

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, ____, ____)
 of the United States of America) (three-judge court)
 BILL LANN LEE, Assistant)
 Attorney General, Civil Rights)
 Division,)
)
 Defendants.)
 _____)

STIPULATION OF FACTS

This action was initiated by Roanoke County, a political subdivision of the Commonwealth of Virginia (hereafter "the County"). The County seeks a declaratory judgment pursuant to Section 4(a) of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973b.

The parties have jointly moved this three-judge Court for entry of a Consent Judgment and Decree to resolve this action. In support of that motion, the parties have entered into the following stipulation of facts. The facts in this stipulation may be received into evidence in lieu of further proof or testimony.

It is hereby stipulated, by and between the respective parties, that:

1. Plaintiff Roanoke County ("the County") is a political subdivision of the Commonwealth of Virginia. See Va. Const. art. VII, § 1. Roanoke County is 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). Roanoke County, Virginia, is located in the Roanoke Valley, approximately 250 miles southwest of Washington, D.C.

2. Roanoke County, Virginia, is one of only two counties in the Commonwealth of Virginia that have been granted a charter by the General Assembly pursuant to Title 15.2, Code of Virginia, Chapter 2.

3. In addition to the County itself, there are two governmental units in Roanoke County within the meaning of 42 U.S.C. §1973b(a)(1): the Town of Vinton and the Roanoke County School Board.

4. Roanoke City, Virginia and Salem City, Virginia are not parties to this bailout action because they are "independent cities" as that term is used in Title 15.2, Code of Virginia, Chapter 39, and are not contained within the boundaries of the political subdivision of Roanoke County, Virginia. Residents of Roanoke City and Salem City are not eligible to vote in Roanoke County elections and Roanoke County residents are not eligible to vote in Roanoke City and Salem City elections.

5. 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. Under Section 5, the County is required to obtain preclearance from either this Court or from the Attorney General for any change in voting standards, practices and procedures since the coverage date of the Act in Virginia (i.e., November 1,

1964).

6. According to the 1990 Census, the County has a total population of 79,332. Of this number, 2,021 (2.5%) are black and 440 (or 0.5%) are Hispanic. The total number of persons age eighteen and over (the voting age population), according to the 1990 Census, is 61,505. Of this number, 1,541 (2.5%) are black and 292 (0.5%) are Hispanic. The County's 1990 Census data includes the populations of the town of Vinton, and the unincorporated towns of Cave Springs and Hollins.

7. According to the 1990 Census, the voting age population of the town of Vinton was 5,929, of which 167 (2.8%) were black, and 30 (0.5%) were Hispanic.

8. According to the 1990 Census, the voting age population of the unincorporated town of Cave Springs was 18,754, of which 396 (2.1%) were black and 108 (.6%) were Hispanic.

9. According to the 1990 Census, the voting age population of the unincorporated town of Hollins was 10,874, of which 431 (3.1%) were black and 59 (.5%) were Hispanic.

10. Like other jurisdictions in the Commonwealth of Virginia, the County does not collect or maintain voter registration data by race. Current data show, however, that a significant proportion of the County's voting age population is registered to vote. As of November 2, 1999, there were 55,113

registered voters in Roanoke County. This number constitutes 89.6% of the County's 1990 voting age population. The number of registered voters in the County has increased approximately thirty percent over the number of registered voters in 1989, which totaled 42,343.

11. The minority population within Roanoke County is dispersed throughout the County, with the largest percentages of blacks concentrated in the Northside precinct (precinct 104) in Catawba, the Hollins precinct (precinct 206), and in the North Vinton and South Vinton precincts (precincts 403 and 404, respectively). This dispersion is reflected in the racial composition of the County's five magisterial districts which contained the following populations as of 1990: District 1 (Catawba) had a total population of 15,705 of which 3.4% were black, District 2 (Cave Spring) had a total population of 15,776 of which 2.3% were black, District 3 (Hollins) had a total population of 16,567 of which 2.0% were black, District 4 (Vinton) had a total population of 15,470 of which 2.8% were black, and District 5 (Windsor Hills) had a total population of 15,814 of which 1.6% were black.

12. The County has five independently elected constitutional officers, including the Sheriff, Commonwealth's Attorney, Commissioner of Revenue, Treasurer, and Clerk of the Circuit Court. All of these officers are elected to four year terms, except for the Clerk of the Circuit Court, who is elected to an eight year term.

See Va. Stat. § 24.2-217. No black has served in any of these offices nor has any black candidate sought election to such offices.

13. The County's governing body is a five-member Board of Supervisors elected from the five single-member magisterial districts. The County Supervisors are elected biannually and serve four-year terms. Staggered terms are used and a plurality win system is in effect. See Va. Stat. §§ 24.2-218 and 24.2-219.

14. The magisterial districts contain a total of 31 polling locations, located conveniently to voters across the County. All polling places are located in buildings open to the public (e.g., public schools, fire halls, etc.). There is no evidence that the polling places are inaccessible to disabled voters.

15. The County School Board has been elected since 1994, and is elected from the same five magisterial districts as those used for the County Board of Supervisors, and the same method of election is in effect. See Va. Stat. § 24.2-222.

16. Roanoke County contains one incorporated town, Vinton. Vinton has a mayor-council form of government and elects their four council members and mayor at-large by plurality vote to four year terms. The terms are staggered so that every two years two councilmen are elected, with the mayor elected every four years. See Va. Stat. § 24.2-222.

17. No minority candidates have ever sought a position on the County Board of Supervisors or on the town council of Vinton. In 1995, a black candidate unsuccessfully ran for a seat in the Virginia House of Delegates (District 17) that includes five precincts in Roanoke County, receiving approximately 31% of the vote in the Roanoke County precincts.

18. Roanoke County contains one special district, the Roanoke Valley Resource Authority (a sanitation district). The Roanoke Valley Resource Authority was formed in 1992. All seven members of its board of directors are appointed by each of the three participating governmental units (four by Roanoke County, two by Roanoke City, and one by the town of Vinton). As an appointed body, the Roanoke Valley Resource Authority is not subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c.

19. 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 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. 42 U.S.C. § 1973b(b). The "test or device" triggering preclearance coverage under Section 5 was an article of

the Virginia Constitution providing for a literacy test as a prerequisite for becoming an elector. Va. Const. Art. II, Sec. 20 (1902). The literacy test was repealed by the Virginia Constitution of 1971.^{1/}

20. Within the ten-year period preceding the filing of this action, Roanoke County and the governmental units within the County have made submissions of 158 changes affecting voting for preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c.

21. Within the ten years preceding the filing of this action, Roanoke County and the town of Vinton have enforced a number of voting changes prior to Section 5 preclearance. These voting changes included six annexations (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

^{1/} However, article II, § 2 of Virginia's 1971 Constitution still permits the General Assembly to adopt literacy tests. This provision is superseded by the passage of Section 201 of the Voting Rights Act in 1970, which imposed a nationwide ban on the use of literacy tests. See Pub. L. No. 91-285, § 6, 84 Stat. 315, 84 Stat. 315 (1970); see also Oregon v. Mitchell, 400 U.S. 112 (1970) (affirming constitutionality of the permanent literacy test ban), made permanent in 1975. See Pub. L. No. 94-73, § 102, 89 Stat. 400 (1975) (codified as amended at 42 U.S.C. § 1973aa).

submitted to the Attorney General for Section 5 review immediately before the present action was filed. All of these voting changes have been precleared.

22. There is no indication that any person in Roanoke County has been denied the right to vote on account of race or color during the past ten years.

23. No "test or device" as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in Roanoke County for the preceding ten years.

24. There is no indication that Roanoke County has been the subject of any lawsuit in which it was alleged that a person (or persons) was being denied the right to vote on account of race, color, or membership in a language minority group. No Court of the United States has issued a final judgment to this effect. See 42 U.S.C. § 1973b(a) (1) (B).

25. There is no indication that any 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 42 U.S.C. § 1973b(a) (1) (B).

26. 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 42 U.S.C. § 1973b(a) (1) (C).

27. 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 has never sought Section 5 judicial preclearance from this Court. See 42 U.S.C. § 1973b(a)(1)(E).

28. There is no indication that the County employs any voting procedures or methods of election that inhibit or dilute equal access to the electoral process in the County. See 42 U.S.C. § 1973b(a)(1)(F)(i).

29. 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 42 U.S.C. § 1973b(a)(1)(F)(ii).

30. The County and its governmental units 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." See 42 U.S.C. § 1973b(a)(1)(F)(iii).

31. Voter registration opportunities in the County are readily and equally available to all citizens. The voter registration office for the County is located in the County Administration Building, which is a central location within the County. The voter registration office is open from 8 a.m. to 5 p.m. Monday through Friday.

32. Voters in Roanoke County also may register by mail, and other voter registration applications are available at all County post offices, branches of the County library, the School Board's administrative offices, the Clerk of Court's office, and in the lobby of the County Administration Building. In addition, the Registrar of Voters registers eligible students at the public high schools every March, and at a number of neighborhood registration sites around the County throughout the year.

33. The opportunity to become a registered voter in Roanoke County also is available under the National Voter Registration Act (the "NVRA") at DMV offices and public assistance agencies in Roanoke County. While in past years most voters became registered at the County Board of Registrars or at one of the voter registration locations throughout the County, the implementation of the NVRA in Virginia over the last few years has changed the origin of the great majority of registration applications. Today, most of the County's new voters register through the DMV and by mail.

34. Polls open in the County at 6:00 a.m. and close at 7:00 p.m., as is the case throughout the Commonwealth of Virginia.

35. Roanoke County's three-member Electoral Board, which is appointed by the County Circuit Court judges, nominates a roster of persons each February to work as poll officials. The appointment of poll officials is 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. In the preceding ten years, no member of a minority group has been denied an appointment to serve as a poll official.

36. There is no indication that any eligible Roanoke County resident who has expressed an interest in becoming an election official has been denied the opportunity to do so within the past ten years. In addition, in recent years, the State's voter registration applications (including the one used at DMV and public assistance agencies throughout Roanoke County) have included a special section soliciting persons to serve as poll officials. All voters expressing an interest in serving as a poll official on these applications have been referred to the Electoral Board for consideration and appointment.

37. According to records maintained by the County's Voter Registrar, the number of black poll officials is slightly lower than the black percentage of 2.5% of the voting age population, with 5

blacks currently serving out of approximately 245 poll officials (about 2.0% of the total number of poll officials).^{2/}

38. No evidence of increased minority voter 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 42 U.S.C. § 1973b(a)(2).

39. There are no known incidents in Roanoke County where persons exercising their right to vote at the polls have been intimidated or harassed.

40. There is no indication that the County has engaged in violations of any provision of the Constitution or laws of the United States or any State or political subdivision with respect to discrimination in voting on account of race or color. See 42 U.S.C. § 1973b(a)(3).

41. 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). Notices have remained posted throughout the litigation process. The County has posted notices regarding the proposed settlement at the Registrar's

^{2/} In addition, three other black voters recently served as poll officials until they had to stop because they either moved out of the County or had to retire for health reasons.

Office, government offices, post offices, and at the town hall in Vinton. In addition, the County has given notice of its intent to seek bailout through the County's web page (www.co.roanoke.va.us) and on the local public access television station. The County published its notice of bailout in the local newspaper, The Roanoke Times and World News, on December 17 and 19, 1999, and published the notice of its intent to file a proposed settlement in The Roanoke Times and World News on August 16, 2000. The Roanoke Times and World News is a daily newspaper whose circulation reaches persons throughout the County.

42. The United States has determined that it is appropriate to consent to a declaratory judgment in this action, pursuant to Section 4(a)(9) of the Voting Rights Act, notwithstanding the enforcement of certain voting changes prior to Section 5 preclearance. This consent is premised upon 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.

43. The United States' consent in this action is based upon its own factual investigation and consideration of all of the circumstances in this case, including the views of minority citizens in the County, the fact that there are no defendant-intervenors, the

affirmative steps taken by the County to increase voter participation, and the absence of evidence of racial polarization or discrimination in the electoral process within the County. See 42 U.S.C. § 1973b(a)(9). The United States' consent also is based upon the fact that the voting changes enforced without Section 5 preclearance were submitted promptly and precleared once brought to Plaintiffs' attention, and the absence of any indication that the failure to submit those changes was intended to evade a Section 5 objection. In these circumstances, where the political subdivision seeking bailout otherwise meets the statutory requirements, the United States believes that a bailout should be granted.

Approved as to form and content:

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