

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

THE HONORABLE RICK PERRY	)	
	)	
Plaintiff,	)	
	)	Civil Action No.: 3:11-cv-856-JAG
v.	)	
	)	
CHARLES JUDD, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ANSWER OF CHARLES JUDD, KIMBERLY BOWERS and DON PALMER  
TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Pursuant to Fed. R. Civ. P. 15(a)(3), Charles Judd, Kimberly Bowers and Don Palmer, members of the Virginia State Board of Elections and defendants herein, in their official capacities, by counsel, submit their Answer to the First Amended Complaint for Declaratory and Injunctive Relief ("Amended Complaint") filed by plaintiff and state as follows:

1. Defendants admit the allegations in paragraph 1 of the Amended Complaint.
2. Defendants admit that the Board has developed, adopted, and implemented form SBE-545, as authorized and directed by law. Defendants deny all other allegations of paragraph 2 of the Amended Complaint.
3. With respect to the allegations contained in paragraph 3 of the Amended Complaint, defendants admit that the Board has implemented Virginia's ballot access requirements, as authorized by law. Defendants deny all other the allegations contained in paragraph 3 of the Amended Complaint.
4. With respect to the allegations contained in paragraph 4 of the Amended Complaint, defendants are without sufficient information and belief to admit the allegations, and therefore, the same are denied.

5. With respect to the allegations contained in paragraph 5 of the Amended Complaint, defendants admit that defendant Mullins, as Republican Party of Virginia Chairman, did not certify Plaintiff for the Republican Presidential Primary ballot because Plaintiff failed to submit the number of petition signatures required by law. Defendants deny all other allegations contained in paragraph 5 of the Amended Complaint.

6. Defendants admit that Plaintiff did not submit the requisite number of petition signatures. Defendants deny all other allegations in paragraph 6 of the Amended Complaint.

7. Defendants deny the allegations contained in paragraph 7 of the Amended Complaint.

8. With respect to the allegations contained in paragraph 8 of the Amended Complaint, defendants admit that plaintiff "seeks access to the March 6, 2012 Republican Party primary ballot." Defendants aver that the deadline for printing absentee ballots has now passed, that at least some of the absentee ballots have been mailed, and that all ballots have been, or are in the process of being, printed for the primary. Defendants also aver that all necessary provisions of SBE-545 have been precleared. Defendants deny all other allegations contained in paragraph 8 of the Amended Complaint.

9. With respect to the allegations in paragraph 9 of the Amended Complaint, defendants admit that there is federal question jurisdiction, but deny that there is jurisdiction under the Voting Rights Act of 1965 as amended.

10. Defendants admit the allegations contained in paragraph 10 of the Amended Complaint.

11. Defendants deny that Plaintiff's allegations are sufficiently material to warrant convening a three-judge court.

12. Defendants admit the allegations contained in paragraph 12 of the Amended Complaint.

13. Defendants admit the allegations contained in paragraph 13 of the Amended Complaint.

14. Defendants admit the allegations contained in paragraph 14 of the Amended Complaint. Defendants also aver that intervenor Huntsman is no longer a candidate for the Office of the President of the United States.

15. Defendants admit the allegations contained in paragraph 15 of the Amended Complaint.

16. Defendants aver that the code sections referenced in paragraph 16 of the Amended Complaint speak for themselves.

17. Defendants aver that the code sections referenced in paragraph 17 of the Amended Complaint speak for themselves.

18. Defendants aver that the code section referenced in paragraph 18 of the Amended Complaint speaks for itself.

19. Defendants aver that the code section referenced in paragraph 19 of the Amended Complaint speaks for itself.

20. Defendants aver that the attached exhibit referenced in paragraph 20 of the Amended Complaint speaks for itself.

21. Defendants aver that the code sections referenced in paragraph 21 of the Amended Complaint speak for themselves.

22. Defendants aver that the code section referenced in paragraph 22 of the Amended Complaint speaks for itself.

23. With respect to the allegations contained in paragraph 23 of the Amended Complaint, defendants aver that the code sections referenced therein speak for themselves. Defendants admit that the deadline for certifying the names of candidates who qualified to appear on the Republican Presidential ballot was Tuesday, December 27, 2011, by 5:00 p.m.

24. Defendants aver that the code section referenced in paragraph 24 of the Amended Complaint speaks for itself.

25. Defendants admit that portions of the Commonwealth of Virginia are subject to the Voting Rights Act of 1965 as amended and aver that the cited United State Code section and the case of *Georgia v. United States*, 411 U.S. 526 (1973) speak for themselves.

26. Defendants aver that the exhibits referenced in paragraph 26 of the First Complaint speak for themselves.

27. With respect to the allegations contained in paragraph 27 of the Amended Complaint, defendants admit that SBE-545 is used throughout the Commonwealth to collect petition signatures, as authorized by law. Defendants separately aver that all the relevant requirements at issue have been precleared. Defendants deny all other allegations contained in paragraph 27 of the Amended Complaint.

28. Defendants aver that the exhibit referenced in paragraph 28 of the Amended Complaint speaks for itself.

29. With respect to the allegations contained in paragraph 29 of the Amended Complaint, defendants are without sufficient information and belief to admit the allegations, and therefore, the same are denied.

30. Defendants admit the allegations contained in paragraph 30 of the Amended Complaint.

31. Defendants admit the allegations contained in paragraph 31 of the Amended Complaint.

32. Defendants admit the allegations contained in paragraph 32 of the Amended Complaint.

33. With respect to the allegations contained in paragraph 33 of the Amended Complaint, defendants admit that plaintiff 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 plaintiff submitted.

34. With respect to the allegations contained in paragraph 34 of the Amended Complaint, defendants admit that the Republican Party of Virginia, through its chairman, announced that plaintiff had failed to submit sufficient valid signatures to qualify for the primary ballot. Defendants aver that the referenced code section and exhibit speak for themselves. To the extent that a response is required, defendants deny all other allegations contained in paragraph 34 of the Amended Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Amended Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Amended Complaint. Defendants further aver that plaintiff lacks standing to assert an injury arising from the inability to circulate his own petitions because there is no averment that he stood ready, willing and able to circulate his own petitions and there is no basis for concluding that he would have collected a sufficient number of valid signatures.

37. With respect to the allegations contained in paragraph 37 of the Amended Complaint, defendants admit that Virginia law prohibits persons not eligible to vote in Virginia

from witnessing the signing of petitions to place a candidate's name on the ballot. Defendants further aver that plaintiff lacks 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 but mere speculation for concluding that they would have collected a sufficient number of valid signatures to qualify plaintiff for the Republican Presidential primary ballot.

38. Defendants deny the allegations contained in paragraph 38 of the Amended Complaint. Defendants aver that plaintiff is not entitled to any of the equitable or declaratory relief he seeks.

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

40. Defendants deny all allegations contained in paragraph 40 of the Amended Complaint. Defendants aver that the code section referenced therein speaks for itself.

41. Defendants aver that the Virginia Supreme Court's decision in *Zinone v. Lee's Crossing Homeowners Association*, 282 Va. 330, 714 S.E.2d 922 (2011), speaks for itself.

42. With respect to the allegations contained in paragraph 42 of the Amended Complaint, the allegations call for a legal conclusion to which no response is required. Defendants admit that the General Assembly knowingly selected the language contained in Va. Code Ann. § 24.2-545 B. Defendants deny all other the allegations contained in paragraph 42 of the Amended Complaint.

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

44. With respect to the allegations contained in paragraph 44 of the Amended Complaint, defendants admit "that petition signatures are required by a candidate for Office for the Office of the President of the United States to gain access to [Virginia's] Republican Party primary ballot." Defendants aver that the referenced code section speaks for itself.

45. Defendants deny the allegations contained in paragraph 45 of the Amended Complaint.

46. Defendants deny the allegations contained in paragraph 46 of the Amended Complaint. Defendants aver that this Court lacks jurisdiction to grant the relief requested.

47. With respect to the allegations contained in paragraph 47 of the Amended Complaint, defendants deny that plaintiff's allegations are sufficiently material to warrant convening a three-judge court.

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

49. With respect to the allegations contained in paragraph 49 of the Amended Complaint, the allegations call for a legal conclusion for which no response is required. Defendants aver that the Supreme Court's decision in *American Constitutional Law Foundation* speaks for itself and that Virginia's witness residency requirement is less restrictive than the statute at issue in that case.

50. With respect to the allegations contained in paragraph 50 of the Amended Complaint, the allegations call for a legal conclusion for which no response is required. Defendants aver that the various cited decisions speak for themselves.

51. Defendants deny the allegations contained in paragraph 51 of the Amended Complaint.

52. With respect to the allegations contained in paragraph 52 of the Amended Complaint, defendants admit that Virginia law prohibits persons not eligible to vote in Virginia from witnessing the signing of petitions to place a candidate's name on the ballot. Defendants deny all other allegations contained in paragraph 52 of the Amended Complaint. Defendants aver that plaintiff lacks 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.

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

54. Defendants deny the allegations contained in paragraph 54 of the Amended Complaint.

55. Except as expressly admitted above, defendants deny all allegations contained in plaintiff's Amended Complaint.

#### **AFFIRMATIVE DEFENSES**

Defendants hereby plead the following as affirmative defenses to plaintiff's Amended Complaint:

1. Having failed to obtain 10,000 valid signatures, plaintiff lacks standing to prosecute the claim set forth in Counts I and III of the Amended Complaint. *See (Perry v. Judd, Rec. Nos. 12-1042, 12-1047, Doc. 15 at 15-16).*

2. Plaintiff's claim, in Count II, "to a Temporary Restraining Order and Preliminary Injunction prohibiting the implementation and use of the unprecleared form for this election," is barred by the doctrine of laches. *See (Docs. 73 at 1-2, 8-12; 74; Rec. No. 12-1067, Doc 15 at 2-*



3, 10-22). Further, this Court, acting alone, lacks jurisdiction to grant the requested relief under the Voting Rights Act. 28 U.S.C. § 2284(b)(3).

3. The Amended Complaint fails to state a claim upon which relief can be granted.

4. The equitable relief sought in the Amended Complaint, insomuch as it seeks to have plaintiff's name placed on the March 6, 2012 ballot, is barred by the doctrine of laches. *See* (Docs. 73 at 1-2, 8-12; 74; Rec. No. 12-1067, Doc 15 at 2-3, 10-22).

5. To the extent that the 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 Amended 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 19th 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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