

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel.
CITIZEN ACTION GROUP,

Petitioner,

v. No. 101494

EARL RAY TOMBLIN, PRESIDENT OF THE
WEST VIRGINIA SENATE, RICHARD THOMPSON,
SPEAKER OF THE WEST VIRGINIA HOUSE OF
DELEGATES, and NATALIE TENNANT, SECRETARY
OF STATE OF WEST VIRGINIA,

Respondents,

--AND--

STATE OF WEST VIRGINIA ex rel. THORNTON COOPER,

Petitioner,

v. No. 10-4004

EARL RAY TOMBLIN, ACTING GOVERNOR OF THE
STATE OF WEST VIRGINIA, and PRESIDENT OF THE
WEST VIRGINIA SENATE, RICHARD THOMPSON,
SPEAKER OF THE WEST VIRGINIA HOUSE OF
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OF STATE OF WEST VIRGINIA,

Respondents.

RESPONSE OF THE HONORABLE
NATALIE E. TENNANT, SECRETARY OF STATE

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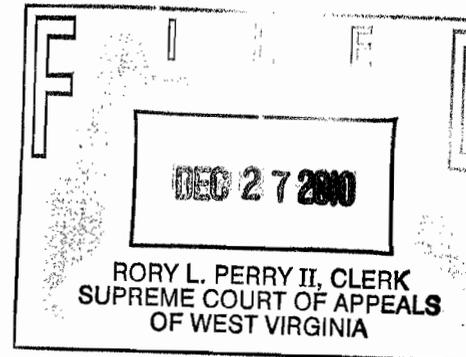


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**RESPONSE OF THE HONORABLE
NATALIE E. TENNANT, SECRETARY OF STATE**

I.

INTRODUCTION AND SUMMARY

The Petitioners argue that Article VII, Section 16 of the West Virginia Constitution requires

when Governor Manchin became a United States Senator on November 15, 2010. Although the Secretary of State has the statutory duty and authority to administer elections (W. Va. Code § 3-1A-6), she lacks the authority to call for a special election and has no official role with respect to the question of constitutional interpretation presented to this Court. Consequently, she will allow the other parties to address this issue. However, if this Court determines that a special election is required, that election *will* be of significant interest to the Secretary of State, because she will be its chief administrator with the duty to oversee its fairness and accessibility. Consequently, this Response will address concerns that should be considered in the event such relief is granted.

First, the Secretary of State desires to make the Court and the parties aware of existing statutory requirements that impose legal and practical constraints on the amount of time it would take to conduct such a special election. West Virginia Code § 3-10-2¹ requires, in the event of a special election to fill a gubernatorial vacancy, that the major parties' nominees be selected by convention rather than a primary. Petitioners do not appear to challenge this requirement. The tasks associated with such conventions and the ensuing election require, under existing law, a minimum period of approximately 160 days from the date of the proclamation calling for such a special election to election day. (*See* Exhibit A.)

Second, the Secretary of State desires to ensure that the “nomination certificate” procedure is available to citizen groups or minor parties that wish to nominate a candidate by procuring signatures. Protecting their rights will require that the August 1 deadline for filing nomination certificates (Code 3-5-24) be ignored. In addition, the statutory requirement that such a petition contain signatures equal to 1% of the total votes cast for governor in 2008 may need to be modified

¹Hereafter sometimes “Code ____”.

in light of any shortened time-frame for mounting a signature drive, although that is a problem that only the Legislature may effectively address absent litigation between parties adverse on this matter.

II.

THE TIMING OF ANY SPECIAL ELECTION

Citizen Action Group (CAG) asserts that, “[w]hen courts are forced to order a special election when the timing is not provided by statute, the court should order that the election occur ‘as soon as practicable.’” (CAG Memorandum at 9.) However, CAG’s citations are to out-of-state decisions. In West Virginia, the general laws governing elections are also applicable to a special election unless they are inconsistent with a law that specifically governs the special election.² Consequently, absent an inconsistency with any constitutional and/or statutory provisions applicable to a special election to fill a gubernatorial vacancy, existing statutes will control.

West Virginia Code § 3-10-2 provides that, “in all cases wherein the vacancy [in the governor’s office] is to be filled at a special election, candidates to be voted for . . . shall be nominated by a state convention to be . . . held under the resolutions, rules and regulations of the political party executive committees of the state.”³ The Petitioners herein do not challenge this requirement. Code 3-10-2 also states that existing laws governing conventions “shall, insofar as

²See e.g., W. Va. Code §§ 3-3-11 (seventy-day schedule for estimating the number of absentee ballots and for printing and distributing the same applies to “any primary, general or special election”), 3-6-1 (provisions of Article 6, governing the administration of elections, apply to special elections “where applicable and not inconsistent with other positive provisions of law”), and 3-8-1 (campaign finance laws applicable to special elections).

³Said code section also requires that the selection of delegates to such a State convention be made at county-wide mass conventions rather than in each magisterial district, as would otherwise have been required by a now-obsolete provision of Code 3-5-21. As amended in 2003, however, Code 3-5-21 no longer requires magisterial-district conventions. (Acts 2003, c. 101.)

applicable,” govern a convention to fill a gubernatorial vacancy. One such law is the requirement in Code 3-5-21 that the resolutions of the party’s state executive committee calling for a state convention, and setting its time and place, be delivered to the county executive committees at least 60 days prior to the state convention. Allowing about 15 days for such resolutions to be passed and delivered, and the additional 15 days allowed by statute for the nominees of the convention to be certified to the Secretary of State (Code 3-5-21), the entire process for nominating party candidates by convention would take approximately 90 days unless the statutory time periods are deemed “inapplicable” to elections to fill a gubernatorial vacancy.⁴

Certain of the procedures applicable to elections generally may be accomplished while the convention process is going on, but most (such as the printing and distribution of absentee and regular ballots) cannot take place until the candidates are known. These processes will take a minimum of 69 days following the certification of the convention nominees, for a total time-span of about 160 days between the proclamation for a special election and the earliest date upon which it could reasonably be held in conformity with existing law. (*See Exhibit A.*)

Recently, the Secretary of State administered a special election to fill the seat of the late Senator Robert Byrd. This included a special primary election. Both the primary and final election were conducted in only 106 days, but this was possible only because the special legislation calling

⁴Code 3-10-2 also contemplates that a convention would be used to nominate candidates for any general election in which the vacancy may be filled if the vacancy occurs too late to use the primary election process, but more than 30 days away from the next general election. This 30-day window is manifestly inconsistent with the 60-day notice requirement generally applicable to state conventions. However, the 30-day window is, itself, unrealistic for conducting a statewide election, be it general or special. That is simply too little time to select candidates and to thereafter prepare and deliver printed ballots or to program electronic voting machines, not to mention selecting and training poll workers. (*See Exhibit A.*)

for the election modified 23 statutory provisions that would otherwise have rendered such a schedule impossible.⁵

By the way, the special primary election to fill Senator Byrd's seat cost over \$3 million, and would have cost at least an additional \$500,000 had the Legislature not enacted several cost-saving measures in its special legislation, including the elimination of training for poll-workers that had just received such training in conjunction with the regular primary.

By reason of the above, should this Court award the relief requested by the Petitioners, the parties and public should not expect the election to be held prior to 160 days following the proclamation calling for such an election absent a determination that one or more time-consuming statutory requirements are inconsistent with the law(s) governing this special election. Alternatively, special legislation could shorten this time-frame.

III.

PROTECTING THE RIGHTS OF THIRD-PARTY CANDIDATES

Any political party polling less than ten percent (10%) of the total votes cast for governor at the last general election, and groups having no party organization, may nominate candidates by "nomination certificates" (sometimes erroneously called "petitions"). W. Va. Code § 3-5-22, -23, and -24. Although this procedure is not mentioned in Code 3-10-2, there is a clearly established constitutional right of reasonable access to the ballot that is implemented by these provisions, so they must be made available in any special election to fill a gubernatorial vacancy.⁶

⁵The special legislation (House Bill 201) is appended as Exhibit B, and included the following provision: "Statutory time deadlines relating to availability of absentee ballots, certification, canvassing and related election procedures that cannot be met in a timely fashion, for the purpose of this special election, are modified as follows: [listing 23 modifications]." W. Va. Code § 3-10-4(a)(b)(2).

⁶A right of reasonable access to the ballot by means other than political conventions or
(continued...)

To obtain ballot-access via the certificate procedure in West Virginia, a potential candidate must obtain signatures from qualified voters equal to one percent (1%) of the votes cast for that office at the last general election. (Code 3-5-23.) Generally, the procedural requirements imposed by West Virginia law have eased considerably over the last two decades and have not yet been challenged herein.⁷

Two statutory deadlines could be of concern to persons seeking a certificate nomination in a special election. First, Code 3-5-7 requires that a person seeking to hold an office file a “certificate of announcement declaring his or her candidacy” by “the last Saturday in January next preceding the primary election day.” However, this requirement has not been applied to candidates nominated by means other than a primary. Rather, the long-standing administrative interpretation of this statute has been that candidates nominated by convention or by certificate file their announcements when actually so nominated.

⁶(...continued)

primaries is protected by the First Amendment’s Speech, Assembly, and Petition Clauses, and any burdens imposed by law on non-party or minor-party candidates that are disproportionate to those imposed upon traditional major-party candidates are prohibited by the Fourteenth Amendment’s Equal Protection Clause. *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *West Virginia Libertarian Party v. Manchin*, 165 W.Va. 206, 270 S.E.2d 634 (1980). However, “[t]he State has the undoubted right to require candidates to make a preliminary showing of substantial support in order to qualify for a place on the ballot, because it is both wasteful and confusing to encumber the ballot with the names of frivolous candidates.” *Jenness v. Fortson*, 403 U.S. 431, 442 (1971).

⁷Among the most significant changes are a reduction in the number of necessary signatures from two percent (2%) to one percent (1%), elimination of the requirement that signers of a nomination certificate not vote in the primary, elimination of requirements that canvassers disclose their identities and addresses and seek signatures only in their own magisterial district, and postponement of the date upon which the certificates must be submitted from the day preceding the primary to August 1. W. Va. Code § 3-5-23. Many of these requirements have been eased despite that the stricter versions had withstood judicial scrutiny. See *West Virginia Libertarian Party v. Manchin*, 165 W.Va. 206, 209, 270 S.E.2d 634 (1980); *Socialist Workers Party v. Hechler*, 890 F.2d 1303(4th Cir. 1989); *Fishbeck v. Hechler*, 85 F.3d 162 (4th Cir. 1996).

The second statutory deadline requires that nomination certificates be submitted “by August 1 preceding the general election.” Code 3-5-24. Until amended in July of 2009, this deadline applied only to Presidential candidates, who had the benefit of a Supreme Court decision widely interpreted as precluding any requirement that Presidential nomination certificates be filed before August 1. *State ex rel. Browne v. Hechler*, 197 W.Va. 612, 476 S.E.2d 559 (1996). Non-Presidential candidates had to submit their nomination certificates on the eve of the primary. In 2009, the statute was amended so as to make the August 1 deadline applicable to all. Like the January deadline just discussed, this August deadline contemplates an ordinary general election cycle and cannot be applied to a special election on a different schedule. Consequently, any decision by this Court that a special election is required on a schedule other than the general election cycle would render the August deadline inconsistent and inapplicable to such a special election. (See Section II herein, explaining that general laws pertaining to elections are applicable to special elections unless inconsistent with the laws requiring the special election.)

The August 1 statutory deadline precedes a regular general election by at least 93 days, which allows sufficient time for the 55 county clerks to verify the thousands of signatures on the certificates⁸ and for the preparation of ballots. These tasks require a minimum of about 80 days, if all goes well. If the actual deadline to be imposed on certificate nominations in a special election is not determined by this Court or by the Legislature (should it choose to enact special legislation), the Secretary of State, as the State’s “chief elections official” (Code 3-1A-6), will be under a duty to do so to protect the constitutional requirement of ballot access for such candidates.

Lastly, it should be noted that the recent special legislation calling for a special election to fill the late Senator Byrd’s seat reduced the number of signatures required to obtain access to that

⁸About 700,000 votes were cast for Governor in 2008, 1% of which is about 7,000.

special ballot from one percent (1%) to one-quarter percent (0.25%) due to the severely shortened time-frame of that special election. (*See* Exhibit B at Code 3-10-4a(b)(2)(w).) While a similar reduction may be warranted for a special election to fill a gubernatorial vacancy, there appears to be no mechanism for doing so other than special legislation or litigation in which such a minor party participates.

IV.

CONCLUSION

In the matter presented by these actions, the Secretary of State has been named as a respondent. The Secretary of State is not the person charged by code or constitution with proclaiming a special election to fill the governor vacancy. Neither does the Secretary of State possess authority to make determinations on the constitutionality of W. Va. Code § 3-10-2. Nevertheless, the Secretary has responded in order to identify some of the issues which must be addressed before an election can be held “as soon as practicable.”

Even if all other requirements of code are met, at least one conflict with code can hardly be avoided: the August 1 deadline for filing of minor party and independent candidates’ nomination certificates under §§ 3-5-23 and -24, can only be met if the general election is held in November 2011 like a regular general election. This Court must address and resolve that specific conflict or authorize the chief election officer to do so.

The Secretary of State sees her responsibility in this litigation as two-fold. First, the Secretary of State protects the rights and interests of candidates and voters by ensuring fair access to the ballot and by administering an election that conforms to all election law. Second, the Secretary of State serves as the voice of reason pointing out the many legal requirements and steps

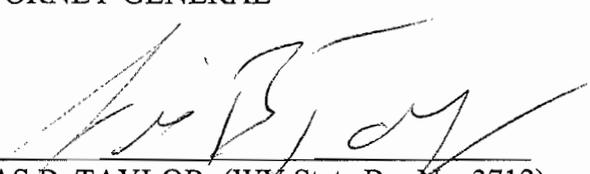
that are necessary before election-day. The timeline advanced herein allows for the meeting of all applicable code sections but one. The Secretary of State has demonstrated that an election can be conducted more expeditiously, but only with sufficient legislation and administrative flexibility permitted to the Secretary.

Respectfully submitted,

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ELECTION TIMELINE BY STATUTE

DATE	CODE	REQUIREMENT
REQUIREMENTS FOR PRIMARY ELECTION		
PE ¹ – 120 days	3-1-7	Order by County Commission changing precinct location (+ 5 days public notice of meeting if not emergency)
Last Sat. in Jan. ²	3-5-7	Candidate filing and fee payment deadline
PE – 90 days	3-3-5c(a)	County Commission to adopt emergency absentee voting policy
2 nd Fri. after close of candidate filing	3-5-11(c)	Deadline for nomination by Exec. Comm. for when no candidate files
3 rd Tues. after close of candidate filing	3-5-11(c)	Deadline for nomination by chair of Executive Comm.
3 rd Tues. after close of candidate filing	3-5-11(a)	Deadline for candidate to withdraw and be removed from ballot
PE – 84 days	3-3-5	Begin application for absentee ballot
PE – 84 days	3-1-29	County Commission notifies Exec. Comm. of # poll-workers required
PE – 84 days	3-5-9	Secretary of State certifies and posts names of candidates
4 th Tues. after close of filing	3-5-13a	County clerk drawing for ballot position
PE – 70 days	3-3-11, 3-1-21(c)	County clerk estimates # of absentee ballots needed
PE – 70 days	3-1-30	Exec. Comm. submits names of poll-workers and alternates
PE – 56 days	3-3-5c(b)	Clerk notifies Co. Comm. of # of emergency absentee commissioners
PE – 49 days	3-1-30	Co. Comm. appoints poll-workers and alternates
Last Sat. in March ²	3-8-5	Close of Primary-First campaign finance reporting period
PE – 47 days	3-3-11	Delivery of absentee ballots to clerks
PE – 46	3-3-5	Sending of absentee ballots to overseas/military voters
PE – 28 days	3-1-21	Delivery of paper ballots and supplies to clerk
PE – 21 days	3-2-6	Voter registration deadline
PE – 3 weeks	3-4A-26	Publication of notice of public testing of machines
PE – 20 days	3-5-10	Publication of Sample Ballot
PE – 20 days	3-3-3	Begin early voting
PE – 15 days	3-8-5	Close of Pre-Primary campaign finance reporting period
PE – 7 days	3-1-46	Completion of poll-worker training
PE – 6 days	3-3-1	Deadline to request absentee ballot
Friday after Primary	3-5-17	Canvass begins (no conclusion deadline)
PE + 30 days	3-6-11	Transmit results to Secretary of State

¹ PE = Primary Election Date

² Inapplicable to convention and certificate nominees.

REQUIREMENTS FOR CONVENTIONS		
Conv. ³ – 75 days (appx)	Not set	Party leaders meet and determine convention details
Conv. – 60 days	3-5-21	Notice of date, location, and county/district delegate allocation for State Convention
Conv. + 15 days	3-5-21	Nominee certified by Party to Secretary of State.
REQUIREMENTS FOR GENERAL ELECTION		
GE ⁴ – 120 days	3-1-7	Order by County Commission changing precinct location (+ 5 days public notice of meeting if not emergency)
August 1 ⁵	3-5-24	Deadline for independent candidates and minor party nominees to file certificates of nominations and filing fees
GE – 84 days	3-5-19	Deadline for certain vacancies that may be filled by Exec. Comm.
GE – 84 days	3-1-29	County Commission notifies Exec. Comm. of # poll-workers required
GE – 84 days	3-3-5	Applications for absentee ballots may be submitted
GE – 78 days	3-5-19	Deadline for Exec. Comm. to fill vacancies for certain reasons
GE – 70 days	3-3-11, 3-1-21	County clerk estimates # of absentee ballots needed
GE – 70 days	3-1-30	Exec. Comm. submits names of poll-workers and alternates
GE – 56 days	3-3-5c(b)	Clerk notifies Co. Comm. of # of emergency absentee commissioners
GE – 49 days	3-1-30	Co. Comm. appoints poll-workers and alternates
GE – 47 days	3-3-11, 3-5-13	Delivery of absentee ballots to clerks
GE – 46	3-3-5	Sending of absentee ballots to overseas/military voters
GE – 43 days	3-8-5	General-First campaign finance report due
GE – 42 days	3-6-4a	Write-in Candidate notice filing deadline
GE – 28 days	3-1-21	Delivery of supplies to clerk
GE – 21 days	3-2-6	Voter registration deadline
GE – 3 weeks	3-4A-26	Publication of notice of public testing of machines
GE – 20 days	3-5-10	Publication of Sample Ballot
GE – 20 days	3-3-3	Begin early voting
GE – 15 days	3-8-5	Pre-General campaign finance report due
GE – 7 days	3-1-46	Completion of poll-worker training
GE – 6 days	3-3-5	Deadline to request absentee ballot

³ Conv. = Convention method of nominating candidates instead of primary election method

⁴ GE = General Election Date

⁵ Could not be applied in a special election conducted on a schedule different than a general election.

1 special elections; modifying procedures relating to payment of
2 filing fees, drawing of ballot positions, selecting and
3 training individuals working as election official; clarifying
4 the eligibility of certain minors to vote in special primary
5 election; modifying statutory provisions relating to minimum
6 number of ballots to be printed; modifying publications
7 requirements of sample ballots, lists of candidates, and
8 public testing of voting machines; providing applications
9 deadlines for absentee ballots and procedures for changing
10 polling places; modifying procedures for persons without party
11 affiliations to nominate candidates for the special general
12 election; authorizing the Secretary of State to issue
13 administrative orders and to establish procedures and
14 deadlines necessary to preserve voting rights, avoid
15 fraudulent voting and other election irregularities and assure
16 orderly and efficient administration of the special primary
17 election; requiring the state to pay costs incurred in
18 connection with a special election to fill a vacancy in the
19 office of United States Senator; requiring Secretary of State
20 to report to joint committee on government and finance and
21 establishing guidelines for the report; providing for the
22 expiration of the section; and clarifying that the special
23 general election held on November 2, 2010, for the United
24 States Senate vacancy is a separate election from the general

1 election held on the same date.

2 *Be it enacted by the Legislature of West Virginia:*

3 That the Code of West Virginia, 1931, as amended, be amended
4 by adding thereto a new section designated as §3-10-4a, to read as
5 follows:

6 **ARTICLE 10. FILLING VACANCIES.**

7 **§3-10-4a. Special Senate vacancy election.**

8 (a) Notwithstanding the provisions of section three of this
9 article establishing processes for the appointment and election to
10 fill a vacancy in the office of United States Senator, for purposes
11 of filling the vacant seat in the office of United States Senator
12 existing on July 1, 2010, a special election shall be held to fill
13 the unexpired term concurrent with the general election of November
14 2, 2010. A special primary election shall be held to nominate
15 party candidates for the November election.

16 (b) For the special primary election required to be held prior
17 to the November 2, 2010 election by operation of this section upon
18 its enactment during the second extraordinary session of the
19 Legislature, 2010, the Governor shall immediately issue a
20 proclamation calling for a special primary election and general
21 election. The special general election shall be held on November
22 2, 2010. The following provisions apply to these special
23 elections:

24 (1) The proclamation for the special election shall be

1 published prior to the special election as a Class II-0 legal
2 advertisement in accordance with article three, chapter fifty-nine
3 of this code and the publication area for the publication is each
4 county of the state. The notice shall be filed with the Secretary
5 of State who shall immediately transmit the document to the clerk
6 of the county commission of each county. The clerk of the county
7 commission of each county shall cause the document to be published
8 within the county in accordance with this section.

9 (2) The provisions of this chapter shall apply to this special
10 primary election to the extent that those provisions are consistent
11 with the provisions of this section. Statutory time deadlines
12 relating to availability of absentee ballots, certification,
13 canvassing and related election procedures that cannot be met in a
14 timely fashion, for the purpose of this special election, are
15 modified as follows:

16 (A) The special primary election is to be held August 28,
17 2010;

18 (B) A notarized declaration of candidacy and filing fee shall
19 be filed and received in hand by the Secretary of State by 5:00
20 p.m. on the fourth calendar day following the proclamation of the
21 special primary election. The declaration of candidacy may be
22 filed in person, by United States mail, electronic means or any
23 other means authorized by the Secretary of State;

24 (C) Early-in-person voting shall be conducted during regular

1 business hours beginning on Friday, August 20, 2010 and continuing
2 through close of business Wednesday, August 25, 2010. In addition,
3 early-in-person voting shall be conducted from 9:00 a.m. to 5:00
4 p.m. on Saturday, August 21, 2010. No satellite polling locations
5 will be utilized for the August 28, 2010 special primary election;

6 (D) The Secretary of State may issue emergency administrative
7 orders to undertake other ministerial actions that are otherwise
8 authorized pursuant to this code when necessary to assure the
9 preservation of the voting rights of the citizens of this state and
10 avoid fraudulent voting and election activities and otherwise
11 assure the orderly and efficient conduct of the election: *Provided,*
12 *that* such emergency administrative orders may not contravene the
13 provisions of this section;

14 (E) The compensation of election officers, cost of printing
15 ballots and all other reasonable and necessary expenses in holding
16 and making the return of the special election to fill a vacancy in
17 the office of United States Senator are obligations of the state
18 incurred by the ballot commissioners, clerks of the circuit courts,
19 clerks of the county commissions and county commissions of the
20 various counties as agents of the state. All expenses of the
21 special election are to be audited by the Secretary of State. The
22 Secretary of State shall prepare and transmit to the county
23 commissions forms on which the county commissions shall certify all
24 expenses of these special elections to the Secretary of State. If

1 satisfied that the expenses as certified by the county commissions
2 are reasonable and were necessarily incurred, the Secretary of
3 State shall requisition the necessary warrants from the Auditor of
4 the state to be drawn on the State Treasurer and shall mail the
5 warrants directly to the vendors of the special election services,
6 supplies and facilities;

7 (F) For petition in lieu of payment of filing fees, a
8 candidate seeking nomination for the vacant seat in the U.S. Senate
9 may utilize the process set forth in section eight-a, article five
10 of this chapter: *Provided*, That the minimum number of signatures
11 required is one thousand seven hundred and forty;

12 (G) Drawing for ballot position will take place at the
13 Secretary of State's office 24 hours after the end of the filing
14 period. For each major political party on the ballot, a single
15 drawing by lot shall determine the candidate ballot position for
16 ballots statewide. This drawing shall be witnessed by four clerks
17 of the county commission chosen by the West Virginia Association of
18 County Clerks, with no more than two clerks representing a single
19 political party;

20 (H) The clerks of the county commission shall submit the list
21 of persons who worked in the May 11, 2010 primary election to the
22 county commission for appointment as election officials;

23 (I) Election officials shall be appointed by Tuesday, August
24 3, 2010;

1 (J) The clerks of the county commission shall provide notice
2 to all election officials of the fact of their appointment by
3 Wednesday, August 4, 2010. Included with the notice shall be a
4 response notice form for the appointed person to return indicating
5 if he or she agrees to serve in the specified capacity in the
6 August 28, 2010 special primary election;

7 (K) The position of any election official notified of
8 appointment who fails to return the response notice or otherwise
9 confirm to the clerk of the county commission his or her agreement
10 to serve by Tuesday, August 10, 2010 is considered vacant and the
11 clerk of the county commission shall proceed to fill the vacancies;

12 (L) Election officials shall be trained by Thursday, August
13 19, 2010: *Provided*, That election officials who attended training
14 for the May 11, 2010 primary election are exempt from additional
15 training for the August 28, 2010 special primary election;

16 (M) A registered voter who has not reached eighteen years of
17 age may vote in the August 28, 2010 special primary election:
18 *Provided*, That the voter will attain eighteen years of age at the
19 time of the special general election;

20 (N) When paper or optical scan ballots are the primary voting
21 method used at any county, the total number of regular official
22 ballots printed shall equal at a minimum fifty percent of the
23 number of registered voters eligible to vote that ballot;

24 (O) When paper ballots are used in conjunction with a direct

1 recording electronic voting system, the total number of regular
2 official ballots printed shall equal at a minimum thirty percent of
3 the registered voters eligible to vote that ballot;

4 (P) For counties in which two or more qualified newspapers
5 publish a daily newspaper, the clerk of the county commission shall
6 publish at least once each sample official August 28, 2010 primary
7 ballot, on the last day on which a newspaper is published
8 immediately preceding the August 28, 2010 special primary election,
9 as a Class I-0 legal advertisement in the two qualified daily
10 newspapers of different political parties within the county having
11 the largest circulation in compliance with the provisions of
12 article three, chapter fifty-nine of West Virginia Code;

13 (Q) For counties having no more than one daily newspaper or
14 having one or more qualified newspapers which publish weekly, the
15 clerk of the county commission shall publish each sample official
16 August 28, 2010 primary ballot, on the last day in which a
17 newspaper is published immediately preceding the August 28, 2010
18 special primary election, as a Class I-0 legal advertisement in the
19 qualified daily newspaper within the county having the largest
20 circulation in compliance with the provisions of article three,
21 chapter fifty-nine of West Virginia Code;

22 (R) Counties shall not be required to separately publish a
23 certified list of candidates;

24 (S) If only one notice of a sample ballot is published, it

1 shall include a statement notifying voters that this is the sole
2 publication of the sample ballot;

3 (T) Before voting machines are used, the clerks of the county
4 commission shall have the ballots, vote recording devices, and
5 electronic poll books inspected, and automatic tabulating equipment
6 tested to ascertain that it will accurately count the votes cast.
7 A single notice of the place and time of the inspection and testing
8 shall be published, no less than three days in advance, as a class
9 I-0 legal advertisement in compliance with the provisions of
10 article three, chapter fifty-nine of West Virginia Code. The
11 publication area is the county involved;

12 (U) Applications for absentee ballots shall be accepted from
13 the date of proclamation, other than from voters eligible to vote
14 under the provisions of the Uniformed and Overseas Citizens
15 Absentee Voting Act who may apply for an absentee ballot for all
16 elections within a calendar year as early as the first day of
17 January of an election year;

18 (V) Regularly scheduled locations of polling places shall not
19 be changed, except for emergency situations as provided for in
20 §3-1-7(e) and (f): *Provided*, That if multiple precincts voted in
21 one polling location for the May 11, 2010 regularly scheduled
22 primary election, such precincts may be consolidated into a single
23 precinct. Locations for consolidated precincts shall provide
24 internet access, insofar as possible, for the sole purpose of

1 utilizing the Statewide Voter Registration System (SVRS) as an
2 electronic poll book; and

3 (W) Persons having no party affiliation may nominate
4 candidates for the U.S. Senate vacancy under the procedures set
5 forth in sections twenty-three and twenty-four, article five of
6 this chapter: *Provided*, That the number of signatures required to
7 be submitted shall be equal to not less than one-quarter of one
8 percent of the entire vote cast at the last preceding general
9 election for any statewide congressional or presidential candidate.
10 Notwithstanding the provisions of sections twenty-three and twenty-
11 four of article three of this section, the signatures, notarized
12 declaration of candidacy, and filing fee must be submitted no later
13 than August 23, 2010.

14 (c) The Secretary of State, shall by January 10, 2011, report
15 to the Joint Committee of Government and Finance findings regarding
16 of the operation of the special elections undertaken pursuant to
17 subsection (b) of this section. This report shall provide analysis
18 of: direct and indirect costs to the state associated with the
19 conduct of the election; benefits and disadvantages of conducting
20 an election on a Saturday; the impact of compressed time periods on
21 efficient election administration; and whether this election
22 process impacted early voting and participation by military and
23 overseas voters.

24 (d) Any special election, which is held under the provisions

1 of this section and occurs concurrently with a general election,
2 shall be a separate election from the general election.

3 (e) Upon the election and qualification of a United States
4 Senator by the United States Senate following the November 2, 2010
5 election, the provisions of this section will expire.

CERTIFICATE OF SERVICE

I, Silas B. Taylor, Senior Deputy Attorney General for the State of West Virginia, do hereby certify that a true and exact copy of the foregoing "Response of the Honorable Natalie E. Tennant, Secretary of State" was served upon the following by depositing the same, postage prepaid in the United States Mail, on this the 27th day of December 2010, addressed as follows:

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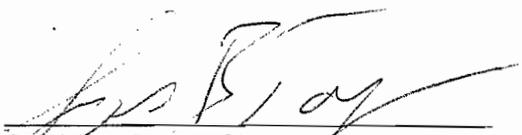
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SILAS B. TAYLOR