

MEMORANDUM OF UNDERSTANDING

The United States of America and the Commonwealth of Massachusetts enter into this Memorandum of Understanding ("MOU") in order to ensure that Puerto Rican voters in the City of Worcester, Massachusetts, covered by Section 4(e) of the Voting Rights Act, as amended, 42 U.S.C. § 1973b(e), receive bilingual election materials. The parties recognize the specific circumstances within the City of Worcester set forth herein which were recently presented to the Commonwealth of Massachusetts and which prompt this agreement.

Section 4(e) of the Voting Rights Act prohibits denying the right to vote, because of an inability to read, write, understand, or interpret English, to persons educated in American-flag schools in which the predominant classroom language was other than English. Id. This provision has been interpreted by courts to require election materials, including ballots, in Spanish for voters who are of Puerto Rican ancestry or birth, who have limited -English proficiency and who have been educated in a Puerto Rican school in which the predominant classroom language was Spanish. See, e.g., Arroyo v. Tucker, 372 F. Supp. 764, 766-67 (E.D. Pa. 1974); Torres v. Sachs, 381 F. Supp. 309, 311-12 (S.D.N.Y. 1974); United States v. Berks County, 277 F. Supp. 2d 570, 579 (E.D. Pa. 2003).

According to the 2000 Census, the City of Worcester had a total population of 172,648 in 2000, of whom 17,091 (9.9%) were persons of Puerto Rican descent and of whom 9,197 (5.3%) were born in Puerto Rico. The City's citizen voting age population in 2000 was 118,127, of whom 10,566 (8.9%) were Puerto Rican. Of the Puerto Ricans of voting age in Worcester, 4,759 (45.07%) understood English less than very well. According to the Census Bureau's American Community Survey estimates, as of 2006, the numbers and percent of Puerto Ricans, and of Hispanics generally, in Worcester, have been increasing faster than any other group. Census data and trends indicate that Worcester is very likely to become subject to § 203 of the Voting Rights Act for the Spanish language following the 2010 Census.

During municipal elections conducted in the City of Worcester, the City itself is responsible for printing ballots and sample ballots. During state and federal elections conducted in the City of Worcester, the Commonwealth of Massachusetts is responsible for printing ballots; sample ballots; voter instructions; and abstracts of the laws imposing penalties upon voters. Mass. Gen. Laws ch. 54 §§ 40 & 48.

The City of Worcester recently sought a home-rule petition which authorizes the City to print and distribute election materials, including ballots and sample ballots, in Spanish for its municipal elections. The home-rule petition was passed on May 1, 2008 as Chapter 99 of the Acts of 2008.

Throughout the past year, the Department of Justice has interviewed Worcester city officials, members of community organizations in Worcester that provide translation

services for limited-English proficient voters, current and former poll workers in Worcester, many voters in Worcester who were educated in a Puerto Rican school in which the predominant classroom language was Spanish, and family members and friends who have provided translation assistance to such voters. In addition, the Department monitored the February 5, 2008, presidential primary election in the City of Worcester to observe the voting experiences of such voters. On August 20, 2008, the Department met with the Commonwealth and shared information regarding its monitoring of this election and the interviews it conducted. On the basis of this information and the other specific circumstances within the City of Worcester, the Commonwealth has agreed to ensure that voters in the City of Worcester who are limited-English proficient and were educated in an American-flag school in Puerto Rico in which the predominant classroom language was Spanish receive bilingual election materials in state and federal elections during the pendency of this agreement.

So as to ensure that Puerto Rican voters in the City of Worcester covered by Section 4(e) receive bilingual election materials the parties agree to enter into this MOU.

NOW THEREFORE, for full, fair, and adequate consideration given and received, it is hereby agreed as follows:

1. Whenever the Commonwealth of Massachusetts, its employees, agents, successors in office, or persons acting in concert with it, provide the City of Worcester with election-related materials distributed to or provided for the use of the electorate generally, such as ballots, sample ballots, or voting instructions, the Commonwealth shall provide such information bilingually, in English and Spanish.
2. The Commonwealth shall consult with trained translators when creating the Spanish translations required by Paragraph 1.
3. Throughout the duration of this MOU, the Commonwealth shall provide copies of any records relating to the printing of bilingual ballots and other election materials for the City of Worcester to the United States within seven days of the United States' request. Such records shall include copies of the ballots, sample ballots and any other materials prepared and distributed to the electorate generally.
4. The terms of this MOU may be adjusted or modified at any time upon joint written agreement of the parties.
5. This MOU is final and binding between the parties and their successors in office. It shall remain in effect through (and, unless previously amended, shall expire on) December 31, 2011. In any event, it shall expire if and when the Director of the Census determines that Worcester is covered by § 203 of the Voting Rights Act for the Spanish language.

Agreed to this 22nd day of September, 2008.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES:



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FOR THE COMMONWEALTH OF
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