

## Preclearance for a Zoning Election

*Watson v. Fuhrmeister*

*(Karon O. Bowdre, N.D. Ala. 2:03-cv-1960)*

One week before a special election, voters filed a federal complaint alleging that the special election was in violation of section 5 of the Voting Rights Act because the election's question, whether a county precinct would be subject to zoning by a county planning commission, pertained to zoning laws that had not been precleared. Defendants acknowledged that the laws in question had not been precleared, so the court enjoined the election. The action was dismissed on notice of preclearance.

*Subject:* Ballot measures. *Topics:* Enjoining elections; section 5 preclearance; ballot measure.

One week before an August 5, 2003, special election, three voters filed a federal complaint in the Northern District of Alabama against the three members of Shelby County's election-canvassing board, alleging that the special election was in violation of section 5 of the Voting Rights Act<sup>1</sup> because the election's question, whether a county precinct would be subject to zoning by a county planning commission, pertained to zoning laws that had not been precleared.<sup>2</sup> Among other relief, the complaint sought a preliminary injunction.<sup>3</sup> The court assigned the case to Judge Karon O. Bowdre, who requested appointment of a three-judge district court.<sup>4</sup>

On Thursday, July 31, the parties filed stipulations that included a stipulation that the laws in question had not been precleared.<sup>5</sup> That day, Judge Bowdre issued a temporary restraining order against the holding of the election.<sup>6</sup>

The canvassing board decided to seek preclearance, and it consented to a sixty-day extension of the restraining order.<sup>7</sup> The extension was expanded to October 28 to accommodate the Justice Department's expected response to

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1. 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); see Robert Barnes, *Court Blocks Key Part of Voting Rights Act*, Wash. Post, June 26, 2013, at A1; Adam Liptak, *Justices Void Oversight of States, Issue at Heart of Voting Rights Act*, N.Y. Times, June 26, 2013, at A1.

2. Complaint, *Watson v. Fuhrmeister*, No. 2:03-cv-1960 (N.D. Ala. July 29, 2003), D.E. 1; see Nancy Wilstach, *County Attorney Suggests Election Dilemma Solutions*, Birmingham News, Sept. 10, 2003, at 2.

3. Complaint, *supra* note 2, at 5.

4. See Order, *Watson*, No. 2:03-cv-1960 (N.D. Ala. July 31, 2003), D.E. 2.

5. Stipulation, *id.* (July 31, 2003), D.E. 4.

6. Temporary Restraining Order, *id.* (July 31, 2003), D.E. 6; Opinion, *id.* (July 31, 2003), D.E. 5.

7. Consent, *id.* (Aug. 8, 2003), D.E. 8.

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the preclearance request.<sup>8</sup> On notice of October 9 preclearance,<sup>9</sup> Judge Bowdre dismissed the action on October 29.<sup>10</sup>

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8. Order, *id.* (Aug. 29, 2003), D.E. 10.

9. Motion, *id.* (Oct. 16, 2003), D.E. 13.

10. Dismissal, *id.* (Oct. 29, 2003), D.E. 15.