

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILIP J. BERG, ESQUIRE,
Plaintiff
vs.
BARACK HUSSEIN OBAMA, ET AL,
Defendants
:CIVIL ACTION NO: 08-cv- 04083

ORDER

ON PLAINTIFF’S MOTION FOR LEAVE TO FILE A FIRST AMENDED COMPLAINT

THIS CAUSE came before the United States District Court Judge, Honorable R. Barclay Surrick on Plaintiff, Philip J. Berg, Esquire’s Motion for Leave to File a First Amended Complaint. Having reviewed the Motion and any response to said Motion and for good cause shown, it is hereby

ORDERED that Plaintiff’s Motion for Leave to File a First Amended Complaint is GRANTED.

The Clerk of the Court is ORDERED to File Plaintiff’s First Amended Complaint attached hereto as Exhibit “A” and deem the date filed October 6, 2008.

The Clerk of the Court is ORDERED to prepare Summons for the newly added Defendants as follows:

- 1. Secretary of the Commonwealth, Pennsylvania Department of State, Bureau of Commissions, Elections and Legislation, 210 N. Office Building, Harrisburg, PA 17120;
2. Pedro A. Cortés, Secretary of the Commonwealth, for the Pennsylvania Department of State, located at 210 N. Office Building, Harrisburg, PA 17120;

3. The U.S. Senate, Commission on Rules and Administration, 305 Russell Building, United States Senate, Washington D.C. 20510;

4. Diane Feinstein, Chairman, U.S. Senate, Commission on Rules and Administration, 305 Russell Building, United States Senate, Washington D.C. 20510; and

5. The Federal Election Commission, 999 E Street, NW, Washington, DC 20463.

IT IS SO ORDERED

Dated: October _____, 2008

Hon. R. Barclay Surrick
United States District Court Judge
For the Eastern District of PA

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILIP J. BERG, ESQUIRE,	:	
	:	
<i>Plaintiff</i>	:	
vs.	:	CIVIL ACTION NO. 08-CV-4083
	:	
BARACK HUSSEIN OBAMA, a/k/a	:	
BARRY SOETORO, a/k/a	:	
BARRY OBAMA, a/k/a	:	JURY TRIAL DEMANDED
BARACK DUNHAM, a/k/a	:	
BARRY DUNHAM; THE	:	
DEMOCRATIC NATIONAL	:	
COMMITTEE; THE FEDERAL	:	
ELECTION COMMISSION;	:	
and DOES 1-50 INCLUSIVE,	:	
	:	
<i>Defendants</i>	:	

**PLAINTIFF’S MOTION FOR LEAVE TO FILE A FIRST AMENDED
COMPLAINT**

NOW COMES the Plaintiff, Philip J. Berg, Esquire and respectfully requests this Honorable Court to grant leave, thereby permitting Plaintiff to file his First Amended Complaint, and state as follows:

1. Plaintiff filed his Complaint in this Court on August 21, 2008. All Defendants’ were served.
2. On or about August 22, 2008, Plaintiff sought an emergency TRO. The Court denied Plaintiff’s request.
3. The U.S. Attorney’s Office accepted service on behalf of the Federal Election Commission [hereinafter “FEC”], who’s answer is due on or before October 21, 2008. Defendants’ Barack Hussein Obama [hereinafter “Obama”] and Democratic

National Committee's [hereinafter "DNC"] answers were due on or before September 24, 2008.

4. On or about September 8, 2008, Plaintiff filed a Motion for Expedited Discovery, Extensive Discovery, Deposition's of Obama and Howard Dean, Chairman of the DNC and the Appointment of a Special Master to be present during the depositions. This Motion is still pending before the Court.
5. On September 24, 2008 Defendants' Obama and the DNC filed Motions to Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) in lieu of filing an Answer to Plaintiff's Complaint.
6. On or about September 25, 2008, Plaintiff received a call from this Honorable Court's Secretary requesting Plaintiff file his Response to the Defendants Motion to Dismiss on or before Monday, September 29, 2008. Plaintiff complied with the Court's request.
7. When Plaintiff originally filed his complaint he was seeking Declaratory and Injunctive relief prohibiting Defendant Obama from being nominated as the Democratic Presidential Nominee.
8. In addition, Plaintiff has learned very important information and facts which are crucial to his case and must be added to the Complaint.
9. Defendants will not be prejudiced by the filing of an Amended Complaint. Therefore, Plaintiff seeks leave of this Court to file his First Amended Complaint.
10. For the aforementioned reasons, Plaintiff files this Motion for Leave to file his First Amended Complaint and has attached the First Amended Complaint hereto as **Exhibit "A"**.

11. Plaintiff respectfully requests this Court to grant his Motion for Leave to File his First Amended Complaint and Order the Clerk of the Court to file Plaintiff's First Amended Complaint attached hereto as **Exhibit "A"**.

Respectfully Submitted,

Date: October 6, 2008

s/ Philip J. Berg
Philip J. Berg, Esquire
Attorney in *Pro Se*
555 Andorra Glen Court, Suite 12
Lafayette Hill, PA 19444-2531
Identification No. 09867
(610) 825-3134

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

PHILIP J. BERG, ESQUIRE,	:	
	:	
<i>Plaintiff</i>	:	
vs.	:	CIVIL ACTION NO. 08-CV-4083
	:	
BARACK HUSSEIN OBAMA, a/k/a	:	
BARRY SOETORO, a/k/a	:	
BARRY OBAMA, a/k/a	:	JURY TRIAL DEMANDED
BARACK DUNHAM, a/k/a	:	
BARRY DUNHAM; THE	:	
DEMOCRATIC NATIONAL	:	
COMMITTEE; THE FEDERAL	:	
ELECTION COMMISSION;	:	
and DOES 1-50 INCLUSIVE,	:	
	:	
<i>Defendants</i>	:	

**BRIEF IN SUPPORT OF PLAINTIFF’S MOTION FOR LEAVE TO FILE A
FIRST AMENDED COMPLAINT**

Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleadings by leave of Court or by written consent of the adverse party. “[L]eave shall be freely given when justice so requires.”

In *Foman v. Davis*, 371 U.S. 178 (1962), the Court noted that Rule 15(a) declares that leave to amend shall be “freely given” when justice so requires and that “this mandate is to be heeded.” *Id.* at 230. The Court noted that a Plaintiff ought to be afforded the opportunity to amend a complaint so long as there is no apparent undue delay, bad faith or dilatory motive on the part of the movant, or repeated failure to cure deficiencies by amendments previously allowed. The amendment will not cause any undue prejudice. Although the District Court has discretion to grant an amendment,

“outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion.” *Id.*

"Among the grounds that could justify a denial of leave to amend are undue delay, bad faith, dilatory motive, prejudice, and futility." *In re Burlington Coat Factory Secs. Litig.*, 114 F.3d 1410, 1434 (3d Cir. 1997) (citations omitted); see also *Lorenz v. CSX Corp.*, 1 F.3d 1406, 1413 (3d Cir. 1993).

The Third Circuit has found that "prejudice to the non-moving party is the touchstone for denial of an amendment." *Lorenz*, 1 F.3d at 1414. In this case, there is absolutely no issue of repeated failure to cure deficiencies. Second, Defendants cannot claim any prejudice by virtue of this Amended Complaint.

Allowing Plaintiff to file his First Amended Complaint will not prejudice any of the Defendants. Plaintiff has diligently prosecuted this case and there have been no failures to cure any alleged deficiencies. In short, there is no reason to deny Plaintiff's Request for Leave to file his First Amended Complaint.

CONCLUSION

For all the forgoing reasons, Plaintiff respectfully requests that this Honorable Court enter an Order Granting Plaintiff's Motion for Leave to file his First Amended Complaint, attached hereto as **Exhibit "A"**, Ordering the Clerk to file Plaintiff's First Amended Complaint and deeming it filed as of the date of the Order and granting any additional relief as this Court deems just and proper.

Respectfully submitted,

Dated: October 6, 2008

s/ Philip J. Berg
Philip J. Berg, Esquire
Attorney in Pro Se

CERTIFICATE OF SERVICE

I, Philip J. Berg, Esquire, hereby certify that Plaintiff's Motion for Leave to file a First Amended Complaint, Brief in Support thereof and Plaintiff's First Amended Complaint attached as Exhibit "A" were served via electronic filing on the ECF System, this 6th day of October 2008 upon the following:

John P. Lavelle, Jr., Esquire
Attorney I.D. PA 54279
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The Federal Election Commission (FEC)
999 E. Street, NW
Washington, D.C. 20463
Served Personal Service

Attorney's for Defendant's
Barack Hussein Obama and
The Democratic National Committee

In pro se

s/ Philip J. Berg
Philip J. Berg, Esquire
Attorney in Pro Se

EXHIBIT “A”