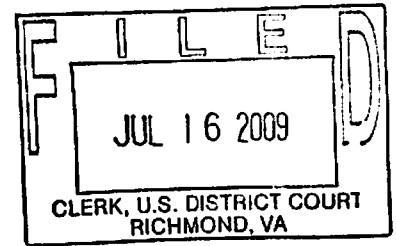


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



WESLEY EDWARD SMITH, III,

Plaintiff,

v.

Civil Action No. 3:08cv800

COMMONWEALTH OF VIRGINIA, et al.,

Defendants.

ORDER

For the reasons set forth in the accompanying Memorandum Opinion, the Court will treat the Plaintiff's allegations of violations of § 2 of the Voting Rights Act of 1965 as being properly pled directly under the act itself, rather than as being brought through the procedural vehicle of 42 U.S.C. § 1983.

It is also hereby ORDERED that the MOTION TO DISMISS of Defendants Commonwealth of Virginia, Governor Timothy Kaine, James V. Ingold, and the Virginia State Board of Elections (Docket Number 42), the MOTION TO DISMISS of Defendant Robert Dybing (Docket Number 36), and the MOTION TO DISMISS of Defendant J. Kirk De Courcey Showalter (Docket Number 40) are granted in part and denied in part.

Those motions are denied to the extent that they are brought under Fed. R. Civ. P. 12(b)(1). Those motions are granted, however, to the extent that they are brought under Fed. R. Civ. P. 12(b)(6). The Plaintiff's Third Amended Complaint is therefore dismissed with prejudice and without leave to amend.

The Plaintiff is hereby advised that he may appeal this Order. Any appeal from the Order must be taken by filing a written notice of appeal with the Clerk of the Court within thirty (30) days of the date of entry thereof. Failure to file a timely notice of appeal may result in the loss of the right to appeal.

The Clerk of the Court is directed to send a copy of this Order to the Plaintiff.

It is so ORDERED.

/s/ REP
Senior United States District Judge

Richmond, Virginia
Date: July 15, 2009