

SEP - 4 2007

CLERK U.S. DISTRICT COURT

By _____
Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

SMYER INDEPENDENT SCHOOL
DISTRICT; and JANE LEWIS, CHIEF
ELECTION OFFICER, in her official capacity,

Defendants.

CASE NO. 5:07-CV-148-C

THREE-JUDGE COURT

**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 the Defendants' election practices and procedures in the May 2007 municipal election as they affect Spanish-speaking citizens of the Smyer Independent School District (the "ISD").

The Complaint's cause of action 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.

According to the 2000 Census, the ISD had a total population of 1,623, of whom 457 (28.2%) were Hispanic. The Census reported that the ISD had a total voting age population of 1,123, of whom 273 (24.3%) were Hispanic.

The Director of the Census has designated the County of Hockley as subject to the requirements of Section 203 of the Voting Rights Act for Spanish. See 42 U.S.C. § 1973aa-1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). As a political unit within the County of Hockley, the ISD is also subject to the requirements of Section 203 for Spanish. See 28 C.F.R. § 55.9. The Census coverage determination is final and non-reviewable. See 42 U.S.C. § 1973aa-1a(b)(4).

Defendants have not complied with the requirements of Section 203 in that they have failed to translate certain written election materials and information accurately into Spanish.

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 have attempted to comply with Section 203, but admit that they have failed to provide certain Spanish language election information accurately as required by Section 203 to limited English proficient Hispanic citizens in the ISD. Defendants are, however, committed to complying fully with all of the requirements of Section 203 in future elections and 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 or government entities representing the interests of Defendants are hereby PERMANENTLY ENJOINED from failing to provide in the Spanish language "any registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots," that they provide in the English language, as required by Section 203 of the Voting Rights Act, as amended, 42 U.S.C. § 1973aa-1a(c). The terms of this Decree apply to all elections in the ISD and any other elections over which the ISD has authority to conduct. Whenever Defendants enter into an election services contract with any other entity political subdivision, or political party to conduct an election on behalf of the ISD, 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 entity to comply fully with Section 203 of the Voting Rights Act.

Translation of Election-Related Materials

2. All information that is disseminated by the ISD 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 Spanish language election information, materials, and announcements provided by the ISD are made equally available to voters.

3. Defendants shall ensure that Spanish language election information is translated accurately.

4. Defendants shall consult with trained translators, who are familiar with election terminology in Spanish, to produce written Spanish language translations of English language election information, and shall allow selected community members fluent in Spanish and English to review each translation before it is adopted.

5. Defendants shall adopt a checklist identifying each material and written item containing Spanish that the Defendants make available to the public at each precinct. The checklist shall include with respect to each item an attestation that the precinct poll workers posted or made available to voters these Spanish language materials, or a detailed written explanation as to why individual items were not posted or made available. The inspectors for each precinct must complete and sign this document before the inspectors receive 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.

Dissemination of Spanish Language Information

6. 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, the Internet, and other media that exclusively or regularly publish or broadcast information in Spanish to the local population. These announcements need not be identical in all respects 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 voting system used by the ISD shall be bilingual, as described below. If the Defendants use electronic voting machines, these machines shall offer the readily apparent options of a Spanish ballot, and any audio version of the ballot on such machines shall be available in Spanish. Any paper ballots used

by the Defendants, including the official ballot, the provisional ballot, and the absentee ballot, shall be bilingual, in both English and Spanish.

8. Whatever information the Defendants provide in the voting booth, including instructions on the casting of a ballot, shall appear in the booth bilingually in both Spanish and English.

Spanish Language Assistance

9. The Defendants shall recruit, hire, and assign election officials able to understand, speak, write, and read Spanish fluently to provide effective assistance to Spanish speaking voters at all polling places in the ISD on election days.

10. In addition to the requirements of state law,

- (a) any election precinct in which there are from 100 to 499 registered voters with Spanish surnames shall be staffed by at least one bilingual election official;
- (b) any election precinct in which there are 500 or more registered voters with Spanish surnames shall be staffed by at least two bilingual election officials; and
- (c) 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.

Program Coordinator

11. The Defendants shall designate a Spanish Language Program Coordinator (“Coordinator”) to coordinate the ISD’s Spanish language election program. The Defendants shall provide the Coordinator with support sufficient to meet the goals of the program. The Defendants may coordinate with other governmental or non-governmental entities in providing a Coordinator for its election program, and the Coordinator may perform other duties in addition to his or her election-related duties.

12. 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 language 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 all other aspects of the ISD's compliance with Section 203.

Advisory Group

13. The Defendants shall establish an Advisory Group to assist and inform the Spanish language election program. The Advisory Group shall be open to any interested person or organization. The Defendants shall maintain a roster of the Advisory Group members together with the telephone and facsimile numbers or e-mail addresses of each member. The Coordinator shall provide notice of all planned meetings, including the date, time, location, agenda, 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.

14. 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 Advisory Group members and to the Chief Elections Officer. If the Chief Elections Officer decides not to implement an Advisory Group's suggestion or a consensus cannot be reached respecting such suggestion, the Chief Elections Officer shall provide to the Advisory Group through the Coordinator, and maintain on file, a written statement of the reasons for rejecting such suggestion. The Chief Elections Officer shall provide a copy of each such summary and report to each member of the Advisory Group.

15. The Chief Elections Officer shall transmit to all members of the Advisory Group, and to any additional interested member of the public who requests such information, in English and Spanish, 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.

Evaluation of Plan

16. 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 Section 203 of the Voting Rights Act. The ISD shall evaluate the Spanish Language 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.

Retention of Documents and Reporting Requirements

17. During the duration of this Decree, the Defendants shall make and maintain written records pertaining to this Decree and shall provide copies of such records to the United States upon request.

18. During the duration of this Decree, at least thirty (30) days before each election held in the ISD, 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 received at the election regarding Spanish language materials or assistance, and (b) copies of the checklists prepared by poll workers referred to in Paragraph five of this Decree. This information may be provided 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
j.christian.adams@usdoj.gov
ernest.a.mcfarland@usdoj.gov

Other Provisions

19. Within seven days of the date on which the Court enters this Decree, Defendants shall submit the voting changes in this Decree for preclearance pursuant to Section 5 of the Voting Rights Act.

20. 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 July 1, 2011.

21. 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 203 of the Voting Rights Act.

22. Each party shall bear its own costs and fees.

Agreed to this 10th day of July, 2007.

AGREED AND CONSENTED TO:

For Plaintiff:

UNITED STATES OF AMERICA



JOHN TANNER

Chief, Voting Section

SUSANA LORENZO-GIGUERE

Acting Deputy Chief

J. CHRISTIAN ADAMS

ERNEST A. MCFARLAND

Trial Attorneys

Voting Section

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(202) 616-4227

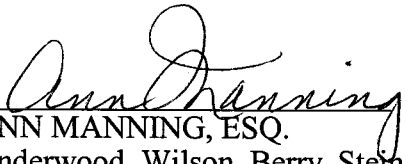
j.christian.adams@usdoj.gov

ernest.a.mcfarland@usdoj.gov

Agreed to this 10th day of July 2007.

AGREED AND CONSENTED TO:

For Defendants:

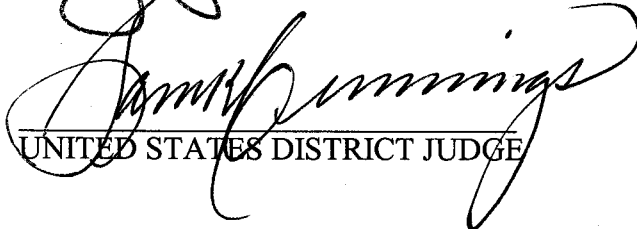

ANN MANNING, ESQ.
Underwood, Wilson, Berry, Stern & Johnson
1111 West Loop 289
Lubbock, Texas 79416
(806) 793-1711

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 4th day of Sept., 2007.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE