

Preclearance of an Election to Create a Hospital District

Hernandez v. Kirkham
(*Marcia A. Crone, E.D. Tex. 1:05-cv-134*)

On February 16, 2005, five Texas residents filed a federal complaint in the Eastern District of Texas's Beaumont courthouse alleging that a February 5 election to create a hospital district had not been precleared pursuant to section 5 of the Voting Rights Act¹ and precinct changes dating back to 2001 had also not been precleared.² With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.³

The next day, the court set a hearing on the motion for February 18 before District Judge Marcia A. Crone.⁴ The circuit's chief judge designated a three-judge court to hear the section 5 claims: Circuit Judge Jerry E. Smith, District Judge Thad Heartfield, and Judge Crone.⁵ At the hearing, before Judge Crone, the parties agreed to a temporary restraining order that enjoined conveying any property to the hospital district until the end of April, subject to further court order and Justice Department preclearance of the February 5 election.⁶ A hearing on the plaintiffs' motion for a preliminary injunction was set for May 17.⁷ Later, the hearing date was moved up to May 5, two days in advance of a planned election to select hospital district directors.⁸

The three-judge court conferred by telephone, but the judges determined that a court proceeding was unnecessary.⁹ The Justice Department precleared both the February 5 and the May 7 elections in April.¹⁰ As a result, Judge Crone declined to enjoin the May 7 election.¹¹ She dismissed the action on May 16.¹²

1. See Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2010) (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).

2. [Complaint](#), *Hernandez v. Kirkham*, No. 1:05-cv-134 (E.D. Tex. Feb. 16, 2005), D.E. 1.

3. [Motion](#), *id.* (Feb. 16, 2005), D.E. 2.

4. [Notice](#), *id.* (Feb. 17, 2005), D.E. 4.

Tim Reagan interviewed Judge Crone for this report by telephone on Sept. 7, 2012.

5. [Order](#), *Hernandez*, No. 1:05-cv-134 (E.D. Tex. Feb. 17, 2005), D.E. 13.

6. [Temporary Restraining Order](#), *id.* (Feb. 22, 2005), D.E. 14; [Minutes](#), *id.* (Feb. 18, 2005), D.E. 15.

7. [Temporary Restraining Order](#), *supra* note 6.

8. [Notice](#), *Hernandez*, No. 1:05-cv-134 (E.D. Tex. Apr. 29, 2005), D.E. 26; [Order](#), *id.* (May 6, 2005), D.E. 36 [hereinafter May 6, 2005, Order].

9. Interview with Hon. Marcia A. Crone, Sept. 7, 2012.

10. [May 6, 2005, Order](#), *supra* note 8.

11. *Id.*

12. [Order](#), *Hernandez*, No. 1:05-cv-134 (E.D. Tex. May 20, 2005), D.E. 39.