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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAY - 2 2001
CLERK, U.S. DISTRICT COURT
By [signature]
Deputy

TRINIDAD "TRINI" GARZA, PEDRO "PETE" VACA, MARIA ADAMES, and WILLIAM ACOSTA,	§	
Plaintiffs,	§	
v.	§	Civil Action No. 3-01CV0502-H
DALLAS INDEPENDENT SCHOOL DISTRICT, the BOARD OF EDUCATION OF THE DALLAS INDEPENDENT SCHOOL DISTRICT, and KEN ZORNES, ROXAN STAFF, LOIS PARROTT, GEORGE WILLIAMS, SE-GWEN TYLER, HOLLIS BRASHEAR, JOSE PLATA, KATHLEEN LEOS, and RON PRICE, in their official capacities as Trustees of the Board of Education of the Dallas Independent School District,	§	Judge Barefoot Sanders
Defendants.	§	

PLAINTIFFS' MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AND APPLICATION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Trinidad "Trini" Garza, Pedro "Pete" Vaca, Maria Adames, and William Acosta file this Motion for Leave to File First Amended Complaint and Application for Declaratory and Injunctive Relief, as follows:

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1. Plaintiffs filed their Original Complaint on March 28, 2001.[1] In the Original Complaint, plaintiffs asserted the following claims for relief: (1) vote dilution in violation of the Fourteenth Amendment Equal Protection Clause; (2) vote dilution in violation of Section 2 of the Voting Rights Act; (3) race-based gerrymandering in violation of the Fourteenth Amendment Equal Protection Clause; and (4) intentional discrimination in violation of the Fifteenth Amendment.[2]

2. On April 11, 2001, defendants Dallas Independent School District ("DISD"), the Board of Education of the Dallas Independent School District, and Ken Zornes, Roxan Staff, Lois Parrott, George Williams, Se-Gwen Tyler, Hollis Brashear, Jose Plata, Kathleen Leos, and Ron Price, in their official capacities as Trustees of the Board of Education of the Dallas Independent School District, (collectively, "defendants") filed their Original Answer and Motion to Dismiss[3] and Brief in Support Thereof.

3. Plaintiffs add two more plaintiffs, representing two other DISD districts, and state causes of action on their behalf.[4]

4. Eric Moyé, counsel for defendants, has previously stated his understanding that plaintiffs will amend their Complaint and Application for Declaratory and Injunctive Relief, and

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[1]*See* Complaint and Application for Declaratory and Injunctive Relief ("Original Complaint"), filed March 28, 2001.

[2]*Id.*

[3]Defendant Board of Education of the Dallas Independent School District (the "Board") has neither answered nor otherwise filed an appearance or Rule 12 motion in this action.

[4]*See* Amended Complaint at ¶¶ 3 and 4.

indicated that forwarding a copy of the First Amended Complaint will suffice for purposes of service of the Complaint under the Federal Rules of Civil Procedure.[5]

5. Plaintiffs have amended their Original Complaint to more specifically address the DISD shift of population and to further support the allegations made in the Original Complaint.[6]

6. Defendants have admitted that the population difference between districts is greater than 10 percent.[7] The suit brought by the Plaintiffs, however, necessitates an amendment to plaintiffs' Original Complaint to set forth with particularity the extent of that significant population shift. The Amended Complaint incorporates and addresses population data that was not available at the time of filing of the Original Complaint.[8]

7. Defendants' conduct since the plaintiffs filed the Original Complaint has created an additional need to amend the Original Complaint. Specifically, Board Trustees have made statements demonstrating their intent to continue racial gerrymanding when creating the new districts.[9] Such conduct is clearly unconstitutional.

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[5]*See* Letter from Eric V. Moyé, Vial, Hamilton, Koch, and Knox, L.L.P., to William A. Brewer and Daniel F. Perez, of April 2, 2001, at 1 ("I understand that you may amend your Original Petition at some point in the near future. Be advised that in the event you choose to so do forwarding a copy of the Petition to me will suffice for the purposes of the relevant Rules of Procedure regarding service of a citation and complaint.").

[6]*See* Amended Complaint and Request for Declaratory and Injunctive Relief ("Amended Complaint"), May 2, 2001, at ¶¶ 50, 51, 52, and 70.

[7]*See* Defendants' Original Answer, Apr. 11, 2001, at ¶57.

[8]*See* Amended Complaint at ¶ 52 ("Likewise, Districts 4, 7, and 8 are all overpopulated districts. Voters in these districts, which include Ms. Adames, Mr. Garza, and Mr. Vaca, respectively, have less voting power than voters in underpopulated districts. Specifically, District 4 has variance of 25.64%. District 7 has a variance of 16.61%. District 8 has a variance of 22.56%.").

[9]*See* Mike Jackson, *Redistricting Plan to be Reworked,* DALLAS MORNING NEWS, April 11, 2001, at 23A ("'I thought that we were going to shoot for three [African-American districts], three [White - Non-Hispanic districts], and three [Hispanic districts].") (quoting Board Trustee Hollis

8. Further, the DISD Board has held the majority of its redistricting discussions in closed session in violation of the Texas Open Meetings Act. Plaintiffs' Amended Complaint describes and addresses activities by defendants since March 28, 2001, the date the Original Complaint was filed, which further underscore the need for this Court's intervention.[10]

9. Plaintiffs have amended their Original Complaint to aid this Court and more specifically address the alleged deficiencies raised by defendants in their Motion to Dismiss. Accordingly, plaintiffs have added supporting facts regarding standing for plaintiffs Vaca and Garza.[11]

10. Likewise, the Amended Complaint supplements the pleadings to more clearly demonstrate that all plaintiffs have stated ripe and viable claims upon which relief can be granted.[12]

11. In light of the fact that the Original Complaint was filed on March 28, 2001, this litigation is in its early stages. Plaintiffs have promptly requested leave to file an amended complaint to add facts. Because of plaintiffs' prompt action, defendants will suffer no prejudice as a result of plaintiffs' amendments.

12. Justice requires that plaintiffs be permitted to file this amended pleading. Accordingly, in view of the compelling need to amend, plaintiffs request leave of Court pursuant to

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Brashear).

[10]*See* Amended Complaint at ¶¶ 55 - 60.

[11]*See* Amended Complaint at ¶¶ 40 - 43, 52, 70, 71, and 76.

[12]*See* Amended Complaint at ¶¶ 25, 48, 51 - 53, 56 - 60, 63, and 68 - 70.

Federal Rule of Civil Procedure 15[13] to file the First Amended Complaint and Application for Declaratory and Injunctive Relief.

WHEREFORE, plaintiffs respectfully request that this Court grant this Motion for Leave to File First Amended Complaint and Application for Declaratory Judgment and Injunctive Relief. Plaintiffs seek this relief not for purposes of delay, but so that justice may be done.

Respectfully submitted,

BICKEL & BREWER STOREFRONT, PLLC

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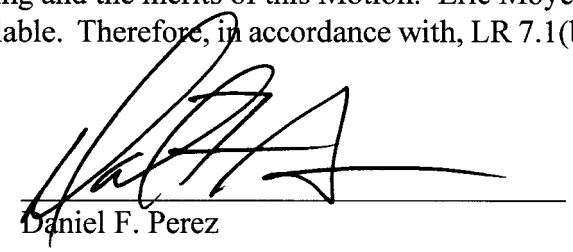
[13] *See* FED. R. CIV. P. § 15 (a) (2001) ("[A] party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires.").

CERTIFICATE OF CONFERENCE

The undersigned certifies that on this 2nd day of May, 2001, he attempted to confer with counsel for the defendants regarding the filing and the merits of this Motion. Eric Moye′, counsel for defendants, was out-of-town and unavailable. Therefore, in accordance with, LR 7.1(b)(3), this motion will be presumed opposed.



Daniel F. Perez

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been forwarded via hand-delivery to counsel for defendants on this 2nd day of May, 2001:

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