

## Enjoining an Election for New District Lines

*Morman v. City of Baconton*

(*W. Louis Sands, M.D. Ga. 1:03-cv-161*)

Four days before the 2003 general election, three voters in Baconton, Georgia, filed in the Middle District of Georgia a federal complaint against Baconton and its officials, seeking an injunction against elections to the city council based on out-of-date district lines.<sup>1</sup> According to the complaint, new district lines based on the 2000 census were precleared pursuant to section 5 of the Voting Rights Act<sup>2</sup> on October 24, but a state judge refused to allow Baconton to delay its city council elections so that precleared district lines could be used.<sup>3</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction<sup>4</sup> and a request for the appointment of a three-judge court to hear their section 5 claim.<sup>5</sup>

On the day before the election, Judge W. Louis Sands set the matter for hearing at 3:30 that afternoon.<sup>6</sup> The evidence showed that of the three seats up for election, only one was contested, and the incumbent's challenger for that seat resided in the seat's district only according to the old district lines.<sup>7</sup> On the day of hearing, Judge Sands enjoined the election for the city council seats.<sup>8</sup>

On November 13, the city submitted a plan for a special election to be held at the time of the March 2, 2004, presidential primary elections.<sup>9</sup> Judge Sands approved the city's proposal.<sup>10</sup> Later, Judge Sands ordered that candidates be able to qualify on February 17 for the election if they could show that they attempted to qualify on January 30 when the city clerk's office was improperly closed.<sup>11</sup>

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1. Complaint, [Morman v. City of Baconton](#), No. 1:03-cv-161 (M.D. Ga. Oct. 31, 2003), D.E. 1.

2. 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. Complaint, *supra* note 1, at 2, 4–7.

4. Motion, [Morman](#), No. 1:03-cv-161 (M.D. Ga. Oct. 31, 2003), D.E. 3.

5. Request, *id.* (Oct. 31, 2003), D.E. 2.

6. Order, *id.* (Nov. 3, 2003), D.E. 8; *see* Minutes, *id.* (Nov. 3, 2003), D.E. 9.

7. Injunction at 2, *id.* (Nov. 3, 2003), D.E. 11.

8. *Id.* at 3.

9. Proposed Plan, [Morman](#), No. 1:03-cv-161 (M.D. Ga. Nov. 13, 2003), D.E. 12.

10. Order, *id.* (Jan. 15, 2004), D.E. 16.

11. Order, *id.* (Feb. 13, 2004), D.E. 23.

The city reported election results to the court,<sup>12</sup> and Judge Sands closed the case.<sup>13</sup> The matter of attorney fees was resolved by the parties out of court.<sup>14</sup>

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12. Report, *id.* (Mar. 12, 2004), D.E. 25.

13. Order, *id.* (Apr. 20, 2005), D.E. 26.

14. Dismissal, *id.* (June 24, 2005), D.E. 32.