

Preclearance of an Election to Incorporate a City

Sabel v. Pinal County

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

A suit to enjoin an election on the incorporation of a city for lack of preclearance was filed three weeks before the election. A three-judge district court determined that incorporation elections did not require preclearance.

Subject: Ballot measures. *Topics:* Section 5 preclearance; enjoining elections; three-judge court; case assignment.

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.¹ With his complaint, the voter filed a motion for an order to show cause.²

The court assigned the case to Magistrate Judge Michelle H. Burns.³ Because of a request for reassignment to a district judge, the court assigned the case to Judge James A. Teilborg on October 22.⁴ That day, Judge Teilborg ordered that the case be assigned to a three-judge district court to review the section 5 claim.⁵ 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.⁶

On November 2, the court determined on the briefs that an election to incorporate a city is not a covered change under section 5.⁷ Judge Teilborg dismissed the case as moot after defeat of the incorporation measure in the election.⁸

1. Complaint, *Sabel v. Pinal County*, 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 (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).

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

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

Judge Burns retired on February 22, 2023. Appointment of New Magistrate Judge, www.azd.uscourts.gov/sites/default/files/announcements/US%20District%20Court%20%5BBURNS%5D%200922F.pdf, *archived at* [web.archive.org/web/20230504181134/www.azd.uscourts.gov/sites/default/files/announcements/US%20District%20Court%20\[BURNS\]%200922F.pdf](http://web.archive.org/web/20230504181134/www.azd.uscourts.gov/sites/default/files/announcements/US%20District%20Court%20[BURNS]%200922F.pdf).

4. Minute Order, *Sabel*, No. 2:07-cv-2000 (D. Ariz. Oct. 22, 2007), D.E. 8.

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

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

Judge Rymer died on September 21, 2011. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

7. Order, *Sabel*, No. 2:07-cv-2000 (D. Ariz. Nov. 2, 2007), D.E. 28.

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