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SUPREME COURT OF VIRGINIA  
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RICHMOND, VIRGINIA

VIRGINIA:

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

\_\_\_\_\_  
DOUGLAS ROBERT JOHNSON )  
 )  
Appellant )  
 )  
v. )  
 )  
VIRGINIA STATE )  
CORPORATION COMMISSION )  
 )  
and )  
 )  
FLUVANNA COUNTY BOARD OF )  
SUPERVISORS )  
 )  
and )  
 )  
LOUISA COUNTY BOARD OF )  
SUPERVISORS )  
 )  
and )  
 )  
JAMES RIVER WATER )  
AUTHORITY )  
 )  
Appellees )  
 )  
 )  
\_\_\_\_\_ )

Record No.: 091703

REPLY BRIEF TO BRIEF SUBMITTED BY JAMES RIVER WATER  
AUTHORITY

COMES NOW your Appellant, Douglas R. Johnson, pro se, and sets forth the following in support of its petition to grant this appeal from the order of the State Corporation Commission dated April 21, 2009 that issued a Certificate of Incorporation for the James River Water Authority; and deem the Certificate of Incorporation of the James River Water Authority void *ab initio*; and suspend the effectiveness of the order appealed from; as follows:

#### **INTRODUCTION**

1. Appellee James River Water Authority is joined with Appellee Fluvanna County Board of Supervisors and with Appellee Louisa County Board of Supervisors in both a Motion to Dismiss and a Brief in Opposition to the Appeal with virtually the same two arguments.

2. This reply is to both documents and deals with both issues.

#### **FACTS IN THE RECORD**

3. Appellees are correct in stating what is in the official record of the subject Order.

4. The three critical documents that should have

been included in the record were forwarded by the Clerk of the Commission on Appellant's request.

5. Appellant contends these documents were known to at least one of the parties to the issuance of the subject Order and did conceal their existence from whoever actually issued the Order.

6. Appellant makes no charge as to fault.

7. The three documents are:

1. Letter dated April 17, 2009 from Appellant to the Clerk of the Commission.
2. Complaint naming all Appellees filed in Fluvanna Circuit on April 20, 2009.
3. Motion for Injunctive Relief naming all Appellees filed in Fluvanna Circuit on April 20, 2009.

#### **ARGUMENT CONCERNING STANDING**

8. Appellees correctly state that a mere "taxpayer or resident" could not have standing for the actions of a governing body.

9. The case at hand, however, gives Appellant standing in the form of specific Virginia Code § 15.2-5105, the first sentence, 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."

10. With respect to that statement, anyone who participates in the public hearing has standing to challenge any resulting action of that governing body.

11. Appellant participated in that hearing by having a letter from him read and such fact is confirmed in the minutes of that meeting.

12. The case at hand also gives Appellant standing in the form of specific Virginia Code § 15.2-5105, the last sentence, 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."

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

14. 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.

15. That filing with the Court gives Appellant standing as Case 09CL61 in the Fluvanna Circuit Court has Appellant's name on it.

16. The resulting Order in case 09CL61 was included in the letter to the Commission of April 17, 2009 which was specified above.

17. Appellant signed both Petitions. This gives him standing.

18. The standing with the Petitions ties to the action of the Commission because if the Petitions were valid under the law, then the filing of the articles with the Commission was not lawful.

19. The subject Order is thus the "fruit of a poisonous tree".

20. The First Amendment of the United States Constitution gives every citizen the right to petition government.

21. Any frustration of that First Amendment right is a grievance which injuriously affects the individual

seeking to petition government.

22. The denial of the referendum is a grievance which injuriously affects the individual participating in the actions that are by law specified to lead to said referendum.

23. While Appellant is acting pro se and by law can only represent himself, he is in fact representative of over 2,000 of the 16,860 voters of Fluvanna County who participated by signing one or both citizen Petitions.

#### **ARGUMENT CONCERNING CONCLUSIVENESS**

24. Please bear with me for an analogy. Assume a criminal case where the defendant is convicted of murder and sentenced to death. Once that sentence is carried out, the presumption of conclusiveness is attached and no further appeal is possible.

25. An intelligent reading of Morrissette would need to conclude that the conclusiveness of any order is subject to any and all challenges permitted by law.

26. The law does not permit the execution of the convicted defendant before the time limit for appeal is over.

27. Why would then the Appellees in this case think they could flee the jurisdiction of the Courts by rushing to Richmond to have expedited same day service on the issuance of the subject Order?

28. To bring up another analogy, think of a speeding car fleeing a chasing State Police car making it to the State Line. Are there consequences or does the individual escape the jurisdiction?

29. In this case, there is no question that the subject Order was challenged.

30. The only defense the Appellees bring up is that they were successful in concealing the challenges from the individual who issued the subject Order.

### **CONCLUSION**

31. The Appellees' argument that Appellant does not have standing would apply to everyone. That argument states that nobody has standing. In fact, there does not exist an individual who could possibly have more standing than Appellant to challenge the actions of the Appellees.

32. The issuance of the subject Order is more like the fleeing car crossing the state line, where we would

need extradition, than the conclusiveness of the execution of the convicted murderer, where we would need to raise the dead.

**WHEREFORE** your Appellant, Douglas R. Johnson, respectfully requests that the Virginia Supreme Court grant this appeal and:

A. Deem the Certificate of Incorporation of James River Water Authority void *ab initio*; and

B. Enjoin Fluvanna Board of Supervisors from forming any Water Authority until there is a referendum held as petitioned for on March 18, 2009; and

C. Cost of suit; and

D. For such other relief as the Court deems just and equitable.

  
\_\_\_\_\_  
Douglas R. Johnson, Pro se

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of this document was mailed the 21st day of September, 2009, to:

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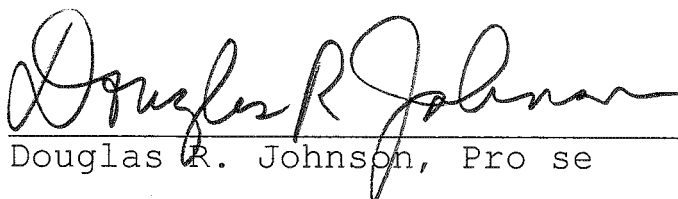
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and that Appellant Douglas Johnson desires to state orally to a panel of the Court the reasons why this Petition for Appeal should be granted and further wishes to do so in person.

  
Douglas R. Johnson, Pro se

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