

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**LAWANDA GILMORE and MARCIA BOROWSKI,**

CA No.-

**Plaintiffs,**

v.

**WILLIAM D. BENNETT, in his official capacity as  
Executive Director of the Georgia Soil and Water Conservation  
Commission, GARLAND THOMPSON, CARL E. BRACK,  
DENNIS T. BROWN, DAVID T. HAYS, AND JAMES S. SINGLETARY,  
in their official capacities as Chair and Members, respectively, of the  
Georgia Soil and Water Conservation Commission;  
DONALD L. MURRAY, DOUG DENTON, DELL MACGREGOR,  
JOHN LITTLE AND JAN DUNAWAY, in their official capacities as  
members of the Soil and Water Conservation District of DeKalb County,  
Georgia and LINDA W. LATIMORE, Director of Voter Registration  
and Elections of DeKalb County,**

**Defendants.**

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**VERIFIED COMPLAINT**

**I. The Nature of the Case.**

1. This is an action for declaratory and injunctive relief to enforce the provisions of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § §1973c, and to prevent deprivation under color of state law, statute, ordinance, regulation, custom or usage of the rights, privileges and immunities secured to plaintiffs by the aforementioned statutes.
2. Plaintiffs seek to prevent defendants from continuing to set election dates, setting candidate qualification dates and holding elections for the offices of District Supervisors of the Soil and Water District of Dekalb County,, without complying with Section 5 of

the Voting Rights Act Of 1965.

## **II. Jurisdiction and Venue.**

3. The jurisdiction of this Court is invoked under Title 28 of the United States Code §§ 1331, 1343(a)(3), 1343(a)(4), and 2201, this suit being authorized by Title 42 of the United States Code §§ 1973j(f) and 1983. A court of three judges composed in accord with 28 U.S.C. § 2284 is required by Title 42 of the United States Code § 1973c to hear plaintiffs' claim under 42 U.S.C. § 1973c. Venue is proper under 28 U.S.C. § 1391(b) and (c).

## **III. Parties.**

4. Plaintiffs Lawanda Gilmore and Marcia Borowski are adult citizens and registered voters of DeKalb County, Georgia. Plaintiff Gilmore is African-American and plaintiff Borowski is Caucasian. Each of the plaintiffs regularly votes regardless of whether the election is a primary, general, special or runoff. They are eligible to vote for the offices of district supervisor of the Soil and Water Conservation District of Dekalb County, Georgia. O.C.G.A. § 2-6-22(6).
5. Defendant William D. Bennett, is the Executive Director of the Georgia Soil and Water Conservation Commission, an agency of the State of Georgia duly established under the laws of said State. O.C.G.A. § 2-6-23. The Executive Director has duties of preparing for elections, including contracting with local officials to hold elections and providing instructions to said local officials. He is sued in his official capacity only.
6. Defendants Garland Thompson, Carl E. Brack, Dennis T. Brown, David T. Hays, and James S. Singletary, are chair and members, respectively, of the Georgia Soil and Water Conservation Commission, an agency of the State of Georgia duly established under the state law. The commission members are appointed by the governor of the state of

Georgia. Ga. Code Ann. § 2-6-23. The commission establishes the rules and procedures for the Soil and Water District Supervisor Elections, O.C.G.A. § 2-6-23(d), pursuant to the "Soil and Water Conservation Districts Law," O.C.G.A. § 2-6-20 et seq.. They are sued in their official capacities only.

7. Defendants Donald L. Murray, Doug Denton, Dell MacGregor, John Little and Jan Dunlavy are the district supervisors of the Soil and Water Conservation District of DeKalb County, Georgia. They are sued in their official capacities only.
8. Defendant Linda W. Latimore is Director of Voter Registration and Elections of DeKalb County. She has responsibility for conducting DeKalb County's elections for Soil and Water District Supervisors in DeKalb County. She is sued in her official capacity only.

#### **IV. Facts.**

9. The State of Georgia, including all its political subdivisions, is a "covered jurisdiction" subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C.A. § 1973c, and 28 C.F.R. § 51 et. seq.
10. DeKalb County is a political subdivision of the State of Georgia and is subject to the provisions of Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.
11. The Georgia Soil and Water Conservation Commission ("hereinafter "Commission") has the following statutory duties regarding elections for district supervisors: "The commission shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of voters therein, and shall publish the results thereof."

O.C.G.A. § 2-6-30(c).

12. The duties and authority of the Soil and Water Conservation Districts in Georgia are set out in O.C.G.A. § 2-6-33.
13. The soil and water conservation district of DeKalb County is co-terminus with DeKalb County. It is administered by five district supervisors, of which two are appointed by the state Commission and three are elected by the voters of Dekalb County. O.C.G.A. §§ 2-6-29 and 30.
14. Elections for district supervisors are not held pursuant to the Georgia Election Code. In 1984 the General Assembly exempted the office of soil and water conservation district supervisors from election code coverage. G. Laws 1984, p. 696 (Act No. 983), now codified as part of O.C.G.A. § 21-2-2.
15. The act exempting district supervisor elections from the Georgia Election Code was submitted for preclearance to the Attorney General of the United States on April 30, 1984 by the Attorney General of Georgia, and the Attorney General did not interpose an objection under Sec. 5 of the Voting Rights Act.
16. On information and belief, no other standard, practice or procedure affecting voting for district supervisor elections for any Soil and Water Conservation Districtd in Georgia has ever been submitted for preclearance under Sec. 5 of the Voting Rights Act.
17. The commission has issued regulations, policies and procedures governing district supervisor elections in a memorandum entitled “Policies and Procedures of the State Soil and Water Conservation Commission on Supervisor Elections,” Exhibit A hereto

(reciting that it was revised May 11, 1994), and a memorandum entitled “Instructions to Board of Elections on Holding Elections of Soil and Water Conservation District Supervisors,” Exhibit B hereto.

18. These documents set out the procedures for setting candidate qualifying periods and election dates.
19. The commission has implemented these procedures governing district supervisor elections without seeking preclearance of said procedures under Sec. 5 or the Voting Rights Act.
20. The commission, through its Executive Director, contracts with the DeKalb County Board of Registration and Elections and/or the Director of Voter Registrations and Elections supervisor to conduct the Soil and Water Conservation District elections for the office of supervisor. Under these agreements, the elections are to be held according to the instructions provided by the commission.
21. Neither the DeKalb County election officials nor the Soil and Water Conservation District of Dekalb County or its members have sought preclearance of the procedures for District Supervisor elections under Section 5 of the Voting Rights Act.
22. The procedures for setting dates for a district supervisor election include variables such as the non-uniform expiration dates of the terms of incumbents, the date on which the incumbent submits a nominating petition, and the date on which the local election official signs a contract to conduct the election. Exhibit A hereto, pp. 2-3.
23. Because of the procedures adopted by the commission, there is no standard, predictable

election date, or time for qualifying as a candidate, which electors may ascertain in advance by reference to any published source.

24. The last three election dates set for district supervisor elections in Dekalb County were set for August 22, 2000, November 12, 2002 (scheduled for one week after the general election, this election was uncontested, and therefore not held, and the lone candidate was declared the winner) and September 14, 2004.
25. Pursuant to commission rules, there is only one polling place for district supervisor elections in DeKalb County, which is at the office of the Supervisor of Elections, and absentee voting is not permitted.
26. The combined effect of district supervisor elections being held on dates other than those required for other public offices in Georgia, the single polling place, and the lack of absentee balloting, depress voter turnout.
27. The turnout for the last election for district supervisor in Dekalb County, held August 22, 2000, was 1,613, less than six-tenths of one percent of the registered voters.
28. In the August 22, 2000 election for district supervisor, approximately 10% of the 1,613 voters were African American, while slightly more than 50% of the registered voters in Dekalb County in August 2000 was African American.

#### **V. Claim.**

29. The failure of defendants to secure preclearance of the election and candidate qualifying dates and related procedures for the office of District Supervisor for the Soil and Water District of DeKalb County from the Attorney General of the United States or by securing

a declaratory judgment from the United States District Court for the District of Columbia that said procedures have neither a discriminatory purpose of effect, prior to the setting of said dates and implementation of procedures, violates plaintiffs' rights guaranteed by Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

## **VI. Relief.**

30. There is before the Court a real and actual controversy between the parties. Plaintiffs are suffering irreparable harm as a result of the actions of defendants herein complained of and that injury will continue unless declared to be unlawful and enjoined by this Court.

WHEREFORE, PREMISES CONSIDERED, plaintiffs pray that this Court:

(a) take jurisdiction of this cause;

(b) convene a court of three judges pursuant to 42 U.S.C. §1973c to hear plaintiffs' claim;

(c) enter a declaratory judgment that setting candidate qualifying and election dates for the offices of District Supervisor of the Soil and Water Conservation District of DeKalb County constitutes a change in standards, practices or procedures with respect to voting different from those in force or effect on November 1, 1964, as that term is meant by 42 U.S.C. §1973c;

(d) issue a permanent injunction prohibiting defendants from further implementation and administration of elections for the offices of District Supervisor of the Soil and Water Conservation District of Dekalb County, specifically including the setting of candidate qualification dates and election dates until such time as the Attorney General of the United States

preclears said actions or the United States District Court for the District of Columbia enters a declaratory judgment that said actions have neither the purpose or effect of discriminating on the basis of race, as required by Section 5 of the Voting Rights Act, 42 U.S.C. §1973c;

(e) award plaintiffs nominal damages; and

(f) award plaintiffs the costs of this action, together with attorneys' fees as provided by 42 U.S.C. §§1973l(e) and 1988.

Respectfully submitted,

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Counsel for Plaintiffs

### **VERIFICATION**

I declare under penalty of perjury that the matters asserted herein are true and correct to the best of my knowledge and belief.

Executed on the \_\_\_ day of September, 2004.

Neil Bradley  
Counsel for Plaintiffs