

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NORTHWEST AUSTIN MUNICIPAL)
UTILITY DISTRICT NUMBER ONE,)
)
)
Plaintiff,)
)
v.)
)
ALBERTO GONZALES, Attorney General of)
the United States, et al.,)
)
)
Defendants.)

Civil Action No. 1:06-CV-01384
(DST, PLF, EGS)

**DEFENDANT-INTERVENORS TEXAS STATE CONFERENCE OF NAACP
BRANCHES, AUSTIN BRANCH OF THE NAACP, RODNEY LOUIS, NICOLE LOUIS,
WINTHROP GRAHAM, YVONNE GRAHAM, WENDY RICHARDSON, JAMAL
RICHARDSON, MARISA RICHARDSON, LISA DIAZ, DAVID DIAZ AND GABRIEL
DIAZ, PEOPLE FOR THE AMERICAN WAY, TRAVIS COUNTY, NATHANIEL
LESANE, JOVITA CASAREZ, ANGIE GARCIA, AND OFELIA ZAPATA'S
MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

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INTRODUCTION

The bailout provision of the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (“VRA” or “Act”), provides a workable mechanism by which certain covered jurisdictions may terminate their obligations under the Section 5 preclearance provision. Although Congress expanded the scope of bailout-eligible jurisdictions during the 1982 renewal, the statute’s structure, text and legislative history make clear that political subunits such as the District that do not register voters have never been eligible to seek bailout. The case law and Attorney General’s regulations also underscore this point. Despite the text, and the weight of the interpretive evidence standing against the District, it now urges a construction of the bailout eligibility provisions contrary to the legislative choice of Congress.

Anticipating that its bailout argument will fail, the District asks this Court to declare that Section 5 is an unconstitutional exercise of Congressional authority. In so doing, the District is not faithful to its “as-applied” First Amended Complaint, but launches a facial attack on Section 5 that ignores an unequivocal line of Supreme Court decisions that foreclose such a claim.

Further, the District’s efforts to minimize the weight of the evidence amassed by Congress during the reauthorization are to no avail. As Representative F. James Sensenbrenner, then-chairperson of the House Judiciary Committee, stated: the 2006 reauthorization of Section 5 and the other temporary provisions of the Voting Rights Act was “one of the most extensive considerations of any piece of legislation that the United States Congress has dealt with in the 27 ½ years” of his congressional tenure. 152 Cong. Rec. H5143. The record before Congress leaves no doubt that Section 5 is responsive to, and designed to deter, unconstitutional conduct. This Court should not set aside the Congressional decision to renew Section 5 as valid enforcement legislation under the Reconstruction Amendments, properly applied to the District and the other covered jurisdictions.

I. THE DISTRICT'S BAILOUT CLAIM FAILS

The District is not entitled to summary judgment on the bailout claim, for two reasons. *First* and foremost, the District is not eligible to petition for bailout under the statute. The statute's text and structure, its judicial construction in *City of Rome v. United States*, 446 U.S. 156, 168 (1980), and the legislative history, consistent with the Attorney General's interpretation of the Act, all make clear that political subunits such as the District that do not conduct voter registration are ineligible to seek bailout. As the 1982 Senate Judiciary Committee Report explained, other than States, bailout is limited "only to counties and parishes except in those rare instances in which registration is not conducted under the supervision of a county or parish." S. Rep. No. 97-417, at 69 (1982). And because the statute's bailout eligibility provision is clear (and constitutional, *see* Part II) the District's reliance on the canon of constitutional avoidance is meritless. *Second*, even if the District were eligible to seek bailout, it has failed to show that it satisfies the statute's bailout criteria.

A. Because The District Is Not A "Political Subdivision" For Purposes Of The Statute's Bailout Provision, The District Is Ineligible To Petition For Bailout

1. Under The Statutory Text and Structure, The District Is Not A "Political Subdivision" For Purposes Of The Bailout Provision

The Act sets forth the coverage formula for Section 5 preclearance obligations in Section 4(b). *See* 42 U.S.C. § 1973(b). Section 4(a) sets forth the bailout rules. *Id.* § 1973b(a). It is undisputed that under the bailout provisions in Section 4(a), only States or "political subdivisions" are eligible to petition for bailout. *See* 42 U.S.C. § 1973b(a); *see* D-I Mem. 21; Pl. Mem. 11-12. The District is not eligible to petition for bailout because it is not a State and, contrary to its assertions, *see* Pl. Mem. 12-23, the District is not a "political subdivision."

Section 14(c)(2) of the Act provides that "[t]he term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of

