

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GARY W. WALTERS, *et al.*,  
*Plaintiffs,*  
vs.  
STATE OF NEVADA, *et al.*,  
*Defendants.*

Case No. 2:13-cv-01435-JAD-GWF

**ORDER**

This civil rights action brought by two Nevada state inmates as co-plaintiffs comes before the Court on plaintiffs’ applications (Docs. 8 & 10) to proceed *in forma pauperis*,<sup>1</sup> plaintiffs’ motions (Docs. 2 & 3) for a temporary restraining order and a preliminary injunction, plaintiff Gary Walters’ motion (Doc. 4) to raise his prison copy credit limit, and plaintiff Curtis Downing’s motion (Doc. 9) for an extension of time, as well as for initial review under 28 U.S.C. § 1915A. The applications to proceed *in forma pauperis* will be granted, subject to the remaining provisions herein. The Court thus proceeds to initial review.

**Screening**

When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint: (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b).

---

<sup>1</sup>The Court held in a prior order that the Prison Litigation Reform Act required that each co-plaintiff satisfy the requirements of the Act regarding payment of the filing fee and pauper status. See Doc. 7.

1 In considering whether the plaintiff has stated a claim upon which relief can be granted,  
2 all material factual allegations in the complaint are accepted as true for purposes of initial  
3 review and are to be construed in the light most favorable to the plaintiff. See, e.g., *Russell*  
4 *v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). However, mere legal conclusions  
5 unsupported by any actual allegations of fact are not assumed to be true in reviewing the  
6 complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 677-81 & 686-87 (2009). That is, bare and  
7 conclusory assertions that constitute merely formulaic recitations of the elements of a cause  
8 of action and that are devoid of further factual enhancement are not accepted as true and do  
9 not state a claim for relief. *Id.*

10 Further, the factual allegations must state a plausible claim for relief, meaning that the  
11 well-pleaded facts must permit the court to infer more than the mere possibility of misconduct:

12 [A] complaint must contain sufficient factual matter,  
13 accepted as true, to “state a claim to relief that is plausible on its  
14 face.” [*Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570, 127  
15 S.Ct. 1955, 1974, 167 L.Ed.2d 929 (2007).] A claim has facial  
16 plausibility when the plaintiff pleads factual content that allows the  
17 court to draw the reasonable inference that the defendant is liable  
18 for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The  
19 plausibility standard is not akin to a “probability requirement,” but  
20 it asks for more than a sheer possibility that a defendant has  
21 acted unlawfully. *Ibid.* Where a complaint pleads facts that are  
22 “merely consistent with” a defendant’s liability, it “stops short of  
23 the line between possibility and plausibility of ‘entitlement to relief.’  
24 ” *Id.*, at 557, 127 S.Ct. 1955 (brackets omitted).

25 . . . . [W]here the well-pleaded facts do not permit the court  
26 to infer more than the mere possibility of misconduct, the  
27 complaint has alleged - but it has not “show[n]” - “that the pleader  
28 is entitled to relief.” Fed. Rule Civ. Proc. 8(a)(2).

29 *Iqbal*, 556 U.S. at 678.

30 Allegations of a pro se complainant are held to less stringent standards than formal  
31 pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

32 In the complaint, co-plaintiffs Gary Walters and Curtis Downing present seven “causes  
33 of action” followed thereafter by seven counts. Plaintiffs’ claims, in the main, proceed from  
34 the same underlying legal premises, repeated numerous times in overlapping fashion over the  
35 course of the thirty-nine page pleading.

1 Plaintiffs maintain in the causes of action, *inter alia*, that: (a) the commission  
2 established by the state legislature in the mid 1950s to oversee preparation of the Nevada  
3 Revised Statutes was unconstitutional under the state constitution because it included  
4 members of the state supreme court and thus allegedly violated a separation of powers  
5 requirement of the state constitution; (b) the legislature thereafter failed to lawfully adopt the  
6 Nevada Revised Statutes in 1957 because, *inter alia*, the revised statutes were adopted and  
7 published without an enacting clause as required by the state constitution and without the  
8 required readings, votes and journal entries; (c) the statutory revision commission transferred  
9 its functions to an another allegedly unconstitutional entity in 1963; (d) plaintiffs thus are  
10 “Minority’ Disadvantaged Persons, i.e. Foreign Incarcerated Inmates unconstitutionally  
11 withheld in a Rogue State of Nevada . . . in the Nevada Department of Corrections (NDOC)  
12 . . . [subjected to] excessive/Cruel and Unusual Punishment Unlawful Confinement;”<sup>2</sup> (e)  
13 plaintiffs told Nevada Assemblyman William Horne of these alleged constitutional violations  
14 in September 2013 but he did not make his colleagues aware of these issues, allegedly  
15 requiring his removal from office under the state constitution; and (f) plaintiffs learned in  
16 February 2013 that Secretary of State Ross Miller has not maintained the official acts of the  
17 state legislature for 1957 and 1969, allegedly requiring his removal as well.

18 In the seven counts that follow the causes of action, plaintiffs allege that the foregoing  
19 circumstances violate their Fourth Amendment rights against illegal seizure, their Fourteenth  
20 Amendment rights to due process and equal protection, and numerous Nevada state  
21 constitutional provisions invoked via pendent jurisdiction. They claim that these alleged  
22 violations have resulted in plaintiffs “being deprived of life; liberty; acquiring, possession and  
23 protecting property and pursuing and obtaining safety and happiness” and “being continued  
24 to be illegally seized unconstitutionally and unlawfully.”<sup>3</sup>

25 ////

---

26  
27 <sup>2</sup>Doc. 1-1, at electronic docketing page 13.

28 <sup>3</sup>Doc. 1-1, at electronic docketing page 19, 21, 23, 26, 30, 31, 33 & 35.

1 Plaintiffs seek, *inter alia*, five trillion dollars in compensatory and punitive damages on  
2 each of the seven counts, a “declaratory judgment declaring [their] convictions void ab initio,”  
3 and a declaratory judgment further declaring all legislative acts of the Nevada legislature since  
4 the mid 1950's void and unconstitutional under the state constitution.

5 Plaintiff names as defendants the State of Nevada and, in their individual and official  
6 capacities, Secretary of State Miller, Assemblyman Horne, and hundreds of John and Jane  
7 Does consisting of all former Nevada state legislators, governors, lieutenant governors,  
8 secretaries of state, attorneys general, and commissioners going back to the 1950's.

9 Plaintiffs do not state a cognizable claim upon which relief may be granted under  
10 federal law.

11 First, plaintiffs clearly lack standing to the extent that they seek to challenge – separate  
12 and apart from a challenge to their criminal convictions – the validity of all Nevada state  
13 statutes since the mid 1950's for violating the state constitution, the alleged failure of  
14 Assemblyman Horne to seek the action in the legislature that they desire, and the alleged  
15 failure of Secretary of State Miller to maintain copies of certain legislative acts. A litigant who  
16 raises only a generally available grievance, claiming only a harm to his and every citizen's  
17 interest in proper application of the constitution and laws, does not state an Article III case or  
18 controversy. *See, e.g., Hollingsworth v. Perry*, 133 S.Ct. 2652, 2662 (2013). A litigant  
19 claiming that every Nevada state statute since the mid 1950's was adopted in violation of the  
20 state constitution presents about as generalized of a grievance for purposes of standing  
21 doctrine as one might imagine. The same conclusion holds true regarding plaintiffs' claims  
22 regarding the alleged failure of a state legislator to inform his colleagues of such alleged  
23 violations and the alleged failure of a state secretary of state to maintain all of the state  
24 statutory materials that he allegedly is required to maintain by the state constitution.

25 To the extent that plaintiffs *arguendo* have standing based upon an effort to establish  
26 the alleged invalidity of their criminal convictions and incarceration, their claims then fall  
27 squarely under the rule of *Heck v. Humphrey*, 512 U.S. 477 (1994). A plaintiff may not pursue  
28 federal civil rights claims that necessarily call the validity of his conviction or sentence into

1 question unless and until the conviction and sentence first have been overturned or otherwise  
2 vacated on direct appeal, on post-conviction review, or by executive action. It is clear from  
3 the face of the papers submitted that plaintiffs' convictions and sentences have not been  
4 overturned, as they seek to have their convictions and continued incarceration adjudicated  
5 and declared to be unconstitutional by this action.

6 In any event, even if plaintiffs *arguendo* had standing to raise claims herein that further  
7 *arguendo* were not *Heck*-barred, their claims clearly are frivolous on their face. Plaintiffs  
8 allege that nearly six decades of Nevada state legislative enactments are wholly void across  
9 the board, rendering Nevada an alleged "rogue" state with no valid legislative action for nearly  
10 sixty years. A number of Nevada state inmates recently have attempted to overturn their  
11 convictions *pro se* based upon substantially similar arguments. The Supreme Court of  
12 Nevada repeatedly has rejected the core argument presented here regarding the alleged lack  
13 of enacting clauses in the Nevada Revised Statutes in numerous opinions, which were not  
14 published apparently due to the nonprecedential value of an opinion on such a patently  
15 meritless challenge.<sup>4</sup> The Supreme Court of Nevada is the final arbiter of Nevada state law,  
16 including Nevada state constitutional law. The state supreme court's rejection of plaintiffs'  
17 core argument regarding an alleged lack of enacting clauses is the final word on that subject,  
18 and a federal court may not reach a different conclusion on the Nevada state law issue  
19 undergirding plaintiffs' federal claims. Nothing in the strained logic presented by plaintiffs  
20 leads to a different outcome with regard to their remaining related arguments.

21 The Court therefore will dismiss all federal claims presented alternatively for lack of  
22 standing, for their noncognizability in a federal civil rights action, and as frivolous.<sup>5</sup> The Court

---

23  
24 <sup>4</sup>See, e.g., *Hull v. State*, 2013 WL 5730596 (Nev. Oct. 16, 2013); *Betts v. State*, 2013 WL 3270769  
25 (Nev. June 12, 2013); *Depiano v. Palmer*, 2013 WL 3305482 (Nev. May 13, 2013); *Burgess v. State*, 2012  
26 WL 5835122 (Nev. Nov. 15, 2012); *Valenzuela v. State*, 2011 WL 4345453 (Nev. Sept. 15, 2011); *Gutierrez-  
Piceno v. State*, 2748446 (July 13, 2011); *Lyons v. State*, 2011 WL 1044591 (March 17, 2011). The Court  
has cited only the most recent handful of such cases available via a legal research service.

27 <sup>5</sup>The Court's dismissal on the bases discussed in the text does not signify that the claims presented  
28 are free of other substantial deficiencies. *Inter alia*, plaintiffs may not proceed against the State in federal

(continued...)



1 rejecting such a request on the basis that he has exceeded his \$100.00 legal copy credit limit.  
2 Finally, the Court finds that the credit increase amount requested – \$1,300.00 – far exceeds  
3 the amount that ever reasonably would be required for this litigation, even if it were not being  
4 dismissed. When the Court approves requests of this nature, the approval typically is for an  
5 increase of \$10.00 or perhaps \$20.00. Plaintiff Downing, again, has ample funds with which  
6 to make any necessary copies if the co-plaintiffs seek review of this dismissal, and it also has  
7 not been established that Downing further does not have copy credit remaining. Plaintiff  
8 Walters thus has no need to increase his legal copy credit limit for this case.

9 The Court will grant plaintiff Downing’s extension request *nunc pro tunc*.

10 **IT THEREFORE IS ORDERED** that plaintiffs’ applications (**Docs. 8 & 10**) to proceed  
11 *in forma pauperis* **are GRANTED**, subject to the remaining provisions herein. Plaintiffs shall  
12 not be required to pay an initial partial filing fee. However, even though the action is  
13 dismissed, plaintiffs each still must pay, separately, a full filing fee pursuant to 28 U.S.C. §  
14 1915(b)(2), pursuant to the Court’s prior order (Doc. 7).

15 **IT FURTHER IS ORDERED** that the movants herein are permitted to maintain this  
16 action to a conclusion without the necessity of prepayment of any additional fees or costs or  
17 the giving of security therefor. This order granting *forma pauperis* status shall not extend to  
18 the issuance of subpoenas at government expense.

19 **IT FURTHER IS ORDERED** that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada  
20 Department of Corrections shall pay to the Clerk of the United States District Court, District  
21 of Nevada, 20% of the preceding month’s deposits in the account of plaintiff **GARY W.**  
22 **WALTERS, #1022269**,<sup>6</sup> (in the months that the account exceeds \$10.00) until a full \$350.00  
23 filing fee has been paid.

24 **IT FURTHER IS ORDERED** that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada  
25 Department of Corrections shall pay to the Clerk of the United States District Court, District  
26

---

27 <sup>6</sup>The Department is being directed to pay \$350.00 from the account of plaintiff Walters and another  
28 \$350.00 from the account of plaintiff Downing. That is, *each* plaintiff is being required to pay a full \$350.00  
filing fee, separate and apart from the fee paid by the other co-plaintiff.

1 of Nevada, 20% of the preceding month's deposits in the account of plaintiff **CURTIS L.**  
2 **DOWNING, #18675,**<sup>7</sup> (in the months that the account exceeds \$10.00) until a full \$350.00  
3 filing fee has been paid. **The Clerk of Court shall SEND a copy of this order to the**  
4 **Finance Division of the Clerk's Office. The Clerk shall also SEND a copy of this order**  
5 **to the attention of the Chief of Inmate Services for the Nevada Department of**  
6 **Corrections, P.O. Box 7011, Carson City, NV 89702.**

7 **IT FURTHER IS ORDERED** that the Clerk shall file the complaint and that the  
8 complaint and this action shall be DISMISSED for the reasons assigned herein.

9 **IT FURTHER IS ORDERED** that plaintiff Downing's motion (**Doc. 9**) for an enlargement  
10 of time **is GRANTED** *nunc pro tunc* in connection with the pauper application (Doc. 10)  
11 entered on December 3, 2013.

12 **IT FURTHER IS ORDERED** that all remaining motions (**Docs. 2, 3, and 4**) are **DENIED**  
13 for the reasons assigned herein.

14 **IT FURTHER IS ORDERED** that the dismissal of this action shall count as a "strike" for  
15 purposes of 28 U.S.C. § 1915(g) for *each* plaintiff herein, such that plaintiff Walters has  
16 accrued a § 1915(g) strike by the filing of this action and plaintiff Downing also has accrued  
17 a § 1915(g) strike by the filing of this action.

18 **IT FURTHER IS ORDERED** that, in the event of an appeal, and pursuant to 28 U.S.C.  
19 § 1915(a)(3), the Court certifies to the Court of Appeals that an appeal is not taken in good  
20 faith. Plaintiffs allege in this federal civil rights action that their convictions are invalid  
21 because, *inter alia*, the entire Nevada Revised Statutes adopted nearly six decades ago are  
22 invalid for lack of an enacting clause. To the extent that plaintiffs *arguendo* have standing to  
23 raise such a generally available grievance regarding the validity of the entirety of the Nevada  
24 Revised Statutes, their federal claims clearly are *Heck*-barred because the claims necessarily  
25 question the validity of their convictions. Their federal claims in any event are frivolous on  
26

---

27 <sup>7</sup>See text at note 6 and note 6, *supra*. Again, *both* plaintiff Downing *and* plaintiff Walters are required  
28 to pay a separate filing fee, such that *each* plaintiff separately must pay a full \$350.00 filing fee.



1 their face, with cases presenting similar underlying contentions regarding unconstitutionality  
2 under the state constitution repeatedly having been rejected by the Supreme Court of Nevada,  
3 the final arbiter of Nevada state law. The present action represents the epitome of the type  
4 of frivolous inmate litigation that numerous provisions of the Prison Litigation Reform Act seek  
5 to discourage. So that this certification may be clearly marked for review by the Court of  
6 Appeals, the Clerk shall prominently include within the docket entry for this order a statement  
7 that the order also certifies to the Court of Appeals that an appeal would not be taken in good  
8 faith.

9 The Clerk of Court shall enter final judgment accordingly, dismissing this action without  
10 prejudice.

11 DATED: March 20, 2014.

12  
13  
14   
15 Jennifer A. Dorsey  
16 United States District Judge

17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28