

## Nullifying an Election Held Without Preclearance

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

Voters filed a federal complaint to enjoin an election for members of a county board of education until changes to the composition of the board were precleared pursuant to section 5 of the Voting Rights Act. The district judge allowed the election to proceed to avoid confusion because there was still time to enjoin the election's results. For part of election day at one polling place, a sign erroneously informed voters that the school-board primary election had been enjoined, so the judge voided the election. The new composition was precleared in time for a substitute primary election in advance of the general election.

*Subject:* Election dates. *Topics:* Section 5 preclearance; enjoining elections; enjoining certification; primary election; three-judge court.

Four days before a planned July 20, 2004, primary election for members of Glynn County's 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.<sup>1</sup> 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.<sup>2</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order or a preliminary injunction<sup>3</sup> and a request for a three-judge district court to hear their section 5 claim.<sup>4</sup> The circuit's chief judge designated a three-judge court on July 19.<sup>5</sup>

Judge Anthony A. Alaimo heard the matter on July 19.<sup>6</sup> The school board asked to be dismissed from the action, arguing that it had no control over its

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1. Complaint, *Lyde v. Glynn Cty. 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*, 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).

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).

own composition and its participation would be an unnecessary expense.<sup>7</sup> Judge Alaimo decided to defer that issue for the three-judge court to address.<sup>8</sup>

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.<sup>9</sup> 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 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 the school board after he realized that the sign was removed.<sup>10</sup> The sign was incorrect, and because of the confusion it may have created for some voters, Judge Alaimo voided the school-board primary election.<sup>11</sup>

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.<sup>12</sup> Judge Alaimo ordered the primary elections held on August 24.<sup>13</sup> On December 10, Judge Alaimo approved a stipulated dismissal of the case.<sup>14</sup>

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Judge Alaimo died on December 30, 2009. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

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, *Lyde*, No. 2:04-cv-91 (S.D. Ga. July 20, 2004), D.E. 9.

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 Niesse, *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.