

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

WARREN COUNTY, VIRGINIA,)
)
 Plaintiff,)
)
 v.) C.A. No. 1:02CV01736
) (HTE, EGS, RMU)
 JOHN ASHCROFT, Attorney General)
 of the United States of America,) (three-judge court)
 RALPH F. BOYD JR., Assistant)
 Attorney General, Civil Rights)
 Division,)
)
 Defendants.)
 _____)

CONSENT JUDGMENT AND DECREE

This action was initiated by Warren County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965 as amended. 42 U.S.C. §1973c. The County 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 County must satisfy five conditions: 1) the County 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 County, 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 County pursuant to the Voting Rights Act during the ten-year period preceding commencement of the declaratory judgment action; 4) the County 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 County 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 County 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 County 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 County 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 County 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 County 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 Warren County and, after investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to annual reporting requirements for a period of three years to which the parties have agreed as a basis for resolving this action. 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. Warren County 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 are two separate governmental units within Warren County, the Town of Front Royal and the Warren County School Board. See: Stipulation of Facts, ¶ 2.

3. Warren 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. See: Stipulation of Facts, ¶ 3.

4. Warren 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, 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 County 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, ¶ 24.

6. No person in Warren County has been denied the right to vote on account of race or color during the past ten years.

See: Stipulation of Facts, ¶ 23.

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 Warren County, 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, ¶ 26.

8. No Federal examiners have been assigned to Warren County within the ten-year period preceding this action. See: Stipulation of Facts, ¶ 28.

9. Warren County and the governmental units within the County have obtained Section 5 preclearance for all voting changes enforced within Warren County during the ten-year period preceding this action. However, preclearance was not obtained in a timely manner, before the changes were enforced, for seven

voting changes effected by the County, including a special election, several boundary changes and annexations involving Warren County, and altering the method of selecting County school board members. See: Stipulation of Facts, ¶¶ 13-15 .

10. All voting changes submitted by the County under Section 5 have been precleared by the Attorney General. No Section 5 submissions by Warren County presently are pending before the Attorney General. Warren County has never sought Section 5 judicial preclearance from this court. See: Stipulation of Facts, ¶ 15.

11. 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. See: Stipulation of Facts, ¶ 26.

12. The County 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, ¶ 27.

13. There is no indication that any persons in the County have been subject to intimidation or harassment in the course of exercising their right to participate in the political process. See: Stipulation of Facts, ¶ 29.

14. Because there is no evidence that any incidents of voter intimidation or harassment of voters have occurred in Warren County in the last ten years, neither the County nor any of its governmental units have had any occasion to engage in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act. See: Stipulation of Facts, ¶ 29.

15. The County 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, ¶¶ 20-22.

16. Since Warren County does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the County has provided evidence of voter participation to the extent possible. See: Stipulation of Facts, ¶¶ 6, 16, 17, 20, and 22.

17. The County 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, ¶ 24.

18. Warren County 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, ¶¶ 30-31.

19. As a basis for resolving this action, the parties have agreed that Warren County will be subject to annual reporting requirements for a period of three years. The County will submit to the United States an annual report documenting all voting changes adopted by the County as well as the two governmental units within the County during each calendar year. The first report will be due December 31, 2003, and subsequent reports will be due each December 31st, thereafter, with the final report due December 31, 2005.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The plaintiff Warren County, 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);

2. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Warren County, including the Town of Front Royal and the

Warren County 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 Warren County be subject to annual reporting requirements as provided herein, and 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).

3. The parties shall bear their own costs.

Entered this 21st day of November, 2002.

Signed: Emmet G. Sullivan
United States District Judge
November 25, 2002

On behalf of

Emmet G. Sullivan
United States District Judge

Harry T. Edwards
Circuit Judge
United States Court of Appeals for the D.C.
Circuit

Ricardo M. Urbina
United States District Judge

members of the three-judge District Court appointed, pursuant to 28 U.S.C. § 2284, to hear and determine this case by

Chief Judge Douglas Ginsburg, United States Court of Appeals for
the D.C. Circuit by Order dated September 10, 2002.

Approved as to form and content:

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