

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)*

One week after the election, a pro se federal complaint challenged the passage of a referendum to add fluoride to a city's drinking water. A little over a year later, a three-judge district court granted the defendants summary judgment.

Subject: Ballot measures. *Topics:* Ballot measure; enjoining certification; pro se party; section 5 preclearance; three-judge court; case assignment; recusal.

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, District 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, (1) denial of the plaintiffs' motion for a preliminary injunction and (2) direction that further filings from the plaintiffs not be accepted without proper certificates of service.⁶

1. Docket Sheet, *Espronceda v. Krier*, No. 5:00-cv-1259 (W.D. Tex. Nov. 14, 2000) (D.E. 1); Opinion, *id.* (Jan. 8, 2002), D.E. 173 [hereinafter Summary-Judgment Opinion]; 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.

Judge Mathy retired on January 14, 2017. Judicial Milestones, www.uscourts.gov/judicial-milestones/pamela-ann-mathy.

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.

Judge Garcia transferred the case to District Judge William Wayne Justice on May 22, 2001.⁷ Judge Garcia 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 district 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 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 fifteen orders against the plaintiffs over the course of four weeks.¹² He 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 jeremiad, 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 from the three-judge decision should have been filed with the Supreme Court.¹⁷

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 Article III Federal Judges [hereinafter FJC Biographical Directory], www.fjc.gov/history/judges.

8. FJC Biographical Directory, *supra* note 7.

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 (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 district 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. 529 (2013).

Judge Garza retired on January 5, 2015; Judge Prado was elevated to the court of appeals on May 5, 2003, and he retired on April 2, 2018. FJC Biographical Directory, *supra* note 7.

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

Judge Benavides died on May 5, 2023. FJC Biographical Directory, *supra* note 7.

11. Orders, *Espronceda*, No. 5:00-cv-1259 (W.D. Tex. Aug. 31, 2001), D.E. 127 to 135.

12. Orders, *id.* (Aug. 31, 2001), D.E. 136 to 140, 142 to 148, 152, 154, 155.

13. Orders, *id.* (Sept. 28 to Oct. 24, 2001), D.E. 149 to 151, 153, 159, 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).