

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FREDERICK COUNTY, VIRGINIA,)

Plaintiff,)

v.)

JANET RENO, Attorney General)
of the United States of America)
BILL LANN LEE, Acting Assistant)
Attorney General, Civil Rights)
Division,)

Defendants.)

C.A. No. 1:99CV00941

(ARR, CK-K, EGS)
(three-judge court)

FILED

SEP - 9 1999

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

CONSENT JUDGMENT AND DECREE

This action was initiated by Frederick 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

2)

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 governments 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. §1973b(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).

The defendant United States has conferred with Plaintiff Frederick County and, upon investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, 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. Frederick 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 four separate governmental units within Frederick County, including: the Frederick County School Board, the Towns of Middletown and Stephens City, and the Frederick County Shawneeland Sanitary District. See Stipulation of Facts, ¶ 2.

3. 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, ¶ 29.

4. 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 Frederick 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, ¶ 30.

5. No Federal Examiners have been to Frederick County. See Stipulation of Facts, ¶ 34.

6. Frederick County and the governmental units within the County have complied with Section 5 of the Voting Rights Act during the ten-year period preceding this action, except that, with respect to the Shawneeland Sanitary District, which was created in 1987, the United States and the County disagree as to whether any voting changes were enforced before the district received Section 5 preclearance in 1999. See Stipulation of Facts, ¶ 18.

7. All voting changes submitted by the County under Section 5 have been precleared by the Attorney General. No Section 5 submissions by Frederick County presently are pending before the Attorney General. Frederick County has never sought Section 5 judicial preclearance from this court. See Stipulation of Facts, ¶ 19.

8. 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, ¶ 33.

9. 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, ¶ 35.

10. The County has engaged in 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. See Stipulation of Facts, ¶¶ 20-23, 25-27.

11. Because Frederick 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, ¶ 8.

12. The County has not within the ten years prior to the commencement of this action engaged 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, ¶ 32.

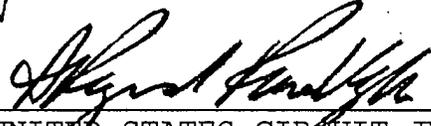
13. Frederick County has publicized the intended commencement and proposed settlement of this action in the media

and in appropriate United States post offices as required under 42 U.S.C. §1973b(a)(4). See Stipulation of Facts, ¶ 36. 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:

- A. The plaintiff Frederick 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);
- B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Frederick County, including the Frederick County School Board, the Towns of Middletown and Stephens City, and the Frederick County Shawneeland Sanitary District, shall be exempt 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. 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).
- C. The parties shall bear their own costs.

Entered this 8 day of September 1999.

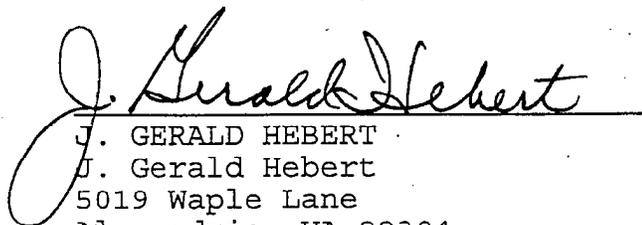

UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

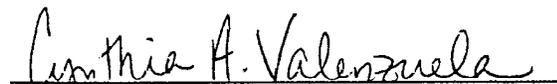
Approved as to form and content:

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