

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILIP J. BERG,)	
)	
Plaintiff,)	
)	Civil Action No. 08-cv-4083
v.)	
)	Motion to Dismiss
BARACK HUSSEIN OBAMA, <u>et al.</u> ,)	
)	
Defendants.)	

**DEFENDANT FEDERAL ELECTION COMMISSION’S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1)**

Defendant Federal Election Commission (“FEC” or “Commission”) moves to dismiss the Complaint in this matter pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Plaintiff’s Complaint does not present an Article III case or controversy because plaintiff lacks standing to raise the issue of a candidate’s constitutional eligibility. Moreover, even if Berg had standing to raise the constitutional eligibility issue, the Commission should be dismissed as a party to this case because it has no oversight over the Constitution’s Presidential Qualifications Clause.

Pursuant to Local Rule 7.1 accompanying this Motion is a Memorandum of Law in support thereof and a Proposed Order.

Respectfully submitted,

/s/ Thomasenia P. Duncan
Thomasenia P. Duncan
General Counsel

/s/ David Kolker
David Kolker
Associate General Counsel

/s/ Kevin Deeley
Kevin Deeley
Assistant General Counsel

/s/ Benjamin A. Streeter III
Benjamin A. Streeter III
Attorney

FOR THE PLAINTIFF
FEDERAL ELECTION COMMISSION
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October 21, 2008

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **DEFENDANT FEDERAL ELECTION COMMISSION'S MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(1)** was electronically filed this 21st day of October, 2008 and served upon the following parties of record by the Court's ECF system and is available for viewing and downloading on that system:

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/s/ Benjamin A. Streeter III
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PHILIP J. BERG,

Plaintiff,

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Civil Action No. 08-cv-4083

Order

ORDER

AND NOW, this _____ day of _____, 2008, upon consideration of Defendant Federal Election Commission's Motion to Dismiss, it is hereby ORDERED that said Motion is GRANTED WITH PREJUDICE.

United States District Judge