

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

CARROLL BOSTON CORRELL, JR.,)	
on behalf of himself and others similarly)	
situated,)	
)	
Plaintiffs,)	Civil Action No. 3:16CV467
)	
v.)	
)	
MARK R. HERRING, et al.,)	
)	
Defendants.)	

**ANSWER TO PLAINTIFF’S FIRST AMENDED VERIFIED CLASS ACTION
COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Defendants Mark R. Herring, in his official capacity as Attorney General of the Commonwealth of Virginia; James B. Alcorn, Clara Belle Wheeler, and Singleton B. McAllister, in their official capacities as Chairman, Vice-Chairman, and Secretary, respectively, of the Virginia State Board of Elections; Edgardo Cortés,¹ in his official capacity as Commissioner of the Virginia Department of Elections, and Marc Abrams,² in his official capacity as Commonwealth’s Attorney for the City of Winchester state as follows for their Answer to Plaintiff’s “First Amended Verified Class Action Complaint for Injunctive and Declaratory Relief”³ (the Amended Complaint):

1. Defendants deny the allegations in Paragraph 1 of the Amended Complaint.
2. Paragraph 2 of the Amended Complaint contains a characterization of Plaintiff’s

¹ Defendant Cortés’ last name is misspelled by Plaintiff in the Complaint and in the Amended Complaint. His last name ends with “és” and not “ez”.

² Defendant Abrams’ first name has been spelled multiple ways in various filings with the Court. His first name ends with a “c” and not a “k”.

³ There is no provision in the Federal Rules of Civil Procedure to require the signatures of the parties on responsive pleadings to a Verified Complaint. According, this pleading meets the signature requirements of FRCP 11(a).

lawsuit to which no response is required. Upon information and belief, Defendants admit that Plaintiff was selected as a delegate to the 2016 Republican National Convention by the Republican Party of Virginia.

Jurisdiction and Venue

3. Paragraph 3 of the Amended Complaint contains a characterization of Plaintiff's lawsuit to which no response is required. Defendants deny that this Court has subject matter jurisdiction to hear the claims raised in this action. Plaintiff failed to show that he (or any other similarly situated Republican delegate) has standing.

4. Defendants admit the allegations in Paragraph 4 of the Amended Complaint.

Parties

5. Upon information and belief, Defendants admit that Plaintiff was selected as a delegate to the 2016 Republican National Convention by the Republican Party of Virginia, pursuant to its rules and the national Republican rules; that Plaintiff is a resident of Winchester, Virginia; and that Plaintiff is a registered voter. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 5 of the Amended Complaint.

6. Defendants admit that Mark R. Herring is the Attorney General of the Commonwealth of Virginia and the chief executive officer of the Department of Law, that he is named in his official capacity, and that, pursuant to the Constitution of Virginia and Virginia Code § 2.2-500, he performs such duties as may be provided by law. Defendants deny any allegations in Paragraph 6 of the Complaint that are inconsistent with applicable law.

7. Defendants admit that Marc Abrams is the Commonwealth's Attorney for the City of Winchester, Virginia, that he is named in his official capacity, and that he performs such

duties as may be provided by law, including those set forth in Virginia Code § 15.2-1626 and - 1627. Defendants aver that paragraph 7 of the Amended Complaint does not accurately describe the duties of the Commonwealth's Attorney and deny any allegations in Paragraph 7 of the Complaint that are inconsistent with Title 15.2, Chapter 16, Article 4 of the Virginia Code.

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

9. Defendants admit that Edgardo Cortés is the Commissioner of Elections and the agency head of the Virginia Department of Elections, which is an independent administrative agency of the Commonwealth pursuant to Virginia Code § 2.2-600, and that he is named in his official capacity. Defendants deny the remaining allegations of Paragraph 9 of the Amended Complaint to the extent that they are inconsistent with the powers and duties of the Department of Elections as set forth in Title 24.2 of the Virginia Code.

Facts

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

11. Paragraph 11 of the Amended Complaint partially quotes Virginia Code § 24.2-545(D). The statute speaks for itself, and Defendants deny any allegations inconsistent with the statute.

12. Paragraph 11 of the Amended Complaint partially quotes Virginia Code § 24.2-545(D). The statute speaks for itself, and Defendants deny any allegations inconsistent with the statute.

13. Paragraph 13 of the Amended Complaint characterizes Virginia Code § 24.2-545(D). The statute speaks for itself, and Defendants deny any allegations that are inconsistent with the statute.

14. Defendants deny the allegations in Paragraph 14 of the Amended Complaint.

Defendants aver that Republican delegates agreed to, and are required to, abide by the national and state Republican party rules and the decision of the Republican Party of Virginia State Central Committee to bind delegates proportionally.

15. Defendants admit that, pursuant to Virginia Code § 24.2-18.2-11(a), a Class 1 misdemeanor is subject to “confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.” Defendants admit that Virginia Code § 24.2-1017 provides that “Any conduct made unlawful by this title, for which no punishment has been otherwise provided, shall be a Class 1 misdemeanor.” Defendants deny any allegations in paragraph 15 that are inconsistent with Title 24.2 of the Code of Virginia.

16. Upon the belief that “alternatives” is a typographical error meant to be “alternates”, Defendants admit the allegations in Paragraph 16 of the Amended Complaint.

17. Upon information and belief, Defendants admit the allegations in Paragraph 17 of the Amended Complaint.

18. Defendants admit the allegations in Paragraph 18 of the Amended Complaint, except that, as shown on the Department of Elections’ Official Results webpage, Donald J. Trump received 34.80% of the votes.

19. Defendants admit that Republican delegates from Virginia are bound on the first national convention ballot to vote according to the results of the Virginia primary, on either a proportional or winner-take-all basis. Defendants lack knowledge or information sufficient to form a belief about the truth of any remaining allegations in Paragraph 19 of the Amended Complaint.

20. Defendants admit that Republican delegates from Virginia, including Correll, are bound on the first Republican National Convention ballot to vote according to the results of the

Virginia primary. Defendants lack knowledge or information sufficient to form a belief about the truth of any remaining allegations in Paragraph 20 of the Amended Complaint.

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 21 of the Amended Complaint.

22. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 22 of the Amended Complaint.

23. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 23 of the Amended Complaint.

24. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 24 of the Amended Complaint.

25. Defendants admit that on May 25, 2016, Plaintiff sent an email message to Brooks Braun, a policy analyst at the Virginia Department of Elections, seeking an advisory opinion. Defendants deny the remainder of the allegations in Paragraph 25 of the Amended Complaint.

26. Defendants admit that on June 2, 2016, Plaintiff sent an email message to Defendant Abrams, requesting an advisory opinion. Defendants deny the remainder of the allegations in Paragraph 25 of the Amended Complaint.

27. Defendants admit that Defendant Abrams replied by letter to Plaintiff on June 8, 2016. The letter partially quoted in Paragraph 27 of the Amended Complaint speaks for itself and Defendants deny any allegations that are inconsistent with the letter. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 27 of the Amended Complaint.

28. Defendants lack knowledge or information sufficient to form a belief about the

truth of the allegations in Paragraph 28 of the Amended Complaint.

29. Defendants admit that on June 8, 2016, Plaintiff sent another email message to the Virginia Department of Elections requesting an advisory opinion. Defendants admit that the Department of Elections did not respond to Plaintiff's second email message.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 30 of the Amended Complaint.

31. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 31 of the Amended Complaint.

32. Upon information and belief, Defendants admit the allegations in Paragraph 32 of the Amended Complaint.

33. Defendants deny the allegations in Paragraph 33 of the Amended Complaint.

34. Defendants deny the allegations in Paragraph 34 of the Amended Complaint.

35. Defendants deny the allegations in Paragraph 35 of the Amended Complaint.

Class Allegations

36. Paragraph 36 of the Amended Complaint contains a characterization of the Plaintiff's lawsuit to which no response is required. To the extent a response is required, Defendants lack knowledge or information sufficient to form a belief about whether Plaintiff can satisfy the prerequisites of Federal Rule of Civil Procedure 23.

37. Upon information and belief, Defendants admit that there are 49 Virginia Republican delegates to the 2016 Republican National Convention. Defendants deny the remaining allegations in Paragraph 37 of the Amended Complaint.

38. Defendants lack knowledge or information concerning any questions of fact that may exist as to delegates other than Correll. Accordingly, Defendants lack knowledge or

information sufficient to form a belief about the truth of the allegations in Paragraph 38 of the Amended Complaint concerning questions of fact. Upon information and belief, Defendants admit that the questions of law involved in this case are common to all Class members.

Defendants deny the remaining allegations in paragraph 38.

39. Defendants admit that if Correll obtains the relief he seeks, any Virginia Republican delegate would be free to vote for any candidate. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 39 of the Amended Complaint.

40. Defendants deny the allegations in Paragraph 40 of the Amended Complaint.

41. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 41 of the Amended Complaint.

Count I: Allegations regarding First and Fourteenth Amendment Speech Protections⁴

42. Defendants incorporate by reference their responses to Paragraphs 1-41 of the Amended Complaint.

43. Defendants admit that the First Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment, protects the right to free speech, including political speech, except to the extent that such freedom has permissibly been abridged.

44. Defendants deny the allegations in Paragraph 44 of the Amended Complaint. Defendants aver that, even assuming that a Virginia Republican delegate's vote at the 2016 Republican National Convention constitutes political speech, such a vote may permissibly be required, by party rule or by Virginia Code § 24.2-545, to be bound by the results of the Virginia

⁴ Defendants deny the headings in the Amended Complaint to the extent that they constitute allegations to which a response is required. Defendants have shortened the corresponding headings in this Answer to use neutral wording but have tried to use similar headings for clarity and convenience.

Republican presidential primary.

45. Defendants incorporate by reference their response to Paragraph 44 of the Amended Complaint. Defendants deny any remaining allegations in Paragraph 45 of the Amended Complaint.

46. Defendants incorporate by reference their response to Paragraph 15 of the Amended Complaint. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 46 of the Amended Complaint, particularly what Plaintiff means by the phrase “Violation of Section 545(D).”

47. Defendants deny the allegations in Paragraph 47 of the Amended Complaint.

48. Defendants deny the allegations in Paragraph 48 of the Amended Complaint.

Count II. Allegations regarding First and Fourteenth Amendment Associational Protections

49. Defendants incorporate by reference their responses to Paragraphs 1-48 of the Amended Complaint.

50. Defendants admit that the First Amendment to the United States Constitution, as applied to the States by the Fourteenth Amendment, protects the right to freedom of association, including association for political purposes except to the extent that such freedom has permissibly been abridged.

51. Defendants admit the allegations in Paragraph 51 of the Amended Complaint as to political parties and their members authorized to so participate and choose. Defendants deny any remaining allegations in Paragraph 51 of the Amended Complaint.

52. Defendants deny the allegations in Paragraph 52 of the Amended Complaint.

53. Defendants incorporate by reference their response to Paragraph 15 of the Amended Complaint. Defendants lack knowledge or information sufficient to form a belief

about the truth of the remaining allegations in Paragraph 46 of the Amended Complaint, particularly what Plaintiff means by the phrase “Violation of Section 545(D).”

54. Defendants deny the allegations in Paragraph 54 of the Amended Complaint.

55. Defendants deny the allegations in Paragraph 55 of the Amended Complaint.

Count III. Allegations regarding Virginia’s Constitutional Authority

56. Defendants incorporate by reference their responses to Paragraphs 1-55 of the Amended Complaint.

57. Defendants admit that the Supremacy Clause of Article VI of the United States Constitution may preempt the States from regulating in certain areas. Defendants deny the remaining allegations in Paragraph 57, including to the extent such allegations are inconsistent with preemption law or imply that Virginia’s authority to regulate is preempted in any way material to this case.

58. Defendants admit that the quotation in Paragraph 58 of the Amended Complaint is a partial quotation of the United States Supreme Court’s decision in *Cousins v. Wigoda*, 419 U.S. 477, 489-90 (1975). Defendants aver that language used by the Court in that decision should be read in the context of the entire decision published by the Court, the facts of that case, and subsequent cases and legal developments.

59. Defendants deny the allegations in Paragraph 59 of the Amended Complaint.

60. Defendants deny the allegations in Paragraph 60 of the Amended Complaint.

Count IV. Allegations regarding Declaratory Judgment Pursuant to 28 U.S.C. §§ 2201 and 2202.

61. Defendants incorporate by reference their responses to Paragraphs 1-60 of the Amended Complaint.

62. Defendants deny the allegations in Paragraph 62 of the Amended Complaint.

63. Defendants deny the allegations in Paragraph 63 of the Amended Complaint.

Count IV. Allegations regarding Temporary, Preliminary and Permanent Injunctive Relief.

64. Defendants incorporate by reference their responses to Paragraphs 1-63 of the Amended Complaint.

65. Defendants admit that the Supreme Court and federal courts of appeals have a significant body of law, including but not limited to the decisions cited by the Plaintiff in Paragraph 65 of the Amended Complaint, interpreting and clarifying the First and Fourteenth Amendment rights of individual citizens. Defendants deny the remainder of the allegations in Paragraph 65 of the Amended Complaint.

66. Defendants admit that the quotation in Paragraph 66 of the Amended Complaint is a partial quotation of the Supreme Court of the United States in its decision in *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Defendants aver that language used by the Court in that decision should be read in the context of the entire decision published by the Court, the facts of that case, and subsequent cases and legal developments. Defendants deny the remaining allegations in Paragraph 66 of the Amended Complaint.

67. Defendants deny the allegations in Paragraph 67 of the Amended Complaint.

68. Defendants deny the allegations in Paragraph 68 of the Amended Complaint.

69. Defendants deny the relief requested in the Prayer for Relief section of the Amended Complaint and further deny that Plaintiff or the purported Class is entitled to any relief as a result of this suit.

70. Defendants admit only those allegations expressly admitted above. To the extent any allegations in the Complaint require a further response beyond that given above, they are denied.

Defenses

71. Any relief with respect to the July 2016 Republican National Convention is barred by laches.

72. None of the four factors for preliminary injunctive relief favor awarding such relief to Plaintiff. *See Winter v. Natural Resources Defense Council*, 55 U.S. 7, 20 (2008); *The Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342 (4th Cir. 2009), *vacated on other grounds* by 559 U.S. 1089 (2010) and *reissued in pertinent part* by 602 F.3d 355 (4th Cir. 2010).

73. Plaintiff (or any other member of the purported Class) lacks standing. The Court lacks subject matter jurisdiction.

74. Correll's challenge to the binding of Virginia delegates to the 2016 Republican National Convention is foreclosed by the choices of the national and state Republican Party, to which he is bound contractually and has forfeited any right to challenge, and by the equitable doctrine of unclean hands.

75. Plaintiff (or any other member of the purported Class) lacks standing to assert the rights of the national Republican Party or the Republican Party of Virginia.

76. Plaintiff has not shown irreparable harm traceable to the Commonwealth or to the particular Defendants sued.

77. Plaintiff has failed to state a claim that merits relief and upon which relief can be granted.

CERTIFICATE OF SERVICE

I certify that, on July 1, 2016, I am electronically filing the foregoing document with the Clerk of Court using the CM/ECF system, which will serve such filing on counsel of record:

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