

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

JUL 27 2006

MICHAEL N. MILBY, CLERK OF COURT

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

NORTH HARRIS MONTGOMERY
COMMUNITY COLLEGE DISTRICT, and
the BOARD OF TRUSTEES OF THE
NORTH HARRIS MONTGOMERY
COMMUNITY COLLEGE DISTRICT,

Defendants.

H 06 - 2488
CIVIL ACTION NO.

COMPLAINT

Three-Judge District Court Requested

The United States of America, Plaintiff herein, alleges:

1. The Attorney General of the United States ("Attorney General") files this action pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c ("Section 5").

JURISDICTION

2. The Court has jurisdiction of this action pursuant to 28 U.S.C. § 1345 and 42 U.S.C. §§ 1973c and 1973j(f). In accordance with the provisions of 42 U.S.C. § 1973c and 28 U.S.C. § 2284, the Section 5 claim must be heard and determined by a court of three judges. The events relevant to this action occurred in Harris and Montgomery Counties, Texas, which are located in the United States District Court for the Southern District of Texas, Houston Division. See 28 U.S.C. § 124.

PARTIES

3. The Attorney General, representing plaintiff United States of America, is charged by the Voting Rights Act with the statutory responsibility both for the Act's administrative preclearance process, and with bringing actions in federal court to enforce the Act's requirements. See 42 U.S.C. 1973j(d).

4. Defendant North Harris Montgomery Community College District ("District") is a subdivision of the State of Texas. The District is located in both Harris and Montgomery Counties, Texas, and covers a large geographic area that overlaps with 11 public independent school districts: Aldine, Conroe, Cypress-Fairbanks, Humble, Klein, Magnolia, New Caney, Splendora, Spring, Tomball, and Willis. The District has an estimated 543,833 registered voters, of whom 342,601 are non-Hispanic white (63.0%), 106,341 are Hispanic (19.6%), 63,821 are non-Hispanic African American (11.7%), and 31,070 are "other" non-Hispanic minorities (5.7%).

5. Defendant Board of Trustees of the North Harris Montgomery Community College District ("Board of Trustees") is the governing board for the District and responsible for conducting elections of the District.

ALLEGATIONS

6. The State of Texas and its subdivisions are subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c ("Section 5"). See also 28 C.F.R. Part 51, Appendix.

7. Section 5 provides that any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from that in force or effect in the

State of Texas or its subdivisions on November 1, 1972, may not be lawfully implemented unless such change has been submitted to the Attorney General, and the Attorney General has not interposed an objection within sixty days, or the jurisdiction obtains a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. 42 U.S.C. § 1973c.

8. On May 13, 2006, the District was scheduled to conduct a trustee and bond election consistent with the election procedures in force or effect on November 1, 1972, as amended from time to time, and consistent with Section 5. Cities and school districts across Texas conduct elections on the second Saturday of May, and the District's election was scheduled for the same day. The District is governed by a nine member Board of Trustees, whose members serve for six-year terms. The May election featured contests for three seats on the Board of Trustees and a \$249.6 million bond referendum.

9. On March 10, 2006, the Attorney General received a submission from the District in which the District proposed to reduce the number of election day polling places from 84 to 12 and the number of early voting sites from 30 to 12. The District further proposed to conduct its May 13th election separately from any other school districts.

10. On May 5, 2006, the Attorney General interposed an objection to the proposed voting changes on the grounds that the submitting authority had failed to meet its burden of establishing that the proposed changes would not have a retrogressive effect on minority voters.

11. On May 11, the Board of Trustees voted not to conduct the election as scheduled. The District's trustee and bond election did not occur on May 13. The failure to conduct the

regularly scheduled May 13 election is a change affecting voting under Section 5 that is subject to the preclearance requirement.

12. The District did not submit its cancellation of the May 13, 2006, election to the Attorney General for Section 5 preclearance prior to implementing this change, nor did the District obtain a declaratory judgment from the United States District Court for the District of Columbia that the change would be free of the proscribed retrogressive purpose and effect.

13. The District subsequently discovered and informed the Attorney General that the District did not have authority under Texas state law to postpone the May 13 election, absent a court order.

CAUSE OF ACTION

14. Plaintiff hereby alleges and incorporates by reference paragraphs one (1) through thirteen (13) above.

15. Defendants' failure to obtain either administrative or judicial preclearance prior to the postponement of the May 13 election is a violation of Section 5 of the Voting Rights Act. 42 U.S.C. § 1973c. Defendants' postponement of the election from May 13 is therefore legally unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff United States of America prays that a court of three judges be convened to hear this action pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2284 and enter an order:

- (1) Declaring that Defendants' failure to conduct the regularly scheduled May 13, 2006, election constitutes a change affecting voting within the meaning of Section

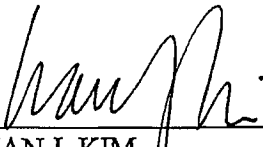
5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, and that the cancellation of the May 13 election is legally unenforceable because Defendants have not received the requisite preclearance under Section 5 of the Voting Rights Act;

- (2) Enjoining Defendants, their agents, their successors in office, and all persons acting in concert with them, from implementing any future voting change unless and until Section 5 preclearance for such change is obtained; and
- (3) Ordering Defendants to reschedule their cancelled election to Tuesday, November 7, 2006, as their decision to postpone the election was legally unenforceable, and the date of the original election (May 13) has since passed.

Plaintiff further prays that this Court order such additional relief as the interests of justice may require, together with the costs and disbursements in maintaining this action.


Date: 27th day of July, 2006.

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