

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

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CASA,	:	
	:	
Plaintiff	:	CIVIL ACTION NO 1:22-CV-
	:	1648
v.	:	
	:	Honorable Jennifer P. Wilson
JULIE WHEELER, DOUG HOKE, and	:	
RON SMITH, in their official capacities as	:	
members of the York County Board of	:	
Elections,	:	
	:	
Defendants	:	

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**ANSWER TO COMPLAINT**

COMES NOW, Defendants Julie Wheeler, Doug Hoke, and Ron Smith, by and through their undersigned counsel, and state the following as their Answer to the Complaint in this matter:

**Parties**

1. Denied. Paragraph 1 of the Complaint does not contain any factual allegations. Instead, paragraph 1 of the Complaint is simply a description of the legal theories and relief sought by Plaintiff CASA in this matter. Accordingly, no responsive pleading from Defendants is required. To the extent that the Court deems a response required, Defendants deny that they have violated Section 4 of the federal Voting Rights Act and that Plaintiff is entitled to the relief sought through this lawsuit.

2. Denied, as stated. The statements in paragraph 2 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is required, Defendants state that Section 4(e)(2) of the Voting Rights Act states that U.S. citizens who have attended some schooling in Puerto Rico in which the “predominant classroom language was other than English,” “shall [not] be denied the right to vote in any Federal, State, or local election because of [their] inability to read, write, understand, or interpret any matter in the English language. . . .” 52 U.S.C. § 10303(e)(2).

3. Denied. Defendants are without sufficient information at this time to admit or deny whether “hundreds of Spanish-speaking Puerto Ricans . . . reside and are eligible to vote in York County.” Accordingly, Defendants deny that allegation and demand strict proof thereof. Moreover, whether an individual from Puerto Rico speaks Spanish is irrelevant to whether they are entitled to the protections of Section 4(e)(2) of the Voting Rights Act. Instead, the issue is whether York County voters who were at least partially educated in Puerto Rico communicate proficiently in English. The allegation about “hundreds of Spanish-speaking Puerto Ricans” does not address the issue of whether such individuals communicate proficiently in English, since a person can speak both Spanish and English proficiently. Furthermore, Defendants deny that they intend to conduct the upcoming 2022 general election “almost entirely in English.”

4. Denied. Defendants deny that they have failed to comply with Section 4(e)(2) of the Voting Rights Act. The remaining statements in paragraph 4 of the Complaint are statements regarding the purported purpose of CASA filing this action. Defendants deny that CASA brings this action on behalf of members whose Section 4(e)(2) rights have been violated because Defendants are unaware that any CASA members are covered by Section 4(e)(2), much less that such individuals' Section 4(e)(2) rights have been violated.

5. Admitted. Defendants admit that CASA has sued Defendants in their official capacities as members of the York County Board of Elections.

### **Jurisdiction and Venue**

6. Denied. Paragraph 6 of the Complaint does not contain any factual allegations. Instead, the statements in paragraph 6 of the Complaint are statements regarding CASA's theories of liability and the remedies it seeks, to which no responsive pleading is required. To the extent the Court requires a response, Defendants deny that they have violated the Voting Rights Act of 1965, 52 U.S.C. § 10101 *et seq.*, or 42 U.S.C. § 1983.

7. Admitted. Defendants admit that this Court may currently exercise subject matter jurisdiction over this lawsuit.

8. Admitted in part and denied in part. The statements in paragraph 8 of the Complaint constitute conclusions of law to which no responsive pleading is

required. To the extent a response is required, Defendants admit that this Court is authorized to provide declaratory relief under the Declaratory Relief Act, 28 U.S.C. § 2201 *et seq.*, in appropriate cases. Defendants, however, deny that such an action is warranted or authorized in this case.

9. Admitted, with clarification. Defendants admit that this Court may exercise venue over this matter in accordance with 28 U.S.C. § 1391(b).

### **Parties**

10. Admitted in part and denied in part. Defendants admit, upon information and belief, that CASA is a non-profit organization with an office in York, Pennsylvania and that CASA has accurately described its mission in paragraph 10 of the Complaint. Defendants, however, are without information at this time to admit or deny the following allegations and, therefore, Defendants deny these allegations: (1) whether CASA has been actively registering Latinx voters and working on issues of voter protection and language access in Pennsylvania since 2016; (2) whether CASA is diverting its limited resources from other projects to provide Spanish-language assistance to, and advocacy on behalf of, Spanish-language voters in York County, including in the 2022 Pennsylvania general election; (3) whether CASA is a membership-based organization, with members in York County who were educated in Puerto Rico; and (4) whether “many” of CASA’s members live in York County and are covered by Section

4(e)(2) of the Voting Rights Act and are registered to vote in Pennsylvania’s 2022 general election. Defendants deny that they have failed to provide Spanish-language materials and assistance to Spanish-speaking Puerto Ricans.<sup>1</sup> Likewise, Defendants deny that York County will conduct a “predominantly English-only election” during Pennsylvania’s 2022 general election.

11. Admitted.

**Legal Background**

12. Admitted.

13. Admitted.

14. Admitted, with the clarification that Section 4(e)(2) applies to any U.S. citizen educated in a school where the predominant language was a language other than English, provided that such education took place in Puerto Rico, any U.S. state, or the District of Columbia.

15. Admitted.

16. Denied, as stated. Section 4(e)(2) only applies to U.S. citizens who attended some school in Puerto Rico, if such a person is unable to communicate

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<sup>1</sup> Again, however, the relevant issue is not whether U.S. citizens who were educated predominantly in the Spanish language speak Spanish. Instead, the relevant issue in determining whether Section 4(e)(2) of the Voting Rights Act applies is the English language proficiency of individuals who received some of their education in the Spanish language. Section 4(e)(2) does not apply to an individual who was educated in Spanish in Puerto Rico, but nevertheless proficiently communicates in English—even if such a person also speaks Spanish.

proficiently in English. If a person attended some school in Puerto Rico, but nonetheless is proficient in English, then Section 4(e)(2) of the Voting Rights Act does not apply to that person.

17. Admitted in part, and denied in part. The statement in paragraph 17 of the Complaint constitutes a legal conclusion to which no responsive pleading is required. To the extent a response is required, Defendants respond as follows: Section 4(e)(2) prohibits Defendants from conditioning the right to vote of a person subject to Section 4(e)(2) on such person's ability to communicate proficiently in English. Admittedly, one way to comply with Section 4(e)(2) is to provide Spanish-language voting materials to individuals who are subject to Section 4(e)(2)—including individuals educated (at least partially) in Puerto Rico who have limited English proficiency. That said, Defendants deny that providing Spanish-language voting materials is the only way to comply with Section 4(e)(2)'s prohibition.

### **Factual Allegations**

18. Denied. Defendants are without sufficient information to determine whether CASA has more than 2,800 members in the Commonwealth of Pennsylvania, with more than 1,162 of those members living in York County. Likewise, Defendants are without sufficient information to determine whether certain CASA members in York County, Pennsylvania were educated in Puerto

Rico and cannot communicate proficiently in English. Defendants demand proof of these allegations.

19. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 19 of the Complaint. CASA has not even identified this individual. Accordingly, Defendants deny these allegations and demand strict proof thereof.

20. Denied. Defendants deny that York County's current election process is ineffective for citizens who are not proficient in English. Defendants do not know the identity of the person referenced in paragraphs 19-20 of the Complaint. Accordingly, Defendants cannot respond to the allegations about his experiences during the 2020 general election. Defendants deny that all signs at all polling precincts in York County will only be in English for the 2022 general election. Defendants deny that all ballots and instructions in York County are only in English. Defendants deny that they do not employ any poll or other election workers to assist individuals who speak Spanish but are not proficient in English. Defendants deny that they only provide election materials in English. Defendants deny the allegation that they do not provide assistance to voters educated in Puerto Rico who do not communicate proficiently in English.

21. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 21 of the Complaint. CASA has not even identified

this individual. Accordingly, Defendants deny these allegations and demand strict proof thereof.

22. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 22 of the Complaint. CASA has not even identified this individual. Accordingly, Defendants deny these allegations and demand strict proof thereof.

23. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 23 of the Complaint. CASA has not even identified this individual. Accordingly, Defendants deny these allegations and demand strict proof thereof. Defendants also deny that individuals who are not English-proficient will be unable to vote effectively in the upcoming elections in York County.

24. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 24 of the Complaint. CASA has not even identified this individual. Accordingly, Defendants deny these allegations and demand strict proof thereof. Defendants deny individuals who are not English-proficient will be unable to vote effectively in the upcoming elections in York County.

25. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 25 of the Complaint. CASA has not even identified this individual. Accordingly, Defendants deny these allegations and demand strict



proof thereof. Defendants deny individuals who are not English-proficient will be unable to vote effectively in the upcoming elections in York County.

26. Denied. Defendants do not know who the individual is. Accordingly, Defendants cannot respond to the allegations about his alleged experiences during the 2020 general election. Defendants deny that York County does not provide any ballot instructions in Spanish. Defendants deny the allegation that they do not provide assistance to voters educated in Puerto Rico who do not communicate proficiently in English.

27. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 27 of the Complaint. CASA has not even identified this individual. Accordingly, Defendants deny these allegations and demand strict proof thereof.

28. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 28 of the Complaint. CASA has not even identified this individual. Accordingly, Defendants deny these allegations and demand strict proof thereof.

29. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 29 of the Complaint. Accordingly, Defendants deny these allegations and demand strict proof thereof.

30. Denied. Defendants are without sufficient information to respond to the allegations in paragraph 30 of the Complaint. Accordingly, Defendants deny these allegations and demand strict proof thereof.

31. Denied. CASA has not identified any of their members who they claim were educated in Puerto Rico and are unable to communicate proficiently in English. Accordingly, Defendants are without sufficient information at this time to admit or deny these allegations. Defendants, therefore, deny the allegations in paragraph 31 of the Complaint and demand strict proof thereof. Defendants deny the implied allegation that York County does not provide any Spanish-language ballots or voter assistance in Spanish.

32. Denied. According to data for the 2020 U.S. Census, approximately 40,824 individuals residing in York County, Pennsylvania classify themselves as Hispanic or Latino.

<https://www.census.gov/quickfacts/fact/table/yorkcountypennsylvania,yorkcitypennsylvania/PST045221>.

But the U.S. Census data that Defendants have ready access to does not identify the population of individuals who were educated in Puerto Rico or what portion of those individuals cannot communicate proficiently in English. Defendants, therefore, are without information at this time to identify the number of individuals in York County who attended some school in Puerto Rico, much less what portion

of that population are eligible to vote but cannot communicate proficiently in English. Accordingly, Defendants deny that “York County is home to a substantial population of citizens” who are “eligible to vote, attended some school in Puerto Rico in which the classroom language was predominantly Spanish, and are unable to vote effectively in English.” Defendants demand strict proof thereof.

33. Denied. CASA has not provided the U.S. Census Bureau’s American Community Survey data to Defendants or the Court. Instead, Defendants have provided what purports to be a portion of a study of that data by Hunter College’s Center for Puerto Rican Studies, which purports to analyze language proficiency in Lancaster and York County, Pennsylvania. Defendants, therefore, deny that 750 individuals of Puerto Rican descent in York County are unable to communicate proficiently in English. Defendants demand strict proof thereof. By way of further answer, the relevant issue is not the number of individuals of Puerto Rican descent in York County who are unable to communicate proficiently in English. Instead, the relevant issue is the number of individuals who are eligible to vote in York County who were at least partially educated in Puerto Rico and are unable to communicate proficiently in English. Being of Puerto Rican descent is not synonymous with being subject to Section 4(e)(2)’s protections. Again, an individual may be of Puerto Rican descent, but never have lived in Puerto Rico. Similarly, an individual may be of Puerto Rican descent, have lived in Puerto Rico,

but never have attended any school in Puerto Rico. Finally, an individual may be of Puerto Rican descent, may have lived in Puerto Rico and may have received some of their education in Puerto Rico, but nonetheless communicate proficiently in English. Such individuals would not be subject to Section 4(e)(2)'s protections. So the information provided by CASA—which they claim came from Hunter College—does not establish the number of individuals subject to Section 4(e)(2) residing in York County, much less where any such individuals reside and are registered to vote within York County.<sup>2</sup>

34. Admitted in part and denied in part. Defendants admit that English is not the primary language of instruction in most schools in Puerto Rico. Defendants, however, are currently unable to determine whether “[m]any” of the individuals of “Puerto Rican descent” in York County attended at least some schooling in Puerto Rico.

35. Admitted.

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<sup>2</sup> Where individuals reside within York County is an important issue in this lawsuit. As will be explained later, there is no dispute that Defendants provide Spanish-language ballots, Spanish-language voting materials, and Spanish-language voting assistance at the voting precincts located within the City of York. Accordingly, the dispute between the parties in this case centers on what is occurring at the voting precincts *outside* the City of York. As a result, Plaintiffs must establish that more than a *de minimis* number of individuals subject to Section 4(e)(2)—*i.e.* were educated at least partially in Puerto Rico and have limited English proficiency—reside outside the City of York and are registered to vote there.

36. Denied. Defendants deny that they only provide registration materials and assistance, voting guides, voting instructions, ballots, or other election materials in English. Likewise, Defendants deny that they have seriously impaired the voting ability of individuals subject to Section 4(e)(2)'s requirements.

37. Admitted in part and denied in part. The statements in paragraph 37 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent a response is required, Defendants deny that they have violated Section 4(e)(2) of the Voting Rights Act.

38. Admitted in part and denied in part. Defendants deny that York County conducts English-only elections. Defendants admit that they only provide Spanish-language ballots in those polling locations where census data indicate that a significant number of Spanish-speaking voters reside. Defendants, however, deny that they fail to "provide sufficient Spanish-language election materials or assistance" in those polling locations.

39. Denied. The statements in paragraph 39 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent the Court deems a response required, Defendants deny that they have violated, or will violate, Section 4(e)(2) of the Voting Rights Act.

40. Denied, as stated.

41. Admitted in part and denied in part. Defendants admit that CASA sent Defendants a letter on September 14, 2022, regarding election practices related to the upcoming 2022 general election. The Pennsylvania Department of State, however, had already approved the ballots for elections in York County before September 14, 2022. Defendants deny that they never responded to CASA.

42. Denied, as stated. Defendants admit that CASA's counsel sent Defendants additional letters on September 26, 2022 and October 3, 2022. Those letters, however, are written documents that speak for themselves regarding their contents. Defendants admit that York County election officials and counsel met with CASA and its counsel on October 11, 2022. Defendants admit that they cancelled a meeting that CASA that CASA scheduled on October 13, 2022 outside of normal business hours. Counsel for CASA refused to meet the morning of October 14, 2022.

43. Denied. The allegation in paragraph 43 of the Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that the Court requires such a response, Defendants state that they intend to comply with Section 4(e)(2)'s prohibitions during the 2022 general election.

44. Denied. The allegation in paragraph 44 of the Complaint constitutes a conclusion of law to which no responsive pleading is required. To the extent that the Court deems a response required, Defendants respond that CASA will not

suffer irreparable harm in the absence of Court intervention because Defendants intend to comply with Section 4(e)(2)'s prohibitions during the 2022 general election.

45. Denied. Defendants are without sufficient information to admit or deny the allegations in paragraph 45 of the Complaint. Accordingly, Defendants deny those allegations and demand strict proof thereof.

46. Admitted in part and denied in part. Defendants admit that the deadline for registering to vote was October 24, 2022, and that the 2022 general election will be held on November 8, 2022. The remaining statements in paragraph 46 of the Complaint constitute legal conclusions to which no responsive pleading is required. To the extent the Court deems a response required, Defendants deny that CASA will suffer irreparable harm in the absence of Court intervention.

47. Admitted in part, and denied in part. Defendants deny the implied allegation that they will not provide any Spanish-language ballots, materials, and election assistance during the upcoming 2022 general election. The remaining statements in paragraph 47 of the Complaint constitute legal conclusions to which no responsive pleading is required.

48. Denied. The allegation in paragraph 48 of the Complaint constitutes a legal conclusion to which no responsive pleading is required. That said, Defendants deny that CASA will suffer irreparable injuries related to the 2022

general election. Defendants intend to comply with Section 4(e)(2)'s prohibition during the upcoming election, including by providing Spanish-language election materials and assistance.

**COUNT I-SECTION 4(e)(2) OF THE VOTING RIGHTS ACT**

49. Defendants incorporate their responses from paragraphs 1-48 above as if set forth fully here.

50. Admitted.

51. Denied. Defendants are without sufficient information at this time to admit or deny the allegation in paragraph 51 of the Complaint. Accordingly, Defendants deny that allegation and demand strict proof thereof.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Denied.

Defendants deny any allegation not explicitly admitted.

**Prayer for Relief**

In response to Plaintiff's Prayer for Relief, Defendants incorporate their responses from paragraphs 1-56 above as if set forth fully here. Defendants deny that they are liable to Plaintiff and that Plaintiff is entitled to the relief sought.



## **AFFIRMATIVE DEFENSES**

Defendants state the following as defenses to Plaintiff's claims without assuming the burden of proof for any such defenses that would otherwise rest on Plaintiff and with the reservation of Defendants' right to amend or supplement their responses to the complaint, as well as their affirmative defenses, as information is obtained through discovery.

### **FIRST AFFIRMATIVE DEFENSE**

CASA lacks standing as a plaintiff in this matter.

### **SECOND AFFIRMATIVE DEFENSE**

Some portions of Plaintiff's claim are barred by the doctrine of laches.

### **THIRD AFFIRMATIVE DEFENSE**

CASA's official capacity claims against Defendants are barred by sovereign immunity under the 11<sup>th</sup> Amendment of the United States Constitution.

### **FOURTH AFFIRMATIVE DEFENSE**

CASA cannot establish that it is entitled to equitable relief from the Court or that the requested relief is required to ensure Defendants comply with Section 4(e)(2) of the Voting Rights Act. Moreover, the requested injunctive relief is not appropriately tailored to ensure compliance with Section 4(e)(2) of the Voting Rights Act.

Defendants will rely upon any and all other defenses lawfully available to them at the time of trial and reserve the right to amend their Answer if necessary.

WHEREFORE, Defendants respectfully requests that the court dismiss this action, with prejudice, and that Defendants receive an award of its costs expended in defense of this action, including its attorneys' fees, expert witness fees, court costs, and such other relief that the court deems necessary and appropriate.

Respectfully Submitted,

/s/David J. Freedman

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing, Defendant's Answer to the Complaint, was filed electronically and is available for viewing and downloading on the Court's CM/ECF system this 26<sup>th</sup> day of October, 2022.

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