

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
)  
Plaintiff, )  
)  
v. )  
)  
CITY OF BOSTON, )  
MASSACHUSETTS; THOMAS M. )  
MENINO, in his official capacity as )  
Mayor of the City of Boston; )  
BOSTON CITY COUNCIL: )  
MICHAEL F. FLAHERTY, PAUL J.)  
SCAPICCHIO, JAMES M. KELLY, )  
MAUREEN E. FEENEY, )  
CHARLES C. YANCEY, ROB )  
CONSALVO, JOHN TOBIN, )  
CHUCK TURNER, MICHAEL P. )  
ROSS, JERRY P. MCDERMOTT, )  
FELIX D. ARROYO, MAURA )  
HENNIGAN, STEPHEN J. )  
MURPHY; BOSTON ELECTION )  
DEPARTMENT; GERALDINE )  
CUDDYER, in her official capacity )  
as Chair of the Boston Election )  
Department, )  
)  
Defendants. )  
\_\_\_\_\_ )

CIVIL ACTION No.

COMPLAINT

THREE-JUDGE COURT

05 - 11598 WGY

COMPLAINT

The United States of America, Plaintiff herein, alleges:

1. The Attorney General files this action seeking injunctive and declaratory relief pursuant to Sections 2, 3, 12(d), and 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973a(a), 1973j(d), 1973aa-1a, 1973aa-2, and 28 U.S.C. § 2201.

## **JURISDICTION**

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 1973j(f), 1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act requires that the action be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

## **PARTIES**

3. Defendant City of Boston (“City” or “Boston”) is a geographical and political subdivision of the Commonwealth of Massachusetts (“Commonwealth” or “Massachusetts”) and exists as a charter city organized pursuant to the laws of Massachusetts.

4. Defendant Thomas M. Menino is the Mayor of Boston, with the responsibility of serving as the chief executive officer of the City, appointing the members of the Election Department and selecting election officers. Defendant Menino is a resident of Boston and is sued in his official capacity.

5. Defendant City Council is the legislative body of the City of Boston, with responsibilities which include adopting appropriations and making bylaws or ordinances, including those which impose duties of the City on departments and department heads.

6. Defendant Michael F. Flaherty is the City Council President. Defendant Flaherty is a resident of the City and is sued in his official capacity.

7. Defendants Paul J. Scapicchio, James M. Kelly, Maureen E. Feeney, Charles C. Yancey, Rob Consalvo, John Tobin, Chuck Turner, Michael P. Ross, Jerry P. McDermott, Felix D.

Arroyo, Maura Hennigan, and Stephen J. Murphy are Members of the City Council. Each of these Defendants is a resident of the City and is sued in his or her official capacity.

8. Defendant Election Department is the City department responsible for the conduct of voter registration and elections held in the City. The Election Department conducts all municipal, state, and federal elections within the City and is responsible to ensure that elections are properly managed and conducted in accordance with municipal, state, and federal laws.

9. Defendant Geraldine Cuddyer is the Chair of the Election Department, with duties, powers, and responsibilities concerning the administration of elections held in Boston. Defendant Cuddyer is a resident of the City and is sued in her official capacity.

### **ALLEGATIONS**

10. According to the 2000 Census, Boston has a total population of 589,141, and a citizen voting-age population of 388,579 persons. Boston's Hispanic population is 85,089, representing 14.4% of the City's total population. There are 33,596 Hispanic voting age citizens, representing 8.6% of the City's citizen voting age population. Boston's Chinese population is 19,885 and the Vietnamese population is 11,126, representing 3.4% and 1.8% respectively of the City's total population. There are 9,825 and 4,220 Chinese and Vietnamese voting age citizens respectively among whom 50.1% of the Chinese citizen voting age population and 61.2% of the Vietnamese citizen voting age population are limited English proficient.

11. Boston is subject to the requirements of Section 203 for the Spanish language, pursuant to the designation by the Director of the Census. The Director has determined that more than 10,000 of Boston's voting-age citizens are members of a single language minority group

(Spanish heritage or Hispanic) who do not speak or understand English well enough to participate in the English-language election process and have an illiteracy rate that is higher than the national illiteracy rate. 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 the City of Boston is covered by Section 203 for Spanish is final and non-reviewable. 42 U.S.C. § 1973aa-1a(b)(4).

12. The City of Boston has been continuously covered under Section 203 to provide bilingual elections in Spanish since September 18, 1992. 57 Fed. Reg. 43,213 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002). The Department of Justice has directly notified election officials, including Boston election officials, in all jurisdictions covered under Section 203 and has provided information regarding the requirements of Section 203. The Department of Justice directly notified Boston election officials of its Section 203 responsibilities in meetings between Civil Rights Division attorney and the City's Election Department Chairs subsequent to the 1990 and 2000 Census designations, respectively, and in letters dated September 21, 1992, July 26, 2002, and August 31, 2004.

13. Because the city of Boston is subject to the requirements of Section 203, "any registration or voting notice, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that Defendants provide in English must also be furnished in Spanish. 42 U.S.C. § 1973aa-1a.

### **FIRST CAUSE OF ACTION**

14. Plaintiff hereby realleges and reincorporates by reference paragraphs 1-13 above.

15. In conducting elections in Boston, Defendants have failed to provide election-

related materials, information, and/or assistance in Spanish including, but not limited to, the following:

- (a) Failing to recruit, appoint, train, and maintain an adequate pool of bilingual poll officials capable of providing effective language election information and assistance to limited English proficient Hispanic citizens; and
- (b) Failing to translate into Spanish all election-related announcements, instructions, and notices at election sites; and in particular, failing to translate into Spanish information available in English on the Election Department's website, or to have any effective alternate method of disseminating such information in Spanish.

16. Defendants' failure to provide assistance at all of the polls when such assistance is needed, to recruit, train and assign bilingual poll workers and to translate election information in Spanish and provide adequate bilingual assistance, as described herein, constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

17. Unless enjoined by this Court, Defendants will continue to violate Section 203 by failing to provide limited English proficient Hispanic citizens of Boston with Spanish-language election information and assistance necessary for their effective political participation.

### **SECOND CAUSE OF ACTION**

18. Plaintiff hereby re-alleges and reincorporates by reference to paragraphs 1-17 above.

19. 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 a denial or abridgment of the right to vote on account of race or color, or membership in a language minority group, including Asian American citizens and citizens of Spanish heritage.

20. In conducting elections in Boston, Defendants have abridged the right of limited English proficient members of language minority groups to vote, in their actions:

- (a) Treating limited English proficient Hispanic and Asian American voters disrespectfully;
- (b) Refusing to permit limited English proficient Hispanic and Asian American voters to be assisted by an assistor of their choice;
- (c) Improperly influencing, coercing or ignoring the ballot choices of limited English proficient Hispanic and Asian American voters;
- (d) Failing to make available bilingual personnel to provide effectively assistance and information needed by minority language voters; and
- (e) Refusing or failing to provide provisional ballots to limited English proficient Hispanic and Asian American voters.

21. Under the totality of the circumstances that exist in Boston, Defendants' conduct has had the effect of denying limited English proficient Hispanic and Asian American voters an equal opportunity to participate in the political process and to elect candidates of their choice on an equal basis with other citizens in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

22. 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 limited English proficient Hispanic and Asian American voters the opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

## PRAYER FOR RELIEF

**WHEREFORE**, the Plaintiff, United States, prays that this Court enter an order:

1. With respect to Plaintiff's First Cause of Action:
  - (a) Declaring that Defendants have failed to provide Spanish language election information and assistance necessary to those who require it in Spanish in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 19733aa-1a;
  - (b) Enjoining Defendants, their employees, agents and successors in office, and all persons acting in concert with them, from failing to provide Spanish language election information and assistance to persons with limited English proficiency as required by Section 203, 42 U.S.C. § 19733aa-1a; and
  - (c) Requiring Defendants to devise, publicize and implement a remedial plan to ensure that Spanish-speaking citizens are able to participate in all phases of the electoral process as required by Section 203, 42 U.S.C. § 19733aa-1a.
2. With respect to Plaintiff's Second Cause of Action:
  - (a) Declaring that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, because their actions have resulted in the denial or abridgement of the rights of limited English proficient Hispanic and Asian American voters;
  - (b) Enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from implementing practices and procedures that deny or abridge the rights of limited English proficient Hispanic and Asian American citizens in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973; and
  - (c) Requiring Defendants to devise and implement a remedial program that provides

Boston's limited English proficient Hispanic and Asian American citizens the opportunity to fully participate in the political process consistent with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

3. Plaintiff further requests that this Court:

- (a) Authorize the appointment of federal examiners for elections held in Boston pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a) until December 31, 2007;
- (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 Court deems just and proper.

Date: \_\_\_\_ day of July, 2005




ALBERTO GONZALES  
Attorney General



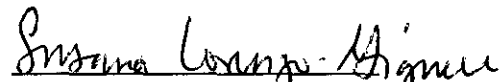
BRADLEY J. SCHLOZMAN  
Acting Assistant Attorney General



MICHAEL J. SULLIVAN  
United States Attorney



JOHN K. TANNER  
Chief, Voting Section



SUSANA LORENZO-GIGUERRE  
Special Counsel  
Civil Rights Division - NWB  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530  
(202) 514-9822