

FILED

NF

SEPTEMBER 26, 2007

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

07 C 5451

UNITED STATES OF AMERICA)
)
Plaintiff,)
)
v.)
)
COUNTY OF KANE, ILLINOIS;)
and the KANE COUNTY CLERK,)
John Cunningham, in his official capacity,)
)
)
Defendants.)
_____)

CIVIL ACTION NO.

COMPLAINT

**JUDGE DER-YEGHIAYAN
MAGISTRATE JUDGE DENLOW**

Plaintiff United States of America, alleges:

1. The Attorney General files 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 the Declaratory Judgment Act, 28 U.S.C. § 2201 and 2202.

JURISDICTION

2. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 1973j(d) & (f), 1973aa-2. The claim pursuant to Section 203 of the Voting Rights Act must 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 KANE COUNTY ("COUNTY" or "KANE") is a geographical and political subdivision of the State of Illinois. The Kane County Board is a twenty-six member board that oversees the conducting of all municipal, state, and federal elections in Kane County,

establishes the budgets of County funds, appointing election judges, and is responsible for ensuring that elections are properly managed and conducted in accordance with municipal, state, and federal laws.

5. Defendant KANE COUNTY CLERK, John Cunningham, is responsible for the administration of election day activities. This includes the hiring, assignment and training of election judges, as well as other aspects of elections and voting procedures in Kane County. Defendant John Cunningham is sued in his official capacity.

ALLEGATIONS

6. According to the 2000 Census, the number of Kane County's Hispanic citizens of voting age that were limited-English proficient ("LEP") was 10,055. The County had a total population of 404,120 persons, of whom 95,965 (23.75%) were Hispanic. The County also had a citizen voting age population ("CVAP") of 224,270 of whom 26,260 (11.7%) were Hispanic.

7. Kane County 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, based on the 2000 Census, that more than 10,000 of Kane County'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. 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 Kane County is covered by Section 203 for Spanish is final and non-reviewable. See 42 U.S.C. § 1973aa-1a(b)(4).

8. Kane County has been continuously covered under Section 203 to provide

bilingual elections in Spanish since July 26, 2002. See 67 Fed. Reg. 48,871 (July 26, 2002).

Since 2002, the Department of Justice has directly notified election officials in all jurisdictions covered under Section 203, including Kane County election officials, and has provided information regarding the requirements of Section 203.

9. Because Kane County 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. See 42 U.S.C. § 1973aa-1a.

10. Kane County is also subject to the requirements of Section 208 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.” See 42 U.S.C. § 1973aa-6.

11. Spanish-speaking voters in Kane County have faced difficulties at the polls. In some cases, Spanish-speaking voters have left the polls without casting a ballot due to the absence of bilingual assistance and interference by election judges and others in the voters’ selecting the assistors of their choice.

FIRST CAUSE OF ACTION

12. Plaintiff hereby alleges and incorporates by reference paragraphs one (1) through eleven (11) above.

13. In conducting elections in Kane County, Defendants have failed to provide effective election-related information and assistance to Spanish-speaking voters, as required by Section 203 of the Voting Rights Act, by failing to recruit, appoint, train, and maintain an

adequate pool of bilingual election judges capable of providing Spanish-speaking voters with necessary and effective language assistance throughout the city on election day.

14. Defendants have also failed to provide effective election-related information and assistance in Spanish to Spanish-speaking voters, as required by Section 203, by failing to provide certain election-related information, including but not limited to information publicizing elections, in a manner that ensures that Spanish-speaking voters throughout the city have an opportunity to be informed about election-related activities.

15. Defendants' failure to provide Spanish-speaking citizens of Kane County with Spanish language election information and assistance, as described above, constitutes a violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a.

16. Unless enjoined by this Court, Defendants will continue to violate Section 203 by failing to provide limited English proficient Spanish-speaking citizens of Kane County with Spanish language election information and assistance necessary for their effective participation in the political process.

SECOND CAUSE OF ACTION

17. Plaintiff hereby re-alleges and reincorporates by reference to paragraphs one (1) through sixteen (16) above.

18. In violation of Section 208, Defendants, their employees, and agents have failed to allow voters the assistors of their choice through the following practices:

- a. Prohibiting assistors of choice from providing assistance to Spanish-speaking voters with limited English proficiency; and
- b. Failing to accurately and adequately instruct poll workers on their duty to

permit voters who need assistance to obtain assistance from any person of the voters' choice, other than voters' employers or agents of those employers or officers or agents of the voters' union.

19. Unless enjoined by this Court, Defendants will continue to violate Section 208 by failing to provide Kane County's voters with the opportunity to receive assistance from persons of the voters' choice.

PRAYER FOR RELIEF

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

- (1). Declaring that Defendants have failed to provide in an effective manner Spanish language election information and assistance necessary for the political participation of limited English proficient Spanish-speaking voters, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 19733aa-1a;
- (2). Declaring that Defendants have failed to allow certain Kane County voters their assistants of choice, in violation of Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;
- (3). 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 of the Voting Rights Act, 42 U.S.C. § 19733aa-1a;
- (4). Enjoining Defendants, their employees, agents and successors in office, and all persons acting in concert with them, from engaging in any act or practice that denies the rights secured by Section 208 of the Voting Rights Act, 42 U.S.C.

§ 1973aa-6;

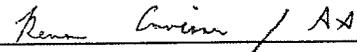
- (5). Requiring Defendants to develop, publicize, and implement a remedial plan to ensure that Spanish-speaking voters with limited English proficiency are able to understand, learn of, and participate in all phases of the electoral process as required by Section 203 of the Voting Rights Act, 42 U.S.C. § 19733aa-1a;
- (6). Requiring Defendants to develop and implement a remedial plan to ensure that Kane County's voters are permitted assistance from persons of their choice when they cast their ballots, in compliance with Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6; and
- (7). Authorizing the appointment of federal examiners for elections held in Kane County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C.

§ 1973a(a).

Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

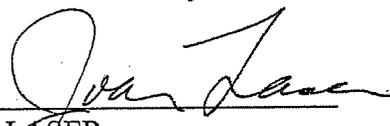
Date: 26 day of September 2007

PETER D. KEISLER
Acting Attorney General

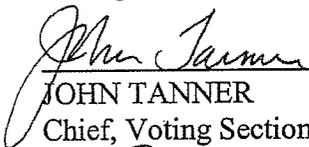


RENA J. COMISAC
Acting Assistant Attorney General

PATRICK J. FITZGERALD
United States Attorney

By: 

JOAN LASER
GILLUM FERGUSON
Assistant United States Attorneys
219 South Dearborn St., 5th Floor
Chicago, IL 60604



JOHN TANNER
Chief, Voting Section



SUSANA LORENZO-GIGUERE
Acting Deputy Chief
PUJA LAKHANI (IL Bar # 6283322)
CHRISTIAN ORTEGO
Trial Attorneys
United States Department of Justice
Civil Rights Division, Voting Section
950 Pennsylvania Ave., NW
Room NWB-7254
Washington, D.C. 20530
Phone: (202) 514-6331
Fax: (202) 307-3961
puja.lakhani@usdoj.gov
christian.ortego@usdoj.gov