

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

CRIMILDA PEREZ-SANTIAGO, VOLUSIA )  
COUNTY HISPANIC ASSOCIATION, JOEL )  
ROBLES, CARMEN FORTIS, EDWIN FORTIS, )  
MADELYN PEREZ, )  
Plaintiffs, )

v. )

VOLUSIA COUNTY, )

Defendant. )

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CIVIL ACTION NO.  
6:08-cv-1868-Orl-28KRS

SECOND AMENDED  
COMPLAINT

**INTRODUCTION**

Plaintiffs herein, allege:

1. This is an action to enforce Section 4(e) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973b, et. seq. with respect to the conduct of elections in Volusia County.
2. Section 4(e) was enacted to prohibit the denial of voting rights of persons born in Puerto Rico based on inability to speak, read or understand English, as they are native born American citizens. Its purpose was that Puerto Ricans, who have received their instruction in United States schools in Spanish, should not lose their right to vote effectively when they choose to move to the mainland United States. Section 4(e) prohibits Defendant from “conditioning the right to vote . . . on ability to read, write, understand, or interpret any matter in the English language” by any person educated in an “American-flag school,” including the

Commonwealth of Puerto Rico, where the predominant classroom language is Spanish. See 42 U.S.C. § 1973b(e)(1).

3. The continued validity and enforceability of Section 4(e) was reconfirmed in 2006 in the VRA Reauthorization Act. In passing the 2006 Act, Congress found that: “Vestiges of discrimination in voting continue to exist as demonstrated by second generation barriers constructed to prevent minority voters from fully participating in the electoral process.”
4. Notwithstanding, thousands of Puerto Ricans in Volusia County continue to be disenfranchised because they are unable to understand their vote and are discouraged from exercising their voting rights in a language they do not understand.
5. During the November 2008 election, Plaintiffs, whose English proficiency is limited, were denied Spanish language ballots and appropriate forms of Spanish language assistance to ensure that they were able to cast their vote effectively and knowledgeably in violation of Section 4(e). They seek injunctive relief to ensure that they and others receive such Spanish ballots and Spanish-language assistance in future elections in Volusia County.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331; 42 U.S.C. § 1973j(f); 28 U.S.C. §1343(3) and (4); 28 U.S.C. §§ 2201 and 2202. Venue is proper in this district pursuant to 28 U.S.C. §1391 (b) and (c) in that the action occurred within the Middle District of Florida.

#### **PARTIES**

7. Plaintiff Crimilda Perez-Santiago is a United States citizen who was born in Puerto Rico. She was educated in an American-flag school in Puerto Rico in which the predominant

classroom language was Spanish. Plaintiff is currently a resident of Deltona in Volusia County and is a registered voter in Volusia County. Plaintiff Perez-Santiago is a member of the Volusia County Hispanic Association.

8. Plaintiff Joel Robles was born in Puerto Rico and is a United States citizen. He is registered to vote in Volusia County and resides in Deltona. He was educated in an American-flag school in Puerto Rico in which the predominant classroom language was Spanish.
9. Plaintiff Carmen Fortis is Puerto Rican and is a United States citizen. She is a registered voter in Volusia County and resides in Orange City. She was educated in an American-flag school in Puerto Rico in which the predominant classroom language was Spanish.
10. Plaintiff Edwin Fortis was born in Puerto Rico and is a United States citizen. He is a registered voter in Volusia County and resides in Orange City. He was educated in an American-flag school in Puerto Rico in which the predominant classroom language was Spanish.
11. Plaintiff Madelyn Perez was born in Puerto Rico and is a United States citizen. She is a registered voter in Volusia County and resides in Deltona. She was educated in an American-flag school in Puerto Rico in which the predominant classroom language was Spanish.
12. Plaintiff Volusia County Hispanic Association (“VCHA”) is a not for profit organization founded in 1995 to create cultural awareness and learning opportunities for people of diverse backgrounds. It is the only Hispanic membership organization in Volusia County and represents the interests of Hispanics in Volusia County. VCHA’s mission is to unite and assist the Hispanic community by increasing visibility and expanding opportunities. VCHA

is committed to assuring that its members, many of whom are registered voters, have full access to the political process and the right to vote. Many of its members are Puerto Rican and were educated in American-flag schools. Currently, all of the Members of its Board of Directors are Puerto Rican.

13. Defendant Volusia County has responsibility for elections in Volusia County. It represents the Volusia Department of Elections which has the duty and responsibility for the conduct of elections and creation of election districts in Volusia County and Ann McFall, the Volusia County Supervisor of Elections, who is charged with the administration of elections in Volusia County.

#### **FACTS**

14. According to the 2000 Census, Volusia County had a total population of 443,343, of which 29,111 were Hispanic and 13,546 were persons of Puerto Rican descent.
15. According to the 2007 American Community Survey Estimates published by the U.S. Census Bureau ("2007 Estimates"), the population of Volusia County increased to 500,413, of which 51,637 were Hispanic and 24,613 were persons of Puerto Rican descent.
16. Plaintiffs believe that, as of the 2007 Estimates, a significant number of persons in Volusia County are of Puerto Rican descent and were educated in American-flag schools in which the language of instruction was Spanish.
17. The Hispanic population of Volusia County has dramatically increased since the 2000 Census. According to the 2007 Estimates, the number of Hispanics in Volusia County has nearly doubled since 2000, from 29,111 Hispanics in the County in 2000 to the 51,637 Hispanics living there in 2007.

18. Defendant has access to information on the large number of Hispanics and Puerto Ricans residing in Volusia County and their increase in recent years.
19. Defendant has unfairly conditioned the voting rights of citizens of Puerto Rican descent educated in American-flag schools in Puerto Rico in which the predominant classroom language was Spanish, on the ability to speak and/or understand English through the following means:
  - a. Plaintiffs believe Defendant has never translated the ballot to Spanish in any election held in Volusia County, including but not limited to the November 4, 2008 election, as a result of which, numerous voters of Puerto Rican descent have been unable to understand the ballot in English and have been unable to fully exercise their voting rights.
  - b. Defendant has failed to make readily available in Spanish other election materials.
  - c. Constitutional amendments and/or city referenda which are often on the ballot, as was the case with respect to the November 2008 election, are often complex and difficult, if not impossible to understand, even for native English speakers, much less for Spanish-speakers, compounding the need for Spanish-language translation. As a result, citizens of Puerto Rican descent with limited English proficiency have had difficulty voting and/or understanding their vote because the ballot and other election materials have been provided in English only.

**Plaintiffs Experience at the Polls for the November 2008 Election**

20. Plaintiff Perez-Santiago was unable to fully exercise her voting rights. While at her polling place, she did not see any Spanish-language elections materials or signs. She asked a Spanish-speaking poll worker for a Spanish language ballot and was told that it was unavailable. When she asked the poll worker for Spanish-language assistance, the poll worker tried, but was unable to translate sections of the ballot for her. Plaintiff Perez-Santiago could not understand the Volusia County ballot that was only in English, a language she does not fully comprehend as she is limited English proficient. Because of her inability to understand her English ballot on November 4, 2008, Plaintiff Perez-Santiago did not vote for several constitutional amendments and city referenda.
21. On November 4, 2008, Plaintiff Robles was unable to fully comprehend his ballot when he cast it as his proficiency in English is limited. He did not receive the Spanish language assistance he needed and did not see any Spanish-speaking poll workers present at his poll. He found the constitutional amendments very difficult to understand and is not certain that he voted according to his wishes.
22. Plaintiff Carmen Fortis does not understand English. She did not see any Spanish language materials or signage while at her polling place and did not see any Spanish-speaking poll workers available to help her before she cast her vote for the November 2008 election. Since her ballot was not in Spanish, she was not able to vote for all offices and left amendment votes blank because she did not understand her ballot.
23. Plaintiff Edwin Fortis does not understand English. His first ballot cast for the November 2008 election was rejected by the voting machine because he had overvoted in one or more

races as he did not understand what was printed on his English ballot. Fearing that his second ballot would be rejected, he only voted for President and left the remaining portions of his ballot blank against his wishes.

24. Plaintiff Madelyn Perez did not vote in the November 4, 2008 election because she felt intimidated by the voting process in Volusia County. She did not feel comfortable reading the complex Florida constitutional amendments in English. Had the ballot been in Spanish and had Spanish-language information and assistance been readily available to her, she would have voted.
25. VCHA has Puerto Rican members that were educated in American-flag schools in which the predominant classroom language was Spanish. Some of these members were injured by Defendant's violation of Section 4(e) of the Voting Rights Act as they were unable to cast a meaningful vote in the November 2008 election because of Defendant's failure to provide Spanish-language assistance.
26. As a result of the practices alleged, Plaintiffs were unable to fully exercise their voting rights.
27. Plaintiffs fear that they will not be able to vote in a manner consistent with their intent because of their inability to understand English when they cast their ballot in the future.

#### **CAUSE OF ACTION**

28. Plaintiffs hereby re-allege and incorporate by reference ¶¶1-27 of this Second Amended Complaint.
29. Defendant conducts elections in English, as described above, and the failure to provide Plaintiffs and other Puerto Ricans with limited English proficiency the Spanish-language

election information, ballots and assistance necessary for their effective political participation constitutes a violation of Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e).

30. Unless enjoined by this Court, Defendant will continue to violate Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e), by failing to provide all of the Spanish-language election information and assistance necessary to citizens of Puerto Rican descent educated in American-flag schools where the predominant classroom language was Spanish to effectively participate in the political process.

**WHEREFORE**, Plaintiffs pray that this Court:

1. Declare that Defendant has violated Section 4(e) of the Voting Rights Act, 42 U.S.C. § 1973b(e), by failing to provide Spanish-language election information, Spanish-language ballots and Spanish-language assistance necessary for Plaintiffs and other United States citizens educated in Puerto Rico to effectively participate in the political process;
2. Preliminarily and permanently enjoin the Defendant, its agents and successors in office, and all persons acting in concert with it, from failing to provide Spanish language voting information, voting materials and Spanish-language ballots and effective assistance to citizens educated in Puerto Rico, in violation of Section 4(e) 42 U.S.C. § 1973b(e); and
3. Requiring Defendant to devise and implement a remedial plan to ensure that citizens educated in Puerto Rico are provided bilingual election information, Spanish-language ballots and assistance consistent with Section 4(e), 42 U.S.C. § 1973b(e).
4. Plaintiffs further requests that this Court:
  - a. Award Plaintiffs compensatory damages;
  - b. Award reasonable attorney's fees, together with all court costs; and

- c. Award such other equitable and further relief as the interests of justice may require.

Dated: September 11, 2009

**/s/ Lida Rodriguez-Taseff**

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11<sup>th</sup> day of September, 2009, I electronically served the foregoing document on all counsel of record identified on the Service List below, via electronic mail.

**/s/ Lida Rodriguez-Taseff**

Lida Rodriguez-Taseff, Esq.  
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**SERVICE LIST**

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