The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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

STATE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DISMISSAL OF PLAINTIFF'S AMENDED COMPLAINT

HEARING DATE:
Friday, September 28, 2007

ORAL ARGUMENT REQUESTED

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 56, defendants Reed, McKenna, Penoyar, Bridgewater, Hunt, Alexander, Madsen, Fairhurst, Owens and Johnson ("the State

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Defendants") move for complete summary judgment and dismissal of plaintiff's Amended Complaint. (A form of proposed Order is attached as Attachment 1.) Based on plaintiff's version of the facts, as admitted in his pleadings, defendants are entitled to judgment based upon the following legal principles:

1. This Court lacks jurisdiction over claims that plaintiff litigated—and which he could have litigated—in state court proceedings that have resulted in a final judgment against plaintiff. ("Rooker-Feldman").

2. Plaintiff initiated and defended state court proceedings that went to final judgment. This Court must give "full faith and credit" to those proceedings and judgment, barring all claims which were, or could have been, raised by plaintiff. ("Res Judicata").

3. Counts I through VI of the Amended Complaint are asserted against several state court judges (trial court and appellate). The claims arise out of these judges' rulings in plaintiff's marital dissolution proceedings in the Washington courts. Such claims are barred under the doctrine of absolute judicial immunity.

4. In Count VII, plaintiff claims that Article IV, § 17 of Washington's Constitution violates the United States Constitution. He asserts that the state constitution's qualification for judicial office that requires judges to be active members of the Washington bar and the statutory requirement of a filing fee or obtaining voter signatures on a qualifying petition contravene due process, equal protection and first amendment rights of association. Such claims are not sustainable under well-established federal law.

5. Finally, any claims asserted against the State and/or its officials in their official capacity are barred by the Eleventh Amendment.

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II. STATEMENT OF PERTINENT FACTS

The following facts are alleged in pleadings filed by plaintiff in this case and state court pleadings and orders in plaintiff's marital dissolution case.[1]

A. Identity and Role of Moving Defendants.

Defendants Penoyar, Bridgewater and Hunt are judges who sit on Division II of Washington's Court of Appeals. Clark Decl., Ex. A, ¶ 22. Plaintiff appealed the trial court's issuance of an Order against him under RCW 26.50, the State's Domestic Violence Act, to ensure "no contact" between him and his ex-wife. *Id.*, Ex. C. That appeal came before these three judges and the court order denying his appeal bears their signatures. *Id.*, Ex. D. A review of the Amended Complaint confirms only Count V ("No Right to Appeal") is asserted against these defendants.[2] His Initial Disclosures confirm the only discovery he anticipates from these defendants in this case relates to his marital dissolution court files. Clark Decl., Ex. B.

Defendants Alexander, Madsen, Owens, Fairhurst and J. Johnson are Justices of the Washington Supreme Court. *Id.*, Ex. A, ¶ 23. Plaintiff petitioned the State Supreme Court for review of the trial court rulings and Division II's appellate ruling on the above matters. *Id.*, Ex. E. The Order denying review was issued by, and bears signatures of, these five Justices. As with the other appellate judges above, only Count V appears directed at the Supreme Court Justices and plaintiff's initial disclosures confirm that the Supreme Court's case file regarding his divorce case is the focus of his case against these defendants.

Defendants Reed and McKenna are, respectively, the Secretary of State and Attorney General for Washington. *Id.*, Ex. A, ¶¶ 18, 19. Only Count VII of the Amended Complaint is

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[1] These pleadings include the Amended Complaint, plaintiff's initial disclosures, a brief he filed in the State dissolution proceedings and two orders of the state appellate courts. These documents are attached to the Clark Declaration as Exhibits A, B, C, D and E, respectively.

[2] Counts I through IV and Count VI are directed at the Clark County Superior Court Judges and Commissioners. Though this Motion is not brought on their behalf, the defenses and immunity doctrines discussed in parts III, A, B and C also require their dismissal.

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asserted against them. They are alleged to be responsible for the administration and enforcement state-wide of Washington's election laws, including the constitutional and statutory qualifications to run for state judicial offices. Clark Decl., Ex. A, ¶¶18, 19. Defendants Reed and McKenna had no involvement with the Washington court rulings attacked by plaintiff.

B. State Court Proceedings Underlying This Case.

Plaintiff and his ex-spouse went through marital dissolution proceedings during 2004. *Id.*, Ex. A. His federal action arises out of two state court rulings (Domestic Violence cases) issued in the Clark County Courts: Cases No. 04-2-08824-4 and 04-2-08908-9. *Id.* Both rulings were issued pursuant to RCW 26.50. Plaintiff claims "while the statute itself provides for due process and equal protection under the law, the defendants ignored the requirements of the statute and the state constitution." *Id.*

The two RCW 26.50 cases were either initiated by him or his ex-spouse. *Id.*, ¶ 2. Both matters resulted in a trial court ruling adverse to plaintiff, which he then unsuccessfully appealed, first to the Court of Appeals, then to the Supreme Court. *Id.*, ¶¶ 11 through 15. The denial of his Petition for Review by the Washington Supreme Court terminated these proceedings, resulting in entry of final judgment against plaintiff on January 31, 2007. *Id.*, Ex. E.

Plaintiff concedes that the issues pleaded in Counts I through VI of his Amended Complaint were raised unsuccessfully by him in state court, including the federal due process, equal protection and "sexual bias" claims. *Id.*, Ex. A, ¶ 12. He concedes the trial court's decision on each of these claims was affirmed by state appellate courts. *Id.*, ¶¶ 14, 15. Plaintiff alleges that the state court judges reached erroneous decisions: in Count V (¶¶ 64 through 70), he complains that "Washington judges…presented with evidence of direct violations of [state law], their oath of office requires them to correct these violations to include overturning the invalid orders…." *Id.*, ¶ 68. The basis for Counts I through VI thus

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are judicial acts pursuant to the jurisdiction of the state courts to hear domestic violence matters. That jurisdiction is provided by RCW 26.50.020.

C. Claim Against Defendants Reed and McKenna.

Count VII is entitled "Restrictions on Candidates for Court Justices." Plaintiff attacks Article IV, § 17 of Washington's constitution:[3]

> **§ 17 ELIGIBILITY OF JUDGES.**
> 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.

He also claims that RCW 29A.24.091, which requires candidates for judicial office to pay a filing fee or obtain signatures on a supporting petition, violates the federal constitution. He asks this Court to declare Article IV, § 17, RCW 2.06.050, RCW 3.34.060 and RCW 29A.24.091 unconstitutional because they are "used to restrict eligibility" for state judicial offices. *Id.*, Ex. A, ¶¶ 84, 87, 88.

III. LEGAL ARGUMENT[4]

Plaintiff's claims are undisguised attempts to use the federal courts as a vehicle to appeal final state court judgments entered against him in cases where state courts had jurisdiction over him and his claims. Dismissal is required because he had his chance to litigate and lost on the merits, and because all but two defendants in this case are the state judges who decided his case in state court. Moreover, long-standing federal precedent upholds state requirements of active bar status and a filing fee or petitions of voter support for state judicial office-seekers.

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[3] Appellate and state district court judges have similar requirements that they be admitted to practice law to qualify. RCW 2.06.050 and 3.34.060.

[4] As this Motion involves consideration of materials other than the Amended Complaint, it is brought under Fed. R. Civ. P. 56. Under that Rule, all facts and inferences therefrom are taken in a light favorable to plaintiff. In this particular case, the facts are taken exclusively from plaintiff's pleadings, thereby eliminating any factual disputes.

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A. The *Rooker-Feldman* Doctrine Deprives Federal Courts of Jurisdiction Over Appeals from State Court Judgments.

Plaintiff concedes his federal case is an attempt to have a federal court "second guess" the judgments against him in state court in connection with his marital dissolution. Clark Decl., Ex. A, ¶¶ 1, 2, 11, 12, 14 and 15. Both the State Court of Appeals and Supreme Court denied his appeals of these issues, resulting in a final judgment on January 31, 2007. *Id.*, Exs. D and E. He later filed this case on May 23, 2007.

In *Exxon Mobil Corp. v. Saudi Basic Inds. Corp.*, 544 U.S. 280, 125 S. Ct. 1517 (2005), the U.S. Supreme Court stated that the federal courts have no jurisdiction to review and overturn state court decisions:

> *Rooker* and *Feldman* exhibit the limited circumstances in which this [Supreme] Court's appellate jurisdiction over state-court judgments, 28 U.S.C. § 1257, precludes a United States district court from exercising subject-matter jurisdiction in an action it would otherwise be empowered to adjudicate under a congressional grant of authority, *e.g.*, § 1330 (suits against foreign states), § 1331 (federal question), § 1332 (diversity). In both cases, the losing party in state court filed suit in federal court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking review and rejection of that judgment. Plaintiffs in both cases, alleging federal-question jurisdiction, called upon the District Court to overturn an injurious state-court judgment. Because § 1257, as long interpreted, vests authority to review a state court's judgment solely in this Court, *e.g.*, *Feldman*, 460 U.S., at 476, 103 S.Ct. 1303; *Atlantic Coast Line R. Co. v. Locomotive Engineers*, 398 U.S. 281, 286, 90 S.Ct. 1739, 26 L.Ed.2d 234 (1970); *Rooker*, 263 U.S., at 416, 44 S.Ct. 149, the District Courts in *Rooker* and *Feldman* lacked subject-matter jurisdiction. See *Verizon Md. Inc.*, 535 U.S. at 644, n. 3, 122 S.Ct. 1753 ("the *Rooker-Feldman* doctrine merely recognizes that 28 U.S.C. § 1331 is a grant of original jurisdiction, and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court, see § 1257(a).").

544 U.S. at 291-92, 125 S. Ct. at 1526 (emphasis added).

It is undisputed that plaintiff's claims arise out of the state court proceedings he was unsuccessful in pursuing or defending; proceedings resulting in a final judgment rendered before plaintiff started this federal action. In paragraphs 12, 14 and 15 of his Amended Complaint he admits that the claims in Counts 1 through VI were raised by him in the concluded state court proceedings. Clark Decl., Ex. A. His only recourse was to petition the

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U.S. Supreme Court to review the state court decisions under 28 U.S.C. 1257. Under Supreme Court Rule 13, he had ninety days after January 31, 2007, the date of the State Supreme Court order, to apply for a writ from the U.S. Supreme Court. 28 U.S.C. § 2101(c). The time to do so expired on or before May 1, 2007, and the deadline is mandatory. *Federal Election Comm'n v. NRA Political Victory Fund*, 513 U.S. 88, 90, 115 S. Ct. 537, 539 (1994). Failure to do so precludes the claims in Counts I through VI.

Rooker-Feldman was discussed in a recent Ninth Circuit case: *Vacation Village, Inc. v. Clark County Nevada*, ____ F.3d _____, 2007 WL 2080288 (9th Cir. 2007). In that opinion, the court rejects plaintiff's contention that *Rooker-Feldman* will not apply if the state court judgment fails to address some of the arguments raised by plaintiff:

> "*Rooker-Feldman* applies only when the federal plaintiff both asserts as her injury legal error or errors by the state court and seeks as her remedy relief from the state court judgment." *Kongasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004).

2007 WL 2284279 *5 (emphasis in original). Both conditions apply here and this Court lacks jurisdiction over all claims that pertain to "second guessing" final state court judgments.

Nor can plaintiff escape *Rooker-Feldman* by alleging that his legal arguments were not specifically addressed in the appellate decisions or in the final state court judgment. *Rooker-Feldman* deprives federal courts of jurisdiction whenever federal claims are "inextricably intertwined" with the state court decision:

> Where the district court must hold that the state court was wrong in order to find in favor of the plaintiff, the issues presented to both courts are inextricably intertwined. (citations omitted) [Plaintiff's] federal constitutional claims were for that reason inextricably intertwined with the state court decision. The district court properly dismissed this action under *Rooker-Feldman*.

Doe & Assoc. Law Offices v. Napolitano, 252 F.3d 1026, 1030 (9th Cir. 2001); *Samuel v. Michaud*, 980 F. Supp 1381, 1411 (D. Idaho 1996) (Claims raised in federal court need not have been argued in the state proceedings for them to be barred under *Rooker-Feldman*.) *See also Johnson v. Bd. of Bar Overseers of Mass.*, 324 F. Supp. 276, 285 (D. Mass. 2004) (Lower

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federal courts have no jurisdiction to hear appeals from state court decisions, even if the state judgment is challenged as unconstitutional.)

Plaintiff asks this Court to overturn state court judgments and to enter its own judgment reversing the state court outcome. *Rooker-Feldman*, bars such claims and requires dismissal of Counts I through VII.

B. Res Judicata Bars All Claims That Plaintiff Raised, or Could Have Raised, in the State Court Proceedings.

An alternative grounds for dismissal of Counts I through VI is the doctrine of res judicata:

> Disposition of the federal action, once the state-court adjudication is complete, would be governed by preclusion law. The Full Faith and Credit Act, 28 U.S.C. § 1738, originally enacted in 1790, ch. 11, 1 Stat. 122, requires the federal court "to give the same preclusive effect to a state-court judgment as another court of that State would give."

Exxon Mobil Corp., *supra*, 544 U.S. at 293, 125 S. Ct. at 1527. As noted further by the Supreme Court in *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 343, 125 S. Ct. 2492 (2005):

> First, both petitioners and *Santini* ultimately depend on an assumption that plaintiffs have a right to vindicate their federal claims in a federal forum. We have repeatedly held, to the contrary, that issues actually decided in valid state-court judgments may well deprive plaintiffs of the "right" to have their federal claims relitigated in federal court. See, *e.g., Migra v. Warren City School Dist. Bd. of Ed.*, 465 U.S. 75, 84, 104 S.Ct. 411. This is so even when the plaintiff would have preferred not to litigate in state court, but was required to do so by statute or prudential rules. See *id.*, at 104, 101 S.Ct. 411. The relevant question in such cases is not whether the plaintiff has been afforded access to a federal forum; rather, the question is whether the state court actually decided an issue of fact or law that was necessary to its judgment.

Indeed, as with *Rooker-Feldman*, application of the bar of res judicata does not require that the state court actually address each and every theory advanced by plaintiff in state court:

> Where the federal constitutional claim is based on the same asserted wrong as was the subject of a state action, and where the parties are the same, res judicata will bar the federal constitutional claim whether it was asserted in state court or not, for the reason that the state judgment on the merits serves not only to bar every claim that was raised in state court but also to preclude the

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> assertion of every legal theory or ground for recovery that might have been raised in support of the granting of the desired relief.

Gallagher v. Frye, 631 F.2d 127, 129 (9th Cir. 1980). Federal claims under the Federal Civil Rights Statutes (28 U.S.C. § 1983 and § 1985, for example) are barred like any other clams. *Allen v. McCurry*, 449 U.S. 90, 97, 101 S. Ct. 411, 416 (1980); *Concordia v. Bendekovic*, 693 F.2d 1073, 1077 (5th Cir. 1982).

Under Washington law, res judicata refers to "the preclusive effect of judgments, including the relitigation of claims and issues that were litigated, or might have been litigated, in a prior action." *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995). Application of res judicata requires identity between a prior judgment and a subsequent action as to (1) persons and parties, (2) cause of action, (3) subject matter, (4) quality of persons for or against whom the claim is made. *Pederson v. Potter*, 103 Wn. App. 62, 67, 11 P.3d 833 (2000). In addition, there must be a final judgment on the merits. *Id.*

All indicia of res judicata are present here. Plaintiff was a party to the state cases and is a plaintiff here. That satisfies the first and last element. Plaintiff's claims and defenses in the underlying state court proceedings were the same issues and claims he presents in Counts I through VI. Clark Decl., Ex. A, ¶¶ 11-15. That fulfills elements two and three. The denial of his Petition for Review resulted in entry of final judgment no later than January 31, 2007. *Id.*, Ex. E. Under the doctrine of res judicata and the "full faith and credit" clause of the U.S. Constitution, the Court must dismiss Counts I through VI.

C. Absolute Judicial Immunity Also Requires Dismissal of Counts I through VI of the Amended Complaint.

Counts I through VI are directed exclusively at state court judges, all of whom made rulings and/or entered judgment against the plaintiff. He has never challenged the jurisdiction of the state courts.[5] Though he claimed that specific commissioners acted in derogation of

[5] It is the court's authority, not that of the particular judge, to hear the underlying case that produces judicial immunity. *Stump*, *infra*, 435 U.S. at 356-57.

their authority under state law, he invoked their jurisdiction by seeking a "no contact" order against his ex-wife in their dissolution proceedings. There is no question he invoked the appellate court's jurisdiction by appealing those rulings to both the State Court of Appeals and Supreme Court.

State court judges are absolutely immune from liability in damages for alleged deprivation of federal civil rights in underlying state court proceedings. *Stump v. Sparkman*, 435 U.S. 349, 98 S. Ct. 1099 (1978). Absolute immunity from damages claims will bar this suit even if "the action [the judge] took was in error, was done maliciously, or was in excess of his authority." 435 U.S. at 356-57, 98 S. Ct. at 1105. (The *Stump* court upheld this principle even though the underlying state court proceedings had resulted in the judicially-decreed sterilization of a minor.) In response to a contention expected to be raised by plaintiff in this case, that the trial court commissioners exceeded their legal authority, the Supreme Court stated:

> Because the court over which Judge Stump presides is one of general jurisdiction, neither the procedural errors he may have committed nor the lack of a specific statute authorizing the approval of the petition in question rendered him liable in damages for the consequences of his actions.

Id. at 359-60, 98 S. Ct. at 1106.

The state court's "subject-matter jurisdiction" is key. Under RCW 26.50.020, the Clark County Courts had general jurisdiction to consider, issue and enforce domestic violence orders. As to the appellate state court judges, plaintiff invoked the appellate jurisdiction of those tribunals. If a court has jurisdiction over the general subject matter, the judge is absolutely immune. *Mullis v. U.S. Bankruptcy Court for Nevada*, 828 F.2d 1385, 1389 (9th Cir. 1987).

Federal civil rights claims do not abrogate judicial immunity. *Pierson v. Ray*, 386 U.S. 547, 554-55, n.9 (1967); *Tenney v. Brandhove*, 341 U.S. 367, 71 S. Ct. 783 (1951).

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Judicial immunity bars all claims under 28 U.S.C. §§ 1981 through 1988. *Haldane v. Chagnon*, 345 F.2d 601, 603-04 (9th Cir. 1965).

Finally, in 1996 Congress amended the federal civil rights laws to enact absolute judicial immunity from injunctive or declaratory relief claims as well as damages claims: 28 U.S.C. § 1983, for example, provides "injunctive relief shall not be granted" in an action brought against "a judicial officer for an act or omission taken in such officer's judicial capacity." *Wolfe v. Strankman*, 392 F.3d 358, 366 (9th Cir. 2004). *See also Huminski v. Corsmes*, 386 F.3d 116, 137-38 (2d Cir. 2004) (The paradigmatic judicial act triggering immunity is the resolution of a dispute between parties invoking the jurisdiction of the court.); *Ballew v. Bush*, 2007 WL 1434500 (E.D. Ark. 2007) (28 U.S.C. 1983 precludes injunctive relief against judges for an act or omission committed in the judge's judicial capacity.); *LeClerc v. Webb*, 2003 WL 21026709 (E.D. La. 2003) (Congress has provided that injunctive relief shall not be granted in a § 1983 action against a judicial officer.).

Absolute judicial immunity is the third alternative basis for dismissal with prejudice of Counts I through VI of the Amended Complaint.

D. Washington's State Law Qualifications for State Judicial Offices Do Not Violate the Federal Constitution.

Count VII of the Amended Complaint claims that state law qualifications for state judicial office violate rights to due process, equal protection and freedom of assembly that are preserved by the U.S. Constitution. Plaintiff asks this Court to declare these laws invalid.

Article IV, § 17 of the state constitution requires that Superior Court and Supreme Court judges shall be persons admitted to practice in the Washington courts. RCW 2.06.050 and 3.34.060 have the same requirement for state District Court and Court of Appeals' candidates. RCW 29A.24.091 declares, in part, that candidates for any office, compensated at an annual salary greater than $1,000, shall pay a filing fee of 1% of that office's salary. Alternatively, the statute states that persons lacking "sufficient assets or income" can submit a

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petition in lieu of filing fee that contains registered voters' signatures that equal the amount of the filing fee. Plaintiff calculates this to mean that the statute would require him (if otherwise qualified) to either pay $1,320 or get 1,320 valid, qualifying signers on a petition to run for judicial office. Clark Decl., Ex. A, ¶ 88.

Federal courts have upheld state laws that, like Washington's constitution, make being a lawyer admitted to practice a qualification to hold state judicial office. In *O'Connor v. State of Nevada*, 27 F.3d 357, 362 (9th Cir. 1994), the court rejected First and Fourteenth Amendment challenges to Nevada laws mandating that State Supreme Court judges be attorneys. Plaintiffs were non-lawyers who were excluded from running for judicial office. The court rejected the same claims plaintiff raises in this case that such laws impermissibly exclude non-lawyers and frustrate the voting preferences of the public:

> …Although the exclusion of candidates burdens a voter's freedom of association, a State's "important regulatory interests are generally sufficient to justify reasonable, nondiscriminatory restrictions." *Anderson v. Celebrezze*, 460 U.S. 780, 787-88, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983) (footnote omitted).
>
> As we concluded above, § 2.020(2) satisfies heightened scrutiny. The State has important regulatory interests in maintaining a competent judiciary that justify its restrictions on ballot access for Supreme Court Justice candidates. Accordingly, the attorney requirement does not violate the First Amendment. *See Clements*, 457 U.S. at 971, 102 S.Ct. at 2847 (upholding restrictions on candidate eligibility that serve legitimate state goals unrelated to First Amendment values).
>
> After considering the character and magnitude of the injury asserted; the interests of the State in maintaining a qualified judiciary; and the extent to which those interests burden appellants' rights, *see Celebrezze*, 460 U.S. at 789, 103 S.Ct. at 1570, we conclude that § 2.020(2) survives heightened scrutiny and violates neither the Equal Protection Clause nor the First Amendment.

Id. (emphasis added); *accord*, *Benham v. Driegert*, 853 F. Supp. 951, 954 (N.D. Tex. 1994) (Requirement that state judicial candidate obtain law degree and be in practice four years serves legitimate state objective of fostering a competent judiciary and burdens only candidates without law degrees who have little competence in the practice of law); *Zielasko v.*

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Ohio, 693 F. Supp. 577, 586-87 (N.D. Ohio 1988) (Age restrictions on state judicial office holders do not violate freedom of association of voters or due process or equal protection rights of office seekers.)[6]

As to statutory filing fees, the U.S. Supreme Court ruled that laws requiring indigent candidates to pay them, in the absence of reasonable alternative means of ballot access, fail to meet constitutional standards. *Lubin v. Panish*, 415 U.S. 709, 94 S. Ct. 1315 (1974). In response to that decision, however, states enacted statutes like RCW 29A.24.091. They incorporate the "reasonable alternative means of ballot access" the Constitution requires and the federal courts have so held. *E.g.*, *Storer v. Brown*, 415 U.S. 724, 740, 94 S. Ct. 1274 (1974); *Andress v. Reed*, 880 F.2d 239 (9th Cir. 1989); *Cross v. Fong Eu*, 430 F. Supp. 1036, 1040 (N.D. Cal. 1977).

In *Andress*, the plaintiff challenged a California statute that (like RCW 29A. 24.091) had a filing fee or required signatures on a petition to qualify for state elected office. The California law required Andress to obtain roughly 100,000 signatures in two months. It was upheld as an exercise of the state's "legitimate interest to ensure the seriousness of a candidate for statewide office…through the signatures of significant numbers of registered voters." 880 F.2d at 242. This result was consistent with the Supreme Court's determination that requiring candidates to get 325,000 voter signatures in twenty-four days was constitutional. *Storer*, 415 U.S. at 740. Requiring plaintiff in this case to amass merely 1,320 signatures is constitutional.

The problems alleged in Count VII with Washington law's requirements to stand for office are the sole grounds alleged for suing defendants Reed and McKenna. Count VII and those defendants must be dismissed.

[6] Though plaintiff does not allege that laws requiring active bar membership violate state law, the Washington courts have routinely rejected such challenges. *See In re Bartz*, 47 Wn.2d 161, 287 P.2d 119 (1955), and *Kraft v. Harris*, 18 Wn. App. 432, 568 P.2d 828 (1977).

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E. The Eleventh Amendment Bars Federal Court Suits by Citizens Against Their States.

Plaintiff alleges that he is suing the defendant judges in their "official" capacity as well as "private individuals." Clark Decl., Ex. A, ¶¶ 22 and 23. Defendants Reed and McKenna are sued only in their official capacities. *Id.*, ¶¶ 18 and 19. However, the Eleventh Amendment to the U.S. Constitution created immunity for the states from liability in federal cases brought by that state's own citizens as well as other state's citizens. *Clark v. State of Washington*, 366 F.2d 678 (9th Cir. 1966). This immunity also applies to state employees acting in their official capacities. *Hirsh v. Supreme Court of California*, 67 F.3d 708, 715 (9th Cir. 1995). This immunity protects states and their representatives from federal civil rights claims as well as other suits. *Clark, supra*, 366 F.2d at 680.

A review of plaintiff's lengthy and detailed Prayer for Relief also confirms the impermissible nature of the intrusive relief he demands. Clark Decl., Ex. A, pp. 22-27.[7] Basically, plaintiff is of the mistaken impression that federal courts supervise state courts and correct state court decisions. That impression is directly contrary to federal law:

> The federal courts are without power to issue writs of mandamus to direct state courts or their judicial officers in the performance of their duties….

Id. 366 F.2d at 681. To award any of the declaratory relief requested would be error and a violation of the line of demarcation that differentiates the roles of federal and state courts.

IV. CONCLUSION

Counts I through VII of the Amended Complaint state causes of action that are unsustainable as a matter of law. This Court lacks jurisdiction to decide Counts I through VI. Alternatively, those Counts fail on the merits due to res judicata and judicial immunity.

[7] No less than 18 separate mandatory directives are sought, including: (1) voiding court orders pertaining to plaintiff and others who are not parties to this case; (2) changes to state court procedures for handling domestic violence cases; (3) what state judges may and may not consider in rendering decisions; (4) intrusive reporting requirements for state courts to this court; and (5) court-ordered changes to the state constitution and statutes.

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Finally, Count VII is defective because the State's requirements for judicial elections do not violate the U.S. Constitution. This Court should enter summary judgment accordingly.

DATED this 30th day of August, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of August, 2007, I electronically filed the foregoing **State Defendants' Motion for Summary Judgment and Dismissal of Plaintiff's Amended Complaint** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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