

## 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 Act<sup>1</sup> and precinct changes dating back to 2001 had also not been precleared.<sup>2</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>3</sup>

The next day, the court set a hearing on the motion for February 18 before District Judge Marcia A. Crone.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> A hearing on the plaintiffs’ motion for a preliminary injunction was set for May 17.<sup>7</sup> Later, the hearing date was moved up to May 5, two days in advance of a planned election to select hospital district directors.<sup>8</sup>

The three-judge court conferred by telephone, but the judges determined that a court proceeding was unnecessary.<sup>9</sup> The Justice Department precleared both the

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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](#), *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.

February 5 and the May 7 elections in April.<sup>10</sup> As a result, Judge Crone declined to enjoin the May 7 election.<sup>11</sup> She dismissed the action on May 16.<sup>12</sup>

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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.