

Section 5 Preclearance Not Required for Misapplication of Election Law

Landry v. Kenner (Carl J. Barbier, E.D. La. 2:04-cv-85)

In a dispute over the date for a special election to replace a mayor elected to the parish council, voters filed a federal complaint alleging that the resigning mayor's setting the election date was contrary to law and therefore a change in voting requiring preclearance pursuant to section 5 of the Voting Rights Act. The district judge concluded that actions in violation of law could not be seen as a change in the law, so he dismissed the section 5 case.

Subject: Election dates. *Topics:* Enjoining elections; section 5 preclearance; three-judge court; matters for state courts.

On January 13, 2004, two voters filed a federal complaint in the Eastern District of Louisiana seeking to enjoin a March 9 special election called to elect a mayor of Kenner because of the incumbent's resignation.¹ The complaint alleged that it was improper for the resigning mayor to set the election date and his doing so had not been precleared pursuant to section 5 of the Voting Rights Act.²

The mayor resigned on December 15, 2003, following his election to the parish council, effective at midnight on December 31.³ Following the outgoing mayor's calling a special election, the city council voted to set the date for September 18, 2004, instead of March 9, an action the plaintiffs alleged to be proper procedure.⁴ After a council member became acting mayor, he confirmed the September 18 date.⁵ The defendants named in the action were the city and its acting mayor, who were on the same side of the dispute as the plaintiffs.⁶

On January 15, 2004, Judge Carl J. Barbier set the case for hearing on January 16.⁷ On January 20, Judge Barbier determined that the section 5

1. Complaint, *Landry v. Kenner*, No. 2:04-cv-85 (E.D. La. Jan. 13, 2004), D.E. 1.

2. *Id.*; 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).

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. Opinion at 2, *Landry*, No. 2:04-cv-85 (E.D. La. Jan. 20, 2004), D.E. 10, 2004 WL 97704.

4. *Id.* at 3; Complaint, *supra* note 1.

5. Opinion, *supra* note 3, at 2–3; see Stephanie Doster, *Kenner Election Squabble Is Pricey: Taxpayers Footing Bill for \$103,000*, *New Orleans Times Picayune*, Apr. 10, 2004, at 1 (reporting that the member of the council who became acting mayor “banded together” with three other council members to oust the president so that he would become acting mayor).

6. Complaint, *supra* note 1; Opinion, *supra* note 3, at 4 n.3.

7. Order, *Landry*, No. 2:04-cv-85 (E.D. La. Jan. 15, 2004), D.E. 4; see Minutes, *id.* (Jan. 16, 2004), D.E. 7.

claim was without merit, so a three-judge district court needn't be empanelled to resolve it, because the plaintiffs did not allege a change in election law but a misapplication of it.⁸ Judge Barbier dismissed the case on January 23.⁹

Judge Barbier denied the plaintiffs a preliminary injunction pending appeal,¹⁰ and the appeal was voluntarily dismissed on February 13.¹¹ The resigning mayor's brother won the March 9 election.¹²

8. Opinion, *supra* note 3; see Stephanie Doster, *Ruling Today on Date of Kenner Election*, New Orleans Times Picayune, Jan. 29, 2004, at 1 (reporting also on parallel state court litigation).

9. Judgment, *Landry*, No. 2:04-cv-85 (E.D. La. Jan. 23, 2004), D.E. 11.

10. Minutes, *id.* (Jan. 27, 2004), D.E. 15.

11. Order, *Landry v. Kenner*, No. 04-30076 (5th Cir. Feb. 13, 2004), *filed as Order, Landry*, No. 2:04-cv-85 (E.D. La. Feb. 17, 2004), D.E. 16.

12. See Doster, *supra* note 5.