

The Honorable Robert J. Bryan

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

BRIAN P. CARR,

Plaintiff,

v.

SAM REED, in his official capacity as Secretary of State of the State of Washington, and ROB McKENNA, in his official capacity as Attorney General of the State of Washington and representing in their official capacity as representatives of the State of Washington and, separately, as private individuals the Honorable ROBERT L. HARRIS, JOHN F. NICHOLS, BARBARA D. JOHNSON, KENNETH EIESLAND, 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. C07-5260 RJB

REPLY TO PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS ROBERT L. HARRIS, JOHN F. NICHOLS, BARBARA D. JOHNSON, KENNETH EIESLAND, RICH MELNICK, JOHN HAGENSEN, AND KELLI E. OSLER

COME NOW Defendants The Honorable ROBERT L. HARRIS, The Honorable JOHN F. NICHOLS, The Honorable BARBARA D. JOHNSON, The Honorable KENNETH EIESLAND, The Honorable RICH MELNICK, The Honorable JOHN HAGENSEN, and The

REPLY TO PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT - 1 of 4

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1 Honorable KELLI E. OSLER (the "Clark County Defendants"), and reply to Plaintiff's response  
2 to Defendants' Motion for Summary Judgment.

### 4 DISCUSSION

5 **1. Plaintiff's Response raises no issues of material fact or issues of law that**  
6 **survive Summary Judgment.**

7 To survive summary judgment, a plaintiff must show there is a genuine issue of material  
8 fact. FED. R. CIV. P. 56(c). An issue is "genuine" if "a reasonable jury could return a verdict for  
9 the nonmoving party" and a fact is "material" if it "might affect the outcome of the suit under the  
10 governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 91 L. Ed. 2d 202, 106 S.  
11 Ct. 2505 (1986). The evidence is viewed in the light most favorable to the non-moving party. *Id.*  
12 "[S]ummary judgment should be granted where the nonmoving party fails to offer evidence from  
13 which a reasonable jury could return a verdict in its favor," Triton Energy Corp. v. Square D Co.,  
14 68 F.3d 1216, 1221 (9<sup>th</sup> Cir. 1995). The opposing party must present significant and probative  
15 evidence to support its claim or defense. Intel Corp. v. Hartford Accident & Indem. Co., 952  
16 F.2d 1551, 1558 (9<sup>th</sup> Cir. 1991). "The mere existence of a scintilla of evidence in support of the  
17 non-moving party's position is not sufficient." Triton Energy Corp., 68 F.3d at 1221.

18 After much discussion, Plaintiff raises three facts, which he labels contested: that judge  
19 Melnick was not acting as a Superior Court Commissioner, that Judge Eiesland was not acting as  
20 a Superior Court Commissioner, that he does not know (at one point he asserts it is Judge  
21 Melnick) who denied his petition for Order for Protection on November 12, 2004.

22 These facts are not material in that they do not affect the outcome of the suit under  
23 governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. at 248. Assuming in arguendo that  
24 only three commissioners were allowed under Washington law, Melnick and Eiesland can be two  
25 of the three allowed. Moreover, were Plaintiff correct that having an extra commissioner (above  
26 the three Plaintiff is arguing for), somehow nullified everything these judges did while  
27 appointed, the judges are still squarely within the protection of the doctrine of absolute judicial  
28 immunity. If the Plaintiff and Defendants are at odds as to whether those judges were properly  
29 appointed, it is of no consequence to the action; as a matter of law, the affirmative defense  
stands.

1 Furthermore, if the Clark County Defendants assume the facts that Plaintiff puts forth:  
2 that Judge Melnick (rather than Judge Nichols) denied Plaintiff's petition for Order for  
3 Protection on November 12, 2004, the above continues to apply. Judge Melnick still is due the  
4 protection afforded to him by the doctrine of Absolute Judicial Immunity.

5 Nor are the "contested" facts material to the application of the Rooker-Feldman doctrine.  
6 Plaintiff raises manifold reasons why the Clark County Defendants' decisions either granting or  
7 denying Court Orders for Protection were faulty, all of which were raised in his motion to  
8 reconsider to Judge B. Johnson, his appeal to the Washington State Court of Appeals (Division  
9 II), and his Petition for Certiorari to the Washington State Supreme Court. At each level of state  
10 review, the presiding courts disagreed with plaintiff's position. Plaintiff has been afforded  
11 appellate review. That Plaintiff now seeks Federal review of these state court decisions on state  
12 court matters is clear from the arguments in his response. Plaintiff therein merely reasserts his  
13 overarching theory of conspiracy and cover-ups and continues to take issue with the State Court  
14 decisions.

### 15 CONCLUSION

16 Overall, the "contested" facts proffered by the Plaintiff do nothing, as a matter of law, to  
17 undermine the applicable affirmative defenses presented in the defense motions to dismiss.  
18 Simply put, the facts as Plaintiff asserts them, do not give rise to any legal liability on behalf of  
19 the Clark County Defendants.

20 DATED this 27<sup>th</sup> day of September, 2007.

21 s/Bernard F. Veljacic, WSBA #28702  
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CERTIFICATE OF SERVICE

I, Mindy Lamberton, hereby certify that on September 27, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system who will send electronic copies to all parties of record.

s/Mindy Lamberton  
Clark County Prosecuting Attorney  
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