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The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

Brian P. Carr,

Plaintiff,

v.

Sam Reed, in his official capacity as Secretary of the State of Washington, and Rob McKenna, in his official capacity as Attorney General of the State of Washington and, separately, as private individuals the Honorable Robert L. Harris, John F. Nichols, Barbara D. Johnson, Kenneth Eisland, Rich Melnick, John Hagensen, Kelli E. Osler, Joel Penoyar, (J.)C.C. Bridgewater, J. Robin Hunt, Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens and James M. Johnson as well as other currently unnamed parties as determined by the Court,

Defendants.

NO. C07-5260RJB

ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANTS REED, McKENNA, PENOYAR, BRIDGEWATER, HUNT, ALEXANDER, MADSEN, FAIRHURST, OWENS AND JOHNSON

1 Defendants Sam Reed, Rob McKenna, Joel Penoyar, C.C. Bridgewater, J. Robin Hunt,
2 Gerry L. Alexander, Barbara Madsen, Mary E. Fairhurst, Susan Owens, and James M. Johnson
3 hereby answer the Complaint by admitting, denying and alleging the following:

4 **ANSWER**

5 1. Answering paragraph 1 of the Complaint, defendants admit that plaintiff seeks
6 declaratory relief and damages, but deny that plaintiff is entitled to any relief. Defendants
7 deny the balance of paragraph 1.

8 2. Answering paragraph 2 of the Complaint, defendants admit that the case
9 appears to arise out of two cases initiated and decided in the state courts of Washington, that
10 plaintiff was a party to both cases and that they related to dissolution proceedings initiated
11 and decided in the state courts of Washington.

12 3. Answering paragraphs 3 through 6 of the Complaint, defendants are without
13 sufficient knowledge or information to admit or deny the allegations in this paragraph and,
14 therefore, deny the same in their entirety.

15 4. Answering paragraph 7 of the Complaint, the allegations therein are legal
16 arguments that do not require an answer. If a response were required, defendants deny this
17 paragraph.

18 5. Answering paragraphs 8 and 9 of the Complaint, defendants are without
19 sufficient knowledge or information to admit or deny the allegations in these paragraphs and,
20 therefore, deny the same in their entirety.

21 6. Answering paragraph 10 of the Complaint, defendants admit that the statutes
22 mentioned therein speak for themselves. Defendants deny the other allegations in this
23 paragraph.

24 7. Answering paragraph 11 of the Complaint, defendants admit that two co-
defendant commissioners/jurists appear to have been involved in the two cases referred to in

1 this paragraph. Defendants further acknowledge plaintiff's admission that the matters he
2 complains of in this federal court case were raised and decided by the state courts of
3 Washington. Defendants deny the balance of this paragraph.

4 8. Answering paragraph 12 of the Complaint, defendants acknowledge plaintiff's
5 admission that the list of constitutional and statutory claims in this paragraph were raised by
6 plaintiff in state court proceedings that were decided adversely to plaintiff. Defendants deny
7 the other allegations of this paragraph.

8 9. Answering paragraph 13 of the Complaint, defendants admit that
9 Washington's courts have the authority to grant restraining orders. Defendants deny the
10 balance of the allegations in this paragraph.

11 10. Answering paragraphs 14 and 15 of the Complaint, defendants admit that
12 plaintiff appealed the trial court results in the state court proceedings that give rise to this
13 case and that the Washington Court of Appeals and Supreme Court both upheld the trial
14 court decisions against plaintiff.

15 11. Defendants deny the allegations in paragraphs 16 and 17 of the Complaint.

16 12. Answering paragraph 18 of the Complaint, defendants admit that Sam Reed is
17 the Secretary of State of Washington, that his work address is in the legislative building in
18 Olympia and that he has responsibility with regard to elections and other matters as set forth
19 in state statutes. Defendants deny the other allegations in this paragraph.

20 13. Answering paragraph 19 of the Complaint, defendants admit that Rob
21 McKenna is the Attorney General of Washington, that his work address is 1125 Washington
22 Street, Olympia, and that his responsibilities include appearing and acting as legal counsel to
23 the State and its representatives, in accordance with state law. Defendants deny the balance
24 of this paragraph.

1 14. Answering paragraph 20 of the Complaint, defendants admit that co-
2 defendants Harris, Nichols and Barbara Johnson are Judges for the Clark County Superior
3 Court, located in Vancouver, Washington. Defendants deny the balance of this paragraph.

4 15. Answering paragraph 21 of the Complaint, defendants admit that co-
5 defendants Eiseland, Melnick, Hagensen and Osler are either Judges or Commissioners of the
6 Clark County District Court, located in Vancouver, Washington. Defendants deny the
7 balance of this paragraph.

8 16. Answering paragraph 22 of the Complaint, defendants admit that defendants
9 Penoyar, Bridgewater and Hunt are Judges in Division II of the Washington Court of
10 Appeals, located in Tacoma. Defendants deny the balance of this paragraph.

11 17. Answering paragraph 23 of the Complaint, defendants admit that defendants
12 Alexander, Madsen, Fairhurst, Owens and James M. Johnson are Justices of the Washington
13 Supreme Court, located in Olympia. Defendants deny the balance of this paragraph.

14 18. Answering paragraph 24 of the Complaint, defendants are without knowledge
15 or information as to plaintiff's residence and, therefore, deny the allegations regarding the
16 same. Defendants further deny that the residence of any party determines federal court
jurisdiction and deny the other allegations of this paragraph.

17 19. Answering paragraph 25 of the Complaint, defendants reallege their responses
18 to paragraphs 1 through 24 of the Complaint.

19 20. Answering paragraph 26 of the Complaint, defendants state that the record of
20 proceedings and actions taken in the state court cases referred to in this Complaint speak for
21 themselves. Defendants deny the balance of this paragraph.

22 21. Answering paragraphs 27 and 28 of the Complaint, the allegations therein are
23 argumentative statements that do not require an answer. If a response were required,
24 defendants deny these paragraphs.

1 22. Answering paragraphs 29 through 32 of the Complaint, defendants deny the
2 same in their entirety.

3 23. Answering paragraph 33 of the Complaint, defendants reallege their responses
4 to paragraphs 1 through 32 of the Complaint.

5 24. Answering paragraphs 34 through 43 of the Complaint, defendants deny the
6 same in their entirety.

7 25. Answering paragraph 44 of the Complaint, defendants reallege their responses
8 to paragraphs 1 through 43 of the Complaint.

9 26. Answering paragraphs 45 through 55 of the Complaint, defendants deny the
10 same in their entirety.

11 27. Answering paragraph 56 of the Complaint, defendants reallege their responses
12 to paragraphs 1 through 55 of the Complaint.

13 28. Answering paragraph 57 of the Complaint, the record of proceedings and
14 actions taken in the state court proceedings that are the subject of the Complaint speak for
15 themselves. Defendants deny the other allegations in this paragraph.

16 29. Answering paragraphs 58 through 62 of the Complaint, defendants deny the
17 same in their entirety.

18 30. Answering paragraph 63 of the Complaint, defendants reallege their responses
19 to paragraphs 1 through 62 of the Complaint.

20 31. Answering paragraph 64 of the Complaint, defendants admit that plaintiff
21 appealed the trial court rulings and decisions complained of herein to the Washington Court
22 of Appeals. Defendants also acknowledge plaintiff's admission that the claims and issues he
23 raises in Counts I through III and in Count VI of this Complaint were raised by him in this
24 appeal, including the claims and issues outlined in this paragraph of the Complaint.
Defendants deny the other allegations in this paragraph.

1 32. Answering paragraph 65 of the Complaint, defendants admit that the appellate
2 court decision of plaintiff's appeal contained the language quoted in paragraph 65.
3 Defendants deny the balance of this paragraph.

4 33. Answering paragraph 66 of the Complaint, defendants admit that plaintiff
5 petitioned the Washington Supreme Court for review of the lower court decisions that are the
6 subject of this case in case No. 78768-9 and that plaintiff raised the same issues to the
7 Supreme Court that are the subject of his Complaint herein. Defendants deny the balance of
8 this paragraph.

9 34. Answering paragraph 67 of the Complaint, defendants admit that the five
10 Justices named as defendants herein signed the Order of the Supreme Court denying
11 plaintiff's petition for review, including denial of the arguments and matters presented in
12 Count IV of the Complaint.

13 35. Answering paragraphs 68 through 70 of the Complaint, defendants deny the
14 same in their entirety.

15 36. Answering paragraph 71 of the Complaint, defendants reallege their responses
16 to paragraphs 1 through 70 of the Complaint.

17 37. Answering paragraphs 72 through 82 of the Complaint, defendants deny the
18 same in their entirety.

19 38. Answering paragraph 83 of the Complaint, defendants reallege their responses
20 to paragraphs 1 through 82 of the Complaint.

21 39. Answering paragraph 84 of the Complaint, defendants admit that Article IV,
22 section 17 of the Washington Constitution provides:

23 **§ 17 ELIGIBILITY OF JUDGES.**

24 No person shall be eligible to the office of judge of the supreme court, or
judge of a superior court, unless he shall have been admitted to practice in the
courts of record of this state, or of the Territory of Washington.

Defendants deny the balance of paragraph 84 of the Complaint.

1 40. Answering paragraph 85 of the Complaint, defendants deny the same.

2 41. Answering paragraph 86 of the Complaint, defendants lack knowledge and
3 information sufficient to admit or deny these allegations and, therefore, deny the same in
4 their entirety.

5 42. Answering paragraph 87 of the Complaint, defendants admit that the state
6 statutes cited specifically in these paragraphs pertain to judicial elections and speak for
7 themselves. Defendants deny the other allegations in these paragraphs.

8 43. Further answering the Complaint, specifically the relief prayed for in
9 paragraphs 1 through 20 (pages 23 through 27) of the Complaint, defendants deny that
10 plaintiff is entitled and/or that this Court can award the relief requested therein.

11 44. Further answering the Complaint, defendants deny each and every allegation
12 not previously addressed in this Answer.

13 **AFFIRMATIVE DEFENSES**

14 Further answering the Complaint and by way of affirmative defenses, defendants
15 allege the following:

16 45. Plaintiff has failed to state a claim for which any relief may be granted,
17 particularly against these answering defendants.

18 46. This Court lacks subject matter jurisdiction over most, if not all, of the claims
19 asserted by plaintiff.

20 47. Plaintiff's claims are barred by the application of collateral estoppel and/or res
21 *judicata*.

22 48. Plaintiff's claims are barred by the *Rooker-Feldman* doctrine.

23 49. Plaintiff's claims against all judges and judicial officers are barred because of
24 absolute judicial immunity.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July, 2007, I electronically filed the foregoing **Answer and Affirmative Defenses of Defendants Reed, McKenna, Penoyar, Bridgewater, Hunt, Alexander, Madsen, Fairhurst, Owens and Johnson** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

Bernard Veljacic
Clark County Prosecutor
Bernard.Veljacic@clark.wa.gov

Notification of filing will be sent by United States Postal Service first class mail, postage prepaid, to:

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