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));
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> (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));
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> 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));
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> 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:

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/s/ J. Gerald Hebert by EAM as authorized

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Dated: July 7, 2011

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