

ORDER

1. This Court's order of January 20, 2012, is hereby vacated. There will be no status conference on February 1, 2012.

2. The parties are hereby directed to appear for a status conference in San Antonio, Texas, at 1:00 p.m. on Friday January 27, 2012, to discuss all pending matters in these related cases. Representatives of the Republican and Democratic Parties, with authority to speak for those respective parties, should be present. A representative of the Secretary of State's Office should be present, also with authority to speak. The Court will be lenient in also allowing presentations by governmental entities or their associations, such as the Texas Municipal League and elections administrators from counties of various sizes.

3. This Court will likely reconsider, vacate, or revise its order of December 16, 2011 (as corrected on December 19), which, *inter alia*, set various deadlines for the conduct of primary elections in 2012. Specifically, but without limitation, this Court will almost certainly need to vacate or amend the February 1, 2012, deadline for ballot applications.

4. If all parties wish to maintain the current election schedule, they should confer and submit agreed-upon interim maps for this Court's consideration by February 6. This Court would not be bound by any such agreement but would take it into careful consideration in announcing interim plans.

5. In the event interim maps cannot be agreed upon, the parties should be prepared to indicate to this Court, by February 6, which districts in the Legislature's enacted maps are no longer objected to in light of the Supreme Court's opinion of January 20.

4. The parties will be expected to indicate, at the status conference, any legal positions they have previously taken in these cases that they are no longer urging, for *interim* plans only and without prejudice, in light of the Supreme Court's opinion.

5. The parties will be expected to indicate what further evidence, in their respective views, needs

to be presented to this Court, either live or by transcripts from the District of Columbia trial and when any such presentations should take place.

6. This Court is of course aware that these parties are engaged now in an important trial of section 5 preclearance issues in the district court in the District of Columbia (the "D.C. Court"). This Court understands that the evidentiary presentations in that trial are scheduled to end no later than Thursday January 26, with closing arguments on February 2-3. With high respect for the importance of that proceeding and the prerogatives of that court, this Court hereby requests both sides in the San Antonio proceedings to request, on behalf of this Court, that the D.C. Court attempt to rule on the section 5 issues in time for this court to incorporate those decisions into its ultimate decision on the redistricting plans for the 2012 elections for the Texas House of Representatives, the Texas Senate, and the U.S. Congress. Should this Court decide to delay some or all of the primary elections beyond the current date of April 3, this Court will make every reasonable attempt to schedule such elections on a date that will give adequate time for receipt and consideration of any rulings from the D.C. Court and will allow sufficient time for this Court to consider the applicable facts and law in light of the Supreme Court's opinion. Any guidance from the D.C. Court as to the timing of its decision will greatly assist this Court in completing its task. But if, for whatever reason, this Court needs to rule on the interim plans without the benefit of a ruling from the D.C. Court, it will need to anticipate what those rulings might be, using the Supreme Court's recent opinion as the binding and best available guide.

7. This Court is giving serious consideration to whether a so-called "split primary" will be required because of the legal requirements and practical logistics of the 2012 election cycle. One important practical limitation is that to issue interim maps, this Court would need to receive additional evidence or have access to the transcript and record from the D.C. Court well in advance. All participants in the January 27 status conference should be prepared to address the advisability of a split primary. The Court has already heard about, and is well aware of, the substantial additional expense of

a split primary. The State should be prepared to address whether it has the authority to reimburse the counties and the political parties for that added expense. The participants should be ready to comment on the various forms of a split primary, including, without limitation, the following possibilities:

a. The political parties would conduct only the Presidential primaries and the precinct chair elections on April 3 or some other date in early or mid-April (hereinafter the "First Primary"), thus setting into motion the extensive convention procedures that would allow the political parties to maintain their current schedule for state conventions in early June. All other primaries (and any runoffs) would be set for a later date (hereinafter the "Second Primary") calculated to occur at a time that would allow this Court to decide all relevant issues in a timely and comprehensive manner.

b. At the First Primary, the political parties would conduct both the Presidential primaries and certain other designated primaries that do not depend on the district lines that this Court will ultimately announce for the interim plans. The remaining primary elections would be held at the Second Primary. The participants at the status conference should be prepared to discuss this option and in particular to comment on which elections should be reserved for the Second Primary. The possible categories of offices to be divided between the First and Second Primaries include, without limitation, the following:

- i. Statewide offices.
- ii. Multi-county offices that do not cut county lines.
- iii. Office that encompass only one whole county.
- iv. Offices that include districts or precincts within counties but do not involve the district lines to be decided by this Court.

8. The participants should be prepared to address how the December 16 order can and should be amended, regarding the details of the election schedule, to accommodate the various options, should this Court decide to amend that order. Although the details of such an amended election schedule might need to be addressed at a later time, the participants should be ready to advise the Court as to which specific dates and requirements must be set or amended immediately in the event this court amends the December 16 order.

9. With regard to districts in the enacted maps that are being challenged, the parties should re-state the specific challenges thereto. In other words, the parties should assist the Court in identifying districts that the Court would need to address under Section 2 and the 14th Amendment regardless of the Section 5 rulings. To the extent there are statewide challenges, the parties should also specifically state those. Further, to the extent that any particular element of any particular claim is not in dispute, the State shall identify all such elements (for example, if any of the *Gingles* preconditions are not in dispute with regard to any section 2 claim, the State shall identify those elements not in dispute).

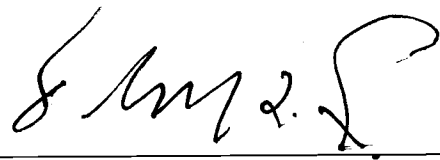
10. The parties should recommend a proposed schedule for trial on the merits of the *Davis* case.

11. To the extent reasonably possible, the parties should describe any additional motions or evidentiary issues that will need to be resolved before this Court addresses the merits of the enacted maps and whether the evidence in the record will need to be supplemented with updated ACS survey data or other evidence that may not have been available during trial on the merits.

12. The Supreme Court has directed that this Court apply a preliminary-injunction standard to the Section 2 and Constitutional claims and determine whether there is a reasonable probability that the state will not secure Section 5 preclearance. The parties should be ready to address who has the burden on those standards in the event this Court needs to rule in regard to section 5 before receiving guidance from the D.C. Court.

13. The Court will consider any other issues the parties may wish to bring to the Court's attention. The parties and participants are welcome to, but are not required to, submit advisories or briefs in advance of the January 27 status conference.

SIGNED this 23 day of January, 2012.



ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE