

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
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 GALVESTON COUNTY, TEXAS,)
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 Defendant.)
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)

CIVIL ACTION NO. 3:07 CV 377

PROPOSED CONSENT DECREE,
JUDGMENT, and ORDER

The United States of America filed this action pursuant to Section 4(f)(4) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973b(f)(4), and Sections 302(a) and 302(b) of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. §§ 15482(a), (b). The Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 1331, 1345 and 42 U.S.C. §§ 1973j(d), 1973j(f), and 15511, and venue properly lies in the Galveston Division of the Southern District of Texas.

Galveston County is covered under Section 4(f)(4) of the Voting Rights Act, as amended, 42 U.S.C. § 1973b(f)(4) ("Section 4(f)(4)"), to provide Spanish language written materials and assistance to voters. The State of Texas, including Galveston County, has been subject to the requirements of Section 4(f)(4) since September 23, 1975. 40 Fed. Reg. 43,746; see also 28 C.F.R. pt. 51, Appendix. As a result, Galveston County has been under notice of its obligations under Section 4(f)(4) since 1975. The Department has sent Galveston County and other covered jurisdictions information regarding the bilingual election requirements of the Voting Rights Act.

According to the 2000 Census, Galveston County had a total population of 250,158 persons, of whom 44,939 (17.96%) were Hispanic. The total voting age citizen population was

171,965, of whom 21,620 (12.57%) were Hispanic. Of Galveston County's Hispanic voting age citizen population, 4,260 were limited English proficient.

Defendants have failed to provide an adequate number of bilingual poll officials trained to assist Spanish-speaking voters on election day, and have failed to provide in an effective manner certain election-related information to Spanish-speaking voters.

Defendants also have an obligation to ensure that its polling places and poll workers comply with the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. §§ 15301 et seq., as it applies to Federal elections. Among other requirements, they must provide provisional ballots to all voters in Federal elections who believe that they are eligible to vote in the elections, even if the voter is not listed in the registration book. 42 U.S.C. § 15482(a). Further, the County must ensure that all HAVA-required information is posted at every polling place. This includes signs regarding the identification requirements for first-time voters, general information on State and Federal laws protecting one's right to vote (including a provisional ballot), a telephone contact number to report violations, and State and Federal law prohibiting voting fraud. 42 U.S.C. § 15482(b). Galveston County has not met these HAVA requirements, in part, because it fails to provide provisional ballots to all the polling places, train its poll workers adequately, monitor poll workers' compliance with HAVA, or otherwise ensure compliance in its polling places.

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 Order. The parties waive a hearing and entry of findings of fact and

conclusions of law on all issues involved in this manner. Each party shall bear its own costs and fees.

Defendants acknowledge that they have not successfully complied with all of the provisions of Section 4(f)(4) of the Voting Rights Act and Sections 302(a) and 302(b) of the Help America Vote Act. Defendants are, however, committed to comply fully with all of such requirements in future elections. Therefore, Defendants stipulate that each provision of this 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 Defendants are hereby PERMANENTLY ENJOINED from:

- a. 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); and
- b. Failing to ensure that poll workers provide and receive adequate training regarding: (1) the use of providing provisional ballots under Section 302(a) of HAVA; and (2) the display of all HAVA-required signs under Section 302(b) of HAVA.

2. The terms of this Decree apply to all Federal, State, and local elections that are administered by 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 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 entity to comply fully with Section 4(f)(4) of the Voting Rights Act and Sections 302(a) and 302(b) of the Help America Vote Act.

Translation and Dissemination of Election-Related Materials

3. All information that is disseminated by Galveston 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.

4. Defendants shall ensure that all Spanish and English language election information, materials, and announcements are made equally available. Spanish language information shall be distributed in newspapers and radio within Galveston County, on the Internet, and through other media that exclusively or regularly publish or broadcast information in Spanish to the local population. The County shall use such media to disseminate these minority language announcements in the form and frequency best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information, but need not be identical in all respects to English language announcements.

Spanish-Language Assistance

5. Spanish-language assistance shall be available at all locations where election-related transactions are conducted. Trained bilingual (Spanish and English fluent) 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. The County may coordinate the provision of such services with other governmental or non-governmental entities that conduct elections.

6. Defendants shall recruit, hire, and assign poll officials able to understand, speak, write, and read Spanish fluently to provide effective assistance to Spanish-speaking voters at the polls on election days.

7. Galveston 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. The County shall request that cities, school districts, and other entities that are involved in conducting elections in Galveston County perform similar surveys of their employees. The County shall also request each school district or other educational entity within the County to devise and implement a program that allows and encourages bilingual students selected (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 the pay and benefits provided by law for such poll officials. The County shall advise counsel for the United States of any entity that does not participate fully in the event that there is difficulty obtaining sufficient bilingual personnel.

8. The County shall invite all individuals on the Advisory Meeting roster, discussed below, to serve as poll officials and to encourage other bilingual voters to do so.

9. 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 a precinct insufficiently staffed by bilingual poll officials to provide any necessary assistance to any Spanish-speaking voter.

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 or that the anticipated voter turnout is substantially lower than average voter turnout.

10. Signs in both English and Spanish shall be posted prominently at all 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

11. 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:

- a. 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; and
- b. Sections 302(a), and 302(b) of HAVA, including the specific requirements to post all HAVA-required signs, in English and Spanish, so that all voters can easily view such signs, the provisional ballot requirements and the procedure for completing that ballot.

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 Officials

12. Defendants, upon receipt of complaints by voters, whether oral or written, shall investigate expeditiously any allegations of poll official 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 within 45 days. Where there is credible evidence that poll

officials have engaged in hostile treatment of Spanish-speaking or Hispanic voters, Defendants shall remove those poll officials.

Spanish-Language Election Program Coordinator

13. The County shall designate an individual to coordinate the County's Spanish language election Program ("the Coordinator") for all elections within the County. The County shall provide the Coordinator 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. The Coordinator shall also conduct the Spanish-Language Advisory Meetings discussed below.

Spanish-Language Advisory Meeting

14. The County shall conduct Spanish-Language Advisory Meetings ("Advisory Meetings") to assist and inform the Spanish language election program. The Advisory Meetings shall be open to any interested person or organization. The County shall invite participation from business, labor, civil, social organizations, and others serving the Spanish-speaking community as well as from political organizations. As soon as possible, the County shall compile a roster ("Advisory Meeting roster") of such interested persons, including telephone and facsimile numbers or email addresses, to be invited to the Advisory Meetings. The County shall update the Advisory Meeting roster with the telephone and facsimile numbers or e mail addresses of past

attendees of the Advisory Meetings. Prior to the first election conducted by the County under the Decree, Advisory Meetings shall be conducted regularly for six months before such election and at least once during the two months after the election. Thereafter, Advisory Meetings shall be conducted as it determines is necessary so long as it is conducted at least three times during the six months before the November 2008 general election, at least once during the two months after the November 2008 general election, and at least twice during the five months before the November 2010 general election. The Coordinator shall provide notice of all planned meetings, including the date, time, location, agenda, at least 14 days in advance of such meeting all individuals on the Advisory Meeting roster and to the general public.

15. Within five days after each meeting, the Coordinator shall provide a written summary of the discussion and any decisions reached at the meeting to all individuals on the Advisory Meeting roster and to the County Clerk. The County Clerk shall send to the Commissioners Court of Galveston County a report listing all recommendations made at the meeting which have been adopted. If the County Clerk decides not to implement a recommendation made at an Advisory Meeting, the County Clerk shall provide to all individuals on the Advisory Meeting roster, through the Coordinator, and shall include in the report to the Commissioners Court a written statement of the reasons for rejecting such recommendation. The report shall be entered upon the minutes of the Commissioners Court and will be available to the public in accordance with the provisions of the Texas Open Records Act.

16. The County shall transmit to all individuals on the Advisory Meeting roster, and to any additional interested member of the public who requests such information, in English and Spanish, copies of all election information, announcements, and notices that are provided or

made available to the electorate and general public, and request that they share such information with others.

Federal Observers

17. To assist in monitoring compliance with and ensure effectiveness of this Decree, and to protect the Fourteenth Amendment rights of the citizens of Galveston County, the appointment of federal observers is authorized for Galveston County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), for the duration of this Decree.

18. 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

19. The parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient Spanish language Program and to ensure compliance with the Help America Vote Act. The County shall evaluate the Spanish language election 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 County also shall evaluate its program to ensure that each polling place is in compliance with the Help America Vote Act. The program may be adjusted at any time upon joint written agreement of the parties.

Retention of Documents and Reporting Requirements

20. Throughout the duration of this Decree, the County shall make and maintain written records of all actions taken pursuant to this Decree and shall produce copies of such

records. Such documents, lists, and records shall be made available, upon reasonable notice, to the United States upon its request.

21. Throughout the duration of this Decree, at least 30 days before each County-administered election, the County 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 precinct;
- (c) a designation of whether each poll official is fluent in English and another language, and an indication of what other languages are spoken by each poll worker; and
- (d) copies of any signs or other written information provided at polling places.

Within 45 days after each such election, the County shall provide to counsel for the United States any updated report regarding changes in these items as well as information about all complaints the County received at the election regarding language or assistance issues, by express mail or electronically to the following address:

Voting Section
United States Department of Justice
Civil Rights Division
1800 G Street, N.W., Room NWB-7254
Washington, D.C. 20006
Facsimile: (202) 307-3961
sean.odonnell@usdoj.gov
donald.palmer@usdoj.gov

Other Provisions

22. This Decree is final and binding between the parties and their successors in office regarding the claims raised in this action. It shall remain in effect through December 31, 2010.

23. 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 and Sections 302(a) and 302(b) of HAVA.

Agreed to this 16th day of July, 2007.

AGREED AND CONSENTED TO:

For Plaintiff:

ALBERTO R. GONZALES
Attorney General



WAN J. KIM
Assistant Attorney General
Civil Rights Division

For Defendants:

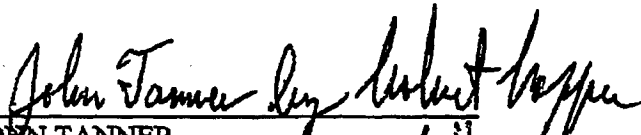


~~XXXXXXXXXXXXXXXXXXXX~~
Galveston County Judge



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DANIEL DAVID HU
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Texas Bar No. 10131415

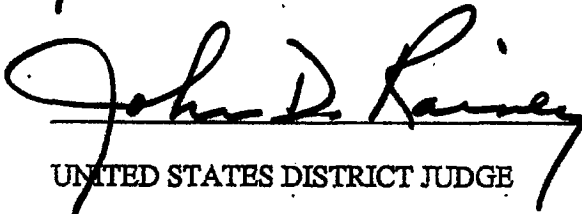

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JUDGMENT AND ORDER

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(f)(4), and Sections 302(a) and 302(b) of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. §§ 15482(a),(b), 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 20th day of July, 2007.


UNITED STATES DISTRICT JUDGE