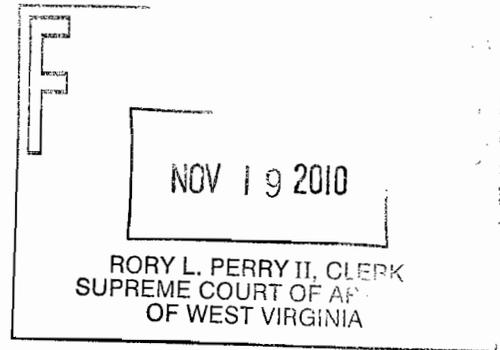


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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.

MOTION TO EXPEDITE

Richard Thompson, Speaker of the West Virginia House of Delegates ("Speaker Thompson"), by counsel, Anthony J. Majestro, Powell & Majestro, pllc, files this Motion to Expedite. For the reasons set forth here, Speaker Thompson, pursuant to West Virginia Appellate Rule 14(c), respectfully requests that the Court issue the Rule to Show Cause in this Case on an expedited basis. This motion is based upon the following grounds:

1. On November 19, 2010, Speaker Thompson was served with the Petition in this action seeking a writ of mandamus requiring a special election fill the current vacancy in the office of the West Virginia Governor.

2. Speaker Thompson is currently reviewing the Petition and plans, through his undersigned counsel, to file a response to the Petition.

3. Speaker Thompson believes that the issues raised in the Petition are of paramount importance as they involve constitutional questions that go to the organization and operation of both the legislative and executive branches.

4. There are significant differences in opinion regarding the constitutionality and interpretation of West Virginia's gubernatorial succession statutes. The resulting uncertainty threatens public confidence in the governing bodies and potentially threatens the legality of actions taken by the State's elected officials.

5. Former Governor Manchin refused to call a special session of the Legislature prior to his resignation. See Exhibit 1. While Respondent Senate President Tomblin, who is currently acting as Governor, presumably has the power to call the Legislature into special session, he has, thus far, refused to do so. See Exhibit 2. The uncertainty has led to calls for this Court to resolve the question. See Exhibit 3. Even Senate President Tomblin has acknowledged that this legal challenge is forthcoming. See Exhibit 4.

6. As this Court can give a final and conclusive opinion on what the Constitution requires and allows, resolution of the Constitutional questions will permit the Legislature to focus its attention on governing the State rather than having the legislative session bogged down with arguments concern who should govern the State.

7. West Virginia Rule of Appellate Procedure 2 permits this Court to expedite a decision:

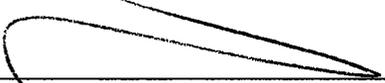
In the interest of expediting decision, or for other good cause shown, the Supreme Court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. These rules shall be construed to allow the Supreme Court to do substantial justice.

This Court has a strong tradition of expediting consideration of constitutional issues that impact the function of the State's government. *See, e.g., State ex rel. McGraw v. Willis*, 174 W.Va. 118, 119, 323 S.E.2d 600, 600 (1984) (deciding mandamus petition arising out of gubernatorial succession in less than thirty days even though case had become moot); *Winkler v. State School Bldg. Authority*, 189 W.Va. 748, 434 S.E.2d 420 (W.Va. 1993) (resolving question over constitutionality state issued bonds 13 days following circuit court's final order); *State ex rel. Cities of Charleston, Huntington and its Counties of Ohio and Kanawha v. West Virginia Economic Development Authority*, 214 W.Va. 277, 588 S.E.2d 655 (2003) (three consolidated cases challenging the issuance of development bonds decided less than two months after filing; rule to show cause entered one day after filing of third case).

Wherefore, Respondent, Richard Thompson, Speaker of the West Virginia House of Delegates respectfully requests that this Honorable Court issue the Rule to Show Cause in this Case on an expedited basis.

**RICHARD THOMPSON,
Speaker of the West Virginia House
of Delegates,**

By Counsel,



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CERTIFICATE OF SERVICE

On November 19, 2010, comes the undersigned counsel and does hereby certify that service of the attached **MOTION TO EXPEDITE** was made upon the opposing parties by facsimile transmission and by mailing a true and exact copy thereof by U.S.

Mail to the addresses below:

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The Honorable Natalie E. Tennant
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Anthony J. Majestro, Esquire (WVSB # 5165)

November 3, 2010

Manchin says he's working with Tomblin on transition

By Phil Kabler

CHARLESTON, W.Va. -- Gov. Joe Manchin said Wednesday he is working to assure a seamless transition when Senate President Earl Ray Tomblin, D-Logan, succeeds him as governor later this month.

However, Manchin said it will be up to others to decide whether Tomblin serves as acting governor for the two years, two months that will be remaining in the unexpired term.

"I do not intend to call a special session, because we do not have an agreement on both sides of the aisle," Manchin said of calls for legislation to mandate a special election for governor in 2011.

Under current law, Tomblin will become acting governor at the moment Manchin vacates the office. However, legal experts say the current law for gubernatorial succession, which would not require a special election until 2012, is at odds with strong separation of powers provisions in the state constitution.

A number of public officials, including House Speaker and gubernatorial hopeful Rick Thompson and state Republican Party Chairman Mike Stuart, have called for a special election for governor.

Meanwhile, South Charleston lawyer and frequent political candidate Thornton Cooper said he plans to file a state Supreme Court petition by mid-month to demand a special election early in 2011.

"I'll be working on the lawsuit next week, and I hope to get it filed in mid-November," Cooper said Wednesday.

As of Wednesday evening, Manchin said he had not been able to arrange a meeting with Tomblin, and said they had not previously discussed the possibility of a gubernatorial transition.

Manchin said that, contrary to popular opinion, he and Tomblin had not discussed a transition, saying he thought it would have been inappropriate prior to the election.

"I thought it was premature to do that," Manchin said.

However, Rob Alsop -- who will serve as Tomblin's chief of staff -- met with Manchin administration cabinet secretaries and department heads Wednesday afternoon to discuss the transition.

Alsop had been secretary of the Department of Revenue until July, when he became U.S. Sen. Carte Goodwin's chief of staff. Manchin appointed Goodwin as a caretaker for the Senate seat left vacant after the death of Robert C. Byrd.

"I think they felt much better after that," Manchin said of the meeting. He said he does not anticipate that Tomblin will make wholesale changes among agency heads, but said those decisions will be his to make.

Tomblin was in his Capitol office much of the day Wednesday, but was not giving interviews.

Raamie Barker, administrative assistant to Tomblin, stressed that plans for the transition were extremely preliminary Wednesday.



"There's no hard information now, but there will be in a couple of days," he said.

Manchin said he believes Tomblin is well qualified to serve as acting governor.

"I know that he has the ability, and he has the experience, and I've watched that," Manchin said. "He's been president longer than any member of the Senate. He's a strong fiscal conservative, and he understands the value of a dollar."

Manchin said he has had a very good working relationship with Tomblin, who has been Senate president since 1995.

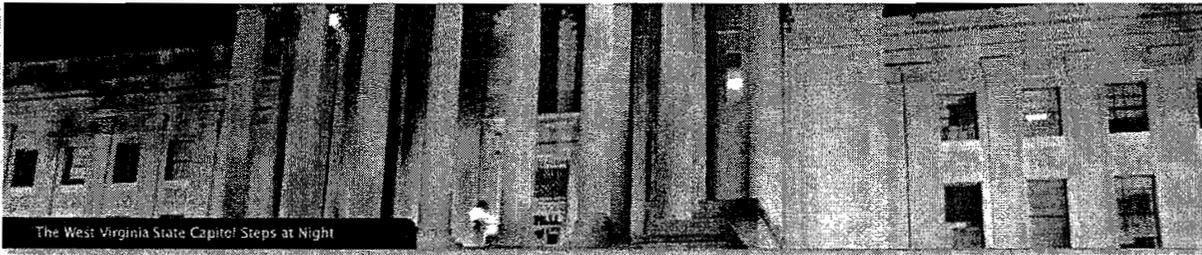
Many questions are unresolved about Tomblin's role as Senate president and acting governor, including whether he will preside over Senate floor sessions.

Under the succession law, Tomblin cannot step down as president without also relinquishing the acting governor title.

In August, Cooper filed notice with the state of his intent to take legal action to require a timely special election for governor, in the event Manchin was elected to the Senate.

Cooper said at the time his goal would be for the state to hold primary and special elections in the winter and spring, in order to have a newly elected governor take office by Memorial Day 2011.

Reach Phil Kabler at ph...@wvgazette.com or 304-348-1220.



Governor Earl Ray Tomblin > News > Senate President Earl Ray Tomblin's press conference on succession.

Senate President Earl Ray Tomblin's press conference on succession.

11/8/2010

Good morning.

As a result of Governor Manchin's successful election, we are now in the midst of a transition for our State. I know that all of you as citizens have questions about what will happen next.

Before we get into that, I want to publicly commend Governor Manchin on his victory and thank him for all he has done for our state. He has been a remarkable Governor. I know he will do us proud as our Senator.

Now, back to the transition process. Our Constitution and our laws contemplate a clear and organized transfer of power. The Constitution states that, when a vacancy arises in the office of governor, the senate president shall act as governor until the vacancy is filled. Throughout my tenure as Senate President, I have always been mindful of this responsibility.

As it became likely that Governor Manchin could join the United States Senate, I recognized that it was absolutely necessary to prepare for transition of the duties, responsibilities, and affairs of our great State in an orderly manner. It has been my honor, privilege and more importantly, my responsibility to prepare for this transition. I have spent countless days examining the work and tasks of the Governor's office. I have had the assistance of those who are currently in government along with others whose vantage point and understanding of government I respect and trust.

Assuming no recount or challenges to the election, it is expected that the secretary of state will certify the election shortly, and Governor Manchin will take his oath as a United States Senator sometime around November 15th.

Governor Manchin will resign prior to taking his Senate oath. When he does, it will be my honor and privilege to serve as Governor of the great state of West Virginia.

I will spend my time as Governor running the executive branch of government. I do not plan on presiding over or voting in the Senate. Our Senate rules contemplate that when the Senate President is unavailable, the President Pro Tempore presides over the senate.

A vacancy in the Office of Governor does not occur often, but long established and carefully contemplated rules govern this process. I am ready to get to work. We must continue to move our great State forward. We must all focus on putting West Virginia first.

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 the new election will occur in 2012. Legal experts agreed on this point unanimously before a legislative committee studying this subject only a few weeks ago.

I am 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 West Virginia. 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 West Virginia envied nationally. We have paid down our debt. We have balanced our budget. We have lowered taxes. And the fruits of our labor have not gone unnoticed. For example, the bond rating agencies have recently upgraded our ratings. This has resulted and will continue to result in millions of dollars of savings for taxpayers. 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. Coal is a huge part of West Virginia. 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 the energy resources so desperately needed by our country. West Virginia is blessed with an abundance of energy resources including coal, oil, natural gas, as well as wind or solar power. And we must continue to take advantage of those resources and make West Virginia stronger.

West Virginia 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 West Virginia first.

Again, thank you for being here. I am happy to answer your questions.

Contact Information

Contact Governor Tomblin



November 8, 2010

Editorial: Tomblin: Justices should decide

THE ISSUE: How long should Tomblin act as governor?

WHERE WE STAND: Let the state Supreme Court decide.

CHARLESTON, W.Va. -- Article 5 of the state constitution says the legislative, executive and judicial branches of government are "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."

However, Article 7, Section 16 seems to contradict Article 5, because it specifies that when a governorship becomes vacant, "the president of the Senate shall act as governor until the vacancy is filled." Therefore, one person evidently is to exercise both legislative and executive powers.

In West Virginia's century-and-a-half history, this situation has occurred only once before -- in 1869, when the Senate president served as acting governor for seven days.

This week, Senate President Earl Ray Tomblin, D-Logan, is expected to assume gubernatorial duties when Gov. Joe Manchin enters the U.S. Senate. In an attempt to resolve the separation-of-powers problem, Tomblin announced Monday that he won't actually perform any Senate duties while in the governor's office.

Gadfly lawyer Thornton Cooper has vowed to file a court challenge against Tomblin's governorship.

Meanwhile, legislative lawyers interpret the State Code to mean that Tomblin must serve as acting governor until the 2012 general election. But Republican groups and some newspapers are calling for an earlier election -- apparently in hope that a Republican might become governor sooner. Some legislators have raised the possibility of a law change to force a quicker election.

We can't guess how these legal tangles may be untangled. The wisest course, we think, would be to let the state Supreme Court issue a clear ruling on Tomblin's governorship -- and how long it shall ensue. *Let the justices decide.*



Thursday September 2, 2010

Tomblin, Thompson discuss gubernatorial successionby George Hohmann
Daily Mail Business Editor

WHITE SULPHUR SPRINGS - State Senate President Earl Ray Tomblin inched away from saying it's his opinion that an election for governor shouldn't be held until 2012 if Gov. Joe Manchin is elected to the U.S. Senate.

Meanwhile, House Speaker Rick Thompson predicted nothing will get done in the next legislative session if the succession issue isn't resolved before it convenes in January.

Tomblin, Thompson, Senate Judiciary Chairman Jeff Kessler, House Judiciary Chairman Tim Miley and Senate Minority Leader Mike Hall were among the speakers Wednesday on the opening day of the state Chamber of Commerce's annual Business Summit.

Tomblin, D-Logan, said, "There's a lot of talk going around after last Saturday's election about what would happen if the current governor was to be elected to the U.S. Senate. One quote attributed to me is, 'There would not be an election until 2012.' Let me clarify that.

"I said the legal opinions I've received indicate that if a vacancy occurred, the Senate president shall be the acting governor and shall call an election, with no timeline. However, the statute reads in such a way that it could go to the next general election."

Tomblin noted that everyone is aware a lawsuit will be filed if the acting governor does not call an election.

While some may agree with this interpretation, there may be others who disagree, Tomblin said.

"I think the main thing is the focus should be on the next regular session coming up. We have a budget to pass and a lot of issues to deal with.

"There is time to make a decision as to when a special election should be called."

Thompson countered, "If we don't resolve the succession issue before the start of this session, it will dominate the session.

"Either we or the courts are going to decide it," Thompson said.

"It will bury everything else," he said. "And it should not be that way. We must resolve that issue not only to provide clarity for the election but so we can get on with our business. That has to be resolved and resolved quickly. There's no question there's a difference of opinion on when it (an election) should occur."

Thompson, D-Wayne, said the separation of executive and legislative powers is a fundamental principle and a failure to maintain that separation "would jeopardize every piece of legislation we pass."

Kessler eased into an oblique mention of the succession issue by first speaking about a bill that passed the appellate court, which passed the Senate Judiciary Committee in the last session of the Legislature. The bill died in the Finance Committee because of objections that an appeals court would cost \$4 million.



"I think we'll get it this year," Kessler said of the appeals court. "I tell you \$4 million in a \$4 billion general revenue budget is a drop in the bucket if it brings in additional investment. We just spent \$3 million to \$4 million on a special election, and I think we should have. The people pick. Whether people to decide to vote or not, that's up to them."

Creating an appeals court would go a long way toward changing the perception of the state, said Kessler, D-Marshall. "I'm sick and tired of people saying we're 50th," he said.

Miley, D-Harrison, said, "I feel my presentation may be a bit lifeless compared to the others because, for the record, I am not running for governor."

Hall, R-Putnam, said, "We have a solution to this governor succession thing: Just keep the current governor for a couple more years!"

As the crowd erupted in laughter, Hall looked at Tomblin and said, "He's been a good governor, hasn't he?"

About 600 leaders from across the state are attending the Business Summit, which continues today and Friday at The Greenbrier Resort.

Contact writer George Hohmann at busin...@dailymail.com or 304-348-4836.

COMMENTS (3) ON "TOMBLIN, THOMPSON DISCUSS GUBERNATORIAL SUCCESSION "

POST COMMENT

NOTICE TO ALL USERS:

We value your comments, but we're changing the way we allow comments to be posted on our site. Rather than allowing comments to flow onto the site unfiltered, we are going to check the comments first for approval. So, readers who use the comments function may experience a lag before actually seeing the comment on our site. Personal attacks, remarks in poor taste or those overly critical will not be published. We believe the result will be a more thoughtful, civil website.

Posted By: **sjl** (9:50pm 09-06-2010)

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Doing a little counting of chickens, aren't we gentlemen? Even if Joe does get the big chair, there's no reason to jump the gun just yet.

Posted By: **WEST VIRGINIAN** (11:46am 09-02-2010)

[△Report Abuse](#)

""Tomblin, Thompson discuss gubernatorial succession""

nnn

It won't make any difference if the Voters vote against Manchin and keep him as Governor of the term he was elected to by the voters.

A special election for governor would cost a couple MILLION DOLLARS\$\$\$\$ of the taxpayers money.

Posted By: **conniesloan** (11:07am 09-02-2010)

[△Report Abuse](#)

Guys, just get on with the business at hand and resolve the election thing in the Legislature. At this point, only you are concerned with who is going to be next in command, no one else cares until the 2012 election year. It's a temporary job, you know that and we know that, so get on with your life and act in the interest of the citizens - at least for once while you're in office.