

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THE UNITED STATES OF AMERICA)
)
 Plaintiff,)
)
 v.)
)
 CITY OF HAMTRAMCK, MICHIGAN;)
 CITY CLERK OF HAMTRAMCK,)
 MICHIGAN, ROBERT J.)
 CWIERTNEWICZ, in his)
 official capacity,)
)
 Defendants.)
 _____)

Civil Action No.: 0073541
Judge Patrick J. Duggan
Magistrate Judge Scheer

A TRUE COPY
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
BY 
DEPUTY CLERK

FIRST AMENDED CONSENT ORDER AND DECREE

This action arose out of the general election that took place in Hamtramck, Michigan, on November 2, 1999. In that election, Arab-American citizens were challenged on citizenship grounds by persons who had registered as challengers under Michigan law. Based on these challenges, election officials required many Arab-American voters to take an oath as a condition to voting. The local election officials consulted at length with state election officials who were present in Hamtramck on election day. The City Clerk contends that she concluded from these conversations that she should allow the challenges to proceed and that she should not attempt to remove challengers or deny the challenges that were raised by the challengers. White voters were not challenged, and therefore this oath was not

required of white voters. The United States found that this constituted a race-based prerequisite to voting that violated federal laws designed to enforce the voting guarantees of the Fourteenth and Fifteenth Amendments to the United States Constitution, and consequently initiated the instant action pursuant to Sections 2 and 12(d) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1973j(d), 42 U.S.C. 1971(a)(1) and 1971(a)(2)(A), and 28 U.S.C. 2201.

The City of Hamtramck and the City Clerk of Hamtramck are desirous of ensuring that all citizens enjoy an equal opportunity to participate in the electoral process. The City and the City Clerk are dedicated to ensuring that all future elections in the City of Hamtramck operate in a manner free from discrimination, and in a manner in which all citizens, including Arab-American citizens, can be confident that they will be able to vote without harassment. The City and the City Clerk recognize that the challenge process under Michigan law is vulnerable to misuse by challengers and that election officials must therefore be vigilant to protect the rights of voters. The City and the City Clerk hereby commit to ensure that the challenge process, like all electoral processes in the City of Hamtramck, will be free from discrimination in all future elections, and that all citizens, without regard to race, color or ethnic origin, are treated with equal dignity and respect in all matters related to

voting. The parties have conferred in good faith and have agreed to entry of this Consent Order and Decree as an appropriate resolution of the claims alleged.

Stipulated Facts

The parties have stipulated to the following facts relevant to the Court's jurisdiction in this matter:

1. The City of Hamtramck (hereafter referred to as "Hamtramck") is a political and geographical subdivision of the State of Michigan.
2. The City Clerk of Hamtramck (hereafter "City Clerk") is responsible for conducting elections in Hamtramck under the laws of Michigan and the Charter of Hamtramck. The City Clerk appoints at least three Election Inspectors, one of whom presides as Chairperson, for each precinct in Hamtramck.
3. On November 2, 1999, Hamtramck conducted a general election for certain municipal offices, including Mayor, all seats on City Council, and City Clerk.
4. Under Michigan law, political parties and citizen groups may designate "challengers". M.C.L. § 168.730. Challengers have the right under Michigan election procedures to observe the manner in which the duties of election inspectors are performed and to challenge the voting rights of a person whom the challenger has good reason to believe is not a registered elector. M.C.L. § 168.733.

5. In October of 1999, a group called "Citizens for a Better Hamtramck" ("CCBH") registered with the City Clerk of Hamtramck to provide challengers for the November 1999 general election. In its registration statement, CCBH asserted an interest in keeping the elections "pure." The committee to re-elect Mayor Zych ("the Zych Committee") likewise registered in October of 1999 to provide challengers for the November general election.

6. Under Michigan practice, a challenger may contest a voter's qualifications in three areas: citizenship, age, and residency. At the November election, more than forty voters in Hamtramck were challenged by CCBH for "citizenship." Some voters were challenged before they signed their applications to vote. Other voters were challenged after they had signed their applications and their names had been announced. The challenged voters had dark skin and distinctly Arabic names, such as Mohamed, Ahmed, and Ali. The challengers did not appear to possess or consult any papers or lists to determine who to challenge.

7. Once challenged, the city election inspectors required the challenged voters to swear that they were American citizens before permitting them to vote. Voters who were not challenged were not required to do so. The city election inspectors did not evaluate the propriety or merit of the challenges. Some dark-

skinned voters produced their American passports to identify themselves to election officials. Nevertheless, these persons were challenged by CCBH, and the election inspectors required them to take a citizenship oath as a prerequisite to voting. No white voters were challenged for citizenship. No white voters were required to take a citizenship oath prior to voting.

8. Early on election day, a representative of the Zych Committee complained to the State of Michigan elections office and the City Clerk's office regarding the manner in which CCBH was challenging voters. Members of the Zych Committee complained repeatedly to the City Clerk and the Deputy City Clerk that the CCBH challengers were targeting voters because of their skin color or because they were perceived to be Arab, without any other reason to believe that the voters were not citizens.

9. Despite the complaints, and after consultations and visits with state election officials, no additional instructions were given to the election inspectors regarding evaluation of challenges; challengers were not required to set forth evidence of a reason to believe that voters were not qualified. In short, despite the Zych committee's allegations, neither the City nor the State prevented the challenges of dark-skinned voters from continuing, and the election inspectors continued to require any voters who were challenged for "citizenship" to take a citizenship oath as a prerequisite to voting.

10. Members of the Zych Committee who had observed the challenges asked that the CCBH challengers be expelled for misconduct based on repeated challenges. No challengers were expelled.

11. The United States contends that some Arab-American citizens assert that they heard of the treatment that others experienced when they voted and decided not to vote rather than be subjected to the embarrassment of being challenged as non-citizens.

Order and Decree

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

1. The Court has jurisdiction over this matter pursuant to 42 U.S.C. 1973j(f), 42 U.S.C. 1971(d), and 28 U.S.C. 1345.

2. The defendants, their agents and successors in office, and all other persons acting in concert or participation with them, are hereby enjoined from discriminating against voters on account of race or color in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973, 42 U.S.C. 1971(a)(1) and 1971(a)(2)(A), and the voting guarantees of the Fourteenth and Fifteenth Amendments. Defendants shall ensure that all citizens of Hamtramck, without regard to race, color or ethnic origin, are treated on an equal basis in all matters related to voting, including but not limited to procedures related to voter registration, candidate qualification,

challenges, poll watching, and voting.

3. The City Clerk shall establish a training program for all election officials, including inspectors and election chairpersons and any other persons present in polling places on election day on behalf of the City or City Clerk's office, at which the officials shall be trained in voting assistance procedures and voter challenge procedures under federal and state law, as enunciated in the "Election Inspectors' Procedure Manual," "The Appointment, Rights and Duties of Election Challengers and Poll Watchers" booklet, and the June 2000 Memorandum to County, City, Township and Village Clerks from the Director of Elections regarding "Election Challengers." At this training, election officials shall be instructed that they have an independent duty to evaluate whether there is a legitimate, non-discriminatory basis for challenges, consistent with the June 2000 Memorandum to County, City, Township and Village Clerks from the Director of Elections regarding "Election Challengers." At the close of this training, all election officials shall sign and submit to the City Clerk the Election Inspector Certification, set forth hereto as Exhibit A.

4. The City Clerk, in conjunction with the state election officials, shall establish a training manual for all challengers and other persons permitted to be present in polling places on election day on behalf of citizens' associations or candidates.

This manual shall set forth the responsibilities and duties of challengers consistent with federal and state law, including the June 2000 Memorandum to County, City, Township and Village Clerks from the Director of Elections regarding "Election Challengers." Challengers shall be specifically instructed that they must have a legitimate, non-discriminatory basis to challenge a voter, which is specific and personal to that voter. Challengers shall be specifically instructed that voters may not be challenged based on their skin color, race, ethnicity, or physical appearance. All challengers shall be required to sign the Challenger Certification, set forth hereto as Exhibit B, prior to acceptance of their designation as challengers.

5. The provisions of Section 3(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973a(a), having been satisfied, the appointment of a federal examiner in Hamtramck is hereby authorized through December 31, 2003. Such designation shall be extended as appropriate to ensure full and ongoing protection of the rights of the voters of Hamtramck either upon agreement of the parties or by Order of this Court, which shall issue if the Court determines that Defendants are not in full compliance with this agreement or if there is otherwise any evidence of discriminatory treatment of minority voters in Hamtramck.

6. No person convicted of harassing or intimidating voters shall be permitted to serve as an election official or challenger

for a period of five years from the date of the election giving rise to the conviction.

7. Defendants shall prepare bilingual English/Arabic notices and bilingual English/Bengali notices regarding the content of this Consent Order and Decree. These notices shall specify that all future elections in the City of Hamtramck will operate in a manner free from discrimination, and in a manner in which all citizens, regardless of their race, color or ethnic origin, can be confident that they will be able to vote without harassment. These notices shall state that election officials will be vigilant to protect the rights of voters to ensure that the challenge process, and all electoral processes in the City of Hamtramck, will be free from discrimination in all future elections.

(a) These notices shall be submitted to the United States by August 31, 2000 for approval.

(b) These notices shall be posted in a prominent location at the City Hall and at the City Library four weeks prior to the voter registration deadline for each of the next two elections.

(c) Each notice shall be published in the Hamtramck Citizen. Additionally, the English/Arabic notice shall be published in The Arab American News (or other Arabic language newspaper with equal circulation figures in Hamtramck); and the English/Bengali notice shall be published in the Bangla Patrika

(or other Bengali language newspaper with equal circulation figures in Hamtramck). The notices shall be published in the newspaper edition which will be in circulation during the fourth week prior to the registration deadline for each of the next two elections in Hamtramck.

(d) These notices shall also be posted at each polling place, together with a telephone number at which complaints regarding voter treatment may be registered.

8. Defendants shall appoint at least two bilingual Arab-American election inspectors, or one bilingual Arab-American and one bilingual Bengali-American election inspector, to each of the City's seven voting precincts. (Referred to hereafter collectively as "bilingual inspectors").

(a) The bilingual inspectors shall at all times be made available to provide assistance as needed, including at the voting booth, in demonstrating the use of new voting equipment, and in handling voter challenges should an Arab-American voter or Bengali-American voter need assistance or have his or her eligibility to vote challenged.

(b) The City shall monitor inspector breaks to ensure that both bilingual inspectors are available to the extent possible throughout the day. In any event, the City will take all reasonable steps to ensure that at least one bilingual inspector is on duty at all times. To do so, the City will instruct the

bilingual inspectors at each precinct to plan their break times to ensure that at least one bilingual inspector is available throughout election day.

(c) In order to recruit such inspectors, the City Clerk shall contact Arab-American and Bengali-American candidates, Arab-American and Bengali-American elected officials, Arab-American and Bengali-American members of political parties, the Arab-American Anti-Defamation League and local organizations comprised predominantly of Arab-American or Bengali-American citizens, by written notification and telephone communication, prior to the appointment of election inspectors for each election to ascertain the names, addresses and telephone numbers of bilingual persons who are qualified and available to serve as election inspectors.

(d) Arab-American election inspectors, and Bengali-American election inspectors as appropriate, shall be appointed from the lists compiled in accordance with ¶ 8(c), above, provided that if the submitted names are insufficient to fulfill the number of bilingual election inspectors required under this paragraph, the City Clerk shall take all necessary steps to supplement such lists, including but not limited to the use of radio and newspaper advertisements.

9. Defendant City of Hamtramck shall provide all supplies, facilities, and funds necessary for the implementation of this

Consent Order and Decree.

10. Defendant City Clerk, or his designee(s), shall monitor on election day the performance of election officials to ensure that all election officials are performing their duties in a nondiscriminatory manner. Defendant City Clerk shall investigate promptly all complaints of discrimination or harassment, shall record such complaints in a log separately maintained for this purpose, and shall take prompt action to expel from the polls any persons engaging in discriminatory conduct.

11. If, for any election, a person or person(s) other than the City Clerk [the "surrogate clerk(s)"] assumes the duties regarding elections which were the responsibility of the City Clerk in the November 1999 election, as stipulated in Paragraph 2 of the Stipulated Facts to this Consent Order and Decree, or were undertaken by the City Clerk in the November 1999 election, then the City Clerk and the surrogate clerk(s) shall immediately notify the United States in writing of the surrogate clerk(s)' assumption of duties, and the surrogate clerk(s) shall undertake all duties imposed on the City Clerk under this Decree for each such election.

12. This Consent Decree and Order shall expire on June 1, 2004, unless extended pursuant to Paragraph 5, above; provided however that the injunction set forth in Paragraph 2, above, shall be permanent and have no expiration. Defendants shall

retain for a period of three (3) years after the expiration of this Consent Order and Decree all records related to its implementation, including but not limited to Election Inspector Certifications, Challenger Certifications, election inspector and challenger training materials, notices regarding nondiscrimination and proof of publication thereof, all documents related to election inspector training, all documentation related to the recruitment, selection, assignment and compensation of all election inspectors (including notation of bilingual status), all documentation related to the registration, assignment and conduct of challengers, and the log set forth in ¶ 10, above, regarding discrimination complaints. Such documents shall be regularly made and preserved, and shall be made available to the United States upon request.

AUG 27 2003

SO ORDERED, this _____ day of August, 2003:

PATRICK DUGGAN

Judge Patrick J. Duggan
United States District Court Judge
for the Eastern District of Michigan