

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

FILED

FEB 11 2013

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

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;
JOHN STEEN, in his official
capacity as Secretary of State of the
State of Texas

Defendants

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;
JOHN STEEN, in his 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.

✓ **11-CA-360-OLG-JES-XR**

CONSOLIDATED ACTION

[Lead case]

CIVIL ACTION NO.

SA-11-CA-788-OLG-JES-XR

CONSOLIDATED ACTION

[Lead case]

ORDER

The Court has reviewed the parties' advisories filed on or about December 3, 2012 and is cognizant of the Section 5 matters pending before the United States Supreme Court that will affect the final outcome of these proceedings. With the uncertainty of matters outside this Court's control, it is difficult to ascertain an appropriate pace for continuing any work that may still need to be done. The Court will not issue any opinion, if at all, until after the Supreme Court resolves the Section 5 matters. Nevertheless, to the extent that additional work in this case may be helpful to prepare for events that may follow later this year, the Court would like the parties' thoughts and opinions on how to facilitate same.

It is therefore ORDERED that all parties (either jointly or separately) file a written advisory that contains a brief summary on each of their positions as to how the Court would need to proceed under each of the following scenarios, along with a realistic time estimate on how long it would take for the Court to complete its task while still leaving sufficient time for local election officials to implement any necessary changes prior to the 2014 election cycle, assuming there is no postponement of statutory deadlines:

- A. The United States Supreme Court determines that Congress did not exceed its authority when it reauthorized Section 5 of the Voting Rights Act in 2006, as asserted in the *Shelby County* case, and accepts the State of Texas' appeal but issues no ruling prior to the end of the current Term;
- B. The United States Supreme Court determines that Congress did not exceed its authority when it reauthorized Section 5 of the Voting Rights Act in 2006, as asserted in the *Shelby County* case, and dismisses the State of Texas' appeal;
- C. The United States Supreme Court determines that Congress did not exceed its authority when it reauthorized Section 5 of the Voting Rights Act in 2006, as asserted in the *Shelby*

County case, accepts the State of Texas' appeal, and affirms the D.C. decision on preclearance;

D. The United States Supreme Court determines that Congress did not exceed its authority when it reauthorized Section 5 of the Voting Rights Act in 2006, as asserted in the *Shelby County* case, accepts the State of Texas' appeal, and reverses the D.C. decision on preclearance in whole or in part; or

E. The United States Supreme Court determines that Congress exceeded its authority when it reauthorized Section 5 of the Voting Rights Act in 2006, as asserted in the *Shelby County* case, accepts the State of Texas' appeal, and vacates the D.C. decision on preclearance;

The parties' advisories should also address the following questions:

1. If the Supreme Court accepts the State of Texas' appeal but does not issue an opinion before the end of the current Term: (a) Would this Court be required to issue interim maps for the 2014 elections? (b) If so, which apportionment plan would the Court use as a baseline when drawing an appropriate interim map?

2. If the D.C. decision to deny preclearance is left undisturbed and State's enacted plans are legally unenforceable: (a) Would all of the Section 2 and constitutional challenges in this case become moot? ¹ (b) If the issues in this case become moot, what jurisdiction and authority does this

¹ Compare Latino Task Force advisory (Dkt. # 737, p. 5) ("No pending legal challenges have become moot"), and Rodriguez plaintiffs' advisory (Dkt. # 724, p. 11) ("The pendency of the State's Supreme Court appeal prevents the D.C. Court's Section 5 ruling from rendering moot the constitutional and Section 2 challenges to the 2011 enacted Congressional plan. If the Supreme Court affirms the D.C. Court's August 28th judgment, then the constitutional and Section 2 challenges will be rendered moot. If the Supreme Court reverses and renders judgment for the state, the constitutional and Section 2 challenges to the enacted Congressional plan will have to be reached"), and State's advisory (Dkt. # 728, p. 12) ("While it is not appropriate to rule on Section 2 and constitutional challenges to the legislatively enacted plans until they have been precleared, those challenges are not moot"), with advisory of MALC, NAACP, LULAC, Quesada plaintiffs and Congresspersons (Dkt. # 725, p. 11) ("With respect to the Plaintiffs' Section 2 and constitutional claims against the enacted plan, the decision of the D.C. district court denying preclearance to the enacted plans renders those claims moot and thus, they may be dismissed without prejudice").

Court retain, and for how long?

3. If the D.C. decision is reversed in whole or in part, is there any possibility of remand to the D.C. Court? What would happen then?

4. Under which scenario(s) would this Court move forward with a decision on the Section 2 and constitutional issues raised in this case? Would the record available for the Court's consideration be limited to the evidence already presented in this case? Would the parties supplement the current record? Would the Court's consideration of the issues in this case be based, in part, on the factual evidence in the D.C. record, which has already been tendered to this Court? Would this Court be bound by any findings or conclusions of the D.C. court? Would the parties need to supplement or amend their proposed findings of fact and conclusions of law?

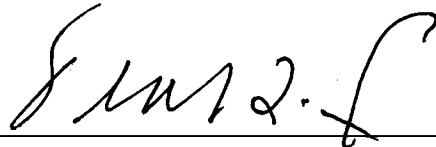
5. In the event the Court does need to proceed with determining the Section 2 and constitutional issues at some juncture, the Court must have a clear understanding of the specific districts in each enacted plan that are alleged to be the result of statutory or constitutional violations. Therefore, the parties' advisories must include a LIST of the specific districts still being challenged in this case, with such list naming the district by number and the specific challenge being asserted.

6. Do the parties to the Senate case anticipate that their case may be resolved more expediently given the limited issues therein?

The parties shall file their written advisories on or before March 15, 2013. Responses are not mandatory, but may be filed no later than March 25, 2013. In addition to addressing the matters set forth above, the parties may address any other matters that may assist the Court in planning its work for the upcoming months. This, however, is not an invitation for the parties to re-argue their respective positions.

After receipt and review of the parties' advisories and any responses thereto, the Court will determine whether a status conference or hearing is necessary.

SIGNED this 11 day of February, 2013 on behalf of the three judge panel.

A handwritten signature in black ink, appearing to read "Orlando L. Garcia", written over a horizontal line.

ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE