

**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.

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### 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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