

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF ILLINIOS**

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

**PEORIA ELECTION COMMISSION'S SECOND MOTION TO AMEND  
THE AMENDED FINAL CONSENT DECREE**

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  $2\frac{1}{2}$  votes. If a voter votes for just three candidates, each of those candidates shall receive  $1\frac{2}{3}$  votes. If a voter votes for four candidates, each of those candidates shall receive  $1\frac{1}{4}$  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.”

3. That Section 24A-16 of the Election Code of the State of Illinois (10 ILCS 5/24A-16) states that the Illinois State Board of Elections shall approve all voting systems provided for by Article 24 of the Election Code of Illinois and Section 24A-3 of the Election Code of Illinois (10 ILCS 5/24A-3) provides that no County Board or Board of Election Commissioners may purchase or lease an electronic voting system or voting system component without the approval of the State Board of Elections “as provided by Section 24A-16”.

4. That at the present time there is no voting system which has been approved for use by the State Board of Elections for the counting and tallying of cumulative votes at the precinct where such votes are cast nor has any voting system been submitted to the State Board of Elections for testing to determine whether it is capable of accurately counting and tallying cumulative votes at the precinct where such votes are cast.

5. That at the present time the only voting system which has been tested by the Illinois State Board of Elections to determine if it accurately counts

and tallies cumulative votes is the e Slate Voting System manufactured by Hart Intercivic, Inc. and this voting system provides for tabulating cumulative votes at a central location as opposed to tabulating those votes at the precinct where the votes are cast. This testing has shown that the e Slate Voting System is capable of accurately counting and tallying cumulative votes at a central location. (See Affidavit of Diane Felts of the Illinois State Board of Elections which is attached hereto, incorporated herein and made a part hereof.)

6. That the e Slate Voting System mentioned above which has been tested by the Illinois State Board of Elections is a Direct Recording Electronic Voting System as that term is defined in Section 24C-2 of the Illinois Election Code (10 ILCS 5/24C-2).

7. That Section 24C-12 of the Illinois Election Code (10 ILCS 5/24C-12) provides, in part, that the votes cast on the Direct Recording Electronic Voting System shall be tabulated and one copy of the "Certificate of Results" of each tabulation shall be posted inside the polling place after the close of polls on election day.

8. That since there has been no voting system to date tested or certified by the Illinois State Board of Elections as being capable of counting and tallying cumulative votes at the polling location where those votes are cast, there is no voting system available to the Peoria Election Commission which will allow it to conduct its primary and general election for the five at-large seats for City Council for the City of Peoria in the primary and general elections in 2007. Therefore, the Peoria Election Commission respectfully moves that this court

enter an order amending the Amended Final Consent Decree previously entered in this case by providing that votes cast in the 2007 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 Commission in Peoria, Illinois.

s/ Robert G. Day, Jr.  
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#### **CERTIFICATE OF SERVICE**

I hereby certify that on October 19, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Donald M. Craven and Randall Ray, and I hereby certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: none

s/ Robert G. Day, Jr.  
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