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

ALFRED E. EHM, *pro se*	)	
	)	
Plaintiff	)	
	)	
V.	)	Civil Action: SA 06 CA 0103 RF
	)	
BOARD OF TRUSTEES of the METRO-POLITAN RAPID TRANSIT AUTHO-RITY OF SAN ANTONIO	)	
	)	
Defendant	)	

BRIEF ON "RATIONAL-BASIS" ANALYSIS OF FRANCHISE-DENIAL

Plaintiff believes that an examination of the complained-of franchise-denial under the less stringent *Equal-Protection Standard* would show that *no* reasonable relation exists between the challenged exclusion and the envisioned state interest and respectfully submits the following points to the Court for its consideration:

1. The franchise denial implicit in § 502 of the Texas MRTAA contravenes several provisions of the U.S. Constitution, namely Sec. 4 of Article IV and all three clauses of § 1 of the Fourteenth Amendment. Through Art. IV, Sec. 4, the United States guarantee the citizens of every state "a Republican Form of Government." A *republican* form of government is generally defined as one "in which the laws of the community are made by their representatives, freely chosen by the people. ... [I]t is popular government; it is the voice of the people expressed through their representatives." "[The] distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies." *Duncan v. McCall*, 139 U.S. 449, 461, 11 S.Ct. 573, 577, 35 L.E. 219, 224 (1891).

2. Closely tied in with the British concept of *liberty*, actually its major component, is the fundamental principle that Englishmen, including those residing in the North-American colonies,

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can be taxed *only* by consent, meaning that they can be taxed only through representatives chosen by the local electors. When King Edward II. reconfirmed *Magna Carta* in 1297, in a compact called *Confirmatio cartarum*, he consented to the inclusion of the inchoate principle that taxation without representation is *unlawful*. The *Petition of Right* of 1628 provided that no one should be compelled to pay any tax "without common consent by act of parliament," for which reason the King could not unilaterally levy a tax on his subjects. The *Bill of Rights* of 1687 confirmed similarly that the monarch could not exact any money without consent of Parliament. The American colonies adopted this principle and based the movement for independence from Great Britain upon it. The traditional and accepted American position has consequently always been, and still is, that taxation is the function of "a representative body" only. The Defendant Board is *not* a representative body because it is appointed by two local, general purpose governments and a local, informal association of suburban town mayors on the basis of unwritten and fluctuating criteria. None of these three entities have currently a public mass-transit function or responsibility or contribute financially to the RTA's operation.

3. The denial of the affected citizens' right to vote effectuated through § 502 also violates the Privileges and Immunities Clause, the Equal Protection of the Laws Clause, and the Due Process of Law Clause of § 1 of the Fourteenth Amendment. However, because the Supreme Court prefers to rely on the Equal Protection Clause to rule on all claims brought under the Fourteenth Amendment, the other two clauses and the Guarantee Clause need not be invoked for the purpose of seeking relief.

4. According to *Kramer v. Union School District*, when a state statute infringes upon a right secured by the Federal Constitution, such as the fundamental and constitutionally protected right to vote, the trial court must determine "whether the exlusions are necessary to promote a compelling state interest." 395 U.S. 621, 628, 89 S.Ct. 1886, 1890, 23 L.Ed.2d 583, 590 (1968), *Dunn v. Blumstein*, 405 U.S. 330, 337, 92 S.Ct. 995, 1000, 31 L.Ed.2d 274, 281 (1972), *Bullock v. Carter*, 405 U.S. 134, 143, 92 S.Ct. 849, 856, 31 L.Ed.2d 92, 100 (1972). Even though the Supreme Court basically requires the application of the *Strict Equal-Protection Test* in such instances, a scrutiny under the well-known *Equal-Protection Standard* would probably lead to an equally satisfactory

result, because it would show that the averred state interest is not rational and that the exclusion is not reasonably related to that interest.

5. The *Equal-Protection Standard*, also called the *Rational-Basis Standard, Kramer*, 395 U.S. at 628, 89 S.Ct. at 1890, 23 L.Ed.2d at 590, requires the court to merely determine "whether the challenged exlusions are reasonably related to a permissible state interest." *Dunn*, 405 U.S. at 337, 92 S.Ct. at 1000, 31 L.Ed.2d at 281. In other words, the Court needs to do nothing more than decide whether the exclusion rests on a rational basis. To apply this test, the following six questions would have to be answered: (1) What does the challenged *exclusion* consist of? (2) Which particular *state interest* is the exlusion intended to protect? (3) What is the *nature* of this particular state interest? (4) Is this particular state interest *permissible* under the Fourteenth Amendment? (5) Does a *reasonably relationship* exist between the challenged exclusion and the asserted state interest?, and (6) Why is the relationship between the restriction and the permissible state interest *reasonable*? The major question is: How does the State as a whole benefit from the franchise denial? (The term *state* is defined as "a political community of free citizens occupying a territory of defined boundaries and organized under a government that is sanctioned and limited by a written constitution and established by the consent of the governed.")

6. No. 1. What does the challenged *exclusion* consist of? The challenged classification obviously constitutes in its direct effect a franchise denial in that it prevents a specific kind of groups of United States citizens, namely the eligible voters who reside within the State's several RTTDs, from exercising their fundamental and constitutionally protected right to elect those who tax them for the necessary public purpose of providing mass transit service within the district. Sec. 502 does not expressly prohibit the affected voters from electing their respective transit trustees, but simply provides for the selection of the authorized number of trustees by three separate groups of grand electors, none of whom are burdened with the official responsibility to provide mass-transit services to the people within their respective jurisdiction.

7. No. 2. To which particular *state interest* is the exlusion directly related? The *state interest* to which the exlusion supposedly directly relates is not stated anywhere in § 502, but might be mentioned in the legislative history of Subch. K of the Texas MRTAA, which document is not

accessible locally. The means employed to serve the unarticulated state interest are a statutory provision that in effect prevents nearly three million eligible Texas residents from electing the transit trustee of their choice.

8. No. 3. What is the *nature* of this particular state interest? Because the state interest that the Legislature wanted to serve by means of the franchise denial is not given in § 502, its *nature* is not known. The statute suggests that the Legislature considered it in the interest of the State to reject the *republican form of government* in regard to RTAs.

9. No. 4. Is this particular state interest *permissible* under the Fourteenth Amendment? Because the nature of the envisioned state interest is not known, a determination whether the same is *permissible* under the U.S. Constitution can not be made at this time.

10. No. 5. Does a *reasonably relation* exist between the challenged exclusion and the asserted state interest? Because the nature of the claimed state interest is not known, it is not possible to determine whether the challenged restriction is *reasonably related* to the state interest. It would appear that a reasonable relationship between the franchise-denial and the ostensible state interest does not exist and can not be formulated.

11. No. 6. Why is the relationship between the challenged restriction and the permissible state interest *reasonable*? Until the state interest is actually articulated by the proponents of the franchise denial and has been ruled permissible by the Court, it is not possible to determine whether its relationship to the complained of restriction is *reasonable*.

12. That no rational relationship exists between the denial of the right to vote and the ostensible state interest can be demonstrated through a logic-based analysis of the underlying argument. The relationship between the two sections is obviously one of *cause* and *effect*: "The State of Texas denies the citizens who reside within the several RTTDs their fundamental right to elect their respective transit board *because* it is in the interest of the State to do so." (The noun-phrase *in the interest of the State* means here something to the effect that "all the people who comprise Texas benefit from restrictions of this sort.") Rewritten in the required *if ... then* form, this statement asserts that, "*If* the State denies the citizens who reside within the several RTTDs their fundamental right to elect their respective transit board, *then* a certain State interest will be served," again mean-

ing that the franchise denial will benefit all the people of Texas.

13. A *material implication* is always untrue or false according to the truth-value table, *if* the conclusion is untrue or false. The *then*-part or conclusion of the given assertion— "all the people of Texas benefit from this and other legislatively mandated franchise denials"—*is false* be-cause the argument from which it was derived is *invalid*. The *categorical syllogism* from which this conclusion is taken appears to be as follows: (1) Denying a certain class of citizens a constitutionally protected civil right benefits the entire State. (2) The citizens' fundamental right to vote is a constitutionally protected civil right. (3) *Therefore*, denying a certain group of citizens their fundamental and constitutionally protected right to vote benefits the entire State. However, a syllogism's conclusion is always *false*, according to the truth-value table, *if* one of the premises is *false*. The major premise in this argument—that it is in the interest of the State of Texas to deny a certain class of citizens a fundamental civil right—is obviously *not true*, for which reason the syllogism's conclusion is *not true*.

14. It is, according to the U.S. Supreme Court, not the Plaintiff's but the Defendant's function to tell the Court what particular state interest the Legislature had in mind when it decided in 1973 to prevent the voters residing in the to-be-established RTTDs from electing their respective board, and, secondly, to show that advanced state interest is "permissible" under the Fourteenth Amendment and that the enacted restriction "reasonably relates" to that interest. "The heavy burden of justification for the restriction of a constitutionally protected right is on the State, and the pertinent statute will be closely scrutinized in light of the asserted purposes." *Dunn v. Blumstein*, 405 U.S. 330, 343, 92 S.Ct. 995, 1002, 31 L.Ed.2d 274, 282 (1972).

Respectfully submitted,

Alfred E. Ehm

April 24, 2006

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Certificate of Service

I hereby certify that I served a true and correct copy of the foregoing "Brief on 'Rational-Basis' Analysis of Franchise-Denial" upon Defendant by hand-delivering the same to the firm of Cox, Smith, Matthews, Inc., at 112 E. Pecan Street, Suite 1800, San Antonio, Texas 78205, this 24th day of April, 2006.

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