

1 exempt from the Prison Litigation Reform Act because it has nothing to do with prison conditions, and
2 the Twenty-Fourth Amendment applies because it prohibits the United States from depriving citizens of
3 the right to vote in federal election for failing to pay any poll tax or other tax. The Twenty-Fourth
4 Amendment provides:

5 Section 1. The right of citizens of the United States to vote in any
6 primary or other election for President or Vice President, for
7 electors for President or Vice President, or for Senator or
8 Representative in Congress, shall not be denied or abridged
9 by the United States or any State by reason of failure to pay
10 any poll tax or other tax.

11 Section 2. The Congress shall have the power to enforce this article by
12 appropriate legislation.

13 U.S. Const., amend. XXIV.

14 The Twenty-Fourth Amendment simply states that the federal and state governments cannot
15 impose a tax to vote. Plaintiff has cited no authority for the proposition that district court civil filing
16 fees, due pursuant to 28 U.S.C. § 1914(a), are a poll or other tax under the Twenty-Fourth Amendment
17 or infringe upon his right to vote in a federal election for President, Vice President, Senator,
18 Representative, or elector for President or Vice President. Accordingly, Plaintiff's Application for
19 Waiver of Filing Fees and Costs (Dkt. #1) and Motion for Total Waiver of Filing Fees Under the
20 Twenty-Fourth Amendment (Dkt. #4) will be denied.

21 In order to proceed in this litigation without paying a filing fee, Plaintiff must request leave to
22 proceed *in forma pauperis*. However, Plaintiff has been barred from proceeding *in forma pauperis*.
23 The Prison Litigation Reform Act contains a three strikes provision, which provides that a prisoner
24 cannot proceed *in forma pauperis* "if the prisoner has on 3 or more prior occasions, while incarcerated
25 or detained in any facility, brought an action or appeal in a court of the United States that was dismissed
26 on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted,
27 unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g). The
28 Ninth Circuit has repeatedly held that section 1915(g) is constitutional because "detering frivolous
lawsuits is rationally related to a legitimate government interest." *O'Neal v. Price*, 531 F.3d 1146,
1153-54 (9th Cir. 2008); *Andrews v. King*, 398 F.3d 1113, 1116 at n.1 (9th Cir. 2005). Plaintiff's
Complaint does not allege that he is in imminent danger of serious physical injury.

1 Plaintiff has had more than three civil actions dismissed as frivolous and has been barred from
2 proceeding *in forma pauperis* pursuant to 28 U.S.C. § 1915(g). *See Judd v. Univ. Of New Mexico*, 1997
3 WL 811632 (5th Cir. Dec. 9, 1997) (appeal dismissed as frivolous); *Judd v. United States District*
4 *Court*, 1999 WL 274608 (5th Cir. Apr. 16, 1999) (appeal dismissed as frivolous); *Judd v. United States*
5 *District Court*, 1999 WL 274610 (5th Cir. Apr. 16, 1999) (appeal dismissed as frivolous); *United States*
6 *v. Judd*, No. 08-50213 (5th Cir. Oct. 7, 2009) (sanctioned \$500 and barred from further filings); *Judd v.*
7 *United States*, No. 7:00-cv-188 (W.D. Va. Mar. 9, 2000) (dismissed as frivolous); *Judd v. United States*
8 *Court of Appeals for the Fifth Circuit*, 1:08-cv-170 (E.D. Tex. Apr. 4, 2008) (dismissed under 28
9 U.S.C. § 1915).

10 Plaintiff is a frequent filer who has filed at least 937 cases in the federal courts since 1997. *See*
11 PACER Case Locator, <http://pcl.uscourts.gov>.¹ He has been sanctioned and enjoined from filing suits
12 in many of these courts. *See, e.g., In re Judd*, 240 Fed. Appx 981, 982 (3d Cir. 2007); *Judd v. Fox*, 289
13 Fed. Appx. 795, 795-96 (5th Cir. 2008); *Judd v. Univ. of New Mexico*, 204 F.3d 1041 (10th Cir. 2000)
14 (summarizing Plaintiff's history of abusive filings in the federal courts and imposing filing restrictions).
15 In fact, as a result of Plaintiff's abusive litigation practices, he has been barred from filing any non-
16 criminal *pro se* matters before the United States Supreme Court. *Judd v. U.S. Dist. Ct. W.D. Tex.*, 528
17 U.S. 5, 5-6 (1999).

18 Additionally, Plaintiff has filed numerous identical complaints in federal district courts across
19 the country. The only apparent differences are that each names the particular state, state officials, and
20 election officials for the state in which the action is filed. *See, e.g., Judd v. Wyoming Sec'y of State*, No.
21 11-cv-00202 (D. Wyo. June 6, 2011) (dismissed as frivolous); *Judd v. Washington Sec'y of State*, No.
22 11-cv-00214 (E.D. Wa. 2011) (pending); *Judd v. Virginia Sec'y of State*, No. 11-cv-00618 (E.D. Va.
23 2011) (pending); *Judd v. Tennessee Sec'y of State*, No. 11-cv-00244 (E.D. Tenn. June 3, 2011)

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25 ¹The court "may take notice of proceedings in other courts, both within and without the federal
26 judicial system, if those proceedings have a direct relation to matters at issue." *United States ex rel.*
27 *Robinson Rancheria Citizens Counsel v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). A court may
28 also take judicial notice of the existence of matters of public record, such as a prior order or decision, but
not the truth of the facts cited therein. *See Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir.
2001).

1 (dismissed pursuant to 28 U.S.C. § 1915(g); *Judd v. Oklahoma Sec’y of State*, No. 11-cv-00183 (E.D.
2 Okla. 2011) (pending); *Judd v. Oklahoma Sec’y of State*, No. 11-cv-00624 (W.D. Okla. 2011)
3 (pending); *Judd v. State Election Bd. of New York*, No. 11-cv-00571 (N.D.N.Y. 2011) (pending); *Judd*
4 *v. Maine Sec’y of State*, No. 11-cv-00212 (D. Me. 2011) (pending); *Judd v. New Hampshire Sec’y of*
5 *State*, No. 11-cv-00183 (D.N.H. 2011) (pending); *Judd v. Montana Sec’y of State*, No. 11-cv-00080 (D.
6 Mont. May 27, 2011) (dismissing pursuant to 28 U.S.C. § 1915(g); *Judd v. Sec’y of the Commonwealth*
7 *of Massachusetts*, No. 11-mc-009407 (D. Mass June 1, 2011) (dismissed as frivolous); *Judd v. Office of*
8 *Elections of Hawaii*, No. 11-cv-00365 (D. Hi. June 13, 2011) (dismissed as baseless, frivolous, and
9 malicious).

10 The court concludes that this case is frivolous because it lacks an arguable basis in law and fact.
11 *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). A finding of frivolousness is warranted where the facts
12 alleged are “clearly baseless.” *Denton v. Hernandez*, 504 U.S. 25, 32 (1992); *see also Ashcroft v. Iqbal*,
13 – U.S. –, 129 S. Ct. 1937, 1959 (2009). A court must not dismiss a complaint simply because the set of
14 facts presented by the plaintiff appears to be unlikely; however, a complaint must allege facts “to state a
15 claim that is plausible on its face.” *Bell Atl. Com. v. Twombly*, 550 U.S. 544, 570 (2007). Because
16 Plaintiff’s Complaint does not set forth a plausible claim, it is recommended that it be dismissed with
17 prejudice. Because allegations of other facts would not cure it, Plaintiff is not entitled to an opportunity
18 to amend the Complaint.

19 With respect to Plaintiff’s Motion to Reopen and Stay Proceedings Pending Decision by Judicial
20 Panel on Multidistrict Litigation No. 2276 to Transfer for Consolidated-Coordinated Proceedings (Dkt.
21 #5), Plaintiff states that on June 22, 2011, the Judicial Panel on Multidistrict Litigation set a briefing
22 schedule in Plaintiff’s various cases, including the issues of waiver of fees and filing fees under the
23 Twenty-Fourth Amendment and the constitutionality of the Prisoner Litigation Reform Act and its
24 applicability on voting rights actions. On October 7, 2011, the Judicial Panel entered an Order denying
25 transfer of this case and others, noting any common issues of act are “neither sufficiently numerous nor
26 complex enough to warrant centralization [because] . . . the overriding question in each action is one
27 that is largely legal in nature, making these actions unsuitable for centralization.” *See Order Denying*
28 *Transfer*, Dkt. #6. Because the Judicial Panel has denied transfer, Plaintiff’s Motion to Reopen and

1 Stay Proceedings Pending Decision by Judicial Panel on Multidistrict Litigation No. 2276 to Transfer
2 for Consolidated-Coordinated Proceedings (Dkt. #5) is denied as moot.

3 Lastly, Plaintiff has filed an Application for Waiver of Filing Fees and Costs on Appeal Under
4 the Twenty-Fourth Amendment in Voting Rights Action (Dkt. #7) in which he requests the court waive
5 any filing fee associated with an appeal under the Twenty-Fourth Amendment. However, Plaintiff has
6 not filed a Notice of Appeal in this action, and no Order has entered from which Plaintiff could take an
7 appeal. Therefore, this motion is denied.

8 For the foregoing reasons,

9 **IT IS ORDERED:**

- 10 1. The Clerk of Court shall file Plaintiff's Complaint.
11 2. Motion to Waive Fees and Costs on Appeal Under the Twenty-Fourth Amendment in
12 Voting Rights Action (Dkt. #7) is DENIED.
13 3. Plaintiff's Motion to Reopen and Stay Proceedings Pending Decision by Judicial Panel
14 on Multidistrict Litigation No. 2276 to Transfer Consolidated-Coordinated Proceedings
15 (Dkt. #5) is DENIED AS MOOT.

16 **IT IS RECOMMENDED:**

- 17 1. Plaintiff's Application for Waiver of Filing Fees and Costs (Dkt. #1) be DENIED WITH
18 PREJUDICE.
19 2. Plaintiff's Motion to Waive Fees Under the Twenty-Fourth Amendment (Dkt. #4) be
20 DENIED WITH PREJUDICE.
21 3. Plaintiff's Complaint be DISMISSED WITH PREJUDICE WITHOUT LEAVE TO
22 AMEND.

23 Dated this 4th day of November, 2011.

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26 
27 PEGGY A. LEEN
28 UNITED STATES MAGISTRATE JUDGE

NOTICE

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2 These findings and recommendations are submitted to the United States District Judge assigned
3 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being
4 served with these findings and recommendations, any party may file written objections with the court.
5 Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing to object to the findings and
6 recommendations of a magistrate judge shall file and serve *specific written objections* together with
7 points and authorities in support of those objections, within fourteen days of the date of service of the
8 findings and recommendations. The document should be captioned “Objections to Magistrate Judge’s
9 Findings and Recommendations.” The parties are advised that failure to file objections within the
10 specified time may waive the right to appeal the District Court’s Order. *Martinez v. Ylst*, 951 F.2d 1153
11 (9th Cir. 1991). The points and authorities filed in support of the specific written objections are subject
12 to the page limitations found in LR 7-4.
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