

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JOHN JAY HOOKER,)	
)	
Plaintiff,)	Civil Action No. 3-99-0794
)	Judge Thomas A. Higgins
v.)	
)	
FEDERAL ELECTION)	
COMMISSION, <i>et al.</i> ,)	
)	
Defendants.)	
)	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS
HOWARD PHILLIPS AND THE CONSTITUTION PARTY

Statement of Facts

Plaintiff has filed this suit in an apparent effort to have this Court declare certain laws (portions of the Federal Election Campaign Act (“FECA”), U.S.C. sections 431, *et seq.*, and the Presidential Election Campaign Fund Act (“PECFA”), 26 U.S.C. section 9001, *et seq.*), unconstitutional.¹

Averring that “all campaign contributions are unconstitutional” (Am. Comp., para. 6), Plaintiff alleges that the FECA is unconstitutional on the theory that Congress has no power to regulate presidential elections beyond timing rules (*e.g.*, Am. Comp., para. 8) and that it has no power to regulate campaign contributions so as to permit “interstate” contributions by nonresidents (*e.g.*, Am. Comp., paras. 8, 16-17, 20-21), and he also targets as unconstitutional the

¹ With respect to Title 26, Plaintiff appears to be attacking the constitutionality of the Presidential Primary Matching Payment Account Act (“the Matching Payment Act”), 26 U.S.C. sections 9031-9042.

statutory scheme for matching funds in presidential elections set forth in the PECFA or the Matching Payment Act (Am. Comp., para. 9).

Plaintiff does not allege that these Defendants have committed any act within the jurisdiction of this Court. Nor does he allege that these Defendants have any dispute with him or have acted in any way to injure him. Rather, he alleges that the defendant political parties “will be affected by the decision in this Cause as will those named defendants who decide to run for president, all of whom have indicated an interest....” (Am. Comp., para. 27.) Nevertheless, Plaintiff states in Count 4 that the defendant political parties “are soliciting, accepting, and utilizing ‘matching funds’ in the [2000] presidential election” as will also “certain candidates herein named if they qualify,” and he seeks to enjoin the defendants from using matching funds “in the Presidential election in the Year 2000.” (Am. Comp., p. 24, para. A.)

Plaintiff apparently has attempted to litigate such claims before, although not against these Defendants. As averred in paragraph 11 of the Amended Complaint, Plaintiff’s complaints that Congress has no power to regulate contributions and that the FECA is unconstitutional were raised in two prior actions in this Court, Hooker v. Sasser, Frist (Civil Action No. 3-94-0750) and Hooker v. Thompson (Civil Action No. 3-95-0688), but were dismissed because Plaintiff lacked standing to raise them. Plaintiff apparently feels that, despite such rulings, he should have the right to challenge the constitutionality of the FECA because the constitutional questions in the earlier cases were never addressed. These Defendants, through counsel, are also aware of other relevant claims of Plaintiff before this Court that have been dismissed. *See* Hooker v. Clinton, 95-0654 (M.D. Tenn. 1996) and Hooker v. Sunquist, 96-0034 (M.D. Tenn. 1996), as

summarized at page 8 of Defendant Federal Election Commission's Memorandum in Support of Its Motion to Dismiss herein.

Defendants Howard Phillips and The Constitution Party have moved to dismiss this case against them, pursuant to Rules 12(b)(1), 12(b)(2), and 12(b)(6), Federal Rules of Civil Procedure. This Memorandum is submitted in support of that Motion.

Argument

A. Plaintiff's Claims are Barred by the Doctrine of Collateral Estoppel.

Based upon the allegations contained in Plaintiff's Amended Complaint regarding his prior attempts to litigate these issues, coupled with the additional decisions recited above that were cited in Defendant Federal Election Commission's Memorandum of Law herein, these Defendants submit that Plaintiff's claims herein are barred by the doctrine of collateral estoppel. *See* Plaintiff's Amended Complaint herein, para. 8; Defendant Federal Election Commission's Memorandum of Law herein, pp. 6-10; Hooker v. Sasser, 893 F. Supp. 764 (M.D. Tenn. 1995). Obviously, to the extent that Plaintiff has previously litigated the claims he now raises, he should not be permitted to relitigate them, particularly at these Defendants' expense. *See, e.g., NLRB v. Kentucky May Coal*, 89 F.3d 1235 (6th Cir. 1996); Marlene Indus. v. NLRB, 712 F.2d 1011 (6th Cir. 1983).

B. Plaintiff's Claims Should be Dismissed for Lack of Subject Matter Jurisdiction.

These Defendants submit that this Court lacks subject matter jurisdiction over the claims set forth in the Amended Complaint in that the Plaintiff's claims are non-justiciable, generalized grievances, and Plaintiff lacks standing to litigate such claims. Although Plaintiff alleges that certain federal laws are unconstitutional, he has not alleged — as he must to even arguably have

standing to sue — any fact that would show he has suffered, or would suffer, any concrete, particularized personal injury by virtue of those laws. At a minimum, for purposes of standing to litigate an issue before this Court, he must establish such an injury, as well as the likelihood that it would be remedied by a favorable decision. *See American Fed’n Gov’t Employees v. Clinton*, 180 F.3d 727, 720-30 (6th Cir. 1999). Accordingly, the Amended Complaint should be dismissed. *See* F.R.Civ.P. 12(b)(1).

C. The Amended Complaint Against These Defendants Should be Dismissed for Lack of Personal Jurisdiction.

This Court has no personal jurisdiction over these defendants, in that the Amended Complaint is devoid of any allegation of conduct engaged in by them within this Court’s jurisdiction. Accordingly, they are not subject to the jurisdiction of this Court in this action, and the Amended Complaint against them should be dismissed. *See* F.R.Civ.P. 12(b)(2).

D. The Amended Complaint Fails to State a Claim Against These Defendants Upon Which Relief Can Be Granted.

The Amended Complaint fails to allege any act committed or engaged in by these defendants, and *a fortiori* fails to allege any act or to state any claim against them upon which relief can be granted. As to interstate contributions, nothing in the Amended Complaint attempts to link these Defendants with Tennessee elections; thus, any matters related to Plaintiff’s complaints regarding interstate contributions do not involve these Defendants. As to the acceptance of matching funds under the Matching Payment Act, Plaintiff’s general statement in the Amended Complaint (Count 4, p. 23), that the defendant political parties “are soliciting, accepting, and utilizing ‘matching funds’ in the presidential election” are factually wrong with regard to Howard Phillips and The Constitution Party, which, as a matter of principle, refuse to

accept such funds. Accordingly, the Amended Complaint should be dismissed against these defendants for failure to state a claim against them upon which relief can be granted. F.R.Civ.P. 12(b)(6).

Conclusion

For the foregoing reasons, and as requested in their Motion to Dismiss, Defendants Howard Phillips and The Constitution Party pray that the Amended Complaint against them be dismissed, with prejudice, that all costs be assessed against plaintiff, and that these defendants be awarded their costs and such other relief as this Court deems just and lawful.

Respectfully submitted,

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