

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION

THE UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION NO. 2:06cv4592
)
 THE CITY OF PHILADELPHIA;)
 MARGARET TARTAGLIONE, EDGAR A.)
 HOWARD, JOSEPH J. DUDA, in their)
 official capacities as Philadelphia City)
 Commissioners; and THE PHILADELPHIA) AMENDED COMPLAINT
 COUNTY BOARD OF ELECTIONS,)
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 Defendants.)
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Plaintiff, the United States of America, alleges:

1. The Attorney General of the United States hereby files this action to enforce the provisions of:
 - a) Sections 2, 3(a), 4(e), 203, and 208 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973a(a), 1973b(e), 1973aa-1a, and 1973aa-6, with respect to the conduct of elections in the City of Philadelphia;
 - b) Sections 301(a)(3), (4) and 302(b) of the Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. §§ 15481(a)(3), (4) and 15482(b), with respect to the conduct of elections for Federal office in the City of Philadelphia; and
 - c) Section 8(a)(4) of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg-6, with respect to the conduct of elections for Federal office in the City of Philadelphia.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 1973j(f), and 42 U.S.C. § 15511. The claim pursuant to Section 203 of the Voting Rights Act requires that the action be heard and determined by a court of three judges in accordance with the provisions of 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.
3. Venue for this action is proper in the United States District Court for the Eastern District of Pennsylvania, pursuant to 28 U.S.C. §§ 118 and 1391(b).

PARTIES

4. Plaintiff United States of America seeks declaratory and injunctive relief pursuant to Sections 12(d) and 204 of the Voting Rights Act, 42 U.S.C. §§ 1973j(d) and 1973aa-2, which authorize the Attorney General to bring this suit to enforce the Voting Rights Act; Section 401 of HAVA, 42 U.S.C. § 15511, which authorizes the Attorney General to bring this suit to enforce HAVA; Section 11(a) of the NVRA, 42 U.S.C. § 1973gg-9(a) which authorizes the Attorney General to bring this suit to enforce the NVRA; and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.
5. Defendant City of Philadelphia (“City” or “Philadelphia”) is a political and geographical subdivision of the Commonwealth of Pennsylvania, and is subject to the laws of the Commonwealth, the Voting Rights Act, HAVA, and the NVRA, as discussed below.
6. Defendants Philadelphia City Commissioners are vested with the statutory powers, duties, and responsibilities concerning the registration of voters and the conduct of Federal, state and local elections in the City. PHILADELPHIA CODE § 2-112. The

Philadelphia City Commissioners include Joseph J. Duda, Edgar A. Howard and Chairwoman Margaret M. Tartaglione, who are sued in their official capacities.

7. Defendant Philadelphia County Board of Elections consists of the Philadelphia City Commissioners when they serve in their capacity as the Philadelphia County Board of Elections. The Philadelphia County Board of Elections is generally responsible for the conduct of elections in Philadelphia and the training of election officers.

FIRST CAUSE OF ACTION

8. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 7 of this Complaint.
9. According to the 2000 Census, the City of Philadelphia had a total population of 1,517,550 persons, of whom 128,928 (8.5%) were Hispanic. By 2004, the Census estimates that Philadelphia's total population decreased by 103,305 (6.8%) to 1,414,245. The Hispanic community, however, grew by an estimated 11,546 (9%) to a total of 140,474, or approximately ten percent of Philadelphia's population.
10. The 2000 Census further indicates that the total citizen voting age population of Philadelphia was 1,071,785, of whom 70,980 (6.6%) were Hispanic. Among Philadelphia's Hispanic citizens of voting age, 25,660 (36.2%) are limited English proficient.
11. The City of Philadelphia is subject to the requirements of Section 203 of the Voting Rights Act ("Section 203") for the Spanish language, pursuant to the designation by the Director of the Census; this determination of the Census Bureau is final and non-reviewable. 42 U.S.C. § 1973aa-1a(b)(2), (b)(4). The City has been continuously

subject to the bilingual election requirements of Section 203 since September 18, 1992.

See 57 Fed. Reg. 43,213 (Sept. 18, 1992) and 67 Fed. Reg. 48,871 (July 26, 2002).

12. The Department of Justice has directly notified Philadelphia officials regarding the bilingual election requirements of the Voting Rights Act, including in letters dated July 26, 2002, and August 31, 2004.
13. Because the City of Philadelphia is subject to the requirements of Section 203, "any registration or voting notice, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots" that Defendants provide in English must also be furnished in Spanish. 42 U.S.C. § 1973aa-1a.
14. In conducting elections in Philadelphia, Defendants failed to provide in an effective manner election-related materials, information and/or assistance in Spanish to limited English proficient Hispanic voters as required by Section 203, including, but not limited to, the following:
 - a. Failing to recruit, appoint, train, and maintain an adequate pool of bilingual poll workers capable of providing the same election information and assistance in Spanish to limited English proficient Hispanic voters that it provides in English;
 - b. Failing to provide the same election-related materials and information in Spanish that it provides in English, such as information publicizing elections, or to provide an effective alternative method of disseminating such information so that limited English proficient Hispanic voters are assured an effective opportunity to be informed about election-related activities; and
 - c. Failing to translate accurately into Spanish election materials and instructions.

15. As a result of Defendants' practices, limited English proficient Hispanic voters have had difficulty understanding the election process and have been prevented from voting.
16. Defendants' failure to provide Spanish language materials, information and assistance, as described above, constitutes a violation of Section 203.
17. Unless enjoined by this Court, Defendants will continue to violate Section 203 by failing to provide limited English proficient Hispanic voters of the City of Philadelphia with the Spanish language materials, information, and assistance necessary for their effective participation in the political process.

SECOND CAUSE OF ACTION

18. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 17 of this Complaint.
19. Section 4(e) of the Voting Rights Act ("Section 4(e)") prohibits Defendants from "conditioning the right to vote . . . on the ability to read, write, understand, or interpret" the English language by persons educated in American-flag schools, including the Commonwealth of Puerto Rico, where the predominant classroom language is Spanish. See 42 U.S.C. § 1973b(e)(1).
20. The Puerto Rico Department of Education has promulgated regulations that specify that the language of classroom instruction will be Spanish, the vernacular of the Commonwealth of Puerto Rico.
21. According to the 2000 Census, 91,527 (71%) of Philadelphia's Hispanic population is of Puerto Rican descent. Almost half of that Puerto Rican population, 40,363 (44%), was born in Puerto Rico. Based on information and belief, a significant percentage of these

persons were educated in American-flag schools in the Commonwealth of Puerto Rico where the predominant classroom language was Spanish.

22. For the November 2004 general election, the City of Philadelphia established 250 polling places, which according to the 2000 Census, were located in Census tracts with 5 percent or more persons of Puerto Rican descent. The City of Philadelphia failed to provide a bilingual interpreter or Spanish-speaking poll worker in at least 100 of the 250 polling places during the November 2004 election.
23. For the November 2005 general election, the City of Philadelphia established 250 polling places, which according to the 2000 Census, were located in Census tracts with 5 percent or more persons of Puerto Rican descent. The City of Philadelphia failed to provide a bilingual interpreter or Spanish-speaking poll worker in at least 107 of the 250 polling places during the 2005 general election.
24. The City is aware of its obligation to ensure that its Puerto Rican citizens, who were educated in American-flag schools, receive bilingual language assistance. In Arroyo v. Tucker, 372 F. Supp. 764 (E.D. Pa. 1974), a United States district court considered a Section 4(e) claim raised by Philadelphia voters who were born in or extracted from Puerto Rico. In Arroyo, the Court ordered the City to prepare all written election materials in both English and Spanish, and to provide bilingual personnel at all polling places falling within a census tract containing five percent or more persons of Puerto Rican birth or parentage pursuant to the most recent census report. Arroyo, 372 F. Supp. at 768.

25. Notwithstanding these obligations, Defendants have continuously failed to provide adequate bilingual assistance and accurately translated bilingual election materials and information to citizens of Puerto Rican descent educated in American-flag schools in Puerto Rico in violation of Section 4(e).
26. Unless enjoined by this Court, Defendants will continue to violate Section 4(e) by failing to provide election materials, information, and assistance to limited English proficient persons educated in American Flag schools in the Commonwealth of Puerto Rico.

THIRD CAUSE OF ACTION

27. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 26 of this Complaint.
28. 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." 42 U.S.C. §1973aa-6.
29. In violation of Section 208, Defendants and their employees and agents failed to allow voters their assistors of choice by:
 - a) Prohibiting family members, friends, and other assistors of choice from providing assistance to limited English proficient Hispanic voters;
 - b) Requiring limited English proficient Hispanic voters to be assisted by poll workers who either did not speak Spanish or did not speak Spanish fluently; and

- c) Failing to instruct poll workers accurately and adequately on their duty to permit eligible voters to receive assistance from any person of their choice, other than their employers or union officials.
30. Defendants' failure to allow eligible voters to receive necessary assistance from any person of their choice, other than their employers or union officials, as described herein, is a violation of Section 208.
31. Unless enjoined by this Court, Defendants will continue to violate Section 208 by failing to provide eligible Philadelphia voters with the opportunity to receive assistance from persons of the voters' choice and by limiting the scope of assistance voters can receive from their chosen assistors.

FOURTH CAUSE OF ACTION

32. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 31 of this Complaint.
33. Section 2 of the Voting Rights Act ("Section 2") prohibits Defendants from applying or imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" which results in a denial or abridgment of the right to vote on account of race or color, or membership in a language minority group, including citizens of Spanish heritage. 42 U.S.C. § 1973.
34. In conducting elections in Philadelphia, Defendants have abridged the right of Hispanic citizens to vote, by:
- a. Treating Hispanic and limited English proficient Hispanic voters disrespectfully;

- b. Refusing to permit limited English proficient Hispanic voters to be assisted by an assistor of their choice;
 - c. Failing to prevent poll workers, poll watchers, and other persons inside the polling places from improperly influencing, coercing or changing, or attempting to improperly influence, coerce or change the ballot choices of Hispanic voters;
 - d. Failing to make available bilingual personnel to provide effective assistance and information required by limited English proficient Hispanic voters;
 - e. Failing to provide provisional ballots to limited English proficient Hispanic voters; and
 - f. Failing to prevent persons from blocking entrances to polling places.
35. Under the totality of the circumstances that exist in Philadelphia, Defendants' conduct has had the effect of denying Hispanic voters an equal opportunity to participate in the political process and to elect candidates of their choice on an equal basis with other citizens in violation of Section 2.
36. Unless enjoined by this Court, Defendants will continue to violate Section 2 by enforcing standards, practices, or procedures that deny Hispanic voters the opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

FIFTH CAUSE OF ACTION

37. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 36 of this Complaint.
38. On October 29, 2002, HAVA, 42 U.S.C. §§ 15301-15545, was signed into law by the President. Title III of HAVA (Sections 301 to 303) includes certain “uniform and nondiscriminatory election technology and administration requirements” which apply in elections for Federal office. 42 U.S.C. §§ 15481-15483.
39. The City conducted an election for Federal office on May 16, 2006, and November 7, 2006.
40. The City is next scheduled to conduct a Federal election in March 2008.
41. Each state and jurisdiction was required to comply with Section 301 of HAVA for Federal office by January 1, 2006. 42 U.S.C. § 15481.
42. Among other things, Section 301 of HAVA requires that voting systems used in an election for Federal office must provide for accessibility for voters with disabilities in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters, 42 U.S.C. § 15481(a)(3) (“Section 301(a)(3)”).
43. The City of Philadelphia utilizes a voting system which requires poll workers to connect an audio function in order for the voting system to be compliant with Section 301(a)(3) of HAVA. During the May 16, 2006 and November 7, 2006 elections, poll workers were unable or unwilling to attach the audio function or informed blind and disabled voters that the polling place did not have a disability accessible machine. In addition, poll

workers discouraged and pressured blind and disabled voters against using the disability accessible machine.

44. Without the audio function being made available to voters with disabilities such voters were not able to access the voting systems or vote privately and independently, as required by Sections 301(a)(3) of HAVA.

45. Unless enjoined by this Court, Defendants will continue to violate Section 301(a)(3) of HAVA by failing to provide voting systems which are accessible to persons with disabilities and provide alternative language accessibility.

SIXTH CAUSE OF ACTION

46. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 45 of this Complaint.

47. Among other things, Section 301(a)(4) of HAVA requires Defendants to “provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965,” 42 U.S.C. § 15481(a)(4) (“Section 301(a)(4)”).

48. Section 301(a)(4) requires, among other things, that any signage or information posted to comply with HAVA comply as well with the requirements of Section 203.

49. During the May 16, 2006, primary and November 7, 2006, general election, Defendants failed to cause voting information required by Section 302(b) of HAVA to be posted in polling places in Spanish.

50. Defendants’ failure to provide Spanish language signage and information, as described above, constitutes a violation of Section 301(a)(4).

51. Unless enjoined by this Court, Defendants will continue to violate Section 301(a)(4) of HAVA by failing to ensure that required voting information is posted in all polling places in Spanish during Federal elections.

SEVENTH CAUSE OF ACTION

52. Plaintiff restates and incorporates herein the allegations in Paragraphs 1 through 51 of this Complaint.
53. Section 8(a)(4) of the NVRA requires that “[i]n the administration of voter registration for elections for Federal office, each State shall . . . conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of – (A) the death of the registrant; or (B) a change in address of the registrant.” 42 U.S.C. § 1973gg-6(a)(4).
54. The Commonwealth of Pennsylvania delegated many of these responsibilities to the Philadelphia City Commissioners. 25 PA. CONS. STAT. ANN. § 1901; PHILADELPHIA CODE § 2-112. The City’s program not only must identify registrants who have died, 25 PA. CONS. STAT. ANN. §§ 1505, 1901, it must take reasonable steps to identify registrants who have changed their address, 25 PA. CONS. STAT. ANN. § 1901(b).
55. Despite the list maintenance requirements of Federal and state law, the City fails to conduct a meaningful general program of voter registration list maintenance in elections for Federal office, in violation of Section 8(a)(4) of the NVRA.
56. The City does not conduct a program that makes a reasonable effort to remove the names of ineligible voters, as the City’s voter registration list used in elections for Federal office

contains numerous ineligible voters, and as information about such individuals has been provided to the City.

57. Unless enjoined by this Court, Defendants will continue to violate Section 8(a)(4) of the NVRA by failing to conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that this Court:

1. With respect to Plaintiff's First Cause of Action:
 - a. Declare that Defendants have failed to provide Spanish language election information and assistance necessary to those who require it in Spanish in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
 - b. Enjoin Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing to provide Spanish language election information and assistance to persons with limited English proficiency as required by Section 203, 42 U.S.C. § 19733aa-1a; and
 - c. Require Defendants to devise, publicize and implement a remedial plan to ensure that Hispanic citizens are able to participate in all phases of the electoral process as required by Section 203, 42 U.S.C. § 19733aa-1a.
2. With respect to Plaintiff's Second Cause of Action:
 - a. Declare that Defendants violated Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e) by failing to provide election material, information and assistance

necessary for Spanish language minority citizens educated in Puerto Rico and currently residing in the City to participate effectively in the political process;

- b. Enjoin Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing to provide election material, information, and assistance to Spanish language minority citizens educated in Puerto Rico and currently residing in the City;
 - c. Require Defendants to devise, publicize, and implement a remedial plan to ensure that Spanish language minority citizens educated in Puerto Rico and currently residing in the City are provided election materials, information, and assistance in compliance with Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e).
3. With respect to Plaintiff's Third Cause of Action:
- a. Declare that Defendants' practices set forth above violate Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;
 - b. Enjoin Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from engaging in any act or practice that denies the rights secured by Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;
 - c. Require Defendants to develop and implement a remedial plan to ensure that Philadelphia voters are permitted assistance from persons of their choice when they cast their ballots, in compliance with Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;
4. With respect to Plaintiff's Fourth Cause of Action:

- a. Declare that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, because their actions have resulted in the denial or abridgement of the rights of Hispanic and limited proficient Hispanic voters;
 - b. Enjoin Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from implementing practices and procedures that deny or abridge the rights of Hispanic and limited proficient Hispanic citizens in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973; and
 - c. Require Defendants to devise and implement a remedial program that provides Philadelphia's Hispanic and limited proficient Hispanic citizens the opportunity to participate fully in the political process consistent with Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.
5. With respect to Plaintiff's Fifth Cause of Action:
- a. Declare that Defendants are not in compliance with Section 301(a)(3) of HAVA, 42 U.S.C. §§ 15481(a)(3), with respect to implementation of HAVA's voting system standards for the voters with disabilities and voters with alternative language needs in elections for Federal office;
 - b. Enjoin Defendants, their employees, agents, and successors in office, and all persons acting in concert with any of them, from failing or refusing to comply promptly with the requirements of Section 301(a)(3) of HAVA;
 - c. Require Defendants, their employees, agents and successors in office and all persons acting in concert with any of them, to develop promptly a plan to remedy the demonstrated violations of Section 301(a)(3) of HAVA.

6. With respect to Plaintiff's Sixth Cause of Action:

- a. Declare that Defendants are not in compliance with Section 301(a)(4) of HAVA, 42 U.S.C. §§ 15481(a)(4), with respect to implementation of HAVA's voting system standards for the voters with disabilities and voters with alternative language needs in elections for Federal office;
- b. Enjoin Defendants, their employees, agents, and successors in office, and all persons acting in concert with any of them, from failing or refusing to comply promptly with the requirements of Section 301(a)(4) of HAVA;
- c. Require Defendants, their employees, agents and successors in office and all persons acting in concert with any of them, to develop promptly a plan to remedy the demonstrated violations of Sections 301(a)(4) of HAVA.

7. With respect to Plaintiff's Seventh Cause of Action:

- a. Declare that Defendants are in violation of Section 8(a)(4) of the NVRA, 42 U.S.C. § 1973gg-6, by failing to conduct an adequate general program of list maintenance that makes a reasonable effort to remove the names of ineligible voters from the voter registration list in elections for Federal office according to the requirements of Section 8(a)(4) of the NVRA.
- b. Enjoin Defendants, their employees, agents, and successors in office, and all persons acting in concert with any of them, from failing or refusing to comply with the voter registration list maintenance requirements of Section 8(a)(4) of the NVRA.

c. Require Defendants, their employees, agents, and successors in office and all persons acting in concert with any of them, to develop promptly a plan to remedy the demonstrated violations of Section 8(a)(4) of the NVRA.

8. Plaintiff further requests that this Court:

- a. Authorize the appointment of Federal observers for elections held in Philadelphia pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), until December 31, 2009;
- b. Award Plaintiff the costs and disbursements associated with the filing and maintenance of this action; and
- c. Award such other equitable and further relief as the Court deems just and proper.

Dated: April 26, 2007

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