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VIA ECF

December 1, 2023

Lyle W. Cayce  
Clerk of Court  
U.S. Court of Appeals for the Fifth Circuit  
600 S. Maestri Place  
70130 New Orleans

Re: **No. 23-40582, Petteway v. Galveston County**

Dear Mr. Cayce,

The NAACP/LULAC Plaintiffs respectfully submit this letter in response to Defendants' November 30, 2023 letter and to reiterate NAACP/LULAC Plaintiffs' opposition to any stay in this matter, for the reasons set forth in their merits brief on appeal, *see* ECF Dkt. 69 at 48-52, and in light of the significant developments since the briefing of Defendants' stay motion. These developments further warrant denying any additional stays in this matter and render Defendants' motion obsolete.

The County's letter purports to ask for reconsideration of an October 17, 2023 stay motion. But that motion became obsolete once a panel of this Court affirmed the judgment below. The panel's subsequent decision to grant an administrative stay pending en banc poll, and the en banc court's eventual decision to grant en banc review, did not implicitly revive the October 17 motion. Nor is any stay warranted on the basis of the factors governing stays pending appeal. The County cannot establish a likelihood of success on the merits when it acknowledges that its position is foreclosed by binding en banc precedent.

Moreover, the 2024 election process is now proceeding under "Map 1," the alternative county commissioners precinct plan considered by the Galveston County Commissioners Court in the 2021 redistricting process. On November 30, 2023, the trial court issued an order enforcing the final Judgment in this matter and requiring use of Map 1. *See* Exhibit 1. The trial court's remedial order was not only appropriate, it was required by law in light of the lifting of the administrative stay: It enforces the remedy required under current, binding precedent, as determined by the trial court in

its October 13, 2023 opinion and judgment enjoining the 2021 enacted plan, and as a panel of this Court agreed on November 10, 2023 in affirming that Judgment.

Even considering another stay will confuse and disrupt the ongoing candidate filing period and election process. To date, the temporary administrative stays have created significant confusion and uncertainty in Galveston County as to what map would be used to administer the 2024 election for county commissioners in precincts 1 and 3. The trial court's remedial order provides crucial and definitive guidance to county election administrators, potential candidates, and voters as to which plan will be used in the 2024 election. It comes over a week before the statutory candidate filing deadline of December 11, 2023, TEX. ELEC. CODE § 172.023(a), and thus will facilitate the orderly administration of that election without the likely need for any modification to election deadlines.

The trial court's order unambiguously serves the "bedrock tenet of election law: When an election is close at hand, the rules of the road must be clear and settled." *Merrill v. Milligan*, 142 S. Ct. 879, 880-81 (2022) (Kavanaugh, J., concurring). Those rules are now clear and should not be disturbed.

Respectfully submitted,



Hilary Harris Klein

CC: Counsel for all parties via ECF

EXHIBIT 1

RETRIEVED FROM DEMOCRACYDOCKET.COM

**ENTERED**

November 30, 2023

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

TERRY PETTEWAY, *et al.*,

Plaintiffs,

VS.

GALVESTON COUNTY, TEXAS,  
*et al.*,

Defendants.

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3:22-CV-57

**ORDER**

On October 13, 2023, this court held that the 2021 commissioners-court precinct map the Galveston County Commissioners Court adopted on November 12, 2021—“the enacted plan”—violated § 2 of the Voting Rights Act. Dkt. 250. The court permanently enjoined the defendants from administering, enforcing, preparing for, or in any way permitting the nomination or election of county commissioners from the commissioners-court precinct map as portrayed in the enacted plan. Dkt. 251 at 1. That same day, it announced a remedial-proceedings schedule that allowed the defendants an opportunity to submit an alternative redistricting plan that complies with § 2 of the Voting Rights Act so that this court could order the adoption of a new redistricting plan before November 11, 2023—the statutory opening date for candidate filing. *Id.* at 2.

Soon after, the defendants appealed and moved this court to stay its injunction pending appeal. Dkts. 253, 254. After the court denied their motion, they moved the United States Court of Appeals for the Fifth Circuit for the same relief. *Petteway v. Galveston County*, No. 23-40582, ECF No. 13. The Fifth Circuit expedited the appeal and entered a temporary administrative stay until November 10. *Id.*, ECF Nos. 28-2 at 2; 40-1 at 2. On November 10, the Fifth Circuit affirmed the district court's judgment, *Petteway v. Galveston County*, 86 F.4th 214 (5th Cir. 2023), but extended the administrative stay pending an en banc poll, *Petteway*, No. 23-40582, ECF No. 122-2. Following the Fifth Circuit en banc poll, the administrative stay terminated. *Id.*, ECF No. 145-2 at 2.

Given that the candidate-filing period for the 2024 election has already begun and that the defendants' electoral map is enjoined, it is no longer practicable to permit the commissioners court the opportunity to cure its enjoined map's infirmities. *See Veasey v. Abbott*, 830 F.3d 216, 240 (5th Cir. 2016). The court will proceed accordingly to carry out its "unwelcome obligation" to devise and impose a remedy for the 2024 election. *See id.* (quoting *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978)).

The Petteway and NAACP plaintiffs previously asked the court to implement "Map 1," the alternative map that the commissioners court

considered on November 12, 2021, and that is pictured in this order's appendix. Dkts. 241 ¶ 8; 242 ¶ 8; *see also* Dkt. 258-9 at 27. And in their emergency motion for a remedial order, the plaintiffs again ask the court to enter an order that requires Map 1 to be the remedial plan. Dkt. 266 at 2. In its order on the initial motion to stay, the court agreed to implement Map 1 if the defendants failed to, or elected not to, submit a revised plan. Dkt. 255 at 3. Map 1 remedies the vote dilution present in the enacted plan, satisfies all constitutional and statutory requirements, and preserves with "least change" the boundaries of the electoral map adopted in 2011. Accordingly, the court grants the plaintiffs' emergency motion and adopts Map 1 as the remedial plan. Dkt. 266.

The court will hold a telephonic status conference for this case on **Monday, December 4, 2023, at 1 p.m.** to discuss how this matter will proceed to ensure that the 2024 election will be conducted using Map 1. Counsel for each party are ordered to participate in the conference.

Signed on Galveston Island this 30th day of November, 2023.



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JEFFREY VINCENT BROWN  
UNITED STATES DISTRICT JUDGE

# Appendix

