-related information and assistance in Spanish to Spanish-speaking voters as required by Section 4(f)(4) of the Voting Rights Act, by failing to recruit, appoint, train, and maintain an adequate pool of bilingual poll officials capable of providing Hispanic citizens with limited English proficiency necessary and effective language assistance on election day.

13. Defendants have also failed to provide certain election-related information, including but not limited to information publicizing elections, in a manner that assures Spanish-speaking voters an effective opportunity to be informed about election-related activities.

14. Defendants' failure to provide Spanish-speaking citizens of Ector County with Spanish-language election assistance and information, as described above, constitutes a violation of Section 4(f)(4).

15. Unless enjoined by this Court, Defendants will continue to violate Section 4(f)(4) by failing to provide Spanish-speaking citizens of Ector County with Spanish-language election assistance on election day necessary for their effective political participation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the United States of America prays that this Court enter an order:

- (1) Declaring that Defendants have failed to provide election assistance and information necessary to those who require it in Spanish for effective political participation, in violation of Section 4(f)(4) of the Voting Rights Act, 42 U.S.C. § 1973b(f)(4);
- (2) Enjoining Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing to provide Spanish-language election assistance and information to persons with limited English proficiency as required by Section 4(f)(4), 42 U.S.C. § 1973b(f)(4);

- (3) Requiring Defendants to devise and implement a remedial plan to ensure that Spanish-speaking citizens with limited English proficiency are able to understand, learn of, and participate in all phases of the electoral process as required by Section 4(f) (4) of the Voting Rights Act, 42 U.S.C. § 1973b(f) (4);
- (4) Requiring the Defendants to publicize effectively the remedial plans and programs addressing violations of Section 4(f) (4) of the Voting Rights Act to ensure their widespread dissemination to Ector County's minority language voters; and
- (5) Authorizing the appointment of federal examiners for elections held in Ector County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), as long as the Decree is in effect.

Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

Date: 22nd day of August, 2005

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Bradley J. Schlozman

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

COPY

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF LAWRENCE,)
 MASSACHUSETTS; PATRICIA)
 DOWLING, Mayor of)
 Lawrence; LAWRENCE BOARD OF)
 REGISTRARS OF VOTERS;)
 ROBERT HUTTON, Chairperson,)
 JAMES DRISCOLL, RONALD)
 MARTIN, members of the)
 Lawrence Board of)
 Registrars of Voters; and)
 JAMES MCGRAVEY, City Clerk)
 and member of the Lawrence)
 Board of Registrars of)
 Voters,)
)
 Defendants.)
)

CIVIL ACTION NO.)
 98 CV 12256WGY)
 JOINT MOTION FOR ENTRY)
 OF SETTLEMENT AGREEMENT)
 AND ORDER WITH RESPECT)
 TO PLAINTIFF'S FIRST,)
 SECOND, AND THIRD CAUSES)
 OF ACTION)

FILED IN CLERK'S)
 OFFICE)
 SEP 9 10 05 AM '99)
 U.S. DISTRICT COURT)
 THE DISTRICT OF)
 MASSACHUSETTS)

JOINT MOTION FOR ENTRY OF SETTLEMENT AGREEMENT AND
ORDER WITH RESPECT TO PLAINTIFF'S FIRST, SECOND, AND
THIRD CAUSES OF ACTION

The parties have reached agreement concerning plaintiff's first cause of action under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, and second and third causes of action under Section 2 of the Voting Rights Act, 42 U.S C. 1973. The terms of that

agreement are set forth in the Settlement Agreement and Order attached hereto as Exhibit A. Accordingly, the parties jointly move the three-judge court to enter the Judgment and Order granting the relief concerning the first cause of action and the single-judge court to enter the Judgment and Order granting the relief concerning the second and third causes of action. In light of the upcoming October 5, 1999 municipal primary election in the City of Lawrence, the parties request expedited consideration of this motion so that the terms of the settlement and order will be implemented before that election.

Respectfully submitted,

For Plaintiff:
UNITED STATES OF AMERICA

For Defendants:
CITY OF LAWRENCE, et al.

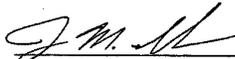
BILL LANN LEE
Acting Assistant
Attorney General

By their attorneys,
ROBINSON & COLE

DONALD K. STERN
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Room 306, City Hall
206 Common Street
Boston, Massachusetts 01846

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

THE UNITED STATES OF)	
AMERICA,)	
)	
Plaintiff,)	
	)	CIVIL ACTION NO.
v.)	
	)	98 CV 12256WGY
CITY OF LAWRENCE,)	
MASSACHUSETTS; PATRICIA)	
DOWLING, Mayor of)	
Lawrence; LAWRENCE BOARD OF)	
REGISTRARS OF VOTERS;)	
ROBERT HUTTON, Chairperson,)	
JAMES DRISCOLL, RONALD)	
MARTIN, members of the)	
Lawrence Board of)	
Registrars of Voters; and)	
JAMES MCGRAVEY, City Clerk)	
and member of the Lawrence)	
Board of Registrars of)	
Voters,)	
)	
Defendants.)	
_____)	

SETTLEMENT AGREEMENT AND ORDER

I. INTRODUCTION

The United States initiated this action pursuant to Sections 2, 11(a), 12(d), 203, and 204 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C.

and materials in Lawrence, and to make the election process equally accessible to Spanish-language minority voters.

A. Coordination

1. Lawrence shall meet with representatives of the Hispanic community, including representatives of each organization identified in the list appended hereto as Attachment A, and solicit their views on the implementation of all phases of the Program. The list of organizations identified on Attachment A shall not be exclusive but may be expanded to include new or additional organizations representing the Hispanic community in Lawrence. To assist in the effective dissemination of election information, Lawrence shall develop an Outreach and Publicity Plan (hereinafter "Publicity Plan") by January 31, 2000 which shall incorporate procedures for the dissemination of translated election-related information and materials, including registration information, and information explaining the necessity of filling out and returning the annual street listing form ("annual census form")

1973aa-1a, 42 U.S.C. 1973aa-2, and 28 U.S.C. 2201. The United States alleges five independent claims based on violations of the Voting Rights Act: (1) that defendants' alleged failure to provide registration or voting notices, forms, instructions, assistance or other materials or information, including ballots, in the Spanish language violates Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a; (2) that defendants' alleged failure to appoint and assign Hispanic persons on the same basis as whites to serve as pollworkers violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973; (3) that defendants' alleged ineffective oral and written bilingual assistance and discriminatory pollworker appointment and assignment practices and procedures violate Section 2 of the Voting Rights Act, 42 U.S.C. 1973, by denying Spanish-language minority citizens with limited-English proficiency an equal opportunity to participate in the electoral process; (4) that the method of electing the

Lawrence City Council dilutes the voting strength of Hispanic citizens, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and (5) that the method of electing the Lawrence School Committee dilutes the voting strength of Hispanic citizens, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

The parties have conferred in good faith and agree that plaintiff's First, Second, and Third Causes of Action, based on Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, and Section 2 of the Voting Rights Act, 42 U.S.C. 1973, as described in (1) - (3) above, should be settled without the need for trial. Accordingly, the parties have agreed to entry of this Settlement Agreement and Order as an appropriate resolution of these three claims.

The claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, must be heard and determined by a court of three judges pursuant to 42 U.S.C.

1973aa-2 and 28 U.S.C. 2284. The second and third claims under Section 2 of the Voting Rights Act, 42 U.S.C. 1973, require a determination by a single-judge court. Accordingly, the provisions of this Settlement Agreement and Order which address plaintiff's claim under Section 203 of the Voting Rights Act are submitted for entry by the three-judge court. The provisions of this Settlement Agreement and Order which address plaintiff's second and third claims under Section 2 of the Voting Rights Act, are submitted for entry by the single-judge court.

The parties acknowledge and agree that this Settlement Agreement and Order is not intended to be, and shall not be construed or represented to be, evidence of or an admission of liability on the part of any of the defendants on any claim in this case. This Settlement Agreement and Order is understood as an amicable resolution of genuinely disputed claims, and defendants categorically deny the claims asserted by the United States. It is further understood and agreed

between the parties that the provisions of this Settlement Agreement and Order are not intended to be and shall not be construed or represented to be evidence of or an admission that the defendants presently or in the past have failed to provide the registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process required by Section 203 and/or Section 2 of the Voting Rights Act.

In settlement of plaintiff's first, second, and third claims, the parties stipulate as follows: Lawrence has been subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, since 1984 with respect to the Spanish language. The city's coverage was based on a determination by the Director of the Census that more than 5 percent of Lawrence's voting age citizens are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate in the English-language election process, and the illiteracy rate of these persons as a group is

higher than the national illiteracy rate. This determination was published in the Federal Register on June 25, 1984. The city's coverage under Section 203 continued when the Census issued new determinations in 1992.

This Court has jurisdiction over the parties and the subject matter of this litigation. Entry of this order shall be final and binding on all of the parties and their successors as to all claims and issues raised by plaintiff's First, Second, and Third Causes of Action and resolved herein. This Settlement Agreement and Order is not intended to place any limitation on the evidence to be presented by the parties at trial with respect to plaintiff's Fourth and Fifth Causes of Action which challenge the systems of electing the Lawrence City Council and the Lawrence School Committee under Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

The Court shall retain jurisdiction of this case consistent with the time frame established in this

paragraph to enter further relief or such other orders as may be necessary for the effectuation of the purposes of this Settlement Agreement and Order and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a. In light of the complexity of the issues involved and the evolving nature of the Program and other procedures outlined below, this Settlement Agreement and Order shall remain in effect through December 31, 2003, unless plaintiff or defendants move the Court, for good cause shown, to extend or shorten this Order. The parties shall meet and confer subsequent to the November 2001 city general elections to determine whether an earlier termination is warranted.

ACCORDINGLY, it is hereby ORDERED, ADJUDGED, and DECREED that AS TO PLAINTIFF'S FIRST CAUSE OF ACTION UNDER SECTION 203 OF THE VOTING RIGHTS ACT, 42 U.S.C. 1973aa-6, AND PLAINTIFF'S SECOND AND THIRD CAUSES OF

ACTION UNDER SECTION 2 OF THE VOTING RIGHTS ACT, 42**U.S.C. 1973:**

1. It is the intent of the City of Lawrence ("Lawrence") to provide to Spanish-language minority citizens full and complete information about all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process[,]" 28 C.F.R. 55.15, and that all information that is generated by Lawrence in English about "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" 42 U.S.C. 1973aa-1a(c) shall also be provided in the Spanish language. It is also the intent of the City of Lawrence to ensure that all Spanish-language election-related information, materials, and announcements provided by the Commonwealth of Massachusetts are made available

and provided to the public in the same manner as English-language State election-related information, materials, and announcements, as provided in Section D, paragraphs 1 and 2, *infra*. It is the further intent of Lawrence to assure that its Hispanic citizens, including its Spanish-language minority citizens, not "have less opportunity than other members of the electorate to participate in the political process," and that the entire election process is equally accessible to Hispanic citizens, 42 U.S.C. 1973. The procedures set forth herein are intended to achieve these goals. This agreement represents the commitment of the parties to provide equal voting rights to all citizens of Lawrence, and Lawrence intends fully and faithfully to implement these procedures.

II. THE SPANISH LANGUAGE ELECTION INFORMATION PROGRAM

Lawrence has adopted the following Spanish Language Election Information Program (hereinafter "Program"). The purpose of the Program is to ensure the dissemination of bilingual election-related information

to identified Spanish-language media, as defined in Paragraph E.2. below, community groups, and any other appropriate sources utilized by the Hispanic community for dissemination of information. Representatives of the Hispanic community, the Coordinator referred to in Paragraph B. below, and other interested persons, shall participate in the development of the Publicity Plan. The Publicity Plan shall provide that representatives of the Hispanic community have an opportunity to comment on both the translations of election information and the selection of polling places. The Publicity Plan shall also include a schedule for regular meetings between Lawrence, the Coordinator, and representatives of the Hispanic community to assess the effectiveness of the Program. Lawrence shall record on audio tape or keep a written record of all comments made at regularly scheduled meetings regarding the Program, selection of polling places, and Lawrence's responses to the comments.

2. For the purposes of the 1999 municipal elections only, the following measures shall constitute

compliance with the requirement to implement a
Publicity Plan: (1) the city shall disseminate notice
of the availability of bilingual materials and
assistance and the presence of bilingual election
officials at each precinct to the Spanish-language
media, as defined in paragraph E.2. below, and the
community election liaisons, as defined in paragraph
C.1. below, and (2) the city shall recruit bilingual
election officials by providing notices to the Spanish-
language media and community election liaisons, in
addition to any other recruitment methods the city
utilizes.

B. Coordinator

1. Lawrence shall assign an employée to act as the
Coordinator for the Program. The Coordinator shall be
bilingual at least in English and in Spanish.

2. The Coordinator shall be trained in all aspects
of the election process by the Lawrence City Clerk and
Board of Registrars. Lawrence will also make good
faith efforts to have the Secretary of State provide
the Coordinator with appropriate training. Thé

Coordinator shall be provided all election information and attend appropriate election meetings conducted by the Secretary of State and by the Lawrence City Clerk and the Board of Registrars. The Coordinator shall be hired by the Mayor of the City of Lawrence.

2. Immediately upon the Coordinator's hiring, the Coordinator shall be fully briefed by the Lawrence City Clerk concerning the Coordinator's duties and responsibilities under the Program and shall be fully trained as soon as possible. In addition to coordinating the Program, the Coordinator shall attempt to attend, on a regular basis, meetings of the Hispanic communities within Lawrence.

3. Within 30 days after each state and/or municipal primary, general, school, and special election, Lawrence and the Coordinator shall prepare a written report, to be filed with the City Clerk, made available to the public by the City Clerk, and provided to counsel for the United States and each community election liaison as designated in Section II.C. below, detailing Lawrence and the Coordinator's election-

related activities in coordinating the provisions of the Program. The report shall include information on Hispanic voter registration as determined by the 1980 Census Spanish Surname List, Technical Documentation and computer matching program. The United States shall assist Lawrence in generating the numbers necessary to determine Spanish-surnamed voter registration. The report shall also include an assessment of the effectiveness of each phase of the Program and recommendations, if any, of the steps to be taken, if any, to improve Hispanic electoral participation.

4. The Coordinator shall participate in the training and recruitment of election officials and other election-related personnel, which may include interpreters.

C. Community Election Liaisons

1. Lawrence shall invite each organization listed in Attachment A to identify at least one individual, bilingual in English and Spanish, to serve as community election liaisons between the city and the Hispanic

community. All such liaisons shall be residents of Lawrence.

2. City election officials shall inform each liaison about all aspects of the election process, including the schedule of elections, election-related deadlines, absentee voting, the voter registration processes, procedures for responding to and returning annual street listing forms, candidate qualification requirements and procedures, election day activities, and the availability of information regarding ballot measures.

3. To assist in the selection of polling places, Lawrence shall meet with the community election liaisons, and shall provide them with a reasonable opportunity to review and comment on the location of polling places.

D. Translations

1. The election-related information, materials and announcements, identified in Attachment B annexed hereto, shall be fully translated into the Spanish language by Lawrence. Consistent with Section A. above

and the Publicity Plan, Lawrence and the Coordinator shall ensure that a representative of the election liaisons, as chosen by the liaisons, has an opportunity to comment on the translations of election-related information, materials, and announcements. The translation of election materials and information by Lawrence shall begin as soon as the English text for an item is known, and translation and review of any election-related material shall be completed promptly and dissemination thereof shall be consistent with the Publicity Plan. It is understood that the Secretary of State has the responsibility for translating the election-related information, materials and announcements identified in Attachment C annexed hereto. Lawrence will ensure that all Spanish-language election-related information, materials and announcements identified in Attachment C are made available and provided to the public in the same manner as English-language State election-related information, materials and announcements are made available and provided to the public. Lawrence shall not be required

to purchase new voting machines to comply with this provision, but shall, in the event of any change to a new voting system or device, ensure that a fully translated bilingual Spanish-English ballot be accommodated.

2. The translations of election information, materials, and announcements should be made available and be provided to the public at the same time the English text is provided to the public.

E. Dissemination of Translated Materials and Provision of Bilingual Assistance

1. All registered voters shall receive election-related information and materials which are sent out by Lawrence in English and Spanish.

2. Language assistance and all bilingual materials, including ballots, shall be provided on election day in each precinct. At least four weeks prior to each election, Lawrence shall prepare and make available to WCCM (800 AM), WHAV (1490 AM), and WNNW (1110 AM) and other local Spanish-language media outlets (hereinafter referred to as "Spanish-language

media") identified by the Coordinator and community election liaisons, a notice of the availability of bilingual assistance and materials and the presence of bilingual election officials at each precinct.

F. Voter Registration and Annual Census

1. Lawrence shall notify the organizations identified in Attachment A of the availability of voter registration forms and materials, and shall provide such forms and materials to such organizations upon request, in conformity with the Commonwealth of Massachusetts Secretary of State's policies regarding availability of such forms and materials.

2. The Coordinator shall provide notice concerning the availability of voter registration forms and materials to the Hispanic community through the Spanish-language media.

3. The Coordinator, consistent with the Publicity Plan, shall work with the community election liaisons, and other interested parties responsible for organizing registration drives, to ensure that voter registration applications are promptly submitted to Lawrence.

Lawrence shall timely process all voter registration applications so that qualified voters are added to the voter registration list in time to vote in the earliest possible election.

4. The Coordinator, consistent with the Publicity Plan, shall work with the community election liaisons and other interested parties, to ensure that Spanish-language minority registrants are provided information concerning: (1) absentee voting processes and requirements; (2) polling place locations; and (3) annual census form procedures and deadlines, including the necessity of filling out and returning in a timely manner the annual census form, in order to avoid removal of the names of qualified, registered voters from the active voter list.

G. Absentee Voting

1. Lawrence shall notify, through the community election liaisons, the organizations identified in Attachment A of the availability of applications for absentee ballots and provide such applications to anyone upon request.

2. The Coordinator shall provide notice concerning the availability of absentee balloting options to the community election liaisons and the Spanish-language media.

H. Recruitment, Assignment, and Training of Election Officials

1. Election officials assigned to each precinct in Lawrence shall include persons who are bilingual in Spanish and in English. In the following precincts, at least 4 election officials shall be bilingual in English and Spanish: A-1, A-2, A-4, B-1, B-2, B-3, B-4, C-1, C-2, C-3, C-4, D-1, D-3, D-4, E-4, F-2, F-3, and F-4. In the remaining precincts, there shall be at least 1 bilingual election official. At all times during the election day, in all precincts, there shall be present at least 1 election official who is bilingual in Spanish and English. In the event that precincts are realigned in Lawrence, the parties shall meet and confer to determine which precincts are required to have at least 4 bilingual election officials.

2. In order to resolve plaintiff's second cause of action herein, brought pursuant to Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and to make the electoral process equally accessible to Hispanic citizens, Lawrence shall recruit and retain for appointment and assignment a number of Hispanic election officials for each precinct that reasonably corresponds to the percentage of Hispanic registered voters for that precinct. Compliance with Paragraph H.1. set forth above shall be deemed as sufficient to satisfy the number of Hispanic, bilingual election officials to be appointed and retained. Lawrence shall assign individuals to election official positions of responsibility, such as warden and deputy warden, in a racially nondiscriminatory manner such that Hispanic poll officials have an equal opportunity to serve in positions of greater responsibility as those positions become available.

3. Lawrence shall recruit and retain qualified bilingual individuals to work at the polls by utilizing a broad range of sources, consistent with the Publicity Plan, which may include recommendations of the political parties made pursuant to Mass. Gen. Laws ch. 54, Sec. 11B, providing notices to the Spanish-language media, schools, churches, senior citizen centers and voting age residents in connection with registration activities.

4. All election officials and all other election-related personnel shall receive instructions on Lawrence's provision of bilingual assistance and bilingual materials as provided for in this Program. All election officials and all other election-related personnel shall also receive instructions on the provision of assistance to voters who require assistance by reason of blindness, disability, or inability to read or write (i.e., such persons are permitted to choose any person to provide assistance

in casting a ballot, with the exception of the voter's employer or union officer).

5. All election officials and all other election-related personnel assigned to work in all precincts shall be fully trained concerning election day procedures at the polling places, the availability of bilingual materials and assistance to voters in Spanish, the contents of the ballot (i.e., all contests, parties, and ballot questions), the procedures for determining the appropriate polling place for registered voters and referring voters to those polling places, the procedures for checking the inactive voter list and permitting inactive voters to vote, and the procedures for informing those voters whose names do not appear on the registered voters list of their options with respect to voting. All election-related personnel shall be instructed not to engage in electioneering on election day at the polls, but that Spanish-speaking voters are entitled to a full, oral translation of the ballot at the polls.

6. Training of bilingual election officials shall include translation of the entire ballot in the Spanish language so that bilingual election officials will be able to provide a full and accurate translation of any part of the ballot. Where appropriate and necessary, training shall be conducted at least in part in the Spanish language, so that the election-related personnel shall be familiar with Spanish terminology for all aspects of their election duties, including instruction in Spanish on terminology related to the voting process.

I. Pre-election Report

Twenty days before each election in Lawrence, the Lawrence City Clerk shall provide to counsel for the United States a report containing the following information: (a) the name and precinct designation of each polling place (e.g. A-1); (b) the name, title, telephone number, and race of each pollworker appointed and assigned to serve at each polling place (including a designation of those who are bilingual in

English and Spanish); and (c) a copy of the most recent voter registration lists on computer disk.

J. Election-day Report

Each precinct warden, after consulting with each precinct poll official, shall complete a short form to be agreed upon by the parties, provided by Lawrence, in which he or she shall report: (1) the number of voters who receive bilingual oral assistance or bilingual materials at their polling place; (2) confirm the availability and posting of the bilingual materials; and (3) identify and record each instance in which unreasonable delays occur related to the particular needs of Spanish-language minority voters. Where such delays occur, Lawrence shall take appropriate steps, such as providing additional bilingual election officials, materials, and voting machines, to avoid such delays in future elections.

K. Records

Copies of all materials or records mentioned in this agreement shall be maintained by Lawrence, and shall be available to the public for inspection and copying on the same basis as other public records in Lawrence.

L. Adjustments to Program

1. The parties recognize that regular and ongoing reassessment of the above-outlined Program and procedures by the responsible officials may be necessary in order to provide Spanish-language minority voters equal access to all phases of the electoral process in Lawrence. Lawrence shall evaluate its Program and procedures on an ongoing basis through meetings with the community election liaisons and other interested parties and counsel for the United States.

2. The parties shall confer in good faith if any party believes that a particular aspect of this Settlement Agreement and Order has proven ineffective. The parties shall confer at least annually in a good

faith effort to improve any aspect of this Settlement Agreement and Order which has proven ineffective.

AGREED AND CONSENTED TO:

For Plaintiff:
UNITED STATES OF AMERICA

For Defendants:
CITY OF LAWRENCE, et al.

BILL LANN LEE
Acting Assistant
Attorney General

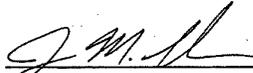
By their attorneys,
ROBINSON & COLE



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P.O. Box 66128
Washington, D.C. 20035



ROBERT J. O'SULLIVAN
Assistant City Attorney
Office of the City Attorney
Room 306, City Hall
206 Common Street
Boston, Massachusetts 01846

JUDGMENT AND ORDER

This three-judge Court having been properly empaneled under 28 U.S.C. 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa, (plaintiff's First Cause of Action), and having determined that it has jurisdiction over this claim, has considered the terms of the Settlement Agreement set forth in Section I and Section II, paragraphs A through G, H.1, H.3-6, I, J, K, and L those terms being incorporated herein, hereby enters the relief set forth in Section II, paragraphs A through G, H.1, H.3-6, I, J, K, and L.

ENTERED and ORDERED this 17th day of September, 1999.

UNITED STATES CIRCUIT JUDGE

William A. Young

UNITED STATES DISTRICT JUDGE

[Signature]

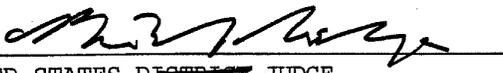
UNITED STATES DISTRICT JUDGE

15

JUDGMENT AND ORDER

This Court having jurisdiction under 28 U.S.C. 1345 and 42 U.S.C. 1973j(f) over plaintiff's claims under Section 2 of the Voting Rights Act, 42 U.S.C. 1973 (plaintiff's Second and Third Causes of Action), and having considered the terms of the Settlement Agreement set forth above in Section I and Section II, paragraphs H.2, I, K, and L, those terms being incorporated herein, hereby enters the relief set forth in Section II, paragraphs H.2, I, K and L.

ENTERED and ORDERED this 4 day of Sept.,
1999.


UNITED STATES DISTRICT JUDGE

Circuit

15

JUDGMENT AND ORDER

This three-judge Court having been properly empaneled under 28 U.S.C. 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa, (plaintiff's First Cause of Action), and having determined that it has jurisdiction over this claim, has considered the terms of the Settlement Agreement set forth in Section I and Section II, paragraphs A through G, H.1, H.3-6, I, J, K, and L those terms being incorporated herein, hereby enters the relief set forth in Section II, paragraphs A through G, H.1, H.3-6, I, J, K, and L.

ENTERED and ORDERED this 7 day of

Sept., 1999.


UNITED STATES CIRCUIT JUDGE

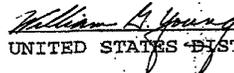

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

JUDGMENT AND ORDER

This Court having jurisdiction under 28 U.S.C. 1345 and 42 U.S.C. 1973 (f) over plaintiff's claims under Section 2 of the Voting Rights Act, 42 U.S.C. 1973 (plaintiff's Second and Third Causes of Action), and having considered the terms of the Settlement Agreement set forth above in Section I and Section II, paragraphs H.2, I, K, and L, those terms being incorporated herein, hereby enters the relief set forth in Section II, paragraphs H.2, I, K and L.

ENTERED and ORDERED this 28th day of September,
1999.


UNITED STATES DISTRICT JUDGE

15

JUDGMENT AND ORDER

This three-judge Court having been properly empaneled under 28 U.S.C. 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa, (plaintiff's First Cause of Action), and having determined that it has jurisdiction over this claim, has considered the terms of the Settlement Agreement set forth in Section I and Section II, paragraphs A through G, H.1, H.3-6, I, J, K, and L those terms being incorporated herein, hereby enters the relief set forth in Section II, paragraphs A through G, H.1, H.3-6, I, J, K, and L.

ENTERED and ORDERED this 28th day of

September, 1999.

UNITED STATES CIRCUIT JUDGE

William A. Young
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

15

ATTACHMENT A

1. Club Cultural Latin Americano
2. Council of Dominican American Voters (CDAV)
3. The Greater Lawrence Community Action Council
(GLCAC) Spanish Program
4. Latin American Professional Association (ALPHA)
5. Movimiento Puertorriqueno
6. People's Alliance for Rights and Equality (PARE)

ATTACHMENT B

1. Official Ballot for Municipal Election
2. Specimen Ballot for Municipal Election
3. Annual Street Listing Form (Annual Census)
4. Official Absentee Ballot for Municipal Election
5. Map of Lawrence Voting Districts (Wards)
6. Disabled Voter Application/Certificate of Disability
7. Change of Party Enrollment Card
8. Change of Address Form
9. Excluded List Census Form
10. Polling Place Handout (list of polling places for each district)
11. City of Lawrence Elected Officials Pamphlet
12. Certificate of Residency
13. List of Polling Places (by district, includes name and phone number of city councilor from each district)
14. Warning Notice of Removal
15. Nomination Papers (City of Lawrence)
16. Census Data Sheet: New Additions
17. Certificate of Identification/Voter Registration Wallet Card
18. Polling Place Sign Offering Assistance in Spanish
19. Municipal Election Calendar
20. How to Cast a Write-In Ballot Sticker Vote Instruction Sheet
21. Notice of Change of Party from "Party" to "Political Designation"
22. Application for Nomination Papers
23. Tips for Getting Signatures Notice

ATTACHMENT C

1. Official Ballot State Election
2. Specimen Ballot State Election
3. Ballot Question published on Internet
4. Commonwealth of Massachusetts Absentee Ballot Envelope
5. Envelope Enclosing Absentee State Election Ballot (sent to absentee voter)
6. Envelope Enclosing Marked Absentee Ballot (sent to City Election Division)
7. Affirmation of Current and Continuous Residence Form
8. Official Absentee Ballot for State Election
9. Voter Registration Receipt
10. Commonwealth of Massachusetts Absentee Ballot Application
11. Final Notice of Removal
12. Acknowledgment Notices (acknowledging, e.g., receipt of affidavit of voter registration, change of address, change of party enrollment)
13. Absentee Ballot Rejection Notice
14. Absentee Ballot Application by a Family Member
15. Instructions for Signing Nomination Papers and Petitions Pamphlet
16. Official Massachusetts Information for Voters Booklet
17. Instructions to Voters, Datavote
18. Massachusetts Official Voter Registration Form
19. Massachusetts Official Mail-in Voter Registration Form
20. Election Law Violations Poster
21. Absentee Ballot Instructions (Insert sent with Absentee Ballot)
22. Datavote State Election Ballot Questions Pamphlet (describes ballot questions)
23. Pamphlet on Registering to Vote

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

COPY

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF LAWRENCE, MASSACHUSETTS;)
 PATRICIA DOWLING, Mayor of)
 Lawrence; LAWRENCE BOARD OF)
 REGISTRARS OF VOTERS; ROBERT)
 HUTTON, Chairperson, JAMES)
 DRISCOLL, RONALD MARTIN, members)
 of the Lawrence Board of)
 Registrars of Voters; and JAMES)
 MCGRAVEY, City Clerk and member)
 of the Lawrence Board of)
 Registrars of Voters,)
)
 Defendants.)

CIVIL ACTION NO.

92CV12256WGY

COMPLAINT

The United States of America, plaintiff herein, alleges:

1. This is an action to protect the voting rights of Hispanic citizens, including those with limited-English proficiency. The plaintiff alleges five independent claims:
 - (1) that defendants' failure to provide registration or voting notices, forms, instructions, assistance or other materials or information, including ballots, in the Spanish language violates Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a;
 - (2) that defendants' failure to appoint and assign Hispanic persons on the same basis as whites to serve as pollworkers violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
 - (3) that defendants' ineffective oral and written bilingual assistance and discriminatory pollworker appointment and

assignment practices and procedures violate Section 2 of the Voting Rights Act, 42 U.S.C. 1973, by denying Hispanic citizens, including Spanish-language minority citizens, an equal opportunity to participate in the electoral process; (4) that the method of electing the Lawrence City Council dilutes the voting strength of Hispanic citizens, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and (5) that the method of electing the Lawrence School Committee dilutes the voting strength of Hispanic citizens, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973. The United States seeks declaratory and injunctive relief for each stated claim.

2. The Attorney General files this action pursuant to Sections 2, 12(d), 203, and 204 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, 42 U.S.C. 1973aa-2, and 28 U.S.C. 2201.

3. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973j(f), and 42 U.S.C. 1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act must be heard and determined by a court of three judges in accordance with the provisions of 28 U.S.C. 2284.

4. Defendant City of Lawrence is a political subdivision of the Commonwealth of Massachusetts and exists as a charter city, organized pursuant to the laws of Massachusetts.

5. Defendant Patricia A. Dowling is the mayor of the City of Lawrence, with the responsibility of serving as the chief executive officer of the city, appointing the Lawrence Board of

Registrars of Voters, and selecting election officers. Defendant Dowling is a resident of the City of Lawrence, Massachusetts, and is sued in her official capacity.

6. Defendant Lawrence Board of Registrars of Voters has responsibility concerning the conduct of voter registration and elections held in the City of Lawrence. Defendants Robert Hutton, James Driscoll, and Ronald Martin are appointed members of the Lawrence Board of Registrars of Voters, and are sued in their official capacity. Each resides in the City of Lawrence, Massachusetts.

7. Defendant James McGravey is the City Clerk of the City of Lawrence, with responsibility concerning the conduct of voter registration and elections held in the City of Lawrence, and a member of the Lawrence Board of Registrars of Voters. Defendant McGravey is a resident of the City of Lawrence, Massachusetts, and is sued in his official capacity.

8. According to the 1990 Census, 41.6 percent of the population of Lawrence is Hispanic and 34.1 percent of the city's voting age population is Hispanic. As of 1997, approximately 31 percent of Lawrence's registered voters were Hispanic.

9. According to the 1990 Census, 5,085 of the Hispanic voting age citizens in Lawrence are limited-English proficient. These persons comprise 51.8 percent of the Hispanic voting age citizens in Lawrence and 12.8 percent of the total voting age citizens in Lawrence.

10. Since their arrival in Lawrence, Hispanics have suffered a history of discrimination and neglect in voting-related activities.

11. In conducting elections in the City of Lawrence, defendants have failed to furnish effectively, in the Spanish language, the information and assistance necessary to afford Spanish-language minority citizens a fair opportunity for effective participation in the electoral process, including the following:

a. Defendants have failed to translate fully all election-related materials into the Spanish language, including but not limited to the official ballot for city elections, the annual register form the city uses to gather information for voter lists, and certain absentee materials;

b. Defendants have failed to provide effective oral language assistance to Spanish-language minority voters on a consistent basis. For example, Spanish-language minority voters at several polling sites have been unable to receive oral Spanish-language assistance necessary to understand the ballot and the procedures for using the voting machine;

c. In some instances, Hispanic voters in Lawrence who were unable to read the ballot and who required voting assistance have been denied the right to have the person of their choice assist them at the polls;

d. Defendants have failed to recruit, appoint, train, and maintain an adequate pool of bilingual poll officials on a

consistent basis to provide Spanish-language minority voters with effective language assistance; and

e. Defendants have failed to train adequately the existing pool of poll officials concerning language assistance to Spanish-language minority voters.

12. Pursuant to the Massachusetts Election Code, city election officers, also known as "poll officials" or "pollworkers," must be appointed annually. Mass. Gen. Laws ch. 54, secs. 11, 11B (1998). According to the same Massachusetts law, defendant Mayor Dowling and defendant Lawrence Board of Registrars of Voters have responsibilities relating to the appointment of pollworkers. In practice, defendant City Clerk McGravey has appointed pollworkers.

13. Any enrolled voter is eligible to serve as a pollworker in Lawrence unless that person is a candidate. Mass. Gen. Laws ch. 54, secs. 11, 15 (1998). Pollworkers are responsible for permitting qualified electors to cast ballots, for keeping records required by law, and for ensuring that primaries and general elections are honestly, efficiently, and uniformly conducted. Mass. Regs. Code tit. 950, sec. 52.01 (1998).

14. Lawrence has 24 voting precincts located at 22 polling sites in Lawrence. Prior to the 1997 elections, Lawrence consistently employed a disproportionately low number of Hispanic pollworkers compared to the number of Hispanic registered voters in Lawrence. On several occasions, Hispanic citizens in Lawrence have requested that the city appoint additional Hispanic

pollworkers to address the problems experienced by Hispanics at the polls.

15. Lawrence employed 294 individuals for the October 1997 election, the vast majority of whom were pollworkers. Of these 294 individuals, approximately 6 (2.0 percent) had Spanish surnames.

16. The city had notice, after the October 1997 election, that voters who required Spanish-language assistance during the election did not receive it. In addition, local Hispanic community leaders met with defendant McGravey and requested that he appoint more Hispanic pollworkers for the November 1997 election. As a result, defendant McGravey appointed approximately 40 temporary Hispanic poll officials for the November 1997 general election. The number of Hispanic poll officials appointed for the November 1997 election, including the temporary Hispanic pollworkers, was disproportionately low in comparison to the number of Hispanic registered voters in Lawrence. As of the November 1997 election, no Hispanic pollworker had ever served as a warden, the head pollworker in each precinct.

17. Pursuant to an interim agreement with the United States, the city agreed to hire more Hispanic pollworkers for the September 15, 1998 state and federal primary election. For the September 15, 1998 election, the city employed approximately 53 Hispanic pollworkers, a disproportionately low number in

comparison to the number of Hispanic registered voters in Lawrence. One Hispanic pollworker served as a warden.

18. Because of the lack of Hispanic pollworkers, many Hispanic citizens, especially those with limited-English proficiency, are intimidated by the process and discouraged from voting at polling places. A significant number of Hispanic citizens have not been comfortable voting at their assigned polling place because of the nature and location of the polling place. In some instances, pollworkers were instructed that they could not assist Hispanic voters.

FIRST CAUSE OF ACTION

19. Lawrence is subject to the requirements of Section 203 of the Voting Rights Act as a result of a determination by the Director of the Census that more than 5 percent of Lawrence's voting age citizens are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate in the English-language election process, and the illiteracy rate of such language minority citizens is higher than the national illiteracy rate. 58 Fed. Reg. 35371, 35374 (July 1, 1993). Lawrence first became subject to the requirements of Section 203 of the Voting Rights Act on June 25, 1984 (49 Fed. Reg. 25887). The city's coverage under Section 203 continued when the Census issued new determinations in 1992.

20. Because Lawrence is subject to the requirements of Section 203, the defendants must "provide[] any registration or

voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" in the Spanish language so that Spanish-speaking voters can be effectively informed of and participate effectively in voting-connected activities. 42 U.S.C. 1973aa-1a(c).

21. Defendants' failure to provide Spanish-language minority citizens of Lawrence with the election information and assistance necessary for their effective political participation, as described above in paragraphs 11(a-e), constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a.

22. Unless enjoined by this Court, defendants will continue to violate Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, by failing to provide Spanish-language minority citizens of Lawrence with the election information and assistance necessary for their effective political participation.

SECOND CAUSE OF ACTION

23. Defendants, by implementing the pollworker appointment and assignment practice described above in paragraphs 11(d-e) to 18, have discriminated on the basis of race by failing to appoint and assign Hispanic persons on the same basis as whites to serve as pollworkers, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

24. Unless enjoined by this Court, defendants will maintain their discriminatory policy and practice of appointing and

assigning pollworkers, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

THIRD CAUSE OF ACTION

25. Section 2 of the Voting Rights Act prohibits defendants from imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" which results in a denial or abridgement of the right of Hispanic citizens to vote. 42 U.S.C. 1973.

26. Defendants' actions described in paragraphs 11-24 above have resulted in Hispanic citizens, including Spanish-language minority citizens, having less opportunity than other members of the electorate to participate effectively in the political process, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

27. Unless enjoined by this Court, defendants will continue to enforce standards, practices, or procedures that deny Hispanic citizens, including Spanish-language minority citizens, an opportunity to participate effectively in the political process on an equal basis with other members of the electorate, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

FOURTH CAUSE OF ACTION

28. The Lawrence City Council is the general governing and managing body of the City of Lawrence. The Lawrence City Council is composed of nine members, all of whom serve two-year concurrent terms. Six of the city councilmembers are elected

from six single-member districts (Districts A-F), and three are elected at-large.

29. The current method of election for the Lawrence City Council has been in place since 1985. The current districting plan has been used for the 1995 and 1997 elections. Under the current plan, only District C has a Hispanic voting age population majority. José Santiago, the only Hispanic city councilmember in the history of Lawrence, has represented District C since 1993.

30. The Hispanic population of Lawrence is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing members of the city council can be drawn in which Hispanic voters would constitute an effective majority in more than one district.

31. The Lawrence School Committee is the general governing and managing body of the public schools in the City of Lawrence. The Lawrence School Committee is composed of seven members: the mayor and six members who are elected at-large to staggered four-year terms. Elections for the school committee are held at the same time as elections for city council.

32. Ralph Carrero is the only Hispanic elected as a school committee member in the history of Lawrence. He has been a member of the school committee since 1991.

33. The Hispanic population of Lawrence is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing members of the school

committee can be drawn in which Hispanic voters would constitute an effective majority in more than one district.

34. Hispanic voters in Lawrence are politically cohesive. Racially polarized voting patterns prevail in elections in the city. In contests between Hispanic and non-Hispanic candidates for elected positions in Lawrence, Hispanics consistently vote for Hispanic candidates and whites vote sufficiently as a bloc to usually defeat the Hispanic voters' candidates of choice, except in city council District C, where Hispanic voters form a substantial majority of the electorate.

35. Hispanics in Lawrence have suffered from a history of official discrimination that has affected the right of Hispanics to participate effectively in the political process.

36. In elections for city council and school committee, the city holds a non-partisan primary to determine which candidates qualify for the general election. In the primary, the top six finishers in the city council at-large contest, the top two finishers in each city council district contest, and the top six finishers in the school committee contest advance to the general election. In the general election, the top three finishers in the city council at-large contest, the top finisher in each city council district contest, and the top three finishers in the school committee contest are elected to office. This feature of the electoral system, like a majority vote requirement, enhances the opportunities for discrimination against Hispanics by

narrowing the field of candidates in the "run-off" general election.

37. Hispanics in Lawrence bear the effects of past discrimination in areas such as education, employment, and housing, as reflected in their depressed socioeconomic status relative to white Lawrence residents. These effects of past discrimination hinder the current ability of Hispanics to participate effectively in elections in Lawrence.

38. During political campaigns in Lawrence, there have been instances of overt or subtle racial appeals by white candidates.

39. The configuration of the city council districts in Lawrence fragments concentrations of Hispanic voters by dividing a predominantly Hispanic population area into portions of different districts.

40. The election system, including the districting plan and the at-large feature, for electing the Lawrence City Council, operating under the totality of circumstances described above in paragraphs 8-30 and 34-39, has had the effect of diluting Hispanic voting strength, resulting in Hispanic citizens being denied an opportunity equal to that afforded to other members of the electorate to participate in the political process and elect representatives of their choice, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

41. Unless enjoined by order of this Court, defendants will continue to conduct elections for the Lawrence City Council using

the current electoral scheme, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

FIFTH CAUSE OF ACTION

42. The at-large system used for electing members of the Lawrence School Committee, operating under the totality of circumstances described above in paragraphs 8-27 and 31-38, has had the effect of diluting Hispanic voting strength, resulting in Hispanic citizens being denied an opportunity equal to that afforded to other members of the electorate to participate in the political process and elect representatives of their choice, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

43. Unless enjoined by this Court, defendants will continue to conduct elections for the Lawrence School Committee using the at-large system, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

WHEREFORE, the plaintiff United States prays for an order:

(1) With respect to plaintiff's First Cause of Action:

- (a) Declaring that defendants have failed to provide Spanish-language minority citizens of Lawrence with the election information and assistance necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a;
- (b) Enjoining defendants, their agents and successors in office, and all persons acting in concert with them, from failing to provide Spanish-language

minority citizens of Lawrence with the election information and assistance necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a; and

- (c) Requiring defendants to devise and implement a remedial plan to ensure that Spanish-language minority citizens of Lawrence are able to be effectively informed of and participate effectively in all phases of the electoral process, in compliance with Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a;
- (2) With respect to plaintiff's Second Cause of Action:
- (a) Declaring that defendants have discriminated on the basis of race by failing to appoint and assign Hispanic persons on the same basis as whites to serve as pollworkers, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
 - (b) Enjoining defendants, their agents and successors in office, and all persons acting in concert with them, from maintaining their discriminatory policy and practice of appointing and assigning pollworkers, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and
 - (c) Requiring defendants to devise and implement a remedial plan to recruit, appoint, and assign

pollworkers so that the number of Hispanic pollworkers, including wardens and deputy wardens, in the city reasonably corresponds to the percentage of Hispanic registered voters in the city and the number of Hispanic pollworkers in each polling place reasonably corresponds to the percentage of Hispanic registered voters assigned to that polling place;

- (3) With respect to plaintiff's Third Cause of Action:
- (a) Declaring that defendants' ineffective oral and written bilingual assistance and discriminatory pollworker appointment and assignment practices and procedures, operating under the totality of circumstances, have resulted in Hispanic citizens having less opportunity than other members of the electorate to participate effectively in the political process, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
 - (b) Enjoining defendants, their agents and successors in office, and all persons acting in concert with them, from implementing practices and procedures which deny Hispanic citizens an opportunity to participate effectively in the political process on an equal basis with other members of the electorate, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and

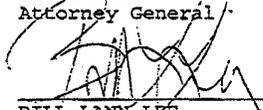
- (c) Requiring defendants to devise and implement a remedial plan which ensures that Hispanic citizens have an opportunity to participate effectively in the political process on an equal basis with other members of the electorate, in compliance with Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
- (4) With respect to plaintiff's Fourth Cause of Action:
 - (a) Declaring that the election system, including the districting plan and the at-large feature, for electing the Lawrence City Council, operating under the totality of circumstances, has the effect of diluting Hispanic citizens' voting strength, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
 - (b) Enjoining defendants, their agents and successors in office, and all persons acting in concert with them, from administering, implementing, or conducting any future elections for the Lawrence City Council based on the current election system, including the districting plan and the at-large feature, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and
 - (c) Ordering defendants to devise and implement an election system for the Lawrence City Council

which complies with Section 2 of the Voting Rights Act, 42 U.S.C. 1973;

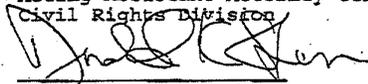
- (5) With respect to plaintiff's Fifth Cause of Action:
- (a) Declaring that the at-large system used for electing members of the Lawrence School Committee, operating under the totality of circumstances, has the effect of diluting Hispanic citizens' voting strength, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
 - (b) Enjoining defendants, their agents and successors in office, and all persons acting in concert with them from administering, implementing, or conducting any future elections for the Lawrence School Committee on an at-large basis, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and
 - (c) Ordering defendants to devise and implement an election system for the Lawrence School Committee which complies with Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
- (6) Requiring the defendants to publicize effectively the remedial plans and programs addressing the violations enumerated herein to ensure their widespread dissemination to the Hispanic citizens in Lawrence.

Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

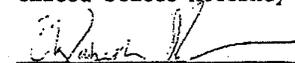
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COPY

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUL 20 1990

R. Pederson
CLERK

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) v.)
)
) MCKINLEY COUNTY, NEW MEXICO,)
) ET AL.,)
)
) Defendants.)

CIVIL ACTION NO. 86-0028-M
ENTERED ON DOCKET
7-20-90

FIRST AMENDED CONSENT DECREE AND ORDER

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UNITED STATES OF AMERICA

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NATIVE AMERICAN ELECTION INFORMATION PROGRAM

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I. INTRODUCTION

This action was initiated by the United States pursuant to Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973aa-1a, by a complaint filed in 1986. On February 4, 1986, this Court entered a Consent Decree that permanently enjoined McKinley County, New Mexico, together with its officers, agents, employees, and successors from non-compliance with the minority language requirements of the Act. The Consent Decree also required the county to establish a remedial bilingual election program to provide Native American citizens with an equal opportunity to participate in the electoral process in McKinley County, New Mexico.

After a review of the current efforts of McKinley County to comply with the Consent Decree and the minority language provisions of the Act, the parties have conferred and agreed that further measures are required to ensure that the election process in McKinley County is fully and effectively accessible to Native American citizens. Accordingly, the parties have agreed to the entry of this First Amended Consent Decree and Order, which provides for additional measures to improve the effectiveness of McKinley County's remedial bilingual election program.

This Court has jurisdiction over the parties and the subject matter of this action. This First Amended Consent Decree and Order is final and binding between the parties and their officers, employees and successors, as to all the facts, claims and issues raised in, or underlying, the plaintiff's complaint.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that McKinley County, New Mexico, shall adopt the Native American Election Information Program, which this Court approves, as set forth below:

II. THE NATIVE AMERICAN ELECTION INFORMATION PROGRAM

A. County Voting Rights Coordinators

1. McKinley County shall employ at least two Native American Voting Rights Coordinators who will coordinate the Native American Election Information Program in the county. These voting rights coordinators shall be bilingual in Navajo and English and shall be hired as full-time county employees.

2. The Navajo voting rights coordinators shall be hired by the county after consultation with the Office of the New Mexico Secretary of State, the Navajo tribal officials of McKinley County, the Navajo Elections Administration (NEA) and the United States. Accordingly, county officials shall provide the McKinley County Navajo chapters and tribal officials from the NEA with a reasonable opportunity to recommend prospective applicants, which shall be seriously considered by the county for the voting rights coordinator positions. The Navajo voting rights coordinators may, for convenience, be located principally in one of the majority Navajo Indian precincts. The hiring, salary, job benefits, and job duties for each of the voting rights coordinators shall be competitive and in accordance with the Personnel Ordinance of McKinley County.

3. McKinley County shall develop job descriptions for each voting rights coordinator, in consultation with the Office of the New Mexico Secretary of State, the Navajo tribal officials of McKinley County, the NEA and the United States.

4. In addition to the voting rights coordinators, McKinley County shall engage in reasonable efforts to employ deputy election clerks bilingual in Navajo and English, who shall be available to assist the voting rights coordinators in all aspects of their duties under this agreement. At a minimum, two Navajo-speaking deputy election clerks shall be employed on a full-time basis and a third Navajo-speaking deputy election clerk utilized on a part-time basis prior to the primary and general elections. Said deputy election clerks may be current employees of McKinley County if they are bilingual in Navajo and English.

5. The voting rights coordinators shall be trained by the county in all aspects of the election process, shall attend all election seminars conducted by the Secretary of State and McKinley County Clerk, and shall be appointed county deputy registration officers. Voting rights coordinators shall be fully briefed by the county clerk and/or state Director of the Bureau of Elections, as appropriate, concerning their duties and responsibilities under this election information program. Representatives of the Navajo chapters of McKinley County, the NEA and the United States shall be available to assist election officials in these briefings.

6. The voting rights coordinators shall, under the supervision of the county clerk, oversee the county's Native American Election Information Program generally, and visit on a regular basis each Navajo chapter located in whole or in part in the county. Voter education programs conducted during such visits shall include instruction, as appropriate, on at least the following topics: voter registration; absentee voting procedures; voter purge; candidate qualification; voting procedures and operation of voting machines; and translations of the ballot, including candidate offices and propositions.

7. At a minimum, a voting rights coordinator shall make at least two oral presentations in Navajo (with audio and visual aids, as appropriate) at each Navajo chapter located in whole or in part within McKinley County during each of the following periods:

a. After each general election and prior to each school board election in February of each odd-numbered year to explain the voter registration cancellation and reinstatement process, candidate qualifying procedures and deadlines, absentee balloting procedures and to translate the proclamation for the respective school board election.

b. During the sixty-day suspension period under NMSA § 1-4-28 to explain and translate the purge notice and re-register or reinstate any voters eligible to remain on the voter registration rolls.

c. Prior to the deadline for filing candidacy petitions for the primary election to explain candidate qualification requirements, absentee balloting procedures and voter registration procedures, including registration cutoff dates.

d. After the primary election sample ballot is finalized and by the Friday before the primary election to instruct voters on election procedures and to translate the ballot.

e. Prior to the voter registration deadline for the general election to explain voter registration procedures, register eligible voters, and explain the absentee balloting process.

f. After the general election sample ballot is finalized and by the Friday before the general election to instruct voters on election procedures and to translate the ballot.

8. The voting rights coordinators, or other county officials, shall maintain a record of the date and purpose of each election-related visit to each Navajo chapter house, or other sites on the Navajo Indian Reservations. After each election, each voting rights coordinator shall prepare a report detailing his or her election-related activities in implementing the goals and provisions of the Native American Election Information Program.

9. The voting rights coordinators shall conduct, under the supervision of the county clerk, the training of all deputy registration officers, poll officials and other election-related personnel who will participate in the Native American Election Information Program. Each Navajo chapter manager whose chapter

is in whole or in part within McKinley County shall be notified, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at locations convenient to trainees.

10. The county voting rights coordinators shall coordinate the delivery of Native American election information to school districts in McKinley County. The county voting rights coordinators shall also coordinate delivery of election information to other governmental entities that conduct elections and voter registration within the county.

11. McKinley County shall establish a travel budget for the voting rights coordinators which shall be sufficient to cover their travel expenses incurred in carrying out their duties, obligations and responsibilities to implement effectively this Native American Election Information Program.

12. Wherever possible, and to the extent necessary, the county voting rights coordinators shall engage in all reasonable efforts to undertake and coordinate their activities and duties under this program in conjunction with those Native American voting rights coordinators hired by the New Mexico Secretary of State.

B. Tribal Election Liaisons

1. McKinley County shall request each Navajo chapter president, whose chapter is in whole or in part in McKinley County, to identify and/or appoint one individual in each Navajo

chapter to serve as a tribal election liaison between the county and each Navajo chapter.

2. Tribal election liaisons shall be fully trained and qualified as deputy registration officers by the county clerk and/or the voting rights coordinators and such training shall be conducted in both English and Navajo. The tribal election liaisons shall be trained in all aspects of the election process, including absentee voting, the voter registration and purge processes, candidate qualifications, election-related deadlines, election day activities, proposed constitutional amendments and other referenda.

3. Where necessary and as appropriate, the county may contract with the tribal election liaisons and/or other qualified persons to assist in the effective implementation of this bilingual election program, including for the translation of materials described in Section D below into the applicable Indian language.

4. Telephone inquiries from voting rights coordinators, tribal election liaisons, as well as from deputy registration officers on the reservations and tribal officials involved in election activities, to the county clerk's office respecting election-related matters, should be encouraged and shall be considered official government business and telephone charges may either be reversed or a toll-free number provided.

C. Translations

1. The following election-related materials and announcements, if made available in English by the state and/or county, shall be translated into Navajo and made available on audio tapes and video tapes, where appropriate: state and county election proclamations, constitutional amendments and other referenda issues on the ballot, dates for elections, candidate qualification and registration deadlines, instructions relating to voting by absentee ballot, and announcements respecting the voter purge, and explanations of voting procedures (including the operation of voting machines). To the extent such information is produced by the Office of the New Mexico Secretary of State, McKinley County officials shall utilize these existing resources by coordinating with the appropriate state officials to arrange for the use of such tapes in McKinley County.

2. McKinley County, through the voting rights coordinators and tribal liaisons, shall engage in reasonable efforts to ensure that each tape is played in at least two tribal meetings at each Navajo chapter house during the appropriate publicity period, and that either the county voting rights coordinator, tribal election liaison or other trained bilingual person is present to answer any questions concerning the subject matter of the tape. If appropriate playing equipment is not available on the site visited, the county shall provide such equipment to the voting rights coordinators for this purpose.

3. Navajo language audio and video tapes described in this agreement shall be available generally to individuals and organizations at the Navajo chapter houses. Separate recordings shall be provided for each election-related subject matter so as to minimize the extent to which any tape recording exceeds 10 minutes in length. A library of currently applicable tapes, together with English transcripts, where available and appropriate, shall be maintained at the Navajo chapter houses.

4. Translation shall be made by a state or county voting rights coordinator or by a tribal election liaison or by qualified persons contracted with for that purpose. The county shall make available to the translators any necessary bilingual subject matter experts to assist in translation of technical or complicated election-related materials.

5. The county shall invite the participation of representatives of the Navajo chapters of McKinley County, the NEA and any other interested parties to assist in the translation of election materials. To assist in uniformity and accuracy, prior to dissemination of any translation, the county shall make available such translations to representatives of the Navajo chapters of McKinley County and/or the NEA, as appropriate, and provide them with a reasonable opportunity to review and comment concerning any matter translated.

6. The translation and review of any election-related material shall be completed promptly so that where possible, tapes are available on or before the date that English language announcements or other publications are made available.

7. The county shall, in consultation with the Office of the New Mexico Secretary of State, tribal election liaisons and other tribal officials, develop a series of appropriate posters and graphics to accompany translated and written notices respecting election matters.

8. Upon request, all translations and election materials shall be made available to all governmental entities or other organizations within McKinley County which endeavor to provide election information to Native American citizens.

D. Dissemination of Election-Related Information

1. The county shall coordinate publicity efforts with the Office of the New Mexico Secretary of State, Navajo tribal officials and with the NEA. All election-related announcements, materials and information, including, but not limited to, the election calendar, state and county election proclamations, the voter information pamphlet and sample ballots, shall be made available to each Navajo chapter house in whole or in part in the county and the NEA.

2. Election-related announcements, materials, tapes and other election information shall be made available to the public high schools in the county to familiarize students with all phases of the election process.

3. Radio and/or Television: Radio announcements in the Navajo language shall be distributed for broadcast to KGAK (Gallup); KYVA (Gallup); KGLX (Gallup); KKOR (Gallup); KQNM (Gallup); KTNN (Window Rock) or other available stations or programs for broadcast in the Navajo language regarding:

a. Deadlines for state voter registration for participation in state and federal elections, and identification of regularly available voter registration sites in each Navajo chapter house or other location convenient to the Indian population. These announcements, which shall be spot announcements, shall be made at least twenty-five times each week for the four weeks preceding the deadlines for both state and federal election registration for each primary and general election. For school board elections, spot announcements shall be made ten times each week for the two weeks preceding the deadline for voter registration.

b. The procedures and deadlines for becoming a candidate. Spot announcements detailing procedures and deadlines for becoming a candidate shall be made fourteen times during the two weeks preceding each candidate filing date, including school board elections.

c. Dates of special, primary, general, and school board elections, a list of the offices to be elected, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements shall be made four times a week

during at least the three weeks prior to each of the foregoing elections.

d. An explanation of the ballot in the Navajo language, identifying each office to be filled and each candidate with the candidate's political affiliation. The tape shall also identify briefly the nature and significance of each referendum, proposed constitutional amendment(s), or ballot proposition to be decided. Announcements shall be made four times a week for at least the three weeks prior to each special, primary, general and school board election.

4. The county shall request that the announcements identified in paragraph II.D.3 above be made at prime time and calculated to reach the largest possible audience.

5. Print Media: English election announcements detailed in paragraph II.D.3 shall be published on a weekly basis in the Gallup Independent or the Navajo Times for the publicity periods noted in that paragraph.

6. To the extent McKinley County presently possesses facsimiles of voting machines or devices, they shall be made available to the voting rights coordinators for their use in training deputy registration officers and conducting voter education programs at the Navajo chapter houses.

7. Monitoring: The county shall monitor the effectiveness of its publicity programs on an ongoing basis through consultation with the Office of the New Mexico Secretary of

State, tribal election liaisons, Navajo tribal officials of McKinley County, the NEA and the United States.

E. Voter Registration

1. The county shall request that each Navajo chapter manager or other tribal official, recommend six persons qualified to serve as deputy registration officers in McKinley County; request assistance from the NEA in identifying potential deputy registration officers; seek to coordinate state voter registration with Navajo tribal voter registration through reciprocal deputization of deputy registration officers for state and tribal elections; invite school personnel, including each high school principal and other community leaders, to become deputy registration officers; and encourage organized political parties to recommend additional deputy registration officers for election precincts on the reservation.

2. Training for deputy registration officers for majority Navajo election precincts in the county shall be conducted on the reservation by the county voting rights coordinators, under the supervision of the county clerk, in both English and the Navajo language. The county shall also invite the participation of the Office of the New Mexico Secretary of State and the state voting rights coordinators in the training of McKinley County deputy registration officers. In addition to training as to registration standards, regulations and forms, deputy registration officers shall be trained fully regarding the voter purge and absentee voting processes, standards and regulations.

Navajo language tapes and English transcripts shall be used in the training process, and copies of such materials shall be maintained as provided generally in this agreement.

3. McKinley County shall appoint and train a minimum of six deputy registration officers in each majority Navajo election precinct in the county.

4. The names of all deputy registration officers available at each Navajo chapter shall be prominently posted at each chapter house and/or trading post or post office.

5. County voting rights coordinators, as part of their outreach efforts, shall conduct special voter registration drives at the Navajo chapters in the county. The appropriate Navajo chapter manager, as well as the tribal election liaisons, shall be notified of the time and place for each registration drive at least two weeks prior to the scheduled registration, and the county shall provide such other publicity as may be appropriate.

6. The county shall monitor, on an ongoing basis, the performance of deputy registration officers and voter registration rates in the majority Navajo election precincts in the county. The county shall encourage or replace inactive or unproductive deputy registration officers.

7. The county shall provide each tribal election liaison with current voter registration lists and forms and detailed election precinct maps for his or her precinct, and shall encourage each tribal election liaison to establish regular hours for registration at set locations on the reservations. The

time(s) and location(s) established by the liaisons for voter registration shall be posted by the county at each Navajo chapter house and announced by the tribal election liaison at tribal meetings.

F. Absentee Voting

1. The county shall supply applications for absentee ballots to all deputy registration officers on the reservations, county voting rights coordinators, tribal election liaisons, and Navajo chapter managers and presidents.

2. The county shall provide an opportunity for Native American citizens, qualified to vote pursuant to state law, to cast absentee ballots within their precinct by ensuring that the voting rights coordinators attend the last two tribal meetings prior to each primary, general, special or school board election, for each Navajo chapter in whole or in part within the county, so that eligible persons may obtain and, if they desire, cast absentee ballots in person at that time (See paragraph II.A.7 above). Deputy registration officers, voting rights coordinators, tribal election liaisons, or county officials shall announce and explain personally, or through trained translators at the tribal meetings, the classes of persons who are eligible to cast absentee ballots. It shall be sufficient for voters on the reservations to have their absentee ballot application witnessed only by another registered voter.

3. Announcements shall be made regarding the availability of absentee balloting, including the standards of eligibility for absentee ballots and for voting absentee, during any tribal meeting prior to the deadline for voting by absentee ballot under state law, and where such meetings fall in the absentee voting period (See paragraph II.A.7 above). The availability of absentee balloting also shall be made known by posting such information prominently at each Navajo chapter house and at trading posts or post offices on the reservation; by radio announcements pursuant to paragraph II.D.3 above; and by print media pursuant to paragraph II.D.5 above.

4. County voting rights coordinators shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk, to witness absentee ballots, and to accept completed absentee ballots from eligible voters for delivery to the county clerk.

G. Election Day Procedures

1. The county shall ensure that the statutory number of fully trained poll officials and translators (bilingual in English and Navajo) are present on election day for each majority Navajo election precinct which is in whole or in part in McKinley County. The county shall consult with the tribal election liaisons, tribal officials of McKinley County, the NEA or other appropriate tribal officials to identify bilingual individuals qualified to work at the polls. Alternate translators shall be designated as required by state law.

2. Poll officials and translators shall be fully trained, at locations in the county convenient to the trainees, in English and Navajo, concerning election day procedures at the polling places, the contents and issues appearing on the ballot, and voter purge procedures. Training in translation of the ballot in the Navajo language shall include the use of audio and/or video tapes, and such tapes shall be maintained in accordance with the terms of this agreement.

3. For each additional voting machine required by state law at each polling place in excess of two voting machines, the county shall appoint an additional trained translator.

4. Poll officials shall specifically advise each voter who requires assistance in casting a ballot that the voter may choose any person to provide that assistance, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6. After the voter has indicated to a poll official that he or she needs assistance in voting or marking his/her ballot, the voter's request for assistance shall be noted in the signature roster and it shall be unnecessary for the voter to execute an affidavit of assistance.

5. Poll officials or other designated county officials shall maintain a record of all persons who come to the polls but are not allowed to vote. This record shall include each voter's name, address, the reason the person thought she or he was eligible to vote at that site, and the reason for not permitting the person to vote.

6. A list of the persons not permitted to vote shall be provided to the appropriate tribal officials, voting rights coordinators and tribal election liaisons, and deputy registration officers in the majority Indian precincts, and the county shall provide an opportunity to such persons on the list to register to vote at the earliest possible time.

7. The county shall cooperate with the NEA in the establishment of polling places so that the same buildings can be used for Navajo tribal and state elections in separate areas of the same buildings.

H. Purge Process

1. On or before February 1 after each general election, a list shall be prepared by the county clerk of all persons identified for purging from the voting list for failure to vote, and such lists for the respective Indian precincts shall be provided to the county voting rights coordinators, tribal election liaisons, including each Navajo chapter house in whole or in part in McKinley County, and persons identified above shall be urged to contact persons on said lists to notify them of the fact of the purge and the procedures for validating their registration or re-registering.

2. Updated lists, as necessary, of persons who have failed to revalidate their registration or re-register shall be provided to the persons identified in paragraph II.H.1 above and each Navajo chapter house every 30 days throughout the purge period. The voting rights coordinator shall monitor these lists and shall

contact as many persons as possible who remain on the list in order to re-validate or re-register them.

3. The county shall inform voters of the purge, the validating and re-registration process through radio announcements in the Navajo language during the purge period pursuant to paragraph II.D.3 above; through English language weekly notices in the Gallup Independent or the Navajo Times during the purge period pursuant to paragraph II.D.5 above; by Navajo language announcements at tribal meetings during the purge period pursuant to paragraph II.A.7 above; and by English language signs posted at the Navajo chapter houses and trading posts or post offices.

4. Navajo language audio tapes on the purge process shall be made available in the tape libraries in each Navajo chapter house. These shall include a description of the purge process, an explanation as to why individuals are listed on the purge printout, the meaning of the mailed purge notices, and explanations as to how to avoid being purged and how to re-register if the purge already has occurred. Navajo language tapes containing this information shall be played during the purge period at separate tribal meetings of each Navajo chapter house situated in whole or in part in McKinley County, and the voting rights coordinator shall be present, at a minimum, at the first meeting when the tapes are played in order to answer any questions (See paragraph II.A.7 above). Thereafter, the tribal election liaison or other trained bilingual personnel may be

present when the tapes are played in order to answer any questions.

5. Thirty (30) days before the close of the purge period, the county voting rights coordinator shall provide the tribal election liaison at each Navajo chapter in McKinley County with a printout with the names of all voters who reside in the respective Navajo chapter, who have not validated their registration, and thus remain on the list of persons identified for purging for failure to vote. Prior to the close of the purge period, the voting rights coordinators, with assistance from the tribal election liaisons, shall ascertain which voters on the list still maintain a residence as shown on their affidavit of registration, and upon making such determination, shall return to the county clerk a list certifying those voters who still maintain such residence within the reservation, together with any changes of addresses of such voters. Upon receipt of the certification, those voters who still reside in the county shall not have their eligibility to vote cancelled and shall remain eligible to vote.

6. At the close of the purge period, the county shall review the printout of purged voters with the tribal election liaisons for each Indian precinct in McKinley County and, to the extent that there is a high percentage of Indian voters purged as compared to non-Indian voters, the county shall consult with tribal officials and tribal election liaisons to ascertain what further action is necessary to correct such situation.

I. Records

1. In addition to copies of tapes and other materials or records mentioned in this agreement, the defendants shall maintain statistical records including but not limited to:

a. Voter Registration

- Voter registration, by precinct, on a monthly basis.
- Number of voters, by precinct, who are registered at voter registration drives conducted pursuant to this agreement.

b. Voter Purge

- Total number of voters purged, by precinct, for failure to vote.
- Total number of voters retained on the voter registration rolls based on certification of eligibility by the voting rights coordinators.
- Total number of voters, by precinct, reinstated by returning post cards.
- Total number of voters validated by other means during the purge period by precinct.

c. Absentee Voting

- Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.
- Total number of absentee ballots cast, per precinct, in person at the county courthouse.
- Total number of absentee ballots cast, per precinct, in person before a deputy clerk and/or voting rights coordinator on the reservations.

d. Publicity

- Time and medium of each broadcast (where records are available) or publication pursuant to this agreement.
- Time, place and occasion of each instance in which each election-related video and audio tape was played.

These data shall be maintained on a current basis at the county clerk's office and all records shall be available for public inspection upon request.

2. On July 1 of each year for the life of the Consent Decree, the county shall compile a report of the efforts taken pursuant to this agreement during the preceding (12) months. The report shall include the status of Native American voter participation as shown by statistics in each area addressed in this agreement, together with an assessment of the effectiveness of each phase of the program and a recommendation of the steps to be taken to improve Native American voter participation. Copies of the report shall be provided to the United States and the NEA.

III. CONSTRUCTION AND IMPLEMENTATION

1. Simultaneous with the entry of this First Amended Consent Decree and Order, the defendants will submit this program to the Attorney General of the United States for review pursuant to the requirements of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. If the requisite Section 5 preclearance is obtained, the parties will promptly notify this Court of such preclearance and the Court will enter an Order granting final approval to this First Amended Consent Decree and Order.

2. It is the goal of McKinley County to ensure that the entire election process is fully and effectively accessible to Native American citizens, and the procedures set forth above are designed to achieve that goal. In the event that the procedures set forth in this Consent Decree fall short of the goal of full and effective access, the county shall have the authority to

eliminate or modify any aspect of this program, subject to the preclearance requirements of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

IV. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over this matter for all purposes for a period of five years. At the end of the five-year period, the defendants may move the Court, upon 45 days written notice to the United States, for an order terminating the provisions of the First Amended Consent Decree and Order. In considering whether the Consent Decree shall be dissolved, the Court will analyze, after a sufficient demonstration by the defendants, whether the basic objectives of the Consent Decree have been achieved.

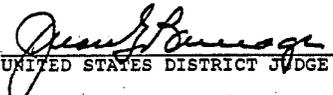
V. CONCLUSION

This agreement represents the commitment of the parties to provide equal voting rights to the Native American citizens of McKinley County, New Mexico. While the procedures outlined above are intended to constitute full relief in this case, the parties recognize that regular and ongoing reassessment of the Native American Election Information Program by the responsible officials will be necessary in order to ensure that Native American voters are able, and will continue to be able, to enjoy equal access to all phases of the political process in McKinley County.

ORDERED this 20th day of July, 1990.

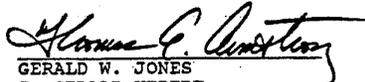

UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
AT ALBUQUERQUE

FEB 4 1986

JESSE CASAS

CLERK

UNITED STATES OF AMERICA,
Plaintiff,

v.

McKINLEY COUNTY, NEW MEXICO,
ET AL.
Defendants.

CIV 86 0028 M

CIVIL ACTION NO.

CONSENT DECREE

ENTERED ON DOCKET
Feb 4, 1986

The United States filed this action pursuant to 42 U.S.C. §1973 et seq., and 28 U.S.C. §2201 alleging that McKinley County, New Mexico failed to comply fully with the minority language requirements of Section 203 of the Voting Rights Act, 42 U.S.C. §1973aa-1a.

Under Section 203 of the Voting Rights Act, whenever McKinley County, New Mexico "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the [Navajo] language ..." 42 U.S.C. §1973aa-1a(c). Because the Navajo language is historically unwritten, McKinley County, under Section 203, is "required to furnish oral instructions, assistance, or other information relating to registration and voting." 42 U.S.C. §1973 aa-1a(c).

According to the 1980 Census, American Indians constitute approximately 65 percent of the population of McKinley County. The majority of the Indians are Navajo. A large proportion of the Navajos residing in McKinley County are unable to speak, write or read the English language, and instead speak the Navajo language.

The defendants claim, and the United States does not deny, that in the past the County has taken certain steps to comply with 42 U.S.C. §1973aa-1a. Defendants do not contest, however, that they have failed to comply fully with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a. Defendants point out that they did not purposely fail to comply with this statute.

The parties to this litigation have conferred and agree that the controversy should be settled without the necessity and expense of a trial. Accordingly, the Plaintiff and Defendants have applied for and agree to the entry of the following final order which is intended by the parties to comprise all of the relief in this case.

I.

NOW THEREFORE, the Court finds that the defendants, although they have taken certain steps toward implementation, have failed to comply fully with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a.

Accordingly, it is ORDERED, ADJUDGED, AND DECREED that McKinley County, New Mexico, together with its officers, agents, employees, successors, and all persons in active concert and participation with them are hereby permanently enjoined from further non-compliance with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a.

II.

IT IS FURTHER ORDERED THAT Defendants shall, for a period of five years, take the following steps to comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a, and the implementing regulations, 23 C.F.R. §55.1 et seq. Nothing in this Order shall preclude the County from taking any additional steps to comply with the statute and regulations.

A. Defendants shall provide a bilingual voter registration program which includes:

1. The establishment of rural registration sites in McKinley County for all future elections run by the County. The county will work with the Navajo Tribal Election Commission and other appropriate federal, state and local agencies in determining where to locate the rural registration sites. Further, the Defendants bilingual voter registration program shall include:

(a) At least one voter registration site to be established in County precincts numbered 1-20, and 51-53 and in any future precinct in which Navajos comprise a

majority of the precinct population. Registration and other information will be available in Navajo at each of the sites, Monday through Friday, 9:00 a.m. to 4:00 p.m., during a one-week period preceding the County Clerk's statutory registration deadline for all future elections run by the county.

(b) Each rural registration site shall be staffed by one or more deputy registration officers who are bilingual in English and Navajo. Completion of the proper registration forms at the rural registration sites shall be deemed the equivalent of filing them with the County Clerk's office for purposes of the 5:00 p.m. deadline on the day that registration closes.

For purposes of compliance with this provision, the county may rely on volunteer assistance from the McKinley County Consolidated School District, the Navajo Tribal Election Commission, the Navajo Tribe, Navajo Tribal Chapters, the State of New Mexico or any other government or private individual who may be located in the rural Navajo precincts.

2. In McKinley County precinct's numbered 1-20, 51-53 and in any future precinct in which Navajos comprise a majority of the precinct population, the County shall designate a minimum of three deputy registration officers. At least two of the registration officers shall be bilingual in English and Navajo in order that they may properly assist Navajo-speaking persons register to vote. Swearing

in of these deputy registration officers, and registration training sessions should such be necessary, shall be performed in a location convenient to the deputy registration officers.

3. The county shall undertake a more comprehensive recruitment effort to enlist bilingual deputy registration officers. The following shall be the minimal mandatory requirements of the deputy registration officer recruitment program:

(a) Swearing in of deputy registration officers and training sessions, should such be necessary, shall be performed in a location and at a time convenient to the deputy registration officers.

(b) The county shall make no attempt to restrict the number of deputy registration officers appointed within McKinley County. Any person desiring to be a deputy registration officer and meeting the statutory requirements as set out by New Mexico state law shall be duly appointed.

(c) The county shall place no restrictions other than those imposed by state law on the number of registration cards or other registration materials requested by deputy registration officers. Deputy registration officers may request additional registration cards or materials in writing, in person or by telephone. The county shall honor such requests and promptly mail or otherwise make the requested material available to the deputy registration officers.

4. Announcement shall be made in Navajo and publication in English of all registration deadlines, and the announcement of the establishment of the rural Navajo registration sites, their locations, dates and hours of operation, and the availability of bilingual assistance at the sites. Specifically, during the one-week period preceding each election registration deadline, Defendants shall cause an announcement containing the above information:

(a) to be announced in Navajo twice a day on KYVA, KOVO, KGAK, or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) to be announced in Navajo during the Navajo television hour on television station KOB/KOBF:

(c) to be prominently published in English twice in the Navajo Times; and

(d) to be announced in Navajo, either in person or by tape recorded message, at the Navajo tribal chapter meeting held closest in time prior to the registration deadline in each chapter having members residing in McKinley County.

B. The county shall undertake a more comprehensive recruitment effort to enlist bilingual poll officials and interpreters. A minimum of two bilingual interpreters shall be enlisted to serve at each polling place in precincts

1-20, 51-53 and in any future precinct in which Navajos comprise a majority of the precinct population. Only one bilingual interpreter is necessary in each precinct in which the population is between five (5) and fifty (50) percent Navajo. No bilingual interpreters are necessary in precincts where the Navajo population is less than five (5) percent. One alternate bilingual interpreter shall be appointed to be on notice to serve at the polling place of each precinct where five (5) percent or more of the population is Navajo. An interpreter may not also serve as an election judge or other election official.

Bilingual interpreters shall determine whether a voter needs assistance, and shall assist that voter in any manner that he or she may desire. Interpreters shall maintain the secrecy of the ballot and shall not disclose the manner in which the assisted persons voted.

C. The county shall expand the current election worker training program to provide for the instruction of poll officials and all others involved in the electoral process in the bilingual voting requirements of federal law, bilingual registration and voting procedures undertaken by the county to comply with federal law, and methods of rendering effective assistance to Navajo-speaking voters.

Such a program shall include the training and instruction of official poll interpreters in effective, accurate, and unbiased communication of all voting information to Navajo speaking voters. The county shall make all reasonable efforts to schedule and locate training and instruction sessions for official poll interpreters at times and locations convenient to the interpreter trainees.

D. During the two-week period immediately preceding each filing deadline for each county, state, federal or other local election conducted by the county election bureau, the defendants shall make the following information available in Navajo: the available positions for which candidates may file, candidate filing requirements, the deadline by which petitions for candidacy must be received, and any other information pertinent to qualify for candidacy which has been made available in English. All such information shall be:

(a) announced in Navajo at least once per week during each of the two weeks on KYVA, KOVO, KGAK, or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) announced in Navajo during the Navajo television hour on television station KOB/KOBF;

(c) published prominently in English once each week in the Navajo Times; and

(d) announced in Navajo, either in person or by tape recorded message, at each Chapter of the Navajo Tribe located in McKinley County.

E. During the two-week period immediately preceding each election the defendants must make the following information available in Navajo: information concerning the offices subject to election; information concerning the identity of candidates for election; information concerning constitutional amendments, referendum and initiative issues on the ballot; eligibility to vote; dates of election and the hours and location of the polling places; and any other election or voting information which has been made available in English. All such information shall be:

(a) Announced in Navajo at least 3 times during each of the two weeks on KYVA, KOVO, KGAK, or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) announced in Navajo during the Navajo television hour on television station KOB/KOBF.

(c) published prominently in English once each week in the Navajo Times; and

(d) announced in Navajo, either in person or by tape recorded message, at each Chapter of the Navajo Tribe located in McKinley County.

F. Defendants shall establish a rural absentee ballot program for the purpose of providing absentee voter information in the Navajo language. The following shall be the minimal mandatory elements of the rural absentee ballot program:

1. In County precincts numbered 1-20, 51-53, and in any future precinct in which Navajos comprise a majority of the precinct population, the county shall designate at least one notary public who resides within the precinct to notarize absentee ballots. If no notary public can be found who resides within a Navajo-majority precinct, the County will make all reasonable efforts to recruit and qualify a Navajo-speaking individual residing within the precinct as a notary public.

2. Commencing on the statutory date that absentee ballots become available for distribution and continuing until the statutory deadline for receipt of absentee ballots, the County shall make absentee ballot information available in Navajo. The absentee ballot information shall include an explanation of the absentee ballot process, notification of the location and availability of the designated notary publics in the majority-Navajo county precincts as delineated in the preceding paragraph in this Section and any other information pertinent to absentee balloting procedures

which has been made available in English. Absentee ballot information shall be:

(a) announced in Navajo at least 3 times per week for a period of 2 weeks immediately preceeding the deadline for the receipt of absentee ballots on KYVA, KOVO, KGAK, or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) announced in Navajo during the Navajo television hour on television station KOB/KOBF;

(c) published prominently in English once each week in the Navajo Times; and

(d) announced in Navajo, either in person or by tape recorded message, at each Chapter of the Navajo Tribe located in McKinley County.

3. At least 20 days prior to the availability of absentee ballots, the county shall provide absentee ballot applications to all designated deputy registration officers and designated notary publics who reside in precincts 1-20, 51-53, and in any future majority-Navajo county precinct. All persons and organizations who request absentee ballot applications either in writing, in person or by telephone shall be provided with applications by the county elections bureau. The County shall not place unreasonable restrictions on the number of absentee ballot applications to be distributed to any person or organization.

G. Each time the county undertakes to purge eligible voters from its registration rolls pursuant to § 1-4-22 through 1-4-32 of the state election code, the County shall carry out the following additional procedures to notify Navajo-speaking individuals who are subject to purge:

1. Each deputy registration officer residing in County precincts 1-20, 51-53 and in any future majority-Navajo precincts will receive from the county a list of registered voters who reside in their precinct and who are subject to purge. The county will request that each deputy registration officer notify the county concerning persons who are on the purge list and have died or moved from the precinct.

2. The county will mail to all registered voters subject to purge, a card notifying them that they are about to be purged. Within the time period set out in state law, voters may reassert their eligibility as registered voters by either: (1) returning the purge cards to the county clerk's office or (2) notifying the County Clerk, County Bureau of Elections, or deputy registration officer of their desire to be retained as an eligible registered voter.

3. The county will disseminate information reasonably designed to explain the purge process to Navajo voters. Such information shall include any information pertinent to

the purge process which has been made available in English. Specifically, during the period provided by state law in which voters are subject to purge, the county shall cause the above information:

(a) to be announced in Navajo twice a week on KYVA, KOVO, KGAK or other appropriate radio stations, if any, with a substantial Navajo audience in McKinley County;

(b) to be published prominently in English twice in the Navajo Times;

(c) to be announced in Navajo, either in person or by tape recorded message, at each Chapter of the Navajo Tribe located in McKinley County.

4. The county will encourage deputy registration officers to contact individuals subject to purge to determine whether affected persons desire to be retained on the registration rolls. Before any person in precincts 1-20, 51-53 or in any future precinct in which a majority of the population is Indian is removed from the registration list, the county will contact the deputy registration officer in those precincts to determine which voters have indicated a desire to be retained on the registration rolls. Should the County learn that any voter has indicated a desire to be retained on the registration rolls, that voter will be retained on the county's list of registered voters.

H. For each polling place location where the county places signs in English directing voters to the polling area, the County shall take appropriate steps, including the use of simple maps, to communicate the same information to Navajo-speaking voters.

I. (a) In order to more fully meet its responsibility under federal law, the County will assign at least one employee in the County Elections Bureau, who is fully bilingual in Navajo and English, the full time task of implementing the requirements of this Decree for a period of 2 years. Specifically, such person will be assigned to initiate, coordinate, implement and supervise McKinley County's compliance with the Navajo language requirements of Section 203 of the Voting Rights Act, 42 U.S.C. §1973aa-1a, including, but not limited to, compliance with the provisions of this consent decree.

(b) In addition, the County shall provide Navajo language assistance in the office of the Bureau of Elections during normal business hours.

J. Whenever the County provides or causes voting or election information to be made available in English, it shall rely on individuals who are capable of providing effective, accurate and unbiased translation of the same information into Navajo including constitutional amendments,

referendum or initiative issues and the information contained in the Voter Information Pamphlet.

II.

Defendants shall cause to be made and preserved records of the actions taken to comply with this agreement and order. Representatives of the Plaintiffs shall be permitted to inspect and copy relevant records of the Defendants at reasonable times and upon reasonable notice.

III.

The Court shall retain jurisdiction over this matter for all purposes for a period of five years. At the end of the five year period, the defendants may move the court, upon 45 days written notice to the United States, for an order terminating the provisions of the consent decree. In considering whether the consent decree shall be dissolved, the Court will take into account, subject to a sufficient demonstration by the defendants, whether the basic objectives of the consent decree have been achieved.

ORDERED this 3rd day of January, 1986.

For the United States:

James M. Schermerhorn
Michael J. Gennaco
JAMES M. SCHERMERHORN
MICHAEL J. GENNACO
Attorneys for the Plaintiff
United States

Robert R. Bell
UNITED STATES APPELLATE JUDGE

James G. Bennett
UNITED STATES DISTRICT JUDGE

For the Defendants:

Forrest G. Buffington
FORREST G. BUFFINGTON
Attorney for the Defendants

S. L. ...
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT
SANTA FE, NEW MEXICO

JAN 09 1986

UNITED STATES OF AMERICA,
Plaintiff,

v.

McKINLEY COUNTY, NEW MEXICO;
McKINLEY COUNTY BOARD OF
COMMISSIONERS; GLORIA P. HOWES,
RUSSELL A. KING, EARNEST C.
BECENTI, McKinley County Board of
Commissioners; GLORIA A. LENTE,
McKINLEY COUNTY CLERK; ERNEST
J. MARQUEZ, JR., DIRECTOR, McKinley
County Bureau of Elections,
Defendants.

John A. ... CLERK

CIVIL ACTION NO.

CIV 86 0028 M

COMPLAINT

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States of America for injunctive and declaratory relief pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 et seq., and 28 U.S.C. § 2201.
2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345, and 42 U.S.C. § 1973aa-2.
3. The Attorney General is authorized to bring this action pursuant to 42 U.S.C. § 1973aa-2 and 25 U.S.C. § 175.

4. The action requires the empanelling of a three-judge court to hear and determine the issues presented herein as provided by 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

5. McKinley County is a political subdivision of the State of New Mexico and is a jurisdiction covered by the minority language assistance requirements, Section 203c of the Voting Rights Act, as amended, 42 U.S.C. § 1973aa-1a.

6. The Defendant County Board of Commissioners is the general governing and managing body of McKinley County, an organized political subdivision of the State of New Mexico.

7. The Defendants Gloria P. Howes, Russell A. King and Earnest C. Becenti are the current duly elected members of the McKinley County Board of Commissioners and are joined in their official capacity. Each resides in McKinley County, New Mexico.

8. Defendant Gloria A. Lente, McKinley County Clerk, has numerous statutory duties and responsibilities with regard to the conduct of elections held in the county. As County Clerk, she is responsible for overseeing all election matters undertaken by the McKinley County Bureau of Elections. She is a resident of the State of New Mexico and is sued in her official capacity.

9. Defendant Ernest J. Marquez, Jr. is the director of the McKinley County Bureau of Elections. As director of the Bureau of Elections, defendant Marquez is responsible for exercising powers and duties associated with the conduct of elections in McKinley County. Among his powers and duties, defendant Marquez is responsible for disseminating all information relating to registration and voting and for implementing voter assistance procedures in McKinley County. He is a resident of the State of New Mexico and is sued in his official capacity.

10. McKinley County is located in northwestern New Mexico and contains a substantial portion of the Navajo and Zuni Indian Reservations.

11. McKinley County has a total population of approximately 56,449 persons according to the 1980 census.

12. 42 U.S.C. § 1973aa-1a(c) provides that where the language of the applicable minority group is historically oral or unwritten, the covered jurisdiction is required to furnish oral instructions, assistance, or other information relating to registration and voting in the minority language, whenever it provides materials or information relating to the electoral process in English.

13. Defendants have violated 42 U.S.C. § 1973aa-1a (c) by failing to furnish, in the Navajo language,

oral instructions, assistance, and other information relating to registration and voting. Defendants have provided, in the English language, such material and information relating to the electoral process. Examples of the county's failure to furnish registration and voting information in the Navajo language include but are not limited to the following:

- a. Defendants have failed to provide knowledgeable bilingual persons within each voting precinct to serve as translators for Navajo voters in McKinley County in need of language assistance.
- b. Defendants have failed to ensure effective interpretation of all aspects of the ballot, including constitutional amendments, to Navajo-speaking voters. Defendants do provide information relating to all aspects of the ballot, including constitutional amendments, to English-speaking voters.
- c. Defendants have failed to provide effective notice, in the Navajo language, concerning the location of polling places. Defendants do provide notice, in the English language, concerning the location of polling places.
- d. Defendants have failed to provide, in the Navajo language, effective oral instructions, assistance, and other information concerning all aspects of the voter registration process, candidate nomination and filing procedures, absentee voting process and voter purging pro-

cess. Defendants do provide, in the English language, information regarding the voter registration process, candidate nomination and filing procedures, the absentee voting process and voter purging process.

e. Defendants have failed to provide, in the Navajo language, registration and voting notices, forms, instructions, assistance and other materials and information relating to the electoral process, including ballots. Defendants do provide, in the English language, registration and voting notices, forms, instructions, assistance and other materials and information relating to the electoral process, including ballots.

WHEREFORE, the plaintiff United States prays for an order:

1. Declaring that the defendants are in violation of the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

2. Enjoining the defendants, their agents, officers, employees, successors, and all other persons in active concert or participation with any of them from further non-compliance with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

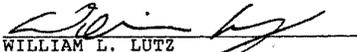
3. Requiring the defendants to submit a plan to the Court which fully complies with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a and the implementing regulations, 28 C.F.R. § 55 et seq.

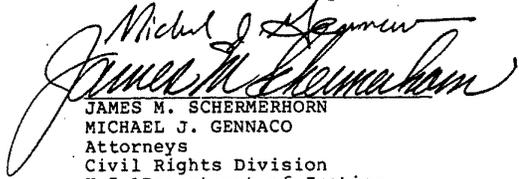
4. Ordering such other relief as the interests of justice may require, together with the costs and disbursements of this action.

EDWIN MEESE III
Attorney General

By:


~~WM. BRADFORD REYNOLDS~~
Assistant Attorney General
Civil Rights Division


WILLIAM L. LUTZ
United States Attorney


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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIV. 86-0028 BB/M/JC
v.)	
)	
McKINLEY COUNTY, NEW MEXICO;)	
McKINLEY COUNTY BOARD OF COUNTY)	
COMMISSIONERS; EARNEST C. BECENTI,)	
SHARON RICHARDS, BENNIE SCHELLY)	
MCKINLEY COUNTY BOARD OF COMMISSIONERS;)	
CAROL K. SLOAN, MCKINLEY COUNTY CLERK;)	
CECELIA S. MADRID, DIRECTOR, McKinley)	
County Bureau of Elections;)	
Defendants.)	

AMENDED COMPLAINT

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States of America for injunctive and declaratory relief pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973-1973bb-1, and 28 U.S.C. § 2201.
2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345, and 42 U.S.C. § 1973aa-2.
3. The Attorney General is authorized to bring this action pursuant to 42 U.S.C. § 1973aa-2.
4. The action requires the empaneling of a three-judge court to hear and determine the issues presented herein as provided by 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.
5. McKinley County is a political subdivision of the State of New Mexico and is a jurisdiction covered by the minority

language assistance requirements, Section 203c of the Voting Rights Act, as amended, 42 U.S.C. § 1973aa-1a.

6. The Defendant County Board of Commissioners is the general governing and managing body of McKinley County, an organized political subdivision of the State of New Mexico.

7. The Defendants Earnest C. Becenti, Sharon Richards and Bennie Schelly are the current duly elected members of the McKinley County Board of Commissioners and are sued in their official capacity. Each resides in McKinley County, New Mexico.

8. Defendant Carol K. Sloan, McKinley County Clerk, has numerous statutory duties and responsibilities with regard to the conduct of elections held in the county. As County Clerk, she is responsible for overseeing all election matters undertaken by the McKinley County Bureau of Elections. She is a resident of the state of New Mexico and is sued in her official capacity.

9. Defendant Cecilia S. Madrid is the director of the McKinley County Bureau of Elections. As director of the Bureau of Elections, defendant Madrid is responsible for exercising powers and duties associated with the conduct of elections in McKinley County. Among her powers and duties, defendant Madrid is responsible for disseminating all information relating to registration and voting and for implementing voter assistance procedures in McKinley County. She is a resident of the State of New Mexico and is sued in his official capacity.

10. McKinley County is located in northwestern New Mexico and contains a substantial portion of the Navajo and Zuni Indian Reservations.

11. According to the 1990 Census, McKinley County had a total population of 60,686 persons, of whom 42,700 were Native American.

12. According to the 1990 Census, there are 18,006 Navajo-speaking voting age citizens and 4,049 Zuni-speaking voting age citizens in McKinley County. Of this group, 7,132 of the Navajo-speakers and 2,098 of the Zuni speakers speak English "less than very well."

13. McKinley County is required to furnish, in the Navajo and Zuni languages, oral instructions, assistance, and other information relating to registration and voting pursuant to 42 U.S.C. § 1973aa-1a(c).

14. 42 U.S.C. § 1973aa-1a(c) provides that where the language of the applicable minority group is historically oral or unwritten, the covered jurisdiction is required to furnish oral instructions, assistance, or other information relating to registration and voting in the minority language, whenever it provides materials or information relating to the electoral process in English.

15. Defendants have violated 42 U.S.C. § 1973aa-1a (c) by failing to furnish, in the Navajo and Zuni languages, oral instructions, assistance, and other information relating to registration and voting. Defendants have provided, in the

English language, such material and information relating to the electoral process. Examples of the county's failure to furnish registration and voting information in the Navajo and Zuni languages include but are not limited to the following:

a. Defendants have failed to provide knowledgeable bilingual persons within each voting precinct to serve as translators for Navajo or Zuni-speaking voters in McKinley County in need of language assistance.

b. Defendants have failed to ensure effective interpretation of all aspects of the ballot, including constitutional amendments, to Navajo-speaking and Zuni-speaking voters. Defendants do provide information relating to all aspects of the ballot, including constitutional amendments, to English-speaking voters.

c. Defendants have failed to provide effective notice, in the Navajo and Zuni languages, concerning the location of polling places. Defendants do provide notice, in the English language, concerning the location of polling places.

d. Defendants have failed to provide, in the Navajo and Zuni languages, effective oral instructions, assistance, and other information concerning all aspects of the voter registration process, candidate nomination and filing procedures, absentee voting process and voter purging process. Defendants do provide, in the English language, information regarding the voter registration process, candidate nomination and filing procedures, the absentee voting process and voter purging process.

e. Defendants have failed to provide, in the Navajo and Zuni languages, registration and voting notices, forms instructions, assistance and other materials and information relating to the electoral process, including ballots. Defendants do provide, in the English language, registration and voting notices, forms, instructions, assistance and other materials and information relating to the electoral process, including ballots.

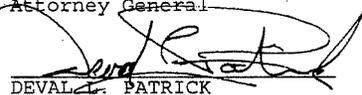
WHEREFORE, the plaintiff United States prays for an order:

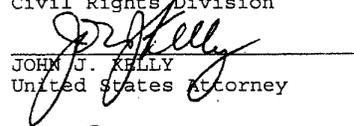
1. Declaring that the defendants are in violation of the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.
2. Enjoining the defendants, their agents, officers, employees successors, and all other persons in active concert or participation with any of them from further noncompliance with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.
3. Requiring the defendants to submit a plan to the Court which fully complies with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a and the implementing guidelines, 28 C.F.R. Part 55.

4. Ordering such other relief as the interests of justice may require, together with the costs and disbursements of this action.

JANET RENO
Attorney General

By:


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Page 1

United States District Court,
D. New Mexico.

UNITED STATES of America, Plaintiff,
v.
McKINLEY COUNTY, NEW MEXICO,
McKinley County Board of Commissioners,
Gloria P.
Howes, Russell A. King, Earnest C. Becenti,
McKinley County Board of
Commissioners, Gloria A. Lente, McKinley
County Clerk, and Ernest J. Marquez,
Director, McKinley County Bureau of Elections,
Defendants.

No. CIV-86-0028.

Sept. 24, 1996.

United States sought ten additional years of federal intervention into county's electoral process, via entry of second amended consent decree and order, due to alleged continuing violations of minority language assistance requirements of Voting Rights Act (VRA). A three-judge panel of the District Court denied entry of decree, and upon reconsideration, held that entry of second consent decree was not warranted, given commendable results in county's minority language assistance program and county's intention to continue with procedures in place as result of original consent decree.

Denied.

West Headnotes

[1] Federal Civil Procedure ⚡ 2397.3
170Ak2397.3

"Consent decree" is not merely contract which court perfunctorily approves upon parties' request; entry of consent decree is discretionary exercise of judicial power enforceable by contempt.

[2] Federal Civil Procedure ⚡ 2397.2
170Ak2397.2

Parties to lawsuit cannot, by giving each other consideration, purchase from court a continuing injunction in form of consent decree.

[3] Federal Civil Procedure ⚡ 2397.3
170Ak2397.3

District court, in deciding whether to approve consent decree, must consider whether proposed decree is appropriate commitment of judicial resources.

[4] Federal Civil Procedure ⚡ 2397.2
170Ak2397.2

Consent decree must be fair, adequate, and reasonable, and not illegal, product of collusion, or against public interest.

[5] Federal Civil Procedure ⚡ 2397.2
170Ak2397.2

Consent decree must remain within scope of pleadings and further objectives of law sought to be enforced; specifically, any federal decree must be a tailored remedial response to illegality.

[6] Evidence ⚡ 83(1)
157k83(1)

Public officials presumably perform duties in manner consistent with law absent clear evidence to contrary.

[7] Federal Civil Procedure ⚡ 2397.3
170Ak2397.3

District court should require showing of at least probable violation of law before approving consent decree which requires separate sovereign to comply with law and substitute its sound discretion with court-ordered procedures.

[8] Federal Civil Procedure ⚡ 2397.3
170Ak2397.3

District court need not conclusively decide merits of controversy before approving consent decree between sovereigns; however, court must carefully scrutinize proposed decree and find it appropriate to remedy probable violation of law under facts presented.

[9] Elections ⚡ 12(9.1)
144k12(9.1)

Congress, in enacting minority language assistance requirements in Voting Rights Act (VRA), did not authorize federal courts to be state election monitors. Voting Rights Act of 1965, § 203(c), 42 U.S.C.A. § 1973aa-1a(c).

[10] Elections ⚡ 12(9.1)
144k12(9.1)

District court would deny entry of second amended consent decree and order that provided for additional ten years of federal oversight of county's electoral process due to alleged continuing violations of minority language assistance requirements of Voting Rights Act (VRA), given that county, which had large percentage of Native Americans, had achieved commendable results in minority language assistance program since entry of original consent decree, that county intended to continue providing oral assistance and instruction to Navajo and Zuni language voters at every stage of electoral process, and that procedures in place as result of original decree would remain in place. Voting Rights Act of 1965, § 203(c), 42 U.S.C.A. § 1973aa-1a(c); 28 C.F.R. §§ 55.2(b)(1,2), (c), 55.16.

*1063 John Kelly, United States Attorney; Deval L. Patrick, Assistant Attorney General; Elizabeth Johnson, Barry Weinberg, Susana Lorenzo-Giguere and Luis Torres, Voting Rights Section, Dept. of Justice, Wash., D.C., for Plaintiff.

James J. Mason, Mason, Isaacson & Macik, PA, Gallup, New Mexico, for Defendants.

OPINION ORDER

Before BALDOCK, Circuit Judge, CONWAY, Chief District Judge, and MECHEM, Senior District Judge. [FN*]

FN* This three-judge panel is convened in accordance with 28 U.S.C. § 2284 and 42 U.S.C. § 1973aa-2.

PER CURIAM.

Backed by court-approved consent decrees, Plaintiff United States has kept careful watch over the electoral process of McKinley County, New Mexico, for the past ten years. Plaintiff now asserts that ten additional years of federal intervention into McKinley County's electoral process is warranted due to continuing violations of the Voting Rights Act's minority language assistance requirements. To that end, Plaintiff seeks entry of a "Second Amended Consent Decree and Order." While not outwardly opposing entry of the decree, McKinley County expressly denies any continuing violation of the Voting Rights Act. The court carefully exercises its discretion and denies *1064 entry of the "Second Amended Consent Decree and Order."

I.

Plaintiff United States instituted this action in January 1986 against Defendants McKinley County, New Mexico; its Board of Commissioners; and certain named county officials. Plaintiff sought declaratory and injunctive relief to remedy Defendants' alleged violation of the minority language requirements of § 203(c) of the Voting Rights Act. 42 U.S.C. § 1973aa- 1a(c). Section 203(c) provides:

Whenever any ... [covered] political subdivision ... provides any registration or 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: *Provided*, That where the language of the applicable minority group is oral or unwritten or in the case of ... American Indians, if the predominant language is historically unwritten, the ... political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.

42 U.S.C. § 1973aa-1a(c) (emphasis added).

A substantial portion of McKinley County's population consists of Navajo Indians. Due to its large Native American population, McKinley County constitutes a political subdivision subject to the minority language assistance requirements of § 203(c). 28 C.F.R. Part 55 (1995) (Appendix). Plaintiff alleged that Defendants were violating § 203(c) "by failing to furnish, in the Navajo language, oral instructions, assistance, and other information relating to registration and voting."

The parties' joint motion for entry of a "Consent Decree" accompanied Plaintiff's complaint. In February 1986, this court entered the "Consent Decree." Therein, Defendants did not contest, and the court expressly found, that Defendants had "failed to comply fully with the minority language requirements of the Voting Rights Act" (VRA). The court permanently enjoined Defendants from noncompliance with the VRA, and required Defendants to establish a remedial bilingual election program designed to provide Navajo language voters with an equal opportunity to participate in McKinley County's electoral process. The court retained oversight jurisdiction of the county's electoral process for a period of five years. The "Consent Decree" further provided that after five years, Defendants would be entitled to formal dissolution of the decree

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upon a "sufficient demonstration" that Defendants had achieved the decree's "basic objectives."

In July 1990, the parties submitted a joint motion for entry of a "First Amended Consent Decree and Order." The "First Amended Consent Decree and Order" provided for increased federal regulation and oversight of McKinley County's electoral process. Conspicuously absent from the proposed amended decree, however, was any allegation, admission or proposed finding of a continuing VRA violation in McKinley County. Rather, the decree "provide[d] for additional measures to improve the effectiveness of McKinley County's remedial bilingual election program." In October 1990, this court entered the "First Amended Consent Decree and Order." Like the original "Consent Decree" the "First Amended Consent Decree and Order" was limited in duration to five years and provided for dissolution of the decree upon "sufficient demonstration" that Defendants had achieved the "basic objectives" of the decree.

In December 1995, the parties submitted to this court for entry, *without motion*, a "Second Amended Consent Decree and Order." The "Second Amended Consent Decree and Order" proposes yet more federal regulation and oversight of McKinley County's electoral process for a ten-year period or until 2006. Furthermore, the proposed decree would, for the first time, mandate election procedures pertaining to Zuni language voters. This addition is in response to 1992 amendments to the VRA, which placed the Zuni Indians residing in McKinley County within the purview of § 203(c), *see* 28 C.F.R. Part 55 (1995) (Appendix). Thus, the parties apparently agreed to incorporate into the "Second Amended Consent Decree and Order" remedies designed to give Zuni language *1065 voters an equal opportunity to participate in McKinley County's electoral process. [FN1] Notably, however, Plaintiff has never sought to amend the complaint to allege a violation of § 203(c) relating to McKinley County's Zuni population. Moreover, the "Second Amended Consent Decree and Order" lacks any allegation, admission, or proposed finding of a VRA violation in McKinley County related to Navajo or Zuni language voters.

FN1. Zuni language voters presently are the subject of a separate agreement which the parties executed in December 1993, and the Attorney General precleared under § 3(c) of the VRA, 42 U.S.C. § 1973a(c), in February 1994.

Concerned with these developments, this court set the proposed entry of the "Second Amended Consent Decree and Order" for hearing. The court directed the parties to address with specificity the ongoing VRA violations which justified an additional ten years of federal court supervision over McKinley County's electoral process. On May 3, 1996, this court held a hearing at which Defendants denied any continuing violations of the VRA in McKinley County. Due to cost considerations arising from the threat of complex litigation, however, Defendants did not oppose Plaintiff's requested entry of the "Second Amended Consent Decree and Order." Unconvinced of the existence of any continuing VRA violations in McKinley County related to Navajo language voters, the desirability of encompassing Zuni language voters within the proposed consent decree, or the need after ten years for more federal court supervision over McKinley County's electoral process, this court denied entry of the "Second Amended Consent Decree and Order" on June 3, 1996.

On June 17, 1996, Plaintiff filed an "Unopposed Motion for Reconsideration" asking the court to reconsider its order denying entry of the "Second Amended Consent Decree and Order." For the first time since the court's entry of the "First Amended Consent Decree and Order" six years ago, Plaintiff claims in its motion that "McKinley County has failed to comply with significant provisions of the First Amended Consent Decree, and has failed to conduct its elections in compliance with § 203 of the Voting Rights Act ... and the Fourteenth and Fifteenth Amendments." While the motion is "unopposed," Defendants continue to deny any violation of the VRA in McKinley County. Defendants' court-ordered response to Plaintiff's motion states: "McKinley County has complied substantially, if not fully, with the provisions of the First Amended Consent Decree. Further, it has conducted its elections, in particular its most recent election, in compliance with § 203 of the Voting Rights Act." [FN2]

FN2. The court construes Plaintiff's motion for reconsideration as a motion to alter or amend judgment pursuant to Fed.R.Civ.P. 59(e). The court entered its order denying entry of the "Second Amended Consent Decree and Order" on June 3, 1996. Plaintiff filed its motion for reconsideration on June 17, 1996, within the ten day time period prescribed by Rule 59(e). Fed.R.Civ.P. 6(a) ("When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."). Although not technically a judgment, the court's June

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3 order may be considered a denial of injunctive relief immediately appealable under 28 U.S.C. § 1292(a)(1), and thus subject to a Rule 59(e) motion. See *Carson v. American Brands, Inc.*, 450 U.S. 79, 101 S.Ct. 993, 67 L.Ed.2d 59 (1981) (order refusing to approve consent decree appealable under § 1292(a)(1)).

II.

[1][2] A consent decree is not merely a contract which the court perfunctorily approves upon the parties' request. Entry of a consent decree is a discretionary exercise of judicial power enforceable by contempt. The Supreme Court rejected long ago the argument that "a decree entered upon consent is to be treated as a contract and not as a judicial act." *United States v. Swift & Co.*, 286 U.S. 106, 115, 52 S.Ct. 460, 462, 76 L.Ed. 999 (1932). A court "is not properly a recorder of contracts; it is an organ of government constituted to make judicial decisions, and when it has rendered a consent judgment it has made an adjudication." *International Assoc. of Firefighters v. City of Cleveland*, 478 U.S. 501, 538, 106 S.Ct. 3063, 3084, 92 L.Ed.2d 405 (1986) (Rehnquist, J., dissenting) (quoting 1B J. Moore, J. Lucas, & T. Currier, *Moore's Federal Practice* ¶ 0.409[5], at 330-31 (1984)). Accordingly, *1066 this court "is not obliged to approve every consent decree placed before it." *United States v. State of Colorado*, 937 F.2d 505, 509 (10th Cir.1991) (emphasis added). Parties to a lawsuit "cannot, by giving each other consideration, purchase from a court ... a continuing injunction" in the form of a consent decree. *System Federation No. 91 v. Wright*, 364 U.S. 642, 651, 81 S.Ct. 368, 373, 5 L.Ed.2d 349 (1961); accord *Kasper v. Board of Election Comm'rs*, 814 F.2d 332, 338 (7th Cir.1987) ("A district judge need not lend the aid of the federal court to whatever strikes the two parties' fancy.").

[3][4][5] Because entry of a consent decree is a judicial act, the district court must consider whether the proposed decree is an appropriate commitment of judicial resources. *Kasper*, 814 F.2d at 338. The decree must be "fair, adequate, and reasonable," and "not illegal, a product of collusion, or against the public interest." *State of Colorado*, 937 F.2d at 509. A consent decree must remain within the scope of the pleadings and further the objectives of the law sought to be enforced. *City of Cleveland*, 478 U.S. at 525, 106 S.Ct. at 3076-77. Specifically, "any federal decree must be a tailored remedial response to illegality." *League of United Latin American Citizens v. Clements*, 999 F.2d 831, 847 (5th

Page 4

Cir.1993), *cert. denied*, 510 U.S. 1071, 114 S.Ct. 878, 127 L.Ed.2d 74 (1994).

[6][7] Additional concerns arise where the proposed decree "entangles an arm of the federal government in the administration of another sovereign ... rather than enforcing strictly legal rights." *Evans v. City of Chicago*, 10 F.3d 474, 477-78 (7th Cir.1993) (en banc) (plurality), *cert. denied*, --- U.S. ---, 114 S.Ct. 1831, 128 L.Ed.2d 460 (1994); see also *Georgevich v. Strauss*, 772 F.2d 1078, 1085 (3d Cir.1985) (en banc) (recognizing district courts' "legitimate concerns" over effect of consent decree on federal-state relations), *cert. denied*, 475 U.S. 1028, 106 S.Ct. 1229, 89 L.Ed.2d 339 (1986). Public officials presumably perform their duties in a manner consistent with law absent "clear evidence to the contrary." *United States v. Chemical Found., Inc.*, 272 U.S. 1, 14-15, 47 S.Ct. 1, 6, 71 L.Ed. 131 (1926). Thus, before approving a decree affecting a separate sovereign, the district court--

must ensure that there is a substantial federal claim, not only when the decree is entered but also when it is enforced, and that the obligations imposed by the decree rest on this rule of federal law rather than the bare consent of the officeholder. When making these inquiries, courts are bound by principles of federalism (and by the fundamental differences between judicial and political branches of government) to preserve the maximum leeway for democratic governance.

Evans, 10 F.3d at 479. Simply stated, the district court should require a showing of "at least a probable violation" of the law before approving a consent decree which requires a separate sovereign not only to comply with the law, but also to substitute its sound discretion with court-ordered procedures. *Kasper*, 814 F.2d at 342.

[8] All this is not to say that the district court must conclusively decide the merits of the controversy before approving a consent decree between sovereigns. *Citizens for a Better Environment v. Gorsuch*, 718 F.2d 1117, 1126 (D.C.Cir.1983), *cert. denied*, 467 U.S. 1219, 104 S.Ct. 2668, 81 L.Ed.2d 373 (1984). The court, however, must carefully scrutinize the proposed decree and find it appropriate to remedy a probable violation of law under the facts presented. *United States v. City of Miami*, 664 F.2d 435, 441 (5th Cir.1981) (Rubin, J., concurring). Otherwise, the court could not conclude that the proposed decree is fair, reasonable, and in the public interest. *State of Colorado*, 937 F.2d at 509.

III.

This court doubts that in enacting § 203 of the VRA, Congress intended to subject the election procedures of county government to seemingly endless federal court supervision without good reason. What Congress did intend in enacting § 203 was that "language minority populations have substantive access to the ballot." H.R.Rep. No. 655, 102d Cong., 2d Sess. 5, *reprinted in* 1992 U.S.C.C.A.N. 766, 769. In the case of historically unwritten languages, such as Navajo *1067 and Zuni, the covered jurisdiction "is only required to furnish oral instructions, assistance, or other information relating to registration and voting." 42 U.S.C. § 1973aa-1a(c)

The Attorney General's interpretation as to what is required of covered jurisdictions under § 203(c) is contained in 28 C.F.R. Part 55 (1995). The Attorney General measures compliance with § 203(c) by determining whether the covered jurisdiction has taken "all reasonable steps" to ensure that minority language voters have received information and assistance allowing them to "participate effectively in voting-connected activities." 28 C.F.R. § 55.2(b)(1) & (2). The covered jurisdiction is responsible for deciding what steps are necessary to achieve that goal: "*The determination of what is required for compliance with ... § 203(c) is the responsibility of the affected jurisdiction.* These guidelines should not be used as a substitute for analysis and decision by the affected jurisdiction." *Id.* § 55.2(c) (emphasis added); *accord* § 55.14(c). The measure of a covered jurisdiction's success in complying with § 203(c) is results: "Compliance with the requirements of ... § 203(c) is *best measured by results.*" *Id.* § 55.16 (emphasis added).

A.

The results which McKinley County's minority language assistance program has achieved in the ten years since the court's entry of the original "Consent Decree" are commendable. McKinley County has a population of 60,700. The county's Navajo voting age population is 18,000. The county's Zuni voting age population is 4,200. While undoubtedly some of McKinley County's Native Americans speak limited English, the record is unclear as to the number of Native Americans requiring language assistance at the polls. Apparently, however, a great number of Native Americans in McKinley County have "substantive access to the ballot." Presently, seven

of nine elected county officials in McKinley County are Native American. The county manager, an appointed official, is Native American. Two of three state senators representing McKinley County are Native American. Two of the county's four state representatives are Native American.

Further, McKinley County has registered an additional 8,000 eligible voters and established an additional 22 polling places or precincts since the court's entry of the original "Consent Decree" ten years ago. In May 1986, 18,000 registered voters resided in McKinley County. In July 1996, 26,000 registered voters resided in McKinley County. In 1986, McKinley County had 42 polling places or precincts--25 county, 15 city, and 2 Zuni. In July 1996, McKinley County had 64 polling places or precincts--38 county, 22 city, and 4 Zuni. At Zuni polling places, 85-90% of poll workers on election day are Zuni, at least half of whom are fluent in both Zuni and English. Similarly, at county polling places where the majority of registered voters are Navajo, 85-90% of poll workers on election day are Navajo. At least half of Navajo poll workers are fluent in both Navajo and English. Despite significant increases in registered voters and polling places, the rate of turnaways--those individuals not permitted to vote due to registration irregularities--has steadily declined in McKinley County.

In addition to implementing the voting procedures this court mandated in the "Consent Decree" and "First Amended Consent Decree and Order," McKinley County has willingly established at Plaintiff's request a "Mobile Satellite Election Office." This mobile office effectively brings McKinley County's Bureau of Elections to residents of the Navajo reservations. A voting rights coordinator and Navajo speaking deputy election clerk staff the office. The coordinator and clerk provide information and instruction regarding registration and voting. Among other things, the office registers voters, records address changes, provides potential candidates with filing information, and furnishes voters with applications for absentee and early voting.

B.

Plaintiff acknowledges that over the past ten years, McKinley County has taken significant steps towards compliance with § 203(c) *1068 of the VRA. Contrary to the Attorney General's guidelines for measuring compliance with § 203(c), however,

Plaintiff asserts that results "have little to do with providing adequate language assistance to the Native American registered voters who need it." Plaintiff submits documentation, sworn and unsworn, showing instances where poll workers at certain polling places have failed to adequately translate the ballot contents for Navajo and Zuni language voters. Plaintiff claims McKinley County's failure to adequately train ballot translators effectively denies Navajo and Zuni language voters equal access at the polls.

[9] Differences in culture and vocabulary make translating English into Navajo or Zuni a complex and difficult task. For instance, no word exists in the Navajo or Zuni languages for Republican or Democrat. Much is necessarily left to the translators' discretion. The court does not dispute *on this record* that irregularities and inconsistencies in translation remain. But if the court considered every inconsistency or irregularity in ballot translation a violation of the VRA, federal court intervention into and oversight of McKinley County's electoral process might never end. Congress in enacting § 203(c) of the VRA "did not authorize federal courts to be state election monitors." *Ganza v. Aguirre*, 619 F.2d 449, 454 (5th Cir.1980). The Attorney General realizes as much in 28 C.F.R. §§ 55.2(c), 55.14(c), which state that a jurisdiction covered under § 203(c) should determine what is necessary to comply with § 203(c).

[10] Entry of the "Second Amended Consent Decree and Order" as written would be improvident because regulation of election procedures should be left to the responsible sovereign "unless a particular procedure is *essential* to cure an ongoing violation of federal

law." *Evans*, 10 F.3d at 480 (emphasis added). By "not opposing" entry of the proposed decree, but not admitting any ongoing violation of § 203(c), McKinley County appears willing to sacrifice the appropriate balance between local and national power, and thus the public interest, merely to avoid the expense of litigation. But no reason exists why this court's refusal to enter the "Second Amended Consent Decree and Order" should sound the death knell of the parties' cooperation or lead to protracted litigation. McKinley County represents in its response to the court that the county will continue providing oral assistance and instruction to Navajo and Zuni language voters at every stage of the electoral process. The county further represents in its response to the court that the procedures now in place as a result of the original "Consent Decree" and "First Amended Consent Decree and Order" will remain in place.

The court is not denying the parties' right to settle on mutually agreeable terms. The court, however, is unwilling after ten years of progress in McKinley County to enter a decree as Draconian as that proposed. The "Second Amended Consent Decree and Order," purchased at the cost of placing a federal court in control of local election procedures where the need for such control, while once apparently justified, is now apparently dubious, comes at too high a cost to democratic principles.

Accordingly, Plaintiff's motion for reconsideration is DENIED.

END OF DOCUMENT

1. McKinley County was designated for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), by the court in Sanchez v. King, C.A. No. 82-0067M (December 17, 1984). The Section 3(a) relief in Sanchez authorized the Attorney General to request the assignment of federal observers to enter and attend the polls of McKinley County. After the order in Sanchez, federal observers regularly monitored elections in McKinley County.

2. The designation for federal examiners described in paragraph one above applied to McKinley County as a whole and was not limited to specific poll sites or languages spoken by County residents.

3. Federal observers have monitored elections in McKinley County since 1986. Since the First Amended Consent Decree and Order entered by the Court in the instant action on July 20, 1990, federal observers have monitored seven elections in McKinley County: November 6, 1990 general; February 5, 1991 school board; June 2, 1992 primary; November 3, 1992 general; February 2, 1993 school board; June 7, 1994 primary; and the November 1994 general election. During the period from 1990 to 1994, federal observers reported instances in various polling places where officials did not interpret, in the Navajo or Zuni language, significant portions of the ballot to Navajo or Zuni-speaking voters in need of language assistance.

4. The United States met and discussed the findings of the federal observers with McKinley County officials following the

various elections and also sent letters to McKinley County officials which reiterated the concerns of the United States.

The parties recognize that unresolved issues remain between them regarding McKinley County's compliance with Section 203. Accordingly, in settlement of these issues, the parties agree and it is ORDERED that:

1. McKinley County shall provide interpretation of the ballot, and all other election related information that is available in English, to voters who need such information in the Navajo and Zuni languages.

2. McKinley County shall inform all voters who present themselves at the polls to cast ballots, or register to vote at the mobile registration office, that language assistance is available in the Navajo or Zuni language.

3. McKinley County shall actively participate in all language and voter assistance programs sponsored by the State of New Mexico and apprise the State of its own language and voter assistance programs.

4. In order to protect the Fourteenth and Fifteenth Amendment rights of McKinley County Native American citizens who are less than English proficient, the appointment of federal examiners for elections in McKinley County is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), for a period beginning with the entry of this order and ending on February 1, 2001. McKinley County was included among six New Mexico counties designated for coverage under Section 3(a) of the

Act as part of the Court's order in Sanchez v. King, C.A. No. 82-0067M (December 17, 1984) (consolidated New Mexico legislative redistricting litigation) and federal observers have monitored twelve elections in McKinley County. While coverage under Section 3(a) lapsed with the expiration of the Court's order on December 17, 1994, the parties to the instant litigation have conferred and agree that continuing Section 3(a) coverage for McKinley County will provide an effective mechanism for providing valuable information to both parties about future compliance with Section 203 of the Voting Rights Act.

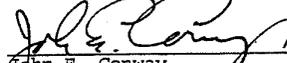
5. If, during the period that McKinley County is covered by Section 3(a) of the Voting Rights Act, voting related information, including instructions pertaining to the ballot or portions thereof, are provided to voters in English but are not provided in the Navajo or Zuni languages to Navajo or Zuni-speaking voters in need of language assistance, the parties shall meet and confer to take measures to ensure that such voting related information, including instructions, are effectively provided to such voters. The parties shall call on representatives of the Navajo Nation or the Zuni Pueblo to provide technical assistance with the respective languages when the parties meet and confer to rectify the County's failure to provide the necessary language assistance.

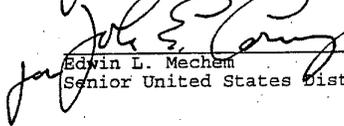
6. The Court shall retain jurisdiction of this case to enter further relief or other orders as may be necessary for the effectuation of the terms of this Stipulation and Order.

Plaintiff may seek further relief if the Defendants have not fully complied with the provisions of this Stipulation and Order.

Entered for the Court this
5th day of February, 1997.


Bobby F. Baldock
United States Circuit Judge


John E. Conway
United States District Judge


Edwin L. Mechem
Senior United States District Judge

AGREED AND STIPULATED TO:

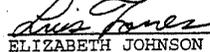
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FILED

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ORANGE COUNTY, FLORIDA;)
 and BILL COWLES, Supervisor)
 of Elections,)
)
 Defendants.)

CIVIL ACTION NO.

6:02-cv-737-Ov-22 JGG

CONSENT DECREE

The United States of America files this action pursuant to Sections 11(a), 12(d), 203, 204, and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, 42 U.S.C. 1973aa-2, 42 U.S.C. 1973aa-6, and 28 U.S.C. 2201, alleging recent violations of the Voting Rights Act arising from Orange County's election practices and procedures as they affect Spanish-speaking citizens of the county:

The claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, must be heard and determined by a court of three judges pursuant to 42 U.S.C. 1973aa-2 and 28 U.S.C. 2284.

Orange County has been subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, since 1992 with respect to the Spanish language. 28 C.F.R. 55, Appendix. The county's coverage was based on a determination

by the Director of the Census that there are more than 10,000 citizens of voting age who are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate in the English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate. This determination was published in the Federal Register on September 18, 1992.

The United States alleged in its complaint that various election practices and procedures of defendants unlawfully deny or abridge the voting rights of Spanish-speaking citizens residing in Orange County. The challenged practices concern the alleged failure of defendants to provide for an adequate number of bilingual poll workers trained to assist Hispanic voters on election day; the alleged failure of defendants to ensure that poll officials allow Spanish-speaking voters their assistants of choice in casting their ballots; and the alleged failure of defendants to translate certain written election materials into Spanish.

Despite defendants' alleged failure to adhere to Sections 203 and 208 of the Voting Rights Act, the United States does not contend that defendants' non-compliance was the result of discriminatory purpose. Moreover, the Orange County Supervisor

of Elections has been cooperative during the Department of Justice's investigation of this matter and has demonstrated from the beginning of the investigation an interest in resolving any violations of federal law.

Defendants deny any violations of the Voting Rights Act as alleged by the United States. Defendants' agreement to the entry of this decree is without admission by defendants that any of their acts or omissions, past or current, have been in violation of the law. Accordingly, this decree shall not serve as evidence that the county or the Supervisor of Elections violated the Voting Rights Act in any pending or subsequent judicial or administrative proceeding, except for actions to enforce or modify this decree or after the decree expires, or actions brought by the Department of Justice to enforce Sections 203 and 208 of the Voting Rights Act. Defendants are dedicated to ensuring that all future elections in Orange County operate in a manner that complies with Section 203 and Section 208 of the Voting Rights Act.

This Court has jurisdiction over the parties and the subject matter of this litigation. This agreement is final and binding between the parties, which pursuant to Fla Stat. Ann. 125.15 (West 2002) and the Orange County Charter, Article VII, Section 706, binds the Orange Board of County Commissioners as

well as the Supervisor of Elections, and their successors in office regarding the claims raised in this action.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants shall provide to Spanish-language minority citizens full and complete information about all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process[.]" 28 C.F.R. 55.15. All information that is disseminated by Orange County in English about "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots", 42 U.S.C. 1973aa-1a(c), shall also be provided in the Spanish language. Defendants shall ensure that both English and all Spanish-language election-related information, materials, and announcements provided by the State of Florida are made equally accessible.

2. Defendants shall assign up to three employees to act as the Spanish Language Assistance Coordinator(s), for at least three months prior to a federal, state or county election, to

help carry out the requirements of this Consent Decree, except that Coordinator(s) for the 2002 primary election only need to be assigned two months prior to the election. The Coordinator(s) shall report to and be supervised by the Orange County Supervisor of Elections, who shall be responsible for ensuring the effective coordination of their duties. The Coordinator(s) shall be bilingual in English and in Spanish. The Coordinator(s) shall be trained in all aspects of the voting and registration process by the Orange County Supervisor of Elections.

3. The translations of the written election-related material into Spanish shall be clear, accurate and complete. 28 C.F.R. 55.19. The Supervisor of Elections and/or the Coordinator(s) will consider the demographics of the Hispanic community and consult with some members of the Hispanic community when translating its own written materials, but need not consult about translations provided to the county by the State of Florida.

4. The Orange County Supervisor of Elections and/or the Coordinator(s) shall meet with representatives of the Hispanic community at least one month prior to each election cycle (e.g., prior to the 2002 primary election) and solicit their views on what steps are needed to ensure the effectiveness of

bilingual assistance for Hispanic voters.

5. Defendants shall ensure that voters are permitted to have assistance in the voting booth by a person of their choice as provided by 42 U.S.C. 1973aa-6. The voter may choose anyone to provide assistance as long as the assistor is not the voter's employer or agent of that employer or union officer or agent of the voter's union. 42 U.S.C. 1973aa-6. The assistor will be permitted to assist in all aspects of the voting process.

6. In any precinct where registered Hispanic voters comprise at least five percent of the voters in the precinct, there shall be at least one poll official bilingual in Spanish and English. In each election precinct in Orange County where Hispanic voters comprise more than 40 percent of the registered voters, defendants shall seek to ensure that at least half of the polling officials are bilingual.

7. Defendants will monitor the levels of Spanish language assistance needed inside the polling booths and will, where needed, provide additional helpers to provide assistance to Spanish-speaking voters. 28 C.F.R. 55.20.

8. Defendants shall use their best efforts to secure bilingual poll officials and bilingual helpers. The Orange County Supervisor of Elections' office shall recruit bilingual

election officials by providing notices in English and Spanish to the Spanish-language media, Hispanic community organizations (e.g., voting organizations, businesses, churches, senior citizen centers, etc.), the Supervisor of Elections' internet site, and the county's cable television site in addition to any other recruitment methods the county uses. The Supervisor of Elections' office also shall publicize prior to the election, through these same publicity methods, the availability of bilingual poll workers to assist Spanish-speaking voters at the polls on election day and that voters may bring their assistant of choice under the allowances provided for in Section 208 of the Voting Rights Act.

9. The Orange County Supervisor of Elections and/or responsible Coordinator(s) shall conduct the training of poll officials and any other election related personnel who will be working at the polls on election day regarding the importance of all eligible citizens being able to cast a ballot at the polls, the right of voters to have assistance in Spanish (including inside the voting booth), and the right of certain voters, including voters with limited English proficiency, to be assisted by the person of their choice.

10. The Orange County Supervisor of Elections and/or the responsible Coordinator upon receipt of complaints shall

investigate any allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. The results of any investigation(s) shall be reported to the Orange County Supervisor of Elections. Where it reasonably has been found that poll workers have engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, the Supervisor shall remove these poll workers, and these poll workers shall not be eligible to be poll workers in future elections.

11. Bilingual poll officials shall be afforded an opportunity to be trained in the translation of the entire ballot, all election related forms used in the polls on election day, and the voting process in the Spanish language so that bilingual election officials will be able to provide a full and accurate translation.

12. Nothing in this Decree shall preclude defendants from the use of contracting to carry out any of the terms and conditions specified herein, including the establishment of the Coordinator position. However, should defendants exercise this option, they shall nevertheless maintain responsibility for compliance with the terms and conditions herein.

13. At least ten (10) days before each federal, state or county election in Orange County, the Orange County Election Supervisor and/or the Coordinator(s) shall provide to counsel

for the United States a report containing the following information: (a) the name and precinct designation of each polling place; (b) the name and title of each poll official appointed and assigned to serve at each polling place (including a designation of those who are bilingual in English and Spanish); and (c) a copy of the most recent voter registration lists on computer disk. Within thirty (30) days after each federal, state or county election in Orange County, the Orange County Election Supervisor and/or the Coordinator(s) shall provide to counsel for the United States any updated report regarding changes in items (a)-(c) above that occurred at the election, and provide information about all complaints the county received at the election regarding language or assistance issues.

14. The parties recognize that a regular and ongoing reassessment may be necessary in order to provide Spanish-language minority voters equal access to all phases of the electoral process in Orange County. The Supervisor of Elections and Coordinator(s) shall evaluate the Section 203 bilingual assistance program after each election cycle (e.g., after the 2002 general election) and on an ongoing basis through meetings with the Hispanic community, representatives of the Hispanic community, and counsel for the United States.

After the 2002 elections, the Supervisor of Elections and counsel for the United States shall meet to evaluate the effectiveness of using multiple Spanish Language Assistance Coordinators.

15. The parties agree that to assist in carrying out the purposes of this Consent Decree, the United States will be permitted to monitor elections in Orange County from the date of the entry of this Consent Decree until January 31, 2005.

(A) The United States will give timely notice of its intent to monitor a particular election;

(B) Department of Justice personnel, including attorneys and staff members, will be permitted into the precincts for the purpose of observing the election process; such Department personnel shall not seek to interfere in any way with the conduct of the election, but will merely observe and report problems to county election officials for resolution.

16. This Consent Decree shall expire on January 31, 2005, unless plaintiff moves the court for good cause shown to extend this Consent Decree.

17. Each party shall bear its own costs and fees.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 203 and 208 of the Voting Rights Act.

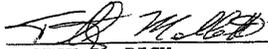
Agreed to this 27th day of June, 2002.

AGREED AND CONSENTED TO:

For Plaintiff:
UNITED STATES OF AMERICA

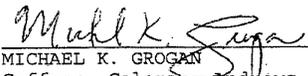
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For Defendants:
ORANGE COUNTY AND ORANGE
COUNTY SUPERVISOR OF ELECTIONS

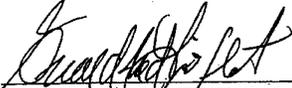


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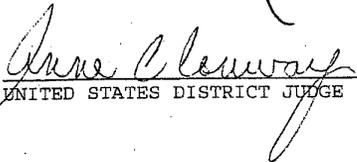
JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, (plaintiff's First Cause of Action), and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree set forth above, and incorporates those terms herein. This Court hereby enters the relief set forth in this decree, with the exception of paragraph five, which addresses only the United States' second cause of action under Section 208 of the Voting Rights Act.

ENTERED and ORDERED this 8th day of October, 2002.


UNITED STATES CIRCUIT JUDGE

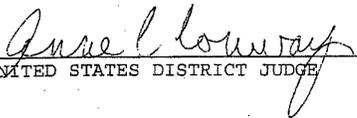

UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

JUDGMENT AND ORDER

The Court having jurisdiction over plaintiff's claims under Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6 (plaintiff's Second Cause of Action), has considered the terms of the Consent Decree set forth above and incorporates those terms herein. The Court hereby enters the relief set forth in paragraphs 5; 8, 9, 15, 16, and 17.

ENTERED and ORDERED this 30th day of August, 2002.


UNITED STATES DISTRICT JUDGE

COPY

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

FILED

UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUL 20 1990

R. Pederson
CLERK

UNITED STATES OF AMERICA,)
)
) Plaintiff,)
)
) v.)
)
) MCKINLEY COUNTY, NEW MEXICO,)
) ET AL.,)
)
) Defendants.)

CIVIL ACTION NO. 86-0028-M
ENTERED ON DOCKET
7-20-90

FIRST AMENDED CONSENT DECREE AND ORDER

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UNITED STATES OF AMERICA

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NATIVE AMERICAN ELECTION INFORMATION PROGRAM

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I. INTRODUCTION

This action was initiated by the United States pursuant to Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973aa-1a, by a complaint filed in 1986. On February 4, 1986, this Court entered a Consent Decree that permanently enjoined McKinley County, New Mexico, together with its officers, agents, employees, and successors from non-compliance with the minority language requirements of the Act. The Consent Decree also required the county to establish a remedial bilingual election program to provide Native American citizens with an equal opportunity to participate in the electoral process in McKinley County, New Mexico.

After a review of the current efforts of McKinley County to comply with the Consent Decree and the minority language provisions of the Act, the parties have conferred and agreed that further measures are required to ensure that the election process in McKinley County is fully and effectively accessible to Native American citizens. Accordingly, the parties have agreed to the entry of this First Amended Consent Decree and Order, which provides for additional measures to improve the effectiveness of McKinley County's remedial bilingual election program.

This Court has jurisdiction over the parties and the subject matter of this action. This First Amended Consent Decree and Order is final and binding between the parties and their officers, employees and successors, as to all the facts, claims and issues raised in, or underlying, the plaintiff's complaint.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that McKinley County, New Mexico, shall adopt the Native American Election Information Program, which this Court approves, as set forth below:

II. THE NATIVE AMERICAN ELECTION INFORMATION PROGRAM

A. County Voting Rights Coordinators

1. McKinley County shall employ at least two Native American Voting Rights Coordinators who will coordinate the Native American Election Information Program in the county. These voting rights coordinators shall be bilingual in Navajo and English and shall be hired as full-time county employees.

2. The Navajo voting rights coordinators shall be hired by the county after consultation with the Office of the New Mexico Secretary of State, the Navajo tribal officials of McKinley County, the Navajo Elections Administration (NEA) and the United States. Accordingly, county officials shall provide the McKinley County Navajo chapters and tribal officials from the NEA with a reasonable opportunity to recommend prospective applicants, which shall be seriously considered by the county for the voting rights coordinator positions. The Navajo voting rights coordinators may, for convenience, be located principally in one of the majority Navajo Indian precincts. The hiring, salary, job benefits, and job duties for each of the voting rights coordinators shall be competitive and in accordance with the Personnel Ordinance of McKinley County.

3. McKinley County shall develop job descriptions for each voting rights coordinator, in consultation with the Office of the New Mexico Secretary of State, the Navajo tribal officials of McKinley County, the NEA and the United States.

4. In addition to the voting rights coordinators, McKinley County shall engage in reasonable efforts to employ deputy election clerks bilingual in Navajo and English, who shall be available to assist the voting rights coordinators in all aspects of their duties under this agreement. At a minimum, two Navajo-speaking deputy election clerks shall be employed on a full-time basis and a third Navajo-speaking deputy election clerk utilized on a part-time basis prior to the primary and general elections. Said deputy election clerks may be current employees of McKinley County if they are bilingual in Navajo and English.

5. The voting rights coordinators shall be trained by the county in all aspects of the election process, shall attend all election seminars conducted by the Secretary of State and McKinley County Clerk, and shall be appointed county deputy registration officers. Voting rights coordinators shall be fully briefed by the county clerk and/or state Director of the Bureau of Elections, as appropriate, concerning their duties and responsibilities under this election information program. Representatives of the Navajo chapters of McKinley County, the NEA and the United States shall be available to assist election officials in these briefings.

6. The voting rights coordinators shall, under the supervision of the county clerk, oversee the county's Native American Election Information Program generally, and visit on a regular basis each Navajo chapter located in whole or in part in the county. Voter education programs conducted during such visits shall include instruction, as appropriate, on at least the following topics: voter registration; absentee voting procedures; voter purge; candidate qualification; voting procedures and operation of voting machines; and translations of the ballot, including candidate offices and propositions.

7. At a minimum, a voting rights coordinator shall make at least two oral presentations in Navajo (with audio and visual aids, as appropriate) at each Navajo chapter located in whole or in part within McKinley County during each of the following periods:

a. After each general election and prior to each school board election in February of each odd-numbered year to explain the voter registration cancellation and reinstatement process, candidate qualifying procedures and deadlines, absentee balloting procedures and to translate the proclamation for the respective school board election.

b. During the sixty-day suspension period under NMSA § 1-4-28 to explain and translate the purge notice and re-register or reinstate any voters eligible to remain on the voter registration rolls.

c. Prior to the deadline for filing candidacy petitions for the primary election to explain candidate qualification requirements, absentee balloting procedures and voter registration procedures, including registration cutoff dates.

d. After the primary election sample ballot is finalized and by the Friday before the primary election to instruct voters on election procedures and to translate the ballot.

e. Prior to the voter registration deadline for the general election to explain voter registration procedures, register eligible voters, and explain the absentee balloting process.

f. After the general election sample ballot is finalized and by the Friday before the general election to instruct voters on election procedures and to translate the ballot.

8. The voting rights coordinators, or other county officials, shall maintain a record of the date and purpose of each election-related visit to each Navajo chapter house, or other sites on the Navajo Indian Reservations. After each election, each voting rights coordinator shall prepare a report detailing his or her election-related activities in implementing the goals and provisions of the Native American Election Information Program.

9. The voting rights coordinators shall conduct, under the supervision of the county clerk, the training of all deputy registration officers, poll officials and other election-related personnel who will participate in the Native American Election Information Program. Each Navajo chapter manager whose chapter

is in whole or in part within McKinley County shall be notified, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at locations convenient to trainees.

10. The county voting rights coordinators shall coordinate the delivery of Native American election information to school districts in McKinley County. The county voting rights coordinators shall also coordinate delivery of election information to other governmental entities that conduct elections and voter registration within the county.

11. McKinley County shall establish a travel budget for the voting rights coordinators which shall be sufficient to cover their travel expenses incurred in carrying out their duties, obligations and responsibilities to implement effectively this Native American Election Information Program.

12. Wherever possible, and to the extent necessary, the county voting rights coordinators shall engage in all reasonable efforts to undertake and coordinate their activities and duties under this program in conjunction with those Native American voting rights coordinators hired by the New Mexico Secretary of State.

B. Tribal Election Liaisons

1. McKinley County shall request each Navajo chapter president, whose chapter is in whole or in part in McKinley County, to identify and/or appoint one individual in each Navajo

chapter to serve as a tribal election liaison between the county and each Navajo chapter.

2. Tribal election liaisons shall be fully trained and qualified as deputy registration officers by the county clerk and/or the voting rights coordinators and such training shall be conducted in both English and Navajo. The tribal election liaisons shall be trained in all aspects of the election process, including absentee voting, the voter registration and purge processes, candidate qualifications, election-related deadlines, election day activities, proposed constitutional amendments and other referenda.

3. Where necessary and as appropriate, the county may contract with the tribal election liaisons and/or other qualified persons to assist in the effective implementation of this bilingual election program, including for the translation of materials described in Section D below into the applicable Indian language.

4. Telephone inquiries from voting rights coordinators, tribal election liaisons, as well as from deputy registration officers on the reservations and tribal officials involved in election activities, to the county clerk's office respecting election-related matters, should be encouraged and shall be considered official government business and telephone charges may either be reversed or a toll-free number provided.

C. Translations

1. The following election-related materials and announcements, if made available in English by the state and/or county, shall be translated into Navajo and made available on audio tapes and video tapes, where appropriate: state and county election proclamations, constitutional amendments and other referenda issues on the ballot, dates for elections, candidate qualification and registration deadlines, instructions relating to voting by absentee ballot, and announcements respecting the voter purge, and explanations of voting procedures (including the operation of voting machines). To the extent such information is produced by the Office of the New Mexico Secretary of State, McKinley County officials shall utilize these existing resources by coordinating with the appropriate state officials to arrange for the use of such tapes in McKinley County.

2. McKinley County, through the voting rights coordinators and tribal liaisons, shall engage in reasonable efforts to ensure that each tape is played in at least two tribal meetings at each Navajo chapter house during the appropriate publicity period, and that either the county voting rights coordinator, tribal election liaison or other trained bilingual person is present to answer any questions concerning the subject matter of the tape. If appropriate playing equipment is not available on the site visited, the county shall provide such equipment to the voting rights coordinators for this purpose.

3. Navajo language audio and video tapes described in this agreement shall be available generally to individuals and organizations at the Navajo chapter houses. Separate recordings shall be provided for each election-related subject matter so as to minimize the extent to which any tape recording exceeds 10 minutes in length. A library of currently applicable tapes, together with English transcripts, where available and appropriate, shall be maintained at the Navajo chapter houses.

4. Translation shall be made by a state or county voting rights coordinator or by a tribal election liaison or by qualified persons contracted with for that purpose. The county shall make available to the translators any necessary bilingual subject matter experts to assist in translation of technical or complicated election-related materials.

5. The county shall invite the participation of representatives of the Navajo chapters of McKinley County, the NEA and any other interested parties to assist in the translation of election materials. To assist in uniformity and accuracy, prior to dissemination of any translation, the county shall make available such translations to representatives of the Navajo chapters of McKinley County and/or the NEA, as appropriate, and provide them with a reasonable opportunity to review and comment concerning any matter translated.

6. The translation and review of any election-related material shall be completed promptly so that where possible, tapes are available on or before the date that English language announcements or other publications are made available.

7. The county shall, in consultation with the Office of the New Mexico Secretary of State, tribal election liaisons and other tribal officials, develop a series of appropriate posters and graphics to accompany translated and written notices respecting election matters.

8. Upon request, all translations and election materials shall be made available to all governmental entities or other organizations within McKinley County which endeavor to provide election information to Native American citizens.

D. Dissemination of Election-Related Information

1. The county shall coordinate publicity efforts with the Office of the New Mexico Secretary of State, Navajo tribal officials and with the NEA. All election-related announcements, materials and information, including, but not limited to, the election calendar, state and county election proclamations, the voter information pamphlet and sample ballots, shall be made available to each Navajo chapter house in whole or in part in the county and the NEA.

2. Election-related announcements, materials, tapes and other election information shall be made available to the public high schools in the county to familiarize students with all phases of the election process.

3. Radio and/or Television: Radio announcements in the Navajo language shall be distributed for broadcast to KGAK (Gallup); KYVA (Gallup); KGLX (Gallup); KKOR (Gallup); KQNM (Gallup); KTNN (Window Rock) or other available stations or programs for broadcast in the Navajo language regarding:

a. Deadlines for state voter registration for participation in state and federal elections, and identification of regularly available voter registration sites in each Navajo chapter house or other location convenient to the Indian population. These announcements, which shall be spot announcements, shall be made at least twenty-five times each week for the four weeks preceding the deadlines for both state and federal election registration for each primary and general election. For school board elections, spot announcements shall be made ten times each week for the two weeks preceding the deadline for voter registration.

b. The procedures and deadlines for becoming a candidate. Spot announcements detailing procedures and deadlines for becoming a candidate shall be made fourteen times during the two weeks preceding each candidate filing date, including school board elections.

c. Dates of special, primary, general, and school board elections, a list of the offices to be elected, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements shall be made four times a week

during at least the three weeks prior to each of the foregoing elections.

d. An explanation of the ballot in the Navajo language, identifying each office to be filled and each candidate with the candidate's political affiliation. The tape shall also identify briefly the nature and significance of each referendum, proposed constitutional amendment(s), or ballot proposition to be decided. Announcements shall be made four times a week for at least the three weeks prior to each special, primary, general and school board election.

4. The county shall request that the announcements identified in paragraph II.D.3 above be made at prime time and calculated to reach the largest possible audience.

5. Print Media: English election announcements detailed in paragraph II.D.3 shall be published on a weekly basis in the Gallup Independent or the Navajo Times for the publicity periods noted in that paragraph.

6. To the extent McKinley County presently possesses facsimiles of voting machines or devices, they shall be made available to the voting rights coordinators for their use in training deputy registration officers and conducting voter education programs at the Navajo chapter houses.

7. Monitoring: The county shall monitor the effectiveness of its publicity programs on an ongoing basis through consultation with the Office of the New Mexico Secretary of

State, tribal election liaisons, Navajo tribal officials of McKinley County, the NEA and the United States.

E. Voter Registration

1. The county shall request that each Navajo chapter manager or other tribal official, recommend six persons qualified to serve as deputy registration officers in McKinley County; request assistance from the NEA in identifying potential deputy registration officers; seek to coordinate state voter registration with Navajo tribal voter registration through reciprocal deputization of deputy registration officers for state and tribal elections; invite school personnel, including each high school principal and other community leaders, to become deputy registration officers; and encourage organized political parties to recommend additional deputy registration officers for election precincts on the reservation.

2. Training for deputy registration officers for majority Navajo election precincts in the county shall be conducted on the reservation by the county voting rights coordinators, under the supervision of the county clerk, in both English and the Navajo language. The county shall also invite the participation of the Office of the New Mexico Secretary of State and the state voting rights coordinators in the training of McKinley County deputy registration officers. In addition to training as to registration standards, regulations and forms, deputy registration officers shall be trained fully regarding the voter purge and absentee voting processes, standards and regulations.

Navajo language tapes and English transcripts shall be used in the training process, and copies of such materials shall be maintained as provided generally in this agreement.

3. McKinley County shall appoint and train a minimum of six deputy registration officers in each majority Navajo election precinct in the county.

4. The names of all deputy registration officers available at each Navajo chapter shall be prominently posted at each chapter house and/or trading post or post office.

5. County voting rights coordinators, as part of their outreach efforts, shall conduct special voter registration drives at the Navajo chapters in the county. The appropriate Navajo chapter manager, as well as the tribal election liaisons, shall be notified of the time and place for each registration drive at least two weeks prior to the scheduled registration, and the county shall provide such other publicity as may be appropriate.

6. The county shall monitor, on an ongoing basis, the performance of deputy registration officers and voter registration rates in the majority Navajo election precincts in the county. The county shall encourage or replace inactive or unproductive deputy registration officers.

7. The county shall provide each tribal election liaison with current voter registration lists and forms and detailed election precinct maps for his or her precinct, and shall encourage each tribal election liaison to establish regular hours for registration at set locations on the reservations. The

time(s) and location(s) established by the liaisons for voter registration shall be posted by the county at each Navajo chapter house and announced by the tribal election liaison at tribal meetings.

F. Absentee Voting

1. The county shall supply applications for absentee ballots to all deputy registration officers on the reservations, county voting rights coordinators, tribal election liaisons, and Navajo chapter managers and presidents.

2. The county shall provide an opportunity for Native American citizens, qualified to vote pursuant to state law, to cast absentee ballots within their precinct by ensuring that the voting rights coordinators attend the last two tribal meetings prior to each primary, general, special or school board election, for each Navajo chapter in whole or in part within the county, so that eligible persons may obtain and, if they desire, cast absentee ballots in person at that time (See paragraph II.A.7 above). Deputy registration officers, voting rights coordinators, tribal election liaisons, or county officials shall announce and explain personally, or through trained translators at the tribal meetings, the classes of persons who are eligible to cast absentee ballots. It shall be sufficient for voters on the reservations to have their absentee ballot application witnessed only by another registered voter.

3. Announcements shall be made regarding the availability of absentee balloting, including the standards of eligibility for absentee ballots and for voting absentee, during any tribal meeting prior to the deadline for voting by absentee ballot under state law, and where such meetings fall in the absentee voting period (See paragraph II.A.7 above). The availability of absentee balloting also shall be made known by posting such information prominently at each Navajo chapter house and at trading posts or post offices on the reservation; by radio announcements pursuant to paragraph II.D.3 above; and by print media pursuant to paragraph II.D.5 above.

4. County voting rights coordinators shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk, to witness absentee ballots, and to accept completed absentee ballots from eligible voters for delivery to the county clerk.

G. Election Day Procedures

1. The county shall ensure that the statutory number of fully trained poll officials and translators (bilingual in English and Navajo) are present on election day for each majority Navajo election precinct which is in whole or in part in McKinley County. The county shall consult with the tribal election liaisons, tribal officials of McKinley County, the NEA or other appropriate tribal officials to identify bilingual individuals qualified to work at the polls. Alternate translators shall be designated as required by state law.

2. Poll officials and translators shall be fully trained, at locations in the county convenient to the trainees, in English and Navajo, concerning election day procedures at the polling places, the contents and issues appearing on the ballot, and voter purge procedures. Training in translation of the ballot in the Navajo language shall include the use of audio and/or video tapes, and such tapes shall be maintained in accordance with the terms of this agreement.

3. For each additional voting machine required by state law at each polling place in excess of two voting machines, the county shall appoint an additional trained translator.

4. Poll officials shall specifically advise each voter who requires assistance in casting a ballot that the voter may choose any person to provide that assistance, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6. After the voter has indicated to a poll official that he or she needs assistance in voting or marking his/her ballot, the voter's request for assistance shall be noted in the signature roster and it shall be unnecessary for the voter to execute an affidavit of assistance.

5. Poll officials or other designated county officials shall maintain a record of all persons who come to the polls but are not allowed to vote. This record shall include each voter's name, address, the reason the person thought she or he was eligible to vote at that site, and the reason for not permitting the person to vote.

6. A list of the persons not permitted to vote shall be provided to the appropriate tribal officials, voting rights coordinators and tribal election liaisons, and deputy registration officers in the majority Indian precincts, and the county shall provide an opportunity to such persons on the list to register to vote at the earliest possible time.

7. The county shall cooperate with the NEA in the establishment of polling places so that the same buildings can be used for Navajo tribal and state elections in separate areas of the same buildings.

H. Purge Process

1. On or before February 1 after each general election, a list shall be prepared by the county clerk of all persons identified for purging from the voting list for failure to vote, and such lists for the respective Indian precincts shall be provided to the county voting rights coordinators, tribal election liaisons, including each Navajo chapter house in whole or in part in McKinley County, and persons identified above shall be urged to contact persons on said lists to notify them of the fact of the purge and the procedures for validating their registration or re-registering.

2. Updated lists, as necessary, of persons who have failed to revalidate their registration or re-register shall be provided to the persons identified in paragraph II.H.1 above and each Navajo chapter house every 30 days throughout the purge period. The voting rights coordinator shall monitor these lists and shall

contact as many persons as possible who remain on the list in order to re-validate or re-register them.

3. The county shall inform voters of the purge, the validating and re-registration process through radio announcements in the Navajo language during the purge period pursuant to paragraph II.D.3 above; through English language weekly notices in the Gallup Independent or the Navajo Times during the purge period pursuant to paragraph II.D.5 above; by Navajo language announcements at tribal meetings during the purge period pursuant to paragraph II.A.7 above; and by English language signs posted at the Navajo chapter houses and trading posts or post offices.

4. Navajo language audio tapes on the purge process shall be made available in the tape libraries in each Navajo chapter house. These shall include a description of the purge process, an explanation as to why individuals are listed on the purge printout, the meaning of the mailed purge notices, and explanations as to how to avoid being purged and how to re-register if the purge already has occurred. Navajo language tapes containing this information shall be played during the purge period at separate tribal meetings of each Navajo chapter house situated in whole or in part in McKinley County, and the voting rights coordinator shall be present, at a minimum, at the first meeting when the tapes are played in order to answer any questions (See paragraph II.A.7 above). Thereafter, the tribal election liaison or other trained bilingual personnel may be

present when the tapes are played in order to answer any questions.

5. Thirty (30) days before the close of the purge period, the county voting rights coordinator shall provide the tribal election liaison at each Navajo chapter in McKinley County with a printout with the names of all voters who reside in the respective Navajo chapter, who have not validated their registration, and thus remain on the list of persons identified for purging for failure to vote. Prior to the close of the purge period, the voting rights coordinators, with assistance from the tribal election liaisons, shall ascertain which voters on the list still maintain a residence as shown on their affidavit of registration, and upon making such determination, shall return to the county clerk a list certifying those voters who still maintain such residence within the reservation, together with any changes of addresses of such voters. Upon receipt of the certification, those voters who still reside in the county shall not have their eligibility to vote cancelled and shall remain eligible to vote.

6. At the close of the purge period, the county shall review the printout of purged voters with the tribal election liaisons for each Indian precinct in McKinley County and, to the extent that there is a high percentage of Indian voters purged as compared to non-Indian voters, the county shall consult with tribal officials and tribal election liaisons to ascertain what further action is necessary to correct such situation.

I. Records

1. In addition to copies of tapes and other materials or records mentioned in this agreement, the defendants shall maintain statistical records including but not limited to:

a. Voter Registration

- Voter registration, by precinct, on a monthly basis.
- Number of voters, by precinct, who are registered at voter registration drives conducted pursuant to this agreement.

b. Voter Purge

- Total number of voters purged, by precinct, for failure to vote.
- Total number of voters retained on the voter registration rolls based on certification of eligibility by the voting rights coordinators.
- Total number of voters, by precinct, reinstated by returning post cards.
- Total number of voters validated by other means during the purge period by precinct.

c. Absentee Voting

- Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.
- Total number of absentee ballots cast, per precinct, in person at the county courthouse.
- Total number of absentee ballots cast, per precinct, in person before a deputy clerk and/or voting rights coordinator on the reservations.

d. Publicity

- Time and medium of each broadcast (where records are available) or publication pursuant to this agreement.
- Time, place and occasion of each instance in which each election-related video and audio tape was played.

These data shall be maintained on a current basis at the county clerk's office and all records shall be available for public inspection upon request.

2. On July 1 of each year for the life of the Consent Decree, the county shall compile a report of the efforts taken pursuant to this agreement during the preceding (12) months. The report shall include the status of Native American voter participation as shown by statistics in each area addressed in this agreement, together with an assessment of the effectiveness of each phase of the program and a recommendation of the steps to be taken to improve Native American voter participation. Copies of the report shall be provided to the United States and the NEA.

III. CONSTRUCTION AND IMPLEMENTATION

1. Simultaneous with the entry of this First Amended Consent Decree and Order, the defendants will submit this program to the Attorney General of the United States for review pursuant to the requirements of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. If the requisite Section 5 preclearance is obtained, the parties will promptly notify this Court of such preclearance and the Court will enter an Order granting final approval to this First Amended Consent Decree and Order.

2. It is the goal of McKinley County to ensure that the entire election process is fully and effectively accessible to Native American citizens, and the procedures set forth above are designed to achieve that goal. In the event that the procedures set forth in this Consent Decree fall short of the goal of full and effective access, the county shall have the authority to

eliminate or modify any aspect of this program, subject to the preclearance requirements of Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

IV. RETENTION OF JURISDICTION

The Court shall retain jurisdiction over this matter for all purposes for a period of five years. At the end of the five-year period, the defendants may move the Court, upon 45 days written notice to the United States, for an order terminating the provisions of the First Amended Consent Decree and Order. In considering whether the Consent Decree shall be dissolved, the Court will analyze, after a sufficient demonstration by the defendants, whether the basic objectives of the Consent Decree have been achieved.

V. CONCLUSION

This agreement represents the commitment of the parties to provide equal voting rights to the Native American citizens of McKinley County, New Mexico. While the procedures outlined above are intended to constitute full relief in this case, the parties recognize that regular and ongoing reassessment of the Native American Election Information Program by the responsible officials will be necessary in order to ensure that Native American voters are able, and will continue to be able, to enjoy equal access to all phases of the political process in McKinley County.

ORDERED this 20th day of July, 1990.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

Approved as to form
and content:

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FILED

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ORANGE COUNTY, FLORIDA;)
 and BILL COWLES, Supervisor)
 of Elections,)
)
 Defendants.)

CIVIL ACTION NO. 6:02-cv-737-Ovl-22 JGG

CONSENT DECREE

The United States of America files this action pursuant to Sections 11(a), 12(d), 203, 204, and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, 42 U.S.C. 1973aa-2, 42 U.S.C. 1973aa-6, and 28 U.S.C. 2201, alleging recent violations of the Voting Rights Act arising from Orange County's election practices and procedures as they affect Spanish-speaking citizens of the county:

The claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, must be heard and determined by a court of three judges pursuant to 42 U.S.C. 1973aa-2 and 28 U.S.C. 2284.

Orange County has been subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, since 1992 with respect to the Spanish language. 28 C.F.R. 55, Appendix. The county's coverage was based on a determination

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by the Director of the Census that there are more than 10,000 citizens of voting age who are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate in the English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate. This determination was published in the Federal Register on September 18, 1992.

The United States alleged in its complaint that various election practices and procedures of defendants unlawfully deny or abridge the voting rights of Spanish-speaking citizens residing in Orange County. The challenged practices concern the alleged failure of defendants to provide for an adequate number of bilingual poll workers trained to assist Hispanic voters on election day; the alleged failure of defendants to ensure that poll officials allow Spanish-speaking voters their assistants of choice in casting their ballots; and the alleged failure of defendants to translate certain written election materials into Spanish.

Despite defendants' alleged failure to adhere to Sections 203 and 208 of the Voting Rights Act, the United States does not contend that defendants' non-compliance was the result of discriminatory purpose. Moreover, the Orange County Supervisor

of Elections has been cooperative during the Department of Justice's investigation of this matter and has demonstrated from the beginning of the investigation an interest in resolving any violations of federal law.

Defendants deny any violations of the Voting Rights Act as alleged by the United States. Defendants' agreement to the entry of this decree is without admission by defendants that any of their acts or omissions, past or current, have been in violation of the law. Accordingly, this decree shall not serve as evidence that the county or the Supervisor of Elections violated the Voting Rights Act in any pending or subsequent judicial or administrative proceeding, except for actions to enforce or modify this decree or after the decree expires, or actions brought by the Department of Justice to enforce Sections 203 and 208 of the Voting Rights Act. Defendants are dedicated to ensuring that all future elections in Orange County operate in a manner that complies with Section 203 and Section 208 of the Voting Rights Act.

This Court has jurisdiction over the parties and the subject matter of this litigation. This agreement is final and binding between the parties, which pursuant to Fla Stat. Ann. 125.15 (West 2002) and the Orange County Charter, Article VII, Section 706, binds the Orange Board of County Commissioners as

well as the Supervisor of Elections, and their successors in office regarding the claims raised in this action.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants shall provide to Spanish-language minority citizens full and complete information about all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process[.]" 28 C.F.R. 55.15. All information that is disseminated by Orange County in English about "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots", 42 U.S.C. 1973aa-1a(c), shall also be provided in the Spanish language. Defendants shall ensure that both English and all Spanish-language election-related information, materials, and announcements provided by the State of Florida are made equally accessible.

2. Defendants shall assign up to three employees to act as the Spanish Language Assistance Coordinator(s), for at least three months prior to a federal, state or county election, to

help carry out the requirements of this Consent Decree, except that Coordinator(s) for the 2002 primary election only need to be assigned two months prior to the election. The Coordinator(s) shall report to and be supervised by the Orange County Supervisor of Elections, who shall be responsible for ensuring the effective coordination of their duties. The Coordinator(s) shall be bilingual in English and in Spanish. The Coordinator(s) shall be trained in all aspects of the voting and registration process by the Orange County Supervisor of Elections.

3. The translations of the written election-related material into Spanish shall be clear, accurate and complete. 28 C.F.R. 55.19. The Supervisor of Elections and/or the Coordinator(s) will consider the demographics of the Hispanic community and consult with some members of the Hispanic community when translating its own written materials, but need not consult about translations provided to the county by the State of Florida.

4. The Orange County Supervisor of Elections and/or the Coordinator(s) shall meet with representatives of the Hispanic community at least one month prior to each election cycle (e.g., prior to the 2002 primary election) and solicit their views on what steps are needed to ensure the effectiveness of

bilingual assistance for Hispanic voters.

5. Defendants shall ensure that voters are permitted to have assistance in the voting booth by a person of their choice as provided by 42 U.S.C. 1973aa-6. The voter may choose anyone to provide assistance as long as the assistor is not the voter's employer or agent of that employer or union officer or agent of the voter's union. 42 U.S.C. 1973aa-6. The assistor will be permitted to assist in all aspects of the voting process.

6. In any precinct where registered Hispanic voters comprise at least five percent of the voters in the precinct, there shall be at least one poll official bilingual in Spanish and English. In each election precinct in Orange County where Hispanic voters comprise more than 40 percent of the registered voters, defendants shall seek to ensure that at least half of the polling officials are bilingual.

7. Defendants will monitor the levels of Spanish language assistance needed inside the polling booths and will, where needed, provide additional helpers to provide assistance to Spanish-speaking voters. 28 C.F.R. 55.20.

8. Defendants shall use their best efforts to secure bilingual poll officials and bilingual helpers. The Orange County Supervisor of Elections' office shall recruit bilingual

election officials by providing notices in English and Spanish to the Spanish-language media, Hispanic community organizations (e.g., voting organizations, businesses, churches, senior citizen centers, etc.), the Supervisor of Elections' internet site, and the county's cable television site in addition to any other recruitment methods the county uses. The Supervisor of Elections' office also shall publicize prior to the election, through these same publicity methods, the availability of bilingual poll workers to assist Spanish-speaking voters at the polls on election day and that voters may bring their assistor of choice under the allowances provided for in Section 208 of the Voting Rights Act.

9. The Orange County Supervisor of Elections and/or responsible Coordinator(s) shall conduct the training of poll officials and any other election related personnel who will be working at the polls on election day regarding the importance of all eligible citizens being able to cast a ballot at the polls, the right of voters to have assistance in Spanish (including inside the voting booth), and the right of certain voters, including voters with limited English proficiency, to be assisted by the person of their choice.

10. The Orange County Supervisor of Elections and/or the responsible Coordinator upon receipt of complaints shall

investigate any allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. The results of any investigation(s) shall be reported to the Orange County Supervisor of Elections. Where it reasonably has been found that poll workers have engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, the Supervisor shall remove these poll workers, and these poll workers shall not be eligible to be poll workers in future elections.

11. Bilingual poll officials shall be afforded an opportunity to be trained in the translation of the entire ballot, all election related forms used in the polls on election day, and the voting process in the Spanish language so that bilingual election officials will be able to provide a full and accurate translation.

12. Nothing in this Decree shall preclude defendants from the use of contracting to carry out any of the terms and conditions specified herein, including the establishment of the Coordinator position. However, should defendants exercise this option, they shall nevertheless maintain responsibility for compliance with the terms and conditions herein.

13. At least ten (10) days before each federal, state or county election in Orange County, the Orange County Election Supervisor and/or the Coordinator(s) shall provide to counsel

for the United States a report containing the following information: (a) the name and precinct designation of each polling place; (b) the name and title of each poll official appointed and assigned to serve at each polling place (including a designation of those who are bilingual in English and Spanish); and (c) a copy of the most recent voter registration lists on computer disk. Within thirty (30) days after each federal, state or county election in Orange County, the Orange County Election Supervisor and/or the Coordinator(s) shall provide to counsel for the United States any updated report regarding changes in items (a)-(c) above that occurred at the election, and provide information about all complaints the county received at the election regarding language or assistance issues.

14. The parties recognize that a regular and ongoing reassessment may be necessary in order to provide Spanish-language minority voters equal access to all phases of the electoral process in Orange County. The Supervisor of Elections and Coordinator(s) shall evaluate the Section 203 bilingual assistance program after each election cycle (e.g., after the 2002 general election) and on an ongoing basis through meetings with the Hispanic community, representatives of the Hispanic community, and counsel for the United States.

After the 2002 elections, the Supervisor of Elections and counsel for the United States shall meet to evaluate the effectiveness of using multiple Spanish Language Assistance Coordinators.

15. The parties agree that to assist in carrying out the purposes of this Consent Decree, the United States will be permitted to monitor elections in Orange County from the date of the entry of this Consent Decree until January 31, 2005.

(A) The United States will give timely notice of its intent to monitor a particular election;

(B) Department of Justice personnel, including attorneys and staff members, will be permitted into the precincts for the purpose of observing the election process; such Department personnel shall not seek to interfere in any way with the conduct of the election, but will merely observe and report problems to county election officials for resolution.

16. This Consent Decree shall expire on January 31, 2005, unless plaintiff moves the court for good cause shown to extend this Consent Decree.

17. Each party shall bear its own costs and fees.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 203 and 208 of the Voting Rights Act.

Agreed to this 27th day of June, 2002.

AGREED AND CONSENTED TO:

For Plaintiff:
UNITED STATES OF AMERICA

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United States Attorney

RALPH F. BOYD, JR.
Assistant Attorney General
Civil Rights Division


JOSEPH D. RICH
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TIMOTHY F. MELLETT
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For Defendants:
ORANGE COUNTY AND ORANGE
COUNTY SUPERVISOR OF ELECTIONS


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Jacksonville, FL 32204

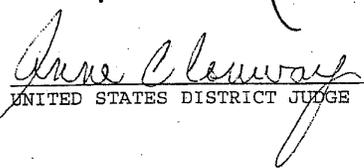
JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, (plaintiff's First Cause of Action), and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree set forth above, and incorporates those terms herein. This Court hereby enters the relief set forth in this decree, with the exception of paragraph five, which addresses only the United States' second cause of action under Section 208 of the Voting Rights Act.

ENTERED and ORDERED this 8th day of October, 2002.


UNITED STATES CIRCUIT JUDGE

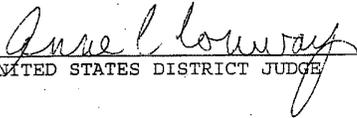

UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

JUDGMENT AND ORDER

The Court having jurisdiction over plaintiff's claims under Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6 (plaintiff's Second Cause of Action), has considered the terms of the Consent Decree set forth above and incorporates those terms herein. The Court hereby enters the relief set forth in paragraphs 5, 8, 9, 15, 16, and 17.

ENTERED and ORDERED this 30th day of August, 2002.


UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

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CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 ORANGE COUNTY, FLORIDA;)
 and BILL COWLES, Supervisor)
 of Elections,)
)
 Defendants.)

CIVIL ACTION NO. 6:02-cv-737-
Crt-22 JCC

Three-Judge District Court
Requested as to First
Cause of Action

COMPLAINT

The United States of America, Plaintiff herein, alleges:

1. The Attorney General files this action pursuant to Sections 11(a), 12(d), 203, 204, and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, 42 U.S.C. 1973aa-2, 42 U.S.C. 1973aa-6, and 28 U.S.C. 2201.
2. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973j(d), and 42 U.S.C. 1973aa-2. In accordance with the provisions of 28 U.S.C. 2284, the Section 203 claim must be heard and determined by a court of three judges.
3. Defendant Orange County is a political subdivision of the State of Florida and exists as a charter county, organized pursuant to the laws of Florida. Pursuant to Fla.

Stat. Ann. 125.14 (West 2002) and the Orange County Charter, Article VII, Section 706, the Board of County Commissioners for Orange County is included in any suit against the county.

4. Defendant Bill Cowles is the Supervisor of Elections of Orange County. The Supervisor of Elections has responsibilities concerning the administration of voting and elections in Orange County. Defendant Cowles is a resident of Orange County, Florida, and is sued in his official capacity.

5. According to the 2000 Census, Orange County has a total population of 896,344 persons, of whom 168,361 (18.8%) are Hispanic persons; and a total voting-age population of 670,004 persons, of whom 116,884 (17.4%) are Hispanic persons.

6. Orange County is covered by Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa-1a ("Section 203") with respect to the Spanish language. 28 C.F.R. 55, Appendix. The Census Bureau has not released figures from the 2000 Census for the Hispanic voting-age citizens who are limited English proficient. According to the 1990 Census, 13,114 Hispanic voting-age citizens were limited English proficient.

7. In conducting elections in Orange County, Defendants have in some instances failed to furnish effectively, in the Spanish language, the information and assistance necessary to

comply with Section 203 of the Voting Rights Act including, but not limited to, failing to do the following:

a. recruit, appoint, train, and maintain an adequate pool of bilingual poll officials capable of providing Hispanic citizens with limited English proficiency with effective language assistance;

b. translate into Spanish all election related announcements, instructions, and notices at election sites; and

c. translate into Spanish all election-related information, including but not limited to information about candidate qualification procedures, letters to voters regarding registration issues, information on Orange County's elections internet site, and announcements for poll workers posted on the Orange County Cable television channel.

8. Some voters at the November 2000 election requested that poll watchers assist them in casting their ballots because they were illiterate in English. Orange County did not permit poll watchers to provide assistance to these voters at the November 2000 election, and they did not receive assistance from other persons.

FIRST CAUSE OF ACTION

9. Because Orange County is subject to the requirements of Section 203, "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that Defendants provide in English must be furnished in the Spanish language so that Spanish-speaking voters can be effectively informed of and participate effectively in all voting-connected activities. 42 U.S.C. 1973aa-1a.

10. Section 203 requires that Defendants provide oral assistance in Spanish to the extent needed to permit Hispanic voters to participate effectively in the electoral process. 28 C.F.R. 55.20.

11. Defendants' failure to provide Orange County's Hispanic citizens with limited-English proficiency with election information and assistance, as described above in ¶¶ 7(a)-(c), constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a.

12. Unless enjoined by this Court, Defendants will continue to violate Section 203 by failing to provide Orange County's Hispanic citizens with limited-English proficiency with the election information and assistance necessary for their effective political participation.

SECOND CAUSE OF ACTION

13. Under Section 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa-6 ("Section 208"), Defendants must permit voters to have the assistors of their choice: "Any voter who requires assistance to vote by reason of blindness, disability or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 42 U.S.C. 1973aa-6.

14. Defendants' failure to allow voters the assistors of their choice as described above in Paragraph 8, constitutes a violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6.

15. Unless enjoined by this Court, Defendants will continue to violate Section 208 by failing to provide Orange County's voters with the opportunity to receive assistance from persons of the voters' choice.

WHEREFORE, Plaintiff United States prays for an order:

- (1) Declaring that Defendants have failed to provide Orange County's Hispanic citizens with limited-English proficiency with election information and assistance in the Spanish language, in violation of Section 203 of the Voting Rights Act, 42 U.S.C.

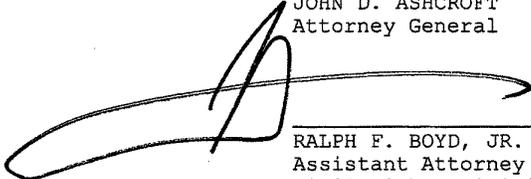
1973aa-1a;

- (2) Declaring that Defendants have not allowed certain Orange County voters their assistants of choice, in violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6;
- (3) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from failing to provide Orange County's Hispanic citizens with limited-English proficiency with election information in the Spanish language, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a;
- (4) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from not allowing Orange County's voters their assistants of choice, in violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6;
- (5) Requiring Defendants to devise and implement a remedial plan to ensure that Orange County's Hispanic citizens with limited-English proficiency are able to be effectively informed of and participate effectively in all phases of the electoral process, in compliance with Section 203 of

the Voting Rights Act, 42 U.S.C. 1973aa-1a;

- (6) Requiring Defendants to devise and implement a remedial plan to ensure that Orange County's voters are able to have their assistants of choice when they cast their ballots, in compliance with Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6; and
- (7) Requiring the Defendants to publicize effectively the remedial plans and programs addressing the Section 203 and 208 violations enumerated herein to ensure their widespread dissemination to Orange County's voters.

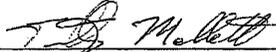
Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.


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FILED
 CLERK, U.S. DISTRICT COURT
 AUG 19 2005
 CENTRAL DISTRICT OF CALIFORNIA
 BY [Signature] DEPUTY

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IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

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 CENTRAL DISTRICT OF CALIFORNIA
 LOS ANGELES

UNITED STATES OF AMERICA,)
 Plaintiff,)
 v.)
 CITY OF PARAMOUNT, CALIFORNIA;)
 and PAT WEST, in his official)
 capacity as Paramount City)
 Manager,)
 Defendants.)

No. 05-05132 AHM *File*

THREE-JUDGE COURT

PROPOSED CONSENT DECREE, ORDER,
 AND JUDGMENT

The United States of America filed this action pursuant to
 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
 amended, 42 U.S.C. § 1973aa-1a; 42 U.S.C. § 1973aa-2; and 28
 U.S.C. § 2201, alleging violations of Section 203 arising from

(9)

1 the City of Paramount's election practices and procedures as
2 they affect Spanish-speaking citizens of the City.

3 The Complaint's cause of action under Section 203 of the
4 Voting Rights Act, 42 U.S.C. § 1973aa-1a, must be heard and
5 determined by a court of three judges pursuant to 42 U.S.C.
6 § 1973aa-2 and 28 U.S.C. § 2284.

7 According to the 2000 Census, the City of Paramount ("the
8 City") had a total voting-age population of 34,881, of whom
9 24,222 (69.4%) were Hispanic. The total citizen voting-age
10 population in Paramount was 20,398, of whom 10,592 (51.9%) were
11 Hispanic.

12 The Census Bureau has designated the County of Los Angeles
13 as subject to the requirements of Section 203 of the Voting
14 Rights Act, for the Chinese, Filipino, Japanese, Korean,
15 Spanish, and Vietnamese languages. See 42 U.S.C. § 1973aa-
16 1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). As a
17 political subdivision within the County of Los Angeles, the City
18 of Paramount is also subject to the requirements of Section 203
19 for these languages. See 28 C.F.R. § 55.9. The City currently
20 has significant numbers of Spanish-speaking voters who need
21 assistance and materials in the election process in the Spanish
22 language.

23 The City of Paramount conducts its own municipal elections,
24 while the County of Los Angeles conducts county, state, and
25 federal elections in which voters in the City also vote. The
26 allegations in the Complaint and the terms of this Consent
27 Decree apply to the City's municipal elections, and any other
28 elections over which the City has authority to conduct.

1 The Complaint states that Defendants have failed to comply
2 with the requirements of Section 203, by failing to translate
3 into Spanish the following written election-day materials and
4 information: (1) official ballot, (2) voter registration form,
5 (3) sign identifying "polling place," (4) sign regarding not
6 damaging voter equipment, (5) provisional ballot envelope,
7 (6) provisional ballot receipt, (7) information regarding poll
8 watchers, (8) opto-mark demonstration ballot, (9) telephone card
9 for precinct information, (10) sign indicating polling place
10 hours, (11) sign indicating voter parking, and (12) the form for
11 voters with disabilities. The Complaint also states that
12 although the City translates into the Spanish language its pre-
13 election notices and announcements relating to the date, time,
14 place, and nature of its elections, those notices and
15 announcements appear only in English language publications.

16 To avoid protracted and costly litigation, the parties have
17 agreed that this lawsuit should be resolved through the terms of
18 this Consent Decree (the "Decree"). Accordingly, the United
19 States and Defendants hereby consent to the entry of this
20 Decree, as indicated by the signatures of counsel at the end of
21 this document. The parties waive a hearing and entry of
22 findings of fact and conclusions of law on all issues involved
23 in this matter.

24 Defendants are committed to complying fully with all of the
25 requirements of Section 203 in future elections and stipulate
26 that each provision of this Consent Decree is appropriate and
27 necessary to comply with Section 203 of the Voting Rights Act.
28

SCANNED

1 Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREEED
2 that:

3 1. Defendants, their agents, employees, contractors,
4 successors, and all other persons or government entities
5 representing the interests of Defendants are hereby PERMANENTLY
6 ENJOINED from failing to provide in the Spanish language any
7 "registration or voting notices, forms, instructions, assistance
8 or other materials or information relating to the electoral
9 process, including ballots" that they provide in the English
10 language, as required by Section 203 of the Voting Rights Act,
11 as amended. 42 U.S.C. § 1973aa-1a(c). The terms of this Decree
12 apply to all municipal elections in the City of Paramount and
13 any other elections over which the City has authority to
14 conduct. Whenever Defendants enter into an election-related
15 services contract with another entity - whether it be a company,
16 political subdivision, political party, or some other entity -
17 to conduct an election on behalf of the City, Defendants shall
18 require such other entity to agree to abide by the terms of this
19 Decree as if such entity were a party to this Decree with the
20 United States.

SCANNED

21 Translation of Election-Related Materials

22 2. All information that is disseminated by the City of
23 Paramount in English about "registration or voting notices,
24 forms, instructions, assistance, or other materials or
25 information relating to the electoral process, including
26 ballots," 42 U.S.C. § 1973aa-1a(c), shall also be provided in
27 the Spanish language. Defendants shall ensure that English and
28

1 Spanish language election information, materials, and
2 announcements are made equally available to voters.

3 3. Defendants shall consult with trained translators who
4 are familiar with election terminology in Spanish, to produce
5 written Spanish language translations of English language
6 election information. Defendants may satisfy this obligation by
7 using terminology and translations provided by the Los Angeles
8 County Registrar-Recorder/County Clerk or the Elections Division
9 of the Office of the Secretary of State of California.
10 Defendants shall also consult in a timely manner with the
11 Spanish Language Advisory Group, discussed below, regarding the
12 translation of any written and audio-recorded materials.

13 4. Defendants shall adopt a checklist identifying each
14 material and written item containing Spanish that the City makes
15 available to the public at each precinct. The checklist shall
16 include with respect to each item an attestation that the poll
17 workers at the precinct posted or made available to voters these
18 Spanish language materials, or a detailed written explanation as
19 to why individual items were not posted or made available. The
20 inspectors for each precinct must complete and sign this
21 document before the inspectors receive payment for work in the
22 election, subject to applicable state and federal law.
23 Defendants shall maintain a record of each such failure to
24 complete and sign the checklist.

25 Dissemination of Spanish Language Information

26 5. Defendants shall ensure that Spanish language election
27 information, materials, and announcements are provided to the
28 same extent as they are provided in English. Spanish language

SECRET

1 information shall be distributed in newspapers, radio, and/or
 2 other media that exclusively or regularly publish or broadcast
 3 information in the Spanish language. These announcements need
 4 not be identical in all respects to English language
 5 announcements, but shall be in the form, frequency, and media
 6 best calculated to achieve notice and understanding equal to
 7 that provided to the English-speaking population and to provide
 8 substantially the same information.

SCANNED

9 6. Any voting system used by the City shall be bilingual,
 10 as described below. If the City uses electronic voting
 11 machines, these machines shall offer the readily apparent
 12 options of a Spanish ballot, and any audio version of the ballot
 13 on such machines shall be available in Spanish. Any paper
 14 ballots used by the City, including the official ballot, the
 15 provisional ballot, and the absentee ballot, shall be bilingual,
 16 in both English and Spanish.

17 7. Whatever information the City provides in the voting
 18 booth, including instructions on the casting of a ballot, shall
 19 appear in the booth bilingually in both Spanish and English.

20 8. The City shall adopt a bilingual sample ballot booklet
 21 that provides all information in English and Spanish. The
 22 booklet and the envelope in which it is sent must include
 23 readily visible Spanish language translations of all the
 24 information provided in the English language.

25 Spanish Language Assistance

26 9. The City shall continue to recruit, hire, and assign
 27 election officials able to understand and speak Spanish fluently
 28 to provide assistance to Spanish language voters at all polling

1 places in the City on election days.

2 Program Coordinator

3 10. The City Clerk of Paramount and/or his or her designee
4 shall serve as the City's Spanish Language Program Coordinator
5 responsible for coordinating all City election-related Spanish
6 language materials and assistance ("Program Coordinator").
7 The Program Coordinator shall speak, read, and write Spanish and
8 English. The City shall provide the Program Coordinator with
9 support sufficient to meet the goals of the Program. The
10 Program Coordinator's responsibilities shall include
11 coordination of the translation of ballots and other election
12 information; development and oversight of Spanish language
13 publicity programs, including selection of appropriate media for
14 notices and announcements; training, recruitment and assessment
15 of Spanish language proficiency of bilingual poll officials and
16 interpreters; and managing all other aspects of the City's
17 compliance with Section 203.

SCANNED

18 Spanish Language Advisory Group

19 11. No later than six (6) months prior to any City
20 election, the City shall convene a Spanish Language Advisory
21 Group ("Advisory Group") concerning Spanish language election-
22 related materials and assistance. The purpose of the Advisory
23 Group shall be to provide information and assistance to the City
24 as to election-related materials for and assistance to its
25 Spanish-speaking citizens.

26 12. The Program Coordinator shall establish and chair the
27 Advisory Group. The Program Coordinator shall invite
28 participation from all interested individuals and organizations

1 that work with or serve the City's Spanish-speaking community to
2 determine how to effectively provide election materials,
3 information, and assistance to Spanish-speaking voters, and how
4 to fill any gaps in public awareness about the City's Spanish
5 language election program. The Advisory Group shall be open to
6 all interested persons. The Program Coordinator shall provide
7 notice of all planned meetings to each member, including the
8 time, location, and agenda for the meeting, at least fourteen
9 (14) days in advance, although members of the Advisory Group may
10 agree to waive or shorten this time period as necessary. Within
11 five (5) working days following each meeting, the Program
12 Coordinator shall provide a written summary to all members and
13 to the City Clerk of the discussion and any decisions reached at
14 the meeting. If the City Clerk decides not to implement the
15 Advisory Group's suggestion or a consensus cannot be reached
16 with respect to such suggestion, the Clerk shall provide to the
17 Advisory Group through the Program Coordinator and maintain on
18 file a written statement of the reasons for rejecting such
19 suggestion.

20 13. The City shall transmit to all interested Advisory
21 Group members copies of all election information, announcements,
22 and notices that are provided to the electorate and general
23 public and request that Group members share this information
24 with others.

25 **Other Language Minority Groups**

26 14. Although the Spanish language minority group is the
27 only language minority group in the City of Paramount currently
28 requiring election-related materials and assistance, as a

1 political unit within the County of Los Angeles, the City is
2 also subject to the requirements of Section 203 for Chinese,
3 Filipino, Japanese, Korean, and Vietnamese. To ensure future
4 compliance with Section 203, the City shall monitor changes in
5 the City population and voter registration, and develop
6 contingency plans to provide election information and materials
7 to Chinese, Filipino, Japanese, Korean, and Vietnamese voters
8 should the need for language assistance in these communities
9 arise in the future. Any language assistance and materials
10 provided to these additional language minority groups shall be
11 provided in a manner consistent with the requirements of this
12 Decree.

13 Federal Examiners and Observers

14 15. To monitor compliance with and ensure effectiveness of
15 this Decree, and to protect the Fourteenth and Fifteenth
16 Amendment rights of the citizens of the City of Paramount, the
17 appointment of a federal examiner is authorized for the City of
18 Paramount pursuant to Section 3(a) of the Voting Rights Act,
19 42 U.S.C. § 1973a(a), as long as this Decree is in effect.

20 16. Defendants shall recognize the authority of federal
21 observers to observe all aspects of voting conducted in the
22 polls on election day.

23 Evaluation of Plan

24 17. The parties recognize that regular and ongoing
25 reassessment may be necessary to provide the most effective and
26 efficient multilingual Program. Defendants shall evaluate the
27 Program after each election to determine which aspects of the
28 Program are functioning well, whether any aspects need

1 improvement, and how to effect needed improvements. The Program
2 may be adjusted at any time upon joint written agreement of the
3 parties.

4 **Retention of Documents and Reporting Requirements**

5 18. During the duration of this Decree, the City shall
6 make and maintain written records of all actions taken pursuant
7 to this Decree and shall provide copies of such records to the
8 United States upon request.

9 19. During the duration of this Decree, at least thirty
10 (30) days before each municipal election held in the City,
11 Defendants shall provide to counsel for the United States, (a)
12 the name, address, and precinct designation of each consolidated
13 precinct; and (b) copies of any signs or other written
14 information provided at polling places. Within thirty (30) days
15 after each election, Defendants shall provide to counsel for the
16 United States (a) information about any complaints the City
17 received at the election regarding Spanish language materials or
18 assistance; and (b) copies of the checklists prepared by poll
19 workers referred to in Paragraph four of this Decree. Copies
20 may be provided electronically.

21 **Other Provisions**

22 20. This Decree is final and binding between the parties
23 and their successors in office regarding the claims raised in
24 this action. This Decree shall remain in effect through August
25 6, 2007, and the parties further stipulate that the Decree shall
26 extend through December 31, 2009, provided Defendants remain
27 under a continuing obligation under Section 203 of the Voting
28 Rights Act to provide minority language materials and

1 assistance.

2 21. The Court shall retain jurisdiction of this case to
3 enter further relief or such other orders as may be necessary
4 for the effectuation of the terms of this agreement and to
5 ensure compliance with Section 203 of the Voting Rights Act.

6 22. Each party shall bear its own costs and fees.

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SCANNED

1 Agreed to this 14th day of July, 2005.

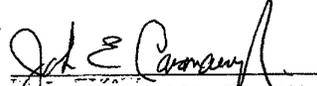
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3 AGREED AND CONSENTED TO:

4 For Plaintiff:
5 UNITED STATES OF AMERICA

For Defendants:

6 

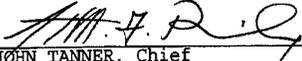
7 BRADLEY J. SCHLOZMAN
8 Assistant Attorney General
9 Civil Rights Division



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11 DEBRA W. YANG
12 United States Attorney
13 MICHELE C. MARCHAND
14 Asst. United States Attorney

15 

16 JOHN TANNER, Chief
17 SUSANA LORENZO-GIGUERE, Special Litigation Counsel
18 AVNER SHAPIRO, Trial Attorney
19 JOHN "BERT" RUSS, Trial Attorney
20 ALBERTO RUISANCHEZ, Trial Attorney
21 Voting Section
22 U.S. Department of Justice
23 Civil Rights Division
24 950 Pennsylvania Ave., N.W. - NWB-7254
25 Washington, D.C. 20530
26
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SUSANED

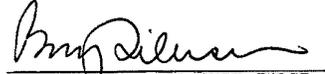
JUDGMENT AND ORDER

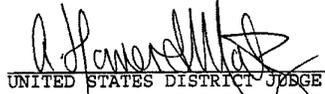
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This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 and 42 U.S.C. § 1973aa-2 to consider the United States' claim under Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, and hereby enters the relief set forth above and incorporates those terms herein.

SCANNED

ENTERED and ORDERED this 17th day of August, 2005.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

NOTICE PARTY SERVICE LIST

Case No. CVDS-5192-ARM (JTL) Case Title U.S.A. v. CITY OF PARAMOUNT, et al
 Title of Document CONSENT DECREE, ORDER, AND JUDGMENT

Atty Stlmnt Officer
BAP (Bankruptcy Appellate Panel)
Beck, Michael J (Clerk, MDL Panel)
BOP (Bureau of Prisons)
CA St Pub Defender (Calif. State PD)
CAAG (California Attorney General's Office - Keith H. Borjon, L.A. Death Penalty Coordinator)
Case Asgmt Admin (Case Assignment Administrator)
Catterson, Cathy (9 th Circuit Court of Appeal)
Chief Deputy Admin
Chief Deputy Ops
Clerk of Court
Death Penalty H/C (Law Clerks)
Dep In Chg E Div
Dep In Chg So Div
Fiscal Section
Intake Section, Criminal LA
Intake Section, Criminal SA
Intake Supervisor, Civil
Interpreter Section
PIA Clerk - Los Angeles (PIALA)
PIA Clerk - Riverside (PIAED)
PIA Clerk - Santa Ana (PIASA)
PSA - Los Angeles (PSALA)
PSA - Riverside (PSAED)
PSA - Santa Ana (PSASA)
Schnack, Randall (CJA Supervising Attorney)
Statistics Clerk

Stratton, Maria - Federal Public Defender
US Attorneys Office - Civil Division -L.A.
US Attorneys Office - Civil Division - S.A.
US Attorneys Office - Criminal Division -L.A.
US Attorneys Office - Criminal Division -S.A.
US Bankruptcy Court
US Marshal Service - Los Angeles (USMLA)
US Marshal Service - Riverside (USMED)
US Marshal Service -Santa Ana (USMSA)
US Probation Office (USPO)
US Trustee's Office
Warden, San Quentin State Prison, CA

ADD NEW NOTICE PARTY (if sending by fax, mailing address must also be provided)
Name:
Firm:
Address (include suite or floor):
*E-mail:
*Fax No.:

* For CIVIL cases only
JUDGE / MAGISTRATE JUDGE (list below):
HON. BARRY G. SILVERMAN
HON. AUDREY B. COLLINS

Initials of Deputy Clerk: BWU

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 Acting Assistant Attorney General

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 3 MICHELE C. MARCHAND
 Assistant United States Attorney (#93390)
 4 United States Courthouse
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 5 Los Angeles, California 90012
 Telephone: (213) 894-2727
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7 JOHN TANNER, Chief
 SUSANA LORENZO-GIGUERE, Special Litigation Counsel
 8 AVNER SHAPIRO, Trial Attorney
 JOHN "BERT" RUSS, Trial Attorney (#192471)
 9 ALBERTO RUISANCHEZ, Trial Attorney
 Voting Section
 10 Civil Rights Division
 United States Department of Justice
 11 950 Pennsylvania Ave., N.W. - NWB-7254
 Washington, D.C. 20530
 12 Telephone: (202) 305-1840
 Facsimile: (202) 307-3961

13 Counsel for Plaintiff
 14 United States of America

FILED

2005 JUL 14 AM 11:45

CLERK U.S. DISTRICT COURT
 CENTRAL DIST. CALIF.
 LOS ANGELES

BY _____

15 IN THE UNITED STATES DISTRICT COURT
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

17 UNITED STATES OF AMERICA,	)	No. 05-05132	ANM
18 Plaintiff,)		
19 v.	)	THREE-JUDGE COURT	JTLX
20 CITY OF PARAMOUNT, CALIFORNIA;	)	<u>COMPLAINT</u>	
21 and PAT WEST, in his official)		
22 capacity as Paramount City)		
23 Manager,)		
Defendants.)		

24 The United States of America, Plaintiff herein, alleges:

25 1. The Attorney General files this action pursuant to

26 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as

27 amended, 42 U.S.C. § 1973aa-1a; 42 U.S.C. § 1973aa-2; and

28 28 U.S.C. § 2201.

1 2. The Court has jurisdiction of this action pursuant to
2 28 U.S.C. § 1345 and 42 U.S.C. § 1973aa-2. In accordance with
3 the provisions of 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284, the
4 Section 203 claim must be heard and determined by a court of
5 three judges. The events relevant to this action occurred in
6 the City of Paramount, which is located in the United States
7 District Court for the Central District of California.

8 3. Defendant THE CITY OF PARAMOUNT ("Paramount" or "the
9 City") is a political and geographical subdivision of the County
10 of Los Angeles and the State of California.

11 4. Defendant PAT WEST is the Paramount City Manager. In
12 this capacity, Defendant WEST has responsibilities for the
13 administration of City affairs, including responsibilities
14 relating to the administration of voting and elections in
15 Paramount. Defendant WEST is sued in his official capacity.

16 5. The 2000 Census reported that the City of Paramount
17 had a total population of 55,266, of whom 39,945 were Hispanic
18 (72.3%). The City had a total voting age population ("VAP") of
19 34,881, of whom 24,222 (69.4%) were Hispanic. The total citizen
20 voting age population ("CVAP") for the City was 20,398, of whom
21 10,592 (51.9%) were Hispanic.

22 6. The Census Bureau has designated the County of Los
23 Angeles as subject to the requirements of Section 203 of the
24 Voting Rights Act for Chinese, Filipino, Japanese, Korean,
25 Spanish, and Vietnamese. See 42 U.S.C. § 1973aa-1a(b)(2); see
26 also 67 Fed. Reg. 48,871 (July 26, 2002). As a political unit
27 within the County of Los Angeles, the City of Paramount is also
28 subject to the requirements of Section 203 for these languages.

1 See 28 C.F.R. § 55.9. The coverage determination of the Census
2 Bureau is final and non-reviewable. See 42 U.S.C. § 1973aa-
3 1a(b)(4). Significant numbers of Spanish-speaking citizens with
4 limited English proficiency ("Spanish-speaking citizens") who
5 need assistance in the election process in the Spanish language
6 reside in the City.

7 7. As a political subdivision of Los Angeles County,
8 Paramount has been continuously subject to Section 203's
9 requirements to provide election materials and information in
10 Spanish since September 18, 1992. See 57 Fed. Reg. 43,213
11 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002). The
12 United States Department of Justice has directly notified
13 election officials, including Paramount and Los Angeles County
14 election officials, of their jurisdictions' responsibilities
15 under Section 203, and Los Angeles County separately has
16 provided such information to City of Paramount officials.

17 8. Because Paramount is subject to the requirements of
18 Section 203, "any registration or voting notices, forms,
19 instructions, assistance, or other materials or information
20 relating to the electoral process, including ballots" that
21 Defendants provide in English must also be furnished in Spanish,
22 for its Spanish-speaking citizens. 42 U.S.C. § 1973aa-1a(c).

23 CAUSE OF ACTION

24 9. In conducting elections in Paramount, Defendants have:

25 A. failed to translate into Spanish the following
26 written election-day materials and information:

- 27 (1) official ballot
28 (2) voter registration form

- 1 (3) sign identifying "polling place"
- 2 (4) sign regarding not damaging voter equipment
- 3 (5) provisional ballot envelope
- 4 (6) provisional ballot receipt
- 5 (7) information regarding poll watchers
- 6 (8) opto-mark demonstration ballot
- 7 (9) telephone card for precinct information
- 8 (10) sign indicating polling place hours
- 9 (11) sign indicating voter parking
- 10 (12) form for voters with disabilities; and

11 B. published all of its pre-election notices and
12 announcements relating to the date, time, place, and nature of
13 its elections, including its Spanish language translations of
14 those notices and announcements, in English language
15 publications only.

16 12. Defendants' failure to provide Spanish language
17 election information to Spanish-speaking citizens, as described
18 above, constitutes a violation of Section 203.

19 13. Unless enjoined by this Court, Defendants will
20 continue to violate Section 203 by failing to provide
21 Paramount's Spanish-speaking citizens with the Spanish language
22 election information necessary for their political
23 participation.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff the United States of America prays that
26 this Court enter an order:

- 27 (1) Declaring that Defendants have failed to provide
- 28 Spanish language election information to Spanish-

- 1 speaking citizens in violation of Section 203 of the
2 Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- 3 (2) Enjoining Defendants, their employees, agents, and
4 successors in office, and all persons acting in
5 concert with them, from failing to provide Spanish
6 language election information to Spanish-speaking
7 citizens as required by Section 203,
8 42 U.S.C. § 1973aa-1a;
- 9 (3) Requiring Defendants to devise and implement a
10 remedial plan to ensure that Spanish-speaking citizens
11 are able to participate in all phases of the electoral
12 process as required by Section 203 of the Voting
13 Rights Act, 42 U.S.C. § 1973aa-1a;
- 14 (4) Requiring Defendants to devise and implement a
15 remedial plan to ensure that, in the event that the
16 need for materials and assistance arises in other
17 languages subject to the requirements of Section 203,
18 the City will provide election-related information and
19 materials to residents needing such assistance.
- 20 (5) Requiring Defendants to publicize the remedial plan
21 and programs addressing violations of Section 203 in
22 such a manner as to ensure its widespread
23 dissemination to Paramount's voters; and
- 24 (6) Authorizing the appointment of federal examiners for
25 elections held in Paramount pursuant to Section 3(a)
26 of the Voting Rights Act, 42 U.S.C. § 1973a(a),
27 through August 6, 2007.
- 28

1 Plaintiff further prays that this Court order such
2 additional relief as the interests of justice may require,
3 together with the costs and disbursements in maintaining this
4 action.

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1 Date: the 14th day of July, 2005

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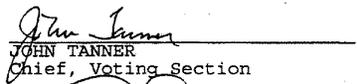
ALBERTO GONZALES
Attorney General



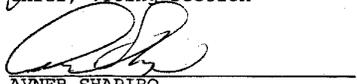
BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General
Civil Rights Division



DEBRA WONG YANG
United States Attorney



JOHN TANNER
Chief, Voting Section



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(202) 305-1840

United States Department of Justice
Civil Rights Division
P.O. Box 66128
Washington, D.C. 20035
ARE-4493

FILED

JUN 4 1999

ORIGINAL FILED
JUN - 1999
WILLIAMS WALSH, CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

THE UNITED STATES OF AMERICA,
Plaintiff,

v.

PASSAIC CITY, NEW JERSEY, et al.

and

PASSAIC COUNTY, NEW JERSEY, et al.,

Defendants.

CIVIL ACTION No. 99-2544 (NAP)

Judge NAP

CIVIL ACTION No. _____

Judge _____

Judge _____

Judge _____

ENTERED

on 6-7-1999

By A. Rossi

CONSENT DECREE

This Consent Decree represents the commitment of the parties to ensure that all citizens of Passaic County have an equal opportunity to participate in the electoral process including Hispanic and Spanish language citizens. The County and City intend to fully implement this Order and Judgment, including the Program for Spanish language election information described below, as part of their ongoing efforts to ensure all voters

regardless of race or ethnic origin equal access to the polls. The parties recognize and agree that regular and ongoing reassessment of the Spanish language election information program by responsible officials will be necessary in order to provide Hispanic and Spanish language citizens with access to all phases of the political process in Passaic County and Passaic City.

The United States initiated this action pursuant to Sections 2, 3(a), 11(a), 12(d), 203, 204, and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973a(a), 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, 42 U.S.C. 1973aa-2, 42 U.S.C. 1973aa-6, 28 U.S.C. 2201, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

In its Complaint, the United States alleges five independent claims arising from Passaic City's and Passaic County's election practices and procedures as they affect Hispanic citizens of the City and County, including those Hispanic voting age citizens who are "unable to speak or understand English adequately enough to participate in the election process," 42 U.S.C. 1973aa-1a (hereafter "limited English proficient" or "Spanish language minorities").

The claim under Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, must be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C.

section 1973aa-2 and 28 U.S.C. section 2284.

The United States alleges that various election standards, practices and procedures in Passaic County and Passaic City deny or abridge the voting rights of Hispanic and limited English proficient citizens. The challenged practices concern the lack of effective bilingual election procedures, as required by the Voting Rights Act, in the following areas: board worker appointment, training and assignment policies and practices; bilingual printing and dissemination of election information; and language assistance at the polls including full translation of election related and voting connected materials.

The defendants do not admit the allegations of the Complaint. Defendants, however, do share with the plaintiff a mutual interest to implement procedures that will protect the rights of Hispanic and Spanish-speaking voters to fully participate in the electoral process in compliance with the Voting Rights Act and the U.S. Constitution, and therefore, defendants agree to fully implement the terms of this Consent Decree for the enforcement of all applicable laws.

In this regard, the parties stipulate that Passaic County and Passaic City are subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. §1973 aa-1a, see 57 Fed. Reg. 43213 (Sept. 18, 1992), and thus the defendants must furnish written and oral instructions, assistance and all information

relating to voter registration and voting in the Spanish language for the benefit of the Hispanic and limited-English proficient voters.

The parties have conferred in good faith and now agree that all claims in the Complaint can be resolved without further judicial proceedings. Accordingly, the parties agree that entry of this Consent Decree is an appropriate resolution of all claims in the Complaint.

Nothing in this Decree shall be construed to prevent the United States from bringing a separate action alleging that the voting strength of Passaic's Hispanic citizens is diluted in violation of Section 2 of the Voting Rights Act and using any facts supporting the relief ordered herein as evidence in such action.

The parties agree that a single member District Court has jurisdiction over the parties and the subject matter of this litigation as alleged in the Complaint and resolved herein, as to all issues other than those raised under Section 203 of the Voting Rights Act, 42 U.S.C. section 1973aa-1a. The parties further agree that a three judge district court has jurisdiction over the parties and the subject matter of the claims under Section 203 of the Voting Rights Act that are alleged in the Complaint and resolved herein. This Consent Decree is final and binding as to all issues raised in or by the Complaint on the parties and their officials, agents, employees, and successors,

and all individuals in active concert or participation with them.

Accordingly, the parties AGREE that the following relief should be granted:

A. RECRUITMENT OF HISPANIC AND BILINGUAL DISTRICT BOARD WORKERS

1. The Defendants agree on behalf of themselves and their officers, agents, successors and all persons acting in concert with them in the performance of their official functions, that they will take immediate steps to exhaust all reasonable efforts to increase the number of Hispanic persons and bilingual persons appointed and assigned as district board members for the June 8, 1999 primary elections. If the County is unable to obtain at least two bilingual district board members for each designated Spanish Election District, the County shall endeavor to obtain bilingual translators, without regard to whether they are resident registered voters or otherwise qualified to be district board workers.

2. Defendants shall contact Hispanic candidates, Hispanic elected officials, Hispanic organizations (including but not limited to those set forth on Exhibit A) by written communication, and by telephonic communication or through direct oral communication at a public meeting as necessary, in connection with the appointment of district board members for each election, in an effort to obtain the names, addresses, and telephone numbers of Hispanic citizens who are qualified and

available to serve as district board members.

3. At all elections conducted by Passaic County or Passaic City beginning with the 1999 primary election, Defendants shall make their best efforts to appoint Hispanic district board members to work on election day in proportions that reasonably correspond to the percentage of Hispanic registered voters in the election district to which they are assigned. Nothing in N.J.S.A. 19:6-3 shall be construed to relieve the defendants of this obligation.

4. At all elections conducted by Passaic County or Passaic City beginning with the 1999 primary election, the County Board of Elections shall in an effort to recruit Hispanic and bilingual district board workers:

- (a) place an advertisement in English and Spanish in the Sunday edition of the Herald and in Spanish in a Spanish language newspaper with circulation numbers in Passaic County at least equal to that of the El Diario for 3 weeks, beginning 4 weeks prior to the final selection of district board members, except that for the June 1999 primary only, such advertisements may be placed once per week in a weekday or Sunday edition for the 2 weeks prior to the election;
- (b) have two drive-time Spanish language 30-second public service announcements on radio WADO, AM, and station 97.9 FM, for each day beginning ten (10) days prior to the final

selection of district board members for each election; and
(c) have three Spanish language public service announcements
per week for the two weeks prior to the selection of
district board members on TV 41 or 47;

provided, however, that the Spanish election information program,
described in Section E below, will supersede this provision once
it has been agreed by the parties and filed with the Court.

B. BILINGUAL ELECTION-RELATED MATERIALS AND NOTICES

5. Beginning with the June 1999 primary election,
defendants shall ensure that all written information that is made
available to the public, including information which is provided
at the polls, regarding any aspect of candidate qualification,
voter registration, and the absentee or in-person voting process
shall also be made available in Spanish. Defendants shall ensure
to the extent that it is technically feasible that the ballot on
the voting machines in English shall also appear on the voting
machines in Spanish at each designated Spanish Election District
for each election.

6. Beginning immediately, election-related advertisements
and announcements shall be bilingual and include information as
to the availability of Spanish language materials and Spanish
language assistance for the entire electoral process, from
registration through voting.

7. Beginning with the June 1999 election, poster size bilingual signs shall be prominently posted in each polling place for the Spanish election districts notifying voters that Spanish language assistance is available and setting forth the telephone number of the emergency telephone lines described in paragraph 11, below. All other signs in each polling place in the Spanish election districts and election office in Passaic County shall also be bilingual.

C. VOTER ASSISTANCE

8. Beginning with the June 3, 1999 training session, the County Board of Elections shall instruct district board workers on the rights of blind or physically disabled voters and voters who are not able to read and write to have assistance in the voting booth by a person of their choice. Board workers will also be expressly instructed that Spanish language minority voters have a right to equal participation in the electoral process, including assistance in the voting booth in the Spanish language when appropriate. These instructions shall include discussion of the proper interpretation of relevant New Jersey election laws, as set forth in paragraph 9. Beginning with the June 1999 election, all district board workers shall be required to sign the Board Member Rules of Voter Etiquette and Procedure, attached as Exhibit B, prominently placed as part of the pay

slip. These Rules shall be included in the Board Worker Instruction Booklet for all training sessions after June 1999.

9. Beginning with the June 1999 primary election, assistance shall be provided in accordance with the broad provisions of the Voting Rights Act, and in particular Sections 203 and 208, to ensure that all entitled voters needing assistance have the opportunity to fully and effectively implement their voting choices. N.J.S.A. 19:52-3 shall not be construed to limit the time in which a voter who requires assistance may reasonably remain with his assistor in the voting machine booth. Additionally, neither N.J.S.A. 19:15-8 nor N.J.S.A. 19:52-3 shall be construed to limit a voter in the choice of his assistor or to prevent an assistor from assisting more than one voter.

10. Defendant Superintendent of Elections shall make available a voting machine at the municipal buildings in the City of Paterson and the City of Passaic to allow for public demonstrations in a timely manner prior to any election.

11. Beginning with the June 1999 election, the Superintendent of Elections shall maintain dedicated emergency telephone lines for use on election day which shall be answered in the Spanish language by a trained bilingual employee, and shall provide adequate bilingual staffing on these phones office throughout the day. Signs shall be posted in Spanish in each

polling place advertising the availability of telephone assistance. Calls to the emergency telephone lines shall be logged, including the name and phone number of the caller, the language spoken by the caller, the nature of the request or complaint, and how the matter was resolved.

The County and the City shall use their best efforts to ensure that a working telephone line (whether land-based or cellular) is either available for voter use in the election district or that a working public telephone is available within 100 yards of the election district.

D. PUBLICATION OF SPANISH LANGUAGE MATERIALS

12. For the June 1999 primary election, Defendants shall publicize to all citizens the availability of Spanish language materials and Spanish language assistance for purposes of casting a ballot in a voting booth or applying for and casting an absentee ballot.

13. Defendants shall publicize to all citizens the availability of assistance in voting for voters who require assistance because of blindness, disability or inability to read or write.

14. Defendants shall place bilingual announcements in the media describing the existence of the materials and assistance set forth in Sections B, C, and D of this Consent Decree.

E. ESTABLISHMENT OF A PERMANENT SPANISH LANGUAGE ELECTION INFORMATION PROGRAM.

15. By September 15, 1999, the Defendants shall review and update the designation of Spanish Election Districts in Passaic County using the most current available data so that all election districts in which the primary language of 10% or more of the registered voters is Spanish are designated. The parties agree that a district shall be designated if a Spanish surname analysis of the current list of registered voters indicates that ten percent or more of the registered voters have Spanish surnames. The United States agrees that a Spanish surname analysis is a reasonable means of "targeting" minority language assistance within the meaning of 28 CFR Ch. 1, § 55.17.

16. At all elections conducted by Passaic County or Passaic City beginning with the 1999 general election, all reasonable efforts shall be exhausted to ensure that Spanish Election Districts shall be staffed with sufficient bilingual board workers to adequately meet the needs of the Spanish language minority voters in such districts; the staffing for such election districts should have at least the two additional district board members required by N.J.S.A. 19:6-1, who are of Hispanic origin and fluent in Spanish. Nothing in that statute or in N.J.S.A. 19:6-3 shall be construed to relieve the County or City of their obligation to have a sufficient number of bilingual

district board members.

17. If, for any election, the County or City is unable to obtain sufficient bilingual district board members to satisfy its obligations under this Consent Decree, the County or City shall meet these obligations by obtaining bilingual translators, without regard to whether those translators are County residents or registered voters, certifying the expense of obtaining translators as an election expense.

18. Passaic County shall, together with Passaic City, implement and enforce a Spanish Language election information program (the "Program"). The purpose of the Program shall be to ensure the dissemination of election-related and voting connected information to the Spanish-speaking citizens of Passaic County, and to make the election process equally available to Hispanic citizens, particularly those with limited English proficiency. The Program shall include provisions for the employment of Voting Rights Coordinator(s); a system for community input into the election process; recruitment, appointment and training of Hispanic and bilingual district board members; training of election personnel; translations of election related and voting connected materials; dissemination of translated materials; publication regarding the availability of voting assistance, Spanish language materials, and Spanish language voting assistance; election day procedures; and records to be

maintained. The Program shall be designed with input from the United States, and defendants shall invite input from Hispanic community organizations and shall include input that is received from such organizations in the Program. The Program shall be designed to ensure that in each election district throughout Passaic County, all citizens, including Hispanic persons, limited English proficient persons and persons requiring voting assistance, have an equal opportunity to participate in the electoral process. This Program shall be broadly construed to improve the effective access of citizens to the electoral process in Passaic County and Passaic City.

19. The parties agree that they will work together in order to develop a Program that should be filed with this Court by August 2, 1999, and that will be fully in effect by October 1, 1999, except that the Program may enumerate specific items that will instead be implemented by January 1, 2000. Any subsequent modifications of the Program must be agreed upon by the parties and approved by the United States and shall be filed with this Court within 60 days of the effective date of the modification.

20. If the parties are unable to agree to all the terms of a Program by August 2, 1999, then the parties agree that they shall file by September 1, 1999, a Program which contains all terms that the parties can agree on and these terms shall be fully implemented by October 1, 1999. In such event, each party

shall file with the three-judge Court empaneled for this case proposed terms for the remaining portions of the Program by September 15, 1999. The Court shall, after such argument as it deems necessary, order such terms as are necessary in order to ensure that every aspect of the electoral process is equally open to language minority citizens, that the Program complies with 28 CFR Ch 1 Part 55, Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups.

21. Once the Program is adopted, Passaic County and City shall evaluate the Program on an ongoing basis through meetings with the Voting Rights Coordinator(s) as well as with Hispanic community organizations, other interested parties, and counsel for the United States. After each election, the County and City shall propose changes to the Program, if necessary, which, after inviting comments from interested parties and agreed to by the United States shall be adopted.

22. The parties shall confer in good faith if any party believes that a particular aspect of the Program has proven ineffective. The parties shall confer at least annually in a good faith effort to improve any aspect of the Program which has proven ineffective, in accordance with this Consent Decree. In the event of changes in Spanish language minority citizen population patterns in Passaic County and City, the parties promptly shall confer and develop a program for meeting fully the

language needs of such population.

23. To ensure the effectiveness of this agreement and to protect the Fourteenth and Fifteenth Amendment rights of the citizens of Passaic County, the appointment of a federal examiner in Passaic County is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), through December 31, 2003. Such designation shall be extended to ensure full and ongoing protection of the rights of the voters of Passaic County upon either agreement of the parties or by court order. The parties agree that such Order shall issue if the court determines either that Defendants are not in compliance with this agreement or that there is evidence of the denial or abridgment of any rights of Hispanic or Spanish-speaking voters under the Voting Rights Act or the Fourteenth or Fifteenth Amendments to the United States Constitution.

24. If the defendants do not comply with this Consent Decree, the United States, upon reasonable notice and an opportunity to cure, shall seek enforcement from this Court. For purposes of such a proceeding, defendants shall not contest the validity of this consent decree entered by this court.

25. Copies of all materials or records referenced in this Consent Decree and the Program shall be maintained by Passaic County for not less than five years, and shall be made available to the public for inspection and copying on the same basis as

other records of Passaic County.

26. Within forty-five (45) days after each election in Passaic County, the Board of Elections shall serve a report on counsel for the United States. Such report shall include:

(A) A copy of the official list of persons appointed to serve as district board members, identified by name, address, telephone number, Hispanic origin, and bilingual status;

(B) A copy of all documents required by the Program for Spanish language election information.

AGREED:

For Plaintiff:
UNITED STATES OF AMERICA

BILL LANN LEE
Acting Assistant Attorney
General


ELIZABETH JOHNSON
DONNA M. MURPHY
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NANCY ROE
Attorneys, Voting Section

Civil Rights Division
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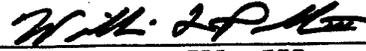
For Defendants:

COUNTY BOARD OF ELECTIONS
COUNTY SUPERINTENDENT


DONNA KELLY
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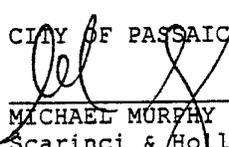
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PASSAIC COUNTY
PASSAIC COUNTY CLERK



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County Counsel
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Paterson, NJ 07505

CITY OF PASSAIC

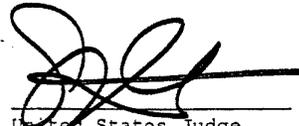


MICHAEL MURPHY
Scarinci & Hollenbeck
500 Plaza Drive, P.O. 3189
Secaucus, NJ 07096-3189

JUDGMENT AND ORDER

This Court finds that it has jurisdiction under 28 U.S.C. §1331 over all matters raised in the Complaint in this case except the claims under Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a. Having considered the Complaint and the stipulations set forth above, this Court ORDERS the defendants to comply with the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Sections 2 and 208 of the Voting Rights Act, and the Court further ORDERS the relief set forth in Paragraphs 1, 2, 3, 4, 8, 9, 10, 13, 18, 19, 20, 21, 22, 23, 24, 25, and 26 above.

Entered and Ordered this 4th day of June, 1999.


United States Judge

NICHOLAS H. POLITAN, U.S.D.J.

Hispanic Organizations

<u>Organization</u>	<u>Contact</u>	<u>Tele #</u>
Hispanic Information Center	Dir. Lorenzo Hernandez	779-7022
Hispanic Citizenship Program	Coordinator Esperanza Torres	472-4648
United Passaic Org.	Ed Lyons	472-2478
Hispanic Political Action Comm.	Victor Carbonel	540-6119
El Liceo Cubano	Lisa Ruiz	779-1833
United Puerto Rican Council	Ozzie Maldonado	365-5634
Alianza Ecuatoriana Para Progreso	Jorge Canarte	779-8284
Association of Friends of Colombia	Antenor Lozano	473-9053
Club Dominicano	Manuel DeLa Rosa	
Amicol- USA	George Torres	340-2040
Hispanic Chamber of Commerce - Passaic	Luis Perez	472-8333
	Sara Vazquez	458-9830
St. Anthony's Church	Father Herman Arias	777-4793
St. Nicholas Church	Mons. Felipe Carvajal	470-0844
Our Lady of Fatima Church	Mons. Raul Guzman	427-0815
Hispanic Multi Purpose Ctr.	Jacqueline Guzman	684-3320
Training Hispanic Exceptionals		523-8993
First Hispanic Baptist Church		345-7737

Exhibit A

Hispanic Organizations
page two

Hispanic Committee for Action	Trini Mestre	916-4331
Father English Multi Purpose Center	Bob Vesota, Director	831-0280

BOARD MEMBER RULES OF ETIQUETTE AND PROCEDURE

I, _____, understand that my duties for the _____, _____ election include, and are not limited to:

1. Treating each voter with courtesy, dignity and respect;
2. Advising illiterate voters and voters with disabilities that they have a right to assistance, and that the person who assists them may enter the polling booth with the voter if the voter so chooses;
3. Speaking in Spanish to Spanish-language voters who are not proficient in English, or assisting the voter to find a district board member who can assist the voter in Spanish; provided that if there is no district board member or poll officer at my polling place who can assist the voter in Spanish, I will either locate a bilingual voter or I will use the emergency telephone number to obtain translation or other Spanish language assistance for the voter;
4. Permitting all voters needing assistance to select a person of their choice, other than their employer or union officer, to help them vote, and allowing them to select a single board worker rather than two board workers if they express that preference;
5. In the event that I am assisting a limited English proficient voter to cast a ballot, I will read the entire ballot, including the names of all candidates, when assisting voters who have requested assistance, and show the voter how to cast the ballot for the candidate whom the voter requests;
6. Obtaining a clear understanding of the name or names under which a voter may appear in the official list of voters, and asking for "all surnames" or "both last names" and checking for each, before concluding that a voter's name is not included in the official list;
7. Providing voters who present themselves at the polls to vote and whose names do not appear on the official list of registered voters with full information, including written information in both Spanish and English, regarding their options respecting voting, including a complaint form, and the opportunity to cast a challenged ballot;

8. Providing persons who are not registered to vote with information on how to register to vote for future elections.

I agree to perform these duties to the best of my ability..

Signature

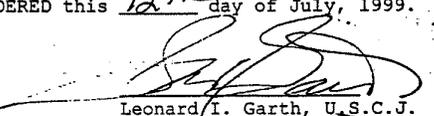
Printed Name

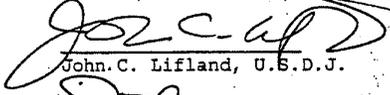
Date

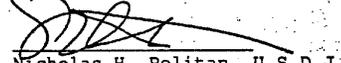
This three-judge Court was properly empaneled under 28 U.S.C. § 2284 to consider the claims raised by the Complaint in this case under Section 203 of the Voting Rights Act, 42 U.S.C. section 1973aa et seq. This Court has determined that it has jurisdiction over the claims raised under Section 203 of the Voting Rights Act, and this Court ORDERS the defendants to comply with Section 203 of the Voting Rights Act, and the Court further ORDERS the relief set forth in Paragraphs 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 24, 25, and 26 above.

This three-judge Court was constituted and considered this matter after the June 8, 1999 primary election.

ENTERED AND ORDERED this 12th day of July, 1999.


Leonard I. Garth, U.S.C.J.


John C. Lifland, U.S.D.J.


Nicholas H. Politan, U.S.D.J.

United States Department of Justice
Civil Rights Division
P.O. Box 66128
Washington, D.C. 20035-6128
AHE-4493

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

ORIGINAL FILED
SEP 16 1999
WILLIAM T. WALSH, CLERK

THE UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.	)	CIVIL ACTION No. 99-2544 (NHP)
PASSAIC CITY, NEW JERSEY, et al.	)	Judge Leonard I. Garth
and	)	Judge John C. Lifland
PASSAIC COUNTY, NEW JERSEY, et al.,	)	Judge Nicholas H. Politan
Defendants.)	

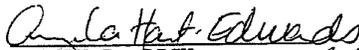
NOTICE OF FILING

Pursuant to Paragraph 20 of the Consent Decree entered by this Court on July 13, 1999, as modified by this Court's Stipulated Order Extending Time, entered on September 2, 1999, the parties hereby jointly file a Spanish Language Election Information Program. The Court's Stipulated Order Extending Time was designed to allow the parties to narrow the issues which are not in agreement. As a result of the Court's extension, the parties were able to negotiate terms satisfactory to all parties. Therefore, the parties report that all terms in this Program have been agreed by all parties, and no disputed terms will be filed.

Respectfully Submitted and
AGREED:

For Plaintiff:
UNITED STATES OF AMERICA

BILL LANN LEE
Acting Assistant Attorney
General


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CITY OF PASSAIC

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COUNTY BOARD OF ELECTIONS
COUNTY SUPERINTENDENT


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PASSAIC COUNTY CLERK

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Acting Assistant Attorney
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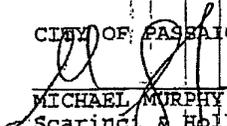
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Respectfully Submitted and
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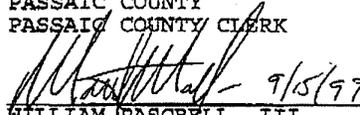
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Paterson, NJ 07505

THE SPANISH LANGUAGE ELECTION INFORMATION PROGRAM

In order to afford Hispanic citizens and Spanish language minority citizens (together, "the Hispanic community") equal opportunity to participate in the electoral process, Passaic County (the "County") and Passaic City (the "City") together adopt this Spanish Language Election Information Program.

A. Spanish Language Election Program Coordinators (from here on known and referred to as "Bilingual Coordinators")

1. Passaic County shall assign or hire two employees to act as Bilingual Coordinators to coordinate and ensure full implementation of the Spanish Language Election Information Program in Passaic County. Those Coordinators shall be registered voters of Passaic County; shall be bilingual in English and Spanish; shall be bi-partisan and shall be part-time, hourly employees to be under the jurisdiction of the Passaic County Board of Elections. The Board may advertise, if necessary, for such position. If a Coordinator is an elected official or candidate for elected office during his or her service in the Coordinator position, the Board of Elections shall adopt in writing any guidelines or restrictions necessary to prevent the potential for or appearance of conflict of interest under state law, and the Board shall promptly notify the United States of any such guideline or restriction. Community members may file complaints with the Board of Elections seeking removal of a person from the Coordinator position for failure to fully or

fairly implement the Spanish Language program. These complaints must set forth the basis for removal and must be fully investigated by the Board of Elections. Written complaints shall be responded to in writing. Complaints received, findings of investigations, and responses shall be retained as election records for review by the United States upon request.

2. The Bilingual Coordinators shall be trained in all aspects of the election process and, where appropriate, shall attend relevant election meetings, conferences and seminars to which the County/City election officials are invited. In addition, the Bilingual Coordinators shall coordinate, under the direction of the Board of Elections, and attend regularly scheduled meetings between the County and City and representatives of the Hispanic community, as further described in Section B, below.

3. For the November 1999 general election, the Bilingual Coordinators shall exhaust all reasonable efforts to obtain at least two bilingual district board members for each designated Spanish Election District. If by October 1, 1999, sufficient bilingual district board members have not been obtained, the advertisements set forth in subparagraphs 4(a) through 4(c) to the Consent Decree shall be undertaken.

4. The Bilingual Coordinators shall develop by November 15, 1999, with the participation of the County, the City, representatives of the Hispanic community, and, if necessary, assistance from the United States, an Outreach and Publicity Plan

("Plan"). This Plan shall become an addendum to the Spanish Language Election Information Program upon filing the entire Plan with the Court. This Plan shall include information concerning procedures and deadlines for: 1) the dissemination of translated election information, including registration, candidate qualification, absentee and in-person voting and availability of Spanish language assistance at the polls; 2) the recruitment and retention of Hispanic and bilingual district board members and translators; 3) the implementation of such dissemination and recruitment through identified Hispanic and Spanish language print media, public service announcements on identified Spanish radio and T.V., and other appropriate sources used by the Hispanic community; and 4) ongoing dialogue and communication with the Hispanic community. All parties shall agree to the Plan prior to its filing with the Court. The Plan shall be filed by November 30, 1999; provided, however, that if the parties are not in agreement, agreed portions shall be filed by December 8, 1999, and the parties shall file remaining portions by December 15, 1999.

5. The Bilingual Coordinators shall work with the County/City to ensure that voting machine demonstrations are translated into Spanish and made available to the Hispanic community.

B. General Community Election Liaisons

General Community Election Liaisons ("General Liaisons")

will serve in an advisory capacity to the Bilingual Coordinators on election-related concerns brought to them by Community Liaisons, described in Section C, below, from the Hispanic community. General Liaisons shall be bilingual in English and Spanish and shall serve as liaisons between the County (or municipality) and the bilingual community. Neither the County nor the City (nor other municipality) shall be required to compensate General Liaisons or Community Liaisons for their service.

1. Passaic County and Passaic City shall advertise the General Liaison positions in a Spanish language newspaper, through posting advertisements in public offices, and through any other means deemed appropriate by the Bilingual Coordinators. The Coordinators shall send advertisements to the organizations listed in Exhibit B to the Consent Decree and shall invite these organizations and other representatives of the Hispanic community to identify individuals to serve as General Liaisons. The advertisements shall contain an application/nomination form. From the applications/nominations received, the Board shall appoint up to twenty-two (22) volunteer General Community Election Liaisons, which will be allocated among the following municipalities according to their relative Hispanic population. Based upon the current registration numbers of Hispanic voters, liaisons should be allocated as follows: Paterson - eight (8); Passaic - six (6); Clifton - four (4); Haledon - two (2); Prospect Park - two (2). General Liaisons shall be designated by

October 30, 1999. Applications shall be considered election records, which shall be retained by the County for examination by the United States.

2. County and City election officials shall inform each General Liaison in writing, and through oral communications initiated by the Bilingual Coordinators about all aspects of the election process, including the schedule of elections, election-related deadlines, absentee voting, voter registration processes, election day activities, and the availability of information regarding ballot measures and County-sponsored voting machine demonstrations; with a voting machine to be available in the municipal buildings of the City of Paterson and the City of Passaic to allow for public demonstrations, pursuant to the Consent Decree.

3. Bilingual Coordinators shall work with the General Liaisons to schedule public meetings where the public will be informed about the Spanish Language Election Program. A meeting shall take place during the 30 days prior to the registration deadline for each general election and another meeting shall take place during the 60 to 70 days before each primary election.

C. Community Liaisons

1. Community Liaisons will be individuals representing any interested Hispanic organization, church, club, community group, CBO or non-profit group in Passaic County. These members shall report concerns of the Hispanic community about the electoral

process to the General Liaisons. Voter information will be made available to the Community Liaisons by the Coordinators through the General Liaisons for dissemination to the public in Spanish Election Districts.

Hispanic community concerns received from Community Liaisons will be communicated through the General Community Election Liaisons to the Coordinators. The Coordinators will record and maintain concerns brought to them as election records for review by the United States upon request.

2. Bilingual Coordinators will work with General Liaisons to schedule meetings with Community Liaisons where the liaisons will be informed about the role of the Community Liaison. This meeting will take place at least yearly. The purpose of this meeting will also include review and update of this Program as it relates to the roles of the coordinators and liaisons.

D. District Boards of Election

1. Passaic County, and Passaic City for municipal elections, shall recruit qualified bilingual and Hispanic district board workers to meet the needs of the Spanish language minority in the Spanish election districts, but in no case fewer than two bilingual board members for each Spanish election district.

2. Bilingual board workers will be recruited by publicizing the availability of such positions to General Liaisons and in a broad range of other sources, consistent with the Outreach and

Publicity Plan.

3. If, 30 days before the deadline for selection of district board workers, the County or City, as applicable, has not obtained sufficient Hispanic and bilingual district board workers to meet the requirements of Paragraphs 1 and 2 above, the County, or City, shall immediately:

a) Place weekly recruitment advertisements in a prominent location in at least one Spanish language newspaper of general circulation in Passaic County with circulation numbers in Passaic County at least equal to that of El Diario;

b) Issue public service recruitment announcements to not less than two Spanish language radio and two Spanish language television stations;

c) Contact each of the General Liaisons and each of the local community organizations set forth in Exhibit B to the Consent Decree, in writing and by telephone, to seek their assistance in obtaining qualified bilingual and Hispanic district board workers.

d) If, 10 days before the deadline for selection of district board workers, the County or City, as applicable, has not obtained sufficient Hispanic and bilingual district board workers to meet the requirements of paragraphs 1 and 2 above, the County or City shall immediately arrange to hire bilingual translators for each vacant bilingual board member position, certifying the expense of hiring translators as an election related expense.

E. Training of Poll Officials and Election Personnel

1. The Bilingual Coordinators shall assist in the training of all district board workers in those municipalities which have Spanish Election Districts with respect to the County's and City's obligations under the Voting Rights Act, regarding Spanish-speaking voters.

a) This training shall address the following:

(i) that voters who are blind, voters with disabilities, and voters who are unable to read the ballot, are entitled to assistance;

(ii) that Spanish-language minority voters, including those with limited English proficiency, are entitled to a complete oral translation of the ballot at the polls;

(iii) that Spanish-language minority voters who cannot read the ballot and others who need assistance in voting are permitted to receive assistance from the person of their choice anywhere inside of the polls, including inside of the booth; and

(iv) that such voter who is entitled to receive assistance has the right to select only one board worker to assist and to decline assistance from a second worker;

(v) that if a disability certificate is completed for a Spanish-language voter, a Spanish language certificate shall be used.

b) Demonstration shall be conducted on the following:

(i) how to offer and provide assistance to blind, voters with disabilities and voters who are unable to read the

ballot on the machine;

(ii) how to assist limited-English proficient Spanish language voters, including how to check the sign-in books for all surnames of Spanish language voters;

(iii) how to handle challenged voters; voters whose names do not appear on the official list; and the use of provisional ballots, with a Spanish language provisional ballot to be used for Spanish language voters.

2. Training sessions shall be open to the public, consistent with the County's long-standing practice.

3. Training by the Board of Election for all board workers, whether bilingual or not, shall include training regarding the voting laws and procedures of New Jersey, including electioneering restrictions and rights of those persons permitted inside or outside of the polling place, including challengers. The Board shall instruct that all such laws and procedures are to be enforced in a nondiscriminatory manner. Any complaints of discriminatory conduct on an election day shall be logged and shall be properly and promptly investigated by the County and/or City, as any other election day complaint.

F. Translations

1. All election-related materials, instructions, signs, and announcements shall be fully translated into the Spanish language. If technically feasible, the voting machine ballot shall also be bilingual. In the event of any change in voting

machine system or device, such as the use of a new voting machine, the County and City shall ensure that all directions and assistance used to implement the new system or device are provided in Spanish. The Spanish translations of election information shall be available and be provided to the public at the same time and in the same manner as the English version is provided to the public.

G. Dissemination of Translated Materials

1. All translated election materials shall be disseminated pursuant to the Outreach and Publicity Plan. A notice of availability of bilingual assistance and materials at all Spanish election districts in Passaic County shall also be included in the challenger advertisement that is to be placed in the English and Spanish newspapers at least one week before the election.

2. Defendants shall ensure that all written information that is made available to the public in English regarding any aspect of the election process, candidate qualification, voter registration, absentee voting, and the voting process shall also be made available in Spanish.

3. Defendants shall ensure that, at all times during the year, information regarding registration and elections is available in the Spanish language by telephone through dedicated phone lines which shall be answered in Spanish. If Spanish language phone calls are referred to a voice messaging system, the Defendants shall ensure that the outgoing message is in

Spanish or is bilingual and that such phone calls should be regularly returned no later than two business days after receipt.

H. Election Day Procedures

1. A sufficient number of bilingual district board workers (or translators where the County or City has exhausted all reasonable means to obtain bilingual board members) recruited and appointed as provided above in Section D, shall be stationed at every polling place in Passaic County's Spanish election districts to ensure that Spanish-language minority voters in each district receive effective Spanish-language assistance during all phases of the voting process.

2. A poster-size notice, in large print and in Spanish and English, shall be placed at each polling place, labeling the entrance and, where appropriate, directing voters clearly to the exact location of the polling room in the building. Inside the polling room for each Spanish election district, there shall be an easily visible and readable notice in both English and Spanish, stating that a Spanish translation of the ballot is available for Spanish speaking voters who need assistance; and that voters who are entitled to assistance in casting a ballot (voters who are blind, voters with disabilities, and voters who are unable to read ballot, including those with limited English proficiency) are permitted to choose any person to provide that assistance, with the exception of the voter's employer, union officer, or agent of these persons. The board at each district

shall be instructed to place this poster in a prominent location. The posters described in this paragraph shall be delivered to every election district in the County, as applicable, prior to the opening of the polls.

3. In each Spanish election district, a bilingual district board worker shall maintain a record of all persons who request assistance, including language assistance, by using the disability certificate. The use of translators shall be an emergency measure used only when there are not two bilingual board workers to work in a particular Spanish Election District. In the event that a Spanish Election District has only translators, rather than bilingual members for a specific election, the district board member shall maintain this list.

4. Before the opening of the polls, a board member in each Spanish election district shall complete a short polling place checklist provided by the County, and the City for municipal elections, in which the election inspector shall confirm the availability and posting of all bilingual materials. If any bilingual materials are needed for that polling site, the Municipal Clerk or Superintendent of Election's office shall be contacted and shall ensure that those materials are promptly provided to the polling place.

5. The County Superintendent of Elections shall maintain dedicated emergency telephone lines for use on all election days within the county which shall be answered in the Spanish language by a bilingual employee and shall provide adequate bilingual

staffing on these phones. A sign shall be posted in Spanish in each polling place for a Spanish election district, advertising the availability of telephone assistance. The sign shall be bilingual, poster-size and easily visible. Calls to the emergency telephone lines shall be logged, including the name and phone number of the caller, the language spoken by the caller, the nature of the complaint, and how the complaint was resolved.

6. Bilingual forms shall be made available at each polling place for registering complaints. All such completed forms shall be returned to the County Superintendent of Elections who shall maintain a log of all complaints and their status. A bilingual sign shall be posted in each Spanish election district notifying voters of the availability of complaint forms. The voter will be provided with a sealed, pre-addressed, postage paid envelope to protect the confidentiality of the form and shall have the option of mailing the completed form to the County Superintendent of Elections or depositing the form at the polling site.

I. Records

1. Copies of all materials or records mentioned in this agreement shall be maintained by the County, or City, as applicable, and shall be available to the United States upon request. Such records shall be made available to the public for inspection and copying on the same basis as other public records in Passaic County subject to the New Jersey Right to Know Law. Nothing in this Program shall be construed to require public

disclosure of personal information regarding district board members to persons other than counsel to the United States.

2. Copies of all materials or records mentioned in this Agreement shall be provided to the United States within 30 days after each election consistent with the provisions of the Consent Decree.

J. Process for Updating the Program

This Program shall be reviewed on at least an annual basis. The Spanish Election Districts will be reviewed and updated by September 15th of odd numbered years based on an expert surname analysis of Passaic County voter registration data as of June 30th of that year.

filed: September 15, 1999

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

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THE UNITED STATES OF AMERICA,)	
Plaintiff,)	
v.)	
PASSAIC CITY, NEW JERSEY,)	Judge Nicholas H. Politan
et al.,	)	Judge Leonard I. Garth
and	)	Judge John C. Lifland
PASSAIC COUNTY, NEW JERSEY,)	
et al.,	)	SUPPLEMENTAL CONSENT ORDER
Defendants.	)	IMPLEMENTING PASSAIC COUNTY
	)	INDEPENDENT ELECTIONS MONITOR
	)	RECOMMENDATIONS

THIS MATTER HAVING BEEN opened by the plaintiff United States of America upon an application for an Order to Show Cause in July 2000, the Court having considered the application and papers filed therewith as well as the arguments of counsel, an Independent Elections Monitor (hereinafter, the Monitor) having been appointed by the Court, the Elections Monitor having filed six reports with the Court making findings and recommendations to the Court, and the Parties having agreed that the Elections Monitor's reports contain a sufficient factual basis for continued monitoring of Passaic County elections, this Supplemental Order is intended by the parties to resolve certain outstanding issues concerning compliance with the Orders in this case.

WHEREAS, this Court having ordered on August 31, 2001, that:

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 THE CLERK
 on 9-26-01
 WILLIAM T. WALSH
 CLERK
 AR

- the term of the Independent Elections Monitor shall be extended from August 27, 2001 until December 31, 2001, subject to entry of this Supplemental Consent Order Implementing Recommendations Made by Passaic County Independent Elections Monitor (hereinafter, Supplemental Order)

- the Parties appear before this Court on September 21, 2001, to show cause why a Supplemental Order implementing the Monitor's recommendations should not issue; and

all Passaic County election officials, including the four Board of Election Commissioners, Superintendent of Elections, County Clerk, Bilingual Coordinators, Board of Elections Administrator, and the County Sheriff appear before the Court on September 21, 2001 to receive instruction from the Court on compliance with Court Orders; **WHEREAS**, it is the parties' goal in this Supplemental Order

that after December 31, 2001, the defendants no longer will require the services of the Elections Monitor appointed by the three-judge Court;

WHEREAS, the parties have agreed that entry of this Supplemental Order is the most appropriate means directed at securing future compliance with the valid Court Orders and avoiding the risks and burdens of litigating such issues;

WHEREAS, the parties have agreed that this Supplemental Order is relief not contemplated by the Consent Decree that falls

within the jurisdiction of the three-judge Court;

WHEREAS, the United States and the Passaic County Board of Elections, Passaic County Superintendent of Elections, Passaic County and Passaic County Clerk have agreed upon this Supplemental Order as an appropriate means directed at securing future compliance with valid Court Orders and to further the objective of the Consent Decree to ensure that all citizens of Passaic County have an equal opportunity to participate in the electoral process, including Hispanic and Spanish language citizens;

WHEREAS, the parties have agreed that nothing in this Supplemental Order changes the intentions, meaning, rights, or requirements of any Court Order previously entered and that the terms of this Supplemental Order shall be interpreted consistently with the achievement of all terms of Court Orders in this matter;

WHEREAS, the parties have agreed that entry of this Supplemental Order is in the public interest because it provides for expeditious action, minimizes litigation costs, and avoids the risks and burdens of litigating issues pertaining to past compliance with the valid Court Orders;

AND, the Court finding that good cause exists and agreed to by the signatories;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Elections Monitor's findings and recommendations contain a sufficient factual basis for the provisions that are ordered, decreed, and adjudged herein.

2. The Passaic County Board of Elections Commissioners shall:

- a) meet with the Superintendent of Elections and County Clerk and create a written chain of custody procedure for handling provisional ballots by October 15, 2001 consistent with Title 19, Chapter 53C of the New Jersey Statutes Annotated, and shall not implement this procedure until approved by the Elections Monitor and the New Jersey Attorney General;
- b) finalize training of the Administrator by December 15, 2001;
- c) draft and adopt guidelines and restrictions necessary for the elections officials, Administrator, and Bilingual Coordinators to prevent the potential for or appearance of conflict of interest under State law by December 15, 2001;
- d) not interfere with the Administrator's exercise of discretion in managing the day-to-day functions of the Board of Elections office in furtherance of the valid Court Orders, except to the extent described in this Supplemental Order;

- e) maintain its office staffed during all regular business hours and any other time the office is required to be open (such as election day);
- f) develop, with the assistance of the Administrator, and agree to a set of written procedures by December 15, 2001, including delegation of responsibilities to be exercised by the Administrator, personnel and attendance policies, and budgetary matters;
- g) establish by December 15, 2001 a task calendar ("Election Calendar") setting forth election responsibilities allocated among the respective offices including election deadlines for tasks required by the valid Court Orders and federal and state law, with copies of the Election Calendar to be made available to the public and to be provided to the Elections Monitor, parties, County Clerk, Superintendent of Elections, Bilingual Coordinators, municipal clerks, Board of Chosen Freeholders and to the Passaic County Board of Elections Commissioners for inclusion in the continuity folder described in paragraph 2(h);
- h) maintain a continuity folder in the Board of Elections Office that shall include a copy of the Elections Calendar prepared by the Administrator, all written policies and procedures developed pursuant to this

Supplemental Order, copies of all of the valid Court Orders, and any other materials deemed appropriate by the Election Monitor or the New Jersey Attorney General, with copies of the continuity folder to be provided to all parties by December 15, 2001 and as it is updated;

- i) update the continuity folder described in paragraph 2(h) as necessary and review new contents or entries in the continuity folder at least once every sixty days;
 - j) retain professional Board Worker Instructors by October 22, 2001; and
 - k) retain up to 40 Master Board Workers, as outlined in paragraph 3(i).
3. The Passaic County Board of Elections Administrator shall:
- a) be responsible for maintaining and updating the Election Calendar described in paragraph 2(g), as needed;
 - b) brief the professional Board Worker Instructors on Spanish language issues outlined in the Spanish Language Information Election Program, with the assistance of the Bilingual Coordinators;
 - c) assist the professional Board Worker Instructors in developing a curriculum by October 20, 2001, subject to review and comment by the Department of Justice and

- approval by the Monitor;
- d) serve as the election day point-of-contact for reporting of election complaints;
 - e) have authority upon consultation with the Board of Elections Commissioners to assign board workers to any and all polling sites;
 - f) manage day-to-day affairs of the Board of Elections Office, allocating work to clerks, overseeing efforts by the Bilingual Coordinators, the Master Board Workers, and the Board Worker Instructors and have the right to confer with any other persons, including the Board of Elections Commissioners;
 - g) have authority to advertise for and interview all prospective elections employees, and shall make hiring and salary recommendations to the Board of Elections Commissioners for forwarding to the Board of Freeholders, as may be required by state law;
 - h) have the authority to streamline office procedures and designate responsibilities to Board of Elections Office staff;
 - i) upon consultation with the Board of Elections Commissioners and as may be required by state law, implement the Master Board Workers Program by advertising, interviewing, recommending hirings,

- training, and putting into place by the November 2001 general election and for all elections thereafter, one Master Board Worker per designated Spanish Election Ward in Clifton, Passaic City, and Paterson, and one Master Board Worker for each of the remaining municipalities in Passaic County;
- j) on election day, immediately suspend any board workers who are identified to the Administrator as causing problems;
 - k) review federal observer reports and complaints, and recommend to the Board of Election Commissioners the removal of any board workers the Administrator identifies from the federal observer reports and complaints as causing problems on election day;
 - l) recommend to the Board of Elections Commissioners for any subsequent election, the removal of any board workers who fail to report for election duty;
 - m) ensure that voting machine demonstrations are scheduled in the municipalities throughout Passaic County, advertised to the public, in English and Spanish media, and are conducted, in English and in Spanish, if the Bilingual Coordinator(s) do not provide in a timely manner;
 - n) provide with all challenger papers and credentials a

copy of the "Challenger Booklet" and Code of Conduct to be distributed either by the candidate or the political party chairman to each challenger; and

- o) by October 10, 2001, create a diagram showing a sample polling place, to include a depiction of where challengers are to be located, display of election signs and materials, and ballot security issues, with such diagram to be approved by the Elections Monitor and New Jersey Attorney General and to be included in the packet of elections materials distributed for the November 2001 general election and all elections thereafter; and
 - p) review the continuity folder described in paragraph 2(h) by December 15, 2001 and at least once every sixty days thereafter.
4. The Passaic County Bilingual Coordinators shall:
- q) comply with all of the terms set forth in the Spanish Language Election Information Program, including provision of specified demonstrations at board worker training sessions;
 - r) create and produce a "Recruitment/Outreach" continuity folder by December 15, 2001;
 - s) ensure that all meeting notices are published in English and Spanish, mailed, and are publicized in

Spanish and English media;

- t) if there is more than one Bilingual Coordinator, delineate and divide responsibilities among each other and include this division in the continuity folder, and shall inform the Administrator, County Clerk, Superintendent of Elections, Board of Chosen Freeholders, and municipal clerks of the division of responsibilities and deadlines sixty days before each election;
 - u) provide board worker recruitment information to the Administrator three weeks before each election; and
 - v) review the continuity folder described in paragraph 2(h) by December 15, 2001 and at least once every sixty days thereafter.
5. The Passaic County Clerk shall:
- f) create written procedures for getting absentee ballots out in a timely manner in accordance with Title 19, New Jersey Statutes Annotated, to voters by December 15, 2001, and shall not implement this procedure until approved by the Monitor;
 - g) ensure that all official machine ballots are in English and Spanish, unless it is not technically feasible. If it is not technically feasible to translate all ballots, the County Clerk shall send a written

explanation why it is not technically feasible to translate all ballots in English and Spanish to the Monitor, parties, Board of Chosen Freeholders, Superintendent of Elections, Board of Elections, and municipal clerks; and

- h) meet with the Superintendent of Elections and Board of Elections Commissioners and create a written chain of custody procedure for handling provisional ballots by October 15, 2001, consistent with Title 19, Chapter 53C of the New Jersey Statutes Annotated, and shall not implement this procedure until approved by the Elections Monitor and New Jersey Attorney General.
6. The Passaic County Sheriff shall:
- a) ensure that no on-duty officer shall directly or indirectly intimidate, harass, or otherwise interfere with any board worker, voter, challenger, federal observer, or any community member participating in the election day process;
 - b) investigate any election day related complaint about any sheriff officer concerning harassment or intimidation made by any member of the community on election day and forward to the Monitor a copy of the complaint and all findings within 7 days;
 - c) discipline any officer who is found to have violated

paragraph 6(a) of this Supplemental Order.

7. The Passaic County Superintendent of Elections shall:

- a) ensure that a sample bilingual ballot in Spanish is posted on all of the voting machines, if it is not technically feasible to have bilingual machine ballots;
- b) meet with the County Board of Elections Commissioners and the County Clerk to create a written chain of custody procedure for provisional ballots by October 15, 2001, and shall not implement this procedure until approved by the Elections Monitor and the New Jersey Attorney General;
- c) ensure that sample ballots are mailed out to the addresses of registered voters in the time periods described in Title 19 of the New Jersey Statutes Annotated; and

~~to ensure the continuity of the ballots described in paragraph 7(c), by December 10, 2001 and at least once every sixty days thereafter.~~

8. The Passaic County Board of Chosen Freeholders shall:

- a) ensure that all election officials have the necessary funds to perform their statutory responsibilities under State laws, the Voting Rights Act and the Court Orders in this matter;
- b) continue to promote additional board worker recruitment

- by sending notices to all of its employees, including Spanish-speaking employees, to serve as board workers;
- c) pay up to 40 Master Board Workers, as outlined in paragraph 3(1), \$250.00 each for work on election day;
 - d) ensure that all municipalities receive funds to compensate board workers within 5 days of receiving board worker confirmation certificates;
 - e) employ professional translators, requested by the Board of Elections Commissioners in carrying out their statutory duties relating to staffing the polls, and provide for their transportation to the polls, if there is an insufficient number of bilingual board workers by the dates specified in earlier orders.
9. The responsibilities listed above are not exhaustive and do not relieve the named officials from continued compliance with any other statutory or Court-Ordered responsibilities not delineated in this Order.
10. Approval Procedures. All procedures, policies, lists, and continuity folders shall be subject to comment by the Department of Justice and final approval by the Elections Monitor and New Jersey Attorney General, as provided by this Supplemental Order.
11. Contempt. Any violations of this Supplemental Order and the other valid Court Orders may be punishable by civil or

criminal contempt, as provided by law.

12. All other Orders remain in full force and effect except as modified herein.
13. Pursuant to the All Writs Act, 28 U.S.C. § 1651, and in order to protect this Court's jurisdiction and ability to enforce its Orders, unless and until this Supplemental Order is lifted or modified by this Court, the State of New Jersey, Passaic County, their agents and all persons acting in concert with them are hereby enjoined from conducting further proceedings in the New Jersey Superior Court case styled In Re Appointment of an Interim Election Monitor in Passaic County, N.J. Sup. Ct. Docket No. L-4344-00.
14. Within three business days of receiving the executed Supplemental Order entered by the Court, the United States shall serve, by certified mail, a copy of the Supplemental Order on each party and employee identified herein.
15. The term of the Supplemental Order shall be the same as that specified in paragraph 23 of the July 12, 1999 Consent Order.
16. The parties and the Elections Monitor shall meet not later than December 1, 2001, to discuss the contents of the Monitor's final report. In the event that the United States, the State of New Jersey, Passaic County, or the Elections Monitor believe at that time that further

oversight and involvement by the Monitor is necessary beyond December 31, 2001, the parties will discuss whether they can agree upon an alternate structure. Such alternate structure may include, but not necessarily be limited to, the Monitor serving as "referee" of any deadlocks among the members of the Board of Elections, as necessary, unless otherwise provided by Title 19 of New Jersey Statutes Annotated. In the event the parties and the Monitor cannot come to an agreement upon an alternate structure, if necessary, any party may apply to the Court for an appropriate order either continuing the office of Monitor or proposing such alternate structure as they may advocate. In the event of such application, all parties shall be given an opportunity to present their respective positions to the Court.

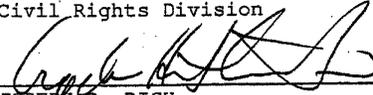
AGREED:

For the plaintiff:

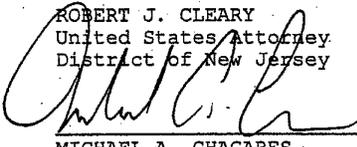
UNITED STATES OF AMERICA

JOHN ASHCROFT
Attorney General

RALPH F. BOYD, JR.
Assistant Attorney General
Civil Rights Division


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LUZ LOPEZ-ORTIZ

ROBERT J. CLEARY
United States Attorney
District of New Jersey

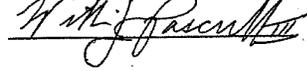

MICHAEL A. CHAGARES
Chief, Civil Division
District of New Jersey

Attorneys, Voting Section
Department of Justice
Civil Rights Division

For the defendants:

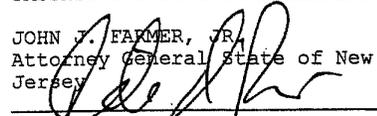
Attorney for:
PASSAIC COUNTY
PASSAIC COUNTY CLERK

WILLIAM PASCRELL, III
Passaic County Counsel



Attorney for:
PASSAIC COUNTY BOARD OF ELECTIONS
PASSAIC COUNTY SUPERINTENDENT

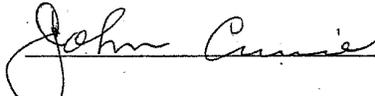
JOHN J. FARMER, JR.
Attorney General State of New
Jersey


DANTE DiPIRRO

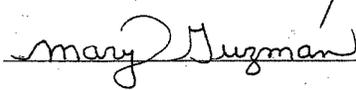
MICHAEL GLOVIN
MATTHEW MALFA
Assistant County Counsel
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401 Grand Street
Paterson, N.J. 07055

C. DANTE DIPIRRO
Deputy Attorney General
Dept. of Law & Public Safety
25 West Market Street
Trenton, N.J. 08625

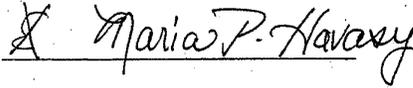
JOHN CURRIE, COMMISSIONER
Passaic County Board of Elections



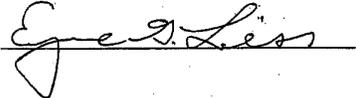
MARY GUZMAN, COMMISSIONER
Passaic County Board of Elections



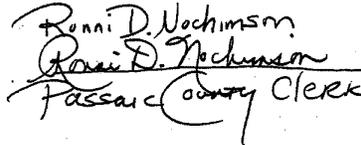
MARIA P. HAVASY, COMMISSIONER
Passaic County Board of Elections



EUGENE LIST, COMMISSIONER
Passaic County Board of Elections

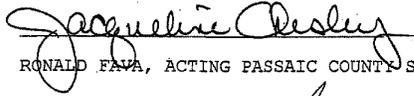


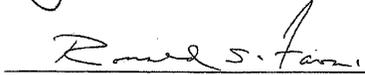
RUDY FILKO, Superintendent
Passaic County Board of Elections



Ronni D. Nachimson
Passaic County Clerk

JACQUELINE CHESLEY, ADMINISTRATOR
Passaic County Board of Elections

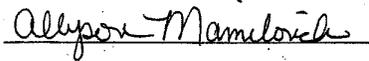

RONALD FAVA, ACTING PASSAIC COUNTY SHERIFF



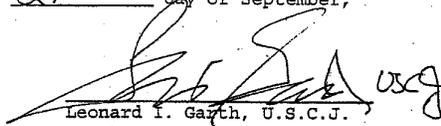
DENNIS GONZALEZ, COMMUNITY LIAISON COORDINATOR

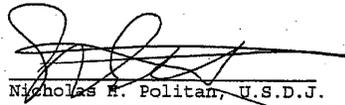


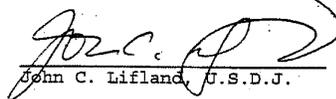
ALLISON MAMILOVICH, BILINGUAL COORDINATOR



IT IS SO ORDERED on this 21st day of September,
2001.


Leonard I. Garth, U.S.C.J.


Nicholas M. Politan, U.S.D.J.


John C. Lifland, U.S.D.J.

United States Department of Justice
Civil Rights Division
P.O. Box 66128
Washington, D.C. 20035-6128
AHE-4493

ORIGINAL FILED
JUN - 2 1999
WILLIAM T. WALSH, CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
PASSAIC CITY, NEW JERSEY;)
MARGIE SEMLER, Mayor of)
Passaic; TINA FIORELLINO,)
City Clerk; and GARY SCHAER,)
CHAIM MUNK, HERMAN BARKLEY, Jr.,)
BENNI JAKUBOVIC, DANIEL)
SCHWARTZ, GERARDO FERNANDEZ,)
ROBERT HARE, members of the)
City Council; and)
)
PASSAIC COUNTY, NEW JERSEY;)
PASSAIC COUNTY BOARD OF)
ELECTIONS COMMISSION,)
MARIA HAVASY,)
Chairperson/Commissioner and)
JOHN KRAUTHEIM, JOHN KURRIE,)
ALICE ZONA, members of the)
Board of Elections Commission;)
RONNIE NOCHIMSON, County)
Clerk; and PETER RYERSON,)
County Superintendent of)
Elections,)
)
Defendants.)

CIVIL ACTION No. 99-2544-NHP
Judge Politan
CIVIL ACTION No. _____
Judge _____
Judge _____
Judge _____

COMPLAINT

The United States of America, plaintiff herein, alleges:

1. This is an action to protect the voting rights of Hispanic citizens, including those with limited-English

proficiency. The plaintiff alleges five independent claims: (1) that the County and City defendants' failure to provide election-related information, forms, instructions, assistance or other materials or information, including absentee ballot applications and procedures, in the Spanish language violates Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a; (2) that the County and City defendants' failure to ensure that Spanish-speaking voters who are unable to read the ballot are able to receive assistance from the person of their choice violates Section 208 of the Voting Rights Act, 42 U.S.C. 1973i(a); (3) that the County and City defendants' failure to appoint and assign Hispanic persons on the same basis as whites to serve as board workers violates Section 2 of the Voting Rights Act, 42 U.S.C. 1973; (4) that the County and City defendants' ineffective oral and written bilingual assistance and discriminatory board worker appointment and assignment practices and procedures violate Section 2 of the Voting Rights Act, 42 U.S.C. 1973, by denying Hispanic citizens, including Spanish-language minority citizens, an equal opportunity to participate in the electoral process; (5) that the County and City conduct elections in a manner that reflects a discriminatory purpose to limit participation by Hispanic voters and results in denial of Hispanic limited-English proficient voters' equal protection rights in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and the Voting Rights Act, 42 U.S.C. 1973, 1973j(d), 42 U.S.C. 1973aa-1a. The United States

seeks declaratory and injunctive relief for each stated claim.

JURISDICTION

2. The Attorney General files this action pursuant to Sections 2, 3(a), 11(a), 12(d), 203, 204, and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973a(a), 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, 42 U.S.C. 1973aa-2, 42 U.S.C. 1973aa-6, and 28 U.S.C. 2201, and to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

3. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973j(f), and 42 U.S.C. 1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act must be heard and determined by a court of three judges in accordance with the provisions of 28 U.S.C. 2284.

PARTIES

4. Defendant Passaic City is a political subdivision of the County of Passaic and exists as a charter city organized pursuant to the laws of New Jersey.

5. Defendant Passaic County is a county within the State of New Jersey and is governed by the laws of that state.

6. Defendant Margie Semler is the mayor of Passaic City, New Jersey, with the responsibility of serving as the chief executive officer of the City. Defendant Semler is a resident of Passaic City and is sued in her official capacity. The address of the Passaic City Mayor is City Hall, 330 Passaic Street, Passaic, New Jersey 07055.

7. Defendant Passaic City Clerk Tina Fiorellino has statutory powers, duties, and responsibilities concerning the conduct of elections held in Passaic City. Defendant Fiorellino is a resident of Passaic County and is sued in her official capacity. The address of the Passaic City Clerk is City Hall, 330 Passaic Street, Passaic, New Jersey 07055.

8. Defendants Gary Schaer, Chaim Munk, Herman Barkley, Jr., Benni Jakubovic, Daniel Schwartz, Geraldo Fernandez, and Robert Hare are members of the Passaic City Council, the general governing body of Passaic City. The members of the City Council are sued in their official capacity. Each resides in Passaic City. The address of the Passaic City Council is City Hall, 330 Passaic Street, Passaic, New Jersey 07055.

9. The Passaic County Board of Elections is governed by the Board of Elections Commission and has statutory powers, duties, and responsibilities concerning the conduct of elections and creation of election districts in Passaic County. Defendant Chairperson/Commissioner Maria Havasy, and Commissioners John Krautheim, John Kurrie, and Alice Zona are members of the Board of Elections Commission and reside in Passaic County. They are each sued in their official capacity. The address of the Passaic County Board of Elections Commission is Passaic County Administration Building, 401 Grand Street, Paterson, New Jersey 07505.

10. Defendant Ronnie Nochimson is the Passaic County Clerk with statutory duties, powers, and responsibilities concerning the conduct of elections held in Passaic County. Defendant Nochimson is a resident of Passaic County and is sued in her official capacity. The address of the Passaic County Clerk is Passaic County Administration Building, 401 Grand Street, Paterson, New Jersey 07505.

11. Defendant Peter Ryerson is the Passaic County Superintendent of Elections, with statutory powers, duties, and responsibility concerning voter registration and the conduct of elections held in Passaic County. Defendant Ryerson resides in Passaic County and is sued in his official capacity. The address of the Passaic County Superintendent of Elections is 311 Pennsylvania Avenue, Paterson, New Jersey 07503.

FACTS

12. According to the 1990 Census, Passaic County has a total population of 453,060 persons, of whom 98,092 (21.7%) are Hispanic persons; and a total voting-age population of 344,317 persons, of whom 66,140 (19.2%) are Hispanic persons.

13. According to the 1990 Census, Passaic County has a total of 39,594 (13.1%) citizens of voting age who are Hispanic. The census data also indicates that 18,789 (47.4%) of the County's Hispanic voting-age citizens are limited English proficient.

14. In 1986, pursuant to State law, the County Board of Elections targeted large parts of two cities in Passaic County, the City of Paterson and the City of Passaic, to receive Spanish language election information.

15. According to the 1990 Census, Paterson City has a total population of 140,891 persons, of whom 57,711 (41.1%) are Hispanic persons. Paterson City has a total voting age population of 100,096 persons, of whom 31,557 (31.5%) are Hispanic persons.

16. According to the 1990 Census, Passaic City has a total population of 58,041 persons, of whom 29,028 (50.0%) are Hispanic persons. Passaic City has a total voting-age population of 42,209 persons, of whom 19,464 (46.1%) are Hispanic persons. As of October 10, 1998, voters with Spanish surnames made up approximately 41% of Passaic City's registered voters.

17. Fifty-one out of seventy-one election districts in the City of Paterson were targeted in 1986 as Spanish election districts. Thirty out of thirty-three election districts in Passaic City were targeted in 1986 as Spanish election districts.

18. County and City defendant election officials have knowledge of the need for Spanish language assistance among Passaic citizens and of State law requirements for use of the Spanish language in conducting elections.

19. New Jersey Election law requires that in election districts in which the primary language of 10% or more of the registered voters is Spanish, the county board shall appoint two

additional election board members who shall be of Hispanic origin and fluent in Spanish.

20. Upon information and belief, each of the targeted Spanish election districts described in paragraph numbered 17 meets the State law threshold that the primary language of 10% or more of the registered voters is Spanish.

21. Upon information and belief, neither the County nor the City defendants have ever complied with the State law requirement to assign two additional board workers who are Hispanic and fluent in Spanish to work in each of the targeted Spanish election districts.

22. Hispanic persons in Passaic County have suffered a history of discrimination and bear the effects of that discrimination today; in particular, since their arrival in Passaic County, Hispanic persons have suffered a history of discrimination and neglect in voting-related activities.

23. In conducting elections in Passaic County, the County defendants have failed to furnish effectively, in the Spanish language, the information and assistance necessary to afford Spanish-language minority citizens a fair opportunity for effective participation in the electoral process, including the following:

a. Defendants have failed to translate fully all election-related materials into the Spanish language, including, but not limited to, a chronological elections index which provides pertinent information for citizens who participate in

the electoral process, election-related material available at the polls on election day, and certain absentee ballot materials, including the absentee ballot application;

b. Defendants have failed to provide effective oral language assistance to Spanish-language minority voters. For example, Spanish-language minority voters at several polling sites have been unable to receive oral Spanish-language assistance necessary to understand the ballot and the procedures for casting a ballot;

c. In some instances, Hispanic voters in Passaic County who were unable to read the ballot and who required voting assistance have been denied the right to have the person of their choice assist them at the polls;

d. Defendants have failed to recruit, appoint, train, and maintain an adequate pool of bilingual board officials to provide Spanish-language minority voters with effective language assistance; and

e. Defendants have failed to train the existing pool of board officials to provide effective language assistance to Spanish-language minority voters.

24. In conducting elections in Passaic City, the County and City defendants have failed to furnish effectively, in the Spanish language, the information and assistance necessary to afford Spanish-language minority citizens a fair opportunity for effective participation in the electoral process, including the following:

a. Defendants have failed to translate fully all election-related materials into the Spanish language, including but not limited to candidate nominating petitions, general election notices concerning participation in the political and electoral process, certain information concerning the process of casting a ballot, and absentee voting material including the absentee ballot application;

b. Defendants have failed to provide effective oral language assistance to Spanish-language minority voters. For example, Spanish-language minority voters at several polling sites have been unable to receive oral Spanish-language assistance necessary to understand the ballot and the procedures for using the voting machine;

c. In some instances, Hispanic voters in Passaic City, who were unable to read the ballot and who required voting assistance, have been denied the right to have the person of their choice assist them within the voting booth;

d. Defendants have failed to recruit, appoint, train and maintain an adequate pool of bilingual board officials to provide Spanish-language minority voters with effective language assistance; and

e. Defendants have failed to train the existing pool of board officials to provide effective language assistance to Spanish-language minority voters.

25. Although County and City defendants know of the need for Spanish language materials, defendants have failed to translate the absentee ballot applications to Spanish for distribution in the targeted Spanish election districts.

26. Pursuant to New Jersey Election law, election officers, also known as board workers, must be certified annually. According to the same New Jersey law, defendant City Clerk Fiorellino and defendant Passaic County Board of Elections have responsibilities relating to the appointment of board workers. In practice, defendant City Clerk Fiorellino has appointed board workers for municipal and school board elections and defendant Passaic County Board of Elections has appointed board workers for Countywide primary and general elections.

27. Any enrolled voter is eligible to serve as a board worker in Passaic unless that person is a candidate. Board workers are responsible for permitting qualified electors to cast ballots, for keeping records required by law, and for ensuring that primaries, general, and municipal elections are honestly, efficiently, and uniformly conducted.

28. The County and City defendants recruit board workers from various English language organizations. The City and County defendants do not make similar efforts to recruit board workers from any of the local Hispanic organizations. For the 1998 elections, County defendants mailed at least 50 recruitment letters to local libraries, schools, and colleges, but mailed no recruitment letters to local Hispanic organizations.

29. For each of the 1993, 1995, and 1997 municipal elections, defendant City Clerk Fiorellino hired between 7 and 10 bilingual board workers out of a total of more than 130 board workers. In each instance, City Clerk Fiorellino started with the list of County board workers and attempted to recruit additional bilingual board workers.

30. Upon information and belief, the Passaic County defendants have not kept records of the number of board workers who speak Spanish who worked in the targeted Spanish election districts at each election.

31. Passaic City and Passaic County have consistently employed a disproportionately low number of Hispanic board workers compared to the number of Hispanic registered voters in Passaic City and County.

32. Because of the low number of Hispanic and bilingual board workers, many Hispanic citizens, especially those who do not speak English well, are intimidated by the electoral process and discouraged from voting at polling places. In some instances, bilingual volunteer board workers have been prevented from assisting Hispanic limited English proficient voters, and, in other instances, such voters have been told that they cannot receive assistance within the voting booth.

FIRST CAUSE OF ACTION

33. Passaic County is subject to the requirements of Section 203 of the Voting Rights Act as a result of a determination by the Director of the Census that more than 5% of

Passaic's voting age citizens are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate in the English-language election process, and the illiteracy rate of such language minority citizens is higher than the national illiteracy rate. 58 Fed. Reg. 35371, 35374 (July 1, 1993). Passaic County first became subject to the requirements of Section 203 of the Voting Rights Act on June 25, 1984 (49 Fed. Reg. 25887). Passaic County's coverage under Section 203 continued when the Census Bureau issued new determinations in 1992.

34. Passaic City is subject to the same requirements of Section 203 as Passaic County, the covered political subdivision, because Passaic City is a political unit that holds elections within the County. Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 28 C.F.R. 55.9.

35. Because Passaic County and City are subject to the requirements of Section 203, the defendants must "provide any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" in the Spanish language so that Spanish-speaking voters can be effectively informed of and participate effectively in voting-connected activities. 42 U.S.C. 1973aa-1a(c).

36. Defendants' failure to provide Spanish-language minority citizens of Passaic County and Passaic City with the election information and assistance necessary for their effective political participation on an equal basis with other citizens described in the above paragraphs numbered 18 through 32 constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a.

37. Unless enjoined by this Court, defendants will continue to violate Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, by failing to provide Spanish-language minority citizens of Passaic County and Passaic City with the election information and assistance necessary for their effective political participation on an equal basis with other citizens.

SECOND CAUSE OF ACTION

38. Section 208 of the Voting Rights Act provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 42 U.S.C. 1973aa-6.

39. Defendants' actions described above in paragraphs 23, 24, and 32 constitute a failure to ensure that voters who are unable to read the ballot and who need voting assistance are permitted to have the person of their choice assist them at the polls, in violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6.

40. Unless enjoined by this Court, defendants will continue to implement voter assistance practices and procedures that violate Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6, by failing to ensure that voters who are unable to read the ballot and who need voting assistance are permitted to receive assistance from the person of their choice.

THIRD CAUSE OF ACTION

41. Defendants, by implementing the board worker appointment process described above in paragraphs 19-21, 23, 24, and 26-32 have discriminated on the basis of race by failing to appoint and assign Hispanic persons on the same basis as white persons to serve as board workers, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

42. Unless enjoined by this Court, defendants will maintain their discriminatory policy and practice of appointing and assigning board workers, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

FOURTH CAUSE OF ACTION

43. Section 2 of the Voting Rights Act prohibits defendants from imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" which results in a denial or abridgement of the right of Hispanic citizens to vote. 42 U.S.C. 1973.

44. Defendants' actions described in paragraphs 18 through 32 above have resulted in Spanish-language minority citizens having less opportunities than other members of the electorate to

participate effectively in the Passaic County and Passaic City political processes, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

45. Unless enjoined by this Court, defendants will continue to enforce standards, practices, or procedures that deny Spanish-language minority citizens an opportunity to participate effectively in the political process on an equal basis with other members of the electorate, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

FIFTH CAUSE OF ACTION

46. Defendants have intentionally failed to provide certain election-related information, forms, instructions, assistance or other materials or information, including absentee ballot applications and procedures, in the Spanish language.

47. Defendants' knowing and intentional failure to provide certain election-related information, forms, instructions, assistance or other materials or information, including absentee ballot applications and procedures, in the Spanish language denies the 47.4% of Hispanic citizens in Passaic County who are of voting age and limited-English proficient equal protection of the laws.

48. Defendants' knowing and intentional failure to ensure that Spanish-speaking voters who are unable to read the ballot are able to receive assistance from the person of their choice denies the 47.4% of Hispanic citizens in Passaic County who are

of voting age and limited-English proficient equal protection of the laws.

49. Defendants' knowing and intentional failure to appoint and assign Hispanic persons on the same basis as whites to serve as board workers denies the 47.4% of Hispanic citizens in Passaic County who are of voting age and limited-English proficient equal protection of the laws.

50. Defendants' knowing and intentional failure to provide effective oral and written bilingual assistance, as described above in paragraphs 18 to 32, denies the 47.4% of Hispanic citizens in Passaic County who are of voting age and limited-English proficient access to the political process equal to that enjoyed by other members of the electorate in violation of the Fourteenth and Fifteenth Amendments.

WHEREFORE, the plaintiff United States prays for an order:

- (1) With respect to plaintiff's First Cause of Action:
 - (a) Declaring that defendants have failed to provide Spanish-language minority citizens of Passaic County and Passaic City with the election information and assistance necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a;
 - (b) Preliminarily and permanently enjoining defendants, their agents and successors in office, and all persons acting in concert with them, from

failing to provide Spanish-language minority citizens of Passaic County and Passaic City with the election information and assistance necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a; and

- (c) Requiring defendants to devise and implement a remedial plan to ensure that Spanish-language minority citizens of Passaic County and Passaic City are able to be effectively informed of and participate effectively in all phases of the electoral process, in compliance with Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a;
- (2) With respect to plaintiff's Second Cause of Action:
- (a) Declaring that defendants' failure to ensure that voters who are unable to read the ballot and who need voting assistance are permitted to have the person of their choice assist them at the polls violates Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6;
 - (b) Preliminarily and permanently enjoining defendants, their agents and successors in office, and all persons acting in concert with them, from implementing voter assistance procedures or practices that deny voters who are unable to read the ballot and who need assistance in voting the

- right to have the person of their choice assist them at the polls, in violation of Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6; and
- (c) Requiring defendants to devise and implement voter assistance procedures and practices which will ensure that voters who are unable to read the ballot and who need voting assistance are permitted to have the person of their choice assist them at the polls, in compliance with Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6;
- (3) With respect to plaintiff's Third Cause of Action:
- (a) Declaring that defendants have discriminated on the basis of race by failing to appoint and assign Hispanic persons on the same basis as white persons to serve as board workers, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
 - (b) Preliminarily and permanently enjoining defendants, their agents and successors in office, and all persons acting in concert with them, from maintaining their discriminatory policy and practice of appointing and assigning board workers, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and

- (c) Requiring defendants to devise and implement a remedial program to actively recruit for appointment and assignment, and to retain on a permanent basis, a pool of Hispanic board workers in each polling place that reasonably corresponds to the percentage of Hispanic registered voters assigned to that polling place;
- (4) With respect to plaintiff's Fourth Cause of Action:
 - (a) Declaring that defendants' ineffective oral and written bilingual assistance and discriminatory board worker appointment and assignment practices and procedures, operating under the totality of circumstances, have resulted in Spanish-language minority citizens having less opportunity than other members of the electorate to participate effectively in the political process, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
 - (b) Preliminarily and permanently enjoining defendants, their agents and successors in office, and all persons acting in concert with them, from implementing practices and procedures which deny Spanish-language minority citizens an opportunity to participate effectively in the political process on an equal basis with other members of

the electorate, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973; and

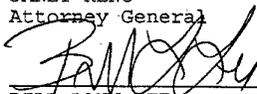
- (c) Requiring defendants to devise and implement a remedial plan which ensures that Spanish-language minority citizens have an opportunity to participate effectively in the political process on an equal basis with other members of the electorate, in compliance with Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
- (5) With respect to plaintiff's Fifth Cause of Action:
 - (a) (1) Permanently ordering defendants, their agents and successors in office, and all persons acting in concert with them to provide election-related information, forms, instructions, assistance or other materials or information, including absentee ballot applications and procedures, in the Spanish language; (2) to ensure that Spanish-speaking voters who are unable to read the ballot are able to receive assistance from the person of their choice; (3) to appoint and assign Hispanic persons on the same basis as whites to serve as board workers; and (4) to effectively provide oral and written bilingual assistance and bilingual board worker appointment and assignment practices and procedures, in a manner that does not discriminate against and provides equal opportunity to

participate in the political process to Hispanic citizens, including Spanish-language minority citizens.

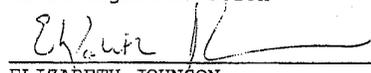
- (b) Authorizing the Director of the Office of Personnel Management to appoint Federal examiners for Passaic County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), to enforce the guarantees of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the United States Constitution.
- (6) Requiring the defendants to publicize effectively the remedial plans and programs addressing the violations enumerated herein to ensure their widespread dissemination to the Hispanic citizens in Passaic County and City.

Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

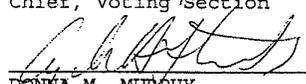
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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, : Hon. Nicholas H. Politan
 Plaintiff, : Civil Action No. 99-2544
 v. :
 PASSAIC CITY, NEW JERSEY, et al., :
 Defendants. :

16
 FILED
 MAR 5 2000
 CLERK OF COURT

ORDER IMPLEMENTING THE OUTREACH AND
PUBLICITY PLAN OF THE CONSENT DECREE

THIS MATTER HAVING been opened to the Court by the parties, the Court having entered a Consent Decree in this matter on July 12, 1999 (the "Consent Decree"), the Court having determined that entry of the present Order is necessary and appropriate to implement the Consent Decree, the Court having taken notice that the parties have no objection to entry of the present Order, and good cause having been shown;

IT IS on this 3rd day of March, 2000;

ORDERED THAT:

1. The County Board of Elections and/or the City of Passaic shall be obligated to hire and train interpreters from an employment or translation service that provides written assurance of bilingual status and translation skills, if other recruitment efforts fail to provide the number of bilingual board workers and interpreters required to comply with the Consent Decree and Spanish Language Election Information Program three weeks prior to an election. On behalf of the Board of Elections, the County of Passaic shall be obligated to provide the necessary

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 WILLIAM
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funding for this election expense, unless provided otherwise by statute.

2. Five weeks before election:

The County Board of Elections shall provide to the United States list[s] for each Spanish election district of bilingual board workers retained and vacancies that exist. These lists shall include the name, address, telephone number, bilingual status, and Hispanic origin of all board workers.

3. Between five weeks and three weeks before election:

For two weeks after reporting the bilingual board workers status to the United States, but not beyond three weeks before an election, the County Board of Elections and/or Passaic City shall have the exclusive opportunity to fill bilingual board worker vacancies that existed five weeks before the election with bilingual board workers/and or interpreters.

4. Three weeks before election:

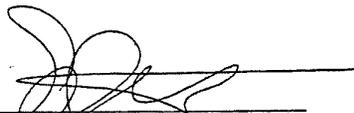
The County Board of Elections shall also provide to the United States a list of all stand-by bilingual board workers they have recruited to fill in for bilingual board workers who may not show up on election day.

5. The County Board of Elections and/or Passaic City shall provide the written report, previously mentioned, on additional recruitment efforts for bilingual board workers to the United States.

6. The Passaic County Board of Elections and/or the City of Passaic shall be obligated to enter into a contract with either an employment or translation service. The employment or translation service used will provide qualified interpreters and

will further provide written representation of such qualification for each of the interpreters needed to staff each Spanish election district with two bilingual workers that have not yet been obtained through other recruiting efforts.

7. The contract may include a contingency which allows a reduction in the number of interpreters needed for election day by the number of bilingual board workers or other interpreters retained as of one week before an election. This contract shall be forwarded to the United States within three days of its execution. Passaic County shall be obligated to provide the funding for any such contract pertaining to the Board of Elections, unless otherwise provided by statute.
8. The time frames contained herein are to be reasonably construed, upon mutual understanding of the parties, but in no event to such an extent to result in non-compliance with any term or goal of the Outreach and Publicity Plan or Consent Decree.



HON. NICHOLAS H. POLITAN
United States District Judge

United States Department of Justice
 Civil Rights Division
 P.O. Box 66128
 Washington, D.C. 20035-6128
 AHE-4493

IN THE UNITED STATES DISTRICT COURT FOR THE
 DISTRICT OF NEW JERSEY

THE UNITED STATES OF AMERICA,	)	CIVIL ACTION No.99-2544 (NHP)
)	
Plaintiff,)	
	)	Judge Leonard I. Garth
v.	)	Judge John C. Lifland
PASSAIC CITY, NEW JERSEY, <u>et al.</u>	)	Judge Nicholas H. Politan
)	
and PASSAIC COUNTY, NEW JERSEY,)	
<u>et al.</u>)	
	)	Three Judge District Court
Defendants.)	
	)	<u>Status conference requested</u>
)	

UNITED STATES' NOTICE OF FILING OF DISPUTED
TERMS FOR OUTREACH AND PUBLICITY PLAN

Plaintiff United States hereby files its proposed terms, attached as Exhibit A, for the Outreach and Publicity Plan required by this Court's Order dated July 12, 1999, and the Spanish Language Election Information Program ("Language Program") filed pursuant to that Order on September 16, 1999.

Under Paragraph A(4) of the Language Program, the Plan was to be filed by November 30, 1999, unless the parties were not in agreement on the terms, in which event the parties would jointly file agreed terms by December 8, 1999, and would separately file disputed terms by December 15, 1999. On December 8, 1999, the parties filed a Stipulated Order extending the date for filing agreed terms to December 15, 1999, in order to allow the parties

to narrow the issues in dispute.

The parties have been able to resolve most, but not all issues. Accordingly, in the attached filing, the United States sets forth its proposal for an Outreach and Publicity Plan that would effectively implement this Court's Order of July 12, 1999. The disputed terms are shaded and bolded. It is the United States' understanding from extensive meetings and discussions with Defendants and their counsel that the remaining terms are agreed.

Disputed Terms

Three terms proposed by the United States are currently disputed by Defendants. The primary disputed term is a provision requiring Defendants to contract for professional translators five weeks prior to any election in which Defendants have not yet engaged sufficient bilingual district board members to satisfy their obligations under the July 12, 1999 Order. Defendants have an unambiguous obligation under the July 12, 1999 Order, as well as under the Language Program, to hire two bilingual board workers for each designated Spanish Election District, and to hire translators to fill any vacancies if sufficient bilingual board workers are not obtained. The United States sought and obtained this provision in the consent order because Defendants have failed for more than fifteen years to provide adequate Spanish language translation at the polls. However, Defendants failed to provide the required number of bilingual board workers and/or translators at numerous voting locations during the 1999 general election. The United States believes that a five-week

deadline is necessary to ensure future compliance with this Court's July 12, 1999 Order.

Second, the United States seeks a one-time mailing to all registered voters in Spanish language districts notifying them of their rights as voters. The United States believes that this mailing is necessary to remedy the longstanding failure to translate key voting related documents, such as the application for absentee ballots and the candidate nominating petition, into Spanish language as required by the Voting Rights Act.

Third, the United States seeks a provision requiring that disputes over the accuracy of translation of election materials shall be referred to an impartial professional translation service. This provision is intended to ensure that all voting materials are translated in an accurate and comprehensible manner.

The United States has endeavored to negotiate acceptable terms for each of the disputed items, and we will continue to attempt to obtain terms which will ensure effective implementation of the July 12, 1999 Order and the associated Language Program. However, if further discussions fail to yield agreement on the disputed terms, then the United States believes that a limited course of discovery followed by an evidentiary hearing may be the appropriate means of resolving the disputed issues.

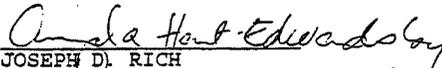
Accordingly, the United States respectfully requests a status conference at the Court's convenience to address the need for further proceedings.

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Respectfully Submitted,

For Plaintiff:
UNITED STATES OF AMERICA

BILL LANN LEE
Acting Assistant Attorney
General


JOSEPH D. RICH
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Civil Rights Division
Department of Justice
P.O. Box 66128
Washington, D.C. 20035-
6128

CERTIFICATE OF SERVICE

I, Nancy Rue, hereby certify that I have sent the foregoing United States' Notice of Filing of Disputed Terms For Outreach And Publicity Plan to all parties, at the addresses set forth below, by overnight delivery, pre-paid, on this, the 14th day of December, 1999.



For Defendant City of
Passaic:

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Board of Elections and
County Superintendent:

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Deputy Attorney General
Dept. of Law and Public
Safety
25 West Market Street
P.O. Box 112
Trenton, NJ 08625-0112

For Defendant Passaic County
Passaic County Clerk:

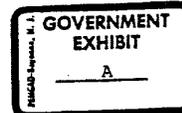
WILLIAM PASCRELL, III
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401 Grand Street
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SPANISH LANGUAGE PROGRAM OF PASSAIC COUNTY

OUTREACH AND PUBLICITY PLAN

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United States' Proposed Terms -- 12/14/99

- I. Voting Classes/Workshops
- J. Community Contacts
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United States' Proposed Terms -- 12/14/99

A. Mission Statement

To provide all citizens with appropriate, timely and accurate election-related and voting-related materials in both Spanish and English.

To assure that all elections are held in a manner that allows full participation by all citizens.

To maintain an outreach program with all pertinent Spanish-speaking organizations and interested individuals.

To encourage all eligible citizens to exercise their right to vote and to participate in all aspects of the in the electoral process.

To ensure full implementation of the Spanish Language and Election Information Program and Consent Decree in United States v. Passaic County.

B. Translated Election Materials

1. Bilingual Materials to be At the Polls

All written election materials, except those materials technically infeasible under the terms of the Consent Decree, will be translated into Spanish and all media advertising will be bilingual. The following documents will be translated into Spanish and made available on Election Day at the Spanish Election districts in Passaic County:

- a. Sample Ballot (County Clerk);
- b. Operating instructions for the voting machines (Superintendent of Elections);
- c. Voting strip, if it is technically feasible (Superintendent of Elections);
- d. Interpreter available sign (Superintendent of Elections);
- e. Telephone available sign (Superintendent of Elections);
- f. Vote Here sign (Superintendent of Elections);

United States' Proposed Terms -- 12/14/99

- g. Disability Certificate (Superintendent of Elections);
- h. Complaint form available sign (Superintendent of Elections);
- i. Complaint form (Superintendent of Elections);
- j. Pre-addressed postage paid envelopes for complaint forms (Superintendent of Elections);
- k. Voter authority slips (Board of Elections);
- l. No voter turned away sign (Superintendent of Elections) (see ¶F(1), below);
- m. Candidate write-in instruction sign (Superintendent of Elections) (see ¶F(1), below);
- n. Voter instruction sign (Superintendent of Elections). petition (see ¶F(1), below).

2. Materials to be Translated for General Public Availability and Dissemination to all voters in Spanish Election Districts

- a. Voter's rights pamphlet shall be drafted by the Board of Elections which shall include inter alia, information regarding voter registration requirements, absentee and provisional ballots availability and procedures, challenged voter procedures, write-in procedures (see ¶C(1), below);
- b. Bilingual nomination petitions to be printed by either the County Clerk or the City of Passaic Municipal Clerk (see ¶C(1), below).

3. Translation and Proofreading Procedures

In order to ensure timely and accurate translations, all written election materials required to be translated into Spanish must be provided to the Bilingual Coordinator four weeks prior to the date on which such materials are submitted to the printer.

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The county and/or municipal election office responsible for the printing of election material will contract with a professional, certified, translation service to ensure an accurate and timely translation of all written election materials required to be translated into Spanish. The contents of the election materials will be translated into Spanish using the English version as a guide.

The Bilingual Coordinator(s) shall review all Spanish language materials before they are printed for dissemination to the public in order to ensure the complete and effective presentation of the information. The proofreading includes, but is not limited to, candidates' names, candidates' statements, the date of the election and the text of ballot measures and interpretive statements. During this review, the Bilingual Coordinator(s) shall ensure that:

- a. all English content also appears in Spanish in comparable repetition and prominence;
- b. all materials can be readily identified in Spanish from their front page or title; and
- c. translations are modeled after the English version.

After review, the Bilingual Coordinator(s) will notify the responsible election office of any errors in the Spanish translation and any suggested changes. Upon such notification, the election office will be obligated to immediately notify the translation services for its review and consideration. If the Bilingual Coordinator(s) and the translation service have not agreed upon all translations by seven days prior to the deadline for submission to the printer, the English original and the translations upon which there is not agreement shall be forwarded to a second state-certified translation service, and the decision of that service shall be final. All disagreements resulting in the use of a second translation service shall be recorded and maintained as election records.

The Bilingual Coordinator(s) will note approval on all proofread document(s) and provide them to the Board of Elections to be retained as election records.

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4. Annual Translation Schedule

For 1999-2000, the following schedule will be followed:

[Based upon annual completion of Election Charts in appendix]

5. Flyers and Handbills

Bilingual flyers and/or handbills will be created for the following purposes:

- to publicize that voting is important - to encourage citizens to participate in voting;
- to recruit bilingual board workers;
- to show the voter how to cast an absentee ballot;
- to educate voters about provisional ballots; and
- to show how to use a voting machine, including the casting of write-in votes.

Such bilingual flyers and/or handbills shall include, but not be limited to, the following:

- a. a voter's rights pamphlet, which shall include information regarding voter registration, absentee and provisional ballots, and the challenged voter and write-in procedures which shall be drafted by the Board of Elections (see ¶C(1), below);
- b. a bilingual board worker recruitment flyer;
- c. an election dates pamphlet to be drafted by the county clerk; and
- d. Nomination petitions informational flyers to be drafted by the county clerk.

The election dates pamphlet described in subparagraph c, above, shall be revised by the second Friday in January each year. All other flyers shall be reviewed annually by the second Friday in January and revised as needed.

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The bilingual flyers and/or handbills described above shall be ~~mailed to each registered voter and General Liaison and~~ distributed to Spanish Organizations, libraries and other public offices regularly prior to elections.

The content or the wordings in the flyer should encourage participation in the electoral process. The flyers will include a telephone number for the Bilingual Coordinator(s). The purpose of such flyers is to encourage people to participate in elections, both by voting and by assisting as bilingual poll workers and interpreters.

Bilingual flyers will be faxed, mailed or hand-delivered to various Spanish Organizations as well as Spanish-language media. Posting of flyers at locations will benefit voters. An example is to post a "Recruiting Bilingual Poll Workers" flyer at a college which has many bilingual students.

6. Notices/Advertisements and News Releases

Newspaper notices/advertisements are published at various times during the election process. There are several standard newspaper notices that are released during each election period. Each of the standard notices remains essentially the same from election to election. Generally only the dates and time change in each election. Each notice must be translated into Spanish. During the course of the year, there also may be a need to issue one or more special news releases.

When the Board of Elections, the Superintendent of Elections, the Passaic County Clerk's Election Division or the City of Passaic Municipal Clerk prepares to publish any election-related or voting-related notice, the Bilingual Coordinator(s) will ensure that each such notice or advertisement is accurately translated as set forth above. It will be the responsibility of the affected election office to contract to have such notice or advertisement contemporaneously published in Spanish-language media.

Notices or advertisements published in English-language media will be published with equal size and prominence in Spanish-language media. During each election cycle, the Bilingual Coordinator(s) will, with the approval of the applicable election office, select a newspaper with circulation figures in Passaic County at least equal to those of El Diario and shall designate that newspaper for publication of all Spanish

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language notices during that cycle. The following Spanish-language newspapers can be utilized for Passaic County:

El Especialito 1-201-348-1959
 Noticias Del Mundo 1-212-684-5656
 El Diario/La Prensa 1-212-807-4600

Any audio/video materials shall also be reviewed by the Bilingual Coordinator(s), who shall approve a Spanish-language release for distribution to Spanish-language media outlets at the same time as any English-language materials.

7. Notice of Changed Polling Location

A bilingual notice, separate from the Sample Ballot, shall be mailed by the Board of Elections with the cooperation of the Superintendent of Elections, no later than thirty days before each election, to each voter whose polling location was changed during the preceding twelve months. Such notice will clearly identify both the voter's former polling location (or locations if more than one during the preceding twelve months) and the voter's new location, and shall provide the names and telephone numbers of election officials, including the Bilingual Coordinator(s), whom voters may contact if they have questions.

C. Pertinent Dates for Election Cycles

1. General Procedures

All informational flyers referenced in this Plan will be completed by January 14, 2000. The content of all flyers referenced in this Plan shall be approved by the parties and filed with the Court by January 21, 2000. The flyers set forth at 1B(5)(a) - (d), above, shall be mailed to all registered voters in all Spanish election districts by February 28, 2000.

Subsequent to the initial mailing set forth above, the Board of Elections shall, on an ongoing basis, mail a copy of the voter's rights flyer described at 1B(5)(a) above, together with the registration acknowledgment notice, within 28 days of registration to all newly registered voters.

Candidate petition forms shall be translated by January 7, 2000 for use in the first candidate qualifying period during the year 2000.

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A back-up list of bilingual workers and/or interpreters will exist for all election days. This back-up list shall contain at least an additional 50 bilingual workers upon which to call on election day in the event that a bilingual worker does not appear on election day. The Board of Elections must document all efforts to obtain back-up bilingual workers as evidence of its good faith effort to secure such individuals.

At the time of the voting machine inspection required under N.J.S.A. 19:48-6, voting machines shall be certified as being in working order and as having each of the following Spanish language notices posted inside the machines:

- *Ball sign:* "Spanish-language assistance is available for Spanish-speaking voters, if needed. Please call for help and a bilingual board worker or interpreter will assist you promptly. Do not pull the lever to open the curtain before asking for help."
- Sample ballot (unless all voting strips are in Spanish);

Six weeks prior to each election, bilingual workers and/or interpreters shall be retained and placed on a list which shall be retained as an election record.

2. Primary Elections

Eight weeks before the deadline for the filing of party affiliation forms Primary Election (by February 21, 2000 for the June 2000 Primary Election), a bilingual change of party affiliation for voting in June Primary advertisement shall be completed for review by the Bilingual Coordinator(s).

Six weeks before the above-noted deadline (by March 6, 2000 for the June 2000 primary election), bilingual advertisements for party affiliation change shall be sent to all Hispanic Organizations listed and advertised in English and Spanish-language media by the superintendent of elections. Such notice requirements set forth in N.J.S.A. 19:23-45.1.

3. Contracting for Translators

The County and/or City of Passaic shall be obligated to hire and train translators from commercial translation firms if other recruitment efforts fail to provide the number of bilingual

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board workers and translators required to comply with the Consent Decree and Spanish Language and Election Information Program four weeks prior to an election. The County and/or City of Passaic shall be obligated to enter into a contract with a commercial translation service five weeks before a scheduled election for the number of translators needed to staff each Spanish election district with two bilingual workers that have not yet been obtained through other recruiting efforts. This contract may include a contingency which allows reduction in the number of translators needed for election day by the number of bilingual board workers retained as of four weeks before an election. This contract shall be forwarded to the United States within three days of its execution by the County.

D. Recruitment and Retention of Bilingual District Board Workers and Translators

1. Bilingual Board Workers

The primary requirements for bilingual board workers are as follows: to be a registered voter in Passaic County; to be able to read and write English and Spanish, and to be able to add and subtract numbers. Bilingual board workers are needed for the following elections: General, Primary, Municipal, School Board, and Special School Board and/or Municipal Elections.

Responsibilities of a board worker include the following: one board worker must pick up the books and other election supplies the night before the election; board workers report at 6:15 a.m. on election day, prepare the area for voting, set up the voting machines and supplies, open the polls, process the voters, close the polls, complete the tally information and return tally sheets and registration books to the designated location.

The Bilingual Coordinator(s) will keep a log of board worker recruitment efforts. Recruitment of board workers and translators shall include, but not be limited to, the following procedures:

1. The Bilingual Coordinator(s) will send annual letters to all Organizations requesting their assistance in recruiting bilingual board workers, and enclosing flyers for posting in public areas. Follow-up

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telephone calls and meetings should be made at least once per week during the 10 weeks prior to each election until the required number of bilingual board workers has been recruited.

2. The Bilingual Coordinator(s) will place ads in the Help Wanted sections of both English and Spanish newspapers every week for at least eight weeks before each election until the required number of bilingual board workers has been recruited.
3. The Bilingual Coordinator(s) will place ads on local radio and local TV stations, including local cable TV, every week for at least four weeks before each election until the required number of bilingual board workers has been recruited.
4. Bilingual Coordinators will speak with high schools and colleges to request their assistance in developing an Electoral Process Program to educate the students and recruit qualified students to serve as board workers or translators. At least two high schools in Passaic City and Paterson City will be contacted for each election in addition to the administrative offices for each public school system.
5. The Bilingual Coordinator(s) will post Help Wanted flyers at community bulletin boards and businesses.
6. The Bilingual Coordinator(s) will visit job fairs, street festivals and retail outlets.
7. The Bilingual Coordinator(s) will post job openings on various employment web sites.
8. The Bilingual Coordinator(s) will ask attendees at voting seminars if they would like to be board workers or translators.
9. The Bilingual Coordinator(s) will advertise on newsletters that are distributed to parishioners at various places of worship.
2. **Translators**

The main responsibility of a translator is, along with the

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board workers, to assist Spanish-speaking voters at the polls when requested. The Bilingual Coordinator(s) will develop, for the Board of Elections approval, a new application for Spanish election district translators describing the responsibilities and eligibility requirements.

The Bilingual Coordinator(s) shall train translators on their election-day responsibilities. A training course for translators shall be held during the second week preceding the election. All translators shall be informed that training is mandatory. Bilingual board members should be encouraged to attend this training; as well.

3. Retention

In order to improve bilingual board member retention, the Bilingual Coordinator(s) will keep a telephone log to call former bilingual Board workers. Training sessions should be conducted at locations convenient to the Board workers.

A bilingual board member survey will be provided at training and at the polling place, for which a postage pre-paid envelope to the Board of Elections will be provided.

E. Pre-Election Training of Board Workers

The Bilingual Coordinator(s) shall attend and participate in board worker training for Spanish election districts.

Pre-election training for all board workers shall include:

1. an explanation of the rights of voters, including a review of the Voters' Rights Flyer, the right to take a sample ballot into the booth, the right to cast write-in votes, the right to have an assistor in the booth if needed, and the right to a provisional ballot;
2. an explanation of the role of translators, and an instruction that board workers who turn away translators will be dismissed;
3. an instruction that board workers who engage in hostile or disparate treatment of Spanish-speaking voters will be dismissed;
4. an explanation of the need to seek alternative surnames

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for Spanish-surnamed voters;

5. the availability of phone numbers for assistance and of complaint forms.

F. Election-Day Procedures

1. Generally

On Election Day, the staff begins work at 6:30 a.m. All board workers, including the bilingual board workers, must be at the polling place by 6:15 a.m. All bilingual board workers shall be assigned to their election districts 30 days prior to the election.

Because board workers sometimes fail to fulfill their commitment to serve, there shall be a list of reserve bilingual board workers and translators, which must be updated after each election. Once all board workers on the reserve list have been used, translators shall be assigned to fill any vacancies. A translator is a person who does not qualify to be a board worker (for example, a non-citizen or a person who resides outside Passaic County), but is able to assist at the polls by translating. Local community liaisons should be called for assistance in locating people to work for the day.

Prior to delivery of voting machines to the election districts, signs shall be prominently affixed to the interior of each voting machine in a Spanish election district as noted in ¶C(1).

Prior to opening of the polls, the following bilingual posters shall be prominently placed so that all voters and board workers can see them:

- a poster size sign instructing board workers and voters that no voter shall be turned away (see ¶F(2)(a));
- a sign adjacent to the voting machine model instructing voters on candidate write-in procedures; and
- sign informing voter of number of votes allowed to cast.

The Bilingual Coordinator(s) and other individuals specifically designated and trained by the Board of Elections

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will visit all Spanish election districts on election day to ensure proper posting and availability of bilingual materials inside the voting booth (as required by ¶C(1)) as well as inside the polling place as set forth above. A report/checklist will be completed indicating whether bilingual materials were properly posted for each Spanish election district. Where materials are not properly posted, the Coordinator(s) or designated individual shall post the omitted materials.

The polls open at 7:00 AM and close at 8:00 PM. When a voter comes in the poll, the board worker will look up his/her name in the poll book, which has all the voters' names of the election district in alphabetical order. For Spanish election districts, at least one Spanish-speaking board worker shall be seated at the table with the poll book to conduct or assist in signing in voters.

After the voter signs his/her name on the poll book, the voter will be given an authorization slip. At that time, the voter will vote in the voting machine upon giving the slip to the board worker assigned to the machine. Finally, it must be noted that a voter who is blind, illiterate (unable to read or write English) or disabled may bring any person of their choice into the voting machine after compliance with the voter assistance statute, N.J.S.A. 19:50-3. If for any reason that voter's name cannot be found in the book, the board worker must offer the voter the right to vote via provisional ballot.

Finally on Election Day, the Bilingual Coordinator(S) and the election officials shall take all reasonable action, including immediate notification to the appropriate election office, if they believe that the Consent Decree and/or the Spanish Language Program is not being implemented. Any actions to enforce the adherence of the decree/Spanish language program should be documented for election reports.

2. Signs

a. A bilingual poster-size sign will be posted inside of each Spanish Election district instructing board workers and voters that no voter shall be turned away, as follows:

New Jersey law provides that a provisional ballot is available in the polling place for a registered voter in Passaic County who has moved and not notified the County Commissioner of Registration. If you are

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registered to vote in Passaic County, you should not be turned away from this polling place if you live in this election district.

If you are told that your name is not on the voter list, be sure to tell the board worker the name you used when you registered to vote.

If your name is not on the voter list and you are a registered voter in Passaic County and live in this election district, you should be offered a provisional ballot.

Ask for a provisional ballot if one is not offered to you. If you are not given a provisional ballot, please call this number: [_____]

b. A sign will be placed next to the voting machine model for each Spanish Election district providing candidate write-in instructions:

1. Look for elected office for which you wish to write a candidate's name;
2. Push open the slot at the top of that column; write in name; close the slot.

c. A poster-size sign will be posted inside of each Spanish Election district as follows:

If you want to know how many candidates you may vote for an elected office, please look at the posted sample ballot.

G. Post-Election Report

Within 30 days after each election, the Bilingual Coordinator(s) shall submit a report to the Board of Elections containing the following information:

1. A discussion of any problems or concerns affecting Spanish-speaking voters observed or reported at the polls;
2. All known deviations from the Consent Decree, the

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Spanish Language Election Information Program, or the requirements of this Outreach Plan;

3. The name of any board worker or other election official who engaged in hostile or disparate treatment of Spanish-speaking voters;
4. All election records as specified in the consent decree and Spanish Program;
5. Recommendations for changes to the Program or Plan; and
6. Any input given by the public or board workers.

H. Voter Registration

1. General Registration Procedures

All newspaper notices for voter registration deadlines for upcoming elections will be sent to the Hispanic Organizations in Passaic County. (This list is in the "Community Contacts" section).

Information regarding locations, hours and deadlines to register to vote shall be sent to each Hispanic organization 60 days prior to each election. Information regarding location and hours to change registration, and an explanation of the rules regarding changing party affiliation prior to a primary shall be sent to all Hispanic organizations and all general and community liaisons.

County Election Employees or their designees may be present at Naturalization Services with a "Register to Vote Table" distributing voter registration forms as well as answer any questions at the same time. This is an opportunity for new citizens to recognize their rights as citizens one of, which is the right to voter. Any election materials made available will be bilingual.

Every year in Passaic County, merchants and community organizations have Hispanic Festivals and Celebrations, which draw thousands of Hispanics. Passaic County will participate in such events by renting booths. The Bilingual Coordinator(s) will recommend at least six such festivals by April 1, 2000 and each year thereafter, and the Board of Elections will choose to sponsor booths at any three. The Bilingual Coordinator(s) will

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work at such events and may call for volunteers from the "Community Contact" list or elsewhere to work at these events.

Merchants want to advertise and sell their goods. Organizations as well as government officials want to introduce their services to the public. The purpose of the "Election Booth" in the Fest is to let the Hispanic Community know that this office has bilingual service as well as to register new voters on site. Simultaneously, board workers will be recruited to work.

Voter drives will be conducted at areas where large numbers of people congregate, such as shopping malls, supermarkets and sporting events. Tables will be set up and literature handed out explaining the importance of voting; at the same time people will be registered to vote and board workers will be recruited. The Bilingual Coordinator(s) shall conduct not less than four events for not less than four hours each, beginning ten weeks prior to each election and finishing four weeks month prior to each election.

High school students who are 18 years old and over should be encouraged to register to vote. The Superintendent of Elections shall, verbally and in writing, request the appropriate high school officials for each town covered by the Spanish Language Program if the Bilingual Coordinator(s) can enter the school and set up a table reasonably adjacent to the school cafeteria and passing out literature about the importance of voting and registering students to vote. Tables should also be set up at local colleges to register students to vote and to recruit board workers.

2. Voter Registration Guidelines

The following guidelines will apply when distributing voter registration forms:

1. Do ask people if they are registered to vote; if not, offer them a voter registration form;
2. Do ask people if they personally know of others who are not registered voters;
3. Do make sure that people understand the voter registration form; that it should be mailed after it is completed and that no postage stamp is necessary;

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4. Do make sure that anyone who helps with this distribution has read this material and understands his/her responsibilities;
5. Inform any prospective applicant the requirements of being a registered voter;
6. Requirements to register to vote are as follows: You must be an American citizen, 18 years old or over by the time of the next election and not serving a sentence, on probation or parole as the result of a conviction for an indictable offense under any state or federal laws.
7. A citizen does not need to take any tests, pay any fee, declare any party or be literate in the English language to register to vote.

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I. Voting Classes/Workshops

The following letter will be sent to community contacts as well as Colleges every 3 months during the Year 2000:

SUBJECT: Voting Class/Workshop

FROM: [Bilingual Coordinator(s)]

Voting is the right of all citizens. Your vote makes a difference to your next generation. In order to encourage our Spanish-speaking citizens to participate in voting, the Passaic County Board of Elections can arrange to send a bilingual (English/Spanish) representative to go to your community for a voting class/workshop, to address the following topics:

Demonstration of voting machines;

Absentee voting information;

How to become a voter;

How to fill out a voter registration and volunteer to register others;

Introduction to sample ballot, propositions and candidates;

How to be a poll worker; and

How to be a volunteer for your community.

For the benefit of your community, please call to arrange a free Class/Workshop for your organization.

Please do not wait until the election comes up because staff may not be available if everybody calls at the same time.

To arrange a voting class, please call [Bilingual Coordinator(s)' name and telephone numbers] the Board of Elections. If you prefer to write a letter, the address is:

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Passaic County Board of Elections
401 Grand Street, Room 123
Paterson, New Jersey 07505

Voter registration should not be limited to the above mentioned. Creative ways to register people to vote should be a constant.

J. Community Contacts

The Bilingual Coordinator(s) will maintain and update lists of Hispanic organizations and interested individuals, beginning with the included list of Hispanic Organizations in Passaic County, for purposes of:

- A. recruiting board workers;
- B. community outreach;
- C. voter registration;
- D. requesting information on community events; and
- E. sending invitations to meetings held by the Bilingual Coordinators.

The Bilingual Coordinator(s) will engage in an ongoing dialogue with Hispanic organizations and interested individuals with regard to relevant issues, including but not limited to means of improving voter turnout and recruitment of board workers.

K. Other Activities

Several sections of the Spanish Language program cross over into the Outreach Program. This section will cover additional outreach program topics not previously covered. Any bilingual literature should be developed to encourage voting. This literature will be distributed at various voting forums and voting drives.

Voters' forum nights at local schools, city halls, local Latino Social Clubs will be overseen by the Bilingual Coordinator(s). At these events the public will have access to voting machines and taught how to use them. At these events the public will also be informed about the importance of voting, and

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the Bilingual Coordinator(s) will also conduct voter registration and recruit bilingual board workers.

In speaking engagements at local high schools and the Latino Senior Citizen Program (Hispanic Information Center Passaic, Mi Casa Su Casa, Paterson) the Bilingual Coordinator(s) will discuss voting rights and other topics related to the electoral process, conduct voter registration and recruit bilingual board workers.

In speaking engagements at New York area Spanish-speaking radio stations and interviews with local Latino newspapers the Bilingual Coordinator(s) will discuss ways to improve voter turnout, the importance of voting and registering to vote, voters' rights at the polls, and finally the need for bilingual Board workers. This will create greater awareness in the entire Spanish community.

[ADD "REGISTER TO VOTE" CHART]

WHEREAS, one member of the three-judge Court, as the managing judge of the three-judge Court, entered the Order Implementing the Outreach and Publicity Plan of the Consent Decree on March 6, 2000;

WHEREAS, on June 26, 2000, the United States of America, through its counsel Bill Lann Lee, Assistant Attorney General for the Civil Rights Division, filed an Application For An Order To Show Cause Why Defendants Should Not Be Cited For Contempt And An Order For Expedited Discovery alleging continued violations of the Consent Decree;

WHEREAS, as used hereinafter, "defendants" refers to Passaic County, the Passaic County Superintendent of Elections, Passaic County Board of Elections, and the Passaic County Clerk;

WHEREAS, the defendants admit that the Orders dated June 7, 1999, July 12, 1999, and March 6, 2000 are valid Court Orders and that they know about the substance and terms of these Court Orders;

WHEREAS, the United States alleges in its Application For An Order To Show Cause Why Defendants Should Not Be Cited For Contempt that defendants' representatives and/or officers have:

- 1) failed to timely and fully provide the United States with required elections records;
- 2) failed to staff designated Spanish election districts with the required number of trained Hispanic and bilingual district board workers;
- 3) failed to timely retain

and train enough qualified translators to fill bilingual district board worker vacancies; 4) failed to ensure that designated Spanish election districts are provided with and display all election-day materials and signs in Spanish; 5) failed to prevent the disparate and/or hostile treatment of Hispanic voters, board workers, and translators in the registration and voting process; and 6) failed to adequately supervise the Voting Rights Coordinators, in violation of the valid Court Orders dated June 7, 1999, July 12, 1999, and March 6, 2000, hereinafter referred to as valid Court Orders.

WHEREAS, the defendants do not admit the allegations of the United States Application. Defendants, however, do share with the United States a mutual interest to implement an interim elections monitor that will protect the rights of Hispanic and Spanish-speaking voters to fully participate in the electoral process in compliance with the Voting Rights Act and the United States Constitution, and therefore defendants agree to full implementation of the terms of this Order Appointing an Independent Elections Monitor in Passaic County for the enforcement of all applicable laws;

WHEREAS, the parties have agreed that entry of this Order Appointing an Independent Elections Monitor in Passaic County (hereinafter, "Order Appointing a Monitor"), as an agent of the Court, is the most appropriate means directed at securing future compliance with the valid Court Orders and avoiding the risks and burdens of litigating contempt proceedings;

WHEREAS, the parties have agreed that entry of this Order Appointing a Monitor to oversee compliance with the valid Court Orders is a remedy not contemplated by the Consent Decree that falls within the jurisdiction of the three-judge Court;

WHEREAS, the United States and Passaic County Board of Elections, Passaic County Superintendent of Elections, Passaic County, and Passaic County Clerk have agreed upon this Order Appointing a Monitor as an appropriate means directed at securing future compliance with valid Court Orders and to further the objective of the Consent Decree to ensure that all citizens of Passaic County have an equal opportunity to participate in the electoral process, including Hispanic and Spanish language citizens;

WHEREAS, the parties have agreed that the Order Appointing a Monitor shall not preclude any party from bringing appropriate actions under any other state or federal law based on future noncompliance with the Consent Decree and its related Orders, provided, however, that in such proceedings no party shall be precluded from using evidence of past noncompliance;

WHEREAS, the parties have agreed that nothing in this Order changes the intentions, meaning, rights, or requirements of either the Consent Decree or the Order Implementing the Outreach and Publicity Plan, and that the terms of this Order shall be interpreted consistent with the achievement of all terms of valid court orders; and

WHEREAS, the parties have agreed that entry of the Order Appointing a Monitor is in the public interest because it provides for expeditious remedial action and minimizes litigation costs:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follow:

JURISDICTION

1. This Court has exclusive jurisdiction over the subject matter herein and over the parties hereto. If the Monitor, any party, or other person or entity files any separate action pursuant to a valid Court Order in this action, such action shall be designated a related action pursuant to Fed. Civ. Rule 42 and will be consolidated with this action and heard by this Court. The Court shall have exclusive jurisdiction to decide any and all issues and disputes arising from the interpretation or application of this Order Appointing A Monitor in Passaic County.

2. This Order is binding upon all persons who have the responsibility for the conduct of elections in designated Spanish election districts in Passaic County, including but not limited to elections conducted in designated Spanish election districts in the Cities of Passaic, Paterson, Prospect Park, Clifton, and Haledon.

REMEDIAL OBJECTIVES

3. The remedial objective of this Order Appointing A Monitor in Passaic County is directed at securing future compliance with valid Court Orders, and avoiding the risks and burdens of litigating contempt proceedings, and to further the

objective of the Consent Decree to ensure that all citizens of Passaic County have an equal opportunity to participate in the electoral process, including Hispanic and Spanish language citizens.

DUTIES OF THE ELECTION OFFICIALS

4. All Passaic County election officials, with due regard to the remedial objectives of this Order Appointing An Independent Monitor in Passaic County, have the duty to ensure that elections in Passaic County are conducted in compliance with the Consent Decree and Order Implementing the Outreach and Publicity Plan and to fully cooperate with the Monitor who will oversee compliance with said valid Court Orders.

INJUNCTIVE PROHIBITIONS

5. All current and future Passaic County election officials and representatives holding positions that have any election-related responsibility shall be enjoined:

- a. from failing to perform any election related responsibility delineated in the Consent Decree and Order Implementing the Outreach and Publicity Plan; and
- b. from prohibiting a subordinate from performing election related responsibilities delineated in the Consent Decree and Order Implementing the Outreach and Publicity Plan.

COURT-APPOINTED MONITOR

6. The Court shall name the Elections Monitor by separate Order. In the event that a vacancy in the Monitor position

subsequently occurs, the Monitor shall be selected by the Court. Said parties shall submit additional jointly proposed candidates to the Court upon its request.

POWERS & RESPONSIBILITIES OF THE INDEPENDENT ELECTIONS MONITOR

7. Oversight powers. The Monitor, in addition to the powers described elsewhere in this Order, shall have the power to monitor all terms of the Consent Decree and Order Implementing the Outreach and Publicity Plan, including oversight of the following:

- a. all efforts to recruit and retain bilingual and Hispanic board workers for Passaic County;
- b. staffing of bilingual district board workers at designated Spanish election districts;
- c. retention of qualified translators, bilingual and literate in English and Spanish, to fill any bilingual board worker vacancies;
- d. training of district board workers and bilingual translators;
- e. preparation, distribution, and use of all written registration and election materials and signs;
- f. voter registration;
- g. publicity and community outreach efforts with persons of Spanish heritage about the voter registration and elections process;
- h. selection of and supervision over the Voting Rights Coordinators; and

i. provision of required election records to the United States.

8. Disapproval powers. The Monitor shall be authorized to disapprove actions by defendants and/or their responsible officers or representatives that would violate any term of the Court's Orders mentioned herein or entered in this matter.

9. Disciplinary powers. Pursuant to paragraph 13, the Monitor shall have the ability to discipline or suspend, consistent with the respective terms of their employment, any of defendants' officers, representatives, agents, or employees who:

- i.) violate any of the terms of the Consent Decree or Order Implementing the Outreach and Publicity Plan;
- ii.) engage in discriminatory acts that adversely affect Hispanic and Spanish speaking voters; or
- (iii) thwart the function of the Monitor as described in this Order.

Failure to fully cooperate with the Monitor in effectuating the objectives of this Order is a basis for discipline by the Monitor and/or extension of the term of the Monitor, pursuant to this Order.

10. Investigative powers. To fully and effectively enforce the valid Court Orders, the Monitor shall be given specific investigative powers including, but not limited, to the following:

- a. the Monitor shall be empowered, in his or her sole discretion, to verify defendants' compliance with the

Court's Orders by performing the following activities including, but not limited to:

1. attend all of defendants' meetings, whether in open or closed session, which will or may concern the remedial objectives of the valid Court Orders, with the exception of privileged attorney-client communications;
2. require defendants to produce documents;
3. conduct investigatory interviews, subpoena witnesses, and take sworn depositions;
4. request the United States Department of Justice or any agency of the United States to provide legal, audit, and investigative personnel to assist in the Monitor's duties, with such expense to be borne by the United States;
5. request the State of New Jersey or any agency of the State of New Jersey to provide its employees for legal, audit, and investigative personnel to assist in the Monitor's duties, with such expense to be borne by the State of New Jersey; and
6. retain investigative and other support at Passaic County's expense, where in the Monitor's discretion, such services are necessary to execute the Monitor's duties, in accordance with Fed. R. Civ. P. 53(c).

11. Report Filing Requirements. At a minimum, the Monitor shall file with the District Court, counsel for the United States, and all counsel for defendants, a report detailing the extent of defendants' compliance or noncompliance with the Court's Orders three weeks and one week before an election and at a reasonable time after an election including, but not limited to items listed in ¶5, and ¶¶7 through 10 of this Order. The Monitor shall have the discretion to notify, at such time as is practicable, any party of a violation or potential violation of the consent orders.

GENERAL APPEAL OF THE MONITOR'S ACTIONS

12. Any party may seek the Court's review of the Monitor's action or failure to act in matters covered by this Order.

DISCIPLINARY PROCEDURE

13. In order to discharge disciplinary duties under this decree, the Monitor shall have the same rights and authority as the appointing or hiring official of as well as the full authority derived from any and all provisions of law. When exercising his/her disciplinary rights and powers, the Monitor shall afford the subject of the potential disciplinary action written notice of the charge(s) against him/her and an opportunity to be heard. The Monitor shall conduct any hearing on any disciplinary charges, render the final decision regarding whether discipline is appropriate, and impose the particular discipline. The charged party shall have 20 days to answer the charges against him/her and may be represented by counsel at any

hearing conducted by the Monitor. Any hearing shall be conducted under the rules and procedures generally applicable in labor arbitration proceedings and decisions shall be made using a "just cause" standard. In conducting any hearing, the Monitor shall have the right and power:

- a. to administer oaths - all testimony and other evidence shall be subject to penalties of perjury to the same extent as if such evidence was submitted directly to the Court;
- b. to examine witnesses or conduct depositions;
- c. to receive evidence - the Monitor may receive evidence withheld from the charged party and the public which contains or constitutes sensitive information provided by a law enforcement agency, and can choose what weight, if any, to give such evidence, but in no case shall the identity of a confidential source of law enforcement information be required to be disclosed; and
- d. to issue subpoenas requiring the attendance and presentation of testimony of any person and/or the production of documentary or other evidence. Witnesses shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States and such payments shall be made by Passaic County. In the case of a failure to obey a subpoena issued under this Paragraph, the Monitor may:

- (i) impose discipline upon the person in accordance with this Order; and/or
- (ii) seek an order from the Court requiring the person to testify or to produce documentary or other evidence.

APPEAL OF DISCIPLINARY ACTION

14. Any discipline imposed by the Monitor shall be final and binding, subject to review by the Court. A person disciplined by the Monitor pursuant to this Order may obtain review of the Monitor's decision regarding such discipline by filing a written appeal of such decision with the Court within thirty (30) days of such decision by the Monitor. The Monitor's decision, all papers or other material relied upon by the Monitor and the papers filed or issued pursuant to this appeal procedure shall constitute the exclusive record for review. The Monitor's decisions pursuant to this Paragraph shall be reviewed by this Court, if necessary, under the substantial evidence standard set forth in 5 U.S.C. § 706(2)(E). Materials considered by the Monitor, but withheld from the appellant and the public which contain sensitive information provided by a law enforcement agency, shall be submitted to the Court for ex parte, in camera consideration and shall remain sealed. The person disciplined by the Monitor may appeal the Monitor's decision regarding the discipline imposed against him/her. Any decision by the Monitor regarding discipline imposed against a person which is not appealed in accordance with this Paragraph may not be appealed or

otherwise challenged, except as otherwise provided in the terms and conditions of employment. The New Jersey State Attorney General, Passaic County Counsel, or the United States may seek the Court's review of the Monitor's decision not to impose discipline.

PRIVILEGES AND IMMUNITIES

15. Consistent with the provisions of N.J.S.A. 59:1-1 et seq., Passaic County and the State of New Jersey shall indemnify and hold harmless the Monitor and any person hired by or acting on his or her behalf from such personal liability and costs incurred to defend against any claim of such liability. In addition, the Monitor and any person hired by or acting on his or her behalf shall enjoy whatever immunity from personal liability that may exist under the law for court officers. The Monitor and his or her designee(s) shall, in addition to the powers and duties enumerated in this Order, shall have all of the powers, privileges and immunities of a person appointed pursuant to Rule 66, Federal Rules of Civil Procedure, and which are customary for court-appointed officers performing similar assignments.

ACCESS TO INFORMATION

16. Upon reasonable notice, the Monitor shall have unfettered access to all records or documents and officials, agents, employees, and members of the defendants subject to this Order and their constituent entities to advance the remedial objective of this action, with the exception of privileged attorney-client communications. The Monitor shall have the right

to make copies of all records or documents with the exception of privileged attorney-client communications.

17. In the event the Monitor discovers or receives information which may indicate that disciplinary action by him/her or one of the defendants is warranted, the Monitor may provide that information to the appropriate official, who shall report to the Monitor what action, if any, is taken.

NOTICE TO THE MONITOR

18. All defendants subject to this Order shall expeditiously provide the Monitor with prior notice of all meetings related to elections or valid court orders, with the exception of meetings containing attorney/client privileged information, and shall provide the Monitor with the minutes of all such meetings.

19. All County defendants and their officers, agents, and representatives, shall expeditiously inform the Monitor about matters involving Passaic County and its constituent entities of importance to the remedial objective of this action including, but not limited to:

- a. the discipline of any person(s) holding election related positions;
- b. decisions to hire, appoint, reassign or discharge persons as officers, agents, representatives, employees and persons holding election related positions;
- c. decisions to pay the expenses of any person or entity who is or may be subject to disciplinary or other action

pursuant to the Consent Decree or related to this lawsuit;

- d. decisions to hire or employ service providers or vendors to carry out objectives of the Consent Decree and Order Implementing the Outreach and Publicity Plan; and
- e. decisions to enter into contracts, leases and other commercial obligations to carry out objectives of the Consent Decree and Order Implementing the Outreach and Publicity Plan.

COMPENSATION

20. Passaic County shall bear the cost of the Monitor. The Monitor shall be compensated at a rate not to exceed \$275.00 per hour plus necessary expenses, and shall be diligent in minimizing the cost to Passaic County. The Monitor shall submit to the Court, the County and the United States a monthly itemized statement of services rendered.

21. In the event that any dispute arises over any aspect of compensation, Passaic County shall immediately notify the Monitor and the United States of the precise reasons for contesting the validity of the billing and shall deposit the disputed amount in an interest bearing escrow account until the parties can resolve the dispute or until the Court, upon petition of the United States, resolves the matter.

TERM OF THE MONITOR

22. The term of the Monitor shall extend from the date of entry of this Order until December 31, 2000. If, at any time, the Monitor resigns, is discharged or becomes disabled from

continuing his/her respective duties, the Court shall select a new Monitor. The parties will submit a jointly propose list upon request of the Court.

23. Upon a showing by the United States that there is probable cause to believe that the objectives of this Order are not being met, or the Consent Decree and/or the Order Implementing the Outreach and Publicity Plan are not being complied with, the term of the Monitor shall be extended by Order of the Court or by mutual agreement of the parties. In the event that the term of the Monitor is extended, the provision of ¶ 22 relating to the expiration of the Monitor's term shall be suspended and a new term shall begin. The Court shall thereafter enter such Order(s) as it deems necessary and proper regarding the continuation, scope or modification of this Order Appointing the Monitor.

ADDITIONAL TIME FOR REVIEW

24. In the event the Monitor cannot reasonably obtain the information necessary to render an informed decision within the time periods set forth in Paragraphs 11, 12 or 14 the Monitor may notify the involved party, the defendants subject to this action, and counsel for the United States that an additional twenty (20) days will be necessary to render an informed decision. In addition, the Monitor and the involved parties may consent to extend the relevant time period. The Court may extend the relevant time period in which the Monitor may render a decision for additional fifteen (15) day periods for good cause shown.

NOTIFICATION

25. Publication and service of the Order. Within ten (10) days of entry of this Order, the parties shall provide a copy of this Order upon each election official affected by this order and shall advise all Passaic County election officials of the existence of this Order, the fact that they are bound by the provisions of this Order and the fact that it is available for reference. Defendants shall post a notice in each polling place in an election during the term of a Monitor informing voters that there is a Monitor and where they can reach her/him. Copies of all notices, correspondence, advertisements, to election officials shall be provided to counsel for the United States and the defendants within 30 days of this Order.

FUTURE ACTION

26. Appointing a Monitor, as an agent of the Court, shall not preclude the United States from bringing an enforcement action based on future non-compliance with the Consent Decree and Order Implementing the Outreach and Publicity Plan pursuant to provision No. 24 of the Consent Decree, provided that notice and an opportunity to cure noncompliance is to be governed by paragraph 11, herein;

The Court may grant such relief as may be equitable and just, having due regard for the purposes of the underlying litigation, the remedial purposes of this Order and the circumstances at the time of the application. The Monitor or any party to this Order may apply to the Court for any order

necessary or appropriate to implement this Order, including orders preventing non-parties from interfering with implementation of this Order. The parties further agree to review the implementation of this Order and the valid Court Orders no later than two weeks after the Monitor issues his final report.

CONTEMPT OF COURT

27. Violation of any restriction or prohibition contained herein, or other disobedience to the mandates of this Order may be subject to punishment as a civil contempt of court.

Willful violation of any restriction or prohibition contained herein, or other disobedience to the mandates of this Order may be subject to punishment as a criminal contempt of court.

SEVERABILITY

28. If any provision of this Order is hereafter determined to be invalid for any reason, the balance of this Order shall remain in full force and effect.

PRIOR CONSENT DECREE AND COURT ORDER

29. Nothing in this Order is to be construed as affecting either the validity or operation of either the Consent Decree or Order Implementing the Outreach and Publicity Plan entered on June 7, 1999, July 12, 1999, and March 6, 2000, in United States v. Passaic County, et al.

APPOINTMENT OF THE SAME MONITOR IN OTHER COURT PROCEEDINGS

30. Nothing in this Order shall preclude the appointment of the same Monitor in any other court proceedings to further objectives similar to and not in conflict with the objectives of this Order and the underlying litigation.

CONTINUING JURISDICTION

This three-judge Court retains continuing jurisdiction to alter, amend, or modify the terms of this Order, as may be necessary, with the parties to be provided notice and an opportunity to be heard on any modification to this Order.

AGREED:

For the plaintiff:

ROBERT J. CLEARY
United States Attorney

UNITED STATES OF AMERICA

JANET RENO
Attorney General

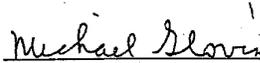
BILL LANN LEE
Assistant Attorney General


JOSEPH D. RICH
ROBERT A. KENGLE
ANGELA HART-EDWARDS
JAMES T. TUCKER
LUZ LOPEZ-ORTIZ
Attorneys, Voting Section

For the defendants:

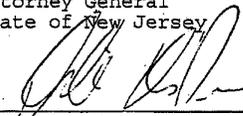
Attorney for:
PASSAIC COUNTY
PASSAIC COUNTY CLERK

WILLIAM PASCRELL, III
Passaic County Counsel

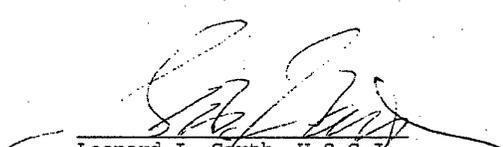

MICHAEL GLOVIN
Assistant County Counsel
Admin. Building, Room 214
401 Grand Street
Paterson, NJ 07055

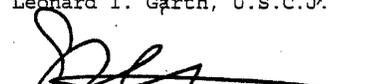
Attorney for:
PASSAIC COUNTY BOARD OF
ELECTIONS
PASSAIC COUNTY
SUPERINTENDENT

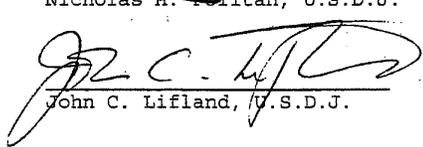
JOHN J. FARMER, JR.
Attorney General
State of New Jersey


C. DANTE DIPIRRO
Senior Deputy Attorney
General
Dept. of Law & Public
Safety
25 West Market Street
Trenton, NJ 08625

IT IS SO ORDERED on this  day of August, 2000.


Leonard I. Garth, U.S.C.J.


Nicholas H. Politan, U.S.D.J.


John C. Lifland, U.S.D.J.

SEP 6 2000

33

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
WILLIAM T. WALSH, CLERK

UNITED STATES OF AMERICA, :
 Plaintiff, : Hon. Leonard I. Garth
 v. : Hon. Nicholas H. Politan
 : Hon. John C. Lifland
 PASSAIC CITY, NEW JERSEY, : Civil Action No. 99-2544
 et al. :
 and :
 PASSAIC COUNTY, NEW JERSEY, : ORDER NAMING ELECTIONS
 et al., : MONITOR
 Defendants. :

THIS MATTER HAVING BEEN opened to the Court by the parties,
 the Court having taken notice that it has previously entered an
 Order Appointing an Independent Elections Monitor in Passaic
 County (hereinafter the "Order Appointing Elections Monitor") and
 that Paragraph 6 of the Order Appointing Elections Monitor
 provides that the Court shall name the Elections Monitor by
 separate Order, and for good cause shown;

IT IS on this 5th day of September, 2000,

ORDERED that pursuant to Paragraph 6 of the Order Appointing
 Elections Monitor, William T. Longoria Esq. be and is

ENTERED

ON THE DOCKET

SEP 8 2000

WILLIAM T. WALSH, CLERK

By [Signature]
(Deputy Clerk)

2000 SEP - 6 PM 4: 01

CLERK

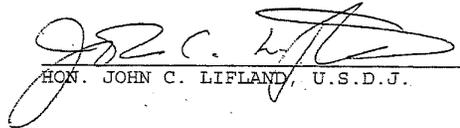
hereby named as the Elections Monitor in the above-captioned case.



HON. LEONARD I. GARTH, U.S.C.J.



HON. NICHOLAS H. POLITAN, U.S.D.J.



HON. JOHN C. LIFLAND, U.S.D.J.

42

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

THE UNITED STATES OF AMERICA,
Plaintiff,

v.

PASSAIC CITY, NEW JERSEY, et al.
and
PASSAIC COUNTY, NEW JERSEY, et al.,
Defendants.

FILED

APR 17 2001

APR 12 2001

CIVIL ACTION NO. 99-2544 (NHP)

Judge Nicholas H. Politan
Judge Leonard I. Garth
Judge John C. Lifshand

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WILLIAM F. WALSH, CLERK
2001 APR 17 A 10:38
UNITED STATES DISTRICT COURT

ORDER TEMPORARILY EXTENDING THE TERM OF THE INDEPENDENT ELECTIONS MONITOR IN PASSAIC COUNTY

On April 3, 2001, the Monitor and counsel for the United States, the State of New Jersey, and Passaic County appeared before the Court on the United States' Application for an Order to Extend the Term of the Court-Appointed Monitor ("Application"). The New Jersey Attorney General supports the United States' Application. The hearing was on the record with the transcript kept under seal until further Order of the Court. This written form of Order memorializes the rulings of the Court at the April 3, 2001 hearing. The relief ordered by the Court is in the nature of temporary restraints pursuant to Title 28, United States Code, Section 2284(b)(3).

Mr. Walter F. Timpone, Esq., the Court-appointed Monitor, has filed three reports with the Court since his appointment as Elections Monitor. In his most recent report filed on January

ENTERED
on 4-19-01
WILLIAM F. WALSH, CLERK

24, 2001, the Monitor identified several problems that persist in the Passaic County elections process, including but not limited to operation of the Passaic County Board of Elections, board worker recruitment and training, voting equipment, ballot security, and outreach efforts by elections officials to the Hispanic community. The Monitor indicates in his report that he is "generally encouraged with the strides made to date" but that "there is still a lot of work that needs to be done."

The Monitor makes several recommendations to the Court to provide Hispanic voters with equal access to the electoral process in Passaic County, including: creating a new position of office administrator for the Passaic County Board of Elections; developing and implementing written office procedures for the Board of Elections; implementing a program that uses a "master board worker" to assist with recruitment and training of board workers; hiring a professional instructor for board worker training; distributing the 150 new voting machines throughout the County; improving ballot security; and improving outreach efforts to the Hispanic community. The Monitor also recommends that the "position of Election Monitor be continued through December 2001."

At the hearing, the parties informed the Court that after receipt of the Monitor's Third Report, they engaged in negotiations with respect to an extension of the Monitor's term

but were unsuccessful in reaching an agreement. The parties recognize that continued oversight of the election process in Passaic County would further the purposes of the prior Orders of the Court. Passaic County has elections scheduled on April 17, 2001, May 8, 2001, June 5, 2001, and November 6, 2001.

The Monitor also reported to the Court about certain events in a parallel New Jersey state court proceeding before Superior Court Judge Robert J. Passero in a case styled In Re Appointment of an Interim Election Monitor in Passaic County, Docket No. L-4344-00. Mr. Timpone indicated that on March 20, 2001, Judge Passero extended his term as state court monitor through December 31, 2001, retroactive to March 1, 2001. Judge Passero also ordered Mr. Timpone to prepare a budget of anticipated expenses that must be submitted to the Passaic County Board of Freeholders on April 4, 2001. The Monitor expressed concern about the negative effects that such fiscal limitations will have on his ability to bring the defendants into full compliance with the federal Consent Orders.

Assistant Passaic County counsel represented that William J. Pascrell, III, Passaic County Counsel, has a conflict with the hearing scheduled on April 16, 2001 on the United States' Application, and would like to have the hearing adjourned until after April 26, 2001.

The parties having agreed to the form of Order, it is

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. The Court finds that data from the April 17, 2001 and May 8, 2001 elections will assist the Court in its determination on whether to extend the term of the Monitor. The imminence of these two elections precludes the Court from holding a hearing on the merits of the United States' Application until after May 8, 2001. Irreparable harm will result if the Monitor is not in place for these elections.

2. For good cause shown, pursuant to 28 U.S.C. § 2284(b)(3) the Monitor's term is extended until a hearing is held on the merits of the United States' Application. All other provisions, remedies, and powers contained in the Court's prior Orders regarding the Elections Monitor remain in full force and effect. The Monitor shall continue to have the power to enforce both federal and State voting and election laws.

3. For the convenience of Passaic County's Counsel, the hearing scheduled in this matter for April 16, 2001 is adjourned.

4. The relief in this Order extends beyond the typical ten-day period for temporary relief for the following reasons:

a. There has been no showing that an immediate hearing is necessary;

b. There are two elections to plan for and conduct in Passaic County before May 8, 2001;

c. Data from those elections will assist the Court in addressing the issues that will be decided at the hearing on the United States' Application; and

d. Passaic County has requested an adjournment of the return date and the Court will accommodate the County.

5. The briefing schedule on the United States' Application is modified as follows: defendants shall file their response briefs to the United States' Application by May 11, 2001, and the United States shall file its reply brief by May 18, 2001.

6. The hearing on the United States' Application shall be rescheduled by separate order. The parties are directed to contact the Court to reschedule the hearing after the May 8, 2001 elections in Passaic County.

7. The issues to be addressed by this Court at the hearing on the United States' Application shall be the following, unless additional issues are properly brought before the Court by appropriate motion:

a. Passaic County's non-payment of the Monitor's bills since September 2000;

b. Passaic County's position that the Monitor's bills for January and February 2001 should not be paid because the Order Appointing the Monitor allegedly expired on December 31, 2000;

c. Passaic County's position that the Monitor's term should not be extended to December 31, 2001;

d. Passaic County's position that the Monitor should be required to submit a budget to the County; and

e. The Monitor's proposals to secure compliance with the Court's prior Orders in this case and payment for reasonable costs incurred by the Monitor to implement these proposals.

8. Pursuant to the Supremacy Clause of the United States Constitution and the All Writs Act, 28 U.S.C. § 1651, the Court finds that in order to protect this Court's jurisdiction and ability to enforce its Orders, it is necessary that the proceedings in the New Jersey Superior Court be enjoined until this Court holds a hearing on the merits of the United States' Application. This injunction specifically includes the April 4, 2001 hearing on Passaic County's objection to the New Jersey Attorney General's proposed form of Order and the State Court's Order that the Monitor submit a budget to the County by April 4, 2001. Unless and until this order is lifted or modified by this Court, the State of New Jersey, Passaic County, their agents and all persons acting in concert with them are hereby enjoined from conducting further proceedings in the New Jersey Superior Court case styled In Re Appointment of an Interim Election Monitor in Passaic County, Docket No. L-4344-00. This Order does not disturb the State Court Orders and Findings, except to the extent

that they are inconsistent with the Orders of this Court.

IT IS SO ORDERED on this 16th day of April, 2001.



Nicholas H. Politan, U.S.D.J.

FILED

51

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

THE UNITED STATES OF AMERICA,)
 Plaintiff,)
 v.) C.A. No. 99-2544 (NHP)
 PASSAIC CITY, NEW JERSEY, et al.) Judge Leonard I. Garth
 and) Judge Nicholas H. Politan
 PASSAIC COUNTY, NEW JERSEY,) Judge John C. Lifland
 et al.,)
 Defendants.)

INTERIM ORDER EXTENDING THE TERM OF THE INDEPENDENT ELECTIONS MONITOR IN PASSAIC COUNTY

Mr. Walter F. Timpone, Esq., the Court-appointed Monitor, has filed four reports with the Court since his appointment as Elections Monitor. The Monitor has identified several problems that persist in the Passaic County elections process, including but not limited to operation of the Passaic County Board of Elections, board worker recruitment and training, voting equipment, ballot security, and outreach efforts by elections officials to the Hispanic community.

The Monitor indicates in his Third Report that he is "generally encouraged with the strides made to date" but that "there is still a lot of work that needs to be done." The Monitor recommends that the "position of Election Monitor be continued through December 2001."

ENTERED

on 8-3-01
By [Signature]

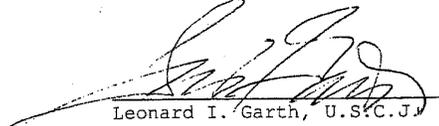
At the hearing before the managing judge of the three-judge court, all parties agreed that continued oversight of the election process would further the purposes of the prior Orders of the this Court. Passaic County had a scheduled election on June 26, 2001, and another on November 6, 2001.

Based upon the foregoing,

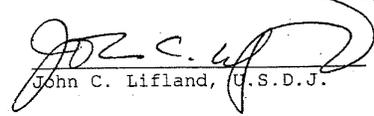
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The Monitor's term shall be extended through July 31, 2001, on the same terms contained in the September 8, 2000 Consent Order.

IT IS SO ORDERED on this 31st day of July, 2001.


Leonard I. Garth, U.S.C.J.


Nicholas H. Politan, U.S.D.J.


John C. Lifland, U.S.D.J.

Case: 2:99-cv-02544

ar

ANGELA D. HART, Esq.
UNITED STATES DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION
P.O. BOX 66128
WASHINGTON, DC 20035

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

54

AUG 29 2001

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THE UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
PASSAIC CITY, NEW JERSEY,)
et al.,)
and)
PASSAIC COUNTY, NEW JERSEY,)
et al.,)
Defendants.)

AT 08:30 WILLIAM WOOD
CIVIL ACTION No. 99-2544 (NHE)
Judge Nicholas H. Politan
Judge Leonard I. Garth
Judge John C. Lifland

ORDER

WHEREAS, on September 5, 2000, the three-judge Court entered the Order Appointing An Independent Elections Monitor in Passaic County, and entered a separate Order Naming Elections Monitor in which the Court appointed Walter F. Timpone, Esq. the Elections Monitor (hereinafter, elections monitor);

WHEREAS, on April 16, 2001, the Court extended the elections monitor's term nunc pro tunc, until July 31, 2000;

WHEREAS, the elections monitor has filed six reports with the Court indicating that while defendants have made progress towards compliance with the Court Orders, the Parties agree that the remedial process must continue;

WHEREAS, this Order hereby incorporates the elections monitor's findings and recommendations as set forth in his six reports by reference herein.

ENTERED
on 8-31-01
WILLIAM WOOD

WHEREAS, the Parties agree that the elections monitor's six reports provide a sufficient factual basis for an extension of the elections monitor's term;

WHEREAS, this Decree incorporates Court Orders entered by this Court in this matter.

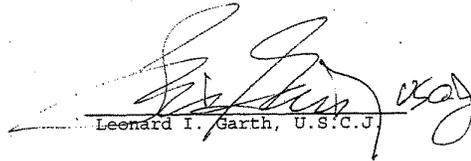
AND, the Court finding that good cause appears for the relief herein;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

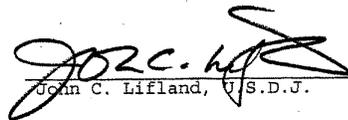
1. The elections monitor's term shall be extended effective immediately as of August 27, 2001 until December 31, 2001, subject to entry of a supplemental Order that will, *inter alia*, implement procedures to carry out requirements of the consent decree, including but not limited to recommendations made by the elections monitor;
2. The supplemental Order referenced *supra* shall be entered following a Show Cause Hearing to be conducted by the Court on September 26, 2001, at 10:00 (a.m./~~p.m.~~), at the Martin Luther King, Jr. Federal Court House, Newark, New Jersey concerning a supplemental order;
3. The following are directed to appear at the time and place set forth above: the Commissioners of the Passaic County Board of Elections, the Passaic County Superintendent of Elections, the Passaic County Clerk,

the Passaic County Bilingual Coordinators, the Passaic County Board of Elections Administrator, and Passaic County Sheriff.

IT IS SO ORDERED on this 29th day of August
2001.


Leonard I. Garth, U.S.C.J.


Nicholas H. Politan, U.S.D.J.


John C. Liffland, U.S.D.J.

United States Department of Justice
Civil Rights Division/Voting Section
Room 7254-NWB
950 Pennsylvania Ave, N.W.
Washington, D.C. 20530
BIG-3388
LLO-2500

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UNITED STATES
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.	) CIVIL ACTION No. 99-2544(JCL)
)
PASSAIC CITY, NEW JERSEY, et al.	) Judge John C. Lifland
	) Judge William G. Bassler
	) Judge Maryanne Trump Barry
)
and)
)
)
PASSAIC COUNTY, NEW JERSEY, et al.,)
)
Defendants.)

STIPULATION

The United States, Passaic County, and the defendants (hereinafter "the County"), agree through their undersigned counsel to the following Stipulation as the predicate for the continued designation of Passaic County for federal examiner coverage pursuant to Sections 3(a) and 6 of the Voting Rights Act.

1. The County has been subject to the bilingual election requirements of Section 203 with respect to persons of Spanish heritage since 1984. 49 Fed. Reg. 25887 (June 25, 1984); 57 Fed. Reg. 43,213 (Sep. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002). On June 2, 1999, the

United States filed a complaint in the United States District Court for the District of New Jersey, pursuant to Sections 2, 3(a), 11(a), 12(d), 203, 204, and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973a(a), 42 U.S.C. 1973i(a), 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, 42 U.S.C. 1973aa-2, 42 U.S.C. 1973aa-6, 28 U.S.C. 2201, and the Fourteenth and Fifteenth Amendments to the United States Constitution. In its Complaint, the United States alleged five independent claims arising from Passaic City's and Passaic County's election practices and procedures as they affected Hispanic citizens of the City and County, including those Hispanic voting age citizens who are "unable to speak or understand English adequately enough to participate in the election process." 42 U.S.C. 1973aa-1a.

2. On June 2, 1999, the parties entered into a consent decree ("Consent Decree") that was intended to resolve all of the United States' claims without further proceedings. The Consent Decree included provisions for: (1) the recruitment of Hispanic and bilingual board workers; (2) the availability of bilingual election materials and notices; (3) voter assistance; (4) and the publication of Spanish language materials. The Consent Decree contained specific provisions with respect to Spanish election districts in five municipalities: Passaic City, Paterson, Prospect Park, Haledon and Clifton. On July 12, 1999, a three-judge Court entered an Order, *inter alia*, certifying Passaic County for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a). The Consent Decree provided that the designation of a federal examiner in Passaic County would be extended either upon agreement of the parties or by court order, and that such Order would issue if the court determines either that Defendants are not in compliance with the Consent Decree or that there is evidence of the denial or abridgment of any rights of Hispanic or Spanish-speaking voters under the Voting Rights Act or the Fourteenth or Fifteenth Amendments to the United States Constitution.

3. Pursuant to the Consent Decree, the United States has assigned voting section personnel and federal observers to monitor Passaic County elections to assist with the assessment of Passaic County's compliance with the consent decree and Section 203 of the Voting Rights Act. Since entry of the Consent Decree on July 12, 1999, federal observers monitored seventeen elections in Passaic County, and four additional county elections were monitored by Department of Justice attorneys. The Department of Justice has provided copies of the observer reports to the Court and to counsel for the Defendants, and when necessary have brought concerns to the attention of County and State officials on election day and after review of the observer reports. The presence of federal observers has been an important means of documenting the problems and successes of the County's Section 203 compliance efforts.

4. A review of the federal observer reports indicates that Passaic County has made significant progress in its compliance with Section 203 of the Voting Rights Act. For example, the Defendants made substantial efforts to comply with the consent decree's following requirements: (1) recruitment of bilingual and Hispanic Board Workers; (2) training of board workers on the rights of blind or physically disabled voters and voters who are not able to read and write to have assistance in the voting booth by a person of their choice; (3) publishing bilingual materials and notices; (4) development of and continued improvement of a master board worker program for the county. The State of New Jersey has been instrumental in assisting the Passaic County Board of Elections and the Passaic County Superintendent of Elections in reaching their compliance goals.

5. The parties agree that Passaic County currently has achieved compliance with Section 203 of the Voting Rights Act. The parties recognize, however, that county and city election officials were required to overcome very serious problems of compliance with Section

203 and the Consent Decree, and that they must continue to contend with election-day problems that could result in the denial or abridgment of the rights of Hispanic and Spanish-speaking voters under the Voting Rights Act or the Fourteenth or Fifteenth Amendments to the United States Constitution if they are not promptly detected and resolved. The parties agree that federal observers are of material assistance in detecting, correcting and preventing the following types of election-day problems that limit the ability of Spanish-language citizens to effectively participate in the election process: i) Spanish election districts that open with an inadequate number of bilingual poll workers or without translated written materials; ii) board workers and/or master board workers who do not follow the bilingual procedures set forth in the training provided by election officials; iii) hostile and/or differential treatment of Hispanic voters, bilingual board workers, and translators.

6. The parties agree to the entry of an order by this Court extending Section 23 of the 1999 consent decree authorizing a federal examiner pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a (a), through December 31, 2005. Passaic County recognizes the authority of the federal observers to observe all aspects of the voting process conducted in the polls on election day, including the provision by the County of assistance to voters in the voting booth provided that the voter does not object to being observed. The United States does not seek to extend any other provision of the 1999 Consent Decree. The parties agree that Passaic City is not a necessary party to this stipulation or subsequent order therefor.

7. The Court shall retain jurisdiction to ensure compliance with any Order entered pursuant to this Stipulation.

Entered this _____ day of _____, 2004.

For Plaintiff:

UNITED STATES OF AMERICA

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COUNTY BOARD OF ELECTIONS
 COUNTY SUPERINTENDENT

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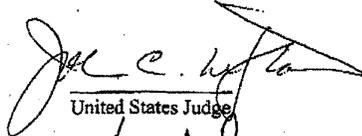
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 PASSAIC COUNTY CLERK

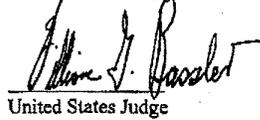
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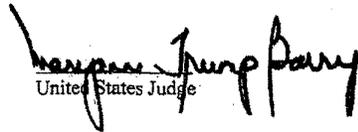
JUDGMENT AND ORDER

This three-judge Court finds that it has jurisdiction under 28 U.S.C. § 1331 to consider the parties stipulated agreement to the extension of time on paragraph 23 of the consent decree in United States v. Passaic County et al., C.A. No. 99-2544 (NHP) (D.N.J. June 2, 1999). Having considered the consent decree and the stipulations set forth above, which are agreed upon by all parties, this Court Orders the defendants to comply with the Fourteenth and Fifteenth Amendments to the U.S. Constitution and Section 203 of the voting Rights Act, and the Court further ORDERS the relief set forth in Paragraph six (6) above.

Entered and Ordered this 12th Day of April, 2004.


United States Judge


United States Judge


United States Judge

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2005 JUL 15
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 LOS ANGELES

IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

18 UNITED STATES OF AMERICA,)
 19 Plaintiff,) No. **CV05-5131** *CAF* (MANx)
 20 v.) **THREE-JUDGE COURT**
 21 CITY OF ROSEMEAD, CALIFORNIA;)
 THE ROSEMEAD CITY COUNCIL;) **PROPOSED CONSENT DECREE,**
 22 BILL CROWE in his official) **ORDER, AND JUDGMENT**
 capacity as Rosemead City)
 23 Manager; and NANCY VALDERRAMA)
 in her official capacity as)
 24 Rosemead City Clerk,)
 25 Defendants.)

THIS CONSTITUTES NOTICE OF ENTRY
 AS REQUIRED BY FRCP, RULE 77(d)

8

1 The United States of America filed this action pursuant to
2 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
3 amended, 42 U.S.C. § 1973aa-1a; 42 U.S.C. § 1973aa-2; and 28
4 U.S.C. § 2201, alleging violations of Section 203 arising from
5 the City of Rosemead's election practices and procedures as they
6 affect Chinese-, Vietnamese-, and Spanish-speaking citizens of
7 the City.

8 The Complaint's cause of action under Section 203 of the
9 Voting Rights Act, 42 U.S.C. § 1973aa-1a, must be heard and
10 determined by a court of three judges pursuant to 42 U.S.C.
11 § 1973aa-2 and 28 U.S.C. § 2284.

12 According to the 2000 Census, the City of Rosemead ("the
13 City") has a total population of 53,280, of whom 16,862 (31.6%)
14 are Chinese, 6,945 (13.0%) are Vietnamese, and 21,846 (41.0%)
15 are Hispanic. The City has a total voting age population
16 ("VAP") of 38,685, of whom 12,729 (32.9%) are Chinese, 5,236
17 (13.5%) are Vietnamese, and 14,571 are Hispanic (37.7%). The
18 total citizen voting-age population ("CVAP") for the City is
19 25,550, of whom 8,196 (32.1%) are Chinese, 3,305 (12.9%) are
20 Vietnamese, and 8,921 (34.9%) are Hispanic.

21 The Census Bureau has designated the County of Los Angeles
22 as subject to the requirements of Section 203 of the Voting
23 Rights Act, for the Chinese, Vietnamese, Spanish, Korean,
24 Japanese, and Filipino languages. See 42 U.S.C. § 1973aa-
25 1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). As a
26 political unit within the County of Los Angeles, the City of
27 Rosemead is also subject to the requirements of Section 203 for
28 these languages. See 28 C.F.R. § 55.9. The City currently has



1 significant numbers of voters in the Chinese-, Vietnamese-, and
2 Spanish-speaking communities who need assistance in the election
3 process in languages other than English.

4 The City of Rosemead conducts its own municipal elections,
5 while the County of Los Angeles conducts county, state, and
6 federal elections in which voters in Rosemead also vote. The
7 allegations in the Complaint and the terms of this Consent
8 Decree apply to Rosemead's municipal elections, and any other
9 elections Rosemead has authority to conduct.

10 The Complaint states that Defendants have failed to comply
11 with the requirements of Section 203 for Chinese-, Vietnamese-,
12 and Spanish-speaking citizens residing in the City of Rosemead
13 by (1) by failing to provide an adequate number of Chinese- and
14 Vietnamese-speaking poll workers trained to assist limited
15 English proficient voters on election day; and (2) failing to
16 translate written election materials and information into
17 Chinese, Vietnamese, and Spanish (including pre-election
18 publicity relating to the time, date, and place of election;
19 information concerning voter precinct assignments; the official
20 ballot; a notice describing the rights of voters; polling booth
21 voting instructions; a sign identifying a polling place's
22 location; provisional and absentee ballot related documents; and
23 other information and written election materials).

24 To avoid protracted and costly litigation, the parties have
25 agreed that this lawsuit should be resolved through the terms of
26 this Consent Decree (hereinafter, the "Decree"). Accordingly,
27 the United States and Defendants hereby consent to the entry of
28 this Decree, as indicated by the signatures of counsel at the



1 end of this document. The parties waive a hearing and entry of
2 findings of fact and conclusions of law on all issues involved
3 in this matter.

4 Defendants are committed to comply fully with all of the
5 requirements of Section 203 in future elections and stipulate
6 that each provision of this Consent Decree is appropriate and
7 necessary.

8 Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED
9 that:

10 1. Defendants, their agents, employees, contractors,
11 successors, and all other persons or government entities
12 representing the interests of the Defendants are hereby
13 PERMANENTLY ENJOINED from failing to provide in the Chinese,
14 Vietnamese, and Spanish languages any "registration or voting
15 notices, forms, instructions, assistance or other materials or
16 information relating to the electoral process, including
17 ballots" that they provide in the English language, as required
18 by Section 203 of the Voting Rights Act, as amended. 42 U.S.C.
19 § 1973aa-1a(c). The terms of this Decree apply to all municipal
20 elections in the City of Rosemead and any other elections that
21 the City of Rosemead has authority to conduct. Whenever
22 Defendants enter into an election-related services contract with
23 another entity - whether it be a company, political subdivision,
24 political party, or some other entity - to conduct an election
25 on behalf of the City, Defendants shall require such other
26 entity to agree to abide by the terms of this Decree as if such
27 entity were a party to this Decree with the United States.

28

1 2. The City shall develop contingency plans to provide
 2 election information, materials, and oral assistance to Korean
 3 Japanese, and Filipino voters, should the need for language
 4 assistance in these communities arise in the future. Any
 5 language assistance and materials provided to these additional
 6 language minority groups shall be provided in a manner
 7 consistent with the requirements of this Decree.

8 3. Throughout the duration of this Consent Decree, any
 9 assistance provided orally in Chinese shall be in the dialect
 10 relevant to the voters being served by the Defendants.

11 Translation of Election-Related Materials

12 4. All information that is disseminated by the City of
 13 Rosemead in English about "registration or voting notices,
 14 forms, instructions, assistance, or other materials or
 15 information relating to the electoral process, including
 16 ballots," 42 U.S.C. § 1973aa-1a(c), shall also be provided in
 17 the Chinese, Vietnamese, and Spanish languages. Defendants
 18 shall ensure that English, Chinese, Vietnamese, and Spanish
 19 language election information, materials, and announcements are
 20 made equally available to voters.

21 5. Defendants shall consult with trained translators who
 22 are familiar with election terminology in Chinese, Vietnamese,
 23 and Spanish, to produce written minority-language translations
 24 of English-language election information. Defendants may
 25 satisfy this obligation by using terminology and translation
 26 provided by the Los Angeles County Registrar-Recorder/County
 27 Clerk. Defendants shall also consult in a timely manner with
 28

1 their Advisory Groups, discussed below, regarding the
2 translation of written and any audio-recorded materials.

3 6. Defendants shall adopt a checklist identifying each
4 material and written item that is provided in a minority
5 language and that the City makes available to the public at each
6 precinct. The checklist shall include with respect to each item
7 an attestation that the poll workers at the precinct posted or
8 made available to voters these minority language materials in
9 each language, or a detailed written explanation of why
10 individual items had not been posted or were not available. The
11 inspectors for each precinct must complete and sign this
12 document before the inspectors receive payment for work in the
13 election, subject to applicable state and federal law.
14 Defendants shall maintain a record of each such failure to
15 complete and sign the checklist.

16 Dissemination of Minority-Language Information

17 7. Defendants shall ensure that Chinese, Vietnamese, and
18 Spanish-language election information, materials, and
19 announcements are provided to the same extent as this
20 information, materials, and announcements are provided in
21 English. Chinese-, Vietnamese-, and Spanish-language
22 information shall be distributed in newspapers, radio, and/or
23 other media that exclusively or regularly publish or broadcast
24 information in the relevant minority language. These
25 announcements need not be identical in all respects to English-
26 language announcements, but shall be in the form, frequency, and
27 media best calculated to achieve notice and understanding equal
28

1 let each voter know the language choices of ballots available.
2 For each minority language, the City shall provide enough
3 minority language ballots to equal either at least 100 percent
4 of the number of requests in a precinct for election materials
5 in a particular minority language group or at least 100 percent
6 of the number of registered voters in a precinct whose surname
7 indicates membership in a particular group. At a minimum, the
8 City shall provide no fewer than 10 minority language ballots in
9 each language at each precinct. The parties may by written
10 agreement adjust the above described standard in light of
11 confirmed information that the actual language need in a
12 particular precinct is less or greater than that standard.

13 10. To the extent the City posts instructions on casting a
14 ballot and other information in English in the voting booth, the
15 City shall also provide that same information at least in
16 Spanish, Chinese, and Vietnamese in the voting booth.

17 11. Sample ballots and other written materials mailed to
18 voters' homes shall be provided in Spanish, Chinese, or
19 Vietnamese to voters who have requested or may request materials
20 be mailed to them in the relevant minority language. The
21 translated materials mailed to voters' homes must include all of
22 the relevant information provided in the English-language
23 materials (e.g., if the English language sample ballot booklet
24 includes the voter's polling place, the minority language sample
25 ballot booklet must include the same information), and these
26 minority-language materials must be mailed out at the same time
27 as the English-language materials.

28



1 12. To ensure that minority language voters are adequately
2 informed of their ability to obtain minority language materials,
3 the following measures shall be taken:

4 A. The City shall make Spanish-, Chinese-, and
5 Vietnamese-speaking staff available during business hours to
6 answer inquiries by minority language voters and to advise such
7 voters of the availability of minority language materials.

8 B. The City shall, with the guidance of its
9 Coordinators and Advisory Groups described below, develop a
10 contact list of all identifiable community groups serving the
11 City's Spanish-, Chinese-, and Vietnamese-speaking residents as
12 a means of effectively and efficiently distributing local
13 election information to its citizens, and solicit the assistance
14 of such groups in the distribution of minority language election
15 information.

16 C. Effective within 60 days of this order, the City
17 shall mail "notice" cards to all registered voters within the
18 City who have thus far not requested minority language materials
19 and who were born in Spanish-, Chinese-, or Vietnamese-speaking
20 countries. The "notice" cards shall inform such voters of their
21 opportunity to receive election information in a minority
22 language. The cards also shall inform language minority voters
23 of their ability to participate in the Advisory Groups discussed
24 below.

25 D. The City shall develop a program in conjunction
26 with the recommendations of the Advisory Groups to ensure
27 Spanish-, Chinese-, and Vietnamese-speaking voters are aware of
28 the availability of and receive minority language materials.



1 eligible members of the Advisory Group, discussed below, to
 2 serve as poll officials and to encourage other bilingual voters
 3 to do so. The City shall contact the Los Angeles County
 4 Registrar-Recorder/County Clerk for names of bilingual
 5 individuals who have served as poll workers in County elections.

6 17. In determining the threshold for assigning bilingual
 7 poll workers in Rosemead's municipal elections, the following
 8 factors are relevant: the historically lower voter turn-out rate
 9 for municipal elections in Rosemead as compared to County-wide
 10 elections, the differing rates of English proficiency among the
 11 minority language communities, and the extent to which Asian
 12 surname analyses of registered voters (using the Lauderdale and
 13 Kestenbaum lists of Asian surnames) undercount the true number
 14 of voters in a particular community. In light of these factors,
 15 Defendants and any entity conducting elections on Defendants'
 16 behalf, in addition to satisfying all requirements of California
 17 state law and the recommended guidelines provided by the Los
 18 Angeles County Registrar-Recorder/County Clerk, shall meet the
 19 following standards for assigning bilingual workers in
 20 Rosemead's municipal elections:

21 A. Defendants shall provide at least one Spanish-
 22 speaking poll worker for each consolidated precinct that has 100
 23 or more Spanish-surnamed voters.

24 B. Defendants shall provide at least one Cantonese
 25 or Mandarin-speaking poll worker (depending on whatever Chinese
 26 dialect is relevant for the precinct) for each consolidated
 27 precinct that has 35 or more Chinese-surnamed voters.

28

1 C. Defendants shall provide at least one Vietnamese-
2 speaking poll worker for each consolidated precinct that has 35
3 or more Vietnamese-surnamed voters.

4 D. The parties may by written agreement adjust this
5 requirement in light of confirmed information that the actual
6 language need in a particular precinct is less or greater than
7 this standard.

8 E. To avoid last-minute gaps in minority language
9 coverage at the polls on election day due to Spanish-, Chinese,
10 and Vietnamese-speaking poll workers who fail to report for
11 work, Defendants shall employ personnel trained in minority
12 language election terminology who shall be on call and available
13 to travel to a polling place not staffed by a bilingual poll
14 worker to provide any necessary assistance to a Spanish-,
15 Chinese-, or Vietnamese-speaking voter.

16 18. Signs in English, Spanish, Chinese, and Vietnamese
17 shall be posted prominently at polling places stating that the
18 relevant minority language assistance is available. At sites
19 without bilingual staff, signs in all four languages shall be
20 posted that explain how voters can obtain language assistance.

21 Election Official Training

22 19. Prior to each municipal election, Defendants shall
23 ensure that all poll workers and other election personnel are
24 trained in the following areas: the provisions of Section 203
25 of the Voting Rights Act, including the legal obligation and
26 means to make minority language assistance and materials
27 available to voters; the requirement that poll officials be
28 respectful and courteous to all voters regardless of race,

1 ethnicity, color, or language abilities; and the requirements of
2 Section 208 of the Voting Rights Act of 1965, 42 U.S.C. §
3 1973aa-6, regarding the rights of voters to the assistor of
4 their choice. The City may coordinate with other governmental
5 or non-governmental entities in ensuring that this training is
6 provided.

7 Response to Complaints About Poll Workers

8 20. Defendants, upon receipt of complaints, whether oral
9 or written, shall investigate expeditiously any allegations of
10 poll worker hostility toward minority voters or minority-
11 language speakers in any election. The results of the
12 investigation(s) conducted by the Defendants shall be reported
13 to the United States in writing within thirty days of receiving
14 the complaint. Where there is credible evidence that poll
15 workers have engaged in inappropriate treatment of voters,
16 Defendants shall remove the poll workers.

17 Program Coordinators

18 21. For each minority language group in the City needing
19 minority language election materials and assistance (currently
20 Spanish, Chinese, and Vietnamese), the City shall retain or
21 designate a Program Coordinator to coordinate the City's
22 election related assistance and materials for that particular
23 language. The City may coordinate with other governmental or
24 non-governmental entities in providing Program Coordinators for
25 its election program, and the coordinators may perform other
26 duties in addition to their election-related duties. Each
27 Program Coordinator shall speak, read, and write English and the
28 language of the minority language group for which he/she is

1 coordinating election related assistance and materials and
 2 individuals who are fluent in more than one of the covered
 3 languages may be designated as the Program Coordinator for each
 4 language group for which he/she is qualified. The City shall
 5 provide each Program Coordinator with support sufficient to meet
 6 the goals of the Program. Each Program Coordinator's
 7 responsibilities shall include coordination of translation of
 8 ballots and other election information; development and
 9 oversight of minority language publicity programs, including
 10 selection of appropriate media for notices and announcements;
 11 recruitment and assessment of minority-language proficiency of
 12 bilingual poll officials and interpreters; and managing other
 13 aspects of the Program.

14 **Advisory Groups**

15 22. The City shall form an Advisory Group for each of the
 16 City's language minority groups needing minority language
 17 materials and assistance (currently Spanish, Chinese, and
 18 Vietnamese). Each Advisory Group shall provide the City with
 19 information and assistance concerning how to provide election
 20 related materials and assistance for its language group.

21 23. Each Advisory Group shall be established and chaired
 22 by the Program Coordinator coordinating for the same minority
 23 language group. The Program Coordinator shall invite
 24 participation from all interested individuals and organizations
 25 that work with or serve the communities that speak languages
 26 other than English in Rosemead (in particular, the Spanish-,
 27 Chinese-, and Vietnamese-speaking communities) to determine how
 28 to provide effectively election materials, information, and

1 assistance to minority-language voters, and how to fill any gaps
 2 in public awareness about the City's multilingual election
 3 program due to past failures to provide accessible election-
 4 related information to minority language voters. The Program
 5 Coordinator shall provide notice of all planned meetings to each
 6 member, including the time, location, and agenda for the
 7 meeting, at least 14 days in advance, although members of the
 8 Advisory Group may agree to waive or shorten this time period as
 9 necessary. Within five working days following each meeting, the
 10 Program Coordinator shall provide a written summary to all
 11 members and to the City Clerk of the discussion and any
 12 decisions reached at the meeting. If the City Clerk decides not
 13 to implement an Advisory Group suggestion or a consensus cannot
 14 be reached with respect to such suggestion, the Clerk shall
 15 provide to the group through the Program Coordinator and
 16 maintain on file a written statement of the reasons for
 17 rejecting such suggestion.

18 24. The City shall transmit to all interested Advisory
 19 Group members copies of all election information, announcements,
 20 and notices that are provided to the electorate and general
 21 public and request that Group members share this information
 22 with others.

23 **Federal Examiners and Observers**

24 25. To monitor compliance with and ensure effectiveness of
 25 this Decree, and to protect the Fourteenth and Fifteenth
 26 Amendment rights of the citizens of the City of Rosemead, the
 27 appointment of a federal examiner is authorized for the City of
 28 Rosemead pursuant to Section 3(a) of the Voting Rights Act,

1 42 U.S.C. § 1973a(a), through August 6, 2007. On motion of the
2 United States within thirty (30) days thereafter, the agreement
3 shall be extended through the 2009 municipal elections in
4 Rosemead and thirty days thereafter.

5 26. Defendants shall recognize the authority of federal
6 observers to observe all aspects of voting conducted in the
7 polls on election day, including the authority to view poll
8 officials providing assistance to voters during voting, except
9 where the voter objects.

10 **Evaluation of Plan**

11 27. The parties recognize that regular and ongoing
12 reassessment may be necessary to provide the most effective and
13 efficient multilingual Program. Defendants shall evaluate the
14 Program after each election to determine which aspects of the
15 Program are functioning well; whether any aspects need
16 improvement; and how to effect needed improvements. The Program
17 may be adjusted at any time upon joint written agreement of the
18 parties.

19 **Retention of Documents and Reporting Requirements**

20 28. During the duration of this Decree, the City shall
21 make and maintain as public documents written records of all
22 actions taken pursuant to this Decree.

23 29. During the duration of this Decree, at least ten (10)
24 days before each municipal election held in the City, Defendants
25 shall provide to counsel for the United States, (a) the name,
26 address, and precinct designation of each consolidated precinct;
27 (b) the name and title of each poll official appointed and
28 assigned to serve at each consolidated precinct; (c) a

1 designation of whether each poll official is bilingual and any
2 minority language(s) that the official speaks; (d) copies of any
3 signs or other written information provided at polling places;
4 and (e) an electronic copy of the voter registration list to be
5 used in such election. Within thirty (30) days after each
6 election, Defendants shall provide to counsel for the United
7 States any updated report regarding changes in items (a)-(d)
8 above that occurred at the election, and provide information
9 about all complaints the City received at the election regarding
10 language or assistance issues.

11 **Other Provisions**

12 30. This Decree is final and binding between the parties
13 and their successors in office regarding the claims raised in
14 this action. This Decree shall remain in effect through August
15 6, 2007, subject to paragraph 25.

16 31. The Court shall retain jurisdiction of this case to
17 enter further relief or such other orders as may be necessary
18 for the effectuation of the terms of this agreement and to
19 ensure compliance with Section 203 of the Voting Rights Act.

20 32. Each party shall bear its own costs and fees.

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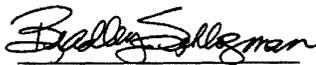


1 Agreed to this 14th day of July, 2005.

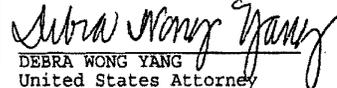
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3 AGREED AND CONSENTED TO:

4 For Plaintiff:
5 UNITED STATES OF AMERICA

6 For Defendants:

7 
8 BRADLEY J. SCHLOZMAN
9 Acting Assistant Attorney General
10 Civil Rights Division

11 
12 NANCY VALDERRAMA
13 City Clerk
14 City of Rosemead
15 8838 E. Valley Boulevard
16 Rosemead, CA 91770

17 
18 DEBRA WONG YANG
19 United States Attorney
20 MICHELE C. MARCHAND
21 Asst. United States Attorney

22 
23 ROBERT L. KRESS (SB #53925)
24 City Attorney

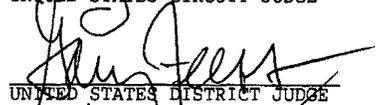
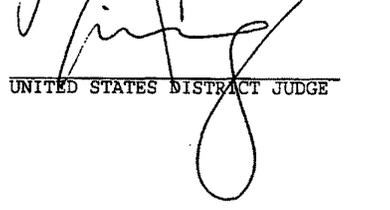
25 
26 JOHN TANNER, Acting Chief
27 AVNER SHAPIRO, Trial Attorney
28 JOHN "BERT" RUSS, Trial Attorney
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U.S. Department of Justice
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950 Pennsylvania Ave., N.W. - NWB-7254
Washington, D.C. 20530

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JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 and 42 U.S.C. § 1973aa-2 to consider the United States' claim under Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, and hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this 6th day of September 2005.


UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE

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Acting Assistant Attorney General

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13 Counsel for Plaintiff
United States of America

2005 JUL 14 AM 11:23
CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

FILED

14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
16 WESTERN DIVISION

17 UNITED STATES OF AMERICA,)
18 Plaintiff,)
19 v.)
20 CITY OF ROSEMEAD, CALIFORNIA;)
21 THE ROSEMEAD CITY COUNCIL;)
22 BILL CROWE in his official)
capacity as Rosemead)
23 City Manager; and NANCY)
VALDERRAMA in her official)
24 capacity as Rosemead City)
Clerk,)
25 Defendants.)

NO. **CV05-5131 GAF** (MANX)
THREE-JUDGE COURT
COMPLAINT

26
27
28

1 The United States of America, Plaintiff herein, alleges:

2 1. The Attorney General files this action pursuant to
3 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
4 amended, 42 U.S.C. § 1973aa-1a; 42 U.S.C. § 1973aa-2; and
5 28 U.S.C. § 2201.

6 2. The Court has jurisdiction of this action pursuant to
7 28 U.S.C. § 1345 and 42 U.S.C. § 1973aa-2. In accordance with
8 the provisions of 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284, the
9 Section 203 claim must be heard and determined by a court of
10 three judges. The events relevant to this action occurred in
11 the City of Rosemead, which is located in the United States
12 District Court for the Central District of California.

13 3. Defendant THE CITY OF ROSEMEAD ("Rosemead" or "the
14 City") is a political and geographical subdivision of the County
15 of Los Angeles and the State of California.

16 4. Defendant THE ROSEMEAD CITY COUNCIL is, pursuant to
17 state law, Rosemead's local governing body.

18 5. Defendants JAY IMPERIAL, GARY TAYLOR, MARGARET CLARK,
19 JOHN TRAN, and JOHN NUNEZ are members of the Rosemead City
20 Council. Each of these Defendants resides in Rosemead and is
21 sued in his or her official capacity.

22 6. Defendant BILL CROWE is the Rosemead City Manager. In
23 this capacity, defendant CROWE has responsibilities for the
24 administration of city affairs, including responsibilities
25 relating to the administration of voting and elections in
26 Rosemead. Defendant CROWE resides in Rosemead, and is sued in
27 his official capacity.

28

1 7. Defendant NANCY VALDERRAMA is Rosemead's City Clerk.
2 In this capacity, Defendant VALDERRAMA has responsibilities
3 concerning the administration of voting and elections in
4 Rosemead. Defendant VALDERRAMA resides in Rosemead, and is sued
5 in her official capacity.

6 8. According to the 2000 Census, the City of Rosemead has
7 a total population of 53,280, of whom 16,862 (31.6%) are
8 Chinese, 6,945 (13.0%) are Vietnamese, and 21,846 (41.0%) are
9 Hispanic. The City has a total voting age population ("VAP") of
10 38,685, of whom 12,729 (32.9%) are Chinese, 5,236 (13.5%) are
11 Vietnamese, and 14,571 are Hispanic (37.7%). The total citizen
12 voting age population ("CVAP") for the City is 25,550, of whom
13 8,196 (32.1%) are Chinese, 3,305 (12.9%) are Vietnamese, and
14 8,921 (34.9%) are Hispanic.

15 9. The Census Bureau has designated the County of Los
16 Angeles as subject to the requirements of Section 203 of the
17 Voting Rights Act for Chinese, Vietnamese, Spanish, Korean,
18 Japanese, and Filipino. See 42 U.S.C. § 1973aa-1a(b)(2); see
19 also 67 Fed. Reg. 48,871 (July 26, 2002). As a political unit
20 within the County of Los Angeles, the City of Rosemead is also
21 subject to the requirements of Section 203 for these languages.
22 See 28 C.F.R. § 55.9. The coverage determination of the Census
23 Bureau is final and non-reviewable. See 42 U.S.C. § 1973aa-
24 1a(b)(4). The City currently has significant numbers of voters
25 in the Chinese-, Vietnamese-, and Spanish-speaking communities
26 who need assistance in the election process in languages other
27 than English.
28

1 A. failing to recruit, appoint, train, and maintain
2 an adequate pool of bilingual poll officials capable of
3 providing language assistance to Chinese and Vietnamese citizens
4 with limited English proficiency, despite being provided the
5 names of experienced bilingual poll workers by Los Angeles
6 County;

7 B. failing to translate fully into Spanish, Chinese,
8 and Vietnamese election related materials used at Rosemead's
9 election sites, including but not limited to, the official
10 ballot, polling booth voting instructions, a notice reminding
11 voters to "Remove All 'Hanging Chads,'" signs used to identify
12 polling place locations, a notice describing the rights of
13 voters, a telephone card informing voters of a telephone number
14 to use for acquiring precinct location and other voting related
15 information, and provisional and absentee ballot materials;

16 C. failing to translate into Chinese and Vietnamese
17 pre-election related publicity, notices, and announcements,
18 including, but not limited to, information contained in a legal
19 notice publicizing the City election; notices concerning date,
20 time, and place of elections; notices concerning candidates for
21 election; and notices to voters of polling place assignments;

22 D. failing to translate into Spanish pre-election
23 related publicity, notices, and announcements, including, but
24 not limited to, notices concerning date, time, and place of
25 elections; notices concerning candidates for election; and
26 notices of voter polling place assignments; and

27 E. failing to provide, in a timely manner, sample
28 ballot and voter information pamphlets translated into Chinese

1 and Vietnamese to Chinese and Vietnamese voters who had formally
2 requested assistance and materials in their own languages,
3 thereby depriving these voters of an opportunity to vote by
4 mail.

5 13. Defendants' failure to provide the City of Rosemead's
6 Spanish, Chinese, and Vietnamese voters with limited English
7 proficiency with election information and assistance in their
8 respective languages, as described above, constitutes a
9 violation of Section 203.

10 14. Unless enjoined by this Court, Defendants will
11 continue to violate Section 203 by failing to provide Rosemead's
12 Spanish, Chinese, and Vietnamese citizens with limited English
13 proficiency with the Spanish, Chinese, and Vietnamese language
14 election information and assistance necessary for their
15 political participation.

16 PRAYER FOR RELIEF

17 WHEREFORE, Plaintiff the United States of America prays that
18 this Court enter an order:

- 19 (1) Declaring that Defendants have failed to provide
20 election information and assistance necessary to those
21 who require it in Spanish, Chinese, and Vietnamese in
22 violation of Section 203 of the Voting Rights Act,
23 42 U.S.C. § 1973aa-1a;
- 24 (2) Enjoining Defendants, their employees, agents, and
25 successors in office, and all persons acting in
26 concert with them, from failing to provide Spanish,
27 Chinese, and Vietnamese-language election information
28

1 and assistance to persons with limited English
2 proficiency as required by Section 203,
3 42 U.S.C. § 1973aa-1a;
4 (3) Requiring Defendants to devise and implement a
5 remedial plan to ensure that Spanish, Chinese, and
6 Vietnamese citizens with limited English proficiency
7 are able to participate in all phases of the electoral
8 process as required by Section 203 of the Voting
9 Rights Act, 42 U.S.C. § 1973aa-1a;
10 (4) Requiring Defendants to devise and implement a
11 remedial plan to ensure that, in the event that the
12 need for assistance arises in other languages subject
13 to the requirements of Section 203, the City will
14 provide election related information and materials to
15 residents needing such assistance.
16 (5) Requiring Defendants to publicize the remedial plan in
17 such a manner as to ensure its widespread
18 dissemination to Rosemead's voters; and
19 (6) Authorizing the appointment of federal examiners for
20 elections held in Rosemead pursuant to Section 3(a) of
21 the Voting Rights Act, 42 U.S.C. § 1973a(a), through
22 August 6, 2007.
23 Plaintiff further prays that this Court order such
24 additional relief as the interests of justice may require,
25 together with the costs and disbursements in maintaining this
26 action.
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1 Date: the 14th day of July, 2005

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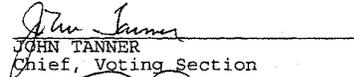
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Attorney General



BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General
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United States Attorney



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10

11 Counsel for Plaintiff
 United States of America

12

13 IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

15 UNITED STATES OF AMERICA,) CIVIL ACTION NO.
 16)
 Plaintiff,)
 17)
 v.) CONSENT DECREE, JUDGMENT,
 18) and ORDER
 SAN BENITO COUNTY, CALIFORNIA;)
 19 JOHN R. HODGES, the COUNTY)
 CLERK, AUDITOR, & RECORDER,)
 20 in his official capacity; and)
 the SAN BENITO COUNTY BOARD)
 21 OF SUPERVISORS,)
 22)
 Defendants.)
 23)

24 The United States of America filed this action pursuant to
 25 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
 26 amended, 42 U.S.C. 1973aa-1a; Section 302 of the Help America
 27 Vote Act of 2002 ("HAVA"), 42 U.S.C. 15482; 42 U.S.C. 1973aa-2;
 28 42 U.S.C. 15511; and 28 U.S.C. 2201, over violations of Section

Consent Decree, Judgment & Order

1 203 of the Voting Rights Act arising from San Benito's election
2 practices and procedures as they affect Spanish-speaking
3 citizens of the County, and violations of Section 302 of HAVA
4 arising from Defendants' failure to provide and post required
5 information at San Benito County's polling places during the
6 March 2, 2004 primary election for Federal office.

7 The Complaint's first cause of action under Section 203 of
8 the Voting Rights Act, 42 U.S.C. 1973aa-1a, must be heard and
9 determined by a court of three judges pursuant to 42 U.S.C.
10 1973aa-2 and 28 U.S.C. 2284. The second cause of action, under
11 Section 302 of HAVA, may be heard and determined by one judge.

12 San Benito County has been subject to the requirements of
13 Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, with
14 respect to Spanish language since 1975. See 40 Fed. Reg. 41,827
15 (Sept. 9, 1975). The county has been continuously covered under
16 Section 203 for Spanish until the present. See, e.g., 49 Fed.
17 Reg. 25,887 (Jun. 25, 1984); 57 Fed. Reg. 43,213 (Sept. 18,
18 1992). In the most recent determination of coverage in 2002,
19 the county's coverage was based on a determination by the
20 Director of the Census that more than 5 percent of the citizens
21 in the County are members of a single language minority group
22 (Spanish heritage or Hispanic) who do not speak English well
23 enough to participate effectively in the English-language
24 election process, and the illiteracy rate of these persons as a
25 group is higher than the national illiteracy rate. See 67 Fed.
26 Reg. 48,871 (July 26, 2002). Since 1992, the Department has
27 sent San Benito County and other jurisdictions covered under
28 Section 203 information regarding Section 203's requirements.

1 San Benito County has been subject to the requirements of
2 Section 302 of HAVA since January 1, 2004. These requirements
3 applied to the county's March 2, 2004 primary election for
4 Federal office.

5 Defendants have failed to comply with the requirements of
6 Section 203 for Spanish-speaking citizens residing in San Benito
7 County, California. The Defendants have violated Section 203
8 requirements by failing to provide for an adequate number of
9 bilingual poll workers trained to assist Spanish-speaking voters
10 on election day, and by failing to translate written election
11 materials and information into Spanish, including the official
12 ballot.

13 Defendants have also failed to comply with Section 302 of
14 HAVA during its March 2, 2004 election, by not providing written
15 information to voters as required by 42 U.S.C. 15482(a)(5)(A);
16 by not posting all information required by 42 U.S.C. 15482(b);
17 and by not informing voters who cast a rejected provisional
18 ballot the reason their vote was not counted, as required by 42
19 U.S.C. 15482(a)(5)(B).

20 To avoid protracted and costly litigation, the parties have
21 agreed that this lawsuit should be resolved through the terms of
22 this Consent Decree (hereinafter, the "Decree"). Accordingly,
23 the United States and Defendants hereby consent to the entry of
24 this Decree, as indicated by the signatures of counsel at the
25 end of this document. The parties waive a hearing and entry of
26 findings of fact and conclusions of law on all issues involved
27 in this matter.
28

1 Defendants do not contest that they have failed to provide
2 limited English proficient ("LEP") Hispanic citizens in San
3 Benito County with Spanish-language election information and
4 assistance as required by Section 203, and they do not contest
5 that they failed to provide the information required by Section
6 302 of HAVA during their March 2, 2004 primary election for
7 Federal office.

8 Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED
9 that:

10 1. Defendants, their agents, employees, contractors,
11 successors, and all other persons representing the interests of
12 the Defendants are hereby PERMANENTLY ENJOINED from failing to
13 provide in Spanish any "registration or voting notices, forms,
14 instructions, assistance or other materials or information
15 relating to the electoral process, including ballots" that they
16 provide in English, as required by Section 203 of the Voting
17 Rights Act, as amended. 42 U.S.C. 1973aa-1a(c). With the
18 exception of Paragraphs two and eight regarding HAVA
19 requirements, the terms of this Decree apply to all federal,
20 state, and local elections administered by the county, including
21 county-run elections for city, school district, and other
22 political subdivisions of the county. Whenever Defendants enter
23 into an election services contract with any other entity,
24 political subdivision, or political party to conduct an election
25 on behalf of that entity, Defendants shall require such other
26 entity to agree to abide by the terms of this Decree as if such
27 entity were a party to this Decree with the United States, and
28

1 consistent with the responsibility of each such entity to comply
2 fully with Section 203.

3 2. Defendants, their agents, employees, contractors,
4 successors, and all other persons representing the interests of
5 the Defendants are hereby PERMANENTLY ENJOINED from failing to
6 provide the information required under Section 302 of HAVA,
7 including written information to voters who cast provisional
8 ballots, the posted information required by Section 302(b), and
9 information on Defendants' free access system for voters who
10 cast provisional ballots regarding whether their ballots were
11 counted, and if not, the reasons their ballots were rejected.
12 42 U.S.C. 15482. Paragraphs two and eight of this Consent
13 Decree apply to all elections for Federal office.

14 **Translation of Election-Related Materials**

15 3. All information that is disseminated by San Benito
16 County in English about "registration or voting notices, forms,
17 instructions, assistance, or other materials or information
18 relating to the electoral process, including ballots," 42 U.S.C.
19 1973aa-1a(c), shall also be provided in the Spanish language.
20 Defendants shall ensure that both English and Spanish language
21 election information, materials, and announcements provided by
22 San Benito County are made equally available.

23 4. Defendants shall employ trained and/or certified
24 translators who are familiar with Spanish-language election
25 terminology to produce all written translations, clearly and
26 accurately. The county shall develop and maintain a glossary of
27 Spanish election terminology in consultation with bilingual
28

1 members of local Hispanic community, who will review the
2 accuracy and accessibility of the translations.

3 5. Defendants shall adopt a checklist identifying each
4 Spanish-language and bilingual material that the county makes
5 available to the public at each polling place. The checklist
6 shall include with respect to each item an attestation that the
7 poll workers at the polling place posted or made available to
8 voters these Spanish-language or bilingual materials, or a
9 detailed written explanation of why individual items had not
10 been posted or were not available. The inspectors for each
11 polling place must complete and sign this document before the
12 inspector receives payment for work in the election, subject to
13 applicable state and federal law. Defendants shall maintain a
14 record of each such failure to complete and sign the checklist.

15 **Dissemination of Spanish-Language Information**

16 6. Defendants shall ensure that Spanish-language
17 election information, materials, and announcements are provided
18 to the same extent as they are provided in English. Spanish-
19 language information shall be distributed in newspapers, radio,
20 and/or other media that exclusively or regularly publish or
21 broadcast information in Spanish. These announcements need not
22 be identical in all respect to English-language announcements,
23 but shall be in the form, frequency, and media best calculated
24 to achieve notice and understanding equal to that provided to
25 the English-speaking population and to provide substantially the
26 same information.

27 7. The official ballot and absentee ballots shall be
28 translated bilingually into both English and Spanish. Any new

1 voting system adopted by the county shall offer a bilingual
2 ballot or offer Spanish-speaking voters the readily apparent
3 option of a Spanish ballot, and any audio version of the ballot
4 on such machines shall be available in English and Spanish.

5 **Information Required Under the Help America Vote Act**

6 8. San Benito County shall comply with all applicable
7 provisions of the Help America Vote Act of 2002 (hereinafter,
8 "HAVA"). All information required to be posted in polling sites
9 by Section 302 of the Help America Vote Act of 2002
10 (hereinafter, "HAVA"), 42 U.S.C. 15482, et seq., shall be posted
11 at all polling sites and shall be in English and Spanish. This
12 information includes, but is not limited to, written information
13 given to the voter casting a provisional ballot on how they may
14 ascertain if their provisional ballot was counted, and if not,
15 the reason the ballot was not counted, see 42 U.S.C.
16 15482(a)(5)(A), and the six categories of information required
17 to be posted under 42 U.S.C. 15482(b). For example, Defendants
18 must post a sample version of the ballot that will be used for
19 that election, in English and Spanish, in each polling location.
20 See 42 U.S.C. 15482(b)(2)(A). Defendants shall provide a free
21 access system for informing voters about whether their
22 provisional ballot has been counted, and if it has been
23 rejected, the reason for the rejection. The information on this
24 system shall be available to each provisional voter in both
25 English and Spanish. See 42 U.S.C. 15482(a)(5)(B).

26 **Spanish-Language Assistance**

27 9. Spanish-language assistance shall be available at all
28 locations where election-related transactions are conducted.

1 Trained bilingual (Spanish/English) election personnel shall be
2 available to answer voting-related questions by telephone
3 without cost and during normal business hours and while the
4 polls are open on election days.

5 10. Defendants shall recruit, hire, and assign election
6 officials able to understand, speak, read, and write Spanish
7 fluently to provide assistance to Spanish-speaking voters at the
8 polls on election days. The County shall survey its employees
9 to identify personnel who speak Spanish fluently and, to the
10 extent such employees can be made available to provide
11 assistance, allow and encourage such employees to serve at the
12 polls on election day. As part of its obligation to ensure that
13 entities on whose behalf the County conducts elections are fully
14 compliant with Section 203 in their elections, the County shall
15 request that each entity for which it conducts elections perform
16 similar surveys of its employees; the County shall request that
17 each school district or other educational entity with which the
18 County contracts implements a program that allows and encourages
19 selected bilingual students (as allowed by state law and as part
20 of an educational program devised by such district) to serve as
21 poll officials on election day for all county elections,
22 including election days that fall on school days, with such
23 students receiving academic credit appropriate to their service
24 as well as all pay and benefits of poll officials; and the
25 County shall request from such entities and maintain copies of
26 all election-related materials and information created or
27 disseminated by such entities for each election. The County
28 shall advise counsel for the United States of any entity that

1 does not participate fully. The county shall also invite
2 eligible members of the Advisory Group, discussed below, to
3 serve as poll officials and to encourage other bilingual voters
4 to do so.

5 11. Any polling place in which there are 100-249
6 registered voters with Spanish surnames shall be staffed by at
7 least one bilingual election official. Any polling place in
8 which there are 250-499 registered voters with Spanish surnames
9 shall be staffed by at least two bilingual election officials.
10 Any polling place in which there are 500 or more registered
11 voters with Spanish surnames shall be staffed by at least three
12 bilingual election officials. Defendants shall employ bilingual
13 personnel, trained in Spanish-language election terminology,
14 who shall be on call and available to travel to a polling place
15 not staffed by a bilingual poll worker to provide any necessary
16 assistance to any Spanish-speaking voter.

17 12. Signs in both English and Spanish shall be posted
18 prominently at polling places stating that Spanish-language
19 assistance is available. At sites without bilingual staff,
20 signs in both English and Spanish shall be posted that explain
21 how voters can obtain Spanish-language assistance.

22 **Election official training**

23 13. Prior to each election, in addition to any required
24 state or county training, the county shall train all poll
25 officials and other election personnel present at the polls
26 regarding the following: The provisions of Section 203 of the
27 Voting Rights Act, including the legal obligation and means to
28 make Spanish-language assistance and materials available to

1 voters; the requirement that poll officials be respectful and
2 courteous to all voters regardless of race, ethnicity, color, or
3 language abilities and to avoid inappropriate comments; and the
4 provisions of Section 302 of the Help America Vote Act, as they
5 apply to elections for Federal office. In addition to the
6 general training for poll officials, the county shall train all
7 bilingual poll officials on Spanish-language election
8 terminology, voting instructions, and other election-related
9 issues. The county shall maintain a record of which poll
10 officials attend training sessions, including the time,
11 location, and training personnel involved.

12 **Response to Complaints About Poll Workers**

13 14. Defendants, upon receipt of complaints by voters,
14 whether oral or written, shall investigate expeditiously any
15 allegations of poll worker hostility toward Spanish-speaking
16 and/or Hispanic voters in any election. The results of the
17 investigation(s) conducted by the Defendants shall be reported
18 to the United States. Where there is credible evidence that
19 poll workers have engaged in inappropriate treatment of Spanish-
20 speaking and/or Hispanic voters, Defendants shall remove the
21 poll workers.

22 **Program Coordinator**

23 15. The county shall employ an individual to coordinate
24 the County's bilingual election Program ("the Coordinator") for
25 all elections within the county. The county shall provide that
26 individual with transportation and other support sufficient to
27 meet the goals of the Program. The Coordinator shall be able to
28 understand, speak, write, and read fluently both Spanish and

1 English. The Coordinator shall work under the supervision of
2 the County Clerk, Auditor, & Recorder. The Coordinator's
3 responsibilities shall include coordination of translation of
4 ballots and other election information; development of a Spanish
5 election glossary to ensure uniform use of election terminology
6 in Spanish; development and oversight of Spanish publicity
7 programs, including selection of appropriate Spanish-language
8 media for notices and announcements; recruitment and assessment
9 of Spanish-language proficiency of bilingual poll officials and
10 interpreters; and managing other aspects of the Program.

11 **Advisory Group**

12 16. The Coordinator shall establish and chair an Advisory
13 Group to assist and inform the bilingual Program. The
14 Coordinator shall invite participation from all interested
15 individuals and organizations that work with or serve the
16 Spanish-speaking community in San Benito County, to determine
17 how most effectively to provide election materials, information,
18 and assistance to Spanish-speaking voters, and to fill any gaps
19 in public awareness about the county's bilingual election
20 program due to past failures to provide accessible election-
21 related information to Spanish-speaking voters. The Advisory
22 Group shall meet at least once a month in 2004, and as the group
23 determines in 2005-2006. The Coordinator shall provide notice
24 of all planned meetings to each member, including the time,
25 location, and agenda for the meeting, at least 14 days in
26 advance. Within five days following each meeting, the
27 Coordinator shall provide a written summary to all members and
28 to the County Clerk, Auditor, & Recorder of the discussion and

1 any decisions reached at the meeting. If the County Clerk,
2 Auditor, & Recorder decides not to implement an Advisory Group
3 suggestion or a consensus cannot be reach respecting such
4 suggestion, he or she shall provide to the group through the
5 Coordinator and maintain on file a written statement of the
6 reasons for rejecting such suggestion.

7 17. The County shall transmit to all interested members of
8 the Advisory Group copies, in English and Spanish, of all
9 election information, announcements, and notices that are
10 provided to the electorate and general public and request that
11 they share with their members.

12 **Federal Examiners and Observers**

13 18. To monitor compliance with and ensure effectiveness of
14 this Decree, and to protect the Fourteenth Amendment rights of
15 the citizens of San Benito County, the appointment of a federal
16 examiner is authorized for San Benito County pursuant to Section
17 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), through
18 December 31, 2006.

19 19. Defendants shall recognize the authority of federal
20 observers to observe all aspects of voting conducted in the
21 polls on election day, including the authority to view county
22 personnel providing assistance to voters during voting, except
23 where the voter objects.

24 **Evaluation of plan**

25 20. The parties recognize that regular and ongoing
26 reassessment may be necessary to provide the most effective and
27 efficient Spanish-language Program. Defendants shall evaluate
28 the bilingual Program after each election (e.g., following 2004

1 elections) to determine which aspects of the bilingual Program
2 are functioning well; whether any aspects need improvement; and
3 how to affect needed improvements. The Program may be adjusted
4 at any time upon joint written agreement of the parties.

5 **Retention of Documents and Reporting Requirements**

6 21. During the duration of this Decree, the county shall
7 make and maintain as public documents written records of all
8 actions taken pursuant to this Decree.

9 22. During the duration of this Decree, at least ten (10)
10 days before each County-administered election held in the
11 County, Defendants shall provide to counsel for the United
12 States, (a) the name, address, and precinct designation of each
13 polling place; (b) the name and title of each poll official
14 appointed and assigned to serve at each polling place; (c) a
15 designation of whether each poll official is bilingual in
16 English and Spanish; (d) copies of any signs or other written
17 information provided at polling places or given to voters to
18 comply with Section 302 of HAVA; and (e) an electronic copy of
19 the voter registration list to be used in such elections.
20 Within thirty (30) days after each election, Defendants shall
21 provide to counsel for the United States any updated report
22 regarding changes in items (a)-(d) above that occurred at the
23 election, and provide information about all complaints the
24 county received at the election regarding language or assistance
25 issues.

26 **Other Provisions**

27 23. This Decree is final and binding between the parties
28 and their successors in office regarding the claims raised in

1 this action. This Decree shall remain in effect through
2 December 31, 2006, and the United States may within 90 days of
3 that date move to extend the Decree for good cause shown, in the
4 event of a violation of any provision contained herein by the
5 county.

6 24. The Court shall retain jurisdiction of this case to
7 enter further relief or such other orders as may be necessary
8 for the effectuation of the terms of this agreement and to
9 ensure compliance with Section 203 of the Voting Rights Act and
10 Section 302 of HAVA.

11 25. Each party shall bear its own costs and fees.
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1 Agreed to this 25 day of May, 2004.

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AGREED AND CONSENTED TO:

For Plaintiff:
UNITED STATES OF AMERICA

For Defendants:
/s/ Karen R. Forcum

KEVIN V. RYAN
United States Attorney

R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division

KAREN FORCUM
San Benito County Counsel
481 Fourth Street, 2nd floor
Hollister, CA 95023

/s/ John Bert Russ

JOSEPH D. RICH, Section Chief
JOHN TANNER, Special Litigation Counsel
JOHN "BERT" RUSS, Trial Attorney
ABEL GOMEZ, Trial Attorney
Voting Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., N.W. - NWB-7254
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JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. 2284 and 42 U.S.C. 1973aa-2 to consider the United States' claim under Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, hereby enters the relief set forth above and incorporates those terms herein. The Court hereby enters the relief set forth in this Decree, with the exception of paragraphs two and eight, which addresses only the United States' second cause of action under Section 302 of the Help America Vote Act.

ENTERED and ORDERED this 1st day of October , 2004.

 /s/Carlos Bea
UNITED STATES CIRCUIT JUDGE

 /s/Jeremy Fogel
UNITED STATES DISTRICT JUDGE

 /s/James Ware
UNITED STATES DISTRICT JUDGE

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JUDGMENT AND ORDER

The Court, having jurisdiction over plaintiff's claims under Section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482 (plaintiff's Second Cause of Action), has considered the terms of the Consent Decree set forth above and incorporates those terms herein. The Court hereby enters the relief set forth in paragraphs 2, 8, 13, 18, 19, 21, 22, 23, 24, and 25.

ENTERED and ORDERED this __1st__ day of __October_____, 2004.

/s/James Ware
UNITED STATES DISTRICT JUDGE

COPY

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11 Counsel for Plaintiff
 United States of America

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 FILED
 MAY 26 2004
 RICHARD M. WINDING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE

ADD
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12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 14 SAN JOSE DIVISION

15 UNITED STATES OF AMERICA,	)	CIVIL ACTION NO.
16 Plaintiff,	)	C04 02056
17 v.	)	<u>COMPLAINT</u>
18 SAN BENITO COUNTY, CALIFORNIA;	)	<u>THREE-JUDGE COURT REQUESTED</u>
19 JOHN R. HODGES, the COUNTY	)	<u>AS TO FIRST CAUSE OF ACTION</u>
20 CLERK, AUDITOR, & RECORDER,)	
21 in his official capacity; and)	
22 the SAN BENITO COUNTY BOARD)	
OF SUPERVISORS,)	
Defendants.)	

PVT

23 The United States of America, Plaintiff herein, alleges:

24 1. The Attorney General files this action pursuant to

25 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as

26 amended, 42 U.S.C. 1973aa-1a; Section 302 of the Help America

27 Vote Act of 2002 ("HAVA"), 42 U.S.C. 15482; 42 U.S.C. 1973aa-2;

28 42 U.S.C. 15511; and 28 U.S.C. 2201.

Complaint

1 2. Jurisdiction: The Court has jurisdiction of this
2 action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973aa-2, and 42
3 U.S.C. 15511. In accordance with the provisions of 42 U.S.C.
4 1973aa-2 and 28 U.S.C. 2284, the Section 203 claim (the first
5 cause of action) must be heard and determined by a court of
6 three judges. The second cause of action, under Section 302 of
7 HAVA, may be heard and determined by one judge.

8 3. Intradistrict Assignment: The events relevant to this
9 action occurred in San Benito County, in the San Jose Division
10 of the U.S. District Court for the Northern District of
11 California. See Civil Local Rules 3-2(c) and 3-5(b).

12 4. Defendant SAN BENITO COUNTY is a political and
13 geographical subdivision of the State of California.

14 5. Defendant JOHN R. HODGES is the County Clerk, Auditor,
15 & Recorder of San Benito County. In his capacity as county
16 clerk, Defendant Hodges has responsibilities concerning the
17 administration of voting and elections in San Benito County.
18 Defendant Hodges is a resident of San Benito County, and is sued
19 in his official capacity. He has held the position of County
20 Clerk, Auditor, & Recorder since 1983.

21 6. Defendant SAN BENITO COUNTY BOARD OF SUPERVISORS is
22 the primary budgetary authority for the county and for the
23 County Clerk, Auditor, & Recorder of San Benito County.

24 7. According to the 2000 Census, San Benito County had a
25 total population of 53,234 persons, of whom 25,516 (47.9%) were
26 Hispanic persons; and a total citizen voting-age population of
27 30,395 persons, of whom 10,765 (35.4%) were Hispanic persons.
28

1 8. According to the 2000 Census, 2,540 Hispanic voting-
2 age citizens in San Benito County were limited English
3 proficient ("LEP").

4 9. San Benito County is subject to the requirements of
5 Section 203 with respect to the Spanish language, pursuant to
6 the designation by the Director of the Census. The Director has
7 determined that more than 5 percent of San Benito County's
8 voting-age citizens are members of a single language minority
9 group (Spanish heritage or Hispanic) who do not speak or
10 understand English well enough to participate in the English-
11 language election process and have an illiteracy rate that is
12 higher than the national illiteracy rate. See 42 U.S.C. 1973aa-
13 1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). The
14 determination of the Census Bureau that San Benito County is
15 covered by Section 203 for Spanish language is final and non-
16 reviewable. See 42 U.S.C. 1973aa-1a(b)(4).

17 10. San Benito County has been continuously covered under
18 Section 203 to provide bilingual elections in Spanish since
19 September 9, 1975. See 40 Fed. Reg. 41,827 (Sept. 9, 1975); 49
20 Fed. Reg. 25,887 (Jun. 25, 1984); 57 Fed. Reg. 43,213 (Sept. 18,
21 1992); 67 Fed. Reg. 48,871 (July 26, 2002). The Department has
22 directly notified election officials, including Defendant
23 Hodges, in all jurisdictions covered under Section 203 of the
24 fact of Section 203 coverage, and has provided information
25 regarding the requirements of Section 203.

26 11. Because San Benito County is subject to the
27 requirements of Section 203, "any registration or voting notice,
28 forms, instructions, assistance, or other materials or

1 information relating to the electoral process, including
2 ballots" that Defendants provide in English must also be
3 furnished in Spanish so that Spanish-speaking voters can be
4 effectively informed of and participate in all voting-connected
5 activities. 42 U.S.C. 1973aa-1a.

6 12. Beginning on January 1, 2004, San Benito County became
7 subject to the requirements of Section 302 of HAVA, including
8 its provisions to provide written information to voters who cast
9 provisional ballots, 42 U.S.C. 15482(a)(5)(A); to post six
10 different categories of election information at the polls, 42
11 U.S.C. 15482(b); and to provide a free access system whereby
12 voters who cast provisional ballots may learn whether their
13 provisional ballot was counted, and if not, the reasons the vote
14 was rejected, 42 U.S.C. 15482(a)(5)(B).

15 **FIRST CAUSE OF ACTION**

16 13. Defendants have not provided effective election-
17 related materials, information, and/or assistance in Spanish to
18 limited English proficient Hispanic citizens as required by
19 Section 203 of the Voting Rights Act, including, but not limited
20 to, the following:

21 a. failing to recruit, appoint, train, and maintain
22 an adequate pool of bilingual poll officials capable of
23 providing Hispanic citizens with limited English proficiency
24 effective language assistance;

25 b. failing to translate into Spanish the official
26 ballot, and all election-related announcements, instructions,
27 and notices at election sites;

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1 c. failing to translate into Spanish all election-
2 related information, including but not limited to information
3 contained in legal notices publicizing elections and materials
4 available to the general public on the internet website of the
5 County Clerk, Auditor, & Recorder.

6 14. Defendants' failure to provide Spanish-speaking
7 citizens of San Benito County with Spanish-language election
8 information and assistance, as described above, constitutes a
9 violation of Section 203.

10 15. Unless enjoined by this Court, Defendants will
11 continue to violate Section 203 by failing to provide Spanish-
12 speaking citizens of San Benito County with Spanish-language
13 election information and assistance necessary for their
14 effective political participation.

15 **SECOND CAUSE OF ACTION**

16 16. In the March 2, 2004 primary election for federal
17 office, Defendants failed to comply with the following
18 requirements of Section 302 of HAVA:

19 a. Defendants did not provide written information to
20 voters who cast provisional ballots on how they are able to
21 ascertain whether their vote was counted, and if the vote
22 was not counted, the reason the vote was not counted, as
23 required by 42 U.S.C. 15482(a)(5)(A);

24 b. Defendants failed to post in each polling place all of
25 the voting information required by 42 U.S.C. 15482(b); and

26 c. Defendants' system for allowing voters to check on the
27 status of their provisional ballots did not provide the
28

1 reasons why provisional ballots were rejected, as required
2 by 42 U.S.C. 15482(a) (5) (B).

3 17. Defendants' actions as described above in Paragraph 16
4 constitute a violation of Section 302 of HAVA, 42 U.S.C. 15482.

5 18. Unless enjoined by this Court, Defendants will
6 continue to violate Section 302 of HAVA, by failing to provide
7 to voters the different types of information required under this
8 provision.

9 PRAYER FOR RELIEF

10 WHEREFORE, Plaintiff the United States of America prays that
11 this Court enter an order:

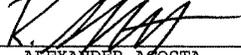
- 12 (1) Declaring that Defendants have failed to provide
13 election information and assistance necessary to those
14 who require it in Spanish for effective political
15 participation, in violation of Section 203 of the
16 Voting Rights Act, 42 U.S.C. 1973aa-1a;
- 17 (2) Declaring that Defendants have failed (a) to provide
18 to voters written information regarding their
19 provisional ballots, (b) to post necessary voter
20 information materials at each polling place, and (c)
21 to provide provisional voters with an explanation of
22 why their provisional ballots were rejected, as
23 required by Section 302 of HAVA, 42 U.S.C. 15482;
- 24 (3) Enjoining Defendants, their employees, agents, and
25 successors in office, and all persons acting in
26 concert with them, from failing to provide Spanish-
27 language election information and assistance to person
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- 1 with limited English proficiency as required by
2 Section 203, 42 U.S.C. 1973aa-1a;
- 3 (4) Enjoining Defendants, their employees, agents, and
4 successors in office, and all persons acting in
5 concert with them, from failing to comply with the
6 voter information requirements of Section 302 of HAVA,
7 42 U.S.C. 15482;
- 8 (5) Requiring Defendants to devise and implement a
9 remedial plan to ensure that Spanish-speaking citizens
10 with limited English proficiency are able to
11 understand, learn of and participate in all phases of
12 the electoral process as required by Section 203 of
13 the Voting Rights Act, 42 U.S.C. 1973aa-1a;
- 14 (6) Requiring Defendants to devise and implement a
15 remedial plan to provide to voters the information
16 required under Section 302 of HAVA, 42 U.S.C. 15482;
- 17 (7) Requiring the Defendants to publicize effectively the
18 remedial plans and programs addressing violations of
19 Section 203 of the Voting Rights Act and Section 302
20 of HAVA enumerated herein to ensure their widespread
21 dissemination of such plans and programs to San Benito
22 County's voters; and
- 23 (8) Authorizing the appointment of federal examiners for
24 elections held in San Benito County pursuant to
25 Section 3(a) of the Voting Rights Act, 42 U.S.C.
26 1973a(a), through December 31, 2006.
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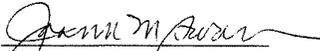
1 Plaintiff further prays that this Court order such
2 additional relief as the interests of justice may require,
3 together with the costs and disbursements in maintaining this
4 action.

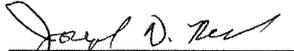
5 Date: 26th day of May, 2004

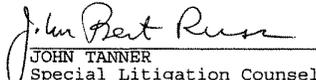
7 JOHN D. ASHCROFT
Attorney General

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11 Civil Rights Division

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13 JOANN M. SWANSON, A.U.S.A.

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Complaint

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14 Counsel for Plaintiff
 United States of America

FILED
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 DEPUTY

16 IN THE UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,) CIVIL ACTION NO.
)
 19 Plaintiff,) '04 CV 1273IEG (JMA)
)
 20 v.) COMPLAINT
)
 21 SAN DIEGO COUNTY, CALIFORNIA;)
 SALLY MCPHERSON, REGISTRAR OF)
 22 VOTERS, in her official)
 capacity; and the SAN DIEGO)
 23 COUNTY BOARD OF SUPERVISORS,)
)
 24 Defendants.)

26 The United States of America, Plaintiff herein, alleges:
 27 1. The Attorney General files this action pursuant to
 28 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as

1 amended, 42 U.S.C. §1973aa-1a; 42 U.S.C. §1973aa-2; and 28
2 U.S.C. §2201.

3 2. Jurisdiction: The Court has jurisdiction of this
4 action pursuant to 28 U.S.C. §1345 and 42 U.S.C. §1973aa-2. In
5 accordance with the provisions of 42 U.S.C. §1973aa-2 and 28
6 U.S.C. §2284, the Section 203 claim must be heard and determined
7 by a court of three judges.

8 3. Defendant SAN DIEGO COUNTY is a political and
9 geographical subdivision of the State of California.

10 4. Defendant SALLY MCPHERSON is the Registrar of Voters
11 of San Diego County. In her capacity as Registrar of Voters,
12 Defendant MCPHERSON has responsibilities concerning the
13 administration of voting and elections in San Diego County.
14 Defendant McPherson is a resident of San Diego County, and is
15 being sued in her official capacity as Registrar of Voters.

16 5. Defendant SAN DIEGO COUNTY BOARD OF SUPERVISORS is the
17 primary budgetary authority for the County and for the Registrar
18 of Voters of San Diego County.

19 6. According to the 2000 Census, San Diego County had a
20 total population of 2,813,833 persons, of whom 750,965 (26.7%)
21 were Hispanic persons and of whom 121,147 (4.3%) were of Filipino
22 heritage; and a total citizen voting-age population of 2,093,080
23 persons, of whom 476,655(22.7%) were Hispanic persons and of
24 whom 103,325(4.9%) were of Filipino heritage.

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1 11. Because San Diego County is subject to the
2 requirements of Section 203, "any registration or voting notice,
3 forms, instructions, assistance, or other materials or
4 information relating to the electoral process, including
5 ballots" that Defendants provide in English must also be
6 furnished in Spanish and Tagalog. 42 U.S.C. §1973aa-1a.

7 12. Defendants have not provided effective election-
8 related materials, information, and/or assistance in Spanish or
9 Tagalog to limited English proficient Hispanic and Filipino
10 citizens as required by Section 203 of the Voting Rights Act,
11 including, but not limited to, the following:

12 a. failing to make available in Spanish and Tagalog
13 an audible version of the ballot for the March 2, 2004 federal
14 primary election such as was made available in English for
15 voters unable to read the ballot;

16 b. failing to provide an adequate pool of bilingual
17 poll officials capable of providing Hispanic and Filipino
18 citizens with effective language assistance at certain polling
19 places where such assistance was necessary;

20 c. failing to make available in Spanish and Tagalog
21 certain election-related announcements, instructions, and
22 notices at election sites;

23 d. failing to translate into Spanish and Tagalog
24 certain election-related information, including but not limited
25 to information contained in legal notices publicizing elections
26 and materials available to the general public on the Internet
27 website of the Registrar of Voters.

28 //

1 13. Defendants' failure to provide Spanish-language and
2 Tagalog-language election information and assistance constitutes
3 a violation of Section 203.

4 14. Unless enjoined by this Court, Defendants will
5 continue to fail to comply with Section 203 in future elections
6 by failing to provide limited English proficient Hispanic and
7 Filipino citizens of San Diego County with Spanish-language and
8 Tagalog-language election information and assistance necessary
9 for their effective political participation.

10 PRAYER FOR RELIEF

11 WHEREFORE, Plaintiff the United States of America prays that
12 this Court enter an order:

13 (1) Declaring that Defendants have failed to provide
14 certain election information and assistance necessary
15 to those who require it in Spanish or Tagalog in
16 violation of Section 203 of the Voting Rights Act, 42
17 U.S.C. §1973aa-1a;

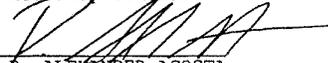
18 (2) Enjoining Defendants, their employees, agents, and
19 successors in office, and all persons acting in
20 concert with them, from failing to provide Spanish-
21 language and Tagalog-language election information and
22 assistance to persons with limited English proficiency
23 as required by Section 203, 42 U.S.C. §1973aa-1a;

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1 (3) Requiring Defendants to devise and implement a
2 remedial plan to ensure that Spanish-speaking and
3 Tagalog-speaking citizens are able to participate in
4 all phases of the electoral process as required by
5 Section 203 of the Voting Rights Act, 42 U.S.C.
6 §1973aa-1a;
7 (4) Authorizing the appointment of Federal examiners for
8 elections held in San Diego County pursuant to Section
9 3(a) of the Voting Rights Act, 42 U.S.C. §1973a(a),
10 through December 31, 2006.
11 Plaintiff further prays that this Court order such
12 additional relief as the interests of justice may require,
13 together with the costs and disbursements in maintaining this
14 action.
15 Dated this 23rd day of June, 2004.
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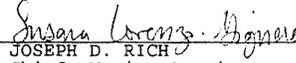
JOHN D. ASHCROFT
Attorney General

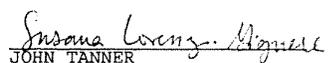


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for 
JOSEPH D. RICH
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15
16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

18	UNITED STATES OF AMERICA,	)	CASE No. 04CV1273-IEG(JMA)
19	Plaintiff,)	
20	v.	)	<u>NOTICE OF LODGMENT</u>
21	SAN DIEGO COUNTY, CALIFORNIA;	)	THREE JUDGE COURT REQUESTED
22	SALLY MCPHERSON, REGISTRAR OF	)	[42 U.S.C. §§1973aa-2]
23	VOTERS, in her official	)	[CivLR 9.2]
24	capacity; and the SAN DIEGO)	
	COUNTY BOARD OF SUPERVISORS,)	
	Defendants.)	

25
26 PLEASE TAKE NOTICE that on June 23, 2004, Plaintiff United
27 States of America, lodged the Parties' Memorandum of Agreement
28 concerning matters raised in the Complaint in this case. The

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

1 Parties have exchanged signed copies of the Memorandum of
2 Agreement and have agreed that a fully executed copy shall be
3 lodged with the Court for its information.

4 Respectfully submitted this 23d day of June, 2004.

5 JOHN D. ASHCROFT
6 Attorney General

7 R. ALEXANDER ACOSTA
8 Assistant Attorney General
9 Civil Rights Division

10 CAROL C. LAM
11 United States Attorney
12 TOM STAHL, CA Bar #078291
13 Assistant United States Attorney

14 
15 JOSEPH D. RICH
16 JOHN TANNER
17 SUSANA LORENZO-GIGUERE
18 Attorneys
19 Voting Section
20 U.S. Department of Justice
21 Civil Rights Division
22 950 Pennsylvania Avenue N.W.
23 NWB-7254
24 Washington, D.C. 20530
25 (202) 514-9822

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MEMORANDUM OF AGREEMENT

This Memorandum of Agreement ("Agreement"), effective this ____ day of June 2004, is entered into by and between the United States of America ("United States") and the County of San Diego ("County").

RECITALS

WHEREAS, County has been subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, for the Spanish language since 1992, 57 Fed. Reg. 43,213 (Sept. 18, 1992); and

WHEREAS, on July 26, 2002, the Director of the Census determined that San Diego County was covered by the Section 203 requirements both for Spanish heritage and Filipino (Tagalog-speaking) citizens; and

WHEREAS, County's coverage is based on a determination that more than 10,000 voting age citizens in San Diego County are members of each language minority group (Spanish or Hispanic heritage and Filipino) who do not speak English well enough to participate effectively in the English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate, 67 Fed. Reg. 48,871 (July 26, 2002); and

WHEREAS, since 1992, United States has sent San Diego County and other jurisdictions covered under Section 203 information regarding Section 203's requirements, and has met with County officials to discuss these requirements; and

WHEREAS, United States believes that, notwithstanding County's good faith efforts, it has not fully complied with the requirements of Section 203 for both Spanish-speaking citizens and Tagalog-speaking citizens residing in San Diego County by failing to: 1) make available in Spanish and Tagalog an audible ballot on its electronic voting machines for the March 2, 2004 federal primary election for voters unable to read the ballot; 2) provide for an adequate number of bilingual poll workers trained to assist Spanish- and Tagalog-speaking voters on election day at certain polling places where

such assistance was necessary; 3) make certain minority language materials available to all citizens who rely on such languages; and 4) translate certain election materials and information into Spanish and Tagalog; and

WHEREAS, United States and County both want to avoid litigation and have agreed that the issues raised by United States should be resolved without litigation through the terms of this Agreement; and

WHEREAS, the 2000 Census also showed a Vietnamese-speaking voting age population with limited English proficiency of 9,915, or only 85 below the 10,000 person statutory threshold, and San Diego County wishes to serve this growing community,

WHEREFORE, United States and County stipulate and agree as follows:

STIPULATION

1. County, its employees, agents, successors in office, and all persons acting in concert with them, agree to provide in Spanish and in Tagalog any "registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots" that they provide in English, as required by Section 203 of the Voting Rights Act, as amended. 42 U.S.C. 1973aa-1a(c). The terms of this Agreement apply to all federal, state, and local elections administered by County, including County-run elections for city, school district, and other political subdivisions of County. Whenever County enters into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, County shall require such other entity to agree to abide by the terms of this Agreement as if such entity were a party to this Agreement with United States, and consistent with the responsibility of each such entity to comply fully with Section 203.

Translation of Election Materials

2. County shall provide all "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," 42 U.S.C. 1973aa-1a(c), in the Spanish and Tagalog languages. County shall ensure that English, Spanish and Tagalog language election information, materials, and announcements provided by County are made equally available.

3. County shall employ trained translators who are familiar, respectively, with Spanish-language and Tagalog-language election terminology to produce clear and accurate written translations.

4. County shall develop and maintain glossaries of Spanish and Tagalog election terminology in consultation with bilingual members of the respective local minority language communities.

5. County shall adopt a checklist identifying each Spanish-language, Tagalog-language, and bilingual or multilingual material that County makes available to the public at each polling place. The checklist shall include for each item an attestation that the poll workers at the polling place posted or made available to voters these materials in both of the minority languages, or a detailed written explanation of why individual items were not posted or available. The inspectors for each polling place must complete and sign this document before the inspector receives payment for work in the election, subject to applicable state and federal law. County shall maintain a record of each failure to complete and sign the checklist.

Dissemination of Minority Language Information

6. County shall ensure that Spanish-language and Tagalog-language election information, materials, and announcements are provided to the same extent as they are provided in English. Spanish-language information shall be distributed in newspapers,

radio, and/or other media that exclusively or regularly publish or broadcast information in Spanish. Tagalog-language information shall be distributed in newspapers, radio, and/or other media that exclusively or regularly publish or broadcast information in Tagalog. These announcements need not be identical in all respect to English-language announcements, but shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information.

7. Subject to Paragraph 8 below, the official ballot and absentee ballots shall be translated bilingually into both English and Spanish, bilingually in Spanish and Tagalog, or multi-lingually; or, on electronic voting machines, shall offer the readily apparent options of a Spanish or a Tagalog ballot, and any audio version of the ballot on such machines shall be available in English, Spanish and Tagalog.

8. For the 2004 general election, County has determined that, because of time constraints and other factors, bilingual ballots cannot be produced and provided from regular, certified and proven sources and cannot be obtained from other sources without unacceptable risk of disruption of the election. County is continuing a diligent inquiry to test this determination, and shall provide to the United States a clear and detailed explanation of the specific problems and risks at issue by July 2, 2004. Accordingly, County shall, consistent with the Attorney General's minority language guidelines:

A. At each polling place identified by the existing County targeting system based on 2000 population, voter request, and voter survey as containing limited English proficient voters, and at each polling place with minority-surnamed registered voters constituting 25 percent of the number necessary for triggering a bilingual poll officials as set forth in paragraphs 14 and 26, County shall provide and make available official ballots in

Spanish and/or Tagalog appropriate to the need in such polling place, and assure that such minority language ballots are made visible and available on an equal basis with English language ballots, provided that the parties may agree to adjust this requirement in light of information that the actual language need in a particular polling place is lesser or greater than this standard;

B. At each precinct described in 8A above, County shall post and display facsimiles of the official ballot (“facsimile ballots”) in English and in the appropriate minority language(s), and County shall affix to the inside of each voting booth in such polling place clearly visible facsimile ballots in English and in each appropriate minority language(s). County shall post and display sample ballots in the appropriate minority language(s) and in English at each precinct described in 8A above, and, in addition County will make facsimile ballots readily available in English for voters to study, mark and take into the voting booth.

C. Such facsimile ballots shall contain a complete and accurate translation of the English ballot, and shall be identical in size, layout and typeface to the official ballot.

D. County shall publicize such procedures according to a program devised in consultation with the Advisory Groups. Such program shall include, among other things use of minority language media, and availability of voting machines and voting booth mock-ups at locations where minority language voters can view, test and practice such procedures.

9. Sample ballots shall be provided in English and Spanish to voters who request such materials or whose place of birth as noted on the voter registration form was

in a nation whose primary language is Spanish. Sample ballots shall be provided in English and Tagalog to voters who request such materials or whose place of birth as noted in the voter registration form was in the Philippines. Any such voter may request and receive instead a sample ballot in English only. County may send, prior to the mailing of sample ballots, a postcard inviting such voters to express a preference and “opt out” of receiving a bilingual sample ballot, subject to agreement by the United States with the form and content of such postcard.

Minority Language Assistance

10. Trained bilingual election personnel shall be available to answer voting-related questions by telephone without cost and during normal business hours and while the polls are open on election days.

11. County shall recruit, hire, and assign election officials able to understand, speak, read, and write Spanish fluently to provide assistance to Spanish-speaking voters at the polls on election days, and County shall recruit, hire, and assign election officials able to understand, speak, read, and write Tagalog fluently to provide assistance to Tagalog-speaking voters at the polls on election days.

12. County shall survey its employees to identify personnel who speak Spanish or Tagalog fluently and, to the extent such employees can be made available to provide assistance, allow and encourage such employees to serve at the polls on election day. As part of its obligation to ensure that entities on whose behalf it conducts elections are fully compliant with Section 203 in their elections, County shall request that each entity for which it conducts elections perform similar surveys of its employees;

13. County shall request that each school district or other educational entity with which County contracts to implement a program that allows and encourages selected bilingual students (as allowed by state law and as part of an educational program devised

by such district) to serve as poll officials on election day for all County elections, including election days that fall on school days, with such students receiving academic credit appropriate to their service as well as all pay and benefits of poll officials; and County shall request from such entities and maintain copies of all election-related materials and information created or disseminated by such entities for each election. County shall advise counsel for the United States of any entity that does not participate. County shall also invite eligible members of the Advisory Groups, discussed below, to serve as poll officials and to encourage other bilingual voters to do so.

14. To supplement the existing County targeting program, any polling place in which there are:

A. 100-249 registered voters with Spanish surnames according to the Bureau of the Census Spanish surname list shall be staffed by at least one Spanish speaking election official; and any polling place where there are 100-249 projected Filipino (projected from the Lauderdale and Kestenbaum Asian surname list of uniquely Filipino surnames, which captures 32 percent of all Filipinos, so that 32 such voters projects to 100), shall be staffed by at least one Tagalog speaking election official;

B. 250-499 registered voters with Spanish surnames shall be staffed by at least two Spanish-speaking election officials; and any polling place where there are 250-499 projected Filipino voters shall be staffed by at least two Tagalog speaking election officials;

C. 500 or more registered voters with Spanish surnames shall be staffed by at least three Spanish speaking election officials; and any polling place where there are 500 or more projected Filipino voters, shall be staffed by at least three Tagalog speaking election officials.

15. County shall employ bilingual personnel, trained in Spanish-language or Tagalog-language election terminology, as appropriate, who shall be on call and available to travel to a polling place not staffed by a bilingual poll worker to provide any necessary assistance to any Spanish or Tagalog speaking voter.

16. Because of the number of shared surnames among Hispanic and Filipino Americans, County shall consult members of the Advisory Group before each election and invite them to identify any necessary and appropriate variations from the formula in Paragraph 14 to more effectively and efficiently serve all minority language voters of County. Such variations may be made on written agreement of the parties.

17. Signs in English, Spanish and Tagalog shall be posted prominently at polling places stating that Spanish- and Tagalog-language assistance is available. At sites without bilingual staff, signs in English, Spanish and Tagalog shall be posted that explain how voters can obtain Spanish- or Tagalog-language assistance.

Election official training

18. Prior to each election, in addition to any required state or county training, County shall train all poll officials and other election personnel present at the polls on the legal requirements of Section 203 of the Voting Rights Act, including making minority language assistance and materials available to voters; and being respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities. In addition to the general training for poll officials, County shall train all bilingual poll officials on Spanish- or Tagalog-language election terminology, voting instructions, and other election-related issues. County shall maintain a record of which poll officials attend training sessions, including the time, location, and training personnel involved.

Response to Complaints About Poll Workers

19. County, upon receipt of complaints by voters, whether oral or written, shall investigate expeditiously any allegations of poll worker hostility toward minority-language voters in any election. The results of the investigation(s) conducted by County shall be reported to the United States. Where there is credible evidence that poll workers have engaged in inappropriate treatment of such voters, County shall remove the poll workers.

Program Coordinator

20. County shall employ an individual to coordinate County's Spanish language election Program ("the Spanish Coordinator"), and an individual to coordinate County's Tagalog language election Program ("the Tagalog Coordinator"), for all elections within County. County shall provide each Coordinator with transportation and other support sufficient to meet the goals of each Program. The Spanish Coordinator shall be able to understand, speak, write, and read fluently both Spanish and English, and the Tagalog Coordinator shall be able to understand, speak, write, and read fluently both Tagalog and English. Each Coordinator shall work under the supervision of the Registrar of Voters. Each Coordinator's responsibilities shall include: coordination of translation of ballots and other election information; development of an election glossary to ensure uniform use of election terminology in Spanish or Tagalog; development and oversight of Spanish or Tagalog publicity programs, including selection of appropriate minority language media for notices and announcements; recruitment and assessment of the minority language; proficiency of bilingual poll officials and interpreters; and managing other aspects of the respective Programs.

Advisory Group

21. Each Coordinator shall establish and chair an Advisory Group to assist and inform each bilingual Program. Each Coordinator shall invite participation from all interested individuals and organizations that work with or serve, respectively, the Spanish-speaking and Tagalog-speaking communities in San Diego County, to determine how most effectively to provide election materials, information, and assistance to minority language voters, and to publicize County's minority language election program. Each Advisory Group shall be open to any interested person or organization. Each Advisory Group shall meet at least once a month in 2004, and as each group determines is necessary in 2005-2006. Each Coordinator shall provide notice of all planned meetings to each member, including the time, location, and agenda for the meeting, at least 14 days in advance of such meeting, although members of the Advisory Group may agree to waive or shorten this time period as necessary. Within five days of each meeting, the Coordinator shall provide a written summary to all members and to the Registrar of Voters of the discussion and any decisions reached at the meeting. If the Registrar of Voters decides not to implement an Advisory Group suggestion or a consensus cannot be reached respecting such suggestion, the Registrar shall provide to the group through the appropriate Coordinator and maintain on file a written statement of the reasons for rejecting such suggestion.

22. County shall transmit to all interested members of each Advisory Group copies, in English and Spanish or in English and Tagalog, as appropriate, of all election information, announcements, and notices that are provided to the electorate and general public and request that the members share such information with their members or clientele.

Evaluation of Plan

23. The parties recognize that regular and ongoing cooperation and reassessment may be necessary to provide the most effective and efficient Spanish-language and Tagalog-language Programs. County shall evaluate each bilingual program after each election (e.g., following 2004 elections) to determine which aspects of such bilingual program are functioning well; whether any aspects need improvement; and how to make needed improvements. The United States shall be available to meet with County following each election to share information it learned through its federal examiners and observers or through other sources which will assist County in its ongoing reassessment pursuant to the Section. Either program may be adjusted at any time upon written agreement of the parties.

Retention of Documents and Reporting Requirements

24. During the duration of this Agreement, County shall make and maintain as public documents written records of all actions taken pursuant to this Agreement.

25. During the duration of this Agreement at least ten (10) days before each County-administered election held in the County, County shall provide to counsel for the United States a list of polling places to be used for such election, the number of poll official appointed and assigned to serve at each polling place who are bilingual, respectively, in English and Spanish and Tagalog; and the number of Spanish-surnamed and Filipino-surnamed voters on the registration list for each precinct and polling place. Within thirty (30) days after each election, County shall provide to counsel for the United States any updated report regarding changes, in these items that occurred at the election, and provide information about all complaints County received at the election regarding language or assistance issues. Unless otherwise specified, or as may be changed from time to time, all reports, notices or any other written communications required to be

submitted under this Agreement shall be sent to the undersigned counsel at the Department of Justice at the following address:

Voting Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., N.W. – NWB-7254
Washington, D.C. 20530
Facsimile: (202) 307-3961

Voluntary Vietnamese Program

26. In addition to the actions to be undertaken by County, as set forth above, and notwithstanding that County is not at this time obligated under Section 203 of the Voting Rights Act to take such actions, County agrees to the following provisions, which shall be binding consistent with Paragraph 1 of this Agreement:

A. County shall perform all of the terms and conditions of Paragraphs 2 through 25 above, as they relate to Vietnamese voters, for elections in 2006, and for the November 2004 general election except as limited or defined herein;

B. With respect to paragraph 14 of the Agreement, County shall provide poll officials similarly fluent in Vietnamese and English at each polling place with 32 or more Vietnamese surnamed voters according to the Lauderdale and Kestenbaum surname list, with proportionate assignment of a second (80) or third (160) bilingual official;

C. With respect to the translation and dissemination of election materials for the November 2004 general election, County shall perform all of the terms and conditions of paragraphs 2 through 24 above to the extent possible; however, the parties acknowledge the practical constraints of time

for achieving complete translation of all materials; County shall provide in Vietnamese the following documents, posters and notices:

Voter Registration Affidavit

Official Ballot

Sample Ballot (w/out Voter Information Pamphlet)

California Official Voter Information Guide (State Pamphlet)

Voting Instructions to Absentee Voters

HAVA I.D. Instructions to Absentee Voters

Voting Instructions at the Polls

Provisional Voting Information

ID Badges

Telephone Cards (provides info on how to reach language assistance at the ROV)

Posters:

The Law

No Smoking

We Speak Vietnamese

Bilingual Poll Worker Recruitment Sign

Bilingual Voter Assistance Notice (used for voters to ask for language assistance)

Hours of Voting

Notices:

Notice of Argument Deadline

List of Polls and Officers

Where constraints of time and other practical obstacles arise that interfere with the full translation of all materials and information, County promptly shall advise the Vietnamese Advisory Group members and counsel for the United States of the details of such obstacles and solicit reasonable practicable means to disseminate such information.

Other Provisions

27. This Agreement shall remain formally in effect through March 31, 2007. San Diego County shall continue after that date to comply fully with all of its obligations under the Voting Rights Act.

28. The United States agrees to provide at least fourteen days written notice to County prior to any action to enforce this Agreement, and such notice only shall be given after County has had an opportunity to prepare, offer and discuss a plan or program adjustment to come into compliance with the provisions of this Agreement as permitted in paragraph 23, above.

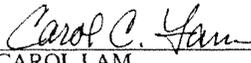
29. This Agreement may only be modified by written agreement of the Parties.

Agreed to this 23rd day of June, 2004.

AGREED TO:

For UNITED STATES OF AMERICA

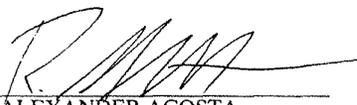
For COUNTY OF SAN DIEGO:



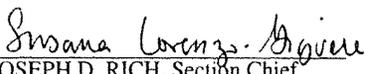
CAROL LAM
United States Attorney



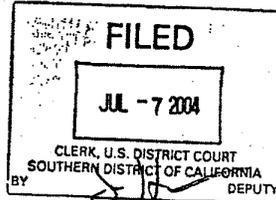
JOHN SANSONE, County Counsel
1600 Pacific Highway, Room 355
San Diego, California 92101



R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division



JOSEPH D. RICH, Section Chief
JOHN TANNER, Special Litigation Counsel
SUSANA LORENZO-GIGUERE, Trial Attorney
Voting Section
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., N.W. - NWB-7254
Washington, D.C. 20530



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
SAN DIEGO COUNTY, CALIFORNIA;
SALLY MCPHERSON, REGISTRAR OF
VOTERS, in her official capacity; and
the SAN DIEGO COUNTY BOARD
OF SUPERVISORS,
Defendants.

Civil No. 04CV1273-JEG(JMA)

STIPULATION TO EXTEND TIME TO
RESPOND TO COMPLAINT AND FOR
APPOINTMENT OF FEDERAL
EXAMINERS
AND INTERLOCUTORY ORDER THEREON

THREE JUDGE COURT REQUESTED
[42 U.S.C. §§ 1973aa-2]
[CivLR 9.2]

COME NOW THE PARTIES, by and through their undersigned counsel, and hereby stipulate as follows:

1. This matter involves a Complaint under Section 203 of the Voting Rights Act with respect to the provision of Spanish and Tagalog (Filipino) language materials and information to voters with limited English proficiency who need such materials to participate effectively in the political process.

2. The Defendants' Answer or other response to the Plaintiff's Complaint is due to be filed on or about July 14, 2004.

3. To allow time to accomplish complete resolution of this matter, the parties agree that the time for Defendants to Answer or otherwise respond to the Complaint shall be extended to March 31, 2007.

//

cc: ALL PARTIES,
JUDGE GONZALEZ, JUDGE LORENZ,
CIRCUIT JUDGE McKEOWN, MAG. ADLER 7

1 a period allowing analysis and discussion following the 2006 federal general election, or until 20 days
2 after a motion by either party.

3 4. The parties are working productively toward a complete resolution of all issues involved in
4 this matter, and jointly seek additional time to accomplish such a resolution without litigation. The
5 parties have as an interim matter reached a Memorandum of Agreement ("Agreement"), a copy of which
6 shall be provided to the Court.

7 5. The Agreement addresses, among other things, allegations concerning matters affecting
8 minority language voters that have occurred inside some San Diego County polling places, including
9 instances in which translated materials provided by the Registrar of Voters were not posted and/or made
10 readily available to Spanish and Tagalog speaking voters who needed such materials.

11 6. San Diego County and the Registrar of Voters agree to and affirmatively seek by interlocutory
12 order the certification of San Diego County for the appointment of Federal examiners pursuant to
13 Section 3a of the Voting Rights Act, 42 U.S.C. §1973a(a), and the consequent authority to assign Federal
14 observers through the 2006 Federal general election, as necessary and appropriate so that the County
15 better can ensure that the rights of all voters will be protected in future elections.

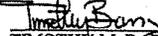
16 7. If the Defendants fulfill their obligations under the Agreement consistent with the provisions
17 of the Voting Rights Act, the Plaintiff will move to dismiss the Complaint pursuant to Rule 41(a)1 of
18 the Federal Rules of Civil Procedure on or about the end of the period of this extension.

19 IT IS SO STIPULATED:

20 DATED: June 23, 2004

DATED: June 23, 2004

21 CAROL C. LAM
22 United States Attorney


TIMOTHY M. BARRY
Senior Deputy County Counsel
Counsel for Defendants

23 R. ALEXANDER ACOSTA
24 Assistant Attorney General
Civil Rights Division

25 
26 JOSEPH D. RICH
JOHN TANNER
27 SUSANA LORENZO-GIGUERE
Attorneys, Voting Section
28 U.S. Department of Justice
Civil Rights Division

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**GOOD CAUSE APPEARING FROM THE STIPULATION OF THE PARTIES,
IT IS HEREBY ORDERED THAT**

The time for filing the Answer or other response to the Complaint in this matter is extended to March 31, 2007, or 20 days following a motion by either party.

IT IS FURTHER ORDERED THAT

The appointment of Federal examiners by the Director of the Office of Personnel Management is authorized for San Diego County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a) for a period through December 31, 2006.

DATED: July 6, 2004

M. Margaret McKeown
United States Circuit Judge

July 6, 2004

Anna E. Gonzalez
United States District Judge

July 6, 2004

William J. Lewis
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

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90 MAY 17 AM 8:38

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF NEW MEXICO,)
 et al.,)
)
 Defendants.)

Robert M. Marshall
CLERK-SANTA FE

Civil Action No.
88-1457-SC

ENTERED ON DOCKET
5-17-90

ORDER

The parties to this action have agreed to resolve this lawsuit by Settlement Agreement, subject to its approval by the Court and conditioned upon the parties devising a Native American Election Information Program to be filed with the Court within 30 days of the filing with the Court of the Settlement Agreement. Accordingly, the Court having considered the terms and provisions of the Settlement Agreement;

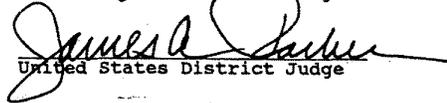
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Settlement Agreement is HEREBY APPROVED and ENTERED as the Judgment of the Court. Upon the filing with the Court of the Native American Election Information Program, this case shall be DISMISSED without prejudice, subject to being reactivated by the United States in the event defendants do not comply with any of the terms and provisions of the Settlement Agreement or the Native American Election Information Program during the time period prescribed in the Settlement Agreement. To reactivate this case to its status at the time of this Order, all that is

required of the United States is the filing of a motion to
reactivate.

So Ordered this 17th day of May, 1990.


United States Circuit Judge


United States District Judge


United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

90 MAR 28 PM 4:02

Robert M. Marshall
CLERK-ALBUQUERQUE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
STATE OF NEW MEXICO; REBECCA)
VIGIL-GIRON, New Mexico)
Secretary of State; SANDOVAL)
COUNTY, NEW MEXICO; SANDOVAL)
COUNTY BOARD OF COUNTY)
COMMISSIONERS; TOM SWISSTACK,)
Chairman of the Sandoval)
County Board of County)
Commissioners; SEFERINO MONTOYA)
and UBALDO LOVATO, members)
of the Sandoval County Board)
of County Commissioners; SALLY G.)
PADILLA, Sandoval County Clerk,)
)
Defendants.)

CIVIL ACTION NO.
88-1457-SC

SETTLEMENT AGREEMENT

1. This action was brought by the United States on December 5, 1988, pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 1973 aa-1a, and 28 U.S.C. 2201.
2. This Court has jurisdiction of this action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973 j(d) and 42 U.S.C. 1973 aa-2.
3. The Attorney General of the United States is authorized to bring this action pursuant to 42 U.S.C. 1973 aa-2 and 42 U.S.C. 1973 j(d).
4. The state defendants are the State of New Mexico and Rebecca Vigil-Giron, New Mexico Secretary of State. The county defendants are Sandoval County, New Mexico; the Sandoval County Board of County Commissioners; Tom Swisstack, Chairman of the

Sandoval County Board of County Commissioners; Seferino Montoya and Ubaldo Lovato, members of the Sandoval County Board of County Commissioners; and Sally G. Padilla, Sandoval County Clerk.

5. The State of New Mexico and Sandoval County, acting through its public officials, conduct public elections within Sandoval County and provide information and materials respecting such elections for distribution to voters.

6. The defendants have authority and responsibility for compliance, by the State of New Mexico and the County of Sandoval, with the Voting Rights Act in their respective jurisdictions. The individually named defendants are officers of the executive branches, respectively, of the state and county and have been sued in their official capacity only.

7. On January 15, 1988, the Attorney General of the United States through William Bradford Reynolds, Assistant Attorney General, notified the State of New Mexico and Sandoval County of its intention to file suit to enforce Sections 2 and 203 of the Voting Rights Act with respect to the voting rights of American Indians in Sandoval County, New Mexico. After unsuccessful settlement negotiations between the parties, the United States filed suit against defendants on December 5, 1988. Defendants filed their answer to the United States' complaint on January 17, 1989.

8. According to the 1980 census, the Director of the Census has determined that the number of Keres-speaking American Indians in Sandoval County makes Sandoval County a jurisdiction

subject to the minority language requirements of Section 203 of the Voting Rights Act for the Keres-speaking American Indians of Sandoval County. 49 Fed. Reg. 25887 (1984). The Keres-speaking American Indians of Sandoval County reside in the Pueblos of Santo Domingo, Cochiti, San Felipe, Santa Ana and Zia.

9. The defendants are not subject to the minority language requirements of Section 203 of the Voting Rights Act with respect to the Navajo-speaking, Tiwa-speaking and Towa-speaking American Indians of Sandoval County. Section 2 of the Voting Rights Act, 42 U.S.C. 1973, however, prohibits implementation in the electoral process of any standard, practice or procedure which results in discrimination on the basis of membership in a language minority group.

10. The parties agree that the conduct of public elections within Sandoval County and provision of information and materials respecting such elections for distribution to voters implicate legal rights of American Indians residing in Sandoval County secured and protected by the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, et seq. The parties entering into this Settlement Agreement recognize these statutory interests and, for the purpose of avoiding protracted, expensive and adversarial litigation, agree to the provisions of this Settlement Agreement. This Settlement Agreement provides for procedures that the United States deems statutorily required and defendants have agreed to implement such procedures.

11. In entering into this Settlement Agreement, the defendants do not admit any violation of law and this Settlement Agreement may not be used as evidence of liability in this or any other legal proceeding.

12. This Settlement Agreement shall be applicable to and binding upon all of the parties and their officers, agents, employees, assigns and successors as to all the facts, claims and issues raised in or underlying the plaintiff's complaint.

13. The United States represents that counsel for the AIPC has been consulted and has had significant input in the development of the terms and provisions of this Settlement Agreement. If the AIPC's motion to intervene is granted, and if the parties devise and timely file with the Court the Native American Election Information Program, counsel for the AIPC represents, as evidenced by his signature below, that the issues raised in Count I of the AIPC's Complaint-In-Intervention will become moot.

I. NATIVE AMERICAN ELECTION INFORMATION PROGRAM

1. Sandoval County agrees to employ one full-time Native American Voting Rights Coordinator who shall be bilingual in the Keres and English languages. In addition, Sandoval County agrees to employ one Native American Voting Rights Coordinator, during the nine months preceding any general election, who shall be bilingual in the Navajo and English languages. The county or state shall contract for or assign a Native American Voting Rights Coordinator, bilingual in the Navajo and English

languages, for the period from December 1 of even-numbered years through March 1 of the succeeding odd-numbered years to coordinate the election information programs for Cuba Independent School District elections. The aforementioned county voting coordinators will be trained in election procedures and coordinate the Native American Election Information Programs in the county.

2. The State of New Mexico agrees to employ, effective upon filing with the Court of the Native American Election Information Program to be devised by the parties, in the office of the Secretary of State, one full-time Native American Voting Rights Director who shall oversee all of the state's Voting Rights Act programs. In addition, the State of New Mexico agrees to employ, in the office of the Secretary of State, during the nine months preceding any general election, three Native American Voting Rights Coordinators, one each for the Pueblo Indians, Navajo Indians and Jicarilla Apache Indians of New Mexico.

3. Sandoval County and the State of New Mexico agree to adopt and fully and faithfully implement during the life of this Settlement Agreement a Native American Election Information Program, which will be administered by the four Pueblo and Navajo Voting Rights Coordinators identified in this Settlement Agreement, to disseminate election related information to the Native American populations of Sandoval County. The Native American Election Information Program shall be provided consistent with the terms set forth in this Settlement Agreement.

This program will provide information as to all election related matters including registration, election dates, candidate information, proposition information, absentee voting information, and registration cancellation and reinstatement information. The program shall be developed between the parties as a document separate from this Settlement Agreement but which shall be filed with the Court within thirty (30) days of the filing with the Court of this Settlement Agreement. The program shall include, inter alia, the following provisions;

A) Sandoval County shall invite voter registration of Native Americans by increasing voter registration information and by promoting an increase in both the number and practical availability of Native American deputy registration officers.

B) Sandoval County, by and through its county voting coordinators, will offer to train all county deputy registration officers and county election board officials, including translators.

C) Election related materials and announcements made available in English by the state and county, shall be made available in the Keres and Navajo Indian languages on audio tapes at Keres-speaking Pueblo community centers and Navajo chapter houses, respectively. Sandoval County, by and through its county voting coordinators, shall make other reasonable efforts to disseminate such information to non-Keres-speaking Pueblos in accordance with the Native American Election Information Program.

D) Telephone inquiries from deputy registration officers, Indian voting coordinators or designated tribal officials to county and state offices respecting election related matters shall be considered official government business and telephone charges may either be reversed or a toll free number provided.

E) Radio announcements or television announcements, or both, in the Keres and Navajo languages concerning deadlines for state voter registration, voter registration sites, dates of primary and general elections, lists of offices to be elected and ballot propositions, procedures and deadlines for becoming a candidate, and the availability of trained translators at the polls will be distributed to agreed upon radio or television stations, or both, for broadcast.

F) The county shall supply applications for absentee ballots to all deputy registration officers, county voting coordinators and designated Pueblo and Navajo chapter officials. The county will offer educational programs, designed in consultation with Indian officials in the county, to promote the proper use of the absentee ballot process by Pueblo and Navajo citizens of Sandoval County. It shall be sufficient for voters on the reservations to have their absentee ballot application witnessed only by another registered voter. County voting coordinators shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk, to witness absentee ballots, and to accept

completed absentee ballots from eligible voters for delivery to the county clerk.

G) After each general election and on or before February 15 following the general election, the County Clerk shall prepare a list of all persons to be cancelled from the voting list for failure to vote and such lists shall be provided to each Sandoval County Pueblo and Navajo chapter house. The county shall assist officials from the Pueblos and Navajo chapter houses of Sandoval County to notify and encourage persons who would otherwise be cancelled, to validate their registration or, if cancelled, to re-register to vote. The county shall also prepare for distribution to agreed upon radio or television stations, or both, for broadcast, information concerning the cancellation process in the applicable Keres or Navajo language. The parties agree to attempt to develop additional procedures in the Native American Election Information Program, consistent with state law, to facilitate that voters resident in the county and wishing to remain registered, but who have not returned purge notices to the county, do not have their registration cancelled.

4. If the parties fail to devise and file with the Court the Native American Election Information Program within the 30 day period described in subparagraph 3 above, discovery shall resume under the present schedule and this Settlement Agreement shall be vacated and set aside in all respects. The time within which the parties must file the Native American Election

Information Program with the Court shall be extended for good cause and only upon joint motion of the parties.

II. CONSTRUCTION AND IMPLEMENTATION

1. The state and county will maintain such records as may be appropriate to permit review of the effectiveness of the program and to assist the state and county in further developing the effectiveness of this program. Copies of any or all such records shall be forwarded to the United States upon its request, within 20 days of receipt of such request.

2. A sound concern for efficiency counsels the parties to avoid any procedures or expenditures which prove on the basis of experience to be ineffective or unnecessary. Accordingly, if the Native American Election Information Program cannot be fully and effectively implemented at a particular Pueblo or Navajo chapter house, the parties shall confer in good faith with agreed-upon representative(s) of the particular Indian tribe in an effort to resolve any problems. If such problems cannot be resolved, the parties agree that the state and county shall be relieved of their obligation to perform those aspects of the program to which objections from the particular Pueblo or Navajo chapter remain. Where, based on experience and after consultation between the parties, a particular aspect of the Native American Election Information Program proves ineffective and the parties have conferred in good faith to resolve such aspect of the program which has proven ineffective, the state and county may modify that aspect of the program. Any modification made to the Native

American Election Information Program pursuant to this paragraph shall be served on the United States and filed with the Court.

3. The parties state and agree that no provision herein nor any provision of the program to be implemented by the parties shall require any revisions of the laws of the State of New Mexico. The New Mexico Secretary of State may, as provided by law, issue such rules and regulations as are necessary to effectuate the terms and provisions of this Settlement Agreement, providing such rules and regulations do not controvert the laws of the State of New Mexico.

4. The state and county, for the period of time during which the Court has jurisdiction, shall provide adequate budgetary appropriations to accomplish the hiring of the employees provided herein and to implement the programs and provisions those employees will administer. For the 1990-1991 fiscal year, the state and county have budgeted \$100,000 and \$50,000, respectively, in order to implement the Native American Election Information Program to be devised by the parties. The parties agree that the budgeted amount for the 1990-1991 fiscal year should be sufficient to implement the Settlement Agreement during said fiscal year.

III. TERMINATION OF JURISDICTION

1. This case shall be dismissed as against the state defendants on December 31, 1990. Such dismissal shall be without prejudice, and the Court's jurisdiction as to the state defendants shall be terminated at that date.

2. Plaintiff may refile this action against the state defendants, after December 31, 1990, only if the state defendants have both failed to comply fully with the program filed with this Court and have otherwise failed to accomplish the objectives of the program through other means.

3. This case shall be dismissed as against the county defendants on June 30, 1993, after the county defendants have fully and faithfully implemented all provisions of the Native American Election Information Program during the period set forth herein. Dismissal shall be upon motion by the county defendants which, if the county defendants have fully and faithfully implemented all those provisions of the Native American Election Information Program during the period set forth herein, will be unopposed. Such dismissal shall be without prejudice, and the Court's jurisdiction as to the county defendants shall be terminated at that date. If the provisions of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, expire by reason of Congressional inaction or repeal, or the Director of the Census determines that, based upon the 1990 Census, Sandoval County is no longer subject to the minority language requirements of Section 203 for the Keres-speaking American Indians of Sandoval County, the county defendants may move the Court for modification of this Settlement Agreement.

4. Plaintiff may refile this action against the county defendants, after June 30, 1993, only if the county defendants have both failed to comply fully with the program filed with the

Court and have otherwise failed to accomplish the objectives of the program through other means.

5. The United States and the defendants agree to bear their own costs and attorney fees in this litigation.

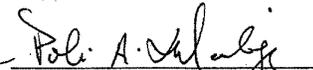
6. The parties agree that upon entry of an order approving the within Settlement Agreement, pending discovery shall be stayed. The August 6, 1990, trial date shall be vacated upon the filing with the Court of the Native American Election Information Program.

Approved as to form and content:

FOR THE STATE OF NEW MEXICO:

FOR THE UNITED STATES OF AMERICA:


REBECCA VIGIL-GIRON
Secretary of State
State of New Mexico

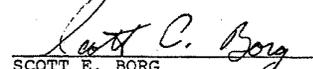

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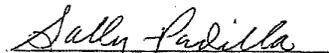

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FOR THE COUNTY OF SANDOVAL:

FOR THE ALL INDIAN PUEBLO
COUNCIL:


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SALLY PADILLA
Sandoval County Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
STATE OF NEW MEXICO; REBECCA)
VIGIL-GIRON, New Mexico)
Secretary of State; SANDOVAL)
COUNTY, NEW MEXICO; SANDOVAL)
COUNTY BOARD OF COUNTY)
COMMISSIONERS; TOM SWISSTACK,)
Chairman of the Sandoval)
County Board of County)
Commissioners; SEFERINO MONTOYA)
and UBALDO LOVATO, members)
of the Sandoval County Board)
of County Commissioners; SALLY G.)
PADILLA, Sandoval County Clerk,)
)
Defendants.)

CIVIL ACTION NO.
88-1457-SC

NATIVE AMERICAN ELECTION INFORMATION PROGRAM

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UNITED STATES OF AMERICA

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NATIVE AMERICAN ELECTION INFORMATION PROGRAM

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I. INTRODUCTION

This action was initiated by the United States pursuant to Sections 2 and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 and 1973aa-1a. By a Settlement Agreement filed with the Court on March 28, 1990, the parties agreed to devise and file with the Court, on or before April 27, 1990, a comprehensive Native American Election Information Program to disseminate election related information to the Native American population of Sandoval County. In accordance with the terms of the Settlement Agreement, the parties have conferred and devised the Native American Election Information Program (NAEIP) described herein. Upon the filing with the court, the state and county shall forthwith begin implementation of the NAEIP.

II. THE ELECTION INFORMATION PROGRAM

A. County Voting Rights Coordinators

1. Sandoval County shall employ at least two Native American Voting Rights Coordinators who will coordinate the Native American Election Information Program in the county. One of the voting rights coordinators shall be bilingual in Keres and English and shall be hired as a full-time position for at least the life of the Settlement Agreement (see Section III, Paragraph 3 of the Settlement Agreement). A second voting rights coordinator shall be bilingual in Navajo and English and shall be hired for no less than 9 months preceding each general election for at least the life of the Settlement Agreement (see Section III, Paragraph 3 of the Settlement Agreement). In addition, the

county or state shall contract for or assign a voting rights coordinator, bilingual in the Navajo and English languages, for the period from December 1 of even-numbered years through March 1 of the succeeding odd-numbered years for at least the life of the Settlement Agreement (see Section III, Paragraph 3 of the Settlement Agreement), to coordinate the election information programs for Cuba Independent School District elections.

2. The Pueblo and Navajo voting rights coordinators shall be hired by the county after consultation with the All Indian Pueblo Council (AIPC), Navajo Tribal officials of Sandoval County, and the United States. To that end, the three Sandoval County Navajo Chapter presidents, collectively, and the AIPC shall each recommend for the respective position, and the county shall seriously consider, two persons for employment for each voting rights coordinator position, but the county may in its discretion hire other qualified applicants. The Navajo voting rights coordinators may, for convenience, be located principally in Cuba or one of the majority Navajo Indian precincts. The salaries for these voting rights coordinators shall be in accordance with the personnel ordinance of Sandoval County.

3. Sandoval County shall develop job descriptions for each voting rights coordinator, in consultation with the AIPC, the Navajo Elections Administration (NEA) and/or Navajo tribal officials of Sandoval County, and the United States.

4. The voting rights coordinators shall be trained by the state and county in all aspects of the election process, shall

attend all election seminars conducted by the Secretary of State and Sandoval County Clerk, and shall be appointed county deputy registration officers. Voting rights coordinators shall be fully briefed by the county clerk and/or state Director of the Bureau of Elections, as appropriate, concerning their duties and responsibilities under this election information program. Representatives of the AIPC and the NEA and/or Navajo tribal officials of Sandoval County, as appropriate, and the United States shall be available to assist election officials in these briefings.

5. The voting rights coordinators shall, under the supervision of the county clerk, oversee the county's Native American Election Information Program generally and visit on a regular basis, but not less than three times prior to each primary, general and school board election, each Pueblo community center and each Navajo chapter located in whole or in part in the county. In addition, the county voting rights coordinators shall engage in reasonable efforts to disseminate election information concerning other county-wide elections which shall include at least one visit to each Pueblo community center and each Navajo chapter house located in whole or in part in the county. Voter education programs conducted during such visits shall include instruction, as appropriate, on at least the following topics: voter registration; absentee voting procedures; voter purge; candidate qualification; voting procedures and operation of voting machines.

6. The voting rights coordinators, or other county officials, shall maintain a record of the date and purpose of each visit for election-related purposes to each Pueblo community center, Navajo chapter house, or other sites on the Pueblo and/or Navajo Indian Reservations. After each election, each voting rights coordinator shall prepare a report detailing his or her election-related activities in implementing the goals and provisions of the Native American Election Information Program.

7. The voting rights coordinators shall conduct, under the supervision of the county clerk, the training of all deputy registration officers, poll officials and other election-related personnel who will participate in the Native American Election Information Program. Each Pueblo governor and Navajo chapter manager whose chapter is in whole or in part within Sandoval County shall be notified, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at locations convenient to trainees.

8. The county voting rights coordinators shall coordinate the delivery of Native American election information to school districts in Sandoval County. Subject to staff and budget limitations, the county voting rights coordinators shall, upon request, coordinate delivery of election information to other governmental entities that conduct elections and voter registration within the county.

9. Sandoval County shall establish a travel budget for the voting rights coordinators which shall be sufficient to cover their travel expenses incurred in carrying out their duties, obligations and responsibilities to effectively implement this Native American Election Information Program.

B. State Voting Rights Coordinators

1. The state shall employ a full-time Native American Voting Rights Director for at least the life of the Settlement Agreement (see Section III, Paragraph 1 of the Settlement Agreement), and at least three bilingual voting rights coordinators who will be employed for no less than nine months preceding each general election for at least the life of the Settlement Agreement (see Section III, Paragraph 1 of the Settlement Agreement). Of the three temporary voting rights coordinators, one shall be fluent in one of the Pueblo languages and English, one shall be fluent in Navajo and English and one shall be fluent in Jicarilla Apache and English.

2. The hiring of the voting rights coordinators shall be undertaken by state officials after consultation with the AIPC, the NEA and/or Navajo tribal officials of Sandoval County, and the United States. To that end, the Secretary of State's office shall solicit from the foregoing entities recommendations of persons to be seriously considered for employment as voting rights coordinators, but may in its discretion hire other qualified applicants. These voting rights coordinators shall coordinate, between the state and county, the delivery of all

election-related information to Indian citizens; and provide expertise and overall assistance to the county in order to implement fully the terms and provisions of the Settlement Agreement and the NAEIP.

3. The Secretary of State shall develop job descriptions for each state voting rights coordinator, in consultation with the AIPC, the NEA and/or Navajo tribal officials of Sandoval County, and the United States.

4. The state voting rights coordinators shall be trained by the state in all aspects of the election process and shall assist in the training of the county voting rights coordinators.

5. The state shall establish a travel budget which shall be sufficient to cover the travel expenses of the coordinators in fulfilling their duties, obligations and responsibilities to effectively implement this Native American Election Information Program.

C. Tribal Election Liaisons

1. Sandoval County shall request each Pueblo Governor and each Navajo chapter president, whose chapter is in whole or in part in Sandoval County, to identify and/or appoint one individual in each Navajo chapter and Pueblo reservation to serve as a tribal election liaison between the county and each Pueblo and Navajo chapter.

2. Tribal election liaisons shall be fully trained and qualified as deputy registration officers by the county clerk and/or the voting rights coordinators and such training shall be

conducted in both English and in the Keres and Navajo Indian languages, as appropriate. The tribal election liaisons shall be trained in all aspects of the elections process, including absentee voting, the voter registration and purge processes, candidate qualifications, election-related deadlines, election day activities, proposed constitutional amendments and other referenda.

3. Where necessary and as appropriate, the state and/or county may contract with the tribal election liaisons and/or other qualified persons to assist in the effective implementation of this bilingual election program, including for the translation of materials described in Section D below into the applicable Indian language.

4. Telephone inquiries from voting rights coordinators, tribal election liaisons, as well as from deputy registration officers on the reservations and tribal officials involved in election activities, to the county clerk's office and the secretary of state's office respecting election-related matters, should be encouraged and shall be considered official government business and telephone charges may either be reversed or a toll-free number provided.

D. Translations

1. The following election-related materials and announcements, if made available in English by the state and/or county, shall be translated into the Keres and Navajo Indian languages and made available on audio tapes: state and county

election proclamations, constitutional amendments and other referenda issues on the ballot, dates for elections, candidate qualification and registration deadlines, instructions relating to voting by absentee ballot, and announcements respecting the voter purge, and explanations of voting procedures (including the operation of voting machines). To the extent financial resources permit, the state may substitute and/or supplement video tapes for audio tapes covering at least the subjects listed above.

2. The state and the county, through the voting rights coordinators and liaisons, shall engage in reasonable efforts to see to it that each tape is played in at least one tribal meeting of each Keres-speaking Pueblo reservation or Navajo chapter house during the appropriate publicity period, and that either the county voting rights coordinator, tribal election liaison or other trained bilingual person is present to answer any questions concerning the subject matter of the tape. If appropriate playing equipment is not available on the site visited, the state and/or county shall provide such equipment to the voting rights coordinators for this purpose.

3. Indian language audio and/or video tapes described in this agreement shall be available generally to individuals and organizations at Keres-speaking Pueblo community centers and Navajo chapter houses. Separate recordings shall be provided for each election-related subject matter so as to minimize the extent to which any tape recording exceeds 10 minutes in length. A library of currently applicable tapes, together with English

transcripts, where available and appropriate, shall be maintained at the applicable Pueblo community centers and Navajo chapter houses.

4. Translation shall be made by a state or county voting rights coordinator or by a tribal election liaison or by qualified persons contracted with for that purpose. The state shall make available to the county and the translators any subject matter experts, if necessary, to assist in translation of technical or complicated election-related materials.

5. The state and/or county shall permit representatives of the AIPC, the NEA and/or Navajo tribal officials of Sandoval County, and any other interested parties to assist in the translation of election materials. To assist in uniformity and accuracy, prior to dissemination of any translation, the state and/or county shall make available such translations to representatives of the AIPC and/or the NEA and/or Navajo tribal officials of Sandoval County, as appropriate, and provide them with a reasonable opportunity to review and comment concerning any matter translated.

6. The translation and review of any election-related material shall be completed promptly so that where possible, tapes are available on or before the date that English language announcements or other publications are made available.

7. To the extent resources permit, the state and county shall, in consultation with the tribal election liaisons and other tribal officials, develop a series of appropriate posters

to accompany translated and written notices respecting election matters.

8. Upon request, all translations and election materials shall be made available to all governmental entities within Sandoval County and other counties which endeavor to provide election information to Native American citizens.

E. Dissemination of Election-Related Information

1. The state and/or county shall coordinate publicity efforts with Pueblo and Navajo Indian tribal officials, and with the NEA and the AIPC. All election-related announcements, materials and information, including, but not limited to, the election calendar, state and county election proclamations, the voter information pamphlet and sample ballots, shall be made available to each Pueblo and Navajo chapter house in whole or in part in the county, the NEA and the AIPC.

2. Election-related announcements, materials, tapes and other election information shall be made available upon request to the public high schools in the county to familiarize students with all phases of the election process.

3. Radio and/or Television: Radio and/or television announcements, or both, in the Keres and Navajo languages shall be distributed for broadcast to KNDN (Farmington-Navajo); KRST (Albuquerque-Keres and Navajo); KGGM T.V. ("Pueblo Viewpoints" Keres) or other available stations or programs for broadcast in the Keres and/or Navajo language, as appropriate, regarding:

- a. Deadlines for state voter registration for participation

in state and federal elections, and identification of regularly available voter registration sites in each Pueblo community center, Navajo chapter house or other location convenient to the Indian population. These announcements, which shall be spot announcements, shall be made at least twenty times each week for the four weeks preceding the deadlines for both state and federal election registration for each primary and general election. For school board elections, spot announcements shall be made five times each week for the two weeks preceding the deadline for voter registration.

b. The procedures and deadlines for becoming a candidate. Spot announcements detailing procedures and deadlines for becoming a candidate shall be made fourteen times during the two weeks preceding each candidate filing date, including school board elections.

c. Dates of special, primary, general, and school board elections, a list of the offices to be elected, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements shall be made twice a week during at least the three weeks prior to each of the foregoing elections.

d. An explanation of the ballot in the Keres and Navajo Indian languages, identifying each office to be filled and each candidate with the candidate's political affiliation. The tape shall also identify briefly the nature and significance of each

referendum, proposed constitutional amendment(s), or ballot proposition to be decided. Announcements shall be made twice a week for at least the three weeks prior to each special, primary, general and school board election.

e. The state and county shall request that the above identified announcements be made at times calculated to reach the largest possible audience.

4. Print Media: English election announcements detailed in paragraph E.3 shall be published on a weekly basis in the Gallup Independent or the Navajo Times for the publicity periods noted in that paragraph.

5. For elections which involve geographic areas less than the entire county, announcements required to be made pursuant to Paragraph 3 and 4 above shall be made in the applicable language (Navajo and/or Keres) and in the media (radio, t.v., print) covering such area.

6. The frequency of the announcements outlined above shall be made subject to available financial resources set aside for implementation of this program.

7. To the extent Sandoval County and/or the state presently possess facsimiles of voting machines or devices, they shall be made available to the voting rights coordinators for their use in training deputy registration officers and conducting voter education programs at Pueblo community centers and Navajo chapter houses.

8. The state and/or county voting rights coordinators shall

disseminate the election information outlined in paragraph D.1 above to the non-Keres-speaking Pueblos of Sandoval County. Although the state and county are not subject to the minority language requirements of Section 203 of the Voting Rights Act with respect to the non-Keres-speaking Pueblos of Sandoval County, the state and/or county voting rights coordinators shall foster and facilitate efforts by tribal election liaisons, tribal officials or other qualified persons to translate and disseminate the election information in their own native languages.

9. Monitoring: The state and county shall evaluate its publicity programs on an ongoing basis through consultation with the tribal election liaisons, the AIPC, Pueblo tribal officials, the NEA and/or Navajo tribal officials of Sandoval County, and the United States.

F. Voter Registration

1. The state and county shall request each Pueblo governor, Navajo chapter manager or other tribal officials, to recommend six persons qualified to serve as deputy registration officers in Sandoval County; request assistance from the NEA and the AIPC in identifying potential deputy registration officers; seek to coordinate state voter registration with Navajo tribal voter registration through reciprocal deputization of deputy registration officers for state and tribal elections; invite school personnel, including each high school principal and other community leaders, to become deputy registration officers; and encourage organized political parties to recommend additional

deputy registration officers for election precincts on the reservations.

2. Training for deputy registration officers for majority Pueblo and Navajo election precincts in the county shall be conducted on the reservations by the county voting rights coordinators, under the supervision of the county clerk, in both English and the Keres and Navajo Indian languages, as appropriate. In addition to training as to registration standards, regulations and forms, deputy registration officers shall be trained fully regarding the voter purge and absentee voting processes, standards and regulations. Keres and Navajo Indian language tapes and English transcripts shall be used in the training process, and copies of such materials shall be maintained as provided generally in this agreement.

3. Sandoval County shall appoint and train a minimum of six deputy registration officers in each majority Pueblo election precinct and each majority Navajo election precinct in the county.

4. The names of all deputy registration officers available at each Pueblo or Navajo chapter shall be prominently posted at each Pueblo community center, Navajo chapter house and/or trading post or post office.

5. County voting rights coordinators, as part of their outreach efforts, shall conduct special voter registration drives at the Pueblo reservations and Navajo chapters in the county. The appropriate Pueblo governor or Navajo chapter manager, as

well as the tribal election liaisons, shall be notified of the time and place for each registration drive at least two weeks prior to the scheduled registration, and the county shall provide such other publicity as may be appropriate.

6. The county shall monitor, on an ongoing basis, the performance of deputy registration officers and voter registration rates in the majority Pueblo election precincts and majority Navajo election precincts in the county. The county shall encourage or replace inactive or unproductive deputy registration officers.

7. The county shall provide each tribal election liaison with current voter registration lists and forms and detailed election precinct maps for his or her precinct, and shall encourage each tribal election liaison to establish regular hours for registration at set locations on the reservations. The time(s) and location(s) established by the liaisons for voter registration shall be posted by the county at each Pueblo community center or Navajo chapter house and announced by the tribal election liaison at tribal meetings.

G. Absentee Voting

1. The county shall supply applications for absentee ballots to all deputy registration officers on the reservations, county voting rights coordinators, tribal election liaisons, Pueblo governors and lieutenant governors, and Navajo chapter managers and presidents.

2. The county shall provide an opportunity for Indian citizens, qualified to vote pursuant to state law, to cast absentee ballots within their precinct by ensuring that the voting rights coordinators attend the last tribal meeting prior to each primary, general, special or school board election, for each Pueblo and Navajo chapter in whole or in part within the county, so that eligible persons may obtain and, if they desire, cast absentee ballots in person at that time. Deputy registration officers, voting rights coordinators, tribal election liaisons, or county officials shall announce and explain personally, or through trained translators at the tribal meetings, the classes of persons who are eligible to cast absentee ballots. It shall be sufficient for voters on the reservations to have their absentee ballot application witnessed only by another registered voter.

3. Announcements shall be made regarding the availability of absentee balloting, including the standards of eligibility for absentee ballots and for voting absentee, during any tribal meeting prior to the deadline for voting by absentee ballot under state law, and where such meetings fall in the absentee voting period. The availability of absentee balloting also shall be made known by posting such information prominently at each Pueblo community center, Navajo chapter house and at trading posts or post offices on the reservations; by radio and/or television announcements pursuant to paragraph E.3 above; and by print media pursuant to Paragraph E.4 above.

4. County voting rights coordinators shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk, to witness absentee ballots, and to accept completed absentee ballots from eligible voters for delivery to the county clerk.

H. Election Day Procedures

1. The county shall assign the statutory number of poll officials bilingual in the applicable Indian language (including the Towa and Tiwa languages) and English and fully train them, and engage in reasonable efforts to secure their presence at the polls on election day for each majority Pueblo election precinct and majority Navajo election precinct which is in whole or in part in Sandoval County. The county shall consult with the tribal election liaisons, the NEA and/or Navajo tribal officials of Sandoval County, the AIPC and/or other appropriate tribal officials to identify bilingual individuals qualified to work at the polls. Alternate translators shall be designated as required by state law.

2. Poll officials and translators shall be fully trained, at locations in the county convenient to the trainees, in English and the Keres and Navajo Indian languages, as appropriate, concerning election day procedures at the polling places, the contents and issues appearing on the ballot, and voter purge procedures. Training in translation of the ballot in the Keres and Navajo Indian languages shall include the use of audio and/or video tapes, and such tapes shall be maintained in accordance

with the terms of this agreement.

3. For each additional voting machine required by state law at each polling place in excess of two voting machines, the county shall appoint an additional trained translator.

4. Poll officials shall specifically advise each voter who requires assistance in casting a ballot that the voter may choose any person to provide that assistance, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6. After the voter has indicated to a poll official that he or she needs assistance in voting or marking his/her paper ballot, the voter's request for assistance shall be noted in the signature roster and it shall be unnecessary for the voter to execute an affidavit of assistance.

5. Poll officials or other designated county officials shall maintain a record of all persons who come to the polls but are not allowed to vote. This record shall include each voter's name, address, the reason the person thought she or he was eligible to vote at that site, and the reason for not permitting the person to vote.

6. A list of the persons not permitted to vote shall be provided to the appropriate tribal officials, voting rights coordinators and tribal election liaisons, and deputy registration officers in the majority Indian precincts, and the county shall provide an opportunity to such persons on the list to register to vote at the earliest possible time.

7. The state and county shall cooperate with the NEA in the establishment of polling places so that the same buildings can be used for Navajo tribal and state elections in separate areas of the same buildings.

I. Purge Process

1. On or before February 15 after each general election, a list shall be prepared by the county clerk of all persons identified for purging from the voting list for failure to vote, and such lists for the respective Indian precincts shall be provided to the county voting rights coordinators, tribal election liaisons, including each Pueblo community center and Navajo chapter house in whole or in part in Sandoval County, and persons identified above shall be urged to contact persons on said lists to notify them of the fact of the purge and the procedures for validating their registration or re-registering.

2. Updated lists, as necessary, of persons who have failed to revalidate their registration or re-register shall be provided to the persons identified in paragraph I.1 above and each Pueblo tribal office and Navajo chapter house every 30 days throughout the purge period. The voting rights coordinator shall monitor these lists and shall contact as many persons as possible who remain on the list in order to re-validate or re-register them.

3. The state and county shall inform voters of the purge, the validating and re-registration process through radio and/or television announcements in the Keres and Navajo Indian languages during the purge period pursuant to paragraph E.3 above; through

English language weekly notices in the Gallup Independent or the Navajo Times during the purge period pursuant to E.4 above; by Keres or Navajo language announcements at tribal meetings during the purge period; and by English language signs posted at the Pueblo community centers and Navajo chapter houses and trading posts or post offices.

4. Keres and Navajo language audio tapes on the purge process shall be made available in the tape libraries in each Pueblo community center and Navajo chapter house. These shall include a description of the purge process, an explanation as to why individuals are listed on the purge printout, the meaning of the mailed purge notices, and explanations as to how to avoid being purged and how to re-register if the purge already has occurred. Keres and Navajo language tapes containing this information shall be played during the purge period at separate tribal meetings of each Keres-speaking Pueblo and Navajo chapter house, respectively, situated in whole or in part in Sandoval County, and the voting rights coordinator shall be present, at a minimum, at the first meeting when the tapes are played in order to answer any questions. Thereafter, the tribal election liaison or other trained bilingual personnel may be present when the tapes are played in order to answer any questions. The county voting rights coordinator shall also attend at least one tribal meeting of each non-Keres-speaking Pueblo in Sandoval County to disseminate information on the purge process.

5. Thirty (30) days before the close of the purge period, the county voting rights coordinator shall provide the tribal election liaison at each Pueblo and Navajo chapter in Sandoval County with a printout with the names of all voters who reside in the respective Pueblo or Navajo chapter, who have not validated their registration, and thus remain on the list of persons identified for purging for failure to vote. Prior to the close of the purge period, the voting rights coordinators, with assistance from the tribal election liaisons, shall ascertain which voters on the list still maintain a residence as shown on their affidavit of registration, and upon making such determination, shall return to the county clerk a list certifying those voters who still maintain such residence within the reservation, together with any changes of addresses of such voters. Upon receipt of the certification, those voters who still reside in the county shall not have their eligibility to vote cancelled and shall remain eligible to vote.

6. At the close of the purge period, the county shall review the printout of purged voters with the tribal election liaisons for each Indian precinct in Sandoval County and, to the extent that there is a high percentage of Indian voters purged as compared to non-Indian voters, the state and county shall consult with tribal officials and tribal election liaisons to ascertain what further action, if any, to take to correct such situation.

J. Records

1. In addition to copies of tapes and other materials or records mentioned in this agreement, the defendants shall maintain statistical records including but not limited to:

a. Voter Registration

- Voter registration, by precinct, on a monthly basis.
- Number of voters, by precinct, who are registered at voter registration drives conducted pursuant to this agreement.

b. Voter Purge

- Total number of voters purged, by precinct, for failure to vote.
- Total number of voters retained on the voter registration rolls based on certification of eligibility by the voting rights coordinators.
- Total number of voters, by precinct, reinstated by returning post cards.
- Total number of voters validated by other means during the purge period by precinct.

c. Absentee Voting

- Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.
- Total number of absentee ballots cast, per precinct, in person at the county courthouse.
- Total number of absentee ballots cast, per precinct, in person before a deputy clerk and/or voting rights coordinator on the reservations.

d. Publicity

- Time and medium of each broadcast (where records are available) or publication pursuant to this agreement.
- Time, place and occasion of each instance in which each election-related video and audio tape was played.

These data shall be maintained on a current basis at the county clerk's office and all records shall be available for public inspection upon request.

2. On July 1 of each year for the life of the Settlement Agreement, the state and county each shall compile a report of the efforts taken pursuant to this agreement during the preceding (12) months. The report shall include the status of Indian voter participation as shown by statistics in each area addressed in this agreement, together with an assessment of the effectiveness of each phase of the program and a recommendation of the steps to be taken, if any, to improve Indian voter participation. Copies of the report shall be provided to each the United States, the AIPC, and the NEA.

K. Adjustments to Program

It is the goal of the State of New Mexico and Sandoval County to provide that the entire election process is fully and effectively accessible to Indian citizens, and the procedures set forth above are designed to achieve that goal.

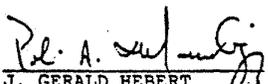
Pursuant to section II, paragraph 2 of the Settlement Agreement, the parties are required to confer in good faith if a particular aspect of the NAEIP has proven ineffective. The state and/or county shall notify the United States in writing of that fact prior to taking any action. The United States shall have thirty (30) days from receipt of notification in which to respond. If necessary, the parties shall meet in a good faith effort to resolve such aspect of the program which has proven ineffective, in accordance with the Settlement Agreement.

III. CONCLUSION

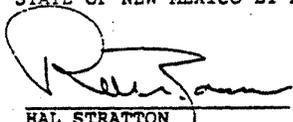
This agreement represents the commitment of the parties to provide equal voting rights to all citizens of New Mexico and Sandoval County and the State of New Mexico intend to fully and faithfully implement this Native American Election Information Program. The parties recognize that regular and ongoing reassessment of the above outlined NAEIP by the responsible officials will be necessary in order to ensure that Indian voters are able, and will continue to be able, to enjoy equal access to all phases of the political process in Sandoval County and the State of New Mexico.

Filed this 30th day of April, 1990.

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SANDOVAL COUNTY, NEW MEXICO:)
SANDOVAL COUNTY BOARD OF COUNTY)
COMMISSIONERS; JOE LANG, Chairman)
of the Sandoval County Board of)
County Commissioners;)
TOM SWISSTACK, PATRICIA THOMAS,)
PATRICK BACA, and R.W. JOHNSON,)
members of the Sandoval County)
Board of County Commissioners;)
SALLY G. PADILLA, Sandoval County)
Clerk,)
)
Defendants.)

CIVIL ACTION NO.
88-1457-SC

FILED
U.S. DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

SEP 09 1994

R. Anton...
CLERK

ORDER ENTERING CONSENT DECREE

This action was initiated by the United States pursuant to Sections 2 and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 and 1973aa-1a. By a Settlement Agreement filed with the Court on March 28, 1990, the parties agreed to devise and file with the Court, on or before April 27, 1990, a comprehensive Native American Election Information Program to disseminate election related information to the Native American population of Sandoval County. In accordance with the terms of the Settlement Agreement, the parties conferred and devised the Native American Election Information Program (NAEIP).

On May 17, 1990, this court ordered the county to implement the NAEIP. To provide for the resolution of disputes concerning

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the implementation of the NAEIP, the court's order provided that the case could be reactivated upon motion of the United States. On June 10, 1993, the United States filed a Motion to Reactivate the case pursuant to that order. On August 23, 1993, this court granted the Motion to Reactivate.

After discovery, the county now stipulates that it has not fully and faithfully complied with the terms and provisions of the NAEIP. The parties have reached agreement on a modified NAEIP designed to address the compliance problems. Upon the order of this court, the county will begin implementation of the modified NAEIP, which has been separately filed.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this Decree and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments.

Entered this 9th day of Sept, 1994.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

COPY

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SANDOVAL COUNTY, NEW MEXICO:)
SANDOVAL COUNTY BOARD OF COUNTY)
COMMISSIONERS; JOE LANG, Chairman)
of the Sandoval County Board of)
County Commissioners;)
TOM SWISSTACK, PATRICIA THOMAS,)
PATRICK BACA, and R.W. JOHNSON,)
members of the Sandoval County)
Board of County Commissioners;)
SALLY G. PADILLA, Sandoval County)
Clerk,)
)
Defendants.)
_____)

CIVIL ACTION NO.
88-1457-SC

NATIVE AMERICAN ELECTION INFORMATION

The United States and the defendants jointly submit the revised Native American Election Information Program below.

NATIVE AMERICAN ELECTION INFORMATION PROGRAM

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CONCLUSION 33

A. County voting rights coordinators

1. General. Sandoval County shall employ at least three Native American voting rights coordinators who will coordinate the Native American Election Information Program (NAEIP) in the county. The requirements of the NAEIP shall apply to all elections held within Sandoval County which include any Native American-majority precinct. These elections include primary, general and special elections, as well as elections for the Cuba, Jemez and Bernalillo Independent School Districts. One of the voting rights coordinators shall be bilingual in Keres and English, one shall be bilingual in Navajo and English, and one shall be bilingual in Towa and English. All coordinators shall be hired on a full-time basis. The Navajo-fluent coordinator shall coordinate the election information programs for Cuba Independent School District elections in the relevant precincts, the Keres-fluent coordinator shall coordinate the election information programs for Bernalillo Independent School District elections in the relevant precincts and the Towa-fluent coordinator shall coordinate the election information programs for Jemez Independent School District elections in the relevant precincts. The coordinators shall be supervised by the County Attorney acting on behalf of the County Commission of Sandoval County. The voting rights coordinators may be discharged only for cause, and only by the County Attorney or the County Commission.

2. Consultation with Native American officials in hiring coordinators. The Pueblo and Navajo voting rights coordinators shall be hired by the county after consultation with the All Indian Pueblo Council (AIPC), the Navajo Elections Administration (NEA), Pueblo and Navajo Tribal officials of Sandoval County, and the United States. To that end, the three Sandoval County Navajo Chapter presidents, collectively, and the AIPC shall each recommend for the respective position, and the county shall seriously consider, two persons for employment for each voting rights coordinator position, but the county may in its discretion hire other qualified applicants. Each voting rights coordinator shall be paid a salary in accordance with Grade XII of the County's Compensation Grades, with a starting annual salary to equal or exceed \$16,881 per year. The provisions of the personnel ordinance of Sandoval County shall apply to the voting rights coordinators.

3. Job descriptions. Sandoval County shall develop job descriptions for each voting rights coordinator, in consultation with the AIPC and/or Pueblo tribal officials of Sandoval County, the NEA and/or Navajo tribal officials of Sandoval County, and the United States. The duties of the voting rights coordinators shall be limited to those necessary to implement the goals and tasks specified in the NAEIP.

4. Training of coordinators. The voting rights coordinators shall be trained by the state and county in all aspects of the election process, and shall attend all election

seminars conducted by the Secretary of State and/or the Sandoval County Clerk. voting rights coordinators shall be fully briefed by the county attorney concerning their duties and responsibilities under this election information program. Representatives of the AIPC and/or Pueblo tribal officials of Sandoval County and the NEA and/or Navajo tribal officials of Sandoval County, as appropriate shall be invited to attend these seminars and briefings.

5. Field visits. The voting rights coordinators shall, under the supervision of the county attorney, oversee the county's Native American Election Information Program generally and visit on a regular basis each Pueblo community center and each Navajo chapter located in whole or in part in the county. In the course of these visits, the voting rights coordinators shall perform at least the tasks specified in the attached Schedule in accordance with the timetable set forth therein. Further, the voting rights coordinators shall announce and hold regular office hours at the Satellite Election Offices (see paragraph A.12. below).

6. Record of field visits. The voting rights coordinators, or other county officials, shall maintain a record of the date and purpose of each visit for election-related purposes to each Pueblo community center, Navajo chapter house, or other sites on the Pueblo and/or Navajo Indian Reservations.

7. Training of election personnel. The voting rights coordinators shall conduct the training of all deputy

registration officers, poll officials and other election-related personnel who will participate in the Native American Election Information Program. For each election covered by the NAEIP, the coordinators shall conduct at least one formal training session for all Keres-speaking election personnel, one formal training session for all Navajo-speaking personnel and one formal training session for all Towa-speaking personnel. Each Pueblo governor and Navajo chapter manager whose chapter or Pueblo is in whole or in part within Sandoval County shall be notified in writing, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at locations convenient to trainees.

8. Delivery of election information to other governmental entities. The county voting rights coordinators shall coordinate the delivery of Native American election information to school districts in Sandoval County. The county voting rights coordinators shall, upon request, coordinate delivery of election information to other governmental entities that conduct elections and voter registration within the county.

9. NAEIP and travel budgets. Sandoval County shall establish a separate travel budget for the voting rights coordinators which shall be sufficient to cover their travel expenses incurred in carrying out their duties, obligations and responsibilities to effectively implement this Native American Election Information Program. Coordinators shall be reimbursed

for expenses incurred for travel incident to bona fide NAEIP business, including visits to Pueblos or Navajo chapters and to sites for training programs. The county also shall establish a separate, itemized NAEIP budget, and shall generate quarterly reports itemizing expenditures made to implement the NAEIP.

10. Access to Clerk's Office facilities. County voting rights coordinators shall have full access to the records and facilities of the Office of the County Clerk, including access to computers. They shall have the authority to inspect, modify, update, and generate reports from all County Clerk election records, whether in computer or other form, in order to fulfill the goals of the NAEIP. The Clerk's Office shall provide the voting rights coordinators with updated lists of registered voters by precinct ("the alpha lists") on a monthly basis.

11. Filling coordinator vacancies. If a vacancy occurs in a voting rights coordinator post, the county shall fill the vacancy within 90 days, after consultation with Native American leaders as outlined in paragraph A.2. During the period of vacancy the duties of the vacant position will be performed by the other coordinators. A vacancy does not relieve the county of its obligations under the NAEIP.

12. Satellite Election Offices. Sandoval County shall establish three permanent Satellite Election Offices. One office shall be established at a location within the Torreon Navajo Chapter. Another office shall be established at a location within the Santo Domingo Pueblo. The third office shall be

established at a location within the Jemez Pueblo. The county shall be responsible for equipping, but not renting, such offices.

13. Function of Satellite Election Offices. Each Satellite Election Office shall serve: as the principal place for office hours for the voting rights coordinators;¹ as a library of written and recorded election information; and as a distribution point for the dissemination of election information. The Satellite Election Office shall also serve as a site for the performance of all functions related to the election process that can be performed at the county courthouse, including but not limited to: registering to vote or updating voter registration information; filing by residents of chapters or pueblos as a candidate for office; and applying for and casting an absentee ballot. The voting rights coordinators shall announce and maintain regular office hours at the Satellite Office.

14. Satellite Office equivalent to county courthouse. Delivery of a voter registration application or performance of any other election-related task at a Satellite Election Office shall be effective in terms of all time deadlines and requirements as if the application had been delivered, or the task performed, at the county courthouse.

¹ The Keres voting rights coordinator may choose to spend up to 4 days a week away from this office. The other voting rights coordinators may choose to spend up to 3 days a week away from this office.

15. Supplies and equipment. A supply of all forms and materials necessary to complete all functions related to the election process shall be maintained at each Satellite Election Office. Copies of all materials, information and audio or video tapes required to be disseminated pursuant to the NAEIP, including all election-related materials prepared by the state, likewise shall be available in each office, together with appropriate office supplies, typing equipment, and audio or visual equipment.

B. Intergovernmental Coordination

1. Cooperation with the State. Sandoval County and the voting rights coordinators shall request and accept all training, materials and services available from the State of New Mexico in furtherance of the implementation of the NAEIP, and shall encourage the production of such training, materials and services by the state. The voting rights coordinators shall contact at least monthly state personnel, including personnel in the Office of the Secretary of State, Bureau of Elections, Office of Indian Rights and the Office of Indian Affairs, in order to coordinate state and county activities and efforts, and for advice and assistance associated with the NAEIP. Sandoval County shall encourage the assistance of such state personnel, and shall at all times welcome their presence in the county to assist in implementation of the NAEIP or to assist Native Americans in any phase of the election process.

2. Cooperation with other counties. The county is encouraged to work with other counties in New Mexico and neighboring states which have programs for Native American language minorities to coordinate election activities, including the development of standard terminology for the translation of election materials into Navajo, Keres and Towa.

3. Consultation with Native American officials. Sandoval County shall invite representatives of the All Indian Pueblo Council (AIPC), the Navajo Elections Administration (NEA) and officials of the Pueblos and chapters within the county to assist in all phases of the NAEIP, including translations (see paragraph D.5.).

4. Designation Under Section 3(c) of the Voting Rights Act. Sandoval County is designated pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c) for the duration of the NAEIP, so that during that period no alteration of any voting qualification or prerequisite to voting or any standard, practice, or procedure with respect to voting, may be implemented by Sandoval County without prior clearance from this Court or from the Attorney General of the United States. Such changes include, but are not limited, to amendments to the NAEIP and changes in polling places within Sandoval County, and, as to state-mandated changes affecting voting, those practices and procedures with respect to which Sandoval County has discretion in implementation or administration. Sandoval County shall notify counsel for the United States within ten days of

notification to the county by the Secretary of State of enactment of any changes affecting voting mandated by the state, and provide a copy of the pertinent statute, regulation or order.

5. Cooperation with federal election observers. To assist in the effectiveness of this agreement and to protect the Fifteenth Amendment rights of citizens of Sandoval County, the appointment of federal examiners for elections in Sandoval County is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973(a), for at least the period of this agreement. Sandoval County recognizes the authority of federal observers to enter and attend at any place for holding an election in the county for the purpose of observing election procedures, including entering the voting booth for the purpose of observing language assistance.

C. Tribal Election Liaisons

1. Appointment of liaisons. Sandoval County shall request each Pueblo Governor and each Navajo chapter president, whose Pueblo or chapter is in whole or in part in Sandoval County, to identify and/or appoint one individual in each Navajo chapter and Pueblo reservation to serve as a tribal election liaison between the county and each Pueblo and Navajo chapter.

2. Training of liaisons. Tribal election liaisons shall be fully trained and qualified as deputy registration officers by voting rights coordinators and such training shall be conducted in both English and in the Keres, Towa or Navajo Indian languages, as appropriate. The tribal election liaisons shall be

trained in all aspects of the elections process, including absentee voting, the voter registration and purge processes, candidate qualifications, election-related deadlines, election day activities, proposed constitutional amendments and other referenda.

3. Contracting for translation assistance. Where necessary and as appropriate, the county may contract with the tribal election liaisons and/or other qualified persons to assist in the effective implementation of this bilingual election program, including for the translation of materials described in Section D below into the applicable Indian language.

4. Telephone inquiries. Telephone inquiries from voting rights coordinators, tribal election liaisons, as well as from deputy registration officers on the reservations and tribal officials involved in election activities, to the county clerk's office or a Satellite Election Office respecting election-related matters, should be encouraged and shall be considered official government business and telephone charges may either be reversed or a toll-free number provided. The county shall provide written notice to all liaisons, registrars, and tribal officials of the toll-free number or the ability to reverse charges.

D. Translations

1. Time and subject matter of translations. The following election-related materials and announcements shall be translated into the Navajo and Towa languages and into each of the five dialects of Keres spoken in Sandoval County, made available on

audio and/or video tapes, and provided to the voting rights coordinators at the Satellite Election Offices by the dates specified:

- a. Detailed election calendar for each year (by January 1 of each year);
- b. State, county and school district election proclamations (by the statutory date of proclamation);
- c. Constitutional amendments and other referenda issues on the ballot (within 30 days of the date the English text is determined, and no later than the date of proclamation);
- d. A brief description of each constitutional amendment and other referendum issue on the ballot (by the date of each election proclamation);
- e. Candidate qualification requirements and deadlines (60 days prior to the respective qualification deadlines for primary elections for state and federal offices, primary elections for other offices, independent candidates, and write-in candidates);
- f. The duties, functions and compensation for each office filled by election involving any part of Sandoval County (by April 30, 1994);
- g. Voter registration deadlines (by January 1 of each year, with separate tapes containing deadlines for each type of election);
- h. Instructions relating to voting by absentee ballot (by April 30, 1994);

i. An explanation of the voter purge process as provided by this Decree (by April 30, 1994);

j. The candidates for office and their political parties for each election (by the date on which the ballot is printed); and

k. Explanations of voting procedures including the operation of voting machines and how to cast a write-in ballot (by April 30, 1994).

2. Discussion/use of tapes at tribal meetings. The county, through the voting rights coordinators and liaisons shall see to it that the subject matter and availability of each tape is discussed in at least one tribal meeting of each Keres-speaking or Towa-speaking Pueblo reservation or Navajo chapter house during the appropriate publicity period (see attached Schedule), and that either the county voting rights coordinator, tribal election liaison or other trained bilingual person is present to answer any questions concerning the subject matter of the tape.

3. Copies and transcripts provided to Navajo chapters and Pueblos. A copy of each Indian language audio and/or video tape described in this agreement shall be provided to each Pueblo community center and Navajo chapter house in Sandoval County in the appropriate language. Separate recordings shall be provided for each election-related subject matter so as to minimize the extent to which any tape recording exceeds 10 minutes in length. A library of currently applicable tapes, together with English

transcripts shall be maintained at the applicable Pueblo community centers and Navajo chapter houses. Where translation tapes do not reflect a word-for-word translation of the original English text, the "English transcript" referred to above shall consist of the "back-translation" from Navajo into English of the Navajo phrases used, and not the original English text.

4. Selection and use of qualified translators.

Translation shall be made by qualified translators contracted with by the county for that purpose. The translators shall be selected after consultation with the tribal officials at each chapter and Pueblo in Sandoval County, the NEA, the AIPC, and the United States. The county shall make use of any expertise available from the state and assist in translation of technical or complicated election-related materials.

5. Review by Pueblo and Navajo officials. To facilitate uniformity and accuracy in the translation of election materials, prior to dissemination of any translation, the county shall make available all such translations to representatives of the AIPC and/or Pueblo tribal officials or the NEA and/or Navajo tribal officials within Sandoval County, as appropriate, and provide them with a reasonable opportunity to review and comment concerning any matter translated. The county shall maintain a written record of any comments received and the county's response to the comments.

6. Prompt translation. The process of translation and review of any election-related material shall begin as soon as

the English text is known so that tapes are available on or before the date that English language announcements or other publications are made available.

7. Translations available to all governmental entities.

Upon request, all translations and election materials shall be made available to all governmental entities within Sandoval County and other counties which endeavor to provide election information to Native American citizens.

E. Dissemination of Election-Related Information

1. Coordination with Native American officials. The county shall coordinate publicity efforts with Pueblo and Navajo Indian tribal officials, and with the NEA and the AIPC. All election-related announcements, materials and information, including, but not limited to, the election calendar, state and county election proclamations, the voter information pamphlet and sample ballots, shall be made available to each Pueblo and Navajo chapter house in whole or in part in the county, the NEA and the AIPC.

2. Availability to high schools. Election-related announcements, materials, tapes and other election information shall be made available upon request to the public high schools in the county to familiarize students with all phases of the election process.

3. Radio and/or Television. The county shall arrange for the broadcast of brief radio and/or television spot announcements, in the Keres, Towa and Navajo languages. The

announcements shall provide a short (less than 5 minutes) general description of the subject matter and an identification of all sources for more detailed information, including the Satellite Election Offices. The announcements shall be broadcast on a local station(s) with sufficient coverage to reach all Navajo chapters and Pueblos in Sandoval County and shall address at least the following topics:

a. Deadlines for voter registration for federal, state and local elections, including school board elections, and identification of regularly available voter registration sites in each Satellite Election Office, Pueblo, Navajo chapter or other location convenient to the Indian population. These announcements shall be made at least five times each week for the four weeks preceding the deadlines for registration for each election covered under the NAEIP.

b. The procedures and deadlines for becoming a candidate. Spot announcements detailing procedures and deadlines for becoming a candidate shall be made five times each week during the four weeks preceding each candidate filing date, including school board elections.

c. Dates of all elections covered by the NAEIP, a list of the offices to be elected, a brief description of the topic of each ballot proposition, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements

shall be made five times each week during at least the three weeks prior to the deadline for registration for the corresponding election.

d. The county shall request that the above identified announcements be aired as a public service and that they be made at times calculated to reach the largest possible audience.

4. Print Media. English election announcements detailed in paragraph E.3 shall be published on a weekly basis in the Navajo Times and the newsletters of each Pueblo in Sandoval County for the publicity periods noted in that paragraph.

5. Targeting of media area. For elections which involve geographic areas less than the entire county, announcements required to be made pursuant to Paragraph 3 and 4 above shall be made in the applicable language (Navajo, Towa, and/or Keres) and in the media (radio, t.v., print) covering such area.

6. Demonstration of use of voting machines. Facsimiles of voting machines or devices shall be made available to the voting rights coordinators for their use in training deputy registration officers, tribal election liaisons and poll officials and in conducting voter education programs at Pueblo community centers and Navajo chapter houses.

7. Sandia Pueblo. The county voting rights coordinators shall disseminate the election information outlined in paragraph D.1 above to Sandia Pueblo. Although the county is not subject to the minority language requirements of Section 203 of the Voting Rights Act with respect to the Tiwa language, the county

voting rights coordinators shall foster and facilitate efforts by tribal election liaison, tribal officials or other qualified persons to translate and disseminate the election information in the Tiwa languages.

8. Monitoring. The county shall evaluate its publicity programs on an ongoing basis through consultation with the tribal election liaisons, the AIPC and/or Pueblo tribal officials, the NEA and/or Navajo tribal officials of Sandoval County, and the United States.

F. Voter Registration

1. Consultation in selecting deputy registration officers. The county shall request each Pueblo governor, Navajo chapter manager or other tribal officials, to recommend six persons qualified to serve as deputy registration officers in Sandoval County; request assistance from the NEA and the AIPC in identifying potential deputy registration officers; train as deputy registration officers all Navajo tribal registrars; invite school personnel, including each high school principal and other community leaders, to become deputy registration officers; and encourage organized political parties to recommend additional Native American deputy registration officers for election precincts on the reservations.

2. Training of deputy registration officers. Training for deputy registration officers for majority Pueblo and Navajo election precincts in the county shall be conducted on the reservations by the county voting rights coordinators in both

English and the Keres, Towa or Navajo Indian languages, as appropriate. In addition to training as to registration standards, regulations and forms, deputy registration officers shall be trained fully regarding the voter purge and absentee voting processes, standards and regulations. The deputy registration officers also shall be trained as to the new registration standards and procedures to be used in accordance with the National Voter Registration Act of 1993, and shall be instructed to explain to voters these new standards and procedures. They also shall be instructed to explain to voters over 65 years old that they may vote absentee, and to make it clear to persons seeking to register that only voters who register with a party affiliation may vote in primary elections. Keres, Towa and Navajo Indian language tapes and English transcripts shall be used in the training process, and copies of such materials shall be maintained as provided generally in this agreement.

3. Appointment of six deputy registration officers per precinct. Sandoval County shall appoint and train a minimum of six deputy registration officers in each majority Pueblo election precinct and in each majority Navajo election precinct in the county.

4. Posting names of registrars. The names of all deputy registration officers available at each Pueblo or Navajo chapter shall be prominently posted at each Pueblo community center, Navajo chapter house and/or trading post or post office. In

addition, the names of all unregistered eligible voters shall be posted at chapter houses and community centers, with the sole notation that "the following persons should contact their county voting rights coordinator (name) or a deputy registration officer (names)."

5. Special registration drives. County voting rights coordinators, as part of their outreach efforts, shall conduct special voter registration drives at the Pueblo reservations and Navajo chapters in the county. At each chapter or Pueblo within the county, a special registration drive shall be held during at least one USDA commodity distribution, one WIC program distribution, or one senior citizens lunch program prior to the registration deadline for each election covered under the NAEIP. The appropriate Pueblo governor or Navajo chapter manager, as well as the tribal election liaisons, shall be notified in writing of the time and place for each registration drive at least two weeks prior to the scheduled registration, and the county shall provide such other publicity as may be appropriate.

6. Monitoring performance of deputy registration officers. The county shall monitor, on an ongoing basis, the performance of deputy registration officers and voter registration rates in the majority Pueblo election precincts and majority Navajo election precincts in the county. The county shall encourage or replace inactive or unproductive deputy registration officers.

7. Materials to be provided to tribal election liaisons; office hours. The county shall provide each tribal election

liaison with current voter registration lists and forms and detailed election precinct maps for his or her precinct, and shall encourage each tribal election liaison to establish regular hours for registration at set locations on the reservations. The time(s) and location(s) established by the liaisons for voter registration shall be posted by the county at each Pueblo community center or Navajo chapter house and announced by the tribal election liaison at tribal meetings.

G. Absentee Voting

1. Delivering, filling out, and collecting applications on the reservations. The county shall supply applications for absentee ballots to all deputy registration officers on the reservations, county voting rights coordinators, tribal election liaisons, Pueblo governors and lieutenant governors, and Navajo chapter managers and presidents. The county voting rights coordinators shall deliver applications to the chapters and Pueblos, assist voters in filling them out, and collect applications for return to the County Clerk's Office. Each Satellite Election Office shall have the necessary materials and personnel available during regular office hours so that an absentee or early ballot can be cast in person there and be counted as if the ballot had been cast at the county courthouse.

2. Absentee voting at tribal meetings. The county shall provide an opportunity for Indian citizens, qualified to vote pursuant to state law, to cast absentee ballots within their precinct by ensuring that the voting rights coordinators attend

the last tribal meeting prior to each primary, general, special or school board election, for each Pueblo and Navajo chapter in whole or in part within the county, so that eligible persons may obtain and, if they desire, cast absentee ballots in person at that time. Deputy registration officers, voting rights coordinators, tribal election liaisons, or county officials shall announce and explain personally, or through trained translators at the tribal meetings, the classes of persons who are eligible to cast absentee ballots. It shall be sufficient for voters on the reservations to have their absentee ballot application witnessed only by another registered voter.

3. Announcements. Announcements shall be made regarding the availability of absentee balloting, including the standards of eligibility for absentee ballots and for voting absentee, during any tribal meeting prior to the deadline for voting by absentee ballot under state law, and where such meetings fall in the absentee voting period. The availability of absentee balloting also shall be made known by posting such information prominently at each Pueblo community center, Navajo chapter house and at trading posts or post offices on the reservations; by radio and/or television announcements pursuant to paragraph E.3 above; and by print media pursuant to Paragraph E.4 above.

4. Authorization to deliver and collect ballots. County voting rights coordinators shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk, to witness absentee

ballots, and to accept completed absentee ballots from eligible voters for delivery to the county clerk.

H. Election Day Procedures

1. Hiring, training and ensuring attendance of poll officials; consultation. The county shall assign at least the statutory number of poll officials bilingual in English and the applicable Indian language (including the Tiwa language) and fully train them, and engage in reasonable efforts to secure their presence at the polls on election day for each majority Pueblo election precinct and majority Navajo election precinct which is in whole or in part in Sandoval County. The county shall consult with the tribal election liaisons, the NEA and/or Navajo tribal officials of Sandoval County, the AIPC, and/or other appropriate tribal officials to identify bilingual individuals qualified to work at the polls. Alternate translators shall be designated as required by state law.

2. Training of poll officials; use of tapes. Poll officials and translators shall be fully trained, at locations in the county convenient to the trainees, in English and the relevant Indian languages concerning election day procedures at the polling places, the contents and issues appearing on the ballot, and voter purge procedures. Poll officials and translators also shall be trained in the relevant Indian language to translate election day procedures, ballot contents, and voter registration and purge procedures. Training in translation of the ballot in the Keres, Towa and Navajo Indian languages shall

include the use of audio and/or video tapes, and one copy of each tape shall be maintained in accordance with the terms of this agreement. A copy of each tape along with a sample ballot shall be provided to each trainee at the training. The county may require that trainees return such tapes and materials to county officials on election day so that they may be reused. Training sessions shall be followed by oral testing in Navajo, Keres and Towa to ensure their effectiveness.

3. Number of translators per precinct. For each additional voting machine at each polling place in excess of one, the county shall appoint an additional trained translator.

4. Instructions regarding assistance to voters. At each training session, poll officials shall be instructed to specifically advise each voter who requires assistance in casting a ballot that the voter may choose any person to provide that assistance, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6. Poll officials shall be further instructed that any voter's request for assistance in casting a ballot need only be noted in the signature roster and that it shall be unnecessary for the voter to execute an affidavit of assistance. If federal observers will be observing the election, poll officials shall be instructed to cooperate with the observers as outlined in paragraph B.5.

5. Instructions regarding persons not allowed to vote. At each training session, poll officials shall be instructed to maintain a record of all persons who come to the polls but are

not allowed to vote. This record shall include each voter's name, address, the reason the person thought she or he was eligible to vote at that site, the reason for not permitting the person to vote, and whether the person was registered at the polling site for future elections. Poll officials shall provide such persons who are eligible with an opportunity to register for future elections before leaving the polling site.

6. Distribution of lists of persons not allowed to vote.

A list of the persons not permitted to vote who did not register at the polling site shall be provided to the appropriate tribal officials, voting rights coordinators and tribal election liaisons, and deputy registration officers in the majority Indian precincts, and the county shall provide an opportunity to such persons on the list to register to vote at the earliest possible time.

7. Dual polling places for tribal and state elections.

The county shall cooperate with the NEA in the establishment of polling places so that the same buildings can be used for Navajo tribal and state elections in separate areas of the same buildings.

8. Monitoring of election day procedures by voting rights coordinators. The county voting rights coordinators shall be authorized to enter polling places on election day to monitor election day procedures. In addition to ensuring that the instructions described above in this section are followed, voting rights coordinators shall identify and record any instances of

unreasonable delays in voting or in translation of the ballot. Where such delays occur, the county shall take whatever steps are necessary, such as providing additional translators and voting machines, to ensure that such delays do not recur in future elections.

I. Purge Process

1. National Voter Registration Act as only purge standard.
Sandoval County shall implement the standards and procedures of the National Voter Registration Act of 1993 as the standards and procedures for the removal of voters from the voter registration lists of Sandoval County, and no voter shall be removed from the list of eligible voters or denied the right to vote for the failure to vote in any election in Sandoval County subsequent to June 1, 1992, except through those standards and procedures.

2. Satellite Election Office deemed "central location".
Each Satellite Election Office shall be deemed a "central location" under the terms of Section 8(e)(2) of the National Voter Registration Act of 1993.

3. Pre-screening of "possible purge lists". At least 60 days prior to the mailing of any notice of removal from the voter registration lists in accordance with Section 8(d)(2) of the National Voter Registration Act of 1993, the county shall provide to the county voting rights coordinators, tribal election liaisons, tribal officials, and deputy registration officer copies of a list of all persons identified for purging from the voting list in each Native American precinct in the county.

Through consultation with tribal election liaisons, tribal officials, and deputy registration officers, the voting rights coordinators shall screen said lists to identify persons still eligible to vote in Sandoval County. The name of each such person shall be removed from the list of voters to be purged, and it shall be the responsibility of the voting rights coordinators to correct any errors on the voter list as to address, precinct assignment, or other matter, and to notify the voter of such change. Sandoval County shall be under no obligation to mail to any such person any notice pursuant to Section 8(d) of the National Voter Registration Act of 1993.

4. Distribution and posting of possible purge list. After the revisions described in the above paragraph, the list of persons in the Native American precincts to be sent a notice of removal from the voter registration lists in accordance with Section 8(d)(2) of the National Voter Registration Act shall be provided to tribal officials in each Navajo chapter and Pueblo in Sandoval County. The voting rights coordinators shall post the names of persons identified in these lists at each Navajo chapter house and Pueblo community center, with the sole notation that "the following persons should contact their county voting rights coordinator (name) or a deputy registration officer (names)."

5. Assistance with response to purge notice. The appropriate county voting rights coordinator shall attempt to contact personally each voter identified on the list and explain the purge process. If the voter so desires, the coordinator

shall assist the voter in filling out the response to the notice, collect the response, and deliver it to the County Clerk's Office.

6. Final screening of possible purge list. One week before the registration deadline for each election covered by the NAEIP, the voting rights coordinators shall review the list of those still identified for purging, certify the current residence of all voters whose current residence is known to them, revalidate the registration of those voters, and make the necessary adjustments to the voter registration records.

J. Records

1. Statistical records required. In addition to copies of tapes and other materials or records mentioned in this agreement, the defendants shall maintain statistical records including but not limited to:

a. Voter Registration

- Voter registration, by precinct, on a monthly basis.
- Number of voters, by precinct, who are registered at each voter registration drive conducted pursuant to this agreement.

b. Voter Purge

- Total number of voters purged, by precinct.
- Total number of voters retained on the voter registration rolls based on certification of eligibility by the voting rights coordinators.
- Total number of voters, by precinct, reinstated by returning post cards.
- Total number of voters validated by other means during the purge period by precinct.

c. Absentee Voting

- Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.
- Total number of absentee ballots cast, per precinct, in person at the county courthouse.
- Total number of absentee ballots cast, per precinct, in person before a deputy clerk and/or voting rights coordinator on the reservations.

d. Publicity

- English text, Indian language, date, time and medium of each broadcast (where records are available) or publication pursuant to this agreement.
- Time, place, subject matter and occasion of each instance in which each election-related video and audio tape was played.

All records to be kept by precinct must be kept for each and every (Indian and non-Indian) precinct in Sandoval County. The records required in this section are tallies that must be computed by the county. Both the raw data used to compute the tallies, and the tallies themselves, shall be maintained at the county clerk's office, and all records shall be available for public inspection upon request. Copies of these records shall be sent to the Department of Justice upon request.

2. Progress reports. After each election covered by the NAEIP, each voting rights coordinator, under the supervision of the county attorney, shall prepare a report detailing her or his election-related activities in implementing the goals and provisions of the NAEIP. A similar report shall be prepared in October of every odd-numbered year. The format of the report shall be a detailed, paragraph-by-paragraph recitation of the specific efforts made by the county to comply with each provision

of the NAEIP (for example, dates and times of visits to particular Navajo chapters or Pueblos, and subjects discussed; dates and times of training sessions and whether the election procedure outlined in a particular paragraph was discussed; the date and text of an election announcement published in a particular newspaper; the date, time, subject matter and language of each radio broadcast). If an appropriate provision is not specifically mentioned in the report, noncompliance with it shall be presumed.

3. Budgetary and statistical appendices to report. The county shall append to each report quarterly printouts showing itemized expenditures within the NAEIP budget. To each report following an election, the county shall append a printout showing turnout and election results by precinct. The report also shall include the status of Native American voter participation as shown by relevant statistics for the covered period as set forth in Section J.1 of the NAEIP, together with an assessment of the effectiveness of each phase of the program and a recommendation of the steps to be taken, if any, to improve Native American voter participation. A copy of each report shall be provided to the United States, the AIPC, and the NEA within 30 days after the relevant election and by November 30 in odd-numbered years.

K. Adjustments to Program

It is the goal of Sandoval County to provide that the entire election process is fully and effectively accessible to Indian citizens, and the procedures set forth above are designed to

achieve that goal. Adjustments to this program may be made to meet this goal upon written agreement of the parties.

Pursuant to section II, paragraph 2 of the Settlement Agreement, the parties are required to confer in good faith if a particular aspect of the NAEIP has proven ineffective. The county shall notify the United States in writing of that fact prior to taking any action. The United States shall have thirty (30) days from receipt of notification in which to respond. If necessary, the parties shall meet in a good faith effort to resolve such aspect of the program which has proven ineffective, in accordance with the Settlement Agreement.

CONCLUSION

This agreement represents the commitment of the parties to provide equal voting rights to all citizens of Sandoval County. Sandoval County intends to fully and faithfully implement this Native American Election Information Program, and to maintain such a program indefinitely. At a minimum, the NAEIP shall continue for at least ten years from the date of the entry of this modified consent decree. The parties recognize that regular and ongoing reassessment of the above outlined NAEIP by the responsible officials will be necessary in order to ensure that voters are able, and will continue to be able, to enjoy equal access to all phases of the political process in Sandoval County.

SCHEDULE

To fulfill the requirements of the NAEIP, the county voting rights coordinators shall perform at least the following tasks:

Even-Numbered Years

January:

- Explain contents of the ballot based on the primary election proclamation; date of election, offices to be filled
- Explain candidate qualifying deadlines and procedures for the primary election²
- Explain registration procedures and deadlines for the primary election; register voters

February

- Explain date, offices to be filled for primary
- Explain candidate qualifying information
- Explain registration procedures and deadlines; register voters
- Disseminate information on applying for Precinct Board positions
- Ensure that translation tapes for primary election (except for the list of candidates to appear on the ballot) have been recorded and copied, and that English transcripts have been generated; deliver copies of tapes and transcripts to chapters and pueblos

March

- Explain date, offices to be filled on ballot
- Explain candidate qualifying information
- Explain registration procedures and deadlines; register voters
- Distribute and collect applications for absentee ballots; explain absentee voting process and deadlines

April

- Distribute and explain sample ballots: offices, candidates, referenda
- Distribute and collect applications for voting absentee; distribute and collect absentee ballots; explain absentee voting process
- Explain registration procedures and deadlines; register voters
- Provide Native American-language instruction to poll workers on election day procedures, and on how to translate offices, candidates, and referenda

² The deadlines are in March for major party, minor party, and independent candidates (April for write-in candidates).

--Play translation tapes at each training session; provide each trainee with a copy of each tape
 --Distribute translation tapes on ballot contents (including list of candidates on ballot)

May

--Distribute and explain sample ballots; offices, candidates, referenda; demonstrate use of voting machines
 --Distribute and collect applications for voting absentee; distribute and collect absentee ballots; explain absentee voting process
 --Explain registration procedures and deadlines; register voters

June

(Before election)
 --Distribute and explain sample ballots: offices, candidates, referenda
 --Distribute and collect applications for voting absentee; distribute and collect absentee ballots; explain absentee voting process
 (Election Day)
 --Monitor polling places to ensure NAEIP compliance by poll workers, including requirement to keep record of turnaways
 --Note any unreasonable delays or other problems
 (After election)
 --Prepare post-election report
 --Receive statistical tabulations from County Clerk's Office of tallies required in Section J.1
 --Compare registration, turnout, absentee voting, and turnaway rates of Native American versus non-Native American precincts
 --Send post-election report, statistical tallies, and Native/non-Native comparisons to DOJ, NEA, AIPC
 --Explain candidate qualification procedures and deadlines for minor party, independent, and write-in candidates in the general election³

July

--Explain offices and referenda on the general election ballot
 --Explain registration procedures and deadlines for general election; register voters
 --Distribute and collect absentee voting applications; explain absentee voting procedures
 --Ensure that translation tapes for general election have been recorded and copied, and that English transcripts have been generated; deliver copies and transcripts to chapters and pueblos

August

--Explain offices and referenda on ballot
 --Explain registration procedures and deadlines; register voters

³ Deadlines are in July, July, and September, respectively.

--Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting procedures

September

--Explain offices, referenda, and candidates on ballot
 --Explain registration procedures and deadlines; register voters
 --Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting procedures
 --Distribute translation tapes on ballot contents (including list of candidates on ballot)

October

--Distribute and explain sample ballots: offices, referenda, and candidates on ballot
 --Demonstrate use of voting machines
 --Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting procedures

November

(Before election)
 --Distribute and explain sample ballots: offices, referenda, and candidates on ballot
 --Demonstrate use of voting machines
 --Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting procedures (Election Day)
 --Monitor polling places to ensure NAEIP compliance by poll workers, including requirement to keep record of turnaways
 --Note any unreasonable delays or other problems
 (After election)
 --Prepare post-election report
 --Receive statistical tabulations from County Clerk's Office of tallies required in Section J.1
 --Compare registration, turnout, absentee voting, and turnaway rates of Native American versus non-Native American precincts
 --Send post-election report, statistical tallies, and Native/non-Native comparisons to DOJ, NEA, AIPC

December

--Explain offices and referenda (if any) on school district election ballot
 --Explain registration procedures, deadlines for school district elections; register voters
 --Distribute and collect absentee voting applications; explain absentee voting process
 --Ensure that translation tapes of next year's election calendar and English transcript are made; deliver tapes to chapters and pueblos

Odd-Numbered YearsJanuary

--Distribute sample ballots for school district elections:
 explain offices, referenda (if any) and candidates
 --Distribute and collect absentee voting applications; distribute
 and collect absentee ballots; explain absentee voting process
 --Demonstrate use of voting machines

February

(Before school district elections)
 --Distribute sample ballots for school district elections;
 explain offices, referenda (if any) and candidates
 --Distribute and collect absentee voting applications; distribute
 and collect absentee ballots; explain absentee voting process
 --Demonstrate use of voting machines
 (Election Day)
 --Monitor polling places to ensure NAEIP compliance by poll
 workers, including requirement to keep record of turnaways
 --Note any unreasonable delays or other problems
 (After school district elections)
 --Prepare post-election report
 --Receive statistical tabulations from County Clerk's Office of
 all tallies required in Section J.1
 --Compare registration, turnout, absentee voting, and turnaway of
 Native American versus non-Native American precincts
 --Send post-election report, statistical tallies, and Native/non-
 Native comparisons to DOJ, NEA, AIPC

March

--Deliver copies of list of persons eligible to be purged to
 officials at each chapter and pueblo; explain NM purge process
 under the National Voter Registration Act (NVRA)
 --Consult tribal officials, liaisons and registrars in order to
 screen the purge list, identify voters who remain eligible to
 vote in the county, remove those voters from the purge list, and
 correct/update all necessary county records.

April

--Personally deliver "purge notices" (see Section 8(d)(2) of
 NVRA) to each voter remaining on the list of those eligible to be
 purged; assist voter in filling out notice card; collect or mail
 card
 --Post list of persons on list of those eligible to be purged at
 each chapter house and pueblo community center, with the notation
 that the persons listed should contact the relevant county voting
 rights coordinator
 --Register voters; explain registration and purge processes

May

--Personally deliver "purge notices" to each voter; assist voter
 in filling out card; collect or mail card

--Register voters; explain registration and purge processes
 --Update lists of those eligible to be purged (including county records, lists provided to chapter and pueblo officials, and lists posted at chapters and pueblos) to reflect revalidation of voters' registration through their confirmation of current address

June

--Personally deliver "purge notices" to each voter; assist voter in filling out card; collect or mail card
 --Register voters; explain registration and purge processes
 --Update lists of those eligible to be purged, as described above
 --List those remaining on list of those eligible to be purged in ads placed in pueblo newsletters and the Navajo Times, with the notation that the persons listed should contact the relevant county voting rights coordinator

July

--Personally deliver "purge notices" to each voter; assist voter in filling out card; collect or mail card
 --Register voters; explain registration and purge processes
 --Update lists of those eligible to be purged, as described above
 --For voters remaining on list of those eligible to be purged, certify the current address of all voters whose current address is known to the county voting rights coordinator; arrange for their registration to be revalidated and their names to be taken off purge list

August and September

--Register voters; explain registration process
 --Contact voters identified for purging
 --Educate voters generally about the electoral process and voting issues

October

--Prepare report detailing the county's implementation of NAEP since February, including the registration and purge activities.
 --Compile statistics regarding registration and purge activities by precinct as set forth in Section J.1.
 --Compare registration and purge activities in Native American versus non-Native American precincts.
 --Send report, statistics and comparison to DOJ, NEA, and AIPC.

November

--Register voters; explain registration process
 --Contact voters identified for purging
 --Educate voters generally about the electoral process and voting issues

December

--Register voters; explain registration process
 --Contact voters identified for purging

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--Educate voters generally about the electoral process and voting
issues
--Send report to DOJ, NEA, AIPC

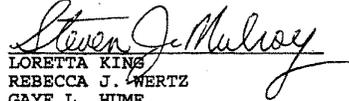
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Filed this 30 day of August, 1994.

Approved as to form and content:

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

FILED
U.S. DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

APR 30 1997

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SANDOVAL COUNTY, NEW MEXICO, et al.,)
)
 Defendants.)
 _____)

R. Heston
CLERK

CIVIL ACTION NO. 88-1457-SC

CONSENT ORDER

On April 25, 1997, this Court scheduled a hearing on the United States' Application for Temporary Restraining Order. Prior to that hearing, the parties met, and with the assistance of the Honorable James A. Parker, one of the members of the three-judge court panel in this case, were able to reach a settlement concerning the United States Application for a Temporary Restraining Order and Motion for a Preliminary Injunction with respect to same-day in-person absentee and absentee-early voting issues for the May 13, 1997 special election in Sandoval County. The terms of that consent agreement are as follows:

In settlement of the United States' Application for a Temporary Restraining Order and Preliminary Injunction seeking compliance with paragraphs G(1) and A(13) of the consent decree entered by this Court on September 9, 1994, Sandoval County, while not admitting to non-compliance with the referenced paragraphs, agrees to provide same-day in-person absentee voting at the satellite office locations specified in the consent decree and at the Counselors Navajo Chapter House for the remainder of the absentee voting and absentee-early voting periods for the May 13, 1997 special election. In settlement of the United States' request for

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enforcement of paragraph B(4), Sandoval County agrees to make a submission to the U.S. Attorney General of the voting changes related to the establishment of an additional absentee-early voting location in Rio Rancho in 1996. Sandoval County further agrees to submit the voting changes related to this consent order to the U.S. Attorney General for Section 3(c) review.

Specifically, Sandoval County, the individual defendants, and all other county officers, agents, servants, employees, attorneys and all others in active concert or participation with them shall:

1) beginning on Wednesday, April 30, 1997, allow voters to obtain an absentee ballot application, submit that application, and if accepted, obtain an absentee ballot, mark that absentee ballot, and seal it in the proper envelope and return it to the staff worker, all during a single visit to any one of the three satellite election office locations specified in the consent decree, including the Torreon Navajo Chapter, the Jemez Pueblo, and the Santo Domingo Pueblo, as well as at the Counselors Navajo Chapter House in the same manner as is permitted at the County Clerk's office under New Mexico law for the remainder of the absentee ballot and absentee-early voting periods for the May 13, 1997 special election. To implement this same-day in-person absentee voting, Sandoval County shall:

a) staff the satellite election offices with the County's Voting Rights Coordinators for a minimum of four hours per day for the remainder of the absentee voting period at announced and scheduled hours to be selected by the Voting Rights Coordinators to be most convenient to Native American voters at those locations; and

b) staff the Counselor's Navajo Chapter location from 8:00 a.m. to 5:00 p.m. with a person trained by the County in absentee ballot procedures and voter assistance procedures who is bilingual in English and Navajo;

2) provide the Voting Rights Coordinators and the person to staff the absentee ballot location at the Counselor's Navajo Chapter with all necessary materials, including absentee ballots, so that voters may apply for, receive, and mark absentee ballots during a single visit to the satellite election offices or the Counselors Navajo Chapter location. These materials shall include those materials necessary for the Voting Rights Coordinator or the staff person at the Counselors Navajo Chapter to determine whether to accept an absentee ballot application. The Voting Rights Coordinator and the person to staff the Counselors Navajo Chapter location shall accept and process valid absentee ballot applications and ballots during the remaining period for same-day in-person absentee ballot voting and absentee-early voting, and such absentee ballots marked shall be valid as if marked at the Sandoval County Clerk's office in Bernalillo;

3) seek, out of an abundance of caution and because Sandoval County believes such authorization is necessary, pursuant to N.M.S.A. Sec. 1-6-5(E), at a hearing on Tuesday, April 29, 1997, proper authorization under New Mexico law from the 13th Judicial District Court, Sandoval County, State of New Mexico to allow the satellite election office locations and the Counselors Chapter House to serve as locations for the processing of absentee ballot applications and ballots as set forth in this agreement. By agreeing to this provision, the United States does not necessarily agree that such authorization is necessary to comply with state law, and does not believe that such approval is necessary in order to comply with this Court's remedial order entered on September 9, 1994;

4) in the event that the 13th Judicial District Court fails to act on April 29, 1997 to provide authorization for the operation of these additional same-day in-person absentee ballot locations, Sandoval County agrees not to oppose entry of an order to provide, beginning at 8:00 a.m. on Wednesday, April 30, 1997, the same relief as is set forth in this Consent Agreement,

provided that if the State District Court issues an order on April 29, 1997 a certified copy shall be attached thereto;

5) immediately take steps to place advertisements in the Navajo Times and each of the major newspapers in Sandoval County on each day of publication until and including the date that the absentee balloting period closes on May 10, 1997, informing voters that they may apply for and cast absentee ballots in person during a single visit during clearly specified hours to the satellite election office locations and Counselors Navajo Chapter location specified;

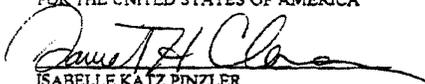
6) immediately take steps to place advertisements or public service announcements in Navajo, Towa, and Keres on local radio station(s) with sufficient coverage to reach all Navajo Chapters and Pueblos in Sandoval County to inform voters that they may apply for and cast absentee ballots in person during a single visit during clearly specified hours to the satellite election office locations and the Counselors Navajo Chapter location specified, with the announcements to air at least twice daily as soon as reasonably possible after or on April 28 through the close of same-day in-person absentee and absentee-early voting on May 10, 1997 at times designed to reach as many Native American voters as possible;

7) submit, within ten days of entry of this order, to this Court or to the United States Attorney General for review, pursuant to Section 3(c) of the Voting Rights Act, the voting changes occasioned by the designation of an additional absentee-early voting site in Rio Rancho for the 1996 primary and general elections; and

8) shall immediately submit to the Attorney General for Section 3(c) review the voting changes occasioned by the County's agreement to provide the relief set forth in this consent order.

The parties further agree to confer in good faith during 1997 in order to resolve the issues of same-day in-person absentee voting and absentee-early voting so that the issue will be resolved prior to 1998 for future elections.

FOR THE UNITED STATES OF AMERICA



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FOR THE COUNTY OF SANDOVAL



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ENTERED this ____ day of April, 1997, for the three-judge Court.


UNITED STATES DISTRICT JUDGE

1015

United States of America v. Sandoval County, New Mexico No. CIV-88-1457 SC
(Consent Order--continued)


SANTIAGO E. CAMPOS
Senior United States District Judge

1016



Bobby R. Baldock
U.S. Circuit Judge

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
NOV - 5 2004

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
SANDOVAL COUNTY, NEW MEXICO;	)	NO. CIV 88-1457-BB/DJS
SANDOVAL COUNTY BOARD OF)	
COMMISSIONERS; WILLIAM SAPIEN,)	
DAYMON ELY, DAVID BENCY, JACK E.)	
THOMAS, and ELIZABETH C. JOHNSON,)	
Members of the Sandoval County)	
Board of Commissioners; and)	
VICTORIA DUNLAP, Sandoval County)	
Clerk,)	
)	
Defendants.)	

ORDER EXTENDING AND MODIFYING CONSENT DECREE

The United States initiated this action against the State of New Mexico and Sandoval County in December of 1988, pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act arising from election practices and procedures in Sandoval County, New Mexico (the "County") as they affect Native American citizens. On March 23, 1990, the parties entered into a settlement agreement which provided for the development and implementation of a comprehensive bilingual Native American Election Information Program ("NAEIP") for the American Indian citizens of Sandoval County. A detailed description of the NAEIP

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was filed with the court on April 30, 1990; on May 17, 1990, this Court ordered the county to implement the NAEIP. Pursuant to the provisions of the settlement agreement, the case was dismissed as against the state defendants on December 31, 1990.

The County failed to comply substantially with the provisions of the NAEIP. In June 1993, the United States moved to reactivate the case and for continued discovery. The Court granted that motion, and the ensuing discovery uncovered significant evidence of the County's failure to comply with the consent decree. Accordingly, Sandoval County agreed to negotiate an extension and modification of the decree.

The parties filed a revised consent decree and NAEIP on August 30, 1994. On September 9, 1994, the three-judge court in this case entered the Order Entering Consent Decree (the "Order") which, by its terms, is otherwise set to expire on September 9, 2004.

In the parties' Joint Motion for Modification and Extension of Consent Decree presently filed with this Court, defendants concede that they failed to furnish all instructions, assistance and other information relating to voting orally in the Navajo, Towa, and Keresan languages. See 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12. The parties agree that this constitutes good cause to extend provisions of the Consent Decree. The parties have agreed to certain modifications of the NAEIP.

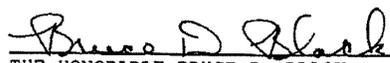
After consideration of the Joint Motion for Modification and Extension of Consent Decree and the modified NAEIP, and good cause appearing, the Court finds the terms of the modified consent decree fair and reasonable, and it is hereby ORDERED that this Court's September 9, 1994 Order and NAEIP, as modified, are hereby extended until January 15, 2007.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the Constitution.

Entered this 3rd day of November, 2004.


THE HONORABLE BOBBY R. BALDOCK
Senior United States Circuit Judge
United States Court of Appeals
for the Tenth Circuit


THE HONORABLE JAMES A. PARKER
Senior United States District Judge
United States District Court for
the District of New Mexico


THE HONORABLE BRUCE D. BLACK
United States District Judge
United States District Court for
the District of New Mexico

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SANDOVAL COUNTY, NEW MEXICO;)
 SANDOVAL COUNTY BOARD OF) NO. CIV 88-1457-SC
 COMMISSIONERS; WILLIAM SAPIEN,)
 DAYMON ELY, DAVID BENCY, JACK E.)
 THOMAS, and ELIZABETH C. JOHNSON,)
 Members of the Sandoval County)
 Board of Commissioners; and)
 VICTORIA DUNLAP, Sandoval County)
 Clerk,)
)
 Defendants.)
 _____)

Amended Native American Election Information Program

NATIVE AMERICAN ELECTION INFORMATION PROGRAM

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A. County Voting Rights Coordinators

1. General. Sandoval County, under the supervision of the Sandoval County Attorney acting on behalf of the Sandoval County Commission, shall continue to employ at least three full-time Voting Rights Coordinators to coordinate the Native American Election Information Program (NAEIP) in the county. The requirements of the NAEIP shall apply to all elections held within Sandoval County which include any Native American-majority precinct located in whole or in part on the following reservations which, based on 2000 Census data, triggered the bilingual voting information requirements of Section 203 of the Voting Rights Act for Navajo and Pueblo Indians in the county: the Pueblos of Jemez, San Felipe, Santo Domingo and Zia, and the Counselors, Ojo Encino and Torreon and Chapters of the Navajo Nation ("covered reservations"). These elections include primary, general and special elections, as well as elections for the Cuba, Jemez and Bernalillo Independent School Districts. One of the Voting Rights Coordinators shall be fluent in Keres and English, one shall be fluent in Navajo and English, and one shall be fluent in Towa and English. The Navajo-fluent coordinator shall coordinate the election information programs for Cuba Independent School District elections in the relevant precincts, the Keres-fluent coordinator shall coordinate the election information programs for Bernalillo Independent School District

elections in the relevant precincts and the Towa-fluent coordinator shall coordinate the election information programs for Jemez Independent School District elections in the relevant precincts. The coordinators shall be supervised by the Sandoval County Attorney acting on behalf of the Sandoval County Commission. Daily supervision of the coordinators may be delegated to the Director of the Sandoval County Community Services Division, at the discretion of the County Attorney. The duties of the coordinators shall be limited to those necessary to implement the goals and tasks specified in the NAEIP. Each coordinator shall be paid a salary in accordance with a compensation salary schedule. The provisions of the personnel ordinance of Sandoval County shall apply to the coordinators. The Voting Rights Coordinators may be discharged by the County Attorney, the County Manager, or the County Commission only.

2. Filling Voting Rights Coordinator Vacancies. If a vacancy occurs in a Voting Rights Coordinator position, the County Attorney shall immediately notify the United States and shall fill the vacancy within 90 days, after consultation with Native American leaders as outlined below. During the period of vacancy the duties of the vacant position will be performed by the other coordinators. A vacancy does not relieve the county of its obligations under the NAEIP.

3. Consultation with Native American officials. Voting Rights Coordinator vacancies shall be filled by the County Attorney after consultation with the All Indian Pueblo Council (AIPC) or Navajo Elections Administration (NEA), as appropriate, the Pueblo or Navajo Tribal officials of the relevant reservations in Sandoval County, and the United States. To that end, the County Attorney shall request from the appropriate officials the names of at least two persons recommended for the respective position, and the County Attorney shall seriously consider those persons, but may hire other qualified applicants. For the Keres-fluent Voting Rights Coordinator position, recommendations shall be sought from the AIPC and the Governors of the Pueblos of San Felipe, Santo Domingo and Zia. For the Navajo-fluent Voting Rights Coordinator position, recommendations shall be sought from the NEA and the Presidents of the Counselors, Torreon and Ojo Encino Chapters of the Navajo Nation. For the Towa-fluent Voting Rights Coordinator, recommendations shall be sought from the AIPC and the Governor of the Jemez Pueblo.

4. Training of coordinators. The Voting Rights Coordinators shall be trained by the state and county in all aspects of the election process, and shall attend all election seminars conducted by the Secretary of State and/or Sandoval County Clerk. Voting Rights Coordinators shall be fully briefed

by the County Attorney concerning their duties and responsibilities under the NAEIP. Representatives of the AIPC and/or Pueblo tribal officials of Sandoval County and the NEA and/or Navajo tribal officials of Sandoval County, as appropriate, shall be invited to attend these seminars and briefings.

5. Field visits. The Voting Rights Coordinators shall, under the supervision of the County Attorney, oversee the county's NAEIP generally and visit on a regular basis each covered reservation. In the course of these visits, the Voting Rights Coordinators shall perform at least the tasks specified in the attached Schedule in accordance with the timetable set forth therein. Further, the Voting Rights Coordinators shall announce and hold regular office hours at the Satellite Election Offices (see paragraph A.12. below).

6. Record of field visits. The Voting Rights Coordinators, or other county officials designated by the County Attorney, shall maintain a record of the date and purpose of each visit for election-related purposes to each Pueblo community center, Navajo Chapter House, or other sites on the Pueblo and/or Navajo Indian Reservations.

7. Training of election personnel. The Voting Rights Coordinators shall conduct the training of all poll officials, tribal election liaisons, and other election-related personnel

who will participate in the NAEIP. For each election covered by the NAEIP, the coordinators shall conduct at least one formal training session for all Keres-speaking election personnel, one formal training session for all Navajo-speaking personnel and one formal training session for all Towa-speaking personnel. Each Pueblo Governor and Navajo Chapter President whose Chapter or Pueblo is in whole or in part within Sandoval County shall be notified in writing, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at locations convenient to trainees.

8. Delivery of election information to other governmental entities. The Voting Rights Coordinators shall coordinate the delivery of Native American election information to school districts in Sandoval County. The Voting Rights Coordinators shall, upon request, coordinate delivery of election information to other governmental entities that conduct elections and voter registration within the county.

9. NAEIP and travel budgets. Sandoval County shall establish a separate travel budget for the Voting Rights Coordinators which shall be sufficient to cover their travel expenses incurred in carrying out their duties, obligations and responsibilities to effectively implement the NAEIP. Coordinators shall be reimbursed for expenses incurred for travel

incident to bona fide NAEIP business, including visits to Pueblos or Navajo Chapters and to sites for training programs. The county also shall establish a separate, itemized NAEIP budget, and shall generate quarterly reports itemizing expenditures made to implement the NAEIP.

10. Access to Clerk's Office facilities. The Voting Rights Coordinators shall have full access to the records and facilities of the Office of the County Clerk, including access to computers. They shall have the authority to inspect, modify, update, and generate reports from all County Clerk election records, whether in computer or other form, in order to fulfill the goals of the NAEIP. The County Clerk shall provide the Voting Rights Coordinators with updated lists of registered voters by precinct ("alpha lists") on the first day of each month. The Voting Rights Coordinators shall be authorized to provide copies of alpha lists without charge to any Pueblo Governor or Navajo Chapter President, whose Pueblo or Chapter is in whole or in part in Sandoval County, upon oral or written request from that Governor or Chapter President.

12. Satellite Election Offices. Sandoval County shall establish three permanent Satellite Election Offices. One office shall be established at a location within the Torreon Navajo Chapter. Another office shall be established at a location within the San Felipe, Santo Domingo or Zia Pueblo, if

practicable; otherwise, the County may establish an election office for the use of the Keres-speaking Voting Rights Coordinator at a location within the Sandoval County Courthouse. The third office shall be established at a location within the Jemez Pueblo. The county shall be responsible for equipping, but not renting, such offices.

13. Function of Satellite Election Offices. Each Satellite Election Office shall serve: as the principal place for office hours for the Voting Rights Coordinators;¹ as a library of written and recorded election information; and as a distribution point for the dissemination of election information. The Satellite Election Office shall also serve as a site for the performance of all functions related to the election process that can be performed at the county courthouse, including but not limited to: registering to vote or updating voter registration information; filing by residents of Chapters or Pueblos as a candidate for office; and applying for and casting an absentee ballot. The Voting Rights Coordinators shall announce and maintain regular office hours at the Satellite Office.

14. Satellite Office equivalent to county courthouse. Delivery of a voter registration application or performance of

¹ The Keres-fluent Voting Rights Coordinator may choose to spend up to 4 days a week away from this office. The other Voting Rights Coordinators may choose to spend up to 3 days a week away from this office.

any other election-related task at a Satellite Election Office shall be effective in terms of all time deadlines and requirements as if the application had been delivered, or the task performed, at the county courthouse.

15. Supplies and equipment. A supply of all forms and materials necessary to complete all functions related to the election process shall be maintained at each Satellite Election Office. Copies of all materials, information and audio or video tapes required to be disseminated pursuant to the NAEIP, including all election-related materials prepared by the state, likewise shall be available in each office, together with appropriate office supplies, typing equipment, and audio or visual equipment.

B. Intergovernmental Coordination

1. Cooperation with the State. Sandoval County and the Voting Rights Coordinators shall request and accept all training, materials and services available from the State of New Mexico in furtherance of the implementation of the NAEIP, and shall encourage the production of such training, materials and services by the state. The Voting Rights Coordinators shall contact, at least monthly, state personnel, including personnel in the Office of the Secretary of State, Bureau of Elections, and the state's Native American Election Information Program in order to coordinate state and county activities and efforts, and for

advice and assistance associated with the NAEIP. Sandoval County shall encourage the assistance of such state personnel, and shall at all times welcome their presence in the county to assist in implementation of the NAEIP or to assist Native Americans in any phase of the election process.

2. Cooperation with other counties. The county is encouraged to work with other counties in New Mexico and neighboring states which have programs for Native American language minorities to coordinate election activities, including the development of standard terminology for the translation of election materials into Navajo and Keres.

3. Consultation with Native American officials. Sandoval County shall invite representatives of the AIPC, the NEA and officials of the Pueblos and Chapters within the county to assist in all phases of the NAEIP, including translations (see paragraph D.5.).

4. Designation Under Section 3(c) of the Voting Rights Act.
Sandoval County is designated pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c) for the duration of the NAEIP, so that during that period no alteration of any voting qualification or prerequisite to voting or any standard, practice, or procedure with respect to voting, may be implemented by Sandoval County without prior clearance from this Court or from the Attorney General of the United States. Such changes

include, but are not limited to, amendments to the NAEIP and changes in polling places within Sandoval County, and, as to state-mandated changes affecting voting, those practices and procedures with respect to which Sandoval County has discretion in implementation or administration. The Sandoval County Clerk shall notify the Sandoval County Attorney of enactment or adoption of any changes affecting voting mandated by the state. The Sandoval County Attorney shall notify counsel for the United States within fourteen days of notification to the county by the Secretary of State of any state-mandated changes, and provide to the United States a copy of the pertinent statute, regulation or order.

5. Cooperation with federal election observers. To assist in the effectiveness of this agreement and to enforce the voting guarantees of the Fourteenth and Fifteenth Amendments, the appointment of federal examiners for elections in Sandoval County is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973(a), for at least the period of this agreement. Sandoval County recognizes the authority of federal observers to enter and attend at any place for holding an election in the county for the purpose of observing election procedures, including entering the voting booth for the purpose of observing language assistance.

C. Tribal Election Liaisons

1. Appointment of liaisons. The Sandoval County Attorney shall request each Pueblo Governor and each Navajo Chapter President, whose Pueblo or Chapter is in whole or in part in Sandoval County, to identify and/or appoint at least one individual in each Navajo Chapter and Pueblo to serve as tribal election liaison(s) between the county and each Pueblo and Navajo Chapter.

2. Training of liaisons. Tribal election liaisons shall be fully trained by the Voting Rights Coordinators in both English and in the Keres, Towa or Navajo Indian languages, as appropriate, in all aspects of the elections process, including absentee voting, the voter registration and purge processes, candidate qualifications process, election-related deadlines, election day activities, proposed constitutional amendments and other referenda.

3. Contracting for translation assistance. Where necessary and as appropriate, the county may contract with the tribal election liaisons and/or other qualified persons to assist in the effective implementation of this bilingual election program, including the translation of materials described in Section D below into the applicable Indian language.

4. Telephone inquiries. Telephone inquiries from Voting Rights Coordinators and tribal election liaisons to the County

Clerk's office or a Satellite Election Office respecting election-related matters, should be encouraged and shall be considered official government business, with the cost of such telephone inquires to be borne by the county.

D. Translations

1. Time and subject matter of translations. The following election-related materials and announcements shall be translated into the Navajo and Towa languages and into each of the three dialects of Keres spoken in the covered reservations in Sandoval County, made available on audio and/or video tapes, and provided to the Voting Rights Coordinators at the Satellite Election Offices by the dates specified:

- a. Detailed election calendar for each year (by January 1 of each year);
- b. State, county and school district election proclamations (by the statutory date of proclamation);
- c. Constitutional amendments and other referenda issues on the ballot (within 30 days of the date the English text is determined, and no later than the date of proclamation);
- d. A brief description of each constitutional amendment or other referendum issue on the ballot (by the date of each election proclamation);
- e. Candidate qualification requirements and deadlines (60 days prior to the respective qualification deadlines for

primary elections for state and federal offices, primary elections for other offices, independent candidates, and write-in candidates);

f. The duties and functions for each office filled by election involving any part of Sandoval County (by October 31, 2004);

g. Voter registration deadlines (by January 1 of each year, with separate tapes containing deadlines for each type of election);

h. Instructions relating to voting by absentee ballot (by October 31, 2004);

i. An explanation of the voter purge process as provided by this Decree (by October 31, 2004);

j. The offices for each election and the political party for each candidate (by the date on which the ballot is printed);

k. Explanations of voting procedures including the operation of voting machines and how to cast a write-in ballot (by October 31, 2004); and

l. An explanation of the circumstances under which a voter may cast a provisional ballot, the circumstances under which the ballot will be counted and information regarding the free access system through which the voter may learn whether the

provisional ballot was counted, and if not, the reason that the ballot was not counted (by October 31, 2004).

2. Discussion/use of tapes at tribal meetings. The county, through the Voting Rights Coordinators and liaisons, shall seek to ensure, to the extent practicable, that the subject matter and availability of each tape is discussed in at least one tribal meeting of each covered Keres-speaking or Towa-speaking Pueblo reservation or Navajo Chapter House during the appropriate publicity period (see attached Schedule), and that either the Voting Rights Coordinator, tribal election liaison or other trained bilingual person is present to answer any questions concerning the subject matter of the tape.

3. Copies and transcripts provided to Navajo Chapters and Pueblos. A copy of each Indian language audio and/or video tape described in this agreement shall be provided to the community center for each covered Pueblo reservation and each Navajo Chapter House in Sandoval County in the appropriate language. Separate recordings shall be provided for each election-related subject matter so as to minimize the extent to which any tape recording exceeds 10 minutes in length. A library of currently applicable tapes, together with English transcripts shall be maintained at the applicable Pueblo community centers and Navajo Chapter Houses. Where translation tapes do not reflect a word-for-word translation of the original English text, the "English

transcript" referred to above shall consist of the "back-translation" from the Indian language into English of the Indian language phrases used, and not the original English text.

4. Selection and use of qualified translators.

Translation shall be made by qualified translators contracted with by the county for that purpose. The translators shall be selected after consultation with the tribal officials at each Chapter and covered Pueblo reservation in Sandoval County, the NEA, the AIPC, and the United States. The County Attorney shall make use of any expertise available from the state and shall assist in translation of technical or complicated election-related materials.

5. Review by Pueblo and Navajo officials. To facilitate uniformity and accuracy in the translation of election materials, prior to dissemination of any translation, the county shall make available all such translations to representatives of the AIPC and/or Pueblo tribal officials or the NEA and/or Navajo tribal officials within Sandoval County, as appropriate, and provide them with a reasonable opportunity to review and comment concerning any matter translated. The county shall maintain a written record of any comments received and the county's response to the comments.

6. Prompt translation. The process of translation and review of any election-related material shall begin as soon as

the English text is known so that tapes are available on or before the date that English language announcements or materials are available.

E. Dissemination of Election-Related Information

1. Coordination with Native American officials. The county shall coordinate publicity efforts with Pueblo and Navajo Indian tribal officials, and with the NEA and the AIPC. All election-related announcements, materials and information, including, but not limited to, the election calendar, state and county election proclamations, the voter information pamphlet and sample ballots, shall be made available to each covered Pueblo reservation and Navajo Chapter in whole or in part in the county, the NEA and the AIPC.

2. Availability to high schools. Election-related announcements, materials, tapes and other election information shall be made available upon request to the public high schools in the county to familiarize students with all phases of the election process.

3. Radio and/or Television. The county shall arrange for the broadcast of brief radio and/or television spot announcements, in the Keres, Towa and Navajo languages. The announcements shall provide a short (less than 5 minutes) general description of the subject matter and an identification of all sources for more detailed information, including the Satellite

Election Offices. The announcements shall be broadcast on one or more local stations with sufficient coverage to reach all Navajo Chapters and Pueblos in Sandoval County and shall address at least the following topics:

a. Deadlines for voter registration for federal, state and local elections, including school board elections, and identification of regularly available voter registration sites in each Satellite Election Office, Pueblo, Navajo Chapter or other location convenient to the Indian population. These announcements shall be made at least five times each week for the four weeks preceding the deadlines for registration for each primary and general election covered under the NAEIP.

b. Dates of all elections covered by the NAEIP, a list of the offices to be elected, a brief description of the topic of each ballot proposition, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements shall be made five times each week during at least the three weeks prior to the deadline for registration for the corresponding election.

c. The county shall request that the above identified announcements be aired as a public service and that they be made at times calculated to reach the largest possible audience.

4. Print Media. English election announcements detailed in paragraph E.3 shall be published on a weekly basis in the Navajo Times and the newsletters of each covered Pueblo reservation in Sandoval County for the publicity periods noted in that paragraph.

5. Targeting of media area. For elections which involve geographic areas less than the entire county, announcements required to be made pursuant to Paragraph 3 and 4 above shall be made in the applicable language (Navajo, Towa, and/or Keres) and in the media (radio, television, print) covering such area.

6. Demonstration of use of voting machines. The County Clerk shall make available to the Voting Rights Coordinators facsimiles of voting machines or devices for their use in training tribal election liaisons and poll officials and in conducting voter education programs at Pueblo community centers and Navajo Chapter Houses.

7. Monitoring. The county shall evaluate its publicity programs on an ongoing basis through consultation with the tribal election liaisons, the AIPC and/or Pueblo tribal officials, the NEA and/or Navajo tribal officials of Sandoval County, and the United States.

F. Absentee Voting

1. Delivering, filling out, and collecting applications on the reservations. The county shall supply applications for

absentee ballots to all Voting Rights Coordinators and tribal election liaisons. The Voting Rights Coordinators and tribal election liaisons shall deliver applications to the Chapters and Pueblos, assist voters in filling them out, and collect applications for return to the County Clerk's Office. The Voting Rights Coordinators and tribal election liaisons shall return completed absentee ballot applications to the County Courthouse as soon as practicable, but no later than five (5) business days following the day on which the Voting Rights Coordinators and/or tribal election liaisons accepted completed absentee ballot applications. Each Satellite Election Office shall have the necessary materials and personnel available during regular office hours so that an absentee or early ballot can be cast in person there and be counted as if the ballot had been cast at the county courthouse.

2. Absentee voting at tribal meetings. The county shall provide an opportunity for Indian citizens, qualified to vote pursuant to state law, to cast absentee ballots within their precincts by ensuring that the Voting Rights Coordinators seek to attend the last tribal meeting prior to each primary, general, special or school board election, for each Pueblo and Navajo chapter in whole or in part within the county, so that eligible persons may obtain and, if they desire, cast absentee ballots in person at that time. However, voters must be provided the

ability to vote such ballots in private with no person having an opportunity to observe the ballot choices made by such voters, except one selected by the voter to render assistance as provided in state law and/or Section 208 of the Voting Rights Act. Voting Rights Coordinators, tribal election liaisons, or county officials shall announce and explain personally, or through trained translators at the tribal meetings, the availability of and instructions for voting absentee.

3. Announcements. Announcements shall be made regarding the availability of absentee balloting, including the standards of eligibility for absentee ballots and for voting absentee, during any tribal meeting prior to the deadline for voting by absentee ballot under state law, and when such meetings occur in the absentee voting period. The availability of absentee balloting also shall be made known by posting such information prominently at the community center for each of the covered Pueblos, at each Navajo Chapter House and at trading posts or post offices on the covered reservations; by radio and/or television announcements pursuant to paragraph E.3 above; and by print media pursuant to Paragraph E.4 above.

4. Authorization to deliver and collect ballots. Voting Rights Coordinators shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk, to witness absentee ballots, and to

accept completed absentee ballots from eligible voters for delivery to the county clerk. The Voting Rights Coordinators shall deliver completed absentee ballots to the County Clerk as soon as practicable, but no later than five business days following the day on which the Voting Rights Coordinator accepted the completed absentee ballot, except that all absentee ballots accepted by the Voting Rights Coordinator during the five days preceding the deadline for receipt of absentee ballots shall be delivered to the County Clerk by the deadline for receipt.

G. Election Day Procedures

1. Hiring, training and ensuring attendance of poll officials; consultation. For each Native-American majority precinct which serves residents of the covered reservations in Sandoval County, the County Clerk shall assign, at a minimum, the number of poll officials required by state law. Such poll officials shall be bilingual in English and the applicable Indian language. The County Clerk shall fully train such poll officials and engage in reasonable efforts to secure their presence at the polls on election day. The County Clerk shall consult with the tribal election liaisons, the NEA and/or Navajo tribal officials of Sandoval County, the AIPC, and/or other appropriate tribal officials to identify bilingual individuals qualified to work at the polls. Alternate translators shall be designated as required by state law. The County Clerk shall provide to the County

Attorney no later than 21 days preceding each primary, general or special election a list of names, addresses, and telephone numbers of the bilingual poll officials assigned to each Native-American majority election precinct which serves residents of the covered reservations.

2. Training of poll officials; use of tapes. Poll officials and translators shall be fully trained, at locations in the county convenient to the trainees, in English and the relevant Indian language concerning election day procedures at the polling places, the contents and issues appearing on the ballot, and voter purge procedures. Poll officials and translators also shall be trained in the relevant Indian language to translate election day procedures, ballot contents, and voter registration and purge procedures. Training in translation of the ballot in the Keres, Towa and Navajo Indian languages shall include the use of audio and/or video tapes, and one copy of each tape shall be maintained in accordance with the terms of this agreement. A copy of each tape along with a sample ballot shall be provided to each trainee at the training. The County may require that trainees return such tapes and materials to county officials on election day so that they may be reused. Training sessions shall be followed by oral testing in Navajo, Keres or Towa, as appropriate to ensure their effectiveness. Bilingual poll officials and translators shall receive additional

compensation for participating in bilingual training. Such training shall be completed no later than the third day before the relevant election.

3. Number of translators per precinct. For each additional voting machine at each polling place in excess of one, the County Clerk shall appoint an additional trained translator.

4. Instructions regarding assistance to voters. At each training session, poll officials shall be instructed to specifically advise each voter who requires assistance in casting a ballot that the voter may choose any person to provide that assistance, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6 (the voter's employer or agent of that employer or officer or agent of the voter's union). Poll officials also shall be instructed to cooperate with federal observers as outlined in paragraph B.5.

5. Instructions regarding persons not allowed to vote and not afforded an opportunity to cast a provisional ballot. At each training session, poll officials shall be instructed to maintain a record of all persons who come to the polls but are not allowed to vote and not afforded the opportunity to cast a provisional ballot. This record shall include each voter's name, address, the reason the person thought she or he was eligible to vote at that site, the reason for not permitting the person to vote, the reason for not affording an opportunity to cast a

provisional ballot at that site, and whether the person was registered at the polling site for future elections. Poll officials shall provide such persons who are eligible with an opportunity to register for future elections before leaving the polling site.

6. Distribution of lists of persons not allowed to vote and not afforded an opportunity to cast a provisional ballot. A list of the persons described in paragraph 5, above, who did not register at each polling site in Native American-majority election precincts serving residents of the covered reservations shall be provided by the County Clerk to the appropriate Voting Rights Coordinators, who will provide a copy of the appropriate list to the relevant tribal election liaisons, and the county shall provide an opportunity to such persons on the list to register to vote at the earliest possible time.

7. Dual polling places for tribal and state elections. The County shall cooperate with the NEA in the establishment of polling places so that the same buildings can be used for Navajo tribal and state elections in separate areas of the same buildings.

8. Monitoring of election day procedures by Voting Rights Coordinators. The Voting Rights Coordinators shall be authorized to enter polling places on election day to monitor election day procedures. In addition to ensuring that the instructions

described above in this section are followed, Voting Rights Coordinators shall identify and record any instances of unreasonable delays in voting or in translation of the ballot. Where such delays occur, the County shall take whatever steps are necessary, such as providing additional translators and voting machines, to ensure that such delays do not recur in future elections.

H. Purge Process

1. Satellite Election Office deemed "central location".

Each Satellite Election Office shall be deemed a "central location" under the terms of Section 8(e) (2) of the National Voter Registration Act of 1993.

2. Voter List Maintenance

At least 30 days before any registrants in a covered reservation are sent notice of the potential cancellation of their registration in accordance with Section 8(d) (2) of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg-6(d) (2), a list of the names and addresses of these registrants shall be provided by the County Clerk to the appropriate Voting Rights Coordinator. If the Voting Rights Coordinator or tribal officials confirm in writing prior to the expiration of the thirty (30) day period that any registrant on the list still lives in the County and remains eligible to vote there, that registrant shall not be sent a notice of potential

cancellation and shall be maintained on the list of eligible voters provided that the Coordinator or tribal officials also provide the current registration address of the registrant. This Consent Decree does not otherwise prohibit the proper authorities from removing from the voter list those ineligible to vote by reason of a change of address, assuming that the requirements of the NVRA are met.

I. Records

1. Statistical records required. In addition to copies of tapes and other materials or records mentioned in this agreement, the County shall maintain statistical records including but not limited to:

a. Voter Registration to be compiled by the County Clerk

--Voter registration, by precinct, on a monthly basis.

b. Voter Purge to be compiled by the County Clerk

--Total number of voters purged, by precinct.

--Total number of voters retained on the voter registration rolls based on certification of eligibility by the Voting Rights Coordinators.

--Total number of voters, by precinct, reinstated by returning post cards.

--Total number of voters validated by other means during the purge period by precinct.

c. Absentee Voting to be compiled by the County Clerk

--Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.

--Total number of absentee ballots cast, per precinct, in person at the county courthouse.

--Total number of absentee ballots cast, per precinct, in person before a Voting Rights Coordinator on the reservations.

d. Publicity

--English text, Indian language, date, time and medium of each broadcast (where records are available) or publication pursuant to this agreement.

--Time, place, subject matter and occasion of each instance in which each election-related video and audio tape was played.

All records to be kept by precinct must be kept for each and every (Indian and non-Indian) precinct in Sandoval County. The records required in paragraphs (a) through (c) of this section are tallies that must be computed by the County Clerk and copies of these tallies shall be provided to the Voting Rights Coordinators and the County Attorney. Both the raw data used to compute the tallies, and the tallies themselves, shall be maintained at the County Clerk's office, and all records shall be available for public inspection upon request. Copies of these records shall be sent to the Department of Justice upon request.

2. Progress reports. After each election covered by the NAEIP, each Voting Rights Coordinator, under the supervision of the County Attorney, shall prepare a report detailing her or his election-related activities in implementing the goals and provisions of the NAEIP. A similar report shall be prepared in October of every odd-numbered year. The United States and the Sandoval County Attorney shall develop a form to be completed by each Voting Rights Coordinator which will constitute the report.

The format of the report shall be a detailed, paragraph-by-paragraph recitation of the specific efforts made by the county to comply with each provision of the NAEIP (for example, dates and times of visits to particular Navajo chapters or Pueblos, and subjects discussed; dates and times of training sessions and whether the election procedure outlined in a particular paragraph was discussed; the date and text of an election announcement published in a particular newspaper; the date, time, subject matter and language of each radio broadcast). If an appropriate provision is not specifically mentioned in the report, noncompliance with it shall be presumed.

3. Budgetary and statistical appendices to report. The County Attorney shall append to each report quarterly printouts showing itemized expenditures within the NAEIP budget. To each report following an election, the County Attorney shall append a printout showing turnout and election results by precinct. The County Clerk shall provide this printout to the County Attorney. The report also shall include the status of Native American voter participation as shown by relevant statistics for the covered period as set forth in Section I.1 of the NAEIP, together with an assessment of the effectiveness of each phase of the program and a recommendation of the steps to be taken, if any, to improve Native American voter participation. A copy of each report shall be provided to the United States, the AIPC, and the NEA within 30

days after the relevant election and by November 30 in odd-numbered years.

CONCLUSION

This agreement represents the commitment of the parties to provide equal voting rights to all citizens of Sandoval County. Sandoval County intends to fully and faithfully implement this NAEIP, and to maintain such a program indefinitely. At a minimum, the NAEIP shall continue through January 15, 2007. The parties recognize that regular and ongoing reassessment of the above outlined NAEIP by the responsible officials will be necessary in order to ensure that voters are able, and will continue to be able, to enjoy equal access to all phases of the political process in Sandoval County.

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SCHEDULE

To fulfill the requirements of the NAEIP, the Voting Rights Coordinators shall perform at least the following tasks:

Even-Numbered Years

January

- Explain contents of the ballot based on the primary election proclamation: date of election, offices to be filled
- Explain candidate qualifying deadlines and procedures for the primary election²
- Explain registration procedures and deadlines for the primary election

February

- Explain date, offices to be filled for primary
- Explain candidate qualifying information
- Explain registration procedures and deadlines
- Ensure that translation tapes for primary election (except for the list of candidates to appear on the ballot) have been recorded and copied, and that English transcripts have been generated; deliver copies of tapes and transcripts to Chapters and Pueblos

March

- Explain date, offices to be filled on ballot
- Explain candidate qualifying information
- Explain registration procedures and deadlines
- Distribute and collect applications for absentee ballots; explain absentee voting process and deadlines

April

- Distribute and explain sample ballots: offices, candidates, referenda
- Distribute and collect applications for voting absentee; distribute and collect absentee ballots; explain absentee voting process
- Explain registration procedures and deadlines
- Provide Native American-language instruction to poll workers on election day procedures, and on how to translate offices, candidates, and referenda

² The deadlines are in March for major party, minor party, and independent candidates (April for write-in candidates).

1052

-Play translation tapes at each training session; provide each trainee with a copy of each tape
--Distribute translation tapes on ballot contents (including list of candidates on ballot)

May

--Distribute and explain sample ballots: offices, candidates, referenda; demonstrate use of voting machines
--Distribute and collect applications for voting absentee; distribute and collect absentee ballots; explain absentee voting process
--Explain registration procedures and deadlines

June

(Before election)

--Distribute and explain sample ballots: offices, candidates, referenda
--Distribute and collect applications for voting absentee; distribute and collect absentee ballots; explain absentee voting process
-- Conduct bilingual training in relevant language for each bilingual poll worker who will participate in the NAEIP; such training shall include instruction on translation of each office and, if applicable, each ballot proposition, including but not limited to referenda questions, bond propositions, charter amendments, and constitutional amendments

(Election Day)

--Monitor polling places to ensure NAEIP compliance by poll workers, including requirement to keep record of voters turned away
--Note any unreasonable delays or other problems

(After election)

--Prepare post-election report
--Receive statistical tabulations from County Clerk's Office of tallies required in Section I.1
--Compare registration, turnout, absentee voting, and turnaway rates of Native American versus non-Native American precincts
--Send post-election report, statistical tallies, and Native/non-Native comparisons to DOJ, NEA, AIPC

July

--Explain offices and referenda on the general election ballot
--Explain registration procedures and deadlines for general election
--Distribute and collect absentee voting applications; explain absentee voting procedures

1053

--Ensure that translation tapes for general election have been recorded and copied, and that English transcripts have been generated; deliver copies and transcripts to chapters and pueblos

August

--Explain offices and referenda on ballot
--Explain registration procedures and deadlines
--Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting procedures

September

--Explain offices, referenda, and candidates on ballot
--Explain registration procedures and deadlines
--Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting procedures
--Distribute translation tapes on ballot contents (including list of candidates on ballot)

October

--Distribute and explain sample ballots: offices, referenda, and candidates on ballot
--Demonstrate use of voting machines
--Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting procedures
--Conduct bilingual training in relevant language for each bilingual poll worker who will participate in the NAEIP; such training shall include instruction on translation of each office and, if applicable, each ballot proposition, including but not limited to referenda questions, bond propositions, charter amendments, and constitutional amendments

November

(Before election)

--Distribute and explain sample ballots: offices, referenda, and candidates on ballot
--Demonstrate use of voting machines
--Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting procedures

(Election Day)

--Monitor polling places to ensure NAEIP compliance by poll workers, including requirement to keep record of voters turned away
--Note any unreasonable delays or other problems

(After election)

--Prepare post-election report
--Receive statistical tabulations from County Clerk's Office of tallies required in Section I.1

1054

--Compare registration, turnout, absentee voting, and turnaway rates of Native American versus non-Native American precincts
--Send post-election report, statistical tallies, and Native/non-Native comparisons to DOJ, NEA, AIPC

December

--Explain offices and referenda (if any) on school district election ballot
--Explain registration procedures, deadlines for school district elections
--Distribute and collect absentee voting applications; explain absentee voting process
--Ensure that translation tapes of next year's election calendar and English transcripts are made; deliver tapes to chapters and pueblos

Odd-Numbered Years

January

- Distribute sample ballots for school district elections: explain offices, referenda (if any) and candidates
- Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting process
- Demonstrate use of voting machines

February

(Before school district elections)

- Distribute sample ballots for school district elections: explain offices, referenda (if any) and candidates
- Distribute and collect absentee voting applications; distribute and collect absentee ballots; explain absentee voting process
- Demonstrate use of voting machines
- Conduct bilingual training in relevant language for each bilingual poll worker who will participate in the NAEIP; such training shall include instruction on translation of each office and, if applicable, each ballot proposition, including but not limited to referenda questions, bond propositions, charter amendments, and constitutional amendments

(Election Day)

- Monitor polling places to ensure NAEIP compliance by poll workers, including requirement to keep record of voters turned away
- Note any unreasonable delays or other problems

(After school district elections)

- Prepare post-election report
- Receive statistical tabulations from County Clerk's Office of all tallies required in Section I.1
- Compare registration, turnout, absentee voting, and turnaway of Native American versus non-Native American precincts
- Send post-election report, statistical tallies, and Native/non-Native comparisons to DOJ, NEA, AIPC

March

- Deliver copies of list of persons eligible to be purged to officials at each Chapter and Pueblo; explain New Mexico purge process under the National Voter Registration Act (NVRA)
- Consult tribal officials and liaisons in order to screen the purge list, identify voters who remain eligible to vote in the county, remove those voters from the purge list, and correct/update all necessary county records

1056

April

- Explain registration and purge processes
- Update lists of those eligible to be purged to reflect revalidation of voters' registration through their confirmation of current address

May

- Explain registration and purge processes
- Update lists of those eligible to be purged, as described above

June

- Explain registration and purge processes
- Update lists of those eligible to be purged, as described above

July

- Explain registration and purge processes
- Update lists of those eligible to be purged, as described above
- For voters remaining on list of those eligible to be purged, certify the current address of all voters whose current address is known to the county Voting Rights Coordinator; arrange for their registration to be revalidated and their names to be taken off purge list

August and September

- Explain registration process
- Contact voters identified for purging
- Educate voters generally about the electoral process and voting issues

October

- Prepare report detailing the county's implementation of NAEIP since February, including purge activities
- Compile statistics regarding purge activities by precinct as set forth in Section I.1
- Compare purge activities in Native American versus non-Native American precincts
- Send report, statistics and comparison to DOJ, NEA, and AIPC.

November

- Explain registration process
- Contact voters identified for purging
- Educate voters generally about the electoral process and voting issues

December

- Explain registration process

1057

--Contact voters identified for purging
--Educate voters generally about the electoral process and voting
issues
--Send report to DOJ, NEA, AIPC

1058

Filed this ____ day of _____, 2004.

Approved as to form and content:

FOR THE PLAINTIFF
UNITED STATES OF AMERICA

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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ALBUQUERQUE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
Plaintiff,

v.

STATE OF NEW MEXICO; REBECCA
VIGIL-GIRON, New Mexico
Secretary of State; SANDOVAL
COUNTY, NEW MEXICO; SANDOVAL
COUNTY BOARD OF COUNTY
COMMISSIONERS; TOM SWISSTACK,
Chairperson of the Sandoval
County Board of County
Commissioners; PETE D. SALAZAR
and UBALDO LOVATO, members of
the Sandoval County Board of
County Commissioners; NETTIE
LUCERO-GRIEGO, SANDOVAL COUNTY
CLERK;

Defendants.

01V88-1457 SC
CIVIL ACTION NO.

COMPLAINT

The United States of America alleges:

1. The Attorney General files this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, and to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.

2. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973j(f) and 42 U.S.C. 1973aa-2. The claim pursuant to Section 203 of Voting Rights Act requires that the action be heard and determined by a court of three judges in accordance with the provisions of Section 2284 of Title 28 of the United States Code.

3. Defendant State of New Mexico is one of the fifty states comprising the United States. The state, acting through its public officials and its political subdivisions, conducts elections within Sandoval County as well as within other areas of the state, and provides information and materials respecting such elections for distribution to voters.

4. Defendant Rebecca Vigil-Giron is the Secretary of State of New Mexico. The Secretary of State is the state's chief election officer and has overall responsibility for the administration of election laws, the education and training of county election officers and the supervision of all elections in the state. Defendant Vigil-Giron is sued in her official capacity.

5. Defendant Sandoval County is a political subdivision of the State of New Mexico and exists under the laws of that state. The Defendant Sandoval County Board

of County Commissioners is the general governing and managing body of Sandoval County, an organized political subdivision of the State of New Mexico.

6. Defendant Tom Swisstack is an elected county commissioner and the present chairperson of the board. He resides in Sandoval County, New Mexico and is sued in his official capacity. Defendants Pete D. Salazar and Ubaldo Lovato are duly elected members of the Sandoval County Board of County Commissioners and are sued in their official capacity. Each resides in Sandoval County, New Mexico.

7. Defendant Sandoval County Clerk Nettie Lucero-Griego has statutory powers, duties and responsibilities with regard to the conduct of elections held in Sandoval County. Among her powers and duties, defendant Lucero-Griego is responsible for registering voters; disseminating information relating to registration and voting; implementing voter assistance procedures; appointing and training deputy registrars, polling place officials and interpreters; cancelling registration for failure to vote, and conducting the absentee voting in Sandoval County. She is a resident of Sandoval County, New Mexico, and is sued in her official capacity.

8. According to the 1980 Census, the State of New Mexico has a total population of 1 302.894 of whom 106,585 (8.2%) are American Indians. Sandoval County had a total population of 34,799 persons, of whom 9,493 (27.3%) are American Indians. The American Indian population of Sandoval County is comprised primarily of Pueblo Indians and Navajo Indians. According to the 1980 Census, 7,338 of the American Indians residing in Sandoval County are Pueblo; the reported number of Navajo Indians residing in the county is 1,693.

9. The Keres language is the primary means of communication among Pueblo Indians within Sandoval County and the Navajo language is the primary means of communication among the county's Navajo residents; both Indian languages are historically unwritten.

10. The Director of the Census has determined that the number of Pueblo Indians who do not speak or understand English adequately enough to participate in the English-language election process constitute more than five percent of the citizens of voting age within the county and further has determined that the illiteracy rate of such persons as a group is higher than the national illiteracy

rate. 29 Fed. Reg. 25889 (1984). Such determinations require the defendants to furnish oral instructions, assistance and other information relating to registration and voting in the Keres language.

11. The Director of the Census determined that the number of Navajo residents who do not speak or understand English adequately enough to participate in the English-language election process constitute less than 5 percent of the citizens of voting age within the county and, for that reason, the county did not become subject to Section 203 of the Voting Rights Act with respect to the Navajo language. Notwithstanding the inapplicability of Section 203 protections to Navajo residents, the defendants nevertheless are prohibited by Section 2 of the Voting Rights Act from applying or imposing any voting qualification or prerequisite to voting or standard, practice, or procedure which results in a denial or abridgement of the right of Navajo residents to vote.

12. The Navajo and Pueblo populations in Sandoval County are concentrated, in the sense that Navajo and Pueblo citizens live in an area where the overwhelming majority of the population are Indians, on or near the checkerboard Navajo area in the northwestern part of the county and the Pueblo Indian Reservations.

At the same time, the Navajo population is dispersed within the checkerboard Navajo area, while the Pueblo population is concentrated in several scattered residential clusters within the reservation boundaries. Navajo and Pueblo citizens live in a state of isolation from the processes of election and government, as conducted by defendants; this isolation is manifested in terms of language and culture, and in terms of sheer distance, exacerbated by poor road conditions and by the Navajos' and Pueblos' relative lack of access to automobiles, telephones and mail.

13. American Indians in Sandoval County have suffered a long history of official discrimination, including discrimination affecting the right to vote. American Indians in New Mexico were denied the right to register and vote until 1948. In more recent years, federal courts have held that various voting devices and procedures implemented within New Mexico and Sandoval County have denied Indian citizens a fair opportunity for effective political participation. American Indians in Sandoval County continue to bear the effects of past discrimination in such areas as education, health, housing and employment.

14. In conducting public elections within Sandoval County, defendants have failed to furnish, in the Keres and Navajo languages, the information and assistance necessary to allow Pueblo and Navajo residents a fair opportunity for effective political participation.

- (a) Although the defendants provide a significant amount of information regarding the election process in the English language, such information is not provided in the Keres and Navajo languages. Examples of election-related information provided in English but not in Keres or Navajo include information regarding the voter registration process, the absentee voting process, the voter purge process, candidate filing procedures, polling place locations, candidates for public office, and issues to be voted upon at the election.
- (b) Defendants have failed to provide a sufficient number of adequately trained bilingual persons to serve as translators for Pueblo and Navajo voters needing assistance at the polls on election day.

15. In addition to failing to provide election-related information and assistance in the Navajo language, defendants have failed to implement procedures to afford the residents of the isolated Pueblo and Navajo residential areas an opportunity, comparable to that afforded other citizens, to register to vote, to obtain and cast absentee ballots, and to avoid registration cancellation.

16. The failure of the defendants to provide Pueblo residents of Sandoval County with the oral instructions, assistance and other information relating to registration and voting necessary for effective political participation constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a.

17. The defendants' English election process, as applied to Navajo and Keres speaking citizens, as well as the remaining voting standards, practices and procedures as described in paragraph 15 above, implemented under the totality of circumstances described herein, result in a denial of the right of Pueblo and Navajo citizens to participate in the political process effectively and on an equal basis with other citizens in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

18. Unless enjoined by this Court, defendants will continue to enforce voting standards practices, and procedures in a manner which denies Pueblo and Navajo citizens an opportunity to participate effectively and on an equal basis with other citizens in violation of Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973 and 1973aa-1a.

WHEREFORE, the plaintiff United States prays for an order:

1. Declaring that the defendants have failed to provide effective oral instructions, assistance and other information relating to registration and voting in the Keres and Navajo languages in violation of Sections 2 and 203 of the Voting Rights Act, as amended, 42 U.S.C. 1973 and 1973aa-1a;
2. Declaring that the defendants' standards, practices, and procedures relating to registration, registration cancellation, absentee voting, and assistance at the polls deny Pueblo and Navajo citizens an opportunity equal to that enjoyed by other citizens to participate in the political process in violation of Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973;
3. Requiring the defendants to devise a plan to assure that Pueblo and Navajo citizens have an opportunity equal to that of other members of

the electorate to register to vote, avoid cancellation of registration, cast an absentee ballot, and otherwise to participate effectively in the Keres and Navajo languages in all phases of the election process; and

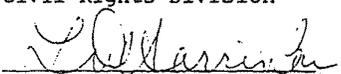
4. Requiring the defendants to implement the remedial plan promptly upon approval by this Court.

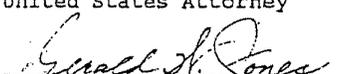
Plaintiff further prays that this Court order such other relief as the interests of justice requires along with the costs and disbursements in maintaining this action.

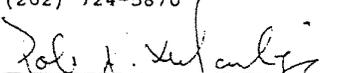
RICHARD L. THORNBURGH
Attorney General

By:


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Assistant Attorney General
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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3	UNITED STATES OF AMERICA,)	
4		)	Civil Number C-78 2521 CFP
5	Plaintiff,)	
6	vs.	)	<u>CONSENT DECREE</u>
7	CITY AND COUNTY OF SAN FRANCISCO,	)	<u>THREE-JUDGE COURT</u>
8	a municipal corporation, etc.,)	
9	et al.,)	
	Defendant.)	

10
11 The plaintiff, United States of America, filed the
12 complaint herein on October 27, 1978 alleging that:

13 a) Defendants have failed to conduct voter registration
14 efforts in such a way as to provide Chinese and Spanish speaking
15 citizens an effective opportunity to register, and have thereby
16 made it difficult for Chinese and Spanish speaking citizens in
17 the City and County of San Francisco to gain effective access to
18 and use of Chinese and Spanish language registration materials
19 and assistance in violation of 42 U.S.C. §1973aa-1a;

20 b) Defendants have failed to recruit, hire and train an
21 adequate number of bilingual personnel to provide Chinese and
22 Spanish speaking citizens residing in San Francisco with
23 effective oral assistance in the registration process and have
24 thereby made it difficult for Chinese and Spanish speaking
25 citizens to have an effective opportunity to register to vote in
26 violation of 42 U.S.C. §1973aa-1a;

27 c) Defendants have failed to recruit, hire and train an
28 adequate number of bilingual poll officials to provide Chinese
29 and Spanish speaking citizens with effective access to and use of
30 voting materials and assistance and have thereby made it
31 difficult for Chinese and Spanish speaking citizens to exercise
32 the right to vote in violation of 42 U.S.C. §1973aa-1a; and that

1 d) Defendants have failed to effectively inform Chinese
2 and Spanish speaking citizens residing in San Francisco of the
3 availability of and have failed to provide effective access to
4 Chinese and Spanish language registration and voting materials
5 and assistance in violation of 42 U.S.C. §1973aa-1a.

6 On November 1, 1978, this Court entered a temporary
7 restraining order directing defendants to comply with the
8 provisions of 42 U.S.C. §1973aa-1a with respect to the general
9 election of November 7, 1978.

10 On October 15, 1979, this Court entered a preliminary
11 injunction enjoining defendants from failing or refusing to
12 comply with the provisions of 42 U.S.C. §1973aa-1a with respect
13 to all primary, special and general elections conducted within
14 the City and County of San Francisco.

15 Pursuant to the applicable provisions of the Charter of the
16 City and County of San Francisco, the conduct, management and
17 control of the registration of voters, the holding of elections
18 and of all matters pertaining to elections is vested exclusively
19 in the Registrar of Voters (§9.102); subject to said provisions,
20 the Chief Administrative Officer of the City and County of San
21 Francisco is the "appointing officer," under the civil service
22 provisions of said Charter, for the appointment, discipline and
23 removal of the Registrar of Voters (§3.501).

24 San Francisco Charter Section 3.401 provides, in relevant
25 part:

26 "Except as otherwise provided in this charter he
27 (City Attorney) shall not settle or dismiss any
28 litigation for or against the City and County,
unless, upon his written recommendation, he is
ordered to do so by ordinance."

29 The parties wish to avoid the delay and expense of contested
30 litigation and desire to ensure that any denials or abridgements
31 of the right of Chinese and Spanish speaking citizens to register
32 and vote which may have resulted from past practices engaged in

1 by defendants be remedied so that Chinese and Spanish speaking
2 citizens residing in San Francisco shall be able to participate
3 fully and freely in the electoral process.

4 The Court has jurisdiction over the parties and subject
5 matter of this action.

6 The parties, by agreeing to the issuance of this order,
7 waive a hearing and findings of fact and conclusions of law on
8 all issues raised by the complaint.

9 Defendants, by entry into the Consent Decree, do not
10 thereby admit any violation of law, rule or regulation with
11 respect to the allegations made by plaintiff in its complaint.
12 Defendants admit no wrongdoing with respect to the obligations
13 expressed herein.

14 The only obligations of this Decree are those explicitly
15 stated herein.

16 The Court, having been fully advised and informed of the
17 facts and circumstances, and good cause appearing therefor,

18 NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
19 THAT:

20 Defendants, together with their agents, employees,
21 successors and all persons in active concert and participation
22 with any of them shall provide Chinese and Spanish language
23 voting and registration materials and assistance in such a way as
24 to allow Chinese and Spanish speaking citizens residing in the
25 City and County of San Francisco to be effectively informed of
26 and effectively participate in the voting process for all
27 primary, special and general elections in compliance with the
28 provisions of this decree.

29 The appointment of Federal Examiners is hereby ordered in
30 accordance with 42 U.S.C. §§1973a and 1973d for the life of this
31 decree.

32 IT IS FURTHER ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1 A. VOTER REGISTRATION AND OUTREACH PLAN.

2 1. The Registrar shall actively seek to establish a
3 cooperative working relationship between the Office of the
4 Registrar and community groups in Chinese and Spanish speaking
5 communities for the purpose of developing and implementing
6 programs, plans and procedures designed to bring the City and
7 County of San Francisco into compliance with the Federal Voting
8 Rights Act.

9 2. The Registrar shall develop a voter registration
10 outreach plan to actively seek out and register Chinese and
11 Spanish speaking voters, which plan shall include:

12 (1) a timetable for distribution and collection of
13 registration forms and related materials, and (2)
14 procedures for identifying specific places in the community
15 where registration materials should be distributed to
16 effectuate said plan.

17 3. As part of the Voter Outreach Plan the Registrar shall:

18 a. Establish effective procedures for distribution of
19 bilingual voting and registration materials to all Chinese
20 and Spanish speaking citizens of voting age.

21 b. Initiate contact and work with community groups and
22 members of the Citizens Task Force to identify and secure
23 sites in Chinese and Spanish speaking neighborhoods to
24 distribute and/or post voter registration forms with
25 instructions for their distribution and display at least
26 three (3) months in advance of the deadline for
27 registration for any given election. The Registrar shall,
28 at the end of forty-five (45) days, assign a staff member
29 to determine by inspection or other inquiry whether forms
30 are still available at said sites.

31 c. Assign appropriate staff resources to assist
32 community-based voter registration groups located in

1 Chinese and Spanish speaking neighborhoods in the
2 registration of language minority voters.

3 d. Inform and encourage city employees of the manner in
4 which they may aid citizens to register to vote and
5 authorize city librarians and assisant librarians to
6 register citizens to vote.

7 e. Update and maintain a list of currently-registered
8 voters in the City and County of San Francisco in
9 compliance with State law.

10 f. Identify and maintain a listing of underregistered
11 Chinese and Spanish speaking precincts.

12 g. Develop bilingual public service announcements with
13 the assistance of Chinese and Spanish speaking community
14 groups to encourage voter registration and to explain the
15 bilingual provision of the Voting Rights Act.

16 h. Administer a "street corner" registration program in
17 underregistered Chinese and Spanish speaking precincts,
18 utilizing members of Chinese and Spanish speaking community
19 groups to register citizens to vote. Said program shall
20 commence no later than three (3) months prior to the
21 deadline for registration for any regular election.

22 i. At least sixty (60) days in advance of the close of
23 voter registration, the Registrar shall draft or shall
24 cause to be drafted public service announcements for
25 dissemination by press, radio and television encouraging
26 voter registration, seeking bilingual poll officials,
27 informing citizens that bilingual poll officials will be
28 available in designated precincts and informing voters that
29 they are allowed to bring a companion to the polls for
30 assistance in the voting process. Such announcements shall
31 be prepared in the English, Chinese and Spanish languages
32 and shall be provided to English, Chinese and

1 Spanish-language press, radio and television stations.

2 j. Secure the assistance of appropriate departmental
3 heads and public officials to distribute bilingual voter
4 registration forms in public offices.

5 k. Request the assistance of Pacific Gas and Electric
6 Company and Pacific Telephone Company to encourage voter
7 registration through trilingual announcements included in
8 their monthly billings regarding the availability of voter
9 registration forms.

10 l. Provide on request to community voter registration
11 groups available lists of registered household addresses in
12 Chinese and Spanish language precincts as designated by the
13 Secretary of State.

14 m. Work with the San Francisco Unified School District,
15 San Francisco Community College District and San Francisco
16 State University to distribute voter registration forms to
17 voting age students and their parents.

18 **B. BILINGUAL POLL OFFICIALS**

19 1. The Registrar shall develop and administer a program
20 for recruitment of bilingual poll officials, said program to
21 commence four (4) months prior to each election. Said
22 recruitment efforts to be conducted through and with the
23 cooperation and assistance of community groups in Chinese and
24 Spanish speaking communities, and to include development and
25 publication of public service messages via English and Chinese
26 and Spanish language press, radio and television for the
27 recruitment of such bilingual poll officials.

28 2. The Registrar shall establish effective procedures to
29 determine well in advance of election day those Chinese and
30 Spanish speaking voters who require Chinese and Spanish language
31 assistance at polling places and shall establish procedures to
32 insure that such assistance will be available when and where

- 1 needed. In furtherance of this goal, the Registrar shall:
- 2 a. Include in the voter's handbook, which shall be
- 3 distributed no later than twenty (20) days prior to each
- 4 election, a conspicuous solicitation for Chinese and
- 5 Spanish speaking persons to serve as poll officials.
- 6 b. Designate a representative of the Office of the
- 7 Registrar of Voters to speak before community groups for
- 8 the purpose of recruiting bilingual poll officials.
- 9 c. Assign regular staff of the Office of the Registrar
- 10 of Voters to manage the development and implementation of
- 11 tasks necessary to bring the City and County of San
- 12 Francisco into compliance with 42 U.S.C. §1973-aa-1a.
- 13 d. Provide appropriate training and written materials
- 14 to all bilingual poll officials, including but not limited
- 15 to, information and training related to the intent of the
- 16 Voting Rights Act.
- 17 e. Develop a glossary of commonly used election terms
- 18 in the appropriate minority languages.
- 19 f. Train all poll officials regarding the manner in
- 20 which they are to assist language minority voters who vote
- 21 in non-designated Chinese and Spanish language precincts.
- 22 g. Develop and administer a training program to
- 23 instruct poll officials, both bilingual and monolingual, in
- 24 the bilingual voting requirements of federal law, bilingual
- 25 registration and voting procedure undertaken by the City
- 26 and County of San Francisco in compliance with Federal law,
- 27 and approved methods of rendering effective assistance to
- 28 Chinese and Spanish voters.
- 29 h. Establish and publicize election "hot line"
- 30 telephone numbers whereby Chinese and Spanish speaking
- 31 voters can receive information in their respective
- 32 languages on election day.

1 i. Work with community groups to list and detail common
2 problems faced by Chinese and Spanish speaking voters at
3 the polls.

4 j. Develop and administer a language assessment
5 procedure to be approved by the parties to this Consent
6 Decree to measure second language fluency of all bilingual
7 poll officials.

8 k. Assign at least two bilingual poll officials to
9 those precincts where there are determined to be at least
10 twenty-five percent or more Chinese or Spanish speaking
11 voters.

12 C. CITIZENS TASK FORCE

13 In addition to the action set forth above, defendants shall
14 establish a Task Force to advise and assist the Registrar of
15 Voters.

16 D. REPORTING PROVISIONS AND RECORD KEEPING

17 Defendants shall file with this Court and simultaneously
18 serve upon plaintiff:

19 1. A report, within sixty (60) days of this order, that
20 describes in detail the steps defendants have taken and, where
21 applicable, the steps defendants will continue to take in
22 compliance with each of the above paragraphs, including each
23 subparagraph, such description to include all dates and names
24 relevant to the described actions. A copy of all described
25 written materials shall be attached to the report. For any
26 action not begun at the time the report is filed defendants shall
27 describe in detail in the report the steps that will be taken,
28 such description to include the date on which the steps will be
29 taken (or if the described action is of a continuing nature, the
30 date on which the action will begin), and all relevant names.

31 If plaintiff has any objection to the report, it shall mail
32 to defendants written objections thereto within thirty (30) days

1 following delivery of the report. The parties shall have thirty
2 (30) days from the date such objections are mailed to resolve
3 their differences. If the parties are unable to reach agreement
4 within said thirty (30) days, the issues in dispute shall be
5 submitted to the Court for resolution. If no objections are
6 mailed within thirty (30) days of delivery of the report, said
7 report shall be deemed acceptable.

8 2. No later than fourteen (14) days prior to each election,
9 defendants shall file a report specifying the actions taken in
10 preparation for said election, a list of targeted precincts and
11 the bilingual poll officials assigned to said precincts, and
12 submit a specimen of all election materials prepared in English,
13 Spanish and Chinese.

14 No later than thirty (30) days after each election,
15 defendants shall file a report indicating the manner in which
16 this order was complied with in said election.

17 If plaintiff has any objections to anything in the above
18 reports or believes that anything done or omitted is inadequate
19 to comply with the law, it shall mail to defendants written
20 objections thereto within thirty (30) days following delivery of
21 that report. The parties shall have thirty (30) days from the
22 date such objections are mailed to resolve their differences. If
23 the parties are unable to reach agreement within said thirty (30)
24 days, the issues in dispute shall be submitted to the Court for
25 resolution. If no objections are mailed within thirty (30) days
26 of delivery of a report, said report shall be deemed acceptable.

27 3. Defendants shall maintain on file and present for
28 public inspection and copying (1) a list of registered household
29 addresses in Chinese and Spanish language precincts, and (2) a
30 list of underregistered Chinese and Spanish language precincts
31 referred to in paragraph A. 3. f., above.

32 4. The Registrar of Voters shall retain all records

1 relating to the actions required to be performed by this order
2 until further order of Court. Counsel for the parties shall have
3 the right to inspect and/or copy such records upon reasonable
4 notice to the Registrar of Voters.

5 E. RESOLUTION OF AMBIGUITIES; SEVERABILITY

6 1. If any provision of this Decree causes a result
7 unintended by all the parties or an ambiguous interpretation, the
8 aggrieved party shall notify the other parties by mail of the
9 unintended result or ambiguous interpretation. The parties shall
10 have thirty (30) days after the date of such letter to resolve
11 the problem. If the parties are unable to reach agreement within
12 such thirty (30) days, the issue may be submitted to the Court
13 for resolution.

14 2. In the event any provision of this Decree is held
15 unlawful by a court, all other provisions of this Decree shall
16 remain in effect and only the rights and/or obligations
17 established in the voided provisions shall be extinguished.

18 F. TERMINATION DATE

19 This decree shall continue in full force and effect until
20 August 6, 1985, or until such time as 42 U.S.C. §1973aa-1a may be
21 substantively modified or repealed, whichever is earlier. At any
22 time after entry of this decree, upon a showing of good cause
23 therefor, defendants may petition the Court to review or modify
24 the provisions of this decree, including the provisions of Part D
25 hereof. This decree shall automatically terminate at midnight,
26 Pacific Daylight Time, on August 6, 1985, provided, however, that
27 defendants are under a continuing obligation to comply with
28 federal law. The Court shall have continuing jurisdiction during
29 the period of this decree to ensure compliance therewith.

30 //
31 //
32 //

1 Consent to the entry of the foregoing Consent Decree is
2 hereby given.

BENJAMIN R. CIVILETTI
Attorney General

DREW S. DAYS, III
Assistant Attorney General

3
4
5
6 DATED: _____

G. William Hunter
G. WILLIAM HUNTER
United States Attorney

7
8
9 DATED: May 7, 1980

Amanda Metcalf
AMANDA METCALF
Assistant United States Attorney

12 GERALD W. JONES
Attorney, Civil Rights Division
Department of Justice

Attorneys for Plaintiff

15 DATED: May 11, 1980

George Agnost
GEORGE AGNOST
City Attorney

18 DATED: May 7, 1980

John J. Moore
JOHN J. MOORE
Deputy City Attorney
Attorneys for Defendants

21 APPROVED AND ORDERED:

22 DATED: 19 MAY 1980

CECIL F. POOLE
CECIL F. POOLE, Judge
United States Court of Appeals
for the Ninth Circuit

26 DATED: 19 MAY 1980

ROBERT F. PECKHAM
ROBERT F. PECKHAM, Chief Judge
United States District Court
Northern District of California

30 DATED: 19 MAY 1980

WILLIAM H. ORRICK
WILLIAM H. ORRICK, Judge
United States District Court
Northern District of California

OFFICE OF THE CLERK OF
BOARD OF SUPERVISORS
CITY HALL

To.

Your attention is hereby directed to the following, passed by the Board of Supervisors of the City and County of San Francisco:

After Amendment of
Consent Decree
4/28/80

FILE NO. 45-79-46

ORDINANCE NO. 179-80

1 AUTHORIZING SETTLEMENT OF LITIGATION OF THE UNITED STATES AGAINST THE
2 CITY AND COUNTY OF SAN FRANCISCO, THE BOARD OF SUPERVISORS, THE MAYOR,
3 THE CHIEF ADMINISTRATIVE OFFICER AND THE REGISTRAR OF VOTERS, IN
4 ACCORDANCE WITH THE SUBSTANCE OF THE TERMS AND CONDITIONS OF A CONSENT
5 DECREE PROVIDING FOR A VOTER REGISTRATION AND OUTREACH PLAN, A PROGRAM
6 FOR RECRUITMENT AND ASSIGNMENT OF BILINGUAL POLL OFFICIALS, A CITIZENS
7 TASK FORCE, REPORTING PROVISIONS AND RECORD KEEPING, AND AUTHORIZING
8 THE CITY ATTORNEY TO EXECUTE THE SAME.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. The City Attorney is hereby authorized and directed
11 to settle "UNITED STATES OF AMERICA v. CITY AND COUNTY OF SAN FRANCISCO,
12 et al.," United States District Court No. C-78-2521-CFP, in accordance
13 with the substance of the terms and conditions of a Consent Decree
14 which is on file with the Board of Supervisors in File No. 45-79-46
15 with appropriate modifications of form consistent with and in imple-
16 mentation of the substance of said Consent Decree.

17 APPROVED AS TO FORM
18 AND RECOMMENDED:

19 GEORGE AGHOST, City Attorney

20 By: Phillip J. Hoggans
21 Deputy City Attorney
22 Board of Supervisors, San Francisco

DO NOT WRITE IN THESE SPACES, USE FOR APPROVALS
MAY 5 1980

APR 28 1980

Ayes: Supervisors Bardin, Britt, Horanzy, Hutch,
Kopy, Lawson, Melrose, Rende, Silver, Walker,
Ward.

Noes: Supervisors. BARDIN, KOPF
LAWSON, MOLNARI

Ayes: Supervisors Bardin, Britt, Horanzy, Hutch,
Kopy, Lawson, Melrose, Rende, Silver, Walker,
Ward.

Noes: Supervisors. BARDIN, KOPF, LAWSON,
MOLNARI

Witness: Supervisor

STATE OF CALIF
City and County of Sa

Gilbert H. Boreman Clerk

I hereby certify that the foregoing ordinance was
readily passed by the Board of Supervisors of the
City and County of San Francisco.

Gilbert H. Boreman Clerk

45-79-46 MAY 07 1980
File No. Approved

James A. ... Mayor

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GILBERT H. BOREMAN

Clerk of the Board of Supervisors, City and County of San Francisco

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to provide language minority materials and assistance in at least the same manner as addressed in this Court's Order of November 1, 1978.

C. The Court authorizes the appointment of federal examiners in accordance with 42 U.S.C. §§ 1973a and 1973d for such period of time as the Court retains jurisdiction of this case.

BENJAMIN R. CIVILETTI
Attorney General

DREW S. DAYS, III
Assistant Attorney General

G. WILLIAM HUNTER
United States Attorney

DATED: *September 13, 1979*

By *Amanda Metcalf*
AMANDA METCALF
Assistant United States Attorney

GERALD W. JONES
Attorney, Civil Rights Division
Department of Justice

Attorneys for Plaintiff

GEORGE AGNOST
City Attorney

DATED: *September 21, 1979*

By *Phillip R. Moscone*
PHILLIP R. MOSCONE
Deputy City Attorney

Attorneys for Defendants

IT IS SO ORDERED:

DATED: *Oct 11, 1979*

Ben C. Dunaway
BEN C. DUNAWAY
Judge, United States Court of Appeals for the Ninth Circuit

DATED:

Robert P. Peckham
ROBERT P. PECKHAM
Judge, United States District Court, Northern District of California

DATED: 9 OCT 1979

Cecil F. Poole
CECIL F. POOLE
Judge, United States District Court, Northern District of California

file

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CIVIL ACTION NO. 79-508 JB
)	
v.)	
)	
THE COUNTY OF SAN JUAN,	)	COMPLAINT
NEW MEXICO, its BOARD OF)	
COUNTY COMMISSIONERS, Linn R.)	
Blancett, Robert L. Batley, Jr.,)	
and Robert F. Farlin; its)	
COUNTY MANAGER, David Vargas;)	
and its COUNTY CLERK,)	
Carol Bandy,)	
)	
Defendants.)	

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States of America for injunctive and declaratory relief pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973 et seq., and 28 U.S.C. §2201.
2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1345, and 42 U.S.C. §1973aa-2.
3. The Attorney General is authorized to bring this action pursuant to 42 U.S.C. §1973aa-2.
4. This action requires the empanelling of a three-judge court to hear and determine the issues presented herein as provided by 42 U.S.C. §1973aa-2 and 28 U.S.C. §2264.
5. San Juan County is a political subdivision of the State of New Mexico and is a jurisdiction covered by the minority language assistance requirements, Section 203c of the Voting Rights Act, as amended in 1975, 42 U.S.C. §1973aa-1a. (See Appendix to 28 C.F.R. 55.)

6. The Defendant Board of County Commissioners, exercising the powers of a county as a body politic and corporate, is the general governing and managing body of San Juan County, an organized political subdivision of the State of New Mexico.

7. The Defendants Linn R. Blancett, Robert L. Batley, Jr., and Robert P. Karlin are the duly elected members of the board of County Commissioners and are joined in their official capacity. Each resides in the District of New Mexico.

8. The Defendant County Manager is employed by the Board of County Commissioners to conduct the business of the county and to act generally as the administrative assistant to the Board, aiding and assisting it in the exercise of its duties and responsibilities.

9. The Defendant David Vargas is the County Manager and is joined in his official capacity. He resides in the District of New Mexico.

10. The Defendant County Clerk has primary responsibility for conducting elections, including registration and voting, in San Juan County.

11. The Defendant Carol Bandy is the duly elected County Clerk and is joined in her official capacity. She resides in the District of New Mexico.

12. San Juan County is located in the northwest corner of the State of New Mexico and encompasses a large portion of the Navajo Reservation.

13. San Juan County has a total population of approximately 52,512 persons according to the 1970 Census of the United States.

14. The Indian population of San Juan County is approximately 18,439 or 34.5 percent of the total county population according to the 1970 Census of the United States.

15. The Indian population is largely concentrated on or near the Navajo Reservation located in the western half of San Juan County.

16. On August 6, 1975, the United States Congress enacted 42 U.S.C. §1973aa-1a et seq., as an amendment to the Voting Rights Act of 1965, 42 U.S.C. §1973. This amendment specifically recognized Congress' finding that, through the use of various practices and procedures, certain language minorities have been effectively excluded from participation in the electoral process. 42 U.S.C. §1973aa-1a(a).

17. 42 U.S.C. §1973aa-1a(b) prohibits the provision of "English language only" voting and registration instructions, assistance, or other materials or information relating to the electoral process, in jurisdictions found by the Director of the United States Census Bureau to have (i) more than five percent voting age, language minority citizens, and (ii) an illiteracy rate among this group higher than the national illiteracy rate.

18. On September 9, 1975, San Juan County became subject to the minority language provisions of the Voting Rights Act pursuant to a determination by the Director of the United States Census Bureau that more than five percent of its voting age citizens are members of a single language minority (Navajo), and that the illiteracy rate for this group is higher than the national rate.

19. 42 U.S.C. §1973aa-1a(c) provides that where the language of the applicable minority group is historically oral or unwritten, the covered jurisdiction is required to furnish oral instructions, assistance, or other information relating to registration and voting in the minority language, whenever it provides materials or information relating to the electoral process in English.

20. Defendants have failed to provide oral instructions, assistance, and other information relating to the registration and voting process in the Navajo language whenever such information was provided in English, in violation of 42 U.S.C. §1973aa-1a.

21. Defendants have failed to provide adequate numbers of bilingual persons to serve as interpreters within each precinct in San Juan County serving Navajo voters in need of language assistance.

22. Defendants have failed to adequately train bilingual interpreters in effective interpretation of all aspects of the ballot, including constitutional amendments, so that they may effectively render oral assistance to Navajo-speaking voters.

23. Defendants have failed to provide sufficient information concerning the location of polling places in the Navajo language, particularly to Navajo-speaking voters newly registered to vote or affected by polling place changes.

24. Defendants have failed to provide sufficient oral instructions, assistance, and other information concerning all aspects of the voter registration process, absentee voting process, and voter purging process in the Navajo language.

WHEREFORE, the plaintiff United States prays for an order:

(1) Requiring Defendants immediately to comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a, in preparation for the 1980 primaries and general election, and to submit a plan outlining their intended actions to comply with these requirements.

(2) Authorizing the appointment of federal examiners pursuant to 42 U.S.C. §§1973a(2) and 1973d to enforce the voting guarantees of the United States Constitution and federal statutes in the primary and general elections of 1980.

Plaintiff United States further prays for such additional relief as the interests of justice may require, together with the costs and disbursements of this action.

Griffin B. Bell
Attorney General

R. E. Thompson
United States Attorney

By:


Drew S. Days III
Assistant Attorney General



Christine B. Nicholson
John P. MacCoon
Attorneys
U. S. Department of Justice
Washington, D. C. 20530
(202) 633-3873

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL NO. 79-508-JB

THE COUNTY OF SAN JUAN,
NEW MEXICO, its BOARD OF
COUNTY COMMISSIONERS, Linn
R. Blancett, Robert L.
Batley, Jr., and Robert E.
Karlin; its COUNTY MANAGER,
David Vargas; and its COUNTY
CLERK, Carol Bandy.

Defendants.

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

APR 8 1980

[Handwritten Signature]

STIPULATION

The United States filed this action for declaratory and injunctive relief pursuant to 42 U.S.C. §1973aa-2, on June 21, 1979, alleging that San Juan County, New Mexico and its County Board of Commissioners, violated the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973 et seq., 28 U.S.C. §2201, by failing to comply with the bilingual requirements of the Act, 42 U.S.C. §1973aa-1a et seq.

Defendants specifically deny these allegations and assert that they have provided instructions, assistance and other information relating to the registration and voting process in the Navajo language, in a manner which complies with federal law and federal guidelines. The United States recognizes that the Defendants have in the past provided and are currently providing substantial bilingual assistance to the Navajo citizens of the County, but asserts that additional assistance is necessary to achieve effective compliance with the Act.

The parties to this litigation have conferred and agree that the controversy should be settled without the necessity of a trial. Accordingly, without an adjudication on the merits, the Plaintiff and the Defendants agree to the following provisions:

I.

The Defendants agree to comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a, in preparation for, and in conducting, all elections within San Juan County. As used herein, the term "elections" shall include all primary, general, bond, statewide special, countywide special, and all other elections, including all those elections which may be held in only a part of San Juan County, which are conducted by Defendants. Defendants have heretofore taken steps to comply and shall continue to comply in preparation for and in conducting the 1980 primary and general elections. Such compliance shall include, but not necessarily be limited to:

A. Expansion of the voter registration program to actively register Navajo voters, which program shall include:

(1) Establishment of a voter registration office in Shiprock where registration forms and other information will be available Monday through Friday, 8:00 a.m. to 5:00 p.m., during the two-week period preceding the registration deadline for each countywide election, beginning with the 1980 general election. This office shall be staffed by one deputy registration officer who is bilingual in English and Navajo. The filing of affidavits of registration with the Shiprock office shall be deemed the equivalent of filing with the County Clerk's office for purposes of the 5:00 p.m. deadline on the day that registration closes.

Establishment of this voter registration office shall be subject to space being made available and to the approval and consent of the Navajo Tribe.

(2) Appointment, for each precinct in San Juan County in which five (5) percent or more of the voting-age population is Navajo, a minimum of two deputy registration officers who are bilingual in English and Navajo and who can properly assist Navajo-speaking persons to register to vote. In addition, the County Clerk shall also appoint at least 24 at-large deputy registration officers who are bilingual in English and Navajo and who can properly assist Navajo-speaking persons to register to vote. All reasonable steps to secure the appointment of such bilingual deputy registration officers shall be taken; and if such steps are taken, the County's inability to secure such appointments shall not be deemed a violation of this Stipulation. Swearing in of these registration officers, if they have not previously been appointed and sworn in, shall be performed in Shiprock, within thirty (30) days of entry of the Order approving this Stipulation, on a date established by the County Clerk and communicated two weeks in advance to all persons to be appointed. Those persons appointed and notified of appointment who fail to attend the swearing-in session in Shiprock may be sworn in on any subsequent date at the County Clerk's office in Aztec.

(3) Announcement and publication of the fact of establishment of the registration office, its location, dates and hours of operation, the availability of bilingual assistance, and all registration deadlines. Specifically, during the two-week period preceding each election registration deadline, Defendants shall cause an announcement containing the above information:

(a) to be announced in Navajo once a day on KENN and KNDN, which have Navajo hours or other Navajo language programs, during such programs;

(b) to be published in English twice in each of the following newspapers: the Farmington Daily Times and the Aztec Review.

B. More comprehensive recruitment and enlistment of bilingual poll officials and interpreters by the County Clerk's office. A minimum of two bilingual interpreters shall be enlisted to serve at the polling place of each precinct in which five (5) percent or more of the voting-age population is Navajo. One alternate bilingual interpreter shall be enlisted to be on notice to serve at the polling place of each such precinct. All reasonable steps necessary to enlist the services of such bilingual interpreters and alternates, and to confirm their appointment, shall be taken; and if such steps are taken, the County's inability to enlist such persons shall not be deemed a violation of this Stipulation. In the event two or more precincts are consolidated for purposes of an election, if five (5) percent or more of the voting-age population is Navajo in one or more of the included precincts, a minimum of two bilingual interpreters and one alternate shall be enlisted to serve at the polling place of the consolidated precinct in the same manner as for a single precinct. At the present time, the precincts covered by this paragraph are the following: Precincts 1, 2, 3, 4, 5, 6, 7, 8, 11, 12, 13, 14, 16, 17, 75 and 76.

C. Expansion of the poll worker training program to include the specific purpose of instructing poll officials and all county employees involved in the electoral process, both bilingual and monolingual, in the bilingual voting requirements

of federal law, bilingual registration and voting procedures undertaken by the County to comply with federal law, and methods of rendering effective assistance to Navajo-speaking voters. Such program shall include training and instruction of official poll interpreters for purposes of effective communication of all voting information.

D. Provision, on each election day, to the polling place in each precinct in which five (5) percent or more of the voting-age population is Navajo, of a master list of all registered voters in all such precincts. These master lists shall be provided for the purpose of allowing bilingual interpreters to assist Navajo-speaking voters to locate their proper polling places. In the event precincts are consolidated for purposes of an election, the above-described master list shall be provided to the polling place of each consolidated precinct which is composed of one or more of the precincts included in the master list.

E. Expansion of the program for adequate translation, including use of trained bilingual experts, of all voting information, including constitutional amendments and referendum issues appearing on ballots, prior to election, for communication in Navajo of such information in accordance with paragraph F(a). The County shall continue to provide for dissemination of voter information in Navajo through reasonable means designed to reach Navajo-speaking voters.

F. During the two-week period preceding each election, Defendants shall cause all information concerning offices and candidates on the ballot, constitutional amendments, referendum issues, and other issues on the ballot, eligibility to vote in the election, and all other voting information necessary for the election:

(a) to be announced in Navajo three times each week on KENN and KNDN, which have Navajo hours or other Navajo language programs, during such programs;

(b) to be published in English twice in each of the following newspapers: the Farmington Daily Times; and the Aztec Review.

II.

Defendants shall cause to be made and preserved records of the actions taken to comply with the Order approving this Stipulation. Representatives of the Plaintiff shall be permitted to inspect and copy relevant records of the Defendants at reasonable times and upon reasonable notice.

III.

The complaint in this action should be dismissed with prejudice, but the Court should retain jurisdiction until December 31, 1984, to review any questions concerning compliance with the provisions of the Order approving this Stipulation. If good faith efforts to resolve any dispute concerning the implementation of, or compliance with, the Order fail, either party shall have recourse to the federal district court.

EXECUTED this 8th day of April, 1980.

DREW S. DAYS III
Assistant Attorney General

MONTGOMERY & ANDREWS, P.A.

By Abigail Elias
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The County of San Juan, New
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Commissioners, Linn R. Blancett,
Robert L. Batley, Jr., and
Robert E. Karlin; its County
Manager, David Vargas; and its
County Clerk, Carol Bandy

FILED
JAN 28 8 51 AM '84
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
v.	)	CIVIL ACTION NO. C-83- ¹²⁸⁷ 12873
SAN JUAN COUNTY, UTAH, ET. AL.)	)	AGREED SETTLEMENT AND ORDER
Defendants.)	

The United States filed this action pursuant to 42 U.S.C. §1973 et seq., and 28 U.S.C. §2201 alleging that San Juan County, Utah failed to comply with the minority language requirements of Section 203 the Voting Rights Act, 42 U.S.C. §1973aa-1a.

Under Section 203 of the Voting Rights Act, whenever San Juan County, Utah "provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the [Navajo] language ..." 42 USC §1973aa-1a(c). Because the Navajo language is historically unwritten, San Juan County, under Section 203, is "required to furnish oral instructions, assistance, or other information relating to registration and voting." 42 U.S.C. §1973aa-1a(c).

4

According to the 1980 Census, American Indians constitute approximately 46 percent of the population of San Juan County. The vast majority of the Indians are Navajo. A large proportion of the Navajos residing in San Juan County are unable to speak, write or read the English language, and instead speak the Navajo language.

The defendants claim, and the United States does not deny, that in the past the County has taken certain steps to comply with 42 U.S.C. § 1973 aa-1a. Defendants do not contest however, that they have failed to fully comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a. Defendants aver, however, that they did not purposely fail to comply with this statute.

The parties to this litigation have conferred and agree that the controversy should be settled without the necessity and expense of a trial. Accordingly, the Plaintiff and Defendants have applied for and agree to the entry of the following final order which is intended by the parties to comprise all of the relief in this case.

I.

NOW THEREFORE, the Court finds that the defendants, although they have taken certain steps toward implementation, have failed to fully comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

Accordingly, it is ORDERED, ADJUDGED, AND DECREED that San Juan County Utah, together with its officers, agents, employees, successors, and all persons in active concert and participation with them are hereby permanently enjoined from further non-compliance with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a.

II.

IT IS FURTHER ORDERED THAT Defendants shall, at a minimum, take the following steps to comply with the minority language requirements of the Voting Rights Act, 42 U.S.C. §1973aa-1a, and the implementing regulations, 28 C.F.R. §55.1 et seq. Nothing in this Order shall preclude the County from taking any additional steps to comply with the statute and regulations.

A. Defendants shall provide a bilingual voter registration program, including:

1. The establishment of one or more voter registration site(s) located in Mexican Hat or elsewhere on or near the Navajo Reservation for the 1984 and 1986 elections. Registration and other information will be available at each site or sites, in Navajo, Monday through Friday, 9:00a.m. to 4:00p.m. during the two-week period preceding the County Clerk's statutory registration deadline for each election in 1984 and 1986 run by the County, including

both primary and general elections. This registration site or sites shall be staffed by one or more registration assistant(s) who are bilingual in English and Navajo. Completion of the proper registration forms at the on or near Navajo Reservation registration site(s) shall be deemed the equivalent of filing them with the County Clerk's office for purposes of the 5:00p.m. deadline on the day that registration closes;

For purposes of compliance with this provision, the County may rely on volunteer assistance from the San Juan County School District, the Utah Navajo Development Council, the Navajo Tribe, the State of Utah or any other government or private individual who may be located on the Navajo Reservation. The County may also choose, at its discretion, to assign an employee of the County Clerk's office to fulfil this function.

2. For each precinct in San Juan County which is in whole or in part on the Navajo Indian Reservation, the appointment of a registration agent and a minimum of one registration assistant. Both the registration agent and assistant shall be bilingual in English and Navajo in order that they properly assist Navajo-speaking persons to register to vote. One person may serve as both the registration agent and the registration assistant.

Swearing in of these registration agents and assistants, should such be necessary, shall be performed in a convenient location on or near the Navajo Indian Reservation; and

3. Announcement in Navajo and publication in English of all registration deadlines, and, in 1984 and 1986, the announcement of the establishment of the on or near Reservation registration site(s), its location(s), dates and hours of operation, and the availability of bilingual assistance at the site(s). Specifically, during the two-week period preceding each election registration deadline, Defendants shall cause an announcement containing the above information:

(a) to be announced in Navajo twice a day on KNDN, KRTZ, or other appropriate radio stations, if any, with a substantial Navajo audience on the reservation;

(b) to be published in English twice in the Navajo Times; and

(c) to be announced in Navajo, either in person or by tape recorded message, at one Navajo tribal chapter meeting of each chapter having members residing in San Juan County.

B. The County shall undertake a more comprehensive recruitment effort to enlist bilingual poll officials and interpreters. A minimum of two bilingual interpreters

and one bilingual poll official shall be enlisted to serve at the polling place of each precinct which is in whole or in part on the Navajo Reservation. Only one bilingual interpreter and no bilingual poll officials are necessary in each off-reservation precinct in which five (5) percent or more of the population is Navajo. In addition, one alternate bilingual interpreter shall be appointed to be on notice to serve at the polling place of each such precinct whether on or off the Reservation. An interpreter may not also serve as an election judge or other election official.

Bilingual interpreters shall assist voters who indicate a need for assistance in the Navajo language, and shall assist voters in the voting booths unless the voter objects to such assistance. Interpreters shall maintain the secrecy of the ballot and shall not disclose the manner in which the assisted persons voted.

C. The County shall expand the current election worker training program so as to provide for the instruction of poll officials and all other county employees involved in the electoral process in the bilingual voting requirements of federal law, bilingual registration and voting procedures undertaken by the County to comply with federal law, and methods of rendering effective assistance to Navajo-speaking

voters. Such program shall include the training and instruction of official poll interpreters for purposes of effective, accurate, and unbiased communication of all voting information to Navajo speaking voters.

D. The County Clerk shall provide on election day, for precincts 1, 2, 3 and 16, a master list of voters registered in precincts, 1, 2, 3, and 16. The master lists shall be provided for the purpose of allowing bilingual interpreters to assist Navajo-speaking voters locate their proper polling place.

E. During the two-week period immediately preceeding each election the following information must be made available in Navajo: information on the offices subject to election; information concerning the identity of candidates for election; constitutional amendments; referendum and initiative issues on the ballot; eligibility to vote; dates of election and the hours and location of the polling places; and any other election or voting information which has been made available in English. All such information shall be:

(a) Announced in Navajo at least 3 times during each of the two weeks on KNDN, KRT2 or other appropriate radio stations, if any, with a substantial Navajo audience on the reservation;

(b) published in English once each week in the Navajo Times; and

(c) made available in Navajo, either in person or by tape recorded message, to each Chapter of the Navajo Tribe located in San Juan County.

F. Whenever the County provides or causes information to be made available in Navajo, for example, whenever the County provides training to bilingual poll workers, registration agents or assistants, or interpreters or whenever the County makes voting or election information available in Navajo by tape recording, in person or other means, it shall rely on individuals who are capable of providing effective, accurate and unbiased translation of all voting information into Navajo including constitutional amendments, referendum or initiative issues and the information contained in the Voter Information Pamphlet.

II

Defendants shall take all reasonable steps to comply with the provisions of this Order, ^{such as} ~~including when necessary,~~ *for U.S. County* on site recruitment efforts at Navajo Chapter meetings; announcements, in Navajo or English, on KNDN or KRTZ; and written requests for assistance to the Utah Navajo Development Council, the Navajo Tribe's Board of Election Supervisors in Window Rock and the San Juan

School District. ~~If such steps are taken, the County's inability to comply with the provisions of this Order shall not be deemed a violation.~~ *Part for U.S.*
Part for County

III

Defendants shall cause to be made and preserved records of the actions taken to comply with this agreement and order. Representatives of the Plaintiff shall be permitted to inspect and copy relevant records of the Defendants at reasonable times and upon reasonable notice.

IV

San Juan County is hereby certified for federal examiners pursuant to 42 U.S.C. § 1973a(a).

V

This Court shall retain jurisdiction for all purposes.

ORDERED this 11 day of JANUARY, 1983.

James M. Schermerhorn
Attorney for the Plaintiff
United States

Brent Ward
UNITED STATES DISTRICT JUDGE

Copies mailed to counsel 1/13/84: mw
Brent Ward, U.S. Atty.
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Bruce K. Halliday
Attorney for the Defendants

RECEIVED CLERK

AUG 21 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

U.S. DISTRICT COURT
RECEIVED

AUG 24 1990

UNITED STATES OF AMERICA, *JMW*)
Plaintiff,)
vs.)
SAN JUAN COUNTY, UTAH, ET. AL.,)
Defendants.)

OFFICE OF CHIEF JUDGE
BRUCE S. JENKINS
CIVIL ACTION NO. C-83-1287

FIRST AMENDED SETTLEMENT AND ORDER

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UNITED STATES OF AMERICA

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SAN JUAN COUNTY, UTAH ET. AL.

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NAVAJO LANGUAGE ELECTION INFORMATION PROGRAM

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I. INTRODUCTION

This action was initiated by the United States pursuant to Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa-1a, by a complaint filed on November 22, 1983. On January 11, 1984, an Agreed Settlement and Order was entered permanently enjoining San Juan County, Utah, its officers and employees from non-compliance with the minority language requirements of the Act. The Agreed Settlement and Order also required the county to establish a remedial bilingual election program to provide Indian citizens with an equal opportunity to participate in the electoral process in San Juan County, Utah.

After a review of the current efforts of San Juan County to comply with the Agreed Settlement and Order and with the minority language provisions of the Act, the parties have conferred and agreed to the entry of this First Amended Settlement and Order, which provides for additional measures to ensure that the election process in San Juan County is fully and effectively accessible to Indian citizens.

This Court has jurisdiction over the parties and the subject matter of this action and the required three-judge court has been convened. This Amended Settlement and Order is final and binding between the parties and their officers, employees and successors, as to all the facts, claims and issues raised in or underlying the plaintiff's complaint.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that San Juan County, Utah, shall adopt the provisions contained herein.

II. THE REMEDIAL PROGRAM

A. County Bilingual Voting Coordinator

1. San Juan County shall employ one full-time bilingual voting coordinator for a period of twelve months, from February 1 of each general election year to February 1 of the succeeding year, who will coordinate the Navajo Language Election Information Program in the county. The primary responsibility of the bilingual voting coordinator shall be, at all times, the full implementation of the provisions of this bilingual election program; however, where time permits, the bilingual voting coordinator may be assigned other responsibilities under the supervision of the county clerk. Performance of such other responsibilities shall not interfere with the bilingual voting coordinator's duties to implement this bilingual election program. The county shall also employ a bilingual voting coordinator from a period four months before each county-wide special election, through the month of such special election. The bilingual voting coordinator shall be bilingual in Navajo and English. The salary for the bilingual voting coordinator shall be comparable to other county positions with similar expertise and experience required to perform the task.

2. The county bilingual voting coordinator shall be hired by the county after consultation with Utah Navajo chapter

officials of San Juan County. The chapter presidents or managers, or Navajo chapter liaisons of each Navajo chapter located in whole or in part in San Juan County (Aneth, Red Mesa, Oljato, Mexican Water, and Navajo Mountain) shall submit recommendations to the county for the position of county bilingual voting coordinator, which recommendations shall be duly considered.

3. San Juan County shall develop a job description for the bilingual voting coordinator, in consultation with the Navajo Elections Administration (NEA) and Utah chapter officials, and the United States.

4. The bilingual voting coordinator shall be trained by the county in all aspects of the election process and shall attend election seminars conducted by San Juan County and, where possible, training provided by the Lieutenant Governor for the State of Utah. The bilingual voting coordinator shall be fully briefed by the county clerk concerning his or her duties and responsibilities under the original consent decree, this modification and the minority language requirements of the Voting Rights Act. Representatives of the NEA and the United States shall be notified of the time and place of such job orientation and shall be welcome to assist in this briefing.

5. The bilingual voting coordinator shall, under the supervision of the county clerk, oversee the county's Navajo Language Election Information Program generally and visit on a regular basis, but not less than two times prior to each

election, each Navajo chapter located in whole or in part in the county. The bilingual voting coordinator shall visit other areas of Navajo concentration in the county, such as Halchita, Montezuma Creek and Blanding. Voter education programs conducted during such visits shall include instruction, as appropriate, on at least the following topics: voter registration; absentee voting procedures; voter purge; political office requirements; and general voting procedures.

6. The bilingual voting coordinator, or other county officials, shall maintain a record of the date and purpose of each visit for election-related purposes to each Navajo chapter house, or other sites on the Navajo Indian Reservation or areas of Navajo population concentration. After each general election, the bilingual voting coordinator shall prepare a report detailing his or her election-related activities in implementing the provisions of the Navajo Language Election Information Program.

7. The bilingual voting coordinator shall conduct, under the supervision of the county clerk, the training of all registration agents, poll officials and other election-related personnel who will participate in the Navajo Language Election Information Program. Each Navajo chapter manager whose chapter is in whole or in part within San Juan County shall be notified, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at locations convenient to trainees.

8. The county bilingual voting coordinator shall coordinate the delivery of Navajo language election information in special elections to school districts and other governmental entities that are conducting elections in the next election process. The county shall be authorized to seek cost contribution from those governmental entities provided language assistance by the language coordinator.

9. San Juan County shall establish a travel budget, in accordance with county travel policy, for the bilingual voting coordinator for transportation and costs incurred in carrying out his or her duties, obligations and responsibilities to effectively implement this Navajo Language Election Information Program.

B. Chapter Election Liaisons

1. San Juan County shall request each Navajo chapter president to identify and/or appoint one individual in each Navajo chapter to serve as a chapter election liaison between the county and the Navajo chapter.

2. Chapter election liaisons shall be provided training with other election officials including all aspects of the elections process, absentee voting, the voter registration and purge processes, candidate qualifications, election-related deadlines, election day activities, proposed constitutional amendments and other ballot propositions.

3. Telephone inquiries from the bilingual voting coordinator, chapter election liaisons, registration agents, and

other tribal officials involving current election activities shall be considered official government business and telephone charges may either be reversed or accepted by the county clerk's office. Where such telephone calls are made directly, the county will provide reimbursement for the costs of such calls.

D. Translations

1. At a minimum, the following election-related materials and announcements, if made available in English by the county and/or the State of Utah, shall be translated into the Navajo language and made available on audio tapes: state and county election notices, constitutional amendments and other referenda issues on the ballot, dates for elections, qualifications for political offices, registration deadlines, instructions relating to voting by absentee ballot, announcements respecting the voter purge, and explanations of voting procedures. The county may substitute and/or supplement video tapes for audio tapes covering the subjects above.

2. The county, through the bilingual voting coordinator and chapter election liaisons, shall engage in reasonable efforts to ensure that each tape is played at least at one tribal meeting of each Navajo chapter during the appropriate publicity period, and that either the bilingual voting coordinator, chapter election liaison, or other trained bilingual person is present to answer any questions concerning the subject matter of the tape. If appropriate playing equipment is not available on the site

visited, the county shall provide such equipment to the bilingual voting coordinator for this purpose.

3. Indian language audio or video tapes described in this Agreement shall be available generally to individuals and organizations at Navajo chapter houses. Separate recordings shall be provided for each election-related subject matter so as to avoid tapes of unnecessary length. A library of currently applicable tapes, together with English transcripts, where appropriate, shall be maintained at each Navajo chapter house.

4. Translations shall be made by the bilingual voting coordinator, by a chapter election liaison, or by a qualified person contracted with for that purpose. The county will use its best efforts to insure accurate translations and where necessary shall enlist additional expertise to assist with technical or complicated election-related materials.

5. The county shall invite the participation of representatives of UDIA, Navajo chapter officials of San Juan County, and other interested parties in the translation of election materials. To assist in the uniformity and accuracy of any translation, the county shall make available such translations to Navajo chapter officials and other interested parties, with an opportunity to review and comment concerning any matter translated.

6. When translations are available for review more than twenty (20) working days prior to dissemination, comments on the translation of material shall be returned to the county ten (10)

working days prior to the first date of publication or dissemination of the information on the radio so that the county may have an opportunity to correct or remediate any deficiency. Any comments or recommendations made after that date will be considered, but might not be included in the translation.

7. The county clerk, the bilingual voting coordinator, and the chapter election liaisons shall review election materials and recommend appropriate posters to accompany written notices respecting election matters, which the county shall develop to the extent practicable.

E. Dissemination of Election-Related Information

1. The county shall coordinate publicity efforts with Navajo chapter officials. All election-related announcements, materials and information, including, but not limited to, the election calendar, state and county election proclamations, the voter information pamphlet and sample ballots, shall be made available to each Navajo chapter house and to any other entity requesting such information.

2. Election-related announcements, materials, tapes and other election information shall be provided upon request to the public high schools in the county to familiarize students with all phases of the election process.

3. Radio: Radio announcements in the Navajo language shall be made on KNDN (Farmington), KTNN (Window Rock); KUTA (Blanding); KRTZ (Cortez) or other substitute stations or

programs that broadcast in Navajo or to an Indian audience regarding:

a. Deadlines for state voter registration, and identification of registration agents and regularly available voter registration sites in each chapter house or other convenient locations in majority Navajo precincts. These announcements shall be made twice each day for the three weeks preceding the deadlines for both state and federal election registration for each primary, general and special election.

b. The procedures and deadlines for becoming a candidate. These announcements shall be made once each day for the week preceding the opening of the candidate qualification period and twice each day during the two weeks preceding the close of the candidate filing period.

c. Dates of special, primary and general elections, a list of the offices to be elected, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements shall be made twice a week during at least the three weeks prior to each of the foregoing elections.

d. An explanation of the ballot in the Navajo language, identifying each office to be filled and each candidate with the candidate's political affiliation. The tape shall also identify briefly the nature and significance of each referendum, proposed constitutional amendment, or ballot proposition to be decided.

Announcements shall be made twice a week for at least the three weeks prior to each primary, special or general election.

4. Print Media: Election announcements detailed in paragraph E.3 shall be published on a weekly basis in the Navajo Times and the San Juan Record for the same number of weeks in which the audio media is being disseminated by the radio stations.

5. Monitoring: The state and county shall monitor the effectiveness of its publicity programs on an ongoing basis through consultation with the chapter election liaisons, Navajo chapter officials and other interested citizens, to identify groups of persons who are not being reached and subject matters pertaining to elections which are not being effectively covered. Recommendations shall be considered and remedial action taken by the county as reasonably deemed appropriate and necessary.

F. Voter Registration

1. The county shall supply registration forms to all registration agents in majority Navajo precincts, to the bilingual voting coordinator, chapter election liaisons, Navajo chapters and to the UNDC.

2. Registration agents in majority Navajo precincts shall be available to assist voters in completing registration forms prior to the deadline for voter registration.

3. Training for registration agents for majority Navajo election precincts shall be conducted by the county clerk and/or the bilingual voting coordinator in both English and Navajo. In

addition to training as to registration standards, regulations and forms, registration agents shall be trained fully regarding the voter purge and absentee voting processes, standards and regulations. Navajo language audio and/or video tapes shall be used in the training process, and copies of such materials shall be maintained as provided generally in this Agreement.

4. The names of all registration agents available at each Navajo chapter shall be prominently posted at chapter houses and other public locations of the corresponding precinct on the reservation.

5. The bilingual voting coordinator shall conduct, and/or assist the Navajo chapters in conducting, special voter registration drives at the Navajo chapters and in other areas of Navajo population concentration in the county. The appropriate Navajo chapter manager, as well as the chapter election liaisons, shall be notified of the time and place for each registration drive at least two weeks prior to the scheduled registration, and the county shall undertake such other publicity as may be appropriate.

6. The county shall provide chapter election liaisons and registration agents in majority Navajo precincts with current voter registration lists, by precinct, and shall encourage each chapter election liaison and registration agent to establish regular hours for registration at set locations on the reservation. The time(s) and location(s) established by the chapter election liaisons and registration agents for voter

registration shall be publicized by the county at chapter meetings.

7. Following the review of the 1990 Census and in conjunction with a redistricting of county commission districts, the county shall prepare a detailed election precinct map, which shall be provided to chapter election liaisons, registration agents in majority Navajo precincts and Navajo chapter managers. Prior to the 1990 primary elections, the county shall prepare and disseminate to the Navajo chapters and registration agents a detailed map showing the boundaries of the following election precincts: 1, 2, 3, 12, 13, 14, 16.

8. The county shall seek to coordinate state voter registration with Navajo tribal voter registration through, inter alia, the use of tribal registrars in assisting voters to register for county elections.

G. Absentee Voting

1. The county shall supply applications for absentee ballots to all registration agents in majority Navajo precincts, to the bilingual voting coordinator, chapter election liaisons, Navajo chapter managers, as well as to the UNDC and the College of Eastern Utah.

2. The bilingual voting coordinator shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk, and to accept completed absentee ballots from eligible voters for delivery to the county clerk.

3. The bilingual voting coordinator shall attend the last tribal meeting prior to each primary, general, or special election to explain the classes of persons who are eligible to cast absentee ballots. Eligible voters may obtain absentee ballots applications at that time and voters whose absentee ballot applications have been accepted by the county clerk may cast their absentee ballots in person with the bilingual voting coordinator for delivery to the county clerk.

4. Consistent with the practice of San Juan County, voters who anticipate being absent from their election precinct on election day shall be eligible to vote by absentee ballot.

5. Announcements shall be made in the Navajo language regarding the availability of absentee balloting, including the standards of eligibility for absentee ballots and for voting absentee, during any tribal meeting prior to the deadline for voting by absentee and where such meetings fall in the absentee voting period. The availability of absentee balloting also shall be made known by posting such information prominently at each Navajo chapter house and at other public sites on the reservation; by radio announcements and by publishing in the Navajo Times and San Juan Record throughout the absentee voting period.

H. Election Day Procedures

1. The county will have trained interpreters and poll officials bilingual in Navajo and English present at the polls on election day for each precinct in which five percent or more of

the total population is Indian. The county shall consult with the chapter election liaisons, or other appropriate chapter officials to identify bilingual individuals qualified to work at the polls. Alternate translators shall also be designated.

2. Poll officials and interpreters shall be trained at locations in the county convenient to the trainees, in English and Navajo, concerning election day procedures at the polling places, the contents and issues appearing on the ballot, and voter purge procedures. Training in translation of the ballot in Navajo may include the use of audio and/or video tapes, and such tapes shall be maintained in accordance with the terms of this Agreement. Interpreters and poll officials shall be instructed in their training that assistance in translating ballot information shall be given in the voting booth, when the voter so requests.

3. Poll officials shall advise each voter who requires assistance in casting a ballot that the voter may choose any person to provide that assistance inside the voting booth, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6.

4. Poll officials or other designated county officials shall maintain a record of all persons who are not allowed to vote. The official shall seek to obtain each such voter's name, address, tribal census number, the reason the person thought she or he was eligible to vote and the reason for not permitting the person to vote.

5. A list of the persons not permitted to vote shall be provided to the bilingual voting coordinator and chapter election liaisons, and the county shall provide an opportunity to such persons on the list to register to vote, if qualified, at the earliest possible time.

6. The state and county shall cooperate with the NEA so that the polling places used for tribal and state elections are in the same building or in close proximity.

I. Purge Process

1. On or before February 15 after each general election, the county clerk shall prepare a list, by precinct, of all persons identified for purging from the voting list for failure to vote, and such lists for the respective Indian precincts shall be provided to the bilingual voting coordinator, registration agents, chapter election liaisons and other tribal officials on the reservation. The county shall urge such persons to contact individuals on said lists to notify them of the fact of the purge and the procedures for re-registering.

2. Updated lists, as necessary, of persons who have failed to re-register shall be provided to each chapter election liaison. The bilingual voting coordinator shall monitor these lists and direct special publicity in precincts where a significant number of persons identified for purging remain on the list.

3. The county shall inform voters of the purge, re-identification and re-registration process through radio

announcements in Navajo during the purge period over KTNN, KNDN, KUTA and KRTZ, and/or other available radio stations which broadcast in an Indian language or to an Indian audience; through notices in the Navajo Times and San Juan Record; by Navajo language announcements at tribal meetings during the purge period; and by posting such information prominently at each Navajo chapter house and at other public places in majority Navajo precincts.

4. Navajo language audio tapes concerning the purge process shall be made available in the tape libraries in each chapter house. These shall include a description of the purge process, an explanation as to why individuals are listed on the purge printout, the meaning of the mailed purge notices, and explanations as to how to avoid being purged and how to re-register if the purge already has occurred. Navajo language tapes containing this information shall be played during the purge period at separate tribal meetings of each Navajo chapter situated in whole or in part in San Juan County, and the bilingual voting coordinator or county official shall be present, at a minimum, at the first meeting when the tapes are played in order to answer any questions. Thereafter, the chapter election liaison or other trained bilingual personnel may be present when the tapes are played in order to answer any questions.

5. Prior to the close of registration following the purge process, the bilingual voting coordinator, with assistance from the chapter election liaisons or other appropriate tribal

officials, shall ascertain which voters on the list still maintain a residence as shown on their affidavit of registration, and upon making such determination, shall take all reasonable efforts to provide such persons an opportunity to re-register to vote.

6. At the close of the purge period, the county shall review the printout of purged voters with the chapter election liaisons and other tribal officers for each majority Navajo precinct and, to the extent that there is a high percentage of Indian voters purged as compared to non-Indian voters, the county shall consult with tribal officials and chapter election liaisons to ascertain what further action, if any, to take to correct such situation.

J. Records

1. In addition to copies of tapes and other materials or records mentioned in this Agreement, the defendants shall maintain statistical records including but not limited to:

- a. Voter Registration
 - Voter registration for each precinct on a quarterly basis.
 - Number of voters, by precinct, who are registered at voter registration drives conducted pursuant to this Agreement.
- b. Voter Purge
 - Total number of voters purged, by precinct, for failure to vote.
 - Total number of voters re-registered by the bilingual voting coordinator.
 - Total number of voters, by precinct, reinstated by returning pre-paid post cards or re-registered by other means during the purge period.

c. Absentee Voting

- Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.
- Total number of absentee ballots cast, per precinct, in person at the county courthouse.
- Total number of absentee ballots delivered to voters by the bilingual voting coordinator and accepted from voters for delivery to the county clerk.

d. Publicity

- County will provide or keep a copy of the affidavit given by the newspaper or radio station with their indication of the times that an election announcement was played or published.
- County will keep the time, place and occasion of each instance in which each election-related audio tape was played by bilingual election coordinator.

These data shall be maintained on a current basis at the county clerk's office and all records shall be available for public inspection upon request.

2. By April 1 following each general election, the county shall compile a report of the efforts taken pursuant to this Agreement during the preceding (12) months. The report shall include the status of Navajo voter participation as shown by statistics in each area addressed in this Agreement and a recommendation of the steps to be taken, if any, to improve Navajo voter participation. Copies of the report shall be provided to the United States. This report shall be of public record and available on request.

III. CONSTRUCTION AND IMPLEMENTATION

1. It is the goal of San Juan County to ensure that the entire election process is fully and effectively accessible to Indian citizens, and the procedures set forth above are designed to achieve that goal. In the event that the procedures set forth

in this Agreement fall short of the goal of full and effective access, the county agrees to take such additional steps as may be necessary to improve the effectiveness of this program.

2. If the county seeks to eliminate or modify discrete aspects of this Agreement, the county shall notify the United States and chapter election liaisons in writing of any such proposal, 30 days prior to undertaking such changes. If the United States objects to the proposed change(s), the parties shall meet in a good faith effort to resolve their differences concerning the proposed modification. The county may modify aspects of the Navajo Language Election Information Program that, based on experience, prove to be ineffective, after the parties have conferred in good faith to resolve their differences with respect to such aspects of the program. Any modifications made to the Navajo Language Election Information Program pursuant to this section shall be filed with the Court.

IV. RETENTION OF JURISDICTION

1. This Court shall retain jurisdiction to enter such further relief or other orders as may be necessary to effectuate the terms of this Agreement.

2. The United States agrees for a period of four (4) years not to seek any further additional relief with respect to the Navajo Election Information Program prescribed herein for San Juan County, Utah. It is contemplated by the parties that this four year period will be used by defendants to implement fully the bilingual election program set out in the original consent

decree and this amendment and to make adjustments to that program as necessary in accordance with the provisions for modification. At the end of such four year period, the county shall provide the United States with a final report summarizing the steps taken to fully implement this Agreement over the preceding four years. The United States will have one hundred eighty (180) days from the end of such four year period in which to move the Court for such additional relief as may be necessary to remedy any failure to fully implement this Agreement. Absent such a motion by the United States, this decree will then be terminated and the case will be dismissed without prejudice. Additionally, after such initial four year period, dismissal may be obtained upon motion of the county defendants which, if the county defendants have fully and faithfully implemented all provisions of the Native American Election Information Program during the period set forth herein, will be unopposed. Such dismissal shall be without prejudice and the Court's jurisdiction as to the county defendants shall be terminated at that date.

If the provisions of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1, expire by reason of congressional inaction or repeal or the Director of the Census determines that, based upon 1990 Census information, San Juan County is no longer subject to the minority language requirements of Section 203 for the Navajo speaking American Indians of San Juan County, the county defendants may move the Court for modification of this Agreement.

3. All provisions of the original Agreed Settlement and Order not inconsistent herewith are hereby approved and ratified by this three-judge court.

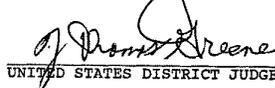
V. CONCLUSION

This Agreement represents the commitment of all of the parties to provide equal voting rights to all citizens of San Juan County, Utah. While the procedures contained herein are intended to comprise full relief in this case, the parties recognize that regular and ongoing reassessment of the above outlined Navajo language election program by the responsible officials will be necessary in order to insure that Indian voters are able to and continue to be able to enjoy equal access to all phases of the political process.

This 11th day of October, 1990.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

Copies mailed to counsel 10/12/90: mw
John R. Dunne, Esq./Richard B. Jerome, Esq.
Craig C. Halls, Esq.

1126

Approved as to form and content:

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UNITED STATES OF AMERICA


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SAN JUAN COUNTY, ET. AL.


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FILS
 UNITED STATES
 DISTRICT COURT
 DISTRICT OF UTAH
 Nov 22 12 51 PM '83
 PAUL L. SAGGER
 CLERK

IN THE UNITED STATES DISTRICT COURT
 DISTRICT OF UTAH - CENTRAL DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.	)	Civil No. C-83-1287J
)	
SAN JUAN COUNTY UTAH;)	
ITS BOARD OF COUNTY)	
COMMISSIONERS, ROBERT LOW,	)	COMPLAINT
KENNETH BAILEY, and)	
CALVIN BLACK; AND ITS COUNTY)	
CLERK, GAIL DALTON,)	
)	
Defendants.)	

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States of America for injunctive and declaratory relief pursuant to the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973 et seq., and 28 U.S.C. § 2201.

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345, and 42 U.S.C. § 1973aa-2.

3. The Attorney General is authorized to bring this action pursuant to 42 U.S.C. § 1973aa-2.

4. This action requires the empanelling of a three-judge court to hear and determine the issues presented herein as provided by 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

5. San Juan County is a political subdivision of the State of Utah and is a jurisdiction covered by the minority language assistance requirements, Section 203c of the Voting Rights Act, as amended, 42 U.S.C. § 1973aa-1a.

6. The Defendant Board of County Commissioners is the general governing and managing body of San Juan County, an organized political subdivision of the State of Utah.

7. The Defendants Robert Low, Kenneth Bailey, and Calvin Black are the duly elected members of the San Juan Board of County Commissioners and are joined in their official capacity. Each resides in San Juan County, Utah.

8. The Defendant County Clerk, Gail Dalton, has primary responsibility for conducting elections, including registration and voting, in San Juan County. The Defendant Gail Dalton is the duly elected County Clerk and is joined in her official capacity. She resides in San Juan County, Utah.

9. San Juan County is located in the southeastern corner of Utah and contains a substantial portion of the Navajo Reservation.

10. San Juan County has a total population of approximately 12,253 persons according to the 1980 census.

11. The Indian population of San Juan County is approximately 5600 or 46 percent of the total county population according to the 1980 Census.

12. The Indian population is largely concentrated on or near the Navajo Reservation located on the far southern part of San Juan County.

13. 42 U.S.C. §1973aa-1a(c) provides that where the language of the applicable minority group is historically oral or unwritten, the covered jurisdiction is required to furnish oral instructions, assistance, or other information relating to registration and voting in the minority language, whenever it provides materials or information relating to the electoral process in English.

14. Defendants have failed to provide an effective number of bilingual persons to serve as interpreters within each precinct in San Juan County serving Navajo voters in need of language assistance.

15. Defendants have failed to ensure effective interpretation of all aspects of the ballot, including constitutional amendments, to Navajo-speaking voters.

16. Defendants have failed to provide effective notice concerning the location of polling places in the Navajo language.

17. Defendants have failed to provide effective oral instructions, assistance, and other information concerning all aspects of the voter registration process, candidate nomination and filing procedures, absentee voting process, and voter purging process in the Navajo language.

18. Defendants provide registration and voting notices, forms, instructions, assistance, and other materials and information relating to the electoral process, including ballots, in English but have failed to provide them in Navajo, in violation of 42 U.S.C. § 1973aa-1a.

19. Defendants have failed to provide oral instructions, assistance, and other information relating to the registration and voting process in the Navajo language at all times when such information was provided in English, in violation of 42 U.S.C. § 1973aa-1a.

WHEREFORE, the plaintiff United States prays for an order:

1. Declaring that the defendants are in violation of the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

2. Enjoining the defendants, their agents, officers, employees, successors, and all other persons in active concert or participation with any of them from further

non-compliance with the minority language requirements of the Voting Rights Act, 42 USC § 1973aa-1a.

3. Requiring the defendants to submit a plan to the Court which fully complies with the minority language requirements of the Voting Rights Act, 42 U.S.C. § 1973aa-1a and the implementing regulations, 28 CFR § 55.1 et seq.

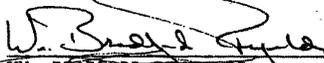
4. Designating federal examiners for San Juan County pursuant to 42 U.S.C. § 1973a(a); and

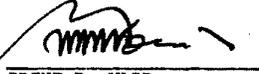
5. Ordering such other relief as the interests of justice may require, together with the costs and disbursements of this action.

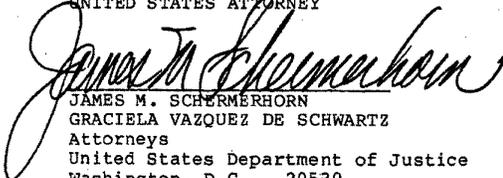
Respectfully submitted,

WILLIAM FRENCH SMITH
Attorney General

By:


~~WM. BRADFORD REYNOLDS~~
Assistant Attorney General


BRENT D. WARD
UNITED STATES ATTORNEY


JAMES M. SCHERMERHORN
GRACIELA VAZQUEZ DE SCHWARTZ
Attorneys
United States Department of Justice
Washington, D.C. 20530
(202) 633-4381

IN THE UNITED STATES DISTRICT COURT		RECEIVED CLERK
FOR THE DISTRICT OF UTAH		
CENTRAL DIVISION		
UNITED STATES OF AMERICA,	)	JUL 30 1997
Plaintiff,	)	U.S. DISTRICT COURT
v.	)	Civil Action No. C-83-1287
SAN JUAN COUNTY, UTAH, et al.,)	
Defendants.)	

ORDER

The parties to this action have jointly moved for an order terminating the First Amended Settlement and Order, entered October 11, 1990, except as to the provision certifying San Juan County for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a). Accordingly, it is hereby ORDERED that the First Amended Settlement and Order is terminated, with the exception of the provision certifying San Juan County for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), which is extended until December 31, 1998. This Court shall retain jurisdiction until that date for the sole purpose of effectuating the federal examiner certification.

SIGNED and ENTERED this 16 day of Oct., 1997.

[Signature]
 UNITED STATES CIRCUIT COURT
[Signature]
 UNITED STATES DISTRICT COURT
[Signature]
 UNITED STATES DISTRICT COURT

15

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH CENTRAL DIVISION		RECEIVED CLERK
UNITED STATES OF AMERICA,	)	JUL 30 1997
Plaintiff,	)	U.S. DISTRICT COURT
v.)	
SAN JUAN COUNTY, UTAH, et al.,	)	Civil Action No. C-83-1287
Defendants.)	

ORDER

The parties to this action have jointly moved for an order terminating the First Amended Settlement and Order, entered October 11, 1990, except as to the provision certifying San Juan County for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a). Accordingly, it is hereby ORDERED that the First Amended Settlement and Order is terminated, with the exception of the provision certifying San Juan County for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), which is extended until December 31, 1998. This Court shall retain jurisdiction until that date for the sole purpose of effectuating the federal examiner certification.

SIGNED and ENTERED this 16 day of Oct., 1997.

[Signature]
UNITED STATES CIRCUIT COURT
[Signature]
UNITED STATES DISTRICT COURT
[Signature]
UNITED STATES DISTRICT COURT

15

FILED RECEIVED CLERK
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION
DEC 21 1998

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
SAN JUAN COUNTY, UTAH, et al.,)
Defendants.)
Civil Action No. C-83-1287
DEC 21 1998

ORDER OFFICE OF CLERK
BRUCE S. JOHNS

The parties to this action have jointly moved for an order amending the Order entered by this Court on October 16, 1997, which terminated the First Amended Settlement and Order, except as to the provision certifying San Juan County for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a). Accordingly, it is hereby ORDERED that the Order extending the certification of San Juan County for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), is amended to extend such certification until December 31, 2002. This Court shall retain jurisdiction until that date for the sole purpose of effectuating the federal examiner certification.

SIGNED and ENTERED this 30th day of Dec, 1998

[Signature]
UNITED STATES CIRCUIT COURT
[Signature]
UNITED STATES DISTRICT COURT
[Signature]
UNITED STATES DISTRICT COURT

17

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 SOCORRO COUNTY, NEW MEXICO;)
 SOCORRO COUNTY BOARD OF COUNTY)
 COMMISSIONERS; DANIEL ROMERO,)
 Chairperson of the Socorro County)
 Board of County Commissioners;)
 DICK GALLEGOS, TOBY JARAMILLO,)
 JUAN GUTIERREZ, and MIKE MORA,)
 Members of the Socorro County Board of)
 County Commissioners; and CARMEN D.)
 GALLEGOS, Socorro County Clerk,)
)
 Defendants.)

CIVIL ACTION NO.
NO. 93-1244-JP

CONSENT AGREEMENT

The United States initiated this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act and the Fourteenth and Fifteenth Amendments arising from Socorro County's election practices and procedures as they affected Native American citizens of the county, including those Native American citizens who rely in whole or in part on the Navajo language.

The claim under Section 203 of the Voting Rights Act ("Section 203") must be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C. 1973aa-2 and 28 U.S.C. 2284.

The plaintiff alleged in its complaint that various election standards, practices and procedures of the defendants

unlawfully deny or abridge the voting rights of Native American citizens residing in Socorro County. The challenged practices touch on voter registration, absentee voting, voter registration cancellation procedures, and the failure of the defendants to implement, as required by Section 203, effective bilingual election procedures, including the effective dissemination of election information in the Navajo language. The challenged practices also concern the failure of defendants to provide for a sufficient number of adequately trained bilingual persons to serve as translators for Navajo voters needing assistance at the polls on election day.

The defendants do not contest that in past elections the county has failed to make the election process in Socorro County equally available to Native American and non-Native American citizens as required by Section 2 and the Fourteenth and Fifteenth Amendments, nor do defendants contest that in past elections the county has failed to comply fully with the minority language requirements of Section 203.

Socorro County agrees in the future to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments.

This Court has jurisdiction over the parties and the subject matter of this litigation. This Agreement is final and binding between the parties and their successors in office regarding the facts, claims, and issues raised in the Complaint and resolved herein.

In settlement of this matter, the parties stipulate as to the following facts:

1. Socorro County has been subject to Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, since 1984 with respect to the Navajo language. In 1992, pursuant to the Voting Rights Language Assistance Act of 1992, the county's coverage under Section 203 was extended based upon the determinations by the Director of the Bureau of the Census pursuant to the Act. The Director determined that Socorro County is a political subdivision that contains all or part of an Indian reservation, wherein more than 5 percent of the American Indian citizens of voting age within the reservation are members of the Navajo language minority group who do not speak or understand English adequately enough to participate in the electoral process, and further that the illiteracy rate of such persons as a group is higher than the national illiteracy rate. Based on this determination, Socorro County is subject to Section 203 of the Voting Rights Act with respect to the Navajo language, which is an oral language. This determination was published in the Federal Register on September 18, 1992, and became effective upon publication.

2. Section 203 requires that all information that is provided by Socorro County in English about voter "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," must be provided in the Navajo language to the extent that it is needed to allow language minority group members to be

informed of and participate effectively in the electoral process and all voting-connected activities. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." Attorney General's Procedures for the Implementation of the Provisions of the Voting Rights Act for Minority Language Groups, 28 C.F.R. 55.15. Because the Navajo language is historically an unwritten language, defendants are required to furnish oral instructions, assistance and other information relating to registration and voting in the Navajo language. 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12(c).

3. Section 2 of the Voting Rights Act requires that citizens be allowed to participate equally in all phases of the election process without regard to race, color or membership in a language minority group.

4. According to the 1990 Census, Socorro County has a population of 14,764 persons, of whom 1,491 (10.1%) are Native Americans, principally members of the Alamo Chapter of the Navajo Nation.

5. According to the 1990 Census, 66.3 percent of the Navajo voting age population in Socorro County does not speak English well enough to participate effectively in English language

elections. Thus, a significant majority of Navajos in Socorro County cannot function in the electoral process except in the Navajo language.

6. The Navajo population of Socorro County lives in circumstances of significant physical and social isolation from the non-Native American population of the county. Socorro County is unusually large in physical terms, and covers a geographic area substantially larger than the States of Connecticut and Rhode Island, combined. While over two-thirds of the non-Native American voting age population of the county lives within four miles of Socorro, the county seat, over 90 percent of the Native American population lives in the Alamo Chapter of the Navajo Nation, approximately 57 miles from the county courthouse. The physical and social isolation of the Navajo population of Socorro County burdens their access to the franchise.

7. The problems associated with the geographical isolation of this area are exacerbated by the depressed socioeconomic conditions of Native Americans in Socorro County. According to the 1990 Census, the per capita income of Native Americans in Socorro County was only \$3,177, or less than one third of the per capita income of non-Native Americans (\$10,505). While 23.9 percent of non-Native American families live below the poverty line, 52.8 percent of Native American families are impoverished. Native American households are more than three times as likely not to have a car or truck as non-Native American households. The lack of vehicles places a special burden on travel to the county

courthouse. The 1990 Census shows similar disparities for access to telephones. Within Socorro County, 64.9 percent of households within the Alamo Chapter lack telephones, compared to 19.7 percent of off-reservation households.

8. Native American citizens in Socorro County suffer from a history of discrimination touching their right to register, to vote, and otherwise to participate in the political process, arising from their unique status. See e.g., Trujillo v. Garvey, C.A. No. 1350 (D.N.M., August 11, 1948); Sanchez v. King, C.A. No. 82-0067-M (D.N.M., August 8, 1984).

9. The level of political participation by Native American citizens of Socorro County is depressed. Over the past decade, voter registration rates in the predominantly Native American precinct (Alamo) have been approximately 60 percent of the rate in non-Native American precincts, and Native Americans are affected disproportionately by voter purge procedures. Although Native Americans comprise over 10 percent of the county population, only one percent of all absentee ballots were from the Alamo precinct in the 1992 general election, and there were no absentee ballots cast from the Alamo precinct in the 1990 general election. As a result of the lack of publicity concerning constitutional and other referenda, the rate of participation by Native Americans on such issues has been far below the participation rate among non-Native Americans, and has ranged from a high of 16 percent to a low of less than three percent since 1986. Native Americans who are able to go to the polls in many cases have had to wait in line an

extraordinary period of time in order to vote, and have been unable to cast effective ballots because of an absence of a sufficient number of fully trained translators.

To bring about compliance with the Voting Rights Act and the Fourteenth and Fifteenth Amendments, the parties have agreed upon the following remedial provisions and have agreed to the entry of this order. Entry of this Agreement shall be final and binding on all of the parties and their successors as to all issues raised in the complaint and resolved herein. Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. The defendants, their agents and successors in office, and all other persons acting in concert or participation with them, are hereby permanently enjoined from failing to comply with the requirements of Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments.

2. It is the intent of Socorro County to provide to Native American voters full and complete information as to all election-related matters including, but not limited to, registration, election dates, polling place locations, candidate information, referendum information, absentee voting information, and voter purge procedure information. It is the further intent of Socorro County, recognizing the particular circumstances of the Native American population of the county, to make all phases of the election process as accessible to the Navajo population of Socorro County as they are to the remainder of the county's population.

3. To assist in the effectiveness of this Agreement and to protect the Fifteenth Amendment rights of citizens of Socorro County, the appointment of federal examiners for elections in Socorro County is authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), for at least the period of this Agreement.

4. Socorro County is designated pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c) for the period of this Agreement, so that during that period no alteration of any voting qualification or prerequisite to voting or any standard, practice, or procedure with respect to voting may be implemented by Socorro County without prior clearance from this Court or from the Attorney General of the United States. Such changes include but are not limited to amendments to the Native American Election Information Program and changes in polling places within Socorro County, and include all practices and procedures of Socorro County to implement and administer state-mandated changes affecting voting.

5. In light of the complexity of the issues involved and the evolving nature of the Program, this Agreement shall remain in effect through December 31, 2003, unless plaintiff moves the Court for good cause shown to extend this Agreement.

6. Socorro County has adopted the following Native American Language Election Information Program which the Court hereby approves as part of this Agreement, as set forth below. The purpose of the Native American Language Election Information

Program is to ensure the dissemination of election-related information to the Navajo speaking population of Socorro County, and to make the election process equally accessible to Native American citizens. This program is intended to remedy the deficiencies of existing procedures for providing election-related information to the Navajo population of Socorro County, and to provide a procedure by which this program may be improved and modified in the future.

THE NATIVE AMERICAN ELECTION INFORMATION PROGRAM

A. Intergovernmental Coordination

1. Socorro County and the Voting Rights Coordinator shall request and accept all training, materials and services available from the State of New Mexico in furtherance of the implementation of this program, and shall encourage the production of such materials by the state. The Voting Rights Coordinator shall stay in regular contact with state personnel, including personnel of the Office of the Secretary of State, Bureau of Elections, Office of Indian Rights and the New Mexico Office of Indian Affairs, in order to coordinate state and county activities and efforts, and for advice and assistance associated with the Native American Election Information Program. Socorro County shall encourage the assistance of such state personnel, and shall at all times welcome their presence in the county to assist in implementation of this Program or to assist Native Americans in any phase of the election process.

2. Socorro County is encouraged to work with other counties in New Mexico and neighboring states which have programs for Native American language minorities to coordinate election activities, including the development of standard terminology for the translation of election materials into Navajo, and to obtain cost savings in the implementation of effective Native American language programs.

3. The county shall invite representatives of the Navajo Elections Administration (NEA) and officials of the Alamo Navajo Chapter to assist in all phases of the Native American Election Information Program. To assist in uniformity and accuracy in the translation of election materials, prior to dissemination of any translation, the county shall make available such translations to tribal officials within Socorro County and to representatives of the NEA, and shall provide them with a reasonable opportunity to review and comment concerning any matter translated. The county shall keep a written record of such comments and the county's response to the comments.

B. Satellite Election Office

1. Socorro County shall establish a permanent Satellite Election Office at a location within the Alamo Navajo Chapter convenient to the population of the Alamo Chapter. The establishment of the Satellite Election Office shall be with the consent of the appropriate tribal officials.

2. The Satellite Election Office shall serve as the principal place for office hours for the Voting Rights Coordinator

provided for in part C of the Program below, as a library of written and recorded election information, as a distribution point for the dissemination of election information, and as a site for the performance of all functions related to the election process that can be performed at the county courthouse, including but not limited to registering to vote or updating voter registration information; filing as a candidate for office; and casting an absentee ballot. The Satellite Election Office may be used for other governmental purposes as agreed upon in writing by the parties.

3. Delivery of a voter registration application or performance of any other election-related task at a Satellite Election Office shall be effective in terms of all time deadlines and requirements as if the application had been delivered to, or the task performed at, the county courthouse.

4. A supply of all forms and materials necessary to complete these functions shall be maintained at the Satellite Election Office. Copies of all materials, information and audio-visual tapes required to be disseminated pursuant to this Agreement, including all election-related materials prepared by the state, likewise shall be available in the office, together with appropriate audio-visual equipment.

5. A county employee, Tribal Election Liaison, or other personnel comparably trained in election procedures and appointed as a deputy registrar, shall be available at the Satellite Election Office during regular office hours on work days.

C. Voting Rights Coordinator

1. Socorro County shall employ at least one Voting Rights Coordinator who will coordinate the Native American Election Information Program in Socorro County. The Voting Rights Coordinator shall be bilingual in Navajo and English, and shall serve primarily the area of the Alamo Chapter of the Navajo Nation.

2. The Voting Rights Coordinator shall be hired by Socorro County after consultation with the officials of the Alamo Navajo Chapter and counsel for the United States. Socorro County shall invite such officials to present the names of at least four qualified persons fluent in English and in Navajo, and shall select the Voting Rights Coordinator from among the names submitted, provided that the individuals otherwise satisfy legitimate requirements for county employment. In the event that fewer than four names of qualified persons are submitted, Socorro County shall consult with the appropriate tribal officials and the United States.

3. Socorro County shall develop a job description for the Voting Rights Coordinator in consultation with the officials of the Alamo Navajo Chapter and counsel for the United States. The duties of the Voting Rights Coordinator shall be limited to those specified in the Native American Election Information Program, and closely related election activities, except as may be provided in a separate written agreement of the parties.

4. The Voting Rights Coordinator shall be trained in all aspects of the election process, shall attend all election

seminars conducted by the Secretary of State and the Socorro County Clerk, and shall be appointed a county deputy registration officer. The Voting Rights Coordinator shall be fully briefed by the county clerk and the state Director of the Bureau of Elections (or the Director's designee), as appropriate, concerning the Coordinator's duties and responsibilities under this Program. Representatives of the Alamo Navajo Chapter and the NEA shall be invited to attend these briefings by written notice 10 days in advance of each training session, and representatives of the United States shall be permitted to attend these briefings to assist state and local election officials in explaining the requirements of this Program. The Voting Rights Coordinator shall be hired and the briefings completed by March 28, 1994.

5. The Voting Rights Coordinator shall oversee the county's Native American Election Information Program generally and attend on a regular basis meetings of the Navajo communities within the county. The Coordinator shall attend each Alamo Chapter meeting and chapter officers' meeting. The Voting Rights Coordinator shall seek to attend and make a presentation of election information at all other public meetings (such as parent-teacher organization and senior citizen group meetings) and gatherings (such as for commodity distribution) within the Alamo Chapter or serving a significant number of Navajo citizens, consistent with the schedule set forth within.

6. The county shall establish booths or displays at all tribal fairs or functions where their presence is permitted by the

tribal officers, and at shopping areas and other locations identified by the Voting Rights Coordinator in consultation with tribal officials. The county shall staff such booths or displays with the Voting Rights Coordinator, Tribal Election Liaison, or deputy registration officers.

7. The Voting Rights Coordinator shall identify other opportunities to disseminate election information to Native Americans. The Coordinator shall contact each officer of the Alamo Chapter in January and June of each year of this Agreement to identify all groups or meetings before which presentations might be made or displays and booths established. The Coordinator shall provide lists of such groups or meetings to the county clerk and the NEA by the close of the relevant month. Within 30 days thereafter, the Voting Rights Coordinator shall notify the Chapter officers, the NEA and the United States, in writing, of the meetings and groups before which the Coordinator will appear.

8. The Voting Rights Coordinator shall conduct voter education programs concerning each election within Socorro County which involves any portion of the Alamo Chapter, and any other areas of Navajo population within the county. Such voter education programs shall include instruction and dissemination of information on at least the following topics: voter registration; absentee voting procedures; voter purge; candidate qualification; voting procedures and operation of voting machines; the contents of the ballot; and all time deadlines and requirements. The Voting Rights Coordinator shall work primarily out of the Satellite Election

Office, and shall not be required to be present in the county courthouse for more than one working day in any week.

9. The Voting Rights Coordinator, or other county officials, shall maintain a written record of the date and purpose of each visit made for election-related purposes to each meeting held at the Alamo chapter house or other site within the Alamo Navajo Chapter. Within 30 days after each primary, general, school, and special election, the Voting Rights Coordinator shall prepare a written report detailing the Coordinator's election-related activities in implementing the goals and provisions of the Native American Election Information Program.

10. The Voting Rights Coordinator shall conduct the training of all deputy registration officers, poll officials and other election-related personnel who will participate in the Native American Election Information Program. The Alamo Chapter President shall be notified, at least two weeks before the scheduled training, of each training session and be invited to send a representative. Training sessions shall be open to the public and shall be held at convenient locations within the Alamo Chapter, as permitted by tribal officials. Training shall be conducted at least in part in the Navajo language, so that the election-related personnel shall be familiar with Navajo terminology for all aspects of their election duties.

11. Socorro County shall establish a travel and supply budget for the Voting Rights Coordinator which shall be sufficient to cover travel and supply expenses incurred in carrying out the

Coordinator's duties, obligations and responsibilities to effectively implement this Native American Election Information Program. The parties anticipate that, since the Coordinator will be based in the Alamo Chapter, the need for travel other than for state-sponsored training will involve primarily short trips to sites within the Chapter or to the town of Magdalena, with trips as necessary and appropriate to the county courthouse.

D. Tribal Election Liaison

1. Socorro County shall request the Alamo Navajo Chapter President to identify and appoint one individual to serve as a Tribal Election Liaison between the county and the Alamo Chapter.

2. The Tribal Election Liaison shall be qualified as a deputy registration officer and county election officials shall train the Liaison in all aspects of the election process, including the schedule of elections, election-related deadlines, absentee voting, the voter registration and purge processes, candidate qualification requirements and procedures, election day activities, and the text and significance of proposed constitutional amendments and other referenda. In the event of a vacancy in the office of Voting Rights Coordinator, the Tribal Election Liaison shall succeed temporarily to that position, and shall receive all responsibilities, pay and benefits of the position until a new Coordinator takes office.

3. Telephone inquiries from the Voting Rights Coordinator, the Tribal Election Liaison, deputy registration

officers on the reservations, and tribal officials involved in election activities, to the county clerk's office and the secretary of state's office respecting election-related matters, are encouraged and shall be considered official government business, and telephone charges associated with any such calls shall be paid by the county.

E. Translations

1. The following election-related materials and announcements shall be translated into the Navajo language, made available on audio tapes, and provided to the Voting Rights Coordinator at the Satellite Election Office by the dates specified:

a.) Detailed election calendar for each year (by January 1 of each year);

b.) State, county and school district election proclamations (by the statutory date of proclamation);

c.) Constitutional amendments and other referenda issues on the ballot (within 30 days of the date the English text is determined, and no later than the date of proclamation);

d.) A brief description of each constitutional amendment and other referendum issue on the ballot (by the date of each election proclamation);

e.) Candidate qualification requirements and deadlines (60 days prior to the respective qualification deadlines for primary elections for state and federal offices, primary elections

for other offices, independent candidates, and write-in candidates);

f.) The duties, functions and compensation for each office filled by election involving any part of Socorro County (by January 1 of each year);

g.) Voter registration deadlines (by January 1 of each year, with separate tapes containing deadlines for each type of election);

h.) Instructions relating to voting by absentee ballot (by April 20, 1994), and an explanation of the voter purge process as provided by this Agreement (by April 20, 1994);

i.) The candidates for office and their political parties for each election (by the date on which the ballot is printed); and

j.) Explanations of voting procedures including the operation of voting machines and how to cast a write-in ballot (by May 1, 1994).

2. The county may substitute and/or supplement video tapes for audio tapes covering at least the subjects listed above. All tapes will be edited or new tapes shall be made within 10 days of enactment of any change in election requirements or procedures, so as to reflect and incorporate the new information. Copies of all tapes and other materials prepared pursuant to this Agreement shall be provided to the Alamo Navajo Chapter, the NEA and the United States.

3. Separate recordings shall be provided for each election-related subject matter so as to avoid lengthy tape recording, and the county shall make every effort to ensure that tape recordings do not exceed five minutes in length. Separate tapes shall be made, for example, for each separate constitutional amendment or bond issue to be voted on at a given election. A library of currently applicable tapes, together with English transcripts or text, shall be maintained at the Satellite Election Office.

4. The county, through the Voting Rights Coordinator and Tribal Election Liaison, shall engage in all reasonable efforts to see to it that each tape is played in at least two Alamo Navajo Chapter meetings, as well as at other public meetings and gatherings during the appropriate publicity period. The Voting Rights Coordinator, Tribal Election Liaison or other trained bilingual person shall be present to answer any questions concerning the subject matter of the tape, and the Voting Rights Coordinator shall make a formal request to the appropriate tribal official or officials regarding such presentation in a timely manner. If appropriate tape-playing equipment is not available on the site visited, the county shall provide such equipment to the Voting Rights Coordinator for this purpose.

5. Native American language audio and/or video tapes described in this Agreement shall be available generally to individuals and organizations at the Satellite Election Office and the Alamo Navajo chapter house.

6. The county shall enter into written contracts with qualified persons so that accurate translations are made. The county may use tapes provided by the state, and may coordinate with other counties of the State of New Mexico in the production of tapes; but Socorro County shall be responsible for addressing promptly and, if necessary, correcting or clarifying any translation upon report from any Voting Rights Coordinator, official of the Alamo Navajo Chapter, or any other Navajo speaker. Disputes as to the accuracy of a given translation which are not promptly resolved by mutual agreement between county officials and Native American leaders will be resolved by a mutually agreed upon third party, and the United States shall be notified of each such dispute. The county shall seek the assistance of the state in identifying and retaining any necessary translators or subject matter experts to assist in translation of technical or complicated election-related materials. In the event that the state fails to provide such translators or subject matter experts, the county shall request the assistance of the NEA.

7. The translation shall begin as soon as the English text for an item is known, and translation and review of any election-related material shall be completed promptly. The county's responsibility to ensure prompt and accurate translation of election materials and information, and dissemination thereof, shall extend to materials and information relating to statewide issues, including those published in each Election Proclamation,

and to elections of subdivisions of Socorro County, including but not limited to the Magdalena School District.

8. The Voting Rights Coordinator shall, in consultation with the Tribal Election Liaison and other tribal officials, develop a series of posters suitable for public display to accompany translated and written notices respecting election matters.

9. Upon request, Socorro County shall make available all translations and election materials prepared pursuant to this Program to all governmental entities within Socorro County and other counties which endeavor to provide election information to Native American citizens.

F. Dissemination of Election-Related Information

1. The county shall plan and publicize meetings at the Alamo chapter house, schools, and other sites convenient to voters of Alamo, at which the Voting Rights Coordinator and other trained personnel will make oral presentations in the Navajo language with appropriate audio and visual aids, as provided in part E above, according to the following schedule:

a.) During the 45 days prior to each separate deadline for candidate qualification for any federal, state, county, or school office: the qualifications, duties and compensation of each office, and the procedures for qualifying as a candidate.

b.) During the 45 days prior to each separate deadline for registering to vote in any primary, general, school, or special election: the voter registration procedures, including the names of

local deputy registrars, voter registration cutoff dates, and voter registration locations.

c.) During the 60 days prior to each separate election: the offices to be filled including the duties of each office; the names and party affiliation of each candidate; each ballot proposition, including a brief summary of each proposition and an explanation that detailed information on the ballot proposition is available at the Satellite Election Office and other locations.

d.) During the absentee voting period for each election: the absentee balloting process, including explanation of what persons are eligible to vote absentee and absentee voting locations; polling place procedures, including the operation of voting machines; procedures for casting a write-in ballot (if and only if there is a write-in candidate); the availability of detailed election information at the Satellite Election Office; and the availability of trained translators at the polls.

2. The county shall coordinate publicity efforts with Navajo tribal officials and with the NEA. The NEA will be requested to disseminate all such information through public service announcements on radio and television stations. All publicity shall be made available to any areas containing Navajo population concentrations outside the Alamo Chapter identified in consultation with the NEA.

3. Election-related announcements, materials, tapes, and other election information shall be made available to all high

schools serving residents of the Alamo Navajo Chapter to familiarize students with all phases of the election process.

4. Facsimiles of voting machines or devices shall be made available to the Voting Rights Coordinator for use in training election-related officers and conducting voter education programs on their respective reservations.

5. The New Mexico Legislative Council Service publication of Constitutional Amendments Proposed by the Legislature and Arguments For and Against shall be provided to the Voting Rights Coordinator, Tribal Election Liaison, and deputy registration officers of Socorro County by September 1 of each even-numbered year of this Agreement. Socorro County shall be under no obligation to translate the publication.

6. Radio and/or Television: The obligation of Socorro County to make radio and television announcements in the Navajo language shall be satisfied by "notice" announcements providing a brief general description of the subject matter and an identification of all sites where detailed information is available, including the Satellite Election Office. Socorro County shall not be required to broadcast in the Navajo language the full text of constitutional amendments, election proclamations or other lengthy election-related announcements. Socorro County shall distribute tapes for broadcast to KABR in Alamo and to other available stations or programs for broadcast in the Navajo language regarding:

a.) Deadlines for voter registration for participation in all primary, general, school, and special elections involving portions of the Alamo Navajo Chapter, including identification of regularly available voter registration sites in the Alamo Chapter. These announcements, which shall be spot announcements, shall be made at least twenty times each week for the four weeks preceding the deadlines for both state and federal election registration for each primary and general election. The announcements shall include a description of the offices to be filled in the election to which the registration deadline applies.

b.) Candidate qualification. Spot announcements detailing procedures and deadlines for becoming a candidate shall be made daily during the two weeks preceding each candidate filing date, including school board elections.

c.) Dates of special, primary, general, and school board elections, a list of the offices to be elected, and the availability of trained translators at the polls and the right of each voter who requires assistance in casting a ballot to be assisted by a person of her or his choice in accordance with federal law. Announcements shall be made twice a week during at least the three weeks prior to each of the foregoing elections.

d.) An explanation of the ballot identifying each office to be filled, each candidate with the candidate's political affiliation, and the nature and significance of each referendum, proposed constitutional amendment, or ballot proposition to be decided. Announcements shall be made twice a week for at least the

three weeks prior to each special, primary, general, and school board election. Separate announcements shall be made for (1) federal, statewide and multi-county offices (2) county and local offices, and (3) constitutional amendments and other referenda. Socorro County may coordinate announcements respecting federal, statewide and multi-county offices and constitutional amendments and other referenda with other New Mexico counties.

e.) The county shall request that the broadcasters make the above identified announcements at times calculated to reach the largest possible Navajo audience. Each announcement shall refer the audience to the Satellite Election Office for detailed information.

7. Print Media: Socorro County shall not be required to publish in the Navajo language the text of election announcements which are published in English in local newspapers. Announcements detailed in paragraph F.6 shall be published on a weekly basis in the Navajo Times, and twice weekly in the Gallup Independent and a Socorro County newspaper of record, for the publicity periods noted in that paragraph. Socorro County may coordinate such publication with other New Mexico counties.

G. Voter Registration

1. The county shall: request the Alamo Chapter President and other chapter officials to recommend at least six persons qualified to serve as deputy registration officers in Socorro County; request assistance from the NEA in identifying potential deputy registration officers; seek to coordinate state

voter registration with Navajo tribal voter registration through reciprocal deputization of deputy registration officers for state and tribal elections; invite school personnel, including each high school principal and parent-teacher organization officer, to become deputy registration officers; and encourage organized political parties to recommend additional deputy registration officers for election precincts on the reservations. Socorro County shall deputize and train all qualified persons who desire to serve as deputy registrars.

2. Training for deputy registration officers for the Alamo precinct and any other majority Navajo election precinct in the county shall be conducted within the Alamo Chapter by the Voting Rights Coordinator in both English and in Navajo. In addition to training as to registration standards, regulations, and forms, deputy registration officers shall be trained fully regarding the voter purge and absentee voting processes, standards, and regulations. Navajo language tapes and English transcripts shall be used in the training process, and copies of such materials shall be maintained as provided generally in this Agreement.

3. Socorro County shall appoint and train a minimum of six deputy registration officers fluent in English and in Navajo in each county precinct which includes any part of the Alamo Navajo Chapter by May 1, 1994.

4. The names of all deputy registration officers residing or working within the Alamo Chapter shall be prominently posted at the Alamo Navajo chapter house, as permitted by chapter

officials, and at each trading post and/or post office serving the Alamo community. Such lists shall be updated within one week of any change in deputy registration officers. Copies of all lists, and updates thereof, shall be provided to the NEA and the United States within 10 days of posting.

5. The Voting Rights Coordinator, as part of the outreach efforts, shall conduct special voter registration drives in the Alamo Chapter. The NEA, Alamo chapter officers, and the Tribal Election Liaison, shall be consulted as to the best time and place for each registration drive, and notified prior to the scheduled registration.

6. The county shall monitor, on an ongoing basis, the performance of deputy registration officers. The Voting Rights Coordinator shall maintain a record of the number of persons, by race, registered for each month by each deputy registration officer. The Voting Rights Coordinator shall encourage inactive or unproductive deputy registration officers, and the Voting Rights Coordinator shall promptly appoint and train a replacement for any deputy registration officer who fails to respond to such encouragement. The county will adopt recognition programs for deputy registrars to encourage registration activity.

7. The county shall provide the Voting Rights Coordinator and Tribal Election Liaison with current voter registration lists and forms, lists of voters to be purged from the voter registration lists, and detailed election precinct maps for his or her precinct. Copies of the maps and registration lists

shall be maintained and available to the public in the Satellite Election Office.

H. Absentee and Early Voting

1. The county shall supply applications for absentee/early ballots to all deputy registration officers serving the Alamo Chapter, Voting Rights Coordinator, Tribal Election Liaison, and Navajo chapter officers.

2. The Satellite Election Office shall have all materials and personnel available during regular business hours so that an absentee or early ballot can be cast in person on the same basis as at the county courthouse. The Voting Rights Coordinator shall attend the last two Navajo Chapter meetings prior to the deadline for voting absentee in each primary, general, special, or school board election, so that eligible persons may obtain and, if they desire, cast absentee/early ballots in person at that time. At such meetings, the Voting Rights Coordinator shall explain that all persons are eligible to cast absentee/early ballots.

3. The Voting Rights Coordinator shall post information concerning the availability of absentee and early balloting prominently at the Alamo chapter house and at trading posts or post offices which serve the reservation, and at other sites identified by the Tribal Election Liaison.

4. The Voting Rights Coordinator shall be authorized to deliver absentee ballots to voters whose absentee ballot applications have been accepted by the county clerk and to accept

completed absentee ballots from eligible voters for delivery to the county clerk.

I. Election Day Procedures

1. Socorro County shall cooperate with the NEA in the establishment of polling places so that the same buildings can be used for Navajo tribal and state elections in separate areas of the same buildings. At least one voting machine shall be provided for such precinct for every 200 registered voters, or fraction thereof.

2. Poll officials assigned to each majority Navajo election precinct in Socorro County shall be persons who are bilingual in Navajo and in English. The county shall consult with the Tribal Election Liaison, the NEA and Navajo tribal officials of Socorro County, to identify bilingual individuals qualified to work at the polls. Alternate translators shall be designated as required by state law.

3. Poll officials and the Voting Rights Coordinator shall monitor the polls during the course of each election to identify and record each instance in which unreasonable delays occur either in voting or in translation of the ballot occur. Where such delays occur, the county shall take whatever steps are necessary, such as providing additional translators and voting machines, to ensure that such delays do not recur in future elections.

4. Poll officials and translators shall be fully trained, at locations in the Alamo Chapter in the Navajo language concerning election day procedures at the polling places, the

contents and issues appearing on the ballot, and voter purge procedures. Training shall include translation of the entire ballot and related information in the Navajo language. Such training shall include the use of audio and/or video tapes of the entire ballot. A copy of each such tape or set of tapes shall be provided to each poll official along with an English language sample ballot at least 30 days prior to the election, and the county shall ensure that the poll officials have access to appropriate equipment for playing the tapes during this period. Training sessions shall be followed by oral testing in Navajo to ensure their effectiveness.

5. For each voting machine at each polling place serving the Alamo Chapter on election day, the county shall appoint at least one trained translator.

6. Poll officials shall specifically advise each voter who is eligible under state or federal law to receive assistance in casting a ballot that the voter may choose any person to provide that assistance, with the exceptions provided in Section 208 of the Voting Rights Act, 42 U.S.C. 1973aa-6. After the voter has indicated to a poll official a need for assistance in voting or in reading the ballot in English, the voter's request for assistance shall be noted in the signature roster and it shall be unnecessary for the voter to execute an affidavit of assistance.

7. Poll officials or other designated county officials shall maintain a record of all persons who come to the polls but are not allowed to vote in each precinct of Socorro County. This

record shall include each voter's name, race, address, the reason the person thought she or he was eligible to vote at that site, and the reason for not permitting the person to vote.

8. A list of the persons not permitted to vote shall be provided to the appropriate tribal officials, the Voting Rights Coordinator, Tribal Election Liaison, and deputy registration officers of each precinct involving a portion of the Alamo Chapter. The county shall contact each such person and provide an opportunity for that person to register to vote at the earliest possible time. The Voting Rights Coordinator shall make a report of the list of persons not permitted to vote, the dates on which they were contacted and registered to vote, and identify such additional training, publicity, or other steps that the Coordinator believes would be useful to prevent similar ineligibility among the Native American population in the future.

J. Purge Process

1. Socorro County shall implement the standards and procedures of the National Voter Registration Act of 1993 as the standards and procedures for the removal of voters from the voter registration lists of Socorro County, and no voter shall be removed from the list of eligible voters or denied the right to vote for the failure to vote in any election in Socorro County subsequent to June 1, 1992, except through those standards and procedures.

2. The Satellite Election Office shall be deemed a "central location" under the terms of Section 8(e)(2) of the National Voter Registration Act of 1993.

3. At least 60 days prior to the mailing of any notice of removal from the voter registration lists in accordance with Section 8(d)(2) of the National Voter Registration Act of 1993, the county shall provide to the Voting Rights Coordinator, Tribal Election Liaison, tribal officials, and deputy registrars copies of a list of all persons identified for purging from the voting list for failure to vote in each precinct which involves any part of the Alamo Chapter. Copies of the list shall be sent to the Alamo chapter house in Socorro County with a request that it be posted. The Voting Rights Coordinator, Tribal Election Liaison, tribal officials, and deputy registrars shall be urged to screen said lists to identify persons still eligible to vote in Socorro County but for any failure to vote in any election(s). The name of each such person shall be removed from the list of voters to be purged, and it shall be the responsibility of the Voting Rights Coordinator to correct any errors on the voters list as to address, precinct assignment, or other matter, and to notify the voter of such change. Socorro County shall be under no obligation to mail to any such person any notice pursuant to Section 8(d) of the National Voter Registration Act of 1993.

K. Records

1. Copies of all tapes and other materials or records mentioned in this Agreement shall be maintained by the defendants. Socorro County also shall maintain statistical records including but not limited to:

a. Voter Registration

--Voter registration, by precinct, on a monthly basis.
--Number of voters, by precinct, who are registered at the Satellite Election Office, by each deputy registrar, and at each voter registration drive conducted pursuant to this Agreement.

b. Voter Purge

--Total number of voters purged, by precinct, for failure to vote.
--Total number of voters retained on the voter registration rolls based on certification of eligibility by the Voting Rights Coordinator.
--Total number of voters, by precinct, reinstated by returning post cards.
--Total number of voters validated by other means during the purge period by precinct.

c. Absentee Voting

--Total number of mail requests for absentee ballots and number of absentee votes cast per precinct pursuant to mail requests.
--Total number of absentee ballots cast, per precinct, in person at the county courthouse.
--Total number of absentee ballots cast in person at the Satellite Election Office.

--Total number of absentee ballots cast, per precinct, in person before a deputy clerk and/or Voting Rights Coordinator on the reservation.

d. Publicity

--Time and medium of each broadcast (where records are available) or publication pursuant to this Agreement.

--Time, place and occasion of presentation by the Voting Rights Coordinator, the subject matter(s) addresses, and the approximate number of persons in attendance.

--Time, place and occasion of each instance in which each election-related video and audio tape was played, and the approximate number of persons in attendance.

The county shall update these records on an ongoing basis and these data shall be maintained for all precincts of Socorro County at the county clerk's office and at the Satellite Election Office. All tapes, materials, and records prepared or maintained pursuant to this Program shall be available for public inspection and copying upon request.

2. Beginning on July 1, 1994, and quarterly during each year for the life of this Agreement, the county shall compile a Quarterly Report of the efforts taken pursuant to this Agreement during the preceding three months. The report shall include the status of Native American voter participation as shown by statistics in each area addressed in this Agreement, together with an assessment of the effectiveness of each phase of the Program and

a recommendation of the steps to be taken, if any, to improve Native American voter participation. Copies of the report shall be provided to the United States, the President of the Alamo Navajo Chapter and the NEA.

L. Adjustments to Program

1. It is the goal of Socorro County to provide that the entire election process is fully and effectively accessible to Native American citizens, and the procedures set forth above are designed to achieve that goal. Socorro County shall evaluate its programs on an ongoing basis through consultation with the Tribal Election Liaison the NEA and Navajo tribal officials of Socorro County, and counsel for the United States.

2. The parties shall confer in good faith if any party believes that a particular aspect of the Program has proven ineffective. The parties shall confer at least annually in a good faith effort to improve any aspect of the program which has proven ineffective, in accordance with this Agreement. In the event of changes in Native American population patterns in Socorro County, including the development of any new Native American population concentration within the county, the parties promptly shall confer and develop a program for meeting fully the Native American language needs of such population.

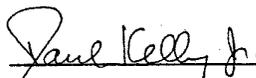
III. CONCLUSION

This Agreement represents the commitment of the parties to provide equal voting rights to all citizens of Socorro County, and the county intends fully and faithfully to implement this

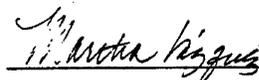
Native American Election Information Program. The parties recognize that regular and ongoing reassessment of the above outlined Program by the responsible officials will be necessary in order to ensure that Native American voters are able, and will continue to be able, to enjoy equal access to all phases of the political process in Socorro County. The parties further agree to confer and cooperate in addressing any jurisdictional issues that may arise in connection with the implementation of this Agreement.

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this Agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments.

Entered this 11 day of April, 1994.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

Approved as to form and content:

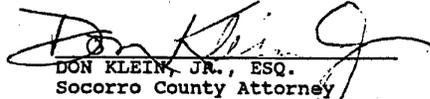
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SOCORRO COUNTY, ET AL.



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Socorro County Attorney
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA, **CIV 93**)

1244)
APR 22 1993)
JP

Plaintiff,)

CIVIL ACTION NO.)

v.)

Count 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100
CLERK-ALBUQUERQUE)

SOCORRO COUNTY, NEW MEXICO;)
SOCORRO COUNTY BOARD OF COUNTY)
COMMISSIONERS; DANIEL ROMERO,)
Chairperson of the Socorro County)
Board of County Commissioners;)
DICK GALLEGOS, TOBY JARAMILLO,)
JUAN GUTIERREZ, and MIKE MORA,)
Members of the Socorro County Board of)
County Commissioners; and CARMEN D.)
GALLEGOS, Socorro County Clerk,)
Defendants.)

COMPLAINT

The United States of America alleges:

1. The Attorney General files this action pursuant to Sections 2, 12(d) and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, and to enforce rights guaranteed by the Fourteenth and Fifteenth Amendments to the United States Constitution.
2. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973j(f) and 42 U.S.C. 1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act requires that the action be heard and determined by a court of three judges in accordance with the provisions of Section 2284 of Title 28 of the United States Code.
3. Defendant Socorro County is a political subdivision of the State of New Mexico and exists under the laws of that state.

The Defendant Socorro County Board of County Commissioners is the general governing and managing body of Socorro County. The County Commissioners have statutory powers, duties and responsibilities with regard to the conduct of elections in Socorro County, including the designation of voting precincts and polling places therefor.

4. Defendant Daniel Romero is an elected county commissioner and the present chairperson of the board. Defendant Romero resides in Socorro County, New Mexico, and is sued in his official capacities. Defendants Dick Gallegos, Toby Jaramillo, Juan Gutierrez, Mike Mora are duly elected members of the Socorro County Board of County Commissioners and are sued in their official capacities. Each resides in Socorro County, New Mexico.

5. Defendant Socorro County Clerk Carmen D. Gallegos has statutory powers, duties and responsibilities with regard to the conduct of elections held in Socorro County. Among her powers and duties, defendant Gallegos is responsible for consolidation of precincts and selection of polling places for certain elections; registering voters; disseminating information relating to registration and voting; implementing voter assistance procedures; appointing and training deputy registrars, polling place officials and interpreters; cancelling registration for failure to vote; and conducting the absentee voting in Socorro County. Defendant Gallegos is a resident of Socorro County, New Mexico, and is sued in her official capacity.

6. According to the 1990 Census, Socorro County has a total population of 14,764 persons of whom 1,491 (10.1%) are Native Americans. The Native American population of Socorro County is comprised primarily of Navajos residing in the Alamo Chapter of the Navajo Nation.

7. The Navajo language is a common means of communication among the county's Navajo residents. Navajo is an historically unwritten language.

8. In 1984, Socorro County became subject to the requirements of Section 203 as a result of a determination by the Director of the Census pursuant to the minority language provisions of the Voting Rights Act. 49 Fed. Reg. 25887 (June 25, 1984). Such determination required the defendants to furnish oral instructions, assistance and other information relating to registration and voting in the Navajo language.

9. In 1992, the Director of the Census, pursuant to the Voting Rights Language Assistance Act of 1992, continued coverage of Socorro County pursuant to Section 203 for the Navajo language. 57 Fed. Reg. 43213 (September 18, 1992). The 1992 determination of the Director of the Census continues the requirement that Socorro County furnish oral instructions, assistance and other information relating to registration and voting, in the Navajo language.

10. In addition to the provisions of Section 203, the defendants are prohibited by Section 2 of the Voting Rights Act from applying or imposing any voting qualification or

prerequisite to voting or standard, practice, or procedure which results in a denial or abridgement of the right of Navajo residents to vote.

11. The Navajo population in Socorro County is geographically concentrated. Navajo citizens tend to live within the boundaries of the Alamo Chapter of the Navajo Nation, where the overwhelming majority of the population is Navajo.

12. Native Americans in Socorro County have suffered a long history of official discrimination, including discrimination affecting the right to vote. Native Americans in New Mexico were denied the right to register and vote until 1948. Native Americans in Socorro County continue to bear the effects of past discrimination in such areas as education, health, housing and employment.

13. Navajo citizens live in a state of isolation from the processes of election and government, as conducted by defendants. This isolation is manifested in terms of language and culture, and in terms of sheer geographical distance, exacerbated by poor road conditions and by the Navajos' relative lack of access to automobiles and telephones.

14. In conducting public elections within Socorro County, defendants have failed to furnish, in the Navajo language, the information and assistance necessary to allow Navajo residents a fair opportunity for effective political participation, including the following:

- (a) Although the defendants provide a significant amount of information regarding voting and the election process in the English language, such information is not provided in the Navajo language. Examples of voting and election-related information provided in English but not in Navajo include information regarding the voter registration process, the absentee voting process, the voter purge process, candidate filing procedures, identity of candidates for public office, and issues to be voted upon at the election.
- (b) Defendants have failed to provide a sufficient number of adequately trained bilingual persons to serve as translators for Navajo voters needing assistance at the polls on election day.

15. In addition to failing to provide election-related information and assistance in the Navajo language, defendants have failed to implement procedures to afford the residents of the isolated Navajo residential areas an opportunity, equal to that afforded other citizens in the county, to register to vote, to obtain and cast absentee ballots, to file and run for office, and to avoid registration cancellation, or purge.

16. The defendants' failure to provide Navajo residents of Socorro County with the oral instructions, assistance and other

information relating to registration and voting necessary for effective political participation constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a.

17. The defendants' English election process, as applied to Navajo speaking citizens, as well as the remaining voting standards, practices and procedures as described in paragraph 15 above, implemented under the totality of circumstances described herein, result in a denial of the right of Navajo citizens to participate in the political process and elect candidates of their choice on an equal basis with other citizens in violation of Section 2 of the Voting Rights Act, 42 U.S.C. 1973.

18. Defendants' actions described in paragraphs 14 and 15, above, were undertaken for the purpose of discriminating on the basis of race and membership in a language minority group in violation of the Fourteenth and Fifteenth Amendments to the United States Constitution.

19. Unless enjoined by this Court, defendants will continue to enforce voting standards, practices, and procedures in a manner which denies Navajo citizens an opportunity to participate effectively and on an equal basis with other citizens in violation of Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973 and 1973aa-1a, and the Fourteenth and Fifteenth Amendments.

WHEREFORE, the plaintiff United States prays for an order:

1. Declaring that the defendants have failed to provide effective oral instructions, assistance and other information relating to registration and voting in the Navajo language in violation of Sections 2 and 203 of the Voting Rights Act, as amended, 42 U.S.C. 1973 and 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the United States Constitution;
2. Declaring that the defendants' standards, practices, and procedures relating to registration, registration cancellation, absentee voting, and assistance at the polls deny Navajo citizens in Socorro County an opportunity equal to that enjoyed by other citizens to participate in the political process in violation of Section 2 of the Voting Rights Act, as amended, 42 U.S.C. 1973, and the Fourteenth and Fifteenth Amendments to the United States Constitution;
3. Requiring the defendants to devise a plan to assure that Navajo citizens of Socorro County have an opportunity equal to that of other members of the electorate to register to vote, avoid cancellation of registration,

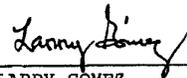
cast an absentee ballot, and otherwise to participate effectively in the Navajo language in all phases of the election process;

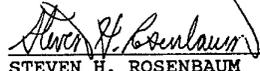
4. Requiring the defendants to implement the remedial plan promptly upon approval by this Court;
5. Authorizing the appointment of federal examiners for elections in Socorro County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), for a period of 10 years;
6. Designating Socorro County pursuant to Section 3 of the Voting Rights Act, 42 U.S.C. 1973a(c) and for a period of 10 years, and requiring that during that period no alteration of any voting qualification or prerequisite to voting or any standard, practice or procedure with respect to voting may be implemented without prior clearance from this Court or from the Attorney General of the United States.

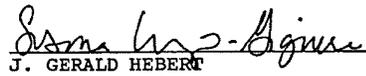
Plaintiff further prays that this Court order such other relief as the interests of justice requires along with the costs and disbursements in maintaining this action.

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Attorney General

By: 
JAMES P. TURNER
Acting Assistant Attorney General


LARRY GOMEZ
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
SOCORRO COUNTY, NEW MEXICO;)
SOCORRO COUNTY BOARD OF)
COMMISSIONERS; DENNIS HARRIS,)
Chairperson of the Socorro County)
Board of Commissioners; DANIEL MONETTE,)
MARCOS GONZALEZ, LAUREL ARMIJO, and)
ROSIE TRIPP, Members of the Socorro)
County Board of Commissioners;)
and AUDREY JARAMILLO, Socorro)
County Clerk,)
)
Defendants.)
)

CA NO. 93-1244-JP

ORDER

The United States has filed a unopposed motion seeking to extend until January 31, 2004 the Consent Agreement entered by this Court on April 11, 1994.

Accordingly, the motion is GRANTED.

ORDERED this 15 day of January, 2004.

Paul Kelly, Jr.
UNITED STATES CIRCUIT JUDGE

M. Maguire
UNITED STATES DISTRICT JUDGE

James A. Duke
UNITED STATES DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT **FILED**
FOR THE DISTRICT OF NEW MEXICO UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

MAR 30 2004

UNITED STATES OF AMERICA,

Plaintiff,

R. B. ...
CLERK

vs.

No. CIV 93-1244 JP

SOCORRO COUNTY, NEW MEXICO;
SOCORRO COUNTY BOARD OF
COMMISSIONERS; DENNIS HARRIS;
Chairperson of the Socorro County
Board of Commissioners; DANIEL MONETTE,
MARCOS GONZALES, LAUREL ARMIJO,
and ROSIE TRIPP, Members of the Socorro
County Board of Commissioners; and
AUDREY JARAMILLO, Socorro County
Clerk,

Defendants.

ORDER EXTENDING AND MODIFYING CONSENT AGREEMENT

The United States initiated this action on October 22, 1993, pursuant to Sections 2, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1973aa-1a, and 28 U.S.C. 2201, alleging violations of the Voting Rights Act arising from Socorro County's election practices and procedures as they affect Native American citizens of the County, including those Native American citizens who rely in whole or in part on the Navajo language. The County did not contest these allegations and agreed to remedy them by entering into a Consent Agreement. On April 11, 1994, the three-judge court in this case entered the Consent Agreement which, by its terms, is otherwise set to expire on December 31, 2003. On December 29, 2003, the United States submitted to the Court an unopposed motion to extend the original Agreement until January 31, 2004. On January 16, 2004, the Court granted the motion.

In the Joint Stipulation filed with this Court, defendants concede that they violated the terms of the Consent Agreement by failing to furnish all instructions, assistance and other information relating to voting orally in the Navajo language. See 42 U.S.C. 1973aa-1a(c); see also 28 C.F.R. 55.12(c). The parties agree, and the Court finds, that this constitutes good cause to extend portions of the Consent Agreement. The parties have agreed to certain modifications of the Native American Election Information Program as provided in the parties' Joint Stipulation.

On March 19, 2004, the Court held a hearing by telephone conference on the parties' Joint Motion for Modification and Extension of the Consent Agreement. Plaintiff United States of America was represented by Attorney Tim Lambert; Defendants were represented by Attorney Adrian Nance. During the hearing, all three judges asked questions regarding the joint motion and the parties' request for a further extension of the Consent Agreement.

After consideration of the Joint Stipulation and Joint Motion for Modification and Extension of the Consent Agreement, and the representations and arguments of counsel during the March 19, 2004 hearing,

IT IS ORDERED THAT:

1. The Consent Agreement, as modified, is hereby extended until July 15, 2004 and the Native American Election Information Program is modified as provided in the parties' Joint Stipulation;
2. By June 30, 2004, the parties must report in writing to the Court the results and effectiveness of the Consent Agreement as modified as it related to the June, 2004 primary election and must set forth in detail a justification for any request to

- extend the Consent Agreement beyond the deadline of June 15, 2004; and
3. The Court will retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of the Consent Agreement and to ensure compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the Constitution.



THE HONORABLE PAUL J. KELLY
United States Circuit Judge
United States Court of Appeals for the Tenth Circuit



THE HONORABLE MARTHA VÁZQUEZ
Chief United States District Judge
United States District Court for the District of
New Mexico



THE HONORABLE JAMES A. PARKER
Senior United States District Judge
United States District Court for the District of
New Mexico

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	CA NO. 93-1244-JP
)	
v.)	
)	
SOCORRO COUNTY, NEW MEXICO;)	
SOCORRO COUNTY BOARD OF)	
COMMISSIONERS; DENNIS HARRIS,)	
Chairperson of the Socorro County)	
Board of Commissioners; DANIEL MONETTE,)	
MARCOS GONZALEZ, LAUREL ARMIJO, and)	
ROSIE TRIPP, Members of the Socorro)	
County Board of Commissioners;)	
and AUDREY JARAMILLO, Socorro)	
County Clerk,)	
)	
Defendants.)	
)	

JOINT STIPULATION

The United States, Socorro County, and all other remaining defendants (who collectively will be referred to as "the County"), agree through their undersigned counsel to the following Joint Stipulation.

Socorro County has been subject to Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, since 1984 with respect to the Navajo language. In 1992 and 2002, the County's coverage under Section 203 for the Navajo language was extended based upon determinations made by the Director of the Bureau of the Census pursuant to the Voting Rights Act.

Section 203 requires that all voting materials provided by Socorro County in English about "registration or voting notices,

forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," must be provided in the Navajo language to the extent that it is needed to allow language minority group members to participate in the electoral process. 42 U.S.C. 1973aa-1a(c). The provisions of Section 203 apply to all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." *Attorney General's Procedures for the Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups*, 28 C.F.R. 55.15. Because the Navajo language is historically an unwritten language, the County is only required to furnish "oral instructions, assistance, or other information relating to registration and voting" in the Navajo language. 42 U.S.C. 1973aa-1a(c); *see also* 28 C.F.R. 55.12(c).

The United States initiated this action on October 22, 1993, alleging violations of Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 42 U.S.C. 1973aa-1a. The United States alleged that the violations arose from Socorro County's election practices and procedures as they affect Native American citizens

of the county, including those Native American citizens who rely in whole or in part on the Navajo language.

The County does not contest that prior to 1994, it failed to make the election process in Socorro County equally available to Native American and non-Native American citizens as required by Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments, nor does the County contest that in past elections it failed to comply fully with the minority language requirements of Section 203. On April 11, 1994, this Court entered a Consent Agreement ("the Agreement") between the parties instituting the Native American Election Information Program ("the Program") in Socorro County to remedy past non-compliance with federal law. The Agreement expired on December 31, 2003. On December 29, 2003, the United States submitted to the Court an unopposed motion to extend the original Agreement until January 31, 2004. On January 16, 2004, the Court granted the motion.

Pursuant to the Agreement, the United States assigned federal observers to monitor elections, and conducted extensive investigations of the actions of Socorro County in complying with the Agreement and Section 203 of the Voting Rights Act from 1994 through 2003. During this period, Socorro County made significant progress in making the election process accessible to the Native American population of the County. Reports of federal observers who monitored elections have demonstrated, however,

that Socorro County failed to furnish all instructions, assistance and other information relating to voting orally in the Navajo language, in violation of the Agreement. The parties agree that this constitutes good cause under paragraph 5, page 8, to permit the further extension of the Agreement. The parties further agree that modifications in the Native American Election Information Program are necessary to ensure full compliance with the relevant provisions of federal law in the future.

Accordingly, the parties stipulate to the following:

1. The County shall make all phases of the election process as accessible to the Navajo population of Socorro as they are to the remainder of the County's population. Accordingly, the County shall provide information, publicity, and assistance in the Navajo language for voter registration, voter registration cancellation, absentee voting, early voting, procedures at the polls, translation of the ballot, and training of polling officials and translators as outlined in the attached Native American Election Information Program.

2. To assist in the effectiveness of this Joint Stipulation and to ensure the continued enforcement of the guarantees of the Voting Rights Act and the Fourteenth and Fifteenth Amendments of the Constitution, Socorro County shall remain designated for federal examiners pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973(a), which enables the

appointment of federal observers. Socorro County recognizes the authority of federal observers to observe all aspects of the voting process conducted in the polls on election day, including assistance to voters in the voting booth provided that the voter does not object to being observed.

3. The parties agree that it shall not be necessary to extend the time that the County is required to seek preclearance of voting changes pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c).

4. The parties stipulate to changes in Socorro County's Native American Election Information Program in order to simplify its provisions and increase its efficacy. The revised version of the Program is attached to this Joint Stipulation and incorporated in its terms.

5. The County acknowledges that permanent procedures need to be instituted in order to ensure ongoing compliance with Sections 2 and 203 of the Voting Rights Act, 42 U.S.C. 1973, 1973aa-1a, and the Fourteenth and Fifteenth Amendments to the Constitution. During 2004, defendant county commissioners shall meet for the purpose of enacting into local law the revised Native American Election Information Program for use in future elections in Socorro County.

6. This Joint Stipulation shall remain in effect through January 31, 2005, and its terms replace all requirements and terms set out in the original Agreement.

7. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary to enforce compliance with the terms of this Joint Stipulation and with Sections 2 and 203 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the Constitution.

Agreed and stipulated to on this ____ day of _____,
2004.

For Plaintiff:
UNITED STATES OF AMERICA

For Defendants:
SOCORRO COUNTY

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United States Attorney

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Washington, D.C. 20530
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THE NATIVE AMERICAN ELECTION INFORMATION PROGRAM

I. Native American Voting Rights Coordinator

A. Socorro County ("the County") shall employ a Native American Voting Rights Coordinator ("the Coordinator") who will coordinate the Native American Election Information Program ("the Program") in Socorro County. The Coordinator shall be fluent in Navajo and English, and shall serve primarily the area of the Alamo Chapter of the Navajo Nation.

B. In the event of a vacancy in the Coordinator position, the County shall invite officials of the Alamo Chapter to recommend at least four qualified applicants fluent in English and Navajo. The County may also solicit applicants through its normal job selection process and shall select the most qualified candidate, who otherwise satisfies any County employment requirements, from all available applicants.

C. The County shall train the Coordinator in all aspects of the election process. The Coordinator shall be fully briefed by County officials regarding the Coordinator's role in ensuring the County's compliance with Section 203 of the Voting Rights Act ("the Act") and the provisions of this Program.

D. The Coordinator shall attend, with the permission of the appropriate tribal officials, Alamo Chapter meetings, and such other public meetings, gatherings, tribal fairs, and public functions held at the Alamo Chapter as the Coordinator's schedule shall permit. During these events, the Coordinator shall, as

appropriate, (1) announce the date of the next scheduled election, the offices open for election, and any non-candidate provisions which shall appear on the ballot; (2) announce the availability of voter registration and the deadlines for registration; (3) provide an opportunity to register to vote by making voter registration applications available and offering Navajo language assistance in filling out the applications; (4) announce any scheduled training for election translators and invite the public to attend; and (5) conduct at least one voter registration drive.

E. The Coordinator shall post the election schedule and all other election-related information at the Chapter House, clinic, and school, and ensure that voter registration applications are available in plain view to interested individuals at each location.

F. Beginning sixty days before any election and continuing through election day, the Coordinator shall ensure that at least three announcements a day in Navajo are made on the radio station KABR containing information on: (1) the date of the next election; (2) the offices, constitutional amendments, and/or propositions on the ballot; (3) opportunities to register to vote and the deadline for registering before the election; (4) the availability of absentee balloting; (5) the availability of trained translators at the polls on election day; (6) the name

and telephone number of the Coordinator who can be contacted to receive more detailed information about the election; and (7) the right of each voter to oral assistance in Navajo from either the County's translators or a person of the voter's choice provided that person is not the voter's employer, an agent of that employer, or officer or agent of the voter's union. See 42 U.S.C. 1973aa-6. In addition, the Coordinator shall ensure that during this period, taped Navajo translations of the ballot made by either the Office of the New Mexico Secretary of State ("the Secretary of State's office") or the Coordinator are broadcast on radio station KABR at least once a day either as public service announcements or as paid advertising if necessary to guarantee their broadcast.

G. Before any election, the Coordinator shall organize and conduct translation training for all election workers who may provide Navajo language assistance at the Alamo Chapter polling place on election day ("translators"). The training shall include: (1) how to translate the entire ballot into Navajo, (2) practicing the translation of the ballot with each translator, and (3) correcting any errors in translation. The translation of the ballot by each translator shall be made according to the taped Navajo translations made by the Secretary of State's office, if such tapes are available. If standardized translations by the Secretary of State's office are not

available, the Coordinator shall record a taped translation of the entire ballot, make the tape available to the translators, and train them in this translation at the training session. If the ballot contains offices or ballot proposition(s) specific to Socorro County for which the Secretary of State's office has not provided a Navajo language translation, the Coordinator shall record a taped translation of the offices and/or proposition(s), make the tape available to the translators and train them in this translation at the training session. Training sessions shall be held at convenient locations within the Alamo Chapter, as permitted by tribal officials, and shall be open to the public.

H. The Coordinator shall be available as needed at the Chapter House to assist in voter registration or to answer election-related questions when not engaged in the other activities required under this Program.

I. The County shall establish a travel, supply, and telephone budget for the Coordinator sufficient to cover expenses incurred in carrying out the Coordinator's duties in fulfilling the objectives of this Program.

II. Intergovernmental Coordination

In administering the Program, the County and its Coordinator shall:

A. Request and accept all training, materials, and services available from the State of New Mexico in furtherance of

the implementation of this program. The Coordinator shall attend all election-related seminars or training sessions conducted by the Secretary of State's office, including the Coordinator and/or County Clerk meetings sponsored by the New Mexico Native American Election Information Program.

B. Encourage contact and collaboration with other counties engaged in similar language assistance programs.

C. Invite assistance by the Navajo Elections Administration and officials of the Alamo Chapter as needed to administer the Program.

III. Translations

A. The County shall ensure that taped and/or written versions of the Navajo language translations of the statewide offices and ballot propositions to appear on the ballot provided by the Secretary of State's office are delivered to the Coordinator as soon as they are available. One copy of all written translations shall be provided to each person employed by the County to translate the ballot into Navajo on election day. Taped versions of the translations and playback equipment shall be made available to the translators during their translation training and on election day at the Alamo Chapter polling place.

B. The County shall provide the Coordinator tape recording and playback equipment and a sufficient supply of blank tapes for use in translator training.

C. During elections, translation into Navajo of the ballot shall be provided according to the written and/or taped translations made by the Secretary of State's office, to the extent such translations are available.

IV. Election Day Procedures

A. The County shall provide four voting machines to the Alamo Chapter polling place.

B. The County shall assign at least one trained translator to the Alamo Chapter polling place for every voting machine.

C. Polling place translators shall orally advise voters of the availability of Navajo language assistance.

D. Any voter requesting Navajo language assistance from polling place translators shall be provided a full and complete translation of each office, the party (when appropriate) of each candidate, all ballot propositions, and relevant instructions on how to cast a ballot and the use of the voting machine (including, when appropriate, instructions on write-in votes), and shall be read all candidates' names for each office.

V. Voter List Maintenance

At least 30 days before any Alamo Chapter registrants are sent notice of the potential cancellation of their registration in accordance with Section 8(d)(2) of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg-6(d)(2), a list of the names and addresses of these registrants shall be

provided to the Coordinator. If the Coordinator or tribal officials confirm in writing prior to the expiration of the thirty (30) day period that any registrant on the list still lives in the County and remains eligible to vote there, that registrant shall not be sent a notice of potential cancellation and shall be maintained on the list of eligible voters provided that the Coordinator or tribal officials also provide the current registration address of the registrant. The Program does not otherwise prohibit the proper authorities from removing from the voter list those ineligible to vote by reason of a change of address, assuming that the requirements of the NVRA are met.

VI. Records

For each election, the Coordinator shall record each activity that is performed in compliance with this Program on the Summary of Activities Form appended herein. Within 30 days after each election, the Coordinator shall submit the completed form to the County Clerk and shall make copies available, upon request, to the United States.

VII. Modifications to the Program

Before making any modifications in this Program, the County shall consult in good faith with Navajo tribal officials from the Alamo Chapter, and shall not make any changes that do not comply with Section 203. The County shall provide notice to counsel for the United States of the proposed changes.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

JUL 13 2004

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CIV 93-1244 JP

CLERK

SOCORRO COUNTY, NEW MEXICO;
SOCORRO COUNTY BOARD OF
COMMISSIONERS: DENNIS HARRIS;
Chairperson of the Socorro County
Board of Commissioners; DANIEL MONETTE,
MARCOS GONZALEZ, LAUREL ARMILLO,
and ROSTE TRIPP, Members of the Socorro
County Board of Commissioners; and
AUDREY JARAMILLO, Socorro County
Clerk,

Defendants.

ORDER

On March 30, 2004, the Court entered its Order Extending and Modifying Consent Agreement (Doc. No. 55) extending to July 15, 2004 the Consent Agreement as modified, and modifying the Native American Election Information Program as provided in the parties' Joint Stipulation. The Court's Order entered March 30, 2004 also required the parties to report in writing by June 30, 2004 the results and effectiveness of the Consent Agreement as modified as it related to the June, 2004 primary election. On June 30, 2004, Plaintiff filed Post-Election Report to the Court and Justification for Further Extension of Federal Examiner Designation (Doc. No. 58) and Defendant County of Socorro filed Report Setting Forth the Results and Effectiveness of the Consent Agreement as Modified as it Related to the June, 2004 Primary Election (Doc. No. 59).

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Chief Judge Martha Vázquez was unavailable and asked that the other two judges assigned to the case, the Hon. Paul J. Kelly and the Hon. James A. Parker, rule on the Plaintiff's request for a further extension of federal examiner designation. At a hearing before Judge Kelly and Judge Parker on July 12, 2004, Plaintiff was represented by way of telephone conference by Richard Dellheim; Defendant County of Socorro was represented by Adren R. Nance, who appeared in person.

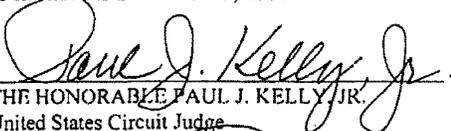
Mr. Nance stated that the County of Socorro essentially took no position on the Plaintiff's request for further extension of federal examiner designation, i.e., the County neither opposed nor supported the Plaintiff's request. Mr. Dellheim emphasized that the Plaintiff's request for further extension was for the sole purpose of allowing federal examiners, appointed in accordance with 42 U.S.C. § 1973a(a) [Sec. 3(a) of the Voting Rights Act], to observe the general election scheduled on November 2, 2004. Plaintiff requested that the extension be until January 31, 2005.

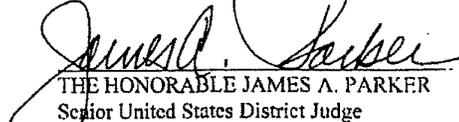
Taking into account the position of the Defendant County of Socorro and considering all relevant information, the Court finds that the Plaintiff's request for a further extension of federal examiner designation should be granted, but that the extension should be to December 15, 2004, instead of to January 31, 2005.

IT IS THEREFORE ORDERED THAT:

1. Plaintiff's request for further extension of federal examiner designation for the sole purpose of allowing federal examiners to observe the general election that will take place on November 2, 2004 is granted; and

2. The provision of the modified Consent Agreement designating the County of Socorro for federal examiners is extended to December 15, 2004.


THE HONORABLE PAUL J. KELLY, JR.
United States Circuit Judge
United States Court of Appeals for the Tenth Circuit


THE HONORABLE JAMES A. PARKER
Senior United States District Judge
United States District Court for the District of
New Mexico

DF

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

SUFFOLK COUNTY; SUFFOLK)
COUNTY BOARD OF ELECTIONS;)
ROBERT L. GARFINKLE)
AND ANITA S. KATZ,)
Commissioners of the)
Suffolk County Board)
Of Elections,)

Defendants.)

ORENSTEIN, M.J.

04 2698
CIVIL ACTION NO.

PLATT, J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT
* JUN 29 2004 *
BROOKLYN OFFICE

CONSENT DECREE

The United States of America files this action pursuant to Sections 203 of the Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 42 U.S.C. § 1973aa-2, and 28 U.S.C. § 2201, alleging recent violations of the Voting Rights Act arising from Suffolk County's election practices and procedures as they affect Spanish-speaking citizens of the County.

The claim under Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, must be heard and determined by a court of three judges pursuant to 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

Suffolk County has been subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a,

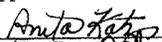
Approved: _____
Anita Katz, Commissioner
Robert Garfinkle, Commissioner

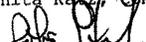
since September 18, 1992 with respect to the Spanish language. The County's coverage is based on a determination by the Director of the Census that there are more than 10,000 citizens of voting age in the County who are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate effectively in the English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate. 28 C.F.R. pt. 55, Appendix; 57 Fed. Reg. 43,213 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002).

The United States alleges in its complaint that Defendants have failed to comply with the requirements of Section 203 with regard to Spanish-speaking citizens residing in Suffolk County. The challenged practices concern, inter alia, the alleged failure of Defendants to provide for an adequate number of bilingual poll workers trained to assist Hispanic voters on election day, and the alleged failure of Defendants to translate written election materials into Spanish.

The parties, by agreeing and consenting to the entry of this Decree, stipulate to the jurisdiction of the Court, and waive a hearing and the entry of findings of fact and conclusions of law on all issues involved in this matter.

Approved:


Anita Kasz, Commissioner


Robert Garfinkle, Commissioner

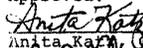
Defendants do not contest the United States' factual allegations with respect to defendants' failure to comply with the bilingual requirements of Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a. However, this Decree shall constitute neither an admission by the defendants nor an adjudication by the Court on the merits of the allegations by the United States.

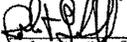
Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants shall comply with the bilingual requirements of Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a, as a covered political subdivision under 42 U.S.C. § 1973aa-1a(b)(2)(A). The provisions of this Decree are applicable only to those elections and stages of the electoral process which are the responsibility of the Suffolk County Board of Elections to conduct and administer under applicable provisions of the New York Election Law.

2. Defendants shall provide to Spanish-language minority citizens full and complete information about all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register,

Approved:

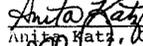

Anita Kahn, Commissioner

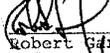

Robert Garfinkle, Commissioner

the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." 28 C.F.R. § 55.15. All information that is disseminated by Suffolk County in English about "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," 42 U.S.C. § 1973aa-1a(c), materials distributed through the Suffolk County Voter Information Program ("VIP"), and the County's mail check card and all other materials sent to voters, shall also be provided in the Spanish language. Defendants shall ensure that both English and Spanish-language election-related information, materials, and announcements provided by Suffolk County are made equally available.

3. Defendants shall assign up to three employees to act as the Spanish Language Assistance Coordinator(s) ("Coordinator(s)"), for at least three months prior to a federal, state or county election, to help carry out the requirements of this Consent Decree. The Coordinator(s) shall report to and be supervised by the Commissioners of the Suffolk County Board of Elections, who shall be responsible for ensuring the effective implementation of their duties. The Coordinator(s) shall be bilingual in English and in Spanish. The Coordinator(s) shall be trained by the Commissioners of the

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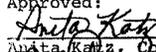
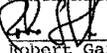

Anita Katz, Commissioner


Robert Garfinkle, Commissioner

Suffolk County Board of Elections in all aspects of the voting and registration process.

4. The translations into Spanish of the written election-related material shall be clear, accurate and complete. See 28 C.F.R. § 55.19(b). Defendants shall use their best efforts to provide effective translations that meet the needs of the Hispanic community. Written translations shall be in the form of Spanish that is used most widely by Suffolk County's voting-age Limited English Proficient Hispanic citizens. The Commissioners of the Suffolk County Board of Elections and/or the Coordinator(s) will consider the demographics of the Hispanic community and consult with some members of the Hispanic community when translating their written materials, but need not consult about translations provided to the County by the State of New York and New York City.

5. The Commissioners of the Suffolk County Board of Elections and/or the Coordinator(s) shall meet with representatives of the Hispanic community and other concerned groups and individuals at least one month prior to the primary and general elections conducted by the Board of Elections and solicit their views on what steps are needed to ensure the effectiveness of bilingual assistance for Hispanic voters. The

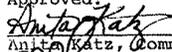
Approved:

Anita Katz, Commissioner

Robert Garfinkle, Commissioner

Board shall consider the views solicited, but is not bound by this Decree to any particular view expressed. The Board of Elections shall determine which organizations, groups or individuals within the Hispanic community may assist beneficially in the development and maintenance of an effective bilingual election program. The Board of Elections is not required by this Decree to solicit the views of such organizations, groups or individuals for purposes other than to develop and maintain the effective bilingual election assistance program required under this Decree. The Board shall keep records of its consultations and outreach activities which shall include a description of the suggestions proposed.

6. Materials available to voters at polling places shall be conspicuous and available equally in English and Spanish. All signs that the County posts at polling places on election day shall be written in English and in Spanish. The ballot on the voting machines shall appear in English and in Spanish.

7. Bilingual assistance shall be provided in polling places in accordance with subsections a-j:

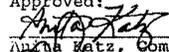
- a) At polling places where one or more bilingual poll officials are required, clearly visible Spanish-language signs outside and inside of the polling place shall indicate that Spanish language assistance is available. Clearly visible sign(s) inside the polling place shall identify the bilingual

Approved:

 Anita Katz, Commissioner

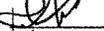
 Robert Garfinkle, Commissioner

official(s) and his/her station(s).

- b) In polling places where the number of Spanish surnamed registered voters is 101 to 250, there shall be at least one poll official bilingual in Spanish and English.
- c) In polling places where the number of Spanish surnamed registered voters is 251 to 500, there shall be at least two poll officials bilingual in Spanish and English.
- d) In polling places where the number of Spanish surnamed registered voters is 501 to 750, there shall be at least three poll officials bilingual in Spanish and English.
- e) In polling places where the number of Spanish surnamed registered voters is 751 to 1,000, there shall be at least four poll officials bilingual in Spanish and English.
- f) In polling places where the number of Spanish surnamed registered voters is 1,001 to 1,250, there shall be at least five poll officials bilingual in Spanish and English.
- g) In polling places where the number of Spanish surnamed registered voters exceeds 1,251, there shall be at least six poll officials bilingual in Spanish and English.
- h) Bilingual poll officials shall be stationed at the election district(s) with the highest number(s) of Spanish surnamed registered voters, unless the Coordinator(s) appointed pursuant to paragraph 3 determine(s) that the goals of this decree would best be achieved by stationing the bilingual poll official(s) in other election districts in the polling place.
- i) The primary responsibility of bilingual poll officials shall be to provide bilingual assistance to all voters at the polling place to which they are assigned, and they shall be available to provide such assistance.

Approved:

Anita Katz, Commissioner

- 7 -


Robert Garfinkle, Commissioner

j) Polling places which do not have bilingual poll officials assigned under the terms of this decree shall provide bilingual assistance through telephonic communication with five bilingual officials at the Board of Elections' principal place of business. Five telephones dedicated exclusively for this purpose, containing features necessary to facilitate effective communication, shall be maintained on election days. An additional bilingual official shall be available at the Board of Elections and shall be dispatched to polling places to provide in-person bilingual assistance in instances where telephonic communication is not effective.

8. If, despite its diligent recruitment efforts, the County is unable to secure and assign the requisite number of bilingual poll officials, the County shall recruit and secure qualified bilingual translators to satisfy the numeric requirements for bilingual workers provided in this Decree. Any such bilingual translators shall be secured and trained only to provide language assistance to limited English proficient Hispanic voters and shall be utilized in addition to, rather than in place of, the full complement of poll officials ordinarily assigned by Defendants.

9. Defendants will monitor the levels of Spanish language assistance needed inside the polling places on election day and will, where needed, provide additional bilingual personnel to assist Spanish-speaking voters where needed. See 28 C.F.R. § 55.20.

10. Defendants shall use their best efforts to secure

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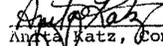

Anibal Katz, Commissioner


Robert J. Garfinkle, Commissioner

bilingual poll officials and Spanish-language translators, and to notify voters that this assistance will be available on election day. Prior to election day, the Suffolk County Board of Elections' office shall provide notices in English and Spanish through the Spanish-language media, Hispanic community organizations (e.g., voting organizations, businesses, churches, senior citizen centers, etc.), in addition to any other recruitment methods the County uses, to recruit bilingual election officials and to publicize the availability of bilingual poll workers to assist Spanish-speaking voters at the polls on election day.

11. The Commissioners of the Suffolk County Board of Elections and/or responsible Coordinator(s) shall include during their regular course of training of poll officials, and any other election-related personnel who will be working at the polls on election day, training regarding the importance of all eligible citizens being able to cast a ballot at the polls, the right of voters to have assistance in Spanish, and the right of certain voters, including voters with limited English proficiency, to be assisted by the person of their choice pursuant to Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6. The Board shall provide poll officials and other election-related personnel with training on the issues

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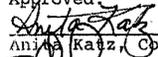
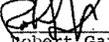

Anita Katz, Commissioner


Robert Garfinkle, Commissioner

identified in this paragraph in advance of the election to be held subsequent to execution of this Decree, if said officials and personnel received regular training that did not include the issues identified in this paragraph. In the event that the Board does not conduct regular training of poll officials and other election-related personnel, the Board shall conduct training on the issues identified in this paragraph.

12. The Commissioners of the Suffolk County Board of Elections and/or the responsible Coordinator upon receipt of complaints, whether oral or written, shall investigate expeditiously any allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. The results of investigation(s) conducted by the Coordinator(s) shall be reported to the Commissioners of the Suffolk County Board of Elections. Where it reasonably has been found that poll workers have engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, the Commissioners shall remove the poll workers.

13. Bilingual poll officials shall be afforded an opportunity to be trained in the Spanish-language translation of the entire ballot, all election related forms used in the polls on election day, and the voting process so that bilingual election officials will be able to provide a full and accurate

Approved:

Anita Katz, Commissioner

Robert Garfinkle, Commissioner

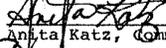
translation. The Board shall provide bilingual poll officials with this training in advance of the election to be held subsequent to execution of this Decree. Defendants may include bilingual poll officials in the regular training given to all poll officials, provided it includes the specific training described in this paragraph. In the event that the Board does not conduct regular training of poll officials, the Board shall conduct training of bilingual poll officials on the issues identified in this paragraph.

14. Nothing in this Decree shall preclude Defendants from the use of contracting to carry out any of the terms and conditions specified herein, including the establishment of the Coordinator position. However, should Defendants exercise this option, they shall nevertheless maintain responsibility for compliance with the terms and conditions herein.

15. Defendants may fulfill their responsibilities under this Decree through a targeting system consistent with 28 C.F.R. §§ 55.17 and 55.18.

16. At least ten (10) days before each federal, state or county election in Suffolk County, the Suffolk County Board of Elections shall provide to counsel for the United States a report containing the following information: (a) the name and precinct designation of each polling place; (b) the name and

Approved:

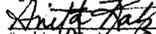

Anita Katz, Commissioner


Robert Garfinkle, Commissioner

title of each poll official or translator appointed and assigned to serve at each polling place; (c) indication of which poll officials are bilingual in English and Spanish; and (d) a copy of the most recent voter registration lists on computer disk. Within sixty (60) days after each federal, state or county election in Suffolk County, the Suffolk County Board of Elections shall provide to counsel for the United States any updated report regarding changes in items (a)-(d) above that occurred at the election, and provide information about all complaints the County received regarding language or assistance issues.

17. The parties recognize that a regular and ongoing reassessment may be necessary in order to provide Spanish-language minority voters equal access to all phases of the electoral process in Suffolk County. The Commissioners of the Suffolk County Board of Elections and Coordinator(s) shall evaluate the Section 203 bilingual assistance program after each election cycle (e.g., after the 2004 general election), and on an ongoing basis through meetings with the Hispanic community, representatives of the Hispanic community, and counsel for the United States. After the 2004 elections, the Commissioners of the Suffolk County Board of Elections and counsel for the United States shall meet to evaluate the

Approved:


Anita Diaz, Commissioner


Robert Garfinkle, Commissioner

effectiveness of the Spanish Language Assistance Coordinators.

18. The parties agree that to assist in carrying out the purposes of this Consent Decree, a federal examiner for Suffolk County shall be authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through January 31, 2008.

19. In addition to the provision of federal observers permitted under Section 6 of the Voting Rights Act, 42 U.S.C. § 1973d, the parties agree that Department of Justice attorneys and staff shall be permitted to monitor elections conducted by Suffolk County from the date of the entry of this Consent Decree until January 31, 2008.

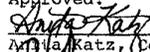
- (A) The United States will give timely notice of its intent to monitor a particular election.
- (B) Department of Justice personnel will be permitted into the precincts for the purpose of observing the election process; such Department personnel shall not seek to interfere in any way with the conduct of the election.

20. This Consent Decree shall expire on January 31, 2008, unless plaintiff moves the Court for good cause shown to extend this Consent Decree.

21. Each party shall bear its own costs and fees.

22. This Decree is binding upon Defendants, by and through their officials, agents, employees, and successors.

23. The Court shall retain jurisdiction of this case to

Approved:


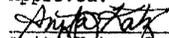
Anna Katz, Commissioner



Robert Garfinkle, Commissioner

enter further relief or such other orders as may be necessary
for the effectuation of the terms of this agreement and to
ensure compliance with Sections 203 of the Voting Rights Act.

Approved:



Anita Katz, Commissioner



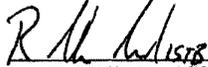
Robert Garfinkle, Commissioner

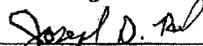
Agreed to this _____ day of _____, 2004.

AGREED AND CONSENTED TO:

For Plaintiff:

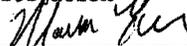
UNITED STATES


R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division


JOSEPH D. RICH
ROBERT A. KENGLE
LUZ V. LOPEZ-ORTIZ
Attorneys, Voting Section
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Civil Rights Division
950 Pennsylvania Ave., N.W.
Voting Section, NWB
Washington, D.C. 20530
(202) 514-5686

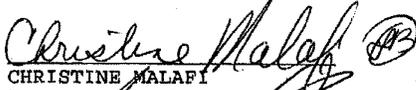

ROSLYNN R. MAUSKOPF
United States Attorney

PAMELA CHEN
Chief, Civil Rights
Litigation


MARIA TEPPER (MT 7529)
Assistant U.S. Attorney
Eastern District of New York
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Brooklyn, N.Y. 11201
(718) 254-6155

For Defendants:

SUFFOLK COUNTY; SUFFOLK
COUNTY BOARD OF
ELECTIONS; ROBERT L.
GARFINKLE AND ANITA S.
KATZ, Commissioners of the
Suffolk County Board
of Elections


CHRISTINE MALAFI
County Attorney


ANNE A. BIZZARRO
Chief Deputy County Attorney
P.O. Box 6100
Hauppauge, N.Y. 11788-0099

JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree set forth above, and incorporates those terms herein.

ENTERED and ORDERED this 27 day of September, 2004.

~~UNITED STATES CIRCUIT JUDGE~~

~~UNITED STATES DISTRICT JUDGE~~

~~UNITED STATES DISTRICT JUDGE~~

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

SUFFOLK COUNTY, SUFFOLK)
COUNTY BOARD OF ELECTIONS;)
ROBERT L. GARFINKLE AND)
ANITA S. KATZ, Commissioners)
of the Suffolk County Board)
Of Elections,)

Defendants.)

CV 04 2698

CIVIL ACTION NO.

PLATT, J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JUN 29 2004 ★

BROOKLYN OFFICE

COMPLAINT

The United States of America alleges:

1. The Attorney General brings this action pursuant to Section 203 of the Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 42 U.S.C. § 1973aa-2, 42 U.S.C. § 1973aa-6, and 28 U.S.C. § 2201.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973aa-2. In accordance with the provisions of 28 U.S.C. § 2284, the Section 203 claim must be heard and determined by a court of three judges.
3. Defendant Suffolk County is a political subdivision of the State of New York and exists as a county, organized pursuant to the laws of New York.
4. Defendants Robert L. Garfinkle and Anita S. Katz serve as the two appointed Suffolk County Board of Elections Commissioners. Commissioners Garfinkle and Katz have

responsibilities concerning the administration of voting and elections in Suffolk County. They are sued in their official capacity.

5. Suffolk County is covered by Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a with respect to the Spanish language. 28 C.F.R. 55, Appendix. The determination by the Director of the Bureau of the Census that Suffolk County is a covered political subdivision for Hispanic citizens has been in effect since September 18, 1992.

6. Because Suffolk County is subject to the requirements of Section 203, "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that Defendants provide in English must be furnished in the Spanish language so that Spanish-speaking voters can be effectively informed of and participate effectively in all voting-connected activities. 42 U.S.C. § 1973aa-1a.

7. In conducting elections in Suffolk County, Defendants have failed to furnish, in the Spanish language, the information and assistance needed by Hispanic citizens of limited-English proficiency to participate effectively in the electoral process, including, but not limited to, the following:

a. Defendants have failed to translate into Spanish all election-related information, including information about

election dates, voter registration, the absentee ballot process, polling place assignment, and poll worker recruitment;

b. Defendants have failed to translate into Spanish all election-related information at election sites including ballots, announcements, instructions, notices, and signs; and

c. Defendants have failed to recruit, appoint, train, and maintain an adequate pool of bilingual poll officials capable of providing Hispanic citizens with limited English proficiency with effective language assistance.

8. Defendants' failure to provide Suffolk County's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation, as described above constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

9. Unless enjoined by this Court, Defendants will continue to violate Section 203 by failing to provide Suffolk County's limited English-proficient Hispanic citizens with the election information and assistance necessary for their effective political participation.

WHEREFORE, Plaintiff United States prays for an order:

- (1) Declaring that Defendants have failed to provide Suffolk County's limited-English proficient Hispanic citizens with the election information and assistance

necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;

- (2) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from failing to provide Suffolk County's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (3) Requiring Defendants to take such actions as will ensure that Suffolk County's limited-English proficient Hispanic citizens are effectively informed of and able to be participate effectively in all phases of the electoral process, in compliance with Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (4) Requiring Defendants to publicize effectively the remedial plans and programs addressing the Section 203 violations enumerated herein to ensure their widespread dissemination to Suffolk County's limited English proficient Hispanic citizen voters.

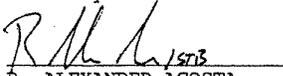
Plaintiff further prays that this Court order such additional relief as the interests of justice may require,

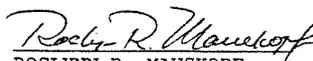
together with the costs and disbursements in maintaining this
action.

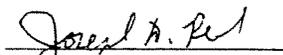
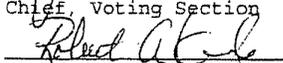
Dated: *July 29*, 2004

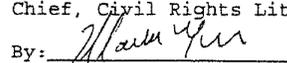
Brooklyn, New York

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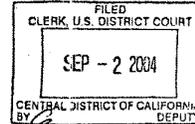

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12 Counsel for Plaintiff
 United States of America



- Priority
- Send
- Clsd
- Enter
- JS-6
- JS-2/JS-3

13 I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED
 BY FAX DELIVERY ON PLAINTIFF/DEFENDANT (OR PARTIES)
 AT THEIR RESPECTIVE MOST RECENT FAX NUMBER OF RECORD
 IN THIS ACTION ON THIS DATE.

DATE: 9/2/04
Cynthia Galy

14 IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

CVD 4-6443 CIS VDK

16 UNITED STATES OF AMERICA,) No. CV
 17 Plaintiff,) THREE-JUDGE COURT
 18 v.) PROPOSED CONSENT DECREE, ORDER,
 19) AND JUDGMENT
 20 VENTURA COUNTY, CALIFORNIA;)
 PHIL SCHMIT, the COUNTY CLERK)
 & RECORDER, in his official)
 21 capacity; and the VENTURA)
 COUNTY BOARD OF SUPERVISORS,)
 22 Defendants.)
 23

24 The United States of America filed this action pursuant to
 25 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
 26 amended, 42 U.S.C. § 1973aa-1a; 42 U.S.C. § 1973aa-2; and 28
 27 U.S.C. § 2201, over violations of Section 203 of the Voting
 28 Rights Act arising from Ventura County's election practices and

I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
 FIRST CLASS MAIL POSTAGE PREPAID TO ALL COUNSEL
 (OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
 RECORD IN THIS ACTION ON THIS DATE.

DATE: 9/2/04
Cynthia Galy
 DEPUTY CLERK

1 procedures as they affect Spanish-speaking citizens of the
2 County.

3 The Complaint's cause of action under Section 203 of the
4 Voting Rights Act, 42 U.S.C. § 1973aa-1a, must be heard and
5 determined by a court of three judges pursuant to 42 U.S.C.
6 § 1973aa-2 and 28 U.S.C. § 2284.

7 Ventura County has been subject to the requirements of
8 Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, for
9 the Spanish language since 1992. See 57 Fed. Reg. 43,213 (Sept.
10 18, 1992). In the most recent determination of coverage in
11 2002, the County's coverage was based on a determination by the
12 Director of the Census that more than 10,000 of the voting-age
13 citizens in the County are members of a single language minority
14 group (Spanish heritage or Hispanic) and are limited-English
15 proficient, and the illiteracy rate of these persons as a group
16 is higher than the national illiteracy rate. See 67 Fed. Reg.
17 48,871 (July 26, 2002). Since 1992, the Department has sent
18 Ventura County and other jurisdictions covered under Section 203
19 information regarding Section 203's requirements.

20 The Complaint states that Defendants have failed to comply
21 with the requirements of Section 203 for Spanish-speaking
22 citizens residing in Ventura County, California, by failing to
23 provide an adequate number of bilingual poll workers trained to
24 assist Spanish-speaking voters on election day, and by failing
25 to translate written election materials and information into
26 Spanish, including the official ballot, information posted on
27 the County Elections Division's website, and other materials.

28 To avoid protracted and costly litigation, the parties have

- 2 -

1 agreed that this lawsuit should be resolved through the terms of
 2 this Consent Decree (hereinafter, the "Decree"). Accordingly,
 3 the United States and Defendants hereby consent to the entry of
 4 this Decree, as indicated by the signatures of counsel at the
 5 end of this document. The parties waive a hearing and entry of
 6 findings of fact and conclusions of law on all issues involved
 7 in this matter.

8 Defendants are committed to comply fully with all of the
 9 requirements of Section 203 in future elections and stipulate
 10 that each provision of this Consent Decree is appropriate and
 11 necessary.

12 Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED
 13 that:

14 1. Defendants, their agents, employees, contractors,
 15 successors, and all other persons representing the interests of
 16 the Defendants are hereby PERMANENTLY ENJOINED from failing to
 17 provide in Spanish any "registration or voting notices, forms,
 18 instructions, assistance or other materials or information
 19 relating to the electoral process, including ballots" that they
 20 provide in English, as required by Section 203 of the Voting
 21 Rights Act, as amended. 42 U.S.C. § 1973aa-1a(c). The terms of
 22 this Decree apply to all federal, state, and local elections
 23 administered by the County, including County-run elections for
 24 city, school district, and other political subdivisions of the
 25 County. Whenever Defendants enter into an election services
 26 contract with any other entity, political subdivision, or
 27 political party to conduct an election on behalf of that entity,
 28 Defendants shall require such other entity to agree to abide by

1 the terms of this Decree as if such entity were a party to this
2 Decree with the United States, and consistent with the
3 responsibility of each such entity to comply fully with Section
4 203.

5 Translation of Election-Related Materials

6 2. All information that is disseminated by Ventura County
7 in English about "registration or voting notices, forms,
8 instructions, assistance, or other materials or information
9 relating to the electoral process, including ballots," 42 U.S.C.
10 § 1973aa-1a(c), shall also be provided in the Spanish language.
11 Defendants shall ensure that both English and Spanish language
12 election information, materials, and announcements provided by
13 Ventura County are made equally available.

14 3. Defendants shall employ trained and/or certified
15 translators who are familiar with Spanish-language election
16 terminology to produce all written translations, clearly and
17 accurately. The County shall develop and maintain a glossary of
18 Spanish election terminology in consultation with bilingual
19 members of local Hispanic community.

20 4. Defendants shall adopt a checklist identifying each
21 Spanish-language and bilingual material that the County makes
22 available to the public at each precinct. The checklist shall
23 include with respect to each item an attestation that the poll
24 workers at the precinct posted or made available to voters these
25 Spanish-language or bilingual materials, or a detailed written
26 explanation of why individual items had not been posted or were
27 not available. The inspectors for each precinct must complete
28 and sign this document before the inspector receives payment for

- 4 -

1 work in the election, subject to applicable state and federal
2 law. Defendants shall maintain a record of each such failure to
3 complete and sign the checklist.

4 Dissemination of Spanish-Language Information

5 5. Defendants shall ensure that Spanish-language
6 election information, materials, and announcements are provided
7 to the same extent as they are provided in English. Spanish-
8 language information shall be distributed in newspapers, radio,
9 and/or other media that exclusively or regularly publish or
10 broadcast information in Spanish. These announcements need not
11 be identical in all respect to English-language announcements,
12 but shall be in the form, frequency, and media best calculated
13 to achieve notice and understanding equal to that provided to
14 the English-speaking population and to provide substantially the
15 same information.

16 6. Subject to Paragraph 7 below, the official ballot and
17 absentee ballots shall be translated bilingually into both
18 English and Spanish. The new voting system that shall be
19 adopted by the County for all elections after November 2004
20 shall offer a bilingual ballot. Any electronic voting machines
21 adopted by the County shall offer Spanish-speaking voters the
22 readily apparent option of a Spanish ballot, and any audio
23 version of the ballot on such machines shall be available in
24 English and Spanish.

25 7. For the 2004 general election, the parties have
26 determined that, because of time constraints and unique
27 limitations of the County's software, which the County will be
28 replacing, bilingual ballots cannot be produced and provided

1 without unacceptable risk of disruption of the election.

2 Accordingly, consistent with the Attorney General's minority
3 language guidelines, the County shall do the following:

4 A. At each precinct, the County shall provide
5 officials ballots in Spanish. The number of Spanish-language
6 official ballots shall equal at least 200 percent of the number
7 of requests by voters for Spanish-language materials in that
8 precinct, provided that no precinct shall have fewer than 10
9 official ballots in Spanish. The County shall assure that such
10 Spanish-language official ballots are made visible and available
11 on an equal basis with English-language ballots. The parties
12 may by written agreement adjust the 200-percent requirement in
13 light of confirmed information that the actual language need in
14 a particular precinct is lesser or greater than this standard;

15 B. At each precinct, the County shall affix to the
16 inside of each voting booth sample ballot booklets, in English
17 and in Spanish, next to each other and at eye level. The County
18 shall henceforth post in each voting booth instructions in
19 Spanish on casting a ballot, using the identical size and layout
20 as the English instructions, to replace the County's previous
21 practice of posting pre-printed instructions in English only in
22 the voting booth.

23 C. The County shall publicize such procedures
24 according to a program devised in consultation with the Advisory
25 Group, discussed below. Such program shall include, among other
26 things, use of minority language media.

27 8. Sample ballots and other written materials mailed to
28 voters' homes shall be provided in Spanish to voters who have

1 requested or may request materials be mailed to them in Spanish.
 2 In addition, the County shall conduct an effective media
 3 campaign to inform Spanish-speaking voters of the ability to
 4 request Spanish-language materials be mailed to them at home.
 5 To that end, the County shall do the following:
 6 A. ^{Effective within four days of the date of this Order} ~~By August 24, 2004~~, the County shall begin ^(see)
 7 Spanish-language radio announcements at least every third day
 8 through November 1, 2004 on each Spanish-language radio station
 9 broadcasting in Ventura County regarding the opportunity to
 10 obtain Spanish versions of the sample ballot and instructions on
 11 how to sign up for such materials, including a phone number that
 12 is free of charge to voters and identifying locations where
 13 voters can obtain postage-prepaid return cards to mail in their
 14 request. These and other steps are necessary to correct
 15 existing deficiencies in the County's current list of persons
 16 who receive Spanish-language materials, which significantly
 17 undercounts the number of Spanish-speaking voters who are
 18 limited English proficient. The County may adjust this
 19 publicity schedule after consultation with the Advisory Group,
 20 discussed below, and by written agreement with the Department of
 21 Justice.
 22 B. The County shall have Spanish-speaking staff
 23 available during business hours to answer inquiries by Spanish-
 24 speaking voters regarding this and other topics.
 25 C. ^{Effective within four days of the date of this Order} ~~By August 24, 2004~~, the County shall ^(see)
 26 affirmatively contact by telephone and in writing the president,
 27 chair, or equivalent of all identifiable Hispanic organizations
 28 in the County and organizations that serve Spanish-speaking

1 citizens, to inform these groups and solicit their assistance in
 2 contacting Spanish-speaking voters. ^{within five days of the date of this Order, (see)}
~~by August 24, 2004,~~ the
 3 County shall also extensively distribute postage prepaid cards
 4 through Hispanic community groups and organizations serving
 5 Spanish-speaking citizens, to provide Spanish-speaking
 6 individuals with instructions on how to obtain Spanish-language
 7 materials at home.

8 D. By ^{September 10, 2004,}
~~August 31, 2004,~~ the County shall also mail ^(see)
 9 these cards to all voters who were born in a Spanish-speaking
 10 country and have thus far not requested Spanish-language
 11 materials.

12 E. The County shall mail a Spanish-language sample
 13 ballot to any one who requests one, even if the voter had
 14 already received an English-language version.

15 F. Nothing in this Decree prevents the County from
 16 adopting a bilingual sample ballot booklet in English and in
 17 Spanish to be mailed to all voters in the County.

18 Information Required Under the Help America Vote Act

19 9. All information required to be posted in polling sites
 20 by Section 302 of the Help America Vote Act of 2002
 21 (hereinafter, "HAVA"), 42 U.S.C. § 15482, et seq., shall be
 22 posted at all polling sites and shall be in English and Spanish.
 23 This information includes, but is not limited to, written
 24 information given to the voter casting a provisional ballot on
 25 how they may ascertain if their provisional ballot was counted,
 26 and if not, the reason the ballot was not counted, see 42 U.S.C.
 27 § 15482(a)(5)(A), and the six categories of information required
 28 to be posted under 42 U.S.C. § 15482(b). For example,

1 Defendants must post a sample version of the ballot that will be
2 used for that election, in English and Spanish, in each polling
3 location. See 42 U.S.C. § 15482(b)(2)(A). Defendants shall
4 provide a free access system for informing voters about whether
5 their provisional ballot has been counted, and if it has been
6 rejected, the reason for the rejection. The information on this
7 system shall be available to each provisional voter in both
8 English and Spanish. See 42 U.S.C. § 15482(a)(5)(B).

9 Spanish-Language Assistance

10 10. Spanish-language assistance shall be available at all
11 locations where election-related transactions are conducted.
12 Trained bilingual (Spanish/English) election personnel shall be
13 available to answer voting-related questions by telephone
14 without cost and during normal business hours and while the
15 polls are open on election days.

16 11. Defendants shall recruit, hire, and assign election
17 officials able to understand, speak, read, and write Spanish
18 fluently to provide assistance to Spanish-speaking voters at the
19 polls on election days. The County shall survey its employees
20 to identify personnel who speak Spanish fluently and, to the
21 extent such employees can be made available to provide
22 assistance, allow and encourage such employees to serve at the
23 polls on election day. As part of its obligation to ensure that
24 entities on whose behalf the County conducts elections are fully
25 compliant with Section 203 in their elections, the County shall
26 request that each entity for which it conducts elections perform
27 similar surveys of its employees; the County shall request that
28 each school district or other educational entity with which the

- 9 -

1 County contracts implements a program that allows and encourages
2 selected bilingual students (as allowed by state law and as part
3 of an educational program devised by such district) to serve as
4 poll officials on election day for all County elections,
5 including election days that fall on school days, with such
6 students receiving academic credit appropriate to their service
7 as well as all pay and benefits of poll officials; and the
8 County shall request from such entities and maintain copies of
9 all election-related materials and information created or
10 disseminated by such entities for each election. The County
11 shall advise counsel for the United States of any entity that
12 does not participate fully. The County shall also invite
13 eligible members of the Advisory Group, discussed below, to
14 serve as poll officials and to encourage other bilingual voters
15 to do so.

16 12. Any consolidated precinct in which there are 100-249
17 registered voters with Spanish surnames shall be staffed by at
18 least one bilingual election official. Any consolidated
19 precinct in which there are 250-499 registered voters with
20 Spanish surnames shall be staffed by at least two bilingual
21 election officials. Any consolidated precinct in which there
22 are 500 or more registered voters with Spanish surnames shall be
23 staffed by at least three bilingual election officials. The
24 parties may by written agreement adjust this requirement in
25 light of confirmed information that the actual language need in
26 a particular precinct is lesser or greater than this standard.
27 Defendants shall employ bilingual personnel, trained in Spanish-
28 language election terminology, who shall be on call and

- 10 -

1 available to travel to a consolidated precinct not staffed by a
2 bilingual poll worker to provide any necessary assistance to any
3 Spanish-speaking voter. Defendants shall ensure that the
4 language needs of Spanish-speaking voters are met in precincts
5 that have less than 100 Spanish-surnamed voters and that have
6 voters who have requested Spanish-language materials or where
7 there is other reliable information of a need for Spanish-
8 language assistance.

9 13. Signs in both English and Spanish shall be posted
10 prominently at polling places stating that Spanish-language
11 assistance is available. At sites without bilingual staff,
12 signs in both English and Spanish shall be posted that explain
13 how voters can obtain Spanish-language assistance.

14 Election official training

15 14. Prior to each election, in addition to any required
16 state or County training, the County shall train all poll
17 officials and other election personnel present at the polls
18 regarding the following: The provisions of Section 203 of the
19 Voting Rights Act, including the legal obligation and means to
20 make Spanish-language assistance and materials available to
21 voters; the requirement that poll officials be respectful and
22 courteous to all voters regardless of race, ethnicity, color, or
23 language abilities and to avoid inappropriate comments; the
24 requirements of Section 302 of HAVA, 42 U.S.C. § 15482, as they
25 apply to elections for Federal office; and the requirements of
26 Section 208 of the Voting Rights Act of 1965, 42 U.S.C.
27 § 1973aa-6, regarding the rights of voters to the assistor of
28 their choice. In addition to the general training for poll

- 11 -

1 officials, the County shall train all bilingual poll officials
2 on Spanish-language election terminology, voting instructions,
3 and other election-related issues. The County shall maintain a
4 record of which poll officials attend training sessions,
5 including the time, location, and training personnel involved.

6 Response to Complaints About Poll Workers

7 15. Defendants, upon receipt of complaints by voters,
8 whether oral or written, shall investigate expeditiously any
9 allegations of poll worker hostility toward Spanish-speaking
10 and/or Hispanic voters in any election. The results of the
11 investigation(s) conducted by the Defendants shall be reported
12 to the United States. Where there is credible evidence that
13 poll workers have engaged in inappropriate treatment of Spanish-
14 speaking and/or Hispanic voters, Defendants shall remove the
15 poll workers.

16 Program Coordinator

17 16. The County shall employ an individual to coordinate
18 the County's bilingual election Program ("the Coordinator") for
19 all elections within the County. The County shall provide that
20 individual with transportation and other support sufficient to
21 meet the goals of the Program. The Coordinator shall be able to
22 understand, speak, write, and read fluently both Spanish and
23 English. The Coordinator's responsibilities shall include
24 coordination of translation of ballots and other election
25 information; development of a Spanish election glossary to
26 ensure uniform use of election terminology in Spanish;
27 development and oversight of Spanish publicity programs,
28 including selection of appropriate Spanish-language media for

- 12 -

1 notices and announcements; recruitment and assessment of
2 Spanish-language proficiency of bilingual poll officials and
3 interpreters; and managing other aspects of the Program.

4 Advisory Group

5 17. The Coordinator shall establish and chair an Advisory
6 Group to assist and inform the bilingual Program. The
7 Coordinator shall invite participation from all interested
8 individuals and organizations that work with or serve the
9 Spanish-speaking community in Ventura County, to determine how
10 to effectively provide election materials, information, and
11 assistance to Spanish-speaking voters, and to fill any gaps in
12 public awareness about the County's bilingual election program
13 due to past failures to provide accessible election-related
14 information to Spanish-speaking voters. The Advisory Group
15 shall meet at least once a month in 2004, and as the group
16 determines in 2005-2007. The Coordinator shall provide notice
17 of all planned meetings to each member, including the time,
18 location, and agenda for the meeting, at least 14 days in
19 advance, although members of the Advisory Group may agree to
20 waive or shorten this time period as necessary. Within five
21 days following each meeting, the Coordinator shall provide a
22 written summary to all members and to the Assistant Registrar of
23 Voters of the discussion and any decisions reached at the
24 meeting. If the Assistant Registrar of Voters decides not to
25 implement an Advisory Group suggestion or a consensus cannot be
26 reached respecting such suggestion, he or she shall provide to
27 the group through the Coordinator and maintain on file a written
28 statement of the reasons for rejecting such suggestion.

- 13 -

1 18. The County shall transmit to all interested members of
2 the Advisory Group copies, in English and Spanish, of all
3 election information, announcements, and notices that are
4 provided to the electorate and general public and request that
5 they share with their members.

6 Federal Examiners and Observers

7 19. To monitor compliance with and ensure effectiveness of
8 this Decree, and to protect the Fourteenth Amendment rights of
9 the citizens of Ventura County, the appointment of a federal
10 examiner is authorized for Ventura County pursuant to Section
11 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through
12 August 1, 2007.

13 20. Defendants shall recognize the authority of federal
14 observers to observe all aspects of voting conducted in the
15 polls on election day, including the authority to view County
16 personnel providing assistance to voters during voting, except
17 where the voter objects.

18 Evaluation of plan

19 21. The parties recognize that regular and ongoing
20 reassessment may be necessary to provide the most effective and
21 efficient Spanish-language Program. Defendants shall evaluate
22 the bilingual Program after each election (e.g., following 2004
23 elections) to determine which aspects of the bilingual Program
24 are functioning well; whether any aspects need improvement; and
25 how to affect needed improvements. The Program may be adjusted
26 at any time upon joint written agreement of the parties.

27 Retention of Documents and Reporting Requirements

28 22. During the duration of this Decree, the County shall

1 make and maintain as public documents written records of
2 all actions taken pursuant to this Decree.
3 23. During the duration of this Decree, at least ten (10)
4 days before each County-administered election held in the
5 County, Defendants shall provide to counsel for the United
6 States, (a) the name, address, and precinct designation of each
7 consolidated precinct; (b) the name and title of each poll
8 official appointed and assigned to serve at each consolidated
9 precinct; (c) a designation of whether each poll official is
10 bilingual in English and Spanish; (d) copies of any signs or
11 other written information provided at polling places; and (e) an
12 electronic copy of the voter registration list to be used in
13 such elections. Within thirty (30) days after each election,
14 Defendants shall provide to counsel for the United States any
15 updated report regarding changes in items (a)-(d) above that
16 occurred at the election, and provide information about all
17 complaints the County received at the election regarding
18 language or assistance issues.

19 Other Provisions

20 24. This Decree is final and binding between the parties
21 and their successors in office regarding the claims raised in
22 this action. This Decree shall remain in effect through
23 August 1, 2007, and the United States may within 90 days of that
24 date move to extend the Decree for good cause shown, in the
25 event of a violation of any provision contained herein by the
26 County.
27
28

1 25. The Court shall retain jurisdiction of this case to
 2 enter further relief or such other orders as may be necessary
 3 for the effectuation of the terms of this agreement and to
 4 ensure compliance with Section 203 of the Voting Rights Act.

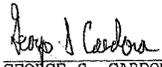
5 26. Each party shall bear its own costs and fees.

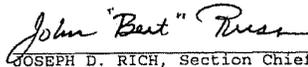
6
 7 Agreed to this 3rd day of August, 2004.

8
 9 AGREED AND CONSENTED TO:

10 For Plaintiff:
 11 UNITED STATES OF AMERICA

12 
 13 R. ALEXANDER ACOSTA
 14 Assistant Attorney General
 15 Civil Rights Division

16 
 17 GEORGE S. CARDONA
 18 Acting United States Attorney
 19 MICHELE C. MARCHAND
 20 Asst. United States Attorney

21 
 22 JOSEPH D. RICH, Section Chief
 23 JOHN TANNER, Special Litigation Counsel
 24 JOHN "BERT" RUSS, Trial Attorney
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 27 Civil Rights Division
 28 950 Pennsylvania Ave., N.W. - NWB-7254
 Washington, D.C. 20530

For Defendants:


 PHILIP C. SCHMIT
 County Clerk and Recorder
 County of Ventura
 Hall of Administration
 800 South Victoria Avenue
 Ventura, California 93009

JUDGMENT AND ORDER

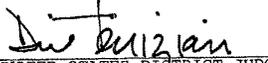
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This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 and 42 U.S.C. § 1973aa-2 to consider the United States' claim under Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this 2d day of September, 2004.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

1 R. ALEXANDER ACOSTA
 Assistant Attorney General

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 3 MICHELE C. MARCHAND
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 13 United States of America

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 CIVIL RIGHTS DIVISION
 U.S. DEPARTMENT OF JUSTICE

14 IN THE UNITED STATES DISTRICT COURT
 15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION

CV04-6443 CAS VBKx

16 UNITED STATES OF AMERICA,) No. CV
 17)
 Plaintiff,) THREE-JUDGE COURT
 18)
 v.) COMPLAINT
 19)
 20 VENTURA COUNTY, CALIFORNIA;)
 PHIL SCHMIT, the COUNTY CLERK)
 & RECORDER, in his official)
 21 capacity; and the VENTURA)
 COUNTY BOARD OF SUPERVISORS,)
 22)
 Defendants.)
 23)

24 The United States of America, Plaintiff herein, alleges:
 25 1. The Attorney General files this action pursuant to
 26 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
 27 amended, 42 U.S.C. § 1973aa-1a; 42 U.S.C. § 1973aa-2; and
 28 28 U.S.C. § 2201.

1 2. Jurisdiction: The Court has jurisdiction of this
2 action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973aa-2.
3 In accordance with the provisions of 42 U.S.C. § 1973aa-2 and 28
4 U.S.C. § 2284, the Section 203 claim must be heard and
5 determined by a court of three judges. The events relevant to
6 this action occurred in Ventura County, which is located in the
7 United States District Court for the Central District of
8 California.

9 3. Defendant Ventura COUNTY is a political and
10 geographical subdivision of the State of California.

11 4. Defendant PHIL SCHMIT is the County Clerk & Recorder
12 of Ventura County. In this capacity as county clerk, Defendant
13 Schmit has responsibilities concerning the administration of
14 voting and elections in Ventura County. Defendant Schmit is a
15 resident of Ventura County, and is sued in his official
16 capacity.

17 5. Defendant Ventura COUNTY BOARD OF SUPERVISORS is the
18 primary budgetary authority for the county and for the County
19 Clerk & Recorder of Ventura County.

20 6. According to the 2000 Census, Ventura County had a
21 total population of 753,195 persons, of whom 251,965 (33.5%)
22 were Hispanic persons; and a total citizen voting-age population
23 of 458,420 persons, of whom 96,780 (21.1%) were Hispanic
24 persons.

25 7. According to the 2000 Census, 24,505 Hispanic voting-
26 age citizens in Ventura County were limited English proficient
27 ("LEP").
28

1 8. Ventura County is subject to the requirements of
2 Section 203 for the Spanish language, pursuant to the
3 designation by the Director of the Census. The Director has
4 determined that more than 10,000 of Ventura County's voting-age
5 citizens are members of a single language minority group
6 (Spanish heritage or Hispanic) who do not speak or understand
7 English well enough to participate in the English-language
8 election process and have an illiteracy rate that is higher than
9 the national illiteracy rate. See 42 U.S.C. § 1973aa-1a(b)(2);
10 see also 67 Fed. Reg. 48,871 (July 26, 2002). The determination
11 of the Census Bureau that Ventura County is covered by Section
12 203 for Spanish language is final and non-reviewable. See 42
13 U.S.C. § 1973aa-1a(b)(4).

14 9. Ventura County has been continuously covered under
15 Section 203 to provide bilingual elections in Spanish since
16 September 18, 1992. See 57 Fed. Reg. 43,213 (Sept. 18, 1992);
17 67 Fed. Reg. 48,871 (July 26, 2002). The Department has
18 directly notified election officials, including Ventura County
19 election officials, in all covered jurisdictions and has
20 provided information regarding the requirements of Section 203.

21 10. Because Ventura County is subject to the requirements
22 of Section 203, "any registration or voting notices, forms,
23 instructions, assistance, or other materials or information
24 relating to the electoral process, including ballots" that
25 Defendants provide in English must also be furnished in Spanish
26 to Spanish-speaking voters. 42 U.S.C. § 1973aa-1a(c).

27
28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the United States of America prays that this Court enter an order:

- (1) Declaring that Defendants have failed to provide election information and assistance necessary to those who require it in Spanish in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (2) Enjoining Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing to provide Spanish-language election information and assistance to persons with limited English proficiency as required by Section 203, 42 U.S.C. § 1973aa-1a;
- (3) Requiring Defendants to devise and implement a remedial plan to ensure that Spanish-speaking citizens with limited English proficiency are able to participate in all phases of the electoral process as required by Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (4) Requiring the Defendants to publicize the remedial plans and programs addressing violations of Section 203 of the Voting Rights Act to ensure their widespread dissemination to Ventura County's voters; and
- (5) Authorizing the appointment of federal examiners for elections held in Ventura County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through August 1, 2007.

1 Plaintiff further prays that this Court order such
2 additional relief as the interests of justice may require,
3 together with the costs and disbursements in maintaining this
4 action.

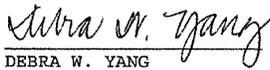
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1 Date: 4th day of August, 2004
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4 JOHN D. ASHCROFT
Attorney General

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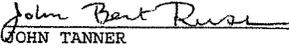
7 R. ALEXANDER ACOSTA
Assistant Attorney General
8 Civil Rights Division

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11 DEBRA W. YANG
United States Attorney

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14 JOSEPH D. RICH
Chief, Voting Section

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MCMAMON, J. 1X

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTCHESTER COUNTY; WESTCHESTER
COUNTY BOARD OF ELECTIONS;
REGINALD LAFAYETTE, Commissioner of
the Westchester County Board of Elections; and
CAROLEE SUNDERLAND, Commissioner of
the Westchester County Board of Elections,

Defendants.

USDC SDNY
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ELECTRONICALLY FILED
DOC #:
DATE FILED:

05 Civ. 0650 (CM)



CONSENT DECREE

WHEREAS, this Consent Decree (the "Decree") represents the parties' commitment to ensure that all citizens of Westchester County have an equal opportunity to participate in the electoral process, including Hispanic and Spanish-language citizens; The County of Westchester intends to fully implement this Consent Decree as part of its ongoing efforts to ensure all voters regardless of race or ethnic origin equal access to the polls; and

WHEREAS, the United States of America (the "United States") filed this action against Westchester County (the "County"), its Board of Elections, and the Commissioners of the Board of Elections (collectively, "Defendants"), pursuant to Section 203 of the Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 42 U.S.C. § 1973aa-2, and 28 U.S.C. § 2201, and pursuant to Section 302 of the Help America Vote Act of 2002 ("Section 302" or "HAVA"), 42 U.S.C. §§ 15482, 15511; and

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WHEREAS, Section 203 requires that “[w]henver any . . . [covered] political subdivision . . . provides any registration or 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,” 42 U.S.C. 1973aa-1a(c); and

WHEREAS, on September 18, 1992, the County became a covered “political subdivision” subject to Section 203 with respect to the Spanish language, and as such, was required to provide limited-English proficient Hispanic citizens in the County with Spanish-language election information and assistance as required by Section 203; and

WHEREAS, the County’s coverage is based on a determination by the Director of the Census that there are more than 10,000 citizens of voting age in the County who are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate effectively in the English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate. 57 Fed. Reg. 43, 213 (1992) (codified at 28 C.F.R. 55, App.); 67 Fed. Reg. 48,871 (July 26, 2002); and

WHEREAS, the United States alleges that Defendants violated Section 203 by failing to translate written election materials and information into Spanish and by failing to provide for an adequate number of bilingual poll workers trained to assist Spanish-speaking voters on election day; and

WHEREAS, claims under Section 203 must be heard and determined by a court of three judges pursuant to 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284; and

WHEREAS, Section 302 requires, *inter alia*, that all jurisdictions (1) permit individuals who declare that they are registered voters in the jurisdiction in which the individuals desire to vote and that they are eligible to vote in an election for Federal office but whose names do not appear on the official list of eligible voters in a particular polling place or whose eligibility is questioned by an election official, to cast a provisional ballot, and (2) provide written information to voters who cast provisional ballots on how they are able to ascertain whether their vote was counted, and if the vote was not counted, the reason the vote was not counted, 42 U.S.C. § 15482(a)(5)(A); and (3) post in each polling place certain voting information, including but not limited to instructions on how to cast a vote and a provisional ballot, information regarding the date of the election and hours during which polling places will be open, and general information on voting rights under applicable Federal and state law, 42 U.S.C. § 15482(b); and

WHEREAS, the United States alleges that Defendants, or those acting on behalf of Defendants, violated Section 302 by failing to post in each and every polling place throughout the County all the signs and information specifically required by Section 302(b) of HAVA, 42 U.S.C. § 15482(b), and by refusing to permit some voters to cast provisional ballots as required by Section 302(a) of HAVA, 42 U.S.C. § 15482(a); and

WHEREAS, claims under Section 302 must be heard and determined by a court of one judge pursuant to 42 U.S.C. § 15511 and 28 U.S.C. § 2284; and

WHEREAS, the parties acknowledge that the electoral process in the County is not centralized and that election day workers, such as election inspectors, poll clerks and coordinators, are hired from lists of individuals recommended by the respective Republican and Democrat local committees and paid for by the local municipalities; and

WHEREAS, by entering into this Decree, Defendants are not making any admission of liability on any claim in this case. Accordingly, this Decree shall not be construed as or represented to be evidence of an admission that Defendants presently or in the past have failed to provide the registration or voting notices, forms, instructions, or assistance, or other material or information relating to the electoral process required by federal and state law and/or regulations; and

WHEREAS, the parties have agreed that this lawsuit should be resolved through the terms of this Decree, hereby waive a hearing and entry of findings of fact and conclusions of law on all issues involved in this matter, and consent to the entry of this Decree.

It is hereby **ORDERED, ADJUDGED, AND DECREED** that:

I. Injunction

1. Defendants, their agents, employees, contractors, successors, and all other persons acting on behalf of the Defendants shall comply with Section 203 of the Voting Rights Act and provide in Spanish any “registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots” that they provide in English in all elections and stages of the electoral process which are the responsibility of the County to conduct and administer under applicable provisions of the New York Election Law.

2. Defendants, their agents, employees, contractors, successors, and all other persons acting on behalf of the Defendants shall comply with all aspects of Section 302 of HAVA, and, *inter alia* (1) permit individuals who declare that they are registered voters in the jurisdiction in which the individuals desire to vote and that they are eligible to vote in an election

for Federal office but whose names do not appear on the official list of eligible voters in a particular polling place or whose eligibility is questioned by an election official, to cast a provisional ballot; (2) provide written information to voters who cast provisional ballots on how they are able to ascertain whether their vote was counted, and if the vote was not counted, the reason the vote was not counted; and (3) post in each polling place all information required by 42 U.S.C. § 15482(b).

II. Translation of Election-Related Materials

3. Defendants shall ensure that all information that is provided by the County in English about “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots,” 42 U.S.C. § 1973aa-1a(c), shall also be provided in Spanish. Defendants shall ensure that both English and Spanish language election information, materials, and announcements provided by the County are made equally available.

4. Defendants shall employ trained and/or certified translators who are familiar with Spanish-language election terminology to produce all written translations, clearly, accurately, and completely to the extent that translations have not already been performed or made available to the County by New York State. *See* 28 C.F.R. §55.19(b). Defendants shall provide effective translations that meet the needs of the Hispanic community in the County. Written translations shall be in the form of Spanish that is used most widely by the County’s voting-age Limited English Proficient Hispanic citizens. The parties recognize the value in having uniform translation and terminology of materials throughout the State.

5. Defendants shall adopt a checklist identifying each Spanish-language and bilingual material they make available to the public at each polling place. Defendants, in their commitment to comply with HAVA shall include in the checklist all information required to be posted in polling sites by all applicable provisions of HAVA. The checklist shall include with respect to each item an attestation that these Spanish-language or bilingual materials were posted or made available to voters at all polling places, or a detailed written explanation of why individual items had not been posted or were not available. The County will advise the local municipalities that the inspectors for each polling place must complete and sign the checklist before the inspector receives payment for work in the election, subject to applicable state and federal law. Defendants shall maintain a record of each such failure to complete and sign the checklist.

III. Dissemination of Spanish-Language Information

6. Defendants shall ensure that election information, materials, and announcements that are published by the County in newspapers and/or other media in English are provided to the same extent in Spanish. Such Spanish-language information shall be distributed in newspapers and/or other media that exclusively or regularly publish or broadcast information in Spanish. Such Spanish-language announcements need not be identical in all respect to English-language announcements, but shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information.

7. Any new voting system adopted by the County shall offer a bilingual ballot or offer Spanish-speaking voters the readily apparent option of a Spanish ballot, and any audio

version of the ballot on such machines shall be available in English and Spanish. Defendants shall not be required to purchase new voting machines or to establish a new voting system solely to comply with this provision, but shall, in the event of any change to a new voting system or device, ensure that a fully translated bilingual Spanish-English ballot be accommodated.

IV. Spanish-Language Assistance

8. Defendants shall provide Spanish-language assistance, including but not limited to trained bilingual (Spanish/English) election personnel, at all locations where election-related transactions are conducted by the County. Such election personnel need not be required to be physically present at all locations except as provided in paragraph 12 below. The bilingual election personnel shall be made available to answer voting-related questions by telephone without cost while the polls are open on election days. Defendants shall provide and/or post information in each polling place describing the availability of telephone assistance. Defendants shall use their best efforts to ensure that a working telephone line (land-based or cellular) is available for voter use without cost to the voter in each polling place, or that a working public telephone is available within close proximity to each polling place.

9. Defendants shall use their best efforts to recruit, hire, and assign trained bilingual poll workers who are able to understand, speak, read, and write Spanish fluently to provide assistance to Spanish-speaking voters at the polls on election days for all County-administered elections.

10. To the extent it is not in conflict with the County's rights and obligations under its collective bargaining agreements with its employees, the County shall survey its employees to identify personnel who speak Spanish fluently and, to the extent such employees can be made

available to provide assistance, allow and encourage such employees to serve as poll workers at the polls on election day.

11. As part of its obligation to ensure that entities on whose behalf the County conducts elections are fully compliant with Section 203 in its elections, the County shall request that each entity for which it conducts elections perform similar surveys of its employees to the extent such surveys and/or service do not conflict with each such entity's rights and obligations under its collective bargaining agreements with its employees; and the County shall request from such entities and maintain copies of all election-related materials and information created or disseminated by such entities for each election. The County shall advise counsel for the United States of any entity that does not participate fully. The County shall also invite eligible members of the Advisory Group, discussed below, to serve as poll officials and to encourage other bilingual voters to do so.

12. Defendants shall ensure for all County-administered elections that:

a. at each and every polling place in the County in which there are 100-249 registered voters with Spanish surnames there shall be staffed at least one poll official bilingual in Spanish and English;

b. at each and every polling place in the County in which there are 250-499 registered voters with Spanish surnames, there shall be staffed at least two poll officials bilingual in Spanish and English;

c. at each and every polling place in the County in which there are 500 or more registered voters with Spanish surnames there shall be staffed at least three poll officials bilingual in Spanish and English.

The parties may by written agreement adjust these requirements in light of confirmed information that the actual language need in a particular polling place is lesser or greater than these standards.

13. If, despite Defendants' best efforts, the County is unable to secure and assign the requisite number of bilingual poll officials as required in paragraph 12, the County shall recruit and secure bilingual translators to satisfy the numeric requirements for bilingual poll workers provided in this Decree. Any such bilingual translators shall be secured and fully trained to provide language assistance throughout the voting process at all polling places to limited-English proficient Hispanic voters and may be utilized in addition to, rather than in place of, the full complement of poll officials ordinarily assigned by Defendants.

14. Notwithstanding any contrary provision in the New York State Election Law, defendants shall employ bilingual personnel, trained in Spanish-language election terminology, who have agreed to be on call and available to travel to a polling place not staffed by a bilingual poll worker to provide any necessary assistance to any Spanish-speaking voter.

15. Defendants shall ensure that signs in both English and Spanish will be posted prominently at polling places stating that Spanish-language assistance is available. At sites without bilingual staff, signs in both English and Spanish shall be posted that explain how voters can obtain Spanish-language assistance.

VI. Election Officials Training

16. Prior to each County-administered election, as part of or in addition to any required state or county training, Defendants shall train all poll officials and other election personnel present at the polls regarding the following:

- a. the provisions of Section 203 of the Voting Rights Act, including the legal obligation and means to make Spanish-language assistance and materials available to voters; and
- b. the requirement that poll officials be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities and to avoid inappropriate comments; and
- c. the provisions of Section 302 of the Help America Vote Act, as they apply to elections for Federal office.

17. In addition to the general training for poll officials, Defendants shall train all bilingual poll officials on Spanish-language election terminology, voting instructions, and other election-related issues.

18. Defendants shall maintain a record of which poll officials attend training sessions, including the time, location, and training personnel involved.

VII. Program Coordinator(s)

19. Defendants shall assign one or two employees to act as Spanish Language Assistance Coordinator(s) (“the Coordinator(s)”) to assist in carrying out the Defendants’ obligations under this Decree. The Coordinator(s) shall be able to understand, speak, write, and read fluently both Spanish and English.

20. Defendants shall provide the Coordinator(s) with transportation and other support sufficient to meet the goals of the program in accordance with County employee policy.

21. The Coordinator(s) shall be trained by the Commissioners of the Westchester County Board of Elections and/or their designees in all aspects of the voting and registration

process, and the Defendants' obligations under this Decree. The Coordinator(s) shall work under the supervision of and report directly to the Commissioners of the County Board of Elections.

22. Under the general supervision of the Commissioners of the Board of Elections, the Coordinators' responsibilities shall include coordination of translation of ballots and other election information; development of a Spanish election glossary to ensure uniform use of election terminology in Spanish; development and/or oversight of Spanish publicity programs; recruitment and assessment of Spanish-language proficiency of bilingual poll officials and interpreters; and managing other aspects of the program.

VIII. Advisory Group

23. Defendants shall establish an Advisory Group, not to exceed six (6) members, to be chaired by the Coordinator(s), to assist and inform the bilingual program.

24. The Coordinator(s) shall invite participation from all interested individuals and organizations that work with or serve the Spanish-speaking community in Westchester County, to determine how most effectively to provide election materials, information, and assistance to Spanish-speaking voters.

25. The Advisory Group shall meet at least quarterly in 2005-2007. The Coordinator(s) shall provide notice of all planned meetings to each member, including the time, location, and agenda for the meeting, at least 14 days in advance, although the members of the Advisory Group may waive or shorten this time period as necessary.

26. Within five business days following each meeting, the Coordinator(s) shall provide a written summary to all members and to the Commissioners of the County Board of Elections of the discussion and any decisions reached at the meeting.

27. If the Commissioners of the County Board of Elections decide not to implement an Advisory Group suggestion or a consensus cannot be reached^{ed} respecting such suggestion, they shall provide to the group and maintain on file a written statement of the reasons for rejecting such suggestion.

28. The County shall provide to all interested members of the Advisory Group copies, in English and Spanish, of all election information, announcements, and notices that are provided to the electorate and general public and request that they share these materials with their members.

IX. Response to Complaints About Poll Workers

29. The Commissioners of the Westchester County Board of Elections and/or their designee(s) shall investigate expeditiously any complaint, whether oral or written, by any voter alleging hostility by any poll worker toward any Spanish-speaking and/or Hispanic voters in any election. The content of such complaints and the results of the investigation(s) conducted by the Defendants shall be promptly reported to the United States. Where there is credible evidence that any poll worker has engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, Defendants shall not appoint the poll worker to work in the future.

X. Information Required Under the Help America Vote Act

30. Defendants shall comply will all applicable provisions of HAVA.

31. All information required to be posted in polling sites by Section 302 of HAVA shall be posted at all polling sites and shall be in English and Spanish. This information includes, but is not limited to, written information given to the voter casting a provisional ballot on how they may ascertain if their provisional ballot was counted, and if not, the reason the ballot

was not counted, *see* 42 U.S.C. § 15482(a)(5)(A), and the six categories of information required to be posted under 42 U.S.C. § 15482(b). For example, Defendants must post in each polling location a sample version of the ballot in English and in Spanish that will be used for that election. *See* 42 U.S.C. § 15482(b)(2)(A).

32. Defendants shall provide a free access system for informing voters about whether their provisional ballot has been counted, and if it has been rejected, the reason for the rejection. The information on this system shall be available to each provisional voter in both English and Spanish. *See* 42 U.S.C. § 15482(a)(5)(B).

XI. Federal Examiners and Observers

33. To monitor compliance with and ensure effectiveness of this Decree, the appointment of a federal examiner is authorized for the County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through August 7, 2007, or to a date thereafter should this Decree be extended.

34. Defendants shall recognize the authority of federal observers to observe all aspects of voting conducted in the polls on election day, including the authority to view County personnel at all polling places providing assistance to voters during voting, except where the voter objects.

35. The United States will give timely notice of its intent to monitor a particular election.

36. The United States personnel will be permitted into each and every polling place for the purpose of observing the election process; such personnel shall not seek to interfere in any way with the conduct of the elections.

XII. Evaluation of Plan

37. The parties recognize that regular and ongoing reassessment may be necessary to provide the Spanish-language minority voters with equal access to all phases of the electoral process. Defendants shall evaluate the Section 203 bilingual assistance program after each election to determine which aspects of the program are functioning well; whether any aspects need improvement; and how to affect needed improvements. The program may be adjusted at any time upon joint written agreement of the parties.

XIII. Retention of Documents and Reporting Requirements

38. During the duration of this Decree, the County shall make available to the United States upon request and identification all documents concerning the County's Section 203 bilingual assistance program and all written records of all actions taken pursuant to this Decree.

39. During the duration of this Decree, at least ten (10) days before each County-administered election held in the County, Defendants shall provide the following to counsel for the United States:

- a. the name, address, and election district designation of each polling place;
- b. the name and title of each poll official appointed and assigned to serve at each polling place;
- c. a designation of whether each poll official is bilingual in English and Spanish;
- d. copies of any signs or other written information provided at polling places or given to voters to comply with Section 203 and Section 302 of HAVA; and
- e. an electronic copy of the voter registration list to be used in such elections.

40. Within sixty (60) days after each County-administered election, Defendants shall provide to counsel for the United States any updated report regarding changes in the items referenced in paragraph 39 that occurred at the election, and provide information about all complaints the County received at the election regarding language or assistance issues.

XIV. General Provisions

41. The terms of this Decree apply to all federal, state, and local elections administered by the County, including County-run elections for city and all other political subdivisions of the County.

42. Whenever Defendants enter into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, Defendants shall require such other entity to agree to abide by the terms of this Decree as if such entity were a party to this Decree with the United States, and consistent with the responsibility of each such entity to comply fully with Section 203 and Section 302 of HAVA.

43. This Decree is binding upon the parties, by and through their officials, agents, employees, and successors in office.

44. This Decree shall remain in effect through August 7, 2007; provided that upon motion made by the United States within thirty days of that date, the Decree shall be extended until December 31, 2008 for good cause shown.

45. The Court shall retain jurisdiction of this case for the term of the Decree to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement, to resolve any disputes that may occur during the term of this Decree, and to ensure compliance with Section 203 of the Voting Rights Act and Section 302 of HAVA.

46. Each party shall bear its own costs and fees.

Agreed to this 18 day of June 2005

For Plaintiff:

UNITED STATES OF AMERICA

JOHN D. ASHCROFT
Attorney General

By:


R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division

DAVID N. KELLEY
United States Attorney

By:

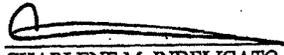

RAMON E. REYES, JR.
Assistant United States Attorney
86 Chambers Street, 3rd Floor
New York, New York 10007
(212) 637-2740

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Agreed to this 19th day of January 2005

For Defendants:

By:


CHARLENE M. INDELICATO
Westchester County Attorney
County of Westchester, Department of L
148 Martine Avenue
White Plains, New York 10601
(914) 995-2696

07/14/2005 18:35 FAX 212 805 7812

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Jul-14-05 03:00pm From: Hon. Barrington D. Parker

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JUL 14

JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree set forth above, and incorporates those terms herein.

ENTERED and ORDERED this 14 day of July, 2005.

B. D. Parker
UNITED STATES CIRCUIT JUDGE

Colleen M. Mahon
UNITED STATES DISTRICT JUDGE

Gregory Gilbert
UNITED STATES DISTRICT JUDGE

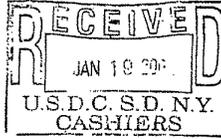
JUDGMENT AND ORDER

This Court, having determined that it has jurisdiction over the United States' claim under Section 302 of the Help America Vote Act, 42 U.S.C. §§ 15482, 15511 and 28 U.S.C. § 1345, has considered the terms of the Consent Decree set forth above, and incorporates those terms herein.

ENTERED and ORDERED this 15 day of July, 2005.


UNITED STATES DISTRICT JUDGE

DAVID N. KELLEY
United States Attorney for the
Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

Judge McMahon

v.

WESTCHESTER COUNTY; WESTCHESTER
COUNTY BOARD OF ELECTIONS;
REGINALD LAFAYETTE, Commissioner of
the Westchester County Board of Elections; and
CAROLEE SUNDERLAND, Commissioner of
the Westchester County Board of Elections,

Defendants.

05 CV 0650

COMPLAINT

Civil Action No. _____

Plaintiff, United States of America (the "United States"), by its attorneys, John

Ashcroft, Attorney General of the United States, and David N. Kelley, United States Attorney for

the Southern District of New York, alleges for its complaint, as follows:

NATURE OF THE CASE

1. The United States brings this action to enforce Section 203 of the Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 42 U.S.C. § 1973aa-2, and 28 U.S.C. § 2201, to require Defendants to provide limited-English proficient Hispanic citizens in Westchester County, New York with Spanish-language voting materials as required by Section

203, and to enforce Section 302 of the Help America Vote Act of 2002 ("Section 302"), 42 U.S.C. § 15482, and 42 U.S.C. § 15511, to require Defendants to devise and implement a remedial plan to provide to voters the information required under Section 302 of HAVA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973aa-2, and 42 U.S.C. § 15511.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b).

4. In accordance with the provisions of 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284, the first claim for relief, under Section 203, must be heard and determined by a court of three judges. The second claim for relief, under Section 302 of HAVA, may be heard and determined by one judge.

THE PARTIES

5. Plaintiff is the United States of America.

6. Defendant Westchester County is a political subdivision of the State of New York, organized pursuant to the laws of the State of New York.

7. Defendant Westchester County Board of Elections is a governmental department of Westchester County with the primary responsibility of administering all countywide elections occurring within the County.

8. Defendants Reginald Lafayette and Carolee Sunderland are the Commissioners of the Westchester County Board of Elections. Defendants Lafayette and Sunderland were appointed by the Westchester County Board of Legislators, which is the legislative branch of Westchester County. Defendants Lafayette and Sunderland have responsibilities concerning the administration of voting and elections in Westchester County. Defendants Lafayette and Sunderland are sued in their official capacities.

FIRST CLAIM FOR RELIEF
(Section 203 of the Voting Rights Act)

9. Westchester County is covered by Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a, with respect to the Spanish language. 28 C.F.R. 55, Appendix. The determination by the Director of the Bureau of the Census that the County is a covered political subdivision for Hispanic citizens has been in effect since September 18, 1992.

10. Because Westchester County is subject to the requirements of Section 203, "any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that the County provides in English must also be provided in the Spanish language so that Spanish-speaking voters can be effectively informed of and participate effectively in all voting-connected activities. 42 U.S.C. § 1973aa-1a.

11. In conducting elections in Westchester County, Defendants have failed to provide, in the Spanish language, the information and assistance needed by Hispanic citizens of limited-English proficiency to participate effectively in the electoral process, including, but not limited to, the following:

a. Defendants have failed to recruit, appoint, train, and maintain an adequate pool of bilingual poll officials capable of providing effective language assistance to Hispanic citizens with limited-English proficiency; and

b. Defendants have failed to translate into Spanish all election-related information, including but not limited to, announcements of election dates, information about voter registration, lists of polling place assignment, poll worker recruitment, notices of general, village and special elections, lists containing the name and residence of every candidate for public office to be voted for within its jurisdiction, and election-related information on the County's website, in particular the web pages for the Board of Elections.

12. Defendants' failure to provide Westchester County's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

SECOND CLAIM FOR RELIEF
(Section 302 of the Help America Vote Act)

13. In the November 2, 2004 general election for federal office, Defendants failed to comply with Section 302 of the Help America Vote Act by failing to post in each polling place all of the voting information required by 42 U.S.C. § 15482(b).

14. Defendants' actions as described above in Paragraph 13 constitute a violation of Section 302 of the Help America Vote Act, 42 U.S.C. § 15482.

15. Unless enjoined by this Court, Defendants will continue to violate Section 302, by failing to provide to voters the different types of information required under this provision.

PRAYER FOR RELIEF

Unless enjoined by this Court, Defendants will continue to violate Section 203 of the Voting Rights Act, by failing to provide Westchester County's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation, and will continue to violate Section 302 of the Help America Vote Act, by failing to provide voters with information required by the statute.

WHEREFORE, Plaintiff United States prays for an order:

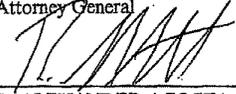
- (1) Declaring that Defendants have failed to provide Westchester County's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (2) Declaring that Defendants have failed to post all necessary voter information materials at each polling place in violation of Section 302 of the Help America Vote Act, 42 U.S.C. § 15482;
- (3) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from failing to provide Westchester County's limited-English proficient Hispanic citizens with the election information and assistance necessary for their effective political participation, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;

- (4) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from failing to comply with the voter information requirements of Section 302 of the Help America Vote Act, 42 U.S.C. § 15482;
- (5) Requiring Defendants to take such actions as will ensure that Westchester County's limited-English proficient Hispanic citizens are effectively informed of and able to participate effectively in all phases of the electoral process, in compliance with Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (6) Requiring Defendants to to devise and implement a remedial plan to provide to voters the information required under Section 302 of the Help America Vote Act, 42 U.S.C. § 15482;
- (7) Requiring Defendants to publicize effectively the remedial plans and programs addressing the Section 203 violations enumerated in this Complaint to ensure their widespread dissemination to Westchester County's limited-English proficient Hispanic citizen voters;
- (8) Requiring Defendants to publicize effectively the remedial plans and programs addressing the Section 302 violations enumerated in this Complaint to ensure their widespread dissemination to Westchester County's English-speaking and Spanish-speaking citizen voters;

- (9) Authorizing the appointment of federal examiners for elections held in Westchester County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through August 7, 2007.

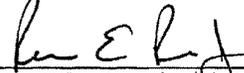
Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

JOHN D. ASHCROFT
Attorney General

By: 

R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division

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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
SEP 03 2004
JAMES H. DANSEN, CLERK
DEPUTY
YAKIMA, WASHINGTON

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
YAKIMA DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
YAKIMA COUNTY; CORKY MATTINGLY,)
Yakima County Auditor;)
JIM LEWIS, RONALD GAMACHE,)
and JESSE PALACIOS,)
County Commissioners.)
)
Defendants.)
_____)

CV-04-3072-LRS
CIVIL NO.
CONSENT DECREE

I. Background

A. The United States of America initiated this action pursuant to Section 203 of the Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 1973aa-2, and 28 U.S.C. § 2201, alleging that election practices and procedures used by Yakima County, Washington, for Spanish-speaking citizens violate Section 203. The claim under Section 203 must be heard and determined by a court of three judges pursuant to 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

1 B. Yakima County's coverage under Section 203 is based on a
2 determination by the Director of the Census that more than five (5) percent of the
3 citizens of voting age in the County are members of a single language minority
4 group (Spanish heritage) who do not speak or understand English well enough to
5 participate effectively in the English-language election process (hereinafter
6 referred to as Spanish-speaking citizens or voters), and that these persons have an
7 illiteracy rate higher than the national illiteracy rate, 42 U.S.C. 1973aa-1(a) .

8 C. In 1976 Yakima County was designated by the Director of the Census as
9 a jurisdiction subject to the requirements of Section 203 for persons of Spanish
10 heritage. 41 Fed. Reg. 29,998 (July 20, 1976). In 2002, Yakima County was again
11 so designated by the Director of the Census. 67 Fed. Reg. 48,871 (July 26, 2002).

12 D. The United States alleges in its complaint that Yakima County is not
13 fully compliant with the requirements of Section 203 for Spanish-speaking
14 citizens residing in Yakima County with respect to the need to:

15 1. Provide complete and accurate Spanish translations of all materials
16 and information produced in English and provided to the public,
17 including but not limited to, ballots, information about voter
18 registration, candidate qualification procedures, voting by mail or
19 absentee, voting at the polls, and voting-related information on the

- 1 Yakima County website;
- 2 2. Provide effective Spanish language assistance at County offices
- 3 and polling places regarding election-related issues;
- 4 3. Publish Spanish language materials in a timely fashion;
- 5 4. Make Spanish language materials, information, and assistance
- 6 available to Spanish-speaking voters; and
- 7 5. Provide Spanish materials to those voters who need them or take
- 8 steps to notify such Spanish-speaking voters that Spanish materials
- 9 are available.

10 E. The named defendant parties (hereinafter "Yakima County") do not

11 admit to the allegations of the complaint. Yakima County, however, does share

12 with the United States a mutual interest to implement procedures that will protect

13 the rights of Spanish-speaking voters to participate fully in the electoral process in

14 compliance with the Voting Rights Act and the United States Constitution, and

15 therefore, Yakima County agrees to implement fully the terms of this consent

16 decree for enforcement of all applicable laws. Accordingly, the United States and

17 Yakima County consent to the entry of this Order, as indicated by the signatures of

18 counsel at the end of this document. The parties waive a hearing and entry of

19 findings of fact and conclusions of law on all issues involved in this matter.

1 Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED**
2 that:

3 Yakima County, its agents, employees, contractors, successors and all other
4 persons representing the interests of Yakima County are hereby **ENJOINED** from
5 violating Section 203 by failing to provide in Spanish any “registration or voting
6 notices, forms, instructions, assistance or other materials or information” that they
7 provide in English. 42 U.S.C. § 1973aa-1a(c). More specifically, Yakima County
8 shall be required to do the following:

9 II. Translation of election-related materials

10 A. All “registration or voting notices, forms, instructions, assistance, or
11 other materials or information relating to the electoral process, including ballots,”
12 42 U.S.C. 1973aa-1a(c), provided by Yakima County shall also be provided by
13 Yakima County in the Spanish language. Yakima County shall ensure that both
14 English and Spanish language election information, materials, and announcements
15 provided by Yakima County are made equally available.

16 B. Yakima County shall translate into Spanish all election-related
17 documents and information it provides in English. Such translation shall begin as
18 soon as the English text is known and shall be completed so as to allow
19 distribution along with the English text. To ensure the quality of translations, the

1 County shall employ trained translators who are familiar with Spanish language
2 election terminology to produce clear and accurate written translations. The
3 County shall develop and maintain a glossary of Spanish election terminology
4 using Spanish terms understandable to local Latino citizens in concert with
5 bilingual members of local Latino communities.

6 C. All official ballots, including absentee ballots, shall be printed
7 bilingually in both English and Spanish. Any new voting system adopted by the
8 County shall offer bilingual ballots or a readily apparent option of a Spanish
9 ballot, and any audible version of the ballot on such machines shall be available in
10 English and Spanish.

11 III. Dissemination of Spanish language information

12 A. All voter registration and election notices, forms, instructions, and other
13 materials available to voters in English shall also be printed in Spanish and shall
14 be displayed or available in the County Auditor's Office, each polling place, and
15 any other location where the County posts election-related materials on the same
16 basis as English language materials and information.

17 B. Yakima County shall ensure that all Spanish- and English-language
18 election-related information, materials, and announcements are made equally
19 available. Spanish-language information shall be distributed through newspapers,

1 radio and other media that exclusively or regularly publish or broadcast
2 information in Spanish. Dissemination of these announcements need not be
3 identical in all respects to dissemination of English-language announcements, but
4 shall be in the form, frequency, and media best calculated to achieve notice and
5 understanding equal to that provided to the English-speaking population.

6 C. Yakima County shall adopt a checklist identifying each Spanish-
7 language and bilingual material that the County makes available to the public at
8 each polling place. The checklist shall include, for each item, an attestation that
9 the poll workers at the polling place posted or made available to voters such
10 Spanish-language or bilingual document, or solicit a detailed written explanation
11 of why individual items were not posted or available. The election inspector for
12 each polling place must complete and sign this document before receiving
13 payment for work in the election, subject to applicable state and federal law.
14 Yakima County shall maintain a record of each failure to complete and sign the
15 checklist.

16 IV. Spanish Language Assistance

17 A. Trained bilingual (English/Spanish) election personnel shall be available
18 to answer voting related questions by telephone without cost during normal
19 business hours and while the polls are open on election days.

1 B. Yakima County shall recruit, hire, and assign sufficient bilingual
2 (Spanish/English) poll workers, who are able to understand, speak, read, and write
3 Spanish fluently, to provide assistance to Spanish-speaking voters at the polls on
4 election days. To assist in the recruitment of bilingual poll workers, the County
5 shall survey its employees to identify personnel who speak Spanish and, to the
6 extent such employees can be made available to provide assistance, allow and
7 encourage such employees to serve at the polls on election day or be available “on
8 call” to address questions or problems that may arise.

9 C. As part of its obligation to ensure that entities on whose behalf the
10 County conducts elections are fully compliant with Section 203 in their elections,
11 the County shall request that each entity for which it conducts elections perform
12 similar surveys of its employees and shall request from such entities, and maintain
13 copies of, all election-related materials and information created or disseminated by
14 such entities for each election. In addition, the County shall request that each
15 school district or other educational entity for which the County conducts elections
16 implement a program that allows and encourages selected bilingual students (as
17 allowed by state law and as part of an educational program devised by such
18 district) to serve as poll workers on election day for all County elections,
19 including election days that fall on school days, with such students receiving

1 academic credit appropriate to their service as well as all pay and benefits of poll
2 officials

3 D. The County shall invite eligible members of the Advisory Group,
4 discussed below, to serve as paid poll workers and to encourage other bilingual
5 voters to do so. The County shall publicize to the Spanish speaking community
6 the option of absentee voting to the same extent it does so for English-speaking
7 voters.

8 E. Bilingual assistance shall be provided in polling places in accordance
9 with the following:

10 (1) In polling places where the number of Spanish surnamed
11 registered voters is 150 to 299, there shall be at least one poll worker
12 bilingual in Spanish and English.

13 (2) In polling places where the number of Spanish surnamed
14 registered voters is 300 to 599, there shall be at least two poll workers
15 bilingual in Spanish and English.

16 (3) In polling places where the number of Spanish surnamed
17 registered voters is 600 to 999, there shall be at least three poll
18 workers bilingual in Spanish and English.

19 (4) In polling places where the number of Spanish surnamed

1 registered voters is over 1,000, there shall be at least four poll
2 workers bilingual in Spanish and English.

3 (5) When assigning poll workers bilingual in Spanish and English to
4 election boards at various polling places, assignment should be done
5 in a manner that there will be at least one bilingual poll worker on
6 each election board, whenever feasible.

7 (6) The parties may agree to adjust the standards in this section in
8 light of information that the actual language need in a particular
9 polling place is lesser or greater than that set forth above.

10 F. Yakima County shall make available and train in Spanish language
11 election terminology sufficient bilingual personnel who shall be on call throughout
12 election day to provide language assistance to Spanish-speaking voters in person
13 at any polling place in which additional language assistance is needed or where no
14 bilingual poll worker is available. Such on-call staff shall be stationed in
15 appropriate areas of the County, including in the City of Yakima and locations in
16 the lower Yakima Valley, so as to minimize any delay for voters while the staff
17 member travels to the polling place.

18 G. At each training session prior to an election, in addition to any required
19 state or County training, the County shall train all poll workers and other election

1 personnel present at the polls on the requirements of Section 203, including
2 making Spanish language assistance and materials available to voters and being
3 respectful and courteous to all voters regardless of race, color, language abilities,
4 or national origin. In addition to the general training for poll workers and
5 interpreters, the County shall train all bilingual poll workers on Spanish language
6 election terminology and how to interpret into Spanish the ballot(s), voting
7 instructions, and other election-related issues. The County shall maintain a record
8 of which poll workers attend training sessions, including the time, location, and
9 training personnel involved.

10 H. Yakima County shall post signs prominently in both English and
11 Spanish at sites where voting occurs stating that Spanish language assistance is
12 available. Bilingual poll workers shall be identified as such by badges. At sites
13 without bilingual poll workers, signs in both English and Spanish shall be posted
14 that explain how voters can obtain Spanish language assistance.

15 I. Upon receipt of complaints by voters, whether oral or written, Yakima
16 County shall investigate expeditiously any allegations of poll worker hostility
17 toward Spanish-speaking and/or Latino voters in any election. Yakima County
18 shall report the results of each investigation to the United States. Where there is
19 credible evidence that a poll worker(s) have engaged in inappropriate treatment of

1 Spanish-speaking and/or Latino voters, Yakima County shall remove the poll
2 worker(s).

3 V. Program Coordinator

4 A. The County shall employ, on a full time basis, an individual to
5 coordinate the County's Bilingual Election Program ("Program Coordinator") for
6 all elections within the County. The County shall provide that individual with
7 transportation and other support sufficient to meet the goals of the Program. The
8 Program Coordinator shall be able to understand, speak, write, and read fluently
9 both Spanish and English.

10 B. The Program Coordinator shall work under the supervision of the
11 Yakima County Auditor to implement a bilingual election program. The Program
12 Coordinator's responsibilities shall include coordination of translation of ballots
13 and other election information; development of an election glossary to ensure
14 uniform use of election terminology in Spanish; development and oversight of
15 publicity, including selection of appropriate Spanish-language media for notices
16 and announcements in Spanish and English-language print media that specifically
17 serves Latino communities for announcements in English; recruitment of bilingual
18 poll workers and interpreters, including assessment of their Spanish language
19 proficiency; devising specific steps to provide election information to the Spanish-

1 speaking community; sending staff to make presentations and answer questions at
2 events and meetings sponsored by Latino community organizations; and managing
3 other aspects of the Program.

4 VI. Advisory Group:

5 A. The Program Coordinator shall establish and chair an Advisory Group to
6 assist and inform the Bilingual Election Program and shall invite participation
7 from all organizations listed in Attachment A, as well as other individuals and
8 organizations that work with or serve the Spanish-speaking and Latino
9 communities in Yakima County. Such Advisory Group shall be open to all
10 interested persons.

11 B. The Advisory Group shall meet at least once a month in 2004, at least
12 every two months during 2005, and as the group determines is necessary in 2006.
13 In these meetings, Yakima County shall solicit information on how most
14 effectively to provide election materials, information, and assistance to Spanish-
15 speaking voters and how to publicize the County's Spanish language election
16 program. The Program Coordinator shall provide notice of all planned meetings
17 to each member, including the date, time, location, and meeting agenda at least 14
18 days in advance, although members of the Advisory Group may agree to waive or
19 shorten this time period as necessary.

1 C. Within five days after each meeting, the Program Coordinator shall
2 provide a written summary of the discussion and any decisions reached at the
3 meeting to all members and to the County Auditor. If the County Auditor decides
4 not to implement an Advisory Group suggestion or a consensus cannot be reached
5 respecting such suggestion, the Auditor shall provide to the group through the
6 Program Coordinator and maintain on file a written statement of the reasons for
7 rejecting such suggestion.

8 D. The County shall transmit to all interested members of the advisory
9 group copies, in English and Spanish, of all election information, announcements,
10 and notices that are provided or made available to the electorate and general public
11 and request that they share such information with their members.

12 VII. Evaluation of the plan

13 The parties recognize that regular and ongoing reassessment may be
14 necessary in order to provide the most effective and efficient Spanish language
15 program. Yakima County shall evaluate the Bilingual Election Program after each
16 election cycle (e.g., following 2004 elections) to determine which aspects of the
17 Bilingual Election Program are functioning well; whether any aspects need
18 improvement; and how to make needed improvements. The program may be
19 adjusted at any time upon written agreement of the parties.

1 VIII. Federal Examiners and Observers:

2 A. To monitor compliance with this Decree, the appointment of federal
3 examiners is authorized for Yakima County pursuant to Section 3(a) of the Voting
4 Rights Act, 42 U.S.C. 1973a (a), through December 31, 2006.

5 B. Yakima County acknowledges the authority of federal observers to
6 observe all aspects of voting conducted in the polls on election day, including the
7 observers' authority to view County personnel providing assistance to voters
8 during voting, except where the voter objects.

9 IX. Retention of Documents and Reporting Requirements

10 A. During the duration of this decree, the County shall make and maintain
11 written records of all actions taken pursuant to this Consent Decree. Such
12 documents, lists, and records shall be made available, upon reasonable notice, to
13 the United States for inspection and copying.

14 B. During the duration of this decree, at least ten (10) days before each
15 County-administered election held in the County, Yakima County shall provide to
16 counsel for the United States, the name, address, and precinct designation of each
17 polling place; the name and title of each poll worker appointed and assigned to
18 serve at each polling place; a designation of whether each poll worker is bilingual
19 in English and Spanish; and an electronic copy of the final, official voter

1 registration list to be used in each such election. Within thirty (30) days after each
2 election, Yakima County shall provide to counsel for the United States any
3 updated report regarding changes in these items as well as information about all
4 complaints the County received at the election regarding language or assistance
5 issues and the voters' registration list used in the election.

6 X. Duty to Defend Consent Decree

7 The parties to this Consent Decree shall employ their best efforts to defend
8 this Consent Decree against any legal challenge.

9 XI. Jurisdiction

10 The Court shall retain jurisdiction of this case to enter further relief or such
11 other orders as may be necessary for the effectuation of the terms of this
12 agreement and to ensure compliance with Section 203.

13 XII. Termination of Consent Decree

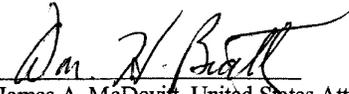
14 This agreement is final and binding between the parties and their successors
15 in office regarding the claims raised in this action. This agreement shall remain in
16 effect through December 31, 2006, and the United States may, within 90 days of
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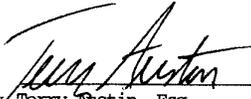
1 that date, move to extend the decree for good cause shown, in the event of a
2 violation of any provision contained herein by the County.

3 AGREED AND CONSENTED TO:

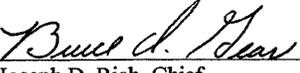
4 For Plaintiff:
5 UNITED STATES OF AMERICA

For Defendants:

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JUDGMENT AND ORDER

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This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 to consider the United States' claim under Section 203 of the Voting Rights Act of 1965 (as amended), 42 U.S.C. § 1973aa-1a (1992), and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this 3rd day of September, 2004.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

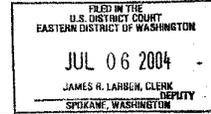
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ATTACHMENT A: Community Contacts/Advisory Committee Members

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Aguilera, Polo	4703 W Prash Av, Yakima 98908	574-1500			Owner, Petunia Markets
Aguilera-Flemming, Terri	152101 W County Rte 12, Prosser 99350	786-4532	kzkr@bentonrea.com	786-1181	LalMaquina Musical Radio Station Mabton Police Chief
Alec, Frank					
Almeida, Raul		966-6558			
American Assc. for Ret. Peo.		206-624-2184			
American Civil Liberties Union		800-880-4183			
Americorps					
Arevalo, Paul	128 Hawthorn Dr, Sunnyside 98944	840-0357			Bilingual poll worker Mabton City Council
Armendariz, Ernesto	P O Bxo 416, Mabton 98935				
Arteaga, Mateo	803 S 30th Av, Yakima 98908	574-4967			
Baca, Mr.	24 S 3rd Av, Yakima 98902	307-3213	bazanirene@hotmail.com		RCDR
Bazan, Irene	P O Box 2888, Yakima 98907	457-1000	bob@radiozorro.com	452-0541	Zorro Radio
Berry, Bob					
City University		453-0303			
Community Services Offices		225-6100			Employment Opportunities
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Contreras, Myrna	312 N 5th Av, Yakima 98902	453-8888		576-8854	Attorney
Cordova, Rebecca	3171 Lateral A Rd, Wapato 98951	969-2828			Wapato School District Director
de la Cruz, Alex	1203 W Grandview Av, Sunnyside 98944	840-5065			Sunnyside City Council
Diaz, Fred	33 N D St, Toppenish 98948	865-5063			Toppenish City Council
Diaz, Kevin	402 S 17th Av, Yakima 98902				VIVA
Farias, Jesse	P O Box 511, Toppenish 98948	865-4055			City of Wapato Mayor
Farm Workers Clin. Yak. Val.	316 Southpark Dr #A, Wapato 98951	877-6169			Serv. for seasonal & migratory f
Farm Workers Opp. Prog		865-5600			
Flores, Santiago	1012 W Mead Av, Yakima 98902	837-8600			
Flores, Sylvia	1002 N 16th Av, Yakima 98902	249-6015			Bilingual poll worker
Franco, Hector	815 N 28th Av, Yakima 98902	307-1183	hfranco@nwinfo.net		DSHS - Dist. Mgr. - Division of C Hispanic Chamber of Commerce
Gamboa, Lupe	107 E Riverside Av, Sunnyside 98944				
Garcia, Avelina A.	P O Box 99, Harrah 98933	848-2370			Harrah Town Council
Garcia, Larry J.	P O Box 99, Harrah 98933	848-2370			Mt. Adams School District Direct
Garcia, Ricardo	P O Box 800, Granger 98932	877-6847			KDNA Radio, Manager
Garza, Lorenzo Jr.	314 Peach Av, Sunnyside 98944	837-0906			Sunnyside School District Direct



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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
YAKIMA DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 YAKIMA COUNTY; CORKY MATTINGLY)
 Yakima County Auditor;)
 JIM LEWIS, RONALD GAMACHE,)
 and JESSE PALACIOS,)
 County Commissioners.)
)
 Defendants.)
)

CV-04-3072-LRS
CIVIL NO.
COMPLAINT

23 The United States of America, Plaintiff herein, alleges:

24 1. The Attorney General files this action pursuant to Section 203 of the
25 Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 42
26 U.S.C. § 1973aa-2, and 28 U.S.C. § 2201.

27 2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345
28 and 42 U.S.C. § 1973aa-2. In accordance with the provisions of 28 U.S.C. § 2284,
29 the Section 203 claim must be heard and determined by a court of three judges.

30

1 3. Defendant YAKIMA COUNTY, is a political and geographical subdivision
2 of the State of Washington and exists as a charter county, organized pursuant to the
3 laws of Washington.

4 4. Defendant CORKY MATTINGLY serves as Yakima County Auditor. As
5 Yakima County Auditor, she is responsible for the administration of elections and
6 voting procedures in Yakima County. Defendant MATTINGLY resides in Yakima
7 County and is sued in her official capacity.

8 5. Defendants JIM LEWIS, RONALD GAMACHE, and JESSE PALACIOS
9 serve as County Commissioners of Yakima County. The Board of County
10 Commissioners is the county's legislative body and is responsible for establishing
11 county policies and the overall administration of the Yakima County government,
12 including but not limited to funding of the office of the Auditor, personnel, and
13 supplies. Defendants Lewis, Gamache, and Palacios reside in Yakima County and
14 are sued in their official capacities.

15 6. According to the 2000 Census:

16 a. Yakima County has a total population of 222,581, of whom 142,676
17 (64.1%) are non-Latino and 79,905 (35.9%) are Latino;

18 b. Yakima County's total voting-age population is 151,830 persons, of
19 whom 107,457 (70.8%) are non-Latino and 44,373 (29.2%) are Latino;

1 c. Yakima County's total citizen voting age population is 129,575 of
2 whom 23,325 (18.0%) are Latino. Of Latino voting age citizens, 6,950
3 (29.8%) have limited English proficiency; and
4 d. Spanish heritage citizens of voting age with limited English
5 proficiency constitute 5.4% of the county's total voting age citizen
6 population.

7 7. Defendant Yakima County is subject to the requirements of Section 203 for
8 the Spanish language, as designated by the Director of the Census. See 28 C.F.R. §
9 55, Appendix. The Director determined that more than five (5) percent of Yakima
10 County's voting age citizens are members of a single language minority group
11 (Spanish heritage) who do not speak or understand English well enough to
12 participate in the English-language election process and have an illiteracy rate that is
13 higher than the national illiteracy rate. 28 C.F.R. § 55.5. The Census Bureau's
14 determination that Yakima County is covered by Section 203 for Spanish is final and
15 non-reviewable. 42 U.S.C. § 1973aa-1a(b)(4).

16 8. Because Yakima County is subject to the requirements of Section 203,
17 "any registration or voting notices, forms, instructions, assistance, or other materials
18 or information relating to the electoral process, including ballots" that Defendants
19 provide in English must also be furnished in Spanish. 42 U.S.C. § 1973aa-1a.

1 9. Defendants have not provided effective election-related materials,
2 information, and/or assistance in Spanish to limited English proficient Latino citizens
3 as required by Section 203. Specifically, Defendants have:

- 4 a. Failed to provide complete and accurate Spanish translations of all
5 materials produced in English and provided to the public, including, but
6 not limited to, information about voter registration, candidate
7 qualification procedures, voting by mail or absentee, voting at the polls,
8 and voting-related information on the Yakima County Auditor's Internet
9 site;
- 10 b. Failed to provide effective Spanish-language assistance at county
11 offices and polling places regarding election-related issues;
- 12 c. Failed to publish Spanish-language materials in a timely fashion; and
- 13 d. Failed to publish Spanish language materials and information about
14 Spanish-language assistance in a manner accessible to limited English
15 proficient Spanish-speaking voters.

16 10. Defendants' failure to provide Spanish-language election information and
17 assistance constitutes a violation of Section 203.

18 11. Unless enjoined by this Court, Defendants will continue to violate
19 Section 203 by failing to provide Spanish-language minority citizens of Yakima

1 County with Spanish-language election information and assistance necessary for their
2 effective political participation.

3 PRAYER FOR RELIEF

4 WHEREFORE, the United States of America prays that this Court enter an
5 order:

- 6 1. Declaring that Defendants have failed to provide Spanish-language
7 election information and assistance necessary to those who require it in
8 violation of Section 203;
- 9 2. Enjoining Defendants, their employees, agents and successors in office,
10 and all persons acting in concert with them, from failing to provide
11 Spanish-language election information and assistance to persons with
12 limited English proficiency as required by Section 203;
- 13 3. Ordering Defendants to devise and implement a remedial plan to ensure
14 that Spanish-speaking citizens are able to participate in all phases of the
15 electoral process as required by Section 203 for all future elections;
- 16 4. Authorizing the appointment of federal examiners for elections held in
17 Yakima County pursuant to Section 3(a) of the Voting Rights Act, 42
18 U.S.C. § 1973a(a), through December 31, 2006.

19 Plaintiff further prays that this Court order such additional relief as the

1 interests of justice may require, together with the costs and disbursements in
2 maintaining this action.

3 *Dated: July 6, 2004*

4
5
6
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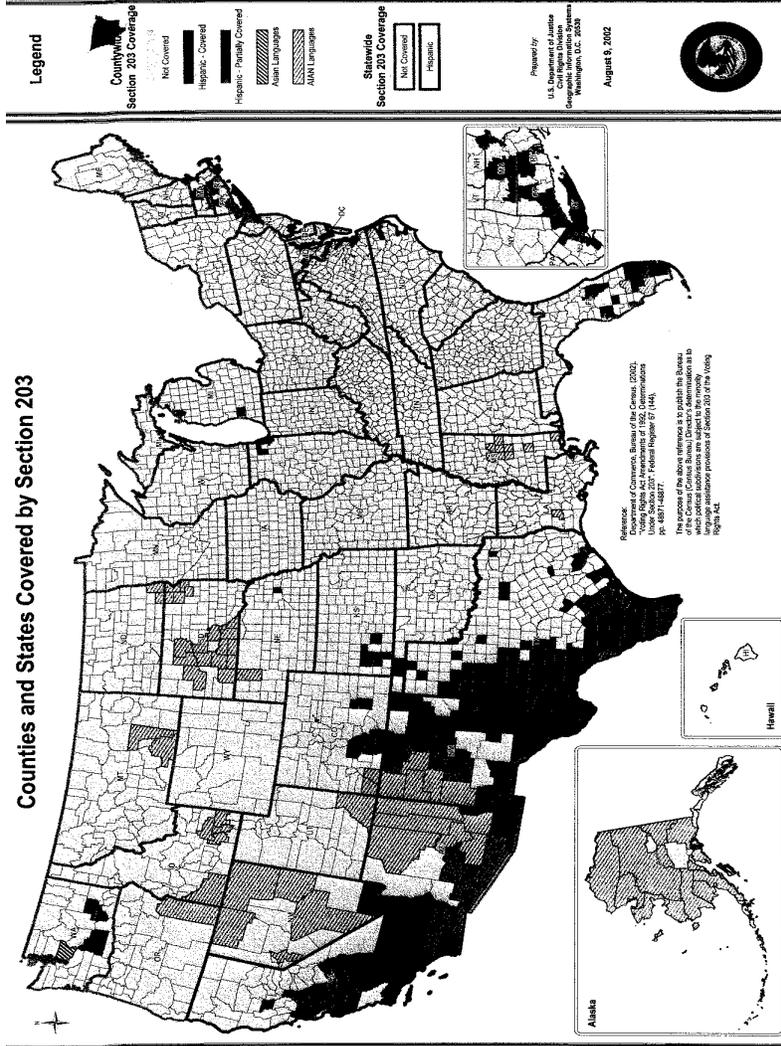
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APPENDIX TO THE STATEMENT OF BRADLEY J. SCHLOZMAN: COUNTIES AND STATES COVERED BY SECTION 203



APPENDIX TO THE STATEMENT OF MARGARET FUNG: LOWERING THE NUMERICAL TRIGGER TO IMPROVE THE EFFECTIVENESS OF SECTION 203 OF THE VOTING RIGHTS ACT



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
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Lowering the Numerical Trigger to Improve the Effectiveness of Section 203 of the Voting Rights Act

In many counties, the Asian American population is growing quickly but is still too small to meet the current test for coverage under section 203 of the Voting Rights Act. As Congress considers reauthorization of Section 203, it should lower the numerical trigger of 10,000 limited English proficient citizens of voting age, so that more counties and languages will be covered. This would expand the right to vote for thousands of Asian Americans and other language minorities.

Pursuant to Section 203, the Director of the U.S. Census Bureau must certify which states and political subdivisions are subject to the language assistance provisions. Determinations of the covered jurisdictions, based on Census 2000 data, were published in 67 Fed. Reg. 48871-77 (July 26, 2002) and are not subject to judicial review.

In December 2004, the Redistricting Office of the U.S. Census Bureau publicly released the data files that were used to determine coverage under Section 203 of the Voting Rights Act. The files can be downloaded via FTP or purchased on the Census Bureau's website (http://www.census.gov/rdo/www/data_and_products1.html).¹

Over 672,750 Asian Americans residing in 16 counties in 7 states are currently covered for language assistance, with some jurisdictions providing assistance in one or more Asian languages (see *Table 1*). These covered areas have a legal obligation to provide bilingual election materials, including voter registration forms, ballots, notices and instructions, as well as oral language assistance, such as interpreters and bilingual poll workers.

Furthermore, this data can be used to assess which areas of the country are likely to come under Section 203 if the language minority trigger is modified.² Adjusting the percent threshold has little to no impact on determinations for Asian language minority groups. By contrast, an adjustment to the numerical trigger will meaningfully expand Section 203 coverage and expand language assistance to Asian American communities.

The effect of lowering the numerical trigger to 7,500 would be to remove language barriers for at least 77,955 limited English proficient Asian American citizens eligible to vote (see *Table 2*). An additional 79,170 limited English proficient Asian American citizens would receive language assistance if the numerical trigger were lowered to 5,000 (see *Table 3*).³

At a time when the Voting Rights Act is beginning to have real significance for the growing population of Asian Americans, it is critical that Section 203 be extended and expanded, so that Asian Americans can overcome a legacy of institutional racism and participate fully in the democratic process.

¹ For more information, contact Ms. Catherine M. McCully, Chief, Census Redistricting Data Office, Bureau of the Census, U.S. Department of Commerce, Federal Building 3, Room 3631, tel 301-457-4039.

² To ensure respondent confidentiality, the data has been suppressed by the U.S. Census Bureau for groups with fewer than 50 voting age citizens in a given geography.

³ This analysis does not take into consideration the rates of growth of these populations or adjust for the undercount of various Asian American communities during Census 2000.

Table 1: Existing Coverage for Asian Language Minority Groups

GROUP	CITIZEN VOTING AGE POPULATION	CVAP & LIMITED ENGLISH PROFICIENT	ILLITERACY RATE	
ALASKA				
Kodiak Island Borough	FILIPINO	870	470	12.77
CALIFORNIA				
Alameda County	CHINESE	62,155	28,280	10.98
Los Angeles County	CHINESE	189,820	95,700	10.71
Los Angeles County	KOREAN	79,740	42,390	2.67
Los Angeles County	FILIPINO	156,320	34,985	4.46
Los Angeles County	VIETNAMESE	48,070	30,340	10.42
Los Angeles County	JAPANESE	85,765	12,510	2.88
Orange County	VIETNAMESE	71,075	45,730	6.90
Orange County	CHINESE	39,565	14,805	4.36
Orange County	KOREAN	25,235	12,240	2.37
San Diego County	FILIPINO	78,195	17,155	4.58
San Francisco County	CHINESE	102,815	58,735	16.89
San Mateo County	CHINESE	32,570	11,780	6.24
Santa Clara County	VIETNAMESE	48,375	31,265	5.76
Santa Clara County	CHINESE	61,620	24,895	5.12
Santa Clara County	FILIPINO	44,950	11,245	3.65
HAWAII				
Honolulu County	FILIPINO	111,270	24,815	10.44
Honolulu County	JAPANESE	169,865	13,865	5.27
Honolulu County	CHINESE	88,600	12,640	13.49
Maui County	FILIPINO	18,620	5,350	13.08
ILLINOIS				
Cook County	CHINESE	26,200	11,645	9.36
NEW YORK				
Kings County	CHINESE	51,290	33,635	13.32
New York County	CHINESE	41,770	21,070	21.33
Queens County	CHINESE	66,715	37,865	8.05
Queens County	KOREAN	18,525	11,835	6.46
TEXAS				
Harris County	VIETNAMESE	28,405	16,970	7.81
WASHINGTON				
King County	CHINESE	28,430	10,535	9.35

Table 2: Coverage Lowering the Numerical Trigger to 7,500

GROUP		CITIZEN VOTING AGE POPULATION	CVAP & LIMITED ENGLISH PROFICIENT	ILLITERACY RATE
CALIFORNIA				
Alameda County	FILIPINO	43,895	9,335	5.57
Los Angeles County	CAMBODIAN	12,135	7,830	29.44
Sacramento County	CHINESE	19,715	8,085	16.14
San Diego County	VIETNAMESE	17,285	9,915	8.93
San Francisco County	FILIPINO	29,360	8,295	7.11
San Mateo County	FILIPINO	37,185	8,695	4.60
ILLINOIS				
Cook County	KOREAN	18,770	8,930	4.54
NEW YORK				
Queens County	ASIAN INDIAN	43,900	8,640	3.18
WASHINGTON				
King County	VIETNAMESE	13,605	8,230	10.27

Table 3: Additional Coverage Lowering the Numerical Trigger to 5,000

GROUP		CVAP	CVAP LEP	ILLRATE
CALIFORNIA				
Alameda County	VIETNAMESE	12,095	7,075	11.10
Contra Costa County	CHINESE	19,945	6,070	4.70
Los Angeles County	ASIAN INDIAN	29,740	5,405	5.27
Los Angeles County	THAI	10,405	5,130	5.56
Sacramento County	VIETNAMESE	8,060	5,010	11.08
San Diego County	CHINESE	20,195	6,295	10.09
HAWAII				
Honolulu County	KOREAN	20,010	5,830	5.75
ILLINOIS				
Cook County	ASIAN INDIAN	27,310	6,630	4.00
Cook County	FILIPINO	33,550	5,955	3.36
MARYLAND				
Montgomery County	CHINESE	14,755	5,815	4.47
TEXAS				
Harris County	CHINESE	16,385	7,025	9.32
VIRGINIA				
Fairfax County	VIETNAMESE	11,920	6,960	4.89
Fairfax County	KOREAN	12,090	5,970	1.68

APPENDIX TO THE STATEMENT OF MARGARET FUNG: LANGUAGE ACCESS TO THE VOTE
FOR ASIAN AMERICANS: RENEW AND EXPAND SECTION 203 OF THE VOTING RIGHTS
ACT



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
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Language Access to the Vote for Asian Americans

Renew and Expand Section 203 of the Voting Rights Act

In the early 1970s, the U.S. Congress found that Asian Americans, Latinos, Alaskan Natives, and Native Americans faced significant barriers to electoral participation because many had low educational attainment and were not fully proficient in English. In response, Congress enacted the Language Assistance Provisions under Section 203 of the Voting Rights Act.

Section 203 Coverage

Section 203 covers counties that have, according to the census, 5% or more than 10,000 voting-age (over 18 years old) citizens who speak the same language, are limited English proficient, and, as a group, have a higher illiteracy rate than the national illiteracy rate, which is measured by educational attainment.

When Section 203 applies, all voting materials must be translated and interpreters must be provided at poll sites. There are currently 5 Asian language groups covered in 16 jurisdictions (see chart).

Expanding Access to the Vote

Section 203 has given Asian Americans a real voice in the political process. Translated voter registration forms have helped more Asian Americans register to vote, bilingual ballots have allowed voters to vote on their own and in private, and election notices in Asian language media have increased voter turnout.

Notwithstanding these successes, there have been some shortcomings in Section 203 compliance. For example, voting materials were mistranslated, interpreters spoke the wrong language or dialect, too few interpreters were available, and poll workers did not post translated signs. Vigorous enforcement of Section 203 is still needed.

Reauthorization of the Voting Rights Act

Section 203 and the Voting Rights Act's enforcement provisions (Section 5) are set to expire in August 2007, unless Congress "reauthorizes" them. Advocates are urging Congress to renew the Voting Rights Act by showing how language assistance has increased the political participation of racial and ethnic minorities.

New Places and Languages

In many counties, the Asian American population is growing but still too small to meet Section 203's current test for coverage. Reauthorization is an opportunity to expand language assistance to include more counties and other Asian languages. As Congress considers reauthorization of Section 203, Congress should lower the 10,000 trigger so that more counties will be covered. This will expand the right to vote for many more Asian Americans.

Asian Language Coverage Under Section 203

Based on Census 2000

Alaska

Kodiak Island Borough: Filipino

California

Alameda: Chinese
Los Angeles: Chinese, Japanese,
Korean, Filipino, Vietnamese
Orange: Chinese, Korean, Vietnamese
San Diego: Filipino
San Francisco: Chinese
San Mateo: Chinese
Santa Clara: Chinese, Filipino,
Vietnamese

Hawaii

Honolulu: Chinese, Filipino, Japanese
Maui: Filipino

Illinois

Cook: Chinese

New York

Kings (Brooklyn): Chinese
New York (Manhattan): Chinese
Queens: Chinese, Korean

Texas

Harris: Vietnamese

Washington

King: Chinese

For more information contact AALDEF at info@aaldef.org or 212.966.5932.



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FOR IMMEDIATE RELEASE
November 9, 2005

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AALDEF MONITORS REPORT VOTING RIGHTS VIOLATIONS IN 2005 ELECTIONS **MONITORS DOCUMENT CONCERNS IN NY, NJ, and MA**

New York, NY—More than 275 volunteers from the Asian American Legal Defense and Education Fund (AALDEF) and a coalition of Asian American advocacy groups monitored yesterday's elections at approximately 80 poll sites in New York, New Jersey, and Massachusetts. Dozens of AALDEF monitors documented and phoned in reports that polling places were understaffed, staff were hostile to Asian American voters, and that required voter assistance materials were not readily available to Asian-language voters.

Under Section 203 of the federal Voting Rights Act, jurisdictions with sizeable Asian language populations must ensure the availability of interpreters and voter assistance and voters' rights materials translated in those languages on Election Day. (For details, see AALDEF's fact sheet, "Language Access to the Vote for Asian Americans": http://www.aaldef.org/docs/LanguageAccessToTheVote_VRA203.pdf.) In New York City, three boroughs are required to staff polling sites with Chinese-language interpreters—Manhattan, Queens, and the Bronx—with the addition of Korean in Queens. In Boston, MA, a court settlement issued last month requires the City of Boston to provide Chinese, Vietnamese, and Spanish language assistance to voters under the Voting Rights Act in the Nov. 8th elections. And in New Jersey, AALDEF had alerted the U.S. Justice Department to racist anti-Asian remarks made by talk radio hosts about an Asian American mayoral candidate before the 2005 primary election.

Said AALDEF Staff Attorney Glenn Magpantay, "The preliminary reports show that Asian Americans needed to overcome several obstacles to exercise their right to vote. As in the previous elections, poll workers were hostile and some did not understand their obligations under federal laws. This is unacceptable."

AALDEF volunteers also conducted its annual multilingual survey of Asian American voters in those states, and the first series of survey results will be released in the coming weeks.

Preliminary list of documented violations in the 2005 Elections:

New York

New York County, NY

At the Mott St. Senior Center, in the heart of Chinatown, only two of the four assigned Chinese interpreters were present by 5:20 p.m.; for the majority of the time, only one Chinese interpreter was on duty, making the site substantially inaccessible to Chinese speakers. In addition, the "Vote Here" sign at the site's entrance was only posted in English and Spanish, and only one Chinese-language sample ballot was available for seven voting machines. Poll workers were inconsistent in their treatment of voters whose names were not found in voter rolls. One man was sent to four election district tables to look up


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his name, and without an interpreter available, believed he could not vote. A poll worker eventually left to get him and ask him to fill out an affidavit ballot.

At the busy Land's End II poll site in Chinatown, the NYC Board of Elections shut down the site's voting machines for half an hour in the early evening, forcing waiting voters to vote by emergency ballots. In addition, a district leader prevented one Chinese American voter at the site from allowing the poll site interpreter to accompany her into the voting booth.

At P.S. 20 in the Lower East Side, Chinese-language affidavit ballots were missing from all election district tables, in direct conflict with federal law. Only two of three Chinese interpreters assigned by the Board of Elections were present at the polling site.

At P.S. 140 in the Lower East Side, Chinese-language sample ballots were missing from four of the five total election district tables. Chinese-language voting machine instructions were not posted at one election district voting table, and posted far from voting machines at two election district tables. Chinese-language affidavit ballots, Chinese voter registration forms, and various multilingual materials were kept behind voting machines, in direct violation of the law.

At Ralph Hernandez Tenement in Chinatown, only two of four Chinese interpreters assigned by the Board of Elections were present at the polling site, and a wide array of mandated voters' rights materials were left unopened in their original plastic wrap or were, as in the case of multilingual affidavit ballot instructions, entirely missing from two of three election district tables.

At Manhattan Civil Court, another poll site, only two Chinese interpreters of the four assigned were present by 11:26 a.m.

Kings County, NY

At P.S. 217 in Midwood, Brooklyn, a Pakistani American voter noticed his voting machine was malfunctioning. When he reported it to the poll workers, the site supervisor summoned looked at the machine and then chose to ignore the problem and the voter. When the voter asked for some resolution to the voting problem, she vulgarly cursed him and refused to address his concern.

Also at P.S. 217, at least two Pakistani American voters were immediately asked to show IDs in order to vote. At least one Pakistani American whose name could not be found in the voter rolls left without voting, although he had voted recently and some of his family members were in the voter rolls. Under the Help America Vote Act (HAVA), only certain first-time voters are required to show ID, and voters whose names do not appear in the voter rolls have a right to vote by provisional affidavit ballot.

At P.S. 314 in Sunset Park, a Chinese American voter could not vote because she was told her name was not listed. Although she knew that it was misspelled in the voter rolls, poll workers rudely refused to let her look under a different name or fill out a form to correct the voting record. She was able to vote only because an interpreter intervened to assist her.

Queens County, NY

At Flushing High School, only two Chinese interpreters and two Korean interpreters were on duty, although four of each had been assigned to the poll site. At four of the five election district tables, Chinese- or Korean- language affidavit ballots were missing. Multilingual instruction cards for affidavit ballots and voting machines were entirely missing from all five election district tables.


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At J.H.S. 189, a poll worker rushed one Chinese American voter to finish voting even though she had not yet finished reading the instructions. The poll worker stopped when a supervisor arrived. Another voter reported that a poll worker at the site was very rude and tried to belittle her.

At P.S. 69 in Jackson Heights, a Bangladeshi American voter could not find her name in the voter rolls although he had voted at the same site in 1996, and registered again after poll workers could not find his name during the 2005 primaries and was asked to vote by affidavit ballot. He voted again this year by affidavit ballot. Another Bangladeshi American was asked to provide ID even though this election was not his first time voting.

At P.S. 11 in Woodside, voting instruction signs were not posted in Korean.

At P.S. 150 in Sunnyside, a variety of voting materials were not available in Korean or Chinese.

At P.S. 148 in East Elmhurst, one election district voting table had bilingual materials stacked in a pile in unopened packages. At South Ridge Coops in Jackson Heights, a Spanish interpreter was available but poll workers did not seek the interpreter's assistance when a voter needed it.

At least one Asian American voter at the Rosenthal Senior Center in Flushing was turned away and misdirected to P.S. 114, another poll site miles away in Far Rockaway.

New Jersey

At the Senior Citizens Center in Fort Lee, one Korean American voter was asked to show ID before she could vote. After voting, she reported that a person came up to her and asked in a harsh tone if she was eligible to vote, and demanded to know her ethnicity. Another Korean American who had been voting since 1985 had his eligibility challenged.

Based on surveys AALDEF volunteers conducted with exiting voters, poll workers insisted that a number of Asian American voters (at least a dozen in Edison and Jersey City) show identification before being allowed to cast a ballot, even though several who had voted in previous elections were not affected by HAVA voter identification provisions for new voters.

In Jersey City, after two Korean American voters cast their ballots, a partisan challenger asked for and mocked the name of one Korean American voter named Hung, asking the poll site, "Have you ever hung a [voter's surname]?" The challenger continued to ridicule the voter's name with a song, in the presence of other waiting voters and site poll workers, who failed to rebuke the challenger.

Massachusetts
Boston, MA

At least two poll monitors noted that Vietnamese interpreters criticized the poor Vietnamese translation of instructions on the use of provisional ballots.

At the Pasciucco Apartments poll site, Chinese and Vietnamese voter assistance materials mandated by a court settlement were not provided unless explicitly requested. Poll workers claimed the tables were too small to accommodate court-ordered translated voting materials.



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

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At the Dorchester House poll site, court-mandated Vietnamese and Spanish voter assistance materials were segregated and kept on a separate table.

At the Early Learning Center, Spanish voter assistance materials were not available unless specifically requested.

At two Boston poll sites, Thomas A. Edison Middle School and Jewish Community Housing for the Elderly, Chinese-language sample ballots and provisional ballots were entirely missing from the poll site. When one voter at Edison Middle School was asked to show ID but did not have any with him, the poll site warden sent him away and remarked, "Read up before you come back."

At the Academy Hill Library, poll workers put up the multilingual "Interpretation Available" and "Fill in the Oval" signs, a Chinese-language check-in table sign, and Chinese-language voter registration forms only after AALDEF's poll monitor arrived.

2005 AALDEF Elections Monitoring Co-Sponsors

New York: Asian American Bar Association of New York, Chinatown Voter Education Alliance, Project Impact, South Asian American Leaders of Tomorrow, Korean American Voters' Council of NY/NJ, YKASEC: Empowering Korean American Community.

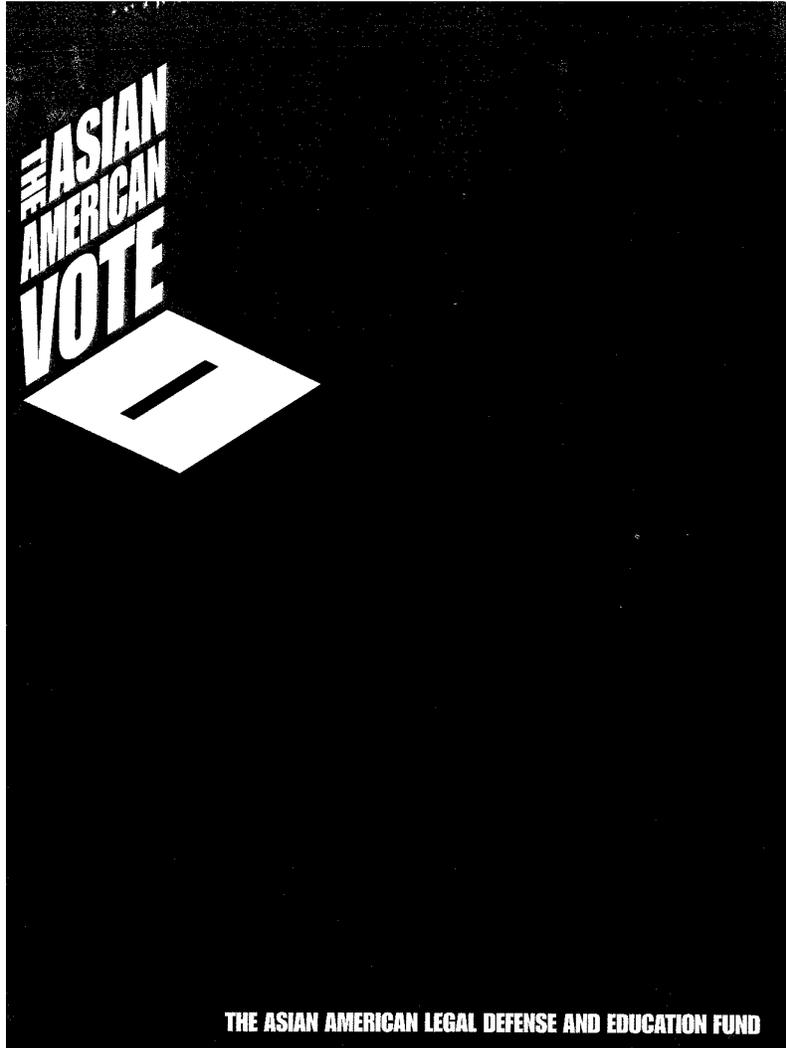
Massachusetts: Family Unity of Lowell, ONE Lowell, Asian Pacific American Agenda Coalition, Greater Boston Legal Services/Asian Outreach Unit, Boston Asian Students Alliance, Lawyers' Committee for Civil Rights of the Boston Bar Association, Chinese Progressive Association, Vietnamese American Initiative for Development, Weil, Gotshal & Manges LLP.

New Jersey: Korean American Voters' Council of NY/NJ, South Asian American Leaders of Tomorrow, NJ Appleseed Public Interest Law Center, NJ Election Protection & Integrity Project, ACLU of NJ, Lawyers' Committee for Civil Rights, People for the American Way.

###

The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, is a national organization that protects and promotes the civil rights of Asian Americans. By combining litigation, advocacy, education, and organizing, AALDEF works with Asian American communities across the country to secure human rights for all.

APPENDIX TO THE STATEMENT OF MARGARET FUNG: THE ASIAN AMERICAN VOTE—A
REPORT ON THE AALDEF MULTILINGUAL EXIT POLL IN THE 2004 PRESIDENTIAL
ELECTION



The Asian American Legal Defense and Education Fund (AALDEF), founded in 1974, protects and promotes the civil rights of Asian Americans through litigation, legal advocacy and community education in the areas of immigrant rights, civic participation and voting rights, economic justice for workers, racially-motivated violence and police misconduct, youth rights and educational equity, affirmative action, and language rights.

This report was written by AALDEF Policy Analyst Nancy W. Yu, with the assistance of Glenn D. Magpantay, Margaret Fung, and Lillian Ling. AALDEF also acknowledges Judy Pisanont, Jennvine Wong, Yaejin Kim, Juvaria Khan, Sang Joon Kim, Jin Ren Zhang, Daphne Hsu, and Stephanie Chang.

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The Asian American Vote

A Report on the AALDEF Multilingual Exit Poll in the 2004 Presidential Election

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EXECUTIVE SUMMARY

On November 2, 2004, the Asian American Legal Defense and Education Fund (AALDEF), with the help of several co-sponsoring organizations and 1,200 attorneys, law students, and volunteers, conducted the nation's largest nonpartisan, multilingual exit poll of almost 11,000 Asian American voters. The questionnaire was written in 8 languages, and Asian Americans were surveyed in 23 cities in 8 states: New York, New Jersey, Massachusetts, Rhode Island, Michigan, Illinois, Pennsylvania, and Virginia.¹

The five largest Asian groups surveyed in 2004 were Chinese (46%), South Asian (25%), Korean (14%), Southeast Asian (6%), and Filipino (5%).² 82% were foreign born. 29% had no formal U.S. education. More than a third (38%) were first-time voters.

- *Asian Americans were largely Democratic voters.* Almost 60% of Asian Americans were registered Democrats, over a quarter were not enrolled in any political party, and only 1 in 7 Asian Americans were registered Republicans. By a 3 to 1 margin, Asian Americans favored Senator John Kerry over President George W. Bush, 74% to 24%, with 2% voting for other candidates. Among first-time Asian American voters, 78% voted for Kerry, 20% voted for Bush, and 2% voted for other candidates.
- *Party crossover voting favored Democrats.* 18% of all Asian Republicans crossed party lines to vote for Kerry. By contrast, 7% of Asian Democrats voted for Bush. Among Asian voters not enrolled in any political party, more than two thirds (70%) voted for Kerry, while 26% voted for Bush.
- *Economy/jobs was the most important issue to Asian Americans in voting for President.*

Overall, the most important issues for voters were Economy/Jobs (26%), followed by the War in Iraq (16%), Terrorism/Security (16%) and Health Care (14%). Asian Americans who voted for Kerry were most influenced by the Economy/Jobs (29%), followed by the War in Iraq (18%) and Health Care (15%). Among Bush supporters, the most important factors influencing their vote for President were Terrorism/Security (33%), Economy/Jobs (18%), and the War in Iraq (11%).

- *Asian Americans share common political interests, even across ethnic lines.* Though Asian Americans are diverse, coming from different countries and speaking different languages and dialects, in the political arena there is a fair amount of political unity. Regardless of ethnicity, almost all Asian ethnic groups voted as a bloc for the same candidates and identified common reasons for their vote. Voters were asked to select the most important civil rights/immigrants rights issue from the following choices: Affirmative Action, Civil Liberties, Deportation/Detention, Hate Crimes, Immigration Backlogs, Language Barriers to Services, Legalization of Immigrants, Racial Profiling, Voting/Political

¹ AALDEF has conducted exit polls of Asian American voters in every major election since 1988. Over 5,000 Asian New Yorkers and 3,000 Asian voters in 4 states (NY, NJ, MA, MD) were surveyed in AALDEF's 2000 and 2002 exit polls, respectively.

² All percentages are based on total correct responses to survey questions. Questions left blank or incorrectly answered were not included in calculating percentages.



Photo by Joseph Hsu, *World Journal*

Representation, and Workers' Rights. Civil Liberties was the top choice for each ethnic group.

- Asian Americans turned to ethnic media outlets for their main source of news.** More than half (51%) of all respondents got their news about politics and community issues from the ethnic press, rather than from mainstream media outlets. The ethnic newspaper was the most common source used among those using ethnic sources. 36% of voters got their news from ethnic media sources in Asian languages.
- Language assistance and bilingual ballots are needed to preserve access to the vote.** 41% of Asian Americans expressed that they were limited English proficient. 14% identified English as their native language. A number of poll sites were mandated to provide bilingual ballots and interpreters under the federal Voting Rights Act; other jurisdictions voluntarily provided language assistance. In the 2004 elections, almost a

third of all respondents needed some form of language assistance to vote. The greatest beneficiaries of language assistance (46%) were first-time voters.

- Asian Americans faced many voting barriers.** Hundreds of voters were directed to the wrong poll site and complained of hostile, rude or poorly trained poll workers. In one instance, 66% of voters who did not have to show identification were required to provide identification. AALDEF poll monitors and pollsters received more than 600 complaints of voting problems.

Community exit polls paint a different picture of the electorate. Different results are found when exit polls are taken in numerous Asian languages and pollsters resemble the populations they are polling. For example, only 11% of respondents in the poll conducted by the National Election Pool were first-time voters, whereas over a third (38%) of those surveyed in AALDEF's multilingual exit poll were first-time voters. Moreover, although the National Election Pool reported that 54% of Asian Americans voted for Kerry, AALDEF's exit poll found that 74% of Asian Americans voted for Kerry. Multilingual exit polls reveal vital information about Asian American voting patterns that are regularly overlooked or very different from mainstream voter surveys.

Copies of the report can be obtained online at www.aaldef.org or by calling the Asian American Legal Defense and Education Fund at 212.966.5932.

METHODOLOGY

In November 2004, 1,197 volunteers surveyed 10,789 Asian American voters at 87 poll sites in 23 cities in 8 states (New York, New Jersey, Massachusetts, Rhode Island, Michigan, Illinois, Pennsylvania, and Virginia).³

Seven of the eight states selected were among the states with the largest Asian American populations in the nation.⁴ Cities and poll sites with large concentrations of Asian American voters were selected based on census data and interviews with local elections officials and community leaders. Sites with a history of voting problems were also selected.

Poll sites were covered throughout the day, from open to close, usually 7:00 AM to 8:00 PM. Volunteers were provided by the co-sponsoring organizations, Asian Pacific American Law Student Associations, community-based organizations, and faculty at universities. All volunteers were trained in conducting the exit poll. All were nonpartisan. Volunteers were instructed to approach all Asian voters as they were leaving poll sites and to ask them to complete a questionnaire.⁵

10,789 surveys were collected.⁶ The survey questionnaire was written in 7 Asian languages: Chinese, Korean, Bengali, Arabic, Vietnamese, Khmer, and Lao, in addition to English. Volunteers were conversant in 23 Asian languages and dialects: South Asian languages (Hindi, Bengali, Punjabi, Malayalam, Gujarati, Tamil, Urdu, Kannada, Nepali, Telegu, Marathi), Southeast Asian

languages (Vietnamese, Khmer, Thai), Chinese dialects (Cantonese, Mandarin, Taiwanese, Fukienese, Toisan), Tagalog, Japanese, Korean, and Arabic. About 1 in 3 respondents (32%) completed the translated questionnaire. 5% of voters needed assistance in completing the survey. Assistance included volunteers reading questionnaires aloud to voters or providing translation in another language.

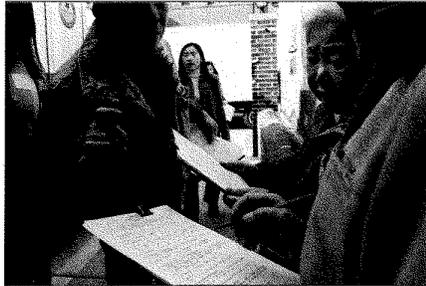


Photo by Jenjamin Yuh

³ A full list of the poll site locations can be found at Appendix A.

⁴ U.S. Census Bureau; Census 2000 Summary File 1 (SF1) 100-Percent Data. Rhode Island was the only state selected that has a comparatively small Asian American population. The inclusion and exclusion of states depended on the capacity and interest of local groups to co-sponsor the exit poll and mobilize the requisite number of volunteers.

⁵ Purposive sampling methodology was employed in this exit poll. Purposive sampling is a non-random sampling method that involves choosing respondents with certain characteristics.

⁶ One hundred non-Asians also voluntarily responded to the exit poll. These surveys, however, were not included in the total sample or the calculation of percentages for this report.

I. Profile of Survey Respondents

Ethnicity. Survey respondents were predominantly Chinese (46%), South Asian (25%), Korean (14%), Southeast Asian (6%) and Filipino (5%). South Asian includes respondents of Asian Indian, Bangladeshi, Pakistani, Indo-Caribbean³, Sri Lankan, and Nepalese heritage. Southeast Asian includes Vietnamese, Cambodians, Laotians, Hmong, Thai, Indonesians, Burmese, and Malaysians. The remaining 4% of respondents were of other Asian ethnicities, including Japanese, Arab⁴, and multiracial Asians.

Language. While 14% of respondents identified English as their native language, more than 41% identified one or more Chinese dialects as their native language, 20% identified one or more South Asian languages, 13% identified Korean, 5% identified one or more Southeast Asian languages, 4% identified Tagalog, 1% identified Arabic, and 2% identified some other language.

Among Chinese voters, 54% selected Cantonese as their native dialect, 28% chose Mandarin, and 7% chose another Chinese dialect, including Fukienese, Shanghainese, Toisan, Taiwanese and Hakka. 10% selected English as their native language, and 1% spoke another language.

Among South Asian voters, 19% selected Bengali as their native language, 15% chose Gujarati, 14% chose Urdu, 10% chose Hindi, 6% chose Malayalam, and 5% chose Punjabi. 11% spoke multiple South Asian languages. The remaining 19% selected English as their native language, and 1% spoke another language.

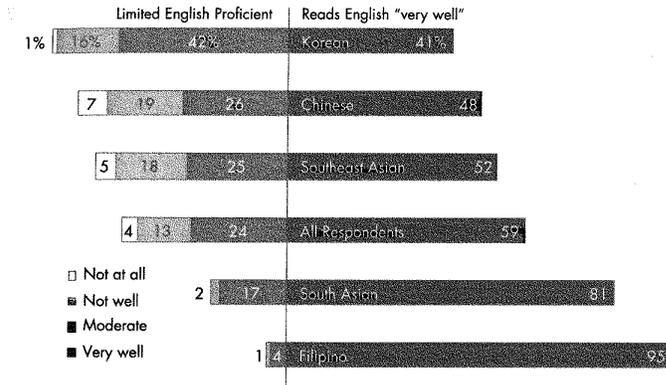
Among Korean voters, nearly 89% selected Korean as their native language. 10% selected

Percentage of Voters	Asian Respondents
100%	Total
71	Women
29	Men
46	Chinese
25	South Asian
14	Korean
6	Southeast Asian
5	Filipino
4	Other Asian
25	18 to 24 years old
18	25 to 34 years old
20	35 to 44 years old
19	45 to 54 years old
11	55 to 64 years old
8	65 and over
18	Born in the U.S.
82	Foreign born, naturalized citizen: 14% 0-2 years ago 17% 3-5 years ago 22% 6-10 years ago 47% More than 10 years ago
57	Democrat
15	Republican
26	Not enrolled in any party
2	Other party
38	First-time voter
62	Has voted before
29	No formal education in the U.S.
	Education in the U.S., highest level:
1	Elementary school
2	Have from high school
3	High school degree or equivalent
2	Trade school degree
42	College or university degree
14	Advanced degree

³ Indo-Caribbeans are ethnic Asian Indians who were brought to Caribbean nations, such as Guyana, Surinam, Trinidad, and Jamaica, as indentured servants over a century ago. Beginning in 1980 and throughout the 1990s, they have been migrating to the United States, specifically to New York.

⁴ Although the U.S. Census Bureau designates Arabs as White, Arabs were included as Asian for this survey, since South Asians and Arabs faced similar problems of discrimination and racial profiling after September 11.

Figure 1. Ethnicity by Reading Proficiency.



English as their native language, and 1% spoke another language.

Among Southeast Asian voters, 57% selected Vietnamese as their native language, 25% chose Khmer, and 6% chose Laotian. Another 4% spoke Cantonese and/or Mandarin as their native language. 6% selected English as their native language, and 2% spoke another language.

Among Filipino voters, over three-quarters (77%) selected Tagalog as their native language. 22% selected English as their native language, and 1% spoke another language.

Limited English Proficiency. 41% of all respondents were limited English proficient.³ Korean Americans were the most limited English proficient of all Asian ethnic groups, with 59% indicating that they have at least some difficulty reading English. Similarly, 59% of Vietnamese and 52% of Chinese voters also read English less than "very well." Among Southeast Asian voters as a whole, 48% were limited English proficient. Among the South Asians polled, Asian Indians were largely proficient in English, while

Bangladeshi and Pakistani voters exhibited higher levels of limited English proficiency, 38% and 26% respectively.

Over a third (37%) of limited English proficient respondents were first-time voters.

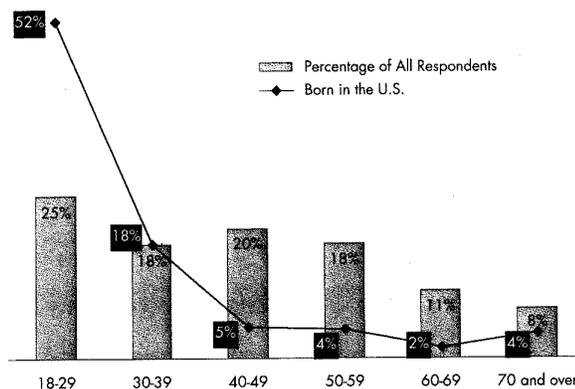
Foreign Born. 82% of all respondents were foreign born naturalized citizens, of which almost half (49%) were limited English proficient. 14% of these foreign born voters became U.S. citizens within the last two years, 17% 3 to 5 years ago, and 22% 6 to 10 years ago. 47% of those foreign born were naturalized more than 10 years ago.

Figure 2. Foreign Born.

South Asian	88%
Korean	87%
Southeast Asian	85%
All respondents	82%
Chinese	79%
Filipino	77%

³ Limited English proficiency is determined by one's ability to read English less than "very well."

Figure 3. Age by Nativity.

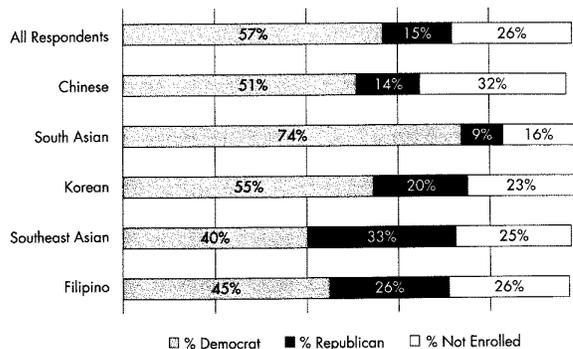


Age. The age distribution of voters polled was fairly even across all groups, with Asian youth 18 to 29 years old and middle aged Asians 40 to 49 years old as the two largest age groups surveyed, 25% and 20% respectively. Voters over 60 years old were 19% of the total respondent pool, in addition to those aged 30 to 39 and 50 to 59, each 18% respectively. More than 95% of Asian voters above the age of 40 were foreign born, while over half of the Asian youth (52%) were native U.S. born.

Educational Attainment. 29% of all respondents had no formal education in the United States. 3% had less than a high school education, 10% attained high school or trade school degrees from a U.S. school, 42% attended college or university in the U.S., and 16% held advanced graduate degrees.¹⁰ Moreover, 38% of limited English proficient voters had no formal education in the U.S.

¹⁰ Other surveys, such as the census, often phrase questions on educational attainment without making distinctions between the education completed abroad and the education acquired in the U.S. The percentages presented in this report reflect education attainment only in the U.S.

Figure 4. Ethnicity by Party Affiliation.



Party Affiliation. A majority of Asian Americans (57%) were registered Democrats, 15% were registered as Republicans, and only 2% were enrolled in other parties. 26% of all Asian American respondents were not enrolled in any political party.

While Democratic Party enrollment was the choice of each Asian ethnic group, there were some variations. By and large, South Asians, particularly Bangladeshi (84%) and Indo-Caribbean voters (81%), were registered as Democrats. A majority of Southeast Asian voters of Laotian and Cambodian descent were also enrolled as Democrats, 63% and 66% respectively. But nearly half (48%) of the Vietnamese voters who were surveyed were registered as Republicans. The Chinese respondents had the highest percentage among all Asian ethnic groups of those not enrolled in any party (32%).

First Time Voting. More than a third (38%) of all those surveyed stated that the November 2004 elections were the first U.S. elections in which they had voted. More than half of the Cambodian (57%), Arab (51%), and Bangladeshi (51%) respondents were first-time voters. 46% of Southeast Asians as a whole were voting for the first time. Among South Asians, there were also many first-time voters (42%), notably among the Bangladeshi and Pakistani communities.

Figure 5. First Time Voting.

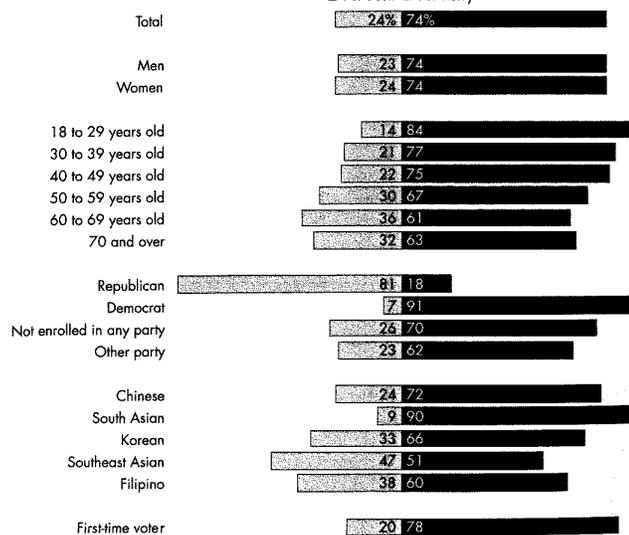
Southeast Asian	46%
South Asian	42%
All respondents	38%
Chinese	37%
Korean	35%
Filipino	27%

II. Asian Americans and the Presidential Vote

Asian Americans favored Senator John Kerry over President George W. Bush, 74% to 24%, with 2% voting for other candidates. Exit polls conducted by the National Election Pool (ABC, Associated Press, CBS, CNN, Fox and NBC) and the *Los Angeles Times* likewise found that Asian American voters favored Kerry over Bush, but those polls had much smaller samples of Asian American voters.¹¹

Among first-time Asian American voters, 78% voted for Kerry, 20% voted for Bush, and 2% voted for other candidates.

Figure 6. Vote for President.



¹¹ Asians made up only 2% of the total sample in the exit poll conducted by the National Election Pool and 3% of the total sample in the exit poll conducted by the *Los Angeles Times*. These surveys were administered in English and Spanish.
¹² Exit poll data for the National Election Pool was collected by Edison Media Research and Mitofsky International. Their national poll sampled 13,660 voters, either exiting the polling place or telephone interviews of absentee/early voters. 77% were White, 11% African Americans, 8% Latino, 2% Asian, and 2% other. More results from this exit poll are available at <http://www.nsbtc.msn.com/id/5297138/>.

Among Asian ethnic groups, South Asians were the strongest supporters for Kerry (90%).

Compared to other racial groups, Asian Americans voted for Presidential candidates at about the same percentage as Latinos, who voted 53% for Kerry and 44% for Bush.¹²

Figure 7. Vote for President by Racial Group.

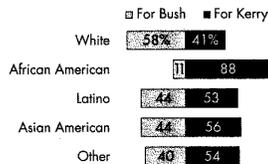
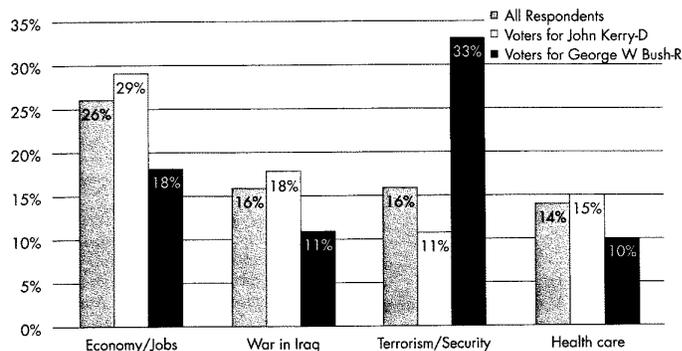


Figure 8. Most Important Factors Influencing Their Vote for President.



A. Most Important Factor in Vote for President

The most important issues influencing Asian Americans in their vote for president were: Economy/Jobs (26%); War in Iraq (16%); Terrorism/Security (16%); Health Care (14%); Civil Rights/Immigrant Rights (13%); Education (8%); Other (4%); and Crime in Neighborhoods (3%). Other issues included the candidate's character, gay rights, reproductive rights, stem cell research and international affairs/foreign policy.

Among Bush supporters, the factors influencing the vote were Terrorism/Security (33%), Economy/Jobs (18%), and the War in Iraq (11%). Among Kerry supporters, the factors influencing the vote were Economy/Jobs (29%), the War in Iraq (18%), and Health Care (15%).

B. Crossover Voting

In the presidential race, 18% of all Asian Republicans crossed party lines to vote for Kerry, while only 7% of Asian Democrats crossed over to vote for Bush. Kerry was also

the choice of Asian American voters who were not enrolled in any political party.

Figure 9. Vote for President by Party Affiliation.

Voted For	Asian Democrats	Asian Republicans	Asians Not Enrolled
Bush	7%	81%	26%
Kerry	91%	18%	70%

Crossover voting for Kerry was stronger among Asian Americans when compared to the nation's voters. The National Election Pool reported that only 6% of all Republicans voted for Kerry, while 11% of all Democrats voted for Bush.¹³

South Asian voters showed overwhelming support for Kerry, with more than 32% of South Asian Republicans crossing party lines to vote for a Democrat. Only 2% of South Asian Democrats voted for Bush. 1 in 5 Chinese Republicans also crossed party lines to vote for Kerry, while almost 1 voter for every 10 Chinese Democrats voted for Bush.

¹³ 37% of this sample were registered Democrats, 37% were Republican, and 26% were Independent.

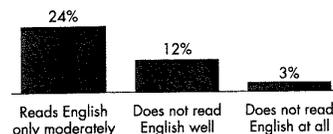
III. The Vote by Other Characteristics

A. First-Time Voters

39% of first-time voters were limited English proficient compared to 41% overall.

Nearly half (46%) of those who used some form of language assistance were first-time voters.

Figure 10. Limited English Proficiency.



57% of first-time voters were Democrats. By contrast, 13% were Republicans and 28% were not enrolled in any party. Only 2% were enrolled in another political party.

Among these new Asian American voters, 78% voted for Kerry, 20% voted for Bush, and 2% voted for other candidates. The most important factors influencing their vote mirrored that of all voters, Economy/Jobs (27%), the War in Iraq (17%), and Terrorism/Security (14%).

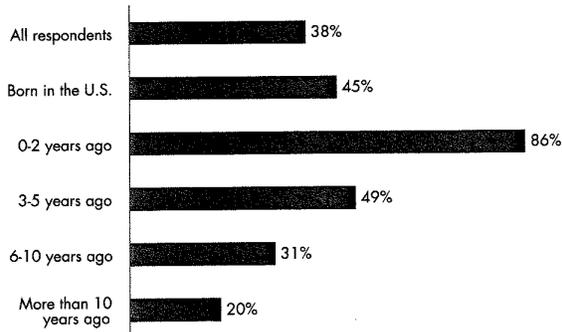
B. Foreign Born Voters

82% of the Asian Americans surveyed on Election Day were foreign born voters.¹⁴

Of the survey respondents who were native born, 45% voted for the first time. By contrast, 86% of those who became U.S. citizens in the last 2 years voted for the first time. Close to half (49%) of the Asian Americans who became U.S. citizens 3 to 5 years ago were also new voters.

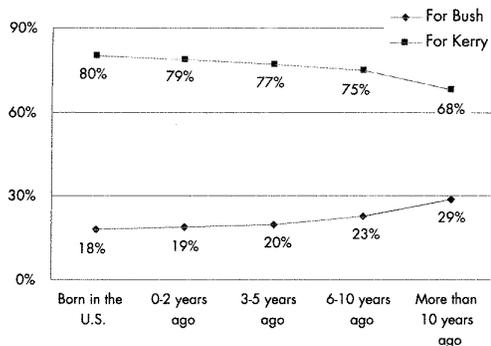
Over half (52%) of the foreign born voters who became U.S. citizens in the last 5 years were limited English proficient. However, Asian Americans who had been naturalized 6-10 years or more than 10 years also expressed difficulty with English, 47% and 48% respectively.

Figure 11. Citizenship Tenure by First Time Voting.



¹⁴ Foreign born voters became U.S. citizens through naturalization.

Figure 12. Citizenship Tenure by Vote for President.



There was an inverse relationship between the vote for the presidential candidates and the citizenship tenure of Asian American voters. Kerry's greatest support came from U.S. born Asian Americans and Asian Americans who became citizens within five years of the election. Conversely, Bush's greatest support came from those who had been naturalized for more than 10 years.

Foreign born voters, regardless of when they naturalized, identified Economy/Jobs as the most important factor influencing their vote for president. However, they were more likely to rank Civil Rights or Health Care as motivating factors influencing their vote than U.S. born voters, who ranked the War in Iraq second and Terrorism/Security third.

C. Young Voters

Close to half (48%) of Asian Americans aged 18 to 29 years old were foreign born. 63% of them voted for the first time.

Across all age groups, young people favored Kerry the most, with 84% voting for Kerry, 14% voting for Bush and 2% for other candidates. Though 9% of these Asian youth were registered in the Republican Party, 25% of them crossed party lines to vote for Kerry. By contrast, 4% of young Democrats voted for Bush.



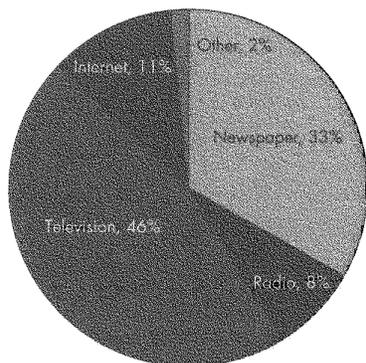
Photo by Jenjamin Yuh

IV. News Sources and Civil Rights Issues

A. Source of News

Nearly 46% of Asians responded that they watched television as their main source of news about politics and community issues. Another third (33%) said that their main source of news came from the newspaper, 11% got their information from the Internet, 8% from the radio, and 2% from other sources.

Figure 13. Source of News.



More than half (51%) of all respondents got their news from the ethnic press, rather than from mainstream English media outlets.

The ethnic newspaper was the most common source (43%) among those using ethnic sources. Very few (6%), however, used the Internet, as opposed to the 19% of those using mainstream English news sources.

Korean and Chinese voters received their news about politics and community issues primarily from ethnic media outlets, most of which were translated in Asian languages.

Figure 14. Type of Media.

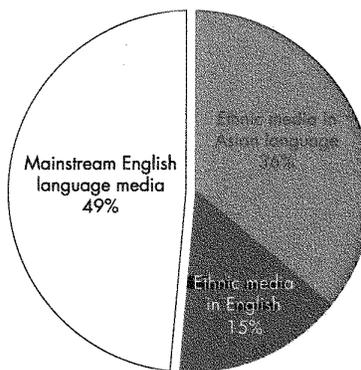


Figure 15. Ethnicity by Type of Media.

	Ethnic media in Asian language	Ethnic media in English	Mainstream English language media
Chinese	47%	12%	41%
South Asian	16%	22%	62%
Korean	37%	9%	34%
Southeast Asian	26%	22%	52%
Filipino	6%	16%	78%

B. Immigrant Rights/Civil Rights Issues
 When asked what immigrant rights/civil rights issue was most important to them, Asian Americans overwhelmingly chose Civil Liberties as their top issue. This issue was followed by Affirmative Action, Racial Profiling and Workers' Rights. Each Asian ethnic group shared similar issues of importance, although there was some variation in their second and third issues.

Among first-time voters, the most important issues included Civil Liberties (28%), Workers' Rights (10%) and Racial Profiling (10%). Likewise, foreign born Asians responded with Civil Liberties (29%) as their top immigrant rights issue, followed by Affirmative Action (10%) and Racial Profiling (10%).

Figure 16. Most Important Civil Rights Issue.

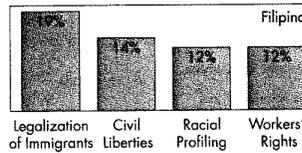
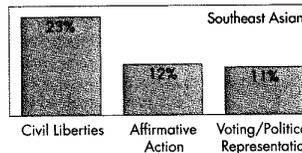
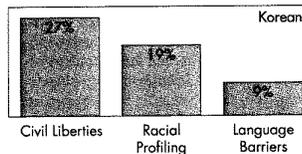
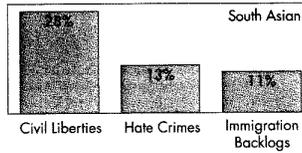
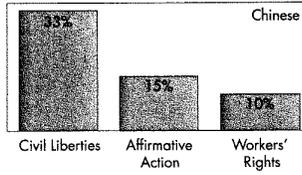
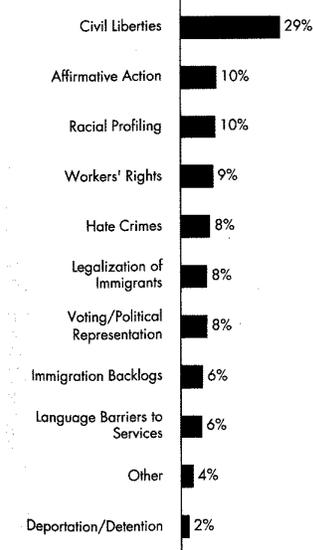




Photo by Joseph Hsu, *World Journal*

V. Access to the Vote

The federal Voting Rights Act protects racial, ethnic and language minority voters. Section 2 of the Voting Rights Act guards against racial discrimination. Section 203 affirmatively requires jurisdictions with large numbers of limited English proficient voting age citizens to provide translated ballots and interpreters at poll sites. Congress also enacted the federal Help American Vote Act (HAVA) to remedy many voting problems highlighted in Florida in the 2000 elections. Several state laws and local election procedures also protect Asian American and other minority voters.

A. Language Assistance

The 2004 exit poll covered jurisdictions that were either legally required to provide or voluntarily provided language assistance to the vote.

Section 203 of the Voting Rights Act covers jurisdictions in New York and Illinois for Asian language assistance.¹⁵ In New York, Chinese language assistance is required in Kings County (Brooklyn) and New York County (Manhattan), and both Chinese and Korean are required in Queens County. In Illinois, Cook County is covered for Chinese language assistance. These jurisdictions must provide translated ballots, instructions, and other voting materials and interpreters at poll sites with large numbers of limited English proficient voters.

In Michigan, pursuant to a consent decree by the U. S. Department of Justice for past voting discrimination and racial profiling at the polls in violation of Section 2 of the Voting Rights Act, the City of Hamtramck provided Arabic and Bengali language assistance.¹⁶

Other jurisdictions in New Jersey, Massachusetts, Illinois and Pennsylvania voluntarily provide language assistance, most often in the form of interpreters at selected poll sites for particular Asian language minority voters.

Figure 17. Required Language Assistance by Language Minority Group.

Language Minority Group ^a	Limited English Proficient	Needed an Interpreter	Needed Translated Written Materials
Chinese in Manhattan, Brooklyn, & Queens, NY	56%	37%	36%
Korean in Queens, NY	67%	34%	49%
Bangladeshi in Hamtramck, MI	59%	26%	33%
Arab in Hamtramck, MI	38%	30%	24%

^a A political subdivision is covered if more than 5% or 10,000 of its voting age citizens are members of a single language minority group and are limited English proficient, and the illiteracy rate of such language minority citizens is higher than the national illiteracy rate. A complete list of the 296 jurisdictions that are required to provide minority language assistance can be found at http://www.usdoj.gov/crt/voting/sec_203/203_notice.pdf.

^b U.S. v. City of Hamtramck, (E.D. Mich.) Aug. 2000.

^c Chinese voters were not surveyed at Section 203 covered poll sites in Chicago, Illinois. Consequently, the corresponding numbers for limited English proficiency and use of language assistance are not offered in this report.

Figure 18. Voluntary Language Assistance by Language Minority Group.

Language Minority Group	Limited English Proficient	Needed an Interpreter	Needed Translated Written Materials
Korean in Palisades Park & Fort Lee, NJ	55%	21%	33%
Chinese in Boston, MA	65%	43%	52%
Vietnamese in Dorchester, MA	74%	60%	55%
Cambodian in Lowell, MA	39%	35%	32%
Korean in Greater Chicago Area, IL	59%	22%	37%
Chinese in Philadelphia, PA	44%	25%	31%
Vietnamese in Falls Church, VA	55%	29%	24%

All voters have a right to be assisted by a person of their choice, and these individuals (most often a friend or family member) may enter voting booths to translate the ballot for the voter. In jurisdictions where Asian American voters were growing in numbers but language assistance was not already provided, voters were allowed to bring their own interpreters. This particularly involved Southeast Asian voters (Cambodian, Laotian, Vietnamese) in Providence, RI; Chinese voters in Quincy, MA; South Asians in Edison and Jersey City, NJ; and South Asian and Vietnamese voters in Falls Church, VA.

Language assistance has expanded access to the vote for many Asian Americans. The greatest beneficiaries of language assistance (46%) were first-time voters.

B. Voting Barriers

Asian Americans had to overcome a number of barriers to exercise their right to vote. For example, in most jurisdictions identification was not a prerequisite to voting. HAVA now requires that certain first-time voters must provide identification.¹⁸ Other voters were generally exempt from these new federal

voting requirements. However, two thirds (66%) of New York and New Jersey voters who had registered prior to January 1, 2003 were required to show identification, even though it was not legally required under HAVA. In total, 2,789 voters reported that they were required to show some form of identification.

A number of Asian American voters polled also reported various other voting problems.

- The names of 371 voters were not on the lists of registered voters.
- 126 voters complained that poll workers were discourteous or hostile.
- 239 voters said that poll workers were poorly trained.
- 185 voters were directed to the wrong poll site or election district.
- 385 voters encountered other voting problems.

More than 600 voters called AALDEF's election hotline or complained to poll monitors to report voting problems. More must be done to ensure that Asian Americans can fully exercise their right to vote.

¹⁸ HAVA's identification provisions only apply to first time voters who registered after January 1, 2003, registered by mail, and who did not provide a driver's license number or last four digits of social security numbers or the numbers did not match.

APPENDIX**A. Poll Site Locations****New York**

Manhattan (Chinatown, Lower East Side)
 Queens (Flushing, Jackson Heights,
 Elmhurst, Richmond Hill, Floral Park,
 Jamaica, Bayside)
 Brooklyn (Sunset Park, Williamsburg,
 Midwood, Kensington)

New Jersey

Palisades Park
 Fort Lee
 Jersey City
 Edison
 East Brunswick

Massachusetts

Boston (Chinatown, Dorchester, Mission Hill)
 Lowell
 Quincy

Rhode Island

Providence

Michigan

Detroit
 Hamtramck
 Dearborn
 Ann Arbor

Illinois

Chicago (Nortown, Devon, Albany Park)
 Evanston
 Lincolnwood
 Glenview
 North Brook

Pennsylvania

Philadelphia (Chinatown, North
 Philadelphia)

Virginia

Annandale
 Falls Church
 Arlington

B. Co-Sponsors of the Asian American Exit Poll

Asian American Bar Association of New York
 Asian Pacific American Agenda Coalition
 Asian Pacific American Legal Resource Center
 Boston Asian Students Alliance
 Chinatown Voter Education Alliance
 Chinese Progressive Association
 Harry H. Dow Memorial Legal Assistance Fund
 Korean American Resource and Cultural Center
 Korean American Voters Council of NY/NJ
 Lawyers Committee for Civil Rights – Boston
 National Asian American Student Convention
 National Korean American Service and Education Consortium
 Providence Youth and Student Movement
 Organization of Chinese Americans – Detroit Chapter
 South Asian American Leaders for Tomorrow
 South Asian American Voting Youth
 Vietnamese American Initiative for Development
 Young Korean American Service and Education Center

C. Acknowledgments

The following groups helped mobilize 1,200 volunteers to conduct the exit poll and monitor poll sites:

Academic Institutions

Asian American Studies Program, Hunter College/ City University of New York (CUNY)
 Asian/American Center, Queens College/ City University of New York (CUNY)
 Asian/Pacific/American Studies Program & Institute, New York University
 Center for the Study of Race & Ethnicity, Columbia University
 College of Public and Community Service, University of Massachusetts at Boston
 Eagleton Institute of Politics, Rutgers University

Asian Pacific American Law Student

Associations (APALSA)
 Brooklyn Law School
 Cardozo School of Law
 Columbia Law School¹⁹
 CUNY School of Law at Queens College
 Fordham University School of Law
 Harvard Law School
 Hofstra University School of Law
 New York University School of Law¹⁹
 Northeastern University School of Law
 Rutgers University School of Law
 Suffolk University Law School
 Southern New England School of Law
 University of Chicago Law School
 University of Michigan School of Law

Community-Based Organizations

Asian Pacific Islander American Corporate Leadership Network
 Asian Americans Raise Your Voice
 Coalition of Asian, African, European and Latino Immigrants of Illinois
 Collaborative Opportunities for Raising Awareness
 Gay Asian and Pacific Islander Men of New York
 Korean American League for Civic Action
 Project Impact for South Asian Americans
 South Asian Youth Action!
 Young Korean American Network

Undergraduate Student Clubs and Organizations

ACLU Chapter at University of Chicago
 Arab Student Association at the University of Michigan at Ann Arbor
 Asian American Alliance at Columbia University
 Asian American Students Association at Brown University
 Asian American Women's Alliance at New York University
 United Asian American Organizations at the University of Michigan at Ann Arbor

AALDEF also acknowledges the support and assistance of the NAACP Legal Defense and Educational Fund, Puerto Rican Legal Defense and Education Fund, New Jersey Appleseed Foundation, New York Voting Rights Consortium, People for the American Way, National Asian Pacific American Bar Association, and the Asian Pacific Islander American Vote. This report was made possible with the generous support of the Ford Foundation.

¹⁹At Columbia and NYU, both the APALSA and South Asian American Law Student Association assisted in the exit poll.

APPENDIX TO THE STATEMENT OF MARGARET FUNG: STATEMENT OF MARGARET FUNG,
EXECUTIVE DIRECTOR, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND,
BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JUNE 14, 2005



ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND
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Statement of Margaret Fung
Executive Director
Asian American Legal Defense and Education Fund
before the
National Commission on the Voting Rights Act
Bar Association of the City of New York City
June 14, 2005

Good afternoon. My name is Margaret Fung, and I am Executive Director of the Asian American Legal Defense and Education Fund (AALDEF). AALDEF is a 31-year old New York-based national organization that promotes and protects the civil rights of Asian Americans through litigation, legal advocacy and community education. Our programs focus primarily in the areas of immigrant rights, economic justice for workers, hate violence and police misconduct, language access to services, youth rights and educational equity, and voting rights and civic participation.

For over a decade, AALDEF has monitored elections on a regular basis for compliance with section 203 of the federal Voting Rights Act. Our 2004 election monitoring efforts were focused in eight states: New York, New Jersey, Massachusetts, Pennsylvania, Virginia, Rhode Island, Michigan and Illinois. Our past voting rights activities have included the following:

- Leading the campaign to secure the first fully-translated Chinese-language ballots in New York City in 1994;
- Filing section 5 comments with the Justice Department, objecting to redistricting plans that diluted minority voting strength and a limited voting scheme that discriminated against Asian Americans in the New York City school board elections;
- Establishing that Asian Americans in Manhattan and Brooklyn constitute a "community of interest" that should be kept together within a single legislative district by representing defendant-intervenors in *Diaz v. Silver*, 978 F. Supp. 96 (E.D.N.Y. 1997)(per curiam), *aff'd*, 522 U.S. 801 (1997), a constitutional challenge to New York's 12th Congressional District;
- Conducting the largest multilingual exit polls of Asian American voters on the East Coast, polling over 5,000 Asian New Yorkers in the 2000 elections, and almost 11,000 Asian American voters in eight states in the 2004 elections;
- Organizing nonpartisan voter registration drives, including weekly events to register newly-naturalized citizens in the Manhattan federal courthouse.

I am speaking today about the significance of section 203 of the Voting Rights Act to promote Asian American civic participation, and here in New York City, the special importance of section 5 of the Voting Rights Act to secure effective implementation of Asian language assistance under section 203.

As you know, under section 203 of the Voting Rights Act of 1965, 42 U.S.C. § 1973aa-1a language assistance is required when the Census Director certifies that over 5% or more than 10,000 citizens of voting age in a jurisdiction are members of a single language minority group, do not speak or understand English well, and have an illiteracy rate higher than the national illiteracy rate.

Thirteen years ago, I testified before the House Judiciary Subcommittee on Civil and Constitutional Rights, in support of the Voting Rights Act Language Assistance Act of 1992. AALDEF supported the creation of the new, alternate benchmark of 10,000 language minority citizens to trigger section 203 coverage, because large concentrations of Asian Americans in New York would not have been covered under the existing 5% trigger. At that time, no Asian American had ever been elected to Congress, the New York State Legislature or the New York City Council. We found in our multilingual exit polls of Asian American voters that 4 out of 5 voters in Manhattan's Chinatown and Flushing, Queens did not speak or read much English, and that they would vote more often if bilingual assistance were provided.

The passage of the 1992 amendments had widespread bipartisan support in Congress, and as a result, 200,000 Asian Americans nationwide, in 10 counties in California, Hawaii and New York, were covered under section 203. The number of covered jurisdictions increased again after Census 2000, with 16 counties in 7 states required to provide assistance in one or more Asian languages.

The Asian American population remains one of the fastest growing communities of color. Asian citizens of voting age numbered 3.9 million in 1996, and rose from 4.7 million in 2000 to 6.7 million in 2004. Asian American voter turnout is also steadily increasing, from 1.7 million in 1996, to nearly 3 million in 2004.

Section 203 of the Voting Rights Act: A Success Story

Section 203 has opened up the political process to thousands of Asian Americans, many of them first-time voters. According to AALDEF's 2004 exit poll of almost 11,000 Asian American voters in 8 states, almost a third of all respondents needed some form of language assistance in order to vote, and the greatest beneficiaries of language assistance (46%) were first-time voters. Of those polled, over 51% of Asian American voters got their news about politics and community issues from the Asian-language media.

At the most fundamental level, translated ballots in voting machines have enabled Asian American voters to exercise their right to vote independently and privately inside the voting booth. The availability of interpreters in polling places provides additional oral language assistance for Asian American voters who are not fully proficient in English.

Section 203 has also aided grass-roots efforts to increase voter registration among eligible Asian Americans. As compared to a decade ago, when only a small number of nonpartisan groups, such as the Chinatown Voter Education Alliance and the Coalition

of Korean American Voters in New York City, did voter registration, there are now scores of new Asian American groups on the East Coast doing voter education and registration in the Korean, Filipino, Asian Indian, Pakistani, Bangladeshi, Cambodian, Laotian, and Vietnamese communities

More Asian Americans have run for political office and can more effectively reach their constituents and register new voters with multilingual voter registration forms. In 2001, for example, 13 Asian American candidates ran for New York City Council. John Liu was elected as the first Asian American City Councilmember in 2001, and Jimmy Meng became the first Asian American member of the NY State Assembly in 2004.

Continuing Problems in the Provision of Minority Language Assistance

Notwithstanding the success of section 203, there continue to be many deficiencies in its effective implementation. Many jurisdictions have failed to provide complete and accurate translations of all voting materials, including ballots, notices and information about polling places. There has been a persistent lack of interpreters, and poll worker training on the requirements of section 203 has been inadequate. Some examples include:

Inaccurate Translations. In the 2000 Presidential election, the Chinese translations of "Democrat" and "Republican" were inverted at several poll sites in Queens. Absentee ballots also contained mistakes in the Chinese-language instructions for selecting New York Supreme Court justices--voters were given contradictory instructions in Chinese to "vote for three" and also to "vote for five." And on one New York City referendum, the word "yes" was translated as "si" on the Chinese-language ballot. Candidates' names have been transliterated in awkward ways, making them unrecognizable to the average voter.

Insufficient Number of Interpreters. Throughout New York City, an insufficient number of Chinese and Korean interpreters has created long lines at polling places, with some voters leaving before casting a ballot due to the absence of language assistance. In the 2000 elections, 336 Chinese interpreters were to have been placed at 150 sites in Manhattan, Brooklyn and Queens, the three counties covered under section 203. In the 2004 elections, 303 sites were targeted for Chinese-language assistance and 66 sites in Queens were targeted for Korean-language assistance, requiring 975 interpreters. The Board of Elections failed to meet these requirements in these and many other elections. And every year, in the weeks before Election Day, the VOTE-NYC hotline set up by the Board of Elections is constantly busy. Those who waited for bilingual assistance about their poll site locations or to verify their voter registration status often encountered interpreters who did not speak the most common Chinese dialects of Mandarin or Cantonese.

In Hamtramck, Michigan, where Arab and Bangla interpreters were once required under a consent decree with the Justice Department, several Bangladeshi voters at the People's Community Services poll site in the 2004 elections complained that they were given wrong poll site information and sought language assistance. Bangla interpreters are still needed in this location.

Poorly Trained Election Day Workers. Many poll workers do not know what to do with bilingual voting materials and signs or give incorrect information to Asian American

voters. Chinese- and Korean-language signs were not posted, bilingual materials often are not displayed, and some poll workers denied Asian American voters the right to cast an affidavit (provisional) ballot when their names are not found in voter registration lists, because Asian names are "unfamiliar" to them.

Voter Discrimination Against Asian Americans Still Exists

Unfortunately, racism against Asian Americans, both overt and subtle, is alive and well at the polling place. These are just a few examples from the 2004 and 2005 elections:

-In Jackson Heights, Queens at P.S. 69, one poll inspector said, "You Oriental guys are taking too long to vote," and told an AALDEF monitor to tell "his people"—implying "Asian Americans"—to vote faster, because others were waiting on line. Other poll workers commented that there were too many bilingual materials on the tables, saying "If they [Asian American voters] need it, they can ask for it." At that poll site, a Chinese American voter who asked for language assistance was directed to a Korean interpreter, who could not help. And several hostile white voters at this poll site made remarks such as, "You all are turning this country into a third-world waste dump," "You can't have anyone go inside the booth with you," and "You should prepare and learn English at home before you come out to vote." At another site in Queens, PS 184, a poll inspector, when asked about the availability of translated materials, sarcastically replied: "What, are we in China? It's ridiculous."

-In Falls Church, Virginia at Baileys Elementary School, a Pakistani American voter politely refused an offer of candy from a poll worker, noting that she was fasting in observance of Ramadan. Another poll worker commented: "If you think certain cultures are weird, you should read about them. They're really weird."

-At the Poe Middle School in Annandale, VA, a poll worker told a Laotian American voter: "Your name is the longest I've ever seen." Although this seems like an innocuous comment, it had the effect of making the voter feel uncomfortable enough to report it to our election monitors.

-In the period leading up to the 2005 New Jersey primary elections last week, two talk radio hosts on 101.5FM in New Jersey ("The Jersey Guys") made several racist remarks on April 25 about Jun Choi, a Korean American candidate for Mayor in Edison, NJ. Speaking in an incoherent, mock Asian accent, they commented that "[Jun Choi is] 'capitalizing on the rapid growth of the Asian community in Edison...'" and in response to a caller's statement that "Indians have taken over Edison," responded, "It's like you're a foreigner in your country, isn't it?" New Jersey's South Asian community, numbering over 225,000, organized a broad-based coalition to protest these remarks and secured an on-air apology from Millennium Radio. Despite these racist sentiments expressed in a heated campaign, Jun Choi won the Democratic primary.

The Critical Role of Section 5 In Securing Effective Minority Language Assistance

In jurisdictions covered under both sections 5 and 203 of the Voting Rights Act, minority language assistance programs established or changed under section 203 must be submitted to the Justice Department for preclearance before they can take effect. Section 5 played a pivotal role in shaping New York City's Chinese Language Assistance Program, which was first adopted after the 1992 language assistance

amendments to section 203. Although the Board of Elections had agreed to provide sample ballots and voting instructions in Chinese in the 1994 primary elections, it claimed that New York's mechanical-lever voting machines did not have space for the candidates' names in Chinese. AALDEF met on numerous occasions with local election officials to convince them that candidates' names must be transliterated into Chinese, because this was the single most important piece of information to the voter. During one lively meeting of the election commissioners, over a hundred Asian Americans packed the hearing room, carrying banners and Chinese-language signs demanding their right to fully-translated bilingual ballots. An August 19, 1994 *New York Times* editorial delivered a scathing rebuke to the Board of Elections's inaction under the Voting Rights Act: "That sounds like the foot-dragging bureaucratic arguments that have been raised all over America at one time or another against giving minorities their rights. It is no excuse for not obeying the law."

Ultimately, it was the Justice Department's oversight under section 5 that forced the recalcitrant Board of Elections to provide fully-translated machine ballots with candidates' names in Chinese, bringing New York City into compliance with section 203. Section 5 gave community groups and individuals an opportunity to shape the local language assistance program and provide their comments to the Justice Department. Over the past decade, federal observers have been sent by the Justice Department to monitor local elections in New York City and other cities and helped to improve compliance with section 203.

Reauthorization of the Voting Rights Act Is Urgently Needed

As Congress considers reauthorization of the Voting Rights Act in 2007, both section 5 and section 203 must be preserved. Existing minority language assistance programs are becoming more integrated into election operations in cities like Los Angeles, San Francisco and New York City, and they should be sustained.

In addition, many large Asian American populations, especially newer immigrant communities, fall just short of the numerical trigger and are also in need of language assistance. In some jurisdictions, bilingual ballots and voting materials have been provided on a voluntary basis, such as Korean-language assistance in Palisades Park and Fort Lee, New Jersey and in Chicago, Illinois; Chinese assistance in Philadelphia; Vietnamese assistance in Dorchester, Massachusetts and Falls Church, Virginia; Cambodian assistance in Lowell, Massachusetts; and Bengali assistance in Hamtramck. These gaps could be addressed by lowering the numerical trigger of section 203 to include jurisdictions with at least 5,000 or 7,500 language minority citizens. Finally, the frequency of determining section 203 coverage, now done only once every ten years after the decennial census, should be increased. The U.S. Census Bureau is currently developing the American Community Survey, which will provide the demographic data used to test section 203 coverage every two years. As data becomes available more frequently, section 203 coverage should also be updated as well.

At a time when the Voting Rights Act is beginning to have real significance for the growing population of Asian Americans, it is essential that section 203 be extended and, if possible, expanded, so that Asian Americans can overcome a legacy of institutional racism and participate fully in the democratic process.



**Testimony of Jim Boulet, Jr., Executive Director of English First Regarding
Reauthorization of the Voting Rights Act: Sec. 203 – Bilingual Election Requirements**

Chairman Chabot and members of the Subcommittee,

English First is a 150,000-member national organization devoted to ensuring that future generations of Americans enjoy the benefits of a common language.

English First has been consistently involved in analyzing the implications of Clinton Executive Order 13166 since its issuance on August 11, 2000. English First was also heavily engaged in the 1993 bilingual ballot reauthorization.

The members of English First are thankful that your subcommittee is holding hearings on the bilingual ballot issue.

Three essential points merit your consideration.

(1) Clinton Executive Order 13,166 Drastically Affects the Sweep of the Voting Rights Act

The interaction of Clinton Executive Order 13,166 and the Voting Rights Act simply must be explicitly considered. This issue is new, given that Clinton Executive Order 13,166 did not exist at the time of the last reauthorization.

The Voting Rights Act permits targeting and has some minimums which must be met before services in other languages must be provided, the five percent or 10,000 person standard.

By contrast, Clinton Executive Order 13,166, which applies to all recipients of federal funds, sets a standard that triggers translation mandates if one speaker of any language presents himself at the polls.

Accordingly, any renewal of the bilingual voting provisions of the Voting Rights Act must include, at a minimum, an exception for Executive Order 13,166.

(2) Bilingual Ballots Do Not Guarantee a More Informed Vote

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Even the translation currently required at the polls has failed to accomplish its intended purpose: helping people cast an informed vote.

Consider the 2000 election. In New York City's Flushing community, the Chinese bilingual ballot translated the "Democratic" label on all state races as "Republican," while "Republican" was translated into the charters which meant "Democratic."¹

In fact, a bilingual Cantonese-English speaker, Kymie Hwang told the *Village Voice* that "the Cantonese instructions given on the Board of Elections voter hotline were so poor that . . . she had to listen to them in English before she could understand the Cantonese."

There was also an absentee ballot problem. The English directions for voting in the race for state Supreme Court justice read "Vote for any THREE." The Chinese ballot first told people to "Vote for any FIVE" and then to "Vote for any THREE."

Peter Lau of the Chinatown Voter Education Alliance told the *Voice* that "translation mistakes happen every year" on Chinese ballots. Perhaps the most famous error was a 1993 referendum ballot which translated the English word "yes" with the Chinese for the word "no."²

Canada had its own problems with translation during its November 2000 federal elections:

The recent federal elections gave rise to 46 complaints, four of which were deemed unfounded. Most came from voters in the National Capital Region, elsewhere in Ontario and Quebec, and New Brunswick, and claimed that services were unavailable (or unsatisfactory) in the voters' preferred official language in communications with election officials, in person or on the telephone.³

(3) English is Required for Citizenship; Only U.S. Citizens Are Supposed to Vote.

By 1906, Congress had decided to require oral English literacy as a condition of becoming a naturalized American citizen.⁴ In 1950, Congress added the requirement that persons

¹ Fiona Yung, "Chinatown Ballot Shows 'Republican' as 'Democrat,'" *The Village Voice* (Internet version) November 15-21, 2000 (available at <http://www.englishfirst.org/13166/chineseballot2000.htm>).

² "Bilingual Ballot Law Fails to Help Chinese-American Voters," *New York Times*, August 14, 1994 at 39.

³ Canada's Commissioner of Official Languages, *Annual Report 2000-2001* (available at http://www.ocol-clo.gc.ca/AR0001_a.htm).

⁴ Leibowitz, *The Official Character of Language in the United States: Literacy Requirements for Immigration, Citizenship, and Entrance into American Life*, 15 AZTLAN 25, 47 (1984).

Testimony of English First
page three of three

who wish to become citizens must "demonstrate an understanding of the English language, including an ability to read, write and speak words in ordinary usage in the English language."⁵

Since only citizens may vote, legal immigrants who became naturalized citizens since 1950 can be expected to be at least somewhat literate in English. And since almost two full generations have passed since English literacy was required to achieve citizenship, it is no wonder that advocates of bilingual ballots must resort to opinion polls and a few horror stories. The need just doesn't exist.

Yet supporters of bilingual voting materials will claim that these services are desperately needed. English First urges you to keep in mind that in 1982, MALDEF released a report which claimed bilingual ballots were essential for Hispanic voters. The MALDEF study reported that 70% of those citizens who spoke only Spanish would be less likely to register and vote if they could no longer get oral help in Spanish.⁶ Fully 72% of monolingual Spanish speakers claimed they would be less likely to vote if bilingual ballots were discontinued.⁷

This same MALDEF report claimed that fully 21% of the citizens classified as "English Monolingual" agreed they would be "less likely" to vote "without Spanish help" and 14% of the "English Monolinguals" supposedly were less likely to vote without a bilingual ballot.⁸ Why a substantial percentage of persons who speak just English needed "Spanish help" and bilingual ballots was not explained.

What this suggests is that bilingual ballots are an exercise in building self-esteem for professional ethnic activists. It does not matter to them if people need these costly services or not. The essential thing is that Spanish and other languages appear on the ballot so that the language of their immigrant ancestors is given "official status" by the federal government. This is nothing more than taxpayer-funded self-esteem enhancement.

English First will gladly address any questions you or staff might have on this point. Thank you for your time and consideration.

⁵ Id.

⁶ Guerra, Voting Rights and the Constitution: The Disenfranchisement of Non-English Speaking Citizens, 97 YALE L.J. 1419, 1430 (1988).

⁷ Id. at 1431.

⁸ Id.

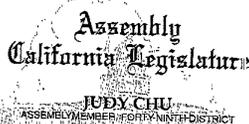
1342

PREPARED STATEMENT OF THE HONORABLE JUDY CHU, CALIFORNIA LEGISLATURE
ASSEMBLY MEMBER

11/10/2005 11:00 FAX 3238813436

Assembly Member Judy Chu

002/005



November 10, 2005

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By Facsimile Followed by First-Class Mail

The Honorable F. James Sensenbrenner, Jr.
U.S. House of Representatives
Chairman, Committee on the Judiciary
2449 Rayburn House Office Building
Washington, DC 20515
Facsimile: 202-225-3190

The Honorable John Conyers, Jr.
U.S. House of Representatives
Ranking Member, Committee on the Judiciary
2426 Rayburn House Office Building
Washington, DC 20515
Facsimile: 202-225-0072

RE: House Judiciary Subcommittee on the Constitution
Hearings on the Voting Rights Act of 1965

Dear Representative Sensenbrenner and Representative Conyers:

I am writing to highlight the impact of the Voting Rights Act of 1965, including the special provisions of the Act that are scheduled to expire in 2007, and to document the continuing need for the Act and its special provisions. I respectfully request that this letter be entered into the record for the Voting Rights Act hearings that are being conducted by the House Judiciary Subcommittee on the Constitution.

I am a California state legislator and the co-chair of the California Asian Pacific Islander Legislative Caucus and I represent a Southern California district that covers the West San Gabriel Valley located in Los Angeles County, Assembly District 49. In my district:

1. Almost 40% of the population is Asian and over 46% is Latino.
2. In 1990, Monterey Park was the only city in Los Angeles County that had a majority Asian population.
3. Now four cities in the 49th Assembly District have populations that are over 50% Asian: Monterey Park, San Marino, San Gabriel, and Rosemead. Alhambra's population is at 49%.

October 21, 2005
 The Honorable F. James Sensenbrenner, Jr.
 The Honorable John Conyers, Jr.

As co-chair of the API Legislative Caucus, I have worked to increase the political profile of APIAs and increase their representation in the public policy arena. We now have nine APIA members in the California State Assembly – a record high – and two APIAs on the State Board of Equalization. However, I would not be in the State Legislature without the Voting Rights Act. Moreover, many APIA voters in my district depend on the Voting Rights Act, including Section 203 of the Act, to fully exercise their right to vote.

As we commemorate the 40th anniversary of the Voting Rights Act, we must remember that our struggle towards equality is not yet finished. I urge Congress to reauthorize Section 203 with an adjustment to Section 203's coverage formula to include jurisdictions containing between 7,500 and 10,000 language minority citizens, in addition to jurisdictions containing over 10,000 language minority citizens.

Impact of the Voting Rights Act Including Section 203 of the Act

In Los Angeles County where my district is located, 43% of APIAs and 48% of Latinos are limited English proficient. My district includes five cities in which approximately half of the APIA families living in these cities are linguistically isolated, living in homes where all family members older than 14 years old are not yet fully proficient in English. Although many of these family members and individuals learn English and gain citizenship, they struggle to comprehend complicated ballots and voter materials that native English speakers themselves have trouble with.

Pursuant to Section 203, Los Angeles County offers bilingual voting assistance in Chinese, Japanese, Korean, Spanish, Tagalog and Vietnamese. Section 203 allows eligible voters to get a fair chance to vote for the candidates and issues they want. For APIA and Latino voters in Assembly District 49 that are not yet fully proficient in English, they rely on translated voting materials, bilingual poll workers and in-language pre-election publicity provided pursuant to Section 203 to exercise their right to vote, a right they have proudly earned by gaining citizenship.

During the 1980s, not one APIA legislator served in the California State Legislature. Times have changed. The Voting Rights Act has led to electoral gains for APIAs in California. Section 203 has had a tremendous impact by protecting the rights of APIA and other language minority voters to exercise their right to vote. In the redistricting context, APIA community groups and leaders have used the Voting Rights Act to keep APIA communities together. For example, in the 2001 California statewide redistricting process, APIA community leaders advocated for a plan that reflected the true makeup of the 49th Assembly District, including the core cities of Monterey Park, Alhambra, Rosemead and San Gabriel. As a result of this advocacy, these cities were kept together.

The Voting Rights Act Leading to Effective Political Representation

The Voting Rights Act, including Section 203 of the Act, has ensured that language minority voters can exercise their right to vote and elect political representatives who are responsive to their needs. In May 2001, I won the seat for Assembly District 49,

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becoming one of four APIAs then serving in the State Legislature. I won because I worked side by side with Latino and APIA communities and formed alliances with members of both communities. However, I would not have won without the protections of the Voting Rights Act, which helped to prevent the dilution of APIA voting power in the 49th Assembly District during the 2001 redistricting process, and in particular Section 203 of the Act, which has ensured that limited English proficient voters in the district can exercise their vote. In 2002, I was re-elected to the State Assembly, winning 75% of the APIA vote and 79% of the Latino vote. In 2004, I was re-elected again, winning 83% of the APIA vote and 76% of the Latino vote.

The Voting Rights Act has in turn has led to greater consumer and civil rights protections for APIAs and other language minorities. In my short four years with the California State Assembly, I have pushed through bills that:

1. Strengthen protections against immigration consultant fraud. AB 2189 (Chu) strengthens protections against immigration consultant fraud by requiring that corporate surety bonding companies notify local district attorneys' offices when the bond required of each immigration consultant in the state has expired or has been cancelled.
2. Protect immigrants with limited English speaking skills who are victimized by unscrupulous businesses. AB 309 (Chu) protects limited English proficient immigrants who are victimized by unscrupulous businesses that prey on their inability to communicate effectively in English. The bill was introduced in response to an egregious "bait-and-switch" case involving an automobile dealership in Alhambra that allegedly negotiated a contract with the customer in Mandarin Chinese to purchase a new seven-seat Toyota van, but then offered a contract written in English that committed the customer to a six-month lease on a used Chevrolet van.
3. Give greater protection to hate crime victims and their families. AB 2428 (Chu) or "Kenny's Law" is named after Kenneth Chiu, a 17 year-old Taiwanese American high school student who was brutally murdered by Christopher Hearn, an avowed white supremacist, on July 30, 2001. After stabbing Chiu over 25 times, Hearn demonstrated no remorse for the murder and expressed hatred for Asians and other minorities. He was found guilty of first-degree murder with an enhanced sentence for lying in wait and hate animus. However, the final verdict found Hearn not guilty by reason of insanity. "Kenny's Law" gives greater protection to hate crime victims and their families by requiring courts to issue a protective order, absent any compelling reason not to do so. It also gives courts and relevant agencies the option of ordering tolerance training, counseling or other rehabilitative programs to guard against future acts of hate violence.

Without APIAs in the State Legislature to push these bills through to passage, APIA and other language minorities would still lack the protections offered by these bills. Indeed, without APIAs in the State Legislature, many of the issues pertinent to the APIA community would not even be heard.

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Continuing Need for the Voting Rights Act

While these gains represent a great step forward for APIAs in California, APIAs are still inadequately represented in government despite constituting 14% of California's population. Although there are now nine APIA members in the California State Assembly, this number will drop next year because of term limits. Moreover, no APIAs currently serve in the State Senate. Over 30 new state legislators are sworn in every two years, many of whom represent significant APIA populations but have little idea what these populations' needs are. More than a third (35%) of the Assembly districts in California have APIA populations of 10% or more.

With regard to bilingual voting assistance for voters, an adjusted 7,500 threshold for Section 203 would enable the Cambodian American population in Long Beach, Los Angeles County to benefit from bilingual voting assistance. This community clearly falls within the group of citizens that Congress intended to protect and empower under Section 203. Fifty-seven percent of the Cambodian American population in Los Angeles County are limited English proficient, and 56% of this population lacks a high school diploma. Not surprisingly, Cambodian American voters have low turnout rates during elections. During the November 2004 election, only 53% of Cambodian American registered voters in Los Angeles County turned out to vote, compared with 79% of all registered voters in Los Angeles County.

I urge Congress to reauthorize Section 203 with an adjusted 7,500 threshold. I also urge Congress to renew and restore the other sections of the Voting Rights Act that are scheduled to expire in 2007, including Section 5 and Sections 6 to 9 of the Act. I thank you for your consideration of this letter and request that it be entered into the Subcommittee on the Constitution's hearing record.

Sincerely,



JUDY M. CHU, Ph.D.
49th Assembly District

JMC:bw

PREPARED STATEMENT OF THE ASIAN PACIFIC AMERICAN LEGAL CENTER OF
SOUTHERN CALIFORNIA: SUBMISSION OF MATERIALS FOR OVERSIGHT HEARINGS



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November 16, 2005

The Honorable Steve Chabot
U.S. House of Representatives
Chairman, Judiciary Subcommittee on the Constitution
129 Cannon House Office Building
Washington, DC 20515
Attention: Ms. Jennifer Goodlatte

RE: House Judiciary Subcommittee on the Constitution
Oversight Hearings on the Voting Rights Act of 1965
Submission of Materials for Oversight Hearings Entitled
"The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part I" and
"The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part II"

Dear Chairman Chabot:

On behalf of the Asian Pacific American Legal Center, we are writing to highlight the impact that the Voting Rights Act of 1965, and in particular Section 203 of the Act, have had on the ability of voters in California to participate in the democratic process. We are also writing to document the discrimination that voters in California have faced and the continuing need that these voters have for the language assistance provided by Section 203. We respectfully submit this letter to the House Judiciary Subcommittee on the Constitution and request that the letter be entered into the record for the Subcommittee's oversight hearings entitled "The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part I" and "The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part II."

Founded in 1983, the Asian Pacific American Legal Center (APALC) is a nonprofit organization dedicated to advocating for civil rights, providing legal services and education, and building coalitions to positively influence and impact Asian Pacific Americans and to create a more equitable and harmonious society. APALC is affiliated with the Asian American Justice Center (formerly NAPALC) in Washington, DC.

As we look backwards and commemorate the Voting Rights Act's 40 years of progress, we must also look at the present and to the future and recognize that we have not yet achieved equal opportunity in the voting process. APALC urges Congress to reauthorize all sections of the Act that are scheduled to expire in 2007 for an additional 25 years, and to strengthen Section 203 by adjusting its coverage formula to include jurisdictions containing over 7,500 limited English proficient language minority citizens.

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Overview

Because this letter addresses a number of topics, we would like to provide a brief overview of the letter's contents. We believe that each of these topics is relevant to building a record for the reauthorization process and request that they each be considered in turn:

- Need – Language minorities have a continuing need for the language assistance provided under Section 203.
- Impact – Section 203 has enabled language minority voters to enjoy gains in electoral representation and voter registration and turnout.
- Education – Language minorities still face unequal educational opportunities.
- Discrimination – Language minority voters still face discrimination.
- Adjustments – Several adjustments should be made to Section 203, including a lowered numerical coverage.

Before addressing these topics, this letter describes APALC's voting rights work and other program work in order to put the contents of this letter in context and explain why APALC is qualified to address these topics.

APALC Voting Rights Work and Other Program Work

For over two decades, APALC has engaged in advocacy, community education and poll monitoring to secure the voting rights of Asian and Pacific Islander Americans (APIA) guaranteed by law. To ensure that jurisdictions are providing limited English proficient voters with adequate language assistance under Section 203, APALC has sent poll monitors during key elections to hundreds of polling sites throughout Los Angeles and Orange Counties, particularly in areas with significant APIA populations. Last year, APALC monitored over 60 poll sites during the March 2004 primary election and over 115 poll sites during the November 2004 general election. Most recently, APALC monitored over 45 poll sites during the November 2005 California statewide special election.

In addition to conducting its own poll monitoring efforts, APALC, together with the Asian American Justice Center, work with and provide technical assistance to a number of APIA advocacy organizations throughout California. As part of this technical assistance, APALC has provided poll monitoring trainings to these organizations and is familiar with the poll monitoring work that they conduct in other parts of California.

APALC uses its poll monitoring results to advocate for systemic reforms of and improvements to the manner in which jurisdictions deliver language assistance to APIA voters. As a result of APALC's poll monitoring and advocacy, the Los Angeles County Registrar of Voters has noticeably increased its recruitment of bilingual poll workers and has also increased its outreach to monolingual voters, as measured by steadily increasing numbers of voters requesting language assistance. APALC and the Asian American Justice Center have also created state and national models for compliance with Section 203.

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In addition to its voting rights work, APALC conducts well-known demographic research. As part of this research, APALC conducts large-scale exit polls of voters in major elections. By surveying large numbers of voters in six languages other than English, APALC's Southern California Voter Survey is the largest and most comprehensive exit poll of APIA voters in California. APALC's exit polls are designed to survey voters on their attitudes and behaviors, including their need for and use of bilingual voting assistance. In the November 2004 general election, APALC polled over 4,300 voters.

APALC also recently launched a series of demographic reports on APIA communities in California and in three Southern California counties. All four reports use disaggregated Census 2000 data to provide information on 20 APIA ethnic groups, including indicators on socioeconomic status, education, housing, language, and immigration. These data represent the most comprehensive current data available on California's APIA population.

Lastly, APALC conducts policy advocacy on educational issues that affect students from language minority populations and communities of color. This advocacy includes monitoring state legislative proposals, California Department of Education reforms, and implementation of the federal No Child Left Behind Act (NCLB), particularly the NCLB's mandate that schools involve limited English proficient parents in the educational process. When necessary, APALC has also engaged in litigation on these issues, both as an organizational plaintiff and as attorneys to plaintiffs. In these capacities, APALC is familiar with and can speak to the quality of education that language minority students receive and the issues that affect the education of such students.

The Continuing Need for Language Assistance Provided Under Section 203

Many APIA and other language minority voters have high rates of limited English proficiency. Voters who are limited English proficient are unable to speak or understand English adequately enough to participate in the electoral process.

Language minority voters face discrimination on the basis of their limited English proficiency. Even though language minority voters are citizens and have the legal right to vote, poll workers and other election officials single them out as persons who should not be voting because they are not completely fluent or literate in English. This discrimination creates barriers to voting. Most obviously, discrimination can result in outright denials of the right to vote. Discrimination also creates an unwelcoming atmosphere in poll sites that serves as a deterrent to language minority voters exercising their right to vote. Section 203 addresses both of these barriers in a manner that is more fully described in the section of this letter addressing discrimination against language minority voters.

Language minority voters face another barrier to voting – language. Because of their limited English proficiency, language is the largest barrier that language minority voters face in becoming full participants in our democracy. Some language minority voters, even though they were born in the United States or came to the United States at an early age, are limited English proficient because they attended substandard schools that did not afford them an adequate chance to learn English. Other language minority voters are limited English proficient because they are immigrants to this

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country and have lacked adequate opportunities to fully learn English. In either case, Section 203 language assistance lowers the single largest hurdle that these voters face in the voting process.

For many language minority voters in California, the language barrier would be insurmountable without the language assistance that they receive pursuant to Section 203. California voters must contend with extremely complicated ballots. For example, the ballot used in the October 2003 gubernatorial recall election listed 135 candidates. The ballot used in the November 2004 general election contained a total of 16 statewide ballot propositions, and the ballot used in the November 2005 statewide special election contained ballot propositions addressing such arcane topics as redistricting reform, prescription drug discounts and electricity regulation. Many voters who speak English as their first language have difficulty understanding these types of ballots. For language minority voters, the language barrier doubles or triples this difficulty.

Voter information guides are also full of complexity. These guides contain not only the text of proposed laws, but also analyses by the state legislative analyst, arguments for and against proposed laws, and rebuttal arguments. Adding to the complexity is the length of these guides. The voter information guide used in the November 2005 statewide special election contains over 75 pages. For voters who do not read English at a high level, reading these types of guides would take weeks.

In short, language minority voters need Section 203 to help them climb the language hurdle. Several indicators show that this need is particularly compelling for voters in California.

Demographic Indicators of Need

Disaggregated Census 2000 data¹ show that the language minority population in California does indeed have a high rate of limited English proficiency. Disaggregated Census 2000 data also show that a significant portion of the Asian American population in California, including significant portions of specific Asian American ethnic groups, live in what are referred to as “linguistically isolated households.” A household is considered linguistically isolated if all members of the household 14 years and older are limited English proficient. Voters who live in linguistically isolated households are in particular need of language assistance because they do not have family members who can assist them in the voting process.

The Asian American population in California is nearly 40% limited English proficient, and over one-quarter of Asian American households are linguistically isolated. A number of Asian American groups are majority or near-majority limited English proficient, including Vietnamese at 62%, Korean at 52%, and Chinese at 48%. These groups also have high rates of linguistic isolation, with 44% of Vietnamese American households isolated, 41% of Korean American households

¹ APALC was the principal researcher in a recently released demographic profile entitled “The Diverse Face of Asians and Pacific Islanders in California,” which it co-sponsored with Asian Law Caucus and the Asian American Justice Center. The profile disaggregates Census 2000 data on the California APIA population by racial/ethnic group and is available at <http://www.apalc.org/brochures.htm> (last visited November 12, 2005). The disaggregated data cited in this letter is derived from Census 2000 data that was compiled in the preparation of this profile. When citing data, this letter uses the term “APIA” to refer to Asian and Pacific Islander Americans and the term “Asian American” to refer to Asian but not Pacific Islander Americans.

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isolated, and 34% of Chinese American households isolated. The Latino population in California is 43% limited English proficient, and 26% of Latino households are linguistically isolated.

The table below provides additional data on rates of limited English proficiency and linguistic isolation for various racial and ethnic groups in California:

California – LEP and LIH Rates

<u>Group</u>	<u>Percentage of Population That Is Limited English Proficient (LEP)</u>	<u>Percentage of Households That Are Linguistically Isolated (LIH)</u>
Vietnamese	62%	44%
Cambodian	56%	32%
Korean	52%	41%
Chinese	48%	34%
Latino	43%	26%
Asian overall	39%	26%
Filipino	23%	11%
Japanese	22%	18%
California	20%	10%
White	3%	2%

Looking at the county level, disaggregated Census 2000 data show high rates of limited English proficiency and linguistic isolation in the seven California counties that are covered under Section 203 for at least one Asian American language minority group. The tables below and on the next page illustrate this point for these seven counties and Sacramento County. Sacramento County is not currently covered under Section 203 for an Asian American language minority group, but is likely to be covered for Chinese Americans after the next coverage determinations are made, provided the Chinese American population in Sacramento County grows from 2000 to 2010 at the same rate that it did from 1990 to 2000. An asterisk (*) indicates that the language minority group is currently covered under Section 203 in such county. A cross (†) indicates that the language minority group is not currently covered in such county, but is likely to be covered after the next coverage determinations are made (under an 10,000 numerical threshold and assuming that the group's population grows from 2000 to 2010 at the same rate that it did from 1990 to 2000).

San Francisco County – LEP and LIH Rates

<u>Group</u>	<u>LEP Rate</u>	<u>LIH Rate</u>
Vietnamese	63%	43%
Chinese *	58%	42%
Asian overall	50%	35%
Latino *	42%	23%
Korean	41%	33%
Filipino	29%	14%
County	25%	13%
White	6%	4%

San Mateo County – LEP and LIH Rates

<u>Group</u>	<u>LEP Rate</u>	<u>LIH Rate</u>
Vietnamese	46%	29%
Latino *	45%	24%
Korean	39%	26%
Chinese *	37%	23%
Asian overall	29%	16%
Filipino †	23%	9%
County	18%	8%
White	4%	2%

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Alameda County – LEP and LIH Rates

<u>Group</u>	<u>LEP Rate</u>	<u>LIH Rate</u>
Vietnamese †	59%	44%
Chinese *	50%	36%
Korean	44%	32%
Latino *	40%	22%
Asian overall	38%	25%
Filipino †	23%	10%
County	18%	9%
White	3%	2%

Santa Clara County – LEP and LIH Rates

<u>Group</u>	<u>LEP Rate</u>	<u>LIH Rate</u>
Vietnamese *	65%	45%
Korean	49%	36%
Chinese *	44%	31%
Asian overall	40%	25%
Latino *	38%	19%
Filipino *	26%	10%
County	22%	10%
White	4%	2%

Los Angeles County – LEP and LIH Rates

<u>Group</u>	<u>LEP Rate</u>	<u>LIH Rate</u>
Vietnamese *	63%	45%
Korean *	59%	47%
Cambodian	57%	33%
Chinese *	54%	39%
Latino *	48%	30%
Asian overall	43%	30%
County	29%	15%
Japanese *	25%	22%
Filipino *	23%	11%
White	7%	4%

Orange County – LEP and LIH Rates

<u>Group</u>	<u>LEP Rate</u>	<u>LIH Rate</u>
Vietnamese *	64%	46%
Korean *	54%	39%
Latino *	48%	27%
Asian overall	45%	29%
Chinese *	40%	26%
County	22%	10%
Filipino	17%	7%
White	2%	1%

San Diego County – LEP and LIH Rates

<u>Group</u>	<u>LEP Rate</u>	<u>LIH Rate</u>
Vietnamese †	60%	45%
Korean	39%	31%
Latino *	39%	23%
Chinese †	35%	25%
Asian overall	32%	21%
Filipino *	23%	11%
County	15%	7%
White	2%	1%

Sacramento County – LEP and LIH Rates

<u>Group</u>	<u>LEP Rate</u>	<u>LIH Rate</u>
Vietnamese	60%	47%
Chinese †	43%	32%
Korean	38%	27%
Asian overall	38%	24%
Latino *	27%	16%
Filipino	18%	9%
County	12%	6%
White	4%	2%

The tables above show that of the 21 Asian American populations that are currently covered in California or likely to be covered after the next coverage determinations, all 21 populations are at least one-fifth limited English proficient, and 15 populations are at least one-third limited English proficient. Ten of these populations are at least one-half limited English proficient.

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Exit Poll Indicators of Need

During major elections, APALC conducts large-scale exit polls at poll sites throughout Southern California.² These poll results show that the limited English proficiency rate of APIA voters mirrors the limited English proficiency rate of the general APIA population. For example, in November 2004, 40% of APIA voters surveyed in APALC's exit poll indicated that they are limited English proficient. The following table shows similar exit poll data for other elections:

Southern California Exit Poll Data – LEP Rates

<u>Election</u>	<u>Percentage of APIA Voters Who Are Limited English Proficient</u>
November 2004 *	40%
November 2002	32%
November 2000	46%
March 2000	47%
November 1998	35%

* Represents preliminary findings. Subject to adjustment based on statistical weighting.

In addition to illustrating that language minority voters have a need for language assistance, these exit poll results show that many APIA and Latino voters in Los Angeles and Orange Counties would benefit from language assistance during the voting process. For example, in November 2000, 54% of APIA voters and 46% of Latino voters indicated that they would be more likely to vote if they received language assistance. The following table provides similar data for other elections:

Southern California Exit Poll Data – More Likely to Vote If Assistance Received

<u>Election</u>	<u>Percentage of APIA Voters More Likely to Vote If Assistance Received</u>	<u>Percentage of Latino Voters More Likely to Vote If Assistance Received</u>
November 2000	54%	46%
March 2000	53%	42%
November 1998	43%	38%

In APALC's most recent exit poll, data from the November 2004 general election³ indicate that over one-third of APIA voters used language assistance to cast their vote. Several APIA groups had particularly high rates of using language assistance, including 37% of Chinese American voters, 48% of Korean American voters and 52% of Vietnamese American voters.

² APALC publishes exit poll data in voter survey reports that are available at <http://www.apalc.org/brochures.htm> (last visited November 12, 2005).

³ These data represent preliminary findings and are subject to adjustment based on statistical weighting.

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Requests for Language Assistance

Another indication that language minority voters are in need of language assistance is the number of voters who request language assistance. According to data gathered by the Los Angeles County Registrar of Voters, the total number of voters in Los Angeles County requesting language assistance increased by 38% from December 1999 to August 2005. This increase reflects increased outreach by Los Angeles County and illustrates language minority voters' reliance on language assistance. The following table shows these increases for specific language minority groups:

Los Angeles County – Voter Requests for Language Assistance

<u>Language</u>	<u>Percentage Increase in Number of Voter Requests for Language Assistance From December 1999 to August 2005</u>
Chinese	49%
Japanese	25%
Korean	26%
Tagalog	63%
Vietnamese	40%
Spanish	37%

These data indicate that because of voter outreach and education by Los Angeles County and community advocates, many limited English proficient APIA and Latino voters are using the language assistance provided under Section 203. The data also indicate that as the number of requests for language assistance increases, language minority voters have a continuing need for Section 203 assistance.

Poll Monitoring Anecdotes

Poll monitoring anecdotes confirm that limited English proficient voters need language assistance. APALC's poll monitors often observe poll sites running out of translated sample ballots. This results from limited English proficient voters taking the translated sample ballots with them as mementos of their voting experience after they have used them in the voting booth. Although this results in problems with the poll sites running out of translated sample ballots, county election staff are usually responsive to the shortages and arrange for additional copies of the translated sample ballots to be delivered to the poll sites so that other voters can continue using them to vote.

Impact of Section 203 of the Voting Rights Act

In the 40 years since the Voting Rights Act was enacted, and in the 30 years since Section 203 was added to the Act, there have been substantial gains in APIA electoral representation and levels of APIA voter registration and voting participation. Many of these gains have occurred since Section 203 was amended in 1992 to add a numerical threshold for triggering coverage.

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Gains in APIA Electoral Representation

There are now nine APIA members of the California state legislature. This stands in marked contrast with 1990 when that number was zero. Prior to 1990, there was a small number of APIA elected officials who served in the state legislature, but they were the rare exception to the rule that APIA politicians were absent from state legislative ranks. After the 1992 amendment to Section 203 and the addition in 2002 of new jurisdictions providing assistance to voters in Asian languages, APIA representation in the state legislature has increased greatly.

One factor in this electoral success has been Section 203 language assistance allowing limited English proficient voters to fully exercise their right to vote. Of California's nine APIA state legislators, eight represent legislative districts located in counties that are covered under Section 203 for at least one Asian American language minority group.⁴ Every county in California that is covered under Section 203 for an Asian American language minority group has at least one APIA legislator from such county.

Several of these legislators have been champions for issues of particular concern to Asian Americans. For example, Assemblymember Judy Chu has won passage of legislation giving greater protections to victims of hate crimes, immigrants defrauded by immigration consultants, and persons with limited English speaking skills who have been victimized by unscrupulous businesses. Assemblymember Leland Yee has won passage of legislation that makes it easier for hospital personnel to communicate with patients who are limited English proficient. In addition, the California Asian Pacific Islander Legislative Caucus, formed in 2001 and made up of key APIA state elected officials, has been successful in preserving important social service programs in the face of proposed budget cuts, including cash and food assistance programs for immigrants and programs addressing the lack of public school education on the Japanese American internment experience.

Increases in APIA Voter Registration and Participation

In California, there have been significant increases in APIA registration and turnout levels over the past several years. According to census data,⁵ the number of APIA registered voters increased by 61% from the November 1998 election to the November 2004 election. In the same period, the number of APIA voters who turned out to vote increased by 98%. Both of these increases outpaced increases in both the overall APIA voting age population and the overall APIA citizen voting age population. The table on the next page shows the total APIA voting age population in California, the total APIA citizen voting age population, the total number of registered APIA voters, and the total number of registered APIA voters who voted in the relevant election.

⁴ Assemblymembers Judy Chu (Los Angeles), Carol Liu (Los Angeles), Ted Lieu (Los Angeles), Van Tran (Orange), Shirley Horton (San Diego), Wilma Chan (Alameda), Alberto Torrico (Alameda, Santa Clara), and Leland Yee (San Francisco, San Mateo).

⁵ Data on reported voting and registration is collected by the U.S. Census Bureau in the Current Population Survey and is available at <http://www.census.gov/population/www/socdemo/voting.html> (last visited September 25, 2005).

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*California – Increase in Voter Registration and Turnout From 1998 to 2004*⁶

<u>Election</u>	<u>Total APIA Voting Age Population</u>	<u>Total APIA Citizen Voting Age Population</u>	<u>Total Registered APIA Voters</u>	<u>Total Turnout Among Registered APIA Voters</u>
November 1998	2,706	1,657	854	587
November 2000	3,027	1,908	1,007	848
November 2002	3,306	2,172	1,122	727
November 2004	3,636	2,620	1,379	1,162
Increase 1998 – 2004	34%	58%	61%	98%

Moreover, according to the U.S. Department of Justice, levels of voter registration in San Diego County have increased dramatically since the Justice Department brought enforcement action to bring San Diego County into compliance with Section 203. Specifically, Latino and Filipino American voter registration has increased by 21% and Vietnamese American registration has increased by 37% since the Justice Department's action.⁷

Continuing Need for Language Assistance Despite Gains

Although APIA Californians have enjoyed gains in electoral representation, APIA elected officials are still underrepresented in government. There are currently no APIA members of the 40-member state Senate, and because of term limits, the number of APIA legislators in the state Assembly is likely to drop. On the local level, only one Asian American has ever served on the city council of the City of Los Angeles.

In addition, although APIA voters have seen gains in voter turnout, their turnout levels still lag behind the overall population. APALC is scheduled to soon release a report that analyzes turnout among Los Angeles County voters during the November 2004 general election. In November 2004, 79% of all registered voters in Los Angeles County voted. However, only 68% of Asian American registered voters turned to vote. The turnout rate was even lower for specific Asian American groups, including Korean American voters at 64%, Vietnamese American voters at 62%, and Cambodian American voters at 53%.

Unequal Educational Opportunities for Language Minorities

Congress enacted Section 203 after concluding that English-only elections and voting practices effectively denied the right to vote to a substantial segment of the nation's language minority population. Congress made findings that language minorities suffer from unequal educational opportunities, high illiteracy and low voting participation. Language minorities still face unequal educational opportunities, and the continuing existence of these inequalities constitutes a sufficient basis for Congress to renew Section 203 for an additional 25 years.

⁶ Figures are in thousands except for percentages.

⁷ Statement of Bradley J. Schlozman, Acting Assistant Attorney General, Civil Rights Division, United States Department of Justice, before the House Judiciary Subcommittee on the Constitution, November 8, 2005. Available at <http://judiciary.house.gov/media/pdfs/schlozman110805.pdf> (last visited November 15, 2005).

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Demographic Indicators of Unequal Educational Opportunities

Current demographic data indicate that educational inequalities still exist. Using high school completion as a measure, disaggregated Census 2000 data show that Asian Americans have lower rates of educational attainment than white Americans. In California, 19% of Asian Americans have less than a high school degree, compared with 10% of the white population. These differences are even more dramatic when looking at specific Asian American ethnic groups. For example, 36% of Vietnamese Americans have less than a high school degree. The following table shows rates of high school non-completion for other Asian American groups:

California – High School Non-Completion

<u>Group</u>	<u>Percentage of Population With Less Than a High School Degree</u>
Hmong	66%
Laotian	58%
Cambodian	56%
Vietnamese	36%
California	23%
Chinese	22%
Asian overall	19%
Filipino	12%
Korean	12%
White	10%

These low rates of high school completion are a contributing factor to continuing high rates of limited English proficiency among Asian American children, defined as children age 17 years and younger. According to disaggregated Census 2000 data, over one-fifth of Asian American children in California are limited English proficient. In the majority of counties covered by Section 203 for an Asian American language minority group, these rates are higher. For example, 30% of Asian American children in San Francisco County and 24% of Asian American children in Los Angeles County are limited English proficient.

Looking further at the county level, disaggregated Census 2000 data show that Asian American ethnic groups suffer from low rates of educational attainment and high rates of child limited English proficiency. The tables on the next two pages illustrate this point for the seven California counties that are covered under Section 203 for at least one Asian American language minority group and Sacramento County. An asterisk (*) indicates that the language minority group is currently covered under Section 203 in such county. A cross (†) indicates that the language minority group is not currently covered in such county, but is likely to be covered after the next coverage determinations are made (under an 10,000 numerical threshold and assuming that the group's population grows from 2000 to 2010 at the same rate that it did from 1990 to 2000).

These tables show that many Asian American ethnic groups in these counties have rates of high school non-completion that are higher than the county average. These tables also show that all

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of the Asian American populations listed have higher rates of high school non-completion than the comparable white population (with the exception of Korean Americans in San Mateo County and Filipino and Japanese Americans in Los Angeles County).

San Francisco County – H.S. and Child LEP

<u>Group</u>	Less Than High School <u>Degree</u>	Child <u>LEP Rate</u>
Vietnamese	47%	37%
Chinese *	39%	34%
Asian overall	32%	30%
County	19%	20%
Filipino	17%	13%
Korean	14%	21%
White	5%	5%

San Mateo County – H.S. and Child LEP

<u>Group</u>	Less Than High School <u>Degree</u>	Child <u>LEP Rate</u>
Vietnamese	22%	11%
County	15%	14%
Chinese *	13%	15%
Asian overall	11%	13%
Filipino †	10%	9%
White	7%	2%
Korean	5%	21%

Alameda County – H.S. and Child LEP

<u>Group</u>	Less Than High School <u>Degree</u>	Child <u>LEP Rate</u>
Vietnamese †	35%	39%
Chinese *	24%	29%
Asian overall	18%	22%
County	18%	14%
Korean	11%	22%
Filipino †	11%	11%
White	8%	2%

Santa Clara County – H.S. and Child LEP

<u>Group</u>	Less Than High School <u>Degree</u>	Child <u>LEP Rate</u>
Vietnamese *	32%	42%
County	17%	16%
Asian overall	15%	23%
Filipino *	12%	11%
Chinese *	11%	22%
Korean	10%	26%
White	7%	2%

Los Angeles County – H.S. and Child LEP

<u>Group</u>	Less Than High School <u>Degree</u>	Child <u>LEP Rate</u>
Cambodian	56%	36%
Vietnamese *	39%	41%
County	30%	23%
Chinese *	24%	30%
Asian overall	18%	24%
Korean *	12%	30%
White	11%	4%
Filipino *	10%	10%
Japanese *	7%	12%

Orange County – H.S. and Child LEP

<u>Group</u>	Less Than High School <u>Degree</u>	Child <u>LEP Rate</u>
Vietnamese *	34%	42%
County	21%	19%
Asian overall	19%	26%
Chinese *	12%	19%
Korean *	10%	27%
Filipino	8%	8%
White	7%	2%

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San Diego County – H.S. and Child LEP

<u>Group</u>	Less Than	Child
	<u>High School</u>	<u>LEP Rate</u>
Vietnamese †	40%	38%
Asian overall	18%	16%
County	17%	14%
Chinese †	16%	14%
Filipino *	14%	7%
Korean	10%	24%
White	8%	2%

Sacramento County – H.S. and Child LEP

<u>Group</u>	Less Than	Child
	<u>High School</u>	<u>LEP Rate</u>
Vietnamese	39%	34%
Chinese †	29%	25%
Asian overall	27%	29%
Korean	20%	15%
County	17%	11%
Filipino	12%	4%
White	11%	5%

In sum, current demographic data indicates that language minorities in California still face unequal educational opportunities, and that these unequal educational opportunities are a contributing factor to high limited English proficiency rates among Asian American children.

Other Indicators of Unequal Educational Opportunities

There are other indications that language minorities suffer from unequal educational opportunities in California. K-12 students in California designated as “English learners” suffer from a number of educational inequities. English learners are students who speak a language other than English at home and who are not proficient in English. Students who speak a language other than English at home must take a test to assess their level of English proficiency. Students who are considered not proficient in English are classified as English learners, and most are placed into English language development programs.⁸

According to a recent 2005 study, there are over 1.6 million English learners in California, representing over one-fourth of California’s elementary and secondary students.⁹ Over 90% of these students are from language minority groups specified in Section 203 (Latinos comprise 85% of English learners, and APIAs make up 9% of English learners). Contrary to common perception, approximately 85% of California’s English learners are born in the United States.

⁸ In 1998, Proposition 227 was passed by California’s voters. Proposition 227 dramatically reduced the number of bilingual education classes in California and required that English learner students be taught in English through structured English immersion programs for a transition period and then transferred to a mainstream English language classroom. The law allows alternatives to English immersion such as bilingual education, but only through parental waivers. Today only a reported 6.5% of English learner students receive bilingual education. Some educational policy advocates believe that bilingual education is a more effective method of teaching English to English learners than English immersion programs. This letter does not examine this question and only addresses the educational inequities that English learner students face, regardless of the method of instruction.

⁹ Jepsen, C., and de Alth, S. (2005). English Learners in California Schools. Public Policy Institute of California. Retrieved October 30, 2005 from http://www.ppic.org/content/pubs/R_405CJR.pdf.

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Achievement Gap for English Learners

According to a 2003 study of English learners in California schools, the academic achievement of English learners lags significantly behind the achievement levels of English-only students.¹⁰ The study finds that the achievement gap puts English learners further and further behind English-only students as the students progress through school grades. For example, in grade 5, current and former English learners read at the same level as English-only students who are between grades 3 and 4, a gap of approximately 1.5 years. By grade 11, current and former English learners read at the same level as English-only students who are between grades 6 and 7, a gap of approximately 4.5 years.

The study also found that English learners have significantly lower rates of passing the California High School Exit Exam, a standards-based test that all students in California must pass in order to graduate from high school. In the graduating class of 2004, only 19% of English learners had passed the test after two attempts, compared with 48% of all students.¹¹

Seven Categories of Unequal Educational Opportunities

The study attributes this achievement gap to a number of educational inequalities that English learners face. The study finds that English learners face seven categories of unequal educational opportunities:

1. California lacks a sufficient number of appropriately trained teachers to teach English learners.

English learners are more likely than any other students to be taught by teachers who are not fully credentialed. The study notes that 14% of teachers statewide were not fully credentialed in 2001-2002. In contrast, 25% of teachers of English learners were not fully certified. The study also finds that as the concentration of English learners in a school increases, the percentage of teachers without full credentials also increases.

The study observes further that only 53% of English learners who were enrolled in grades 1 to 4 during the 1999-2000 school year were taught by a teacher with any specialized training to teach them. In addition, many newly certified teachers report that they do not have sufficient training to work with English learners and their families. Of the teachers graduating from teacher credential programs in the California State University system¹² in 1999-2000, one-fourth reported that they felt they were only somewhat prepared or not at all prepared to teach English learners.

¹⁰ Gándara, P., Rumberger, R., Maxwell-Jolly, J., and Callahan, R. (October 7, 2003). English Learners in California Schools: Unequal resources, unequal outcomes. *Education Policy Analysis Archives*, 11(36). Retrieved November 6, 2005 from <http://epaa.asu.edu/epaa/v11n36>.

¹¹ The state board of education has delayed the implementation of this requirement, and the requirement now applies to students beginning with the class of 2006.

¹² The Cal State University system has been the largest preparer of teachers since 1857.

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2. Teachers of English learners lack adequate professional development opportunities to gain skills necessary to address the instructional needs of English learners.

The study notes the intense instructional demands that teachers of English learner students face. Teachers must provide instruction in English language development while simultaneously attempting to ensure that English learners have access to core curriculum subjects. Despite these demands, teachers devote inadequate amounts of time to their professional development in the area of teaching English learners. For example, in 1999-2000, the percentage of professional development time that teachers reported spending on the instruction of English learners was about 7%. Even for teachers whose students are more than 50% English learners, this percentage was only 10%.

As reported in the study, one cause of this is the lack of funding devoted to making professional development available to teachers so that they can enhance their skills in teaching English learners. For example, in 2000-2001, the state provided \$50.9 million to the University of California to provide professional development to teachers. However, only \$8.6 million was allotted for professional development in the area of English language development. This amount was only 16% of the professional development budget even though English learners comprise over 25% of the student population in California and are arguably the most educationally disadvantaged of all students.

3. English learners are forced to use inappropriate assessment tools to measure their achievement, gauge their learning needs, and hold the system accountable for their progress.

The study describes the impact that inappropriate testing has on English learners. California schools administer English-only tests to measure achievement for English learners. These tests fail to provide accurate data for purposes of gauging whether their educational needs are being met. They also fail to help teachers in monitoring the progress of English learners and enhancing the instruction of English learners.

The study observes that such tests can also have serious negative effects on English learners in at least two ways. First, increases in test scores can give the inaccurate impression that English learners have gained subject matter knowledge when in fact they may have simply gained proficiency in English. This misperception can lead schools to continue providing a curriculum that fails to emphasize subject matter that is substantively appropriate. Second and conversely, consistently low test scores can lead educators to mistakenly believe that English learners need remedial or even special education when in fact they may have mastered the curriculum in another language, but are unable to show their learning gains when taking an English language test.

4. English learners fail to receive sufficient instructional time to accomplish learning goals.

The study notes that a significant body of research shows a clear relationship between increased time devoted to academic instruction and increased levels of achievement, but that English learners fail to spend as much time receiving academic instruction time as other students. This happens in a number of ways. For example, elementary schools commonly take English learners out

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of their regular classes in order to put them in English language development classes. These “pulled out” students miss regular classroom instruction, and there is generally no opportunity for students to later acquire the instruction they missed during the pull out period.

The study also observes that English learners in secondary schools are frequently assigned to multiple periods of English as a Second Language (ESL) classes while other students are taking a full complement of academic courses. When schools do not have enough courses available for English learners, the English learners are often given shortened day schedules, leading to the students receiving significantly less amounts of academic instruction.

5. English learners lack access to appropriate instructional materials and curriculum.

The study notes that English learners need additional materials beyond what is provided to all students. This need exists in two areas. First, English learners need developmentally appropriate texts and curriculum to learn English and to meet standards for their development of English skills. Second, English learners who receive instruction in their primary language need texts and curriculum that are in their primary language.

However, the study finds that many English learners lack access to such materials. For example, the study cites a 1998-2001 survey that reports 75% of teachers use the same textbooks for both English learners and English-only students and that only 46% of teachers use any supplementary materials for English learners. Not surprisingly, only 41% of teachers reported that they were able to cover as much material with English learners as with English-only students.

6. English learners lack access to adequate school facilities.

The study reports that teachers of English learners are more apt than teachers of English-only students to respond that they do not have facilities that are conducive to teaching and learning. For example, the study cites a 2002 survey finding that close to half of teachers in schools with higher percentages of English learners reported that the physical facilities at their schools were only fair or poor, compared with 26% of teachers in schools with low percentages of English learners. Also, teachers in schools with high percentages of English learners were 50% more likely to report bathrooms that were not clean and open throughout the day and to have seen evidence of cockroaches, rats or mice. Lastly, more than a third of principals in schools with higher concentrations of English learners reported that their classrooms were never adequate or often not adequate, compared with 8% of principals in schools with low concentrations of English learners.

7. English learners are segregated into schools and classrooms that place them at particularly high risk for educational failure.

The study finds that English learners are highly segregated among California’s schools and classrooms. In 1999-2000, 25% of all students in California attended elementary schools in which a majority of the students are English learners. In contrast, 55% of all English learners were enrolled in majority-English learner schools. The study argues that this segregation weakens the quality of

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education that English learners receive compared with their English-only peers. The study notes several ways in which this happens.

First, English learners lack sufficient interaction with English-speaking student models, limiting their development of English. Second, English learners do not interact with enough students who are achieving at high or even moderate levels, inhibiting their academic achievement. Third, English learners are segregated into classrooms that frequently suffer from poor conditions, creating a poor learning environment. Fourth, English learners are segregated into classrooms that typically have inadequately trained teachers, depressing their learning.

Conclusion

In short, as explained exhaustively in this study of English learners in California, language minorities still face unequal educational opportunities such as the seven categories of inequality described above.

Litigations Against the State of California

Public schools and teachers are the responsibility of government, and California's failures to provide adequate education to language minorities have contributed to the educational inequalities described above. In a number of instances, these failures have even led to direct litigation against the state. These legal actions highlight the state's educational failures and indicate the severity of these failures.

For example, in 1970, the state entered into a consent decree that settled the *Diana v. California State Board of Education*¹³ class action lawsuit. The lawsuit was filed on behalf of Chinese and Mexican American English learners who were inappropriately placed in special education. The 2003 study described above reports that although the state agreed to address this problem in the *Diana* consent decree, the state has failed to fully implement the consent decree in the 30 years following the consent decree. The result is that English learners are still over-represented in special education classes. Because schools continue to fail to offer support services in the primary language of English learners, English learners are misdiagnosed as needing special education and misplaced into special education programs at higher rates than other students. When students are placed in special education, especially when the placement is not warranted, the placement has devastating effects on students' access to opportunities later in life, leading to massive rates of high school non-completion, underemployment, poverty and marginalization during their adult lives.

In 1974, the U.S. Supreme Court, in the *Lau v. Nichols* litigation,¹⁴ ordered California public schools to provide education for all students, regardless of their English-speaking ability. The litigation was filed on behalf of 1,800 Chinese American students who were segregated by the San Francisco school system into separate "Oriental" English-only schools.

¹³ N.D. Cal. (1970).

¹⁴ 414 U.S. 563 (1974).

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In 2000, a class action lawsuit entitled *Williams v. State of California*¹⁵ was filed on behalf of students in low-income communities and communities of color. APALC served as co-counsel in this litigation. The lawsuit challenged substandard conditions rampant in schools located in low-income and primarily minority communities and alleged that the state's failure to provide minimum educational necessities violated the state constitution and state and federal laws. In 2004, the state entered into a settlement agreement pursuant to which the state is required to provide all students with books, keep schools clean and safe, and ensure that students have qualified teachers. It remains to be seen whether the state's compliance efforts will succeed, or whether they will fail as they did in the implementation of the *Diana* consent decree. Either way, the devastating impact on language minority students who suffered through substandard conditions has the potential to persist for the remainder of the students' lives.

Most recently, ten school districts filed a lawsuit earlier this year against the State of California.¹⁶ As part of a statewide coalition, APALC is an organizational plaintiff in the lawsuit, which demands that schools test English learners in their primary language and/or provide reasonable testing accommodations as mandated by the federal No Child Left Behind Act. The lawsuit alleges that the state's failure to provide assessments to English learners that yield accurate and reliable results has resulted in numerous harms to English learners, including the stigmatization of English learners who are not afforded the opportunity to demonstrate their academic learning, the curtailing of basic educational programs in school districts deemed "education failures" compared to other districts, and diminished opportunities for English learners to advance to higher grades and to graduate.

Lack of Opportunities for Adult Language Minorities to Learn English

Adult language minorities also suffer from a lack of opportunities to learn English. According to the 2004 Annual Report of the Commission on Asian & Pacific Islander American Affairs, current federal and state funding for English acquisition classes in California consistently fails to meet the demand of California's growing limited English proficient population.¹⁷ The report found that ESL courses are often oversubscribed and overcrowded. For example, from 2001 to 2002, individuals enrolled in ESL courses made up 43% of the total number of people in California who participated in an adult school program and 20% of people who participated in non-credit courses offered by California's community colleges. The report also found that ESL courses are rarely offered outside of work hours when working language minorities can take advantage of the courses.

¹⁵ San Francisco County Superior Court, Case No. 312236 (May 17, 2000).

¹⁶ *Coachella Valley Unified School District, et al v. State of California, et al*, San Francisco County Superior Court, Case No. CPF-05-505334 (June 1, 2005).

¹⁷ Established by state legislation in 2002, the Commission on Asian & Pacific Islander American Affairs is a 13-member citizens' commission appointed by the Governor and the California state legislature. The Commission's members include community leaders from different backgrounds, vocations and regions of the state who provide an impartial assessment of the APIA community's needs. The 2004 Annual Report of the Commission is available at <http://democrats.assembly.ca.gov/apilegcaucus/pdf/guts.pdf> (last visited November 12, 2005).

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Unequal Educational Opportunities as Sufficient Basis for Twenty-Five Year Renewal

As outlined in the preceding subsections, Asian American and other language minority children in California suffer from unequal educational opportunities both in general and in learning English. Given that adult language minorities in California lack adequate ESL opportunities, Asian American children who are limited English proficient when they reach the age of high school graduation are likely to remain limited English proficient for years to come, if not for the remainder of their lives. Unequal educational opportunities constitute a sufficient basis for Congress to renew Section 203, and the lasting impact of these unequal educational opportunities justifies a 25-year renewal of Section 203.

Discrimination Against Language Minority Voters

Despite the protections of the Voting Rights Act, discrimination against APIA and other language minority voters still occurs in the voting process. Evidence of this discrimination can be seen in the anecdotes from poll monitoring efforts and schemes of discrimination that are described below. Before describing these anecdotes and schemes, it is important to illustrate in general the nature of discrimination against language minority voters and how Section 203 addresses this discrimination in a unique and successful manner.

Nature of Discrimination Against Language Minority Voters
 and Uniqueness of Section 203 Remedy

Poll worker comments such as “why can’t these people speak English” create a pernicious atmosphere in polling sites that non-English speaking voters are unwelcome. In turn, this unwelcoming atmosphere acts as a deterrent to language minority voters exercising their right to vote. In other cases, discrimination against language minority voters serves as an outright denial of their right to vote. For example, language minority voters are disenfranchised by poll workers who, exasperated with their inability to find “foreign-sounding” names in the voter roster, send language minority voters to the back of the line. In both respects, the Section 203 remedy addresses discrimination against language minority voters in a unique and successful manner.

With regard to the deterrent barrier, language minority voters feel welcome as they interact with poll workers who hail them with familiar greetings and show them how to use complicated voting machines. Language minority voters also feel confident that they can make informed voting choices by using translated election materials. During the weeks leading up to election day, language minority voters feel included in the process as they see translated notices informing them of polling place changes and deadlines to request absentee ballots.

With regard to outright denials of the right to vote, language minority voters are able to get recourse that they would otherwise lack. For example, when faced with problems, voters can read translated signs that list telephone hotline numbers for the voters to call and report problems. Also, translated voter bill of rights signs give language minority voters awareness of their voting rights, which empowers them to protest voting discrimination. Naturally, like many people who have been historically disenfranchised, language minority voters are often hesitant to speak up for themselves.

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In such cases, enforcement of Section 203 by the Justice Department and poll monitoring by advocacy organizations deter and prevent discrimination against language minority voters and also ensure that jurisdictions fully comply with Section 203.

Non-Compliance and Poll Worker Ignorance Leading to Voting Problems

APALC poll monitors have seen recurring problems at poll sites including problems in Section 203 implementation. APIA advocacy groups that conduct poll monitoring in other parts of California¹⁸ have seen the same recurring problems. With regard specifically to Section 203 implementation, these problems include:

- Poll sites lacking a sufficient number of bilingual poll workers and interpreters
- Translated materials not being supplied to poll sites
- Translated materials being supplied but poorly displayed at poll sites
- Poll sites lacking adequate translated signage or lacking signage altogether directing voters where to go and explaining what their rights are

Recurring problems in Section 203 implementation reflects the failure of county registrars to properly educate their poll workers about language assistance. Many of these problems are the result of poor poll worker training or poll workers not attending training sessions at all. Poll monitors are at times able to resolve problems of non-compliance, thereby preserving the right of language minority voters to vote. On other occasions, poll workers' ignorance of voting rights has led to language minority voters being turned away and denied the right to vote.

Poll monitors have observed several instances of this disenfranchisement in California:

- November 2000 general election, San Francisco County – Poll monitors witnessed a poll worker yelling at several elderly Chinese American women, telling them, “Get out!” The poll worker later explained that he was angry at an elderly Chinese American voter who had brought a friend to help her vote. The poll worker mistakenly believed that it was “illegal” to have someone other than a poll worker provide voting assistance. The elderly voter was turned away before she could vote.
- November 2002 general election, San Francisco County – A poll worker reported to the poll monitor that one voter left the polling place without voting because the voter was unable to communicate with the poll worker. The poll worker did not know that he could

¹⁸ These organizations include Asian Law Alliance (Santa Clara County), Asian Law Caucus (San Mateo County), CAA | Center for Asian American Advocacy (San Francisco County), Council of Philippine American Organizations (San Diego County), and Orange County Asian and Pacific Islander Community Alliance (Orange County). APALC and the Asian American Justice Center work with and provide technical assistance to these organizations. Earlier this year, the Asian American Justice Center published an election poll monitoring report for the November 2004 general election that contains the poll monitoring findings of these organizations and organizations in other parts of the country. This report is entitled “Sound Barriers: Asian Americans and Language Access in Election 2004” and is available at http://www.advancingequality.org/files/sound_barriers.pdf (last visited November 12, 2005).

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have called the language assistance line operated by the City of San Francisco's Department of Elections and obtained bilingual assistance for the voter.

- November 2002 general election, San Francisco County – At a poll site with a large number of elderly Chinese American voters who needed language assistance, the poll monitor observed a number of voters whose votes were not counted. These problems resulted from the Department of Elections failing to staff the poll site with a sufficient number of bilingual poll workers. Many of the voters at the poll site struggled with the voting process, and the bilingual poll workers were overwhelmed and unable to help everyone who needed voting assistance. The poll inspector showed the poll monitor spoiled ballots on which voters had voted for the wrong number of candidates or checked the write-in box without entering a candidate's name. The poll inspector expressed frustration that some of these voters left the poll site before the poll inspector could ask them to complete new ballots, or left despite being asked because they could not understand his request. The poll monitor observed the poll site's optical scan machine rejecting many completed ballots.

Unwelcoming Atmosphere Created by Discriminatory Poll Worker Attitudes

Despite improvements in poll worker training, discrimination against Asian American and other language minority voters still occurs in the polling place. Even the most comprehensive poll worker training program will not completely eliminate the discriminatory attitudes retained by some poll workers. Such poll workers display a cavalier attitude about language assistance or even an attitude that language assistance should not be provided to voters. This ambivalence about providing language assistance reflects a view of society that excludes non-mainstream voters from the political process. This view not only contributes to the recurring non-compliance problems described above, but it also creates an unwelcoming atmosphere that acts as a deterrent to language minority voters exercising their right to vote.

Poll monitors deployed by APALC and other organizations in California have observed poll workers expressing these attitudes either verbally or in their obvious refusal to provide language assistance. A few examples include the following:

- March 2000 primary election, Monterey Park, Los Angeles County – The inspector stated, "The bilingual materials are a waste of time and money." She pulled the bilingual materials out, but then put them back in the envelope. Ultimately, the poll monitor had to assist in laying them out.
- March 2000 primary election, Torrance, Los Angeles County – In plain earshot of voters, poll workers discussed the tediousness of providing language assistance and the need to restrict materials to English only.
- March 2000 primary election, Westminster, Orange County – When the poll monitor noted that no translated materials were displayed, the poll workers discovered that the poll site did have translated materials and displayed them. However, when the poll monitor

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returned to the poll site in the afternoon, she found that the poll workers had put the translated materials back into their storage envelope instead of keeping them displayed.

- November 2000 general election, San Francisco County – A poll inspector complained that it was difficult to assist Chinese American voters, stating his belief that they generally are ignorant about the voting process. The poll inspector told the poll monitor, “I guess they don’t have free elections in their countries. We don’t always have all this time to explain everything about free elections to them.”
- November 2002 general election, San Francisco County – The poll monitor noted to a poll worker that the poll site lacked Spanish language voter information pamphlets. The poll worker responded, “If they don’t speak English, then they shouldn’t be voting in the United States of America.”
- March 2004 primary election, Artesia, Los Angeles County – After the poll monitor discussed sample ballots with the poll inspector, the inspector said, “One day I wish we can have all English,” motioning to the sample ballots with his hand.
- November 2004 general election, Monterey Park, Los Angeles County – When the APALC poll monitor surveyed the poll workers to ascertain which poll workers were bilingual, one of the poll workers responded, “I speak English; this is America.”

Poll workers also express these attitudes in their dealings with poll monitors. For example, at seven polling sites in Santa Clara County during the November 2004 general election, poll monitors experienced rude, difficult and uncooperative poll workers who refused the monitors entry to the polling sites or did not allow the monitors to inspect the translated materials.

Outright Discrimination Against Language Minority Voters

Over the years, APALC poll monitors have observed a number of instances of discrimination against language minority voters. A few examples in Southern California include the following:

- March 2000 primary election, Santa Ana, Los Angeles County – The poll inspector was rude and curt to voters, particularly young voters, and was also reluctant to help limited English proficient voters. She inappropriately asked some young APIA voters for identification (California state law did not at the time and does not now require voters to show identification). The APALC poll monitor heard the inspector comment, “Everybody wants to come to America and take what is ours – our land.”
- November 2004 general election, Rowland Heights, Los Angeles County – The poll inspector talked slowly and loudly to elderly APIA voters. When two elderly APIA women made a mistake on their ballots and wanted assistance to get new ones, the inspector told them very loudly, “Just stay there, just stay.” When asked about bilingual voter registration forms, the inspector replied that the forms were available in the

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“American language.” When asked about hotline numbers for bilingual assistance, the inspector replied, “They’re around here somewhere” and walked away.

Poll monitors deployed by other APIA advocacy organizations have observed similar instances of discrimination, including discrimination resulting in denials of the right to vote:

- November 2000 general election, San Francisco County – A poll monitor observed a poll worker yell at a Chinese American voter and take the voter’s ballot away. The poll worker was frustrated that the voter, who was limited English proficient, was not following his instructions. The voter left without casting a ballot.
- November 2004 general election, San Diego County – In the words of the poll monitor at one poll site, a poll worker talked to minority voters “as if they were children.”
- November 2004 general election, San Mateo County – A poll worker questioned the competency of a voter to vote because of the voter’s limited English proficiency.

Intentional Discriminatory Schemes

In addition to individual instances of discrimination in polling sites, there have also been instances of schemes of voter discrimination. Section 6253.6 of the California Government Code is a reminder of such instances. Enacted in 1982, this section requires government officials to maintain the confidentiality of information in voter files that identifies voters who have requested bilingual voting materials. The section was enacted to protect language minority voters from being targeted with allegations of voter fraud.

As detailed in the legislative history of Section 6253.6, the section’s enactment was precipitated by an investigation conducted by the U.S. Attorney’s office in nine Northern Californian counties. The U.S. Attorney’s office randomly investigated voters who had requested Spanish and Chinese language voting materials and arranged for the Immigration and Naturalization Service (INS) to cross-check the voters’ records with citizenship records.

This investigation followed on the footsteps of INS raids on factories and businesses and was part of a larger scheme to scapegoat language minority and immigrant communities for economic woes. The investigation also occurred during voter registration drives among minority language communities in Northern California. Amidst concerns that the investigation would intimidate language minority voters, the American Civil Liberties Union and the Mexican American Legal Defense and Educational Fund filed suit under the Voting Rights Act. There was also a large amount of public outcry against the investigation, including censures by a number of city councils. The U.S. Attorney’s office abated its investigation, and Section 6253.6 was passed overwhelmingly in the legislature by a 54 – 7 Assembly vote and a 38 – 0 Senate vote.

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 Chairman, House Judiciary Subcommittee on the Constitution

Discrimination Against Language Minority Voters as
 Independent and Sufficient Basis for Twenty-Five Year Renewal

In short, English-only elections and voting practices deny language minority voters the right to vote not only because such voters suffer from unequal educational opportunities and high rates of limited English proficiency, but also because English-only elections and voting practices themselves exacerbate discrimination against language minority voters. Without the remedy of language assistance, the discrimination that language minority voters suffer at the hands of poll workers and even government officials leads to outright denials of their right to vote and creates a deterrent barrier to voting. Given this, discrimination against language minority voters constitutes an independent and sufficient basis for Congress to renew Section 203.

Moreover, discrimination against language voters still persists even after 30 years of the Section 203 remedy being administered and despite the gains that language minority voters have enjoyed as a result of Section 203. In light of persisting discrimination, it is unlikely that discrimination against language minority voters will disappear in the foreseeable future. This likelihood of continuing discrimination justifies a 25-year renewal of Section 203.

Need for a Lower Numerical Threshold Under Section 203 and Other Adjustments

Lower Numerical Threshold

A number of APIA populations that desperately need the protections of Section 203 are not currently covered under Section 203 and are not likely to be covered after the next coverage determinations are made – unless Section 203's numerical threshold is adjusted from 10,000 to 7,500. In California, a lower numerical threshold of 7,500 would likely trigger Section 203 coverage for the Cambodian American population in Los Angeles County, which is concentrated in Long Beach. This community clearly falls within the group of citizens that Congress intended to protect and empower under Section 203. Fifty-seven percent of the Cambodian American population in Los Angeles County is limited English proficient, and 33% of Cambodian American households are linguistically isolated. Also, 56% of this population lacks a high school diploma, and 36% of Cambodian American children are limited English proficient. Not surprisingly, Cambodian American voters have low turnout rates during elections. During the November 2004 election, only 53% of Cambodian American registered voters in Los Angeles County turned out to vote, compared with 79% of all registered voters in Los Angeles County. Coverage of just the Cambodian American community in Los Angeles County would result in language assistance being provided to 17% of Cambodian Americans nationally.

In addition to alleviating this unmet need, a lower numerical threshold will offset the significant potential that the Census Bureau's new data collection methodology will undercount language minorities who are limited English proficient. This new methodology is the American Community Survey. Currently, there are no plans for the American Community Survey to be conducted in any Asian languages. Because 36% of the Asian American population is limited English proficient, an English- and Spanish-only American Community Survey will likely result in an undercount of Asian American language minorities. In addition, because the American

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Community Survey collects data on an annual basis, American Community Survey forms are sent to only a small sample of the population. This means that few language minorities receive the form, which adds to the likelihood that Asian American language minorities will be undercounted as a result of the American Community Survey collecting insufficient sample sizes for proper statistical analysis. The likelihood of an undercount further justifies lowering Section 203's numerical threshold to 7,500.

More Frequent Determinations of Coverage

Lastly, the frequency of coverage determinations should be adjusted from every ten years to every five years. Section 203 determinations have historically been made only on a decennial basis because census data has been available only on a decennial basis. With the Census Bureau switching its data collection methodology from the decennial census to the annual American Community Survey, coverage determinations should be made more frequently so that Section 203 coverage better reflects the country's growing and changing population. Because the American Community Survey provides a five-year rolling average, coverage determinations under Section 203 should be made every five years instead of every ten years.

Closing

To briefly conclude this letter, the Voting Rights Act has had a marked impact on the ability of APIA and other language minority voters in California to participate in the electoral process. Section 203 of the Voting Rights Act has been of particular benefit to APIA voters who are limited English proficient. Unfortunately, voting discrimination continues to exist, and APIA and other language minority voters have a continuing need to receive the protections of the Voting Rights Act, including the special provisions that are scheduled to expire in 2007.

APALC urges Congress to reauthorize Section 203 for an additional 25 years with an adjusted threshold of 7,500. APALC also urges Congress to enact a 25-year renewal of the other sections of the Voting Rights Act that are scheduled to expire in 2007 with a restoration of Section 5.

We thank you for your consideration of this letter and respectfully request that it be entered into the record for the Subcommittee on the Constitution's oversight hearings on the Voting Rights Act.

Truly yours,



Stewart Kwoh
President and
Executive Director



Eugene Lee
Staff Attorney
Voting Rights Project

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APALC Letter to the Honorable Steve Chabot
Chairman, House Judiciary Subcommittee on the Constitution

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Chairman, Committee on the Judiciary
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PREPARED STATEMENT OF ANGELA M. ARBOLEDA, CIVIL RIGHTS POLICY ANALYST,
NATIONAL COUNCIL OF LA RAZA



Testimony

**The Latino Community and the Reauthorization of the
Voting Rights Act**

Submitted by:

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**Before the:
House Committee on the Judiciary
Subcommittee on the Constitution**

November 22, 2005

I. INTRODUCTION

Chairman Chabot, Ranking Member Nadler, and Members of the Constitution Subcommittee, on behalf of the National Council of La Raza (NCLR), thank you for holding hearings on the reauthorization of the Voting Rights Act, an issue that is very important to the Latino community. NCLR is the largest national Latino civil rights and advocacy organization in the U.S., with more than 300 local affiliated community-based organizations (CBOs) in its network. In addition to providing capacity-building assistance to our affiliates and essential information to our associates, NCLR serves as a voice in public policy debates for all Hispanic subgroups in all regions of the country.

NCLR appreciates the opportunity to submit testimony before the subcommittee to support the reauthorization of the sections of the Voting Rights Act of 1965 due to expire in 2007. The right to vote is a fundamental civil right for all Americans, and NCLR supports efforts to remove barriers that inhibit Americans, especially the most vulnerable in our society, from exercising their right to vote.

The Voting Rights Act of 1965 was designed to strengthen the Fifteenth Amendment of the Constitution. It eliminated voting barriers, such as literacy tests and poll taxes which kept African Americans, Latinos, and other minority voters away from voting booths and without a political voice. The Voting Rights Act of 1965 prohibits discrimination based on race and national origin, and requires certain jurisdictions to provide bilingual assistance to language minority voters.

In this testimony, I will provide background demographic information about the Latino community, which will support not only the importance but also the relevance of Section 203 – the language minority provisions – and Section 5 of the Voting Rights Act. At the conclusion of the testimony, I will provide a set of recommendations that, if adopted, will protect the right to vote by making the ballot accessible to all Americans regardless of race, ethnicity, socioeconomic status, literacy, or disability.

II. BACKGROUND: HISPANIC DEMOGRAPHICS

According to the U.S. Census Bureau, Hispanic Americans are now the largest minority in the United States; as of 2004 there are 41.3 million Latinos living in the U.S. Although Hispanic Americans have traditionally been concentrated in five states – California, Illinois, New York, Arizona, and Texas – the 2000 Census revealed that Latinos are moving to “nontraditional” states such as Arkansas, Georgia, North Carolina, and Tennessee. In fact, North Carolina experienced nearly 400% growth in the Latino population between 1990 and 2000. Although the Latino community experienced strong rates of growth throughout the nation, the Southeast U.S. has experienced the most dramatic population growth, with 23 states experiencing at least 100% growth or more in a ten-year period. Further, the nation’s Latino population is projected to reach 73 million by 2030.¹ Additionally, the Latino community is young. Of the 41.3 million Hispanics living in the U.S., more than one-third (34%) are under the age of 18. Several years

¹ U.S. Census Bureau, International Data Base, Table 094. <http://www.census.gov/ipc/www.idbprint.html>

ago, Latino children became the largest minority group among children under 18 years old in the U.S. This translates into substantial new growth in the voting-age population in the near future. In addition, approximately 40% of Latinos in the U.S. are foreign-born, which means that the majority of Latinos are native-born U.S. citizens. Even among the 14 million foreign-born Latinos, 38.5% are naturalized citizens who vote at a higher voting rate than native-born Americans. Currently, 16.1 million Latinos are citizens of voting age.² Among Latino voting-age citizens, 4.3 million are limited-English-proficient (LEP); that is, they are still in the process of learning English and may need assistance in order to fully understand the ballot and the process of voting itself.³ It is important to point out that today's immigrants learn English as fast as or faster than earlier generation of immigrants. Nevertheless, while Hispanic Americans are working on English language acquisition, it is critical that they have meaningful access to the ballot.⁴

III. LANGUAGE MINORITY PROVISIONS

Every voter has the right to cast an informed and effective vote. This right is extended to all people including those for whom English is not their first language. In 1975 Congress added the language minority provisions to the Voting Rights Act, recognizing that large numbers of American citizens who primarily spoke a language other than English had been effectively excluded from participation in the electoral process. The denial of the right to vote among language minority citizens was "directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation."⁵ Section 203 applies to four language minority groups: people of Spanish heritage,⁶ Asian Americans, Native Americans, and Alaskan Natives.

Language minorities are ensured protection and full participation in the electoral process by two separate provisions of the Voting Rights Act of 1965 – Section 203 and Section 4(f)(4), and a number of state and local statutes. Sections 203 and 4 of the Act apply only to jurisdictions which meet a numerical threshold. In order to receive protection under the Voting Rights Act, a single language minority group, which has limited or no English proficiency and has low literacy skills, must either number 10,000 within a jurisdiction or constitute 5% of the voting-age population within that jurisdiction. Once a jurisdiction is determined to meet one of the thresholds, then it has an affirmative duty to provide meaningful access to voting to the language minority group in their native language. According to the latest U.S. Census Bureau

² U.S. Census Bureau, Current Population Survey, November 2004, Table 2: Reported Voting and Registration, by Race, Hispanic Origin, Sex, and Age, for the United States: November 2004. <http://www.census.gov/population/socdemo/voting/cps2004/tab02-6.xls>.

³ According to the U.S. Census, among all those who speak Spanish at home, more than 50% speak English "very well" (http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=ACS&_lang=en&_ts=134303235020).

⁴ *Solving the Immigration Crisis: The Road to Comprehensive Reform*. The American Prospect, November 2005

⁵ 42 U.S.C. Sec. 1973aa-1(a).

⁶ At the time of the passage of Section 203, "people of Spanish heritage" was the common term used by the government for Hispanic Americans/ Latinos.

determinations, there are 220 jurisdictions⁷ that must comply with Spanish language assistance. Such jurisdictions must provide voting materials and language assistance in Spanish to ensure full access and participation to Spanish language citizens who are limited-English-proficient (LEP).

Despite the fact that the language assistance provision of the Voting Rights Act has been in place for the past 30 years, there is evidence that some jurisdictions are still not in full compliance with the federal language assistance requirements, and that Latino voters still face voting discrimination based on language capability. For example:

- During the 2004 election in Pima County, Arizona, Latino LEP voters were denied equal access to voting due to the lack of sufficient bilingual ballots.⁸ Consequently, Latino voters were relegated to crowd around one translated, poster-sized board of more than a dozen initiatives that were on the ballot. At dusk, even this inadequate attempt to comply with Section 203 completely failed, given that the poster board was illegible due to the lack of lighting around it.

IV. SECTION 5 OF THE VOTING RIGHTS ACT

Section 5 of the Voting Rights Act was designed to eliminate and prevent discriminatory voting practices affecting minority voters imposed by states with a documented history of discrimination. Prior to passage of Section 5, states or counties that were told by federal courts to end one discriminatory practice would simply implement a new one to take its place. Congress decided in 1965 that states that had a history of discriminating against minority voters would have to affirmatively demonstrate that new changes in voting procedures would not further discriminate against minority voters. There are nine states, in whole, and an additional seven states, in part, that must receive administrative approval from the United States Attorney General or judicial approval from a three-judge panel of the D.C. District Court for all proposed voting changes. This approval requires proof sufficient to convince the Attorney General or the court that the proposed changes do “not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or [membership in a language minority group].”⁹ For example:

- The Mexican American Legal Defense and Educational Fund (MALDEF) filed suit in 2002 against the City of Seguin, Texas when it attempted to prevent Latinos from gaining a majority of seats on its city council. The 2000 Census showed that the growing Latino population in Seguin comprised the majority of five of the eight city council districts.

⁷ Despite the rapid growth of the Latino community, there were only 49 additional jurisdictions added in the entire country to those jurisdictions that need to comply with Section 203. Furthermore, five jurisdictions were removed from the list.

⁸ In 2004, NCLR worked with its Tucson, AZ affiliate (Pima County), Chicanos Por La Causa (CPLC), on a voter mobilization and election protection initiative, the Latino Empowerment and Advocacy Project (LEAP). CPLC volunteers noted at least ten polling locations that had only one bilingual copy of the ballot initiatives posted outside, before entering the building, and no bilingual copies inside those polling locations.

⁹ 42 U.S.C. 1973c.

The city responded by dismantling the fifth Latino majority district in its new redistricting plan, but the Department of Justice indicated that it would not likely preclear a plan with such an obvious retrogressive effect.¹⁰

The fact that the states of Texas and Arizona as well as certain counties in New York and California are covered by Section 5 has made a significant difference in the ability of Latino voters to exercise their right to vote. As more Latinos move into other historically-covered jurisdictions such as Georgia and Louisiana, Section 5 will provide protections needed there as well.

Section 5 has been an effective tool for a number of reasons. It stops many jurisdictions from implementing discriminatory barriers they might otherwise be tempted to try because they know they must prove to the federal government or a federal court that the voting change they want – whether it be to change a polling place, the time of the polling hours, or the way voting districts are drawn – will not leave the Latino community worse off than before the change. If a jurisdiction attempts to implement the change anyway, the Department of Justice often responds to the jurisdiction with an objection. Many times, the jurisdiction will modify the change at that point so that it will not have a discriminatory effect on minority voters. If the jurisdiction decides to implement the change over the Department of Justice's objection, the jurisdiction can be prevented from implementing the change by a federal court. This mechanism is critical to preserving the voting rights of Latinos primarily because the discriminatory change is stopped *before* the harm is done. In other words, Latino voters do not have to wait till after a discriminatory election to go to court when it is often too late to change the outcome of an election. Instead, Latino voters can prevent the change from ever going into effect, and the election can proceed without a new barrier.

V. RECOMMENDATIONS

NCLR is encouraged by the progress achieved since the inception of the Voting Rights Act; however, every election since the subsequent reauthorization of the act in 1975, 1982, and 1992 reminds us that the work, such as in Sections 203 and 5, is far from being completed. There are numerous examples of Latino voters unable to understand a ballot because it was in English; this denies them the right to cast an informed and effective ballot. There are also examples of jurisdictions attempting to limit the full voting potential of Latino voters as that segment of the voting population increases.

Letting the expiring provisions of the Voting Rights Act sunset in 2007 sends the wrong message. It says that we have given up on the great work that started more than 40 years ago, which strived to provide full voting rights to all American citizens. Therefore, NCLR respectfully urges Congress to study, reauthorize, and update the expiring provisions of the Voting Rights Act, to ensure that the vision, promise, and spirit of the Act are realized.

¹⁰ Testimony by Nina Perales, MALDEF Southwestern Regional Counsel, before the U.S. House Judiciary Subcommittee on the Constitution, regarding the reauthorizations of Sections 5 of the Voting Rights Act, October 25, 2005.

Specifically, NCLR calls on Congress to:

Reauthorize Section 203 of the Act and adjust it to comport to the nation's population needs and reality.

- Extend this section for an additional 25 years, to expire in August 2032.
- Lower the numerical trigger from 10,000 to 7,500 to more effectively capture language minority communities.
- Change the basis for Section 203 determinations from the decennial long-form survey to the American Community Survey (ACS) which is replacing the decennial long form.
- Require that Section 203 determinations be made every five years instead of every ten years, beginning in 2010, because it will be keyed to the ACS.

Failure to reauthorize the language minority provisions of the Act would result in the disenfranchisement of more than four million Latino citizens.

Reauthorize Section 5 of the Act.

- Extend this section for an additional 25 years, to expire in August 2032.
- Clarify the retrogression standard as articulated in *Georgia v. Ashcroft*¹¹ which has implications for Section 5 enforcement.

¹¹ In *Georgia v. Ashcroft*, the Supreme Court interpreted Section 5 to allow preclearance in certain circumstances if the overall political "influence" of minority voters is not diminished, even if their ability to elect candidates of choice is. This decision was a radical departure from past practice by the Department of Justice and the D.C. District Court.

PREPARED STATEMENT OF THE ASIAN AMERICAN JUSTICE CENTER: SUBMISSIONS OF MATERIALS FOR OVERSIGHT HEARINGS



November 22, 2005

The Honorable Steve Chabot
Chairman, Judiciary Subcommittee on the Constitution
U.S. House of Representatives
129 Cannon House Office Building
Washington, DC 20515
Facsimile: (202) 225-3012
Attention: Ms. Jennifer Goodlatte

RE: House Judiciary Subcommittee on the Constitution
Oversight Hearings on the Voting Rights Act of 1965
Submission of Materials for Oversight Hearings Entitled
"The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part I" and
"The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part II"

Dear Chairman Chabot:

On behalf of the Asian American Justice Center ("AAJC"), we write to express our support for the renewal and strengthening of those sections of the Voting Rights Act that are currently scheduled to expire in 2007. In particular, we advocate the renewal and expansion of Section 203, which requires certain jurisdictions to provide language assistance to voters with limited proficiency in English, as well as the renewal and restoration of Section 5, which requires "preclearance" of changes in laws and practices, and the consequent renewal of the United States Attorney General's federal observer and examiner authority granted pursuant to Sections 6 through 9.

Asian Americans have long suffered discrimination at the polls. Section 203 has had a profoundly positive impact on the ability of Asian American voters and other language minorities to exercise their right to vote. Section 203 is particularly beneficial to Asian American voters with limited English proficiency.¹ Unfortunately, problems with implementation and enforcement of Section 203, as well as overt discrimination towards language minorities at the polls, persist. Without renewal and proper implementation of Section 203, and the expansion of its reach to additional language minority populations, the right to vote

¹ Limited English proficiency is defined according to Census data as "speaking English less than very well." In the context of Section 203, limited English proficient means unable to speak or understand English adequately enough to participate in the electoral process.

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of many language minorities who do not read or speak English very well will be drastically and unfairly impaired. Accordingly, AAJC supports the renewal and expansion of Section 203, the renewal and restoration of Section 5 and the renewal of the Sections 6 through 9.

This letter outlines the reasons for renewing and strengthening Sections 5, 6-9, and 203 of the Voting Rights Act. The first section briefly discusses AAJC and its experience in the area of voting rights. The second section addresses historical discrimination against Asian Americans and the ongoing effects of that discrimination. The third section discusses the positive impact that Section 203 has had on the ability of Asian Americans to participate in the electoral process, and the fourth and fifth sections present evidence that demonstrates the importance of renewing Section 203. The sixth section illustrates the impact that Section 5 has had on language minority voters, and the seventh section demonstrates how Sections 6 through 9 have assisted language minority voters. Finally, the eighth and last section discusses the importance of strengthening Section 203 to include more language minority populations and restoring Section 5. We respectfully submit this letter to the House Judiciary Subcommittee on the Constitution and request that the letter be entered into the record for the Subcommittee's oversight hearings entitled "The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part I" and "The Voting Rights Act: Section 203 – Bilingual Election Requirements, Part II."

I. The AAJC Background and Its Experience in the Voting Rights Field

AAJC, formerly the National Asian Pacific American Legal Consortium ("NAPALC"), was founded in order to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. It was incorporated in 1991, and opened its Washington, D.C., office in 1993. A nationally recognized voice on behalf of Asian Americans, AAJC focuses its expertise on affirmative action, prevention of violence against Asian Americans, race relations, census issues, immigrant rights, language access, and voting rights. AAJC is affiliated with the Asian American Institute of Chicago, the Asian Pacific American Legal Center of Southern California in Los Angeles ("APALC"), and the Asian Law Caucus in San Francisco.

For over a decade, AAJC has worked to eliminate discriminatory barriers to the participation of Asian Americans in our nation's political process. AAJC has worked to enforce the protections of the Voting Rights Act, encouraged voter registration through enforcement of the National Voter Registration Act, and provided analysis of Asian American electoral participation through exit polling. AAJC and its affiliates also have worked to support policies that remove barriers to voting, such as defending the language assistance provisions of the Voting Rights Act and the National Voter Registration Act against congressional proposals to repeal these laws.²

The work of the AAJC is particularly important given that the Asian American population is the fastest growing racial group in the United States. It grew 99% between 1980

² Appendix A to this letter contains additional information about the AAJC's activities in the field of voting rights.

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and 1990, and has grown another 72% between 1990 and 2000.³ Asian Americans and Pacific Islanders comprise a broad category of people from nearly fifty ethnic groups and countries, including China, Japan, the Philippines, Korea, India, Pakistan, and Vietnam. They speak over one hundred Asian and Pacific Islander languages and dialects.⁴

II. Past and Present Discrimination Against Asian Americans and Its Continuing Effects

Past and Present Discrimination

Asian Americans historically have suffered extensive racial discrimination. Indeed, from the very beginnings of American history, Asian Americans have faced governmental discrimination that has prejudiced their ability to exercise their most basic rights. In 1790, among the first acts of the new federal Congress was to bar Asian Americans and other minorities from becoming naturalized citizens.⁵ Starting in the mid-1800s, immigration laws severely restricted the ability of Asian Americans to enter the United States. Between 1917 and 1965, the United States enacted at least five statutes intended to eliminate or limit Asian immigration. It was not until 1965 that discriminatory quotas were halted against Asian Americans. Perhaps the best-known historical example of discrimination against Asian Americans is the brutal internment of 120,000 Japanese Americans during World War II.⁶ Discrimination against Asian immigration continued through the 1980s and 1990s in often-uneven reactions to the recent waves of Vietnamese and Chinese political refugees.

As recently as 1994, the United States Commission on Civil Rights found that being of "Asian descent" had a "negative effect" on an employee's chance to move upward into management.⁷ One recent study stated that Asian Americans "face the worst chance [among all racial groups] of advancing into management positions."⁸

Another recent study showed that many Americans continue to harbor deeply racist attitudes toward Asian Americans. This study found that approximately 25% of the American public hold decisively negative views of Chinese Americans, and that 32% believe that Chinese

³ Felicia Sze, *Failing Predictions in Pursuit of Proportional Representation: Assuring Asian American Voter Strength in San Francisco Through Section 2 Litigation*, 11 Asian L.J. 97, 102 (2004) (citing U.S. Environmental Protection Agency, *Asian & Pacific Islander American Demographics* (2002)).

⁴ This letter discusses Asian Americans and Pacific Islanders as one group ("Asian American") unless it is referring to an article, study, or poll etc., which addresses them separately.

⁵ See, e.g., Naturalization Act of March 26, 1790, ch. 3, 1 Stat. 103 (1790) (Repealed 1795).

⁶ See *Korematsu v. United States*, 323 U.S. 214 (1944).

⁷ Deborah Woo, *The Glass Ceiling and Asian Americans: A Research Monograph* 42 (July, 1994) (unpublished manuscript).

⁸ LEAP Asian Pacific American Pub. Policy Inst. & UCLA Asian American Studies Ctr., *The State of Asian Pacific America* 215-216 (1993).

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Americans are more loyal to China than to the U.S.⁹ The study showed that 46% of those surveyed believe that “Chinese Americans passing on information to the Chinese government is a problem.”¹⁰ Almost 25% of those polled believe Chinese Americans are “taking away ‘too many jobs from Americans,’ are ‘[o]verly aggressive in the workplace,’ and have too much power in the business world.”¹¹ Approximately 15% of those polled believe that Chinese Americans were “[m]ore willing than others to use shady practices,” and that Chinese Americans are “two-faced” and “conceited.” The study further found that, of those respondents holding decisively negative views, 34% said they would be upset if a significant number of Asian Americans moved into their neighborhood, and 57% believed that increased Asian American population is bad for America.¹²

Racist attitudes toward Asian Americans include negative views about the prospect of Asian Americans in political office. Approximately 23% of those polled said that they would be “uncomfortable” if an Asian American were elected president, in contrast to 15% who would be uncomfortable with an African-American President.¹³

Continuing Effects of Discrimination

Notwithstanding the stereotype of Asian Americans as highly successful, many Asian Americans continue to suffer from the effects of the discrimination discussed above. Demographic data from the 2000 Census demonstrates that many Asian American subgroups fall below average national levels of income and educational attainment.¹⁴

For example, although approximately 80% of all Americans graduate from high school Hmong, Cambodian, and Laotian Americans all have graduation rates of 50% or less. Similarly, poverty is particularly high among the Hmong population, 38% of whom live at or below the poverty line. Additionally, 29% of people of Cambodian descent live at or below the poverty line. As discussed in a 2003 White House report, recent Asian immigrants are even more likely to be poor. The report found, for example, that almost two-thirds of Hmong Americans who were born abroad live in poverty.¹⁵

⁹ See Committee of 100, *American Attitudes Toward Chinese Americans and Asian Americans* 12, 15 (Apr. 25, 2001), available at <http://www.committee100.org/publications/survey/C100survey.pdf>.

¹⁰ *Id.* at 25.

¹¹ *Id.* at 12-13.

¹² *Id.* at 46, 50. In addition to negative views towards Asian Americans, thousands of incidents of anti-Asian Pacific American violence have been documented over the last decade, including physical harassment, assault, attempted murder, and murder. See National Asian Pacific American Legal Consortium, *2000 Audit of Violence Against Asian Pacific Americans* 9 (2001).

¹³ *Id.* at 29.

¹⁴ The data cited below are taken from U.S. Census 2000, Summary Files 1 through 4. Figures are for the inclusive Asian American (but not Pacific Islander) population (single race and multirace combined).

¹⁵ President's Advisory Commission on Asian Americans and Pacific Islanders, *Report to the President and the Nation. Asian Americans and Pacific Islanders Addressing Health Disparities: Opportunities for Building a Healthier America* (2003), available at http://www.aapi.gov/Commission_Final_Health_Report.pdf.

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Consistent with these disparities, many Asian Americans do not have the opportunity to learn English and therefore must rely on their native tongue. Data from the 2000 Census make clear that people of Asian descent are far less likely than the total population, particularly the White population, to speak only English at home. Whereas 82% of the population as a whole speaks only English at home, only 27% of the Asian population does so. Additionally, 36% of the Asian population has limited English proficiency, in contrast to only 8% of the total population and 2% of the White population. The disparity is even greater for certain Asian American subgroups. For example, over 50% of Cambodian, Laotian, Hmong, and Vietnamese Americans have limited English proficiency. According to the 2003 White House report, problems with English limit Asian Americans' ability to access other parts of society, including healthcare. Such limited access also perpetuates unequal opportunities, reinforces stereotypes, and results in continued discrimination in the electoral process.¹⁶

Indeed, before the enactment of the language assistance provisions of the Voting Rights Act, citizens with limited English proficiency effectively were denied the opportunity to vote by English-only elections. As discussed in Section III below, Section 203 has had a profoundly beneficial impact on securing the right to vote for many Asian American voters. Thus, the need for Section 203 remains.

III. The Beneficial Impact of Section 203 of the Voting Rights Act

Under Section 203 of the Voting Rights Act, jurisdictions must provide language assistance to voters if more than 5% or a total of at least 10,000 of the voting-age citizens of a jurisdiction belong to a single minority group with limited English proficiency and the illiteracy rate for the particular minority group exceeds the national illiteracy rate. The language assistance provided under Section 203 includes translated ballots and other voting materials, publicity, and oral assistance at polling places. The language minority groups covered under Section 203 include Asian Americans, American Indians, Alaskan Natives, and Latinos.

Every ten years, the Census Director determines whether a jurisdiction qualifies for Section 203 protection. The director's decision is final and is not subject to legal challenge.

Since the Voting Rights Act was enacted over 40 years ago, and since the adoption of Section 203 of the Voting Rights Act in 1975, Asian Americans have made substantial gains in electoral representation. Asian American voter participation and registration likewise have increased. The language assistance provided by Section 203 has played a critical role in many of these gains.¹⁷

¹⁶ *Id.*

¹⁷ States that contain at least one county required to provide voting assistance in one or more Asian languages pursuant to Section 203 include Alaska, California, Hawaii, Illinois, New York, Texas, and Washington.

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Gains in Asian American Electoral Representation

As a result of the passage of Section 203 and the 1992 amendments of the Voting Rights Act, Asian Americans have made tremendous progress in obtaining electoral representation. Studies show a sharp rise in the number of Asian American elected officials in federal, state, and local offices. In 2004 the total number was 346, up from 120 in 1978. Of the 346 total elected officials, 260 serve at the local level, up from 52 in 1978.¹⁸ Approximately 75 Asian American officials serve at the state legislative level. In California, the increase has been particularly dramatic. In 1990, California had no Asian American state legislators; it now has nine. These gains can be directly attributed to the Voting Rights Act and particularly to the passage of Section 203. For example, the vast majority of Asian American elected officials, 75%, were elected in jurisdictions covered by Section 203 of the Voting Rights Act.¹⁹ In the state legislatures, 65% of Asian Americans were elected from jurisdictions covered by the Voting Rights Act.²⁰ In city councils, 79% of Asian Americans were elected from Voting Rights Act-covered jurisdictions.²¹ And among those serving on the school boards, 84% of Asian Americans were elected from covered jurisdictions.

In California, eight of the nine Asian American state legislators represent legislative districts located in counties that are covered under Section 203 for at least one Asian language.²² Every county in California that is covered under Section 203 for an Asian language has at least one Asian American legislator.

Harris County, Texas provides another example of gains in electoral representation that are directly attributable to the 1992 amendment to Section 203. In July 2002, the Census Bureau determined that Harris County had nearly 17,000 voting age United States citizens who speak Vietnamese. In 2003, Harris County election officials violated Section 203 by failing to provide Vietnamese ballots on its electronic voting machines. Harris County attempted to remedy the problem by creating paper ballot templates in Vietnamese. However, the County did not make these templates widely available to voters and did not offer them to voters at all polling places.

Pressure by the Department of Justice, the AAJC, and the Asian American Legal Center of Texas, a local community-based organization, resulted in a settlement agreement that addressed the County's violations. Specifically, the County agreed to (1) hire an individual to coordinate the county's Vietnamese language election program; (2) provide all voter registration

¹⁸ Carol Hardy-Fanta, Christine Marie Sierra, Pei-te Lien, Dianne M. Pinderhughes, and Wartyna L. Davis, *Race, Gender and Descriptive Representation: An Exploratory View of Multicultural Elected Leadership in the United States*, September 4, 2005, at 4.

¹⁹ *Id.* at 17.

²⁰ *Id.* at 17.

²¹ *Id.* at 17-18.

²² These legislators are California State Assemblymembers Judy Chu (Los Angeles), Carol Liu (Los Angeles), Ted Lieu (Los Angeles), Van Tran (Orange), Shirley Horton (San Diego), Wilma Chan (Alameda), Alberto Torrico (Alameda, Santa Clara), and Leland Yee (San Francisco, San Mateo).

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and election information and materials, including the voting machine ballot, in Vietnamese, as well as English and Spanish; (3) establish a broad-based election advisory group to make recommendations and assist in election publicity, voter education, and other aspects of the language program; and (4) train poll officials in election procedures and applicable federal voting rights law. As a result of these changes, Harris County elected its first Vietnamese legislator, Hubert Vo, in November 2004 by at least 16 votes over an incumbent.²³ Despite these tremendous gains, barriers precluding Asian Americans from electing candidates of their choice still exist. Thus the need for Section 203 protections remains.

Asian Americans have increased not only their electoral representation but also their voter registration and turnout. U.S. Census Bureau, American voters turned out in unprecedented numbers across the country on November 2, 2004, including almost 3 million Asian Americans. From 1990 to 2000, Asian American voters grew from less than 1 million to 1.98 million or a growth rate of 118 percent.²⁴ While there have been steady increases in Asian American voter registration and participation, this progress is at risk of being subverted without the renewal of Section 203. There is still much work to do (as evidenced below) before Asian Americans can exercise their right to vote without encountering obstacles related to their inability to read English very well and without encountering discrimination at the polls. This work cannot be done without Voting Rights protections and specifically those protections provided by Section 203.

IV. Continued Need for Special Provisions of the Voting Rights Act

Despite much needed Voting Rights Act protections and the proven success of Section 203, discrimination against Asian American voters and other language minority voters still occurs in the voting process. There is evidence that intentional discrimination against Asian Americans in the voting process is often far reaching with the intent of impacting vast numbers of Asian American voters.

Evidence of Ongoing Intentional Discrimination Against Asian Americans

Although the Voting Rights Act has done a tremendous amount to assist language minorities in exercising their right to vote, discrimination against Asian Americans and other groups persists, and the need for the protections provided by the Voting Rights Act remains.

For example, Bayou La Batre, Alabama, is a fishing village of about 2,750 residents, about one-third of whom are Asian Americans. In the 2004 primary elections, an Asian American candidate ran for City Council. In a concerted effort to intimidate supporters of this candidate, supporters of a white incumbent challenged Asian American voters at the polls. The

²³ Article available at http://www.civilrights.org/campaigns/vra/learn_more/detail.cfm?d=195.

²⁴ "The Voting Rights Act and Its Implications on Three Nonblack Minorities" in Richard Valelly Ed., *The Voting Rights Act: Securing the Ballot*. Washington, DC Congressional Quarterly, 2006. (Chapter 8, Draft version, 4-5-05 at 11).

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challenges, which are permitted under state law, included complaints that the voters were not U.S. citizens or city residents, or that they had felony convictions. The challenged voters had to complete a paper ballot and have that ballot vouched for by a registered voter. The Department of Justice investigated the allegations and found them to be racially motivated. As a result, the challengers were prohibited from interfering in the general election, and ultimately the town, for the first time, elected an Asian American to the City Council.²⁵

Boston provides another example of ongoing discrimination against language minorities. On July 29, 2005, the Justice Department sued the city for violating the Voting Rights Act. The suit alleged that the city's practices during several elections discriminated against citizens of Hispanic, Chinese, and Vietnamese descent, in violation of Section 2, and that the city failed to provide Spanish language information to voters, in violation of Section 203. For example, when minority language voters could not locate their correct polling place, the city directed them to the city's English-only online polling site locator. In addition, the city treated Asian American voters with limited English proficiency disrespectfully, refused to allow them to use an assistant of choice, and improperly influenced, coerced, and ignored their ballot choices. Ultimately, the court approved a settlement agreement requiring the City of Boston to provide language assistance to Chinese, Vietnamese, and Hispanic voters. The assistance includes providing interpreters, translated ballots, and translated voter notices, as well as mandatory poll worker and interpreter training. The agreement also creates a mechanism for voters to lodge complaints against poll workers. In addition, it establishes an advisory task force and permits federal examiners to monitor elections.²⁶

Similarly, in 1999, in Hamtramck, Michigan, an organization called "Citizens for Better Hamtramck" challenged voters (including Bengali Americans) who "looked" Arab, had dark skin, or had Arab or Muslim sounding names. Voters were pulled from voting lines and forced to show passports or citizenship papers before they could vote. Some were asked to take an oath of allegiance even though they had appropriate citizenship documentation. No white voters were challenged. The Department of Justice sued, and the city entered into an agreement that required the city to appoint at least two Arab Americans or one Arab American and one Bengali American election inspector to provide language assistance for each of the 19 polling places where challenges of dark-skinned voters occurred during the November 2, 1999 general election.²⁷

Even the federal government has taken part in intentional discrimination against Asian Americans and other language minorities. In California, a U.S. Attorney's office randomly investigated voters who had requested Spanish and Chinese language voting materials, and arranged for the Immigration and Naturalization Service to crosscheck the voters' records with citizenship records. In response, California enacted Section 6253.6 of the California

²⁵ http://www.civilrights.org/campaigns/vra/learn_more/detail.cfm?id=196.

²⁶ *U.S. v. City of Boston*, No. 05-11598-WGY (D. Mass. Oct. 18, 2005).

²⁷ *U.S. v. City of Hamtramck*, No. 0073541 (E.D. Mich. Aug. 27, 2003).

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Government Code in 1982, which requires government officials to maintain the confidentiality of the files of voters who have requested translated voting materials.

Unfortunately, there are numerous other examples of discrimination against Asian Americans voters and candidates. For example, on April 25, 2005, Trenton, New Jersey radio hosts denigrated Asian Americans by using racial slurs and speaking in mock Asian gibberish during an on-air radio show. The hosts demeaned a Korean American mayoral candidate and made various other derogatory remarks. One of the hosts, Craig Carton, made the following remarks:

Would you really vote for someone named Jun Choi [said in fast-paced, high-pitched, squeaky voice]? ... And here's the bottom line. . . no specific minority group or foreign group should ever dictate the outcome of an American election. I don't care if the Chinese population in Edison has quadrupled in the last year, Chinese, should never dictate the outcome of an election, Americans should... And it's offensive to me... not that I have anything against uh Asians... I really don't... I don't like the fact that they crowd the goddamn black jack tables in Atlantic City with their little chain smoking and little pocket protectors.²⁸

Several days after the broadcast, the New Jersey/National Taskforce Against Hate Media and the New Jersey Coalition for Asian American Civil Rights reached an agreement with the radio station, which provided that the hosts would issue an on-air apology and the station would implement specific strategies to promote cultural awareness.²⁹ Jun Choi eventually won the election by just 191 votes. His opponent did not concede defeat and said he would seek a recount.³⁰

The discriminatory attitudes expressed by the hosts in Trenton are by no means unique. Earlier this year in Washington State, a citizen named Martin Ringhofer challenged the right to vote of more than one thousand people with foreign-sounding names.³¹ Mr. Ringhofer targeted voters with names that "have no basis in the English language" and "appear to be from outside the United States" while eliminating from his challenge voters with names "that clearly sounded American-born, like John Smith, or Powell."³² Mr. Ringhofer primarily targeted Asian and Hispanic voters.³³ In one of the counties in which Mr. Ringhofer initiated his challenge, the

²⁸ <http://www.asianmediawatch.net/jerseyguys/>.

²⁹ *Id.*

³⁰ Susan Todd, *A Political Upstart on Way to Making History in Edison*, Nov. 9, 2005, available at <http://www.nj.com/news/ledger/index.ssf?base/news-0/113152149242680.xml&coll=1>.

³¹ *A Nasty Turn in Election Challenge*, Seattle Times Editorial, Apr. 5, 2005, available at http://seattletimes.nwsource.com/html/editorialsopinion/2002230834_profilinged05.html.

³² *Id.* See also Jim Camden, *Man says votes from illegal immigrants*, March 31, 2005, available at <http://www.spokesmanreview.com/local/story.asp?ID=61944>.

³³ *Id.*

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county auditor declined to process the challenge and contacted the U.S. Department of Justice about the challenge due to its apparent violation of state and federal law.³⁴

Through poll monitoring efforts, several organizations have documented evidence of discrimination by poll workers at polling sites throughout the country. Under the Access to Democracy Project (described further in Appendix A to this letter), the AAJC and its affiliates monitored polls during the November 2004 election and found significant evidence of poll worker reluctance to implement Section 203 properly, as well as outright hostility towards Asian American voters. For example, one election judge in Cook County, Illinois, commented that a voter whom he was unable to understand should “learn to speak English.” Similarly, in a precinct in Cook County, with a very high concentration of Chinese American voters, there was only one Chinese ballot booth and no sign indicating that the booth was for Chinese speakers. When asked about this concern, the election judge replied, “They don’t need them anyway. They just use a piece of paper and punch numbers. They don’t read the names anyway, so it doesn’t matter.”

During the 2004 election, “Election Protection” coalition members monitored polls by documenting calls from voters across the United States complaining of discriminatory practices at the polls. For example, in Orange County, California, an Asian American voter was required to show proof of identification and address even though she was not a first time voter and had voted in the precinct previously. This also occurred in Bergen County, New Jersey.³⁵

Similarly, in Boulder, Colorado, a poll worker made racist comments to an Asian American voter, told her she was not on the list of registered voters, and then turned her away after she had waited in line for over an hour. The voter watched as others completed provisional ballots, and she asked if she could do so as well, only to be told her circumstances were different. The voter continued to watch as another Asian American woman was also turned away. After the voter left the polling place, she called the Election Protection hotline and discovered that she indeed was properly registered to vote at that location. She returned and eventually was allowed to vote.³⁶

Other examples of discriminatory behavior at the polls included:

- In West Palm Beach, Florida, an election poll worker told a voter that the city was not handling Hispanic, Black or Asian voters at that particular polling place.³⁷
- In Union County, New Jersey, White challengers were seen going inside the voting booth with minority voters.³⁸

³⁴ Letter dated April 5, 2005 from Franklin County Auditor to Martin Ringhofer.

³⁵ *Election Incident Reporting System: 1-866-Our-Vote*, available at <https://voteprotect.org/index/php?display=EIRMapNation&tab=ED04>.

³⁶ *Id.*

³⁷ *Id.*

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- In Jackson Heights, Queens, one poll worker said, "You Oriental guys are taking too long to vote." Other poll workers commented that there were too many bilingual materials on the tables, saying, "If they (Asian American voters) need it, they can ask for it." At another site in Queens, when a poll worker was asked about the availability of translated materials, he replied, "What, are we in China? It's ridiculous."³⁹

These examples demonstrate the continued need for the Voting Rights Act protections. Ample evidence demonstrates that when properly implemented, Section 203, in particular, has a positive impact on language minority communities and results in increases in registration and voter turn out. King County Washington, which is covered under Section 203, exemplifies how grass roots efforts can assist in the implementation of Section 203. King County included public service announcements and outreach among community groups at high schools and universities in an effort to staff polling places with Chinese-speaking poll workers. As a result, King County's 2005 primary election had more language assistance poll workers than ever before. In addition, the number of voters requesting election materials translated into Chinese for this year's general election increased by more than 26% over the prior year's general election.

Statistical Evidence of Discrimination

The 2004 Election Day Survey conducted by the U.S. Election Assistance Commission ("EAC") confirms that language minorities have unequal access to election services. The survey found that Section 203 jurisdictions tended to have more inactive voter registration rolls, lower voter turnout, fewer returned absentee ballots, and far more provisional ballots cast. For example, more than half of all of the provisional ballots were cast by voters in Section 203 jurisdictions, even though these jurisdictions constituted only one-tenth of the jurisdictions reporting results to the EAC. The EAC's report concluded, "These findings appear to be consistent with voters within these jurisdictions having difficulty in navigating the electoral process in a language that is not their native tongue."⁴⁰

Differential Voting Patterns

Although Asian American voters are highly diverse both economically and in educational attainment, they have a distinct and unique voice, and sometimes favor different candidates than White voters. There have been several examples of differences in voting patterns between Asian American and White voters:

(... Continued)

³⁸ *Id.*

³⁹ Asian American Legal Defense & Education Fund, *Asian American Access to Democracy in the 2004 Election: Local Compliance with the Voting Rights Act and Help America Vote Act (HAVA) in NY, NJ, MA, RI, MI, PA, VA*, August 2005.

⁴⁰ Final Report of the 2004 Election Day Survey, U.S. Election assistance Commission, September 27, 2005 at Executive Summary, p.9, available at http://eac.gov/election_2004/toc.htm.

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- In the 1998 U.S. Congressional 39th District race in California, Cecy Groom (a Filipino American Democrat) ran against Ed Royce. While almost 57% of Asian American Pacific Islanders voted for Groom, over 61% of White voters supported Royce.⁴¹
- In the 1998 race for California State Assembly District 60, in which Bob Pacheco ran against Ben Wong, 61% of Asian American Pacific Islanders voted for Wong, but only 23% of White voters did so.⁴²
- In the 1998 race for California State Assembly District 68, in which Ken Maddox ran against Mike Matsuda, 68% of Asian American Pacific Islanders voted for Matsuda; most White voters supported Maddox (56%).⁴³
- The City of Westminster, California, is home to the largest Vietnamese community outside of Vietnam. In the 1998 Westminster mayoral race, five candidates ran for the position of Westminster Mayor, including a Vietnamese American, Chuyen Nguyen. While Asian American and Pacific Islander voters surveyed overwhelmingly supported him, White voters tended to support Joy Neugebauer and eventual winner Frank Fry. In the highly contested Westminster City Council race, eight candidates, including three Asian Americans, ran for two seats. Despite overwhelming support from Asian American voters, the Asian American candidates lost to White candidates who were opposed by the Asian American community.⁴⁴

Even in elections where no Asian American candidate is involved, Asian American voters still tend to vote differently than White voters. According to a Los Angeles Times election 2004 exit poll, 34% of Asian American voters voted for Bush, whereas 64% voted for Kerry. White voters, on the other hand, voted 57% for Bush and 42% for Kerry.⁴⁵ A November 2002 Southern California Voter Survey found that, in the 2002 gubernatorial vote, 61% of Asian American Pacific Islanders voted for Gray Davis, while only 38% of White voters voted for him.⁴⁶ According to a November 2000 Los Angeles Times exit poll, Asian American voters voted 62% for Gore and 37% for Bush. White voters, on the other hand, voted 43% for Gore and 54% for Bush.⁴⁷

⁴¹ Asian Pacific American Legal Center, November 1998 Southern California Voter Survey Report (1999), available at http://www.apalc.org/Nov_1998_Voter_Survey.pdf.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ L.A. Times 2004 Exit Poll, available at www.pollingreport.com/2004.htm.

⁴⁶ Asian Pacific American Legal Center, Data on Asian Pacific Islander Voters From the November 2002 Southern California Voter Survey, Nov. 7, 2002, available at http://www.apalc.org/2002_voter_survey.pdf.

⁴⁷ L.A. Times 2004 Exit Poll, available at www.pollingreport.com/2000.htm.

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Asian American voters also vote differently than White voters on ballot initiatives that directly impact the Asian American community.⁴⁸ For example, 53% of Asian American voters voted against Proposition 187, a 1994 initiative in California to ban illegal immigrants from public social services, non-emergency health care, and public education. By contrast, 63% of White voters voted for the initiative. Similarly, 61% of Asian American voters voted against California's Proposition 209, a 1996 initiative that bans affirmative action in the state; by contrast, 63% of White voters voted for the initiative.

Poor Implementation of Section 203

Despite the protective measures provided by Section 203 of the Voting Rights Act, problems with implementation and enforcement persist at the polls that discourage language minorities from voting and perpetuate low voter turnout among Asian Americans and other nonwhite groups.

As shown in the November 2004 election poll monitoring conducted by AAJC and its affiliates, in 21% of the polling sites monitored (96 sites), poll monitors found there were no multilingual materials or translated instructions on how to use the voting machines, sample ballots, or directional signs. In 23% of the polling sites monitored (106 sites), poll monitors found that multilingual materials were placed in such a way that voters were unable to see or reach them. Ballots and other materials were poorly displayed, hidden in boxes under tables, hidden under other materials, not taken out of their original packaging, or placed behind poll workers where voters could not reach them.

In both the 2000 and 2004 elections, there were insufficient numbers of Chinese and Korean interpreters, which resulted in lines so long that some voters were forced to leave before casting their ballots. In Flushing, Queens, poll workers were often hostile to providing language assistance to voters with limited English proficiency.⁴⁹

V. The Continued Need for Language Assistance

Despite the positive impact of the Voting Rights Act in general and Section 203 in particular, language minorities still face significant discrimination at the polls when attempting to exercise their right to vote. As the examples discussed above show, discrimination at the polls can manifest in different ways, including hostile and unwelcoming environments at the polls and an outright denial of the right to vote. Section 203 remains necessary to remedy the problem of discrimination against Asian Americans at the polls.

⁴⁸ L.A. Times exit polls.

⁴⁹ Asian American Legal Defense & Education Fund, *Asian American Access to Democracy in the 2004 Election: Local Compliance with the Voting Rights Act and Help America Vote Act (HAVA) in NY, NJ, MA, RI, MI, PA, VA*, August 2005.

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Section 203 likewise remains necessary to help language minorities overcome another major barrier: the inability to speak or read English well. This is the single greatest hurdle that many language minorities must overcome in exercising their right to vote. Although many language minorities were born in this country or came here at a very young age, some have trouble speaking English well, often because they received a substandard education and were not taught English in school. Other language minorities immigrated to this country and have not had adequate opportunities to learn English.

Because the United States encourages people who have been here for a long time and who have been contributing to society to be civically engaged, certain persons are exempt from English literacy requirements when applying for citizenship, such as the elderly who have resided in the United States for a lengthy period of time, the physically or developmentally disabled, and certain Hmong veterans who helped to save American lives during the Vietnam War and came to the United States as refugees. Additionally, during the 1992 reauthorization of Section 203, Congress itself documented that the lack of English as a Second Language (ESL) programs effectively precludes language minorities from learning English. The waiting time for language minorities enrolling in ESL courses often can be more than one year. In Boston, the average waiting time can be as much as two years. In parts of New Jersey, the waiting time is six months to a year. Pennsylvania has reported waiting times as long as a year.⁵⁰ Section 203 is a necessary remedy to overcome the language barrier, which prevents those who do not speak or read English well from fully exercising their right to vote.

According to the 2000 Census,⁵¹ 40% of Asian Americans nationwide over the age of 18 have limited English proficiency, and 77% speak a language other than English in their homes. For certain Asian American groups, these numbers are well over the national averages. For example, 67% Vietnamese Americans over the age of 18 have limited English proficiency. For Laotians, Cambodians and Hmongs over the age of 18, over 60% have limited English proficiency.

Many Section 203 counties likewise have significant Asian American populations with limited English proficiency. For example, in King County, New York, 63% of Asian Americans 18 years and older have limited English proficiency. In several other Section 203 counties, including San Francisco County, Queens County and Kodiak Island Bureau, Alaska, over 50% of Asian Americans 18 years and older have limited English proficiency. The high rates of limited English proficiency among Asian American and other language minority voters make the language assistance provisions of Section 203 a critical protective measure against racial discrimination.

According to Attorney General Alberto Gonzales, Section 203 is a necessary remedy to address these disparities.

⁵⁰ Center for Adult English Acquisition, *available at* <http://www.ca.org/caela>.

⁵¹ The data cited below are taken from U.S. Census 2000, Summary Files 1 through 4. Figures are for the inclusive Asian American (but not Pacific Islander) population (single race and multirace combined).

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In the past two years, the Civil Rights Division has undertaken the most extensive enforcement of the minority language provisions in the history of the Voting Rights Act...The good news is we have evidence that our enforcement and compliance efforts are working.

For example, in San Diego County, voter registration among Hispanics and Filipinos rose by over 20 percent after one of our suits was filed. During that same period, Vietnamese registrations increased by 40 percent. And right here in Texas – in Harris County – the turnout among Vietnamese eligible voters doubled following the Justice Department’s efforts in that county.⁵²

Additional evidence of the necessity of Section 203 as a remedy is the number of voters who have requested language assistance. According to data gathered by the Los Angeles County Registrar of Voters, the total number of voters in Los Angeles County who have requested language assistance increased by 38% from December 1999 to August 2005. This increase reflects increased outreach by Los Angeles County and illustrates language minority voters’ reliance on language assistance. The following table contains additional data on this point:

Percentage Increase in Number of Voter
Requests for Language Assistance from December 1999 to August 2005

<u>Languages</u>	
Chinese	49%
Japanese	25%
Korean	26%
Tagalog	63%
Vietnamese	40%
Spanish	37%

Similarly, during a recent election in Orange County, 46.5% of Chinese, Korean and Vietnamese foreign-born voters requested bilingual sample ballots.⁵³

Costs of Language Assistance

In a May 1997 study on the costs of Section 203, the General Accounting Office (GAO) surveyed all 422 jurisdictions and all 28 states covered by Section 203. For the respondents that provided cost data, the average cost for written assistance was only 14% of total costs, and the average cost of oral assistance was only 6.5% of total costs.

⁵² Prepared Remarks of Attorney General Alberto R. Gonzales at the Anniversary of the Voting Rights Act, Lyndon B. Johnson Presidential Library Austin, Texas, Aug. 2, 2005.

⁵³ Martin Wisckol, *The Buzz: Registrar Gadgets Lets You be Election Monitor*, available at http://www.ocregister.com/ocregister/news/local/article_754103.php.

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Notably, some officials responding to the GAO survey stated that they have provided assistance for so long that it is just part of their process, and they do not track costs separately. Some jurisdictions even demonstrated that it is possible to provide oral assistance at no or minimal cost. The GAO reported that other jurisdictions even provided assistance to groups for whom they were not required to offer assistance.

As the panel recently heard from Dr. James Tucker, his research confirms the GAO findings. Dr. Tucker's research found, among other things, that nearly 60% of reporting jurisdictions (91 of 154) reported incurring no additional costs for providing oral language assistance, and that nearly 55% of reporting jurisdictions (78 of 144) reported incurring no additional costs for providing written language assistance. This research also concluded that, after controlling for factors such as population size and classification of costs, the average percentage of total election costs attributable to language assistance is 2.9% for oral assistance and 7.6% for written assistance. As Dr. Tucker noted in his testimony, these averages are nearly equal to or below the original costs reported by GAO based on the 1984 elections and relied upon by Congress to extend Section 203 in 1992.

Opponents of the Voting Rights Act and Section 203 in particular continue to argue that providing language assistance to voters with limited English proficiency is prohibitively costly. The evidence presented in the GAO study and the recent research conducted by Dr. Tucker rebut this contention. According to these reports, costs were minimal in most cases and certainly manageable.

VI. Impact of Section 5 – Preclearance Provision of the Voting Rights Act

Section 5 of the Voting Rights Act requires covered jurisdictions to receive approval from either the Attorney General or a three-judge panel of the United States District Court for the District of Columbia for any proposed change to their election laws or practices before the change may take effect. A jurisdiction is covered under Section 5 if it (1) maintained a voting "test or device" as a prerequisite for voting or registration as of November 1, 1964, 1968, or 1972; and (2) less than 50% of the voting-age residents in the jurisdiction were registered to vote, or actually voted, in the presidential elections of 1964, 1968, or 1972.

In order to receive federal or judicial approval, a covered jurisdiction must establish that the proposed change was not made with either the purpose or effect of making a minority group worse off with respect to its ability to exercise its voting rights effectively than it was before the change; *i.e.*, the change must not have the purpose or effect of causing retrogression.

Section 5 applies to numerous voting changes in covered jurisdictions, including redistricting, annexation of other territories or political subdivisions, and polling place changes. These changes can have an immense impact on local politics in particular and on Asian American communities' ability to participate in the process. In jurisdictions that are covered by both Sections 5 and 203, Section 5 complements the enforcement of Section 203. Jurisdictions that are covered by both Sections 5 and 203 must obtain preclearance from the Justice

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Department before implementing any change in a language assistance program. For example, when the New York City Board of Elections refused to provide fully translated machine ballots, the Justice Department, acting pursuant to Section 5, compelled the Board to comply with Section 203 by providing machine ballots with all names transliterated into Chinese.⁵⁴

As the Asian American community continues to grow and move, Section 5 will become more and more relevant to Asian Americans. Asian Americans are one of the fastest growing populations in America.⁵⁵ Large numbers of Asian Americans continue to live in California, New York, and Hawaii.⁵⁶ However, Asian Americans are simultaneously moving to different areas of the United States, including the South. Georgia and North Carolina are among the three fastest growing Asian American populations.⁵⁷ In fact, five of the states covered in their entirety and another four states covered partially by Section 5 are among the top 20 states with the fastest growing Asian American populations. The remaining covered states all experienced a growth in their Asian American populations.⁵⁸

VII. **Impact of Section 6 Through 9 of the Voting Rights Act**

Sections 6 through 9 of the Voting Rights Act provide for the appointment of federal employees to examine and observe polling places and vote-counting activities. Examiners primarily prepare and maintain lists of persons eligible to vote. Observers actually monitor elections to ensure that eligible voters are being allowed to vote and that votes are being properly counted. They serve as witnesses and also as deterrents to improper voting activities. The provisions of Sections 6 through 9 grant to courts and to the Attorney General the power to certify jurisdictions eligible for examiners or observers. Judicial authority in this regard is permanent, and certification can be granted at the court's discretion. By contrast, the Attorney General's authority is limited to jurisdictions covered by Section 5, and can only be exercised after the Attorney General has received at least twenty complaints from minority groups. Most jurisdictions eligible for examiners and observers have been certified as such by the Attorney General. Since the Attorney General's authority is conditioned upon Section 5, which is set to expire in 2007, his authority under Sections 6 through 9 will effectively expire then as well, unless Section 5 is renewed.

Judicial authority has allowed for federal examiners and observers to be authorized in jurisdictions that have been sued by the Justice Department. For example, earlier this year, the Justice Department filed suit against three cities in Los Angeles County for alleged violations of Section 203. The Justice Department's complaint against the City of Rosemead alleged that,

⁵⁴ Editorial, *Minority Rights in the Voting Booth*, New York Times, Aug. 19, 1994, available at <http://select.nytimes.com/search/restricted/article?res=F60910FB3D5DOC7A8DDDA10894DC494D81>.

⁵⁵ <http://www.census.gov/Press-Release/www/releases/archives/race/001839.html>.

⁵⁶ http://www.advancingequality.org/files/census_handbook.pdf - Summary - p.i.

⁵⁷ http://www.advancingequality.org/files/census_handbook.pdf - Table 9 - p. 10.

⁵⁸ *Id.*

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during its March primary election, the city failed to provide language assistance to Latino Chinese and Vietnamese American voters. The Justice Department's complaints against the Cities of Paramount and Azusa contained similar allegations with regard to language assistance for Latino American voters. The Justice Department entered into consent agreements with each of the three cities that authorize monitors to observe future elections held by the cities. These federal observers will help to ensure that language minority voters in Rosemead, Paramount, and Azusa who have limited English proficiency receive adequate language assistance under Section 203.

In June 2004, after a finding that it had not fully complied with Section 203 for both Tagalog-speaking and Spanish-speaking citizens, San Diego County, California, entered into a settlement agreement requiring that it provide appropriate language assistance to both Filipino and Hispanic voters. This assistance included providing registration and voting materials in Tagalog and Spanish, hiring poll officials fluent in Tagalog and Spanish, as well as translators familiar with Tagalog and Spanish election terminology in order to provide clear and accurate translations. The agreement also provided for federal examiners and observers to be deployed to observe elections. Though not required to do so by Section 203,⁵⁹ the county also agreed to provide similar materials and assistance for Vietnamese voters for the November 2004 election and for elections in 2006.

Several Section 203 jurisdictions are also covered by Section 5, such as Harris County, Texas, Kings County, New York, and New York County, New York. Given that the importance of federal examiners and observers to the Justice Department's ability to ensure that jurisdictions are complying with Section 203, the failure to renew Section 5 and the consequent lapse of the Attorney General's federal examiner and observer authority would harm language minority voters in such jurisdictions.

VIII. Strengthening the Voting Rights Act

Strengthening Section 203

Specifically, Congress should improve Section 203 by lowering the numerical threshold for coverage to 7,500. Lowering the threshold from 10,000 to 7,500 will allow several Asian American language minority populations to benefit from language assistance under Section 203. These populations would likely not be covered after the next coverage determinations are made based on 2010 census data – unless the threshold is lowered to 7,500. A lower threshold would result in minimal additional costs.

A lower numerical threshold will also remedy the potential that the American Community Survey, which will replace the decennial census, will undercount language minorities. Unlike the decennial census long-form survey, the American Community Survey

⁵⁹ *Justice Department Monitored Election in San Diego, California*, U.S. Newswire, July 26, 2005, available at <http://releases.usnewswire.com/GetRelease.asp?id=50908>.

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will not be conducted in any Asian languages. Because 36% of the Asian American population has limited English proficiency, an English and Spanish-only American Community Survey will likely result in an undercount of Asian American language minorities. Additionally, American Community Survey forms are sent to only a small sample of the population, which means that few language minorities receive the form. This may result in the American Community Survey collecting insufficient sample sizes for proper statistical analysis, further increasing the probability that the American Community Survey will undercount Asian American language minorities. The likelihood of an undercount further justifies lowering Section 203's numerical threshold to 7,500.

Nine additional Asian American populations in California, Illinois, New York, and Washington would currently be covered under Section 203 for Asian language assistance if a 7,500 threshold had been in effect when the 2002 determinations were made. All but one of those populations reside in counties that are already mandated to provide voting assistance in one or more Asian languages. Another six populations would have been covered for Spanish language assistance in Illinois, New Jersey, Ohio, Texas, Virginia and Wisconsin. Although several of these populations will have reached the 10,000 threshold by 2010, several other populations will not have reached the 10,000 threshold and will not be covered after the next coverage determinations are made – unless the threshold is lowered to 7,500.

Importantly, lowering the threshold to 7,500 would trigger coverage for several Southeast Asian American communities. The current numerical benchmark has largely left out this significant portion of the Asian American community. Vietnamese Americans are covered by Section 203 in a few jurisdictions, but other Southeast Asian American language minority groups have not been covered thus far. The Southeast Asian American community largely consists of Americans from Cambodia, Laos and Vietnam. These communities clearly fall within the group of citizens Congress intended to protect and empower under Section 203 of the Voting Rights Act. Their characteristics include high levels of limited English proficiency and low levels of educational attainment, as well as low voter turnout.

For the Southeast Asian American community, educational attainment remains low, especially for the Cambodian, Laotian, and Hmong communities.⁶⁰ Census data show that over 25% of Cambodians, 45% of Hmong, and 23% of Laotians have had no formal schooling, compared to 1% of the overall population. Similarly, Census data shows that only 9% of Cambodians, 7% of Hmong, and 8% of Laotians obtain at least a bachelor's degree, compared to 24% of the overall U.S. population. The impact of these low rates of educational attainment on electoral participation is exacerbated by the fact that 32% of Cambodian households, 35% of Hmong households, and 32% of Laotian households are "linguistically isolated," which means that all members of the household 14 years old and over have at least some difficulty with English, as compared to 4% of households for the total U.S. population. Voters from linguistically isolated households are in particular need of Section 203 assistance because they

⁶⁰ The data cited below are taken from U.S. Census 2000, Summary Files 1 through 4. Figures are for the inclusive Asian American (but not Pacific Islander) population (single race and multirace combined).

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do not have any family members who can accompany them to the polls and assist them in the voting process.

Three more Southeast Asian American communities would have been covered in the 2002 coverage determinations if the threshold had been 7,500 then, including the Cambodian American population in Los Angeles County. Section 203 coverage of this population alone would allow 17% of the nation's total Cambodian American population to benefit from language assistance; but if the threshold remains at 10,000 when the next coverage determinations are made in 2012, zero percent of the nation's Cambodian American population will benefit from language assistance. A lower threshold of 7,500 will also trigger coverage for two more Southeast Asian American communities that were not at 7,500 after the 2000 census, but will likely be after the 2010 census.

Section 203 currently covers several cities traditionally known for their significant Asian American populations, including Los Angeles, California's Bay Area region, New York, Chicago and Seattle. Section 203 coverage has also been triggered in cities with emerging Asian American populations, including Houston and San Diego. However, without a lower threshold, Section 203 will likely to continue to omit from its coverage other emerging Asian American populations in places such as Boston and Dallas. It is important for Congress to consider strengthening Section 203 so that it protects Asian American voters in these emerging population areas.

Another important change should be more frequent determinations of the Section 203 coverage. Currently, Section 203 is determined based upon data from the decennial census long form. Asian Americans are a rapidly growing minority; this method of determining eligibility cannot keep pace with the ever-growing and changing population and denies many Asian American citizens the right to vote. Since the Census Bureau is replacing the decennial census long form with an annual American Community Survey, determinations should be conducted every five years.

Another potential improvement that can be made is to include Section 203 jurisdictions in the triggering formula provided in Sections 6 through 9. Currently, federal examiners and observers cannot be sent to Section 203 jurisdictions without a court order or consent decree. Section 203 should be treated in the same manner as Section 5 with regard to federal examiners and observers.

Restoring the Strength of Section 5

In order to restore the vitality of Section 5 of the Voting Rights Act, any reauthorization process should include language that restores prior interpretation of both the "purpose" and the "effect" prongs of the Section 5 preclearance test.

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Restoring Section 5's Protections Against Intentional Racial Discrimination

The plain language of Section 5 states that proposed voting changes should be approved only if they will “not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color or [membership in a language minority group].” While this language was long understood to prohibit jurisdictions from implementing both purposefully discriminatory voting changes and those with a discriminatory or “retrogressive” effect, the Supreme Court issued a decision in 2000 that effectively eliminated the “purpose” prong of the Section 5 test.

In Reno v. Bossier Parish Sch. Bd., 528 U.S. 320 (2000), despite strong evidence that the school board was acting with an unconstitutional intent to discriminate against black voters, the Supreme Court found no basis for an objection under Section 5. Instead, the Court articulated a new interpretation of the statute: that the Justice Department was powerless to block intentionally discriminatory voting changes unless it found that the jurisdiction acted with the “retrogressive purpose” of making things worse than they already were for minority voters. Thus, because the school board in Bossier had no majority black districts before 1990, its enactment of a plan preserving the all-white school board could not violate Section 5, no matter how blatant the evidence that the plan was motivated by racial discrimination. The decision in this case has dramatically reduced the power of Section 5 by removing the Justice Department’s ability to stop intentional racial discrimination. The prior interpretation must be restored.

Restoring the Prior Interpretation of “Discriminatory Effect” in the Section 5 Analysis

The Supreme Court has consistently interpreted “discriminatory effect” to mean retrogression – *i.e.*, whether the minority community is worse off after the change. Notwithstanding decades of consistent interpretation of this standard, in Georgia v. Ashcroft, 539 U.S. 461 (2003), a bare 5-4 majority of the Supreme Court suddenly abandoned this straightforward approach and replaced it with a “totality” test that significantly reduces the importance of voting changes that diminish the minority community’s ability to elect candidates of choice. The new interpretation of retrogression articulated by the Court introduces highly subjective and ill-defined standards into the Section 5 analysis. In short, the Court held that when making preclearance determinations, administrators must consider not only “coalition” jurisdictions, but also “influence” jurisdictions. In a coalition jurisdiction, minority voter populations are large enough to enable minorities to elect a candidate of their choice. In contrast, in an influence jurisdiction, the minority voter population is too small to enable minorities to elect a candidate of their choice, but apparently sufficient to provide “influence” in the political process. This opinion threatens to erode decades of progress for minority voters under the Voting Rights Act. The decision in this case has dramatically reduced the power of Section 5 by creating a confusing, murky standard that courts do not know how to navigate. The prior interpretation must be restored.

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Expert Witness Fees and Expenses

In West Virginia University Hospitals, Inc. v. Casey, 499 U.S. 83 (1991), the Supreme Court held that prevailing parties in civil rights cases cannot recover expert witness fees as part of the attorneys' fees recoverable under 42 U.S.C. § 1988. Because it is virtually impossible to prove a Voting Rights Act violation without expending thousands of dollars for expert witness testimony, this decision radically undermines the purpose of civil rights fee-shifting provisions, which is to assure access to the courts for victims of discrimination who otherwise would be financially unable to bear the costs of civil rights litigation. To restore Congress' intent of assuring access to the courts, with respect to voting rights cases, the attorneys' fee provision of the Voting Rights Act, 42 U.S.C. § 1973 l (e), should be amended to permit the recovery of expert fees and expenses.

Conclusion

We urge Congress to renew and strengthen Sections 203, 5 and 6 through 9 of the Voting Rights Act. Asian Americans have long suffered discrimination at the polls, and the Voting Rights Act has had a profoundly positive impact on the ability of Asian American voters and other language minorities to exercise their right to vote. Section 203 is particularly beneficial to Asian American voters with limited English proficiency. Without renewal and proper implementation of Section 203, and the expansion of its reach to additional jurisdictions, the right to vote of many language minorities who do not read or speak English well will be drastically and unfairly impaired. Section 5, which requires preclearance of any proposed change in election laws in covered jurisdictions, is critical to the enforcement of Section 203. And Sections 6 through 9 are imperative in poll monitoring and deterring improper voting activity. Accordingly, AAJC supports the renewal and expansion of Section 203. In addition, we advocate for the renewal and restoration of Sections 5 and 6 through 9.

We thank you for your consideration of this letter and respectfully request that it be entered into the record for the Subcommittee on the Constitution's oversight hearings on the Voting Rights Act.

Sincerely,



Karen K. Narasaki
President and Executive Director

The Honorable Steve Chabot
November 22, 2005
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cc: The Honorable F. James Sensenbrenner, Jr.
U.S. House of Representatives
Chairman, Committee on the Judiciary
2449 Rayburn House Office Building
Washington, DC 20515
Facsimile: (202) 225-3190

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The Honorable Spencer Bachus
U.S. House of Representatives
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The Honorable William L. Jenkins
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The Honorable John N. Hostettler
U.S. House of Representatives
1214 Longworth House Office Building
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The Honorable Chris Van Hollen
U.S. House of Representatives
1419 Longworth House Office Building
Washington, DC 20515

Appendix A: Work of AAJC

During and after the 2004 elections, AAJC actively participated in protecting voting rights and increasing civic participation in the Asian American community through four major voting rights projects:

- AAJC's Access to Democracy project established community based programs in Cook County (Chicago), Harris County (Houston), King County (Seattle), Los Angeles County, Orange County, San Diego County, San Mateo County, and Santa Clara County (San Jose) to ensure compliance with Section 203 by providing language assistance to Asian American voters. Affiliates and local partners of AAJC assisted local election officials with their compliance efforts, monitored polls to evaluate how effectively covered counties complied with Section 203 and the Help America Vote Act ("HAVA"), and conducted exit polling. AAJC affiliates and local partners also conducted community education projects.
- AAJC and its affiliates recently released a report, "Sound Barriers: Asian Americans and Language Access in Election 2004," which details the observations made of 466 polling stations in Illinois, Texas, Washington and California during the November 2004 elections. "Sound Barriers" illustrates the pervasive problems Asian American voters face at the polls, and underscores the necessity of Section 203 in ensuring right to vote for Asian Americans with limited English proficiency.
- AAJC's Project VOTE program focused on increasing the civic engagement and political participation of the Southeast Asian community, a community that has grown rapidly since 1975 but that often does not vote. Through Project VOTE, AAJC provided mini-grants to two local sites: Wausau, WI and Long Beach, CA. AAJC will be releasing a report regarding the best practices to increase the civic engagement and political participation of the Southeast Asian community.
- AAJC participated in Election Protection 2004, a nonpartisan coalition of civil rights and civic organizations, that combined grassroots and legal advocacy in an effort to prevent the sort of problems that occurred in Florida and elsewhere during the 2000 presidential elections in county after county and state after state. AAJC functioned as the Asian American liaison at the Election Protection hotline headquarters for the November 2004 election.

AAJC has been a resource for community-based organizations across the country on voting rights, providing both technical assistance and community education materials. In addition to developing fact sheets and information kits regarding pertinent voting issues, such as Section 203 of the Voting Rights Act and campaign finance reform, AAJC has also spearheaded a number of important reports. Working with the NAACP Legal Defense and Educational Fund, Inc. and the Mexican American Legal Defense and Educational Fund, AAJC produced a report

on redistricting, *The Impact of Redistricting In Your Community: A Guide to Redistricting*, that provides a broad overview of the Voting Rights Act and the connection between the 2000 Census and redistricting. The report supplies answers to frequently asked questions, an overview of the legal issues affecting voting rights, and details current redistricting standards. AAJC also drafted a comprehensive voting rights handbook, *Voting in the Asian Pacific American Community: Asserting Our Rights, Asserting Our Voice*, that is a practical, hands-on guide for individuals, community leaders, and organizations to improving the current level of political and civic engagement among Asian American communities and increasing Asian American participation in the voting process.

NATIONAL CONGRESS OF AMERICAN INDIANS, RESOLUTION #TUL-05-090: SUPPORT
REAUTHORIZATION OF PROVISIONS SET TO EXPIRE IN THE VOTING RIGHTS ACT



NATIONAL CONGRESS OF AMERICAN INDIANS

The National Congress of American Indians
Resolution #TUL-05-090

TITLE: Support Reauthorization of Provisions Set to Expire in the Voting
Rights Act

EXECUTIVE COMMITTEE

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Leon Jacobs
Lumbee Tribe

SOUTHERN PLAINS
Steve Johnson
Absentee Shawnee

SOUTHWEST
Manuel Heart
Ute Mountain Ute Tribe

WESTERN
Kathleen Kitcheyan
San Carlos Apache

EXECUTIVE DIRECTOR
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Tingit

NCAI HEADQUARTERS
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WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

WHEREAS, through its unique relationship with Indian nations and tribes, the federal government has established programs and resources to meet the educational needs of American Indians, Alaska Natives, and Native Hawaiians, residing on and off their reserved or non-reserved homelands; and

WHEREAS, while the Indian Citizenship Act made Native Americans eligible to vote in 1924, state law determined who could actually vote, which effectively excluded many Native Americans from political participation for decades; and

WHEREAS, the Voting Rights Act was enacted to remove barriers to political participation and prohibit the denial of the right to vote on account of race or color and as a result, the Voting Rights Act has guaranteed millions of Americans the equal opportunity to participate in the political process and is considered one of the most successful civil rights laws ever enacted by Congress; and

WHEREAS, while much progress has been made in the area of voting rights, significant hurdles to securing voting rights for still remain as documented by a recent court case in South Dakota detailing three decades of systematic voting rights abuses against Native Americans; and

WHEREAS, while most of the Voting Rights Act is permanent, some provisions are set to expire in 2007, including: a requirement that states with a documented history of discriminatory voting practices obtain approval from federal officials before they change election laws; provisions that guarantee access to bilingual election materials for citizens with limited English proficiency; and the authority to send federal examiners and observers to monitor elections in order to prevent efforts to intimidate minority voters at the polls.

NOW THEREFORE BE IT RESOLVED, that the NCAI, in light of the history of discrimination that minorities have experienced when voting, and the proven effectiveness of the Voting Rights Act, encourages Congress to:

1. Re-enact the Section 5 pre-clearance requirements for 25 years, consistent with the time period adopted with the 1982 extension. These provisions directly impact nine states (South Dakota, Arizona, California, New York, Florida, Michigan, Louisiana, Mississippi, and Texas) with a documented history of discriminatory voting practices, and local jurisdictions in seven others by requiring them to submit planned changes in their election laws or procedures to the U.S. Department of Justice or the District Court in Washington, D.C. for pre-approval. Congress should also consider options for modifying the mechanism by which coverage is determined in order to expand coverage to additional areas with a high concentration of Native Americans.
2. Renew Section 203 for 25 years so that the indigenous people of what is now called the United States and other Americans who are limited in their ability to speak English can continue to receive assistance when voting. Of the 466 local jurisdictions impacted by this provision, 102 jurisdictions must assist American Indians and Alaska Natives in 18 states. Congress also should modify the formula by which these covered jurisdictions are identified in order to provide more communities with Section 203 assistance.
3. Renew Sections 6 to 9, which authorize the attorney general to appoint election monitors and poll watchers to ensure voters are free from harassment, intimidation, or other illegal activity at the polls on Election Day; and

BE IT FURTHER RESOLVED, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

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NCAI 2005 Annual Session

Resolution TUL-05-090

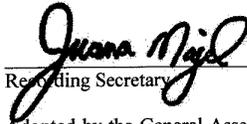
CERTIFICATION

The foregoing resolution was adopted at the 2005 Annual Session of the National Congress of American Indians, held at the 62nd Annual Convention in Tulsa, Oklahoma on November 4, 2005 with a quorum present.



Joe Garcia, President

ATTEST:



Recording Secretary

Adopted by the General Assembly during the 2005 Annual Session of the National Congress of American Indians held from October 30, 2005 to November 4, 2005 at the Convention Center in Tulsa, Oklahoma.

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PREPARED STATEMENT OF ROGENE GEE CALVERT BEFORE THE NATIONAL COMMISSION
ON THE VOTING RIGHTS ACT, APRIL 7, 2005

NATIONAL COMMISSION ON THE VOTING RIGHTS ACT

SOUTHWEST REGIONAL HEARING

April 7, 2005

Arizona State University

Tempe, Arizona

Good afternoon, Commissioners, fellow panelists and guests. My name is Rogene Gee Calvert and I am representing Houston/Harris County, Texas.

Today) I plan to cover my experience as a community leader in the rollout of the Vietnamese voting language assistance program in Harris County.

I first heard the news that Harris County met the threshold for the Section 203 of the Voting Rights Act in late July 2002 when representatives of the Justice Department came to the National Organization of Chinese Americans (OCA) annual convention to inform those OCA local chapters that were located in the jurisdictions deemed eligible based on the 2000 US Census.

Having no prior knowledge of Section 203 and how it could affect our community, I was delighted to know that the Vietnamese community in Houston/Harris County would now have voting information in their native language.

Shortly after returning to Houston, I spoke with County Clerk, Beverly Kaufman whose responsibility it would be to manage the county's Vietnamese voting language assistance program. I suggested putting together a community advisory committee to assist in this endeavor as I imagined there would be mountains of information to translate. From experience, I knew that translation is not an easy task and would be best to have the translations reviewed and translated back into English to ensure accuracy.

Within a month, the Community Advisory Committee met to discuss their agenda. Tackling the translation of materials was both easy and difficult. Since other communities had already translated ^{voting information} into Vietnamese, the County chose to use one of these companies ^{from} ~~in~~ another state. The local Advisory Committee had issues with some of the translation down to the

selection of words. In some instances, the choice of ^a certain words ~~is~~ ^{over another} indicated whether it was before or after the Communist takeover. This was of great offense to the reader. Members of the committee recommended revisions of the translation. Of course, revisions mean expense and expense was not always tolerated. It was not as important or sensitive to a non-Vietnamese who had the decision-making power ^{to deem} if the change was substantive or not.

Just earlier in Harris County, the change from the paper ballot to the eSlate had taken place. This, of course, is a critical part of the voting process. As it turned out, the County was not able to put the eSlate ballot in Vietnamese until March of 2004. They gave as the reason for not having the eSlate ballot in Vietnamese ^{because} ~~that~~ the International Testing Authorities had not fully certified the firmware required to run the necessary applications on the E-slate. This was because of the lack of clarifying input from the Election Assistance Commission (EAC) which was authorized through the Help America Vote Act of 2002 (HAVA) ^{however} ~~at~~ the EAC was not in existence yet.

Whether this excuse was valid or not, we would never know. We were, however, very disappointed and this excuse seemed indicative of the general attitude of the County, to get done just what was necessary to get by. After all it was almost 2 years since we had begun the Vietnamese language program and the eSlate should have been one of the most important things handled.

Furthermore, the alternative left much to be desired. Instructions for using the eSlate was, of course, put in Vietnamese along with a paper ballot template in Vietnamese. This was held up next to the eSlate machine for the voter to read while looking at the eSlate in English and Spanish.

It was during this election process that the Asian American Legal Center (AALC) documented voting problems among the Vietnamese. The lack of Vietnamese-speaking poll workers was a critical issue especially since the actual eSlate voting process required more assistance. It was also noted that the translated paper ballot template and instructions were not always available at the polls or Vietnamese voters were instructed to go

Downtown to get them. Furthermore, poll workers were not properly trained to know about or use the translated ballot templates.

As a result of this less than satisfactory effort, the Justice Department and the County entered into a Memorandum of Agreement that outlined certain terms that needed to be accomplished. Some of these terms addressed the need:

- for Vietnamese speaking poll workers in precincts with 50 or more registered Vietnamese voters and Vietnamese speaking workers on call for other smaller precincts;
- ^{to} emphasis ^{to} on letting voters know in Vietnamese that anyone can assist them with voting except their employer or agent of their employer or the union; ^{to} the use of County employees who speak Vietnamese during election day;
- to keep strict records on who is trained and a checklist of the items upon which they are trained;
- to employ on a full-time basis a coordinator for the Vietnamese language program and

For the last election, a daughter called me because her elderly mother went to vote and a poll worker went into the booth with her to help. The mother felt pressured and rushed with this stranger standing next to her and she had to vote for someone she intended to vote for. The daughter did not know she could have accompanied her mother into the booth - she wanted to know if her mother could go without vote paper to the person who she needed.

- to convene an Advisory Committee that meets monthly during the election cycle and whose meetings are documented in summary fashion.
- This agreement would continue through December 31, 2006.

This agreement has helped tremendously in implementing things that were lacking previously or seemed to take excessive time to complete. The Vietnamese speaking coordinator has been helpful in recruiting more poll workers but the numbers are still not enough to fill the need. More resources are required to recruit and maintain these workers. They need to be educated about the importance of this task and their employers need to understand why a day off from work is critical. Many Vietnamese are employed in service industry jobs or own their own businesses and cannot have a day off without negative ramifications.

The suggestion to add a polling place in the densely Asian American populated area of southwest Houston was finally adopted. In the last election, this polling place saw waiting lines everyday during the early voting period as well as on election day. The familiarity and convenience

^{run by Vietnamese political workers}
 of this site, as well as it being a presidential election year and a Vietnamese
 American on the ballot drew ^{Vietnamese} voters from all over the county and many first
^{Vietnamese} time voters as well.

With the obvious success of the Vietnamese language program, the large
 and diverse Asian American community in Houston is hopeful that the
 Chinese language can be next. Community leaders are willing and ready to
 work with the county on incrementally translating information into the
 Chinese language. Congressman Al Green, who has a large part of the
 Asian American population in southwest Houston in his district, has
 committed to helping find resources to do so.

I am somewhat dismayed, however, at the possibility of this happening
 without Section 203 making it mandatory. I recently spoke with the
 County Clerk to introduce the idea of working voluntarily towards this end
 and she indicated that unless it was mandatory, she wouldn't be as
 "enthusiastic." I think this statement sums up my experience with the local
 municipality in charge of the language assistance program, unless it is
 MANDATORY, it would be done less than enthusiastically.

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Unless we have the Voting Rights Act and, especially Section 203, the effort to assist limited speaking populations with the right to vote will be less than enthusiastically accomplished, if at all.

Thank you all for the opportunity to share my thoughts and experiences with you. We are on the brink of making or breaking a very important program that has ensured that many persons in this country can exercise their right to vote. Please let those who will make this decision know that hundreds of thousands of individuals in Houston/Harris County are grateful for the language assistance program in both Vietnamese and Spanish.

PREPARED STATEMENT OF JOHN LEWIS, EXECUTIVE DIRECTOR, INTER TRIBAL COUNCIL OF ARIZONA, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, APRIL 7, 2005

**STATEMENT OF THE
INTER TRIBAL COUNCIL OF ARIZONA
BEFORE THE
NATIONAL COMMISSION ON THE VOTING RIGHTS ACT
ON
THE VOTING RIGHTS ACT**

April 7, 2005

Good afternoon my name is John R. Lewis and I serve as the Executive Director for the Inter Tribal Council of Arizona. The Inter Tribal Council of Arizona was established in 1952 to provide a united voice for tribal governments located in the State of Arizona to address common issues of concern. On July 9, 1975, the council established a private, non-profit corporation, Inter Tribal Council of Arizona, Inc.(ITCA), under the laws of the State of Arizona to promote Indian self-reliance through public policy development. ITCA provides an independent capacity to obtain, analyze and disseminate information vital to Indian community self-development.

The members of ITCA are the highest elected tribal officials: tribal chairpersons, presidents and governors. These representatives are in the best position to have a comprehensive view of the conditions and needs of the Indian communities they represent. As a group, the tribal leaders represent governments that have a shared historical experience. Consequently, the tribes have a common governmental status as well as similar relationships with federal and state governments. ITCA is governed by a Board of Directors composed of: President, First Vice President, Second Vice President, and Secretary/Treasurer. The work of ITCA staff and consultants is carried out under the direction and supervision of John R. Lewis, Executive Director and Alberta C. Tippeconnic, Assistant Director.

There are 22 Tribes in Arizona and they occupy reservations varying in size from the Navajo Reservation with 9 million acres in Arizona (not including lands in New Mexico and Utah), to the Tonto Apache Reservation with 85 acres. Altogether, Indian lands comprise 26.6% of the total land in Arizona. The lands the tribes occupy range from the timbered forests of the White Mountain Apache Tribe to the dry Sonoran desert of the Tohono O'odham Nation. The Hualapai, Fort Mojave, Colorado River and

Quechan tribes all have lands along the Colorado River. The Hopi Tribe's villages are on arid, rocky mesas in northeast Arizona and have the longest authenticated history of occupation of a single area by an American Indian Tribe in the United States.

Most of the Indian reservation communities are rural and remote from major metropolitan population and service areas. Reaching the Havasupai reservation for example, requires a two hour drive from Flagstaff, a half hour drive on a dirt road, and an eight mile hike or horse ride down into Havasupai Canyon. Several of the tribes, including Salt River, Gila River and Yavapai Prescott, are located near, or contiguous to, off-reservation towns. The Salt River Pima-Maricopa Indian Community is bounded on the west by Scottsdale and on the South by Mesa, Arizona. The Yavapai Prescott reservation boundaries are contiguous with the town of Prescott, Arizona. Nevertheless, all of the reservations maintain rural characteristics including sparse populations, scattered homesites, and agricultural land use. The reservations also share the rural problems of lack of access to important public services such as transportation, wastewater treatment facilities, and fire protection.

With that background of current Tribal lands and populations, I'd like to relay a bit of Indian history that provides a more specific context for today's discussion. Historically, Tribes were forced to give up vast tracts of their homelands but did retain governmental rights on the lands they kept. In this process, Indian people were put into a unique position. They remained tribal citizens but also became citizens of the United States though their full rights of citizenship did not come until this century and only as a result of the efforts of Indian people with the support of Indian rights organizations and their allies.

One of the major issues in this struggle has been the right of Indian people to vote, a basic right in a democracy. Before World War I, Indian people in Arizona who lived on reservations were not legal citizens of the United States. When the United States entered the war in 1917, Indians were exempt from the draft. However, more than 8,000 Indian men and women voluntarily served in the armed forces; many of them giving their lives in defense of their homes. In response to the contribution of Indian people in the war and through a major political effort of Indian rights leaders such as Dr. Carlos Montezuma, a Yavapai Indian, congress passed the Indian Citizenship Act in 1924.

The fact that Indians were U.S. citizens did not make them eligible voters in Arizona or other states¹. In an attempt to gain recognition of the right of Indians to vote in Arizona, Peter Porter, a Pima Indian from the Gila River Reservation, filed a lawsuit in 1928. But the Arizona Supreme Court ruled against the case asserting that Indians were under FEDERAL GUARDIANSHIP and that the State Constitution denied the vote to “mental incompetents and people under guardianship.”

Facing World War II and the need for a universal draft, Congress again affirmed the citizenship of all Indian people—on or off reservations—in the Nationality Act of 1940. At the end of World War II, many Indian veterans returned to their reservation homes in Arizona. These veterans learned that the country which had willingly accepted their sacrifices in the name of democracy on the battlefield, denied them the opportunity to protect democracy through political action—that is the right to vote.

On November 8, 1947 two members of the Ft. McDowell Yavapai Nation, Harry Austin and Frank Harrison, walked into the Maricopa County Recorders office in Phoenix to register to vote. The County Recorder refused to register the two Yavapai men. Their attorneys immediately filed suit and when the Superior Court ruled against the case, they appealed the decision to the Arizona Supreme Court. Finally, on July 15, 1948 the Supreme Court of Arizona unanimously overruled the previous opinions. Judge Levi S. Udall, father of Congressman Morris Udall, quoted the Indian law scholar Felix Cohen and stated in his decision:

“In a democracy suffrage is the most basic civil right, since its exercise is the chief means whereby other rights may be safeguarded. To deny the right to vote where one is legally entitled to do so, is to do violence to the principles of freedom and equality.”

After the court decision, Arizonans, both Indian and non-Indian saw new opportunities—they also anticipated new problems and the intensification of old problems. Some Indian people were unsure about their newly won voting rights. Many did not see themselves as active participants in the federal and state political process—simply because they did not view it as their process. Some feared that involvement in this non-Indian process would lead to taxation, further loss of reservation lands, and the termination of their special relationship with the federal government. These fears stemmed in large part from statements generated by the non-Indian community. Despite

these fears, the decision in the voting-rights lawsuit set a firm basis for the eligibility of Indian people to the rights of full citizenship in education, health and social services.

Other legal barriers still had to be overcome. In 1948 an article in the Arizona Republic newspaper noted:

“To be eligible to register and vote, Indians must meet all the customary requirements, including age, residency, ability to write and to read the Constitution without prompting. . . .

It was estimated that 80 to 90 percent of the State’s Indian population could not meet all these requirements, primarily because of illiteracy.”

Arizona was made subject to the Voting Rights Act requirements in 1965 because of discrimination against Mexican-Americans and Indian citizens. Increased educational opportunities for Indian people reduced the impact of the literacy requirements when they were struck down by the Voting Rights Act Amendments of 1970. But problems, some intentional and some the result of insensitivity, continued to exist and in 1976 the Arizona State legislature passed a law which allowed a voter to bring someone of his or her own choosing to help in voting.

There were also physical barriers that remain obstacles even today. Geographical isolation and long travel distances make it difficult for many Indian people living on reservation to register and to vote. Moreover, other issues raised at the conclusion of the lawsuit in 1948 are still controversial. These issues can also be seen in the San Carlos Apache Tribe’s successful objection in 1982 to the proposed redistricting plan that would have split and diluted the strength of the Apache vote. In addition, Navajo and Apache counties were made subject to a consent decree requiring those counties to establish programs to assist Indian voters who primarily speak an Indian language.

The language resources developed and Indian people conducting outreach to Tribes on behalf of some counties in Arizona provide a valuable and necessary service particularly in contemporary times as Indian people are overcoming the historical but still relevant direct and indirect attempts to disenfranchise their votes. Indian people are becoming more and more engaged in state and federal elections and based on U.S. Census figures we can conservatively estimate that in Arizona there are approximately 100,000 Indian people of voting age who speak an Indian language. However, although

there are nine counties in Arizona that are covered by Section 203 of the Voting Rights Act not all are in full compliance with the law. Apache, Navajo and Pima counties do have notable programs and their election officials and staff have been willing to share their materials with other counties. However, other counties have stalled efforts to hire and retain individuals fluent in the Indian language or languages spoken in those counties or develop the necessary materials and so language assistance required by Section 203 is not readily available in Indian languages. Anecdotal evidence suggests that potential Indian voters who primarily speak an Indian language are further discouraged to vote as poll workers in these counties are at best ignorant of the requirements of Section 203 due to the lack of leadership by county election officials on this matter.

Most recently another barrier has been erected in that Arizona statutes have been changed to require proof of citizenship for voter registration and picture or two forms of other identification for voting at polling places. Although the VRA requires approval by the U.S. Department of Justice of such changes it does not provide absolute protection as we have seen on this particular matter. The new law will require proof of citizenship for voter registration that many American Indians may not possess. Specifically, many older American Indians were not born in a medical facility and therefore lack the required official documentation necessary to apply for documents required by the proposed law. Moreover, with regard to voting at polling places counties may not accept picture identification cards issued by Tribal governments. Some Tribes do not issue picture identification cards or do not have identification cards at all.

The provisions contained in the new statute creates undue administrative requirements that places a burden of proof on and perpetuates suspicion of Indian people. Moreover, in many parts of Arizona Indian people are regularly mistaken for undocumented immigrants and harassed – the new statute would empower those who wish to disenfranchise Indian voters and further alienate Indian people from exercising their right to vote. Voting in Federal and state elections should not be made more burdensome but this new statute does exactly that. Indian people vote in large numbers during Tribal elections because, perhaps more than anything, they feel it is their process. Those same voters can and will vote in state and federal elections in greater numbers when we are able to do away with all forms of voter antagonism, intimidation and

neglect. Until we reach that day we must maintain, enhance and enforce the Voting Rights Act and Section 203 specifically so the voting process is made as convenient and simple as possible to ensure the viability of the democratic electoral process and to insure that all citizens are encouraged to vote and exercise the most basic civil right -- the right to vote.

With that brief statement I'd like to thank the National Commission on the Voting Rights Act, local partners and your allies in Congress and elsewhere for providing an opportunity to provide testimony in support of reauthorization of Section 203 and other important provisions of the Voting Rights Act.

END

¹ On June 14, 1948 a 44-year-old former Marine sergeant, World War II veteran and at the time the principal at Laguna Pueblo Day School went to register to vote at the Valencia County Courthouse in Los Lunas, New Mexico. Even though he was a U.S. citizen, a local resident and a war veteran, clerks refused to register Miguel H. Trujillo because he was an American Indian. New Mexico prevented Indians who lived on reservations from voting in state elections under a provision in the state Constitution that prohibited voting for "insane persons . . . and Indians not taxed."

Outraged that he could fight for the United States in war, but couldn't vote in his home state, Trujillo of Isleta Pueblo, sued New Mexico in federal court and won. On Aug. 3, 1948, a three-judge panel in Santa Fe ruled that New Mexico's provision banning Indians was "discrimination on the grounds of race" and violated the U.S. Constitution. Nevertheless, some months later state Attorney General Walter Kegel had to reject Santa Fe District Attorney Marcelino Gutierrez's request for double lines at Polling places so "intelligent voters can vote without having to wait for all of the Indian voters."

PREPARED STATEMENT OF NADINE COHEN, LAWYER'S COMMITTEE FOR CIVIL RIGHTS
UNDER LAW OF THE BOSTON BAR ASSOCIATION, BEFORE THE NATIONAL COMMISSION
ON THE VOTING RIGHTS ACT, JUNE 14, 2005



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**Testimony of Nadine Cohen of the Lawyers' Committee For Civil Rights Under Law of the
Boston Bar Association To The Northeast Regional Hearing of the National Commission on
the Voting Rights Act
June 14, 2005**

Thank you for inviting me to participate in this critical hearing to discuss the challenges facing minority voters in Massachusetts. The Boston Lawyers' Committee, was the first local affiliate of the National Lawyers' Committee, and from its inception in 1968 has been actively involved in protecting the voting rights of people of color.

African-Americans, Latinos and Asians make up almost 20% of the MA population, but hold less than 2% of the key elected offices.

The state's 12 member congressional delegation is comprised of all white men.

All five state-wide constitutional offices, from Governor on down are held by whites. There has been not one non-white elected to state-wide office since Edward Brooke was last elected to the U.S. Senate over 30 years ago.

The 160-member Massachusetts House of Representatives has only 5 African-Americans, and 3 Latinos. The 40-member Massachusetts Senate has only 1 African American and 1 very recently elected Latino.

No African-American or Latino member of the state legislature has held any of the influential leadership positions: including, Speaker of the House, Senate President, Chair of either body's Ways and Means Committee, or the Joint Committee on the Judiciary.

Virtually every mayor in the state is white.

Only 40 or so of the state's 351 communities have elected an official of color in the past 25 years.

In 2000, MA ranked 26th in the number of Black elected officials; and since 1980 the state has not improved its ranking.

People of color in Massachusetts have battled for decades over redistricting for legislative seats and to change at-large election systems for city councils and school committees that operate to dilute minority voting strength.

In a state that was once the center of the movement to abolish slavery Massachusetts should, and can, do much better in ensuring the rights of minority voters to equal participation in the electoral process.

Of course I would be remiss if I didn't also state that Massachusetts was the state that invented "gerrymandering" - when in 1812 Governor Elbridge Gerry crafted a district for political purposes that looked like a salamander. Unfortunately, gerrymandering, continues to be used in MA, often as a means to dilute the minority vote.

The reauthorization of the VRA is needed not only in the Section 5 states but in states like Massachusetts where minority voters have faced many barriers in their efforts to elect representatives of their choice.

**I want to focus on two specific issues: 1. Redistricting
2. Language assistance and other voting problems**

Redistricting

- **The 2000 Census revealed that Boston, for the 1st time, was a majority-minority city, with people of color making up 50.5% of the population.**
- **Despite substantial growth in Boston's minority population the 2001 Redistricting plan enacted by the Massachusetts legislature, instead of increasing the number of minority districts for the state House of Representatives, eliminated two majority- minority districts, "whitened" several incumbents' districts, and super-packed another, so that it had 98% minorities.**
- **The Redistricting Act of 2001 adopted by the Massachusetts legislature created majority-white House districts well in excess of the number justifiable by the white voting age population. The Redistricting Act gerrymandered districts and diluted minority voting strength in violation of §2 of the Voting Rights Act, the Equal Protection Clause of the Fourteenth Amendment and the Fifteenth Amendment to the United States Constitution. Defendants' redistricting actions deprived minorities of equal voting power and prevented them from electing candidates of their choice.**
- **The Lawyers' Committee brought suit in Federal Court on behalf of several organizations, including the Black Political Task Force and Oiste, a Latino political organization, and 13 individuals of color. In 2003 we had a trial before a three-judge panel. The three judge court in February 2004, found the redistricting plan to**

be unlawful as it “deprived African-American voters of the rights guaranteed to them by Section 2 of the VRA in that it diluted the minority vote.

The Court found:

- That the legislature sacrificed racial fairness to the voters to achieve incumbency protection – and to make matters worse the House leadership knew what it was doing.
- Despite the increase of the minority population in Boston the Redistricting Plan increased the number of majority white districts to twelve and diminished the number of majority black districts to one.
- Specifically held the plan contained “extreme and unexplained packing” and that it unnecessarily stripped minority voters out of 2 districts.
- That the plan “leaves AA citizens in the Boston area with ‘less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice’”.
- The Court gave the legislature 6 weeks to come up with a new plan. The legislature was specifically told by the court “not to rob Peter to pay Paul”. After much haggling we agreed on a new plan that provided greater voting opportunities to voters of color.
- As a result of the redistricting lawsuit, the Speaker of the Massachusetts House of Representatives, once the most powerful politician in the state, resigned; a Haitian American woman got elected to his seat; and he got indicted by the U.S. Attorney for lying at the trial saying he was not involved in developing the redistricting plan or that he had even seen it prior to its public release.
- In an unusual footnote the court in its decision noted that although the Speaker denied any involvement in the redistricting process the evidence strongly suggested the opposite conclusion.
- This case illustrates that minority voters still do not have a level playing field and that we still need the VRA to protect their right to vote on an equal basis with white voters – even in the cradle of liberty - in Boston MA.
 - This case also should send a warning to other elected officials involved in redistricting plans – that they will not be able to get away with depriving people of color of equal voting opportunities under the VRA. At this very moment, the former Speaker of the

MA House is being arraigned in U.S. District Court for perjury and obstruction of justice, as a result of lying about his role in the redistricting process.

Barriers To Minority Voting in Massachusetts

- **Unfortunately voter disenfranchisement is alive and well in MA and as in other parts of the country it disproportionately impacts people of color.**
- **In the 2000 Presidential election there were widespread voting problems in the minority communities of Boston – people told they were not on the voting list when they were; many polling location did not have adequate signage; many polling locations were inaccessible to people with disabilities and the elderly; people sent to wrong polling places; there were long lines; busy phone lines to election headquarters; and many voters of color were treated rudely.**
- **A public hearing was held in the Black community where testimony was taken from voters of color who experienced problems casting their votes. Many community organizations worked with election officials to remedy some of the issues. However in subsequent elections many of the problems remained, and for the 2004 presidential elections the Lawyers' Committee along with many community partners undertook an Election Protection Project.**
- **We had over 600 Election Protection volunteers in 11 cities across the state with the largest minority populations.**
- **MassVOTE and the Lawyers' Committee have just released their report documenting voting problems experienced in communities of color in Massachusetts.**

Those problems were:

- **Voter Registration Problems**
 - **People who registered at DMV or Rock the Vote events or other off site locations often were not on the voting lists**
 - **Problems with absentee ballots not being sent out**
 - **2,800 voters observed, primarily voters of color, were told they were not on the list of registered voters**
 - **Over 3,600 voters – again – primarily voters of color - were not allowed to cast ballots out of the voters observed**
 - **This can mean between 100,000 and 200,000 lost votes due to registration problems, most heavily impacting minorities**

- **Failure To Give Provisional Ballots**
 - Voters whose names were not on list were not given provisional ballots as required by HAVA and state law – some cities refused to offer provisional ballots at all
 - Only 23% of provisional ballots were counted
- **Poll Worker Issues**
 - Wrong info on provisional ballots
 - Misapplication of ID requirements
 - Poorly trained on the law and procedures
 - Rude and unprofessional conduct
- **Language Assistance**
 - AALDEF worked with us in MA
 - A number of locations that needed interpreters did not have them
 - In Boston election officials only will provide interpreters when requested ahead of time
 - Translated materials were not uniformly available where needed
 - Inappropriate language assistance, ie. Instances of poll workers telling people who to vote for
- **Several Massachusetts Communities Are Covered By the Section 203 Language Assistance Requirements**
 - The growing numbers of Latino, Asian and Haitian voters in MA make it critical that the requirements of Section 203 are fully enforced to enable voters who need language assistance to vote – and have their votes counted.
 - The DOJ is currently investigating voting practices in MA to determine if the requirements of Section 203 have been violated.
 - It is imperative that Section 203 be reauthorized and fully enforced.

This Commission has a crucial role to play in the future of voting rights for people of color in our country. I thank you for giving me the opportunity to address the voting issues facing voters of color in Massachusetts.

PREPARED STATEMENT OF MARTIN PEREZ, PRESIDENT, LATINO LEADERSHIP ALLIANCE OF NEW JERSEY, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JUNE 14, 2005



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Martin Perez, Esq.
President of the Latino Leadership Alliance of New Jersey

Testimony to the National Commission on the Voting Rights Act.

June 14, 2004

Honorable members of the Commission, I want to start by thanking you for this opportunity to address the Commission on this most important of issue for our state and in particular for the Latino community.

The Latino Leadership Alliance is an umbrella organization that includes most of the Latino organizations in our state. It was established in 1999 to foster the political empowerment of Latinos across New Jersey. In the last decade our community has made some progress, but we are still under-represented in the halls of power of our state. Latinos make up 14 percent of New Jersey's population – an estimated 1.2 million residents. Census trends indicate that by next year our percentage of the state's population will climb to 17 percent. We are the largest "minority" in New Jersey and in the Nation. Yet our faces are missing on many of

the governing bodies of our state, even in municipalities with sizeable Latino populations. There are no Latinos in our state Senate. That is what brings me here today.

The Voting Rights Act of 1965 is widely regarded as the most influential civil rights statute. Latinos in New Jersey rely on the Act to protect our fundamental right to vote. In 1999 the Department of Justice's Civil Rights Division found that Passaic County was discriminating against Latino voters by denying equal access to the election process. The county was not providing Spanish-speaking poll workers or Spanish language voting material. The Civil Rights Division entered into a consent decree with the County of Passaic. From 1999 to the present Passaic County conducts four elections each year, all monitored by the federal observers. A three-judge panel of the U.S. District Court of New Jersey appointed an independent elections monitor to ensure that the County will comply with the court orders. The monitor assisted the County in its efforts to comply with the court's orders and to implement major institutional reforms.

The Passaic case has not only helped the Latinos in Passaic County. Its influence was felt in other parts of the state. In order to avoid similar intervention from the Civil Rights Division, other counties took affirmative actions to bring themselves in compliance with the Voting Rights Act. We rely on the minority

language and monitors provisions of the Act in order to protect our rights. These provisions are scheduled to expire in August 2007.

The question that we face today is: Do we need a reauthorization of these provisions? There is no doubt to Latinos in New Jersey that the answer is YES.

New Jersey has made progress in its efforts to comply with implementation requirements of the Voting Rights Act but the reality is that we still have a long way to go.

Our organization receives complaints in every election from almost every county. Some of the most common complaints are:

- The counties don't recruit enough bilingual election workers.
- Election workers are not properly trained to deal with language issues.
- Spanish language signs and documents are not posted in places accessible to the people that need them.
- Community outreach to educate our community that language assistance is available is deficient at best and in some instances non-existing.

New Jersey has seven counties that qualify for coverage under Section 203 of the Act. (Middlesex, Passaic, Union, Bergen, Essex, Hudson and Cumberland.)

Due to population trends, it is reasonable to expect that after the next census we will have more Counties qualifying for coverage under Section 203. It is also fair to expect that unless we maintain constant vigilance the complaints will increase.

We acknowledge that there are other laws, like the Help America Vote Act (HAVA), that set minimum standards for voting systems and accessibility for persons with disabilities and non-English speakers. These laws are a complement to the Voting Rights Act, not a substitute. HAVA does not provide a private right of action and its implementation creates new reasons to reauthorize the Voting Rights Act. For example, HAVA requires that new voters registered by mail since 2003 produce some form of identification at the voting place. We received complaints from Latinos from the City of Vineland during the last mayoral election that elections workers were asking for identification from many Latinos irrespective of whether they were new mail registrants or not. Some people, because of frustration or embarrassment, simply go home and don't return to vote. The conduct of the Vineland election workers, which might be from lack of training, is not only a violation of HAVA but also of the Voting Rights Act.

Some people could argue that if Section 203 of the Voting Rights Act is not reauthorized Latinos in New Jersey can turn to the state laws for protection. Those who live in New Jersey long enough know that the office of the Attorney General in our state has not been the most effective agency in prosecuting corruption or illegal conduct of other government agencies. We understand that it is the responsibility of the citizens of New Jersey to continue to pressure our state agencies, like the

Attorney General, to become more effective. But the reality tells us that we still need the U.S. Department of Justice to protect our voting rights. It is our insurance.

Yes, we have made progress in protecting voting rights in New Jersey, but the only guarantee to maintain the progress attained and be ready to defend our rights against new and creative forms of discrimination is the reauthorization of the Voting Rights Act.

PREPARED STATEMENT OF COLOMBINA SANTIAGO, MEMBER, NEW JERSEY ACORN,
BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, JUNE 14, 2005



**Testimony of Colombina Santiago
Member, New Jersey ACORN
Passaic, New Jersey
June 14, 2005**

My name is Colombina Santiago, and I am an ACORN member from the City of Passaic in New Jersey and I am here today representing our members in Passaic County. I have been an ACORN member for three years and am a graduate of ACORN's leadership school. In 2002 my home was the headquarters for a get out the vote drive and I increased the turnout in my precinct from 95 to 134 voters. I want to thank you for listening to my testimony, since I want to make sure that our rights as voters are protected.

In Passaic County there is a history of voter intimidation, especially against voters who speak Spanish. My home was the headquarters of a get-out-the-vote project in my neighborhood, and we had some problems. Many people we talked to were voting for the first time and were very excited. There was a problem with absentee ballots though. Many people got them, but didn't fill them out and wanted to vote at the polls instead. When they got to the polls they were told they couldn't vote and weren't offered a provisional ballot. I got a ride to Paterson on Election Day to turn in my ballot at the elections office and make sure my vote counted.

In 2000, Latino voters got a letter telling them that armed police officers would be out at the polls, and I think this scared away a lot of people who wanted to vote. In the City of Passaic, the administration tells businesses that they have to put up signs supporting the current leaders, and if not, they will have a hard time. In Clifton, another city in Passaic County, every election they try to make it English only, and don't want to have information and ballots in Spanish and other languages, even though lots of people didn't learn English as their first language.

I don't speak English well, but I am very active in my community. I have even been to Washington and spoken with our Congressmen, and I want to make sure my vote counts. Please re-authorize these important parts of the Voting Rights Act and protect the voice of all American citizens.

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PREPARED STATEMENT OF EUNSOOK LEE, EXECUTIVE DIRECTOR, NATIONAL KOREAN
AMERICAN SERVICE AND EDUCATIONAL CONSORTIUM, BEFORE THE NATIONAL COM-
MISSION ON THE VOTING RIGHTS ACT, SEPTEMBER 27, 2005

**National Commission on the Voting Rights Act
Western Region Hearing**

Testimony by EunSook Lee
Executive Director of the
National Korean American Service & Education Consortium (NAKASEC)

*Tuesday, September 27, 2005
California African American Museum
Los Angeles, CA*

Good afternoon and thank you to the members of the Commission and the staff for inviting to speak today. Let me begin with a brief introduction of my organization, the National Korean American Service & Education Consortium (NAKASEC). We were established 10 years ago as a consortium by local community centers that realized that only by coming together can we build a national movement and progressive Korean American voice for social justice. Our issue priorities since our formation have been immigrant rights & immigration reform as well as other major civil rights issues including voting rights. Hence, since the 1996 presidential elections, NAKASEC and our three affiliates in New York City, Los Angeles and Chicago have coordinated a multi-faceted civic engagement & voter empowerment project that includes voter registration, voter assistance, voter education, voter mobilization, voter research and voting rights advocacy.

I am here today to state our support for the re-authorization of the three key provisions of the Voting Rights Act that are scheduled to expire in August 2007. Furthermore, we are seeking to see those provisions strengthened through the expansion of coverage.

The Voting Rights Act is widely understood to be among our nation's most effective civil rights legislation. Key provisions authorizing the federal government to monitor polling places and specifically Section 203 which requires counties to provide multilingual materials and services to certain language minority voting groups have been instrumental in enabling Asian Pacific American voters to vote free from discrimination. As a result, the Voting Rights Act has contributed to the noticeable increase in the electoral participation of the Korean American and Asian Pacific American voting population.

Korean Americans are a minority population that number more than 1.2 million according to the 2000 Census. More than 70% or 865,000 are foreign born. Finally 72% of those who are 25 years or older speak or read English "not well." Moreover, in the major cities that Korean Americans reside, the level of linguistic isolation that has been documented is considerable --- ranging from 35% to 42%. Linguistic isolation means that in a given household all family members over the age of 14 years have some difficulty with the English language.

The short profile that I provide shows that as a voting population, Korean Americans are ethnic minority voters, immigrant voters, Limited English Proficient voters and new voters. For this reason, Section 203, coupled with other provisions in the Act ensures that Korean American voters are not discriminated and that language access is appropriately provided. Currently the Korean language is covered in three counties; Los Angeles, Orange, and Queens.

In speaking on the importance of continuing the provisions in the Voting Rights Act that will expire in 2007, we also know that we have yet to achieve full compliance. We base this statement on the decade of poll monitoring that we have conducted in New York and Los Angeles. The results of our poll monitoring indicate that Korean American voters will be discriminated against because they are minorities, foreign-born, and Limited English Proficient.

For example, during the November 2004 elections, a precinct inspector at a polling place in Koreatown was documented to have given certain voters time limits and send one Asian Pacific American voter to the back of the line. Broadly, the shortcomings have also included the failure of certain counties to translate all materials, to translate inaccurately or not in a timely manner. On Election Day, polling places have had too few interpreters or missing multilingual materials.

It is for this reason that Asian Pacific American organizations have worked with local counties to advocate for full compliance as well as to donate their services to increase the number of poll workers or to review translated materials. In short, our communities have developed strong working relationships with local counties because we share the common goal of ensuring full access to minority voters.

As we approach the sunset date for key provisions in the Voting Rights Act, with regard to Section 203, we understand that there are several proposals to decrease the threshold for coverage from 10,000 voters to 7,500 or 5,000 voters. Currently Section 203 covers counties that have 5% or 10,000 voting-age citizens who speak the same language, are Limited English Proficient, and as a group, a higher illiteracy rate than the national illiteracy rate. In our opinion, measures that would allow counties to capture as many language minority voters as possible are both meaningful and necessary. For this reason, we reiterate our support for first, the re-authorization of key provisions in the Voting Rights Act that are set to sunset on August 2007. Second, we seek to strengthen these provisions by expansion of coverage for language minority voters under Section 203.

Thank you for giving me this opportunity to share the thoughts and experiences of the Korean American community.

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PREPARED STATEMENT OF CONNY MCCORMACK, REGISTRAR-RECORDER/COUNTY CLERK, LOS ANGELES COUNTY, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT, SEPTEMBER 27, 2005

THE NATIONAL COMMISSION on the VOTING RIGHTS ACT
by Conny McCormack*
September 27, 2005

Thank you for the invitation to appear before the National Commission on the Voting Rights Act (VRA) to offer testimony and to submit written materials with regard to Los Angeles County's comprehensive program that provides much-needed assistance to limited-English proficient (LEP) voters throughout Los Angeles County, California.

Los Angeles (L.A.) County is the largest and most diverse local election jurisdiction in the United States. Indeed, only eight States have more registered voters than the nearly four million registered voters within L.A. County and no other jurisdiction provides assistance in as many languages. In compliance with Section 203 of the VRA, Los Angeles County provides assistance to voters in six languages in addition to English: Chinese, Japanese, Korean, Spanish, Tagalog and Vietnamese. Our extensive multi-lingual (ML) program involves provision of both translated written election materials and oral assistance at up to 5,000 voting precincts on election day.

California is known for presenting voters with lengthy ballots that often contain numerous ballot initiatives and propositions asking voters to decide on a wide array of complex issues. Such complicated ballots challenge all voters to be prepared and to have the information they need prior to casting their ballots, and highlights the importance of providing translated materials and oral assistance to voters whose native language is not English. I believe that our office's focus on providing extensive ML services was a contributing factor to the record-high voter turnout of over 3 million voters or 79% of L.A. County's registered voters at the November 2, 2004 General Election. For the first time in any statewide election, L. A. County exceeded the statewide voter turnout rate in California which for the 2004 General Election was 76%.

Three key facets comprise the core of L.A. County's comprehensive ML program: 1) provision of translated written materials, 2) oral assistance, and 3) collaboration with key community based organizations (CBOs). Each of these aspects is detailed below along with a description of how our office provides information to voters about the availability of ML materials and assistance.

Translated Written Materials

The extensive array of translated election materials available to ML voters includes, but is not limited to, the sample ballot and voter information booklet mailed to each registered voter in advance of every election; the State ballot pamphlet (mailed to households of registered voters for applicable elections); voter registration forms; absentee ballot and permanent absentee ballot application forms, envelopes and instructions; voter instructions on how to use the voting system(s); provisional ballot instructions and materials; voter guides and tri-fold pamphlets containing key election information such as how to register to vote, where to vote, upcoming elections and deadlines and available voting options (i.e. at the neighborhood voting location or via

absentee/mail ballot or early voting during the designated dates/times prior to election day available at multiple locations throughout the County using touchscreen voting equipment). Also, samples of translated polling place signs and numerous additional translated polling place materials are available at the voting precincts on election day. A complete list of translated materials is noted at Attachment A along with a sample packet of these translated materials in each designated language.

Additionally, prior to and on election day LEP voters have the opportunity to obtain translated written materials by calling our office via a toll-free line to request materials be mailed to them and/or by accessing our website at www.lavote.net (a copy of the website's homepage highlighting ML services is at Attachment B). LEP voters may request that translated written material automatically be mailed to them prior to each election. Such requests are entered into the voter database. A copy of the current multi-lingual voter requests on file and a graphical depiction of how these numbers have grown over the recent past is found at Attachment C.

With regard to the website, it prominently advises voters of the ML services available and the toll-free number, 800-815-2666, provides oral ML assistance. Among the website's most popular features is the availability, at a click of the mouse, of each voter's specific translated sample ballot for his/her geographic address (i.e. for the November 2004 Election there were 818 different ballot styles/combinations - depending on where the voter lives, the election contests vary for Congress, State Assembly, County Supervisor, and other local offices).

Oral Assistance

L.A. County's provision of ML oral assistance far exceeds the specified legal requirements of targeting precincts based on U.S. Census data. We believe that a key variable in voters experiencing a positive election day entails voters entering a polling place where the composition of the precinct's election workers reflects the neighborhood including languages spoken. Therefore, our office developed a comprehensive ML targeting program to recruit and place ML poll workers that is comprised of four components: 1) Census data; 2) number of Requests on File from voters who have requested that ML materials be mailed to them in advance of each election; 3) input from CBOs that a neighborhood is in need of language assistance; and 4) information gathered from poll workers who complete a ML tally card at every election denoting how many requests they received for ML assistance (see Attachment D, 2 pages, for complete description of targeting and priorities assigned).

For the November 2004 Election, for example, there were 4,835 voting precincts. Overlaying Census data with precinct geography displayed the number of precincts to target for specific language assistance. These numbers are shown on Attachment E for each of the six mandated languages and reveal, for example, that 170 voting precincts were required to be targeted for Chinese language assistance based on Census data. However, based on the number of Requests on File from voters in 254 additional precincts (i.e. more than 20 requests), the number of actual targeted precincts increased to

424 for recruitment of poll workers who speak Chinese. Additionally, the total Goal of targeted precincts for Chinese was also increased by an additional 27 precincts based on input from CBOs and an additional 61 precincts where past elections ML tally cards indicated more than five voters had requested ML assistance in that language. This same process is followed for all six VRA-designated languages. Additionally, due to CBO identification of heavy concentration of voters who speak Armenian, Russian and Khmer (Cambodian) in specific neighborhoods, efforts are made to recruit poll workers who speak these languages in order to expand ML services to voters in need.

Like translated written materials, oral assistance is also available prior to as well as on election day by calling our toll-free number at 800-815-2666.

Collaboration with CBOs

The third key component of L.A. County's ML program is the active partnership we have forged with numerous CBOs. Beginning in 1998 with the institution of the Community Voter Outreach Committee (CVOC), L.A. County has expanded this program to a current list of 104 participating organizations and the list is continually growing. A full description of CVOC partners, functions and accomplishments is found at Attachment E. With regard to assistance with ML services, CBOs including NALEO, MALDEF, APALC and many others, collaborate with L.A. County in identifying neighborhoods and voting precincts in need of ML assistance in specific languages. As mentioned above, this process is incorporated into the four-part targeting formula to recruit poll workers who speak the languages spoken in the neighborhoods served by the designated voting precincts.

Training for Poll Workers and Precinct Coordinators

L.A. County has an extensive program of training for poll workers. Approximately 400 separate, 2-hour training classes are held for poll workers at locations throughout the County prior to each statewide election. Poll workers are mailed a training schedule prior to each election to let them know where and when classes will be held. The training schedule also designates which classes will have translation services available in the which of the six designated languages.

Precinct coordinators are hired to troubleshoot and be responsible for between 10-15 voting precincts. Precinct coordinators receive extensive, 8-hour training sessions. A key component of this specialized training includes a section on Cultural Interactions that is focused on ML services. A copy of this component of their training is found at Attachment F - Cultural Interactions.

Getting the Word Out

How do voters learn about the widespread availability of L.A. County's extensive ML services program? Every registered voter in L.A. County is mailed a sample ballot and voter information booklet approximately 3-4 weeks prior to every election. This booklet

always contains a full-page of information on ML services. Additionally, as mentioned above, LEP voters may request that their names be included on our permanent list of voters who have a Request on File to receive automatically a translated version of the sample ballot booklet prior to each election in the mail.

Additionally, L.A. County has developed an advertising program encompassing both Public Service Announcements, at no cost, on cable TV and radio and paid advertisements. L.A. County's paid multi-media advertisement campaign was initiated in advance of the November 2004 Election using Help America Vote Act (HAVA) funds. Also, the partnership with numerous CBOs has been invaluable in getting the word out.

How Do We Measure Success?

A comprehensive, multifaceted program is only as good as the results it achieves. The growth of L.A. County's ML services program is clearly revealed by a number of indices. These include the large number of voting precincts that are targeted for recruitment of poll workers who speak the languages that have been identified as needed. Attachment G reveals the progress achieved over the past four years in expanding the number of precincts targeted for ML oral assistance by poll workers. This chart also reveals the actual number of precincts where ML poll workers showed up and served the voters at the targeted precincts. It shows that for most elections the actual recruitment of ML poll workers achieved 90+% of the established goal.

Another measurement is the number of voters who have called our office to request that translated written material be mailed to them in advance of each election, i.e. the number of Requests on File. As the chart and graph at Attachment C reveals, this number has been steadily increasing.

Additionally, in both pre and post election meetings with attorneys from the U.S. Department of Justice (USDOJ), L.A. County's ML services program has been described as very good and comprehensive. Indeed, from feedback from other Counties covered by Section 203 of the VRA, we have learned that the USDOJ has held L.A. County's multi-faceted program as a model for other jurisdictions to follow. Also, our commitment to the permanence of our extensive, successful ML program is demonstrated by assigning specified staff to this program including a designated ML Coordinator, an Executive Liaison Officer and several additional full and part-time staff.

In conclusion, L.A. County is proud of our proactive, multi-faceted ML program that reaches beyond minimum standards of legal compliance and focuses on a commitment to excellence in serving all voters in our most diverse community.

* Conny McCormack has been an elections official for the past 24 years and the Registrar-Recorder/County Clerk for Los Angeles County since December 1995. A brief bio is available on the office's website at www.lavote.net

PREPARED STATEMENT OF EUGENE LEE, STAFF ATTORNEY, ASIAN PACIFIC AMERICAN
LEGAL CENTER, BEFORE THE NATIONAL COMMISSION ON THE VOTING RIGHTS ACT,
SEPTEMBER 27, 2005



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**Statement of Eugene Lee
Staff Attorney, Voting Rights Project
Asian Pacific American Legal Center
Before the National Commission on the Voting Rights Act**

**Western Regional Hearing
Los Angeles, California
September 27, 2005**

Good afternoon. Thank you for inviting to testify at this hearing. My name is Eugene Lee and I am a staff attorney in the Voting Rights Project at the Asian Pacific American Legal Center of Southern California (APALC). Founded in 1983, APALC has become the largest organization in the country focused on providing multilingual, culturally sensitive legal services, education, and civil rights support to one of the nation's fastest growing populations. APALC is affiliated with the National Asian Pacific American Legal Consortium (NAPALC) in Washington, D.C.

For over two decades, APALC has engaged in advocacy, community education and poll monitoring to secure the voting rights of Asian and Pacific Islander Americans (APIA) guaranteed by law. To ensure that jurisdictions are providing limited English proficient voters with adequate language assistance under Section 203, APALC sends poll monitors during key elections to polling sites throughout Los Angeles and Orange Counties, particularly in areas with significant APIA populations. Most recently, APALC monitored over 60 poll sites for the March 2004 primary election and over 115 poll sites for the November 2004 general election.

APALC uses the poll monitoring results to advocate for systemic reforms and improvements for APIA voters. As a result of APALC's poll monitoring and advocacy, the Los Angeles County Registrar's office has noticeably increased its recruitment of bilingual poll workers and has also increased its outreach to monolingual voters, as measured by steadily increasing numbers of voters requesting language assistance.

In addition to its voting rights work, APALC conducts large-scale exit polls of voters in major elections. In the November 2004 general election, APALC conducted an exit poll of over 4,000 voters. By surveying large numbers of APIA voters in six languages other than English, APALC's Southern California Voter Survey is the largest and most comprehensive exit poll of APIA voters in California. APALC's exit polls are designed to survey APIA voters on the issues that were of importance to them during elections and to provide data on their need for and use of bilingual voter assistance, as well as to gain detailed demographic information on APIA voters.

APALC also recently launched a series of demographic reports on APIA communities in California and in three Southern California counties. All four reports use disaggregated Census 2000

data to provide information on 20 APIA ethnic groups, including indicators on socioeconomic status, education, housing, language, and immigration. This data represents the most comprehensive current data available on California's APIA population.

Impact of Section 203 of the Voting Rights Act

In the 40 years since the Voting Rights Act was enacted, and in the 30 years since Section 203 was added to the Voting Rights Act, there have been substantial gains both in APIA electoral representation and also in levels of APIA voter registration and voting participation. Many of these gains have occurred since Section 203 was amended in 1992 to add a numerical threshold for when a jurisdiction is covered for language assistance.

Gains in APIA Electoral Representation

With the recent election of Ted Lieu to the State Assembly, there are now nine APIA state legislators in California. This stands in marked contrast with 1990 when that number was zero.

One factor in this electoral success has been Section 203 language assistance allowing limited English proficient voters (or voters who speak English less than very well) to fully exercise their right to vote. Eight of these nine legislators represent legislative districts located in counties that are covered under Section 203 for at least one Asian language.¹ These seven counties represent all of the counties in California that are covered under Section 203 for an Asian language. Put differently, every county in California that is covered under Section 203 for an Asian language has at least one APIA legislator from a district in such county.

These counties each have significant limited English proficient Asian American populations, ranging from San Francisco County with a 34% Asian American population that is 50% limited English proficient to San Diego County with a 11% Asian American population that is 32% limited English proficient. The following table provides additional data on this point (population figures based on 2003 census estimates and limited English proficiency figures based on disaggregated Census 2000 data²):

<u>County</u>	<u>Asian American Population As Percentage of Total Population</u>	<u>Asian American Limited English Proficiency Rate</u>
San Francisco	34%	50%
Santa Clara	30%	40%
Alameda	25%	38%
San Mateo	24%	29%
Orange	16%	45%
Los Angeles	14%	43%
San Diego	11%	32%

¹ Assemblymembers Judy Chu (Los Angeles), Carol Liu (Los Angeles), Ted Lieu (Los Angeles), Van Tran (Orange), Shirley Horton (San Diego), Wilma Chan (Alameda), Alberto Torrico (Alameda, Santa Clara), and Leland Yee (San Francisco, San Mateo).

² APALC was the principal researcher in a recently released demographic profile entitled "The Diverse Face of Asians and Pacific Islanders in California," which it co-sponsored with Asian Law Caucus and NAPALC. The profile disaggregates Census 2000 data on the California APIA population by racial/ethnic group and is accessible at <http://www.apalc.org>. As used in this testimony, the term "APIA" refers to Asian and Pacific Islander Americans and the term "Asian American" refers to Asian but not Pacific Islander Americans.

Increases in APIA Voter Registration and Participation

In California, there have been significant increases in both the number of APIA registered voters and APIA turnout. The language assistance provided under Section 203 has again been a factor in these increases. According to census data,³ the number of APIA registered voters has increased by 61% from the November 1998 election to the November 2004 election. In the same period, the number of APIA voters who turn out to vote has increased by 98%. Both of these increases have outpaced the increase in both the overall APIA voting age population and the overall APIA citizen voting age population. The following table shows the total APIA voting age population in California, the total APIA citizen voting age population, the total number of registered APIA voters, and the total number of registered APIA voters who voted in the relevant election (figures in thousands except for percentages):

<u>Election</u>	<u>Total APIA Voting Age Population</u>	<u>Total APIA Citizen Voting Age Population</u>	<u>Total Registered APIA Voters</u>	<u>Total Turnout Among Registered APIA Voters</u>
November 1998	2,706	1,657	854	587
November 2000	3,027	1,908	1,007	848
November 2002	3,306	2,172	1,122	727
November 2004	3,636	2,620	1,379	1,162
Increase 1998 – 2004	34%	58%	61%	98%

Need for Language Assistance and Section 203 as an Appropriate Remedy

Because of the high rates of limited English proficiency among APIA and other language minority voters, the language assistance required under Section 203 is an appropriate remedy for racial discrimination against such voters. As Congress found in 1975, racial discrimination against language minority voters resulted in high illiteracy rates.

Disaggregated Census 2000 data show that the language minority population in California does indeed have a high limited English proficiency rate. The Asian American population in California is nearly 40% limited English proficient. A number of Asian American groups are majority or near-majority limited English proficient, including Vietnamese at 62%, Korean at 52%, and Chinese at 48%. The Latino American population in California is 43% limited English proficient. The following table provides additional data on this point:

<u>Group</u>	<u>Percentage of Population That Is Limited English Proficient</u>
Vietnamese	62%
Hmong	61%
Cambodian	56%
Laotian	55%
Korean	52%
Chinese	48%
Latino	43%
Asian	39%
California	20%

³ Data on reported voting and registration is collected by the U.S. Census Bureau in the Current Population Survey and is accessible at <http://www.census.gov/population/www/socdemo/voting.html>.

During major elections, APALC conducts large-scale exit polls at poll sites throughout Southern California. These poll results show that the limited English proficiency rate of APIA voters mirrors the limited English proficiency rate of the general APIA population. For example in November 2004, 40% of APIA voters surveyed in the exit poll indicated that they are limited English proficient. The following table provides additional data on this point:

<u>Election</u>	<u>Percentage of APIA Voters Who Are Limited English Proficient</u>
November 2004 ¹	40%
November 2002	32%
November 2000	46%
March 2000	47%
November 1998	35%

¹ Represents preliminary findings and subject to adjustment based on statistical weighting.

In addition to illustrating that language minority voters have a need for language assistance, these exit poll results show that Section 203 is an appropriate remedy. Exit poll results indicate that many APIA and Latino voters in Los Angeles and Orange Counties would benefit from language assistance during the voting process. For example, in November 2000, 54% of APIA voters and 46% of Latino voters indicated that they would be more likely to vote if they received language assistance. The following table provides additional data on this point:

<u>Election</u>	<u>Percentage of APIA Voters More Likely to Vote If Assistance Received</u>	<u>Percentage of Latino Voters More Likely to Vote If Assistance Received</u>
November 2000	54%	46%
March 2000	53%	42%
November 1998	43%	38%

Another measure of the appropriateness of Section 203 as a remedy is the number of voters who have requested language assistance. According to data gathered by the Los Angeles County Registrar of Voters, the total number of voters in Los Angeles County who have requested language assistance has increased by 38% from December 1999 to August 2005. This increase reflects increased outreach by Los Angeles County and illustrates language minority voters' reliance on language assistance. The following table contains additional data on this point:

<u>Language</u>	<u>Percentage Increase in Number of Voter Requests for Language Assistance from December 1999 to August 2005</u>
Chinese	49%
Japanese	25%
Korean	26%
Tagalog	63%
Vietnamese	40%
Spanish	37%

These data indicate that because of voter outreach and education by both Los Angeles County and community advocates, many limited English proficient APIA and Latino voters are using the Section 203 remedy. The data also indicate that as the number of requests for language assistance increases, language minority voters have a continuing need for Section 203 assistance.

Federal Examiners and Observers – Section 6 Through 9 of the Voting Rights Act

In addition to Section 203, APIA voters have benefited from the federal examiner and observer provisions contained in Sections 6 through 9 of the Voting Rights Act. Pursuant to Sections 6 to 9, the U.S. Department of Justice assigns federal observers to polling places so they can monitor election day practices in response to concerns about discrimination in the voting process and to gather information about compliance with bilingual election procedures.

Earlier this year, the Justice Department filed suit against three cities in Los Angeles County for alleged violations of Section 203. The Justice Department's complaint against the City of Rosemead alleged that during its March primary election, the city failed to provide bilingual assistance to Latino, Chinese and Vietnamese American voters. The Justice Department's complaints against the Cities of Paramount and Azusa contained similar allegations with regard to bilingual assistance for Latino American voters.

The Justice Department entered into consent agreements with each of the three cities that authorize federal observers to observe future elections held by the cities. These federal observers will help to ensure that limited English proficient language minority voters in Rosemead, Paramount and Azusa receive adequate language assistance under Section 203.

Discrimination Against Voters

Despite these gains and the protections of the Voting Rights Act, discrimination against APIA and other language minority voters still occurs in the voting process. Evidence of this discrimination can be seen in both demographic research and anecdotes from poll monitoring efforts.

Demographic Evidence of Discrimination

In 1975, Congress passed Section 203 of the VRA after concluding that English-only elections and voting practices effectively deny the right to vote to a substantial segment of the nation's language minority population. Congress found that this result is directly attributable to the unequal educational opportunities afforded to language minorities, resulting in high illiteracy and low voting participation.

Current demographic data indicate that these discriminatory conditions, including unequal educational opportunities, still exist. Using high school completion as a measure, disaggregated Census 2000 data show that a number of Asian American groups in California have low rates of educational attainment compared with the California population as a whole. These data also show that Asian Americans as a whole have lower rates of educational attainment than white Americans. For example, 36% of Vietnamese Americans have less than a high school degree, compared with 23% of the overall California population. 19% of Asian Americans have less than a high school degree, compared with 10% of white Californians.

The following table provides additional data on this point:

<u>Group</u>	<u>Percentage of Population With Less Than a High School Degree</u>
Hmong	66%
Laotian	58%
Cambodian	56%
Vietnamese	36%
California	23%
Chinese	22%
Asian	19%
White	10%

These low rates of high school completion are a contributing factor to continuing high English proficiency rates among Asian American children, defined as children age 17 years and younger. According to disaggregated Census 2000 data, over 20% of Asian American children in California are limited English proficient. In the majority of counties covered by Section 203 for an Asian language, these rates are higher. For example, 30% of Asian American children in San Francisco County are limited English proficient, and 24% of Asian American children in Los Angeles County are limited English proficient. The following table provides additional data on this point:

<u>County</u>	<u>Asian American Child Limited English Proficiency Rate</u>
San Francisco	30%
Santa Clara	23%
Alameda	22%
San Mateo	13%
Orange	26%
Los Angeles	24%
San Diego	16%

In sum, current demographic data indicates that the discriminatory conditions cited by Congress in 1975 such as unequal educational opportunities still exist, and that the results of these conditions such as high limited English proficiency rates also still exist.

Anecdotal Evidence of Discrimination

Despite electoral gains and improvement in poll worker training, racial discrimination against APIA voters still occurs in the polling place. Over the years, APALC poll monitors have observed a number of instances of racial discrimination. A few examples in Southern California include the following:

- March 2000 primary election, Santa Ana – The poll inspector was rude and curt to voters, particularly young voters, and was also reluctant to help limited English proficient voters. She inappropriately asked some young APIA voters for identification. The APALC poll monitor heard the inspector comment, “Everybody wants to come to America and take what is ours – our land.”

- November 2004 general election, Koreatown – At a poll site with a large number of Korean American voters, the poll inspector lectured voters in a demeaning manner, for example lecturing one non-English speaking voter who did not know where to put his ballot. The inspector also gave voters time limits, stating, “Everyone’s who been here for more than five minutes, you need to hurry up.” The inspector told one Korean American voter to go back to the end of the line.
- November 2004 general election, Rowland Heights – The poll inspector talked slowly and loudly to elderly APIA voters. When two elderly APIA women made a mistake on their ballots and wanted assistance to get new ones; the inspector told them very loudly, “Just stay there, just stay.” When asked about bilingual voter registration forms, the inspector replied that the forms were available in the “American language.” When asked about hotline numbers for bilingual assistance, the inspector replied, “They’re around here somewhere” and walked away.

In the November 2004 general election, APIA advocacy groups conducted poll monitoring in other parts of California.⁴ Poll monitors deployed by these organizations observed similar instances of discrimination:

- San Diego County – A poll worker talked to minority voters as if they were children.
- San Mateo County – A poll worker questioned the competency of a voter to vote because of the voter’s limited English proficiency.

Discrimination in Implementation of Section 203

APALC poll monitors have also seen recurring problems at poll sites including problems in Section 203 implementation. These same problems have been observed in other parts of California by poll monitors deployed by other APIA advocacy groups. With regard specifically to Section 203 implementation, these problems include:

- Poll sites lacking a sufficient number of bilingual poll workers and interpreters
- Multilingual materials not being supplied to poll sites
- Multilingual materials being supplied but poorly displayed at poll sites
- Poll sites lacking adequate multilingual signage or lacking signage altogether directing voters where to go and explaining what their rights are

Recurring problems in Section 203 implementation reflects the failure of county registrars to educate their poll workers about language assistance. Many of these problems are the result of poor poll worker training or poll workers not attending training sessions at all.

However, even the most comprehensive poll worker training program will not completely eliminate the discriminatory attitudes retained by some poll workers. Another cause of these recurring problems lies in poll workers having a cavalier attitude about language assistance or even an attitude that

⁴ These organizations include Asian Law Alliance (Santa Clara County), Asian Law Caucus (San Mateo County), CAA ! Center for Asian American Advocacy (San Francisco County), Council of Philippine American Organizations (San Diego County), and Orange County Asian and Pacific Islander Community Alliance (Orange County). APALC and NAPALC work with and provide technical assistance to these organizations. NAPALC has published an election poll monitoring report for the November 2004 general election. This report is entitled “Sound Barriers: Asian Americans and Language Access in Election 2004” and can be accessed at http://www.napalc.org/files/sound_barriers.pdf.

language assistance should not be provided to voters. This ambivalence about providing language assistance reflects a view of society that excludes non-mainstream voters from the political process.

APALC poll monitors have observed poll workers expressing these attitudes either verbally or in their obvious refusal to provide language assistance. A few examples include the following:

- March 2000 primary election, Monterey Park – The inspector said that, “The bilingual materials are a waste of time and money.” She pulled the bilingual materials out, but then put them back in the envelope. Ultimately, the APALC poll monitor had to assist in laying them out.
- March 2000 primary election, Torrance – In plain earshot of voters, poll workers discussed the tediousness of providing language assistance and the need to restrict materials to English only.
- March 2000 primary election, Westminster – When the APALC poll monitor noted that no translated materials were displayed, the poll workers discovered that the poll site did have translated materials and displayed them. However, when the poll monitor returned to the poll site in the afternoon, she found that the poll workers had put the translated materials back into their storage envelope instead of keeping them displayed.
- March 2004 primary election, Artesia – After the APALC poll monitor discussed sample ballots with the poll inspector, the inspector said, “One day I wish we can have all English,” motioning to the sample ballots with his hand.
- November 2004 general election, Monterey Park – When the APALC poll monitor surveyed the poll workers to ascertain which poll workers were bilingual, one of the poll workers responded, “I speak English; this is America.”

Poll workers also express these attitudes in their dealings with poll monitors. For example, at polling sites in Santa Clara County during the November 2004 general election, poll monitors experienced rude, difficult and uncooperative poll workers who refused the monitors entry to the polling site or did not allow the monitors to inspect the translated materials.

Intentional Discriminatory Schemes

In addition to individual instances of discrimination in polling sites, there have also been instances of schemes of voter discrimination. Section 6253.6 of the California Government Code is a reminder of such instances. Enacted in 1982, this section requires government officials to maintain the confidentiality of information in voter files that identifies voters who have requested bilingual voting materials. The section was enacted to protect language minority voters from being targeted with allegations of voter fraud.

As detailed in the legislative history of Section 6253.6, the specific instance precipitating the section’s enactment arose out of an investigation conducted by the U.S. Attorney’s office in nine Northern Californian counties. The U.S. Attorney’s office randomly investigated voters who had requested Spanish and Chinese language voting materials and arranged for the Immigration and Naturalization Service (INS) to cross-check the voters’ records with citizenship records.

This investigation followed on the footsteps of INS raids on factories and businesses and was part of a larger scheme to scapegoat language minority and immigrant communities for economic woes. The investigation also occurred during voter registration drives among minority language communities in Northern California. Amidst concerns that the investigation would intimidate language minority voters, the American Civil Liberties Union and the Mexican American Legal Defense and Educational Fund filed suit under the Voting Rights Act. There was also a large amount of public outcry against the investigation, including censures by a number of city councils. The U.S. Attorney's office abated its investigation, and Section 6253.6 was passed overwhelmingly in the legislature by a 54 – 7 Assembly vote and a 38 – 0 Senate vote.

Conclusion

To briefly conclude this testimony, the Voting Rights Act has had a marked impact on the ability of APIA and other language minority voters in California to participate in the electoral process. Section 203 of the Voting Rights Act has been of particular benefit to APIA voters who are limited English proficient. Unfortunately, voting discrimination continues to exist, and APIA and other language minority voters have a continuing need to receive the protections of the Voting Rights Act, including the special provisions that are scheduled to expire in 2007. Thank you for this opportunity to provide testimony.