UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JOYCE BANKS, GIRTHA GULLEY, OSCAR PENN, ROBERT GRUBBS, STAN MACLIN and HIRAM WALKER,	))))	
Plaintiffs,	))	
vs.	))	No. 87-2371
CITY OF PEORIA, ILLINOIS and the PEORIA ELECTION COMMISSION,	))))	
Defendants.	)	

FILED

MAY 2 4 2006

JOHN M. WATERS, Clerk
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA, IL

MOTION TO AMEND THE AMENDED FINAL CONSENT DECREE ENTERED IN THIS CASE ON AUGUST 10, 1988

Now comes the Board of Election Commissioners of the City of Peoria, (hereinafter the Peoria Election Commission) one of the Defendants in the above captioned cause, by its attorney, Robert G. Day, Jr., and moves this court for the entry of an order amending the Amended Final Consent Decree entered in this case on August 10, 1988 and for reasons states as follows:

1.   That on August 10, 1988, this court entered in this case a document entitled Amended Final Consent Decree And Full Resolution Of Action which document incorporated "Amended Exhibit B", which was entitled "Amended Electoral Structure For The City Council" (Copies of both of these documents are attached hereto.) Amended Exhibit B provided that the City Council of the City of Peoria shall consist of 5 members elected from single-member districts and 5 members elected at-large.

2.   That said Amended Final Consent Decree provided that the 5 at-large City Council seats shall be elected by means of cumulative voting such that each voter may vote for one, two, three, four or five candidates at such election.

Amended Exhibit B to the said Consent Decree specifically stated in part as

follows with regard to such cumulative voting:

> "If a voter votes for just one candidate, that candidate shall receive five votes. If a voter votes for just two candidates, each of those candidates shall receive 2½ votes. If a voter votes for just three candidates, each of those candidates shall receive 1 2/3 votes. If a voter votes for four candidates, each of those candidates shall receive 1¼ votes. If a voter votes for five candidates, each of those candidates shall receive 1 vote. The maximum number of votes each voter may cast in the at-large elections will be five. The five candidates who receive the highest number of votes in the general election will be declared the winners of the at-large seats."

3.   That on December 21, 2005, the Peoria Election Commission

entered into an agreement with Hart Intercivic, Inc. for the purchase of Hart's

e Slate Electronic Voting System (hereinafter referred to as the e Slate Voting

System) for the purpose of conducting elections within the City of Peoria,

including, but not limited to, elections for the 5 at-large City Council seats

referred to in paragraph 1 above.

4.   That the e Slate Voting System is a Direct Recording Electronic

Voting System as that term is defined in Section 24 C-2 of the Illinois Election

Code (10 ILCS 5/24C-2), which system provides for the casting and counting of

votes by the use of electronic equipment.

5.   That Section 24 C-12 of the Illinois Election Code (10 ILCS 5/24C-

12) provides, in part, that the voter shall cast his ballot on the Direct Recording

Electronic Voting System at the polling place and that the counting and tallying of

the votes cast on the Direct Recording Electronic Voting System shall be

performed by such voting system at the polling location where such equipment is

located, after the close of the polls on election day. Said Section 24C-12 further

provides that the totals of votes cast for all candidates and propositions, after

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being tabulated by such equipment, shall be printed out by the automatic tabulating equipment and one copy of such vote totals print out shall be posted in a conspicuous place inside the polling place. Said Section 24C-12 further states that "every effort shall be made by the judges of election to provide a copy for each authorized poll watcher or other official authorized to be present in the polling place to observe the counting of the ballots; but in no case shall the number of copies to be made available to poll watchers be fewer than four, chosen by lot by the judges of election. In addition, sufficient time shall be provided by the judges of election to the poll watchers to allow them to copy information from the copy which has been posted." (a copy of Section 24C-12 is attached hereto for reference)

6. That Hart Intercivic, Inc. has determined that a significant redevelopment effort would be required to re-engineer the tabulation routines within the e Slate Voting System firmware to accommodate the counting of Peoria's fractional cumulative voting (FCV) at the precinct level. Hart is also concerned that because the results of a write-in adjudication are not entered into the system at the precinct, the FCV results produced at the precinct would be incorrect.

7. That Hart Intercivic, Inc. has determined that its voting system equipment can be programmed to accurately count and tally fractional cumulative votes cast at Peoria's at-large City Council elections by counting and tabulating those votes at a central location, as opposed to counting and tabulating those votes at the precinct polling places. For this reason, the Peoria Election Commission moves this court for the entry of an Order to amend the Amended

Final Consent Decree in this case by adding to said Consent Decree a provision which would authorize the Peoria Election Commission to count and tally all votes cast in elections for at-large City Council seats at said Commission's central office location at 542 S.W. Adams Street, Peoria, Illinois or at such other central location where said Election Commission may have its office in the future.

8.   That the amendment proposed by this Motion will in no way change the method of electing at-large Peoria City Council members by cumulative voting as set forth in this Court's Amended Final Consent Decree which was entered in this case on August 10, 1988.

Wherefore, Defendant, Peoria Election Commission, respectfully moves that this court enter an Order amending the Amended Final Consent Decree And Full Resolution Of Action previously entered in this case by providing that votes cast in elections for at-large Peoria City Council seats in the General and Primary Elections for those seats may be counted and tallied at the office of the Peoria Election Commissioner in Peoria, Illinois.

Board of Election Commissioners of the
City of Peoria,
Defendant

By: Robert G. Day Jr.

Robert G. Day, Jr., its attorney

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

FILED

AUG 1 0 1988

JOHN M. WATERS, Clerk
U. S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JOYCE BANKS, et al.	)
Plaintiffs,	)
vs.	) NO. 87-2371
CITY OF PEORIA, et al.	)
Defendants.	)

AMENDED FINAL CONSENT DECREE AND FULL RESOLUTION OF ACTION

Hearing on the fairness and adequacy of this Consent Decree having been held, the court having considered the arguments and presentations of all who appeared at that hearing, and being fully apprised,

THE COURT FINDS:

1. This Court has jurisdiction over the subject matter of this action and the parties thereto.

2. The provisions of this Consent Decree are fair, adequate and reasonable and are not contrary to the laws of the State of Illinois or Federal Law.

3. This Consent Decree is in the best interest of the parties and the public.

THEREFORE, THE COURT ORDERS AND DECREES:

1. The City of Peoria shall hereafter be governed by a City Council elected as set forth in Amended Exhibit B.

2. The present members of the City Council shall continue in office until the expiration of their terms and the election and qualification of their successors under the electoral structure set forth in Amended Exhibit B. The calendar and

schedule for elections under the new electoral structure shall comply with Illinois election law.

3. The Election Commission of the City of Peoria is authorized and ordered to comply with the terms of this Consent D   ee and to conduct elections in accordance with the terms of this Consent Decree.

4. The plaintiffs are prevailing parties for purposes of an award of attorneys' fees and costs and the parties agree to the payment of $82,000.00 as and for fees and costs. Judgement is hereby entered in favor of plaintiffs and against defendant City of Peoria in the amount of $82,000.00.

5. This Court retains jurisdiction of this case for purposes of supervising the implementation of this Consent Decree.

6. Upon approval of this Consent Decree notice of the approval shall be effectuated to all members of the class by publication of notice of the entry of the Consent Decree by the Defendant.

DATE: _August 10, 1988_   _____
                                                JUDGE

2.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JOYCE BANKS, et al.   )
)
       Plaintiffs,   )
)
    vs.   )   NO. 87-2371
)
CITY OF PEORIA, et al.   )
)
       Defendants.   )

<u>AMENDED ELECTORAL STRUCTURE</u>
<u>FOR THE CITY COUNCIL</u>

The City Council of the City of Peoria shall hereafter
be elected as follows:

1.   The Mayor of the City of Peoria will continue to
serve a 4 year term and will continue to be elected at-large.

2.   There will continue to be 5 members of the City
council elected from single-member districts. The 5 districts
as currently in place in the City of Peoria will remain un-
distrubed at this time and would continue to be reapportioned
after every decennial census. The terms of the current members
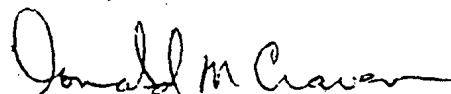of this City Council elected from these districts will not be
disturbed.

3.   In the 1991 election there will be five at-large
City Council seats up for election and the at-large general
and primary election for those seats will be by means of
cumulative voting. That is, each voter may vote for one, two,
three, four or five candidates at such election. If a voter
votes for just one candidate, that candidate shall receive
five votes. If a voter votes for just two candidates each of
those candidates shall receive 2½ votes. If a voter votes
for just three candidates each of those candidates shall receive

AMENDED EXHIBIT B

1 2/3 votes. If a voter votes for just four candidates each of those candidates shall receive 1 1/4 votes. If a voter votes for five candidates each of those candidates shall receive 1 vote. The maximum number of votes each voter may cast in the at-large elections will be five. The five candidates who receive the highest number of votes in the general election will be declared the winners of the at-large seats.

4.   There will continue to be primary elections for the at-large Council seats to reduce the candidate field down to ten and, for the district elections, down to two.

5.   The elections in all other respects will be governed by the law of the State of Illinois.

JOYCE BANKS, GIRTHA GULLEY,
OSCAR PENN, ROBERT GRUBBS,
STAN MACLIN and HIRAM WALKER,
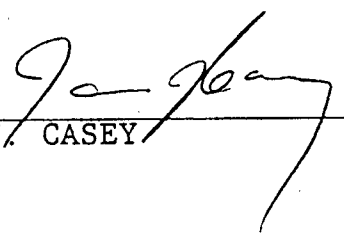Plaintiffs,

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2.

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10 ILCS 5/24C-12   ELECTIONS   488

disabling or resetting by other than authorized persons after the polls close. The counter shall be visible to all judges of election so long as the device is installed at the polling place.

(h) Each system voting device shall be equipped with a protective counter that records all of the testing and election ballots cast since the unit was built. This counter shall be designed so that its reading cannot be changed by any cause other than the casting of a ballot. The protective counter shall be incapable of ever being reset and it shall be visible at all times when the device is configured for testing, maintenance, or election use.

(i) All system devices shall provide a means of preventing further voting once the polling place has closed and after all eligible voters have voted. Such means of control shall incorporate a visible indication of system status. Each device shall prevent any unauthorized use, prevent tampering with ballot labels and preclude its re-opening once the poll closing has been completed for that election.

(j) The system shall produce a printed summary report of the votes cast upon each voting device. Until the proper sequence of events associated with closing the polling place has been completed, the system shall not allow the printing of a report or the extraction of data. The printed report shall also contain all system audit information to be required by the election authority. Data shall not be altered or otherwise destroyed by report generation and the system shall ensure the integrity and security of data for a period of at least 6 months after the polls close.

(k) If more than one voting device is used in a polling place, the system shall provide a means to manually or electronically consolidate the data from all such units into a single report even if different voting systems are used to record absentee ballots. The system shall also be capable of merging the vote tabulation results produced by other vote tabulation systems, if necessary.

(l) System functions shall be implemented such that unauthorized access to them is prevented and the execution of authorized functions in an improper sequence is precluded. System functions shall be executable only in the intended manner and order, and only under the intended conditions. If the preconditions to a system function have not been met, the function shall be precluded from executing by the system's control logic.

(m) All system voting devices shall incorporate at least 3 memories in the machine itself and in its programmable memory devices.

(n) The system shall include capabilities of recording and reporting the date and time of normal and abnormal events and of maintaining a permanent record of audit information that cannot be turned off. Provisions shall be made to detect and record significant events (e.g., casting a ballot, error conditions that cannot be disposed of by the system itself, time-dependent or programmed events that occur

without the intervention of the voter or a judge of election).

(o) The system and each system voting device must be capable of creating, printing and maintaining a permanent paper record and an electronic image of each ballot that is cast such that records of individual ballots are maintained by a subsystem independent and distinct from the main vote detection, interpretation, processing and reporting path. The electronic images of each ballot must protect the integrity of the data and the anonymity of each voter, for example, by means of storage location scrambling. The ballot image records may be either machine-readable or manually transcribed, or both, at the discretion of the election authority.

(p) The system shall include built-in test, measurement and diagnostic software and hardware for detecting and reporting the system's status and degree of operability.

(q) The system shall contain provisions for maintaining the integrity of memory voting and audit data during an election and for a period of at least 6 months thereafter and shall provide the means for creating an audit trail.

(r) The system shall be fully accessible so as to permit blind or visually impaired voters as well as physically disabled voters to exercise their right to vote in private and without assistance.

(s) The system shall provide alternative language accessibility if required pursuant to Section 203 of the Voting Rights Act of 1965.

(t) Each voting device shall enable a voter to vote for a person whose name does not appear on the ballot.

(u) The system shall record and count accurately each vote properly cast for or against any candidate and for or against any public question, including the names of all candidates whose names are written in by the voters.

(v) The system shall allow for accepting provisional ballots and for separating such provisional ballots from precinct totals until authorized by the election authority.

(w) The system shall provide an effective audit trail as defined in Section 24C-2 in this Code [10 ILCS 5/24C-2].

(x) The system shall be suitably designed for the purpose used, be durably constructed, and be designed for safety, accuracy and efficiency.

(y) The system shall comply with all provisions of federal, State and local election laws and regulations and any future modifications to those laws and regulations.

(Source: P.A. 93-574, § 5.)

10 ILCS 5/24C-12   Procedures for Counting and Tallying of Ballots

Sec. 24C-12. *Procedures for Counting and Tallying of Ballots.* In an election jurisdiction where a Direct Recording Electronic Voting System is used, the

following procedures for counting and tallying the ballots shall apply:

Before the opening of the polls, the judges of elections shall assemble the voting equipment and devices and turn the equipment on. The judges shall, if necessary, take steps to activate the voting devices and counting equipment by inserting into the equipment and voting devices appropriate data cards containing passwords and data codes that will select the proper ballot formats selected for that polling place and that will prevent inadvertent or unauthorized activation of the poll-opening function. Before voting begins and before ballots are entered into the voting devices, the judges of election shall cause to be printed a record of the following: the election's identification data, the device's unit identification, the ballot's format identification, the contents of each active candidate register by office and of each active public question register showing that they contain all zero votes, all ballot fields that can be used to invoke special voting options, and other information needed to ensure the readiness of the equipment and to accommodate administrative reporting requirements. The judges must also check to be sure that the totals are all zeros in the counting columns and in the public counter affixed to the voting devices.

After the judges have determined that a person is qualified to vote, a voting device with the proper ballot to which the voter is entitled shall be enabled to be used by the voter. The ballot may then be cast by the voter by marking by appropriate means the designated area of the ballot for the casting of a vote for any candidate or for or against any public question. The voter shall be able to vote for any and all candidates and public measures appearing on the ballot in any legal number and combination and the voter shall be able to delete, change or correct his or her selections before the ballot is cast. The voter shall be able to select candidates whose names do not appear upon the ballot for any office by entering electronically as many names of candidates as the voter is entitled to select for each office.

Upon completing his or her selection of candidates or public questions, the voter shall signify that voting has been completed by activating the appropriate button, switch or active area of the ballot screen associated with end of voting. Upon activation, the voting system shall record an image of the completed ballot, increment the proper ballot position registers, and shall signify to the voter that the ballot has been cast. Upon activation, the voting system shall also print a permanent paper record of each ballot cast as defined in Section 24C-2 of this Code [10 ILCS 5/24C-2]. This permanent paper record shall either be self-contained within the voting device or shall be deposited by the voter into a secure ballot box. No permanent paper record shall be removed from the polling place except by election officials as authorized by this Article. All permanent paper records shall be preserved and secured by

election officials in the same manner as paper ballots and shall be available as an official record for any recount, redundant count, or verification or retabulation of the vote count conducted with respect to any election in which the voting system is used. The voter shall exit the voting station and the voting system shall prevent any further attempt to vote until it has been properly re-activated. If a voting device has been enabled for voting but the voter leaves the polling place without casting a ballot, 2 judges of election, one from each of the 2 major political parties, shall spoil the ballot.

Throughout the election day and before the closing of the polls, no person may check any vote totals for any candidate or public question on the voting or counting equipment. Such equipment shall be programmed so that no person may reset the equipment for reentry of ballots unless provided the proper code from an authorized representative of the election authority.

The precinct judges of election shall check the public register to determine whether the number of ballots counted by the voting equipment agrees with the number of voters voting as shown by the applications for ballot. If the same do not agree, the judges of election shall immediately contact the offices of the election authority in charge of the election for further instructions. If the number of ballots counted by the voting equipment agrees with the number of voters voting as shown by the application for ballot, the number shall be listed on the "Statement of Ballots" form provided by the election authority.

The totals for all candidates and propositions shall be tabulated; and 4 copies of a "Certificate of Results" shall be printed by the automatic tabulating equipment; one copy shall be posted in a conspicuous place inside the polling place; and every effort shall be made by the judges of election to provide a copy for each authorized pollwatcher or other official authorized to be present in the polling place to observe the counting of ballots; but in no case shall the number of copies to be made available to pollwatchers be fewer than 4, chosen by lot by the judges of election. In addition, sufficient time shall be provided by the judges of election to the pollwatchers to allow them to copy information from the copy which has been posted.

If instructed by the election authority, the judges of election shall cause the tabulated returns to be transmitted electronically to the offices of the election authority via modem or other electronic medium.

The precinct judges of election shall select a bipartisan team of 2 judges, who shall immediately return the ballots in a sealed container, along with all other election materials and equipment as instructed by the election authority; provided, however, that such container must first be sealed by the election judges with filament tape or other approved sealing devices provided for the purpose in a manner

that the ballots cannot be removed from the container without breaking the seal or filament tape and disturbing any signatures affixed by the election judges to the container. The election authority shall keep the office of the election authority, or any receiving stations designated by the authority, open for at least 12 consecutive hours after the polls close or until the ballots and election material and equipment from all precincts within the jurisdiction of the election authority have been returned to the election authority. Ballots and election materials and equipment returned to the office of the election authority which are not signed and sealed as required by law shall not be accepted by the election authority until the judges returning the ballots make and sign the necessary corrections. Upon acceptance of the ballots and election materials and equipment by the election authority, the judges returning the ballots shall take a receipt signed by the election authority and stamped with the time and date of the return. The election judges whose duty it is to return any ballots and election materials and equipment as provided shall, in the event the ballots, materials or equipment cannot be found when needed, on proper request, produce the receipt which they are to take as above provided.
(Source: P.A. 93-574, § 5.)

10 ILCS 5/24C-13   Absentee ballots; Proceedings at Location for Central Counting; Employees; Approval of List

Sec. 24C-13. *Absentee ballots; Proceedings at Location for Central Counting; Employees; Approval of List.* (a) All jurisdictions using Direct Recording Electronic Voting Systems shall use paper ballots or paper ballot sheets approved for use under Articles 16, 24A or 24B of this Code [10 ILCS 5/16-1 et seq., 10 ILCS 5/24A-1 et seq. or 10 ILCS 5/24B-1 et seq.] when conducting absentee voting except that Direct Recording Electronic Voting Systems may be used for in-person absentee voting conducted pursuant to Section 19-2.1 of this Code [10 ILCS 5/19-2.1]. All absentee ballots shall be counted at the office of the election authority. The provisions of Section 24A-9, 24B-9 and 24C-9 of this Code [10 ILCS 5/24A-9, 10 ILCS 5/24B-9 and 10 ILCS 5/24C-9] shall apply to the testing and notice requirements for central count tabulation equipment, including comparing the signature on the ballot envelope with the signature of the voter on the permanent voter registration record card taken from the master file. Absentee ballots other than absentee ballots voted in person pursuant to Section 19-2.1 of this Code shall be examined and processed pursuant to Sections 19-9 and 20-9 of this Code [10 ILCS 5/19-9 and 10 ILCS 5/20-9]. Vote results shall be recorded by precinct and shall be added to the vote results for the precinct in which the absent voter was eligible to vote prior to completion of the official canvass.

(b) All proceedings at the location for central counting shall be under the direction of the county clerk or board of election commissioners. Except for any specially trained technicians required for the operation of the Direct Recording Electronic Voting System, the employees at the counting station shall be equally divided between members of the 2 leading political parties and all duties performed by the employees shall be by teams consisting of an equal number of members of each political party. Thirty days before an election the county clerk or board of election commissioners shall submit to the chairman of each political party, for his or her approval or disapproval, a list of persons of his or her party proposed to be employed. If a chairman fails to notify the election authority of his or her disapproval of any proposed employee within a period of 10 days thereafter the list shall be deemed approved.
(Source: P.A. 93-574, § 5.)

10 ILCS 5/24C-14   Tabulating Votes; Direction; Presence of Public; Computer Operator's Log and Canvass

Sec. 24C-14. *Tabulating Votes; Direction; Presence of Public; Computer Operator's Log and Canvass.* The procedure for tabulating the votes by the Direct Recording Electronic Voting System shall be under the direction of the election authority and shall conform to the requirements of the Direct Recording Electronic Voting System. During any election-related activity using the automatic Direct Recording Electronic Voting System equipment, the election authority shall make a reasonable effort to dedicate the equipment to vote processing to ensure the security and integrity of the system.

A reasonable number of pollwatchers shall be admitted to the counting location. Such persons may observe the tabulating process at the discretion of the election authority; however, at least one representative of each established political party and authorized agents of the State Board of Elections shall be permitted to observe this process at all times. No persons except those employed and authorized for the purpose shall touch any ballot, ballot box, return, or equipment.

The computer operator shall be designated by the election authority and shall be sworn as a deputy of the election authority. In conducting the vote tabulation and canvass, the computer operator must maintain a log which shall include the following information:

(a) alterations made to programs associated with the vote counting process;

(b) if applicable, console messages relating to the program and the respective responses made by the operator;

(c) the starting time for each precinct counted, the number of ballots counted for each precinct, any equipment problems and, insofar as practicable, the number of invalid security designations encountered during that count; and

(d) changes and repairs made to the equipment during the vote tabulation and canvass.