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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT TACOMA

8 JESS R. SMITH,

9 Plaintiff,

10 v.

11 B. GRONSETH, et al.,

12 Defendants.

CASE NO. C16-5775BHS-DWC

ORDER ADOPTING REPORT  
AND RECOMMENDATION

13 This matter comes before the Court on the Report and Recommendation (“R&R”)  
14 of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 28), and  
15 Plaintiff Jess Smith’s (“Smith”) objections to the R&R (Dkt. 29).

16 On December 14, 2016, Judge Christel issued the R&R recommending that the  
17 Court deny Smith’s motion because he failed to show either success on the merits or  
18 irreparable harm. Dkt. 28. On December 22, 2016, Smith filed objections. Dkt. 29.

19 The district judge must determine de novo any part of the magistrate judge’s  
20 disposition that has been properly objected to. The district judge may accept, reject, or  
21 modify the recommended disposition; receive further evidence; or return the matter to the  
22 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

1 In this case, Smith advances two major objections. First, Smith objects on the  
2 grounds that Defendants have prevented access to his legal materials. Dkt. 29 at 3.  
3 Judge Christel declined to consider this issue because Smith raised it for the first time in  
4 his reply briefs. Dkt. 28 at 2. The Court agrees with Judge Christel that the issue is  
5 beyond the scope of the original motion and adopts the R&R on this issue.

6 Second, Smith contends that failure to provide access to out-of-state appellate  
7 decisions is a violation of his right to access the courts. Dkt. 29. Judge Christel  
8 concluded that Smith had failed to show that he was likely to succeed on the merits or  
9 that serious questions going to the merits existed. Dkt. 28 at 3–5. The Court agrees with  
10 both conclusions. Because a federal habeas petition addresses whether a state court  
11 unreasonably applied clearly established federal law, it is unlikely that an out-of-state  
12 appellate opinion would shed additional light on clearly established federal law.

13 Therefore, the Court having considered the R&R, Smith’s objections, and the remaining  
14 record, does hereby find and order as follows:

- 15 (1) The R&R is **ADOPTED**; and  
16 (2) Smith’s motion for a temporary restraining order and preliminary  
17 injunction is **DENIED**.

18 Dated this 8th day of February, 2017.

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21 BENJAMIN H. SETTLE  
22 United States District Judge