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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,	)	**The Honorable Judge David H. Coar**
Defendants.	)	

PLAINTIFF CLASS' RESPONSE ON THE ISSUE OF VOTING POPULATION DATA

This Court has directed the parties to submit legal memoranda on the following issues: (1) whether the plans for new voting districts for the City of Chicago Heights need to be resubmitted to the Special Master to allow him to determine whether, in light of the fact that voting age population is the proper measure of population equality, any of the plans comply with the "one person, one vote" rule, and (2) whether the parties need to re-submit new plans and maps to the Special Master and to the Court.

It is the position of the Plaintiff Class that new plans and maps do not need to be resubmitted. However, if the Court determines that the existing plans and maps are insufficient, the proper procedure is to have the Special Master draft a plan and map that complies with the law and with the orders of this Court.

I. The Plans And Maps Submitted By The Plaintiffs In This Case Do Not Violate The One Person/One Vote Standard For Equal Protection.

As pointed out in the Plaintiff Class' Memorandum filed with this Court and the Special Master on October 23, 2003, there are two different issues in this case. One issue is whether the maps under consideration meet the one person/one vote requirement set forth in *Reynolds v. Sims,* 377 U.S. 533 (1964), which is essentially a question under equal protection. The second issue is whether the maps dilute the voting strength of minority voters under *Thornburg v. Gingles*, 478 U.S. 30 (1986), which is essentially a question under the Voting Rights Act.

The focus of equal protection is on persons. This is made clear by *Reynolds v. Sims,* 377 U.S. at 562: "Legislators represent people, not trees or acres." Who are persons is not clearly spelled out in the cases; however, it appears that most states use general census figures. In one case, *Burns v. Richardson,* 384 U.S. 73 (1966), the Supreme Court did allow the State of Hawaii to use registered voters as the population basis for an interim plan. This was justified on the grounds that there was a large transient population and that the use of registered voters was not substantially different from the state citizen population. Hawaii claimed that it had a large number of tourists and military that tended to distort the distribution of the state citizenry. The Court stated that a state need not include "aliens, transients, short-term or temporary residents or persons denied the right to vote for convictions of a crime" in the apportionment base and that "the decision to include or exclude any such group involves choices about the nature of representation which which we have no constitutionally founded reason to interfere." 384 U.S. at 92. However, the Court emphasized that this was an exceptional case and that the use of registered voters has the potential to open the process up to manipulation by state officials. 384 U.S. at 96.

The Illinois Municipal Code provides as follows:

> "In the formation of wards, the number of inhabitants of the city immediately preceding the division of the city into wards shall be as nearly equal in population, and the wards shall be of as compact and contiguous territory, as practicable. Wards shall be created in a manner so that, as far as practicable, no precinct shall be divided between 2 or more wards." 65 ILCS 5/3.1-20-25 (a).

Illinois law speaks of population, not voting age or citizen population. Twice the Seventh Circuit has warned the parties in this case not to depart from state law unless necessary to remedy the voting rights violation. *Harper v. Chicago Heights,* 233 F.3d 593, 601 (2000); 47 F.3d 212, 217 (1995). There is no justification in this case to depart from the state standard.

Unlike the equal protection issue, voting age population is a factor that a court should look to in determining whether there is a violation of the Voting Rights Act. This does not mean that there can be a deviation from the one person/one vote requirement, rather it means that in drawing districts, a court must consider how the lines being drawn affect minority voting strength and whether minorities have the opportunity to participate equally in the election process. Voting age population is one factor that courts look to in determining whether the district is viable. In *Thornburg v. Gingles,* 478 U.S. at 56, the Court recognized that in order to determine racial bloc voting, it is necessary to inquire into actual voting patterns. Consequently, to remedy a violation, a court must consider the actual voting patterns in the community. The special master did look at voting age population and found that there was no diminution of minority voting strength under all three plans.

The distinction between assessing a one person/one vote deviation and assessing the impact of a districting scheme on minority representation explains why voting age was taken into account in *Barnett v. City of Chicago,* 141 F.3d 699 (1998), *cert. denied,* 524 U.S. 954 (1998).

In *Barnett, supra,* the issue before the Court was whether there was a violation of Section 2 of the Voting Rights Act. The District Court had found that there was no violation of section 2, but the Court of Appeals held that the District Court should have considered voting age population to determine whether the distribution of effective majority status was proportional to black voting strength. The Court of Appeals held that considering voting-age population, the wards should have been characterized as majority-white wards and not "multi-racial" wards. The Court remanded the case to the District Court to determine whether the ward map could be modified to reflect the proportional equality of voting power between majority-black and majority-white wards. In so doing, the Court acknowledged the tension between the one person/one vote equal protection requirement and the protection of minority voting strength under the Voting Rights Act: "The tricky part is maintaining equality of population and the desired racial and ethnic balance without creating wards of grotesque rather than merely irregular shape." 141 F.3d at 705.

Similarly, in *Ketchum v. M. Byrne,* 740 F.2d 1398, 1412 (7th Cir. 1984), the Court of Appeals used voting age population as the best way to evaluate minority voting strength when devising a remedy under the Voting Rights Act. In devising a remedy, the Court also held that "super-majorities" could be used to adjust for the usually lower voter registration and turnout patterns of certain minority population groups and recommended a variation of 65% of total population or 60% of voting age population as a proper adjustment. The Special Master found that these standards were met in this case.

The approach of the Special Master in determining whether the maps presented in this case met the requirements of equal protection and Section 2 of the Voting Rights Act is very similar to the approach followed by the District Court in *Frank v. Forest County,* 194 F.Supp.2d

867 (E.D.Wis. 2002), an action brought by Native Americans claiming that the 2001 plan for redistricting county supervisory districts deprived them of equal protection and violated the Voting Rights Act. The Court found neither a violation of equal protection nor the Voting Rights Act. In computing the size of the districts, the Court used total population figures. 194 F.Supp.2d at 873. In considering the claim whether the districting plan violated Section 2 of the Voting Rights Act, the Court considered voting age population to measure proportionality. 194 F.Supp.2d at 877.

Looking at voting age population figures makes perfect sense in determining whether there has been a violation of the Voting Rights Act because the focus is on whether minority voters are being squeezed out of the election process. In this case, defendant has been found guilty of violating the Voting Rights Act, so that question is not before the Court. In analyzing the remedy for that violation, the Special Master looked at the voting age population to determine that the maps proposed by the City, the Class Plaintiffs, and the Individual Plaintiffs conformed to the requirements of the Voting Rights Act and remedied the violation. In considering whether the maps met the one person/one vote requirement, the Special Master looked to general population figures as required by the Illinois statute and permitted by equal protection. This is precisely the methodology followed by the District Court in *Frank v. Forest County, supra.*

Nothing under the Voting Rights Act would require the use of voting age population in lieu of total population for purposes of the one person/one vote requirement in this case. The Special Master found that there was no minority vote dilution under any of the plans. Indeed, if one were to use voting age or citizenship population, there could be a diminishment of minority voting strength in the City of Chicago Heights.

Any remedial plan adopted by this Court must meet both the requirements of equal protection (one person/one vote) and of the Voting Rights Act (no minority dilution). The maps proposed by the Plaintiff Class and by the Individual Plaintiffs meet both standards.

Furthermore, the maps approved by the Special Master conform to the guidelines issued by this Court to the Special Master:

> "(a) Districts shall be of substantially equal population, compact, and contiguous.
>
> "(b) The plan shall comply with 42 U.S.C. sec. 1973(b) and with other applicable provisions of the Voting Rights Act."
>
> Order of October 2, 2002.

II. If This Court Decides That A New Plan And Map Must Be Presented, The Court Should Request The Special Master To Submit A Plan And Map Of His Own Creation.

In his Report to this Court, the Special Master found that the maps submitted by the City, the Class Plaintiffs, and by the Individual Plaintiffs all comply with section 2 of the Voting Rights Act. The Special Master found that the maps submitted by the Class Plaintiffs and the Individual Plaintiffs met the "one person, one vote" rule, but that the map submitted by the City did not. Therefore, the Special Master did not find it necessary to present a plan of his own creation to the Court. In his report, the Special Master noted that there had been disagreement among the parties whether general population or voting age population was determinative of the one person/one vote requirement, but he deferred to the Court to resolve that issue.

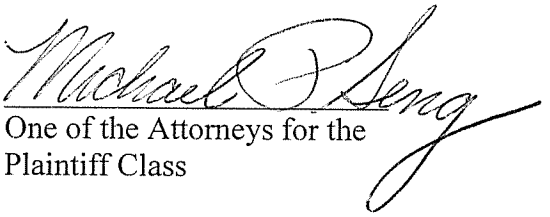
Subsequent to that Report, the Individual Plaintiffs objected to the Class Plaintiffs' plan and map on the ground that it fractured too many voting districts. The Class Plaintiffs responded that the Special Master had found that both the plan of the Class Plaintiffs and the plan of the

Individual Plaintiffs satisfied the demands of Equal Protection and the Voting Rights Act and that the Class Plaintiffs would not object to the entry of an order recognizing either plan.

It is the Class Plaintiffs' position in this Memorandum that the maps of both the Class Plaintiffs and the Individual Plaintiffs comply with equal protection and Voting Rights Act standards. However, if this Court decides that the existing maps do not comply with the one person/one vote rule, the Special Master should be directed to submit a plan and a map of his own creation. The normal procedure in a voting rights case is for the defendant to be given an opportunity to cure the defect, if the defendant does not come up with a plan to cure the defect, it is the responsibility of the Court to enter a plan that does. The City of Chicago Heights has been given an opportunity to cure the defect and did not do so. If this Court decides that neither of the plans and maps of the two sets of plaintiffs is legally sufficient, the Court should not go back to the beginning and have each side submit new maps. The proper course at this stage is for the Court to request the Special Master to draw up a plan and map that meets the specifications ordered by this Court. This method of proceeding would certainly be the more expeditious.

In any event, whichever course it follows, this Court should set strict time lines to resolve the question. As this Court noted in its order of September 6, 2005: "For eighteen years, the parties have been involved in litigation to ensure that the election process for the Chicago Heights City Council complies with the directives of Section 2 of the Voting Rights Act. . . ." In remanding *Barnett v. City of Chicago, supra,* Judge Posner noted that "the protraction of this litigation [eight years and two appeals] has been absurd." He ordered that proceedings (including, if necessary, the drawing of a new map) be completed within 90 days. This case demands nothing less.

Respectfully Submitted,



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Notice of Filing

To: See service list:

Please take notice that on October 11, 2005, I caused to be filed with the Clerk of the United States District Court, Northern District of Illinois, Eastern Division, PLAINTIFF CLASS' RESPONSE ON THE ISSUE OF VOTING POPULATION DATA.

Certificate of Service

Michael P. Seng certifies that he served the PLAINTIFF CLASS' RESPONSE ON THE ISSUE OF VOTING POPULATION DATA 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 Tuesday, October 11, 2005:

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