

**Record No. 12-1067**

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**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**THE HONORABLE RICK PERRY,**  
Plaintiff – Appellant - Movant,

v.

**THE HONORABLE NEWT GINGRICH, THE HONORABLE JON  
HUNTSMAN, JR., AND THE HONORABLE RICK SANTORUM,**  
Intervenor - Plaintiffs,

v.

**CHARLES JUDD, KIMBERLY BOWERS, and DON PALMER,**  
members of the Virginia State Board of Elections, in their official capacities,  
Defendants - Appellants - Respondent.

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**Appeal from the United States District Court  
For the Eastern District of Virginia  
Richmond Division**

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**RICK PERRY’S MOTION TO EXPEDITE APPEAL and REVIEW OF  
EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL**

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Appellant and Movant, the Honorable Rick Perry, Governor of the State of Texas, and Republican Candidate for the President of the United States, noticed this appeal on January 14, 2012, and filed an Emergency Motion For Injunction Pending Appeal [Docket No. 3-1] on January 15, 2012. Because Movant seeks to have his name placed on the ballot for the Republican Party Primary election currently scheduled for March 6, 2012, and because he believes he was unconstitutionally restricted from having his name appear alongside others on the ballot, Movant now seeks expedited review of Emergency Motion and this Appeal. On January 13, 2012, the District Court entered an Order (Doc. #74) and issued a Memorandum Opinion (Doc. #73) finding section 24.2-545 of the Virginia Code, is “likely . . . unconstitutional” and that Movant is likely to succeed on his claim.

In its analysis of the four *Winter* factors required for the granting of injunctive relief, the District Court found in favor of Movant on each: 1) Movant is likely to succeed on its claim as Virginia’s residency requirement for petition circulators is “highly unlikely to withstand [Movant’s] First Amendment Challenge”; 2) the harm to Movant resulting from Virginia’s unconstitutional law “would obviously be irreparable”; 3) the “balance of the equities tip in favor of [Movant]”; and 4) the “public interest weighs heavily in favor of [Movant].” (Doc. #73 p. 14-21). The Court found the only adequate remedy available is for

Movant's name to be placed on the Commonwealth's Republican primary ballot.

The District Court determined, however, that "except for the doctrine of laches, [Movant] would be entitled to the relief [he] seek[s] (Doc. #73 p. 22). The equitable doctrine of laches essentially punishes a litigant for failing to assert his rights in a timely manner which operates to prejudice a defendant. As discussed herein, the Court abused its discretion in determining Movant rested on his rights for such a period of time to allow the Commonwealth to trample on Movant's First Amendment rights.

Movant filed this lawsuit on December 27, 2011, the same date the names of candidates qualified to appear on the ballot were scheduled to be certified and just two business days<sup>1</sup> after Defendant Mullins made a preliminary determination and publicly announced Movant did not submit enough petition signatures to qualify to be placed on the ballot. Prior to this date, Movant reasonably expected to meet the requirements of Virginia's "likely . . . unconstitutional" election law, and Respondents could not have suffered any injury, as they could not have begun the process of finalizing their ballot orders.

Movant moves this Court, pursuant to Rule 8(a) of the Federal Rules of Appellate Procedure, for an order granting injunctive relief. Movant would show

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<sup>1</sup> Defendant Mullins made a preliminary decision Movant did not submit enough petition signatures on December 23, 2011. The four days between Defendant Mullins' preliminary decision and Movant's filing of this lawsuit included Christmas Eve, Christmas Day, and the generally recognized national holiday of December 26<sup>th</sup>, on which the federal courthouse was closed.

this Court should issue an injunction ordering Movant's name to appear alongside others on the ballot for the Republican primary for the Commonwealth of Virginia, or in the alternative, that this Court issue an injunction ordering the Respondents not to order, print, or mail ballots prior to the Court's final consideration of this appeal.

Expedited review of Movant's Emergency Motion For Injunction Pending Appeal and this appeal is necessary in order to protect Movant's constitutional rights and to afford the State Board of Elections ample time to print and mail ballots, and otherwise prepare for the primary election, currently scheduled for March 6, 2012. Moreover, Movant's Emergency Motion For Injunction Pending Appeal is ripe for decision because Movant has waived the right to file a reply to the State Board of Election's opposition brief.

Respectfully Submitted,

**THE HONORABLE RICK PERRY**

/s/

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## CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2012, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF System, which will send a notification of such filing (NEF) to the following counsel of record for Defendants and Intervenors:

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I further certify that some of the participants in the case are not registered CM/ECF users.

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