

Failure to Preclear a Change in the Percentage of Votes Needed to Avoid a Runoff Election

Luper v. Anchorage (James K. Singleton, Jr., Richard Tallman, and James A. von der Heydt, D. Alaska 3:03-cv-79)

A federal complaint challenged the forgoing of a runoff election because the leading candidate received more than 45% of the vote and in the same election voters approved a change in law allowing that, claiming that the new rule was invalid because it had not been precleared pursuant to section 5 of the Voting Rights Act. Because the change was precleared after the election, a three-judge court denied the plaintiffs a remedy, reasoning that failure to preclear the change was an innocent oversight.

Subject: Ballot measures. *Topics:* Section 5 preclearance; three-judge court; ballot measure; matters for state courts; intervention.

An April 10, 2003, federal complaint filed in the District of Alaska sought to invalidate the April 1 election of Anchorage’s mayor on the ground that forgoing a runoff election when the leader has more than 45% of the vote had not been precleared pursuant to section 5 of the Voting Rights Act.¹ In the April 1 election, voters approved an initiative that enacted the plurality change for mayor as of that election.² Anchorage initiated preclearance procedures on April 11.³

The two Alaska Native plaintiffs filed an amended complaint on April 14 and a motion for injunctive relief on April 15.⁴ Defendants filed a motion on April 21 for a three-judge district court to hear the section 5 claim.⁵ On April 29, Chief Circuit Judge Mary M. Schroeder appointed Circuit Judge Richard Tallman and District Judge James A. von der Heydt to join District Judge James K. Singleton, Jr., as a three-judge court.⁶

1. Docket Sheet, *Luper v. Anchorage*, No. 3:03-cv-79 (D. Alaska Apr. 10, 2003) (D.E. 1); *Luper v. Anchorage*, 268 F. Supp. 2d 1110, 1111–12 (D. Alaska 2003); 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); see also Ben Spiess, *Runoff Law Prop. 2 Draws Suit*, Anchorage Daily News, Apr. 11, 2003, at B1.

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).

2. *Luper*, 268 F. Supp. 2d at 1111.

The leading candidate received 45.03% of the vote, seventeen votes more than necessary to avoid a runoff election under the new rule. See Ben Spiess, *Begich Triumphs After Recount*, Anchorage Daily News, Apr. 24, 2003, at A1.

3. *Luper*, 268 F. Supp. 2d at 1112.

4. Docket Sheet, *supra* note 1 (D.E. 13, 14); *Luper*, 268 F. Supp. 2d at 1112; see Ben Spiess, *Racist History Put State on Fed’s List*, Anchorage Daily News, May 1, 2003, at B1.

5. Docket Sheet, *supra* note 1 (D.E. 34); *Luper*, 268 F. Supp. 2d at 1112.

6. Docket Sheet, *supra* note 1 (D.E. 46); *Luper*, 268 F. Supp. 2d at 1111 n.*, 1112.

Because the preclearance process was underway, and because the court expected preclearance to be granted, the court decided to await the outcome of that process before resolving the case, so on May 1 it denied the plaintiffs a preliminary injunction.⁷ Because of parallel state-court proceedings, the plaintiffs dismissed all but their section 5 claim.⁸

The Justice Department precleared the election change on May 15.⁹ While an objection to that decision remained pending, the court heard the case on June 9.¹⁰ On June 20, eleven days before the scheduled swearing in of the mayor, the court dismissed the complaint.¹¹

Exercising our equitable discretion, we do not think any further remedy is appropriate in the case before us. . . . The failure to obtain preclearance was, by all accounts, an oversight. We also think it significant that Plaintiffs did not notify the City of its failure to obtain preclearance until *after* the election was held and the incumbent mayor lost.¹²

Judge von der Heydt died on December 1, 2013. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

7. Docket Sheet, *supra* note 1 (D.E. 48); *Luper*, 268 F. Supp. 2d at 1112; *see* Ben Spiess, *Order Barring Begich Denied*, Anchorage Daily News, May 3, 2003, at B1.

8. *Luper*, 268 F. Supp. 2d at 1112.

9. *Id.* at 1113; *see* Katie Pesznecker, *Prop. 2 Gets Justice's OK*, Anchorage Daily News, May 20, 2003, at B1.

10. *Luper*, 268 F. Supp. 2d at 1113; *see* Nicole Tsong, *Judges Urged to Order Runoff for Mayor*, Anchorage Daily News, June 10, 2003, at B3.

11. *Luper*, 268 F. Supp. 2d at 1114.

12. *Id.*