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# Record No. 4210

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**STANLEY B. HANES AND THE TOWN OF  
HERNDON, VIRGINIA**

v.

**TRACY N. FOX**

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FROM THE CIRCUIT COURT OF FAIRFAX COUNTY

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## RULE 5:12—BRIEFS.

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

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

H. G. TURNER, Clerk.

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

196 VA 51





IN THE  
**Supreme Court of Appeals of Virginia**

AT RICHMOND

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**Record 4210**

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VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 2nd day of September, 1953.

STANLEY B. HANES AND THE TOWN OF HERNDON,  
VIRGINIA, Appellants,

*against*

TRACY N. FOX,

Appellee.

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From the Circuit Court of Fairfax County.

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This is to certify that upon the petition of Stanley B. Hanes and the Town of Herndon, Virginia, an appeal and *supersedeas* has been awarded by one of the Justices of the Supreme Court of Appeals of Virginia from an order entered by the Circuit Court of Fairfax County on the 30th day of March, 1953, in a certain proceeding then therein depending wherein Tracy N. Fox was plaintiff and the said petitioners were defendants, upon the petitioners, or some one for them, entering into bond with sufficient surety before the clerk of the said circuit court in the penalty of three hundred dollars, with condition as the law directs.

## RECORD

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\* \* \* \* \*

Filed in Circuit Court Clerk's Office, Jan. 19, 1953

THOMAS P. CHAPMAN, JR.  
 Clerk, of the Circuit Court  
 Fairfax County, Va.

Writ tax paid	\$3.00
Deposit	\$8.50

## IN PROHIBITION.

1. Your petitioner, Tracy N. Fox, represents that on the 2nd. day of November, 1952, he was arrested on an alleged warrant issued by an alleged Trial Magistrate, Stanley B. Hanes.

2. The said Stanley B. Hanes is an executive employed by the United States government in Washington, D. C.

3. The Town of Herndon has employed the said Stanley B. Hanes as the Judge of the Police Court of the Town of Herndon, Virginia, contrary to Sec. 2-27 1950 code.

4. The said Town of Herndon and the said Stanley B. Hanes are attempting to prosecute the alleged warrant against your petitioner with all their powers and endeavors; in contempt of the law of the Commonwealth and to the manifest prejudice, damage, and grievance of your petitioner.

Wherefore, your petitioner being without any other adequate remedy prays that a writ of prohibition may be awarded directed to the said Stanley B. Hanes, Trial Justice as aforesaid, and the said Stanley B. Hanes and the Town of Herndon, as aforesaid, in due form of law, to prohibit him, the said Trial Justice from holding the matter aforesaid, of any concerning the premises aforesaid, further before him,

and to prohibit the said Stanley B. Hanes and the Town of Herndon from further proceedings in the premises.

TRACY N. FOX, Petitioner.

MARSHALL A. MARTIN, JR., p. q.  
Attorney at Law  
Herndon, Va. 298

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\* \* \* \* \*

Filed, Jan. 28, 1953.

9058.

THOMAS P. CHAPMAN, JR.  
Clerk, of the Circuit Court  
Fairfax County, Va.

ANSWER.

In answer to the petition for a writ of prohibition herein, respondents say:

1. They admit the allegations of paragraph 1 of said petition.
2. They admit that the respondent, Stanley B. Hanes, is an employee of the United States Government but, on information and belief, they aver that his status is that of "Clerk" within the meaning of paragraph (10) of Sec. 2-29, Virginia Code.
3. They admit that the Town of Herndon has employed Stanley B. Hanes as the Judge of the Police Court of the Town of Herndon but they deny that said employment is contrary to Sec. 2-27, Virginia Code.
4. They deny the allegations of paragraph 4 of said petition but on the contrary aver that a continuance has been granted the petitioner to the end that the questions raised in the petition may be adjudicated by this Court.

MOTION FOR DECLARATORY JUDGMENT.

The respondents, Stanley B. Hanes, and the Town of Herndon, by counsel, in response to the rule to show cause why a writ of prohibition should not be awarded herein, now move the Court for a judgment declaratory of the right of page 6 } the respondent, Stanley B. Hanes, to exercise the duties of his Office as Police Justice of the Town of Herndon, Virginia, in view of the provisions of Section 2-27 and Section 2-29, Virginia Code (1950); and in support of this motion respondents rely on the averments contained in their answer herein.

STANLEY B. HANES,  
 THE TOWN OF HERNDON,  
 Defendants  
 By HARDEE CHAMBLISS, JR.  
 Counsel

HARDEE CHAMBLISS, JR.  
 Attorney at Law  
 Fairfax, Virginia  
 Counsel for the defendants.

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\* \* \* \* \*  
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DEMURRER.

4863.

Now comes the cross defendant and says that the cross petition for Declaratory Judgment in this action is not sufficient in law for the following reason :

(1) That said provision of paragraph (10) of Section 2-29, 1950 Code as relied on by the cross petitioners for Declaratory Judgment is unconstitutional, for the following reason, to-wit:

The said paragraph is directly in conflict with Section 64 which provides in part as follows :

\* \* \* Any general law shall be subject to amendment or repeal, but the amendment or partial repeal thereof shall not operate directly or indirectly to enact, and shall not have the effect of the enactment of, a special, private, or local law. \* \* \*

(2) Section 2-29, Subsection 10, as amendend by Acts of 1950, by arbitrary classification undertakes to remove from section 2-27 1950 Code a special and limited class of office-holders and government employees who, except for such unreasonable and arbitrary separation and exclusion, would fall under its ban. It thus necessarily limits, and amends and partially repeals section 2-27, a general law; and the said cross petitioners are not entitled to the relief prayed for as a matter of law.

MARSHALL A. MARTIN, JR.,  
Counsel for Cross Defendant

I hereby certify that a copy of this demurrer was mailed to Hardee Chambliss, Jr., Esq., attorney for the cross petitioners, on the 11th. day of February, 1953.

MARSHALL A. MARTIN, JR.

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\* \* \* \* \*

#### FINAL ORDER.

This matter came on to be heard on the 9th day of March, 1953, upon the petitioner for a writ of prohibition herein; upon the order of January 12, 1953, requiring the defendant, Stanley B. Hanes, to appear herein on February 12, 1953, and show cause why a writ or prohibition should not be awarded; upon the answer of the defendants; upon their motion for a declaratory judgment herein asking for a judgment declaratory of the right of the defendant, Stanley B. Hanes, to exercise the duties of his office as Police Justice of the Town of Herndon, Virginia; upon the demurrer to said motion for a declaratory judgment; and the parties appearing in Court on the 12th day of February, 1953, and the Court thereupon continued the hearing of all issues of law and fact raised by the pleadings herein until March 9, 1953;

And evidence being introduced on March 9, 1953, on behalf of the parties, plaintiff and defendant, and upon argument of counsel;

Upon consideration whereof the Court although being of the opinion that the respondent Stanley B. Hanes is a "clerk" within the meaning of the language of paragraph numbered (10) of Section 2-29, Virginia Code, but being further of the



opinion that said paragraph numbered (10) of said Section 2-29 is special or class legislation and hence unconstitutional; it is, therefore,

page 10 } ADJUDGED and ORDERED that the provisions of paragraph (10), Section 2-29, Virginia Code, be and the same hereby are declared to be an unconstitutional and arbitrary classification and that the exception thereby created to Section 2-27 of the Virginia Code, is void and of no effect; and it is further

ORDERED that the demurrer filed herein to the motion for declaratory judgment be and the same hereby is sustained and the prayer of the petition be, and the same hereby is, granted:

To which ruling and judgment of the Court the defendants thereupon excepted on the ground that the ruling is contrary to law and that the defendant, Stanley B. Hanes, having satisfied the Court that he is a "United States Government Clerk" within the meaning of Section 2-29, Virginia Code, is entitled to exercise the duties of his office to which he has been validly appointed.

And the defendants thereupon indicated their intention to apply to the Supreme Court of Appeals of Virginia for a writ of error.

It is further ORDERED that a copy of this order be served on each of the said defendants and that it shall have the same force and effect as service of the formal writ of prohibition.

The costs of this proceeding shall be paid by the defendants.

Enter:

PAUL E. BROWN  
Judge.

March 30, 1953.

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\* \* \* \* \*

Filed, May 11, 1953.

THOMAS P. CHAPMAN, JR.  
Clerk, of the Circuit Court  
Fairfax County, Va.

At Law No. 4863.

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

The defendants, Stanley B. Hanes and the Town of Herndon, hereby give notice of their intention to appeal from a final judgment order entered in this cause on the 30th day of March, 1953, and assign as error the following:

1. The Court erred, as a matter of law, in sustaining the demurrer of Tracy N. Fox to the motion of Staley B. Hanes and the Town of Herndon, Virginia, for a declaratory judgment and in ruling that the provisions of paragraph (10), Section 2-29, Virginia Code, are an unconstitutional and arbitrary classification and that the exception thereby created to Section 2-27 of the Virginia Code is void and of no effect.

2. The Court erred in granting the prayer of the petitioner, Tracy N. Fox, for a writ of prohibition against Stanley B. Hanes and the Town of Herndon in that the defendant, Stanley B. Hanes, having satisfied the Court that he is a United States Government Clerk within the meaning of paragraph (10) of Section 2-29, Virginia Code, is entitled to exercise the duties of his office to which he has been validly appointed by the Town Council of the Town of Herndon.

HARDEE CHAMBLISS, JR.,  
Counsel for the Defendants.

A Copy—Teste:

H. G. TURNER, C. C.

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