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VIA CMRRR #7003 3110 0000 1838 6236

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January 15, 2008

From: Robert Doggett 
Attorney at Law

RE: Cause No.: 03-06-00273-CV
Finance Commission of Texas, Credit Union Commission of Texas, and Texas Bankers
Association v. Association of Community Organizations for Reform Now (ACORN),
Valerie Norwood, Elise Shows, Mary Ann Robles-Valdez, Bobby Martin, Pamela Cooper,
and Carlos Rivas
In The Court of Appeals, For The Third District, Austin, Texas

ENCLOSED: COPY OF FILED STAMPED APPELLEES' RESPONSE TO COMMISSIONS' MOTION FOR ABATEMENT

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| <input type="checkbox"/> Please File | <input type="checkbox"/> Please Review and Reply |
| <input type="checkbox"/> Affidavit of Inability to Pay Costs is Enclosed | <input type="checkbox"/> Please return in our stamped envelope |
| <input type="checkbox"/> Our check for \$ _____ is enclosed | <input type="checkbox"/> Please prepare citation and return |
| <input type="checkbox"/> Present Order to Judge for Signature | <input type="checkbox"/> Please sign and return |
| <input type="checkbox"/> Please prepare subpoena | <input type="checkbox"/> By copy of this letter am sending a copy to: |
| <input checked="" type="checkbox"/> For your information in the above cause | <input type="checkbox"/> This Transmittal: |
| <input type="checkbox"/> For Your Files | <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Regular Mail |
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Enclosures

FINANCE COMMISSION OF TEXAS,)
CREDIT UNION COMMISSION OF)
TEXAS, and TEXAS BANKERS)
ASSOCIATION,)

IN THE COURT OF APPEALS

Appellants,)

vs.)

FOR THE THIRD DISTRICT

ASSOCIATION OF COMMUNITY)
ORGANIZATIONS FOR REFORM)
NOW (ACORN), VALERIE NORWOOD,)
ELISE SHOWS, MARYANN ROBLES-)
VALDEZ, BOBBY MARTIN, PAMELA)
COOPER, and CARLOS RIVAS)

Appellees.)

AUSTIN, TEXAS

**APPELLEES' RESPONSE TO
COMMISSIONS' MOTION FOR ABATEMENT**

TO THIS HONORABLE COURT:

Appellees, Association of Community Organizations for Reform Now (ACORN) et al., request that this Court deny the motion, urged by Appellants, the Finance Commission of Texas and the Credit Union Commission of Texas ("the Commissions"), to abate a portion of this appeal. The motion is not meritorious.

The Commissions set their meeting schedules and decide when to issue interpretations of the Texas Constitution. Appellees agree that Texas House Joint Resolution 72 (H.J.R. 72) amended the Texas Constitution, and was passed by the Texas Legislature in May and by the voters in November 2007. Tex. H.J. Res. 72, 80th Leg., R.S. (2007). Appellees also agree

THIRD COURT OF APPEALS
JEFFREY D. KYLE, CLERK

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that the Commissions have met, discussed, and reviewed the language of H.J.R. 72 since it was passed in May.¹ Appellees do not dispute that some of the interpretive rules at issue in this case were impacted by these constitutional changes passed by the Legislature some eight months ago and approved by the voters over two months ago. Appellees are also hopeful, as stated in the Commissions' motion for abatement, that at the conclusion of anticipated rulemaking proceedings, the parties will be able to agree on a joint motion to dismiss parts of this lawsuit.

However, since none of the interpretative rules at issue in this lawsuit have been withdrawn or invalidated by the Commissions, and the Commissions assert that these rules are still in effect, Appellees must disagree with the Commissions' motion to abate parts of this case for another six months. The Commissions have had sufficient time and opportunity to amend the current rules to interpret the new constitutional language. Even if the Commissions need an additional six months to study the constitutional changes and issue new rules, the Commissions should at the very least invalidate the rules they believe are impacted, as these rules guide lenders and arguably give safe harbor to those that follow them. TEX. CONST. art. XVI, § 50(u). This Court should not expressly give the Commissions additional time to continue to ignore the Texas Constitution.

Further, the Commissions are asking this Court to abate ruling on the validity of rules

¹ The Finance Commission met in June, August, October and December 2007. The Credit Union Commission met in June and October 2007. Both are scheduled to meet in February 2008.

interpreting constitutional language that was not modified by H.J.R. 72. For example, H.J.R. 72 does not change the constitution to state more specifically whether an application for a home equity loan be in writing, or be given orally. Thus, the oral application rule (7 TEX. ADMIN. CODE § 153.12) was not impacted by H.J.R. 72. A request to abate a ruling on this portion or any portion of the case is simply inappropriate.

Appellees desire the Court to issue its decision without delay. Indeed, a ruling by the Court of Appeals prior to any further rulemaking by the Commissions may give all parties guidance for future interpretative rulemaking. Both Commissions are scheduled to meet in February 2008.

Wherefore, Appellees request the Court of Appeals deny the Commissions' motion.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been sent certified mail return receipt requested to:

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Deputy Division Chief

Office of Solicitor General,
P.O. Box 12548
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Attorney for Appellants Texas Finance Commission and
Credit Union Commission of Texas

and

Craig Enoch
Winstead Sechrest & Minick, P.C.
401 Congress Avenue, Suite 2100,
Austin, Texas 78701
Attorney for Appellant Texas Bankers Association

on this 15th day of January, 2008.

A handwritten signature in black ink, appearing to read 'R. Doggett', written over a horizontal line.

ROBERT W. DOGGETT