

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

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U.S. DISTRICT COURT  
DISTRICT OF COLUMBIA  
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ROCKINGHAM COUNTY, VIRGINIA, )  
a political subdivision of the )  
Commonwealth of Virginia, )

Plaintiff, )

v. )

JOHN D. ASHCROFT, Attorney General )  
of the United States of America, )  
RALPH F. BOYD, JR., Assistant )  
Attorney General, Civil Rights )  
Division, United States Department )  
of Justice, Washington, D.C., )

Defendants. )

NANCY M.  
MAYER-WHITTINGTON  
CLERK

Case No. 1:02CV00391

Judge: Ellen Segal Huvelle

3-Judge Court

STIPULATION OF FACTS

This action was initiated by Rockingham 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 Rockingham County is a political subdivision of the Commonwealth of Virginia. See Va. Code Ann. §1-13.2. The 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). The city of Harrisonburg is located within, but is independent of, Rockingham County. City voters are not eligible to vote in County elections, and County voters are not eligible to vote in City elections. Rockingham County is approximately 100 miles from Washington, D.C., in the Shenandoah Valley.

2. In addition to the County itself, there are additional governmental units within Rockingham County within the meaning of 42 U.S.C. §1973b(a)(1), including the Rockingham County School Board and the town governments of Bridgewater, Broadway, Dayton, Elkton, Grottoes, Mt. Crawford, and Timberville.

3. Rockingham 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 Act's November 1, 1964 coverage date for Virginia.

4. Rockingham 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 then 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 citizens to become electors. Va. Const. Art. II, Sec. 20 (1902). The literacy test was repealed by the Virginia Constitution of 1972.

5. According to the 2000 Census, Rockingham County has a total population of 67,725 persons, of whom 63,938 (94.41%) are white; 965 (1.42%) are black, and 2,221 (3.28%) are Hispanic. The total voting age population is 51,046 persons, of whom 48,601 (95.21%) are white; 657 (1.29%) are black, and 1,378 (2.70%) are Hispanic.

6. Like other jurisdictions in the Commonwealth of Virginia, Rockingham County does not collect or maintain voter registration data by race. The numbers countywide, irrespective of race, however, are encouraging. Since 1982, registration in the County has risen steadily, from 20,967 in 1982 to 33,654 in 2002. In

1998, the County registered 2,425 new voters. The County registered 2,317 new voters in 1999. Today, 67.9 percent (34,674 of 51,046) of the County's voting age population are registered voters. Not surprisingly, the greatest yearly increases in voter registration have occurred just prior to presidential election years. For example, registration rose from 31,380 in 1999 to 33,341 in 2000. In comparison, between 1998 and 1999, registration rose from 30,624 to 31,380.

7. Voters may register in person at the county registrar's office in the County Administration Building between 9 a.m. and 1:15 p.m. and 2:15 p.m. and 5 p.m., Monday through Friday. Voters also may register at the Department of Motor Vehicles. The registrar's office will mail registration applications on request. At least once a year, the registrar's office registers students at the high schools. Registration is scheduled at the high schools every April or May through the government teacher at each school. Civic organizations also conduct registration drives. The registrar's office gives these organizations registration forms and advises the participants on how registrants are to fill out the forms. The registrar's office has not conducted registration drives.

8. Rockingham County is governed by a five-member County Board of Supervisors. Each of the supervisors is elected from a single-member district. Staggered terms are used and a plurality

win system is in effect. The supervisors serve four-year terms and are elected biannually, with terms staggered so that three supervisors are elected at one time and two supervisors are elected two years later. See Va. Stat. §§ 24.2-218 and 24.2-219. The elections are partisan. The Board of Supervisors appoints a county administrator to serve as the County's chief administrative officer.

9. By referendum vote in November 1992, Rockingham County voters elected to move from an appointed to an elected Rockingham County School Board. Districts 2, 4, and 5 were the first districts to conduct school board elections on November 7, 1995. Five school board members are elected by district to staggered, four-year terms. School Board elections are nonpartisan.

10. There are twenty-six voting precincts in Rockingham County for purposes of electing the County School Board and County Board of Supervisors. The same five voting districts are used for purposes of electing both bodies.

11. Minority candidates for public office have been successful in Rockingham County, at both the town and county levels. Pablo Cuevas, who is Hispanic, won reelection to a fourth term on the County Board of Supervisors in November 2001 and Roscoe Burgess, who is African-American, was the leading vote-getter in his 1992 and 1996 Bridgewater Town Council elections and ran unopposed in 2000. From 1992 to 1998,

Joe Correa, who is Hispanic, served on the County Board of Supervisors, winning election in 1991 and re-election in 1995. In addition, several minority citizens have been appointed to county boards and commissions and at least one minority citizen has been appointed to a town board. No minority, however, has ever been appointed or elected to the Rockingham County School Board. Since the School Board began holding elections in 1995, there have been no minority candidates.

12. Dating back to at least 1989, Rockingham County has had only one minority poll official, Lei Wong, an Asian-American woman. Moreover, no minority has ever worked in any capacity in the Office of Voter Registration. No special efforts have been made by the County to recruit poll officials of any race or ethnicity. The available pool of eligible minority group members who could serve in either the Office of Voter Registration or as a poll official in Rockingham County is quite small, however. African-Americans comprise just 1.3% of the County's voting age population and Hispanics comprise only 2.7% of the County voting age population. Most of the area's minority population is concentrated in the city of Harrisonburg, which, as indicated above, is independent of the County. The County's voter registration application contains a section in which voters are asked if they would be interested in serving as a poll official. The County has never rejected any person who has ever expressed

an interest in serving as a poll officer.

13. Rockingham County has a three-member Electoral Board appointed by the County Circuit Court judge. The Electoral Board is responsible for conducting elections and hiring the poll officials. The registrar's office and the Democratic and Republican parties forward names to the Secretary of the Electoral Board. The appointment of poll officials is for a one-year term. Currently, none of the members on the Electoral Board is a member of a racial minority group. No person recommended by a political party chair to serve as a poll official ever has been rejected by the Electoral Board.

14. Because Rockingham County has found it difficult over the years to find enough persons willing to serve as poll officials, the county registrar has actively recruited persons to work at the polls, including designing brochures seeking qualified persons to serve as poll officials. There is no indication that in the preceding ten years that any eligible Rockingham County resident who has expressed an interest in becoming an election official has been denied the opportunity to serve in that capacity. The registrar forwards the names of voters indicating an interest in serving as a poll official to the Electoral Board for consideration and appointment.

15. In the preceding ten years, Rockingham County has made 45 Section 5 submissions of changes affecting voting for

preclearance review under Section 5 of the Voting Rights Act. 42 U.S.C. §1973c. During that same period, the Rockingham County School District has made 3 such submissions, and the towns comprising the County have made 19 such submissions. Most of the County submissions involved increasing the opportunities its citizens had to register and vote by adding registration locations, hours during which citizens could register, and voting precincts. The school district submissions related to changing the County School Board from an appointed to an elected body, a change which gave voters a more direct say in the composition of the School Board.

16. Within the ten-year period preceding the filing of this action, Rockingham County and its governmental units have a near perfect record of making timely Section 5 preclearance submissions of changes affecting voting. Indeed, over the last ten years, only one minor voting change was not submitted for preclearance in a timely fashion by Rockingham County and/or any of its governmental units. This appears to have been an inadvertent oversight and was not an attempt to evade Section 5 review. When this oversight was brought to the County's attention, it immediately submitted the change for Section 5 preclearance on November 13, 2001, and the Attorney General granted Section 5 preclearance to the change on January 11, 2002.

17. The Attorney General has not interposed a Section 5

objection to any change affecting voting in Rockingham County within the past ten years. All voting changes submitted by the County and its governmental units under Section 5 have been precleared by the Attorney General. Neither the County nor its governmental units has ever sought Section 5 judicial preclearance from this Court. The County and its governmental units have no pending Section 5 submissions before the Attorney General.

18. No person in Rockingham County has been denied the right to vote on account of race or color during the past ten years.

19. No discriminatory test or device as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) has been used in Rockingham County for the preceding ten years. The County has not engaged, within the ten years prior to the commencement of this action, in violations 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.

20. Rockingham County, in the preceding ten years, has not 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.

21. In the preceding ten years, no voting practices or procedures have been abandoned by Rockingham 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. 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 the 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.

22. Rockingham County does not employ any voting procedures or methods of election that inhibit or dilute minority citizens' equal access to the electoral process in the County.

23. No Federal Examiners have been appointed or assigned to Rockingham County pursuant to Section 3 or Section 6 of the Voting Rights Act, 42 U.S.C. §1973a, within the past ten years.

24. Rockingham County and its governmental units have not engaged in 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.

25. Rockingham County has publicized the intended filing 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). The County published notice that it intended to commence this bailout action in the Daily News-Record, a daily newspaper of general circulation in and around Rockingham County on October 29, 2001, and November 5, 2001. In addition, the County posted copies of the notice in post offices in the County and in other public locations, including the County Courthouse and Office of Voter Registration. Similarly, the County has recently published and posted Notices of its proposed settlement of this action in the same newspaper and in the same locations.

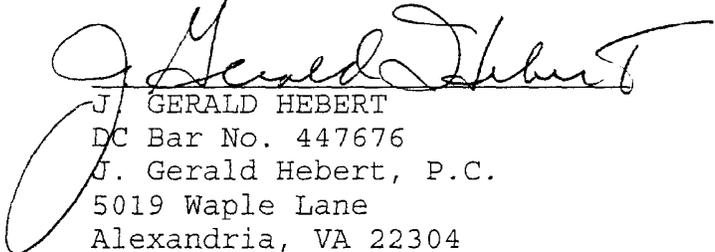
26. The United States has determined that it is appropriate to consent to a declaratory judgment in this action, pursuant to Section 4(a)(9) of the Voting Rights Act. This consent is premised upon an understanding that Congress intended Section 4(a)(9) to permit bailout in those cases where the Attorney 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.

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 Rockingham County, the fact that there are no defendant-interveners, the affirmative steps taken by the County to increase voter participation, the fact that minority candidates have been elected to the Rockingham County Board of Supervisors and to the town councils of the towns comprising the County, and the absence of evidence of racial polarization or discrimination in the electoral process within the County.

Approved as to form and content:

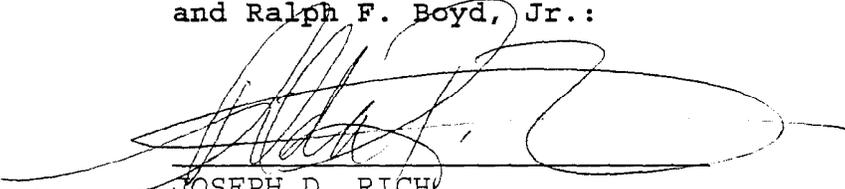
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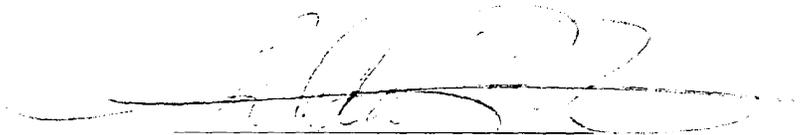
ROSCOE C. HOWARD, JR.  
United States Attorney

## CERTIFICATE OF SERVICE

I hereby certify this 29<sup>th</sup> day of April, 2002, that I have served all counsel by placing a copy of the **Stipulation of Facts** in the United States mail postage prepaid and properly addressed to:

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