

Unsuccessful Pro Se Challenge to a Fluoride Ballot Initiative

Espronceda v. Krier

*(H.F. Garcia, William Wayne Justice,
and Pamela A. Mathy, W.D. Tex. 5:00-cv-1259)*

A pro se federal complaint filed in the Western District of Texas on November 14, 2000, sought invalidation of November 7 election results in San Antonio, which is located in Bexar County, because of opposition to a municipal referendum to add fluoride to the city's drinking water.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order.²

That same day, Judge H.F. Garcia denied the plaintiffs a temporary restraining order for failure to comply with the notice provisions of Federal Rule of Civil Procedure 65.³ On November 28, Judge Garcia denied additional motions for temporary restraining orders and referred motions for preliminary injunctions to Magistrate Judge Pamela A. Mathy,⁴ who denied motions that she recuse herself.⁵

Reviewing an amended complaint filed on November 21, Judge Mathy recommended, on December 28, denial of the plaintiffs' motion for a preliminary injunction and direction that further filings from the plaintiffs not be accepted without proper certificates of service.⁶

Judge Garcia transferred the case to Judge William Wayne Justice on May 22, 2001,⁷ and died on January 16, 2002.⁸ Judge Justice determined that a pending claim pursuant to section 5 of the Voting Rights Act required appointment of a three-judge court, so on July 16, 2001, Circuit Judge Emilio M. Garza and Western District of Texas Judge Edward C. Prado were named to join Judge

1. Docket Sheet, *Espronceda v. Krier*, No. 5:00-cv-1259 (W.D. Tex. Nov. 14, 2000) (D.E. 1); Summary Judgment Opinion, *id.* (Jan. 8, 2002), D.E. 173; Report and Recommendation at 2, *id.* (Dec. 28, 2000), D.E. 70.

2. Docket Sheet, *supra* note 1 (D.E. 2); Report and Recommendation, *supra* note 1, at 2.

3. Order, *Espronceda*, No. 5:00-cv-1259 (W.D. Tex. Nov. 14, 2000), D.E. 3; Report and Recommendation, *supra* note 1, at 2-3.

4. Order, *Espronceda*, No. 5:00-cv-1259 (W.D. Tex. Nov. 28, 2000), D.E. 13; Docket Sheet, *supra* note 1; Report and Recommendation, *supra* note 1, at 4-5.

5. Order and Advisory at 9, *Espronceda*, No. 5:00-cv-1259 (W.D. Tex. Dec. 19, 2000), D.E. 48; Order and Advisory, *id.* (Dec. 4, 2000), D.E. 16.

6. Report and Recommendation, *supra* note 1; *see* Docket Sheet, *supra* note 1 (amended complaint, D.E. 5); *see also* Order, *Espronceda*, No. 5:00-cv-1259 (W.D. Tex. Dec. 28, 2000), D.E. 71 (returning the case to the district judge); Matt Flores, *Fluoridation Foes Lose Round in Court*, San Antonio Express-News, Dec. 30, 2000, at 1B.

7. Order, *Espronceda*, No. 5:00-cv-1259 (W.D. Tex. May 22, 2001), D.E. 124.

Judge Justice died on October 13, 2009. Federal Judicial Center Biographical Directory of Federal Judges, www.fjc.gov/history/home.nsf/page/judges.html.

8. Federal Judicial Center Biographical Directory of Federal Judges, *supra* note 7.

Justice on a three-judge court.⁹ Circuit Judge Fortunato P. Benavides replaced Judge Garza, who recused himself.¹⁰

On August 30, 2001, Judge Justice issued nine orders denying pending plaintiff motions.¹¹ Judge Justice issued an additional 15 orders against the plaintiffs over the course of four weeks.¹² Judge Justice also issued six orders not adverse to the plaintiffs¹³ and an additional order denying a motion for sanctions against the plaintiffs.¹⁴

On January 8, 2002, the three-judge court granted summary judgment to the defendants.¹⁵ “[W]ith all due respect to the plaintiffs’ anti-fluoride jere-miad, this court is not the proper forum for resolution of the health issues plaintiff advances. Plaintiffs have still produced no solid evidence that the defendants violated federal election law or otherwise infringed upon plaintiffs’ civil rights.”¹⁶

The court of appeals dismissed an appeal as having been filed with the wrong court; the appeal should have been filed with the Supreme Court.¹⁷

9. Order, *Espronceda*, No. 5:00-cv-1259 (W.D. Tex. July 16, 2001), D.E. 125; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (2014) (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 County v. Holder*, 570 U.S. ___, 133 S. Ct. 2612 (2013).

Judge Prado was elevated to the court of appeals on May 5, 2003. Federal Judicial Center Biographical Directory of Federal Judges, *supra* note 7.

10. Order, *Espronceda*, No. 5:00-cv-1259 (W.D. Tex. July 23, 2001), D.E. 126.

11. Order, *id.* (Aug. 31, 2001), D.E. 135; Order, *id.* (Aug. 31, 2001), D.E. 134; Order, *id.* (Aug. 31, 2001), D.E. 133; Order, *id.* (Aug. 31, 2001), D.E. 132; Order, *id.* (Aug. 31, 2001), D.E. 131; Order, *id.* (Aug. 31, 2001), D.E. 130; Order, *id.* (Aug. 31, 2001), D.E. 129; Order, *id.* (Aug. 31, 2001), D.E. 128; Order, *id.* (Aug. 31, 2001), D.E. 127.

12. Order, *id.* (Aug. 31, 2001), D.E. 155; Order, *id.* (Aug. 31, 2001), D.E. 154; Order, *id.* (Aug. 31, 2001), D.E. 152; Order, *id.* (Aug. 31, 2001), D.E. 148; Order, *id.* (Aug. 31, 2001), D.E. 147; Order, *id.* (Aug. 31, 2001), D.E. 146; Order, *id.* (Aug. 31, 2001), D.E. 145; Order, *id.* (Aug. 31, 2001), D.E. 144; Order, *id.* (Aug. 31, 2001), D.E. 143; Order, *id.* (Aug. 31, 2001), D.E. 142; Order, *id.* (Aug. 31, 2001), D.E. 140; Order, *id.* (Aug. 31, 2001), D.E. 139; Opinion, *id.* (Aug. 31, 2001), D.E. 138; Order, *id.* (Aug. 31, 2001), D.E. 137; Order, *id.* (Aug. 31, 2001), D.E. 136.

13. Order, *id.* (Sept. 28, 2001), D.E. 149; Order, *id.* (Sept. 28, 2001), D.E. 150; Order, *id.* (Sept. 28, 2001), D.E. 151; Order, *id.* (Sept. 28, 2001), D.E. 153; Order, *id.* (Oct. 17, 2001), D.E. 159; Order, *id.* (Oct. 24, 2001), D.E. 160.

14. Order, *id.* (Sept. 28, 2001), D.E. 141.

15. Summary Judgment Opinion, *supra* note 1.

16. *Id.* at 2.

17. *Espronceda v. Krier*, 61 F. App’x 121 (5th Cir. 2003).