

VIRGINIA:

BEFORE THE VIRGINIA SUPREME COURT  
APPEAL FROM THE STATE CORPORATION COMMISSION  
At Richmond

\_\_\_\_\_  
DOUGLAS ROBERT JOHNSON )

Appellant )

v. )

Case No.: \_\_\_\_\_

VIRGINIA STATE )  
CORPORATION COMMISSION )

and )

FLUVANNA COUNTY BOARD OF )  
SUPERVISORS )

and )

LOUISA COUNTY BOARD OF )  
SUPERVISORS )

and )

JAMES RIVER WATER )  
AUTHORITY )

Appellees )  
\_\_\_\_\_  
)

REPLACEMENT PETITION FOR APPEAL TO DEEM CERTIFICATE OF  
AUTHORITY VOID AB INITIO AND FOR INJUNCTIVE RELIEF



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4. Appellee James River Water Authority is the newly formed entity which is the subject of this petition with a serve address of

Robert L. Hodges, Esquire  
McGuire Woods  
James River Water Authority  
One James Center  
901 East Cary St.  
Richmond, VA 23219-4030

804-775-7513

**Statement of the Action Sought and Jurisdiction**

5. Appellant is requesting that the Court deem its Certificate of Incorporation of James River Water Authority, issued April 21, 2009, void ab initio.

6. The Supreme Court has jurisdiction over this matter as explained in vscr-5:21.1 "Special Rules Applicable to Appeals From the State Corporation Commission" and as detailed in *Morrisette v. McGinniss*, 246 Va. 378; 378 S.E.2d 433 (1993).

**Statement of Facts**

7. Appellee Fluvanna County Board of Supervisors was petitioned with over 1,700 valid signatures according to

Virginia Code § 15.2-5105 where less than 1,700 are required by that statute.

8. Appellee Fluvanna County Board of Supervisors abused its discretion to act consistent with Virginia Code § 15.2-5105 which says:

"If at the hearing, in the judgment of the governing body of the participating locality, substantial opposition is heard, the governing body may at its discretion petition the circuit court to order a referendum on the question of adopting or approving the ordinance, agreement or resolution."

9. The public hearing of March 18, 2009 was held over until April 15, 2009 to "review the citizen petitions" in addition to other reasons.

10. At that March 18, 2009 Hearing, the County Attorney voiced his opinion that Election Law section 24.2-684.1 should have been followed.

11. Without agreeing to that opinion, Appellant Douglas Johnson, on March 19, 2009, followed the official instructions of the Virginia Election Board and filed a blank copy of the Petition Form used in the March 18, 2009 filing of the citizen petitions.

12. On March 24, 2009 the Clerk of the Court approved

the Petition form according to 24.2-684.1 leaving the sole technical defect with the citizen petitions filed on March 18, 2009 was the timing of the filing with the Clerk of the Court. Every other requirement of 24.2-684.1 was followed to the letter.

13. Between March 24, 2009 and April 15, 2009, another petition was circulated and over 2,200 signatures were gathered.

14. On April 15, 2009, a copy of this second citizen petition was submitted to the Court in the afternoon as specified in 24.2-684.1 and a copy was submitted to the Appellee Fluvanna Board of Supervisors that evening at the beginning of their meeting.

15. Appellee Fluvanna County Board of Supervisors voted 4 to 2 at its April 15, 2009 evening meeting to reject the first petition even though acknowledging the number of valid signatures exceeded the statutory requirement of Virginia Code § 15.2-5105 which says:

"If ten percent of the qualified voters in a locality file a petition with the governing body at the hearing calling for a referendum, such governing body shall petition the circuit court to order a referendum in that locality as provided in this

section."

16. Appellee Fluvanna County Board of Supervisors voted 4 to 2 at that meeting for the formation of the Joint Water Authority.

17. By April 20, 2009, two separate legal actions were before the Fluvanna Circuit Court challenging the actions of the Fluvanna Board of Supervisors, case 09CL61 filed by Appellant Douglas Robert Johnson and 09CL81 filed by other citizens.

18. Appellant Douglas Robert Johnson personally notified the Clerk of the State Corporation Commission on April 17, 2009 of the Court challenge to the action of Fluvanna Board of Supervisors and objected to the Commission issuing the Certificate of Incorporation.

19. Appellee Fluvanna County Board of Supervisors and Appellee Louisa County Board of Supervisors filed with the State Corporation Commission on April 21, 2009 for the Certificate of Incorporation of James River Water Authority which was issued by the State Corporation Commission that same day.

20. Appellant Douglas Robert Johnson filed a Petition

with the State Corporation Commission on April 24, 2009 case number CLK-2009-00012 to deem the Certificate of Incorporation of the James River Water Authority void ab initio. That case is still pending.

21. The cases in the Fluvanna Circuit Court have been fought based on the finality of 15.2-5108 which states:

"Upon the issuance of the certificate or charter such authority shall be conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers under this chapter."

22. The development of the Fluvanna Court cases are now before the Court as a Declarative Judgement action under case 09CL102.

### **Argument**

23. 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. The fact that this matter was in the Fluvanna Circuit Court

means that the State Corporation Commission did not have jurisdiction on April 21, 2009 even though it would have if the matter was not in the Court.

24. The actions of the Fluvanna Circuit Court that have transpired since the incorporation of the James River Water Authority are not relevant to this action as this action is based on the facts that existed at the time of incorporation (April 21, 2009).

25. The matter brought before the Commission on April 21, 2009 was the filing of articles of incorporation under the Virginia Water and Waste Authorities Act where the exact language says that the Commission must determine if those articles "conformed to law", namely that Virginia Water and Waste Authorities Act.

26. The matter, which was already in the Fluvanna Circuit Court in two separate actions, was whether those articles of incorporation did or did not conform to that same law, the Virginia Water and Waste Authorities Act.

27. There is no dispute that if the citizen

petitions were valid, the articles of incorporation would not conform to that law, the Virginia Water and Waste Authorities Act.

28. Items 24, 25, 26, and 27 above clearly and conclusively prove that the same matter was before the Fluvanna Circuit Court on April 21, 2009, when the matter came before the Commission.

29. Whether or not the Commission had the authority to decide on the validity of the citizen petitions is not material because the matter was already before the Fluvanna Circuit Court in two actions, 09CL61 and 09CL81.

30. The actions of the Appellant, both in this action and with the Fluvanna Circuit Court, are being done using *Morrisette v. McGinniss*, 246 Va. 378; 378 S.E.2d 433 (1993) Supreme Court Decision as a "Play Book":

Of greater significance, however, is the effect of the Commission's order issuing the Authority's corporate charter. As we have noted, Code § 15.1-1246 provides that when the charter is issued, "such authority [\*\*\*8] shall be conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers."

That order was unchallenged and became final. Therefore, no subsequent act of the Registrar or the County Board could affect the force of the Commission's order or undo the creation of the Authority once the conclusive presumption of § 15.1-1246 attached. [\*383] Thus, the trial court correctly ruled that mandamus would not lie under the circumstances of this case. [Emphasis added]

Step 1 was (is) to challenge the action of the Commission before it became final so that the "conclusive presumption" would NOT "attach". Step 2 is to have the Circuit Court rule by the way of a Declarative Judgement on whether or not the citizen petitions were valid. This should be relatively simple as the standard mentioned in that Supreme Court Decision is "substantial compliance." It is anticipated that no further legal action would then be needed.

31. Appellant first challenged the issuance of the certificate or charter in his letter to the Clerk of the Commission on April 17, 2009. The letter included:

It is my understanding that Fluvanna County and Louisa County are filing for a certificate of incorporation or charter for a Joint Water Authority according to § 15.2-5108. Issuance of certificate or charter.

I object to the issuance of said charter.

