

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JESSE W. WILLIAMS, SHERIFF
OF PATRICK COUNTY, a Constitu-
tional Officer of the Common-
wealth of Virginia and elected
under the laws of the Common-
wealth,

Defendant.

CIVIL ACTION NO.
83-0094-D

INITIAL MEMORANDUM OF PLAINTIFF UNITED STATES
IN OPPOSITION TO MOTION OF DEFENDANT JESSE
W. WILLIAMS FOR SUMMARY JUDGMENT

INTRODUCTION

By motion dated December 15, 1983, and first received by counsel for the United States on December 22, 1983, defendant Jesse W. Williams, Sheriff of Patrick County, moved this Court for a summary judgment, pursuant to Rule 56, F.R.Civ.P. That motion was unaccompanied by any supporting papers and did not "state with particularity the grounds therefor," as required by Rule 7(b), F.R.Civ.P. This motion of Sheriff Williams is devoid of merit on its face and properly ought be denied outright. However, to the extent that such motion - unaccompanied by any supporting papers - lends itself to any response, we do so in this memorandum. If Sheriff Williams elects to file any papers in support of his motion, the United States will respond to such papers.

ARGUMENT

The Courts have uniformly applied a rigorous standard which must be met by a movant for summary judgment. As the Court of Appeals for this Circuit has instructed in Phoenix Savings and Loan, Inc. v. Aetna Casualty and Surety Co., 381 F.2d 245, 249 (4th Cir. 1967):

It is well settled that summary judgment should not be granted unless the entire record shows a right to judgment with such clarity as to leave no room for controversy and establishes affirmatively that the adverse party cannot prevail under any circumstances. Neither should summary judgment be granted if the evidence is such that conflicting inferences may be drawn therefrom, or if reasonable men might reach different conclusions [citations omitted]. Burden is upon the party moving for summary judgment to demonstrate clearly that there is no genuine issue of fact, and any doubt as to the existence of such an issue is resolved against him [citations omitted]. */

As is hereafter demonstrated, there is no basis - either upon the record evidence or under the law - for granting Sheriff Williams' motion for summary judgment.

1. Initially, Sheriff Williams contends (Motion, p. 1) that the United States has no standing to prosecute this action under 42 U.S.C. §2000e-5(f), because the Sheriff is not a "government, governmental agency, or political subdivision." We find it incredible for the defendant to suggest that he is not a "govern-

*/ See also, Adickes v. S.H. Kress & Co., 398 U.S. 144 (1970); Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980); Morrissey v. Proctor & Gamble Co., 379 F.2d 675 (1st Cir. 1967); Clark v. Western Chemical Products, 557 F.2d 1155 (5th Cir. 1977); Clausen & Sons, Inc. v. Theo. Hamms Brewing Co., 395 F.2d 388 (8th Cir. 1968); Bankers Trust Co. v. Transamerica Title Insur., 594 F.2d 321 (10th Cir. 1979).

ment, governmental agency or political subdivision" in light of the uncontested facts, among others, that: the Sheriff is a constitutional officer of the Commonwealth of Virginia elected under the laws of the Commonwealth; the Sheriff is responsible for the protection of life and property, the maintenance of order and the enforcement of State laws and local ordinances within Patrick County; and in order to carry out his responsibilities, the Sheriff maintains and operates the Patrick County Sheriff's Department (the "PCSD").

2. The Sheriff also contends (Motion, p. 1) that even if the United States has standing to bring this action, the action nevertheless should be dismissed because the United States has not joined the Commonwealth of Virginia as "a necessary party defendant." The Sheriff intimates no reason why he is of the view that the Commonwealth is a necessary party defendant. Nor do we perceive of any such reason. The Commonwealth is not an employer, an employment agency or a labor organization with respect to applicants for employment with, or employees of, the PCSD. Further, even if the Commonwealth were a necessary party defendant, the United States' determination not to join the Commonwealth would provides no basis for the dismissal of this action against the Sheriff. See Rule 21, F.R.Civ.P.

3 and 4. The Sheriff next contends - again without setting forth any bases therefor - that the extention of Title VII coverage in 1972 to governments, governmental agencies and political

subdivisions violated the Tenth Amendment to the Constitution of the United States, and that the Eleventh Amendment provides the Sheriff with immunity from liability for money damages. Neither of these contentions has any merit. See Fitzpatrick v. Bitzer, 427 U.S. 445 (1976).

5. Similarly without merit is the Sheriff's suggestion (Motion, p. 2) that the claim of the United States "is barred by failure to file suit within the statutorily prescribed time limits following the conclusion of administrative procedures." Simply stated, there is no statutory time limit following the conclusion of administrative procedures in a Title VII action brought by the United States.

6. One need only refer to the Sheriff's own testimony in his depositions taken by the United States, as well as to the exhibits attached thereto, to refute the Sheriff's bald contention (Motion, p. 2) that he is not an "employer" as that term is defined in Section 701(b) of Title VII, 42 U.S.C. §2000e-(b). See, Deposition of Jesse W. Williams 8/11/83, pp. 27-28, 48-57, 144-155, and Govt. Exs. 5 and 6 attached thereto; Deposition of Jesse W. Williams 10/12/83, pp. 278-288, and Govt. Exs. 27-81 attached thereto.


7. Lastly without merit is the Sheriff's contention (Motion, p. 2) that the United States' claim for injunctive relief will become moot as of January 1, 1984. This contention is apparently bottomed on the fact that on or about that date, Sheriff Williams is to be succeeded in office by Jay Gregory. How-

ever, the United States' suit was brought against Sheriff Williams in his official capacity as Sheriff. Pursuant to Rule 25(d), F.R.Civ.P., Jay Gregory is to be automatically substituted for Sheriff Williams after January 1, 1984.

CONCLUSION

For the foregoing reasons, the motion of defendant Jesse W. Williams for summary judgment should be denied.

Respectfully submitted,

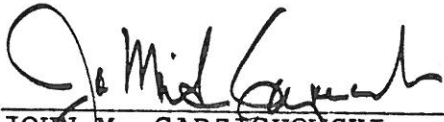


JOHN M. GADZICHOWSKI
Senior Trial Attorney
MELISSA P. MARSHALL
Trial Attorney
Civil Rights Division
U.S. Department of Justice
Washington, D.C. 20530
(202) 633-3895

CERTIFICATE OF SERVICE

I, JOHN M. GADZICHOWSKI, do hereby certify that on January 3, 1983, I served a copy of the foregoing Initial Memorandum of Plaintiff United States in Opposition to Motion of Defendant Jesse W. Williams for Summary Judgment, by Federal Express, upon:

ANTHONY P. GIORNO, ESQUIRE
Blue Ridge Street
P.O. Box 1076
Stuart, Virginia 24171



JOHN M. GADZICHOWSKI
Senior Trial Attorney
Department of Justice
Civil Rights Division
Washington, D.C. 20530
(202) 633-2188