

OPINION OF INDIVIDUAL JUSTICE
IN CHAMBERS

CAMPOS ET AL. *v.* CITY OF HOUSTON ET AL.

ON APPLICATION FOR INJUNCTION AND STAY

No. A-301. Decided October 29, 1991

The application seeking an injunction and stay stopping imminent elections for the Houston City Council is denied because there is no legal basis for such an original order. Assuming that the applicants would desire the lesser relief of a mere stay of the District Court's order implementing a redistricting plan for the elections, that too must be denied. There is no evidence that the city was acting in bad faith in seeking that order, and both the applicants and the United States share some responsibility for this matter's having been presented and decided in inordinate haste. Relying on the judgment of those federal judges on the scene, who have declined the stay, it also cannot be said with certainty that more good than harm to the public interest will be achieved by staying the District Court's order.

JUSTICE SCALIA, Circuit Justice.

The application before me seeks "an injunction and stay from the Court stopping the entire City election process" with respect to elections for the Houston City Council scheduled for November 5. Application 11. As the *amicus* United States points out, there is no basis in law for such an original order, and the application must be denied.

Assuming that the applicants would desire the lesser relief of a mere stay of the District Court's order, I would nonetheless deny it. The issuance by a circuit justice of a stay pending appeal calls for consideration of not only the probability that the district court was wrong, but also the nature of (including responsibility for) the alleged injury that will occur absent a stay, and the effect that a stay would have upon the public interest. See *Republican State Central Comm. of*

Opinion in Chambers

Arizona v. Ripon Society Inc., 409 U. S. 1222, 1224 (1972) (REHNQUIST, J., in chambers). Like the Court of Appeals, I am doubtful of the District Court's authority to issue the present order. However, while the city may have been guilty of overimaginative lawyering in obtaining it, I have no reason to believe the city was acting in bad faith in the sense of seeking to frustrate the purposes of the Voting Rights Act of 1965. Moreover, in my view both the applicants and the United States share some responsibility, by their delay, for this matter's having been presented and decided in inordinate haste. Finally, and most important, I am not certain that more good than harm to the public interest will be achieved by staying the District Court's order, making the imminent elections (in which some people have already cast absentee ballots) impossible. On this last point, which seems to me in the present case the determinative one, I am inclined to rely upon the judgment of those federal judges on the scene, who have declined the stay.

For the foregoing reasons, the application is denied.