

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

CASA,	:	Civil No. 1:22-CV-1648
	:	
Plaintiff,	:	
	:	
v.	:	(Magistrate Judge Carlson)
	:	
WHEELER, et al.,	:	
	:	
Defendants.	:	

ORDER

Whereas the parties in the above-captioned case have consented to magistrate judge jurisdiction; and,

Whereas this case has been assigned to the undersigned; and,

Whereas the parties have entered into an agreement, attached as Exhibit A, resolving their dispute; and,

Whereas this agreement expressly provides for the Court to retain jurisdiction over this matter solely for the purpose of overseeing compliance with the agreement and resolution of any disputes that may arise in connection with the agreement.

IT IS ORDERED that the Court will retain jurisdiction for the sole purpose of overseeing compliance with the agreement and resolution of any disputes that

may arise in connection with the agreement. Subject to this reservation of jurisdiction at the request of the parties, IT IS FURTHER ORDERED that that the clerk is directed to CLOSE this case administratively.

So ordered this 23d day of August 2023.

/s/ Martin C. Carlson

Martin C. Carlson

United States Magistrate Judge

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EXHIBIT A

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SETTLEMENT AGREEMENT

As of the first date written below, Plaintiff CASA (“CASA”) and Defendants Felicia Dell, Mark Derr, and the Honorable Christy Fawcett (Ret.) in their official capacities (collectively “the Board of Elections”) enter into this Settlement Agreement (“Agreement”).

For the purpose of this Agreement:

A. The terms “the Board of Elections” and “Defendants” mean both the Board of Elections for York County, Pennsylvania, and its respective board members, and the County of York, Pennsylvania—including its respective commissioners, governing bodies, current and former employees, boards, authorities, elected officials, appointed officials, representatives, agents, attorneys, all insurers and reinsurers, successors, assigns, and all other persons, entities, governing bodies, and related associations whether named in this Agreement or not.

B. The terms “CASA” and “Plaintiff” refer to CASA, a non-profit organization that is the plaintiff in the lawsuit *CASA v. Julie Wheeler, Doug Hoke, Ron Smith, in their official capacities as members of the York County Board of Elections*, which was filed in the United States District Court for the Middle District of Pennsylvania and is docketed in that court as Case No. 1:22-cv-1648. The terms “CASA” and “Plaintiff” also refer to CASA’s board of directors, members of its board of directors, CASA’s employees, representatives, agents, attorneys, all insurers and reinsurers, successors, assigns, and all other related persons, entities, and associations whether named in this Agreement or not.

C. The term “the Parties” refers collectively to the Board of Elections and CASA, as defined above.

D. The term “Agreement” means this Settlement Agreement, signed by authorized agents of both CASA and the Board of Elections, as those terms are defined above.

E. The term “York County,” as used in the Agreement, refers to the County of York, Pennsylvania.

BACKGROUND

On October 19, 2022, Plaintiff CASA filed a complaint (“the Complaint”)¹ in the United States District Court for the Middle District of Pennsylvania. The Complaint—docketed as Case No. 1:22-cv-1648—asserted official capacity claims against the members of the Board of Elections. Specifically, the Complaint alleged that the Board of Elections had conducted—and will conduct—elections in York County that violate Section 4(e) of the Voting Rights Act, 52 U.S.C. § 10303(e). The Complaint sought only injunctive relief against the Board of Elections related to how elections are conducted in York County. At that time, the members of the Board of Elections were York County Commissioners Julie Wheeler, Doug Hoke, and Ron Smith. On October 20, 2022, CASA filed a motion seeking a preliminary injunction² regarding the then-

¹ (ECF Docket Entry 1).

² (ECF Docket Entry 5).

approaching 2022 General Election. On October 26, 2022, the Board of Elections filed its Answer to the Complaint³ and opposition to CASA's motion for preliminary injunction.⁴ Both of those filings denied that the Board of Elections had violated—or would violate—the Voting Rights Act and otherwise argued that injunctive relief would be inappropriate.

The Parties engaged in negotiations that resulted in resolution of CASA's motion for preliminary injunction regarding the 2022 General Election. As a result, on November 2, 2022, the Parties filed a Joint Motion to Stay Proceedings Regarding Plaintiff's Motion for Preliminary Injunction.⁵ In response to that motion, the Court entered an order on November 3, 2022, staying proceedings, denying CASA's motion for preliminary injunction without prejudice, and requiring the Parties to provide a joint status report to the Court regarding the case's status following the 2022 General Election.⁶

The Parties filed several joint status reports to the Court after the 2022 General Election.⁷ In the meantime—by order dated February 14, 2023—York County Court of Common Pleas President Judge Maria Musti Cook—in accordance with 25 P.S. § 2641(c)—appointed the following members to replace the York County Commissioners as the York County Board of Elections for 2023: Felica Dell; Mark Derr; and the Honorable Christy Fawcett (Ret.). Upon their appointment, Dell, Derr, and Judge Fawcett were automatically substituted by operation of law as Defendants to the official capacity claims in the Complaint.⁸

Since the conclusion of the 2022 General Election, the Parties have endeavored to resolve their remaining disputes concerning future elections in York County. These efforts have included numerous conference calls between counsel for the Parties and two in-person settlement conferences between the Parties and their counsel, which were presided over by the Honorable Martin Carlson, United States Magistrate Judge for the Middle District of Pennsylvania.

Based on those discussions—and in order to avoid the expense and uncertainty associated with protracted litigation—both Parties have decided to resolve the remaining disputes related to elections conducted in York County through the end of the year 2028. Accordingly, the Parties—intending to be legally bound—have agreed to the following terms:

1. Conduct of Elections. The Parties agree that for all elections conducted by the Board of Elections between now and December 31, 2028, the Board of Elections will do the following:

³ (ECF Docket Entry 16).

⁴ (ECF Docket Entry 17).

⁵ (ECF Docket Entry 19).

⁶ (ECF Docket Entry 20).

⁷ (See ECF Docket Entries 21, 23, and 25).

⁸ See Fed. R. Civ. P. 25(d) (“An action does not abate when a public officer who is a party in an official capacity dies, resigns, or otherwise ceases to hold office while the action is pending. The officer's successor is automatically substituted as a party.”).

- a. Make sample bilingual (English-Spanish) ballots available on the York County Elections & Voter Registration website for all elections in all 161 voting precincts in York County;
- b. Make paper copies of sample bilingual (English-Spanish) ballots available at all 161 voting precincts in York County. Specifically, one copy of such bilingual ballot will be posted at each voting precinct's registration table and an additional five copies will be made available for Spanish-speaking voters to take with them to the voting booth;
- c. Program ICX voting machines at all 161 voting precincts in York County to enable voting in Spanish and permit any voter requesting to vote in Spanish to use the ICX voting machine to cast their ballot in Spanish;
- d. Post signs containing the following language (translated into Spanish) at all 161 voting precincts in York County: (1) "Spanish voting services available!"; (2) "Spanish-English interpreters available at this number: [provide number]"; (3) "If you need help voting in Spanish, or if you have any issues voting in Spanish, call the PA Spanish-language voter protection line: 1-866-868-3772"; (4) "Visit this page for information about your rights as a voter: <https://www.vote.pa.gov/Your-Rights/Pages/Voting-Rights-and-the-law.aspx>"; and (5) "Visit this page to file a complaint if you encounter a problem at the polls: <https://pavoterservices.pa.gov/Pages/ReportElectionComplaints.aspx>".
 - i. Such signs will be posted prominently inside each voting precinct.
 - ii. Any such signs must be at least 22 inches-by-28 inches in size and the signs' text must be no smaller than 48 point font.
- e. Post "Vota Aquí!" signs at all 161 voting precincts in York County;
 - i. Any such signs must be at least 22 inches-by-28 inches in size and the signs' text must be no smaller than 48 point font.
 - ii. Any such signs must be posted either at the voting precinct's entrance or on the front lawn of the location of the voting precinct.
- f. Provide the Judge of Elections at all 161 voting precincts in York County with the following forms in Spanish: (1) affirmation of elector form; (2) declaration of need for voter assistance; (3) challenger elector's affidavit; (4) remit mail-in/absentee v. provisional ballot flow chart; (5) general information and instructions; (6) notice of prohibitions and penalties; (7) declaration to remit mail-in or absentee ballot; and (8) voter registration forms;

- g. Provide training to all York County Judges of Elections, poll workers, and York County Elections Department Staff regarding the following topics: (1) how to use the Pennsylvania Department of State's Spanish language voting hotline, and when to engage it; (2) the rights of Spanish-speaking voters under Section 4(e) and 208 of the Voting Rights Act; and (3) the availability of Spanish-language voting services, including bilingual sample ballots, use of ICX machines to cast ballots in Spanish, Spanish-language signage requirements, and language ability of poll workers (including whether a precinct has English-Spanish bilingual poll workers);
- h. Provide on the York County Elections & Voter Registration website a link to the Pennsylvania Department of State's Spanish-language resource page: <https://www.vote.pa.gov/Pages/default.aspx>.
- i. Provide bilingual (English-Spanish) paper ballots to all voters casting their votes at the following 33 voting precincts in York County:
 - i. Hanover Borough #3
 - ii. Windsor Township #4
 - iii. Hanover Borough # 4
 - iv. York City #12-2
 - v. Springettsbury Township #7
 - vi. West Manchester Township #4
 - vii. York City #5
 - viii. York City #1
 - ix. Hanover Borough #2
 - x. York City #8
 - xi. York City #12-3
 - xii. Hanover Borough #1
 - xiii. York City #12-4
 - xiv. Springettsbury Township #5
 - xv. York City #9-1
 - xvi. Springettsbury Township #2
 - xvii. York City #15
 - xviii. York City #11
 - xix. York City #13
 - xx. York City #14-3
 - xxi. Springettsbury Township #3
 - xxii. York City #7
 - xxiii. York City #6
 - xxiv. York City #14-2
 - xxv. York City #9-2
 - xxvi. Windsor Township #1
 - xxvii. York City #12-1
 - xxviii. Penn Township #3

- xxix. York City #14-1
 - xxx. West Manchester #1
 - xxxi. Windsor Township #3
 - xxxii. Penn Township #4
 - xxxiii. Springettsbury Township #1
- j. Provide any written communications mailed or emailed to voters in both English and Spanish for voters at all voting precincts at which bilingual (English-Spanish) paper ballots will be used;
 - k. For all voting precincts at which bilingual (English-Spanish) paper ballots will not be used, include in any written communications mailed or emailed to voters language—in Spanish—indicating that translations of the communication in Spanish are available upon request and provide an email address or weblink for a voter to request such a translation;
 - l. Train York County Elections Department employees regarding the availability and use of the County’s election day language line Spanish interpretation service and Spanish language interpretation services available through the County on days other than election days; and
 - m. Provide instructions in Spanish on the York County Elections & Voter Registration website regarding how individuals can access the County’s election day language line Spanish interpretation service and the Spanish language interpretation services available through the County on days other than election days.
- 2. Update to Poll Worker Manual: The Board will ensure that the York County Poll Workers Manual is updated to mention that it is legal and possible in appropriate cases to assign poll workers outside the voting precinct where they reside and, as a result, bilingual (English-Spanish) poll workers may be requested to volunteer to work at a voting precinct outside the voting precinct in which they reside. The Board of Elections will also implement training of both Judges of Elections and poll workers regarding this topic. These amendments to the Poll Worker Manual and the associated training will be made in time to be utilized for the 2023 General Election.
 - 3. 2026 Re-Evaluation of Precincts Where Bilingual (English-Spanish) Ballots Will Be Used:
 - a. Following the 2025 General Election and before the 2026 Primary Election, the Board of Elections will evaluate whether to expand the number of voting precincts in York County where bilingual (English-Spanish) paper ballots are used by voters. That re-evaluation will be conducted in the following manner:

- i. The re-evaluation will utilize figures in the latest available version of the U.S. Census Bureau’s American Community Survey’s Five-Year Estimate (“ACS Survey”) available at that time;
 - ii. The Board of Elections will expand use of bilingual (English-Spanish) paper ballots to any voting precinct in York County whose geographic boundaries cross the geographic boundaries of a census tract which the ACS Survey indicates (in tables C16002 and B030001) satisfies all three of the following criteria:
 1. 2% or more of the census tract’s population identifies as of Puerto Rican ancestry;
 2. 2% or more of the households in the census tract indicate that their primary language is Spanish; and
 3. 2% or more of the households in the census tract indicate that their primary language is Spanish and that they have limited English speaking proficiency.
 - b. The results of the re-evaluation will be implemented for all elections conducted in York County following the re-evaluation and through the 2028 General Election.
 - c. The re-evaluation will only apply to the 128 voting precincts in York County that are not listed in Paragraph 1.h. above. The re-evaluation will have no effect on the 33 voting precincts listed in Paragraph 1.h above. Bilingual (English-Spanish) paper ballots will continue to be used through the 2028 General Election at the 33 voting precincts listed in Paragraph 1.h above, regardless of what the ACS Survey data says about those precincts.
 - d. CASA will be permitted to request that the Board of Elections expand use of bilingual (English-Spanish) paper ballots at an additional ten voting precincts in York County not satisfying the criteria listed in Paragraph 3.a above. If CASA makes such a request, the Board of Elections will allow CASA to explain the basis for its request for expansion of bilingual (English-Spanish) paper ballots at up to ten additional voting precincts. Likewise, the Board of Elections agree to consider any such request by CASA. The Board of Elections, however, is under no obligation to expand use of bilingual (English-Spanish) paper ballots at any voting precincts other than those identified in Paragraph 1.h above and through the re-evaluation process discussed in Paragraphs 3.a-c above.
4. No Promises or Entitlement Related to Elections After 2028. Any requirements related to this Agreement expire on December 31, 2028, at the latest. No requirements in this Agreement will apply to any elections conducted in York

County after December 31, 2028. The Parties agree that nothing in this Agreement should be interpreted as creating any right of CASA, its members, or anyone else related to elections in York County occurring after December 31, 2028. Similarly, nothing in this Agreement should be interpreted as creating any obligations upon the Board of Elections related to elections in York County occurring after December 31, 2028.

5. Full Release by CASA. For and in consideration of the Board of Election's agreements, promises, and performance set forth in this Agreement, CASA hereby fully releases and discharges the Board of Elections from any and all actions, claims, liability or potential liability related to the claims asserted by CASA in the Complaint, or which could have been asserted by CASA in the Complaint. This release covers any claims that can be legally waived. CASA specifically acknowledges that it is releasing the Board of Elections from any claims against it under the Voting Rights Act and 42 U.S.C. § 1983 related to any elections that have occurred before the execution of this Agreement.
6. Waiver of Claims for Attorneys' Fees, Costs, and Other Litigation Expenses. The Parties agree that each party will pay its own litigation expenses, costs, and attorneys' fees incurred to date during the course of this litigation. Accordingly, CASA releases the Board of Elections from any claim for payment of its attorneys' fees, costs, and other litigation expenses incurred to date. Likewise, the Board of Elections releases CASA from any claim for payment of its attorneys' fees, costs, and other litigation expenses incurred to date.
7. Additional Remedial Measures. This Agreement does not preclude the Board of Elections from taking additional steps to facilitate voting by Spanish-speaking voters. The Agreement also does not prohibit the Board from taking any action to comply with the Voting Rights Act, the Pennsylvania Election Code, or any other applicable law.
8. Change in Applicable Law. This Agreement is made subject to any changes in applicable law that would require the Board of Elections to take additional action to facilitate voting by Spanish-speaking voters or voters subject to Section 4(e) of the Voting Rights Act. As a result, nothing in this Agreement may be interpreted as excusing compliance with any such changes in applicable law that may require more or different action by the Board of Elections.
9. Implementation. The Parties agree that upon execution of the Agreement they will file a notice of consent under 28 U.S.C. § 636(c)(1) to assignment of a U.S. Magistrate Judge for the Middle District of Pennsylvania for all future proceedings regarding the Complaint and the Agreement. Once the assignment is made, the Parties will jointly request that the assigned U.S. Magistrate Judge suspend all pretrial deadlines but maintain jurisdiction over the Complaint in order to monitor compliance with the Agreement. CASA agrees that if the Board

of Elections has complied with the terms of the Agreement then CASA will file a motion to dismiss the Complaint with prejudice no later than December 31, 2028.

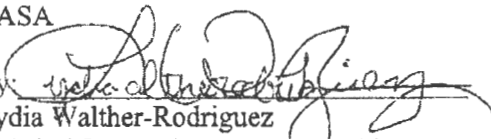
10. No Admission of Violation or Wrongdoing. CASA acknowledges that the Board of Elections denies that it has violated the Voting Rights Act or any other law or legal theory. Accordingly, CASA agrees that nothing in this Agreement should be construed as an admission that the Board of Elections did anything wrong or that CASA's claims in the Complaint have merit. Similarly, the Board of Elections acknowledges that CASA believes that its claims in the Complaint were meritorious. Accordingly, the Board of Elections agrees that nothing in this Agreement should be construed as an admission by CASA that the claims in the Complaint lack merit.
11. CASA's Warranties and Covenants. CASA acknowledges that—other than the Complaint—CASA has not filed any other lawsuit or otherwise initiated adversarial proceedings related to the conduct of elections in York County. CASA agrees that it will not, after execution of the Agreement, assert any claims against the Board of Elections related to the conduct of elections in York County that occurred before execution of the Agreement. Nothing in this paragraph, however, is intended to inhibit CASA's rights to enforce the terms of the Agreement.
12. Adequate Consideration. CASA agrees that (i) the promises of the Board of Elections in this Agreement constitute the sole and exclusive undertakings to be provided to CASA by the Board of Elections, (ii) the Board of Elections has no obligation to provide CASA with any monetary compensation or any non-monetary benefits beyond what is specifically listed in the Agreement, and (iii) the Parties' promises in the Agreement constitute good and sufficient consideration to make those promises legally binding.
13. Costs. If either CASA or the Board of Elections takes action to enforce the Agreement, the non-prevailing party will be required to pay the prevailing party all reasonable fees, costs, and expenses that the prevailing party spends related to enforcing the Agreement's terms, including payment of the prevailing party's reasonable attorneys' fees, expert witness fees, and other litigation and court costs.
14. Binding Nature. This Agreement will bind the successors and assigns of both CASA and the Board of Elections.
15. Facts Accepted. The Parties acknowledge that they understand and assume the risk that the facts as understood by them to be true or accurate may be different from those that may or could have been proved or established. The Parties agree that any such difference will have no effect upon the validity or enforcement of any part of this Agreement, and this Agreement (in its entirety) will in all respects be effective and not subject to termination or rescission, either in whole or in part.

16. Entire Agreement. The Agreement constitutes the Parties' entire agreement. As a result, the Agreement cannot be altered or amended, except by a written agreement signed by both CASA and the Board of Elections. Because the Agreement contains the entire agreement between CASA and the Board of Elections, neither CASA nor the Board of Elections will be bound by any other promises or representations not contained in the Agreement. Both CASA and the Board of Elections agree that this Agreement may not be changed or waived (either in whole or partially) orally, by conduct, by informal writings, or any combination of such conduct.
17. Governing Law. Pennsylvania contract law will govern the interpretation of the Agreement.
18. Exclusivity of Forum, Consent to Jurisdiction. As indicated in Paragraph 10 above, the Parties have consented to assignment of a U.S. Magistrate Judge for the Middle District of Pennsylvania to oversee compliance with the Agreement's requirements. The Parties agree that the U.S. District Court for the Middle District of Pennsylvania is the exclusive venue for resolution of any disputes arising in connection with the Agreement. The Parties unequivocally and irrevocably consent to personal jurisdiction in Pennsylvania.
19. Severability. The Agreement's promises are severable, meaning that if the Court were to find any promise or term invalid or unenforceable, the Court could modify or adjust that promise or term. The Agreement's other promises and terms, however, would remain fully enforceable if that were to occur.
20. Acceptance. The Parties certify that they have read this Agreement, that they have been advised by an attorney, that they understand the meaning and legal effects of this Agreement, that they are executing this Agreement of their own volition, that they are legally competent to enter into this Agreement, and that they acknowledge that the consideration stated in this Agreement is adequate and satisfactory. Neither the Board of Elections, nor CASA, will hereafter deny the Agreement's validity on the grounds that it did not have the advice of counsel.
21. Interpretation. That a party drafted the Agreement—or a specific term—will not be grounds for the Court to construe the Agreement or any term against the drafting party. The Agreement's paragraph headings are for reference purposes only and may not be used to interpret the Agreement's terms.
22. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which will constitute one and the same document.
23. Authorization of Signatories. The undersigned are fully competent and legally authorized to execute this Agreement and have signed their names to this Agreement of their own free will.

Executed on the first date entered below:

Dated: 8/18/2023

CASA

By: 
Lydia Walther-Rodriguez
Chief of Organizing and Leadership

YORK COUNTY BOARD OF ELECTIONS

Dated: _____

Felicia Dell, Chair and Board Member, in her
official capacity

Dated: _____

Mark Derr, Vice Chair and Board Member, in his
official capacity

Dated: _____

The Honorable Christy Fawcett (Ret.), Board
Member, in her official capacity

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Executed on the first date entered below:

CASA

Dated: _____

By: _____
[OFFICER'S NAME AND TITLE]

YORK COUNTY BOARD OF ELECTIONS

Dated: _____

Felicia Dell

Felicia Dell, Chair and Board Member, in her
official capacity

Dated: _____

Mark Derr, Vice Chair and Board Member, in his
official capacity

Dated: _____

The Honorable Christy Fawcett (Ret.), Board
Member, in her official capacity

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Executed on the first date entered below:

CASA

Dated: _____

By: _____
[OFFICER'S NAME AND TITLE]

YORK COUNTY BOARD OF ELECTIONS

Dated: _____

Felicia Dell, Chair and Board Member, in her
official capacity

Dated: 8-11-23


Mark Derr, Vice Chair and Board Member, in his
official capacity

Dated: _____

The Honorable Christy Fawcett (Ret.), Board
Member, in her official capacity

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Executed on the first date entered below:

CASA

Dated: _____

By: _____
[OFFICER'S NAME AND TITLE]

YORK COUNTY BOARD OF ELECTIONS

Dated: _____

Felicia Dell, Chair and Board Member, in her
official capacity

Dated: _____

Mark Derr, Vice Chair and Board Member, in his
official capacity

Dated: 8-10-2023

Christy D. Fawcett
The Honorable Christy Fawcett (Ret.), Board
Member, in her official capacity

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