V I R G I N I A:

IN THE COURT OF APPEALS OF VIRGINIA

WESLEY SMITH,	)	
	)	
APPELLANT / Defendant, pro se	)	
	)	
v.	)	**Record No. 0272-05-4 (1-3-05 order)**
	)	**0916-05-4 (1-18-05 order)**
	)	
CHERI SMITH,	)	
	)	
APPELLEE / Plaintiff	)	

APPELLANT'S PETITION FOR
HEARING or REHEARING or REHEARING EN BANC

An electronic copy of this reply with related documents, motions, and orders is available at:
http://www.liamsdad.org/court_case/

1. On July 12, 2004, the Appellant received letters (dated July 5th) signed by Deputy Clerk Cynthia L. McCoy stating that court is without jurisdiction to hear the appeals and dismissed them.

2. The letters do not indicate any hearing took place or that any Judge reviewed the APPELLANT'S REPLY TO MOTION TO DISMISS nor any indication it based the dismissal on the record thus the "mere recital" by a clerk (no offence intended to the clerk) that the court does not have jurisdiction **is not the determinating factor as to whether the court actually has jurisdiction**.

"Because a court does not acquire jurisdiction by a mere recital contrary to what is shown in the record", the record of the case is the determinating factor as to whether a court has jurisdiction. State Bank of Lake Zurich v. Thill, 113 Ill.2d 294, 497 N.E.2d 1156 (1986).

3. The letters were sent to my old address that has not been used in any Appeals Court documents since January 24, 2005 (and the court notified of the change). Due to the use of the incorrect address rather than **the correct address that was on all briefs, motions, replies filed by the Appellant**, and the fact the dismissal letters do not address several of the claims the Appellant made that would prevent the court dismissing the case, it appears **nobody even read** the APPELLANT'S REPLY TO MOTION TO DISMISS.

4. Certainly the action taken did not meet the criteria of **Strict Scrutiny** that is required in this case (see APPELLANT'S REPLY TO MOTION TO DISMISS)

5. The letters failed to address in any manner the claim that Circuit Court lacked jurisdiction to enter the orders and thus they are **already null and void, not just voidable**, and they may be declared void by **any court**. In fact a null and void court order is the most final of all court 'orders' as it may not be modified or ratified later but must forever stay null and void. The Court of Appeals routinely declares orders null and void, but since any so called 'final order' that is already void, is a complete nullity, and thus isn't really a final order, the Appeals Court still manages to make rulings regarding them, thus 17.1-405 does not prevent the Appeals Court from making a similar ruling in this case.

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)

"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)

The lack of jurisdiction to enter an order under any of these circumstances renders the order a complete nullity and it **may be "impeached directly or collaterally by all persons, anywhere, at any time, or in any manner.**" Singh v. Mooney, 261 Va. 48, 51-52, 541 S.E.2d 549, 551 (2001)

"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."

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)

The law is well-settled that a void order or judgment is void even before reversal. Vallely 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).

6. The letters failed to address in any manner the claim "Where rights secured by the Constitution are involved, **there can be no rule making or legislation which would abrogate them**" Miranda vs Arizona, 384 US 436 p. 491. To deny using 17.1-405 the court must first address if 17.1-405 is unconstitutional in this case.

7. Should the Court feel that due to the Constitutional issues raised that the Supreme Court of Virginia has jurisdiction instead of the Appeals Court, then according to 8.01-677.1 the Court should have transferred it there instead of dismissing it.
8. The letters failed to adequately address my claim that the orders are interlocutory injunctions and **thus are appealable via 17.1-405**. Its quite clear that the orders are injunctions baring me from exercising my various Constitutional rights as a parent. Indeed the position of the Appellee has been that it is an injunction baring me from exercising those rights.
9. **The Fairfax County School System and the Commonwealth of Virginia have also taken the orders to be injunctions** that prohibit me from attending my son's events at school, and have had me arrested and prosecuted for attempting to exercise my rights according to 22.1-4.3
10. A court speaks only through its written orders. Hill v. Hill, 227 Va. 569 (1984) and an order isn't entered until a Judge, not clerk, signs the order. As such the letter by Deputy Clerk Cynthia L. McCoy does not appear to even be a legal order dismissing the appeals, since a clerk does not have the ability to either render judicial opinions or enter them.

WHEREFORE, the Appellant requests that this court grant the Appellant a HEARING or REHEARING or REHEARING EN BANC (I'm not an attorney and not sure which is the appropriate term), to rule first on the grounds to hear the case (jurisdiction) as raised in the APPELLANT'S REPLY TO MOTION TO DISMISS and this document (as opposed to a form letter not based on the issues at hand) and then rule on the brief previously filed if the Court then agrees it does have jurisdiction.

Respectfully submitted,
WESLEY C. SMITH

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Wesley C. Smith - Appellant / Defendant, pro se
5347 Landrum Rd APT 1, Dublin, VA 24084 (no phone) liamsdad@liamsdad.org