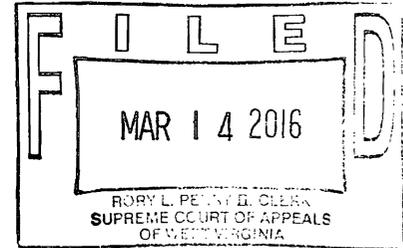


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 16-0223



**STATE OF WEST VIRGINIA ex rel.
JUDICIAL INVESTIGATION COMMISSION,**

Petitioner,

v.

THE PUTNAM COUNTY BOARD OF BALLOT COMMISSIONERS
(The Honorable Brian Wood, Putnam County Clerk and Chairman;
Judy Jeffries, Member; and Joyce Surface, Member), and
TROY SEXTON,

Respondents.

**THE PUTNAM COUNTY BOARD OF BALLOT COMMISSIONERS
RESPONSE TO PETITION FOR WRIT OF MANDAMUS**

**MARK A. SORSAIA
PUTNAM COUNTY PROSECUTING ATTORNEY**

**JENNIFER SCRAGG KARR
ASSISTANT PROSECUTING ATTORNEY
12093 Winfield Road
Winfield, West Virginia 25213
304-586-0201; 304-586-0205
WV Bar No. 8051**

*Counsel for Respondents Putnam Co.
Bd. of Ballot Cmmrs.*

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I.

INTRODUCTION

NOW COME the Respondents Putnam County Board of Ballot Commissioners in response to the Petition for Writ of Mandamus filed in this case. These Respondents concur that Petitioner has standing to file this Petition for Writ of Mandamus and with the factual allegations concerning Respondent Troy Sexton's misdemeanor convictions. Because the removal of a candidate from a ballot, if subsequently deemed erroneous, cannot easily be rectified, these Respondents defer to this Honorable Court on the issue of removing Respondent Troy Sexton from the ballot for the May 2016 Primary Election.

II.

STATEMENT REGARDING IMPORTANT DEADLINES IMPLICATED BY THE PETITION

Ballot Commissioners such as these Respondents, County Clerks and County Commissions have imminent deadlines approaching to accomplish certain required actions with regard to preparation of the 2016 Primary Election. Specifically, West Virginia Code §3-3-11(a) mandates that Boards of Ballot Commissioners deliver absentee ballots to their respective County Clerks by no less than forty-six (46) days prior to the election. Therefore, Friday, March 25, 2016 is the deadline for these Respondents to deliver absentee ballots to the Putnam County Clerk for the upcoming May 10th Primary Election.

Upon receiving the absentee ballots, the County Clerk must mail that ballot within one day to qualified absentee voters who filed their applications by March 25, 2016. West Virginia Code §3-3-5(e) requires that the Clerk mail absentee ballots to

qualified absentee voters within one day of having received both the absentee ballot and the proper application therefor. These Respondents have previously sent their approved absentee ballot to the printer; however, Respondents have withheld their approval of the final printing of said ballot pending this Court's ruling on whether Respondent Troy Sexton must be removed from the ballot.

Thus far as of Monday, March 14, 2016 at 10:00 a.m., the Putnam County Clerk has received twenty-one (21) West Virginia Absentee Ballot Applications and eleven (11) Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") Applications. Upon receipt of the corrected proof for absentee ballots, the Clerk will email a PDF version of the ballot to UOCAVA voters. If this Court is able to rule by no later than noon on March 24, 2016, the County Clerk may likely have sufficient time to have the ballot corrected and ready for delivery in a PDF version even though these Respondents would not be able to have the printed ballots delivered to the Clerk by the March 25th deadline. The printer will not guarantee nor suggest a deadline for proof approval to ensure ballots are delivered to the County Clerk by no later than March 25, 2016.

III.

STATEMENT REGARDING ORAL ARGUMENT and DECISION

The issue of oral argument is moot given that this Court has set the matter for oral argument on Tuesday, March 15, 2016 at 10:00 am. Regarding this Court's decision on the issue, these Respondents merely request the Court to rule as soon as possible and no later than March 24, 2016.

IV.

STATEMENT OF THE CASE, STANDING and ARGUMENT

These Respondents do not dispute that Petitioner has standing nor any factual allegation or legal argument contained in the Petition for Writ of Mandamus. These Respondents simply state that they have never considered the qualifications of candidates outside the information contained in the Certificate of Announcement and information of record in the Office of the County Clerk with regard to the candidate's voter registration, residency and political affiliation.

These Respondents recognize the significance in permitting or removing a candidate from the ballot. Were Respondent Troy Sexton permitted to remain on the ballot and end up successfully receiving a majority of votes for the Office of Magistrate in Division II, then Petitioner would prevent him from taking office or have him removed after taking office, either of which would result in a vacancy of the office. Because vacancies are filled by Circuit Judges instead of the will of the people, these Respondents recognize the importance of putting forth only eligible, qualified candidates to the voters on the ballot. However, because any error by these Respondents in preparation of the ballot would be most difficult if not impossible to remedy, these Respondents defer the decision of removing Troy Sexton from the ballot for Putnam County Magistrate in the May 2016 Primary Election to this Honorable Court.

V.

CONCLUSION

These Respondents respectfully urge this Honorable Court to issue its decision on the removal of Troy Sexton from the 2016 Primary Election ballot for Putnam County, West Virginia as soon as possible and by no later than March 24, 2016.

WHEREFORE, these Respondents pray that this Honorable Court issue its ruling as soon as possible, and award any further relief this Court deems just and proper.

Respectfully submitted,

The Putnam County Board of Ballot
Commissioners, Respondents

By counsel,

MARK A. SORSAIA
PUTNAM COUNTY PROSECUTING ATTORNEY



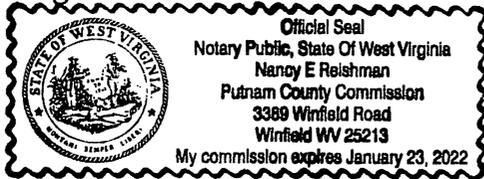
JENNIFER SORAGG KARR
ASSISTANT PROSECUTING ATTORNEY
12093 Winfield Road
Winfield, West Virginia 25213
(304)586-0201; (304)586-0205
WV Bar No. 8051

VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF PUTNAM, to-wit:

I, Brian Wood, after first being duly sworn upon oath, state that I am Putnam County Clerk and Chairman of The Putnam County Board of Ballot Commissioners, Respondents named in the foregoing "Response by Putnam County Board of Ballot Commissioners to Petition for Writ of Mandamus", that I have read the same and that the facts and allegations therein contained are true and correct to the best of my belief and knowledge.





BRIAN WOOD

Taken, sworn to, and subscribed before me this 14th day of March 2016.

My commission expires: January 23, 2022.



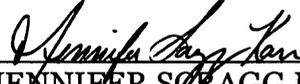
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Jennifer Scragg Karr, counsel for Respondents The Putnam County Board of Ballot Commissioners, do hereby certify that I have this 14th day of March 2016, served the foregoing "THE PUTNAM COUNTY BOARD OF BALLOT COMMISSIONERS RESPONSE TO PETITION FOR WRIT OF MANDAMUS" by depositing the same in the U.S. Mail, first-class postage paid, and addressed as follows:

Teresa A. Tarr, Counsel
Brian J. Lanham, Asst. Counsel
WV Judicial Investigation Commission
City Center East, Suite 1200A
4700 MacCorkle Ave., SE
Charleston, WV 25304
Counsel for Petitioner

Troy Sexton
139 Summit Ridge Dr.
Hurricane, WV 25526
Respondent



JENNIFER SCRAGG KARR (WV Bar #8051)
*Counsel for Respondents Putnam Co. Bd. of
Ballot Cmms.*