

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HANOVER COUNTY, VIRGINIA,)
a political subdivision of)
the Commonwealth of Virginia,)
)
Plaintiff,)
)
v.)
)
ERIC H. HOLDER, JR.,)
Attorney General of the)
United States of America, *et al.*)
)
Defendants.)
_____)

Case No. 1:13-cv-00625
(JRB-BAH-KBJ)
Three-Judge Court

CONSENT JUDGMENT AND DECREE

1. The complaint in this action was filed on May 2, 2013, by Plaintiff Hanover County, Virginia (“the County”), against defendants Eric H. Holder, Jr., Attorney General of the United States, and Thomas E. Perez, Assistant Attorney General, Civil Rights Division (collectively, the “Attorney General”).

2. Hanover County is a governmental entity organized under the Constitution and laws of the Commonwealth of Virginia. The County is a political subdivision of the Commonwealth within the meaning of Section 4(a) of the Voting Rights Act. 42 U.S.C. § 1973b(a)(1).

3. The Commonwealth of Virginia became covered as a whole by certain special provisions of the Voting Rights Act based on a coverage determination made by the Attorney General and the Director of the Census, published in the Federal Register on August 7, 1965. *See* 30 Fed. Reg. 9,897 (Aug. 7, 1965). By virtue of this coverage determination, the Commonwealth of Virginia and all of its political subdivisions (including Hanover County) must

receive preclearance under Section 5 of the Voting Rights Act for all changes enacted or implemented after November 1, 1964, that affect voting.

4. Through this action, Hanover County seeks a declaratory judgment pursuant to the “bailout” provisions of Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1), declaring it exempt from coverage under Section 4(b) of the Act, 42 U.S.C. § 1973b(b). Bailout would exempt the County from the preclearance provisions of Section 5 of the Act, 42 U.S.C. § 1973c.

5. This three-judge District Court has been convened as provided in 42 U.S.C. § 1973b(a)(5) and 28 U.S.C. § 2284, and has jurisdiction over this matter.

6. Section 4(a) of the Voting Rights Act provides that a political subdivision subject to the special provisions of the Act may be exempted or “bailed out” from those provisions through an action for a declaratory judgment before this Court if it can demonstrate fulfillment of the specific statutory conditions in Section 4(a) for both the 10 years preceding the filing of the action, and throughout the pendency of the action. 42 U.S.C. § 1973b(a). In relevant part, the statutory conditions for bailout in Section 4(a) are:

(A) no . . . test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section;

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second

sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners or observers under subchapters I-A to I-C of this chapter have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory - (i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process; (ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I-A to I-C of this chapter; and (iii) have engaged in other 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.

42 U.S.C. § 1973b(a)(1)(A)-(F).

7. Section 4(a) provides the following additional requirements to obtain bailout:

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, 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 (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. . . .

42 U.S.C. § 1973b(a)(2)-(4).

8. Section 4(a)(9) provides that the Attorney General may consent to entry of a declaratory judgment granting bailout “if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political

subdivision has complied with the requirements of [Section 4(a)(1)] . . .” 42 U.S.C. § 1973b(a)(9).

9. The Attorney General advises the Court that he has conducted a comprehensive and independent investigation to determine Hanover County’s entitlement to bailout. In so doing, the Attorney General represents that Department of Justice attorneys have, among other things, reviewed a significant number of documents related to the County, including available background information and demographic data, minutes of the Hanover County Board of Supervisors and Electoral Board meetings, minutes of the Ashland Town Council meetings, records relating to voter registration and turnout in the County and the Town of Ashland, and records of preclearance submissions made by the County and the Town of Ashland.

10. The Attorney General and Hanover County agree that the County has fulfilled the conditions required by Section 4(a) and is entitled to the requested declaratory judgment under Section 4(a). Accordingly, the County and the Attorney General have filed a Joint Motion for Entry of Consent Judgment and Decree.

11. The parties request that this Court wait 30 days after filing of the Joint Motion for Entry of Consent Judgment and Decree before approving this settlement, while a notice of proposed settlement is advertised.

THE PARTIES’ AGREED FACTUAL FINDINGS

12. Hanover County is a political subdivision of the Commonwealth of Virginia, and thus, the County is a political subdivision within the meaning of Section 4(a) of the Voting Rights Act. *See* 42 U.S.C. § 1973b(a)(1); *see also* *Nw. Austin Mun. Util. Dist. No. One v.*

Holder, 557 U.S. 193, 210-11 (2009). One other elected governmental unit within the meaning of 42 U.S.C. § 1973b(a)(1) exists within Hanover County: the Town of Ashland (“the Town”).

13. According to the 2010 Census, Hanover County has a total population of 99,863, of whom 85,391 (85.5%) are non-Hispanic White; 9,617 (9.6%) are non-Hispanic Black; and 2,116 (2.1%) are Hispanic; the remainder of the population is split among other racial groups. The 2010 Census reported that Hanover County’s total voting-age population is 74,865, of whom 64,615 (86.3%) are non-Hispanic White; 7,115 (9.5%) are non-Hispanic Black; and 1,352 (1.8%) are Hispanic; the remainder of the voting-age population is split among other racial groups.

14. The Town of Ashland has, according to the 2010 Census, a total population of 7,225, of whom 5,002 (69.2%) are non-Hispanic White; 1,679 (23.2%) are non-Hispanic Black; and 341 (4.7%) are Hispanic; the remainder of the population is split among other racial groups. Also based on 2010 Census data, the Town’s voting age population is 5,891, of whom 4,245 (72.1%) are non-Hispanic White; 1,231 (20.9%) are non-Hispanic Black; and 255 (4.3%) are Hispanic; the remainder of the voting-age population is split among other racial groups.

15. Hanover County is governed by a seven-member Board of Supervisors. Each of the Supervisors is elected from a single-member district (a “magisterial district”) and serves a four-year term. Elections are staggered and held in November of odd-numbered years.

16. The Town of Ashland is governed by a five-member Town Council, which includes the Mayor. The five Council members are elected at-large in May of even-numbered years and serve staggered, four-year terms. The Mayor is chosen from among the elected Council members and serves a two-year concurrent term.

17. The County became 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 in Section 4(c) of the Act, 42 U.S.C. § 1973b(c), 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 Commonwealth voted in the November 1964 presidential election. *See* 42 U.S.C. § 1973b(b).

18. In the past 10 years, one African American has served on the Hanover County Board of Supervisors. John Gordon was elected in 1995 and reelected in 1999, 2003, and 2007. He served until 2012.

19. In the past 10 years, three African Americans have served on the Ashland Town Council. Melvin Hall was elected in 2000 and served until 2004. He was later appointed to fill a two-year vacancy, from 2006 to 2008. Anthony E. Keitt was elected to the Council in 2000 and reelected in 2004. He served until 2008. Terri Winston-Abri was elected to the Council in 2008 and served until 2012.

20. In the past 10 years, no Hispanic candidates have run for office in Hanover County.

21. In the past 10 years, no African Americans or Hispanics have served as members of the Hanover County Electoral Board, or as General Registrar, County Administrator, or Ashland Town Manager.

22. The Hanover County Electoral Board and General Registrar are primarily responsible for all election-related functions, including voter registration, list maintenance, voter

outreach, conduct of elections, and the selection of polling sites and election officials in the County.

23. Opportunities for voter registration are available in Hanover County through various offices, including the office of the General Registrar and Electoral Board, which is located in Hanover; social service agencies; the department of motor vehicles; online through the Virginia State Board of Elections; and through mail-in application. In addition, the Registrar's office supports organizations that conduct voter registration drives and works with the Hanover County Public Schools to make voter registration applications available to students turning 18 years old.

24. Since Hanover County, like other jurisdictions in Virginia, does not record the race of its registered voters, it cannot present evidence of minority participation in registering and voting.

25. According to data maintained by the State Board of Elections, over the past decade, the number of registered voters in Hanover County increased by 14,352, from 57,677 to 72,029 individuals. Approximately 67,980 County residents, or 90.8% of the voting-age population, were registered to vote as of November 2010. That number increased to approximately 71,830 by November 2012.

26. Voter turnout in elections in Hanover County varies according to the offices up for election. In the last three Presidential elections in 2004, 2008, and 2012, voter turnout was 80.7%, 83.7%, and 82.7%, respectively. In the last two statewide elections for Governor, turnout was lower: 57.2% in 2005 and 51.5% in 2009.

27. Hanover County uses a total of 36 polling sites plus one central absentee voting precinct. There are a minimum of four polling places in each magisterial district.

28. The Hanover County Electoral Board delegated authority to the General Registrar to hire and train Officers of Election. The General Registrar recruits Officers of Election primarily through word of mouth and outreach at community events. The County employs approximately 300 Officers of Election, 18% to 20% of whom are minorities.

29. During the 10 years preceding the filing of this action, and during the pendency of this action, Hanover County made 11 submissions under Section 5 of the Voting Rights Act to the Attorney General. The Attorney General did not interpose an objection to any of these submissions. The County has not sought judicial preclearance under Section 5 for any voting changes in the District Court for the District of Columbia.

30. During the 10 years preceding the filing of this action, and during the pendency of this action, the Town of Ashland has not made any submissions under Section 5 of the Voting Rights Act to the Attorney General. The Town has not sought judicial preclearance under Section 5 for any voting changes in the District Court for the District of Columbia.

31. Hanover County publicized its intent to commence a bailout action, as required by Section 4(a)(4) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(4), by posting notice in 10 community post offices and at the County administrative building. The County also published notice in two local newspapers: the *Herald Progress* and the *Richmond Times-Dispatch*.

32. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by Hanover County, pursuant to Section 4(a)(9) of the Voting Rights Act. *See* 42 U.S.C. § 1973b(a)(9). The Attorney General's consent in this action

is based upon his own independent factual investigation of the County's fulfillment of all of the bailout criteria, and consideration of all of the circumstances of this case, including the absence of racial discrimination in the electoral process within the County. This consent is premised on 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 PARTIES' AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

33. Hanover County and the Town of Ashland are covered jurisdictions subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. Pursuant to Section 5 of the Act, these jurisdictions must obtain preclearance from either this Court or the Attorney General for any change in voting standards, practices, or procedures adopted or implemented since the Act's coverage date for the Commonwealth of Virginia.

34. Hanover County is a political subdivision within the meaning of Section 4(a) of the Voting Rights Act and may therefore seek bailout on its own. *See* 42 U.S.C. § 1973b(a)(1); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).

35. During the 10 years preceding the filing of this action, and during the pendency of this action, Hanover County has not used any test or device as defined in Section 4(c) of the Voting Rights Act, 42 U.S.C. § 1973b(c), for the purpose or with the effect of denying or abridging the right to vote on account of race or color. During the relevant time period there is also no indication that any person in the County has been denied the right to vote on account of race or color. *See* 42 U.S.C. § 1973b(a)(1)(A).

36. During the 10 years preceding the filing of this action, and during the pendency of this action, no final judgment of any court of the United States has determined that denials or abridgments of the right to vote on account of race or color have occurred anywhere within Hanover County. Further, no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds. No action is presently pending alleging such denials or abridgments of the right to vote. *See* 42 U.S.C. § 1973b(a)(1)(B).

37. During the 10 years preceding the filing of this action, and during the pendency of this action, no Federal examiners or observers have been assigned to Hanover County. *See* 42 U.S.C. § 1973b(a)(1)(C).

38. During the 10 years preceding the filing of this action, and during the pendency of this action, Hanover County has submitted a number of voting changes to the Attorney General for review under Section 5. The Attorney General has not interposed an objection under Section 5 to any of these changes. *See* 42 U.S.C. § 1973b(a)(1)(D)-(E).

39. During the 10 years preceding the filing of this action, and during the pendency of this action, Hanover County and the Town of Ashland have complied with Section 5, and there has been no need for the County or Town to repeal any voting changes to which the Attorney General has objected, or to which this Court has denied a declaratory judgment, since no such objection or denials have occurred. *See* 42 U.S.C. § 1973b(a)(1)(D).

40. The Attorney General has never interposed any objection to voting changes submitted by or on behalf of the County or Town for administrative review under Section 5. No such administrative submissions by or on behalf of the County or Town are presently pending

before the Attorney General. Neither the County nor the Town has ever sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied the County or Town a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. *See* 42 U.S.C. § 1973b(a)(1)(E).

41. During the 10 years preceding the filing of this action, and during the pendency of this action, neither Hanover County nor the Town of Ashland has employed voting procedures or methods of election that inhibit or dilute equal access to the electoral process. *See* 42 U.S.C. § 1973b(a)(1)(F)(i).

42. During the ten years preceding the filing of this action, and during the pendency of this action, there is no evidence that anyone participating in elections within Hanover County has been subject to intimidation or harassment in the course of exercising his or her rights protected under the Voting Rights Act. *See* 42 U.S.C. § 1973b(a)(1)(F)(ii).

43. During the past 10 years, Hanover County has engaged in constructive efforts to expand opportunities for voter registration and voting for every person of voting age through a variety of means, including by offering various locations for voter registration in the County, through an internet portal and by mail-in application, and by the appointment of minority poll officials. *See* 42 U.S.C. § 1973b(a)(1)(F)(iii).

44. Hanover County has presented available evidence concerning rates of voter registration and voter participation over time. *See* 42 U.S.C. § 1973b(a)(2).

45. During the 10 years preceding the filing of this action, and during the pendency of this action, the County has not 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. *See* 42 U.S.C. § 1973b(a)(3).

46. The County provided public notice of its intent to seek a Section 4(a) declaratory judgment and of the proposed settlement of this action. *See* 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED, and DECREED:

1. Plaintiff Hanover County 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).

2. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Hanover County and the Town of Ashland are exempted 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 pursuant to Section 4(a)(5), 42 U.S.C. § 1973b(a)(5). 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 Section 4(a)(5), 42 U.S.C. § 1973b(a)(5).

3. Each party shall bear its own fees, expenses, and costs.

Entered this 24th day of June, 2013.

JANICE ROGERS BROWN
UNITED STATES CIRCUIT JUDGE

BERYL A. HOWELL
UNITED STATES DISTRICT JUDGE

KETANJI BROWN JACKSON
UNITED STATES DISTRICT JUDGE

Agreed and Consented To:

/s/ J. Gerald Hebert

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Dated: June 24, 2013

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Dated: June 24, 2013