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in forma pauperis

IN THE SUPREME COURT OF THE UNITED STATES

Carol Garrard, Robert Richardson,
Petitioners,
vs.
Gavin Newsom, Governor of the State of California, Xavier Becerra, Attorney General of the State of California, sued in their official capacity; ETAL.

PETITION FOR A WRIT OF CERTIORARI

to the Ninth Circuit Court of Appeals
Case No. 20-16511
Date of Final Decision August 24, 2021

APPENDIX 1
TABLES AND COMMENTARY
ADOPTION OF ABA MODEL CODE OF JUDICIAL CONDUCT

APPENDIX 1
TABLES AND COMMENTARY
ADOPTION OF ABA MODEL CODE OF JUDICIAL CONDUCT

Since 1974 a total of 51 states plus the District of Columbia have adopted a version of the American Bar Association (ABA) Model Code of Judicial Conduct. There are three discernible common variations to Canon 3 policing the appearance of impropriety by outside memberships: A) The Model of a broadly worded ban to membership and a comment excepting "lawful" religious membership; B) The latter version but excluding the religion comment; and C) A version which incorporates the comment into the rule; California is in the latter category. The Model Canon contains a list of classes of persons 'invidious discrimination' refers to; a few states provide a separate definition of 'invidious discrimination' (typically under heading 'Terminology'), and the Canon refers only to 'invidious discrimination.' By implication 'invidious' means 'discrimination against any of the protected classes' listed in the Canon, in a separate definition, or under a 'generic' reference to protected classes of persons. See Table A Comment. Neither the ABA Model nor any state's Code defines 'religion.' Whether the ABA or any state by other statute or case law has adopted a definition of 'religion' is outside the scope of this Appendix. This court itself has failed to come up with a comprehensive definition any better than the Founding Fathers' 'freedom of conscience."

TABLE A:
STATES ADOPTING ABA MODEL CODE OF JUDICIAL CONDUCT
WITH RELIGION COMMENT

The current ABA version of the Model Code (as of April 13, 2020), Canon 3, Rule 3.6, is referenced here for convenience of making a point of law en masse. It states as follows:

"(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation. . . . . [Commentary ¶] [4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule."

The following 34 states and district have adopted the foregoing Canon and Rule: Alabama; Alaska; Arkansas; Colorado; Florida; Hawaii; Idaho; Indiana; Iowa; Kansas; Kentucky; Maine; Maryland; Massachusetts; Michigan; Minnesota; Missouri; Montana; Nebraska; Nevada; New Hampshire; New Mexico; North Dakota; Ohio; Oklahoma; Pennsylvania; Rhode Island; Tennessee; Virginia; Washington; West Virginia; Wisconsin; Wyoming; District of Columbia.

COMMENTARY:

Several but not all states adopting the version containing the above religion comment also include an ABA legal comment about 'invidious' with citations to:

"New York State Club Ass'n v. City of New York, [487 U.S. 1] 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Board of Dirs. of Rotary Int'l v. Rotary Club of Duarte, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984)."

Aside from the inherent ambiguity of 'what is religion' where the Model Code does not define it, there is a circularity or ambiguity that arises from use of the phrase 'organization that practices invidious discrimination' and an exception for 'organization

as a lawful exercise of the freedom of religion.' That is, if 'invidious discrimination' is unlawful, then it cannot become a 'lawful exercise of religion' unless 'invidious discrimination' does not include religious discrimination. The latter construction is not supported by any of the foregoing authorities, all of which dealt with gender discrimination, not religion, and which assume some level of discrimination is necessary for some organizations to maintain 'exclusivity.' E.g., New York Club Ass'n v. City of New York, 487 U.S. 1, 19 (1988) (O'Connor, J., concurring).

Petitioners raised the issue of disparity of treatment in their Complaint and briefs below, pointing out that if a baker, or florist, or landlord can be denied exercise of religion if it impinges on the liberty interest of a consumer not to have his cake just so, or flowers delivered, or co-habit with whom they please, why should the state judge be granted exercise of religion if it impinges on the liberty interests of petitioners to be free of the oppression of apparent partiality? Petitioners contend the equal protection clauses of the Fifth and Fourteenth Amendments are a bar to preferential treatment of religion and hypocrisy of legitimizing religious discrimination.

TABLE B:
STATES ADOPTING ABA MODEL CODE OF JUDICIAL CONDUCT WITH NO RELIGION COMMENT

1.) Arizona Code of Judicial Conduct: Canon 3.6: "(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation." Religion Comment: None.

2.) Connecticut Code of Judicial Conduct; Canon 2 (Avoidance of Impropriety and Appearance of Impropriety). Religion Comment: None. Note: Similar to California version, but for lack of ¶ C and no mention of religion.

3.) Delaware Judge's Code of Judicial Conduct; Canon 3.6: "(A) A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity or sexual orientation."; Religion Comment: None.

4.) Georgia Code of Judicial Conduct, Canon 2, Rule 2.3: "Judges shall not hold membership in any organization that practices invidious discrimination." (Original emphasis.) Religion Comment: None. Under heading Terminology, 'invidious discrimination' is defined as: "any action by an organization that characterizes some immutable individual trait such as a person's race, gender, or national origin, as well as religion, as odious or as signifying inferiority, which therefore is used to justify arbitrary exclusion of persons possessing those traits from membership, position, or participation in the organization."

5.) Illinois Code of Judicial Conduct, no reference to invidious discrimination or religion. The Illinois Code of Conduct for Administrative Law Judges does contain mention of invidious discrimination (similar in context to the ABA judicial model), but in both instances, the Codes as presently enacted are materially different from the model code. Louisiana Code of Judicial Conduct, Canon 3, "C. A judge shall not hold membership in any organization that arbitrarily excludes from membership, on the basis of race,

religion, sex or national origin, any persons who would otherwise be admitted to membership. The term "organization" shall not include, however, an association of individuals dedicated to the preservation of religious, ethnic, historical or cultural values of legitimate common interest to its members; or an intimate, distinctly private association of persons whose membership limitations would be entitled to constitutional protection." Religion Comment: None. Note: This Canon is included here as a good faith attempt to put religion on the same footing as other beliefs.

6.) Mississippi Code of Judicial Conduct, Canon 2, Rule 2: "C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion or national origin." Religion Comment: None

7.) New Jersey Code of Judicial Conduct, Canon 5, Rule 5.3: "(A) A judge shall not hold membership in any organization that practices invidious discrimination on any of the bases prohibited by Rule 3.6(A)." Rule 3.6(A): "(A) A judge shall be impartial and shall not discriminate because of race, creed, color, sex, gender identity or expression, religion/religious practices or observances, national origin/nationality, ancestry, language, ethnicity, disability or perceived disability, atypical hereditary cellular or blood trait, genetic information, status as a veteran or disabled veteran of, or liability for service in, the Armed Forces of the United States, age, affectional or sexual orientation, marital status, civil union status, domestic partnership status, socioeconomic status or political affiliation. " Religion Comment: None. Note: This Canon is included here as a good faith attempt to put religion on the same footing as other beliefs.

New York, Rules of the Chief Administrative Judge, Part 100, Rule 100.2, ""(D) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of age, race, creed, color, sex, sexual orientation, gender identity, gender expression, religion, national origin, disability or marital status. This provision does not prohibit a judge from holding membership in an organization that is dedicated to the preservation of religious, ethnic, cultural or other values of legitimate common interest to its members." Religion Comment: None. Note: This Canon is included here as a good faith attempt to put religion on the same footing as other beliefs.

8.) North Carolina, Code of Judicial Conduct, Canon 2, "C. A judge should not hold membership in any organization that practices unlawful discrimination on the basis of race, gender, religion or national origin." Religion Comment: None.

9.) Oregon Code of Judicial Conduct, Rule 4.4: "(A) A judge shall not hold membership in an organization that the judge knows or should know is a discriminatory organization." Religion Comment: None. In Rule 1.3, 'Discriminatory organization' is defined as: "An organization that, as a policy or practice and contrary to applicable federal or state law, treats persons less favorably in granting membership privileges, allowing participation, or providing services on the basis of sex, gender identity, race, national origin, ethnicity, religion, sexual orientation, marital status, disability, or age." Note: This Canon is included here as a good faith attempt to put religion on the same footing as other beliefs.

10.) South Carolina Code of Judicial Conduct, Rule 501, Canon 2: "A judge shall not hold membership in any organization that practices invidious discrimination on the basis of

race, sex, religion or national origin."; Religion Comment: "Organizations dedicated to the preservation of religious, fraternal, sororal, spiritual, charitable, civic, or cultural values, which do not stigmatize any excluded persons as inferior and therefore unworthy of membership, are not considered to discriminate invidiously." Note: This Canon is included here as a good faith attempt to put religion on the same footing as other beliefs.

11.) South Dakota Code of Judicial Conduct; Canon 2: "(C) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin."; Religion Comment: "Organizations dedicated to the preservation of religious, fraternal, sororal, spiritual, charitable, civic, or cultural values, which do not stigmatize any excluded persons as inferior and therefore unworthy of membership, are not considered to discriminate invidiously." Note: This Canon is included here as a good faith attempt to put religion on the same footing as other beliefs.

12.) Texas Code of Judicial Conduct, Canon 2: " C. A judge shall not knowingly hold membership in any organization that practices discrimination prohibited by law." Religion Comment: None.

14.) Vermont Code of Judicial Conduct, Canon 2: "C. A judge shall not hold membership in any organization that, in the selection of members, practices invidious discrimination on the basis of race, sex, sexual orientation, religion, or national origin. . . ." Religion Comment: None.

TABLE C:
STATES ADOPTING MODEL CODE OF JUDICIAL CONDUCT WITH RELIGION TERM INCORPORATED INTO CANON

1.) California Code of Judicial Ethics, Canon 2, 2(C): "A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, or sexual orientation. [¶] This canon does not apply to membership in a religious organization." Note: The ABA qualifier "lawful exercise" is omitted.

2.) Iowa Code of Judicial Conduct; Rule 51:3.6: "(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation. A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not prohibited." Note: The ABA comment 4 is incorporated into the rule.

3.) Utah Code of Judicial Conduct: Rule 3.6: "(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation. A judges membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule." Note: The ABA comment 4 is incorporated into the rule.

COMMENTARY:

It is not clear what significance to give the difference between the Table A, B and C versions of the Model Code. One point is that the impact of the Religion Exception is lesser and more susceptible to interpretation or 'harmonization' with the Constitution where it is merely a 'comment' or guide to interpretation, albeit in an official comment, in the 'Table A' version. A reproach to uniformity is that incorporation of the religion

exception into the body of the Canon in the 'Table C' versions elevates the exception to the same level with the same force as the Canon itself, making it a mandatory qualification of or limitation to the Canon, and less susceptible to interpretation or declination that would harmonize it with the Constitution.

In this context, the virtue of the ' Table B' versions that omit a religion exception (in common with the federal version) is that the Canon is readily harmonized and interpreted in a manner consistent with the Constitution, without necessity of 'striking down' any provision or amendment of the Canon that offends the Constitution.

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Docket: _____

in forma pauperis

IN THE SUPREME COURT OF THE UNITED STATES

Carol Garrard, Robert Richardson,
Petitioners,
vs.
Gavin Newsom, Governor of the State of California, Xavier Becerra, Attorney General of the State of California, sued in their official capacity; ETAL.

PETITION FOR A WRIT OF CERTIORARI

to the Ninth Circuit Court of Appeals
Case No. 20-16511
Date of Final Decision August 24, 2021

APPENDIX 2

EXHIBIT 1
ORDER DENYING REHEARING

EXHIBIT 2
DECISION OF COURT OF APPEALS

EXHIBIT 3
DSITRICT COURT ORDER OF DISMISSAL

EXHIBIT 4
MAGISTRATE'S ORDER AND RECOMMENDATION

EXHIBIT 5
PLAINTIFF'S FRCP 72/73 MOTION

EXHIBIT 6
FIRST AMENDED COMPLAINT

FILED

AUG 24 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CAROL GARRARD; ROBERT RICHARDSON,

Plaintiffs-Appellants,

v.

GAVIN NEWSOM; et al.,

Defendants-Appellees.

No. 20-16511

D.C. No. 3:20-cv-04706-CRB
Northern District of California,
San Francisco

ORDER

Before: CANBY, FRIEDLAND, and VANDYKE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Appellants' petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 15) are denied.

NOT FOR PUBLICATION

FILED

MAY 27 2021

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CAROL GARRARD; ROBERT RICHARDSON, Plaintiffs-Appellants, v. GAVIN NEWSOM; et al., Defendants-Appellees.	No. 20-16511 D.C. No. 3:20-cv-04706-CRB MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Charles R. Breyer, District Judge, Presiding

Submitted May 18, 2021**

Before: CANBY, FRIEDLAND, and VANDYKE, Circuit Judges.

Carol Garrard and Robert Richardson appeal from the district court's judgment dismissing their 42 U.S.C. § 1983 action alleging that a California state judicial ethics canon violates their rights under the First and Fourteenth Amendments. We have jurisdiction under 28 U.S.C. § 1291. We review de novo.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012) (dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii)); *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1249 (9th Cir. 2007) (dismissal for lack of standing). We affirm.

The district court properly dismissed plaintiffs' claims because plaintiffs failed to allege facts sufficient to establish an injury-in-fact as required for Article III standing. *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992) (constitutional standing requires an "injury in fact," which refers to "an invasion of a legally protected interest which is (a) concrete and particularized . . . and (b) actual or imminent, not conjectural or hypothetical" (citation and internal quotation marks omitted)).

We reject as meritless plaintiffs' contention that 28 U.S.C. § 1915(e)(2)(B)(ii) is unconstitutional.

Contrary to plaintiffs' contention, the reassignment of the case to the district judge mooted any arguments plaintiffs may have had in favor of the magistrate judge's recusal.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Plaintiffs' motions to take judicial notice and file a supplemental brief are granted. The Clerk will file the supplemental brief submitted at Docket Entry

No. 12.

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

CAROL GARRARD, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. 20-cv-04706-CRB

ORDER ADOPTING REPORT AND RECOMMENDATION, DISMISSING CASE WITH PREJUDICE

The Court has reviewed Magistrate Judge Kim's Report and Recommendation (dkt. 13), as well as the document that Plaintiffs Carol Garrard and Robert Richardson recently filed, objecting to the Report and Recommendation's conclusion that this case should be dismissed, see Notice of ex parte Motion to Chief Judge for Review and Modification of Magistrate's Orders and Recommendation for Dismissal ("Ex Parte Notice") (dkt. 14). Plaintiffs claim that they are entitled to relief under 42 U.S.C. § 1983, based on an unconstitutional religion exception to California Canon 2(C), which prohibits judicial membership in organizations that practice invidious discrimination. Id. at 3.

Plaintiffs have failed to address the deficiencies that the Report and Recommendation identified: lack of federal jurisdiction and a failure to establish standing to seek relief under 42 U.S.C. § 1983. See Ex Parte Notice; see also Report and Recommendation at 3–4; FAC (dkt. 11). Instead, Plaintiffs argue that (1) they were not required to allege injury in fact to assert their § 1983 claim; (2) Magistrate Judge Kim should have been recused; and (3) the application of 28 U.S.C. § 1915 by Magistrate Judge Kim was unconstitutional. Ex Parte Notice at 4–11. For the reasons set forth below, these arguments fail.

The cases Plaintiffs cite in favor of their argument that they were not required to allege injury in fact to assert their § 1983 claim are inapt. Liljeberg v. Health Services Acquisition Corp. involves a federal judge's failure to recuse himself and therefore does not apply to Plaintiffs' challenge to a state law. See 486 U.S. 847, 855, 857 (1988). While Caperton v. A.T. Massey Coal Co., Inc. does involve a justice of the Supreme Court of Appeals of West Virginia, the plaintiffs in that case did not bring a § 1983 claim in federal district court. See 556 U.S. 868, 873–74, 876 (2009). Further, the plaintiffs in that case did allege an injury in fact because a jury verdict in their favor was reversed. See id. at 872. Plaintiffs in this case have not alleged such an injury.

Any arguments that Plaintiffs may have had in favor of Magistrate Judge Kim's recusal are mooted by the assignment of the case to this Court.

Finally, 28 U.S.C. § 1915 directs a court to dismiss a case in forma pauperis if the action "fails to state a claim on which relief may be granted." 28 U.S.C. § 1915(e)(2)(B)(ii). That Plaintiffs are represented by counsel and that their "complaint was not amateurish, hand written, incoherent mishmash," see Ex Parte Notice at 7, is irrelevant to whether a claim is stated. The Court rejects plaintiffs' argument, which is unsupported by any authority, that screening in forma pauperis claims amounts to institutional racism because the statute applies chiefly to low income plaintiffs who are disproportionately people of color. See id. The in forma pauperis statute applies the same substantive standard that is applicable to all other claims. See 28 U.S.C. § 1915(e)(2)(B)(ii). Plaintiffs' claims are subject to dismissal because they have failed to meet that pleading standard. They have not been disadvantaged due to their membership in any protected category.

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Thus, the Court finds the Report and Recommendation correct, well-reasoned, and thorough, and ADOPTS it in every respect. The Court DISMISSES the First Amended Complaint with prejudice.

IT IS SO ORDERED.

Dated: August 6, 2020

CHARLES R. BREYER
United States District Judge

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CAROL GARRARD, et al.,

Plaintiffs,

v.

GAVIN NEWSOM, et al.,

Defendants.

Case No. 20-cv-04706-SK

ORDER TO REASSIGN AND REPORT AND RECOMMENDATION FOR DISMISSAL

Regarding Docket No. 11

Plaintiffs Carol Garrard and Robert Richardson ("Plaintiffs") filed a complaint and two applications to proceed *in forma pauperis* on July 14, 2020. (Dkts. 1, 2, 3.) The Court issued a screening order granting the applications but ordering a hold on the service of the complaint. (Dkt. 7.) The Court reviewed the complaint and found that it fails to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915(e). The Court gave Plaintiffs permission to file an amended complaint by September 1, 2020, instructing that the amended complaint should address and correct the deficiencies described in the Court's screening order. (Dkt. 7.) On July 28, 2020, Plaintiffs filed their first amended complaint ("FAC"). (Dkt. 11.) Plaintiffs simultaneously filed a document styled an "*Ex Parte* Motion for Disqualification of Magistrate Sally [sic] Kim." (Dkt. 12.) For the reasons set forth below, the Court HEREBY ORDERS that this matter be reassigned to a District Judge and RECOMMENDS that this matter be dismissed. The Court simultaneously DENIES Plaintiffs' "motion for disqualification" as MOOT.

A. Background.

Plaintiffs' FAC rehashes the contents of Plaintiffs' original complaint. Plaintiffs allege that Plaintiffs are also plaintiffs in a civil lawsuit currently pending before the Superior Court for Monterey County, Case No. 16-cv-002776. (Dkts. 1 ¶ 9; 11 ¶ 11.) The judge in that action is Marla O. Anderson ("Anderson"). (*Id.*) Plaintiffs allege that Anderson is a member of the

Seventh Day Adventists, a Christian religious organization. (*Id.*) Plaintiffs allege that the Seventh Day Adventists practice "invidious discrimination." (*Id.*)

Simultaneously, Plaintiffs note that California has adopted the American Bar Association Model Code of Judicial Conduct as the California Code of Judicial Ethics. (Dkts. 1; 11.) Plaintiffs observe that California Code of Judicial Ethics Canon 2(C) ("Canon 2(C)") provides that "[a] judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation." (*Id.*) Plaintiffs also note that Canon 2(C) excepts religious organizations explicitly: "This canon does not apply to membership in a religious organization." (*Id.*) Plaintiffs contend that, because Anderson is a member of the Seventh Day Adventist religious organization, she holds invidious discriminatory beliefs and would therefore be disqualified from serving as a judge but for the exception for religious organizations provided in Canon 2(C). (Dkt. 1 ¶ 9; Dkt. 11 ¶¶ 16-17.) Plaintiffs therefore conclude that Canon 2(C) violates their constitutional rights. (Dkts. 1, 11.) Plaintiffs claim that Canon 2(C) violates their right to due process by denying them the opportunity to adjudicate their case before an impartial judge. (Dkt 1. ¶¶ 19-20; Dkt. 11 ¶¶ 21-22.) Plaintiffs contend that Canon 2(C) violates the establishment clause of the First Amendment. (Dkt 1. ¶¶ 21-22; Dkt. 11 ¶¶ 23-24.) Plaintiffs claim that Canon 2(C) violates the equal protection clause of the Fourteenth Amendment. (Dkt 1. ¶¶ 23-25; Dkt. 11 ¶¶ 25-27.) Finally, pursuant to 42 U.S.C. § 1983, Plaintiffs allege that Defendants, acting under color of state law, employ Canon 2(C) to deprive them of their constitutional rights. (Dkt 1. ¶¶ 26-27; Dkt. 11 ¶¶ 28-29.)

Plaintiffs state that they have been irreparably harmed by Canon 2(C) because it enables Anderson to place "god's law" over state and federal law. (Dkt. 1 ¶ 29; Dkt. 11 ¶ 31.) Plaintiffs allege that in having Anderson as judge of their case, they are "being forced to appear before a judicial officer who identifies the United States with the evil 'anti-christ' of Christian belief, believes in the violent overthrow of the United States by a theocratic state, and thereby is not unequivocally committed to uphold and defend the Constitution of the United States." (Dkt 1. ¶ 30; Dkt. 11 ¶¶ 31-32.)

B. Jurisdiction.

Federal courts are courts of limited jurisdiction, and a "federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears." *Stock W., Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citations omitted). Generally, original federal jurisdiction is premised on federal question jurisdiction or diversity jurisdiction. Here, Plaintiffs do not sufficiently assert a violation of federal law or diversity jurisdiction.

As stated in the Court's screening order, the Court lacks diversity jurisdiction over this action. Diversity jurisdiction exists where the two parties to the lawsuit are residents of different states and the amount in controversy is over $75,000. 28 U.S.C. § 1332. "When federal subject matter jurisdiction is predicated on diversity of citizenship, complete diversity must exist between opposing parties." *Equity Growth Asset v. Holden*, No. C 19-01505 JSW, 2019 WL 2180202, at *2 (N.D. Cal. Apr. 16, 2019) (citing *Iowen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373-74 (1978)). This means that no defendant may be a resident of the same state as any plaintiff for diversity to exist. Here, Plaintiffs allege that both they and Defendants are California residents. (Dkt. 1 ¶¶ 1-4.) Because both Plaintiffs and Defendants are residents of California, complete diversity does not exist between the parties. Diversity jurisdiction therefore does not lie over this action.

The Court also lacks federal question jurisdiction over this matter. "The presence or absence of federal question jurisdiction is governed by the 'well-pleaded complaint rule.'" *Caterpillar Inc. v. Williams*, 482 U.S. 382, 392 (1987). Under the well-pleaded complaint rule, federal question jurisdiction arises where the "complaint establishes either that federal law creates the cause of action or that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S. California*, 463 U.S. 1, 27-28 (1983). Here, federal question jurisdiction does not exist because Plaintiffs' complaint does not adequately state a federal claim, as described below.

C. Federal Claims.

In its screening order, the Court found that Plaintiffs have not established the standing

necessary to state a federal claim for relief.

Federal Rule of Civil Procedure 8(a)(2) requires "a short and plain statement of the claim showing that the pleader is entitled to relief." To comport with Rule 8, "[s]pecific facts are not necessary; the statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus,* 551 U.S. 89, 93 (2007) (citations omitted). While a complaint need not provide detailed factual allegations, it is "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief.'" *Bell v. Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007) (citations omitted). Plaintiff must provide more than assert "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* Rather, the plaintiff must provide sufficient factual allegations "to state a claim to relief that is plausible on its face." *Id.* at 570. In order to establish standing to be heard, a plaintiff must have suffered "injury in fact." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). To establish injury in fact, the plaintiff must allege concrete and particularized harm that is not merely speculative, may be traced to conduct of the defendant, and can be redressed by the court. *Id.*

In its screening order, the Court instructed Plaintiffs that they had not pled specific facts establishing the concrete and particularized injury in fact necessary to bring suit. Plaintiffs did not add a single allegation showing injury to support their standing to bring suit to the FAC. As was true in the original complaint, Plaintiffs provide only conclusory allegations that the existence of a certain provision of California law violates their constitutional rights. They assert that the California judge overseeing their case in the Superior Court is unable to be impartial because of her religious affiliation, but they do not allege any facts to the effect that they have actually been discriminated against or that the proceeding has been biased in any way. That Plaintiffs object to a certain provision of California law is not itself grounds for a federal constitutional lawsuit. Nor does such objection establish injury in fact sufficient to confer standing in federal court.

Plaintiffs' FAC fails to establish that Plaintiffs have standing to seek relief. For the reasons set forth above, the Court RECOMMENDS that this action be dismissed. Because the Undersigned lacks the consent from all parties necessary to make a dispositive ruling pursuant to 28 U.S.C. § 636, the Court ORDERS that this matter be reassigned to a District Judge with the

above recommendation. Given that this case will no longer be assigned to the Undersigned, the Court DENIES Plaintiffs' "motion to disqualify" the Undersigned as MOOT.

Any party may serve and file specific written objections to this recommendation within fourteen days after being served with a copy. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b); Civil Local Rule 72-3.

IT IS SO ORDERED.

Dated: August 3, 2020

SALLIE KIM
United States Magistrate Judge

United States District Court
Northern District of California

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Carol Garrard, Robert Richardson, **plaintiffs,** **vs.** **Gavin Newsom, Governor of the State of California, Xavier Becerra, Attorney General of the State of California, sued in their official capacity; Justices of the California Supreme Court: Hon. Tani Gorre Cantil-Sakauye, Hon. Ming W. Chin, Hon. Carol A. Corrigan, Hon. Goodwin H. Liu, Hon. Mariano-Florentino Cuéllar, Hon. Leondra R. Kruger, Hon. Joshua P. Groban, sued in their official capacity as rule makers and supervisory capacity over the California Commission on Judicial Performance, and Members of the California Commission on Judicial Performance: Hon. Michael B. Harper, Dr. Michael A. Moodian, Hon. William S. Dato, Hon. Eduardo "Eddie" De La Riva, Ms. Sarah Kruer Jager, Ms. Kay Cooperman Jue, Hon. Lisa B. Lench, Victor E. Salazar, Esq., Mr. Richard Simpson, sued in their supervisory capacity over the judiciary; Doe-CSC Members 1-3; Doe-CJP Members 1-3; Doe Defendants 1-10,** **defendants.**	**CASE: 3:20-cv-04706-SK** **NOTICE OF ex parte MOTION TO CHIEF JUDGE FOR REVIEW AND MODIFICATION OF MAGISTRATE'S ORDERS AND RECOMMENDATION FOR DISMISSAL** **Hon. Sallie Kim** **28 U.S.C. § 455(a)** **29 U.S.C. § 636(c)** **FRCP 72(a);73(3)** **Federal Canon 2(C)**

MOTION FOR REVIEW AND MODIFICATION OF MAGISTRATE'S ORDERS

This Motion is brought under the authority of Rules 72(a) and 73(3), implementing 28 U.S.C. §636 (c). The case before Magistrate Kim is pending finalization of the complaint after a "Screening Order" order July 24, 2020 (Docket 7; Ex. 2), and the Order (Docket 13) filed this date, before plaintiffs had a chance to file this motion, in part challenging 28 U.S.C. § 1917, applied to all paupers, including plaintiffs, disabled Black Americans, as institutional racism.

Plaintiffs filed two 'Ex Parte' papers objecting to the Screening Order (Ex. 3, 4, Docket 8,9– see Rule 72(a)), because 1) the complaint was well pleaded and stated a cause of action for relief, 2) use of the summary Prison Litigation Reform Act (PLRA) statute where plaintiffs were represented by counsel and there was no obvious reason to dispense with notice and opportunity to be heard, was unwarranted; 3) that the PLRA is unconstitutional as applied to ordinary civil paupers represented by counsel and constitutes a form of institutional racism; [1] and 4) the Magistrate violated 28 U.S.C. § 455 by refusing to make disclosures under Federal Canon 2(C) of the Code of Judicial Ethics. This pleadings is effectively a third objection, to today's Order.

The Magistrate vacated both prior objections (Ex. 5, Docket10) with threats of sanctions, which prompted the filing of a Motion to Disqualify (Ex. 6, Docket 12). Because the Screening Order halted service of process, and there are no voluntary appearances, all proceedings so far

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[1] *Inter alia* it impacts Black Americans and other minorities of color disparately because so many are poor and within the class most likely to file as paupers. Nationally 20.8% of blacks live below the poverty line. 68% of black children graduate high school nationally, dropping 32% onto the 'fast track' to poverty before they can vote, because 52.% of all persons who fail to graduate stay poor. Focusing just on black citizens in California, 20.2% live below the poverty line but 28.6% of black children live in poverty. Sources: kidsdata.org (Packard Foundation); Wimer, et al, *Trends in California Poverty: 2011-2014* (Stanford Center on Poverty and Inequality 2018); https://www.povertyusa.org/; and www.governing.com (high school graduation rates). Hispanic statistics are similar. Note the consensus is 'the math' tells a story missing debilitating 'parts' such as the effect of sustained low income on mental health, divorce rates, and child health. A chapter in the " rest of the story" is the undeserved 'stigma' or *prejudicial disdain* toward the poor. See, e.g., Ex. 7. A variant of prejudicial disdain is behind the unmerited assumption poor people file more 'flaky' § 1983 complaints inherent in 28 U.S.C. § 1917, than anyone with $350 handy, an absurd and irrational presumption.

are *ex parte*. The Magistrate has now filed an Order for Reassignment, mooting parts of the following, except for the request for venue in Oakland, CA. However, plaintiffs contend Rule 72 and the right to review of the Magistrate's actions is not moot, since the latest Order (docket 13) presumably is within Rule 72. No objection is made to the reassignment however.

I. THE COMPLAINT AS FIRST FILED STATED A CAUSE OF ACTION

The original complaint (and subsequent amended version) amply stated a cause of action for prospective relief under § 1983, based on an unconstitutional religion exception to the California state Canon 2(C) ethical proscription against judicial membership in organizations that practice invidious discrimination, which is similar to federal Canon 2(C), wherein both are modeled on the American Bar Association model canons promulgated in the 1990's. The difference is there is no religion exception in the federal Canon.

The complaint alleges in significant detail a long running state real property lawsuit was assigned to a state judge who belongs to the Seventh Day Adventist religious organization, which practices invidious discrimination, and but for the religion exception to the state Canon 2(C), would 'automatically' have been disqualified from presiding. The judge's membership was not disclosed at any time and instead was discovered only after an interlocutory appeal was pending; the state case is still pre-trial.

This federal action was brought for a determination and declaratory relief *inter alia* whether the state religion exception constitutes an establishment of religion or otherwise violates plaintiffs 1st, 5th and 14th Amendment rights (summarizing for brevity) on the grounds *inter alia*: the religion exception of the state Canon is a "door in the wall of separation of church and state" which lacks a rational basis because religious discrimination is no less pernicious to the victim than secular discrimination of the same kind or quantity and the exception amounts to a governmental endorsement of judicial bigotry so long as a colorable claim the invidious discrimination is based on religion can be made. The example alleged, with references to verses in the Christian Bible Old Testament making slavery lawful under the (ancient) Torah, a member of an organization whose symbol is a flaming cross could claim the religion exception under the

Canon. A more 'pastoral' example, although not alleged in the complaint, that better illustrates the scope of the religion exception and implication for the lack of an exception to the federal Canon, is the very widely held tenet, across a broad spectrum of religious sects common in the United States, that only men can be appointed to positions of leadership. The latter needless to say, is today regarded as invidious discrimination on the basis of sex. Thus the complaint below alleges that, but for the state religion exception, the state judge was disqualified by membership in an organization practicing invidious discrimination since all Adventist pastors are men.

Despite a well pleaded case for a declaration (one way or the other) whether the religion exception is constitutional or not, the Magistrate ruled as follows:

> "Here, Plaintiffs provide only conclusory allegations that the existence of a certain provision of California law violates their constitutional rights. They assert that the California judge overseeing their case in the Superior Court is unable to be impartial because of her religious affiliation, but *they do not allege any facts to the effect that they have actually been discriminated against or that the proceeding has been biased in any way*. That Plaintiffs object to a certain provision of California law is not itself grounds for a federal constitutional lawsuit. Nor does such objection establish injury in fact sufficient to confer standing in federal court. " (Emphasis added.)

This is not a § 1983 tort case for damages for police brutality lacking an allegation of physical injury nor a 'rigged bidding' case against a municipality over vehicle towing fines lacking an allegation of financial loss, or something similar. The Magistrate's comments show a conceptual error behind the Screening Order. That is, the foregoing statement assumes a direct injury must be shown for a due process violation to occur. That is not the law nor the case alleged under the Civil Rights Act.

This case is about the appearance of impropriety as well as the oppressive effects of being obliged to appear before a judge who secretly held invidious religious beliefs. The Screening Order noted that. "Plaintiffs claim that Canon 2(C) violates their right to due process by denying them the opportunity to adjudicate their case before an impartial judge. " and "Plaintiffs allege that in having Anderson as [state] judge of their case, they are "being forced to appear before a judicial officer who identifies the United States with the evil 'anti-christ' of

Christian belief, believes in the violent overthrow of the United States by a theocratic state, and thereby is not unequivocally committed to uphold and defend the Constitution of the United States." This summary is essentially correct.

But the statement, " Plaintiffs state that they have been irreparably harmed by Canon 2(C) because it enables [state judge] Anderson to place "god's law" over state and federal law." is not accurate and helps illustrate the conceptual issue. That is, the allegation is not that the Canon permits violating the law; the allegation is oppression by uncertainty what rules are being applied by the state judge, God's law, the teachings of a 19th Century 'prophetess' named Ellen G. White, or applicable state law, because of the Adventist's tenet they must put God's law first if it conflicts with 'man's law.' The latter is an allegation of the appearance of or actuality of impropriety in the courtroom both by non-disclosure and practical reality– that is, assuming the state judge 'faithfully' adheres to her sect's tenets and applies God's law as Adventists see it.

Within a day after receiving the Screening Order plaintiffs attempted to point out this error in Ex. 3, with analysis of *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988), which held:

> "The goal of section 455(a) is to avoid even the appearance of partiality. If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then *an appearance of partiality is created even though no actual partiality exists.*"

The idea was to bring to the court's attention the concept that Canon 2(C) prohibits membership in organizations that practice invidious discrimination, which is a form of status, and attempted to show by reference to *Liljeberg*, how membership could be a conflict by discussing *Liljeberg*'s facts, that because the judge there was a member of a board of trustees of a medical entity, an appearance of impropriety and conflict existed regardless of the judge's protests there had been no partiality shown in the proceedings. In other words, the error by the Magistrate was to assume plaintiffs' burden of proof went beyond the appearance of impropriety derived from proof of status creating impropriety (which is clearly and amply alleged in the

complaint), and adding a burden to prove some kind of 'overt act' of bias or prejudice, before the appearance of impropriety could exist. That's not the law nor meaning of either the federal or state Canon 2(C) in issue. And that is likely the way it has to be; given judicial immunity, it is unlikely there is any redress for an 'overt act' of bias, added to the inherent difficulty of proving a state of mind. *E.g.*, beyond judges' hiding bigoted mentation, even serial killers are able to kill serially because they learn to appear normal day to day, even to co-workers and family, in some cases 'keeping up appearances' over a period twenty years or more.

In the federal system, the goal of section 455(a) is to avoid even the appearance of partiality and the standard under § 455(a) is whether a reasonable person with knowledge of all the facts would conclude that the judge's impartiality might reasonably be questioned. *Clemens v. U.S. Dist. Ct.*, 428 F.3d 1175, 1178 (9th Cir.2005). Under this standard and Canon 2(C), there is no requirement of proof of overt bias, just proof of the status that confers a conflict of interest. Both state and federal Canon 2(C), present a form of 'automatic' disqualification based on the status of belonging to an organization that practices invidious discrimination.

That brings this to the point: Magistrate Kim's dicta in her Screening Order is not actually pertinent to the federal question issue– because *prima facie* a federal question is presented under the 1st, 5th and 14th Amendments, clearly alleged in the complaint.

Instead Magistrate Kim actually based her ruling on a finding of lack of standing or ripeness or accrual of a claim, sufficient to give standing, inherent in the statement quoted above, " they do not allege any facts to the effect that they have actually been discriminated against or that the proceeding has been biased in any way." It is this statement that evidences a fundamental conceptual error on the part of Magistrate Kim, in that the very fact of 'invidious membership' *IS* the due process violation and the fact the state case has been ongoing for two years before the compromised state judge, *IS* an actual and ongoing form of discrimination. That is, Judge Kim's dicta shows she does not understand the principle of the appearance of impropriety and prophylactic purpose of either the state or federal version of Canon 2(C).

To articulate the issue again by analogy to controlling precedent, in the two leading cases on this issue, *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988) and *Caperton v. A. T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009), the judge in issue and his advocates contended that even though the judge had a 'technical' or 'abstract' conflict, there was no evidence that the judge had committed any overt act of partiality during the federal (*Liljeberg*) or state (*Caperton*) legal proceedings. But because the issue was the appearance of impropriety, and in each case the judge had a form of status that constituted a conflict of interest, reversal and retroactive vacatur was required, despite a final judgment

II. THE STATUTE RELIED ON BY THE MAGISTRATE FOR ENGAGING IN A SUA SPONTE PROCEDURE IS A FORM OF INSTITUTIONAL RACISM AND UNCONSTITUTIONAL

The magistrate invoked 28 U.S.C. §1915 as the basis for proceeding sua sponte without notice or opportunity to be heard before entering her Screening Order, even though the paupers are represented by counsel. The complaint was not an amateurish, hand written, incoherent mishmash invoking § 1983 that the Prison Litigation Reform Act was intended to address, that 'earns' the penalty of a 'screening' process that permits judicial determinations on the merits without prior notice and opportunity to be heard, and that § 1917 is intended to discourage, by creating a 'free filing' penalty. *Jones v. Bock, Warden, et al.*, 549 U.S. 199, 214-215 (2007); see E x. 6, § 455 Motion, p. 1-2, *and authorities cited.*

Whatever justification obtains against prisoners whose civil rights are compromised, the application of the § 1915 rules against an ordinary civil action pauper is unconstitutional by putting a price on due process (i.e., $350), and this *pauper's penalty* is institutional racism which falls disproportionately on citizens of color, who despite the prosperity of this nation overall, remain the citizens most likely to have to file as paupers. Fn. 1 *supra*. Plaintiffs are within that category and ironically, if they paid, would be 'recycling' part of a disability benefit payment.

Notably the due process pauper's penalty originated in an era long before modern concepts of minimum due process, high literacy rates or even typed pleadings. The 1892 statute

permitted a summary dismissal only if a pauper complaint was "frivolous or malicious.". *See* Feldman, S. M., *Indigents in the Federal Courts: The in Forma Pauperis Statute -Equality and Frivolity*, fn. 4, *and accompanying text* (54:3 Fordham LR 1985). The PLRA actually increased the pauper's penalty by lowering the standard for dismissal by adding failure to state a claim to the statute. Magistrate Kim relied on the latter standard. The change was in part a response to *Neitzke v. Williams*, 490 U.S. 319, 320, 328-329 (1989), but it hardly equalizes the due process afforded paupers with those who easily afford, nor even 'scrounge up,' $350 for a filing fee.

However Rule 12(b)(6) remains the standard for determining whether a § 1983 action states a claim, including the presumption all well pleaded facts are true unless 'baseless, fantastic or delusional' allegations are refutable by judicial notice. See *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992). The latter is not this case, arising from a long running real property dispute in state court involving a state judge who does in fact belong to an organization practicing invidious discrimination (as alleged in Ex. 1 and amply supported by attached exhibits), and who did fail to disclose her membership in the state action despite state Canon 2(C), which indisputably contains a religion exception upon which the constitutional issues rest.

III. THE COMPLAINT WAS AMENDED TO ALLEGE STANDING UNDER A SEPARATE SUB-CAPTION BUT ALL OTHER ALLEGATIONS WERE CARRIED FORWARD FOR THE REASONS ADDUCED IN PART I

In order to best protect the interests of plaintiffs, in an excess of caution, given the opportunity to amend and given the general rule exhaustion of available remedies must precede extraordinary relief (i.e., such as a writ), an amended complaint was filed, adding an express allegation of standing, but carrying forward all other allegations unchanged. Standing was already alleged but given the Magistrate's ruling on 'overt acts' (which plaintiffs regard as in error as adduced in Part I), and threats of sanctions and striking the objections, which indicated unwillingness to address the issues raised, it appeared prudent to file. However it was filed the same day as the § 455 motion, since the issue of conflict and impropriety was unresolved and the

Magistrate's delay in making disclosure was untimely and should have preceded even the Screeing Order, as discussed following.

IV. THE MAGISTRATE HERSELF HAS VIOLATED CANON 2(C) AND CREATED THE APPEARANCE OF IMPROPRIETY BY NOT MAKING DISCLOSURE UPON ASSIGNMENT AND AFTERWARD REFUSING TO MAKE DISCLOSURE OF HER MEMBERSHIPS AFTER AN EXPRESS DEMAND BY PLAINTIFFS

In plaintiffs second objection pleading (Ex. 3, Docket 9), plaintiffs objected a second time to proceeding before complying with § 455 and federal Canon 2(C), and made express, enumerated requests for disclosure of Magistrate Kim's 'outside' memberships. In response the Magistrate vacated both objection pleadings (Ex. 4, Docket 10) prompting the filing of a Motion to Disqualify for cause. Ex. 5, Docket 12.

Magistrate Kim had and still has an affirmative duty to comply with Canon 2(C) and make disclosure under 28 U.S.C. § 455(e). *See Bracy v. Gramley*, 520 U.S. 899 (1997) (discovery regarding judicial bias for good cause); and see *Caperton v. A. T. Massey Coal Co., Inc., supra,* 556 U.S. at 16-20 (questions of judicial recusal are regulated primarily by common law, statute, or the professional standards of the bench and bar).

The refusal of Magistrate Kim to timely conduct a conflicts hearing and disclose her organizational memberships, even after an express request, creates an appearance of impropriety under § 455(a). The requests specified in detail the 'need to know' about religious membership in the Seventh Day Adventists (the membership in issue in the state matter) or a similar religious organization. The latter bear on both § 455 (b) as well as (a). That is, membership in a religious organization that is the same as or similar to the organization alleged to practice discrimination would create a direct conflict (instead of status conflict) because a determination the organizations' belief system was invidious might trigger the court's self-interest as a member of the same or a similar organization. (I.e., a typical *pre-millennial* 'Pentecostal' or 'Evangelical' Christian sect would hold many similar protestant tenets as the Seventh Day Adventists.) The idea here is as simple as the following hypothetical: If a judge is a member of a service

organization that excludes men, and in issue is whether a similar organization before the court practices invidious discrimination by excluding men, there would be a direct conflict of interest under § 455 (b), because of the reasonable implication the judge might not be impartial in deciding whether excluding men was invidious. In the same way plaintiffs had and still have a need to know the magistrates' membership in organizations, if any, and not limited to religion, given that under Canon 2(C) any organization of any kind practicing invidious discrimination is implicated, not just religious organizations.

The duty to make disclosure is implicit in the bar to membership, [2] as well as § 455(e), which provides:

> "(e) No justice, judge, or magistrate judge shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted *provided it is preceded by a full disclosure on the record* of the basis for disqualification." (Emphasis added.)

First, this implies a judge disqualified by Canon 2(C) must recuse herself unless a waiver is obtained after disclosure, which means full and complete disclosure required for an informed waiver. Whatever the scope of such disclosure in the 'tension' between Canon 2(C) and the issue of appearance of impropriety under § 455(a), or active conflicts under § 455(b), in this dispute at a minimum it meant prompt, forthright and timely disclosure of religious memberships.

In conclusion of this part, striking plaintiffs' second objection filed with its detailed requests for disclosure amounts to creating an appearance of impropriety and generates the reasonable inference that Magistrate Kim 'has something to hide' in her organizational memberships that would incline her to partiality. Magistrate Kim's original Screening Order was in error, and her following order striking the two objections were error under § 455 and Rule 72.

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[2]The bar to membership of Canon 2(C) is meaningless if the judge can keep memberships secret– an implicit issue in *Liljeberg:* Despite the Court's 'grudging' acceptance of the judge's disclaimers he was unawares of a duty to disclose, vacatur was required without a finding of scienter.

Racism is also alleged under § 455 (b). Plaintiffs further urge the court to determine that the PLRA amendments to 28 U.S.C. § 1915 et seq. are unconstitutional as applied to ordinary, non-prisoner, civil plaintiffs or defendants who appear by counsel based solely on whether they have to appear as paupers or not, as lacking any rational basis for denying a party prior notice and opportunity to be heard before acting on the merits, and is a form of institutional racism disparately affecting an identifiable protected class of persons (i.e., paupers of color where paupers are far more likely to be of color both in California and across the nation). That is, paupers are entitled to the same due process as wealthy litigants, lest the courthouse appear to be even more of a private sporting club where the 'well heeled' go to oppress the 'down-at-heel," than it already does in the mind of the working-class public.

IV. AVAILABLE REMEDIES

Rule 72(a) confers authority on the district court to review the actions of a magistrate after a cause is referred to the magistrate. Thus this matter could be referred back with direction, or the magistrate's error resolved by order, or the magistrate in this instance could be ordered to recuse herself under § 455 if she continues to refuse to make disclosure.

Rule 73(c) authorizes the court to vacate the referral for good cause or where "extraordinary circumstances" exist. Although the 'state a claim' issue over 'overt acts' is a more or less routine issue, the dispute over disclosure under § 455 and issue of institutional racism constitute good cause and extraordinary circumstances in plaintiffs' view.

In the latter regard, counsel points out a significant flaw in the current procedure for referral, that requires a party to elect whether to consent to referral or not 'blind' as to the assigned judge, and before disclosure of any issues that might inhere as a result of criteria relevant under § 455. In other words, Magistrate Kim 'jumped the gun' and 'left the chocks' in haste to 'knock out' plaintiffs' complaint, without first making any disclosures relevant under § 455. The fact that she refused to make disclosure, prompting a § 455 motion, 'dramatizes' the point, whether the criteria fall under Canon 2(C) or § 455 (a) generally. That is, keeping a 'blind' litigant 'in the dark' so to speak, exacerbates the procedural 'anomaly' extant in the

procedure for magistrate assignments where litigants are asked to consent without knowing which magistrate will be assigned.

Plaintiffs remind this court (and Magistrate Kim) a disqualified judge lacks jurisdiction to Act and rulings, orders or judgments by a disqualified judge are void; that is the reason vacatur is the remedy. A conflicts review is no frill; it is basic to due process for that reason. Therefor, the current procedure for soliciting assignment of magistrates, as it existed on filing this action, with no form of conflicts screening, violates due process and presents a form of extraordinary circumstances that justifies vacating the referral in this case, in addition to the foregoing.

As a final point, on the issue of the supposed prevalence of inchoate, delusional allegations in pauper's pleadings vs. 'paying parties,' in the state case an alleged contract addendum was fabricated in 2014 to circumvent the statute of frauds and alleged to exist in 2013, and the 2014 document was given 2013 effect against a 2011 contract, in a form of 'judicial miracle' even after disclosure it was fabricated in 2014. Thus 'baseless, fantastic or delusional' allegations are not limited to the self-help pleadings of schizophrenic federal prisoners in the existing legal system.

Plaintiffs therefor submit that they are entitled to have the magistrate's orders herein stricken, the original complaint reinstated as filed, reassignment to a different judge, preferably given what's happened at the Oakland, CA,, venue, to a conflicts review and a hearing if necessary, before a new judge takes any action on the merits--- and that plaintiffs be henceforth given proper notice and opportunity to be heard before any further determinations of any kind occur on the merits of this action.

Dated: August 3, 2020

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

Carol Garrard, Robert Richardson,

plaintiffs,

vs.

Gavin Newsom, Governor of the State of California, Xavier Becerra, Attorney General of the State of California, sued in their official capacity; Justices of the California Supreme Court: Hon. Tani Gorre Cantil-Sakauye, Hon. Ming W. Chin, Hon. Carol A. Corrigan, Hon. Goodwin H. Liu, Hon. Mariano-Florentino Cuéllar, Hon. Leondra R. Kruger, Hon. Joshua P. Groban, sued in their official capacity as rule makers and supervisory capacity over the California Commission on Judicial Performance, and Members of the California Commission on Judicial Performance: Hon. Michael B. Harper, Dr. Michael A. Moodian, Hon. William S. Dato, Hon. Eduardo "Eddie" De La Riva, Ms. Sarah Kruer Jager, Ms. Kay Cooperman Jue, Hon. Lisa B. Lench, Victor E. Salazar, Esq., Mr. Richard Simpson, sued in their supervisory capacity over the judiciary; Doe-CSC Members 1-3; Doe-CJP Members 1-3; Doe Defendants 1-10,

defendants.

CASE: 3:20-cv-04706-SK

FIRST AMENDED

CIVIL RIGHTS COMPLAINT

FOR DECLARATORY AND INJUNCTIVE RELIEF

42 USC 1983

THEME OF CIVIL RIGHTS COMPLAINT

National Public Policy Against Appearance of Judicial Impropriety

Judicial Bigotry Is Not Ipso Facto *Rendered Proper by the Label of 'Religion'*

> "You must not distort justice; you must not show partiality, and you must not accept bribes for bribes blind the eyes of the wise and subverts the cause of those who are in the right." *New Oxford Annotated Bible*, Deut. 16:19, p. 278 (Oxford 2010)

> "A trial court's appearance of impartiality is significant because the Court performs a unique governmental function--namely, the administration of justice. Trial courts perform this function for all [] citizens and may not discriminate among them." *Superior Court v. Public Employment Relations Bd.,* 30 Cal.App.5th 158, 178 (2018)

California in common with approximately 37 other states, has adopted a version of the American Bar Association Model Code of Judicial Conduct, enacted in California as the Code of Judicial Ethics. In common with the ABA version, Canon 2(C), relating to the "appearance of impropriety" facet of the fair-and-impartial-adjudication component of due process, contains a bar to judicial membership in organizations which practice "invidious discrimination." Also in common with the ABA Model Code, the California statute contains an exception that permits judicial membership in religious organizations that practice invidious discrimination. California Canon 2(C) (last revised in 2017), varies in detail from the ABA model code and provides:

> "A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.
> This canon does not apply to membership in a religious organization."

The ABA religion exception reads:

> " A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule."

The constitutional circularity of the references to 'religion' in the provision and its exception is evident *prima facie* since, as a general matter, most religions teach their beliefs are superior to and thus disparage, in greater or lesser degree, other religious teachings, so that the bar to invidious religious discrimination is effectively negated by the exception for religious

association, excepting perhaps for atheists. [1] Notably, the Federal Code of Judicial Ethics has no such Canon 2(C) 'religion exception.' [2]

More generally, plaintiffs allege and contend that the religion exception to the general bar to judicial membership in organizations practicing invidious discrimination is unconstitutional and discriminatory by favoring religionist beliefs over secularist, humanist, atheist, scientist, communist, etc., belief systems, all of which tend toward moral, ethical and eschatological concerns of their founders and members, and because the 'secular vs. religious' divide puts government in the position of deciding what the distinctions are between a secular organization's bigoted tenets and a religious organization's bigoted tenets, where both organizations contend their tenet is obligatory based on an alleged moral or ethical criterion.

To 'recycle' a metaphor from antecedent state legal proceedings, the religion exception of Canon 2(C) is a 'door' in the 'wall' of separation between religion and the state that lacks any secular or practical purpose. It cannot be justified merely as an accommodation to religion because 'freedom of conscience' must include the right to no belief at all or to 'moral' beliefs and 'values' that a citizen self-identifies with as secularist, humanist, communist, etc., instead of religionist. And the issue of 'labeling' a discriminatory practice as 'religious' as an alleged pretext, obliges one or more judges to evaluate the 'quality' or 'credibility' of the religious beliefs of other judges. To 'recycle' another metaphor, the Christian Roman cross is instantly

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[1] The more verbose ABA version poses additional 'interpretive' issues and a higher risk of entanglement in adjudicating religious tenets, such as choice of law issues between secular vs. canon law, state vs. federal law, and civil vs. penal law in determining what is lawful vs. unlawful religious practice. The human sacrifice scenes from the film *Apocalypto* come to mind in this context, as setting at least one possible parameter. "Shunning" apostates and similar punitive religious practices entail more subtle distinctions in a vast 'middle range' of religious activities that might be alleged to be unlawful.

[2] Federal Code of Conduct for United States Judges, Canon 2(C), *passim*. This may derive from the bar in U.S. Const. Art. VI, clause 3, to a religious test for federal officials. The argument, "No thermometer exists for measuring the heatedness of a religious belief objectively. Either religious belief disqualifies or it does not. Under Article VI it does not." *(Feminist Women's Health Center v. Codispoti*, 69 F. 3d 399, 400 (9th Cir. 1995), Noonan, J.), is weakened by the distinction between appointment of federal officers and how they execute their office. Litigants don't appoint their judges. Thus while "In God we Trust" is the national motto, it is dubious as a sectarian motive for deciding cases.

recognizable as a religious symbol; but a flaming cross is also instantly recognizable in this society. Both symbols have religious overtones, yet the one is associated with invidious discrimination against "the sons of Ham." A colorable claim to the religion exception for membership in an organization associated with the flaming cross symbol could be asserted, based on belief in a scriptural 'curse' of perpetual servitude. *See, e.g.*, Christian Bible (KJV), Old Testament, Book of Genesis verse. 9:18-27 and Book of Joshua verse 7:23. [3]

In the context of this case, the state trial judge in issue is a member of the Seventh Day Adventist Protestant denomination. The 28 Fundamental Beliefs all Adventists are required to adopt before becoming baptized members include *inter alia* bans on gay sex, gay marriage, abortion, and other lifestyle choices which is generally regarded as invidious discrimination. The Adventists are also hostile to beliefs of other Christian denominations that, contrary to Adventist "Saturday Sabbath" belief, worship on Sunday. The Adventists are also overtly anti-Catholic and include a 'belief' the papacy is allied with or constitutes the evil "anti-christ" of Christianity.

The Adventists believe the United States constitutes part of the evil "anti-christ" and must be overthrown in a violent confrontation in which, *inter alia*, all Sunday worshiping 'pagans' will be annihilated and cast into a "lake of fire." Generally, these Adventist beliefs and tenets are derived from the writings of a woman named Ellen G. White, 1827-1915.

Adventists believe White received visions directly from God. White's writings allegedly inspired by her visions were then, and have been since the 19th Century, controversial. White was raised in the Methodist faith as were other founding members, who organized as Seventh Day Adventists after being expelled from the Methodist denomination in the wake of the failed Millerite prophesy the

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[3]Plaintiffs and all other members of the Richardson family are sons and daughters of Ham; that is, Black Americans. Slavery was a Hebrew 'peculiar institution' permitted by Scripture. *E.g.,* Lev. 25:44-46; Deut. 15:12-18. War captives were treated as booty (Deut. 20:10-15); the Old Testament permits sexual exploitation of female captives. Deut. 21:10-14. *See* http://www.jewishencyclopedia.com/ "slavery." In the modern era, Israel is a parliamentary democracy with statutory human rights guarantees. But, in common with several nations in the Near East, human trafficking is an issue for Israel. See https://www.state.gov/wp-content/uploads/2019/06/2019-Trafficking-in-Persons-Report, pdf, p. 253-256. The Richardson family and their counsel regard themselves as equal brothers and sisters in Christ under the New Covenant, freed from the 'OT' Torah. *See e.g.*, Matt. 12:1-8; Mark 2:23-27. Acts 10:11-15.

"second coming" would occur in 1844, during the ante-bellum Great Awakening (aka "Frontier-Revivalist") movement in U.S.A.. American Methodists, after John Wesley, attain to 25 Articles of Religion on which the Adventists' 28 Fundamental Beliefs are based, in concept at least. The idea the Pope is the anti-christ comes directly from John Wesley's Bible Commentary- and sundry other Reformation propagandists. The 'technical' terms for the Adventists' preaching, common to 19th Century revivalism based on an imminent "second coming," are *pretribulational dispensationalism.* Relevant here, however, is Methodist Article 23, absent from the Adventist 28 Beliefs, which proclaims *loyalty to the United States* and its constitution. [4]

Thus one prime issue raised herein is that if a residential landlord (*Smith v. Fair Employment & Housing Com.*, 12 Cal.4th 1143 (1996)), a baker (*Klein v. Dept. of Labor*, 289 Ore. App. 507 (2017)), or a florist (*State v. Arlene's Flowers, Inc.*, 441 P.3d 1203 (2019)), can be compelled to chose between religious scruples and how they do business, creating a special 'dispensation' for judges' religionist bigotry while in public office is an arrogant, elitist, discreditable, and unconstitutional accommodation, that gives judges a special privilege to engage in religionist bigotry 'on the job' the ordinary citizen cannot obtain, even if that ordinary citizen's religious beliefs are just as closely and fervently held as any judge's religious beliefs.

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[4]The role Adventists' anti-United States beliefs have in attracting 'fellow-travelers' outside U.S.A. where they actively recruit, and are or may become a vector for terrorism, is beyond the scope of this pleading. However, the treatment of the Yazidi's at the hands of Isis in 2014 during the period of its control in Northern Iraq, is a contemporary object lesson in what happens when a constitutional authority is replaced by theocratic rule. *See e.g.*, https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2019/08/report/a-demographic-documentation-of-isiss-attack-on-the-yazidi-village-of-kocho/Cetorelli_Demographic_documentation_ISIS_attack.pdf. An ancient example is the forced conversion of the Idumean Arab tribes of the deserts south of Judea to Judaism 'at the point of the sword' to create a 'buffer state' by John Hyrcanus (one of the Maccabeean war lords); biblical Herod the Great, descended from these *conversos*, rose to power as a Roman *satrap* in an ironic twist. The Massachusetts Bay Colony of the Puritans in the in Colonial era is a familiar example of an oppressive Christian 'dictatorship of the clerics.' The allegation thus is: The 'dictatorship of the clerics' of theocratic states is anti-democratic and antithetic to personal liberty and, as clearly as it is possible to be, unconstitutional regardless of the religionist casuistry offered to justify theocracy. Plaintiffs, while conceding the right of private citizens to hold such beliefs, also allege: A judge who believes in the overthrow of the United States in favor of a theocratic state, is disqualified to preside by equivocating the judicial duty to uphold and defend the Constitution of the United States.

Therefore, in the traditional terminology of constitutional legal analysis, plaintiffs allege the religion exception to Canon 2(C) cannot withstand strict scrutiny under the First Amendment of the United States Constitution because it lacks a rational state purpose unrelated to religion, and because it constitutes an establishment of religion by treating religionist belief and practice more favorably than secular belief and practice, and entangles the courts in deciding a) what the beliefs of a religion are, and in b) interpreting and evaluating such religious beliefs, in distinguishing between secular invidious discrimination and religious invidious discrimination. Therefore, plaintiffs allege the religion exception to California Code of Judicial Ethics Canon 2(C) is unconstitutional under *Stone v. Graham* (1980) 449 U.S. 39, 40-41; *Lemon v. Kurtzman* (1971) 403 U.S. 602, 612-613, and seek declaratory and injunctive relief against further enforcement of said religion exception.

PARTIES

Plaintiffs:

1.. Carol Garrard and Robert Richardson, are brother and sister and individuals with a common interest in a parcel of real property in dispute in a California state court proceeding in which their civil rights have been violated or abrogated or otherwise denied to them, by the actions of the defendants herein identified, and in particular by the unlawful enactment and enforcement the religion exception to California Judicial Canon 2(C), which they contend violates the Constitutional bar to governmental establishment of religion and entanglement in religious beliefs and associations, and chills and suppresses their own liberty interests in religion, guaranteed to them by the United States Constitution.

Defendants:

2 Governor Gavin Newsom is the chief executive officer of the State of California and in his official capacity is charged with the enforcement of the laws of said state generally, and specifically with the duty to enforce and protect the civil rights of the citizens of the State of California guaranteed by the United States Constitution and the Constitution of the State of California. The governor maintains one or more offices within this District.

3. Attorney General Xavier Becerra, is the chief law enforcement officer of the State of California charged with the enforcement of the laws of said state generally and specifically with the duty to enforce and protect the civil rights of the citizens of the State of California guaranteed by the United States Constitution and the Constitution of the State of California. The attorney general maintains one or more offices within this District.

4. The Supreme Court of the State of California, and the justices herein named, are sued in their official capacity as rule makers in promulgating the Canons of Judicial Ethics incorporated into the California Code of Judicial Conduct, pursuant to Cal. Const., art. VI, § 18, subd. (m). The Court is also sued in its policy making, enforcement and supervisory capacity in its authority over its enforcement arm, the California Commission on Judicial Performance, charged with the 'day to day' enforcement of the Code of Judicial Ethics. Said court maintains offices in this District.

A.) As of the filing of this complaint, the justices of the California Supreme Court known to plaintiffs are: Hon. Tani Gorre Cantil-Sakauye, Hon. Ming W. Chin, Hon. Carol A. Corrigan, Hon. Goodwin H. Liu, Hon. Mariano-Florentino Cuéllar, Hon. Leondra R. Kruger, Hon. Joshua P. Groban;

B.) Doe-CSC Members 1-3, are members of the court who may be appointed or elected to serve, or to serve in the stead of any of the foregoing, during the pendency of this action.

__ The California Commission on Judicial Performance, and its members named herein, are sued in their official enforcement capacity as an administrative agent of the said California Supreme Court charged with the authority to enforce the California Code of Judicial Conduct. Said commission maintains one or more offices within this District.

A.) As of the filing of this complaint, the known members of the California Commission on Judicial Performance are: Hon. Michael B. Harper, Dr. Michael A. Moodian, Hon. William S. Dato, Hon. Eduardo "Eddie" De La Riva, Ms. Sarah Kruer Jager, Ms. Kay Cooperman Jue, Hon. Lisa B. Lench, Victor E. Salazar, Esq., Mr. Richard Simpson;

B.) Doe-CJP Members 1-3, are members of the commission who may be or many have been appointed to serve, or to serve in the stead of any of the foregoing, during the pendency of this action.

5. Does 1-10 are persons or entities who may be identified at a later time as a proper party defendant to this action, including necessary or indispensable parties, but who are mis-identified or unknown to plaintiffs at this time, and therefore are named herein as a fictitious party.

JURISDICTION AND VENUE

6. This case raises questions under the Constitution of the United States and 42 U.S.C. § 1983, and thus this Court has jurisdiction over all claims for relief pursuant to 28 U.S.C. § 1331.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because all parties are domiciles of the State of California. Venue is also proper because the state defendants all maintain offices or other facilities in the San Francisco Bay Area, and a substantial part of the events giving rise to the claim occurred in this District, and in that the parcel of real property in dispute in the state legal proceeding in issue is located in this District.

STANDING

8. Plaintiffs allege standing to bring this 42 U.S.C. § 1983 action for declaratory and injunctive relief on the grounds that they are Black American citizens of the United States entitled to the protection of the Civil Rights Acts; that they are parties directly aggrieved by A) religious discrimination by the oppression of being compelled to litigate a pending California state case before a judge who believes in and practices invidious discrimination based on religious beliefs, and B) who believes in the overthrow of the United States by a theocratic power, contrary to the universal judicial obligation to defend and uphold the Constitution of the United States. Plaintiffs are further prejudiced by those beliefs because despite the general bar under California state law to judicial membership in organizations practicing invidious discrimination, similar to Federal Judicial Canon 2(C) that governs this action, there is a religion based exception to the general bar under California law lacking a rational basis and constituting an establishment of religion. They further have been prejudiced and have suffered oppression because

although the state judge had a legal obligation to disclose invidious memberships, disclosure did not occur at all nor in timely manner, and but for the above religious exception said judge would have been disqualified from presiding in the state case because of said membership in an organization practicing invidious discrimination. And as a proximate result there was and has been and will continue to occur the appearance of and ongoing appearance of impropriety in the pending state case, which is in pre-trial phase of litigation.

9. Plaintiffs also allege that, unless said state religion exception is overturned, plaintiffs will continue to sustain oppression of being forced to appear in the state matter before a judge holding beliefs in, and actually practicing, invidious discrimination in an open and public manner. Further as a proximate cause of said religion exception, even if a new judge were assigned to the state case, the same rule would obtain and lead to further oppression because of the fear a judge holding similar invidious membership(s) (whether in secular or religious organizations) would be assigned to the case, and due to lack of enforcement or binding procedure for disclosure, leave the matter unknown but menacing, or a judge who would refuse to make disclosure by invoking the religion exception whether as a pretext or because of a desire to conceal another instance of membership in a religious or other organization practicing invidious discrimination. The foregoing conditions of oppression will continue into the future so long as said religion exception is not declared unconstitutional and enforcement enjoined.

FACTS AND NATURE OF THE CASE

10. This action arising under 42 U.S.C. § 1983 for enforcement of plaintiffs civil rights under the First, Fifth, and Fourteenth Amendments of the United States Constitution seeks the remedy of a declaration that the religion exception of California Judicial Canon 2(C) is unconstitutional and unenforceable, and for a preliminary and permanent injunction against enforcement of the same by the State of California and its officials named herein or any future occupant of those offices. To the extent *vacatur* of the judicial acts of the disqualified state judge is an available remedy in this forum, plaintiffs seek *vacatur nunc pro tunc,* from and after January 1, 2018, of

all judicial acts of the state judge. Plaintiffs also seek to recover all their attorneys' fees, costs, and expenses incurred in this action and any other relief that this Court may order.

11. The present dispute arises from a pending California civil lawsuit in which plaintiffs herein are also plaintiffs. The state trial judge assigned to plaintiffs pending state action, Superior Court for Monterey County California action 16CV002776, is Marla O. Anderson, is a member of the Seventh Day Adventists, a protestant Christian religious association that, pursuant to its 28 Fundamental Beliefs, holds to tenets of invidious discrimination that were not disclosed by the judge upon assignment to plaintiffs' state case in 2018, and her membership in said religious organization practicing invidious discrimination was not discovered by plaintiffs until 2020. See Exhibit 1, 28 Fundamental Beliefs, incorporated by reference. Said beliefs constitute invidious discrimination because no individual who does not comply with the 28 Beliefs can be baptized into the Adventist church or become a minister, elder or other official thereof. But for the religion exception to California Judicial Canon 2(C), said judge would have been disqualified from presiding because of membership in an organization practicing invidious discrimination, and they seek relief under 42 U.S.C. § 1983.

12. As and for an additional ground of relief, the Seventh Day Adventists, based on alleged divine revelations to a founding matriarch, Ellen G. White, in the 19th Century, regards the United States as, or as a constituent part of, the evil "anti-christ" of Christian belief, and are committed to the overthrow of the United States by a one-ruler theocratic state. They further believe that the process of overthrow began in 1844, and is ongoing. Plaintiffs further seek relief under 42 U.S.C. § 1983, and 5th and 14th Amendments of the United States Constitution, for violation of their right to adjudication of their state case by a fair and impartial judge who has taken a sincere and unequivocal oath to protect, defend and uphold the Constitution of the United States as well as the Constitution of the State of California, and to uphold and protect their personal liberties guaranteed thereunder, without religious reservations.

A The Adventists' belief in the overthrow of the United States has in past at least posed a direct and bloody threat to the peace and welfare of the United States. In 1993, leading up to a

notorious, well publicized and televised event known as the Siege of Waco Texas, a sub-group of Seventh Day Adventists lead by an individual calling himself David Koresh, armed themselves with military grade weapons in preparation for the coming Armageddon and overthrow of the United States prophesied by Ellen G. White. The United States Bureau of Alcohol, Tobacco and Firearms (ATF), with the assistance of the Federal Bureau of Investigation and local law enforcement agencies, attempted to disarm Koresh and his Adventist followers. 86 people, including law enforcement and children under age 10, were killed in the resulting stand off, the federal assault on Koresh's "compound" of wooden structures, a series of gun-fights, and "climactic" structural fire of disputed origin. Ironically the ATF operation that resulted in the siege was code named, "Showtime."

B. All Adventists are required to follow the teachings of Ellen G. White by Fundamental Belief # __. This belief system identifying he United States with the 'anti-chritst' and overthrow of the United States is current and being 'preached' (publicized) by church sponsored media, such as, *Adventist Review* on-line article, "The Mark of the Beast," 3/21/2020 (https://www.adventistreview.org/1806-36) ; *Spectrum Magazine* on-line article, "America and The Two Horned Beast of Revelation 13," 3/25/2020 (https://spectrummagazine.org/journal/archive); A.L. Duncan and E.G. White, *America, the Papacy and The Signs of the Times,* Ch. 7, 9, *passim* (Advent Truth Ministries 2015 [Kindle ed.]); and see Ellen G. White, *The Great Controversy: Global War on Freedom* (Pacific Press 2002 [a reprint of an 1888 edition, originally titled *The Great Controversy between Christ and Satan*]), the latter two writings published with garish, politicized propaganda covers. See Exhibits 2, 3 attached hereto and incorporated by reference.

C. The Adventists believe, based on other teachings of Ellen G. White, that the laws of God have precedence over the laws of 'mere' men, and therefore in the instance of a conflict an Adventist must follow God's law and abjure the law of man contrary to God's Word..

D. The Adventists believe that the Roman Catholic papacy is 'anti-Christ' and that Catholics and all mainstream Protestant denominations who worship on Sunday, as allegedly

decreed by pagan Romans, instead of Saturday under the Adventist doctrine of Saturday Sabbath, are themselves pagans who will be annihilated and consumed in a "lake of fire" in the violent process of overthrow of the United States that Adventists believe began in 1844 and is ongoing in a preliminary phase, based on the 19th Century 'prophesies' of Ellen G. White. Such invidious anti-Catholic propaganda has an odious history in U.S.A.. See Exhibit 4, attached hereto and incorporated by reference.

E. From the foregoing belief system arises an appearance of impropriety and reasonable belief Judge Anderson is not capable of fair, objective and rigorous application of secular law and only secular law in deciding plaintiffs' case, untainted by bias and religious tenets of the Adventist faith. Investigation in February and March 2020 disclosed public comments by Judge Anderson that her courtroom actions are guided by her religious convictions, such as her video presentations at http://cvvnet.org/m/index.php?cmd=view&id=1423; and at: https://vimeo.com/channels/godcreated/53621385. There is also an appearance of impropriety arising from her belief that the United States and its Constitution are impermanent and violate which creates the appearance if not actuality she has only an equivocal commitment to uphold and defend the United States and California Constitutions.

___ The Adventist congregations in the United States are organized on ethnic and linguistic lines, such that there are Mandarin Chinese, Korean, Hispanic, White and Black congregations, typically located in urban and suburban areas where there are 'ethnic enclaves.' Seaside California traditionally has had the largest black population in Monterey County, California, an outgrowth of the situs of former Army base Fort Ord, and integration of the military which brought black soldiers and their families to Monterey County starting in the 1950's. Until the de-commissioning of Fort Ord, the west boundary of part of the military reservation and east boundary of Seaside were contiguous. Carol Garrard's and Robert Richardson's father was a black veteran who mustered out at Fort Ord, and thereafter operated a billiard parlor business in Seaside, and resided in Seaside's black 'neighborhood' until his death. The underlying legal dispute concerns the family residence, a part of the estate of their mother, Alice Richardson.

Judge Anderson's spouse is the black pastor of the local black Adventist congregation. in Seaside, CA. Members of the extended Richardson family have ties to that Seaside congregation, such that Judge Anderson knew or should have known the religious affiliation of plaintiffs was not Adventist.

13. The underlying state case, Monterey County Superior Court action 16CV002776, is a form of 'wrongful foreclosure' case in which plaintiffs seek to recover the title to, or compensation for, their mother's home at 1710 Laguna Street, Seaside CA 93955 (real property within this district). The dispute originated in 2006, during the probate of the Estate of Alice Richardson, wherein plaintiff Carol Garrard as administrator, was defrauded by a real estate broker named David Shapiro, of Las Vegas Nevada, who by use of the mail and telephone, transacted a loan in California secured by said 1710 Laguna Street. The loan was intended to finance refurbishing the family home to conform to the local municipal building code. The loan transaction (hereinafter 2006 Loan) was illegal since *inter alia* David Shapiro was not licensed by the California Department of Real Estate to broker loans in California and both state and federal laws were violated in consummating the loan across state lines. That illegality also included use of an out-of-state title insurance company not admitted to do business in California to generate and record a trust deed..There were six private 'investors' in the loan, none of whom were California residents at that time.

14. The illegal loan by happenstance came due just as the so-called (by legal authority Miller & Starr) Great Recession and banking and real estate financing 'panic' that caused real estate values to collapse, began in Fall 2007. Being unable to refinance the short-term 2006 Loan, plaintiff Carol Garrard defaulted and the loan was foreclosed. After the fraud and illegality of the 2006 Loan was discovered, the first iteration of this wrongful foreclosure action was filed in 2008 as Monterey County California Superior Court Action M90047, an action settled by a written agreement in 2011, constituting a form of retraxit having res judicata effect under California law, that replaced the 2006 Loan. Subsequently however, by use of false evidence presented at a 2015 default hearing, the investors in the 2006 Loan obtained a judgment

reinstating the illegal 2006 trust deed. The state defendants actions were motivated by the fact the real property was 'underwater' in 2007, but by 2015 its value had recovered so that it was worth more than 150% of the secured debt. The pending state action 16CV002776 was the second iteration of the wrongful foreclosure action, filed initially to prevent and later to vacate an ensuing second 2016 foreclosure sale of the subject real property by use of the illegal 2006 trust deed. The later state lawsuit is now pending on appeal in the California Sixth District Court of Appeal as action H047728, contending *inter alia* the 2015 default judgment is void.

15. In the underlying state case, Plaintiff Garrard has a title and Plaintiff Richardson a lien interest in the subject real property, a lien also derived from the Estate of Alice Richardson. Yet another fraud prompted Richardson's filing of an intervention complaint in the wrongful foreclosure case in 2018, contending his lien is superior to the lien foreclosed. A $50,000.00 element of the alleged deficiency is disputed in the state case, and at the time of the 2016 foreclosure defendants in the state action secretly added to the deficiency, and credit bid a total of which at least $87,000.00 was surplus funds to which plaintiff Richardson asserts a right as a lien holder of record. This 'scam' is well documented. The source-accuracy of the state defendants' figures is in dispute but the originating notice showed the deficiency balance claimed by the state defendants was $, shown by exhibit 5 attached and incorporated. The total credit bid shown by the cryer's auction notes in Exhibit 6, attached and incorporated, was $. And the excess was discovered to be a result of hand-altered Exhibit 7, attached and incorporated, adding $37,000.00 to the deficiency '*ad hoc*.' Thus this dispute is also rooted in a post-sale fraud and conversion of foreclosure sale proceeds.

16. Although Judge Anderson was assigned to this case in January 2018, at no point then nor thereafter did she disclose her membership in an organization practicing invidious discrimination. Judge Anderson's affiliations were discovered in February and March 2020, prompted by *sua sponte* remarks made by her at a state court hearing. A petition for a Writ of Mandate, based on a violation of California Code of Judicial Ethics Canon 2(C) and challenging the constitutionality of the religion exception under state law, followed as California Sixth

District Court of Appeal case H048043; but was summarily denied. A follow on petition for Writ of Review in the California Supreme Court, case S262794, was thereafter also summarily denied.

17. Because Judge Andersons's membership in a religious organization practicing invidious discrimination was discovered so late in the case, the opportunity to exercise any form of challenge to her assignment based on invidious practices of Adventists under California Code of Civil Procedure § 170.1 *et seq.*, was lost due to passage of time.

18 Although summary denial of a discretionary writ is not a decision on the merits in California, petitioners did first make a good faith and diligent attempt to obtain relief from oppression and violation of their fundamental liberty interests in fair and impartial adjudication and to freedom from religious discrimination, in the state system, before filing this federal action.

19. Plaintiffs therefore lack any plain, speedy or adequate remedy at law from the pernicious effects of the religion exception to California Code of Judicial Ethics Canon 2(C), and therefore seek a declaration said exception is unconstitutional and for injunctive relief barring enforcement of said religion exception to Canon 2(C).

20. Despite the fact Canon 2(C) puts the matter in issue, as much as financial, professional, marital or familial conflicts of interest are in issue on the question of the Appearance of Impropriety, it is not customary for judges to disclose their religious affiliation and secular membership(s) when assigned to a particular case, and thus as a general matter Canon 2(C) is a 'silent' ground for disqualification, even as to membership in secular organizations practicing invidious discrimination. Plaintiffs only discovered the religious issue long after the state case was pending, and remain to this day ignorant of the state judge's secular memberships, if any, and whether they pose any issues of invidious discrimination.

CLAIMS FOR RELIEF

CLAIM ONE: DUE PROCESS

21 . Plaintiffs incorporate here by reference all foregoing allegations, including paragraphs 1 through 1-20 *supra,* as if fully set forth herein.

22. California Judicial Canon 2(C) violates fundamental liberties that are protected by the Due Process Clause, both on its face and as applied to Plaintiffs, in that the religion exception to disqualification of California judges denies plaintiffs adjudication before a fair and impartial judge with an unequivocal commitment to uphold and defend the United States and its Constitution, uphold and defend the State of California and its Constitution, and to enforce the secular law of California in an objective manner uninfluenced by religious bias, belief or convictions of the supremacy of religious tenets and "God's law" over and above secular law and procedure.

CLAIM TWO: RELIGIOUS FREEDOM

23. Plaintiffs incorporate here by reference all foregoing allegations, including paragraphs 1 through 22 *supra,* as if fully set forth herein.

24. California Judicial Canon 2(C) violates fundamental liberties that are protected by the Due Process Clause, both on its face and as applied to Plaintiffs, in that the religion exception to disqualification of California judges based on membership in organizations practicing invidious discrimination, denies and abridges plaintiffs' First Amendment right to freedom from the establishment of religion and entanglement of state government in religious affairs and by favoring religious belief over secular belief, by fostering religious bigotry while purporting to punish secular bigotry, even where the acts, tenets and practices constituting invidious discrimination by an organization are the same.

CLAIM THREE: EQUAL PROTECTION OF THE LAW

25 . Plaintiffs incorporate here by reference all foregoing allegations, including paragraphs 1 through 24 *supra,* as if fully set forth herein.

26 . The religion exception in California Judicial Canon 2(C) violates the Equal Protection Clause of the Fourteenth Amendment, both on its face and as applied to Plaintiffs and all others similarly situated.. Under Canon 2(C) all parties and their counsel appearing in a California state court are protected from judges who hold membership in secular organizations practicing invidious discrimination, but any party or counsel, including plaintiffs who appear in the

courtroom of a judge holding membership in a religious organization practicing invidious discrimination, are not protected solely on the basis of religion. They have been and will be harmed by the appearance of impropriety arising from permitting judicial bigotry on the basis of religion, and from actual bias and prejudice arising from religious doctrines and tenets incompatible with secular law that have and continue to bear upon and influence the exercise of discretion by a state judge who is a member of a religious sect whose beliefs and tenets permit, foster and engender invidious discrimination.

27. Petitioners and all others similarly situated are also denied equal protection of the law because of the failure of defendants to enforce California Constitution Article 1, § 7(b), which provides in relevant part:

> "A citizen or class of citizens may not be granted privileges or immunities not granted on the same terms to all citizens."

The religion exception in California Judicial Canon 2(C) violates California Constitution Article 1, § 7(b) by allowing a class of citizens, that of state judges, the privilege to engage in, and immunity from sanction for, bigotry by permitting judges to be or become members of organizations which practice invidious discrimination so long as they are religious, but denying the same permission and immunity to judges belonging to secular organizations that practice invidious discrimination. There is no practical difference between the pernicious effects of invidious discrimination based on religion instead of secular beliefs and tenets. Treating the same conduct by the sub-set of judges who claim a religious basis for membership in organizations practicing invidious discrimination from the remainder of judges, is to grant a special privilege authorizing, and a grant of immunity from sanction for, judicial bigotry that violates California Constitution Article 1, § 7(b) and the Fourteenth Amendment. Thereby plaintiffs have and continue to be harmed by the assignment of their state case to a judge authorized and permitted to engage in religious bigotry under the religion exception to state Canon 2(C).

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CLAIM FOUR: VIOLATION OF 42 U.S.C. § 1983

28. Plaintiffs incorporate here by reference all foregoing allegations, including paragraphs 1 through 27 *supra,* as if fully set forth herein.

29. Insofar as they are enforcing the religion exception in California Judicial Canon 2(C), Defendants, acting under color of state law, are depriving and will continue to deprive Plaintiffs of their rights secured by the Fourteenth Amendment to the United States Constitution in violation of 42 U.S.C. § 1983.

IRREPARABLE INJURY

30.. Plaintiffs incorporate here by reference all foregoing allegations, including paragraphs 1 through 29, *supra,* as if fully set forth herein.

31 . Plaintiffs are now severely and irreparably injured by the religion exception in California Judicial Canon 2(C) a state rule or law that violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment as a result of the oppression of being forced to litigate before and have their state case decided by a judge who belongs to an organization that practices invidious discrimination.. By way of example but not exclusively, Plaintiffs' injury as a result of the religion exception in California Judicial Canon 2(C) includes the deprivation of the right to a fair and impartial trial and adjudication of all issues in their underlying state lawsuit based upon even handed application of secular, state law untainted by bias and prejudice and discrimination of judicial religious bigotry– or the appearance that the decisions and exercise of discretion by the state trial judge have been and continue to be and will be during later stages of the state case, informed by discriminatory religious beliefs and tenets, including any tenets that would or would tend to place alleged 'god's law' over and above the federal or state Constitutions or any other secular law, rule, regulation, ordinance or policy that applies or may apply to the adjudication of their state lawsuit.

32. In the peculiar instance of the publicized membership of the state judge in issue, Marla O. Anderson, in the Seventh Day Adventist religious organization, again by way of example only, Plaintiffs are now severely and irreparably injured by the religion exception in California Judicial Canon 2(C), by being forced to appear before a judicial officer who identifies the United States with

the evil 'anti-christ' of Christian belief, believes in the violent overthrow of the United States by a theocratic state, and thereby is not unequivocally committed to uphold and defend the Constitution of the United States, nor to uphold and defend Plaintiffs' civil rights under said Constitution nor the California state Constitution, thereby oppressing and prejudicing plaintiffs who are forced to litigate their state case uncertain whether their rights under the United States or California constitutions will be upheld and enforced without impact or influence from discriminatory religionist beliefs.

33. An actual, ongoing and judicially cognizable controversy exists between Plaintiffs and Defendants regarding whether the religion exception in California Judicial Canon 2(C) violates Freedom of Religion under, and Due Process and Equal Protection Clauses of the Fourteenth Amendment, and derivative elements of the California state constitution. Defendants have in past, and are presently, and will continue to enforce the religion exception to California Judicial Canon 2(C) to the actual and ongoing detriment of Plaintiffs, unless it is overturned.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. Plaintiffs respectfully request that this Court, pursuant to 28 U.S.C. § 2201, construe and enter a declaratory judgment:

A. Declaring that the religion exception in California Judicial Canon 2(C) enables judicial bigotry, establishes religion, and entangles state government in religious doctrine and practice, and thereby violates the First Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment and 42 U.S.C. § 1983;

B. Declaring that California Judicial Canon 2(C), by creating a special privilege based on religious membership only applicable to judges, thereby violates the First Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment and 42 U.S.C. § 1983;

C. That the failure of the State of California to require judicial disclosure of all religious and secular memberships in organizations prior to or at the time of a judicial assignment, renders California Judicial Canon 2(C) ineffective, even assuming it is constitutional in whole or part, and thereby

violates the First Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment and 42 U.S.C. § 1983;

D. That the failure of the State of California to require unequivocal judicial commitment to uphold and defend the Constitution of the United States and compel full disclosure of all religious, secular or other belief in the overthrow of the United States, prior to or at the time of a judicial assignment, thereby violates the First Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment and 42 U.S.C. § 1983;

E. That Defendants Gavin Newsom, in his capacity as governor and chief executive officer, and Xavier Becerra, in his capacity as attorney general and chief law enforcement officer, have denied plaintiffs the equal protection of the California State Constitution, by failing to enforce Art. 1, § 7(b) of the California State Constitution against defendant justices and members of the California Supreme Court and Commission on Judicial Performance, at the time of promulgation of a special privilege based on religious membership only applicable to judges under California Judicial Canon 2(C), or thereafter, and thereby violated the First Amendment and Due Process and Equal Protection Clauses of the Fourteenth Amendment and 42 U.S.C. § 1983.

2. Plaintiffs respectfully request that this Court enter a preliminary and a permanent injunction enjoining enforcement or application of the religion exception to California Judicial Canon 2(C) and enactment of any other similar California law that enables judicial religious bigotry in office.

3. Plaintiffs also seek *vacatur* of all judicial acts of the state judge from and after her initial assignment to their state case January 1, 2018, to the fullest extent of this court's jurisdiction to grant such relief, *nunc pro tunc.*

4. Plaintiffs respectfully request costs of suit, including reasonable attorneys' fees under 42 U.S.C. § 1988, and all further relief to which they may be justly entitled.

Dated: July 28 , 2020

Attorney for Plaintiffs