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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Pasquale Labate,

10 Plaintiff,

11 v.

12 George W Bush, et al.,

13 Defendants.

No. CV-13-02366-PHX-DGC

ORDER

14
15 Defendant Janice Brewer has filed a motion to dismiss pursuant to Rule 12(b)(1),
16 or, in the alternative, Rule 12(b)(6). Doc. 16. Plaintiff has filed a motion to quash
17 Defendant Brewer's motion to dismiss. Doc. 38.

18 Defendant Planned Parenthood of Arizona, Inc. ("Planned Parenthood") and
19 Defendant Planned Parenthood Federation of America, Inc. ("PPFA") have filed a motion
20 to dismiss pursuant to Rule 8(a), or, in the alternative, Rule 12(b)(1) or 12(b)(6).
21 Doc. 14. Plaintiff has moved to quash the motion to dismiss filed by Planned Parenthood
22 and PPFA. Docs. 36, 37, 44, 45. Plaintiff also moves for sanctions against Planned
23 Parenthood's attorneys, Lawrence J. Rosenfield and Laura Lawless. *Id.*

24 Defendant City of Tucson has filed a motion to dismiss pursuant to Rule 12(b)(6).
25 Doc. 15. Plaintiff has moved to strike the City of Tucson's motion to dismiss and has
26 also moved for sanctions against the City's attorneys. Doc. 35.

27 Defendant City of Bisbee has filed a motion to dismiss pursuant to Rule 12(b)(1),
28 or, in the alternative, Rule 12(b)(6). Doc. 42. Plaintiff has moved to strike the City of

1 Bisbee’s motion to dismiss. Doc. 43. Plaintiff has also moved for sanctions against the
2 City’s lawyer, John MacKinnon, and for an award of costs incurred by Plaintiff to bring
3 this action against the City. *Id.*

4 Defendants Thomas J. Olmsted and John Ehrich have filed a motion to dismiss
5 pursuant to Rule 12(b)(1), or, in the alternative, Rule 12(b)(6). Doc. 13.

6 Defendants George W. Bush, former President of the United States of America,
7 and Barack Obama, President of the United States of America (“Federal Defendants”)
8 have file a motion to dismiss pursuant to Rule 12(b)(1). Doc. 47.

9 Plaintiff also moves to change the judge presiding over this action pursuant to
10 Rule 42(f) of the Arizona Rules of Civil Procedure. Doc. 39.

11 **I. Background.**

12 Plaintiff’s complaint is based on his objections to same-sex marriage, abortion,
13 and capital punishment. *See* Doc. 1. Plaintiff’s complaint is nearly a word-for-word
14 copy of another complaint that he filed on February 29, 2012 in this Court in case No.
15 CV12-0421-PHX-DGC. Plaintiff has pled no new facts or legal theories. He has made
16 no substantive alterations to the February 2012 pleadings in this new filing. He has
17 named five additional Defendants – Governor Janice Brewer, Pope Francis, the City of
18 Tuscon, the City of Bisbee, and Frank Pavone – and he has excluded Thomas Horne from
19 the list of Defendants. On May 18, 2012, the Court granted all motions to dismiss the
20 2012 complaint. *See Labate v. Bush*, CV12-0421-PHX-DGC, 2012 WL 1831531 (D.
21 Ariz. May 18, 2012).

22 **II. Defendants’ Motions to Dismiss.**

23 Defendants move to dismiss Plaintiff’s complaint on the same grounds as the
24 Court relied upon in dismissing Plaintiff’s February 2012 complaint. The Court will
25 grant Defendants’ motions to dismiss and deny Plaintiff’s various motions to quash for
26 sanctions for reasons set forth in its May 2012 order. *Id.*

27 **III. Plaintiff’s Motion for a New Judge.**

28 Plaintiff has filed a motion to change the judge presiding over this action pursuant

1 to Rule 42(f) of the Arizona Rules of Civil Procedure. Doc. 39. The Arizona Rules of
2 Civil Procedure do not apply in this Court, and the Federal Rules of Civil Procedure have
3 no counterpart to Rule 42(f). Plaintiff's motion will be denied.

4 **IV. Leave to Amend.**

5 The Court will also adopt the reasoning of its May 2012 order and deny Plaintiff
6 leave to amend his complaint. As before, Plaintiff's complaint presents one of the rare
7 cases where it is clear that deficiencies of the complaint cannot be cured by amendment.

8 **IT IS ORDERED:**

- 9 1. Defendants' motions to dismiss (Docs. 13, 14, 15, 16, 42, 47) are **granted**.
- 10 2. Plaintiff's motions for sanctions and to strike (Docs. 35, 37, 43) are **denied**.
- 11 3. Plaintiff's motion to quash Defendant Janice K. Brewer's motion to dismiss
12 (Doc. 38) is **denied**.
- 13 4. Plaintiff's motion to change judge (Doc. 39) is **denied**.
- 14 5. The Rule 16 Case Management Conference set for February 14, 2014 at
15 4:30 p.m. is **vacated**.
- 16 6. The Clerk is directed to terminate this action.

17 Dated this 14th day of January, 2014.

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22 David G. Campbell
23 United States District Judge
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