

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 20 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

SAVE OUR PRESERVE POLITICAL
ACTION COMMITTEE OF
SCOTTSDALE, on behalf of itself and its
members and volunteers,

Plaintiff-Appellant,

v.

CITY OF SCOTTSDALE, a political
subdivision of the State of Arizona; et al.,

Defendants-Appellees.

No. 18-16180

D.C. No. 2:18-cv-01047-DJH

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona

Diane J. Humetewa, District Judge, Presiding

Argued and Submitted February 8, 2019
Phoenix, Arizona

Before: HAWKINS, M. SMITH, and HURWITZ, Circuit Judges.

Plaintiff-Appellant Save Our Preserve Political Action Committee of
Scottsdale (SOP PAC) appeals from (1) the denial of its motion to enjoin
Defendant-Appellee City of Scottsdale (the City) from building in the Scottsdale

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

McDowell Sonoran Preserve (the Preserve) and from allegedly interfering with SOP PAC's advocacy efforts, and (2) the striking of its amended complaint.

Because we lack jurisdiction, we dismiss the appeal.

1. While we generally have jurisdiction to review a district court's denial of preliminary injunctive relief pursuant to 28 U.S.C. § 1292(a)(1), we do not have jurisdiction if the appeal has become moot. *Akina v. Hawaii*, 835 F.3d 1003, 1010 (9th Cir. 2016) ("An interlocutory appeal of the denial of a preliminary injunction is moot when a court can no longer grant any effective relief sought in the injunction request.").

Although SOP PAC was unable to qualify for the November 2018 ballot, another initiative to amend the City's charter did qualify and subsequently passed. The McDowell Sonoran Preserve Protection Act amended the charter to require voter approval for any development in the Preserve, and to limit how the City may use funds dedicated to the Preserve. *Scottsdale City Charter*, Art. 8 §§ 12, 13. SOP PAC's self-professed mission was "to gather enough valid signatures from registered voters in Scottsdale to place the charter amendment on the November 2018 ballot." An almost identical amendment succeeded, and thus, there is no present risk that absent a preliminary injunction the City will build in the Preserve without voter approval or that SOP PAC will need to renew its advocacy efforts. The appeal is moot. SOP PAC conceded during oral argument that it is currently

undertaking no advocacy efforts. If it does, and the City interferes with those efforts, SOP PAC can seek injunctive relief at that time.

2. In general, we have appellate jurisdiction pursuant to 28 U.S.C. § 1291 over “final decisions” of district courts, not “interlocutory appeals from orders of the district court issued before final judgment.” *Van Dusen v. Swift Transp. Co. Inc.*, 830 F.3d 893, 896 (9th Cir. 2016). A dismissal without prejudice is not a “final decision” reviewable by this court. *See WMX Techs., Inc. v. Miller*, 104 F.3d 1133, 1136–37 (9th Cir. 1997) (en banc).

The district court, in its January 28, 2019 order, clarified that “once the Motion to Dismiss was resolved in the 2017 Action, SOP PAC could move to amend the complaint to be added as a party and to add additional allegations.” The district court also clarified that SOP PAC could take “some action, in either the 2017 Action or 2018 Action, to remedy the deficiencies [in its complaint] noted by the Court.” The district court resolved the Motion to Dismiss on September 27, 2018, granting the motion in part and denying it in part. Because SOP PAC may amend its complaint, the order striking its complaint is not a final order.

Accordingly, we lack jurisdiction.¹

¹ We grant the City’s motion to take judicial notice of the election results. *See Dudum v. Arntz*, 640 F.3d 1098, 1101 n.6 (9th Cir. 2011). We deny the City’s motion to take judicial notice of two state court dockets and its motion to take judicial notice of government documents indicating that SOP PAC was suspended from operating as a political action committee.

DISMISSED.