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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KIM BERRY,

Plaintiff - Appellant,

v.

STATE OF CALIFORNIA; et al.,

Defendants - Appellees.

No. 05-16637

D.C. No. CV-04-02580-KJM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence K. Karlton, District Judge, Presiding

Submitted November 6, 2006**

Before: LEAVY, GOULD, and CLIFTON, Circuit Judges.

Kim Berry appeals pro se from the district court's judgment dismissing his action against the State of California and its officers alleging that California

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). We therefore deny Berry's request for oral argument.

Family Code Section 271 violates the First Amendment. We have jurisdiction under 28 U.S.C. § 1291. After de novo review, *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003), we affirm.

The district court correctly concluded that it lacked jurisdiction to consider Berry's action because the relief Berry sought would require review of the state court judgment against him. *See id.* at 1158. Berry's action was thus a de facto appeal of the state court proceedings, and the district court was required to "refuse to decide any issue raised in the suit that is 'inextricably intertwined' with an issue resolved by the state court." *Id.* We reject Berry's contention that he brings an independent action seeking prospective relief because his complaint "asserts as a legal wrong an allegedly erroneous decision by a state court." *Id.* at 1164.

Berry's remaining contentions lack merit.

AFFIRMED.