

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

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| UNITED STATES OF AMERICA |) | |
| |) | CIVIL ACTION No. 06-30123-MAP |
| Plaintiff, |) | |
| |) | |
| v. |) | <u>REVISED AGREED</u> |
| |) | <u>SETTLEMENT ORDER</u> |
| CITY OF SPRINGFIELD, MASSACHUSETTS; |) | |
| <u>et al.</u> |) | |
| |) | <u>Three Judge Court Requested</u> |
| Defendants. |) | <u>As to First Cause of Action</u> |
| _____ |) | |

The United States of America filed this action pursuant to Sections 203 and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973aa-1a and 1973aa-6, and 28 U.S.C. § 2201, over violations of Sections 203 and 208 arising from the City of Springfield's election practices and procedures as they affect the Spanish-speaking voters of Springfield.

The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1345, 42 U.S.C. § 1973j(d) & (f), and 42 U.S.C. § 1973aa-2. The Complaint's first 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. The second cause of action, under Section 208 of the Voting Rights Act, may be heard and determined by one judge.

The City of Springfield, Massachusetts ("Springfield" or "City") has been subject to the requirements of Section 203 of the Voting Rights Act ("Section 203"), 42 U.S.C. § 1973aa-1a, with respect to Spanish language since 1992. See 57 Fed. Reg. 43,213 (Sept. 18, 1992). In the most recent determination of coverage in 2002, the Director of the Census determined that more than five percent of Springfield's voting age citizens are members of a single language minority group (Spanish heritage or Hispanic) and are limited English proficient, and the illiteracy rate of

these persons as a group is higher than the national illiteracy rate. See 42 U.S.C. § 1973aa-1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). The determination of the Census Bureau that Springfield is covered by Section 203 for Spanish is final and non-reviewable. See 42 U.S.C. § 1973aa-1a(b)(4). In 1992, Plaintiff sent a letter to the Election Commission notifying it that the City was subject to the bilingual requirements of Section 203. Plaintiff also sent correspondence to the City regarding bilingual election requirements in 2002 and 2004, and requested data from the City in 2004 and 2005.

Springfield is also subject to the requirements of Section 208 of the Voting Rights Act, as amended, 42 U.S.C. § 1973aa-6 ("Section 208"). Section 208 provides that "[a]ny voter who requires assistance 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. The Complaint alleges that Springfield, through its employees and agents, has prevented certain limited English proficient Spanish-speaking voters from securing assistance at the polls necessary for their effective participation in the voting process, in violation of Section 208.

According to the 2000 Census, Springfield had a total population of 152,080 persons, of whom 41,360 (27.2%) were Hispanic. The Census also reported that the total voting age citizen population was 102,490, of whom 22,720 (22.2%) were Hispanic. The Census further reported that, of Springfield's Hispanic voting age citizen population, 9,560 (42.1%) were limited English proficient ("LEP").

Plaintiff's Complaint alleges that Defendants ("the City") have not complied with the requirements of Section 203 for Spanish-speaking citizens residing in Springfield, by failing to

provide an adequate number of bilingual poll workers trained to assist Spanish-speaking voters with limited English proficiency on election day, and by failing to provide in an effective manner certain election-related information to Spanish-speaking voters. The Complaint also alleges that the City failed to comply with Section 208, when their employees and agents prevented certain Spanish-speaking voters from receiving assistance in the voting process from the person of their choice. The City disputes Plaintiff's allegations, and asserts that it is committed to increasing its current efforts to provide covered language-minority voters equal access to the election process and allowing voters their assistants of choice consistent with Section 208, and by entering into this Agreed Settlement Order does not admit to liability.

On August 21, 2006, the United States moved for preliminary relief. On August 24, the City filed opposing papers. The Court conducted a hearing on August 28.

To avoid protracted and costly litigation, the parties have agreed that this lawsuit should be resolved through the terms of this Agreed Settlement Order. Accordingly, the United States and the City hereby consent to the entry of this Agreed Settlement Order, as indicated by the signatures of counsel at the end of this Order. The parties waive further hearings and entry of findings of fact and conclusions of law on all issues involved in this matter. Each party shall bear its own costs and fees.

The City is committed to comply fully with all of the requirements of Sections 203 and 208 in future elections. The City stipulates that each provision of this Agreed Settlement Order is appropriate and necessary. The terms and provisions of the Agreed Settlement Order are strictly limited to the specific claims in this action, and are not intended to represent any finding of fact or conclusion of law in any other claim, cause, or action.

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. Defendants, their agents, employees, contractors, successors, and all other persons representing the interests of the 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 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a; and
- b. Failing to allow "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write . . . [to] 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.

2. The terms of this Agreed Settlement Order apply to all federal, state, and local elections that are administered by Springfield. Whenever the City enters into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, the City shall require such other entity to agree to abide by the terms of this Agreed Settlement Order as if such entity were a party to this Agreed Settlement Order with the United States, and consistent with the responsibility of each such entity to comply fully with Sections 203 and 208.

Assistors of Choice

3. The City shall ensure that Spanish-speaking voters are permitted assistance from

persons of the voters' choice, other than the voters' employers or agents of those employers or officers or agents of the voters' unions, and that such assistance shall include assistance in the voting booth, including reading or interpreting the ballot and instructing voters on how to select the voters' preferred candidates.

4. The City shall alert voters that Spanish-speaking poll workers are available to provide assistance, and shall make such poll workers available when voters choose these workers as their assistants of choice.

Translation and Dissemination of Election-Related Materials

5. All information that is disseminated by Springfield 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. The City shall ensure that both English and Spanish language election information, materials, and announcements provided by Springfield are made equally available to voters.

6. The City shall develop and maintain a glossary of Spanish election terminology in consultation with bilingual members of the local Hispanic community, who will review the accuracy and accessibility of the translations.

7. The City shall adopt a checklist identifying each Spanish language and bilingual material that Springfield makes available to the public at each polling place. The checklist shall include with respect to each item an attestation that the poll workers at the polling place posted or made available to voters these Spanish language or bilingual materials, or a detailed written explanation of why individual items had not been posted or were not available. The warden for

each precinct shall call the Office of the Election Commission before the polls open and advise the Office that all identified notices have been posted or otherwise placed in a location readily accessible to the voters. City personnel shall further verify by visual inspection that these notices have in fact been posted and prominently displayed in each polling place. The Election Commission shall further maintain a record of any warden who has failed to post the appropriate signs or make available bilingual materials, and shall take effective measures to make sure there is no recurrence of the failure to post materials in the future.

8. The City shall ensure that it provides all election information, materials, and announcements in both English and Spanish. Spanish language information shall be distributed in newspapers, radio, the Internet, and other media that exclusively or regularly publish or broadcast information in Spanish. These Spanish language announcements need not be identical in all respects to English language announcements, either in terms of the wording of the announcements or in the amounts spent in distributing them, but shall provide substantially the same information with comparable effectiveness. In addition to the City's own direct efforts to distribute election information, the City shall identify organizations to help distribute information to the Spanish-speaking community, and the City shall distribute notices to these organizations about the rights of Spanish-speaking voters to receive assistance at the polls, the availability of bilingual poll worker assistance, and other voting rights information.

Spanish Language Assistance

9. Trained bilingual (Spanish and English fluent) election personnel shall be available to answer voting-related questions at all City office locations where election-related transactions are conducted by telephone without cost during normal business hours and while the

polls are open on election days.

10. The City shall recruit, hire, and assign election officials able to understand, speak, write, and read English and Spanish fluently to provide effective assistance to Spanish-speaking voters at the polls on election days. For purposes of this Agreed Settlement Order, bilingual poll workers and election officials can include Spanish-speaking interpreters who are hired by the City and who receive all training available to regular bilingual poll workers.

11. The City agrees to survey its employees to identify personnel who speak Spanish fluently and, to the extent such employees can reasonably be made available by the City to provide assistance, the City agrees to allow and encourage such employees to serve at the polls on election day, as permitted by state law, and to receive all pay and benefits provided by law to poll officials. The City agrees to request each educational entity within the City 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 elections, including election days that fall on school days, with such students receiving all pay and benefits provided by law for such poll officials.

12. Springfield shall also invite eligible members of the Advisory Committee, discussed below, and of each major political party, and other appropriate local organizations, to submit names of qualified bilingual persons, including themselves, who might be approached to serve as bilingual election workers.

13. In light of the high percentage of Hispanic voting age citizens who are limited in their ability to speak English, the parties agree to the following formula to determine the number of bilingual poll workers needed at each precinct:

- a. Any precinct in which there are 70-174 registered voters with Spanish surnames shall be staffed by at least one bilingual election official;
- b. Any precinct in which there are 175-349 registered voters with Spanish surnames shall be staffed by at least two bilingual election officials;
- c. Any precinct in which there are 350 or more registered voters with Spanish surnames shall be staffed by at least three bilingual election officials; and
- d. The City 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 workers 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.

For the September 2006 primary election only, any precinct in which there are 70 or more registered voters with Spanish surnames shall be staffed by at least one bilingual election official; and the City shall make and document its best efforts in acknowledgment of the limited time before the September 2006 election to hire at least two bilingual election officials in precincts with 175-349 registered voters with Spanish surnames and at least three bilingual election officials in precincts with 350 or more registered voters.

Each polling place shall have a telephone by which election officials can contact the

Election Commission Office on Election Day regarding questions about voter registration and other issues. The City's Election Commission Office shall add additional phone lines on Election Day to handle the increased volume of calls it receives from poll workers and from voters. Information provided on these phone lines shall be readily available in Spanish, as well as English.

14. 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

15. Prior to each election, in addition to any required state or city training, the City shall train all poll officials and other election personnel present at the polls regarding the following:

- a. The provisions of Section 203, including the legal obligation and means to make Spanish language assistance and materials available to voters;
- b. The provisions of Section 208, including the legal obligation to allow anyone to assist the voter at the polls, other than the voter's employer or agent of that employer or officer or agent of the voter's union; and
- c. The requirement that poll officials apply uniform procedures with respect to each voter, and be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities, and to avoid inappropriate

comments.

In addition to the general training for poll officials, the City shall train all bilingual poll officials on Spanish language election terminology, voting instructions, and other election-related issues. The City shall maintain a record of which poll officials attend training sessions, including the time, location, and training personnel involved.

Response to Complaints About Poll Workers

16. The City, upon receipt of complaints by voters, whether oral or written, shall investigate expeditiously any allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. The results of the investigation(s) conducted by the City shall be reported to the United States within thirty (30) days. Where there is credible evidence that a poll worker has engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, the City shall take all reasonable steps to stop the inappropriate treatment on Election Day and shall ensure that such poll worker does not work in any future election.

Spanish Language Election Program Coordinator

17. The City shall designate and employ an individual ("the Coordinator") to coordinate a Spanish language election program, in compliance with the terms of this Agreed Settlement Order, for all elections within Springfield. The City 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 development of a Spanish election glossary to ensure uniform use of election terminology in Spanish; 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; coordinating the City's efforts to recruit individuals to serve on the Advisory Committee and to distribute information to organizations serving the Spanish-speaking community; and managing other aspects of the bilingual election program.

Advisory Committee

18. The Mayor shall establish an Advisory Committee to provide assistance and information regarding the Spanish language election program. The Mayor shall appoint a Chair, who is bilingual, to lead the Advisory Committee. The Coordinator shall also participate in the Advisory Committee and preside in the absence of the Chair. The Chair and the Coordinator shall invite participation from all interested individuals and organizations that work with or serve the Spanish-speaking community in Springfield, to determine how to most effectively provide election materials, information, and assistance to Spanish-speaking voters, and to fill any gaps in public awareness about Springfield's bilingual election program. The Advisory Committee shall be open to all interested persons.

19. Beginning in September 2006, the Advisory Committee shall meet at least once a month in 2006, and as the Advisory Committee determines for the duration of the Agreed Settlement Order. The Coordinator shall provide notice of all planned meetings to each member of the Advisory Committee, including the time, location, and agenda for the meeting, at least 14 days in advance, although members of the Advisory Committee may agree to waive or shorten this period as necessary. Within five working days following each meeting, the Coordinator shall provide a written summary to all members and to the Springfield Elections Commission of

the discussions from the meeting. If the City decides not to implement an Advisory Committee suggestion, or a consensus cannot be reached by the Advisory Committee and the City respecting such suggestion, the City shall provide to the Advisory Committee through the Chair and the Coordinator, and maintain on file, a written statement of the reasons for rejecting such suggestion.

20. Springfield shall provide to all interested members of the Advisory Committee copies, in English and Spanish, of all election information, announcements, and notices that are provided or made available to the electorate and general public and shall request that the members of the Advisory Committee share such information with their clients, constituents, members, and others.

Federal Observers

21. To monitor compliance with and ensure effectiveness of this Agreed Settlement Order, and to protect the Fourteenth Amendment rights of the citizens of Springfield, the appointment of federal observers is authorized for the City of Springfield, Massachusetts, pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), as amended by Public Law 109-246 (120 Stat. 578-580), § 3, as long as the Agreed Settlement Order is in effect.

22. The City 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 Springfield poll workers providing assistance to voters during voting, except where the voter objects.

Evaluation of plan

23. The parties recognize the importance of regular and ongoing cooperation and reassessment may be necessary to provide the most effective and efficient Spanish language

program. The City 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 program may be adjusted at any time upon joint written agreement of the parties. The parties agree that after the November 2006 election, they will meet by phone to discuss the assignment of bilingual workers in the September 2006 and November 2006 Federal elections.

Retention of Documents and Reporting Requirements

24. During the duration of this Agreed Settlement Order, the City shall make and maintain written records of all actions taken pursuant to this Agreed Settlement Order. The City shall also maintain and produce copies, if requested by the United States, of these records and papers, along with all other records and papers related to voter registration and acts requisite to voting, as otherwise required by federal law. See, e.g., 42 U.S.C. §§ 1974 & 1974b.

25. During the duration of this Agreed Settlement Order, at least thirty (30) days before each election held in the Springfield, the City 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 planned poll official appointed and assigned to serve at each polling place, as of the date the materials are sent;
- c. a designation of whether each poll official is bilingual in English and Spanish; and
- d. an electronic copy of the voter registration list to be used in such elections.

Within thirty (30) days after each election, the City shall provide to Counsel for the United States any updated information regarding changes in items a. to c. above that occurred at the election, and provide information about all complaints the City 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
john.russ@usdoj.gov
veronica.jung@usdoj.gov

The Plaintiff agrees to share information regarding issues, complaints, and concerns that arise during the election coverage, including providing the City with written feedback after elections monitored by federal observers so that the City may make adjustments as needed for the next election. The Plaintiff also agrees to provide assistance in answering questions that the City's Finance Control Board may have about various aspects of the City's bilingual election program.

Other Provisions

26. This Agreed Settlement Order is final and binding between the parties and their successors in office regarding the claims raised in this action. This Agreed Settlement Order shall remain in effect through March 1, 2009.

27. 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 Sections 203 and 208 of the Voting Rights Act. The action shall be dismissed on March 2, 2009, unless the United States moves to extend the Order.

Agreed to this 13th day of SEPTEMBER, 2006.

AGREED AND CONSENTED TO:

For Plaintiff:

For Defendants:

UNITED STATES OF AMERICA

ALBERTO GONZALES
Attorney General

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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 Agreed Settlement Order, and hereby enters the relief set forth above and incorporates those terms herein. The Court hereby enters the relief set forth in the Agreed Settlement Order, with the exception of paragraphs 1(b), 3, and 4, which address only the United States' Second Cause of Action under Section 208 of the Voting Rights Act.

ENTERED and ORDERED this 15th day of Sept., 2006.

Norman H. Stahl (MTP)

UNITED STATES CIRCUIT JUDGE

Paul J. Barbadoro (MTP)

UNITED STATES DISTRICT JUDGE

Michael B. Ponsor

UNITED STATES DISTRICT JUDGE

JUDGMENT AND ORDER

The Court, having jurisdiction over plaintiff's claim under Section 208 the Voting Rights Act, 42 U.S.C. § 1973aa-6 (the United States' Second Cause of Action), has considered the terms of the Agreed Settlement Order set forth above and incorporates those terms herein. The Court hereby enters the relief set forth in paragraphs 1(b), 3, 4, 15, 21, 22, 24, 25, 26, and 27 of this Agreed Settlement Order.

ENTERED and ORDERED this 15th day of Sept., 2006.

Michael A. Ponsor

UNITED STATES DISTRICT JUDGE