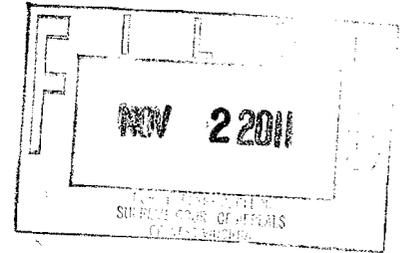


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET NO. 11-1447

STATE OF WEST VIRGINIA ex rel. STEPHEN ANDES and JOSEPH HAYNES, individually and in official capacities as members of the County Commission of Putnam County, West Virginia; **BRIAN WOOD**, individually and in official capacity as Putnam County Clerk; **BOB BAIRD, MYLES EPLING and RICK HANDLEY**, individually and in official capacities as members of the County Commission of Mason County, West Virginia; and **DIANA CROMLEY**, individually and in official capacity as Mason County Clerk,



Petitioners,

v.

NATALIE TENNANT, in her official Capacity as Secretary of State of the State of West Virginia,

Respondent.

Petitioners' Response to House Speaker's Motion to Intervene

Counsel for Petitioners

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COME NOW the Petitioners, State of West Virginia, ex rel. Andes, Haynes, Wood, Baird, Epling, Handley and Cromley, by counsel, Jennifer Scragg Karr, in response to the "Motion to Intervene" filed by the Honorable House Speaker Richard Thompson. These Petitioners respectfully object to the intervention based on the following:

- (1) No West Virginia statute exists conferring an unconditional right to intervene upon the Speaker of the House;
- (2) The interests of the applicant are more than adequately represented by counsel for the Respondent West Virginia Secretary of State; and
- (3) The "separation of powers" doctrine is better protected by preventing the Speaker of the House from being a party to a case before the West Virginia Supreme Court of Appeals where the issue is whether a statute is constitutional.

Rule 32 of the West Virginia Revised Rules of Appellate Procedure provides that anyone may intervene in an original jurisdiction proceeding before this Court "only when (1) a statute of this State confers an unconditional right to intervene; or (2) the representation of the applicant's interest by existing parties is or may be inadequate, and the applicant is or may be bound by judgment in the action." Provisions (1) and (2) are not met in this case where there is no statute granting such right to the Speaker of the House and where the Speaker's interests are fully served by the Attorney General of West Virginia.

The named Respondent in this case is the West Virginia Secretary of State, Natalie Tennant. She has capable attorneys on staff to represent the State's interests. Further, she is also represented by the West Virginia Attorney General, Darrell McGraw, who has numerous capable attorneys on staff to not only represent State officials, but to

render advice and opinions to them – including the Speaker of the House. See W.Va. Code §5-3-1.

Rule 32, W.Va. Rev. R. App. Proc., also provides, “Intervention may be permitted in other cases in the discretion of the Supreme Court.” This Court should not exercise its discretion and grant the applicant -- who argues this Court has no jurisdiction and needs assistance to maintain a separation of powers -- permission to intervene.

Permitting the Speaker of the House, who constitutes the leader of one-half of the West Virginia Legislature, to intervene in this judicial matter would be improper under the “separation of powers” doctrine. As the federal system of government, the West Virginia state government was created with a built-in protection commonly referred to as the “separation of powers”. Article V, Section 1 of the Constitution of the State of West Virginia explains that the “division of powers” within our government are to be kept separate. It specifically states, “The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time”

The West Virginia Legislature has previously found that “because of an extensive structure of constitutional protections established to safeguard the prerogatives of the legislative branch under our governmental system of checks and balances[,]” the Legislature is not a proper party in proceedings that “may affect the public interest” and “have significant consequences that can only be addressed by subsequent legislative action.” W.Va. Code §55-17-1(a). Thus, one is prevented from filing an action such as this Petition for Writ of Prohibition against the Legislature.

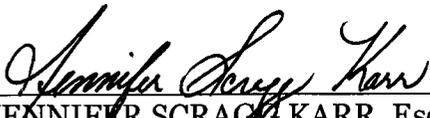
Conversely, it follows that the Legislature or a member thereof in his official capacity should not be able to intervene and become a party in this action. The language of W.Va. Code §55-17-1 did not limit the Legislature from merely being a “respondent” or “defendant”. Rather, the statute prevents the Legislature from being “directly involved as a party.”

In conclusion, there is no mandatory requirement that this Court permit the House Speaker to intervene in this matter. Furthermore, this Court should not exercise its discretion and permit the House Speaker to intervene because the “separation of powers” clause is better upheld where the Speaker of the House’s involvement in the law is limited to making it and not interpreting it or arguing to the judicial branch about its constitutionality.

WHEREFORE, these Petitioners object to the Speaker of the House’s motion to intervene in this matter.

Respectfully submitted,

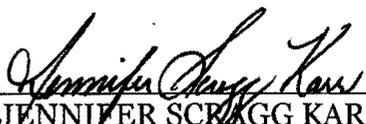
By counsel,



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CERTIFICATE OF SERVICE

I, Jennifer Scragg Karr, counsel for Petitioners, do hereby certify that I have this 2nd day of November 2011, served the foregoing "Petitioners' Response to House Speaker's Motion to Intervene" upon the following: The Honorable Natalie Tennant, Secretary of State of the State of West Virginia, (304) 558-6000, State Capitol Complex, Building 1, Suite 157-K, 1900 Kanawha Boulevard, East, Charleston, WV 25305; The Honorable Darrell McGraw, West Virginia Attorney General, (304) 558-2021, State Capitol Complex, Building 1, Room E-26, 1900 Kanawha Boulevard, East, Charleston, WV 25305, via hand-delivery at their respective offices; and also upon counsel for House Speaker Richard Thompson, Anthony J. Majestro, Powell & Majestro, PLLC, (304)346-2889, via USPS, first-class postage paid, by depositing a copy of the same in the mail addressed to Anthony J. Majestro at 405 Capitol Street, Suite P-1200, Charleston, WV 25301.



JENNIFER SCRAGG KARR (WV Bar #8051)
Counsel for Petitioners