

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**Medicine v. McCulloch**

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

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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.

OPINION

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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.

