

Enjoining an Election for New District Lines

Morman v. City of Baconton
(*W. Louis Sands, M.D. Ga. 1:03-cv-161*)

The federal district court enjoined an election for city council because the district lines had recently received preclearance pursuant to section 5 of the Voting Rights Act and a state judge had refused to allow a delay to await preclearance of the new lines. The matter was heard on the afternoon before the scheduled November election. The election was held instead at the time of the presidential primary elections the following March. The matter of attorney fees was settled out of court.

Subject: District lines. *Topics:* Malapportionment; enjoining elections; section 5 preclearance; three-judge court; attorney fees.

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complaint against Baconton and its officials, seeking an injunction against elections to the city council based on out-of-date district lines.¹ According to the complaint, new district lines based on the 2000 census were precleared pursuant to section 5 of the Voting Rights Act² on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.³ With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction⁴ and a request for the appointment of a three-judge district court to hear their section 5 claim.⁵

On the day before the election, Judge W. Louis Sands set the matter for hearing at 3:30 that afternoon.⁶ 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.⁷ On the day of hearing, Judge Sands enjoined the election for the city-council seats.⁸

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*, 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. 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.

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.⁹ Judge Sands approved the city's proposal.¹⁰ 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.¹¹

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

9. Proposed Plan, *id.* (Nov. 13, 2003), D.E. 12.

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

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

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.