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**CLERK, U.S. DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA**

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

ANTHONY EVANS)	CV 11-65-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
ROSS SWANSON, TOM WOOD,)	
DENISE DEYOTT, MATTHEW J.)	
SAVILLE, MONTANA STATE PRISON,)	
)	
Defendants.)	
_____)	

Anthony Evans filed a complaint against the defendants, alleging that they violated his constitutional rights by prohibiting him from obtaining certain books and corresponding with white supremacy organizations. He is proceeding pro se. Mr. Evans moved to proceed in forma pauperis. Magistrate Judge Strong granted the motion and ordered that Mr. Evans' complaint not be dismissed under 28 U.S.C. § 1915. Judge Strong, however, recommends dismissing the Montana State Prison under the Eleventh Amendment to the United States Constitution.

Mr. Evans did not object to Judge Strong's Findings and Recommendation. The Court therefore reviews them for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no clear error and agrees with Judge Strong's Findings and Recommendation, adopting them in full.

In particular, the Court agrees that the Montana State Prison should be dismissed under the Eleventh Amendment. The Eleventh Amendment bars lawsuits against a state or an "arm of the state," unless (1) Congress has abrogated state sovereign immunity under its power to enforce the Fourteenth Amendment, (2) the state waives its sovereign immunity, or (3) the lawsuit is for prospective injunctive relief against individual state officials acting in their official capacity. Johnson v. Rancho Santiago Community College Dist., 623 F.3d 1011, 1021 n.4 (9th Cir. 2010); Pittman v. Or., Empl. Dept., 509 F.3d 1065, 1071 (9th Cir. 2007). Neither of these exceptions apply to the Montana State Prison. The prison is therefore entitled to sovereign immunity under the Eleventh Amendment.

Accordingly, IT IS ORDERED THAT the Court adopts in full Judge Strong's Findings and Recommendations (dkt # 5).

IT IS FURTHER ORDERED that the Montana State Prison is dismissed from this lawsuit. The Clerk of Court is directed to enter judgment in favor of the Prison by separate document.

DATED this 25 day of January 2012.



Donald W. Molloy, District Judge
United States District Court

