

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

FILED

JAN 14 2013

Clerk, U.S. District & Bankruptcy Courts for the District of Columbia

CITY OF WHEATLAND,)
a political subdivision of the State of)
California, in Yuba County,)
City Hall)
111 C St.)
Wheatland, CA 95962)

Plaintiff,)

v.)

ERIC HOLDER,)
Attorney General of the)
United States of America;)
THOMAS E. PEREZ,)
Assistant Attorney General,)
Civil Rights Division, United States)
Department of Justice, Washington, DC,)

Defendants.)

Case: 1:13-cv-00054
Assigned To : Collyer, Rosemary M.
Assign. Date : 1/14/2013
Description: Three Judge Court

Three-Judge Court Requested

COMPLAINT FOR DECLARATORY RELIEF
UNDER THE VOTING RIGHTS ACT

The Plaintiff City of Wheatland alleges that:

1. This is an action brought for declaratory relief pursuant to Section 4 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973b (hereinafter "Section 4"). This Court has jurisdiction over this action pursuant to 28 U.S.C. §1343(a)(4), 28 U.S.C. §2201, 42 U.S.C. §1973b, and 42 U.S.C. §1973l(b).

2. Plaintiff City of Wheatland ("Wheatland") is a political subdivision of the State of California, incorporated in 1874. Wheatland is located within the boundaries of Yuba County. Yuba County is also a political subdivision of the State of California and a

covered jurisdiction subject to the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c. 42 U.S.C. §1973b(a)(1).

3. According to the 2010 Census, Yuba County has a total population of 72,155, of which 42,416 (58.8%) are Non-Hispanic White; 2,122 (2.9%) are Non-Hispanic Black; 4,710 (6.5%) are Non-Hispanic Asian; 1,260 (1.7%) are Non-Hispanic American Indian; and 18,051 (25%) are Hispanic. The total voting age population is 51,165, of which 32,949 (64.4%) are Non-Hispanic White; 1,526 (3%) are Non-Hispanic Black; 3,159 (6.2%) are Non-Hispanic Asian; 935 (1.8%) are Non-Hispanic American Indian; and 10,590 (20.7%) are Hispanic.

4. According to the 2010 Census, Wheatland has a total population of 3,456, of which 2,399 (69.4%) are Non-Hispanic White; 31 (0.9%) are Non-Hispanic Black; 199 (5.8%) are Non-Hispanic Asian; 43 (1.2%) are Non-Hispanic American Indian; and 620 (17.9%) are Hispanic. The total voting age population is 2,432, of which 1,768 (72.7%) are Non-Hispanic White; 20 (0.8%) are Non-Hispanic Black; 145 (6%) are Non-Hispanic Asian; 2 (0.1%) are Non-Hispanic American Indian; and 382 (15.7%) are Hispanic.

5. There are approximately 30,115 registered voters in Yuba County. This represents an increase of 23.3% since November 2002, when there were 24,421 registered voters.

6. There are approximately 1,666 registered voters in Wheatland. This represents an increase of more than 48% since November 2000, when there were 1122 registered voters.

7. Voter turnout in elections within Yuba County (*i.e.*, the percentage of those registered voters who cast ballots) varies according to the offices up for election. In the

presidential election years of 2000, 2004, and 2008, voter turnout in Yuba County increased from 64.7% in 2000 to 72.8% in 2008. The number of ballots cast county-wide also increased from 16,302 in 2000 to 21,681 in 2008. Voter turnout and ballots cast in the 2012 presidential election decreased slightly to 66.3% and 19,973. Turnout in Yuba County for the last three non-presidential federal elections has fluctuated: 48.6% in 2002, 47.8% in 2006, and 55.14% in 2010.

8. In Wheatland, voter turnout has fluctuated somewhat in presidential election years and increased steadily in non-presidential federal elections. In the presidential elections in 2000, 2004 and 2008, the number of ballots cast increased, although turnout decreased slightly in 2004 because the total number of registered voters had increased significantly: 754 ballots in 2000 (67.2% turnout); 1101 ballots in 2004 (66.2% turnout); 1131 ballots in 2008 (75.4% turnout). Voter turnout decreased slightly in 2012, to 71.6%, with 1193 ballots cast. Turnout in Wheatland has increased steadily for the last three non-presidential federal elections: 38.8% in 2002, 57.7% in 2006, and 60.5% in 2010.

9. The City of Wheatland is governed by a five-member City Council. Each member of the City Council is elected at-large to a four-year term. Terms are staggered, with two members elected in one cycle and three elected in a cycle starting two years later.

10. Since its inception in 1965, the Voting Rights Act has allowed States that are subject to the special remedial provisions of the Act to seek a judicial decree exempting them from coverage under the special provisions if they can satisfy standards established in the Voting Rights Act. This exemption process is known as "bailout". The Wheatland City Council voted to seek bailout on Tuesday, September 13, 2011.

11. In 1982, Congress made changes in the exemption standards of the Voting Rights Act. As amended in 1982, Section 4 of the Voting Rights Act provides that political subdivisions within jurisdictions that are covered under the special provisions of the Act are entitled to a declaratory judgment in this Court granting an exemption from the Act's special remedial provisions if, during the ten years preceding the filing of the action:

- A) no test or device has been used either for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, within the State or political subdivision seeking a declaratory judgment;
- B) no final judgment has been entered by any court determining that the political subdivision has denied or abridged the right to vote on account of race, color, or membership in a language minority group;
- C) no Federal examiners have been assigned to the political subdivision;
- D) all governmental units within the political subdivision have complied with the preclearance provisions of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c; and
- E) the Attorney General has not interposed any objection to any proposed voting change within the political subdivision and no declaratory judgment has been denied with regard to such a change by this Court under Section 5.

12. As described herein, Plaintiff City of Wheatland has fully complied with the provisions of Section 4 of the Act.

13. As a political subdivision within a covered jurisdiction, Plaintiff Wheatland has been subject to certain special remedial provisions of the Voting Rights Act, including the provisions of Section 5 of the Act, 42 U.S.C. §1973c. Under Section 5 of the Act, known as the 'preclearance' provisions, covered jurisdictions, including the Plaintiff City

of Wheatland, are required to seek and obtain preclearance from either this Court or from the United States Attorney General of any change affecting voting, and such preclearance must be obtained prior to implementation.

14. Wheatland has made preclearance submissions to the United States Department of Justice pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973c. No submission by Wheatland has ever received an objection from the Attorney General. Wheatland has never sought judicial preclearance of any voting changes in this Court.

15. One recent preclearance submission was made by Wheatland after the Defendant Attorney General reviewed the election documents and other records of the City of Wheatland in the course of considering the State's bailout request. During the Attorney General's review, there was one voting change discovered from 2004 that was not reflected in any of the City's prior preclearance submissions to the Attorney General over the preceding ten years. The failure to make a submission of this voting change prior to implementation was inadvertent and not the product of any discriminatory purpose or an intent to evade the Act. Upon notice from the Attorney General, this one voting-related change was promptly submitted for review under Section 5.

16. Voter registration opportunities in Yuba County for Wheatland elections are readily and equally available to all citizens. In addition to voter registration activities conducted by Yuba County, the City of Wheatland makes voter registration forms available in the front office of City Hall during normal hours of operation.

17. No person in Wheatland has been denied the right to vote on account of race, color, or membership in a language minority group for at least the preceding ten years.

18. The City of Wheatland has not used a “test or device” as defined in the Voting Rights Act (42 U.S.C. §1973b(c)) as a prerequisite to either registering or voting for at least the preceding ten years.

19. No final judgment of any court of the United States has determined that denials or abridgments of the right to vote on account of race or color have occurred in Wheatland, nor has Wheatland entered into any consent decree, settlement or agreement resulting in any abandonment of a voting practice challenged on such grounds. There are no pending actions against Wheatland alleging such denials or abridgments of the right to vote.

20. No voting practices or procedures have been abandoned by Wheatland 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.

21. The Plaintiff City of Wheatland has not employed any voting procedures or methods of election that inhibit or dilute equal access to the electoral process by minority voters in Wheatland. Minority voters in Wheatland are not being denied an equal opportunity to elect candidates of their choice to any office in Wheatland.

22. Federal examiners have never been appointed or assigned to Wheatland under Section 3 of the Voting Rights Act, 42 U.S.C. §1973a.

23. Because there has not been any known intimidation or harassment of persons exercising rights protected under the Voting Rights Act in Wheatland within the last ten years, Wheatland has not had any occasion to take any action eliminating such activity.

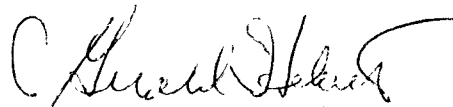
24. Pursuant to 42 U.S.C. §1973b, Wheatland has “publicize[d] the intended commencement ... of [this] action in the media serving [the City of Wheatland] and in the appropriate United States post offices.”

25. The allegations set forth in paragraphs 11 through 24, above, if established, entitle Plaintiff City of Wheatland to a declaratory judgment under Section 4 of the Voting Rights Act, 42 U.S.C. §1973b, exempting Wheatland from the special remedial provisions of the Voting Rights Act.

WHEREFORE, Plaintiff City of Wheatland respectfully prays that this Court:

- A. Convene a three-judge court, pursuant to 28 U.S.C. §2284 and 42 U.S.C. §1973b, to hear the claims raised in Plaintiff's complaint;
- B. Enter a declaratory judgment that Plaintiff City of Wheatland is entitled to a bailout from the special remedial provisions of the Voting Rights Act;
and
- C. Grant such other relief as may be necessary and proper as the needs of justice may require.

**FOR THE PLAINTIFF CITY OF
WHEATLAND:**



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