

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

MCCAIN-PALIN 2008, INC.; and)
THE UNITED STATES OF AMERICA,)
)
Plaintiffs,)
)
)
v.)
)
JEAN CUNNINGHAM,)
Chairman, Virginia State Board of Elections;)
HAROLD PYON, Vice-Chairman, Virginia State)
Board of Elections; and NANCY RODRIGUES,)
Secretary, Virginia State Board of Elections;)
)
Defendants.)
_____)

Case No. 3:08CV709

CONSENT MOTION TO AMEND COMPLAINT

The United States hereby moves this Court for an order permitting the United States to amend its Complaint in Intervention, pursuant to Fed. R. Civ. P. 15(a)(2), to clarify the named defendants in this action, specifically that the United States' Complaint names as defendants the Commonwealth of Virginia and the Virginia State Board of Elections (rather than the individual members). In support, the United States states as follows:

1. On November 17, 2008, this Court granted the United States' Motion to Intervene as a plaintiff in this action. Also on November 17, 2008, this Court granted the defendants' Motion to Dismiss plaintiff McCain-Palin 2008, Inc. from the case.

2. In paragraphs 4 and 5 of the Plaintiff United States' original Complaint in Intervention, both the Commonwealth of Virginia and the Virginia State Board of Elections were named as defendants, however the caption to the Complaint bore the original caption of the

matter into which the United States sought to intervene.¹

3. By this motion, Plaintiff United States seeks to clarify that its Complaint in the above-captioned case designates both the Commonwealth of Virginia and the Virginia State Board of Elections as the defendants in this action.

4. Plaintiff United States has received responsive pleadings from Defendants Cunningham, Pyon, and Rodrigues, the members of the Virginia State Board of Elections, and thus respectfully requests this Court's leave to amend its Complaint.

5. Counsel for Defendants Cunningham, Pyon, and Rodrigues has consented to this amendment. Counsel for Defendants Cunningham, Pyon, and Rodrigues will also represent the Virginia State Board of Elections and the Commonwealth of Virginia in this matter, and counsel for the parties stipulate that the Motion to Dismiss the United States' Complaint in Intervention, Memorandum in Support of Motion to Dismiss, and Answer filed by Defendants Cunningham, Rodrigues and Pyon should be deemed to have been filed by the Virginia State Board of Elections and the Commonwealth of Virginia in response to the Complaint in Intervention.

CONCLUSION

Based on the above, the United States respectfully moves this Court to grant leave to file and serve the attached First Amended Complaint.

¹ For purposes of this Consent Motion to Amend Complaint, and the accompanying Proposed Order, the United States adopts the caption specified in this Court's most recent order and in the docket sheet for this case.

Date: November 26, 2008

Respectfully submitted,

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Acting Assistant Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of November, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following counsel of record:

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By: /s/

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