

IN THE UNITED STATES DISTRICT COURT
for the Western District of Texas
San Antonio Division

FILED

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CLERK, U.S. DISTRICT COURT,
WESTERN DISTRICT OF TEXAS
BY Att
DEPUTY

ALFRED E. EHM, *pro se*

) No.

Plaintiff

)
)
) **SA06CA0103 RF**
)

V.

BOARD OF TRUSTEES of the METRO-
POLITAN RAPID TRANSIT AUTHO-
RITY OF SAN ANTONIO

Defendant

)

PLAINTIFF'S ORIGINAL COMPLAINT

NOW COMES the Plaintiff in person and, for himself and for the members of the San Antonio Public Transit Users' Association and the qualified voters who reside within the Rapid Transit Tax District of San Antonio, brings this action against the Defendant Board, alleging as follows:

I.

This Court has jurisdiction in this cause over all parties under 28 U.S.C. §§ 1331 and 1343, and 42 U.S.C. § 1983.

II.

Plaintiff ALFRED E. EHM is a citizen of the United States and a resident of the City of San Antonio, County of Bexar, State of Texas, as well as of the Rapid Transit Tax District of San Antonio and the Advanced Transportation Tax District of San Antonio.

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III.

Defendant BOARD OF TRUSTEES of the METROPOLITAN RAPID TRANSIT AUTHORITY OF SAN ANTONIO ("RTA"), consisting of Timothy N. Tuggey, Esq., Chairman, Henry U. B. Brummett, Vice Chairman, Leonel T. Lopez, Secretary, Melissa Castro, Esq., Barbara B. Christian, Joe F. Garcia, Heriberto "Eddie" Herrera, Oliver W. Hill, Tomás T. Moreno, Charles R. Muñoz, and Sidney G. Ordway, Esq., Trustees, is the collegial governmental body statutorily charged with the duty to administer the local Rapid Transit Tax District and to provide rapid mass-transit services to the people who reside within the Tax District. Process of service can be had at 800 W. Myrtle Street, San Antonio, Texas 78212-4233.

IV.

This Court is the *proper* venue under 28 U.S.C. § 1391(b)(2) because the omission complained of is occurring within this Judicial District.

V.

This is an action under 42 U.S.C. § 1983, the *Civil Rights Law* of 1871, praying for redress for the *intentional* deprivation, on the part of Defendant Board, of Plaintiff's and the affected U.S. citizens' right, under the Federal Constitution, to vote freely for the Transit Board candidate of their choice, and is brought under the long-established Supreme Court rule that "a denial of a constitutionally protected right demands judicial protection."

VI.

It is, more specifically, a petition under 28 U.S.C. § 2201, for a judgment declaring §§ 501 and 502, Subch. K, Ch. 451, of the Texas Transportation Code (Exh. "A"), *unconstitutional* on grounds that (1) these provisions prevent the eligible voters who reside within the Rapid Transit Tax District, which is almost identical in size and shape to Bexar County, from exercising their fundamental right to elect the 11 members of the RTA's Board of Trustees, and (2) they unconstitutionally force upon the affected citizens taxation *without* actual representation.

VII.

The RTA is pursuant to § 52, Subch. B, Ch. 451, Texas Transportation Code, a "public political entity" that "exercises public and essential governmental functions." It is what Texas law generally labels a "governmental body or unit" and Federal law a

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"local government agency." Since April 1, 2005, Defendants, in their dual-capacity as the Transit Board and as the Board of Directors of the Advanced Transportation Tax District of San Antonio, have been collecting sales and use taxes in the amount of over \$ 12 mill. per month and are spending these tax proceeds without having held the statutorily mandated public hearing on their respective proposed annual budgets.

VIII.

All members of Defendant Board are subject to and legally required to comply with the *Right-to-Vote Law* of 1964, a judicial law laid down by the U.S. Supreme Court through *Reynolds v. Sims*, 377 U.S. 533 (1964), and the pertinent subsequent decisions, as well as with 18 U.S.C. § 242, 42 U.S.C. § 1983, § 1 of the Fourteenth Amendment to the U.S. Constitution, Art. I, § 3, of the Texas Constitution, the Equal-Rights Guarantee, Art. I, § 19, the Due-Process Guarantee, and Ch. 39 of the Texas Penal Code. All 11 Trustees took an oath of office in which they swore to uphold the Constitution and laws of Texas and the United States.

IX.

The U.S. Supreme Court's *One Person, One Vote Doctrine*, established through *Reynolds v. Sims*, 377 U.S. 533 (1964), and several subsequent decisions, requires the governing board of a tax-levying, political subdivision of a state, such as the RTA, to stand for election and held furthermore that an agency's *intentional* denial of the exercise of the right to vote constitutes a violation of the Fourteenth Amendment to the U.S. Constitution. The preceding Transit Boards simply disregarded the *Reynolds* mandate for 25 years and the current Board refuses even to consider the possibility that it may be subject to the *Right-to-Vote Law*.

X.

On March 23 and again on June 28, 2005, Plaintiff, on behalf of the TUA, informed the Transit Board's Vice Chairman in writing that the Board is probably subject to the *Right-to-Vote Rule* of 1964 and should implement the law. (The TUA sent this notice also to the Board Secretary and to several of the Trustees personally.) Not having received a response from any of the contacted Trustees or an RTA officer or employee, the Plaintiff, on behalf of the TUA, informed the three appointing authorities—the San Antonio City Council, the Bexar County Commissioners' Court, and the Association of Suburban Mayors—that the Transit Board sits in violation of the *Right to Vote Law* of 1964 and, consequently, of § 1 of the Fourteenth Amendment to the

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Federal Constitution. None of these three entities (one of them is not a "governmental body" under Texas law, but merely a voluntary association of the elected heads of several small general-purpose governments) indicated the least bit of interest in the matter and apparently *decline* to take any corrective action.

XI.

On August 9th, Plaintiff, on behalf of the TUA, informed the Board that their *intentional* refusal to obey the *One Person, One Vote Doctrine* constitutes a violation of 18 U.S.C. § 242, one of the two existing Federal criminal civil-rights statutes, and asked that the Board acknowledge receipt of the written notice. Not having received any response from Defendant Board, Plaintiff on Sept. 28th informed the Board collectively, and the Chairman, Vice Chairman, and several of the Trustees personally, that the Board's refusal to comply with the Federal *Right-to-Vote Law* constitutes an *intentional* disregard of Art. I, § 3, of the Texas Constitution, for which reason the TUA would submit a complaint under the State's malfeasance statute, Ch. 39 of the Penal Code, to the Criminal District Attorney of Bexar County. Again not having received any response from Defendant Board, Plaintiff submitted the TUA's Ch. 39 complaint on Oct. 11th. (The District Attorney has to date not responded.)

XII.

On Oct. 17th, Plaintiff, on behalf of the TUA, mailed the Board collectively, and the Chairman, Vice Chairman, and Secretary individually, a proposed complaint to the U.S. Attorney under 18 U.S.C. § 242 and asked them to comment on it within twelve days. Not having received any response from Defendant Board or one of the Trustees, Plaintiff submitted the TUA's § 242 complaint on Nov. 5th.

XIII.

On October 31, 2005, Plaintiff, on behalf of the TUA, inquired of the U.S. Transportation Department's Office of Civil Rights, whether the agency could assist us in forcing the Defendant Board to comply with the Federal *One Person, One Vote Doctrine*, in view of the fact that the TRA routinely receives Federal financial assistance. On December 2nd the Chief of USDOT's External Policy and Program Development Division informed the TUA that he had forwarded the petition to the U.S. Justice Department's Civil Rights Division and requested that the TUA deal with that agency directly. Plaintiff consequently queried the CRD's Coordination and Review Section on Dec. 7th as to their ability to assist the TUA's efforts, but has to date not

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received a response.

XIV.

On Nov. 19, 2005, Plaintiff provided Defendant Board a copy of this application for a declaratory judgment and requested that the Board indicate any factual errors, or, in the alternative, inform the TUA what steps it was willing to take to come into compliance with the *One Person, One Vote Doctrine* of 1964. As of this date Plaintiff has not received a response from the Defendant Board or any RTA officer or employee.

XV.

On Jan. 14, 2006, Plaintiff notified the Defendant Board collectively and the Board Chairman individually by letter that he would file this petition at the end of the month and included a copy of his notice of Nov. 19, 2005. As of this date Plaintiff has not received a response from the Defendant Board collectively, the Chairman, any of the Trustees, or an RTA officer or employee.

XVI.

As required by § 21, Ch. 402, Government Code, Plaintiff on Nov. 26, 2005, informed the Texas Attorney General of his intent to petition the U.S. District Court for a judgment declaring §§ 501 and 502, Subch. K, Ch. 451, Texas Transportation Code, originally enacted in 1973, *unconstitutional* and provided a copy of the proposed complaint. On January 11th an attorney in the General Litigation Division informed Plaintiff Ehm that the Attorney General usually does not intervene in such proceedings, but requested a copy of the complaint after the same has actually been filed.

XVII.

On December 7, 2005, Plaintiff provided the Bexar County Criminal District Attorney a copy of the proposed application to the U.S. District Court, the petition to the Justice Department's Civil Rights Division, and other documents. As of this date Plaintiff has not received a response from the District Attorney.

XVIII.

Defendant Board is *intentionally* depriving Plaintiff and the affected qualified voters who reside within the RTTD of their fundamental and constitutionally protected right to elect all 11 members of the Board, in that it *knowingly, deliberately, and wil-*

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lingly evades compliance with the *Right to Vote Law* of 1964, the aim of the Trustees and the three appointing authorities being the perpetuation of an appointed Board and of taxation without representation.

XIX.

The three statutorily designated appointing authorities—the San Antonio City Council, the Bexar County Commissioners' Court, and the non-governmental Association of Suburban Mayors—are *knowingly* and *willingly* aiding and abetting the Defendant Board's disobedience of the *Right to Vote Law* of 1964 by continuing to appoint new members. The TUA's attempts to obtain their support have to date been met only with contempt.

XX.

No effective remedy at law is available to Plaintiff, the TUA, and the voters who reside within the Transit Tax District. Plaintiff has exhausted all the administrative remedies that Defendant Board was willing to provide, which was *none*. Plaintiff's attempt to resolve the controversy by non-judicial means, as under the Texas *Governmental Alternative Dispute Resolution Act*, was also unsuccessful because of Defendants' steadfast refusal to cooperate. Plaintiff has also exhausted the nonjudicial remedies available to him through Ch. 39 of the Texas Penal Code and 18 U.S.C. § 242, respectively, by submitting a proper complaint to the Criminal District Attorney of Bexar County and the local U.S. Attorney, as well as by petitioning the Civil Rights Division of the U.S. Department of Justice for assistance. All these efforts have to date been in vain.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays for the following relief:

1. A judgment under 28 U.S.C. § 2201 *declaring* that

- a. Secs. 501 and 502, Subch. K, Ch. 451, of the Texas Transportation Code (Exh. "A"), constitute a "state action" that unlawfully discriminates against a set of specific groups of United States citizens, in particular the qualified voters who reside within the State's several rapid transit tax districts, by depriving them of their constitutionally protected right to elect the respective governing board, and, therefore, violates

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§ 1 of the Fourteenth Amendment to the U.S. Constitution;

b. Secs. 501 and 502, Subch. K, Ch. 451, of the Texas Transportation Code, contravene the *Privileges and Immunities* Clause of the Fourteenth Amendment to the U.S. Constitution by *abridging* the affected U.S. citizens' fundamental "privilege" (or right) to elect the 11 members of the Transit Authority's Board of Trustees;

c. Secs. 501 and 502, Subch. K, Ch. 451, of the Texas Transportation Code contravene the *Due-Process-of-Law* Clause of the Fourteenth Amendment in that they *take*, without having afforded any process of law, from the eligible voters who reside within the Rapid Transit Tax District of San Antonio their "liberty" (or fundamental right), as United States citizens, to choose the 11 members of the Transit Board;

d. Secs. 501 and 502, Subch. K, Ch. 451, of the Texas Transportation Code contravene the *Equal-Protection-of-the-Laws* Clause of the Fourteenth Amendment in that they *deny* the eligible voters who reside within the Rapid Transit Tax District of San Antonio their fundamental right, under *Reynolds v. Sims*, to elect all 11 members of the Transit Board;

e. Defendant Board *violates* § 1 of the Fourteenth Amendment to the Federal Constitution by obeying the provisions of §§ 501 and 502, Subch. K, Ch. 451, of the Texas Transportation Code, and concurrently disobeying the *Right to Vote Law* of 1964, as established through *Reynolds v. Sims*, 377 U.S. 533 (1964), and subsequent af-firming decisions;

f. Defendant Board may lawfully disregard §§ 501 and 502, Subch. K, Ch. 451, of the Texas Transportation Code and should promptly take all necessary action to come into full compliance with the *Right to Vote Law* of 1964, *Reynolds v. Sims*, 377 U.S. 533 (1964), by subdividing the Rapid Transit Tax District into the appropriate number of precincts and calling an election as soon as practical; and

g. Defendants' adamant refusal to implement the *Right to Vote Law* of 1964, *Reynolds v. Sims*, 377 U.S. 533 (1964), has caused and is presently causing *irreparable harm* to Plaintiff, the members of the TUA who are eligible to vote, and all of the District's qualified voters, by preventing them from electing the 11 members of the Transit Board.

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2. A finding that Plaintiff's action benefited the general public in that it has caused the Defendant Board to implement the Federal *Right to Vote Law* of 1964.

3. A judgment awarding Plaintiff litigation costs, including any incurred attorney fees, in an amount that the Court may find appropriate.

4. Such other and further relief as the Court may find equitable.

Respectfully submitted,

Alfred E. Ehm

February 2, 2006

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170 Carousel Drive
San Antonio, Texas 78227-4712
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TRANSPORTATION CODE – MASS TRANSPORTATION

SUBCHAPTER K. BOARDS

§ 451.501. Board Membership

- (a) Except as provided by Subsection (b), a board is composed of:
 - (1) five members; plus
 - (2) the number of additional members determined under Subsection (c), (d), or (e).
- (b) The board of an authority created by an alternate municipality is composed of five members.
- (c) If less than 50 percent of the population of the principal county, excluding the population of the principal municipality, reside in the authority, the board has two additional members.
- (d) If ~~less than~~ 50 percent or more but less than 75 percent of the population of the principal county, excluding the population of the principal municipality, reside in the authority, the board has four additional members.
- (e) If 75 percent of the population of the principal county, excluding the population of the principal municipality, reside in the authority, the board has six additional members.
- (f) In this section and Section 451.502, "principal county" means the county in which not less than 51 percent of the territory of the principal municipality is located.
- (g) This section does not apply to the board of an authority described by Section 451.5021(a).

§ 451.502. Appointment of Members

- (a) The five board members under Section 451.501(a)(1) are appointed by the governing body of the principal municipality, except in an authority having a principal municipality with a population of more than 1.2 million, the five board members are appointed by the mayor of the principal municipality and are subject to confirmation by the governing body of the principal municipality.
- (b) In an authority created by an alternate municipality, the board members are appointed by the mayor of the alternate municipality and are subject to confirmation by the governing body of the alternate municipality.

Exhibit "A"

§ 451.502. Appointment of Members (Cont'd)

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(c) In an authority having two additional members, the additional members are appointed as follows:

(1) one member appointed by a panel composed of:

(A) the mayors of the municipalities in the authority, excluding the mayor of the principal municipality; and

(B) the county judges of the counties having unincorporated area in the authority, excluding the county judge of the principal county.

(d) In an authority having four additional members, the additional members are appointed as follows:

(1) two members appointed by a panel composed of:

(A) the mayors of the municipalities in the authority, excluding the mayor of the principal municipality; and

(B) the county judges of the counties having unincorporated area in the authority, excluding the county judge of the principal county; and

(2) two members appointed by the commissioners' court of the principal county.

(e) In an authority having six additional members, the additional members are appointed as follows:

(1) two members appointed by a panel composed of:

(A) the mayors of the municipalities in the authority, excluding the mayor of the principal municipality; and

(B) the county judges of the counties having unincorporated area in the authority, excluding the county judge of the principal county;

(2) three members appointed by the commissioners' court of the principal county; and

(3) one member, who serves as presiding officer of the board, appointed by a majority of the board.

(f) This section does not apply to the board of an authority described by Section 451.5021(a).