SUPREME COURT OF THE UNITED STATES

CITY OF MONROE ET AL. *v.* UNITED STATES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA

No. 97–122. Decided November 17, 1997

PER CURIAM.

The United States claims the city of Monroe, Georgia did not seek preclearance for majority voting in mayoral elections, as required by §5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, 42 U. S. C. §1973c. The Government seeks to enjoin majority voting and to require Monroe to return to the plurality system it had once used. A three-judge District Court for the Middle District of Georgia agreed with the Government and granted summary judgment. 962 F. Supp. 1501 (1997). The District Court rejected Monroe's claim that the Attorney General's preclearance of a 1968 statewide law encompassed Monroe's adoption of a majority system. On Monroe's motion, this Court stayed enforcement of the judgment. 521 U. S. ___ (1997). The case is now on appeal, and the judgment must be reversed.

I

The parties agree upon the facts. Until 1966, Monroe's city charter did not specify whether a candidate needed a plurality or a majority vote to win a mayoral election. In practice, the city used plurality voting in its elections until 1966 and majority voting thereafter.

In 1966, the General Assembly of Georgia amended the city's charter to require majority voting in mayoral elections. 1966 Ga. Laws 2459. Because Monroe is a jurisdiction covered by §5 of the Voting Rights Act, the change had to be precleared. Georgia or Monroe could have

sought preclearance by submitting the change to the Attorney General or seeking a declaratory judgment from the United States District Court for the District of Columbia. Neither did, so the 1966 charter amendment was not precleared.

In 1968, the General Assembly passed a comprehensive Municipal Election Code (the 1968 code), which is still in force today. The statute applies to Monroe and all other municipalities in Georgia. Section 34A–1407(a) of the 1968 code has two sentences. The first sentence sets forth a rule of deference to municipal charters:

> "If the municipal charter . . . provides that a candidate may be nominated or elected by a plurality . . . , such provision shall prevail."

The second sentence lays down a state-law default rule for all other cities:

> "Otherwise, no candidate shall be . . . elected . . . [without] a majority of the votes cast . . . ." Georgia Municipal Election Code, §34A–1407(a) (1968 code section or §34A–1407(a)), 1968 Ga. Laws 977, as amended, Ga. Code Ann. §21–3–407(a) (1993).

Georgia submitted the 1968 code to the Attorney General for preclearance. Its cover letter stated: " 'In view of the variety of laws which heretofore existed, no effort will be made herein to set forth the prior laws superseded by the Municipal Election Code.' " 962 F. Supp., at 1505. The letter then listed the majority-vote provision as a significant change, noting: " 'Whether the majority or plurality rule is in effect in the municipal election will depend upon how the municipality's charter is written at present or may be written in [the] future . . . .' " *Ibid.* The Attorney General objected to other provisions of the 1968 code but did not object to §34A–1407(a), so it was, and is, precleared. The United States does not dispute this conclusion, nor does it claim Georgia's submission was mislead-

ing, ambiguous, or otherwise defective.

In 1971, the General Assembly passed a comprehensive revision of Monroe's charter. 1971 Ga. Laws 3227. The 1971 charter made explicit provision for majority voting. Neither Georgia nor Monroe sought to preclear the revisions to the charter.

In 1990, the General Assembly once again amended Monroe's charter and carried forward the majority-vote requirement. This time, Monroe sent the 1990 charter to the Attorney General for preclearance, but the cover letter did not mention the majority-vote provision. The Attorney General objected to it nevertheless, interpreting the submission as effecting a change from plurality to majority voting. The Government filed suit against Monroe and city officials in 1994 and prevailed in the District Court.

II

The 1968 code must be the centerpiece of this case, for it defers where city charters are specific and provides a default rule where they are not. If a city charter requires plurality voting, the deference rule in the first sentence of the 1968 code section allows the municipal charter provision to take effect. Monroe, however, does not have and has not had a plurality-vote provision in its charter. The first sentence simply does not apply here because no charter provision triggers its rule of deference to municipal law. Thus, the second sentence's default rule of state law governs, requiring Monroe to use majority voting. Since the Attorney General precleared the default rule, Monroe may implement it.

The District Court reached a contrary conclusion, relying on a single footnote in *City of Rome* v. *United States*, 446 U. S. 156, 169–170, n. 6 (1980). As the District Court put it: "The *[Rome]* Court's rationale focused squarely on the notion that [Georgia's] submission of the 1968 Statewide Code did not put before the Attorney General the

propriety of changes in the voting practices in individual cities." 962 F. Supp., at 1513.

The court's reliance on the footnote was misplaced. Unlike this case, which concerns the default rule in the second sentence of the 1968 code section, the *City of Rome* footnote concerned the deference rule in the first sentence. Rome's pre-1966 charter had an explicit requirement of plurality voting. When the General Assembly amended Rome's charter to provide for majority voting, no one sought to preclear this or other changes. "Rome [later] argue[d] that the Attorney General, in preclearing the 1968 Code, [had] thereby approved by reference the City's 1966 Charter amendments." *City of Rome* v. *United States*, 472 F. Supp. 221, 233 (DC 1979), aff'd, 446 U. S. 156 (1980); see also 472 F. Supp., at 233 ("Rome argues that its Charter, having been amended in 1966 to provide for majority voting, did not provide for plurality voting in 1968, and that therefore the 1968 Code mandated majority voting").

This Court rejected Rome's claim because the submission of the 1968 code did not submit Rome's 1966 charter for preclearance "in an unambiguous and recordable manner." 446 U. S., at 170, n. 6 (internal quotation marks omitted). Georgia's submission of the 1968 code "informed the Attorney General only of [Georgia's] *decision to defer to local charters* and ordinances regarding majority voting" should a city choose to include a voting provision in its charter as permitted by the deference rule. *Ibid.* (internal quotation marks omitted; emphasis added). Georgia's submission of the 1968 code did not give the Attorney General "an adequate opportunity to determine the purpose of [Rome's 1966] electoral changes and whether they will adversely affect minority voting." *Id.*, at 169, n. 6.

Indeed, Georgia's submission of the 1968 code did not even arguably constitute a request for preclearance of the 1966 change to Rome's charter. Given that the unpre-

cleared charter amendment was a nullity as a matter of federal law, the 1968 code did not change the law in Rome. Rather, it deferred to the plurality-vote requirement in the pre-1966 charter. In this case, however, the 1968 code is what changed the law in Monroe. Accordingly, unless the Attorney General's preclearance of the code was a nullity, there has been no violation of the Voting Rights Act.

In short, *City of Rome* rejected Rome's effort to use the submission of the 1968 code to validate the 1966 municipal electoral changes. *City of Rome*, in discussing the "decision to defer to local charters," recognized that the case arose under the rule of deference to municipal law. This rule of deference would not have been interpreted to effect a change in the law, and so it did not put the Attorney General on notice of Rome's shift to majority voting. Because municipal law was dispositive under the first sentence of the 1968 code section, *City of Rome* said nothing about the state-law default rule of majority voting in the second sentence.

The instant case, in contrast, is controlled by the default rule of state law set forth in the second sentence. Monroe's pre-1966 charter, unlike Rome's, did not require plurality voting and so could not trigger the rule of deference to municipal law in the first sentence. Thus Monroe, unlike Rome, does not need to breathe life into its invalid 1966 charter to circumvent the rule of deference. After one disregards Monroe's invalid 1966 and 1971 charters, the state-law default rule mandates majority voting.

Cases, such as this one, arising under the default rule satisfy all of the preclearance requirements in *City of Rome*. The Government does not dispute that Georgia submitted the state-law default rule to the Attorney General in an "unambiguous and recordable manner." The submission, furthermore, gave the Attorney General "an adequate opportunity to determine the purpose of the [default-rule] electoral changes and whether they will ad-

versely affect minority voting." In consequence, by preclearing the 1968 code the Attorney General approved the state-law default rule. The controlling default rule having been precleared, Monroe may conduct elections under its auspices.

Because the 1968 code disposes of the case on this undisputed factual record, the Court need not address appellants' other contentions. The judgment of the District Court is

Reversed.