ARGUMENT DOCKET

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

NO. 14-0877

RECEIVED
SEP 12 2014
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL. NATALIE E. TENNANT, WEST VIRGINIA SECRETARY OF STATE,

Petitioner,

v.

BALLOT COMMISSIONERS OF MINGO COUNTY, WEST VIRGINIA; JIM HATFIELD, as Clerk of the Mingo County Commission and member of the Ballot Commissioners of Mingo County, West Virginia; ANGIE BROWNING, as member of the Ballot Commissioners of Mingo County, West Virginia; and RAMONA BROWNING, as member of the Ballot Commissioners of Mingo County, West Virginia,

Respondents.

REPLY IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS

Natalie E. Tennant, West Virginia Secretary of State, submits the following reply to certain issues raised in the response brief filed by Respondents this same day.

I. Vacancy Proclamations

In their response, Respondents represent that, with respect to certain other public office vacancies that occurred in Mingo County this year, "the Mingo County Commission failed to issue a proclamation placing the unexpired commission seat on the ballot and there was no proclamation issued for placing the vacant magistrate seat on the election ballot." [Resp. at 10.] This is incorrect. The WVSOS investigated and determined that, for all vacancy elections in Mingo County of which the WVSOS is aware, vacancies were declared and notices of election were published in the Williamson Daily News as required by law. The elections that Respondents mention in their Response, specifically the Mingo County Commission seat and the

magistrate court vacancy, are among the ones for which Respondent was able to locates Notices of Election and publication. Copies of those records are included with this Reply for the Court's review and consideration.

II. Constitutional Right to Election

Respondents rely on a portion of the West Virginia Constitution to buttress their argument that an election should be allowed for this vacancy. However, Respondents' discussion of the Constitution ignores critical language from Article VIII, Section 7, to which Section 16 points for the filling of family court judge vacancies. The relevant portion of that section reads:

> If from any cause a vacancy shall occur in the office of a justice of the supreme court of appeals or a judge of a circuit court, the governor shall issue a directive of election to fill such vacancy in the manner prescribed by law for electing a justice or judge of the court in which the vacancy exists, and the justice or judge shall be elected for the unexpired term; and in the meantime, the governor shall fill such vacancy by appointment until a justice or judge shall be elected and qualified. **If the unexpired term be less than two years, or such additional period, not exceeding a total of three years, as may be prescribed by law, the governor shall fill such vacancy by appointment for the unexpired term.**

W. Va. Const. Art. VIII, Section 7 (emphasis added). Respondents' citation to this section on page 6 of his response omits the bolded language. In other words, West Virginia Code may extend the period for which a gubernatorial appointment is valid for up to three years. The Code sets the triggering date for an election to fill a vacancy at 84 days before the primary election. In 2014, that date fell on February 18, 2014. The original term of the Eighth Family Court Circuit judge is set to expire in January 2017. Consequently, any appointment to this position by the Governor could in no event last longer than 3 years and is therefore constitutional.

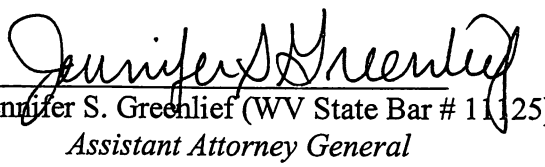
Respectfully submitted,

STATE OF WEST VIRGINIA ex rel.
NATALIE E. TENNANT,
West Virginia Secretary of State

Petitioner

By counsel

PATRICK MORRISEY
ATTORNEY GENERAL



Jennifer S. Greenlief (WV State Bar # 11125)
Assistant Attorney General
State Capitol
Building 1, Room 26-E
Charleston, West Virginia 25305
Telephone: (304) 558-2021
E-mail: Jennifer.S.Greenlief@wvago.gov

Counsel for Petitioner

From:MINGO County Commission 3042350328 09/12/2014 15:25 #816 P.002/002

IN THE COUNTY COMMISSION OF MINGO COUNTY, WEST VIRGINIA

ORDER

IN RE: PROCLAMATIONS: SHERIFF, County Com. Prosecutor

The County Commission of Mingo County, West Virginia, at a REGULAR Session on the 4TH day of DECEMBER, 2013, hereby Orders the following:

authorize Pres. to sign Proclamation put on Record and publication

Motion by: GS Seconded by: JMH

Vote: 3 Yes ___ No ___ Abstain (___)

This Order effective this the 4TH day of DECEMBER, 2013.

ORDER:

ENTER:

President

Commissioner

Mike Carter

Commissioner

NOTICE OF ELECTION FOR THE UNEXPIRED TERM
FOR THE OFFICE OF COMMISSIONER OF MINGO COUNTY, WEST VIRGINIA

It is hereby proclaimed that the unexpired term for the vacated office of commissioner of Mingo County, West Virginia will be up for election in the primary election to be held on May 13, 2014, and the general election to be held on November 4, 2014.

In addition, the election for a full six year term for county commissioner will be held on the aforesaid election dates. Candidates must indicate when filing which office he or she is seeking.

Candidates must file a Certificate of Announcement, accompanied by the payment of the filing fee, with the Mingo County Clerk pursuant to West Virginia Code § 3-5-7. The filing period begins January 13, 2014 and closes January 25, 2014.

The certified winner of the vacated office of commissioner will serve the remainder of the unexpired term, which is until January 1, 2019.

When votes are counted, the full term election will be counted first and the unexpired term election second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

This proclamation is made by the Mingo County Commission pursuant to the provisions of West Virginia Code § 3-10-1(e) and 3-10-7(e).

JOHN MARK HUBBARD
President of the Mingo County Commission

NOTICE OF ELECTION FOR THE UNEXPIRED TERM FOR THE OFFICE OF COMMISSIONER OF MINGO COUNTY, WEST VIRGINIA

It is hereby proclaimed that the unexpired term for the vacated office of commissioner of Mingo County, West Virginia will be up for election in the primary election to be held on may 13, 2014 and the general election to be held on November 4, 2014.

In addition, the election for a full six year term for county commissioner will be held on the aforesaid election dates. Candidates must indicate when filing which office he or she is seeking.

Candidates must file a Certificate of Announcement, accompanied by the payment of the filing fee, with the Mingo County Clerk pursuant to West Virginia Code 8-5-7. The filing period begins January 13, 2014 and closes January 25, 2014.

The certified winner of the vacated office of commissioner will serve the remainder of the unexpired

full term election will be counted first and the unexpired term election second. If the candidate with the highest number of votes for the unexpired term resides in the same magisterial district as the candidate with the highest number of votes for the full term, the candidate for the full term shall be seated. The candidate with the next highest number of votes for the unexpired term residing in a different magisterial district shall be seated for the unexpired term.

This proclamation is made by the Mingo County Commission pursuant to the provisions of West Virginia Code 3-10-1(e) and 3-10-7(e).

John Mark Hubbard
President of the Mingo County Commission

12-11-18

AFFIDAVIT OF PUBLICATION

I, Jeffrey Vaughn General Manager of the The Williamson Daily News (Mingo County), Logan Banner (Logan County), Coal Valley News (Boone County), Gilbert Times (Mingo County) and Independent Herald (Wyoming County) West Virginia, do hereby certify that the annexed notice was published in said paper for 2 successive time(s)

Williamson Daily News 12/11, 18

Given under my hand this 18 day December, 2013

State of West Virginia
to-wit:

Subscribed and sworn before me this 18 day of December, 2013

NOTARY PUBLIC OFFICIAL SEAL
LUCINDA FAYE HAWKINS
State of West Virginia
My Commission Expires November 22, 2022
P.O. BOX 427 ACCOVILLE, WV 25606

Lucinda Faye Hawkins

Notary Public of Boone County
West Virginia

Cost of Publication $ 106.52

Copy of Publication
See attached

NOTICE OF ELECTION FOR THE UNEXPIRED TERM OF THE VACATED OFFICE OF MAGISTRATE OF MINGO COUNTY, WEST VIRGINIA

PLEASE TAKE NOTICE, that the unexpired term for the vacated office of magistrate of Mingo County, West Virginia will be up for election in the primary election to be held May 13, 2014, and the general election to be held November 4, 2014.

Candidates must file a Certificate of Announcement, accompanied by the payment of the filing fee, with the Mingo County Clerk pursuant to West Virginia Code § 3-5-7. The filing period begins January 13, 2014 and ends January 25, 2014.

The certified winner of the election will serve the remainder of the unexpired term, which is until January 1, 2017.

This notice is made by Judge John L. Cummings, Judge of the Circuit Court of Mingo County, West Virginia, pursuant to West Virginia Code § 50-1-6.

HON. JOHN L. CUMMINGS
Judge of the Circuit Court of
Mingo County, West Virginia

NOTICE OF ELECTION FOR THE
UNEXPIRED TERM OF THE VACATED OFFICE OF MAGISTRATE OF
MINGO COUNTY, WEST VIRGINIA

PLEASE TAKE NOTICE, that the unexpired term for the vacated office of magistrate of Mingo County, West Virginia will be up for election in the primary election to be held May 13, 2014, and the general election to be held November 4, 2014.

Candidates must file a Certificate of Announcement, accompanied by the payment of the filing fee, with the Mingo County Clerk pursuant to West Virginia Code 3-5-7. The filing period begins January 13, 2014 and ends January 25, 2014.

The certified winner of the election will serve the remainder of the unexpired term, which is until January 1, 2017.

This notice is made by Judge John L. Cunnings, Judge of the Circuit Court of Mingo County, West Virginia, pursuant to West Virginia Code 50-1-6.

Hon. John L. Cunnings
Judge of the Circuit Court of
Mingo County, West Virginia

12:11,18

AFFIDAVIT OF PUBLICATION

I, Jeffrey Vaughn General Manager of the The Williamson Daily News (Mingo County), Logan Banner (Logan County), Coal Valley News (Boone County), Gilbert Times (Mingo County) and Independent Herald (Wyoming County) West Virginia, do hereby certify that the annexed notice was published in said paper for 2 successive time(s)

Williamson Daily News 12/11, 18

Given under my hand this 18 day December, 2013

State of West Virginia
to-wit:

Subscribed and sworn before me this 18 day of December, 2013

NOTARY PUBLIC OFFICIAL SEAL
LUCINDA FAYE HAWKINS
State of West Virginia
My Commission Expires November 22, 2022
P.O. BOX 427 ACCOVILLE, WV 25606

Lucinda Faye Hawkins

Notary Public of Boone County
West Virginia

Cost of Publication $ 68.45

Copy of Publication
See attached

NOTICE OF ELECTION FOR THE
UNEXPIRED TERM OF PROSECUTING ATTORNEY FOR
MINGO COUNTY, WEST VIRGINIA

It is hereby proclaimed that the unexpired term for the office of Prosecuting Attorney for Mingo County, West Virginia will be up for election in the primary election to be held on May 13, 2014, and the general election to be held on November 4, 2014.

Candidates must file a Certificate of Announcement, accompanied by the payment of the filing fee, with the Mingo County Clerk pursuant to West Virginia Code § 3-5-7. The filing period begins January 13, 2014 and closes January 25, 2014.

The certified winner of this election will serve the remainder of the unexpired term, which is until January 1, 2017.

This proclamation is made by the Mingo County Commission pursuant to the provisions of West Virginia Code § 3-10-1(e) and 3-10-8(c).

JOHN MARK HUBBARD
President of the Mingo County Commission

NOTICE OF ELECTION FOR THE UNEXPIRED TERM OF PROSECUTING ATTORNEY FOR MINGO COUNTY, WEST VIRGINIA

It is hereby proclaimed that the unexpired term for the office of Prosecuting Attorney for Mingo County, West Virginia will be up for election in the primary election to be held on May 13, 2014 and the general election to be held on November 4, 2014.

Candidates must file a Certificate of Announcement, accompanied by the payment of the filing fee, with the Mingo County Clerk pursuant to West Virginia Code 3-5-7. The filing period begins January 13, 2014 and closes January 25, 2014.

The certified winner of this election will serve the remainder of the unexpired term, which is until January 1, 2017.

This proclamation is made by the Mingo County Commission pursuant to the provisions of West Virginia Code 3-10-1(e) and 3-10-8(c).

John Mark Hubbard
President of the Mingo County Commission

12-11,18

AFFIDAVIT OF PUBLICATION

I, Jeffrey Vaughn General Manager of the The Williamson Daily News (Mingo County), Logan Banner (Logan County), Coal Valley News (Boone County), Gilbert Times (Mingo County) and Independent Herald (Wyoming County) West Virginia, do hereby certify that the annexed notice was published in said paper for 2 successive time(s)

Williamson Daily News 12: 11/18

Given under my hand this 18 day December, 2013

Jeff Vaughn

State of West Virginia
to-wit:

Subscribed and sworn before me this 18 day of December, 2013

NOTARY PUBLIC OFFICIAL SEAL
LUCINDA FAYE HAWKINS
State of West Virginia
My Commission Expires November 22, 2022
P.O. BOX 427 ACCOVILLE, WV 25506

Lucinda Faye Hawkins

Notary Public of Boone County
West Virginia

Cost of Publication $ 65.28

Copy of Publication
See attached

NOTICE OF ELECTION FOR THE
UNEXPIRED TERM OF SHERIFF FOR
MINGO COUNTY, WEST VIRGINIA

It is hereby proclaimed that the unexpired term for the office of Sheriff for Mingo County, West Virginia will be up for election in the primary election to be held on May 13, 2014, and the general election to be held on November 4, 2014.

Candidates must file a Certificate of Announcement, accompanied by the payment of the filing fee, with the Mingo County Clerk pursuant to West Virginia Code § 3-5-7. The filing period begins January 13, 2014 and closes January 25, 2014.

The certified winner of this election will serve the remainder of the unexpired term, which is until January 1, 2017.

This proclamation is made by the Mingo County Commission pursuant to the provisions of West Virginia Code § 3-10-1(e) and 3-10-8(c).

JOHN MARK HUBBARD
President of the Mingo County Commission

NOTICE OF ELECTION FOR THE UNEXPIRED TERM OF SHERIFF FOR MINGO COUNTY, WEST VIRGINIA

It is hereby proclaimed that the unexpired term for the office of Sheriff for Mingo County, West Virginia will be up for election in the primary election to be held on May 13, 2014, and the general election to be held on November 4, 2014.

Candidates must file a Certificate of Announcement accompanied by the payment of the filing fee, with the Mingo County Clerk pursuant to West Virginia Code 3-5-7. The filing period begins January 13, 2014 and closes January 25, 2014.

The certified winner of this election will serve the remainder of the unexpired term, which is until January 1, 2017.

This proclamation is made by the Mingo County Commission pursuant to the provisions of West Virginal Code 3-10-1(e) and 3-10-8(c).

John Mark Hubbard
President of the Mingo County Commission

12-11,18

AFFIDAVIT OF PUBLICATION

I, Jeffrey Vaughn General Manager of the The Williamson Daily News (Mingo County), Logan Banner (Logan County), Coal Valley News (Boone County), Gilbert Times (Mingo County) and Independent Herald (Wyoming County) West Virginia, do hereby certify that the annexed notice was published in said paper for 2 successive time(s)

Williamson Daily News 12: 11, 18

Given under my hand this 18 day December, 2013

State of West Virginia
to-wit:

Subscribed and sworn before me this 18 day of December, 2013

NOTARY PUBLIC OFFICIAL SEAL
LUCINDA FAYE HAWKINS
State of West Virginia
My Commission Expires November 22, 2022
P.O. BOX 427 ACCOVILLE, WV 25606

Lucinda Faye Hawkins

Notary Public of Boone County
West Virginia

Cost of Publication $ 65.28

Copy of Publication
See attached

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS
NO. 14-0877

STATE OF WEST VIRGINIA EX REL.
NATALIE E. TENNANT, WEST VIRGINIA
SECRETARY OF STATE,

Petitioner,

v.

BALLOT COMMISSIONERS OF
MINGO COUNTY, WEST VIRGINIA;
JIM HATFIELD, as Clerk of the Mingo County Commission and member of the Ballot Commissioners of Mingo County, West Virginia; ANGIE BROWNING, as member of the Ballot Commissioners of Mingo County, West Virginia; and RAMONA BROWNING, as member of the Ballot Commissioners of Mingo County, West Virginia,

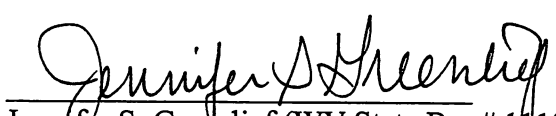
Respondents.

CERTIFICATE OF SERVICE

I, Jennifer S. Greenlief, Assistant Attorney General and counsel for Petitioner, verify that I have served a copy of the foregoing Motion to File Reply Brief and Reply Brief in Support of Petition for Writ of Mandamus by the methods identified below on September 12, 2014, addressed as follows:

To: Ben White
Counsel for Respondents
Via: Electronic Mail

Teresa Maynard
Prosecuting Attorney for Mingo County
75 East 2nd Avenue, Room 201
Williamson, West Virginia 25661
Via: Facsimile at (304) 235-0567



Jennifer S. Greenlief (WV State Bar # 10125)