

Ballot Errors for Local Election

Caudell v. Thomas

(William C. O'Kelley, N.D. Ga. 2:10-cv-217)

On October 15, 2010, six voters filed a complaint in Georgia's Superior Court of Banks County, seeking relief from errors in the ballot prepared for the 2010 general election to elect two county commissioners.¹ The defendant probate judge, who acts as election superintendent for the county, removed the action to the U.S. District Court for the Northern District of Georgia on October 26.²

In 2008, the composition of the county's board of commissioners was changed from a chair, occupying Commissioner Post 1, and two other members, occupying Commissioner Posts 2 and 3, all elected at large, to a chair elected at large, and four members representing Commissioner Districts 1 through 4.³ Incumbents occupied the seats for Districts 1 and 3 until the 2010 election.⁴ The 2010 ballot listed elections for County Commissioner Posts 1 and 3 instead of for Commissioner Districts 1 and 3.⁵ The primary alleged confusion arose from the previous designation of Post 1 as the chair.⁶ The plaintiffs also alleged that the districts were unequally drawn.⁷

On October 25, the state judge issued a rule nisi, setting a show-cause hearing for October 27,⁸ and the federal court construed this as a motion for a temporary restraining order.⁹ The federal court assigned the case to Judge William C. O'Kelley, who heard the matter by telephone at 9:30 a.m. on October 27.¹⁰ Judge O'Kelley decided that the ballot issue was a state matter, so he denied immediate injunctive relief and remanded that claim to the state court.¹¹ He retained the equal protection claim for regular proceedings.¹²

The parties stipulated to a dismissal on November 24.¹³

1. [Complaint](#), *Caudell v. Thomas*, No. 10-cv-588 (Ga. Sup. Ct. Banks Cnty. Oct. 15, 2010), attached to [Notice of Removal](#), *Caudell v. Thomas*, No. 2:10-cv-217 (N.D. Ga. Oct. 26, 2010), D.E. 1.

2. [Notice of Removal](#), *supra* note 1.

3. [Order Denying Temporary Restraining Order](#), *Caudell*, No. 2:10-cv-217 (N.D. Ga. Oct. 29, 2010), D.E. 5; *see* [Complaint](#), *supra* note 1, at 2–3.

4. [Order Denying Temporary Restraining Order](#), *supra* note 3, at 3; *see* [Complaint](#), *supra* note 1, at 3–4.

5. *See* [Complaint](#), *supra* note 1, at 5.

6. *Id.*

7. *Id.* at 10–14 (noting a population range from 3,504 to 3,666).

8. Rule Nisi, *Caudell v. Thomas*, No. 10-cv-588 (Ga. Sup. Ct. Banks Cnty. Oct. 25, 2010), filed as [State Court Filings](#) at 27, *Caudell*, No. 2:10-cv-217 (N.D. Ga. Oct. 26, 2010), D.E. 2.

9. [Docket Sheet](#), *Caudell*, No. 2:10-cv-217 (N.D. Ga. Oct. 26, 2010).

10. [Minutes](#), *id.* (Oct. 27, 2010), D.E. 3.

11. [Remand Order](#) at 3–5, *id.* (Oct. 27, 2010), D.E. 4; [Minutes](#), *supra* note 10.

12. [Order Denying Temporary Restraining Order](#), *supra* note 3; [Remand Order](#), *supra* note 11, at 2–3, 5; [Minutes](#), *supra* note 10.

13. [Stipulated Dismissal](#), *Caudell*, No. 2:10-cv-217 (N.D. Ga. Nov. 24, 2010), D.E. 8.