

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STEPHEN LAROQUE,)	
ANTHONY CUOMO, JOHN NIX,)	
KLAY NORTHRUP, LEE RAYNOR,)	
and KINSTON CITIZENS FOR NON-)	
PARTISAN VOTING,)	
)	
Plaintiffs,)	Civil Action No.
)	1:10-0561-JDB
v.)	
)	
ERIC H. HOLDER, JR., in his official capacity as)	
Attorney General of The United States,)	
)	
Defendant.)	

ATTORNEY GENERAL'S NOTICE OF SUPPLEMENTAL INFORMATION

The Attorney General respectfully submits this Notice regarding relevant events occurring since the Attorney General filed his Memorandum of Law in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Cross-Motion for Summary Judgment (Dkt. No. 55) on August 1, 2011.

Attached are four court-entered consent decrees and one proposed consent decree from bailout actions consented to by the Attorney General since August 1, 2011. The attached consent decrees arise from City of Manassas Park (Virginia), *City of Manassas Park v. Holder*, C.A. 1:11-cv-749 (D.D.C., decree entered by the court August 3, 2011); Rappahannock County (Virginia), *Rappahannock County v. Holder*, C.A. 1:11-cv-1123 (D.D.C., decree entered by the court August 9, 2011); Bedford County (Virginia), *Bedford County v. Holder*, C.A. 1:11-cv-499 (D.D.C., decree entered by the court August 30, 2011); City of Bedford (Virginia), *City of Bedford v. Holder*, C.A. No. 1:11-cv-473 (D.D.C., decree entered by the court August 31, 2011);

and Culpeper County (Virginia), *Culpeper County v. Holder*, C.A. 1:11-cv-1477 (D.D.C., proposed decree filed August 31, 2011). The decrees and proposed decree were filed pursuant to the bailout provision in Section 4(a) of the Voting Rights Act. *See* 42 U.S.C. §1973b(a).

The Attorney General provides this supplemental information to ensure a complete and accurate record. This information supplements the record to reflect that the Attorney General has consented to bailout in 28 cases—of which twenty-seven decrees have been entered by the court—since 1984. *See* Mem. of Law in Opp. to Pl.’s Mot. for Summ. J. and in Support of Def.’s Cross-Mot. for Summ. J. at 5-6 (Dkt. No. 55); Defendant’s Statement of Undisputed Material Facts at ¶¶ 31-40 (Dkt. No. 55); and Berman Decl., Ex. 1 and Attachment B thereto (listing bailout cases after Aug. 5, 1984). The Attorney General is currently investigating additional potential bailouts and will continue to supplement the record before this Court as appropriate.

The Attorney General has consulted with Plaintiffs’ counsel, who does not oppose the Attorney General’s filing of this Notice. Plaintiff’s counsel noted his belief that the supplemental information is irrelevant to this action.

Date: September 9, 2011

Respectfully submitted,

RONALD C. MACHEN, JR.
United States Attorney
District of Columbia

THOMAS E. PEREZ
Assistant Attorney General

/s/ Richard Dellheim

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CERTIFICATE OF SERVICE

I hereby certify that on this day, September 9, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CITY OF MANASSAS PARK, VIRGINIA,)
a political subdivision of the)
Commonwealth of Virginia,)
City Hall, One Park Center Court,)
Manassas Park, Virginia 20111)

Plaintiff,)

v.)

Civil Action No. 1:11-cv-749
Three-Judge Court (CKK-JRB-HHK)

ERIC HOLDER,)
Attorney General of the)
United States of America;)
THOMAS E. PEREZ,)
Assistant Attorney General,)
Civil Rights Division, United States)
Department of Justice, Washington, DC,)

Defendants.)

CONSENT JUDGMENT AND DECREE

1. This action was initiated on April 19, 2011 by Plaintiff City of Manassas Park, Virginia ("City of Manassas Park" or "the City"), against the Defendant Eric H. Holder, Jr., Attorney General of the United States, and the Defendant Thomas E. Perez, Assistant Attorney General, Civil Rights Division (collectively, "the Attorney General").

2. The City of Manassas Park is a governmental entity organized under the Constitution and laws of the Commonwealth of Virginia. Plaintiff City of Manassas Park is a political subdivision of the State 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 the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c, based on

a coverage determination under Section 4(b) made by the Attorney General and the Director of the Census, and published in the Federal Register. 30 Fed. Reg. 9897 (Aug. 7, 1965). By virtue of this coverage determination, the Commonwealth of Virginia and its political subdivisions, including the City of Manassas Park, must receive preclearance under Section 5 of the Act for all changes enacted or implemented after November 1, 1964 that affect voting.

4. Through this action, the City 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 also exempts the jurisdiction from being subject to the preclearance provisions of Section 5 of the Act, 42 U.S.C. § 1973c.

5. This three-judge 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 state or 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 ten years preceding the filing of the action, and throughout the pendency of the action. As set forth in Section 4(a)(1), the conditions the City must satisfy are as follows:

(A) no such 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 [42 U.S.C. § 1973b(a)(1)(A)];

(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 [42 U.S.C. § 1973b(a)(1)(B)];

(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 [42 U.S.C. § 1973b(a)(1)(C)];

(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 [42 U.S.C. § 1973b(a)(1)(D)];

(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 [42 U.S.C. § 1973b(a)(1)(E)]; 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)(F)(i-iii).]

7. Section 4(a) also provides that the following additional requirements must be satisfied to obtain a 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. [42 U.S.C. § 1973b(a)(3).]

(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. [42 U.S.C. § 1973b(a)(3).]

(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)(4).]

8. Finally, Section 4(a)(9) provides that the Attorney General can 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)].”

9. The Attorney General of the United States has conducted a comprehensive and independent investigation to determine the City’s entitlement to bailout. In doing so, he has, among other things, interviewed members of the local minority community, and reviewed a significant number of documents related the City, including available background information and demographic data, minutes of the meetings of the Manassas Park City Council, records relating to voter registration and turnout in the City, and records of the City’s preclearance submissions.

10. The Attorney General and the City of Manassas Park agree that the City has fulfilled the conditions required by Section 4(a) and is entitled to the requested declaratory judgment allowing it to bail out of Section 5 coverage. Accordingly, the City and the Attorney General have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED FACTUAL FINDINGS

11. The City of Manassas Park is Northern Virginia’s newest city, and was created in 1975. The City is about thirty miles south of Washington D.C. It covers approximately 2.5 square miles.

12. The City of Manassas Park is the only governmental subdivision that conducts elections within the City of Manassas Park. The City of Manassas Park School Board is appointed by the City Council.

13. According to the 2010 Census, the City of Manassas Park has a total population of 14,273. Of this number, 6,070 (42.5%) are non-Hispanic white, 4,645 (32.5%) are Hispanic, 1,923 (13.5%) are non-Hispanic black, and 1,408 are non-Hispanic Asian (9.9%). The City has a 2010 voting-age population of 10,214, of whom 4,685 (45.9%) are non-Hispanic white, 3,003 (29.4%) are Hispanic, 1,384 (13.3%) are non-Hispanic black, and 1,028 are non-Hispanic Asian (10.1%).

14. The City of Manassas Park is governed by a mayor and six member City Council that formulates policies for the administration of government in the City. Each member of the governing body is elected at-large in partisan elections to four-year staggered terms in November of even numbered years with the Mayor and three council members running in one election, and the other three council members running two years later. Since 2008, the City's governing body has had two council members who are members of minority groups, Suhas Naddoni, who is Asian-American and was elected in a November 2008 special election, and Preston Banks, who is black and was elected in the November 2010 election.

15. Elections in the City of Manassas Park are conducted by a three-member Electoral Board and the City's General Registrar. Pursuant to State law, the Electoral Board is appointed by the State circuit court to administer the elections laws and other regulations established by the State Board of Elections. Two electoral board members must be of the same political party that received the highest number of votes for the Governor in the last election; the third member must be of the political party that received the next-to-highest number of votes in the last gubernatorial election. Each Electoral Board member serves a three-year term. The Electoral Board appoints the General Registrar. A minority group member has served on the Electoral Board since at least

2006. Minority citizens in the City of Manassas Park also have played an important role in the voter registration office. From 1998 to 2005, a minority group member was employed in the City's voter registration office as a deputy registrar or assistant registrar, and another minority group member served as a temporary assistant registrar in 2005.

16. In the last gubernatorial election held in the City of Manassas Park (November 2009), there were 18 poll workers, of whom seven, or 39%, were minority group members. In the last presidential election held in the City of Manassas Park (November 2008), there were 47 poll workers, of whom at least 20, or 42.5%, were minority group members.

17. Since the City does not record the race of its registered voters, like other jurisdictions throughout the Commonwealth, it is unable to present evidence directly measuring minority voter participation, but the City has provided evidence of voter participation for elections since 2000. Current data show, however, that a significant proportion of the City's voting age population is registered to vote. As of April 2011, there were 6,442 registered voters in the City of Manassas Park. This constituted 63.1% of the City's 2010 voting-age population of 10,214 persons. The number of registered voters in the City of Manassas Park has risen over the decade. In April 2000, for example, there were 4,076 registered voters in the City. By 2005, the number of registered voters had grown to 5,299. From 2000 to 2011, the total number of registered voters in the City grew by 58%, from 4,076 in 2000 to 6,442 as of today.

18. Voter turnout in elections within the City of Manassas Park (*i.e.*, the percentage of those registered voters who cast ballots) varies according to the offices up for election. In the last three Presidential elections in 2000, 2004, and 2008, for example, 58%, 62%, and 67% of the City's registered voters turned out to vote, respectively. In the General Elections for Governor

held in November 2001, 2005, and 2009, 30.7%, 27%, and 28% of the City's registered voters turned out to vote, respectively. Voter turnout for the Manassas Park municipal elections in the last three election cycles that were held in May 2002, 2004, and 2006, (before the City's municipal elections were moved to November) were 7%, 11%, and 11% respectively.

19. Voter registration opportunities in the City are available to all citizens. The voter registration office for the City is located at City Hall at One Park Place Center in Manassas Park. The voter registration office is open Monday through Friday, from 8:30 a.m. until 4:30 p.m. Voters in the City of Manassas Park may also register by mail, and voter registration applications are available at the Division of Motor Vehicles, Libraries, Post Offices, and other Government agency offices in the City, including the City's Departments of Health and Mental Health and Social Services. Applications to register to vote are also available online at the Virginia State Board of Elections website.

20. There are presently two polling locations (and an additional central absentee voting location) situated conveniently for voters across the City. All of the City's polling places are accessible to the disabled and include direct-recording electronic (DRE) voting machines that have access to Braille/audio, and DRE voting machines that allow voters in wheelchairs to have the screen brought forward for easier voting. In addition, the City of Manassas Park has pocket talkers available for the hard of hearing and screen magnifiers for the visually impaired.

21. Since the City was formed in 1975, the City of Manassas Park has made seven timely submissions to the Department of Justice seeking preclearance of voting changes under Section 5 of the Voting Rights Act. The Attorney General has not interposed an objection to any of these submissions. The Attorney General reviewed the records of the City of Manassas Park in

the course of considering the City's bailout request, and no voting changes were discovered in the City's records that had not been submitted for preclearance. The Attorney General's investigation indicates that the City has not enforced any changes prior to receiving preclearance during the previous ten years and during the pendency of this action.

22. The City has publicized the intended commencement of this action prior to its being filed, as required by Section 4(a)(4) of the Act. On March 13, 2011, the City published a notice that it intended to file an action in the United States District Court for the District of Columbia to seek an exemption from the Voting Rights Act's Section 5 preclearance requirements, in the Manassas Journal Messenger. The Manassas Journal Messenger is a newspaper of general circulation in the City of Manassas Park. In addition, the City has posted copies of this Notice in the local courthouse, City Hall, and the Voter Registration Office, as well as on the City's website and on the City's news channel. The parties request that this Court wait thirty days after filing of the Joint Motion for Entry of this Consent Judgment and Decree before approving this settlement, while this notice of proposed settlement is advertised.

23. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the City, pursuant to Section 4(a)(9) of the Voting Rights Act. The Attorney General's consent in this action is based upon his own independent factual investigation of the City's fulfillment of all of the bailout criteria, and consideration of all of the circumstances of this case, including the views of minority citizens in the City, and the absence of racial discrimination in the electoral process within the City. 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.

AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

24. The City of Manassas Park 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 of the Act, 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 adopted or implemented since the City was formed in 1975. There are no other governmental subdivisions within the City's territory for which it is responsible, or which must request bailout at the same time as the City, within the meaning of Section 4(a), 42 U.S.C. § 1973b(a).

25. During the ten years preceding the filing of this action and during the pendency of this action, there has been no test or device as defined in Section 4(c) of the Voting Rights Act used within the City 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 City of Manassas Park has been denied the right to vote on account of race or color. 42 U.S.C. § 1973b(a)(1)(A).

26. During the ten 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 abridgements of the right to vote on account of race or color have occurred anywhere within the territory of the City of Manassas Park. 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 abridgements of the right to vote. 42

U.S.C. § 1973b(a)(1)(B).

27. During the ten years preceding the filing of this action, and during the pendency of this action, no federal examiners or observers have been assigned to the City of Manassas Park.

42 U.S.C. § 1973b(a)(1)(C).

28. Since it became an independent political jurisdiction in 1975, the City of Manassas Park has submitted seven administrative submissions to the Attorney General for review under Section 5, and the Attorney General did not object to any of these submissions, and there is no evidence that the City enforced any changes that had an actual effect on voting prior to receiving preclearance under Section 5. 42 U.S.C. § 1973b(a)(1)(D).

29. During the ten years preceding the filing of this action, and during the pendency of this action, there has been no need for the City 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. 42 U.S.C. § 1973b(a)(1)(D).

30. During the ten years preceding this action, and during the pendency of this action, the Attorney General has not interposed any objection to voting changes submitted by or on behalf of the City for administrative review under Section 5. No such administrative submissions by or on behalf of the City are presently pending before the Attorney General. The City has never sought judicial preclearance from this Court under Section 5; thus, this Court has never denied the City a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. 42 U.S.C. § 1973b(a)(1)(E).

31. During the ten years preceding the filing of this action, and during the pendency of this action, the City of Manassas Park has not employed voting procedures or methods of election which inhibit or dilute equal access to the electoral process. 42 U.S.C. § 1973b(a)(1)(F)(i).

32. 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 the City's elections has been subject to intimidation or harassment in the course of exercising his or her rights protected under the Voting Rights Act. Constructive efforts have been undertaken by the City of Manassas Park to avoid intimidation or harassment in the City of Manassas Park elections, including, for example, by the appointment of minorities to the Electoral Board, in the voter registration office, and as poll officials throughout the City. 42 U.S.C. § 1973b(a)(1)(F)(ii).

33. During the ten years preceding the filing of this action, and during the pendency of this action, the City has engaged in other constructive efforts to expand the opportunity for voting for every person of voting age through the City's support and coordination of numerous election activities within the City of Manassas Park. Voters in the City's elections vote in centrally located facilities, are permitted to vote absentee as prescribed by the laws of Virginia, and also benefit from the City's efforts to recruit a diverse pool of poll officials. 42 U.S.C. § 1973b(a)(1)(F)(iii).

34. The City is unable to present evidence directly measuring minority voter participation rates over time, because the City does not record the race of its registered voters, but a significant percentage of the City's population is registered to vote. In 2008 an Asian-American candidate was elected to the City Council and in 2010, an African American candidate was

elected to the City Council; currently there are two minorities serving on the City Council. 42 U.S.C. § 1973b(a)(2).

35. During the ten years preceding the filing of this action, and during the pendency of this action, the City 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. 42 U.S.C. § 1973b(a)(3).

36. As required by 42 U.S.C. § 1973b(a)(4), the City of Manassas Park has provided public notice of its intent to seek a Section 4(a) declaratory judgment, prior to its being filed. The City posted a notice on the city's website and on the City's TV channel, published notice in the Manassas Journal Messenger on March 13, 2011, and posted notice at the City's social services offices and at the office of the Registrar of Voters. The parties request that this Court wait thirty days after filing of the Joint Motion for Entry of this Consent Judgment and Decree before approving this settlement, while the notice of this proposed settlement is advertised. 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The Plaintiff City of Manassas Park 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 the Plaintiff City of Manassas Park is 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 costs.

Entered this 3rd day of August, 2011.

/s/ Janice Rogers Brown
UNITED STATES CIRCUIT JUDGE

/s/ Colleen Kollar-Kotelly
UNITED STATES DISTRICT JUDGE

/s/ Henry H. Kennedy
UNITED STATES DISTRICT JUDGE

Agreed and consented to:

/s/ J. Gerald Hebert

J. GERALD HEBERT

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City of Manassas Park, Virginia

Dated: June 20, 2011

Agreed and Consented to:

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Attorney General of the United States
And Thomas E. Perez
Assistant Attorney General
Civil Rights Division

Dated: June 20, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RAPPAHANNOCK COUNTY, VIRGINIA, a)
 political subdivision of the Commonwealth of)
 Virginia,)
)
 Plaintiff,)
)
 v.)
)
 ERIC H. HOLDER, JR., the Attorney General of)
 the United States of America, and THOMAS E.)
 PEREZ, Assistant Attorney General, Civil Rights)
 Division, United States Department Of Justice,)
)
 Defendants.)

No. 1:11-CV-1123-JEB-KLH-RMC
Three-Judge Court

CONSENT JUDGMENT AND DECREE

1. This action was initiated on June 17, 2011 by Plaintiff Rappahannock County (“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”). The County is a governmental entity organized under the constitution and laws of the Commonwealth of Virginia.

2. 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, and 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 the 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.

3. In this action, the County seeks a declaratory judgment pursuant to Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1), exempting it from coverage under Section 4(b) of the Act, 42 U.S.C. 1973b(b). Exemption under Section 4(b) would in turn exempt the County and its political subunits from the preclearance provisions of Section 5, 42 U.S.C. § 1973c.

4. This three-judge 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.

5. 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 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 the time period “during the ten years preceding the filing of the action” and “during the pendency of such action,” as described below:

(A) no such 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 (42 U.S.C. § 1973b(a)(1)(A));

(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 (42 U.S.C. § 1973b(a)(1)(B));

(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 (42 U.S.C. § 1973b(a)(1)(C));

(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 (42 U.S.C. § 1973b(a)(1)(D));

(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 (42 U.S.C. § 1973b(a)(1)(E)); 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)(F)(i-iii)).

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

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. (42 U.S.C. § 1973b(a)(2));

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. (42 U.S.C. § 1973b(a)(3));

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)(4)).

7. Section 4(a)(9) provides that the Attorney General can 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)).

8. The Attorney General has conducted a comprehensive and independent investigation to determine the County’s eligibility for bailout. Department of Justice attorneys have interviewed members of the local minority community and reviewed a significant quantity of documentary evidence, including background information, demographic data, minutes of the Rappahannock County Board of Supervisors, Rappahannock County Electoral Board, Rappahannock County School Board, and the Town of Washington Council, and the preclearance submissions of Rappahannock County, the Rappahannock County School District and the Town of Washington.

9. The Attorney General and Rappahannock County agree that Rappahannock County has fulfilled all conditions required by Section 4(a) and is entitled to the requested declaratory judgment. The parties have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED STIPULATION OF FACTUAL FINDINGS

10. The County is a political subdivision of the Commonwealth of Virginia and thus a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act. *See* 42 U.S.C. § 1973b(a)(1)(A); *see also Northwest Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504, 557 U.S. ____ (2009). There are two other elected governmental units within the meaning of 42 U.S.C. §1973b(a)(1) that exist within the Rappahannock County: the Rappahannock County School Board and the Town Council of Washington.

11. The Rappahannock County Board of Supervisors is the governing body that formulates policies for the administration of government in Rappahannock County. It is comprised of five supervisors elected by plurality vote from single-member districts to serve four-year staggered terms.

12. The Rappahannock County School District (“School District”) is coterminous with the County and governed by the Rappahannock County School Board. The Rappahannock County School Board is comprised of five members and is elected from the same single-member districts as are members of the Rappahannock County Board of Supervisors. The School Board members are elected by plurality vote to four-year staggered terms.

13. In addition to the County and the School District, located within Rappahannock County is the Town of Washington (“Town”). The Town is governed by a seven-member council which includes a mayor, treasurer, and five additional members. These seven members are elected at-large by plurality vote to four-year concurrent terms.

14. Residents of the Town are eligible to participate in Town, County, and School District elections.

15. 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 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.

16. Rappahannock County, Virginia has a total population of 7,373 persons, according to the 2010 Census. The racial composition of the County’s population is 6,653 (90.2%) non-

Hispanic white, 362 (4.9%) non-Hispanic black, 228 (3.1%) Hispanic, 48 (0.6%) non-Hispanic Asian, and 46 (0.6%) non-Hispanic Native American. According to the 2010 Census, Rappahannock County has a total voting age population of 5,908. The racial composition of this voting age population is 5,394 (91.3%) non-Hispanic white, 276 (4.7%) non-Hispanic black, 143 (2.4%) Hispanic, 38 (0.6%) non-Hispanic Asian, and 37 (0.6%) non-Hispanic Native American.

17. The Rappahannock County School District has the same total population and voting age population as the County.

18. The Town of Washington has a total population of 135 persons according to the 2010 Census. The racial composition of the Town's population is 121 (89.6%) non-Hispanic white, 8 (5.9%) non-Hispanic black, 2 (1.5%) Hispanic, 3 (2.2%) non-Hispanic Asian, and 1 (0.7%) non-Hispanic Native American. According to the 2010 Census, the Town of Washington has a voting age population of 125. The racial composition of this voting age population is 112 (89.6%) non-Hispanic white, 8 (6.4%) non-Hispanic black, 2 (1.6%) Hispanic, 2 (1.6%) non-Hispanic Asian, and 1 (0.8%) non-Hispanic Native American.

19. No African-Americans have been elected to the County Board of Supervisors.

20. One African-American has been elected to the Rappahannock County School Board. This African-American was elected to represent the Stonewall-Hawthorne District. One African-American was also appointed to serve on the Rappahannock County School Board and represented the Piedmont District.

21. No African-Americans have served on the Council for the Town of Washington.

22. The Rappahannock County Registrar of Voters and the Rappahannock County Electoral Board 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 certain poll workers, in the County.

23. African-Americans have been appointed and have served on the County Electoral Board. Since at least the late 1980's, at least one minority group member has served on the three-member Electoral Board in the County. From 2007 to February 2011, two of the three members of the Electoral Board were black. Today, one of the three members of the Electoral Board is black and serves as Secretary of the Electoral Board.

24. Citizens in Rappahannock County may register to vote in person at the office of the County Registrar of Voters in the Town of Washington. Citizens may also obtain voter registration applications at additional locations in the County, including the Office of Social Services and the Rappahannock County Library near the Town of Washington; and at Department of Motor Vehicle locations in the neighboring Counties of Culpeper, Fauquier, and Warren. Citizens can also obtain mail-in voter registration applications from at the State Board of Elections website and the County Registrar.

25. Since the 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. Current data show, however, that a significant portion of the County's voting age population is registered to vote. As of April 2011, there were 5,602 registered voters in Rappahannock County, which is approximately 94.8% of the County's 2010 Census voting age population of 5,908. The number of registered voters in the County has risen over the last decade. In April 2000, there were 4,681 registered voters in the County. Thus from 2000 to 2011, the total number of registered voters in the County has increased by 19.7%.

26. On Election Day, the County uses six polling places, which are accessible to voters with physical disabilities.

27. African-Americans have been appointed and have served as poll workers in the County. In elections from 2005-2010, Rappahannock County employed 164 poll workers of whom 9 (5.5%) were black. During the November 2010 election, there were 31 poll workers of whom 2 (6.5%) were black.

28. Voter turnout in elections within Rappahannock County (*i.e.* the percentage of those registered voters who cast ballots) varies according to the offices up for election. In the last three Presidential elections, for example, voter turnout was 74.8% in 2000, 77.4% in 2004, and 78.8% in 2008. Voter turnout for the last three statewide elections in November and for which the Governor's office appeared on the ballot was 56.5% in 2001, 53.5% in 2005, and 52.3% in 2009.

29. Since Section 5 coverage of Virginia began, 20 submissions under Section 5 have been made on behalf of the County. Neither the Attorney General nor the United States District Court for the District of Columbia has denied preclearance to any of these changes. Of these submissions, seven were submitted in the 10 years preceding this action. The most recent submission for the County—a redistricting plan—was precleared by the Attorney General on May 25, 2011.

30. Since Section 5 coverage of Virginia began, five submissions under Section 5 have been made on behalf of the Rappahannock County School District. Neither the Attorney General nor the United States District Court for the District of Columbia has denied preclearance to any of these changes. Of these submissions, three were submitted in the 10 years preceding this action.

The most recent submission for the School District—a redistricting plan—was precleared by the Attorney General on May 25, 2011.

31. Since Section 5 coverage of Virginia began, three submissions under Section 5 have been made on behalf of the Town of Washington. Neither the Attorney General nor the United States District Court for the District of Columbia has denied preclearance to any of these changes. No submissions have been submitted on the Town's behalf in the 10 years preceding this action.

32. The County publicized the intended commencement of this action prior to its being filed by placing advertisements in the local newspaper, post offices located within the County, the County Courthouse, the office of the Registrar of Voters, and public schools within the County. 42 U.S.C. 1973b(a)(4). The County has publicized notice of this proposed settlement, simultaneously with the filing of the Joint Motion for Entry of Consent Judgment and Decree. 42 U.S.C. 1973b(a)(4). The parties request that this Court wait 30 days after filing of the Joint Motion for Entry of this Consent Judgment and Decree, before approving this settlement, while this notice of proposed settlement is advertised.

33. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the County, pursuant to Section 4(a)(9) of the Voting Rights Act. 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 views of minority citizens in the County, and 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.

AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

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

35. During the 10 years preceding the filing of this action and during the pendency of this action, there has been no test or device as defined in Sections 4(c) of the Voting Rights Act used within the County for the purpose or with the effect of denying or abridging the right to vote on account of race or color. 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 abridgements of the right to vote on account of race or color have occurred anywhere in the territory of the 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 abridgements of the right to vote. 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 the County. 42 U.S.C. § 1973b(a)(1)(C).

38. The County, School District, and Town have 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. 42 U.S.C. § 1973b.

39. During the 10 years preceding the filing of this action, and during the pendency of this action, the County, School District and Town have complied with Section 5, and there has been no need for the County, School District, 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. 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, School District, or Town for administrative review under Section 5. No such administrative submissions by or on behalf of the County, School District, or Town are presently pending before the Attorney General. Neither the County, School District, nor Town has ever sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied the County, School District, or Town a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. 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 the County, School District, nor Town have employed voting procedures or methods of election which inhibit or dilute equal access to the electoral process. 42 U.S.C. § 1973b(a)(1)(F)(i).

42. There is no evidence that any persons in the County's, School District's, or Town's elections have been subject to intimidation or harassment in the course of exercising their rights protected under the Voting Rights Act. 42 U.S.C. § 1973b(a)(1)(F)(ii).

43. Over the years, the County has engaged in constructive efforts to expand the opportunity for voting for every person of voting age through a variety of ways, including offering additional voter registration opportunities. Further, there are various opportunities for convenient voter registration in the County. 42 U.S.C. § 1973b(a)(1)(F)(iii).

44. The County is unable to present evidence directly measuring minority voter participation rates over time because the County, like the Commonwealth of Virginia, does not record the race of its registered voters. 42 U.S.C. § 1973b(a)(2).

45. During the preceding 10 year period, neither the County, School District, nor Town 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).

46. The County publicized the intended commencement of this action prior to its being filed, by placing advertisements in the local newspaper, post offices located within the County, the County Courthouse, the office of the Registrar of Voters, and public schools within the County. The County has publicized a notice of the proposed settlement of this action, simultaneously with the filing of the Joint Motion for Entry of Consent Judgment and Decree. 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The Plaintiff, Rappahannock 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 Plaintiff Rappahannock County is 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 costs.

Entered this 8th day of August, 2011.

/s/ Karen LeCraft Henderson
KAREN LECRAFT HENDERSON
United States Circuit Judge

/s/ James E. Boasberg
JAMES E. BOASBERG
United States District Judge

/s/ Rosemary M. Collyer
ROSEMARY M. COLLYER
United States District Judge

Approved as to form and content:

For the Plaintiff
RAPPAHANNOCK COUNTY:

/s/ J. Gerald Hebert by EAM as authorized

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Dated: July 7, 2011

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Dated: July 7, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BEDFORD COUNTY, VIRGINIA,)
 County Administration Building)
 122 East Main Street)
 Bedford, VA 24523,)
)
 Plaintiff,)
)
 v.)
)
 ERIC HOLDER,)
 Attorney General of the)
 United States of America;)
 THOMAS E. PEREZ,)
 Assistant Attorney General,)
 Civil Rights Division, United States)
 Department of Justice, Washington, DC,)
)
 Defendants.)

FILED
AUG 30 2011
 Clerk, U.S. District & Bankruptcy
 Courts for the District of Columbia

Civil Action No. 1:11-cv-499
 ESH-KLH-BAH

CONSENT JUDGMENT AND DECREE

1. This action was initiated on March 8, 2011, by the Plaintiff Bedford County, Virginia (“Bedford County” or “the County”), against the Defendant Attorney General of the United States and the Defendant Assistant Attorney General, Civil Rights Division (collectively the “Attorney General”).

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

3. Bedford County is covered by the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c, based on a coverage determination under Section 4(b) made by the Attorney General and the Director of the Census, and published in the Federal Register. 30 Fed. Reg. 9897 (Aug. 7, 1965). By virtue of this coverage determination,

Bedford County, and all of its political subdivisions, including the Bedford County School Board, must receive preclearance under Section 5 of the Act for all changes enacted or implemented after November 1, 1964 that affect voting.

4. Through this action, the 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 also exempts the jurisdiction from being subject to 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 ten years preceding the filing of the action, and throughout the pendency of the action. As set forth in Section 4(a)(1), the conditions the County must satisfy are as follows:

(A) no such 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 [42 U.S.C. § 1973b(a)(1)(A)];

(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 [42 U.S.C. § 1973b(a)(1)(B)];

(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 [42 U.S.C. § 1973b(a)(1)(C)];

(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 [42 U.S.C. § 1973b(a)(1)(D)];

(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 [42 U.S.C. § 1973b(a)(1)(E)]; 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)(F)(i-iii)].

7. Section 4(a) also provides that the following additional requirements must be satisfied to obtain a 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. [42 U.S.C. § 1973b(a)(2)].

(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. [42 U.S.C. § 1973b(a)(3)].

(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)(4)].

8. Finally, Section 4(a)(9) provides that the Attorney General can 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 has conducted a comprehensive and independent investigation to determine the County’s entitlement to bailout. In so doing, he has, among other things, interviewed members of the local minority community, and reviewed a significant number of documents related to the County, including available background information and demographic data, minutes of the meetings of the Bedford County Board of Supervisors, records relating to voter registration and turnout in the County, and records of the County’s preclearance submissions.

10. The Attorney General and Bedford County agree that the County has fulfilled the conditions required by Section 4(a) and is entitled to the requested declaratory judgment

allowing it to bail out of Section 5 coverage. Accordingly, the County and the Attorney General have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED FACTUAL FINDINGS

11. Bedford County is located at the foot of the Blue Ridge Mountains in the heart of central Virginia.

12. In addition to Bedford County, there is one governmental subdivision located within the County, the Bedford County School Board, which is comprised of seven elected representatives from Bedford County and one appointed member from Bedford City.

13. According to the 2010 Census, Bedford County has a total population of 68,676 persons, of whom 62,035 (90.3%) are non-Hispanic white, 4,162 are non-Hispanic black (6.1%), 1,090 (1.6%) are Hispanic and 843 (1.2%) are Asian. According to the 2010 Census, Bedford County has a voting-age population of 53,371, of whom 48,649 (91.2%) are non-Hispanic white, 3,162 (5.9%) are non-Hispanic black, 662 (1.2%) are Hispanic and 499 (0.9%) are Asian.

14. Bedford County is governed by a seven-member County Board of Supervisors. The seven-member Board of Supervisors is elected from seven, single-member districts. The supervisors are elected in partisan elections to four-year staggered terms, and the Board elects its Chairman and Vice-Chairman each January at the Board's organizational meeting. Currently, Gary M. Lowry, Vice-Chairman of the Board, is the only minority member of the Bedford County Board of Supervisors. Though the non-white voting-age population in Bedford County is relatively small, the district which contains the greatest number of minority citizens is District Seven, the district represented by Mr. Lowry. According to the 2010 Census, 3.0% of the voting-age population of District One is non-white; 7.7% of the voting-age population of District Two; 10.8% of the voting-age population of District Three; 8.6% of the voting-age population of

District Four; 11.2% of the voting-age population of District Five; 3.6% of the voting-age population of District Six; and 12.1% of the voting-age population of District Seven, represented by Mr. Lowry, is non-white.

15. Gary Lowry is the only black candidate to run for public office in Bedford County in the past ten years, and he is the only black citizen to have ever served on the Board of Supervisors. There are no black members of the School Board, nor have there been any black candidates for the School Board in the last ten years. There have been no black members of the County Electoral Board in the past ten years. For the period spanning the last ten years, approximately five of the ninety-five (5.3%) Board-appointed officials who serve on various County boards and commissions were black citizens. While it is a small office, the Voter Registrar's Office has not employed any full-time black employees in the past ten years, although the office had a part-time black employee from 2000 to 2004.

16. Elections in Bedford County are conducted by the three-member Electoral Board and are administered by the County's General Registrar, who is appointed by the Electoral Board. Pursuant to State law, the Electoral Board is appointed by the Circuit Court to oversee the election laws and other regulations established by the State Board of Elections. Two Electoral Board members must be of the same political party that cast the highest number of votes for the Governor at the last election; the third member must be of the political party that cast the next-to-highest number of votes in the last gubernatorial election. Each Electoral Board member serves a three-year term.

17. Under Virginia law, the Electoral Board for each county is solely responsible for appointing poll workers, and local political parties are authorized to nominate poll workers where practicable. Va. Code Ann. § 24.2-115. In practice, however, the local parties of Bedford

County do not nominate poll workers. Bedford County poll workers are nominated instead by the Electoral Board, by the Registrar, or by other poll workers. After being nominated, poll workers are then appointed to the poll worker pool by the Electoral Board once per year, and their appointment may last up to three years. Whether the poll workers are actually called to work is left to the discretion of the polling place Chiefs, who are appointed by the Electoral Board. In the last ten years, the Electoral Board has appointed one black citizen as a to work as a polling place Chief, across a number of elections, and four black citizens to work as Assistant Chiefs in various recent elections. There is numerical evidence that the various Chiefs who have been appointed over the last ten years have appointed minority poll workers for elections , conducted in the County. Since 2001, minority persons have served as poll officials in every election but one within Bedford County. The number of minority citizens working at the polls has risen since 2001, with minority citizens comprising 4.7% of poll officials since 2001, and 5.4% of poll officials from 2005 to the present. Minority citizens have comprised between 3.7% and 7.3% of all poll officials in elections conducted in the last five years. Efforts to solicit persons to serve as poll officials include flyers from the County Electoral Board directed specifically at recruiting new poll officials as well as the Commonwealth's voter registration application forms, which include a checkbox for persons interested in serving as poll officials. Bedford County commits to undertake continued efforts to recruit a diverse group of poll officials to serve in polling places throughout the county in future elections.

18. Since the 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 for elections since 2000. Current data show, for example, that a significant proportion of the County's voting-age population is registered to vote. The number

of persons registered to vote in the County as of April 2011 is, 47,160 which is 88.4% of the County's 2010 voting age population of 53,371. Voter registration has increased since April 2000, when the County had 34,972 registered voters. Hence, voter registration totals in the County have increased by 34.9% from 2000 to 2011.

19. Voter turnout in the County over the past decade has varied depending upon the types of elections held. In the presidential election years of 2004 and 2008, voter turnout was consistently high, with the 77.9% voter turnout for the 2008 presidential election slightly exceeding the 2004 election turnout of 76.1%. Turnout for the last three statewide elections for Governor has been fairly consistent, ranging from 47.8% to 53.4%.

20. Voter registration opportunities, as well as opportunities to fully participate in the political process in Bedford County, are readily and equally available to all citizens. Bedford County residents may obtain an application to register to vote at any location within Bedford County that offers voter registration forms, including the Office of Voter Registration, all Bedford County libraries, the County Administration building, and the County's social services offices. Voter registration forms are also available in the County at the Division of Motor Vehicle offices, on the website of the State Board of Elections (which is also linked on the County's website), all County post offices, the Department of Game and Inland Fisheries, and at all voting precincts on Election Day. The County Registrar's office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, as well as the two Saturdays prior to each general election and one Saturday before each primary or special election. Voter registration is also available by mail-in application.

21. The Bedford County Voting Registrar has conducted voter registration outreach to offer the opportunity for more Bedford County residents to apply to register to vote. For

example, the Bedford County Registrar of Voters works with the three local high schools to register students who are eighteen or who will be eighteen by the November general election. In addition, voters may register at the annual Centerfest event, a local street festival in Bedford City, and the County advertises this registration event in the local newspaper. The County's Voter Registration office also set up voter registration booths at local high school football games prior to the 2008 Presidential Election. Registration booths were located outside of the gates and were available to the general public. This event was advertised in local newspapers and on the local news channel. A registration booth was also set up at a local park in 2006 for a minority-sponsored Community Day event. The park was open for general public access, and the registration event was publicized in the local newspapers.

22. Bedford County and County School Board have made nineteen submissions to the Attorney General under Section 5 of the Voting Rights Act in the ten years preceding this action, and the Attorney General has not interposed an objection to any of these submissions. The Attorney General reviewed the records of Bedford County in the course of considering the County's bailout request, and no voting changes were discovered in either the records of the Board of Supervisors or the records of the County School Board that had not been submitted for preclearance approval in a timely manner. Hence, the Attorney General's investigation indicates that the County has not enforced any changes prior to receiving preclearance during the previous ten years and during the pendency of this action.

23. The County has publicized the intended commencement of this action and a proposed settlement of the action as required by Section 4(a)(4) of the Act prior to its being filed. Notices of the bailout and bailout settlement were posted on the County's website, all County post offices, as well as in County offices, the courthouse, and libraries. Notice of the bailout was

also published in The News and Advance in Lynchburg, The Bedford Bulletin in Bedford, and The Roanoke Times in Roanoke.

24. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the County, pursuant to Section 4(a)(9) of the Voting Rights Act. The Attorney General's consent in this action is based upon its 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 views of minority citizens in the County and surrounding areas, and 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.

AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

25. The County and the County School Board are covered jurisdictions subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. Under Section 5 of the Act, these County governmental entities are required to obtain preclearance from either this Court or from the Attorney General for any change in voting standards, practices, and procedures adopted or implemented since the Act's coverage date. There are no other governmental subdivisions within the County's territory for which it is responsible or which must request bailout at the same time as the County, within the meaning of Section 4(a), 42 U.S.C. § 1973b(a).

26. During the ten years preceding the filing of this action and during the pendency of this action, there has been no test or device as defined in Section 4(c) of the Voting Rights Act

used within the County 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 Bedford County has been denied the right to vote on account of race or color. 42 U.S.C. § 1973b(a)(1)(A).

27. During the ten 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 in Bedford 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. 42 U.S.C. § 1973b(a)(1)(B).

28. During the ten years preceding the filing of this action, and during the pendency of this action, no federal examiners or observers have been assigned to Bedford County. 42 U.S.C. § 1973b(a)(1)(C).

29. During the ten years preceding this action, and during the pendency of this action, the County and County School Board made nineteen administrative submissions to the Attorney General for review under Section 5, and the Attorney General did not object to any of these submissions. Moreover, there is no evidence that the County enforced any changes that had an actual effect on voting in elections prior to receiving preclearance under Section 5. 42 U.S.C. § 1973b(a)(1)(D).

30. During the ten years preceding the filing of this action, and during the pendency of this action, there has been no need for the County 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. 42 U.S.C. § 1973b(a)(1)(D).

31. During the ten years preceding this action, and during the pendency of this action, the Attorney General has not interposed any objection to voting changes submitted by or on behalf of the County for administrative review under Section 5. No such administrative submissions by or on behalf of the County are presently pending before the Attorney General. The County has never sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied Bedford County a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. 42 U.S.C. § 1973b(a)(1)(E).

32. During the ten years preceding the filing of this action, and during the pendency of this action, Bedford County has not employed methods of election which inhibit or dilute equal access to the electoral process. 42 U.S.C. § 1973b(a)(1)(F)(i).

33. 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 the County's elections has been subject to intimidation or harassment in the course of exercising rights protected under the Voting Rights Act. Constructive steps have been undertaken by Bedford County to avoid intimidation or harassment in Bedford County elections, such as by appointing a more diverse group of poll officials for elections in the County in recent years, and, as a precaution on Election Day 2008, commissioning additional law enforcement officers to patrol the County. 42 U.S.C. § 1973b(a)(1)(F)(ii).

34. All voter registration and all County elections have been conducted solely by the Electoral Board and Voting Registrar throughout the ten years preceding the filing of this action and through the present time. There is evidence of constructive efforts by the Board and Registrar to expand the opportunity for convenient registration and voting for every person of voting age. The numerical evidence indicates that the County polling place Chiefs have

appointed minority citizens to serve as poll officials in elections in the jurisdiction.” 42 U.S.C. § 1973b(a)(1)(F)(iii).

35. Bedford County has presented available information regarding rates of voter registration and voter participation over time. 42 U.S.C. § 1973b(a)(2).

36. During the ten 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. 42 U.S.C. § 1973b(a)(3).

37. Bedford County has provided public notice of its intent to seek a Section 4(a) declaratory judgment, as well as its intention to reach a settlement of the bailout action with the United States Attorney General. Additionally, notices of the bailout and bailout settlement were also posted on the County’s website, as well as in County offices, courthouse, and libraries. Notice of the bailout and the County’s intention to reach a settlement of the bailout action were published in The News and Advance in Lynchburg, The Bedford Bulletin in Bedford, and The Roanoke Times in Roanoke. 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The plaintiff Bedford 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 the plaintiff Bedford County and the Bedford County School Board 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 costs.

Entered this 29 day of August, 2011.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

Agreed and Consented To:

/s/ J. Gerald Hebert

J. GERALD HEBERT

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Dated: July 27, 2011

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Dated: July 27, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF BEDFORD, VIRGINIA,)
 a political subdivision of the)
 Commonwealth of Virginia,)
 215 East Main Street)
 Bedford, Virginia 24523)
)
 Plaintiff,)
)
 v.)
)
 ERIC HOLDER,)
 Attorney General of the)
 United States of America;)
 THOMAS E. PEREZ,)
 Assistant Attorney General,)
 Civil Rights Division, United States)
 Department of Justice, Washington, DC,)
)
 Defendants.)
 _____)

FILED

AUG 31 2011

Clerk, U.S. District & Bankruptcy
Courts for the District of Columbia

Civil Action No. 1:11-cv-00473
(TFH-TBG-RLW)(three-judge court)

CONSENT JUDGMENT AND DECREE

1. This action was initiated on March 4, 2011, by the Plaintiff City of Bedford, Virginia (“City of Bedford” or “the City”), against the Defendant Attorney General of the United States and the Defendant Assistant Attorney General, Civil Rights Division (collectively the “Attorney General”).

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

3. The City of Bedford is covered by the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c, based on a coverage determination under

Section 4(b) made by the Attorney General and the Director of the Census, and published in the Federal Register. 30 Fed. Reg. 9897 (Aug. 7, 1965). By virtue of this coverage determination, the City of Bedford must receive preclearance under Section 5 of the Act for all changes enacted or implemented after November 1, 1964 that affect voting.

4. Through this action, the City 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 also exempts the jurisdiction from being subject to 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 ten years preceding the filing of the action, and throughout the pendency of the action. As set forth in Section 4(a)(1), the conditions the City must satisfy are as follows:

(A) no such 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 [42 U.S.C. § 1973b(a)(1)(A)];

(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 [42 U.S.C. § 1973b(a)(1)(B)];

(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 [42 U.S.C. § 1973b(a)(1)(C)];

(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 [42 U.S.C. § 1973b(a)(1)(D)];

(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 [42 U.S.C. § 1973b(a)(1)(E)]; 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)(F)(i-iii).]

7. Section 4(a) also provides that the following additional requirements must be satisfied to obtain a 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. [42 U.S.C. § 1973b(a)(2).]

(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. [42 U.S.C. § 1973b(a)(3).]

(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)(4).]

8. Finally, Section 4(a)(9) provides that the Attorney General can 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)].”

9. The Attorney General has conducted a comprehensive and independent investigation to determine the City’s entitlement to bailout. In so doing, he has, among other things, interviewed members of the local minority community, and reviewed a significant number of documents related to the City, including available background information and demographic data, minutes of the meetings of the Bedford City Council, records relating to voter registration and turnout in the City, and records of the City’s preclearance submissions.

10. The Attorney General and City of Bedford agree that the City has fulfilled the conditions required by Section 4(a) and is entitled to the requested declaratory judgment

allowing it to bail out of Section 5 coverage. Accordingly, the City and the Attorney General have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED FACTUAL FINDINGS

11. The City of Bedford is located in the Shenandoah Valley, approximately 178 miles from Washington, DC, and covers 6.81 square miles.

12. The City of Bedford is the only governmental subdivision within the City of Bedford.

13. According to the 2010 census, City of Bedford has a total population of 6,222. Of this number, approximately 4,671 (75.1%), are non-Hispanic white, 1,318 (21.2%) are non-Hispanic black and 134 (2.2%) are Hispanic. According to the 2010 census, the total voting age population of the City of Bedford is 4,944. Of this number, 3,830 (77.5%) are non-Hispanic white, 960 (19.4%) are non-Hispanic black, and 89 (1.8%) are Hispanic.

14. The Bedford City Council is the governing body that formulates policies for the administration of government in the City. The City has a seven-member City Council. Members are elected at-large and serve a four-year term. Council contests feature no primary elections, only general elections that are conducted by plurality-vote with no numbered posts. Terms are staggered such that at least three members are up every two years. The City Council elects the Mayor and Vice-Mayor from their members for a two-year term. Three black members have served on the City Council since 1972 -- one black member has served on the seven-member council during each of three time periods -- from 1972 to 1980, from 1990 to 1995, and from 1995 to the present.

15. Elections in City of Bedford are conducted by a three-member Electoral Board and the City's General Registrar. Pursuant to State law, the Electoral Board is appointed by the

Circuit Court to administer the election laws and other regulations established by the State Board of Elections. Two electoral board members must be of the same political party that cast the highest number of votes for the Governor at the last election; the third member must be of the political party that cast the next-to-highest number of votes in the last gubernatorial election. Each electoral board member serves a three-year term. The Electoral Board appoints the General Registrar. Since 2004, two black members have served on the Electoral Board -- one black citizen has served as a member of the three-person Electoral Board during each of two time periods, from 2004-2009 and from 2009 to the present.

16. The Electoral Board nominates a roster of persons each February to work as poll workers for a one-year term. Recommendations of persons to be appointed as poll workers originate with the chairs of the local Democratic and Republican parties. No person recommended by a political party chair to serve as a poll official has been rejected by the Electoral Board for at least the preceding ten years. In the last gubernatorial election held in the City of Bedford (November 2009), there were nineteen poll workers, three (16%) of whom were black. In the last City Council election held in the City (November 2010), there were 19 poll workers, four (21%) of whom were black. The percentage of black poll workers in the 2010 election in the City slightly exceeded the percentage of the City's black voting age population (19.4%).

17. Since the City does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the City has provided evidence of voter participation for elections since 2000. Current data show, for example, that a significant proportion of the City's voting age population is registered to vote. As of the end of October 2010, there were 3,849 registered voters in the City of Bedford. This constituted 77.9%

of the City's 2010 voting age population of 4,944 persons. The number of registered voters in the City of Bedford has risen over the decade. From 2001 to 2010, the total number of registered voters in the City grew by 8.6%, from 3,543 in 2001 to 3,849.

18. Voter turnout in elections within the City of Bedford (*i.e.*, the percentage of those registered voters who cast ballots) varies according to the offices up for election. In the last three Presidential elections in 2000, 2004, and 2008, for example, 69.7%, 69.9%, and 75.2% of the City's registered voters turned out to vote, respectively. In the General Elections for Governor held in November 2001, 2005, and 2009, 50.4%, 50.3%, and 41.7% of the City's registered voters turned out to vote, respectively. Voter turnout for the Bedford City Council elections in the last seven election cycles (1998, 2000, 2002, 2004, 2006, 2008, and 2010) was 23.2%, 25.5%, 23.9%, 4.8%, 52.8%, 75.2%, and 50.7%, respectively.

19. Voter registration opportunities in the City are available to all citizens. The voter registration office for the City is located at 215 E. Main St., Second Floor in Bedford. The voter registration office is open from 8:30 a.m. until 4:30 p.m., Mondays, Tuesdays, and Thursdays; and, from August to December, is open Monday through Friday. Voter registration applications are also available at the local library, at the City's social services offices, on the website of the State Board of Elections, and at Division of Motor Vehicle Offices. Voter registration is also available by mail-in application.

20. In addition to serving on the City's three-person Electoral Board, black citizens have played an important role in the voter registration office. Since 1999, for example, two black citizens of the City have worked in the voter registration office each February assisting with the registration of high school students turning 18 years of age.

21. The City of Bedford has made eight submissions to the Attorney General under Section 5 of the Voting Rights Act during the period covering the ten years preceding this action, and the Attorney General has not interposed an objection to any of these submissions. The Attorney General reviewed the records of the City of Bedford in the course of considering the City's bailout request, and no voting changes were discovered in the City's records that had not been submitted for preclearance in a timely manner. Hence, the Attorney General's investigation indicates that the City has not enforced any changes prior to receiving preclearance during the previous ten years and during the pendency of this action.

22. The City has publicized the intended commencement of this action and a proposed settlement of the action as required by Section 4(a)(4) of the Act prior to its being filed. On January 19, 2011, the City published a notice that it intended to file an action in the United States District Court for the District of Columbia to seek an exemption from the Voting Rights Act's §5 preclearance requirements, in the Bedford Bulletin. The Bedford Bulletin is a weekly newspaper of general circulation in the City of Bedford. In addition, the City has posted copies of this Notice "in the appropriate United States post offices" and at various public places throughout the City of Bedford, including City Hall, the Office of Voter Registration, and the City's website.

23. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the City, pursuant to Section 4(a)(9) of the Voting Rights Act. The Attorney General's consent in this action is based upon its own independent factual investigation of the City's fulfillment of all of the bailout criteria, and consideration of all of the circumstances of this case, including the views of minority citizens in the City and surrounding areas, and the absence of racial discrimination in the electoral process within the

City. 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.

AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

24. The City of Bedford 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 of the Act, 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 adopted or implemented since the Act's coverage date. There are no other governmental subdivisions within the City's territory for which it is responsible or which must request bailout at the same time as the City, within the meaning of Section 4(a), 42 U.S.C. § 1973b(a).

25. During the ten years preceding the filing of this action and during the pendency of this action, there has been no test or device as defined in Section 4(c) of the Voting Rights Act used within the City 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 City of Bedford has been denied the right to vote on account of race or color. 42 U.S.C. § 1973b(a)(1)(A).

26. During the ten 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 the territory of the City of Bedford. 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 abridgements of the right to vote. 42 U.S.C. § 1973b(a)(1)(B).

27. During the ten years preceding the filing of this action, and during the pendency of this action, no federal examiners or observers have been assigned to the City of Bedford. 42 U.S.C. § 1973b(a)(1)(C).

28. During the ten years preceding this action, and during the pendency of this action, the City made eight administrative submissions to the Attorney General for review under Section 5, and the Attorney General did not object to any of these submissions, and there is no evidence that the City enforced any changes that had an actual effect on voting in elections prior to receiving preclearance under Section 5. 42 U.S.C. § 1973b(a)(1)(D).

29. During the ten years preceding the filing of this action, and during the pendency of this action, there has been no need for the City 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. 42 U.S.C. § 1973b(a)(1)(D).

30. During the ten years preceding this action, and during the pendency of this action, the Attorney General has not interposed any objection to voting changes submitted by or on behalf of the City for administrative review under Section 5. No such administrative submissions by or on behalf of the City are presently pending before the Attorney General. The City has never sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied the City of Bedford a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. 42 U.S.C. § 1973b(a)(1)(E).

31. During the ten years preceding the filing of this action, and during the pendency of this action, the City of Bedford has not employed methods of election which inhibit or dilute equal access to the electoral process. 42 U.S.C. § 1973b(a)(1)(F)(i).

32. 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 the City's elections has been subject to intimidation or harassment in the course of exercising his or her rights protected under the Voting Rights Act. Constructive steps have been undertaken by the City of Bedford to avoid intimidation or harassment in City of Bedford elections, such as by recruiting a diverse group of poll officials for elections in the City. 42 U.S.C. § 1973b(a)(1)(F)(ii).

33. All voter registration and all City elections have been conducted solely by the City of Bedford Electoral Board and the City's Voting Registrar throughout the ten years preceding the filing of this action and through the present time. There is evidence of other constructive efforts, such as expanded opportunities for convenient registration and voting for every person of voting age, as well as the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. The percentage of black poll workers in the City in the 2010 election (21%) slightly exceeded the black share of the City's 2010 voting age population (19.2%). See 42 U.S.C. § 1973b(a)(1)(F)(iii).

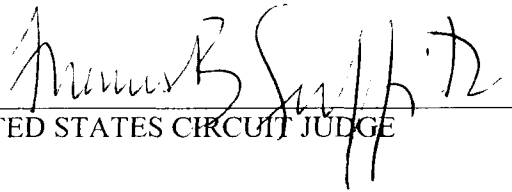
34. During the ten years preceding the filing of this action, and during the pendency of this action, the City has not engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. 42 U.S.C. § 1973b(a)(3).

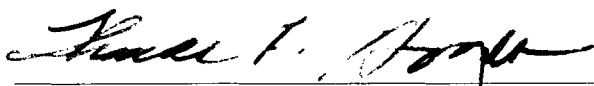
35. As required by 42 U.S.C. § 1973b(a)(4), the City of Bedford has provided public notice of its intent to seek a Section 4(a) declaratory judgment, as well as its intention to reach a settlement of the bailout action with the United States Attorney General. On January 19, 2011, the City published a notice that it intended to seek an action in the United States District Court for the District of Columbia to seek an exemption from the Voting Rights Act's §5 preclearance requirements in the Bedford Bulletin. The Bedford Bulletin is a weekly newspaper of general circulation in the City of Bedford. In addition, the City has posted copies of this Notice "in the appropriate United States post offices" and at various public places throughout City of Bedford, including City Hall, the Office of Voter Registration, and the City's website.

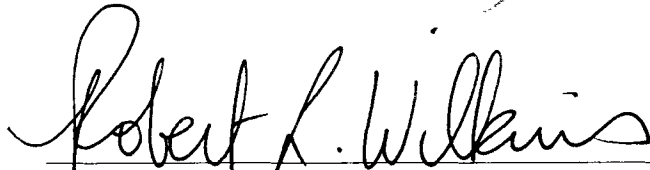
Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The plaintiff City of Bedford 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 the plaintiff City of Bedford is 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 costs.

Entered this 30 day of August, 2011.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE

Agreed and Consented To:

/s/ J. Gerald Hebert

J. Gerald Hebert

D.C. Bar No. 447676

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Counsel for Plaintiff

City of Bedford, Virginia

Dated: June 8, 2011

Agreed and Consented To:

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Assistant Attorney General
Civil Rights Division

RONALD C. MACHEN, JR.
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Attorney General of the United States
and Thomas E. Perez,
Assistant Attorney General
Civil Rights Division

Eric H. Holder, Jr.
Attorney General of th
and Thomas E. Perez,

Assistant Attorney General,

Dated: June 8, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CULPEPER COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia,)	
)	
Plaintiff,)	
)	
v.)	
)	No. 1:11-CV-01477
ERIC H. HOLDER, JR., the Attorney General of the United States of America, and THOMAS E. PEREZ, Assistant Attorney General, Civil Rights Division, United States Department Of Justice,)	JEB-JWR-RLW
)	Three-Judge Court
Defendants.)	
)	
)	
)	

JOINT MOTION FOR ENTRY OF CONSENT JUDGMENT AND DECREE

Plaintiff Culpeper County, Virginia (“the County”), a political subdivision of the Commonwealth of Virginia, and 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”), respectfully move for entry of the attached Consent Judgment and Decree.

As grounds for this motion, the parties would show the following:

1. Culpeper County initiated this action on August 16, 2011, pursuant to Section 4(a) of the Voting Rights Act, 42 U.S.C. § 1973b(a). In this litigation, the County seeks to demonstrate that it meets the statutory requirements for bailout from coverage under Section 4(b) of the Act, 42 U.S.C. § 1973b(b). A declaratory judgment granting bailout exempts a covered jurisdiction from the preclearance requirements of Section 5 of the Act, 42 U.S.C. § 1973c.
2. The Attorney General has conducted an independent investigation to determine if

Culpeper County and its governmental units have satisfied the necessary requirements for a bailout, as required by Section 4(a)(9) of the Act, 42 U.S.C. § 1973b(a)(9). Based on that investigation, as well as information provided by the County, the Attorney General has determined that Culpeper County, the Culpeper County School Board, and the Town of Culpeper meet the requirements of Section 4(a) and that the Attorney General would consent to a declaratory judgment granting bailout under Section 4(a).

3. The parties have conferred concerning a resolution of this litigation and have agreed on the terms of the attached Consent Judgment and Decree, which would grant the requested bailout.

4. The enclosed Consent Judgment and Decree is similar to those that have been entered by three-judge courts in other declaratory judgment actions brought in this Court under Section 4(a) of the Voting Rights Act. *See, e.g., City of Manassas Park v. Holder*, No. 11-749 (D.D.C. Aug. 3, 2011); *Alta Irrigation District v. Holder*, No. 11-758 (D.D.C. July 15, 2011); *City of Sandy Springs v. Holder*, No. 10-1502 (D.D.C. Oct. 26, 2010); *City of Kings Mountain v. Holder*, No. 10-1153 (D.D.C. Oct. 22, 2010); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, No. 06-1384 (D.D.C. Nov. 3, 2009); *Amherst County v. Mukasey*, No. 08-780 (D.D.C. Aug. 13, 2008); *Middlesex County v. Gonzales*, No. 07-1485 (D.D.C. Jan. 7, 2008).

5. The parties request that this Court wait 30 days after the filing of this motion before approving the Consent Judgment and Decree. During that time, the proposed settlement will be publicized pursuant to Section 4(a)(4) of the Act, 42 U.S.C. § 1973b(a)(4).

For the reasons above and as set forth in the attached Consent Judgment and Decree, the parties respectfully submit that this Joint Motion should be granted and the attached Consent Judgment and Decree entered.

Respectfully submitted,

**For the Plaintiff
CULPEPER COUNTY:**

/s/ J. Gerald Hebert by JWT as authorized

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Dated: August 31, 2011

**For the Defendants ATTORNEY GENERAL OF
THE UNITED STATES, *et al.*:**

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United States Attorney
District of Columbia

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Assistant Attorney General
Civil Rights Division

/s/ Justin Weinstein-Tull
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Dated: August 31, 2011

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CULPEPER COUNTY, VIRGINIA, a political)
subdivision of the Commonwealth of Virginia,)
))
Plaintiff,)
))
v.)
))
ERIC H. HOLDER, JR., the Attorney General of)
the United States of America, and THOMAS E.)
PEREZ, Assistant Attorney General, Civil Rights)
Division, United States Department Of Justice,)
))
Defendants.)
))

No. 1:11-CV-01477
JEB-JWR-RLW
Three-Judge Court

CONSENT JUDGMENT AND DECREE

1. This action was initiated on August 16, 2011 by Plaintiff Culpeper 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”). Culpeper County is a governmental entity organized under the constitution and laws of the Commonwealth of Virginia.

2. 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 Culpeper 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.

3. In this action, the County seeks a declaratory judgment pursuant to Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1), exempting it from coverage under Section 4(b) of the Act, 42 U.S.C. § 1973b(b). Exemption under Section 4(b) would in turn exempt the County and its political subunits from the preclearance provisions of Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c.

4. This three-judge 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.

5. 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 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 the time period “during the ten years preceding the filing of the action” and “during the pendency of such action,” as described below:

(A) no such 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 (42 U.S.C. § 1973b(a)(1)(A));

(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 (42 U.S.C. § 1973b(a)(1)(B));

(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 (42 U.S.C. § 1973b(a)(1)(C));

(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 (42 U.S.C. § 1973b(a)(1)(D));

(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 (42 U.S.C. § 1973b(a)(1)(E)); 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)(F)(i-iii)).

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

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. (42 U.S.C. § 1973b(a)(2));

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. (42 U.S.C. § 1973b(a)(3));

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)(4)).

7. Section 4(a)(9) provides that the Attorney General can 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).

8. The Attorney General has conducted a comprehensive and independent investigation to determine the County’s eligibility for bailout. Department of Justice attorneys have interviewed members of the local minority community and reviewed a significant quantity of documentary evidence, including background information; demographic data; minutes of the Culpeper County Board of Supervisors, Culpeper County Electoral Board, Culpeper County School Board, and the Town of Culpeper; and the preclearance submissions of Culpeper County, the Culpeper County School Board, and the Town of Culpeper.

9. The Attorney General and the County agree that Culpeper County has fulfilled all conditions required by Section 4(a) and is entitled to the requested declaratory judgment. The parties have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED STIPULATIONS

10. Culpeper County is a political subdivision of the Commonwealth of Virginia and thus a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act. *See* 42 U.S.C. § 1973b(a)(1)(A); *see also Nw. Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009). There are two other elected governmental units within the meaning of 42 U.S.C. § 1973b(a)(1) that exist within Culpeper County: the Culpeper County School Board and the Town of Culpeper.

11. The Culpeper County Board of Supervisors is the governing body that formulates policies for the administration of government in Culpeper County. It is comprised of seven

supervisors elected by plurality vote from single-member districts to serve four-year staggered terms.

12. The Culpeper County School Board is coterminous with the County and governs the Culpeper County school system. The Culpeper County School Board is comprised of seven members elected from the same single-member districts as members of the Culpeper County Board of Supervisors. The School Board members are elected by plurality vote to four-year staggered terms.

13. The Town of Culpeper is located within Culpeper County. The Town is governed by a nine-member town council which includes a mayor. Council members are elected at-large by plurality vote and serve four-year staggered terms.

14. 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 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.

15. According to the 2010 Census, Culpeper County has a total population of 46,689, of which 33,482 (71.7%) are Non-Hispanic White, 7,763 (16.6%) are Non-Hispanic Black, 4,157 (8.9%) are Hispanic, 731 (1.6%) are Non-Hispanic Asian, and 264 (0.6%) are Non-Hispanic Native American. The County’s total voting age population is 34,604, of which 25,574 (73.9%) are Non-Hispanic White, 5,597 (16.2%) are Non-Hispanic Black, 2,614 (7.6%) are Hispanic, 475 (1.4%) are Non-Hispanic Asian, and 196 (0.6%) are Non-Hispanic Native American.

16. According to the 2010 Census, the Town of Culpeper has a total population of 16,379, of which 9,191 (56.1%) are White, 3,803 (23.2%) are Non-Hispanic Black, 2,788 (17%) are Hispanic, 386 (2.4%) are Non-Hispanic Asian, and 80 (0.5%) are Non-Hispanic Native American. The Town's voting age population is 11,563, of which 6,903 (59.7%) are White, 2,512 (21.7%) are Non-Hispanic Black, 1,799 (15.4%) are Hispanic, 243 (2.1%) are Non-Hispanic Asian, and 59 (0.5%) are Non-Hispanic Native American.

17. No African Americans have been elected to the Culpeper County Board of Supervisors.

18. One African American has been elected to the Culpeper County School Board. This African American was elected to represent the Cedar Mountain District.

19. Four African Americans have been elected at-large to the Culpeper Town Council.

20. The Culpeper County Registrar of Voters and the Culpeper County Electoral Board 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 poll workers.

21. An African-American has been appointed to the County Electoral Board and served as the Electoral Board Secretary from 1991-2007. Currently, the three members of the Electoral Board are white.

22. Citizens in Culpeper County may register to vote in person at the office of the County Registrar of Voters in the Town of Culpeper. Citizens may also obtain voter registration applications at additional locations in the County, including the Office of Social Services, the Culpeper County Library, the Department of Motor Vehicles, and the Department of Game and

Inland Fisheries; on the State Board of Elections website; and by requesting that the Registrar of Voters provide an application by mail. Voters can also register to vote through mail-in application.

23. Since the County, like other jurisdictions in Virginia, does not record the race of its registered voters, it cannot present direct evidence of minority voter registration or minority participation in voting. The County has presented available information on voter registration and voting participation. Current data show that a significant portion of the County's voting age population is registered to vote. As of April 2011, the County had 28,310 registered voters, or 82% of the County's 2010 Census voting age population (VAP). The percentage of VAP in the County that is registered to vote has risen over the last decade. As of January 2000, there were 17,652 registered voters in the County, or 69% of the County's 2000 Census VAP.

24. On Election Day, the County uses fifteen polling places which span Culpeper's seven magisterial districts. In addition, the County operates a central absentee precinct, where people may vote absentee.

25. In the November 2010 election, 10 (13.9%) of Culpeper County's 72 poll workers were Black. The percentage of Black appointed poll workers is slightly below the 16.2% Black VAP (16.2%) in the County. Culpeper County does not have any Hispanic poll workers. Culpeper County commits to undertake continued efforts to recruit a diverse group of poll officials to serve in polling places throughout the county in future elections.

26. Voter turnout in elections within Culpeper County (*i.e.* the percentage of those registered voters who cast ballots) varies according to the offices up for election. In the presidential election years of 2000, 2004, and 2008, voter turnout increased from 65.3% in 2000,

to 68.5% in 2004, and to 73.1% in 2008. Turnout for the last three non-presidential congressional elections has fluctuated: 35.9% in 2002, 48.0% in 2006, and 37.6% in 2010.

27. The Attorney General has received 17 submissions on behalf of the County, School Board, and Town in the ten years preceding this action. These submissions include the 2011 redistricting plans for the Board of Supervisors and the School Board. All of these submissions have been precleared by the Attorney General. The most recent submissions for the County and its subjurisdictions were a town special election, an appointment to fill a town vacancy, and county tax referenda. These most recent submissions were made after the Attorney General reviewed the elections records of the County and its subjurisdictions in the course of considering the County's bailout request and determined that these matters were not reflected in their previous submissions to the Attorney General over the preceding ten years. Such review also determined that the failure to make such submissions prior to implementation was inadvertent and not the product of any discriminatory purpose. Upon notice from the Attorney General, these matters were promptly submitted for review under Section 5, and the Attorney General interposed no objection to these changes on July 28, 2011. This Court has granted bailout to other jurisdictions who have similarly implemented certain minor changes prior to Section 5 review. *See, e.g., Augusta County v. Gonzales*, No. 05-1885 (D.D.C. Nov. 30, 2005).

28. The County publicized the intended commencement of this action by placing advertisements in the local newspaper and posting notice of bailout at all County post offices, the County Administration Building, Treasurer and Commissioner of the Revenue Offices, Voter Registrar's office, Department of Social Services, County Courthouse, and Town Hall Building. The County has publicized notice of this proposed settlement, simultaneously with the filing of

the Joint Motion for Entry of Consent Judgment and Decree. 42 U.S.C. § 1973b(a)(4). The parties request that this Court wait 30 days after filing of the Joint Motion for Entry of this Consent Judgment and Decree before approving this settlement, while the notice of proposed settlement is advertised.

29. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the County, pursuant to Section 4(a)(9) of the Voting Rights Act. 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 views of minority citizens in the County, and 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 both the statutory objectives of encouraging Section 5 compliance and preventing the use of racially discriminatory voting practices would not be compromised by such consent.

AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

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

31. During the ten years preceding the filing of this action and during the pendency of this action there has been no test or device as defined in Section 4(c) of the Voting Rights Act used within the County for the purpose or with the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. § 1973b(a)(1)(A).

32. During the ten 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 abridgements of the right to vote on account of race or color have occurred anywhere in the territory of the 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 abridgements of the right to vote. 42 U.S.C. § 1973b(a)(1)(B).

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

34. During the ten years preceding the filing of this action, the County, School District, and Town have 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. As set forth above, the County or its subjurisdictions inadvertently failed to submit, prior to implementation, a town special election, an appointment to fill a town vacancy, and county tax referenda to the Attorney General for review under Section 5. There is no evidence that the County or its subjurisdictions did not submit these matters prior to implementation for any improper reason. Nor is there any evidence that implementation of such

changes, which have now been precleared under Section 5, has had a discriminatory effect on voting that would contravene Congress' intent in providing the bailout option to jurisdictions such as these. During the ten years preceding the filing of this action, and during the pendency of this action, there has been no need for the County, School District, 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 objections or denials have occurred. 42 U.S.C. § 1973b(a)(1)(D).

35. During the ten years preceding the filing of this action, and during the pendency of this action, the Attorney General has not interposed any objection to voting changes submitted by or on behalf of the County, School District, or Town for administrative review under Section 5 of the Voting Rights Act. Nor has any declaratory judgment been denied under Section 5 of the Act by or on behalf of the County, School District, or Town. No administrative submissions or declaratory judgment actions under Section 5 on behalf of the County, School District, or Town are now pending. 42 U.S.C. § 1973b(a)(1)(E).

36. During the ten years preceding the filing of this action, and during the pendency of this action, neither the County, School District, nor Town has employed voting procedures or methods of election which inhibit or dilute equal access to the electoral process. 42 U.S.C. § 1973b(a)(1)(F)(i).

37. There is no evidence that any persons participating in the County, School District, or Town elections have been subject to intimidation or harassment in the course of exercising their rights protected under the Voting Rights Act in the preceding ten years or during the pendency of this action. 42 U.S.C. § 1973b(a)(1)(F)(ii).

38. Over the preceding ten years, the County has engaged in a variety of constructive efforts, including efforts to expand the opportunity for registration and voting, such as providing opportunities to register to vote through a variety of offices and through the mail, conducting voter registration outreach to high school seniors, expanding office hours to encourage and facilitate voter registration opportunities for the 2008 election, providing voter registration applications to minority groups conducting voter registration outreach campaigns during that same period, and appointing minority elections and poll officials. 42 U.S.C. § 1973b(a)(1)(F)(iii).

39. The County has presented available information regarding rates of voter registration and voter participation over time. 42 U.S.C. § 1973b(a)(2).

40. During the preceding ten year period, neither the County, School District, nor Town 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).

41. The County publicized the intended commencement of this action prior to its being filed, by placing advertisements in the local newspaper, post offices located within the County, the County Courthouse, the office of the Registrar of Voters, and public schools within the County. The County has publicized a notice of the proposed settlement of this action, simultaneously with the filing of the Joint Motion for Entry of Consent Judgment and Decree. 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The Plaintiff, Culpeper 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 Plaintiff Culpeper County, the Culpeper County School Board and the Town of Culpeper 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 costs.

Entered this _____ day of _____, 2011.

JUDITH W. ROGERS
United States Circuit Judge

ROBERT L. WILKINS
United States District Judge

JAMES E. BOASBERG
United States District Judge

Approved as to form and content:

For the Plaintiff
CULPEPER COUNTY:

/s/ J. Gerald Hebert by JWT as authorized

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Dated: August 31, 2011

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Dated: August 31, 2011