

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION NO.
)	8:12-cv-84
v.)	
)	
COLFAX COUNTY, NEBRASKA; the)	
COLFAX COUNTY CLERK and ELECTION)	<u>COMPLAINT</u>
COMMISSIONER, in her official capacity; and)	
the COLFAX COUNTY BOARD OF)	THREE-JUDGE COURT
COMMISSIONERS, in their official capacities,)	REQUESTED
)	
Defendants.)	

The United States of America, Plaintiff herein, alleges:

1. This action is an action brought to enforce the minority language requirements of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a (Section 203), in order to secure voting rights guaranteed by the Fourteenth and Fifteenth Amendments.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345, 42 U.S.C. § 1973aa-2, and 28 U.S.C. §§ 2201 and 2202.

3. Venue is proper as the events relevant to this action occurred in Colfax County, Nebraska, which is located in the United States District Court for the District of Nebraska. 28 U.S.C. §§ 107 and 1391.

THREE-JUDGE COURT

4. In accordance with 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284, the claim under Section 203 must be heard and determined by a court of three judges.

PARTIES

5. The Attorney General of the United States brings this action on behalf of Plaintiff United States of America, pursuant to the Voting Rights Act, 42 U.S.C. §§ 1973aa-1a and 1973aa-2, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. Defendant Colfax County (“the County”) is a political and geographical subdivision of the State of Nebraska and exists under the laws of that state.

7. Defendant Colfax County Clerk and Election Commissioner is responsible for the administration of voting and elections in Colfax County, Neb. Rev. Stat. §§ 32-215, 218 (2010), and is sued in her official capacity.

8. Defendants Colfax County Board of Commissioners are the primary budgetary authority for Colfax County and for the Colfax County Clerk and Election Commissioner. Neb. Rev. St. §§ 23-106, 23-113.03 and 23-151 (2010). Defendants Colfax County Board of Commissioners are sued in their official capacities.

ALLEGATIONS

9. According to the 2000 Census, Colfax County had a total population of 10,441 persons, of whom 2,732 (26%) were Hispanic. The County had a total voting age population of 7,424 persons, of whom 1,690 (22.8%) were Hispanic. Of the total Hispanic voting age population, the Census Bureau estimated that 570 (33.3%) persons were citizens, of whom 385 (68%) were limited-English proficient (“LEP”)

10. According to the 2000 Census, the total population of the City of Schuyler,

Nebraska, was 5,371 persons, of whom 2,423 (45.1%) were Hispanic. The total voting age population was 3,777 persons, of whom 1,493 (39.5%) were Hispanic. Of the Hispanic total voting age population, the Census estimated that 524 persons (34.2%) were citizens.

11. Since the 2000 Census, the Hispanic population in both the County and in Schuyler has grown significantly.

12. According to the 2005-2009 American Community Survey (“ACS”) five-year estimates, the total population of Schuyler was 5,205 persons, of whom 3,470 (66.7%) were Hispanic. The total voting age population was 3,225 persons, of whom 1,790 (55.5%) were Hispanic. The total citizen voting age population was 1,945 persons, of whom 505 (25.9%) were Hispanic.

13. According to the 2010 Census, the total population of Colfax County was 10,515 persons, of whom 4,315 (41%) were Hispanic. The total voting age population of the County was 7,452 persons, of whom 2,499 (33.5%) were Hispanic.

14. According to the 2010 Census, the total population of Schuyler was 6,211 persons, of whom 4,060 (65.4%) were Hispanic. The total voting age population of Schuyler was 4,113 persons, of whom 2,359 (57.4%) were Hispanic.

15. Defendant Colfax County has been covered by the requirements of Section 203 with respect to the Spanish language since 2002. 42 U.S.C. § 1973aa-1a; 67 Fed. Reg. 48871 (July 26, 2002); 76 Fed. Reg. 63,302 (Oct. 13, 2011). The determination that Colfax County is covered by Section 203 for the Spanish language is not subject to judicial review. 42 U.S.C. § 1973aa-1a(b)(4).

16. Because Colfax County is subject to the language minority requirements of Section 203, “any registration or voting notices, forms, instructions, assistance or other materials or

information relating to the electoral process, including ballots,” must be provided in the Spanish language. 42 U.S.C. § 1973aa-1a.

17. The Department of Justice has notified Colfax County election officials of their obligations and responsibilities under the language minority requirements of the Voting Rights Act on numerous occasions.

CAUSE OF ACTION

18. The United States hereby alleges and incorporates by reference paragraphs 9 through 17 above.

19. Defendants have failed to comply with Section 203 of the Voting Rights Act by:

a) Failing to provide all election-related information, materials and assistance in the Spanish language;

b) Failing to translate and disseminate election-related information and materials, including but not limited to information publicizing elections and procedures, in the Spanish language, in a manner that ensures limited-English proficient Spanish-speaking voters the opportunity to be informed about election-related activities; and

c) Failing to recruit, hire, train, and maintain at least one bilingual, fluent Spanish-speaking poll official capable of providing necessary and effective Spanish language assistance to limited-English proficient Spanish-speaking voters at each polling site in the City of Schuyler on Election Day.

20. Defendants’ failure to provide limited-English proficient Spanish-speaking voters of Colfax County with Spanish language election materials, information and assistance, as described above, constitutes a violation of Section 203.

21. Unless enjoined by this Court, Defendants will continue to violate Section 203 by

failing to provide limited-English proficient Spanish-speaking voters of Colfax County with Spanish language election materials, information and assistance necessary for their effective participation in the political process.

PRAYER FOR RELIEF

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

- (1) Declaring that Defendants have failed to provide, in the Spanish language, election materials, information and assistance necessary for the political participation of limited-English proficient Spanish-speaking voters, in violation of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (2) Enjoining Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from failing to provide, in an effective manner, election materials, information and assistance in the Spanish language to limited-English proficient Spanish-speaking voters as required by Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a;
- (3) Requiring Defendants, their employees, agents, and successors in office and all persons acting in concert with any of them, to promptly develop and implement a remedial program to ensure that limited-English proficient Spanish-speaking voters receive election materials, information, and assistance to effectively participate in all phases of the electoral process, as required by Sections 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a; and
- (4) Authorizing the appointment of federal observers to observe elections held in Colfax County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a).

The United States further prays for such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.

Dated, this 27th day of February, 2012

PLAINTIFF,
UNITED STATES OF AMERICA,

By: /s/ SaraBeth Donovan
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