

ORIGINAL

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

TRINIDAD "TRINI" GARZA and
PEDRO "PETE" VACA,

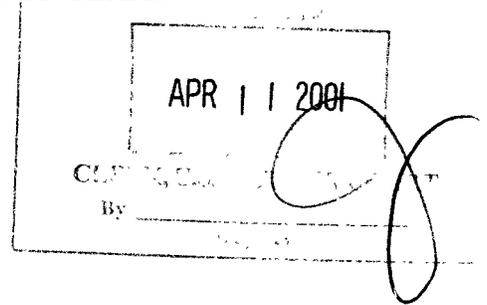
Plaintiffs,

v.

DALLAS INDEPENDENT SCHOOL
DISTRICT, et al.,

Defendants.

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Civil Action No 3-01CV0602-H

DEFENDANTS' MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF

TO THE HONORABLE BAREFOOT SANDERS, UNITED STATES DISTRICT JUDGE:

COME NOW, the Dallas Independent School District, Ken Zornes, Roxan Staff, Lois Parrott, George Williams, Se-Gwen Tyler, Hollis Brashear, Jose Plata, Kathleen Leos and Ron Price, (hereinafter referred to collectively as the "Trustees") and file this Motion to Dismiss the Complaint of Plaintiffs Trinidad Garza and Pedro Vaca pursuant to FED.R.CIV.PROC. 12(B)(1). As good and sufficient grounds for said Motion, these Defendants would respectfully show this Court as follows:

A. Summary of Argument

The Court lacks subject matter jurisdiction over the claims asserted by Plaintiffs' suit, and those claims should be dismissed under FED.R.CIV.PROC. 12(B)(1) for want of subject matter jurisdiction. Plaintiffs also have failed with respect to their claims of vote dilution to state a claim upon which relief can be granted, and dismissal of these claims is also warranted under FED.R.CIV.PROC. 12(B)(6).

B. Background

Plaintiffs are Trinidad "Trini" Garza and Pedro "Pete" Vaca. Defendants are the Dallas Independent School District (the "DISD"), the DISD Board of Education (the "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 of Education.

Plaintiffs ostensibly sued Defendants "on behalf of themselves, but also to protect the interests of all residents and voters" in the DISD.¹ Plaintiffs seek a declaration that the DISD's nine single-member trustee districts, as currently apportioned, violate the Equal Protection Clause of the Fourteenth Amendment, sections 2 and 5 of the Voting Rights Act of 1965 and the Fifteenth Amendment right to vote. The DISD's current apportionment plan was put in place in 1991 when Plaintiff Garza was himself a member of the Board. Complaint ¶ II.A.1. Plaintiffs also ask this Court to postpone the next regularly scheduled DISD elections, which have been called by the Board pursuant to state law, and are currently set for May 5, 2001.

Plaintiffs' suit states three bases for relief. Count I is based on the Fourteenth Amendment and appears to assert two claims, a "one person-one vote" claim and a *Shaw v. Reno*, 113 S.Ct. 2816 (1993). Count II is based on section 2 of the Voting Rights Act and asserts a vote dilution claim. Count III is based on the Fifteenth Amendment and appears to assert three claims, a "one person-one vote" claim, what appears also to be vote dilution claim, and what appears to be a privileges and immunities claim.

¹ See Complaint and Application for Declaratory and Injunctive Relief (hereinafter "Complaint") ¶ I.

C. The Nature of Plaintiffs' Requested Relief

Plaintiffs' request for injunctive relief is equitable in nature. Postponing an election is an especially extraordinary request even in the context of injunctions as extraordinary relief. The courts have uniformly held that postponing or canceling an election is a step not to be taken except under the most compelling circumstances, which are not present here. Even then, overturning an election is itself an extraordinary remedy seldom ordered. *Chisom v. Roemer*, 853 F.2d 1186, 1189 (5th Cir. 1988); *Terrazas v. Slagle*, 789 F.Supp. 828, 844 (W.D. Tex. 1991) (3-judge court). The better course of action is to let the election proceed and if, upon later examination it is determined that the plan was unlawful, to consider at that juncture whether to overturn the election and order a new one. *United States v. City of Houston*, 800 F.Supp. 504, 506 (S.D. Tex. 1992) (3-judge court).

Contrary to Plaintiffs' hyperbole, this is not a case where the alleged violations are unequivocally clear or egregious. The May 2001 election is not proposed to be held under a redistricting plan that has not been precleared as required by section 5 of the Voting Rights Act (where enforcing section 5 itself would provide the basis in law for enjoining the scheduled election). It is not a case where a minority group clearly satisfies the minimum Voting Rights Act section 2 criteria announced in *Thornburg v. Gingles*, 106 S.Ct. 2752 (1986), but has been flatly denied creation of a majority minority district. It is not a case where the District has avoided its obligation to redistrict under the one person-one vote principle following a decennial federal census.

It is a case where one of the plaintiffs, Trinidad Garza, was a member of the DISD Board in 1991 when the plan he then supported – but now challenges – was adopted (and who may well be estopped to challenge it now). It is also a case in which both plaintiffs may be barred by the equitable doctrine of laches from challenging the plan at this late date on the eve of the election process on the basis of their vote dilution and *Shaw* claims. Plaintiffs have been on notice since at least 1993, when

Shaw v. Reno was decided, of any possible *Shaw* - based claim. Finally, it is a case where the vote dilution and one person-one vote claims are not ripe: The 2000 Census data have only recently been released, and the District has not yet had a reasonable opportunity to redistrict.

Under these circumstances, Plaintiffs' eve-of-election² request to disrupt the constitutionally guaranteed right to vote of hundreds of thousands of the DISD constituents is entirely inappropriate.

D. The Basic Elements of Standing

It is axiomatic that Federal courts lack subject matter jurisdiction in cases where the plaintiffs cannot establish that they have standing to bring suit. *Carr v. Alta Verde Industries, Inc.*, 931 F. 2d 1055, 1061 (5th Cir. 1991). The constitutional "irreducible minimum of standing" consists of three elements:

"First, the plaintiffs must have suffered an 'injury in fact' – an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual and imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of. ...Third, it must be likely, as opposed to merely speculative, that injury will be redressed by a favorable decision."

U.S. v. Hays, 115 S.Ct. 2431 (1995), quoting *Lujan v. Defenders of Wildlife*, 112 S.Ct. 2130, 2136, 2137 (1992). A court lacks subject matter jurisdiction as to claims which a plaintiff has no standing to assert. *Carr; id.*

A plaintiff must live in the district about which he or she complains in order to challenge a plan on the basis of vote dilution, e.g., *Valdespino v. Alamo Heights ISD*, 168 F.3d 848 (5th Cir. 1999), or a *Shaw*-type claim. *U.S. v. Hays*, 115 S.Ct. 2431, 2436-37 (1995). The Supreme Court has "repeatedly refused to recognize a generalized grievance against allegedly illegal governmental conduct as sufficient for standing to invoke the federal judicial power." *Id.* at 2435.

² Indeed, Early Voting in person commences on April 18th. Ballots have been available by mail for this election since March 6, 2001(sixty days before the election).

E. Plaintiffs' Allegations

Count 1: Fourteenth Amendment claims.

Count One of Plaintiffs' Complaint, based on the Fourteenth Amendment, appears to contain two distinct claims. The first is a "one person-one vote" claim, in which Plaintiffs complain that, under the 2000 Census data, the DISD's trustee districts are malapportioned. Complaint ¶¶ 54, 56-58. The second appears to be a *Shaw v. Reno* claim, in which Plaintiffs complain that the trustee districts are so bizarrely shaped and so based on racial considerations not narrowly tailored to further a compelling state interest as to be unlawful. Complaint ¶¶ 59, 60.

a. Plaintiffs' circumstance does not entitle them to the remedy they seek.

Plaintiffs do not have a "legally protected right" to an immediate reapportionment of their districts. The Equal Protection Clause requires only that a legislative body adopt some "reasonable plan for periodic revision of their apportionment schemes." *Reynolds v. Sims*, 84 S. Ct. 1362, 1392 (1964). As acknowledged by Plaintiffs in Paragraph 30 of the Complaint, the DISD has adopted a plan where its nine trustee districts are reapportioned after each census. The *Reynolds* Court specifically held that a decennial redistricting plan such as the DISD's "appears to be a rational approach to readjustment of legislative representation in order to take into account population shifts and growth," and that such a plan meets the minimal requirements for maintaining a reasonably current scheme of representation. *Id.*

The DISD's redistricting process has already begun.³ Even prior to the release of the 2000 Census data in mid-March 2001, the Board had retained legal and other professional consultants to assist it in the redistricting process. Following the census release, the Board received an analysis by

³ The Defendants would urge that the Court take judicial notice of the actions of the DISD Board of Trustees taken pursuant to the Texas Open Meetings Act on January 21, 2001, and April 4, 2001 (reflected in Exhibits "A" and "B", respectively appended hereto), in furtherance of the previously-commenced redistricting process.

of the 2000 Census data applied to DISD's existing trustee districts and the need for a new plan. On April 4, 2001, the Board approved guidelines for the process of receiving public input, and a draft of the new illustrative redistricting plan was presented to the Board for discussion on April 10, 2001.

Plaintiffs lack standing to bring a one person-one vote claim because they have failed to state any "injury in fact." In particular, they have failed to allege violation of a legally protected interest. Plaintiffs have merely stated a generalized grievance about a plan that was put into effect almost ten years ago. This claim should be dismissed pursuant to FED.R.CIV.PROC. 12(B)(3).

b. The *Shaw v. Reno* claim

As a matter of law, a plaintiff does not have standing to assert a *Shaw v. Reno* claim concerning a district in which that plaintiff does not live. *U.S. v. Hays*, 115 S.Ct. 2431, 2436-37 (1995). Plaintiffs' claims that the DISD Trustee districts are "bizarrely shaped", or are otherwise impermissibly racially gerrymandered, may only be raised as to the districts in which they reside. These Plaintiffs lack standing to assert claims as to other districts, and those claims should be dismissed pursuant to FED.R.CIV.PROC. 12(B)(3). District 7 (of which Plaintiff Garza is a resident) cannot by any stretch of imagination be characterized as "bizarrely shaped."⁴ Accordingly, there is no personal injury in fact to Plaintiff Garza as to his *Shaw* claim. Similarly, the "redressability" prong of the standing test is left unsatisfied: There is no likelihood that any injury arising from District 7's allegedly unlawful shape could be redressed by any grant of relief by this Court. Plaintiff Garza lacks standing to assert a *Shaw* claim as to District 7 and has failed to state a claim as to District 7 for

⁴ The Defendants would likewise urge that the Court take judicial notice of the Trustee District boundaries which have been in place since the 1991 redistricting, appended hereto in Exhibit "A".

which relief can be granted. Accordingly, his claim based upon the Supreme Court decision in *Shaw* should be dismissed pursuant to FED.R.CIV.PROC. 12(B)(1) & (6).⁵

Count Two: Vote Dilution Claim

Plaintiffs complain that, as a result of an increase in the Hispanic population in the DISD, the Hispanic vote is now diluted under the DISD's 1991 Trustee district plan, and assert a violation of section 2 of the Voting Rights Act. Again, however, Plaintiffs lack standing to bring this claim because they have not demonstrated (and cannot demonstrate) how they as individuals have suffered a particularized and personal "injury in fact." A plaintiff bringing a section 2 claim must be able to demonstrate standing in the same manner as any other litigant, including demonstrating that they have **personally** suffered harm as a result of the challenged practice. *Gingles*, 106 S.Ct. At 2766 n. 17, *Hays*, 115 S.Ct. at 2436; *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 102 S.Ct. 752 (1982). These claims are not ripe, since the District has not had a reasonable opportunity to complete redistricting since the recent release of the census data.

Plaintiffs, both Hispanic, have personally suffered no vote dilution injury under section 2 based on their status as members of a protected racial or language minority, because they reside in districts (Trustee Districts 7 and 8) in which their protected group (Hispanics) constitutes a numerical majority of both the total population and voting age population according to the 2000 Census. Additionally, there is no relief that could be granted by this Court that would redress any personal injury they have suffered, even assuming that their assertions regarding the viability of a third majority Hispanic trustee district are true. Plaintiffs lack standing to assert vote dilution claims on behalf of Hispanic residents

⁵ Defendants note that both Plaintiffs have been on notice since the Supreme Court's opinion in that case in 1993 that they might have claims as addressed in *Shaw*. The ripeness of those claims is not dependent upon the 2000 [con't.] Census data coming available. The campaigns began after nominations closed in January, and candidates, including minority candidates, have already begun spending limited campaign funds. Plaintiffs' failure to assert such claims until the eve of the current election process should be barred by laches.

of other DISD Trustee districts; that is, a claim that an additional Hispanic majority district might be drawn since, as to these Plaintiffs, any such assertion is merely a "generalized grievance" for they lack standing. *E.g., Hays; Defenders of Wildlife.*

Moreover, although they have recited the three elements in the test for standing in section 2 cases articulated by the Supreme Court in *Thornburg v. Gingles*, 106 S.Ct. 2752, 2766-67 (1986), Plaintiffs have failed entirely to allege facts which if true would establish any of the elements of that test. In the Fifth Circuit, the first prong of the *Gingles* test requires proof by a minority plaintiff as a threshold matter that the minority group is sufficiently large in number of members and sufficiently geographically compact to constitute a strict numerical majority of the *citizen* voting age population of a new district. *Valdespino v. Alamo Heights ISD*, 168 F.3d 848, 850, 852-53 (5th Cir. 1999). The 2000 Census data upon which Plaintiffs purport to base their claim do not establish unambiguously that such a new district might be drawn. Plaintiffs' bare and conclusory allegations are insufficient on their face to satisfy the *Gingles* standing test.

The third prong of the *Gingles* standing test, that a majority Anglo bloc vote usually suffices to defeat election of the candidate of the minority group's preferred candidate, is impossible to meet in this instance, insofar as there are currently (and have been) Hispanic and/or Spanish-surnamed Board members elected from Districts 7 and 8. Plaintiffs' assertion that history reveals Hispanics have occupied a "disproportionately low number of the DISD Board seats" is insufficient to establish the third *Gingles* element, that a polarized Anglo voting majority usually results in the defeat of candidates of the Hispanic community's preference. *Gingles*, 106 S.Ct. at 2768-70.

Plaintiffs' section 2 claims should be dismissed pursuant to FED.R.CIV.PROC. 12(B)(1) & (6). Plaintiffs appear merely as "concerned bystanders." *Valley Forge*, 102 S.Ct. at 759, and thereby lack the requisite standing.

Count Three: Fifteenth Amendment Claims

Count Three seems to assert three distinct claims. To the extent this count repeats allegations of the DISD's "failure to redraw district lines to equalize the power of all voters," *see* Complaint ¶ 70, Plaintiffs seem to be restating a one person-one vote claim. To the extent Plaintiffs repeat allegations of the current trustee district lines' "disproportionate effect on Hispanics," they seem to be restating a vote dilution claim. Similarly, Plaintiffs may be asserting a privileges and immunities claim. *See* Complaint ¶73.

The "one person-one vote" claim actually arises under the Fourteenth Amendment. Even so, Plaintiffs lack standing to bring this claim for the reasons already stated. *Reynolds v. Sims*, 84 S.Ct. at 1302-93.

Before enactment of the Voting Rights Act section 2, vote dilution claims were brought under the Fifteenth Amendment. *Riddell v. National Democratic Party*, 508 F. 2d 770 (5th Cir. 1975). The same considerations discussed above that showed that Plaintiffs lack standing to raise a section 2 claim regarding Count Two apply with equal force to the Fifteenth Amendment posture of this claim. *Id.*

Finally, Plaintiffs have failed to allege the requisite concrete personal injury in fact with respect to any privileges and immunities claim, but assert only a generalized grievance on behalf of District residents generally. As discussed above, this is insufficient to establish standing. *E.g., Hays*. Such a claim would arise under the Fourteenth Amendment, not the Fifteenth as alleged. There is no protected right under this clause that appears to apply to Plaintiffs. It does not apply to non-federal elections. *Deubert v. Gulf Federal Savings Bank*, 820 F.2d 754, 760 (5th Cir. 1987) (clause applies to protect "only uniquely federal rights such as the . . . the right to vote in *federal* election[s]"; emphasis added)). Here only DISD elections are in issue. It confers no federal right for a citizen to

"live in a regularly shaped congressional district" in any case. *Pope v. Blue*, 809 F.Supp. 392, 399 (W.D. N.C. 1992) (3-judge district court), *aff'd*, 506 U.S. 801 (1992).

For the reasons stated above, Plaintiffs lack standing to bring these Fifteenth Amendment claims, or the Fourteenth Amendment privileges and immunities claim, which should be dismissed pursuant to FED.R.CIV.PROC. 12(B)(1) & (6).

F. Conclusion

Plaintiffs lack standing to assert the various claims contained in their Complaint or have failed to state claims for which relief can be granted. Plaintiffs do not have a "legally protected right" to an immediate reapportionment of their districts. These Plaintiffs do not have standing to assert a *Shaw* claim concerning a district in which they do not live. Moreover, Plaintiffs cannot demonstrate how they as individuals have suffered a particularized "injury in fact", but assert only a generalized grievance on behalf of District residents generally.

Finally, the Equal Protection Clause only requires a reasonable plan for periodic revision of their apportionment schemes. The DISD has indeed adopted such a plan, and was implementing it well prior to the institution of this suit. Plaintiffs have shown no right whatsoever to the extraordinary remedy of halting an election, and consequently, this Court should deny the relief for which they have prayed.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants pray that this Court enter a judgment by which Plaintiff take nothing, that these Defendants be awarded their costs, and for all such other and further relief at law and in equity to which these Defendants may show themselves justly entitled.

Respectfully submitted,



Eric V. Moyé
State Bar No. 14611300
Dawn Kahle Doherty
State Bar No. 00793625

VIAL, HAMILTON, KOCH & KNOX, L.L.P.
1717 Main Street, Suite 4400
Dallas, Texas 75201
(214) 712-4400
(214) 712-4402 FAX

Myra A. McDaniel
State Bar No. 135203300
Sidney W. Falk, Jr.
State Bar No. 0679540
C. Robert Heath
State Bar No. 09347500
David Méndez
State Bar No. 13932575
BICKERSTAFF, HEATH, SMILEY, POLLAN,
KEVER & MC DANIEL
1700 Frost Bank Plaza
816 Congress Avenue
Austin, Texas 78701
(512) 472-8021
(512) 320-5638 FAX

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of this document has been served upon all parties in accordance with the relevant Rules of Civil Procedure by hand delivering a copy of same to all counsel of record upon the date of filing.



Eric V. Moyé

FOR USE BY BOARD SERVICES	
APPROVED <input checked="" type="checkbox"/>	FILED <input type="checkbox"/>
AMENDED <input type="checkbox"/>	(SEE MINUTES)
BOARD FILE NO.	42739



3700 ROSS AVENUE DALLAS, TEXAS 75204
BOARD OF EDUCATION
AGENDA ITEM

January 25, 2001

(DATE OF BOARD MEETING)

7.1

(AGENDA ITEM NUMBER)

APPROVAL OF REDISTRICTING CONTRACT

TITLE OF DOCUMENT: BBB (LOCAL)

POLICY REFERENCE: _____

The Board shall approve the contract for Redistricting Services to be performed by Bickerstaff, Heath, Smiley, Pollan, Kever & McDaniel as agreed to by the Trustees.

EXHIBIT "A"

BOARD RESOLUTION

THE STATE OF TEXAS §
 §
THE COUNTY OF DALLAS §

**DALLAS INDEPENDENT SCHOOL DISTRICT RESOLUTION
ADOPTING CRITERIA FOR USE IN REDISTRICTING 2001 PROCESS**

WHEREAS, the Dallas ISD Board of Trustees ("Dallas ISD" or "District") has certain responsibilities for redistricting under federal and state law including, but not limited to, Amendments 14 and 15 to the United States Constitution, U.S.C.A. (West 1987), and the Voting Rights Act, 42 U.S.C.A. § 1973 *et seq.* (West 1987 and Supp. 199); Article 5, Section 18 of the Texas Constitution (Vernon 1993 and Supp. 2000); and Tex. Educ. Code Ann. § 11.052 (Vernon 1996); and

WHEREAS, on review of the 2000 census data it appears that a population imbalance exists requiring redistricting of Dallas ISD's trustee districts; and

WHEREAS, it is the intent of the District to comply with the Voting Rights Act and with all other relevant law, including *Shaw v. Reno* jurisprudence; and

WHEREAS, a set of established redistricting criteria will serve as a framework to guide the District in the consideration of districting plans; and

WHEREAS, established criteria will provide the District a means by which to evaluate and measure proposed plans; and

WHEREAS, redistricting criteria will assist the District in its efforts to comply with all applicable federal and state laws;

NOW THEREFORE BE IT RESOLVED, that Dallas Independent School District, in its adoption of a redistricting plan for trustee districts, will adhere to the following criteria:

1. Where possible, easily identifiable geographic boundaries should be followed.
2. Communities of interest should be maintained in a single district, where possible, and attempts should be made to avoid splitting neighborhoods.
3. To the extent possible, districts should be composed of whole voting precincts as they currently exist.
4. Although it is recognized that existing districts will have to be altered to reflect new population distribution, any districting plan should, to the extent possible, be based on existing districts.

5. Districts must be configured so that they are relatively equal in total population according to the 2000 federal census. In no event should the total deviation between the largest and the smallest district exceed ten percent. The District will attempt to achieve a deviation that is less than ten percent under the data released by the Census Bureau.
6. The districts should be compact and composed of contiguous territory. Compactness may contain a functional, as well as a geographical dimension.
7. Consideration may be given to the preservation of incumbent-constituency relations by recognition of the residence of incumbents and their history in representing certain areas.
8. The plan should be narrowly tailored to avoid retrogression in the position of racial minorities and language minorities as defined in the Voting Rights Act with respect to their effective exercise of the electoral franchise.
9. The plan should not fragment a geographically compact minority community or pack minority voters in the presence of polarized voting so as to create liability under section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

BE IT SO ORDERED.

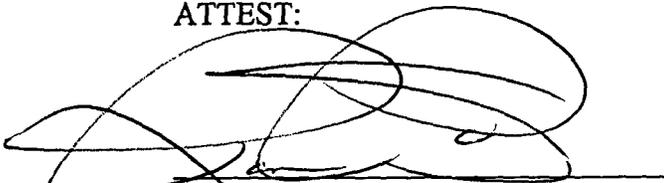
Adopted on this 4th day of April, 2001.

DALLAS ISD BOARD OF TRUSTEES



ROXAN STAFF
President

ATTEST:



Board Secretary