

FILED

FEB 02 2012

**CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK**

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

SHANNON PEREZ; HAROLD
DUTTON, JR.; GREGORY TAMEZ;
SERGIO SALINAS; CARMEN
RODRIGUEZ; RUDOLFO ORTIZ;
NANCY HALL and DOROTHY DEBOSE

Plaintiffs

v.

STATE OF TEXAS; RICK PERRY,
in his official capacity as Governor of the
State of Texas; DAVID DEWHURST,
in his official capacity as Lieutenant
Governor of the State of Texas; JOE
STRAUS, in his official capacity as Speaker
of the Texas House of Representatives;
HOPE ANDRADE, in her official
capacity as Secretary of State of the
State of Texas

Defendants

CIVIL ACTION NO.
✓ 11-CA-360-OLG-JES-XR
CONSOLIDATED ACTION
[Lead case]

WENDY DAVIS; MARC VEASEY;
ROY BROOKS; VICKY BARGAS;
PAT PANGBURN; FRANCES DELEON;
DOROTHY DEBOSE; and SARAH
JOYNER

Plaintiffs

v.

RICK PERRY, in his official capacity
as Governor of the State of Texas;
HOPE ANDRADE, in her official
capacity as Secretary of State of the
State of Texas; BOYD RICHIE, in his
official capacity as Chair of the Texas
Democratic Party; and STEVE MUNISTERI,
in his official capacity as Chair of the
Republican Party of Texas

Defendants

CIVIL ACTION NO.
SA-11-CA-788-OLG-JES-XR
CONSOLIDATED ACTION
[Lead case]

ORDER

Given the current circumstances, the Court will proceed with the task of preliminarily reviewing all legal challenges in this case, as well as the legal challenges in the D.C. case, under the standards enunciated by the Supreme Court. After such review, the Court will proceed with preparing new interim maps for the 2012 elections.

It is therefore ORDERED that in addition to the issues the parties have already been ordered to address in briefs or written advisories, the parties shall submit briefs and proposed findings of fact and conclusions law that the Court may utilize in preparing interim redistricting plans no later than 6:00 p.m. on February 10, 2012.

1. Findings of fact and Conclusions of law applying interim plan standards of review:

Prior to filing proposed findings of fact and conclusions of law, the parties shall confer and exchange proposed findings and jointly file any findings of fact and conclusions of law that they can agree upon. For those findings of fact and conclusions of law that the parties do not agree on, the parties shall submit proposed findings of fact and conclusions of law for the Court's consideration. The proposed findings of fact must include references to the records in this case and the D.C. court case, and any portions of the D.C. record that the parties wish to rely upon will need to be filed either as an appendix or under separate notice of filing. The proposed conclusions of law must include citations to the applicable law. All such findings and conclusions must be based on the application of the legal standards enunciated by the Supreme Court. In other words, for all claims asserted by Plaintiffs in this case, the Plaintiffs would need to submit proposed findings and conclusions that would

support a finding that there is a likelihood of success on the merits of such claims. On the other hand, the State would need to submit proposed findings and conclusions that would support a finding that Plaintiffs have not shown a likelihood of success on the merits of such claims. For all claims asserted in the D.C. proceedings, Plaintiffs would need to submit proposed findings and conclusions that would support a finding that the § 5 challenges asserted in the D.C. Court are “not insubstantial” and the State would need to submit proposed findings and conclusions that would support a finding that the challenges are insubstantial.

2. Briefs on the parties’ positions on issues relating to interim plans:

The parties are directed to simultaneously file comprehensive briefs on all of the §2, constitutional, and §5 claims that are still being asserted following the Supreme Court’s ruling on January 20, 2012. The Court will assume that the plaintiffs are still asserting every claim unless they have indicated to the contrary by February 7, 2012. Likewise, the Court will assume that the State still contests every claim unless it has indicated to the contrary by February 7, 2012. The briefing should separately address each district or specific geographical area that is still at issue and should state, as to that district or area, how this Court should apply the standards that the Supreme Court announced for drawing interim maps. The briefing should be limited to interim plans only. The parties should assume that this Court will announce interim maps before any decision is rendered by the D.C. Court and that, therefore, the “not insubstantial” test is applicable to § 5 claims. Each party may file a responsive brief by noon on February 13, 2012.

The parties' briefs shall address the following issues, and any other issues the parties deem significant at this juncture of the proceedings:

1. How this Court should interpret and apply the Supreme Court's "not insubstantial" standard for addressing § 5 challenges, including the proper allocation of the burden of proof.
2. The manner in which the county line rule was interpreted and applied in the enacted plans and how it should be applied in the drawing of interim plans.
3. The applicable law on coalition and crossover districts; the manner in which the law was interpreted and applied in the enacted plans; and how it should be applied in the drawing of interim plans.
4. Whether the State is permitted to replace the reduction of one minority opportunity district by adding another in a different part of the State, under § 2, § 5 or any other applicable law.
5. If this Court is required to redraw certain districts for the Congressional or state legislative maps, what are the constraints, for interim plans, with regard to population deviations?
6. If population deviations remain in the unchallenged districts, the parties should identify the districts with population deviations that are still being challenged as racial gerrymanders or violations of the one person, one vote principle.
7. The Plaintiffs should identify all aspects of the State's enacted plans that stand a reasonable probability of failing to gain § 5 preclearance. The State should

identify any districts that they do not contest stand a reasonable probability of failing to gain § 5 preclearance.

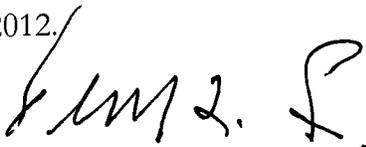
8. Whether the Court has the authority to waive preclearance requirements for the voting changes that would need to be submitted to the Department of Justice by the counties after new interims plans are issued in this case.

It is further ORDERED that the parties appear for oral argument on all issues relating to the interim plans at 8:00 a.m. on Wednesday, February 15, 2012. That hearing will include a status conference to discuss any matters that need to come before the Court.

The Court is not announcing a primary election schedule at this time.

The Court encourages the parties to continue discussions that may result in any stipulations, agreements or concessions for the purpose of preparing interim plans for the 2012 elections.

SIGNED this 2 day of February, 2012.



ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE