ORIGINAL

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

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
MAY - 4 2001
CLERK, U.S. DISTRICT COURT
By _____ 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.	§	

FIRST AMENDED COMPLAINT AND APPLICATION FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Trinidad "Trini" Garza, Pedro "Pete" Vaca, Maria Adames, and William Acosta file this First Amended Complaint and Application for Declaratory and Injunctive Relief against defendants Dallas Independent School District ("DISD"), the Board of Education of the DISD (the "Board of Education" or "Board"), 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 DISD Board, on personal knowledge as to all facts regarding themselves and on information and belief as to all other matters, as follows:

I.

PRELIMINARY STATEMENT

The present configuration of DISD's nine single-member districts violates the United States Constitution and applicable federal and state law. The Board of Education gerrymandered those districts ten years ago based on predominantly racial considerations — which, in itself, is unlawful. To exacerbate matters, the demographics of Dallas have changed so substantially over the past decade that the nine DISD districts no longer bear any rational relationship to the various communities of interest which make up the social fabric of Dallas. Accordingly, the voting power of certain neighborhoods and groups, including the Hispanic community, has been diluted with respect to the most important function of local government — the provision of public education.

Plaintiffs file this action on behalf of themselves, but also to protect the interests of all residents and voters located within the DISD and their children whose education is entrusted to DISD. Plaintiffs seek, among other forms of relief, a declaratory judgment that the existing single-member districts are violative of applicable law, an order requiring defendants to appropriately reconfigure those districts in accordance with constitutional and statutory standards, and an injunction postponing the upcoming Board of Education election, scheduled for May 5, 2001, until such time as defendants have redrawn those districts to conform to and comply with applicable law.

II.

PARTIES

A. Plaintiffs

1. Plaintiff Trinidad "Trini" Garza ("Garza") is a citizen of the State of Texas and resides at 2235 West Colorado, Dallas, Texas 75211. Mr. Garza is a registered voter who lives in DISD District 7. Mr. Garza has a long history of business, civic, and educational leadership. Mr. Garza held the position of Region VI Regional Director of the United States Action Agency during the Carter Administration, and worked as a Community Awareness Specialist with the United States Census Bureau in 1990. He served as a Trustee on the DISD Board of Education from 1969 to 1971 and from May 1991 to July 1994. In 1994, he was appointed by then-Secretary of Education Richard Riley to the position of Deputy Secretary's Regional Representative for the United States Secretary of Education. In addition, Mr. Garza has served as Vice President of West Dallas Community Centers, Secretary of the Dallas Area Rapid Transit Board, Trustee of both the Baylor School of Dentistry and Charlton Methodist Hospital, and Chairman of the Phoenix Project (a Dallas youth drug treatment and prevention program).

2. Plaintiff Pedro "Pete" Vaca ("Vaca") is a citizen of the State of Texas and resides at 4410 Eastside, Dallas, Texas 75226. Mr. Vaca is a registered voter who lives in DISD District 8. Mr. Vaca is a local mediator and is heavily involved in neighborhood issues and political causes. In 1999, Mr. Vaca ran for office in Dallas City Council District 2, and remains active in educational and electoral matters.

3. Plaintiff Maria Adames ("Adames") is a citizen of the State of Texas and resides at 1533 Algonquin Drive, Dallas, Texas 75217. Ms. Adames is a registered voter who lives in DISD District 4. Ms. Adames has served in such civic-minded capacities as the President of Parents Against Crime and Drugs, a volunteer for the Texas Youth Commission, and a member of the Citizen Police Academy. Ms. Adames is a mother of six children, a grandmother of eighteen children, and a great-grandmother of five children.

4. Plaintiff William Acosta ("Acosta") is a citizen of the State of Texas and resides at 3338 South Ravinia Drive, Dallas, Texas 75233. Mr. Acosta is a registered voter who lives in DISD District 6. In 1953, he became a Naval Aviator. Mr. Acosta was promoted to the grade of Navy Captain in August 1972, and commanded three Navy Reserve Units, until his retirement in 1984. In May 1992, Mr. Acosta earned his Juris Doctorate at Thurgood Marshall School of Law at Texas Southern University.

B. Defendants

5. Defendant DISD is an independent school district established pursuant to Texas law.

6. Defendant Board of Education is a corporate body which, pursuant to Section 11.151 of the Texas Education Code, may be sued in that capacity.

7. Defendant Ken Zornes is a Trustee on the Board of Education and represents District 1.

8. Defendant Roxan Staff is a Trustee on the Board of Education and represents District 2.

9. Defendant Lois Parrott is a Trustee on the Board of Education and represents District 3.

10. Defendant George Williams is a Trustee on the Board of Education and represents District 4.

11. Defendant Se-Gwen Tyler is a Trustee on the Board of Education and represents District 5.

12. Defendant Hollis N. Brashear is a Trustee on the Board of Education and represents District 6.

13. Defendant Jose Plata is a Trustee on the Board of Education and represents District 7.

14. Defendant Kathleen Leos is a Trustee on the Board of Education and represents District 8.

15. Defendant Ron Price is a Trustee on the Board of Education and represents District 9.

III.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1357.

17. This Court has personal jurisdiction over defendants because they are all citizens of the State of Texas.

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

IV.

FACTS APPLICABLE TO ALL COUNTS

A. DISD: The Educational Steward For Dallas's Schoolchildren

19. DISD is the eleventh largest school district in the United States and is responsible for the public education of a substantial portion of the children living in Dallas County. It encompasses an area of 351 square miles in the eastern portion of the Dallas-Fort Worth Metroplex, and includes all or portions of the municipalities of Addison, Balch Springs, Carrollton, Cockrell Hill, Dallas, Farmers Branch, Garland, Mesquite, and Seagoville.

20. DISD has a total of 220 elementary and secondary schools, serving over 161,000 students. DISD employs 18,678 professional teachers and support personnel, making it one of the largest employers in the City of Dallas. Its budget for the 1999-2000 school year exceeded $1.1 billion.

21. DISD's student population is diverse — 54.55% is Hispanic (88,148 students), 35.87% is African-American (57,962 students), 7.81% is White (Non-Hispanic) (12,622 students), 1.39% is Asian-American (2,244 students), and .38% is American-Indian (617 students). That diversity is not only one of DISD's greatest strengths, but also poses certain challenges to its governing body, the Board of Education.

B. A Shameful History: The DISD's Longstanding Failure To Address The Needs Of Spanish-Speaking Schoolchildren

22. Given the realities of their socioeconomic background, private school is simply not an option for many Hispanic children in our community. Yet, the educational needs of Spanish-

speaking schoolchildren are unique, requiring special programs such as bilingual instruction to provide them with equal opportunities.

23. Unfortunately, the DISD has a poor record of addressing and responding to the needs of Hispanic students. For instance, in the face of court orders to provide bilingual educators for Spanish-speaking students, DISD refuses to address the needs of that substantial portion of its school population. Of the 55% of DISD students who are Hispanic, approximately 60% have Limited English Proficiency ("LEP"). Despite this demonstrated and compelling need for bilingual education, a mere 3% of the DISD budget is devoted to such programs.

24. In fact, the United States District Court has twice ordered the DISD to make adequate provision for the needs of its language-challenged students. In 1981, this Court examined the DISD's compliance with desegregation requirements and ordered the DISD to provide a special instructional program for all LEP students. In 1994, this Court was again compelled to address DISD's failure to adequately provide for LEP students when it reviewed DISD's compliance with the 1981 order. In its opinion, this Court discussed the DISD bilingual education failure, as reflected by the high drop-out rate for Hispanic students and DISD's inability to keep up with the needs of a rapidly growing Hispanic student population.

25. Sadly, the DISD's inattention to the needs of the LEP students is likely explained by the fact that 77% of those who make decisions on budgetary matters, are elected by voters whose children do not share the needs of our city's Spanish-speaking students. Only one of nine trustees is Hispanic and one other is Spanish - surnamed. Furthermore, the fact that only 7.8% of the students attending DISD schools are White (non-Hispanic) is compelling evidence that many voters

— and, thus, the Trustees they elect — are less concerned with the quality of public education than the marginal cost they could bear to improve it.

26. The plight of Hispanic and Spanish-speaking students within DISD dramatically illustrates the problems inherent in the Board's present districting plan. That plan, however, has detrimentally impacted thousands of other DISD residents and students, as well.

C. The Board Of Education: DISD's Governing Body

27. The Board of Education is comprised of nine (9) Trustees, who establish the policies by which DISD schools operate. The Board also elects the General Superintendent to act as DISD's chief instructional and executive officer. In carrying out the task of setting policy, the Board identifies needs and establishes priorities for the school system, allocates financial and human resources, and evaluates school performance.

28. Pursuant to Section 11.152 of the Texas Education Code and Art. 7, § 3-b of the Texas Constitution, the Board has the authority to levy and collect ad valorem taxes for purposes of maintaining free public schools. Apart from the Board's policy-making role, that taxing power places the Trustees among the most important public officials in Dallas local government.

29. As the governing body of the DISD, the Board of Education is ultimately responsible for the quality and effectiveness of the educational services provided to the District's public schoolchildren. Obviously, with a billion-dollar budget at their disposal and the power to levy taxes, dictate policy, and establish educational programs, the Trustees have an obligation to represent the interests of DISD's constituents — who include not only its residents and voters but, more importantly, the children who attend its 220 schools.

D. The People's Voice In Matters Of Public Education: The DISD's Nine Single-Member Districts

30. The DISD is made up of nine (9) geographic districts. The voters within each district are entitled to elect a single Trustee to the Board of Education, who must reside within that district.

31. Trustees have staggered terms of three (3) years, and elections are held annually. Thus, in most years, only three of the nine district Trustee positions are open for election.

32. According to the DISD's publications, "After each census is taken, the Board of Education apportions the school district into nine areas of similar population." Indeed, Section 11.052(g) of the Texas Education Code provides: "Not later than the 90th day before the day of the first regular school board election at which trustees may officially recognize and act on the last preceding federal census, the board shall redivide the district into the appropriate number of trustee districts if the census data indicates that the population of the most populous district exceeds the population of the least populous district by more than 10 percent."

33. Pursuant to Section 11.052(f) of the Education Code, after the decennial redistricting process is completed, all nine Trustee positions on the DISD Board of Education must be filled simultaneously, and the winners then draw lots to determine who has three, two, and one-year staggered terms.

34. The foregoing procedures are intended to ensure that voters within each of the DISD's nine districts have equal voting power with respect to the election of Trustees.

a. **The standards applicable to lawful apportionment and redistricting**

35. The Board of Education is responsible for dividing and configuring the DISD's nine districts in accordance with applicable law. In drawing district lines, the Board must: (1) where possible, use easily identifiable geographic boundaries as district boundaries; (2) maintain communities of interest in a single district and avoid splitting neighborhoods; (3) use whole county voting precincts, if possible; (4) give due regard to existing DISD districts; (5) establish districts approximately equal in population, which ensures against any deviation of more than 10 percent between the most and least populated districts; (6) create compact and contiguous districts; (7) recognize incumbent-constituency relations by keeping existing trustees within their respective districts, if possible; and (8) avoid retrogression in the voting strength and position of racial and language minorities.

36. The purpose of those rules is to ensure that traditional neighborhoods, natural boundaries, and communities of interest are recognized, respected, and accommodated in the drawing of voting districts. In the context of public education, they permit parents and voters who are the most affected by any given policy or proposed action meaningful and effective recourse to their community representative (i.e., their respective district's Trustee).

37. Although the Board may consider race in drawing district lines, race may not be the predominant factor. Thus, the deliberate inclusion or exclusion of persons in or from a voting district on the basis of race will be subject to strict judicial scrutiny.

38. Regrettably, DISD's nine districts fail to conform to the foregoing standards. That, in itself, justifies this Court's intervention in this action and the issuance of necessary judicial relief.

b. **DISD's gerrymandered "jigsaw puzzle" of single-member districts**

39. In 1991, the last time the Board reapportioned and configured DISD's districts, race was the predominant factor in drawing the new district lines. More specifically, during the redistricting following the 1990 Census, the Board deliberately restructured the districts to create ethnic strongholds in certain districts. In fact, as presently drawn, the DISD districts are, in large part, devoid of any non-race-based justification. This is demonstrated by the bizarrely-shaped districts that bend and curve and reach and swell to gather as many pockets of a given ethnic group as possible into a given district.

40. District 7 is an oval-shaped district just east of downtown, with the exception of a significant portion of District 7 being extracted and combined into existing District 5. Specifically, south of Trinity River, an L-shaped portion of what would be the oval-shape is extracted and added to District 5. In addition, along the eastern front of District 7, two narrow strips are again extracted in a snake-shaped configuration and added to Districts. Mr. Garza resides in this gerrymandered District.

41. Similarly, District 8 extends from Park Lane and Denton Road in a southeasternly direction all the way to East Grand Avenue and I-30. This snake-like district at its widest point is roughly two miles and at its narrowest point is a mere two blocks. From end-to-end, this district extends over eight miles. Along its perimeter, certain blocks jut into other districts and likewise, along its perimeter, portions one block wide are taken away from District 8. Mr. Vaca resides in this racially gerrymandered District.

42. District 4 extends from as far north as Gus Thomasson Road and extends southernly beyond the city of Seagoville. Along its western parameter, District 4 juts into District 9 in a saw-tooth shape. Specifically, south of Scyene Road and north of Lake June Road, two sections of District 4 randomly cut into existing District 9, while a third tooth cuts into District 3 just north of I-30. Ms. Adames resides in this racially gerrymandered District.

43. Furthermore, District 6 extends from Mountain Creek Parkway in an easternly direction to Lancaster Road. District 6, at its north eastern flank, arbitrarily cuts into existing District 5 to create an isolated peninsula that crosses highway I-35, capturing neighborhoods within existing District 5. Mr. Acosta resides in this racially gerrymandered District.

44. District 5 extends at its northern tip from Northwest Highway and Stemmons in a southeasternly direction to Simpson Stuart Road and I-45. Its entire stretch from point-to-point is over twelve miles long. On its western flank, District 5 surrounds existing District 7 in a "C" shape configuration. At its widest point, District 5 is over four miles, while its narrowest point is less than one mile wide. Most of the area, at its narrowest point, is taken up by the Trinity River Basin. At its halfway point, District 5 crosses the Trinity River for approximately three miles, only to be returned to the other side of the river and jut in a "L" shape into a significant portion of District 7.

45. Likewise, District 2 is best described as two separate rectangle-shaped areas, connected at its most narrow point at Northwest Highway and U.S. 75 by just a few blocks. This district extends as far north as Beltline and Preston Road and as far south as Samuel Boulevard and East Grand Avenue. At its northern perimeter, the district crosses Preston Road and is connected by only an intersection to engulf additional neighborhoods.

46. In sum, DISD's nine districts stretch, pinch, expand, jut, swerve, and travel across the map of Dallas in a seemingly chaotic pattern. The real story, however, is that the DISD Board apportioned and configured those amoeba-like districts in 1991 with one primary objective in mind — namely, to accommodate the then-existing racial composition of the DISD. However, those districts today violate the legal requirements that control the configuration and composition of voting districts.

47. The legal defects in DISD's nine districts are exacerbated by the fact that DISD's demographics have so changed in the past decade that the voting power of those ethnic groups with the highest stake in the quality of public education in Dallas has been substantially diluted.

48. The gerrymandered nature of the 1991 district lines poses an immediate problem to the DISD, because these 1991 lines are used both as a starting point for redistricting based on the 2000 Census and as a basis of comparison to determine if new redistricting plans pass the "retrogression" preclearance test mandated by Section 5 of the Voting Rights Act.

E. The Changing Face Of Dallas: The Hispanic Population Doubles In Size Following The 1990 Census

49. On March 12, 2001, the 2000 U.S. Census was officially released, and the data verified a phenomenon experienced throughout the country — namely, that the face of America has changed.

50. The Hispanic population in Dallas has exploded. The 2000 Census reported that Dallas's population of 1,188,580 is now 35.6% Hispanic. According to the 1990 Census, Dallas's population of 1,006,877 was 20.9% Hispanic. Indeed, the 212,000-person increase in the Hispanic

community accounts for most, if not all, of Dallas's growth over the past decade. Today, more than one of every three people in Dallas is Hispanic, as compared to one in every five just ten years ago.

F. Widely Disparate Voting Power: The Populations of the Largest and Smallest DISD Trustee Districts Differ By Nearly Thirty Percent 1990 Census

51. This dramatic increase in population has been unequally distributed among the current DISD districts. The 2000 Census data demonstrates that the difference between the least and most populous districts is well beyond the 10% necessary to mandate redistricting. The least populous district is District 9 which has deviation of -15.20%. In contrast, the most populous district is District 3, which has a deviation of 14.15%. Comparison of Districts 3 and 9 reveals a difference between the least and most populous districts of 29.35%.

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%. Vote dilution is an unconstitutional violation of the Equal Protection clause and requires redistricting for equipopulous districts. Districts 4, 7 and 8 are, in fact, in violation of the Equal Protection Clause of the U.S. Constitution. Section 2 of the Voting Rights Act is also violated because the unequally populated districts have a disproportionately greater vote dilution impact on Hispanics because population growth has been almost completely within Hispanic communities.

G. Imminent Harm: The Upcoming May 5 Trustee Elections

53. Seven (7) prior DISD Board of Education elections (1994, 1995, 1996, 1997, 1998, 1999, and 2000) have been conducted in violation of the United States Constitution. Prior to each of those elections, the Trustees had an opportunity — indeed, an obligation — to reconfigure the nine DISD districts to conform to and comply with equal protection requirements. On none of those occasions did the Board discharge its public responsibilities to DISD voters. Now, after seven straight failures, the need for judicial intervention and oversight is clear and compelling. Simply put, there can be no assurances that defendants, left to their own devices, will finally follow the law which they have ignored for nearly eight years running.

54. Pursuant to established DISD policy, the election of Trustees is held on the first Saturday in May of each year. Accordingly, an election of Trustees for three of DISD's nine districts (Districts 5, 7, and 8) is scheduled for Saturday, May 5, 2001. Coincidentally, that is Cinco de Mayo — a traditional holiday within Dallas's Hispanic community.

55. Notwithstanding the legal defects in the configuration and composition of DISD's nine districts, defendants have not taken appropriate action to redraw those districts to comport with constitutional and statutory requirements. Nor do defendants apparently intend to engage in any redistricting activities prior to the upcoming May 5 election.

56. In fact, DISD originally scheduled a April 10, 2001, meeting to discuss the extent that the public will be involved in working with DISD on the redistricting efforts. With community members in attendance to hear the Board criteria for public involvement, the Board ignored its own

agenda. Instead, the Board argued among its members and with its outside counsel on the criteria used to create a proposed map.

57. The meeting of April 10, 2001, demonstrated that members of the Board of Trustees continue to consider predominantly race as the overarching criterion for redistricting. Notably, Trustee Hollis Brashear, who represents District 6, stated in open session that "I thought we were going to shoot for three [African-American], three [Hispanic] and three [White (Non-Hispanic)]." This statement is powerful evidence that race remains the key criterion driving current redistricting efforts within the DISD, based on a politically motivated understanding with counsel.

58. Moreover, it is evident that not all Trustees are confident that they can properly configure a map in accordance with their adopted criteria. Trustee Ron Price, who represents District 9, took issue with the proposed districts by calling them, "unacceptable and embarrassing." In commenting on the draft map, Mr. Price further stated that, "you do not split a community in half like that."

59. With the exception of the foregoing, all redistricting discussions have been held in closed session, shrouded in secrecy to prevent the public from learning about Board decisions on the redistricting process, a matter of critical public interest. The Board has blamed its purported need for secrecy on this litigation – to flout the requirements of the Texas Open Meetings Act, which mandates that closed sessions be confined to attorney advice and litigation strategy. The Board has also ignored notice provisions in the Texas Open Meetings Act which provide that the public be informed of the date and time of all meetings, even closed sessions. In short, while the Board flounders, Dallas voters are deprived their constitutional rights.

60. In light of the significant differences in the populations of the DISD districts, if the May 5 election proceeds, voters within the affected districts will exercise either disproportionately high or low voting power relative to that allowed by law. In either event, because the present configuration and composition of the districts violates applicable law, the upcoming elections will be tainted.

61. On the other hand, if the May 5 election is stayed until November 2001, there will only be minimal, if any, disruption of the electoral process. If the rescheduled election takes place following redistricting efforts that comply with applicable law, no voters will be disenfranchised. Because the Board is required by law to reconfigure the districts to account for the 2000 Census data, and then to hold an election for all nine Trustee positions, a delay in the upcoming May 5 election of only three of those positions will not result in any harm or prejudice to anyone. Those three seats will be subject to immediate re-election in any event. Therefore, postponing the May election and combining it with the decennial 9-seat election in November 2001 will actually save the taxpayers' money, promote efficiency, and avoid wasted time and effort. Simply put, a short stay of the May election will permit defendants to reconfigure DISD's nine districts in conformance with applicable law and in light of the recently-issued 2001 Census data.

62. In sum, an objective balancing of the interests demonstrates that any alleged harm resulting from a short delay in the upcoming Trustee elections is negligible in comparison with the disenfranchisement that will occur if the May election goes forward as scheduled. That is especially true when the voters who will be most affected are those who have the greatest stake in the

educational services provided by DISD and, consequently, have the greatest interest in the representatives who sit on the District's governing body.

H. Avoidable Consequences: Prompt DISD Redistricting Will Allow The Voice Of Public Education's Greatest Stakeholders To Be Fairly And Fully Heard

63. The Board of Education is required by the United States Constitution and Texas law to redistrict to correct existing defects in the configuration and composition of DISD's nine districts and to accommodate and account for the recent dramatic shift in population. The existing malapportionment of the DISD voting districts dilutes the voting strength of emerging groups – particularly the Hispanic community. Failure to immediately redistrict denies this emerging group its constitutional rights under the Equal Protection Clause of the Fourteenth Amendment. Indeed, one of the most basic rights of Americans is the right to be represented in accordance with the principle of "one person - one vote."

64. Plaintiffs have been compelled to file this action due to the failure of defendants to take all action necessary to ensure that DISD's nine single-member districts are drawn and constituted — and that all DISD Board of Education elections are held and conducted — in strict accordance with applicable law. As a result of defendants' violations of United States Constitution, federal statute, and state law, plaintiffs have been required to retain the undersigned counsel to prepare, file and prosecute this lawsuit.

V.

CLAIMS

A. Count One: Violation Of 42 U.S.C. § 1983 And The Equal Protection Clause Of The Fourteenth Amendment By "One-Man-One-Vote" Vote Dilution

65. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

66. A fundamental principle of representative government in this country is equal representation for equal numbers of people, without regard to race, sex, or economic status. It is axiomatic that when population disparities exist between electoral districts, voters in districts with populations greater than other districts have less influence in the election process than voters in less-populous districts. Such vote dilution – as is the case under the current DISD districting – violates plaintiffs' constitutional right to equal protection of the laws.

67. 42 U.S.C. § 1983, entitled "Civil Action for Deprivation of Rights," provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

68. The United States Supreme Court has interpreted the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution to require that legislative districts be as nearly of equal population as is practicable. Consequently, the Supreme Court will not accord a districting scheme of a greater than 10% top to bottom population deviation with prima facie constitutional validity.

69. The difference between the least and most populous DISD voting districts is over 10%. That deviation is not based on any legitimate considerations incident to the effectuation of a rational state policy.

70. Ms. Adames' voting rights are diluted because she resides in overpopulated District 4, which has a variance of 25.64% from the least populated District. The voting rights of Mr. Garza are similarly diluted because he resides in overpopulated District 7, with a variance of 16.61%. The voting rights of Mr. Vaca are also diluted because he resides in overpopulated District 8, which has a variance of 22.56%. Those plaintiffs have, therefore, each sustained injury-in-fact.

71. Use of the current electoral districts constitutes a denial to the plaintiffs, and all other voters who reside in overpopulated districts, of equal protection under the laws guaranteed to them by the Fourteenth Amendment to the United States Constitution.

72. Therefore, conducting the DISD Board elections prior to reapportionment of the districts would result in a violation of plaintiffs' equal protection rights and 42 U.S.C. § 1983.

73. There exists an actual and justiciable controversy. Accordingly, plaintiffs request this Court to issue, pursuant to 42 U.S.C. § 1983, declaratory and injunctive relief, declaring the conduct of the DISD Board elections prior to redistricting a violation of plaintiffs' constitutional rights and staying those elections until such voting districts have been properly reapportioned.

B. Count Two: Violation of 42 U.S.C. § 1983 And The Equal Protection Clause Of The Fourteenth Amendment By Race-Based Gerrymandering

75. The DISD voting districts are bizarrely shaped, are not compact and contiguous, and were configured without regard for traditional districting principles. In fact, the districts are so

irregular on their face that they rationally can be viewed only as an effort to segregate the races for purposes of voting.

76. Mr. Garza, Mr. Vaca, Ms. Adames, and Mr. Acosta all reside in districts which were created by unconstitutional gerrymandering. Specifically, Districts 4, 6, 7, and 8 are bizarrely shaped, are not compact and continuous, and were configured without regard to constitutionally mandated districting principles. Accordingly, plaintiffs have each sustained injury-in-fact.

77. Race, and not the application of other districting principles, was the DISD Board's dominant and controlling rationale in drawing the district lines in 1991. The DISD Board subordinated traditional race-neutral districting principles to racial considerations when it last reapportioned the districts. Race was the predominant factor motivating the DISD Board's redistricting decisions. Further, the racial classifications embodied in the districting scheme are not narrowly tailored to further a compelling a state interest.

78. Therefore, conducting the DISD Board elections prior to reapportionment of the districts in accordance with federal law would result in a violation of plaintiffs' equal protection rights and 42 U.S.C. § 1983.

79. There exists an actual and justiciable controversy. Accordingly, plaintiffs request this Court to issue, pursuant to 42 U.S.C. § 1983, declaratory and injunctive relief, declaring that the 1991 district lines are unconstitutionally gerrymandered and preventing their use in any future future election and eliminating them as a consideration in 2001 redistricting.

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C. Count Three: Discriminatory Dilution Of Voting Rights Under Section 2 Of The Voting Rights Act Of 1965, 42 U.S.C. § 1973

80. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

81. Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, protects the voting rights of racial minorities when a districting plan results in an impairment of said group's right to vote.

82. DISD's current districting plan violates Section 2 because it dilutes the votes of protected minority groups.

83. A number of factors demonstrate the dilution of the Hispanic vote within the DISD, including: (1) Hispanics in Dallas are a sufficiently large and geographically-compact group to constitute a majority in more than just the current two districts with a Hispanic majority; (2) the Hispanic minority is politically cohesive; (3) current voting district lines enable Anglo candidates to defeat Hispanic candidates because Hispanic votes are being under-represented as a result of overpopulated Hispanic-majority districts; (4) based on the totality of the circumstances, the current districting scheme decreases the opportunity of Hispanics to participate in the political process and to elect representatives of their choice; (5) although Hispanics make up a large percentage of the DISD electorate and student body, Hispanics occupy and have occupied a disproportionately low number of DISD Board seats; and (6) the history of official discrimination affecting the Hispanic community's participation in the DISD democratic process is profound.

84. DISD Board of Education has had seven prior opportunities to correct its violation of the United States Constitution. Between 1994 and 2000, DISD failed to conform to and comply with the Equal Protection requirements.

85. Plaintiffs are Hispanics, and they have each sustained injury-in-fact.

86. Accordingly, pursuant to 42 U.S.C. § 1983, Plaintiffs request appropriate declaratory and injunctive relief.

D. Count Four: Violation Of 42 U.S.C. § 1983 And The Fifteenth Amendment Right To Vote By Intentional Discrimination Against Hispanic Voters

87. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

88. The Fifteenth Amendment provides that the right of U.S. citizens to vote shall not be denied or abridged by the United States or by any state on account of race or color.

89. The population growth in Dallas has primarily occurred in the Hispanic community. As a result, most growth in DISD districts has occurred in majority Hispanic districts. Failure to redraw district lines to equalize the power of all voters has the unconstitutional effect of abridging the voting rights of all citizens in overpopulated districts. Most overpopulated districts are majority Hispanic districts and, therefore, defendants' failure to redistrict harms Hispanics more than any other ethnic or racial group.

90. In addition, defendants' failure to reschedule the election on May 5, 2001, may only be interpreted as "purposeful discrimination" in light of the well-documented, phenomenal growth within the Hispanic community and the disproportionate effect of the current district lines on Hispanics.

91. The facts alleged herein constitute a deprivation of plaintiffs' rights under the Fifteenth Amendment to the United States Constitution.

92. As set forth above, DISD policy provides for the May, 2001, election of three Trustees to the DISD Board of Education. However, conducting DISD Board elections in May, 2001, will undermine the voting rights of thousands of United States citizens, including plaintiffs, by diluting their voting rights.

93. Accordingly, pursuant to 42 U.S.C. § 1983, plaintiffs request appropriate declaratory and injunctive relief.

E. Count Five: Attorneys' Fees And Related Litigation Expenses

94. Plaintiffs reallege and incorporate by reference the preceding paragraphs.

95. Pursuant to 42 U.S.C. § 1973 and 1988, plaintiffs are entitled to recovery of their attorneys' fees and expert costs.

VI.

JURY DEMAND

Plaintiffs hereby request a jury trial with respect to any and all claims and/or issues to which they are so entitled.

VII.

REQUEST FOR RELIEF

CONSIDERING THE PREMISES, plaintiffs respectfully request that this Court, upon final hearing, enter a judgment in their favor and against defendants, providing for the following relief:

(1) A judicial declaration that DISD's current districting plan violates the United States Constitution, the Voting Rights Act of 1965, and other applicable federal and state law and, therefore, that any election of Trustees conducted or held in recognition or reliance upon that districting scheme will likewise be unlawful;

(2) A preliminary and permanent injunction restraining and prohibiting defendants from holding or conducting any election of Trustees until such time as defendants have redrawn and reconfigured the nine DISD single-member districts in accordance with applicable federal and state constitutional and statutory law;

(3) An order compelling defendants to promptly reconfigure the nine DISD single-member districts to conform to applicable law and to account for 2000 Census data, and in the alternative, order defendants to reconfigure Districts 4, 6, 7, and 8, because they are racially gerrymandered ;

(4) An award of plaintiffs' reasonable attorneys' fees and reasonable expert fees;

(5) Costs of Court; and

(6) Such other and further relief, at law or in equity, to which plaintiffs may be entitled and which this Court deems just and appropriate.

Respectfully submitted,

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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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