

Citizenship Verification

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

A naturalized citizen sued Georgia for its efforts to purge noncitizens from voter-registration rolls. A three-judge district court determined that section 5 preclearance was required for the efforts and granted interim relief. Georgia eventually was able to establish procedures that earned preclearance.

Subject: Nullifying registrations. *Topics:* Citizenship; registration challenges; Help America Vote Act (HAVA); section 5 preclearance; three-judge court.

On October 9, 2008, a naturalized U.S. citizen filed a federal class action in the Northern District of Georgia's Atlanta courthouse complaining that Georgia's secretary of state was improperly challenging citizens who registered 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 district court to hear his claim that Georgia had 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 He 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 Af-

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*, 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).

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

4. Oct. 27, 2008, *Morales* Order, *supra* note 3, at 3; Oct. 16, 2008, *Morales* Order, *supra* note 3, at 3.

5. Oct. 27, 2008, *Morales* Order, *supra* note 3, at 3; Oct. 16, 2008, *Morales* Order, *supra* note 3, at 3.

6. Oct. 27, 2008, *Morales* 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, www.fjc.gov/history/judges.

ter that proceeding, he approved the request for a three-judge court,⁸ which the circuit's chief judge empaneled four days later.⁹

On October 16, Judge Camp determined that a central question was whether Georgia's application of the Help America Vote Act¹⁰ 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 on that issue.¹²

The three-judge court conducted an evidentiary hearing on October 22 in Atlanta.¹³ It 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 If preclearance would 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 adding three civil rights organizations 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

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. 14, 2008), D.E. 18.

10. Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145. *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, *Morales* 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. Justice Department Letter (May 29, 2009) [hereinafter 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.

On June 22, 2010, Georgia sought judicial preclearance by filing an action in the U.S. District Court for 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 court in the District of Columbia granted a voluntary dismissal of the action for judicial preclearance.²²

20. *Georgia* Complaint, *supra* note 17.

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