

Retroactive Preclearance for Emergency Consolidation of Polling Places

Leyva v. Bexar County Republican Party
(*Edward C. Prado, W.D. Tex. 5:02-cv-408*)

Nearly seven weeks after an election for which polling places were consolidated because of an unexpected shortage of poll workers, a federal complaint challenged the consolidations for not being precleared pursuant to section 5 of the Voting Rights Act. The district judge denied immediate relief because the county intended to seek preclearance and election records would be preserved. In time, the county received retroactive preclearance, and a three-judge district court declined to void the election.

Subject: Voting procedures. *Topics:* Poll locations; section 5 preclearance; three-judge court; polling hours; primary election; intervention; news media.

On April 29, 2002, Judge Edward C. Prado denied a temporary restraining order in a federal class action filed five days previously challenging county polling-place locations and hours in a March 12 primary election as, among other things, not precleared pursuant to section 5 of the Voting Rights Act.¹ Judge Prado found that “a temporary restraining order would serve no purpose at this time” because the county intended to seek preclearance and would preserve election records.²

The circuit’s chief judge named Circuit Judge Fortunato P. Benavides and Western District of Texas Judge Orlando L. Garcia to join Judge Prado as a three-judge district court to hear section 5 claims.³

On July 5, Judge Prado denied a motion to intervene filed by the League of United Latin American Citizens (LULAC), finding “that LULAC’s intervention would add to the cost and delay of this litigation without adding sufficient

1. Temporary-Restraining-Order Denial, *Leyva v. Bexar Cty. Republican Party*, No. 5:02-cv-408 (W.D. Tex. Apr. 29, 2002), D.E. 8; see Docket Sheet, *id.* (Apr. 24, 2002) (complaint, D.E. 1); see also Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, as amended, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge district court); Bob Richter & Sherry Sylvester, *Lawsuit Targets Bexar Voting*, San Antonio Express-News, Apr. 25, 2002, at 1B.

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013).

Judge Prado was elevated to the court of appeals on May 5, 2003, and he retired on April 2, 2018. Federal Judicial Center Biographical Directory of Article III Federal Judges [hereinafter FJC Biographical Directory], www.fjc.gov/history/judges.

2. Temporary-Restraining-Order Denial, *supra* note 1, at 2.

3. Order, *Leyva*, No. 5:02-cv-408 (W.D. Tex. June 14, 2002), D.E. 18.

Judge Benavides died on May 5, 2023. FJC Biographical Directory, *supra* note 1.

benefit to the existing Plaintiffs' interests."⁴ On July 16, Judge Prado denied as moot a motion by the *San Antonio Express-News* to intervene in opposition to a motion to prevent the plaintiffs from trying their case in the media, because Judge Prado denied what the newspaper referred to as a motion for a gag order.⁵

On December 5, the court declined to set aside the results of the March 12 election.⁶ Polling places were consolidated in response to an unexpected shortage of polling-place volunteers.⁷ The county party received retroactive preclearance from the Justice Department.⁸

4. Order, *Leyva*, No. 5:02-cv-408 (W.D. Tex. July 5, 2002), D.E. 33.

On August 14, 2002, Judge Prado dismissed a separate case filed by LULAC on July 8. Order, *League of United Latin Am. Citizens v. Bexar Cty. Republican Party*, No. 5:02-cv-654 (W.D. Tex. Aug. 14, 2002), D.E. 7; Docket Sheet, *id.* (July 8, 2002) (complaint, D.E. 1); see *LULAC Sues After Judge Rejects Bid to Join Suit*, *Hous. Chron.*, July 10, 2002, at A20; Sherry Sylvester, *LULAC Hits GOP with New LawsUIT*, *San Antonio Express-News*, July 9, 2002, at 1B.

5. Order, *Leyva*, No. 5:02-cv-408 (W.D. Tex. July 16, 2002), D.E. 39; see Sherry Sylvester, *No Gag Order in GOP Case*, *San Antonio Express-News*, July 10, 2002, at 3B; see also Order, *Leyva*, No. 5:02-cv-408 (W.D. Tex. July 9, 2002), D.E. 35 ("The Court will not prohibit communication with the media at this time . . .").

6. Opinion, *Leyva*, No. 5:02-cv-408 (W.D. Tex. Dec. 5, 2002), D.E. 92, 2002 WL 34729181.

7. *Id.* at 1–2.

8. *Id.* at 4; see Sherry Sylvester, *Feds Rule Altered GOP Poll Sites OK*, *San Antonio Express-News*, July 23, 2002, at 5B.