

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2004-020468

10/28/2004

HON. MARGARET H. DOWNIE

CLERK OF THE COURT
L. Rasmussen
Deputy

FILED: _____

NO ON 200, ARIZONANS FOR REAL
IMMIGRATION REFORM, et al.

CHARLES A BLANCHARD
MICHAEL S MANDELL

v.

JAN BREWER, et al.

JESSICA G FUNKHOUSER

JILL M KENNEDY
TIMOTHY V NELSON
JOHN W ACER
GARY M SUNDBERG
DENNIS D CARPENTER JR.
LISA T HAUSER
JAMES R. BRUNER

RULING

A.R.S. § 19-122(C) authorizes the court to take certain enumerated actions if it finds that an initiative petition is legally insufficient. Specifically, it permits the court to enjoin certification of the initiative or to enjoin printing of the ballots -- actions that have already occurred in the case at bar. Neither Arizona statutes nor the common law appear to authorize an injunction against canvassing or proclaiming the result of the vote, as plaintiffs request.

There is a second independent impediment to plaintiffs' challenge. Simply put, it comes too late.

Real parties in interest began circulating the initiative petition in July 2003. On July 1, 2004, they filed signature sheets with the Secretary of State. Proposition 200 was certified for the general election ballot on August 16, 2004. A previous challenge to the proposition, based on the sufficiency of petition signatures, was filed on August 13, 2004.¹ That challenge was

¹ See CV 2004-015592, *Service Employees Int'l Union, AFL-CIO, et al. v. Brewer, et al.*
Docket Code 019

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unsuccessful. Beginning in August, general election ballots including Proposition 200 were printed. The Secretary of State distributed publicity pamphlets to every household with a registered voter before early voting commenced on September 30, 2004. As of the hearing date, approximately 265,000 voters had cast early ballots in Maricopa County alone.

Under these rather extraordinary facts, the court concludes that plaintiffs' challenge is untimely. Proposition 200 has been certified, printed on the ballots, and submitted to the voters. *See, e.g., Kromko v. Superior Court*, 168 Ariz. 51, 811 P.2d 12 (1991) (disputes concerning election and petition matters must be initiated and heard in time to prepare ballots for absentee voting to avoid rendering action moot); *Mathieu v. Mahoney*, 174 Ariz. 456, 459, 851 P.2d 81, 84 (1993) (same); *Tilson v. Mofford*, 153 Ariz. 468, 470, 737 P.2d 1367, 1369 (1987) ("the procedures leading up to an election cannot be questioned after the people have voted"). *See also Nader v. Brewer*, ___ F.3d ___, 2004 WL 2360137 (9th Cir. October 15, 2004), *quoting Southwest Voter Registration Education Project v. Shelley*, 344 F.3d 914, 919 (9th Cir. 2003) ("Our law recognizes that election cases are different from ordinary injunction cases, . . . and interference with an election after voting has begun is unprecedented.").

Additionally, the equitable doctrine of laches bars the challenge. Although plaintiffs have articulated reasons for not filing sooner, nothing prevented them from performing due diligence as to the documents on file with the Secretary of State months ago. While testimony established that plaintiffs were unaware of the need to inspect the documents until very recently, application of such an "excusable neglect" standard would open the door to eleventh hour challenges and inject great uncertainty into the election process. Under the unusual circumstances of this case, where the action was filed a mere 10 days before the general election and well after statewide early voting began, the delay was unreasonable.

As for demonstrable prejudice, our Supreme Court has recognized that the prejudice inherent in last-minute election challenges is far-reaching and extends beyond the parties themselves:

The real prejudice caused by delay in election cases is to the quality of decision making in matters of great public importance. [citation omitted] The effects of such delay extend far beyond the interests of the parties. Waiting until the last minute to file an election challenge "places the court in a position of having to steamroll through the delicate legal issues in order to meet the deadline for measures to be placed on the ballot." [citations omitted] We repeat our caution that litigants and lawyers in election cases "must be keenly aware of the need to bring such cases with all deliberate speed or else the quality of judicial decision making is seriously compromised." Late filings "deprive judges of the ability to fairly and reasonably process and consider the issues . . . and rush appellate review, leaving little time for reflection and wise decision making." [citation omitted] It is imperative that we consider fairness not only to those who challenge a ballot initiative, but also to the sponsors who place a measure on the

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ballot, the citizens who sign petitions, the election officials, and the voters of Arizona.

Sotomayor v. Burns, 199 Ariz. 81, 83, 13 P.3d 1198, 1200 (2000).

Finally, although election challenges are subject to expedited procedures, judicial proceedings must nonetheless comport with due process standards. With the general election now only five days away, it is virtually impossible to deliver on this constitutional guarantee. Even if the court were to hold a trial on the merits, complete the necessary legal research, and issue an opinion later this week, the aggrieved parties would have little time to meaningfully exercise their appellate rights.

The effect of this ruling is not altogether satisfactory. If true, plaintiffs' allegations are serious and cast doubt on the validity and integrity of the petition circulation process. It is regrettable that the issue was not discovered sooner. Based on current Arizona law, however, this Court concludes that dismissal of the challenge is required.

IT IS ORDERED granting the Motion to Dismiss filed by real party in interest Protect Arizona Now.

IT IS FURTHER ORDERED granting the Motion to Dismiss filed by real party in interest Yes on 200 Committee.

IT IS FURTHER ORDERED denying Yes on 200 Committee's Motion to Quash Application for Order to Show Cause.

Based on these rulings, no further proceedings will be held in this Court.

Margaret H. Downie

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