

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Upon Original Jurisdiction

No. _____

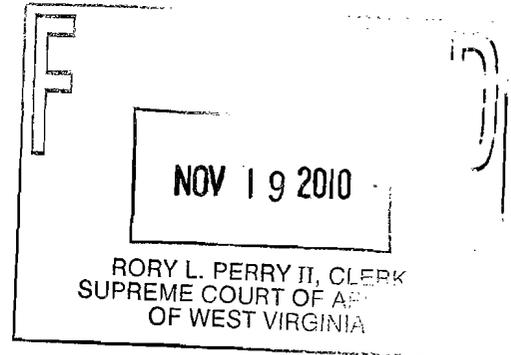
**STATE OF WEST VIRGINIA
ex rel WEST VIRGINIA CITIZEN
ACTION GROUP,**

Petitioner,

v.

**EARL RAY TOMBLIN,
President of the West Virginia Senate,
RICHARD THOMPSON,
Speaker of the West Virginia House of
Delegates, and
NATALIE E. TENNANT,
Secretary of State of West Virginia**

Respondents.

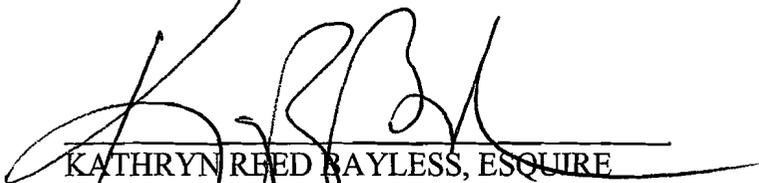


PETITION FOR WRIT OF MANDAMUS

State of West Virginia ex rel. West Virginia Citizen Action Group (“WV-CAG”) files this Petition for a Writ of Mandamus. In support of this Petition, WV-CAG files the attached Appendix and a Memorandum of Law which are incorporated into this Petition. For the reasons set forth therein, WV-CAG seeks a writ of mandamus from this Court ordering the Respondents to call a special election to fill the office of Governor as soon as an election may practicably be held on the grounds that a new election for Governor is required by the provisions of article VII, section 16, of the West Virginia Constitution.

**STATE OF WEST VIRGINIA
ex rel WEST VIRGINIA CITIZEN
ACTION GROUP,**

By counsel,

A handwritten signature in black ink, appearing to read 'KRB', is written over a horizontal line. The signature is fluid and cursive.

KATHRYN REED BAYLESS, ESQUIRE

WV State Bar No. 0272

BAYLESS LAW FIRM, PLLC

1607 West Main Street

Princeton, West Virginia 24740

Telephone: 304-487-8707

WV-CAG'S

APPENDIX

OF

EXHIBITS

EXHIBIT A

November 14, 2010

Tomblin to become governor in private ceremony today

By Paul J. Nyden

CHARLESTON, W.Va. -- Senate President Earl Ray Tomblin, D-Logan, is scheduled to be sworn in as West Virginia's next governor on Tuesday during a public ceremony, by state Supreme Court Chief Justice Robin Davis, in front of the state Senate chambers.

But Tomblin will actually become governor Monday, shortly after Gov. Joe Manchin formally resigns, and becomes a U.S. senator.

Kanawha County Circuit Court Chief Judge Tod Kaufman will conduct a private ceremony around noon in the governor's office at the Capitol today to make Tomblin West Virginia's official governor.

"During this moment, the authority of the state's chief executive will pass immediately to Mr. Tomblin," Kaufman said.

"It will take place within minutes of when Gov. Joe Manchin's resignation is effective, insuring an orderly transfer of powers, in accordance with West Virginia's constitution," Kaufman said on Saturday.

Kaufman and Tomblin served together in the state Senate between 1982 and 1988.

The last time an acting governor took the oath to become governor was more than 141 years ago.

"The only other time the responsibilities of governor have been assumed by the president of the Senate was in 1869, when Daniel D.T. Farnsworth served as acting governor," said Ray E. Ratliff Jr., counsel to the West Virginia Senate.

A justice of the peace administered the oath of office to Farnsworth.

Farnsworth was president of the West Virginia state Senate when Gov. Arthur I. Boreman resigned to serve in the U.S. Senate. Farnsworth was governor for only seven days, between Feb. and March 4, 1869.

According to a brief biography posted by the West Virginia State Archives on its website, Farnsworth was a delegate to the first Wheeling Convention in 1861, which passed the first resolution to secede from Virginia.

Farnsworth served in both the Virginia and West Virginia state senates between 1862 and 1869.

Reach Paul J. Nyden at pjny...@wvgazette.com or 304-348-5164.

EXHIBIT B

TOMBLIN PRESS CONFERENCE
11-08-10

The world in which we live is extremely competitive. The issues and needs that face West Virginia continue and are far too important to be placed on hold.

I recognize that many people may be wondering when a new election for governor will be held. I have been advised that our current laws, which have been on the books for over a century, clearly provide that a new election will occur in 2012. Legal experts agree on this point unanimously before a legislative committee studying this subject only a few weeks ago.

I'm well aware of the strong desires of some wishing to have an election prior to 2012. For me, it comes down to what the people want. If my fellow West Virginians express an overwhelming desire to have a quick election, I will work with the Legislature to make that a reality.

We must, however, take a reasoned and thoughtful approach to our decision-making process. We must keep in mind the potential costs, timing and what is in the best interests of West Virginia.

Unlike many of our neighboring states, West Virginia has enjoyed stability during these difficult times. As governor, I will focus on maintaining a stable WV. I will lead with a renewed passion to continue to move this state forward.

Twenty-five years ago when I became Senate Finance Chairman, the State was on the verge of default and bankruptcy. Since that time, I've worked with legislative members and four different governors to help bring us back to the financial stability that now makes WV envied nationally.

We've paid down our debt. We've balanced our budget. We've lowered taxes. The fruits of our labor have not gone unnoticed. For example, the bond-rated agencies have recently upgraded our ratings. This has resulted and will continue to result in millions of dollars of savings for the taxpayers of our state. This is something we can all be proud of.

We must continue to improve our education system. Our children depend on us for a competitive, world-class education. They cannot afford to be let down.

We are an energy leader in this country. Coal is a huge part of WV and we must continue to support its important role in the energy needs of our nation. We need to foster policies where we appropriately balance the interests of protecting our environment while extracting energy resources so desperately needed by our country. WV is blessed with an abundance of energy resources, including coal, natural gas, oil, as well as wind and solar power. We must continue to take advantage of these resources and make WV stronger.

WV is a tremendous state with an even greater potential. Her horizon looks bright and her people are poised for success. I look forward to the coming days and weeks as we create a smooth transition to continue to take care of the business of our great state and as we all pull together to put WV first.

Again, thank you-all for being here, and I'm happy to answer any questions that you may have.

Question: What kind of response would you have to get from the public to have a special election?

Answer: It is the responsibility of the Legislature to set a special election. Of course, as we know, every inch of WV is represented by senators and delegates. I feel if the citizens of this state demand a special election, they will let their members of the House and Senate know. At that time, the Legislature will act appropriately.

Question: You mentioned that you would not participate as the Senate President anymore. Why is that? You just don't want to have the added responsibility?

Answer: My major responsibility today and will be in the next few days hopefully will be to run the executive branch of this government. Even though I will still be a member of the Senate, I think our Senate rules clearly contemplate the absence of a Senate President. I'm very proud of the Senate we have developed over the years. They are great individuals, and I am sure they will continue on doing what's right for the State of WV.

Question: On that point, you know, legally, the Constitution says Senate President shall be acting Governor. So if you're no longer presiding over the Senate, are you still Senate President?

Answer: I will still be President of the Senate under our Constitution. The Senate Democrats will caucus in December. On the first day of the session will be the election for President for a two-year term. It's my hope that my fellow members of the Senate will re-elect me as their President for the ninth time. But beyond that, that will probably be the last day that I will be actually in the Senate Chamber. I will turn it over to the capable individuals who are there to run the business of the Senate.

Question: Does the Constitution provide how you will be compensated? Will you be drawing the Senate President and the Governor's salary? How does that work?

Answer: I will be drawing the salary for the Governor. I will not be drawing the salary for the Senate.

Question: Is that your choice? Would you be able to draw both at the same time?

Answer: I'm not sure that I would be able to, but I will not.

Question: What about in this transition process when you say "if the public wants a special election"? There's already been a lot of talk by a lot of folks who have their eye on the governor's seat for 2012 and forward. Are you worried that this process will get messy and politically muddy?

Answer: Well, my concentration will be to lead this state forward in a responsible manner, the way we have done for the last several years. That will be my whole goal, and I would hope that others during this time of transition would follow suit.

Question: Somebody raised the Constitutional issues in regards to the Senate President and also acting as Governor regards separation of powers. Is that something that needs to be looked into to make sure --

Answer: It has been looked into. Several states have the same provisions as WV in their constitutions. It's been explained to me by the legal staff that different supreme courts have decided that -- in this particular case, in the vacancy of a governor, it does not violate the separation of powers. You may also want to look at the Vice President of the United States who is also President of the United States Senate.

Question: How will you determine the voice of the people as far as a special election?

Answer: As I said, I think our members of the Legislature, both members of the House of Delegates and Senate, listen to their constituents. I think that if the people demand that, those individuals will know.

Question: How soon do you (inaudible)? It seems like everything would be (inaudible) another two years or if they come and replace you between then. Has there been any timelines set or has there been any (inaudible) upon the lawmakers to (inaudible).

Answer: I don't know if there's been any timelines that have been set, but the Legislature will be going in session on the second Wed of January. They will have 60 days there to make those determinations.

Question: You said that you would have a special election though during that 2012 term, right? Would that be like the last month or so of that; is that correct?

Answer: That's the way it's explained to me by the legal authorities, yes.

Question: Do you plan to run in 2012 or prior to a special election?

Answer: Absolutely. (Applause.)

Question: For those who maybe don't know you as Senate President, what kind of governor will you be? Just talk about how (inaudible).

Answer: I'm very proud of some of the accomplishments we have made in WV. As I mentioned in my remarks, when I became Finance Chair, this state was virtually bankrupt. We were not paying our debts -- our invoices on time. Our retirement system was in shambles. We've been able to address those problems. We got our debt under control right now. Even though we're not completely out of debt, we've got it headed in the right direction.

We've been able to do some innovative things, like create our Infrastructure Council, our School Building Authority, created

the Promise Scholarship, and we've been able to live within our means along with -- at the same time, been able to reduce the taxes on our citizens out there. I will continue to do that, to try to make WV a business-friendly state and try to do what we can to make sure that our children are educated to their full potential.

Question: (Inaudible.) higher education system not graduating more. (Inaudible)

Answer: There's no doubt that education will be one of the top priorities, both K-12 as well as higher education. You're right. We do not have the amount of college graduates that we need in WV. We really need to concentrate our efforts there. We need to make sure our K-12 students, when they do graduate high school, that they are prepared to go on to college. We need to really reinforce the role that energy plays in WV. It is so important. We've been blessed with some great natural resources here, and we need to continue to be able to produce those so we can be the energy storehouse for America. Also, we need to keep being responsible to the taxpayers out there, treating their finances the way we would treat our own.

Question: (Inaudible.) Do you think two years will be enough time to accomplish all of that?

Answer: There are certain things, for example, OPEB, that liability did not come around overnight, and the solution to the problem there will not go away overnight. However, I think it is essential that we do start addressing the liabilities that we have with our OPEB liability.

Question: Do you think there's a need for a special election? (Inaudible.)

Answer: Well, I'm operating under the current Constitution and what the Code says. That Code has been in place for a century now, and there has never been a question on it until this particular time.

Question: (Inaudible) next three weeks. Would you call a special session ahead of the regular session to get it out of the way?

Answer: I probably would not. We are in the transition now with a new Legislature coming into town, which will be any time after December 1st. Considering that we do have the regular

session coming up and only a few weeks after that, I think it would be appropriate to wait until that time.

Also, as I mentioned earlier, we need to give this some serious thought. It's not something that we do in haste. I think it's very important, any change that's made in the existing law, we need to give some deep thought about.

If there's nothing else... Yes, sir?

Question: One more question. (inaudible) transition (inaudible).

Answer: We are in the process now of putting together the budget. I would anticipate the budget for next year would be very similar to the budget that we have this year, but we're still in the budget preparation stage right now.

Question: What about mid-transition that I know you worked on last week? Are we going to see a whole new cabinet, secretaries, things like that?

Answer: There will be some new faces around as I announced a new chief of staff, chief counsel, communications director and assistant chief of staff last week. I'm very proud of those individuals. We're continuing to work day and night putting together the additional department heads, and those will be released here shortly.

If there are no more questions, thank you very much.

* * * * *

EXHIBIT C

November 7, 2010

Questions accompany Tomblin's rise as governor

By Lawrence Messina

Page 2 of 2

CHARLESTON, W.Va. -- With West Virginia losing its governor to the U.S. Senate, officials have to go back 141 years to the last -- and only-- time the state's top job has become vacant.

But the seven days in 1869 that then-Senate President Daniel Farnsworth served as acting governor may not shed enough light to resolve looming questions regarding West Virginia's succession process.

Gov. Joe Manchin's win in last week's election means Senate President Earl Ray Tomblin will soon succeed him under the state constitution. A longtime Logan County legislator, and like Manchin a Democrat, Tomblin has scheduled a press conference today<co Monday> at the Capitol to discuss the transition and his upcoming administration.

But Tomblin and other state officials have already been threatened with a lawsuit if there's no election for governor before November 2012. With the office up for a new, full term on that ballot, Manchin has more than two years left in his term.

A Kanawha County lawyer, Thornton Cooper, filed notice of his planned legal challenge over the summer. He told The Associated Press last week that he expects to sue within days of Tomblin becoming governor.

Several legislative lawyers have concluded that state law would not allow an earlier, special election. But others disagree, including House Speaker Rick Thompson, D-Wayne, and the state GOP.

"Clearly, acting governor is not governor. We would be without a governor until we have an election," Thompson, a lawyer, told AP last week. "The constitution envisioned a reasonable election date.... It could be very costly for us not to have the election."

The House and Senate's top legal staff also differ over whether Tomblin can simultaneously occupy both legislative and executive posts. The examples of other states, and of the U.S. Constitution, may prove unhelpful as well.

New Jersey, for instance, saw its Senate president also serve as governor from late 2004 until early 2006. But the provision of its constitution separating the branches of government expressly allows for exceptions. West Virginia's constitution lacks such language on the three branches. Instead, it says no person shall "exercise the powers of more than one of them at the same time."

New Jersey voters have since amended their constitution to create the elected office of lieutenant governor. Just six states don't have that office. West Virginia gave its Senate president that title in 2000.

The U.S. Constitution, meanwhile, allows the vice president to preside over the U.S. Senate and break tie votes there. But it says little about that post's executive branch powers. Nor does it have the specific division of powers clause found in West Virginia's constitution.

Farnsworth's brief 19th century tenure was a recurring topic during last month's meeting of a joint committee assigned to study the succession issue. The legislators heard from Tomblin's chief lawyer, Ray Ratliff, and House counsel Brian Skinner. They were joined by Bob Bastress, a West Virginia University law professor who has written extensively on the state constitution.

All three agreed that relevant state law sets the next vote for governor at the 2012 general election. But Bastress also found that statute at odds with the constitution's language addressing a vacancy in the governor's office.

Bastress questioned why else the language would call for a "new election" if there is at least a year left in the departing governor's term. Now serving a second term, Manchin would not otherwise leave office until January 2013.

"Waiting until the two months before the term ends is inconsistent with what the framers tried to accomplish," Bastress said. "Putting it off to the general election I think defeats that purpose of having the voters choose the replacement in cases of vacancy."

Farnsworth succeeded West Virginia's first governor, Arthur Boreman, who like Manchin was heading to the U.S. Senate. Farnsworth stepped down as acting governor in March 1869 to make way for William Stevenson, who had been elected the previous November. Stevenson was also Farnsworth's predecessor as Senate president.

Ratliff told the interim committee that records from the time show the Senate adopted a resolution allowing Farnsworth to return to the Senate. Those records also show he cast votes that same day as the chamber's president, Ratliff said.

West Virginia then operated under a constitution crafted in 1863, after it broke from Virginia to stay with the United States. While much was drawn from Virginia's constitution, including the vacancy election language, West Virginia did not create the office of lieutenant governor as the other state had.

But Ratliff called the Farnsworth resolution a "legal fiction," questioning its necessity. More important, he said, a convention held in 1872 replaced that constitution with one still in effect. Both he and Bastress concluded that this constitution allows a dual role for a Senate president under its vacancy provision.

"I think it's implicit in the section that the president of the Senate will continue to serve as president of the Senate while acting as a governor," Bastress said.

With Bastress agreeing, Ratliff also argued that someone in Tomblin's position must occupy both offices, or neither.

"But for his office as president of the Senate, he ceases to be acting governor," Ratliff said.

Skinner, the House counsel, disagreed.

"It's not contingent on him being Senate president *any* longer," Skinner said. "He's completely divorced from the Legislature at this point."

Skinner cited the debates held during the 1863 constitution to argue his point.

"They saw that you could not hold both offices, you could not have one foot in the executive branch and one foot in the Legislature," Skinner told the committee.

Secretary of State Natalie Tennant, West Virginia chief elections officer, has posted a video of the October interim presentation on her office's website.

Before Manchin, just one other sitting governor besides Boreman made it to the U.S. Senate. Though three others lost their bids, Sen. Jay Rockefeller was ending his second term in 1984 when he won election -- and like Manchin, defeated John Raese, the Republican nominee, in the process.

But unlike Rockefeller or Boreman, Manchin is the first West Virginia governor to win a Senate seat midway through a term atop state government. Of the three earlier governors who unsuccessfully ran while in office, Gov. Matthew Neely tried halfway through his term, in 1942.

Messina covers the statehouse for The Associated Press.

Online:

Secretary of State's interim meeting video: <http://tinyurl.com/28efb9q>

EXHIBIT D



THORNTON COOPER

3015 Ridgeview Drive
South Charleston, WV 25303
(304) 744-9616

August 9, 2010

The Honorable Joe Manchin, III
West Virginia Governor
State Capitol Building
1900 Kanawha Boulevard, East
Charleston, WV 25305;

The Honorable Natalie E. Tennant
West Virginia Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770;

The Honorable Earl Ray Tomblin
President, West Virginia State Senate
Room 227M, Building 1
1900 Kanawha Boulevard, East
Charleston, WV 25305;

The Honorable Richard Thompson
Speaker, West Virginia House of Delegates
Room 228M, Building 1
1900 Kanawha Boulevard, East
Charleston, WV 25305; and

The Honorable Darrell McGraw
West Virginia Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305.

Dear Madam and Gentlemen:

Enclosed herewith is the "Notice by Thornton Cooper of his Intention to Institute Legal Proceedings Relating to Requiring Prompt Special Elections to Fill Possible Gubernatorial Vacancy" with an accompanying certificate of service.

If you have any questions, please feel free to contact me at (304) 744-9616.

Thank you for your attention to this matter.

Sincerely,


Thornton Cooper

cc (with enclosure): news media

NOTICE BY THORNTON COOPER OF HIS INTENTION TO INSTITUTE LEGAL PROCEEDINGS RELATING TO REQUIRING PROMPT SPECIAL ELECTIONS TO FILL POSSIBLE GUBERNATORIAL VACANCY.

To:

The Honorable Joe Manchin, III
West Virginia Governor
State Capitol Building
1900 Kanawha Boulevard, East
Charleston, WV 25305;

The Honorable Natalie E. Tennant
West Virginia Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, WV 25305-0770;

The Honorable Earl Ray Tomblin
President, West Virginia State Senate
Room 227M, Building 1
1900 Kanawha Boulevard, East
Charleston, WV 25305;

The Honorable Richard Thompson
Speaker, West Virginia House of Delegates
Room 228M, Building 1
1900 Kanawha Boulevard, East
Charleston, WV 25305; and

The Honorable Darrell McGraw
West Virginia Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25305.

PLEASE TAKE NOTICE that, pursuant to the provisions of Chapter 55, Article 17, of the West Virginia Code, **Thornton Cooper**, a resident of, and registered voter in, Kanawha County, West Virginia, hereby notifies the **Honorable Joe Manchin, III**, the **Honorable Natalie E. Tennant**, the **Honorable Earl Ray Tomblin**, and the **Honorable Richard Thompson** of Mr. Cooper's intention to institute legal proceedings as to one or more of them relating to requiring prompt special primary and general elections to fill a possible gubernatorial vacancy that may arise later in 2010.

More specifically, the Honorable Joe Manchin, III, is being herein notified in his official capacity as Governor of the State of West Virginia. The Honorable Natalie E. Tennant is being herein notified in her official capacity as Secretary of State of the State of West Virginia, which capacity includes broad powers over the conduct of

elections in West Virginia. The Honorable Earl Ray Tomblin is being herein notified in his official capacity as President of the West Virginia State Senate, which capacity also includes the possibility of serving as acting Governor if the current Governor decides to vacate his current office before his four-year elected term expires. The Honorable Richard Thompson is being herein notified in his official capacity as Speaker of the West Virginia House of Delegates, which capacity also includes the possibility of serving as acting Governor if the current Governor decides to vacate his current office before his four-year elected term expires and the President of the Senate is incapable of performing as Governor.

In addition, the **Honorable Darrell McGraw** is being notified in his capacity as West Virginia Attorney General.

SUMMARY OF CLAIM BY THORNTON COOPER.

Mr. Cooper is aggrieved by the likely deprivation, under the letter or application of current statutory law, of his constitutional right, as a resident of, and voter in, Kanawha County and West Virginia, to vote for a potential gubernatorial successor to Governor Manchin in 2011 if Joe Manchin, III, is elected United States Senator in an election to be held on Tuesday, November 2, 2010, to fill the vacancy caused by the recent death of the Honorable Robert C. Byrd.

If Joe Manchin, III, wins a special primary election on August 28, 2010, and the special general election on November 2, 2010, for the United States Senate, he could be sworn in as United States Senator as early as mid-November 2010, if all 55 of the county boards of canvassers quickly report the vote totals from their respective counties to state officials.

If those boards act more slowly, the swearing in of Joe Manchin, III, as United States Senator might be delayed until mid-December 2010. In the latter event, approximately 760 days would still remain in his unexpired term through January 2013.

In the case of a vacancy or disability in the office of Governor, the President of the West Virginia State Senate, under the first sentence of Article VII, § 16, of the West Virginia Constitution," shall act as governor until the vacancy is filled, or disability removed; and if the president of the Senate, for any of the above named causes, shall become incapable of performing the duties of governor, the same shall devolve upon the speaker of the House of Delegates; and in all other cases where there is no one to act as governor, one shall be chosen by a joint vote of the Legislature."

However, the second sentence of Article VII, § 16, of the West Virginia Constitution reads as follows: "Whenever a vacancy shall occur in the office of the governor before the first three years of the term shall have expired, **a new election for governor shall take place to fill the vacancy.**" (emphasis added)

One reasonable interpretation of that second sentence would, in Mr. Cooper's opinion, be that, if about 760 days of the gubernatorial term had not been served by Governor Manchin, a special primary election to fill the vacancy should be held within 90 days after the vacancy arises and a special general election should be held within 150 days after the vacancy arises, with the successful gubernatorial candidate sworn into office within 190 days after the vacancy arises. Under such a scenario, that successful gubernatorial candidate would serve about 570 days of the term to which Governor Manchin had been elected in 2008.

It now appears that some political leaders are interpreting the current parallel statutory provision, § 3-10-2 of the West Virginia Code, as postponing until November 2012 the general election to fill the unexpired term to which Joe Manchin, III, was elected. The winner of that election would be sworn in as Governor by mid-December 2012. Under that scenario, only about 30 days (less than 5%) of the unexpired 760 days would be served by the candidate chosen by the voters. Under such a scenario, Senate President Tomblin (if he is reelected as Senate President after the 2010 general elections) might serve the first 730 days of that 760-day period as acting Governor. In the alternative, if Senator President Tomblin is unable to serve as acting Governor, then House Speaker Thompson (if he is reelected as House Speaker after the 2010 general election) might serve the first 730 days of that 760-day period as acting Governor.

Such a construction and application of § 3-10-2 of the West Virginia Code and other applicable statutes would have the effect of making a farce and mockery of the second sentence of Article VII, § 16, of the West Virginia Constitution, thereby effectively disenfranchising Mr. Cooper and over a million other registered voters in West Virginia with respect to the election mandated by that sentence.

RELIEF REQUESTED BY THORNTON COOPER.

To prevent the absurd and unconstitutional outcome described in the two immediately preceding paragraphs, Mr. Cooper respectfully requests that Governor Manchin promptly call the Legislature into special session to amend § 3-10-2 of the West Virginia Code, and other applicable statutes, to do the following: provide (a) that, in the event that a Governor resigns from his or her office or otherwise causes a

vacancy in that office more than 366 days before the expiration of the term to which he was elected, any candidates for the unexpired gubernatorial term may file for office within thirty (30) days after the date of any such vacancy; (b) that a special primary election (with secret ballot), not a party convention, to choose each party's candidates be held within ninety (90) days after the date of any such vacancy; and (c) that a special general election to fill the unexpired term be held within 150 days after the date of any such vacancy. The costs of these special primary and general elections should be borne by the State of West Virginia.

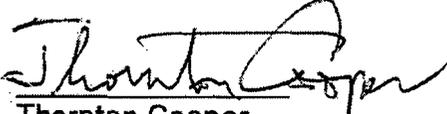
If such legislative relief is not provided in a timely manner, Mr. Cooper plans to institute a proceeding in a court of competent jurisdiction in an effort to obtain appropriate judicial relief to protect his voting rights and those of over a million other registered voters.

In addition, Mr. Cooper plans to move to intervene in any litigation commenced by any other party with respect to the same general subject matter.

Respectfully submitted,

Thornton Cooper

Pro Se


Thornton Cooper
3015 Ridgeview Drive
South Charleston, WV 25303
West Virginia State Bar No. 823
(304) 744-9616
thornbush@att.net

August 9, 2010

CERTIFICATE OF SERVICE

I, Thornton Cooper, do hereby certify that I have served the foregoing "Notice by Thornton Cooper of his Intention to Institute Legal Proceedings Relating to Requiring Prompt Special Elections to Fill Possible Gubernatorial Vacancy" upon the Honorable Joe Manchin, III, West Virginia Governor, by mailing an original thereof, by United States certified mail, return receipt requested, to his office at the State Capitol Building, 1900 Kanawha Boulevard, East, Charleston, WV 25305; upon the Honorable Natalie E. Tennant, West Virginia Secretary of State, by mailing an original thereof, by United States certified mail, return receipt requested, to her office at Building 1, Suite 157-K, 1900 Kanawha Boulevard, East, Charleston, WV 25305-0770; upon the Honorable Earl Ray Tomblin, President, West Virginia State Senate, by mailing an original thereof, by United States certified mail, return receipt requested, to his office at Room 227M, Building 1, 1900 Kanawha Boulevard, East, Charleston, WV 25305; upon the Honorable Richard Thompson, Speaker, West Virginia House of Delegates, by mailing an original thereof, by United States certified mail, return receipt requested, to his office at Room 228M, Building 1, 1900 Kanawha Boulevard, East, Charleston, WV 25305; and upon the Honorable Darrell McGraw, West Virginia Attorney General, by mailing an original thereof, by United States certified mail, return receipt requested, to his office at the State Capitol Complex, Building 1, Room E-26, Charleston, WV 25305, all on this 9th day of August, 2010.

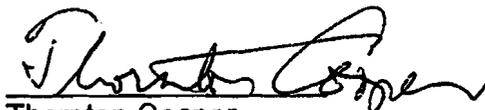

Thornton Cooper

EXHIBIT E

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Battle Brews Over Gubernatorial Succession

Posted Thursday, November 11, 2010 : 06:00 AM | [View Comments](#) | [Post Comment](#)

Updated Wednesday, November 10, 2010; 05:50 PM

As Joe Manchin prepares to go to the U.S. Senate, questions abound about whether the state will have a special election for the next governor.

By [Walt Williams](#)[Email](#) | [Other Stories by Walt Williams](#)**Related Stories:**

- [Tomblin Likely to Continue Manchin's Agenda](#)
- [Battle Brews Over Gubernatorial Succession](#)

State Senate President Earl Ray Tomblin, D-Logan, said Nov. 8 he was taking steps to assure a smooth transition to the Governor's Office once Gov. Joe Manchin leaves for the U.S. Senate. But Tomblin left open questions about whether he would support a special election for the seat.

Already a fight appears to be brewing between the state Senate and House of Delegates over whether a special election is needed, with House Speaker Rick Thompson, D-Wayne, criticizing Tomblin's decision in a news release issued that same day.

Tomblin hosted a press conference in the governor's reception room to talk about his upcoming move to the office in light of Manchin's election to the Senate. The governor-to-be said he would support a special election for the governor's seat before the 2012 general elections — as state law appears to require — but only if there was public outcry for one.

"I'm well aware of the strong desire of some to have an election prior to 2012," he said. "For me, it comes down to what the people want. If my fellow West Virginians express overwhelming desire to have a quick election, I will work with the Legislature to make that reality.

"We must, however, take a reasoned and thoughtful approach to our decision-making process," he continued. "Thus keep in mind the cost, timing and what is in the best interest for West Virginia."

As state Senate president, Tomblin also serves as lieutenant governor and, as a result, will serve as acting governor once Manchin steps down. Manchin is expected to resign either on or before Nov. 15. Tomblin said he does not plan on presiding as Senate president and serving as governor at the same time.

Tomblin would serve most of the remaining two years of Manchin's term, with voters choosing during the November 2012 general elections who they want to serve as governor for the final few months of the term. They would also choose during that election the next governor, whose four-year term starts in 2013.

Some state lawmakers have questioned whether two years is too long a time for a person to sit in the governor's seat without an election. They have called for a special election before the 2012 general elections.

Among them is Thompson, who noted the state had a special election for the late Sen. Robert C. Byrd's seat.

"If Gov. Manchin's replacement is not chosen until November 2012, for the next two years, more than one half of the term, the people of West Virginia will have a governor they did not select, while the counties of the 7th Senatorial District (Tomblin's district) will be represented by only half of their senatorial delegation," he said in a news release.

The West Virginia Republican Party has been harsher in its criticism, demanding either Tomblin or Manchin call a special session to avoid what it calls a "pending constitutional crisis."

"Tomblin has already failed the leadership test," state GOP Chairman Mike Stuart said in a news release. "Tomblin does not have the consent of the governed and shall be a mere figurehead. In the event of an unforeseen crisis, West Virginia's governor must have the confidence of the people."

Tomblin said he would not call a special session of the Legislature to decide the issue. That decision could result in a lawsuit, with South Charleston lawyer Thornton Cooper saying he will bring legal action against the state if it doesn't hold a special election.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Upon Original Jurisdiction
No. _____

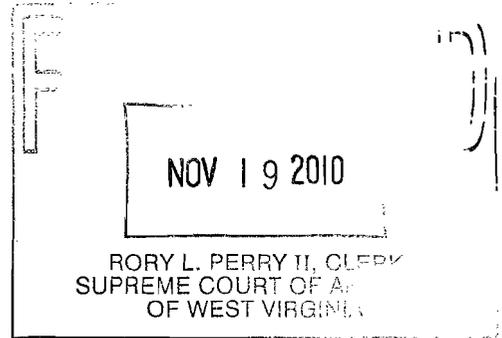
STATE OF WEST VIRGINIA
ex rel WEST VIRGINIA CITIZEN
ACTION GROUP,

Petitioner,

v.

EARL RAY TOMBLIN,
President of the West Virginia Senate, et al.,

Defendant.



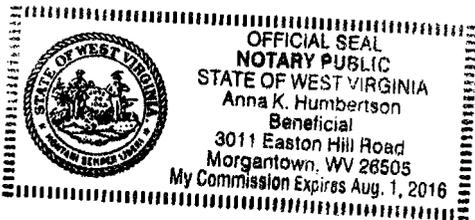
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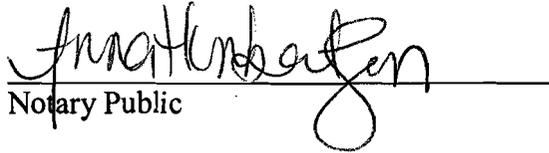
STATE OF WEST VIRGINIA
STATE AT LARGE *to wit*:

Gary Zuckett, being first duly sworn upon oath states that he resides in Kanawha County, West Virginia, that he is Executive Director of West Virginia Citizen Action Group; that he has read the Petition for Writ of Mandamus and that the facts and allegations contained therein are true except insofar as therein stated to be upon information and belief and insofar as therein stated upon information and belief he believes them to be true.


GARY ZUCKETT

Taken, subscribed and sworn to before me this the 18 day of November 2010.
My commission expires 8-1-2016.




Notary Public