

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

UNITED STATES OF AMERICA,	§	
Plaintiff	§	
	§	
and	§	
	§	
GI FORUM and LULAC,	§	Civil Action No. 6:71-CV-5281
Plaintiff-Intervenors	§	
	§	
v.	§	
	§	
STATE OF TEXAS, et al.,	§	
Defendants	§	

MOTION FOR FURTHER RELIEF

NOW COME GI FORUM AND LULAC, Plaintiff-Intervenors, in the above-entitled matter and respectfully urge the Court for supplemental relief to require that the State of Texas, et al., Defendants, monitor, enforce and supervise programs for limited-English proficient students in the Texas public schools so as to ensure that those students receive appropriate educational programs and equal educational opportunities. This motion is made pursuant to this Court’s order of July 13, 1971, retaining jurisdiction for all purposes, “especially for the purpose of entertaining any and all further orders which may become necessary to enforce or modify its decree in this cause” and also pursuant to 20 U.S.C. § 1708.<sup>1</sup> In support of this motion, GI FORUM and LULAC show as follows:

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<sup>1</sup> Plaintiffs-Intervenors do not seek by this order relief against any particular school district in the State of Texas, nor that any particular form of educational program for limited English proficient students be ordered.

## PARTIES

1. Movants, GI-FORUM and LULAC, are intervenors as plaintiffs in this litigation and have been certified “for all purposes as representative of all persons of Mexican-American descent or nationality in the State of Texas” pursuant to the Order of this Court of July 10, 1972.
2. Movants, GI-FORUM and LULAC, are two Mexican-American (Latino) organizations with members and chapters located in many cities, towns, and public school districts throughout the State of Texas. Both organizations have as two of their primary functions and purposes, the improvement and advancement of educational opportunities for persons of Mexican-American descent or nationality and the protection and defense of the civil rights of this major ethnic and nationality group.
3. Defendants, herein, are the State of Texas, the Commissioner of Education (currently Commissioner Shirley J. Neeley) for the State of Texas, and the Texas Education Agency (hereinafter referred to as TEA) and its agents, servants or employees, the aforesaid being Defendants in the original action in this cause.

### THE EQUAL EDUCATIONAL OPPORTUNITIES ACT OF 1974

4. The Congress of the United States enacted the following provision of the Equal Educational Opportunities Act:

“No State shall deny equal educational opportunity on account of his or her race, color, sex or national origin by . . . the failure by an education agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program.”

20 U.S.C. § 1703(f).

5. The Act recognizes the ultimate responsibility of the State for the implementation and monitoring of educational programs for limited-English proficient students since, by its own terms, it is addressed to the states, and the term “education agency” is statutorily defined to include both local and state education agencies. 20 U.S.C. § 1720(a).
6. Section 1706 of the Act expressly provides that “an individual denied an equal educational opportunity as defined by this subchapter may institute a civil action in an appropriate district court of the United States against such parties, and for such relief, as may be appropriate . . . .” and jurisdiction is expressly reserved to United States District Courts under Section 1708.

#### BACKGROUND OF EQUAL EDUCATIONAL OPPORTUNITIES ACT LITIGATION

7. On June 3, 1975, GI Forum and LULAC filed a Motion to Enforce Decree and for Supplemental Relief in this action to address denials of equal educational opportunity to Mexican-American students in the Texas public schools. That motion was predicated upon alleged violations of Section G of the Court’s Modified Order of July 13, 1971, Title VI of the 1964 Civil Rights Act, the Equal Protection Clause of the Fourteenth Amendment and the Equal Education Opportunities Act of 1974, 20 U.S.C. § 1703(f). In essence, the motion challenged the scope and implementation of the Texas Bilingual Education Act of 1973 as insufficient to secure the rights of limited-English proficient Mexican-American students. Subsequently, the United States also moved for supplemental relief.

8. Following an extensive trial, the Court issued its opinion on January 12, 1981. *United States v. Texas*, 506 F. Supp. 405 (E.D. Tex. 1981). In its Memorandum Opinion the Court found that Defendants had violated the federal constitutional and statutory rights of Plaintiff-Intervenors but had not violated Section G, which had simply required the filing of a report of proposed remedial language programs. *See id.*
9. Among the numerous factual findings of the Court most relevant to the instant motion, the Court found that the inadequacies of the State's bilingual program were: "compounded by the Defendants' failure to monitor and enforce local compliance with state regulations" regarding limited-English proficient (LEP) students. *Id.* at 427.
10. The Court further found that the TEA administrative unit directly charged with the bilingual education program, the Division of Bilingual Education, employed "ten professionals and two secretaries" to carry out a "myriad of duties," including advising school districts concerning the development and implementation of local programs, reviewing all applications for state bilingual funding, and monitoring local compliance with state law. *Id.* Therefore, the Court found that: "(I)t is clear that the staffing of the Bilingual Education Division is grossly inadequate to accomplish all of its responsibilities." *Id.*
11. The Court recognized that the TEA had promulgated a new state plan that provided for on-site visits to school districts with and without bilingual programs but nonetheless, the Court found that: "unless some appropriate division within TEA undertakes on-site verification of student counts reported by districts," on-site visits

would be “largely an empty gesture.” *Id.* at 428. The Court concluded that unless Defendants “are prepared to commit substantial additional resources . . . monitoring of bilingual education at the local level will continue to be deficient.” *Id.* TEA’s “same tiny staff ” was found unable to fulfill its duties to monitor and enforce the state’s program for LEP students. *Id.*

12. The Court issued its remedial decree on April 17, 1981. Subsequently, Defendants moved to vacate the decree and to withdraw certain stipulations earlier agreed to that had formed part of the historical evidence concerning the constitutional issues in the case. The Court denied these motions and pointed out that “even if the Equal Protection claims had been permanently removed from the case, the evidentiary record provided ample grounds for the issuance of the remedial decree . . .” *United States v. Texas*, 523 F. Supp. 703, 724 (E.D. Tex. 1981).

13. At the time, Defendants argued that the enactment of a new state law, S.B. 477, created a new program for addressing the learning difficulties of LEP students “which must be given a chance to work before it can be evaluated as a success or failure.” *Id.* at 736.

14. S.B. 477 provided, in part, that each school district with an enrollment of 20 or more LEP students in any language classification in the same grade must offer a bilingual education program in elementary school; English as a second language or other transitional language instruction in post-elementary school through grade 8; and instruction in English as a second language (“ESL”) in grades 9-12. TEX. EDUC. CODE ANN. § 21.451 (1981). The statute further provided for the adoption, by the State Board of Education, of standardized criteria for the identification, assessment,

and classification of students of limited-English proficiency for eligibility into the program and criteria to exit from the program.

15. With regard to monitoring and enforcement, S.B. 477 stated that compliance with the program's provisions were "an imperative public necessity" and that:

"[t]herefore...the agency shall monitor school district compliance with state rules by inspecting each school district on site at least every three years." *Id.* at § 21.461.

16. Among the program requirements to be thus monitored, the statute included: program content and design, program coverage, identification procedures, classification procedures, staffing, learning materials, testing materials, reclassification of students, and activities of language proficiency assessment committees.

17. Where school districts that failed to, or refused to, comply with program provisions after proper notification, the statute commanded that TEA "shall apply sanctions, which may include removal of accreditation, loss of foundation funds, or both." *Id.*

18. The Court found that S.B. 477 still fell short of what was required by 20 U.S.C. Section 1703(f) because it did "not significantly increase the resources allocated to carry out" the new law's approach and also because remedial or compensatory programs were not mandated for children "who fall behind in academic areas while becoming proficient in English. *United States v. Texas*, 523 F. Supp. at 736-737.

19. Defendants filed their appeal. On July 12, 1982, the Court of Appeals issued its opinion and agreed with Defendants' arguments concerning the equal protection claim and the stipulations. *United States v. Texas*, 680 F.2d 356 (5th Cir. 1982). However, regarding the district court's Memorandum Opinion related to the statutory grounds under 1703(f), the Fifth Circuit stated: "At trial, plaintiffs' experts presented

abundant testimony supportive of the court’s finding that the 1973 Texas bilingual program was pedagogically unsound, largely unimplemented, and unproductive in its results.” *Id.* at 371. For example, the Court of Appeals pointed to expert testimony that “one hour of intensive English per day for graders four through twelve was not adequate . . .” *Id.*

20. The Court of Appeals further noted: “The evidence was even more overwhelming concerning the TEA’s lack of implementation of the existing, under-funded program.” *Id.* at 372. The Court cited TEA’s lack of an adequate monitoring instrument and inadequate identification of limited English-speaking students. *Id.*

21. However, the Court of Appeals vacated the injunctive remedy in light of the potential of the legislature’s newly enacted S.B. 477 to address the problems found by the district court. As the Court of Appeals described S.B. 477: “The 1981 Act goes significantly beyond the 1973 scheme...and compels TEA to take certain specific measures, including on-site monitoring, to insure compliance.” *Id.*

**THE PRESENT SITUATION: MANY MORE LIMITED-ENGLISH PROFICIENT STUDENTS, MANY MORE FAILING, AND VIRTUALLY NO MONITORING BY THE TEA**

22. Over the last two decades, there has been a dramatic increase in the enrollment of both Latino and limited-English proficient students in the Texas public schools.

23. In 1979, the TEA reported that there were 2,872,719 students in public school K-12 of whom 198,618 (or 6.9%) were LEP students. For the 2004-2005 school year, TEA reported, a total enrollment of 4,400,644 students of whom 684,007 (15.5%) were LEP students.

24. In 1980, the U.S. Census reported there were 3,094,581 public school students enrolled in K-12 of whom 795,274 (25.7%) were Mexican American and 855,108 (27.6%) were described as total Spanish origin.

25. In 2004-2005, TEA reported Latino enrollment at 1,969,097, or 45% of the total school enrollment of 4,400,644 students.

#### Failure of Defendants' Program for LEP Students

26. TEA's failures in the areas of monitoring and enforcement are of particular concern given the difficulties faced by LEP students who are lagging substantially behind in the Texas schools, whether measured by state-mandated examinations, grade retention or similar indicia of success.

27. With few exceptions, nearly every student in Texas schools in grades 3-11, including LEP students, are expected to take an examination known as the Texas Assessment of Knowledge and Skills (or TAKS). TEX. EDUC. CODE § 28.011. LEP students are required to take the TAKS in English at the secondary level. Passage of the TAKS test in English in four different subject areas at the secondary level is a graduation requirement for all Texas public school students. TEX. EDUC. CODE § 39.025.

28. According to TEA data, many LEP students have enrolled in schools in the United States for three or more years, and many others for five years or more. Only about 10% of LEP students are recent immigrants.

29. According to TEA data in 2004-2005, more than 8 out of 10 (84%) of Texas LEP students in Grade 7 failed to meet the state's standards on the TAKS test; more than 8 out of 10 (86%) of Texas LEP students in Grade 8 failed to meet the state's standards on the TAKS test; almost 9 out of 10 (87%) of Texas LEP students in Grade 9 failed

to meet the state's standards on the TAKS test; and more than 9 in 10 (94%) of Texas LEP students in Grade 10 failed to meet the state's standards on the TAKS test.

30. Also according to TEA data, LEP students in Texas dropped out of school at a rate much greater than both white students and all students statewide. The reported dropout rate for 2003-2004 showed that the annual dropout rate for grade 7-8 LEP students was 0.5%, five times greater than for white students (0.1%) and more than twice that for all Texas grade 7-8 students (0.2%). The same pattern held true for grades 7-12. LEP students at grades 7-12 dropped out at a reported annual rate of 2.0%, five times greater than white students at those grades (0.4%) and more than twice that for students as a whole, 0.9%.
31. For the Class of 2004, 16.3% of LEP students dropped out of school statewide as compared with only 1.9% of white students and 3.9% of all students. Even taking into consideration the large number of LEP students who drop out of school by grade 11, the failure rate among those remaining LEP students on the April administration of the 2004-2005 TAKS exit exam was 81%, more than 8 in 10.
32. LEP students in Texas are also being retained, or held back, at an alarming rate, both at the elementary and secondary level.
33. From the 2001-02 school year through the 2003-04 school year, the retention rate of LEP elementary students rose from 3.9% to 4.6%, while the retention rate for all other students remained steady at 2.5%, nearly 50% lower than the LEP rate.
34. At the secondary level, even higher percentages of LEP students are being retained in Texas schools as compared to all other students.

35. From the 2001-02 school year through the 2003-04 school year, the retention rate of LEP secondary students in grades 7-12 rose from 13% to 13.8%, while the retention rate for all other Texas students dropped from 6.5% to 6.3%-- greater than 100% lower than the LEP rate.

Evisceration of Monitoring and Enforcement of the Bilingual Education/ESL Program in Violation of 20 U.S.C. § 1703 (f) and the Orders of this Court

36. Plaintiff-Intervenors repeat and re-allege paragraphs 1-35.

37. Defendants have all but ceased any pretense that they inspect school districts on-site to insure compliance with the program provisions pertaining to LEP students.

38. In an official report in 1996, the Texas State Auditor's Office found that the TEA had not performed cyclical on-site monitoring visits for the Bilingual Education program at 860 districts. Regarding TEA's failure to monitor, the State Auditor stated:

The Agency is required by both the Texas Education Code and a federal court order to perform on-site monitoring visits at all districts at least once every three years. As a result, the Agency is not in compliance with the Texas Education Code or federal court order requirements for cyclical visits. Nonperformance of these monitoring visits reduces the Agency's ability to ensure that ...districts are properly classifying students, and that districts are providing equal educational opportunities for bilingual students.

TEXAS STATE AUDITOR'S OFFICE, REP. No. 96-072 at 14-15 (Aug. 1996).

39. Two years later, the Texas State Auditor's Office issued another official report and again found that the TEA had not performed cyclical on-site monitoring visits for the Bilingual Education program at 852 school districts. The Auditor found that in 1996 the TEA had reorganized program monitoring functions and placed that responsibility with a newly created District Effectiveness and Compliance Division (DEC). The

Auditor also found that monitoring efforts were not coordinated between all of TEA's divisions. TEXAS STATE AUDITOR'S OFFICE, REP. No. 98-021 at 5-6 (Feb. 1998).

40. In response to the Auditor's recommendation that the three-year monitoring cycle be eliminated for the Bilingual Education program, TEA responded to the State Auditor, in part, as follows:

*The Agency concurs with the State Auditor's Office report that current staffing levels limit the ability to comply with the three-year monitoring cycle. Additional resources may be needed to ensure compliance with state law. The Agency is required by both TEC 29.062 and Federal Court Order 5281 to perform on-site monitoring visits every three years to all school districts and open enrollment charter schools with a Bilingual Education program. Moving to eliminate the three-year monitoring cycle would require not only a change in state law, but also a change in the federal court order. The Agency may not be in a position to eliminate the three-year monitoring cycle.*

*Id.* at 26 (emphasis in original).

41. The TEA eliminated the three-year monitoring cycle without seeking a change in the order in this case.
42. In March 2002, the Texas State Auditor's Office issued its Audit Report of TEA's Monitoring of School Districts. Once again the Auditor found that TEA had failed to monitor bilingual education every three years, this time in more than 400 school districts. Among other findings, the Auditor noted: that divisions with monitoring responsibility were not sharing information; that previous noncompliance information was not being utilized in monitoring; that procedures were lacking to determine how districts were reclassifying LEP students for entry into regular classes; that the DEC's Reference Guide did not provide detailed instructions on how to determine compliance with state and federal laws; and that the TEA had failed to follow-up on

noncompliance determinations. TEXAS STATE AUDITOR'S OFFICE, REP. No. 02-030 (Mar. 2002).

43. The monitoring and compliance provisions of the Education Code, Section 29.062, were amended by the Legislature to delete the following words: "monitor compliance with state rules by inspecting each school district and open enrollment charter school on site at least every three years." TEX. EDUC. CODE § 29.062 (2003).
44. At the same time, the Legislature also passed Section 7.027 entitled "Limitation on Compliance Monitoring," which recognized that on-site monitoring could be required for compliance with federal law, stating in part, that the TEA "may monitor compliance . . . by a school district . . . or a program . . . only as necessary to ensure: (1) compliance with federal law and regulations." TEX. EDUC. CODE § 7.027 (2003).
45. Upon information and belief, the conduct of on-site monitoring inspections of the Bilingual Education program by the DEC Division ended after the 2003 school year. Since that time, the TEA has not monitored, on-site, the provisions of the Bilingual program regarding program content and design, resources, program coverage, identification procedures, classification procedures, staffing, learning materials, testing materials, reclassification of students, and activities of language proficiency assessment committees. The failure to conduct meaningful on-site monitoring as described herein constitutes a violation of 20 U.S.C. Section 1703 (f) and the orders of this Court.
46. As of 2004, the TEA reduced the Division of Bilingual Education to one professional position and one clerical position. Upon information and belief, the one professional staff person does not engage in on-site monitoring activities.

47. In its 2003-04 Report to the Court in this case, Defendants stated in Section G:
- “During 2003-2004 the Agency did not conduct any accreditation, compliance or review visits. All audits and on-site reviews were postponed for one year in order to redesign the process for all school districts in Texas.”
48. As of the 2004-2005 school year, the TEA instituted a new Performance Based Monitoring Analysis System (PBMAS) under the Performance Based Monitoring Division. The PBM is now virtually entirely reliant on computer analysis of certain test scores and upon district self-assessment in order to determine compliance by school districts with Section 1703(f) and with the program provisions of the state bilingual education laws.
49. Under the PBMAS, the performance of LEP students in a school district on the TAKS exam is compared to the PBMAS Standard or state passing rate. For the 2004-2005 school year, the acceptable state passing rate was 35% for mathematics, 50% for reading and language arts, 25% for science, 50% for social studies and 50% for writing.
50. Depending upon their TAKS scores, some districts are required to engage in a local meeting called a Public Program Effectiveness Review and electronically submit additional information, along with an improvement plan to the TEA. Further, upon information and belief, the TEA Division charged with reviewing such information has a staff of only 8 professionals charged not only with reviewing data concerning Bilingual/ESL programs, but also Special Education, Career and Technology and No Child Left Behind data, information and plans.

51. As described by the TEA, the TAKS scores of a district determine the stages of intervention, if any, by the TEA. The TEA assigns Performance Levels to the district as follows: Performance Level 0 means that the district's bilingual program has met the state standard described in paragraph 53 above; Performance Level 1 means that the TAKS passing rate is 0.1 to 5.0 percentage points below the state accountability standards; Performance Level 2 means that the TAKS passing rate is 5.1 to 10 percentage points below the state accountability standards; Performance Level 3 means that the TAKS passing rate is at least 10.1 percentage points below the state accountability standard for the subject.
52. Upon information and belief, for the 2004-05 year, only those districts assigned a Performance Level 3 were designated for further intervention. This means that districts in which 55% of LEP students failed mathematics, 85% failed science, and 60% failed reading, writing and social studies were considered as Level 2 and hence not flagged for further intervention.
53. Upon information and belief, the PBMAS system does not identify a district for intervention when there is a significant gap in educational success between LEP students and non-LEP students in that district until and unless the LEP students' performance falls below the standards described in the preceding paragraphs. For example, if 85% of LEP students fail to pass the TAKS science standards, and 85% of non-LEP students in the same district do pass the same standards, the resulting performance gap does not in itself trigger intervention or higher monitoring scrutiny by TEA.

54. Upon information and belief, under the PBMAS system, LEP students' TAKS scores are analyzed only at the district level. As described by the TEA, scores are summed across grade levels so that: the score for mathematics and reading are the sum of the TAKS scores at grade levels 3-11; the score for science is the combined scores at grades 5, 10, and 11; the score for social studies is the combined scores at grades 8, 10, 11; and for writing, the combined scores at grades 4 and 7. This means that low performance by LEP students at grades 7-12 can be balanced out by higher scores at grades 3-6, yielding a district summed score which meets the state's passing rates of 35% for mathematics, 25% for science, and 50% for reading, writing and social studies.
55. Further under this system, a great many LEP students attend schools with low LEP passing rates, which schools are never flagged for noncompliance or other intervention.
56. Upon information and belief, the TAKS data is analyzed by the PBM Division only at the district level. This means that the lack of equal educational opportunity, noncompliance with bilingual program requirements and failing performance by LEP students at any given school is not recognized by TEA unless the overall district TAKS scores by LEP students rises to the TEA's trigger levels. Relatively higher TAKS performance at one school can thereby cancel out lower performance at another school. As a result many LEP students attend failing schools not subject to modest analysis and strictures of the new TEA monitoring system.
57. Upon information and belief, under the PBMAS system, the dropout rate among LEP students is analyzed in such a manner that LEP dropouts at the high school level are

not subject to separate monitoring scrutiny but are combined with grade 7 and 8 dropouts. Given that students are more likely to drop out of school after grade 8, this practice has the effect of obscuring or diminishing high school dropout rates.

58. Upon information and belief, TEA's new PBMAS system is dependent upon the accuracy of LEP information submitted by local school districts. TEA does not as a routine matter question whether LEP students are being accurately identified and reported by local school districts.
59. On a statewide basis, approximately 35% of Latino students are identified as LEP. However, upon information and belief, in many school districts with significant numbers of Latino students enrolled, the ratio of LEP students reported to TEA compared to the ratio of Latino students is extremely low. The TEA does not have a system in place to monitor, promptly, school districts that report these low numbers of LEP students to determine an accurate number of LEP students and to require, where appropriate, additional supplementary and compensatory services for LEP students who were erroneously not identified as LEP.
60. On a statewide basis, approximately 5% of LEP students are reported by TEA as not being in bilingual or ESL programs because their parents requested that they not receive such services. However, based upon information and belief, in some school districts the percentage of alleged parent denials of services for LEP students ranges from twice to ten times the statewide average. The TEA does not have a system in place to monitor, in real time, school districts that report higher than expected numbers of parent denials of bilingual and ESL program services, to determine the accuracy of the reported parent denials, the circumstances of the

reported parent denials, and where appropriate, to require additional supplementary and compensatory services for LEP students where reported parent denials are inaccurate or do not reflect the informed desires of parents.

61. Upon information and belief, during the 2004-05 school year, TEA identified approximately 180 districts for further intervention (but not necessarily on-site). As of December 2005, TEA had secured acceptable corrective action plans in only 2 of the 180 districts.
62. As described above, TEA does not monitor, supervise, or enforce bilingual the requirements of the bilingual and ESL programs in violation of 20 U.S.C. §1703(f) and the orders of this Court.

#### PRAYER FOR RELIEF

63. Wherefore, Plaintiff-Intervenors pray that this Court enforce and secure compliance with 20 U.S.C. Section 1703 (f) and the orders of this Court.
64. Plaintiff-Intervenors pray that this Court issue an order for injunctive relief requiring TEA to design, sufficiently staff, and promptly implement a program for monitoring of programs for LEP students, including the bilingual education/ESL program, which has at least the following minimal components: (a) on-site monitoring, (b) ensuring appropriate instruction and equal educational opportunities for all LEP students, (c) ensuring that such programs are implemented with appropriate program content and design, resources, program coverage, identification procedures, classification procedures, staffing, learning materials, testing materials, reclassification of students, and activities of language proficiency assessment committees, (d) ensuring monitoring of programs for LEP students at the school level,

(e) ensuring that programs for LEP students at the post-elementary level, grades 7-8 and grades 9-12 are each monitored separately from each other, (f) ensuring that the monitoring of programs for LEP students includes as a component for the prompt monitoring of districts and schools where the percentage of students identified as LEP appears to be significantly lower than population and Census data would suggest, (g) ensuring that the monitoring of programs for LEP students includes a component for the prompt monitoring of districts and schools where the percentage of students identified as LEP whose parents are alleged to have declined program services is substantially higher than in the state as a whole, (h) ensure as part of the monitoring of programs for LEP students that schools and school districts are identified for compliance intervention when there is a significant gap in achievement, grade retention rates, and/or dropping out as between LEP students and non-LEP students.

65. Plaintiff-Intervenors pray that this Court issue an order for injunctive relief requiring the TEA to propose comprehensive changes in the program for LEP students above the elementary level including, but not limited to, supplementary compensatory services for all LEP students in the subject matter curriculum.

66. Plaintiff-Intervenors pray that this Court declare the monitoring, supervision, and enforcement acts of Defendants insufficient to provide programs for limited-English proficient students in the Texas public schools so as to ensure that LEP students receive appropriate educational programs and equal educational opportunities required by this Court's orders and the Equal Educational Opportunities Act of 1974.

67. Plaintiff-Intervenors pray that this Court issue an order for injunctive relief requiring Defendants to propose a plan to commit adequate resources to implementing their program for LEP students.
68. Plaintiff-Intervenors pray for such further relief as may be equitable, reasonable, and fitting.
- 69 . Plaintiff-Intervenors further pray that this Court award them their costs, including reasonable attorneys' fees, and retain jurisdiction of this cause.

DATED: February 9, 2006

Respectfully submitted,

/s/  
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**CERTIFICATE OF SERVICE**

I hereby certify that on February 9, 2006, a true copy of the foregoing document was sent to the following counsel of record by electronic service and first class mail:

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