

ORDINANCE NO. J-60

AN EMERGENCY ORDINANCE OF THE CITY OF FORT PIERCE, FLORIDA AMENDING THE CODE OF ORDINANCES OF THE CITY OF FORT PIERCE; CHAPTER 6, ELECTIONS; TO CONFORM THE PROVISIONS OF SAID CHAPTER TO THE PLAN FOR ELECTION OF CITY COMMISSIONERS APPROVED BY THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FORT PIERCE DIVISION, IN CIVIL ACTION CASE NO. 92-14157; PROVIDING FOR THE REPEAL OF ORDINANCES IN CONFLICT; PROVIDING FOR THE SEVERABILITY OF THE PARTS HEREOF; PROVIDING FOR READING BY TITLE ONLY AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, municipal elections in the City of Fort Pierce are regulated by Chapter 6 of the Code of Ordinances of the City of Fort Pierce entitled "Elections" and by certain provisions of the City Charter; and,

WHEREAS, the City of Fort Pierce and its duly elected mayor and city commissioners, in their representative capacities, were named as defendants in a civil lawsuit designated as case no. 92-13157 filed in the United States District Court for the Southern District of Florida in July 1992 by African American registered voters and residents of the City of Fort Pierce; and,

WHEREAS, said lawsuit alleged that the former system for election of Fort Pierce City Commissioners violated the rights of plaintiffs under the U.S. Constitution and under the Voting Rights Act of 1965 as amended by Congress in 1982; and,

WHEREAS, in response to said lawsuit the City of Fort Pierce voluntarily devised a new plan for election of City Commissioners wherein four (4) city commissioners are elected from two (2) double member voting districts and the mayor-commissioner continues to be elected at large; and,

WHEREAS, upon the establishment of boundaries for the two double member voting districts contained in defendants proposed election plan, plaintiffs accepted the plan and the plaintiffs and defendants entered into a Consent Agreement in order to settle the factual and legal disputes arising from civil action case no. 92-14157; and,

WHEREAS, by Order on Consent Agreement dated September 24, 1993, the United States District Court approved the Consent Agreement of the parties; thereby approving the plan for election of city commissioners contained therein; and,

WHEREAS, the Order on Consent Agreement requires that the City of Fort Pierce take all necessary and appropriate action to conform its Charter and Code provisions to the new election plan; and,

WHEREAS, certain provisions of the Code of Ordinances of the City of Fort Pierce, more fully specified herein, must be formally amended by ordinance of the City Commission in order to fully implement and effectuate the plan for election of city commissioners approved by the United States District Court; and,

NOW THEREFORE, BE IT ENACTED BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, AS FOLLOWS:

Section 1. In accordance with the Order on Consent Agreement dated September 24, 1993 entered by the United States

District Court for the Southern District of Florida in the case of Rev. Howard D. Coleman, et. al. v. Fort Pierce City Commission, et. al. (Case no. 92-14157), Section 6-6 of Chapter 6 of the Code of Ordinances of the City of Fort Pierce shall be amended as hereinafter set forth.

Section 2. The title of said section 6-6 shall be amended so that said section shall hereafter be entitled "Election districts."

Section 3. The text of section 6-6 shall be amended to provide as follows:

Sec. 6-6 Election districts.

(a) The City of Fort Pierce shall be and is hereby divided into two (2) election districts, (formerly known as qualifying districts). District 1 shall consist of all that territory lying north and west of a certain dividing line, dividing the city into two (2) districts. District 2 shall consist of all that territory lying on the mainland south and east of a certain dividing line, dividing the city into two (2) districts; and shall further contain all of that territory referred to as the beach area on Hutchinson Island within the city limits.

(b) The dividing line between the two election districts, formerly known as qualifying districts, shall be and is hereby established as the centerline of that portion of Okeechobee Road, beginning from the western boundary of the city and running east to 25th Street; thence along the centerline of that portion of 25th Street running north from Okeechobee Road to Delaware Avenue; thence along the centerline of Delaware Avenue running east from 25th Street to 4th Street (U.S. Highway 1); thence along the centerline of 4th Street (U.S. Highway 1) running north to the north city limits.

Section 4. All other ordinances in conflict herewith are hereby repealed, but only to the extent of such conflict.

Section 5. Should any section, sentence, clause, part or provision of this ordinance be declared by a court of competent jurisdiction to be invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole, or any part hereof, other than the part declared to be invalid.

Section 6. This ordinance shall take effect immediately upon passage.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

REV. HOWARD D. COLEMAN, CATHERINE
ROLLE-WHITE, NORCISS PLUMMER, and
WILLIE BURDEN, JR.

Plaintiffs,

v.

CA No. 92-14157-CIV-PAINE

FT. PIERCE CITY COMMISSION; WILLIAM
R. DANNAHOWER, GLORIA GRIMYSER,
DARRELL DRUMMOND, BOB BLUESTONE, and
BOB BURDGE, in their official
capacities as mayor and members
respectively of the Ft. Pierce City
Commission.

Defendants.

CONSENT DECREE

Plaintiffs initiated this action under the first, thirteenth, fourteenth and fifteenth amendments of the Constitution of the United States and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. sec. 1973, as amended, and prayed for declaratory and injunctive relief concerning the method of electing the members of the City of Fort Pierce City Commission.

The plaintiffs and the defendants are desirous of resolving this action and have agreed to a method to be used in future elections for the Fort Pierce City Commission. This Court has jurisdiction of the parties and the subject matter of this action

and the parties have agreed to the entry of this Consent Decree. Based upon the inherent equitable powers of this Court, the consent of the parties and the agreement entered into by the parties on file with the Court, the future members of the Fort Pierce City Commission shall be elected on the basis of and in accordance with the provisions of this Consent Decree.

Pursuant to the agreement of the parties, the defendants have approved a plan for the election of members of the Fort Pierce City Commission which provides plaintiffs, as African American residents and voters of the City of Fort Pierce, with a greater opportunity than previously existed to elect candidates of their choice to the Fort Pierce City Commission, through the establishment of two double member districts. This plan shall replace the current election plan under which all four city commissioners are elected at large from two residency districts and the mayor-commissioner is elected at large with no residency district requirement.

The new election plan includes the following aspects:

(a) Candidates for city commissioner are required to reside in and be elected by the voters residing in one of the two double member districts. Candidates for mayor-commissioner may reside anywhere in the city and are elected by the voters at large.

(b) The plan will be implemented so that the successors of the city commissioners whose terms expire in 1993 will be elected under the new plan and all commissioners elected thereafter will be elected under the new plan. In order to continue the current plan of staggered terms, all city commissioners and the mayor-

commissioner will be elected to four year terms.

The parties have jointly requested the issuance of this Consent Decree.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That the terms of the Consent Agreement between the plaintiffs and defendnats in this action, on file with the court are hereby approved and confirmed and same shall be implemented as provided therein.

2. That the terms of the Consent Agreement and of this Consent Decree shall henceforth be binding on the plaintiffs and the defendants, and their successors, officers and agents.

3. The City of Fort Pierce shall take all necessary and appropriate action to conform its Charter and Code provisions to the election plan approved herein.

4. Defendants shall pay the sum of \$ 36,661.02 to the plaintiffs in full satisfaction of any claims that they may have for attorneys' fees and costs as a result of this action and the subject matter of this litigation, said amount to be paid in accordance with the terms set out in the Consent Agreement.

SO ORDERED this _____ day of _____, 1993.

James C. Paine
United States District Judge

Agreed and Consented to by:

Neil Bradley, Esq.
Cristina Correia, Esq.
Counsel for Plaintiffs

Robert M. Fournier, Esq.
John T. Brennan, Esq.
Robert J. Gorman, Esq.
Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

REV. HOWARD D. COLEMAN, CATHERINE
ROLLE-WHITE, NORCISS PLUMMER, and
WILLIE BURDEN, JR.

Plaintiffs,

v.

CA No. 92-14157-CIV-PAINE

FT. PIERCE CITY COMMISSION; WILLIAM
R. DANNAHOWER, GLORIA GRIMYSER,
DARRELL DRUMMOND, BOB BLUESTONE, and
BOB BURDGE, in their official
capacities as mayor and members
respectively of the Ft. Pierce City
Commission.

Defendants.

CONSENT AGREEMENT

The above named plaintiffs and defendants, being desirous of resolving the above captioned action as inexpensively and expeditiously as possible; and further being desirous of implementing a compromise solution to the subject matter of this action by establishing a new method of electing the members of the City of Fort Pierce City Commission; by and through their respective undersigned counsel, hereby enter into this Consent Agreement to memorialize their agreement as to the following:

1. The United States District Court for the Southern District of Florida has jurisdiction over the parties and the subject matter of this action; and the parties shall move jointly that this Agreement be implemented and ordered into effect by a Consent Decree to be entered by said Court.

2. Plaintiffs and defendants have analyzed the applicable law and facts and the various elections in and for the Fort Pierce City Commission and have concluded that it is in their best interests and the best interests of the citizens of the City of Fort Pierce that this civil action be resolved by an agreed upon settlement in order to avoid the costs, delays and uncertainties of further litigation. Therefore, defendants agree not to contest plaintiffs' claim that the holding of at large elections for the Fort Pierce City Commission under the current election system results in a denial or abridgment of plaintiffs' right to vote in violation of the Voting Rights Act of 1965, 42 U.S.C. sec. 1973, (as amended by Act of Congress in 1982).

3. Plaintiffs and defendants shall employ their best efforts to obtain approval of this Consent Agreement from the United States District Court and to request and encourage the Court to enter a Consent Decree incorporating the terms of this agreement therein. Both parties shall participate in any hearing to be conducted on the matter.

4. Defendants shall, through their counsel, present to the City Commission as an integral part of the settlement of this civil action, an ordinance amending the relevant provisions of Article

VI of the Fort Pierce City Charter, regarding elections, to conform to the provisions of this Agreement as ratified by Consent Decree. Defendants shall further, through their counsel, present to the City Commission as an integral part of the settlement of this civil action, an ordinance amending the relevant provisions of Chapter 6 of the Fort Pierce City Code regarding elections to conform to the provisions of this Agreement as ratified by Consent Decree. Defendant City Commission shall conduct any and all public hearings on said ordinances and any and all other public hearings as may be necessary for the implementation of the proposed settlement as set out in this Agreement and ratified by Consent Decree.

5. The Fort Pierce City Commission shall continue to consist of a mayor-commissioner and four (4) commissioners. The seat held by the mayor-commissioner shall be designated as seat 1. The four commissioner's seats shall be designated as seats 2 through 5. These numbered seats shall be deemed to be currently occupied as follows:

- Seat 1 - Mayor Dannahower
- Seat 2 - Commissioner Burdge
- Seat 3 - Commissioner Drummond
- Seat 4 - Commissioner Bluestone
- Seat 5 - Commissioner Grimyser

6. For purposes of future City Commission elections, the City of Fort Pierce shall be geographically divided into two (2) districts of approximately equal population. These districts shall be referred to as District 1 and District 2 respectively.

Candidates for seats 3 and 5 shall be residents of District 1 and shall be qualified, voted on and elected solely by the voters of District 1. Candidates for seats 2 and 4 shall be residents of District 2 and shall be qualified, voted on and elected solely by the voters of District 2. Candidates for seat 1 (mayor-commissioner) may reside anywhere in the City of Fort Pierce, but shall be residents of the City of Fort Pierce and shall be qualified, voted on and elected by the voters of the city at large.

7. District 1 shall consist of current (August 1993) St. Lucie County voting precincts nos. 4, 5, 17, 18 and 19. District 2 shall consist of current (August 1993) St. Lucie County voting precincts 3, 7, 10, 16, 25 and 27. A table which reflects the composition of District 1 by census block and tract according to the Official 1990 U.S. Census is attached to this Agreement as Exhibit "A". A table which reflects the composition of District 2 by census block and tract according to the Official 1990 U.S. Census is attached to this Agreement as Exhibit "B". A map of the City of Fort Pierce which reflects the division of the city into District 1 and District 2 as provided in this Agreement is attached as Exhibit "C".

8. According to the official 1990 U.S. Census, the total population, by race, of Districts 1 and 2 is as follows:

	<u>Total</u>	<u>White</u>	<u>Afr. Am.</u>	<u>Other</u>
District 1	18,675	2,942	14,751	982
District 2	18,155	16,830	853	472

9. According to the official 1990 U.S. Census, the voting age population, by race, of Districts 1 and 2 is as follows:

	<u>Total</u>	<u>White</u>	<u>Afr. Am.</u>	<u>Other</u>
District 1	11,957	2,196	9,098	663
District 2	15,199	14,302	561	336

10. The new election system shall be implemented so that the current plan of four year staggered terms is maintained. Seats 4 and 5 shall be filled by elections held in December 1993 in District 2 and District 1 respectively, and thereafter by elections held every four (4) years. Seats 2 and 3 shall be filled by elections held in December 1995 in District 2 and District 1 respectively, and thereafter by elections held every four (4) years. Seat 1 (Mayor-Commissioner) shall be filled by an at large election held in December 1995 and thereafter by an election held every four (4) years.

11. To the extent possible and consistent with this Agreement, all future elections shall be held in accordance with applicable Florida law and the Charter of the City of Fort Pierce. Any vacancies on the City Commission shall be filled under the appropriate provisions of the City Charter and state law; however any persons seeking to fill a vacancy for seats 2 through 5 shall reside within the district for which the vacancy exists.

12. Plaintiffs and Defendants agree that the election plan for the Fort Pierce City Commission as set out herein does not deny or abridge plaintiffs' right to vote in violation of Section 2 of

the Voting Rights Act of 1965, 42 U.S.C. sec. 1973, (as amended by Act of Congress in 1982). Accordingly, the respective individual plaintiffs agree that neither they nor any person, organization or entity acting on their behalf will, subsequent to the settlement of this action; file, charge or claim or cause to be filed, charged or claimed, any law suit or administrative complaint, or other action, other than to enforce the terms of this Consent Agreement and Decree, against the Fort Pierce City Commission or its members, arising out of or relating to the subject matter of this action.

13. The terms of this Agreement shall be binding upon the plaintiffs and the defendants and their successors, officers and agents.

14. The respective plaintiffs and the respective defendants agree that this Consent Agreement constitutes the entire agreement between them relating to the subject matter hereof, and fully supersedes any and all prior agreements or understandings between them pertaining to the subject matter hereof.

16. The respective plaintiffs and the respective defendants agree that if any provisions of this Consent Agreement should be held to be illegal or invalid by a court of competent jurisdiction, the legality and validity of the remaining provisions shall not be affected.

17. Because of future demographic changes within the City of Fort Pierce, the parties acknowledge that it may be necessary from time to time for the districts described herein to be reapportioned. Defendants may undertake such reapportionment

without seeking to alter or modify this agreement. Paragraph 12 above shall not be construed to prohibit legal action challenging such future district reapportionment(s) and shall not be construed to prohibit legal action which seeks district reapportionment at any time after publication of the results of the 2000 U.S. Census.

18. Defendants shall pay the total aggregate sum of \$36,661.02 to plaintiffs in full satisfaction of any claims that plaintiffs may have for attorneys' fees and costs as a result of this action and the subject matter of this action. Said amount shall be paid as follows within thirty (30) days after entry of the Consent Decree approving this Agreement: The total sum of \$12,012.50 (including \$10,500.00 in attorney fees and \$1,512.50 in costs) shall be paid directly to the American Civil Liberties Union Foundation at 44 Forsyth St. NW, Suite 202, Atlanta Georgia 30303. The total sum of \$24,648.52 (including \$20,950.00 in attorney fees and \$3,690.52 in costs) shall be paid directly to Florida Rural Legal Services, Inc., at 5700 Lake Worth Road, Suite 212, Lake Worth, Florida 33463.

19. The respective plaintiffs and defendants acknowledge that they have carefully read and fully understand all of the provisions of this Consent Agreement and have thoroughly discussed all aspects thereof with their attorneys and that they are entering into this Consent Agreement freely and voluntarily and with the intent to be bound by its terms. The undersigned counsel represent that this Agreement is executed with the full knowledge and prior consent of the individual plaintiffs and the individual defendants

respectively.

Agreed and Consented to by:

Cristina Correia, Esq.
Fla. Bar no. 870005
Fla. Rural Legal Srv. Inc.
5700 Lake Worth Rd.
Suite 212
Lake Worth, Florida 33463
(407) 968-4427

Robert M. Fournier, Esq.
Florida Bar no. 0262730
Fournier, Pretschner & Rowell
1800 Second Street
Suite 803
Sarasota, Florida 34236
(813) 957-3980

Neil Bradley, Esq.
Georgia Bar no. 075125
American Civil Liberties
Union Foundation
44 Forsyth St. NW
Suite 202
Atlanta, Georgia 30303
(404) 523-2721

John T. Brennan Esq.
Florida Bar no. 0008570
Robert J. Gorman, Esq.
Florida Bar no. 224286
Brennan, Hayskar, Jefferson,
Gorman, Walker & Schwerer P.A.
P.O. Box 1480
Fort Pierce, FL 34954-1480
(407) 460-2200

COUNSEL FOR PLAINTIFFS

COUNSEL FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

REV. HOWARD D. COLEMAN, CATHERINE
ROLLE-WHITE, NORCISS PLUMMER, and
WILLIE BURDEN, JR.

Plaintiffs,

v.

CA No. 92-14157-CIV-PAINE

FT. PIERCE CITY COMMISSION; WILLIAM
R. DANNAHOWER, GLORIA GRIMYSER,
DARRELL DRUMMOND, BOB BLUESTONE, and
BOB BURDGE, in their official
capacities as mayor and members
respectively of the Ft. Pierce City
Commission.

Defendants.

JOINT MOTION TO ENTER CONSENT DECREE AND JUDGMENT

Plaintiffs and Defendants, having come to an agreement for the complete resolution of this civil action, hereby move this Court to enter the attached proposed Consent Decree and enter Judgment accordingly. In support of this joint motion, the parties have attached a fully executed copy of their Consent Agreement.

MEMORANDUM OF LAW

The redistricting and reapportionment of legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt. Wise v. Lipscomb, 437 U.S. 535, 539, 98

S.Ct. 2493, 57 L.Ed.2d 411, 417. The City of Fort Pierce has agreed not to further contest the plaintiffs' allegation that the holding of at large elections for the Fort Pierce City Commission under the current system results in a denial or abridgment of the plaintiffs' right to vote in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. sec. 1973. Under these circumstances, it is appropriate that the defendant City Commission be given the opportunity to devise and to adopt a substitute election plan. The City's new legislative plan is then the governing law, unless it too is challenged. Id 437 U.S. at 540. A legislatively enacted remedial plan, such as the one proposed by the City of Fort Pierce in this action, may include multi-member election districts. Tallahassee Branch of NAACP v. Leon County, Florida 827 F.2d 1436, 1438, (11th Cir. 1987).

Dated: _____

Dated: _____

PLAINTIFFS' COUNSEL

Cristina Correia
Fla. Bar No. 0870005
Fla. Rural Legal
Services, Inc.
5700 Lake Worth Rd. #212
Lake Worth, FL 33463
(407) 968-4427

Neil Bradley
Georgia Bar no. 075125
ACLU, Southern Reg. Off.
44 Forsyth St. N.W.
Suite 202
Atlanta GA, 30303
(404) 523-2721

DEFENDANTS' COUNSEL

Robert M. Fournier
Fla. Bar No. 0262730
Fournier, Pretschner &
Rowell, P.A.
1800 Second St. #803
Sarasota, FL 34236
(813) 957-3980

John T. Brennan
Fla. Bar no. 0008570
Robert J. Gorman
Fla. Bar no. 224286
P.O. Box 1480
Fort Pierce, FL 34954
(407) 460-2200

RECEIVED

SEP 28 1993

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 92-14157-CIV-PAINE

REV. HOWARD D. COLEMAN,
CATHERINE ROLLE-WHITE,
NORCRISS PLUMMER, and WILLIE
BURDEN, JR.,

Plaintiffs,

vs.

FT. PIERCE CITY COMMISSION;
WILLIAM R. DANNAHOWER, GLORIA
GRIMYSER, DARRELL DRUMMOND,
BOB BLUESTONE, and BOB BURDGE,
in their official capacities
as mayor and members
respectively of the Ft. Pierce
City Commission,

Defendants.

FILED by

SEP 24 1993

T. G. CHELEOTIS
CLERK U. S. DIST. CT.
S.D. OF FLA.-W.P.B.

ORDER ON CONSENT AGREEMENT

I. BACKGROUND

On July 6, 1992, the Plaintiffs, African-American adult citizens and registered voters, brought action for declaratory and injunctive relief to enforce provisions of the First, Thirteenth, Fourteenth and Fifteenth Amendments of the United States Constitution and Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, as amended, so that their participation in the electoral and political process will have their votes counted on an equal basis with registered white citizens and voters of Fort Pierce.

1 According to the 1990 United States Census of Population,
2 Fort Pierce is a city of 36,830 persons, of which 19,772
3 (53.68%) are white and 15,604 (42.73%) are African-American.
4 The total voting age population is 27,156 persons, of which
5 16,498 (60.75%) are white and 9,659 (35.57%) are African-
6 American. Pursuant to the city's charter, the Fort Pierce
7 City Commission is composed of five members, one being the
8 mayor-commissioner. Four of the commissioners are required to
9 run from two residency districts, and the mayor-commissioner
10 is elected without regard to residency. All members currently
11 are nominated and elected at-large by majority vote.

12 In the entire history of the city, no African-American
13 candidate has ever won election when his or her election would
14 have resulted in African-Americans holding two council seats
15 at the same time. The dispute in this litigation does not
16 concern whether the African-American community could elect one
17 candidate of its choice; the dispute, rather, is over the
18 dilution of the African-American votes by their inability to
19 elect a second candidate of their choice to the five member
20 council.

21 On August 19, 1993, the parties filed a Consent Agreement
22 whereby Fort Pierce would be divided into two voting
23 districts: District 1 comprised of an African-American
24 majority population and District 2 comprised of a white
25 majority population, with both districts to elect two of the
26

1 four city commissioners. The mayor-commissioner would be
2 elected by an at-large majority vote of the combined two
3 districts.

4 On September 23, 1993, the court held an evidentiary
5 hearing to address: (1) whether the Consent Agreement is
6 consistent with the United States Supreme Court's recent
7 opinion in Shaw v. Reno, 113 S. Ct. 2816 (1993); and (2)
8 whether the Defendants' agreement not to contest the
9 Plaintiffs' claim that at-large elections violate Section 2 of
10 the Voting Rights Act sufficiently permits the court to impose
11 the remedies proposed by the Consent Agreement. Having
12 reviewed the record, the memoranda of counsel and relevant
13 authorities, the court enters the following order.

14 II. ANALYSIS

15 A. Jurisdiction

16 The Plaintiffs initiated this action under the First,
17 Thirteenth, Fourteenth and Fifteenth Amendments of the United
18 States Constitution and Section 2 of the Voting Rights Act of
19 1965, 42 U.S.C. § 1973.¹ The court has jurisdiction over the
20 parties and the subject matter of this case under Title 28 of
21 the United States Code, Sections 1331, 1343(3), 1343(4), and
22

23
24 ¹ The parties agree that Ft. Pierce, which is located
25 in St. Lucie County, Florida, is not covered by Section 5 of
26 the Voting Rights Act of 1965.

1 2201, this suit being authorized by Title 42 of the United
2 States Code, Section 1983.

3 **B. The Shaw Inquiry**

4 In Shaw v. Reno, 113 S. Ct. 2816 (1993), the Supreme
5 Court held that an allegation that "redistricting legislation
6 that is so extremely irregular on its face that it rationally
7 can be viewed as an effort to segregate the races for purposes
8 of voting, without regard for traditional districting
9 principles and without sufficiently compelling justification"
10 states a claim upon which relief can be granted under the
11 equal protection clause. Id. at 2824. The Court recognized
12 that a complaint may state such a claim when it "is so bizarre
13 on its face that it is 'unexplainable on grounds other than
14 race.'" Id. at 2825 (quoting Arlington Heights v.
15 Metropolitan Housing Development Corp., 429 U.S. 252, 266
16 (1977)).

17 Shaw reaffirmed that "[t]his Court never has held that
18 race-conscious state decisionmaking is impermissible in all
19 circumstances." Id. at 2824 (emphasis in original). The
20 Court explained:

21 [R]edistricting differs from other kinds of state
22 decisionmaking in that the legislature always is
23 aware of race when it draws district lines, just as
24 it is aware of age, economic status, religious and
25 political persuasion, and a variety of other
26 demographic factors. That sort of race
consciousness does not lead inevitably to
impermissible race discrimination.

1 Id. at 2826 (emphasis in original). The Court acknowledged
2 that it would be an "exceptional case[]" in which a
3 districting plan would be challenged "on its face," id.,
4 giving as an example "a case in which a States concentrated a
5 dispersed minority population in a single district by
6 disregarding traditional districting principles such as
7 compactness, continuity, and respect for political
8 subdivisions." Id. at 2877.

9 A comparison of the congressional districts subject to
10 complaint in Shaw and the plan of the Consent Agreement
11 reveals that the Fort Pierce plan cannot be described as
12 "bizarre" or "irrational."² The shape of the proposed
13 districts are readily explainable -- they follow the existing
14 voting precinct boundaries for the city.³ Affidavit of
15 William S. Cooper, dated September 17, 1993, at ¶ 8.
16 Moreover, the Fort Pierce plan deals with a concentrated
17 minority population; it violates no principles of contiguity
18 and compactness. Thus, the court finds that the parties'
19 Consent Agreement is consistent with Shaw.

21
22 ² A copy of the plan for the congressional districts
23 at issue in Shaw is attached as Appendix A. A copy of the
24 redistricting plan pertaining to the instant Consent Agreement
25 is attached as Appendix B.

26 ³ Any irregular edges on the South are caused by city
boundaries and prior annexations and are not attributable to
the adoption of this plan.

1 C. Section 2 of the Voting Rights Act

2 In a challenge by minority voters to an at-large election
3 structure, the Supreme Court in Thornburg v. Gingles, 478 U.S.
4 30 (1986), set forth three elements that must be established
5 in order to prove a violation under Section 2 of the Voting
6 Rights Act: (1) that the minority group is sufficiently large
7 and geographically compact to constitute a majority in a
8 single-member district; (2) that the minority group is
9 politically cohesive; and (3) that the white majority votes
10 sufficiently as a bloc to cause it usually to defeat the
11 minority's preferred candidate. Id. at 50-51. See Nipper v.
12 Smith, No. 92-2588 (11th Cir. Sept. 15, 1993). The United
13 States Court of Appeals for the Eleventh Circuit is divided on
14 whether these elements conclusively establish a Section 2
15 violation, see Solomon v. Liberty County, 899 F.2d 1012, 1017
16 (11th Cir. 1990) (en banc) (per curium) (Kravitch, J.,
17 specially concurring), and whether defendants thereafter can
18 raise a defense under the totality of the circumstances.⁴ Id.
19 at 1033 (Tjoflat, C.J., specially concurring).

20
21 ⁴ In addition to the three threshold elements, Gingles
22 recognized other factors that might be considered as part of
23 the totality of the circumstances to support a Section 2
24 claim. Id. at 36-37 (quoting S.Rep. No. 417, 97th Cong., 2d
25 Sess. 28-29 (1982), reprinted in 1982 U.S. Code Cong. & Admin.
26 News 177, 206-07). By prior order, the court has taken
judicial notice of evidence of historical discrimination
touching upon the right to vote and the effects of
discrimination in education and employment which hinders the
minority's ability to participate in the political process.

1 In this case, the first element is established by the map
2 and census data submitted as part of the Consent Agreement.
3 The second and third elements are established by evidence of
4 racially polarized voting. The Plaintiffs have submitted an
5 analysis of elections in Fort Pierce, where African-American
6 candidates were opposed by white candidates, using the same
7 statistical techniques approved in Gingles. This analysis
8 shows that the minority community is extremely cohesive --
9 minority candidates usually getting more than ninety percent
10 of the African-American vote. The Plaintiffs' analysis also
11 shows that whites usually vote as a bloc to defeat the
12 candidate of choice of the minority, particularly when
13 African-American candidates have run for city council
14 positions when there is already an African-American
15 incumbent.⁵ Thus, the court finds that the Plaintiffs have

16
17 ⁵ In Fort Pierce, African-Americans constitute
18 approximately thirty-six percent of the age-eligible
19 population. If white and African-American voters registered
20 and voted at the same rates, and if the African-American
21 community gave all of its votes to the same candidate,
22 minority supported candidates would need to receive an
23 additional fourteen percent of the total vote to reach the
24 fifty percent (plus one vote) needed to be elected. This
25 fourteen percent must come from the white majority, and the
26 African-American candidate thus would need to receive
approximately twenty-two percent [fourteen divided by sixty-
four] of the white cross-over vote. In none of the elections
for a second council seat in Fort Pierce has the minority
supported candidate received the necessary level of white
cross-over vote to be elected. White cross-over averaged less
than twelve percent, a far lower level of white cross-over
than deemed sufficient in Gingles. Plaintiffs' Response to
Inquiries of the Court Regarding the Consent Agreement and

1 tendered evidence demonstrating the existence of the three
2 Gingles elements to establish a Section 2 violation.

3 In the Consent Agreement, the Defendants "agree[d] not to
4 contest plaintiffs' claim that the holding of at large
5 elections for the Fort Pierce City Commission under the
6 current election system results in a denial or abridgment of
7 plaintiffs' right to vote in violation of the Voting Rights
8 Act of 1965." The United States Court of Appeals for the
9 Fourth Circuit has recognized that the consent of the
10 defendants alone is sufficient to authorize a court to impose
11 a remedy under Section 2. Neal v. Harris, 837 F.2d 632, 634
12 (4th Cir. 1987) (finding that "[o]nce it was determined that
13 plaintiffs were entitled to relief under § 2 of the Voting
14 Rights Act, either by a finding of unlawfulness or the express
15 consent of the parties, the timing of that relief was a matter
16 within the discretion of the court") (emphasis added). In
17 this case, the Plaintiffs have established a prima facie
18 violation under Gingles, and the Defendant have not contested
19 or raised a defense to the Section 2 violation. The court
20 concludes that such a showing sufficiently justifies the
21 exercise of federal court authority to impose and implement
22 the remedial plan of the Consent Agreement.

23
24
25 _____
Proposed Consent Decree, filed September 22, 1993, at 11-2.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

III. CONSENT DECREE

The Plaintiffs and the Defendants are desirous of resolving this action and have agreed to a method to be used in future elections for the Fort Pierce City Commission. This court has jurisdiction of the parties and the subject matter of this action and the parties have agreed to the entry of this Consent Decree. Based upon the inherent equitable powers of this court, the consent of the parties and the agreement entered into by the parties on file with this court, the future members of the Fort Pierce City Commission shall be elected on the basis of and in accordance with the provisions of this Consent Decree.

Pursuant to the agreement of the parties, the Defendants have approved a plan for the election of members of the Fort Pierce City Commission which provides the Plaintiffs, as African-American residents and voters of the City of Fort Pierce, with greater opportunity than previously existed to elect candidates of their choice to the Fort Pierce City Commission, through the establishment of two double member districts. This plan shall replace the current election plan under which all four city commissioners are elected at large from two residency districts and the mayor-commissioner is elected at large with no residency district requirement.

The new election plan includes the following aspects:

1 (a) Candidates for city commissioner are required to
2 reside in and be elected by the voters residing in one of the
3 two double member districts. Candidates for mayor-
4 commissioner may reside any where in the city and are elected
5 by the voters at large.

6 (b) The plan will be implemented so that the successors
7 of the city commissioners whose terms expire in 1993 will be
8 elected under the new plan and all commissioners elected
9 thereafter will be elected under the new plan. In order to
10 continue the current plan of staggered terms, all city
11 commissioners and the mayor-commissioner will be elected to
12 four year terms.

13 The parties have jointly requested the issuance of this
14 Consent Decree.

15 IV. CONCLUSION

16 In view of all the foregoing, it is hereby ORDERED,
17 ADJUDGED and DECREED as follows:

18 (1) That the terms of the Consent Agreement between the
19 Plaintiffs and the Defendants in this action, on file with the
20 court, are hereby approved and confirmed and the same shall be
21 implemented as provided therein.

22 (2) That the terms of the Consent Agreement and of this
23 Consent Decree shall henceforth be binding on the Plaintiffs
24 and the Defendants, and their successors, officers, and
25 agents.

1 (3) The City of Fort Pierce shall take all necessary and
2 appropriate action to conform its Charter and Code provisions
3 to the election plan approved herein.

4 (4) The Defendants shall pay the sum of \$36,661.02 to
5 the Plaintiffs in full satisfaction of any claims that they
6 may have for attorneys' fees and costs as a result of this
7 action and the subject matter of this litigation, said amount
8 to be paid in accordance with the terms set out in the Consent
9 Agreement.

10 (5) The Clerk of Court is directed to close this file.
11 To the extent not otherwise disposed of herein, any pending
12 motions are declared moot.

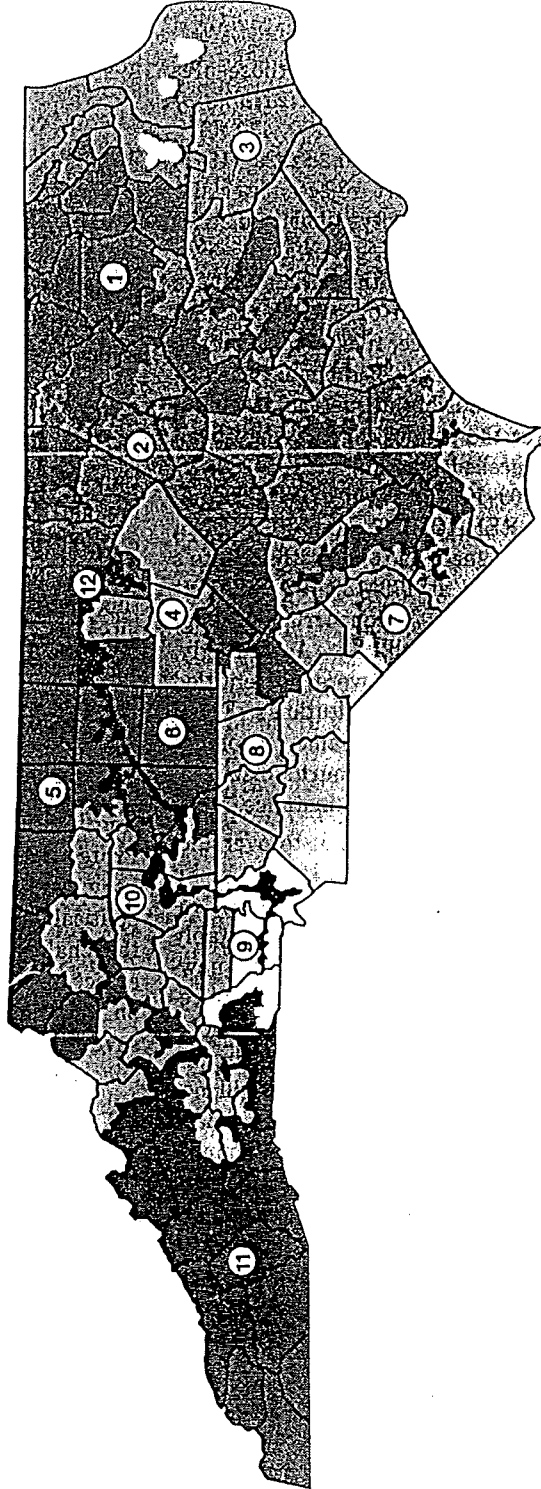
13 (6) The court retains jurisdiction to enforce the terms
14 and conditions of the Consent Agreement and of this Consent
15 Decree.

16 DONE and ORDERED at West Palm Beach, Florida this 24th day
17 of September, 1993.

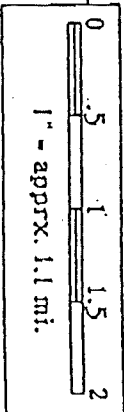
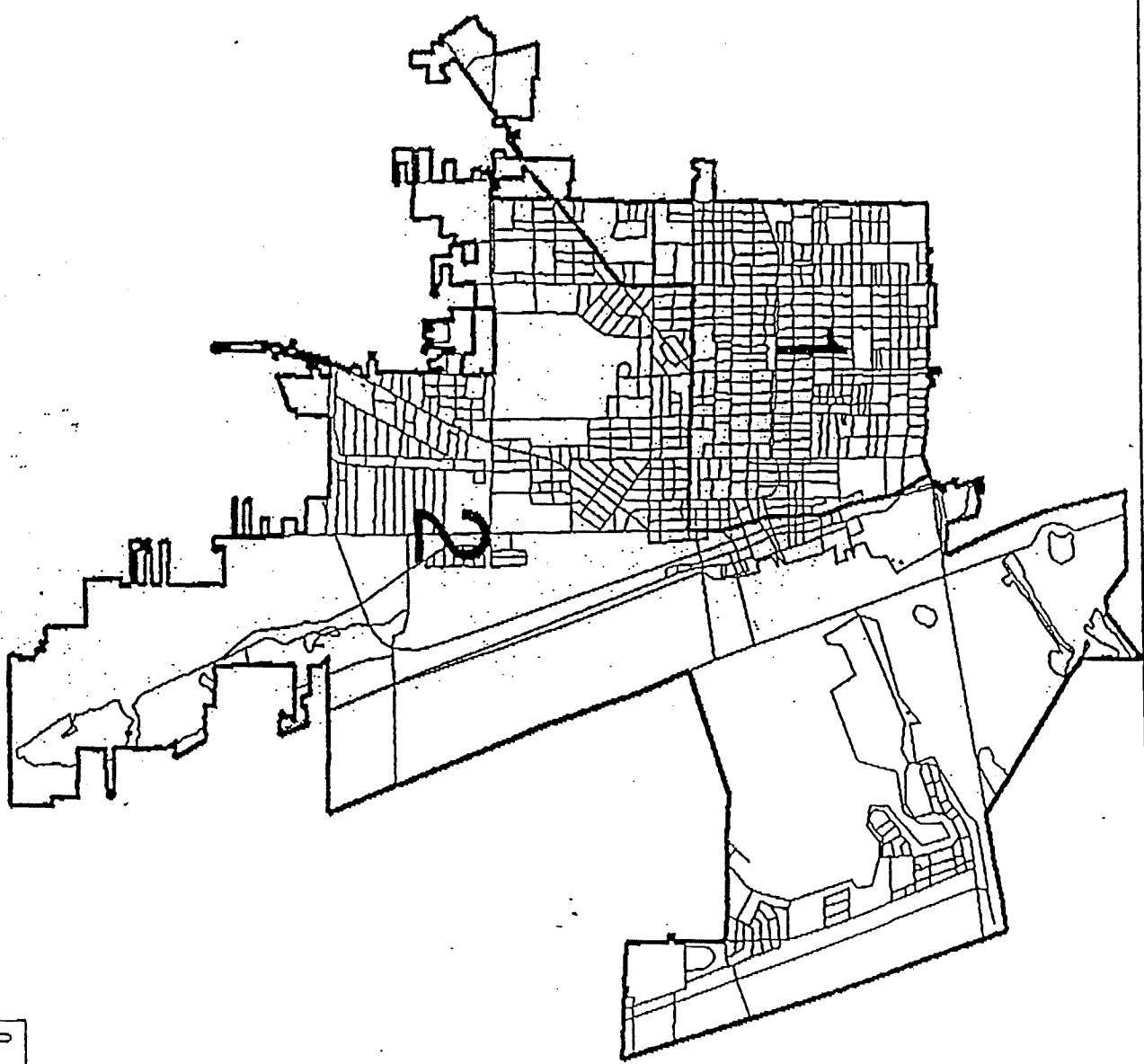
18 James C. Parize
19 UNITED STATES DISTRICT JUDGE

20 cc: Neil Bradley
21 Christina Correia
22 Robert M. Fournier
23 John T. Brennan
24
25
26

APPENDIX
NORTH CAROLINA CONGRESSIONAL PLAN
Chapter 7 of the 1991 Session Laws (1991 Extra Session)



Draft 2-District, 4-Member Plan — Fort Pierce, Plan B 3/93



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT PIERCE DIVISION

REV. HOWARD D. COLEMAN, CATHERINE
ROLLE-WHITE, NORCISS PLUMMER, and
WILLIE BURDEN, JR.

Plaintiffs,

v.

CA No. 92-14157-CIV-PAINE

FT. PIERCE CITY COMMISSION; WILLIAM
R. DANNAHOWER, GLORIA GRIMYSER,
DARRELL DRUMMOND, BOB BLUESTONE, and
BOB BURDGE, in their official
capacities as mayor and members
respectively of the Ft. Pierce City
Commission.

Defendants.

CONSENT AGREEMENT

The above named plaintiffs and defendants, being desirous of resolving the above captioned action as inexpensively and expeditiously as possible; and further being desirous of implementing a compromise solution to the subject matter of this action by establishing a new method of electing the members of the City of Fort Pierce City Commission; by and through their respective undersigned counsel, hereby enter into this Consent Agreement to memorialize their agreement as to the following:

1. The United States District Court for the Southern District of Florida has jurisdiction over the parties and the subject matter of this action; and the parties shall move jointly that this Agreement be implemented and ordered into effect by a Consent Decree to be entered by said Court.

2. Plaintiffs and defendants have analyzed the applicable law and facts and the various elections in and for the Fort Pierce City Commission and have concluded that it is in their best interests and the best interests of the citizens of the City of Fort Pierce that this civil action be resolved by an agreed upon settlement in order to avoid the costs, delays and uncertainties of further litigation. Therefore, defendants agree not to contest plaintiffs' claim that the holding of at large elections for the Fort Pierce City Commission under the current election system results in a denial or abridgment of plaintiffs' right to vote in violation of the Voting Rights Act of 1965, 42 U.S.C. sec. 1973, (as amended by Act of Congress in 1982).

3. Plaintiffs and defendants shall employ their best efforts to obtain approval of this Consent Agreement from the United States District Court and to request and encourage the Court to enter a Consent Decree incorporating the terms of this agreement therein. Both parties shall participate in any hearing to be conducted on the matter.

4. Defendants shall, through their counsel, present to the City Commission as an integral part of the settlement of this civil action, an ordinance amending the relevant provisions of Article

VI of the Fort Pierce City Charter, regarding elections, to conform to the provisions of this Agreement as ratified by Consent Decree. Defendants shall further, through their counsel, present to the City Commission as an integral part of the settlement of this civil action, an ordinance amending the relevant provisions of Chapter 6 of the Fort Pierce City Code regarding elections to conform to the provisions of this Agreement as ratified by Consent Decree. Defendant City Commission shall conduct any and all public hearings on said ordinances and any and all other public hearings as may be necessary for the implementation of the proposed settlement as set out in this Agreement and ratified by Consent Decree.

5. The Fort Pierce City Commission shall continue to consist of a mayor-commissioner and four (4) commissioners. The seat held by the mayor-commissioner shall be designated as seat 1. The four commissioner's seats shall be designated as seats 2 through 5. These numbered seats shall be deemed to be currently occupied as follows:

- Seat 1 - Mayor Dannahower
- Seat 2 - Commissioner Burdge
- Seat 3 - Commissioner Drummond
- Seat 4 - Commissioner Bluestone
- Seat 5 - Commissioner Grimyser

6. For purposes of future City Commission elections, the City of Fort Pierce shall be geographically divided into two (2) districts of approximately equal population. These districts shall be referred to as District 1 and District 2 respectively.

Candidates for seats 3 and 5 shall be residents of District 1 and shall be qualified, voted on and elected solely by the voters of District 1. Candidates for seats 2 and 4 shall be residents of District 2 and shall be qualified, voted on and elected solely by the voters of District 2. Candidates for seat 1 (mayor-commissioner) may reside anywhere in the City of Fort Pierce, but shall be residents of the City of Fort Pierce and shall be qualified, voted on and elected by the voters of the city at large.

7. District 1 shall consist of current (August 1993) St. Lucie County voting precincts nos. 4, 5, 17, 18 and 19. District 2 shall consist of current (August 1993) St. Lucie County voting precincts 3, 7, 10, 16, 25 and 27. A table which reflects the composition of District 1 by census block and tract according to the Official 1990 U.S. Census is attached to this Agreement as Exhibit "A". A table which reflects the composition of District 2 by census block and tract according to the Official 1990 U.S. Census is attached to this Agreement as Exhibit "B". A map of the City of Fort Pierce which reflects the division of the city into District 1 and District 2 as provided in this Agreement is attached as Exhibit "C".

8. According to the official 1990 U.S. Census, the total population, by race, of Districts 1 and 2 is as follows:

	<u>Total</u>	<u>White</u>	<u>Afr. Am.</u>	<u>Other</u>
District 1	18,675	2,942	14,751	982
District 2	18,155	16,830	853	472

9. According to the official 1990 U.S. Census, the voting age population, by race, of Districts 1 and 2 is as follows:

	<u>Total</u>	<u>White</u>	<u>Afr. Am.</u>	<u>Other</u>
District 1	11,957	2,196	9,098	663
District 2	15,199	14,302	561	336

10. The new election system shall be implemented so that the current plan of four year staggered terms is maintained. Seats 4 and 5 shall be filled by elections held in December 1993 in District 2 and District 1 respectively, and thereafter by elections held every four (4) years. Seats 2 and 3 shall be filled by elections held in December 1995 in District 2 and District 1 respectively, and thereafter by elections held every four (4) years. Seat 1 (Mayor-Commissioner) shall be filled by an at large election held in December 1995 and thereafter by an election held every four (4) years.

11. To the extent possible and consistent with this Agreement, all future elections shall be held in accordance with applicable Florida law and the Charter of the City of Fort Pierce. Any vacancies on the City Commission shall be filled under the appropriate provisions of the City Charter and state law; however any persons seeking to fill a vacancy for seats 2 through 5 shall reside within the district for which the vacancy exists.

12. Plaintiffs and Defendants agree that the election plan for the Fort Pierce City Commission as set out herein does not deny or abridge plaintiffs' right to vote in violation of Section 2 of

the Voting Rights Act of 1965, 42 U.S.C. sec. 1973, (as amended by Act of Congress in 1982). Accordingly, the respective individual plaintiffs agree that neither they nor any person, organization or entity acting on their behalf will, subsequent to the settlement of this action; file, charge or claim or cause to be filed, charged or claimed, any law suit or administrative complaint, or other action, other than to enforce the terms of this Consent Agreement and Decree, against the Fort Pierce City Commission or its members, arising out of or relating to the subject matter of this action.

13. The terms of this Agreement shall be binding upon the plaintiffs and the defendants and their successors, officers and agents.

14. The respective plaintiffs and the respective defendants agree that this Consent Agreement constitutes the entire agreement between them relating to the subject matter hereof, and fully supersedes any and all prior agreements or understandings between them pertaining to the subject matter hereof.

16. The respective plaintiffs and the respective defendants agree that if any provisions of this Consent Agreement should be held to be illegal or invalid by a court of competent jurisdiction, the legality and validity of the remaining provisions shall not be affected.

17. Because of future demographic changes within the City of Fort Pierce, the parties acknowledge that it may be necessary from time to time for the districts described herein to be reapportioned. Defendants may undertake such reapportionment

without seeking to alter or modify this agreement. Paragraph 12 above shall not be construed to prohibit legal action challenging such future district reapportionment(s) and shall not be construed to prohibit legal action which seeks district reapportionment at any time after publication of the results of the 2000 U.S. Census.

18. Defendants shall pay the total aggregate sum of \$36,661.02 to plaintiffs in full satisfaction of any claims that plaintiffs may have for attorneys' fees and costs as a result of this action and the subject matter of this action. Said amount shall be paid as follows within thirty (30) days after entry of the Consent Decree approving this Agreement: The total sum of \$12,012.50 (including \$10,500.00 in attorney fees and \$1,512.50 in costs) shall be paid directly to the American Civil Liberties Union Foundation at 44 Forsyth St. NW, Suite 202, Atlanta Georgia 30303. The total sum of \$24,648.52 (including \$20,950.00 in attorney fees and \$3,690.52 in costs) shall be paid directly to Florida Rural Legal Services, Inc., at 5700 Lake Worth Road, Suite 212, Lake Worth, Florida 33463.

19. The respective plaintiffs and defendants acknowledge that they have carefully read and fully understand all of the provisions of this Consent Agreement and have thoroughly discussed all aspects thereof with their attorneys and that they are entering into this Consent Agreement freely and voluntarily and with the intent to be bound by its terms. The undersigned counsel represent that this Agreement is executed with the full knowledge and prior consent of the individual plaintiffs and the individual defendants

respectively.

Agreed and Consented to by:

Cristina Correia
Cristina Correia, Esq.
Fla. Bar no. 870005
Fla. Rural Legal Srv. Inc.
5700 Lake Worth Rd.
Suite 212
Lake Worth, Florida 33463
(407) 968-4427

Neil Bradley, Esq.
Georgia Bar no. 075125
American Civil Liberties
Union Foundation
44 Forsyth St. NW
Suite 202
Atlanta, Georgia 30303
(404) 523-2721

COUNSEL FOR PLAINTIFFS

Robert M. Fournier
Robert M. Fournier, Esq.
Florida Bar no. 0262730
Fournier, Pretschner & Rowell
1800 Second Street
Suite 803
Sarasota, Florida 34236
(813) 957-3980

John T. Brennan Esq.
Florida Bar no. 0008570
Robert J. Gorman, Esq.
Florida Bar no. 224286
Brennan, Hayskar, Jefferson,
Gorman, Walker & Schwerer P.A.
P.O. Box 1480
Fort Pierce, FL 34954-1480
(407) 460-2200

COUNSEL FOR DEFENDANTS