216 Va. 674

CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

NO. 741174

GEORGE VOLLIN, JR., et al

Appellants

V.

ARLINGTON COUNTY ELECTORAL BOARD
CORNELIA ROSE

Intervenors

(Appellees)

APPENDIX TO BRIEF

On Appeal from an Order of the Arlington County

Circuit Court

SHERMAN W. PRATT
Counsel for Appellants
1512 South 20th Street
Arlington, Virginia 22202

RICHMOND, VIRGINIA
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

GEORGE VOLLIN, JR.,
DOLORES LURITO,
HARRISON DOUGLAS,
ETHEL TUCKER,
FRANK WALSH,
KAY LOU PAPANICOLAS,
PHILIP J. KACZMAREK,
DORA CURTIS,
Plaintiffs

v.

Civil Action
No. 173-74-A

MILLS E. GODWIN, Governor,

ULYSSES P. JOYNER, JR.,
EDGAR A. PRICHARD,
JOAN S. MAHAN,
Members, Virginia State
Board of Elections

RALPH KIMBEL,
WILLIAM O'CONNEL,
MICHAEL HAGE,
Members, Arlington County
Board of Elections
Defendants

ANSWER TO INTERROGATORIES

Defendants, Honorable Mills E. Godwin, Governor, Commonwealth of Virginia, and Ulysses P. Joyner, Edgar A. Prichard and Joan S. Mahan, members, Virginia State Board of Elections, by counsel, object to the applicability of plaintiffs' Interrogatories Nos. 1 through 10. Said questions pertain only to officials of Arlington County.

In reply to Interrogatory No. 6, counsel for defendants asserts that an argument exists that State law would allow a procedure to take the sense of the people on the question whether Arlington County should change its form of government. See e.g., § 15.1-694 of the Code of Virginia (1950), as amended. As such, plaintiffs have an adequate remedy in State law and this Court should abstain pending resolution of such remedy.

Respectfully submitted,

MILLS E. GODWIN, Governor,

ULYSSES P. JOYNER, JR.,
EDGAR A. PRICHARD,
JOAN S. MAHAN,

Members of Virginia State
Board of Elections

By: /s/
Counsel

Andrew P. Miller
Attorney General of Virginia

Anthony F. Troy
Deputy Attorney General

Henry M. Massie, Jr.
Assistant Attorney General

Supreme Court-Library Building
1101 East Broad Street
Richmond, Virginia 23219

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer to Interrogatories was mailed, postage prepaid,

this 23rd day of July, 1974, to Sherman W. Pratt, Esquire, 1512 South 20th Street, Arlington, Virginia 22202, and Jerry K. Emrich, Esquire, County Attorney, County of Arlington, 2100 14th Street, North, Arlington, Virginia 22201.

/s/

Before the
ARLINGTON COUNTY CIRCUIT COURT
Arlington, Virginia

EX PARTE PETITION OF	)
GEORGE VOLLIN, JR.,	)
and others for a change in	)
the organization and	)
government of Arlington	)
County	)

P E T I T I O N

To: The Honorable Court (or Judge thereof in vacation)

Comes now George Vollin, Jr., a resident and registered voter of Arlington County, Virginia, and at least 200 other residents and qualified voters of Arlington County, and petitions this Honorable Court to require, by Order, the judges of election, or appropriate election officials, pursuant to Section 15.1-694 and any other related Sections of the Code of Virginia (1950) as amended, and an opinion of the Office of the Attorney General for the Commonwealth of Virginia contained in a related pending litigation (copy attached hereto), to open a poll, preferably in the 1974 general election in November, and take the sense of the qualified voters of the county on the question of whether they desire the form of government, or organization of government of Arlington County changed to provide that

the governing body members be elected from magisterial districts, rather than at large as at present.

GEORGE VOLLIN, JR., et al
(additional signature pages
attached hereto)

SEEN:

SHERMAN W. PRATT, Attorney
1512 So 20th Street
Arlington, Virginia 22202
632-7197, 521-7706
Of Counsel.

ARLINGTON COUNTY CIRCUIT COURT
Arlington, Virginia

In re EX PARTE PETITION OF)
GEORGE VOLLIN, JR., et al)
for a change in the Organization)
and Government of Arlington)
County, Virginia)

O R D E R

To: The Arlington County Electoral Board
Ralph Kimble,
William O'Connell, and
Michael Hage, Members

Whereas the Court has before it for consideration a petition signed by one George Vollin, Jr., and at least 200 others, all of whom assert they are residents and registered voters of Arlington County; and

Whereas said petitioners are requesting this Court to Order the Judges of election to open a poll to take the sense of the voters, pursuant to the Code of Virginia (1950) as amended, on the question of whether they desire the form or organization of the Arlington County government changed to provide that the governing body members are elected from magisterial districts instead of at large; and

Whereas this Court has found that said petition is in good order and that petitioners are legally entitled

to the action by this Court that they request;

IT IS THEREFORE ORDERED, pursuant to Section 15.1-694 of the Code of Virginia (1950) as amended, that you open a poll and take the sense of the qualified voters of Arlington County on the questions hereinafter specified, and IT IS FURTHER ORDERED that said poll be taken at the November 5, 1974, general election unless that date is less than 30 days from the date of this order, in which case said poll is to be taken not less than 30, nor more than 90, days from the date of this Order.

Question 1. Shall the County change its form of government?

/__/ For

/__/ Against

Question 2. In the event of such change, which form of government shall be adopted?

/__/ Modified Commission plan

or

/__/ County Manager plan

Question 3. In the event of such change, shall the governing board be elected at large or by districts?

/__/ At large

/__/ By districts

_____
(Judge)

Date: _____

SEEN:

SHERMAN W. PRATT, Attorney
Of Counsel for Petitioners

Additional Signature pages to be attached to the Petition filed in Arlington County Circuit Court for a change in the Organization and government of Arlington County.

SIGNATURE	NAME PRINTED	ADDRESS	PRECINCT
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			

I certify that I, the undersigned, a resident and voter of Arlington County, personally witnessed the signatures appearing hereon.

_____
(Name and address)

Subscribed and sworn to before me, a person duly authorized to administer oaths in cases of this nature, on this _____ day of _____, 1974.

_____
(Notary Public)

S E A L

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

IN RE: PETITION OF GEORGE VOLLIN, JR., ET AL., FOR A CHANGE IN THE ORGANIZATION AND GOVERNMENT OF ARLINGTON COUNTY, VIRGINIA	)	At Law No. 17298

ORDER

IT APPEARING TO THE COURT that a Petition has been filed herein which requests that an order be entered by this Court requiring the Arlington County Electoral Board to open a poll and take the sense of the qualified voters of Arlington County, Virginia, on certain questions set forth more particularly in the proposed order of the Petitioners all pursuant to Section 15.1-694, Code of Virginia, 1950, as amended, and

IT FURTHER APPEARING TO THE COURT that prior to the consideration of or entry of any proposed order in this matter, the Court should have the benefit of the argument of counsel and the presentation of authorities on the issues raised in the Petition; whereupon it is

ORDERED that counsel for the Petitioners and for the Arlington County Electoral Board appear on Friday, September 13, 1974, at 10:00 o'clock A.M. or as soon thereafter as counsel may be heard, to be heard on the

issues raised in the Petition; and it is further

ORDERED that a copy of this Order be served on the Secretary of the Arlington County Electoral Board and that a copy of this Order be furnished forthwith to counsel for the Petitioners.

Entered: September 9, 1974

WILLIAM L. WINSTON
Judge

A COPY,

TESTE: JOSEPH C. GWALTNEY, Clerk

By_____
Deputy Clerk

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

IN RE: PETITION OF GEORGE VOLLIN, JR., ET AL., FOR A CHANGE IN THE ORGANIZATION AND GOVERNMENT OF ARLINGTON COUNTY, VIRGINIA	)	At Law No. 17298

PETITIONERS' BRIEF OF HISTORY AND LAW

With reference to the Court's Order entered on September 9, 1974, in this matter, in an effort to be of assistance to the Court, the Petitioners respectfully submit the following.

In event an argument is made, or there is uncertainty with the Court concerning the present validity of Section 15.1-694 of the Code of Virginia (formerly Sections 2773 (15-(23) of 109c of Title 25 of Virginia Code Ann. (1930), as an existing statute upon which petitions may rely, petitioners point out as follows:

Section 15.1-694 was adopted by the Virginia General Assembly by action on January 27, 1950, following the submission on December 15, 1947 of the Report of the Commission on Recodification. The following language appears in the Forward or Preface of the Commission's Report (as now contained in Volume I of the Code of Virginia (1950));

"The Code Commission has codified into the Code the Acts of the 1950 and subsequent sessions, which are of a general and permanent nature." (emphasis supplied)

"It has been the intention of the Commission to omit statutes and portions of statutes which have been in whole or in part repealed, expressly or by clear implication, and statutes that have expired by their own terms, or have been superceded by more recent legislation, or have otherwise become obsolete." (emphasis supplied)

"The proposed Code is believed to be a complete and accurate statement of the presently existing general statutes of Virginia." (emphasis supplied)

"To supply the need for such a complete, accurate and usable statement of the statute law, in a form that may be kept permanently usable has been the immediate and primary purpose of the Commission." (emphasis supplied)

"If the work done by the Commission in the way of . . . eliminating dead statutes and harmonizing and arranging the living statutes has been adequately done, (the necessary first step of (Code revision) has been accomplished." (emphasis supplied)

In addition to the above language in the Commission Report, Volume 82 of C.J.S. "Statutes" has the following to say under Section VII,

§ 271 A revision (or codification) contemplates a redrafting and simplification of the entire body of statute law. It involves the elimination of . . . obsolete provisions. It is a complete statement of the law." Fidelity and Columbia Trust Co. 171S.W. 2d 41. (emphasis supplied)

"Revision or codification of laws may be effected by the omission of laws . . . . The Code Revision is intended to take the place of the law as previously formulated and to include all the law of the state of a general or permanent nature to the date of its adoption . . . ." Berks Broadcasting v Carol, 45 S.E. 2d 257, "unless otherwise provided in the Code or in the acts of the legislature in adopting it." Burke v Layoff 199 SW 775 (emphasis supplied)

If there exists any doubt as to the meaning and application of the subject Code section, despite the above cited authorities, petitioners believe it should be resolved by a liberal interpretation of the statute so as to accomplish the purpose of the act in accordance with the intention of the legislature. On the subject of statutory construction and operation, Volume 82 of C.J.S. contains the following:

§ 337 "Where language of a statute . . . is uncertain, the subject matter of the statute will control,

to some extent, whether a liberal or strict interpretation shall be adopted." La Farque v Waggoner, 753 W. 2d 235.

"Thus laws enacted in the interest of public welfare, or convenience, or in which the public at large is interested or with respect to the rights of citizenship. . . have been liberally construed with a view to promote the object in the mind of the legislature. Gause v American Life Ins Co, 267 NW 368; People v Earl, 94 Pac 294. (emphasis supplied)

"The requirements of a statute which are directory shall receive a liberal consideration for the accomplishment of the purposes of the Act." People v Earl, 94 Pac 294. (emphasis supplied)

"The rule of liberal or strict construction is subordinate and subject to the general principle that the ascertainment of legislative intent is the paramount object of statutory construction and is utilized with the various other rules of construction simply as a means of ascertaining and effectuating legislative intent." Blorstein v Standard Oil, 49 A 2d 726; Garrity v the District of Columbia, 86 F 2d 207.

In researching and Sheppardizing this subject, Counsel for the Petitioners has been unable to find any State of Virginia cases that conflict with the near

unanimous judicial decisions relied upon by 82 C.J.S. in its statements of the law on this subject.

In summary, Petitioners believe the quoted law clearly permits, in fact requires (". . . the Court shall . . . issue an order, etc") the Court to take the action here requested by Petitioners. The petitioners do not believe, as might be urged by those arguing against the requested action, that the statute, passed in 1930, and once used in 1931, as the law under which Arlington County government was adopted and now operates, is a "one time" law which when once used, is no longer available and usable to Petitioners. Petitioners further assert, however, that if doubt exists on this point, notwithstanding the language and clear intent of the codification commission, and the General assembly in approving the work of the Commission, then this doubt should be resolved in favor of petitioners who as citizens in a democratic society are, essentially, seeking to more fully participate in the democratic system through the electoral process. With respect to the intent of the Virginia legislature on the question of whether the citizens of Arlington are provided a democratic means of changing their form or organization of local government through the subject statute, petitioners would point out that in every other Chapter of Title 15 of the Code of

Virginia providing for various forms of County or local government, there is a provision permitting citizens (by petition or resolution, and election) to discard a form of government once adopted. To hold that Section 15.1-694 as a part of Chapter 14, (which is the chapter under which only the Arlington County government in all of Virginia is organized) does not provide Arlington citizens with a statutory recourse to change the organization or form of government, would be tantamount to concluding that the legislature intended, and did, provide all Virginia citizens with a statutory recourse for so changing their local governments - with the sole exception of Arlington County residents. Such a constriction, absent clear legislative intent to the contrary, is neither necessary or reasonable nor would it serve any rational public interest.

Accordingly, Petitioners urge that this Honorable Court grant their petition and issue the order herein requested.

GEORGE VOLLIN, JR., et al

by /s/
Counsel

SHERMAN W. PRATT
1512 South 20th Street
Arlington, VA 22202

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

IN RE: PETITION OF GEORGE VOLLIN, JR., ET AL., FOR A CHANGE IN THE ORGANIZATION AND GOVERNMENT OF ARLINGTON COUNTY, VIRGINIA	)	At Law No. 17298

ORDER

THIS MATTER was heard on the petition of George Vollin, et al., by counsel, for an order requiring the judges of election to fix a day for a poll to take the sense of the qualified voters of Arlington County on the questions provided for in Section 15.1-694 of the Code of Virginia, and after a hearing held on September 13, 1974, at which counsel for the petitioners, the Arlington County Electoral Board, and Miss Cornelia B. Rose, a taxpayer and voter in Arlington County, had opportunity to be heard, and after consideration of the petition, the applicable statute of Virginia, and argument of counsel,

The Court was of the opinion that:

1. Section 15.1-694 is general legislation and this generality of its nature is the reason for its periodic re-enactment and does not express any intention by the legislature to make such an election available to a Virginia County which has already come under its

provisions;

2. Arlington County is not precluded from changing its form of government because its citizens or governing body have a continuing opportunity to request changes in its form of government from the General Assembly;

3. Section 15.1-694 is a provision available only to Virginia Counties which meet the standards of Section 15.1-694 and have not previously adopted either the Modified Commission Plan or County Manager Plan of government;

4. The Court does not need to decide the applicability of Section 15.1-695 and Section 24.1-165, since it has decided that Section 15.1-694 may not be used by Arlington County; and it is therefore

ORDERED that the petition of George Vollin, Jr., et al., be denied and is hereby dismissed.

This order is final.

ENTERED: Sept. 30/74

/s/
William L. Winston, Judge

SEEN AND AGREED:

/s/
Lawrence Latto, Esq.
Counsel for Cornelia B. Rose

/s/

Charles G. Flinn
Assistant County Attorney for
Arlington County, Virginia
Counsel for Arlington County
Electoral Board

SEEN AND OBJECTED TO:

/s/

Sherman W. Pratt, Esq.
Counsel for George Vollin, et al.

VIRGINIA

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

IN RE: PETITION OF GEORGE VOLLIN, JR., ET AL., FOR A CHANGE IN THE ORGANIZATION AND GOVERNMENT OF ARLINGTON COUNTY, VIRGINIA	)	At Law No. 17298

MOTION FOR RECONSIDERATION AND REVERSAL OF ORDER DENYING AND DISMISSING PETITION

Comes now the petitioners in this proceeding and urges this Honorable Court to reconsider the petition on file and to set aside and nulify the Order released and entered on September 30 (?), 1974, and from the bench, and to grant petitioners the action requested. Petitioners assert the Court has misapplied the law and has failed to take into account precedent decisions that are applicable and controlling with respect to this matter.

In oral argument before the Court, petitioners asserted that the Court is compelled by Section 15.1-694 of the Code of Virginia to issue an order requiring the County election officials to open a poll to take the sense of the voters, as specified in the petition and provided for in the statute. Petitioners further asserted that the language of the codification commission and the General Assembly in 1950, as set forth in specificity in the Brief filed by petitioners in this matter, established

that the subject statutory section is a continuing, live and usable statute available to petitioners for further use, and not a "one time" statute which when once used is no longer available to voters or citizens in Arlington County.

Intervening citizen Rose, through counsel, argued orally in Court that, contrary to petitioners position stated above, the statute is in fact a one time section when once used may not be again made available to citizens in Arlington County, and that the codification commission and General Assembly retained the statute in 1950 in event any other county in Virginia, through its citizens, opted to use its provisions. This argument was raised for the first time at the oral hearing since there was no exchange of pleadings or other filings by counsels herein, and it caught petitioners by surprise.

Upon further research and study petitioners learn that by provisions elsewhere in the Chapter and Title of the Virginia Code of which Section 15.1-694 is a part, and by a decision of the Virginia Supreme Court, the section can only apply to Arlington County, and to no other county in the State and its continued presence in the Code, deliberately retained by the General Assembly, constitutes a valid, existing and usable statute available to petitioners.

The election contemplated in Section 15.1-694 is one that is permitted through the applicability criteria in Section 15.1-669 (Article 1 of Chapter 14 of which Section 15.1-694 is a part). That section applies to any county "having a population of five hundred inhabitants or more to the square mile. . ." and "having less than sixty square miles of high land." Arlington County is the only county in the State of Virginia with less than 60 square miles of high land, as shown in the Rand McNally World Atlas, an extract copy of which is attached to this Motion.[1] The next nearest county is the County of Mathews (Newport News-Hampton area) which has 89 square miles of land. Thus, it is an impossibility for Section 15.1-694 or Chapter 14, to apply to any other county and without merit to argue to the contrary since the General Assembly must be presumed to have known the size of Virginia counties and thus intended that the section could only apply to Arlington County.

Furthermore, the Supreme Court has rules expressly that the sections cited in Chapter 14 apply only to Arlington County. In Henrico County v City of Richmond, 177 Va 754 (15 S.E. 2d 309) so held as reflected in key

[1]The same land area information, without any material or substantial deviation, is contained in annual Reports of the Secretary of the Commonwealth of Virginia.

paragraph 6 of the decision and the footnote to Section 15.1-669 under Application which reads in part, "The Act containing these provisions, Ch. 167, Acts of 1930 . . . was conceededly designed to apply only to Arlington County . . . ." (emphasis supplied)

In view of the foregoing, petitioners again urge the Court to grant the action requested in their petition. In event the Court does so grant petitioners request, petitioners move that they be allowed, if found to be necessary under the provisions of Section 15.1-695 of the Code, to perfect their petition within a reasonable time, say not more than ten days, to enable the matter to be placed on the ballot in the November 5, 1974, general election in the County.

Respectfully submitted,

GEORGE VOLLIN, JR., et al

Date: Sept. 30, 1974

By /s/
SHERMAN W. PRATT
Counsel

CERTIFICATE OF SERVICE

I certify that I have mailed a copy of this Motion, by U.S. Mail, postage prepaid, to the following, on this date.

Charles Flinn, Esq.
Office of the County Attorney
Arlington County
2100 No 14th Street
Arlington, VA

Lawrence Latto, Esq.
Counsel for Cornelia Rose
734 15th Street, NW
Washington, D. C.

and

928 South 26th St.
Arlington, VA 22202

/s/

SHERMAN W. PRATT
1512 South 20th Street
Arlington, VA 22202

Extract of page 533, 1975 Commercial Atlas and Manufacturing Guide, Printed and Published by Rand, McNally and Company, Chicago, New York, San Francisco.

Virginia Counties (Total 95 Counties)	County Seat	Land Area (Sq Mi)
* *	* *	*
Arlington	Arlington	26
* *	* *	*
Mathews	Newport News-Hampton	89
* *	* *	*

(NOTE: All other counties listed in this table are shown to have more than 89 square miles of land area with most counties having between about 300 and 500 square miles of land area and the largest county of Pittsylvania having 1,012 square miles.)

V I R G I N I A:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

IN RE: PETITION OF GEORGE VOLLIN, JR., ET AL., FOR A CHANGE IN THE ORGANIZATION AND GOVERNMENT OF ARLINGTON COUNTY, VIRGINIA	)	At Law No. 17298

ORDER

This matter was heard on the motion of George Vollin, Jr., et al., by counsel, for reconsideration and reversal of the order of this Court entered September 30, 1974, denying and dismissing the petition for an election pursuant to Section 15.1-694 of the annotated Code of Virginia, which motion for reconsideration was duly filed and taken under consideration by the Court within 21 days of the order denying and dismissing the petition, and after counsel for the petitioners, for Miss Cornelia B. Rose, and for the Arlington County Electoral Board had an opportunity to be heard, and after consideration by the Court of the motion, the argument of counsel, and further consideration of the statute in question, the Court was of the opinion that the order of September 30, 1974, ought to be confirmed and the motion for reconsideration and reversal denied; it is therefore

ORDERED that the motion of George Vollin, Jr.,

et al., for reconsideration and reversal be and hereby is denied.

This Order is final.

ENTERED this 15 day of November, 1974.

/s/
William L. Winston, Judge

SEEN AND AGREED:

/s/
Lawrence Latto, Esq.
Counsel for Cornelia B. Rose

SEEN:

/s/
Charles G. Flinn
Assistant County Attorney
Counsel for Arlington County Electoral Board

SEEN AND OBJECTED TO:

/s/
Sherman W. Pratt, Esq.
Counsel for George Vollin, Jr., et al.

CERTIFICATE OF FILING AND SERVICE

(Rule 5:49)

I hereby certify that I have mailed on the ~~1st~~ 29th day of ~~August~~ July, 1975, 25 copies of the foregoing Appendix to the Appeal Brief with the Clerk of the Supreme Court of Virginia, and three copies to Lawrence J. Latto, Counsel for Intervenor Cornelia Rose, and three copies to Jerry K. Emrich and Charles G. Flinn, Attorneys for Arlington County Electoral Board, at their addresses of record.

Sherman W. Pratt

Sherman W. Pratt
Counsel for Appellants
1512 South 20th Street
Arlington, Virginia 22202