

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

ROCKINGHAM COUNTY, 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.)

FILED

MAY 21 2002

NANCY ANNE WITTINGER, CLERK
U.S. DISTRICT COURT

Case No. 1:02CV00391

Judge: Ellen Segal Huvelle

3-Judge Court

CONSENT JUDGMENT AND DECREE

This action was initiated by Rockingham 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

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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), the County must satisfy five conditions: 1) the County has not used any test or device 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 has 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 County, and 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 have been assigned to the County pursuant to the Voting Rights Act during the ten-year period preceding commencement of the declaratory judgment action; 4) the County 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 not be 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 have denied Section 5 preclearance to a submission by the County 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).

In addition, to obtain the declaratory judgment, the County 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 County 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 County is required to present evidence of minority participation in the electoral process, 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). In the ten years preceding bailout, the County must not 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 County 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 Rockingham County and, after investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to the submission of a report detailing the County's efforts to hire minority persons as poll officials, to be filed one year from entry of this Consent Judgment and Decree. 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. Rockingham 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. Additional governmental units within Rockingham County include the Rockingham County School Board and the town governments of Bridgewater, Broadway, Dayton, Elkton, Grottoes, Mt. Crawford, and Timberville. See: Stipulation of Facts, ¶ 2.

3. Rockingham County 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. See: Stipulation of Facts, ¶ 3.

4. Rockingham County 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, 42 U.S.C. § 1973b(b), on November 1, 1964, 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. See: Stipulation of Facts, ¶ 4.

5. No discriminatory test or device has been used by Rockingham 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, ¶ 19.

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

See: Stipulation of Facts, ¶ 18.

7. 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 Rockingham 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, ¶ 21.

8. No Federal Examiners have been assigned to Rockingham County within the ten-year period preceding this action. See: Stipulation of Facts, ¶ 23.

9. Rockingham County and its governmental units have enforced only one voting change prior to receiving Section 5 preclearance during the ten-year period preceding this action. That voting change has been submitted and precleared. See: Stipulation of Facts, ¶ 16.

10. All voting changes submitted by Rockingham County and its governmental units under Section 5 have been precleared by the Attorney General. No Section 5 submissions by the County or

its governmental units presently are pending before the Attorney General. The County and its governmental units have never sought Section 5 judicial preclearance from this Court. See: Stipulation of Facts, ¶ 17.

11. No voting practices or procedures have been abandoned by Rockingham County 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 during the ten-year period preceding this action. See: Stipulation of Facts, ¶ 21.

12. Rockingham County does not employ voting procedures or methods of election which inhibit or dilute equal access to the electoral process by the County's minority citizens. See: Stipulation of Facts, ¶ 22.

13. There is no indication that in the past ten years any persons in Rockingham 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, ¶ 24.

14. Because there is no evidence that any voters in Rockingham County have been subjected to intimidation or harassment within the last ten years, neither Rockingham County nor any of its governmental units have been required to take any constructive efforts to eliminate such intimidation and harassment of persons exercising rights protected under the

Voting Rights Act. See: Stipulation of Facts, ¶ 24.

15. Rockingham County has engaged in constructive efforts to enhance registration and voting opportunities for all of its citizens of voting age by adding hours during which to register to vote and polling locations at which to vote. Despite these efforts, and other good faith efforts generally undertaken by the County to solicit and encourage County residents to serve as poll officials, the County has found it difficult to recruit citizens to serve in the election process as poll officials. This has been especially true with respect to the County's minority population, although this difficulty respecting the recruitment of minority poll officials would appear to be due, at least in part, to the small percentage of minority group persons living in Rockingham County. See: Stipulation of Facts, ¶¶ 5-7 and 12-14.

16. Since Rockingham 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, ¶¶ 6-7.

17. Rockingham County 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. See: Stipulation of Facts, ¶ 19.

18. Rockingham 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). No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4).

See: Stipulation of Facts, ¶ 25.

19. As a basis for resolving this action, the parties have agreed that Rockingham County will submit a report to the Department of Justice one year from the date of entry of this Consent Judgment and Decree. During this one-year period, the County agrees to make a good faith effort to recruit minority persons to serve as poll officials. The County further agrees that this report will include the number of minority persons who have served as poll officials, as well as any efforts County officials have made to recruit minority poll workers. By way of example only, County officials may contact leaders in the African-American and Hispanic communities, including officeholders and candidates, along with churches or other organizations, whose congregations or memberships are primarily comprised of African-Americans or Hispanic persons. Both the County and the defendants recognize that the pool of eligible minority persons who can serve as poll officials is quite small, as only 1.3% of the County's voting age population is African American and only 2.7% of the County's voting age population is

Hispanic, according to the 2000 census. Nevertheless, the County does agree to make a good faith effort to encourage minority group members to serve as poll officials. The County also agrees during the reporting period to maintain the number of registered voters by precinct, as it presently does, and to make those figures available to the Department of Justice upon request. The County's report shall be submitted to the Department of Justice one year from the date of entry of this Consent Order and Decree.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

A. The Plaintiff, Rockingham 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 Rockingham County, including the Rockingham County School Board and the towns of Bridgewater, Broadway, Dayton, Elkton, Grottoes, Mt. Crawford, and Timberville, shall be exempt from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. §1973b(b), provided that Rockingham County be subject to reporting requirement as provided in paragraph 19, and 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

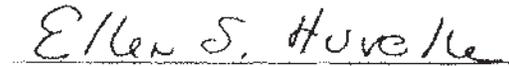
the procedures set forth in 42 U.S.C. §1973b(a)(5).

C. The parties shall bear their own costs.

Entered this 21st day of May, 2002.

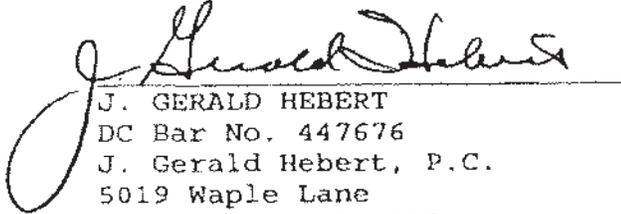

UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

Approved as to form and content:

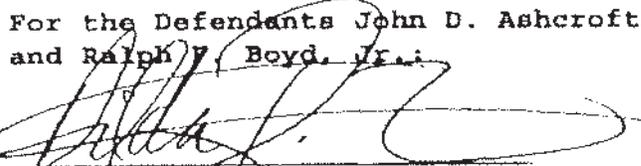
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