

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 08-cv-01929-REB-MEH

JOHN MARSHALL COGSWELL,

Plaintiff,

v.

JOSEPH R. BIDEN, JR., President of the United States Senate,

Defendants.

**ORDER OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

The matters before me are (1) the magistrate judge's **Recommendation on Defendants' Motion To Dismiss Complaint Pursuant to Fed.R.Civ.P. 12(b)(1)** [#22] filed February 9, 2009; (2) the magistrate judge's **Supplemental Recommendation To Dismiss** [#24] filed February 12, 2009; and (3) **Plaintiff's Objections to Proposed Findings and Recommendation s of Magistrate** [#25] filed February 20, 2009. I overrule the objections, adopt the recommendations, strike plaintiff's amended complaint, and grant defendant's motion to dismiss.

As required by 28 U.S.C. § 636(b), I have reviewed *de novo* all portions of the recommendation to which objections have been filed, and have considered carefully the recommendation, objections, and applicable caselaw. Even though plaintiff is a licensed attorney, in an abundance of caution, because plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard

than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, ____, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Belmon***, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing ***Haines v. Kerner***, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)).

The recommendations are detailed and well-reasoned.¹ Contrastingly, plaintiff's objections are imponderous and without merit.

Therefore, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendations proposed by the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the magistrate judge's **Recommendation on Defendants' Motion To Dismiss Complaint Pursuant to Fed.R.Civ.P. 12(b)(1)** [#22], filed February 9, 2009, is **APPROVED AND ADOPTED** as an order of this court;

2. That the magistrate judge's **Supplemental Recommendation To Dismiss** [#24] filed February 12, 2009, also is **APPROVED AND ADOPTED** as an order of this court;

3. That the objections stated in **Plaintiff's Objections to Proposed Findings and Recommendation s of Magistrate** [#25] filed February 20, 2009, are **OVERRULED**;

¹ Although the magistrate judge's supplemental recommendation counsels dismissing plaintiff's Amended Complaint on substantive grounds, because the pleading was filed without leave of court to amend, I will strike it instead. **See FED.R.Civ.P.** 15(a)(2). Since the purported amendment would be ineffective and futile in any event, as discussed in the supplemental recommendation, there would be no reason to permit amendment in any event. **See *id.*** (noting that leave to amend should be freely granted "when justice so requires").

4. That **Defendants' Motion To Dismiss Complaint Pursuant to Fed.R.Civ.P. 12(b)(1)** [#8] filed November 14, 2008, is **GRANTED**;

5. That plaintiff's proposed **Amended Complaint** [#23], filed February 10, 2009, is **STRICKEN**;


6. That plaintiff's claims against defendant, Joseph. R. Biden, Jr., President of the United States Senate, are **DISMISSED** for lack of subject matter jurisdiction;

7. That judgment **SHALL ENTER** on behalf of defendant, Joseph R. Biden, Jr., President of the United States Senate, and against plaintiff, John Marshall Cogswell, as to all claims for relief and causes of action; and

8. That defendant is **AWARDED** his costs, to be taxed by the Clerk of the Court pursuant to Fed.R.Civ.P. 54(d)(1) and D.C.COLO.LCivR 54.1.

Dated February 27, 2009, at Denver, Colorado.

BY THE COURT:


Robert E. Blackburn
United States District Judge