

WESTERMANN ET AL. v. NELSON, ATTORNEY
GENERAL OF ARIZONA

ON MOTION FOR INJUNCTION

No. A-412. Decided October 20, 1972

The motion for injunction pending appeal of candidates who failed to secure ballot placement for the November 7, 1972, election in Arizona is denied because orderly election processes would likely be disrupted by granting so tardy an application.

MR. JUSTICE DOUGLAS, Circuit Justice.

Petitioners are candidates of the American Independent Party who complain of their inability to get on the ballot in Arizona for the November 7, 1972, election.

They brought suit in the District Court but their complaint was dismissed. They desire to appeal to the Court of Appeals but were denied a preliminary injunction by a judge of that court. They now apply to me as Circuit Justice.

The complaint may have merit. But the time element is now short and the ponderous Arizona election machinery is already under way, printing the ballots. Absentee ballots have indeed already been sent out and some have been returned. The costs of reprinting all the ballots will be substantial and it may well be that no decision on the merits can be reached by the Court of Appeals in time to reprint the ballots excluding petitioners, should they lose on the merits.

I have been unable to hear oral argument and have only the papers of the parties before me.

On the basis of these papers I have concluded that in fairness to the parties I must deny the injunction, not because the cause lacks merit but because orderly elec-

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tion processes would likely be disrupted by so late an action. The time element has plagued many of these election cases; but one in my position cannot give relief in a responsible way when the application is as tardy as this one.

So I deny the injunction.