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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 17-10079
Hon. Terrence G. Berg

CITY OF EASTPOINTE; EASTPOINTE
CITY COUNCIL; SUZANNE PIXLEY,
in her official capacity as
Mayor of Eastpointe; CARDI
DEMONACO JR., MICHAEL
KLINEFELT, SARAH LUCIDO, and
MONQIUE OWENS, in their
official capacities as members
of the Eastpointe City Council;
and JOSEPH SOBOTA, in his
official capacity as Eastpointe
City Clerk,

Defendants.

JOINT MOTION TO APPROVE CONSENT JUDGMENT

BEFORE THE HONORABLE TERRENCE G. BERG
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, June 26, 2019

APPEARANCES:

For the Plaintiff: DANIEL J. FREEMAN
LUTTRELL LEVINGSTON
GEORGE EPPSTEINER
U.S. Department of Justice

For the Defendant: ROBERT D. IHRIE
RICHARD S. ALBRIGHT
Ihrrie O'Brien

To obtain a copy of this official transcript, contact
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1 Detroit, Michigan
2 Wednesday, June 26, 2019
3 at about 10:09 a.m.

4
5 (Court and Counsel present.)

6 THE CASE MANAGER: Please rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session, the Honorable
9 Terrence Berg presiding.

10 You may be seated.

11 The Court calls Case No. 17-10079, United States of
12 America vs. City of Eastpointe, et al.

13 Counsel, please place your appearances on the
14 record.

15 MR. FREEMAN: Dan Freeman on behalf of the
16 United States.

17 THE COURT: Mr. Freeman.

18 MR. LEVINGSTON: Luttrell Levingston on behalf of
19 the United States.

20 THE COURT: Mr. Levingston.

21 MR. EPPSTEINER: George Eppsteiner for the United
22 States.

23 THE COURT: Mr. Eppsteiner.

24 MR. IHRIE: Robert Ihrie for the City of
25 Eastpointe.

1 THE COURT: Mr. Thrie.

2 MR. ALBRIGHT: Good morning, Your Honor.

3 Richard Albright on behalf of the City of Eastpointe.

4 THE COURT: Mr. Albright.

5 All right. Well, Counsel, thank you very much for
6 being here this morning. And before we get started, let me
7 just thank our court reporter this morning; we have
8 Mr. Rob Smith, and we want to thank him for his services.

9 And we also have Ms. Anna Matejcek, our law clerk.

10 We also have a number of our interns who are
11 present today. Mr. Huntley Chamberlain participated in
12 helping to prepare for this case, and I want to thank him as
13 well.

14 So we have a proposed consent decree here, and I
15 know from the motion and having read it that the parties are
16 indicating that they believe that this consent decree is a
17 fair, adequate and reasonable decree that's consistent with
18 the public interest and resolves the problems that were
19 raised by this lawsuit in terms of a violation of the Voting
20 Rights Act.

21 I would like to hear from counsel on both sides
22 about the agreement, what the agreement is and what it does;
23 in particular, how it resolves the concerns that were raised
24 in the lawsuit. And so I do want to give each side an
25 opportunity to express their position regarding the consent

1 decree.

2 Before doing that though, I did want to also say
3 that I have reviewed the consent decree, and the motion, and
4 the other materials that have been presented. I just want to
5 express my appreciation and really my congratulations to the
6 parties for having worked so hard on this case and trying to
7 reach a resolution.

8 I recognize that cases like this present all kinds
9 of complex, challenging, difficult and legitimate questions
10 for both parties, and the fact that you've been able to work
11 with one another and come up with what you believe is a
12 sufficient and adequate resolution says a lot about the
13 professionalism and the commitment that you have shown in
14 this case, both to your clients' interest and to the public
15 interest in a fair election system.

16 And so I do want you to know that I'm aware of
17 that. I have spoken with Judge Grand about his efforts as
18 well, and I thanked him for his efforts in helping you during
19 your discussions about the case.

20 And so I'm not sure who wants to go first. Maybe
21 the government wants to go first. Mr. Freeman?

22 MR. FREEMAN: Thank you, Your Honor.

23 THE COURT: Go ahead.

24 MR. FREEMAN: I can speak from here --

25 THE COURT: You can come to the lectern, if you

1 would.

2 MR. FREEMAN: Okay. Dan Freeman for the
3 United States.

4 I actually want to begin by thanking Your Honor for
5 referring this matter to Magistrate Judge Grand following
6 the -- following your decision on the motion for summary
7 judgment. Judge Grand's assistance was critical in bringing
8 the parties to a consent decree that everyone could agree on
9 and that we believe, as Your Honor said, is fair, adequate,
10 reasonable and consistent with the public interest.

11 And for that reason, because the consent decree
12 meets the proposed -- or meets the standard in the
13 Sixth Circuit, we would ask that Your Honor enter the consent
14 decree as soon as reasonable possible.

15 So I would like to explain both the mechanics of
16 how the decree will work and how elections under the decree
17 would work in the City of Eastpointe, as well as explain why
18 the method of election set out in the decree, which is
19 multi-winner ranked-choice voting, is able to cure minority
20 vote dilution in the City of Eastpointe.

21 So under the proposed consent decree, as I said, it
22 would be a ranked-choice voting system with multiple winners.
23 From the perspective of the voter, the experience of voting
24 under this system is not that different from the experience
25 of voting under Eastpointe's current system, which is also an

1 at-large election system.

2 So under the current method of election, the voter
3 sees a list of candidates and a single column of bubbles, and
4 the voter is instructed to vote for up to two candidates.
5 They can fill in a bubble next to no candidates, one
6 candidate, two candidates; the voter's choice.

7 Under a multi-winner ranked-choice voting system,
8 rather than having a single column, there's a column -- a
9 series of columns next to that list of candidates where a
10 voter can indicate their first choice, their second choice,
11 their third choice, and so on, or the voter can only select a
12 first choice, or the voter can make one, two choices,
13 et cetera.

14 If the Court would like to see a sample ballot that
15 has been used in this type of election, I have one with me
16 and would be happy to provide it to the Court as well as to
17 counsel for the City of Eastpointe, if that would be useful.

18 THE COURT: I would be happy to see it. I mean, in
19 the research that we have done, I have seen examples of it,
20 but I think if you wish to present it that would be fine.

21 MR. FREEMAN: Now, from the perspective of the
22 City, the way that the election is run is set out in the
23 Memorandum of Understanding that the parties entered into
24 back on June 5th. And the City would be using the same basic
25 election hardware and software that the City uses now.

1 Fortuitously, Macomb County uses voting machines that are
2 manufactured by a company called ES&S, which are the same
3 voting machines that are used in the state of Maine.

4 Now, Maine is important because Maine is the first
5 state in the United States to use ranked-choice voting across
6 numerous different types of elections, and they were used
7 successfully in the 2018 election cycle. There had been
8 statewide elections using ranked-choice voting previously in
9 North Carolina just for a single election. And it is also --
10 ranked-choice voting is used for military voters under
11 certain limited circumstances as well.

12 But we know that those ES&S voting machines can
13 produce ballots with a ranked-choice layout, and we know that
14 they can read and count up the ballots in a way that is
15 needed for the final ranked-choice tabulation.

16 Now, under the MOU, the Memorandum of
17 Understanding, there's an accounting method that's laid out
18 for how the ballots are actually counted in order to arrive
19 at the final winner in the contest. The way that that is
20 likely to be run under the MOU is using a software algorithm.
21 So all that needs to be done is that the votes are
22 transferred using a Memory Stick into a separate secure
23 computer, that computer looks at all the votes, runs an
24 algorithm as explained in the Memorandum of Understanding,
25 and spits out both a series of charts showing the

1 round-by-round vote counts, so it is subject to being
2 audited, and the ultimate winner. It takes a few seconds,
3 and you've arrived at the two candidates who most reflect the
4 preferences of voters across the City of Eastpointe.

5 The last critical piece of the system is voter
6 education. And I will compliment the City of Eastpointe for
7 insisting as part of the set of principles that they wanted
8 to be included in a proposed consent decree that there be a
9 robust voter-education plan, and that that voter-education
10 plan not only focus on your ranked-choice voting, but that it
11 also focus on voter education more broadly so that voters in
12 the City of Eastpointe would be more likely to be engaged in
13 city government and be more likely to turn out in city
14 elections. And social science has shown that in
15 ranked-choice voting, voter education is critical. And that
16 is really all that is required of the City, and that's all
17 that will be required in order to bring the City into
18 compliance with the Voting Rights Act.

19 Now, how do we know that multi-winner ranked-choice
20 voting will be adequate here? There is a well-established --

21 THE COURT: And when you say adequate, part of what
22 my question is, the lawsuit is based on a concern about voter
23 dilution in the current system, and so if you can address how
24 does ranked-choice voting create a system that either solves
25 or in some way ameliorates the problems that were set out in

1 the complaint and discussed in the various pleadings that
2 were before the Court.

3 MR. FREEMAN: Yes, Your Honor. The remedy is
4 adequate insofar as it will bring Eastpointe into compliance
5 with Section 2 of the Voting Rights Act. And modified
6 at-large systems, such as cumulative voting and limited
7 voting, have been used to cure Section 2 violations since the
8 1980s.

9 The Dillard litigation, which changed the method of
10 election in numerous counties in Alabama in the '80s and
11 '90s, used various modified at-large systems. The
12 United States has used modified at-large systems in the
13 Euclid City School District case, the Village of Port Chester
14 case, and a case in a place called Lake Park in Florida.

15 And the reason that it will work is that there's a
16 concept called the threshold of exclusion, and under these
17 types of modified systems where every voter is effectively
18 casting one vote, rather than casting two votes, in order for
19 a community to be able to elect a preferred candidate of
20 choice, they need to be able to represent a certain vote
21 share under the system. That is the threshold of exclusion
22 is the vote share needed to elect a candidate of choice under
23 a modified at-large system, and this is addressed throughout
24 the social science literature.

25 And in Eastpointe under a system where two

1 individuals be elected in this modified at-large system but
2 effectively every voter has one vote, it's just that it's a
3 preference vote. As long as the black-preferred and the
4 black community and the candidates that it supports receives
5 over a third of the vote, they will be able to effectively
6 control one of the two seats in the election.

7 The way that this is looked at in the ranked-choice
8 voting-tabulation system is laid out in Memorandum of
9 Understanding is something called the election threshold;
10 that so long as you have a one-vote system for two seats and
11 one candidate where the collective preferences of a group of
12 voters receives more than a third of the vote, it's not
13 possible for two additional candidates to receive more of the
14 vote than that one candidate.

15 And so under the concept of the threshold of
16 exclusion, which is discussed at length in *United States vs.*
17 *Euclid City School District* case, which was cited in the
18 briefing on summary judgment, is at 632 F.Supp. 2d 740.
19 Under that concept, so long as the minority community, their
20 vote preferences are over the threshold of exclusion, they
21 will be able to have an opportunity to elect under this
22 system.

23 And we know based on the election data that has
24 already been analyzed in this case that, in fact, the
25 black-preferred candidates in Eastpointe receive more than a

1 third of the vote. The most clear example is the 2017
2 special election because that was a head-to-head contest
3 between a black-preferred black candidate, Tonia Gladney, and
4 a white-preferred white candidate, Michael Klinefelt. And in
5 that election where everyone again had only one vote, as they
6 will effectively under a ranked-choice system, Ms. Gladney
7 received 35 percent of the vote; she cleared what would
8 effectively be the threshold of exclusion if we were looking
9 at this ranked-choice voting system.

10 We also believe that that 2017 election represents
11 the floor, not the ceiling, for the black vote share here
12 because of two things. First, as the Court recognized in the
13 Summary Judgment order, there has been a consistent
14 population trend in the City of Eastpointe, and we have no
15 basis to believe that that trend stopped in 2017, and, in
16 fact, from speaking with defendants, we believe that the
17 trend has continued to some extent. So we believe that the
18 overall share of the electorate that is African American will
19 be higher in November's election.

20 Moreover, social science has shown that where there
21 is an opportunity to elect, and voters know that they are
22 under a different type of method of election where their vote
23 is more likely to have an impact on the outcome of the
24 election, minority voters will turn out at higher rates. And
25 so we expect that the African-American community in

1 Eastpointe under this modified at-large system where
2 effectively you have two seats up but everyone is only really
3 getting one vote, even though that vote transfers between
4 candidates under the ranked-choice system, that
5 African-American voters will have the opportunity to elect.

6 We also believe certainly that this proposed
7 consent decree is fair, reasonable and consistent with the
8 public interest. The decree, as I said, asks no more of
9 defendants than what is necessary to bring the jurisdiction
10 into compliance with the Voting Rights Act, which is a change
11 to the method of election and the voter education necessary
12 to imply that change.

13 And it is consistent with public interest insofar
14 as it would implement this compelling federal interest and
15 compliance with Section 2 of the Voting Rights Act. And it
16 is also consistent with the public policy interest expressed
17 by the City of Eastpointe in this case, which was a strong
18 preference not to divide the City into single-member
19 districts.

20 THE COURT: Uh-huh.

21 MR. FREEMAN: And so --

22 THE COURT: Do you have a position with respect to
23 whether this ranked-choice voting system would be as
24 effective or more effective than dividing the City into
25 districts?

1 MR. FREEMAN: Well, the United States certainly
2 proposed single-member districts as an initial remedy in this
3 case. The consent decree -- the draft consent decree that we
4 provided to defendants before we even filed this litigation
5 would have laid out a single-member district plan as the
6 remedy in this case.

7 But once the defendants expressed a strong
8 preference not to divide the City into single-member
9 districts for election purposes, we, as the United States,
10 typically consider what alternative methods of election the
11 City has an interest in, in order to try to bring the
12 jurisdiction into compliance with Section 2 of the
13 Voting Rights Act.

14 And in this case when the City expressed that it
15 would be potentially willing to use ranked-choice voting,
16 we -- so long as we were confident that ranked-choice voting
17 would bring the City into compliance with Section 2, that is
18 where our interest ends, and we do believe that it is an
19 adequate remedy to do that, and that the opportunity to elect
20 will be present, and we really consider that to be a binary
21 question, and that the opportunity to elect will certainly be
22 present under this system.

23 THE COURT: So if you take it as true that the
24 African-American voting public does vote -- tend to vote for
25 a certain candidate, perhaps an African-American candidate,

1 is it your position that this agreement would provide a
2 better opportunity for that voting block to get a
3 representative result on the council than the current system?

4 MR. FREEMAN: Absolutely, Your Honor, absolutely
5 because under the current system where everyone is able to
6 cast two votes, the majority of City -- the majority of the
7 City's electorate, which continues to be white, controls both
8 seats. But under this system, cohesive minority community
9 that makes up more than one-third of the votes cast will be
10 able to have an opportunity to elect, and we are confident
11 that the African-American community will represent more than
12 a third of the votes cast in this November's election if this
13 consent decree is put in place.

14 THE COURT: I noticed that there was some language
15 in the agreement pertaining to a particular statute, and that
16 was Michigan Compiled Laws 168.736f, pertaining to ballot
17 language. Do you know what I'm referring to?

18 MR. FREEMAN: Yes, Your Honor.

19 THE COURT: And so there is a statute that requires
20 a certain kind of ballot language. And so this system would
21 require different ballot language; correct?

22 MR. FREEMAN: That's correct, Your Honor.

23 THE COURT: So how does -- how does Eastpointe
24 implement this without running into problems with that
25 statute?

1 MR. FREEMAN: Well, Your Honor, under a federal
2 consent decree, this Court could preempt Michigan law on that
3 issue, and that is what the proposed consent decree here
4 would do. It is an odd quirk of Michigan law that the
5 Home Rule Cities Act does allow for cities to adopt
6 preferential voting systems, but a subsequently enacted
7 provision of the election code requires the use of one of the
8 sets of ballot instructions set out in Section 736b through
9 736e of the Michigan Election Law, which is MCL 168.736b
10 through e.

11 THE COURT: And what is -- you are saying, if I
12 understood you correctly, that there is a -- there is
13 authority that allows the Court to issue an order that
14 somehow supersedes this requirement of Michigan law?

15 MR. FREEMAN: Certainly, Your Honor. A federal
16 consent decree enforcing the Voting Rights Act can preempt
17 local laws. And, for example, in our case with the Village
18 of Port Chester in New York State, there were a number of
19 local election deadlines and rules concerning voting machines
20 that were preempted by a series of orders by the court there.

21 In some jurisdictions at-large voting is mandated
22 by state law and so any type of effective at-large voting
23 with a vote for every seat that is available is mandated by
24 state law, and so any type of effective remedy must preempt
25 state or local law. It is not atypical for that to happen.

1 THE COURT: And that's what paragraph 10 in the
2 proposed order provides where it says, "Notwithstanding
3 Section 736f of the Michigan Electoral Law --", and it has a
4 Michigan Compiled Laws citation. It says, "Defendants may
5 provide ballot-marking instructions compatible with
6 ranked-choice voting to electors."

7 MR. FREEMAN: Yes, sir.

8 THE COURT: Okay. Do you agree with that,
9 Mr. Ihrie?

10 MR. IHRIE: I do, Your Honor.

11 THE COURT: Okay. And, Mr. Albright, do you also
12 agree?

13 MR. ALBRIGHT: I do, Your Honor.

14 THE COURT: Okay. All right. Well -- because I
15 have become aware, for example, of the efforts in the City of
16 Ferndale to do this. Are you familiar with that?

17 MR. FREEMAN: I am, Your Honor.

18 THE COURT: And I understand they have had some
19 difficulties in actually implementing it?

20 MR. FREEMAN: Your Honor, Oakland County where
21 Ferndale is located uses a different type of election
22 equipment. They use equipment provided by a company called
23 Hart InterCivic, and so I'm not certain of the exact
24 technical impediments that they have run into.

25 They also -- their specific ordinance that was --

1 or I believe it was a ballot proposition states that they
2 would imply ranked-choice voting when it became technically
3 and legally feasible. And they are under very different
4 circumstances where they would not have a federal court order
5 with regard to ballot language.

6 It is not necessary for compliance of Section 2 of
7 the Voting Rights Act for there to be an alternative method
8 of election in Ferndale, but it is necessary in Eastpointe.
9 And so this Court, based on a finding of a violation of the
10 Voting Rights Act, would be empowered to then preempt state
11 law, whereas Ferndale cannot.

12 THE COURT: Uh-huh. The consent decree itself
13 seems to foresee some potential problems by indicating
14 that -- it says, "The parties agree that ranked-choice
15 voting --" this is in the preamble, I guess "-- under the
16 consent decree shall proceed in accordance with the
17 procedures set out below to the extent technically feasible
18 using voting equipment and other resources available.
19 Parties acknowledge impediments may arise that prevent
20 Eastpointe from following these exact procedures, and will
21 work together to ensure successful implementation beginning
22 November 2019."

23 Do you -- are there any impediments that you
24 believe that you should bring to the Court's attention or to
25 the public's attention that may prevent this from being

1 implemented?

2 MR. FREEMAN: Not at this time, Your Honor. At the
3 time that this was drafted, we knew certainly less than we
4 actually know now. The parties have been working diligently
5 since -- even before the agreement was entered into, while we
6 were still ironing out language and getting final approval
7 from our respective clients, working with an organization
8 called the Ranked Choice Voting Resource Center that provides
9 technical assistance to jurisdictions implementing
10 ranked-choice voting so they are not reinventing the wheel
11 every time, and we have been working with ES&S, and officials
12 from the Michigan Secretary of State's office to ensure that
13 we can implement this in a timely manner to be ready for the
14 November election.

15 I think that essentially, and I don't want to speak
16 for my colleague Mr. Ihrle, but I believe that some of this
17 language was put in to make sure if absolute impossibility
18 occurred the City would not be violating a court order. But
19 certainly we would not have anticipated any kind of
20 impossibility and then ignored it in the rest of the consent
21 decree. It is simply, I believe, to protect the City from
22 unintentionally violating a court order. But at this time we
23 are confident that the City will be able to implement
24 ranked-choice voting in November.

25 I will say that there are jurisdictions in Utah

1 that are using the same technical setup that we anticipate
2 Eastpointe will be using in terms of the ES&S voting machines
3 in municipal elections that will also be happening in
4 November without the assistance of a court order. And so
5 that sort of technical process of getting everything ready is
6 moving forward.

7 THE COURT: Does the prior experience of other
8 jurisdictions involving ranked-choice voting provide any
9 information or learning with respect to the issue of voter
10 turnout?

11 MR. FREEMAN: It does, Your Honor. In the City of
12 Minneapolis, which has been using ranked-choice voting since
13 2009, voter turnout has gone up dramatically. I don't have
14 the exact numbers in front of me, but turnout has gone up to
15 levels that are not typically seen in municipal elections,
16 that are generally seen more in federal or statewide
17 elections. Voters have expressed that they are generally
18 very happy with the systems.

19 And where there have been exit polls in a number of
20 California jurisdictions that are also using ranked-choice
21 voting, voters have typically said that they understand the
22 ballot and that they are happy with the system. So we
23 anticipate -- we hope that the same thing will happen in
24 Eastpointe.

25 Another benefit is that typically there is less

1 negative campaigning. Not that there is often negative
2 campaigning in Eastpointe, but because candidates are still
3 seeking a second- or third-place preference, they don't want
4 another candidate's supporters to actively dislike them, and
5 so they will frequently engage in more issue-based and less
6 negative campaigning so that they can still have a chance at
7 that second or third vote. And there have been studies on
8 that in -- I believe, Social Science Quarterly just put out a
9 study on that in this year -- earlier this year.

10 THE COURT: Can the voters mess this up in some
11 way? For example, if the voters for some reason just all
12 decided they only wanted to vote for their first choice?

13 MR. FREEMAN: Well, if voters just decide that they
14 are not going to rank subsequent to first choice, that is a
15 ballot that will count. If that candidate is eliminated from
16 contention during the tabulation rounds, their ballot will
17 fall out of consideration. It is called an exhausted ballot.

18 But that's no different than under, for example, a
19 limited voting system which is one vote for two seats but
20 without ranking, casting a ballot for somebody who loses.
21 And those limited voting systems also will provide an
22 opportunity to elect at a lower threshold than half of the
23 population.

24 The real advantage of ranked-choice voting is
25 twofold. Because you have a minority community that doesn't

1 have its own sort of separate primary but may split its
2 preferences among multiple minority candidates, the process
3 of tabulation allows the consolidation of that preference
4 behind a single candidate to increase the likelihood that
5 they will clear the threshold of exclusion behind a single
6 minority-preferred candidate.

7 It also ensures that if, for example, 90 percent of
8 the city's first preference is for a single candidate, that
9 the surplus transfer that occurs under ranked-choice voting
10 will prevent 10 percent of the city or 5 percent of the city
11 from controlling the second seat.

12 So there are real advantages here for ranked-choice
13 voting, but even a limited voting system without the transfer
14 component of ranked-choice would still provide the
15 opportunity to elect what we are talking about here.

16 THE COURT: Is there more of a likelihood of voters
17 spoiling their ballot or making a mistake with so many
18 potential rankings?

19 MR. FREEMAN: Well, we don't believe so for a
20 couple of reasons. First, a spoiled ballot will kick back
21 under, I believe, Michigan law, possibly federal law as well,
22 so that the voter will have another opportunity to cast a
23 ballot.

24 And second, based on exit polling and other
25 research, it is our understanding that voters typically

1 understand the instructions and don't have much of a problem
2 with them. It's pretty clear, as you will see from the
3 sample ballot, and as you saw in your research, you simply
4 cast a first vote next to the candidate that you prefer in
5 the same way you always have, but you just have the
6 opportunity to cast additional votes -- excuse me, not
7 additional votes but to list additional preferences.

8 THE COURT: Uh-huh. All right. Go ahead.
9 Anything else?

10 MR. FREEMAN: If Your Honor has no further
11 questions, we respectfully request that Your Honor enter the
12 consent decree as soon as possible so that Eastpointe can
13 definitively inform its voters that it will be using
14 ranked-choice voting in November and begin educating the
15 voters as to how they will be voting in next November's
16 election because, as I mentioned previously, voter education
17 is critical here.

18 Also the candidate-qualifying deadline is next
19 month and candidates are already gathering signatures, and we
20 think it is very important that those candidates who are
21 considering running know what type of election system they
22 will be running under.

23 Thank you, Your Honor.

24 THE COURT: All right. Thank you very much.

25 Okay. On behalf of the City we have Mr. Ihrle.

1 All right. Go ahead, sir.

2 MR. IHRIE: Good morning, Your Honor.

3 THE COURT: Good morning.

4 MR. IHRIE: May it please the Court, Robert Ihrrie
5 for the City of Eastpointe.

6 Just as a preliminary matter, Your Honor, I would
7 like to thank a couple of people.

8 When this litigation was filed against the City, we
9 can't really forget that it, indeed, is litigation, and it
10 was filed against the City of Eastpointe, and that is never a
11 fun position to be in.

12 Understanding the Department of Justice's position,
13 our office, which is an office of six or seven attorneys, we
14 have been engaged in municipal law for many decades, but this
15 was the first time we had to defend a case like this. So we
16 co-counselled with somebody whose name is Angela Gabel, who
17 has been an integral part of this litigation in defending the
18 litigation, and who has been of immeasurable help. Though
19 she is not here today, I would like to thank her for the
20 assistance that she gave in resolving this matter.

21 We also secured as a -- another firm, Dentons law
22 firm, specifically as a consultant. I don't believe she ever
23 filed an appearance on this case, an attorney by the name of
24 Lisa Krigsten. Lisa actually used to head up the voting
25 right section of the Department of Justice, and we felt that

1 her counsel to us -- she works out of -- well, the her -- the
2 firm where we met her was in Washington, D.C. We want to
3 thank her and her invaluable assistance as well.

4 And I would also like to acknowledge Rich Albright.
5 Though he's not standing here right now, he has been engaged,
6 I really must say primarily, in the defense of this action
7 and the resolution of this action, even more -- substantially
8 more than I have been. So I want to thank Mr. Albright for
9 all of his efforts.

10 I would be remiss also, Your Honor, if I did not
11 acknowledge, though he was our opposition and though we had
12 some issues and difficult times, I would be remiss if I
13 didn't at least acknowledge Mr. Dan Freeman's -- what I have
14 felt throughout the entirety of this case -- sense of
15 professionalism and courtesy, and in some situations
16 assistance in the resolution of this matter. And while I
17 won't name all of them by name, all of those persons who are
18 sitting with him at this point and other attorneys.

19 So I think that though this was litigation, the
20 resolution that we are in front of Your Honor for was to some
21 degree a joint -- a joint effort.

22 With respect to the proposed consent decree, this
23 was not a consent decree -- a proposed consent decree that
24 was typed up by one of the secretaries at Eastpointe or one
25 of the secretaries at the Department of Justice and is being

1 | thrown in front of you for a signature. It was heartily and
2 | mightily -- I hope this phrase does not have a negative
3 | connotation, but it was word-crafted very carefully. There
4 | were many times when phraseology was changed, and there were
5 | many times when words were changed to accommodate both the
6 | interests of the Department of Justice and the interests of
7 | the City of Eastpointe.

8 | The City of Eastpointe, as this Court knows because
9 | it is from this particular area, is a city that has been
10 | undergoing changing demographics for 10 to 15 years or even
11 | more. The City of Eastpointe has taken extremely seriously
12 | the goal of accommodation, the goal of making sure that those
13 | changing demographics work to be a positive for the City, a
14 | positive for the residents that move into the City, and a
15 | positive for all persons having equal access to not only the
16 | services of the City but also in this particular case the
17 | voting rights of everybody in the City.

18 | I will address an issue that the Court brought up
19 | and the Court asked, I believe, all of the key questions
20 | about this consent decree -- or at least most of them.
21 | Mr. Freeman is correct, early on in this case the City was
22 | quite -- quite opposed to districts. The reason that the
23 | City was opposed to districts is because the City Council,
24 | which is a five-person council -- usually city councils are
25 | seven, but this one is five. The City Council believed that

1 it, they and its predecessors had worked very, very hard
2 through community organizations, through various
3 methodologies to make sure that as the demographics changed
4 in the City of Eastpointe that lines of racial separation did
5 not exist. And it felt that to draw districts which would
6 essentially cordon off one district that had primarily
7 African-American residents or voters would have the net
8 effect of drawing racial lines, the same kinds of lines that
9 it sought not to have.

10 The City Council also believed that it was not
11 conducive to the good health, both political and racial, of
12 the City to have what had the risk of ultimately being called
13 the black district. And inherently involved in that language
14 and that word, that monicker, if you will, would be a racial
15 separation. And the City Council wanting to meet the goals
16 of this lawsuit did not want to in so doing create another
17 problem. So, yes, it is true as Mr. Freeman had stated, the
18 City was quite opposed to districts.

19 What the City was not opposed to is making sure
20 that all residents and all voters in the City of Eastpointe
21 have an equal opportunity to elect the candidate of their
22 choice, hence this resolution -- this proposed resolution.

23 I will say that --

24 THE COURT: Do you agree with what Mr. Freeman said
25 that the proposed resolution would accomplish the same goal

1 of avoiding the -- what the lawsuit calls a dilution of the
2 votes of African-American citizens?

3 MR. IHRIE: I agree with it with one caveat. There
4 is -- I've always said every time I go to a legal seminar I
5 always walk out a little bit scared because I realize that --
6 what I don't know.

7 These are very esoteric issues and very esoteric
8 remedies. If I were to say to the Court that I have studied
9 to such a degree that I have a clear understanding of the
10 algorithmic, mathematical, sociological underpinnings of
11 ranked-choice voting, I would not be truthful to the Court.
12 So I'm not going to say that.

13 I will say this, however, two things. Number one,
14 I have done substantial reading. I have done substantial
15 observing and studying of ranked-choice voting and how it
16 works, and why it resolves the issues that this lawsuit is
17 about. And to the best of my ability, I have concluded that
18 it is in the best interest of not only the City of Eastpointe
19 but also the African-American voters or minority voters.

20 So the answer to your question with that caveat is,
21 yes, I do believe that this particular remedy will, indeed,
22 be an adequate remedy to solve the problem that this
23 litigation is about.

24 My second response to that question is --
25 remembering that we are in litigation, my second response to

1 that question is somewhat circular, but I also agree to this
2 and the City Council agrees to this resolution because it is
3 a remedy that is satisfactory to the Department of Justice.
4 I would be less than forthright if I didn't say that.

5 One of the reasons that we reached this remedy is
6 because it was one of the options the Department of Justice
7 felt was appropriate and would solve the problems that the
8 litigation is about.

9 If I could give a 2.5 answer, there's another
10 reason why we think it does resolve the problems, and it is
11 something that we are willing as a city to enter into.
12 There's never been a question in my mind both from public,
13 personal, closed-session comments, that the City of
14 Eastpointe and each member of City Council does want to
15 resolve any question with respect to enfranchisement of
16 minority voters. The City wants to resolve it in a way that
17 will allow minority voters to be completely and totally
18 enfranchised.

19 I'm going to go a step above that though. I'm
20 going to say, Your Honor, that the City of Eastpointe is not
21 only accepting and asking the Court to enter a consent
22 decree, I'm going say -- I'm going to go out on a little bit
23 of limb and say the City of Eastpointe is even excited about
24 it. They are looking forward to what they feel may be a
25 somewhat progressive and enlightened way of dealing with

1 minority enfranchisement, and believes that though it is
2 occurring under the umbrella of a consent decree that it may
3 be the beginning of a -- maybe the first in this state and
4 perhaps the beginning of a process that causes other
5 governmental entities to take a look at this to see how it
6 works, if it works, and the success of the ultimate goal of
7 enfranchisement.

8 I will say the City of Eastpointe has at this
9 point, not to jump the gun with Your Honor, but recognizing
10 that there has -- there is limited time before the November
11 election, along with the Department of Justice, we have
12 had -- there has been substantial discussion and research
13 into how we set up for the November election. There have
14 been conference calls that included multiple persons from the
15 elections division of the State of Michigan, from the County
16 of Macomb, from the -- I believe the Ranked Choice Voting
17 Resource Center was involved. I think we had at least one
18 where there must have been close to 20 people on the
19 conference call trying to work through some of the technical
20 aspects of implementing this methodology for the November
21 election.

22 The Court is correct that the consent decree does
23 acknowledge that if we run into some type of technical
24 impossibility we have both reserved the right -- well, we
25 both committed to work together to try to solve that. If it

1 can't be solved, we have acknowledged that that could require
2 us to come back to the Court to propose a secondary
3 resolution or remedy of some type. I don't mean a different
4 remedy but perhaps something -- a timing change of some type.

5 But we don't anticipate that that's going to
6 happen -- or shall I say to be a little bit more accurate, we
7 are optimistic that that will not be necessary, and we are
8 going to do all within our power, meaning the City of
9 Eastpointe, to assure that this process is ready for the
10 November election, and that it occurs with -- as the consent
11 decree indicates, occurs within, the word that we used was a
12 robust educational program so that the persons who do go into
13 the election booth will have a good understanding of what
14 they are doing.

15 Yes, it is something new, but it's not all that
16 complicated quite frankly. In the booth you rank your
17 choices. If somebody wants to just put down number one and
18 nothing else, that's a valid ballot. If somebody -- my
19 understanding is if somebody circles number one for
20 Candidate A and number one for Candidate B, that is a ballot
21 that will be kicked back.

22 THE COURT: Right, that would be a spoiled ballot.

23 MR. IHRIE: That would be spoiled -- a spoiled
24 ballot.

25 THE COURT: Can I -- let me just --

1 MR. IHRIE: Yes.

2 THE COURT: I want to make sure with respect to how
3 the City is looking at the consent decree as a likely
4 solution because we are talking about a fair and adequate and
5 reasonable solution that's in the public interest here. And
6 so since -- and I know this is sometimes hard to summarize
7 exactly, but since the lawsuit is based on a concern that
8 when you have a minority block of voters that does, in
9 fact -- which I know this is sometimes disputed, but if it
10 does, in fact, tend to vote as a block, and that in -- that
11 under the current system the argument was that that block of
12 voters could not get adequate representation matching its
13 preferred candidate.

14 Does this system, in your view and in the City's
15 view, address that problem and make it more likely that that
16 block of minority voters would be able to succeed in having
17 its preferred candidate be represented?

18 MR. IHRIE: I am tempted, Your Honor, to give you a
19 rather wordy answer. I'm not going to do that. I'm just
20 going to answer your question and say yes.

21 THE COURT: All right. Thank you. And what about
22 the costs? Can the City afford the necessary costs that may
23 be needed to be borne regarding this change, or is it not
24 that expensive, or what's going on with that?

25 MR. IHRIE: Your Honor, that is a question that the

1 City of Eastpointe has looked at with some concern. The City
2 of Eastpointe is not a rich community, and quite frankly very
3 few municipal governments have any money to -- any excess
4 money these days.

5 That having been said, the City Council is aware
6 that there is and will be a cost to implementation. We
7 have -- while we have not quantified that cost, and I cannot
8 give you a number, the City Council has committed to expend
9 the monies that it believes will be necessary to accomplish
10 the requirements set forth in the proposed consent decree and
11 in the Memorandum of Understanding.

12 We hope that it is not wallet-crushing. We don't
13 anticipate that it will be, but thus far the City of
14 Eastpointe believes that it can accommodate the expense to
15 get to ranked-choice voting through a proper educational
16 program for the November election.

17 THE COURT: All right. Thank you very much. Is
18 there anything else that you wish to add?

19 MR. IHRIE: I just want to say, Your Honor, that I
20 do agree with Mr. Freeman that this is an adequate remedy,
21 that it is fair, it is reasonable, it is in the public
22 interest which is why the City of Eastpointe joins with the
23 Department of Justice in this motion to enter the proposed
24 consent decree. Thank you.

25 THE COURT: All right. Thank you very much, sir.

1 Is there any response, Mr. Freeman? Or is there
2 anything that any other attorney would like to add?

3 MR. FREEMAN: No response from the government, Your
4 Honor, other than to provide a couple citations to the extent
5 that Your Honor is interested in materials concerning the
6 effectiveness of ranked-choice voting to remedy Section 2
7 violations given Your Honor's interest in that.

8 There is an article at 77 North Carolina Law Review
9 1867, Steven Mulroy, *Alternative Ways Out*, and an article by
10 Dr. Richard Engstrom called the Single Transferable Vote,
11 which is at 27 University of South Florida Law Review 779,
12 and those which also describe the effectiveness of a variety
13 of modified at-large systems including ranked-choice voting
14 to cure vote dilution under Section 2. Thank you, Your
15 Honor.

16 THE COURT: All right. Thank you. If I -- I was
17 trying to write those down, but if you could also make sure
18 you give those citations to Ms. Matejcek that would be great.

19 All right. Well, in this matter the parties have
20 submitted to the Court a proposed consent decree which would
21 resolve the case and that would effect the future method for
22 voting in the City of Eastpointe, and I have carefully
23 reviewed the consent agreement between the parties, and I
24 have also carefully reviewed the consent judgment and decree.

25 I am going to enter the consent judgment. I do

1 find that it is a fair, and adequate, and reasonable solution
2 to the issues that were raised in the complaint in this
3 matter, and that the alleged violations of Section 2 of the
4 Voting Rights Act that were acknowledged in the consent
5 decree will be ameliorated according to this plan. That is
6 the intent of the plan, and that's the belief of both parties
7 that have indicated to the Court that that is the reason that
8 they are asking for this consent decree to be entered, and so
9 that will be the ruling of Court.

10 Now, I will have that entered today so you can go
11 forward with your planning.

12 I do want to emphasize again what I said before
13 that I think that the attorneys on this case, on both sides,
14 should be commended for the work that they have done, for the
15 attitude, and for the professionalism that they have
16 displayed. I think that both sides have acquitted themselves
17 in the highest possible honor of our profession, and have --
18 through their approaching this with that kind of commitment
19 to really doing the right thing, and seeing their job as not
20 only simply representing what might be the initial reaction
21 of a client, but also seeing the needs of the public,
22 acknowledging the changing demographics that both sides have
23 referenced during their presentations today and their
24 commitment to ensure that the vote of each citizen has
25 meaning and is actually able to effect the development of

1 their community.

2 As I say, I think it is very positive. Sometimes
3 in court we will see behavior of attorneys which is not
4 inspiring, but this is an example of behavior of attorneys
5 that is inspiring, and I want to thank you for all of that.

6 All right. Thank you very much. If there is
7 nothing further, we can be adjourned. Is there anything
8 further?

9 MR. IHRIE: Nothing, Your Honor.

10 MR. FREEMAN: No.

11 THE COURT: All right. Thank you very much.

12 THE LAW CLERK: All rise. The Court is in recess.

13 (Proceedings concluded at 11:02 a.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of U.S.A. vs. City of Eastpointe, et al., Case No. 17-10079, on Wednesday, June 26, 2019.

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 07/24/2019
Detroit, Michigan