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

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. )

CIVIL ACTION NO.

PROPOSED CONSENT DECREE,  
JUDGMENT, and ORDER

Three-Judge District Court

**H 06 - 2488**

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

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).

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The State of Texas and its subdivisions are subject to the preclearance requirements of Section 5. See 42 U.S.C. § 1973c; see also 28 C.F.R. Part 51, Appendix. 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. See 42 U.S.C. § 1973c.

Defendant North Harris Montgomery Community College District ("District") is a subdivision of the State of Texas and is therefore subject to the Section 5 preclearance requirements. 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%).

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.

On May 13, 2006, the District was scheduled to conduct a trustee and bond election

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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.

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 13 election separately from any other school districts.

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 (the "DOJ Objection").

On May 9, 2006, the Board of Trustees promptly approved an Amended and Restated Order Calling a Trustee and Bond Election in an effort to comply with the DOJ Objection and to conduct the election under legally enforceable conditions. The District's employees ultimately were unable to complete all necessary tasks, including obtaining the requisite number of election judges and other personnel needed to conduct the election in the limited time available.

Proceeding with the election without remedying the Section 5 objections would have resulted in the invalidity and unenforceability of the election results and necessitated the calling of a new election and the shortening of terms of any persons elected under the illegal procedures.

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See *Burton v. Hobbie*, 561 F. Supp. 1029, 1032 n.6 (M.D. Ala.1983).

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.

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.

The Defendants have not complied with the requirements of Section 5 by failing to obtain administrative or judicial preclearance before the postponement of the May 13 election. The Defendants' postponement of the May 13 election is legally unenforceable.

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

To avoid protracted and costly litigation, the parties have agreed that this lawsuit should be resolved through the terms of this Consent Decree ("Decree"). Accordingly, the United States and the Defendants hereby consent to the entry of this Decree, as indicated by the signatures of counsel at the end of this Decree. The parties waive a hearing and entry of findings of fact and conclusions of law on all issues involved in this matter. Each party shall bear its own costs and fees.

Defendants admit that they have not fully complied with the preclearance requirements of Section 5. Defendants are, however, committed to fully complying with all such requirements in

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the future. Therefore, Defendants stipulate that each provision of this Decree is appropriate and necessary.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

1. 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 the cancellation of the May 13 election is legally unenforceable because Defendants did not receive the requisite preclearance under Section 5 of the Voting Rights Act. See Clark v. Roemer, 500 U.S. 646, 652 (1991).

2. Defendants, their agents, their successors in office, and all persons acting in concert with them, are PERMANENTLY ENJOINED from implementing any future "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, unless and until administrative or judicial preclearance pursuant to Section 5 is obtained.

3. Defendants shall reschedule the cancelled May 13 election to November 7, 2006, with all balloting and candidate qualification deadlines and other procedures as for a new and separate election. Defendants shall treat all orders, notices, ballots and other election materials related to the May 13 election as null and void. Defendants shall follow state law requirements in conducting the new election. See TEXAS ELECTION CODE § 41.006. Defendants shall conduct the election jointly with other jurisdictions who are also conducting elections on November 7, and Defendants shall use the same polling places that are used by those jurisdictions for early voting and election day.

4. This Decree is final and binding between the parties and their successors in office

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regarding the claims raised in this action. This Decree shall remain in effect through December 31, 2008.

5. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Section 5 of the Voting Rights Act.

6. Within seven days of the date on which the Court enters this Decree, Defendants shall submit the voting changes in this Decree for preclearance pursuant to Section 5.

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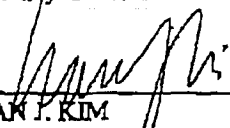
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Agreed to this 27<sup>th</sup> day of July, 2006.

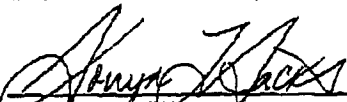
AGREED AND CONSENTED TO:

For Plaintiff:


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Attorney General


  
\_\_\_\_\_  
WAN J. KIM  
Assistant Attorney General  
Civil Rights Division

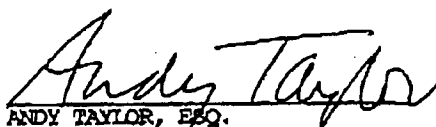
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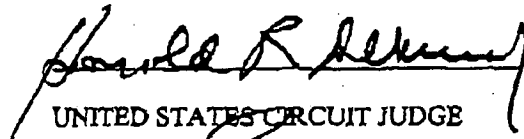
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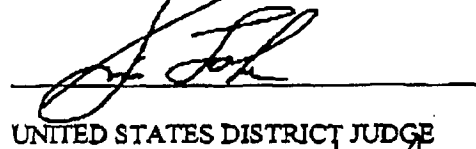
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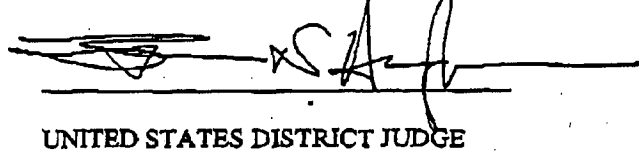
**JUDGMENT AND ORDER**

This Court, having considered the United States' claim under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, and having determined that it has jurisdiction over this claim, has considered the terms of the Consent Decree, and hereby enters the relief set forth above and incorporates those terms herein.

ENTERED and ORDERED this 4<sup>th</sup> day of Aug., 2006.

  
UNITED STATES CIRCUIT JUDGE

  
UNITED STATES DISTRICT JUDGE

  
UNITED STATES DISTRICT JUDGE