

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

APR 16 2008
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES OF AMERICA)

Plaintiff,)

v.)

THE SCHOOL BOARD OF)
OSCEOLA COUNTY, FLORIDA)
and CONNIE CLICK, Supervisor)
of Elections,)

Defendants.)

CIVIL ACTION NO.

08-CV-582-ORL-18DAB

COMPLAINT

The United States of America, Plaintiff herein, alleges:

1. The Attorney General files this action pursuant to Sections 2 and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 1973j(d).

2. The Court has jurisdiction of this action pursuant to 28 U.S.C. 1345 and 42 U.S.C. 1973j(f).

3. Defendant the School Board of Osceola County, Florida is a political subdivision of the State of Florida, organized pursuant to the laws of Florida.

4. Defendant Connie Click is the Supervisor of Elections of Osceola County. The Supervisor of Elections has responsibilities concerning the administration of voter registration and the conduct of school board elections in Osceola County. Defendant Click is a resident of Osceola County, Florida, and is sued in her official capacity.

5. The School Board of Osceola County, Florida (hereafter "School Board" or

“Board”) is the body established under the laws of the State of Florida that is responsible for the governance and administration of the School District of Osceola County, Florida. Jay Wheeler, Thomas Chalifoux, David Stone, Thomas Greer and John McKay currently serve as members of the School Board.

6. Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 (“Section 2”), prohibits the enforcement of any voting qualification or prerequisite to voting or any standard, practice or procedure that has either the purpose or the result of denying or abridging the right to vote on account of race, color, or membership in a language minority group.

7. According to the 2000 Census, Osceola County has a total population of 172,493 persons, of whom 102,792 (59.6%) are non-Hispanic white persons, 50,727 (29.4%) are Hispanic persons, and 11,075 (6.4%) are black persons; and a total voting-age population of 126,279 persons, of whom 79,150 (62.7%) are non-Hispanic white persons, 34,267 (27.1%) are Hispanic persons, and 7,392 (5.6%) are black persons. The boundaries of Osceola County and the Osceola County School District are coterminous.

8. There has been substantial and continuing growth in the Hispanic population. The 2006 American Community Survey of the Bureau of the Census for Osceola County reflects a total population of 244,045 persons, of whom 115,184 are non-Hispanic white persons (47.2%), 97,361 are Hispanic persons (39.9%), and 21,271 are black persons (8.7%). The total voting-age population is 182,237, of whom 90,169 are non-Hispanic white persons (49.5%), 68,663 are Hispanic persons (37.7%) and 17,032 are black persons (9.3%).

9. From 1997 through the most recent election in 2006, the five members of the School Board have been elected on an at-large basis from numbered positions to four-year, staggered terms. If no candidate receives a majority of the vote in the initial election, there is a run-off election between the top two candidates.

10. In 2006, the United States prevailed in a Section 2 vote dilution suit against Osceola County challenging the at-large system for electing its Board of County Commissioners. The court ruled that the use of the at large system for electing commissioners in Osceola County diluted Hispanic voting strength in violation of Section 2, and ordered elections to be held, beginning with a special election in 2007, under a remedial plan of five single-member districts. The districting plan approved by the federal district court included a district with a Hispanic citizen voting age population and Hispanic voter registration majority. See United States v. Osceola County, Florida, 475 F.Supp.2d 1220 (M.D. Fla. 2006); United States v. Osceola County, Florida, 474 F.Supp.2d 1254 (M.D. Fla. 2006).

11. Following the federal court's decision in United States v. Osceola County, the School Board voted to conduct a referendum election on whether to change to a single-member district method of election. On January 29, 2008, the voters of Osceola County approved a change in the method of electing members of the School Board from at-large to single-member districts.

12. The Hispanic population of the county is sufficiently numerous and geographically compact that a properly apportioned single-member district plan for electing

the School Board can be drawn in which Hispanic persons would constitute a majority of the citizen voting-age population in one out of five districts.

13. Under the School Board's existing district plan, the predominantly Hispanic area of Buenaventura Lakes is unnecessarily divided between two districts, and Hispanic persons do not constitute a majority of the citizen voting-age population or of the registered voters in any of the five districts.

14. Hispanic voters in Osceola County are politically cohesive. Racially polarized voting patterns prevail in elections for the School Board and in other elections held in the county, and non-Hispanic voters have voted sufficiently as a bloc to enable them usually to defeat Hispanic voters' preferred candidates, particularly when those Hispanic-preferred candidates are Hispanic.

15. No Hispanic candidate has ever been elected to the School Board.

16. Many Hispanic persons in Osceola County have suffered the effects of official discrimination, including a recent and pervasive history of discrimination and neglect in voting-related activities.

17. In conducting elections in Osceola County, Defendants have failed to ensure that all Hispanic citizens with limited-English proficiency have an opportunity to participate effectively in the voting process.

18. The effects of discrimination on Hispanic citizens in Osceola County, including their markedly lower socioeconomic conditions relative to white citizens, continue to hinder the ability of Hispanic citizens to participate effectively in the political process in

county elections.

19. Political campaigns in Osceola County have been characterized by racial appeals.

20. Implemented in the totality of circumstances described in paragraphs 7 to 20, the current single-member districts for electing members of the School Board will dilute Hispanic voting strength, resulting in Hispanic citizens of the county having less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice, in violation of Section 2.


21. Unless enjoined by order of this Court, Defendants will continue to conduct elections for the School Board using the current district boundaries, in violation of Section 2.

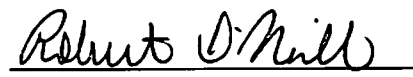
WHEREFORE, the United States of America prays that this Court enter an order:

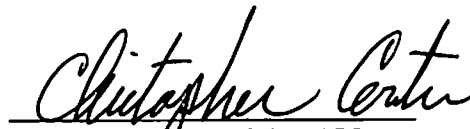
- (1) Declaring that the School Board's current district boundaries violate Section 2 of the Voting Rights Act, 42 U.S.C. 1973;
- (2) Enjoining the Defendants, their agents and successors in office, and all persons acting in concert with them, from administering, implementing, or conducting any future elections for the School Board under the current district boundaries; and
- (3) Ordering the Defendants to devise and schedule the prompt implementation of a single-member district plan for the School Board that complies with Section 2 of the Voting Rights Act, 42 U.S.C. 1973.


Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

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Civil Rights Division


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JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Timothy Mellett
Trial Attorney, Voting Section

DEFENDANTS

School Board of Osceola County, Florida
Connie Click, Supervisor of Elections

County of Residence of First Listed Defendant Osceola County, FL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Suzanne D'Agresta
Brown, Garganese, Weiss & D'Agresta

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1973, 1973j(d)

Brief description of cause:
Violation of Section 2 of the Voting Rights Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

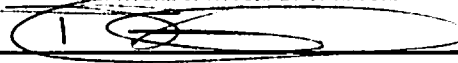
(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
04/16/2008

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____