

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAY 21 11 40 AM '01

CITY OF WINCHESTER, VIRGINIA,)
)
 Plaintiff,)
)
 JOHN D. ASHCROFT, Attorney) Civil Action No.
 General of the United States) 1:00CV03073
 of America, WILLIAM R. YEOMANS,)
 Acting Assistant Attorney General,) (DHG, RCL, ESH)
 Civil Rights Division,) (Three-Judge Court)
)
 Defendants.)
)

STIPULATION OF FACTS

This action was instituted by the City of Winchester, Virginia, a political subdivision of the Commonwealth of Virginia (hereafter, "the City"). The City seeks a declaratory judgment pursuant to Section 4(a) of the Voting Rights Acts of 1965, as amended, 42 U.S.C. 1973b.

The parties have jointly moved this three-judge Court for entry of a Consent Judgment and Decree to resolve this action. In support of that motion, the parties have entered into the following stipulation of facts. The facts in this stipulation may be received into evidence in lieu of further proof of testimony.

It is hereby stipulated by and between the respective parties that:

1. Plaintiff City of Winchester is a political subdivision of the Commonwealth of Virginia and is 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). The City is located approximately 70 miles from Washington, D.C., at the northern entrance to the Shenandoah Valley. The City of Winchester covers 9.3 square land miles.

2. The Winchester City School Board (hereafter "School Board") is a nine-member body appointed by the Winchester City Council. Four members of the School Board are selected for at-large positions and five others are selected one from each precinct. School board members serve three-year terms and are limited to two consecutive terms. The Winchester City School Board has had one black member continuously from 1974 to the present.

3. The City of Winchester 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, the City of Winchester is required to obtain preclearance from either this Court or from the Attorney General for any change in voting standards, practices and procedures since the coverage date of the Act in Virginia (i.e., November 1, 1964). There are no separate governmental units within the City.

4. According to the 2000 Census, the City has a total population of 23,585. Of this number, 2,470 persons (10.5 percent) are black non-Hispanic persons of one race and 1,527 (6.5 percent) are Hispanic. The voting age population, according to the 2000 Census is 18,473. Of this number, 1,767 (9.6 percent) are black non-Hispanic persons of one race and 1,081 (5.9 percent) are Hispanic.

5. Like other jurisdictions in Virginia, the City of Winchester does not collect or maintain voter registration data by race. Black citizens have been allowed to register and vote in Winchester since at least 1938. Current data show, however, that a significant proportion of the City's voting age population is registered to vote.

6. The number of registered voters in the City of Winchester has grown over the last few decades. As of April 2001, there are 12,473 registered voters in the City. This number constitutes 67.5 percent of the City's 2000 voting age population. The number of registered voters in the City has steadily increased over the preceding decades. Between 1970 and 1980, the number of voters in the City was between 7,000 and 8,000 voters. In 1985, the number of registered voters grew to 8,711. By 1994, the City's registered voter population had grown to 9,207.

7. The City is governed by a thirteen-member body consisting of twelve elected city council members and a mayor. The City is divided into two wards (the First Ward and the Second Ward), with six members of the City Council elected from each ward. Terms of office for council members are four years in length and are staggered such that six members (three from each ward) are up for election every two years. The mayor is elected at large in a citywide vote. A plurality win system is in effect for all city offices.

8. The Second Ward contains two voting precincts and the First ward contains three voting precincts. There are five polling places in the City of Winchester, one polling place for each precinct (and a Central Absentee precinct located at City Hall). The five polling locations are situated at convenient places for voters throughout the City. The City Council last redistricted the two wards pursuant to an ordinance passed on November 12, 1991. The Department of Justice precleared the City's redistricting plan on March 16, 1992.

9. Voter turnout in elections in the City of Winchester varies according to the offices up for election. In the November 1992 Presidential election, for example, 86.1 percent (7,728 of 8,939) of the City's registered voters cast ballots. In the 1996 Presidential election, over 72 percent of the City's electorate turned out to vote. Most recently, in the 2000 Presidential

election, over 62.6 percent of the City's registered voters went to the polls. In the General Election for Governor held in November 1989, 68.5 percent of the registered voters in the City turned out to vote. Similarly, in the 1993 gubernatorial elections, 64.5 percent of the City's registered voters voted. Voter turnout for Winchester City Council elections (measured as a percentage of those registered to vote who actually cast ballots) has ranged over the last five cycles from a low of 20 percent to a high of 50 percent.

10. Black citizens have been able to seek and obtain election to the Winchester City Council. Since 1974 there have been four black candidates who have sought election to the city council in seven different city council races. Two of these candidates have successfully attained a seat on the Winchester City Council (in 1976 and 1994). No black candidates sought election to the city council in 1996, 1998, or 2000.

11. The City of Winchester was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on November 1, 1964, on the basis of determinations made by the United States Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act; 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. 42 U.S.C. 1973(b). The test or device

triggering preclearance coverage under Section 5 was an article of the Virginia Constitution providing for a literacy test as a prerequisite for becoming an elector. Va. Const. Art. II, Sec 20 (1902). The literacy test was repealed by the Virginia Constitution of 1971.

12. Within the ten-year period preceding the filing of this action, the City has made submissions of numerous changes affecting voting for preclearance review under Section 5 of the Act. 42 U.S.C. 1973c. The City has obtained Section 5 preclearance for all voting changes enforced within Winchester during the ten-year period preceding this action. The City has never sought Section 5 preclearance from this Court.

13. Voter registration opportunities in the City of Winchester are readily and equally available to all citizens. The voter registration office for the City is located in downtown Winchester, a central and convenient location within the City. The voter registration office is open from 9:00 a.m. to 5:00 p.m., Monday through Friday. In addition, the registration office is also open from 9:00 a.m. to 5:00 p.m. on the two Saturdays before all elections. Voters may also register by mail, and voter registration applications are available at a number of convenient locations across the City.

14. While in past years most voters became registered at the City Registrar's office, the implementation of the National

Voter Registration Act has changed the origin of the great majority of registration applications. In 1998, for example, there were 1,986 new voter registrations for the City. Of this number, 1,827 (92 percent) filled out their voter registration applications at Department of Motor Vehicles (hereafter "DMV") offices. Of the remaining 157 applications, 110 registered in person, 37 registered by mail and 12 were sent in by state agencies.

15. The City's three-member Electoral Board appoints persons each February to work as poll officials. The appointment of poll workers is for a one-year term. During the United States' investigation of this matter one minority individual who served as a poll worker in the City within the past ten years informed the United States that he believed he was the subject of disparate treatment compared to other poll workers and indicated that he volunteered to serve again but was not contacted. The City has no record of any person ever making these allegations, nor is the City aware of any poll worker receiving any disparate treatment or not being considered for a poll worker position after volunteering to serve. The City believes that in the preceding ten years, no member of a minority group has been denied an appointment to serve as a poll official, and that there is no evidence that any eligible resident of Winchester who has expressed an interest in becoming an election official has been

denied the opportunity to do so.

16. In recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies throughout Winchester) have included a special section soliciting persons to serve as poll officials. All persons expressing an interest in serving as a poll official on these applications have been referred to the Electoral Board for consideration and appointment.

17. Minority citizens have served as poll officials in the City of Winchester. There have been three elections in the City within the past ten years in which there were no black poll workers. The City has no record of any minority person having asked to serve as a poll worker in those three elections. At least one black person has served as a poll worker in each election in Winchester between 1989 and 1996, and in each election held since 1999.

18. No person in the City of Winchester has been denied the right to vote on account of race, color, or membership in a minority language group for at least the preceding ten years.

19. No "test or device" as defined in Section 4 of the Voting Rights Act (42 U.S.C. 1973b(c)) has been used in the City of Winchester as a prerequisite to either registering or voting for at least the preceding ten years.

20. The City of Winchester has never been the subject of

any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group. Nor has any court of the United States issued any final judgment to this effect.

21. There is no indication that the City of Winchester 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 or membership in a language minority group for at least the preceding ten years.

22. The City of Winchester does not employ any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in the City.

23. 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, or membership in a language minority group.

24. No Federal Examiners have ever been appointed or assigned to the City of Winchester under Section 3 of the Voting Rights Act, 42 U.S.C. 1973a.

25. There are no known incidents in the City of Winchester where any person exercising his or her right to vote at the polls has been intimidated or harassed.

26. Pursuant to 42 U.S. 1973b, the City of Winchester has "Publicize(d) the intended commencement . . . of (this) action in the media serving (the City) and in the appropriate United States post offices." The City published a legal Notice that it intended to commence this bailout action in The Winchester Star newspaper on May 30 and June 6, 2000. The Winchester Star is a newspaper published in the City of Winchester, and the Counties of Frederick and Clarke, Virginia. In addition to the aforementioned publications, Notices that the City of Winchester would be seeking a bailout judgment also have been posted at public locations throughout the City, including the City's libraries, the City's post offices, Winchester City Hall, Winchester Social Services Center, and the Joint Judicial Center. In addition, the City has arranged for publication of a Notice publicizing the proposed settlement of this action pursuant to 42 U.S.C. 1973b in The Winchester Star on April 27, 2001. The City also conducted a public hearing on June 15, 2000, with regard to its intention to seek a bailout from coverage under the special provisions of the Voting Rights Act, which was attended by approximately six members of the minority community. Notices advertising the public hearing were published in The Winchester Star on May 30 and June 6, 2000, and were posted at public locations throughout the City, including the City's libraries, the City's post offices, City Hall, Winchester Social Services

Center, and the Joint Judicial Center.

27. The United States has determined that it is appropriate to consent to a declaratory judgment in this action pursuant to Section 4(a)(9) of the Voting Rights Act, notwithstanding the United States' belief that the City enforced, before Section 5 preclearance, a voting change occasioned by the City's 1980 agreement with Frederick County, which was approved by a State court and updated in 1994, to waive City-initiated annexation rights through January 1, 2006. Although the City takes the position that no voting changes were occasioned by its agreement with Frederick County, the City submitted the agreement to the Attorney General, and it was precleared on July 25, 2000. The United States' consent is premised upon 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, the fact that the annexation agreement was submitted promptly and precleared once brought to Plaintiffs' attention, and the absence of any indication that the City did not seek preclearance of the agreement earlier in order evade a Section 5 objection.

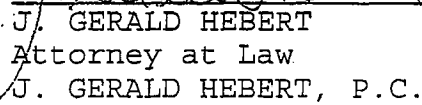
28. The United States' consent in this action also is based upon the agreement between the parties to the terms in the

Consent Judgment and Decree. As the result of the United States' investigation of this matter several issues of concern were brought to the attention of the City. One concern of the United States was that an all-white advisory panel, appointed by city officials in 1999 and including some city council members, had in a February 2000 report recommended changes to the City's method of election that, in the view of the United States, potentially could have had a retrogressive effect upon minority voting strength if they had been enacted. The Winchester City Council promptly rejected all of the recommendations in the report, in part because of concerns that the Council had on the potential impact on minority voters of some of the recommended changes. A second concern of the United States was the extent to which the City had, as required by Section 4(a)(1)(F)(iii), "engaged in other constructive efforts, such as . . . the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process." In addition, some opposition to bailout was expressed at the City's June 15, 2000 public hearing by one individual; although this individual did not represent to the Winchester City Council that he spoke on behalf of any group, and was not identified or recognized by the City Council as being a spokesperson for any group, he was, at that time, President of the local NAACP. In response to these concerns, the City agreed

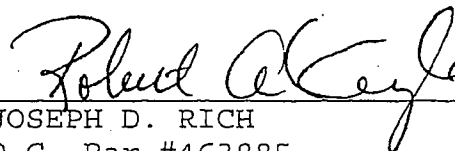
to the provisions contained in Paragraphs III, IV, V, VI and VII of the Consent Judgment and Decree. The United States is satisfied that these provisions provide a reasonable means to ensure that the requested declaratory judgment does not result in voting-related discrimination. In light of these and the other circumstances in this case, including the fact that there are no defendant-intervenors, the United States believes that bailout should not be denied.

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