

FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THE ASSOCIATION OF AMERICAN
PHYSICIANS & SURGEONS, a
nonprofit corporation; MATT
SALMON, a citizen of the State of
Arizona; DEAN MARTIN, a citizen
of the State of Arizona,

Plaintiffs-Appellants,

STEVEN S. POE; CLEAN ELECTIONS
INSTITUTE, INC.,

Intervenors-Appellees,

and

LORI DANIELS, a citizen of the
State of Arizona,

Plaintiff,

v.

JAN BREWER, in her official
capacity as Secretary of State of
the State of Arizona; DAVID A.
PETERSSEN, in his official capacity
as Treasurer of the State of
Arizona; TERRY GODDARD, in his
official capacity as Attorney
General of the State of Arizona;
LESLIE LEMON, a member of the
Arizona Citizens Clean Elections
Commission aka Gene Lemon;
DAVID G. MCKAY, a member of
the Arizona Citizens Clean
Elections Commission;

No. 05-15630

D.C. No.

CV-04-00200-EHC

District of Arizona,

Phoenix

ORDER

KATHLEEN S. DEETRICK, a member of the Arizona Citizens Clean Elections Commission; ERMILA JOLLEY, a member of the Arizona Citizens Clean Elections Commission; MARCIA BUSCHING, a Member of the Arizona Citizens Clean Elections Commission,
Defendants-Appellees.

Filed July 18, 2007

Before: John T. Noonan, Ronald M. Gould, and
Johnnie B. Rawlinson, Circuit Judges.

ORDER

Dean Martin's petition for rehearing en banc is construed as a petition for rehearing by the panel and is GRANTED.

Under binding precedent, his case is not moot. *Caruso v. Yamhill County*, 422 F.3d 848, 853-854 (9th Cir. 2005). We have jurisdiction. The judgment of the district court dismissing his case for money damages brought against officers of the State of Arizona acting in their official capacities is affirmed. The suit is barred by the Eleventh Amendment. *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989).

The remainder of his complaint, seeking an injunction against enforcement of A.R.S. § 16-9121(A) states a cause of action. We remand this portion of the case to the district court with instructions to permit further development.

AFFIRMED in part. REVERSED in part. REMANDED.

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