

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

CRIMILDA PEREZ-SANTIAGO, VOLUSIA
COUNTY HISPANIC ASSOCIATION,
JOEL ROBLES, CARMEN FORTIS,
EDWIN FORTIS, MADELYN PEREZ,

Plaintiffs,

vs.

Case No.: 6:08-cv-1868-Orl-28KRS

VOLUSIA COUNTY,

Defendant.

**SUPPLEMENTAL BRIEF OF THE UNITED STATES
AS AMICUS CURIAE**

The Court has granted the United States permission to participate as amicus curiae in this action alleging a violation of Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e) ("Section 4(e)"). The United States respectfully submits this supplemental brief to address Defendant Volusia County's contention that the right conferred by Section 4(e) does not include the right to a Spanish-language ballot. For the reasons discussed below, the United States believes the provision of a Spanish-language ballot is essential to affording voters the opportunity to cast an informed and effective vote that is guaranteed by Section 4(e).

I. BACKGROUND

The Attorney General is charged with the enforcement of the Voting Rights Act, including Section 4(e), on behalf of the United States. 42 U.S.C. § 1973j(d). On January 26, 2009, this Court granted the United States' Unopposed Motion to Appear as Amicus Curiae, and on January 29, 2009, the United States filed a brief addressing the requirements for stating a

claim under Section 4(e) of the Voting Rights Act. (Docs. 35 & 37). On August 25, 2009, this Court denied Volusia County's Amended Motion to Dismiss for failure to state a claim under Section 4(e). (Doc. 48 at 11).¹ On October 16, 2009, Plaintiffs and Defendant Volusia County filed motions for summary judgment. (Docs. 65 & 64). On November 13, the United States filed a Motion and Memorandum to File a Supplemental Brief as Amicus Curiae (Doc. 81), and on November 16, 2009, the Court granted the United States permission to file a supplemental brief. (Doc. 82).

II. ARGUMENT

A central question raised in the parties' pending motions for summary judgment is whether Section 4(e) requires a Spanish-language ballot in jurisdictions that provide some election materials and assistance at the polls in Spanish. (Docs. 64 & 65). The United States respectfully submits that for Puerto Rican voters who need Spanish-language assistance, a translated ballot is integral to the ability to comprehend the ballot and cast an effective vote. Courts have consistently followed this guiding principle in adjudicating Section 4(e) claims and in imposing relief under the statute.

Section 4(e) is violated if: (1) the jurisdiction has "persons educated in American-flag schools in which the predominant classroom language was other than English[;]" (2) defendants are "conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language[;]" and (3) such persons are "denied the right to vote in any Federal, State, or local election because of [the] inability to read, write, understand, or

¹ The Court granted Volusia County's Amended Motion to Dismiss with regard to Plaintiff Volusia County Hispanic Association without prejudice to permit the filing of an amended complaint to plead sufficient facts to establish standing. (Doc. 48 at 11).

interpret any matter in the English language.” 42 U.S.C. § 1973b(e).

Federal courts construing Section 4(e) have consistently held that the right to vote encompasses the right to cast an effective vote, and that this right is not meaningful if it does not include the opportunity to read or understand the ballot itself. In the first case to consider this issue after the Supreme Court upheld the constitutionality of Section 4(e) in Katzenbach v. Morgan, 384 U.S. 641 (1966),² the court in Puerto Rican Organization for Political Action v. Kusper (“PROPA”), 350 F. Supp. 606, 610 (N.D. Ill. 1972), aff’d, 490 F.2d 575, 579 (7th Cir. 1973) ruled that the fundamental right to vote encompasses more than just pulling a lever; it includes the right to vote in a meaningful or effective manner. The court found that in the case of Puerto Ricans who do not understand the ballot in English, failure to provide the ballot in Spanish violates Section 4(e), stating that “[i]f voting instructions and ballots or ballot labels on voting machines are printed only in English, the ability of the citizen who understands only Spanish to vote effectively is seriously impaired.” PROPA, 350 F. Supp. at 610.

Since the PROPA decision, other federal courts addressing Section 4(e) have followed the same reasoning. Arroyo v. Tucker, 372 F. Supp. 764, 767 (E.D. Pa. 1974) (“We agree that the ‘right to vote’ means more than the mechanics of marking a ballot or pulling a lever. Here, plaintiffs cannot cast an ‘informed’ or ‘effective’ vote without demonstrating an ability to comprehend the registration and election forms and the ballot itself.”); Torres v. Sachs, 381 F. Supp. 309, 312 (S.D.N.Y. 1974) (“It is simply fundamental that voting instructions and ballots... must be in Spanish as well as English, if the vote of Spanish-speaking citizens is not to be

² See also United States v. County Bd. of Elections of Monroe County, 248 F. Supp. 316, 320 (W.D.N.Y. 1965).

seriously impaired.”); United States v. Berks County (Berks I), 250 F. Supp. 2d 525, 527 (E.D. Pa. 2003) (“Voting without understanding the ballot is like attending a concert without being able to hear. Even if the voter, illiterate in English, may be able to distinguish one candidate’s last name from another, the voter illiterate in English may not understand the office for which the various candidates are running, and surely cannot understand the various propositions, ranging from bond authorizations to constitutional amendments.”); United States v. Berks County (Berks II), 277 F. Supp. 2d 570, 579 (E.D. Pa. 2003) (“If voters cannot understand English-only ballot language such as the offices for which candidates are running, propositions, bond authorizations, and constitutional amendments... their right to vote effectively is diminished.”).³

Defendant acknowledges Section 4(e)’s broad mandate to ensure Spanish-speaking Puerto Ricans can vote in a language they can read or understand. (Doc. 64 at 10, citing PROPA, Arroyo, and Torres). Nevertheless, Defendant asserts that its failure to provide the ballot in Spanish is immaterial under Section 4(e) because it allegedly has provided certain other translated signs, instructions and materials (including for the 2008 election several copies of the Florida Constitution with the proposed amendments depicted by underlining or strikeout).⁴ (Doc. 64 at 17-19). Defendant also cites its assignment of some number of bilingual poll workers to predominately Hispanic voting precincts. (Doc. 64 at 4, 18-19). The provision of some Spanish-

³ We also note that a consent decree entered by a court in a recent Section 4(e) case initiated by the United States required translation of the ballot, among other remedial measures. See Attach. 1, Consent Decree at para. 5, United States v. Salem County, No. 1:08-cv-03726 (D.N.J. July 29, 2008) (requiring translation of “all written election-related materials, including the official ballot, sample ballots, absentee ballots”).

⁴ Defendant states that these documents were translated by the Department of State and were placed on the information table at “precincts with a significant Hispanic registered voter population on election day and at all early voting sites.” (Doc. 64 at 4).

language assistance, however, does not negate the need for translation of the ballot itself.

It is now beyond dispute that the foundation of Section 4(e) protections is the ability of limited-English proficient Puerto Rican voters to read and understand the ballot, and by their orders courts have made clear that a Spanish-language ballot is an essential element to providing this opportunity. Berks II, 277 F. Supp. 2d at 583; Arroyo, 372 F. Supp. at 768; Torres, 381 F. Supp. at 313.

In addition to the centrality of the ballot to Section 4(e)'s core right to vote, the need for a Spanish-language ballot is grounded in considerations of privacy, access, accuracy, and uniformity. As an initial matter, without a Spanish-language ballot, the many voters who could read and comprehend the ballot if it were in Spanish are denied the option available to English-speaking voters to cast an informed vote in private.

Also, there are substantial practical impediments to providing a meaningful opportunity to cast an informed and effective vote if the ballot is only in English. In theory, Spanish-speaking voters who cannot read the English-language ballot could seek translation assistance from a bilingual poll worker. This assumes, however, that the election officials could assign sufficient numbers of trained translators as poll workers, to accompany each voter who needs such assistance to the polling booth to translate all of the relevant voting and ballot instructions and terminology, and each line of the ballot, office by office, and each ballot proposition, without unduly impeding the voting process. In a jurisdiction with large numbers of Puerto Rican voters who have difficulty understanding an English-only ballot,⁵ serious questions arise as to whether

⁵ According to the 2000 Census, Volusia County had 3,287 voting-age Puerto Ricans who were limited-English proficient ("LEP"). See Attach. 2, U.S. Census Bureau, Summary File 4, Age by Language Spoken at Home by Ability to Speak English for the Population 5 Years and

relying solely on bilingual poll workers can provide the effective opportunity to vote on election day that Section 4(e) guarantees.⁶ Accordingly, federal court-crafted remedies for Section 4(e) violations have included bilingual poll workers, Spanish-language publicity about elections, *and* bilingual election materials, including, most importantly, the ballot. Berks II, 277 F. Supp. 2d at 583; Arroyo, 372 F. Supp. at 768; Torres, 381 F. Supp. at 313. In addition, the stipulated final order filed by the parties on remand in PROPA required Spanish-language ballots. See Attach. 3, Stipulation for Entry of Final Order at 5-6, PROPA v. Hanly, et. al., in their capacity as Board of Election Commissioners of the City of Chicago, No. 72-C-2312 (May 17, 1974).

Defendants seek to distinguish the Berks case, arguing that Berks County did not provide any Spanish-language assistance prior to the lawsuit. (Doc. 83 at 17-18). Defendant is mistaken. Prior to the initiation of the Berks lawsuit, the county provided 395 of the 407 polling machines with Spanish-language instructions inside the voting booth and had some poll workers with Spanish surnames, Berks I, 250 F. Supp. 2d at 530, and following entry of the preliminary injunction, provided some additional bilingual poll workers. Berks II, 570 F. Supp. 2d at 576-77.

Over [67] - Racial or Ethnic Grouping: Puerto Rican, Census 2000 (2000). This number is calculated by adding those 18 to 64 year-old and over 64 year-old Puerto Ricans who speak Spanish and do not speak English "very well." H.R. No. 102-655, at 8 (1992), reprinted in 1992 U.S.C.C.A.N. 776, 722. The number of voting-age LEP Puerto Ricans has likely increased since 2000. From 2000 to 2008 the number of Puerto Ricans in Volusia County nearly doubled, from 13,546 in 2000 to an estimated 25,276 in 2008. (Doc. 65 at 3). Similar Census data was taken into account by the Berks court. Berks II, 277 F. Supp. 2d at 574.

⁶ The need for bilingual poll workers *in addition to* bilingual ballots and other written materials and instructions is also well recognized. Berks II, 277 F. Supp. 2d at 583; Arroyo, 372 F. Supp. at 768; Torres, 381 F. Supp. at 313. Oral assistance in Spanish is critical for those protected voters who are not able to read the ballot in Spanish; although these voters may not be able to vote independently, they otherwise would have no meaningful opportunity to vote. Bilingual poll officials also are essential to help limited-English speaking voters navigate the sign-in process, voting machine procedures, and other election day procedures, such as provisional balloting, which cannot always be explained fully with written documents.

Despite these steps, the ballot remained in English only, and the court concluded that Berks County was in violation of Section 4(e). Accordingly, along with other measures, the court ordered that the ballot be provided in Spanish, as part of both its preliminary injunction and the final order. Berks I, 250 F. Supp. 2d at 538; Berks II, 570 F. Supp. 2d at 579.⁷

Similarly, in discussing the Torres case, Defendant states that New York City “had been providing no Spanish voting assistance[.]” (Doc. 83 at 16-17) (emphasis in original). However, subsequent to the commencement of the Torres action, but prior to the court’s opinion, the defendants did resolve to provide bilingual ballots in all elections and to provide Spanish-speaking inspectors in some election districts. Torres, 381 F. Supp. at 311. Despite this resolution, and despite noting an earlier order in a separate case requiring the provision of language assistance,⁸ the Torres court found that Section 4(e) had been violated, and ordered the defendants to provide Spanish-language assistance, materials, and ballots. Torres, 381 F. Supp. at 313.

Finally, the two petition cases Defendant cites to support its argument that the limited

⁷ We also note that jurisdictions that were subject to recent Department of Justice Section 4(e) enforcement actions provided some bilingual materials and assistance, but did not provide the ballot in Spanish. See Attach. 4, Complaint at para. 14(a), United States v. Salem County, No. 1:08-cv-03726 (D.N.J. July 29, 2008) (failure to translate actual ballot and most other election materials”); Attach. 5, Memorandum of Understanding, United States and Massachusetts (Sept. 28, 2008) (only issue was Commonwealth’s failure to provide bilingual ballot in City of Worcester, when the City had been providing bilingual poll workers and other Spanish-language materials; remedy was bilingual ballots in every polling place).

⁸ The Torres case references an order requiring language assistance handed down in Lopez v. Dinkins, 73 Civ. 695 (S.D.N.Y. Feb. 14, 1973). Id. at 313. As discussed in Coalition for Education in District One v. Board of Education, 370 F. Supp. 42, 45 (S.D.N.Y. 1974), the Lopez order required Spanish- and Chinese-language assistance. The Torres court does not comment on to what degree the defendants complied with the Lopez order.

bilingual information and assistance Volusia County provides suffice to comply with Section 4(e) are inapposite. (Doc. 64 at 18). Neither case involved the question of whether the provision of the ballot only in English violates Section 4(e). In Gerena-Valentin v. Koch, 523 F. Supp. 176, 177 (S.D.N.Y. 1981), the court held that Section 4(e) was not violated by New York City's failure to provide bilingual candidate petitions, noting that defendants provided the essential bilingual services for registration and voting on election day. Importantly, due to the 1974 ruling in Torres, New York City was already required by Section 4(e) to provide the ballot in Spanish. Torres, 381 F. Supp. at 313.

Defendant's reliance on Delgado v. Smith, 861 F.2d 1489 (11th Cir. 1988) is similarly misplaced. As in New York, bilingual ballots were already required in the jurisdiction in question, Dade County, pursuant to Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a. Delgado, 861 F.2d at 1494. The Eleventh Circuit simply upheld the district court's ruling that citizen initiative petitions did not have to be translated into Spanish because they were not considered voting materials within the meaning of Section 203. Delgado, 861 F.2d at 1497.

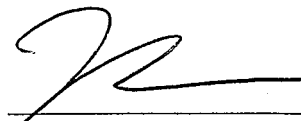
III. CONCLUSION

Section 4(e) has uniformly been construed to confer more than the mere right to enter the voting booth and pull the lever of the machine. Indeed, in ruling that voters must be afforded the means to read the ballot in a language they understand and in ordering bilingual ballots, courts have spoken with "a united and consistent voice." Berks I, 250 F. Supp. 2d at 537. For the foregoing reasons, the United States respectfully requests that this Court decline to improperly limit the scope of Section 4(e) as Defendant requests.

Respectfully submitted,

A. BRIAN ALBRITTON
United States Attorney
Middle District of Florida

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division



CHRISTOPHER COATES
REBECCA J. WERTZ
KATHERINE CULLITON-GONZALEZ
KATHRYN HOLLOMAN
Attorneys, Voting Section
U.S. Department of Justice
Civil Rights Division
Room 7254 NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 305-0010
Fax: (202) 307-3961
E-mail: katherine.culliton@usdoj.gov
kathryn.holloman@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Supplemental Brief of the United States of America as Amicus Curiae was served upon counsel for Defendant and Plaintiffs on November 23, 2009 via Electronic Mail and Federal Express delivery:

Luis Davila, Esq.
Davila & Torres, P.A.
911 Main Street, Suite 5
Kissimmee, FL 34744
mrldavila@aol.com

Nancye R. Jones, Esq.
Assistant County Attorney
County of Volusia
123 W. Indiana Avenue
DeLand, FL 32720
njones@co.volusia.fl.us

Diana S. Sen, Esq.
Latino Justice/PRLDEF
99 Hudson Street, 14th Floor
New York, NY 10013
dsen@latinojustice.org

Lida Taseff-Rodriguez, Esq.
Raymond Robin, Esq.
Duane Morris, LLP
200 South Biscayne Boulevard, Suite 3400
Miami, FL 33131-2397
LRTaseff@duanemorris.com
RLRobin@duanemorris.com



CHRISTOPHER COATES
REBECCA J. WERTZ
KATHERINE CULLITON-GONZALEZ
KATHRYN HOLLOMAN
Attorneys, Voting Section
U.S. Department of Justice
Civil Rights Division
Room 7254 NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 305-0010
Fax: (202) 307-3961
E-mail: katherine.culliton@usdoj.gov
kathryn.holloman@usdoj.gov

Attachment 1

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

THE UNITED STATES OF AMERICA,

Plaintiff

v.

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; and GILDA T.
GILL, County Clerk, in her official capacity; BOROUGH
OF PENNS GROVE, NEW JERSEY; and SHARON
WILLIAMS, Municipal Clerk and Deputy Registrar,
in her official capacity;

Defendants.

CIVIL ACTION NO.

**SETTLEMENT
AGREEMENT AND
PROPOSED ORDER**

The United States of America filed this action pursuant to Sections 2, 4(e), and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973b(c) & 1973aa-6, over violations of Sections 2, 4(e), and 208 arising from Defendants' election practices and procedures as they affect Hispanic voters. The Court has jurisdiction over the matter pursuant to 28 U.S.C. §§ 1331 & 1345 and 42 U.S.C. §§ 1973j(d) & 1973j(f).

Defendants are subject to the requirements of Section 2 of the Voting Rights Act, which provides that, "no voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in denial or abridgement of the right of any citizen of the United States to vote on account of race or color, . . . or membership in a language minority group." 42 U.S.C. § 1973(a) (Section 2).

Defendants are subject to Section 4(e) of the Voting Rights Act, which prohibits any political subdivision from "conditioning the right to vote . . . on the ability to read, write, understand, or interpret" the English language by persons educated in American flag classrooms, including Puerto Rico, where the predominant language is not English. 42 U.S.C. § 1973b(c)(1) (Section 4(e)).

Defendants are 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 any 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.

Defendants do not admit the allegations of the Complaint. Defendants, however, are committed to implementing procedures that will protect the rights of Hispanic voters in Penns Grove and Salem County to fully participate in the electoral process in compliance with the Voting Rights Act, for all future elections. Therefore, the parties stipulate that each provision of this Decree is appropriate and necessary.

To avoid protracted and costly litigation, the parties have conferred in good faith and 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 Order. The parties waive a hearing and entry of findings of fact and conclusions of law on all issues involved in this manner. Each party shall bear its own costs and fees.

Accordingly, it is hereby ORDERED AND DECREED that:

1. Defendants, their agents, employees, contractors, successors, and all other persons representing the interests of Defendants are hereby PERMANENTLY ENJOINED from:
 - a. Imposing or applying "any voting qualification or prerequisite to voting or standard, practice, or procedure ... in a manner which results in denial or abridgement of the right of any citizen of the United States to vote on account of race or color, ... or membership in a language minority group," or otherwise discriminating against Spanish-speaking and other Hispanic citizens, in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973;
 - b. Failing to provide all election materials and assistance, and any publicity or information about elections that they provide in English, in Spanish, as required by Section 4(c) of the Voting Rights Act, 42 U.S.C. § 1973b(e); and
 - c. Interfering with or otherwise not permitting any 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, in violation of Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;
2. The terms of this Decree apply to all Federal, State, and local elections that are administered by the Defendants.

Equal Treatment

3. Defendants shall take all measures needed to ensure that the Hispanic population of Penns Grove, Salem County does not "have less opportunity to participate in the political process and to elect representatives of their choice," including all the measures set forth below.

Challenge Procedures

4. Upon receipt of a voter challenge, Defendants shall follow the state law procedures set forth in Election Law of New Jersey, N.J.S.A. 19:15-18.1 *et. seq.*, as appropriate and shall also undertake all measures necessary to ensure compliance with Section 2 of the Voting Rights Act.

Translation and Dissemination of Election-Related Materials

5. Defendants shall provide in English and Spanish all written election-related materials, including the official ballot, sample ballots, absentee ballots, voter registration applications, candidate qualification information, notification of elections, polling place changes, polling place signage, any voter information guides or pamphlets provided by Defendants, voting instructions and procedures at the polls, and other election material used at the polls, in every election district in which the registered Hispanic voters constitute more than five percent of the registered voters.

6. Defendants shall ensure that all Spanish and English language election information, materials, and announcements are made equally available. Spanish-language information shall be distributed in newspapers and radio within Salem County, on the Internet, and through other media as may be available that exclusively or regularly publish or broadcast information in Spanish to the local population. The County shall use such media to disseminate these minority language announcements in the form and frequency best calculated to achieve notice and understanding equal to that provided to the English-speaking population and to provide substantially the same information, but need not be identical in all respects to English language announcements.

Spanish-Language Assistance

7. Trained bilingual (Spanish and English fluent) election personnel shall be available in person or by telephone during normal business hours and while the polls are open on election days at all locations where election-related transactions are conducted in Penns Grove, Salem County. The County may coordinate the provision of such services with other governmental or non-governmental entities that conduct elections.

8. Defendant Board of Election shall recruit, hire, and assign poll officials able to understand, speak, write, and read Spanish fluently to provide effective assistance, as defined in

paragraphs 8 and 11, to Spanish-speaking voters in Penns Grove, Salem County at the polls on election days.

9. Salem County shall survey its employees to identify personnel who speak Spanish fluently and, to the extent such employees can be made available to provide assistance, allow and encourage such employees to serve at the polls on election day. The County shall also request each school district or other educational entity within the County to allow bilingual students to serve as district board workers on election day for all County elections, including election days that fall on school days.

10. The County shall invite all individuals on the Community Outreach Group roster, discussed below, to serve as poll officials and to encourage other bilingual voters to do so.

11. As required to ensure compliance with Sections 2 and 4(e) of the Voting Rights Act, and in addition to the requirements of State law,

- a. any election district in Penns Grove, Salem County in which 50-124 of registered voters have Spanish surnames shall be staffed by at least one bilingual election official;
- b. any election district in Penns Grove, Salem County in which there are 125-249 of registered voters have Spanish surnames shall be staffed by at least two bilingual election officials; and
- c. any election district in Penns Grove, Salem County in which 250 or more of registered voters have Spanish surnames shall be staffed by at least three bilingual election officials.

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.

12. Signs in both English and Spanish shall be posted prominently at all polling places in Salem County 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

13. In addition to any required State or County training, the County shall train all district board workers, including newly appointed district board workers, and other election personnel regarding the following:

- a. The provisions of Section 4(e) of the Voting Rights Act, including the

legal obligation and means to make Spanish-language assistance and materials available to voters, and the requirement that district board workers be respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities and to avoid inappropriate comments;

- b. All district board workers for Defendants shall receive training on the legal requirements set forth in the Voting Rights Act, with a focus on the types of conduct that may constitute a violation under Section 2, and on New Jersey state law regarding when and how voters may be asked for identification, and how to respond to voter challenges. The training shall stress the importance of applying all voting standards and practices equally regardless of race, color, or membership in a language-minority group. Defendants shall maintain a record of which election officers attend the training, including the time, location, and training personnel involved.
- c. Defendants shall train all poll workers and other election personnel to be present at the polls on the following topics: applying all voting standards and practices equally; being respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities; allowing voters their assistor of choice, including inside the voting booth, consistent with and as limited by Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6; allowing any bilingual poll workers to assist minority-language voters; making them aware that all eligible citizens have the right to cast a ballot; and making them aware of their obligation to comply with all other applicable provisions of the Voting Rights Act of 1965, including Section 11, 42 U.S.C. § 1973i.

In addition to the general training for district board workers and other election personnel, the County shall provide all bilingual election personnel with the United States Election Assistance Commission's Glossary of Key Election Terminology (English-Spanish). The County shall maintain a record of which district board workers attend training sessions, including the time, location, and training personnel involved.

Response to Complaints About District Board Workers

14. Defendants, upon receipt of complaints by voters, or their representatives or agents, whether oral or written, in English or Spanish, agree to investigate expeditiously any allegations of election-officer hostility toward minority voters in any election. Where there is credible evidence that any election personnel, including a district board worker, have engaged in inappropriate treatment of voters, Defendants shall take appropriate remedial action, including removing officials if necessary.

Spanish-Language Election Program Coordinator

15. The County shall designate an individual to coordinate the County's Spanish-language election Program ("the Coordinator") for all elections within the County. The County 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 coordination of the translation of ballots and other election information; 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 district board workers and interpreters; and managing other aspects of the program. The Coordinator shall also conduct the Spanish-Language Advisory Meetings discussed below.

Community Outreach

16. The County shall establish a Community Outreach Group to assist and inform the Spanish-language election program. The Community Outreach Group shall be open to any interested person or organization. The County shall maintain a roster of the Community Outreach Group members together with the telephone and facsimile numbers or e-mail addresses of each member. The Community Outreach Group shall meet as it determines necessary, so long as it meets at least four times a year (before and after the primary election, and before and after the general election) to discuss any concerns directly impacting Hispanic voters. The parties may by writing adjust the Community Outreach Group's meeting schedule after consultation with the Community Outreach Group. With the assistance of the Coordinator, Defendants shall publicly notice Community Outreach Group meetings. Minutes shall be kept of such meetings, including the names of all those individuals in attendance. Defendants shall provide a copy of such minutes to each member of the Community Outreach Group and to interested members of the public who request such minutes.

17. The County shall transmit to all members of the Community Outreach Group, and to any additional 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.

Federal Observers

18. To assist in monitoring compliance with and ensure effectiveness of this Decree, and to protect the Fourteenth Amendment rights of the citizens of Penns Grove, Salem County, the appointment of federal observers is authorized for Penns Grove, Salem County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), for the duration of this Decree.

19. Defendants 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 voter assistance provided during voting, except where the voter objects.

20. The Department of Justice shall communicate with Salem County and Penns Grove regarding potential federal law violations in order to give the County and Borough the opportunity to rectify these issues.

Evaluation of Plan

21. The parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient Spanish-language election Program. The County 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.

Retention of Documents and Reporting Requirements

22. Throughout the duration of this Decree, Defendants shall make and maintain written records of all actions taken pursuant to this Decree and shall produce copies of such records. Such documents, lists, and records shall be made available, upon reasonable notice, to the United States upon its request.

23. Throughout the duration of this Decree, at least 30 days before each election, Defendants shall provide to counsel for the United States the following information as it relates to Penns Grove, Salem County:

- (a) the name, address, and election district designation of each polling place;
- (b) the name and title of each district board worker appointed and assigned to serve at each election district;
- (c) a designation of whether each district board worker is fluent in English and Spanish;
- (d) copies of any signs or other written information provided at polling places;
- (e) a set of all written materials to be provided to voters at the upcoming election; and
- (f) a copy of the most recent voter registration list on a computer disk in a format to be agreed upon.

Within 45 days after each such election, Defendants shall provide to counsel for the United States any updated report regarding changes in these items as well as information about all complaints the County or Borough received at the election regarding language or assistance issues in Penns Grove, Salem County, 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

katherine.culliton@usdoj.gov
joshua.rogers@usdoj.gov

Other Provisions

24. 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 March 31, 2011.


25. 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 2, 4(e) and 208 of the Voting Rights Act.

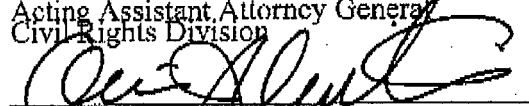
Agreed to this 24th day of July, 2008.

AGREED AND CONSENTED TO:

For Plaintiff:

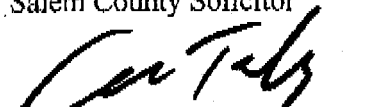
MICHAEL B. MUKASEY
Attorney General

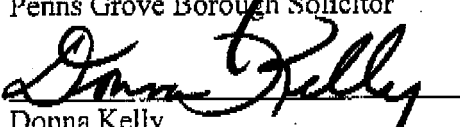

GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division



CHRISTOPHER J. CHRISTIE
United States Attorney
SUSAN STEELE (New Jersey No. 10131415)
Chief, Civil Division

For Defendants:


E. Elaine Voyles
Salem County Solicitor


Adam Telsey
Penns Grove Borough Solicitor


Donna Kelly
New Jersey Office of the Attorney General

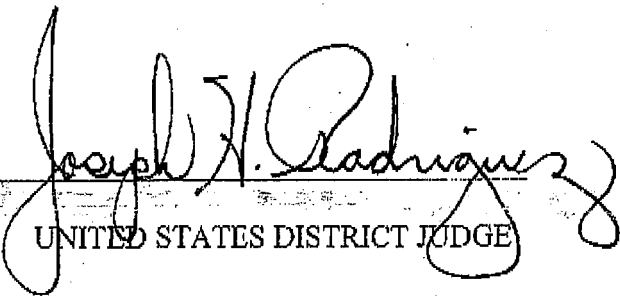

CHRISTOPHER COATES
Chief, Voting Section
SUSANA LORENZO-GIGUERE
Special Litigation Counsel
KATHERINE CULLITON
JOSHUA L. ROGERS
Trial Attorneys
United States Department of Justice
Civil Rights Division
Voting Section
950 Pennsylvania Avenue NW
Room NWB-7254

Washington, D.C. 20530
Telephone: (202) 305-0827
Facsimile: (202) 307-3961
susana.lorenzo-giguere@usdoj.gov
katherine.culliton@usdoj.gov
joshua.rogers@usdoj.gov
Attorneys for the United States of America

PROPOSED ORDER

This Court, having considered the United States' claims under Sections 2, 4(e) and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973b(e) & 1973aa-6, and having determined that it has jurisdiction over this, has considered the terms of the Settlement Agreement, and hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this 29th day of July, 2008.


UNITED STATES DISTRICT JUDGE

Attachment 2

Detailed Tables - American FactFinder



**PCT38. AGE BY LANGUAGE SPOKEN AT HOME BY ABILITY TO SPEAK ENGLISH FOR THE
POPULATION 5 YEARS AND OVER [67] - Universe: Population 5 years and over**

Racial or Ethnic Grouping: **Puerto Rican**

Data Set: **Census 2000 Summary File 4 (SF 4) - Sample Data**

NOTE: Data based on a sample. For information on confidentiality protection, sampling error, nonsampling error, definitions, and count corrections see <http://factfinder.census.gov/home/en/datanotes/expsf4.htm>.

	Volusia County, Florida
Total:	12,826
5 to 17 years:	2,848
Speak only English	1,207
Speak Spanish:	1,634
Speak English "very well"	1,137
Speak English "well"	312
Speak English "not well"	169
Speak English "not at all"	16
Speak other Indo-European languages:	7
Speak English "very well"	7
Speak English "well"	0
Speak English "not well"	0
Speak English "not at all"	0
Speak Asian and Pacific Island languages:	0
Speak English "very well"	0
Speak English "well"	0
Speak English "not well"	0
Speak English "not at all"	0
Speak other languages:	0
Speak English "very well"	0
Speak English "well"	0
Speak English "not well"	0
Speak English "not at all"	0
18 to 64 years:	8,291
Speak only English	1,132
Speak Spanish:	7,139
Speak English "very well"	4,840
Speak English "well"	1,681
Speak English "not well"	497
Speak English "not at all"	121
Speak other Indo-European languages:	20
Speak English "very well"	16
Speak English "well"	4
Speak English "not well"	0
Speak English "not at all"	0
Speak Asian and Pacific Island languages:	0
Speak English "very well"	0
Speak English "well"	0
Speak English "not well"	0
Speak English "not at all"	0
Speak other languages:	0
Speak English "very well"	0
Speak English "well"	0
Speak English "not well"	0
Speak English "not at all"	0
65 years and over:	1,687
Speak only English	109
Speak Spanish:	1,578
Speak English "very well"	590

Speak English "well"	530
Speak English "not well"	371
Speak English "not at all"	87
Speak other Indo-European languages:	0
Speak English "very well"	0
Speak English "well"	0
Speak English "not well"	0
Speak English "not at all"	0
Speak Asian and Pacific Island languages:	0
Speak English "very well"	0
Speak English "well"	0
Speak English "not well"	0
Speak English "not at all"	0
Speak other languages:	0
Speak English "very well"	0
Speak English "well"	0
Speak English "not well"	0
Speak English "not at all"	0

U.S. Census Bureau
Census 2000

Standard Error/Variance documentation for this dataset:

Accuracy of the Data: Census 2000 Summary File 4 (SF 4) - Sample Data (PDF 141.5KB)

Attachment 3

DOCKETED

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MAY 17 1974

H. STUART CUNNINGHAM
At _____ o'clock _____
CLERK

PUERTO RICAN ORGANIZATION FOR
POLITICAL ACTION, a Not-for-Profit
Illinois Corporation; JESUS GOMEZ:
GERALDO GOMEZ: VICTOR GOMEZ: and
ADBONA VARGAS, and all others
similarly situated,

Plaintiffs,

- vs -

JOHN H. WANLY, MARIE H. SUTHERS
and CHARLES A. COLEMAN, in their
capacity as the Board of Election
Commissioners of the City of Chicago,

Defendants.

No. 72 C 2312

STIPULATION FOR ENTRY OF FINAL ORDER

This matter having been pending before the Court and
all parties having recognized that the defendant members of
the Chicago Board of Election Commissioners (hereafter the
"Board") must initiate and enforce certain procedures in order
(a) to insure that Puerto Rican voters will be able to partici-
pate fully and effectively in all forthcoming elections con-
ducted under the supervision of the Board and (b) to comply
with the Voting Rights Act of 1965, 42 U.S.C., Sec. 1973 et
seq., as amended.

- 2 -

All parties have further considered the problems posed by the implementation of the Preliminary Agreement and Order in regard to the March 19, 1974 Primary Election.

It is hereby agreed by all parties that the Board shall institute and enforce the following procedures for all forthcoming elections under its jurisdiction:

I. OFFICIAL NOTICES, PUBLICATIONS, AND SELECTION
OF DEPUTY REGISTRARS, JUDGES OF REGISTRATION
AND JUDGES OF ELECTION.

A. The Board shall hereafter translate from the English to Spanish language all official notices, press releases, paid advertisements and public interest announcements pertaining to all future precinct registrations and elections and distribute said translated material to the English and Spanish media in the same manner and under the same terms as the English language materials are distributed. The Board shall maintain an updated list of Spanish newspaper, radio and television stations to which the aforesaid materials shall be sent. Whatever paid official notices which the Board is required to print in any English newspaper shall be likewise printed in the Spanish language newspaper having the largest circulation in the City of Chicago.

- 3 -

B. The Board shall make available at its offices in the Spanish language all the pamphlets and other printed information for voters which are available in the English language. If the Spanish translation of said materials is not included in the front page thereof, a notice in Spanish shall be placed on the front page stating that a translation is available inside or on the reverse side of the pamphlet or written material.

C. The Board shall have at least one employee bilingual in the English and Spanish languages available at its office during business hours to assist Spanish-speaking persons. In said office, the Board shall prominently display a sign in the English and Spanish languages stating that a bilingual person is available for assistance upon request. The above requirement shall also apply in any branch office of the Board established pursuant to Section 6-29 of the Election Code in any of the wards noted in I(D) below.

D. The Board shall make all reasonable efforts to select qualified applicants for deputy registrars, judges of registration and judges of election who are bilingual in Spanish and English in the following 38 Wards of the City of Chicago, which wards contain 1/2 or 1% or more of Spanish-speaking citizen population over the age of 18 years, to-wit:

- 4 -

1, 3, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 39, 40, 42, 43, 44, 46, 47, 48 and 49. All application forms for the positions of deputy registrar, judges of registration and judges of election shall specifically include an inquiry whether the applicant is bilingual in English and Spanish.

II. WRITTEN FORMS IN THE SPANISH LANGUAGE

A. Registration and Canvassing.

1. All Verification of Registration forms issued by the Board to persons residing in the wards listed in I(D) above shall hereafter contain on the front face a Spanish translation of "See Reverse for Important Information" or substantially those words and on the reverse side a Spanish translation of the procedure used to notify the Board of the registrant's new address.

2. During Precinct Registration in those Wards listed in I(D) above and at all times when registration is allowed in its offices, the Board shall hereafter make available translated facsimilies of Voter Registration Cards and Affidavits of Registration. A sign shall prominently be displayed in each of the precinct polling places in those Wards listed in I(D) above during Precinct Registration and in the Board's offices at all other times, which shall give notice in Spanish that facsimilies

- 5 -

in Spanish of Voter Registration Cards and Affidavits of Registration are available upon request to assist any person in filling out the English language registration forms.

3. The Board shall hereafter print "Notices to Show Cause Why Registration Should Not Be Cancelled" in the English and Spanish languages upon the same form. The aforesaid bilingual notices shall be utilized by the Board and its appointed canvassers in all the precincts of the Wards listed in I(D) above. The English side of said notice shall include a notice in Spanish that the reverse side contains a translation of what is written on the front.

B. Election Day

1. In all elections under its jurisdiction, the Board shall hereafter print in the Spanish language and distribute for use in said elections in all of the precincts of the Wards listed in I(D) above the following materials:

- a. Facsimilie diagrams of the entire face of the voting machine, including all the column headings, office titles and parenthetical instructions, in all precincts with voting machines. At least two of said facsimilie diagrams shall be posted and displayed in a prominent and conspicuous

- 6 -

place in the polling places. Each precinct shall receive no less than forty (40) of such translated facsimilies.

b. Facsimilies of all paper ballots, including ballots for propositions, referenda and judicial candidates, if not included in the facsimilie diagram referred to in paragraph B, 1.(a), above. At least two of said facsimilies shall be posted and displayed in a prominent and conspicuous place in the polling places. Each precinct shall receive no less than forty (40) of each such translated facsimilie.

c. A notice posted and displayed in a prominent and conspicuous location inside the polling place shall contain substantially the following language in Spanish:

NOTICE TO SPANISH SPEAKING VOTERS

Spanish translation of the facsimilie of the face of the voting machine and any other paper ballots are available upon request. You may take these Spanish facsimilies into the voting booth to assist you. Please do not mark the Spanish facsimilies and return them to the election judges after you have used them.

Please
return these
facsimilies

- 7 -

d. A pamphlet entitled "Voting Machine Instructions." The Board shall also make said pamphlet available to interested Spanish-speaking groups prior to each election.

e. Cards of instruction identical in content to the printed cards of instructions in the English language used with Instruction Model Voting Machine in each polling place where voting machines are used. Said cards of instruction will be affixed to the model voting machines in such a way that they are plainly visible.

f. A placard entitled "Who is Entitled to Assistance" shall be posted and displayed in a prominent and conspicuous place in the polling places.

g. A poster entitled "Who Can Vote" shall be posted and displayed in a prominent and conspicuous place in the polling places.

h. The words "Polling Place" shall be posted and displayed on a placard in a prominent and conspicuous place visible from the outside of the polling place.

- 8 -

1. Facsimilies of affidavits entitled "Challenged Voters Affidavit" with supporting affidavit (FORM 6), "Affidavit of Voter Whose Name is on Printed List, but not in Precinct Binder" with two supporting affidavits (FORM 11), "Affidavit of Registered Voter who has Changed Address Subsequent to _____" with supporting affidavit (FORM 3), "Affidavit of Registered Voter who has Changed Name Subsequent to _____" with supporting affidavit (FORM 3), "Assisted Voters Affidavit - Illiterate Voter" (FORM 2-A), "Assisted Voters Affidavit- Physically Disabled Voter" with Supporting Affidavit of assisting person (FORM 2-B).

III. INSTRUCTIONS TO JUDGES OF ELECTION

A. The Board shall take measures to provide that all training sessions for judges of election in all of the Wards listed in I(D) above and any training sessions conducted at a central location for all judges of election who are unable to attend the local training sessions shall include specific instructions relating to the contents of this Stipulation.

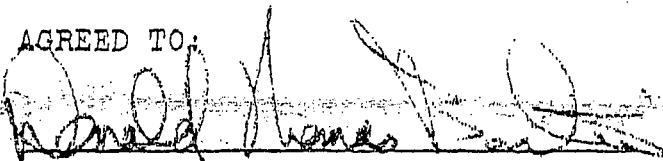
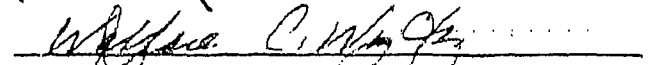
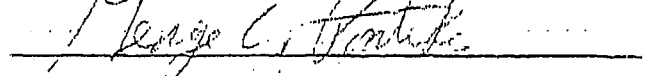
- 9 -

B. The Board shall hereafter revise the manual entitled "Instructions for Judges of Election, Registrars and Canvasers" to include a summary of the terms contained in this Stipulation. Said revision shall include a specific list of Spanish materials to be conspicuously displayed and/or made available to Spanish-speaking voters on Election Day.


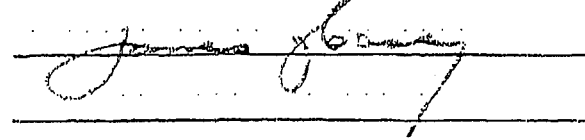
IV. The Board shall use data compiled by the United States Census Bureau in order to determine no less frequently than once every ten years which wards in the City of Chicago fall within the purview of this Order as set forth in I(D) above.

V. Plaintiffs hereby agree to consult with the defendants or their successors to resolve differences concerning any alleged non-compliance of this Stipulation prior to seeking any judicial relief based on said alleged non-compliance.

AGREED TO:

Attorneys for Plaintiffs

Attorneys for Defendants

Attachment 4

GRACE CHUNG BECKER
Acting Assistant Attorney General

CHRISTOPHER J. CHRISTIE, United States Attorney
SUSAN STEELE, Chief, Civil Division
Peter Rodino Federal Building
970 Broad Street, Suite 700
Newark, New Jersey 07102
Telephone: (973) 645-2700
Facsimile: (973) 645-2702

CHRISTOPHER COATES, Chief
SUSANA LORENZO-GIGUERE, Special Litigation Counsel
KATHERINE CULLITON, Trial Attorney
JOSHUA L. ROGERS, Trial Attorney
Voting Section, Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave., N.W. - NWB-7254
Washington, D.C. 20530
Telephone: (202) 305-1840
Facsimile: (202) 307-3961

Counsel for Plaintiff
United States of America

SALEM COUNTY, NEW JERSEY
SALEM COUNTY BOARD OF ELECTIONS
JOHN BURKE
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 MCCLAUGHLIN 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

MICHAEL B. MUKASEY
Attorney General


GRACE CHUNG BECKER


Acting Assistant Attorney General
Civil Rights Division


CHRISTOPHER J. CHRISTIE

United States Attorney

SUSAN STEELE

Chief, Civil Division


CHRISTOPHER COATES

Chief, Voting Section


SUSANA LORENZO-GIGUERE

Special Litigation Counsel

KATHERINE CULLITON

JOSHUA L. ROGERS

Trial Attorneys

United States Department of Justice

Civil Rights Division

Voting Section

950 Pennsylvania Avenue NW

Room NWB-7254

Washington, D.C. 20530

Telephone: (202) 305-0827

Facsimile: (202) 307-3961

susana.lorenzo-giguere@usdoj.gov

katherine.culliton@usdoj.gov

joshua.rogers@usdoj.gov

Attorneys for the United States of America

Attachment 5

MEMORANDUM OF UNDERSTANDING

The United States of America and the Commonwealth of Massachusetts enter into this Memorandum of Understanding ("MOU") in order to ensure that Puerto Rican voters in the City of Worcester, Massachusetts, covered by Section 4(e) of the Voting Rights Act, as amended, 42 U.S.C. § 1973b(e), receive bilingual election materials. The parties recognize the specific circumstances within the City of Worcester set forth herein which were recently presented to the Commonwealth of Massachusetts and which prompt this agreement.

Section 4(e) of the Voting Rights Act prohibits denying the right to vote, because of an inability to read, write, understand, or interpret English, to persons educated in American-flag schools in which the predominant classroom language was other than English. Id. This provision has been interpreted by courts to require election materials, including ballots, in Spanish for voters who are of Puerto Rican ancestry or birth, who have limited -English proficiency and who have been educated in a Puerto Rican school in which the predominant classroom language was Spanish. See, e.g., Arroyo v. Tucker, 372 F. Supp. 764, 766-67 (E.D. Pa. 1974); Torres v. Sachs, 381 F. Supp. 309, 311-12 (S.D.N.Y. 1974); United States v. Berks County, 277 F. Supp. 2d 570, 579 (E.D. Pa. 2003).

According to the 2000 Census, the City of Worcester had a total population of 172,648 in 2000, of whom 17,091 (9.9%) were persons of Puerto Rican descent and of whom 9,197 (5.3%) were born in Puerto Rico. The City's citizen voting age population in 2000 was 118,127, of whom 10,566 (8.9%) were Puerto Rican. Of the Puerto Ricans of voting age in Worcester, 4,759 (45.07%) understood English less than very well. According to the Census Bureau's American Community Survey estimates, as of 2006, the numbers and percent of Puerto Ricans, and of Hispanics generally, in Worcester, have been increasing faster than any other group. Census data and trends indicate that Worcester is very likely to become subject to § 203 of the Voting Rights Act for the Spanish language following the 2010 Census.

During municipal elections conducted in the City of Worcester, the City itself is responsible for printing ballots and sample ballots. During state and federal elections conducted in the City of Worcester, the Commonwealth of Massachusetts is responsible for printing ballots; sample ballots; voter instructions; and abstracts of the laws imposing penalties upon voters. Mass. Gen. Laws ch. 54 §§ 40 & 48.

The City of Worcester recently sought a home-rule petition which authorizes the City to print and distribute election materials, including ballots and sample ballots, in Spanish for its municipal elections. The home-rule petition was passed on May 1, 2008 as Chapter 99 of the Acts of 2008.

Throughout the past year, the Department of Justice has interviewed Worcester city officials, members of community organizations in Worcester that provide translation

services for limited-English proficient voters, current and former poll workers in Worcester, many voters in Worcester who were educated in a Puerto Rican school in which the predominant classroom language was Spanish, and family members and friends who have provided translation assistance to such voters. In addition, the Department monitored the February 5, 2008, presidential primary election in the City of Worcester to observe the voting experiences of such voters. On August 20, 2008, the Department met with the Commonwealth and shared information regarding its monitoring of this election and the interviews it conducted. On the basis of this information and the other specific circumstances within the City of Worcester, the Commonwealth has agreed to ensure that voters in the City of Worcester who are limited-English proficient and were educated in an American-flag school in Puerto Rico in which the predominant classroom language was Spanish receive bilingual election materials in state and federal elections during the pendency of this agreement.

So as to ensure that Puerto Rican voters in the City of Worcester covered by Section 4(e) receive bilingual election materials the parties agree to enter into this MOU.

NOW THEREFORE, for full, fair, and adequate consideration given and received, it is hereby agreed as follows:

1. Whenever the Commonwealth of Massachusetts, its employees, agents, successors in office, or persons acting in concert with it, provide the City of Worcester with election-related materials distributed to or provided for the use of the electorate generally, such as ballots, sample ballots, or voting instructions, the Commonwealth shall provide such information bilingually, in English and Spanish.
2. The Commonwealth shall consult with trained translators when creating the Spanish translations required by Paragraph 1.
3. Throughout the duration of this MOU, the Commonwealth shall provide copies of any records relating to the printing of bilingual ballots and other election materials for the City of Worcester to the United States within seven days of the United States' request. Such records shall include copies of the ballots, sample ballots and any other materials prepared and distributed to the electorate generally.
4. The terms of this MOU may be adjusted or modified at any time upon joint written agreement of the parties.
5. This MOU is final and binding between the parties and their successors in office. It shall remain in effect through (and, unless previously amended, shall expire on) December 31, 2011. In any event, it shall expire if and when the Director of the Census determines that Worcester is covered by § 203 of the Voting Rights Act for the Spanish language.

Agreed to this 22nd day of September, 2008.

AGREED AND CONSENTED TO:


FOR THE UNITED STATES:


GRACE CHUNG BECKER
Acting Assistant Attorney General
Civil Rights Division

FOR THE COMMONWEALTH OF
MASSACHUSETTS:


WILLIAM FRANCIS GALVIN
Secretary of the Commonwealth

MICHAEL J. SULLIVAN
United States Attorney


CHRISTOPHER COATES
Chief
SUSANA LORENZO-GIGUERE
Special Litigation Counsel
ALBERTO RUISANCHEZ
KATHERINE CULLITON
Trial Attorneys
United States Department of Justice
Civil Rights Division
Voting Section
950 Pennsylvania Avenue NW
Room NWB-7254
Washington, D.C. 20530
Telephone: (202) 305-0827
Facsimile: (202) 307-3961
susana.lorenzo-giguere@usdoj.gov
katherine.culliton@usdoj.gov
alberto.ruisanchez@usdoj.gov
Attorneys for the United States of America