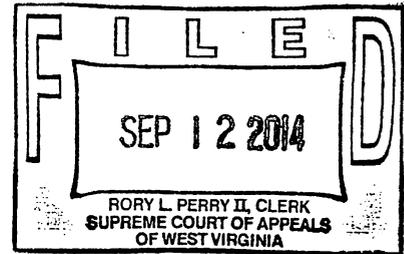


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

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.

RESPONSE TO WRIT OF MANDAMUS

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BALLOT COMMISSIONERS OF
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JIM HATFIELD, as Clerk of the Mingo County
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County, West Virginia; and RAMONA BROWNING,
as member of the Ballot Commissioners of Mingo
County, West Virginia,

Respondents.

RESPONSE TO PETITION FOR WRIT OF MANDAMUS

Respondents, Jim Hatfield, Mingo County Clerk and Chairman of the Ballot Commissioners of Mingo County; Angie Browning, Mingo County Ballot Commissioner; and Ramona Browning, Mingo County Ballot Commissioner, pursuant to this Honorable Court's Scheduling Order, file their response to the Petition for Writ of Mandamus filed by Petitioner, Natalie E. Tennant, West Virginia Secretary of State.

STATEMENT OF THE CASE

Respondents generally concur with Petitioner's recitation of the Statement of the Case with the exception of several inaccuracies and omissions.

On page 3 of Petitioner's writ she represents that "[t]hroughout this time, the Office of the Secretary of State was in contact with Respondents. . . " It is true that the Secretary of State's office was in contact with Respondent Hatfield; however, Respondent Angie Browning and Respondent Ramona Browning have had no contact with the Secretary of State's office other than receiving service, via certified mail, of a notice that they were named as respondents in the instant case.

The Petitioner also omitted the fact that Respondent Hatfield filed a Petition For a Writ of Prohibition in the Circuit Court of Mingo County on September 5, 2014 at 2:43 p.m. [Res. App. 1-13]. Respondent Hatfield's Writ of Prohibition is currently pending in the Mingo County Circuit Court [See Res. App. 14] seeking to prohibit the Secretary of State from ordering the Mingo County Ballot Commissioners to remove the family court judge election from the 2014 general ballot.

Petitioner's counsel accepted service, via facsimile, of the Petition for Writ of Prohibition filed in Mingo County on or about 4:00 p.m. on September 5, 2014. Upon information and belief, Petitioner's Petition Writ of Mandamus was not filed until on or about 5:00 p.m. on September 5, 2014. Petitioner knew or should have known that the Writ of Prohibition Petition had been filed before she filed the Writ of Mandamus Petition herein. Said Writ of Prohibition Petition should have been included in the Petitioner's Appendix in the captioned matter.

Moreover, although the undersigned spoke with counsel in Petitioner's office spoke several times on September 5, 2014, the contents of the Petitioner's Appendix were never discussed.

SUMMARY OF ARGUMENT

This issue should be resolved in the Circuit Court of Mingo County where a writ, filed by Respondent Hatfield, addressing the same questions presented herein, was filed before the Petitioner filed her writ in this Honorable Court. Should this Honorable Court take cognizance of the Petitioner's writ, the Respondents first argue that the West Virginia Constitution dictates that the present Eighth Family Court vacancy be placed on the 2014 general election ballot so the voters of Mingo County will have the opportunity to fill the vacancy by election. Secondly, the governing law supports Respondents' arguments that an election is proper. Finally, Respondents request that they be granted legal authority to place the Election for the Eighth Family Circuit Judge on the ballot for the 2014 general election.

For all these reasons, the writ should be denied.

STATEMENT REGARDING ORAL ARGUMENT AND DECISIONS

The Respondents request oral argument pursuant to *West Virginia Rule of Appellate Procedure 20* because the issues raised are matters of fundamental importance to the citizens of Mingo County and throughout West Virginia.

ARGUMENT

I. JURISDICTION AND STANDING

On September 5, 2014, hours before Petitioner's writ was filed in this Honorable Court, Respondent Hatfield filed a writ in the Circuit Court of Mingo County raising the same issues presented herein. [Res. App. 1-13] The very issue of whether the Eighth Family Court Circuit Judge election should appear on the 2014 general election ballot is currently pending before the Judge of the Circuit Court of Mingo County. Jurisdiction should lie in the court where the writ was first filed – Mingo County Circuit Court. West Virginia Code § 53-1-2 dictates “[j]urisdiction of writs of mandamus and prohibition (except cases whereof cognizance has been taken by the supreme court of appeals or a judge thereof in vacation), shall be in the circuit court of the county in which the record or proceeding is to which the writ relates.”

The record or proceeding to which the writ relates is Mingo County Circuit Court where the issue was first raised by Respondent Hatfield. This Court should summarily deny the Petitioner's writ without considering the merits of the petition so the matter can be heard in the jurisdiction where the question was first raised.

“* * * [T]he fact that inferior courts also have original jurisdiction concurrent with appellate courts with respect to the writ has been considered as ample ground for appellate courts in their discretion to refuse to assume original jurisdiction, since the remedy in the lower court is in the nature of another adequate remedy. In the application to a court of last resort for a writ of mandamus it may be necessary to show why it is essential or proper that the writ should issue from that court, rather than from a lower court having concurrent jurisdiction, and in the absence of such a showing the Supreme Court may refuse to assume jurisdiction.”

State ex rel. Blankenship v. McHugh, 217 S.E.2d 49, 158 W.Va. 986 (W.Va. 1975), *quoting*, 52 Am.Jur.2d, Mandamus, Section 44, page 369. This is especially true given that jurisdiction for this particular issue already lies with the Circuit Court Mingo County.

In addition to trying to preempt jurisdiction in this Honorable Court when the same issue was already pending in another jurisdiction, the Petitioner failed to perfect a writ and accordingly should be denied.

Application for a writ of mandamus or a writ of prohibition **shall** be on verified petition. West Virginia Code §53-1-3 (*emphasis added*) On September 5, 2014, Petition the Writ of Mandamus was filed without verification of the Petitioner.¹ In *Cable v. Hatfield*, 505 S.E.2d 701, 202 W.Va. 638 (1998) this Court upheld the lower court's dismissal of a writ on several grounds first being that West Virginia Code §53-1-3 requires that on application for writ of mandamus be on verified petition. "Because the requisite verification was submitted on behalf of only one of the sixteen petitioners, the court found that it lacked jurisdiction to consider the application with respect to the remaining fifteen petitioners." *Id.* at 704, *Citing Duncan v. Tucker County Bd. of Educ.*, 140 S.E.2d 613, 149 W.Va. 285 (1965).

At the time of the filing of the instant writ, the one and only petitioner therein failed to verify the petition. Without the requisite verification, this Court, like the *Cable* Court lacks jurisdiction to consider the application. Petitioner attempted to rectify the error by attempting a second verification filed on September 8, 2014.

¹ Counsel for the Petitioner signed the original verification.

The Petitioner signed the second verification but it was not perfected because it was not taken under oath. Therefore, without proper verification the petition fails.

Respondent is aware that this Court has not held an election mandamus proceeding to the same degree of procedural rigor as an ordinary mandamus case. *State ex real. Browelow v. Daniel*, 258 S.E.2d 119, 163 W.Va. 532 (1972). Unlike the writ in *Browelow*, the Attorney General of the State of West Virginia, who should be held to the strict requirements of West Virginia Code §53-1-3, filed the instant writ.

For all these reasons, the writ should be dismissed for lack of jurisdiction.

II. THE WEST VIRGINIA CONSTITUTION DICTATES THAT THE PRESENT EIGHTH FAMILY COURT CIRCUIT VACANCY BE FILLED BY ELECTION.

The family court system was created in November, 2000 when Article VIII, § 16 of the West Virginia Constitution was ratified by the citizens of the State of West Virginia. Article VIII, § 16 provides that the voters shall elect the family court judges. Should a vacancy occur in the office of family court judge Article VIII, § 7 shall apply to fill the vacancy. *See* Article VIII, § 16.

When a vacancy occurs in the office of family court judge the “. . . governor shall issue a directive of election to fill such vacancy in the manner prescribed by law for electing a family court judge, and the family court 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.” *See* Article VIII, § 7 of the West Virginia Constitution (*emphasis added*). The filling of a vacancy of family court judge by election for the unexpired term does not preclude the

governor from appointing an individual to fill the vacancy in the interim. In fact, the constitution contemplates just that.

If the governor's appointee for the vacancy in the Eighth Family Court Circuit is permitted to serve until one shall be elected and qualified in the 2016 election, that individual will have served as family court judge for just under one-third of the eight year term without having been elected by the voters as required by Article VIII, § 16 of the West Virginia Constitution.

Compliance with Article VIII, § 7 of the West Virginia Constitution requires that the vacancy in the office of Eighth Family Court Judge be placed on the ballot for the 2014 general election.

III. THE GOVERNING LAW SUPPORTS RESPONDENTS' ARGUMENTS THAT AN ELECTION IS PROPER

The constitutional provision creating the family court system requires that the family law judges be elected by the voters. This Honorable Court has held that "statutes relating to vacancies on an election ballot ordinarily should be liberally construed in order to serve the legislative policy of providing a full selection of candidates for voters." Tillis v. Wright, 217 W.Va. 722, 619 S.E.2d 235 (2005) quoting, Syl. pt. 1, State ex. Rel. Cravotta v. Hechler, 187 W.Va. 790, 421 S.E.2d 698 (1992). This Court further opined in State ex. rel. Lockhart v. Rogers, 134 W.Va. 470, 477, 61 S.E.2d 258 262, "... that a liberal application of any statute should be made so as to afford the citizens of this State or any political subdivision thereof an opportunity to vote for persons of their choice."

In appointing an individual to appear on the ballot as a candidate for family court judge, the Mingo County Democratic Executive Committee relied upon West Virginia Code §3-5-19-(7)(b):

(b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election. Appointments shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

Clearly a vacancy occurred for the position of family court judge which would not otherwise appear on the ballot in the general election by virtue of the appointment of the Mingo County Family Court Judge to Circuit Court Judge after the close of the filing period for the primary election but more than eighty-four days before the general election. Further, Article 10, Chapter 3 of the West Virginia Code does not “otherwise provide” for the filling of a family court judge vacancy on the ballot.

Respondents concede that West Virginia Code § 3-10-3 does vest in the governor the right to fill the vacancy of a judge of a family court by appointment but also provides that family court judge may be filled by “subsequent election to fill the remainder of the term, if required by section one of this article. West Virginia Code § 3-10-3.

However, West Virginia Code § 3-10-1(a) provides that “[w]hen a vacancy occurs in an elected office of the state or county, it shall be filled according to the processes set forth in this article.” West Virginia Code § 3-10-1 is devoid of any

specific mention of filling a vacancy for family court judge. Thus, the Mingo County Democratic and Republican Executive Committee could appoint individuals to be candidates to fill the vacancy.

It can also be argued that the Eighth Family Court Judge is a county office as contemplated by West Virginia Code § 3-10-1(b)(1) because the Eighth Family Court Judge Circuit is entirely situate in Mingo County. Only the citizens of Mingo County can vote for family court judge in the Eighth Family Court Circuit. Although the Mingo County Family Court Judge can be a county office pursuant to West Virginia Code § 3-10-1(b)(1) there is no provision in article ten for the election of the county office of family court judge.

The vacancy in the office of Mingo County Family Court Judge occurred on or about June 30, 2014, more than four (4) months preceding the 2014 general election and more than eighty-four (84) days prior to the 2014 general election as prescribed by law. The Executive Committee Members from both parties, who are elected by the citizens of Mingo County, have the authority under law to appoint a candidate to be placed on the ballot for the office of family court judge.

A similar situation occurred in Putnam County where approximately five (5) months prior to the 2014 primary election a vacancy occurred in the office of family court judge and the language of Article VIII, § 7 of the West Virginia Constitution was followed. The Governor appointed a family court judge and directed that an election to fill the vacancy be held. The Respondents argue the law affords the voters of Mingo County the same opportunity as the voters of Putnam County to elect their next family court judge.

IV. RESPONDENTS REQUEST THAT THEY BE GRANTED LEGAL AUTHORITY TO PLACE THE ELECTION FOR EIGHTH FAMILY COURT CIRCUIT JUDGE ON THE BALLOT FOR THE 2014 GENERAL ELECTION.

The Mingo County Clerk and ballot commissioners have faced an unprecedented number of unique and challenging situations regarding the 2014 primary and general elections with little or no guidance from the Secretary of State's Office. As a direct result of several elected officials resigning their offices after pleading guilty to federal crimes, Mingo County had three races on the 2014 primary election ballot that would not normally occur. Vacancies occurred in the offices of Circuit Judge, the unexpired term of county commissioner, and magistrate more than eighty-four days prior to the 2014 primary election. All three races were placed on the primary election ballot.

While the Governor issued a proclamation placing the circuit judge vacancy on the ballot, 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.

West Virginia Code § 3-10-7(c) places the responsibility for issuing a proclamation for the vacancy in the offices of county commission with the county commission, or president thereof in vacation. Vacancies in the office of magistrates are addressed in West Virginia Code § 50-1-6, subject to the provisions of § 3-10-1. Pursuant to § 50-1-6 if the magistrate vacancy occurs before the primary election, candidates to fill such vacancy shall be nominated at such primary election in accordance with the time requirements and the provisions and procedures prescribed in article five, chapter three of the West Virginia Code. Although the

office of magistrate is a judicial office, the Respondents could not find a statute or code section requiring a proclamation to place the office of magistrate on the election ballot.

Both the commissioner vacancy and the magistrate vacancy were placed on the 2014 Mingo County primary election ballot that was approved by Petitioner and used in the election. Presumably, the Petitioner also approves the placement of the commissioner vacancy and magistrate vacancy on the 2014 Mingo County general election ballot as the writ seeks to compel the ballot commissioners to approve a general election ballot including said races. Clearly, the Petitioner cannot in good faith argue to this Honorable Court that lack of a proclamation is a bar from placing a vacant office on the general election ballot.

In addition to the previously mentioned races unexpectedly added to the 2014 Mingo County primary election ballot, a vacancy occurred in the office of Board of Education after the primary but before the general election. A special filing period was established for the Board of Education vacancy, however there was no proclamation issued placing the race on the general election ballot.

Respondents seek to allow the voters of Mingo County to exercise their constitutional right to vote for and elect their family court judge for the Eighth Family Court Circuit and respectfully request this Honorable Court grant them the legal authority to do so.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request the Court to deny the Petitioners request for a writ of mandamus.

Respectfully submitted,

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.

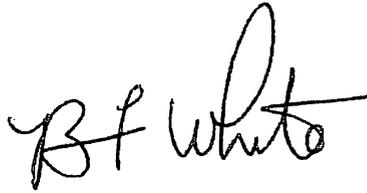
By Counsel



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CERTIFICATE OF SERVICE

I, Benjamin F. White, counsel for Respondents, do hereby certify that I have this 12th day of September 2014, served the foregoing "Response to Writ of Mandamus" and "Respondents' Appendix" thereto via hand-delivery upon the follow at their respective offices as follows: The Honorable Natalie Tennant, Secretary of State of the State of West Virginia, State Capitol Complex, Building 1, Suite 157-K, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305; and the Honorable Patrick Morrissey, West Virginia Attorney General, State Capitol Complex, Building 1, Room E-26, 1900 Kanawha Boulevard, East, Charleston, West Virginia 25305.

A handwritten signature in black ink that reads "BF White". The signature is written in a cursive, flowing style.

BENJAMIN F. WHITE (WVSB # 10062)
Counsel for Respondents

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
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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.

RESPONDENTS APPENDIX RECORD

BENJAMIN F. WHITE (WV State Bar # 10062)
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Counsel for Respondents

CERTIFICATION

I, Benjamin F. White, certify that the contents of the Respondents Appendix are true and accurate copies of items contained in the record of Circuit Clerk of Mingo County, West Virginia.

Dated this 12th day of September 2014.

A handwritten signature in black ink that reads "BF White". The letters are cursive and fluid.

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IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA ex real.
JIMMY "BIG JIM" HATFIELD, in his
official capacity as Mingo County
Clerk,

Petitioner,

v.

Case No. 14-C-186

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

Defendant.

ADMITTED TO RECORD
2014 SEP -5 P 2:43
MINGO COUNTY CIRCUIT CLERK

PETITION FOR WRIT OF PROHIBITION

Counsel for Petitioner

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NOW COMES the Petitioner and petitions this Honorable Court for a Writ of Prohibition, pursuant to Rule 71b of the *West Virginia Rules of Civil Procedure*, to prohibit Respondent Tennant from removing the office of Democratic Family Court and appointed name from the ballot for the 2014 General Election.

STATEMENT OF FACTS

Petitioner, Jimmy "Big Jim" Hatfield, is the duly elected County Clerk of Mingo County, West Virginia and as Mingo County Clerk he serves as Chairman of the Mingo County Ballot Commission pursuant to West Virginia Code § 3-1-19(c). Respondent Natalie Tennant is the duly elected Secretary of State of the State of West Virginia.

On October 2, 2013 a vacancy occurred in the Mingo County Circuit Court when former Judge Michael Thornsby resigned after pleading guilty to a federal felony. On or about June 30, 2014, Miki Thompson was sworn-in as Mingo County Circuit Judge, after winning the democratic nomination for circuit judge in the 2014 Primary Election and receiving the appointment by Governor Earl Ray Tomblin.

Prior to being appointment as Circuit Judge Miki Thompson held the office of Mingo County Family Court Judge. The office of Mingo County Family Court Judge became vacant upon The Honorable Miki Thompson's appointment to the circuit court bench. The Mingo County Family Court Judge vacancy occurred more than Eighty-Four (84) days before the 2014 general election.

There being a vacancy on the 2014 general election ballot for family court judge, the Mingo County Democratic Executive Committee met in special session on August 5, 2014 to consider candidates to fill the vacancy pursuant to West Virginia

Code § 3-5-19(7)(b). After considering the resumes and comments of several candidates, the Mingo County Democratic Executive Committee voted unanimously to appoint Jonathan "Duke" Jewell to be the Democratic candidate on the ballot for the general election to be held on November 4, 2014.

The Chairman of the Executive Committee sent a letter to Petitioner on August 7, 2014 informing him of the appointment of Mr. Jewell to the vacancy on the ballot. On or about August 8, 2014, Petitioner faxed a copy of the Mingo County Democratic Executive Committee's letter to the Secretary of State. Shortly thereafter, Mr. Jewell paid the filing fee and filled out candidacy forms for the office of Mingo County Family Court Judge.

Petitioner prepared the Mingo County General Election ballot with Mr. Jewell listed as a democratic candidate for family court judge and sent the forms to the printer, Casto-Harris. On or about August 27, 2014, Petitioner's office received a call from the printer informing them that Mr. Jewell's name had to be removed from the ballot. Petitioner informed the printer that it had no authority to remove a name from the ballot.

On August 29, 2014, Petitioner received an order, via facsimile, from the Secretary of State ordering the "Mingo County Ballot Commissioners to remove from the 2014 general election ballot any and all reference to an election to fill an unexpired term of judge of the Eighth Family Court Circuit."

Petitioner has and continues to believe in the people's right to elect their public officials and further believes that West Virginia Code § 3-5-19(7)(b) gives the Democratic and the Republican Executive Committees the opportunity appoint

candidates to be placed on the November 4, 2014 ballot to fill the vacancy of family court judge. Therefore, Petitioner declines to remove the Mingo County Democratic Executive Committee's appointee, Jonathan "Duke" Jewell from the ballot and respectfully requests this Honorable Court GRANT his writ and prohibit Respondent from removing Mr. Jewell's name from the ballot as a candidate for the Eighth Family Court Circuit.

ARGUMENT

Writs of Prohibition are to be granted to "correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance." Hinkle v. Black, Syl. pt. 1, *in part*, 164 W.Va. 112, 262 S.E.2d 744 (1979). This Honorable Court's intervention is needed to prevent Respondent from prohibiting the Mingo County voters from having a candidate for family court judge.

The Supreme Court of Appeals of West Virginia has held that "statutes relating to vacancies on an election ballot ordinarily should be liberally construed in order to serve the legislative policy of providing a full selection of candidates for voters." Tillis v. Wright, 217 W.Va. 722, 619 S.E.2d 235 (2005) *quoting*, Syl. pt. 1, State ex. Real. Cravotta v. Hechler, 187 W.Va. 790, 421 S.E.2d 698 (1992). The Court further opined in State ex. rel. Lockhart v. Rogers, 134 W.Va. 470, 477, 61 S.E.2d 258 262, "... that a liberal application of any statute should be made so as to afford the

citizens of this State or any political subdivision thereof an opportunity to vote for persons of their choice.”

Liberally construing the clear statutory and constitutional election laws warrants this Court’s granting of Petitioner’s Writ of Prohibition.

I. Statutory and Constitutional Election Laws Permit the Naming of A Candidate for the Eighth Family Court Circuit.

The Secretary of State’s order dated August 28, 2014 incorrectly finds that Petitioner must remove Mr. Jewell’s name as candidate for the Eighth Family Court. *See Order of the Secretary of State attached hereto as “Petitioner’s Exhibit 1.”*

West Virginia Code § 3-6-2(f) prohibits the board of ballot commissioners from placing any issue on the ballot for election which is not specifically authorized under the West Virginia Constitution or statutes or which has not been properly ordered by the appropriate governmental body charged with calling the election. Petitioner has a good faith belief that the West Virginia Constitution and statutes permit the placement of a candidate for the office of Eighth Family Court on the ballot.

In appointing an individual to appear on the ballot as a candidate for family court judge, the Mingo County Democratic Executive Committee relied upon West Virginia Code §3-5-19-(7)(b):

(b) Except as otherwise provided in article ten of this chapter, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than eighty-four days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than seventy-eight days before the general election. Appointments

shall be filed in the same manner as provided in subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

Clearly a vacancy occurred for the position of family court judge which would not otherwise appear on the ballot in the general election by virtue of the appointment of the Mingo County Family Court Judge to Circuit Court Judge after the close of the filing period for the primary election but more than eighty-four days before the general election. Moreover, Article 10 of Chapter 3 of the West Virginia Code does not "otherwise provide" for the filling of a family court judge vacancy on the ballot.

Petitioner concedes that West Virginia Code § 3-10-3 does vest the Governor of the State to fill the vacancy of a judge of a family court by appointment but also provides that family court judge may be filled by "subsequent election to fill the remainder of the term, if required by section one of this article. West Virginia Code § 3-10-3.

West Virginia Code § 3-10-1(a) provides that "[w]hen a vacancy occurs in an elected office of the state or county, it shall be filled according to the processes set forth in this article." West Virginia Code § 3-10-1 is devoid of any mention of filling a vacancy for family court judge. Thus, the Mingo County Democratic Executive Committee could appoint an individual to fill the vacancy.

It can also be argued that the Eighth Family Court Judge is a county office as contemplated by West Virginia Code § 3-10-1(b)(1) because the Eighth Family Court Judge Circuit is entirely situate in Mingo County. Only the citizens of Mingo County can vote for family court judge in the Eighth Family Court Circuit. Although the Mingo County Family Court Judge can be a county office pursuant to West Virginia

Code § 3-10-1(b)(1) there is no provision in article ten for the election of the county office of family court judge.

II. Pursuant to the West Virginia Constitution an Appointment Shall be Made to Fill Family Court Judge Vacancy Until Elected For the Unexpired Term.

The Family Courts system was added to the West Virginia Constitution on November 7, 2000. See Section 16, Article VIII of the Constitution of the State of West Virginia. Section 16 provides that Sections 7 and 8 of Article VIII, applicable to circuit judges, shall also apply to family court judges.

Section 7, Article VIII provides specific language regarding vacancies of a justice of the supreme court of appeals or a circuit court judge and pursuant to Section 16, Article VIII said language also is applicable to the family court judges.

The Constitution provides that if a vacancy shall occur in the office of family court judge the “governor shall issue a directive of election to fill such vacancy in the manner prescribed by law for electing a family court judge, and the family court 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.” See Article VIII, § 7 of the West Virginia Constitution.

III. The Citizens of Mingo County Deserve the Right to Elect Their Next Family Court Judge

The vacancy in the office of Mingo County Family Court Judge occurred on or about June 30, 2014, more than four (4) months preceding the 2014 general election and more than eighty-four (84) days prior to the 2014 general election as prescribed by law. The Executive Committee Members from both parties, who are

elected by the citizens of Mingo County, have the authority under law to appoint a candidate place on the ballot for the office of family court judge.

A similar situation occurred in Putnam County where approximately five (5) months prior to the primary election a vacancy occurred in the office of family law judge and the language of Article VIII, § 7 of the West Virginia Constitution was followed. The Governor appointed a family court judge and directed that an election to fill the vacancy be held. The Petitioner believes the law affords the voters of Mingo County the same opportunity as the voters of Putnam County to elect their next family court judge.

CONCLUSION

The Petitioner respectfully urges this Honorable Court to allow candidate(s) names to be placed on the 2014 general ballot for the office of family court judge.

WHEREFORE, the Petitioner prays that this Honorable Court issue a Rule to Show Cause to Respondent to demonstrate why Petitioner's requested relief should not be granted; to enter an Order proclaiming that the office of judge of the Eighth Family Court be placed on the 2014 general election ballot; that the Executive Committees of both parties be afforded the opportunity to appoint a candidate to place on the ballot for the office of family court judge; and for any and all further relief this Court deems just and proper.

Respectfully submitted,

By counsel,

BF White

BENJAMIN F. WHITE (WV State Bar # 10062)

Attorney at Law

338 Main Street

Chapmanville, West Virginia 25508

Telephone: (304) 855-2369

Facsimile: (304) 855-2370

Ben@BFWhite.com

ORDER OF THE SECRETARY OF STATE

Ballot Commissioners of Mingo County:

The Office of Secretary of State has become aware that you have submitted to the printer a ballot design which contains an election which is not permitted by law. Therefore, pursuant to authority provided in West Virginia Code §3-1A-6(a), and after consultation with the State Election Commission, the Secretary of State hereby **ORDERS** the Mingo County ballot commissioners to remove from the 2014 general election ballot any and all reference to an election to fill an unexpired term of judge of the Eighth Family Court Circuit.

West Virginia Code §3-1A-6(a) requires:

"All election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks **SHALL ABIDE** by any orders that may be issued."

To ensure standardization and effectiveness of Chapter 3 (West Virginia Election Code), the Secretary of State, as chief elections officer, must issue this order. The legal basis for the order is contained in various sections of the West Virginia Election Code. West Virginia law controls the holding and scheduling of elections. The opinion shared by all elected officials, that voters should have a say, cannot replace or overrule laws promulgated by our state legislature. The position and actions taken by the Mingo County board of ballot commissioners are clearly in violation of West Virginia code, for the reasons outlined below, and must be reversed.

- West Virginia Code §3-6-2(f) prohibits ballot commissioners from placing issues on the ballot not specifically authorized by the government body charged with calling the election.

Petitioner's Exhibit 1

- West Virginia Code §3-10-3 and §3-10-1 vests the Governor with authority to fill judicial vacancies and proclaim any unexpired term elections required by code. The Governor has not issued such proclamation.
- West Virginia Code §3-10-1(e) requires publication of the date of the election and the offices to be elected. No such publication has occurred.
- West Virginia Code §3-10-1(b) provides that for a vacancy occurring after February 18, 2014, the Governor's appointee holds office until the end of the original term. This law applies to all appointments except U.S. Senate, U.S. House, and seven specific county offices. Family law judge is not one of the exceptions.
- Family law judge is not a "county office" because many circuits are multi-county and different appointment and election requirements based upon the number of counties in the circuit are not contemplated by the law.
- Judicial offices are not included in the exceptions because the Legislature, in 2013, deliberately omitted the post-primary vacancy procedures from the judicial vacancy and the legislative vacancy sections of code.

Compliance with this order is expected no later than Tuesday, September 2, 2014.

So ORDERED by the West Virginia Secretary of State this 28th day of August, 2014.



Natalie E. Tennant
Secretary of State





VERIFICATION

STATE OF WEST VIRGINIA

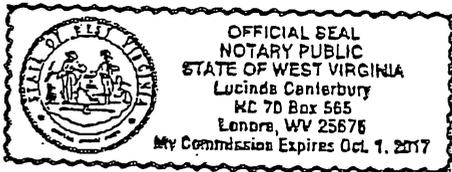
COUNTY OF MINGO, to-wit:

I, Jimmy "Big Jim" Hatfield, after first being duly sworn upon oath, state that I am the Petitioner named in the foregoing "Petitioner for Writ of Prohibition," that I have read the same, along with the attached "Petitioner's Exhibit No. 1" and that the facts and allegations therein contained are true and correct to the best of my belief and knowledge.

Jimmy "Big Jim" Hatfield
Jimmy "Big Jim" Hatfield

Taken, sworn to, and subscribed before me this 5th day of September, 2014.

My commission expires: Oct 1-2017

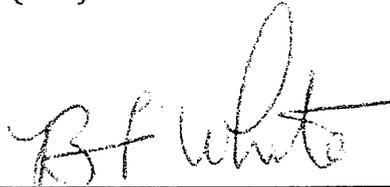


Lucinda Canterbury
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I, Benjamin White, counsel for the Petitioner, do hereby certify that I have this 5th day of September 2014, served the foregoing "Petition for Writ of Prohibition" by facsimile and by placing the same in the US Mail, postage prepaid, to the Respondent at the following address and facsimile number:

The Honorable Natalie Tennant
Secretary of State
State Capitol Complex,
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25304
Facsimile Number (304) 558-0900



BENJAMIN F. WHITE (WV BAR # 10062)
Counsel for Petitioner

Case number : 14-C-186

Action Log

ST. OF. WV. EX REAL JIM HATFIELD vs. NATALIE TENNANT., OFFICIAL CAP.

Line	Date	Action / Results
1	09/05/14	COMPLAINT FILED WITH CIVIL CASE; ISSUED SUMMONS AND SENT BACK
2		WITH ATTY FOR SERVICE

C=Chg D=Del 1-4=Scr M=Menu T=Chg Line# PgUp PgDn P=Prt A=Add I=Image

STATE OF WEST VIRGINIA
COUNTY OF MINGO,
I, GRANT PREECE, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 11th
DAY OF September - 2014

CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA CLERK
Grant Preece