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

15 UNITED STATES OF AMERICA,) CIVIL ACTION NO.
16)
Plaintiff,)
17)
v.) **CONSENT DECREE, JUDGMENT,**
18) **and ORDER**
SAN BENITO COUNTY, CALIFORNIA;))
19 JOHN R. HODGES, the COUNTY))
CLERK, AUDITOR, & RECORDER,))
20 in his official capacity; and))
the SAN BENITO COUNTY BOARD))
21 OF SUPERVISORS,))
22))
Defendants.))
23 _____)

24 The United States of America filed 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, over violations of Section

Consent Decree, Judgment & Order

1 203 of the Voting Rights Act arising from San Benito's election
2 practices and procedures as they affect Spanish-speaking
3 citizens of the County, and violations of Section 302 of HAVA
4 arising from Defendants' failure to provide and post required
5 information at San Benito County's polling places during the
6 March 2, 2004 primary election for Federal office.

7 The Complaint's first cause of action under Section 203 of
8 the Voting Rights Act, 42 U.S.C. 1973aa-1a, must be heard and
9 determined by a court of three judges pursuant to 42 U.S.C.
10 1973aa-2 and 28 U.S.C. 2284. The second cause of action, under
11 Section 302 of HAVA, may be heard and determined by one judge.

12 San Benito County has been subject to the requirements of
13 Section 203 of the Voting Rights Act, 42 U.S.C. 1973aa-1a, with
14 respect to Spanish language since 1975. See 40 Fed. Reg. 41,827
15 (Sept. 9, 1975). The county has been continuously covered under
16 Section 203 for Spanish until the present. See, e.g., 49 Fed.
17 Reg. 25,887 (Jun. 25, 1984); 57 Fed. Reg. 43,213 (Sept. 18,
18 1992). In the most recent determination of coverage in 2002,
19 the county's coverage was based on a determination by the
20 Director of the Census that more than 5 percent of the citizens
21 in the County are members of a single language minority group
22 (Spanish heritage or Hispanic) who do not speak English well
23 enough to participate effectively in the English-language
24 election process, and the illiteracy rate of these persons as a
25 group is higher than the national illiteracy rate. See 67 Fed.
26 Reg. 48,871 (July 26, 2002). Since 1992, the Department has
27 sent San Benito County and other jurisdictions covered under
28 Section 203 information regarding Section 203's requirements.

1 San Benito County has been subject to the requirements of
2 Section 302 of HAVA since January 1, 2004. These requirements
3 applied to the county's March 2, 2004 primary election for
4 Federal office.

5 Defendants have failed to comply with the requirements of
6 Section 203 for Spanish-speaking citizens residing in San Benito
7 County, California. The Defendants have violated Section 203
8 requirements by failing to provide for an adequate number of
9 bilingual poll workers trained to assist Spanish-speaking voters
10 on election day, and by failing to translate written election
11 materials and information into Spanish, including the official
12 ballot.

13 Defendants have also failed to comply with Section 302 of
14 HAVA during its March 2, 2004 election, by not providing written
15 information to voters as required by 42 U.S.C. 15482(a)(5)(A);
16 by not posting all information required by 42 U.S.C. 15482(b);
17 and by not informing voters who cast a rejected provisional
18 ballot the reason their vote was not counted, as required by 42
19 U.S.C. 15482(a)(5)(B).

20 To avoid protracted and costly litigation, the parties have
21 agreed that this lawsuit should be resolved through the terms of
22 this Consent Decree (hereinafter, the "Decree"). Accordingly,
23 the United States and Defendants hereby consent to the entry of
24 this Decree, as indicated by the signatures of counsel at the
25 end of this document. The parties waive a hearing and entry of
26 findings of fact and conclusions of law on all issues involved
27 in this matter.

1 Defendants do not contest that they have failed to provide
2 limited English proficient ("LEP") Hispanic citizens in San
3 Benito County with Spanish-language election information and
4 assistance as required by Section 203, and they do not contest
5 that they failed to provide the information required by Section
6 302 of HAVA during their March 2, 2004 primary election for
7 Federal office.

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

10 1. Defendants, their agents, employees, contractors,
11 successors, and all other persons representing the interests of
12 the Defendants are hereby PERMANENTLY ENJOINED from failing to
13 provide in Spanish any "registration or voting notices, forms,
14 instructions, assistance or other materials or information
15 relating to the electoral process, including ballots" that they
16 provide in English, as required by Section 203 of the Voting
17 Rights Act, as amended. 42 U.S.C. 1973aa-1a(c). With the
18 exception of Paragraphs two and eight regarding HAVA
19 requirements, the terms of this Decree apply to all federal,
20 state, and local elections administered by the county, including
21 county-run elections for city, school district, and other
22 political subdivisions of the county. Whenever Defendants enter
23 into an election services contract with any other entity,
24 political subdivision, or political party to conduct an election
25 on behalf of that entity, Defendants shall require such other
26 entity to agree to abide by the terms of this Decree as if such
27 entity were a party to this Decree with the United States, and
28

1 consistent with the responsibility of each such entity to comply
2 fully with Section 203.

3 2. Defendants, their agents, employees, contractors,
4 successors, and all other persons representing the interests of
5 the Defendants are hereby PERMANENTLY ENJOINED from failing to
6 provide the information required under Section 302 of HAVA,
7 including written information to voters who cast provisional
8 ballots, the posted information required by Section 302(b), and
9 information on Defendants' free access system for voters who
10 cast provisional ballots regarding whether their ballots were
11 counted, and if not, the reasons their ballots were rejected.
12 42 U.S.C. 15482. Paragraphs two and eight of this Consent
13 Decree apply to all elections for Federal office.

14 **Translation of Election-Related Materials**

15 3. All information that is disseminated by San Benito
16 County in English about "registration or voting notices, forms,
17 instructions, assistance, or other materials or information
18 relating to the electoral process, including ballots," 42 U.S.C.
19 1973aa-1a(c), shall also be provided in the Spanish language.
20 Defendants shall ensure that both English and Spanish language
21 election information, materials, and announcements provided by
22 San Benito County are made equally available.

23 4. Defendants shall employ trained and/or certified
24 translators who are familiar with Spanish-language election
25 terminology to produce all written translations, clearly and
26 accurately. The county shall develop and maintain a glossary of
27 Spanish election terminology in consultation with bilingual
28

1 members of local Hispanic community, who will review the
2 accuracy and accessibility of the translations.

3 5. Defendants shall adopt a checklist identifying each
4 Spanish-language and bilingual material that the county makes
5 available to the public at each polling place. The checklist
6 shall include with respect to each item an attestation that the
7 poll workers at the polling place posted or made available to
8 voters these Spanish-language or bilingual materials, or a
9 detailed written explanation of why individual items had not
10 been posted or were not available. The inspectors for each
11 polling place must complete and sign this document before the
12 inspector receives payment for work in the election, subject to
13 applicable state and federal law. Defendants shall maintain a
14 record of each such failure to complete and sign the checklist.

15 **Dissemination of Spanish-Language Information**

16 6. Defendants shall ensure that Spanish-language
17 election information, materials, and announcements are provided
18 to the same extent as they are provided in English. Spanish-
19 language information shall be distributed in newspapers, radio,
20 and/or other media that exclusively or regularly publish or
21 broadcast information in Spanish. These announcements need not
22 be identical in all respect to English-language announcements,
23 but shall be in the form, frequency, and media best calculated
24 to achieve notice and understanding equal to that provided to
25 the English-speaking population and to provide substantially the
26 same information.

27 7. The official ballot and absentee ballots shall be
28 translated bilingually into both English and Spanish. Any new

1 voting system adopted by the county shall offer a bilingual
2 ballot or offer Spanish-speaking voters the readily apparent
3 option of a Spanish ballot, and any audio version of the ballot
4 on such machines shall be available in English and Spanish.

5 **Information Required Under the Help America Vote Act**

6 8. San Benito County shall comply will all applicable
7 provisions of the Help America Vote Act of 2002 (hereinafter,
8 "HAVA"). All information required to be posted in polling sites
9 by Section 302 of the Help America Vote Act of 2002
10 (hereinafter, "HAVA"), 42 U.S.C. 15482, et seq., shall be posted
11 at all polling sites and shall be in English and Spanish. This
12 information includes, but is not limited to, written information
13 given to the voter casting a provisional ballot on how they may
14 ascertain if their provisional ballot was counted, and if not,
15 the reason the ballot was not counted, see 42 U.S.C.
16 15482(a)(5)(A), and the six categories of information required
17 to be posted under 42 U.S.C. 15482(b). For example, Defendants
18 must post a sample version of the ballot that will be used for
19 that election, in English and Spanish, in each polling location.
20 See 42 U.S.C. 15482(b)(2)(A). Defendants shall provide a free
21 access system for informing voters about whether their
22 provisional ballot has been counted, and if it has been
23 rejected, the reason for the rejection. The information on this
24 system shall be available to each provisional voter in both
25 English and Spanish. See 42 U.S.C. 15482(a)(5)(B).

26 **Spanish-Language Assistance**

27 9. Spanish-language assistance shall be available at all
28 locations where election-related transactions are conducted.

1 Trained bilingual (Spanish/English) election personnel shall be
2 available to answer voting-related questions by telephone
3 without cost and during normal business hours and while the
4 polls are open on election days.

5 10. Defendants shall recruit, hire, and assign election
6 officials able to understand, speak, read, and write Spanish
7 fluently to provide assistance to Spanish-speaking voters at the
8 polls on election days. The County shall survey its employees
9 to identify personnel who speak Spanish fluently and, to the
10 extent such employees can be made available to provide
11 assistance, allow and encourage such employees to serve at the
12 polls on election day. As part of its obligation to ensure that
13 entities on whose behalf the County conducts elections are fully
14 compliant with Section 203 in their elections, the County shall
15 request that each entity for which it conducts elections perform
16 similar surveys of its employees; the County shall request that
17 each school district or other educational entity with which the
18 County contracts implements a program that allows and encourages
19 selected bilingual students (as allowed by state law and as part
20 of an educational program devised by such district) to serve as
21 poll officials on election day for all county elections,
22 including election days that fall on school days, with such
23 students receiving academic credit appropriate to their service
24 as well as all pay and benefits of poll officials; and the
25 County shall request from such entities and maintain copies of
26 all election-related materials and information created or
27 disseminated by such entities for each election. The County
28 shall advise counsel for the United States of any entity that

1 does not participate fully. The county shall also invite
2 eligible members of the Advisory Group, discussed below, to
3 serve as poll officials and to encourage other bilingual voters
4 to do so.

5 11. Any polling place in which there are 100-249
6 registered voters with Spanish surnames shall be staffed by at
7 least one bilingual election official. Any polling place in
8 which there are 250-499 registered voters with Spanish surnames
9 shall be staffed by at least two bilingual election officials.
10 Any polling place in which there are 500 or more registered
11 voters with Spanish surnames shall be staffed by at least three
12 bilingual election officials. Defendants shall employ bilingual
13 personnel, trained in Spanish-language election terminology,
14 who shall be on call and available to travel to a polling place
15 not staffed by a bilingual poll worker to provide any necessary
16 assistance to any Spanish-speaking voter.

17 12. Signs in both English and Spanish shall be posted
18 prominently at polling places stating that Spanish-language
19 assistance is available. At sites without bilingual staff,
20 signs in both English and Spanish shall be posted that explain
21 how voters can obtain Spanish-language assistance.

22 **Election official training**

23 13. Prior to each election, in addition to any required
24 state or county training, the county shall train all poll
25 officials and other election personnel present at the polls
26 regarding the following: The provisions of Section 203 of the
27 Voting Rights Act, including the legal obligation and means to
28 make Spanish-language assistance and materials available to

1 voters; the requirement that poll officials be respectful and
2 courteous to all voters regardless of race, ethnicity, color, or
3 language abilities and to avoid inappropriate comments; and the
4 provisions of Section 302 of the Help America Vote Act, as they
5 apply to elections for Federal office. In addition to the
6 general training for poll officials, the county shall train all
7 bilingual poll officials on Spanish-language election
8 terminology, voting instructions, and other election-related
9 issues. The county shall maintain a record of which poll
10 officials attend training sessions, including the time,
11 location, and training personnel involved.

12 **Response to Complaints About Poll Workers**

13 14. Defendants, upon receipt of complaints by voters,
14 whether oral or written, shall investigate expeditiously any
15 allegations of poll worker hostility toward Spanish-speaking
16 and/or Hispanic voters in any election. The results of the
17 investigation(s) conducted by the Defendants shall be reported
18 to the United States. Where there is credible evidence that
19 poll workers have engaged in inappropriate treatment of Spanish-
20 speaking and/or Hispanic voters, Defendants shall remove the
21 poll workers.

22 **Program Coordinator**

23 15. The county shall employ an individual to coordinate
24 the County's bilingual election Program ("the Coordinator") for
25 all elections within the county. The county shall provide that
26 individual with transportation and other support sufficient to
27 meet the goals of the Program. The Coordinator shall be able to
28 understand, speak, write, and read fluently both Spanish and

1 English. The Coordinator shall work under the supervision of
2 the County Clerk, Auditor, & Recorder. The Coordinator's
3 responsibilities shall include coordination of translation of
4 ballots and other election information; development of a Spanish
5 election glossary to ensure uniform use of election terminology
6 in Spanish; development and oversight of Spanish publicity
7 programs, including selection of appropriate Spanish-language
8 media for notices and announcements; recruitment and assessment
9 of Spanish-language proficiency of bilingual poll officials and
10 interpreters; and managing other aspects of the Program.

11 **Advisory Group**

12 16. The Coordinator shall establish and chair an Advisory
13 Group to assist and inform the bilingual Program. The
14 Coordinator shall invite participation from all interested
15 individuals and organizations that work with or serve the
16 Spanish-speaking community in San Benito County, to determine
17 how most effectively to provide election materials, information,
18 and assistance to Spanish-speaking voters, and to fill any gaps
19 in public awareness about the county's bilingual election
20 program due to past failures to provide accessible election-
21 related information to Spanish-speaking voters. The Advisory
22 Group shall meet at least once a month in 2004, and as the group
23 determines in 2005-2006. The Coordinator shall provide notice
24 of all planned meetings to each member, including the time,
25 location, and agenda for the meeting, at least 14 days in
26 advance. Within five days following each meeting, the
27 Coordinator shall provide a written summary to all members and
28 to the County Clerk, Auditor, & Recorder of the discussion and

1 any decisions reached at the meeting. If the County Clerk,
2 Auditor, & Recorder decides not to implement an Advisory Group
3 suggestion or a consensus cannot be reach respecting such
4 suggestion, he or she shall provide to the group through the
5 Coordinator and maintain on file a written statement of the
6 reasons for rejecting such suggestion.

7 17. The County shall transmit to all interested members of
8 the Advisory Group copies, in English and Spanish, of all
9 election information, announcements, and notices that are
10 provided to the electorate and general public and request that
11 they share with their members.

12 **Federal Examiners and Observers**

13 18. To monitor compliance with and ensure effectiveness of
14 this Decree, and to protect the Fourteenth Amendment rights of
15 the citizens of San Benito County, the appointment of a federal
16 examiner is authorized for San Benito County pursuant to Section
17 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), through
18 December 31, 2006.

19 19. Defendants shall recognize the authority of federal
20 observers to observe all aspects of voting conducted in the
21 polls on election day, including the authority to view county
22 personnel providing assistance to voters during voting, except
23 where the voter objects.

24 **Evaluation of plan**

25 20. The parties recognize that regular and ongoing
26 reassessment may be necessary to provide the most effective and
27 efficient Spanish-language Program. Defendants shall evaluate
28 the bilingual Program after each election (e.g., following 2004

1 elections) to determine which aspects of the bilingual Program
2 are functioning well; whether any aspects need improvement; and
3 how to affect needed improvements. The Program may be adjusted
4 at any time upon joint written agreement of the parties.

5 **Retention of Documents and Reporting Requirements**

6 21. During the duration of this Decree, the county shall
7 make and maintain as public documents written records of all
8 actions taken pursuant to this Decree.

9 22. During the duration of this Decree, at least ten (10)
10 days before each County-administered election held in the
11 County, Defendants shall provide to counsel for the United
12 States, (a) the name, address, and precinct designation of each
13 polling place; (b) the name and title of each poll official
14 appointed and assigned to serve at each polling place; (c) a
15 designation of whether each poll official is bilingual in
16 English and Spanish; (d) copies of any signs or other written
17 information provided at polling places or given to voters to
18 comply with Section 302 of HAVA; and (e) an electronic copy of
19 the voter registration list to be used in such elections.
20 Within thirty (30) days after each election, Defendants shall
21 provide to counsel for the United States any updated report
22 regarding changes in items (a)-(d) above that occurred at the
23 election, and provide information about all complaints the
24 county received at the election regarding language or assistance
25 issues.

26 **Other Provisions**

27 23. This Decree is final and binding between the parties
28 and their successors in office regarding the claims raised in

1 this action. This Decree shall remain in effect through
2 December 31, 2006, and the United States may within 90 days of
3 that date move to extend the Decree for good cause shown, in the
4 event of a violation of any provision contained herein by the
5 county.

6 24. The Court shall retain jurisdiction of this case to
7 enter further relief or such other orders as may be necessary
8 for the effectuation of the terms of this agreement and to
9 ensure compliance with Section 203 of the Voting Rights Act and
10 Section 302 of HAVA.

11 25. Each party shall bear its own costs and fees.
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1 Agreed to this 25 day of May, 2004.

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3 AGREED AND CONSENTED TO:

4 For Plaintiff:
5 UNITED STATES OF AMERICA

For Defendants:

/s/ Karen R. Forcum

6 KEVIN V. RYAN
7 United States Attorney
8 R. ALEXANDER ACOSTA
9 Assistant Attorney General
10 Civil Rights Division

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11 /s/ John Bert Russ

12 JOSEPH D. RICH, Section Chief
13 JOHN TANNER, Special Litigation Counsel
14 JOHN "BERT" RUSS, Trial Attorney
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JUDGMENT AND ORDER

This three-judge Court, having been properly empaneled under 28 U.S.C. 2284 and 42 U.S.C. 1973aa-2 to consider the United States' claim under Section 203 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973aa-1a, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, hereby enters the relief set forth above and incorporates those terms herein. The Court hereby enters the relief set forth in this Decree, with the exception of paragraphs two and eight, which addresses only the United States' second cause of action under Section 302 of the Help America Vote Act.

ENTERED and ORDERED this 1st day of October, 2004.

/s/Carlos Bea
UNITED STATES CIRCUIT JUDGE

/s/Jeremy Fogel
UNITED STATES DISTRICT JUDGE

/s/James Ware
UNITED STATES DISTRICT JUDGE

JUDGMENT AND ORDER

The Court, having jurisdiction over plaintiff's claims under Section 302 of the Help America Vote Act of 2002, 42 U.S.C. 15482 (plaintiff's Second Cause of Action), has considered the terms of the Consent Decree set forth above and incorporates those terms herein. The Court hereby enters the relief set forth in paragraphs 2, 8, 13, 18, 19, 21, 22, 23, 24, and 25.

ENTERED and ORDERED this 1st day of October, 2004.

/s/James Ware
UNITED STATES DISTRICT JUDGE