

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

December 8, 2008
ECO-16

No. 08-4340

PHILIP J. BERG,
Appellant

v.

BARACK HUSSEIN OBAMA, et al.

(E.D. Pa. No. 08-cv-04083)

PRESENT: **SCIRICA**, Chief Judge and **AMBRO**, Circuit Judge

- 1) Emergency Motion by Appellant Philip J. Berg for an Immediate Injunction Pending the Resolution of Appellant's Appeal;
- 2) Response by Appellee, Federal Election Commission to Appellant's Emergency Motion for Immediate Injunction;
- 3) Notice by Appellees Barack Obama and the Democratic National Committee of their Opposition to Appellant's Emergency Motion for Immediate Injunction on the Grounds previously set forth in Appellees' Opposition to Appellant's Previous Motion for Injunction.

Carolyn Hicks, Case Manager
267-299-4926

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ORDER

Appellant's Emergency Motion for an Immediate Injunction to Stay the Certification of Electors, to Stay the Electoral College from Casting any Votes for Barack H. Obama on December 15, 2008, and to Stay the Counting of any Votes in the House of Representatives and the Senate on January 6, 2009 Pending Resolution of Appellant's Appeal, is hereby DENIED. As ably expressed by the District Court, it appears that Appellant lacks standing to challenge the election of Barack H. Obama to the Presidency of the United States. Even if Appellant possessed standing to raise the issue of President-Elect Obama's constitutional eligibility to be President, no justiciable controversy is presented, as Appellant seeks adjudication of a political question. Accordingly, Appellant has not shown a likelihood of success with respect to his appeal.

By the Court,

/s/ Anthony J. Scirica
Chief Judge

Dated: December 9, 2008

cc: Philip J. Berg, Esq.
John P. Lavelle Jr., Esq.
Kevin Deeley, Esq.
Thomasenia Duncan, Esq.
David Kolker, Esq.
Benjamin A. Streeter, III, Esq.