

November 7, 2009 Saturday

**SECTION:** NEWS; Pg. 1AWP

**LENGTH:** 657 words

**HEADLINE:** Judge OKs 'cumulative' voting in Port Chester rights case

**BYLINE:** Leah Rae

**BODY:**

A federal judge has cleared the way for Port Chester trustee elections in June under an unusual voting system meant to give Latinos a fair shot at gaining political representation.

U.S. District Judge Stephen C. Robinson told village attorneys Friday in White Plains that he would allow the village to use "cumulative voting" to replace a system the U.S. Justice Department successfully labeled unfair to Hispanic voters.

Under the system - which will be unlike any in New York - all six trustee seats will be up for election at the same time. Voters will have six votes to cast, and they'll have the option of allotting anywhere from one to all six of those votes to a single candidate.

The "vote plumping" mechanism allows like-minded voters to rally behind one particular candidate, or to spread their votes among several.

Robinson told attorneys from the village and the Justice Department that he was obligated to favor Port Chester's plan, so long as it fixed the voting rights violation in accordance with the law.

The Justice Department had sought to create six separate voting districts, including one with a Hispanic voting majority.

Trustees in Port Chester previously were elected on a standard, at-large system. Cumulative voting and variations of it are used in some U.S. communities, including Amarillo, Texas, but districts are the common remedy in such voting rights cases.

"This is very exciting. This is historic," Mayor Dennis Pilla said.

The decision comes almost three years after the Justice Department brought its suit. Robinson found the village in violation of the Voting Rights Act in January 2008 and ruled Friday on the remedy.

Trustee elections in Port Chester have been suspended since 2006 because of the lawsuit.

Robinson postponed the next election from March, when it would normally be scheduled, to June to allow more time for voters to learn the new system. Attorneys on both sides of the case must come up with a plan by Dec. 8 on how to explain and implement it.

Spanish-language materials and assistance at the polls would have to be part of the plan, along with a chance for voters to practice voting under the new rules.

Robinson wrote that he "is deeply concerned about how to achieve an effective and non-discriminatory implementation."

The Justice Department had argued that cumulative voting was an untested remedy - a "leap in the dark."

"We're not opposed to it in principle," said Randolph McLaughlin, a Pace Law professor who represented plaintiff Cesar Ruiz, who had been an unsuccessful board candidate in 2001. McLaughlin said the challenge now is to make the system work "on the streets, not just in court."

Under the old system, the six trustees ran for three-year terms, with two seats up for election every March. Five trustees now serve on the board, all of them holdovers or appointees.

Cumulative voting and its variations are far less common than single-member districts as a remedy to ensure minority representation.

"Generally, I would say it's a gamble," said Jon Greenbaum, a former Justice Department litigator who is legal director of the Lawyers Committee for Civil Rights Under Law. In contrast, he said, "In all the cases that I've been involved in, single-member districts have never failed."

To succeed as a legal remedy, the new system must allow Latinos an opportunity to elect someone of their choice - Hispanic or not - to the Board of Trustees.

The court found that under the old system, Hispanics tended to vote cohesively for a particular candidate but saw their votes diluted in village-wide voting. The village is nearly half Hispanic but has never elected a Hispanic to the village board.

"My goal is to make this a model plan," the mayor said.

The village may turn to the nonprofit organization FairVote to help coordinate the new system.

Ruiz said the village could finally move on from the divisive fight. Of the new system, he said, "I'm sure we will get it, and we'll get it right."

**LOAD-DATE:** November 7, 2009