

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, ETHEL
FIDDLER, in her official capacity,

Defendants.

CLOSED

00-73541

Civil Action No.:

PATRICK J. DUGGAN

U.S. DISTRICT COURT
EAST. DIST. MICH.
DETROIT

AUG 7 12 00 PM '00

FILED

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

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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-

ect 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, for each of the polling places containing the following precincts where challenges of dark-skinned voters occurred in the November 1999 election:

3	10	18	24	34
5	12	19	26	36
7	14	20	28	40
8	16	21	32	

Defendants shall appoint at least one bilingual Arab-American election inspector or one bilingual Bengali-American election inspector for each of the other polling places.

(a) 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 predominately 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.

(b) Arab-American election inspectors, and Bengali-American election inspectors as appropriate, shall be appointed from the lists compiled in ¶ 8(a), 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 her 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

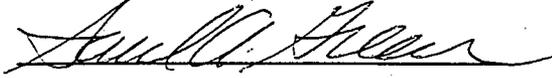
challenger training materials, notices regarding nondiscrimination and proof of publication thereof, all documents related to election inspector training, all documentation related to the recruitment, selection, assignment and compensation of all election inspectors (including notation of bilingual status), 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.

AGREED:

For the United States of
America:

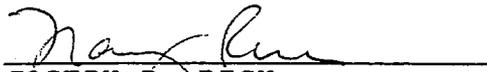
For the City Clerk:

SAUL A. GREEN
United States Attorney

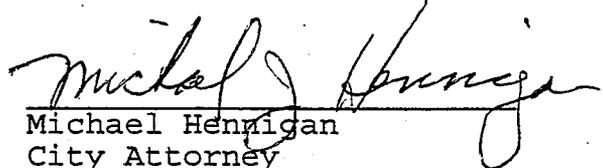



ETHEL FIDDLER
City Clerk, City of Hamtramck
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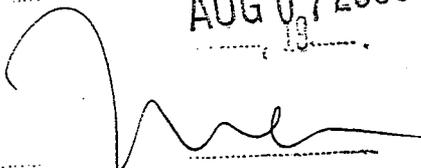
SO ORDERED, this 7th day of August, 2000:

BY USA/dist

USA/dist


United States District Judge for
the Eastern District of Michigan

AUG 07 2000


CLERK

Election Inspector Certification

I, _____, understand and will fully comply with each of the following duties of my position as [election inspector/election chairperson/other] for the _____, _____ election:

1. I will ensure that each voter in my polling place is treated with courtesy, dignity and respect;
2. I will ensure that no voter in my polling place is treated differently because of his or her race, ethnicity or color, either by election officials, challengers or any other persons inside the polling place.
3. In furtherance of the above, I will evaluate all challenges to voters' credentials in accordance with the directives from the State of Michigan Director of Elections, and I will not proceed on any challenges which appear to be discriminatory or otherwise lacking in good cause. I will, in consultation with the City Clerk or other election official, expel any challenger who harasses or targets voters based on race, ethnicity, skin color or physical appearance or whose challenges consistently fail to comply with the Michigan directives regarding appropriate challenges or whose conduct is otherwise disorderly under Michigan law.
4. I will advise illiterate voters and voters with disabilities that they have a right to assistance in voting, and that they may select a person of their choice (other than an employer or union representative) to accompany them inside the polling booth if they so choose;
5. I will provide voters who present themselves at the polls to vote and whose names do not appear on the official list of registered voters with full information, including all available written information, regarding their options respecting voting, including a complaint form, and the opportunity to cast a challenged ballot.
6. I will provide all persons who are not registered to vote with information on how to register to vote for future elections.
7. I will post all materials provided to me for posting by the City Clerk during my training session.

I agree to perform these duties to the best of my ability.

Signature

Printed Name

Date

Exhibit A

Challenger Certification

I, _____, wish to register for the _____, _____ election. I understand and will fully comply with the standards set forth for challengers under the "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." and the Hamtramck Challenger Information Bulletin. I specifically understand that I may not challenge a voter unless I have a legitimate, non-discriminatory basis for challenge, which is specific and personal to that voter. I recognize and acknowledge that voters may not be challenged based on their skin color, race, ethnicity, or physical appearance. I understand that I may be expelled from the polling place for improper challenges, and may be subject to other sanctions under federal or state law. I certify that I have not been convicted of harassing or intimidating voters during the five years preceding the date of this election.

Signature

Printed Name

Date

Exhibit B