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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

UNION COUNTY; UNION COUNTY
CLERK JOANNE RAJOPPI, in her official
capacity; and UNION COUNTY BOARD OF
ELECTIONS;

Defendants.

THREE-JUDGE COURT

Civil Action No.
2:23-cv-02531

[PROPOSED] CONSENT DECREE AND ORDER

The United States of America filed this action pursuant to Sections 203 and 208 of the Voting Rights Act, 52 U.S.C. §§ 10503 (“Section 203”) & 10508 (“Section 208”), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 & 2202, to enforce voting rights guaranteed by the Fourteenth and Fifteenth Amendments, with respect to the conduct of elections in Union County, New Jersey.

This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1345 and 52 U.S.C. §§ 10504, 10307(a), & 10308(f). In accordance with the provisions of 52 U.S.C. § 10504 and 28 U.S.C. § 2284, the Section 203 claim must be heard and determined by a court of three judges.

Union County, the Union County Clerk, and the Union County Board of Elections are subject to the requirements of Section 203 of the Voting Rights Act, which requires that whenever any covered jurisdiction provides “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it must provide them in the language of the applicable minority group as well as in the English language.” 52 U.S.C. § 10503(c). Union County, the Union County Clerk, and Union County Board of Elections have been continuously covered by Section 203 since September 18, 1992, and are required by Section 203 to provide Spanish-language written materials, information, and assistance to voters. 52 U.S.C. § 10503(c); *see* 67 Fed. Reg. 48,871 (July 26, 2002); 76 Fed. Reg. 63,602 (Oct. 13, 2011); 81 Fed.

Reg. 87,532 (Dec. 5, 2016); 86 Fed. Reg. 69,611 (Dec. 8, 2021). With each of these new coverage determinations, the U.S. Department of Justice (“the Department”) has provided Union County with written notice of its obligations under Section 203 of the Voting Rights Act. *See, e.g.*, Letter from Voting Section Chief Chris Herren to Joanne Rajoppi & Nicole DiRado (Dec. 21, 2021).

According to the 2020 Census, Union County had a total population of 575,345, of whom 211,245 (36.7%) were non-Hispanic white, 195,519 (34.0%) were Hispanic, and 115,350 (20.0%) were non-Hispanic Black. Union County's total voting-age population was 440,856, of whom 170,765 (38.7%) were non-Hispanic white, 141,485 (32.1%) were Hispanic, and 89,734 (20.4%) were non-Hispanic Black.

According to the 2016-2020 American Community Survey (“ACS”) estimates, the total Hispanic citizen population was 127,560 (26.7%) and the Hispanic citizen voting age population was 83,025 (23.4%). In December 2021, the Census released data on its website showing that Union County had an estimated 27,850 Spanish-speaking voting-age citizens who were limited English-proficient (“LEP”).

The United States’ Complaint alleges in its first cause of action that the Union County Board of Elections (“Board”) has failed to implement an effective minority language program for Spanish-speaking citizens in violation of Section

203 of the Voting Rights Act because the Board has not recruited, properly staffed, and trained enough bilingual Spanish-speaking board workers capable of providing LEP Spanish-speaking voters effective language assistance during elections. The Complaint further alleges that Defendants the Clerk and the Board have not provided translated election-related materials, including but not limited to the Clerk providing ballots and sample ballots, in a manner that ensures all Spanish-speaking voters across the County receive same.

Union County is also subject to the requirements of Section 208 of the Voting Rights Act. Section 208 provides 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.” 52 U.S.C. § 10508.

The United States’ Complaint alleges in its second cause of action that the Board, through its employees and agents, is not fully compliant with the requirements of Section 208 of the Voting Rights Act for Spanish-speaking citizens. The Complaint alleges that district board members,¹ also known as “poll

¹ The term “district board members” is drawn from Title 19, Chapter 6, of the New Jersey Statutes Annotated.

workers,” have prohibited LEP voters from receiving assistance from the person of their choice while casting their ballot.

Because Defendants are committed to complying fully with the Voting Rights Act and the Parties wish to avoid protracted and costly litigation, the Parties have agreed that this lawsuit should be resolved through the terms of this Consent Decree (“the Decree”). Accordingly, the United States and Defendants hereby consent to the entry of this Decree, as indicated by the signatures of counsel at the end of this Decree. The Parties waive a hearing and the entry of findings of fact and conclusions of law on all issues involved in this matter. Each party shall bear its own costs and fees.

Without having seen the Complaint and without admitting or denying any allegations in the Complaint, as part of their commitment to full compliance with Sections 203 and 208 of the Voting Rights Act, Defendants agree to each provision of this Decree to resolve the issues in this case.²

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

1. Defendants, their agents, employees, successors and all other persons

² Defendants’ agreement to the provisions of this Decree does not reflect any admissions by Defendants regarding any questions of prior compliance with the law. The Board believes that it has used its best efforts to recruit bilingual poll workers and provide assistance to Spanish-speaking voters and enters into this consent decree to further those efforts.

representing the interests of Union County, the Clerk and the Board hereby agree to the following, as set forth under the terms of this Consent Decree:

a. As required by Section 203 of the Voting Rights Act, 52 U.S.C. § 10503(c), the Board shall provide in Spanish voter registration applications; the Clerk shall provide in Spanish to all election districts in the County ballots and sample ballots, that they provide in English; and the Clerk and the Board shall provide in Spanish “voting notices, forms, instructions, assistance or other materials or information,” relating to the electoral process, that they provide in English; and

b. The Board shall permit “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write . . . [to receive] 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,” including providing assistance inside the voting booth or at any phase of the voting process. 52 U.S.C. § 10508; 52 U.S.C. § 10310(c)(1).

2. The terms of this Decree apply to all federal, state, and local elections that are administered by Union County, the Clerk, and the Board, and consistent with the terms of this Decree, Union County, the Clerk, and the Board shall comply with Sections 203 and 208 of the Voting Rights Act.

A. Definitions

3. “Bilingual election official” means all election officials assigned by the Board who are able to understand, speak, write, and read both Spanish and English fluently, to provide Spanish-language assistance to LEP voters. For purposes of this Decree, a person is considered fluent when they can confidently, easily, and accurately express themselves in English and Spanish, as reasonably determined by the Board and its staff. This includes but is not limited to election district board members, persons answering the Spanish-language assistance telephone number described in paragraph 10, and persons serving as on-call assistants for election districts, as described in paragraph 14(e).

4. “Bilingual poll worker” means a bilingual election official who is hired and trained to work as a district board member at an election district.

B. Translation and Dissemination of Election-Related Materials

5. All information that is disseminated by the Clerk and the Board in English about “registration or voting notices, forms, instructions, assistance or other materials or information, relating to the electoral process, including ballots,” 52 U.S.C. § 10503(c), shall also be disseminated in Spanish.

6. Beginning with the November 2023 General Election conducted in Union County, including the early voting period, all election-related materials that the Clerk and the Board provide to the public shall include English and Spanish on

the same document(s), including without limitation: (a) the official ballot; (b) sample ballots; (c) mail-in and early voting applications and ballots; (d) provisional ballots and envelopes; (e) voting instructions; (f) any voter information guides or pamphlets provided by the Clerk and Board; (g) notice of elections and polling place changes; (h) polling place signage; and (i) any election-related materials mailed to voters. In the infrequent situation where it is technically not feasible to provide English and Spanish on the same document, the Clerk or the Board shall (1) notify the Department of the issue related to that specific document, and (2) provide to voters Spanish and English versions of the document.

7. Before the November 2023 General Election, the Clerk and the Board shall utilize one or more Spanish translators selected by each of them to prepare accurate translated materials. The translator shall work in coordination with the bilingual Spanish-language election program coordinators described in paragraph 22-23 and the advisory group described in paragraphs 24-25 below to ensure that bilingual materials are complete, accurate, and linguistically competent and accessible for LEP voters.

8. Before the June 2023 Primary Election, the County shall ensure that English-language election information and services available on the Board's and the Clerk's websites and mobile applications are substantially equivalent in Spanish through links to Spanish-language web pages that provide the same

information as the English-language portions of the Board and County Clerk's websites and mobile applications. Spanish-language information and materials shall be readily accessible through easily visible and identifiable Spanish-language links on the Board's and the Clerk's websites and mobile applications in a font comparable to that of English-language sections of the websites and mobile applications. The Board and the Clerk shall ensure that Spanish-language information is accurately translated.

9. Before the June 2023 Primary Election, the Board shall coordinate with the Spanish-language election program coordinator described in paragraph 22 below to undertake outreach efforts through Spanish-language media, including newspapers, radio, the internet, and relevant community organizations. These outreach efforts shall notify Spanish-speaking citizens of the availability of Spanish-language election materials and assistance during federal, state, and local elections in Union County. Dissemination of these Spanish-language announcements shall be in the form, frequency, and media designed to achieve notice and understanding of election dates, deadlines, and other election-related practices and procedures, and the substance of the announcements shall be substantially equivalent to those provided to Union County's English-speaking population.

C. Spanish Language Assistance

10. At all times that the polls are open for an election, including during any early voting period, the Board shall make available trained bilingual election officials to answer voting-related questions by telephone without cost to voters.

11. During all phases of the voting process—including but not limited to early voting, inside the voting booth, and while voting provisionally—the Board shall provide Spanish-language assistance at all election districts where election-related transactions are conducted as required by this Decree, in accordance with paragraphs 13 and 14 below.

12. Before the November 2023 General Election, the Board shall update the Board's computerized "Poll Worker Assignment List by District" to include designations identifying: (a) Spanish-language targeted election districts and (b) bilingual poll workers and their assigned election districts.

13. The Board will specifically recruit, hire, and assign bilingual poll workers to provide effective assistance to Spanish-speaking citizens at the polls.

14. Before the November 2023 General Election, the Board agrees to assign bilingual poll workers as follows:

- a. During the early voting period, the Board shall staff at least one bilingual poll worker at each early voting site, for the duration of the early voting period;

b. On Election Day, in each election district in which there are 100 to 249 registered voters with Spanish surnames, the Board shall recruit, hire, and assign at least one bilingual poll worker;

c. On Election Day, in each election district in which there are 250 to 499 registered voters with Spanish surnames, the Board shall recruit, hire, and assign at least two bilingual poll workers;

d. On Election Day, in each election district in which there are 500 or more registered voters with Spanish surnames, the Board shall recruit, hire, and assign at least three bilingual poll workers; and

e. On Election Day, the Board shall also provide bilingual election officials who are on call and available to travel to any election district to provide any necessary assistance to any LEP Spanish-speaking citizen.

f. The Department agrees to work cooperatively with the Board in the Board's efforts to implement the assignment of bilingual election officials.

15. Within forty-five (45) days of the entry of this Decree, the Board shall conduct a Spanish-surname analysis of their voter registration list by using the surname analysis program that is available on the State of New Jersey's Statewide Voter Registration Statistics database. The Board shall conduct a Spanish-surname analysis of their voter registration list at least once every 12 months.

16. The Board and the Department may, by written agreement, adjust the requirements regarding the assignment of bilingual poll workers in light of reliable information that the actual need for language assistance in a particular election district is lesser or greater than these standards or that the anticipated voter turnout is substantially lower or higher than average voter turnout. If the Board and Department cannot agree as to a proposed adjustment in the assignment of bilingual poll workers by the Board, the Board may file an application with the court for an adjustment to the obligations in paragraph 14.

17. At each election district, the Board shall post signs in English and Spanish that explain how voters can obtain Spanish-language assistance via the telephone number required by paragraph 10 above. In addition, at each election district, the Board shall also post signs in English and Spanish stating that an election official is available to provide Spanish-language assistance.

D. Election Official Training

18. As part of any required state or county training, the Board shall train all election officials, including all district board members and other bilingual election officials who are on call or designated to be present at any early voting or election day polling place, regarding the following:

- a. The provisions of Section 203 of the Voting Rights Act and related provisions of this Decree, including the legal obligation to make

Spanish-language assistance and materials available to voters; the requirement that district board members contact the call-in number when an assigned bilingual poll worker is not present at the polls, so that a bilingual election official can be assigned to the election district; and the reminder that election officials be respectful and courteous to all voters;

b. The provisions of Section 208 of the Voting Rights Act and related provisions of this Decree, including the legal obligation to allow covered voters, including LEP voters, to receive assistance at the polls during any phase of the voting process, including inside the voting booth or while voting provisionally, from a person of the voter's choosing, other than the voter's employer or officer or agent of the voter's union;

c. That bilingual election officials shall be permitted to assist LEP voters during any stage of the voting process, including inside the voting booth and while voting provisionally, as required by Sections 203 and 208 of the Voting Rights Act; and

d. How to provide language assistance to LEP voters, including basic Spanish-language election terminology, what to do if a bilingual election official is not available, and how to handle common problems that arise for LEP voters.

19. The Board shall maintain a record of all individuals who attended the training sessions described in paragraph 18(a)-(d) above, including the time, location, and training personnel involved. The Board shall provide a copy of the most recent training manual and online training program, upon request, to the United States prior to the start of training sessions. The Board shall allow representatives of the Department to attend any training provided pursuant to this Decree.

E. Assistors of Choice

20. The Board shall ensure that each LEP citizen who requires assistance to vote may be assisted by the person of that voter's choice—other than the voter's employer or agents of that employer or officers or agents of the voter's union—during any stage of the voting process, and that such assistance may include assistance in the voting booth, including reading or interpreting the ballot, the mechanics of voting on a voting machine, on a paper ballot or by provisional ballot, instructing the voter on how to select the voter's preferred candidates, and confirming that the voter's ballot has been cast.

F. Response to Reports About Impediments to Participation

21. Defendants shall investigate expeditiously any allegations of lack of assistance or other impediments to LEP voters' participation in the election in any election conducted by Union County that are brought to the attention of

Defendants. Defendants shall retain copies of all written complaints. The results of the investigation(s) conducted by the Defendants, and any steps taken by Defendants, including referral to another agency, to address the incidents, shall be reported to the United States within 30 days of the completion of the investigation. Counsel for the Department shall contact the Defendants, as soon as practicable, either in-person, by phone, or by e-mail, if the Department learns of credible allegations of lack of assistance or other impediments to LEP voters' participation in any election conducted by Union County that are brought to the attention of the Department. For the purposes of these notices, the Board's contact information is as follows: 908-527-4121 (phone), and Ndirado@ucnj.org and ucboe@ucnj.org (email addresses). The Department and the Board shall work cooperatively to address potential issues in a timely manner.

G. Spanish-Language Election Program Coordinators

22. Before the June 2023 Primary Election, the Board shall designate an individual from the Board of Elections' staff to coordinate the Board's Spanish-language election program ("the Board Coordinator") for the Board. The County shall provide the Board Coordinator with support sufficient to meet the goals of the program. The Board Coordinator shall be able to understand, speak, write, and read fluently both English and Spanish, as defined in paragraph 3 of this Decree. The Board Coordinator's responsibilities shall include developing and overseeing

Spanish-language publicity programs, including selecting appropriate Spanish-language election media for the Board's notices and announcements; recruiting bilingual election officials and assessing their fluency in both Spanish and English, as defined by paragraph 3 in this Decree; training bilingual election officials as required under this Decree; and managing other aspects of the Board's Spanish-language election program.

23. Before the June 2023 Primary Election, the Clerk shall designate an individual from the Clerk's staff to coordinate the Clerk's Spanish-language election program ("the Clerk Coordinator") for the Clerk. The County shall provide the Clerk Coordinator with support sufficient to meet the goals of the program. The Clerk Coordinator shall be able to understand, speak, write, and read fluently both English and Spanish, as defined in paragraph 3 of this Decree. The Clerk Coordinator's responsibilities shall include coordinating the translation of ballots and other election information within the Clerk's authority and responsibility; developing and overseeing Spanish-language publicity programs, including selecting appropriate Spanish-language election media for the Clerk's notices and announcements; and managing other aspects of the Clerk's Spanish-language election program.

H. Advisory Group

24. Within 120 days of the entry of the Consent Decree by the Court, the Board's Coordinator shall establish and chair an Advisory Group to assist and inform the bilingual election program and shall invite participation from individuals and organizations that work with or serve the Spanish-speaking and Hispanic communities in Union County.

25. The Board's Coordinator shall set the schedule for the Advisory Group to meet. The Advisory Group shall meet at least twice before the 2023 general election and once before each primary and general election held in 2024, as the Board starts recruiting for those elections, and as the group determines is necessary thereafter. In these meetings, the Board shall solicit information on how most effectively to provide election materials, information, and assistance to Spanish-speaking citizens, how to publicize the Board's Spanish-language election program. If the Advisory Group makes any suggestions on areas outside of the scope and responsibilities of the Board, the Board will forward those suggestions to the appropriate entity, to the extent the Board can determine the appropriate entity. The Board's Coordinator shall provide notice of all planned meetings to the Department, the Clerk, and each Advisory Group member, including the date, time, location, and meeting agenda at least 14 days in advance, although members of the Advisory Group may agree to waive or shorten this time period as necessary.

Representatives of the Department and the Clerk may attend any Advisory Group meeting held pursuant to this Decree.

26. Within seven (7) days after each meeting, the Board Coordinator must provide a written summary of the discussion at the meeting to all Advisory Group members, the Board, and the Clerk. If the Board decides not to implement an Advisory Group suggestion or a consensus cannot be reached respecting such suggestion, the Board shall provide to the Advisory Group, through the Board's Coordinator, a written statement of the reasons for rejecting such suggestion. The Board shall maintain all written summaries of Advisory Group meetings and the written reasons for rejecting Advisory Group suggestions for the purposes of this Consent Decree only. The Board's written statement of reasons is not to be considered a final agency decision, is not appealable to any court or other authority, and affords no explicit or implicit rights to the Advisory Group, any other group or individual.

27. The Clerk's Coordinator and the Board's Coordinator shall transmit to all interested members of the Advisory Group copies, in English and Spanish, all election information, announcements, and notices that are provided or made available to the electorate and general public under the respective authority and responsibility of the Clerk and the Board, and shall request that the Advisory

Group share such information with members of the County's Spanish-speaking and Hispanic communities.

I. Federal Observers

28. To assist in monitoring compliance with and ensuring the effectiveness of this Decree, and to implement the voting guarantees of the Fourteenth and Fifteenth Amendments for the citizens of Union County, the appointment of Federal Observers is authorized for Union County pursuant to Section 3(a) of the Voting Rights Act, 52 U.S.C. § 10302(a), for the duration of this Decree.

29. The Board shall recognize the authority of Federal observers to enter any polling place during early voting or on election day, to gather information, review documents, and ask questions of election officials regarding practices and procedures. In addition, Federal Observers shall be allowed to speak with any voter and observe any County election official provide assistance to any voter, except when the voter objects.

30. In accord with longstanding practice of the Federal Observer program conducted by the Office of Personnel Management for the Department under the Voting Rights Act, Federal Observers observe and document relevant events occurring in polling places on election day, including voting procedures and practices. Federal Observers do not interfere with the election process. After each

election, the Department will provide copies of the reports of the Federal Observers (redacted for privacy) to Defendants' counsel.

31. Counsel for the Department will contact Defendants, as soon as practicable, either in-person, by phone, or by email, of any lack of assistance for LEP voters or other impediments to LEP voters' participation in any election conducted by Union County observed by Federal Observers or Department staff. For the purposes of these notices, the Board's contact information is as follows: 908-527-4121 (phone), and Ndirado@ucnj.org and ucboe@ucnj.org (email addresses).

J. Evaluation, Modification, and Termination

32. The Parties recognize that regular and ongoing reassessment of this Decree may be necessary to provide the most effective and efficient Spanish-language election program. The Clerk and the Board shall evaluate their respective Spanish-language programs after primary and general election to determine which aspects of the programs are functioning well; whether any aspects of the programs need improvement; and how to effect needed improvements. The programs may be adjusted at any time upon joint written agreement of the Parties.

33. Within thirty (30) days after submission of the information described in paragraphs 36 & 37 below regarding any election conducted throughout the term of this Decree, the United States shall notify the Defendants and Defendants'

counsel of any potential violation of this Decree. The United States and Defendants shall work together in good faith to remedy as soon as possible any violation of this Decree. If the parties are unable to resolve the violation within thirty (30) days, the United States shall have the right to seek such relief as may be necessary, including by application to this Court, to enforce the terms of this Decree.

34. This Decree shall remain in effect through December 31, 2026, unless Plaintiff moves the court for good cause shown to extend the Decree. This date will allow Federal Observers the ability to monitor federal election cycles in 2024 and 2026, as well as state and local elections during this time period.

K. Retention of Documents and Reporting Requirements

35. Throughout the duration of this Decree, the Clerk and the Board shall make and maintain written records of all actions taken pursuant to any reported complaint or violation of the bilingual requirements under this Decree sufficient to document its compliance with all of the requirements of the Decree. Such records shall be made available to the United States upon its request and upon reasonable notice.

36. During the duration of this Decree, at least thirty (30) days before each County-administered election, the Board shall provide to counsel for the United States:

- a. the name, address, and precinct designation of each polling place;
- b. the name and title of each poll worker hired and assigned to serve at each polling place, as of the date the materials are sent;
- c. a designation of whether each poll worker is bilingual in English and Spanish;
- d. a list of bilingual election officials that are designated as being on call;
- e. if requested, an electronic copy of the most recent Spanish-surname analysis conducted by the Board;
- f. if requested, an electronic copy, printed no more than 30 days before an election, of the voter registration list to be used in such elections;
- g. copies of any new signs or other written information provided at polling places; and
- h. agendas and minutes from previous meetings of the Advisory Group.

37. Within 60 days after each such election, the Board shall provide to counsel for the United States any updated report regarding changes in these items, including a list of bilingual election officials that did not report for on call duty, during early voting, or on election day. The Board shall also provide all

information about any complaints the Board received at the election regarding language assistance issues, by express mail or electronically to the following addresses:

United States Department of Justice
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4 Constitution Square
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Telephone: (202) 353-0419
bruce.gear@usdoj.gov

United States Attorney's Office
District of New Jersey
Civil Rights Division
970 Broad Street, Suite 700
Newark, NJ 07102
Telephone: (973) 645-2700
Michael.Campion@usdoj.gov

L. Other Provisions

38. This Decree is final and binding regarding the claims raised in this action.

39. The Court shall retain jurisdiction over this case to enter further relief or such other orders as may be necessary to enforce this Decree and to ensure compliance with Sections 203 and 208 of the Voting Rights Act.

AGREED AND CONSENTED TO this 9th day of May, 2023:

For Plaintiff:

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Union County Clerk

ORDER

This three-judge Court, convened under 28 U.S.C. § 2284, and 52 U.S.C. § 10504, having considered the United States' claims under Section 203 and 208 of the Voting Rights Act, 52 U.S.C. §§ 10503, and 10508, and having determined that it has jurisdiction over these claims, has considered the terms of this Consent Decree and finds them to be fair, adequate and reasonable, and hereby enters the relief set forth above and incorporates those terms herein. Pursuant to Section 3(a) of the Voting Rights Act, 52 U.S.C. § 10302(a), federal observers are authorized to attend and observe elections in Union County during the period of this decree.

ENTERED and ORDERED this ____ day of _____, 2023.

United States Circuit Judge

United States District Judge

United States District Judge