

IN THE

Supreme Court of Virginia

RECORD NO. 091703

DOUGLAS ROBERT JOHNSON,

Petitioner-Appellant,

v.

VIRGINIA STATE CORPORATION COMMISSION
and
FLUVANNA COUNTY BOARD OF SUPERVISORS
and
LOUISA COUNTY BOARD OF SUPERVISORS
and
JAMES RIVER WATER AUTHORITY,

Respondents-Appellees.

**MOTION TO DISMISS AND MEMORANDUM IN SUPPORT OF
RESPONDENTS FLUVANNA COUNTY BOARD OF SUPERVISORS,
LOUISA COUNTY BOARD OF SUPERVISORS
AND JAMES RIVER WATER AUTHORITY**

From the State Corporation Commission

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MOTION TO DISMISS

Respondents Fluvanna County Board of Supervisors, Louisa County Board of Supervisors, and James River Water Authority, pursuant to Virginia Supreme Court Rule 5:4(a), move to dismiss the petition for appeal filed in this matter for the reasons set forth in the accompanying memorandum of law.

Respectfully Submitted,

BOARD OF SUPERVISORS OF FLUVANNA COUNTY
BOARD OF SUPERVISORS OF LOUISA COUNTY
JAMES RIVER WATER AUTHORITY

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MEMORANDUM OF LAW

Respondents Fluvanna County Board of Supervisors, Louisa County Board of Supervisors, and James River Water Authority have moved to dismiss the petition for appeal in this matter.

The appeal is due to be dismissed because (1) the petitioner lacks standing, and (2) the action of the State Corporation Commission is conclusive under the applicable statute, Va. Code § 15.2-5108.

Here, the record shows only that the Commission issued the certificate of incorporation to the James River Water Authority, and the petitioner appealed. The petition for appeal states that petitioner "is a resident and registered voter in Fluvanna County." This is insufficient to establish petitioner's standing to appeal. Moreover, the Commission's action is conclusive under the applicable statute, Va. Code § 15.2-5108, Once issued, the certificate is not subject to challenge, even by the County Boards.

ARGUMENT

I. Petitioner Lacks Standing to Challenge the Action of the State Corporation Commission in Issuing the Certificate of Incorporation to the James River Water Authority.

In *Morrisette v. McGinniss*, 246 Va. 378, 382, 378 S.E.2d 433, 435 (1993), the Supreme Court held that neither mandamus nor injunction would lie where the Commission's action pursuant to the predecessor

statute to Va. Code § 15.2-5108 “was unchallenged and became final.” In that case, the Court observed, the Authority was “... conclusively deemed to have been lawfully and properly created and established and authorized to exercise its powers.” See *id.* (citing Va. Code § 15.1-1246 (now codified as Va. Code § 15.2-5108)). The Court held that “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.” *Id.*

The threshold question here is, under the decision in *Morrisette*, *supra*, where the County Boards that created the Authority could not affect the force of the Commission’s order, can a “resident and registered voter” (see Petition, at 2), nevertheless do so?

No provision of law authorizes an appeal by a private citizen from the Commission’s issuance of a certificate of incorporation to an Authority under the Water and Waste Authorities Act. As the Court held in *Morrisette*, once the Commission has issued the certificate, even the County Boards that created the Authority lacks the power to challenge the Commission’s order. *Morrisette*, 246 Va. at 382, 378 S.E.2d at 435.

Neither is petitioner a “person aggrieved” for the purposes of appeal to this Court. See Va. Code § 12.1-39. “Person aggrieved” for the

