

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

GORDON WARREN EPPERLY,

Plaintiff,

VS.

ALLEN WEINSTEIN,
Archivist of the United States,

Defendant.

Case No. 1:07-cv-00011-JWS

ORDER of DISMISSAL

Motion Presented

On June 11, 2007, Gordon Warren Epperly, representing himself, filed a "Petition for an Order in the Nature of Mandamus,"¹ requesting that the Court order the National Archivist of the United States to correct the "fraudulent publication of Proclamation(s) of Ratification of the U.S. Constitution, 14th Amendment," claiming that the Archivist "refused to ... record and publish the correct voting record of Legislatures and States that cast votes on the Resolution proposing the ... 14th Amendment which includes the removal of all votes cast by unlawful governments

¹ See Docket No. 1.

as identified by the Congress of the United States."² Mr. Epperly paid his filing fee and served the Archivist.³ The Archivist has moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), and Mr. Epperly has responded.⁴ Oral argument was not requested and would not assist the court.

Standard of Review

Under Rule (12)(b)(6), the allegations of the non-moving party are taken as true, and the complaint is construed in the light most favorable to the non-moving party.⁵ "[T]he federal courts may not dismiss a complaint unless 'it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'"⁶ The Court must determine, "not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and

² *Id.* at 11 (Mr. Epperly believes the recorded vote was incorrect because the Archivist "did not record all the votes of rejection that were cast by the Legislatures and States that were in the Union *before* the enactment of the Reconstruction Act of March 2nd, 1867.") (emphasis in original).

³ See Docket Nos. 1, 4, 5, 6.

⁴ See Docket Nos. 13, 14, 15.

⁵ See *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969); *Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 248 (9th Cir. 1997).

⁶ *Davel Communications, Inc. v. Qwest Corp.*, 460 F.3d 1075, * (9th Cir. 2006) (quoting *Kwai Fun Wong v. United States*, 373 F.3d 952, 956-57 (9th Cir. 2002) (quoting *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002))).

unlikely but that is not the test.”⁷ Further, in conducting its review of a self-represented plaintiff's pleadings, the Court is mindful that it must liberally construe the complaint, and give the plaintiff the benefit of the doubt.⁸

Discussion

1. Mr. Epperly's Claims

Mr. Epperly, stating that he is a “natural born Caucasian male citizen,” requests that the Archivist “perform his ministerial duties to correct the record by publishing the correct voting record of the State Legislatures that cast votes of ratification and rejection upon the proposed 14th Amendment to the U.S. Constitution,” alleging that the Fourteenth Amendment to the Constitution was never properly ratified.⁹

2. Previously Litigated Claims

As pointed out by the Archivist, Mr. Epperly has previously litigated his claim that the Fourteenth Amendment was never properly ratified.¹⁰ In *Epperly v. U.S.*

⁷ *Swartz v. KPMB LLP*, 476 F.3d 756, 763 (9th Cir. 2007), quoting *Jackson v. Carey*, 353 F.3d 750, 755 (9th Cir. 2003).

⁸ See *Jackson v. Carey*, 353 F.3d 750 (9th Cir. 2003) (“Pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers.”).

⁹ See Docket No. 1 at 2, 5.

¹⁰ See Docket No. 13 at 3-5, citing, e.g., *Epperly v. United States*, No. J90-0010 CV (D. Alaska April 30, 1991); *Epperly v. United States*, No. 95-281 (Ct. Cl. April 17, 1995); *Epperly v. Archivist Carlin*, No. J97-0025

(*U.S. Congress*), 980 F.2d 737 (9th Cir. Nov. 14, 1992) (unpublished), *cert. denied*, 510 U.S. 867, *rehearing denied*, 510 U.S. 985 (2003), the Court of Appeals for the Ninth Circuit explained as follows: “The Epperlys also seek declaratory relief to the effect that the Fourteenth Amendment was never ratified. See E.R. p. 13 (Amended Complaint, p. 11). Such relief involves the evaluation of a political question which cannot be addressed by the courts.” In that case, the Court awarded sanctions to the Government in the amount of \$2,500, for bringing a frivolous appeal.¹¹

Contrary to Mr. Epperly’s contention that he may once again litigate the ratification of the 14th Amendment, this time based upon a different theory, “[u]nder *res judicata*, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or **could have been** raised in that action.”¹²

CV (D. Alaska March 3, 1998); *Epperly v. United States Congress*, No. 1:06-cv-00008-JWS (D. Alaska April 14, 2006).

¹¹ See *Epperly v. U.S.* 980 F.2d 737 (Table) at *2.

¹² *Holcombe v. Hosmer*, 477 F.3d 1094, 1097 (9th Cir. 2007) (emphasis added); see also *In re Baker*, 74 F.3d 906, 909-10 (9th Cir. 1996) (per curiam) (“a final judgment on the merits of an action precludes the parties from relitigating issues that were or could have been raised in that action”).

3. Frivolous Claims

"[A] complaint . . . is frivolous where it lacks an arguable basis either in law or in fact,"¹³ A complaint may be dismissed as frivolous if it "merely repeats pending or previously litigated claims."¹⁴ Mr. Epperly's complaint, alleging that the 14th Amendment was never properly ratified, is frivolous.¹⁵

¹³ *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); see also *Martin v. Sias*, 88 F.3d 774, 775 (9th Cir. 1996); *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

¹⁴ *Cato*, 70 F.3d at 1105 n. 2 (citations and internal quotations omitted).

¹⁵ See, e.g., *Morse v. Frederick*, 127 S.Ct. 2618, 2630 n. 1 (2007) ("[T]he First Amendment did not apply to the States until at least the **ratification of the Fourteenth Amendment.**") (emphasis added); *Central Virginia Community College v. Katz*, 546 U.S. 356, 374 (2006) ("This grant of habeas power is remarkable not least because it would be another 67 years, after **ratification of the Fourteenth Amendment**, before the writ would be made generally available to state prisoners.") (emphasis added); *Deck v. Missouri*, 544 U.S. 622, 638 (2005) ("Despite the existence of a rule at common law, state courts did not even begin to address the use of physical restraints until the 1870's, and the vast majority of state courts would not take up this issue until the 20th century, well after the **ratification of the Fourteenth Amendment.**") (emphasis added).

IT IS THEREFORE ORDERED:

This action is DISMISSED with prejudice.¹⁶

DATED this 27th day of December, 2007, at Anchorage, Alaska.

/s/JOHN W. SEDWICK
United States District Judge

¹⁶ See *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (dismissal, with prejudice, upheld after "weigh[ing] the following factors: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits").

Other Orders/Judgments1:07-cv-00011-JWS Epperly v Weinstein

U.S. District Court

District of Alaska

Notice of Electronic Filing

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Case Name: Epperly v Weinstein**Case Number:** 1:07-cv-11**Filer:****WARNING: CASE CLOSED on 12/27/2007****Document Number:** 17**Docket Text:**

JUDGMENT; matter dismissed with prejudice. Signed by Judge John W. Sedwick on 12/27/07. (RMC, COURT STAFF)

1:07-cv-11 Notice has been electronically mailed to:

Daniel R. Cooper , Jr daniel.cooper@usdoj.gov, patty.thede@usdoj.gov, usaak.ecf@usdoj.gov

1:07-cv-11 Notice has been delivered by other means to:Gordon Warren Epperly
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

GORDON WARREN EPPERLY,
Plaintiff,

Case Number 1:07-cv-00011-JWS

v.

ALLEN WEINSTEIN,
Defendant.

JUDGMENT IN A CIVIL CASE

 JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

 X **DECISION BY COURT.** This action came before the court. The issues have been reviewed and a decision has been rendered.

IT IS ORDERED AND ADJUDGED:

THAT this action is DISMISSED with prejudice.

APPROVED:

/s/JOHN W. SEDWICK
United States District Judge

Date: December 27, 2007

*NOTE: Award of prejudgment interest,
costs and attorney's fees are governed
by D.Ak. LR 54.1, 54.3, and 58.1.*

Ida Romack
Ida Romack, Clerk of Court