

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
NO. 1:15-CV-00399-TDS-JEP**

SANDRA LITTLE COVINGTON, *et al.*,  
  
Plaintiffs,  
  
v.  
  
THE STATE OF NORTH CAROLINA, *et al.*,  
  
Defendants.

**MEMORANDUM  
IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
ADDITIONAL RELIEF**

Pursuant to the Court's Order for Supplementary Briefing Schedule, (Doc. 124, August 15, 2016), as modified by Consent Order (Doc. 127, August 19, 2016), Plaintiffs respectfully submit this memorandum in support of their Motion for Additional Relief. The additional relief Plaintiffs seek is well within the equitable powers of this Court to grant and is fully justified by ample precedent in redistricting jurisprudence. Plaintiffs incorporate herein by reference all of the arguments and legal authorities previously submitted to the Court on the issue of an appropriate remedy in this matter in Plaintiffs' Post-Trial Briefing on Remedy (Doc. 115, May 6, 2016) and its attachments, most particularly the authorities cited on pages 2-6 of the brief concerning the Court's jurisdiction to implement a remedy even while an appeal is pending and Plaintiffs' right to a full remedy to avoid further irreparable harm.

**I. STATEMENT OF THE CASE**

Plaintiffs filed this action on May 19, 2015 (Doc. 1) and, on October 7, 2015 filed a motion for a preliminary injunction (Doc. 23), seeking to avoid the continuing use of

unconstitutional racially gerrymandered districts, which was denied. (Doc. 39) Following the trial of this action on April 11 – 15, 2016, Plaintiffs sought an order requiring the North Carolina General Assembly to immediately redraw the unconstitutional districts. (Doc. 115) In this Court’s Order and Judgment entered August 15, 2016 (Doc. 125), holding that the twenty-eight districts challenged in this case are unconstitutional, Plaintiffs’ request for immediate relief was denied and the 2016 elections are proceeding using the 2011 districts. Plaintiffs now seek an order requiring the Defendants to remedy the constitutional violations in the twenty-eight districts<sup>1</sup> at issue in this case within two weeks of the General Assembly reconvening in January 2017, and directing the Defendants to conduct special elections in those districts in 2017.

## II. ARGUMENT

### A. Plaintiffs’ Request that Remedial Districts Be Drawn by January 25, 2017 is Reasonable.

The primary responsibility for reapportionment of state legislative districts rests with the legislature, which should be afforded an adequate opportunity to “reapportion according to federal constitutional requisites in a timely fashion.” *Reynolds v. Sims*, 377 U.S. 533, 586 (1964). As the U.S. Supreme Court has explained:

When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford

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<sup>1</sup> Only the twenty-eight districts (out of 170 state legislative districts) found unconstitutional need to be redrawn. While neighboring districts and county clusters in some areas of the state will be impacted, other areas of the state, and most notably districts in the western region of the state, do not need to be redrawn to remedy the unconstitutional districts.

a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan. The new legislative plan, if forthcoming, will then be the governing law unless it, too, is challenged and found to violate the Constitution.

*Wise v. Lipscomb*, 437 U.S. 535, 540 (1978). The time period requested by Plaintiffs does afford the Defendants that reasonable opportunity to adopt a remedial measure in place of the unconstitutional districts currently in use.

This Court issued its judgment on August 15, 2016, and the legislature could at any time from that date convene in special session to consider and enact a redistricting plan that cures the constitutional defects found in the twenty-eight districts at issue in this case. Alternatively, Defendants could wait until the next regular session to redraw. Plaintiffs request that this Court allow the Defendants no longer than two weeks after the next regular session of the North Carolina General Assembly is underway, that is, until January 27, 2017 to adopt remedial districts.

This time period is consistent with state law provisions applicable in these circumstances, *see* N.C. Gen. Stat. § 120-2.4 (state courts must give legislature at least two weeks to remedy defects identified in a redistricting plan).<sup>2</sup> It is consistent with, and indeed well beyond, the time period allowed in similar recent litigation in North Carolina. *See Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D. N.C. 2016) (three-judge court)

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<sup>2</sup> Plaintiffs do not contend that this state statute constrains this court but only point out that the relief Plaintiffs seek is consistent with this state policy, *see also, Stephenson v. Bartlett*, 358 N.C. 219, 230, 595 S.E.2d 112, 119-20 (2004) (holding that N.C. Gen. Stat. § 120-2.4 does not unconstitutionally limit the authority of judicial branch to remedy constitutional violation).

(ruling on February 5, 2016 that Defendants have until February 19, 2016 to enact remedial districts); *Stephenson v. Bartlett*, No. 01-cvs-2885 (Johnston County Superior Ct. May 8, 2002) (allowing the General Assembly 12 days to draw new redistricting plans for the State House and State Senate) (Attached as Appendix 1).

Requiring the Defendants to remedy the constitutional defects in the twenty-eight house and senate districts at issue here in January 2017 is justified on pragmatic and equitable grounds. First, legislative action by January 25, 2016 is necessary to allow Plaintiffs' additional relief of special legislative elections in those districts in 2017. In order to have ample time for court review and administrative implementation of the new districts with primary and general elections in 2017, new districts should be in place as early as possible in 2017. Second, even if there are no new elections in those districts in 2017, voters, potential candidates and the general public should have notice at the earliest possible time of the new election districts. The longer there is uncertainty, the greater harm to the plaintiffs and the public that follows. There is no justification for delaying the Defendants' consideration of remedial districts beyond January 25, 2017.

Finally, it is well established that if the Defendants fail to enact a remedy, the responsibility falls to the Court to craft a remedial plan. *See Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 557 (E.D. Va. 2016) (three-judge court) (citing *White v. Weiser*, 412 U.S. 783, 794-95 (1973)); *Connor v. Finch*, 431 U.S. 407, 415, 425 (1977) (district court must draw legislative districts expeditiously that comply with constitutional requirements where the legislature fails to do so). *See also Chatman v. Spillers*, 44 F.3d 923, 925 (11th

Cir. Ga. 1995) (it was error for the trial court to refuse to order special elections where the city failed to enact a remedy). Allowing the Defendants until January 25, 2017 to carry out their responsibility to enact remedial districts is more than fair and equitable in these circumstances.

**B. Special Elections in 2017 in the Remedial Districts are Necessary to Avoid Further Violation of Plaintiffs' Constitutional Rights.**

Plaintiffs request that this Court order Defendants to conduct special elections in the redrawn house and senate districts in 2017. While the Court exercised its discretion to allow the 2016 elections to proceed using the unconstitutional districts, the general rule is that “once a State’s apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan.” *Reynolds v. Sims*, 377 U.S. at 585. The use of unconstitutional racially gerrymandered districts to elect representatives irreparably harms Plaintiffs in this case and they “are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan.” *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (three-judge court) (citing *Page v. Va. Bd. of Elections*, No. 3:13-cv-678, 2015 U.S. Dist. LEXIS 73514, 2015 WL 3604029, at \*18 (E.D. Va. June 5, 2015)).

“A denial of constitutionally protected rights demands judicial protection.” *Reynolds v. Sims*, 377 U.S. at 566. Where a legislature has impermissibly used race to draw districts, the harm of that governmental use of racial classifications extends to everyone in the district and “the public has an interest in having ... representatives

elected in accordance with the Constitution.” *Personhuballah*, 155 F. Supp. 3d at 560-61. A special election in 2017 is necessary to prevent further harm to Plaintiffs and all North Carolina voters residing in the unconstitutional districts. As the Court has acknowledged, Plaintiffs have already suffered “substantial stigmatic and representational injuries.” Mem. Op. 161, Aug. 11, 2016 (Doc. No. 123). The interests of the public as a whole also are best served by implementing constitutional redistricting plans as soon as possible. Since the districts were first enacted in 2011, this legislature has enacted over 1,000 laws.<sup>3</sup> Indeed, “[t]he public has a strong interest in having elections conducted according to constitutionally drawn districts, instead of pursuant to racially gerrymandered lines that violate the constitutional rights of all citizens within those districts.” *Johnson v. Miller*, 929 F. Supp. 1529, 1560-61 (S.D. Ga. 1996). The “paramount fact is that all persons” in these districts “are currently represented by unconstitutionally elected officials.” *Tucker v. Burford*, 603 F. Supp. 276 (N.D. Miss. 1985) (ordering the terms of county officials shortened and a special election to fill the remainder of the terms).

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<sup>3</sup> Numerous laws enacted since 2011 have been held unconstitutional or enjoined by state and federal courts. *See, e.g., Stuart v. Camnitz*, 774 F.3d 238 (4th Cir. 2014) *cert. denied sub. nom., Walker-McGill v. Stuart*, 135 S. Ct. 2838 (2015) (N.C. Gen. Stat. § 90-21.85 violated the First Amendment where it required a physician to speak to a patient who was not listening, rendered the physician the mouthpiece of the state's message, and omitted a therapeutic privilege to protect the health of the patient); *NAACP v. McCrory*, No. 16-1468, 2016 U.S. App. LEXIS 13797 (July 29, 2016) (Parts of Session Law 2013-381, a comprehensive election reform measure held unconstitutional); *N.C. Ass'n of Educators v. State*, 786 S.E.2d 255 (N.C. 2016) (Career Status Law unlawfully infringed upon the contract rights of those teachers who had already achieved career status in violation of the Contract Clause, U.S. Const. art. I, § 10).

It is well established that “[f]ederal courts have often ordered special elections to remedy violations of voting rights.” *Ketchum v. City Council of Chicago*, 630 F. Supp. 551, 565 (N.D. Ill. 1985); *see also, Cousins v. City Council*, 503 F. 2d 912, 914 (7th Cir. 1974) (in resolving challenge to Chicago City Council redistricting, district court ordered special elections in the affected wards); *United States v. Osceola County*, 474 F. Supp. 2d 1254, 1255 (M.D. Fla. 2006) (ordering special elections and shortening terms to implement remedial districting plan in Section 2 vote dilution case).

The relief that Plaintiffs seek here is precisely what the three-judge panel ordered in *Smith v. Beasley*, 946 F. Supp. 1174 (D.S.C. 1996), following its holding that six house districts and three senate districts in South Carolina’s legislative redistricting plans were unconstitutional racially gerrymandered districts. That court held that the 1996 elections could go forward using the unconstitutional districts because at the time of its ruling on September 26th, the general election was roughly six weeks away, but that a special election would be held in 1997 in any districts that had to be redrawn as a result of the court’s ruling. *Id.* at 1212. Recognizing that racial gerrymandering causes significant harm and that citizens are entitled to have their equal protection rights vindicated as soon as possible, the court ordered that:

In the House and Senate districts that are altered by the remedial districting plan, legislators elected in the 1996 general election will serve for only one year. Special elections must be held in 1997 to elect Representatives and Senators to serve the balance of the terms in the amended districts.

*Id.*

The Plaintiffs in this case are entitled to the same relief. “Particularly where ‘voters are represented by unconstitutionally elected officials . . . [courts have] had no difficulty in determining that the terms of the officials elected’ should be shortened and special elections held.” *Ketchum*, 630 F. Supp. at 565 (quoting *Tucker v. Burford*, 603 F. Supp. 276, 279 (N.D. Miss.1985) (redistricting case). *See also Keller v. Gilliam*, 454 F.2d 55, 57-58 (5th Cir. 1972) (approving the shortening of terms of office as a remedy for a voting rights violation). Plaintiffs’ request for a special election in 2017 also is bolstered by the fact that Plaintiffs sought relief in the form of a preliminary injunction in advance of the challenged election. *See Smith v. Cherry*, 489 F. 2d 1098, 1103 (7th Cir. 1973) *cert. denied*, 417 U.S. 910 (1974).

The same relief Plaintiffs seek here was also ordered in redistricting litigation in Virginia in 1981 where the court found that the legislature’s state house and senate districts violated the equal protection clause on one-person one vote grounds. *See Cosner v. Dalton*, 552 F. Supp. 350 (E.D. Va. 1981) (three-judge court). The court there held that “[b]ecause Virginia's citizens are entitled to vote as soon as possible for their representatives under a constitutional apportionment plan, we will limit the terms of members of the House of Delegates elected in 1981 to one year.” *Id.* at 364. North Carolina’s citizens living in unconstitutional racially gerrymandered districts deserve no less. This court has the authority and the duty to protect Plaintiffs rights to equal protection in their exercise of the most fundamental right to vote, *see Reynolds*, 377 U.S. at 554-55; *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most



basic, are illusory if the right to vote is undermined.”), and should order that an election occur in the in the remedial districts in 2017.

Defendants’ notice of appeal in this action is no reason to delay implementation of a remedy or to deny Plaintiffs the relief of a special election in the affected districts in 2017. Similar arguments to suspend any remedial efforts pending Supreme Court review were carefully considered and rejected in *Personhuballah v. Alcorn*, 155 F. Supp. 3d at 558 (stay denied by *Wittman v. Personhuballah*, 136 S. Ct. 998 (2016)). Seeking to delay implementation of an effective remedy is in essence an attempt to stay this Court’s order, which should be the subject of a separate motion. *See, e.g., Larios v. Cox*, 305 F. Supp. 2d 1335 (N.D. Ga. 2004) (denying motion to stay order during pendency of Supreme Court proceedings and collecting cases).

Indeed, there are numerous examples of courts ordering the implementation of remedial plans shortly after ruling and before any further appeals are decided to ensure that voters already constitutionally harmed by illegal redistricting plans do not suffer further irreparable harm. *See, e.g., Vera v. Bush*, 933 F. Supp. 1341, 1352-53 (S.D. Tex. 1996) (ordering a remedial plan on August 6, 1996, for November 1996 elections); *Johnson v. Mortham*, 926 F. Supp. 1540, 1542 (N.D. Fla. 1996) (denying motion to stay a May 22, 1996, deadline for the legislature to enact a remedial plan for the November 1996 congressional election); *Busbee v. Smith*, 549 F. Supp. 494, 518-19 (D.D.C. 1982) (ordering a court-drawn remedial plan on August 24, 1982, for two congressional districts), *aff’d* 459 U.S. 1166 (1983). Here there is no reason to delay. The court should

order the Defendants to hold special elections in 2017 in the newly-drawn remedial districts required by ruling on the merits in this case.

**C. This Court Has Authority to Make Such Other Orders as Required to Implement the Appropriate Remedy.**

Plaintiffs also seek an order that the Defendants produce the legislative history of the new districts at the same time the plans are submitted to this court for approval, and that the state constitutional residency requirement be slightly relaxed to avoid disadvantaging candidates who wish to seek office in the remedial districts who may have less than a year's notice of the district's location and boundaries. Ordering the production of the legislative history for the remedial plan is consistent with the procedure recently followed in another case in this district. *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. Feb. 5, 2016); *see also, Harris*, Case No. 1:13-cv-949, ECF No. 149 (Feb. 19, 2016) (Defs.' Notice of Filing of Legislative History Materials) (Attached as Appendix 2). Moreover, it is critically important to this Court's review of the remedial plan. This Court will have to determine whether the remedial state legislative plans truly cure the constitutional defect identified by this Court, without introducing any new constitutional defects. In order to do so, this Court must consider not only the effect that the altered district lines will have on voters, but the process by which those remedial district lines are created. Prompt production of a broad array of legislative history materials will enable this Court to conduct a meaningful review.

Plaintiffs also request that the Court slightly shorten the residency requirement contained in Article II, §§ 6-7 of the North Carolina Constitution, so that candidates for

the new legislative districts in 2017 need only be residents of the district from which they seek election for the period of time between the close of filing for the 2017 special election and the date of the election. The North Carolina Constitution states that a senator or representative “shall have resided in the district for which he is chosen for one year immediately preceding his election.” N.C. Const. Art. II, §§ 6-7. However, where the district boundaries are not even known one year before the date of the election, this one-year residency requirement unfairly limits citizens’ ability to run for office and voters’ ability to elect candidates of their choice.

Federal courts have broad authority to modify election deadlines in order to ensure that elections under remedial plans proceed in an orderly fashion, and that authority includes the power to modify state constitutional residency requirements. *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *Butterworth v. Dempsey*, 237 F. Supp. 302, 306 (D. Conn. 1964). In *Butterworth*, the court explained:

It is fundamental that state limitations -- whether constitutional, statutory or decisional -- cannot bar or delay relief required by the federal constitution ... of course it is elemental that if we have the power to enjoin an election to the General Assembly pursuant to an unconstitutional plan of districting and apportionment, we certainly have the power to approve a special election pursuant to a constitutional redistricting and reapportionment and to allow such election at the earliest practicable date without delay because of state constitutional or statutory limitations.

*Id.* See also, *Valenti v. Dempsey*, 211 F. Supp. 911, 913, (D. Conn. 1962) (A “state constitutional limitation need not be construed as a bar, for no state limitation on legislative action can prevent relief which the Federal Constitution, as construed by the Supreme Court, requires.”) This principle applies here to the state constitutional

residency requirement. Where equity requires relaxing that requirement to allow the scheduling of a special election, vindication of the federal constitutional right to equal protection takes precedence.

It is common for federal courts to alter residency requirements, election deadlines and term lengths when necessary to implement remedial plans, even where those requirements are established by state constitutions. *See, e.g., Perez v. Perry*, Case No. 5:11-cv-360, ECF No. 486 at \*3 (W.D. Tex. Nov. 4, 2011) (shortening the residency requirement in Texas Constitution in connection with ordering special election schedule) (Attached as Appendix 3); *id.*, ECF No. 685 at \*3 (W.D. Tex. March 1, 2012) (same) (Attached as Appendix 4); *Brown. v. Ky. Leg. Research Comm'n*, 966 F. Supp. 2d. 709, 726 (E.D. Ky. 2013) (noting that state constitution residency requirement for state legislative office does not constrain deadline for drawing reapportionment plan consistent with federal constitutional standards); *see also Smith v. Beasley*, 946 F. Supp. at 1212-13 (shortening terms from 2 years to 1 year and ordering 1997 special elections for state legislative seats, even though the South Carolina Constitution set the terms for Senators as four years and Representatives as two years. S.C. Const. art. III, §§ 2, 6). The additional relief Plaintiffs seek is supported by precedent and necessary for equitable implementation of remedial districts to end the improper use of racial classifications in redistricting that occurred in 2011 when the current districts were enacted.

### **III. CONCLUSION**

Accordingly, this Court should grant Plaintiffs' Motion for Additional Relief.

This the 30th day of September, 2016.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 30th day of September, 2016.

/s/ Anita S. Earls

# APPENDIX 1

*Stephenson v. Bartlett*, No. 01-cvs-2885  
Johnston County Superior Court  
Order of May 8, 2002

NORTH CAROLINA  
JOHNSTON COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO: 01 CvS 2885

ASHLEY STEPHENSON, et al  
PLAINTIFFS,

vs.

GARY BARTLETT, et al  
DEFENDANTS.

FILED  
DATE 5/8/02 TIME 4:30 pm  
WILL R. CROCKER  
JOHNSTON COUNTY C.S.C.  
ORDER BY P. Ryals  
DEPUTY

**THIS MATTER** came on to be heard, and was heard, before the undersigned Judge of the Superior Court on May 8, 2002. In accordance with the Supreme Court's April 30, 2002, opinion in this matter the purpose of this hearing was twofold: (1) to determine whether the General Assembly should be accorded the first opportunity to draw new redistricting plans for the 2002 election for the State House and State Senate and (2) to establish a timetable for action by the General Assembly and subsequent actions by this Court.

Based upon the Supreme Court's opinion, the affidavits filed by the parties and arguments of counsel, it is hereby ordered:

1. The General Assembly shall be accorded the first opportunity to draw new redistricting plans for the State House and the State Senate and it shall have up to and including 12:00 noon, May 20, 2002, to submit those plans to the Court. Primary responsibility for redistricting rests with the General Assembly.

2. If they choose to do so, the parties will submit proposed redistricting plans to the Court no later than Noon on May 20, 2002. Any plans



submitted will comply with all criteria established by the Supreme Court of North Carolina. Any plans submitted will include the following reports generated by the General Assembly's District Builder system: (1) statewide maps; (2) ideal versus actual population based on 2002 Census results; (3) district populations by race and ethnicity, both total population and voting age population; (4) split county report; (5) split precinct report; (6) voter registration by district; (7) 2002 General Election results; and (8) bill text report. Each plan submitted shall also include a report explaining how the plan was constructed.

3. No later than 5:00 p.m. on May 21, 2002, plaintiffs will submit to the Court comments and materials which shall specifically identify any and all defects they claim exist in the legislature's redistricting plans.

4. A hearing shall be held on May 22, 2002, at 2:00 p.m. to determine whether the legislature's plans are constitutional.

5. Should defendants submit a plan by noon on a day earlier than May 20, 2002, this schedule shall be adjusted by the Court accordingly.

6. The Court will defer to any plan by the General Assembly submitted to the Court consistent with this timetable, provided any such plans comply with the criteria established by the Supreme Court of North Carolina. In the event the General Assembly chooses not to submit a plan, the Court will adopt a constitutional plan and seek preclearance of such plan, strictly as an interim remedy for the 2002 election.

7. The Court retains the discretion to consider any additional plans submitted by the General Assembly to correct any constitutional defects that the Court may find.

8. No plan submitted by the General Assembly and approved by this Court, or in the absence of such a plan, no plan adopted by the Court, shall be administered in the 2002 elections until such time as it is precleared pursuant to Section 5 of the Voting Rights Act of 1965.

So ordered, this the 8<sup>th</sup> day of May, 2002.



HONORABLE KNOX V. JENKINS, JR.  
RESIDENT SUPERIOR COURT JUDGE PRESIDING

# APPENDIX 2

*Harris v. McCrory*, No. 1:13-cv-949  
(M.D. N.C. Feb. 19, 2016)  
Defs' Notice of Filing of Legislative History Materials

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
NO. 1:13-CV-00949**

DAVID HARRIS and CHRISTINE  
BOWSER,

Plaintiffs,

v.

PATRICK MCCRORY, in his capacity as  
Governor of North Carolina; NORTH  
CAROLINA STATE BOARD OF  
ELECTIONS; and A. GRANT WHITNEY,  
JR., in his capacity as Chairman of the  
North Carolina State Board of Elections,

Defendants.

**DEFENDANTS' NOTICE OF FILING**

Please take notice that the North Carolina General Assembly enacted Senate Bill 2, which was ratified on February 19, 2016, and the corresponding House Bill 2. Please find attached to this Notice of Filing copies of Senate Bill 2 and House Bill 2. For bill history and other information on Senate Bill 2 please visit <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2015E1&BillID=S2> For bill history and other information on House Bill 2 please visit <http://www.ncleg.net/gascripts/BillLookUp/BillLookUp.pl?Session=2015E1&BillID=H2> Statistics, reports, maps, and other information regarding the 2016 Extra Session on Redistricting can be found here: <http://www.ncleg.net/representation/redistricting.aspx>

Respectfully submitted, this the 19th day of February, 2016.

NORTH CAROLINA DEPARTMENT  
OF JUSTICE

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## CERTIFICATE OF SERVICE

I Thomas A. Farr, hereby certify that on this date I served a copy of the foregoing **DEFENDANTS' NOTICE OF FILING** to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action.

This the 19th day of February, 2016.

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*Local Rule 83.1  
Counsel for Plaintiffs*

23913741.1

# APPENDIX 3

*Perez v. Perry*, No. 5:11-cv-360  
(W.D. Tex. Nov. 4, 2011)  
ORDER



FILED

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

NOV 04 2011

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

SHANNON PEREZ, ET AL.,  
*Plaintiffs*

VS.

STATE OF TEXAS, ET AL.,  
*Defendants.*

Civil Action No. 11-CV-360-OLG-JES-XR  
[Lead Case]

MEXICAN AMERICAN  
LEGISLATIVE CAUCUS, (MALC)  
*Plaintiff,*

VS.

STATE OF TEXAS, ET AL.,  
*Defendants.*

Civil Action No. 11-CV-361 OLG-JES-XR  
[Consolidated Case]

TEXAS LATINO REDISTRICTING  
TASK FORCE, ET AL.,  
*Plaintiffs,*

VS.

RICK PERRY,  
*Defendant.*

Civil Action No. 11-CV-490-OLG-JES-XR  
[Consolidated Case]

MARGARITA V. QUESADA, ET AL.,  
*Plaintiffs,*

VS.

RICK PERRY, ET AL.,  
*Defendants.*

Civil Action No. 11-CV-592-OLG-JES-XR  
[Consolidated Case]



### Residency

Section 7, Article III, of the Texas Constitution, requires that a person seeking election to the Texas House of Representatives must be a resident of the district the person seeks to represent for one year prior to the person's election as a representative.

Section 6, Article III, of the Texas Constitution, provides the same requirement for a candidate for the Texas State Senate.

Section 23, Article III, of the Texas Constitution, provides that a senator or representative who removes his or her residence from the district for which elected vacates the office of senator or representative.

Since the composition of House and Senate districts in which candidates might offer themselves are uncertain until the Court enters an order pertaining to the districts of the offices described above, and to be fair to the present officeholders, potential candidates and the citizens of Texas, the court finds it necessary to modify the foregoing residence requirements.

Therefore, it is ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate a person must be a resident of the district the person seeks to represent from December 15, 2011 until the date of the General Election, and it is,

It is further ORDERED that an incorrect precinct designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before December 19, 2011.

An application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period.

### Schedule

The Court hereby adopts and orders this procedure with respect to the 2012 Primary Election for federal, state, county and local offices. All those dates, deadlines or requirements not specifically adjusted by this order remain as required under state or federal law:


- a. The deadline for county chairs and state chairs to post notice of the dates of the candidate filing period in a public place in a building in which the chair has an office, as described in Texas Election Code § 141.040 is November 11, 2011.
- b. The first day to file an application for a place on the Primary Ballot as described in Texas Election Code § 172.023(b) shall be November 28, 2011.
- c. An application for a place on the general primary election ballot must be filed not later than 6 p.m. on December 15, 2011 as described in Texas Election Code § 172.023(a)
- d. The last day a vacancy for an unexpired term in an office of the state or county government may occur and appear on the primary ballot, as described in Texas Election Code § 202.004(a), is December 10, 2011.
- e. The deadline for the county chair (or secretary of the county executive committee) to post a notice on the bulletin board used for posting notices of the commissioners court's meetings, containing the address at which the county chair and secretary of the county executive committee will be available to receive applications on the last day for filing an application, as described in Texas Election Code § 172.022, is December 14, 2011.

- f. If a candidate withdraws, dies or is declared ineligible by December 16, 2011, the name is omitted from the primary ballot as described Texas Election Code §§ 172.057 & 172.058.
- g. The deadline for state chair to deliver certified list of statewide and multi-county district candidates to each county chair, as described in Texas Election Code § 172.028(b), is December 19, 2011.
- h. Deadline for a write-in candidate for the office of county or precinct chair to file a declaration of write-in, as described in Texas Election Code § 171.0231(d), is December 19, 2011.
- i. The deadline for the state or county chair, as applicable, to receive applications for a place on the general primary election ballot for an unexpired term for a vacancy in an office of the state or county government that occurs on or before December 10, 2011, as described in Texas Election Code § 202.004(b) is December 19, 2011.
- j. The deadline for county executive committee to conduct drawing for candidate order on ballot at the county seat (unless committee provides by resolution that primary committee is to conduct drawing), as described in Texas Election Code § 172.082(c), is December 20, 2011.
- k. The deadline the state chair shall deliver the chair's list to the secretary of state, and each county chair shall deliver a copy of the chair's list to the county clerk, the state chair, and the secretary of state as described in Texas Election Code § 172.029(c), is December 22, 2011.

- l. If changes in county election precinct boundaries are necessary to give effect to a redistricting plan under Article III, Section 28, of the Texas Constitution, each commissioners court shall order the changes before December 13, 2012, as described in Texas Election Code § 42.032.
- m. On or before January 13, 2012, the registrar shall issue a voter registration certificate to each voter in the county whose registration is effective on the preceding November 14 and whose name does not appear on the suspense list, as described in Texas Election Code § 14.001.

Therefore, it is ORDERED that for the 2012 elections for federal, state, county and local officers shall proceed as required under state and federal law except as provided for above. The State of Texas through the Secretary of State shall deliver an exact duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order. The political parties shall deliver this order and notice thereof to county party chairs without delay.

SIGNED this 4 day of November, 2011.

  
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ORLANDO GARCIA  
UNITED STATES DISTRICT JUDGE

*And on behalf of:*

Jerry E. Smith  
United States Circuit Judge  
U.S. Court of Appeals, Fifth Circuit

*-and-*

Xavier Rodriguez  
United States District Judge  
Western District of Texas

# APPENDIX 4

*Perez v. Perry*, No. 5:11-cv-360  
(W.D. Tex. March 1, 2012)  
ORDER







### **Residency**

It is ORDERED that for the 2012 elections to the Texas House of Representatives and Texas Senate, a person must be a continuous resident of the district the person seeks to represent from April 9, 2012 until the date of the General Election.

It is further ORDERED that an incorrect precinct, district or place designation on an application for a place on the ballot shall not render the application invalid if the designation is corrected on or before March 9, 2012, at 6:00 p.m. If a previously filed application indicated a district, precinct, or place designation specifying a particular map to which that designation applied, or if the application did not specify a district, precinct, or place designation, and one is required for the office sought, the application shall be rejected if not amended to correct such designation prior to 6:00 p.m., March 9, 2012. Any petition submitted in lieu of filing fee or otherwise required for judicial office must contain valid signatures of registered voters of the territory from which the office sought is elected in the number required by the Texas Election Code, and must be submitted to the appropriate filing authority no later than 6:00 p.m., March 9, 2012. Candidates who filed during the prior filing period in late 2011 who still wish to seek the same office need not re-file their applications, assuming no information contained therein has subsequently been rendered inaccurate.

Notwithstanding the provisions of the foregoing paragraph or any other provision of this Order, the election for the office of precinct chair will be held concurrently with the July 31, 2012 runoff, with a plurality vote required for election. Candidates for precinct chair may file, amend, or withdraw their application for a place on the ballot no later than 6:00 p.m., June 1, 2012. The county chair shall be responsible for posting notice of this filing deadline on the county party's

website and via electronic mail to any distribution list maintained by the county party. An application for the office of precinct chair may be filed, amended, or withdrawn by the candidate using the official forms prescribed by the Secretary of State via facsimile or electronic mail. The office of precinct chair shall not be included in the official ballot drawing prescribed below, but the list of candidates for that office must be forwarded by the county chair, in the order of filing, to the authority responsible for preparing the ballot in each county no later than 6:00 p.m., June 4, 2012. Furthermore, an application for a place on the ballot for the office of precinct chair shall not be invalid if filed more than 90 days before the end of the filing period.

#### **Schedule for Reopened Filing Period and General Primary**

The Court hereby adopts and orders this procedure with respect to the 2012 Primary Election for federal, state, county and local offices. The reopened filing period applies to all races for federal, state and county officers. All those dates, deadlines or requirements not specifically adjusted by this order remain as required under state or federal law. Because the time period for the 2012 Primary Election includes shortened deadlines, a few of the deadlines necessarily fall on a weekend, notwithstanding § 1.006 of the Texas Election Code. Unless stated otherwise, § 1.006 of the Texas Election Code is superseded for purposes of this order.

- a. Subsections (c)-(m) of this Court's Order of November 7, 2011 (Dkt. Nos. 57 and 489) are vacated. Ballot drawings and delivery of candidate lists as provided for in that order are not required until after the close of the reopened filing period as set forth below.
- b. The first day to file an application for a place on the Primary Ballot during the reopened filing period as described in Texas Election Code § 172.023(b) shall be

- March 2, 2012. Any applications and petitions received by county judges, county chairs, or state chairs after December 19, 2011 but before March 2, 2012 will be deemed submitted as of March 2, 2012, unless later withdrawn by the candidate.
- c. An application for a place on the general primary election ballot during the reopened filing period must be filed not later than 6:00 p.m. on March 9, 2012 as described in Texas Election Code § 172.023(a). All amendments to previously filed applications with respect to office, precinct, place or any other material detail must be completed by this time. Candidates, and not filing authority election staff, may amend their applications by replacing the whole page of such application that requires changes. Each submitted page must contain the notarized signature of the candidate and the date it was signed. Political parties that make their nominations by convention and do not hold a primary election may accept applications until 6:00 p.m., March 9, 2012. Applications filed with the incorrect authority are deemed to have been timely received by the correct authority if the authority who received the application was the correct authority at the time the application was originally filed. Applications filed with the incorrect authority shall be forwarded to the correct authority without delay.
- d. The last day on which a vacancy for an unexpired term in an office of the state or county government may occur and appear on the primary ballot, as described in Texas Election Code § 202.004(a), is March 5, 2012.
- e. The deadline for the county chair (or secretary of the county executive committee) to post a notice on the bulletin board used for posting notices of the commissioners court's meetings, containing the address at which the county chair and secretary of

the county executive committee will be available to receive applications on the last day for filing an application, as described in Texas Election Code § 172.022, is March 8, 2012.

- f. If a candidate withdraws, dies or is declared ineligible by March 12, 2012, the name is omitted from the primary ballot as described in Texas Election Code §§ 172.057 and 172.058.
- g. The deadline for the state chair to deliver a certified list of statewide and multi-county district candidates to each county chair, as described in Texas Election Code § 172.028(b), is March 12, 2012.
- h. The deadline for a write-in candidate for the office of county or precinct chair to file a declaration of write-in, as described in Texas Election Code § 171.0231(d), is March 9, 2012.
- i. The deadline for the state or county chair, as applicable, to receive applications for a place on the general primary election ballot for an unexpired term for a vacancy in an office of the state or county government that occurs on or before March 1, 2012, as described in Texas Election Code § 202.004(b), is March 9, 2012.
- j. The deadline for a county executive committee to conduct a drawing for candidate order on the ballot at the county seat (unless the committee provides by resolution that the primary committee is to conduct the drawing), as described in Texas Election Code § 172.082(c), is March 12, 2012.
- k. The deadline by which the state chair shall deliver the chair's list to the Secretary of State, and each county chair shall deliver a copy of the chair's list to the county clerk,

the state chair, and the Secretary of State as described in Texas Election Code § 172.029(c), is March 12, 2012.

- l. If changes in county election precinct boundaries are necessary to give effect to a redistricting plan under Article III, Section 28, of the Texas Constitution, each commissioners court shall order the changes on or before March 20, 2012, notwithstanding Texas Election Code § 42.032. The requirements of Texas Election Code §§ 42.035 and 42.036 are suspended for an order of a commissioner's court adopted to comply with this section of this Court's Order.
- m. The first day of the period for a voter to submit an application for an early ballot by mail for the general primary, or for both the general primary and the runoff election, as described in Texas Election Code §§ 84.001(d) and (e) and § 84.007, shall be March 30, 2012. Unless previously rejected as prematurely filed under earlier orders of this Court by the early voting clerk, applications received before the date of this Order and denominated for the Primary Election or for both the Primary and Primary Runoff Elections shall be deemed to have been received on March 30, 2012.
- n. On or before April 25, 2012, the registrar shall issue a voter registration certificate to each voter in the county whose registration will be effective as of the date issued and whose name does not appear on the suspense list, as described in Texas Election Code § 14.001.
- o. The early voting clerk shall mail general primary ballots to voters subject to the MOVE Act requirements on or before April 14, 2012.

- p. Because of insufficient time between the mailing of voter registration certificates as described in Texas Election Code § 14.001 and the beginning of early voting, the registrar is required to comply with Texas Election Code §14.023 regarding the issuance of a confirmation notice in accordance with Texas Election Code § 15.051 on or before July 2, 2012. The deadline for entering the voter's name on the suspense list due to an undelivered renewal certificate pursuant to Texas Election Code §14.021 shall be July 3, 2012.
- q. **The 2012 General Primary Election shall be held on May 29, 2012.** All deadlines and dates specified as changed in this Order, or in previously issued orders in this action, shall be observed as provided for in the Texas Election Code.
- r. The deadline for runoff primary candidates to withdraw from the runoff ballot, as described in Texas Election Code § 172.059, is 9:00 a.m., June 11, 2012.
- s. The local canvass of the general primary for county and precinct offices by the county executive committee, as described in Texas Election Code §§ 172.116(b) and 172.084(b), shall occur on or before June 6, 2012. The political parties are ordered to make any necessary modifications to their Party Rules to give this section effect.
- t. The deadline for county chairs to submit canvassed returns for statewide and district offices to the state party chair as described in Texas Election Code §§ 67.007(d) and 172.119(b) is 12:00 noon, June 7, 2012.
- u. The deadline for the state executive committees to conduct the canvass of statewide and district offices with potential runoffs, and certify these candidates to county chairs as described in Texas Election Code §§ 172.120 and 172.121, is June 9, 2012.

- v. The ballot drawing conducted by county executive committees for all offices on the primary runoff ballot, as described in Texas Election Code §§ 172.084(b) and (c), shall occur no later than 9:00 a.m., June 12, 2012.
- w. The first day of the period for a voter to submit an application for an early ballot by mail for the runoff primary, as described in Texas Election Code §§ 84.001(d) and (e) and § 84.007, shall be June 1, 2012.
- x. The early voting clerk shall mail runoff ballots on or before June 16, 2012.
- y. **The 2012 General Primary Runoff Election shall be held on July 31, 2012.**
- z. Section 2.025, Texas Election Code, requiring that a runoff election be held no earlier than the 20th nor later than the 45th day after the final canvass of the main election, is waived for the purposes of any municipal, school, or other political subdivision election held on May 12, 2012. The requirements of any home-rule city charter relating to runoff election dates are also suspended to allow for compliance with this Order.
- aa. The last day on which minor party chairs may submit petitions and precinct convention lists to the Secretary of State and to the appropriate county clerk (or other county election officer) for placement on the ballot is June 29, 2012. Texas Election Code §§ 181.005(a), 181.006(b)(3), 182.003, 182.004.
- bb. The deadline for independent candidates, including candidates for U.S. President, to file applications and petitions is June 29, 2012. See Texas Election Code §§ 142.006, 192.032(c). The provisions of Texas Election Code § 142.009 are waived to the extent they are incompatible with this order.



Therefore, it is ORDERED that the 2012 elections for federal, state, county, and local officers shall proceed as required under state and federal law except as provided above. The State of Texas through the Secretary of State shall deliver a duplicate of this order to all election officials and county chairs, to the extent possible, within three days. The order shall also be posted by the Secretary of State on its website, and the official election calendar as posted on the Secretary of State's website shall be updated to reflect the terms of this order.

SIGNED this 1st day of March, 2012.

  
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ORLANDO GARCIA  
UNITED STATES DISTRICT JUDGE

And on behalf of:

JERRY E. SMITH  
UNITED STATES CIRCUIT JUDGE  
U.S. COURT OF APPEALS, FIFTH CIRCUIT

XAVIER RODRIGUEZ  
UNITED STATES DISTRICT JUDGE  
WESTERN DISTRICT OF TEXAS