

## Preclearance of an Election to Incorporate a City

*Sabel v. Pinal County*

*(James A. Teilborg, D. Ariz. 2:07-cv-2000)*

A Pinal County voter filed a federal complaint in the District of Arizona on October 16, 2007, to enjoin a scheduled November 6 election on the incorporation of Arizona City within Pima County for lack of preclearance pursuant to section 5 of the Voting Rights Act.<sup>1</sup> With his complaint, the voter filed a motion for an order to show cause.<sup>2</sup>

The court assigned the case to Magistrate Judge Michelle H. Burns.<sup>3</sup> Because of a request for reassignment to a district judge, the court assigned the case to Judge James A. Teilborg on October 22.<sup>4</sup> That day, Judge Teilborg ordered that the case be assigned to a three-judge court to review the section 5 claim.<sup>5</sup> Chief Circuit Judge Mary M. Schroeder appointed Circuit Judge Pamela A. Rymer and District Judge Susan R. Bolton to join Judge Teilborg as the three-judge court.<sup>6</sup>

On November 2, the court determined on the briefs that an election to incorporate a city is not a covered change under section 5.<sup>7</sup> Judge Teilborg dismissed the case as moot after defeat of the incorporation measure in the election.<sup>8</sup>

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1. [Complaint](#), *Sabel v. Pinal Cnty.*, No. 2:07-cv-2000 (D. Ariz. Oct. 16, 2007), 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, *formerly* 42 U.S.C. § 1973c (2013) (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 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 Cnty. v. Holder](#), 570 U.S. \_\_\_, 133 S. Ct. 2612 (2013).

2. [Motion](#), *Sabel*, No. 2:07-cv-2000 (D. Ariz. Oct. 16, 2007), D.E. 2.

3. [Docket Sheet](#), *id.* (Oct. 16, 2007).

4. [Minute Order](#), *id.* (Oct. 22, 2007), D.E. 8.

5. [Order](#), *id.* (Oct. 22, 2007), D.E. 11.

6. [Order](#), *id.* (Oct. 23, 2007), D.E. 15.

7. [Order](#), *id.* (Nov. 2, 2007), D.E. 28.

8. [Order](#), *id.* (Dec. 14, 2007), D.E. 31.