

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

GREGORY GAMACHE,)	
)	
Plaintiff,)	
)	
v.)	Case No. 11-1090-MLB
)	
THE STATE OF KANSAS,)	
)	
Defendant.)	
_____)	

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 3). As explained in greater detail below, plaintiff's motion to proceed *in forma pauperis* shall be DENIED and the case is DISMISSED.

Proceeding *in forma pauperis* in a civil case is a privilege, not a right. White v. Colorado, 157 F.3d 1226, 1233 (10th Cir. 1998). Under 28 U.S.C. § 1915(a)(1), a federal court *may* authorize the commencement, prosecution or defense of any suit, action, or proceeding without the prepayment of fees by a person who lacks financial means. The decision whether to grant or deny *in forma pauperis* status under section 1915 lies within the sound discretion of the court. Cabrera v. Horgas, No. 98-4231, 1999 WL 241783, at *1 (10th Cir. 1999)(unpublished). In addition to plaintiff's financial status, the court considers whether the action: (1) is frivolous or malicious, (2) fails to state a claim on which relief may

be granted, or (3) seeks monetary relief against a defendant who is immune from such relief.
28 U.S.C. § 1915(e)(2)(B).

Gamache, a resident of St. Charles, Missouri, filed this complaint seeking the immediate passage of a state law to protect citizens “from the use of electronic weapons.” Gamache has apparently filed more than eighty lawsuits concerning “electronic weapons” in various other federal courts. See, e.g., Gamache v. Delaware, 2011 WL 2198109 (D. Del. June 6, 2011)(reviewing a five month period of the Public Access to Court Electronic Records website records).

The State of Kansas is the sole defendant and

[t]he Eleventh Amendment of the United States Constitution protects a non-consenting state from a suit brought in federal court by a citizen of another state, regardless of the relief sought. See U.S. Const. Amend XI (“The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”)

Gamache v. Delaware, 2011 WL 2198109 at * 2 (internal citations omitted). The State of Kansas has not waived its immunity from suit in federal court; therefore, Gamache’s claim is barred by the Eleventh Amendment. Because Gamache’s claim against the State of Kansas has no arguable basis in law or fact and is frivolous, the case shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

IT IS THEREFORE ORDERED that plaintiff’s motion to proceed *in forma pauperis* (**Doc. 3**) is **DENIED**.

IT IS FURTHER ORDERED that the complaint is **DISMISSED** pursuant to 28

U.S.C. § 1915(e)(2)(B) and the Clerk of the Court is directed to **CLOSE** this case.

IT IS SO ORDERED.

Dated this 14th day of June, 2010, at Wichita, Kansas.

s/ Monti Belot
Monti L. Belot
UNITED STATES DISTRICT JUDGE