

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

GREGORY J. BENNETT,

Petitioner,

VS.

STATE OF NEVADA,

### Respondent.

3:16-cv-00420-RCJ-WGC

## ORDER

Petitioner Gregory Bennett is a prisoner in the custody of the Nevada Department of Corrections. He filed a Petition for a Writ of Prohibition in this Court. The Magistrate Judge recommended dismissing the Petition without prejudice because Petitioner complained of constitutional violations at his trial in state court that were not cognizable under *Heck v. Humphrey*, 512 U.S. 477 (1994). The Court agreed. Petitioner has now asked the undersigned to use. The Court denies the motion. Judgment has been entered, and Petitioner has no right to request recusal of a judge before whom no action is pending. See *United States v. Porte*, 624 F.2d 869, 879–80 (9th Cir. 1980) (Kennedy, J.) (holding that absent exceptional circumstances, grounds for disqualification must be raised before the judicial action at issue). There are no exceptional circumstances here. Anyway, nowhere in his motion does Petitioner identify any source of alleged bias.

## CONCLUSION

IT IS HEREBY ORDERED that the Motion to Recuse (ECF No. 10) and the Motion for Subpoena (ECF No. 11) are DENIED.

IT IS SO ORDERED.

] DATED: This 17th day of October, 2016.

ROBERT C. JONES  
United States District Judge