

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CITY OF HARRISONBURG, VIRGINIA,)
a political subdivision of the)
Commonwealth of Virginia,)
)
)

Plaintiff,)

v.)

JOHN D. ASHCROFT, Attorney General)
of the United States of America,)
RALPH F. BOYD, JR., Assistant)
Attorney General, Civil Rights)
Division, United States Department)
of Justice, Washington, D.C.,)
)

Defendants.)

Case No. 1:02CV00289

Judge: John D. Bates

3-Judge Court

PCY-
FILED

APR 17 2002

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

CONSENT JUDGMENT AND DECREE

This action was initiated by the city of Harrisonburg, a political subdivision of the Commonwealth of Virginia (hereafter "the City"). The City is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. The City seeks a declaratory judgment under Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b. A three-judge court 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 Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States

District Court for 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), the City must satisfy five conditions: 1) the City has not used any test or device 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 has 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 within the territory of the City, and 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 have been assigned to the City pursuant to the Voting Rights Act during the ten-year period preceding commencement of the declaratory judgment action; 4) the City and all governmental units within its territory must have complied with Section 5 of the Voting Rights Act, 42 U.S.C. §1973c, during that ten-year

period, including the requirement that voting changes covered under Section 5 not be 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 have denied Section 5 preclearance to a submission by the City 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).

In addition, to obtain the declaratory judgment, the City 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.

42 U.S.C. §1973b(a)(1)(F)(i). In addition, the City must have engaged in constructive efforts to eliminate intimidation or 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 City is required to present evidence of minority participation in the electoral process, including 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). In the ten years preceding bailout, the City must not 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 City 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 Plaintiff city of Harrisonburg and, after investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment. 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 city of Harrisonburg 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). See: Stipulation of Facts, ¶ 1.
2. There is an additional governmental unit within the City

of Harrisonburg, the Harrisonburg City School Board. See:
Stipulation of Facts, ¶ 2.

3. The city of Harrisonburg 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. See:
Stipulation of Facts, ¶ 3.

4. The city of Harrisonburg 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, 42 U.S.C. § 1973b(b), 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. See: Stipulation of Facts, ¶ 4.

5. No discriminatory test or device has been used by the City 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, ¶ 23.

6. No person in the City has been denied the right to vote on account of race or color during the past ten years. See: Stipulation of Facts, ¶ 22.

7. No court of the United States has issued a final

judgment during the last 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, 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, ¶ 24.

8. No Federal Examiners have been assigned to the city of Harrisonburg within the ten-year period preceding this action. See: Stipulation of Facts, ¶ 27.

9. The City and its school board have not enforced any voting changes prior to receiving Section 5 preclearance during the ten-year period preceding this action. See: Stipulation of Facts, ¶ 20.

10. All voting changes submitted by the city of Harrisonburg under Section 5 have been precleared by the Attorney General. No Section 5 submissions by the City presently are pending before the Attorney General. The City has never sought Section 5 judicial preclearance from this court. See: Stipulation of Facts, ¶ 21.

11. 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 during the ten-year period preceding this action. See: Stipulation of Facts, ¶ 25.

12. The City 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, ¶ 26.

13. There is no indication that in the past ten years any persons in the City have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See: Stipulation of Facts, ¶ 28.

14. Because there is no evidence that any persons exercising rights protected under the Voting Rights Act have been subjected to any intimidation or harassment in the City in the last ten years, the City and the school board have not had to engage in any constructive efforts to eliminate intimidation or harassment of voters. See: Stipulation of Facts, ¶ 28.

15. The City has engaged in other constructive efforts, such as expanded opportunity for convenient registration and voting for every person of voting age, and the appointment of minority persons as poll workers for election day. See: Stipulation of Facts, ¶¶ 7, 13, 15-19.

16. Since the City does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the City has provided

evidence of voter participation to the extent possible. See: Stipulation of Facts, ¶¶ 6-9.

17. The City has not engaged, within the ten years prior to the commencement of this action, in violations 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, ¶ 23.

18. The city of Harrisonburg 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). No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4). See: Stipulation of Facts, ¶ 29.

19. As a basis for resolving this action, the parties have agreed that the City will provide the Department of Justice, upon request, information in the City's possession about its efforts to expand political participation by its growing Hispanic community. The City will agree to keep records over the next three years of efforts taken by it to expand registration and voting opportunities for its Hispanic residents. Much as it currently does in the African-American community, the city's registrar's office shall make its best efforts to hold voter registration drives at churches and festivals and other gatherings where members of the Hispanic community are likely to

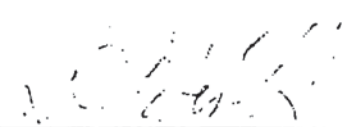
be in attendance. In addition, the City also agrees to record any complaints received by the City about voting at the Simms Building, stemming from the City's efforts to make the precinct handicapped-accessible. The City recognizes its continuing duty to maintain records showing the most recent registration figures, by precinct, and to make this information available to the Department of Justice upon request.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

- A. The Plaintiff, city of Harrisonburg, 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 Harrisonburg, including the Harrisonburg City School Board, 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 17th day of April, 2002.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE

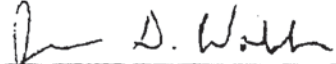

UNITED STATES DISTRICT JUDGE

Approved as to form and content:

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