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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

COCHISE COUNTY, ARIZONA;
COCHISE COUNTY BOARD OF
SUPERVISORS; CHRISTINE RHODES,
in her official capacity as Cochise County
Recorder; THOMAS SCHELLING, in his
official capacity as Cochise County
Elections and Special Districts Director,

Defendants.

CASE NO. CV 06-304 TUC-FRZ

THREE-JUDGE COURT

**CONSENT DECREE,
ORDER AND JUDGMENT**

The United States of America filed this action pursuant to Sections 203 and 204 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973aa-1a and 1973aa-2, and Sections 302(b) and 401 of the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. §§ 15482(b) and 15511, arising from Cochise County's election practices and procedures.

The Census Bureau has designated Defendant Cochise County as subject to the bilingual election requirements of Section 203 of the Voting Rights Act of 1965, as amended ("Section 203"), for Hispanics. 67 Fed. Reg. 48871 (July 26, 2002). The determination that Cochise County is covered by Section 203 is final and not subject to judicial review. See 42 U.S.C. § 1973aa-1a(b)(4).

1 Since July 26, 2002, Cochise County has been required, pursuant to Section 203, to
2 provide effective language assistance to limited-English proficient Hispanic voters, see 67
3 Fed. Reg. 48871 (July 26, 2002), and previously was required to do so from September 9,
4 1975 until September 18, 1992, see 40 Fed. Reg. 41827 (Sept. 9, 1975); 49 Fed. Reg. 25887
5 (June 25, 1984); 57 Fed. Reg. 43213 (Sept. 18, 1992).

6 According to the 2000 Census, Cochise County has a total population of 117,755,
7 of whom 36,195 (30.7%) are Hispanic, and a total voting age population of 86,860, of
8 whom 23,040 (26.5%) are Hispanic. The County has a citizen voting age population of
9 80,670, of whom 18,095 (22.4%) are Hispanic and 4,325 are limited-English proficient
10 Hispanics (5.4%).

11 Defendants have failed to comply with the requirements of Section 203 for limited-
12 English proficient Spanish-speaking citizens residing in Cochise County by:

- 13 (1) failing to provide complete and accurate Spanish translations of all public
14 materials produced in English, including, but not limited to, information
15 about voter registration, voting absentee, voting early, voting machine
16 instructions, and other election related information;
- 17 (2) failing to recruit, appoint, train, and assign sufficient bilingual election
18 workers to assist Hispanic citizens with limited English proficiency; and
- 19 (3) failing to provide certain election related information, including but not
20 limited to information publicizing elections, registration deadlines, and early
21 and absentee voting options, in a manner that provides limited-English
22 proficient Spanish-speaking voters an equal and effective opportunity to be
23 informed about election related activities.

24 Defendants have failed to post in each polling place during the 2004 elections for
25 federal office all of the voting information required by Section 302(b) of HAVA, including
26 but not limited to information regarding the date of the election, federal and state voting

1 laws, and instructions for mail-in registrants and first-time voters.

2 To avoid protracted and costly litigation, the parties have agreed that this lawsuit
3 should be resolved through the terms of this Consent Decree (hereinafter, the "Decree").
4 Accordingly, the United States and Defendants hereby consent to the entry of this Decree,
5 as indicated by the signatures of counsel at the end of this document. The parties waive a
6 hearing and entry of findings of fact and conclusions of law on all issues involved in this
7 matter.

8 Defendants do not contest that they have failed to provide limited-English proficient
9 Hispanic citizens in Cochise County with Spanish language election information and
10 assistance as required by Section 203, and they do not contest that they failed to provide the
11 information required by Section 302(b) of HAVA during their 2004 elections for federal
12 office.

13 Accordingly,

14 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that:

15 1. With the exception of Paragraphs 3, 26, and 27 regarding HAVA
16 requirements, the terms of this Decree apply to all federal, state, and local elections
17 administered by the County, in whole or in part, including municipal, school district, and
18 special district elections that the County administers.

19 **Injunction**

20 2. Cochise County, its agents, employees, contractors, successors and all other
21 persons representing the interests of Cochise County are hereby **ENJOINED** from failing
22 to provide in Spanish any "registration or voting notices, forms, instructions, assistance or
23 other materials or information relating to the electoral process" that it provides in English,
24 as required by Section 203 of the Voting Rights Act of 1965, as amended. 42 U.S.C. §
25 1973aa-1a(c). Whenever Defendants enter into an election services contract with any
26 political subdivision, political party, or other entity to conduct an election on behalf of that

1 entity, Defendants shall require such other entity to agree to abide by the terms of this
2 Decree as if such entity were a party to this Decree with the United States, consistent with
3 the responsibility of each such entity to comply fully with Section 203.

4 3. Cochise County, its agents, employees, contractors, successors and all other
5 persons representing the interests of Cochise County are hereby **ENJOINED** from failing
6 to provide the information required by Section 302(b) of HAVA, 42 U.S.C. § 15482(b).
7 Paragraphs 3, 26, and 27 of this Decree apply to all elections for Federal office.

8 **Translation of Election Related Materials**

9 4. All information that is disseminated by Cochise County in English regarding
10 “registration or voting notices, forms, instructions, assistance, or other materials or
11 information relating to the electoral process, including ballots,” 42 U.S.C. § 1973aa-1a(c),
12 shall also be provided in Spanish. Defendants shall ensure that both English and Spanish
13 language election information, materials, and announcements provided by Cochise County
14 are made equally available to voters.

15 5. Defendants shall consult with trained translators who are familiar with
16 Spanish language election terminology to produce clear and accurate written translations
17 of English language election information. The County shall develop and maintain a
18 glossary of Spanish election terminology. In creating such a glossary, Defendants shall
19 consult with the Advisory Group, discussed below, to ensure that the election terms selected
20 for the glossary are commonly used by local Spanish-speaking citizens.

21 6. Defendants shall adopt a checklist identifying each written item that is
22 provided in Spanish and that the County makes available to the public at each precinct. The
23 checklist shall include with respect to each item an attestation that the election workers at
24 the precinct posted or made available to voters these materials in Spanish, or a detailed
25 written explanation of why individual items had not been posted or were not available. The
26 head of each precinct must complete and sign this document before he/she receives payment

1 for work in the election, subject to applicable state and federal law. Defendants shall
2 maintain a record of each such failure to complete and sign the checklist.

3 **Dissemination of Spanish Language Information**

4 7. Defendants shall ensure that all Spanish and English language election related
5 information, materials, and announcements are made equally available. Spanish language
6 information shall be distributed through newspapers, radio and/or other media that
7 exclusively or regularly publish or broadcast information in Spanish to the local population.
8 Dissemination of these Spanish language announcements shall be in the form, frequency,
9 and media best calculated to achieve notice and understanding equal to that provided to the
10 English-speaking population and to provide substantially the same information.

11 8. All official ballots, including absentee ballots, shall be printed bilingually in
12 both English and Spanish. Any new voting system adopted by Defendants shall offer
13 bilingual ballots or the readily apparent option of a Spanish ballot, and any audible version
14 of the ballot on such machines shall be available in at least English and Spanish.

15 9. To the extent the County posts instructions on casting a ballot or other election
16 related information inside the voting booth, Defendants shall also provide that same
17 information in Spanish.

18 **Spanish Language Assistance**

19 10. Defendants shall provide trained personnel who are bilingual in English and
20 Spanish to assist citizens who contact the County before, during, or after an election with
21 questions regarding the election process. Trained bilingual personnel shall be available to
22 answer voting related questions by telephone without cost during normal business hours and
23 while the polls are open on election day.

24 11. Cochise County shall recruit, hire, and assign bilingual election workers, who
25 are able to understand, speak, read, and write Spanish and English fluently, to provide
26 assistance to limited-English proficient Spanish-speaking voters at the polls on election day.

1 12. Cochise County shall survey its employees to identify personnel who speak
2 Spanish fluently and, to the extent such employees can be made available to provide
3 assistance, allow and encourage such employees to serve at the polls on election day. The
4 County shall request that cities, school districts, and other entities that are involved in
5 conducting elections in Cochise County perform similar surveys of their employees. The
6 County shall also request each school district or other educational entity within the County
7 to devise and implement a program that allows and encourages bilingual students selected
8 (as permitted by state law and as part of an educational program devised by such district)
9 to serve as election workers on election day for all County elections, including election days
10 that fall on school days, with such students receiving all pay and benefits provided by law
11 for such election workers. The County shall advise counsel for the United States of any
12 entity that does not participate fully. Additionally, the County will invite members of the
13 Advisory Group, each major political party, and other appropriate local organizations to
14 submit names of qualified bilingual persons who might be approached to serve as bilingual
15 election workers.

16 13. Defendants shall provide bilingual assistance on election day in accordance
17 with the following standards:

- 18 (a) At least one election worker who is fluent in English and Spanish at
19 each precinct that has 100 to 249 registered voters with Spanish
20 surnames;
- 21 (b) At least two election workers who are fluent in English and Spanish
22 at each precinct that has 250 to 499 registered voters with Spanish
23 surnames; and
- 24 (c) At least three election workers who are fluent in English and Spanish
25 at each precinct that has more than 500 registered voters with Spanish
26 surnames.

1 The parties may by written agreement adjust these requirements in light of reliable
2 information that the actual need for language assistance in a particular precinct is lesser or
3 greater than these standards.

4 14. To avoid last-minute gaps in Spanish language coverage at the polls on
5 election day due to bilingual election workers who fail to report for work, Defendants shall
6 employ personnel fluent in English and Spanish and trained in Spanish election terminology
7 who shall be on call and available to travel to a polling place not staffed by a bilingual
8 election worker to provide any necessary assistance to a limited-English proficient Spanish-
9 speaking voter. Such on-call staff shall be stationed in appropriate areas of the County,
10 including in or near Willcox, Bisbee, Sierra Vista, and Benson, so as to minimize any delay
11 for voters while the staff member travels to the designated polling place.

12 15. Defendants shall post signs prominently in both English and Spanish at
13 polling sites stating that Spanish language assistance is available. Bilingual personnel shall
14 be identified as such by wearing bilingual badges. At sites without bilingual staff, signs in
15 both English and Spanish shall be posted that explain how voters can obtain Spanish
16 language assistance.

17 **Election Worker Training**

18 16. Prior to each election conducted in whole or in part by the County, Defendants
19 shall train all election workers and other election personnel present at the polls on the
20 following topics:

- 21 (1) the provisions of Section 203, including the legal obligation to make Spanish
22 language assistance and materials available to voters and to be respectful and
23 courteous to all voters regardless of race, color, language abilities, or national
24 origin; and
25 (2) the requirements of Section 208 of the Voting Rights Act, 42 U.S.C. §
26 1973aa-6, regarding the rights of limited-English proficient voters to the

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assistant of their choice. The County also shall train all bilingual election workers on Spanish language election terminology and how to interpret into Spanish the ballot, voting instructions, and other election related information.

The County shall maintain a record of which election workers attend training sessions, including the time, location, and training personnel involved.

Response to Complaints about Election Workers

17. Upon receipt of complaints by voters, whether oral or written, Defendants shall investigate expeditiously any allegations of election worker hostility toward Spanish-speaking and/or Hispanic voters or election workers in any election. Defendants shall report the results of each investigation to the United States in writing within thirty days of receiving the complaint. Where there is credible evidence that an election worker has engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters or election workers, Defendants shall remove the election worker.

Program Coordinator

18. The County shall retain or designate a Program Coordinator to coordinate the County's Spanish language election program. The Program Coordinator shall be able to understand, speak, write, and read fluently both Spanish and English. The County shall provide the Program Coordinator with transportation and other support sufficient to meet the goals of the Program.

19. The Program Coordinator shall work under the supervision of the Cochise County Recorder and the Cochise County Elections and Special Districts Director ("Elections Director") to implement a Spanish language election program. The Program Coordinator's responsibilities shall include coordinating the translation of ballots and other election information; developing and overseeing publicity in Spanish, including selecting appropriate Spanish language media for notices and announcements in Spanish; recruiting bilingual election workers; assessing the Spanish language proficiency of election workers;

1 and devising specific steps to remedy past failures to provide election information to the
2 Spanish-speaking community.

3 **Advisory Group**

4 20. Defendants shall form an Advisory Group to provide the County with
5 information and assistance regarding how best to provide election related materials and
6 assistance to the Spanish-speaking community. The Advisory Group shall be established
7 and chaired by the Program Coordinator. The Program Coordinator shall invite
8 participation from all interested individuals and organizations who work with or serve the
9 Spanish-speaking community to determine how most effectively to provide election
10 materials, information, and assistance to Spanish-speaking voters. The Program
11 Coordinator shall provide notice of all planned meetings to each member, including the
12 date, time, location, and meeting agenda at least 14 days in advance, although members of
13 the Advisory Group may agree to waive or shorten this time period as necessary. The
14 Advisory Group shall meet at least monthly from July through November 2006 and as the
15 Advisory Group determines is necessary for the duration of this Decree.

16 21. Within five days after each meeting, the Program Coordinator shall provide
17 a written summary of the discussion and any decisions reached at the meeting to all
18 Advisory Group members and to the County Recorder and Elections Director. If the County
19 Recorder and/or Elections Director decides not to implement an Advisory Group suggestion
20 or a consensus cannot be reached respecting such suggestion, the official at issue shall
21 provide to the Advisory Group through the Program Coordinator, and maintain on file, a
22 written statement of the reasons for rejecting such suggestion.

23 22. Defendants shall transmit to all interested members of the Advisory Group
24 copies, in English and Spanish, of all election information, announcements, and notices that
25 are provided or made available to the electorate and general public and request that they
26 share such information with others.

1 **Evaluation of the Program**

2 23. The parties recognize that regular and ongoing reassessment may be necessary
3 in order to provide the most effective and efficient Spanish language program. Cochise
4 County shall evaluate the Spanish language election program after each election cycle (e.g.,
5 following 2006 elections) to determine which aspects of the program are functioning well,
6 whether any aspects need improvement, and how to make any needed improvements. The
7 program may be adjusted at any time upon written agreement of the parties.

8 **Federal Examiners and Observers**

9 24. To assist in monitoring compliance with this Decree, and to protect the
10 Fourteenth and Fifteenth Amendment rights of the citizens of Cochise County, the
11 appointment of a federal examiner is authorized for Cochise County pursuant to Section
12 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a (a), for the duration of this Decree.

13 25. Defendants shall recognize the authority of federal observers to observe all
14 aspects of voting conducted in the polls on election day, including the authority to view
15 County personnel providing assistance to voters during voting, except where the voter
16 objects.

17 **HAVA Program**

18 26. Defendants shall produce or obtain written posters that set forth in English
19 and in Spanish all election related information required by Section 302(b) of HAVA, see
20 402 U.S.C. § 15482(b)(2), including relevant information on voting rights under applicable
21 Federal and State laws, and prominently post such information at each polling place on the
22 day of each election for Federal office. For each federal election, Defendants shall also
23 include in the checklist required by Paragraph 6 an attestation that the election workers at
24 the precinct posted or made available to voters all of the information required by Section
25 302(b) of HAVA, or a detailed written explanation of why such information had not been
26 posted or was not available.

1 27. Prior to each election for Federal office, Defendants shall supplement the
2 training required by Paragraph 16 to include an explanation of the posting requirements of
3 Section 302(b) of HAVA.

4 **Retention of Documents and Reporting Requirements**

5 28. Throughout the duration of this Decree, the County shall make and maintain
6 written records of all actions taken pursuant to this Decree. Such documents, lists, and
7 records shall be made available, upon reasonable notice, to the United States for inspection
8 and copying.

9 29. Throughout the duration of this Decree, at least ten (10) days before each
10 County-administered election, Defendants shall provide to counsel for the United States:
11 (a) the name, address, and precinct designation of each polling place; (b) the name and title
12 of each election worker appointed and assigned to serve at each precinct; (c) a designation
13 of whether each election worker is fluent in English and Spanish; (d) an electronic copy of
14 the final, official voter registration list to be used in each such election; and (e) copies of
15 any signs or other written information provided at polling places.

16 Within thirty (30) days after each such election, Cochise County shall provide to
17 counsel for the United States any updated report regarding changes in these items as well
18 as information about all complaints the County received at the election regarding language,
19 assistance, or HAVA posting issues.

20 **Miscellaneous Provisions**

21 30. The Court shall retain jurisdiction of this case to enter further relief or such
22 other orders as may be necessary for the effectuation of the terms of this agreement and to
23 ensure compliance with Section 203 and Section 302(b) of HAVA. The United States shall
24 provide at least thirty (30) days written notice to Cochise County prior to any action to
25 enforce this Consent Decree, and such notice shall set forth the United States' allegations
26 of non-compliance.

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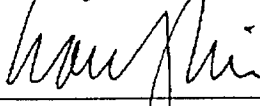
31. This Decree is final and binding between the parties and their successors in office regarding the claims raised in this action. This Decree shall remain in effect through August 6, 2007, and the parties further stipulate that the Decree shall be extended through December 31, 2008, if Defendants remain under a continuing federal statutory obligation to provide minority language materials and assistance after August 6, 2007.

1 AGREED AND CONSENTED TO:

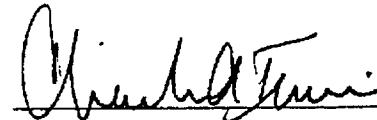
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3 FOR PLAINTIFF:

FOR DEFENDANTS:


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5 ALBERTO R. GONZALEZ
Attorney General

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8 WAN J. KIM
Assistant Attorney General



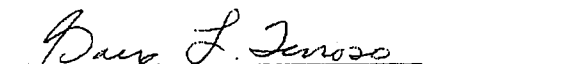
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10 *for* ED RHEINHEIMER
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950 Pennsylvania Ave., N.W.
23 Washington, D.C. 20530
24 (202) 305-1291
25 alberto.ruisanchez@usdoj.gov

26 Dated: June 16, 2006.

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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 and incorporates herein the relief set forth above in this Decree, with the exception of Paragraphs 3, 26, and 27, which address only the United States' second cause of action under Section 302 of the Help America Vote Act of 2002, 42 U.S.C. § 15482.

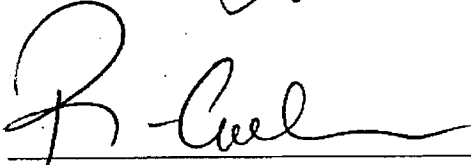
ENTERED and ORDERED this 12th day of October, 2006.



UNITED STATES CIRCUIT JUDGE



UNITED STATES DISTRICT JUDGE



UNITED STATES DISTRICT JUDGE

JUDGMENT AND ORDER

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The Court, having jurisdiction over the United States' claim 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, and hereby enters and incorporates herein the relief set forth above in Paragraphs 3, and 26 through 31 of this Decree.

ENTERED and ORDERED this 12th day of October, 2006.


UNITED STATES DISTRICT JUDGE