

Preclearance of a State Supreme Court Decision That Provisional Ballots Have to Be Cast in the Correct Precinct

Kindley v. Bartlett
(*Terrence W. Boyle, E.D.N.C. 5:05-cv-177*)

On March 15, 2005, a North Carolina voter filed a federal class-action complaint in the Eastern District of North Carolina challenging state policy on the counting of provisional ballots cast in the wrong precinct.¹ Two days later, the court set the case for hearing on March 22.² On March 18, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction.³

In his March 18 response, North Carolina's attorney general explained that the suit concerned contested elections in state court and the state supreme court's February 5 decision that under state law provisional ballots had to be cast in the correct precinct to count.⁴ On March 21, the court set the case for hearing on March 30 before Judge Terrence W. Boyle.⁵

Judge Boyle issued an opinion on April 8 denying immediate injunctive relief.⁶ Judge Boyle found that North Carolina was in the process of having its supreme court's ruling precleared pursuant to section 5 of the Voting Rights Act, and the plaintiff had not shown an attempt by North Carolina to enforce the ruling in advance of preclearance.⁷

On September 26, the plaintiff voluntarily dismissed the action.⁸

1. [Complaint](#), *Kindley v. Bartlett*, No. 5:05-cv-177 (E.D.N.C. Mar. 15, 2005), D.E. 1; *see* Gary D. Robertson, *Election Battle Back in Court*, *Charlotte Observer*, Mar. 16, 2005, at 4B.

2. [Docket Sheet](#), *Kindley*, No. 5:05-cv-177 (E.D.N.C. Mar. 15, 2005).

3. [Motion](#), *id.* (Mar. 18, 2005), D.E. 3.

4. [Response](#), *id.* (Mar. 18, 2005), D.E. 4.

5. [Docket Sheet](#), *supra* note 2.

6. [Opinion](#), *Kindley*, No. 5:05-cv-177 (E.D.N.C. Apr. 8, 2005), D.E. 16.

7. *Id.* at 7; *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).

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.

8. [Notice](#), *Kindley*, No. 5:05-cv-177 (E.D.N.C. Sept. 28, 2005), D.E. 27.