

Changing How Straight-Party Votes Are Marked Without Preclearance

LULAC v. Bexar County
(*Edward C. Prado, W.D. Tex. 5:02-cv-1015*)

A federal complaint challenged, among other things, a change in ballot construction that required voters to mark their selection for straight-party voting twice instead of once as not precleared pursuant to section 5 of the Voting Rights Act. After four proceedings, the parties and the judge agreed that the change could proceed as if precleared for early voting, but the election-day ballot would use the old method while preclearance was pending.

Subject: Voting procedures. *Topics:* Early voting; voting technology; section 5 preclearance; intervention; attorney fees.

A federal complaint filed against Bexar County—the county that includes San Antonio—on October 16, 2002, alleged that the county was conducting the November general election without having precleared voting changes pursuant to section 5 of the Voting Rights Act.¹ With the complaint, the plaintiffs filed a motion for a temporary restraining order.²

Judge Edward C. Prado held hearings in the case on October 17, 18, 24, and 31.³ Chairs of the Democratic and Republican Parties were permitted to intervene.⁴ On November 1, the Friday before the election, Judge Prado issued an order memorializing the parties' and the court's agreement on how to proceed while preclearance—which was sought on October 18 and 21—was pending.⁵

Early voting was to be delayed because of a delay in printing ballots, but in the event, early voting could begin on time.⁶ The more difficult issue was a change in how a straight-party vote was to be selected: from the previous procedure of marking the straight-party vote once to a new procedure requiring the voter to mark it twice.⁷ For election day, the old procedure could be used, but early-voting ballots would still require two markings for straight-party

1. Docket Sheet, *LULAC v. Bexar County*, No. 5:02-cv-1015 (W.D. Tex. Oct. 16, 2002) (D.E. 1); Opinion at 1, *id.* (Nov. 1, 2002), D.E. 13; 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).

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

3. *Id.* (D.E. 4, 5, 9, 12); Opinion, *supra* note 1, at 1.

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, *LULAC*, No. 5:02-cv-1015 (W.D. Tex. Oct. 31, 2002, filed Nov. 4, 2002), D.E. 15 (Democratic Party); Order, *id.* (Oct. 31, 2002, filed Nov. 4, 2002), D.E. 14 (Republican Party).

5. Opinion, *supra* note 1.

6. *Id.* at 1; see Tom Bower, *Bexar Vows Early Voting Won't Get a Late Start*, San Antonio Express-News, Oct. 17, 2002, at 1A.

7. Opinion, *supra* note 1, at 1–2.

voting.⁸ After the election, election authorities would have to figure out how to count ballots cast by early voters that only marked a straight-party preference once.⁹ Because preclearance was pending and the election was imminent, “the Court agrees with the parties that the voting changes should be treated as precleared.”¹⁰

On January 24, 2003, Judge Prado awarded the plaintiffs \$18,202.50 in attorney fees and costs.¹¹

8. *Id.* at 2–3; see Tom Bower, *Groups OK New Ballot*, San Antonio Express-News, Oct. 25, 2002, at 3B; Sherry Sylvester, *Bexar Officials Redesign Ballot*, San Antonio Express-News, Oct. 22, 2002, at 1B.

9. Opinion, *supra* note 1, at 3.

10. *Id.*

11. Order, *LULAC v. Bexar County*, No. 5:02-cv-1015 (W.D. Tex. Jan. 24, 2003), D.E. 23.