



Se Habla Lawsuit?

By Edward Blum

Though an understanding of English is a requirement for U.S. citizenship, Section 203 of the Voting Rights Act mandates that “language assistance” be available to voters in districts with non-native speaker populations that meet certain criteria. The enforcement of Section 203, however, costs taxpayers tens of thousands of dollars, and there is no evidence it helps non-native speakers vote. The experiences of Springfield, Massachusetts, illustrate these problems.

“A City of Homes . . . A City for Business . . . A City Rich with History and Multi-cultural Diversity”—so reads the motto of Springfield, Massachusetts (pop. 150,000), halfway between New York and Boston. With an ethnic mix of blacks, whites, Hispanics, and others reflected in its local government, Springfield, like most of New England today, supports liberal Democrats at the polls. In the 2006 election, for instance, nearly 70 percent of Springfield voters backed Deval Patrick, the African-American Democratic nominee for governor.

So it must have come as a shock to city officials when the U.S. Department of Justice slammed Springfield with a lawsuit claiming, among other transgressions, “rude treatment” of Spanish-speaking voters in 2005. According to the complaint filed in federal court, some “Spanish-speaking voters have left the polls without casting a ballot due to the absence of bilingual assistance.” The Justice Department asked the court to require the city to beef up its assistance, notably by hiring more Spanish-speaking poll workers and by developing a plan to ensure that Hispanics “understand, learn of, and participate in all phases of the electoral process.”

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Springfield, like hundreds of other towns and counties around the country, is subject to Section 203 of the Voting Rights Act because, among many other complex criteria, more than 5 percent of the city’s population speaks a particular foreign language. The law requires covered jurisdictions to translate all printed election materials into that language and provide foreign-language assistance at the polls. In its six years in office, the George W. Bush administration has filed nineteen lawsuits charging noncompliance with Section 203, more than were filed in all the years from 1978 to 2000 combined.

Preemptive Action

Setting aside for a moment the interesting point that even foreign-born voters should be able to understand their ballots since the ability to speak English is a condition for gaining American citizenship, it is fair to ask how much trouble non-English-speaking voters actually encounter at the polls. If the data from Springfield are any indication, the answer is very little. Not a single Spanish-speaking voter in Springfield complained in the election that prompted the Justice Department to sue.

While this may seem puzzling at first, it turns out that complaints on the ground are not what trigger an enforcement action. Instead, Justice

Department bureaucrats regularly comb through voter registration rolls in covered jurisdictions, counting Spanish, say, or Chinese or Vietnamese surnames. Then they count the number of foreign language-speaking poll workers. If the ratios do not comport with their ideal percentages, they sue. No phone calls, no warning letters, no inquiries about extenuating circumstances—they go straight to court.

Springfield entered into a consent decree with the Justice Department that required the town to triple the number of bilingual poll workers it hires and to allow federal observers to monitor the next few elections. The government sent in a small army of monitors to observe the first election after this agreement, a primary in September 2006. Springfield's city attorney, Ed Pikula, told the Associated Press, "It's unfair to saddle the city with that type of intrusion." And it costs American taxpayers tens of thousands of dollars.

How did the government run up such an exorbitant tab? The Department of Justice sent four employees from Washington to Springfield at a cost of \$3,488 for travel, room, and board. The Office of Personnel Management sent in forty-five employees from around the country, some from the Northeast, but many from as far away as California and Florida, according to sources who were in Springfield during the election. Assuming similar costs for both agencies, the monitoring operation cost at least \$40,000.

Costly Assistance

And how helpful to Springfield's Spanish-speaking voters was this exercise? According to the observation reports filed by these forty-five people, there were ninety-two instances of bilingual "voter assistance." That is, ninety-two voters out of more than 16,000 said *something* to a poll worker in a language other than English. They may have asked a question about the ballot or made a comment on the weather. Regardless, the interaction was recorded as a "person receiving language assistance." This monitoring did not come cheap at \$435 per voter. If Washington sends the same number of observers for the general election, for which turnout is higher, the monitoring cost will still run more than \$100 per voter assisted.

Boston is another covered city, and it held a primary the same day as Springfield. The Department of Justice sent six employees from its Civil Rights Division to Boston at a cost of \$6,000, and the Office of Personnel Management sent forty-nine observers. Out of 87,000 voters in Boston that day, 210 received "language assistance." The taxpayers' tab was less than Springfield's, but still topped \$250 a voter.

Voting is the vital mechanism of democracy, and the government should make every effort to ensure that elections are accessible and fair. But there are better ways of going about it than this. Most election officials are mindful of the law and want to make voting accessible to everyone. But enforcement along these lines is unnecessary and, frankly, foolish. The Justice Department has embraced the legal tactics of a sue-happy plaintiff's lawyer: dig through a jurisdiction's election data looking for an improperly low number of bilingual poll workers, file a lawsuit, then muscle the local government into a consent decree and settlement—another scalp to add to the pile.

(Indeed, there is speculation that the real impetus for the sudden increase in Section 203 enforcement was a series of U.S. Supreme Court decisions in voting rights cases culminating in 2003, which had the effect of significantly reducing the workload of the career lawyers in the voting section at the Justice Department. For what it is worth, seventeen of the nineteen enforcement actions brought by the Bush administration have been filed since those decisions came down.)

Congress was skeptical of renewing the foreign-language ballot provisions of the Voting Rights Act last summer. Led by Rep. Steve King, an Iowa Republican, 181 GOP members of the House (and four Democrats) voted to eliminate Section 203. Unfortunately, the effort failed, and the provision was renewed for twenty-five years. Too bad members of Congress were not aware of the deplorable manner in which Section 203 was being enforced when they made this decision. Now the only way good sense can prevail in the matter of foreign-language ballots is for the Justice Department of its own accord to stop suing jurisdictions unnecessarily and to start reasonably enforcing the law.

Speaking of which, just whose job is it anyway to enforce the requirement that new citizens be able to speak English?

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