



May 16, 2019

Via email

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Re: Notice of Development of Rulemaking for Florida Administrative Code Rule 1S-2.032 and Rule 1S-2.034

Dear Ashley E. Davis,

We write to provide comments on the proposed rule development of Florida Administrative Code Rule 1S-2.032: Uniform Design for Election Ballots and Rule 1S-2.034: Polling Place Procedures Manual. *See* Fla. Admin. Register Vol. 45, No. 81 (April 25, 2019) at 1793-94 (Notices of Development of Proposed Rules). We urge the Secretary of State (“Secretary”) to adopt rules that ensure statewide compliance with Section 4(e) of the Voting

Rights Act, 52 U.S.C. §10303(e). In addition, we request that the Secretary extend the time for submission of written comments on the proposed rules to May 31, 2019.

1. Federal law requires Spanish-language official ballots, official election-related materials, and oral election assistance

A. Spanish-language ballots, election materials, and assistance have been ordered by a federal district court

Section 4(e) of the Voting Rights Act protects the voting rights of limited-English, Puerto Rico-educated citizens. *See* 52 U.S.C. §10303(e). The federal District Court for the Northern District of Florida has held that Section 4(e) requires that Spanish-language official ballots, Spanish-language official election-related written materials, and Spanish-language oral election assistance must be provided for elections in 32 Florida counties. *See Rivera Madera, et al. v. Lee, et al.*, Case No. 18-cv-152-MW/GRJ (N.D. Fla.) ECF No. 131 (May 10, 2019) (attached hereto). To ensure that all Florida elections comply with Section 4(e), the Secretary should revise Rules 1S-2.032 and 1S-2.034 to require that all of the Spanish-language ballots, other election materials, and assistance ordered by the Court in *Rivera Madera v. Lee* be provided for all Florida elections. *See id.*

Specifically, Rules 1S-2.032 and 1S-2.034, and any necessary additional rules, should, at the very least, require for all elections, including early voting and vote-by-mail, all of the following:

1. Official Spanish-language ballots.
2. A toll-free, county-specific, Spanish-language hotline with at least one bilingual employee for the purpose of translating or otherwise assisting Spanish-language voters during all early voting hours, hours when polls are open, and all hours during which voters can cure deficiencies with vote-by-mail or provisional ballots following election days, and all business hours on other days. The Rules should further require that at each polling place the availability of Spanish-language hotline assistance, including the county's Spanish-language hotline number and the state's Spanish-language hotline number, must be visibly displayed.
3. The provision in Spanish of all official election-related written and electronic materials, including, but not limited to, ballots, vote-by-mail and early voting applications and envelopes, provisional ballot envelopes and certifications, voter registration cards and applications and related notices, voting instructions, voter information guides and pamphlets, notifications of elections and polling place changes, polling place signage, and all information available on the supervisors of elections' and municipal election officials' websites. The Rules should further require that the existence of these materials must be made known at polling places and the supervisors of elections' offices with prominent displays, and that signage must be prominently posted and explain in English and Spanish how voters can obtain Spanish-language assistance.

4. The provision in Spanish, at the same time as the information is provided in English, of all notifications, announcements, and informational materials about all stages of the electoral process, including materials concerning the opportunity to register, voter registration deadlines, the times, places, and subject matters of the elections, the vote-by-mail and early voting processes, offices up for election, candidates who have qualified, and local issues or referenda and announcements applicable to elections in the counties.
5. A copy of the Spanish-English Election Terms Glossary prepared by the U.S. Election Assistance Commission at each polling place.
6. Spanish-language election information on supervisors of elections' and municipal election officials' websites that is readily accessible through prominent and identifiable Spanish-language links on each website.
7. Information in Spanish on supervisors of elections' and municipal election officials' websites and at each polling place that any voter who requires assistance to vote may bring a helper to assist them.
8. To the extent practicable, the recruiting, hiring, training, and assignment of bilingual poll workers who are able to understand speak, write, and read English and Spanish fluently and can provide effective translation assistance to Spanish-speaking voters at the polls on election days, at early voting locations, and at locations where voters can cure deficiencies with vote-by-mail or provisional ballots following election days. The Rules should further require that supervisors of elections and municipal elections officials must make good-faith recruiting efforts to provide bilingual assistance, particularly for the benefit of those polling locations with a higher proportion of individuals who fall under the ambit of Section 4(e).
9. Training of all poll officials and other election personnel regarding the requirements of Section 4(e) of the Voting Rights Act, including the legal obligation and means to make effective Spanish-language assistance and materials available to voters.

See Rivera Madera v. Lee, ECF No. 131 at 9-16.

The Secretary should issue rules requiring all the above-listed Spanish-language ballots, other election materials, and assistance for all of the reasons set forth in the Court's orders in *Rivera Madera v. Lee*, as well as for all of the reasons set forth in the Plaintiffs' briefing and supporting evidence in that case, which for brevity's sake are attached hereto and incorporated by reference. *See Rivera Madera v. Lee*, Case No. 18-cv-152-MW/GRJ (N.D. Fla.) ECF Nos. 2 to 2-10, 3 to 3-46, 45 to 45-12, 46 to 46-10, 47 to 47-21, 48, 48-1, 54, 57, 59, 77 to 79, 107, 110 to 110-6, 116 to 116-2, 126, 126-1, 131 (attached).

B. Additional requirements are necessary to ensure compliance with Section 4(e)

The Court's recent preliminary injunction order makes clear that "[n]othing in this Order shall be construed to limit the Secretary or supervisors of elections or municipalities from offering *more* relief." *Rivera Madera v. Lee*, ECF No. 131 at 16. Accordingly, to fully comply

with Section 4(e) of the Voting Rights Act and ensure that Spanish-speaking, Puerto Rico-educated citizens can vote effectively, the Secretary's rules should also include the following requirements:

1. Rule 1S-2.032 should require bilingual or multilingual official ballots (including vote-by-mail and provision ballots), rather than permitting separate, unilingual Spanish ballots or only English ballots marked with Automark devices using a Spanish interface. Bilingual official ballots are necessary to protect the secrecy of Spanish-language voters' ballots, to avoid potential intimidation of Spanish-language voters, to avoid mistakes and misunderstandings by pollworkers about the proper provision of Spanish-language ballots, to avoid the possibility that not enough unilingual ballots are created or made available at each precinct, and to ensure that the voting process is fully inclusive of and effective for Spanish-language voters. Experience in other jurisdictions, including in Florida, reflects that use of bilingual and multilingual official ballots is effective and administrable.

During the litigation in *Rivera Madera v. Lee*, some supervisors of elections have speculated about possible burdens of bilingual ballots. The legal and practical benefits of using bilingual or multilingual ballots greatly outweigh any such speculative potential burdens. Nevertheless, the Rule could be revised to provide a process, subject to public participation and comment, for a supervisor of elections or municipality to request and obtain permission from the Secretary to provide unilingual rather than bilingual Spanish official ballots, upon a showing of compelling need, with the decision of the Secretary to grant permission for an exception subject to judicial review. Allowing supervisors of elections or municipal elections officials to decline to provide bilingual or multilingual ballots, and instead to provide separate unilingual Spanish ballots or to force all Spanish-speaking voters to use Automark devices, would insufficiently protect the rights of American citizens protected by Section 4(e). The Rule should require that all official ballots, including vote-by-mail and provisional ballots, be at least bilingual in English and Spanish, with exceptions, if any, only permitted after a rigorous process involving public participation and judicial review.

2. Rule 1S-2.032 should require, in addition to bilingual or multilingual ballots, the provision in each precinct and early voting location of at least one electronic Voter Assistance Terminal, such as an Automark device, programed to allow Spanish-speaking voters to mark their ballots using a Spanish-language electronic or audio interface. Making such equipment accessible to Spanish-speaking voters is critical to ensuring that voters with disabilities or with limited literacy are able to effectively participate and is required by the Americans with Disabilities Act.

3. Rule 1S-2.034 or another rule should require that all official election-related written and electronic material be provided by supervisors of elections and municipal elections officials at the same time as such material is provided in English. The Court's recent preliminary injunction order requires as much, *see Rivera Madera v. Lee*, ECF No. 131 at 10-11, but also provides that, with respect to supervisors of elections' websites, "[s]maller counties with less means and resources to fully translate their websites may provide a Spanish-language link,

prominently displa[y]ed, to the state’s election-information website.” *Id.* at 11. The Rule should not include such an exception. Translation of online material is easy and can be done efficiently at little cost. *See, e.g., Rivera Madera v. Lee*, ECF No. 45-4 ¶6.

The Rule should require translation to Spanish of all supervisors of elections’ and municipal elections officials’ websites. Access to accurate information concerning voting and elections is of utmost importance for citizens to be able to effectively exercise their fundamental right to vote. Accordingly, the Rule should incorporate best practices for the provision of reliable translations of government materials, as recommended by the federal government’s digital services office. *See* U.S. General Services Administration, DigitalGov, “Top 10 Best Practices for Multilingual Websites,” *available at* <https://digital.gov/resources/top-10-best-practices-for-multilingual-websites/>. In particular, the Rule should prohibit reliance solely on machine translation for providing website content in Spanish. *Id.*

4. Rule 1S-2.034 or another rule should set a minimum required number of bilingual pollworkers for each county and municipality, who can then be assigned to the precincts most likely to need them in each election. The proposed rule as currently drafted does not require any bilingual pollworkers, and leaves the number of pollworkers provided (if any) up to the relevant supervisor of elections. In order for the final rule to be clear and administrable, to avoid ambiguity, and to ensure that the benefits of bilingual in-person assistance are made available to the maximum extent feasible, the Secretary should identify a required minimum number of bilingual pollworkers for each county and municipality. We propose using one of the three different formulas Plaintiffs in *Rivera Madera v. Lee* have proposed for calculating the required minimum number of bilingual pollworkers per county. *See* the attached Proposed Orders and Declarations of Daniel Smith, *Rivera Madera v. Lee*, ECF Nos. 2-2, 2-10, 45-10, 110-1, 110-6. The Secretary could alternatively develop and use another method for determining the required minimum number of bilingual pollworkers in each county and municipality, so long as that alternative method is at least as protective of Spanish-speaking citizens educated in Puerto Rico as the methods proposed by Plaintiffs in *Rivera Madera v. Lee*.

5. Rule 1S-2.034 or another rule should require that all counties and municipalities provide access to a toll-free Spanish-language election assistance hotline with all relevant county-specific or municipality-specific election information, unless the Secretary ensures that the state’s Spanish-language hotline includes all county-specific and municipality-specific information. The Court’s recent preliminary injunction order provides that the five counties that expressed concerns over the cost and staffing limitations for a Spanish-language hotline (Columbia, Jackson, Okeechobee, Taylor, Wakulla) must at least create and advertise at polling places a telephone line that patches them to the state’s Spanish-language hotline. *See Rivera Madera v. Lee*, ECF No. 131 at 10 n.7. That is not enough to comply with Section 4(e), if the state’s Spanish-language hotline does not provide county-specific and municipality-specific election information. If that information is not available through the state’s Spanish-language hotline, limited-English county and municipal voters referred to the state’s hotline will be unable

to receive assistance about county or municipal election, polling place, or ballot issues, among other things, and therefore will not be able to vote effectively.

The Secretary should issue rules requiring this additional Spanish-language election materials and assistance for all of the reasons set forth in the Court's orders in *Rivera Madera v. Lee*, as well as for all of the reasons set forth in the Plaintiffs' briefing and supporting evidence in that case, attached hereto.

Sincerely,

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