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November 28, 2023

Hon. Scott S. Harris, Clerk
Supreme Court of the United States
One First Street NE
Washington, DC 20543

**Re: *Petteway, et al. v. Galveston County, et al.*,
No. 23A449**

Dear Mr. Harris:

This morning, on the day responses to the Emergency Application to Vacate the Fifth Circuit's Stay in the above-referenced case are due, the Fifth Circuit granted its own request for en banc consideration of this case. That order, attached hereto, also vacated the panel decision affirming the district court's injunction. This Court's urgent action is needed to ensure the district court's injunction is in effect in advance of the December 11 candidate filing deadline.

The district court held a 10-day bench trial in August and expeditiously ruled on October 13 that the county commissioner map adopted by Galveston County was a "clear violation of § 2 of the Voting Rights Act," Application at 5, a conclusion compelled by 30-year-old en banc precedent from the Fifth Circuit, App. B at 3. The district court accompanied that ruling with dozens of pages of factual findings cataloguing an intentionally discriminatory mapdrawing process, including findings rejecting as false every non-racial explanation for the map's purpose. App. D at 60-118.¹

¹ The district court's resolution of the Section 2 discriminatory results claim rendered it unnecessary for the court to accompany its intentional discrimination factual findings with corresponding legal conclusions on plaintiffs' intentional discrimination and racial gerrymandering claims.

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Since then, the Fifth Circuit has issued a series of orders and decisions that have injected substantial confusion and uncertainty into the ongoing candidate filing process, which began on November 11 and ends on December 11. The Fifth Circuit (1) issued two unreasoned “administrative stays” with expiration dates that have come and gone, (2) unanimously affirmed the district court’s decision the day before candidate filing commenced, (3) issued another unreasoned “administrative stay” pending a *sua sponte* requested en banc poll, (4) granted en banc review, and now (5) has left the status of its most recent “administrative stay” unclear. This series of contradictory and confusing orders—issued in the middle of the ongoing candidate filing period—have created an untenable situation contravening the *Purcell* principle this Court has enforced.

This Court should vacate the Fifth Circuit’s stay and ensure that the district court’s injunction is enforced for the December 11 candidate filing deadline and the November 2024 election. Doing so will merely leave in place the status quo *ex ante* while the County’s appeal proceeds. The County has conceded—at trial and on appeal—that the map imposed by the district court—which the County itself drew—is lawful, represents “least changes” from the maps governing elections in Galveston County for 30 years, has compact districts, and was not drawn on the basis of race. *See* Application at 30-32. A stay pending appeal is especially unwarranted given that the County seeks to unsettle 30 years of precedent and in light of the district court’s alarming factual findings showing the indicia of intentional discrimination.

Alternatively, to the extent the Court is unsure whether the latest in the series of “administrative stays” is still in effect, the Court should set an expedited deadline for the Fifth Circuit to clarify the status of the administrative stay to ensure this Court has time to take up Applicant’s request to vacate the stay in advance of the December 11 filing deadline.

Sincerely,



Chad Dunn
Counsel for *Petteway* Applicants

cc: All Counsel

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

November 28, 2023

Lyle W. Cayce
Clerk

No. 23-40582

HONORABLE TERRY PETTEWAY; HONORABLE DERRICK ROSE;
HONORABLE PENNY POPE,

Plaintiffs—Appellees,

versus

GALVESTON COUNTY, TEXAS; MARK HENRY, *in his official capacity
as Galveston County Judge*; DWIGHT D. SULLIVAN, *in his official capacity
as Galveston County Clerk,*

Defendants—Appellants,

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

GALVESTON COUNTY, TEXAS; GALVESTON COUNTY
COMMISSIONERS COURT; MARK HENRY, *in his official capacity as
Galveston County Judge,*

Defendants—Appellants,

DICKINSON BAY AREA BRANCH NAACP; GALVESTON BRANCH

NAACP; MAINLAND BRANCH NAACP; GALVESTON LULAC
COUNCIL 151; EDNA COURVILLE; JOE A. COMPIAN; LEON
PHILLIPS,

Plaintiffs—Appellees,

versus

GALVESTON COUNTY, TEXAS; MARK HENRY, *in his official capacity
as Galveston County Judge*; DWIGHT D. SULLIVAN, *in his official capacity
as Galveston County Clerk,*

Defendants—Appellants.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 3:22-CV-57
USDC No. 3:22-CV-93
USDC No. 3:22-CV-117

ON PETITION FOR REHEARING EN BANC

(Opinion November 10, 2023, 5 Cir., 2023, 86 F.4th 214)

Before RICHMAN, *Chief Judge*, and JONES, SMITH, STEWART,
ELROD, SOUTHWICK, HAYNES, GRAVES, HIGGINSON, WILLETT,
HO, DUNCAN, ENGELHARDT, OLDHAM, WILSON, and DOUGLAS,
Circuit Judges.

PER CURIAM:

A majority of the circuit judges in regular active service and not
disqualified having voted in favor, on the Court's own motion, to rehear this
case en banc,

IT IS ORDERED that this cause shall be reheard by the court en banc with oral argument on a date hereafter to be fixed. The Clerk will specify a briefing schedule for the filing of supplemental briefs. Pursuant to 5th Circuit Rule 41.3, the panel opinion in this case dated November 10, 2023, is VACATED.

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United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

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CLERK

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November 28, 2023

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No. 23-40582 Petteway v. Galveston County
USDC No. 3:22-CV-57
USDC No. 3:22-CV-93
USDC No. 3:22-CV-117

Dear Counsel,

Enclosed is the court's order filed this date directing this case be reheard en banc with oral argument.

Under Fifth Circuit Local Rule 41.3 this order vacates the previous opinion and judgment of this court and stays the mandate.

Appellants will have until January 8, 2024, to file an en banc brief and the Appellees' en banc brief is due on February 7, 2024. You will be requested to furnish 22 paper copies of your en banc brief after the electronic filing is reviewed and processed. The color of the cover on your en banc brief will be the same as the color of the cover on your merits brief (blue for the appellants and red for the appellees). The case will be heard sometime during the week of May 13, 2024. Counsel for the parties will receive adequate notice as to the exact date and time for the presentation of the oral argument.

We request that the parties forward 22 copies of their previously filed merits briefs, reply briefs, and record excerpts, for the use of the en banc court. As you did previously, we request that all copies be spirally bound. These additional copies are due in the Clerk's Office by December 12, 2023. Please contact me if you have any questions.

Any party filing a matter outside normal business hours (M-F, 8:00 a.m. - 5:00 p.m.) that may require the court's immediate attention should call the emergency duty deputy and inform them of the filing, even if the matter does not qualify as an emergency under 5th Cir. R. 27.3. The emergency duty deputy can be reached at 504-442-0252.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Peter A. Conners, Deputy Clerk
504-310-7685

cc:
Ms. Pooja Chaudhuri
Mr. T. Russell Nobile