2006

Memorandum in Opposition to the City's Motion to Amend Judgment, Harper v. Chicago Heights, Docket No. 1:87-cv-05112 (Northern District of Illinois 1987)

Michael P. Seng
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`IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Ron Harper, Kevin Perkins, William Elliot, and Robert McCoy, Plaintiffs	)	
v.	)	Case No.: 87 C 5112
City of Chicago Heights and the Chicago Heights Election Commission, Defendants.	)	David H. Coar, Judge

MEMORANDUM IN OPPOSITION TO THE CITY'S MOTION TO AMEND JUDGMENT, OR IN THE ALTERNATIVE, TO STAY JUDGMENT PENDING APPEAL

Plaintiff Class, Ron Harper, et al., files this Memorandum in Opposition to the City's Motion to Amend the Judgment of this Court issued on February 8, 2006, or in the alternative, to stay the judgment pending appeal. Plaintiff Class asserts that the City of Chicago Heights has raised no basis to amend the judgment. Because the appeal in this 19 year-old case does not raise any substantial issue, a stay pending appeal should be summarily denied.

I. The City Defendant Raises No Issue That Would Require This Court to Amend Its Judgment

In its order of February 8, 2006, this Court approved the recommendation of the Special Master to implement the map proposed by the Individual Plaintiffs in this action. The Plaintiff Class had previously stipulated that it would accept this map if implemented by the Court. The City provides no new argument in support of its motion to amend this Court's order.

A. The City's Argument for a Single-Member Six-Ward Map Is Untimely

When this law suit was filed in 1987, Chicago Heights had a commission form of government where all the members of the city counsel were elected at large. The law suit alleged that most of the Commissioners lived in one area of the City and were not responsible to the wishes of minorities living in other parts of the City and that voting in Chicago Heights was racially polarized. The Complaint alleged that the at-large system made it impossible for minority voters to elect the candidate of their choice and effectively fenced the minority voters of Chicago Heights out of the political process in violation of the Voting Rights Act. The Complaint prayed that the at-large system be dismantled and that the City be divided into seven wards so that the voters in each ward could elect the candidate of their choice.

The City fought any attempt to change the at-large system. In February 1989, both Plaintiffs and Defendants filed motions for summary judgment, and on January 28, 1992, a federal magistrate recommended partial summary judgment for the Plaintiffs, which was accepted by the District Court in May 1993. Thereafter, the case was assigned to Judge Hubert Will to mediate a settlement. At the suggestion of Judge Will, the City and the Plaintiff Class agreed to implement a single-member six-ward map. The Plaintiff Class accepted this plan on the assumption that under the 1990 census minority voters would constitute a majority in only three wards, regardless whether there were six or seven wards. In either case, the representatives of the minority wards would be a minority on the city council. The Plaintiff Class hoped (it turned out wrongly) that under a six-ward systen minority voters might have a chance to influence the mayor, who would act as a tie-breaker.

The settlement was opposed by the individual Plaintiffs, Perkins and McCoy, who appealed the settlement to the Seventh Circuit Court of Appeals. On February 7, 1995, the Court of Appeals vacated the settlement on the ground that the settlement departed from state law without justification. The Court suggested, however, that these changes could be accepted by the voters by referendum. Thereafter, a referendum was conducted and the change to a single-member six-ward system was approved by the voters on November 7, 1995 and implemented by the City. Voting in the City Council by the three white aldermen and the three minority aldermen continued to be racially polarized, and the mayor consistently cast his tie-breaking vote with the three white aldermen.

On March 4, 1997, the District Court found that the City's previous commission form of government did in fact violate the Voting Rights Act and that the referendum that approved the single-member six-ward system was valid. Thereafter, the parties submitted remedial maps to the Court, and on May 28, 1998, the District Court determined that the single-member six-ward system did not remedy the old system and approved a plan that provided for seven aldermen to be elected at-large under a cumulative voting scheme. That decision was appealed to the Seventh Circuit Court of Appeals.

Consequently, on July 27, 2000, the Seventh Circuit Court of Appeals held that the District Court's finding that the six-ward system did not remedy the Voting Rights Act violation because the mayor's pattern of voting in tie-breaking situations was proper, but that the cumulative voting system imposed by the District Court was invalid because it departed from existing state law and did not respect the City's preference for single-

member districts. The United States Supreme Court denied the City's petition to review this decision.

On October 2, 2002, the District Court appointed a Special Master to review the various maps proposed by the parties and to recommend a map that complied with the Voting Rights Act and the Equal Protection Clause. On November 20, 2002, the City proposed a revised single-member seven-ward proposed map. At that time all parties appeared to be in agreement about the propriety of adopting some type of seven-ward map; the only difference in the different parties' proposals was where to draw the lines.

Thereafter, the Special Master scheduled a public meeting in Chicago Heights on October 1, 2003 where the three different seven-ward maps submitted by the City, the class plaintiffs, and the individual plaintiffs were discussed. Questions were raised about whether the City's map complied with the one-person/one-vote requirements of Equal Protection. By letter to the Special Master, the City indicated that it might want to propose revisions to its map.

Then on March 24, 2004, the City's attorney notified the Special Master that he was recommending that the City file a new map. Over the Plaintiff's objection, the Special Master gave the City until April 15 to confirm whether it would be filing a revised map. The City did not respond and the Special Master closed the period for submissions on April 17, 2004, stating that he would consider the City's map to be that presented at the October 1, 2003 hearing held in Chicago Heights. The City never moved to vacate this decision. But on June 23, 2004, the City, ***for the first time and after the time for submissions had expired***, served on everyone a proposed weak mayor single-member six-ward plan based on the boundaries that were presently in effect. In his letter

to Mr Scariano on November 24, 2004, the Special Master explained why this submission was untimely and was not considered.

The Special Master made his recommendation to this Court on October 27, 2004 based on the original three seven-ward maps that had been considered at the open meeting on October 1, 2003. On December 6, 2004, the City filed an emergency motion with this Court to remand the Special Master's Report for further consideration of the City's tardy six-ward proposal. That motion was denied by this Court on December 12, 2004, and on January 7, 2005, the City filed a Petition for Writ of Prohibition and/or Mandamus with the Court of Appeals contesting this Court's refusal to remand. That petition was denied on January 20, 2005.

This Court issued its order requiring the implementation of a single-member seven-ward map as recommended by the Special Master on February 8, 2006.

Contrary to its current argument, the City of Chicago Heights has expressed no long-standing commitment to the six-ward system. Indeed, the City had appeared to have abandoned the six-ward idea when it submitted a seven-ward map on November 20, 2002. It was only after more that two months after the time for submitting new maps had expired that the City, on June 23, 2004, informed everyone that it was reverting to a six-ward proposal that maintained the *status quo* previously ruled to be illegal. Therefore, the only maps under consideration are the three seven-ward maps submitted by each of the parties, and the Special Master determined, and this Court agreed, that the seven-ward map submitted by the City fails to satisfy the one-person/one-vote requirement of Equal Protection.

A new referendum is not required. The Court of Appeals required a referendum to enforce the original settlement because the settlement negotiated by Judge Will had departed from state law in imposing a six-ward aldermanic system. The seven-ward system imposed by this Court in its order of February 8 is consistent with state law.

There is an inconsistency with state law to the extent that the Court's February 8, 2006 order implements single-member wards and not two-member wards as required by state law. 65 ILCS 53.1-20-10. Plaintiff Class opposes a deviation from state law; nothing in the record justifies a deviation from state law. Based on the recommendation of the Special Master, either a single-member or a two-member system satisfies the requirements of the Voting Rights Act. Both the February 7, 1995 and the July 27, 2000 opinions of the Court of Appeals directed that any voting plan conform as closely as possible to state law.

However, the decision of the Court of Appeals on July 27, 2000 did instruct the District Court to defer to the City's preference for single-member districts. Currently the City has single-member wards and the City has consistently argued that it does not want to change to two-member wards. The decision of this Court is premised on the City's preference to leave in place the single-member ward system that had previously been approved by referendum.

What the City is really arguing for is a six-ward map, but the six-ward system has already been rejected by the District Court and that rejection was affirmed by the Seventh Circuit Court of Appeals in 2000. The City's proposal of June 2004 for a six-ward map was untimely. A seven-ward map is consistent with Illinois law and consistent with the

Voting Rights Act. Therefore, the change from a six-ward map to a seven-ward map does not require a referendum.

Nor should a referendum be required to implement this Court's order of February 8, 2005 regarding the use of single-member wards. This Court's order merely perpetuates the single-member ward system that is presently in place in Chicago Heights, that was previously approved by the voters, and that has been consistently preferred by the City. Indeed, it is ironical for the City to be objecting to a single-member district map when it has consistently opposed two-member districts.

However, if the City insists on a referendum and should this Court decide that a referendum is appropriate, the City should conduct a simple referendum ***in lieu of an appeal*** on the sole question whether each ward should be represented by a single alderman. Should the voters in a referendum adopt the single-member ward system, that vote would settle any argument about the validity of the new system ordered by this Court. The Special Master held that a single-member districting system complies with the Voting Rights Act, and no party has challenged that finding.

If the voter's were to reject the single-member ward system, then this Court may properly implement a two-member ward system. The Special Master found that a two-member ward districting system, like a single-member ward system, complies with the Voting Rights Act. A two-member seven-ward plan would result in fourteen aldermen being elected -- an even number that theoretically could result in a tie vote, the same as the existing single-member six-ward system. However, because there would be seven wards, each of which would elect candidates reflecting the preferences of that ward, the likelihood of a tie vote in the City Council should not be great. Also, the greater number

of alderman would most likely increase the diversity of the City Council thereby making a tie vote less likely.

B. The City's Argument for Voting Age Population under the Equal Protection Clause Borders on the Frivolous

The City's argument that the standard under the equal protection clause is voting age population rather than general population borders on the frivolous. The Court's decision properly disposes of that issue.

The City attempts to argue that because the Plaintiffs did not allege an independent violation of the one-person/one-vote requirement in their complaint but only a violation of the Voting Rights Act, the Court should only have considered voting age population in fashioning a remedy. When the Plaintiffs filed this lawsuit, there were no aldermanic districts in Chicago Heights, therefore making a one-person/one-vote challenge superfluous. Any remedy imposed by this Court must accord with the Constitution. It is an axiom that this Court cannot impose a remedy that complies with the Voting Rights Act but otherwise violates Equal Protection.

II. This Court Should Not Grant the City a Stay Pending an Appeal Because There Is No Basis in Law or in Fact for an Appeal

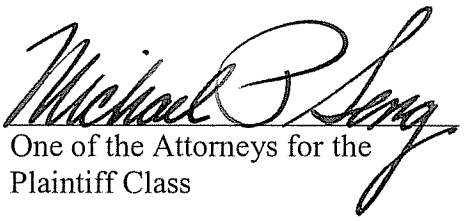
On February 8, 2006, this Court began its order disposing of this case with the observation that this case is nineteen years old.

On July 27, 2000, Judge Wood observed in her opening comments in the second appeal to the Seventh Circuit Court of Appeals in this case that "The wheels of justice have turned slowly in this voting rights case, which began more than a decade ago and continues to accrete new appeals almost by the month."

In remanding the voting rights case of *Barnett v. City of Chicago,* 141 F.3d 699 (7th Cir.), *cert. denied,* 524 U.S. 954 (1998), Judge Posner observed in a case that had been filed eight years earlier and had been twice before the Court of Appeals that "the protraction of this litigation has been absurd."

All good things must come to an end. It is long past the time when this case should have ended. To maintain further proceedings in this matter is truly "absurd." A stay pending appeal in a suit for an injunction is discretionary with the Court. FRCP 62(c). A stay in this matter to allow another trip to the Court of Appeals is not warranted under the law or the facts. The City has no grounds to base an appeal except to perpetuate a case that should have ended years ago. There City raises no substantial question to warrant an appeal and its request for a stay should, therefore, be denied.

Respectfully Submitted,



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March 2, 2006

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Ron Harper, Kevin Perkins, William Elliot, and Robert McCoy,	)	
Plaintiffs	)	
v.	)	**Case No.: 87 C 5112**
City of Chicago Heights and the Chicago Heights Election Commission,	)	**The Honorable Judge David H. Coar**
Defendants.	)	

Notice of Filing

To: See service list:

Please take notice that on March 2, 2006, I caused to be filed with the Clerk of the United States District Court, Northern District of Illinois, Eastern Division, **PLAINTIFFS MEMORANDUM IN OPPOSITION TO THE CITY'S MOTION TO AMEND JUDGMENT, OR IN THE ALTERNATIVE, TO STAY JUDGMENT PENDING APPEAL**, a copy which is here served upon you.

Certificate of Service

J. Damian Ortiz, certifies that I served the PLAINTIFFS MEMORANDUM IN OPPOSITION TO THE CITY'S MOTION TO AMEND JUDGMENT, OR IN THE ALTERNATIVE, TO STAY JUDGMENT PENDING APPEAL, upon the parties on the service list by electronic filing and by depositing it, postage prepaid in a properly addressed envelope, in a U.S. mailbox in Chicago, Illinois, on Thursday, March 2, 2006.

J. Damian Ortiz

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