

**UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 24-cv-209
)	
v.)	
)	
CITY OF PAWTUCKET;)	
KENNETH R. MCGILL, City Registrar, in)	
his official capacity; and Board of Canvassers))	
Members MARIA M. PAVAO, EDWARD)	
CATONE, JR., and ROBERT W. CASTLE, in))	
their official capacities,)	
)	
Defendants.)	

CONSENT ORDER

The United States of America filed this action pursuant to Section 203 of the Voting Rights Act, 52 U.S.C. § 10503 (“Section 203”), Section 302 of the Help America Vote Act (“HAVA”), 52 U.S.C. § 21082 (“Section 302”), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, to enforce voting rights guaranteed by the Fourteenth and Fifteenth Amendments, with respect to the conduct of elections in the City of Pawtucket, Rhode Island.

This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, 2201, and 2202, and 52 U.S.C. §§ 10307, 10308, 10504, and 21111. In accordance with 52 U.S.C. § 10504 and 28 U.S.C. § 2284, the claim under Section 203 of the Voting Rights Act must be heard and determined by a court of three judges.

Defendants the City of Pawtucket; the City Registrar Kenneth R. McGill; and

Maria M. Pavao, Edward Catone, Jr., and Robert W. Castle, members of the Board of Canvassers (collectively hereinafter “the City of Pawtucket and City Voting Officials”), are subject to the requirements of Section 203, which states that whenever a covered jurisdiction provides “any registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots, it must provide them in the language of the applicable minority group as well as in the English language.” 52 U.S.C. § 10503(c). The City of Pawtucket and City Voting Officials have been continuously covered by Section 203 since October 13, 2011, and are required to provide Spanish-language written materials, information, and assistance to voters. 52 U.S.C. § 10503(b)(2)(A); *see also* 86 Fed. Reg. 69,616 (Dec. 8, 2021); 81 Fed. Reg. 87,536 (Dec. 5, 2016); 76 Fed. Reg. 63,605 (Oct. 13, 2011). With each new coverage determination, the U.S. Department of Justice has provided the City of Pawtucket and City Voting Officials with written notice of its obligations under Section 203. *See, e.g.*, Letter from Voting Section Chief Chris Herren to Kenneth McGill (December 21, 2021).

According to the 2020 Census, the City of Pawtucket has a total population of 75,604, of whom 18,727 (24.8%) are Hispanic. The total voting-age population is 59,149, of whom 13,239 (22.4%) are Hispanic. According to the 2018-2022 American Community Survey (“ACS”), the city has an estimated citizen voting-age population (“CVAP”) of 53,304, of whom 10,235 (19.3%) are Hispanic. The 2018-2022 5-year ACS estimates that 2,903 Spanish-speaking voting-age citizens in Pawtucket are limited English proficient (“LEP”).

The United States' Complaint alleges in its first cause of action that the City of Pawtucket and City Voting Officials have failed to implement an effective minority language program for Spanish-speaking citizens in violation of Section 203 because they have not recruited, properly staffed, and trained enough bilingual Spanish-speaking poll officials capable of providing LEP Spanish-speaking voters with necessary and effective language assistance during elections. The Complaint further alleges that the City of Pawtucket and City Voting Officials have failed to provide translated election-related materials, including but not limited to ballots and other Election Day materials, election postcard and newspaper notices, and election information on the Board of Canvassers' and City's website, in a manner that ensures that LEP Spanish-speaking voters can have the same access as English-speaking voters.

The United States' Complaint alleges in its second cause of action that the City of Pawtucket and City Voting Officials have failed to comply with the provisional ballot requirements of Section 302 of HAVA by refusing to allow individuals who were qualified to cast a provisional ballot to do so, and by failing to train and instruct poll officials accurately and adequately regarding the requirements for offering and completing provisional ballots, and when such ballots should be provided to voters.

The City of Pawtucket and City Voting Officials deny that they have violated Section 203 of the Voting Rights Act and/or Section 302 of HAVA. City Voting Officials believe that the translations they have provided and the Spanish-speaking

interpreters at the polling place have helped LEP Spanish-speaking voters effectively participate in Pawtucket's elections. The City of Pawtucket and City Voting Officials point to the fact that Pawtucket has gone from 0% Latino elected representation in 2011 when it was first covered by the Voting Rights Act to 28.6% Latino elected representation in 2024, a percentage that exceeds both the percentage of Latinos in Pawtucket's total population and voting-age population. The City of Pawtucket and City Voting Officials allege that this type of increase in Latino elected representation would not have happened without the effective participation of the Pawtucket Latino electorate. Moreover, the City of Pawtucket and City Voting Officials deny they have violated Section 302 of HAVA and state that they provide provisional ballots to any resident who appears at a polling place but is not on the voter list.

Because the Parties wish to avoid protracted and costly litigation, the Parties have agreed that this lawsuit should be resolved through the terms of this Consent Order ("Order"). Accordingly, the United States and the City of Pawtucket and City Voting Officials hereby consent to the entry of this Order, as indicated by the signatures of counsel at the end of this Order. The Parties waive a hearing and the entry of findings of fact and conclusions of law on all issues involved in this matter. Each party shall bear its own costs and fees.

As part of their commitment to full compliance with Section 203 of the Voting Rights Act and Section 302 of HAVA, the City of Pawtucket and City Voting Officials agree to each provision of this Order to resolve the issues in this case.

Accordingly, it is hereby **ORDERED, ADJUDGED and DECREED** that:

1. The City of Pawtucket and City Voting Officials, their agents, employees, contractors, successors, and all other persons representing the interests of the City of Pawtucket and City Voting Officials hereby agree to the following, as set forth under the terms of this Consent Order:

- a. As required by Section 203 of the Voting Rights Act, 52 U.S.C. § 10503, the City of Pawtucket and City Voting Officials are enjoined from failing to provide “any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots” in the Spanish language; and
- b. The City of Pawtucket and City Voting Officials are enjoined from failing to provide provisional ballots to individuals who are qualified to cast a provisional ballot, as required by Section 302(a) of HAVA, 52 U.S.C. § 21082.

2. The terms of this Order pertaining to enforcement of Section 203 of the Voting Rights Act apply to all Federal, state, and local elections that are administered by the City of Pawtucket and City Voting Officials. The terms of this Order pertaining to enforcement of Section 302 of HAVA apply to all federal elections. Whenever the City of Pawtucket and City Voting Officials enter into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, the City of Pawtucket and City

Voting Officials shall require such entity to agree to abide by the terms of this Order as if such entity were a party to this Order with the United States, and consistent with the responsibility of each entity to comply fully with Sections 203 of the Voting Rights Act and Section 302 of HAVA.

Definition

3. “Bilingual election official” means all election officials assigned by the Board of Canvassers and the Registrar who can understand, speak, write, and read both Spanish and English fluently, to provide Spanish-language assistance to LEP voters. For purposes of this Order, a person is considered fluent when they can confidently, easily, and accurately express themselves in English and Spanish, as reasonably determined by the Board of Canvassers and the Registrar. This includes, but is not limited to, bilingual poll officials who are hired and trained to work at a polling place on Election Day or during early voting, persons answering the Spanish-language assistance telephone number described in paragraph 12, and persons serving as on-call assistors, as described in paragraph 15(b).

Translation and Dissemination of Election-Related Materials

4. All information that is disseminated by the City of Pawtucket and City Voting Officials in English about “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots,” 52 U.S.C. § 10503, shall also be provided in the Spanish language and disseminated equally.

5. The City of Pawtucket and City Voting Officials shall utilize a certified

translator to prepare translated materials. The translator shall work in coordination with the bilingual election program Coordinator and the Advisory Group described in paragraphs 25-29 to ensure that bilingual materials are complete, accurate, linguistically competent, and accessible to LEP voters.

6. Any voting system the City of Pawtucket and City Voting Officials employ shall be bilingual, as established by The Rhode Island Board of Elections and as described below. If the City of Pawtucket and City Voting Officials use electronic voting machines, these machines shall offer the readily apparent options of a written and audio ballot in the Spanish language. Any paper ballots used by the City of Pawtucket and City Voting Officials, including the official ballot, the provisional ballot, and the absentee ballot, shall include both English and Spanish on the same document(s).

7. All the provisional ballot materials shall include English and Spanish on the same document(s), including the provisional ballot envelope, forms or affidavits, and the written information given to a provisional voter setting forth the instructions for determining whether the provisional ballot was counted. Any system utilized by the City of Pawtucket and City Voting Officials, through which a provisional voter can determine whether a provisional ballot was counted, shall be available in English and Spanish.

8. All election information and materials posted or displayed in the polling places shall be available in both English and Spanish, with the Spanish translations either on the same posting or display, or in near proximity to each

other.

9. Sample ballots and other written materials mailed to voters' homes prepared by the City of Pawtucket and City Voting Officials shall be provided in English and Spanish, and, to the extent the Spanish and English are not on the same document(s), mailed out at the same time.

10. To the extent that the City of Pawtucket and City Voting Officials provide any information, material, or announcements about the election process in English, the City of Pawtucket and City Voting Officials shall ensure that the same information is provided in Spanish in a manner that would best reach the Spanish-speaking population, including by distributing Spanish language information in newspapers, radio, the internet, and other media that exclusively or regularly publish or broadcast information in Spanish to the local population. Dissemination of Spanish language information shall be in the form, frequency, and media best calculated to achieve notice and understanding equal to that provided to the English-speaking population, and to provide substantially the same information but need not be identical in all respects to English language announcements.

11. The City of Pawtucket and City Voting Officials shall contact by telephone and in writing the Hispanic organizations in Pawtucket (and neighboring jurisdictions), as well as organizations that serve Spanish-speaking citizens, in a list, as agreed to by the parties, to inform these groups of this Order and solicit their assistance in recruiting bilingual election officials and conducting outreach to LEP voters.

Spanish Language Assistance

12. Spanish language assistance shall be available at all locations where the City of Pawtucket and City Voting Officials conduct election-related transactions. Trained bilingual election officials shall be available to answer voting-related questions by telephone without cost during normal business hours and while the polls are open on Election Day. The City of Pawtucket and City Voting Officials may coordinate the provision of such services with other governmental or non-governmental entities that conduct elections.

13. The City of Pawtucket and City Voting Officials shall recruit, hire, and assign poll officials able to understand, speak, write, and read Spanish and English fluently to provide effective assistance to Spanish-speaking voters at the polls on Election Day.

14. The City of Pawtucket and City Voting Officials agree that in targeting precincts for bilingual assistance, it shall consult Spanish surnames of registered voters and data from the 2020 Census and the most recent Five-Year Survey data estimates from the American Community Survey (“ACS”) regarding the location of persons of Hispanic origin in Pawtucket.

15. The City of Pawtucket and City Voting Officials shall, at a minimum, assign at least one bilingual election official to each election precinct on Election Day in all elections and consult with the Mayor’s Community Board regarding the need for additional poll workers to be assigned to precincts with significant numbers of Spanish-speaking voters. Additional requirements include:.

- a. For general elections, the following shall apply:
 1. Any election precinct in which there are 100-250 registered voters with Spanish surnames shall be staffed by at least one bilingual election official;
 2. Any election precinct in which there are more than 250 registered voters with Spanish surnames shall be staffed by at least two bilingual election officials; and
 3. Any election precinct in which there are 500 or more registered voters with Spanish surnames shall be staffed by at least three bilingual election officials.
- b. The City of Pawtucket and City Voting Officials shall employ bilingual personnel, trained in Spanish language election terminology, who shall be on call on Election Day and available to travel to a precinct insufficiently staffed by bilingual election officials, to provide any necessary assistance to any limited English proficient Spanish speaking voter.

16. The City of Pawtucket and City Voting Officials shall provide Spanish language election materials and information at all early voting polling sites and locations to the same extent they are provided in English, and each early voting location shall be staffed by at least one bilingual election official.

17. The parties may, by written agreement, adjust these requirements in light of reliable information that the actual need for language assistance in a

particular polling location is lesser or greater than these standards or that the anticipated voter turnout is substantially lower than average voter turnout.

18. Signs in both English and Spanish shall be posted prominently at all polling places on Election Day and at early voting polling sites stating that Spanish language assistance is available. At sites without a bilingual election official, signs in both English and Spanish shall be posted that explain how voters can obtain Spanish language assistance via the telephone service required by paragraph 12.

19. The City of Pawtucket and City Voting Officials shall invite eligible members of the Mayor's Community Board, discussed below, to serve as poll officials and to encourage bilingual voters to do so.

Election Official Training

20. Prior to each election, in addition to any required state or city training, the City of Pawtucket and City Voting Officials shall train all poll officials and other election personnel present at the polls, on Election Day or during early voting, regarding:

- a. The provisions of Section 203, including the legal obligation and means to make Spanish language assistance and materials available to voters;
- b. The requirement not to discriminate against voters based on their race, ethnicity, color, disability, or language abilities; and
- c. The provisions of Section 302 of HAVA, including, in particular, the requirement that if an individual declares that she is a

registered voter in Pawtucket and eligible to vote in an election for federal office, but the individual does not appear on the official list of eligible voters for that polling site, or an election official asserts the individual is not eligible to vote, a polling official inform the individual that she may cast a provisional ballot after the individual affirms in writing that she is eligible and registered to vote in the jurisdiction.

21. In addition to the general training for poll officials, the City of Pawtucket and City Voting Officials shall train all bilingual election officials on Spanish language election terminology, how to provide effective language assistance, voting instructions, and other election-related issues.

22. The City of Pawtucket and City Voting Officials shall maintain a record of poll officials' attendance at training sessions, including the time, location, and training personnel involved. The City of Pawtucket and City Voting Officials shall provide a copy of any training materials to the United States prior to the start of training sessions. Personnel from the United States shall be permitted to observe the training.

Response to Complaints

23. The City of Pawtucket and City Voting Officials shall investigate expeditiously any complaints or election-related allegations, whether oral or written, including but not limited to: (1) minority language voters, materials, or assistance; (2) poll official hostility toward Spanish-speaking voters, Hispanic

voters, and/or voters requiring assistance to vote by reason of inability to read or write in the English language; and (3) voters who were denied the opportunity to cast a provisional ballot. The results of the investigation(s) conducted by the City of Pawtucket and City Voting Officials shall be reported to the United States within 30 days of the Election or as soon thereafter as is reasonably practicable. Where there is credible evidence that poll officials have engaged in inappropriate treatment of Spanish-speaking voters, Hispanic voters, or voters requiring assistance to vote by reason of inability to read or write in the English language, or where there is credible evidence that poll officials have improperly denied voters the opportunity to cast a provisional ballot, the City of Pawtucket and City Voting Officials shall not permit those poll officials to continue working at the polls in any current or future election.

Spanish-Language Election Program Coordinator

24. The City of Pawtucket and City Voting Officials shall hire an individual to coordinate Pawtucket's Spanish-language election program ("the Coordinator") for all elections within Pawtucket. The City of Pawtucket and City Voting Officials shall provide the Coordinator with support sufficient to meet the goals of the program, as set forth in this Order. The Coordinator shall be able to understand, speak, write, and read fluently in both Spanish and English. The Coordinator's responsibilities shall include coordination of the translation of ballots and other election information; development and oversight of Spanish publicity programs, including selection of appropriate Spanish-language media for notices

and announcements; training, recruitment, and assessment of Spanish-language fluency of bilingual election officials and interpreters; and managing other aspects of the language program.

Advisory Group – Mayor’s Community Board

25. The City of Pawtucket and City Voting Officials recognize their need to assist and inform Pawtucket’s Spanish language election program and the existing Mayor’s Community Board shall serve as the Advisory Group to assist in determining how most effectively to provide election materials, information, and assistance to Spanish-speaking voters. The City of Pawtucket and City Voting Officials shall continue to maintain a roster of the Mayor’s Community Board members together with the telephone and electronic mail addresses of each member.

26. The Executive Order establishing the Mayor’s Community Board shall be amended to reflect the requirements of this Order. Further, any future changes to the Executive Order which established the Mayor’s Community Board must be approved by the United States.

27. Within seven business days after each meeting, the Mayor’s Community Board shall provide a written summary of the discussion and any decisions reached at the meeting to all its members and to the City of Pawtucket and City Voting Officials. If the City of Pawtucket and City Voting Officials decide not to implement a Mayor’s Community Board suggestion or a consensus cannot be reached regarding such suggestion, the City of Pawtucket and City Voting Officials

shall provide to the Mayor's Community Board, and maintain on file, a written statement of the reasons for rejecting such suggestion. The City of Pawtucket and City Voting Officials shall provide a copy of each written summary of Mayor's Community Board meetings and any statement rejecting a Mayor's Community Board suggestion to each member of the Mayor's Community Board and to any additional interested member of the public who requests such information.

28. The City of Pawtucket and City Voting Officials shall transmit to all members of the Mayor's Community Board, and to any additional interested member of the public who requests such information, in English and Spanish, copies of all election information, announcements, and notices that are provided or made available to the electorate and general public, and request that they share such information with others.

29. It is assumed that the Mayor's Community Board will continue to meet with the frequency that has been established with one exception. For 2024 only, the Mayor's Community Board will meet after the September 10, 2024, primary election twice prior to the November 5, 2024, general election – once in the last week of September 2024, and once in the last week of October 2024.

Federal Observers

30. To assist in monitoring compliance with and ensure effectiveness of this Order, and to enforce the voting guarantees of the Fourteenth and Fifteenth Amendments, the appointment of federal observers is authorized for Pawtucket

pursuant to Section 3(a) of the Voting Rights Act, 52 U.S.C. § 10305(a)(1), for the duration of this Order.

31. The City of Pawtucket and City Voting Officials shall recognize the authority of Federal observers to gather information and to observe all aspects of voting conducted during early voting or in the polls on Election Day, including the authority to view Pawtucket personnel providing assistance to voters during voting, except where the voter objects.

Evaluation of Plan

32. The Parties recognize that regular and ongoing reassessment may be necessary to provide the most effective and efficient Spanish language election program and to ensure compliance with provisional ballot requirements. The City of Pawtucket and City Voting Officials shall evaluate the Spanish language election program and the issuance of provisional ballots after each election to determine which aspects are functioning well, whether any improvements are necessary, and how to implement needed improvements. The requirements set forth in this Order may be adjusted at any time upon written agreement of the parties.

33. This Order shall terminate five years from the entry of the Order, provided the Parties agree or this Court determines, in accordance with the procedures in paragraphs 34-36 below, that the City of Pawtucket and City Voting Officials have achieved substantial compliance with the terms of the Order for the previous three election cycles. An “election cycle” refers to all elections administered by the City of Pawtucket and City Voting Officials during a calendar year.

34. If after the November 2028 general election, or anytime subsequent to that date, the City of Pawtucket and City Voting Officials' assessments show that they have been substantially complying with all aspects of this Order for the previous three election cycles and have the intent and means to continue compliance with Section 203 of the Voting Rights Act and Section 302 of HAVA, the City of Pawtucket and City Voting Officials will file a report with the United States seeking to demonstrate their substantial compliance with each provision of this Order. The City of Pawtucket and City Voting Officials shall include reports from the Coordinator and the Mayor's Community Board detailing the City of Pawtucket and City Voting Officials' efforts to comply with the Order. The City of Pawtucket and City Voting Officials shall bear the burden of demonstrating that they have substantially complied with the Order and maintained substantial compliance for the required period.

35. After conferring with the City of Pawtucket and City Voting Officials, the United States, in its good faith discretion and consistent with federal law, will determine whether the City of Pawtucket and City Voting Officials have maintained substantial compliance for the requisite three election cycles. A conclusion of substantial compliance may not be unreasonably withheld. If the Parties agree that there is substantial compliance, they shall file a joint motion with the Court to terminate the Order.

36. If the United States determines that the City of Pawtucket and City Voting Officials have not substantially complied for the requisite period, and if the

City of Pawtucket and City Voting Officials dispute such determination, The City of Pawtucket and City Voting Officials may file a motion with this Court for termination of the Order after the November 2028 election, or any time after that date. In any such proceeding, the City of Pawtucket and City Voting Officials shall have the burden of demonstrating substantial compliance. The City of Pawtucket and City Voting Officials must notify the United States and the Mayor's Community Board, and provide public notice of its intention to file such motion, at least 45 days prior to filing a contested motion to terminate the Order. The City of Pawtucket and City Voting Officials shall also make public the report sent to the United States purporting to show substantial compliance and invite comments from the public, and the City of Pawtucket and City Voting Officials shall allow at least 30 days for public comment before filing the contested motion to terminate the Order. The City of Pawtucket and City Voting Officials shall provide to the United States all comments received within five days of the end of the 30-day comment period.

Retention of Documents and Reporting Requirements

37. Throughout the duration of this Order, the City of Pawtucket and City Voting Officials shall make and maintain written records of all actions taken pursuant to this Order sufficient to document its compliance with all the requirements of the Order. Such records shall be made available to the United States, upon its request and reasonable notice.

38. Throughout the duration of this Order, at least 30 days before any Pawtucket-administered election, the City of Pawtucket and City Voting Officials shall provide to counsel for the United States:

- (a) the name, address, and precinct designation of each polling site;
- (b) the name and title of each poll official appointed and assigned to serve at each precinct;
- (c) a designation of whether each poll official is fluent in English and Spanish;
- (d) an electronic copy of the voter registration list to be used in such elections;
- (e) copies of any signs or other written information provided at polling sites;
- (f) agendas and minutes from previous meetings of the Mayor's Community Board; and
- (g) copies of any training materials addressing the provisional ballot requirements in Section 302 of HAVA.

The information may be supplemented before the election, if necessary.

39. Within 60 days after each such election, the City of Pawtucket and City Voting Officials shall provide to counsel for the United States a report regarding any changes in these items set forth in Paragraph 38 as well as information about all complaints the City of Pawtucket and City Voting Officials received during the election regarding Spanish translation, bilingual assistance, or

provisional ballot issues, by express mail or electronically to the following addresses:

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Other Provisions

40. This Order is final and binding between the Parties and their successors in office regarding the claims raised in this action.

41. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Section 203 of the Voting Rights Act and Section 302 of HAVA.

Respectfully submitted this 23rd day of May, 2024.


AGREED AND CONSENTED TO:


FOR THE UNITED STATES OF AMERICA:

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This three-judge Court, convened under 28 U.S.C. § 2284, and 52 U.S.C. § 10504, having considered the United States' claims under Section 203 of the Voting Rights Act, 52 U.S.C. § 10503, and Section 302 of the Help America Vote Act, 52 U.S.C. § 21082, and having determined that it has jurisdiction over these claims, has considered the terms of this Consent Order and finds them to be fair, adequate and reasonable, and hereby enters the relief set forth above and incorporates those terms herein. Pursuant to Section 3(a) of the Voting Rights Act, 52 U.S.C. § 10302(a), federal observers are authorized to attend and observe elections in the City of Pawtucket during the period of this Order.

ENTERED and ORDERED this 30 day of July, 2024.



United States Circuit Judge



United States District Judge



United States District Judge