

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CITY OF MANASSAS PARK, VIRGINIA,)
a political subdivision of the)
Commonwealth of Virginia,)
City Hall, One Park Center Court,)
Manassas Park, Virginia 20111)

Plaintiff,)

v.)

Civil Action No. 1:11-cv-749
Three-Judge Court (CKK-JRB-HHK)

ERIC HOLDER,)
Attorney General of the)
United States of America;)
THOMAS E. PEREZ,)
Assistant Attorney General,)
Civil Rights Division, United States)
Department of Justice, Washington, DC,)

Defendants.)

CONSENT JUDGMENT AND DECREE

1. This action was initiated on April 19, 2011 by Plaintiff City of Manassas Park, Virginia ("City of Manassas Park" or "the City"), against the Defendant Eric H. Holder, Jr., Attorney General of the United States, and the Defendant Thomas E. Perez, Assistant Attorney General, Civil Rights Division (collectively, "the Attorney General").

2. The City of Manassas Park is a governmental entity organized under the Constitution and laws of the Commonwealth of Virginia. Plaintiff City of Manassas Park is a political subdivision of the State within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1).

3. The Commonwealth of Virginia became covered as a whole by the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c, based on

a coverage determination under Section 4(b) made by the Attorney General and the Director of the Census, and published in the Federal Register. 30 Fed. Reg. 9897 (Aug. 7, 1965). By virtue of this coverage determination, the Commonwealth of Virginia and its political subdivisions, including the City of Manassas Park, must receive preclearance under Section 5 of the Act for all changes enacted or implemented after November 1, 1964 that affect voting.

4. Through this action, the City seeks a declaratory judgment pursuant to the “bailout” provisions of Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1), declaring it exempt from coverage under Section 4(b) of the Act, 42 U.S.C. 1973b(b). Bailout also exempts the jurisdiction from being subject to the preclearance provisions of Section 5 of the Act, 42 U.S.C. § 1973c.

5. This three-judge Court has been convened as provided in 42 U.S.C. § 1973b(a)(5) and 28 U.S.C. § 2284 and has jurisdiction over this matter.

6. 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 or “bailed out” from those provisions, through an action for a declaratory judgment before this Court, if it can demonstrate fulfillment of the specific statutory conditions in Section 4(a), for both the ten years preceding the filing of the action, and throughout the pendency of the action. As set forth in Section 4(a)(1), the conditions the City must satisfy are as follows:

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the

guarantees of subsection (f)(2) of this section [42 U.S.C. § 1973b(a)(1)(A)];

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote [42 U.S.C. § 1973b(a)(1)(B)];

(C) no Federal examiners or observers under subchapters I-A to I-C of this chapter have been assigned to such State or political subdivision [42 U.S.C. § 1973b(a)(1)(C)];

(D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment [42 U.S.C. § 1973b(a)(1)(D)];

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending [42 U.S.C. § 1973b(a)(1)(E)]; and

(F) such State or political subdivision and all governmental units within

its territory - (i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process; (ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I-A to I-C of this chapter; and (iii) have 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 election officials throughout the jurisdiction and at all stages of the election and registration process [42 U.S.C. § 1973b(a)(1)(F)(i-iii).]

7. Section 4(a) also provides that the following additional requirements must be satisfied to obtain a bailout:

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall 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)(3).]

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, 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 or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated. [42 U.S.C. § 1973b(a)(3).]

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices . . . [42 U.S.C. § 1973b(a)(4).]

8. Finally, Section 4(a)(9) provides that the Attorney General can consent to entry of a declaratory judgment granting bailout “if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of [Section 4(a)(1)].”

9. The Attorney General of the United States has conducted a comprehensive and independent investigation to determine the City’s entitlement to bailout. In doing so, he has, among other things, interviewed members of the local minority community, and reviewed a significant number of documents related the City, including available background information and demographic data, minutes of the meetings of the Manassas Park City Council, records relating to voter registration and turnout in the City, and records of the City’s preclearance submissions.

10. The Attorney General and the City of Manassas Park agree that the City has fulfilled the conditions required by Section 4(a) and is entitled to the requested declaratory judgment allowing it to bail out of Section 5 coverage. Accordingly, the City and the Attorney General have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED FACTUAL FINDINGS

11. The City of Manassas Park is Northern Virginia’s newest city, and was created in 1975. The City is about thirty miles south of Washington D.C. It covers approximately 2.5 square miles.

12. The City of Manassas Park is the only governmental subdivision that conducts elections within the City of Manassas Park. The City of Manassas Park School Board is appointed by the City Council.

13. According to the 2010 Census, the City of Manassas Park has a total population of 14,273. Of this number, 6,070 (42.5%) are non-Hispanic white, 4,645 (32.5%) are Hispanic, 1,923 (13.5%) are non-Hispanic black, and 1,408 are non-Hispanic Asian (9.9%). The City has a 2010 voting-age population of 10,214, of whom 4,685 (45.9%) are non-Hispanic white, 3,003 (29.4%) are Hispanic, 1,384 (13.3%) are non-Hispanic black, and 1,028 are non-Hispanic Asian (10.1%).

14. The City of Manassas Park is governed by a mayor and six member City Council that formulates policies for the administration of government in the City. Each member of the governing body is elected at-large in partisan elections to four-year staggered terms in November of even numbered years with the Mayor and three council members running in one election, and the other three council members running two years later. Since 2008, the City's governing body has had two council members who are members of minority groups, Suhas Naddoni, who is Asian-American and was elected in a November 2008 special election, and Preston Banks, who is black and was elected in the November 2010 election.

15. Elections in the City of Manassas Park are conducted by a three-member Electoral Board and the City's General Registrar. Pursuant to State law, the Electoral Board is appointed by the State circuit court to administer the elections laws and other regulations established by the State Board of Elections. Two electoral board members must be of the same political party that received the highest number of votes for the Governor in the last election; the third member must be of the political party that received the next-to-highest number of votes in the last gubernatorial election. Each Electoral Board member serves a three-year term. The Electoral Board appoints the General Registrar. A minority group member has served on the Electoral Board since at least

2006. Minority citizens in the City of Manassas Park also have played an important role in the voter registration office. From 1998 to 2005, a minority group member was employed in the City's voter registration office as a deputy registrar or assistant registrar, and another minority group member served as a temporary assistant registrar in 2005.

16. In the last gubernatorial election held in the City of Manassas Park (November 2009), there were 18 poll workers, of whom seven, or 39%, were minority group members. In the last presidential election held in the City of Manassas Park (November 2008), there were 47 poll workers, of whom at least 20, or 42.5%, were minority group members.

17. Since the City does not record the race of its registered voters, like other jurisdictions throughout the Commonwealth, it is unable to present evidence directly measuring minority voter participation, but the City has provided evidence of voter participation for elections since 2000. Current data show, however, that a significant proportion of the City's voting age population is registered to vote. As of April 2011, there were 6,442 registered voters in the City of Manassas Park. This constituted 63.1% of the City's 2010 voting-age population of 10,214 persons. The number of registered voters in the City of Manassas Park has risen over the decade. In April 2000, for example, there were 4,076 registered voters in the City. By 2005, the number of registered voters had grown to 5,299. From 2000 to 2011, the total number of registered voters in the City grew by 58%, from 4,076 in 2000 to 6,442 as of today.

18. Voter turnout in elections within the City of Manassas Park (*i.e.*, the percentage of those registered voters who cast ballots) varies according to the offices up for election. In the last three Presidential elections in 2000, 2004, and 2008, for example, 58%, 62%, and 67% of the City's registered voters turned out to vote, respectively. In the General Elections for Governor

held in November 2001, 2005, and 2009, 30.7%, 27%, and 28% of the City's registered voters turned out to vote, respectively. Voter turnout for the Manassas Park municipal elections in the last three election cycles that were held in May 2002, 2004, and 2006, (before the City's municipal elections were moved to November) were 7%, 11%, and 11% respectively.

19. Voter registration opportunities in the City are available to all citizens. The voter registration office for the City is located at City Hall at One Park Place Center in Manassas Park. The voter registration office is open Monday through Friday, from 8:30 a.m. until 4:30 p.m. Voters in the City of Manassas Park may also register by mail, and voter registration applications are available at the Division of Motor Vehicles, Libraries, Post Offices, and other Government agency offices in the City, including the City's Departments of Health and Mental Health and Social Services. Applications to register to vote are also available online at the Virginia State Board of Elections website.

20. There are presently two polling locations (and an additional central absentee voting location) situated conveniently for voters across the City. All of the City's polling places are accessible to the disabled and include direct-recording electronic (DRE) voting machines that have access to Braille/audio, and DRE voting machines that allow voters in wheelchairs to have the screen brought forward for easier voting. In addition, the City of Manassas Park has pocket talkers available for the hard of hearing and screen magnifiers for the visually impaired.

21. Since the City was formed in 1975, the City of Manassas Park has made seven timely submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. The Attorney General has not interposed an objection to any of these submissions. The Attorney General reviewed the records of the City of Manassas Park in

the course of considering the City's bailout request, and no voting changes were discovered in the City's records that had not been submitted for preclearance. The Attorney General's investigation indicates that the City has not enforced any changes prior to receiving preclearance during the previous ten years and during the pendency of this action.

22. The City has publicized the intended commencement of this action prior to its being filed, as required by Section 4(a)(4) of the Act. On March 13, 2011, the City published a notice that it intended to file an action in the United States District Court for the District of Columbia to seek an exemption from the Voting Rights Act's Section 5 preclearance requirements, in the Manassas Journal Messenger. The Manassas Journal Messenger is a newspaper of general circulation in the City of Manassas Park. In addition, the City has posted copies of this Notice in the local courthouse, City Hall, and the Voter Registration Office, as well as on the City's website and on the City's news channel. The parties request that this Court wait thirty days after filing of the Joint Motion for Entry of this Consent Judgment and Decree before approving this settlement, while this notice of proposed settlement is advertised.

23. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the City, pursuant to Section 4(a)(9) of the Voting Rights Act. The Attorney General's consent in this action is based upon his own independent factual investigation of the City's fulfillment of all of the bailout criteria, and consideration of all of the circumstances of this case, including the views of minority citizens in the City, and the absence of racial discrimination in the electoral process within the City. This consent is premised on 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.

AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

24. The City of Manassas Park 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 of the Act, 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 adopted or implemented since the City was formed in 1975. There are no other governmental subdivisions within the City's territory for which it is responsible, or which must request bailout at the same time as the City, within the meaning of Section 4(a), 42 U.S.C. § 1973b(a).

25. During the ten years preceding the filing of this action and during the pendency of this action, there has been no test or device as defined in Section 4(c) of the Voting Rights Act used within the City for the purpose or with the effect of denying or abridging the right to vote on account of race or color. During the relevant time period there is also no indication that any person in the City of Manassas Park has been denied the right to vote on account of race or color. 42 U.S.C. § 1973b(a)(1)(A).

26. During the ten years preceding the filing of this action, and during the pendency of this action, no final judgment of any court of the United States has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere within the territory of the City of Manassas Park. Further, no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds.

No action is presently pending alleging such denials or abridgements of the right to vote. 42

U.S.C. § 1973b(a)(1)(B).

27. During the ten years preceding the filing of this action, and during the pendency of this action, no federal examiners or observers have been assigned to the City of Manassas Park.

42 U.S.C. § 1973b(a)(1)(C).

28. Since it became an independent political jurisdiction in 1975, the City of Manassas Park has submitted seven administrative submissions to the Attorney General for review under Section 5, and the Attorney General did not object to any of these submissions, and there is no evidence that the City enforced any changes that had an actual effect on voting prior to receiving preclearance under Section 5. 42 U.S.C. § 1973b(a)(1)(D).

29. During the ten years preceding the filing of this action, and during the pendency of this action, there has been no need for the City to repeal any voting changes to which the Attorney General has objected, or to which this Court has denied a declaratory judgment, since no such objection or denials have occurred. 42 U.S.C. § 1973b(a)(1)(D).

30. During the ten years preceding this action, and during the pendency of this action, the Attorney General has not interposed any objection to voting changes submitted by or on behalf of the City for administrative review under Section 5. No such administrative submissions by or on behalf of the City are presently pending before the Attorney General. The City has never sought judicial preclearance from this Court under Section 5; thus, this Court has never denied the City a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. 42 U.S.C. § 1973b(a)(1)(E).

31. During the ten years preceding the filing of this action, and during the pendency of this action, the City of Manassas Park has not employed voting procedures or methods of election which inhibit or dilute equal access to the electoral process. 42 U.S.C. § 1973b(a)(1)(F)(i).

32. During the ten years preceding the filing of this action, and during the pendency of this action, there is no evidence that anyone participating in the City's elections has been subject to intimidation or harassment in the course of exercising his or her rights protected under the Voting Rights Act. Constructive efforts have been undertaken by the City of Manassas Park to avoid intimidation or harassment in the City of Manassas Park elections, including, for example, by the appointment of minorities to the Electoral Board, in the voter registration office, and as poll officials throughout the City. 42 U.S.C. § 1973b(a)(1)(F)(ii).

33. During the ten years preceding the filing of this action, and during the pendency of this action, the City has engaged in other constructive efforts to expand the opportunity for voting for every person of voting age through the City's support and coordination of numerous election activities within the City of Manassas Park. Voters in the City's elections vote in centrally located facilities, are permitted to vote absentee as prescribed by the laws of Virginia, and also benefit from the City's efforts to recruit a diverse pool of poll officials. 42 U.S.C. § 1973b(a)(1)(F)(iii).

34. The City is unable to present evidence directly measuring minority voter participation rates over time, because the City does not record the race of its registered voters, but a significant percentage of the City's population is registered to vote. In 2008 an Asian-American candidate was elected to the City Council and in 2010, an African American candidate was

elected to the City Council; currently there are two minorities serving on the City Council. 42 U.S.C. § 1973b(a)(2).

35. During the ten years preceding the filing of this action, and during the pendency of this action, the City has not 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).

36. As required by 42 U.S.C. § 1973b(a)(4), the City of Manassas Park has provided public notice of its intent to seek a Section 4(a) declaratory judgment, prior to its being filed. The City posted a notice on the city's website and on the City's TV channel, published notice in the Manassas Journal Messenger on March 13, 2011, and posted notice at the City's social services offices and at the office of the Registrar of Voters. The parties request that this Court wait thirty days after filing of the Joint Motion for Entry of this Consent Judgment and Decree before approving this settlement, while the notice of this proposed settlement is advertised. 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The Plaintiff City of Manassas Park 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).

2. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and the Plaintiff City of Manassas Park is exempted 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 pursuant to Section 4(a)(5), 42 U.S.C. § 1973b(a)(5). 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 Section 4(a)(5), 42 U.S.C. § 1973b(a)(5).

3. Each party shall bear its own costs.

Entered this 3rd day of August, 2011.

/s/ Janice Rogers Brown
UNITED STATES CIRCUIT JUDGE

/s/ Colleen Kollar-Kotelly
UNITED STATES DISTRICT JUDGE

/s/ Henry H. Kennedy
UNITED STATES DISTRICT JUDGE

Agreed and consented to:

/s/ J. Gerald Hebert

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Dated: June 20, 2011

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Dated: June 20, 2011