

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

FILED

2006 MAR 17 P 2:09

ALFRED E. EHM, *pro se*

Plaintiff

V.

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

Defendant

Civil Action: SA/06 CA 0103 RF

BRIEF IN SUPPORT OF "MOTION FOR CERTIFICATION AS CLASS-ACTION"

PLAINTIFF moves the Court to certify this suit a class-action pursuant to Fed.R.Civ.P. 23 and in support of his application would show as follows:

1. The Court should allow the Plaintiff to represent all of the registered voters who reside within the Metropolitan Rapid Transit Tax District of San Antonio, estimated to number approximately 850,000 individuals, because (1) all of them are materially interested, as plaintiffs, in the subject matter of this action, (2) the matter can apparently not be settled through other means than litigation, (3) all members of the group are similarly situated and affected, (4) the class is much too numerous to appear in person or through a personally selected representative, (5) the Court would prevent multiple and further litigation by making a complete decree between the parties, and (6) the Plaintiff in this suit will be able to adequately represent the interests of all the individuals who will be absent from the action, but whose rights will be materially affected by the outcome of this suit.

2. **SIZE OF CLASS:** The involved class of individuals, namely all the registered voters who reside within the Rapid Transit Tax District of San Antonio, is so large that individual suits would not be feasible. All members of this group possess a joint interest in the question to be adjudicated because all of them are deprived by a particular state action of their fundamental and constitutionally protected right to elect those who tax them. Plaintiff does not know the exact number of registered voters who reside within the RTTD and has no means to obtain that number. The *Express-News* stated on March 9, 2006, that on election day, March 7th, the number of properly registered voters within the County of Bexar was 872,040. Because the RTTD is almost identical to the County in size and shape, but the voters of several small enclave communities have exempted themselves from the Transit Tax District, the number of eligible voters who reside within the District is probably somewhat smaller than the number cited by the newspaper.

3. **COMMON LEGAL ISSUE:** The legal and factual questions are common to the entire class. The central legal question and probably the only one that the Court needs to decide is wheth-

Brief in Support of Plaintiff's "Motion for Certification as Class Action"**Page 2**

er or not §§ 501 and 502 of the Texas *Metropolitan Rapid Transit Authorities Act* constitute a "state action" that unjustifiably deprives the approximately 850,000 affected United States citizens of their fundamental and constitutionally protected right to elect the 11 individuals, who, in their capacity as the Transit Authority of San Antonio, levy a tax of $\frac{1}{2}$ and $\frac{3}{4}$ per cent, respectively, on them. No genuine issue of fact exists and the factual questions that do exist are of minor or no relevance.

4. TYPICAL CLAIM: The claim of the representative party, the Plaintiff, is typical of all 850,000 members of the class. Like all other members of this group, Plaintiff resides within the Transit Tax District, and pays a $\frac{1}{2}$ or $\frac{3}{4}$ per cent sales and use tax on every purchase that he makes, the rate being dependent upon the location of the vendor. (A part of this tax, the so-called ATTD component, clearly contravenes Art. VIII, § 1, of the Texas Constitution, which requires all taxes levied within the State to be *uniform* and *equal*.) Like every other member of the affected class, Plaintiff lacks any say over public mass-transportation policy within our County because he is denied the right to vote for the Board candidate of his choice. If the 11 members of the Board were required to stand for election, each candidate would be obliged to run for office on a particular platform, which arrangement would allow every voter to effectively influence the official actions of the individual for whom he voted in the end.

5. ADEQUATE REPRESENTATION: The representative party, the Plaintiff, desires and intends to properly protect the interests of the entire class and believes that he will be able to adequately represent the interests of all the approximately 850,000 individuals who comprise the class of RTTD voters.

Respectfully submitted,

Alfred E. Ehm

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