

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

TODD J. SCHOENROGGE,
Plaintiff,

vs.

Case No. 07-1021-JTM

SAM BROWNBACK,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court following the Report and Recommendations by the United States Magistrate Judge. The Report recommends dismissal of plaintiff Todd Schoenrogge's complaint as frivolous under 28 U.S.C. § 1915(e)(2). Specifically, the Magistrate Judge found that Schoenrogge who seeks an order of mandamus directing United States Senator Sam Brownback "to call for the investigation and prosecution" of certain officers of the United States Department of Justice, because the plaintiff had failed to show any entitlement to the relief sought, in that he had not shown either a clear right to the relief sought, or a clear duty on the part of Senator Brownback to call for any particular investigation or prosecution, two of the three necessary elements for a mandamus action under 28 U.S.C. § 1361. With respect to the question of duty, the Magistrate Judge found that calling for such an investigation would be a discretionary act and hence not subject to mandamus. *Powell v. Katzenbach*, 359 F.2d 234 (1965), cert. denied, 384 U.S. 906 (1966).

Plaintiff has objected to the Report and Recommendations, but has submitted no authority which recognizes the right to mandamus in any matter comparable to the present case.

IT IS ACCORDINGLY ORDERED this 25th day of May, 2007, that the court hereby adopts and incorporates herein the Report and Recommendations of the United States Magistrate Judge and hereby dismisses the present action for the reasons stated here and in the Report and Recommendations.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE