

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

**12 CIV 3071**

----- x  
UNITED STATES OF AMERICA,

Plaintiff,  
v.

ORANGE COUNTY BOARD OF ELECTIONS,  
SUSAN BAHREN, in her official capacity, and  
DAVID GREENE, in his official capacity,

Defendants.  
----- x

ECF Case

12 Civ. \_\_\_\_\_

COMPLAINT

FILED  
U.S. DISTRICT COURT  
12 APR 18 PM 3:45  
S.D. OF N.Y.

The United States of America, by its attorney Preet Bharara, the United States Attorney for the Southern District of New York, alleges as follows:

**PRELIMINARY STATEMENT**

1. The United States of America brings this action against the Orange County Board of Elections (the "BOE"), Susan Bahren in her official capacity as a Commissioner at the BOE, and David Greene in his official capacity as a Commissioner at the BOE (collectively the "Defendants") pursuant to Sections 4(e) and 12(d) of the Voting Rights Act, 42 U.S.C. §§ 1973b(e), 1973j(d).

2. The purpose of Section 4(e) of the Voting Rights Act is "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" (*i.e.* Puerto Rico). Section 4(e) prohibits local governmental entities, including the County, "from conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language." 42 U.S.C. § 1973b(e).

3. As set forth below, the United States alleges that the Defendants have violated Section 4(e) of the Voting Rights Act by conditioning the right to vote of Orange County residents educated in an American-flag school where the predominant classroom language was other than English upon such persons' ability to read, write, understand, or interpret English in violation of Section 4(e) of the Voting Rights Act.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 42 U.S.C. § 1973j(f).

5. Venue lies in this District pursuant to 28 U.S.C. § 1391(b) because the Defendants are located within this District and the acts complained of herein took place in this District.

#### **PARTIES**

6. Plaintiff is the United States of America.

7. Defendant the BOE is the entity with the statutory powers, duties, and responsibilities concerning the registration of voters and the conduct of Federal, state, and local elections in Orange County, New York. *See* N.Y. Elec. Law §§ 1-102, 3-404, 3-410, 3-412, 4-106 – 110, 4-114, 4-118, 4-134, 7-118.

8. Defendant Susan Bahren is one of two Election Commissioners at the BOE, *see* N.Y. Elec. Law § 3-200(2), with duties, powers, and responsibilities concerning the administration of elections held in Orange County, *see, e.g., id.* §§ 3-212, 3-300. Defendant Bahren is sued in her official capacity.

9. Defendant David Greene is one of two Election Commissioners at the BOE, *see* N.Y. Elec. Law § 3-200(2), with duties, powers, and responsibilities concerning the

administration of elections held in Orange County, *see, e.g., id.* §§ 3-212, 3-300. Defendant Greene is sued in his official capacity.

### **FACTS**

10. A significant number of voting age citizens in Orange County were educated in American-flag schools in Puerto Rico, where the predominant classroom language was Spanish.

11. According to the 2000 Census, Orange County had a total population of 341,367, of whom 19,153 (5.6%) were of Puerto Rican descent. *See* 2000 Census, Summary File 1, PCT. 11, Hispanic or Latino by Specific Origin.

12. According to the 2000 Census, there were 5,671 persons in Orange County who were born in Puerto Rico, which constituted 29.6% of the County's Puerto Rican population. *See* Census 2000, Summary File 4, PCT. 43, Sex by Place of Birth by Citizenship Status.

13. The 2000 Census further indicates that the Orange County has 12,535 Puerto Ricans of voting age, of whom 2,400 (19.1%) have limited English proficiency. *See* Census 2000, Summary File 4, PCT 38, Age by Language Spoken at Home by Ability to Speak English for the Population 5 years and Over.

14. The 2006-2010 American Community Survey estimated that there were 26,524 Puerto Rican residents of Orange County.

15. In 2010, the Puerto Rican population of Orange County had increased to 29,210, which constituted 7.8% of the County's total population. *See* 2010 Census, Summary File 1, QT-P3, Race and Hispanic or Latino Origin.

16. During the Federal, state, and local elections held in 2009, 2010, and 2011, Defendants did not translate election-related materials into Spanish, including, but not limited to,

the official ballot, sample ballot, absentee ballot, affidavit ballot, election notices, and election-related information on the BOE website.

17. During the Federal, state, and local elections held in 2009, 2010, and 2011, Defendants did not recruit, appoint, train, and maintain an adequate number of bilingual poll workers to provide Spanish-language assistance at the polls, including, but not limited to, providing assistance in translating the English-language ballot.

18. As a result of Defendants' actions described in paragraphs 16 and 17, Orange County voters who were born and educated in Puerto Rico and who do not read, write, or understand English were prevented from casting an informed ballot in the 2009, 2010, and 2011 elections in Orange County.

19. Orange County residents have made repeated requests that Defendants provide Spanish-language election materials or make Spanish-language assistance available at the polls.

20. Defendants have consistently refused requests from Orange County residents to provide Spanish-language election materials or Spanish-language assistance at the polls.

21. Defendants conditioned the right to vote of Orange County citizens educated in Puerto Rico on their ability to read, write, understand or interpret the English language by not providing Spanish-language election materials and not consistently providing effective Spanish-language assistance during elections held in Orange County.

22. By not providing Spanish-language materials and consistent, adequate Spanish-language assistance during elections, Defendants denied Orange County citizens who were educated in Puerto Rico the right to cast an informed vote and impaired their ability to participate effectively in the election process, in violation of Section 4(e) of the Voting Rights Act.

**CLAIM FOR RELIEF**

23. The United States re-alleges and incorporates by reference the allegations set forth in paragraphs 1-22.

24. Defendants' failure to provide Spanish-language election materials conditioned the right to vote of Orange County residents born and educated in Puerto Rico on their ability to read, write, understand, or interpret English, in violation of Section 4(e) of the Voting Rights Act.

25. Defendants' failure to provide Spanish-language assistance during elections denied Orange County residents who were born and educated in Puerto Rico the right to cast an informed vote and impaired their ability to participate effectively in the electoral process in violation of Section 4(e) of the Voting Rights Act.

26. Unless enjoined by order of this Court, Defendants will continue acting in violation of Section 4(e) of the Voting Rights Act by failing to provide election-related information, such as notices, in Spanish, and by conducting elections without the availability of Spanish-ballots or other election materials or Spanish-language assistance at the polls.

**PRAYER FOR RELIEF**

WHEREFORE, the United States of America requests that this Court enter an order:


- (a) Declaring that Defendants violated Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e), by not providing Spanish-language election materials, information, and assistance necessary to effectively participate in the electoral process to Orange County residents educated in Puerto Rico;

- (b) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from not providing Spanish-language election materials, information, and assistance to Orange County residents educated in Puerto Rico;
- (c) Requiring defendants to devise and implement a remedial plan to ensure that Orange County residents educated in Puerto Rico are provided Spanish-language election materials, information, and assistance, or some combination thereof, consistent with Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e);
- (d) Authorizing the Director of the Office of Personnel Management to appoint federal observers in Orange County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), to monitor compliance with the Court's Order; and
- (e) Granting such additional relief as the interests of justice may require.


Dated: New York, New York  
April 17, 2012

PREET BHARARA  
United States Attorney for the  
Southern District of New York

By:

  
BENJAMIN H. TORRANCE  
JAMES NICHOLAS BOEVING  
Assistant United States Attorneys  
86 Chambers Street  
New York, New York 10007  
Telephone: (212) 637-2703/2748  
Facsimile: (212) 637-2686  
Benjamin.Torrance@usdoj.gov  
James.N.Boeving@usdoj.gov

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

  
T. CHRISTIAN HERREN JR.  
TIMOTHY F. MELLETT  
KATHERINE CULLITON-GONZÁLEZ  
OLIMPIA E. MICHEL  
Attorneys, Voting Section  
United States Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, N.W.  
NWB-7254  
Washington, D.C. 20530  
Telephone: (800) 253-2931  
Facsimile: (202) 307-3961  
Katherine.Culliton@usdoj.gov  
Olimpia.Michel@usdoj.gov