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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 5170

In the Supreme Court of Appeals of Virginia at Richmond

IN RE: PETITION OF ARTHUR GONZALES ET AL., FOR REFERENDUM TO ADOPT COUNTY EXECUTIVE FORM OF GOVERNMENT

FROM THE CIRCUIT COURT OF WASHINGTON COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5170

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 3rd day of March, 1960.

In *Re*: Petition of Arthur Gonzales, et al., for Referendum to Adopt County Executive Form of Government.

From the Circuit Court of Washington County

Upon the petition of Arthur Gonzales and others an appeal is awarded them from an order entered by the Circuit Court of Washington County on the 15th day of October, 1959, in a certain proceeding then therein depending entitled: Petition for Referendum to Adopt County Executive Form of County Government; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

RECORD

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REPORT.

Now come Dorothy B. Boucher and James R. Edmondson and respectfully report unto Your Honor as follows:

1. That to the best of their information and belief there are 8182 duly qualified, registered voters in Washington County, Virginia, and ten per cent of this number would be 818.
2. That to the best of their information and belief there are signatures of 895 qualified and registered voters on the petition filed herein.
3. That they have not embraced in this report the petitions for removal filed herein, some of the signatures on same being included in the 895 signatures reported above and some being not included therein by reason of not having paid poll tax or not being registered.
4. That they have been unable to verify 70 signatures on said petition.

Given under our hand this the 4th day of September, 1959.

DOROTHY B. BOUCHER
JAMES R. EDMONDSON

Filed Sep. 4, 1959.

LUCILLE VAN DEVENTER,
Deputy Clerk
Circuit Court
Washington County, Va.

* * * * *

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This matter came on again to be heard on September 5, 1959.

Present: Ralph Brumet, Esq., Counsel for Petitioners, Arthur Gonzales and others.

George B. Kreger, Esq., Counsel for Robert G. Wyatt and others,

who move the Court to have their names withdrawn from the petition heretofore filed on July 7, 1959.

It appearing that the report of Dorothy B. Boucher and James R. Edmondson, Special Commissioners, was filed herein on September 4, 1959.

Thereupon, the Court inquired of Ralph Brumet, Esquire, counsel for petitioners, and George B. Kreger, Esquire, counsel for Robert G. Wyatt and others, if there were any exceptions to the report of the said Commissioners, Boucher and Edmondson, and each replied there were no exceptions.

Thereupon, George B. Kreger moved the Court, on behalf of Wyatt and others, that their names be withdrawn from the initial petition filed herein on July 7, 1959.

Thereupon, Ralph Brumet, attorney for petitioners, moved the Court that in event the Court permitted George B. Kreger's clients, Wyatt and others, to withdraw their names, that thereupon, he moved the Court, on behalf of petitioners, that petitioners be permitted to add certain other names to the petition. The Court makes no ruling upon these motions at this time.

page 200 } Thereupon, it was stated by Mr. Brumet that if he was entitled to an election, as provided by law, that it was agreeable that the issue be submitted to the voters at the coming general election to be held on November 3, 1959, rather than at a special election theretofore, but in the event, for any reason, the matter could not be submitted to the voters at the coming general election to be held on November 3, 1959, thereupon, he would move the Court that the matter be submitted at some special election.

The Court doth direct that, by agreement of both parties, Dorothy B. Boucher and James R. Edmondson, Special Commissioners, heretofore appointed, examine the list of those who seek to withdraw and file their report in writing as to how many qualified voters seek to withdraw, and whether or not their names are on the initial petition filed on July 7, 1959, and the Commissioners are directed to hear any pertinent evidence on this point and to file their report as expeditiously as possible, on or before September 21, 1959.

Thereupon, the Court inquired of counsel with reference to the taxable court costs of this proceeding as to whom should be required to pay same, including the compensation of the Special Commissioners for the services they have performed herein. The Court directed counsel to give their views on this on the 21st day of September, 1959.

By agreement of the parties, by their respective counsel, the Court fixes September 21, 1959, at 9:00 o'clock A. M., in the Circuit Court Room at Abingdon, Virginia, as the time and place, for the hearing on the matters above set out.

This order is entered without objection or exception from any party.

page 201 } This order is to be entered as of September 5, 1959 and same was dictated in the presence of George B. Kreger, Ralph Brumet and James R. Edmondson.

Enter: This the 5th day of September, 1959.

T. L. H., Judge.

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REPORT OF SPECIAL COMMISSIONERS.

To the Honorable Thomas L. Hutton, Judge of said Court:

The undersigned, Dorothy B. Boucher and James R. Edmondson, Special Commissioners, respectfully represent unto your honor as follows:

1.

That there have been One Hundred nineteen (119) sworn petitioners for removal of name from the petition filed herein on the 7th day of July, 1959, filed in the above matter.

2.

That One Hundred Seven (107) of the above sworn petitioners are duly qualified voters of Washington County.

3.

That the One Hundred Seven (107) qualified voters who seek to have their names withdrawn were on the original petition filed herein on the 7th day of July, 1959, and that they were counted in the Eight Hundred Ninety-Five (895) qualified signers heretofore reported.

4.

The Undersigned attach hereto a schedule showing the hours which they have devoted as Special Commissioners in determining the matters assigned to them in this matter, and also showing their mileage and expenses incurred
page 203 } therein.

Respectfully submitted this the 12th day of September, 1959.

DOROTHY B. BOUCHER
Special Commissioner.

JAMES R. EDMONDSON
Special Commissioner.

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* * * * *

This the 21 day of September 1959 came again Arthur Gonzales and others by counsel, Ralph Brumet, Esq. Came also Robert S. Wyatt, et al., by counsel, George B. Kreger, Esq. The parties came pursuant to an order heretofore entered setting September 21, 1959, as the date the Court would hear argument upon the issues set out in the order entered herein on September 5th. The matter came on also to be heard upon the report of Special Commissioners, Edmondson and Boucher, filed herein on the day of September, 1959.

Thereupon, the Court heard argument of counsel, Mr. Brumet, counsel for petitioners, and when he had concluded heard argument on the part of parties seeking to withdraw their names by Mr. Kreger, their counsel. The respective

counsel did not have a Memorandum of Authorities in support of their respective contentions and upon inquiry Mr. Brumet said that he could furnish his authorities in a few days and the Court doth fix September 21, 1959, as the date the authorities in support of the respective contentions of the parties should be filed herein. The Court doth ORDER that counsel furnish each other with a copy and file the original with the Court. The Court doth direct that Special Commissioners, Boucher and Edmondson, file a peittion setting forth the amount claimed by them for their services and expenses.

Thereupon, each party announced that they had concluded their arguments and the issue submitted was taken under advisement by the Court, and it is so ORDERED.

page 219 } The Clerk shall certify copy hereof to counsel of record and to said Special Commissioners.

Enter: This the 28th day of September, 1959.

T. L. H., Judge.

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On July 7, 1959, there was filed in the Clerk's Office of the Circuit Court of Washington County, Virginia, a petition signed by Ralph H. Brumet as Counsel for Petitioners, and attached to this one sheet are a number of petitions designated, "Petitition Form For Referendum," to which documents are appended certain names.

On July 9, 1959, an order was entered in this Court appointing Dorothy B. Boucher and James R. Edmondson as Special Commissioners to ascertain and determine whether 10% of the qualified voters of Washington County, Virginia, had affixed their signatures to the aforesaid petition. Commissioners were requested to report the number of qualified voters in the County and whether the petitions were signed by at least 10% of the qualified voters. By agreement, another order was entered on the 7th day of August, 1959, in which the time for filing the report was extended until the 4th day of September, 1959.

On September 4, 1959, Commissioners filed their report to

page 226 } the effect that to the best of their information and belief there are 8182 qualified voters in the County and 10% of this number would be 818. Further, that to the best of their information and belief there are signatures of 895 qualified voters on the petition. Further, that Commissioners did not include in their report petitions for removal, some of the signatures on same being included in the 895 signatures reported. Commissioners further reported that they were unable to verify 70 signatures. A supplemental report was filed on September 21st by the aforesaid Commissioners, this pursuant to an order entered on the 5th day of September, 1959, which order was entered without objection or exception by any party. On September 21, 1959, the Court heard oral argument of Mr. Kreger and Mr. Brumet. The Court received a memorandum from Mr. Brumet on September 30, 1959. Those seeking to withdraw have filed petitions under oath and filed at various dates from August 13th to September 4th, all of which is shown by the record. In the supplemental report of the Commissioners, filed on the 12th day of September, 1959, the Commissioners reported in substance that:

1. There were 119 sworn petitions for removal of names from petition, filed herein on July 7, 1959.
2. That 107 of the above sworn petitioners are qualified voters.
3. That 107 qualified voters who seek to have their names withdrawn were on the original petition, filed on July 7, 1959, and were counted in the 895 qualified signers.

It thus appears, based upon the report:

1. That there are 8182 qualified voters in the County.
2. That 818 would be 10% and that 895 signatures were reported.
3. That 107 seek to withdraw, which were included in the 895, which would leave less than 10% on the petition if the motion to withdraw is granted.

page 227 } The Commissioners also filed a report requesting the Court to allow them the total sum of $3,418.19 for their services.

The Court met with counsel on various occasions, as is shown by the various orders entered herein. The primary issues to be decided, according to the position of the respective counsel, are as follows:

1. Mr. Brumet, for petitioners, insisted that no names could be withdrawn after July 9, 1959, and likewise that it was too late thereafter to add names to the initial petition.

2. Mr. Kreger, on the other hand, insisted that his clients had a perfect right to withdraw their names and certainly at any time before final action by the Court and that his motion to withdraw had been timely made and that those who desire to withdraw should be permitted so to do.

The Court has heard argument of counsel on this phase of the case.

Further, another issue arose as to how the taxable court costs and fees and expenses of the two Commissioners should be paid. It was insisted in oral argument by Mr. Brumet that the County should pay these costs. On the other hand, Mr. Kreger insisted that the parties whose names appear should pay the costs, including the compensation and expenses of the Special Commissioners.

Mr. Brumet in his memorandum, furnished the Court on September 30, 1959, states that the issues are as follows:

ISSUES.

"The two questions involved in this cause are as follows:

"1. At what stage in this suit may the signers withdraw their names from the petition.

page 228 } 2. In the event that petitioners lose their request for an election, who is liable for the coste of this suit."

RIGHT TO WITHDRAW.

In the first instance, I have carefully gone over the entire record and note that the petition signed by Mr. Brumet, consisting of one page, to which is appended numerous petitions designated, "Petition Form For Referendum," and to which was affixed signatures of certain voters, same makes reference to Chapter 11, Article I, Article II and Article IV of the Code of Virginia.

I find that under Title 15, Counties, Cities and Towns, Chapter 11 deals with the County Executive and County Managers Form of Government.

Code Section 15-267 of the Code of Virginia, provides as follows:

"Upon a petition filed with the circuit court of the county, or the judge thereof in vacation, signed by ten per cent of the qualified voters of such county which in no event shall be less than one hundred qualified voters of the county, asking that a referendum be held on the question of adopting one of the forms of county organization and government herein provided for, the court or the judge thereof in vacation shall, by order entered of record, require the regular election officials at the next regular election or on the day fixed in such order to open a poll and take the sense of the qualified voters of the county on the question submitted, as herein provided * * *."

It will be noted from an order, entered in this matter on September 5, 1959, that Mr. Brumet stated that if he was entitled to an election, as provided by law, that it was agreeable for said election to be held on November 3, 1959, rather than at a special election, but with the proviso that if for any reason the matter could not be submitted to the voters at the general election on November 3rd that he would page 229 } move the Court to call a special election. Consequently, we are not confronted at this stage with the provisions in the latter part of Section 15-267 of the Code of Virginia, with reference to the dates for a special election.

The main and primary issue before the Court is whether the 107 persons who have filed petition under oath for leave to withdraw their names should be permitted so to do. By reference to 18 Am. Jur. ELECTIONS, p. 243 and following, there is no presumption that the signers of a petition are qualified electors. See p. 244.

The Commsisioners' report is not definite or certain but merely states that from their "best information" there are 895 qualified voters' names signed to the initial petition. I think that it is incumbent upon those who seek to call an election to comply substantially with the provisions of the law because if the election is called and carried this will mean a drastic change in the form of County government and as stated in the case of *Town of Falls Church* v. *County Board of Arlington*, 166 Va. 192 at p. 197, "the signing and filing of the petition by the required number of voters is not the final determination of the question of the exclusion of the area or the contraction of the corporate limits; it is simply one of the essential requirements which must be met before the court is authorized to proceed with the hearing." See also 29 C. J. S., ELECTIONS, p. 92, with reference to the preparatory steps in general. Consequently, the Court is of

opinion that the preparatory steps should be in substantial compliance with the law. The Statute requires that at least 10 per cent of the qualified voters sign their names to the petition. Without objection, the two Commissioners were appointed and they have made their report and it could be inferred the two Commissioners are not definite page 230 } and sure that there are in fact 8182 qualified voters in the County. And further neither are they positive that there are signatures of 895 qualified voters filed on July 7, 1959, as they base their report upon their "best information and belief." Furthermore, the petition itself is general and does not with any degree of certainty set forth the effects of changing to a new form of County government. I think that the petition should contain at least a brief synopsis of the purpose for which the election is called and I believe that the petition is defective in this manner. See 18 Am. Jur. ELECTIONS, p. 244, Section 103.

In view of the entire record herein, the manner in which the signatures appear, some of which are illegible, it could be easily argued that the petition is in fact defective. However, the main point stressed before the Court in argument was the right to withdraw.

I have considered numerous authorities in an effort to arrive at a proper conclusion of this matter. By reference to Dean Lile's Equity Pleading and Practice, 2d, p. 144 and 145, this is said:

"As hereafter shown more at large in connection with creditors' bills, the plaintiff is *dominus litis,* and may dismiss his suit at any stage before affirmative rights of others have attached. This rule is not confined to creditors' bills, but applies to equity suits of every nature."

In the case of *City of Norfolk* v. *Norfolk County,* 194 Va. 716, opinion by Justice Spratley, the holding of the trial court was reversed because the trial court refused to dismiss a 1949 case and refused to permit a nonsuit and the Supreme Court held that this was error. We quote from this opinion as follows:

"In the absence of Statute or Rule of Court, the matter of dismissing an action or taking a nonsuit is controlled by the Common Law." Citing 27 C. J. S., Dismissal and Nonsuit and 17 M. J., Dismissal, Discontinuance and Nonsuit, Section 13, p. 64.

page 231 } Further, this is said:

"The right of a plaintiff to dismiss a case prior to decision on the merits before the rights of other parties have attached or their rights have been affected, has long been generally recognized in Virginia." Citing numerous Virginia decisions, including *Board of Supervisors* v. *Proffit,* 129 Va. p. 15 to the effect that,

"The law is well settled any man may ordinarily dismiss his suit at pleasure upon payment of costs."

The Court also in this opinion, makes reference to Code Section 8-220 of the Code of Virginia of 1950. Numerous other authorities are quoted. The court held that the rights of the County of Norfolk were not prejudiced by dismissal of the 1949 case and further that the mere inconvenience of double litigation cannot be allowed to deprive the City of Norfolk of its right to abandon and to dismiss its first action."

In the case of *Kemper* v. *Calhoun,* 111 Va. 428, which had to do with the right to dismiss, this is said:

"The law is well settled that a man can ordinarily dismiss his suit at pleasure upon the payment of costs."

Follows a quote from 14 Cyc. 406d as follows:

"The law is very well stated as follows: While a plaintiff may dismiss any claim where such dismissal will not prejudicially affect the interests of the defendant, he will not be permitted to dismiss, to discontinue, or to take a non-nuit, when by so doing he will obtain an advantage and the defendant will be prejudiced or oppressed, or deprived of any just defense. Nevertheless, the injury which would be thus occasioned to defendant must be of a character that deprives him of some substantive right concerning his defenses, not available in a second suit, or that may be endangered by the dismissal, and not the mere ordinary inconveniences of double litigation, which in the eye of the law would be compensated by costs."

By reference to 6 M. J., p. 214, this authority states the rule to be:

page 232 } "Generally, it is the right of a plaintiff to dismiss his action or suffer a non-suit at any time before submission of the case before a court or jury."

Further, this is said:

"Before affirmative rights of other parties have attached the plaintiff is *dominus litis.*" Citing *Patterson* v. *Old Dominion Trust Co.*, 139 Va. 246.

See also numerous cases cited to the same effect in Virginia & West Virginia Digest, Dismissal and Non-suit, Vol. 7.

In my search for the authorities in this case, I have considered among others, 29 C. J. S. p. 92 and following; 9 R. C. L. p. 996 and following; Burke's Pleading and Practice, 4th ed. Section 336, p. 644; Annot. 126 A. L. R. p. 1031 and following; Supplemental Annotation in 27 A. L. R. 2d, p. 604 and following 18 Am. Jur. Elections, p. 242 and following and the 1959 Cumulative Supplement to Vol. 18 at p. 28, to the effect that,

"It is almost universally held that the signers of a petition for an election may withdraw therefrom at any time prior to the filing of the instrument but may not so withdraw after final action has been had on petition. With respect to the right of such withdrawal at various stages of the proceedings after the filing of the instrument but prior to final action thereon, there is some variation in result."

In 9 R. C. L. p. 997, it is said:

"That the signing of a petition is not an irrevocable act, for anyone may withdraw his support of it before final action thereon has been taken."

In 18 Am. Jur. ELECTIONS, p. 245, this is said:

"And that the signing of a petition is not an irrevocable act but that anyone may withdraw his support of such petition before action thereon has been taken."

In 27 A. L. R. (2d) at p. 613, this is said:

"It is often held or stated that signers of a petition or remonstrance may withdraw their signatures at any time before final action is taken on the instrument." Numerous cases are cited in support of this from various States.

page 233 } At page 610, this is stated:

"It has been held in several cases that persons signing a

petition or remonstrance may withdraw their names after the instrument was filed but before a determination was made as to its sufficiency." Numerous authorities are cited in support of this.

In Annot. 126 A. L. R., substantially the same rules are set forth.

It was insisted by Mr. Brumet that after July 9, 1959, the day the Court appointed the Commissioners to ascertain whether 10% of the qualified voters had signed the petition, that it was too late to withdraw or to add because the Court had already taken jurisdiction and the rights of other parties had attached.

I cannot agree with this argument. On July 9, 1959, the Court merely, with the consent of Mr. Brumet, appointed Mrs. Boucher and Mr. Edmondson, two attorneys practicing at this Bar, as Special Commissioners to ascertain and determine whether the requisite number of names were affixed to the petition and in the report that Commissioners filed reference is made to the fact that numerous parties have filed petitions under oath, making the request that their names be withdrawn. As stated in 126 A. L. R., p. 1046, quoting from an Ill. case, the Court said this:

"Signatures to such petitions are easily obtained. Ordinary experience teaches that in matters which do not seem closely to touch themselves, many person sign petitions without sufficient consideration and inquiry, and if the subject afterwards becomes a matter of public discussion so that their attention is carefully drawn to the reasons for that for which they have petitioned, they often then conclude that they have been hasty in signing, or are in error, or that they do not wish the petition granted, etc."

The Court further stated:

"What good reason is there why one who has changed his mind since signing such petition and who concludes that either the public good or his own interest is not in harmony with the petition, may not recede from his signature before action is taken thereon. The rule which permits a withdrawal at any time before final action upon the petition is much more likely to get at the real and mature judgment of the voters and it is calculated to discourage a hasty presentation of a
page 234 } petition for signatures without a full disclosure of the real merits of the question. Circulators of the petition can usually avoid sufficient withdrawals to de-

feat the petition by taking care that the matter is fully understood by those to whom it is presented for signature. If they fail once, they can present another petition the next year, etc."

We quote from a Wisconsin case at p. 1047 of 126 A. L. R.

"The learned circuit judge held that the board had the right to allow persons who had signed the petition to withdraw their names therefrom, or to strike their names from the petition, when requested so to do by the signers, before the petition was finally acted upon by the board. Was that a correct view of the matter? We think it was, and that it was in accord with reasons and common sense. For what valid objection is there, either in law or in grounds of public policy, against allowing a person who has signed a petition asking for a removal of the county seat from withdrawing his name from the petition before it is acted upon by the board?" And the court concluded as follows:

"There is no good reason why a person who has voluntarily signed the petition could not have the right to withdraw his name before the board finally acts upon it."

There is a very good discussion in 14 S. E. (2d) 801.

Apparently all of the authorities agree that the sufficiency of the petition must be determined before an election is called. Here the court is of opinion that if Mr. Brumet so desired, he could on a timely motion move to dismiss and I am likewise of opinion that the rights of no party will be violated if those who seek to withdraw their names are permitted to do so. Consequently, the motion to withdraw the 107 names will be granted.

Now, as to the compensation of Mrs. Boucher and Mr. Edmondson, I full well realize that they performed their services at the request of the Court and I notice that Mr. Brumet asserts that they have done their work well. I think that the compensation requested is too much. They are asking the Court to allow a total of $3,418.19, including expenses of $35.91 and $45.08. These two items will be al-
page 235 } lowed. They stated that they had spent approximately 445 hours and requested that the Court allow them $7.50 per hour. It will be noted that they were requested to do the work within a prescribed time and on motion agreed to by Mr. Brumet the time was extended so as to enable them to complete their work and that again certain issues were submitted to them for their determination. I

think that they should be compensated well for their services. I do not think that they were taken away from all their other duties and work in their office by this assignment. Consequently, the Court will not grant the request for $3,418.19. While I hesitate to reduce the amount of their request, considering all of the facts and circumstances as disclosed by the record, the argument of counsel and considering the time spent, I believe an allowance of $1,500.00 would be a reasonable compensation for their services.

As to who should pay this, I know of no rule of law, neither have I been shown any by which the County of Washington should be required to pay this sum. Mr. Brumet insists that the County bear this expense. Mr. Kreger insists that the expense of the proceeding, including the compensation of Commissioners, as well as the taxable court costs should be paid by all those whose names appear on the petition, including those who seek to withdraw.

Upon consideration of all of which, the Court is of opinion that the $1,500.00 allowed the Commissioners for their services, as well as an item of $35.91 and another item of $45.08, shall be paid jointly and severally by those whose names appear on the petition filed July 7, 1959. In arriving at what is proper for the services of the Commissioners, I have considered numerous Virginia authorities, in-

page 236 } cluding *County of Campbell* v. *Howard*, 133 Va. 19, *Hayes* v. *Parker*, 117 Va. 70, 2 M. J. Section 42 and following, p. 412 and 413, ATTORNEY AND CLIENT, and cases there cited. See *Garner* v. *Beskin*, 198 Va. 653, where a fee of $900.00 is allowed where the assets of the estate involved are some $100,000.00.

An order may be prepared and presented for entry in accordance with the views herein expressed, granting the right of the 107 voters to withdraw and requiring the costs and expenses to be paid by all whose names appear on the petition filed July 7, 1959, jointly and severally; and that the petition be dismissed.

Given under my hand this the 7th day of October, 1959.

T. L. H., Judge.

Filed Oct. 7, 1959.

C. N. BOOTH, Clerk.

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* * * * *

ORDER.

This day came the petitioners, Arthur Gonzales and others, by counsel, Ralph H. Brumet, Esquire, and also came Robert G. Wyatt and others, by counsel, George B. Kreger, Esquire, and the Court having stated his reasons in writing, by opinion dated October 7, 1959 and duly filed on October 7, 1959, doth hereby ADJUDGE and ORDER as follows:

1. The 107 petitions of Robert G. Wyatt and others, requesting that they be allowed to withdraw their names from the original petition filed herein, is hereby granted and it is ORDERED that their names be withdrawn.

2. The Court doth fix the compensation for Dorothy B. Boucher and James R. Edmondson, Special Commissioners in this matter, at $1,500.00 total compensation for the services of said Commissioners, and doth allow them the sum of $35.91 and the sum of $45.08 expenses which they incurred as a result of their duties as Special Commissioners, to be taxed as part of the costs herein.

3. The above items of $1,500.00, $35.91 and $45.08 shall be paid to Dorothy B. Boucher and James R. Edmondson, Special Commissioners, by all of those 895 persons whose names appear on the petition filed herein on July 7, 1959, jointly and severally, as reported by said Commissioners.

And it is ORDERED that the said Boucher and Edmondson do have and recover the aforesaid sum of $1,580.99 against the said 895 persons, jointly and severally, whose names were reported by the said Commissioners. Said judgment to be docketed and indexed as prescribed by law.

Whereupon, the petitioners, by counsel, Ralph H. Brumet, Esquire, moved the Court to allow to be filed and the Court to consider signatures of additional qualified page 238 } voters who desired to petition the Court for an election, as set out in the original petition, and further moved the Court to allow the filing of petitions of persons who had filed petitions to withdraw their names but who now desire to reconsider and allow their names to continue as part of the original petition, and on Oct. 7, 1959 further moved the Court to allow the introduction of further evidence of verification of a part of the seventy names mentioned in the Special Commissioners' report filed on the 12th day of September, 1959 and have them considered as a part of the record and for purposes of complying with the statutory requirements of 10% of the qualified voters, all of said motions being hereby denied by the Court.

Thereupon, the Court doth hereby ORDER that the original petition be dismissed, and at the cost of the said 895 persons, in accordance with and for the reasons set out in his opinion dated October 7, 1959, which opinion is ordered to be made a part of the record herein.

All of which is ADJUDGED and ORDERED.

To all of which action by the Court, the petitioners, Arthur Gonzales and others, by counsel, duly excepted and gave notice of their intention to appeal to the Supreme Court of Appeals of Virginia.

WE HAVE SEEN THIS:

RALPH H. BRUMET
Counsel for Arthur Gonzales, et al.,
Petitioners.

GEORGE B. KREGER
Counsel for Robert G. Wyatt, et al.

Enter Oct. 15th 1959.

T. L. H., Judge.

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NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: C. N. Booth, Clerk of said Court:

Arthur Gonzales, et al., by counsel hereby gives notice, pursuant to Rule 5:1 of the Supreme Court of Appeals of Virginia, of their appeal from that certain judgment rendered in this action by order entered on the 15th day of October, 1959, wherein Arthur Gonzales, et al. were the petitioners.

Pursuant to said Rule, defendant assigns the following errors:

1. The Court erred in allowing and ordering that the 107 petitions of Robert G. Wyatt and others to withdraw their names from the original petition for election be granted.

2. The Court erred in refusing to allow the petitioners to file additional petitions of other duly qualified voters who

desired to petition the Court for an election as set out in the original petition.

3. The Court erred in refusing to allow the filing of petitions of persons who signed the original petitions, then filed petitions to withdraw from the original petition which the Court granted, and who then wanted to continue to be considered as signers of the original petition.

4. The Court erred in refusing to allow the petitioner to introduce further evidence of verification of a
page 241 } part of the seventy names mentioned in the Special Commissioners' Report filed on September 12, 1959 and have them considered as part of the record for purposes of complying with the Statutory Requirements of 10% of the qualified voters for the calling of the election. These seventy names having not been verified or certified by the Special Commissioners.

5. The Court erred in not re-ordering positive certification by the Special Commissioners as required by the Statutes of the number of qualified voters in Washington County if their original report was too uncertain or vague to accurately determine this important fact.

6. The Court erred in ordering the original petition dismissed as set out in his opinion dated October 7, 1959 and assessing the costs to be paid by the said 895 persons who the Special Commissioner certified as qualified voters on the original petition.

ARTHUR GONZALES, et al.
By Counsel.

RALPH H. BRUMET, Counsel
for Arthur Gonzales, et al.

Filed Dec. 11, 1959.

R. M. SUMMERS, Deputy Clerk
Circuit Court Washington
County, Va.

* * * * *

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H. G. TURNER, Clerk.

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