

Elimination of a Constable Precinct

Rodriguez v. Bexar County (H.F. Garcia and William Wayne Justice, W.D. Tex. 5:01-cv-1049)

A district judge issued a temporary injunction against the redistricting of precincts for justices of the peace and constables, eliminating one of the five precincts, without preclearance pursuant to section 5 of the Voting Rights Act. After the county obtained preclearance, the judge found Hispanic vote dilution in violation of section 2 of the Voting Rights Act, but the court of appeals reversed the nullification of an election to the new precincts.

Subject: District lines. *Topics:* Section 5 preclearance; section 2 discrimination; enjoining elections; three-judge court; case assignment.

On November 21, 2001, two days after a complaint and motion were filed, Western District of Texas Judge H.F. Garcia issued a temporary restraining order against Bexar County's elimination of a precinct for justices of the peace and constables because the county, which includes San Antonio, had not received preclearance for the change pursuant to section 5 of the Voting Rights Act.¹ On the same day, Judge Garcia transferred the case to Judge William Wayne Justice.² Judge Garcia died on January 16, 2002.³

On December 19, 2001, Judge Justice denied a motion to dismiss for lack of standing the admittedly otherwise meritorious section 5 claim.⁴ That same day, the circuit's chief judge named Circuit Judge Fortunato P. Benavides and District Judge Edward C. Prado to join Judge Justice as a three-judge district court to hear the section 5 claims.⁵ Section 5 claims became moot, however, when preclearance was granted on May 15, 2002.⁶ The three-judge court was

1. Temporary Restraining Order, *Rodriguez v. Bexar County*, No. 5:01-cv-1049 (W.D. Tex. Nov. 21, 2001), D.E. 3; see Docket Sheet, *id.* (Nov. 19, 2001) [hereinafter *Rodriguez* Docket Sheet] (D.E. 1, 2); 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); see also Tom Bower, *JP Redistricting Takes Court Hit*, *San Antonio Express-News*, Nov. 22, 2001, at 3B.

"The major changes effected by the 001 redistricting plan were the reduction of the number of precincts from five to four, and the elimination of one constable position." *Rodriguez v. Bexar County*, 385 F.3d 853, 858 (5th Cir. 2004).

2. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Nov. 21, 2001), D.E. 4.

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.

3. FJC Biographical Directory, *supra* note 2.

4. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Dec. 19, 2001), D.E. 17.

5. Order, *id.* (Dec. 19, 2001), D.E. 18.

Judge Prado was elevated to the court of appeals on May 5, 2003, and he retired on April 2, 2018; Judge Benavides died on May 5, 2023. FJC Biographical Directory, *supra* note 2.

6. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. July 19, 2002), D.E. 54; see *Rodriguez*,

designated again on September 23 following the filing of amended complaints.⁷

As 2002 elections approached, Judge Justice denied the plaintiffs a temporary restraining order on October 2, finding no showing that claims could not be remedied after a trial on the merits.⁸ On April 14, 2003, the three-judge court concluded that the county's nullification of old-plan primary elections in 2002 following preclearance of the new plan did not invalidate later general election results.⁹

In an opinion signed on August 15, 2003, Judge Justice found that the 2001 redistricting violated the proscription against Hispanic vote dilution in section 2 of the Voting Rights Act.¹⁰ On September 26, Judge Justice nullified the 2002 election results and ordered the county to reinstate the fifth justice-of-the-peace-and-constable precinct.¹¹

On October 6, the court of appeals granted the county a stay of Judge Justice's remedy,¹² and it reversed the section 2 ruling on September 17, 2004.¹³

385 F.3d at 859; *see also* Tom Bower, *Redistricting Plans OK'd*, San Antonio Express-News, May 18, 2002, at 2B.

7. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Sept. 23, 2002), D.E. 86; *see Rodriguez* Docket Sheet, *supra* note 1 (Fourth Amended Complaint, D.E. 55; Fifth Amended Complaint, D.E. 61).

8. Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Oct. 2, 2002), D.E. 94; *see Order, id.* (Oct. 7, 2002), D.E. 97 (denying reconsideration).

9. Opinion, *id.* (Apr. 14, 2003), D.E. 168, *aff'd*, 540 U.S. 1099 (2004).

10. Opinion, *id.* (Aug. 19, 2003), D.E. 187, *rev'd*, 385 F.3d 853; *see* Voting Rights Act of 1965, Pub. L. No. 89-110, § 2, 79 Stat. 437, 437, *as amended*, 52 U.S.C. § 10301; *see also* Tom Bower, *JP Remap Ruled Illegal*, San Antonio Express-News, Aug. 22, 2003, at 1B.

11. Opinion, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Sept. 26, 2003), D.E. 203, *rev'd*, 385 F.3d 853; *see* Tom Bower, *Judge Voids Election of Constables, JPs*, San Antonio Express-News, Sept. 27, 2003, at 1A.

12. Order, *Rodriguez v. Bexar County*, No. 03-51119 (5th Cir. Oct. 6, 2003), *filed as* Order, *Rodriguez*, No. 5:01-cv-1049 (W.D. Tex. Oct. 6, 2003), D.E. 212; *see* Maro Robbins, *Bexar County Precinct Tiff Put on Hold*, San Antonio Express-News, Oct. 7, 2003, at 1B.

13. *Rodriguez*, 385 F.3d 853; *see* Guillermo Contreras, *Appeals Court Clears Bexar of Bias Charge*, San Antonio Express-News, Sept. 21, 2004, at 1A.