

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA
CESAR RUIZ, :

Plaintiffs, :

v. :

06 Civ. 15173 (SCR)

VILLAGE OF PORT CHESTER, :

Defendant. :

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MEMORANDUM OF LAW OF
PLAINTIFF CESAR RUIZ IN SUPPORT OF
PLAINTIFFS' JOINT PROPOSED REMEDIAL PLAN

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Preliminary Statement

Plaintiff Cesar Ruiz respectfully submits this memorandum in support of the imposition of a six member district remedy to cure the Voting Rights Act violation found by the Court in its opinion of January 17, 2008. U.S. v. Village of Port Chester, 2008 WL 190502 (S.D.N.Y). Plaintiffs have submitted a Joint Proposed Remedial Plan ("Plan") that is identical to the Modified Plan A discussed in the Court's opinion. Plaintiff Ruiz adopts the arguments raised by the United States in support of the imposition of the Plan. Plaintiff Ruiz addresses herein the arguments in favor of the adoption of a district remedy and in opposition to the Village's cumulative voting remedy.

ARGUMENT

THE COURT SHOULD ADOPT THE JOINT PROPOSED REMEDIAL PLAN

The traditional remedy for a violation of Section 2 of the Voting Rights Act is a district plan. See, e.g., Thornburg v. Gingles, 478 U.S. 30, 50 (1986); Goosby v. Town Bd. of Hempstead, 180 F.3d 476, 485 (2d Cir. 1999); Garza v. County of Los Angeles, 918 F.2d 763, 776 (9th Cir. 1990). The plaintiffs are submitting as a remedy for the violation of the Voting Rights Act Modified Plan A ("Plan"). Under the Plan, each member of the board of trustees would be elected from a single member district. As the Court ruled in discussing both Plan A and the Modified Plan A, "[b]oth of the proposed plans show very limited deviation in the total population among the six proposed districts." Port Chester at *5. The Court also concluded that the Plan was reasonably compact. Id. Additionally, while the Plan does create a majority Hispanic district, race was not the predominant consideration in the creation of the districts. Id. at *6. As the Court concluded the size and shape of the districts comport with traditional districting

principles of population equality and compactness. Id. at *23. Finally, in light of the fact that Hispanics comprise 56.27% of the citizen voting age population, utilizing the 2000 census figures, in District 4 of the Plan, Hispanic voters will have an equal opportunity to nominate and elect a candidate of choice from that district. Thus, the Plan is an adequate remedy for the violation of the Voting Rights Act as found by the Court.

Plaintiff Ruiz would also suggest that the Court should include as part of the remedy that the elections for trustees be held in November as opposed to March. As the Court found “[e]xperts on both sides agree that generally, voter turnout is lower in March than in November elections, and that this general principle is true of the off-cycle elections in Port Chester.” Id. at *18. Dr. Handley’s data demonstrated that Hispanic turnout was markedly greater for November elections in 2004, 2005, and 2006, than it was for March elections held in those same years. Id. Similarly, Dr. Gaddie noted that holding local elections off cycle resulted in depressed voter participation. Id.

The Court noted in its opinion that holding Village elections “at a time when only the most engaged and politically astute citizens - those citizens who feel the most enfranchised – are likely to vote will almost certainly result in the diminished influence of groups who feel generally excluded from the political fabric of the community.” Port Chester at *28; see NAACP v. Hampton County Election Comm., 470 U.S. 166, 178 (1985) (“An election in March is likely to draw significantly fewer voters than an election held simultaneously with a general election in November.”). The Court concluded that “off-cycle . . . Trustee elections contribute to the Hispanic community’s difficulty in electing candidates of choice.” Id. Plaintiff Ruiz is concerned that even under a district system the holding of trustee elections in March, as opposed to November, could

continue to result in depressed levels of voter participation. There is no question that the Hispanic community has been excluded from the political process in the Village. The continued holding of trustee elections in March could continue to result in depressed participation. Accordingly, in order to ensure that the remedy ordered by the Court completely eradicates the vote dilution violation, the Court should order both a district remedy and that the trustee elections be held in November.

THE COURT SHOULD REJECT THE VILLAGE'S CUMULATIVE VOTING PROPOSAL

The Village has proposed a cumulative voting remedy for the Voting Rights Act violation. Every Circuit Court to have considered cumulative voting as a remedy for a Section 2 violation has rejected it. See Dillard v. Baldwin Cty. Comm'rs, 376 F.3d 1260, 1268 (11th Cir. 2004); Harper v. City of Chicago Heights, 223 F.3d 593 (7th Cir. 2000); Cousin v. Sundquist, 145 F.3d 818, 829 (6th Cir. 1998); Cane v. Worcester Cty. Comm'n, 35 F.3d 921, 923 (4th Cir. 1994). The courts consistently have rejected cumulative voting as inconsistent with the Voting Rights Act. See, e.g., Cousin, 145 F.3d at 829 (cumulative voting "is an inappropriate remedy for a Section 2 claim" because it promotes proportional representation, a goal disclaimed by the statute).

Accordingly, as there is a district remedy that would cure the Voting Rights Act violation and the cumulative voting model has been rejected as a remedy for such a violation, Plaintiff Ruiz urges the Court to reject such a proposal as an inadequate remedy based on the facts of this case. Plaintiff Ruiz believes that the Plan would afford Hispanic voters with an equal opportunity to participate in the political process.

He also believes that he would have a reasonable opportunity to become a candidate under the plan and to attain a seat on the Board of Trustees.

CONCLUSION

The Court should adopt as a remedy herein the jointly proposed Modified Plan A as a remedy...

Dated: Bronx, New York
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Respectfully submitted

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