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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 7327

In the Supreme Court of Appeals of Virginia at Richmond

FORREST C. BAILEY, III, ET AL.

v.

CHARLES W. FLEMING, ET AL.

FROM THE CIRCUIT COURT OF HENRICO COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7327

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 14th day of October, 1969.

FORREST C. BAILEY, III, ROBERT F. BODDE, E. LEE CHAPMAN, ROLAND H. HARRIS, JR., HENRY S. HOTCHKISS, EDWARD O. RENICK, SR., and THOMAS R. WYANT, Plaintiffs in error,

against

CHARLES W. FLEMING and 54 other qualified voters of Henrico County similarly situated; and B. EARL DUNN, EDWIN H. RAGSDALE, ANTHONY P. MEHFOUD, L. R. SHADWELL, JR., and LINWOOD E. TOOMBS, or their successors in office, constituting the Board of Supervisors of Henrico County, Defendants in error.

From the Circuit Court of Henrico County
Edmund W. Hening, Jr., Judge

Upon the petition of Forrest C. Bailey, III, Robert F. Bodde, E. Lee Chapman, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr., and Thomas R. Wyant a writ of error is awarded them to an order entered by the Circuit Court of Henrico County on the 24th day of March,

1969, in certain consolidated proceedings then therein depending, under the short styles of : Re: Increase of Magisterial Districts of the County of Henrico, Case No. 638; and, Re: In the matter of Rearrangement, Increase, or Diminution of all the Magisterial Districts of the County of Henrico, Case No. 673; upon the petitioners, or some one for them, entering into bond with sufficient security before the clerk of the said court below in the penalty of $300, with condition as the law directs.

RECORD

* * * * *

page 1 }

* * * * *

Your Petitioners, the undersigned qualified voters of Henrico County, the petitioners in this cause, respectfully represent the Court the following:

Your petitioners, being of the opinion that there exists a disproportionate, insufficient and inequitable representation on the Board of Supervisors of Henrico County, and in support of this opinion your petitioners request that this Court take judicial notice of the population figures reported in the 1960 Official U. S. Census:

Henrico County Total Population		117,339
Varina District	8,723	
Fairfield District	31,445	
Brookland District	38,845	
Tuckahoe District	38,326	

In Consideration Whereof your petitioners pray that this Court appoint a bipartisan commission comprised of responsible citizens equally representing all existing districts to study the representation and make recommendations concerning the increasing of the Magisterial Districts of Henrico County; and that this Court enter such other orders as may be necessary to effect an increase of the number of Magisterial Districts in Henrico County.

Petitioners & Addresses

Charles W. Fleming, 7807 Thornrose Ave
Daniel J. Kennedy, 2709 Omega Road
Montell A. Manning, 2007 Oakwood Lane
Ralph L. Axselle, Sr., Rt. 4, Box 119, Glen Allen, Va.
Charles E. Lewis, 8214 Buckeye Dr.
Ellen H. Chewning, 7506 S. Pinehill Drive
J. O. Sale, 7304 Vernon Road
James L. Sheets, 8719 Lakefront Dr.
J. Thomas Mills, Jr., 2108 Buckeye Drive
Robert G. Mann, 9314 Huron Ave.
page 2 } Evelyn M. Mann (Mrs.), 9314 Huron Ave.
Christian P. Napoli, 9111 Huron Ave.
Mrs. Wilbur C. Russell, 9305 Gunford Drive

John W. Harrington, 3801 Delleow Dr.
Roger A. Lutz, Jr., 9406 Greenford Drive
L. G. Bailey, 9305 Huron
Roger P. Schad, 3811 Alston Lane
Polly M. Goodman, 9130 Huron Ave.
Sam L. McEwin, III, 9500 Huron Ave.
James C. Giles, 3805 Francistown Road
William J. Galli, 3008 Manor Dr.
Mrs. Virginia D. Galli, 3008 Manor Dr.
R. L. Williams, 3010 Manor Dr.
Mrs. R. L. Williams, 3010 Manor Drive
H. W. Schlieser, 1710 Chadwick Drive
John E. Rocek, 6318 Rigsby Road
Joseph A. Arcaro, Jr., 7115 Horsepen
Jane W. Arcaro, 7115 Horsepen
David S. Laird, Jr., 9800 W. Broad
Mrs. Thelma M. Chappell, Route 1, Box 54-B, Glen Allen, Va.
Robert F. Chappell, Rt. 1, Box 54-B, Glen Allen, Va.
K. E. Mills, Rt. 1, Box 56, Glen Allen, Va.
L. A. Mills, 3415 Merkin Dr., Glen Allen, Va.
page 3 } Mrs. Ruth E. Jamerson, 2100 Shirleydale Ave.
Mrs. J. G. Hannaman, 301 Jackson Ave.
H. W. Walton, 2410 Boyle Ave.
Mrs. James H. Clifton, 5 Lambelle Rd., Glen Allen
Mrs. Margaret M. Schmidt, Rt. 5, Box 10, Glen Allen, Va.
J. Godfrey Binns, Glen Allen, Va.
Woodrow J. Moss, Rt. 5, 168, Glen Allen, Va.
E. L. Allen, Jr., Glen Allen, Va.
James H. Clifton, Rt. 5, Glen Allen
B. F. Willis, Glen Allen, Va.
H. L. Kelley, Glen Allen, Va.
Robert J. Niedermayer, 2500 Hungary Rd.
Lucille W. Kennedy, 2709 Omega Rd., Richmond, Va.
Frank G. Binns, Jr., 2710 Omega Road, Richmond, Va.
Milton M. Jacobson, 7505 Comet Rd., Richmond, Va.
C. H. Wash, 25 Bridgeway Rd., Richmond, Va.
Lorraine H. Hensley, 2707 Omega Rd., Rich., Va.
Earl L. Robb, 2711 Omega Rd., Rich., Va.
Earlene B. Robb, 2711 Omega Rd., Richmond, Va.
Mr. Henry L. West, Jr., 2410 Omega Road, Richmond, Va.
Mrs. Henry L. West, Jr., 2410 Omega Rd., Richmond 28, Va.
Thomas H. McCants, 974 Paragon Dr., Richmond, Va.

Filed in the Clerk's Office the 19th day of October, 1965, Margaret B. Baker D. C.

* * * * *

page 10 }

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ORDER

This day came Robert M. Wallace, counsel for Petitioners and filed his motion by leave of Court, with consent of Petitioners that he be permitted to withdraw as counsel for Petitioners, notice of the time and place of such motion having been waived by the appearance of Charles W. Fleming on behalf of all Petitioners, and it appearing to the Court that Petitioners consent to such motion and that it should be granted, Robert M. Wallace is herby permitted to withraw as counsel for Petitioners.

On motion of Petitioners Russell Alton Wright is hereby designated as counself of record for Petitioners.

On further motion of Petitioner, It Is Ordered that this case be set for hearing on February 26, 1968 at 10:00 o'clock a. m. and It Is Further Ordered that an attested copy of this order be posted at the courthouse of this Court and at all voting places in each of the magisterial districts of the County of Henrico.

Enter: 12/29/67

John Wingo Knowles
Judge

* * * * *

page 28 }

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ORDER

This day came Forrest C. Bailey, III, Robert F. Bodde, John T. Casey, E. Lee Chapman, John T. Ferguson, G. Edwin Gaulding, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr. and Thomas R. Wyant, by counsel, and filed their Motion to Intervene in this action by leave of Court, and it appearing to the Court proper so to do, it is Ordered that the Petition To Intervene be, and the same hereby is, filed, and said petitioners be designated intervening petitioners in opposition to the original petition in case designated No. 638.

Enter: 2/26/68
Enter: Edmund W. Hening, Jr.

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page 29 }

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Motion to Intervene By Forrest C. Bailey, III, Robert F. Bodde, John T. Casey, E. Lee Chapman, John T. Ferguson, G. Edwin Gaulding, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr. and Thomas R. Wyant

To the Honorable Judges of the Aforesaid Court:

1. Forrest C. Bailey, III, Robert F. Bodde, John T. Casey, E. Lee Chapman, John T. Ferguson, G. Edwin Gaulding, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward. O. Renick, Sr. and Thomas R. Wyant, pursuant to §15.1-575 of the Code of Virginia of 1950, as amended, move for leave to intervene as parties defendant in order to protect their interests as citizens of the County of Henrico, Virginia, on the ground that they are members of the class represented by the original petitioners in their action and the representation of their interests by the existing petitioners is or may be inadequate; that they may or will be bound by judgment in this action.

2. The applicants for leave to intervene further represent to the Court that they are residents, citizens, taxpayers and voters of the County of Henrico, Virginia, and residents and citizens of the existing magisterial districts of said County, which may or will be affected by any judgment in this action, and that they desire to intervene each on his own behalf individually and on behalf of all others in said County who are or may be similarly situated.

Forrest C. Bailey, III, Robert F. Bodde,
John T. Casey, E. Lee Chapman, John T.
Ferguson, G. Edwin Gaulding, Roland H.
Harris, Jr., Henry S. Hotchkiss, Edward
O. Renick, Sr. and Thomas R. Wyant

By: L. P. Byrne
Of Counsel

2-26-68 Filed

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page 31 }

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PETITION TO INTERVENE

To the Honorable Judges of the Aforesaid Court:

1. Forrest C. Bailey, III, Robert F. Bodde, John T. Casey, E. Lee Chapman, John T. Ferguson, G. Edwin Gaulding, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr. and Thomas R. Wyant, hereinafter referred to as "Defendant-Intervenors", file this their intervening petition in this action, with leave of Court, pursuant to §15.1-575 of the Code of Virginia of 1950, as amended, jointly and severally, as individual residents, citizens, taxpayers and voters of the County of Henrico, Virginia, and on behalf of all others in said County that are or may be similarly situated.

2. The Defendant-Intervenors are each residents, citizens, taxpayers of and duly registered and qualified voters of the County of Henrico, Virginia, and residents and citizens of the existing magisterial districts of said County, which may or will be affected by any judgment in this action.

3. The Defendant-Intervenors are members of the class represented by the original petitioners in this case but because their interests are or may be separate and distinct from those of said original petitioners, the representation of the Defendant-Intervenors' interests by said original petitioners is or may be incomplete and inadequate and the Defendant-Intervenors may or will be bound by a judgment in this action.

2-26-68 Filed by order.

page 32 } 4. Moreover, the Defendant-Intervenors are members of the class of persons to whom §15.1-575 of the Code of Virginia of 1950, as amended, refers to as parties who may be granted leave to intervene in this action upon proper application therefor to contest the original petition filed herein.

5. The Defendant-Intervenors show to the Court that the original Petition was filed in this Court in October 1965, and subsequent thereto the General Assembly of Virginia, at its regular session, which convened in January 1966, did enact into law Chapters 255 and 531 of the Acts of Assembly of 1966, amending and re-enacting §16.1-623 and enacting §16.1-623.1, to permit the citizens of a County having the County

Manager Form of Government, by referendum held for such purpose, to determine whether the members of the board of supervisors should be elected as provided in §16.1-623.1, and to determine whether such members should be elected by the County at large or by magisterial districts with one supervisor elected at large.

6. Further, the Defendant-Intervenors would show the Court that by referendum of the qualified voters of Henrico County held on November 8, 1966, the electorate of said County, by an overwhelming majority, determined that an election be held to decide if the members of the board of supervisors of said County should be elected as provided in §16.1-623, and, further, said election determined that the board of supervisors of said County be elected by magisterial districts with one (1) member being elected by the qualified voters of the County at large.

7. That by the aforesaid election held on November 8, 1966, the electorate of Henrico County, by an overwhelming majority, in each of the magisterial districts and of the County at large, endorsed and approved the presently existing form of government and representation, which the original petitioners now pray that this Court change.

8. The Defendant-Intervenors allege and aver that by the election of four (4) members of the Board of Supervisors by magisterial district and the election of one
page 33 } (1) member of said Board by the County at large, the present representation on the Board of Supervisors of Henrico County is not disproportionate, insufficient and inequitable as alleged in the original petition filed herein, and no good cause can be shown to grant the relief sought by the original Petitioners.

Wherefore, the Defendant-Intervenors pray that the original petition filed herein be dismissed.

Forrest C. Bailey, III
Robert F. Bodde
John T. Casey
E. Lee Chapman
John T. Ferguson
G. Edwin Gaulding
Roland H. Harris, Jr.
Henry S. Hotchkiss
Edward O. Renick, Sr.
Thomas R. Wyant

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page 40 }

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PETITION

* * * * *

Your Petitioners, B. Earl Dunn, Chairman, Edwin H. Ragsdale, Vice-Chairman, Anthony P. Mehfoud, L. R. Shadwell, Jr., and Linwood E. Toombs, constituting the Board of County Superisors of Henrico County, pursuant to a resolution duly adopted by the said Board on the 10th day of April, 1968, an attested copy of which is filed herewith and marked Exhibit "A", respectfully represent unto the Court the following:

(1) That the County of Henrico is presently divided into four (4) magisterial districts, namely, Tuckahoe, Brookland, Fairfield and Varina;

(2) That the said Board of County Supervisors presently consist of one (1) supervisor elected from and representing the citizens of each of the magisterial districts respectively and one (1) supervisor elected from the County at large and representing the citizens of all four (4) magisterial districts;

(3) That the said Board of County Supervisors are of the opinion because of the present location of the boundary lines of the four (4) present magisterial districts, namely, Tuckahoe, Brookland, Fairfield and Varina and according to the 1960 Official United States Cenus, the citizens of the County of Henrico do not have equal and lawful
page 41 } representation on the present Board of County Supervisors and that this present representation of the said citizens is inequitable and not in proportion with the population of the several magisterial districts;

(4) That the said Board of County Supervisors are of the opinion there presently exists an even more unequal, inequitable and disproportionate representation of the said citizens on the Board of County supervisors because of the increased growth of the population in each of the said four (4) magisterial districts since the 1960 Official United States Cenus;

(5) That the Board of County Supervisors are of the opinion that all the magisterial districts of the County of Henrico should be rearranged, increased or diminished in proportionately and equitably represented on the said Board order that the said citizens of the County may be equally, of County Supervisors.

In Consideration Wherefore, your petitioners pray that the Court rearrange, or increase or diminish the present four (4) magisterial districts, namely, Tuckahoe, Brookland, Fairfield and Varina in accordance with law, and to that end, respectfully request the Court to appoint commissioners to lay off and designate by metes and bounds new magisterial districts.

Board of County Supervisors of Henrico County, Virginia

B. Earl Dunn, Chairman
Edwin H. Ragsdale, Vice-Chairman
L. R. Shadwell, Jr.
Linwood E. Toombs
Anthony P. Mehfoud

Received & Filed in Office April 16, 1968
Teste: N. B. Baker, Dep. Clerk

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page 44 }

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ORDER

This day came the respective parties, by counsel, in Case No. 638, and came also the Commonwealth Attorney, counsel for the Board of County Supervisors of Henrico County, Virginia, in Case No. 673, and on their joint motions and consents that the cases Nos. 638 and 673 be consolidated and set for hearing together as soon as Case No. 673 has fully matured, and upon consideration whereof, it is Ordered that Cases Nos. 638 and 673 be consolidated and set for hearing together on all additional evidence and argument of counsel; upon the maturity of Case No. 673, on June 6, 7, 10 and 11, at 9:30 o'clock a. m., on each of said days.

Whereupon defendant intervenors in Case No. 638, by counsel, moved to withdraw the motion to dismiss the petition and the motion to strike the evidence of the petitioners in Case No. 638, which motion was not opposed, and upon consideration thereof, the said motion is granted, and it is Ordered that the defendant intervenors' motion in Case No. 638 to dismiss the petition and to strike the evidence of the petitioners, is now withdrawn and no longer before the Court for consideration.

And it appearing desirable to facilitate the trial of these matters, it is Ordered that the defendant intervenors in Case No. 638 and the petitioners in Case No 673 furnish the petitioners in Case No. 638 on or before May 7, 1968, the following information:

page 45 } 1. The names and addresses of all witnesses who are expected to testify and, if such testimony is in the nature of expert testimony, the qualifications of such witnesses who will be used as experts.

2. Copies of all exhibits to be introduced into evidence.

3. A statement as to the general nature of the evidence to be adduced from each witness.

It is further Ordered that the petitioners in Case No. 638 furnish to the defendant intervenors in said case and to the petitioners in Case No. 673, the information above set forth on or before May 28, 1968, with reference to any additional evidence they intend to produce in rebuttal.

On further motion of the respective parties in Cases Nos. 638 and 673, by counsel, it is Ordered that an attested copy of this Order be posted at the Court House of this Court and at all voting places in each of the Magisterial Districts of the County of Henrico.

Enter: 4/16/68

Edmund W. Hening, Jr.
Judge

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page 60 }

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Motion to Join in the Prayer of the Petition Filed by the Board of Supervisors of the County of Henrico in Case No. 673

Comes now the Defendant-Intervenors, Forrest C. Bailey, III, Robert F. Bodde, John T. Casey, E. Lee Chapman, John T. Ferguson, G. Edwin Gaulding, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr., and Thomas R. Wyant, by counsel, and move the Court for leave to permit said Defendant-Intervenors to join in the prayer of the petition filed by the Board of Supervisors of Henrico County on April 16, 1968, Case #673, praying that the Court rearrange, or increase or diminish the present four (4) Magis-

terial Districts, namely, Tuckahoe, Brookland, Fairfield and Varina, in accordance with law, and to that end, respectfully requesting the Court to appoint Commissioners to lay off and designate by metes and bounds new Magisterial Districts.

Forrest C. Bailey, III, Robert F. Bodde, John T. Casey, E. Lee Chapman, John T. Ferguson, G. Edwin Gaulding, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr., and Thomas R. Wyant, Defendant-Intervenors By: L. P. Byrne Of Counsel

Received and Filed in Office June 3, 1968
Teste: Helen C. Loving Clerk

* * * * *

page 61 } NOTICE OF MOTION

* * * * *

Take Notice, that the Defendant-Intervenors shall bring on the above Motion for hearing before the Judge of the Circuit Court of Henrico County, Virginia, at the Courtroom thereof, 22nd and Main Streets, Richmond, Virginia, on June 6, 1968, at 9:30 a. m., or as soon thereafter as counsel may be heard.

Forrest C. Bailey, III, Robert F. Bodde, John T. Casey, E. Lee Chapman, John T. Ferguson, G. Edwin Gaulding, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr., and Thomas R. Wyant, Defendant-Intervenors

By: L. P. Byrne
Of Counsel

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page 86 }

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FINAL ORDER

The Court, on June 6, 1968, having granted, from the bench, the motion of the defendant intervenors in Case Num-

ber 638 to withdraw altogether from said Case Number 638 and to be permitted to intervene as petitioners in Case Number 673, joining in the prayer of the Board of Supervisors of Henrico County in Case Number 673, and the Court having heard additional testimony of witnesses for the petitioners in both cases and having received exhibits and heard the argument of counsel for petitioners in both cases and for the intervenors in Case Number 673, is of the opinion, for reasons set forth in the written Memorandum Opinion of the Court, dated October 10, 1968, and addressed to counsel for the petitioners and intervenors, and filed with the papers in this cause, that there is substantial and unequal population among the four magisterial districts of the County of Henrico, Virginia, and that good cause has been shown for an increase of the magisterial districts in the said County of Henrico, Virginia, it is, accordingly, and for reasons set forth in the Memorandum Opinion, Adjudged and Ordered that the magisterial districts in the County of Henrico, Virginia, be increased from four to five.

And the Court, further being of the opinion that page 87 } it does not have enough before it to enable it to safely and properly determine the whole matter, within the contemplation of §15.1-576 of the Virginia Code of 1950, as amended, it is, therefore, Ordered that the following named discreet and intelligent persons, a majority of whom may act, be and they are hereby appointed as commissioners pursuant to the provisions of §15.1-577 of the Code of Virginia of 1950, as amended:

Howard W. Dobbins
C. Kemper Lorraine
Harry F. Hoffmann
J. B. Bourne, Jr.
Grayson F. Holt
Okla B. Meade

And it is further Ordered that the aforesaid commissioners shall, after first taking an oath to faithfully discharge their duties, such oath to be administered by the Court, proceed, without delay, to increase the magisterial districts of the County of Henrico from four to five, with the aid of a competent surveyor to be employed by them, if necessary or needed, according to the following guidelines:

(1) That none of the five districts be of substantially unequal population or of a disparate size—so that every qualified resident has a right to a ballot for election of a supervisor of each district of equal weight to the vote of every

other resident. Although mathematical exactness is not required, there should be no substantial variation in population of each district so as to be arbitrary or invidious. Permissable deviation from the average population of the five districts should preferably not exceed a figue of ten percent from the average of the deviations in any combination of two of said districts. Some, but not primary, con-
page 88 } sideration may be given to the compactness of the new districts and their community of interests.

(2) That no districts shall be made containing less than thirty square miles.

(3) That within the primary prerequisities of (1) and (2) above, consideration be given to avoiding displacing any presently elected supervisor from the magisterial district in which he now resides.

(4) That upon completing (1), (2) and (3) above, the magisterial districts be laid off and designated by metes and bounds, as agreed upon by the Commissioners; that memorial stones be caused to be placed at prominent points on the boundary lines of the districts, if the same is deemed necessary in the opinion of the commissioners; and that a map or diagram of the five magisterial districts be prepared.

(5) That within ten days after laying off such districts and completing their surveys, the commissioners shall make a written report designating as accurately as possible the boundary thereof, and also designating the same by appropriate names, as Magisterial District of Henrico County, together with any other matter deemed pertinent by them, which report, together with the map or diagram, shall be returned to the Clerk's Office of the Circuit Court of the County of Henrico, for recording by said Clerk, pursuant to the provisions of Section 15.1-579 of the Code of Virginia, as amended.

It is further Ordered that the Clerk of this Court shall, upon receipt thereof, record the report and diagram in her deed book and shall furnish the Secretary of the Commonwealth an attested copy thereof. The Magisterial
page 89 } Districts so designated and laid off by the commissioners shall thereafter be the Magisterial Districts of Henrico County.

It is further Ordered that the said commissioners and surveyor be compensated by the Board of Supervisors of Henrico County for their services rendered herein as provided for in Section 15.1-580 of the 1950 Code of Virginia, as amended together with any necessary expenses incurred.

Enter: 10/30/68 Edmund W. Hening, Jr.
Judge

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page 92 }

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COMMISSIONERS' REPORT

By Order of this Court entered on October 30, 1968, the persons reporting herewith were appointed pursuant to the provisions of §15.1-577 of the Code of Virginia, as amended, to increase the magisterial districts of the County of Henrico from four to five, with the aid of a competent surveyor to be employed by them, if necessary or needed, according to certain guidelines set forth in the said Order.

As required by the said Order, the said Commissioners make their written report as follows:

I.

1. That the County of Henrico has been laid off in five magisterial districts and that a map of the said five magisterial districts has been prepared and certified to by Foster & Miller, Certified Surveyors, Richmond, Virginia, which map is returned with and made a part of this report.

2. The names of the five magisterial districts laid off by these Commissioners, and by reference to the map page 93 } returned herewith, the metes and bounds of each, are as follows:

TUCKAHOE DISTRICT
CONTAINING 30.1 SQUARE Miles

Beginning at a point where the eastern line of Peachtree Boulevard (Extended) intersects with the boundary line between Henrico County and the City of Richmond, and from said point of beginning along the said boundary line until the same crosses from the north to the south of the James River and intersects with the northern boundary line between Henrico County and Chesterfield County; thence in a generally westward direction along the southern bank of the James River forming a boundary line between Henrico County and Chesterfield County to a point where such boundary line intersects with the boundary line between Henrico County and Goochland County; thence in a generally northward direction across the James River and along the boundary line between Henrico County and Goochland County to

a point which is 3100 feet, more or less, due west from a point on the western line of Gayton Road 5700 feet, more or less, south of Church Road; thence due east 3100 feet, more or less, to said point on the western line of Gayton Road 5700 feet, more or less, south of Church Road; thence in a generally northward direction along the western line of Gayton Road to the northern line of Broad Street Road; thence eastwardly along the northern line of Broad Street Road to the northern right-of-way line of Interstate Route 64; thence southeastwardly along the northern right-of-way line of Interstate Route 64 to the eastern line of Parham Road; thence southwestwardly along the eastern line of Parham Road to the eastern line of Three Chopt Road; thence in a direction generally southward and eastward along the eastern line of Three Chopt Road to the western line of Horsepen Road; thence northeastwardly along the western line of Horsepen Road to the northern line of Monument Avenue; thence southeastwardly along the northern line of Monument Avenue to the eastern line of Peachtree Boulevard; thence southwestwardly along the eastern line of Peachtree Boulevard (Extended) to the point and place of beginning at the corporate limits of the City of Richmond.

page 94 } THREE CHOPT DISTRICT
CONTAINING 30.2 SQUARE MILES

Beginning at a point on the boundary line between Henrico County and Goochland County, which point is 3100 feet, more or less, due west from a point on the western line of Gayton Road 5700 feet, more or less, south of Church Road; thence northwardly along the said boundary line between Henrico County and Goochland County until the same intersects with the boundary line between Henrico County and Hanover County; thence in a generally eastward direction along the boundary line between Henrico County and Hanover County to a point which is 5700 feet, more or less, due north from a point on the western line of Springfield Road 1600 feet, more or less, north of Nuckols Road; thence due south 5700 feet, more or less, to said point on the western line of Springfield Road 1600 feet north of Nuckols Road; thence in a direction southwardly along the western line of Springfield Road to the southern line of Hungary Road; thence eastwardly along the southern line of Hungary Road to the western line of the RF&P Railroad right-of-way; thence southwardly along the western line of the RF&P Railroad right-of-way to the northern line of Parham Road; thence westwardly along the northern line of Parham Road; thence southwardly along the eastern line of Staples Mill

Road to the southern line of Wistar Road; thence westwardly along the southern line of Wistar Road to the eastern line of Wistar Village Drive (Extended); thence southwardly along the eastern line of Wistar Village Drive (Extended-to the northern line of Glenside Drive; thence eastwardly along the northern line of Glenside Drive to the eastern line of Hazelwood Street (Extended); thence southwardly along the eastern line of Hazelwood Street (Extended) to the southern right-of-way of Interstate Route 64; thence southeastwardly along the southern right-of-way of Interstate Route 64 to the boundary line between Henrico County and the City of Richmond; thence along the boundary line between Henrico County and City of Richmond to the eastern line of Peachtree Boulevard (Extended); thence northeastwardly along the eastern line of Peachtree Boulevard (Extended) to the northern line of Monument Avenue; thence northwestwardly along the northern line of Monument Avenue to the western line of Horsepen Road; thence southeastwardly along the western line of Horsepen
page 95 } Road to the eastern line of Three Chopt Road; thence in a direction generally westward and northward along the eastern line of Three Chopt Road to the eastern line of Parham Road; thence northeastwardly along the eastern line of Parham Road to the northern right-of-way of Interstate Route 64; thence northwestwardly along the northern right-of-way of Interstate Route 64 to the northern line of Broad Street Road; thence westwardly along the northern line of Broad Street Road to the western line of Gayton Road; thence in a direction generally southward along the western line of Gayton Road to a point 5700 feet, more or less, south of Church Road; thence due west 3100 feet, more or less, to the boundary line between Henrico County and Goochland County, the point and place of beginning.

BROOKLAND DISTRICT
CONTAINING 30.1 SQUARE MILES

Beginning at a point on the bounday line between Henrico County and the City of Richmond where the same is intersected by the southern right-of-way of Interstate Route 64, and from said point of beginning extending northwestwardly along the southern right-of-way of Interstate Route 64 to the eastern line of Hazelwood Street (Extended); thence northwardly along the eastern line of Hazelwood Street (Extended) to the northern line of Glenside Drive; thence westwardly along the northern line of Glenside Drive to the eastern line of Wistar Village Drive (Extended); thence

northwardly along the eastern line of Wistar Village Drive (Extended) to the southern line of Wistar Road; thence eastwardly along the southern line of Wistar Road to the eastern line of Staples Mill Road; thence northwardly along the eastern line of Staples Mill Road to the northern line of Parham Road; thence eastwardly along the northern line of Parham Road to the western line of the RF&P Railroad right-of-way; thence northwardly along the western line of the RF&P Railroad right-of-way to the southern line of Hungary Road; thence westwardly along the southern line of Hungary Road to the western line of Springfield Road; thence northwardly along the western line of Springfield Road to a point 1600 feet, more or less, north of Nuckols Road; thence due north 5700 feet, more or less, to
page 96 } the boundary line between Henrico County and Hanover County; thence in a direction generally northward and eastward along the boundary line between Henrico County and Hanover County to Chamberlayne Branch; thence southwestwardly along the northern line of Chamberlayne Branch to the northern property line of Wildwood Subdivision; thence continuing southwestwardly along the northern line of Wildwood Subdivision to the northwest corner of such subdivision; thence westwardly 1200 feet, more or less, to a point in a sharp turn on Scott Road, which point is 900 feet, more or less, northeast of the eastern line of Interstate Route 95; thence southwestwardly along the southern line of Scott Road 900 feet, more or less, to the eastern line of Interstate Route 95; thence southwardly along the eastern line of Interstate Route 95 to the southern line of Parham Road; thence westwardly along the southern line of Parham Road to the eastern line of U. S. Route 1; thence southwardly along the eastern line of U. S. Route 1 to the northern line of Lakeside Boulevard; thence eastwardly along the northern line of Lakeside Boulevard (Extended) to the eastern line of Interstate Route 95; thence in a direction generally southward and southwestward along the eastern line of Interstate Route 95 to the northern line of Dumbarton Road; thence southeastwardly along the northern line of Dumbarton Road to the boundary line between Henrico County and the City of Richmond; thence along the boundary line between Henrico County and the City of Richmond to where said boundary line intersects with the southern right-of-way of Interstate Route 64, the point and place of beginning.

FAIRFIELD DISTRICT
CONTAINING 33.3 SQUARE MILES

Beginning at a point where the boundary line between Henrico County and the City of Richmond intersects with the northern line of Dumbarton Road, and from said point of beginning extending northwestwardly along the northern line of Dumbarton Road to the eastern line of Interstate Route 95; thence in a direction generally northeastward and northward along the eastern line of Interstate Route 95 to the northern line of Lakeside Boulevard (Extended); thence westwardly along the northern line of Lakeside Boulevard (Extended) to the eastern line of U. S. Route 1; thence northwardly along the eastern line of U. S. Route 1 to the southern line of Parham Road; thence eastwardly along the southern line of Parham Road to the eastern line of Interstate Route 95; thence northwardly along the eastern line of Interstate Route 95; to the southern line of Scott Road; thence northeastwardly along the southern line of Scott Road 900 feet, more or less, to a point in a sharp turn to the east thereon; thence eastwardly 1200 feet, more or less, to the northwest corner of the Wildwood Subdivision; thence northeastwardly along the northern property line of Wildwood Subdivision to Chamberlayne Branch; thence continuing northeastwardly along the northern line of Chamberlayne Branch to the boundary line between Henrico County and Hanover County; thence eastwardly along the boundary line of Henrico County and Hanover County to the boundary line between Henrico County and New Kent County; thence continuing eastwardly along the boundary line between Henrico County and New Kent County to the northern right-of-way of Interstate Route 64; thence westwardly along the northern right-of-way of Interstate Route 64 to the eastern line of Nine Mile Road; thence northwestwardly along the eastern line of Nine Mile Road to the eastern line of Hanover Road; thence northeastwardly along the eastern line of Hanover Road to the southern line of Washington Street (Extended); thence northwestwardly along the southern line of Washington Street (Extended) to the western line of Bridge Avenue; thence southwestwardly along the western line of Bridge Avenue to the northern line of Nine Mile Road; thence westwardly along the northern line of Nine Mile Road to the boundary line between Henrico County and the City of Richmond; thence along the boundary line between Henrico County and the City of Richmond to its intersection with the northern line of Dumbarton Road, the point and place of beginning.

page 97

page 98 } VARINA DISTRICT
CONTAINING 120.5 SQUARE MILES

Beginning at a point where the boundary line between Henrico County and the City of Richmond intersects with the northern line of Nine Mile Road; thence eastwardly along the northern line of Nine Mile Road to the western line of Bridge Avenue; thence northeastwardly along the western line of Bridge Avenue to the southern line of Washington Street; thence northeastwardly along the southern line of Washington Street (Extended) to the eastern line of Hanover Road; thence southwestwardly along the eastern line of Hanover Road to the eastern line of Nine Mile Road; thence southeastwardly along the eastern line of Nine Mile Road to the northern right-of-way of Interstate Route 64; thence eastwardly along the northern right-of-way of Interstate Route 64 yo the boundary line between Henrico County and New Kent County; thence along the boundary line between Henrico County and New Kent County to the boundary line between Henrico County and Charles City County; thence along the boundary line between Henrico County and Charles City County crossing the James River from north to south to the boundary line between Henrico County and Chesterfield County; thence along the southern bank of the James River marking the boundary line between Henrico County and Chesterfield County to the boundary line between Henrico County and the City of Richmond; thence southeastwardly across the James River to the northern bank thereof; thence northwardly following the northern bank of the James River to the boundary line between Henrico County and the City of Richmond; thence along the boundary line between Henrico County and the City of Richmond to the northern line of Nine Mile Road, the point and place of beginning.

II

1. The following table sets forth certain information relating to the total population of Henrico County, population of the five magisterial districts laid out and de-
page 99 } scribed above. The figures in said table are based on the best information available to the Commissioners on population and area:

Name of District	Area of District	Population of District	Per Cent of Variance From Average Population
Tuckahoe	30.1 Sq. Miles	32,739	+3.9%
Three Chopt	30.2 Sq. Miles	33,339	+5.8%
Brookland	30.1 Sq. Miles	32,816	+4.2%
Fairfield	33.3 Sq. Miles	29,464	—6.5%
Varina	120.5 Sq. Miles	29,157	—7.4%

Henrico County—Total Population 157,515
Average Population of Five Districts 31,503
Greatest Total Population Disparity
13.2% (5.8% + 7.4%)

2. That in the opinion of the Commissioners the disparity in population of each of the five districts as shown above from the average total county population of the five districts is not substantial although exceeding a figure of ten per cent from the average of the deviations in any combination of two of the said districts.

3. That none of the five magisterial districts contain less than the thirty square mile area required by statue and Section 111 of the Virginia Constitution, but a great disparity in the size of Varina District as compared to the other four districts was necessary by virtue of the density of population in the western portion of the County as compared to the eastern portion of the County.

page 100

4. That insofar as was possible, the Commissioners gave consideration to the compactness of the five magisterial districts and their community of interests, but in some instances, such considerations were overcome by the necessity of complying with the primary requirements.

5. That although much consideration was given by the Commissioners in an effort to avoid the displacement of any presently elected supervisor from the magisterial district in which he now resides, the Commissioners were unable to avoid this and still comply with the one-man one-vote principle and the thirty square mile requirement.

6. All but one of the five magisterial districts laid out and referred to above retain names which have been in use in the County for many years. The name, Three Chopt, is derived from the road of the same name located in the western part of the County and which now forms one boundary of the district which now bears that name. The road, and hence the name, has historical significance (as do the

names of the other districts) and was once the most direct route from this area to Louisville, Kentucky. Upon information received by the Commissioners, Three Chopt Road originally an Indian and buffalo path to the Blue Ridge Mountains.

page 101 } III

The Commissioners did not deem it necessary to place memorial stones on the boundary lines of the districts inasmuch as the boundaries are generally delineated by the boundary lines between the County of Henrico and adjoining jurisdictions or well-defined roadways.

IV

The expenses incurred by the Commissioners in connection with the matters for which they were appointed and as to which they now report, were as follows:

1. Groome Transportation, Inc. limousine rental to inspect boundary lines	$ 40.00
2. Henrico County School Board (Bill Fabry Reproduction & Supply Corporation)—reproducing maps—Credit Account No. 6130-305	10.80
3. Dr. Roderick J. Britton—assistance in connection with population studies	125.00
4. Mr. Nathan Young—assistance in preliminary area measurements	50.00
5. Mr. Scott Rogers—assistance in preliminary area measurements	75.00
6. Foster & Miller—Surveyors—area measurements and preparation of map of magisterial districts	152.00
7. Mrs. Joyce Flann—assistance in preliminary area measurements	25.00
8. Mrs. Marian K. Frazier—secretarial assistance	25.00

page 102 } V

The Commissioners report that they each expended ten days in connection with the matters for which they were appointed and for which they now report.

page 103 } March 7, 1969

Respectfully submitted,

C. Kemper Lorraine
Harry H. Moore
Harry F. Hoffman
J. B. Bourne, Jr.
Grayson F. Holt
Okla B. Meade
Howard W. Dobbins, Chairman

See Plat Book 45
Plat No. 29A&29B

Virginia: In the Office of the Clerk of the Circuit Court of the County of Henrico, March 10, 1969 this Deed was presented and with the Certificate & Plat Annexed, Admitted to Record at 11:30 o'clock A. M.

Helen C. Loving Clerk

Received & Filed in Office March 7 1969
Teste: Helen C. Loving Clerk

* * * * *

page 105 }

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NOTICE OF MOTION

* * * * *

Take Notice that we shall bring the aforementioned Motion to Vacate the Commissioners' Report forward for hearing before the Circuit Court of the County of Henrico, Virginia, at its courtroom, 22nd and Main Streets, Richmond, Virginia, on the 24th day of March, 1969, at 10:00 A. M., or as soon thereafter as we may be heard.

Forrest C. Bailey, III
Robert F. Bodde
E. Lee Chapman
Roland H. Harris, Jr.

Henry S. Hotchkiss
Edward O. Renick, Sr., and
Thomas R. Wyant

By: L. P. Byrne
Of Counsel

Received & Filed in Office March 13, 1969
Teste Margaret B. Baker, Dep. Clerk

* * * * *

page 106 }

* * * * *

MOTION TO VACATE COMMISSIONERS' REPORT

Come now the following Intervening Petitioners in Case No. 673, Forrest C. Bailey, III, Robert F. Bodde, E. Lee Chapman, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr., and Thomas R. Wyant, by counsel, and move the Court to vacate the Commissioner's Report filed herein on March 7, 1969, upon the following grounds and exceptions thereto:

1. The Commissioners' Report is contrary to the law and the evidence in this case.
2. The Commissioners' Report is contrary to the Order of this Court entered herein on October 30, 1968.
3. The Commissioners' Report is arbitrary and invidious.
4. The Commissioners' Report is unconstitutional on its face.

Forrest C. Bailey, III
Robert F. Bodde
E. Lee Chapman
Roland H. Harris, Jr.
Henry S. Hotchkiss
Edward O. Renick, Sr., and
Thomas R. Wyant

By L. P. Byrne
Of Counsel

Received & Filed in Office March 13, 1969
Teste Margaret B. Baker Dep. Clerk

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page 108 }

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NOTICE OF MOTION

* * * * *

Take Notice that we shall bring the aforementioned Motion To Dismiss "Motion To Vacate Commissioners' Report," filed by Intervening Petitioners In Case No. 673, and For Appointment Of Supervisor For Three Chopt Magisterial District forward for hearing before the Circuit Court of the County of Henrico, Virginia, at its courtroom, 22nd and Main Streets, Richmond, Virginia, on the 24th day of March, 1969, at 10:00 o'clock a. m., or as soon thereafter as we may be heard.

Petitioners in Case No. 638

Russell Alton Wright
Of Counsel

Filed March 19, 1969

* * * * *

page 109 }

* * * * *

Motion to Dismiss "Motion To Vacate Commissioners' Report", Filed by Intervening Petitioners in Case No. 673, and For Appointment of Supervisor for Three Chopt Magisterial District

Come now the Petitioners in Case No. 638, by counsel, and move the Court to dismiss Motion To Vacate Commissioners' Report filed by Intervening Petitioners in Case No. 673, Forrest C. Bailey, III, et al, on the ground that the Commissioners' Report properly carries out the Order of the Court entered herein on October 30, 1968, and that since no appeal was taken from said Order of this Court, said Order is final and is not subject to attack in the manner set forth in said motion filed by said Intervening Petitioners in Case No. 673.

Petitioners in Case No. 638, by counsel, further move this Court to appoint a supervisor for Three Chopt Magisterial District in accordance with the statue so provided in view of the foregoing and since, pursuant to §15.1-579 of the Code of Virginia of 1950, as amended, the magisterial districts designated in the Commissioners' Report have been the magisterial districts of the County of Henrico since March 7, 1969, and the people living in Three Chopt Magisterial District are not represented.

Petitioners In Case No. 638

By Russell Alton Wright
Of Counsel

Received & Filed in Office March 19, 1969
Teste Helen C. Loving Clerk

* * * * *

page 111 }

* * * * *

ORDER

This day came the parties, by counsel, to be heard upon the written motion to vacate Commissioners' report received and filed in the Clerk's Office on March 13, 1969, and upon the written motion to dismiss "Motion to Vacate Commissioners' Report" etc., received and filed in the Clerk's Office on March 19, 1969.

After hearing argument of counsel and upon consideration whereof and for the reasons stated to the record, the Court sustains the written motion to dismiss "Motion to Vacate Commissioners' Report" etc., to which action of the Court the intervening petitioners in Case No. 673, by counsel, objected and excepted.

And said intervening petitioners in Case No. 673, by counsel, having indicated their desire to appeal to the Supreme Court of Appeals of Virginia, made a motion to stay execution of the judgment sustaining the written motion to dismiss "Motion to Vacate Commissioners' Report" etc., which motion was opposed by counsel for the other parties.

After hearing argument thereon and upon consideration whereof, the Court, being of opinon that it is without authority or jurisdiction to grant the motion to stay for the reasons set forth in the record, does deny said motion to stay.

The intervening petitioners in Case No. 673, by counsel, objected and excepted to said ruling of the Court.

Enter: 3/24/69

Edmund W. Hening, Jr.
Judge

* * * * *

page 112 } We ask for and consent to this:

Russell Alton Wright
George R. Humrickhouse
Attorneys for Petitioners in
Case No. 638

Seen:

Donald R. Howren
J. Mercer White
Attorneys for Petitioners in
Case No. 673

Seen and objections and exceptions noted:

L. P. Byrne
Attorney for Intervening
Petitioners in Case No. 673

page 113 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

The undersigned, Counsel of Record for the Intervening Petitioners in Case No. 673, Forrest C. Bailey, III, Robert F. Bodde, E. Lee Chapman, Roland H. Harris, Jr., Henry S. Hotchkiss, Edward O. Renick, Sr., and Thomas R. Wyant, hereby gives notice of their intention to appeal from the final order of this Court heretofore entered on March 24, 1969, and assigns the following errors:

1. The Court erred in sustaining the written motion of the petitioners in Case No. 638 to dismiss the Motion to Vacate Commissioners' Report filed by the Intervening Petitioners in Case No. 673 on the grounds:

A. That its Order of October 30, 1968, was a Final Order; and

B. That the Commissioners' Report, filed on March 7, 1969, pursuant to said Order was not reviewable by the Court; and

C. That the Court was without jurisdiction to hear and determine the Motion to Vacate said Commissioners' Report.

page 114 } 2. The Court erred in denying the Motion to Stay any further action and proceeding in this cause made by the Intervening Petitioners in Case No. 673, pending final adjudication of this matter by the Supreme Court of Appeals of Virginia.

Respectfully submitted this 25th day of March, 1969.

Forrest C. Bailey, III
Robert F. Bodde
E. Lee Chapman
Roland H. Harris, Jr.
Henry S. Hotchkiss
Edward O. Renick, Sr., and
Thomas R. Wyant, Intervening
Petitioners in Case No. 673

By: L. P. Byrne
Of Counsel

Received & Filed in Office March 25, 1969
Teste M. B. Baker, Dep. Clerk

* * * * *

page 1 }

* * * * *

DATE: March 24, 1969

BEFORE: Hon. Edmund W. Hening, Jr., Judge

APPEARANCES:

George R. Humrickhouse, Esquire,
Russell Alton Wright, Esquire
Attorneys for petitioners in Case No. 638

Donald R. Howren, Esquire
J. Mercer White, Jr., Esquire
Attorneys for petitioners in Case No. 673

L. Paul Byrne, Esquire,
Andrew W. Wood, Esquire
Attorneys for intervening petitioners

page 2 } RULING OF THE COURT

The Court: Gentlemen of counsel, the Court feels it should go ahead and make its decision in this case at this time without taking the matter under advisement any further, in view of your respective arguments, which have been most helpful.

The Court addresses itself first to the motion to dismiss filed on March 19, 1969, by Attorney Wright, which motion is on behalf of the petitioners in Case 638 and directed against the motion to vacate the commissioners' report. Because a little earlier this morning the Court took under advisement the argument in connection with this motion to dismiss, let me now return to it.

To begin with, I think it should be observed that what is said in those provisions relating to 15.1-571 through 581 on the subject of redistricting magisterial districts is inclusive and exclusive. There doesn't seem to be any other section of the Code that refers back to it or ties in in any way with it, nor does anything inside these sections refer back to anything else that would expand upon the proceedings

page 3 } other than what is stated in statutory provisions 15.1-571 through 581.

At the same time, the Court is not unmindful of the observation I believe made by Mr. Humrickhouse or Mr. Wright to the effect that originally the commissioners went ahead and did the whole business of redistricting, and there wasn't any proceeding before the Court to handle the thing on its own. Or having heard and decided that a redistricting should go forward, that it be referred to the commissioners for such redistricting, as the present Code reads.

It seems to me that the law has provided and counsel have approached it from the standpoint that it has been a two-phase situation. You come into court on both of these matters and in effect say let the Court make the determination. In the first case, 638, the petitioners through Mr. Humrickhouse and Mr. Wright in effect say you, the Court, make the only determination; it's unnecessary for the commissioners. Then in case 673, the gentlemen over here (indicating) come in and say, yes, the Court should make the decision about whether there should be a redistricting; but if you so decide, on our motion and pursuant to the statute, be sure and refer it to commissioners and let them do it, because they are in a better position to do it than the Court.

page 4 } And I certainly want to observe—and I thought I put it in the opinion—that it's extremely difficult for a judge, with a bunch of maps introduced by experts, to sit in a courtroom or, more particularly, in his chambers and start drawing lines in a county with 254 square miles with it and come out anywhere near right without going right smack through somebody's house or right smack through a major building. And I thought the prior opinion of the Court already alluded to the need for commissioners to get out in the area and see where the lines are to be, because there were the roads and houses and buildings and things that make practical any division, according to the guidelines suggested.

It astounded me that some appellate courts apparently have no recognition of what takes place in a courtroom as to witnesses, or that it is necessary to go outside the courtroom when you start drawing lines in a great big county in a great big state. People obviously assume they have such great vision that they can set up there on the record and draw perfect lines and condemn other people who have gone out and walked all around and seen these things. I thought the law had an aspect of practicability that certainly seems to have been overlooked on a number

page 5 } of occasions, all of which may be pure history or summation.

Up to what is the main point on the motion to dismiss, as I see it, I see nothing in these provisions of the Code—15.1-571 through 581—that relate anything to the filing of exceptions or the Court taking up the filing of exceptions or things of this sort.

And so we come back basically to what I would consider a very general law, a very positive law, starting with Rule 1:9. And Rule 1:9 says: "All final judgments, orders, and decrees, respective of the terms or court, shall remain under the control of the trial court and subject to be modified or vacated for twenty-one days after the date of entry, and no longer."

So, the question is what authority or jurisdiction does the Court have at this time to do anything with respect to this order that was final on October 30 or twenty-one days thereafter, as it relates to this commissioners' report, under the framework of the Code, which under 15.1-579 and 578 they file the report, then "the clerk of such court shall record the report and the diagram in his deed book and shall furnish the Secretary of the Commonwealth an attested copy thereof. And the magisterial districts so designated and laid off, whether by the court or commissioners, shall thereafter be the magisterial districts of such county."

page 6 } Now, as to the point of whether there is any authority or jurisdiction for the Court to do anything at this stage, I would invite counsel's attention to *Martin* v. *Commonwealth,* 207 Va. 459. And here we are talking about a judgment in a criminal case. The Court there said final after twenty-one days.

In *Lyle, an inf.* v. *Ekleberry,* 209 Va. 349, the trial court entered an order disposing of the case on a certain day, and twenty-one days afterwards it's final.

There was a more recent one that I haven't even had a chance to read. It hasn't come through in the advance sheets, but it's in this Law Letter from the Virginia Trial Lawyers Association that is circulated to the Judge's desk. In the case involving Record 6853 in the Corporation Court of the City of Lynchburg, opinion by Justice Harrison, *Hirschkop* v. *Commonwealth,* this is the language from the excerpt of this headnote: "The defendant's motion to vacate"—a prior judgement—"came more than twenty-one days after judgment had become final. After this, the Court refused a writ of error. The trial court was without authority to entertain the motion, and this court is without jurisdiction."

And there are some other references. Burke's Pleading and Practice, Fourth Edition, is one of them. There are probably several. Section 203 in effect says any-
page 7 } one can raise the question of the court's jurisdiction, including the Court itself. Some of these references to cases cited there might be pertinent here.

So, in accord with the reasoning the Court has cited, it in effect says that it is now holding that it has no authority or jurisdiction to consider the motion to vacate the commissioners' report heretofore filed, and therefore it is sustaining the motion to dismiss the motion to vacate the commissioners' report.

But I think, while we are on it and even though it's unnecessary and moot—or if it's held that it was not unnecessary and moot—if the Court had the authority and jurisdiction to pass on the motion to vacate the commissioners' report, it would have denied the motion.

First of all, the judgment order was final. And under the terms of the order of October 30, 1968, I really have serious doubts of the right of parties who endorse an order and subsequently take an inconsistent position.

So here we have an attempt to vacate the report based on something on the bottom of the third page and going on the fourth page of the Court's order of October 30, which order was endorsed by all counsel. This paragraph says,
page 8 } "It is further ordered that the clerk of this court

shall, upon receipt thereof"—referring back to the commissioners' report—"record the report and diagram in the deed book, and shall furnish the Secretary of the Commonwealth an attested copy thereof. And the magisterial districts so designated and laid off by the commissioners shall thereafter be the magisterial districts of Henrico County."

But I think to go back into the guidelines and argument we have heard this morning on whether the commissioners met the guidelines is basically to redirect the court's attention to its own opinion, in which it has already set forth the reasons for the guidelines. And nothing has been said in argument by counsel that would change the Court's view of the basic guidelines that are set forth in this opinion which were reincorporated in its order of October 30.

It appears to me that much is apparently being made of the language of Page 2 under Guideline 1, and principally the third sentence. And you all have given it different interpretations, and the Court might itself put another interpretation on it: That all the court need to have said was in Sentence 1 and Sentence 2 of Guideline 1, and page 9 } that when it went ahead and saying "it being preferable", it was volunteering something beyond the actual guideline, so to speak.

But the *Avery* case is really saying "no substantial variation in population". And all the cases that Mr. Wright has referred to relating to reapportionment, they don't even begin to think it's invidious—or anything else under that grand term they thought up—until it exceeds 10 percent.

But I find nothing in the argument with regard to the commissioners not following the guidelines that has any weight to it at all. So that if only the motion to vacate the commissioners' report was before the court, the Court would overrule the motion to vacate. But all of this latter part of the statement or opinon that I am making to counsel is really secondary and unnecessary. Because as I see it, sustaining the motion to dismiss the motion to vacate the commissioners' report in the first instance makes it really unnecessary to consider the motion to vacate the commissioners' report.

Gentlemen, whatever you all want to put on the record, now would be the time to do it. But while we are here I would like for you all to go back in the office and let's just get the order right now while everybody is together. page 10 } Otherwise, it will be two weeks while everybody is moving around circulating the order.

So, we will go back to the office and write it, as soon as you all put in the record anything you wish.

Note: Discussion off the record.

Mr. Byrne: May it please the Court, I believe I represent the only parties who may be aggrieved by this situation. So, we would like to have the record show that we object and except to the ruling of the Court, and we note an appeal thereto. The proper Notice of Appeal and Assignments of Error will be filed.

The Court: Anything you all want in the record at this time, Gentlemen?

Mr. Wright: (Shaking head)

Mr. Howren: Your Honor, may I say something about the second half of this motion filed by Mr. Wright and
page 11 } Mr. Humrickhouse, concerning the appointment of a supervisor?

The Court: Yes, Mr. Howren.

Mr. Howren: Since the Court has overruled the motion to vacate the—sustained the motion not to entertain the motion to vacate the commissioners' report, then as Commonwealth's Attorney and a representative of counsel of record for the Board of Supervisors, I think without question I have to join in this motion for the appointment of a supervisor, by Mr. Wright and Mr. Humrickhouse. I think that the situation now exists that five districts are created, and at this time one needs a representative.

The Court: Anyone else wish to be heard?

Mr. Byrne: May it please the Court, in connection with that, I would move to stay the proceedings and any further action in this cause until such time as the statutory period for perfecting such an appeal has expired, or until the Supreme Court of Appeals of Virginia has had an opportunity to dispose of this matter either by denial of a writ or by final adjudication of the question involved.

Mr. Humrichouse: May it please the Court, we would earnestly object to any stay of the proceedings. The only persons that can be harmed by a stay of the proceedings
page 12 } are those who have already been harmed by the failure to have a representative. If the Supreme Court of Appeals decides to grant a writ and/or an appeal and does say that this court is in error, the only harm that has been done is that they have had one more supervisor than they have had for sometime. To stay the proceeding would do irreparable damage and harm to those parties involved, and our clients.

The Court: Do you have any position to state with regard to that, Mr. Howren?

Mr. Howren: Yes, sir, Your Honor. The county business has to proceed. I feel that since the commissioners' report

set out these five districts, there are people in the county who need to be represented on this Board of Supervisors. And I feel that to delay any further their representation on this board would do even more harm than the Midland County case has come out and said you cannot do. These people don't have any representation at all, much less a one-vote one-man rule.

The Court: Well, as a matter of fact, the Court has been very conscious of its responsibility with regard to the appointment of a supervisor for the new district, Three Chopt Magisterial District. Probably more out of courtsey to counsel, than anything else, the Court waited for this

page 13 } particular hearing before previously taking any steps in this connection.

The Court has given it considerable thought. And, in addition, the Court didn't really think that it was a part of this particular proceeding. In other words, it seems to me and it's an entirely separate thing not connected with an order in which counsel are interested at all. I mean other than the fact that you hope that the Court is going to come up with somebody who is responsible enough to serve in this capacity.

But I mean this isn't an order, as I see it, on appointing the supervisor that I have to get any endorsement from counsel or that the Court solicits any suggestions from counsel, or that any order with respect to it has to be approved or endorsed by counsel in any way. As I see it, this is a separate responsibility one sentence of the Code places upon the Court.

Mr. Byrne: It's an administrative action of the judge under the Code; not a judicial decision.

The Court: Right. And with regard to this so-called staying matter that Mr. Byrne is suggesting, I don't see any basis on which I can grant a stay; because in effect I have already held that the motion to dismiss the motion to vacate the commissioners' report should be sustained, as

page 14 } I have no authority to consider the motion to vacate the commissioners' report. So that is a part of it. I have held that what the Court had to do was final as of October 30, and it has no further jurisdiction or authority to act at all.

So, I will meet counsel in chambers in about five minutes.

Mr. Byrne: I assume the Court overrules the motion to stay?

The Court: Yes.

Mr. Byrne: We would for the record note an objection and exception.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	3
Petition	3
Order—December 29, 1967	5
Order—February 26, 1968	5
Motion to Intervene	6
Petition to Intervene	7
Petition	9
Order—April 16, 1968	10
Motion of Defendant	11
Notice of Motion	12
Final Order—October 30, 1968	12
Commissioners' Report	15
Notice of Motion	23
Motion to Vacate Commissioners' Report	24
Notice of Motion	25
Motion to Dismiss Motion to Vacate Commissioners' Report	25
Judgment—March 24, 1969	26
Notice of Appeal and Assignments of Error	27
Proceedings	29