

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

2010 SEP -3 PM 01:03
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 CUYAHOGA COUNTY BOARD OF ELECTIONS)
 ("BOE"), BOE CHAIRMAN JEFFREY P.)
 HASTINGS, and BOE MEMBERS INAJO DAVIS)
 CHAPPELL, ROBERT S. FROST, EBEN O.)
 MCNAIR IV, JANE M. PLATTEN, DIRECTOR, in)
 their official capacities,)
)
 Defendants.)
)
 _____)

CIVIL ACTION NO.

**AGREEMENT, JUDGMENT
AND ORDER**

The United States of America filed this action pursuant to Sections 4(e) and 12(d) of the Voting Rights Act, 42 U.S.C. §§ 1973b(e) & 1973j(d), and pursuant to 28 U.S.C. § 2201, to enforce voting rights guaranteed by the Fourteenth and Fifteenth Amendments, with respect to the conduct of elections in Cuyahoga County, Ohio.

The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1345 and 42 U.S.C. §§ 1973j(d) & 1973j(f).

This Agreement, effective this 1 day of September, 2010, is entered into by and between the United States of America ("United States") and the Cuyahoga County Board of Elections ("BOE"). The United States and the BOE are hereinafter sometimes referred to jointly as the "Parties."

WHEREAS, Cuyahoga County is subject to Section 4(e) of the Voting Rights Act, which secures the rights of "persons educated in American-flag schools in which the predominant

classroom language was other than English,” i.e. Puerto Rico, by prohibiting jurisdictions from “conditioning the right to vote of such persons on ability to read, write, understand, or interpret any matter in the English language.” 42 U.S.C. § 1973b(e)(1).

According to the 2000 Census, Cuyahoga County had 30,147 persons of Puerto Rican descent. The Puerto Rican population in Cuyahoga County has grown substantially over the last two decades. According to the Census, from 1990 to 2000 the number of Puerto Ricans in Cuyahoga County increased from 20,568 to 30,147 (a 46.6% increase). The Census Bureau’s 2006-2008 American Community Survey (“ACS”) estimated that the Puerto Rican population of Cuyahoga County had increased further to 34,283. According to the 2000 Census, there were 12,235 Puerto Rican persons in Cuyahoga County who were born in Puerto Rico (41.7% of the County’s Puerto Ricans). The 2000 Census also reported that 6,334 Puerto Ricans of voting age (35.1% of all voting age Puerto Ricans) in Cuyahoga County were limited-English proficient (“LEP”).

To avoid protracted and costly litigation, the Parties have conferred in good faith and agreed that this lawsuit should be resolved through the terms of this Agreement. Accordingly, the United States and the BOE hereby consent to the entry of this Agreement, as indicated by the signatures of counsel at the end of this Order. The parties waive a hearing and entry of findings of fact and conclusions of law on all issues resolved by this Agreement. Each party shall bear its own costs and fees.

The BOE does not admit the allegations of the Complaint. There has been no court finding that the BOE has violated any law upon which this litigation is based. The BOE is committed to compliance with Section 4(e) to ensure that the County’s Puerto Rican voters are afforded the right to vote even when there is inability to read, write, understand, or interpret any

matter in English. Therefore, the parties stipulate that each provision of this Agreement is appropriate and necessary.

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

1. Pursuant to Federal Rule of Civil Procedure 65, the BOE, its agents, employees, contractors, successors, and all other persons acting in concert with or on behalf of the BOE, shall permanently provide the Spanish-language election materials, information and assistance necessary to effectively participate in the electoral process to persons educated in Puerto Rico, as required by Section 4(e).

2. The terms of this Agreement apply to all Federal, State, and local elections that are administered by the BOE and its agents, employees, contractors, successors, and all other persons acting in concert with or on behalf of the BOE.

September 7, 2010 Primary Election

3. The BOE agrees to undertake the following measures with respect to the September 7, 2010 primary election:

a) Develop a sample bilingual Spanish ballot to be posted on-line, and full size posters of the bilingual ballot at the designated polling locations of the seventy-one (71) precincts that have more than one hundred (100) registered voters with Hispanic surnames, the list of which is attached hereto and incorporated herein as Exhibit A.

b) (i) Evaluate current outreach efforts to determine gaps in reaching the Hispanic community for poll worker recruitment and voter education; (ii) continue development of relationships with Hispanic organizations.

c) Translate into Spanish vote-by-mail instructions and how to vote using an optical scan ballot instructions.

d) Distribute the U.S. Election Assistance Commission Spanish language Glossary to the precincts identified in Exhibit A.

e) Make good faith efforts to recruit bilingual poll workers to work in the precincts identified in Exhibit A, utilizing current partnerships with Hispanic organizations and developing new relationships.

f) Add a field to the on-line application where poll worker applicants can check off that they are bilingual.

g) Hire two bilingual temporary staff persons for the Poll Worker Department's recruitment team to focus solely on recruitment of bilingual poll workers.

November 2, 2010 General Election

4. In addition to the measures to be taken with respect to the September 7, 2010 Primary Election, the BOE agrees to undertake the following measures with respect to the November 2, 2010 General Election:

a) Provide official bilingual ballots and voting instructions at the precincts and polling locations identified in Exhibit A.

b) Conduct specialized training for bilingual poll workers, incorporating into such training materials regarding the rights of LEP persons to bilingual assistance and materials.

c) Hire at least one bilingual poll worker for each precinct in Exhibit A.

d) Develop a sample bilingual Spanish-English ballot to be posted on-line, full size posters of the bilingual ballot at all polling locations, and copies of the sample bilingual ballot to be distributed to all polling locations.

e) Trained bilingual election personnel (Spanish and English fluent) shall be available in person or by telephone while the polls are open on Election Day.

Subsequent Elections

5. In addition to the above measures, the BOE agrees to undertake the following county-wide measures with respect to the May 3, 2011 election, and all subsequent elections throughout the term of this Agreement.

A. Translation and Dissemination of Election-Related Materials

6. The BOE shall provide information in Spanish about all stages of the electoral process pertaining to the issuance, at any time during the year, of notifications, announcements, and other informational materials concerning the opportunity to register, voter registration deadlines, the times, places and subject matters of elections, and the absentee and early voting processes.

7. The BOE shall provide bilingually, in English and Spanish, the following election-related materials: a) the official ballot; b) sample ballots; c) absentee and early voting applications and ballots; d), provisional envelopes; e) voter registration cards and applications; f) voting instructions; g) any voter information guides or pamphlets provided by the BOE; h) notification of elections and polling place changes; and i) polling place signage. The BOE shall also provide Spanish translations of election-related materials, and announcements applicable to elections in the County provided by the State of Ohio.

8. The BOE shall ensure that the Bilingual Election Program Coordinator (“Coordinator”) as said term is defined in numbered paragraph 20 herein provides bilingual voter registration materials to voter registration offices in the County required under the National Voter Registration Act, 42 U.S.C. § 1973gg *et seq.*

9. The BOE shall utilize a certified translator to prepare translated materials. The translator shall work in coordination with the Coordinator to ensure that bilingual and Spanish-

language materials are complete, accurate, linguistically competent and accessible for the County's Spanish-speaking voters educated in Puerto Rico.

10. Spanish-language voter information shall be distributed in newspapers and on radio within the County, on the internet, and through other media as may be reasonably available that publish or broadcast information in Spanish to the Spanish-speaking Puerto Rican community in the County. The BOE shall consult with the Coordinator and the Spanish-Language Advisory Group described in paragraphs 22-24 to ensure that all voter information regarding the availability of bilingual assistance and election materials is disseminated in a form, frequency, media and at locations calculated to educate the County's LEP persons.

11. The BOE shall ensure that English-language election information and services available on the BOE website, in particular, a) the ability to print forms; b) check voter registration status; and c) determine voting locations, are available in equivalent form in Spanish through links to Spanish-language web pages that provide the same information as English-language portions of the BOE website. Spanish-language information and materials shall be readily accessible through easily visible and identifiable Spanish-language links on the BOE homepage in font comparable to that of English-language sections of the website.

12. The BOE shall coordinate with the Coordinator and the Spanish-Language Advisory Group described in paragraphs 22-24 to undertake outreach efforts through Spanish-language media and relevant community organizations to notify LEP Puerto Rican voters of the availability of Spanish-language election materials and assistants at the BOE. In addition, English and Spanish messages with this information will be added to the BOE's telephone system.

B. Bilingual Poll Workers

13. The BOE shall recruit, hire, train, and assign bilingual poll workers who are able to understand, speak, write, and read English and Spanish fluently and can provide effective translation and assistance to Spanish-speaking voters at the polls on election days and at early voting locations.

14. The BOE shall ensure that:

- a) any election precinct in which there are 100-249 registered voters with Spanish surnames is staffed by at least one bilingual election official;
- b) any election precinct in which there are 250 or more registered voters with Spanish surnames is staffed by at least two bilingual election officials;
- c) each early voting location is staffed by at least one bilingual election official; and
- d) bilingual personnel, trained in Spanish-language election terminology, are on call and available to travel to a precinct or early voting location insufficiently staffed by bilingual poll officials to provide assistance to any Spanish-speaking voters.

The Parties may by written agreement adjust these requirements in light of reliable information that the actual need for language assistance in a particular polling place is lesser or greater than these standards.

15. The BOE in conjunction with the United States shall determine which precincts have 100 or more Spanish-surnamed voters by conducting a Spanish-surname analysis of the current County voter registration list 30 days prior to each election.

16. **Signs in English and Spanish explaining how voters can obtain Spanish-language assistance shall be prominently posted at all polling places in Cuyahoga County. Such signs shall be printed in large, easily visible lettering and English and Spanish signs shall be posted adjacent to each other. The BOE shall also provide at least one English-Spanish election glossary (such as, for example, the Spanish-English Election Terms Glossary prepared by the United States Election Assistance Commission, available at <http://www.eac.gov/voter/language-accessibility-program-1/glossary-of-election-terms/>) at each polling place and early voting location.**

C. Election Official Training

17. **The BOE shall train all poll officials and other election personnel regarding the requirements of Section 4(e), including the legal obligation and means to make effective Spanish-language assistance and materials available to voters. The training should also emphasize that poll officials must be respectful and courteous to all voters regardless of race, color, ethnicity, or language ability. The training shall be integrated into the BOE's standard training of all poll officials and other election personnel.**

18. **In addition to the above general training for poll officials and other election personnel, the BOE shall include in their training of all bilingual poll officials the following election-related materials: the official ballot; sample ballots; absentee and early voting applications and ballots; provisional envelopes; voter registration cards and applications; voting instructions; any voter information guides or pamphlets provided by the BOE; notification of elections and polling place changes; and polling place signage. The BOE shall also provide Spanish translations of election-related information, materials, and announcements applicable to elections in the County that are provided by the State of Ohio. The BOE shall also provide all**

bilingual poll officials with a copy of the Spanish-language election terminology glossary referenced in paragraph 16.

19. The BOE shall maintain a record of the time and location of training personnel and the materials involved with bilingual assistance training. The BOE shall also record the names of poll officials who attended such training and their assigned polling places.

D. Bilingual Election Program Coordinator

20. The BOE shall designate an individual to coordinate the BOE's bilingual election program ("the Coordinator") for all elections within the County. The BOE shall provide the Coordinator with support sufficient to meet the goals of the program. The Coordinator shall be able to understand, speak, write, and read fluently both Spanish and English. The Coordinator's responsibilities shall include: coordination of the translation of ballots and other election information; development and oversight of Spanish-language election publicity, including selection of appropriate Spanish-language media for notices and announcements; training, recruitment, and assessment of the Spanish-language proficiency of bilingual poll officials; and conducting outreach to Puerto Ricans and assessing their needs for Spanish-language assistance in voting; and managing other aspects of the program. The Coordinator shall also coordinate the notice for and conduct the meetings of the Spanish-language Advisory Group described in paragraphs 22-24 of this Agreement.

21. The BOE shall ensure that the Coordinator provides bilingual voter registration materials to voter registration offices in Cuyahoga County designated pursuant to the National Voter Registration Act, 42 U.S.C. § 1973gg *et seq.* The Coordinator shall be available if requested to offer assistance, expertise, and training regarding providing Spanish-language access for LEP persons to register at such voter registration offices.

E. Spanish-Language Advisory Group

22. The BOE shall establish a Spanish-language Advisory Group (the “Advisory Group”) to assist the Coordinator and the BOE in implementing the bilingual election program, in order to ensure that the most effective means are consistently utilized to provide Spanish-language access to elections to voting age LEP persons in Cuyahoga County. The Coordinator shall solicit comments from the Advisory Group regarding the accuracy of translations, work with the Advisory Group to further outreach efforts to Puerto Rican residents in the County, encourage Advisory Group members to recommend bilingual poll officials, and generally work with the Advisory Group to help ensure the effectiveness of the BOE’s bilingual election program. The Advisory Group shall be open to any interested person or organization subject to neutral, non-discriminatory written rules, as may reasonably be determined by the BOE and the Advisory Group, and the Coordinator shall maintain a roster of the Advisory Group members and their contact information. In their capacity as members of the Advisory Group, the Advisory Group members shall serve without compensation. Prior to the first countywide election conducted by the BOE in these subsequent elections (May 2011), the Advisory Group shall meet at least monthly during the four months before such election and at least once during the two months after the election. Thereafter, the Advisory Group shall meet as it determines necessary so long as it meets at least twice during the six months before and at least once during the two months after the November 2012 general election, and at least twice during the six months before and once during the two months after each subsequent general election for the duration of this Agreement. The Parties may by writing adjust the Advisory Group’s meeting schedule after consultation with the Advisory Group. The Parties agree that nothing in this Section of the

Agreement shall confer standing upon the Advisory Group, or any of its members, for purposes of enforcement of the Agreement.

23. The Coordinator (or the Coordinator's designee) shall maintain minutes of all Advisory Group meetings that shall include a record of those in attendance at the meetings, timely provide copies of the minutes to all Advisory Group members and to the Director of the BOE after each meeting, and timely post such minutes on the BOE website. If the BOE or the Director decides not to implement an Advisory Group recommendation, if any, or the BOE cannot reach a consensus regarding such recommendation, the BOE or the Director shall provide the Advisory Group with a statement of the reason(s) for rejecting such recommendation, which shall be recorded in or attached to the Advisory Group's minutes. The BOE shall provide copies of Advisory Group meeting minutes to any member of the public who requests such information. The BOE shall send notices regarding the time and place of all Advisory Group meetings as soon as practical prior to each meeting to any member of the public who requests to remain informed about the meeting schedule and shall post such notices on the BOE website.

24. The BOE shall invite all individuals on the Advisory Group roster to assist in identifying qualified bilingual residents who are interested in serving as poll officials.

F. Federal Observers

25. To assist in monitoring compliance with and ensure effectiveness of this Agreement, and to protect the voting guarantees of the Fourteenth and Fifteenth Amendments for the citizens of Cuyahoga County, the appointment of federal observers is authorized for Cuyahoga County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), for the duration of this Agreement.

26. The BOE shall recognize the authority of federal observers to observe all aspects of the process of voting conducted in the polls on Election Day, including the authority to observe BOE personnel providing interpretation and assistance to voters during voting, except when the voter objects.

G. Evaluation, Modification, and Termination

27. The Parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient bilingual election program. The BOE, in consultation with the Coordinator, shall evaluate the bilingual election program after each election to determine which aspects of the program are functioning well, whether any aspects need improvement, and how to implement any needed improvements. The program may be adjusted at any time upon joint written agreement of the Parties.

28. This Agreement shall terminate on March 30, 2014. The BOE may seek early termination of the Agreement, provided the Parties agree or this Court determines, in accordance with the procedures in paragraphs 29-31 below, that the BOE has achieved substantial compliance with the terms of the Agreement for elections conducted after the effective date of this Agreement. The BOE may seek a determination of substantial compliance no earlier than following the November 2012 election.

29. If after the November 2012 election the BOE's assessments show that they have been substantially complying with all aspects of this Agreement since its effective date and have the intent and means to continue compliance with Section 4(e), the BOE shall file a report with the United States demonstrating substantial compliance with each provision of this Agreement. The BOE shall include with any substantial compliance report detailed reports describing the BOE's efforts to comply with the Agreement. The BOE shall make public the report sent to the

United States, and invite comments from the public. The BOE shall bear the burden of demonstrating that they have substantially complied with the Agreement and maintained substantial compliance for the required period.

30. After conferring with the BOE, the United States, in its good faith discretion, will determine whether the BOE has maintained substantial compliance for the requisite election cycles, and a conclusion of substantial compliance may not be unreasonably withheld. If the parties agree that there is substantial compliance, they shall file a joint motion with the Court to terminate the Agreement.

31. If the United States determines that the BOE has not substantially complied for the requisite period, and if the BOE disputes such determination, the BOE may file a motion with this Court for termination of the Agreement. In any such proceeding, the BOE shall have the burden of demonstrating substantial compliance. The BOE must notify the United States and the Advisory Group, and provide public notice of its intention to file such motion, at least forty-five (45) days prior to filing a contested motion to terminate the Agreement. The BOE shall make public the report sent to the United States, and invite comments from the public. The BOE shall allow at least thirty (30) days for public comment before filing the motion to terminate the Agreement. The BOE shall provide to the United States all comments it receives.

32. Within thirty (30) days after submission of the information described in paragraph 34 below regarding any election conducted throughout the term of this Agreement, the United States shall notify the BOE of any known alleged violation or potential violation of this Agreement and shall provide the BOE a report detailing the BOE's alleged violation of this Agreement. The United States and the BOE shall work together in good faith to remedy as soon as possible any violation of this Agreement. The BOE may provide a written response to the

federal observers' report within thirty (30) days after receipt of the written report. If the BOE fails to submit a written response within thirty (30) days, or indicates in its written response that BOE does not have the intent or means to comply with the terms of this Agreement applicable to the particular election, the United States shall have the right to seek such relief as may be necessary to enforce the terms of this Agreement. These reports and responses shall be the principal means by which the BOE's compliance with this Agreement shall be judged.

H. Retention of Documents and Reporting Requirements

33. Throughout the duration of this Agreement, the BOE shall make and maintain written records of all actions taken pursuant to this Agreement sufficient to document its compliance with all of the requirements of the Agreement. Such records shall be made available to the United States upon its written request (including via e-mail) and upon reasonable notice.

34. Through out the duration of this Agreement, at least fourteen (14) days before each election the BOE shall provide to counsel for the United States:

- a) the name, address, and precincts at each polling place and early voting location;
- b) the name and title of each election official appointed and assigned to serve at each precinct and early voting location;
- c) a designation of those election officials fluent in English and Spanish;
- d) copies of any signs or other written information provided at polling locations;
- e) a set of all written materials to be provided to voters at the upcoming election; and

- f) a copy of the most recent voter registration list in a format to be agreed upon by the parties.

The BOE shall update and revise the aforementioned information, materials and documents.

The BOE shall send the foregoing information by express delivery or electronically, to the following address:

Voting Section
United States Department of Justice
Civil Rights Division
1800 G. Street, N.W., Room 7254-NWB
Washington, D.C. 20006
Facsimile: (202) 307-3961
katherine.culliton@usdoj.gov
ali.ahmad@usdoj.gov

Throughout the duration of this Agreement, within sixty (60) days after each election, the BOE shall provide to counsel for the United States an updated report regarding any changes in these items, as well as information about all complaints the BOE received before, during, or after the election regarding the subject matter of this Agreement.

35. This Agreement is final and binding regarding the claims raised in this action.

36. The Court shall retain jurisdiction of this case to 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 Section 4(e).

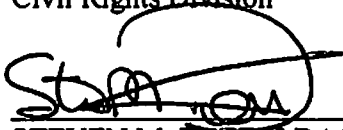
Agreed to this 1 day of September, 2010.

AGREED AND CONSENTED TO, this 1 day of September, 2010.

For Plaintiff:


ERIC H. HOLDER, JR.
Attorney General

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

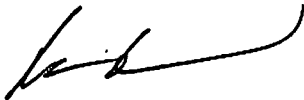


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JUDGMENT AND ORDER

This Court, having considered the United States' claim under Section 4(e) of the Voting Rights Act, 42 U.S.C. §1973b(e), and having determined that it has jurisdiction over this claim, has considered the terms of this Agreement, and hereby enters the relief set forth above and incorporates those terms herein. Pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. 1973a(a), federal observers are authorized to attend and observe elections in Cuyahoga County during the period of this Agreement.

ENTERED and ORDERED this 2nd day of Sept., 2010.


UNITED STATES DISTRICT JUDGE

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CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND, OHIO

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