

the December 16 schedule requested by the parties and ordered by the Court, and an explanation of why the additional time was required. Additionally, the County Organizations explained the impact of compliance with the MOVE Act and pre-clearance under Section 5 of the Voting Rights Act on the schedule agreed to by the parties, and informed the parties that relief from such compliance would aid counties.

On December 26, 2011, several of the parties to this litigation participated in a conference call with the County Judges and Commissioners Association of Texas and the Texas Conference of Urban Counties. During the call the information provided to the parties in advance of the call was repeated by the County Organizations. However, the parties refused to suggest any schedule changes and insisted that the County Organizations provide a detailed schedule in the form issued by the Court on December 16.

The County Organizations have not previously suggested a detailed schedule as demanded by the parties because (1) the County Organizations are not advocating for any particular election dates, merely sufficient time in the adopted schedule for counties to physically be able to comply by conducting the elections; and (2) the County Organizations are not in a position to determine the effect of any proposed changes in election dates on the dates for political party activities or any other potential negative impact on the parties in the litigation.

As has been explained to the parties, the following amounts of time are required to conduct the following activities:

- After issuance of redistricting plans, 1 - 3 weeks are required to prepare election precinct boundaries for adoption by commissioners courts. This time includes ensuring that there is an available polling place for each precinct.

- After approval of election precinct boundaries by commissioners courts, 3 - 4 weeks are required to update voter registration information to be able to print voter certificates and ballots. While part of this delay is caused by the required DOJ pre-clearance, a minimum of two weeks is required due to the required manual entry of voter data into the voter registration system to account for the new precinct boundaries.
- After updating voter registration information, 2 - 3 weeks are required to print voter certificates and ballots. Once the precincts and candidates are set, counties generally need 10 days to 2 weeks for ballot generation, proofing, review by the political parties, and equipment testing before ballots can be printed and mailed. Counties that rely on a vendor to print their absentee ballots or program their voting equipment probably need 3 full weeks. There are relatively few printing vendors registered with the Secretary of State for the printing of ballots, and that fact contributes to this time.

The maps finally issued by the Court will determine the actual amount of time needed by counties. If the final maps differ substantially from both the maps approved by the Texas Legislature and the maps previously ordered by the Court, then counties impacted by those differences will require more time than set forth above. For that reason, counties are requesting that any election schedule ordered by the Court at this time be contingent on final maps that are substantially similar to the maps approved by the Texas Legislature or the maps previously entered by the Court.

Further, the County Organizations have explained to the parties that, under the present schedule, counties cannot comply with the MOVE Act and mail overseas ballots on or before the 45th day before the primary and runoff elections. The 45th day before the April 3 primary is February 18, which is a mere 17 days after the last day the Court may issue maps under the

December 16 order. The 45th day before the June 5 runoff is April 21, which is a mere 5 days after the drawing for ballot places by the political parties. There is simply no way counties can comply with the MOVE Act under the other dates in the Court's schedule. Any relief from compliance with the MOVE Act should not include the addition of days for the receipt and canvassing of overseas ballots. Such addition of days will push back other critical dates, and could ultimately have a devastating effect on municipal and school district elections. For this reason, the County Organizations are requesting relief from compliance with the MOVE Act, and that no changes be made to the date for the receipt of overseas ballots to make up for the non-compliance.

Finally, the County Organizations believe a waiver of the requirements of section 5 of the Voting Rights Act will assist counties in meeting any schedule ordered by the court. Counties should not spend significant staff time and expense making changes to voter registration records and mailing voter registration certificates for election precincts that are ultimately rejected by the Department of Justice. Waiving the pre-clearance requirement for election precinct changes required to address redistricting maps entered by the Court would permit counties to move more quickly in making changes to voter registration records.

All of the times, caveats and requested relief communicated to the parties by the County Organizations are contained in the attached proposed Order for the Court's consideration. The County Organizations have not suggested any changes to dates applicable to political party activities. If the Court were to adopt the proposed Order, it is the opinion of the County Organizations that counties in Texas could conduct the elections in compliance with it. However, the Court should know that many counties use the same vendors for ballot preparation, and the ability of vendors to comply with the time constraints is outside the control of the counties. In the event counties later learn that those vendors are unable to comply with the time constraints in the proposed Order, the County Organizations will inform the Court.

Respectfully submitted,

/s/ John B. Dahill w/ permission

John B. Dahill, General Counsel

SBN: 05310430

john@cuc.org

Texas Conference of Urban Counties

500 W 13th St.

Austin TX 78701

P: 512.476.6174

F: 512.476.5122

*Attorney for the Texas Conference of Urban
Counties*

/s/ James P. Allison

James P. Allison

SBN: 01090000

j.allison@allison-bass.com

ALLISON, BASS & ASSOCIATES, L.L.P.

A.O. Watson House

402 W. 12th Street

Austin, Texas 78701

(512) 482-0701 *telephone*

(512) 480-0902 *facsimile*

*Attorney for the County Judges and
Commissioners Association of Texas*

/s/ Karen C. Gladney w/ permission

Karen C. Gladney, General Counsel

SBN: 07992500

KarenG@county.org

Texas Association of Counties

P. O. Box 2131

Austin TX 78768

Phone: (512) 478-8753

Fax: (512) 478-3573

Attorney for the Texas Association of Counties

CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2011, I electronically filed the foregoing document(s) with the Clerk of the United States District Court, Western District of Texas, San Antonio Division, using the electronic case filing system of the Court. The electronic case filing system sent a "Notice of Electronic Filing" to attorneys of record who have consented in writing to accept such Notice as service of this document by electronic means.

All attorneys who have not yet registered to receive Notice of Electronic Filing have been served by fax and/or by first class regular mail, postage prepaid, and addressed as follows:

David Escamilla
Travis County Assistant Attorney
P.O. Box 1748
Austin, TX 78767
By Fax only: (512) 854-4808

/s/ James P. Allison

James P. Allison

The Court is entertaining various issues pertaining to redistricting of the United States House of Representatives, the Texas House of Representatives and the Texas State Senate. In order to provide the Court time to enter necessary orders, the following relief is hereby granted. The following schedule is contingent upon the Court entering redistricting plans for Texas House, Senate and Congress on or before February 1, 2012 that are substantially similar to either (1) the redistricting plans approved by the Texas Legislature; or (2) the redistricting plans previously entered by this Court. If the final redistricting plans differ substantially from both of those plans, even with regard to a single county, the Court will receive comments and make further orders as are necessary to address compliance issues with the following schedule by any party or county, if any.

Residency

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 February 1, 2012 until the date of the General Election, and,

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 February 1, 2012 at 6 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 p.m. February 1, 2012. Any petition submitted in lieu of filing fee 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., February 1, 2012.

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. All those dates, deadlines or requirements not specifically adjusted by this order remain as required under state or federal law:

- a. Subsections (c)-(m) of this Court's Order of November 7, 2011 (Docs. 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 at a future date to be determined by this Court.
- c. An application for a place on the general primary election ballot during the reopened filing period must be filed not later than 6 p.m. on February 1, 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 signature of the candidate and the date it was signed. Political parties who make their nominations by convention and do not hold a primary election may accept applications until 6:00 p.m., February 1, 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 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 January 27, 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 January 31, 2012.

- f. If a candidate withdraws, dies or is declared ineligible by February 2, 2012, 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 February 2, 2012.
- 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 February 1, 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 January 27, 2012, as described in Texas Election Code § 202.004(b) is February 1, 2012.
- 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 February 3, 2012.
- 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 February 2, 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 February 20, 2012, notwithstanding Texas Election Code § 42.032. The requirements of Texas Election Code § 42.036 and the requirements of Section 5 of the Voting Rights Act 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 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), (e) & 84.007, shall be February 11, 2012.
- n. On or before March 9, 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.
- o. Notwithstanding the requirements of the MOVE Act, the early voting clerk shall mail general primary ballots to voters subject to the MOVE Act requirements on or before March 9, 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 1, 2012.

- q. **The 2012 General Primary Election shall be held on April 3, 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 Section 172.059, Election Code is 5 p.m. April 10, 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 April 11, 2012.
- 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 Noon, April 12, 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 5 p.m., April 14, 2012.
- v. The ballot drawing conducted by county executive committee 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 a.m., April 16, 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), (e) & 84.007, shall be April 6, 2012.
- x. County and Senatorial District Conventions, as described in Texas Election Code § 174.063, shall be held on either April 14 or April 21, 2012 as determined by the State Chair of each political party.
- y. Notwithstanding the requirements of the MOVE Act, the early voting clerk shall mail runoff ballots to voters subject to the MOVE Act requirements on or before May 4, 2012.
- z. **The 2012 General Primary Runoff Election shall be held on June 5, 2012.**

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.

Nothing in this order shall be construed by the Court or the parties as a waiver of the positions of each party with respect to the schedule or conduct of the upcoming election. The parties' positions as stated at the December 13, 2011 hearing are expressly reserved. Additionally, the Republican and Democratic parties have agreed that is necessary to have a primary early enough in April to allow them to conduct their statutorily required conventions as previously planned.

SIGNED this _____ day of _____, 2011.

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