

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 Georgia 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. On the day that the complaint was filed, the district judge issued a temporary restraining order enjoining the property acquisition, but the property had already been acquired earlier in the day, so the judge vacated the order. The parties agreed to a settlement.

Subject: District lines. *Topics:* Section 5 preclearance; three-judge court.

The City of College Park and one of its residents filed a federal complaint against the City of Atlanta in the Northern District of Georgia 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.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order² and a request for a three-judge district court.³

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.⁴ After the order was issued, Atlanta informed the court that the property had already been acquired that day, so Judge Carnes vacated her order on the day that it was issued.⁵ At a status

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*, 52 U.S.C. § 10304 (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 district 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 County v. Holder*, 570 U.S. 529 (2013).

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.

Judge Carnes was elevated to the court of appeals on July 31, 2014. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

5. Order, *City of College Park*, No. 1:08-cv-1464 (N.D. Ga. Apr. 18, 2008), D.E. 6; *see* Transcript, *supra* note 4, at 3 (“the money was transferred by wire at about 3:15 Friday after-

conference in open court on April 21, Atlanta agreed to refrain from razing the property for six weeks.⁶ That gave the plaintiffs two weeks to file a more detailed pleading and the defendants thirty days after that to respond.⁷

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 did not apply to acquisitions of property.⁸

The parties agreed to a settlement while the case was on appeal.⁹ On June 9, 2010, Judge Carnes certified that she would approve the settlement if the case were remanded back to her.¹⁰ The court of appeals responded by remanding the case on July 27.¹¹ On August 2, 2010, Judge Carnes approved a settlement specifying greater cooperation between Atlanta and College Park when Atlanta wished to acquire College Park property.¹²

noon”).

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.

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.