

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CITY OF FAIRFAX, VIRGINIA, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 JANET RENO, Attorney General of )  
 the United States of America, )  
 ISABELLE PINZLER, Acting )  
 Assistant Attorney General, )  
 Civil Rights Division, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

CA 97-2212-JR

FILED

OCT 21 1997

NANCY MAYER-WHITTINGTON, CLERK  
U.S. DISTRICT COURT

CONSENT JUDGMENT AND DECREE

This action was instituted by the Plaintiff City of Fairfax, a political subdivision and independent city of the Commonwealth of Virginia. The City of Fairfax is subject to the provisions of Section 5 of the Voting Rights Act. 42 U.S.C. 1973c. The Plaintiff seeks a declaratory judgment pursuant to Section 4(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973b. A court of three judges has been convened as provided in 42 U.S.C. 1973b(a)(5) and 28 U.S.C. 2284.

Section 4(a) of the Voting Rights Act provides that a state or political subdivision subject to the special provisions of the Voting Rights Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court of the District of Columbia that it has both 1) complied with the Voting Rights Act during the ten-year period prior to filing the action; and 2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

In order to demonstrate compliance with the Voting Rights Act during the ten-year period prior to commencement of a declaratory judgment action under Section 4(a), a political subdivision of the State of Virginia must satisfy five conditions: 1) no test or device may have been used within the political subdivision during that ten-year period for the purpose or with the effect of denying or abridging the right to vote on account of race or color; 2) no court of the United States may have issued a final judgment during that ten-year period that the right to vote has been denied or abridged on account of race or color anywhere within the territory of the political subdivision; no consent decree, settlement, or agreement may have been entered into during that ten-year period that resulted in the abandonment of a voting practice challenged on such grounds; and no such claims may be pending at the time the declaratory judgment action is commenced; 3) no Federal examiners may have been assigned to the political subdivision during the ten-year period preceding commencement of the declaratory judgment action; 4) the political subdivision and all governmental units within its territory must have complied with Section 5 of the Voting Right Act, 42 U.S.C. 1973c, during that ten-year period, including the requirement that voting changes covered under Section 5 were not enforced without Section 5 preclearance, and that all voting changes denied Section 5 preclearance by the Attorney General or the District Court for the District of Columbia have been repealed; and 5) neither the Attorney General nor the District Court for

the District of Columbia may have denied Section 5 preclearance to a submission by the political subdivision or any governmental unit within its territory during that ten-year period, nor may any Section 5 submissions or declaratory judgment actions be pending. 42 U.S.C. 1973b(a)(1)(A)-(E).

Also, to obtain the declaratory judgment, a political subdivision and all governmental units within its territory must have eliminated voting procedures and methods of election that inhibit or dilute equal access to the electoral process.

1973b(a)(1)(F)(i). In addition, the political subdivision and all governmental units within its territory must have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising voting rights, and to expand the opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. 42 U.S.C. 1973b(a)(1)(F)(ii)-(iii).

The political subdivision is required to present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation. 42 U.S.C. 1973b(a)(2). The political subdivision may not in the preceding ten years have engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision

with respect to discrimination in voting on account of race or color. 42 U.S.C. 1973b(a)(3). Finally, the political subdivision must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. 1973b(a)(4).

The Defendant United States has conferred with the Plaintiff City of Fairfax and, upon investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment. 42 U.S.C. 1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

#### FINDINGS

Pursuant to the parties' stipulations and joint motion, this Court finds as follows:

1. The Plaintiff City of Fairfax, as an independent city in the State of Virginia, is 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). See Stipulation of Facts, Par. 1.

2. There is no separate governmental unit within the territory of the City of Fairfax. See Stipulation of Facts, Par. 2.

3. No discriminatory test or device has been used by the City of Fairfax during the ten years prior to the commencement of this action for the purpose or with the effect of denying or abridging the right to vote on account of race or color. See Stipulation of Facts, Par. 19.

4. No court of the United States has issued a final judgment during the ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in the City of Fairfax, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See Stipulation of Facts, Par. 20-21.

5. No Federal examiners have been assigned to the City of Fairfax. See Stipulation of Facts, Par. 24.

6. The City of Fairfax has complied with Section 5 of the Voting Rights Act during the ten year period prior to commencement of this action, during which time the City of Fairfax did not enforce any voting changes without first obtaining Section 5 preclearance. See Stipulation of Facts, Par. 14.

7. All voting changes submitted by the City of Fairfax under Section 5 have been precleared by the Attorney General. The City of Fairfax never has sought Section 5 judicial preclearance from this Court. No Section 5 submissions by the City of Fairfax presently are pending before the Attorney General. See Stipulation of Facts, Par. 14.

8. The City of Fairfax is not employing voting procedures or methods of election which inhibit or dilute equal access to

the electoral process by its minority citizens. See Stipulation of Facts, Par. 23.

9. There is no indication that any persons in the City of Fairfax have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See Stipulation of Facts, Par. 24.

10. The City of Fairfax has engaged in constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. See Stipulation of Facts, Par. 15, 17-18.

11. Because the City of Fairfax does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation but has provided evidence of voter participation to the extent possible. See Stipulation of Facts, Par. 5.

12. The City of Fairfax has not within the ten years prior to commencement of this action engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See Stipulation of Facts, Par. 19, 22.

13. The City of Fairfax has publicized the intended commencement and proposed settlement of this action in the media and in appropriate United States post offices as required under

42 U.S.C. 1973b(a)(4). See Stipulation of Facts, Par. 26. No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. 1973b(a)(4).

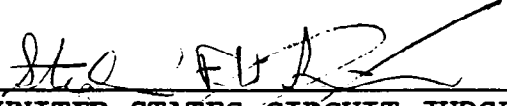
Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

A. The Plaintiff City of Fairfax, Virginia is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. 1973b(a)(1);

B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and the City of Fairfax, Virginia, including the Fairfax City School Board, henceforth shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. 1973b(b), provided that this Court shall retain jurisdiction over this matter for a period of ten years. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. 1973b(a)(5).

C. The parties shall bear their own costs.

Entered this 31<sup>st</sup> day of October, 1997.

  
UNITED STATES CIRCUIT JUDGE

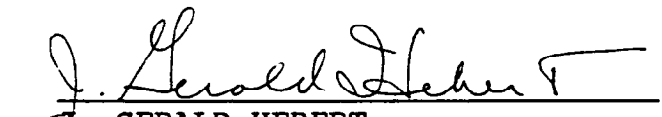
  
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UNITED STATES DISTRICT JUDGE

Approved as to form and content:

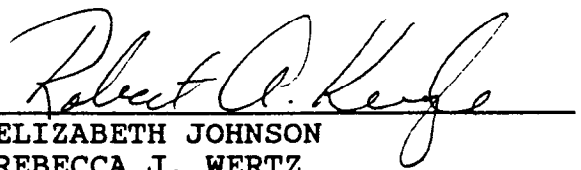
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