

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

THE HONORABLE RICK
PERRY,

PLAINTIFF

CIVIL NO. 3:11-cv-856-JAG

THE HONORABLE NEWT GINGRICH,
THE HONORABLE JON HUNTSMAN,
JR., AND THE HONORABLE RICK
SANTORUM,

INTERVENORS

v.

CHARLES JUDD, KIMBERLY BOWERS,
and DON PALMER, members of the Virginia
State Board of Elections, in their official
capacities, and PAT MULLINS, in his official
capacity as Chairman of the Republican Party
of Virginia,

DEFENDANTS

**MOTION TO FILE FRIEND OF THE COURT BRIEF BY REPUBLICAN VOTER,
PETITION SIGNER, AND RPV MEMBER JONATHON MOSELEY
AND ATTACHED FRIEND OF THE COURT BRIEF**

COMES NOW Jonathon Moseley, **as a signer (personally) of ballot access petitions
for both Rick Perry and Newt Gingrich** for their appearance on the March 6, 2012, Republican
Presidential primary ballot in Virginia for nomination for President of the United States,
registered voter in the Commonwealth of Virginia, and pursuant to the Party Plan a member of

the Republican Party of Virginia.

Friend of the Court Moseley wishes to vote for candidates currently not on the ballot as certified to the State Board of Elections pursuant to Va. Code 24.2-545(B) by the Republican Party of Virginia, and due to extensive study of these laws wishes to offer some points and authorities that may be helpful

FRIEND OF THE COURT BRIEF

Friend of the Court Jonathon Moseley understands that the Court is primarily challenged by the remedy that may be appropriate if the ballot petition circulator requirement that ballot petitions must only be circulated and attested to by those registered or eligible to be registered as voters in Virginia.

1. A combination of factors may best inform the problem of the remedy appropriate:
2. Much has been made of the use of the word “may” in Va. Code 24.2-545.
3. Most of this discussion is misguided, because if a candidate wishes to be on the ballot, he or she “may” submit petitions.
4. Yet there are clearly two different steps involved in Va. Code 24.2-545.
5. The import of this distinction is likely different here from the extensive discussion.
6. Va. Code 24.2-545(B) provides a two step process:
 - A) Any person who wishes to be on the ballot “may” submit petitions.
 - B) The Chair of the Party then – separately – certifies to the State Board of Elections **those persons who have complied with “this section.”**
7. If the ballot petition portion of Va. Code 24.2-545(B) is stricken in its entirety, then what remains is the Chair of the Party’s obligation to certify all candidates who have complied

with “this section” – as thus modified by the Court striking the unconstitutional scheme.

8. Therefore, all candidates who apply have complied with “this section” – 24.2-545(B) – if the ballot petition portion is stricken.

9. The Chair of the Party is not given discretion but must certify all those who comply with “this section” meaning 24.2-545.

10. The ballot petition portion must be stricken in its entirety, as not being severable.

11. Va. Code § 1-243 offers Virginia’s all-encompassing, overarching rule of interpretation on severability for Virginia statutes:

Va. Code § 1-243. Severability.

The provisions of acts of the General Assembly or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other acts, provisions, or applications that can be given effect without the invalid provisions or applications. The provisions of all acts, except for the title of the act, are severable unless (i) the act specifically provides that its provisions are not severable; or (ii) ***it is apparent that two or more acts or provisions must operate in accord with one another.***

(Emphasis added.)

12. This final provision “***it is apparent that two or more acts or provisions must operate in accord with one another,***” is subjective but I believe it certainly applies here.

13. As a result, the entire ballot petition scheme of 24.2-545 must fall together with the requirement contained in it that the ballot circulator must be a Virginia resident.

14. Among other factors, Va. Code 24.2-545(B) is not severable because it deterred the other candidates from even attempting to submit the required ballot petitions.

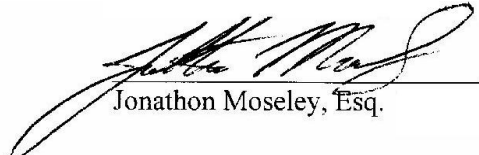
15. Thus the invalid portion cannot be separated out from the ballot access procedure as a whole, thus requiring the inclusion of all of the candidates on the ballot.

16. The result is that the portion of 24.2-545(B) which remains in force is that the Chair of the Party shall certify – without discretion – all candidates to the Virginia State Board of

Elections, *because those candidates have complied with the section as modified.*

WHEREFORE, the Intervenor urges the Court to order all candidates appear on the ballot, although the Court may choose to limit this to only those candidates who timely asked to appear.

RESPECTFULLY SUBMITTED

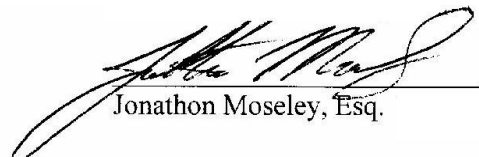


Jonathon Moseley, Esq.

JONATHON MOSELEY, Esq. VSB #41058 ¹
1818 Library Street, Suite 500
Reston, Virginia 20190
(703) 656-1230
Fax: (703) 783-0449
Email: Law@JonMoseley.com

CERTIFICATE OF SERVICE

On the 13th day of January, 2012, this Motion is served electronically through ECF to counsel of record:



Jonathon Moseley, Esq.

¹ When the case went up on appeal with the Plaintiffs pro se, there was misunderstanding as to whether Moseley was still representing the Plaintiffs.