

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

Plaintiff, )

v. )

CITY OF BOSTON, )

MASSACHUSETTS; THOMAS M. )

MENINO, in his official capacity as )

Mayor of the City of Boston; )

BOSTON CITY COUNCIL: )

MICHAEL F. FLAHERTY, PAUL J.)

SCAPICCHIO, JAMES M. KELLY, )

MAUREEN E. FEENEY, )

CHARLES C. YANCEY, ROB )

CONSALVO, JOHN TOBIN, )

CHUCK TURNER, MICHAEL P. )

ROSS, JERRY P. MCDERMOTT, )

FELIX D. ARROYO, MAURA )

HENNIGAN, STEPHEN J. )

MURPHY; BOSTON ELECTION )

DEPARTMENT; GERALDINE )

CUDDYER, in her official capacity )

as Chair of the Boston Election )

Department, )

Defendants. )

CIVIL ACTION NO. 05-11598

JOINT MOTION

THREE-JUDGE COURT

**JOINT MOTION FOR AN INTERLOCUTORY ORDER**  
**AUTHORIZING THE APPOINTMENT OF FEDERAL EXAMINERS AND FOR**  
**CONDITIONAL DISMISSAL PURSUANT TO RULE 41(a)(2)**

On July 29, 2005, the United States filed a complaint in this matter alleging violations of Sections 2 and 203 of the Voting Rights Act of 1965. 42 U.S.C. 1973; 42 U.S.C. 1973aa-1. The parties have worked diligently toward an amicable resolution of all of the matters involved in this case, and are desirous of an election process in the City of Boston that is equally open to all

voters, including language-minority voters. The parties agree that the appointment of federal observers to monitor elections in the City of Boston is appropriate and would be productive towards achieving the shared goals of the parties.

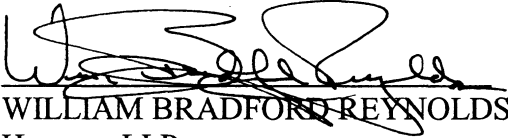
Under Section 3(a) of the Voting Rights Act, the appointment of federal examiners is a necessary predicate to the appointment of federal observers pursuant to Section 8 of the Act, 42 U.S.C. 19973f. The appointment of such examiners and observers requires an order of the Court. 42 U.S.C. 1973a. The order may be an interlocutory order or as part of a final judgment. Id. Such appointment cannot, however, occur simply by an out-of-court agreement of the parties. The parties jointly waive a hearing and findings of fact and conclusions of law, and herein stipulate that such appointment is necessary and appropriate under all of the circumstances. Accordingly, the parties jointly move this Court to enter an interlocutory order authorizing the appointment of federal examiners by the Director of the Office of Personnel Management pursuant to Section 3(a) of the Voting rights Act, 42 U.S.C. 1973a(a).

Conditionally on the Order giving authority to appoint federal examiners, the parties further seek dismissal of this action pursuant to Fed. R. Civ. P. 41(a)(2) subject to the terms and conditions set forth in the attached Agreement. The United States, Plaintiff, and the City of Boston, et al., Defendants, have determined that the interests of all concerned parties can best be served by entering into the Agreement attached as Exhibit A to this Motion, concerning the implementation of improvements in the City of Boston's election process, particularly as it concerns Spanish-speaking, Chinese-speaking, and Vietnamese-speaking voters. In recognition of these interests and to avoid adversarial litigation, the parties jointly move this Court, pursuant to Fed. R. Civ. P. 41(a)(2), to (1) dismiss the complaint conditionally upon the City of Boston's substantial compliance in the future with the terms of the attached Agreement; (2) place the case on the Court's


inactive docket; and (3) retain jurisdiction over the case until the interlocutory order entered in this case authorizing the use of federal examiners expires on December 31, 2008.

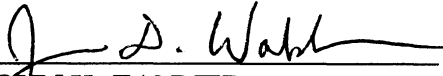
WHEREFORE, the parties request that this Court enter the attached proposed Order.

Respectfully submitted,

  
WILLIAM BRADFORD REYNOLDS  
Howrey, LLP  
1299 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2402  
(202) 383-6912

BRADLEY J. SCHLOZMAN  
Acting Assistant Attorney General

  
MERITA A. HOPKINS  
Corporation Counsel  
City of Boston  
Boston City Hall  
Room 615  
Boston, MA 02201  
(617) 635-4017

  
JOHN K. TANNER  
CHRISTOPHER COATES  
SUSANA LORENZO-GIGUERE  
JAMES D. WALSH  
ABEL GOMEZ  
ALBERTO RUISANCHEZ  
Attorneys  
Civil Rights Division - NWB  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530  
(202) 514-6346

**EXHIBIT A**

## MEMORANDUM OF AGREEMENT AND SETTLEMENT

Whereas Section 2 of the Voting Rights Act of 1965 requires that citizens be allowed to participate equally in all phases of the election process without regard to race, color or membership in a language-minority group, 42 U.S.C. § 1973, and said Section applies to all areas of the United States; and

Whereas the City of Boston has been subject to the requirements of Section 203 of the Voting Right Act, 42 U.S.C § 19733aa-1a, with respect to the Spanish language, since 1992, *see* 57 Fed. Reg. 43,213-02 (Sept. 18, 1992); and

Whereas the Voting Rights Act protects those language-minority groups against which there has been a history of discrimination in voting in the United States, and specifically defines “language minorities” or “language minority group” as including only persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage, 42 U.S.C. § 19731(c)(3); 42 U.S.C. § 1973aa-1a(e); and

Whereas the Director of the Census determined on July 26, 2002, that the City of Boston continued to be subject to Section 203 coverage under the Voting Rights Act for Spanish-heritage citizens, based on a determination that more than 10,000 citizens in the City are members of a language-minority group, specifically of Spanish heritage, who do not speak English well enough to participate effectively in an English-language election process, and the illiteracy rate of these persons as a group is higher than the national illiteracy rate, *see* 67 Fed. Reg. 48,871 (July 26, 2002); and

Whereas the Department of Justice has, since 1992, sent the City of Boston and other jurisdictions covered under Section 203 information regarding Section 203’s requirements and

has met with City officials and officials of other jurisdictions to further explain these requirements; and

Whereas the City maintains that since 1992 it has undertaken to provide full and fair access to its elections to language-minority groups, including citizens of Spanish heritage, in accordance with its obligations and responsibilities under Section 203 of the Voting Rights Act, including providing minority-language assistance at a number of polling places, bilingual signage and literature relevant to the City's voting practices and procedures, and bilingual ballots; and

Whereas the Department of Justice filed a civil complaint against the City of Boston on July 29, 2005, captioned *United States of America v. City of Boston, et al.*, Civil Action No. 05-11598, claiming violations of the Voting Rights Act in regard to the City's covered language-minority voting population; and

Whereas the Department of Justice's Civil Rights Division, which has primary enforcement responsibility for the Voting Rights Act, has alleged that the City of Boston is not in compliance with Sections 2 and 203 of the Voting Rights Act and needs to take steps to ensure that all minority-language voters covered by the Act, including Spanish-speaking, Chinese-speaking, and Vietnamese-speaking voters, have equal access to the City's electoral process for all city, state, and federal elections administered in whole or in part by the City; and

Whereas the City of Boston disputes the Justice Department's allegations, and asserts it is committed to increasing its current efforts to provide covered language-minority voters equal access to the election process and to resolving whatever differences there may be with the Department of Justice regarding the manner in which it has endeavored to provide the franchise to covered language-minority groups in the City, and has entered into discussions and negotiations with the Department of Justice intent on reaching agreement as to what

improvements the City might adopt so as to satisfy the Department of Justice that the City's voting practices and procedures will fully and fairly apply to citizens of covered language-minority groups, in the same manner as they are applied to English-speaking citizens, as required by the Voting Rights Act; and

Whereas the City of Boston and the Department of Justice have reached agreement with respect to the matters set forth herein, and are desirous of working together in the future so as to ensure that covered language-minority citizens of voting age in the City of Boston are provided the same opportunity to participate in the franchise as are other voting-age citizens to the fullest extent possible;

NOW THEREFORE, for full, fair and adequate consideration given and received, it is hereby agreed as follows:

1. The City of Boston, its employees, agents, successors in office, and all persons acting in concert with it, agree to continue, as they have since at least 2002, to provide in Spanish all of those "registration or voting notices, forms, instructions, assistance or other materials or information relating to the electoral process, including ballots" that the City provides in English, so that such materials are equally available in Spanish and English, as required by Section 203 of the Voting Rights Act, as amended, 42 U.S.C. § 1973aa-1a(c), and also provide such materials and information the City may have recently begun providing, and all future such materials and information. In similar fashion, the City further agrees henceforth to provide such election materials in Chinese and Vietnamese as it provides in English in accordance with the terms of this Agreement.

2. The terms of this Agreement shall apply to all federal, state, and local elections administered by the City of Boston to the fullest extent permitted by law, which shall include elections run in whole or in part by the City for the Commonwealth of Massachusetts or any political subdivision of the Commonwealth. To insure the City's full authorization to perform its obligations and responsibilities hereunder, the City of Boston commits to seek passage by the Legislature of the Commonwealth of Massachusetts, before the next scheduled state elections on September 19, 2006, of Home Rule Legislation pursuant to the Home Rule Amendment to the Massachusetts Constitution and the Massachusetts Home Rule Procedures Act, G.L. c.43B, s.1, *et seq.*, authorizing use by the City of Chinese and Vietnamese bilingual ballots as required by this Agreement in all federal and state elections administered by the City. If said Home Rule Legislation has not been obtained 90 days prior to the September 19, 2006 elections, the City, together with the Department of Justice, will immediately file with the Court a joint petition for a declaratory order regarding the City's authority to print and distribute such bilingual ballots in said state election, while continuing the City's Home Rule initiative to similar effect. The parties agree that such an order would be necessary and appropriate under all of the circumstances.

3. The City of Boston, its employees, agents, successors in office, and all persons acting in concert with it, agree not to engage in any act or practice which has as its purpose or result the denial or abridgment of the right to vote on the basis of membership in a language-minority group in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

4. The United States agrees to move to dismiss its complaint against the City of Boston based on the City's willingness to enter into this Agreement, and, to that end, the parties hereto agree to jointly move for conditional dismissal pursuant to Rule 41(a)(2), Fed. R. Civ. P.

### **Minority Language Assistance**

5. The City of Boston agrees to continue to make available by telephone, without cost, trained bilingual election personnel able to speak Spanish to answer voting-related questions during normal business hours, and while the polls are open on election days. In addition, the City agrees to provide like telephone assistance, without cost, through trained bilingual election personnel able to speak Chinese and Vietnamese to assist members of those language-minority groups on election days.

6. The City of Boston agrees to recruit, hire, and assign available bilingual election officers able to understand, speak, read, and write Spanish fluently to provide assistance to Spanish-speaking voters at the polls on election days. In addition, the City agrees similarly to recruit, hire, and assign available bilingual election officers to assist Chinese-speaking and Vietnamese-speaking voters at the polls on election days.

7. The City of Boston agrees to survey City employees to identify those who speak Spanish, Chinese, or Vietnamese fluently, and to allow and encourage such employees, as they can be made available to provide assistance, to serve at the polls on election day. The City further agrees to strive to find and utilize qualified bilingual persons fluent in Spanish, Chinese, or Vietnamese to serve as election officers, and, to that end, shall, among other outreach efforts, invite recommendations of names from each major political party, request each educational entity within or proximate to the City to allow and encourage selected bilingual students (as allowed by state law and as part of an educational program) to serve as election officers, even on election days that fall on school days, and receive academic credit appropriate to their service as well as all pay and benefits of election officers, and urge eligible members of the Mayor's Advisory Task Force (including its Community Liaisons and the individuals and organizations with which they

are in contact, as discussed below), also to serve as and help recruit election officers.

8. The City of Boston agrees to increase substantially its pool of bilingual election officers so as to serve all voters who need assistance in Spanish to vote. In 2000, the Census Bureau, based on data it collected, determined that 35 out of every 100 voting-age citizens of Spanish heritage in Boston were unable to speak English well enough to participate in a political process administered in English. With that information-base, and applying the Census Bureau Spanish surname list to the City's voter registration rolls -- the best current measure of the likely need for assistance by Spanish-speaking voters in Boston -- the City agrees to supplement its existing targeting program, so that any polling place in which there are, according to the Census Bureau Spanish surname list:

- (a) 100-249 registered voters with Spanish surnames, shall be staffed by at least one Spanish-speaking election officer;
- (b) 250-499 registered voters with Spanish surnames, shall be staffed by at least two Spanish-speaking election officers;
- (c) 500-999 registered voters with Spanish surnames, shall be staffed by at least three Spanish-speaking election officers; and
- (d) 1,000 or more registered voters with Spanish surnames, shall be staffed by at least four Spanish-speaking election officers.

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 place is lesser or greater than these standards.

9. The City of Boston further agrees to provide bilingual election officers to assist at polling places serving Chinese and Vietnamese voters on a basis suited to the differing needs of

these language-minority groups. The Census Bureau reports higher rates for Chinese (50%) and Vietnamese (61%) citizens of voting age who are unable to speak English well enough to participate in elections conducted in English than it reports for their counterparts of Spanish heritage (35%). Moreover, surname lists compiled of Asian-American citizens, such as the Lauderdale-Kestenbaum List, by necessity exclude common but ethnically ambiguous surnames (such as “Lee”), so that such lists understate the actual numbers of Chinese and Vietnamese citizens. Accordingly, the Department of Justice uses a separate formula for each minority-language group, as appropriate, to measure the likely need of that group of voters for language assistance at the polls. With that information-base and to better serve the needs of its Chinese and Vietnamese citizens, the City of Boston agrees to the following commencing with the November 8, 2005 Citywide election:

(a) any polling place in which there are, according to the Lauderdale and Kestenbaum surname list:

- (1) 35-84 registered voters with Chinese surnames, shall be staffed by at least one Chinese-speaking election officer;
- (2) 85-169 registered voters with Chinese surnames, shall be staffed by at least two Chinese-speaking election officers;
- (3) 170-339 registered voters with Chinese surnames, shall be staffed by at least three Chinese-speaking election officers; and
- (4) 340 or more registered voters with Chinese surnames, shall be staffed by at least four Chinese-speaking election officers.

(b) any polling place in which there are, according to the Lauderdale and Kestenbaum surname list:

- (1) 30-74 registered voters with Vietnamese surnames, shall be staffed by at least one Vietnamese-speaking election officer;
- (2) 75-149 registered voters with Vietnamese surnames, shall be staffed by at least two Vietnamese-speaking election officers;
- (3) 150-299 registered voters with Vietnamese surnames, shall be staffed by at least three Vietnamese-speaking election officers; and
- (4) 300 or more registered voters with Vietnamese surnames, shall be staffed by at least four Vietnamese-speaking election officers.

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 place is lesser or greater than these standards.

10. The City of Boston agrees to have available on election days bilingual persons, trained in Spanish-language election terminology and all election procedures, as appropriate, who shall be on call to travel to polling places not staffed by a bilingual election officer to provide any necessary assistance to any Spanish-speaking voter. Similarly, the City agrees to have bilingual persons trained in Chinese and Vietnamese on call on election days to provide like services as needed to assist Chinese-speaking or Vietnamese-speaking voters.

11. The City of Boston agrees to post signs prominently in English and Spanish at all polling places in the City, indicating that Spanish-speaking assistance is available by a telephone in the polling place. Similarly, the City agrees to post signs prominently in English and Chinese and in English and Vietnamese indicating that assistance in either Chinese or Vietnamese, as appropriate, is available by a telephone in the polling place.

### **Election officer training**

12. Prior to each election, in addition to any other required state or city training, the City of Boston agrees to increase existing training of all election officers and other election personnel to be present at the polls on the legal requirements of Sections 2 and 203 of the Voting Rights Act, including making minority-language assistance and materials available to voters in an appropriate manner, applying all voting standards and practices equally, allowing voters their assistor of choice consistent with and as limited by Section 208 of the Voting Rights Act, provisional voting, the need to enforce state law prohibitions against campaigning in or near the polls, and other election-related issues, and being respectful and courteous to all voters regardless of race, ethnicity, color, or language abilities. In addition to the general training for election officers, the City of Boston agrees to train all bilingual election officers (whether they be Spanish, Chinese or Vietnamese speakers) on election terminology and voting instructions for their specific language. The City of Boston further agrees to maintain a record of which election officers attend training sessions, including the time, location, and training personnel involved.

13. In order to be eligible to serve as an election officer, an individual must commit orally or in writing that he or she will: (1) treat all voters equally and with respect; (2) honor the candidate and other ballot choices of all voters who receive assistance in marking their ballots, and avoid making any statement or allowing any person to make any communication within or near the polls to influence any voter's ballot choice; (3) allow voters requiring assistance to choose a person to assist, consistent with Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6; and (4) offer voters provisional ballots who are entitled to such ballots under Massachusetts law and the Help America Vote Act of 2002, 42 U.S.C. § 15482(a). The Election Department shall maintain records to demonstrate that each election officer has made this

commitment.

### **Response to Complaints About Election Officers**

14. The City of Boston agrees, at the request of and on the responsibility of the Department of Justice, to remove from the polls any election officer who the Department of Justice advises has, in its judgment, knowingly violated the requirements set forth in items one and two in Paragraph 13 of this Agreement.

15. The City of Boston, upon receipt of complaints by voters, or their representatives or agents, whether oral or written, agrees to investigate expeditiously any allegations of election-officer hostility toward minority-language voters in any election. Where there is credible evidence that election officers have engaged in inappropriate treatment of voters, the City of Boston shall continue its practice of discipline, to include termination and removal of such election officers for future elections, where appropriate.

### **Translation of Election Materials**

16. The City of Boston agrees to employ trained translators who are familiar with Spanish-language election terminology to produce clear and accurate written translations, and also to employ trained translators who are familiar with Chinese-language and/or Vietnamese-language election terminology for the same purposes.

17. The City of Boston agrees to compile a checklist identifying each written or printed item of election information that the City of Boston makes available to the public at each polling place. The checklist shall include for each item an attestation that the election officers at the polling place posted or made available to voters these materials in each minority language, as required in this Agreement, and shall also include sufficient space for insertion of a detailed written explanation of why individual items were not posted or available. The Wardens for each

polling place must complete and sign this checklist or, where appropriate, provide written explanation for a failure to do so, before the Warden receives payment for work in the election, subject to applicable state and federal law. The City of Boston agrees to maintain a record of each failure to complete and sign the checklist.

### **Dissemination of Minority Language Information**

18. The City of Boston agrees to disseminate all bilingual election information, materials, and announcements produced hereunder (whether in Spanish, Chinese or Vietnamese) to the same extent and on comparable terms as they are disseminated by the City in English, including distributing said bilingual election information, materials, and announcements in newspapers, radio, and/or other media that exclusively or regularly publish or broadcast information in Spanish, Chinese, or Vietnamese, as appropriate. Such election information and materials, except for ballots, need not be identical in all respects to English-language materials, but 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.

19. The official ballot and absentee ballots shall continue to be provided bilingually in English and Spanish or, on any electronic voting machine, shall be readily available in Spanish as an option. Any audio version of the ballot on such machines shall be available in English and Spanish. Beginning January 1, 2006, official and absentee ballots shall also be provided bilingually in Chinese and English and Vietnamese and English, and on any electronic voting machine shall be readily available in Chinese and Vietnamese as an option, consistent with this Agreement. Any audio version of the ballot on such machines shall be available in Chinese and Vietnamese, as well as in English and Spanish.

20. Beginning with elections after January 1, 2006, the City agrees to provide ballots bilingual in English and Chinese and/or English and Vietnamese as agreed in Paragraph 19 above at each of the polling places staffed with at least one Chinese-speaking election officer (in the case of English-Chinese ballots) or Vietnamese-speaking election officer (in the case of English-Vietnamese ballots) as described in Paragraph 9(a) and (b) above, the number of such ballots to be equal to the number of Chinese or Vietnamese surnamed registered voters, as appropriate. After each election, the parties will evaluate whether the English and Chinese and English and Vietnamese bilingual ballots should be distributed to additional or different polling places, and make appropriate changes. For the November 8, 2005 City election, the City agrees to produce and affix a sample or facsimile ballot, as nearly identical in size and layout to the official ballot, in the Chinese language inside each voting booth in the polling places identified in Paragraph 9(a)(1) – (4) above and in Vietnamese inside each voting booth in the polling places identified in Paragraph 9(b)(1) – (4) above. The City agrees to solicit the assistance of the Advisory Task Force in the production of said sample ballots.

21. To the extent the City of Boston provides sample ballots in English to voters who request them, the City of Boston shall also provide sample ballots in Spanish to voters who request them. For the November 8, 2005 Citywide election, the City also agrees to the extent it provides sample ballots in English to use its best efforts to provide sample ballots in Chinese and Vietnamese in similar fashion to voters who request them, and agrees to provide such sample ballots on the same basis as for English for all elections thereafter.

**City Elections Language Coordinator**

22. The City of Boston agrees to employ an individual to coordinate the City's minority-language election programs (the "City Elections Language Coordinator") for all

elections administered in whole or in part by the City of Boston. The employment of a permanent City Elections Language Coordinator consistent with the City's employment procedures shall be completed no later than January 1, 2006, and in the interim the Election Department will consult with the Office of New Bostonians and the linguistics liaisons of Neighborhood Services to address the needs as enumerated in this Paragraph. The City of Boston further agrees to provide the City Elections Language Coordinator with all the support necessary to meet the goals of the Program. The City Elections Language Coordinator shall work under the supervision of the Chair of the Election Department. The City Elections Language Coordinator's oversight responsibilities shall include: training of bilingual election officers; recruitment and assessment of the minority-language proficiency of bilingual election officers and interpreters; coordination of translation of election information, including the Election Department's website; development of an election glossary to insure uniform use of election terminology in Spanish, Chinese, and Vietnamese; development, selection and oversight of minority-language media and other election notices, announcements and information, including effective notices of poll site information and voter assignments; and managing other aspects of the Program. To accomplish these tasks, the City shall appoint from among the members of the Mayor's Advisory Task Force a Community Liaison for each of the three language-minority communities covered by this Agreement -- the Spanish-speaking community, Chinese-speaking community, and Vietnamese-speaking community. The City of Boston further agrees to assign a full-time City employee, fully familiar with the election process within the City of Boston, who speaks Spanish to work with the Spanish Community Liaison, a comparable City employee who speaks Chinese to work with the Chinese Community Liaison, and a comparable City employee who speaks Vietnamese to work with the Vietnamese Community Liaison. These employees

shall assist the Community Liaisons in conducting outreach to their respective communities and partner with the Liaisons in aiding the City Elections Language Coordinator's achievement of his or her responsibilities.

### **Advisory Task Force**

23. The City Elections Language Coordinator and each Community Liaison shall be members of the Mayor's Advisory Task Force that has been established to coordinate and assist efforts of the City of Boston to address concerns of the City's language-minority groups, including concerns relating to the distribution and dissemination of bilingual election materials. To fully effectuate this Agreement and to serve effectively and efficiently the varying needs of each covered language-minority group, the designated Community Liaison shall be fully able to read, write, and speak fluently the language of the language-minority group he or she has been appointed to represent. The Community Liaison, along with his or her City employee counterpart whenever possible, shall meet periodically with interested individuals and organizations that work with or serve that Community Liaison's particular covered minority-language group in the City of Boston to receive comments, input and guidance on how more effectively the City might be able to provide election materials, information, and assistance to those minority-language voters, and to publicize the City's minority-language election programs. Said meetings shall occur at least monthly through 2006, and as frequently thereafter as the Community Liaison determines is necessary to insure that the language-minority community served is being heard and its comments, input and guidance are being fully considered by the Mayor's Task Force. The Advisory Task Force shall meet regularly throughout the year to review with the City Elections Language Coordinator and the Community Liaisons the City's performance under this Agreement, and to consider comments and recommendations made by

the City Elections Language Coordinator and the Community Liaisons. At least one such meeting of the Task Force shall occur within 45 days of any city, state or federal election administered by the City, following which the City Elections Language Coordinator shall provide a written summary to the Mayor, the Chair of the Election Department, and all members of the Task Force of the discussion and any decisions reached at the meeting. Said written summary shall include a statement of reasons supporting any decision made by the Chair of the Election Department not to implement a Task Force suggestion regarding any particular voting practice or procedure.

24. The City of Boston agrees to transmit, by electronic mail, facsimile or other means, to all interested persons and organizations, copies of all bilingual election information, announcements, and notices that are provided to the electorate and general public, together with an election glossary containing accepted election terminology in Spanish, Chinese and Vietnamese, and request that they share such information with their members, clientele, and representative language-minority groups. The Election Department shall maintain a separate list of persons and organizations interested in receiving materials and information in each language.

#### **Evaluation of Plan**

25. The parties to this Agreement recognize that regular and ongoing cooperation and reassessment may be necessary to provide the most effective and efficient bilingual election program. The City of Boston therefore agrees to evaluate each bilingual program after each election (e.g., following the 2005 preliminary election) to determine which aspects of such programs are functioning well, whether any aspects need improvement, and, if improvements are needed, how to address them. The Department of Justice shall be available to meet with the City of Boston following each election to share information it learns through its federal examiners,

and to assist the City of Boston in its ongoing assessment of its bilingual election program. This Agreement may be adjusted at any time upon written agreement of the parties.

### **Retention of Documents and Reporting Requirements**

26. During the duration of this Agreement, the City of Boston agrees to make and maintain written records of all actions taken pursuant to this Agreement, and to make copies of such records available to the Department of Justice upon request.

27. During the duration of this Agreement, at least 30 days before each election held in whole or in part within the City of Boston, the City of Boston agrees to provide to the Assistant Attorney General, Civil Rights Division, Department of Justice, or his designee, a list of polling places to be used for such election, the precincts voting at each such polling place, the number of election officers to be appointed and assigned to serve at each polling place who are bilingual and the language(s) spoken by each such officer, and an electronic copy of the list of registered voters for such election, as known at that time. Within 30 days following certification of election results for each election, the City of Boston agrees to provide to the Assistant Attorney General, Civil Rights Division, Department of Justice, or his designee, any updated report regarding the aforesaid polling information, and further to advise said Department official on all complaints the City of Boston received before, on, or after election day concerning language or voter assistance issues. Unless otherwise specified, or as may be changed from time to time, all reports, notices or any other written communications required to be submitted under this Agreement shall be sent to the undersigned counsel at the Department of Justice, at the following address:

Voting Section  
U.S. Department of Justice

Civil Rights Division  
950 Pennsylvania Ave., N.W. – NWB-7254  
Washington, D.C. 20530

Facsimile: (202) 307-3961

E-mail: John.K.Tanner@usdoj.gov

**Preliminary Measures for the September 27, 2005 Preliminary Election**

28. Given the limited amount of time between execution of this Agreement and the September 27, 2005 preliminary election, this Paragraph sets forth the City of Boston's obligations for that election and that election only. The other provisions of this Agreement will apply to all future elections, commencing with the November 8, 2005 final election, or as soon as otherwise provided in this Agreement, through expiration of this Agreement. The City of Boston shall undertake the following initial, reasonable, and practicable steps for the September 27, 2005 preliminary election:

Bilingual Election Officers

(a) While the City of Boston shall make best efforts to recruit and hire the number of bilingual, Spanish-speaking, Chinese-speaking, and Vietnamese-speaking election officers set forth in Paragraphs 8(a) - (d), 9(a)(1) - (4), and 9(b)(1) - (4) above, the City of Boston agrees to appoint at least one Spanish-speaking election officer to each polling place in the City of Boston with 100 or more Spanish-surnamed registered voters; at least one Chinese-speaking election officer to each polling place with 35 or more Chinese-surnamed registered voters; and at least one Vietnamese-speaking election officer to each polling place with 30 or more Vietnamese-surnamed voters. The parties recognize the time constraints and appreciate the challenges

involved in meeting the appointment goals set forth in this Paragraph and agree to meet and confer on a frequent basis to facilitate achievement of these requirements, and make adjustments, if necessary.

#### Election Officer Training

(b) Prior to the September 27, 2005 preliminary election, the City of Boston agrees to continue its existing training for all election officers to be respectful and courteous to all voters regardless of race, ethnicity, or language abilities, and to provide provisional ballots to those voters who are eligible to vote by provisional ballot.

(c) The City of Boston further agrees to instruct its wardens and bilingual election officers during election officer training that the bilingual election officers must be available to assist voters needing language assistance at all stages of the voting process – including at the sign-in table, during voting demonstrations, and while voting at the voting booths. The City of Boston also agrees to include in its instruction of all its election officers that voters needing language assistance may be given assistance by a person of the voters' choice consistent with and as limited by Section 208 of the Voting Rights Act, and that all applicable state law prohibitions against campaigning in or near the polls shall be enforced.

#### Signs and Ballots

(d) Signs in English and Spanish shall be posted prominently at all polling places in the City of Boston, indicating that Spanish-speaking assistance is available by a telephone in the polling place.

(e) Signs in English and Chinese shall be posted prominently at those polling places identified in Paragraph 9(a)(1) - (4) stating that Chinese-language assistance is available, if in

fact the particular polling place has bilingual staff, or explaining how voters can obtain assistance in Chinese if there is no bilingual election officer present.

(f) Signs in English and Vietnamese shall be posted prominently at those polling places identified in Paragraph 9(b)(1) - (4) stating that Vietnamese-language assistance is available, if in fact the particular polling place has bilingual staff, or explaining how voters can obtain assistance in Vietnamese if there is no bilingual election officer present.

(g) The City of Boston shall continue to provide a bilingual ballot in English and Spanish to each of the City's polling places. As time and circumstances permit, the City of Boston shall also use its best efforts to produce and affix a sample or facsimile ballot, as nearly identical in size and layout to the official ballot, in the Chinese language inside each voting booth in the polling places identified in Paragraph 9(a)(1) - (4) above and in Vietnamese inside each voting booth in the polling places identified in Paragraph 9(b)(1) - (4) above. The City agrees to solicit the assistance of the Advisory Task Force in the production of said sample ballots.

#### **Other Provisions**

29. This Agreement is final and binding between the parties and their successors in office regarding the claims raised in this action. This Agreement shall remain in effect through December 31, 2008. Either party may move this Court for such orders as may be necessary for the effectuation of the terms of this Agreement and to ensure compliance with the Voting Rights Act.

30. Each party shall bear its own costs and fees.

Agreed to this 15<sup>th</sup> day of September, 2005.

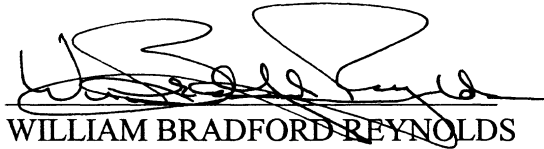
AGREED TO

For UNITED STATES OF AMERICA:

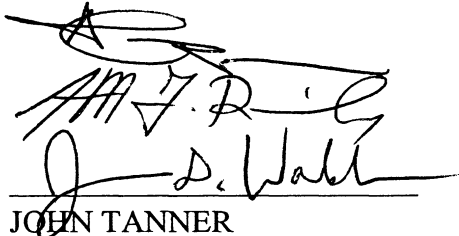
For CITY OF BOSTON:



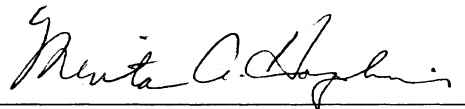
BRADLEY J. SCHLOZMAN  
Acting Assistant Attorney General  
Civil Rights Division



WILLIAM BRADFORD REYNOLDS  
Howrey LLP  
1299 Pennsylvania Avenue, NW  
Washington, D.C. 20004-2402  
(202) 383-6912



JOHN TANNER  
Chief  
CHRISTOPHER COATES  
Principal Deputy Chief  
SUSANA LORENZO-GIGUERE  
Special Counsel  
JAMES D. WALSH  
ABEL GOMEZ  
ALBERTO RUISANCHEZ  
Attorneys  
Voting Section  
U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530  
(202) 514-6346



MERITA A. HOPKINS  
Corporation Counsel  
City of Boston  
Boston City Hall  
Room 615  
Boston, MA 02201  
(617) 635-4017

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )

Plaintiff, )

v. )

CITY OF BOSTON, )

MASSACHUSETTS; THOMAS M. )

MENINO, in his official capacity as )

Mayor of the City of Boston; )

BOSTON CITY COUNCIL: )

MICHAEL F. FLAHERTY, PAUL J.)

SCAPICCHIO, JAMES M. KELLY, )

MAUREEN E. FEENEY, )

CHARLES C. YANCEY, ROB )

CONSALVO, JOHN TOBIN, )

CHUCK TURNER, MICHAEL P. )

ROSS, JERRY P. MCDERMOTT, )

FELIX D. ARROYO, MAURA )

HENNIGAN, STEPHEN J. )

MURPHY; BOSTON ELECTION )

DEPARTMENT; GERALDINE )

CUDDYER, in her official capacity )

as Chair of the Boston Election )

Department, )

Defendants. )

CIVIL ACTION No. 05-11598

ORDER

THREE-JUDGE COURT

**INTERLOCUTORY ORDER AND ORDER OF DISMISSAL**

It is hereby **ORDERED, ADJUDGED, AND DECREED** that:

- (1) The appointment of federal examiners is authorized for the City of Boston pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), through December 31, 2008.

- (2) Pursuant to Rule 41(a)(2) of the Fed. R. Civ. P., this matter is dismissed, subject to substantial compliance by the City of Boston, et. al., with the Agreement reached by the parties, and the contingency set forth in Paragraph 2 of the Agreement.
- (3) This matter shall remain on the Court's inactive docket for enforcement of the terms of the Memorandum of Agreement by either party through expiration of the Court's interlocutory order authorizing the appointment of federal examiners on December 31, 2008.

ENTERED and ORDERED this \_\_\_\_\_ day of September 2005.

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THE HONORABLE WILLIAM G. YOUNG  
UNITED STATES DISTRICT JUDGE

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THE HONORABLE SANDRA L. LYNCH  
UNITED STATES CIRCUIT JUDGE

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THE HONORABLE PATTI B. SARIS  
UNITED STATES DISTRICT JUDGE