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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GEORGE RADANOVICH, CHARLES PATRICK, GWEN PATRIC, OMAR NARARRO, TRUNG PHAN,

Plaintiffs,

v.

DEBRA BOWEN, in her official capacity as SECRETARY OF STATE OF CALIFORNIA; THE CITIZENS REDISTRICTING COMMISSION,

Defendants.

No. 2:11-cv-09786-SVW (PJW)

REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFFS' COMPLAINT

Date: February 13, 2012
Time: 1:30 p.m.
Ctrm.: 6

[Honorable Stephen V. Wilson]

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I. INTRODUCTION

Plaintiffs do not dispute that the Commission's motion presents pure issues of law that are properly resolved on the pleadings. Their opposition presents only one real contested issue—whether the California Supreme Court's decision in *Radanovich I* constituted a "final ruling on the merits" for purposes of res judicata.

On January 27, the California Supreme Court issued a published opinion in the last remaining state-court challenge to the Commission's certified maps, and confirmed that the rule articulated in *In re Rose*, 22 Cal. 4th 430, 446 (2000) applies to redistricting: Where the state Supreme Court sits as a trial court, entertaining petitions pursuant to "original and exclusive jurisdiction" in the state-court system, its denial of a petition even without a written opinion is a final ruling on the merits. *Vandermost v. Bowen*, __ Cal. 4th __, 2012 Cal. Lexis 572, at *132 (Jan. 27, 2012).

Plaintiffs' arguments for avoiding this legal principle and the result that necessarily follows are flatly wrong. Contrary to Plaintiffs, federal courts apply state-law principles to evaluate the res judicata effect of a prior decision by a state court, independent of whether the present action or the prior one involved federal claims. Application of federal res judicata principles would not assist Plaintiffs in any event—*Napa Valley Elec. Co. v. Railroad Com.*, 251 U.S. 366, 373 (1920) and Ninth Circuit authority following it are equally supportive of the rule confirmed recently by the California Supreme Court in *Vandermost*, *supra*.

No dispute exists that all other elements of res judicata are satisfied here: the same "primary right" was advanced in *Radanovich I* as here (indeed, the claims are virtually identical), and the parties are the same. The bottom line is that Plaintiffs chose the California Supreme Court as their first-selected forum, received that court's careful consideration, and—having lost in that forum—are precluded by res judicata from re-litigating their claims here.

For the reasons discussed further herein, the complaint should be dismissed without leave to amend, and the Commission should be awarded its fees incurred.

II. ALL CLAIMS ARE BARRED BY RES JUDICATA.

A. Applicable Legal Standards: This Court Applies California Law to Decide the Preclusive Effect of the California Supreme Court's Decision in *Radanovich I*.

The Commission's moving papers explained—citing four on-point Ninth Circuit decisions—that this Court must apply California law to determine the preclusive effect of *Radanovich I*. (Mtn. at 11-12.) This legal principle is well-settled:

> Federal courts are required to give full faith and credit to state court judgments under 28 U.S.C. § 1738. *See San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 162 L. Ed. 2d 315, 125 S. Ct. 2491 (2005)…. To determine the preclusive effect ***of a state court judgment*** federal courts ***look to state law***.

Manufactured Home Cmtys., Inc. v. City of San Jose, 420 F.3d 1022, 1031 (9th Cir. 2005) (applying California law and holding that prior state-court mandamus action barred later federal action for alleged U.S. constitutional violations).[1]

In response, Plaintiffs address only one of the Commission's cited cases (*Henrichs*, 474 F.3d at 615), and argue erroneously that the standards the Ninth Circuit articulated there apply only in diversity cases. (Opp. at 6-7.) For support,

[1] *See also Henrichs v. Valley View Dev.*, 474 F.3d 609, 615 (9th Cir. 2007); *Palomar Mobilehome Park Ass'n v. City of San Marcos*, 989 F.2d 362, 364 (9th Cir. 1993) (applying California law to determine the res judicata effect of a state court judgment on later-filed federal claims); *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1035 (9th Cir. 1990) (applying California law to determine the res judicata effect of a state court judgment on subsequent federal due process claims); *Takahashi v. Bd. of Trustees*, 783 F.2d 848, 851 (9th Cir. 1986) (applying California law and holding that plaintiff's mandamus proceeding in state court barred later-filed constitutional claims in federal court because both actions stemmed from a single primary right); *Trujillo v. Cty. of Santa Clara*, 775 F.2d 1359, 1363-64 (9th Cir. 1985) (applying "applicable state law principles" to determine the preclusive effect of a state court decision that addressed federal claims); *Eichman v. Fotomat Corp.*, 759 F.2d 1434, 1438 (9th Cir. 1985) (applying state law to evaluate the res judicata effect of state-court litigation on later-filed federal claims); *Scoggin v. Schrunk*, 522 F.2d 436, 437 (9th Cir. 1975) (same).

Plaintiffs rely solely on two out-of-circuit decisions—which stand only for the general point that in evaluating the res judicata effect of *successive* federal court actions, federal law applies. *In re Iannochino*, 242 F.3d 36, 41 (1st Cir. 2001) ("Federal res judicata principles govern the res judicata effect of a judgment entered *in a prior federal suit*, including judgments of the bankruptcy court."); *Ramallo Bros. Printing, Inc. v. El Dia, Inc.*, 490 F.3d 86, 89 (1st Cir. 2007) (considering the res judicata effect of successive federal actions before the same district judge).

Plaintiffs' statement of the law simply is wrong: Federal courts apply the law of the state in which the prior state-court action was decided, independent of whether federal claims were alleged in the prior action or the present one. *Trujillo v. Cty. of Santa Clara*, 775 F.2d 1359, 1363-64 (9th Cir. 1985) (applying "applicable state law principles" to determine the preclusive effect of a state court decision that addressed federal Title VII claims); *see also* cases cited in fn.1, *supra*.

Accordingly, California principles of res judicata must be applied. And, as the Ninth Circuit has explained: "It is well-established that where a federal constitutional claim is based on the same asserted wrong as a state action and the parties are the same, res judicata will bar the federal constitutional claim, whether or not it was asserted specifically in state court." *Sanchez*, 936 F.2d at 1035 (applying the rule "[i]n California, to whose law we must look for the applicable res judicata and collateral estoppel principles"); *Scoggin*, 522 F.2d at 437 (same).

B. Under Controlling Federal and State Precedent, *Radanovich I* Resulted in a "Final Decision on the Merits."

Plaintiffs have no meaningful answer for the controlling authority cited in the moving papers—and they cite no other authority that addresses the specific circumstances of this case: Prior litigation before the California Supreme Court, where that court had "original and exclusive jurisdiction" over all cases filed in the state-court system. (Mtn. at 12-13, citing, inter alia, *Napa Valley*, 251 U.S. at 373; *In re Rose*, 22 Cal. 4th at 445-46.)

On January 27, 2012, the California Supreme Court confirmed that the rule articulated in *Rose*, 22 Cal. 4th at 445 applies and that the court's rejection of prior challenges to the Commission's maps was final and on the merits:

> [P]etitioner's 126-page petition, *Vandermost v. Bowen* (Sept. 11, 2011, S196493), presented myriad federal and state statutory and constitutional challenges to the Commission's certified state Senate map…. On October 26, 2011, after thorough consideration of all the issues raised by petitioner, we determined that the petition lacked merit and denied the requested writ. (See *In re Rose* (2000) 22 Cal.4th 430, 445 ["When the sole means of review is a petition in this court… our denial of the petition -- with or without opinion -- reflects a judicial determination on the merits."].) We are aware of no basis upon which to reasonably question the legality of the Commission's certified state Senate map.

Vandermost, __ Cal. 4th __, 2012 Cal. Lexis 572, at *132.[2]

United States Supreme Court authority is squarely in accord. In *Napa Valley*, 251 U.S. 366, the plaintiff-electric company filed a petition for writ of review in the California Supreme Court, challenging a decision issued by the Railroad Commission, which at that time reviewed public electricity contracts subject to the Public Utilities Act. The petition was filed in the state Supreme Court pursuant to Section 67 of the Public Utilities Act, which provided that "no court of the state except the Supreme Court to the extent specified shall have jurisdiction over any order or decision of the Commission," and that review by the California Supreme Court shall be by writ petition. *Id.* at 371.

The California Supreme Court denied the electric company's petition without ordering argument and without a written opinion. The electric company filed essentially the same claims in federal court, and the commission argued that the

[2] *Vandermost v. Bowen* (Sept. 11, 2011, S196493) was consolidated with *Radanovich I*—both cases were decided by the same written order. (RJN Ex. J.)

state Supreme Court's denial of the petition was res judicata. *Id*. at 372. The district court dismissed the case based on res judicata and the U.S. Supreme Court affirmed, holding that in these circumstances "'the denial of the petition was necessarily a final judicial determination, … based on the identical rights' asserted in that court and repeated here…. 'Such a determination is as effectual as an estoppel as would have been a formal judgment upon issues of fact.'" *Napa Valley*, 251 U.S. at 373 (citations omitted).

Subsequent authority confirms that *Napa Valley* remains good law in the Ninth Circuit, a conclusion that Plaintiffs do not dispute. *Pac. Tel. & Tel. Co. v. Public Utilities Comm'n*, 600 F.2d 1309, 1312 (9th Cir. 1979).

Plaintiffs argue, however, that *Napa Valley* should be limited to its facts—i.e., applied only to cases that reviewed acts by a *utilities* commission (Opp. at 10), not to challenges to decisions by the Citizens Redistricting Commission, which is vested with state constitutional authority to solicit broad public participation, hear testimony, and draw district lines. Cal. Const. art. XXI, § 2. Plaintiffs' argument is refuted by controlling California Supreme Court decisions—cited in the moving papers, but ignored by Radanovich—that apply *Napa Valley* in other contexts in which the state Supreme Court has original and exclusive jurisdiction. *In re Rose*, 22 Cal. 4th at 445 ("When the sole means of review is a petition in this court, however, our denial of the petition -- with or without an opinion -- reflects a judicial determination on the merits."; citing *Napa Valley*); *Geibel v. State Bar of Cal.*, 14 Cal. 2d 144, 148 (1939) (in an original proceeding in the California Supreme Court, "[t]he action of this court taken by means of an order of denial is res judicata although no written opinion is filed"; citing *Napa Valley*).[3]

[3] Plaintiffs, by contrast, cite no authority that supports their argument that the Supreme Court's decision in *Radanovich I* was not final and on the merits. (Opp. at 9-10.) Their cited cases are uninstructive: *People v. Medina*, 6 Cal. 3d 484, 491 (1972) does not cite or address *Napa Valley*, and merely states the general rule that the discretional denial of a pre-trial petition for extraordinary relief in a criminal

(Footnote continues on next page.)

Plaintiffs' assertion that application of the *Napa Valley* rule and res judicata principles would somehow "preclude federal remedies" is also wrong. (Opp. at 11-12.) The California Supreme Court's "original and exclusive jurisdiction" over challenges to the Commission's maps means only that *if* registered voters elect to pursue their claims *in state court*, they must do so in the California Supreme Court. *McKnett v. St. Louis & S.F. Ry. Co.*, 292 U.S. 230, 233 (1934) ("The power of a State to determine the limits of the jurisdiction of its courts and the character of the controversies which shall be heard in them is, of course, subject to the restrictions imposed by the Federal Constitution."); *see also Hathorn v. Lovorn*, 457 U.S. 255, 269 (1982) (explaining that state and federal courts have concurrent jurisdiction over issues involving Section 5 Voting Rights Act claims); *Donovan v. City of Dallas*, 377 U.S. 408, 412 (1964) (where state and federal courts have concurrent jurisdiction, each "may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata in the other").[4]

Moreover, Plaintiffs pursued their claims in the California court "freely and without reservation" (including a claim directly under the 14th Amendment) yet their voluminous filings in the California Supreme Court said nothing about

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(Footnote continued from previous page.)

case is not a final judgment on the merits. *Heine Piano Co. v. Bloomer*, 183 Cal. 398, 404 (1920) and *Beverly Hills National Bank v. Glynn*, 16 Cal. App. 3d 274, 283 (1971) merely state general res judicata principles—prior to the state Supreme Court's ruling in *Mycogen Corp. v. Monsanto Co.*, 28 Cal. 4th 888 (2002).

[4] Article XXI of the California Constitution must be construed consistent with federal law to permit—but not require—Plaintiffs who allege federal Voting Rights Act claims to pursue them either in the California Supreme Court or a federal district court. *Bartlett v. Stephenson*, 535 U.S. 1301, 1302 (2002) (state constitutional provisions are properly "harmonized" with federal law to preserve their constitutionality); *Sandoval v. Los Angeles Cty. Dept. of Public Social Srvcs.*, 169 Cal. App. 4th 1167, 1180 (2008) (state law should be construed to preserve its constitutionality, "with an eye to harmonizing it with surrounding provisions and the state and federal Constitutions"). Res judicata is implicated only where a plaintiff files first in state court, loses, and then re-files in federal court.

reserving federal claims for another day. *England v. La. Bd. of Med. Exam'rs*, 375 U.S. 411, 419 (1964) (noting that plaintiffs can file simultaneously in two forums but must expressly reserve in state court any right to pursue federal claims in federal court).[5] Thus, as the U.S. Supreme Court has explained, "we see no reason why a party, after unreservedly litigating his federal claims in the state courts although not required to do so, should be allowed to ignore the adverse state decision and start all over again in the District Court." *England*, 375 U.S. at 419.

Plaintiffs' assertion that res judicata principles are somehow "preempted" (Opp. at 11) also runs contrary to the long line of cases holding that res judicata bars subsequent constitutional and civil rights claims where, as here, the "primary right" at issue was advanced unsuccessfully in a state-court action. *Manufactured Home*, 420 F.3d at 1031 & n.13 (state court mandamus proceeding barred subsequent federal due process, equal protection and takings claims); *Trujillo*, 775 F.2d at 1363-64 (state resolution of Title VII claims precluded re-litigation of those claims in federal court); *Sanchez*, 936 F.2d at 1036 (state court decision was res judicata as to later-filed civil rights claims); *Scoggin*, 522 F.2d at 437 (same); *see also Jackson v. Waller Indep. Sch. Dist.*, 2008 U.S. Dist. LEXIS 22923, at *34-35 (S.D. Tex. Mar. 24, 2008) (Voting Rights Act claims barred by res judicata where first pursued unsuccessfully in state court).[6]

Accordingly, *Radanovich I* resulted in a final ruling on the merits and is binding for purposes of res judicata.

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[5] *See also Los Altos El Granada Investors v. City of Capitola*, 583 F.3d 674, 686 (9th Cir. 2009) (noting that plaintiffs can make an *England* reservation in state court even where no federal action is at that time pending).

[6] Again, Plaintiffs cite *no* authority that supports their position. Their sole cited case, *Adams Fruit Co., Inc. v. Barrett*, 494 U.S. 638, 640 (1990), does not involve res judicata and considered only whether a state workers' compensation statute was preempted by the federal Migrant Agricultural Protection Act, pursuant to which plaintiffs sought remedies in a single action filed in federal court.

C. Plaintiffs Do Not Dispute That All Other Elements Needed for Res Judicata to Apply Are Satisfied.

Plaintiffs do not dispute that *Radanovich I* involved virtually identical claims, the same "primary right" to vote in constitutional Congressional districts, and the same parties as in this case. (*Compare* Mtn. at 13-15; Opp. at 5.) Accordingly, all elements needed for res judicata to apply are satisfied.

III. PLAINTIFFS' CLAIM UNDER SECTION 5 OF THE VOTING RIGHTS ACT FAILS FOR MULTIPLE ADDITIONAL REASONS.

A. Plaintiffs Have Not Pleaded Facts Sufficient to Satisfy the *Twombly* and *Iqbal* Pleading Standard.

Plaintiffs do not cite or refer the Court to any allegations other than their singular, factually unsupported statement in Paragraph 50 of the complaint that the Commission's certified maps are "retrogressive" and "unlikely to be approved" by the Attorney General pursuant Section 5 of the Voting Rights Act. (Opp. at 13 citing Compl. ¶ 50.) These "'naked assertion[s]' devoid of 'further factual enhancement'" are woefully inadequate. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007)).

B. Plaintiffs Acknowledge That Section 5 Does Not Apply to the Los Angeles-Area Districts at Issue Here in Any Event.

Plaintiffs' allegations are meaningless in context because Plaintiffs concede "that Los Angeles is not subject to preclearance" under Section 5. (Opp. at 13.) Accordingly, their claim that the Commission's Los Angeles-area districts are "unlikely to be approved pursuant to § 5" (Compl. ¶ 50) lacks "facial plausibility." *Iqbal*, 129 S. Ct. at 1949; *see also Perry v. Perez*, 565 U.S. __, 2012 WL 162610 (2012) (explaining the preclearance requirement for "covered jurisdictions").

C. The Commission's Certified Maps Have Now Been Precleared by the U.S. Department of Justice.

Plaintiffs' Section 5 claim is moot in any event because on January 17, 2012 the Attorney General precleared the Commission's maps pursuant to Section 5.

(See concurrently filed Supplemental Request for Judicial Notice Ex. A.) This development provides yet another basis for dismissing the claim without leave.

IV. CONCLUSION

For all these reasons, Plaintiffs' lawsuit should be dismissed without leave to amend. The Commission should recover its attorneys' fees and costs incurred pursuant to 42 U.S.C. §§ 1973L(e) and 1988(b).

Dated: January 30, 2012

Respectfully submitted,

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CITIZENS REDISTRICTING COMMISSION

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