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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

GORDON WARREN EPPERLY, Plaintiff, vs. ALLEN WEINSTEIN, Defendant,	)	Case No. 1:07-cv-00011-JWS **MOTION TO DISMISS ALL CLAIMS**

Defendant, through counsel, moves to dismiss all claims in plaintiff Gordon Epperly's Petition For an Order In The Nature of Mandamus, pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff's primary argument, that the Archivist of the United States (the Archivist) should be ordered to "correct" the voting record that ratified

the Fourteenth Amendment, thereby removing that amendment from the Constitution, invokes an area of traditional congressional competence and is non-justiciable under the political question doctrine. Furthermore, plaintiff has previously litigated both this claim and this issue and should be barred from bringing this Petition according to the principles of res judicata and collateral estoppel. In addition, plaintiff's Petition in the Nature of Mandamus fails to state a claim for which relief can be granted. Finally, plaintiff is unable to meet the required elements of standing and his claim should be dismissed.

I. STANDARD OF REVIEW

The court may dismiss a claim, pursuant to Fed. R. Civ. P. 12(b)(6), if the plaintiff has failed to state a claim upon which relief can be granted. *See, e.g.; Rodriguez v. Panayaiotou*, 314 F.3d 979, 983 (9th Cir. 2002). Dismissal may be based on either the "lack of cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *Balistreri v. Pacifica Police Dep't.*, 901 F.2d 696, 699 (9th Cir. 1990). Therefore, a court should dismiss a case if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Vignolo v. Mille*, 120 F.3d 1075, 1077 (9th Cir. 1997).

Furthermore, a court considering a motion to dismiss based on jurisdictional grounds is not restricted to the pleadings, but may review additional evidence to

resolve factual disputes concerning the existence of jurisdiction. *See*, *Land v. Dollar*, 330 U.S. 731 (1947). In such circumstances the plaintiff's allegations will not be granted presumptive truthfulness, instead the trial court will be able to evaluate the "merits of the jurisdictional claim for itself." *Thornhill Pub. Co. Inc. v. General Tel. & Electronics Corp.*, 594 F.2d 730, 733 (9th Cir. 1979).

II. BACKGROUND

Plaintiff believes that the Fourteenth Amendment to the Constitution was never ratified. In order to challenge the Fourteenth Amendment's legitimacy, plaintiff requests that the Archivist "perform his ministerial duty" and "correct" the voting record of the state legislatures that led to the ratification of the Amendment. (Petition at 5.) According to plaintiff's logic, a recount of the votes for and against the adoption of the Fourteenth Amendment by the Archivist would prove that the Amendment was never truly ratified. (Petition at 11.)

This is not the first time that plaintiff has challenged the validity of the Fourteenth Amendment in a court of law. Plaintiff previously sought to challenge the regulations of the Internal Revenue Code by denying his status as a United States citizen under the Fourteenth Amendment because he claimed the Amendment was never ratified. *Epperly v. United States*, J90-0010 CV, (D. Alaska April 30, 1991). The court described plaintiff's case as frivolous and dismissed it for failure to state a claim. *Id.* Plaintiff then appealed the case to the Ninth Circuit

where the District Court's dismissal was upheld and sanctions were imposed on Appellant, ordering him to pay $2,500 dollars for filing a meritless appeal. *Epperly v. United States*, 980 F.2d 737 (9th Cir. 1992). Plaintiff subsequently petitioned the United States Supreme Court for certiorari on this claim and was denied. *Epperly v. United States*, 510 U.S. 867 (1993).

Plaintiff then turned his attention to the United States Court of Federal Claims where he filed a complaint that directly challenged the validity of the Fourteenth Amendment. The court dismissed plaintiff's claim on jurisdictional grounds. *Epperly v. United States*, No. 95-281, (Ct. Cl. April 17, 1995).

Plaintiff next challenged the legality of the Fourteenth Amendment[1] in 1997 when he submitted a Petition for an Order in the Nature of a Writ of Mandamus on the Archivist of the United States,[2] commanding him to investigate the validity of the Fourteenth Amendment. More specifically, plaintiff sought to have the Archivist determine the validity of the ratification process that led to the adoption of the Fourteenth Amendment. On March 3, 1998, the United States District Court for the District of Alaska dismissed plaintiff's claims for the following reasons: 1) the Archivist is not authorized to investigate the validity of the ratification of amendments; 2) petitioner sought relief outside of the scope of

[1] Mr. Epperly also challenged the legality of the Fifteenth Amendment in this Petition.
[2] At the time, Dr. Allen Weinstein's predecessor, John W. Carlin, was serving as Archivist of the United States.

mandamus; 3) determining who has the authority to investigate ratification of amendments is a non-justiciable question; and 4) the United States has not waived sovereign immunity. *Epperly v. Carlin*, No. J97-0025-CV (HRH) (D. Alaska March 3, 1998).

Plaintiff returned to the United States District Court for the District of Alaska in 2006 with a complaint against the Congress of the United States that sought "judicial review of federal enactments of law," specifically the Fourteenth and Fifteenth Amendments, and demanded to be informed under what authority Congress passed laws granting "Colored People" the right to vote and participate in the political process. *Epperly v. United States Congress*, No. 1:06-cv-00008-JWS (D. Alaska April 14, 2006). Plaintiff's case was dismissed once more. *Id.* In his decision, Judge John W. Sedwick declared plaintiff's claims "frivolous" and dismissed the action "with prejudice." *Id.*

Not easily discouraged, plaintiff next sent a letter to the current Archivist of the United States, Allen Weinstein, at the National Archives and Records Administration (NARA). This letter, which the Archivist received on December 13, 2006, commanded the Archivist to perform his ministerial duty and publish the correct voting record of the state legislatures that voted to ratify or reject the Fourteenth Amendment.[3] The letter was eventually forwarded to NARA's Office

[3] This letter is attached to the Petition as Exhibit A.

of the Federal Register (OFR) where it prompted a response from Michael L. White, the Director of Legal Affairs and Policy at the OFR.[4] Mr. White's letter explained the Archivist's role in the amendment process and concluded that NARA "finds no basis for taking the actions requested."[5] Plaintiff filed the instant Petition on June 11, 2007.

III. LEGAL OBLIGATIONS OF THE ARCHIVIST

The Federal Records Act (FRA) governs the management, retention, and disposal of Federal Records. *See* 44 U.S.C. ch. 21, 25, 29, 31, 33 (2000). NARA and its lead officer, the Archivist of the United States, have primary authority under the FRA over the management and disposal of Federal Records. *See id.* at §§ 2904a, 3303a. Thus the Archivist's primary focus is on safeguarding and preserving the records of the United States Government, though he does have other ancillary duties, including the certification of constitutional amendments. 1 U.S.C. § 106b (2000). [6]

The Archivist was reassigned the duty of certifying and proclaiming the ratification of amendments to the Constitution from the Administrator of the

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[4] Mr. White's letter is attached to the Petition as Exhibit C.

[5] Indeed, Mr. White was very clear about the Archivist's very limited role in the amendment process. He cited leading Supreme Court Cases that address this very issue and concluded that questions such as plaintiff's fall under the purview of Congress, rather than the Executive Branch.

[6] The Archivist also administers presidential records after an incumbent Administration leaves office. 44 U.S.C. Chap. 22.

General Services Administration (GSA) in 1984. The Administrator of GSA had been entrusted with the responsibility in 1951, the year Congress transferred the obligation from the original official in charge, the Secretary of State. Pub. L. No. 248-655, 65 Stat. 710. The Secretary of State performed the function by custom from 1789 until 1818, when Congress passed a statute setting out the Secretary's duties. 3 Stat. 439.[7] Over the years, the substance of those duties has not changed[8] and the Archivist's current responsibilities during the amending process can now be found at § 106b of Title 1 of the United States Code, which reads:

> Whenever official notice is received at the National Archives and Records Administration that any amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Archivist of the United States shall forthwith cause the amendment to be published, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

It is Section 106b, then, which defines the role that the Archivist plays in the amending process. As numerous court decisions and law review articles have

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[7] For more on the history of this transition see, John R. Vile, *Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues, 1789-2002*. 399 (2d ed. 2003).

[8] The language has certainly been updated, but the content has remained the same. The original language from the 1818 statute reads:

> That, whenever official notice shall have been received, at the Department of State, that any amendment which, heretofore has been, or hereafter may be, proposed to the Constitution of the United States, has been adopted, according to the provisions of the Constitution, it shall be the duty of the said Secretary of State forthwith to cause the said amendment to be published in the said newspapers authorized to promulgate the laws with his certificate, specifying the states by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as part of the Constitution of the United States.

noted, this role is limited in scope.[9] Indeed, § 106b's plain language states that the Archivist only enters the fray *after* the proposed amendment has already been adopted according to the provisions of the Constitution.[10] The Archivist's power to publish the amendment, as well as list the States that voted to adopt the amendment, is only triggered after "official notice" is received. The Archivist has no authority to determine, as a matter of law, whether any amendment is actually part of the Constitution, *Dillon v. Gloss*, 256 U.S. 368, 376-77 (1921), or whether a State has properly ratified an amendment in the first place. *Leser v. Garrett*, 258 U.S. 130, 137 (1922). As plaintiff notes in his own Petition, the Archivist's powers in this arena truly are *ministerial* in nature, an admission that makes Plaintiff's demands even more puzzling. [11]

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[9] *See, e.g.*, *United States v. Sitka*, 845 F.2d 43, 47 (2d Cir), *cert. denied*, 488 U.S. 827 (1988) (declaring that certification authority in § 106b is "ministerial" in nature); Jol A. Silversmith, *The "Missing Thirteenth Amendment": Constitutional Nonsense and Titles of Nobility*., 8 S. Cal. Interdisc. L.J., 577, 590 (1999).

[10] These provisions are found in Article V and read as follows:

> The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several states shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress.

[11] *Black's Law Dictionary* defines *ministerial* as, "of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill." 1017 (8th ed. 2004).

IV. ANALYSIS

A. PLAINTIFF'S CLAIM INVOLVES A POLITICAL QUESTION AND IS NON-JUSTICIABLE

Plaintiff's claim—that the Archivist of the United States should be made to "correct" the voting records that ratified the Fourteenth Amendment—should be dismissed on the basis of the political question doctrine. The Supreme Court's decision in *Baker v. Carr* laid out the most influential definition of the political question doctrine. 369 U.S. 186 (1962). In *Baker*, the Court stated that Art. III courts are justified in declining jurisdiction when issuing a ruling that would evince a "lack of the respect due to coordinate branches of government." *Id.* at 217. Over the years the doctrine has been reserved for certain specific areas that involve traditional presidential or congressional competence: these include whether or not a President can unilaterally terminate a treaty, *Goldwater v. Carter*, 481 F.Supp. 949 (D.D.C. 1979); how the Senate conducts impeachment "trials," *Nixon v. United States*, 418 U.S. 904 (1993); and, the propriety of judicial supervision of the amendment process, *Coleman v. Miller*, 307 U.S. 433 (1939).

In *Coleman* the Supreme Court held that issues relating to the validity and procedures involved in ratifying Constitutional amendments triggered the political question doctrine because those matters were the provenance of the legislative branch. *Id.* at 450-56. Plaintiff's demand, that the court command the Archivist to

"correct" the voting record which led to the ratification of the Fourteenth Amendment, clearly implicates the political question doctrine and falls squarely under *Coleman*.

Any attempt to "correct the record" of states that ratified or rejected the amendment would interfere with Congress' traditional power to make the laws and would require this court to rule against precedent. In fact, the Ninth Circuit has invoked the political question doctrine to dismiss a number of cases, including one of plaintiff's previous Fourteenth Amendment claims, arguing that certain amendments to the Constitution were improperly ratified. *Epperly*, 980 F.2d at 738; *Unites States v. Stahl*, 792 F.2d 1438 (9th Cir. 1986); *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir. 1983).

B. PLAINTIFF HAS ALREADY RECEIVED A FINAL JUDGMENT ON THIS CLAIM AND IS THUS PRECLUDED FROM BRINGING THE CLAIM AGAIN

Over the years plaintiff has presented numerous similar arguments to convince federal courts that the Archivist should invalidate the Fourteenth Amendment. Indeed, in the 1998 case of *Epperly v. Carlin,* No. J97-0025-CV (HRH), the plaintiff directly named the previous Archivist of the United States as the Defendant and sought to have him investigate the ratification of the Fourteenth

Amendment.[12] More recently, in his 2006 case, ostensibly focused on Congress as the Defendant, plaintiff sought an exhaustive list of remedies including asking "the Court to notify the Archivist of the United States of its findings" and instructing "the Archivist to remove" the ratification notices of the southern states.[13]

The instant case thus marks the third time that plaintiff has sought to discredit the legitimacy of the Fourteenth Amendment by targeting the Archivist. Considering plaintiff's past history of trying to adjudicate what essentially amounts to the same claim, the Court should bar plaintiff from pursuing the current matter under the doctrines of res judicata (i.e. claim preclusion) and/or collateral estoppel (i.e., issue preclusion). *See*, *Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 (1984).

In fact, plaintiff should be precluded from bringing this action because his last lawsuit on this precise issue was dismissed as "frivolous" and "with prejudice." The black letter law definition of a "dismissal with prejudice" describes the dismissal as a decision on the merits "barring the plaintiff from prosecuting any later lawsuit on the same claim...".[14] More to the point, the Ninth Circuit has held that a concern with judicial efficiency "lends powerful support to

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[12] The Petition was dismissed for reasons that have been stated earlier in this motion, pp. 4 - 5.

[13] *Epperly v. United States Congress*, No. 1:06-cv-00008-JWS, Complaint at 19.

[14] *Black's Law Dictionary* (8th Ed. 2004).

a presumption against entertaining actions previously dismissed with prejudice." *Johnson v. Lumpkin*, 769 F.2d 630, 637 (9th Cir. 1985). In other words, if the court finds that plaintiff's 2006 claim against Congress—which unambiguously asked the Archivist to remove ratification notices, as in the instant case, and featured much of the same historical evidence he has been relying on in all the cases— is essentially the same as the current one, then the decision to dismiss plaintiff's case with prejudice would have a res judicata effect. *See, In re Marino*. 181 F.3d 1142, 1144 (9th Cir. 1999).

Alternatively, the court in *Epperly v. Carlin*[15] has already ruled against plaintiff on an essentially identical claim against the previous Archivist of the United States and therefore the court should dismiss plaintiff's current complaint under a traditional application of res judicata. In determining whether to apply res judicata, courts consider four factors: 1) whether the interest established in the first action would be destroyed or impaired by prosecution of the second; 2) whether substantially the same evidence will be presented in the two actions; 3) whether the two actions involve an infringement of the same right; and 4) whether the two actions arise out of the same transactional nucleus of fact. *C.D. Anderson & Co., Inc. v. Lemos*, 832 F.2d 1097, 1100 (9th Cir. 1986). Of these concerns, the latter carries the most weight. *Id.*

[15] No. J97-0025-CV (HRH) (D. Alaska March 3, 1998).

In the earlier case against Archivist Carlin, plaintiff sought an Order in the Nature of Mandamus on the Archivist to "investigate" the validity of the state ratifications that allowed the Fourteenth Amendment to become a part of the Constitution. Plaintiff's current claim, also a Petition For An Order In The Nature of Mandamus on the Archivist, while technically asking for a different action, presents the same facts and evidence, quotes the same rights as being violated, and, most importantly, rises out of the same transactional nucleus of facts: the role of the Archivist, as successor to the Secretary of State, in determining whether or not the Fourteenth Amendment was ratified. Given the core similarities between plaintiff's current claim and those that have come before, applying res judicata is wholly appropriate and necessary.

Finally, plaintiff's Petition should be dismissed because it seeks resolution of an issue that has already been addressed by a previous judgment. Collateral estoppel (or issue preclusion) prohibits a party from relitigating issues addressed in previous litigation between the same parties. *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1320 (9th Cir. 1992). In order for a party to assert collateral estoppel, said party must first show that the estopped issue is identical to the issue litigated in the first action, then the party must show that the issue to be foreclosed in the second litigation was decided in the first case. *Kamilche Co. v. U.S.*, 53 F.3d 1059, 1062 (9th Cir. 1995). Using these elements as guidelines, it is clear that

plaintiff has litigated the issue of the Archivist's role in the Fourteenth Amendment's ratification process before and should be estopped from litigating the issue again.

In his previous case against the predecessor Archivist, Mr. Carlin, plaintiff sought to have that Archivist "investigate the validity of the states' ratification of the Fourteenth Amendment." *Epperly v. Carlin*, *supra*. Although the wording of the earlier petition differs from plaintiff's current petition, the issue to be resolved in both is identical: whether or not plaintiff was entitled to an Order in the Nature of Mandamus against the Archivist that would force him to determine whether the Fourteenth Amendment was validly ratified. Judge Holland's March 3, 1998 decision listed several reasons to dismiss plaintiff's claims, chief among them were those that addressed the issue of the Archivist's role in the amending process: "the Archivist is not authorized to investigate the validity of the ratification of amendments" and that "determining who has the authority to investigate ratification of amendments is a non-justiciable question." In his opinion Judge Holland specifically addresses the plaintiff's issue and actually offers two separate reasons for why plaintiff should lose. To insist, as the plaintiff does in this most recent Petition, that the Archivist's involvement in the amending process needs to be revisited, is to burden the court with mere repetition and warrants preclusion.

C. PLAINTIFF'S PETITION FAILS TO STATE A CLAIM FOR WHICH RELIEF CAN BE GRANTED

Even if plaintiff's claim did not invoke a political question or was not claim or issue precluded, prior case law and the plain language of § 106b illustrate that the Archivist of the United States, like the Administrator of the GSA or the Secretary of State before him, does not have the authority to perform the task that plaintiff demands. Although plaintiff attempts to disguise his true intention by repeating the word "ministerial" numerous times, his demand, that "Respondent (as Archivist of the United States) perform his ministerial duties to correct the record by publishing the correct voting record of the State Legislatures," calls upon the Archivist to do more than merely carry out the instructions in the statute: plaintiff's Petition actually demands that the Archivist use his own discretion and judgment to sort out what the "correct" record is or might be. (Petition at 5.)

Plaintiff's demand that the Archivist publish the "correct voting record" insists on an action that determines which voting records count and which do not. Such an action by the Archivist would necessarily invoke his discretion and would violate the scope of the Archivist's powers with regards to the ratification of constitutional amendments. As various courts have held, even if the Archivist *wanted* to correct the voting records he would not be allowed to do so. *U.S. ex rel Widenmann v. Colby*, 265 F. 998, (D.C. Cir. 1920), *aff'd sub nom*, *U.S. ex rel*

Widenmann v. Hughes, 257 U.S. 619 (1921) (holding that it is the Secretary of State's duty, upon receiving official notice from the requisite number of states, to proclaim the amendment, but he is not required, or authorized, to investigate and determine whether or not the notices are true); *Dillon* at 376 (holding that the proclamation of the Secretary of State does not determine the ratification of an amendment. An amendment becomes effective when the requisite number of states ratify).

The Archivist is also precluded from correcting the voting record concerning the ratification of the Fourteenth Amendment by the "enrolled bill rule." This rule essentially states that once a legislative document is authenticated by the proper officials and adopted as law the courts will be reluctant to look behind the statute at the particulars of the legislative process. *Field v. Clark*, 143 U.S. 649, 672 (1892). *Leser v. Garret,* 258 U.S. 130 (1922) extended the "enrolled bill rule" to issues involving the legitimacy of constitutional amendments. 258 U.S. at 137. In *Leser*, the court noted that once the Secretary of State received authenticated resolutions of ratification, they were binding upon him, and that his subsequent proclamation of the amendment was binding on the courts. *Id.* Ultimately, plaintiff's Petition does not state a claim for which relief can be granted as the Archivist cannot perform the duty demanded of him.

D. **PLAINTIFF LACKS STANDING TO PURSUE THIS CLAIM**

It has long been held that parties seeking to litigate a Constitutional question must demonstrate a "personal stake" in the outcome of the case, a requirement that is commonly known as "standing." *See, Baker v. Carr*, 369 U.S. 186 (1962). To have standing to assert this petition, plaintiff must meet the following three elements: 1) there must be an injury in fact, 2) there must be a causal connection between the injury and the conduct complained of, and 3) it must be "likely," not merely "speculative," that the injury will be redressed by a "favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Plaintiff fails to meet any of these elements.

First, plaintiff fails to assert that he has suffered an injury in fact, which the Court has defined as: "an invasion of a legally protected interest which is (a) concrete and particularized" and (b) "actual or imminent, not 'conjectural or hypothetical'." *Id.* Plaintiff does offer up some examples of the ways in which he claims he has been injured by the ratification of the Fourteenth Amendment, which include: being compelled to pay taxes, suffering the separation of church and state (which he alleges has singled out his own Christian faith); and being generally aggrieved with the establishment of the U.S. administrative law system. (Petition at 9-10.)

None of these "injuries" as stated in plaintiff's Petition meet this first

element of standing. Even if plaintiff's injuries, which essentially amount to performing one's civic duty (i.e. respecting the separation of church and state and paying one's taxes), can be classified as "actual" rather than "conjectural" injuries, Plaintiff cannot show, or has not shown, that these injuries are particularized. Plaintiff cannot demonstrate that he is the only one in the country made to pay taxes, or, that he is not allowed to exercise his Christian faith in public buildings while those of other faiths are given permission to do so. Although plaintiff may feel affronted by the state of the world since the ratification of the Fourteenth Amendment, the Supreme Court has ruled that generalized grievances against government policy or law are not good enough to reach the injury in fact requirement. *United States v. Hays*, 515 U.S. 737 (1995).

More tenuous than plaintiff's claim that he has been injured by the ratification of the Fourteenth Amendment is the claim that the injury is "traceable" to the defendant's action or, in this case, inaction. *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41-42 (1976). In other words, plaintiff must demonstrate how the Archivist's decision not to "correct" the voting record of the Fourteenth Amendment has caused the injuries outlined above. Although plaintiff argues that the Archivist's decision not to "correct" the constitutional voting record is the source of the various injuries that have afflicted him, plaintiff fails to establish the necessary causal connection between the Archivist's action and

plaintiff's alleged injuries to meet the traceability element of standing.

For instance, one of the injuries plaintiff describes is that he "has been made liable to the debt of the United States" and as a result he must pay taxes to the Internal Revenue Service (IRS) "under duress." (Petition at 9.) But it is not at all clear how the Archivist's decision not to "correct" the voting record of the Fourteenth Amendment has caused the plaintiff to have to file a tax return against his will. Indeed, plaintiff's Petition fails to document how the Archivist's decision to allow the constitutional voting records to stand has caused plaintiff to have to pay his taxes. The reality is that Congress' power to tax comes from Art. I, Sec. 8, of the Constitution, and this power was later expanded in 1913 with the ratification of the Sixteenth Amendment. It is plaintiff's duty as an American citizen to pay taxes, whether the Archivist is compelled to change the voting record of the Fourteenth Amendment or not.

Even if the court assumes for the sake of argument that plaintiff's speculation is correct that the ratification of the Fourteenth Amendment has somehow caused American citizens to be taxed unfairly, outlawed demonstrations of Christian piety, and established the federal administrative law system, the Archivist's powers are so limited in the context of the Constitutional amendment process that a potentially favorable decision for the plaintiff would not remedy plaintiff's injuries. Such a situation, the inability to bring about the required result

sought by the plaintiff, speaks to the third and final element of the standing requirement: redressability.

For plaintiff to have standing, "it must be "likely," as opposed to merely "speculative," that the injury will be redressed by a favorable decision." *Lujan* at 560. Plaintiff has not demonstrated how the Archivist's "correction" of the Fourteenth Amendment voting record would redress the many injuries he claims. Even if the Archivist changed the voting record, the Fourteenth Amendment would stand. As a number of decisions have held, once the final state ratifies the amendment, it becomes law, and once it has become law, the enrolled bill rule applies.[16] The only way that plaintiff can redress his injuries is to petition Congress to change the laws. The courts can not provide plaintiff with the redress he seeks.

For the reasons enumerated above, Plaintiff's claim fails to meet the minimal requirements of standing and should be dismissed.

V. CONCLUSION

Mr. Epperly's most recent attempt at discrediting the validity of the Fourteenth Amendment, a Petition For Order in the Nature of Mandamus against the Archivist of the United States, should be dismissed because the claim raises a political question which is not justiciable before this court. Moreover, Mr.

[16] See discussion of *Leser v. Garrett*, 258 U.S. 130 (1922) and other cases in the preceding section concerning the enrolled bill rule.

Epperly is precluded from bringing this Petition under the doctrines of res judicata and collateral estoppel because he has brought the same claim based on the same nucleus of facts without success many times before. Further, Mr. Epperly fails to state a claim for which the relief he seeks from the Archivist can be granted as the Archivist is not empowered by statute to do that which Mr. Epperly seeks. Finally, Mr. Epperly lacks standing to bring this Petition.

For the foregoing reasons, the court should dismiss this petition with prejudice

RESPECTFULLY SUBMITTED this 12th day of September, 2007, in Anchorage, Alaska.

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[17] Counsel acknowledges the invaluable assistance of Ezequiel Berdichevsky, Legal Intern (Office of General Counsel, National Archives and Records Administration), George Washington University Law School, in the substantial research and drafting of this Motion to Dismiss.

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2007, a copy of the foregoing **MOTION TO DISMISS ALL CLAIMS** was served by United States Mail and via e-mail on

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