

**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,)

v.)

CHARLES JUDD, *et al.*,)

Defendants.)

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

**ANSWER OF CHARLES JUDD, KIMBERLY BOWERS and DON PALMER
TO INTERVENORS' 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 plaintiffs-intervenors (collectively, the "intervenors") and state as follows:

1. Defendants admit that intervenors Gingrich and Santorum are currently 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. Defendants aver that intervenor Huntsman is no longer a candidate for the Office of President of the United States.

2. With respect to the allegations contained in paragraph 2 of the Amended Complaint, defendants admit that intervenors Santorum and Huntsman did not submit the requisite number of valid signatures, but deny the remaining allegations of said paragraph.

3. Defendants admit that intervenor Gingrich failed to submit the requisite number of valid signatures, but deny all other allegations contained in paragraph 3 of the Amended Complaint.

4. Defendants deny the allegations contained in paragraph 4 of the Amended Complaint. Defendants further aver that intervenors lack standing to assert an injury arising from their 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.

5. Defendants deny the allegations in paragraph 5 of the Amended Complaint.

6. With respect to the allegations contained in paragraph 6 of the Amended Complaint, defendants aver that that many of the ballots have been printed and shipped to comply with federal law, state law, and a consent decree entered by this Court. *See* (Case 3:08-cv-00709-RLW Doc. 75). Defendants also aver that intervenors are not entitled to any of the equitable or declaratory relief they seek.

7. Defendants admit that there is federal question jurisdiction, but deny that there is jurisdiction under the Voting Rights Act of 1965 as amended.

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

9. Defendants deny that the allegations of intervenors are sufficiently material to warrant convening a three-judge court.

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

11. Defendants admit the allegations in paragraph 11 of the Amended Complaint.

12. Defendants admit the allegations in paragraph 12 of the Amended Complaint, except to deny that intervenor Huntsman is an active candidate for the Office of President of the United States.

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

14. With respect to the allegations contained in paragraph 14 of the Amended Complaint, defendants aver that the referenced code sections speak for themselves.

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

16. With respect to the allegations contained in paragraph 16 of the Amended Complaint, defendants aver that the referenced code section and exhibit speak for themselves.

17. With respect to the allegations contained in paragraph 17 of the Amended Complaint, defendants aver that the referenced code section speaks for itself.

18. With respect to the allegations contained in paragraph 15 of the Amended Complaint, defendants aver that the referenced form and exhibit speak for themselves.

19. With respect to the allegations contained in paragraph 19 of the Amended Complaint, defendants aver that the referenced code sections speak for themselves.

20. With respect to the allegations contained in paragraph 20 of the Amended Complaint, defendants aver that the referenced code section speaks for itself.

21. With respect to the allegations contained in paragraph 21 of the Amended Complaint, defendants admit that the deadline for certifying the names of the candidates who qualified to appear on the Republican Presidential primary ballot was Tuesday, December 27, 2011 by 5:00 p.m. Defendants aver that the referenced code sections speak for themselves.

22. With respect to the allegations contained in paragraph 22 of the Amended Complaint, defendants aver that the referenced code section speaks for itself

23. Defendants admit the allegations contained in paragraph 23 of the Amended Complaint.

24. Defendants admit the allegations contained in paragraph 24 of the Amended Complaint.

25. Defendants admit the allegations contained in paragraph 25 of the Amended Complaint.

26. Defendants admit the allegations contained in paragraph 26 of the Amended Complaint.

27. Defendants admit the allegations contained in paragraph 27 of the Amended Complaint.

28. Defendants admit the allegations contained in paragraph 28 of the Amended Complaint.

29. With respect to the allegations contained in paragraph 29 of the Amended Complaint, defendants admit that intervenor Gingrich signed and affirmed, in the presence of a notary, his Declaration of Candidacy for the Office of the President of the United States for the Commonwealth of Virginia. Defendants are without sufficient information and belief to admit that intervenor Santorum did as well, and therefore, the same is denied. Defendants aver that no Declaration of Candidacy signed and affirmed by intervenor Santorum in the presence of a notary was filed with the Virginia State Board of Elections.

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

31. With respect to the allegations contained in paragraph 31 of the Amended Complaint, defendants admit that intervenor Gingrich failed to submit the requisite number of valid petition signatures to qualify to have his name placed on the ballot. Defendants deny the remaining allegations contained in paragraph 31 of the Amended Complaint.

32. With respect to the allegations contained in paragraph 32 of the Amended Complaint, defendants admit that intervenor Santorum failed to submit any petition signatures to the Board. Defendants deny that the Board "refused to accept" any signatures offered by intervenor Santorum. Defendants are without sufficient information and belief to admit that intervenor Santorum collected "in excess of 8,000 petition signatures," and therefore, the same is denied.

33. With respect to the allegations contained in paragraph 33 of the Amended Complaint, defendants admit that intervenors Huntsman and Santorum failed to submit the requisite number of valid signatures to entitle them to have their names appear as candidates on the Republican Presidential primary ballot. Defendants aver that the referenced code section speaks for itself. Defendants deny all remaining allegations contained in paragraph 33 of the Amended Complaint.

34. With respect to the allegations contained in paragraph 34 of the Amended Complaint, defendants admit that intervenor Gingrich failed to submit the requisite number of signatures to entitle him to have his names appear as a candidate on the Republican Presidential primary ballot. Defendants aver that the referenced code section speaks for itself. Defendants deny the remaining allegations contained in paragraph 34.

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 aver that intervenors lack standing to challenge Virginia's witness residency requirements inasmuch as it may inhibit a candidate from circulating his or her own petitions, as there is no averment that any of the three intervenors stood ready, willing and able to do so to circulate their own petitions. 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.

37. Defendants deny the allegations contained in paragraph 37 of the Amended Complaint. Defendants aver that intervenors lack standing to challenge Virginia's witness residency requirements inasmuch as it may inhibit a candidate from employing non-residents as circulators, as there is no averment that any of the intervenors stood ready, willing and able to employ non-resident circulators and there is no basis for concluding that non-resident circulators would have collected a sufficient number of signatures had they done so.

38. Defendants deny the allegations contained in paragraph 38 of the Amended Complaint.

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

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

41. With respect to the allegations contained in paragraph 41 of the Amended Complaint, the allegations call for a legal conclusion to which no response is required. Defendants aver that the Virginia Supreme Court's decision in *Zinone v. Lee's Crossing*

Homeowner's Association, 282 Va. 330, 714 S.E.2d 922 (2011) speaks for itself. Insofar as paragraph 41 of the Amended Complaint contains any allegations requiring an answer, the same are denied.

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, 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.

45. With respect to the allegations contained in paragraph 45 of the Amended Complaint, the allegations call for a legal conclusion for which no response is required. Defendants aver that the various cited decisions contained in paragraph 45 speak for themselves.

46. Defendants deny the allegations contained in paragraph 46 of the Amended Complaint.

47. 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

aver that there is no basis but mere speculation for concluding that non-resident circulators would have collected a sufficient number of valid signatures to qualify intervenors for the Republican Presidential primary ballot. Defendants deny the remaining allegations contained in paragraph 47 of the Amended Complaint.

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

49. Defendants deny the allegations contained in paragraph 49 of the Amended Complaint.

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

AFFIRMATIVE DEFENSES

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

1. Having failed to obtain 10,000 valid signatures, intervenors lack standing to prosecute the claim set forth in Count 2. Also, intervenors Santorum and Huntsman lack standing to prosecute Count 2 for the independent reason that they failed to file a valid Declaration of Candidacy with the Virginia State Board of Elections. 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. Having omitted any allegation that intervenors intend to avail themselves of Virginia's Republican Presidential Primary in the future, all three counts of the Amended Complaint, requesting equitable relief, are now moot or will be before the action reaches

decision. Furthermore, because intervenor Huntsman has withdrawn his candidacy, his claims are currently moot.

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

4. The relief sought in the Amended Complaint, inasmuch 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 Amended 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/

E. Duncan Getchell, Jr.
Solicitor General of Virginia
(VSB No. 14156)
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-7240 – Telephone
(804) 371-0200 – Facsimile
dgetchell@oag.state.va.us
*Counsel for Defendants Judd,
Bowers and Palmer*

Kenneth T. Cuccinelli, II
Attorney General of Virginia

E. Duncan Getchell, Jr., VSB #14156
Solicitor General of Virginia
E-mail: dgetchell@oag.state.va.us

Wesley G. Russell, Jr., VSB #38756
Deputy Attorney General
E-mail: wrussell@oag.state.va.us

Joshua N. Lief, VSB # 37094
Senior Assistant Attorney General
E-mail: jlief@oag.state.va.us

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 Intervenor:

M. F. Connell Mullins, Jr., Esquire
Hugh M. Fain, III, Esquire
Edward Everett Bagnell, Jr., Esquire
Spotts Fain P.C.
411 East Franklin Street, Suite 600
Richmond, Virginia 23219
Phone: (804) 697-2040
Fax: (804) 697-2140
cmullins@spottsfain.com
hfain@spottsfain.com
ebagnell@spottsfain.com
Counsel for The Honorable Rick Perry

Joseph M. Nixon, Esquire (*pro hac vice*)
James E. Trainor, III, Esquire (*pro hac vice*)
Martin D. Beirne, Esquire (*pro hac vice*)
Beirne, Maynard & Parsons, L.L.P.
1300 Post Oak Boulevard, Suite 2500
Houston, TX 77056
Phone: (713) 623-0887
Fax: (713) 960-1527
jnixon@bmpllp.com
ttrainor@bmpllp.com
mbeirne@bmpllp.com
Counsel for The Honorable Rick Perry

Charles Michael Sims
LeClairRyan, A Professional Corporation
P.O. Box 2499
Richmond, VA 23218-2499
Tel: (804) 783-2003
charles.sims@leclairryan.com
Counsel for Pat Mullins, in his official capacity as Chairman of the Republican Party of Virginia

J. Christian Adams, Esquire
Election Law Center, PLLC
300 N. Washington St., Suite 405
Alexandria, VA 22314
Tel: 703-963-8611
Fax: 703-740-1773
adams@electionlawcenter.com
Counsel for Plaintiff-Intervenor The Honorable Newt Gingrich

Stefan C. Passantino, Esquire (*pro hac vice* filed)
J. Randolph Evans, Esquire (*pro hac vice* to be filed)
Benjamin P. Keane, Esquire (*pro hac vice* filed)
McKenna Long & Aldridge, LLP
1900 K St. NW
Washington, DC 20009
Tel: 202-496-7500
Fax: 202-496-7756
Counsel for Plaintiff-Intervenor The Honorable Newt Gingrich

Craig Engle, Esquire (*pro hac vice* to be filed)
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
Tel: 202-857-6000
Fax: 202-857-6395
Counsel for Plaintiff-Intervenor The Honorable Jon Huntsman, Jr.

Cleta Mitchell, Esquire (*pro hac vice* filed)
Foley & Lardner LLP
3000 K Street, N.W.
Suite 600
Washington, DC 20007-5109
Tel: 202-672-5300 Fax: 202-672-5399
Counsel for Plaintiff-Intervenor Rick Santorum

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:

Lee Elton Goodman, Esquire
LeClairRyan, P.C.
1101 Connecticut Avenue, NW
Suite 600
Washington, D.C. 20036
Phone: (202) 659-4140
Lee.Goodman@leclairryan.com
*Counsel for Pat Mullins, in his official
capacity as Chairman of the Republican Party of Virginia*

/s/

E. Duncan Getchell, Jr.
Solicitor General of Virginia
(VSB No. 14156)
Office of the Attorney General
900 East Main Street
Richmond, Virginia 23219
(804) 786-7240 – Telephone
(804) 371-0200 – Facsimile
dgetchell@oag.state.va.us
*Counsel for Defendants Judd,
Bowers and Palmer*