

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 07-cv-01924-DME-KMT

KENNETH L. SMITH,

Plaintiff,

v.

HONS. MICHAEL L. BENDER,  
NATHAN B. COATS,  
GREGORY J. HOBBS, JR.,  
REBECCA LOVE KOURLIS,  
ALEX J. MARTINEZ,  
MARY J. MULLARKEY, and  
NANCY E. RICE, in their individual capacities only,  
HON. JOHN W. SUTHERS, and  
FRIEDRICK C. HAINES, in their individual capacities only,  
JOHN DOES 1-99, and  
THE UNITED STATES OF AMERICA,

Defendants.

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**STATE DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION  
FOR INJUNCTIVE AND/OR DECLARATORY RELIEF**

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DEFENDANTS, Hons. Michael L. Bender, Nathan B. Coats, Gregory J. Hobbs, Jr., Rebecca Love Kourlis, Alex J. Martinez, Mary J. Mullarkey, Nancy E. Rice, John W. Suthers, and Friedrich C. Haines (together referred to as "State Defendants"), through their attorney, the Colorado Attorney General, respectfully submit this Response in Opposition to Plaintiff's Motion for Injunctive and/or Declaratory Relief:

## **Introduction**

Plaintiff has moved for this Court to issue an order to Chief Justice Mullarkey “commanding that she submit the attached opinion for publication acknowledging that *Smith v. Mullarkey*, 121 P.3d 890 (Colo. 2005) (per curiam) is void, and that she convene a panel of judges chose from the Colorado Court of Appeals to decide the jurisdictional question.” Plaintiff’s Motion for Injunctive and/or Declaratory Relief, dkt. # 18, at p.3. For a variety of reasons, Plaintiff’s motion must fail.

## **Argument**

Here, Plaintiff cannot demonstrate that there is a substantial likelihood that he will ever prevail on the merits of his claim, as asserted in the State Defendants Motion to Dismiss, dkt #7. In the interest of brevity, State Defendants incorporate their arguments from the Motion to Dismiss in response to Plaintiff’s Motion for Injunctive and/or Declaratory Relief as if fully set forth herein, including, but not limited to, that Plaintiff’s claims are barred by the *Rooker-Feldman* doctrine, the State Defendants are entitled to absolute judicial immunity, the State Defendants are entitled to qualified immunity and Plaintiff’s claims in this lawsuit are barred by the statute of limitations.

In addition, Plaintiff has not established that that he will suffer irreparable injury, and any threatened injury to Plaintiff is outweighed by the damage such an order, which is not legally cognizable, would render the State Defendants. Finally, the injunction would be contrary to the public interest, since it would violate long-established precedent and would be tantamount to a federal court instructing a state court in the performance of its duties.

## Conclusion

For the foregoing reasons and on the foregoing authorities, State Defendants request that this Court deny Plaintiff's Motion for Declaratory and/or Injunctive Relief and that it grant such additional relief as it deems appropriate under the circumstances, including an award of costs and reasonable attorneys' fees incurred in responding to this Motion.

Respectfully submitted this 20<sup>th</sup> day of February 2008,

JOHN W. SUTHERS  
Attorney General

*s/Christine K. Wilkinson*

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CHRISTINE K. WILKINSON\*

Assistant Attorney General

Employment Tort Unit

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\*Counsel of Record

**CERTIFICATE OF SERVICE**

I hereby certify that on February 20, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and that I have mailed or served the document of paper to the following non CM/ECF participants in the manner (mail, hand-delivery, etc.) indicated by the non-participant's name:

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*s/ Christine K. Wilkinson*