



Stanart at 201 Caroline, Suite 460, Houston, Texas 77002. Defendant Don Sumners, Harris County Tax Assessor Collector may be served by delivering a copy of the summons and of the complaint to Don Sumners at 1001 Preston, Houston, Texas 77002.

## **II. Jurisdiction and Venue**

3. The Court has federal-question jurisdiction over this action, pursuant to 28 U.S.C. § 1331, because Plaintiff's claims arise under the Constitution and laws of the United States, including the Fourteenth Amendment to the United States Constitution, Section 1983 of the Civil Rights Act, 42 U.S.C. § 1983, Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and 28 U.S.C. § 1343.

4. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1) and 1391(b)(2).

## **III. Introduction**

5. This dispute arises from Defendants' use of incorrect election boundaries when conducting primary elections for HCDE trustee positions 4 and 6. The boundaries used, which were adopted in 2001 ("the 2001 boundaries"), predate the 2010 census and have been declared unconstitutional by the Honorable Judge Vanessa Gilmore in *Rodriguez v. Harris Cnty.*, No. 4:11-CV-02907 (S.D. Tex. 2011). Judge Gilmore found that the 2001 boundaries violate the Fourteenth Amendment's "one-person, one-vote" requirement and ordered the use of interim boundaries in connection with the 2012 primary elections for county commissioners' seats.

6. As explained below, the precinct boundaries for county commissioner and HCDE trustee positions are the same. Yet, while the Defendants used the court-ordered interim boundaries when holding primary elections for county commissioner seats, it is undisputed that the Defendants failed to use the interim boundaries when conducting HCDE's primary election

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applicable chapter as that chapter existed on that date and under state law generally applicable to school districts that does not conflict with that chapter.”).

and instead used the 2001 boundaries that Judge Gilmore previously declared unconstitutional. For the reasons explained below, HCDE contends that the use of the 2001 boundaries for HCDE's primary election was unconstitutional; requests that the primary election and related run-off election be declared void; and requests that the Court order a special election to remedy the violation.

#### **IV. Background and Facts**

7. Because Harris County has a population in excess of 350,000, the Board of Trustees of HCDE consists of seven members, three of whom are elected from the county at large and one from each of the four commissioner precincts. *See* TEX. EDUC. CODE § 17.02(b). HCDE trustees serve six-year terms. *Id.* HCDE trustees are elected at the general election for state and county officers, and the office of county school trustee is considered a county office for purposes of nomination and election for the commencement of the term of office. *See* TEX. EDUC. CODE § 17.031.

8. Defendant Harris County is responsible for conducting elections for HCDE trustees because the office of county school trustee is a county office,. As part of that duty, Defendant Harris County is responsible for notifying the Harris County Tax Assessor Collector of new county commissioner precinct boundary lines as required by Texas Election Code § 42.0615, conducting all other aspects of the HCDE trustee elections, and seeking preclearance under Section 5 of the Voting Rights Act of 1965 when required.

9. The following three HCDE Trustee positions were up for election in 2012, with primary elections held in all three positions on May 29, 2012:

- a. Position 3, which is at-large, in which Democrats David Rosen and Diane Trautman and Republicans Richard Johnson and Michael Wolfe ran;

- b. Position 4, which is precinct-based and the boundaries of which corresponds to Harris County commissioner precinct 3, in which Democrat Sylvia Mintz and Republicans Ray Garcia and Kay Smith ran; and
- c. Position 6, which is precinct-based and the boundaries of which corresponds to Harris County commissioner precinct 1, in which Democrats Reagan Flowers, Jarvis Johnson, and Erica Lee and Republican JuLurette Bartlett-Pack ran.

10. Due to the 2010 census, Harris County proposed a redistricting plan for the Harris County commissioner precincts for the 2012 election. Harris County's revised commissioner precincts were challenged in the U.S. District Court for the Southern District of Texas. The plaintiffs alleged violations of the Equal Protection Clause, Section 2 of the Voting Rights Act, and Section 5 of the Voting Rights Act. *See Exhibit A, Rodriguez v. Harris Cnty.*, No. 4:11-CV-02907 (S.D. Tex. 2011). Judge Gilmore ordered that a Court-drawn interim plan detailing new commissioner precinct boundaries be used for the 2012 election, as she found that the use of the existing commissioner precinct boundaries drawn in 2001 to facilitate the 2012 election was unconstitutional. *Exhibit A, Rodriguez v. Harris Cnty.*, No. 4:11-CV-02907 (S.D. Tex. Nov. 19, 2011) (order directing county to adopt interim redistricting plan); *Exhibit B, Rodriguez v. Harris Cnty.*, No. 4:11-CV-02907 (S.D. Tex. Nov. 23, 2011) (order substituting interim redistricting plan).

11. The court-ordered commissioner precinct boundaries were used for the 2012 commissioner elections. However, despite being aware of the new commissioner precinct boundaries, the Harris County Tax Assessor Collector failed to update the boundaries for the HCDE trustee precinct-based elections (i.e., HCDE trustee positions 4 and 6). *See Exhibit C,*

*Letter from Don Sumners post-marked July 16, 2012.* Rather, Defendants used the previously declared unconstitutional 2001 commissioner precinct boundaries for the 2012 HCDE trustee primary elections for positions 4 and 6. *Id.* There is no dispute that the incorrect boundary lines were used for the HCDE trustee elections for positions 4 and 6.

12. In the position 4 trustee election, Republican Kay Smith defeated Ray Garcia. Democratic candidate Sylvia Mintz was unopposed. In the position 6 trustee election, Republican JuLette Bartlett-Pack was unopposed and a run-off is scheduled to be held between Democrats Jarvis Johnson and Erica Lee on July 31, 2012. Mail-in ballots for the run-off election have already been mailed, using the unconstitutional 2001 commissioner precinct boundary lines. On information and belief, County Clerk Stan Stanart mailed a second round of mail-in ballots using the court-ordered interim commissioner precinct boundary lines. Additionally, Harris County will use the court-ordered interim commissioner precinct boundaries for early voting and in-person voting on July 31, 2012 for the run-off election. *See Exhibit C, Letter from Don Sumners post-marked July 16, 2012* (Don Sumners affirmatively stating, “The correct boundary lines will be used for the Democratic Primary Run-off Election.”). Harris County did not obtain preclearance under Section 5 of the Voting Rights Act for the court-ordered interim commissioner precinct boundary lines for the July 31, 2012 run-off election.

13. With respect to HCDE trustee position 4, 34,154 registered voters were allowed to vote who should not have been given the opportunity to vote in that trustee race. *See Exhibit D, Official Cumulative Report for May 29, 2012 primary elections* (comparing 524,138 registered voters for the HCDE trustee position 4 position to 489,984 registered voters for commissioner precinct 3). Consequently, 15.35% of the registered voters for the HCDE trustee position 4 election should not have been afforded the opportunity to vote in the primary election. With

respect to HCDE trustee position 6, 27,352 registered voters were denied the opportunity to vote in the correct trustee race. *See Exhibit D, Official Cumulative Report for May 29, 2012 primary elections* (comparing 462,549 registered voters for the HCDE trustee position 6 position to 489,901 registered voters for commissioner precinct 1). Therefore, 17.91% of registered voters in HCDE trustee position 6/precinct 1 were denied the opportunity to vote in the HCDE trustee position 6 primary election.

### **V. Declaratory Judgment**

14. HCDE respectfully requests that the Court declare the May 29, 2012 primary election for HCDE trustee positions 4 and 6 and the July 31, 2012 Democratic run-off election for HCDE trustee position 6 based on the May 29, 2012 primary election void. HCDE further requests that the Court order a special election to be held in conjunction with the general election in November 2012 for HCDE trustee positions 4 and 6, with candidates from all parties running against one another, using the commissioner precinct boundaries ordered by Honorable Judge Vanessa Gilmore on November 19 and 23, 2011.

A. May 29, 2012 primary election was unconstitutional under the Fourteenth Amendment to the U.S. Constitution and the “one person, one vote” principle of *Reynolds v. Sims* and its progeny.

15. The Fourteenth Amendment to the U.S. Constitution requires that, for purposes of elections, governmental districts must be apportioned to have equal populations to ensure that all votes count equally, giving rise to the well-established principle of “one person, one vote.” When Harris County’s proposed redistricting plan was challenged, U.S. District Court Judge Vanessa Gilmore found that using the existing commissioner precinct boundaries drawn in 2001 to facilitate the 2012 election violated this principle and was constitutionally impermissible. *Exhibit A, Rodriguez v. Harris Cnty.*, No. 4:11-CV-02907 (S.D. Tex. Nov. 19, 2011) (order

directing county to adopt interim redistricting plan). Judge Gilmore found that such use was unconstitutional “because the boundaries would result in a total population deviation [across all four commissioner precincts] of more than 25%, well outside of constitutionally permissible limits.” *Exhibit A, Rodriguez v. Harris Cnty.*, No. 4:11-CV-02907 (S.D. Tex. Nov. 19, 2011).

16. After finding the 2001 commissioner precinct boundaries unconstitutional for the 2012 election, Judge Gilmore ordered that a Court-drawn interim plan detailing new commissioner precinct boundaries be used for the 2012 election. *Exhibit A, Rodriguez v. Harris Cnty.*, No. 4:11-CV-02907 (S.D. Tex. Nov. 19, 2011) (order directing county to adopt interim redistricting plan); *Exhibit B, Rodriguez v. Harris Cnty.*, No. 4:11-CV-02907 (S.D. Tex. Nov. 23, 2011) (order substituting interim redistricting plan).

17. Harris County, however, failed to update the boundaries for the HCDE trustee precinct-based elections and used the unconstitutional 2001 commissioner precinct boundaries for the 2012 HCDE trustee primary elections. By using the 2001 unconstitutional commissioner precinct boundaries for the HCDE trustee elections, Harris County allowed some voters’ votes to be over-weighted and some to be diluted. *See supra* ¶ 13 (detailing the disparities between the number of registered voters based on the 2001 commissioner precinct boundaries and the number of registered voters based on the court-ordered commissioner precinct boundaries for the 2012 election).

18. Moreover, because Harris County, acting under color of state law, failed to hold the 2012 HCDE trustee primary elections for positions 4 and 6 within constitutionally permissible boundaries, thereby depriving voters of rights secured to them by the U.S. Constitution, Harris County has also violated section 1983 of the Civil Rights Act. 42 U.S.C. § 1983.

B. Alternatively, the Court should invalidate the July 31, 2012 run-off election because the County did not seek preclearance for the court-ordered interim lines for the HCDE trustee elections.

19. Although HCDE believes that Judge Gilmore's order applied with equal force to the HCDE trustee elections as it did to the commissioner elections, if it is the County's position that it did not so apply, then the County violated Section 5 of the Voting Rights Act of 1965 ("Section 5") by failing to obtain preclearance. It is within a district court's discretion to invalidate an improper election and order a new election if an entity fails to obtain preclearance on changes affecting the election. The Court should exercise its discretion to invalidate the July 31, 2012 run-off election, including ordering that the votes in the run-off election not be counted and ordering a special election to occur on the November 2012 general election date in conformity with the court-mandated precinct lines.

C. A special election is the appropriate remedy.

20. Without the Court's intervention, the results of the general election will be the product of an unconstitutional primary election. Thus, it is imperative that the Court take immediate corrective action to remedy the continuing constitutional violation. The most appropriate means of rectifying Harris County's failures is for the Court to invalidate the May 29, 2012 primary election (and the resulting July 31, 2012 run-off election) and order a special election.

21. If a substantial number of voters are affected by the constitutional violation, a court should invalidate the unconstitutional election and order a special election. As a result of Harris County's failures, thousands of voters were denied the right to vote in the correct precinct in HCDE's trustee primary and thousands of voters who were not qualified to vote in a given precinct were given the opportunity to vote. In HCDE trustee position 6, 27,352 registered

voters were denied the opportunity to vote in the correct trustee race. *See Exhibit D, Official Cumulative Report for May 29, 2012 primary elections* (comparing 462,549 registered voters for the HCDE trustee position 6 position to 489,901 registered voters for commissioner precinct 1). In HCDE trustee position 4, 34,154 registered voters were allowed to vote who should not have been given the opportunity to vote in that trustee race. *See Exhibit D, Official Cumulative Report for May 29, 2012 primary elections* (comparing 524,138 registered voters for the HCDE trustee position 4 position to 489,984 registered voters for commissioner precinct 3).

22. The length of an HCDE trustee's term also favors invalidation of the May 29, 2012 primary election and the ordering of a special election. Section 17.02(b) of the Texas Education Code provides that HCDE trustees shall serve six-year terms. TEX. EDUC. CODE § 17.02(b). Because HCDE trustees hold office for six years, if the Court does not invalidate the primary election and order a special election, the integrity of HCDE's Board of Trustees will be tainted by this constitutional violation for years to come.

23. Finally, the proximity of the general election and feasibility of the proposed remedy weigh in favor of the invalidation of the primary election and ordering of a special election. The Court has time to remedy the constitutional violation and order the special election to be held in conjunction with the November 6, 2012 general election in accordance with the deadlines imposed by the Texas Election Code. Further, the special election is unlikely to reduce voter turnout given the "historically high" voter turnout for presidential elections.

## **VI. Injunctive Relief**

24. In addition to declaratory relief, due to the exigent circumstances associated with holding a special election on the November general election date and the deadlines imposed by the Texas Election Code, HCDE respectfully requests that the Court enjoin Harris County from

proceeding with the general election of HCDE trustees based on the unconstitutional primary and run-off and order Harris County to hold a special election for HCDE trustee positions 4 and 6. If the general election is allowed to proceed in November based on the results of the unconstitutional primary election and/or the improper run-off election, the general election would itself be unconstitutional and improper. Given the proximity of the general election and its associated deadlines, time is of the essence in resolving this matter. Therefore, HCDE requests an immediate scheduling conference for the purpose of scheduling a preliminary hearing and any necessary subsequent hearings.

#### **VII. Prayer**

25. HCDE requests an immediate scheduling conference for the purpose of scheduling a preliminary hearing and any necessary subsequent hearings. HCDE further respectfully requests that the Court:

- a. enjoin Harris County from proceeding with the general election of HCDE trustees based on the unconstitutional primary and run-off and order Harris County to hold a special election for HCDE trustee positions 4 and 6;
- b. declare the May 29, 2012 primary election for HCDE Trustee Positions 4 and 6 and the July 31, 2012 Democratic run-off election for HCDE Trustee Position 6 based on the May 29, 2012 primary election void;
- c. order a special election to be held in conjunction with the general election in November 2012 for HCDE Trustee Positions 4 and 6, with candidates from all parties running against one another, using the commissioner precinct boundaries ordered by Judge Vanessa Gilmore on November 19 and 23, 2011;
- d. order Harris County to seek preclearance under Section 5 of the Voting Rights

Act of 1965 regarding use of the court-ordered interim commissioner precinct boundary lines and the voting procedures set forth in this Court's Order, if necessary;

- e. order that a schedule be used for the special election addressing the following deadlines:
- deadline for open filing for HCDE Trustee Positions 4 and 6 candidates, including write-in candidates, to declare candidacy and for independent candidates to file petitions;
  - deadline for the Harris County Clerk to determine ballot position for candidates for the November 2012 special election;
  - November 6, 2012, the date of the general election and the special election; and
  - deadline for the Harris County Commissioner's Court to canvass the results of the special election.

HCDE also respectfully requests that the Court order judgment against Harris County for reasonable attorneys' fees, costs of court; and all other relief the Court deems appropriate.

Respectfully submitted,

ROGERS, MORRIS & GROVER, L.L.P.



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