

## Section 5 Preclearance for Acquisition of Property

*City of College Park v. City of Atlanta*  
(Julie E. Carnes, N.D. Ga. 1:08-cv-1464)

The City of College Park and one of its residents filed a federal complaint against the City of Atlanta in the Northern District of Atlanta on April 18, 2008, claiming that Atlanta was violating section 5 of the Voting Rights Act by acquiring an apartment building in College Park to clear the land of structures and people for benefit of the airport without first obtaining preclearance for the change in College Park's electorate.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order<sup>2</sup> and a request for a three-judge court.<sup>3</sup>

That day, Judge Julie E. Carnes spoke by telephone with attorneys for College Park and Atlanta and then granted a temporary restraining order enjoining the property acquisition.<sup>4</sup> After the order was issued, Atlanta informed the court that the property had already been acquired that day, so Judge Carnes vacated her order the day it was issued.<sup>5</sup> At a status conference in open court on April 21, Atlanta agreed to refrain from razing the property for six weeks.<sup>6</sup> That gave the plaintiffs two weeks to file a more detailed pleading and the defendants 30 days after that to respond.<sup>7</sup>

On March 31, 2009, after several months of discovery, Judge Carnes determined that a three-judge court need not be empaneled for two reasons: (1) Atlanta had no additional plans to acquire College Park property, and (2) section 5 of the Voting Rights Act does not apply to acquisitions of property.<sup>8</sup>

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1. [Complaint](#), *City of College Park v. City of Atlanta*, No. 1:08-cv-1464 (N.D. Ga. April 18, 2008), D.E. 1; *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.

2. [Temporary Restraining Order Motion](#), *City of College Park*, No. 1:08-cv-1464 (N.D. Ga. Apr. 18, 2008), D.E. 3

3. [Request](#), *id.* (Apr. 18, 2008), D.E. 4.

4. [Temporary Restraining Order](#), *id.* (Apr. 18, 2008), D.E. 5; Transcript at 2–3, *id.* (Apr. 21, 2008, filed June 13, 2008), D.E. 31.

5. [Order](#), *id.* (Apr. 18, 2008), D.E. 6; *see* Transcript, *supra* note 4, at 3 (“the money was transferred by wire at about 3:15 Friday afternoon”).

6. [Minutes](#), *City of College Park*, No. 1:08-cv-1464 (N.D. Ga. Apr. 21, 2008), D.E. 8; Transcript, *supra* note 4, at 49–50.

7. Transcript, *supra* note 4, at 48–49.

8. [Opinion](#), *City of College Park*, No. 1:08-cv-1464 (N.D. Ga. Mar. 31, 2009), D.E. 48.

The parties agreed to a settlement while the case was on appeal.<sup>9</sup> On June 9, 2010, Judge Carnes certified that she would approve the settlement if the case were remanded back to her.<sup>10</sup> The court of appeals responded by remanding the case on July 27.<sup>11</sup> On August 2, 2010, Judge Carnes approved a settlement specifying greater cooperation between Atlanta and College Park when Atlanta wishes to acquire College Park property.<sup>12</sup>

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9. [Joint Motion](#), *id.* (May 25, 2010), D.E. 60.

10. [Order](#), *id.* (June 9, 2010), D.E. 61.

11. Order, *City of College Park v. City of Atlanta*, No. 09-12255 (11th Cir. July 27, 2010), *filed as Order*, *City of College Park*, No. 1:08-cv-1464 (N.D. Ga. July 27, 2010), D.E. 62.

12. [Consent Order](#), *City of College Park*, No. 1:08-cv-1464 (N.D. Ga. Aug. 2, 2010), D.E. 664.