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12
13 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
14 SAN JOSE DIVISION

15 UNITED STATES OF AMERICA,)
16 Plaintiff,)
17 v.)
18 SAN BENITO COUNTY, CALIFORNIA;)
JOHN R. HODGES, the COUNTY)
19 CLERK, AUDITOR, & RECORDER,)
in his official capacity; and)
20 the SAN BENITO COUNTY BOARD)
OF SUPERVISORS,)
21)
22 Defendants.)

CIVIL ACTION NO.

C04 02056

COMPLAINT

THREE-JUDGE COURT REQUESTED
AS TO FIRST CAUSE OF ACTION

23 The United States of America, Plaintiff herein, alleges:

24 1. The Attorney General files this action pursuant to
25 Section 203 of the Voting Rights Act of 1965 ("Section 203"), as
26 amended, 42 U.S.C. 1973aa-1a; Section 302 of the Help America
27 Vote Act of 2002 ("HAVA"), 42 U.S.C. 15482; 42 U.S.C. 1973aa-2;
28 42 U.S.C. 15511; and 28 U.S.C. 2201.

Complaint

ORIGINAL FILED
MAY 26 2004
RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

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E-FILING

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1 2. Jurisdiction: The Court has jurisdiction of this
2 action pursuant to 28 U.S.C. 1345, 42 U.S.C. 1973aa-2, and 42
3 U.S.C. 15511. In accordance with the provisions of 42 U.S.C.
4 1973aa-2 and 28 U.S.C. 2284, the Section 203 claim (the first
5 cause of action) must be heard and determined by a court of
6 three judges. The second cause of action, under Section 302 of
7 HAVA, may be heard and determined by one judge.

8 3. Intradistrict Assignment: The events relevant to this
9 action occurred in San Benito County, in the San Jose Division
10 of the U.S. District Court for the Northern District of
11 California. See Civil Local Rules 3-2(c) and 3-5(b).

12 4. Defendant SAN BENITO COUNTY is a political and
13 geographical subdivision of the State of California.

14 5. Defendant JOHN R. HODGES is the County Clerk, Auditor,
15 & Recorder of San Benito County. In his capacity as county
16 clerk, Defendant Hodges has responsibilities concerning the
17 administration of voting and elections in San Benito County.
18 Defendant Hodges is a resident of San Benito County, and is sued
19 in his official capacity. He has held the position of County
20 Clerk, Auditor, & Recorder since 1983.

21 6. Defendant SAN BENITO COUNTY BOARD OF SUPERVISORS is
22 the primary budgetary authority for the county and for the
23 County Clerk, Auditor, & Recorder of San Benito County.

24 7. According to the 2000 Census, San Benito County had a
25 total population of 53,234 persons, of whom 25,516 (47.9%) were
26 Hispanic persons; and a total citizen voting-age population of
27 30,395 persons, of whom 10,765 (35.4%) were Hispanic persons.

28

1 8. According to the 2000 Census, 2,540 Hispanic voting-
2 age citizens in San Benito County were limited English
3 proficient ("LEP").

4 9. San Benito County is subject to the requirements of
5 Section 203 with respect to the Spanish language, pursuant to
6 the designation by the Director of the Census. The Director has
7 determined that more than 5 percent of San Benito County's
8 voting-age citizens are members of a single language minority
9 group (Spanish heritage or Hispanic) who do not speak or
10 understand English well enough to participate in the English-
11 language election process and have an illiteracy rate that is
12 higher than the national illiteracy rate. See 42 U.S.C. 1973aa-
13 1a(b)(2); see also 67 Fed. Reg. 48,871 (July 26, 2002). The
14 determination of the Census Bureau that San Benito County is
15 covered by Section 203 for Spanish language is final and non-
16 reviewable. See 42 U.S.C. 1973aa-1a(b)(4).

17 10. San Benito County has been continuously covered under
18 Section 203 to provide bilingual elections in Spanish since
19 September 9, 1975. See 40 Fed. Reg. 41,827 (Sept. 9, 1975); 49
20 Fed. Reg. 25,887 (Jun. 25, 1984); 57 Fed. Reg. 43,213 (Sept. 18,
21 1992); 67 Fed. Reg. 48,871 (July 26, 2002). The Department has
22 directly notified election officials, including Defendant
23 Hodges, in all jurisdictions covered under Section 203 of the
24 fact of Section 203 coverage, and has provided information
25 regarding the requirements of Section 203.

26 11. Because San Benito County is subject to the
27 requirements of Section 203, "any registration or voting notice,
28 forms, instructions, assistance, or other materials or

1 information relating to the electoral process, including
2 ballots" that Defendants provide in English must also be
3 furnished in Spanish so that Spanish-speaking voters can be
4 effectively informed of and participate in all voting-connected
5 activities. 42 U.S.C. 1973aa-1a.

6 12. Beginning on January 1, 2004, San Benito County became
7 subject to the requirements of Section 302 of HAVA, including
8 its provisions to provide written information to voters who cast
9 provisional ballots, 42 U.S.C. 15482(a)(5)(A); to post six
10 different categories of election information at the polls, 42
11 U.S.C. 15482(b); and to provide a free access system whereby
12 voters who cast provisional ballots may learn whether their
13 provisional ballot was counted, and if not, the reasons the vote
14 was rejected, 42 U.S.C. 15482(a)(5)(B).

15 **FIRST CAUSE OF ACTION**

16 13. Defendants have not provided effective election-
17 related materials, information, and/or assistance in Spanish to
18 limited English proficient Hispanic citizens as required by
19 Section 203 of the Voting Rights Act, including, but not limited
20 to, the following:

21 a. failing to recruit, appoint, train, and maintain
22 an adequate pool of bilingual poll officials capable of
23 providing Hispanic citizens with limited English proficiency
24 effective language assistance;

25 b. failing to translate into Spanish the official
26 ballot, and all election-related announcements, instructions,
27 and notices at election sites;

1 c. failing to translate into Spanish all election-
2 related information, including but not limited to information
3 contained in legal notices publicizing elections and materials
4 available to the general public on the internet website of the
5 County Clerk, Auditor, & Recorder.

6 14. Defendants' failure to provide Spanish-speaking
7 citizens of San Benito County with Spanish-language election
8 information and assistance, as described above, constitutes a
9 violation of Section 203.

10 15. Unless enjoined by this Court, Defendants will
11 continue to violate Section 203 by failing to provide Spanish-
12 speaking citizens of San Benito County with Spanish-language
13 election information and assistance necessary for their
14 effective political participation.

15 **SECOND CAUSE OF ACTION**

16 16. In the March 2, 2004 primary election for federal
17 office, Defendants failed to comply with the following
18 requirements of Section 302 of HAVA:

19 a. Defendants did not provide written information to
20 voters who cast provisional ballots on how they are able to
21 ascertain whether their vote was counted, and if the vote
22 was not counted, the reason the vote was not counted, as
23 required by 42 U.S.C. 15482(a)(5)(A);

24 b. Defendants failed to post in each polling place all of
25 the voting information required by 42 U.S.C. 15482(b); and

26 c. Defendants' system for allowing voters to check on the
27 status of their provisional ballots did not provide the
28

1 reasons why provisional ballots were rejected, as required
2 by 42 U.S.C. 15482(a)(5)(B).

3 17. Defendants' actions as described above in Paragraph 16
4 constitute a violation of Section 302 of HAVA, 42 U.S.C. 15482.

5 18. Unless enjoined by this Court, Defendants will
6 continue to violate Section 302 of HAVA, by failing to provide
7 to voters the different types of information required under this
8 provision.

9 PRAYER FOR RELIEF

10 WHEREFORE, Plaintiff the United States of America prays that
11 this Court enter an order:

- 12 (1) Declaring that Defendants have failed to provide
13 election information and assistance necessary to those
14 who require it in Spanish for effective political
15 participation, in violation of Section 203 of the
16 Voting Rights Act, 42 U.S.C. 1973aa-1a;
- 17 (2) Declaring that Defendants have failed (a) to provide
18 to voters written information regarding their
19 provisional ballots, (b) to post necessary voter
20 information materials at each polling place, and (c)
21 to provide provisional voters with an explanation of
22 why their provisional ballots were rejected, as
23 required by Section 302 of HAVA, 42 U.S.C. 15482;
- 24 (3) Enjoining Defendants, their employees, agents, and
25 successors in office, and all persons acting in
26 concert with them, from failing to provide Spanish-
27 language election information and assistance to person
28

1 with limited English proficiency as required by
2 Section 203, 42 U.S.C. 1973aa-1a;

3 (4) Enjoining Defendants, their employees, agents, and
4 successors in office, and all persons acting in
5 concert with them, from failing to comply with the
6 voter information requirements of Section 302 of HAVA,
7 42 U.S.C. 15482;

8 (5) Requiring Defendants to devise and implement a
9 remedial plan to ensure that Spanish-speaking citizens
10 with limited English proficiency are able to
11 understand, learn of and participate in all phases of
12 the electoral process as required by Section 203 of
13 the Voting Rights Act, 42 U.S.C. 1973aa-1a;

14 (6) Requiring Defendants to devise and implement a
15 remedial plan to provide to voters the information
16 required under Section 302 of HAVA, 42 U.S.C. 15482;

17 (7) Requiring the Defendants to publicize effectively the
18 remedial plans and programs addressing violations of
19 Section 203 of the Voting Rights Act and Section 302
20 of HAVA enumerated herein to ensure their widespread
21 dissemination of such plans and programs to San Benito
22 County's voters; and

23 (8) Authorizing the appointment of federal examiners for
24 elections held in San Benito County pursuant to
25 Section 3(a) of the Voting Rights Act, 42 U.S.C.
26 1973a(a), through December 31, 2006.

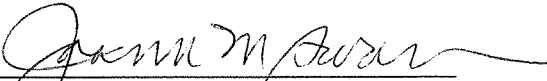
1 Plaintiff further prays that this Court order such
2 additional relief as the interests of justice may require,
3 together with the costs and disbursements in maintaining this
4 action.

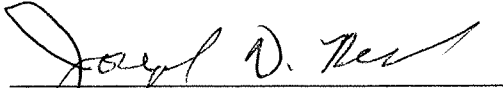
5 Date: 26th day of May, 2004

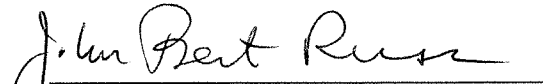
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