

Preclearance for a Zoning Election

Watson v. Fuhrmeister

(Karon O. Bowdre, N.D. Ala. 2:03-cv-1960)

One week before an August 5, 2003, special election, three voters filed a federal complaint in the Northern District of Alabama against the three members of Shelby County's election canvassing board, alleging that the special election was in violation of section 5 of the Voting Rights Act¹ because the election's question, whether a county precinct would be subject to zoning by a county planning commission, pertained to zoning laws that had not been precleared.² Among other relief, the complaint sought a preliminary injunction.³ The court assigned the case to Judge Karon O. Bowdre, who requested appointment of a three-judge court.⁴

On Thursday, July 31, the parties filed stipulations that included a stipulation that the laws in question had not been precleared.⁵ That day, Judge Bowdre issued a temporary restraining order against the holding of the election.⁶

The canvassing board decided to seek preclearance, and it consented to a 60-day extension of the restraining order.⁷ The extension was expanded to October 28 to accommodate the Justice Department's expected response to the preclearance request.⁸ On notice of October 9 preclearance,⁹ Judge Bowdre dismissed the action on October 29.¹⁰

1. Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2012) (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 court).

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 Cnty. v. Holder](#), 570 U.S. ___, 133 S. Ct. 2612 (2013); see Robert Barnes, *Court Blocks Key Part of Voting Rights Act*, Wash. Post, June 26, 2013, at A1; Adam Liptak, *Justices Void Oversight of States, Issue at Heart of Voting Rights Act*, N.Y. Times, June 26, 2013, at A1.

2. [Complaint](#), *Watson v. Fuhrmeister*, No. 2:03-cv-1960 (N.D. Ala. July 29, 2003), D.E. 1; see Nancy Wilstach, *County Attorney Suggests Election Dilemma Solutions*, Birmingham News, Sept. 10, 2003, at 2.

3. [Complaint](#), *supra* note 2, at 5.

4. See [Order](#), *Watson*, No. 2:03-cv-1960 (N.D. Ala. July 31, 2003), D.E. 2.

5. [Stipulation](#), *id.* (July 31, 2003), D.E. 4.

6. [Temporary Restraining Order](#), *id.* (July 31, 2003), D.E. 6; [Opinion](#), *id.* (July 31, 2003), D.E. 5.

7. [Consent](#), *id.* (Aug. 8, 2003), D.E. 8.

8. [Order](#), *id.* (Aug. 29, 2003), D.E. 10.

9. [Motion](#), *id.* (Oct. 16, 2003), D.E. 13.

10. [Dismissal](#), *id.* (Oct. 29, 2003), D.E. 15.