

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

FILED

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ALFRED E. EHM, *pro se*

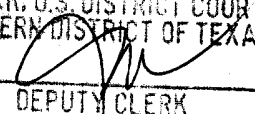
Plaintiff

V.

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

Defendant

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY  DEPUTY CLERK

Civil Action: SA 06 CA 0103 RF

MOTION FOR DECLARATORY JUDGMENT UNDER
§ 5 OF THE VOTING RIGHTS ACT OF 1965

PLAINTIFF MOVES THE COURT

- (1) To convene a three-judge tribunal under 42 U.S.C. § 1973c for the purpose of adjudicating whether the organizers of the Rapid Transit Tax District of San Antonio put in effect in late 1979 a change in voting that is covered by § 5 of the *Voting Rights Act of 1965* without first having obtained preclearance of that change from the Attorney General of the United States;
- (2) To declare under 42 U.S.C. § 1973c that the change from an elective board of supervisors of the public-transit operation to an appointive one in 1979 was and is subject to the preclearance requirement of § 5; and
- (3) To declare that the organizers of the RTTD transferred supervision and control of the public-transit operation from the elected Council of the City of San An-

Motion for Three-Judge Court**Page 2**

tonio to the appointed Board of Trustees of the District without having obtained the required Federal preclearance and that the current board declines to obtain such a preclearance;

and in support of his motion would SHOW THE COURT as follows:

1. Plaintiff became aware of the fact that the Transit Board sits in violation of § 5 of the *Voting Rights Act* through an item in the local newspaper. On Sept. 21, 2006, the *Express-News* reported that on the previous day the District Court had entered an order in *Rios et al. v. Bexar Metropolitan Water District*, No. SA-96-CA-335-OLG, requiring the board of directors of that local government agency to submit its proposal for the equalization of the District's seven voting precincts to the Attorney General of the United States by the end of January 2007. The present situation differs from that of BexarMet primarily in that the 850,000 qualified voters who reside within the Rapid Transit Tax District are prevented from electing the 11 members of the supervising board.

2. Sec. 5 of the *Voting Rights Act of 1965*, 42 U.S.C. § 1973c, requires the State and all its political subdivisions to obtain written permission from the Attorney General before they institute a new voting practice or procedure that would lead to *retrogression* in the position of racial and ethnic minorities with respect to their effective exercise of the elective franchise. When the County of Bexar, the City of San Antonio, and the small, independent municipalities organized the Rapid Transit Tax District in 1979, they substituted an appointed board for the transit operation's elected

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board of managers, *without* having first obtained the written permission from the Attorney General mandated by § 5 of the *Voting Rights Act*. By providing for an appointive VIA Board in place of the existing elective one, the organizers disfranchised not only all of the racial and ethnic minorities who then resided within the City of San Antonio, but also those who lived outside San Antonio and were now being taken into the newly established, County-wide RTTD. They, furthermore, disfranchised all the voters who were not protected by § 5 of the Act, but who make up almost one half of the electorate within the District.

3. Public transportation in San Antonio was for over 60 years continuously in the hands of private for-profit companies, beginning with the inauguration of horsecar service in 1878. In 1917 the S.A. Public Service Co., a subsidiary of a large national holding company, purchased the S.A. Traction Co. and operated it as its Traction Division. In 1942, when the City of San Antonio purchased the Public Service Co., the transit operation was sold to a group of local investors who operated it as the San Antonio Transit Co. In 1945, however, the municipality purchased the transit operation from its private owners anyway and made it an integral component of the City government. The transit operation thus became a genuine government entity and remained such for 35 years, at the end of which period the City transferred the bus operation's assets, employees, and responsibilities to the newly established RTTD.

4. Pursuant to the U.S. Supreme Court, the function of a three-judge district court convened under § 5 of the Act is merely to determine (1) whether § 5 covers the

Motion for Declaratory Judgment

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contested change in voting practice, (2) whether the approval requirements of § 5 were satisfied, and (3) if these requirements were not satisfied, whether a temporary remedy, if any, is appropriate. *Lopez et al. v. Monterrey County, Cal.*, 519 U.S. 9, 23, 117 S.Ct. 340, 349, 136 L.Ed.2d 273, 286 (1996). The temporary remedy sought is that the Court give back to the qualified RTTD voters who reside within the City of San Antonio their right to elect the 11 members of the Transit Board.

Respectfully submitted,

Alfred E. Ehm

October 24, 2006

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Certificate of Service

I hereby certify that I served a true and correct copy of the foregoing "Motion for Declaratory Judgment under § 5 of the *Voting Rights Act of 1965*" and of the proposed Declaratory Judgment upon Defendant by hand-delivering them to Mr. Howard P. Newton, Esq., at 112 East Pecan Street, Suite 1800, San Antonio 78205, on this 24th day of October, 2006 A.D.

Alfred E. Ehm

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

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

**DECLARATORY JUDGMENT UNDER
SEC. 5 OF THE VOTING RIGHTS ACT OF 1965**

ON PLAINTIFF'S MOTION for a declaratory judgment under § 5 of the *Voting Rights Act of 1965*, 42 U.S.C. § 1973c, the Court declares that

1. The change from an elective board of managers of the then existing public mass-transit operation, the Council of the City of San Antonio, to an appointive one in 1979, the Board of Trustees of the Rapid Transit Tax District of San Antonio, was subject to the preclearance requirement set out in § 5 of the *Voting Rights Act of 1965*, 42 U.S.C. § 1973c, which provides that every change in an existing voting practice or procedure requires the approval of the Attorney General of the United States; and
2. When the organizers of the RTTD transferred the supervision and control of the municipally-owned public-transit operation from the lawfully elected San Antonio

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City Council to an 11-member Board of Trustees of the District that is appointed by the City Council, the Commissioners' Court of the County of Bexar, and the nongovernmental Association of Suburban Mayors, respectively, they failed to obtain the preclearance mandated by § 5 of the Act, 42 U.S.C. § 1973c, and the current board of managers, the Defendant, continues to decline to obtain the required preclearance from the Attorney General of the United States.

Signed this _____ day of _____, 2006 A.D.

W. Royal Furgeson, Jr.
United States District Judge