

## Elimination of a Constable Precinct

*Rodriguez v. Bexar County (H.F. Garcia  
and William Wayne Justice, W.D. Tex. 5:01-cv-1049)*

On November 21, 2001, two days after a complaint and motion were filed, Western District of Texas Judge H.F. Garcia issued a temporary restraining order against Bexar County's elimination of a precinct for justices of the peace and constables because the county, which includes San Antonio, had not received preclearance for the change pursuant to section 5 of the Voting Rights Act.<sup>1</sup> On the same day, Judge Garcia transferred the case to Judge William Wayne Justice.<sup>2</sup> Judge Garcia died on January 16, 2002.<sup>3</sup>

On December 19, 2001, Judge Justice denied a motion to dismiss for lack of standing the admittedly otherwise meritorious section 5 claim.<sup>4</sup> That same day, the circuit's chief judge named Circuit Judge Fortunato P. Benavides and District Judge Edward C. Prado to join Judge Justice as a three-judge court to hear the section 5 claims.<sup>5</sup> Section 5 claims became moot, however, when preclearance was granted on May 15, 2002.<sup>6</sup> The three-judge court was designated again on September 23 following the filing of amended complaints.<sup>7</sup>

As 2002 elections approached, Judge Justice denied the plaintiffs a temporary restraining order on October 2, finding no showing that claims could not be remedied after a trial on the merits.<sup>8</sup> On April 14, 2003, the three-judge court concluded that the county's nullification of old-plan primary elections

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1. Temporary Restraining Order, *Rodriguez v. Bexar County*, No. 5:01-cv-1049 (W.D. Tex. Nov. 21, 2001), D.E. 3; see Docket Sheet, *id.* (Nov. 19, 2001) (D.E. 1, 2); 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); see also Tom Bower, *JP Redistricting Takes Court Hit*, San Antonio Express-News, Nov. 22, 2001, at 3B.

"The major changes effected by the 001 redistricting plan were the reduction of the number of precincts from five to four, and the elimination of one constable position." *Rodriguez v. Bexar County*, 385 F.3d 853, 858 (5th Cir. 2004).

2. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Nov. 21, 2001), D.E. 4.

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

3. Federal Judicial Center Biographical Directory of Federal Judges, *supra* note 2.

4. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Dec. 19, 2001), D.E. 17.

5. Order, *id.* (Dec. 19, 2001), D.E. 18.

Judge Prado was elevated to the court of appeals on May 5, 2003. Federal Judicial Center Biographical Directory of Federal Judges, *supra* note 2.

6. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. July 19, 2002), D.E. 54; see *Rodriguez*, 385 F.3d at 859; see also Tom Bower, *Redistricting Plans OK'd*, San Antonio Express-News, May 18, 2002, at 2B.

7. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Sept. 23, 2002), D.E. 86; see Docket Sheet, *supra* note 1 (Fourth Amended Complaint, D.E. 55; Fifth Amended Complaint, D.E. 61).

8. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Oct. 2, 2002), D.E. 94; see Order, *id.* (Oct. 7, 2002), D.E. 97 (denying reconsideration).

in 2002 following preclearance of the new plan did not invalidate later general election results.<sup>9</sup>

In an opinion signed on August 15, 2003, Judge Justice found that the 2001 redistricting violated the proscription against Hispanic vote dilution in section 2 of the Voting Rights Act.<sup>10</sup> On September 26, Judge Justice nullified the 2002 election results and ordered the county to reinstate the fifth justice of the peace and constable precinct.<sup>11</sup>

On October 6, the court of appeals granted the county a stay of Judge Justice's remedy,<sup>12</sup> and the court of appeals reversed the section 2 ruling on September 17, 2004.<sup>13</sup>

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9. Opinion, *id.* (Apr. 14, 2003), D.E. 168, *aff'd*, 540 U.S. 1099 (2004).

10. Opinion, *id.* (Aug. 19, 2003), D.E. 187, *rev'd*, 385 F.3d 853; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 2, 79 Stat. 437, 437, *as amended*, 52 U.S.C. § 10301 (2014); see also Tom Bower, *JP Remap Ruled Illegal*, San Antonio Express-News, Aug. 22, 2003, at 1B.

11. Opinion, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Sept. 26, 2003), D.E. 203, *rev'd*, 385 F.3d 853; see Tom Bower, *Judge Voids Election of Constables, JPs*, San Antonio Express-News, Sept. 27, 2003, at 1A.

12. Order, *Rodriguez v. Bexar County*, No. 03-51119 (5th Cir. Oct. 6, 2003), *filed as* Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Oct. 6, 2003), D.E. 212; see Maro Robbins, *Bexar County Precinct Tiff Put on Hold*, San Antonio Express-News, Oct. 7, 2003, at 1B.

13. *Rodriguez*, 385 F.3d 853; see Guillermo Contreras, *Appeals Court Clears Bexar of Bias Charge*, San Antonio Express-News, Sept. 21, 2004, at 1A.