

Brown v. Board of Commissioners of the City of Chattanooga was a federal lawsuit that alleged that the Chattanooga city government was in violation of the Voting Rights Act of 1965 and the First, Thirteenth, Fourteenth, and Fifteenth Amendments to the United States Constitution. This lawsuit was filed on behalf of citizens of color to challenge the at-large electoral system in Chattanooga.

The ultimate decision required that Chattanooga change its form of government. Among other things, it required that the city change its electoral system, establish districts that represented minority citizens, and eliminate voting privileges for non-resident property owners.

History

In the years immediately following the Civil War, black citizens in Chattanooga were elected to certain positions of power throughout the city.¹ In 1883 the Chattanooga City Charter was amended to include a poll tax, special voting registration procedures, and other changes.² Other, similar laws followed over the years.³ While they did not explicitly discriminate on the basis of race, these laws had the effect of disenfranchising black city residents.

Eventually, a group of concerned citizens sought to address this inequality through the courts. In 1987, several individuals filed suit in federal court against the Chattanooga Board of Commissioners and its elected members.⁴ Trial took place in 1989 in the United States District Court for the Eastern District of Tennessee before Judge R. Allan Edgar. At its conclusion, Judge Edgar found that the form of government under which Chattanooga operated deliberately disenfranchised African Americans, and he ordered that a new form of government be created.⁵ Thereafter, the city government and the plaintiffs collaborated to create a new form of government, which was approved by the Court.⁶

Additional Materials

1989 Opinion, *Brown v. Board of Commissioners of the City of Chattanooga*
The First, Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution of the United States
Voting Rights Act of 1965

Instructions

Brown v. Board of Commissioners of the City of Chattanooga is a landmark local case. Though the decision was reached over 30 years ago, its impact is still felt. Like all history, it is important

¹ Bahner, T. Maxfield & Gray, Russell W., *The Other Brown Case: The Promise of the U.S. Constitution at Work in Chattanooga*,

<https://www.bakerdonelson.com/files/Uploads/Documents/brownchattanoogaMay2013.pdf>

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

that we continue to reflect on this case, its lessons, and how it has shaped and will continue to shape the way we live today and in the future. Knowledge and assessment of historical events also helps us to better understand and consider present events and determine what issues still need to be addressed today.

Please review and consider the accompanying materials and then develop an analysis of the circumstances that led to the case being filed, the case itself, and the ultimate outcome. As you develop your analysis, please write responses to one or more of the questions listed under the Prompts below.

Your analysis should be in the form a written essay consisting of 2000 words or less.

Prompts

After reviewing the History and other Materials, including the Court's Opinion, consider the impact that the outcome of this case has had on the City of Chattanooga and its citizens for the past 30 years. As you do so, also consider the following:

- Why is this case important?
- How might present day and the past 30 years in Chattanooga have been different had this case never been brought?
- What, if anything, would you change about the Court's decision?
- Are the changes enacted as a result of this case still effective today?

Materials will be submitted to students on **February 16, 2022**.

Completed essays are due **no later than March 18, 2022**.

Please submit completed essays to: dbolano@bakerdonelson.com.

In the subject line of the email, please put: Brown v. Board of Commissioners Essay Submission.

The winner in grades 9-12 will receive a \$300 prize.

The winner in grades 6-8 will receive a \$200 prize.

A ceremony honoring the winner(s) will be held later in spring 2022.

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Dr. Tommie BROWN; Leamon Pierce; Rev. Herbert H. Wright; J.K. Brown; Annie D. Thomas; Johnny W. Holloway; George A. Key; Lorenzo Ervin; Bobby Ward; Norma Crowder; Maxine B. Cousins; and Buford McElrath, Plaintiffs,

v.

BOARD OF COMMISSIONERS OF THE CITY OF CHATTANOOGA, TENNESSEE: Gene Roberts, Ervin Dinsmore,* John Franklin, Pat Rose and Ron Littlefield, In Their Official Capacities as Members of the Board of Commissioners, Defendants, and State of Tennessee, Intervenor.

No. CIV-1-87-388.

United States District Court, E.D. Tennessee, S.D.

August 8, 1989.

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Margaret Carey and Charles Victor McTeer, Center for Constitutional Rights, McTeer & Bailey, P.A., Greenville, Miss., and Myron Bernard McClary, Chattanooga, Tenn., for plaintiffs Dr. Tommie Brown, Leamon Pierce, Rev. Herbert H. Wright, J.K. Brown, Johnny W. Holloway, George A. Key, Norma Crowder and Buford McElrath.

Laughlin McDonald, Neil Bradley and Derek Alphan, American Civil Liberties Union Foundation, Inc. and American Civil Liberties Union of Tennessee, Atlanta, Ga., and Richard Dinkins, Williams & Dinkins, Nashville, Tenn., for plaintiffs Annie D. Thomas, Lorenzo Ervin, Bobby Ward and Maxine B. Cousins.

Eugene N. Collins, City Atty., and Randall L. Nelson, Sp. Counsel, Chattanooga, Tenn., and Vincent R. Fontana, Wilson, Elser, Moskowitz, Edelman & Dicker, New York City, Steven M.

Levine, Wilson, Elser, Moskowitz, Edelman & Dicker, Washington, D.C., for defendants.

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Elizabeth P. McCarter, Asst. Atty. Gen., State of Tenn., Nashville, Tenn., for intervenor.

MEMORANDUM

EDGAR, District Judge.

Plaintiffs, who are black citizens of Chattanooga, Tennessee, have brought this action challenging the system for selecting members of the Board of Commissioners, Chattanooga's governing body. Plaintiffs allege that this system, which features atlarge elections for members of the Board of Commissioners, is in violation of section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, in that it (1) was adopted, and is being maintained, with the discriminatory purpose of diluting black voting strength; and (2) results in the denial or abridgment, on the basis of their race, of the right of black citizens to participate in the political process and elect representatives of their choice. Plaintiffs also claim that the method for electing members of the Board of Commissioners (herein the "Commission" or "City Commission") is violative of their rights under the First, Thirteenth, Fourteenth and Fifteenth Amendments to the United States Constitution. Finally, plaintiffs assert that Tennessee Code Annotated Section 2-2-107(a) and section 5.1 of the Chattanooga charter, which permit nonresident "property qualification" as a basis for voting in municipal elections, violate the First, Ninth, Thirteenth, Fourteenth and Fifteenth Amendments to the United States Constitution, as well as section 2 of the Voting Rights Act. Plaintiffs seek declaratory and injunctive relief. Jurisdiction is based on 28 U.S.C. §§ 1331, 1343(3), 2201, 2202 and 42 U.S.C. § 1973j(f).

For the reasons set forth below, the Court concludes that Chattanooga's method of electing members of its Board of Commissioners violates section 2 of the Voting Rights Act. This result

makes it unnecessary for the Court to reach plaintiffs' constitutional claims which relate to the method of electing the City Commission.

The Court further concludes that section 5.1 of the Chattanooga's charter is in violation of the Fourteenth Amendment to the United States Constitution. Therefore, the plaintiffs' claim that property qualified voting in Chattanooga violates the Voting Rights Act need not be considered. The Court will grant appropriate declaratory and injunctive relief. Defendants will be granted seventy-five (75) days to submit to the Court a plan incorporating electoral procedures which comply with the Voting Rights Act.

I.

General Factual Background

Since 1911 the City of Chattanooga has been governed by a five-member Commission elected from the city at-large. Terms of office are four years. Elections are nonpartisan. Candidates must run for designated posts and must win by a majority of votes cast. This often results in "runoffs." Nonresident property owners are permitted to vote in municipal elections by virtue of a state statute, Tennessee Code Annotated Section 2-2-107, and section 5.1 of Chattanooga's charter.

The designated Commission posts are Mayor; Commissioner of Fire and Police; Commissioner of Education and Health; Commissioner of Public Utilities, Grounds and Buildings; and Commissioner of Public Works, Streets and Airports. Each Commissioner, including the Mayor, has one vote. The Mayor is the ex-officio president of the board. He also has general supervision over the city's financial affairs. The other Commissioners serve as the administrative heads of their respective departments. The Commissioner of Education and Health is, by virtue of his office, Chairman of the Chattanooga Board of Education which has the responsibility of maintaining the city schools and which is comprised of representatives who are themselves

electd from districts within the City of Chattanooga.

Blacks have always been a significant minority of the population of Chattanooga. In 1980, blacks made up 31.69% of the population. After the Commission was created

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in 1911, no black ran for a Commission post until 1955. Only one black candidate, John Franklin, has ever been elected to the Commission. He was elected in 1971 and has been reelected since. Since 1955 there have been 15 other black candidates for the Commission. None have been elected.

II.

The Voting Rights Act — General

The Voting Rights Act was enacted in 1965 to achieve full participation for all Americans in our democracy. S.Rep. No. 417, 97th Cong., 2d Sess. 4, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 181. *See generally*, H.R.Rep. No. 439, 89th Cong., 1st Sess., *reprinted in* 1965 U.S.Code Cong. & Admin.News 2437. Initial efforts under the Voting Rights Act focused on voter registration. More than a million black citizens were registered from 1965 to 1972. S.Rep. No. 417, 97th Cong., 2d Sess. 6, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 183. Despite registration gains, however, black voters still found themselves faced with various electoral practices which lessened the impact of, or "diluted," their votes.

Some of the electoral practices which have been identified as vote dilution devices are: elective posts made appointive, gerrymandered electoral boundaries, majority run-offs, and at-large elections. *Id.* Courts have identified other vote dilution methods. These include numbered or designated posts, *Rogers v. Lodge*, 458 U.S. 613, 627, 102 S.Ct. 3272, 3280, 73 L.Ed.2d 1012 (1982), discriminatory annexations, *City of Port Arthur v. United States*, 459 U.S. 159, 166-67, 103 S.Ct. 530, 534-35, 74 L.Ed.2d 334 (1982), and

staggered terms, *City of Rome v. United States*, 446 U.S. 156, 183-85, 100 S.Ct. 1548, 1564-65, 64 L.Ed.2d 119 (1980). As early as 1969, the Supreme Court had determined that "the right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot." *Allen v. State Board of Elections*, 393 U.S. 544, 569, 89 S.Ct. 817, 833, 22 L.Ed.2d 1 (1969).¹

In the 1970's, particularly in the South, many cases were filed against governmental bodies by black and hispanic citizens claiming that one or more of the above electoral devices wrongfully diluted their votes in violation of the Voting Rights Act and the Constitution. Courts continued to grope for the proper legal standards, with which to evaluate alleged vote dilution.

Ultimately, the Supreme Court in *Mobile v. Bolden*, 446 U.S. 55, 100 S.Ct. 1490, 64 L.Ed.2d 47 (1980),² determined that minority voters, to establish that their votes have been diluted in violation of section 2 of the Act, as well as violation of the Fourteenth and Fifteenth Amendments to the Constitution, must prove that the contested electoral practice was adopted or maintained by the governmental officials for a discriminatory purpose. 446 U.S. at 66, 100 S.Ct. at 1499. This touched off considerable congressional debate about the intent and desired effect of the Voting Rights Act. Those who wanted to change the result of *Bolden* prevailed, and in 1982, section 2 of the Act was amended to add a "results" test to the "intent" test. After 1982, a section 2 violation could be made out by proving intent *or* that the challenged system in the context of all the circumstances *results* in minorities being denied equal access to the political process. (Legislative History, p. 205).

Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, as amended ("Section 2"), provides that:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any state or political subdivision in a manner which results in a denial or

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abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in 1973(b)(f)(2) of this Title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the state or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the state or political subdivision is one circumstance which may be considered: *provided*, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

Under the results test, therefore, plaintiffs must show that, based on the totality of the circumstances, the political processes are not equally open to participation by the members of a minority and that members of that minority have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

The Senate Judiciary Committee Report on the bill amending section 2 lists a number of "typical factors" which might be considered probative of a violation of the Act. Those factors are:

1. The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

2. The extent to which voting in the elections of the state or political subdivision is racially polarized;

3. The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

4. If there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. Whether political campaigns have been characterized by overt or subtle racial appeals;

7. The extent to which members of the minority group have been elected to public office in the jurisdiction.

Additional factors that in some cases have had probative value as part of plaintiffs' evidence to establish a violation are:

Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

S.Rep. No. 417, 97th Cong., 2d Sess. 28-29, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 206-07.

The Senate Committee made it clear that these factors are nonexclusive and that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or another." *Id.*

In *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), the Supreme Court had the opportunity to interpret the 1982 amendment to Section 2. The results test, said the Court, requires the plaintiffs to show three things to prove a violation of the "results" prong of the statute:

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First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. Second, the minority group must be able to show that it is politically cohesive. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a block to enable it — in the absence of special circumstances ... usually to defeat the minority's preferred candidate.

478 U.S. at 50-51, 106 S.Ct. at 2766-67.

A. Voting Rights Act — Intent Analysis

In adding the "results" test to Section 2 of the Voting Rights Act, Congress left the "intent" test intact. The Senate Report states that:

The amendment to the language of section 2 is designed to make clear that plaintiffs need not prove a discriminatory purpose in the adoption or maintenance of the challenged system of practice in order to establish a violation. Plaintiffs must either prove such intent, or, alternatively, must show that the challenged system or practice, in the context of all the circumstances in the jurisdiction in question, results in minorities being denied equal access to the political process.

S.Rep. No. 417, 97th Cong., 2d Sess. 27, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 205.

The standard of proof required for determining intent or discriminatory purpose is the same as that used in resolving cases under the Fourteenth Amendment's equal protection clause. *Rogers*, 458 U.S. at 617, 102 S.Ct. at 3275. This requires proof of discriminatory purpose. *Washington v. Davis*, 426 U.S. 229, 240, 96 S.Ct. 2040, 2047, 48 L.Ed.2d 597 (1976). This purpose may be "inferred from the totality of the relevant facts, including the fact, if it is true, that the law bears more heavily on one race than another." *Id.* at 242, 96 S.Ct. at 2049. Determining the existence of discriminatory purpose "demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Arlington Heights v. Metropolitan Housing and Dev. Corp.*, 429 U.S. 252, 266, 97 S.Ct. 555, 564, 50 L.Ed.2d 450 (1977); S.Rep. No. 417, 97th Cong., 2d Sess. 27, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 205.

Historical evidence is relevant to a determination of discriminatory purpose. *Rogers*, 458 U.S. at 625, 102 S.Ct. at 3279. Indeed, the

history of Chattanooga's city government and the black franchise is particularly revealing.

For much of the time before the Civil War, southeastern Tennessee was Indian territory. White settlement of the area was sparse. Small scale farming made large numbers of slaves unnecessary. There were in Tennessee some "free" blacks who had the right to hold property, to vote and to testify in court. However, in 1834 these rights were removed pursuant to changes in the State Constitution.

In the 1850's, Chattanooga became a railroad hub. In 1860, the population of Hamilton County was 13,258. Twelve percent of this number were slaves and free blacks.

When the Union Army occupied Chattanooga during the latter part of the Civil War, many slaves looking for freedom came to Chattanooga from other areas of the south. As a result, in 1866 blacks numbered 2,657 or 46% of Chattanooga's total population of 5,776.

In Tennessee, at the outset of Reconstruction in the late 1860's, blacks, with the help of the Republican Party, secured the right to vote and to hold public office. However, Reconstruction ended prematurely in Tennessee, statewide. By 1870 white conservative Democrats had regained control of state government where, even in the few years after the Civil War, blacks had possessed little influence in the state as a whole.

Chattanooga, however, was an exception to this trend. Here, because of their numbers, blacks possessed considerable political clout. This translated into the election of black public officials and to patronage posts for blacks. Blacks were elected to the Board of Aldermen from 1868 forward. By 1881 there were seven blacks in Chattanooga's twelve-person police force. Former

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slaves appeared in the fire companies, on the Board of Education, as justices of the peace, and as constables and deputy sheriffs.

Black political strength, with its accompanying patronage in Chattanooga rankled whites. One thing that particularly bothered them was blacks on the police force. John E. McGowan, editor of *The Chattanooga Times*, wrote in 1881 that, "We think we know the peculiarities of the negro character tolerably well ... the negro is utterly and irretrievably spoiled by a badge of authority." After Democrats as well as Republicans began to court black votes, Mr. McGowan lamented in 1882 that no party could carry Chattanooga "without toadying to the Negro vote."

In 1883, an effort was made to change the city charter to minimize black political strength. At that time, and until the advent of home rule in the 1970's, Chattanooga's city charter amendments had to be made by the state legislature. The state legislators were asked to repeal the city charter and turn the city into a "taxing district" to be run by a council of fire, police, and public works commissioners, some elected at-large, but most appointed by the Governor. The objective was to eliminate black officeholders. The legislators were told in a petition from local citizens that, "We have no prejudice against the Negroes, but dislike to be ruled and ruined by them."

The city charter was not repealed in 1883, but a compromise was reached whereby the charter was amended to provide for a poll tax, special voting registration procedures, a police force under the control of a commission appointed by the Governor, and a reduction in the number of aldermen to six, five of whom had to reside in the particular ward they represented. The Mayor and one alderman could live anywhere. All aldermen and the Mayor were elected at-large.

The 1883 compromise, according to Styles Hutchins, a local black lawyer at the time, "was aimed at the negro and nothing else." However, the compromise did not eliminate black political influence in Chattanooga. Working through the Republican Party, blacks still managed to elect aldermen and at least two different state legislators over the next few years. In 1883 black

registered voters in Chattanooga actually outnumbered white registered voters, even though the black population was about 43% that of the city.

There was a continuing effort from this point until 1911 to diminish black political power in Chattanooga. Mr. McGowan said in October 1883 that: "We say plainly that if the city must be ruled through negroes manipulated and used for the purposes of the worst demagoguery, then businessmen and taxpayers generally, regardless of party belongings, will be bound to accept any respectable and responsible system of government."

In 1885 a group of Chattanoogaans sought again with state legislation to amend the city charter with a purpose of "preserving white supremacy." This effort failed.

In 1889 and 1890 the Tennessee legislature enacted statewide legislation designed to disenfranchise blacks. This legislation included advance registration requirements, provisions that favored literacy, and a poll tax.

In Chattanooga the city charter was again amended in 1889 to increase the number of voting wards from five to eight, and to arrange their geography so as to limit Republican-black strength to three wards.

Beginning about 1890, Jim Crow laws were enacted to legalize racial segregation. James Livingood, Chattanooga's best known local historian, reports that there developed a "hardening attitude between the races" at this time. Chattanooga endured four lynchings between 1885 and 1906.

Despite adversity, blacks retained an electoral foothold in Chattanooga at the turn of the century, especially in the heavily Republican (black) fourth ward. The continued black electoral presence continued to bother many whites. In 1901 the "Peak bill," a state legislative revision of the city charter, created a bicameral city

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government with eight aldermen and 16 councilmen. This had the effect of eliminating all black aldermen after 1902. The blacks had had continuous aldermanic representation since 1868. After 1902 blacks retained only two city council seats (elected from the fourth ward).

In 1900 the black population of Chattanooga was 43.5%. Yet, in 1902, the *Times* reported that the election of 1902, which resulted in no blacks on the Board of Aldermen (two still on the Council), gave the city "the most representative board of aldermen that ever sat in the council chamber of Chattanooga."

At this time, although there were a number of white Republicans,³ black citizens provided locally the bulk of the Republican Party's electoral support. In 1905 the *Times* said that the fourth ward was the only Republican holdout in the city, and it could not "be captured from the negroes by any means." In 1909 the *Times* continued to express concern about what it saw as the political power of black Republicans.

The proposal advanced by white civic leaders to create what became Chattanooga's current form of commission government first surfaced in 1907, and had gained considerable momentum by 1909. The Hamilton County state legislative delegation declined in that year to introduce a city charter revision bill which would have installed a commission form of government, much to the regret of the *Times*, but the delegation did do some gerrymandering to further reduce black voting influence. As the *Times* put it, the result of this was that "the negroes of Bushtown, Stanleyville and Churchville are about the nearest disfranchised they could possibly be."

The Commission charter revision was opposed by the two blacks, who voted with the majority of the city council against the commission form of government in 1909. A *Times* columnist observed that "when one or two boss politicians, in combination with a couple of ignorant negroes and a handful of weak white

brothers, can defeat the will of the people then its time to stop and think."

The 1910 legislative elections focused on the City Commission charter issue. Among the reasons given by pro-commission candidates for the commission form of government were that "under it, Bossism is impossible" and "wiping out ward lines prevents political dictatorship." The term "bosses" was largely a euphemism for those who had influence in the black community. One of those people was Hiram Tyree, the most prominent local black leader at that time. The *Times*, which did not care much for Hiram Tyree, predicted that "if the movement for commission government succeeds, his light promises to go out forever."⁴ During the campaign, a competing Republican version of charter for Chattanooga emerged which, it was reported, contained provisions which would make it "possible for negroes to secure places on the police force as in olden times." Blacks perceived that the Commission charter would "shut the door of hope" in their ambition to hold places on the police force. The political views of black citizens in opposition to the pro-commission candidates were reported in the *Times* in Uncle Remus-like dialect.

The pro City Commission legislative candidates won. The new charter was quickly approved by the Tennessee General Assembly in 1911. This provided for five City Commissioners elected at-large. The 1911 charter also made it illegal to pay another person's \$2.00 poll tax, thus eliminating an important means to encourage blacks to vote. The charter change also eliminated "ward workers," another aid to black voting. An important goal of this charter revision was the elimination of the last vestiges of black electoral power. It succeeded — at least for many years. No black

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would be elected to the City Commission until 1971. This black, John Franklin, is to this day the only elected black person elected to the Chattanooga City Commission since 1911.

It wasn't that Chattanooga's white civic leaders were motivated by racial animosity towards blacks. Instead, they had a paternalistic belief that they knew what was best for blacks. They felt that meaningful participation by blacks in city government was bad for business and for the community. They perceived that black political influence had led to political corruption. Thus, they made blacks exclusively dependent upon white decision making.

The diminution of black voting influence was not the only purpose of the commission form of government. Backers of the charter change saw the commission form of government as businesslike and efficient. What happened in 1911 is perhaps best summarized by T.C. Thompson, who was Mayor in the pre-commission city government in 1911 and who was named the first Mayor under the commission government. He said later that "... the commission form of government was at first seized upon by us as simply a likely looking vehicle for the riddance of the city of boss rule. We soon learned, however, that it was a very businesslike method of government and that it had advantages other than political over the old form." It is very clear, therefore, that the political objective prevailed over the practical, at least at the outset.

In 1911, this was becoming a popular form of municipal government, having had its genesis in Galveston, Texas, in 1901, after a hurricane had devastated that community. At its high point in 1917, at least 500 cities made use of the commission form of government. Since that time, most larger cities have adopted the mayor-council form. Many smaller cities use the city manager form. By 1965 the commission form of government was being used in only 7.9% of cities with populations over 5,000.

The essentials of the commission form of government in Chattanooga have remained the same since 1911, the only major change being in 1957 when legislation was enacted requiring Commission candidates to run for a designated commission post. Previously the candidates ran for Commissioner and decided after the election

among themselves what posts they would fill. The "designated post" system effectively prevented "single shot" voting for Commission members, and amounts to an additional vote dilution device.

The city increased both its land area and population by annexation in the late 1960's and early 1970's. By 1974 the annexation had increased the city's population from 119,923 to 167,025. The area annexed was inhabited primarily by whites.

There have been several attempts at city charter reform in recent years. In 1972 Mayor Robert Kirk Walker initiated an attempt to change the commission form of government. The motivation for this effort did not concern the black franchise one way or the other. Mayor Walker and others were then concerned about how the government was functioning. He told a civic club that "Chattanooga's divided form of government, in which commissioners are both policymakers and administrators, is an antiquated and often almost impossible structure within which to work to try to meet modern problems."

In a report to the city of his administration as Mayor, Mayor Walker said regarding the commission form of government:

After more cities gained experience with the plan, certain shortcomings began to appear. This system of government assumed that the commissioners would have both the general knowledge of their communities necessary to make basic policy decisions and the technical knowledge necessary to direct operations of a major city department. The division of authority inherent in the commission form often hindered the smooth operation of government and elected department heads often proved less than competent in jobs which demanded technical expertise.⁵

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The charter revision effort was eventually scuttled by the Commission in 1974. The Commission cited several "problems." Among these problems was the question of whether members of a proposed city council would be required to receive a majority vote or be elected simply by receiving a plurality.

Another charter revision attempt began by newly elected Mayor Charles "Pat" Rose in 1975 similarly came to nothing.

In 1964, 1970 and 1984, the City of Chattanooga and Hamilton County held referenda on whether they would be jointly governed under a metropolitan charter. All of these efforts were voted down. The last effort was rejected by an unusual coalition of blacks and rural whites, each fearing loss of political power.

Finally in 1988, when faced with this lawsuit, the Board of Commissioners appointed a charter study commission to formulate a city charter that would, among other things, comply with the Voting Rights Act. After considerable debate, the majority of the charter study commission recommended a mayor/council form of government with the council members being elected by districts and the mayor being elected at-large. The charter change was put to a referendum and was defeated. A majority of blacks voted for the change. A majority of whites voted against it.

This Court concludes that the commission form of government was adopted in 1911 with, as one of its purposes, discrimination against black voters. While this was not the only purpose which the city fathers had in mind, it was most certainly a purpose, and was likely their primary purpose at the outset. However, to prove the necessary discriminatory intent for a constitutional or Voting Rights Act violation, plaintiffs are not required to show that such intent was the sole purpose of the 1911 charter change. *Arlington Heights*, 429 U.S. at 265, 97 S.Ct. at 563; *Bolden*

v. City of Mobile, 542 F.Supp. 1050, 1072 (S.D.Ala.1982).

Plaintiffs also contend that the commission form of government, with its at-large voting, run-offs, and added designated posts has been *maintained* since 1911 for the purpose of diluting black votes. They point in particular to the addition of the designated post requirement in 1957 and the annexations which were carried out in the late 1960's and early 1970's as having been done with a discriminatory purpose. While these actions may have had the *effect* of limiting black political power, the Court cannot conclude that they were carried out with that intent. In particular, the annexations were carried out in order to increase the city's tax base, and to allow for economic and industrial growth.

The evidence in this case does not persuade the Court that any actions taken by city officials after 1911 and to the present day have been intended to restrict the black franchise. Nevertheless it is a fact, as will be pointed out below, that the city electoral process which has been in effect since 1911 continues to limit the power of black voters. Plaintiffs must only show that the present system was "conceived or operated as a purposeful device to further racial ... discrimination." *Rogers*, 458 U.S. at 619, 102 S.Ct. at 3276 (quoting *Bolden*, 446 U.S. at 66, 100 S.Ct. at 1499 (quoting *Whitcomb v. Chavis*, 403 U.S. 124, 149, 91 S.Ct. 1858, 1872, 29 L.Ed.2d 363 (1971))) (emphasis added). Plaintiffs have shown that the system was conceived with a discriminatory purpose. Even if it has not been maintained for that purpose, the system must nevertheless fall. If the system was adopted with a discriminatory purpose and continues to fulfill that purpose by having some quantum of discriminatory effect, lack of discriminatory intent on the part of recent and current city officials does not bring the system into compliance with the Voting Rights Act. *Hunter v. Underwood*, 471 U.S. 222, 233, 105 S.Ct. 1916, 1922, 85 L.Ed.2d 222 (1985); *Bolden*, 542 F.Supp. at 1073.

B. Voting Rights Act — Results Analysis

The inquiry under the 1982 amendment to Section 2 of the Voting Rights Act

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is whether an "electoral law, practice or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Gingles*, 478 U.S. at 47, 106 S.Ct. at 2764. This entails "a searching practical evaluation of the "past and present reality" ... and ... a `functional' view of the political process." *Id.* at 45, 106 S.Ct. at 2763 (quoting and citing Senate Report 2, which accompanied the 1982 amendments to Section 2). The framework for this analysis is a set of the three factors set forth in *Gingles* which the Court will consider *seriatim*.

1. Gingles Test

a. Minority Voting Group Size and Geographical Compactness

The plaintiffs must prove that they as a group are sufficiently large and geographically compact to constitute a majority in a single-member district. *Gingles*, 478 U.S. at 50, 106 S.Ct. at 2766.

Blacks comprised 31.69% of the population in Chattanooga as of the 1980 census. They were 28.24% of the voting age population. Geographically they are pretty much concentrated in the central part of the city and in some adjacent areas. Approximately 64% of all black city residents live in 13 of the 46 city census tracts. Districts with effective black majorities have already been created in Chattanooga for, and elect black representatives for, the Chattanooga City School Board, the Hamilton County Council, and the Tennessee legislature. The 1988 Charter Commission prepared a single-member district plan which would have created several single member, effectively black, majority districts. There is no doubt whatsoever that the black population of Chattanooga is sufficiently compact

and numerous as to be an effective majority in various combinations of single member districts.

b. Political Cohesiveness — Racially Polarized Voting

The Supreme Court did not provide a definition of political cohesiveness. The Court has said, however, that "a showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim...." *Gingles*, 478 U.S. at 56, 106 S.Ct. at 2769. Put another way, there is political cohesiveness when a minority group expresses clear political preferences that are distinct from those of the majority. *Gomez v. City of Watsonville*, 863 F.2d 1407, 1415 (9th Cir.1988), *cert. denied*, ___ U.S. ___, 109 S.Ct. 1534, 103 L.Ed.2d 839 (1989). One way to ascertain the existence of political cohesiveness is to determine the extent of racially polarized voting. *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir.1988), *cert. denied*, ___ U.S. ___, 109 S.Ct. 3213, 106 L.Ed.2d 564 (1989); *Collins v. City of Norfolk*, 816 F.2d 932, 935 (4th Cir.1987). There is racially polarized voting where there is "a consistent relationship between the race of the voter and the way in which the voter votes' ... or to put it differently, where `black voters and white voters vote differently.'" *Gingles*, 478 U.S. at 53 n. 21, 106 S.Ct. at 2768 n. 21 (quoting District Court, E.D.N. C.).

Do black voters and white voters in Chattanooga vote differently? The answer to this question has been pursued by expert witnesses engaged by plaintiffs and defendants, as well as other witnesses. Of course, the answer may well depend to some extent upon which elections are analyzed. The Court has, in its analysis, examined all election contests for Chattanooga City Commission posts from 1971 to the present. To a lesser extent, the Court has reviewed all city judgeship elections from 1969 to the present, as well as five other referenda and one other election.⁶ The results of all of these elections are set out in Appendices A, B and C to this opinion. The Court's analysis encompasses elections

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with only white candidates, as well as elections with both black and white candidates. The plurality opinion in *Gingles* states that "only the race of the voter, not the race of the candidate, is relevant to vote dilution analysis." 478 U.S. at 68, 106 S.Ct. at 2775. In other words, under the results of amended Section 2, it is the status of the candidate as the chosen representative of blacks, not the race of the candidate that is important. *Id.*; *City of Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1557 (11th Cir.1987), *cert. denied sub nom Duncan v. City of Carrollton*, 485 U.S. 936, 108 S.Ct. 1111, 99 L.Ed.2d 272 (1988).

While this approach commanded only a plurality of the Supreme Court in *Gingles*, its use makes sense in this particular case. As previously stated, the question is whether blacks and whites in Chattanooga vote differently. This can be determined from a number of Chattanooga's white/white elections as well as white/black elections. In Chattanooga, while there have been a number of black candidates for city offices since 1969, only four have been viable candidates in the sense that they were supported by a majority of blacks. It may well be that the dearth of serious black candidates results from the perceived difficulty of winning in an at-large election. Whatever the reason, blacks have, with one notable exception,⁷ found themselves having to support white candidates in an effort to achieve a measure of political influence. Often, when black voters have found themselves in this situation, they have expressed a clear preference for one white candidate. Sometimes this has happened in elections where there were issues which had racial overtones.⁸ Therefore, the Court concludes that a review of white/white elections as well as white/black elections is necessary to determine the existence of racially polarized voting in Chattanooga.

The Court's analysis also includes five referenda and a Tennessee Supreme Court election. *See* Appendix C. These are referred to by the defendants and some case law as

"exogenous"⁹ elections. While these elections are not as relevant to the Court's inquiry as the other elections, they do show a propensity of Chattanooga blacks and whites to vote as a group for candidates on issues popularly recognized as being affiliated with their respective, particularized interests. *Gomez*, 863 F.2d at 1415, *citing* Blacksher and Menafee, *From Reynolds v. Sims to City of Mobile v. Bolden; Have the White Suburbs Commandeered the Fifteenth Amendment?*, 34 *Hastings L.J.* 1, 59 (1982).

Experts on both sides of this case have undertaken an extensive statistical analysis of Chattanooga's elections since 1969 to determine the existence of racially polarized voting. Plaintiffs' expert, Dr. J. Morgan Kousser, and defendants' expert, Dr. Michael M. Gant, each, using ecological regression analysis, calculated the percentages of blacks and whites who voted for white and black candidates in various elections. While the precise methods they used in doing this differ slightly, they reached essentially the same conclusions as to the levels of support among both blacks and whites for candidates.

Dr. Gant, however, testified about only City Commission and city judgeship elections for the period 1969 to 1987 that involved at least one black and at least one white candidate. Dr. Kousser's analysis extended to these, as well as City Commission and judgeship contests in which no black was a candidate, and a number of other elections and referenda.

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The experts, in their effort to determine whether or not there is racially polarized voting, differ as to how to use the data which they compiled. Dr. Kousser testified that one indication of polarization is whether the difference between black and white voting patterns is "statistically significant" at the .05 level. *See Gingles*, 478 U.S. at 53, 106 S.Ct. at 2767. To do this, he calculated the "slope" of a regression line on a graph where the left vertical axis represents 0% black voting age population and the right axis represents 100% black voting

age population. The slope of the line is a measure of how much difference there is in the voting pattern between whites and blacks. The steeper the slope — the more difference in the voting pattern. The degree of the slope was determined to be "statistically significant" if, after using a "T test," the slope coefficients were significantly different from zero at the .05 level.

Dr. Kousser also testified that there is no "bright line" which would differentiate a racially polarized and nonracially polarized election. One might also generally, apart from statistics, look at the preference of voters of each race to see if they are the same or not. A look at the City Commission and city judgeship races since 1969 in which there was a black candidate, makes it is apparent that white voters have not supported any black candidates other than John Franklin. The highest percentage of white votes received by any other black candidate for the City Commission was Moses Freeman who got 14.8% of the white vote in 1987. Judge Bennie Harris received 30.7% of the white vote in 1969 in a special election for City Judge.

Even with respect to Mr. Franklin, there has been a demonstrable amount of white anti-black bloc voting. When candidate Williams ran against two other white candidates for a state legislative seat in 1983, he received 3.2% of the white votes. Yet, as the only candidate opposing John Franklin in the 1983 election for Commission of Education and Public Health, he received 40% of the white votes. When Franklin ran against Dean Peterson (white) in the 1971 run-off, Peterson received 73% of the white vote.

A third, and more restrictive, method of determining the existence of racially polarized voting was identified by both Drs. Kousser and Gant. This is simply looking at the election results and counting as racially polarized only those elections in which more than half of the blacks vote against more than half of the whites. Defendants have referred to this as the "majority/majority" test. (In multicandidate races, the test could be whether a plurality of blacks vote against a plurality of whites.)

Defendants, and their expert Dr. Gant, contend that this is the only proper test for the existence of racially polarized voting. This Court disagrees. Nothing in *Gingles* suggests that this must be the analysis. In fact, the Court's opinion in *Gingles* makes specific reference to the use of statistical significance in determining racial polarization, 478 U.S. at 53, 106 S.Ct. at 2767, and eschews the use of doctrinal tests to determine racial bloc voting. 478 U.S. at 58, 106 S.Ct. at 2770. This Court concludes, therefore, that it is not bound solely to the majority/majority test for determining racial polarization. The Court will use the majority/majority test along with the statistical analysis and other facts of this case to determine whether blacks and whites vote differently in Chattanooga.

There were 34 contested primary or run-off election contests for City Commission seats between 1971 and 1987. The Court finds that 26 of these contests (or 76%) were racially polarized.¹⁰ Even if the majority/majority

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analysis put forth by the defendants is used as the exclusive determinant of racially polarized voting, 21 or 62% of these elections were racially polarized.

Chattanooga has two city judges. Candidates for these positions run at-large and must receive a majority vote to win. There have been eight of these contests since 1969. Five of these contests (63%) were racially polarized.¹¹ Under the more restrictive majority/majority test, four (50%) of these judgeship contests were racially polarized.

The referenda listed in Appendix C also show racially polarized voting on issues where whites and blacks perceived that they had a particular interest at stake. Probably the most significant is the 1988 vote on the city charter amendment which would have replaced at-large voting for the City Commission with district voting. This election was racially polarized in that 69.5% of whites voted against the amendment, while 56.1% of blacks voted for it. Also of particular interest is

the 1980 vote for a seat on Tennessee's Supreme Court between a black and two white candidates. Drowota and Parrish, two white candidates, received together a total of 69.6% of the white vote. Brown, the black candidate, received 78.8% of the black vote. Finally, only 51% of whites voted in 1978 for the housekeeping state constitutional ban on interracial marriages — even though the constitutional provision was clearly not in compliance with the United States Constitution under the authority of the U.S. Supreme Court decision 11 years earlier in *Loving v. Virginia*, 388 U.S. 1, 87 S.Ct. 1817, 18 L.Ed.2d 1010 (1967).

It is therefore clear that black and white voters in Chattanooga do vote differently most of the time. This is, as stated above, an important indication of political cohesiveness. While the experts in this case disagree to some degree on the extent of racially polarized voting, they nevertheless both conclude that, in general, blacks in Chattanooga have been politically cohesive in that they have, as a group, generally expressed a clear preference for certain candidates. The second element of the *Gingles* test is satisfied.

c. Minority Electoral Success — Whether The White Majority Votes Sufficiently As A Bloc To Enable It — In The Absence Of Special Circumstances ... Usually To Defeat The Minority's Preferred Candidate

This is the final element of the three-part *Gingles* analysis. It is the ultimate test of vote dilution. Political cohesiveness with its racially polarized voting only becomes *legally* significant if a white bloc vote normally (in the absence of special circumstances) will defeat the combined strength of minority support plus white crossover votes. *Gingles*, 478 U.S. at 56, 106 S.Ct. at 2769.

Blacks in Chattanooga register to vote in approximately the same proportion as whites. Although blacks usually turn out at slightly lower levels than whites, the lower turn out is generally not enough to make a measurable difference in election outcomes.¹² Therefore, these factors, with

one or two notable exceptions, have not influenced Chattanooga elections.

It is appropriate here to examine the success that black and black-supported candidates have had in city elections. From 1955 to the present, there have been 16 black candidates for City Commission posts.¹³ Only one, John Franklin, who was elected Commissioner of Education and Health in 1971, and who has been reelected since, has been successful. From 1955 to the present, these black candidates have run for the City Commission on 24 different occasions (excluding Franklin's 1979 election in which he ran unopposed).

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Franklin's four victories give blacks a success rate of 16.7%. Including Franklin's uncontested election results in blacks having a 20% success rate.

This relatively limited success of black candidates is attributable to one black — John Franklin. In *Gingles*, the Supreme Court recognized that the success of a minority candidate does not necessarily mean there is no vote dilution if the election is explained by special circumstances, among which are the absence of an opponent and incumbency. 478 U.S. at 57, 106 S.Ct. at 2769. Further, a section 2 claim is not foreclosed if an "independent consideration of the record" and a "searching practical evaluation of the 'past and present reality'" leads to a conclusion that limited black electoral success has not been tantamount to no vote dilution. *Gingles*, 478 U.S. at 76, 106 S.Ct. at 2779 (quoting Senate Report 2, which accompanied 1982 amendments to Section 2).

This Court is unable to conclude that John Franklin, as a black officeholder, is a "token" in any sense of the word. He holds a Bachelor of Science degree in health and physical education from Fisk University and a masters degree in health, physical education and recreation from the University of Indiana. At the time of his election, he had held various teaching and

administrative jobs in the Chattanooga city school system for nearly 20 years. He is most certainly qualified to be Commissioner of Education and Public Health. An extraordinarily capable politician, he has managed to acquire an increasing percentage of white votes (71.4% in 1987), while maintaining near unanimous support among blacks. Throughout his political career he has been reasonably effective as a black spokesman, recognizing of course that he has been dependent upon significant white electoral support, and further recognizing that he is only one of five members of the city commission.

Yet, this Court does have a sure belief that Mr. Franklin's presence on the City Commission does not mean that at-large voting in Chattanooga gives black voters an undiluted opportunity to elect their preferred representatives. Mr. Franklin himself says that it is very difficult for a black to run at-large with some reasonable assurance of being elected. It is also true that if there is a hierarchy of power as between the five Commission posts, education and health ranks low as reflected by the size of its budget and lack of patronage potential. The department actually does little in the way of public health. As Commissioner, Franklin chairs the independent city school board, but votes only in the case of a tie. The city schools are run on a day-to-day basis by a Superintendent of Schools chosen by the School Board. This is not to say that the office of Commissioner of Education and Public Health is not an important one. Mr. Franklin does have one of the five votes on the Commission. However, it can be said that blacks would have a greater impact on city government if they were able to elect someone as Mayor — or to one of the other Commission posts.

When Mr. Franklin first ran in 1971, he did not think that he could win. Local political observers saw his victory as an upset. In 1971 there was much ferment in Chattanooga concerning school desegregation — and particularly the remedy of busing students to overcome racial imbalance in the schools. The Supreme Court's decision in *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1, 91

S.Ct. 1267, 28 L.Ed.2d 554 (1971), came down on April 20, 1971. The Chattanooga city primary elections were held on March 16, 1971. The run-off between John Franklin and his opponent, Dean Peterson, was held on April 13, 1971. Mr. Franklin had seen black school children bused long distances past white schools. He took the position in the election campaign that he was against the kind of busing that transported students from one community all across town to another community. This was perceived by some whites as an "anti-busing" position and won him barely enough crossover votes to beat his white opponent in the run-off with 52.8% of the total vote.

Since 1971, Mr. Franklin has, of course, been the incumbent. He has had no serious opposition since 1971, and in 1979 he

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ran unopposed. Since Mr. Franklin has done his job well, and since no one has really challenged him, he has received increasing numbers of white votes. That is not to say, unfortunately, that all white voters have become colorblind to Mr. Franklin. Even as late as 1987, in a three-way contest with a quixotic white "street preacher" and a black candidate, Chester Heathington, who wanted to abolish the office of Commissioner of Education and Public Health, there was still a 25.6% difference between Franklin's white vote (71.4%) and his black vote (97%). The other black candidate, Chester Heathington, is the only black candidate in the recorded history of city elections to receive more white votes (8.2%) than black votes (2.7%).

The Court concludes that the unique qualities of John Franklin, as well as the unique character of the office he holds, together with the unique circumstances of his election in 1971, make his election a special circumstance within the meaning of *Gingles*.¹⁴ In general, the level of white crossover voting in Chattanooga elections has been very low. In the City Commission races since 1971, the white crossover vote for all black candidates, including Franklin, has averaged

14.18%. If Franklin's candidacies are excluded, the white crossover rate averages only 1.8%. In those races where black candidates received majority black support (Key, Wright and Freeman), and excluding Franklin, the white crossover vote averaged 5.7%. By contrast, the white crossover vote in the electoral districts analyzed in *Gingles* averaged 27.48% in the primaries and 37.06% in the general elections.¹⁵

Returning to the third *Gingles* element — whether the white majority voting as a bloc has been able to defeat the minority's preferred candidate (black or white) — a review of Chattanooga City Commission elections since 1971 reveals that 23 of those elections have produced winners in the sense that the candidate getting the most votes actually took office.¹⁶ This includes primaries where the winner received more than 50% of the vote. It also includes run-offs. Of these contests, 16 (70%) were racially polarized.¹⁷ In these 16 racially polarized, elections the black or black preferred candidate was defeated 11 times (69% of the time) by the white voting bloc.¹⁸

Vote dilution is particularly evident in run-offs. Since 1981 there have been 11 run-offs.¹⁹ The white voting bloc has out voted blacks and white crossover votes in

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these elections eight or 73% of the time.²⁰ The calculations in this paragraph and in the next preceding paragraph include Mr. Franklin's contests. If his contests are excluded, the vote dilution would, of course, be even more pronounced.

The vote dilution in the run-offs is particularly significant in that it shows that the majority vote requirement, when coupled with at-large voting, works against black representation on the City Commission.²¹

In summary, this Court concludes that absent special circumstances, candidates favored by blacks are usually defeated by whites voting as a

bloc in Chattanooga. The third and final element of the *Gingles* test is satisfied.

2. Other Senate Factors

As mentioned above, the legislative history of the Voting Rights Act invites consideration of a number of "typical factors" considered probative of vote dilution. See S.Rep. No. 417, 97th Cong., 2d Sess. 28-29, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 206-07. The following, among the list of "typical factors," have been adequately addressed, at length, elsewhere in this opinion:

1. The extent of any history of official discrimination touching the right of blacks to participate in the democratic process.
2. The extent to which voting in Chattanooga is racially polarized.
3. The extent to which blacks have been elected to public office.

Other factors bear additional comment:

A fourth factor is "extent to which Chattanooga has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against blacks." Chattanooga uses all of the named practices.

A fifth factor is whether "there is a candidate slating process, and whether blacks have been denied access to that process." There is no slating process in Chattanooga that would limit black candidacies. However, it does appear that if (black or white) candidates want to receive black voter support, they would be well advised to contact the "Unity Group."²²

A sixth factor is consideration of the "extent to which blacks in Chattanooga bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the electoral

process." While it is probably true that blacks in Chattanooga generally do bear the effects of discrimination, there is no evidence in this case that this has hindered their ability to participate effectively in the electoral process. As stated above, they register and vote in roughly the same proportion as whites.

A seventh factor is "whether political campaigns have been characterized by overt or subtle racial appeals." Chattanooga has for the most part been spared both overt and subtle racial appeals in elections. The only evidence of such in recent history, in a city election, was candidate "Bookie" Turner's use, against Gene Roberts in the 1971 Fire and Police Commissioner race, of some articles that Roberts had written as a newspaperman for *The Chattanooga Times*, in which Roberts spoke favorably of Cassius Clay (later Mohammed Ali), the black boxer. Turner, who ironically received most of the black votes, was foiled in this Machiavellian attempt to play both sides of the street and narrowly lost to Roberts in a run-off.

An eighth factor is "whether there is a significant lack of responsiveness on the

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part of elected officials to the particularized needs of blacks." Lack of responsiveness has been described as not an essential part of the plaintiffs' case under the Voting Rights Act. S.Rept. No. 417, 97th Cong., 2d Sess. 29 n. 116, *reprinted in* 1982 U.S. Code Cong. & Admin.News 177, 207. Plaintiffs have not attempted to prove lack of responsiveness in this case. In fact, there is considerable proof in the record that Chattanooga's city government has been responsive to certain needs of blacks.

A ninth and final factor is "whether the policy underlying the city's use of at-large voting, majority vote requirement and designated posts is tenuous." In practical effect, at-large voting is necessary so long as Chattanooga has a commission form of government. The same cannot be said for majority vote requirements and

designated posts. The commission form of government has much to be said for it. Its reason for being is not tenuous. It has served the city reasonably well over the years as a method of governing. However, it is not without its faults, and public officials have from time to time expressed the view that it should be changed. The Court suspects that the commission form of government is about like other forms of government; its effectiveness is very much dependent upon the ability and the integrity of the people running it.

It is beyond the scope of this opinion to discuss the merits or demerits of the commission form of government. The question of whether at-large voting or voting by districts results in better government is likewise not before the Court. What is before the Court is a relatively narrow issue — whether the present method of electing city officials violates the Voting Rights Act or the United States Constitution.

The Court concludes on the basis of all the facts of this case that the system of selecting members for the Chattanooga City Commission violates the Voting Rights Act of 1965 as amended in that it (1) was originally conceived with a discriminatory purpose and continues to fulfill that purpose; and it (2) results in a denial or abridgment of the rights of plaintiffs and other black voters.

There is a legitimate public policy concern as to whether the establishment of voting by districts will actually enhance racial polarity rather than alleviate it. One can imagine a possible scenario of the creation of "safe" black majority districts perpetuating racial ghettos and racially polarized voting. All that can be said about this is that Congress was aware of this concern at the time it amended section 2 of the Voting Rights Act in 1982, S.Rep. No. 417, 97th Cong., 2d Sess. 103, *reprinted in* 1982 U.S.Code Cong. & Admin.News 177, 276, and decided that the risk of this happening is outweighed by the need for the government to affirmatively secure minority voting rights. *See Gingles v. Edmisten*, 590 F.Supp. 345 (E.D.N.C.1984), *aff'd (in part) sub*

nom. Thornburg v. Gingles, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). This Court is, of course, compelled to comply with the wishes of Congress. One can only hope that persons of good will, black and white, will work together for the betterment of local government and the community as a whole.

III.

Property Qualified Voting

Tennessee Code Annotated § 2-2-107(a) (1985) provides that:

A person shall be registered as a voter of the precinct in which he is a resident, and, if provided for by municipal charter or general law, may be also registered in a municipality in which he owns real property in order to participate in that municipality's elections.

Section 5.1 of the Chattanooga city charter provides in part that:

Nonresident freeholders may vote in the wards in which their freehold is situated, and not elsewhere; provided, that if any nonresident freeholder may have a freehold in more than one ward he may vote in the ward of his choice in which his freehold is situated.

Thus, the City of Chattanooga, by virtue of the authority granted it by state statute,

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permits city property owners who are non-residents of the city to vote in municipal elections.

As of December 14, 1988, there were 547 nonresidents who had registered to vote in Chattanooga elections. Of these, 427 are known to be white. The remainder are black, other minorities, or race unknown. In 1988, the

assessed value of real property owned in Chattanooga by nonresident voters was \$6,154,315.00 or .05% of the total assessed value of all real property in Chattanooga. These nonresident voters pay a similar percentage of Chattanooga's property taxes.

Plaintiffs allege that the statute and ordinance are violative of the Fourteenth Amendment as well as the Voting Rights Act. Plaintiffs, relying on the legislative and municipal reapportionment cases, chiefly *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), contend that property qualified voting can never be permitted because it is only residency, and not any other interest (example — property ownership), which can be the basis for voting.

The plaintiffs argument is not supported by the authority that they cite. *Reynolds v. Sims* and its progeny were concerned with equalizing deviations from the equal population principle in voting districts. These cases do not say that an economic interest, such as property ownership, is an impermissible criterion for apportioning voting power in municipal elections.

Plaintiffs also assert that the statute and the ordinance must fall because they fail to advance a "compelling" state interest. In fact, several cases hold that, absent a compelling state interest, laws which *deny* some residents the right to vote in general elections on grounds other than residence, age or citizenship, are violative of the Fourteenth Amendment's equal protection clause. *See Hill v. Stone*, 421 U.S. 289, 297, 95 S.Ct. 1637, 1643, 44 L.Ed.2d 172 (1975); *Dunn v. Blumstein*, 405 U.S. 330, 342, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274 (1972); *Evans v. Cornman*, 398 U.S. 419, 422, 90 S.Ct. 1752, 1754, 26 L.Ed.2d 370 (1970); *Kramer v. Union Free School District*, 395 U.S. 621, 626-27, 89 S.Ct. 1886, 1889, 23 L.Ed.2d 583 (1969); *Cipriano v. City of Houma*, 395 U.S. 701, 704, 89 S.Ct. 1897, 1899, 23 L.Ed.2d 647 (1969).

However, the Tennessee statute and Chattanooga charter *expand* rather than curtail the franchise. *Over* inclusiveness is a lesser constitutional evil than *under* inclusiveness.

Sutton v. Escambia County Board of Education, 809 F.2d 770, 775 (11th Cir.), *reh'g denied*, 817 F.2d 761 (1987). The Court concludes, therefore, that the equal protection analysis which should be applied here is the traditional "rational basis" test. The issue, then, is whether the plaintiffs have shown that there is no rational basis for allowing nonresident property owners to vote in Chattanooga's municipal elections.

The "rational basis" test was used by the Fifth Circuit in *Glisson v. Mayor and Councilmen of Savannah Beach*, 346 F.2d 135 (5th Cir.1965), and by the district court in *Spahos v. Mayor and Councilmen of Savannah Beach*, 207 F.Supp. 688 (S.D. Ga.), *aff'd* 371 U.S. 206, 83 S.Ct. 304, 9 L.Ed.2d 269 (1962), both of which arose from the same town and from the same factual situation. There, state law and a municipal charter permitted nonresident property owners to vote. Savannah Beach, a resort town, had a population of 1,385 in 1962, with a summer population of 2,500. Nonresident property owners owned real estate with an assessed valuation of \$2,852,040. Permanent residents owned property assessed at \$1,586,485. Nonresident voters were limited to those who owned property in Savannah Beach and who resided in Chatham County. There were 712 resident voters and 467 property qualified nonresident voters. The Georgia legislation under these facts was found to have a "rational" objective and to make a reasonable classification with respect to the right to vote in municipal elections. *Glisson*, 346 F.2d at 136.²³

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Rationality of state legislation was also the focus in a series of Eleventh and Fifth Circuit cases dealing with Alabama legislation permitting residents of cities with independent school systems to vote in county school board elections. *See Sutton*, 809 F.2d 770; *Hogencamp v. Lee County Board of Education*, 722 F.2d 720 (11th Cir.1984); *Phillips v. Andress*, 634 F.2d 947 (5th Cir.1981); *Creel v. Freeman*, 531 F.2d 286 (5th Cir.1976), *cert. denied*, 429 U.S. 1066, 97 S.Ct. 797, 50 L.Ed.2d 784 (1977). In these cases, the equal protection test of validity was whether the

city residents had a "substantial interest" in the operation of the county school system.

The Court views the issue in the instant case as being whether the plaintiffs have demonstrated that the Chattanooga charter is irrational in that it permits nonresident property owners to vote in city elections who do not have a *substantial interest* in the operation of the city.

There is no question that city property owners, including nonresident property owners, have an interest in the conduct of municipal affairs, including property taxes, zoning, public services such as sewage and garbage disposal, and other matters that may affect their property. The difficulty, however, with Chattanooga's charter provision is that it contains no limitation of the number of people who can "vote" on a piece of property or no limitation as to any minimum property value required for the exercise of the franchise. The record in this case shows that as many as 23 nonresidents have been registered to vote on a single piece of property in the city. By way of further example, 15 nonresidents are registered to vote as co-owners of one parcel of property which has an assessed value of \$100.²⁴

A nonresident who owns a one-fifteenth undivided interest in a lot assessed at \$100 does not have a substantial interest in the operation of the city. Since the Chattanooga charter permits a nonresident who owns a trivial amount of property to vote in municipal elections, it does not further any rational governmental interest. *See Hill*, 421 U.S. at 299-300, 95 S.Ct. at 1644-45; *Turner v. Fouche*, 396 U.S. 346, 363, 90 S.Ct. 532, 541, 24 L.Ed.2d 567 (1970).²⁵ The Court, therefore, concludes that section 5.1 of the Chattanooga city charter violates of the equal protection clause of the Fourteenth Amendment. If Chattanooga wishes to give nonresident property owners the right to vote in municipal elections, the city charter must use means "more finely tailored to achieve the desired goal." *Quinn v. Millsap*, ___ U.S. ___, ___, 109 S.Ct. 2324, 2333, 105 L.Ed.2d 74 (1989) (quoting *Turner*, 396 U.S. at 364, 90 S.Ct. at 542).

This disposition of the property qualified voting issue makes it unnecessary for the Court to determine whether property qualified voting in Chattanooga, as presently structured, violates the Voting Rights Act.

The Court's ruling does not extend to T.C.A. § 2-2-107(a). When the constitutionality of a state statute is challenged, this Court has an obligation to construe it, if possible, consistent with legislative intent, so as to comply with constitutional limitations. *St. Martin Evangelical Lutheran Church v. South Dakota*, 451 U.S. 772, 780, 101 S.Ct. 2142, 2147, 68 L.Ed.2d 612 (1981); *Kay v. Austin*, 621 F.2d 809, 812 (6th Cir.1980). This is especially so

[722 F. Supp. 400]

when the statute has not been authoritatively construed by the state courts. *Dale Baker Oldsmobile, Inc. v. Fiat Motors of North America, Inc.*, 794 F.2d 213, 221 (6th Cir.1986).

T.C.A. § 2-2-107(a) is merely permissive, in that it only authorizes municipalities to permit nonresidents to vote. Municipalities are not specifically advised by the statute about how this might be accomplished, and it would appear that municipalities have some discretion as to this. The action of the municipality ultimately determines whether and defines which nonresidents can vote. Therefore, T.C.A. § 2-2-107(a) will be construed only to authorize municipalities to permit nonresidents to vote consistent with the Fourteenth Amendment.

IV.

Remedy

Since the present system of electing the Chattanooga City Commission violates section 2 of the Voting Rights Act of 1965, this Court must fashion equitable relief. S.Rep. No. 417, 97th Cong., 2d Sess. 31, reprinted in 1982 U.S.Code Cong. & Admin.News 177, 208. The Court will grant the defendants seventy-five (75) days to submit an acceptable remedial plan. The Court

will order a hearing, if necessary, concerning an appropriate remedy.

Pending further order of the Court, the Board of Commissioners of the City of Chattanooga may continue to operate as the governing body of the city. However, defendants will be enjoined from holding any elections under the current city charter.²⁶

Further, the defendants will be enjoined from permitting nonresidents to vote in municipal elections under section 5.1 of the Chattanooga city charter, as presently drawn.

An appropriate order will enter.

APPENDIX A

Chattanooga City Commission
Election Contests
1971-1987

1971

Office/Candidate	Estimated % of Vote For		
Black Polarization	% of Vote For	White	
PRIMARIES —			
MAYOR:			
Brown	1.4	1.1	2.1
Crawford	34.8	27.4	47.9
Racially Polarized			
Days (black)	3.1	-0.5	9.4
Walker	57.7	71.7	32.4
Wright (black)	3.2	0.3	8.3
FIRE & POLICE COMMISSIONER:			
Kilgore	0.3	0.0	0.9
Mansfield	9.7	12.5	4.1
Racially Polarized			
Roberts	47.8	68.7	7.9
Shell	0.5	0.1	1.2
Turner	41.7	18.8	85.9

[722 F. Supp. 401]

Office/Candidate	Estimated % of Vote For		
Black Polarization	% of Vote For	White	

PUBLIC WORKS COMMISSIONER:

Carter (black)	1.8	1.3	3.2
Key (black)	21.9	1.9	63.0
Racially			
Rose	70.1	89.7	32.2
Polarized			
Snow	6.3	8.8	3.3

PUBLIC UTILITIES COMMISSIONER:

Alexander (black)	4.6	0.1	13.2
Conrad	53.6	47.5	61.5
Racially			
Davis (black)	4.1	-0.2	14.9
Polarized			
Morgan	16.6	23.9	3.3
Roth	21.0	28.7	7.0

EDUCATION & HEALTH COMMISSIONER:

Franklin (black)	49.0	20.9	94.6
McAuley	4.7	7.3	1.0
Racially			
Petersen	46.3	71.8	4.3
Polarized			

RUN-OFFS —

FIRE & POLICE COMMISSIONER:

Roberts	52.4	74.5	5.5
Racially			
Turner	47.6	25.5	94.5
Polarized			

EDUCATION & HEALTH COMMISSIONER:

Franklin (black)	52.8	27.1	98.9
Racially			
Peterson	47.2	72.9	1.1
Polarized			

1975

PRIMARIES —

MAYOR:

Brown	0.7	0.7	0.6
Conrad	26.7	20.5	38.9
Racially			
Copeland	4.3	6.1	-0.3
Polarized			
Rose	40.3	48.7	8.0
Turner	28.0	24.0	52.7

FIRE & POLICE COMMISSIONER:

Crabtree	1.3	1.3	2.2
King	0.3	0.2	0.9
Not			
Lewis (black)	0.2	0.2	0.5
Racially			
Mansfield	32.3	34.4	38.0
Polarized			
Poole	1.2	1.2	1.2
Roberts	64.6	62.7	57.1

PUBLIC WORKS COMMISSIONER:

Clark	22.0	23.4	15.8
DeFriese	18.1	17.9	20.7
Not			
Dickerson	16.7	16.1	15.1
Racially			
Moore (black)	4.7	2.3	12.2
Polarized			
Olgiati	38.6	40.4	36.3

PUBLIC UTILITIES COMMISSIONER:

Burnette	2.5	2.8	2.5
B. Davis	27.5	24.4	37.5
G. Davis (black)	4.0	-0.1	17.7

[722 F. Supp. 402]

Office/Candidate	Estimated % of Vote For		
Black Polarization	% of Vote For	White	
Eberle	23.4	27.5	4.3
Racially			
Keene	6.8	6.8	4.2
Polarized			
McDonald	20.4	22.6	11.7
Milles	7.3	6.7	5.5
Samples	8.2	9.5	14.5

EDUCATION & HEALTH COMMISSIONER:

Berry	32.9	47.8	0
Racially			
Franklin (black)	67.1	52.2	100
Polarized			

RUN-OFFS —

MAYOR:

Rose	70.9	78.2	31.4
Racially			
Turner	29.1	21.8	68.6
Polarized			

PUBLIC WORKS COMMISSIONER:

		Not	
Clark	60.3	60.1	59.3
Racially			
Olgati	39.7	39.9	40.7
Polarized			

PUBLIC UTILITIES COMMISSIONER

Davis	47.2	39.6	78.2
Racially			
Eberle	52.8	60.4	21.8
Polarized			

1979

PRIMARIES —

MAYOR:

Rose (unopposed)

FIRE & POLICE COMMISSIONER:

Dean	9.6	8.2	16.2
Martin	17.4	16.7	20.5
Racially			
Smart	48.7	55.1	23.6
Polarized			
Williams	24.2	19.9	39.6

PUBLIC WORKS COMMISSIONER:

Adams	25.2	36.0	4.7
Clark	48.8	57.8	17.4
Racially			
Hyde	5.2	5.7	4.3
Polarized			
Wright (black)	20.8	0.5	73.6

PUBLIC UTILITIES COMMISSIONER:

Not

Donohoe	21.1	22.1	24.0
Racially			
Eberle	78.9	77.9	76.0
Polarized			

EDUCATION & HEALTH COMMISSIONER:

Franklin (black) (unopposed)

RUN-OFFS —

FIRE & POLICE COMMISSIONER:

Smart	63.5	68.5	39.2
Racially			
Williams	36.5	31.5	60.8
Polarized			

PUBLIC WORKS COMMISSIONER:

Adams	40.8	39.9	50.2
Racially			
Clark	59.2	60.1	49.8
Polarized			

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Estimated % of Vote For
Office/Candidate % of Vote For White

Black Polarization

1983

PRIMARIES —

MAYOR:

Baty	2.0	1.8	2.9
Boehm	12.8	12.7	13.1
Fuller	25.6	21.3	36.9
Racially			
Roberts	55.8	61.2	41.4
Polarized			
Spradley	2.5	2.2	2.8
Whitener	1.3	0.8	2.9

FIRE & POLICE COMMISSIONER:

Hisey	25.9	21.5	37.5
Kennedy	33.2	40.4	11.8



Knowles	21.2	17.8	33.3
Racially			
Meeks	15.1	15.8	14.2
Polarized			
Townson	4.6	4.5	3.3

PUBLIC WORKS COMMISSIONER:

Broick	3.5	3.2	4.7
Clark	52.1	50.3	55.0
Davis		36.7	37.0
Racially			
Hill		3.0	3.5
Polarized			1.4
Hipple	0.5	0.6	0.5
Igou	4.2	5.3	1.2

PUBLIC UTILITIES COMMISSIONER:

Cannon	23.7	24.2	22.3
Conrad		34.5	27.7
Racially			
Eberle		41.8	48.0
Polarized			23.4

EDUCATION & HEALTH COMMISSIONER:

Franklin (black)	71.1	59.4	99.2
Racially			
Williams	28.9	40.6	0.8
Polarized			

RUN-OFFS —

FIRE & POLICE COMMISSIONER:

Hisey	*23.72	79.51	Racially
Kennedy		76.28	20.49
Polarized			

PUBLIC UTILITIES COMMISSIONER:

Conrad		*30.59	71.73
Racially			
Eberle		69.41	28.27
Polarized			

[722 F. Supp. 404]

Office/Candidate
Black Polarization

Estimated % of Vote For
% of Vote For White

1987

PRIMARIES —

MAYOR:

Eberle	37.0	39.1	32.0	Not
Roberts		57.9	59.6	52.7
Racially				
Sandefur (black)		5.2	1.3	15.3
Polarized				

FIRE & POLICE COMMISSIONER:

Davis	45.4	34.4	74.4
Kennedy		48.1	64.0
Racially			
Wright (black)		6.5	1.6
Polarized			19.6

PUBLIC WORKS COMMISSIONER:

Clark	*51.67	37.42	
Cramer			2.65
Racially			
Littlefield			44.43
Polarized			58.36
Whitener		1.24	1.53

PUBLIC UTILITIES COMMISSIONER:

Freeman (black)	37.3	14.8	94.5
Rose		54.9	74.3
Racially			
Barzour		7.8	10.9
Polarized			0.8

EDUCATION & HEALTH COMMISSIONER:

Franklin (black)	79.3	71.4	97.0
Not			
Heathington (black)		6.3	8.2
Racially			
Martino		14.4	20.4
Polarized			0.4

RUN-OFFS —

FIRE & POLICE COMMISSIONER:

Davis	49.9	31.4	96.7
Racially			
Kennedy		50.1	68.6
Polarized			3.3

PUBLIC WORKS COMMISSIONER:

Clark	44.4	51.2	28.5
Racially Littlefield	55.6	48.8	71.5
Polarized			

Meyer				Not
Racially				*84.73 77.20
Timberlake (black)				15.27 22.80
Polarized				

APPENDIX B

Chattanooga City Judge
Election Contests
1969-1987

1969

Candidate	Estimated % of Vote For		
Black Polarization	% of Vote For	White	

Harris (black)	61.4	30.7	96.2
Racially			
Hudson	38.6	69.3	3.8
Polarized			

[722 F. Supp. 405]

Office/Candidate	Estimated % of Vote For		
Black Polarization	% of Vote For	White	

1971

Hargraves	6.1	6.6	6.6
Meyer	28.5	15.0	56.3
Racially			
O'Rear	14.5	13.9	15.7
Polarized			
Parks	51.0	64.6	23.3

1975

Cash	33.2	30.9	49.4
Racially			
Meacham	66.8	69.1	50.6
Polarized			

1978

1979

Meyer	61.7	59.4	68.4	Not
Taylor		32.7	37.1	20.8
Racially				
Timberlake (black)		5.6	3.6	10.9
Polarized				

Brown				*38.58 75.53
Racially				
Cox				61.42 24.47
Polarized				

1982

McClarty (black)		37.4	15.2	93.4
Racially				
Taylor		56.3	76.5	5.7
Polarized				
Timberlake (black)		6.3	8.3	0.9

1983

Brock	11.4	12.0	11.1	Not
Cox		77.0	78.4	73.9
Racially				
Timberlake (black)		11.6	9.7	15.1
Polarized				

[722 F. Supp. 406]

APPENDIX C

Other Elections and Referenda

Election/Candidate	Estimated % of Vote For		
Black Polarization	% of Vote For	White	

1970 REFERENDUM ON
CONSOLIDATED GOVERNMENT:

For	52.2	62.4	11.1
Racially			
Against	47.8	37.6	88.9
Polarized			

1978 CONSTITUTIONAL AMENDMENT ON REPEAL OF INTERRACIAL MARRIAGE BAN:

For	61.0	51.0	84.0
Racially			
Against	39.0	49.0	16.0
Polarized			

1978 REFERENDUM ON ELECTED SCHOOL BOARD:

Yes	55.1	47.8	82.5
Racially			
No	44.9	52.2	17.5
Polarized			

1980 SUPREME COURT:

Drowota	49.0	58.4	22.3
Brown (black)	42.7	30.4	76.8
Racially			
Parrish	8.3	11.2	0.9
Polarized			

1984 METRO CHARTER REFERENDUM:

For	40.9	51.5	11.1
Racially			
Against	59.1	48.5	88.9
Polarized			

1988 CITY CHARTER (voting by districts — mayor/council form of government):

For	36.3	30.5	56.1
Racially			
Against	63.7	69.5	43.9
Polarized			

Notes:

* Since the trial of this case, Mr. Dinsmore has replaced Tom Kennedy, an original

defendant, as a member of the Board of Commissioners. See Fed.R.Civ.P. 25(d)(1).

1 Vote dilution first came under attack in voting reapportionment cases. These cases, beginning with *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962), have required voting power to be apportioned equally on the basis of population. See McDonald, *The Quiet Revolution in Minority Rights*, 42 Vanderbilt L.Rev. 1258 (1989).

2 The facts in *Mobile v. Bolden* were similar to those confronted in this case in that the challenged system was an at-large elected city commission instituted in 1911.

3 Most notably H. Clay Evans and Newell Sanders, who were Republicans of local, statewide and some national prominence. Evans, among his other accomplishments, was elected in 1911 to serve on Chattanooga's first City Commission.

4 There were whites who were also considered by the insurgents to be "bosses," particularly Thomas P. McMahan, chief of police, and Thomas Wilcox, chairman of the board of public works.

5 Mr. Walker testified at the trial that he has since changed his mind on this question, and now favors the commission form of government.

6 There are no figures available for elections prior to 1969, from which precinct voting population by race of the voter can be derived.

7 The exception is John Franklin, Chattanooga Commissioner of Education and Health, who is black, and whose electoral success will be discussed below.

8 In the 1987 election for Commissioner of Fire and Police, blacks, who stated that they perceived that incumbent Commissioner Tom Kennedy had acted adversely to blacks, voted 96% for Kennedy's white opponent.

9 This appears to be primarily a medical term with some usage in the fields of geology and economics, meaning "produced from without;

originating from or due to external causes." M. Webster, *Webster's Third New International Dictionary*, 1981.

[10](#) Racially polarized City Commission elections were: 1971 mayoral primary; 1971 fire and police primary; 1971 public works primary; 1971 public utilities primary; 1981 education and health primary; 1971 fire and police run-off; 1971 education and health run-off; 1975 mayoral primary; 1975 public utilities primary; 1975 education and health primary; 1975 mayoral run-off; 1975 public utilities run-off; 1979 fire and police primary; 1979 public works primary; 1979 fire and police run-off; 1979 public works run-off; 1983 fire and police primary; 1983 public utilities primary; 1983 education and health primary; 1983 fire and police run-off; 1983 public utilities run-off; 1987 fire and police primary; 1987 public works primary; 1987 public utilities primary; 1987 fire and police run-off; 1987 public works run-off.

[11](#) 1969 *Harris v. Hudson*; 1971 *Hargraves v. Meyer v. O'Rear v. Parks*; 1975 *Cash v. Meacham*; 1979 *Brown v. Cox*; 1982 *McClarty v. Taylor v. Timberlake*.

[12](#) An exception to this finding is the 1969 election of Benny Harris as City Judge where black voter turnout exceeded white voter turnout two to one.

[13](#) Chaney, Strickland, Davis, Days, H. Wright, Carter, Alexander, Key, Davis, Franklin, Lewis, Moore, G. Davis, Sandefer, L. Wright, Freeman.

[14](#) One witness stated that no black other than John Franklin "is going to win in this town running at-large, nobody, be 75 years from now, nuclear holocaust."

[15](#) Figures derived from Appendix A to opinion of Brennan, J., 478 U.S. at 80-81.

[16](#) 1971 mayoral primary; 1971 public works primary; 1971 public utilities primary; 1971 fire and police run-off; 1971 education and health run-off; 1975 fire and police primary; 1971 education and health primary; 1975 mayoral run-off; 1975

public works run-off; 1975 public utilities run-off; 1979 public utilities primary; 1979 fire and police run-off; 1979 public works run-off; 1983 mayoral primary; 1983 public works primary; 1983 education and health primary; 1983 fire and police run-off; 1983 public utilities run-off; 1987 mayoral primary; 1987 public utilities primary; 1987 education and health primary; 1987 fire and police run-off; 1987 public works run-off. (This list excludes the uncontested elections of candidates Rose (mayor) and Franklin (education and health) in 1979).

[17](#) 1971 mayoral primary; 1971 public works primary; 1971 public utilities primary; 1971 fire and police run-off; 1971 education and health run-off; 1975 education and health primary; 1975 mayoral run-off; 1975 public utilities run-off; 1979 fire and police run-off; 1979 public works run-off; 1983 education and health primary; 1983 fire and police run-off; 1983 public utilities run-off; 1987 public utilities primary; 1987 fire and police run-off; 1987 public works run-off.

[18](#) 1971 mayoral primary; 1971 public works primary; 1971 fire and police run-off; 1975 mayoral run-off; 1975 public utilities run-off; 1979 fire and police run-off; 1979 public works run-off; 1983 fire and police run-off; 1983 public utilities run-off; 1987 public utilities primary; 1987 fire and police run-off.

[19](#) 1971 fire and police run-off; 1971 education and health run-off; 1975 mayoral run-off; 1975 public works run-off; 1975 public utilities run-off; 1979 fire and police run-off; 1979 public works run-off; 1983 fire and police run-off; 1983 public utilities run-off; 1987 fire and police run-off; 1987 public works run-off.

[20](#) 1971 fire and police run-off; 1975 mayoral run-off; 1975 public utilities run-off; 1979 fire and police run-off; 1979 public works run-off; 1983 fire and police run-off; 1983 public utilities run-off; 1987 fire and police run-off.

[21](#) The three run-offs which did not result in vote dilution were the 1971 education and health run-off (Franklin victorious); the 1975 public works run-off (not racially polarized); and the

1987 public works run-off (Littlefield elected with the support of black and white votes over a white bloc vote of more than 50%).

22 A loosely knit group of black leaders which mobilizes electoral support for political candidates.

23 While the Court concurs with the *approach* taken in *Spahos* and *Glisson*, the Court nevertheless concludes that the result reached in those cases does not dictate the same result in this case. The nonresident voters in Savannah Beach as a group had a much greater economic interest in the municipality than do the nonresident voters of Chattanooga. They were also required to be residents of Chatham County, although the Court does not deem the geographical limitation to be determinative of the constitutional issue in this case.

24 As plaintiffs have pointed out, the law currently would permit Muammar el-Qaddafi to buy a parcel of land in Chattanooga and deed it to thousands of Libyans who would then be able to control the outcome of Chattanooga's elections.

25 Plaintiffs also contend that the practice of allowing nonresidents to vote is over inclusive in that nonresident property owners are permitted to vote in all city elections and not just those affecting their property interests. The drawing of such a distinction does not appear to be practical. Moreover, the ordinance permits city residents to vote who do not own property. These voters cannot be prevented from voting on matters that affect property interests in the city. *Hill v. Stone*, 421 U.S. at 300, 95 S.Ct. at 1644.

26 This applies to members and the Registrar-at-Large of the Hamilton County Board of Elections, in their official capacities, who were dismissed as defendants upon their agreement to comply with the orders of the Court in this case.

* The black/white voting percentages in Appendices A, B and C are those of plaintiffs' expert Dr. Kousser, except those marked with an asterisk. These asterisk-marked elections are the calculations of defendants' expert, Dr. Gant.

Plaintiffs offered no figures on these particular elections. As noted in the Court's opinion, there is no significant difference in the method used by Drs. Kousser and Gant to arrive at these figures.

* The black/white voting percentages in Appendices A, B and C are those of plaintiffs' expert Dr. Kousser, except those marked with an asterisk. These asterisk-marked elections are the calculations of defendants' expert, Dr. Gant. Plaintiffs offered no figures on these particular elections. As noted in the Court's opinion, there is no significant difference in the method used by Drs. Kousser and Gant to arrive at these figures.

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

*rec'd
3:30 pm
Jan. 17, 1990.*

DR. TOMMIE BROWN, ET AL.,)

Plaintiffs,)

v.)

BOARD OF COMMISSIONERS OF)
THE CITY OF CHATTANOOGA,)
TENNESSEE, ET AL.,)

Defendants.)

CIVIL ACTION NO. CIV-1-87-388

AGREED ORDER

Pursuant to the Order of the Court of August 8, 1989, directing the Defendants to submit an acceptable remedial plan to bring the City of Chattanooga, Tennessee, into compliance with the Voting Rights Act of 1965, as amended, and after the submission by Defendants of a proposed plan and following an evidentiary hearing pursuant to Section 2 of the Voting Rights Act, 42 U.S.C. Sec. 1973, the parties have agreed upon a remedy for the voting rights violation in this case, which is described more fully in Defendants' Amended Plan, a copy of which is attached hereto as Exhibit A and made a part hereof by reference. With the consent of the parties and for good cause shown, the Court accepts and adopts Defendants' Amended Plan as a full and complete remedy for the violation of Plaintiffs' rights in this case.

The Court's retention of jurisdiction over this case is limited by the agreement of the parties (which is contained in Paragraphs nineteen (19) and twenty (20) of said Amended Plan) pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. Sec.

1973a(c). The Court retains jurisdiction over Plaintiffs' request for costs and attorneys' fees, and this case remains on the docket for this purpose only.

This Order shall be binding upon the parties, their successors, agents and assigns.

AND IT IS SO ORDERED.

January , 1990
Chattanooga, Tennessee

R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE

We Consent:

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January 17, 1990
Attorney for Defendants

City of Chattanooga
By: Gene Roberts
Mayor Gene Roberts
January 17, 1990

John A. Franklin
Commissioner
January 17, 1990

John A. Franklin
Commissioner
January 17, 1990

Ervin B. Dinsmore
Commissioner
January 17, 1990

Carole
Commissioner
January 17, 1990

DEFENDANTS' AMENDED PLAN

AMENDED PLAN TO REORGANIZE THE GOVERNING BODY OF THE CITY OF CHATTANOOGA AS ORDERED BY THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT, SOUTHERN DIVISION, AT CHATTANOOGA, TENNESSEE IN THE CASE OF BROWN, ET AL. V. CITY, ET AL., CIVIL ACTION NO. 1-87-388.

1. The Charter of the City of Chattanooga, Tennessee (which is a compilation of various acts of the Tennessee General Assembly as well as certain ordinances enacted by the Board of Commissioners and ratified by a vote of the people pursuant to the Constitution of Tennessee) shall be amended as provided herein when approved and implemented by a final order of the United States District Court for the Eastern District of Tennessee, Southern Division sitting at Chattanooga, Tennessee, in the case of Brown, et al. v. City, et al., Civil Action No. 1-87-388.

2. The Board of Commissioners of the City of Chattanooga and the present offices of the Mayor and the Commissioners are hereby abolished as of noon, June 11, 1990. A special municipal election for the office of Mayor and members of the City Council of the City of Chattanooga shall be held on May 1, 1990. If there is to be a run-off election held pursuant to this Plan, then such election shall be held on Thursday, June 7, 1990. All persons duly elected to a City office hereunder shall file the appropriate bond, take the prescribed oath and assume the duties of office at noon on Monday, June 11, 1990.

3. There is hereby created the office of the Mayor, and all executive and administrative authority and responsibility now vested in and exercised by the Board of Commissioners and its individual members shall be vested exclusively in the Mayor. All references in the Charter to individual Commissioners or the Board of Commissioners acting in their administrative or executive capacity are hereby deleted and the word 'Mayor' substituted therefor.

4. There is hereby created a City Council of the City of Chattanooga, Tennessee, and all legislative and quasi-judicial authority and responsibility now vested in and exercised by the Board of Commissioners shall be vested exclusively in the City Council. All references to the 'Board of Commissioners' or 'Board' or 'City Commission' or 'Commissioners' or 'Commission' where the same refers to the Board of Commissioners acting in its or their legislative or quasi-judicial capacity in the present City Charter are hereby deleted and there is inserted in lieu thereof the phrase 'City Council' or 'Council' or 'Council Members' except as otherwise specified herein.

5. The Mayor shall be elected at-large and shall not be a member of the City Council. The Mayor shall not have a vote in any matter considered by the City Council. The Mayor shall have a veto over any ordinance enacted or resolution adopted by the City Council, but the City Council may override the veto of the Mayor at the next regular meeting of the Council but only by a majority vote of the entire membership of the City Council.

6. No person shall be elected to the office of Mayor unless he or she has been a resident of the City of Chattanooga for at least one year prior to his or her election and unless he or she shall be at least thirty (30) years of age.

7. The Chief Executive Officer of the City of Chattanooga shall be the Mayor. The Mayor shall be authorized to administer oaths and shall supervise and control all of the divisions of the City, except as otherwise provided, and shall see that the ordinances of the City and the provisions of the Charter are observed. The Mayor shall devote his or her entire time and attention to the duties of the office of the Mayor. The Mayor may attend any meeting of the Council or any of its committee meetings and may address the Council or its committee meetings subject to recognition by the Chairperson.

8. No person shall be eligible to be elected as Mayor for more than two (2) consecutive four (4) year terms.

9. In the case of the Mayor's death, resignation, inability to serve for any reason, recall or removal of his or her residence from the City, upon such fact being certified by resolution of the Council, the Chairperson of the Council shall become the interim Mayor upon being administered the oath and making bond. Such person shall hold the Office of the Mayor on an interim basis until a new Mayor is elected as provided in this Charter and qualified. The interim Mayor shall have the authority to cast a vote to break a tie in the City Council. A vacancy in the Office of the Mayor shall be filled by election at the next regularly scheduled election to be held in the City not less than ninety (90) days but not more than one hundred twenty

(120) days after the vacancy is certified by the Council. If no such election is scheduled, a special election shall be held within not less than ninety (90) nor more than one hundred twenty (120) days. The person so elected shall serve the remainder of the term vacated by the Mayor.

10. The Mayor shall appoint all department heads, subject to confirmation by a majority vote of the entire membership of the Council. The Mayor may remove department heads at any time with the approval of a majority vote of the entire membership of the Council. The City Council may remove department heads and/or City officials (but not the Mayor) for cause after notice and hearing, and pursuant to a vote of two-thirds of the entire membership of the Council.

11. Within sixty (60) days after taking office, the Mayor shall recommend to the Council any revisions to the names, functions, and organization of City departments that the Mayor deems appropriate. The Council shall adopt a plan of reorganization within thirty (30) days after receiving recommendations for the same from the Mayor, which recommendations the Council may accept, modify or reject.

12. The existing City departments as specified in Pr. Acts 1911, Ch. 10, Sec. 17, as modified directly or indirectly by Pr. Acts 1953, Ch. 105; Pr. Acts 1955, Ch. 56; Pr. Acts 1957, Ch. 73; and, Pr. Acts 1965, Ch. 207, will be retained and will continue to perform their respective duties pending the reorganization of the departmental structure described herein.

13. (a) Subject to the procedure for establishment of departmental structures under which one or more of the following offices may be combined with others or otherwise modified, the persons holding the offices of Fire Chief, Police Chief, and City Engineer on the operative date of these Charter amendments shall continue in those offices on an interim basis and until their successors are appointed and qualified. No later than the date he or she appoints department heads, the Mayor shall appoint, with the approval of a majority vote of the entire membership of the Council, persons to fill these positions for terms concurrent with the Mayor and until they are discharged or their successors are appointed and qualified. The Mayor, with the approval of a majority vote of the entire membership of the Council, may discharge any of these officials prior to the expiration of their terms of office. Thereafter, vacancies shall be filled by appointment of the Mayor with the approval of a majority vote of the entire membership of the Council.

(b) The persons holding the offices of City Auditor and City Treasurer on the operative date of these Charter amendments shall continue in those offices on an interim basis and until their successors are appointed and qualified. No later than the date the Mayor appoints department heads, the Mayor shall appoint, with the approval of a majority vote of the entire membership of the Council, a City Finance Officer in place of the City Auditor, and a City Treasurer, for terms concurrent with the terms of the Mayor, and until they are discharged or their successors are appointed and qualified. The Mayor may discharge the City Finance Officer or City Treasurer with the approval of a

majority vote of the entire membership of the Council. Any vacancy occurring in said offices shall be filled by appointment of the Mayor with the approval of a majority vote of the entire membership of the Council.

(c) An Internal Auditor shall be appointed by the Council, independent of the Mayor, and may be removed and replaced at any time by the affirmative vote of a majority of the Council. The Internal Auditor's responsibilities will include, but not be limited to, auditing expenditures of the executive and administrative departments and verifying that all revenues due the City are properly collected and accounted for.

(d) The Mayor and Council shall jointly appoint a City Attorney for a four (4) year term from the date of appointment to said four (4) year term. The City Attorney may be removed from office at any time by the affirmative vote of two-thirds of the entire membership of the City Council, and the concurrence of the Mayor.

14. The salary of the Mayor shall be at all times the same as the salary of the County Executive of Hamilton County.

15. The City shall be divided into nine (9) districts within the geographic boundaries of the City. The City Council shall be composed of nine (9) members with each member elected from one of such single districts. The candidate for each Council position who receives the majority of votes cast for that Council position in his or her district shall be elected. No person shall be elected or appointed as a member of the Council

who is not at least 21 years of age and who has not been a resident of the district for at least one year preceding his or her election.

16. At its initial meeting, the Council shall elect from its membership a Chairperson who shall preside over Council meetings. The Council shall also elect a Vice-Chairperson who shall preside in the Chairperson's absence. Terms of the Chairperson and Vice-Chairperson shall be for two years. The Council may when necessary elect from their members a Chairperson pro tempore to preside at a particular meeting in the absence of the Chairperson and Vice-Chairperson.

17. The Chairperson of the Council shall ascend to the Office of the Mayor as interim Mayor on a temporary basis in the event of a vacancy in the office of the Mayor by reason of death, resignation, removal, or otherwise, all as specified in Paragraph 9 hereof. During service as interim Mayor, the Council Chairperson shall step down from his or her position as a member of the Council. However, the temporary ascension of the Council Chairperson to the Office of the Mayor will not create a vacancy on the Council to be filled by the Council.

18. The following districts are hereby established for the various Council positions:

<u>District No.</u>	<u>Precincts</u>
District 1	Mountain Creek, Northwoods North, Northwoods South, Valleyview East, and Wauhatchie City.
District 2	Lupton City, Moccasin Bend, North Chattanooga, Northgate, Riverview, and Stuart Heights.
District 3	Dupont, Hixson, Kings Point, Lake Hills, Murray Hills, Hixson 2 and East Chattanooga.

District 4	Brainerd Hills, Concord, East Brainerd, and Tyner.
District 5	Airport, Bonny Oaks, Dalewood, Eastdale, and Woodmore.
District 6	Brainerd, Eastgate, Eastside, Missionary Ridge N, Missionary Ridge S, Ridgedale, and Sunnyside.
District 7	Alton Park, Cedar Hill, East Lake, Piney Woods, and St. Elmo.
District 8	Amnicola, City Hall, Clifton Hills, Courthouse, Downtown, and Howard.
District 9	Avondale, Bushtown, Highland Park, Glenwood, and Orchard Knob.

19. Following publication of each new official decennial federal census, the Council shall reorganize and adjust by ordinance the boundaries of the districts currently established. The Council's reorganization and adjustment of the district boundaries shall be completed no later than one (1) year prior to the next City election; provided, however, that the Council shall have not less than six (6) calendar months within which to reorganize and adjust the districts. The adjusted districts shall be as equal in population as practicable. Such reorganization and adjustment of district boundaries shall not affect the qualifications of any Council member to fulfill his or her remaining unexpired term.

20. The first and only the first redistricting plan (based on the 1990 census figures only) prepared pursuant to paragraph 19 hereof, prior to its implementation, shall be submitted by the Mayor and Council, or the Chief Legal Officer (pursuant to Section 3(c) of the Voting Rights Act, 42 U.S.C. Sec. 1973 a(c)), to

the District Court for the Eastern District of Tennessee, Southern Division, or in the alternative to the Attorney General of the United States for preclearance under Section 5 of the Act, 42 U.S.C. Sec. 1973c.

21. A majority of the entire membership of the Council shall constitute a quorum for the transaction of business. The affirmative votes of a majority of the members of the entire Council shall be necessary to enact any ordinance or adopt any resolution or take any affirmative action. Every ordinance enacted by the Council shall be signed by the Council Chairperson, Vice-Chairperson or Chairperson pro tempore and shall also be approved or vetoed by the Mayor as provided by the Charter and shall then be delivered to the Clerk of the City Council. Except as provided herein, wherever in the Charter more than three (3) votes of the present Board of Commissioners is required to take any action, it shall mean more than five (5) votes of the entire membership of the City Council.

22. Removal of residence by a member of the Council from that member's district shall constitute a vacancy in that member's Council position. Any vacancy occurring on the Council, including any vacancy in the office of Chairperson of the Council, shall be filled by a vote of a majority of all of the remaining members of the Council. Any person elected to fill such a vacancy shall possess the same qualifications as a Council member elected by the people. Any person elected or appointed as a member of the Council shall serve until his or her successor is

elected and qualified; provided, however, that if any general statute requires an earlier election, then such general statute shall apply.

23. Members of the Council shall be paid fifteen percent (15%) of the Mayor's salary as may be adjusted from time to time. The Chairperson shall be paid an additional Five Thousand Dollars (\$5,000.00) per annum, and the Vice-Chairperson shall be paid an additional Twenty-Five Hundred Dollars (\$2,500.00) per annum. Such salaries shall be payable on a monthly basis.

24. The Council shall from time to time establish and publish such procedures and rules for its organization and orderly operation as the Council deems appropriate so long as the procedures and rules do not conflict with provisions of the Charter, state or federal law. The Council shall have the power to issue subpoenas and administer oaths. The Council's rules shall specify the schedule for its regular meetings, which shall be held at least twice a month, and the procedures for calling special meetings. In the event that a member of the Council shall be absent from all Council meetings during three (3) consecutive months without proper and reasonable explanation acceptable to the Council, his or her office may be declared vacated by a majority vote of the remaining membership of the Council and such vacancy shall be filled as provided herein.

25. The Council may from time to time establish such committees, committee responsibilities, and the manner of committee appointment as the Council deems appropriate. The Council shall employ a Clerk whose duty it shall be to preserve, keep and

retain all of the records of the Council and shall have the authority to certify the correctness of such records when necessary or requested by a citizen.

26. Members of the Council may be reimbursed their reasonable, necessary and actual expenses incurred in the performance of their official duties. The Council shall adopt procedures and guidelines for documentation and reimbursement of expenses of members of the Council and of all the officials and employees of the government after receiving appropriate recommendations on the same from the Mayor.

27. Only persons who are residents of the City of Chattanooga shall be eligible to vote in City elections.

28. Subsequent elections for Mayor and City Council members shall be held on the first Tuesday in March, 1993, and every four (4) years thereafter. The Mayor and each City Council member shall be elected by a majority of the votes cast for the office he or she seeks. If no candidate for Mayor or no candidate for one or more City Council seats attains a majority in the March elections, a run-off election shall be held on the second Tuesday in April. The run-off election shall be held between the two candidates in each such contest who received the highest number of votes. Those candidates elected either in the first election in March or in the run-off election in April shall file a bond, take the oath of office and assume their respective duties on the first Monday after the second Tuesday in April following the initial March elections, each to serve until the first Monday after the second Tuesday in April, 1997, or until a successor is

elected and qualified. A Mayor and all City Council members shall be elected to four (4) year terms of office in the same manner thereafter.

29. The current Chairman of the Board of Education shall serve until February 1, 1991. Thereafter, the Chairman of the Board of Education shall be elected by the Board from among its members, which Chairman shall have full voting rights on all matters and questions coming before the Board of Education.

30. Current members of the Board of Education shall serve until their terms expire. Elections shall be held in the general election in November, 1990 for Districts 1, 3, 5, 7 and 9 as defined herein. The candidates receiving the most votes (plurality) in his or her district shall be elected. Those candidates elected shall take the oath of office and assume their respective duties February 1, 1991, for four (4) year terms. Thereafter, elections shall be held in the general election of November, 1994 and every four (4) years thereafter with terms of office to begin the following February first. An election shall be held in the general election of November, 1992 for Districts 2, 4, 6 and 8 as defined herein. Those candidates receiving the most votes (plurality) in his or her district shall be elected. The candidates elected shall take the oath of office and shall assume their respective duties on February 1, 1993. Thereafter, elections for Districts 2, 4, 6 and 8 shall be held in the general election of November, 1996 and every four (4) years thereafter with terms of office to begin the following February first. Members of the Board of Education shall be paid two and one-half percent (2.5%) of the Mayor's salary as adjusted from

time to time. Qualifications for Board membership shall be the same as those for members of the City Council. Any vacancy occurring on the Board of Education shall be filled by appointment of the Mayor with the approval of a majority of the Council. Any person chosen to fill such a vacancy shall possess the same qualifications as that of a Board member elected by the people. Any person elected or appointed as a member of the Board of Education shall serve until his or her successor is elected and qualified; provided, however, that if any general statute requires an earlier election, then such general statute shall apply.

31. All employees of the City shall either be registered voters in the State of Tennessee, or eligible to vote in the State of Tennessee, except that those employees currently employed and living outside the State of Tennessee shall be exempted from this provision.

32. The Board of Trustees of the General Pension Plan is hereby expanded to seven (7) members. The Mayor shall be an ex-officio member of the Board of Trustees and shall have the right to vote on all matters. The other six (6) Trustees shall be appointed by the Mayor with the approval of a majority vote of the entire membership of the City Council. (The City Auditor and City Treasurer shall no longer serve as ex officio members of the Board of Trustees.) The Mayor and Council shall ensure in the exercise of their appointment powers as vacancies occur on the Board of Trustees that black representation thereon will be consistent with the percentage of the black population in the City. No person shall be eligible to be a Trustee unless he or she (a)

is a trust or investment officer, or has the qualifications of a trust or investment officer as determined from the requirements for those positions by prevailing custom in local government, and among the banks, insurance companies or licensed stock or bond brokers who have offices in Chattanooga, Tennessee, and (b) is a resident of the City of Chattanooga, Tennessee, or is employed within the corporate boundaries of the City of Chattanooga, Tennessee. Of the six (6) appointed members of the Board, no more than two (2) may be employed by the same employer. Two (2) of the members of the Board shall be appointed to initial terms of five (5) years, two (2) of the members shall be appointed to initial terms of four (4) years and two (2) of the members shall be appointed to initial terms of three (3) years. Thereafter, all terms shall be for five (5) years. The City Personnel Director (by whatever title) shall be the keeper of the records of the Board of Trustees.

33. The Mayor shall propose an annual budget and present it to the City Council. The Council shall enact a budget ordinance after receiving recommendations for the same from the Mayor, which recommendations the Council may accept, modify or reject.

34. On June 11, 1990, the current Mayor and Commissioners of the City of Chattanooga, shall act as consultants to the new Mayor and Council until April 15, 1991. As consultants they shall perform any duties specified by the Mayor and Council in keeping with their former positions and duties. Nothing herein shall prohibit any Commissioner from being elected or appointed to any position in City government. Any Commissioner who shall be elected or appointed to a position in City government shall

receive for the remainder of his current elective term the greater of either the prior salary or the City salary to which such official shall be entitled by election or appointment. In addition to the prior salary, a Mayor or former Commissioner as a consultant shall be entitled to all the benefits to which said Mayor or Commissioner had been previously entitled, including health insurance, pension, and retirement benefits. Any Mayor's or Commissioner's entitlement shall terminate upon such Commissioner's establishment of residence outside the City or rejection of the offer of a position in the City government having a salary of not less than that of the former office held by such person.

35. Nothing herein shall preclude persons who are receiving benefits from any of the City's pension plans from serving on the City Council without loss of previously accrued pension benefits; provided, however, such service by such retired employees shall not constitute additional credited service toward greater pension benefits.

36. Any existing provision of the Charter of the City of Chattanooga not directly amended or materially and substantially affected by the foregoing amendments shall remain in full force and effect, but all provisions of the existing Charter that are in conflict or are not consistent with the foregoing amendments shall be considered repealed by implication.

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

FILED

JAN 18 1 17 PM '90

U.S. DISTRICT COURT
EASTERN TENN.
BY _____ CLERK

DR. TOMMIE BROWN; LEAMON PIERCE;
REV. HERBERT H. WRIGHT; J. K. BROWN;
ANNIE D. THOMAS; JOHNNY W. HOLLOWAY;
GEORGE A. KEY; LORENZO ERVIN; BOBBY WARD;
NORMA CROWDER; MAXINE B. COUSINS; AND
BUFORD McELRATH,

Plaintiffs,

v.

CIV-1-87-388

BOARD OF COMMISSIONERS OF THE CITY OF
CHATTANOOGA, TENNESSEE: GENE ROBERTS,
ERVIN DINSMORE, JOHN FRANKLIN, PAT ROSE
and RON LITTLEFIELD, In Their Official
Capacities as Members of the Board of
Commissioners,

Defendants,

and

STATE OF TENNESSEE,

Intervenor.

J U D G M E N T

The agreed order and defendants' amended plan, both of which this Court has approved and filed this date, shall be the judgment of the Court in accordance with Rule 58, Federal Rules of Civil Procedure.

Under the plan, this Court will retain jurisdiction for the purpose of (1) reviewing, in accordance with 42 U.S.C. § 1973a(c), the first redistricting plan based on 1990 Census figures

if such a plan is submitted to this Court, and (2) the assessment of costs and attorneys' fees, which are hereby awarded to the plaintiffs in accordance with 42 U.S.C. § 1973l(e). Counsel for the plaintiffs are reminded of the provisions of L.R. 10.6, EDTN, which requires that all petitions for attorneys' fees must be filed within thirty (30) days after the entry of judgment.

SO ORDERED.

ENTER.



R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE

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

DR. TOMMIE BROWN; LEAMON PIERCE;
 REV. HERBERT H. WRIGHT; J. K. BROWN;
 ANNIE D. THOMAS; JOHNNY W. HOLLOWAY;
 GEORGE A. KEY; LORENZO ERVIN; BOBBY WARD;
 NORMA CROWDER; MAXINE B. COUSINS; and
 BUFORD McELRATH,

Plaintiffs,

v.

BOARD OF COMMISSIONERS OF THE CITY OF
 CHATTANOOGA, TENNESSEE: GENE ROBERTS,
 TOM KENNEDY, JOHN FRANKLIN, PAT ROSE and
 RON LITTLEFIELD, In Their Official
 Capacities as Members of the Board of
 Commissioners,

Defendants,

and

STATE OF TENNESSEE,

Intervenor.

Filed AUG 8 1989
 Ent'd Order Bk. 42, p. 4
 R. MURRY HAWKINS, CLERK

Dep. Clerk

CIV-1-87-388



JUDGMENT ORDER

For the reasons stated in the accompanying memorandum,
 judgment is hereby entered in favor of the plaintiffs. It is
 further ORDERED that:

1. Defendants shall submit to the Court within
 seventy-five days from the date of entry of this judgment order
 an acceptable remedial plan to bring the City of Chattanooga,
 Tennessee, into compliance with the Voting Rights Act of 1965,
 as amended;

2. Until the Court orders otherwise, the defendants may continue to lawfully function as the municipal government of the City of Chattanooga, Tennessee;

3. The defendants are enjoined from holding any elections under the current city charter pending further orders of the Court; and

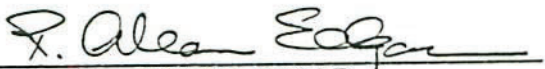
4. The defendants are enjoined from permitting nonresidents to vote in municipal elections under the present provisions of section 5.1 of the Chattanooga city charter.

5. In the event that the parties are unable to agree upon an acceptable remedial plan, this Court will hold a hearing on the subject of a proper remedy.

6. The assessment of costs and attorney fees will await further orders of the Court.

SO ORDERED.

ENTER:



R. ALLAN EDGAR
UNITED STATES DISTRICT JUDGE