

Nullifying an Election Held Without Preclearance

Lyde v. Glynn County Board of Elections
(Anthony A. Alaimo, S.D. Ga. 2:04-cv-91)

Four days in advance of a planned July 20, 2004, primary election for members of the Glynn County Board of Education, three voters filed a federal complaint in the Southern District of Georgia, seeking to enjoin the election until changes to the composition of the board were precleared pursuant to section 5 of the Voting Rights Act.¹ According to the complaint, Georgia's legislature had changed the composition of the school board from two members from each of five districts to one member from each district plus two members elected at large.² With their complaint, the plaintiffs filed a motion for a temporary restraining order or preliminary injunction³ and a request for a three-judge court to hear their section 5 claim.⁴ The circuit's chief judge designated a three-judge court on July 19.⁵

Judge Anthony A. Alaimo heard the matter on July 19.⁶ The school board asked to be dismissed from the action, arguing that it had no control over its own composition and its participation would be an unnecessary expense.⁷ Judge Alaimo decided to defer that issue for the three-judge court.⁸

Judge Alaimo decided that the best course was for the election to proceed on the following day, to avoid confusion, but he might enjoin giving effect to the results.⁹ On election morning, a voter, who was not one of the plaintiffs, submitted to the court an affidavit stating that a sign was posted at his polling place stating that Judge Alaimo had enjoined the election with respect to school board members, that the sign was taken down while the voter was at the polling place, and

1. [Complaint](#), Lyde v. Glynn Cnty. Bd. of Elections, No. 2:04-cv-91 (S.D. Ga. July 16, 2004), D.E. 1; see Voting Rights Act of 1965, 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](#), *supra* note 1, at 4–6.

3. [Motion](#), Lyde, No. 2:04-cv-91 (S.D. Ga. July 16, 2004), D.E. 4.

4. [Request](#), *id.* (July 16, 2004), D.E. 3.

5. [Order](#), *id.* (July 19, 2004), D.E. 7.

6. Transcript, *id.* (July 19, 2004, filed July 26, 2004), D.E. 11; [Docket Sheet](#), *id.* (July 16, 2004).

Judge Alaimo died on December 30, 2009. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>.

7. Transcript, *supra* note 6, at 7–8, 86–87.

8. *Id.* at 87–88 (“if this case is subject to a special court of three judges, I am not sure that I have the power to do that”).

9. [Injunction](#) at 2, *id.* (July 20, 2004), D.E. 9.

that another voter who had skipped the school board elections because of the sign was not permitted to return to the voting booth and vote for school board after he realized that the sign was removed.¹⁰ The sign was incorrect, and because of the confusion it may have created for some voters Judge Alaimo voided the school board primary election.¹¹

On July 30, the county filed a notice of preclearance and a request that Judge Alaimo order a substitute primary election so that nominees could be selected in time for the general election in November.¹² Judge Alaimo ordered the primary elections held on August 24.¹³ On December 10, Judge Alaimo approved a stipulated dismissal of the case.¹⁴

10. *Affidavit*, *id.* (July 20, 2004), D.E. 8; *see also Letter*, *id.* (July 21, 2004), D.E. 10 (letter from another voter arguing that the election should not be voided).

11. *Injunction*, *supra* note 9; *see* Mark Niese, *Voting Problems Reported in Two Precincts*, *Macon Telegraph*, July 21, 2004, at A4.

12. *Notice*, *Lyde*, No. 2:04-cv-91 (S.D. Ga. July 30, 2004), D.E. 12.

13. *Order*, *id.* (Aug. 6, 2004), D.E. 17.

14. *Stipulated Dismissal*, *id.* (Dec. 10, 2004), D.E. 26.