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11 UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 13 SOUTHERN DIVISION

14 CAPTAIN PAMELA BARNETT, *et al.*, ) No. SACV 09-00082 DOC (ANx)  
 15 )  
 Plaintiffs, )  
 16 ) **DEFENDANTS' REPLY MEMORANDUM TO**  
 v. ) **OPPOSITION FILED BY PLAINTIFFS**  
 17 ) **DRAKE AND ROBINSON**  
 BARACK H. OBAMA, *et al.* )  
 18 )  
 Defendants. )  
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I.

Introductory Statement

Plaintiffs Wiley Drake and Markham Robinson, through their counsel, Gary Kreep, timely filed their Opposition to Defendants' Motion to Dismiss. As the following discussion will demonstrate, the Opposition fails to demonstrate that this Court has subject matter jurisdiction of this action, because it fails to establish that Plaintiffs have standing herein, or that this case presents justiciable questions.

In addition to the foregoing, these Plaintiffs utterly fail to address the following arguments made by Defendants:

(1) That this Court lacks subject matter jurisdiction over Plaintiffs' Quo Warranto claims;

(2) That this Court does not have subject matter jurisdiction of this action either under 42 U.S.C. § 1983 or 42 U.S.C. § 1988;

(3) That this Court lacks subject matter jurisdiction and Plaintiffs fail to state a claim for relief in re their FOIA claims;

(4) That this case must be dismissed as to Secretary Hillary Rodham Clinton and Secretary Robert M. Gates for lack of subject matter jurisdiction, and failure by Plaintiffs to state a claim for relief;

(5) That this case must be dismissed as to First Lady Michelle Obama and Vice President Joseph Biden because Plaintiffs have failed to state any claim against them at all.

It is submitted that Defendants' Motion should be granted, as to the aforementioned arguments, for lack of any opposition by these Plaintiffs.

1 Finally, the arguments made by these Plaintiffs, in large  
2 measure, completely ignore the fact that Barack Obama is the  
3 President of the United States and seek to treat him as simply a  
4 candidate for the Office. Try as they might, Plaintiffs cannot  
5 conceal the fact that what they are really seeking in this case is  
6 nothing less than a determination by this United States District  
7 Court that President Obama should be removed from Office. The  
8 preposterous nature of this assertion is readily apparent. No  
9 single United States District Court has the power to try the  
10 question of whether a sitting President of the United States should  
11 be allowed to remain in Office. As previously set forth in  
12 Defendants' Motion, Plaintiffs have presented a non-justiciable  
13 political question, committed by the very text of the Constitution  
14 to Congress, which cannot be litigated in this, or any other court.  
15 See Motion to Dismiss at pages 15-16, and cases cited therein.

16 As set forth in Defendants' Reply Memorandum To The Opposition  
17 Filed By All Plaintiffs, Except Drake And Robinson (simultaneously  
18 being filed herewith) if this Court were to hold that it had the  
19 power to try the question of whether a sitting President of the  
20 United States is fit or qualified to remain in Office, or whether  
21 he should be removed from Office, the political life of this  
22 country would be exposed to chaos. If a court did have such power,  
23 anyone with a political agenda and a filing fee, could file an  
24 action or, indeed, multiple actions in any one of the 93 Judicial  
25 Districts in the United States, alleging, for various legal or  
26 factual reasons, that the President was not fit to continue to  
27 serve. Such cases could subject the President to a barrage of  
28 discovery, and other pre-trial proceedings, not to mention trial in

1 multiple districts throughout the United States. Moreover, where,  
2 as here, multiple cases in multiple districts throughout the United  
3 States seek adjudication of the same allegations regarding the  
4 fitness and qualifications of the President to continue to serve in  
5 Office, the danger of conflicting judgments from such courts is  
6 obvious.

7 In short, a holding that cases such as this are justiciable  
8 would create a virtual engine of destruction of our Constitutional  
9 system of separation of powers, and of the ability of the President  
10 to effectively function.

11 **II.**

12 **Plaintiffs Utterly Fail To Establish That This Court Has Subject**  
13 **Matter Jurisdiction Of This Action**

14 In their Opposition, at heading III, Plaintiffs assert that  
15 "Because this case presents an issue regarding a Federal question  
16 arising out of the Constitution, this Court has Subject Matter  
17 Jurisdiction over the issues raised in this case, and the Court  
18 should deny this ground for dismissal." This argument completely  
19 ignores the well-established legal doctrine that standing is a  
20 necessary component of subject matter jurisdiction. As the  
21 discussion in Defendant's Motion to Dismiss demonstrated, and as  
22 briefly discussed below, Plaintiffs clearly lack standing herein,  
23 and this Court, therefore, has no subject matter jurisdiction.

24 Moreover, as outlined above in the introductory statement,  
25 these Plaintiffs make no argument whatever in opposition to  
26 Defendants' arguments that this Court lacks subject matter  
27 jurisdiction over Plaintiffs' Quo Warranto claims, their claims  
28 under 42 U.S.C. § 1983 and § 1988, their claims under FOIA, and

1 claims against Secretaries Clinton and Gates, and First Lady  
2 Michelle Obama and Vice President Joseph Biden.

3 **III.**

4 **These Plaintiffs Lack Standing**

5 In their Opposition, Plaintiffs Drake and Robinson alleged  
6 that they satisfied the "injury-in-fact" component of the standing  
7 doctrine. Regarding Plaintiff Drake, Plaintiffs allege that he was  
8 "the Vice-Presidential nominee for the American Independent Party  
9 in the 2008 Presidential election on the California ballot."  
10 (emphasis supplied) (See page 1 of Opposition at lines 6-8).  
11 Regarding Plaintiff Robinson, it is alleged that he was a "pledged  
12 Presidential elector for the American Independent Party in the  
13 2008 Presidential election for the California ballot and is  
14 currently the Chairman of the American Independent Party." (Id. at  
15 lines 8-11).

16 Neither Plaintiff Drake nor Plaintiff Robinson has sustained  
17 anything even remotely resembling the required "injury-in-fact,"  
18 traceable to Defendants' conduct, to vest them with standing in  
19 this case. In the first place, as previously demonstrated in  
20 Defendants' Motion to Dismiss, neither of these Plaintiffs can  
21 contend that Plaintiff Drake or the American Independent Party were  
22 even on the ballot in enough states in the year 2008 to gain the  
23 requisite 270 electoral votes to win the Presidential election.  
24 Any "injury," therefore, sustained by them was no greater than that  
25 of any other voter or concerned citizen. As also demonstrated in  
26 Defendants' Motion to Dismiss, such an injury is not sufficiently  
27 particularized to constitute the requisite injury-in-fact necessary  
28 to establish standing.

1 In their Opposition, Plaintiffs cite the case of Hollander v.  
2 McCain, 566 F.Supp.2d 63 (D.N.H. 2008) for the proposition that a  
3 candidate has standing to challenge the inclusion of an allegedly  
4 ineligible rival on the ballot. Hollander is inapposite to the  
5 instant case for several reasons. In the first place, the language  
6 quoted by Plaintiffs from a case is not a holding, but rather, is  
7 dictum. The holding in Hollander was that the plaintiff, a voter,  
8 lacked standing. Secondly, the stated premise of the district  
9 court's dictum that a candidate has standing to challenge the  
10 inclusion of an allegedly ineligible rival on the ballot before the  
11 election is that such inclusion "hurts the candidate's . . .  
12 chances of prevailing in the election." Hollander v. McCain,  
13 supra, 566 F.Supp.2d at 68. In the instant case, as noted above,  
14 neither Plaintiff Drake nor the American Independent Party which  
15 Plaintiff Robinson heads had any chance at all, mathematically, of  
16 prevailing in the 2008 Presidential election. Consequently, they  
17 could not have been harmed by the alleged ineligibility of Barack  
18 Obama.<sup>1</sup> Lastly, of course, Hollander is distinguishable because it  
19 involved questions regarding the fitness of a candidate to run for  
20 Office, rather than the fitness of a sitting President to continue  
21 in Office.

22 As established above, and as set forth in Defendants' Motion  
23 to Dismiss, Plaintiff Drake and Robinson lack standing herein

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25 <sup>1</sup> Plaintiff Robinson also contends that he has been injured in his  
26 role as Elector "because the candidate he pledged to vote for . . .  
27 did not have a fair competition." Hollander's dicta makes clear that  
28 this claim does not allege an adequate injury-in-fact. See 566  
F.Supp.2d at 68 ("that notion of 'competitive standing' has never been  
extended to voters challenging the eligibility of a particular  
candidate" (emphasis in original)).

1 because they have not suffered the requisite concrete,  
2 particularized, injury-in-fact sufficient to vest them with  
3 standing.

4 Similarly, neither of these Plaintiffs can satisfy the  
5 redressability requirement for standing. In the first place, it  
6 should be noted that Plaintiffs have couched their requests for  
7 relief in this case in broad, vague, language. The Prayer for  
8 Relief in the First Amended Complaint is a model of unclear  
9 pleading. In the "Statement of the Case" in their Opposition  
10 herein, Plaintiffs Drake and Robinson state that they "seek a  
11 determination by this Court as to whether Defendant Barack Obama  
12 has met all of the Constitutional requirements for eligibility for  
13 the Office of President of the United States." (See Opposition at  
14 page 1, lines 23-25). As outlined previously in Defendants'  
15 Motion, it appears that, in order to redress Plaintiffs' alleged  
16 injuries herein, the Court would need to issue an injunction  
17 against President Obama that, inter alia, would require him to  
18 prove his eligibility and qualifications to be President of the  
19 United States. This Court cannot, consistent with the doctrine of  
20 Separation of Powers, preside over a trial regarding the  
21 President's eligibility and qualifications, nor could it issue any  
22 injunction related thereto. See, e.g., Newdow v. Bush, 355  
23 F.Supp.2d 265, 280-283 (D.D.C. 2005), and cases cited therein.  
24 Similarly, as outlined in Defendants' Motion, even if Plaintiffs  
25 stated that they were only asking for a declaratory judgment from  
26 this Court regarding the issue of the eligibility of President  
27 Obama to continue to serve in Office, they also fail to satisfy the  
28 redressability element, both because of the reasons set forth

1 above, and because any such judgment would be a legal nullity. Id.

2 Plaintiffs also fail to satisfy the redressability element of  
3 standing because this case presents non-justiciable political  
4 questions. In their Opposition, Plaintiffs utterly fail to address  
5 the argument made by Defendants that the Twelfth and Twentieth  
6 Amendments to the United States Constitution constitute a  
7 "textually demonstrable commitment" (within the meaning of Baker v.  
8 Carr, 369 U.S. 186, 217, 82 S.Ct. 691, 710, 7 L.Ed.2d 663 (1962))  
9 of the issue of eligibility of a President to serve in Office to  
10 the Congress.

11 Finally, it deserves repeating that the issues sought to be  
12 raised by Plaintiffs in this case are non-justiciable political  
13 questions for a series of very good reasons, which are summarized  
14 in the Introductory Statement to this brief and succinctly set  
15 forth by the United States Circuit Court for the District of  
16 Columbia, in Nixon v. United States, 938 F.2d at 245 (D.C. Cir.  
17 1991) aff'd 506 U.S. 224, 113 S.Ct. 732, 122 L.Ed.2d 1 (1992).

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IV.

**Conclusion**

For the foregoing reasons, as well as those set forth in Defendants' Motion, this case must be dismissed, in its entirety, for lack of subject matter jurisdiction and failure by Plaintiffs to state a claim for relief.

Respectfully submitted,

DATED: September 25, 2009

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