

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

CITY OF HARRISONBURG, VIRGINIA,)
a political subdivision of the)
Commonwealth of Virginia,)
)
)
Plaintiff,)
)
v.)
)
JOHN D. ASHCROFT, Attorney General)
of the United States of America,)
RALPH F. BOYD, JR., Assistant)
Attorney General, Civil Rights)
Division, United States Department)
of Justice, Washington, D.C.,)
)
Defendants.)

Case No. 1:02CV00289

Judge: John D. Bates

3-Judge Court

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U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
JAN 14 2003
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STIPULATION OF FACTS

This action was initiated by the city of Harrisonburg, 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 Act 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 or testimony.

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

1. Plaintiff city of Harrisonburg is a political subdivision of the Commonwealth of Virginia. See Va. Code Ann. §1-13.2. The City 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 within, but is independent of, Rockingham County. City voters are not eligible to vote in County elections, and County voters are not eligible to vote in City elections. Harrisonburg is approximately 150 miles from Washington, D.C., in the Shenandoah Valley.

2. In addition to the City itself, there is an additional governmental unit within Harrisonburg within the meaning of 42 U.S.C. §1973b(a)(1), the Harrisonburg City School Board.

3. The city of Harrisonburg 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 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 Act's November 1, 1964 coverage date for Virginia.

4. The city of Harrisonburg 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 on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age then residing in the state voted in the 1964 presidential election. 42 U.S.C. §1973b(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 citizens to become electors. Va. Const. Art. II, Sec. 20 (1902). The literacy test was repealed by the Virginia Constitution of 1972.

5. According to the 2000 Census, the City has a total population of 40,468 persons, of whom 2,458 persons (6.07%) are black and 3,580 (8.85%) are Hispanic. The voting age population, according to the 2000 Census, is 34,231 persons, of whom 1,843 (5.38%) are black and 2,476 (7.23%) are Hispanic.

6. Like other jurisdictions in the Commonwealth of Virginia, the City does not collect or maintain voter registration data by race. Current data show, however, that registration within the City is on the rise. Since 1980, registration in the City has more than doubled, from 6,948 registered voters in 1980 to 15,379 in 2000. After an annexation-induced spike in voter registration in 1983, registration flattened out during the 1980s, reaching a peak of 10,518 during the 1988 presidential election year. Between 1990 and 2000, registration increased steadily,

increasing by nearly a thousand voters during presidential election years. Between 1999 and 2000, for example, the City added 1,451 voters. As of 2000, 15,379, or 45 percent, of the City's voting age population of 34,231 persons were registered voters. The City is also home to James Madison University, a large major public university. Many of the students at the school are counted as Harrisonburg residents for census purposes, but are registered to vote elsewhere.

7. Voters may register in person at the registrar's office, located at 345 South Main Street, from 8 a.m. to 5 p.m., Monday through Friday. Voters may also register by mail and, pursuant to the NVRA, at DMV offices and public assistance agencies. In addition, the city registrar conducts registration drives, including drives focusing on the City's African-American community. For example, the registrar's office has conducted registration drives at black churches (including John Wesley United Methodist Church, Bethel AME Church, and the First Baptist Church, Broad Street), and each spring during a festival held in the African-American community at the Simms Building, which formerly housed the all-black Lucy Simms School.

8. The City's governing body is a five-member city council. Members are elected at-large by plurality vote and serve four-year, staggered terms, such that two or three seats are elected every two years. See Va. Stat. § 24.2-222. These elections are

partisan. From their number, the council members choose a city manager to serve as the City's chief administrative officer. The council meets every second and fourth Tuesday of each month, except on holidays.

9. Members of the Harrisonburg City School Board have been elected since 1995, when city voters approved a change from an appointed to an elected school board. The city council enacted the change, which received preclearance on February 23, 1996. Six members are elected to the school board at-large to four-year, staggered terms from two residency districts. Main Street splits the city into an east district and a west district.

10. The city council redistricted for purposes of electing city school board members in November 2001. In recognition of the City's growth pattern, the city council added a seat in the east district, which had the effect of enhancing the voting strength of the City's minority community. The redistricting plan received preclearance on January 10, 2002.

11. Also in recognition of the growth on the City's east side, the city council, in September 2001, voted to add a third precinct to the City's east district. Because the City's minority community is concentrated on the east side of the City, adding a third precinct without moving or eliminating the two existing precincts makes voting more convenient for minority voters. The addition of a fifth voting precinct received

preclearance on January 10, 2002.

12. Over the past thirty years, there have been two minority candidates elected to public office in the city of Harrisonburg: Elon Rhodes (B) and Larry Rogers (B). Mr. Rhodes served four terms, from 1976 to 1992, on the city council. His peers on the city council named him vice mayor from 1990 to 1992. Mr. Rogers is currently serving his second term on the city council, having first been elected in 1994 and reelected in 1998. In addition to his time on the city council, Mr. Rhodes served six years on the city school board after being appointed in 1970.

13. ~~Of the 36 poll workers during the November 2000~~ presidential election, 6 were African-American. One of these poll workers served as a judge - i.e., supervisor - of her precinct. The percentage of African-American poll workers (16.67%) for the 2000 election exceeded the African-American share of the City's voting age population (5.38%). Indeed, in elections dating back to 1989, the percentage of African-American poll workers consistently has exceeded the African-American share of the City's voting age population.

14. Although the staff in the registrar's office is currently all-white, an African American has worked there and several African Americans have served as on-site volunteer assistant registrars.

15. The City has a three-member electoral board pursuant to

Virginia state law, which nominates a roster of persons each February to work as poll workers. The poll worker appointments are for one-year terms. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. There is no indication that in the preceding ten years any person recommended by a political party chair to serve as a poll worker has been rejected by the electoral board. Currently, none of the members on the electoral board is a member of a racial minority group.

16. Because the City has found it difficult over the years to find enough persons willing to serve as poll officials, the city registrar has actively recruited persons to work at the polls, including designing brochures seeking qualified persons to serve as poll officials. There is no indication that in the preceding ten years that any eligible Harrisonburg resident who has expressed an interest in becoming an election official has been denied the opportunity to serve in that capacity. The registrar forwards the names of voters indicating an interest in serving as a poll official to the electoral board for consideration and appointment.

17. Over the last ten years the City has experienced tremendous growth in its Hispanic community. Although the African-American community has participated in the City's election process at significant levels, there has been no

evidence of Hispanic community participation.

18. During the course of the Department of Justice's review of the City's "bailout" request, concern was expressed in the minority community over the accessibility of the Simms Building, a voting precinct at which a number of African Americans vote. Specifically, voters at this precinct expressed concern that disabled voters had to enter the precinct through a back door after traversing a passageway at the side of the building in need of repair. The City had considered moving the Simms polling place to another location, but black community leaders asked that it remain open. By letter dated January 14, 2002, the attorney for the City represented that steps had been taken by the City to rectify this situation. The letter listed the following as steps taken by the City:

First, in all future elections, the City will now require all voters to enter and exit via the back door of the building. Consequently, the passageway on the side of the building should no longer be used and should pose no problems for voters. Second, a new concrete slab has been laid at the back door of the building that should make access smoother, especially for any wheel-chair bound voters or elderly persons in need of a smoother surface to walk. Third, a new back door has been added that is an 'automatic power door' to allow for handicapped entrance. The door's width is more than ample to handle wheel chair traffic. Fourth, the City has updated the bathroom in the building near the back entrance such that it will now accommodate handicapped persons.

19. Within the ten-year period preceding the filing of this action, the city of Harrisonburg and the Harrisonburg City School

Board have made 34 Section 5 submissions consisting of 157 changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. §1973c.

20. Within the ten years preceding the filing of this action, the city of Harrisonburg has not enforced any voting changes prior to receiving Section 5 preclearance.

21. The Attorney General has not interposed a Section 5 objection to any change affecting voting in the city of Harrisonburg within the past ten years. All voting changes submitted by the City under Section 5 have been precleared by the Attorney General. The City has never sought Section 5 judicial preclearance from this Court. The City has no pending Section 5 submissions before the Attorney General.

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

23. No discriminatory test or device as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in the City for the preceding ten years. The City 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.

24. The city of Harrisonburg, in the preceding ten years, has not 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. No court of the United States has issued a final judgment to this effect.

25. In the preceding ten years, 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. 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 the City, 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.

26. The city of Harrisonburg does not employ any voting procedures or methods of election that inhibit or dilute minority citizens' equal access to the electoral process in the City.

27. No Federal Examiners have been appointed or assigned to the City pursuant to Section 3 or Section 6 of the Voting Rights Act, 42 U.S.C. §1973a, within the past ten years.

28. Because there is no evidence that any persons exercising rights protected under the Voting Rights Act have been

subjected to any intimidation or harassment in the City in the last ten years, the City and its governmental units have not had to engage in any constructive efforts to eliminate intimidation or harassment of voters.

29. The City has publicized the intended filing of this action prior to its commencement in local newspapers of general circulation and in appropriate United States post offices throughout the City in accordance with 42 U.S.C. §1973b(a)(4). The City publicized its intent to seek a bailout in the October 23, 2001 and October 31, 2001 editions of the Daily News Record, a daily newspaper of general circulation in and around Harrisonburg. In addition, the City has posted copies of the notice at ten locations across the City, including the Main Post Office, the Harrisonburg Post Office Retail Unit, the Courthouse, City Hall, the Registrar's office, and the City Library, and has utilized these same outlets to publish notice of its intent to file a proposed settlement in accordance with 42 U.S.C. § 1973b(a)(4).

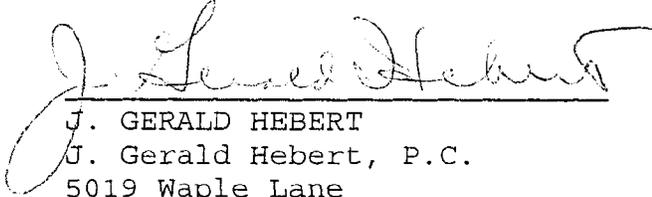
30. The United States has determined that it is appropriate to consent to a declaratory judgment in this action, pursuant to Section 4(a)(9) of the Voting Rights Act. This consent is premised upon an understanding that Congress intended Section 4(a)(9) to permit bailout in those cases where the Attorney 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 United States' consent in this action is based upon its own factual investigation and consideration of all of the circumstances in this case, including the views of minority citizens in the City, the fact that there are no defendant-intervenors, the affirmative steps taken by the City to increase voter participation, the fact that minority candidates have been elected to the Harrisonburg City Council, and the absence of evidence of racial polarization or discrimination in the electoral process within the City.

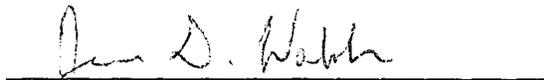
Approved as to form and content:

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