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NOT FOR PUBLICATION

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Montye Fuse, a married man,

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No. CV 07-2351-PHX-FJM

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Plaintiff,

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ORDER

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vs.

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Arizona Board of Regents, a political
subdivision of the State of Arizona; Neal
Lester, a married man,

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Defendants.

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Montye Fuse brings this action against the Arizona Board of Regents and Neal Lester for discrimination in violation of federal and state law. Defendants move for judgment on the pleadings on plaintiff’s claims against the Arizona Board of Regents under the Arizona Civil Rights Act, A.R.S. § 41-1463, and state tort law (counts 3, 4, and 5). We have before us defendants’ motion for partial judgment on the pleadings (doc. 40), plaintiff’s response (doc. 53), and defendants’ reply (doc. 57).

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Defendants argue, and plaintiff concedes, that plaintiff’s state law claims are not within our jurisdiction pursuant to the Eleventh Amendment. We agree. See Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 106, 104 S. Ct. 900, 911 (1984) (“[I]t is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law”). Plaintiff requests that we either: (1) remand his state law claims to the Superior Court of Arizona in Maricopa County; or (2)

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1 extend the statute of limitations under A.R.S. § 12-504 so he may refile these claims in
2 Superior Court. First, we cannot remand plaintiff's claims to state court because this action
3 was originally filed in federal court (doc. 1). See 28 U.S.C. § 1447(c). Second, the state
4 court in which plaintiff refiles his claims must decide whether the statute of limitations
5 should be extended under A.R.S. § 12-504.

6 Accordingly, **IT IS ORDERED GRANTING** defendants' motion for partial
7 judgment on the pleadings (doc. 40). Counts 3, 4, and 5 of plaintiff's complaint are
8 dismissed without prejudice to his right to reassert these claims in state court.

9 DATED this 27th day of March, 2009.

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Frederick J. Martone

Frederick J. Martone
United States District Judge