

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

Larry Miller,)	
)	
and)	
)	
11 th Senatorial District)	
Republican Committee,)	
Plaintiffs)	
v.)	Case No. _____
Michael Brown, in his official)	
capacity as Chairman of the Virginia)	
State Board of Elections,)	
)	
Barbara Hildenbrand, in her official)	
capacity as Vice-Chairman of the)	
Virginia State Board of Elections)	
)	
and)	
)	
Jean R. Jensen, in her official)	
capacity as Secretary of the)	
Virginia State Board of Elections,)	
Defendants.)	
)	

COMPLAINT FOR DECLARATORY RELIEF

COME NOW the Plaintiffs, Larry Miller, and the 11th Senatorial District Republican Committee (“plaintiffs”), by and through undersigned counsel, and complain of the defendants as follows:

The Parties

1. Plaintiff Larry Miller (“Mr. Miller”) is a natural person and a citizen of the Commonwealth of Virginia and the United States, residing at 9211 Barefoot Trail, Chesterfield, Virginia 23832. Mr. Miller is a registered voter at his home address, and he is a member of his local Republican Committee, the Chesterfield County Republican Committee (“CCRC”), of

which he is Chairman. By virtue of his Chairmanship of the CCRC and his residence within the 11th Virginia Senatorial District (“the 11th District”), Mr. Miller is a member of the 11th Senatorial District Republican Committee (“11th District Committee”). Mr. Miller is also Chairman of the 11th District Committee.

2. Plaintiff 11th District Committee is an unincorporated political association properly established for the purpose of, *inter alia*, conducting nominations of the Republican candidate to the Virginia State Senate from the 11th District. The 11th District Committee’s business address is 9211 Barefoot Trail, Chesterfield, Virginia 23832.

3. Upon information and belief, defendant Michael Brown (“Mr. Brown”) is a resident of the Commonwealth of Virginia and serves as the Chairman of the Virginia State Board of Elections (“SBE”). As Chairman, he implements and enforces the laws of the Commonwealth of Virginia related to elections, *inter alia*, Va. Code §§ 24.2-400 *et seq.* Mr Brown is sued in his official capacity.

4. Upon information and belief, defendant Barbara Hildenbrand (“Mrs. Hildenbrand”) is a resident of the Commonwealth of Virginia and serves as the Vice-Chairman of the Virginia State Board of Elections (“SBE”). As Vice-Chairman, she implements and enforces the laws of the Commonwealth of Virginia related to elections, *inter alia*, Va. Code §§ 24.2-400 *et seq.* Mrs. Hildenbrand is sued in her official capacity.

5. Upon information and belief, defendant Jean R. Jensen (“Mrs. Jensen”) resides at XXXX XXXXXXXX., XXXXXXX, VA XXXXX and serves as the Secretary of the Virginia State Board of Elections (“Secretary”). As Secretary, she implements and enforces the laws of the Commonwealth of Virginia related to elections, *inter alia*, Va. Code §§ 24.2-400 *et seq.* Mrs. Jensen is sued in her official capacity.

Jurisdiction and Venue

6. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

7. Venue lies in this Court pursuant to 28 U.S.C. § 1391.

Facts Giving Rise to the Controversy

8. The First Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

9. The right commonly called “the right of free association” is an expression of “the right of the people peaceably to assemble,” and the right of free association includes the right *not* to associate as well.

10. On June 4, 2004, the Republican Party of Virginia (“RPV”) amended Article I, §A. of its Plan of Organization (“Party Plan”) to allow its affiliated committees, such as the 11th District Committee, to exclude from Republican nominations voters who have participated in the nomination of non-Republican Party candidates during the last five years. For example, a Virginia voter that participates in the Democrat Party’s statewide primary in June of 2005 will be ineligible to participate in the June 2007 primary for the Republican nomination to the Virginia State Senate in the 11th District, unless that voter undertakes curative steps provided in the foregoing Party Plan amendments.

11. On August 12, 2004, Steve Martin, the incumbent Senator in the 11th senatorial district of Virginia (“Senator Martin”), selected his method of nomination for the 2007 election cycle under Va. Code §§24.2-400 *et seq.*, particularly, Va. Code §24.2-509. Exhibit 1, incorporated herein

by reference. Senator Martin selected a primary as his method of nomination.

12. On January 13, 2005, the 11th District Committee met and voted to hold a primary nomination and to exclude Democrat Party primary voters under the Party Plan of the RPV, the document that governs the 11th District Committee's operation. Exhibit 2, incorporated herein by reference.

13. On January 17, 2005, Mr. Miller wrote a letter to the State Board of Elections ("SBE") informing the SBE of the 11th District Committee's decisions to proceed with a primary for the 2007 nomination of a Republican candidate to run for the Senate of Virginia and to exclude Democrat Party primary voters from the 11th District's Republican primary. Mr. Miller requested a response from the SBE. Exhibit 3 is an unsigned copy of the letter dated January 17, 2005, incorporated herein by reference. Such letter was faxed to the SBE on February 5, 2005.

14. On February 9, 2005, Mrs. Jensen, Secretary of the SBE, wrote back to Mr. Miller informing him that the SBE would not restrict who could vote in the 11th District Republican primary in 2007, as per Mr. Miller's request on behalf of the 11th District Committee. Exhibit 4, incorporated herein by reference.

15. Mrs. Jensen has acted under color of state law to enforce Virginia Code §§24.2-400 *et seq* against Mr. Miller and the 11th District Committee in a manner violative of the First Amendment, and therefore is subject to relief under 42 U.S.C. § 1983.

16. Virginia Code §24.2-530 states: "All persons qualified to vote, pursuant to §§24.2-400 through 24.2-403, may vote at the primary. No person shall vote for the candidates of more than one party." Insofar as defendants are implementing and/or enforcing Va. Code §24.2-530 in such a way as to restrict the 11th District Committee's ability to block Democrat Party primary voters from participating in its primary, defendants are violating plaintiffs' rights of free

association under the First Amendment of the United States Constitution.

17. Defendants' statement to plaintiffs that they will enforce Virginia Code §24.2-530 to require the 11th District Committee to permit Democrat Party primary voters to vote in the primary, contrary to the Party Plan and the explicit decision of the 11th District Committee, creates an immediately justiciable controversy between the parties susceptible of resolution by declaratory relief under 28 U.S.C. § 2201.

Cause of Action
U.S. Constitution, Amendment I

18. Paragraphs 1 through 17 are incorporated as though fully stated herein.

19. Mrs. Jensen's refusal to conduct the primary in the manner requested by the 11th District Committee violates the First Amendment of the Constitution of the United States.

20. By maintaining, implementing and/or enforcing a set of laws forbidding plaintiffs the right to exclude Democrat Party primary voters from their Republican Party nomination in accordance with their own adopted rules contained in the Party Plan, defendants are propagating customs, policies, and practices that violate the plaintiffs' rights of free association under the First Amendment to the United States Constitution.

21. Defendants' violation of the First Amendment is actionable under 42 U.S.C. § 1983.

Prayer for Relief

Wherefore, plaintiffs request that judgment be entered in their favor and against defendants as follows:

(a) Issue a declaratory judgment under 28 U.S.C. § 2201 and 42 U.S.C. § 1983 that Virginia Code §24.2-530 violates the First Amendment of the United States Constitution;

(b) Grant such further relief under 28 U.S.C. § 2202 as may be necessary to effectuate the declaratory judgment issued by this Court; and

(c) Award them attorney's fees and costs under 42 U.S.C. § 1988, as well as any further relief that the Court deems just and appropriate.

Dated: April 13, 2005

I swear and verify that the foregoing facts are true under penalty of perjury.

Larry Miller

Respectfully submitted by:

Kenneth T. Cuccinelli, II, VSB# 39490
Gura & Day, LLC
11350 Random Hills Road, Suite 800
Fairfax, Virginia 22030
Voice: 703-766-3275
Facsimile: 703-766-0637

Counsel for Plaintiffs