

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

THE UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

No. CV - H - 08 - 3022

WALLER COUNTY, TEXAS; and)

ELLEN C. SHELBURNE, Waller County)

Registrar, in her official capacity,)

Defendants.)

CONSENT DECREE

The United States filed this action to enforce Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c ("Section 5"), and Title I of the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(B). The complaint alleges that defendants have implemented changes in their voter registration practices and procedures without obtaining the requisite Section 5 preclearance and rejected certain voter registration applications in violation of 42 U.S.C. § 1971(a)(2)(B).

The parties have conferred in good faith and agree that the plaintiff's claims should be settled without contested litigation. Accordingly, the parties have agreed to the entry of this Consent Decree as an appropriate resolution of this action.

The parties hereby stipulate that:

1. This Court has jurisdiction pursuant to 42 U.S.C. §§ 1973j(f) and 1971(d), and 28 U.S.C. § 1345. In accordance with 42 U.S.C. § 1973c and 28 U.S.C. § 2284, the Section 5 claims must be determined by a three-judge district court.

2. 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. Under Section 5 any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from that in force or effect in Waller County 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.

3. Defendant Waller County is a subdivision of the State of Texas and is therefore subject to Section 5 preclearance requirements. According to the 2000 Census, the County had a total population of 32,663, of whom 18,889 (57.8%) are white and 9,553 (29.2%) are black. The County's voting age population is 24,277, of whom 12,504 (51.5%) are white and 7,556 (31.1%) are black.

4. Defendant Ellen C. Shelburne is the County Tax Assessor and serves *ex officio* as the County Registrar. In her capacity as the County Registrar, she is responsible for the administration of voter registration for Waller County. She is a resident of Waller County and is sued in her official capacity.

5. Waller County is home to Prairie View A&M ("PVAMU"), a historically black university located in Prairie View, Texas. PVAMU has an enrollment of approximately 8,000 students for the 2007-2008 academic year. Many PVAMU students apply to register to vote through voluntary deputy registrars (VDRs) appointed by Waller County pursuant to Texas law. VDRs in Waller

County, many of whom are PVAMU students, frequently seek to conduct large registration drives on campus.

6. Beginning in 2007, the Defendants have implemented several new standards, practices, or procedures affecting the administration of voter registration without the requisite Section 5 preclearance. Specifically, the Defendants have implemented the following changes affecting voting within the meaning of Section 5:

(a) With regard to the County's VDR program, the new practices of (i) refusing to accept any application submitted by a VDR that the registrar's staff deems incomplete and requiring the VDR to personally notify each such applicant of the rejection; and (ii) imposing limitations on the number of voter registration receipts VDRs may obtain to facilitate voter registration;

(b) With regard to standards for accepting voter registration applications, the rejection of applications because the applicant (i) failed to supply a ZIP code; and (ii) failed to use the most recent version of the registration forms; and

(c) With regard to notification practices, the failure to notify applicants from noncontiguous counties that the registrar's office has forwarded their voter registration applications to those counties.

None of these voting changes has received the requisite judicial or administrative preclearance under Section 5 and thus are legally unenforceable. Clark v. Roemer, 500 U.S. 646 (1991); Procedures for the Administration of Section 5 of the Voting Rights Act, 28 C.F.R. § 51.10 (2008).

7. Under 42 U.S.C. 1971(a)(2)(B), no person shall be denied the right to vote "because of an error or omission on any record or paper relating to any application, registration, or other act

requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election."

8. Since 2007, Defendants have rejected voter registration applications based on the criteria set forth in paragraph 6(b) above, the vast majority of which were applications of PVAMU students.

9. The errors or omissions described in paragraph 6(b) above are not material to determining whether the applicants are qualified under Texas law to vote, and Waller County's rejection of applications on these grounds violates 42 U.S.C. 1971(a)(2)(B).

10. To avoid protracted and costly litigation, the parties have agreed that this lawsuit should be resolved through the terms of this Consent Decree. Defendants are committed to fully complying with the requirements of Section 5 and 42 U.S.C. 1971(a)(2)(B) in the future. Therefore, Defendants stipulate that each provision of this Consent Decree is appropriate and necessary. The parties waive a hearing and entry of findings of fact and conclusions of law on all issues involved in this matter.

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

11. Defendants have not received the requisite preclearance under Section 5 for the voting changes identified in paragraph 6 above. The implementation of these changes without preclearance constitutes a violation of Section 5.

12. Defendants, their agents, successors, and all other persons acting in concert with them, are permanently enjoined from further implementing the voting changes described in paragraph 6 above, and any future "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from the last precleared practice or procedure in Texas or Waller County, unless and until administrative or judicial preclearance pursuant to Section 5 is obtained.

13. Waller County's rejections of voter registration applications on the grounds identified in paragraph 6(b) above violate 42 U.S.C. § 1971(a)(2)(B).

14. Defendants, their agents, successors, and all other persons acting in concert with them, are permanently enjoined from rejecting voter registration applications for reasons immaterial to determining whether an individual is qualified under Texas law to vote, including the failure to provide a ZIP code and failure to use the most recent version of the registration forms.

15. Defendants shall immediately undertake measures to place on the list of registered voters any individuals whose applications were rejected for reasons identified in the preceding paragraph. To that end, within 7 days of the entry of this Decree, the Defendants shall complete the processing of all registration applications that were rejected pursuant to the criteria described in paragraph 6(b) above and promptly notify all such applicants of the disposition of their applications. Any applicant whose application was rejected pursuant to the criteria described in paragraph 6(b) shall be added to the registration list, provided the application meets all other requirements of Texas law and that the applicant has not been subsequently registered to vote elsewhere in Texas, and the applicant will be permitted to vote a regular ballot in the November 4, 2008 election in Waller County and all future elections for which the applicant remains eligible under Texas law. The effective date for these registrants shall be the date the applications were originally submitted. The notice to such applicants shall include a registration card and a brief statement that advises that the registrant is eligible to vote in the November 4, 2008 election, explains that the application was processed as a result of this Consent Decree, and provides contact information for the registrar's office should the registrant have any questions.

16. Within 10 days of the entry of this Decree, the Defendants shall provide the Plaintiff with a report of the County's compliance with the application processing required by the preceding paragraph, including the name of each applicant, the disposition of each application, and, for any application that is rejected, the basis for that rejection. The report shall also include a certification that the County has notified all individuals of the disposition of their applications. Thereafter, on October 10th and February 10th of each year for the duration of this Consent Decree, the County shall provide the Plaintiff with a report containing the name of each applicant, the disposition of each application, and, for any application that is rejected, the basis for that rejection. This report shall clearly designate which applications were received during the registration drives conducted pursuant to paragraph 20. The report shall also include a certification that the County has notified all individuals of the disposition of their applications.

17. Defendants shall provide written notice to all voter registration applicants of the disposition of their applications in accordance with Texas law, including notice to applicants from noncontiguous counties that the registrar's office has forwarded their voter registration applications.

18. By December 1, 2008, Defendant Shelburne, in consultation with the Texas Director of Elections, shall develop a VDR training program, including appropriate written materials, for purposes of improving the training of the registrar's staff and existing and future VDRs. These written materials shall include instructions about VDR responsibilities, an overview of the information required for an application to be deemed complete under Texas law, and a list of frequently asked questions and answers, including identification of common errors on VDR-submitted applications. Defendant Shelburne shall regularly update these written materials.

19. Defendants shall coordinate with PVAMU's President, or his designee, to hold twice-

annual events, on the PVAMU campus, at which students can become VDRs and receive training on the proper procedures for the VDR program. This coordination shall include a written request to the President, or his designee, three weeks prior to the suggested date for such event asking for access to the campus to conduct such event. Further, Defendants shall consult with PVAMU's President, or his designee, to determine the most appropriate place and time to ensure that students will have the fullest opportunity to attend these events. The Defendants shall arrange for each event to be advertised in the PVAMU student newspaper, The Panther, at least two days during the 14 day period that precedes the event. Defendants shall also request the President's assistance in facilitating electronic notice, such as through electronic mail or posting on PVAMU's online calendar, of these events to all students through the PVAMU's Information Technology Services during this same period. Within 10 days following each event, Defendants shall provide the Plaintiff with a copy of the training agenda, list of attendees, and information with respect to the place and time of these training sessions.

20. Defendants shall coordinate with PVAMU's President, or his designee, to hold county-conducted voter registration drives at the W.A. Templeton Memorial Student Center on the first Wednesday following the second full week of classes for each of the Fall and Spring PVAMU semesters. This coordination shall include a written request to the President, or his designee, three weeks prior to the proposed date of each drive asking for access to the campus to conduct the drive, and consultation with PVAMU's President, or his designee, to determine the most appropriate time to ensure that students will have the fullest opportunity to attend these drives. Prior to each drive, Defendants shall solicit, by telephone and letter, participation by PVAMU and other interested VDRs to assist in conducting these drives. The Defendants shall arrange for the drives to be

advertised in the PVAMU student newspaper, The Panther, at least two days during the 14 day period that precedes the drive. Defendants shall also request the President's assistance in facilitating electronic notice, such as through electronic mail or posting on PVAMU's online calendar, of these drives to all students through the PVAMU's Information Technology Services during this same period.

21. Within 3 days of the date on which the Court enters this Decree, Defendants shall submit for preclearance under Section 5 all voting changes instituted as a result of the implementation of this Decree, except that the VDR training procedures referenced in paragraph 18 shall be submitted for preclearance within 10 days of Defendant Shelburne's final approval.

22. Defendants shall retain any and all records concerning the subject matter of this Consent Decree. Upon request, the Defendants shall provide Plaintiff with copies of any such materials including, but not limited to, registration and VDR-related records and notices of rejection or incomplete registration applications.

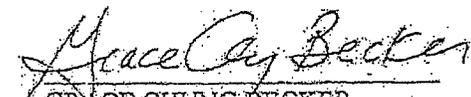
23. The parties recognize that regular and ongoing reassessment may be necessary to ensure that voter registration opportunities are provided to PVAMU students in the most effective and efficient manner. To that end, the parties shall confer in good faith if any party believes that adjustment to the agreed procedures is necessary to attain that objective or if Defendants are unable to fulfill any of the obligations set forth herein. Accordingly, subject to the preclearance requirements of Section 5, the relief may be adjusted at any time upon joint written agreement of the parties.

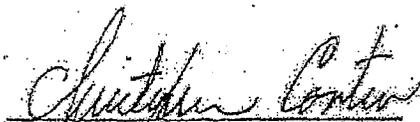
24. This Decree will remain in effect through December 31, 2012. This Court shall retain jurisdiction of this case to enter further relief or such other orders as are necessary for the

effectuation of the terms of this Consent Decree and to ensure compliance with Section 5 and 42 U.S.C. § 1971(a)(2)(B).

AGREED AND CONSENTED TO:

FOR PLAINTIFF:


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Date:  day of October, 2008

JUDGMENT AND ORDER

This Court, having considered the foregoing stipulation of the parties, has considered the terms of the Consent Decree and hereby incorporates and enters the relief set forth herein, with the exception of paragraphs 11 and 12, which are entered by the three-judge court convened to address the claim under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c.

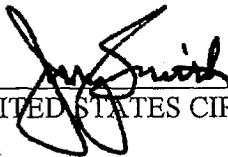
ENTERED and ORDERED this 17th day of October, 2008.

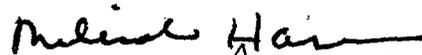
Melinda Har
UNITED STATES DISTRICT JUDGE

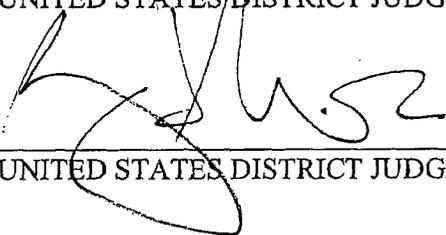
JUDGMENT AND ORDER

This Court, having been properly empaneled under 28 U.S.C. § 2284 to consider the United States' claim under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, has considered the terms of the Consent Decree and hereby enters and incorporates the relief set forth in paragraphs 11 and 12 of this Decree.

ENTERED and ORDERED this 17th day of October, 2008.


UNITED STATES CIRCUIT JUDGE


UNITED STATES DISTRICT JUDGE


UNITED STATES DISTRICT JUDGE