

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
STATE OF GEORGIA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:11-cv-01788
)	(RBW-DST-BAH)
ERIC H. HOLDER, JR., in his official capacity as)	Three-Judge Court
Attorney General of the United States,)	
)	
Defendant.)	
)	
_____)	

MEMORANDUM IN SUPPORT OF THE UNITED STATES’
MOTION TO DISMISS

Defendant Eric H. Holder, Jr. in support of the United States’ Motion to Dismiss states as follows:

STATEMENT OF FACTS

On October 6, 2011, the State of Georgia filed a complaint that seeks a declaratory judgment that Georgia’s 2011 state House of Representatives, state Senate, and Congressional redistricting plans, Acts 1EX, 2EX, and 3EX of the 2011 Special Session of the Georgia General Assembly, respectively (collectively “Georgia’s 2011 redistricting plans”), comply with Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c (“Section 5”). The complaint further requests in the alternative that if the Court finds any of the 2011 redistricting plans does not meet the requirements of Section 5, it enter a declaratory judgment that Section 5 is unconstitutional. (Docket No. 1).

On October 24, 2011, the United States received a submission from the State of Georgia requesting administrative preclearance of Georgia’s 2011 redistricting plans under Section 5.

Upon receipt of the submission, the United States undertook an administrative review of the redistricting plans and concluded that the State had met its burden of establishing that the plans are free from discriminatory purpose or retrogressive effect. By letter dated December 23, 2011, the Attorney General advised the State of Georgia that he did not interpose any objection under Section 5 to Georgia's 2011 redistricting plans.

ARGUMENT

This case should be dismissed pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction because it is moot.

Section 5 of the Voting Rights Act requires that jurisdictions subject to its requirements submit changes affecting voting to the Attorney General or to this Court for a determination that the voting change "neither has the purpose nor will have the effect of denying or abridging the right to vote" on account of race, color or language minority status, prior to the change being implemented. 42 U.S.C. § 1973c. The State of Georgia sought preclearance of its 2011 redistricting plans both from the Attorney General and this Court.

By letter dated December 23, 2011, in response to Georgia's administrative submission, the Attorney General advised the State that he did not interpose any objection under Section 5 to Georgia's 2011 redistricting plans. In light of the Attorney General's administrative preclearance of the State's 2011 redistricting plans, nothing remains for the Court's decision in this case. If, pursuant to administrative review, the Attorney General declines to interpose an objection to a voting change as has occurred here, the decision of the Attorney General is not subject to judicial review. *Morris v. Gressette*, 432 U.S. 491, 504-505 (1977) ("Since judicial review of the Attorney General's actions would unavoidably extend this period, it is necessarily precluded."); *Allen v. State Bd. of Elections*, 393 U.S. 544, 549-550 (1969). This precise

situation has arisen on several prior occasions, where the Attorney General has administratively precleared the identical voting change also at issue in a judicial preclearance action pending before this Court. In those circumstances, this Court has recognized under *Morris* that administrative preclearance renders the declaratory judgment action moot under Section 5.

Based on the Attorney General's administrative preclearance of Georgia's state House of Representatives, state Senate, and Congressional redistricting plans, there is no further relief to be had under Section 5, and the complaint should be dismissed as moot.

CONCLUSION

In light of the Attorney General's administrative preclearance of the Georgia's 2011 state House of Representatives, state Senate, and Congressional redistricting plans, Acts 1EX, 2EX, and 3EX of the 2011 Special Session of the Georgia General Assembly, respectively, there is nothing more for this Court to address in this proceeding. Therefore, the Attorney General respectfully requests that the Court enter an order dismissing this action pursuant to Fed. R. Civ. P. 12(b)(1). A proposed order is attached.

Date: December 23, 2011

RONALD C. MACHEN, JR.
United States Attorney
District of Columbia

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/s/Abel Gomez

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CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record for the Plaintiff:

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