

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SHELBY COUNTY, ALABAMA,	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	Civil Action No.
ERIC H. HOLDER, Jr.,	)	1:10-cv-00651-JDB
in his official capacity as	)	
Attorney General of the	)	
United States,	)	
	)	
Defendant	)	

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**ATTORNEY GENERAL’S NOTICE OF SUPPLEMENTAL INFORMATION**

The Attorney General respectfully submits this Notice regarding relevant events occurring since the Attorney General filed his Memorandum of Law in Opposition to Plaintiff’s Motion for Summary Judgment and in Support of Cross-Motion for Summary Judgment (Dkt. Nos. 53 and 54), and since the Court heard oral argument on February 2, 2011.

Attached are one court-entered consent decree and two proposed consent decrees from bailout actions consented to by the Attorney General since February 2, 2011. The attached consent decrees arise from Jefferson County Drainage District No. 7 (Texas), *Jefferson Cnty. Drainage Dist. No. 7 v. Holder*, C.A. No. 1:11-cv-00461 (D.D.C., decree entered by the court June 6, 2011); the City of Bedford (Virginia), *City of Bedford v. Holder*, C.A. No. 1:11-cv-00473 (D.D.C., proposed decree filed June 8, 2011); and the Alta Irrigation District (California), *Alta Irrigation Dist. v. Holder*, C.A. No. 1:11-cv-758 (D.D.C., proposed decree filed June 9, 2011). The Decrees are filed pursuant to the bailout provision in Section 4(a) of the Voting Rights Act. *See* 42 U.S.C. §1973b(a).

The Attorney General provides this supplemental information to ensure a complete and accurate record. This information supplements the record to reflect that the Attorney General has consented to bailout in 24—rather than 21—cases since 1984. *See* Mem. of Law in Opp. to Pl.’s Mot. for Summ. J. and in Support of Def.’s Cross-Mot. for Summ. J. at 72 (Dkt. Nos. 53 and 54); Attorney General’s Reply Brief at 34 (Dkt. 67) and Berman Supp. Decl., Ex. 2 and Attachment A thereto (listing all bailout cases after Aug. 5, 1984). The Attorney General is currently investigating additional potential bailouts and will continue to supplement the record before this Court as appropriate.

The Attorney General has consulted with counsel for the Plaintiff in this action, who takes no position on the Attorney General’s filing of this Notice.

Date: June 15, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day, June 15, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

JEFFERSON COUNTY DRAINAGE )  
DISTRICT NUMBER SEVEN, )  
a political subdivision of the )  
State of Texas, )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
ERIC H. HOLDER, JR., )  
Attorney General of the )  
United States of America; )  
THOMAS E. PEREZ, )  
Assistant Attorney General, )  
Civil Rights Division, United States )  
Department of Justice, )  
) )  
Defendants. )  
\_\_\_\_\_ )

Civil Action No. 1:11-cv-00461

(three-judge court) DST-RWR-RJL

CONSENT JUDGMENT AND DECREE

1. This action was initiated on March 2, 2011 by Plaintiff Jefferson County Drainage District Number Seven (the District), against Defendants Eric H. Holder, Jr., Attorney General of the United States, and Thomas E. Perez, Assistant Attorney General, Civil Rights Division (collectively, “the Attorney General”). The District is a governmental entity organized under the constitution and laws of the State of Texas.

2. The State of Texas became covered as a whole by certain special provisions of the Voting Rights Act, based on a coverage determination under the third sentence of Section 4(b), “the language minority trigger,” made by the Attorney General and the Director of the Census, and published in the Federal Register on September 23, 1975. *See* 40 Fed. Reg. 43,746 (Sept. 23, 1975). As of November 1972, over 5 percent of the State’s voting-age citizens were Latinos,

its election materials were in English only, and fewer than 50 percent of all of its voting-age citizens were registered to vote or turned out to vote. By virtue of this coverage determination, the State of Texas and all of its political subunits (including the District) must receive preclearance under Section 5 of the Voting Rights Act for all changes enacted or implemented after November 1, 1972, that affect voting. *See Briscoe v. Bell*, 432 U.S. 404 (1977).

3. This three-judge 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.

4. 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 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 the time period “during the ten years preceding the filing of the action” and “during the pendency of such action,” as described below:

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 (42 U.S.C. § 1973b(a)(1)(A));

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 (42 U.S.C. § 1973b(a)(1)(B));

no Federal examiners or observers under subchapters I-A to I-C of this chapter have been assigned to such State or political subdivision (42 U.S.C. § 1973b(a)(1)(C));

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 (42 U.S.C. § 1973b(a)(1)(D));

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 (42 U.S.C. § 1973b(a)(1)(E)); and

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 (42 U.S.C. § 1973b(a)(1)(F)(i-iii)).

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

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. (42 U.S.C. § 1973b(a)(2));

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. (42 U.S.C. § 1973b(a)(3));

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 . . . (42 U.S.C. § 1973b(a)(4)).

6. Section 4(a)(9) provides that the Attorney General can 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)).

7. The Defendant Attorney General of the United States, after investigation, has agreed that the Plaintiff Jefferson County Drainage District Number Seven has fulfilled all conditions required by Section 4(a) and is entitled to the requested declaratory judgment. The parties have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED STIPULATION OF FACTUAL FINDINGS

8. The District is a political subdivision of the State of Texas and thus a political subdivision of a state 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*, 129 S. Ct. 2504, 557 U.S. \_\_\_ (2009).

9. The District is located entirely within the boundaries of Jefferson County, Texas. The District is one of three drainage districts located in Jefferson County. It was initially established under the provisions of Section 59 of Article XVI of the Constitution of Texas by Sections 3, 4, and 13 of Senate Bill 53, Chapter 34, Acts of the 57th Legislature, 3rd Called Session, 1962 (Senate Bill 53), to maintain levees, drainage canals, and pumping stations within its boundaries. Today, the District covers the needs for drainage and hurricane protection for 107.5 square miles of Jefferson County, including the entirety of the communities of the City of Port Arthur, the City of Port Neches, the City of Nederland, and the City of Groves.

10. Jefferson County, Texas had a total population of 252,051 persons, according to the 2000 Census, and the racial makeup of the county's total population was 130,604 (51.8%) Non-Hispanic white, 84,482 (33.5%) Non-Hispanic black, and 26,536 (10.5%) Hispanic. The total voting age population of Jefferson County in 2000 was 186,727, and the racial makeup of

the County's voting age population was 103,646 (55.5%) Non-Hispanic white, 58,271 (31.2%) Non-Hispanic black, and 17,908 (9.6%) Hispanic. The total estimated citizen voting age population of Jefferson County in 2000 was 178,631, and the racial makeup of the citizen voting age population was 103,177 (57.8%) Non-Hispanic white, 57,936 (32.4%) Non-Hispanic black, and 12,417 (7.0%) Hispanic.

The 2006-2008 American Community Survey (ACS) Census data estimates the total population of Jefferson County to have dropped to 242,142 persons, with a racial makeup of 116,388 (48.1%) Non-Hispanic white, 83,025 (33.5%) Non-Hispanic black, and 33,351 (13.8%) Hispanic. The 2006-2008 ACS estimates the voting age population of the County at 183,104, with a racial make-up of 94,340 (51.5%) Non-Hispanic white, 60,144 (32.8%) Non-Hispanic black, and 22,264 (12.2%) Hispanic. The 2006-2008 ACS estimates the citizen voting age population of the County at 170,651, with a racial make-up of 93,708 (54.9%) Non-Hispanic white, 59,868 (35.1%) Non-Hispanic black, and 12,691 (7.4%) Hispanic.

The total population of the District, according to the 2000 Census, was approximately 121,922 persons, with a racial makeup of 67,934 (55.7%) Non-Hispanic white, 31,553 (25.9%) Non-Hispanic black, and 16,752 (13.7%) Hispanic. The voting age population of the District, according to the 2000 Census, was approximately 92,035 persons, with a racial makeup of 53,744 (58.4%) Non-Hispanic white, 22,939 (24.9%) Non-Hispanic black, and 11,619 (12.6%) Hispanic. The estimated citizen voting age population of the District was 82,774 in 2000, with an estimated racial makeup of 52,466 (63.4%) Non-Hispanic white, 21,171 (25.6%) Non-Hispanic black, and 6,436 (7.8%) Hispanic.

Based on the 2006-2008 ACS data, the parties estimate the total population of the District to be 119,272, with an estimated racial make-up of 60,039 (50.3%) Non-Hispanic white, 32,587 (27.3%) Non-Hispanic black, and 21,618 (18.1%) Hispanic. Based on the 2006-2008 ACS data, the parties estimate that the voting age population of the District declined to 90,191 persons, with a racial makeup of 48,665 (54.0%) Non-Hispanic white, 23,606 (26.2%) Non-Hispanic black, and 14,432 (16.0%) Hispanic. Based on the 2006-2008 ACS data, the parties estimate that citizen voting age population of the District has dropped to 79,079, with an estimated racial makeup of 47,651 (60.3%) Non-Hispanic white, 21,875 (27.7%) Non-Hispanic black, and 6,578 (8.3%) Hispanic.

11. Governing state law, including the Texas Election Code, the Texas Water Code, and House Bill 3847, Chapter 1151, Acts of the 76th Legislature, 1999 (House Bill 3847) (amending Senate Bill 53) provide for the method of election of the District's commissioners. *See* Tex. Elec. Code Ann. § 1.002; *see also* Tex. Water Code Ann. § 49.101. Under Senate Bill 53 (1962), the original legislation creating the District, the governing body of the District consisted of three commissioners appointed by the County governing body, the Jefferson County Commissioner's Court. By a petition of at least 20 percent of the real property taxpayers of the District, under House Bill 1180, Chapter 614, Acts of the 65th Legislature, 1977 (House Bill 1180) (amending Senate Bill 53) and the provisions of Section 56.064 of the Texas Water Code, the method of choosing commissioners was changed from appointment to election.

The first commissioner election was held in January 1982. The second election was held in November 1982 to coordinate the District's election timetable with similar agencies. Subsequent elections were held in April 1985, January 1989, January 1993, and January 1997.

The District's elections currently take place in May on a uniform election date established by state law at the same time as other local elections in Jefferson County. *See* Tex. Water Code Ann. § 49.103(b). Elections scheduled for May 2002 and May 2006 were canceled because the entire board ran unopposed. *See id.* at § 2.053. The District's last contested election occurred on May 8, 2010.

12. The District is currently governed by a board of five commissioners with one commissioner serving as its chairman. *See* Tex. Water Code Ann. § 54.101. These commissioners serve concurrent four-year terms and all seats for the board are up for election each election cycle in even-numbered non-presidential election years. *See* Tex. Water Code Ann. § 49.103(a); *see also* House Bill 3847, section 4. As required by state law, elections for commissioner are non-partisan. *See* Tex. Elec. Code Ann. §§ 1.005(9), 144.001, 144.002. To be elected as a commissioner, a plurality-vote is required. *See id.* at § 2.001. Thus, candidates with the highest numbers of votes for each available position are elected regardless of whether the candidate receives a majority of the votes cast.

The District's Board of Commissioners has authority to determine the method of election whether at-large or through single member districts. *See* Tex. Water Code Ann. § 49.103(c), (d). The District currently employs at-large elections with residency districts. Under this system, candidates must run from the particular municipality they live in and all voters in the District vote for five commission members, but only one commissioner is elected from each of the geographic municipalities represented in the District. *See* House Bill No. 3847 ("Not more than one Commissioner shall be elected from any one municipality as long as five municipalities exist within the [D]istrict.")

The District recently adopted a resolution modifying the municipalities represented by its five commission members to reflect changes over time in the geographic composition of the municipalities in the District. *See* Dist. No. 7, Res. No. 341 (Feb. 2, 2010). The District previously elected a total of five commissioners with no more than one commissioner being elected from each of the geographical areas of the Cities of Groves, Nederland, Port Neches, Port Arthur, and Griffing Park. On February 2, 2010, the District's Board of Commissioners, through a resolution, authorized a change to the geographical areas of election, with one commissioner each being elected from Nederland, Port Neches and Groves, and with two commissioners being elected from Port Arthur, inclusive of the area formerly identified as Griffing Park. This resolution was submitted to the Department of Justice for review under Section 5, and, on May 4, 2010 the Attorney General informed district officials that no objection would be interposed. (Submission numbers 2010-1723 and 2010-1670.)

13. African Americans have held several prominent positions in the governance of the District. One African American from Port Arthur was appointed and served on the Board from March 1975 to January 1982. Another African American candidate was elected to the District's Board of Commissioners in 1993 to represent Port Arthur and he has served continuously to the present time, having just been reelected to the board in May 2010; he is the current chair of the Board and has served in that capacity since 1997. The May 2010 election also resulted in an additional African American candidate being elected to the Board to represent Port Arthur—receiving the most votes of any candidate running for a contested seat. Hence, at present, two of the five commissioners on the District's Board of Commissioners are African-American.

14. Voting registration is not conducted under the supervision of the District. Instead, since state law provides that registration for voting is conducted by Texas's 254 counties, Jefferson County's Tax Assessor-Collector serves as the Voter Registrar for Jefferson County and provides voter registration information for the District. *See* Tex. Elec. Code Ann. § 12.001. Texas uses a unitary voter registration system under which a citizen need only register once in order to be able to vote in elections for federal, state, county, and municipal offices, as well as for special district offices, such as the District. The determination of which eligible voters can vote in the District's elections has historically been established on the basis of whether a voter is subject to the District's taxing authority. The District utilizes a voter registration list generated by Jefferson County, and there are various opportunities for convenient voter registration in the County. *See id.* at §§ 11.001-11.002. As of 2008, there were an estimated total of 66,422 registered voters within the District. As of May 2010, there were 67,858 registered voters within the District.

The District is unable to present evidence directly measuring minority voter participation rates over time because the District does not engage in voter registration, and while Jefferson County does maintain voter registration records for the District, it does not record the race of its registered voters. Data suggest that voter registration rates in the precincts comprising the District have generally decreased over time along with its decreasing population, and that the overall voter registration rate remains at about 84 percent of the citizen voting age population being registered to vote in the District. In addition, available data covering recent years from the Texas Secretary of State suggest that there have been increases in the precincts comprising the District over time in the total number of Hispanic-surnamed registered voters. Voter turnout has varied in the

county by the type of election being conducted, with turnout being the highest for November presidential elections and generally much lower for the District's May elections.

15. At present, the District's elections are conducted independent of elections for County offices and independent of elections for other local offices. The District, however, contracted with Jefferson County's Elections Director to work as an independent contractor assisting the District with conducting its most recent election in May 2010. Additionally, the District utilizes election contact information provided by Jefferson County to find staff, such as poll workers and election judges, for its elections. The District also uses the same polling places used by the community for County and other municipal elections. This allows voters to avoid traveling to a separate polling place on Election Day to vote in the District's elections. Voters are also permitted to vote early in the District's elections at the District's administrative offices.

16. In 1981, at the time the District shifted its method of selecting its commissioners from appointment to election, the District developed a plan for compliance with the language minority requirements of Sections 4(f)(4) of the Voting Rights Act and received preclearance under Section 5 from the Department of Justice for that plan. Submission number 1981-0685. The District has complied with the minority language requirements of the Act by publishing, in both English and Spanish, notices of election, orders of election, and other relevant orders and resolutions establishing the election of commissioners, the election date, selection of election judges, and other related election issues, including its ballot. In addition, bilingual assistance has been made available for Spanish-speaking voters through the District's administrative offices during the early voting process and on election days.

17. Jefferson County was certified by the Attorney General for federal examiners (and federal observers) on December 10, 1996. *See* 61 Fed. Reg. 65,074-04 (Dec. 10, 1996). However, no federal examiners or observers have been assigned to the District's elections nor to any elections conducted in the County at the same time as the District's elections.

18. Over the course of its history, the District has made five submissions under Section 5 of the Voting Rights Act to the Attorney General, with the first occurring in 1982. The Attorney General has not interposed an objection to any of these submissions. Of these submissions, two were submitted by the District in the ten years preceding this action. In the ten years preceding this action, and during the pendency of this action, there have been two minor voting changes enforced with respect to the District's elections requiring preclearance under Section 5 that were not precleared prior to implementation; namely, the District's decision to cancel elections in 2002 and 2006, when no candidates running for the office of District Commissioner were opposed. The District subsequently obtained preclearance for these voting changes. (Submission numbers 2010-1723 and 2010-1670.) The parties note their understanding that the State of Texas had at one time advised local jurisdictions that these types of election cancellations did not require preclearance under Section 5.

19. The District publicized the intended commencement of this action in the manner required by Section 4(a)(4) prior to its being filed by placing advertisements in local newspapers, in the appropriate post office, and in the Jefferson County Sub-Courthouse, and by conducting a public hearing on the matter. The District has publicized notice of this proposed settlement, simultaneously with the filing of the Joint Motion for Entry of Consent Judgment and Decree, as required by Section 4(a)(4). The parties request that this Court wait 30 days after filing of the

Joint Motion for Entry of this Consent Judgment and Decree, before approving this settlement, while this notice of proposed settlement is advertised.

20. Allowing bailout by the District is appropriate, notwithstanding the enforcement of certain minor voting changes prior to Section 5 preclearance. 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 United States' consent also is premised on the fact that the voting changes concerning cancelled elections enforced without Section 5 preclearance were minor in nature, were submitted promptly once brought to Plaintiff's attention, the changes were not discriminatory in purpose or effect, and the absence of any indication that the failure to submit those changes was intended to evade a Section 5 objection. This Court has granted bailout to other jurisdictions who have similarly implemented certain minor voting changes prior to Section 5 review. *See e.g., Augusta County v. Gonzales*, No. 05-1885 (D.D.C. Nov. 30, 2005).

21. The United States has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the District, pursuant to Section 4(a)(9) of the Voting Rights Act. The United States' consent in this action is based upon its own independent factual investigation of the District's fulfillment of all of the bailout criteria, and consideration of all of the circumstances of this case, including the views of minority citizens in the District, and the absence of racial discrimination in the electoral process within the District.

AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

22. The District 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 of the Act, the District is required to obtain preclearance from either this Court or from the Attorney General for any change in voting standards, practices, and procedures adopted or implemented since the Act's coverage date for the State of Texas.

The only entity seeking bailout through this action is the District. Neither Jefferson County nor any of the other political subdivisions in the County are seeking bailout, other than the District. The District is a political subdivision entitled to seek bailout from this Court for itself and by itself under Section 4(a). *See Northwest Austin Mun. Util. Dist. No. One*, 129 S. Ct. at 2516 (“We therefore hold that all political subdivisions . . . are eligible to file a bailout suit”).

The District is one of the smallest kinds of governmental units in Texas. While its boundaries embrace certain other governmental units in Jefferson County, there are no other governmental units within its territory for which it is responsible or which must request bailout at the same time as the District, within the meaning of Section 4(a), 42 U.S.C. § 1973b(a).

23. During the ten years preceding the filing of this action and during the pendency of this action, there has been no test or device as defined in Sections 4(c) and 4(f)(3) of the Voting Rights Act used within the District for the purpose or with the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees of Section 4(f)(2). 42 U.S.C. § 1973b(a)(1)(A).

24. 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

abridgements of the right to vote on account of race or color or in contravention of the guarantees of Section 4(f)(2) have occurred anywhere in the territory of the District. 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 abridgements of the right to vote. 42 U.S.C. § 1973b(a)(1)(B).

25. 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 the District. 42 U.S.C. § 1973b(a)(1)(C).

26. The District has submitted a number of voting changes for review under Section 5 since it became an elected body. During the ten years preceding the filing of this action, the District has enforced two voting changes prior to preclearance under Section 5. These two minor changes concerned the cancellation of elections -the District's elections in May 2002 and May 2006 – in which all of the candidates for District commissioner ran unopposed. These voting changes have since been submitted to the Attorney General under Section 5 and precleared. 42 U.S.C. § 1973b(a)(1)(D).

27. During the ten years preceding the filing of this action, and during the pendency of this action, there has been no need for the District 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 objection or denials have occurred. 42 U.S.C. § 1973b(a)(1)(D).

28. The Attorney General has never interposed any objection to voting changes submitted by or on behalf of the District for administrative review under Section 5. No such administrative submissions by or on behalf of the District are presently pending before the

Attorney General. The District has never sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied the District a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. 42 U.S.C. § 1973b(a)(1)(E).

29. During the ten years preceding the filing of this action, and during the pendency of this action, the District has not employed voting procedures or methods of election which inhibit or dilute equal access to the electoral process. 42 U.S.C. § 1973b(a)(1)(F)(i). African-American candidates have been elected to the District's Board of Commissioners on several occasions. During its most recent election, two African American candidates won election to the District's five member Board of Commissioners.

30. During the ten years preceding the filing of this action, and during the pendency of this action, no one in the District's elections has been subject to intimidation or harassment in the course of exercising their right to participate in the political process. The District has engaged in constructive efforts to eliminate intimidation and harassment of persons exercising rights protected under the Voting Rights Act through the District's numerous election-related contacts and coordination of election activities with Jefferson County. 42 U.S.C. § 1973b(a)(1)(F)(ii).

31. During the ten years preceding the filing of this action, and during the pendency of this action, the District has engaged in other constructive efforts to expand the opportunity for voting for every person of voting age through the District's numerous election-related contacts and coordination of election activities with Jefferson County. Voters in the District's elections vote in centrally-located facilities also utilized by the County for voting, are allowed to participate in early voting, and also benefit from the County's minority language election procedures and the County's efforts to recruit a diverse pool of poll officials. Potential candidates for District

Commissioner are provided with election-related information from the District upon request and are easily able to obtain access to the ballot. Further, the District utilizes a registration list generated by the County, and there are various opportunities for convenient voter registration in Jefferson County. Additionally, the District has contracted with Jefferson County's Elections Director to help conduct its elections, further facilitating the process of voting in the District. 42 U.S.C. § 1973b(a)(1)(F)(iii).

32. The District is unable to present evidence directly measuring minority voter participation rates over time because the District does not engage in voter registration, and while Jefferson County does maintain voter registration records for the District, it does not record the race of its registered voters. The District had its last contested election in May 2010 and before that had not had a contested election since 1997. During its most recent contested election, two African American candidates won election to the District's five member Board of Commissioners. 42 U.S.C. § 1973b(a)(2).

33. During the preceding ten year period, the District 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 in contravention of the guarantees of Section 4(f)(2). 42 U.S.C. § 1973b(a)(3).

34. The District publicized the intended commencement of this action in the manner required by Section 4(a)(4) of the Act, prior to its being filed, by placing advertisements in local newspapers, in the appropriate post office and in the Jefferson County Sub-Courthouse, and by conducting a public hearing on the matter. The District has publicized a notice of the proposed

settlement of this action, simultaneously with the filing of the Joint Motion for Entry of Consent Judgment and Decree, as required by Section 4(a)(4). 42 U.S.C. § 1973b(a)(4).

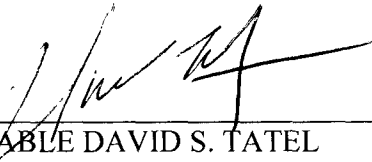
Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The Plaintiff, Jefferson County Drainage District Number Seven, is entitled to a declaratory judgment in accordance with the second sentence of 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 the Plaintiff Jefferson County Drainage District Number Seven is exempted from coverage pursuant to the third sentence of 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 costs.

Entered this 3<sup>rd</sup> day of June, 2011.



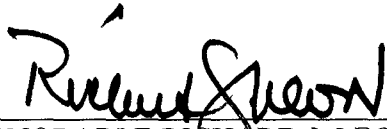
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HONORABLE DAVID S. TATEL  
UNITED STATES CIRCUIT JUDGE



---

HONORABLE RICHARD W. ROBERTS  
UNITED STATES DISTRICT JUDGE



---

HONORABLE RICHARD J. LEON  
UNITED STATES DISTRICT JUDGE

Approved as to form and content:

**For the Plaintiff**  
**JEFFERSON COUNTY DRAINAGE**  
**DISTRICT NUMBER SEVEN:**

*/s/ J. Gerald Hebert by BFH as authorized*

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Dated: April 20, 2011

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**RONALD C. MACHEN JR.**  
United States Attorney  
District of Columbia

**THOMAS E. PEREZ**  
Assistant Attorney General  
Civil Rights Division

*/s/ Brian F. Heffernan*

---

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Dated: April 20, 2011

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

CITY OF BEDFORD, VIRGINIA, )  
a political subdivision of the )  
Commonwealth of Virginia, )  
215 East Main Street )  
Bedford, Virginia 24523 )  
) )  
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. )  
\_\_\_\_\_ )

Civil Action No. 1:11-cv-00473  
(TFH-TBG-RLW)(three-judge court)

CONSENT JUDGMENT AND DECREE

1. This action was initiated on March 4, 2011, by the Plaintiff City of Bedford, Virginia (“City of Bedford” or “the City”), against the Defendant Attorney General of the United States and the Defendant Assistant Attorney General, Civil Rights Division (collectively the “Attorney General”).

2. The City of Bedford is a governmental entity organized under the Constitution and laws of the Commonwealth of Virginia. Plaintiff City of Bedford is a political subdivision of the State within the meaning of Section 4(a) of the Voting Rights Act, 42 U.S.C. §1973b(a)(1).

3. The City of Bedford is covered by the special provisions of the Voting Rights Act, including Section 5 of the Act, 42 U.S.C. § 1973c, based on a coverage determination under

Section 4(b) made by the Attorney General and the Director of the Census, and published in the Federal Register. 30 Fed. Reg. 9897 (Aug. 7, 1965). By virtue of this coverage determination, the City of Bedford must receive preclearance under Section 5 of the Act for all changes enacted or implemented after November 1, 1964 that affect voting.

4. Through this action, the City 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 also exempts the jurisdiction from being subject to 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. As set forth in Section 4(a)(1), the conditions the City must satisfy are as follows:

(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 [42 U.S.C. § 1973b(a)(1)(A)];

(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 [42 U.S.C. § 1973b(a)(1)(B)];

(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 [42 U.S.C. § 1973b(a)(1)(C)];

(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 [42 U.S.C. § 1973b(a)(1)(D)];

(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 [42 U.S.C. § 1973b(a)(1)(E)]; 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. [42 U.S.C. § 1973b(a)(1)(F)(i-iii).]

7. Section 4(a) also provides that the following additional requirements must be satisfied to obtain a 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. [42 U.S.C. § 1973b(a)(2).]

(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. [42 U.S.C. § 1973b(a)(3).]

(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. [42 U.S.C. § 1973b(a)(4).]

8. Finally, Section 4(a)(9) provides that the Attorney General can 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)].”

9. The Attorney General has conducted a comprehensive and independent investigation to determine the City’s entitlement to bailout. In so doing, he has, among other things, interviewed members of the local minority community, and reviewed a significant number of documents related to the City, including available background information and demographic data, minutes of the meetings of the Bedford City Council, records relating to voter registration and turnout in the City, and records of the City’s preclearance submissions.

10. The Attorney General and City of Bedford agree that the City 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, the City and the Attorney General have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED FACTUAL FINDINGS

11. The City of Bedford is located in the Shenandoah Valley, approximately 178 miles from Washington, DC, and covers 6.81 square miles.

12. The City of Bedford is the only governmental subdivision within the City of Bedford.

13. According to the 2010 census, City of Bedford has a total population of 6,222. Of this number, approximately 4,671 (75.1%), are non-Hispanic white, 1,318 (21.2%) are non-Hispanic black and 134 (2.2%) are Hispanic. According to the 2010 census, the total voting age population of the City of Bedford is 4,944. Of this number, 3,830 (77.5%) are non-Hispanic white, 960 (19.4%) are non-Hispanic black, and 89 (1.8%) are Hispanic.

14. The Bedford City Council is the governing body that formulates policies for the administration of government in the City. The City has a seven-member City Council. Members are elected at-large and serve a four-year term. Council contests feature no primary elections, only general elections that are conducted by plurality-vote with no numbered posts. Terms are staggered such that at least three members are up every two years. The City Council elects the Mayor and Vice-Mayor from their members for a two-year term. Three black members have served on the City Council since 1972 -- one black member has served on the seven-member council during each of three time periods -- from 1972 to 1980, from 1990 to 1995, and from 1995 to the present.

15. Elections in City of Bedford are conducted by a three-member Electoral Board and the City's General Registrar. Pursuant to State law, the Electoral Board is appointed by the

Circuit Court to administer the election laws and other regulations established by the State Board of Elections. Two electoral board members must be of the same political party that cast the highest number of votes for the Governor at the last election; the third member must be of the political party that cast the next-to-highest number of votes in the last gubernatorial election. Each electoral board member serves a three-year term. The Electoral Board appoints the General Registrar. Since 2004, two black members have served on the Electoral Board -- one black citizen has served as a member of the three-person Electoral Board during each of two time periods, from 2004-2009 and from 2009 to the present.

16. The Electoral Board nominates a roster of persons each February to work as poll workers 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. No person recommended by a political party chair to serve as a poll official has been rejected by the Electoral Board for at least the preceding ten years. In the last gubernatorial election held in the City of Bedford (November 2009), there were nineteen poll workers, three (16%) of whom were black. In the last City Council election held in the City (November 2010), there were 19 poll workers, four (21%) of whom were black. The percentage of black poll workers in the 2010 election in the City slightly exceeded the percentage of the City's black voting age population (19.4%).

17. Since the City does not record the race of its registered voters, it is unable to present evidence directly measuring minority voter participation, but the City has provided evidence of voter participation for elections since 2000. Current data show, for example, that a significant proportion of the City's voting age population is registered to vote. As of the end of October 2010, there were 3,849 registered voters in the City of Bedford. This constituted 77.9%

of the City's 2010 voting age population of 4,944 persons. The number of registered voters in the City of Bedford has risen over the decade. From 2001 to 2010, the total number of registered voters in the City grew by 8.6%, from 3,543 in 2001 to 3,849.

18. Voter turnout in elections within the City of Bedford (*i.e.*, the percentage of those registered voters who cast ballots) varies according to the offices up for election. In the last three Presidential elections in 2000, 2004, and 2008, for example, 69.7%, 69.9%, and 75.2% of the City's registered voters turned out to vote, respectively. In the General Elections for Governor held in November 2001, 2005, and 2009, 50.4%, 50.3%, and 41.7% of the City's registered voters turned out to vote, respectively. Voter turnout for the Bedford City Council elections in the last seven election cycles (1998, 2000, 2002, 2004, 2006, 2008, and 2010) was 23.2%, 25.5%, 23.9%, 4.8%, 52.8%, 75.2%, and 50.7%, respectively.

19. Voter registration opportunities in the City are available to all citizens. The voter registration office for the City is located at 215 E. Main St., Second Floor in Bedford. The voter registration office is open from 8:30 a.m. until 4:30 p.m., Mondays, Tuesdays, and Thursdays; and, from August to December, is open Monday through Friday. Voter registration applications are also available at the local library, at the City's social services offices, on the website of the State Board of Elections, and at Division of Motor Vehicle Offices. Voter registration is also available by mail-in application.

20. In addition to serving on the City's three-person Electoral Board, black citizens have played an important role in the voter registration office. Since 1999, for example, two black citizens of the City have worked in the voter registration office each February assisting with the registration of high school students turning 18 years of age.

21. The City of Bedford has made eight submissions to the Attorney General under Section 5 of the Voting Rights Act during the period covering the ten years preceding this action, and the Attorney General has not interposed an objection to any of these submissions. The Attorney General reviewed the records of the City of Bedford in the course of considering the City's bailout request, and no voting changes were discovered in the City's records that had not been submitted for preclearance in a timely manner. Hence, the Attorney General's investigation indicates that the City has not enforced any changes prior to receiving preclearance during the previous ten years and during the pendency of this action.

22. The City has publicized the intended commencement of this action and a proposed settlement of the action as required by Section 4(a)(4) of the Act prior to its being filed. On January 19, 2011, the City published a notice that it intended to file an action in the United States District Court for the District of Columbia to seek an exemption from the Voting Rights Act's §5 preclearance requirements, in the Bedford Bulletin. The Bedford Bulletin is a weekly newspaper of general circulation in the City of Bedford. In addition, the City has posted copies of this Notice "in the appropriate United States post offices" and at various public places throughout the City of Bedford, including City Hall, the Office of Voter Registration, and the City's website.

23. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the City, pursuant to Section 4(a)(9) of the Voting Rights Act. The Attorney General's consent in this action is based upon its own independent factual investigation of the City's fulfillment of all of the bailout criteria, and consideration of all of the circumstances of this case, including the views of minority citizens in the City and surrounding areas, and the absence of racial discrimination in the electoral process within the

City. 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.

AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA

24. The City of Bedford 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 of the Act, the City is required to obtain preclearance from either this Court or from the Attorney General for any change in voting standards, practices, and procedures adopted or implemented since the Act's coverage date. There are no other governmental subdivisions within the City's territory for which it is responsible or which must request bailout at the same time as the City, within the meaning of Section 4(a), 42 U.S.C. § 1973b(a).

25. During the ten years preceding the filing of this action and during the pendency of this action, there has been no test or device as defined in Section 4(c) of the Voting Rights Act used within the City for the purpose or with the effect of denying or abridging the right to vote on account of race or color. During the relevant time period there is also no indication that any person in the City of Bedford has been denied the right to vote on account of race or color. 42 U.S.C. § 1973b(a)(1)(A).

26. 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 have occurred anywhere within the territory of the City of Bedford. 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 abridgements of the right to vote. 42 U.S.C. § 1973b(a)(1)(B).

27. 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 the City of Bedford. 42 U.S.C. § 1973b(a)(1)(C).

28. During the ten years preceding this action, and during the pendency of this action, the City made eight administrative submissions to the Attorney General for review under Section 5, and the Attorney General did not object to any of these submissions, and there is no evidence that the City enforced any changes that had an actual effect on voting in elections prior to receiving preclearance under Section 5. 42 U.S.C. § 1973b(a)(1)(D).

29. During the ten years preceding the filing of this action, and during the pendency of this action, there has been no need for the City 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 objection or denials have occurred. 42 U.S.C. § 1973b(a)(1)(D).

30. During the ten years preceding this action, and during the pendency of this action, the Attorney General has not interposed any objection to voting changes submitted by or on behalf of the City for administrative review under Section 5. No such administrative submissions by or on behalf of the City are presently pending before the Attorney General. The City has never sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied the City of Bedford a declaratory judgment under Section 5, nor are any such declaratory judgment actions now pending. 42 U.S.C. § 1973b(a)(1)(E).

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

32. During the ten years preceding the filing of this action, and during the pendency of this action, there is no evidence that anyone participating in the City's elections has been subject to intimidation or harassment in the course of exercising his or her rights protected under the Voting Rights Act. Constructive steps have been undertaken by the City of Bedford to avoid intimidation or harassment in City of Bedford elections, such as by recruiting a diverse group of poll officials for elections in the City. 42 U.S.C. § 1973b(a)(1)(F)(ii).

33. All voter registration and all City elections have been conducted solely by the City of Bedford Electoral Board and the City's Voting Registrar throughout the ten years preceding the filing of this action and through the present time. There is evidence of other constructive efforts, such as expanded opportunities for convenient registration and voting for every person of voting age, as well as the appointment of minority persons as election officials throughout the jurisdiction and at all stages of the election and registration process. The percentage of black poll workers in the City in the 2010 election (21%) slightly exceeded the black share of the City's 2010 voting age population (19.2%). See 42 U.S.C. § 1973b(a)(1)(F)(iii).

34. During the ten years preceding the filing of this action, and during the pendency of this action, the City 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. 42 U.S.C. § 1973b(a)(3).

35. As required by 42 U.S.C. § 1973b(a)(4), the City of Bedford has provided public notice of its intent to seek a Section 4(a) declaratory judgment, as well as its intention to reach a settlement of the bailout action with the United States Attorney General. On January 19, 2011, the City published a notice that it intended to seek an action in the United States District Court for the District of Columbia to seek an exemption from the Voting Rights Act's §5 preclearance requirements in the Bedford Bulletin. The Bedford Bulletin is a weekly newspaper of general circulation in the City of Bedford. In addition, the City has posted copies of this Notice "in the appropriate United States post offices" and at various public places throughout City of Bedford, including City Hall, the Office of Voter Registration, and the City's website.

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The plaintiff City of Bedford 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 the plaintiff City of Bedford 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 costs.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2011.

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UNITED STATES CIRCUIT JUDGE

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UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT JUDGE



*Agreed and Consented To:*

/s/ J. Gerald Hebert

J. Gerald Hebert

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*City of Bedford, Virginia*

Dated: June 8, 2011

*Agreed and Consented To:*

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Civil Rights Division

RONALD C. MACHEN, JR.  
United States Attorney  
District of Columbia

/s/ Robert Popper

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*and Thomas E. Perez,*  
*Assistant Attorney General*  
*Civil Rights Division*

*Eric H. Holder, Jr.*  
*Attorney General of the*  
*and Thomas E. Perez,*

*Assistant Attorney General,*

Dated: June 8, 2011

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ALTA IRRIGATION DISTRICT, )  
a political subdivision of )  
the State of California, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
ERIC H. HOLDER, JR., )  
Attorney General of the )  
United States of America, )  
 )  
THOMAS E. PEREZ, )  
Assistant Attorney General, )  
Civil Rights Division, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Civil Action No. 1:11-cv-758  
(three-judge court) RJL-DAG-PLF

CONSENT JUDGMENT AND DECREE

1. This action was initiated on April 20, 2011, by Plaintiff Alta Irrigation District (“Alta” or “the District”) against Defendants Eric H. Holder, Jr., Attorney General of the United States, and Thomas E. Perez, Assistant Attorney General, Civil Rights Division (collectively “the Attorney General”).

2. Alta is a governmental entity organized under the constitution and laws of the State of California. The District overlaps three counties: Fresno County, Kings County, and Tulare County. Kings County is covered by the special provisions of the Voting Rights Act, based on a coverage determination under Section 4(b) made by the Attorney General and the Director of the Census, and published in the Federal Register. *See* 40 Fed. Reg. 43,746 (Sept. 23, 1975). By virtue of this coverage determination, Kings County and political subdivisions within its boundaries (including the District) must receive preclearance under Section 5 of the

Voting Rights Act for all changes affecting voting enacted or implemented after November 1, 1972.

3. In this action, the District seeks a declaratory judgment pursuant to Section 4(a)(1) of the Voting Rights Act, 42 U.S.C. § 1973b(a)(1), exempting it from coverage under Section 4(b) of the Act, 42 U.S.C. 1973b(b). Exemption under Section 4(b) would in turn exempt the District from the preclearance provisions of Section 5, 42 U.S.C. § 1973c.

4. This three-judge district court is authorized by 28 U.S.C. § 2284 and 42 U.S.C. § 1973b(a)(5) and has jurisdiction over this matter.

5. 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 a declaratory judgment action in this Court if it can demonstrate fulfillment of the specific statutory conditions in Section 4(a) both “during the ten years preceding the filing of the action” and “during the pendency of such action.” 42 U.S.C. § 1973b(a). The statutory conditions are:

(A) no . . . 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[,] color[, or language minority status];

(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[,] color[, or language minority status] have occurred anywhere in the territory of such State or political 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 [the Voting Rights Act] 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 5], including compliance with the requirement that no change covered by [Section 5] has been enforced without preclearance under [Section 5], and have repealed all changes covered by [Section 5] 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 5] of this title, with respect to any submission by or on behalf of the plaintiff or any governmental unit within its territory under [Section 5], and no such submissions or declaratory judgment actions are pending;

(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 [the Voting Rights Act]; 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.

42 U.S.C. § 1973b(a)(1)(A)-(F).

6. Section 4(a) provides three additional requirements for bailout:

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.

42 U.S.C. § 1973b(a)(2).

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.

42 U.S.C. § 1973b(a)(3).

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.

42 U.S.C. § 1973b(a)(4).

7. Section 4(a)(9) provides that the Attorney General can 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).

8. The Attorney General has conducted a comprehensive and independent investigation to determine the District’s eligibility for bailout. Department of Justice attorneys have interviewed members of the local minority community and reviewed a significant quantity of documentary evidence, including background information, demographic data, minutes of the Alta Irrigation District Board of Directors (“the Board”), voter registration records for the Kings County portion of the District, and the District’s preclearance submissions.

9. The Attorney General and Alta agree that the District has fulfilled the conditions required by Section 4(a) and is entitled to the requested declaratory judgment exempting it from

Section 5 coverage. Accordingly, the District and the Attorney General have filed a Joint Motion for Entry of this Consent Judgment and Decree.

AGREED FACTUAL FINDINGS

10. Alta Irrigation District is a special district of the State of California.

11. Alta is located in Fresno County, California; Kings County, California; and Tulare County, California. The substantial majority of the District, including its headquarters, lies in Tulare County. A small part of the District lies in Kings County.

12. The District was formed in 1888 under California's Wright Act, 1887 Cal. Stat. ch. 34, p. 29.

13. Alta does not contain any jurisdictions or governmental units for which it is responsible.

14. The District reported a 2010 Census population of 78,265 persons, of whom 13,043 were Non-Hispanic White (16.7%), 61,631 were Hispanic (78.7%), 295 were Non-Hispanic Black (0.4%), 363 were American Indian/Alaskan Native (0.5%), and 2,634 were Asian (3.4%). The District's total reported 2010 Census voting-age population was 52,309, of whom 10,737 were Non-Hispanic White (20.5%), 38,877 were Hispanic (74.3%), 210 were Non-Hispanic Black (0.4%), 281 were American Indian/Alaskan Native (0.5%), and 2,020 were Asian (3.9%).

15. The 2010 Census determined that Kings County, California, had a total population of 152,982 persons, of whom 53,879 were Non-Hispanic White (35.2%), 77,866 were Hispanic (50.9%), 10,314 were Non-Hispanic Black (6.7%), 1,297 were American Indian/Alaskan Native (0.8%), and 5,339 were Asian (3.5%). Kings County's 2010 Census total voting-age population was 110,434, of whom 43,171 were Non-Hispanic White (53.9%), 50,909

were Hispanic (46.1%), 8,693 were Non-Hispanic Black (7.9%), 917 were American Indian/Alaskan Native (0.8%), and 4,178 were Asian (3.8%).

16. According to the 2010 Census, the total population in the portion of the District that lies in Kings County is 67, of whom 26 (38.8%) are Hispanic. The voting age population is 45, of whom 15 (33.3%) are Hispanic.

17. Alta is governed by a seven-member Board of Directors. Each director is elected from a single-member district, which is called a division. Directors are elected to four year terms under a non-partisan plurality-vote system. Elections are staggered so that three or four directors' terms expire every two years. Director elections are held in November of odd numbered years.

18. The District adopted its current Board structure in 1995 after receiving preclearance from the Attorney General. Prior to 1995, the Board of Directors consisted of five members elected from single-member districts. Alta expanded the Board to permit the creation of districts made up entirely of urban areas without violating the principle of one-person one-vote.

19. In the last twenty years, there has only been one minority candidate for the Alta Board of Directors, and no minority candidate has ever been elected to the Board. Nor has a member of a racial minority group ever been appointed to fill a vacancy.

20. All District territory in Kings County is in Director Division 5, although Tulare County makes up substantial majority of Director Division 5. The Board appointed Tom Marshall to fill a vacancy in the directorship for Division 5 in 1990. Marshall ran for reelection unopposed in 1993, 1997, 2001, 2005, and 2009, and he now serves as vice-chairman of the Board.

21. Under California law, when only a single candidate qualifies to run for a position in a special district, the election does not appear on the ballot. *See* Cal. Elec. Code § 10515(a). Because Marshall has never faced a challenger for the directorship in Division 5, there has not been an election in Kings County for the Alta Board of Directors for over 20 years.

22. All election-related functions in the Kings County portion of Alta – including voter outreach, list maintenance, voter registration, and the selection of polling sites – are administered by the Kings County Elections Department. The District does not participate actively in electoral processes. Voter registration is unitary in the State of California: registering to vote once will register voters for all federal, state, county, municipal, and special district elections, including Alta elections. The opportunity to register to vote is available in Kings County through a variety of offices, and through mail-in application available in English and Spanish.

23. In the portion of Kings County that is part of the District, all elections are conducted by mail. Thus, the Kings County Elections Department does not arrange for polling places or hire poll workers to serve voters in that area.

24. The District has ascertained that there are 22 registered voters in the portion of the District that lies in Kings County, of whom 6 have Hispanic surnames. The District is unable to present any other information directly measuring minority voter registration in Alta, since Kings County, like other counties in California, does not record the race of registered voters. Because there has not been an election for the Alta Board of Directors in Kings County for the last 20 years, historic voter registration tallies are not available.

25. Kings County has engaged in constructive efforts to increase minority participation in elections, including expanded opportunity for convenient registration, Spanish-language outreach, and voter registration drives in the Hispanic community.

26. Alta has made four submissions to the Attorney General under Section 5 of the Voting Rights Act, and the State of California has also submitted a special-purpose statute that applies only to the District. During the ten years preceding this action, and during the pendency of this action, the District has made three submissions under Section 5 to the Attorney General. The Attorney General has not interposed an objection to any of these submissions.

27. The Attorney General reviewed the minutes of the Alta Board of Directors in the course of considering the District's bailout request and found three landowner tax protest proceedings carried out pursuant to Article XIII-D of the California Constitution that had been carried out without preclearance. The District expressed a good faith belief that the protests were not subject to Section 5 of the Voting Rights Act, *see* Cal. Gov't Code § 53750(6) (establishing that such protest ballots "shall not constitute an election or voting for purposes of Article II of the California Constitution or of the Elections Code"), but agreed to submit the protest proceedings as a precautionary measure. Upon review, the Attorney General did not interpose an objection to any of the related procedures.

28. The District publicized its intent to commence this action prior to the filing of the Complaint in this action. *See* 42 U.S.C. § 1973b(a)(4). On October 13 and October 20, 2010, Alta published a notice of public hearing and of its intent to file suit. The notices appeared in the Hanford Sentinel, which serves Kings County, as well as the Reedley Exponent and the Dinuba Sentinel. Although all three newspapers publish in English, the advertisements were printed in both English and Spanish. The notice advertised that the District intended to seek to bailout

from the special provisions of the Voting Rights Act and directed any person desiring additional information or wishing to express an opinion to attend a public hearing. The District has also publicized notice of the commencement of this action, and of this proposed settlement, prior to the filing of the Joint Motion for Entry of Consent Judgment and Decree. *See* 42 U.S.C. § 1973b(a)(4). Specifically, Alta posted notices in the U.S. Post Office in the cities of Reedley and Dinuba, on April 21, 2010, for a two week period, and published notices in the Hanford Sentinel, Dinuba Sentinel and Reedley Exponent in English and Spanish between March 3 and June 1, 2010.

29. The Attorney General has determined that it is appropriate to consent to a declaratory judgment allowing bailout by the District, 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 the District's fulfillment of all of the bailout criteria and consideration of all of the circumstances of this case, including the views of minority residents of Kings County and Tulare County and the absence of evidence of racial discrimination in the electoral process. 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.

**AGREED FINDINGS ON STATUTORY BAILOUT CRITERIA**

30. Alta Irrigation District 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 District is required to obtain preclearance either from this Court or from the Attorney General for

any change in voting standards, practices, and procedures adopted or implemented since the Act's coverage date for Kings County, California.

31. Alta is the only entity seeking bailout through this action. Neither Kings County nor any other jurisdiction in the County presently seeks bailout.

32. Alta Irrigation District 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*, 129 S. Ct. 2504, 2516 (2009).

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

34. During the ten years preceding the filing of this action and during the pendency of this action, the District has not used a test or device, as defined in Section 4(c), 42 U.S.C. § 1973b(c), or as defined in Section 4(f)(3), 42 U.S.C. 1973b(f)(3), for the purpose or with the effect of denying or abridging the right to vote on account of race, color, or language minority status. During the relevant time period there is also no indication that any person in the Alta Irrigation District has been denied the right to vote on account of race, color, or language minority status. *See* 42 U.S.C. § 1973b(a)(1)(A).

35. 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, color, or language minority status have occurred anywhere within the territory of the Alta Irrigation District. 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 abridgements of the right to vote. *See* 42 U.S.C. § 1973b(a)(1)(B).

36. 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 the Alta Irrigation District. *See* 42 U.S.C. § 1973b(a)(1)(C).

37. During the ten years preceding this action, and during the pendency of this action, the District made three administrative submissions to the Attorney General for review under Section 5, and the Attorney General did not object to any of these submissions. During the ten years preceding this action, and during the pendency of this action, three special property-based protest proceedings required by Article XIII-D of the California Constitution were held without preclearance. *See* 42 U.S.C. § 1973b(a)(1)(D). These proceedings and related procedures were not submitted for review under Section 5 prior to implementation based on the District's good-faith belief that they are not voting changes subject to the preclearance requirements of Section 5. There is no evidence that the District 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 effect on voting that would contravene Congress' intent in providing the bailout option to jurisdictions such as the District.

38. During the ten years preceding the filing of this action, and during the pendency of this action, there has been no need for the District to repeal any voting changes to which the Attorney General has objected, or to which this Court has denied a declaratory judgment, because no such objection or denials have occurred. *See* 42 U.S.C. § 1973b(a)(1)(D).

39. During the ten years preceding this action, and during the pendency of this action, the Attorney General has not interposed any objection to voting changes submitted by or on

behalf of the District for administrative review under Section 5. No such administrative submissions by or on behalf of the District are presently pending before the Attorney General. The District has never sought judicial preclearance from this Court under Section 5. Thus, this Court has never denied Alta 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, Alta has not employed voting procedures or methods of election that inhibit or dilute equal access to the electoral process within Kings County. *See* 42 U.S.C. § 1973b(a)(1)(F)(i).

41. During the ten years preceding the filing of this action, and during the pendency of this action, there is no evidence that anyone participating in the District'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 in the Kings County portion of the District has been conducted solely by Kings County throughout the ten years preceding the filing of this action and through the present time. During that time, neither the District nor Kings County conducted an election for the director division that includes territory in Kings County. There is evidence that Kings County has engaged in constructive efforts, including expanded opportunity for convenient registration, Spanish-language outreach, and voter registration drives in the Hispanic community. *See* 42 U.S.C. § 1973b(a)(1)(F)(iii).

43. Alta has presented available information concerning voter registration and participation in the portion of the District that lies in Kings County. *See* 42 U.S.C. § 1973b(a)(2).

44. During the ten years preceding the filing of this action, and during the pendency of this action, the District 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, color, or language minority status. *See* 42 U.S.C. § 1973b(a)(3).

45. Alta has provided public notice of its intent to seek a Section 4(a) declaratory judgment and of the proposed settlement of this action. The District published notice in English and Spanish of a public hearing and its intent to file suit on October 13, 2010 and October 20, 2010 in the Hanford Sentinel, which serves Kings County, as well as the Reedley Exponent and the Dinuba Sentinel. The District also published notice in English and Spanish of the commencement and proposed settlement of this action prior to the filing of the Joint Motion for Entry of Consent Judgment and Decree. Additionally, the District posted notices in the U.S. Post Office in Reedley and in its office in Dinuba. *See* 42 U.S.C. § 1973b(a)(4).

Accordingly, it is hereby ORDERED, ADJUDGED and DECREED:

1. The plaintiff Alta Irrigation District 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 the plaintiff Alta Irrigation District 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 costs.

Entered this \_\_\_\_ day of \_\_\_\_\_, 2011.

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UNITED STATES CIRCUIT JUDGE

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UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT JUDGE

*Agreed and Consented To:*

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Dated: June 9, 2011

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