

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS, URBANA DIVISION**

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

**THE CITY OF PEORIA MOTION TO MODIFY
THE AMENDED FINAL CONSENT DECREE DATED AUGUST 10, 1988.**

The City of Peoria, by and through its Corporation Counsel and its attorneys, Kavanagh, Scully, Sudow, White and Frederick, P.C. seeks to modify and further amend the Amended Final Consent Decree and Full Resolution of Action dated August 10, 1988 and in support thereof files this Motion and accompanying Memorandum.

JURISDICTION

1. The City of Peoria requests this Honorable Court to modify and amend the Amended Final Consent Decree and Full Resolution of Action entered August 10, 1988 as applied to a special election, held pursuant to Illinois Law, for the election of at-large members of the Peoria City Council.
2. The original Consent Decree was entered on November 23, 1987; however, on letter motion by the Peoria Board of Election Commissioners, the decree was amended. The Amended Final Consent Decree and Full Resolution of Action was entered by this Court on August 10, 1988.
3. The Amended Final Consent Decree provides that "This Court retains jurisdiction of this case for purposes of supervising the implementation of this Consent Decree." *See*

paragraph 5, Amended Final Consent Decree and Full Resolution of Action entered August 10, 1988 and attached as Exhibit 1 to City of Peoria Memorandum in Support to Modify.

PROCEDURE

4. In addition to this Court explicitly retaining jurisdiction of this case and, further, the Court entering a previous amendment to the Consent Decree, Federal Rule of Civil Procedure 60(b) provides that modification and amendment is permitted for the relief from a “final judgment, order, or proceeding.” It permits the Court, on a motion, to relieve a party or its legal representative from a final judgment, order, or proceeding by, in part, amending and modifying the order. In relevant part the rule states in (b)(5) and b(6), that relief is warranted if “the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or; (6) any other reason that justifies relief” then amendment and modification is appropriate. *See* Fed. R. Civ. P. 60(b).

5. This rule serves a “particularly important function” in reviewing “institutional reform litigation.” *Horn v. Flores*, 557 U.S. 433, 447 (2009). The Supreme Court states that Consent Judgments should not take on “a talismanic quality warding off virtually all efforts to modify consent decrees.” *Rufo v. Inmates, et. al.* 502 U.S. 367, 380 (1992). The Supreme Court has recognized that consent decrees may remain in place for many years, and that the passage of time brings about changed circumstances which call for reexamination of the original consent. *Horn* 557 U.S. at 448. The party seeking relief must meet the burden of showing that changed circumstances warrant relief. *Horn* at 447.

6. As detailed in the attached Memorandum, an issue has arisen that is not addressed in the Amended Consent Decree – specifically, the means of electing an at-large City Council seat in a special election and under what circumstances that a primary is held to reduce the candidate field.

7. The proposed remedy, as set forth in the attached Memorandum, codifies what may be implied in the Amended Consent Decree but is not stated and the changed circumstance warrants relief. The proposed remedy is narrowed tailored to the circumstances at hand.

REQUEST FOR RELIEF

WHEREFORE, the City of Peoria requests, for the reasons stated in this Motion and the Memorandum, to modify the Amended Consent Decree to state that if under Illinois law a special election is held to fill a vacancy for an at-large seat, then each voter in that election may cast the same number of votes as seats are available in that special at-large election. Further, a primary will be held to reduce the candidate field down to twice the number of seats that are available in that special at-large election.

(signature on next page)

Respectfully Submitted by the
City of Peoria, Defendant.

BY: s/ Robert C. Gates

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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

Joyce Banks, et. al.)	
<i>Plaintiffs</i>)	
)	
vs.)	No. 87-2371
)	
City of Peoria, et.al.)	
<i>Defendants</i>)	

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2016, I caused to be electronically filed the
forgoing with the Clerk of the Court using the CM/ECF system which will send notification
of such filing to the following:

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