

Redistricting an Incumbent Out of His District

Jenkins v. Ray

(*Clay D. Land, M.D. Ga. 4:06-cv-43*)

On April 17, 2006, three months in advance of the next election, six voters in Randolph County, Georgia, filed a federal action in the Middle District of Georgia complaining that the incumbent chair of the school board had been redistricted into another district although section 5 preclearance of the redistricting had been obtained on representation that neither he nor any other incumbent would change districts.¹ The plaintiffs sought a temporary restraining order, a preliminary injunction, and a three-judge court to hear their claim that Georgia had failed to properly preclear the new school board districts as required by section 5 of the Voting Rights Act.²

The court assigned the case to Judge Clay D. Land, who requested a three-judge court on the following day.³ The circuit's chief judge empaneled a three-judge court on April 24.⁴ It is the practice of the district for the clerk's office to screen cases that might require three-judge courts and alert judges of their review as soon as the case is filed.⁵ Judge Land reviewed the case and agreed with the clerk's office that a three-judge court was required.⁶

After a hearing on April 21,⁷ Judge Land issued a temporary restraining order declaring that the qualification period for the ballot, which was to begin on April 24, would remain open beyond the previously set closing date of April 28 until further order of the court.⁸

The three-judge court held an evidentiary hearing on May 31.⁹ On June 5, the court ruled that the assignment of the African-American incumbent to a different

1. Complaint, *Jenkins v. Ray*, No. 4:06-cv-43 (M.D. Ga. Apr. 17, 2006), D.E. 1; *Cook v. Randolph Cnty.*, 573 F.3d 1143, 1146–47 (11th Cir. 2009); see Harry Franklin, *Randolph School Board Member to Stay in District*, Columbus Ledger-Enquirer, June 8, 2006 (reporting that two of the plaintiffs were the superintendent of schools and his wife).

2. Motions, *Jenkins*, No. 4:06-cv-43 (M.D. Ga. Apr. 17, 2006), D.E. 9 & 10; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2012) (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 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 Cnty. v. Holder*, 570 U.S. ___, 133 S. Ct. 2612 (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.

3. Letter, *Jenkins*, No. 4:06-cv-43 (M.D. Ga. Apr. 19, 2006), D.E. 11.

Tim Reagan interviewed Judge Land for this report by telephone on October 11, 2012.

4. Order, *Jenkins*, No. 4:06-cv-43 (M.D. Ga. Apr. 24, 2006), D.E. 21.

5. Interview with Hon. Clay D. Land, Oct. 11, 2012.

6. *Id.*

7. Minutes, *Jenkins*, No. 4:06-cv-43 (M.D. Ga. Apr. 21, 2006), D.E. 17.

8. Order, *id.* (Apr. 21, 2006), D.E. 18.

9. Minutes, *id.* (May 31, 2006), D.E. 41.

district required preclearance.¹⁰ The redistricting followed the 2000 census.¹¹ Following the redistricting, the incumbent's property was partly in one district, a predominantly African-American district, and partly in another, a predominantly white district, and his dwelling was not in the district he represented.¹² For the 2002 election, in response to a challenge by a competing candidate, the incumbent was allowed to continue representing his original district.¹³ For the 2006 election, election officials decided that they had made a mistake in 2002.¹⁴ The three-judge court decided that assigning the incumbent to a different district required section 5 preclearance.¹⁵

Election officials permitted the incumbent to vote in and represent his original district, and he was reelected.¹⁶ Because preclearance was still pending, the incumbent had to cast a provisional ballot, and he was not issued a permanent voting card showing his registration in the original district.¹⁷ On May 24, 2007, the three-judge court denied a motion for contempt.¹⁸

On September 12, 2006, the Justice Department decided not to preclear the assignment of the incumbent to a different district, and so he remained a voter and representative in his original district.¹⁹

Meanwhile, a removed action by the incumbent was pending before Judge Land.²⁰ On April 17, 2006, the incumbent filed an action in state court seeking his assignment to his original district.²¹ On November 30, the defendants removed the action to federal court in the Middle District of Georgia,²² which assigned the case to Judge Land.²³ Judge Land denied the plaintiff's motion to remand on February 2, 2007.²⁴ On January 4, 2008, Judge Land determined that the incumbent's pray-

10. Order, *id.* (June 5, 2006), D.E. 44 [hereinafter June 5, 2006, Order], available at [2006 WL 1582426](#); see [Cook v. Randolph Cnty.](#), 573 F.3d 1143, 1145, 1147 (11th Cir. 2009); see also Franklin, *supra* note 1.

11. [Cook](#), 573 F.3d at 1145; June 5, 2006, Order, *supra* note 10, at 1.

12. [Cook](#), 573 F.3d at 1145; June 5, 2006, Order, *supra* note 10, at 1–2.

13. [Cook](#), 573 F.3d at 1145–46; June 5, 2006, Order, *supra* note 10, at 2; [Jordan v. Cook](#), 277 Ga. 155, 587 S.E.2d 52 (Ga. 2003).

14. June 5, 2006, Order, *supra* note 10, at 2.

15. *Id.* at 3–5.

16. Order at 3–5, [Jenkins v. Ray](#), No. 4:06-cv-43 (M.D. Ga. May 24, 2007), D.E. 57, available at [2007 WL 1544741](#).

17. *Id.*

18. *Id.* at 5–6.

19. [Cook v. Randolph Cnty.](#), 573 F.3d 1143, 1145, 1147 (11th Cir. 2009); Summary Judgment at 5, [Cook v. Randolph Cnty.](#), No. 4:06-cv-138 (M.D. Ga. Jan. 4, 2008), D.E. 101 [hereinafter *Cook* Summary Judgment].

20. Docket Sheet, [Cook](#), No. 4:06-cv-138 (M.D. Ga. Nov. 30, 2006) [hereinafter *Cook* Docket Sheet].

21. Complaint, [Cook v. Randolph Cnty.](#), No. 2006-cv-54 (Ga. Sup. Ct. Randolph Cnty. Apr. 17, 2006), filed as Ex. 2, Amended Notice of Removal, [Cook](#), No. 4:06-cv-138 (M.D. Ga. Dec. 1, 2006), D.E. 5 (electronic filing of removal documents); [Cook](#), 573 F.3d at 1146.

22. Notice of Removal, [Cook](#), No. 4:06-cv-138 (M.D. Ga. Nov. 30, 2006), D.E. 1; [Cook](#), 573 F.3d at 1148.

23. *Cook* Docket Sheet, *supra* note 20.

24. Order, [Cook](#), No. 4:06-cv-138 (M.D. Ga. Feb. 2, 2007), D.E. 60; [Cook](#), 573 F.3d at 1148.

ers for injunctive relief were moot and his claims for damages were without merit.²⁵ The court of appeals affirmed on July 7, 2009.²⁶

25. *Cook* Summary Judgment, *supra* note 19 (finding qualified immunity for the individual defendants, municipal immunity for the municipal defendants, and insufficient evidence for conspiracy claims); *Cook*, 573 F.3d at 1148–49.

26. *Cook*, 573 F.3d 1143.