

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NORTHWEST AUSTIN MUNICIPAL
UTILITY DISTRICT NUMBER ONE,

Plaintiff,

vs.

ALBERTO GONZALES,
ATTORNEY GENERAL OF THE
UNITED STATES,

Defendant.

§
§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 1:06-cv-01384-PLF

Three-judge court (PLF, DST, EGS)

ANSWER OF DIAZ INTERVENORS

NOW COME Lisa Diaz, David Diaz and Gabriel Diaz, Defendant-Intervenors (“Diaz Intervenors”) in the above-captioned action, and answer Plaintiffs’ Complaint as follows:

AFFIRMATIVE DEFENSES

Plaintiff has failed to state a claim on which relief can be granted under 42 U.S.C. § 1973b. Furthermore, Plaintiff lacks standing to sue under 42 U.S.C. § 1973b.

AND NOW, in response to the specific allegations of Plaintiffs’ Complaint, Diaz Intervenors respond as follows:

1. Diaz Intervenors admit that Plaintiff NW Austin Municipal Utility District Number One seeks to bailout from coverage under the preclearance requirements of §5 of the voting Rights Act, 42 U.S.C. §1973c, or, in the alternative, seeks a declaratory judgment that continued application of §5 is unconstitutional. Diaz Intervenors deny that Plaintiff is entitled to any relief on its claims.

2. Diaz Intervenors admit that Plaintiff municipal utility district, as an entity created under Texas Constitution article XVI, section 59, is a political subdivision of the State of Texas. Diaz Intervenors deny that Plaintiff is a political subdivision as that term is defined by the Voting Rights Act of 1965, 42 U.S.C. 19731 (c)(2).
3. Diaz Intervenors admit the allegations contained in paragraph 3.
4. Diaz Intervenors deny that this court has jurisdiction pursuant to 42 U.S.C. §§ 1973b and 19731.
5. Diaz Intervenors admit that Plaintiff requests the appointment of a three-judge panel to hear and resolve its complaint and that the convening of a three-judge panel is appropriate under 42 U.S.C. §1973b(a)(5) and 28 U.S.C. §2284(a).
6. Diaz Intervenors admit the allegations in the first sentence of paragraph 6. Diaz Intervenors deny that Plaintiff has long been considered a political subdivision under the Voting Rights Act. Diaz Intervenors deny for lack of sufficient information to justify a belief therein the remaining allegations in paragraph 6.
7. Diaz Intervenors admit that Plaintiff seeks to terminate its obligation under Section 5 of the Voting Rights Act to seek preclearance of voting changes in the future. Diaz Intervenors deny for lack of sufficient information to justify a belief therein the remaining allegations in paragraph 7. Diaz Intervenors aver that Section 5 is constitutional and necessary.
8. With respect to the allegations contained in paragraph 8, Diaz Intervenors admit that Texas is covered by Section 5 of the Voting Rights Act. Diaz Intervenors deny the remaining allegations in paragraph 8, because they do not accurately describe the timing

of Section 5 coverage in Texas or the mechanism by which Texas became covered by Section 5.

9. With respect to the allegations contained in paragraph 9, Diaz Intervenors admit that on July 27, 2006 President Bush signed into the law the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006. Diaz Intervenors deny the remaining allegations in paragraph 9.
10. Diaz Intervenors deny for lack of sufficient information to justify a belief therein the allegation that Plaintiff did not exist at the time that Texas was designated a covered jurisdiction under § 5 and has never been found to violate voting rights. Diaz Intervenors deny the remaining allegations contained in paragraph 10.
11. With respect to the allegations contained in the first sentence of paragraph 11, Diaz Intervenors admit that Section 5 of the Voting Rights Act requires Texas and its political subunits to obtain preclearance from either the Attorney General or the U.S. District Court for the District of Columbia for changes in voting practices and procedures. Diaz Intervenors deny the remaining allegations in paragraph 11.
12. Diaz Intervenors deny the allegations contained in paragraph 12.
13. Diaz Intervenors deny the allegations contained in paragraph 13.
14. Diaz Intervenors admit that the Voting Rights Act permits eligible political subdivisions to file an action in the U.S. District Court for the District of Columbia seeking to bail out from coverage under Section 5. Diaz Intervenors deny the remaining allegations contained in paragraph 14.

15. Diaz Intervenors deny for lack of sufficient information to justify a belief therein the allegations contained in paragraph 15.
16. Diaz Intervenors deny for lack of sufficient information to justify a belief therein the allegations contained in paragraph 16.
17. Diaz Intervenors deny for lack of sufficient information to justify a belief therein the allegations contained in paragraph 17.
18. Diaz Intervenors deny the allegations contained in paragraph 18.
19. Diaz Intervenors deny the allegations contained in paragraph 19.
20. Diaz Intervenors deny for lack of sufficient information to justify a belief therein the allegations contained in the third and fourth sentences in paragraph 20. Diaz Intervenors deny the remaining allegations contained in paragraph 20.
21. Diaz Intervenors deny the allegations contained in paragraph 21.
22. Diaz Intervenors deny the allegations contained in paragraph 22.
23. Diaz Intervenors admit the allegations contained in the first and second sentences of paragraph 23. Diaz Intervenors deny the allegations contained in the third and fourth sentences of paragraph 23.
24. Diaz Intervenors deny the allegations contained in paragraph 24.
25. Diaz Intervenors deny for lack of sufficient information to justify a belief therein the allegations contained in the first sentence of paragraph 25. Diaz Intervenors deny the allegations contained in the second and third sentences of paragraph 25.
26. Diaz Intervenors deny the allegations contained in paragraph 26.

In response to the Prayer for Relief contained in Plaintiff's complaint, Diaz Intervenors respond as follows:

Diaz Intervenors deny that Plaintiff is entitled to a declaratory judgment that it has met the bailout requirements of Section 4(a) of the Voting Rights Act. Diaz Intervenors deny that the Plaintiff is entitled to a declaratory judgment that the preclearance requirements of Section 5 of the Voting Rights Act no longer apply to Plaintiff. Diaz Intervenors deny that the Plaintiff is entitled to a declaratory judgment that Section 5 of the Voting Rights Act is unconstitutional. Diaz Intervenors deny that the Plaintiff is entitled to any relief.

Any and all allegations not specifically admitted herein are denied.

REQUEST FOR ATTORNEYS FEES

Pursuant to 42 U.S.C. 1973l(e) and Fed. R. Civ. P. 54, Diaz Intervenors request that the Court adjudge all costs against Plaintiff, including reasonable attorneys fees and expenses.

DATED: November 6, 2006

Respectfully submitted,
MEXICAN AMERICAN LEGAL DEFENSE &
AND EDUCATIONAL FUND

BY: /s/ Nina Perales
NINA PERALES
Application for Admission Pending
Texas State Bar No. 240054046
110 Broadway, Suite 300
San Antonio, Texas 78205
(210) 224-5476 (telephone)
(210) 224-5382 (facsimile)
nperales@maldef.org

BY: /s/ Joseph E. Sandler
JOSEPH E. SANDLER
D.C Bar # 255919
Sandler Reiff & Young PC
50 E St SE # 300
Washington, D.C. 20003
Tel: (202) 479 1111
Fax (202) 479-1115
sandler@sandlerreiff.com

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of November, I served a true and correct copy of the above document on all counsel of record by sending a copy via electronic mail and first-class mail, postage prepaid, addressed to all of the counsel listed below:

Gregory S. Coleman, Esq.
Christian T. Ward, Esq.
Weil, Gotshal & Manges LLP
8911 Capital of Texas Highway
Suite 1350
Austin, TX 78759
greg.coleman@weil.com
chris.ward@weil.com

Ferdose al-Taie, Esq.
Weil, Gotshal & Manges LLP
1300 Eye Street, NW
Washington, D.C. 20005
ferdose.al-taie@weil.com

Counsel for Plaintiff

Erik Scott Jaffe, Esq.
5101 34th Street, NW
Washington, DC 20008-2015
jaffe@esjpc.com

T. Christian Herren Jr.
Sarah E. Harrington
Christy A. McCormick
Civil Rights Division
United States Department of Justice
Room 7254 - NWB
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530
chris.herren@usdoj.gov
sarah.harrington@usdoj.gov
christy.mccormick@usdoj.gov

Counsel for Alberto R. Gonzalez

