

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

JAMES RODRIGUEZ; EDWARD §
GONZALEZ; ORNALDO YBARRA; §
PATRICIA GONZALES; THOMAS §
BERG; REYNALDO GUERRA; and §
SANDRA PUENTE §

Plaintiffs §

Civil Action No. 4:11-CV-02907

vs. §

HARRIS COUNTY, TEXAS; and §
ED EMMETT, in his capacity as §
Harris County Judge §

Defendants §

PLAINTIFFS' FIRST AMENDED ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiffs, JAMES RODRIGUEZ, EDWARD GONZALEZ, ORNALDO YBARRA, PATRICIA GONZALES, THOMAS BERG, REYNALDO GUERRA, and SANDRA PUENTE (hereinafter referred to as "Plaintiffs"), and files this Original Complaint complaining of Defendants, HARRIS COUNTY, TEXAS, and ED EMMETT, in his capacity as Harris County Judge (hereinafter referred to as "Defendants"), and in support thereof would show the Court as follows:

EXHIBIT "A"

I.

INTRODUCTION

1. The Latino population drove the growth of Harris County in the past decade. Latinos made up 53% of growth in Harris County in the last decade among the people who are old enough and eligible to vote.
2. Despite their overwhelming share of growth, these Latinos are poised to lose representation on the County Commissioners' Court due to an illegal gerrymander.
3. The redistricting plan adopted by the Court fails to create and/or maintain the opportunity district enjoyed by Latino citizens.
4. On August 5, 2011, the Harris County Commissioners' Court publically posted its intent to vote on the adoption of a certain plan ("the Plan") for the district boundaries for the offices of County Commissioner with such vote scheduled to occur on August 9, 2011.
5. On August 9, 2011 the Court adopted the Plan with minor revisions.
6. On August 5, 2011, Plaintiffs filed this action seeking declaratory and injunctive relief to prevent Defendants from using the Plan in any election. Plaintiffs bring this action pursuant to the United States Constitution and 42 U.S.C. § 1983, as well as 42 U.S.C. §1973 (Section 2 of the Voting Rights Act of 1965, as amended) and 42 U.S.C. § 1973c (Section 5 of the Voting Rights Act of 1965, as amended). The Plan would harm minority voters, including Plaintiffs, by reconfiguring every

district in the County. The injury to Latino voters throughout the County as a result of the reconfiguration of the districts is neither necessary nor justified.

7. The Plan violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, by significantly minimizing the opportunities for Latino voters to participate in the political process and to elect Representatives of their choice.
8. The Plan was drawn to ensure that population gains in minority communities from 2000 to 2010 does not afford minority voters increased electoral opportunity equal to their population.
9. Although the Latino population accounted for 53% of population growth for the Citizen Voting Age Population (“CVAP”) between 2000 and 2010, Latinos are denied the one opportunity the district afforded them under the existing boundaries. This configuration constitutes an unlawful dilution of minority voting strength under Section 2 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the United States Constitution.
10. The Plan was drawn with the purpose, and has the effect, of minimizing and reducing the strength of minority populations in Harris County. While the pre-2011 map contains one effective Latino minority opportunity district, the Plan contains no such districts. Reducing the number of effective minority opportunity districts constitutes unlawful retrogression under Section 5 of the Voting Rights Act, Section 2 of the Voting Rights Act, and the Fourteenth and Fifteenth Amendments to the United States Constitution.

11. Harris County has submitted the Plan to the United States Department of Justice (“DOJ”) for preclearance under Section 5.
12. Since the submission was made to DOJ, Plaintiffs have provided the DOJ substantial information and data that proves the Plan is in violation of the Voting Rights Act.
13. Plaintiffs have prepared two expert reports and submitted them to DOJ in the hope of convincing DOJ to deny preclearance.
14. The map as adopted by Harris County is legally unenforceable unless and until preclearance is granted. *See* 42 U.S.C § 1973c.
15. On October 14, 2011, the DOJ sent a letter to Harris County requesting more information concerning the adopted Plan and withholding preclearance. *See* Exhibit B.
16. The letter requests a wealth of information that will take time to collect and forward.
17. Furthermore, the DOJ will have an addition 60 days to consider the information once submitted by Harris County.
18. At this point, it is highly unlikely, if not certain, that Defendants will be unable to secure preclearance of the Plan before the filing period and other events related to the next election are well underway.
19. Accordingly, Plaintiffs are entitled to an injunction against the implementation of the Plan for this election.

20. Plaintiffs are also entitled to a hearing to consider evidence for the construction of an interim plan as well as an order adopting such interim plan for use this election.

II.

JURISDICTION AND VENUE

21. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1343, 1357, and 2284; and pursuant to 42 U.S.C. §§ 1973c, 1973j(f). Plaintiffs' action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202, and 2284, as well as by Rules 57 and 65 of the Federal Rules of Civil Procedure. Venue is proper pursuant to 28 U.S.C. §§ 1391(b).

III.

PARTIES

22. Plaintiffs are citizens and registered voters residing in the current Commissioners' Court Precinct 2. Plaintiffs have standing to bring this action under 42 U.S.C. § 1983 to redress injuries suffered through the deprivation, under color of state law, of rights secured by the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1973, 1973c, and by the United States Constitution.
23. Plaintiff JAMES RODRIGUEZ is a City of Houston Councilmember, a Latino citizen and a registered voter whose address is in Houston, Texas 77061.
24. Plaintiff EDWARD GONZALEZ is a City of Houston Councilmember, a Latino citizen and a registered voter whose address is in Houston, Texas 77009.

25. Plaintiff ORNALDO YBARRA is a City of Pasadena Councilmember, a Latino citizen and a registered voter whose address is in Pasadena, Texas 77506.
26. Plaintiff PATRICIA GONZALEZ is a Latino citizen and a registered voter whose address is in Pasadena, Texas 77502.
27. Plaintiff THOMAS BERG is of Mexican Heritage and a registered voter whose address is in Houston, Texas 77007.
28. Plaintiff REYNALDO GUERRA is a Latino citizen and a registered voter whose address is in Houston, Texas 77009.
29. Plaintiff SANDRA PUENTE is a Latino citizen and a registered voter whose address is in Houston, Texas 77022.
30. Defendant HARRIS COUNTY is a political subdivision of the State of Texas.
31. Defendant ED EMMETTT is County Judge of Harris County. Defendant EMMETT is sued in his official capacity. Defendant EMMETT is the Chief Officer of Harris County.

IV.

FACTS

Reapportionment

32. Every ten years, under U.S. Constitution, Art. I, Sec. 2, Cl. 3, a federal census is performed.

33. In Harris County the total citizen voting age population increased from 1,964,970 in 2000 to 2,281,093 through the end of 2009, representing an estimated total growth of 316,123, or a 16% change in total citizens of voting age.
34. During that same time period, the Latino citizen voting age population (“CVAP”) changed by 44%, increasing from 374,227 in 2000 to 541,411 in 2009.
35. The additional 167,184 in Latino citizens of voting age indicates that more than half of the raw growth in Harris County’s citizen voting age population occurred in the Latino community.
36. Harris County Latinos also increased in terms of their share of the citizen voting age population, with a 5 point shift from 19% in 2000 to 24% in 2009.
37. The 5 point gain in the Latino share of the CVAP represents a 25% change over the decade, and this outstrips the 19% change during the same period for the percent of Latino registered voters, suggesting underperformance of Latino voter registration in Harris County.
38. 53% of the CVAP growth in Harris County can be attributed to the Latino community.
39. By contrast, the Latino community claims a much lower 23% of the growth in the Harris county voter rolls during the same time period.
40. Thus, while Latinos accounted for over half of the growth in the citizen eligible population, they were less than a quarter of the growth in voter registration.
41. For over ten years, Latinos have benefited from an opportunity district, precinct 2.

42. Despite accounting for 53% of the growth in Harris County over the decade, the Plan eliminates this opportunity district by lowering the CVAP in the district and by intentionally lowering the turnout.
43. When comparing how the Latino population has changed from 2000 to 2010 across the four commissioner precincts, and as compared to the current boundaries, the proposed boundaries reduce the overall Latino population, and the Latino voting age population in precinct 2.
44. For example, under the currently existing boundaries, precinct 2 has now grown to 60.1% Latino total population and 55.2% Latino voting age population (“VAP”).
45. Under the proposed boundaries, the second district is reduced to 58.2% Latino population and 53.4% Latino voting age population (citizen voting age is even more drastically lowered).
46. As a percentage change, this represents a 3% reduction in the Latino population and VAP for precinct 2.
47. Further, while the overall county saw the Latino population share increase by 19% from 32.9% to 40.8%, in the proposed precinct 2, the Latino population share increases by only 10.5%.
48. The CVAP for precinct 2 helps determine the opportunities Latinos have to select their candidate of choice in elections for that office.
49. The current estimated Latino CVAP in precinct 2 is 34.9% and Latino registration at 29.7%.

- 50. Under the proposed plan, the Latino CVAP will drop to an estimated 33.8% and registration will drop to 28.8%.
- 51. The Latino population is sufficiently cohesive and compact to justify an opportunity district under Section 2.
- 52. The following table accurately compares the precincts under the existing boundaries:

Comparison of Percent Latino in Current County Commissioner Precincts

Precinct	CURRENT PCT. BOUNDARIES DATA AS OF 2000				CURRENT PCT. BOUNDARIES DATA AS OF 2010			
	POP	VAP	CVAP	REG	POP	VAP	CVAP	REG
1	28.6	25.4	16.5	14.8	38.4	33.9	22.3	19.0
2	52.1	47.6	30.1	26.9	60.1	55.2	34.9	29.7
3	26.7	24.3	15.4	13.8	35.3	32.1	20.5	17.5
4	24.4	22.0	14.1	12.6	33.3	29.7	19.3	16.5
Co. Total	32.9	29.6	19.0	17.0	40.8	36.7	23.7	20.2

- 53. The following table accurately compares the precincts under the Plan:

Comparison of Percent Latino in
Current vs. A-1 Proposed County Commissioner Precincts

Precinct	CURRENT PREC BOUNDARIES DATA AS OF 2000				PROPOSED PREC BOUNDARIES DATA AS OF 2010			
	POP	VAP	CVAP	REG	POP	VAP	CVAP	REG
1	28.6	25.4	16.5	14.8	36.9	32.6	21.4	18.3
2	52.1	47.6	30.1	26.9	58.2	53.4	33.8	28.8
3	26.7	24.3	15.4	13.8	34.1	31.0	19.8	16.9
4	24.4	22.0	14.1	12.6	34.8	31.0	20.2	17.2
Co. Total	32.9	29.6	19.0	17.0	40.8	36.7	23.7	20.2

Voter Registration

54. On November 10, 2008, other Plaintiffs filed sued against Harris County for systematic and extensive violations of federal and state law as it relates to voter registration.
55. The case, filed in the Houston Division of the Southern District of Texas, was assigned to Judge Gray Miller and cause number 4:08-CV-03332.
56. In that litigation, it was learned that in the approximately 12 months before the 2008 General Election, Harris County sent rejections/notices of incomplete to approximately 68,000 voter registration applications.
57. In discovery, it was learned that Harris County had adopted numerous election practices, in contravention to federal law, that caused the illegal rejection of thousands of valid voter registration applications.
58. On October 23, 2009 the parties to that litigation entered into a Settlement Agreement which is attached hereto as Exhibit "A" that prohibited the illegal practices and required other measures to ensure fair voter registration administration.
59. Pursuant to paragraph 9 of the Settlement Agreement, the terms thereof were submitted to the Department of Justice for pre-clearance. Pre-clearance was granted and the Agreement now forms the baseline election practices for Harris County as they relate to voter registration.

60. Upon information and belief, Harris County has adopted election practices or procedures with respect to voter registration that are inconsistent with the Agreement.
61. Whether or not the Agreement has been complied with, the county's voter registration practices are designed with the purpose and/or effect to discourage Latino voters from having effective political participation.
62. Furthermore, the county's voter registration practices have resulted in fewer Latino registered voters.
63. Fewer registered voters is inequitably used by the county to adopt a redistricting plan that eliminates or severely injures the long-time existing Latino opportunity district.

The Voting Rights Act

64. On September 25, 1975, the Voting Rights Act of 1965 was extended and amended to cover the State of Texas. State and political subdivisions covered by the Act must comply with certain procedures under the Act, as amended, 42 U.S.C. 1973(c). Among them is the Section 2 requirement that states show that any new redistricting plan does not dilute the voting strength of minority communities. Where minority communities have diminished opportunity to elect candidates of their choice, their voting strength has been diluted, and so unlawfully abridged under the Act.

65. Also, among the Act's provisions is the Section 5 preclearance requirement that certain States and political subdivisions must show that any new redistricting plan "does not have the purpose and will not have the effect of denying or abridge the right to vote on account of race or color" To make this showing, Harris County must demonstrate that those drafting its redistricting plan did not possess racially discriminatory intent, and that the adopted plan does not cause a retrogressive effect of minority voting strength.

Alternative Redistricting Plans

66. Numerous alternative plans show that the minority opportunity districts can be drawn within the confines of accepted traditional redistricting principles. These alternatives allow the effective Latino minority opportunity district without adversely impacting the other existing African-American opportunity district.

67. In fact, alternative plans exists the improve the minority election effectiveness of *both* opportunity districts.

68. Instead, the adopted Plan takes the City's eastside population and combines it with parts of the suburban Kingwood area in order to dilute the Latino vote with conservative Anglo voters.

69. These are not areas with a common political interest.

70. The addition of these dissimilar communities was designed to prevent Precinct 2 from giving Latinos the opportunity to elect their candidates of choice.

71. Furthermore, State Senate and Congressional districts have been drawn and adopted that, if used as a model, would create a precinct 2 that does not injure the Latino political opportunity.

Count 1

72. Plaintiffs reallege the facts set forth above.
73. The County's proposed Precinct Plan violates Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, in that, under the totality of the circumstances, Plaintiffs and minority voters are denied an equal opportunity to participate effectively in the political process and to elect candidates of their choice to the Commissioners' Court. The Plan also violates Section 2 of the Voting Rights Act, 42 U.S.C. §1973, because, under the totality of circumstances, Plaintiffs and minority voters are denied an equal opportunity to participate effectively in the political process and to have any meaningful or significant influence in elections for Members of Commissioners' Court in Harris County.

Count 2

74. Plaintiffs reallege the facts set forth above.
75. The Plan violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because it intentionally discriminates against Latino persons by denying Plaintiffs and Latino voters an equal opportunity to participate in the political process, to elect candidates of their choice to the Commissioners'

Court, and to have any meaningful or significant influence in elections for Members of the Commissioners' Court.

Count 3

76. Plaintiffs reallege the facts set forth above.
77. The Plan violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution because its districts are racial gerrymanders, drawn with excessive and unjustified use of race and racial data.

Count 4

78. Plaintiffs reallege the facts set forth above.
79. The Plan cannot be administered because it has not been precleared pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c.
80. Because the plan will not be precleared in time for the upcoming election, Plaintiffs are entitled to a Temporary Restraining Order and a Preliminary Injunction prohibiting the implementation of the Plan for this election.
81. Plaintiffs are further entitled to have the Court adopt an interim plan for use in this election.
82. In the event the Plan is never precleared, Plaintiffs are entitled to an order adopting the interim plan for all future elections this decade.

V.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that this Court:

1. Assume jurisdiction of this action.
2. Issue a declaratory judgment, pursuant to 28 U.S.C. §§ 2201 and 2202 and Federal Rules of Civil Procedure Rule 57, declaring that the Plan for Harris County's Commissioners' Court boundaries: (1) dilutes the voting strength of minority voters in violation of Section 2 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973, and in violation of the Equal Protection Clause; (2) is an unconstitutional gerrymander in violation of the First and Fourteenth Amendments to the United States Constitution and Article I of the United States Constitution; and (3) cannot be administered pursuant to Section 5 of the Voting Rights Act, as amended, 42 U.S.C. § 1973c.
3. Issue a temporary restraining order, preliminary and permanent injunctions enjoining the Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the proposed boundaries as drawn in the Plan, including enjoining Defendants from conducting any elections for the Commissioners' Court based on the 2011 Plan.
4. Issue preliminary and permanent injunctions enjoining the Defendants, their agents, employees, and those persons acting in concert with them, from enforcing or giving any effect to the unlawful voter registration practices.
5. Make all further orders as are just, necessary, and proper to ensure complete fulfillment of this Court's Declaratory and injunctive orders in this case.

6. Issue an order requiring Defendants to pay Plaintiffs' costs, expenses and reasonable attorneys' fees incurred in the prosecution of this action, as authorized by the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. § 1988
7. Grant such other and further relief as it seems is proper and just.

Dated this 17th day of October, 2011.

Respectfully Submitted,

BRAZIL & DUNN

/s/ Chad W. Dunn

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CERTIFICATE OF SERVICE

I hereby certify that on October 17, 2011, I electronically filed the foregoing document with the Clerk of the United States District Court, Southern District of Texas, Houston Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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