

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

SUFFOLK COUNTY; SUFFOLK)
COUNTY BOARD OF ELECTIONS;)
ROBERT L. GARFINKLE)
AND ANITA S. KATZ,)
Commissioners of the)
Suffolk County Board)
Of Elections,)

Defendants.)

ORENSTEIN, M.J.

CV 04 2698
CIVIL ACTION NO.

PLATT, J.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 29 2004 ★
BROOKLYN OFFICE

CONSENT DECREE

The United States of America files this action pursuant to Sections 203 of the Voting Rights Act of 1965 ("Section 203"), as amended, 42 U.S.C. § 1973aa-1a, 42 U.S.C. § 1973aa-2, and 28 U.S.C. § 2201, alleging recent violations of the Voting Rights Act arising from Suffolk County's election practices and procedures as they affect Spanish-speaking citizens of the County.

The claim under Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, must be heard and determined by a court of three judges pursuant to 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

Suffolk County has been subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a,

Approved:

Anita Katz
Anita Katz, Commissioner

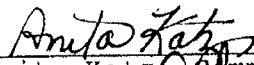
Robert Garfinkle
Robert Garfinkle, Commissioner

since September 18, 1992 with respect to the Spanish language. The County's coverage is based on a determination by the Director of the Census that there are more than 10,000 citizens of voting age in the County who are members of a single language minority group (Spanish heritage or Hispanic) who do not speak or understand English well enough to participate effectively in the English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate. 28 C.F.R. pt. 55, Appendix; 57 Fed. Reg. 43,213 (Sept. 18, 1992); 67 Fed. Reg. 48,871 (July 26, 2002).

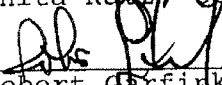
The United States alleges in its complaint that Defendants have failed to comply with the requirements of Section 203 with regard to Spanish-speaking citizens residing in Suffolk County. The challenged practices concern, inter alia, the alleged failure of Defendants to provide for an adequate number of bilingual poll workers trained to assist Hispanic voters on election day, and the alleged failure of Defendants to translate written election materials into Spanish.

The parties, by agreeing and consenting to the entry of this Decree, stipulate to the jurisdiction of the Court, and waive a hearing and the entry of findings of fact and conclusions of law on all issues involved in this matter.

Approved:



Anita Katz, Commissioner



Robert Garfinkle, Commissioner

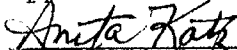
Defendants do not contest the United States' factual allegations with respect to defendants' failure to comply with the bilingual requirements of Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a. However, this Decree shall constitute neither an admission by the defendants nor an adjudication by the Court on the merits of the allegations by the United States.

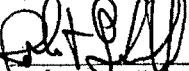
Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. Defendants shall comply with the bilingual requirements of Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973aa-1a, as a covered political subdivision under 42 U.S.C. § 1973aa-1a(b)(2)(A). The provisions of this Decree are applicable only to those elections and stages of the electoral process which are the responsibility of the Suffolk County Board of Elections to conduct and administer under applicable provisions of the New York Election Law.

2. Defendants shall provide to Spanish-language minority citizens full and complete information about all stages of the electoral process, "including, for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register,

Approved:


Anita Katz, Commissioner

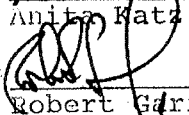

Robert Garfinkle, Commissioner

the deadline for voter registration, the time, places and subject matters of elections, and the absentee voting process." 28 C.F.R. § 55.15. All information that is disseminated by Suffolk County in English about "registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots," 42 U.S.C. § 1973aa-1a(c), materials distributed through the Suffolk County Voter Information Program ("VIP"), and the County's mail check card and all other materials sent to voters, shall also be provided in the Spanish language. Defendants shall ensure that both English and Spanish-language election-related information, materials, and announcements provided by Suffolk County are made equally available.

3. Defendants shall assign up to three employees to act as the Spanish Language Assistance Coordinator(s) ("Coordinator(s)"), for at least three months prior to a federal, state or county election, to help carry out the requirements of this Consent Decree. The Coordinator(s) shall report to and be supervised by the Commissioners of the Suffolk County Board of Elections, who shall be responsible for ensuring the effective implementation of their duties. The Coordinator(s) shall be bilingual in English and in Spanish. The Coordinator(s) shall be trained by the Commissioners of the

Approved:


Anita Katz, Commissioner

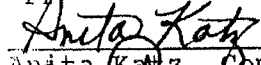

Robert Garfinkle, Commissioner

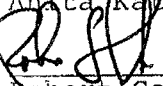
Suffolk County Board of Elections in all aspects of the voting and registration process.

4. The translations into Spanish of the written election-related material shall be clear, accurate and complete. See 28 C.F.R. § 55.19(b). Defendants shall use their best efforts to provide effective translations that meet the needs of the Hispanic community. Written translations shall be in the form of Spanish that is used most widely by Suffolk County's voting-age Limited English Proficient Hispanic citizens. The Commissioners of the Suffolk County Board of Elections and/or the Coordinator(s) will consider the demographics of the Hispanic community and consult with some members of the Hispanic community when translating their written materials, but need not consult about translations provided to the County by the State of New York and New York City.

5. The Commissioners of the Suffolk County Board of Elections and/or the Coordinator(s) shall meet with representatives of the Hispanic community and other concerned groups and individuals at least one month prior to the primary and general elections conducted by the Board of Elections and solicit their views on what steps are needed to ensure the effectiveness of bilingual assistance for Hispanic voters. The

Approved:


Anita Katz, Commissioner


Robert Garfinkle, Commissioner

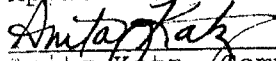
Board shall consider the views solicited, but is not bound by this Decree to any particular view expressed. The Board of Elections shall determine which organizations, groups or individuals within the Hispanic community may assist beneficially in the development and maintenance of an effective bilingual election program. The Board of Elections is not required by this Decree to solicit the views of such organizations, groups or individuals for purposes other than to develop and maintain the effective bilingual election assistance program required under this Decree. The Board shall keep records of its consultations and outreach activities which shall include a description of the suggestions proposed.

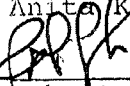
6. Materials available to voters at polling places shall be conspicuous and available equally in English and Spanish. All signs that the County posts at polling places on election day shall be written in English and in Spanish. The ballot on the voting machines shall appear in English and in Spanish.

7. Bilingual assistance shall be provided in polling places in accordance with subsections a-j:

- a) At polling places where one or more bilingual poll officials are required, clearly visible Spanish-language signs outside and inside of the polling place shall indicate that Spanish language assistance is available. Clearly visible sign(s) inside the polling place shall identify the bilingual

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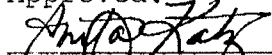

Anita Katz, Commissioner


Robert Garfinkle, Commissioner

official(s) and his/her station(s).

- b) In polling places where the number of Spanish surnamed registered voters is 101 to 250, there shall be at least one poll official bilingual in Spanish and English.
- c) In polling places where the number of Spanish surnamed registered voters is 251 to 500, there shall be at least two poll officials bilingual in Spanish and English.
- d) In polling places where the number of Spanish surnamed registered voters is 501 to 750, there shall be at least three poll officials bilingual in Spanish and English.
- e) In polling places where the number of Spanish surnamed registered voters is 751 to 1,000, there shall be at least four poll officials bilingual in Spanish and English.
- f) In polling places where the number of Spanish surnamed registered voters is 1,001 to 1,250, there shall be at least five poll officials bilingual in Spanish and English.
- g) In polling places where the number of Spanish surnamed registered voters exceeds 1,251, there shall be at least six poll officials bilingual in Spanish and English.
- h) Bilingual poll officials shall be stationed at the election district(s) with the highest number(s) of Spanish surnamed registered voters, unless the Coordinator(s) appointed pursuant to paragraph 3 determine(s) that the goals of this decree would best be achieved by stationing the bilingual poll official(s) in other election districts in the polling place.
- i) The primary responsibility of bilingual poll officials shall be to provide bilingual assistance to all voters at the polling place to which they are assigned, and they shall be available to provide such assistance.

Approved:


Anita Katz, Commissioner


Robert Garfinkle, Commissioner


- j) Polling places which do not have bilingual poll officials assigned under the terms of this decree shall provide bilingual assistance through telephonic communication with five bilingual officials at the Board of Elections' principal place of business. Five telephones dedicated exclusively for this purpose, containing features necessary to facilitate effective communication, shall be maintained on election days. An additional bilingual official shall be available at the Board of Elections and shall be dispatched to polling places to provide in-person bilingual assistance in instances where telephonic communication is not effective.


8. If, despite its diligent recruitment efforts, the County is unable to secure and assign the requisite number of bilingual poll officials, the County shall recruit and secure qualified bilingual translators to satisfy the numeric requirements for bilingual workers provided in this Decree. Any such bilingual translators shall be secured and trained only to provide language assistance to limited English proficient Hispanic voters and shall be utilized in addition to, rather than in place of, the full complement of poll officials ordinarily assigned by Defendants.

9. Defendants will monitor the levels of Spanish language assistance needed inside the polling places on election day and will, where needed, provide additional bilingual personnel to assist Spanish-speaking voters where needed. See 28 C.F.R. § 55.20.

10. Defendants shall use their best efforts to secure

Approved:


Anita Katz, Commissioner



Robert Garfinkle, Commissioner

bilingual poll officials and Spanish-language translators, and to notify voters that this assistance will be available on election day. Prior to election day, the Suffolk County Board of Elections' office shall provide notices in English and Spanish through the Spanish-language media, Hispanic community organizations (e.g., voting organizations, businesses, churches, senior citizen centers, etc.), in addition to any other recruitment methods the County uses, to recruit bilingual election officials and to publicize the availability of bilingual poll workers to assist Spanish-speaking voters at the polls on election day.

11. The Commissioners of the Suffolk County Board of Elections and/or responsible Coordinator(s) shall include during their regular course of training of poll officials, and any other election-related personnel who will be working at the polls on election day, training regarding the importance of all eligible citizens being able to cast a ballot at the polls, the right of voters to have assistance in Spanish, and the right of certain voters, including voters with limited English proficiency, to be assisted by the person of their choice pursuant to Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6. The Board shall provide poll officials and other election-related personnel with training on the issues

Approved:


Anita Katz, Commissioner

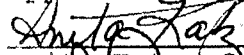

Robert Garfinkle, Commissioner

identified in this paragraph in advance of the election to be held subsequent to execution of this Decree, if said officials and personnel received regular training that did not include the issues identified in this paragraph. In the event that the Board does not conduct regular training of poll officials and other election-related personnel, the Board shall conduct training on the issues identified in this paragraph.


12. The Commissioners of the Suffolk County Board of Elections and/or the responsible Coordinator upon receipt of complaints, whether oral or written, shall investigate expeditiously any allegations of poll worker hostility toward Spanish-speaking and/or Hispanic voters in any election. The results of investigation(s) conducted by the Coordinator(s) shall be reported to the Commissioners of the Suffolk County Board of Elections. Where it reasonably has been found that poll workers have engaged in inappropriate treatment of Spanish-speaking and/or Hispanic voters, the Commissioners shall remove the poll workers.

13. Bilingual poll officials shall be afforded an opportunity to be trained in the Spanish-language translation of the entire ballot, all election related forms used in the polls on election day, and the voting process so that bilingual election officials will be able to provide a full and accurate

Approved:


Anita Katz, Commissioner

- 10 -


Robert Garfinkle, Commissioner


translation. The Board shall provide bilingual poll officials with this training in advance of the election to be held subsequent to execution of this Decree. Defendants may include bilingual poll officials in the regular training given to all poll officials, provided it includes the specific training described in this paragraph. In the event that the Board does not conduct regular training of poll officials, the Board shall conduct training of bilingual poll officials on the issues identified in this paragraph.

14. Nothing in this Decree shall preclude Defendants from the use of contracting to carry out any of the terms and conditions specified herein, including the establishment of the Coordinator position. However, should Defendants exercise this option, they shall nevertheless maintain responsibility for compliance with the terms and conditions herein.


15. Defendants may fulfill their responsibilities under this Decree through a targeting system consistent with 28 C.F.R. §§ 55.17 and 55.18.

16. At least ten (10) days before each federal, state or county election in Suffolk County, the Suffolk County Board of Elections shall provide to counsel for the United States a report containing the following information: (a) the name and precinct designation of each polling place; (b) the name and

Approved:


Anita Katz, Commissioner

- 11 -


Robert Garfinkle, Commissioner


title of each poll official or translator appointed and assigned to serve at each polling place; (c) indication of which poll officials are bilingual in English and Spanish; and (d) a copy of the most recent voter registration lists on computer disk. Within sixty (60) days after each federal, state or county election in Suffolk County, the Suffolk County Board of Elections shall provide to counsel for the United States any updated report regarding changes in items (a)-(d) above that occurred at the election, and provide information about all complaints the County received regarding language or assistance issues.

17. The parties recognize that a regular and ongoing reassessment may be necessary in order to provide Spanish-language minority voters equal access to all phases of the electoral process in Suffolk County. The Commissioners of the Suffolk County Board of Elections and Coordinator(s) shall evaluate the Section 203 bilingual assistance program after each election cycle (e.g., after the 2004 general election), and on an ongoing basis through meetings with the Hispanic community, representatives of the Hispanic community, and counsel for the United States. After the 2004 elections, the Commissioners of the Suffolk County Board of Elections and counsel for the United States shall meet to evaluate the

Approved:


Anita Katz, Commissioner

- 12 -


Robert Garfinkle, Commissioner

effectiveness of the Spanish Language Assistance Coordinators.

18. The parties agree that to assist in carrying out the purposes of this Consent Decree, a federal examiner for Suffolk County shall be authorized pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through January 31, 2008.

19. In addition to the provision of federal observers permitted under Section 6 of the Voting Rights Act, 42 U.S.C. § 1973d, the parties agree that Department of Justice attorneys and staff shall be permitted to monitor elections conducted by Suffolk County from the date of the entry of this Consent Decree until January 31, 2008.

(A) The United States will give timely notice of its intent to monitor a particular election.

(B) Department of Justice personnel will be permitted into the precincts for the purpose of observing the election process; such Department personnel shall not seek to interfere in any way with the conduct of the election.

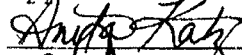
20. This Consent Decree shall expire on January 31, 2008, unless plaintiff moves the Court for good cause shown to extend this Consent Decree.

21. Each party shall bear its own costs and fees.


22. This Decree is binding upon Defendants, by and through their officials, agents, employees, and successors.

23. The Court shall retain jurisdiction of this case to

Approved:


Anita Katz, Commissioner

- 13 -


Robert Garfinkle, Commissioner


enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 203 of the Voting Rights Act.

Approved:



Anita Katz, Commissioner

- 14 -




Robert Garfinkle, Commissioner

Agreed to this _____ day of _____, 2004.

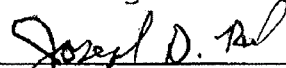
AGREED AND CONSENTED TO:

For Plaintiff:


UNITED STATES



R. ALEXANDER ACOSTA
Assistant Attorney General
Civil Rights Division

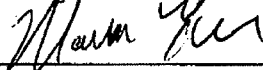


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United States Attorney

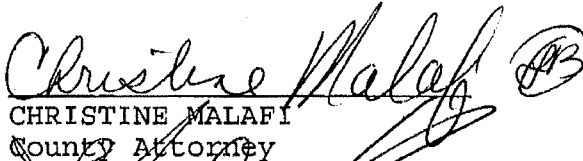
PAMELA CHEN
Chief, Civil Rights
Litigation



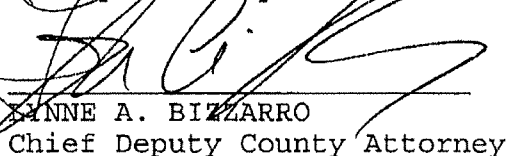
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For Defendants:

SUFFOLK COUNTY; SUFFOLK
COUNTY BOARD OF
ELECTIONS; ROBERT L.
GARFINKLE AND ANITA S.
KATZ, Commissioners of the
Suffolk County Board
of Elections



CHRISTINE MALAFI
County Attorney



KINNE A. BIZZARRO
Chief Deputy County Attorney
P.O. Box 6100
Hauppauge, N.Y. 11788-0099

JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. § 2284 to consider the United States' claim under Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree set forth above, and incorporates those terms herein.

ENTERED and ORDERED this 27 day of September, 2004.

~~UNITED STATES CIRCUIT JUDGE~~

~~UNITED STATES DISTRICT JUDGE~~

UNITED STATES DISTRICT JUDGE