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United States of America

SALEM COUNTY, NEW JERSEY
SALEM COUNTY BOARD OF ELECTIONS
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FLORENCE BUTLER
MICHAEL FACEMYER
CAROL WADDINGTON
MARGARET BUTLER
ANDREA McLAUGHLIN SOSNOWIK
94 Market Street
Salem, New Jersey 09079

GILDA T. GILL
Salem County Clerk
92 Market Street
Salem, New Jersey 08079

BOROUGH OF PENNS GROVE
1 State Street
Penns Grove, New Jersey 08069

SHARON WILLIAMS
Penns Grove Municipal Clerk & Deputy Registrar
1 State Street
Penns Grove, New Jersey 08069

Defendants
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

THE UNITED STATES OF AMERICA,)
)
Plaintiff,)

v.)

CIVIL ACTION NO.

SALEM COUNTY, New Jersey; the SALEM)
COUNTY BOARD OF ELECTIONS; SALEM)
COUNTY BOARD MEMBERS FLORENCE)
BUTLER, JOHN BURKE, MICHAEL FACEMYER,)
CAROL WADDINGTON, in their official capacities;)
SALEM COUNTY REGISTRARS MARGARET)
BUTLER AND ANDREA McLAUGHLIN)
SOSNOWIK, in their official capacities; GILDA T.)
GILL, County Clerk, in her official capacity;)
BOROUGH OF PENNS GROVE, NEW JERSEY;)
JOHN WASHINGTON, Mayor and Borough Council)
member, in his official capacity; CLIFTON)
POINDEXTER, Borough Council President and all)
members of the council (Tami Baytops, Carol)
Mincey, Anthony Crescenzi, Janet M. Bercute, and)
Thomas R. Ownsby), in their official capacities; and)
SHARON WILLIAMS, Municipal Clerk and Deputy)
Registrar, in her official capacity;)

COMPLAINT

Defendants.)

Plaintiff, the United States of America, alleges:

1. The Attorney General of the United States hereby files this action to enforce the provisions of:
 - a. Section 4(e) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973b(e), with respect to the conduct of elections in Penns Grove and Salem County;

- b. Section 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-6, with respect to the conduct of elections in Penns Grove and Salem County; and
- c. Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, with respect to the conduct of elections in Penns Grove and Salem County.

JURISDICTION

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. § 1973j(d) & (f). The events relevant to this action occurred in the Borough of Penns Grove, located within Salem County, which is located within the United States District Court for the District of New Jersey.

PARTIES

3. Defendant SALEM COUNTY, NEW JERSEY, is a political and geographic subdivision of the State of New Jersey.

4. Defendant SALEM COUNTY BOARD OF ELECTIONS is governed by the County's Board of Elections Commission and has statutory powers, duties, and responsibilities concerning the conduct of elections and creation of election districts in Salem County, including elections within the Borough of Penns Grove. Defendant Chairperson CAROL WADDINGTON, Secretary MICHAEL FACEMYER, Salem County Board Members JOHN BURKE and FLORENCE BUTLER, and Salem County Registrars MARGARET BUTLER and ANDREA MCLAUGHLIN SOSNOWIK, are members of the Salem County Board of Elections. Each is sued in his or her official capacity.

5. Defendant Salem County Clerk, the Honorable GILDA T. GILL, has statutory powers, duties, and responsibilities concerning the conduct of elections held in Salem County including elections within the Borough of Penns Grove. She is sued in her official capacity.

6. Defendant BOROUGH OF PENNS GROVE is a political and geographic subdivision of the State of New Jersey.

7. Defendant Penns Grove Municipal Clerk and Deputy Registrar, SHARON WILLIAMS, has statutory powers, duties, and responsibilities concerning the conduct of elections held in Penns Grove. She is sued in her official capacity.

ALLEGATIONS

8. According to the 2000 Census, Salem County had a total population of 64,285, of whom 2,360 (3.67%) were Hispanic and 1,433 (2.29%) were persons of Puerto Rican descent. Of the Salem's Hispanic population, 57.36% were persons of Puerto Rican descent.

9. The 2000 Census reported that Penns Grove had a total population of 4,886, of whom 845 (17.29%) were Hispanic and 580 (11.9%) were persons of Puerto Rican descent. Of Penns Grove's Hispanic population, 68.63% were persons of Puerto Rican descent.

10. Of the approximately 580 Hispanic persons of Puerto Rican descent residing in Penns Grove, a significant number were educated in American flag schools in which the predominant classroom language was Spanish.

11. The 2000 Census reported that 465 of the 1,210 (38.45%) Hispanic voting age citizens in Salem County, and 364 of the 825 (44.12%) Puerto Rican voting age citizens in Salem County were limited English proficient. In Penns Grove, 190 of the 349 (54.44%) voting age Puerto Ricans were limited English proficient. These percentages were significantly higher than the national average of 27.2 percent.

12. Hispanics in Salem County 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.

13. The 2000 Census also showed that Hispanics in Salem County and Penns Grove suffer from depressed socioeconomic conditions, including less access to education.

14. Defendants have unfairly conditioned the voting rights of citizens of Puerto Rican descent, educated in American-flag schools in Puerto Rico in which the predominant classroom language was Spanish, on the ability to speak English through the following:

- a. Defendants have never translated the actual ballot to Spanish in any election held in Penns Grove, and numerous voters of Puerto Rican descent who cannot understand the ballot in English have been unable to fully exercise their voting rights. Defendants have also failed to translate into Spanish most other election materials, including general election notices concerning participation in the political and electoral processes, polling place information, letters to voters regarding registration and election-day issues, voter assistance information, and most election-related information on Salem County's internet site. As a result, citizens of Puerto Rican descent with limited English proficiency have had difficulty voting because most election materials have been provided in English only; and
- b. Historically, defendants have failed to recruit, appoint, train and maintain an adequate pool of bilingual poll workers, and voters of Puerto Rican descent have been unable to obtain effective assistance and have had difficulty voting at the Penns Grove polling place over the years because it was not consistently and adequately staffed with bilingual polling officials.

15. Defendants and their employees and agents have failed to consistently allow voters their assistors of choice by:

- a. Prohibiting family members, friends, and other assistors of choice from providing assistance to limited English proficient Hispanic voters;
- b. Failing to instruct poll workers accurately and adequately on their duty to permit eligible voters to receive assistance from any person of their choice, other than their employers or union officials; and
- c. In instances when Spanish-language assistance by Hispanic voters' assistors of choice was permitted, interfering with such assistance and in particular, not permitting translation of the ballot.

16. In conducting elections in Penns Grove, Defendants have engaged in election practices including, but not limited to:

- a. Directing hostile or discriminatory remarks at, or otherwise acting in a hostile manner toward, Hispanic voters, which in many instances made them feel unwelcome at the polls;
- b. Failing to communicate effectively with Hispanic voters regarding necessary information about their eligibility to vote, voter registration status, and identification requirements;
- c. Requiring more identification from, and turning away Hispanic voters;
- d. Failing to protect Hispanic voters from unfounded or discriminatory challenges;
- e. Refusing to permit, or interfering with the right of Hispanic voters who need assistance in voting to be assisted by an assistor of their choice; and

f. Failing to consistently make bilingual personnel available to provide effective assistance and information required by Hispanic voters with limited English proficiency.

17. Political campaigns in Penns Grove, including 2006 and 2007 campaigns for mayor and city council, have been characterized by racial appeals as well as attempts to intimidate Hispanic voters.

FIRST CAUSE OF ACTION

18. Plaintiff hereby alleges and incorporates by reference ¶¶ 1-17 of this Complaint.

19. Section 4(e)(1) of the Voting Rights Act prohibits Defendants from “conditioning the right to vote . . . on ability to read, write, understand, or interpret any matter in the English language” by persons educated in American-flag schools, including the Commonwealth of Puerto Rico, where the predominant classroom language is Spanish. See 42 U.S.C. § 1973b(e)(1).

20. Defendants conduct elections mostly in English, as described above, and the failure to consistently provide Puerto Rican citizens with limited English proficiency with all of 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(e).

21. 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 consistently provide all of the election information and assistance necessary to effectively participate in the political process to citizens of Puerto Rican descent educated in American-flag schools where the predominant classroom language was Spanish.

SECOND CAUSE OF ACTION

22. Plaintiff hereby alleges and incorporates by reference ¶¶ 1-21 of this Complaint.

23. 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.

24. Defendants’ actions described in ¶ 17 above constitute a failure to ensure that voters who are unable to read the ballot and who need voting assistance in Spanish 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.

25. 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

26. Plaintiff hereby alleges and incorporates by reference ¶¶ 1-25 of this Complaint.

27. 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 denial or abridgement of the right to vote on account of race or color, or membership in a language minority group, including citizens of Spanish heritage. 42 U.S.C. § 1973(a).

28. The “totality of circumstances” of Defendants’ actions, as described in ¶¶ 8-17, 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.

29. 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 Hispanic voters opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

WHEREFORE, Plaintiff United States of America prays that this Court:

1. With respect to Plaintiff’s First Cause of Action:
 - a. Declare 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 citizens educated in Puerto Rico;
 - b. Preliminarily and permanently enjoin the Defendants, their agents and successors in office, and all persons acting in concert with them, from failing to provide election information and assistance to citizens educated in Puerto Rico, in violation of Section 4(e), 42 U.S.C. § 1973b(e); and
 - c. Requiring Defendants to devise and implement a remedial plan to ensure that citizens educated in Puerto Rico are provided bilingual election information and assistance consistent with Section 4(e), 42 U.S.C. § 1973b(e).
2. With respect to Plaintiff’s Second Cause of Action:

- a. Declare that Defendants have violated Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;
 - b. Preliminarily and permanently enjoin Defendants, their agents and successors in office, and all persons acting in concert with them, from engaging in any act or practice that has the effect of denying or limiting the rights secured by Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6; and
 - c. Require Defendants to develop a remedial plan to ensure that voters are permitted to have the person of their choice assist them at the polls, without any interference or undue limitations, 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. Declare that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a), because their actions have resulted in the denial or abridgement of the rights of Hispanic and Spanish-speaking voters;
 - b. Enjoin Defendants, their agents and successors in office, and all persons acting in concert with them, from implementing or applying practices and procedures that deny or abridge the rights of Hispanic and Spanish-speaking voters in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a); and
 - c. Require Defendants to develop and implement a remedial plan that provides Hispanic and Spanish-speaking voters the opportunity to fully

participate in the political process consistent with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973(a).

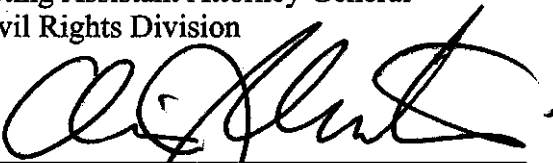
4. Plaintiff further requests that this Court:
 - a. Authorize the Director of the Office of Personnel Management to appoint federal observers for Penns Grove and Salem County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a);
 - b. Award Plaintiff the costs and disbursements associated with the filing and maintenance of this action; and
 - c. Award such other equitable and further relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

Date: 24th day of July, 2008

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