**IN THE UNITED STATES DISTRICT COURT FOR THE**

**WESTERN DISTRICT OF TEXAS**

**SAN ANTONIO DIVISION**

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| WENDY DAVIS, *et al.*,<br>*Plaintiffs,*<br><br>v.<br><br>RICK PERRY, *et al.*,<br>*Defendants.* | §<br>§<br>§<br>§<br>§<br>§<br>§ | CIVIL ACTION NO.<br>SA-11-CA-788-OLG-JES-XR<br>[Lead Case] |
| LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC), DOMINGO GARCIA,<br>*Plaintiffs,*<br><br>v.<br><br>RICK PERRY, *et al.*,<br>*Defendants.* | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | CIVIL ACTION NO.<br>SA-11-CA-855-OLG-JES-XR<br>[Consolidated Case] |

**O R D E R**

On February 28, 2012, this Court issued PLAN S172 as the interim plan for the districts used to elect senators in 2012 to the Texas State Senate. This order explains that plan.

The plaintiffs in this case have asserted claims alleging, *inter alia*, that defendants violated Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and the one-person, one-vote requirements of the United States Constitution. As of this date, Section 5 preclearance of the State's enacted senate plan has not been obtained, and it is undisputed that the state senate districts (Plan S100) established during the last decennial redistricting cycle are unconstitutionally malapportioned. Plaintiffs have argued that this Court should impose an interim remedial map that differs from the plan enacted by the Texas legislature last year. This Court agrees.

Pursuant to the Supreme Court's decision in *Perry v. Perez*, 565 U.S. ___, 132 S. Ct. 934 (2012) (*per curiam*), this Court has received and partially reviewed the trial transcripts and

documentary evidence that are a part of the record in the preclearance action, *State of Texas v. United States, et al*. No. 11-1303 (D.D.C. 2011). While "avoid[ing] prejudging the merits of preclearance," *Perry*, 132 S. Ct. at 942, since that issue can only be decided by the United States District Court for the District of Columbia, this Court has concluded that certain aspects of the State's enacted senate plan "stand a reasonable probability of failing to gain §5 preclearance" and that the Section 5 challenge to those aspects of the plan "is not insubstantial." *Id.* Imposition of an interim plan is therefore appropriate. In determining which interim plan to put in place, the Court has "take[n] guidance from the State's recently enacted plan in drafting an interim plan." *Id.* at 941. In addition, this Court heard arguments on interim plans on February 14–15, 2012.

The Plaintiffs and Plaintiff-Intervenor Estes have developed a proposed interim plan, Plan S171, to govern the 2012 elections for the Texas Senate, and they have submitted that plan to this Court. Plan S171 is only a partial plan addressing Senate District 10. Plan S172 incorporates Plan S171 into the entire legislatively enacted senate map. Defendants have indicated in open court that they have no objection to the Court's entry of an order directing that Plan S172 be used on an interim basis for the 2012 elections. Defendants have, however, preserved all defenses for the final judgment stage of these proceedings and have not admitted that any of Plaintiffs' claims against the legislatively enacted Senate plan have merit.

This Court has independently reviewed Plan S172 and finds that it reflects changes to the legislatively enacted Texas Senate plan that are appropriately designed to address Plaintiffs' not insubstantial claim that SD 10 reflects a prohibited purpose under Section 5 of the Voting Rights Act; S172 also remedies the unconstitutional malapportionment of the state senate districts. The Court further finds that 27 of the 31 districts in the proposed interim plan are identical to those in the State's enacted plan (S148). Thus, the proposed interim plan respects the State's enacted plan while not incorporating into it those aspects as to which there is, in this Court's view, "a

reasonable probability" that Section 5 preclearance will not be forthcoming. The proposed interim plan makes changes to SD 10 by restoring that district to its benchmark configuration and by redrawing only three adjacent senate districts as required to comply with one-person, one-vote principles and to accommodate the changes with respect to SD 10. In limiting the interim map to redrawing SD 10 and the impacted districts adjacent to it, we have limited our changes in the State's enacted plan to those aspects of the plan "that stand a reasonable probability of failing to gain §5 preclearance." *Perry*, 132 S. Ct. at 941.

This order applies only on an interim basis for the 2012 elections to the Texas Senate. Nothing in this order explaining this Court's independently drawn Plan S172 represents a final judgment on the merits as to any claim or defense in this case, nor does it affect any future claim for attorney's fees.

It is hereby ORDERED that Plan S172 be used on an interim basis as the redistricting plan for the 2012 elections for the Texas Senate.

SIGNED on this 19th day of March, 2012.

_____/s/_____
JERRY E. SMITH
UNITED STATES CIRCUIT JUDGE

_____/s/_____
ORLANDO L. GARCIA
UNITED STATES DISTRICT JUDGE

_____/s/_____
XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE