

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CITY OF WILLIAMSBURG, VIRGINIA, )  
a political subdivision of the )  
Commonwealth of Virginia, )  
401 Lafayette Street, )  
Williamsburg, VA 23185, )

Plaintiff, )

v. )

Civil Action No. 1:11-cv-01415  
Three Judge Court (EGS-JRB-RWR)

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 August 4, 2011, by the Plaintiff City of Williamsburg, Virginia (“Williamsburg” or “the City”), against the Defendant Attorney General of the United States and the Defendant Assistant Attorney General, Civil Rights Division (collectively the “Attorney General”).

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

3. The City of Williamsburg is covered 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 for the Commonwealth of Virginia 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 City of Williamsburg, and all of its governmental units, including the Williamsburg/James City County School Board (“School Board”), must receive preclearance under Section 5 of the Act for all changes that affect voting enacted or implemented after November 1, 1964.

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 district 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 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)(2)].

(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)].” 42 U.S.C. § 1973b(a)(9).

9. The Attorney General has conducted a comprehensive and independent investigation to determine the City’s entitlement to bailout. In so doing, he has, among other things, interviewed members of the local minority community and reviewed a significant number of documents related to the City, including available background information and demographic data, minutes of the meetings of the Williamsburg City Council and the Williamsburg/James

City County School Board, 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 Williamsburg 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 from coverage under Section 4(b). 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 Williamsburg is located on the Virginia Peninsula in the Hampton Roads metropolitan area of Virginia, about one hundred and fifty miles southeast of Washington, D.C.

12. In addition to the City of Williamsburg, there is one governmental subdivision located within the City, the Williamsburg/James City County School Board, which is jointly operated by the City of Williamsburg and James City County. The School Board is a seven-member body comprised of five members elected from James City County and two members appointed by the City of Williamsburg City Council. Voters in the City of Williamsburg do not vote for members of the Williamsburg/James City County School Board.

13. According to the 2010 Census, the City of Williamsburg has a total population of 14,068 persons, of whom 9,952 (70.7%) are non-Hispanic white, 2,052 (14.6%) are non-Hispanic black, 941 (6.7%) are Hispanic and 952 (6.8%) are non-Hispanic Asian. According to the 2010 Census, Williamsburg has a voting-age population of 12,664, of whom 9,232 (72.9%) are non-Hispanic white, 1,638 (12.9%) are non-Hispanic black, 768 (6.1%) are Hispanic and 891 (7.0%) are non-Hispanic Asian.

14. The City of Williamsburg is governed by a five-member City Council. The City Council members serve four-year staggered terms and are elected at-large in non-partisan elections. The Council appoints one of its members to be Mayor and another to be Vice-Mayor. Currently, there are no minorities serving on the City Council.

15. Bobby Braxton is the most recently elected African American to serve on the city council, serving from 2006-2010. Mr. Braxton was preceded on the City Council by another African American, who served from 2002-2006. There are currently two minority members serving on the School Board, an Hispanic member, who was elected from the County, and a African American member, who was appointed by the City of Williamsburg.

16. Elections in Williamsburg are conducted by the three-member Electoral Board and are administered by the City's General Registrar, who is appointed by the Electoral Board. Pursuant to State law, the Electoral Board is appointed by the Circuit Court to oversee the election laws and other regulations established by the State Board of Elections. Two Electoral Board members must be of the same political party that cast the highest number of votes for the Governor at the last election; the third member must be of the political party that cast the next-to-highest number of votes in the last gubernatorial election. Each Electoral Board member serves a three-year term. There are currently no African Americans working in the Registrar's Office.

17. Under Virginia law, the Electoral Board for each jurisdiction is solely responsible for appointing poll workers, and local political parties are authorized to nominate poll workers where practicable. Va. Code Ann. § 24.2-115. In practice, however, the local parties of Williamsburg do not nominate poll workers. In Williamsburg, poll workers are nominated instead by the Registrar or by other poll workers. There is numerical evidence that the Registrar over the last ten years has appointed minority poll workers for elections conducted in the City.

From 2008-2010, black poll workers constituted about 10.5% of the total poll workers hired in the City, while the black voting-age population of the City is approximately 12.9%, according to the 2010 census. Williamsburg's primary mechanism for recruiting poll workers is through the Commonwealth's voter registration application form, which includes a checkbox for persons interested in serving as poll officials. Williamsburg experiences very low turnover in its poll worker workforce. However, the Registrar maintains a list of the names of individuals who have expressed an interest in serving as a poll worker.

18. 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 for elections since 2000. Current data show, for example, that a significant proportion of the City's voting-age population is registered to vote. The number of persons registered to vote in the City as of May 2011 is 9,265, which is 73.2% of the City's 2010 voting age population of 12,664. Voter registration has increased since 2000, when the City had 5,953 registered voters. Hence, voter registration totals in the City have increased by 55.6% from 2000 to 2011.

19. Voter turnout in the City over the past decade has varied depending upon the types of elections held. In presidential election years, voter turnout was consistently higher, with voter turnout for the 2004 and 2008 presidential elections at 69.6% and 77.5%, respectively. Turnout for the last three statewide elections for Governor has been fairly consistent, ranging from 40.5% to 46.6%.

20. Voter registration opportunities, as well as opportunities to fully participate in the political process in Williamsburg are readily and equally available to all citizens. City residents may obtain an application to register to vote at a number of offices in Williamsburg, including

the Office of Voter Registrar, the Williamsburg Regional Library, the City Department of Human Services, and the College of William and Mary Office of Residence Life. Voter registration forms are also available in the City at the local Virginia Department of Motor Vehicles office, on the website of the City and the State Board of Elections, all City post offices, and at all voting precincts on Election Day. The City Registrar's office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, as well as the two Saturdays prior to each general election and one Saturday before each primary or special election. Voter registration is also available by mail-in application.

21. The City Registrar has conducted voter registration outreach to offer the opportunity for more City residents to apply to register to vote. For example, the Registrar supports voter registration drives by providing materials and training and by making her staff available to answer questions. Since 2008, the Registrar's staff has provided registration assistance to church, student, and minority groups.

22. The City of Williamsburg and the School Board have made twelve submissions to the Attorney General under Section 5 of the Voting Rights Act in the ten years preceding this action, and the Attorney General has not interposed an objection to any of these submissions. The Attorney General reviewed the records of the City of Williamsburg in the course of considering the City's bailout request, and no voting changes were discovered in either the records of the City Council or the records of the School Board that had not been submitted for preclearance in a timely manner. Hence, the Attorney General's investigation indicates that the City has not enforced any voting changes prior to receiving preclearance during the previous ten years and during the pendency of this action.



23. The City has publicized the intended commencement of this action and a proposed settlement of the action as required by Section 4(a)(4) of the Act prior to its being filed. Notices of the bailout and bailout settlement were posted in City post offices, as well as in the municipal building, the Registrar's office, the courthouse, and public libraries. Notice of the bailout was also published in Virginia Gazette in Williamsburg.

24. 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 surrounding areas, 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

25. The City of Williamsburg and the Williamsburg/James City County School Board are covered jurisdictions 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, these governmental entities are 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 Act's coverage date. There are no other governmental units 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).

26. 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 has been denied the right to vote on account of race or color. 42 U.S.C. § 1973b(a)(1)(A).

27. 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 abridgments of the right to vote on account of race or color have occurred anywhere in the City. 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).

28. 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. 42 U.S.C. § 1973b(a)(1)(C).

29. During the ten years preceding this action, and during the pendency of this action, the City of Williamsburg and Williamsburg/James City County School Board made twelve administrative submissions to the Attorney General for review under Section 5, and the Attorney General did not object to any of these submissions. Moreover, there is no evidence that the City or School Board enforced any changes that had an actual effect on voting in elections prior to receiving preclearance under Section 5. 42 U.S.C. § 1973b(a)(1)(D).

30. 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 or School Board 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).

31. 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 or School Board for administrative review under Section 5. No such administrative submissions by or on behalf of the City or School Board are presently pending before the Attorney General. Neither the City nor School Board has ever sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied the City or School Board a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. 42 U.S.C. § 1973b(a)(1)(E).

32. During the ten years preceding the filing of this action, and during the pendency of this action, neither the City nor School Board has employed methods of election which inhibit or dilute equal access to the electoral process. 42 U.S.C. § 1973b(a)(1)(F)(i).

33. 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 elections in the City has been subject to intimidation or harassment in the course of exercising rights protected under the Voting Rights Act. Constructive steps have been undertaken by the City to avoid intimidation or harassment in elections, such as by the appointment of a diverse group of poll officials in elections in the City. 42 U.S.C. § 1973b(a)(1)(F)(ii).

34. All voter registration and all elections in the City have been conducted solely by the Electoral Board and Registrar throughout the ten years preceding the filing of this action and

through the present time. There is evidence of constructive efforts by the Electoral Board and Registrar to expand the opportunity for convenient registration and voting for every person of voting age. The numerical evidence indicates that the Registrar has appointed minority citizens to serve as poll officials in elections in the jurisdiction. 42 U.S.C. § 1973b(a)(1)(F)(iii).

35. The City has presented available information regarding rates of voter registration and voter participation over time. 42 U.S.C. § 1973b(a)(2).

36. During the ten years preceding the filing of this action, and during the pendency of this action, neither the City nor the School Board 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. 42 U.S.C. § 1973b(a)(3).

37. The City has provided public notice of its intent to seek a declaratory judgment under Section 4(a) of the Act, as well as its intention to reach a settlement of the bailout action with the Attorney General. Notices of the bailout and bailout settlement were also posted in City post offices, as well as in the municipal building, the Registrar's office, the courthouse, and public libraries. Notice of the bailout was also published in the Virginia Gazette in Williamsburg. 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The plaintiff City of Williamsburg 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 Williamsburg and the Williamsburg/James City County School Board are 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 22<sup>nd</sup> day of November, 2011.

/s/ Janice Rogers Brown  
UNITED STATES CIRCUIT JUDGE

/s/ Emmet G. Sullivan  
UNITED STATES DISTRICT JUDGE

/s/ Richard W. Roberts  
UNITED STATES DISTRICT JUDGE

*Agreed and Consented To:*

/s/ J. Gerald Hebert  
J. GERALD HEBERT  
D.C. Bar No. 447676  
191 Somerville Street, #405  
Alexandria, Virginia 22304  
Telephone: (703) 628-4673  
hebert@voterlaw.com

CHRISTINA WORKMAN SHELTON  
City Attorney for City of Williamsburg  
Municipal Building  
401 Lafayette Street  
Williamsburg Virginia, 23185-3617  
Telephone: (757) 220-6253  
Facsimile: (757) 565-0113

*Counsel for Plaintiff*  
*City of Williamsburg, Virginia*

Dated: October 3, 2011

*Agreed and Consented To:*

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

RONALD C. MACHEN, JR.  
United States Attorney  
District of Columbia

/s/ Robert Popper  
T. CHRISTIAN HERREN, JR.  
ROBERT POPPER  
T. RUSSELL NOBILE  
t.russell.nobile@usdoj.gov  
CHRISTY MCCORMICK  
christy.mccormick@usdoj.gov  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
Room 7254 NWB  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Telephone: (800) 253-3931  
Facsimile: (202) 307-3961

*Counsel for Defendants*  
*Eric H. Holder, Jr.,*  
*Attorney General of the United States,*  
*and Thomas E. Perez,*  
*Assistant Attorney General,*  
*Civil Rights Division*

Dated: October 3, 2011