

Preclearance Not Required for How Election Officials Are Selected

*Selma Coalition for Equality and Change v. City
of Selma (Edward C. Prado, W.D. Tex. 5:00-cv-498)*

Unsuccessful candidates in a city-council election filed a federal complaint alleging that election procedures had not been precleared pursuant to section 5 of the Voting Rights Act. Two years later, a three-judge district court determined that remaining claims for how election officials were appointed were not section 5 violations. The court initially awarded the defendants attorney fees, but it denied fees on reconsideration because of the more rigorous standard for awarding fees to defendants in civil rights cases.

Subject: Voting procedures. *Topics:* Section 5 preclearance; three-judge court; attorney fees; poll locations.

On May 15, 2000, three unsuccessful candidates in a May 6 city-council election for Selma, Texas, filed a federal complaint in the Western District of Texas alleging that election procedures had not been precleared pursuant to section 5 of the Voting Rights Act.¹

On May 16, Judge Edward C. Prado denied the plaintiffs immediate relief because the plaintiffs' complaint did not show that relief was required before the defendants could be heard or that irreparable injury would result from the election winners' taking office.²

Judge Prado denied the city and its council a dismissal on February 13, 2001, finding that a three-judge court needed to determine whether some changes that had not been precleared—altering the selection of election judges and clerks and changing an elections administrator and a polling place—were in violation of section 5.³

1. Docket Sheet, *Selma Coal. for Equality and Change v. City of Selma*, No. 5:00-cv-498 (W.D. Tex. May 15, 2000) (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); *see also* Chuck McCollough, *De-feated Candidates File Lawsuit*, San Antonio Express-News, May 24, 2000, at 1H.

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. ___, 133 S. Ct. 2612 (2013).

2. Order, *Selma Coal. for Equality and Change*, No. 5:00-cv-498 (W.D. Tex. May 16, 2000), D.E. 4.

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.

3. Order, *Selma Coal. for Equality and Change*, No. 5:00-cv-498 (W.D. Tex. Feb. 13, 2001), D.E. 47.

On July 1, 2002, Judge Prado denied the defendants' motion to dismiss the second amended complaint,⁴ and the circuit's chief judge named Circuit Judge Jerry E. Smith and Western District of Texas Judge Orlando L. Garcia to join Judge Prado as a three-judge district court.⁵ On October 10, the court concluded that altering how election judges and clerks are selected was a matter of city operations and not something covered by section 5.⁶

On January 6, 2003, Judge Prado awarded the defendants \$86,168.78 in attorney fees and costs,⁷ but on reconsideration, on February 19, Judge Prado recognized the "more rigorous standard for awarding attorneys' fees to prevailing defendants in civil rights lawsuits" and denied the defendants an award.⁸ Selma withdrew its appeal on April 16.⁹

4. Opinion, *id.* (July 1, 2001), D.E. 68; *see* Fee-Reconsideration Opinion, *id.* (Feb. 19, 2003), D.E. 92 ("Plaintiffs did not explain why they had failed to actively prosecute the case [for] 10 months.").

5. Order, *id.* (July 1, 2001), D.E. 69.

6. Opinion, *id.* (Oct. 10, 2002), D.E. 74; Corrected Opinion, *id.* (Dec. 12, 2002), D.E. 80.

7. Order, *id.* (Jan. 6, 2003), D.E. 82; *see* Chuck McCollough, *Losers Told to Pay City for Lawsuit*, San Antonio Express-News, Feb. 19, 2003, at 1H.

8. Fee-Reconsideration Opinion, *supra* note 4.

9. Order, *Selma Coal. for Equality and Change v. City of Selma*, No. 03-50358 (5th Cir. Apr. 16, 2003), *filed as* Order, *Selma Coal. for Equality and Change*, No. 5:00-cv-498 (W.D. Tex. Apr. 29, 2003), D.E. 95; *see* Chuck McCollough, *Lawsuit Losers Don't Have to Pay Selma*, San Antonio Express-News, Mar. 5, 2003, at 1H.