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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







# Appendix

