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VIRGINIA:

BEFORE THE STATE CORPORATION COMMISSION
At Richmond, June 9, 2009

DOUGLAS ROBERT JOHNSON
Petitioner,

v.

Case No.: CLK-2009-00012

FLUVANNA COUNTY BOARD OF SUPERVISORS,
LOUISA COUNTY BOARD OF SUPERVISORS,
and
JAMES RIVER WATER AUTHORITY,
Respondents.

MEMORANDUM OF LAW IN OPPOSITION TO MOTION TO DISMISS

COMES NOW your Petitioner, Douglas Robert Johnson, pursuant to the Hearing Examiner's Ruling of June 2, 2009, and, for its objection to the motion to dismiss this cause, respectfully says as follows:

STATEMENT OF THE CASE

Petitioner Douglas Robert Johnson adopts the statement of facts contained in the memorandum in support of motion to dismiss filed on behalf of Authority with the factually disputed exceptions as follows:

1. The fact of notice of public hearing was contested in Fluvanna Circuit Case 09CL81 filed on April 20, 2009 before the Louisa Board of Supervisors voted to apply to the SCC for a charter.
2. The minutes of the March 18, 2009 Fluvanna Board of Supervisors meeting on page 5 states "review of citizens petitions" as one of the reasons "to defer until April 15th, 2009". That means

that the petition was not rejected on March 18, 2009 as stated.

3. On April 15, 2009, the second petition was filed with the court in the afternoon and also with the Fluvanna Board of Supervisors that evening at the start of that meeting. There are multiple witnesses to that fact.

4. The compliance of the petitions, both the first and circulation, is the subject of the cases which were before the Circuit Court before the matter came before the SCC.

5. The Motion concerning petitions voted on at the March 18, 2009 Public Hearing only dealt with the discretion part of § 15.2-5105. The mandatory part was voted on at the April 15, 2009 continuation of that Public Hearing.

6. Everything that has happened in the Circuit Court is not relevant as we are only dealing with the circumstances relating to the actions of the SCC on April 21, 2009.

ARGUMENT

1. SCC did not have jurisdiction to act on April 21, 2009.

The orderly admission of justice demands that two courts do not have the jurisdiction over the same parties and matter at the same time. See Allison's Executor v. Wood, 104 Va. 765, 767-768 (1906). The purpose of this rule is to prevent possible confusion which could result from allowing multiple courts jurisdiction over the same matter at the same time.

2. SCC has the authority to correct itself.

If a charter was granted at gun point, would the perpetrators be allowed to have that charter stand?

The authorities presented by the Memo of Law by the James River Authority clearly give the exception for fraud. An mere allegation of fraud is not what was in existence on April 21, 2009 but what did exist at that point in time was two separate Circuit Court cases that are now in a state of confusion because of the actions of the SCC.

3. Any attack on the actions of the Fluvanna Board of Supervisors was already started in Circuit Court.

The filing of the documents related to the Circuit Court cases was done so that the SCC could take judicial notice of those actions. Those court cases cannot proceed in an orderly manner because of the intervening action of the SCC which needs to be reversed so those cases can be adjudicated. In fact, the issuing of the charter by the SCC is being used as a defense to the actions that were already in existence in Circuit Court.

4. Both Fluvanna County Board of Supervisors and Louisa County Board of Supervisors committed an act of Fraudulent Concealment.

Two courts cannot have jurisdiction over the same parties and matters at the same time. Certainly the attorneys for the respective boards knew that. Certainly they also knew that the cases before the Circuit Court pertained to the same parties and

the same matter as what was filed with the SCC. Had the SCC been aware that the legality of the articles presented to the SCC were already being challenged in Circuit Court, the SCC would not have exercised jurisdiction over that matter.

5. The Notice of Appeal only reserve the right to appeal rather than being an appeal itself.

The Notice of Appeal was filed prior to the Scheduling Order being entered by the SCC. While Petitioner argues that the SCC still has jurisdiction, the Scheduling Order does not confirm that it does in fact have that jurisdiction. Certainly the Petitioner does not have in his power the establishment of jurisdiction.

6. Petitioner has standing more than anyone else in Fluvanna County.

Petitioner Douglas Robert Johnson prepared the petition, including composing the language of that petition, "Shall Fluvanna County join Louisa County in the formation of a Joint Water Authority", helped circulate that petition, signed a copy of that petition, had his signature disenfranchised by the Fluvanna Board of Supervisors, filed a copy of the petition form with the Fluvanna Circuit Court, helped circulate the petition a second time, signed a copy of petition during the second circulation of that petition, filed a copy the second batch of petitions along with the proposed court order which was subject of the Court Order that Judge Berry of the Fluvanna Circuit Court signed on April 16, 2009, and had

that Fluvanna Circuit Court Case Number 09CL61 superceded by the SCC. Certainly Petitioner Douglas Robert Johnson has standing to challenge that SCC action.

CONCLUSION

The cloud of uncertainty surrounding the charter of the James River Authority was caused solely by the Fluvanna Board of Supervisors. Had they requested a Declaratory Judgement on the validity of the citizen petitions, the delay could have been no more that a couple of weeks. In fact, they could have done that between March 18, 2009 and April 15, 2009 without any delay whatsoever. Then there could have been no challenge possible to the resulting SCC filing.

Wherefore this Petitioner, Douglas Johnson, prays the Commission deny the Motion to Dismiss the Petition and requests to be heard.

Respectfully submitted,

DATED: June 9, 2009



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Memorandum in Opposition to the Motion to Dismiss, concerning petition to deem certificate of authority void *ab initio* and for injunctive relief, was mailed the 9th day of June, 2009, to:

DEFENDANT FLUVANNA COUNTY BOARD OF SUPERVISORS at:

Frederick W. Payne, Esquire
Fluvanna County Attorney
414 East Jefferson Street
Charlottesville, VA 22902

and

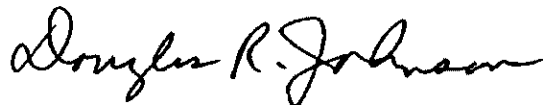
DEFENDANT LOUISA COUNTY BOARD OF SUPERVISORS at:

Gregory Hoffmann, Esquire
County Attorney for Louisa County
PO Box 160
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Louisa, VA 23093.

and

DEFENDANT JAMES RIVER WATER AUTHORITY at:

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