

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROANOKE COUNTY, VIRGINIA, )  
 )  
 ) Plaintiff, )  
 )  
 v. ) C.A. No. 1:00CV01949  
 )  
 JANET RENO, Attorney General ) (RMU, DST, JR )  
 of the United States of America ) (three-judge court)  
 BILL LANN LEE, Assistant )  
 Attorney General, Civil Rights )  
 Division, )  
 )  
 ) Defendants. )  
 )

---

**FILED**

JAN 24 2001

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

CONSENT JUDGMENT AND DECREE

This action was initiated by Roanoke County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County is subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended. 42 U.S.C. § 1973c. The County seeks a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. § 1973b. A three-judge Court has been convened as provided in 42 U.S.C. § 1973b(a) (5) and 28 U.S.C. § 2284.

Section 4(a) of the Voting Rights Act provides that a State or political subdivision subject to the special provisions of the Act may be exempted from those provisions if it can demonstrate in an action for a declaratory judgment before the United States District Court for the District of Columbia that it has both (1) complied with the Voting Rights Act during the ten-year period prior to filing the

(N)

action; and (2) taken positive steps both to encourage minority political participation and to remove structural barriers to minority electoral influence.

To demonstrate compliance with the Voting Rights Act during the ten year period preceding the filing of the declaratory judgment action under Section 4(a), Roanoke County and its governmental units must prove the following five conditions: (1) that they have not used any test or device that has the purpose or effect of denying or abridging the right to vote on account of race or color; (2) 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 County and its governmental units and no consent decree, settlement, or agreement has been entered into before or during the pendency of the declaratory judgment action that results in the abandonment of such a practice; (3) no Federal examiners under the Voting Rights Act have been assigned to the County or its governmental units; (4) the County and its governmental units have complied with Section 5 of the Voting Rights Act, including submission of all changes covered by Section 5 and repeal of all covered changes to which the Attorney General has successfully objected or the District Court of the District of Columbia has denied a declaratory judgment; and (5) the Attorney General has not interposed any objection not overturned by final judgment of a court

and no Section 5 declaratory judgment action has been denied, with respect to any submissions by the County and its governmental units, and no such submissions or declaratory judgment actions are pending. 42 U.S.C. § 1973b(a)(1)(A)-(E).

In addition, Roanoke County and its governmental units must demonstrate the steps they have taken to encourage minority political participation and to remove structural barriers to minority electoral influence by showing the following: (1) elimination of voting procedures and elections methods which inhibit or dilute equal access to the electoral process; (2) constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act; and (3) other constructive efforts, such as convenient registration and voting for every person of voting age and the appointment of minority persons as election officials throughout the County and at all stages of the election and registration process. 42 U.S.C. § 1973b(a)(1)(F)(i)-(iii).

To assist the Court in determining whether to issue a declaratory judgment, Roanoke County and its governmental units also must present evidence of minority participation, including the levels of minority group registration and voting, changes in those levels over time, and disparities between minority-group and non-minority-group participation. 42 U.S.C. § 1973b(a)(2). Furthermore, the County and its governmental units must demonstrate that during the

ten years preceding judgment they have not violated any provision of the Constitution or federal, state, or local law governing voting discrimination, unless they show any such violations were trivial, promptly corrected, and not repeated. 42 U.S.C. § 1973b(a)(3).

Finally, Roanoke County and its governmental units must publicize their intent to commence a declaratory judgment action and any proposed settlement of the action. 42 U.S.C. § 1973b(a)(4).

If Roanoke County and its governmental units show "objective and compelling evidence" that they have satisfied the foregoing requirements, as confirmed by the Department's independent investigation, the Attorney General is authorized to consent to entry of a judgment granting an exemption to coverage under Section 5 of the Voting Rights Act. 42 U.S.C. § 1973b(a)(9).

The Defendant United States has conferred with Plaintiff Roanoke County and, upon investigation, has agreed that the Plaintiff is entitled to the requested declaratory judgment, subject to annual reporting requirements for a period of four years to which the parties have agreed as a basis for resolving this action. 42 U.S.C. § 1973b(a)(9). The parties have filed a joint motion, accompanied by a Stipulation of Facts, for entry of this Consent Judgment and Decree.

## FINDINGS

Pursuant to the parties' Stipulations and joint motion, this Court finds as follows:

1. Roanoke County is a political subdivision of the Commonwealth of Virginia, and a political subdivision of a state within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1). See Stipulation of Facts, ¶ 1.
2. There are two separate governmental units within Roanoke County: the town of Vinton and the Roanoke County School Board. See Stipulation of Facts, ¶ 3.
3. The independent cities of Roanoke City, Virginia and Salem City, Virginia are not governmental units of Roanoke County, Virginia and are not parties to this bailout action. See Stipulation of Facts, ¶ 4.
4. Roanoke County is a covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. See Stipulation of Facts, ¶ 5.
5. Roanoke County was designated as a jurisdiction subject to the special provisions of the Voting Rights Act on the basis of the determinations made by the Attorney General that Virginia maintained a "test or device" as defined by section 4(b) of the Act, 42 U.S.C. § 1973b(b), on November 1, 1964, and by the Director of the Census that fewer than 50 percent of the persons of voting age residing in the

state voted in the 1964 presidential election. See Stipulation of Facts, ¶ 19.

6. No person in Roanoke County has been denied the right to vote on account of race or color during the past ten years. See Stipulation of Facts, ¶ 22.

7. No "test or device" as defined in Section 4(c) of the Voting Rights Act, 42 U.S.C. § 1973b(c), has been used in Roanoke County for the preceding ten years. See Stipulation of Facts, ¶ 23.

8. No Court of the United States has issued a final judgment during the last ten years prior to the commencement of this action that the right to vote has been denied or abridged on account of race or color in Roanoke County, and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds during that time. No such claims presently are pending or were pending at the time this action was filed. See Stipulation of Facts, ¶ 24.

9. No voting practices or procedures have been abandoned by the County or challenged on the grounds that such practices or procedures would have either the purpose or the effect of denying the right to vote on account of race or color. See Stipulation of Facts, ¶ 25.

10. No Federal Examiners have ever been appointed or assigned to Roanoke County pursuant to Section 3 or Section 6 of the Voting

Rights Act. See Stipulation of Facts, ¶ 26.

11. The Attorney General has not interposed any objection to a change affecting voting in Roanoke County and no declaratory judgment has been denied under Section 5 of the Voting Rights Act, and no such submissions or declaratory judgment actions are pending. Roanoke County never has sought Section 5 judicial preclearance from this Court. See Stipulation of Facts, ¶ 27.

12. The County does not employ any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the County. See Stipulation of Facts, ¶ 28.

13. The County and its governmental units have not engaged in other constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act because there is no evidence that any such incidents have occurred in the County in the last ten years. See Stipulation of Facts, ¶ 29.

14. The County and its governmental units have engaged in other constructive efforts that have provided expanded opportunity for convenient registration and voting for persons of voting age, and the County has appointed some minority persons as election officials. See Stipulation of Facts, ¶¶ 30-37.

15. No evidence of increased minority participation is available because Virginia does not track voter registration and turnout by race. The overall level of voter registration has

increased, although voter turnout has dropped off in recent years for reasons apparently unrelated to race. See Stipulation of Facts, ¶ 38.

16. There are no known incidents in Roanoke County where persons exercising their right to vote at the polls have been intimidated or harassed. See Stipulation of Facts, ¶ 39.

17. There is no evidence that the County has violated any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See Stipulation of Facts, ¶ 40.

18. Roanoke County has publicized the intended commencement of this action prior to its commencement in local newspapers of general circulation and in appropriate United States post offices throughout the County in accordance with 42 U.S.C. §1973b(a)(4). See Stipulation of Facts, ¶ 41. No aggrieved party has sought to intervene in this action pursuant to 42 U.S.C. §1973b(a)(4).

19. Roanoke County and the governmental units within the County have obtained Section 5 preclearance for all voting changes enforced within Roanoke County during the ten-year period preceding this action. However, preclearance was not obtained in a timely manner, i.e. before the changes were enforced, with respect to six annexations and boundary changes by the County and the town of Vinton, a March 16, 1992 amendment of Vinton's town charter that



permits town council members to become candidates for filling a vacancy in the mayoral seat, and an April 7, 1998 amendment of Vinton's town charter that changes the timing of filling vacancies for mayor and town council members. All of these voting changes were submitted to the Attorney General for Section 5 review immediately before the present action was filed, and have been precleared. See Stipulation of Facts, ¶ 21.

20. As a basis for resolving this action, the parties have agreed that Roanoke County will be subject to annual reporting requirements for a period of four years. The County will submit to the United States an annual Report documenting all voting changes adopted by the County as well as the two governmental units within the County during each calendar year. The first Report will be due December 15, 2000, and subsequent Reports will be due each December 15, thereafter.

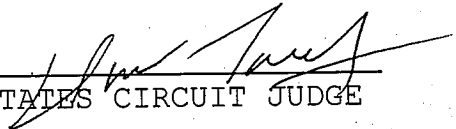
Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

- A. The Plaintiff Roanoke County, Virginia, is entitled to a declaratory judgment in accordance with Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1);
- B. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and Roanoke County, including the town of Vinton and the Roanoke County School Board shall be exempt from coverage pursuant to Section 4(b) of the

Voting Rights Act, 42 U.S.C. § 1973b(b), provided that Roanoke County be subject to annual reporting requirements as provided in paragraph 20, and provided that this Court shall retain jurisdiction over this matter for a period of ten years.

- C. This action shall be closed and placed on this Court's inactive docket, subject to being reactivated upon application by either the Attorney General or any aggrieved person in accordance with the procedures set forth in 42 U.S.C. §1973b(a)(5).
- D. The parties shall bear their own costs.

Entered this 23 day of January 2004.

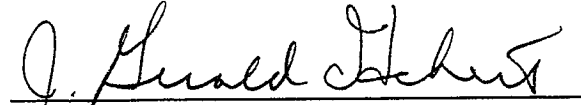
  
UNITED STATES CIRCUIT JUDGE

  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

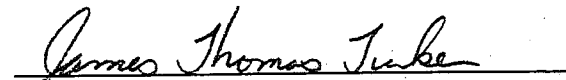
**For the Plaintiff Roanoke County, Virginia**



J. GERALD HEBERT  
J. Gerald Hebert, P.C.  
5019 Waple Lane  
Alexandria, VA 22304  
(703) 567-5873  
DC Bar No. 447676

Paul Mahoney  
County Attorney  
Roanoke County  
P.O. Box 29800  
5204 Bernard Drive  
Roanoke, VA 24018-0789  
(540) 772-2007

**For the Defendant Janet Reno  
and Bill Lann Lee:**



JOSEPH D. RICH  
ROBERT A. KENGLE  
JAMES T. TUCKER  
Attorneys, Voting Section  
Civil Rights Division  
United States Department of Justice  
P.O. Box 66128  
Washington, D.C. 20035-6128  
(202) 514-6336

WILMA A. LEWIS  
United States Attorney