IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

GORDEN WARREN EPPERLY,

Petitioner,

v.

BARACK HUSSEIN OBAMA II, et al.,

Respondents.

Case No. 1:12-cv-00011-TMB

ORDER OF DISMISSAL

On June 25, 2012, Gordon Warren Epperly, representing himself, filed an action in the Superior Court for the State of Alaska, which was removed by the defendants to this court on July 27, 2012.[1]

Removal Jurisdiction

Mr. Epperly has challenged the right of the defendants to remove the case to this court. He challenges (1) the jurisdiction of the court, contending that he is complaining of the administrative actions which allowed President Obama's name to appear on the ballot in Alaska, rather than posing a federal question; and (2) that, as a woman, United States Attorney for the District of Alaska, Karen Loeffler, has no authority to remove this case to federal court.[2] Mr. Epperly goes on to state as follows:

[1] Docket 1; *Gordon Warren Epperly v. Barack Obama II,* Case No. 1JU-12-694CI, *available at* http://www.courtrecords.alaska.gov/eservices/home.page

[2] Docket 13 at 2 – 3.

> The year 2010 national elections for the government of the United States have come and gone with several Woman [sic], and other individuals who are not white Citizens, having been elected or appointed into the Offices of the Congress, President, Judicial Courts, and several Executive Offices of the government for the United States of America. All these individuals are *"Usurpers of Office"* for they have no *"Political Privileges" (Rights)* under any provision of the United States Constitution to hold a Pubic Office for the United States government under the qualification Clauses of Article I, Article II, and Article III of the United States Construction.
>
> The question presented, since the *[purported]* adoption of the Fourteenth Amendment to the U.S. Constitution, does a Woman or any none [sic] white citizen have *"Political Privileges"* to be elected into or appointed into Pubic Offices of the government for the United States of America?[3]

In his initial pleading filed with the Superior Court for the State of Alaska, Mr. Epperly states that he "brings this Petition for an 'Order in the Nature of Mandamus' within the *time frame and venue* established by Article I, section 7 of the *Alaska Constitution*, and by the *Privileges and Immunity [sic] Clause* of the *Fourteenth Amendment to the United States Constitution*."[4] He alleges that President Obama was unlawfully inaugurated as President because, as "a child of a mixed marriage [who] is identified in law as a 'Mulatto,'" he has "no inherent 'Rights of Birth' to be a 'Citizen' of the United States." As such, Mr. Epperly contends, President Obama "was (unlawfully) inaugurated as President of the United States."[5]

---

[3] *Id*. at 3 – 4.

[4] *Id*. at 1-1 at 2 (emphasis added).

[5] *Id.* at 2 – 3.

Likewise, Mr. Epperly contends that "Respondent Nancy Pelosi is a questionable member of the House of Representatives [because, a]s a women, [sic] she has no inherent Rights of Birth to be a Citizen of the United States …. There are no provisions in the Constitution of the United States that grants Women 'Political Rights' of Suffrage to hold any Political Office of the United States Government."[6]

Given Mr. Epperly's statement of his own cause of action,[7] the defendants had the right to remove the case to federal court.[8]

---

[6] *Id*. at 3.

[7] Although Mr. Epperly also names state officials who have duties concerning federal elections in Alaska, he claims that he was denied his "Constitutional Rights to 'Due Process of Law' to allow [Respondent Gail Fenumiai] to place the name of a Presidential Candidate that has no qualifications of Office on the Election Ballots for the State of Alaska. … and that his "Rights of 'Due Process of Law' … have been placed in jeopardy by Respondents, Lt. Governor Mead Treadwell and his Director of Elections, Gail Fenumiai, for they have taken no action to 'verify' the qualifications of Office of (perspective) Presidential Candidate, Barack Hussein Obama II." Docket 1-1 at 9 - 10. Mr. Epperly's cause of action under A.S. 15.25.042(a), likewise arise out of his allegation that President Obama "has not established the eligibility requirements set forth by the U.S. Constitution of being a 'natural born Citizen,' or even a citizen of the United States," and "is therefore ineligible to appear on the Election Ballots for the State of Alaska as a Candidate for President of the United States." *Id*. at 16 – 17. And Mr. Epperly's prayer for relief states that his "Rights of 'Due Process of Law' … require that the Alaska Lt. Governor and his Director of Elections adhere to the U.S. Constitution and verify the eligibility of Barack Hussein Obama II in a timely manner for the Office of President of the United States." *Id*. at 17. Mr. Epperly further requests that the court "submit the name of Respondent, Nancy Pelosi, to the United States District Court for the District of Columbia for a Grand Jury investigation into the crime of 'advocating the overthrow of the Constitutional form of government of the United States.' (5 U.S.C. 3331, 5 U.S.C. 3333, 18 U.S.C. 1918, and Executive Order 10450)." *Id*. at 17. In addition, Mr. Epperly requests that "[i]f Barack Hussein Obama II is found to be in want of the Constitutional qualifications to hold the Office of President of the United States," that President Obama's name be submitted "to the United States District Court for the District of Columbia for a Grand Jury investigation … into the crime of 'advocating the

Frivolous Claims

"[A] complaint . . . is frivolous where it lacks an arguable basis either in law or in fact."[9] "Factual frivolousness includes allegations that are clearly baseless, fanciful, fantastic, or delusional."[10] Moreover, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'"[11]

In conducting a review of the pleadings of a self-represented plaintiff, the court is mindful that it must liberally construe the pleadings and give the plaintiff the benefit of the doubt.[12] Before the court may dismiss Mr. Epperly's case, the court must provide him with a statement of the deficiencies in the complaint and

---

overthrow of the Constitutional form of government of the United States.' (5 U.S.C. 3331, 5 U.S.C. 3333, 18 U.S.C. 1918, and Executive Order 10450)." *Id*. at 18.

[8] *See* 28 U.S.C. § 1442(a)(1) (allowing for removal for suits against federal officers); 28 U.S.C. § 1441(a) (allowing for removal when a federal district court has original jurisdiction); *Vaden v. Discover Bank*, 556 U.S. 49, 59-60 (2009) ("28 U.S.C. § 1331 … vests in federal district courts jurisdiction over 'all civil actions arising under the Constitution, laws, or treaties of the United States.' Under the longstanding well-pleaded complaint rule … a suit 'arises under' federal law 'only when the plaintiff's statement of his own cause of action shows that it is based upon [federal law].'"); *see also* Docket 9.

[9] *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).

[10] *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992); *see also Neitzke*, 490 U.S. at 325 ("'[F]rivolous,' when applied to a complaint, embraces not only the inarguable legal conclusion, but also the fanciful factual allegation.").

[11] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

[12] *See Hebbe v. Plier*, 627 F.3d 338, 342 (9th Cir. 2010) ("[O]ur 'obligation' remains [after *Iqbal*] 'where the petitioner is *pro se,* particularly in civil rights cases, to construe the pleadings liberally and to afford the petitioner the benefit of any doubt.'") (citation omitted).

an opportunity to amend, unless it is clear that amendment would be futile.[13] In this case, amendment would be futile. Mr. Epperly's claims are implausible and frivolous.[14] This court will, therefore, dismiss this case.[15]

Therefore, IT IS HEREBY ORDERED:

1. This case is DISMISSED with prejudice;[16]
2. All outstanding motions are DENIED as moot; and
3. The Clerk of Court will enter a Judgment in this case.

Dated at Anchorage, Alaska this 24th day of August, 2012.

/s/ TIMOTHY M. BURGESS
United States District Judge

---

[13] *See Schmier v. U.S. Court of Appeals for Ninth Circuit*, 279 F.3d 817, 824 (9th Cir. 2002) ("Futility of amendment ... frequently means that 'it was not factually possible for [plaintiff] to amend the complaint so as to satisfy the standing requirement.'") (citations excluded); *Eldridge v. Block*, 832 F.2d 1132, 1136 (9th Cir. 1987). *See also Jackson v. Carey*, 353 F.3d 750, 758 (9th Cir. 2003) ("dismissal without leave to amend is improper unless it is clear that the complaint could not be saved by any amendment." (citing *Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996)).

[14] *See, e.g.*, Dockets 1-1, 7, 10-1, 10-2, 11, 13, 17.

[15] *See* Blacks Law Dictionary (9th ed. 2009) ("sua sponte" is defined as "of one's own accord; voluntarily."). Although the defendants make good arguments for dismissal (Docket 7), the court requires no further briefing by any party on any issue presented in this case. The issue of frivolousness and implausibility are so clear and conclusive that it would be a waste of the parties' and the court's resources to allow this case to proceed.

[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").