



Braunstein et al v. State of Nevada et al

2018 | Cited 0 times | D. Nevada | September 30, 2018

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

*** STEVEN BRAUNSTEIN, DESHON HEREFORD,

Plaintiffs, v. STATE OF NEVADA, et al.,

Defendants.

Case No. 2:18-cv-01767-RFB-NJK

ORDER

In Forma Pauperis and the Proposed Complaint. ECF Nos. 1, 1-1. Plaintiffs seek injunctive relief under 42 U.S.C. § 1983, alleging their constitutional rights were violated when the juries in their respective criminal cases were not sworn in by the state judges. ECF No. 1-1. is the exclusive vehicle for claims brought by state prisoners that fall within the core of habeas, and such claims may not be brought in a § 1983 action. *Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016), cert. denied 137 S. Ct. 645 (2017) (citing *Wilkinson v. Dotson*, 544 U.S. 74, 81 82 (2005)). Thus, no matter the relief sought conviction or internal prison proceedings) if success in that action would necessarily demonstrate

the invalidity of confinement or its *Wilkinson*, 544 U.S. at 81 82 (citations omitted).

convictions and sentences. A habeas petition and not a Section 1983 claim is the proper way to

challenge a conviction or sentence. Indeed, Plaintiffs previous filed habeas petitions, seeking habeas relief for the same alleged violations. Plaintiffs acknowledge the habeas petitions were unsuccessful. See *Hereford v. Neven*, Case No. 2:14-cv-01390-JAD-CWH, Docket No. 13 (D. Nev. Aug. 27, 2015) (dismissing habeas petition with prejudice); *Braunstein v. Neven*, Case No. 2:15-cv-00947-RFB-NJK, Docket No. 13 (D. Nev. Feb. 5, 2016) (dismissing fourth attempted habeas petition with prejudice). Plaintiffs now seek to challenge their convictions and confinement in this litigation. Plaintiffs attempt to attack their confinement through § 1983 in this case is barred by *Wilkinson*. 544 U.S. at 81-82.



Braunstein et al v. State of Nevada et al

2018 | Cited 0 times | D. Nevada | September 30, 2018

IT IS THEREFORE ORDERED that this case is DISMISSED with prejudice. IT IS FURTHER ORDERED that to Proceed In Forma Pauperis [ECF No. 1] is DENIED as moot.

IT IS FURTHER ORDERED that the Clerk of the Court shall close this matter accordingly.

DATED: September 30, 2018.

JUDGE RICHARD F. BOULWARE, II UNITED STATES DISTRICT

