

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

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|------------------------------|---|-------------------|
| Whitbeck & Associates, P.C., |) | |
| Plaintiff, |) | |
| v. |) | Case No: CL 71003 |
| WESLEY C. SMITH, |) | |
| Defendant |) | |
| CHERI SMITH, |) | |
| Defendant |) | |

#4 – Demand For Jury Trial & Evidentiary Hearing

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COMES NOW the co-Defendant, Wesley C. Smith, and makes a demand for a jury trial and evidentiary hearing, as required by both the U.S. and Virginia Constitutions, and states as follows:

1. The only argument put forth by co-defendant Cheri Smith has been a claim of a court order in a different case. The position of Wesley Smith is that the “order” cited by Cheri Smith does not exist as a valid legal order and that he must be allowed to challenge the validity of the claimed “order” before a jury.

The law is well-settled that a void order or judgment is **void even before reversal**. *Valley v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S.Ct. 116 (1920) ("Courts are constituted by authority and they cannot go beyond that power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply VOID, AND THIS EVEN PRIOR TO REVERSAL." [Emphasis added]); *Old Wayne Mut. I. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907); *Williamson v. Berry*, 8 How. 495, 540, 12 L.Ed. 1170, 1189 (1850); *Rose v. Himely*, 4 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

Since a void order has no legal force or effect there can be no time limit within which to challenge the order or judgment. Further since the order has no legal force or effect, it can be repeatedly challenged, since no judge has the lawful authority to make a void order valid. *Bates v. Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill.2d 260, 267 (1990) (a court "cannot confer jurisdiction where none existed and cannot make a void proceeding valid."); *People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*, 385 Ill. 86, 92, 52 N.E.2d 255 (1943).

It is clear and well established law that **a void order can be challenged in any court**. *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907) ("jurisdiction of any court exercising authority over a subject `may be inquired into in every other court **when the proceedings in the former are relied upon and brought before the latter by a party claiming the benefit of such proceedings,**' and the rule prevails whether `the decree or judgment has been given, in a court of admiralty, chancery, ecclesiastical court, or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of states."); *In re Marriage of Macino*, 236 Ill.App.3d 886 (2nd Dist. 1992) ("if the order is void, it may be attacked at any time in any proceeding, "); *Evans v. Corporate Services*, 207

Ill.App.3d 297, 565 N.E.2d 724 (2nd Dist. 1990) ("a void judgment, order or decree may be attacked at any time or in any court, either directly or collaterally"); Oak Park Nat. Bank v. Peoples Gas Light & Coke Co., 46 Ill.App.2d 385, 197 N.E.2d 73, 77 (1st Dist. 1964) ("that judgment is void and may be attacked at any time in the same or any other court, by the parties or by any other person who is affected thereby."). [Emphasis added].

WHEREFORE co-defendant Wesley Smith requests the Court grant an evidentiary hearing with a jury.

**Respectfully Submitted,
Wesley C. Smith**

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing motion was sent to John Whitbeck and Loretta Vardy, this 12th day of Dec 2006.

Wesley C. Smith