

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

CARROLL BOSTON CORRELL, Jr.,	§	
Plaintiff,	§	Civil Action No. 3:16-cv-00467-REP
v.	§	
MARK R. HERRING, <i>et al.</i> ,	§	
Defendants.	§	

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

Intervenors John Fredericks, Waverly Woods, Michael Belefski, Eugene Delgaudio, Virgil Goode, Tamara Neo, Howard Lind, and Brandon Howard (collectively, the “Intervenors”) state as follows for their Answer to Plaintiff’s “First Amended Verified Class Action Complaint for Injunctive and Declaratory Relief” (the “Amended Complaint”):

1. Intervenors deny the allegations in Paragraph 1 of the Amended Complaint.
2. Paragraph 2 of the Amended Complaint contains a characterization of Plaintiff’s lawsuit to which no response is required. Upon information and belief, Intervenors 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. Intervenors 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. Intervenor admits the allegations in Paragraph 4 of the Amended Complaint.

**Parties**

5. Intervenor admits 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. Intervenor lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations in Paragraph 5 of the Amended Complaint.

6. Intervenor admits 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. Intervenor denies any allegations in Paragraph 6 of the Complaint that are inconsistent with applicable law.

7. Intervenor admits 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. Intervenor avers 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. Intervenor admits the allegations in Paragraph 8 of the Amended Complaint.

9. Intervenor admits 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. Intervenor denies 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. Intervenors 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 Intervenors deny any allegations inconsistent with the statute.

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

14. Intervenors admit that Virginia delegates' first-ballot votes are bound to particular candidates. Intervenors otherwise deny the allegations in Paragraph 14 of the Amended Complaint.

15. Paragraph 15 of the Amended Complaint characterizes Virginia Code § 24.2-545(d). The statute speaks for itself, and Intervenors deny any allegations that are inconsistent with the statute.

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

17. Upon the believe that "alternatives" is a typographical error meant to be "alternates", Intervenors admit the allegations in Paragraph 17 of the Amended Complaint.

18. Intervenors 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. Paragraph 19 of the Amended Complaint characterizes Virginia Code § 24.2-545(D). The statute speaks for itself, and Intervenors deny any allegations that are inconsistent with the statute..

20. Intervenors 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. To the extent Paragraph 20 of the Amended Complaint refers to Virginia Code § 24.2-545(D), the statute speaks for itself and Intervenors deny any allegations in Paragraph 20 that are inconsistent with the language of § 24.2-545(D).

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

22. Intervenors admit that the Republican Party of Virginia's rules allocate delegates proportionally. Intervenors admit that the Republican Party of Virginia's rules allocate Donald Trump 17 of 49 delegates. Intervenors otherwise lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 22 of the Amended Complaint.

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

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

25. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 25 of the Amended Complaint.

26. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 26 of the Amended Complaint.

27. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 27 of the Amended Complaint.

28. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 28 of the Amended Complaint.

29. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 29 of the Amended Complaint.

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

31. Intervenors 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, Intervenors admit the allegations in Paragraph 32 of the Amended Complaint.

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

34. Paragraph 34 of the Amended Complaint states a legal conclusion to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 34 of the Amended Complaint.

35. Paragraph 35 of the Amended Complaint states a legal conclusion to which no response is required. To the extent a response is required, Intervenors 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, Intervenor's 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, Intervenor's admit that there are 49 Virginia Republican delegates to the 2016 Republican National Convention. Intervenor's deny the remaining allegations in Paragraph 37 of the Amended Complaint.

38. Intervenor's lack knowledge or information concerning any questions of fact that may exist as to delegates other than Correll and themselves. Accordingly, Intervenor's 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.

39. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 39 of the Amended Complaint.

40. Intervenor's deny the allegations in Paragraph 40 of the Amended Complaint.

41. Intervenor's deny that Plaintiff and his counsel will fairly and adequately protect and represent the interests of the Intervenor's. Intervenor's lack knowledge or information sufficient to form a belief as to whether Plaintiff and his counsel would fairly and adequately represent the other members of the putative class. Any remaining allegations in Paragraph 41 of the Amended Complaint are denied.

**Count I**

42. Intervenor's incorporate by reference their responses to Paragraphs 1–41 of the Amended Complaint.

43. Intervenors 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. Intervenors deny the allegations in Paragraph 44 of the Amended Complaint.

45. Intervenors deny the allegations in Paragraph 45 of the Amended Complaint.

46. Intervenors incorporate by reference their response to Paragraph 15 of the Amended Complaint. Intervenors 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. Intervenors deny the allegations in Paragraph 47 of the Amended Complaint.

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

## **Count II**

49. Intervenors incorporate by reference their responses to Paragraphs 1–48 of the Amended Complaint.

50. Intervenors 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. Intervenors admit that the First Amendment protects the associational rights of parties to conduct primary elections. Intervenors deny the remaining allegations in Paragraph 51 of the Amended Complaint.

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

53. Intervenors incorporate by reference their response to Paragraph 15 of the Amended Complaint. Intervenors 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. Paragraph 54 of the Amended Complaint states a legal conclusion to which no response is required. To the extent a response is required, Intervenors deny the allegations in Paragraph 54 of the Amended Complaint.

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

### **Count III**

56. Intervenors incorporate by reference their responses to Paragraphs 1–55 of the Amended Complaint

57. Intervenors admit that the Supremacy Clause of Article VI of the United States Constitution may preempt the States from regulating in certain areas. Intervenors 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. Intervenors 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). Intervenors 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. Paragraph 59 of the Amended Complaint states a legal conclusion to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 59 of the Amended Complaint.

60. Paragraph 60 of the Amended Complaint states a legal conclusion to which no response is required. To the extent a response is required, Intervenor deny the allegations in Paragraph 60 of the Amended Complaint.

#### **Count IV**

61. Intervenor incorporate by reference their responses to Paragraphs 1–60 of the Amended Complaint.

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

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

#### **Count V**

64. Intervenor incorporate by reference their responses to Paragraphs 1–63 of the Amended Complaint.

65. Intervenor 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. Intervenor deny the remainder of the allegations in Paragraph 65 of the Amended Complaint.

66. Intervenor 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). Intervenor 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. Intervenors deny the remaining allegations in Paragraph 66 of the Amended Complaint.

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

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

69. Intervenors 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. Intervenors 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 favors 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. Plaintiff'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.

78. Plaintiff has waived any argument that he has a “freestanding right under the First Amendment” to vote his “conscience when doing so would conflict with governing” Republican Party Rules. *See* Dkt No. 36 at 6.

79. Plaintiff has waived any right to “vote his conscience” because he agreed to be bound by the Rules of the Republican Party and the September 15, 2015 Allocation Resolution in order to qualify to stand for election as a delegate to the 2016 Republican National Convention. *See* Joint Ex. 5.

Dated: July 8, 2016

Respectfully submitted,

/s/ David A. Warrington

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**CERTIFICATE OF SERVICE**

I certify that on July 8, 2016, a copy of the foregoing was filed electronically with the Clerk of Court using the ECF system which will send notification to the following ECF participants:

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Dated: July 8, 2016

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