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U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

COMMITTEE TO REGULATE AND
CONTROL MARIJUANA; et al.,

Plaintiffs - Appellants,

and,

SHARON BRUNE; et al.,

Plaintiffs,

v.

LARRY LOMAX, County Registrar of
Voters; et al.,

Defendants - Appellees.

No. 04-16626

D.C. No.

CV-04-01035-JCM/LRL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted September 3, 2004**

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral
(continued...)

San Francisco, California

Before: PREGERSON, T.G. NELSON, and KLEINFELD, Circuit Judges.

Plaintiffs sought an injunction against enforcement of several provisions of Nevada law. The laws govern how registered voters may cause an initiative to be placed on the ballot. The district court agreed with the plaintiffs that two provisions were unconstitutional. Those were a provision requiring signatures to be verified by affidavits and a provision requiring signatures to be from adequate numbers of registered voters in three quarters of the counties of the state. The district court rejected the plaintiffs' claim that a provision requiring the signatories to be registered voters when they signed the petitions, not subsequently, was unconstitutional. The State of Nevada has indicated that it expects to appeal the first two determinations, but they are not before us now, and we intimate no opinion as to whether they were correct. All that is before us now is an interlocutory appeal by the plaintiffs from the third determination, which was adverse to the plaintiffs.

** (...continued)
argument. See Fed. R. App. P. 34(a)(2).

The rule challenged in this interlocutory appeal requires that an application to register as a voter is valid from the time it is postmarked or hand delivered to election officials. Plaintiffs argue that they have a federal constitutional right under various provisions to have voter registrations treated as valid from the time they are signed, even though they have not yet been postmarked or delivered.

Our review of a grant or denial of a preliminary injunction is deferential and limited. Except where the district court plainly gets the law wrong, we review only for abuse of discretion.¹ The cases relied on by plaintiffs² provide protection for persons conducting a petition drive, not for unregistered voters seeking to change the laws of the state in which they are not registered. Whether the “four part test”³ or the “continuum” test⁴ is applied, the plaintiffs have not demonstrated a high enough probability of success on the merits to establish that the district court abused its discretion in denying injunctive relief. The Supreme Court has

¹ Clear Channel Outdoor, Inc. v. City of Los Angeles, 340 F.3d 810, 813 (9th Cir. 2003).

² Meyer v. Grant, 486 U.S. 414 (1988); Buckley v. American Constitutional Law Foundation, Inc., 525 U.S. 182 (1999).

³ Southwest Voter Registration Educ. Project v. Shelley, 344 F.3d 914, 917-18 (9th Cir. 2003) (en banc).

⁴ Id.

recognized that states “have considerable leeway to protect the integrity and reliability of the initiative process” when they provide for voter initiatives.⁵ Where a legislative requirement restricts speech, then strict scrutiny is applied,⁶ but this requirement does not restrict speech. What it restricts is the power of persons not registered to vote to change the laws passed by the voters’ duly elected representatives. A registration form that has not been mailed or delivered (and might, at the will of the petition signer, never be mailed or delivered) is distinct in a relevant and meaningful way from one that has been mailed or delivered.

AFFIRMED.

⁵ Buckley, 525 U.S. at 191.

⁶ See Meyer, 486 U.S. at 420.