

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AMHERST COUNTY, VIRGINIA, )  
 a political subdivision of the )  
 Commonwealth of Virginia, )  
 P. O. Box 390 )  
 Amherst, Virginia 24521 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MICHAEL B. MUKASEY )  
 Attorney General of the )  
 United States of America, )  
 GRACE CHUNG BECKER, )  
 Acting Assistant Attorney General, )  
 Civil Rights Division, United States )  
 Department of Justice, Washington, DC, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

No. 08-cv-00780 (EGS)  
(Three-Judge Court)

STIPULATION OF FACTS

This action was initiated by Amherst County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County seeks a declaratory judgment pursuant to Section 4(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b.

The parties have jointly moved this three-judge Court for entry of a Consent Judgment and Decree to resolve this action. In support of that motion, the parties have entered into the following stipulation of facts. The facts in this stipulation may be received into evidence in lieu of further proof or testimony.

It is hereby stipulated, by and between the respective parties, that:

1. Plaintiff Amherst County (“the County”) is a political subdivision of the Commonwealth of Virginia and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1). Amherst County is near the geographic center of Virginia in the Central Virginia region and within the Lynchburg metropolitan area. The James River borders the county on the south and east, with the crest of the Blue Ridge Mountains forming the western boundary. The Piney River comprises much of the county's northern boundary. The County has a land area of approximately 475 square miles.

2. Located within Amherst County is the Town of Amherst (hereafter, the “Town”). The Town of Amherst, according to the 2000 census, has a total population of 2251. Of this number, 678 (30%) are black and 35 (1.5%) are Hispanic.

3. Residents of the Town are eligible to participate in town elections and in County elections. The Town is governed by a five-member Town Council and a mayor, who are all elected at large every two years. The Amherst County School Board is a five-member body *appointed* by the Amherst County Board of Supervisors. Currently, four of *the five members of the school board are African-American*.

4. Amherst County is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act. 42 U.S.C. §1973c. Under Section 5, the County is required to obtain preclearance from either this Court or from the Attorney General for any change in voting standards, practices and procedures since the Act's November 1, 1964 coverage date for Virginia.

5. Amherst County was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the

Attorney General that Virginia maintained a “test or device” as defined by Section 4(b) of the Act on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age then residing in the state voted in the 1964 presidential election. 42 U.S.C. §1973b(b). The “test or device” triggering preclearance coverage under Section 5 was an article of the Virginia Constitution providing for a literacy test as a prerequisite for citizens to become electors. Va. Const. Art. II, Sec. 20 (1902). The literacy test was repealed by the Virginia Constitution of 1972.

6. The Amherst County Board of Supervisors is the governing body that formulates policies for the administration of government in Amherst County. It is comprised of five members elected from single-member districts to serve four-year staggered terms. The County Board of Supervisors appoints a County Administrator to serve as the County's chief administrative officer. The general day to day operations of Amherst County are controlled by the Office of the County Administrator. Since 1999, one member of the Board of Supervisors has been an elected African-American.

7. According to the 2000 census, Amherst County, Virginia has a total population of 31,894. Of this number, 6331 persons (or 19.8%) are African-American and 306 (or 1%) are Hispanic. The voting age population of the County (18 years of age or older), according to the 2000 census, is 24,408. Of this number, 4608 (18.8%) are African-American and 223 (0.9%) are Hispanic.

8. Like other jurisdictions in the Commonwealth of Virginia, the County does not collect or maintain voter registration data by race. Current data show, however, that a significant proportion of the County's voting age population is registered to vote. As of

February 2008, there were 18,170 registered voters in Amherst County, which is 74.4% of the County's voting age population.

9. The number of registered voters in the County has steadily risen over the last few years. In 1998, for example, there were 15,067 registered voters in the County. By 2003, the number of registered voters had grown to 16,955. The number of registered voters in the County has continued to grow. As of February 2008, there were 18,170 registered voters in the County. Thus, from 1998 to 2008, the total number of registered voters in the County has grown by 20.6% (from 15,067 in 1998 to 18,170 in 2008).

10. Voter turnout in elections within Amherst County (*i.e.*, the percentage of those registered voters who cast ballots) varies according to the offices up for election. In the last two Presidential elections (2000 and 2004), for example, 73% and 72.6% of the County's registered voters turned out to vote, respectively. In the General Elections for state and county offices held in November 1999, 2001, 2003, and 2005, 37.4%, 48.9%, 37.3%, and 47.3% of the County's registered voters turned out to vote, respectively.

11. There are presently a total of twelve polling locations in Amherst County (which includes a central absentee voting precinct), located conveniently to voters across the County. All polling places in the County are accessible to voters with physical disabilities.

12. African-American candidates have had a history of electoral success in Amherst County. The following three African-American candidates have been elected to the Board of Supervisors: Stanley Harris (District 1), Roy Wood (elected in 1999 from District 4), and Mr. Leon Parish (elected in 2001 from District 5). Mr Parish was re-elected to the Board of Supervisors in 2005 and currently serves on the Board.

13. Since 1996, Amherst County has submitted twelve (12) voting changes to the United States Department of Justice seeking preclearance under Section 5 of the Voting Rights Act, 42 U.S.C. §1973c. Not a single objection was interposed by the Department of Justice to any of the changes submitted.

14. Within the ten years preceding the filing of this action, Amherst County has not enforced any voting changes prior to Section 5 preclearance. Nor has the Attorney General interposed a Section 5 objection to any change affecting voting in Amherst County within the past ten years. The County has not sought judicial preclearance of any voting changes in this Court.

15. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located on the 1st floor of the Amherst County Courthouse Complex, a location that is convenient for all County residents. The voter registration office is open 8:30 a.m. to 4:30 p.m. weekdays and certain Saturdays prior to each election.

16. Voters in Amherst County may also register by mail, and voter registration applications are available at locations convenient to voters throughout the County. In addition, voter registration applications are available at the Amherst County Public Library, the Amherst County Public Library Madison Heights Branch, the Amherst County Treasurer's Office, and the Amherst County Commissioner of the Revenue's Office.

17. The opportunity to become a registered voter in Amherst County is also available under the National Voter Registration Act (the "NVRA") at the Department of Motor Vehicle ("DMV") offices and at all public assistance agencies in Amherst County.

While in past years most voters became registered at the County's voter registration office, the implementation of the NVRA in Virginia over the last decade has changed the origin of many registration applications. Today, many of the County's new registrants register through applications submitted through the DMV and by mail, and the opportunities for persons to register to vote in Amherst County has been made more convenient and available as a result of implementation of the NVRA.

18. Amherst County has a three-member Electoral Board, appointed pursuant to Virginia state law. The Electoral Board is comprised of one African-American member and two white members. Over at least the last ten years, no person recommended to serve as a poll official has been rejected by the Electoral Board for at least the preceding ten years. The County's General Registrar of Voters from 1986 to 2001 was an African-American female, Ms. Francine Brown. Presently, the Secretary of the Amherst County Electoral Board is Ms. Wanda Spradley, who also is African-American.

19. Amherst County has a long history of appointing African Americans to work at the polls as poll officials. As of 2007, Amherst County employed 39 African-Americans persons as poll officials (out of a total of 112). The percentage of African-American poll workers (33%) is more than the percentage of Amherst County's African-American voting age population (18.8%).

20. There is no evidence that any person in Amherst County has been denied the right to vote on account of race, color, or membership in a language group for at least the preceding ten years.

21. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in Amherst County as a prerequisite to either registering or voting for at least the preceding ten years.

22. No final judgment of any court of the United States has determined that denials or abridgments of the right to vote on account of race or color have occurred in Amherst County, nor has the County entered into any consent decree, settlement or agreement resulting in any abandonment of a voting practice challenged on such grounds. There are no pending actions against Amherst County alleging such denials or abridgments of the right to vote.

23. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color.

24. Amherst County has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the County. Minority voters in Amherst County are not being denied an equal opportunity to elect candidates of their choice to the County Board of Supervisors, or to the Amherst Town Council.

25. Federal examiners have never been appointed or assigned to Amherst County under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

26. Because there has not been any known intimidation or harassment of persons exercising rights protected under the Voting Rights Act in Amherst County within the last ten years, neither the County nor any of its governmental units have had any occasion to eliminate such activity.

27. Pursuant to 42 U.S.C. §1973b, the County has “publicize[d] the intended commencement ...of [this] action in the media serving [the County] and in the appropriate United States post offices.” A Notice of Intent to Seek a Bailout was published by the County in the *Amherst New Era Progress*, the County’s weekly newspaper, on November 29 and December 6, 2007. This Notice was also posted at all post offices in the County, at the County courthouse in Amherst, at the County social services office, and at the office of the General Registrar of Voters. In addition, the County has also publicized the proposed settlement of this bailout action in the media serving Amherst County and in the appropriate United States post offices as set forth in 42 U.S.C. §1973b(a). A Notice that the Department of Justice had agreed to the Bailout also was published by the County in the Lynchburg, Virginia News & Advance on June 6, 2008, and in the *Amherst New Era Progress*, the County’s weekly newspaper, on June 12 and June 19, 2008. This Notice of settlement was also posted at all post offices in the County, at the County courthouse in Amherst, at the County social services office, and at the office of the General Registrar of Voters.

28. The United States has determined that it is appropriate to consent to a declaratory judgment in this action, pursuant to Section 4(a)(9) of the Voting Rights Act. This consent is premised upon an understanding that Congress intended Section 4(a)(9) to permit bailout in those cases where the Attorney General is satisfied that the statutory objectives of encouraging Section 5 compliance, and preventing the use of racially discriminatory voting practices, would not be compromised by such consent.

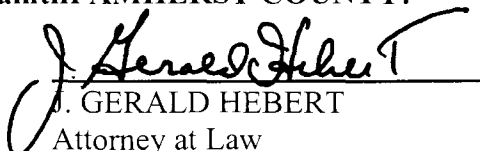
29. The United States’ consent in this action is based upon its own factual investigation and consideration of all of the circumstances in this case, including the



views of minority citizens in the County, the fact that there are no defendant-intervenors, the affirmative steps taken by the County to increase voter participation, and the absence of evidence of discrimination in the electoral process within the County.

Approved as to form and content:

**For the Plaintiff AMHERST COUNTY:**

  
J. GERALD HEBERT

Attorney at Law  
5019 Waple Lane  
Alexandria, Va. 22304  
(703) 628-4673  
DC Bar No. 447676

**For the Defendants MUKASEY and BECKER:**

MICHAEL B. MUKASEY  
Attorney General

GRACE CHUNG BECKER  
Acting Assistant Attorney General

JEFFREY A. TAYLOR  
United States Attorney

  
CHRISTOPHER COATES

ROBERT POPPER  
CHRISTY McCORMICK  
STEVEN WRIGHT  
Attorneys, Voting Section  
Civil Rights Division  
United States Department of Justice  
Room 7254 - NWB  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530  
(202) 514-2386