

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.)
)
 _____)

STIPULATION OF FACTS

This action was instituted by the City of Fairfax, a political subdivision and independent city within the Commonwealth of Virginia (hereafter "the City"). The City 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 requested as provided in 42 U.S.C. 1973b(a)(5) and 28 U.S.C. 2284.

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.

1. The City of Fairfax, Virginia is a political subdivision of the Commonwealth of Virginia. See Va. Code Ann. §1-13.2. Fairfax is an independent city, chartered by the Virginia General Assembly. See Va. Constitution Art. VII, Section 1 and Va. Code

Ann. §15.1-833. In Virginia, independent cities are separate from any county for governmental, geographical and political purposes. The Plaintiff City of Fairfax, as an independent city of 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).

2. There are no separate governmental units in the territory of the City of Fairfax within the meaning of 42 U.S.C. 1973b(a)(1). The City of Fairfax School Board was created pursuant to the City of Fairfax Charter, has the same electorate and method of election as the Fairfax City Council and is not a separate governmental unit within the meaning of 42 U.S.C. 1973b(a)(1).

3. The City of Fairfax 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 City 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 coverage date of the Act in Virginia (i.e., November 1, 1964).

4. According to the 1990 Census, the City of Fairfax has a population of 19,622 persons. Racial and ethnic minorities comprise the following shares of the total population and voting age population:

	<u>Total</u>	<u>White %</u>	<u>Black %</u>	<u>Asian %</u>	<u>Hisp. %</u>	<u>Other %</u>
Total Pop.	19,622	82.1	4.8	7.0	5.9	0.2
Vot. Age Pop.	15,863	83.8	4.3	6.4	5.2	0.2

5. Like other jurisdictions in the Commonwealth of Virginia, the City of Fairfax does not collect or maintain voter registration data by race. As of November, 1996, a total of 11,813 persons were registered to vote in the city, which comprised 74.5 percent of the City's voting age population. In the November 1996 general election, 8,878 persons (75.2 percent of those registered) turned out to vote. Among the City's six voting precincts, turnout ranged from 71.5 percent in Precinct 1 to 77.4 percent in Precinct 2. Turnout for City elections, which are held in May, is on average approximately 30 percent of those registered to vote.

6. The minority population within the City of Fairfax is dispersed through the City. This dispersion is reflected in the racial composition of the city's six voting precincts which, according to the Northern Virginia Planning District Commission Division of Demographics and Information Services, contained the following populations as of 1993:

<u>Precinct</u>	<u>Total Pop.</u>	<u>White %</u>	<u>Black %</u>	<u>Asian %</u>	<u>Hisp. %</u>	<u>Other %</u>
1	4,368	79.2	7.5	6.0	5.2	2.1
2	2,235	83.1	3.5	7.7	4.7	1.0
3	2,820	81.2	4.3	6.5	5.5	2.4
4	3,626	83.5	3.2	7.3	4.8	1.2
5	3,132	78.5	4.1	9.4	6.0	2.0
6	3,350	74.7	5.8	6.7	9.1	3.7

7. The town of Fairfax was made a City by order of the Circuit Court of Fairfax County on June 30, 1961. The City of Fairfax received its charter by act of the General Assembly on March 31, 1962.

8. The City's 1962 charter called for the first election of city councilmembers in June 1962 and provided that the city's governing body was to be comprised of a mayor and six members of the council to be "elected by the qualified voters of the city at large." Charter, §3.1. The basic electoral system for the City of Fairfax established in the original 1962 charter has not been changed since that time.

9. Terms of office for the mayor and councilmembers are two years in length and run concurrently. The mayoral position is elected separately from the council. A plurality win system has always been used, with the six candidates receiving the most votes elected to the council. City elections are nonpartisan. There has never been a full slate requirement nor any other anti-single shot voting provision.

10. Prior to 1994, the Fairfax city school board was appointed. In 1994, the Fairfax City Council altered the method of school board selection to be elective. Terms of office for the school board are two years in length and run concurrently. There are five at-large school board positions.

11. The City treasurer and the City commissioner of revenue are also elective offices with four-year terms.

12. The only racial minority ever to seek office in the City was Henry Minor, an African American, who was elected to the city council in 1968. Mr. Minor ranked fifth among a total of 18 candidates (receiving 1,520 votes).

13. The City of Fairfax 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 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 becoming an elector. Va. Const. Art. II, Sec. 20 (1902). The literacy test was repealed by the Virginia Constitution of 1971.

14. During the past ten years the City has made timely Section 5 preclearance submissions to the Attorney General for all changes affecting voting. The Attorney General has never interposed a Section 5 objection to any of the City's submitted changes. The City has sought administrative preclearance for all of its voting changes. The City has no pending Section 5 submissions before the Attorney General.

15. Current procedures permit voter registration in person at the Registrar's Office at City Hall any weekday between 8:30 a.m. and 5:00 p.m. Voters can register each Monday at the United

States Post Office between 8:30 a.m. and 5:00 p.m. Voters can obtain an application to register by mail at one of five locations: the Post Office on Jermantown Road, the Turnpike Post Office on Pickett Road, the main lobby of Fairfax City Hall, Fairfax High School and the John C. Wood Center on Old Lee Highway. The Registrar's office also conducts registration at the Community Market Saturday mornings from August to October, at two Giant Food Stores on Sunday in September, and at a Safeway Food Store on one Saturday in September and one Saturday in October. These registration sites are dispersed throughout the City.

16. Polls open in the City at 6:00 a.m. and close at 7:00 p.m., as is the case throughout the Commonwealth.

17. The City's Electoral Board appoints persons to work as poll officials (called officers of election). These appointments are made in February of each year and the appointment is for a one-year term. The Republican Party and Democratic Party chairs make recommendations of persons to be appointed. The City Registrar also recruits poll officials. No member of a minority group has been denied an appointment to serve as a poll official.

18. According to records maintained by the City's Voting Registrar, members of racial minority groups have been appointed as poll officials in every election since 1989. During this time period, there have been 12 elections held within the City.

19. No person in the City of Fairfax has been denied the right to vote on account of race or color during the previous ten

years. No discriminatory test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race or color in the City of Fairfax during the previous ten years.

20. The City of Fairfax has never been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race or color. No court of the United States has issued a final judgment to this effect.

21. No voting practices or procedures have been abandoned by the City 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.

22. There is no indication that the City has 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.

23. The City does not employ any voting procedures or method of election that have the effect of inhibiting or diluting equal access to the electoral process.

24. No Federal examiners have been assigned to the City of Fairfax pursuant to Section 6 of the Voting Rights Act, 42 U.S.C. 1973d.

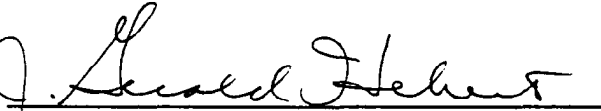
25. There are no known incidents in the past ten years in which persons exercising their right to vote in the City have been intimidated or harassed.

26. The City of Fairfax publicized the intended commencement of this action prior to its commencement by notifying interested persons, including a number of civil rights groups, by letter inviting them meetings to discuss the action. The City has also publicized the intended commencement and proposed settlement of the action in the media and in appropriate United States post offices in the City in accordance with 42 U.S.C. 1973b(a)(4).

Approved as to form and content:

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