

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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WILLIAM F. WEST,

Plaintiff,

v.

MATTHEW J. FRANK,

Defendant.  
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ORDER

05-C-547-C

In an order entered in this case on November 16, 2005, I reopened this case and allowed plaintiff to against defendant Matthew Frank on his claim that DOC 309 IMP 1 is unconstitutional on its face because it prohibits him from receiving material from any non-commercial web page. Defendant filed an answer to the complaint on December 23, 2005. Now plaintiff has moved the court for permission to dismiss his case voluntarily.

When a motion for voluntary dismissal is filed after the defendant has filed an answer or motion for summary judgment such as in this case, Rule 41(a)(2) provides that the action may be dismissed by the plaintiff "only upon order of the court and upon such terms and conditions as the court deems proper." Although defendant has filed an answer and conducted some discovery, the deadline for filing dispositive motions is nearly a month

away. The discovery in which defendant has engaged consists of two interrogatories and a request for the production of documents. (I know this because plaintiff did not answer these requests within the time allowed and defendant has just filed a motion to compel the answers.) Therefore, it appears that defendant has not yet expended considerable resources defending this case. In this circumstance, I am inclined to grant plaintiff's motion for voluntary dismissal without prejudice unless, on or before April 4, 2006, defendant files an objection to such a dismissal which is supported by a showing that defendant has expended considerably more resources defending this action than the record suggests.

#### ORDER

IT IS ORDERED that defendant may have until April 4, 2006, in which to object to a dismissal of this action without prejudice. If, by April 4, 2006, defendant files no such objection, the clerk of court is requested to enter judgment dismissing this action without prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

Entered this 30<sup>th</sup> day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB  
District Judge