

No. 06-41573

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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WILLIE RAY, *et al.*,

*Plaintiffs-Appellees,*

v.

GREG ABBOTT, *et al.*,

*Defendants-Appellants.*

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On Appeal from the United States District Court,  
Eastern District of Texas, Marshall Division

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**PLAINTIFFS-APPELLEES' MOTION TO STAY FURTHER  
PROCEEDINGS IN THE COURT OF APPEALS**

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Plaintiffs-Appellees (“Plaintiffs”) respectfully request that this Court stay further proceedings in this appeal from the District Court’s preliminary injunction ruling, pending resolution of the remainder of this case in the District Court. *See* Fed. R. App. P. 27; Fifth Cir. R. 27.1.3.

In support of this Motion, Plaintiffs state as follows:

1. This lawsuit concerns federal constitutional and statutory challenges by Plaintiffs to several provisions of the Texas Election Code restricting the mail-in ballot process (the “challenged provisions”). Plaintiffs allege that the challenged provisions unduly infringe upon fundamental voting and expressive rights, and further allege that such laws have been enforced by Defendants-Appellants (“the State”) in a racially discriminatory manner.

2. On October 31, 2006, after considering legal briefs and holding an evidentiary hearing, the District Court granted a narrow and limited preliminary injunction against enforcement of a portion of only one of several provisions challenged by Plaintiffs. *See* Dist. Ct. Docs. 15, 17. The Court did not reach the merits of the bulk of Plaintiffs’ other statutory and constitutional claims because “even assuming that the plaintiffs’ claims are meritorious, the court could not award meaningful relief in the form of a preliminary injunction given the current timetable governing the elections.” Dist. Ct. Doc. 17 at 5, ¶ 23; *see id.* (“Although the plaintiffs raise challenges to several statutory provisions included in the 2003

amendments, the court will address only one for purposes of preliminary injunctive relief.”).

3. The next day, November 1, 2006, the State filed an emergency motion with this Court for a stay pending appeal of the preliminary injunction order, as well as a motion to expedite the appeal. Plaintiffs filed an opposition to the State’s motion on November 2, 2006.

4. On November 3, 2006, this Court granted the State’s motion to stay the preliminary injunction pending appeal and denied the State’s motion to expedite the appeal. Dist. Ct. Doc. 26. Because of this Court’s stay of the preliminary injunction, the State is not restricted in the enforcement of any of the provisions challenged by Plaintiffs.

5. This Court has not yet issued a briefing schedule or any order additional order since its stay of the preliminary injunction.

6. This case will now proceed in the normal course in the District Court. Plaintiffs expect that the District Court will soon hold a scheduling conference, at which time the trial court will set forth by order a discovery and trial schedule for resolution of this case.

7. Plaintiffs respectfully submit that further proceedings in this appeal from the preliminary injunction should be stayed pending resolution of the remainder of this case before the District Court. *See* Fifth Cir. R. 27.1.3. A stay of

this appeal, and subsequent consolidation of this appeal with any appeal from the District Court's final order in this case, will promote the fair, efficient, and just resolution of this case, and will cause prejudice to no party.

8. Although the District Court's preliminary injunction order was based upon substantial evidence received at an evidentiary hearing, because of the time constraints faced by the District Court, there has not yet been full discovery, and thus a complete evidentiary record has not been developed. Moreover, because of the legal and practical constraints faced by the District Court in light of the imminent election, its ruling was necessarily preliminary in nature and did not purport to reach the final merits of this case. Furthermore, the District Court's ruling pertained to only one of Plaintiffs' several challenges to the Texas Election Code, and thus does not address the bulk of the issues raised in this case. Only after full discovery and litigation of all issues in this case will a full record be developed for this Court's review.

9. Accordingly, it would promote judicial efficiency for this Court to stay further proceedings in the appeal of the preliminary injunction order pending resolution of the remainder of this case in the District Court, at which point the present appeal could be consolidated with any appeal from the District Court's final order. A stay of this appeal would give the parties the opportunity to develop a complete evidentiary record in the District Court, and would give the District

Court the benefit of that full record in making final rulings on the merits of all of Plaintiffs' claims. In the unlikely event that no appeal is taken from the District Court's final order in this case, the stay of proceedings in the present appeal could be lifted and this appeal could then proceed.

10. This case is unlike a typical appeal from a preliminary injunction order, in which an immediate appeal may alleviate irreparable injury to the party appealing from the order entered below. Here, this Court has already stayed the District Court's preliminary injunction, and thus the State may continue to enforce all provisions of the Texas Election Code without restriction by the District Court's stayed injunction and free of any threat of legal penalty, absent further court order. Because this Court's stay ensures that the State's interests are fully protected pending resolution of this appeal and pending resolution of the remainder of this case in the District Court, the State will suffer no cognizable harm from a stay of further proceedings in this appeal.

11. This case is also unlike a typical appeal from a preliminary injunction order because an immediate appeal would not promote the efficient resolution of the case. As noted above, the District Court's preliminary injunction ruling did not resolve the bulk of the factual and legal issues presented by this case, and thus it would be more efficient for this Court to consider all of these interrelated challenges to the Texas Election Code at once, upon final resolution of this case by

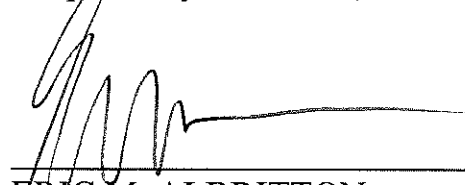
the District Court. Moreover, a further evidentiary presentation to the District Court, and further factfinding by the District Court, is necessary for the development of an adequate record to properly and finally resolve the numerous constitutional and statutory challenges presented in this case. Thus, the Court's consideration of this appeal on the preliminary factual record would be a waste of judicial resources, as the Court would subsequently have to reconsider all of the issues presented in this case on a full record in any subsequent appeal.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully pray that this Court will grant this Motion for a Stay of Further Proceedings in this Appeal.

This 11th day of December, 2006.

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Respectfully submitted,



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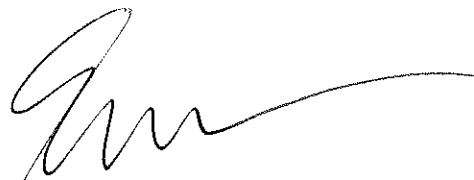
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*Counsel for Plaintiffs-Appellees*



## CERTIFICATE OF CONFERENCE

The undersigned certifies that counsel for Plaintiffs-Appellees conferred with counsel for Defendants-Appellants, who advised that Defendants-Appellants are opposed to this motion.

A handwritten signature in black ink, appearing to read "Eric M. Albritton", written in a cursive style.

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Eric M. Albritton

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing was sent by facsimile, electronic mail and overnight mail, on this 11th day of December, 2006, to:

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Eric M. Albritton