

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JEFFERSON COUNTY COMMISSION;
PATRICIA NOLAND, as an individual
and behalf of all others similarly situated;
and DALE MANUEL, as an individual and
behalf of all others similarly situated,

Plaintiffs, and

THORNTON COOPER,

Intervening Plaintiff,

v.

Civil Action No. 2:11-CV-989
(KING, BAILEY, BERGER)

NATALIE E. TENNANT, in her capacity as
the Secretary of State; EARL RAY TOMBLIN,
in his capacity as the Chief Executive Officer
of the State of West Virginia; JEFFREY
KESSLER, in his capacity as the Acting
President of the Senate of the West Virginia
Legislature; and RICHARD THOMPSON, in
his capacity as the Speaker of the House of
Delegates of the West Virginia Legislature,

Defendants.

**PLAINTIFFS JEFFERSON COUNTY COMMISSION, PATRICIA NOLAND, AND
DALE MANUEL'S COMBINED MOTION TO STRIKE**

Plaintiffs Jefferson County Commission, Patricia Noland, and Dale Manuel, by and
through counsel, hereby move to strike Exhibit O submitted in support of the Joint Opening
Brief of Defendants Jeffrey Kessler and Richard Thompson and all those portions of
Defendants' brief that rely on or refer to Exhibit O. Exhibit O is an unauthenticated document

which is not part of the legislative record and is inadmissible under the Federal Rules of Evidence and FRCP 44(a).

ARGUMENT

Exhibit O purports to be a transcript of the Thursday, August 4, 2011, meeting of the Select Committee on Redistricting. The document purports to be the transcript of discussion between two committee members and a Professor of Law from West Virginia University followed by the presentation of potential amendments to the membership of the Select Committee on Redistricting. The transcript is not signed, notarized, or certified in any way.

Exhibit O is unauthenticated; therefore, it, and any argument relying on or referring to Exhibit O, should be excluded in this case under Fed. R. Evid. 901 and 902. Pursuant to Federal Rule of Evidence 901(a), “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” Although Defendants Kessler and Thompson submit Exhibit O as a transcript of a meeting of the Select Committee on Redistricting, the document itself offers no authentication. The transcript is not a part of the legislative record of the passage of S.B. 1008 as it is not included in the Senate Journals or the enrolled bill. 32A C.J.S. Evidence §1427. *See also* Fed. R. Civ. P. 44.¹ Indeed, upon information and belief, the audio file of this meeting does not exist and the person or persons who may have recorded the meeting were not official court reporters. Thus, there exists no means to verify the reliability or accuracy of the transcript.

¹Each of the following evidences an official record . . . that is otherwise admissible
(A) an official publication of the record; or
(B) *a copy attested by the officer with legal custody of the record . . . and accompanied by a certificate that the officer has custody.* The certificate must be made under seal . . .
Fed. R. Civ. P. 44(a)(1).

Furthermore, the transcript cannot be self-authenticating, as it does not bear the seal of the State of West Virginia, the signature of any officer or employee of the Select Committee, or an official certification. *See* Fed.R.Evid. 902. Without such certification, this putative transcript, and all arguments based upon the document, should be excluded from the Defendants' Opening Brief as it violates the Federal Rules of Evidence.

The Plaintiffs filed the official record of proceedings. *See* Notice of Intent to Offer Exhibits, ([Doc. 40] at #1 "The official record of Senate of West Virginia for the First Extraordinary Session of the Legislature, 2011 relating to Enrolled Senate Bill No. 1008 (Reapportioning congressional districts)" as certified by Darrell E. Holmes, Clerk of the Senate on December 16, 2011). There is no other official record.

JEFFERSON COUNTY COMMISSION
PATRICIA NOLAND and
DALE MANUEL
By Counsel

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of December, 2011, I electronically filed the foregoing
Plaintiffs Jefferson County Commission, Patricia Noland, and Dale Manuel's Motion to Strike with the
Clerk of the Court using the CM/ECF system which will provide notice to counsel of record as follows:

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