

No. A-\_\_\_\_

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**IN THE SUPREME COURT OF THE UNITED STATES**

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TRAVIS COUNTY AND THE CITY OF AUSTIN, TEXAS,  
*Applicants-Appellants,*

v.

RICK PERRY, Governor of Texas, *et al.*,  
*Respondents-Appellees.*

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**On Appeal from the United States District Court  
for the Eastern District of Texas**

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**APPLICATION FOR A STAY OR INJUNCTION PENDING APPEAL**

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January 10, 2004

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To the Honorable Antonin Scalia, Associate Justice of the United States and Circuit Justice for the Fifth Circuit:

**I. The County and City join the stay application of the Jackson Plaintiffs.**

Travis County and the City of Austin, Texas,<sup>1</sup> seek a stay of the divided ruling of the three-judge district court, issued on January 6, 2004, in *Session v. Perry*, No. 2:03-CV-354. The ruling upheld the statewide redistricting plan for Texas congressional districts (denominated Plan 1374C) enacted by the Texas Legislature on October 12, 2003. Travis County and Austin seek to have the court-drawn redistricting plan that was used in the 2002 Texas congressional elections (denominated Plan 1151C) be used again for the upcoming 2004 Texas congressional elections, instead of Plan 1374C.

The County and City, therefore, join the Application for a Stay or Injunction Pending Appeal filed on January 9, 2004, on behalf of the Jackson Plaintiffs, the Cherokee County Plaintiffs, the Texas Coalition of Black Democrats, and the Democratic Congressional Intervenors.<sup>2</sup> Parts II and III, below, address two additional points specific to the Travis County/Austin area. These points address the irreparable harm that would result from denying a stay and explain how implementing Plan 1374C now – without appellate review, on short notice, for one election cycle – would be overriding the public interest of the electorate.

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<sup>1</sup> Travis County and the City of Austin, plaintiff-intervenors below, appealed the district court's January 6<sup>th</sup> ruling on January 9, 2004. *See* Exhibit A, attached. The district court denied the County and City's stay request on January 8, 2004. *See* Exhibit B, attached. The County and City incorporate by Exhibit B of the Jackson Plaintiffs' stay application, which is the district court's opinion.

<sup>2</sup> The Valdez-Cox group of plaintiff-intervenors and the Texas Democratic Party also have since joined the Jackson Plaintiffs' stay application.

**II. In the Capital City area, Plan 1374C replaces what *Georgia v. Ashcroft* said the Voting Rights Act intends to achieve with what *Shaw v. Reno* said the Constitution abhors.**

Travis County and Austin together form the core of Texas’s Capital City area. The undisputed trial testimony is that, after a long period of difficult political “pulling and hauling,” the Capital City area has been able in the last couple of decades or so to boast of the effective functioning of a comparatively unique tri-ethnic coalition of voters – African-American, Hispanic, and Anglo.<sup>3</sup> This tri-ethnic voting coalition controls the outcome in current District 10 elections. This district, located entirely within Travis County and mostly within Austin proper, is a shining, albeit hard-won, example of what the Court identified only this past summer as the very thing the Voting Rights Act seeks to foster: the “transformation to a society that is no longer fixated on race.” *Georgia v. Ashcroft*, 123 S.Ct. 2498, 2517 (2003). *Georgia v. Ashcroft* anticipated with remarkable prescience the Voting Rights Act flaw in Plan 1374C’s deliberate displacement of District 10’s tri-ethnic coalition with race-based District 25:

[T]he Voting Rights Act, *as properly interpreted*, should encourage the transition to a society where race no longer matters: a society where integration and color-blindness are not just qualities to be proud of, but are simple facts of life.

*Georgia v. Ashcroft*, 123 S.Ct. at 2517 (emphasis added).

Less than four months after the Court laid down this voting rights marker, the Texas Legislature flagrantly disregarded it. Taking direct and purposeful aim at the Capital Area’s exemplary District 10, the legislature dismembered the district and scattered the pieces of the voting coalition among three new districts. Inserted in District

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<sup>3</sup> See Testimony of Travis County Judge Sam Biscoe (an African-American officeholder, elected county-wide with this coalition’s support) and Travis County Commissioner Margaret Gomez (an Hispanic officeholder, and one of the County’s four elected County Commissioners, whose precinct is invaded by new District 25).

10's stead, piercing the very heart of the tri-ethnic coalition's base (eastern Travis County and East Austin), is new District 25, drawn on purely race-based grounds. Stretching through sparsely populated brush-land and hunting territory in South Texas, but dodging the obvious destination of San Antonio, new District 25 loops to hook the Hispanic voters on the under-side of Hidalgo County on the Mexican border, then link them through 300 miles of South Texas brush-land with sizeable pockets of Hispanic voters on the east side of Austin and Travis County. The State openly touted the racial purposes of this new district, justifying it as a voting rights counterweight to the partisan-based destruction of an existing Hispanic opportunity district – District 23 – further up the Rio Grande River.

The County and City urge the Court to stay for at least this one election cycle this legislative assault on Voting Rights Act ideals. If the ideal's destruction is to be legally blessed, the blessing should come only after a full opportunity for thorough appellate review. If it does nothing else, *Georgia v. Ashcroft* aligns the public interest here with a refusal to bury District 10's exemplar coalition until it has been afforded the dignity of the full funeral that only this Court can give when it considers the merits of this case.

**III. Rushed implementation of Plan 1374C threatens unacceptable levels of voter confusion due to its widespread upheaval of local voting places and precincts.**

Travis County's Voter Registration Director explained<sup>4</sup> to the district court that Plan 1374C's radical re-map of the Capital City area would require new precinct lines and new polling places for at least 8,000 already-registered, mostly minority voters in an area that had gone essentially unscathed by redistricting for a quarter century.<sup>5</sup> The local

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<sup>4</sup> See Declaration of Dolores D. Lopez, Dec. 2, 2003, Exhibit B to Travis County's Motion to Modify Court Order of November 12, 2003, on Local Implementation of Plan 1374C.

<sup>5</sup> The record also includes a letter from the Hidalgo County elections administrator at the other end of new District 25, concerned about a similar magnitude of voter confusion and disruption

disruptions caused by Plan 1374C's calculated destruction of current District 10 and the associated creation of new District 25 threaten a disturbing level of voter confusion that will not even arise if Plan 1151C continues to be used for the upcoming elections – and would not have arisen in the first place if the State had not effectively waited until the even of the election to impose Plan 1374C. The interest of local election officials in minimizing voter confusion outweighs any countervailing interest in the last-minute imposition of a new legislative plan enacted as a belated and brash new strategic move in the increasingly brutal partisan warfare being waged on the redistricting battlefield.

### **Conclusion**

Travis County and the City of Austin urge the Court to grant the stay as requested by the Jackson and other associated plaintiffs in their January 9<sup>th</sup> stay application.

Respectfully submitted,

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there. Similar disruption appears threatened in Harris County, the state's most populous county. See M. Schwartz, *Voters to discover how redistricting measure maps out*, Houston Chronicle, Jan. 10, 2004 (487 of the county's 887 precincts moved into new districts, 119 of which will be split as a result, with 24 new precincts to be added).