

FILED

United States District Court
Eastern District of Virginia
Richmond Division

2010 JUL 13 P 2:38

Herb Lux, Stephen Cruse, Andrew Mikel,
and Eugene Foret,

Plaintiffs,

v.

Nancy Rodrigues, Jean Cunningham, and
Harold Pyon, members of the Virginia State
Board of Elections, in their official capaci-
ties,

Defendants.

Civ. No. 3:10CV482

Verified Complaint for Declaratory and Injunctive Relief

Herb Lux, Stephen Cruse, Andrew Mikel, and Eugene Foret complain against Defendants as follows:

Introduction

1. Plaintiff Herb Lux is a candidate for the United States House of Representatives in Virginia's Seventh Congressional District. The dispute between Plaintiffs and Defendant members of the Virginia State Board of Elections (the "Board") arises from Plaintiffs' efforts to qualify Mr. Lux for the November 2, 2010 general election ballot. After categorically excluding more than 1,000 signatures collected by Mr. Lux on the sole ground that under Virginia law he is ineligible to circulate his *own* candidate petitions, the Board ruled that Mr. Lux failed to obtain a sufficient number of signatures from qualified voters to qualify for the ballot. The Board issued its decision based on Virginia's district-residency requirement, which requires that all petition circulators be eligible to register to vote for the candidate for which they are circulating petitions.

2. Virginia's district-residency requirement violates Plaintiffs' freedoms of speech and association protected by the First and Fourteenth Amendments to the United States Constitution. By enforcing the district-residency requirement in connection with Mr. Lux's candidate petition, Defendants have violated the rights of Plaintiffs to engage in protected speech and association activities under the United States Constitution.

3. Because Plaintiffs seek access to the November 2010 ballot, because the deadline for printing those ballots is quickly approaching, and because Plaintiffs have no adequate remedy at law, this Complaint seeks declaratory and injunctive relief in the form of preliminary and permanent injunctions.

Jurisdiction and Venue

4. This Court has jurisdiction over Plaintiffs' claims arising under 42 U.S.C. § 1983 and the First and Fourteenth Amendments to the United States Constitution. 28 U.S.C. § 1331, 1343(a).

5. Venue is proper in this district, and in the Richmond Division, because Defendants are residents of or have their official offices in the Eastern District of Virginia, in the City of Richmond. 28 U.S.C. § 1391(b)(1); E.D. Va. R. 3(C).

Parties

6. Plaintiff Herb Lux is a resident of Spotsylvania County, Virginia. Spotsylvania County is divided between Virginia's First and Seventh Congressional Districts. Mr. Lux resides in the portion of Spotsylvania County, Virginia, that falls within Virginia's First Congressional District. Mr. Lux satisfies all the requirements of Article I, Section 2, clause 2 of the United States Constitution and is otherwise eligible to represent Virginia's Seventh Congressional

District in the United States House of Representatives.¹ Mr. Lux circulated candidate petitions in an effort to have his name printed on the November 2 ballot as a candidate for the United States House of Representatives in Virginia's Seventh Congressional District. Mr. Lux would like to associate with all Virginians, and all United States citizens, for the purpose of advancing his candidacy.

7. Plaintiff Stephen Cruse is a resident of Culpeper County, Virginia. Mr. Cruse is a registered voter in Virginia's Seventh Congressional District. Mr. Cruse circulated a candidate petition on behalf of Mr. Lux. Mr. Cruse would like to associate with Mr. Lux and other Virginia residents for the purpose of advancing Mr. Lux's candidacy.

8. Plaintiff Andrew Mikel is a resident of Spotsylvania County, Virginia. Mr. Mikel is a registered voter in Virginia's Seventh Congressional District. Mr. Mikel circulated a candidate petition on behalf of Mr. Lux. Mr. Mikel would like to associate with Mr. Lux and other Virginia residents for the purpose of advancing Mr. Lux's candidacy.

9. Plaintiff Eugene Foret, is a resident of Culpeper County, Virginia. Mr. Foret is a registered voter in Virginia's Seventh Congressional District. Mr. Foret signed Mr. Lux's candidate petition and also circulated a candidate petition on behalf of Mr. Lux. Mr. Foret would like to associate with Mr. Lux and other Virginia residents for the purpose of advancing Mr. Lux's candidacy.

10. As officers and members of the Virginia State Board of Elections, Defendants Nancy Rodrigues (Secretary), Jean Cunningham (Chairman), and Harold Pyon (Vice-Chair) are

¹ See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 837 (1995) (state cannot impose additional qualifications for Congress beyond those contained in the United States Constitution).

responsible for receiving and certifying a candidate for the ballot for the United States House of Representatives. Va. Code Ann. §§ 24.2-505, -506, -507. The Board has authority to make rules and regulations, issue instructions, and provide information consistent with the election laws to the county and city electoral boards and registrars to promote the proper administration of election laws. Va. Code Ann. § 24.2-103.

Statutory Scheme

11. In Virginia, an individual qualifies as a candidate by filing a statement of qualification.² Va. Code Ann. § 24.2-501.

12. In addition, an independent candidate must file a declaration of candidacy, designating the office for which he is a candidate. Va. Code Ann. § 24.2-505.

13. An independent candidate must file a petition of qualified voters:

Va. Code Ann. § 24.2-506

Petition of qualified voters required; number of signatures required; certain towns excepted.

The name of any candidate for any office, other than a party nominee, shall not be printed upon any official ballots provided for the election unless he shall file along with his declaration of candidacy a petition therefor, on a form prescribed by the State Board, signed by the number of qualified voters specified below after January 1 of the year in which the election is held and listing the residence address of each such voter. Each signature on the petition shall have been witnessed by a person who is himself a qualified voter, or qualified to register to vote, for the office for which he is circulating the petition and whose affidavit to that effect appears on each page of the petition.

Each voter signing the petition shall provide on the petition his social security number, if any; however, noncompliance with this requirement shall not be cause to invalidate the voter's signature on the petition.

² The Commonwealth requires candidates for Governor, Lieutenant Governor, Attorney General, the Virginia Senate and House of Delegates, constitutional offices, and the school board to file a statement of economic interest. Va. Code Ann. § 24.2-502. This provision is inapplicable to Mr. Lux as a candidate for the United States House of Representatives.

The minimum number of signatures of qualified voters required for candidate petitions shall be as follows:

***³

2. For a candidate for the United States House of Representatives, 1,000 signatures;

14. The filing deadline for filing the statement of qualification, the declaration of candidacy, and petitions of qualified voters is 7:00 p.m. on the second Tuesday in June. Va. Code Ann. §§ 24.2-503, -507. In 2010, the second Tuesday in June was June 8.

15. The statutory scheme outlines an entirely separate process for candidates seeking the nomination of a political party. *See* Va. Code Ann. §§ 24.2-508 to -541.

Facts

16. On June 8, 2010, Mr. Lux filed a timely statement of qualification with the Board as a candidate for the United States House of Representatives in Virginia's Seventh Congressional District. *See* Ex. A.

17. Pursuant to Virginia law, Mr. Lux is a candidate. Va. Code Ann. §§ 24.2-501, -503.

18. On June 8, 2010, at 6:48 p.m., Mr. Lux filed a timely declaration of candidacy and candidate petitions with the Board. *See* Ex. A.

19. Mr. Lux submitted seventy-eight candidate petitions, representing approximately 1,220 signatures.⁴ *See* Ex. A.

³ Statutory provisions inapplicable to candidates for the United States House of Representatives have been omitted. Omissions are indicated by "****".

⁴ The candidate petition is a two-page document printed on the front and back of an 8 1/2" x 14" piece of paper. It contains line numbers 1 through 11 on the front, and 12 through 23 on the back, followed by the affidavit. Qualified voters sign one of the numbered lines. The petition circulator must sign the affidavit on the back of the petition form. *See* Ex. D.

20. Plaintiff Eugene Foret signed a candidate petition circulated by Mr. Lux.

21. The candidate petitions, on their face, contain enough signatures to qualify Mr. Lux for the ballot.

22. If the Board verifies that at least 1,000 of the signatures are from qualified voters, Mr. Lux will qualify for the ballot.

23. Mr. Lux personally collected approximately 1,063 signatures on sixty-three candidate petitions.

24. Mr. Lux signed the witness affidavit on the sixty-three candidate petitions that he circulated, stating that he personally witnessed the signature of each person that signed the petition. *See* Va. Code Ann. § 24.2-506.

25. The signatures on the fifteen remaining candidate petitions, representing approximately 157 signatures, were collected by someone other than Mr. Lux.⁵

26. Plaintiffs Stephen Cruse, Andrew Mikel, and Eugene Foret each circulated at least one candidate petition on behalf of Mr. Lux.

27. Pursuant to Virginia law, Mr. Cruse, Mr. Mikel, and Mr. Foret each signed the corresponding witness affidavit on the candidate petitions they circulated. *See* Va. Code Ann. § 24.2-506.

28. Each of the affidavits on the fifteen candidate petitions circulated by someone other than Mr. Lux (including the petitions circulated by Mr. Cruse, Mr. Mikel, and Mr. Foret) was

⁵ In its preliminary findings, the Board stated that the fifteen candidate petitions witnessed by someone other than Mr. Lux contained 161 signatures. *See* Ex. B.

signed by someone who was either a qualified voter for, or qualified to register to vote for, the United States House of Representatives in Virginia's Seventh Congressional District.

29. On June 21, 2010, the Board made a preliminary finding and excluded all signatures contained on the candidate petitions bearing a witness affidavit executed by Mr. Lux.

30. The Board excluded the signatures pursuant to the district-residency requirement, Va. Code Ann. § 24.2-506, because Mr. Lux is not registered or eligible to be registered in Virginia's Seventh Congressional District. *See Ex. B.*

31. On June 21, 2010, the Board made a preliminary finding that the fifteen remaining candidate petitions contain 161 signatures; that 110 are from qualified voters in Virginia's Seventh Congressional District; and indicated that it was continuing the process of verifying the remaining signatures. *See Ex. B.*

32. In its preliminary findings, the Board stated that even if the remaining fifty-one signatures were verified, Mr. Lux would not qualify to have his name printed on the ballot for the United States House of Representatives in Virginia's Seventh Congressional District because he failed to obtain signatures from at least 1,000 qualified voters. *See Ex. B.*

33. On June 23, 2010, the Board issued its final ruling, stating that Mr. Lux failed to qualify to have his name included on the ballot. *See Ex. C.*

34. The final ruling stated the Board categorically excluded all petitions circulated by Mr. Lux because he is not eligible to vote in the Seventh Congressional District. *See Ex. C.*

35. Virginia's district-residency requirement resulted in the exclusion of at least 1,063 voters' signatures.

36. If at least 890 of the 1,063 excluded signatures are from qualified voters, Mr. Lux is entitled to have his name printed on the November 2010 ballot.

37. Virginia's district-residency requirement imposes a severe burden on Plaintiffs' freedoms of speech and association because it substantially limits the number of eligible petition circulators.

38. Virginia's district-residency requirement is a severe burden on Plaintiffs' freedoms of speech and association because it prohibits an otherwise qualified candidate for the United States House of Representatives from circulating his own candidate petitions..

39. In addition to the present election, Mr. Lux is considering running in a future election for the United State's House of Representatives in Virginia's Seventh Congressional District. In the event that he runs again in the future, Mr. Lux would like to circulate his own candidate petitions, and he would like to recruit other petition circulators, including individuals who live outside Virginia's Seventh Congressional District, to circulate petitions on his behalf.

40. In the future, Plaintiffs Lux, Cruse, Mikel, and Foret would like to associate with their preferred candidates by circulating candidate petitions on their behalf. Plaintiffs expect that they will be ineligible to circulate candidate petitions for at least some of their preferred candidates because of the district-residency requirement.

41. In the future, Plaintiffs Lux, Cruse, Mikel, and Foret would like to associate with their preferred candidates by signing a candidate petition. Plaintiffs expect that at least some of those candidate petitions will be circulated by individuals who do not satisfy the district-residency requirement.

42. Plaintiffs have no adequate remedy at law.

Count 1

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

44. Defendants exclusion of otherwise valid voters' signatures from Plaintiff Herb Lux's candidate petitions because of the district-residency requirement violates the First and Fourteenth Amendments to the United States Constitution.

45. In *Buckley v. American Constitutional Law Foundation*, 525 U.S. 182 (1999) ("*ACLF*"), the Supreme Court held that a Colorado law requiring all petition circulators to be registered Colorado voters violated the First Amendment to the United States Constitution.⁶ The Court held that the restriction imposed severe burdens on core political speech, *id.* at 192, was subject to strict scrutiny, *id.* at 192 n.12, and that the state's interests were not sufficient to justify the burdens, *id.* at 192.

46. Applying the *ACLF* standard, numerous courts have ruled that state- or district-residency requirements violate the First Amendment. *See Yes on Term Limits, Inc. v. Savage*, 550 F.3d 1023 (10th Cir. 2008) (state-residency requirement); *Nader v. Brewer*, 531 F.3d 1028 (9th Cir. 2008) (same); *Nader v. Blackwell*, 545 F.3d 459 (6th Cir. 2008) (same); *Chandler v. City of Arvada*, 292 F.3d 1236 (10th Cir. 2002) (city-residency requirement); *Lerman v. Bd. of Elections in the City of New York*, 232 F.3d 135 (2d Cir. 2000) (district-residency requirement);

⁶ The American Constitutional Law Foundation did not challenge Colorado's residency requirement because the registration requirement also required a circulator to reside in Colorado. *ACLF*, 525 U.S. at 189 n.3. Virginia's district-residency requirement is more restrictive than the Colorado provision. In Virginia, not only must the circulator be a qualified voter (i.e., a Virginia resident), but he must also be eligible to vote for the candidate for whom he is circulating the petition.

Krislov v. Rednour, 226 F.3d 851 (7th Cir. 2000) (state- and district-residency requirements); *Bogaert v. Land*, 572 F. Supp. 883 (W.D. Mich. 2008) (district-residency requirement); *Frami v. Ponto*, 255 F. Supp. 2d 962 (W.D. Wis. 2003) (same); *Morrill v. Weaver*, 224 F. Supp. 2d 882 (E.D. Penn. 2002) (same).

47. Section 24.2-506's district-residency requirement violates freedoms of speech and association protected by the First and Fourteenth Amendments to the United States Constitution.

Prayer for Relief

Wherefore, Herb Lux, Stephen Cruse, Andrew Mikel, and Eugene Foret pray for the following relief:

1. Declaratory judgment that the district-residency requirement provision contained in Virginia Code section 24.2-506 is unconstitutional, as applied to Plaintiffs and facially.
2. Preliminary and permanent injunctions enjoining Defendants, and all successors in office, from enforcing the district-residency requirement.
3. Preliminary and permanent mandatory injunctions compelling Defendants to verify and count all signatures contained on Herb Lux's candidate petitions regardless of whether the petition circulator satisfies the district-residency requirement.
4. Reasonable costs and attorneys' fees, incurred as a consequence of Plaintiffs' efforts to safeguard their constitutionally protected rights, pursuant to 28 U.S.C. § 1988 and any other statute or authority.
5. Any other relief this Court in its discretion deems just and appropriate.

July 13, 2010

Respectfully Submitted,



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Lead Counsel for Plaintiffs

*Pro hac vice application pending.

**Of counsel, pending full admission to
the U.S. District Court for the Eastern District
of Virginia

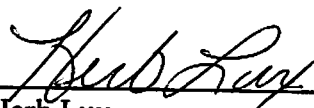
**United States District Court
Eastern District of Virginia
Richmond Division**

<p>Herb Lux, Stephen Cruse, Andrew Mikel, and Eugene Foret,</p> <p style="text-align: right;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>Nancy Rodrigues, Jean Cunningham, and Harold Pyon, members of the Virginia State Board of Elections, in their official capaci- ties,</p> <p style="text-align: right;"><i>Defendants.</i></p>	<p>Civ. No.</p>
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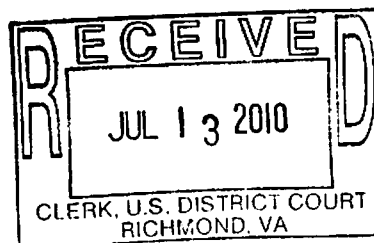
Verification

I, Herb Lux, swear (or affirm) under the penalties of perjury under the laws of the United States that the statements made in the verified complaint concerning me are true and correct to the best of my knowledge and understanding.

Dated: July 08, 2010



Herb Lux
6205 Plank Rd.
Fredricksburg, VA 22407



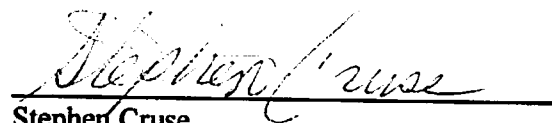
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Verification

I, Stephen Cruse, swear (or affirm) under the penalties of perjury under the laws of the United States that the statements made in the verified complaint concerning me are true and correct to the best of my knowledge and understanding.

Dated: July 8, 2010



Stephen Cruse
305 W. Asher St.
Culpeper, VA 22701

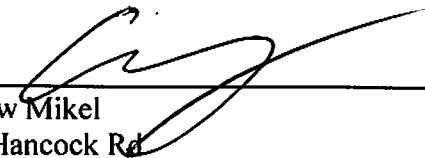
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Verification

I, Andrew Mikel, swear (or affirm) under the penalties of perjury under the laws of the United States that the statements made in the verified complaint concerning me are true and correct to the best of my knowledge and understanding.

Dated: July 8, 2010



Andrew Mikel
8549 Hancock Rd
Spotsylvania, VA 22553

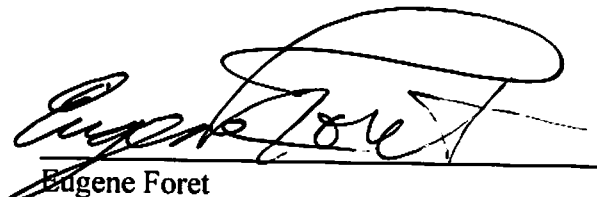
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Verification

I, Eugene Foret, swear (or affirm) under the penalties of perjury under the laws of the United States that the statements made in the verified complaint concerning me are true and correct to the best of my knowledge and understanding.

Dated: July 8, 2010



Eugene Foret
19110 Colonial Dr.
Culpeper, VA 22701