

Preclearance Required for a Special-Election Schedule Ordered by a State Court

*LULAC of Texas v. Ramon (Alia Moses, Jerry E. Smith,
and Xavier Rodriguez, W.D. Tex. 2:10-cv-58)*

A three-judge district court enjoined a special election set by a state court for lack of preclearance pursuant to section 5 of the Voting Rights Act. Once an uncontested schedule had received preclearance, the district court dissolved the injunction.

Subject: Election dates. *Topics:* Section 5 preclearance; three-judge court; enjoining elections; matters for state courts; primary election.

A federal complaint filed in the Western District of Texas on September 9, 2010, challenged a state-court-ordered election schedule for a special Democratic primary election for a Val Verde County commissioner—which the state court ordered on a finding of undue influence in the original close primary election—alleging that the tight time frame would disadvantage minority voters in violation of sections 2¹ and 5² of the Voting Rights Act.³

The circuit’s chief judge named Circuit Judge Jerry E. Smith and Western District of Texas Judge Xavier Rodriguez to join Judge Alia Moses, the originally assigned judge, as a three-judge district court to hear the section 5 claim.⁴ Observing that “[t]he Defendants . . . do not dispute that these changes are at variance with the Texas Election Code and have not been submitted to, or precleared by, the Department of Justice,” the three-judge court issued a preliminary injunction on September 14 against the election schedule ordered by the state court.⁵

Upon preclearance of “proposed uncontested election changes” on October 1, the three-judge court issued an order on October 5 dissolving the preliminary injunction.⁶

1. Pub. L. No. 89-110, § 2, 79 Stat. 437, 437, *as amended*, 52 U.S.C. § 10301.

2. *Id.*, § 5, 79 Stat. at 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).

3. Complaint, *LULAC of Texas v. Ramon*, No. 2:10-cv-58 (W.D. Tex. Sept. 9, 2010), D.E. 1.

4. Order, *id.* (Sept. 10, 2010), D.E. 2 (referring to Judge Moses as Judge Alia Moses Ludlum); *see* Docket Sheet, *id.* (Sept. 10, 2010).

5. Order, *id.* (Sept. 14, 2010), D.E. 3.

6. Order, *id.* (Oct. 5, 2010), D.E. 6; *see* Amended Complaint, *id.* (Oct. 4, 2010), D.E. 4.