

Ballot Errors for Local Election

Caudell v. Thomas

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

A defendant probate judge removed to federal court an action seeking relief from ballot errors in an election for county commissioners. The composition of the commission had recently changed from a chair in post 1 and two other members in posts 2 and 3, all elected at large, to a chair elected at large and four members representing districts 1 through 4. Commissioners in districts 1 and 3 were up for election, but the ballot listed them as running for posts 1 and 3. In addition, the plaintiffs alleged malapportionment. The federal district judge remanded the ballot issue as a state matter but retained the malapportionment challenge for regular proceedings. The parties, however, stipulated dismissal.

Subject: Voting irregularities. *Topics:* Election errors; matters for state courts; malapportionment; removal.

On October 15, 2010, six voters filed a complaint in Georgia’s superior court for 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 acted 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 main 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

1. Complaint, *Caudell v. Thomas*, No. 10-cv-588 (Ga. Sup. Ct. Banks Cty. 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 Cty. Oct. 25, 2010),

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 He 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 dismissal on November 24.¹³

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.

Judge O’Kelley died on July 5, 2017. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

11. Remand Order at 3–5, *Caudell*, No. 2:10-cv-217 (N.D. Ga. 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.