

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

THE HONORABLE NEWT GINGRICH, )  
THE HONORABLE JON HUNTSMAN, )  
JR., and THE HONORABLE RICK )  
SANTORUM )

Plaintiffs-Intervenors, )

Civil Action No.: 3:11-cv-856-JAG

v. )

CHARLES JUDD, et al., )

Defendants. )

**ANSWER OF CHARLES JUDD, KIMBERLY BOWERS  
and DON PALMER TO COMPLAINT OF INTERVENORS**

Charles Judd, Kimberly Bowers and Don Palmer, members of the Virginia State Board of Elections, in their official capacities (collectively, the "defendants"), by counsel, submit their Answer to the Proposed [sic] Complaint for Declaratory and Injunctive Relief filed by plaintiffs-intervenors (collectively, the "intervenors") and state as follows:

1. Defendants admit that intervenors are candidates for the Office of President of the United States, but are without sufficient information and belief to admit that intervenor Huntsman made an effort "to qualify for the March 6, 2012 Republican Primary Election ballot," and therefore deny the same.

2. With respect to the allegations contained in paragraph 2 of the Proposed Complaint, defendants admit that intervenors did not submit the requisite number of valid signatures. Defendants are without sufficient information and belief to admit the remaining allegations of said paragraph, and therefore, the same are denied.

3. Defendants deny the allegations contained in paragraph 3 of the Proposed Complaint.

4. With respect to the allegations contained in paragraph 4 of the Proposed Complaint, defendants admit that the deadline for printing ballots is quickly approaching and that intervenors are seeking declaratory and injunctive relief. Defendants aver that intervenors are not entitled to any of the equitable or declaratory relief they seek.

5. Defendants admit the allegations in paragraph 5 of the Proposed Complaint.

6. Defendants admit the allegations in paragraph 6 of the Proposed Complaint.

7. Defendants admit the allegations in paragraph 7 of the Proposed Complaint.

8. Defendants admit the allegations in paragraph 8 of the Proposed Complaint.

9. Defendants admit the allegations in paragraph 9 of the Proposed Complaint.

10. With respect to the allegations contained in paragraph 10 of the Proposed Complaint, defendants aver that the referenced sections of the Code of Virginia speak for themselves.

11. With respect to the allegations contained in paragraph 11 of the Proposed Complaint, defendants aver that the referenced sections of the Code of Virginia speak for themselves. Defendants admit that Mr. Mullins is Chairman of the Republican Party of Virginia.

12. With respect to the allegations contained in paragraph 12 of the Proposed Complaint, defendants aver that the referenced section of the Code of Virginia and the exhibit speak for themselves.

13. With respect to the allegations contained in paragraph 13 of the Proposed Complaint, defendants aver that the referenced section of the Code of Virginia and the exhibit speak for themselves.

14. With respect to the allegations contained in paragraph 14 of the Proposed Complaint, defendants aver that the exhibit speaks for itself.

15. With respect to the allegations contained in paragraph 15 of the Proposed Complaint, defendants aver that the referenced sections of the Code of Virginia speak for themselves.

16. With respect to the allegations contained in paragraph 16 of the Proposed Complaint, defendants aver that the referenced section of the Code of Virginia speaks for itself.

17. With respect to the allegations contained in paragraph 17 of the Proposed Complaint, defendants aver that the referenced sections of the Code of Virginia speak for themselves.

18. With respect to the allegations contained in paragraph 18 of the Proposed Complaint, defendants aver that the referenced section of the Code of Virginia speaks for itself.

19. Defendants admit the allegations in paragraph 19 of the Proposed Complaint.

20. Defendants admit the allegations in paragraph 20 of the Proposed Complaint.

21. Defendants admit the allegations in paragraph 21 of the Proposed Complaint.

22. Defendants admit the allegations in paragraph 22 of the Proposed Complaint.

23. Defendants admit the allegations in paragraph 23 of the Proposed Complaint.

24. Defendants admit the allegations in paragraph 24 of the Proposed Complaint.

25. With respect to the allegations contained in paragraph 25 of the Proposed Complaint, defendants are without sufficient information and belief to affirm that intervenor Santorum signed and affirmed, in the presence of a notary, a Declaration of Candidacy. Defendants aver that no such Declaration was filed by intervenor Santorum. Defendants admit all other allegations contained in paragraph 25 of the Proposed Complaint.

26. Defendants admit that intervenor Huntsman did not sign a Declaration of Candidacy. Defendants deny the remaining allegations of paragraph 26 of the Proposed Complaint.

27. With respect to the allegations contained in paragraph 27 of the Proposed Complaint, defendants admit that intervenor Gingrich submitted fewer than 10,000 valid petition signatures. Defendants are without sufficient information and belief to admit what number of valid signatures less than 10,000 intervenor Gingrich submitted. Defendants admit that intervenor Huntsman failed to submit any petition signatures, but deny the remaining allegations of said paragraph.

28. With respect to the allegations contained in paragraph 28 of the Proposed Complaint, defendants admit that intervenor Santorum failed to submit any petition signatures. Defendants are without sufficient information and belief to admit what number of valid signatures less than 10,000 intervenor Santorum gathered. Defendants aver that the State Board of Elections did not refuse to accept any petition signatures offered by intervenor Santorum's representative. Defendants further aver that intervenor Santorum's representative voluntarily withdrew the petition signatures.

29. The Defendants deny the allegations contained in paragraph 29 of the Proposed Complaint.

30. With respect to the allegations contained in paragraph 30 of the Proposed Complaint, defendants admit that the Republican Party of Virginia, through its chairman, announced that intervenor Gingrich failed to submit sufficient valid signatures to qualify for the primary ballot. Defendants are without sufficient information and belief to admit the remaining allegations of said paragraph, and therefore, the same are denied.

31. Defendants deny the allegations contained in paragraph 31 of the Proposed Complaint.

32. Defendants deny the allegations contained in paragraph 32 of the Proposed Complaint. Defendants further aver that intervenors lack standing to assert an injury arising from an alleged inability to circulate their own petitions because there is no averment that they stood ready, willing and able to circulate their own petitions and there is no basis for concluding that they would have collected a sufficient number of valid signatures had they done so. Defendants also aver that intervenors Gingrich and Santorum, as persons eligible to vote in the Commonwealth of Virginia, lack standing to challenge the circulator requirements, as they were not restricted from circulating their own petitions, had they so desired.

33. With respect to the allegations contained in paragraph 33 of the Proposed Complaint, defendants are without sufficient information and belief to admit the allegations of said paragraph, and therefore, the same are denied. Defendants further aver that intervenors lack standing to assert an injury arising from the inability to recruit petition circulators who reside outside of Virginia because there is no averment that he stood ready, willing and able to do so, and there is no basis for concluding that they would have collected a sufficient number of signatures had they done so.

34. Defendants deny the allegations contained in paragraph 34 of the Proposed Complaint.

35. With respect to the allegations contained in paragraph 35 of the Proposed Complaint, the allegations call for a legal conclusion for which no response is required. Defendants aver that intervenors are not entitled to any of the equitable or declaratory relief they seek.

36. With respect to the allegations contained in paragraph 36 of the Proposed Complaint, defendants re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

37. With respect to the allegations contained in paragraph 37 of the Proposed Complaint, the allegations call for a legal conclusion to which no response is required. Defendants aver that the Supreme Court's decision in Buckley speaks for itself and that Virginia's ballot access requirements for primary candidates are less restrictive than the statute at issue in Buckley.

38. With respect to the allegations contained in paragraph 38 of the Proposed Complaint, the allegations call for a legal conclusion to which no response is required. Defendants aver that the various cited decisions speak for themselves.

39. Defendants deny the allegations contained in paragraph 39 of the Proposed Complaint.

40. Defendants deny the allegations contained in paragraph 40 of the Proposed Complaint.

41. Defendants re-allege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

42. Defendants deny the allegations contained in paragraph 42 of the Proposed Complaint.

43. Except as expressly admitted above, defendants deny all allegations contained in intervenors' Proposed Complaint.

#### **AFFIRMATIVE DEFENSES**

Defendants hereby plead the following as affirmative defenses to the Proposed Complaint:

1. Having failed to obtain 10,000 valid signatures, intervenors lack standing to prosecute the claim set forth in Count 1. Intervenor Gingrich also lacks standing to prosecute Count 2 because the independent act of a third party, and not the 10,000 signature requirement, prevented intervenor Gingrich from submitting the requisite number of valid signatures.

2. The Proposed Complaint fails to state a claim upon which relief can be granted.

3. The relief sought in the Proposed Complaint is barred by the doctrine of laches.

4. To the extent that the Proposed Complaint references the State Board of Elections as opposed to its individual members, the State Board of Elections asserts its immunity under the Eleventh Amendment and associated concepts of sovereign immunity.

WHEREFORE, defendants pray that the Proposed Complaint be dismissed and that the Court order such further relief to defendants as the ends of justice may require.

Respectfully submitted,

CHARLES JUDD, KIMBERLY BOWERS and  
DON PALMER, in their official capacities

\_\_\_\_\_  
/s/

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## CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2012, I electronically filed the foregoing 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 Plaintiff and Intervenors:

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

I have mailed one copy of the foregoing document by First-Class Mail to the following non-CM/ECF participant:

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