

Citizenship Verification

Morales v. Handel

(*Jack T. Camp, N.D. Ga. 1:08-cv-3172*)

On October 9, 2008, a naturalized U.S. citizen filed a class action in the Atlanta courthouse of the U.S. District Court for the Northern District of Georgia, complaining that Georgia's secretary of state was improperly challenging citizens who register to vote as possibly not being citizens.¹ With his complaint, he filed a motion for a temporary restraining order, for a preliminary injunction, and to convene a three-judge court to hear his claim that Georgia has failed to preclear changes to its registration procedures as required by section 5 of the Voting Rights Act.²

In September, the plaintiff completed a voter registration application on campus; he was a student at Kennesaw State University.³ The plaintiff received a notice from the county registrar that there was a question about his citizenship.⁴ On September 26, the plaintiff proved his citizenship by presenting his passport at the registrar's office.⁵ On October 10, the day after he filed his complaint, he was notified that his status as a registered voter was confirmed.⁶

The court assigned the case to Judge Jack T. Camp, who ordered the parties to appear in his Newnan courtroom on the morning of October 10.⁷ After that proceeding, Judge Camp approved the request for a three-judge court,⁸ which the circuit's chief judge empaneled four days later.⁹

1. [Complaint](#), *Morales v. Handel*, No. 1:08-cv-3172 (N.D. Ga. Oct. 9, 2008), D.E. 1.

2. [Motion](#), *id.* (Oct. 9, 2008), D.E. 2; *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. [Order](#) at 2–3, *Morales*, No. 1:08-cv-3172 (N.D. Ga. Oct. 27, 2008), D.E. 36 [hereinafter Oct. 27, 2008, Order]; [Order](#) at 2, *id.* (Oct. 16, 2008), D.E. 19 [hereinafter Oct. 16, 2008, Order].

4. [Oct. 27, 2008, Order](#), *supra* note 3, at 3; [Oct. 16, 2008, Order](#), *supra* note 3, at 3.

5. [Oct. 27, 2008, Order](#), *supra* note 3, at 3; [Oct. 16, 2008, Order](#), *supra* note 3, at 3.

6. [Oct. 27, 2008, Order](#), *supra* note 3, at 3.

7. [Order](#), *Morales*, No. 1:08-cv-3172 (N.D. Ga. Oct. 9, 2008), D.E. 5.

Judge Camp retired on November 19, 2010. Federal Judicial Center Biographical Directory of Federal Judges, <http://www.fjc.gov/history/home.nsf/page/judges.html>.

8. [Order](#), *Morales*, No. 1:08-cv-3172 (N.D. Ga. Oct. 10, 2008), D.E. 7; [Minutes](#), *id.* (Oct. 10, 2008), D.E. 10.

9. [Order](#), *id.* (Oct. 15, 2008), D.E. 18 (signed Oct. 14, 2008).

On October 16, Judge Camp determined that a central question was whether Georgia's application of the Help America Vote Act (HAVA)¹⁰ database requirements in checking registered voters for evidence of citizenship required section 5 preclearance.¹¹ Judge Camp decided that immediate injunctive relief was not necessary in advance of a determination by the three-judge court of that issue.¹²

The three-judge court conducted an evidentiary hearing on October 22 in Atlanta.¹³ The court suggested that the parties reach a compromise agreement over the lunch break, but that was not to be.¹⁴ After the hearing, the court determined that preclearance was required and noted that although the secretary did not believe preclearance was required she had responded to this action by seeking it.¹⁵ Should preclearance remain unresolved during the upcoming November 4 election, Georgia was ordered to allow voters whose citizenship was in doubt to cast provisional ballots.¹⁶

On December 15, the Justice Department asked Georgia for additional information.¹⁷ On March 10, 2009, the plaintiff filed an amended complaint with three civil rights organizations added as plaintiffs.¹⁸

On May 29, 2009, the Justice Department informed Georgia that "the state's proposed procedures for verifying voter registration information are seriously flawed. This flawed system frequently subjects a disproportionate number of African-American, Asian, and/or Hispanic voters to additional and, more importantly, erroneous burdens on the right to register to vote."¹⁹ On June 22, 2010, Georgia sought judicial preclearance by filing an action in the U.S. District Court for the District of the District of Columbia.²⁰ In response to an August 17, 2010, submission to the Justice Department, Georgia's procedures were precleared by the department on the following day.²¹ On November 2, the District of the District

10. [Pub. L. No. 107-252](#), 116 Stat. 1666 (2002), *as amended*, 42 U.S.C. §§ 15301–15545 (2012). *See generally* Marie Leary & Robert Timothy Reagan, [The Help America Vote Act](#) (Federal Judicial Center 2012); Symposium, [HAVA @ 10](#), 12 Election L.J. 111 (2013).

11. [Oct. 16, 2008, Order](#), *supra* note 3, at 5–6.

12. *Id.* at 11.

13. [Minutes, Morales](#), No. 1:08-cv-3172 (N.D. Ga. Oct. 22, 2008), D.E. 29; *see* [Order](#), *id.* (Oct. 16, 2008), D.E. 20; [Oct. 16, 2008, Order](#), *supra* note 3, at 11–12.

14. *See* Bill Rankin, [Countdown 2008: Road to the White House](#), Atlanta J. & Const., Oct. 23, 2008, at A18.

15. [Oct. 27, 2008, Order](#), *supra* note 3, at 21–22; *see* Aaron Gould Sheinin & Julia Malone, [State Responds to Voter ID Challenge](#), Atlanta J. & Const., Oct. 15, 2008, at C7; Aaron Gould Sheinin & Bill Rankin, [Flagged Voters Can Cast Ballots](#), Atlanta J. & Const., Oct. 28, 2008, at A1.

16. [Oct. 27, 2008, Order](#), *supra* note 3, at 23–27.

17. [May 29, 2009, Justice Department Letter](#), attached as Ex. 2, [Complaint](#), Georgia v. Holder, No. 1:10-cv-1062 (D.D.C. June 22, 2010), D.E. 1 [hereinafter *Georgia Complaint*].

18. [Amended Complaint, Morales](#), No. 1:08-cv-3172 (N.D. Ga. Mar. 10, 2009), D.E. 55 (adding as plaintiffs the NAACP, the Georgia Association of Latino Elected Officials, and the Center for Pan Asian Community Services).

19. [May 29, 2009, Justice Department Letter](#), *supra* note 17.

20. [Georgia Complaint](#), *supra* note 17.

21. [Aug. 18, 2010, Justice Department Letter](#), attached as Ex. 2, [Motion to Dismiss, Georgia](#), No. 1:10-cv-1062 (D.D.C. Aug. 20, 2010), D.E. 46; 21. [Georgia v. Holder](#), 748 F. Supp. 2d 16, 18

of Columbia's district court granted a voluntary dismissal of the action for judicial preclearance.²²

(D.D.C. 2010); see Aaron Gould Sheinin, *State Wins Voter ID Case*, Atlanta J. & Const., Aug. 24, 2010, at A1.

22. *Georgia*, 748 F. Supp. 2d 16.