IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF TEXAS, Plaintiff, v. UNITED STATES OF AMERICA and ERIC H. HOLDER, JR., In His Official Capacity As Attorney General Of The United States, Defendants, WENDY DAVIS, *et al.*, Defendant-Intervenors, MEXICAN-AMERICAN LEGISLATIVE CAUCUS, Defendant-Intervenors, GREG GONZALEZ, *et al.*, Defendant-Intervenors, TEXAS LEGISLATIVE BLACK CAUCUS, Defendant-Intervenor, TEXAS LATINO REDISTRICTING TASK FORCE, Defendant-Intervenor, TEXAS STATE CONFERENCE OF NAACP BRANCHES, *et al.*, Defendant-Intervenors.	)	No.1:11-CV-1303 (RMC-TBG-BAH) (three-judge court)

JOINT ADVISORY OF DEFENDANT INTERVENORS

This joint advisory is submitted by various Defendant-Intervenors to keep the Court abreast of the status of developments in the *Perez v. Perry* case in the United States District Court in San Antonio.

On February 14-15, 2012, the San Antonio Court held hearings relating to the creation of interim plans for the Texas House, the Texas Senate, and the U.S. Congress. Although the court has not yet issued an order stating when it will issue interim plans, information provided in the hearing suggests the court likely will issue the plans on or before March 3, 2012. The parties to this joint advisory have urged the San Antonio court to defer issuing the interim plans until this Court rules on Texas's pending requests for pre-clearance under Section 5, but there remains the distinct possibility that the San Antonio court will not await a decision from this Court. As a result, the parties feel compelled to advise this Court of the potential for conflicts between the San Antonio court's interim plans and the Section 5 rulings this Court will ultimately issue.

On February 15, county election administrators testified in the San Antonio hearing that holding primaries in April is now practically impossible and that the next available primary date is May 29. The evidence—a chart of possible election schedules keyed to possible release dates for interim maps—was that, in order to have a May 29 primary, election administrators would need interim maps by March 3. At the conclusion of the February 15 hearing, the court, through Judge Smith, announced that, while it was not making a final determination, the "most likely" primary date would be May 29. The logical inference, therefore, is that the San Antonio court intends to issue the interim plans on or before March 3.

There is no reasonable likelihood of a settlement relating to the interim plans for the Texas House and the U.S. Congress. There is, however, an agreement among the parties on a proposed interim Senate map (which, in any event, would not moot the Section 5 issue pending in this Court on the enacted Senate map).

In this procedural posture, the San Antonio court now is faced with making a decision on interim maps, using the standards announced by the Supreme Court on January 20 in *Perry v. Perez*. Under those standards, the San Antonio court, in the absence of a Section 5 determination by this Court, must determine whether the parties challenging the Texas's proposed plans have a "not insubstantial" chance in this Court of succeeding in their Section 5 challenges. If the San Antonio court is required to make these "not insubstantial" determinations without a ruling from this Court on the Section 5 issues, it is unclear whether the San Antonio court will consider the evidence presented to this Court in the Section 5 trial in making those determinations. Nor has the San Antonio court indicated whether it intends to rely on this Court's legal rulings in its December 22, 2011 Memorandum and Opinion that denied Texas's motion for summary judgment. Given the possibility of an independent review of the Section 5 issues by the San Antonio court, there is also a distinct possibility of conflicting Section 5 determinations by the San Antonio court and this Court.

The parties submitting this advisory have requested in written filings that the San Antonio court not rule on interim maps until after this Court has made a final determination on the Section 5 issues now under submission here. The San Antonio court has not acted in any way on those requests; however, its subsequent orders indicate that it is proceeding apace with its decision-making on interim maps.

In short, there is a distinct possibility at this point that the San Antonio court will be making its Section 5 determinations under the *Perry v. Perez* standard without awaiting a final determination by this Court on the Section 5 issues. This raises a real possibility of conflicting rulings on the Section 5 issues and interim plans that could

conflict with this Court's ultimate decision in this case. The parties of course recognize that the timing of a decision in this case is within the Court's full discretion. But the parties determined that the Court should be aware of this procedural posture in exercising that discretion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of February 2012, I filed and served the foregoing Advisory by filing the same in this Court's ECF system, which caused copies of this document to be sent to counsel of record in this litigation.

/s/ J. Gerald Hebert___
J. GERALD HEBERT