Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1996

B.C. FOREMAN, IDA CLARK, OTIS TARVER, DOMINIC DE LA CRUZ, LOUIS DAVIS, and MANDY PESINA,

Appellants,

v.

DALLAS COUNTY, TEXAS; COMMISSIONERS COURT OF DALLAS COUNTY, TEXAS; LEE F. JACKSON, Dallas County Judge; JIM JACKSON, JOHN WILEY PRICE, MIKE CANTRELL, and KENNETH MAYFIELD, Dallas County Commissioners; and BRUCE SHERBET, Elections Administrator of Dallas County, Texas,

Appellees.

On Appeal From The United States District Court For The Northern District Of Texas

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED

1. UNDER SECTION 5 OF THE VOTING RIGHTS ACT, MUST A COVERED JURISDICTION SUBMIT FOR PRECLEARANCE TO EITHER THE DISTRICT COURT FOR THE DISTRICT OF COLUMBIA OR TO THE ATTORNEY GENERAL CHANGES IN THE METHOD OF SELECTING ELECTION OR POLL JUDGES, WHERE SUCH JUDGES PERFORM A PUBLIC ELECTORAL FUNCTION THAT DIRECTLY AFFECTS VOTERS?

2. WHETHER THE LOCAL THREE-JUDGE DISTRICT COURT EXCEEDED ITS JURISDICTION IN A SECTION 5 ENFORCEMENT ACTION BY REVIEWING THE MOTIVE FOR THE JURISDICTION'S VOTING CHANGES AND EXEMPTING THOSE CHANGES FROM THE PRECLEARANCE REQUIREMENTS BECAUSE THE COURT BELIEVED THE CHANGES WERE MOTIVATED BY PARTISAN CONCERNS RATHER THAN RACIAL DISCRIMINATION?

3. WHETHER THE DISTRICT COURT ERRED IN RULING THAT THE ATTORNEY GENERAL'S PRECLEARANCE OF A 1985 RECODIFICATION AND AMENDMENT TO THE TEXAS ELECTION CODE IMPLICITLY PRECLEARED DALLAS COUNTY'S CHANGES IN THE PROCEDURES USED TO SELECT ELECTION JUDGES?

4. WHETHER A SECTION 5 COVERED JURISDICTION, WHICH HAS IMPLEMENTED A SERIES OF UNPRECLEARED VOTING STANDARDS, PRACTICES OR PROCEDURES, MAY RETURN, AGAIN WITHOUT

QUESTIONS PRESENTED

PRECLEARANCE, TO THE STANDARDS, PRACTICES OR PROCEDURES IN EFFECT AT THE TIME OF THE ORIGINAL COVERAGE DATE OF THE VOTING RIGHTS ACT?

5. WHETHER THE DISTRICT COURT ERRED IN REFUSING TO ENJOIN CHANGES IN VOTING STANDARDS, PRACTICES OR PROCEDURES THAT HAD NOT RECEIVED PRECLEARANCE UNDER SECTION 5 OF THE VOTING RIGHTS ACT?

PARTIES

Actual parties to the proceedings in the United States District Court were:

(1) B.C. Foreman, Ida Clark, Otis Tarver, Dominic De La Cruz, Louis Davis, and Mandy Pesina, plaintiffs, appellants, herein,

(2) Dallas County, Texas, a political subdivision of the State of Texas, defendant,

(3) Commissioners Court of Dallas County, Texas, defendant,

(4) Lee F. Jackson, Dallas County Judge, defendant,

(5) Jim Jackson, John Wiley Price, Mike Cantrell, and Kenneth Mayfield, Dallas County Commissioners, defendants,and

(6) Bruce Sherbet, Elections Administrator of Dallas County, Texas, defendant.

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JURISDICTIONAL STATEMENT

This is a direct appeal from a February 7, 1997, final judgment and order of a three-judge court of the United States District Court for the Northern District of Texas, under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

OPINIONS BELOW

The October 18, 1996, opinion of the district court denying appellants' application for an injunction under Section 5 of the Voting Rights Act is unreported and appears in the appendix to the jurisdictional statement in No. 96-987 at App. 1a.[1] The February 7, 1997, final judgment and order are also unreported and appear in the appendix hereto at App. 65a.

JURISDICTION

The order of the three-judge district court denying appellants' application for a preliminary injunction under Section 5 of the Voting Rights Act, as amended, 42 U.S.C.

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[1] Except for the changes on page 1 and the insertion of a new paragraph on page 10, *infra*, of this jurisdictional statement (updating the procedural history of the case), this jurisdictional statement is identical to the one filed by appellants in No. 96-987. Appellants, therefore, have not duplicated the appendix. Citations in this jurisdictional statement are to the appendix which was filed with the appellants' jurisdictional statement in No. 96-987 (App. 1a to App. 64a). In addition, appellants have also prepared an appendix to this jurisdictional statement which includes the most recent orders and judgment of the three-judge court, and appellants' notice of appeal. The pages in the attached appendix (App. 65a to 72a) have been numbered so as to follow consecutively with those pages which were set forth in the appendix that accompanied the jurisdictional statement in No. 96-987.

1973c, was entered on October 18, 1996. App. 1a. Appellants filed a notice of appeal on October 18, 1996. App. 9a.

A final judgment and order was entered on February 7, 1997. App. 65a. Appellants filed a notice of appeal on February 21, 1997. App. 70a. The jurisdiction of this Court rests on 42 U.S.C. 1973c and 28 U.S.C. 1253.

STATUTORY PROVISIONS INVOLVED

Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, is set forth at App. 50a-51a.

STATEMENT OF THE CASE

This case arises because Dallas County, Texas, which is a covered jurisdiction under Section 5 of the Voting Rights Act, has changed its procedures for selecting election judges on several occasions without obtaining Section 5 preclearance. Election judges are appointed annually by county commissioners courts in Texas and are in charge of and responsible for the management of the polls on election day. Texas Election Code Ann. § 32.071. In Texas, election judges, also known as presiding judges, possess a wide variety of authority under state law, and the performance of their duties and responsibilities on election day affects voters and the electoral process in a fundamental way. For example, election judges have the power to: decide who is qualified to vote on election day (Tex. Election Code Ann. § 63.001); assist voters who are unable to mark a ballot either because of physical disability or inability to read or write (Texas Election Code Ann. § 64.031); and inspect voting machines throughout election day to insure that the machines are properly working and have not been tampered with. (Tex. Election Code Ann. § 125.005). As presiding officers at the polls, election judges also are empowered to preserve order at the polls and to issue

arrest warrants for those who interfere with the voting process. Tex. Election Code Ann. § 32.075.

Because election judges possess such a broad range of authority over voters and elections. changes in the procedures used to select them go to the very heart of Section 5. Dallas County's most recent change in selecting judges, adopted on October 8, 1996, and implemented in the November 5, 1996 elections, for example, demonstrates the dramatic effect such changes can have on voters and the electoral process, from both a racial and partisan standpoint. At least 54 African-Americans and 22 Latinos (including the six appellants herein) who had previously served as election judges were removed as judges as a result of the county's October 8 decision. App. 33a. Moreover, it was stipulated below that the county's October 8, 1996 decision left some election judge positions vacant in precincts where no Republican judge could be named, and that those precincts left with such vacancies were, for the most part, predominately African-American or Latino. App. 15a. Whereas many Democrats and many Republicans had served as election judges prior to 1996, Dallas County's October 8 change removed all 109 Democrats and named only Republicans to serve as election judges at approximately 500 polling locations. App. 3a, 15a, 35a. The district court, however, declined to require that Dallas County's changes in procedures to select election judges undergo Section 5 preclearance.

A. Dallas County's History of Appointing Election Judges

Although the record below does not reflect how Dallas County appointed election judges at the time of the coverage date of the Voting Rights Act in Texas (November 1, 1972), it is undisputed that Dallas County

changed its method of selecting election judges in 1983.[2] Beginning in 1983 and continuing until 1995, the County selected election judges recommended by the county elections clerk utilizing the results of the last held Presidential election (hereafter, "the Presidential precinct method"). App. 12a-13a. Using the Presidential precinct method, "Dallas County Commissioners, acting under § 32.002, selected an election judge in each precinct from the political party whose candidate carried that precinct in the preceding presidential election." App. 2a. It is undisputed that no preclearance was sought or obtained for the 1983 change to the Presidential precinct method of selecting poll judges. See App. 15a.

In 1985, the State of Texas recodified and enacted comprehensive revisions to its election code and submitted those revisions to the Attorney General for Section 5 preclearance. App. 38a-46a. In its Section 5 submission to the Attorney General, the State explained that the 1985 revisions to Tex. Election Code Ann. § 32.002 "merely clarifies the beginning date and duration of the appointment of an election judge for a county election precinct." App. 41a. The Department of Justice precleared the revisions to the Texas Election Code on August 16, 1985. App. 47a-49a.

The parties stipulated that the 1985 legislation "made no mention of the use of any method by Dallas County for the appointment of election judges." App. 12a. The

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[2] Since 1972, the Texas Election Code has authorized county commissioners courts, the governing bodies, to appoint election judges. Texas Election Code Ann. § 32.002. App. 52a. These appointments are made based upon recommendations of a county elections clerk, who compiles a list of nominees based on a formula or practice established by the county commissioners court. *Id.* Since 1972, Texas law has not prescribed any particular formula or practice for selecting such judges, however.

parties also stipulated that both before and after the 1985 amendments and recodification to the Texas Election Code (§ 32.002), Dallas County appointed its election judges pursuant to the Presidential precinct appointment method adopted in 1983. App. 12a. Consequently, nothing in the 1985 revisions or recodification of the Texas Election Code changed Dallas County's procedures for appointing election judges.

In each election held from 1983 to 1995, Dallas County officials administered the Presidential precinct method of selecting election judges. App. 12a. It is undisputed, and the district court found, that on August 8, 1995, Dallas County "adopted an order changing the benchmark from the preceding presidential election to the 1994 United States Senate election returns in each precinct" (App. 2a and 13a) (hereafter, "U.S. Senate precinct method"). Like the Presidential precinct method, the U.S. Senate precinct method provided for the appointment of a Republican as an election judge in those precincts won by the Republican candidate in the November 1994 U.S. senatorial election, and a Democrat as election judge in those precincts carried by the Democratic candidate in that election. App. 13a, 31a. Dallas County failed to submit the 1995 change to the U.S. Senate precinct method of selecting election judges for preclearance under the Voting Rights Act. App. 14a.

It was also undisputed that on September 3, 1996, the Dallas County Commissioners Court again changed its procedures for choosing election judges. App. 2a, 13a-14a. Under the method adopted on September 3, the results of the 1994 U.S. Senate race would be used to select poll judges only in those precincts where the Republican candidate had prevailed. App. 2a. In those precincts where the Democratic candidate in the 1994 U.S. Senate race had prevailed, "the County Commissioner

whose district included that precinct had discretion to choose the election judge." App. 2a.[3] It was stipulated below that Dallas County failed to submit the September 3, 1996 change in the method of selecting judges for preclearance. App. 15a.

By letter dated September 30, 1996, the United States Department of Justice notified the Dallas County Judge that it had received information that Dallas County "had changed the method for selection of election judges" in 1995 and 1996, and that such changes had not received the requisite preclearance under Section 5 of the Voting Rights Act. App. 36a-37a. The Department of Justice advised the County Judge that the changes were "legally unenforceable without Section 5 preclearance." App. 37a. The County failed to make the requested submission.

B. Initial Proceedings Before The Three-Judge Court

On October 3, 1996, plaintiffs, African American and Latino voters who had previously served as election judges in Dallas County but who had been notified of their removal as a result of the September 3, 1996 changes in the practices or procedures for selecting judges, filed

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[3] In addition, under the method of choosing election judges adopted by the County on September 3, 1996, a majority of the county commissioners retained the right not to appoint any particular individual designated by an individual commissioner. App. 29a.

The Dallas County Commissioners Court is comprised of five members. App. 11a. There are four Republicans and one Democrat presently serving on the County Commissioners Court. Each of four commissioners are elected from a single-member district, and the fifth member, the county judge, is elected county-wide or at large.

their original complaint seeking declaratory and injunctive relief. Plaintiffs alleged that the defendants had adopted and administered new practices and procedures for choosing election judges after the effective date of the Voting Rights Act in Texas, and had done so without receiving the necessary preclearance under Section 5. Plaintiffs filed an application for a temporary restraining order and moved for a preliminary injunction seeking to enjoin further administration of the unprecleared changes.

Later that day, following an in chambers hearing on plaintiffs' application for a temporary restraining order, a single-judge of the three-judge court below found that Dallas County's changes in 1995 and 1996 in the method of selecting election judges "would effect changes in voting standards, practices or procedures that have not received preclearance from the Attorney General of the United States." App. 7a. The order restrained the defendants from implementing the 1995 U.S. Senate method of choosing election judges, as well as the modified U.S. Senate precinct method for choosing judges adopted on September 3, 1996. App. 7a.

Following entry of the temporary restraining order, Dallas County did not submit any of the changes in its method of selecting poll judges for Section 5 preclearance. Instead, by Orders dated October 8, 1996, the Commissioners' Court rescinded "any and all policies or practices that provided a method of selecting and appointing presiding [election] judges in Dallas County by any method other than that set out in Tex. Elec. Code, § 32.002 or its predecessor statutes[.]" App. 22a. Since § 32.002 of the Texas Election Code, the enabling statute which authorizes Texas counties to appoint election

judges, does not prescribe any specified method of selecting judges, the effect of the County Commissioners' October 8 order was to allow the county commissioners to select election judges without reference to any benchmark of past election results. As noted above, the county's October 8 order had a substantial racial and partisan effect.[4]

The plaintiffs filed their amended complaint on October 10, 1996, challenging under Section 5 the new procedures for selecting election judges adopted on October 8, 1996. Plaintiffs sought declaratory and injunctive relief, and filed an amended motion for a preliminary injunction, seeking to enjoin the defendants from implementing any unprecleared changes in the practices or procedures used to select election or poll judges in future elections. A three-judge court comprised of Circuit Judge Patrick Higginbotham, and District Judges Sidney Fitzwater and Terry Means, was convened to hear the claims.

Defendants denied that the changes adopted and administered in 1983, 1995, and 1996, constituted changes in voting-related standards, practices, or procedures subject to Section 5 preclearance requirements. Defendants argued that since none of the earlier changes in method of selecting election judges in Dallas County ever received Section 5 preclearance, those methods had been legally unenforceable. Thus, the defendants argued, the county's October 8, 1996 change did not have to undergo Section 5 preclearance because the county was merely

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[4] As noted above, it was stipulated below that the October 8, 1996 Order of the Commissioners Court left approximately 30 precincts without election judges, mostly in precincts where black voters and/or Latino voters predominate. See App. 15a. The only black member of the Dallas County Commissioners Court, who also is the county's only Democratic commissioner, voted against the October 8, 1996 change. App. 27a.

adopting a method of choosing election judges consistent with § 32.002 of the Texas Election Code. The county also contended that since the Texas Election Code that has been in place since the coverage date of the Voting Rights Act did not specify any standard or procedure for appointment of judges, the county's October 8 change to a selection procedure without regard to election results was merely a reversion to the last legally enforceable method of choosing judges, and thus Section 5 pre-clearance was not required.

A hearing was held before the three-judge court on plaintiffs' amended motion for a preliminary injunction on October 16, 1996.

C. The Decision of the Three-Judge Court

On October 18, 1996, the three-judge court issued its decision. App. 1a-4a. Without citing a single case to support its decision, the court found that because the commissioners in Dallas County have always retained discretion under the Texas Election Code to appoint election judges, the changes in the method of selecting judges in 1983, 1995, and 1996 merely reflected "[s]hifts in the strengths of [political] parties and changing perceptions of power[.]" App. 3a. The district court observed that all three methods employed by Dallas County to select election judges "utilize partisan affiliation as an informing principle in the exercise of the appointive power." App. 3a. The Court found that Congress did not intend "that Section 5 freeze partisan choices". App. 3a. Concluding that the changes in the method of choosing election judges in Dallas County simply reflected the "ebb and flow of political power, manifesting itself in an insistence on party affiliation" (App. 3a), the district court ruled that the changes were not "change[s] in election practice or procedure contemplated by Section 5 of the Voting

Rights Act." App. 3a. The court below also observed that even if preclearance was required, "it would be proper at this stage of the litigation for this court to approve the Commissioners Court's exercise of its power of appointment under § 32.002." App. 4a.

A notice of appeal was filed on October 18, 1996. App. 9a-10a. The district court denied an application for a stay on October 22, 1996. App. 5a. An application for a stay and/or injunction pending appeal presented to Mr. Justice Scalia, and referred by him to the full Court, was denied on October 29, 1996. No. A-298.

Appellants filed a jurisdictional statement on December 18, 1996, and the appellees filed a motion to dismiss or affirm on January 18, 1997. Meanwhile, a single judge of the three-judge court below granted appellees' Rule 12(b)(6) motion to dismiss and entered a "judgment" on January 6, 1997, dismissing the case with prejudice. See Appellee's motion to dismiss or affirm at App. 1-3. The judgment of dismissal was invalid, however, because a single judge of a three-judge district court "shall not . . . enter judgment on the merits." 28 U.S.C. § 2284(b)(3). Because the single judge lacked authority to enter the judgment on the merits, appellants filed an unopposed motion to defer consideration of their appeal in this Court on January 31, 1997. The single judge vacated the invalid judgment. App. 68a. On February 7, 1997, the three-judge court entered a final judgment and order. App. 65a. Appellants filed a notice of appeal from that judgment on February 21, 1997. App. 70a.

THE QUESTIONS ARE SUBSTANTIAL

This Court has made clear that Section 5 of the Voting Rights Act reaches any voting or election standard, practice, or procedure "which alter[s] the election law of a covered State in even a minor way." *Allen v. State Board of*

Elections, 393 U.S. 533, 566 (1969). The changes at issue in this appeal go to the very heart of the Voting Rights Act. Nothing could go to the core of the Voting Rights Act and Section 5 more than a change in the procedures for selecting election officials who conduct elections and decide who may vote on election day. Election judges play a central and critical role in the election process. Changes in the procedures used to select them are unquestionably voting standards, practices or procedures within the meaning of Section 5.

It is undisputed that Dallas County's prior methods of appointing election judges has enabled a significant number of blacks and Latinos to serve as election judges, as well as a substantial number of Democrats. Prior to 1996, for example, at least 54 blacks and 22 Latinos served as poll judges. App. 33a. Prior to the October 8 order of the Dallas County Commissioners Court, over 100 Democrats had been designated to serve as election judges for the November 1996 elections. App. 35a. Also prior to October 8, 1996, all precincts within Dallas County had election judges appointed to serve on election day.

It is undisputed that Dallas County's October 8, 1996 order changed the procedures used to select election judges and this change altered the status quo in a major way. As noted above, 54 blacks and 22 Latinos who had served as election judges were removed. App. 33a. Equally shocking, the October 8, 1996 change in procedures left election judge positions vacant in over 64 precincts, and most of those were predominantly black and/or Latino. App. 15a, 35a. Not a single Democrat was selected to serve as an election judge for the November 5 election at the nearly 500 polling places in Dallas County. App. 14a-15a, 35a.

The district court, which failed to cite any case or other legal authority in support of its ruling, exempted

Dallas County's changes in selecting election judges from the preclearance requirements of Section 5. As we show below, the lower court's decision is directly contrary to the decisions of this Court and should be summarily reversed. Alternatively, this Court should note probable jurisdiction.

1. THE DISTRICT COURT ERRED BY INQUIRING INTO THE PURPOSE OR MOTIVATION BEHIND THE CHANGES IN THE PROCEDURES FOR SELECTING ELECTION JUDGES; THE DISTRICT COURT'S INQUIRY CONFLICTS WITH *ALLEN V. STATE BOARD OF ELECTIONS* AND *PERKINS V. MATTHEWS*.

In a Section 5 enforcement case such as this one, the only questions for the local district court to consider are: "(i) whether a change is covered by Section 5, (ii) if the change is covered, whether Section 5's approval requirements have been satisfied, and (iii) if the requirements have not been satisfied, what relief is appropriate." *McCain v. Lybrand*, 465 U.S. 236, 250 n.17; *Lopez v. Monterey County*, 1996 WL 637045, (U.S. November 6, 1996) at *9; *City of Lockhart v. United States*, 460 U.S. 125, 129 n.3 (1983).

This Court, in case after case, has admonished three-judge district courts that the Attorney General and the District Court for the District of Columbia possess exclusive authority to decide the purpose or effect of a change in any voting standard, practice, or procedure. See *Morse v. Republican Party of Virginia*, 116 S. Ct. 1186, 1204 (1996); *NAACP v. Hampton County Election Comm'n*, 470 U.S. 166, 181 (1985); *McCain v. Lybrand*, *supra*, 465 U.S. at 250; *Dougherty County Bd. of Ed. v. White*, 439 U.S. 32, 42 (1978); *Georgia v. United States*, 411 U.S. 526, 534 (1973); *Perkins v. Matthews*, 400 U.S. 379, 383-385 (1971); *Allen v. State Bd. of Elections*, *supra*, 393 U.S. at 570.

Indeed, earlier this term, this Court unanimously reversed a decision of a three-judge court in a Section 5 enforcement action, stating:

> On a complaint alleging failure to preclear election changes under Section 5, that court lacks authority to consider the discriminatory purpose or effect of the changes. . . . Congress designed the preclearance procedure to forestall the danger that local decisions to modify voting practices will impair minority access to the electoral process. *McDaniel* [*v. Sanchez*], 452 U.S. [130] at 149 [1973]. Congress chose to accomplish this purpose by giving exclusive authority to pass on the discriminatory effect or purpose of an election change to the Attorney General and to the District Court for the District of Columbia.

Lopez v. Monterey County, 65 U.S.L.W. 4003, 4007 (1996 WL 637045 (U.S. November 6, 1996)).

In exempting Dallas County's 1983, 1995, and 1996 changes in the practices or procedures for selecting election judges from the preclearance requirements of Section 5, the three-judge court found a common thread motivating the actions of Dallas County officials in selecting election judges: political or partisan concerns. According to the district court, "the Presidential and Senatorial methods of appointment, which have now been rescinded, as well as the proposed appointment of Republicans across the Board, all utilize partisan affiliation as an informing principle in the exercise of the appointive power." App. 3a. The district court thus concluded that partisan politics, and not racial discrimination, motivated each of Dallas County's changes in procedures for selecting election judges.

The district court erred by examining the *purposes* behind the changes at issue to decide the *threshold* question of whether the changes were subject to the preclearance requirements of Section 5.[5] In concluding that partisan politics and not racial discrimination motivated the changes in the procedures used to select election judges, the three-judge court improperly undertook an examination of the "substantive 'discrimination questions' " (*Allen, supra,* at 559) that are exclusively reserved for either the Attorney General or the District of Columbia court. The decision below, therefore, must be summarily reversed.

This Court has repeatedly reversed judgments of three-judge courts that similarly have failed to properly apply Section 5: *NAACP v. Hampton County Election Commission, supra; McCain v. Lybrand, supra; Blanding v. Dubose,* 454 U.S. 393 (1982) (summary reversal); *Allen v. State Board of Elections, supra; Perkins v. Matthews, supra; Morse v. Republican Party of Virginia, supra; United States v. Bd. of Comm'rs of Sheffield, Alabama,* 435 U.S. 110 (1978); and *Berry v. Doles,* 438 U.S. 190 (1978). The Court should do so again here.

It was also error for the district court to carve out a political exception to the preclearance requirements under the Voting Rights Act. The district court ruled that Dallas County's changes in the method of selecting election judges were driven by politics, and that the "ebb and flow of political power, manifesting itself in an insistence

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[5] The fact that nearly all African American and Latino poll judges have been removed as election judges by the County's October 6, 1996, decision, and that precincts which left election judge positions vacant were predominantly African American and/or Latino, shows the October 8 changes have a "*potential* for discrimination." *NAACP v. Hampton County Election Comm'n, supra,* 470 U.S. at 181 (emphasis in original).

on party affiliation, is not a change in election practice or procedure contemplated by Section 5 of the Voting Rights Act." App. at 3a.[6]

The district court's decision to exempt these changes from Section 5 preclearance because they may have been motivated, in whole or in part, by political or partisan concerns, "opens a loophole in the statute the size of a mountain[.]" *Morse v. Republican Party of Virginia*, 116 S. Ct. 1186 (1996) (Breyer, J., concurring). Many voting-related changes that take place in communities subject to the preclearance requirements of the Voting Rights Act are the result of a calculation or reallocation of political power, but Section 5 preclearance of such changes is nonetheless required. For example, reapportionment or redistricting plans are subject to the preclearance requirements of Section 5, *Georgia v. United States*, 411 U.S. 526 (1973), even though such plans may be the product of political gerrymandering or other partisan efforts (*e.g.*, incumbency protection).

Under the district court's ruling, a covered jurisdiction would be able to escape Section 5 review of even the

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[6] Appellants did not seek an injunction below to obtain preclearance review of shifts in political power. Indeed, appellants agree that shifts in political power on local governmental bodies should not be subject to Section 5's preclearance requirements. We respectfully submit, however, that such shifts are not what this case is about. Here, Dallas County has changed its *standards or procedures* for determining who may serve as an election judge in each precinct. Those standards or procedures may change even when there has been no shift of political power on a local governing body. In other words, shifts in the political make-up of a local government *may or may not* affect voters and elections, but changes in standards or procedures for selecting election judges *will always* have such an impact. The district court's ruling failed to recognize this critical distinction.

most overt racially discriminatory voting changes if it could point to some political reason for its decision. Changes in procedures used to select election judges, who perform a public electoral function and have a direct impact on voters and the election process, are precisely the types of changes that Section was intended to reach.

In sum, the district court failed to recognize its limited role as a Section 5 coverage court. The lower court's decision to exempt Dallas County's changes from Section 5 preclearance by looking to the motivations behind such changes squarely conflicts with numerous decisions of this Court, including *Allen, supra* and *Perkins, supra*. Likewise the district court's ruling that exempts politically motivated voting changes from Section 5 preclearance review is contrary to "[t]he prophylactic purposes of the Section 5 remedy . . . requiring 'review of *all* voting changes prior to implementation by the covered jurisdictions.' " *McDaniel v. Sanchez*, 452 U.S. 151 (1975), citing S. Rep. No. 94-295 (94th Cong. 1st Sess.) (1975), p. 15. See also, *Presley v. Etowah County Comm'n*, 502 U.S. 491, 509 (1992). Application of these principles here clearly requires reversal of the decision below.[7]

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[7] The district court mistakenly concluded that because Dallas County officials have always had the power to appoint election judges, Texas law left local officials with discretion involving "only the identity of persons to be appointed [as election judges.]" App. 3a. As has been shown, Dallas County officials, in carrying out their authority to appoint election judges, have been able to exercise their discretion to effectuate vast changes in the racial and political composition of the election judges, beyond simply changing the names of individuals selected. Whole *categories* of persons are no longer eligible to serve (*e.g.*, Democrats). In any event, appellants did not make the claim below that changes in the identity of individuals selected as poll judges are subject to Section 5 preclearance, and do not make such an argument in this Court.

2. THE DISTRICT COURT'S RULING THAT THE ATTORNEY GENERAL'S PRECLEARANCE IN 1985 OF REVISIONS TO THE TEXAS ELECTION CODE IMPLICITLY PRECLEARED DALLAS COUNTY'S CHANGES IN PROCEDURES FOR SELECTING ELECTION JUDGES THAT WERE NOT PART OF THE STATE'S 1985 SUBMISSION CONFLICTS WITH *MCCAIN V. LYBRAND* AND *CLARK V. ROEMER*.

This Court has repeatedly and emphatically rejected after-the-fact efforts of covered jurisdictions to redefine Section 5 submissions in an effort to escape Section 5 review of changes that were not included in the submission. This Court has done so "because the purposes of the Act would plainly be subverted if the Attorney General could ever be deemed to have approved a voting change when the proposal was neither properly submitted nor in fact evaluated by him." *McCain*, 465 U.S. at 249.

The district court's ruling that the Department of Justice's preclearance of the State of Texas' 1985 submission of revisions and recodification of its election code "precleared the process of selecting election judges in Texas" (App. 3a) was error. The 1985 amendments did not prescribe any particular method of selecting election judges and the parties below so stipulated. App. 12a, 52a. Nevertheless, the district court found that the Texas Election Code Ann. § 32.002 contemplated the selection of election judges by partisan affiliation and that the Department of Justice's 1985 preclearance of minor revisions to that statute implicitly precleared Dallas County's changes in the methods of selecting election judges. In the words of the district court, "[i]t would be unrealistic

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Rather appellants challenge Dallas County's changes in the *standards or procedures* used to select election judges.

to conclude that this preclearance did not contemplate the selection of election judges by partisan affiliation." App. 3a.

The district court's ruling is plainly wrong. Preclearance of the 1985 recodification and amendments to the election code could not have implicitly precleared the method of choosing election judges in Dallas County because there were no changes in any procedures for selecting judges occasioned by that legislation. The 1985 legislation merely "clarif[ied] the beginning date and duration of the appointment of an election judge[.]" App. 41a.[8] In addition, it is undisputed that before and after the 1985 legislation, Dallas County employed the same Presidential precinct method of selecting judges. App. 12a. Thus, the 1985 legislation did not effect any changes in Dallas County's procedures for selecting election judges. Accordingly, the Department of Justice's preclearance of the 1985 legislation could not have precleared the 1983 change to a Presidential precinct method, much less the changes in 1995 and 1996.

The district court's ruling squarely conflicts with this Court's decision in *McCain v. Lybrand*, 465 U.S. 236 (1984). In *McCain*, this Court reversed a district court judgment denying plaintiffs' request for an injunction barring further elections under a system of county government created by a 1966 statute that had never been submitted for preclearance. The district court in *McCain* had ruled that the 1966 statute was implicitly precleared when the Attorney General gave Section 5 preclearance to a 1971 statute that increased the size of the county's governing body,

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[8] Appellants made no claim that the 1985 legislation had failed to undergo preclearance. Appellants challenged *Dallas County's* implementation of changes in 1983, 1995, and 1996 in the procedures used to select election judges.

because the seats were to be elected using the same election system set forth in the 1966 statute. In reversing, this Court announced its holding:

> A request for preclearance of certain identified changes in election practices which fails to identify other practices as new ones thus cannot be considered an adequate submission of the latter practices.

McCain, supra, at 256-57.

The district court's decision also conflicts with this Court's unanimous decision in *Clark v. Roemer*, 500 U.S. 646 (1991). In *Clark*, this Court reversed a decision of a three-judge court that preclearance of an increase in the number of elected judgeships by implication precleared "all of the judicial positions necessary to reach that number." 500 U.S. at 657. Relying on *McCain v. Lybrand, supra*, this Court stated that a covered jurisdiction "must identify with specificity each change that it wishes the Attorney General to consider," *id.*, at 658, and confirmed the long-standing principle that "any ambiguity in the scope of the preclearance request must be construed against the submitting jurisdiction." *Id.* at 659 (citation omitted).

Here, neither Dallas County nor the State of Texas ever made a Section 5 submission to the Attorney General or the District of Columbia court that sought preclearance of any changes in Dallas County's procedures for selecting election judges. It can hardly be said, therefore, that any submission was made to the Attorney General that identified "with specificity" (*Clark, supra,* at 659) any changes in selecting election judges in Dallas County. As this Court observed in *Allen*, 393 U.S. at 571, "[a] fair interpretation of the [Voting Rights] Act requires that the State [or local jurisdiction] in some unambiguous and recordable manner submit any legislation or regulation in

question directly to the Attorney General with a request for his consideration pursuant to the Act." Clearly, that did not happen here, as the 1985 recodification and amendments to the Texas Election Code did not effectuate any changes in Dallas County's procedures for selecting election judges.

This Court has rejected the concept of preclearance by implication, and should do so again here. The district court's decision plainly conflicts with *McCain* and *Clark*, and should be summarily reversed.

3. THE DISTRICT COURT ERRED IN EXEMPTING FROM SECTION 5 PRECLEARANCE VOTING CHANGES THAT ARE IMPLEMENTED AS A RESULT OF DISCRETIONARY ACTS OF LOCAL OFFICIALS.

The district court's October 18 decision also allows covered jurisdictions to enact and administer voting changes, and then evade Section 5 review, if the jurisdiction can show that it is simply exercising discretion granted under state law. This Court has had occasion to consider this issue in the context of setting election dates and has emphatically rejected that proposition. In *NAACP v. Hampton County Election Comm'n, supra*, Hampton County reset an election date and argued that because its rescheduling of an election "was merely an administrative effort to comply with a statute that had already received clearance, it was not a change of such magnitude as to trigger the requirements of Section 5." 470 U.S. at 181. This Court, however, rejected that argument and required that the change undergo Section 5 preclearance. The Court explained that the discretion involved in setting an election date had "potential for discrimination" because the date could affect candidates desiring to enter

the race as latecomers, as well as voter turnout. 470 U.S. at 181.

The reasons that discretionary actions of state and local officials are subject to Section 5's preclearance requirements was explained thirty years ago in *South Carolina v. Katzenbach*, 383 U.S. 301, 335 (1966), when this Court stated:

> Congress knew that some of the States covered by . . . the Act had resorted to the extraordinary stratagem of contriving new rules of various kinds for the sole purpose of perpetuating voting discrimination in the face of adverse federal court decrees. Congress had reason to suppose that these States might try similar maneuvers in the future in order to evade the remedies for voting discrimination contained in the Act itself.

Contrary to the district court's ruling here, it is precisely because discretionary actions of state and local officials can produce changes that affect voters and elections that they fall within the scope of Section 5. Exempting changes that involve the exercise of discretion by state or local election officials from the preclearance requirements of Section 5 will permit covered jurisdictions to "contriv[e] new rules of various kinds for the sole purpose of perpetuating voting discrimination." *South Carolina v. Katzenbach*, 383 U.S. at 335.

In this case, the district court held that the Texas Election Code conferred the authority on county officials to select election judges and that the county's changed procedures for choosing election judges simply reflected an exercise of discretion under the state statute. The district court's ruling carves out an exception that could eviscerate Section 5. If voting changes occasioned by discretionary actions of local officials are beyond the

reach of Section 5, covered jurisdictions will be encouraged to enact broad enabling legislation that allows local officials to change election practices, and then argue that such changes are beyond the scope of Section 5 review because they merely constitute discretionary action. This runs directly contrary to Congress' intent in enacting Section 5, which this Court has stated is to be effectuated by giving Section 5 "the broadest possible scope." *Allen*, 393 U.S. at 567.

Other three-judge courts have applied these principles in considering the issue of whether voting changes occasioned by the discretionary actions of election officials are subject to Section 5's preclearance requirements and have reached a result contrary to the decision of the district court in this case. In *United States v. State of Texas*, C.A. No. SA-85-CA-2199 (W.D. Tx. 1985) (3-judge court), the Governor of Texas called a special election to fill a vacancy in the state's congressional delegation.[9] The United States brought a Section 5 enforcement case to require preclearance of the setting of the special election date. The State of Texas argued that the Governor's decision to call for an emergency election pursuant to a state statute that had already undergone Section 5 preclearance did not constitute a change within the meaning of Section 5. The three-judge court recognized that the Governor had the discretion under Texas law to declare the election an emergency. Nevertheless, the three-judge court ruled that the discretionary act of setting a special election date required preclearance because there was "no requirement

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[9] This decision is unreported and is reproduced in the Appendix at 53a-57a.

under Texas law to prevent discretion [from] being exercised in a manner that would adversely impact voters protected by the Act." App. 55a.[10]

In sum, the district court's decision to exempt the voting changes from Section 5 preclearance requirements opens a gaping loophole in Section 5 coverage. Under the district court's ruling, covered jurisdictions can evade federal review of virtually any voting change by enacting enabling legislation that confers broad discretion on local election officials. Once such enabling legislation is precleared, a local government could change its election procedures year after year without subjecting such changes to Section 5 review. In fact, under the three-judge court's decision, if local election officials adopt a new procedure of choosing election judges that provides "no blacks or Latinos need apply", such procedures would not be subject to scrutiny under the preclearance requirements of Section 5 so long as local officials exercised discretion granted them under state law. Such a result would wipe out the gains made under Section 5.[11]

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[10] The district court in *United States v. Texas* also rejected the State of Texas' claim that the Department of Justice's "preclearance of the election code carried with it approval by the Attorney General of whatever emergency election schemes were subsequently ordered by the state election official." App. 56a.

[11] Such a result would also run contrary to the administrative guidelines published by the Department of Justice governing the administration of Section 5. Under those provisions, see 28 CFR § 51.15(a) (1996), implementation of enabling legislation must undergo Section 5 preclearance unless the voting changes occasioned by that implementation are specifically described in the enabling legislation. The Attorney General's interpretation of Section 5 is entitled to deference under this Court's decisions. *NAACP v. Hampton County Election Comm'n*, 470 U.S. at 182.

The district court's ruling is in conflict with *NAACP v. Hampton County Election Comm'n*, as well as the decision in *United States v. State of Texas*, and should be summarily reversed.

4. THE DISTRICT COURT'S RULING THAT SECTION 5 PRECLEARANCE IS NOT REQUIRED OF VOTING CHANGES THAT HAVE BEEN IMPLEMENTED BY A COVERED JURISDICTION BUT ARE LATER ABANDONED OR RESCINDED CONFLICTS WITH *PERKINS V. MATTHEWS*.

The district court's decision conflicts with this Court's decision in *Perkins v. Matthews*, *supra*, which closed the very loophole that the district court re-opened. In *Perkins*, black voters sought to enjoin the City of Canton, Mississippi from implementing a change from a ward election system to an at-large election system for its board of aldermen. The city had conducted its elections from wards after the coverage date of the Voting Rights Act, even though state law that pre-existed the Voting Rights Act required the city to conduct its elections at-large. The city argued that its change back to an at-large system was beyond the scope of Section 5, because it had implemented the ward system in apparent violation of state law. This Court rejected that argument, looking to the election system that was actually in force or effect in Canton to decide whether there had been a change.

The requirement of federal preclearance of voting changes was not inserted into the Voting Rights Act merely to require a mechanistic review, for the mere sake of review. As recently noted in *Morse*, *supra*, "[t]he purpose of preclearance is to prevent all attempts to implement discriminatory voting practices that change the status quo." 116 S. Ct. at 1201 (Stevens, J.). Here, it is undisputed that Dallas County changed the status quo in

1983, 1995, and 1996, without subjecting such changes to federal review under Section 5. App. 12a-15a.[12] By ignoring such changes, the district court's ruling employs a fiction that the changes never existed. Such an "interpretation of Section 5 . . . permits the precise evil that Section 5 was designed to avoid." *United States v. Bd. of Commr's of Sheffield, Alabama,* 435 U.S. 110, 124 (1978).

The district court's decision allows Dallas County to rescind its previously-implemented but unprecleared changes, implement new voting-related procedures and evade Section 5 review. This ruling is in conflict with

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[12] Although the record below does not reveal Dallas County's method of selecting election judges from 1972 to 1983, it is undisputed that those procedures have changed on several occasions since the coverage date and that Section 5 preclearance has not been obtained. If the method of choosing election judges between 1972 and 1993 is the same as that adopted on October 8, 1996, then the district court's ruling allows Dallas County to escape Section 5 coverage by returning to the procedure for selecting poll judges that existed at the time Texas became subject to Section 5's preclearance requirements. Allowing covered jurisdictions to revert back without preclearance to election procedures that were in place when the Voting Rights Act took effect – when electoral systems throughout the Deep South (including Texas) were overtly discriminatory – would fly in the face of Congress' "concern[ ] about the risk of losing what progress has already been won. The gains are fragile. Without the preclearance of new laws, many of the advances of the past decade could be wiped out overnight with new schemes and devices." Sen. Rep. No. 97-417 at 10 (97th Cong. 2nd Sess.) (1982). Clearly it would undermine the purposes of the Voting Rights Act if state and local governments subject to the preclearance provisions of the Voting Rights Act could revert back to voting systems in place at a time when the playing field was far from level, and could do so without federal review of whether such changes are free of a racially discriminatory purpose or effect. Yet the district court's ruling allows for precisely that result.

decisions of other three-judge district courts that have decided this issue.

In *League of United Latino American Citizens #4552 (LULAC) v. Roscoe Independent School District*, C.A. No. 1:96-CV-010-C (N.D. Tex. 1996) (three-judge court) (App. 58a-59a), a Texas school district elected its school board at large, without numbered posts, at the time of the coverage date of the Voting Rights Act. Subsequently, the school board implemented a numbered post provision, but did not submit the change for Section 5 preclearance. In 1995, the school district rescinded the numbered post provision and attempted to revert to the prior method of election (*i.e.*, an at-large system without numbered posts). Latino voters and LULAC sought an injunction requiring the school district to submit the change for Section 5 preclearance. The district court granted the injunction, concluding that the change from an unprecleared at-large system with numbered posts back to a pure at-large system without posts "is a change covered by Section 5 of the Voting Rights Act that must be precleared before it is implemented." (App. 58a).[13]

Other three-judge district courts also have decided the issue of whether a jurisdiction that has implemented an unprecleared change may then enact a different voting procedure without obtaining Section 5 preclearance. See, *e.g.*, *City of Pleasant Grove v. United States*, C.A. No. 80-2589 (D.D.C. October 7, 1981) (unreported) (App.

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[13] The order of the three-judge court in *LULAC v. Roscoe ISD* is unreported and is reproduced in the appendix at App. 58a-59a. Because the order contains limited discussion of the issues that were before the three-judge court and resolved by that decision, appellants are lodging with the Clerk of this Court copies of the plaintiffs' and defendants' pre-trial briefs in that case. Copies of these briefs have been served on counsel for the appellees.

60a-64a); *City of Rome v. United States*, 472 F. Supp. 221, 247 (D.D.C. 1979), *aff'd*, 446 U.S. 156, 186 (1980); and *NAACP, DeKalb County Chapter v. Georgia*, 494 F. Supp. 668 (N.D. Ga. 1980). In each case, the three-judge court reached the opposite result of the district court in this case and decided that all voting changes were required to undergo Section 5 preclearance.

In *City of Pleasant Grove v. United States*, for example, the city sought preclearance of an annexation in the District of Columbia Court.[14] Although the city had actually implemented two unprecleared annexations, it sought preclearance of only one annexation. The City argued that preclearance of the second annexation was unnecessary because the City would no longer enforce the annexation. The three-judge court required simultaneous review of *all* the previously implemented and unprecleared changes, stating:

> Piecemeal changes which appear innocuous when examined individually may in fact produce discriminatory effects when viewed collectively. . . . It would completely contradict the purpose of the Voting Rights Act if a state or municipality were allowed to enforce a change without preclearance and then to escape an otherwise mandatory preclearance requirement simply by stating it would no longer enforce that change.

App. 62a.

Similarly, in *NAACP, DeKalb County Chapter v. Georgia*, 494 F. Supp. 668 (N.D. Ga. 1980), DeKalb County adopted a new procedure governing voter registration

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[14] This decision is unreported and appears in the Appendix at 60a-64a. The decision of the *Pleasant Grove* court on the merits appears at 568 F. Supp. 1455 (D.D.C. 1983), *aff'd*, 479 U.S. 462 (1987).

drives after the coverage date of the Voting Rights Act in Georgia (November 1, 1964). The County then rescinded that change and attempted to revert back to its 1964 procedure. The three-judge court held that the attempt to revert back to the system in place on the coverage date was a change requiring Section 5 preclearance. *NAACP, DeKalb County Chapter v. Georgia, supra,* at 677.

5. THE DISTRICT COURT'S JUDGMENT SHOULD BE SUMMARILY REVERSED AND THE COURT SHOULD BE INSTRUCTED TO ISSUE A SECTION 5 INJUNCTION.

Appellants seek an injunction requiring Dallas County to seek prompt Section 5 preclearance from either the District of Columbia court or the Attorney General of *all* previously administered and unprecleared changes in the standards or procedures used to select election judges (*i.e.*, the 1983, 1995 and 1996 procedures). See, *e.g., Perkins, supra; NAACP v. Hampton County, supra; Clark, supra;* and *Morse, supra.*

Once the injunction is entered, appellants expect that the 1983 Presidential precinct method will receive the requisite preclearance. Once precleared, that method of election would then become the benchmark for measuring whether subsequent changes (*i.e.*, those in 1995 and 1996) are likely to "lead to retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." *Beer v. United States,* 425 U.S. 130, 141 (1976). If the 1983 Presidential precinct method (or one of the subsequent changes) receives Section 5 preclearance, "the matter will be at an end". *Berry v. Doles,* 438 U.S. at 193. If preclearance is not obtained, then the question of appropriate relief, if any, should be addressed to the district court in the first instance. *NAACP v. Hampton County Comm'n,* 470 U.S. at 182-83.

CONCLUSION

The district court exempted from Section 5 preclearance a series of changes implemented by Dallas County with respect to its procedures for selecting election judges. In doing so, the district court improperly examined the purposes behind those changes. The district court's decision directly contradicts several decisions of this Court, which have made clear the limited role of a local district court in a Section 5 enforcement action. The district court's ruling is also contrary to decisions of this Court which have reversed three-judge courts that attempted to carve out unwarranted exceptions to Section 5.

Accordingly, this Court should summarily reverse the judgment of the district court. Alternatively, this Court should note probable jurisdiction.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

B.C. FOREMAN, et al., Plaintiffs, VS. DALLAS COUNTY, TEXAS, et al., Defendants.	§ § § § § § § §	Civil Action No. 3:96-CV-2764-D (Filed Feb. 7, 1997)

JUDGMENT

For the reasons set out in an order filed today, it is ordered and adjudged that this action is dismissed with prejudice.

Taxable costs of court, as calculated by the clerk of court, are assessed against plaintiffs.

/s/ Patrick E. Higginbotham
PATRICK E. HIGGINBOTHAM
UNITED STATES CIRCUIT JUDGE

/s/ Sidney A. Fitzwater
SIDNEY A. FITZWATER
UNITED STATES DISTRICT JUDGE

/s/ Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

B.C. FOREMAN, et al., Plaintiffs, VS. DALLAS COUNTY, TEXAS, et al., Defendants.	§	Civil Action No. 3:96-CV-2764-D (Filed Feb. 7, 1997)

Before HIGGINBOTHAM, Circuit Judge, and FITZWATER and MEANS, District Judges:

Defendants' November 4, 1996 second Rule 12(b)(6) motion to dismiss plaintiffs' first amended complaint is granted.

As the court reads plaintiffs' first amended complaint, plaintiffs contend only that they are entitled to relief pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *See* First Am. Compl. at ¶ 1 & prayer (¶¶ (A)-(D)). Therefore, the decision of the three-judge court denying plaintiffs' application for a preliminary injunction establishes that plaintiffs have failed to state a § 5 claim on which relief can be granted. *See* Oct. 18, 1996 Order (three-judge court).

Defendants have not established adequate grounds to recover their attorney's fees in defending suit. This portion of their motion is denied. Defendants are, however, entitled to recover their taxable costs of court.

A judgment of dismissal is filed today.

SO ORDERED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

B.C. FOREMAN, et al., Plaintiffs, VS. DALLAS COUNTY, TEXAS, et al., Defendants.	§	Civil Action No. 3:96-CV-2764-D (Filed Jan. 30, 1997)

ORDER

The January 6, 1997 order granting defendants' November 4, 1996 second Rule 12(b)(6) motion to dismiss plaintiffs' first amended complaint is vacated, as is the judgment signed on January 6, 1997.

As I noted in my January 6, 1997 order, I read plaintiffs' first amended complaint to contend only that they are entitled to relief pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. *See* First Am. Compl. at ¶ 1 & prayer (¶¶ (A)-(D)). Therefore, although the decision of the three-judge court denying plaintiffs' application for a preliminary injunction establishes that plaintiffs have failed to state a § 5 claim on which relief can be granted, *see* Oct. 18, 1996 Order (three-judge court), the limited nature of the action precludes me from addressing as a single judge plaintiff's § 5 claims.

Accordingly, defendants' November 4, 1996 second Rule 12(b)(6) motion to dismiss plaintiffs' first amended

complaint will be referred to the entire three-judge court for determination.

SO ORDERED.

January 30, 1997.

/s/ Sidney A. Fitzwater
SIDNEY A. FITZWATER
UNITED STATES DISTRICT
JUDGE

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

B.C. FOREMAN; IDA CLARK; OTIS TARVER; DOMINIC DE LA CRUZ; LOUIS DAVIS; and MANDY PESINA, *Plaintiffs,* VS. DALLAS COUNTY, TEXAS; COMMISSIONERS COURT OF DALLAS COUNTY, TEXAS; LEE F. JACKSON, DALLAS COUNTY JUDGE; JIM JACKSON, JOHN WILEY PRICE, MIKE CANTRELL, and KENNETH A. MAYFIELD, Dallas County Commissioners; and BRUCE SHERBET, Elections Administrator of Dallas County, Texas, *Defendants.*	§	CIVIL ACTION NO. 3:96-CV-2764-D (Filed Feb. 21, 1997)

NOTICE OF APPEAL

Notice is hereby given that Plaintiffs B.C. Foreman, Ida Clark, Otis Tarver, Dominic De La Cruz, Louis Davis, and Mandy Pesina, hereby appeal to the Supreme Court of the United States pursuant to 28 U.S.C. § 1253 from: the Judgment entered February 7, 1997, dismissing the case with prejudice, and from the Order of the same entry

date granting Defendants' Rule 12(b)(6) Motion to Dismiss.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

In accordance with the Federal Rules of Civil Procedure, I hereby certify that a true and correct copy of the foregoing document has been served on the following opposing counsel this 21st day of February, 1997:

C. Robert Heath
Bickerstaff, Heath, *et al.*
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/s/ Kenneth H. Molberg
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