

2. Therefore, the Chairman incorporates by reference and reasserts here the legal arguments, authorities and grounds for dismissal set forth in his Motion to Dismiss the Complaint and Memorandum in Support dated January 3, 2012 (D.N. 18).

3. The Intervenors' Complaint alleges the unique factual circumstances of each prospective candidate's filings and submissions to the State Board of Elections. None of the factual circumstances alleged establishes a cause of action against Chairman Mullins.

4. John Huntsman ("Huntsman") alleges that he did not submit a Declaration of Candidacy or any petition signatures to the State Board of Elections (Complaint at ¶ 26), and he alleges that the State Board of Elections determined that he did not meet Virginia's legal requirements to appear on the Virginia Republican primary ballot. *Id.* at ¶ 29. Therefore, Chairman Mullins had no role in reviewing petition signatures, determining Huntsman's compliance with Virginia's legal requirements, or certifying that Huntsman had met the requirements of Va. Code § 24.2-545.

5. Likewise, Rick Santorum ("Santorum") alleges that he did not submit any petition signatures to the State Board of Elections (*id.* at ¶ 28), and he alleges that the State Board of Elections determined that he did not meet Virginia's legal requirements to appear on the Virginia Republican primary ballot. *Id.* at ¶ 29. Therefore, Chairman Mullins had no role in reviewing petition signatures, determining Santorum's compliance with Virginia's legal requirements, or certifying that Santorum had met the requirements of Va. Code. § 24.2-545.

6. Newt Gingrich ("Gingrich") alleges that he submitted a Declaration of Candidacy and "11,050 petition signatures of *purportedly* eligible Virginia voters, of which less than 10,000 were ultimately verified as registered voters on the Board's registration rolls." *Id.* at ¶ 27 (emphasis added). Gingrich also alleges that Chairman Mullins determined that Gingrich had

not submitted 10,000 valid petition signatures, did not meet Virginia's legal requirements, and therefore did not certify to the State Board of Elections that Gingrich had met the requirements of Va. Code §24.2-545. *Id.* at ¶ 30. Gingrich, however, does not dispute the accuracy of the Chairman's signature count or aver that the Chairman came to an incorrect conclusion. Gingrich also does not allege or assert that the Chairman's accurate count of the signatures violated any law. Instead, Gingrich alleges only that the 10,000-signature requirement and in-state witness requirements caused him to be disqualified from the Virginia ballot and that those laws are unconstitutional.

7. None of the Intervenors allege that he submitted petition signatures witnessed by a non-Virginia resident or that the Chairman rejected or refused to count any signatures on the basis of the out-of-state residency of the witness. Therefore, the Chairman had no role in implementing the alleged unconstitutional witness residency requirement.

8. There is no cognizable dispute between the Intervenors and the Chairman in this matter and, moreover, the Chairman's participation is not necessary to a resolution of the Intevenor's constitutional challenges to Virginia statutes. The Virginia State Board of Elections is represented by the Virginia Attorney General's office, and thus, is the proper party to defend the constitutionality of Virginia's statutory scheme for inclusion on a national party's primary ballot.

9. For these reasons, and for the reasons set forth in the Chairman's Motion to Dismiss Governor Perry's Complaint and Memorandum in Support, it is clear that the Intervenors' Complaint (a) fails to establish a case or controversy vis-à-vis the Chairman, and there is no Article III jurisdiction as to the Chairman, and (b) fails to state a claim against the Chairman.

10. Accordingly, the Chairman respectfully requests that the Court enter an order dismissing the Chairman from this lawsuit.

11. The Chairman also respectfully requests that the Court waive the filing of a duplicative memorandum of law in support of this Motion because the grounds for the Motion are set forth above and in the incorporated pleadings filed in response to Governor Perry's Complaint.

Respectfully submitted this 6th day of January, 2012.

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of January 2012, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to counsel named below:

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