

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

GERALD LEE NEELY,

Plaintiff,

Case Number: 08-15243

v.

JUDGE PAUL D. BORMAN
UNITED STATES DISTRICT COURT

BARACK HUSSEIN OBAMA,

Defendant.

_____ /

ORDER OF DISMISSAL

Plaintiff filed a complaint on December 22, 2008, against Defendant President Barack Hussein Obama. Plaintiff alleges that President Obama is not qualified to take the Oath of Office because he will not defend the Constitution. (Compl. 6). Plaintiff further alleges that President Obama's vote against the "Born Alive Infant Protection Act," evidently a piece of legislation defeated in the Illinois legislature, evidences his inability to defend the Constitution. Plaintiff also filed a petition to proceed *in forma pauperis*.

"[A] district court may, at any time, *sua sponte* dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple v. Glenn*, 183 F.3d 477, 479 (6th Cir. 1999). The Court finds that Plaintiff's complaint is, on its face, totally implausible, frivolous and devoid of merit.

Accordingly, the Court **DISMISSES** this action pursuant to Rule 12(b)(1), and **GRANTS** Plaintiff's application to proceed *in forma pauperis*.

SO ORDERED.

S/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: February 4, 2009

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on February 4, 2009.

S/Denise Goodine
Case Manager