

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

Appellants,

vs.

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

Appellees.

§ IN THE COURT OF APPEALS  
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§ FOR THE THIRD DISTRICT  
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§  
§ AUSTIN, TEXAS

**APPELLANT TEXAS BANKERS ASSOCIATION'S MOTION FOR  
CLARIFICATION REGARDING CONTINUATION OF THE COURT'S STAY**

Appellant Texas Bankers Association ("TBA") files this Motion seeking clarification that the stay issued by the Court on May 26, 2006 remains in effect until the parties have exhausted all appellate remedies and this Court issues its mandate. In the alternative, if necessary, TBA asks this Court to stay its judgment until issuance of its mandate.

**I.**

The trial court's order, which invalidates certain rules issued by the Finance Commission of Texas and the Credit Union Commission of Texas interpreting the Texas Constitution provisions governing home equity lending, included the following language staying the effect of its decision:

It is further ORDERED that this judgment is stayed in all respects for 30 days, and the rules declared to be invalid by this judgment remain in effect

during that time regardless of whether this judgment is superseded by the posting of a bond, filing a notice of appeal or other action of a party.<sup>1</sup>

On May 11, 2006, the Finance Commission of Texas and the Credit Union Commission of Texas (collectively the "Commissions") filed a notice of appeal. Shortly thereafter, as the trial court's stay was about to expire, TBA asked this Court to clarify that the trial court's judgment would remain stayed, and the Commissions' rules would remain in effect, during this appeal. This Court responded by continuing the trial court's stay until September 8, 2006, then ultimately until "disposition of this appeal."<sup>2</sup>

The Court issued its opinion in this case on February 8, 2010, also invalidating certain of the Commissions' interpretive rules. TBA and the Commissions are currently determining whether to file petitions for review with the Texas Supreme Court. Because lenders across the state rely heavily on the Commissions' rules, and need certainty regarding whether they can continue to do so, TBA asks this Court to clarify that its judgment invalidating the Commissions' rules remains stayed until all appellate remedies have been exhausted and this Court's mandate is issued.

## II.

It is important to give Texas lenders certainty regarding their ability to continue to rely on the Commissions' rules until this appeal is ultimately resolved. The Texas Constitution provides for penalties that include monetary sanctions, lien loss, and forfeiture of principal and interest for lenders who fail to comply with the Constitution's

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<sup>1</sup> See Trial Court Order, attached as Exhibit A.

<sup>2</sup> See Order, attached as Exhibit B.

home equity lending requirements.<sup>3</sup> To ameliorate the harsh consequences of a lender's failure to comply with the Constitution, the Constitution authorizes the Commissions to interpret the home equity loan provisions.<sup>4</sup> And the Constitution provides a safe harbor for lenders who follow the Commissions' interpretive rules. Section 50(u) states:

*An act or omission does not violate a provision* included in those subsections *if the act or omission conforms to an interpretation of the provision* that is: (1) *in effect at the time of the act or omission*; and (2) made by a state agency to which the power of interpretation is delegated as provided by this subsection or by an appellate court of this state or the United States.<sup>5</sup>

Texas lenders have changed their business practices to comply with the Commissions' interpretive rules; they will need to make significant changes at such time as the judgment invalidating the rules becomes effective; and they face high risk if they are not certain as to when they can no longer rely on the rules and the Constitution's safe harbor.

### III.

The need for clarification regarding continuation of the stay is compounded by confusion in Texas law regarding when a judgment becomes effective. Generally, a trial court's judgment is automatically suspended until all appellate remedies have been exhausted when a government agency, like the Commissions, files a notice of appeal. Under Section 6.001 of the Texas Civil Practice and Remedies Code, a governmental entity may not be required to file a bond for an appeal.<sup>6</sup> Numerous Texas courts have

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<sup>3</sup> See TEX. CONST. art. XVI, § 50(a)(6)(Q)(x), (xi).

<sup>4</sup> TEX. CONST. art. XVI, § 50(u).

<sup>5</sup> TEX. CONST. art. XVI, § 50(u)(1)-(2) (emphasis added).

<sup>6</sup> TEX. CIV. P. & REM. CODE § 6.001.

held that an appeal, when perfected, automatically supersedes the trial court's judgment, and that suspension remains in effect until all appellate rights are exhausted.<sup>7</sup> The effect of supersedeas is to preserve the status quo of matters in litigation as they existed before the issuance of the judgment from which an appeal is taken.<sup>8</sup> Thus, the automatic supersedeas resulting from the Commissions' appeal should allow the Commissions' interpretive rules to remain "in effect" until all appellate remedies are exhausted and a mandate has been issued.

Uncertainty arises, though, from the Texas Supreme Court's recent decision in *Edwards Aquifer Authority v. Chemical Lime, Ltd.* The Texas Supreme Court declined to decide the issue of "whether, as a general matter, an appellate court's decision takes effect the moment the court issues its opinion, order, or judgment, or later when rehearing is denied or the time for rehearing expires, or still later when the clerk issues the mandate."<sup>9</sup> The Court recognized that is "a difficult question under Texas law and procedure," which is further evidenced by the two concurring opinions authored by Justice Brister and Justice Willett, which took competing views on the issue. Justice Brister's concurrence argues that appellate decisions "should take effect on the date of judgment," even though the judgment would not be final and enforceable until a later date.<sup>10</sup> On the other hand,

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<sup>7</sup> See *In re Bill Long*, 984 S.W.2d 623, 625 (Tex. 1999); *City of Dallas v. North By West Entertainment, Ltd.*, 24 S.W.3d 917, 918-19 (Tex. App.—Dallas 2000, no pet.); *In re Tarrant County*, 16 S.W.3d 914, 918 (Tex. App.—Fort Worth 2000, no pet.).

<sup>8</sup> *City of Fort Worth v. Johnson*, 71 S.W.3d 470, 472 (Tex. App.—Waco 2002, no pet.) ("Supersedeas preserves the status quo of the matters in litigation as they existed before the issuance of the order or judgment from which an appeal is taken"); *In re Tarrant County*, 16 S.W.3d at 918.

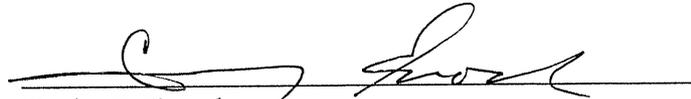
<sup>9</sup> 291 S.W.3d 392, 393 (Tex. 2009).

<sup>10</sup> *Id.* at 405-12 (Brister, J. concurring).



**CERTIFICATE OF CONFERENCE**

I hereby certify that counsel for Texas Bankers Association contacted lead trial counsel for Plaintiffs/Appellees, Mr. Robert W. Doggett, concerning the relief requested by this motion, but Texas Bankers Association's counsel was unable to reach Mr. Doggett.

  
Craig T. Enoch

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing has been sent by Certified Mail, Return Receipt Requested on January 25, 2010 to the following counsel:

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The Meadows Bldg.  
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Association of Texas

  
Craig T. Enoch

# **EXHIBIT A**



**53RD DISTRICT COURT**

TRAVIS COUNTY COURTHOUSE

P. O. BOX 1748

AUSTIN, TEXAS 78767

FAX (512) 854-9332

**SCOTT H. JENKINS**

Judge

(512) 854-9308

**LAWRENCE ANDREWS**

Bailiff

(512) 854-9397

**NANCY HERRERA**

Judicial Aide

(512) 854-9303

**CHAVELA PRINCE**

Official Reporter

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Court Clerk

(512) 854-9457

**BARBARA HANNON**

Staff Attorney

(512) 854-9366

May 1, 2006

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Ms. Ann Hartley  
Assistant Attorney General  
Financial Litigation Division  
P.O. Box 12548  
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*Via Facsimile: (512) 477-2348*

Re: Cause No. GN4-00269; *Association of Community Organizations for Reform now (Acorn), Valerie Norwood, Elsie Shows, Maryann Robles-Valdez, Bobby Martin, Pamela Cooper, and Carlos Rivas vs. Finance Commission of Texas and Credit Union Commission of Texas vs. Texas Bankers Association, in the 126<sup>th</sup> Judicial District, Travis County, Texas*

Dear Counsel:

Enclosed is a copy of Final Summary Judgment and Temporary Stay Order in the above-cause. This order has been signed by the Court and filed with the District Clerk's office.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Herrera".

NANCY HERRERA

Judicial Aide, 53rd District Court

Travis County, Texas

Orig: Ms. Amalia Rodriguez-Mendoza, Travis County District Clerk

No. GN 400269

<b>ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), VALERIE NORWOOD, ELSIE SHOWS, MARYANN ROBLES-VALDEZ, BOBBY MARTIN, PAMELA COOPER, and CARLOS RIVAS,</b>	)	<b>IN THE DISTRICT COURT</b>
	)	
<b>PLAINTIFFS,</b>	)	
	)	
<b>VS.</b>	)	
	)	
<b>FINANCE COMMISSION of TEXAS, and CREDIT UNION COMMISSION of TEXAS,</b>	)	<b>OF TRAVIS COUNTY, TEXAS</b>
	)	
<b>DEFENDANTS,</b>	)	
	)	
<b>VS.</b>	)	
	)	
<b>TEXAS BANKERS ASSOCIATION,</b>	)	
	)	
<b>DEFENDANT-INTERVENOR.</b>	)	<b>126th JUDICIAL DISTRICT</b>

**FINAL SUMMARY JUDGMENT AND TEMPORARY STAY ORDER**

Plaintiffs challenge the validity of rules adopted by Defendants Finance Commission of Texas and Credit Union Commission of Texas which purport to interpret Article XVI, Section 50(a)(6) of the Texas Constitution. Defendants along with Intervenor Texas Bankers Association defended the rules. There are no genuine issues of material fact, and the parties are entitled to judgment as a matter of law. The Court has considered all pleadings, motions, cross motions, responses, replies and other materials filed with the Court. After consideration of these materials and considering arguments of counsel, the Court ORDERS and declares the following rules invalid or denies Plaintiffs relief:

1. Rules 7 TAC 153.1(11), 153.5(3), (4), (6), (8), (9), and (12) are invalid;

2. Rule 7 TAC 153.12(2) is invalid as to orally submitted applications, and not invalid as to electronically submitted applications;

3. Rule 7 TAC 153.13(4) is invalid;

4. Plaintiffs' challenge to Rules 7 TAC 153.15(2) and (3) is denied;

5. Rule 7 TAC 153.18(3) is invalid;

6. Rule 7 TAC 153.20 is invalid;

7. Rule 7 TAC 153.22 is invalid;

8. Plaintiffs' challenge to Rules 7 TAC 153.51(1) and (3) is denied; and

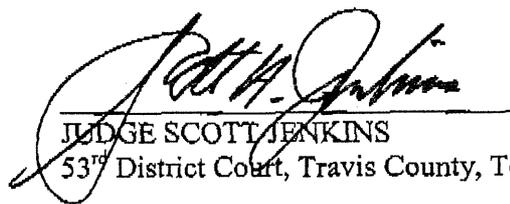
9. Rule 7 TAC 153.84(1) is invalid.

It is further ORDERED that this judgment is stayed in all respects for thirty days, and the rules declared to be invalid by this judgment remain in effect during that time regardless of whether this judgment is superseded by the posting of a bond, filing a notice of appeal or other action of a party.

All other relief requested by any party is denied. Costs are taxed against Defendants.

This order disposes of all claims and all parties and is final and appealable.

Signed this 29<sup>th</sup> day of April, 2006.

  
\_\_\_\_\_  
JUDGE SCOTT JENKINS  
53<sup>rd</sup> District Court, Travis County, Texas

# **EXHIBIT B**



# COURT OF APPEALS

## THIRD DISTRICT OF TEXAS

P.O. BOX 12547, AUSTIN, TEXAS 78711-2547  
www.3rdcoa.courts.state.tx.us  
(512) 463-1733

W. KENNETH LAW, CHIEF JUSTICE  
BEA ANN SMITH, JUSTICE  
JAN P. PATTERSON, JUSTICE  
DAVID PURYEAR, JUSTICE  
BOB PEMBERTON, JUSTICE  
ALAN WALDROP, JUSTICE

DIANE O'NEAL, CLERK

PATRICK SHANNON,  
CHIEF STAFF ATTORNEY

August 31, 2006

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The Honorable Craig T. Enoch  
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Mr. Robert L. Wharton  
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Huntsville, TX 77320

RE: Court of Appeals Number: 03-06-00273-CV  
Trial Court Case Number: D-1-GN-04-000269

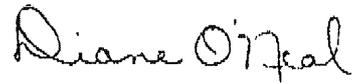
Style: Appellants, Texas Bankers Association, Finance Commission of Texas, and Credit Union Commission of Texas// Cross-Appellants, Association of Community Organizations for Reform Now (ACORN), Valerie Norwood, Elsie Shows, Maryann Robles-Valdez, et al.  
v. Appellees, Association of Community Organizations for Reform Now (ACORN), Valerie Norwood, Elsie Shows, Maryann Robles-Valdez, Bobby Martin, Pamela Cooper and Carlos Rivas// Cross-Appellees, Appellants, Texas Bankers Association, Finance Commission et al.

Page 2  
September 7, 2006

Dear Counsel:

The parties are notified that this Court extends its stay of May 24, 2006 (since extended to September 8, 2006) and leave it in place pending disposition of this appeal. The emergency motion and motion to expedite filed by Texas Bankers Association remain pending.

Very truly yours,

A handwritten signature in cursive script that reads "Diane O'Neal".

Diane O'Neal, Clerk