

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FREDERICK COUNTY, VIRGINIA,)
)
 Plaintiff,)
)
 v.) C.A. No. 1:99CV00941
)
 JANET RENO, Attorney General) (ARR, CK-K, EGS)
 of the United States of America) (three-judge court)
 BILL LANN LEE, Acting Assistant)
 Attorney General, Civil Rights)
 Division,)
)
 Defendants.)
)

STIPULATION OF FACTS

This action was initiated by Frederick 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 Frederick County ("the County") is a political subdivision of the Commonwealth of Virginia. See Va. Code Ann. §1-13.2. Frederick County 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). Frederick County, Virginia, is located in the Shenandoah Valley, approximately 80 miles from Washington, D.C.

2. In addition to the County itself, there are four governmental units in Frederick County within the meaning of 42 U.S.C. §1973b(a) (1): the Frederick County School Board, the Towns of Middletown and Stephens City, and the Frederick County Shawneeland Sanitary District.

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

4. According to the 1990 Census, the County has a total population of 45,723. Of this number, 832 persons (or 1.8%) are black and 291 (or 0.6%) are Hispanic. The voting age population, according to the 1990 Census, is 33,256. Of this number, 571 (1.7%) are black and 197 (0.5%) are Hispanic.

5. The 1990 population of Middletown was 768, of which 36 (4.7%) were black.

6. The 1990 population of Stephens City was 884, of which 52 (5.9%) were black.

7. Although precise population data are not available for the Shawneeland Sanitary District, the County has estimated the

population to be approximately 5,160, and the minority percentage to be approximately the same as the County as a whole.

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 1998, there were 28,757 registered voters in Frederick County. This number constitutes 85.8% of the county's 1990 voting age population. The number of registered voters in the County has increased over the preceding decades. In 1975, there were 9,892 registered voters in the County. By 1985, the number of registered voters had grown to 14,193. By 1990, the number had risen to 17,313.

9. The minority population within Frederick County is dispersed throughout the County. This dispersion is reflected in the racial composition of the County's five magisterial districts which contained the following populations as of 1990: Backcreek had a total population of 9,073 of which 1.3% were black, Opequon had a total population of 9,072 of which 4.6% were black, Gainesboro had a total population of 9,450 of which 1.0% were black, Shawnee had a total population of 8,725 of which 3.2% were black, and Stonewall had a total population of 9,406 of which 2.9% were black.

10. The County's governing body is a six-member elected board of Supervisors. Five of the county supervisors are elected from single-member districts (known as magisterial districts) and

one (the chair) is elected at-large. The County Supervisors serve part-time. Staggered terms are used and a plurality win system is in effect.

11. The magisterial districts contain a total of 12 polling locations, located conveniently to voters across the County. All polling places are located in public buildings (e.g., public schools, fire halls, etc.) which are completely accessible to physically disabled persons.

12. The County School Board has been elected since 1995, and is elected from the same five districts as those used for the County Board of Supervisors. In addition, a sixth school board member is elected at-large.

13. Frederick County contains two incorporated towns, Stephens City and Middletown. Both towns have a mayor council form of government and elect their town councils at-large. A plurality win system is in effect in both towns. Terms of office for council members are four years in length and are staggered such that three council members are elected every two years.

14. No minority candidates have ever sought elective office in Middletown town elections. In Stephens City, black candidates ran in 1983 and 1994 for the town council. In 1983 Mr. Willie Corum was defeated. In 1994, Mr. Virgil Watson was elected to the Town council and served one term. Mr. Watson did not seek reelection in 1998.

15. Frederick County contains one special district, the Frederick County Shawneeland Sanitary District, which was

established by state court order dated July 28, 1987. The District is governed by the county board of supervisors with input from the Shawneeland Advisory Committee. The committee is composed of nine District property owners who are elected by District property owners and whose names are approved by the Frederick County Board of Supervisors. These elections are not conducted by the official county election machinery, i.e., the Frederick County Board of Elections. Advisory Committee members serve without compensation for a three year term. Interim appointments are made by the county board of supervisors to fill vacancies left by unexpired terms. State law provides for referendum election procedures within the sanitary district upon petition of at least fifty (50) qualified district voters. No such petitions have been filed, and no referenda have been held since the District's creation in 1987.

16. Frederick 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 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.

17. Within the ten-year period preceding the filing of this action, Frederick County and the governmental units within the County have made submissions of 202 changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. §1973c.

18. The Attorney General takes the position that the creation of the Frederick County Shawneeland Sanitary District did occasion a voting change and was implemented prior to its being precleared. The County takes the position that no voting changes occurred and that Section 5 preclearance was not required. Nevertheless, the creation of the district was submitted to the Attorney General for Section 5 review on June 21, 1999, and was precleared on July 30, 1999.

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, notwithstanding the enforcement of the Shawneeland Sanitary District prior to Section 5 preclearance. 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.

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 fact that only one voting change was enforced without preclearance in the preceding ten years, the fact that that voting change was submitted and precleared once brought to Plaintiffs' attention, and the absence of any indication that the Section 5 non-compliance in this case was intended to evade Section 5 review. The Attorney General also has considered 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 nature of the change that was implemented without preclearance. In these circumstances, where the political subdivision seeking bailout otherwise meets the statutory requirements, the United States believes that bailout should not be denied.

19. No Section 5 objection has ever been interposed to any change affecting voting in Frederick County. The County has no pending Section 5 submissions before the Attorney General.

20. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located in Winchester, the County seat and a central location within the County. The voter registration office is open from 9 a.m. to 5 p.m. Monday through Friday. Since 1997, the County voter registration office has been staffed with a full-time registrar and two part-time assistants (one works three days a week and the other works two days per week).

21. Voters in Frederick County may also register by mail,

and other voter registration applications are available at towns throughout the County. Each town clerk has received training from the County Registrar concerning voter registration procedures. Voter registration applications are available at post offices throughout the County.

22. Frederick County and the City of Winchester have conducted joint voter registration drives. These registration drives have been advertised in local publications which are readily available to all residents. The County Registrar and the City of Winchester's Registrar have run joint notices in local papers regarding the casting of absentee ballots, election day hours, voter registration hours or drives, and other election and/or voting related information.

23. The opportunity to become a registered voter in Frederick County is also available under the National Voter Registration Act (the "NVRA") at DMV offices and public assistance agencies in Frederick County. While in past years most voters became registered at the County Board of Registrars or at one of the voter registration locations throughout the County, the implementation of the NVRA in Virginia over the last few years has changed the origin of the great majority of registration applications. Today, most of the County's new voters register through the DMV and by mail.

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

25. Frederick County's three-member Electoral Board

nominates a roster of persons each February to work as poll workers. The appointment of poll workers is for a one-year term. In 1998, 96 persons served as poll officials. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. In the preceding ten years, no member of a minority group has been denied an appointment to serve as a poll official.

26. There is no indication that any eligible Frederick county resident who has expressed an interest in becoming an election official has been denied the opportunity to do so within the past ten years. In addition, in recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies throughout Frederick County) have included a special section soliciting persons to serve as poll officials. All voters expressing an interest in serving as a poll official on these applications have been referred to the Electoral Board for consideration and appointment.

27. According to records maintained by the County's Voter Registrar, minority voters have served as poll workers in Frederick County. A minority voter has also served as an Assistant Registrar of Voters.

28. No person in the county of Frederick has denied the right to vote on account of race or color during the past ten years.

29. No "test or device" as defined in the Voting Rights Act (42 U.S.C.1973b(c)) has been used in the County of Frederick for

the preceding ten years.

30. The County of Frederick 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, color, or membership in a language minority group. No court of the United States has issued a final judgment to this effect.

31. 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.

32. There is no indication that the County 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.

33. Frederick County does not employ any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the County.

34. No Federal Examiners have ever been appointed or assigned to the County of Frederick pursuant to Section 3 or Section 6 of the Voting Rights Act, 42 U.S.C.1973a.

35. There are no known incidents in the county of Frederick where persons exercising their right to vote at the polls have been intimidated or harassed.

36. Frederick County has publicized the intended commencement of this action prior to its commencement in local newspapers of general circulation and in appropriate United

States post offices throughout the County in accordance with 42 U.S.C. §1973b(a)(4). These notices have been posted in all post offices within the County, at all local government offices in the County, and in two local newspapers whose circulation reaches persons throughout the county.

Approved as to form and content:

For the Plaintiff Frederick County, Virginia .



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