

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

November 28, 2023

Lyle W. Cayce  
Clerk

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No. 23-40582

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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,*

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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,*

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DICKINSON BAY AREA BRANCH NAACP; GALVESTON BRANCH

No. 23-40582

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.*

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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

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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.

***United States Court of Appeals*****FIFTH CIRCUIT  
OFFICE OF THE CLERK****LYLE W. CAYCE  
CLERK****TEL. 504-310-7700  
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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