

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Medicine v. McCulloch

544 F. App'x 699 (9th Cir. 2013) · Decided October 30, 2013

SUMMARY

The Ninth Circuit dismissed the appeal as moot because the 2012 election had passed and the requested preliminary injunction could no longer provide relief. The court vacated the district court's order without expressing an opinion on its merits, denied appellees' request for damages and double costs, and stated that each side would bear its own appellate costs.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Callahan; Fletcher; Silverman
JURISDICTION	Federal
DECIDED	October 30, 2013
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiffs appealed the district court's denial of a preliminary injunction seeking to require satellite offices for late registration and in-person absentee voting during the 2012 election.
STANDARD OF REVIEW	The court reviewed mootness de novo as a jurisdictional question.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Plaintiffs v. Defendants

TOPICS

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PRACTICE AREAS

appellate procedure election law remedies civil procedure indian affairs

QUESTIONS PRESENTED

1. Whether the appeal from denial of a preliminary injunction was moot because the 2012 election had passed.
2. Whether the capable-of-repetition-yet-evading-review exception to mootness applied.

3. Whether the district court's order should be vacated after dismissal of the appeal as moot.
4. Whether appellees were entitled to damages and double costs under Federal Rule of Appellate Procedure 38.

HOLDINGS

1. The appeal was moot because the preliminary injunction sought relief only for the 2012 election, which had already passed, and the appellate court could no longer provide the requested relief.
2. The capable-of-repetition-yet-evading-review exception did not apply because plaintiffs' request for a permanent injunction remained pending in the district court, making the controversy unlikely to evade review.
3. The district court's order was vacated when the appeal was dismissed as moot.
4. Appellees were not entitled to damages and double costs under Federal Rule of Appellate Procedure 38, and each side was ordered to bear its own appellate costs.

KEY QUOTATIONS

“When it is no longer possible for this court to grant the relief requested, a case is moot and this court lacks jurisdiction to hear it.” (at 699-700)

“Appeal DISMISSED, Order of the District Court VACATED.” (at 700)

FACTUAL BACKGROUND

Plaintiffs sought satellite offices in Lame Deer, Fort Belknap, and Crow Agency, Montana, for late voter registration and in-person absentee voting. Their preliminary-injunction motion and the evidence presented below focused almost exclusively on the 2012 election. By the time of appellate review, that election had passed, although plaintiffs' request for a permanent injunction concerning future elections remained pending in the district court.

PROCEDURAL HISTORY

The district court denied plaintiffs' motion for a preliminary injunction. During the appeal, the 2012 election passed, and the Ninth Circuit concluded that the requested preliminary-injunction relief could no longer be granted. The court dismissed the appeal as moot and vacated the district court's order, while leaving plaintiffs' request for a permanent injunction pending in the district court.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

The appeal was dismissed as moot and the district court's order was vacated. The court expressed confidence that the district court would act expeditiously on the pending request for a permanent injunction.

CASES CITED

- Dream Palace v. County of Maricopa, 384 F.3d 990, 1000 (9th Cir. 2004)

OPINION

Medicine v. McCulloch 544 F. App'x 699

PER CURIAM.

MEMORANDUM *

Plaintiffs appeal from the district court's denial of a preliminary injunction to open satellite offices for late registration and in-person absentee voting in Lame Deer, Fort Belknap, and Crow Agency in Montana. We dismiss the appeal as moot and vacate the district court's order. When it is no longer possible for this court to grant the relief requested, a case is moot and this court lacks jurisdiction to hear it. See *Dream Palace v. Cnty. of Maricopa*, 384 F.3d 990, 1000 (9th Cir.2004). Because we conclude that the *700scope of the preliminary injunction only included the 2012 election, this court can no longer provide plaintiffs with the relief requested — requiring defendants to open satellite offices in time for that election. Although plaintiffs' complaint requested "preliminary and permanent injunctive relief ... for the 2012 primary election and ... for all future elections," plaintiffs' motion for a preliminary injunction included no such language, and the evidence presented to the district court focused almost exclusively on the 2012 election. As that election has passed, there is no longer any relief that this court can provide with respect to that election. Contrary to plaintiffs' arguments, this case does not fall within the "capable of repetition, yet evading review" exception to mootness doctrine. Plaintiffs' request for a permanent injunction remains pending before the district court, so this case is unlikely to "evade review." We trust that the district court will act expeditiously in dealing with plaintiffs' request for a permanent injunction. In dismissing the appeal as moot and vacating the district court's order, we express no opinion as to the merits of the legal analysis contained in the district court's order. We deny Appellees' request for "just damages and double costs" under Federal Rule of Appellate Procedure 38. Each side shall bear its own costs on appeal. Appeal DISMISSED, Order of the District Court VACATED. This disposition is not appropriate for publication and is not precedent except as provided by 9 th Cir. R. 36-3.