

## Unlawful Bill of Attainder

*Caudell v. City of Toccoa*

(*William C. O’Kelley, N.D. Ga. 2:01-cv-105*)

On Friday, June 15, 2001, a city commissioner filed a federal complaint in the Northern District of Georgia challenging an act of Georgia’s legislature, signed on April 16 by the governor, forbidding members of the city commission for Toccoa from serving as a member of a hospital authority board.<sup>1</sup> The plaintiff was the only person burdened by the act.<sup>2</sup> With his complaint, he filed a motion for a preliminary injunction against enforcement of the act so that he could qualify for re-election by the September 14 deadline.<sup>3</sup>

On Monday, Judge William C. O’Kelley set the matter for hearing on July 12.<sup>4</sup> Because neither party called for a jury trial, Judge O’Kelley consolidated the injunction hearing with a trial on the merits.<sup>5</sup> Two weeks later, Judge O’Kelley struck down the act: (1) it was an invalid bill of attainder under both the federal and Georgia constitutions,<sup>6</sup> (2) it violated Georgia’s provisions for municipal home rule,<sup>7</sup> (3) it violated equal protection by singling out the plaintiff without justification,<sup>8</sup> (4) it violated the plaintiff’s freedom of association without justification,<sup>9</sup> and (5) it had not been precleared, as required by section 5 of the Voting Rights Act.<sup>10</sup>

---

1. [Docket Sheet](#), *Caudell v. City of Toccoa*, No. 2:01-cv-105 (N.D. Ga. June 15, 2001); [Caudell v. City of Toccoa](#), 153 F. Supp. 2d 1371, 1374–75 (N.D. Ga. 2001).

2. *Caudell*, 153 F. Supp. 2d at 1375.

3. *Id.* at 1374–75.

4. [Docket Sheet](#), *supra* note 1; [Caudell](#), 153 F. Supp. 2d at 1374; *see* Transcript at 3, *Caudell*, No. 2:01-cv-105 (N.D. Ga. July 12, 2001, filed Sept. 25, 2001), D.E. 11 (“The Court:.. And so I set it immediately for a hearing, I believe even before the defendants had responded, but you’ve since responded.”).

5. *Caudell*, 153 F. Supp. 2d at 1374–75; Transcript, *supra* note 4, at 4–8; *see id.* at 8 (“I don’t intend to hear this matter but one time.”).

6. *Caudell*, 153 F. Supp. 2d 1379–80.

7. *Id.* at 1380–81.

8. *Id.* at 1377–78.

9. *Id.* at 1378.

10. *Id.* at 1377; *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).

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.