

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF WHEATLAND,)	
California,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:13-cv-00054
)	(RMC-DST-RBW)
ERIC HOLDER,)	Three-Judge Court
Attorney General of the)	
United States of America, <i>et al.</i>)	
)	
Defendants.)	
_____)	

CONSENT JUDGMENT AND DECREE

1. The complaint in this action was filed on January 14, 2013, by plaintiff City of Wheatland (“Wheatland” or “the City”) against defendants Eric Holder, Attorney General of the United States, and Thomas E. Perez, Assistant Attorney General, Civil Rights Division (collectively, the “Attorney General”).

2. Wheatland is a political subdivision of the State of California and is organized under the constitution and laws of the State of California. It is located within the boundaries of Yuba County, California.

3. Yuba County is subject to the special provisions of the Voting Rights Act, including the preclearance provisions of Section 5 of the Voting Rights Act, based on coverage determinations made by the Attorney General and the Director of the Census and published in the Federal Register. Coverage determinations were made regarding Yuba County both after the 1970 amendments to the Voting Rights Act and after the 1975 amendments to the Act. *See* 28 C.F.R. pt. 51 app. After the 1970 amendments to the Voting Rights Act, the Attorney General determined that the State of California maintained a “test or device” as defined by Section 4(c) of

the Act as of November 1, 1968, 35 Fed. Reg. 12354 (Aug. 1, 1970), and the Director of the Census determined that in Yuba County, less than 50 percent of the persons of voting age residing therein voted in the November 1968 presidential election, 36 Fed. Reg. 5809 (Mar. 27, 1971). After the 1975 amendments to the Voting Rights Act, the Attorney General also determined that the State of California maintained a “test or device” as defined by Section 4(f)(3) of the Act as of November 1, 1972, and the Director of the Census determined that in Yuba County less than 50 percent of citizens of voting age were registered to vote on November 1, 1972 or that less than 50 percent of such persons voted in the November 1972 presidential election, 41 Fed. Reg. 784 (Jan. 5, 1976); 41 Fed. Reg. 1503 (Jan. 8, 1976). As a consequence, voting changes undertaken in Yuba County or any governmental units within the county (including Wheatland) after November 1, 1968 must be submitted for review under Section 5.

4. Through this action, Wheatland seeks a declaratory judgment pursuant to the “bailout” provisions of Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1), declaring it exempt from coverage under Section 4(b) of the Act, 42 U.S.C. § 1973b(b). Bailout would exempt Wheatland from the preclearance provisions of Section 5 of the Act, 42 U.S.C. § 1973c.

5. This three-judge district court has been convened as provided in 42 U.S.C. § 1973b(a)(5) and 28 U.S.C. § 2284 and has jurisdiction over this matter.

6. Section 4(a) of the Voting Rights Act provides that a political subdivision subject to the special provisions of the Act may be exempted or “bailed out” from those provisions through an action for a declaratory judgment before this Court if it can demonstrate fulfillment of the specific statutory conditions in Section 4(a) for both the ten years preceding the filing of the

action, and throughout the pendency of the action. 42 U.S.C. § 1973b(a). In relevant part, the statutory conditions for bailout in Section 4(a) are:

(A) no such test or device has been used within such State or political subdivision for the purpose or with the effect of denying or abridging the right to vote on account of race or color or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section;

(B) no final judgment of any court of the United States, other than the denial of declaratory judgment under this section, has determined that denials or abridgements of the right to vote on account of race or color have occurred anywhere in the territory of such State or political subdivision or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) that denials or abridgements of the right to vote in contravention of the guarantees of subsection (f)(2) of this section have occurred anywhere in the territory of such State or subdivision and no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds; and no declaratory judgment under this section shall be entered during the pendency of an action commenced before the filing of an action under this section and alleging such denials or abridgements of the right to vote;

(C) no Federal examiners or observers under subchapters I-A to I-C of this chapter have been assigned to such State or political subdivision;

(D) such State or political subdivision and all governmental units within its territory have complied with section 1973c of this title, including compliance with the requirement that no change covered by section 1973c of this title has been enforced without preclearance under section 1973c of this title, and have repealed all changes covered by section 1973c of this title to which the Attorney General has successfully objected or as to which the United States District Court for the District of Columbia has denied a declaratory judgment;

(E) the Attorney General has not interposed any objection (that has not been overturned by a final judgment of a court) and no declaratory judgment has been denied under section 1973c of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under section 1973c of this title, and no such submissions or declaratory judgment actions are pending; and

(F) such State or political subdivision and all governmental units within its territory - (i) have eliminated voting procedures and methods of election which inhibit or dilute equal access to the electoral process; (ii) have engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under subchapters I-A to I-C of this chapter; and (iii) 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)(A)-(F).

7. Section 4(a) provides the following additional requirements to obtain bailout:

(2) To assist the court in determining whether to issue a declaratory judgment under this subsection, the plaintiff shall present evidence of minority participation, including evidence of the levels of minority group registration and voting, changes in such levels over time, and disparities between minority-group and non-minority-group participation.

(3) No declaratory judgment shall issue under this subsection with respect to such State or political subdivision if such plaintiff and governmental units within its territory have, during the period beginning ten years before the date the judgment is issued, 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 or (in the case of a State or subdivision seeking a declaratory judgment under the second sentence of this subsection) in contravention of the guarantees of subsection (f)(2) of this section unless the plaintiff establishes that any such violations were trivial, were promptly corrected, and were not repeated.

(4) The State or political subdivision bringing such action shall publicize the intended commencement and any proposed settlement of such action in the media serving such State or political subdivision and in appropriate United States post offices. . . .

See 42 U.S.C. § 1973b(a)(2)-(a)(4).

8. Section 4(a)(9) provides that the Attorney General may consent to entry of a declaratory judgment granting bailout “if based upon a showing of objective and compelling evidence by the plaintiff, and upon investigation, he is satisfied that the State or political subdivision has complied with the requirements of [Section 4(a)(1)]” 42 U.S.C. § 1973b(a)(9).

9. The Attorney General has advised the Court that he has conducted a comprehensive and independent investigation to determine Wheatland’s entitlement to bailout. In so doing, the Attorney General represents that Department of Justice attorneys have, among other things, reviewed a significant number of documents related to Wheatland, including available background information and demographic data, minutes of Wheatland’s City Council meetings, records relating to voter registration and turnout in Wheatland, and records of Wheatland’s preclearance submissions.

10. The Attorney General and Wheatland agree that Wheatland has fulfilled the conditions required by Section 4(a) and is entitled to the requested declaratory judgment allowing it to bail out of Section 5 coverage. Accordingly, Wheatland and the Attorney General have filed a Joint Motion for Entry of Consent Judgment and Decree.

11. The parties request that this Court wait 30 days after filing of the Joint Motion for Entry of Consent Judgment and Decree, before approving this settlement, while a notice of proposed settlement is advertised.

THE PARTIES' AGREED FACTUAL FINDINGS

12. Wheatland is a city located in Northern California's Central Valley within the boundaries of Yuba County.

13. Wheatland is political subdivision of the State of California, and thus, it is a political subdivision within the meaning of Section 4(a) of the Voting Rights Act. *See* 42 U.S.C. § 1973b(a)(1)(A); *see also Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009). Wheatland does not have any subjurisdictions.

14. According to the 2010 Census, Yuba County had a population of 72,155, including 42,416 non-Hispanic Whites (58.8%), 18,051 Hispanics (25%), 2,637 non-Hispanic Blacks (3.6%), 2,634 American Indian/Alaskan Natives (3.6%), 5,326 Asians (7.4%), and the remainder split among other racial groups. The total reported voting-age population was 51,165, which included 32,949 non-Hispanic Whites (64.4%), 10,590 Hispanics (20.7%), 1,674 non-Hispanic Blacks (3.3%), 1,880 American Indian/Alaskan Natives (3.7%), 3,453 Asians (6.8%), and the remainder split among other racial groups.

15. The most recent data concerning citizen voting age population (CVAP) comes from the 2007-2011 American Community Survey, which estimated Yuba County CVAP as 46,085. This included 32,705 non-Hispanic Whites (71.0%), 6,745 Hispanics (14.6%), 1,350 non-Hispanic Blacks (2.9%), 585 American Indian/Alaskan Natives (1.3%), 2,520 Asians (5.5%), and the remainder split among other racial groups.

16. According to the 2010 Census, the total population of Wheatland was 3,456, which included 2,399 non-Hispanic Whites (69.4%), 620 Hispanics (17.9%), 254 Asians (7.4%), 104 American Indian/Alaskan Natives (3%), and 46 non-Hispanic Blacks (1.3%). The total reported voting age population of Wheatland in 2010 was 2,432, which included 1,768 non-Hispanic Whites (72.7%), 382 Hispanics (15.7%), 170 Asians (7%), 71 American Indian/Alaskan Natives (2.9%), and 25 non-Hispanic Blacks (1%).

17. The 2007-2011 American Community Survey estimated Wheatland's CVAP as 2,090. This included 1,390 non-Hispanic Whites (66.5%), 360 Hispanics (17.2%), 155 Asians (7.4%), 15 American Indian/Alaskan Natives (0.7%), and 10 non-Hispanic Blacks (0.5%).

18. Wheatland is governed by a five-member City Council consisting of a mayor, vice mayor, and three other council members. *See* Cal. Gov't Code § 36501. The City Council's five members are elected at large for four-year, staggered terms. Such elections are non-partisan and held along with statewide general elections. *See* Wheatland Mun. Code § 2.40.020; Wheatland Ord. Nos. 275, 276. A city manager administers the City's day-to-day functions under the direction and control of the City Council, Wheatland Mun. Code § 2.06.060, and a city clerk maintains public records and assists the City Council. *See id.* § 2.08.010(A).

19. Of Wheatland's five City Council members, one member is Hispanic and has served on the council since 2004.

20. All election-related functions in Wheatland, including voter outreach, voter registration, list maintenance, and the administration of elections, are administered by the Yuba County Elections Department. Yuba County also manages candidate filings for Wheatland.

21. Wheatland does not manage the electoral processes. Instead, prior to each municipal election, Wheatland adopts a resolution to consolidate its election with the upcoming statewide election. *See* Cal. Elec. Code § 10403 (if an election is to be consolidated with a statewide election, relevant jurisdiction must file a resolution authorizing the consolidation with the board of supervisors).

22. Wheatland has approximately 1,666 registered voters. Voter turnout in Wheatland has increased during the past ten years. In 2000, turnout was 67.2%. It was 66.2% in 2004, 75.4% in 2008, and 71.6% in 2012. The trend is similar for recent non-presidential election years: turnout was 38.8% in 2002, 57.7% in 2006, and 60.5% in 2010.

23. Since California does not require voter applicants to identify their race when registering, Wheatland is unable to present evidence of minority participation in registering and voting.

24. Opportunities for voter registration are available in Yuba County through various offices, including the office of the clerk/recorder, social service agencies, the department of motor vehicles, or online through the California Online Voter Registration website, and through mail-in application.

25. Yuba County has engaged in constructive efforts to increase minority participation in elections, including conducting voter registration drives at Hispanic fairs and the Yuba County/Sutter County Fair.

26. Yuba County also ensures that its written election materials, including ballots, polling place materials, instructions, signage, and all mailings to voters, are provided in both English and Spanish. Some of the County's poll workers are Spanish speaking, and the County

has a Spanish-speaking staff person available by phone during elections to provide language assistance upon request.

27. The Yuba County Elections Department does not collect data on the ethnicity of its poll workers. The department recruits poll workers through the Yuba County website, appearances at local fairs, flyers included with its mailings, and advertisements in the local “shopper” newspaper. It has conducted targeted outreach to recruit poll workers from Hispanic communities, including through advertisements on local Hispanic radio.

28. During the ten years preceding this action, and during the pendency of this action, Wheatland made three submissions under Section 5 to the Attorney General. The Attorney General did not interpose an objection to any of those submissions. Wheatland has not sought judicial preclearance under Section 5 for any voting changes in the District Court for the District of Columbia. The Attorney General’s review of Wheatland’s records in the course of considering its bailout request indicated that during the preceding ten years, several voting changes were implemented by or on behalf of Wheatland prior to preclearance under Section 5. These voting changes consisted of conversion of the positions of city clerk and treasurer from elected to appointed, joint election procedures with Yuba County for the November 2006 special referendum and tax election, recurring resolutions authorizing Yuba County to conduct its municipal elections, and four annexations. This review also determined that the failure to make such submissions prior to implementation was not the product of any discriminatory reason. Upon notice from the Attorney General, Wheatland ensured that these matters were promptly submitted for review under Section 5, and the Attorney General interposed no objection to these changes under Section 5. This Court has granted bailout to a number of other covered

jurisdictions who have similarly implemented certain voting changes prior to Section 5 review. *See, e.g., Shenandoah Cnty. v. Reno*, No. 99-992 (D.D.C. Oct. 15, 1999); *Roanoke Cnty. v. Reno*, No. 00-1949 (D.D.C. Jan. 24, 2001); *Warren Cnty. v. Ashcroft*, No. 02-1736 (D.D.C. Nov. 26, 2002); *Pulaski Cnty. v. Gonzales*, No. 05-1265 (D.D.C. Sept. 27, 2005); *Augusta Cnty. v. Gonzales*, No. 05-1885 (D.D.C. Nov. 30, 2005); *City of Kings Mountain v. Holder*, No. 10-cv-1153 (D.D.C. Oct. 22, 2010); *Jefferson Cnty. Drainage Dist. No. Seven v. Holder*, No. 11-461 (D.D.C. June 6, 2011); *Alta Irrigation Dist. v. Holder*, No. 11-758 (D.D.C. July 15, 2011); *Culpeper Cnty. v. Holder*, No. 11-1477 (D.D.C. Oct. 3, 2011); *King George Cnty. v. Holder*, No. 11-02164 (D.D.C. April 5, 2012); *Prince William Cnty. v. Holder*, No. 12-00014 (D.D.C. April 10, 2012); *Merced Cnty. v. Holder*, No. 12-00354 (D.D.C. Aug. 31, 2012); *Browns Valley Irrigation Dist. v. Holder*, No. 12-1597 (D.D.C. Feb. 4, 2013); *New Hampshire v. Holder*, No. 12-01854 (D.D.C. Mar. 1, 2013). Information on bailout cases is available on the Department of Justice's website at www.justice.gov/crt/about/vot/misc/sec_4.php.

29. Wheatland publicized its intent to commence a bailout action, as required by Section 4(a)(4), by posting a notice on its calendar on its website, <http://www.wheatland.ca.gov/events.asp?eid=362>, and in U.S. post offices in Yuba County. Wheatland also disseminated the notice through a local newspaper, the Appeal-Democrat, on October 29, 2012. *See* 42 U.S.C. § 1973b(a)(4).

30. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by Wheatland, pursuant to Section 4(a)(9) of the Voting Rights Act. *See* 42 U.S.C. § 1973b(a)(9). The Attorney General's consent in this action is based upon his own independent factual investigation of Wheatland's fulfillment of all of the bailout

criteria, and consideration of all of the circumstances of this case, and the absence of racial discrimination in the electoral process within Wheatland. This consent is premised on 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 PARTIES' AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

31. The City of Wheatland 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. Pursuant to Section 5 of the Act, Wheatland is required to obtain preclearance from either this Court or the Attorney General for any change in voting standards, practices, and procedures adopted or implemented since the Act's coverage date for Yuba County, California.

32. Wheatland is the only entity seeking bailout through this action.

33. Wheatland is a political subdivision entitled to seek bailout from this Court for itself and by itself under Section 4(a). *See* 42 U.S.C. § 1973b(a)(1); *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193 (2009).

34. There are no other governmental units within Wheatland's territory for which Wheatland is responsible or which must request bailout at the same time as Wheatland within the meaning of Section 4(a). *See* 42 U.S.C. § 1973b(a).

35. During the ten years preceding the filing of this action and during the pendency of this action, Wheatland has not used any test or device as defined in Section 4(c) or Section 4(f)(3) of the Voting Rights Act, 42 U.S.C. § 1973b(c) & (f)(3), for the purpose or with the effect

of denying or abridging the right to vote on account of race or color or language minority status. 42 U.S.C. § 1973b(a)(1)(A).

36. During the ten years preceding the filing of this action, and during the pendency of this action, 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 or language minority status have occurred anywhere within Wheatland. Further, no consent decree, settlement, or agreement has been entered into resulting in any abandonment of a voting practice challenged on such grounds. No action is presently pending alleging such denials or abridgments of the right to vote. 42 U.S.C. § 1973b(a)(1)(B).

37. During the ten years preceding the filing of this action, and during the pendency of this action, no Federal examiners or observers have been assigned to Wheatland. 42 U.S.C. § 1973b(a)(1)(C).

38. During the ten years preceding the filing of this action, and during the pendency of this action, Wheatland has made three administrative submissions to the Attorney General for review under Section 5, and the Attorney General did not interpose an objection to any of these submissions under Section 5. As set forth above, Wheatland did not submit, prior to implementation, certain voting changes to the Attorney General for review under Section 5. There is no evidence that Wheatland did not submit these matters prior to implementation for any improper reason. Nor is there any evidence that implementation of such changes, which have now been precleared under Section 5, has had a discriminatory purpose or effect on voting that would contravene Congress' intent in providing the bailout option to a jurisdiction such as this. During the ten years preceding the filing of this action, and during the pendency of this

action, there has been no need for Wheatland to repeal any voting changes to which the Attorney General has objected, or to which this Court has denied a declaratory judgment, since no such objections or denials have occurred. *See* 42 U.S.C. § 1973b(a)(1)(D).

39. The Attorney General has never interposed any objection to voting changes submitted by or on behalf of Wheatland for administrative review under Section 5. No such administrative submissions by or on behalf of Wheatland are presently pending before the Attorney General. Wheatland has never sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied Wheatland a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. *See* 42 U.S.C. § 1973b(a)(1)(E).

40. During the ten years preceding the filing of this action, and during the pendency of this action, Wheatland has not employed voting procedures or methods of election which inhibit or dilute equal access to the electoral process. *See* 42 U.S.C. § 1973b(a)(1)(F)(i).

41. There is no evidence that any person in Wheatland's elections has been subject to intimidation or harassment in the course of exercising his or her rights protected under the Voting Rights Act. *See* 42 U.S.C. § 1973b(a)(1)(F)(ii).

42. All voter registration and election administration in Wheatland has been conducted solely by Yuba County throughout the ten years preceding the filing of this action and through the present time. During that time, Yuba County has engaged in constructive efforts to expand the opportunity for voter registration and voting for every person of voting age through a variety of means, including offering various locations for voter registration in the County, as well as through an internet portal and by mail-in application. 42 U.S.C. § 1973b(a)(1)(F)(iii).

43. Wheatland has presented available evidence concerning rates of voter registration and voter participation over time. 42 U.S.C. § 1973b(a)(2).

44. During the preceding ten year period, Wheatland has not 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 or language minority status. 42 U.S.C. § 1973b(a)(3).

45. Wheatland has provided public notice of its intent to seek a Section 4(a) declaratory judgment and of the proposed settlement of this action. 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. Plaintiff City of Wheatland 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).

2. The parties' Joint Motion for Entry of Consent Judgment and Decree is GRANTED, and plaintiff City of Wheatland is exempted from coverage pursuant to Section 4(b) of the Voting Rights Act, 42 U.S.C. § 1973b(b), provided that this Court shall retain jurisdiction over this matter for a period of ten years pursuant to Section 4(a)(5), 42 U.S.C. § 1973b(a)(5). 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 Section 4(a)(5), 42 U.S.C. § 1973b(a)(5).

3. Each party shall bear its own fees, expenses and costs.

4. This Consent Judgment and Decree apply only to plaintiff City of Wheatland and do not exempt Yuba County from coverage of the Voting Rights Act.

Entered this 25th day of April, 2013.

/s/

DAVID S. TATEL
UNITED STATES CIRCUIT JUDGE

/s/

ROSEMARY M. COLLYER
UNITED STATES DISTRICT JUDGE

/s/

REGGIE B. WALTON
UNITED STATES DISTRICT JUDGE