



4. Defendant has not submitted the 2009 voting changes for preclearance as required under Section 5 of the Voting Rights Act. Elections were held under the unprecleared election rules for the City of Hondo and additional elections pursuant to these unprecleared election rules are next scheduled for July, 2009

5. Plaintiffs seek to enjoin the Defendant and their successors from conducting elections pursuant to the unprecleared 2009 election practices and seek to set aside the results of the illegal election conducted on May 9, 2009.

#### **JURISDICTION**

6. Jurisdiction of this Court is invoked pursuant to 42 U.S.C. §1973c, 28 U.S.C. §1343(3) and (4), and 28 U.S.C. § 2201.

#### **PARTIES**

7. Plaintiffs, ODILIA GARCIA, RICARDO BENAVIDES and RAQUEL G. MORIN, are citizens, residents and voters of the City of Hondo, Texas. Plaintiffs GARCIA, BENAVIDES and MORIN participated in the May 9, 2009 Hondo city elections. Plaintiff MORIN is a Spanish speaking voter and makes use of bilingual election material.

8. Defendant, CITY OF HONDO, TEXAS is a political subdivision of the State of Texas. As a political subdivision, organized and existing pursuant to the laws of the State of Texas. As a political subdivision of the State of Texas, HONDO is subject to the requirements of Section 5 of the Voting Rights Act. The CITY OF HONDO, TEXAS, may be served by service upon the City Manager, Robert T. Herrera, at 1600 Ave. M Hondo, Texas 78861.

9. At all times relevant hereto, Defendant was and has been acting under the color of

statutes, ordinances, regulations, customs and usages of the City of Hondo and the State of Texas.

### **STATEMENT OF FACTS**

10. In November of 1975, the Voting Rights Act of 1965 was amended and extended to cover the State of Texas. State political subdivisions covered by the Act must comply with certain specified procedures. Among those procedures is the requirement that all qualifications, prerequisites, standards, practices or procedures with respect to voting different from those in force and effect on November 1, 1972, must be determined, either by the United States Attorney General or a United States District Court for the District of Columbia, not to have the purpose or effect of denying or abridging the right to vote on account of race, color or membership in a language minority group.

11. On May 12, 2007, the City of Hondo adopted its current City Charter. The Charter for the first time in the history of the City of Hondo, provided for Recall of council members. (City Charter, Sections 6.07-6.12) Section 6.09 specifically set out the form of a recall ballot:

**“Ballots used in recall elections shall read as follows: ‘SHALL (name of person or persons) BE REMOVED FROM THE CITY COUNCIL BY RECALL?’ Below such question there shall be printed the following as to each person named:**

**‘FOR REMOVAL OF (name of person.)’  
‘AGAINST REMOVAL OF (name of person.)’”**

(emphais added)

12. The Charter also provides for the requirements for the petition form. Section 6.07 of the Charter requires that:

**“The petition shall be signed and verified in the manner required for an initiative petition [Sec. 6.03], shall contain a general statement of the grounds upon which the removal is sought and one to the signers of each**

petition paper shall make an affidavit that the statements made therein are true.”

13. The 2007 City of Hondo, City Charter was approved and precleared by the United States Department of Justice as required by Section 5 of the Voting Rights Act.

14. In May of 2008 the City of Hondo conducted city council elections and three Mexican American council member were elected to the City council. The voting in the 2008 election was racially polarized. The 2008 election resulted in a clear majority of the council in the hands of the Mexican American council members.

15. In early December of 2008, an effort to recall all three of the Mexican American council members was initiated by Anglo voters of Hondo. After securing the necessary signatures on the recall petition, the Anglo voters presented the petition to the City Secretary. Although, the petition failed to meet the requirements of Section 6.07 and failed to comply with the petition form requirements contained in Section 6.03 of the Charter, the City Secretary certified the petition and presented it to the City Council. After the City Secretary certified the petition to the Council, the City of Hondo City Council performed its ministerial duty and called for the recall election as required by the Charter and State law. By certifying the validity of the petition although it failed to comply with the Charter’s requirements for a valid petition, the City of Hondo altered election practices. This change in voting procedures has not be submitted or precleared as required by the Voting Rights Act.

16. The City Secretary conducted the 2009 election.

17. Instead of using the ballot form specifically required by the City’s charter requiring a vote on each council member to be recalled, however, the City of Hondo instead lumped the three council-members together, in a single for or against vote, and

deprived the voters of Hondo the choice of voting on each council member separately as required by the charter.

18. The City of Hondo conducted the May 9, 2009 recall election using the unprecleared ballot in contravention of its own precleared charter provision. Such election is void as a matter of law.

19. Moreover, the 2009 recall election was conducted jointly with a Hondo Independent School District election. The boundaries for the City of Hondo and the Hondo Independent School District are not co-terminus. Yet, voter lists were not segregated and upon information and belief, it appears that some Anglo residents of the School District, who do not reside within the City of Hondo, may have been given city election ballots and were allowed to cast votes in the City recall election. The City of Hondo did not preclear the conduct of a joint election with the School District.

20. In addition, the City used a Spanish translation for "removal" from office that is incorrect or at best confusing. Spanish language voters were asked to vote in favor of "revocar" or against "revocar" with regard to the recall petition. "Revocar" is a technical legal term indicating a repeal or to revoke, thus it could more readily be understood to apply to the petition rather than the office holder. On the other hand, English language voters were clearly asked to vote for or against "removal" of the city council members, with regard to the recall petition. This Spanish language voting material has never been submitted, much less approved in compliance with Section 5 of the Voting Rights Act.

21. The City of Hondo continues to enforce the unprecleared election change when on May 12, 2009 the city canvassed the vote of the recall election and removed from office the three Mexican American council members that were the subject of the recall.

22. Moreover, on May 15, 2009, a recount requested by one of the recalled councilmembers was held and the vote total was modified, but the end result remained the same.

23. Finally, on May 12, 2009 the City of Hondo set the election to fill the vacancies created by the recall in July of 2009. Yet, the Texas election code clearly requires that the uniform election dates set out in state statute that may be used for municipal elections. The next uniform election date would be the first Tuesday after the first Monday in November, 2009. (See: §41.001, Texas Election Code) The use of a July date to fill the vacancies has not been submitted nor approved in compliance with Section 5, of the Voting Rights Act.

24. The changes in the petition requirements, the ballot form, the Spanish language translation of "removal" and the selection of an election date that is not one of the Texas uniform election dates are changes affecting voting pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Based on information and belief, Defendants have failed to submit those changes for preclearance review by the United States Attorney General or file a lawsuit in the District of Columbia to seek preclearance of the changes adopted and implemented.

25. With full knowledge of and in spite of the total absence of compliance with Section 5 of the Voting Rights Act, the Defendant has conducted its 2009 recall election and begun the process for filling the vacancies resulting from that illegal election.

#### **CAUSE OF ACTION**

26. The allegations contained in paragraphs 1 through 25 are alleged as if fully set forth herein.

27. Plaintiffs' cause of action arises under the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c. Since the Defendants have failed to secure preclearance of the election, the administration of election procedures or the conduct of election pursuant to those changes, the election is void. The implementation of the changes affecting voting set forth herein and above without Section 5 preclearance violates the rights of Plaintiffs as secured by Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

28. This is also an action for declaratory judgment and preliminary and permanent injunctive relief instituted pursuant to 42 U.S.C. § 1973c and 28 U.S.C. § 2001. Plaintiffs seek a declaration that the actions of the Defendants in conducting the election violate their rights as secured by the Voting Rights Act and that the election conducted pursuant to those unprecleared election provisions is void and should be set aside. Plaintiffs seek the Injunction of any further implementation of unprecleared election practices and provisions unless or until such changes receive the necessary approval as required by Section 5 of the Voting Rights Act.

29. Plaintiffs request that pursuant to 42 U.S.C. § 1973c a three-judge court be convened to hear this cause.

#### **BASIS FOR EQUITABLE RELIEF**

30. Plaintiffs have no plain, adequate or complete remedy at law to redress the wrongs alleged herein and this suit for declaratory judgment and injunctive relief is their only means of securing adequate redress from Defendant's unlawful practices.

31. Plaintiffs will continue to suffer irreparable injury from Defendant's intentional acts, policies, and practices set forth herein unless enjoined by this Court.

**PRAYER**

Plaintiffs respectfully pray that this Court enter Judgment granting Plaintiffs:

- A. A declaratory judgment that Defendant's actions conducting, preparing to administer or conduct elections, without Section 5 preclearance, violate the rights of Plaintiff as secured by the Voting Rights Act, 42 U.S.C. §1973c;
- B. Preliminary and permanent injunctive relief requiring Defendant, its successors in office, agents, employees, attorneys and those persons acting in concert with it and/or at its discretion to reinstate the illegally removed city council members and enjoin it from conducting any election to fill the positions held by said council members, and to begin the process for a new recall election conducted pursuant to precleared provisions of the city charter.
- C. An order requiring Defendants to comply with Section 5 preclearance requirements of the Voting Rights Act;
- E. The costs of this suit and reasonable attorneys fees;
- F. An order of this Court retaining jurisdiction over this matter until all Defendants have complied with all orders and mandates of this Court; and
- G. Such other and further relief as the Court may deem just and proper.

DATED: May 18, 2009

Respectfully Submitted,

LAW OFFICE OF JOSE GARZA  
7414 Robin Rest Dr.  
San Antonio, Texas 78209  
210-392-2856

By:

  
JOSE GARZA

Attorney for the Plaintiffs