Preclearance of a State Supreme-Court Decision That Provisional Ballots Have to Be Cast in the Correct Precinct

Kindley v. Bartlett
(Terrence W. Boyle, E.D.N.C. 5:05-cv-177)

A federal class-action complaint challenged a state policy against counting provisional ballots cast in the wrong precinct, a policy recently allowed by the state's supreme court. The federal district-court judge denied injunctive relief on a finding that the state was not attempting to enforce the policy in advance of preclearance pursuant to section 5 of the Voting Rights Act.

Subject: Provisional ballots. *Topics:* Provisional ballots; section 5 preclearance; matters for state courts; class action.

On March 15, 2005, a North Carolina voter filed a federal class-action complaint in the Eastern District of North Carolina challenging state policy on the counting of provisional ballots cast in the wrong precinct.[1] Two days later, the court set the case for hearing on March 22.[2] On March 18, the plaintiff filed a motion for a temporary restraining order and a preliminary injunction.[3]

In his March 18 response, North Carolina's attorney general explained that the suit concerned contested elections in state court and the state supreme court's February 5 decision that under state law provisional ballots had to be cast in the correct precinct to count.[4] On March 21, the court set the case for hearing on March 30 before Judge Terrence W. Boyle.[5]

Judge Boyle issued an opinion on April 8 denying immediate injunctive relief.[6] Judge Boyle found that North Carolina was in the process of having its supreme court's ruling precleared pursuant to section 5 of the Voting Rights Act, and the plaintiff had not shown an attempt by North Carolina to enforce the ruling in advance of preclearance.[7]

On September 26, the plaintiff voluntarily dismissed the action.[8]

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1. Complaint, Kindley v. Bartlett, No. 5:05-cv-177 (E.D.N.C. Mar. 15, 2005), D.E. 1; *see* Gary D. Robertson, *Election Battle Back in Court*, Charlotte Observer, Mar. 16, 2005, at 4B.

2. Docket Sheet, *Kindley*, No. 5:05-cv-177 (E.D.N.C. Mar. 15, 2005).

3. Motion, *id.* (Mar. 18, 2005), D.E. 3.

4. Response, *id.* (Mar. 18, 2005), D.E. 4.

5. Docket Sheet, *supra* note 2.

6. Opinion, *Kindley*, No. 5:05-cv-177 (E.D.N.C. Apr. 8, 2005), D.E. 16.

7. *Id.* at 7; *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).

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).

8. Notice, *Kindley*, No. 5:05-cv-177 (E.D.N.C. Sept. 28, 2005), D.E. 27.