

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

CHERI SMITH,)	
Plaintiff)	
)	
v.)	Chancery No. 53360
)	
WESLEY C. SMITH,)	
Defendant)	

#42 - DEFENDANTS DEMAND FOR A VIRGINIA CONSTITUTION ARTICLE 1, SECTION 11, JURY TRIAL IN A CIVIL CASE

A pdf copy of this motion is available at: http://www.liamsdad.org/court_case/

COMES NOW the Defendant, Wesley C. Smith, and demands a Jury Trial per Article 1, Section 11 of the Virginia Constitution. In support of his MOTION the Defendant states as follows:

1. The Virginia Constitution of 1971, ARTICLE I, Bill of Rights, Section 11 states:
Jury Trial in civil cases

That in controversies respecting property, and in suits between man and man, **trial by jury is preferable to any other, and ought to be held sacred.** The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

2. The dictionary contains the following definition of the word sacred: “regarded as too important or valuable to be interfered with” thus making it clear the Constitution of Virginia considers a Jury Trial in a Civil case a right too important to be interfered with by the legislature or the courts.

3. The matter in question is a civil suit, is a controversy respecting property, and between two people, thus this case is exactly the situation referred to above in the Constitution of Virginia.

4. Since the Constitution of Virginia by unambiguous language grants the Defendant the right to a jury trial neither the Court nor the legislature have any authority to make a law or ruling to the contrary.

"A primary rule of statutory construction is that courts must look first to the language of the statute. If a statute is clear and unambiguous, a court will give the statute its plain meaning." Loudoun County Dep't of Social Servs. v. Etzold, 245 Va. 80, 85, 425 S.E.2d 800, 802 (1993) (citation omitted).

"Therefore, we **must accept its plain meaning and not consider rules of statutory construction, legislative history, or extrinsic evidence.**" Perez v. Capital One Bank, 258 Va. 612, 616, 522 S.E.2d 874, 876 (1999) (citation omitted).

"Courts must give effect to legislative intent, **which must be gathered from the**

words used, unless a literal construction would involve a manifest absurdity." HCA Health Servs. of Virginia, Inc. v. Levin, 260 Va. 215, 220, 530 S.E.2d 417, 420 (2000).

5. The Defendant has not knowingly and voluntarily waived a trial by jury.

6. The Court has no jurisdiction to hear the case on terms contrary to that of the Virginia Constitution as the only authority the court has comes from the Virginia Constitution.

7. Given the Defendant has exercised his right to demand a Jury Trial per the Virginia Constitution, any final order issued without a Jury Trial would be null & void.

WHEREFORE the Defendant demands that the Court honor the Constitution Of Virginia and have this case heard by a Jury of not less than 5 Jurors.

**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 served to Loretta Vardy and Ronald Fahy (GAL) via e-mail and/or fax and/or website, this 13th day of February 2006.

Wesley C. Smith