

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FILED

MAY 31 2001

NANCY MAVER WHITTINGTON, CLERK
U.S. DISTRICT COURT

CITY OF WINCHESTER, VIRGINIA,)
)
Plaintiff,)

JOHN D. ASHCROFT, Attorney)
General of the United States)
of America, WILLIAM R. YEOMANS,)
Acting Assistant Attorney General,)
Civil Rights Division,)
)
Defendants.)

Civil Action No.
1:00CV03073
(DHG, RCL, ESH)
(Three-Judge Court)

CONSENT JUDGMENT AND DECREE

This action was initiated by the City of Winchester, a political subdivision of the Commonwealth of Virginia (hereafter "the City"). Defendants John D. Ashcroft, Attorney General of the United States, and William R. Yeomans, Acting Assistant Attorney General, Civil Rights Division, have been substituted for their predecessors, Janet Reno and Bill Lann Lee. 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 ending its coverage under Section 4 of the Voting Rights Act, 42 U.S.C. 1973b. A three-judge court has been requested as provided in 42 U.S.C. 1973b(a)(5) and 28 U.S.C. 2284.

The Defendant United States, upon investigation, has conferred with the Plaintiff City of Winchester, and the parties have agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to the terms and conditions

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specified herein. 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.

I. **BACKGROUND**

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), a political subdivision in Virginia must satisfy five conditions: (1) no test or device may have been used within the political subdivision 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 may have 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 political subdivision; 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 may have been assigned to the political subdivision during the ten-year period preceding commencement of the declaratory judgment action; (4) the political subdivision 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 were not 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 may have denied Section 5 preclearance to a submission by the political subdivision 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. 1973(a)(1)(A-E).

Also, to obtain the declaratory judgment, a political subdivision 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 political subdivision 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 political subdivision is required to present evidence of minority participation, 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). The political subdivision may not in the preceding ten years 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 political subdivision must provide public notice of its intent to seek a Section 4(a) declaratory judgment. 42 U.S.C. 1973b(a)(4).

II. FINDINGS

Pursuant to the parties' Stipulations, this Court finds as follows:

1. The City of Winchester 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, Par. 1.

2. There are no separate governmental units within the City of Winchester. See Stipulation of Facts, Par. 3.

3. No court of the United States has issued a final judgment during the ten years preceding the commencement of this action that the right to vote has been denied or abridged on account of race or color in the City of Winchester. See Stipulation of Facts, Par. 20.

4. No Federal Examiners have been to the City of Winchester. See Stipulation of Facts, Par. 24.

5. The City of Winchester has obtained Section 5 preclearance for all voting changes enforced within Winchester during the ten-year period preceding this action. With respect to a February 20, 1980 agreement with Frederick County to suspend all annexations, until January 1, 2006, the United States and the City disagree as to whether that agreement constituted the enactment or implementation of any voting-related changes that would have required Section 5 preclearance. In any event, at the

request of the Department of Justice, the City submitted the February 20, 1980 agreement for Section 5 preclearance nearly a year ago under the Voting Rights Act, and preclearance was obtained on July 25, 2000. See Stipulation of Facts, Pars. 12, 27.

6. All voting changes submitted by the City under Section 5 have been precleared by the Attorney General. No Section 5 submission by the City of Winchester is pending before the Attorney General. Winchester has never sought Section 5 judicial preclearance from this court. See Stipulation of Facts, Par. 12.

7. No evidence of increased minority participation is available because Virginia does not track voter registration and turnout by race. In recent years the overall level of voter registration in the City has increased but overall voter turnout has declined. There is no indication that the decline in overall voter turnout is due to disproportionately lower levels of minority participation. See Stipulation of Facts, Pars. 5, 6, 9, 14.

8. During the course of the United States' investigation into the City of Winchester's voting and election procedures to determine the City's eligibility to obtain bailout, concerns have been raised about the low level of minority citizens serving as poll workers, the relatively small number of minority citizens serving on boards and committees appointed by the City Council,

and the City's eligibility to obtain a bailout under the Voting Rights Act. The City shares the concerns expressed concerning the low level of minority persons serving as poll officials and on appointed boards and commissions. The City takes the position that it has found it difficult to recruit persons in all racial groups to serve in these positions, and this difficulty has been exacerbated by the relatively small percentage of minority persons living in the City (e.g. the 2000 Census reports that the City is less than 10 percent black and less than 6 percent Hispanic in its voting age population). By entering into this Consent Decree, the City and the United States have agreed that the City is eligible for obtaining the requested declaratory judgment, subject to the conditions set forth herein. See Stipulation of Facts, Pars. 15, 16, 17.

9. The City of Winchester recognizes that in order to be eligible for a declaratory judgment under Section 4 of the Voting Rights Act, it is required to engage in constructive efforts to expand 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 of Winchester shall undertake additional affirmative efforts to facilitate the selection of minority officials in the election and registration process, and in the appointment of persons to serve on boards, committees, and commissions whose members are

appointed by city officials.

10. The City of Winchester has publicized the intended commencement and proposed settlement of this action in local media and in appropriate United States post offices as required under 42 U.S.C. 1973b(a)(4). See Stipulation of Facts, Par. 24. No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. 1973b(a)(4).

Accordingly, it is hereby **ORDERED, ADJUDGED AND DECREED:**

I. The Plaintiff City of Winchester, 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);

II. The parties' Joint Motion for Entry of Consent Judgment and Decree is ^[13-1] GRANTED, and the City of Winchester shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42, U.S.C. 1973b(b), subject to the terms provided herein.

III. The United States Attorney General shall retain the authority to certify the City of Winchester for federal observer coverage as provided under Section 8 of the Voting Rights Act, 42 U.S.C. 1973f, provided that any such certification shall be accompanied by a Notice to this Court and to the City of Winchester describing the reasons therefor.

IV. Notwithstanding any other provisions of this Consent Judgment and Order, any change in the electoral structure of the City government, or other change in the method of electing City

officials, that becomes effective on or before June 30, 2005, whether by local action or by the Virginia General Assembly, shall require preclearance by the United States Attorney General or by this Court, as provided in Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. This Paragraph does not require preclearance for redistricting of the boundaries of the city's present wards or voting precincts.

V. The City shall annually report the total number of persons by name and race who have served as election officials, including but not limited to the following categories:

a. Registrar and assistant registrar(s);

b. Officers of election in each precinct, designating for each precinct the chief officer, assistant officer and any other officer of election; and

c. Members of all committees, boards or commissions that deal with election or voting related matters.

VI. The city shall retain records of all voting changes until June 30, 2005, and shall provide annual reports identifying each such change.

VII. All reports required under this Order are due on the thirtieth day of June of each year commencing in the Year 2002. Reports shall be addressed to the Chief of the Voting Section, Civil Rights Division, United States Department of Justice.

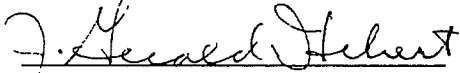
VIII. This Court shall retain jurisdiction over this

action, 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).

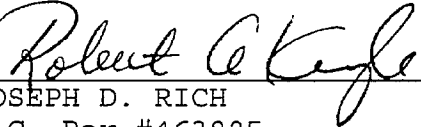
~~IX. The parties shall bear their own costs.~~

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Entered this 30 day of may, 2001.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE