

Enjoining a Water-District Annexation for Want of Section 5 Preclearance

*Thelma Area Neighborhood Corporation v.
Evergreen Underground Water Conservation District
(Edward C. Prado, W.D. Tex. 5:01-cv-1191)*

A district judge enjoined an election to annex territory to a water-conservation district, because the election had not been precleared pursuant to section 5 of the Voting Rights Act. The election was canceled and held three months later than originally scheduled, and annexation failed.

Subject: Ballot measures. *Topics:* Section 5 preclearance; enjoining elections; ballot measure.

An organization filed a federal complaint against a water district on December 28, 2001, in the Western District of Texas to challenge a February 2, 2002, election to annex the southern part of Bexar County, claiming that the election had not yet received preclearance pursuant to section 5 of the Voting Rights Act.¹ With its complaint, the plaintiff filed a motion for a temporary restraining order.²

Judge Edward C. Prado set the case for hearing on January 3, 2002.³ Following the hearing, Judge Prado agreed to stay the case until January 14, two days before early voting was to begin, to see if preclearance would be granted.⁴ Because preclearance had not been granted by January 14, Judge Prado enjoined the election.⁵ Following the cancelation of the election, Judge Prado dismissed the case on January 25.⁶

1. Docket Sheet, *Thelma Area Neighborhood Corp. v. Evergreen Underground Water Conservation Dist.*, No. 5:01-cv-1191 (W.D. Tex. Dec. 28, 2001) (D.E. 1); Temporary Restraining Order, *id.* (Jan. 14, 2002), D.E. 8; *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).

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. Docket Sheet, *supra* note 1 (D.E. 2).

3. Order, *Thelma Area Neighborhood Corp.*, No. 5:01-cv-1191 (W.D. Tex. Dec. 28, 2001), D.E. 3.

Judge Prado was elevated to the court of appeals on May 5, 2003, and he retired on April 2, 2018. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

4. Order, *Thelma Area Neighborhood Corp.*, No. 5:01-cv-1191 (W.D. Tex. Jan. 3, 2002), D.E. 6.

5. Temporary Restraining Order, *supra* note 1.

6. Order, *Thelma Area Neighborhood Corp.*, No. 5:01-cv-1191 (W.D. Tex. Jan. 25, 2002), D.E. 13; *see* Jerry Needham, *Water District Delays Annexation Election*, San Antonio Express-News, Jan. 23, 2002, at 8B.

Annexation failed in a May 4 election.⁷

⁷. See Jerry Needham, *Water Management at Issue in 2 Votes*, San Antonio Express-News, May 5, 2002, at 8B.