

3004  
194-810

# Record No. 4059

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**THE COUNTY SCHOOL BOARD OF  
FAIRFAX COUNTY, VIRGINIA**

v.

**TOWN OF HERNDON**

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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.

194VA 810

## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) The opening brief of the appellant shall be filed in the clerk's office within twenty-one days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. The brief of the appellee shall be filed in the clerk's office not less than twenty-one days, and the reply brief of the appellant not less than two days, before the first day of the session at which the case is to be heard.

(b) Unless the appellant's brief is filed at least forty-two days before the beginning of the next session of the Court, the case, in the absence of stipulation of counsel, will not be called at that session of the Court; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§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.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.



IN THE  
**Supreme Court of Appeals of Virginia**  
AT RICHMOND.

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**Record No. 4059**

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VIRGINIA:

In the Supreme Court of Appeals held at the Court-Library Building in the City of Richmond on Thursday the 9th day of October, 1952.

THE COUNTY SCHOOL BOARD OF FAIRFAX COUNTY,  
VIRGINIA, Appellant,

*against*

TOWN OF HERNDON, Appellee.

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From the Circuit Court of Fairfax County.

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Upon the petition of The County School Board of Fairfax County, Virginia, an appeal is awarded from a decree entered by the Circuit Court of Fairfax County on the 21st day of April, 1952, in a certain chancery cause then therein depending wherein the Town of Herndon, Virginia, was plaintiff and said petitioner was defendant, no bond being required.

## RECORD

\* \* \* \* \*

Feb. 12, 1952.

THOMAS P. CHAPMAN, JR.  
Clerk, Fairfax County, Va.

Writ Tax Paid \$ 1.50  
Deposit 12.75

## PETITION FOR DECLARATORY JUDGMENT.

To the Honorable Judges of said Court:

Your Complainant respectfully represents as follows:

1. That your Complainant is an incorporated town, located in the County of Fairfax, Virginia, having been granted its first charter by an act of the General Assembly of Virginia, approved January 14, 1879 (Chapter 28, Page 25, Acts of 1878-1879). By an emergency act, approved February 19, 1880 (Chapter 93, Page 72, Acts of 1879-1880), the Town of Herndon was given the authority to create a separate school district. Although the town charter has been amended and new charters have been granted from time to time, your Complainant has had the authority, by charter, to constitute a separate school district from February 19, 1880, as aforesaid, to the present date.

2. That the history of the special legislation, in addition to the charter provisions, giving the Town of Herndon the right to constitute a separate school district is as follows:

a. By an act approved March 24, 1922 (Chapter 423, Page 737), the General Assembly created a County School Board in lieu of district and town school boards. This act expressly excepts from its provisions any town "now constituting or which may hereafter be constituted", a "separate page 2 } school division". The act further outlines the method of creating a town school board, and provides that it shall have one vote on the county school board.

b. By an act approved March 26, 1928 (Chapter 471, Page 1186), the school laws of the State were codified, and *Section 653* thereof provided that special town school districts were

thereby expressly retained as they existed at that time, with certain exceptions in the Counties of Henrico and Sussex.

c. By an act approved March 25, 1930 (Chapter 412, Page 878), all special town school districts were abolished except in the Towns of Leesburg and Lexington with certain exceptions as to towns located in more than one county, and towns not having less than 1,000 population. This was an amendment and re-enactment of *Section 653* above mentioned. The Town of Herndon is located entirely within the boundaries of the County of Fairfax, and its population according to the records in the United States Bureau of Census was as follows: 1920—954; 1930—887; 1940—1,046 and 1950—1,471, and, therefore, it could not qualify under the exceptions to this act until 1940.

d. By an act approved March 8, 1932 (Chapter 117, Page 124), *Section 653* was amended and re-enacted to include the following language:

“ \* \* \* provided, however, that the Town of Herndon \* \* \* of Fairfax County \* \* \* may by ordinance of the Town Council and by and with the approval of the State Board of Education be constituted separate school districts, either for the purpose of representation on the County School Board, or for the purpose of being operated as a separate school district under a town school board of three members appointed by the Town Council. In the event that such a town district be set up to be operated by a board of three members, the members of such board shall be appointed in accordance with the provisions of Section 780 of the Code providing for the appointment of trustees in cities, and of such members, one shall be designated by the Town School Board as a member of the County School Board, and entitled to serve as a member of said County Board”.

page 3 } This act was an emergency act and, therefore, became effective when approved by the Governor on March 8, 1932.

Pursuant to this act, the Town Council of said Town of Herndon at a duly called meeting on March 19, 1932 requested that the State Board of Education approve the town as a special town school district and on March 30, 1932, the State Board of Education granted such approval and took the necessary steps to create the Town of Herndon as a special school district.

e. By an act approved March 26, 1936 (Chapter 314, Page 497), *Section 653*, was again amended and re-enacted, leav-

ing the language of said act approved March 8, 1932 the same in relation to the Town of Herndon.

f. By an act approved March 29, 1938 (Chapter 318, Page 468, *Section 653* was again amended and re-enacted, leaving the language of the act approved March 8, 1932 the same in relation to the Town of Herndon.

g. By an act approved April 6, 1942, (Chapter 422, Page 679), *Section 653* was repealed, and *Section 653-a2* was added, the latter being the same as *Section 653* with amendments, but the language of the act approved March 8, 1932 remained the same in relation to the Town of Herndon.

h. By an act approved March 29, 1944 (Chapter 316, Page 467), *Section 653-a2* was amended and re-enacted, but the language of the act approved March 8, 1932 remained the same in relation to the Town of Herndon.

i. By an act approved March 15, 1948 (Chapter 247, Page 483), *Section 653-a2* was again amended and re-enacted, but the language of the act approved March 8, 1932 was not changed in relation to the Town of Herndon.

In the official Code of 1950, that part of *Section 653-a2* in relation to the Town of Herndon became *Section 22-43*.

j. By an act approved April 4, 1950 (Chapter 270, Page 451), *Section 22-43* was amended and re-enacted, not changing the language in relation to the Town of Herndon.

page 4 } 3. That the history of the legislation creating the alternate forms of government known as the "County Executive" form of government and the "County Manager" form of government for the counties is as follows:

a. By an act approved March 26, 1932 (Chapter 368, Page 727), the legislature provided for the two alternate forms of government above mentioned for the counties to become effective *only* when one of the forms of government was approved by a majority of the qualified voters in such counties.

*Section 2773-n15* deals with the Department of Education.

The language of this Section is identical with the language of Michie's 1942. Code—*Section 2773 (38)* and *Section 15-292* of the Code of 1950, except that the number of the code section mentioned in the last chapter was necessarily changed because of the change in codes. This was *not* an emergency act. The language of said code section, with the exception of the number of a code section above mentioned, has remained unchanged since 1932.

The language of said *Code Section 15-292* appears in part as follows \* \* \* "provided, however, that in addition to such number (i. e. the number of members of the County School

Board appointed by the Board of County Supervisors), any town in a county which is operated as a separate school district under a Town School Board shall be entitled to one member on the County School Board to be selected by the Town School Board from its own membership.”

4. The said alternate form of county government, known as the “*County Executive*” form of government went into effect in Fairfax County pursuant to the favorable vote of a majority of the qualified voters on January 1, 1952. At its regular meeting, held on that date, the Board of County Supervisors, constituted the County School Board and appointed thereto six trustees pursuant to the terms of *Section 15-292* of the Code of Virginia of 1950, as aforesaid.

page 5 } 5. That on January 3, 1952, Mrs. Thelma Detweiler, the duly elected and qualified member of the County School Board, representing the separate school district of the Town of Herndon, appeared to take her place as a member of the County School Board, but it was the sense of the County School Board that the Town of Herndon is not operated as a separate school district under a Town School Board within the meaning of *Section 15-292* of the Code of Virginia of 1950, and that the said town is not, therefore, entitled to a member on the County School Board, said Mrs. Thelma Detweiler was denied membership on the County School Board, and a motion to this effect was duly passed by an affirmative vote, all members of the County School Board being present.

6. That the special act creating the Town of Herndon as a special school district should be construed as an exception to the general law, and the general law cannot be construed to repeal the same; therefore, the Town of Herndon is entitled to a separate representative on the County School Board in addition to those appointed by the Board of County Supervisors under *Section 15-292* of the Code of Virginia of 1950.

WHEREFORE, an actual controversy exists between the Complainant and the Defendant, and the Complainant moves the Court for a judgment under the provisions of Section 8-578 to 8-585, both inclusive, of the Code of 1950, declaratory of the rights of the parties hereunder under the foregoing facts and circumstances. The Complainant prays that said judgment declare that the Town of Herndon has been duly constituted a separate school district under special legislation passed by the General Assembly of Virginia and, therefore, is entitled to one member on the County School Board



in addition to those appointed by the Board of County Super-  
visors.

page 6 } And your Complainant will ever pray, etc.

THE TOWN OF HERNDON, VIRGINIA,  
A BODY CORPORATE,  
By: ROBERT J. McCANDLISH, JR.  
Its Counsel.

RICHARDSON, McCANDLISH & LILLARD  
By: ROBERT J. McCANDLISH, JR.  
Attorney for the Complainant.

\* \* \* \* \*

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\* \* \* \* \*

Filed Mar. 12, 1952.

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

DEMURRER.

Now comes the defendant and says that the Petition for Declaratory Judgment in this action is not sufficient in law for the following reasons: That nowhere is it alleged that the defendant is operated as a separate school district by its Board in a manner prescribed by the Acts and Statutes set forth in said Petition; that the County Executive Act, Section 15-272, *et seq.*, (15-292), of the 1950 Code, supercedes Section 22-43 of the Code and Chapter 376, 1938 Acts, page 624, (Section 29, page 634), and in order to be represented on the County School Board of Fairfax County it is necessary that the Town of Herndon be operated as a separate school district; and that said complainant is not entitled to the relief prayed for as a matter of law.

JAMES KEITH  
HUGH B. MARSH  
Counsel for Defendant.

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\* \* \* \* \*

FINAL ORDER.

This cause came on to be heard the 21st day of April, 1952, upon the Petition for Declaratory Judgment filed herein by the Complainant and the Demurrer thereto filed by the Defendant, and argument of Counsel.

And the Court being of the opinion that Chapter 11 of the 1950 Code, containing Sections 15-266 *et seq.*, relating to County Executive and County Manager forms of government, became law in 1932; that as a result of the referendum held in accordance with said Act on November 9, 1950, the County Executive Form of Government was adopted for Fairfax County, and the effective date of said Act in Fairfax County was January 1, 1952; that Section 22-43 of the 1950 Code was last re-enacted in 1950; that Section 22-43 of the 1950 Code, insofar as the same relates to representation on the County School Board by the Town of Herndon is an exception to the provisions of said general Act relating to the County Executive Government (Section 15-292), and that, therefore, the Town of Herndon is entitled to a separate representative on the County School Board in addition to those appointed by the County Board of Supervisors.

UPON CONSIDERATION WHEREOF, it is adjudged, ordered and decreed that said demurrer be, and the same hereby is, overruled, and it is further adjudged, ordered and decreed that the Town of Herndon is a special school district for the purposes of representation on the County School Board of Fairfax County, and is entitled to one member on the said School Board in addition to those appointed by the Board of County Supervisors of said County.

To which action of the Court the Defendant, by page 11 } counsel, excepted on the ground that said Chapter 11 relating to County Executive form of Government, did not become effective and the law as to Fairfax County, Virginia, until January 1, 1952, and since it expressly provides that all laws in conflict therewith should not apply (Section 15-339), it expressly repealed Section 22-43, insofar as the same related to the Town of Herndon, and the Charter for said Town insofar as the same provided for representation on the School Board; and on the further ground that said Section 22-43 and the said Charter were repealed by implication by said Chapter 11 (Section 15-292), the same being in irreconcilable conflict; and on the further ground that

the Court erred in its decision by holding that Chapter 11, of the 1950 Code, became law as to Fairfax County prior to January 1, 1952.

And this order is final.

Enter:

PAUL E. BROWN  
Judge of said Court.

Entered Apr. 23, 1952.

\* \* \* \* \*

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\* \* \* \* \*

Filed Jun. 4, 1952.

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

**NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.**

The undersigned counsel of record for defendant in the above entitled cause, hereby give notice of their intent to appeal from the final judgment of this Court heretofore entered therein on the 21st day of April, 1952.

Counsel for the defendant assign the following errors:

The Court erred in overruling the demurrer filed by the defendant and in decreeing that the complainant, The Town of Herndon, is entitled to a representative on the County School Board, in addition to those appointed by the Board of County Supervisors of Fairfax County, Virginia.

A copy of this notice was mailed to counsel of record for the complainant this 4th day of June, 1952.

Respectfully submitted,

HUGH B. MARSH  
JAMES KEITH  
Counsel for Defendant.

A Copy—Teste:

H. G. TURNER, C. C.