

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON
YAKIMA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

YAKIMA COUNTY; CORKY MATTINGLY,

Yakima County Auditor;

JIM LEWIS, RONALD GAMACHE,

and JESSE PALACIOS,

County Commissioners.

Defendants.

) CV-04-3072-LRS

) CIVIL NO.

) CONSENT DECREE

I. Background

A. The United States of America initiated this action pursuant to Section

203 of the Voting Rights Act of 1965 (“Section 203”), as amended, 42 U.S.C. §

1973aa-1a, 1973aa-2, and 28 U.S.C. § 2201, alleging that election practices and

procedures used by Yakima County, Washington, for Spanish-speaking citizens

violate Section 203. The claim under Section 203 must be heard and determined

by a court of three judges pursuant to 42 U.S.C. § 1973aa-2 and 28 U.S.C. § 2284.

1 B. Yakima County's coverage under Section 203 is based on a
2 determination by the Director of the Census that more than five (5) percent of the
3 citizens of voting age in the County are members of a single language minority
4 group (Spanish heritage) who do not speak or understand English well enough to
5 participate effectively in the English-language election process (hereinafter
6 referred to as Spanish-speaking citizens or voters), and that these persons have an
7 illiteracy rate higher than the national illiteracy rate, 42 U.S.C. 1973aa-1(a) .

8 C. In 1976 Yakima County was designated by the Director of the Census as
9 a jurisdiction subject to the requirements of Section 203 for persons of Spanish
10 heritage. 41 Fed. Reg. 29,998 (July 20, 1976). In 2002, Yakima County was again
11 so designated by the Director of the Census. 67 Fed. Reg. 48,871 (July 26, 2002).

12 D. The United States alleges in its complaint that Yakima County is not
13 fully compliant with the requirements of Section 203 for Spanish-speaking
14 citizens residing in Yakima County with respect to the need to:

- 15 1. Provide complete and accurate Spanish translations of all materials
16 and information produced in English and provided to the public,
17 including but not limited to, ballots, information about voter
18 registration, candidate qualification procedures, voting by mail or
19 absentee, voting at the polls, and voting-related information on the

Yakima County website;

2. Provide effective Spanish language assistance at County offices and polling places regarding election-related issues;
 3. Publish Spanish language materials in a timely fashion;
 4. Make Spanish language materials, information, and assistance available to Spanish-speaking voters; and
 5. Provide Spanish materials to those voters who need them or take steps to notify such Spanish-speaking voters that Spanish materials are available.

E. The named defendant parties (hereinafter “Yakima County”) do not

admit to the allegations of the complaint. Yakima County, however, does share

with the United States a mutual interest to implement procedures that will protect

the rights of Spanish-speaking voters to participate fully in the electoral process.

compliance with the Voting Rights Act and the United States Constitution, and

therefore, Yakima County agrees to implement fully the terms of this consent

decree for enforcement of all applicable laws. Accordingly, the United States

Yakima County consent to the entry of this Order, as indicated by the signatures of

counsel at the end of this document. The parties waive a hearing and entry of

findings of fact and conclusions of law on all issues involved in this matter.

1 Accordingly, it is hereby **ORDERED, ADJUDGED, AND DECREED**

2 that:

3 Yakima County, its agents, employees, contractors, successors and all other
4 persons representing the interests of Yakima County are hereby **ENJOINED** from
5 violating Section 203 by failing to provide in Spanish any “registration or voting
6 notices, forms, instructions, assistance or other materials or information” that they
7 provide in English. 42 U.S.C. § 1973aa-1a(c). More specifically, Yakima County
8 shall be required to do the following:

9 II. Translation of election-related materials

10 A. All “registration or voting notices, forms, instructions, assistance, or
11 other materials or information relating to the electoral process, including ballots,”
12 42 U.S.C. 1973aa-1a(c), provided by Yakima County shall also be provided by
13 Yakima County in the Spanish language. Yakima County shall ensure that both
14 English and Spanish language election information, materials, and announcements
15 provided by Yakima County are made equally available.

16 B. Yakima County shall translate into Spanish all election-related
17 documents and information it provides in English. Such translation shall begin as
18 soon as the English text is known and shall be completed so as to allow
19 distribution along with the English text. To ensure the quality of translations, the

1 County shall employ trained translators who are familiar with Spanish language
2 election terminology to produce clear and accurate written translations. The
3 County shall develop and maintain a glossary of Spanish election terminology
4 using Spanish terms understandable to local Latino citizens in concert with
5 bilingual members of local Latino communities.

6 C. All official ballots, including absentee ballots, shall be printed
7 bilingually in both English and Spanish. Any new voting system adopted by the
8 County shall offer bilingual ballots or a readily apparent option of a Spanish
9 ballot, and any audible version of the ballot on such machines shall be available in
10 English and Spanish.

11 III. Dissemination of Spanish language information

12 A. All voter registration and election notices, forms, instructions, and other
13 materials available to voters in English shall also be printed in Spanish and shall
14 be displayed or available in the County Auditor's Office, each polling place, and
15 any other location where the County posts election-related materials on the same
16 basis as English language materials and information.

17 B. Yakima County shall ensure that all Spanish- and English-language
18 election-related information, materials, and announcements are made equally
19 available. Spanish-language information shall be distributed through newspapers,

1 radio and other media that exclusively or regularly publish or broadcast
2 information in Spanish. Dissemination of these announcements need not be
3 identical in all respects to dissemination of English-language announcements, but
4 shall be in the form, frequency, and media best calculated to achieve notice and
5 understanding equal to that provided to the English-speaking population.

6 C. Yakima County shall adopt a checklist identifying each Spanish-
7 language and bilingual material that the County makes available to the public at
8 each polling place. The checklist shall include, for each item, an attestation that
9 the poll workers at the polling place posted or made available to voters such
10 Spanish-language or bilingual document, or solicit a detailed written explanation
11 of why individual items were not posted or available. The election inspector for
12 each polling place must complete and sign this document before receiving
13 payment for work in the election, subject to applicable state and federal law.
14 Yakima County shall maintain a record of each failure to complete and sign the
15 checklist.

16 IV. Spanish Language Assistance

17 A. Trained bilingual (English/Spanish) election personnel shall be available
18 to answer voting related questions by telephone without cost during normal
19 business hours and while the polls are open on election days.

1 B. Yakima County shall recruit, hire, and assign sufficient bilingual
2 (Spanish/English) poll workers, who are able to understand, speak, read, and write
3 Spanish fluently, to provide assistance to Spanish-speaking voters at the polls on
4 election days. To assist in the recruitment of bilingual poll workers, the County
5 shall survey its employees to identify personnel who speak Spanish and, to the
6 extent such employees can be made available to provide assistance, allow and
7 encourage such employees to serve at the polls on election day or be available "on
8 call" to address questions or problems that may arise.

9 C. As part of its obligation to ensure that entities on whose behalf the
10 County conducts elections are fully compliant with Section 203 in their elections,
11 the County shall request that each entity for which it conducts elections perform
12 similar surveys of its employees and shall request from such entities, and maintain
13 copies of, all election-related materials and information created or disseminated by
14 such entities for each election. In addition, the County shall request that each
15 school district or other educational entity for which the County conducts elections
16 implement a program that allows and encourages selected bilingual students (as
17 allowed by state law and as part of an educational program devised by such
18 district) to serve as poll workers on election day for all County elections,
19 including election days that fall on school days, with such students receiving

1 academic credit appropriate to their service as well as all pay and benefits of poll
2 officials

3 D. The County shall invite eligible members of the Advisory Group,
4 discussed below, to serve as paid poll workers and to encourage other bilingual
5 voters to do so. The County shall publicize to the Spanish speaking community
6 the option of absentee voting to the same extent it does so for English-speaking
7 voters.

8 E. Bilingual assistance shall be provided in polling places in accordance
9 with the following:

10 (1) In polling places where the number of Spanish surnamed
11 registered voters is 150 to 299, there shall be at least one poll worker
12 bilingual in Spanish and English.

13 (2) In polling places where the number of Spanish surnamed
14 registered voters is 300 to 599, there shall be at least two poll workers
15 bilingual in Spanish and English.

16 (3) In polling places where the number of Spanish surnamed
17 registered voters is 600 to 999, there shall be at least three poll
18 workers bilingual in Spanish and English.

19 (4) In polling places where the number of Spanish surnamed

1 registered voters is over 1,000, there shall be at least four poll
2 workers bilingual in Spanish and English.

3 (5) When assigning poll workers bilingual in Spanish and English to
4 election boards at various polling places, assignment should be done
5 in a manner that there will be at least one bilingual poll worker on
6 each election board, whenever feasible.

7 (6) The parties may agree to adjust the standards in this section in
8 light of information that the actual language need in a particular
9 polling place is lesser or greater than that set forth above.

10 F. Yakima County shall make available and train in Spanish language
11 election terminology sufficient bilingual personnel who shall be on call throughout
12 election day to provide language assistance to Spanish-speaking voters in person
13 at any polling place in which additional language assistance is needed or where no
14 bilingual poll worker is available. Such on-call staff shall be stationed in
15 appropriate areas of the County, including in the City of Yakima and locations in
16 the lower Yakima Valley, so as to minimize any delay for voters while the staff
17 member travels to the polling place.

18 G. At each training session prior to an election, in addition to any required
19 state or County training, the County shall train all poll workers and other election

1 personnel present at the polls on the requirements of Section 203, including
2 making Spanish language assistance and materials available to voters and being
3 respectful and courteous to all voters regardless of race, color, language abilities,
4 or national origin. In addition to the general training for poll workers and
5 interpreters, the County shall train all bilingual poll workers on Spanish language
6 election terminology and how to interpret into Spanish the ballot(s), voting
7 instructions, and other election-related issues. The County shall maintain a record
8 of which poll workers attend training sessions, including the time, location, and
9 training personnel involved.

10 H. Yakima County shall post signs prominently in both English and
11 Spanish at sites where voting occurs stating that Spanish language assistance is
12 available. Bilingual poll workers shall be identified as such by badges. At sites
13 without bilingual poll workers, signs in both English and Spanish shall be posted
14 that explain how voters can obtain Spanish language assistance.

15 I. Upon receipt of complaints by voters, whether oral or written, Yakima
16 County shall investigate expeditiously any allegations of poll worker hostility
17 toward Spanish-speaking and/or Latino voters in any election. Yakima County
18 shall report the results of each investigation to the United States. Where there is
19 credible evidence that a poll worker(s) have engaged in inappropriate treatment of

1 Spanish-speaking and/or Latino voters, Yakima County shall remove the poll
2 worker(s).

3 V. Program Coordinator

4 A. The County shall employ, on a full time basis, an individual to
5 coordinate the County's Bilingual Election Program ("Program Coordinator") for
6 all elections within the County. The County shall provide that individual with
7 transportation and other support sufficient to meet the goals of the Program. The
8 Program Coordinator shall be able to understand, speak, write, and read fluently
9 both Spanish and English.

10 B. The Program Coordinator shall work under the supervision of the
11 Yakima County Auditor to implement a bilingual election program. The Program
12 Coordinator's responsibilities shall include coordination of translation of ballots
13 and other election information; development of an election glossary to ensure
14 uniform use of election terminology in Spanish; development and oversight of
15 publicity, including selection of appropriate Spanish-language media for notices
16 and announcements in Spanish and English-language print media that specifically
17 serves Latino communities for announcements in English; recruitment of bilingual
18 poll workers and interpreters, including assessment of their Spanish language
19 proficiency; devising specific steps to provide election information to the Spanish-

1 speaking community; sending staff to make presentations and answer questions at
2 events and meetings sponsored by Latino community organizations; and managing
3 other aspects of the Program.

4 VI. Advisory Group:

5 A. The Program Coordinator shall establish and chair an Advisory Group to
6 assist and inform the Bilingual Election Program and shall invite participation
7 from all organizations listed in Attachment A, as well as other individuals and
8 organizations that work with or serve the Spanish-speaking and Latino
9 communities in Yakima County. Such Advisory Group shall be open to all
10 interested persons.

11 B. The Advisory Group shall meet at least once a month in 2004, at least
12 every two months during 2005, and as the group determines is necessary in 2006.
13 In these meetings, Yakima County shall solicit information on how most
14 effectively to provide election materials, information, and assistance to Spanish-
15 speaking voters and how to publicize the County's Spanish language election
16 program. The Program Coordinator shall provide notice of all planned meetings
17 to each member, including the date, time, location, and meeting agenda at least 14
18 days in advance, although members of the Advisory Group may agree to waive or
19 shorten this time period as necessary.

1 C. Within five days after each meeting, the Program Coordinator shall
2 provide a written summary of the discussion and any decisions reached at the
3 meeting to all members and to the County Auditor. If the County Auditor decides
4 not to implement an Advisory Group suggestion or a consensus cannot be reached
5 respecting such suggestion, the Auditor shall provide to the group through the
6 Program Coordinator and maintain on file a written statement of the reasons for
7 rejecting such suggestion.

8 D. The County shall transmit to all interested members of the advisory
9 group copies, in English and Spanish, of all election information, announcements,
10 and notices that are provided or made available to the electorate and general public
11 and request that they share such information with their members.

12 VII. Evaluation of the plan

13 The parties recognize that regular and ongoing reassessment may be
14 necessary in order to provide the most effective and efficient Spanish language
15 program. Yakima County shall evaluate the Bilingual Election Program after each
16 election cycle (e.g., following 2004 elections) to determine which aspects of the
17 Bilingual Election Program are functioning well; whether any aspects need
18 improvement; and how to make needed improvements. The program may be
19 adjusted at any time upon written agreement of the parties.

1 VIII. Federal Examiners and Observers:

2 A. To monitor compliance with this Decree, the appointment of federal
3 examiners is authorized for Yakima County pursuant to Section 3(a) of the Voting
4 Rights Act, 42 U.S.C. 1973a (a), through December 31, 2006.

5 B. Yakima County acknowledges the authority of federal observers to
6 observe all aspects of voting conducted in the polls on election day, including the
7 observers' authority to view County personnel providing assistance to voters
8 during voting, except where the voter objects.

9 IX. Retention of Documents and Reporting Requirements

10 A. During the duration of this decree, the County shall make and maintain
11 written records of all actions taken pursuant to this Consent Decree. Such
12 documents, lists, and records shall be made available, upon reasonable notice, to
13 the United States for inspection and copying.

14 B. During the duration of this decree, at least ten (10) days before each
15 County-administered election held in the County, Yakima County shall provide to
16 counsel for the United States, the name, address, and precinct designation of each
17 polling place; the name and title of each poll worker appointed and assigned to
18 serve at each polling place; a designation of whether each poll worker is bilingual
19 in English and Spanish; and an electronic copy of the final, official voter

1 registration list to be used in each such election. Within thirty (30) days after each
2 election, Yakima County shall provide to counsel for the United States any
3 updated report regarding changes in these items as well as information about all
4 complaints the County received at the election regarding language or assistance
5 issues and the voters' registration list used in the election.

6 X. Duty to Defend Consent Decree

7 The parties to this Consent Decree shall employ their best efforts to defend
8 this Consent Decree against any legal challenge.

9 XI. Jurisdiction

10 The Court shall retain jurisdiction of this case to enter further relief or such
11 other orders as may be necessary for the effectuation of the terms of this
12 agreement and to ensure compliance with Section 203.

13 XII. Termination of Consent Decree

14 This agreement is final and binding between the parties and their successors
15 in office regarding the claims raised in this action. This agreement shall remain in
16 effect through December 31, 2006, and the United States may, within 90 days of
17

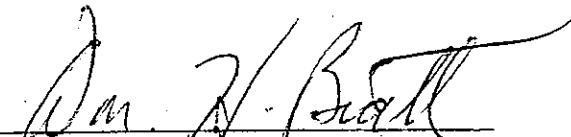
18

19

1 that date, move to extend the decree for good cause shown, in the event of a
2 violation of any provision contained herein by the County.

3 AGREED AND CONSENTED TO:

4 For Plaintiff:
5 UNITED STATES OF AMERICA

6 
7 James A. McDevitt, United States Attorney
8 William A. Beatty, Asst. United States
9 Attorney and Chief, Civil Division
10 Eastern District of Washington
11 920 West Riverside Avenue # 300
12 Spokane, WA 99201-1494

For Defendants:

6 
7 Terry Austin, Esq.
8 County Counsel, Yakima County
9 County Court House, Room 329
10 128 North Second Street
11 Yakima, Washington 98901

12 
13 R. Alexander Acosta
14 Assistant Attorney General
15 Civil Rights Division

16 
17 Joseph D. Rich, Chief
18 John Tanner, Special Litigation Counsel
19 Bruce I. Gear
20 Ana Henderson, Attorneys
21 Voting Section, NWB
22 U.S. Department of Justice
23 Civil Rights Division
24 950 Pennsylvania Ave., N.W.
25 Washington, D.C. 20530

1 JUDGMENT AND ORDER

2 This three-judge Court, having been properly empaneled under 28 U.S.C. §
3 2284 to consider the United States' claim under Section 203 of the Voting Rights
4 Act of 1965 (as amended), 42 U.S.C. § 1973aa-1a (1992), and having determined
5 that it has jurisdiction over this claim, has considered the terms of the Consent
6 Decree, hereby enters the relief set forth above and incorporates those terms
7 herein.

8 ENTERED and ORDERED this _____ day of _____, 2004.

9
10
11
12 UNITED STATES CIRCUIT JUDGE

13
14
15
16
17 UNITED STATES DISTRICT JUDGE

18
19
20
21
22 UNITED STATES DISTRICT JUDGE