

## Preclearance of an Election to Create a Hospital District

*Hernandez v. Kirkham*

(*Marcia A. Crone, E.D. Tex. 1:05-cv-134*)

Eleven days after an election to create a hospital district, five residents filed a federal complaint charging that the election and earlier precinct changes had not received preclearance pursuant to section 5 of the Voting Rights Act. At a district-court hearing two days later, the parties agreed to a temporary restraining order that enjoined the conveyance of any property to the hospital district until the end of April. The Justice Department granted preclearance in April, so the district-court action was dismissed.

*Subject:* Ballot measures. *Topics:* Section 5 preclearance; three-judge court.

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 also had 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 district 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

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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, *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 September 7, 2012. Judge Heartfield died on December 27, 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

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.

injunction was set for May 17.<sup>7</sup> Later, the hearing date was moved up to May 5, two days before 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 February 5 and the May 7 elections in April.<sup>10</sup> So 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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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.

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.