

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia, ex rel)
William K. Schwartz, a registered)
voter in Kanawha County,)
West Virginia)

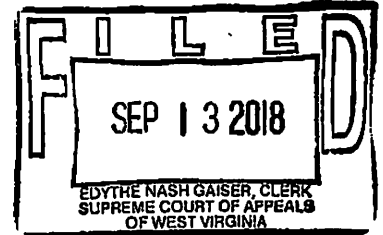
Relator,)

v.)

The Honorable James Justice,)
Governor of the State of West)
Virginia, and The Honorable)
Mac Warner, Secretary of State)
of the State of West Virginia, and)
Evan Jenkins, a real party in)
interest, and Tim Armstead,)
a real party in interest,)

Respondents.)

Upon Original Jurisdiction in Prohibition and
Mandamus No.



**Relator William K. Schwartz's Combined Writ of Mandamus and Writ of Prohibition
Directing the Secretary of State to Remove Evan Jenkins' Name from the Election Ballot
on November 6, 2018 and to Prohibit Governor Justice's Appointments of Jenkins and
Armstead to the Vacant Supreme Court Seats**

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The powers of government reside in all the citizens of the State and can be rightfully exercised only in accordance with their will and appointment. W.Va. Const., art. II, §2.

***No person may hereafter be elected as a justice in the supreme court of appeals unless he has been admitted to practice law for at least ten years prior to his election.
W. Va. Const. art. VIII, §7.***

No senator or delegate, during the term for which he shall have been elected, shall be elected or appointed to any civil office of profit under this State, which has been created, or the emoluments of which have been increased during such term, except offices to be filled by election by the people. W.Va. Const. art. VI, §15.

I. QUESTIONS PRESENTED

A. When the West Virginia Constitution says:

“No person may hereafter be elected to a justice of the supreme court unless he has been admitted to practice law for at least ten years prior to his election”

1. Is the ten year requirement met with ten years accumulated at any time or with ten uninterrupted years accumulated the decade before the election?
2. Does the same Constitutional provision require ten years of actual experience practicing law or is holding a law license and performing non-lawyer jobs enough to rise to the office of Supreme Court Justice?

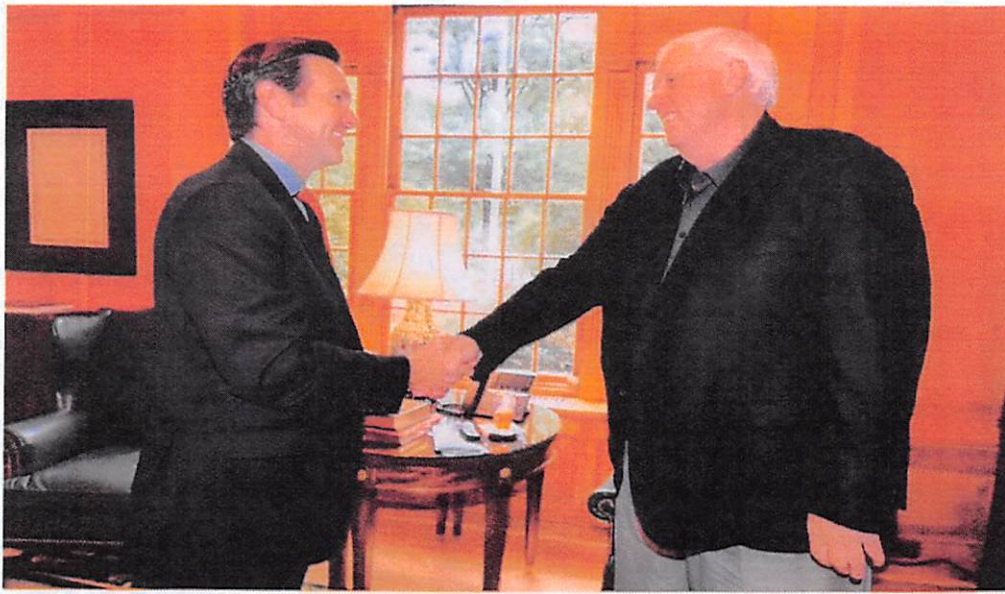
B. Has Article II, §2 (government power comes from the people) and Article II, § 4 (equal protection) been violated when voters elect two supreme court justices and a governor, all as democrats, and the governor flips party loyalty to republican after winning the election as a democrat, and subsequently appoints two supreme court vacancies with “conservative” republicans?

C. Is Article VI, §15, The Emoluments Clause, violated by the gubernatorial appointment of a legislator to a vacant supreme court of appeals seat who voted affirmatively by official house resolution to investigate and impeach the entire supreme court, and who then resigned to run for one of the two seats vacated where the vacancies of the two seats at issue were “created” due to the House impeachment proceedings?

II. STATEMENT OF THE CASE

This Writ is filed directly to the West Virginia Supreme Court of Appeals; there was no action filed in any lower tribunal. As such, there is no lower court record or Appendix created. Below are the facts, as the Relator asserts them:

- a. William Schwartz is a West Virginia attorney who has been licensed, uninterrupted, in the State of West Virginia in excess of ten years. Attorney Schwartz was among those selected by the Judicial Vacancy Advisory Commission and recommended to the Governor to fill Robin Davis' vacated seat but was not appointed to that seat.
- b. James Conley Justice II was a registered Republican until February 2015 when he changed his party affiliation to Democrat;
- c. James Conley Justice II was elected Governor of the State of West Virginia as a Democrat on November 8, 2016;
- d. On or about August 4, 2017, Governor Justice switched his party affiliation back to Republican;
- e. Since West Virginia became a state in 1863, judges and justices have been chosen by the voters in partisan elections;
- f. The voters of the State of West Virginia elected Democrat Robin Davis to the West Virginia Supreme Court first in 1996, and re-elected her in 2000 and 2012;
- g. The voters of the State of West Virginia elected Democrat Menis Ketchum to the West Virginia Supreme Court on November 4, 2008;
- h. In April of 2015, then Governor Tomblin signed a bill into law that made elections for all judges, including Supreme Court justices, non-partisan.
- i. Since January 2018, allegations of overspending and other misuse of funds were levied against all five members of the West Virginia Supreme Court;
- j. Menis Ketchum resigned his seat on or about July 27, 2018;



k.

On August 1, 2018 Governor Justice met with Evan Jenkins and discussed Jenkins running for the Supreme Court. See above. Justice, James (@WVGovernor), August 1, 2018, 3:00PM Tweet. (Twenty Four days later, Governor Justice appointed Jenkins a seat on the bench. See below).

l. On August 13, 2018, the Republican controlled West Virginia House of Delegates impeached the entire Supreme Court in a never before seen act in United States politics.

m. Public cries rang out across the state and country that the mass impeachment was actually a coup. For example:

- “No one has defended the lavish spending. But the prospect of a mass judicial impeachment struck opponents as a partisan power grab by Republicans who control the governor’s office and both houses of the State Legislature.” Campbell Robertson, *A Coup or a Couch? What’s Behind the Impeachment of West Virginia’s Supreme Court*, N.Y. Times, August 14, 2018.
- “A mass judicial impeachment, over lavish but legally permissible spending, he said, was unwarranted and possibly even a violation of the separation of powers. ‘It’s unprecedented in the United States that one branch of the

government goes in and lops off another,' he said." *Id.* Quoting Delegate Chad Lovejoy (D).

- "Republicans are attempting to stack it—but the justices made that task easy by engaging in conduct ranging from questionable to certainly illegal. Republicans are citing the serious allegations against two justices to justify removing all four, and they have timed their attacks to ensure that Republican Gov. Jim Justice, rather than West Virginia voters, will be able to select their replacements, thereby dragging the court far to the right." Mark Joseph Stern, *Why Republicans Just Impeached the Entire West Virginia Supreme Court*, (August 15, 2018, 4:56 PM) <https://slate.com/news-and-politics/2018/08/west-virginia-supreme-court-why-republicans-just-impeached-all-four-sitting-justices.html>

- n. Robin Davis resigned her seat August 13, 2018;
- o. Thankfully, the timing of Ketchum's and Davis' resignations provided for their respective replacements to be chosen by the people of the State of West Virginia in a special election on November 6, 2018; See W. Va. Code § 3-10-3(d)(3);
- p. Now-Republican Governor Justice is authorized to appoint justices to fill the vacancies created by the resignations until the citizens can fill the seats through the special election on November 6, 2018. See W. Va. Code § 3-10-3(b);
- q. On August 25, 2015, Governor Justice appointed Republican Tim Armstead to fill Menis Ketchum's seat on the Court and Republican Evan Jenkins to fill Robin Davis' seat on the Court;

- r. While the vacancies were created by the resignations of two (2) Democrats, Governor Justice appointed (2) Republicans to those vacancies which shifts the power of the Judicial Branch to match the Executive Branch and the Legislative Branch.
- s. In a news conference and tweets lauding his appointments, Governor Justice made the following statements:
- “Both of these appointees are true conservatives, and both have the honor and integrity we need to restore trust to our highest court.” Justice, James (@WVGovernor), August 25, 2018, 1:37 PM, Tweet.
 - “What we need to do more than anything is repair, move on and show the nation how committed we are as West Virginians to have a solid court and, in my opinion, without any question, a conservative court.” Lacie Pierson, *Justice selects Armstead, Jenkins for interim spots on WV Supreme Court*, Charleston Gazette Mail, August 25, 2018.

Facts Specific to Evan Jenkins

- a. Evan Jenkins is a lifelong resident of Huntington, West Virginia. See Exhibit A, West Virginia Supreme Court of Appeals Vacancy Application Form for Evan Jenkins.
- b. Jenkins was admitted to practice law in West Virginia April 5, 1988. Id.
- c. From 1987 to 1992, Jenkins worked at his father’s law firm, Jenkins Fenstermaker, PLLC in Huntington, West Virginia. This was the first and last job Jenkins held that required him to practice law. Id.
- d. From 1992 to 1999, Jenkins worked for the West Virginia Chamber of Commerce as its General Counsel. Id.

- e. From 1999 to 2014, Jenkins worked for the West Virginia Medical Association as its Executive Director. Id.
- f. From 1994 to 2018, a 24 year time span, Evan Jenkins has run for five different offices ten different times. For 22 of the last 25 years, Evan Jenkins has been an elected official and running for one of five different offices.
- g. Not one of those elected offices required a law license, or a law degree, or the exercise of legal or judicial judgement. See Id.
- h. Of every position held by Evan Jenkins, a non-lawyer could hold that same position since 1992.
- i. He has lost two elections, his only two statewide elections, where voters rejected him. In 2000, Evan Jenkins lost a bid for West Virginia Supreme Court of Appeals; in 2018, he was rejected by voters in his party's primary for United States Senate, who instead choose his opponent, Patrick Morrissey. Id.
- j. In 2014, Jenkins placed his West Virginia law license on inactive status, an act he was not required to do, but did so voluntarily, after he was elected to the United States House of Representatives.
- k. Until 2013, Jenkins was a registered Democrat.
- l. On August 9, 2018, Jenkins reactivated his law license.
- m. Although Jenkins stands appointed by the Governor as a Supreme Court Justice and is on the ballot for that same seat come November 6, he has nonetheless not yet resigned his United States House of Representatives seat.
- n. Evan Jenkins himself, in his application for appointment, attached as Exhibit A, admits he has no recent trial experience. When asked to state the case number and court of all trials

handled to conclusion in the last five years, he can state only work from 1988 to 1992. Id at page 8 of 19, Question 7 and response.

- o. When asked to list honors, prizes or awards received, Evan Jenkins lists 3 pages of awards, overwhelming in their volume, and each one of them political and none related to the practice of law. Id at pages 5 through 7 of 19.

Facts Specific to Tim Armstead

- a. Tim Armstead is a lifelong resident of West Virginia. See Exhibit B, West Virginia Supreme Court of Appeals Vacancy Application Form for Tim Armstead.
- b. Armstead was an active member of the West Virginia House of Delegates from 1998 to August 21, 2018. Id.
- c. Armstead was Speaker of the House starting in 2015. Id.
- d. As Speaker of the House, Armstead is the *de facto* leader of the statewide Republican party.
- e. Armstead recused himself from presiding over the House impeachment proceedings citing “this process be free from any appearance of impropriety.” See Exhibit C, Speaker Armstead Statement on Special Impeachment Session.
- f. While Armstead recused himself from presiding over the impeachment special session, he stayed on the floor of the House and voted “yea” on HR 201 to investigate all members of the Supreme Court for impeachable offenses. See Exhibit D, House Roll Call #601.
- g. On August 14, 2018 Armstead also voted “yea” on HR 203 recommending the public reprimand of four Supreme Court Justices. See Exhibit E, House Roll Call #619.

- h. Justice Robin Davis issued a statement on August 14, 2018 notifying all West Virginians that she had resigned her seat because the “majority party in the legislature is positioning to impose their own party preferences.” See Exhibit F, Justice Davis Statement.
- i. The salary of a West Virginia Supreme Court Justice is \$136,000.00 See W. Va. Code § 51-1-10a.
- j. The salary of the West Virginia Speaker of the House is \$20,000.00 per year base pay plus \$150.00 per day additional compensation for each actually served during any regular, extension of regular or extraordinary session, and \$150.00 per day attending to legislative business when the Legislature is not in any session and no committees are meeting. See W. Va. Code § 4-2A-2, § 4-2A-3, § 4-2A-4.
- k. Tim Armstead was admitted to practice law in West Virginia in 1990. See Exhibit B.
- l. Tim Armstead has not practiced law since 2006. Id.

III. SUMMARY OF ARGUMENT

Two Democrat Supreme Court Justices have resigned their seats. By rule, the Governor is to appoint their replacements to fill the seats until the November 6, 2018 election. Both appointees that Governor Justice appointed fail to meet the licensing and experiential qualifications required by the West Virginia Constitution. Further, Governor Justice violated the West Virginia Constitution and West Virginia state law by appointing replacement justices with opposite political affiliations from the vacating, previously elected, justices.

The facts that lead the parties and the court to this place are stunning, historical, unprecedented and described by some as a coup or power grab in a gross blending of the power of the three separate branches of government.

Evan Jenkins is disqualified to be on the ballot for election to Supreme Court of Appeals of West Virginia because the West Virginia Constitution requires a candidate be admitted to practice law in West Virginia for the decade prior to the election; he was inactive for four of the last ten years. Without current relevant legal experience this court has no way to ensure a candidate is qualified. The “has been admitted” language coupled with the “prior to his election” language is clear. The candidate must be admitted continuously and uninterrupted to practice law for the decade prior to his election.

Evan Jenkins’ and Tim Armstead’s appointments violate the West Virginia Constitution by abrogating the clear will of the voters and similarly deny equal protection to those who voted to elect three democrats. The party switch by the Governor coupled with these appointments are the filling of elected seats through means other than election and result in three “conservative” republicans in office where democrats were elected by the people at the last authorized election.

Tim Armstead’s appointment violates the Emoluments Clause because he, as a sitting delegate, voted to investigate and impeach the entire court creating two vacancies and then resigned to run for one of the vacancies he helped “create”. His base salary would go from about Thirty Thousand Dollars (\$30,000.00) per year to about One Hundred and Forty Thousand Dollars (\$140,000.00) per year. Such enrichment created by his vote on impeachment is specifically prohibited by the emoluments clause and can only be cleansed through he will of the voters.

IV. STATEMENT OF ORAL ARGUMENT AND DECISION

Oral argument is necessary in this matter because the criteria outlined in Rule 18(a), W.Va. R. App. P., do not render oral argument unnecessary; no party has waived oral argument; the appeal is not frivolous, the parties disagree whether the dispositive issues have been authoritatively

decided, and this Court's decisional process would be significantly aided by oral argument. Oral argument should be held pursuant to Rule 20, W.Va. R. App. P., because the decision in this case involves (1) several issues of first impression; (2) issues of fundamental public importance; and (3) constitutional questions regarding the validity of a statute, municipal ordinance, or court ruling.

V. ARGUMENT

A. This Court has original jurisdiction to hear writs of mandamus and prohibition as to elections

This Court's precedent supports the use of a writ of mandamus to challenge the candidacy of a person seeking elected office. This Court recently set forth the elements of a writ of mandamus:

"This Court has explained that the purpose of mandamus is to enforce 'an established right' and a 'corresponding imperative duty created or imposed by law.' *State ex rel. Ball v. Cummings*, 208 W.Va. 393, 398, 540 S.E.2d 917, 922 (1999). In determining the appropriateness of mandamus in a given case, our law is clear that :
'A writ of mandamus will not issue unless three elements coexist-(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.'

Syllabus Point 2, *State ex rel. Kucera v. Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969). *State ex rel. West Virginia Citizen Action Group v. Tomblin*, 227 W.Va. 687, 692, 715 S.E.2d 36, 41 (2011).

"In West Virginia a special form of mandamus exists to test the eligibility to office of a candidate in either a primary or general election." Syl pt. 5 *State ex rel Maloney v. McCartney*, 159 W.Va. 513, 223 S.E.2d 607 (1976). Thus, "[b]ecause there is an important public policy interest in determining the qualifications of candidates in advance of an election, this Court does not hold an election mandamus proceeding to the same degree of procedural rigor as an ordinary mandamus case." Syl. pt. 2, *State ex rel. Bromelow v. Daniel*, 163 W.Va. 532, 258 S.E.2d 119

(1979); Syl. pt. 3, *State ex rel. Carenbauer v. Hechler*, 208 W.Va. 584, 585, 542 S.E.2d 405, 406 (2000). This relaxed standard was first adopted in the context of cases where the petitioner sought to preserve the right to vote or to run for political office, see, e.g., syl. pt 3, *State ex rel. Sowards v. County Comm'n of Lincoln Co.*, 196 W.Va. 739, 474 S.E.2d 919 (1996); *State ex rel. Sandy v. Johnson*, 212 W.Va. 343, 348, 571 S.E.2d 333, 338 (2002), and has been expanded to cases seeking to prohibit a candidate from running:

“While we countenanced easing the standard for issuing extraordinary relief in the context of ‘preserving’ the right to run for political office in *Sowards*, the issues raised in this case, although aimed at prohibiting a candidacy, suggest similar exigencies which require immediate, rather than deferred, resolution. Moreover, as we explained in *Bromelow*, ‘[t]he principal purpose of the liberalized election mandamus proceeding is to provide an expeditious pre-election hearing to resolve eligibility of candidates, so that voters can exercise their fundamental rights as to all eligible candidates.’ Id. at 536, 258 S.E.2d at 122; see also *State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 527, 223 S.E.2d 607, 616 (1976) (stating that ‘intelligent and meaningful exercise of the franchise requires some method of averting a void or voidable election’ and recognizing that ‘some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery....’).”

State ex rel. Carenbauer v. Hechler, 208 W.Va. at 588, 542 S.E.2d at 409.

“As this Court has recognized, prompt resolution of candidate and vacancy appointment eligibility disputes furthers important public policies: A consistent line of decisions of this Court during the last fifteen years clearly recognizes that the intelligent and meaningful exercise of the franchise requires some method of averting a void or voidable election. Consequently this Court has recognized that some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery.”

State ex rel. Maloney v. McCartney, 159 W.Va. at 526-27, 223 S.E.2d at 616; see also *White v. Manchin*, 173 W.Va. 526, 532-534, 318 S.E.2d 470, 476-478 (1984).

A writ of prohibition is proper where a judge is improperly appointed. *State ex rel. Hash v. McGraw*, 180 W. Va. 428, 429, 376 S.E.2d 634, 635, (1988). Cognizant of the need for alacrity in matters affecting the right to political office, this Court has recognized that “[i]n West

Virginia a special form of mandamus exists to test the eligibility to office of a candidate in either a primary or general election." *State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 223 S.E.2d 607 (1976). In special mandamus election cases, "[b]ecause there is an important public policy interest in determining the qualifications of candidates in advance of an election, this Court does not hold an election mandamus proceeding to the same degree of procedural rigor as an ordinary mandamus case." Syl. Pt. 2 *State ex rel. Bromelow v. Daniel*, 163 W.Va. 532, 258 S.E.2d 119 (1979). In that same vein, we have explained that "when a writ of mandamus has been invoked to preserve the right to vote or to run for political office . . . this Court has eased the requirements for strict compliance for the writ's preconditions, especially those relating to the availability of another remedy." Syl. Pt. 3 *State ex rel. Sowards v. Cty. Comm'n of Lincoln Co.*, 196 W.Va. 739, 474 S.E.2d 919 (1996).

B. The constitutional requirement that a candidate can only be elected when he or she "has been admitted to practice law for at least ten years prior to his election", by its plain language and also as a matter of constitutional intent means that a candidate must have current experience practicing law by, being admitted to practice law in the decade prior to the election; and not merely at any time ever in the life of the candidate, as any other reading would render the words "prior to his election" superfluous.

1. The policy basis in ensuring West Virginia has a competent and qualified judiciary who understands the law of the jurisdiction is what is behind the framers' intent in the ten year admission to bar requirement

The West Virginia Constitution states "[n]o person may hereafter be elected as a justice of the Supreme Court of Appeals unless he has been admitted to practice law for at least ten years prior to his election" W. Va. Const. Art. VIII, § 7. "The phrase 'admitted to practice law for at least five years,' contained in West Virginia Constitution Art. VIII, § 7 imposes licensing and experimental requirements for persons elected to the office of circuit judge which may only be satisfied by unqualified admission to the practice of law in this State for the requisite period.

‘Admitted to practice’ means permitted to practice before the official body empowered to regulate the practice of law in this State.” *State ex rel. Haught v. Donnahoe*, 174 W. Va. 27, 28, 321 S.E.2d 677, 678, (1984). So important is regulation of the entire judiciary, and so important is that lawyers, who become judges, are regulated by the highest tribunal in the state, as found by the *Haught* Court, the constitutional provision mandating the five-year requirement means five years of licensing is required to be in the same jurisdiction where the potential judge would preside, that is, the State of West Virginia. The need to fulfill the qualification requirement is even higher here because the seat sought is on the highest Court in our State. Certainly, if a circuit judge is required to have five years of unqualified admission in this State, a Supreme Court Justice’s requirement of ten years admission likewise is unqualified and in this State.

“The starting point in every case involving construction of our Constitution is the language of the constitutional provision at issue”. *State ex rel. W. Va. Citizen Action Group v. Tomblin*, 227 W. Va. 687, 690, 715 S.E.2d 36, (2011). This Court previously has recognized that “[t]he provisions of the Constitution, the organic and fundamental law of the land, stand upon a higher plane than statutes, and they will as a rule be held mandatory in prescribing the exact and exclusive methods of performing the acts permitted or required.” Syl pt. 2 *Id.* citing *Simms v. Sawyer*, 85 W. Va. 245, 101 S.E. 467 (1919). This Court also has stated:

“The Constitution of this State is the supreme law of West Virginia; it is subject only to the Constitution of the United States and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made, under the authority of the United States, all of which constitute the supreme law of the land. United States Constitution, Article VI, Clause 2. The Constitution of West Virginia is binding upon all the departments of government of this State, all its officers, all its agencies, all its citizens, and all persons whomsoever within its jurisdiction. The three branches of our government, the legislative, the executive, and the judiciary, alike derive their existence from it; and all of them must exercise their power and authority under the Constitution solely and strictly in accordance with the will of the sovereign, the people of West Virginia, as expressed in that basic law. It is the solemn duty of this Court, its creature, to obey and give full force and effect to all its terms and provisions.”

Harper v. County Court, 129 W. Va. 54, 61-62, 39 S.E.2d 177, 184 (1946).

The qualifications requirement for justices of the Supreme Court stated in the West Virginia Constitution are mandatory. Their goal is to “advance the State’s compelling interest in securing and maintaining a judiciary qualified in the law of the jurisdiction”. *Haught* at 22. Further the *Haught* Court discussed the importance of the licensing prerequisite for a Circuit Judge:

“As previously noted, similar experiential requirements for judges are common. The purpose for such requirements is unquestionably clear. They are intended to insure not only that judges are competent in the law, but that they are reasonably familiar with the law of the jurisdiction to which they are elected. While it may be axiomatic that judges are elected to interpret and uphold the law, due process demands a high level of jurisdictional competence and integrity in that endeavor. Requirements or restrictions affecting eligibility for judicial office that reasonably strive to meet such valid public purposes do not impose impermissible barriers to such offices. Furthermore, a state’s particular interest in maintaining the integrity of its judicial system can support restrictions which could not survive constitutional scrutiny if applied to other types of offices.

Id. at 22 citing *Clements v. Fashing*, 457 U.S. 957, 968, 102 S. Ct. 2836, 2846, 73 L. Ed. 2d 508, 519 (1982).

2. The plain language of the constitutional provision demonstrates that continuous, uninterrupted admission to practice law during the ten years prior to his election is a constitutional prerequisite to run for election or hold the office of justice of the Supreme Court of West Virginia.

The plain meaning of the words of the constitutional provision at issue here requires that a justice of the Supreme Court of Appeals be admitted to practice law for the decade prior to his ascension to the bench. The verb tense “has been” coupled with the phrase “prior to his election” indicates continuous, uninterrupted admission for the decade prior to the election is required. Indeed, had the framers intended only that one merely be admitted to practice law for any ten year period, the words “prior to his election” would be rendered superfluous and meaningless.

This Court also previously had held that state constitutional provisions must be read using the plain meaning of their words. “[I]n discerning the meaning of constitutional language, words used in a state constitution, as distinguished from any other written law, should be taken in their general and ordinary sense.” *State ex rel. W. Va. Citizen Action Group* at 690.

Here, an analysis of the Constitution’s use of “has been” is necessary to determine the remoteness of the ten-year license requirement. “Has been” is used for the present perfect continuous tense. This form is used to refer to something which had started in the past and is still continued in the present tense. EF Education First, Ltd, <https://www.ef.edu/english-resources/english-grammar/present-perfect-continuous>. Here, as used in Art. VIII, § 7, “has been admitted to the practice of law for at least ten years prior to his election” means the candidate must have been licensed for the ten years preceding and continuously running up to the appointment or election. “Has been” is clear and unambiguous to a reasonable person. “Where a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed.” *State ex rel. W. Va. Citizen Action Group* at 690 citing *State ex rel. Smith v. Gore*, 150 W. Va. 71, 143 S.E.2d 791 (1965). By using “has been” and not some other verb or verb tense qualifying the time period of the active license, the authors of the requirement intended for the candidate to have had an active law license for at least a continuous ten years up to the present. Mr. Jenkins’ law license lapsed for four years, from 2014 to when he just recently applied to have it reinstated. This clearly violates the active license requirement mandated in the West Virginia Constitution and renders Mr. Jenkins unqualified for the vacated Supreme Court seat.

The facts here present the situation of a person who was a West Virginia licensed lawyer who voluntarily placed that license in inactive status and did not practice law in West Virginia

and in fact had not acted as a lawyer for more than twenty years. The former licensee then reactivated his license solely for the purpose of qualifying for the appointment and subsequent run for a vacant seat on the West Virginia Supreme Court. The four year gap in the law licensure of the appointee/candidate for a seat on the Supreme Court violates the West Virginia Constitutional requirement to be a licensed lawyer for the requisite time period "prior to his [taking office]."

If the ten year "prior to" licensure requirement were anything but immediate and recent as to the decade, someone could accumulate the ten years and not practice for decades and then immediately ascend to the bench, with no limits on how long it has been since once was a practicing attorney. The constitutional words "prior to his election" would be superfluous and meaningless, as they would add nothing to a ten year licensure requirement. The way the requirement is written must give a meaning to those words separate and apart from what would be meant if the provision had ended with a period after the word "years." The only common sense interpretation of the plain constitutional language that gives meaning to the words "prior to his election" is that a justice must be fully admitted and licensed to practice law in West Virginia in the decade prior to taking office. To that end, this Court has long recognized that a "cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute." Syl. Pt. 3, *Meadows v. Wal-Mart Stores, Inc.*, 207 W.Va. 203, 530 S.E.2d 676 (1999); *see also State ex rel. Johnson v. Robinson*, 162 W.Va. 579, 582, 251 S.E.2d 505, 508 (1979) ("It is a well-known rule of statutory construction that the Legislature is presumed to intend that every word used in a statute has a specific purpose and meaning."); *Davis Mem'l Hosp. v. W. Va. State Tax Comm'r*, 222 W.Va. 677, 686, 671 S.E.2d 682, 691 (2008) (same). "Courts should favor the plain and obvious meaning of a statute as

opposed to a narrow or strained construction." *T. Weston, Inc. v. Mineral Cnty.*, 219 W.Va. 564, 568, 638 S.E.2d 167, 171 (2006) (citing *Thompson v. Chesapeake & O. Ry. Co.*, 76 F. Supp. 304, 307-08 (S.D. W. Va. 1948)). *Young v. Apogee Coal Co., LLC*, 232 W. Va. 554, 561 (2013) Indeed, it is apparent this constitutional provision was intended to prohibit the very type of appointment or possible election of an inexperienced, unqualified person like Jenkins to the Supreme Court of Appeals of West Virginia.

Additionally, "inactive" status carries with it specific limitations within the Rules governing the members of the West Virginia State Bar. An inactive member shall not practice law, vote in any meeting, election or referendum of the state bar, or hold office in the state bar. W. Va. State Bar Bylaws Art. II, § 6. An inactive member must also pay the annual inactive member dues. As an inactive member of the West Virginia State Bar, Mr. Jenkins was prohibited from advising any one regarding the law, from drafting legal documents for another, or from representing another in front of a tribunal. In short, Mr. Jenkins has been prohibited from doing any act that is the essence of what lawyers do for four (4) years prior to the appointment. Further, for four (4) years, Mr. Jenkins had no legal malpractice insurance requirement and no continuing legal education requirement. He was devoid of everything that makes a West Virginia lawyer a West Virginia lawyer.

In his/her service as a United States House of Representatives member, a Representative is not practicing law and is not required to have a law license. Attorneys General, Supreme Court Justices, lower court judges, and prosecuting attorneys are the only politicians that are practicing law, and are required to be admitted to the practice of law, by nature of the position. Representative Jenkins (and Speaker Armstead) were not practicing law in their respective political positions.

State ex rel. Haught, as previously discussed, was a case regarding a California lawyer who left that state after purchasing a farm in West Virginia. After moving to West Virginia with no intention to practice law here, Mr. Donnahoe decided to run for a Circuit Court seat in the Third Judicial Circuit. While he had been a licensed lawyer in California for five years prior to seeking the seat, Mr. Donnahoe was not ever licensed in West Virginia. A challenge to his qualifications to be a West Virginia judge was brought asserting the West Virginia Constitution, even though it did not specifically state it, required the candidate to have been licensed in West Virginia, not any other state, for five years. The *Haught* Court reached the analysis by reasoning the following:

“...the phrase ‘admitted to practice law for at least five years,’ contained in West Virginia Constitution art. VIII, § 7 imposes licensing and experiential requirements for persons elected to the office of circuit judge which may only be satisfied by unqualified admission to the practice of law in this State for the requisite period. ‘Admitted to practice’ means permitted to practice before the official body empowered to regulate the practice of law in this State for the minimum five-year period provided in article VIII, § 7. **This requires uninterrupted permission to practice in the State for such period.**”

Id. at 683-684. (Emphasis Added).

Similarly here, the phrase in the qualification of justices section of the W.Va. Constitution “unless he has been admitted to practice law for at least ten years prior to his election” is not satisfied unless the candidate has unqualified admission to the practice of law in this state uninterrupted for the decade prior to the election. *Haught*, *supra*, Mr. Jenkins’ admission to practice law in West Virginia is not for the requisite period: his ten years prior to his appointment was interrupted by the four most recent years of not being permitted to practice law in West Virginia. Evan Jenkins is constitutionally unqualified to be a West Virginia Supreme Court Justice and therefore the instant writ should be granted.

C. When voters elect two supreme court justices and a governor all as Democrats, and the Governor flips party loyalty to Republican after winning the election as a Democrat, and subsequently appoints two supreme court vacancies with “conservative” Republicans, has art. II, § 2 and art. VII, §7, been violated to deny the will of the people and to deny equal protection to those who elected three Democrats and instead got three Republicans, by means other than election.

“Liberty is always at stake when one or more of the branches seeks to transgress the separation of powers.”¹

“The powers of government reside in all the citizens of the State, and can be rightfully exercised only in accordance with their will and appointment.” W. Va. Const. art. II, §2. Article II, §4 states that “[e]very citizen shall be entitled to equal representation in the government, and, in all apportionments of representation, equality of numbers of those entitled thereto, shall as far as practicable, be preserved.” This Court previously has determined this language to be plain: “[w]e believe that Article II, §4 of our Constitution is clear in its terms and that the intention thereof is manifest from the language used. It provides for equal representation in government and, additionally, in all apportionments of representation.” *State ex rel. Smith v. Gore*, 150 W. Va. at 76, 143 S.E.2d at 794. “Thus, it is clear that the voters of this State have the right, guaranteed by this State's Constitution, to elect the individuals who will represent them, and their interests, in this State's Legislature.” *State ex rel. Biafore v. Tomblin*, 236 W. Va. 528, 532, 782 S.E.2d 223, 227, (2016) (Davis, R, dissenting). “No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535, 11 L. Ed. 2d 481 (1964).

An elected official also has a right to choose her own political party. Syl. pt. 3, *State ex rel. Billings v. City of Point Pleasant*, 194 W. Va. 301, 460 S.E.2d 436 (1995) (“Restrictions that

¹ *Clinton v. City of N.Y.*, 524 U.S. 417, 450, 118 S. Ct. 2091, 141 L. Ed. 2d 393 (1998) (Kennedy, J., concurring).

limit an individual's ability to select and change his or her party affiliation implicate the speech and associational freedoms guaranteed by the First Amendment to the United States Constitution and by Sections 7 and 16 of Article III of the West Virginia Constitution. Such restrictions cannot be imposed on these rights unless the restrictions are necessary to accomplish a legitimate and compelling governmental interest and there is no less restrictive means of satisfying such interest." In her dissent in *Biafore*, Justice Davis stated:

"That is not to say, however, that the whim of the one may trump the will of the many. While the express language of W. Va. Code § 3-10-5 may require replacing a vacating legislator with an individual of the last political party of which the vacating legislator was a member, where, as here, that legislator has changed parties such that the person replacing him/her is a member of a different political party than the one that sponsored the legislator as a candidate for political office at the time he/she was elected, such a replacement procedure effectively frustrates the voters' right to elect the candidate of their choice. 'Political candidacies are essentially a coming together of voters to support a particular platform, cause, or leader. Political parties, which are—for better or worse—an integral part of our democratic system, measure their success through their candidates.' *Billings*, 194 W. Va. at 305, 460 S.E.2d at 440".

Biafore at 547². But "candidates' rights are necessarily tied to voters' rights. Clearly, '[t]he right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on the right strike at the heart of representative democracy.'" *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S. Ct. 1362, 1378, 12 L. Ed. 2d 506, 523 (1964). A citizen's right to vote is not worth much if the law denies his or her candidate of choice the opportunity to run. "The rights of voters and the rights of candidates do not lend themselves to neat separation; laws that affect candidates always have at least some theoretical, correlating effect on voters." *Bullock v. Carter*, 405 U.S. 134, 143, 92 S. Ct. 849, 856, 31 L. Ed. 2d 92, 99 (1972). As the United States Supreme

² While her position was not that of the majority decision on the Court, those arguments were also not developed throughout the briefing process or oral argument. "While it was considerate for the parties to evade the pivotal question of this statute's constitutionality to facilitate the Court's decision of this case, such niceties were neither necessary nor prudent. This Court regularly considers and decides issues involving this State's Constitution, and, while addressing the constitutionality of a statutory provision is not always a routine part of this Court's statutory construction, sometimes the constitutional implications of a statute's construction require venturing into that realm." *Biafore* at 542.

Court observed in *Powell v. McCormack*, 395 U.S. 486, 548, 89 S. Ct. 1944, 1977, 23 L. Ed. 2d 491, 531 (1969): "A fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to govern them.' 2 *Elliot's Debates*, 257. . . ." *Billings*, 194 W. Va. at 305, 460 S.E.2d at 440.

It is not necessary for the Relator herein to argue or this Court to find these political occurrences discussed here were strategically planned to intentionally create vacancies to allow the GOP to appoint a conservative court. All that is necessary is that through the totality of the facts the Court recognize the conditions exist in our government for this unacceptable abrogation of the will of the voters to occur. In other words, it does not matter if a coup was actually intended – only that it could have been – and the law should not allow conditions to exist that permit political strategy to prevail over the will of the voters. Frankly, it does not matter which political side one is on, the situation exists now where the will of the voter is poised to be ignored and the separation of powers effectively dissolved.

The citizens of the State elected Robin Davis and Menis Ketchum as Democrats at a time when the citizens were directed to choose between candidates that had a known party affiliation. Democrat Davis was elected to the West Virginia Supreme Court first in 1996, and re-elected her in 2000 and 2012, firmly indicating a Democrat in the seat was desired. Democrat Ketchum was elected to the West Virginia Supreme Court on November 4, 2008. In April of 2015, before Davis' term ended and before Ketchum's term ended, the then Governor signed a bill into law that made subsequent elections for all judges, including Supreme Court justices, non-partisan. Had Davis stayed on the bench, her next re-election, should she have chosen to run, would have been in 2024. If Ketchum had decided to stay, his re-election would have been in 2020. The non-

partisan rule, W. Va. Code § 3-5-6a³, would apply to both re-elections. But the non-partisan rule did not apply and was not in effect when Davis and Ketchum were most recently elected. The will of the people in electing Democrats to the Supreme Court was thwarted by subsequent Republican vacancy appointments.

If these political developments come to fruition, the voters will have had three major public elected officials swing from Democrat to Republican when the will of the people was the exact opposite. The transgression of the separation of powers is exhibited in Governor Justice's comments on August 25, 2018, the day he appointed Evan Jenkins and Tim Armstead:

- “What we need to do more than anything is repair, move on and show the nation how committed we are as West Virginians to have a solid court and, in my opinion, without any question, a conservative court.” Erin Beck, *Justice: Supreme Court appointees selected for their conservatism*, Register-Herald reporter, August 26, 2018.
- “Both of these appointees are true conservatives, and both have the honor and integrity we need to restore trust to our highest court.” Justice, James (@WVGovernor), August 25, 2018, 1:37 PM, Tweet.

In this case, a unique set of facts has unfolded; they are so unique that this is a case of first impression for this Court and perhaps for all courts nationwide. The people elected two Democrat Supreme Court Justices and later elected a Democrat for Governor. The people had spoken by casting their votes that they wanted Democrats in those positions. A complete disenfranchisement of the voters will occur if all three of those highest positions in government are switched to Republican in direct contravention to their vote. Reasonable people can evaluate

³ “(a) An election for the purpose of electing a justice or justices of the Supreme Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose.”

the actions of this Governor and know that they have been deceived and their will is being denied. Governor Justice “must exercise their power and authority under the Constitution solely and strictly in accordance with the will of the sovereign”. *Harbert v. County Court*, 129 W. Va. 54, 61-62, 39 S.E.2d 177, 184 (1946).

Further, in this case, the voters of the entire State separately chose the persons who they wanted to be on the Supreme Court: Democrats Robin Davis and Menis Ketchum. As was their prerogative, both justices resigned their positions. Upon their departure from office, however, application of the express language of W. Va. Code § 3-10-3(b) without regard to political party affiliation of the replacement operates to disenfranchise the voters of the entire State, who, at the time of each previous election, (2012 and 2008) elected Robin Davis and Menis Ketchum as their Supreme Court Justices. This construction, dictated by the statute's plain language, effectively silences the voters' voice and cannot be reconciled with the voters' constitutional right to select their representatives of their choosing guaranteed by Article II §4 of the West Virginia Constitution which plainly states “[e]very citizen shall be entitled to equal representation in the government, and, in all apportionments of representation, equality of numbers of those entitled thereto, shall as far as practicable, be preserved.” (The second clause of this section, “and, in all apportionments of representation,” refers to something other than the legislature) *State ex rel. Smith v. Gore*, 150 W. Va. 71, 143 S.E.2d 791 (W. Va. 1965).

"The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. *And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.*" (Italics supplied.) Syl. Pt. 1 *Lance v. Board of Educ. of Cnty. of Roane*, 153 W. Va. at 569, 170

S.E.2d at 789 (quoting *Reynolds v. Sims*, 377 U.S. at 555, 84 S. Ct. at 1378, 12 L. Ed. 2d 506 (footnote omitted)). See also *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 665, 86 S. Ct. 1079, 1081, 16 L. Ed. 2d 169 (1966) ("[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment."). Application of W. Va. Code § 3-10-3(b) without regard to political party affiliation of the replacement as the Governor has done deprives the voters of their right to elect a candidate of their choosing, and, thus, is unconstitutional by violating Article II, §4 of the West Virginia Constitution.

Certainly Governor Justice has drawn his authority to appoint these replacements without adhering to the vacating justice's political affiliation from the recently passed statute that provides that justices shall be elected through nonpartisan ballots. W.Va. Code § 3-5-6a stating "[a]n election for the purpose of electing a justice or justices of the Supreme Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose." This statute is a part of a larger chapter of laws collectively referred to as "West Virginia Election Code", W.Va. Code § 3-1-1 *et seq.*, and took effect June 8, 2015 *after* both Robin Davis and Menis Ketchum were elected in their respective partisan elections. A complete reading of the statute, and the entire Election Code, reveals no provision for retroactivity of the statute or that the statute would specifically apply to appointments of vacated partisan justices, as has happened here. "A statute will be construed to operate in future only, and will not be given a retroactive effect unless the legislature has expressed its intention to make it retrospective. *Jenkins v. Heaberlin*, 107 W. Va. 287, 148 S.E. 117, (1929). The Legislature could have indicated in the new statute that it was to be considered retroactively, yet such language is absent from the text of W.Va. Code § 3-5-6a. The result of the

absence of the language is that the statute making the election of Supreme Court Justices nonpartisan is not applied only to the seats that were elected in a partisan election and vacated prior to their next naturally occurring election. Governor Justice misused the nonpartisan provision in the statute by not appointing Democrats to fill the unexpired seats on the Court of Democrats elected by the People as justices.

D. Article VI, §15, The Emoluments Clause, is violated by the gubernatorial appointment of a legislator to a vacant supreme court of appeals seat, who voted affirmatively by official house resolution, to investigate and impeach the entire Supreme Court, and who then resigned to run for one of the two seats vacated, where the vacancies of the two seats at issue were “created” due to the House impeachment proceedings.

When the House of Delegates passed HR201, Armstead, while recusing himself from presiding as Speaker over the special session, nevertheless did not recuse himself from voting on the House Resolution to investigate and impeach the entire Supreme Court of Appeals. To be clear, Armstead thereby “created” an office, by voting in a way that a vacancy was created on the Supreme Court through resignations directly related to impeachment resolution Armstead knew at the time of the vote that he would be filing to run for a vacant Supreme Court position. See Exhibit C, Speaker Armstead Statement on Special Impeachment Session. Notwithstanding his self-serving subjective belief that he had “no conflict” such a position is directly opposite to the West Virginia Constitution that states in pertinent part: “No senator or delegate, during the term for which he shall have been elected, shall be elected or appointed to any civil office of profit under this State, which has been created, or the emoluments of which have been increased during such term...” W. Va. Const. Art. VI, § 15. This is a “straightforward and absolute bar against a member of the legislature obtaining any public office that was created, or the emoluments of which were increased, during the legislator's term of office.” Syl pt. 6 *State ex rel. Rist v.*

Underwood, 206 W. Va. 258, 524 S.E.2d 179, (1999). Here, Armstead was in his term of office, and was the highest ranking member of the House of Delegates on June 26, 2018. By voting “yea” on the impeachment resolution he helped create a vacancy in the office of the Supreme Court of Appeals that he himself wanted to take. This is a transparent and straightforward violation of the constitutional emoluments clause.

The fact that Mr. Armstead may have requested a ruling from sympathetic House leaders on whether or not he should vote on the resolution is of no moment. The fact remains that he did vote, he voted “yea”, and that vote ultimately created an office for an unexpired term of justice on the Supreme Court of Appeals that he wanted to fill, all in direct violation of the constitutional emoluments clause. The emoluments clause allows for only one exception: if that ineligible legislator gains the office through popular election. W. Va. Const. Art. VI, § 15. It is conceded here that should he be otherwise qualified to be on the ballot on November 6, 2018 and the citizens of West Virginia should elect him by popular vote, his actions in creating the office he was interested in are swept away. In other words, this constitutional restriction is limited to appointment to the office created; Armstead can run and be elected to the position. But his appointment to a seat he helped create by his vote in favor of the impeachment resolution is precisely the kind of unconstitutional appointment the emoluments clause was intended to prohibit.

Creating a vacancy by impeachment proceedings is “creating an office” as contemplated by the West Virginia Constitution. The Emoluments Clause prohibits Armstead, who voted “yea” on the impeachment resolution, from the appointment to this created office which would raise his personal income by four or five times. Based upon the foregoing, the requested Writ should be granted.

VI. CONCLUSION

Evan Jenkins is disqualified from election because he has not been admitted to the practice of law for the decade prior to his appointment or election. Evan Jenkins' and Tim Armstead's appointments both violate the Constitution as to abrogating the will of voters in electing a Democratic governor and two Democratic Supreme Court justices and having all three changed to "conservative" Republicans through means other than election. The West Virginia Supreme Court of Appeals should never be a consolation prize for a career politician like Evan Jenkins who lacks even a decade of relevant legal experience and who has been prohibited from practicing law in this State for the last four years.

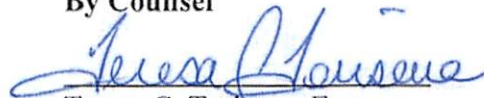
Tim Armstead cannot be appointed because his vote on the impeachment resolution helped create the vacancies on the Court, one of which he immediately sought. The Emoluments Clause of the Constitution does not permit him to vote in favor of a resolution to create a vacancy in an office and then be the one to fill that office.

PRAYER FOR RELIEF

For the foregoing reasons, the Writs requested should be granted.

WILLIAM K. SCHWARTZ

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I. PERSONAL IDENTIFICATION

1. Full name: Evan H. Jenkins
2. Other names by which you have been known: None
3. Employer's name: U.S. House of Representatives
4. Employment address: 1609 Longworth Building
City: Washington State: D.C. Zip: 20515
5. Residential Address:
City: State: Zip:
6. Contact number:
7. Date and Place of birth:
8. Are you an American citizen
9. Length of continuous residence in WV

II. SERVICE IN THE ARMED FORCES

1. If you are or have been a member of the armed forces of the United States, please state:
 - a) Branch of Service: N/A
 - b) Dates of Active Duty:
 - c) ~~Current Rank or Rank at Separation:~~
 - d) Explain if discharge was other than honorable:



III. HEALTH

1. Do you have any mental or physical impairment(s) that would affect your ability to perform the duties of a judge with or without reasonable accommodations?

IV. EDUCATION

1. List all colleges and universities attended, the dates attended and the degrees awarded.
 - University of Florida, 1979-1983, Bachelor of Science in Business Administration
 - Marshall University, 1983-1984, Masters in Business Administration program, 16 hours completed
 - Cumberland School of Law at Samford University, 1984-1987, Juris Doctor
2. Please list any reporting periods for the last ten (10) years in which you did not obtain the mandatory minimum of continuing legal education or judicial education credit hours.
 - Completed required mandatory CLE credit hours when license was active. License was placed in inactive status while serving in the U. S. House of Representatives and CLE hours were not required.

V. HONORS

1. List any honors, prizes or awards you have received.

[Please See Attached]

[Attachment]

V. HONORS

1. List any honors, prizes or awards you have received

(Not in chronological order.)

- Certificate of Appreciation, American Red Cross, Service following Hurricane Andrew, August 24, 1992
- Recognition of Outstanding Efforts, Big Brothers/Big Sisters of the Tri-State, 1994
- Certificate of Recognition, 1996 National Honor Roll , Project Vote Smart's 1996 National Political Awareness Test, December 4, 1996
- Tri-Captain Recruitment Challenge, Big Brothers/Big Sisters of the Tri-State, 1991
- Certificate of Appreciation, Big Brothers/Big Sisters of the Tri-State, 1997
- Governor's Certificate of Appreciation, Cecil H. Underwood, Family Violence Coordinating Council of West Virginia, November 29, 1999
- Certificate of Appreciation, Kiwanis Club of Huntington, June 25, 2002
- Certificate of Appreciation, Kiwanis Club of Huntington, April 27, 2004
- Honorary Co-Chair, Prestera Foundation Third Annual Huntington Grand Ol' Auction, June 4, 2004
- West Virginia American Trauma Society, Legislator of the Year 2006
- Recipient, Joyce Chaffin Memorial Award for Outstanding Dedication in the Fields of Speech Language and Hearing, Quota International of Huntington, May, 1997
- Recipient, Outstanding Young Huntingtonian Award, Huntington Jaycees
- Recipient, Outstanding Leadership and Continuing Support Award, Marshall University Forensic Science Program, May 8, 1998
- Certificate of Achievement, Leadership West Virginia, November 19, 1993
- Outstanding Service Proclamation, Mayor of Barboursville, April 16, 1996
- Certificate of Appreciation, Friend of Leadership West Virginia Award, November 4, 1997
- Certificate of Recognition, Perfect Voting Record, 1997 Regular Session, The House of Delegates of West Virginia
- Certificate of Recognition, Perfect Voting Record, 1998 Regular Session, The House of Delegates of West Virginia
- Appreciation Award, West Virginia Troopers Association, June 29, 1996
- Recognition Resolution, Board of Directors of the Regional Education Service Agency, Region II, March 24, 1999
- Certificate of Appreciation, West Virginia Tobacco Prevention Program, November 5, 2001

- Certificate of Appreciation, Department of Veterans Affairs, Huntington VA Medical Center, National Salute 2006

~~[Attachment]~~

- Certificate of Appreciation, WV Office of Emergency Services Federal Emergency Management Agency, Floods of 1996
 - Certificate of Appreciation, American Red Cross, Western West Virginia Chapter, March 17, 2002
 - 'Most Wanted to Thank' Recognition, West Virginia Troopers Association
 - Certificate of Recognition, West Virginians for Safe Roads and Bridges
 - Honor Roll and Certificate of Appreciation, Coalition for West Virginia's Children, April 22, 1996
 - Honorary Co-Chair, School Based Recycling Program, Goodwill Industries of Huntington
 - Appreciation Award, West Virginia Deputy Sheriff's Association, February 19, 2003
 - Certificate of Recognition, Old Central City Association
 - Certificate of Appreciation for Dedicated Service, Tri-State Fire Academy, August 20, 2005
 - Certificate of Appreciation, Ohio River Road Volunteer Fire Department, January 10, 2004
 - Certificate of Appreciation, Ohio River Road Volunteer Fire Department, January 15, 2005
 - Medical Executive Meritorious Achievement Award, American Medical Association, November 11, 2006
 - Appreciation Award, West Virginia Deputy Sheriff's Association, February 17, 1999
 - Certificate of Appreciation, Cabell County Deputy Sheriff's Association, 1997
 - Certificate of Appreciation, Army and Air Force JROTC, February 20, 2009
 - Certificate of Appreciation, Habitat for Humanity of West Virginia, February 27, 2009
 - Certificate of Appreciation, AARP West Virginia Driver Safety Program, February 15, 2007
 - Dedication and Support Recognition, Boys & Girls Clubs of Huntington, 2009
-

Attachment continued

- National Healthy Start Association, 2017 Distinguished Legislator Award
 - Health IT Now 2017 Health IT Pioneer Award
 - West Virginia State Medical Association 2015 Friend of Medicine
 - Joseph A. Holmes Safety Association West Virginia State Council Certificate of Appreciation June 10, 2017
 - Vietnam Veterans of America Chapter 308 Recognition for Support and Dedication
 - National Retail Federation 2015 Hero of Main Street
 - Mingo County Fire School 2016 recognition for support to emergency services
 - International Foodservice Distributors Association 2016 Thomas Jefferson Award
 - US Chamber of Commerce 114th Congress Spirit of Enterprise Award
 - Key to the City of Huntington Presentation from Mayor Steve Williams 2013
 - National Association of Home Builders Defender of Housing Recognition 115th Congress 2017-2018
 - American Academy of Orthopaedic Surgeons 2018 Recognition
 - NFIB Guardian of Small Business Recognition 114th Congress
 - West Virginia Mutual Ins. Company 2013 Robert L. Ghiz, MD Award
 - National Association of Community Health Centers Distinguished Community Health Defender Award
 - West Virginia State Rifle and Pistol Association Certificate of Appreciation March 10, 2018
 - The American Legion Mountaineer Boy's State Certificate of Appreciation June 12, 2017
 - Healthcare Leadership Council Champion of Healthcare Innovation Recognition May 12 2016
 - Coalition for Medicare Choices 2016 Medicare Advantage Champion Recognition
 - Coalition for Medicare Choices 2015 Medicare Advantage Champion Recognition
 - Civil Air Patrol Certification as Congressional Member of the Civil Air Patrol January 16, 2015
-
- International Foodservice Distributors Association 2018 Thomas Jefferson Award

VI. PUBLICATIONS

1. If you have published any books, articles or editorials, list them, giving citations and dates:
 - I have authored numerous articles and editorials both in my legislative and association management work. My writings include discussion of public policy issues proposed or pending before the West Virginia Legislature and U.S. Congress and have appeared in newspapers and magazines mostly within West Virginia. I have also written on membership/policy issues pertinent to my work at the West Virginia Chamber of Commerce and the West Virginia State Medical Association. I have been a speaker for approved CLE programs and prepared course material used in the course resource binder. I have appeared on many news and public affairs radio/television programs.
 2. "Social Media" are media for social interaction using internet and web-based tools to turn communication into interactive dialogue and to publish recorded information and documentation including, but not limited to, videos, pictures and audio recordings. Examples of Social Media include, but are not limited to, YouTube, MySpace, Facebook, Google Docs, Epinion, PBWorks, Topix, LinkedIn.
 - a) List all Social Media to which you subscribe, are a member or have an account.
 - Either personal or prior campaign Social Media accounts on Facebook, LinkedIn, Twitter and YouTube.
 - b) If you have published any documents, videos, pictures or audio recordings on Social Media that depict the subject of the publication in a negative or false light, provide the specific web address(es) of each publication and an explanation of what each publication depicts.
-
- Social Media is used in most all political campaigns. Content posted comes from many sources. At times unfavorable content is posted by persons not affiliated with the person's campaign.
- c) If you have knowledge of any documents, videos, pictures or audio recordings published on Social Media that depict you in a negative or false light, provide the specific web address(es) of each publication and an explanation of what each publication depicts.

- In the course of prior political campaigns, Social Media postings from campaign opponents and other non-candidate affiliated organizations could be viewed as attempts to cast me in a negative or false light.

VII. PROFESSIONAL ADMISSIONS

1. Have you been licensed to practice law for five (5) years? Yes
2. List all courts (including state bar admissions) and administrative bodies having special admission requirements in which you presently are admitted to practice law, giving the month, day and year of admission in each case.

Court or Administrative Body

Date of Admission

- Admitted to practice law in West Virginia on April 5, 1988.
- Admitted to practice law in the United States District Court of the Southern District of West Virginia on April 5, 1988.

3. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No

If yes, please explain.

VIII. LAW PRACTICE

1. Have you continuously "engaged in the practice of law" since first admitted to a state bar? Yes (Except during the period when license was placed in inactive status while serving in the U.S. House of Representatives.)

If no, please explain and list the time periods in which you did not "engage in the practice of law."

2. List all state and federal jurisdictions where you have "engaged in the practice of law."

- West Virginia

3. Provide a chronological list of your legal employment since first admitted to a state bar. For each employment, include the following information:

- a) Full names and addresses of all law offices, firms, companies, government agencies, or other organizations where you practiced law.
- b) Start and end dates of each employment.
- c) The nature of your affiliation/position with each employer.
- d) The general nature of your law practice for each legal employment.

- Jenkins Fenstermaker, PLLC

325 8th Street
Huntington, WV 25701
1987-1992

Associate Attorney – Labor and Employment law, NLRB proceedings, civil and criminal litigation, administrative law, workers' compensation, unemployment compensation, arbitration and local/state Human Rights Commission.

- West Virginia Chamber of Commerce

1624 Kanawha Blvd. East
Charleston, WV 25311
1992-1999

General Counsel – Legal research and writing, drafting corporate documents, corporate compliance, organization management and frequent public speaking.

- West Virginia State Medical Association

2018 Kanawha Blvd. East
Charleston, WV 25311
1999-2014

Executive Director – Legal research and writing, drafting corporate documents, corporate compliance, organization management and frequent public speaking. Formation of for-profit corporation and formation of 501(c)(3) not-for-profit foundation.

4. What percentage of your legal practice has been devoted to "litigation?" If that percentage has changed over time, please explain.

- Estimate about 30%. Between 1988 and 1992, the percentage was higher for litigation which included trial and administrative law work. From 1992 to 2014 my litigation work focused primarily on research and drafting *Amici Curiae* Briefs to the West Virginia Supreme Court of Appeals.

5. Of your "litigation" work, specify what percentage falls into the following categories:

Civil	99 %
Criminal	1 %
Domestic Relations	%
Other	%
	100 %

Explain the general nature of any proceedings that fall in the category of "other."

6. Of your "litigation" work, what percentage is practiced in:

State Court	100 %
Federal Court	%
Other	%
	100 %

Explain the general nature of any jurisdictions that fall in the category of "other."

7. State the case number and style of all "trials" you handled to conclusion for the last five (5) years in State and Federal trial courts of general jurisdiction (e.g., Circuit Court, Court of Common Pleas, U.S. District Court). Also indicate whether you were sole, associate, or chief counsel.

[The Committee invites you, at your option, to list all trials you have handled to conclusion in trial courts of general and limited jurisdiction or to also list any trials handled to conclusion since you first "engaged in the practice of law" which you feel are noteworthy.]

- Between 1988 and 1992, I handled cases as both lead counsel and co-counsel (civil and criminal) in the Circuit Court of Cabell County. Actual trial experience included all aspects of courtroom litigation responsibilities, opening/closing arguments, direct/cross examination of witnesses, etc.

- 93-C-315, Sole Counsel of Record, J. Cross v. James J. Weiler, II, Cabell County Circuit Court – Civil Jury Trial to Verdict
 - 90-F-120, Sole Counsel of record, State of WV v. Fred Watts, Sr., Cabell County Circuit Court – Criminal Jury Trial to Verdict
 - 87-C-1376, Sole Counsel of record, John S. Henry v. South Central Supply Corp., et al., Cabell County Circuit Court – Civil Jury Trial to Verdict
 - 88-C-982, Co-counsel, L.R. Ashworth, et al., v. Inco, et al., Cabell County Circuit Court – Civil Jury Trial to Verdict. Accepted and reviewed on appeal to the West Virginia Supreme Court of Appeals.
 - Note – the above is a listing of cases obtained from the records of the Cabell County Circuit Clerk. Under the document retention policy of Jenkins Fenstermaker PLLC, records for the relevant period showing the complete list of litigation cases that went to trial that I had some level of involvement in are not available.
8. List all reported appellate cases in which you were an attorney of record and state your involvement in the appellate process.
- [See Attachment]
9. If you have handled arbitration or administrative hearings to conclusion, briefly describe the types of matters addressed during the hearings. [The Committee invites you, at your option to list the style and case number of any arbitration or administrative hearing you believe to be noteworthy.]
- Between 1988 and 1992, I handled a significant number of arbitration and administrative hearings in the area of labor and employment law, including labor contract grievances, workers' compensation and unemployment compensation, local/state Human Rights Commission matters.
10. State your substantive courtroom experience for legal issues involving domestic relations ~~(i.e. the laws, practices, procedures and remedies provided for in Chapters 48 and 49 of the West Virginia Code).~~
-
- None involving domestic relations.

[Attachment]

§ 8. List all reported appellate cases in which you were an attorney of record.

Appellate Cases – Counsel of Record

- 88-C-982, Counsel of Record, Civil Jury Trial to Verdict, L.R. Ashworth, et al., v. Inco, et al., Cabell County Circuit Court
 - Accepted and reviewed on appeal to the West Virginia Supreme Court of Appeals

Amici Curiae Briefs – Counsel of Record

- West Virginia Supreme Court of Appeals No. 35542, MacDonald et al. v. City Hospital et al., Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association
- West Virginia Supreme Court of Appeals No. 031796, M. D. White et al. v. The Logan Medical Foundation et al., Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association
- In the Supreme Court of Appeals of West Virginia No. 31757, Boggs v. Camden-Clark Memorial Hospital et al., Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association

Amici Curiae Briefs – Substantive Involvement but not Counsel of Record

- In the Supreme Court of Appeals of West Virginia No. 31321, State of West Virginia ex rel. April L. King et al. v. The Honorable Circuit Judges of Cabell and Mingo Counties ex rel. Cabell Huntington Hospital., Amici Supervising Attorney, Not Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association
 - In the Supreme Court of Appeals of West Virginia No. 32979, State of West Virginia ex rel. Hanley C. Clark v. Blue Cross and Blue Shield of West Virginia. Supervising Attorney for West Virginia State Medical Association, Intervener, Not Counsel of Record
-
- In the Supreme Court of Appeals of West Virginia No. 26355, Kent A. Gerver et al. v. Aurelio Benavides, M.D., Amici Supervising Attorney, Not Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association

[Attachment]

- In the Supreme Court of Appeals of West Virginia No. 27872, Linda Ward et al. v. West Virginia Insurance Guaranty Association, Amici Supervising Attorney, Not Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association
 - In the Supreme Court of Appeals of West Virginia No. 27464, The Estate of Marjorie I. Verba v. David A. Ghaphery, Amici Supervising Attorney, Not Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association
 - 92-C-5572, In the Circuit Court of Kanawha County, West Virginia, Betty Cordial, as Deputy Receiver for Blue Cross and Blue Shield of West Virginia, Inc., v. UMWA, Supervising Attorney for West Virginia State Medical Association, Intervener, Not Counsel of Record
 - In the Supreme Court of Appeals of West Virginia No. 080721, E.I. DuPont De Nemours and Company v. Lenora Perrine, et al., Amici Supervising Attorney, Not Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association
 - In the Supreme Court of Appeals of West Virginia, Riggs et al. v. West Virginia University Hospitals, Inc., Amici Supervising Attorney, Not Counsel of Record, Amici Curiae Brief, West Virginia State Medical Association
-

11. Have you ever served or acted as a mediator or arbitrator? No

If yes, briefly describe the issues addressed and your experience as a mediator or arbitrator.

IX. PUBLIC OFFICE

1. Have you ever run for or held a public office, other than a judicial office? Yes

If yes, explain:

- West Virginia House of Delegates, 16th Delegate District, elected 1994, 1996 and 1998
- West Virginia State Senate, 5th Senatorial District, elected 2002, 2006 and 2010
- U.S. House of Representatives, 3rd Congressional District, elected 2014 and 2016
- U.S. Senate, May Primary 2018

X. JUDICIAL EXPERIENCE

1. a) Have you ever held judicial office or been a candidate for judicial office?
Yes

If yes, state the court(s) involved and the dates of service, or dates of candidacy.

- Candidacy for the office of Justice, West Virginia Supreme Court of Appeals, 2000 May Primary.

-
- b) If you have held judicial office, state the types of legal matters over which you presided.

- c) If you have held judicial office, state the names and addresses of five (5) attorneys knowledgeable of your work, temperament, and abilities.

2. List any prior quasi-judicial experience:

XI. BUSINESS INVOLVEMENT

1. If you have ever been engaged in any occupation other than the practice of law (exclusive of employment during your school years), please list the names of your employers, the dates of employment, positions held and the reason(s) the employment ended.
 - My work since 1992 at both the West Virginia Chamber of Commerce and the West Virginia State Medical Association include both traditional legal representation work and non-legal work that could be characterized as 'business involvement.' This work is primarily association management, including employee supervision, budget/fiscal oversight, long-range planning and member relations.

2. Are you now or have ever been an owner, officer or director of any business enterprise?

Yes If yes, state the name of such business enterprise, the nature of the business and your involvement with the business.

- Lily's Place, Inc., 501(c)3 facility caring for drug withdrawing newborn infants. Initial incorporator and board president.
- West Virginia Medical Foundation, 501(c)3 wholly owned by the West Virginia State Medical Association, CEO
- West Virginia Medical Agency, Inc., wholly owned by the West Virginia State Medical Association, initial incorporator
- West Virginia Center for Patient Safety, Inc., 501(c)3, initial incorporator
- Downtown Athletic Club, Inc., former owner/partner

3. "Lobbying and Special Interest groups, firms or organizations" are those that use various forms of support, advocacy, sponsorship or promotion to attempt to influence public opinion, public policy or decisions of legislators or government officials.

Have you ever received a contribution, a fee or compensation from any Lobbying or Special Interest group, firm or organization? Yes

If yes, state the name of the group, firm or organization; state the contribution(s), fee(s) or compensation you received; and state the purpose of the contribution(s), fee(s) or compensation.

- As a candidate for public office, I have received campaign contributions from both individuals and political action committees. Each and every contribution has been fully reported pursuant to state and federal campaign finance laws and is available on-line.
- I was registered for with the WV Ethics Commission while employed by the West Virginia Chamber (approx. 1992/1993) and West Virginia State Medical Association (approx. 2001/2002).

XII. CONDUCT

1. Have you ever been arrested, charged, or convicted for violation of any federal law, state law, county or municipal law, regulation, or ordinance? No

If yes, please explain:

2. a) Have you ever been sued by a client? No

If yes, please explain:

- b) Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? No

If yes, please explain:

3. Have you ever been charged in any civil or criminal proceedings with conduct alleged to involve moral turpitude, dishonesty, or unethical conduct? No

If yes, please explain:

4. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group? No

If yes, please explain:

5. Have you filed appropriate tax returns as required by federal, state, local, and other government authorities? Yes

If no, please explain:

-
6. Have any liens or claims ever been instituted against you by the federal, state or local authorities? No

If yes, please explain:

7. Do you have any unsatisfied judgments against you? No

If yes, please explain:

8. Are you now, or have you ever been found to be delinquent or in arrears on payments for spousal or child support? No

If yes, please explain:

9. Have you ever been subject to any domestic relations order, including, but not limited to, a domestic violence petition or any other similar restraining order? No

If yes, please explain and provide documentation:

10. Do you owe any person or company a debt in excess of \$5,000, other than a debt to a family member, a mortgage, student loan, or a motor vehicle loan? No

If yes, please explain:

XIII. PROFESSIONAL & OTHER ACTIVITIES

1. a) List all bar associations and legal professional societies or organizations of which you are a member and the length of such membership. Give the titles and dates of any office you have held in any such associations, societies or organizations.

- Member of the West Virginia State Bar as required by law of all licensed attorneys in West Virginia.

- b) List all organizations and clubs, other than bar associations and legal professional societies or organizations identified in response to 1(a) above, which you have been a member during the past ten (10) years, the dates of such membership(s) and include the titles and dates of any offices you have held in each organization or club.

- Member of the board of directors for Big Brothers/Big Sisters of the Tri-State; Tri-State Chapter of the American Red Cross; Operation B.E.S.T. (Business and Education Succeeding Together); Lily's Place; Foundation for the Tri-State Community; Regional Council Boy Scouts of America; Elder, First Presbyterian Church

2. State any achievements or actions you have accomplished or actions in which you have been engaged which would demonstrate your commitment to equal justice under the law.
- Extensive amount of work as a legislator advancing public policy efforts promoting equal justice including a leadership role in enacting legislation that creating West Virginias' Herb Henderson Office of Minority Affairs and work supporting the West Virginia Women's Commission.
3. State any additional education or other experiences you believe would assist you in holding judicial office.
N/A
4. State any other pertinent information reflecting positively or adversely on you, which you believe should be disclosed to the Governor and the Judicial Vacancy Advisory Commission in connection with your possible selection as a judge.
N/A

XIV. REFERENCES

1. List three (3) individuals as references who are familiar with your legal abilities.

Name Robert H. Sweeney, Jr., Esq.

Address

Telephone

Name Barry M. Taylor, Esq.

Address

Telephone

Name Judge Dan O'Hanlon, Senior Status Circuit Judge

Address

2. List three (3) individuals as references who are familiar with your personal character.

Name Douglas McKinney, MD

Address :

Telephone

Name The Honorable William 'Bill' Cole

Address .

Telephone

Name Steven G. Roberts

Address

Telephone

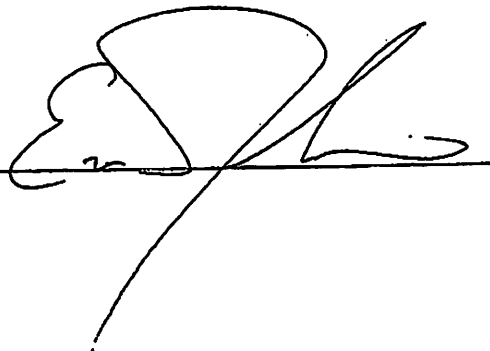
XV. CONFIDENTIALITY STATEMENT

Pursuant to West Virginia Code §3-10-3a, the Judicial Vacancy Advisory Commission ~~shall make available to the public copies of any applications and any letters of recommendation~~ written on behalf of any applicants. All other documents or materials created or received by the Judicial Vacancy Advisory commission shall be confidential and exempt from the provisions of West Virginia Code, Chapter 29B, except for the list of best qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of West Virginia Code §3-10-3a(j), which shall be available for public inspection.

XVI. APPLICANT'S DECLARATION

I declare under the penalty of perjury that all responses and other information submitted herewith are true and accurate, to the best of my knowledge.

Signature of Applicant



Date

8/9/18

Evan H. Jenkins

August 9, 2018

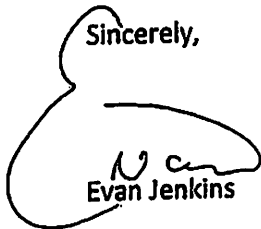
Judicial Vacancy Advisory Commission
c/o Brian Abraham, General Counsel
Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear Mr. Abraham:

Please find enclosed my Resume, Application Form and Authorization for Release of Information for consideration by the Judicial Vacancy Advisory Commission for the vacancy in the West Virginia Supreme Court of Appeals resulting from the resignation of Justice Menis Ketchum.

Thank you for your kind consideration.

Sincerely,



Evan Jenkins

Evan H. Jenkins

Federal Legislator and Committee Leadership

- United States House of Representatives - 2 terms (2015-Present)
 - Member, Committee on Appropriations
 - Vice Chairman - Commerce, Justice, Science, and Related Agencies Subcommittee
 - Subcommittee Member - Interior, Environment; Legislative Branch; Military Construction, Veterans Affairs; Transportation, Housing and Urban Development
 - Firsthand experience crafting federal legislation and pro-actively working with congressional colleagues and staff to secure passage and presidential approval. In-depth understanding of federal funding priorities and public policy directives through the appropriations process. Successfully passed legislation to establish a new national priority to address Neonatal Abstinence Syndrome, the medical complications newborns suffer due to drug and opioid exposure during pregnancy.

State Legislator and Committee Leadership

- West Virginia House of Delegates - 3 terms (1995-2000)
 - West Virginia Senate - 3 terms (2003-2014)
 - Committee Chairman - Interstate Cooperation; Pensions
 - Committee Vice Chairman - Health and Human Resources; Banking and Insurance; Transportation and Infrastructure
 - Committee Member - Judiciary; Rule-Making Review; Veterans Affairs; Energy, Industry and Mining; Government Organizations
 - Extensive record of policy accomplishments including taxpayers' bill of rights, children's health care, workers' compensation reform, tax reduction and combating opioid crisis.
-

Association Executive and Organization Leadership

- Executive Director, West Virginia State Medical Association (1999-2014)
 - Presented the Medical Executive Achievement Award (2006) by the American Medical Association for nationally recognized meritorious service.

- Founder, West Virginia Medical Foundation - Charleston, West Virginia (Incorporated 2002)
 - Initial incorporator and President of the West Virginia Medical Foundation, a 501(c)(3) program of the West Virginia State Medical Association dedicated to improving the health of West Virginia.
- Founder and Licensed Insurance Agent, West Virginia Medical Insurance Agency - Charleston, West Virginia (Incorporated 1999)
 - Initial incorporator of the West Virginia Medical Insurance Agency, a wholly owned corporation of the West Virginia State Medical Association.
- Founder, Lily's Place - Huntington, West Virginia (Incorporated 2013)
 - Initial incorporator and President of Lily's Place, a nationally acclaimed residential treatment facility for newborn infants exposed to opioids during pregnancy.
- General Counsel, West Virginia Chamber of Commerce (1992-1999)
 - Provided legal and strategic planning advice to the President and Board of Directors.

Practicing Attorney and University Instructor

- Attorney, Jenkins Fenstermaker PLLC - Huntington, West Virginia (1987-1992)
 - Direct client advice specialized in labor and employment law. Jury trial experience in West Virginia circuit court and appellate work before the West Virginia Supreme Court of Appeals.
- Instructor, Marshall University - Huntington, West Virginia (1990)
 - Faculty instructor for 300 level Business Law course. Developed syllabus, prepared and delivered class lectures, and provided academic counseling guidance to upper-level college of business students.

Education

- B.S. Degree, Business Administration, University of Florida - Gainesville, Florida (1983)
- Juris Doctor Degree, Cumberland School of Law, Samford University - Birmingham, Alabama (1987)

Personal

- Licensed private pilot, certified scuba diver and marathon runner. Extensive community involvement and local non-profit board leadership including President, Big Brothers/Big Sisters of the Tri-State and President of the Foster Foundation. Elder, First Presbyterian Church. Married 27 years with three children (eldest son is an officer in the U.S. Marines, second son is a college senior and a daughter that graduated high school in May).
-

I. PERSONAL IDENTIFICATION

1. Full name: Timothy Paul Armstead
2. Other names by which you have been known: Tim Armstead
3. Employer's name: West Virginia House of Delegates
4. Employment address: Room M-228
City: Charleston State: WV Zip: 25305
5. Residential Address:
City: State: Zip:
6. Contact number:
7. Date and Place of birth:
8. Are you an American citizen
9. Length of continuous residence in WV

II. SERVICE IN THE ARMED FORCES

1. If you are or have been a member of the armed forces of the United States, please state:
 - a) Branch of Service:
 - b) Dates of Active Duty:
 - c) Current Rank or Rank at Separation:
 - d) Explain if discharge was other than honorable:



III. HEALTH

1. Do you have any mental or physical impairment(s) that would affect your ability to perform the duties of a judge with or without reasonable accommodations?

IV. EDUCATION

1. List all colleges and universities attended, the dates attended and the degrees awarded.

University of Charleston, Charleston, WV, 1983-1987, B.A. Political Science and History

West Virginia University College of Law, Morgantown, WV, 1987-1990, Juris Doctor

2. Please list any reporting periods for the last ten (10) years in which you did not obtain the mandatory minimum of continuing legal education or judicial education credit hours.

On one instance approximately 4-5 years ago, one Legal Ethics credit was reported one day after deadline in the Kentucky Bar due to confusion on available credits. This filing was accepted by the Kentucky Bar Association.

V. HONORS

1. List any honors, prizes or awards you have received.

West Virginia Press Association Champion and Advocate of Public Information and Government Transparency (2015)

West Virginia History Advocate Legislative Leadership Award (2015)

Mountain State Trauma and Injury Protection Coalition Legislator of the Year (2011)

Merit Badge of Bill Writing – Summit Bechtel Reserve Boy Scouts of America

United States Chamber Institute for Legal Reform State Legislative Achievement Award (2015)

Federation for Advancing Alcohol Responsibility – Leadership in Fight Against Drunk Driving and Underage Drinking (2015)

West Virginia Chamber of Commerce Champion of Free Enterprise Award (2016)

West Virginia Insurance Federation Legislator of the Year 2015

West Virginia Business and Industry Council Special Recognition for Outstanding Leadership

Distinguished West Virginian Award – Governor Arch A. Moore, Jr. (1988)

Baker Cup Moot Court – Best Oralist Award 1989

University of Charleston Outstanding Graduate Award 1987

Knight of the Golden Horseshoe

VI. PUBLICATIONS

1. If you have published any books, articles or editorials, list them, giving citations and dates:

Howard Sutherland, West Virginia's Congressman-at-Large, *West Virginia Historical Society Quarterly Newsletter*

Cass Gilbert's Design for West Virginia's Capitol, *West Virginia Historical Society Quarterly Newsletter*

I have written several opinion pieces for publications during my service in the Legislature. Some recent articles include:

Legislators Take Bold Steps Together, *Charleston Daily Mail*, February 14, 2015

Time to Write a New Chapter for State, *Charleston Gazette-Mail*, October 13, 2014

Multi-Districts Serve Incumbents, *Charleston Gazette*, June 6, 2011

2. "Social Media" are media for social interaction using internet and web-based tools to turn communication into interactive dialogue and to publish recorded information and documentation including, but not limited to, videos, pictures and audio recordings. Examples of Social Media include, but are not limited to, YouTube, MySpace, Facebook, Google Docs, Epinion, PBWorks, Topix, LinkedIn.

- a) List all Social Media to which you subscribe, are a member or have an account.

Facebook
Twitter
LinkedIn

- b) If you have published any documents, videos, pictures or audio recordings on Social Media that depict the subject of the publication in a negative or false light, provide the specific web address(es) of each publication and an explanation of what each publication depicts.

I have, during my service in the West Virginia Legislature, expressed opinions regarding issues and actions of office holders at times on social media but believe all such depictions have been fair and ethical.

- c) If you have knowledge of any documents, videos, pictures or audio recordings published on Social Media that depict you in a negative or false light, provide the specific web address(es) of each publication and an explanation of what each publication depicts.

Due to my position as a legislator and Speaker of the House, participants on various social media accounts have, from time to time, expressed disagreement with my views and opinions or votes and positions on issues.

VII. PROFESSIONAL ADMISSIONS

1. Have you been licensed to practice law for five (5) years? Yes

2. List all courts (including state bar admissions) and administrative bodies having special admission requirements in which you presently are admitted to practice law, giving the month, day and year of admission in each case.

Court or Administrative Body	Date of Admission
West Virginia State Bar	November 1990
United States District Court, Southern District of West Virginia	November 1990
United States District Court, Northern District of West Virginia	Approximately 2000
Fourth Circuit Court of Appeals	August 1995
Kentucky State Bar Association	September 2002

-
3. Have you ever been denied admission to the bar of any state due to failure to pass the character and fitness screening? No

If yes, please explain.

VIII. LAW PRACTICE

1. Have you continuously "engaged in the practice of law" since first admitted to a state bar?

If no, please explain and list the time periods in which you did not "engage in the practice of law."

I have continually practiced law, provided that I was on active status with the West Virginia Bar during my federal clerkship for United States District Judge David A. Faber. I have remained licensed to practice law but have not served with a firm or company during my last two years as Speaker of the House.

2. List all state and federal jurisdictions where you have "engaged in the practice of law."

West Virginia and Kentucky. I also performed limited work in other states as in-house counsel under safe-harbor rules of practice governing in-house counsel.

3. Provide a chronological list of your legal employment since first admitted to a state bar. For each employment, include the following information:

- a) Full names and addresses of all law offices, firms, companies, government agencies, or other organizations where you practiced law.
- b) Start and end dates of each employment.
- ~~c) The nature of your affiliation/position with each employer.~~
- d) The general nature of your law practice for each legal employment.

Legal Intern, Columbia Gas Transmission Corporation and Columbia Natural Resources,
Charleston, West Virginia

May - August 1989

Conducted legal research; drafted memoranda; and assisted in extensive discovery project.

**Teaching Assistant, Legal Research and Writing, West Virginia University College of Law,
Morgantown, West Virginia**

August 1989 - May 1990

Assisted first-year law students with legal research assignments; prepared research exercises; graded assignments; taught legal research and writing sessions; assisted research and writing professor.

Associate, Spilman, Thomas, Battle & Klostermeyer, Charleston, West Virginia

August 1990 - December 1991

Performed legal research; drafted pleadings and correspondence; assisted partners in litigation department with civil discovery and litigation; represented clients at depositions.

**Law Clerk to The Honorable David A. Faber, United States District Judge for the Southern
District of West Virginia, Bluefield, West Virginia**

December 1991 - July 1994 (Senior Law Clerk, 1993-94)

Consulted with and advised Judge Faber regarding legal issues relating to civil and criminal cases; conducted legal research; drafted orders and legal memoranda; consulted with attorneys practicing before the court; assisted Judge Faber in conducting trials and hearings; provided case management for one-half of criminal and civil docket; assisted in scheduling hearings.

Associate, Carey, Hill & Scott, Charleston, West Virginia

July 1994 - October 1997

Performed duties associated with the litigation of civil and administrative actions, including court appearances, drafting of pleadings, legal research, motions practice, depositions and client interaction; maintained responsibility for progress of various cases; assisted partners in research and litigation.

Executive Assistant to the Chief of Staff, Office of Governor Cecil H. Underwood

October 1997 - September 1998

Assisted Governor's Chief of Staff in ongoing projects and day-to-day operation of the Office of the Governor of West Virginia; served as liaison between Governor and national and regional governmental organizations; provided legal advice to Governor and senior staff; served as member of Governor's legislative team.

Associate, Steptoe & Johnson, Charleston, West Virginia

September 1998 - November 1, 2001

Represented clients in various areas of law, including property matters, mining and reclamation, natural gas and general business litigation.

**Senior Counsel, TransCanada - Columbia Pipeline Group / NiSource Corporate Services
Company, Charleston, West Virginia**

Attorney, November 1, 2001 - 2004; Senior Attorney / Senior Counsel, 2004-2016

Advised and represented corporate clients in relation to real estate, litigation and contract matters related to natural gas transportation and storage; drafted land documents and agreements and oversaw litigation matters.

Speaker, West Virginia House of Delegates

January 2015 – Present; Minority Leader, 2007-2015; Minority Chair, House Committee on the Judiciary, 2006-2007; Assistant Minority Whip, 2003 - 2005; Member, September 1998 – Present.

4. What percentage of your legal practice has been devoted to "litigation?" If that percentage has changed over time, please explain.

My early career at Spilman, Thomas, Battle and Klostermeyer was devoted in large part to litigation matters. As a Law Clerk to United States District Judge David A. Faber, nearly all of my work was dedicated to litigation pending before Judge Faber. At Carey, Hill & Scott, I worked on litigation matters in federal and state courts as well as the West Virginia Public Service Commission and other administrative agencies. Since that time, my work has included a mixture of litigation, commercial, real estate and governmental work. From 2000 until 2016, I worked as in-house counsel. This practice involved overseeing outside counsel in litigation matters, as well as performing in-house commercial and real estate work.

5. Of your "litigation" work, specify what percentage falls into the following categories:

Civil	80%
Criminal	10% (during clerkship)
Domestic Relations	0%
Other	10% (administrative agencies, boards & commissions)
	100 %

Explain the general nature of any proceedings that fall in the category of "other."

6. Of your "litigation" work, what percentage is practiced in:

State Court	45%
Federal Court	45%
Other	10% (administrative, PSC, etc.)
	100 %

Explain the general nature of any jurisdictions that fall in the category of "other."

7. State the case number and style of all "trials" you handled to conclusion for the last five (5) years in State and Federal trial courts of general jurisdiction (e.g., Circuit Court, Court of Common Pleas, U.S. District Court). Also indicate whether you were sole, associate, or chief counsel.

[The Committee invites you, at your option, to list all trials you have handled to conclusion in trial courts of general and limited jurisdiction or to also list any trials handled to conclusion since you first "engaged in the practice of law" which you feel are noteworthy.]

Because I most recently served as In-House Counsel for Columbia Gas Transmission / NiSource / TransCanada, I have not directly engaged in courtroom litigation during the past five years. I have overseen and supervised outside counsel's litigation work in various areas such as real estate, encroachment, condemnation and FERC and PSC related litigation.

8. List all reported appellate cases in which you were an attorney of record and state your involvement in the appellate process.

*Anna Adkins v. United States of America, CA-94-94-1 (Fourth Circuit 1996);
Argued Case before the Fourth Circuit (per curiam)*

I have authored and co-authored various briefs and pleadings before the West Virginia Supreme Court of Appeals in unpublished cases.

9. If you have handled arbitration or administrative hearings to conclusion, briefly describe the types of matters addressed during the hearings. [The Committee invites you, at your option to list the style and case number of any arbitration or administrative hearing you believe to be noteworthy.]

I have appeared before various Administrative Law Judges with the West Virginia Public Service commission related to motor carrier matters and prepared Findings of Fact and Conclusions of Law that formed the basis for orders entered by the ALJ.

10. State your substantive courtroom experience for legal issues involving domestic relations (i.e. the laws, practices, procedures and remedies provided for in Chapters 48 and 49 of the West Virginia Code).

I do not have substantive experience related to domestic relations matters.

11. Have you ever served or acted as a mediator or arbitrator? No

If yes, briefly describe the issues addressed and your experience as a mediator or arbitrator.

While I have not acted as a mediator, I participated in settlement conferences both as an attorney and as law clerk for Judge Faber. I have also "mediated" many matters during my service as a legislator and Speaker of the House.

IX. PUBLIC OFFICE

1. Have you ever run for or held a public office, other than a judicial office? Yes.

If yes, explain:

I have been elected to 10 terms in the West Virginia House of Delegates from Kanawha County. I served eight years as House Minority leader and the past four sessions as Speaker of the House.

X. JUDICIAL EXPERIENCE

1. a) Have you ever held judicial office or been a candidate for judicial office?

No

If yes, state the court(s) involved and the dates of service, or dates of candidacy.

- b) If you have held judicial office, state the types of legal matters over which you presided.
- c) If you have held judicial office, state the names and addresses of five (5) attorneys knowledgeable of your work, temperament, and abilities.

-
2. List any prior quasi-judicial experience:

Although not judicial in nature, I have presided in the House of Delegates as Speaker and made numerous rulings on motions pursuant to the West Virginia Constitution, State Statutes and House Rules.

XI. BUSINESS INVOLVEMENT

1. If you have ever been engaged in any occupation other than the practice of law (exclusive of employment during your school years), please list the names of your employers, the dates of employment, positions held and the reason(s) the employment ended.

University of Charleston, Adjunct Professor of Constitutional Law, Summer 1994

Office of the Governor of West Virginia, Executive Assistant to the Chief of Staff to Governor Cecil H. Underwood, 1997-98, Left to assume seat in West Virginia House of Delegates.

2. Are you now or have ever been an owner, officer or director of any business enterprise? No. If yes, state the name of such business enterprise, the nature of the business and your involvement with the business.

3. "Lobbying and Special Interest groups, firms or organizations" are those that use various forms of support, advocacy, sponsorship or promotion to attempt to influence public opinion, public policy or decisions of legislators or government officials.

Have you ever received a contribution, a fee or compensation from any Lobbying or Special Interest group, firm or organization? Yes.

If yes, state the name of the group, firm or organization; state the contribution(s), fee(s) or compensation you received; and state the purpose of the contribution(s), fee(s) or compensation.

I have received numerous such contributions over the course of the past two decades in relation to my campaigns for the House of Delegates. Such contributions are listed by election year on the website of the West Virginia Secretary of State or can be provided upon request.

XII. CONDUCT

1. Have you ever been arrested, charged, or convicted for violation of any federal law, state law, county or municipal law, regulation, or ordinance? Yes

If yes, please explain:

Other than occasional parking tickets, I received a speeding ticket on Interstate 79 approximately more than 20 years ago

2. a) Have you ever been sued by a client? No

If yes, please explain:

- b) Have you or your professional liability insurance carrier ever settled a claim against you for professional malpractice? No

If yes, please explain:

3. Have you ever been charged in any civil or criminal proceedings with conduct alleged to involve moral turpitude, dishonesty, or unethical conduct? Possibly if the matter stated below is responsive.

If yes, please explain:

A citizen filed an ethics complaint with the West Virginia Ethics Commission alleging that as Speaker of the House, I had violated the Ethics Act by failing to provide a public hearing on a piece of legislation. The legislation was a Senate Bill that had not been adopted by the Senate and was, therefore, not before the House of Delegates for consideration or hearing. The Ethics Commission dismissed the matter for failure to state a case upon which relief could be granted.

-
4. Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group?

No.

If yes, please explain:

5. Have you filed appropriate tax returns as required by federal, state, local, and other government authorities? Yes
If no, please explain:

6. Have any liens or claims ever been instituted against you by the federal, state or local authorities? No
If yes, please explain:

7. Do you have any unsatisfied judgments against you? No
If yes, please explain:

8. Are you now, or have you ever been found to be delinquent or in arrears on payments for spousal or child support? No
If yes, please explain:

9. Have you ever been subject to any domestic relations order, including, but not limited to, a domestic violence petition or any other similar restraining order? No

If yes, please explain and provide documentation:

10. Do you owe any person or company a debt in excess of \$5,000, other than a debt to a family member, a mortgage, student loan, or a motor vehicle loan? Yes

If yes, please explain:

I have a credit card account on which I owe less than \$10,000.

XIII. PROFESSIONAL & OTHER ACTIVITIES

1. a) List all bar associations and legal professional societies or organizations of which you are a member and the length of such membership. Give the titles and dates of any office you have held in any such associations, societies or organizations.

Fourth Circuit Judicial Conference, approximately 5 years

- b) List all organizations and clubs, other than bar associations and legal professional societies or organizations identified in response to 1(a) above, which you have been a member during the past ten (10) years, the dates of such membership(s) and include the titles and dates of any offices you have held in each organization or club.

Elkview Baptist Church, 1996-Present

West Virginia Republican Legislative Committee, Honorary Chair and Executive Committee Member

West Virginia Law Institute, served approximately 5-6 years ago

2. State any achievements or actions you have accomplished or actions in which you have been engaged which would demonstrate your commitment to equal justice under the law.

I believe that I have established a record during my legislative service to the State of West Virginia or advocating legal fairness, openness and accountability. Many of the legislative initiatives we have advanced have furthered such goals.

3. State any additional education or other experiences you believe would assist you in holding judicial office.

The combination of my legal experience, both as a practicing attorney, law clerk to the federal court system and advisor the previous Governor of West Virginia, coupled with my experience in government, as legislator and Speaker of the House, would give me unique perspective that would allow me to competently and fairly interpret the law. In addition, I believe I have established a record of and reputation for integrity, fairness, openness and accountability that would be a valuable asset on the court.

4. State any other pertinent information reflecting positively or adversely on you, which you believe should be disclosed to the Governor and the Judicial Vacancy Advisory Commission in connection with your possible selection as a judge.

XIV. REFERENCES

1. List three (3) individuals as references who are familiar with your legal abilities.

Name	The Honorable David A. Faber
Address	

Telephone	
-----------	--

Name Michael W. Carey
Address

Telephone :

Name Brant Johnson

Address

Telephone

2. List three (3) individuals as references who are familiar with your personal character.

Name Pastor Charles Bias
Address

Telephone - - - - -

Name Judge Dan Greear
Address

Telephone

Name Phyllis Hamrick
Address

Telephone

XV. CONFIDENTIALITY STATEMENT

Pursuant to West Virginia Code §3-10-3a, the Judicial Vacancy Advisory Commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the Judicial Vacancy Advisory commission shall be confidential and exempt from the provisions of West Virginia Code, Chapter 29B, except for the list of best qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of West Virginia Code §3-10-3a(j), which shall be available for public inspection.

XVI. APPLICANT'S DECLARATION

I declare under the penalty of perjury that all responses and other information submitted herewith are true and accurate, to the best of my knowledge.

Signature of Applicant



Date

8/14/18

TIMOTHY PAUL ARMSTEAD

Education

West Virginia University College of Law, J.D., May, 1990; Senior Staff, West Virginia Law Review; Moot Court; Clinical Law Program.

University of Charleston, Charleston, West Virginia, Bachelors Degree in History and Political Science, *Summa Cum Laude*, May, 1987.

Experience

**Speaker, West Virginia House of Delegates
January 2015 – Present; Minority Leader, 2007-2015; Minority Chair, House Committee on the Judiciary, 2005-2007; Assistant Minority Whip, 2003 - 2005; Member, September 1998 – Present.**

**Senior Counsel, TransCanada – Columbia Pipeline Group / NiSource Corporate Services Company, Charleston, West Virginia
Attorney, November 1, 2001 - 2004; Senior Attorney / Senior Counsel, 2004 -2016
Advised and represented corporate clients in relation to real estate, litigation and contract matters related to natural gas transportation and storage; drafted land documents and agreements and oversaw litigation matters.**

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September 1998 - November 1, 2001
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October 1997 - September 1998
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July 1994 - October 1997
Performed duties associated with the litigation of civil and administrative actions, including court appearances, drafting of pleadings, legal research, motions practice, depositions and client interaction; maintained responsibility for progress of various cases; assisted partners in research and litigation.**

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August 1990 - December 1991

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Teaching Assistant, Legal Research and Writing, West Virginia University College of Law, Morgantown, West Virginia

August 1989 - May 1990

Assisted first-year law students with legal research assignments; prepared research exercises; graded assignments; taught legal research and writing sessions; assisted research and writing professor.

Legal Intern, Columbia Gas Transmission Corporation and Columbia Natural Resources, Charleston, West Virginia

May - August 1989

Conducted legal research; drafted memoranda; and assisted in extensive discovery project.

Press Intern, Office of Governor Arch A. Moore, Jr.

March 1986 - August 1987, May - August 1988

Drafted speeches and remarks for the Governor of West Virginia; wrote press releases; drafted correspondence; monitored legislation and conducted research.

Honors and Awards

Law School

Senior Staff, West Virginia Law Review

Best Oralist Award and Second Place Overall 1989 Baker Cup Moot Court Competition

Undergraduate

West Virginia Emulation Scholarship

Ivor F. Bolarzky Scholarship Award in Political Science

Outstanding Graduate Award, University of Charleston 1987

Memberships and Additional Experience

- **Bar Admissions: West Virginia State Bar, Kentucky State Bar Association, Fourth Circuit Court of Appeals, Federal District Courts (Northern and Southern District of West Virginia)**
- **Member, West Virginia Governor's Cabinet on Children and Families, 1999-2000**
- **American Council of Young Political Leaders, 1999 Delegation to Middle East**
- **Natural Resources Staff Advisory Council, National Governors Association, 1998**
- **Leadership West Virginia, West Virginia Chamber of Commerce, 1997**
- **Member, Transition Team of Governor Cecil H. Underwood, Education Committee, 1997**
- **Counsel and Parliamentarian, West Virginia Republican State Executive Committee, 1995-1997**
- **Adjunct Professor of Constitutional Law, University of Charleston, Summer 1994**



West Virginia Legislature

2ND SESSION OF THE 83RD LEGISLATURE



Member's Press Release

Release Date: 06/25/2018

Contact: Jared Hunt at (304) 340-3323

Tim Armstead

Speaker Armstead Statement on Special Impeachment Session

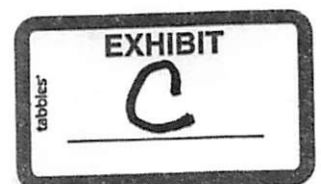
CHARLESTON, W.Va. – House Speaker Tim Armstead, R-Kanawha, today issued the following statement regarding the potential special session focused on possible impeachment proceedings against one or more members of the West Virginia Supreme Court:

"As the Legislature begins the process of considering possible impeachment proceedings related to members of the West Virginia Supreme Court of Appeals, it is important that this process be free from any appearance of bias," Speaker Armstead said.

"When I announced I would not seek re-election to the House of Delegates, I also indicated that I am considering the possibility of seeking a statewide office in 2020. One office I indicated I am considering running for is a seat on the West Virginia Supreme Court of Appeals. I have not decided whether I will seek such a position regardless of whether such position would be up for election in 2020 or would become open at an earlier time. However, the process followed by the Legislature in relation to any impeachment process must be free from even the appearance of any conflict.

"Therefore, while I do not believe there is an actual conflict, I have decided that the decisions as to whether to ask the Governor to call the Legislature into Special Session and the initial disposition of any resolution relative to impeachment of any Justice of the Supreme Court of Appeals should be made by the Speaker Pro Tempore, Delegate John Overington. Pursuant to the Rules of the House of Delegates, if votes are taken in relation to matters related to the potential impeachment, I will request, pursuant to Rule 49 of the House Rules, a determination by the Speaker Pro Tempore as to whether I should vote on any such matters and will abide by such decision.

"I believe that to be consistent with my personal views that I, and the operations of the House, should always err on the side of caution and high ethical standards, I should follow this course as we address this very serious is

[All Releases](#)

WEST VIRGINIA HOUSE OF DELEGATES

83rd Legislature - Second Extraordinary Session 2018

HR 201

Relating to empowering the
House Committee on the Judiciary
to investigate of impeachable
offenses against the Chief Justice
and Justices of the West Virginia

RCS# 601
6/26/2018
1:28 PM

ADOPTION

YEAS: 89 NAYS: 0 NOT VOTING: 11 ADOPTED

YEAS: 89

Adkins	Ferro	Lovejoy	Romine, R.
Ambler	Fluharty	Lynch	Rowan
Anderson	Folk	Malcolm	Rowe
Atkinson	Foster	Martin	Shott
Bates	Frich	Maynard	Sobonya
Boggs	Graves	McGeehan	Sponaugle
Brewer	Hamilton	Miley	Statler
Butler	Hamrick	Miller, C.	Storch
Byrd	Harshbarger	Miller, R.	Summers
Campbell	Hartman	Moore	Sypolt
Canestraro	Hicks	Moye	Thompson
Capito	Higginbotham	Nelson	Upson
Caputo	Hill	Overington	Wagner
Cooper	Hollen	Pack	Ward
Cowles	Howell	Paynter	Westfall
Criss	Iaquinta	Pethtel	White
Dean	Isner	Phillips	Williams
Diserio	Jennings	Pushkin	Wilson
Eldridge	Kelly	Pyles	Zatezalo
Espinosa	Kessinger	Queen	Speaker Armstead
Evans, A.	Lane	Robinson	
Evans, E.	Longstreth	Rodighiero	
Fast	Love	Rohrbach	

NAYS: 0

NOT VOTING: 11

Barrett	Ellington	Hanshaw	Marcum
Blair	Fleischauer	Hornbuckle	Romine, C.
Deem	Gearheart	Householder	



WEST VIRGINIA HOUSE OF DELEGATES

83rd Legislature - Second Extraordinary Session 2018

HR 203

Recommending the public reprimand
and censure of Supreme Court
Justice Allen Loughry, II,
Robin Davis, Margaret Workman and
Elizabeth Walker.

RCS# 619
8/14/2018
1:13 AM

ADOPTION

YEAS: 95 NAYS: 1 NOT VOTING: 4 ADOPTED

YEAS: 95

Adkins	Evans, E.	Kelly	Queen
Ambler	Ferro	Kessinger	Robinson
Anderson	Fleischauer	Lane	Rodighiero
Atkinson	Fluharty	Linville	Rohrbach
Barrett	Folk	Longstreth	Romine, R.
Bates	Foster	Love	Rowan
Blair	Frich	Lovejoy	Rowe
Boggs	Gearheart	Lynch	Shott
Brewer	Graves	Malcolm	Sobonya
Butler	Hamilton	Marcum	Sponaugle
Byrd	Hamrick	Martin	Statler
Campbell	Hanshaw	Maynard	Summers
Canestraro	Harshbarger	McGeehan	Sypolt
Capito	Hartman	Miller, C.	Thompson
Caputo	Hicks	Miller, R.	Upson
Cooper	Higginbotham	Moore	Wagner
Cowles	Hill	Moye	Ward
Criss	Hollen	Nelson	Westfall
Dean	Hornbuckle	Overington	White
Diserio	Householder	Pack	Williams
Eldridge	Howell	Paynter	Wilson
Ellington	Iaquinta	Pethtel	Zatezalo
Espinosa	Isner	Pushkin	Speaker Armstead
Evans, A.	Jennings	Pyles	

NAYS: 1

Fast

NOT VOTING: 4

Deem

Miley

Phillips

Storch





Supreme Court of Appeals State of West Virginia

News

Administrative Office
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Bldg. 1, Room, E-316
Charleston, West Virginia 25305
(304) 340-2305 Jennifer Bundy
(304) 340-2306 April Harless
(304) 558-1212 FAX
Web Site: www.courtswv.gov
Facebook: [wvjudiciary](https://www.facebook.com/wvjudiciary)
Twitter: [WVCourts](https://twitter.com/WVCourts)
Flickr: www.flickr.com/photos/courtswv/
Email: Jennifer.Bundy@courtswv.gov
Email: April.Harless@courtswv.gov

Justice Davis Statement

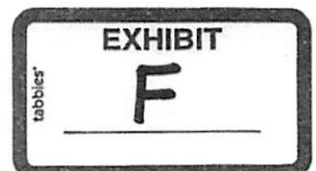
For immediate release Tuesday, August 14, 2018

CHARLESTON, W.Va. -- I deliver this statement today in dismay, disbelief, and in sadness. I feel profound grief for the state of West Virginia given the current state of affairs. What we are witnessing is a disaster for the Rule of law, the foundation of our state, and indeed, our very society. For when a legislative body attempts to dismantle a separate branch of government, the immediate effects, as well as the precedent it sets for the future, can only be termed disastrous.

Most majority members of the judiciary committee have skipped from one subject to another, irrationally, and without due process of law. The majority party has established a preconception which they bring forth, without regard to the evidence, or the process by which that evidence should be considered.

The majority members have ignored the will of the people who elected the justices of this court. They have erased the lines of separation between the branches of government. In fact, the majority party in the legislature is positioning to impose their own party preferences. The will of the people is being DENIED!

I just cannot allow the finalizing of their plot to come to fruition. I have always put my faith in the people of West Virginia. The people of West Virginia have honored me in three separate elections by placing their confidence in me as a Justice of the West Virginia Supreme Court of Appeals. I have returned their faith by serving honorably for almost 22 years.



I am proud of the opinions I have written as well my dissents. As a point of particular pride, cases on which I have sat, as a West Virginia Supreme Court Justice, which have been appealed to the United States Supreme Court, have always, every single time, been upheld by the United States Supreme Court. It is exactly this fairness of process I would have hoped would have been applied to recent legislative actions. But, there is no evidence that has been the case or that it will be the case.

We judges weigh evidence as part of our jobs. Unfortunately, the evidence clearly shows that the preconceived, result driven mania, among the majority party members in the legislature cannot result in a just and fair outcome.

As I said, I have always placed my faith in the people. I return that faith today to the people of West Virginia. Effective yesterday, August 13, 2018, I retired as a Justice of the West Virginia Supreme Court of Appeals. The citizens of West Virginia will therefore be afforded their Constitutional right to vote in November and elect the Justice who will be my successor.

I thank my fellow West Virginians for the extraordinary opportunity to have served you. I encourage each of you to watch this legislative process very carefully and to vote in November.

##

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF OHIO; TO-WIT:

WILLIAM SCHWARTZ, the Petitioner named in the foregoing Relator William Schwartz's Combined Writ of Mandamus and Writ of Prohibition Directing the Secretary of State to Remove Evan Jenkins' Name from the Election Ballot on November 6, 2018, and to Prohibit Governor Justice's Appointments of Jenkins and Armstead to the Vacant Supreme Court Seats after being duly sworn, says that the facts and allegations therein contained are true, except so far as they are therein stated to be on information and belief, and that so far as they are therein stated to be on information and belief, he believes them to be true.



William Schwartz

Taken, sworn to and subscriber before me this the 13th day of September, 2018, by William Schwartz, Petitioner.

My Commission Expires:

March 28, 2021
Traci A. Casto
Notary Public



IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

AT CHARLESTON

State of West Virginia, ex rel
William K. Schwartz, a registered
voter in Kanawha County, West Virginia
Relator

V.

The Honorable James Justice,
Governor of the State of West
Virginia, and The Honorable Mac Warner,
Secretary of State of the State of
West Virginia, and Evan Jenkins, a real party in
interest, and Tim Armstead, a real party in
interest,

Respondents.

CERTIFICATE OF SERVICE

I, Teresa C. Toriseva, the undersigned counsel, do hereby certify that true copies of the foregoing **Relator William Schwartz's Combined Writ of Mandamus and Writ of Prohibition Directing the Secretary of State to Remove Evan Jenkins' Name from the Election Ballot on November 6, 2018, and to Prohibit Governor Justice's Appointments of Jenkins and Armstead to the Vacant Supreme Court Seats** were deposited in the United States Mail via certified mail to the following:

Governor James C Justice
Office of the Governor
State Capitol, 1900 Kanawha Blvd. E
Charleston, WV 25305

Mac Warner
Secretary of State
State Capitol, 1900 Kanawha Blvd. E.
Charleston, WV 25305

Evan Jenkins
121 Oak Lane
Huntington, WV 25701

Tim Armstead
State Capitol, 1900 Kanawha Blvd E.
Charleston, WV 25305



Teresa C. Toriseva, Esq.
Counsel for Relator William K. Schwartz, Esquire
Bar ID 6947
1446 National Road
Wheeling, WV 26003
(304) 238-0066