

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

COPY

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UNITED STATES OF AMERICA,

Plaintiff,
v.

ORANGE COUNTY BOARD OF ELECTIONS,
SUSAN BAHREN, in her official capacity, and
DAVID GREEN, in his official capacity,

Defendants.
----- X

ECF Case

12 Civ. 3071 (ER)

CONSENT DECREE

WHEREAS, 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) and 1973j(d), to enforce the voting rights guaranteed by the Fourteenth and Fifteenth Amendments, with respect to the conduct of elections in Orange County, New York;

WHEREAS, the Court has jurisdiction over this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. § 1973j(f);

WHEREAS, this Consent Decree is entered into by and between the United States of America (the "United States") and the Orange County Board of Elections (the "BOE"). The United States and the BOE are hereinafter referred to jointly as the "Parties";

WHEREAS, this Consent Decree becomes effective upon approval by this Court (the "Effective Date");

WHEREAS, Orange County is subject to Section 4(e) of the Voting Rights Act, which secures the voting 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 [their] ability to read, write, understand, or interpret any matter in the English language.” 42 U.S.C. § 1973b(e).

WHEREAS, a significant number of voting age citizens in Orange County were educated in American-flag schools in Puerto Rico, where the predominant classroom language was Spanish;

WHEREAS, according to the 2000 Census, Orange County had 19,153 (5.6% of the County’s total population) persons of Puerto Rican descent;

WHEREAS, according to the 2000 Census, there were 5,671 persons residing in Orange County who were born in Puerto Rico (29.6% of the County’s Puerto Rican population);

WHEREAS, according to the 2000 Census, there were 12,535 persons of Puerto Rican descent residing in Orange County who were of voting age, of whom 2,400 had limited English proficiency;

WHEREAS, the 2006-2010 American Community Survey estimated that there were 26,524 Puerto Rican residents of Orange County;

WHEREAS, in 2010, the Puerto Rican population of Orange County had increased to 29,210, which constituted 7.8% of the County’s total population. *See* 2010 Census, Summary File 1, QT-P3, Race and Hispanic or Latino Origin;

WHEREAS, during the Federal, state, and local elections held in 2009, 2010, and 2011, Defendants did not translate election-related materials into Spanish, including, but not limited to, the official ballot, sample ballot, absentee ballot, affidavit ballot, election notices, and election-related information on the BOE website;

WHEREAS, Defendants conditioned the right to vote of Orange County citizens educated in Puerto Rico on their ability to read, write, understand or interpret the English

language by not providing Spanish-language election materials and not consistently providing effective Spanish-language assistance during elections held in Orange County;

WHEREAS, 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 Consent Decree;

It is hereby ORDERED, ADJUDGED, AND AGREED that:

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

2. The terms of this Consent Decree shall 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.

April 24, 2012, Primary Election

3. The BOE agrees to undertake the following measures with respect to the April 24, 2012, primary election:

- a. Develop a sample bilingual Spanish ballot to be posted on its publicly accessible web site.
- b. Translate into Spanish instructions on how to utilize voting equipment used in Orange County.
- c. Identify and track bilingual ability of all individuals who apply or volunteer to serve as election inspectors.

Subsequent Elections

4. In addition to the above measures, the BOE agrees to undertake the following county-wide measures with respect to all elections after April 2012.

A. Translation and Dissemination of Election-Related Materials

5. The BOE shall provide the following election material in both English and Spanish:

- a. The official ballot;
- b. Sample ballots;
- c. Absentee applications and ballots;
- d. Affidavit ballots and affidavit ballot envelopes;
- e. Voter registration cards and applications;
- f. Any voter information guides or pamphlets provided by the BOE;
- g. Notification of elections and polling place changes; and
- h. Polling place signage.

6. The BOE shall also provide Spanish translations of election-related materials and announcements applicable to elections in the County provided by the State of New York.

7. The BOE shall ensure that the Bilingual Election Program Coordinator (“Coordinator”), as defined in paragraphs 20-21 below, 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.*

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

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

9. Spanish-language voter information shall be distributed in newspapers, on the BOE's website (as described in paragraph 10 below), and through all 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 Còordinator and the Spanish-language Advisory Group, described in paragraphs 22 - 30 below, 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 Spanish-speaking Puerto Rican voters.

10. The BOE shall ensure that English-language election information and services available on the BOE's website are available in equivalent form in Spanish, including, but not limited to, information concerning (1) polling place location, (2) voter information, (3) absentee voting, and (4) election inspectors. The BOE shall further ensure that Spanish-language information and materials shall be readily accessible through easily visible and identifiable Spanish-language links on the BOE website in a font comparable to that of English-language sections of the website.

B. Bilingual Election Inspectors

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

12. The BOE shall ensure that:
 - a. any polling location in which there are between 100 and 249 registered voters with Spanish surnames on the voter registration list for that election is staffed by at least one bilingual election inspector;
 - b. any polling location in which there are between 250 and 500 registered voters with Spanish surnames on the voter registration list for that election is staffed by at least two bilingual election inspectors (if possible, the inspectors should include one Republican and one Democrat);
 - c. any polling location in which there are more than 500 registered voters with Spanish surnames on the voter registration list for that election is staffed by at least three bilingual election inspectors (the inspectors should include at least one Democrat and one Republican);
 - d. an equal number of bilingual election inspectors from each major political party, trained in Spanish-language election terminology, available by telephone to provide assistance to any Spanish-speaking voters.

13. If, despite its diligent recruitment efforts, the BOE is unable to secure and assign the requisite number of bilingual election inspectors, the BOE shall recruit and secure qualified bilingual translators to satisfy the numeric requirements for bilingual election inspectors provided in this Consent 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 the BOE. In the event that the BOE is unable to meet the requirements set forth in paragraph 12, the BOE shall document the polling location(s) at which it was unable to provide

the required number of bilingual election inspectors, as well as all efforts undertaken by the BOE to provide the required number of bilingual election inspectors at each polling place identified. This information shall be contained in the report required by paragraph 37 of this Consent Decree.

14. The parties may, by joint written amendment to this Consent Decree, adjust the requirements set forth in paragraph 12 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 polling places satisfy the conditions of paragraph 12(a)-(c) by conducting a Spanish-surname analysis of the current County voter registration list thirty (30) days prior to each election.

16. Signs in English and Spanish shall be posted prominently at all polling places stating that Spanish-language assistance is available. At polling places without bilingual election inspectors, signs in both English and Spanish shall be posted that explain how voters can obtain Spanish-language assistance. The BOE will monitor the levels of Spanish language assistance needed within the polling places on election day and will, if necessary, provide additional bilingual personnel to assist Spanish-speaking voters.

C. Election Official Training

17. The BOE shall train all election inspectors and other election personnel regarding the requirements of Section 4(e) of the Voting Rights Act, including the legal obligation and means to make effective Spanish-language assistance and materials available to voters. The training shall also emphasize that election inspectors must be respectful and courteous to all voters, regardless of race, color, ethnicity, or language ability.

18. The BOE shall include in their training of all bilingual election inspectors the following election-related materials: (1) the official ballot, if available at the time of the training, (2) sample ballots, (3) affidavit ballots and envelopes, (4) absentee voting applications and ballots, (5) voter registration cards and applications, (6) notification of elections and polling place changes, (7) polling place signage, and (8) any voter information guides or pamphlets provided by the BOE. The BOE shall also provide bilingual election inspectors with a copy of the United States Election Assistance Commission Spanish Language Glossary.

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

D. Bilingual Programs Coordinator

20. The BOE shall designate an individual to coordinate the BOE's bilingual election program (the "Coordinator") for all elections run by the County. The Coordinator shall be able to understand, speak, read, and write fluently both English and Spanish.

21. The Coordinator's responsibilities shall include, but are not limited to, coordination of the translation of ballots and other election information; development and oversight of Spanish-language media for notices and announcements concerning elections; recruitment, training, and assessment of Spanish-language proficiency of bilingual election inspectors; and, conducting outreach to Puerto Ricans and assessing their need for Spanish-language assistance in voting. The Coordinator shall also provide notice for and conduct the meetings of the Spanish-language Advisory Group described in paragraphs 22 - 30 of this Consent Decree.

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 County's bilingual election program.

23. The Advisory Group shall be open to any interested person or organization subject to neutral, non-discriminatory written rules, as may be reasonably determined by the BOE and the Advisory Group, and the Coordinator shall maintain a roster of the Advisory Group. Members of the Advisory Group shall serve without compensation.

24. 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 members of the Advisory Group to recommend bilingual election inspectors, and generally work with the Advisory Group to help ensure the effectiveness of the BOE's bilingual election program.

25. Prior to the first County-wide general election in 2012, the Advisory Group shall meet at least monthly during the four months before such election, and at least once within 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 once during the two months after each subsequent general election for the duration of this Consent Decree. The Parties may adjust the Advisory Group's meeting schedule by written Consent Decree after consulting with the Advisory Group.

26. The BOE shall send notices regarding the time and place of all Advisory Group meetings as soon as practicable prior to each meeting to any member of the public who requests

in writing to be remain informed about the meeting schedule, and shall also post such notices on the BOE website.

27. 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 BOE after each meeting, timely post such minutes on the BOE's website, and timely provide a copy of such minutes to any member of the public who requests them.

28. The Advisory Group may provide written recommendations to the BOE concerning the implementation of the bilingual election program in the County, and individual members of the Advisory Group may offer statements in support of or in opposition to the Advisory Group's recommendations.

29. If the BOE decides not to implement an Advisory Group recommendation, the BOE shall provide the Advisory Group with a written statement of the reason(s) for rejecting such recommendation, which shall be attached to the Advisory Group's minutes.

30. The Parties agree that nothing in this Section of the Consent Decree shall confer standing upon the Advisory Group, or any of its members, to enforce this Consent Decree.

F. Federal Observers

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

32. 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, but not limited to, the authority to observe BOE personnel providing Spanish-language assistance to voters during voting, except when the voter objects.

33. The BOE may provide a written response to the federal observers' report within thirty (30) days after receipt of such report.

G. Retention of Documents and Reporting Requirements

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

35. Throughout the duration of this Consent Decree, at least fourteen (14) days before each election, the BOE shall provide to counsel for the United States:

- a. The name, address, and election districts at each polling place;
- b. The name of each election inspector appointed and assigned to serve at each polling place;
- c. The names of those election inspectors who are 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.

36. The BOE shall send the information described in paragraph 35 by express delivery to the following address:

Chief, Civil Rights Unit
United States Attorney's Office
Southern District of New York
86 Chambers Street, 3rd Floor
New York, New York 10007

37. Throughout the duration of this Consent Decree, and within sixty (60) days after each election, the BOE shall provide to counsel for the United States an updated report regarding (1) any changes in these items, (2) information described in paragraph 13 concerning the BOE's inability to provide the number of bilingual election inspectors required by this Consent Decree, and (3) information about all complaints the BOE received before, during, or after the election regarding the subject matter of this Consent Decree.

H. Modification and Termination of This Consent Decree

38. 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 of the program need improvement; and, how to implement any needed improvements.

39. This Consent Decree shall terminate on January 31, 2015, provided that Defendants have achieved substantial compliance with the terms of the Consent Decree for the previous two full election cycles. An "election cycle" refers to all elections administered by Defendants during a calendar year. If Defendants fail to establish substantial compliance, either by agreement between the Parties or a determination by the Court, this Consent Decree shall be extended to January 31, 2017.

40. Five weeks after each November election, Defendants will file a report with the United States demonstrating substantial compliance with each provision of this Consent Decree. Defendants shall include with any certification request reports from the Coordinator and the Advisory Group detailing the Defendants' efforts to comply. Defendants shall bear the burden of demonstrating that they have substantially complied with the Consent Decree and maintained substantial compliance for the duration of this Consent Decree.

41. Eight weeks after the November 2014 election, the United States and Defendants shall meet and confer regarding whether Defendants have achieved substantial compliance for the previous two full election cycles. After conferring with Defendants, the United States will determine whether the Defendants have maintained substantial compliance for the requisite election cycles. If the United States agrees that Defendants have substantially complied with their obligations under this Consent Decree, the parties shall file a joint notice with the Court that this Consent Decree will be terminated on January 31, 2015. If the United States does not agree that Defendants have substantially complied with this Consent Decree, Defendants may challenge that determination by application to this Court.

42. Within thirty (30) days after submission of the information described in paragraphs 35, 37, and 40 above regarding any election conducted throughout the term of this Consent Decree, the United States shall notify the BOE of any known violation or potential violation of this Consent Decree and shall provide the BOE a report detailing the BOE's violation or potential violation of this Consent Decree. The Parties shall work together in good faith to remedy as soon as practicable any violation of this Consent Decree.

43. If the BOE indicates that it does not have the intent or means necessary to comply with the terms of this Consent Decree, the United States shall have the right to seek such relief as may be necessary to enforce the terms of this Consent Decree.

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

45. This Decree represents the entire agreement between the parties. Any oral representations or agreements concerning the subject matter of this Decree are of no force or effect.

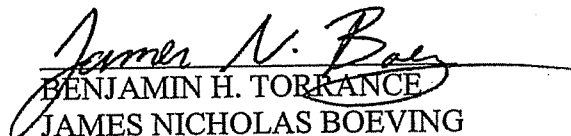
46. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary to effectuate the terms of this Consent Decree.

47. This Consent Decree may be executed in counterparts, each of which shall constitute an original, and all of which shall constitute one and the same agreement.

Dated: New York, New York
April 16, 2012

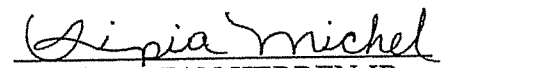
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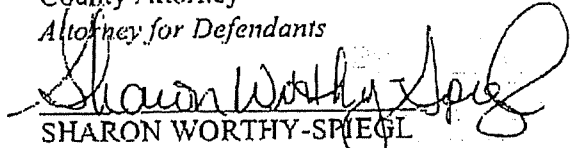
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Dated: Goshen, New York
April 18, 2012

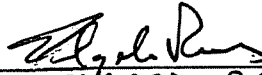
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The Clerk's Office is respectfully requested to close this case.

SO ORDERED:


HON. EDGARDO RAMOS
UNITED STATES DISTRICT JUDGE

Dated: White Plains, NY
April 19, 2012

