

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

ANNE HARDING, §
RAY HUEBNER, §
GREGORY R. JACOBS, §
MORGAN MCCOMB, §
HOLLY KNIGHT MORSE, AND §
JOHANNES PETER SCHROER, §

PLAINTIFFS, §

v. §

CASE NO. 3:15-cv-00131-D

COUNTY OF DALLAS, TEXAS, §
CLAY LEWIS JENKINS, in his official §
capacity as County Judge of Dallas §
County, Texas; *et al.*, §

DEFENDANTS. §

SECOND AMENDED COMPLAINT

Like something out of the bad old days, a southern electoral body plays naked racial politics, intentionally using its power to minimize a dissenting race’s political sway. The body does so through its redistricting authority, cramming as much of that racial minority as possible into a single district and splitting the remainder up as an insignificant fraction of the electorate in the surrounding districts. It undertakes this move to intentionally deny the racial minority a chance to fairly participate in the electoral process, while claiming that the minority has no legal right to protection and arguing that higher law compels the racist act.

That’s not history -- it’s today’s Dallas County. Dallas County became a majority-minority jurisdiction before the turn of the century, finally losing its non-Hispanic White (“Anglo”) plurality in 2006. A change-over in control of the

Dallas Commissioners Court (the “Commissioners Court”), from one ethnically-based, bloc-voting majority coalition to another, followed that same year. As a result, since 2004, the candidate preferred by the Anglo racial minority has almost never won countywide general elections contested by the major parties.

So a new majority remapped Dallas’s districts after the 2010 census. The new majority of the Dallas Commissioners Court used that chance to draw Commissioners Court districts that violate the rights of Dallas’s Anglo minority, denying it rights protected by the United States Constitution and the Voting Rights Act.

To right this wrong, the plaintiffs ask the Court to: (i) declare the resulting map invalid; and (ii) either: (a) compel Dallas to draw a map consistent with American law by a date certain; or (b) draw one for Dallas, should the Commissioners Court fail to timely do so.

I. PARTIES

1. Anne Harding is an Anglo resident of Dallas County, Texas (“Dallas”). Ms. Harding resides in current Commissioners Court District (“CCD”) 4.

2. Ray Huebner is an Anglo resident of Dallas. Mr. Huebner resides in CCD 1.

3. Gregory R. Jacobs is an Anglo resident of Dallas. Mr. Jacobs resides in current CCD 1.

4. Johannes Peter Schroer is an Anglo resident of Dallas. Mr. Schroer resides in current CCD 3.

5. Morgan McComb is an Anglo resident of Dallas. Ms. McComb resides in current CCD 2.

6. Holly Knight Morse (along with Mr. Harding, Mr. Huebner, Mr. Jacobs, Mr. Schroer, and Ms. McComb, the “Plaintiffs”) is an Anglo resident of Dallas. Ms. Morse resides in current CCD 2.

7. Dallas is a political subdivision of the State of Texas, under Article I, Section 1 of the Texas Constitution. First formed by the Republic of Texas in 1846, Dallas is governed by the Commissioners Court, a five (5) member body composed of a County Judge elected by Dallas’s electorate at large and four (4) County Commissioners representing districts drawn by the Commissioners Court. Dallas may be served with process through County Judge Clay Lewis Jenkins.

8. Clay Lewis Jenkins is sued solely in his official capacity as the County Judge of Dallas.

9. Commissioners Theresa Daniel, Mike Cantrell, John Wiley Price, and Elba Garcia are sued solely in their official capacities as County Commissioners.

II. JURISDICTION AND VENUE

10. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), 1343(a)(4), and 1357.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

III. FACTS

12. The Dallas electorate votes in cohesive, polarized racial blocs. African Americans and Anglos are each politically cohesive. As a group, Dallas’s African Americans consistently prefer different candidates than do Dallas’s Anglos.

13. The Dallas electorate's voting patterns also diverge between "language minorities" and Anglos. If taken as a single group, Dallas's Hispanics prefer different candidates than do Dallas's Anglos.

14. According to the 2010 census, Anglos are a minority in Dallas, constituting 48% of Dallas's citizens of voting age.

15. Since 2004, Dallas's non-Anglo majority has voted sufficiently as a bloc to consistently deny Dallas's Anglo minority the chance to elect its candidates of choice. In 2006, Dallas's Anglo minority was able to produce narrow county-wide majorities for its preferred candidates in some top-of-the-ticket, statewide races (including those electing a United States Senator, Texas's Lieutenant Governor, Texas's Comptroller, and Texas's Attorney General), but failed to do so in the races electing the Governor or lower statewide officers (like the Land Commissioner and the Agriculture Commissioner), or in any race for county government office. More recently, only two candidates preferred by Dallas's Anglos have narrowly won the county in any election contested between the major parties over the last four (4) cycles. The consistent pattern shows that in gubernatorial election years (2006, 2010, and 2014), countywide races see an ethnically defined majority reject candidates preferred by Dallas's Anglo minority, often by narrow margins; in Presidential election years (2008 and 2012), the same ethnically defined majority does the same, with larger margins.

16. Dallas and its subdivisions have an established history of voting-related discrimination. Dallas has seen consistent, overt and subtle racial appeals in its local elections held after 2004, including in elections to the Commissioners Court. The Commissioners Court over that period has demonstrated unresponsiveness to its Anglo minority.

17. The Commissioners Court crafted its current map (the “Discriminating Map”) following the 2010 census and approved that Discriminating Map on a 3-1 vote at a hearing held on June 7, 2011 (the final member of the Commissioners Court did not vote, as she had walked out of the hearing in protest over the Discriminating Map). When it did so, the majority that approved the Discriminating Map had been elected by an ethnically defined, bloc-voting majority coalition that did not include Dallas’s Anglos; this was, of course, the same Commissioners Court majority that has demonstrated unresponsiveness to Dallas’s Anglo minority. As explained below, race was the predominant factor in the Commissioners Court’s crafting of the Discriminating Map as a whole and in the design of each of the Discriminating Map’s component four (4) CCDs.

18. At that June 7, 2011 hearing, Commissioner Price, the Discriminating Map’s sponsor, disclosed that the Commissioners Court had considered but rejected an “impulse” to “fragment the Republican areas of the county to draw all four commissioner districts as Democratic districts.” He omitted, except by implication, that instead they had decided to intentionally crack and pack Dallas’s Anglo minority through the Discriminating Map to provide Anglos a less obviously offensive, but still-less-than-equal opportunity to participate in the political process and to elect their Commissioners of choice. But the Commissioners Court majority that approved the Discriminating Map was aware that the Discriminating Map would have that impact on Dallas’s Anglo racial minority and intended that result.

19. Commissioner Price explained that the Discriminating Map had been crafted to “acknowledge[] the dramatic growth involving, you know, of Hispanic and African American population[s] and our obligation under the U.S. Voting Rights Act to provide [those] voters with an effective opportunity to elect

their preferred candidate of choice.” He understood that African Americans and Hispanics in Dallas consistently prefer different candidates than Dallas’s Anglos. He made no reference to the opportunities the Discriminating Map afforded the Anglo racial minority to elect its preferred candidates, nor the impact of the Voting Rights Act on the Commissioners Court’s ability to fragment its vote. Commissioner Price went on to describe CCD 4 as having been designed to elect a “candidate of choice of Hispanic voters” and CCD 3 as having been drawn to “continue to provide African American voters an effective opportunity to elect” a commissioner of their choice, even though these groups’ preferred candidates usually win elections in Dallas and even though a majority of the Commissioners Court that was considering the Discriminating Map had been elected with these groups’ bloc-voted support, over the opposition of the Anglo community. Commissioner Price knew that CCDs 3 and 4, as designed, would not elect candidates preferred by Dallas’s Anglo minority; he intended these CCDs to elect candidates that were not preferred by Dallas’s Anglo minority. Judge Jenkins filled in the final blank, explaining that the newly created CCD 1 had been crafted (in a bizarre misstatement of the Voting Rights Act’s requirements) as a “Democratic Opportunity District,” justified by the rise of Dallas’s Hispanic and African American populations and intended to allow the newly governing, bloc-voting, majority ethnic coalition the “opportunity to elect their candidate of choice in [the 2012] election.” The express intention of CCD 1 was to allow the newly dominant, ethnic bloc-voting majority coalition the chance to reject a candidate preferred by Dallas’s Anglo minority and to elect, instead, a additional commissioner supported by the block-voting majority ethnic coalition.

20. So the majority of the Commissioners Court simultaneously passed a map designed to punish its racial enemies, while patting itself on the back for its

adherence to the Voting Rights Act. By all appearances, they simply concluded that the Voting Rights Act: (i) offers an Anglo minority no protection against the intentional dilution of its votes; and (ii) *requires* that a governing majority coalition made up of other bloc-voting ethnic groups carve itself more pie.

21. To express numerically how the Commissioners Court followed through on that apparent conclusion, the Discriminating Map “packed” CCD 2 with 43% of Dallas’s Anglos, creating a super-concentration of Anglos in that district. As a result, Anglos constitute more than 72% of CCD 2’s citizens of voting age. Simultaneously, the Discriminating Map divides the remaining Anglo population among CCD 1 (assigned 22% of Dallas’s Anglos, who constitute 45% of CCD 1’s CVAP), CCD 3 (assigned 18% of Dallas’s Anglos, who constitute 32% of CCD 3’s CVAP), and CCD 4 (assigned 18% of Dallas’s Anglos, who constitute 39% of CCD 4’s CVAP) so assuring the political insignificance of the Anglo voters isolated in each. The result is a Discriminating Map in which the Anglos isolated in CCD 1, CCD 3, and CCD 4 have no opportunity to elect their preferred candidates to the Commissioners Court, while those Anglos packed into CCD 2 have seen their votes unnecessarily wasted there. And the electoral results under the Discriminating Map have not disappointed its designers: as planned, CCD 1 and CCD 3 have rejected the Anglo minority’s preferred candidates for the Commissioners’ court; CCD 4 presented such an unappealing prospect for competition that no candidate challenged its incumbent commissioner in the sole election held for that district using the Discriminating Map (despite the fact that, under the previous map, the Anglo minority had overwhelmingly preferred a different candidate for the office). Only CCD 2, the over-weighted Anglo opportunity district, afforded the Anglo minority the opportunity to elect its preferred Commissioner.

22. The Commissioners Court chose to dilute the influence of the Anglo minority in Dallas so that the Anglo minority has the opportunity to elect a disproportionately small share of the Commissioners Court: 48% of Dallas's citizen voting age population is allowed to influence the election of only 20% of the Commissioners Court (25% of the districted commissioners). The Commissioners Court obtained this result, even though it meant dividing political subdivisions, and exaggerating the population disparities between CCDs (whether measured by total population or by CVAP) far beyond the ideal distribution.

23. The Commissioners Court could have acted differently. The Anglo minority is a sufficiently compact, sufficiently large proportion of Dallas's citizen voting age population, which turns out to vote in sufficient numbers, that the Commissioners could readily have drawn a second performing Anglo CCD. Such a district could have been drawn, with both this additional seat and the successor to CCD 2 maintaining an absolute majority of such CCDs' CVAP. Indeed, had the Commissioners Court drawn a map that better respected Dallas's political subdivisions and more fairly apportioned Dallas's citizens and residents among the districts, it would have produced such a map.

24. Instead, the Commissioners Court chose to punish Dallas's dissenting race, cracking and packing Anglo voters between districts. The result, when gauged under the totality of the circumstances, is a Discriminating Map composed of four (4) CCDs each of which denies Dallas's Anglo community the same opportunities to participate in the political process and to elect commissioners of their choice enjoyed by other voters. The Discriminating Map and its four (4) CCDs deny the Plaintiff(s) residing in each CCD the same opportunity to participate in the political process and to elect the commissioner of his, her, or their choice enjoyed by other voters in Dallas.

IV. CLAIMS FOR RELIEF

A. VRA SECTION 2

25. The Plaintiffs restate and incorporate by reference all allegations made in paragraphs 1-23, above.

26. The facts alleged demonstrate the imposition of standards, practices, or procedures that result in a denial or abridgement of the Plaintiffs' right to vote for their Commissioners, in violation of Section 2 of the Voting Rights Act. 52 U.S.C. § 10301 and seq.

27. The Commissioners Court could have formed two reasonably compact CCDs with an Anglo CVAP of more than 50%. They chose not to do so, despite their knowledge that Anglos in Dallas are politically cohesive, as are the voters forming Dallas's governing, non-Anglo ethnic majority coalition. That ethnic-bloc voting majority coalition votes sufficiently as a bloc to enable it to defeat the Anglo community's preferred candidates in the absence of special circumstances.

28. As a result, the Discriminating Map: (i) illegally dilutes the vote of Ms. Harding, by isolating her and others like her in CCD 4, a CCD where she has a less-than-equal opportunity to elect her preferred candidate or the a candidate preferred by her racial minority; (ii) illegally dilutes the vote of Mr. Huebner and Mr. Jacobs in CCD 1, by isolating them and others like them in CCD 1, a CCD where they have a less-than-equal opportunity to elect a candidate they prefer or the candidate preferred by their racial minority; (iii) illegally dilutes the vote of Mr. Schroer, by isolating him and others like him in CCD 3, a CCD where he has a less-than-equal opportunity to elect his preferred candidate or the candidate preferred by his racial minority; and (iv) illegally wastes the votes of Ms. McComb and Ms. Morse, by super-concentrating them with others like them in

CCD 2, a CCD where their racial minority is so drastically over-represented as to substantially waste both Ms. McComb's and Ms. Morse's vote.

29. Taken together with: (i) Dallas's history of racial and ethnic bloc voting; (ii) the Anglo minority's proven inability over an extended period to elect its preferred candidates to office (barring exceptional circumstances); (iii) Dallas's and its subdivisions' established history of voting-related discrimination; (iv) the consistent, overt and subtle racial appeals in Dallas's local elections held after 2004, including in elections to the Commissioners Court; and (v) the Commissioners Court's demonstrated unresponsiveness to its Anglo minority over that period; the Discriminating Map, under the totality of the circumstances, provides Dallas's Anglo minority a less-than-equal opportunity to participate in the political process and to elect commissioners of its choice.

B. EQUAL PROTECTION

30. The Plaintiffs restate and incorporate by reference all allegations made in paragraphs 1-23, above.

31. The facts alleged constitute a denial to the Plaintiffs of rights guaranteed by the Equal Protection Clause of Section 1 of the 14th Amendment to the United States Constitution. The Commissioners Court crafted the Discriminating Map and each of its four (4) component CCDs to purposefully fragment Dallas's Anglos, dispersing them among the four (4) CCDs without regard to traditional, neutral redistricting principles. The Commissioners Court designed the Discriminating Map to reduce and lesson Dallas's Anglos' electoral opportunities significantly below the level of opportunities that would have been available under a map compliant with neutral principles. This fragmentation provides undue voting advantages to Dallas's non-Anglo, ethnic-bloc-voting majority. The Discriminating Map was intentionally crafted to allow Dallas's

ethnic majority coalition to dominate the Commissioners Court beyond what their voting power and geographic distribution would otherwise suggest and to deny Dallas's Anglos the chance to meaningfully participate in the choice of any commissioner outside of CCD 2.

C. ALTERNATIVE EQUAL PROTECTION CLAIM

32. The Plaintiffs restate and incorporate by reference all allegations made in paragraphs 1-23, above.

33. To the extent that the Court determines that Dallas's Anglo minority isn't a protected class under Section 2 of the Voting Rights Act, the Voting Rights Act denies Dallas's Anglo minority the equal protection of the law guaranteed by the 14th Amendment to the United States Constitution.

D. ATTORNEYS' FEES

34. The Plaintiffs restate and incorporate by reference all allegations made in paragraphs 1-32, above.

35. To the extent that the Plaintiffs prevail on any of the theories set out above, they are entitled to recover their reasonable attorneys' fees from Dallas.

VI. PRAYER

Therefore, the Plaintiffs ask the Court to:

- (a) Enter declaratory judgment that the Discriminating Map and each of its four (4) component CCDs violate the Plaintiffs' rights under the United States Constitution, the Voting Rights Act, or both;
- (b) Grant appropriate injunctive relief enjoining the Defendants, their officers, agents, employees, attorneys, successors in office, and all persons in active concert or participation with

them, from implementing the Discriminating Map in primary or general elections, until and unless the legal violations found in the Discriminating Map are remedied in a replacement map containing a second Anglo-opportunity CCD, either by the Commissioners Court by a date certain or by this Court;

- (c) Hold hearings, consider briefing and evidence, and otherwise take actions necessary to determine the necessity of and to order the creation of a valid Commissioners Court map that includes a second Anglo-opportunity CCD for use in future elections;
- (d) Grant the Plaintiffs' their reasonable attorneys' fees, litigation expenses, and costs in maintaining this action; and
- (e) Grant the Plaintiffs such further relief as is just and proper.

Respectfully submitted,

The Equal Voting Rights Institute
P.O. Box 12207
Dallas, Texas 75225
danmorenoff@equalvotingrights.org
www.equalvotingrights.org

/s/ Daniel I. Morenoff

Daniel I. Morenoff
Texas Bar No. 24032760
The Morenoff Firm, PLLC
P.O. Box 12347
Dallas, Texas 75225
Telephone: (214) 504-1835
Fax: (214) 504-2633
dan.morenoff@morenoff-firm.com
www.morenoff-firm.com

COUNSEL TO THE PLAINTIFFS

CERTIFICATE OF SERVICE

I certify that on July 10, 2015, I served a copy of this *Second Amended Complaint* on all counsel of record by electronic filing through the Court's CM/ECF system.

/s/ Daniel I. Morenoff
Daniel I. Morenoff