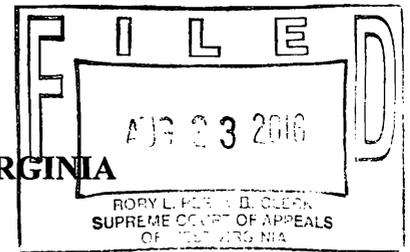


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



No. 16-0779

**ERIK PATRICK WELLS,
Respondent Below, Petitioner**

v.

**STATE OF WEST VIRGINIA ex rel. CHARLES T. MILLER,
Prosecuting Attorney for Kanawha County,
Petitioner Below, Respondent**

BRIEF OF PETITIONER

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I. ASSIGNMENT OF ERROR

1. The lower court erred in failing to address and find that under the First and Fourteenth Amendments of the United States Constitution, and Article III, Sections 7, 16 and 17, and Article IV, Sections 1 and 4, of the West Virginia Constitution, here 900 Kanawha County voters were denied the right to nominate and vote in the general election for a candidate of their choice by ruling that Erik Wells' name being placed on the Kanawha County ballot for Clerk of County Court of Kanawha County.

2. The Circuit Court erred by finding that W.Va. § 3-5-7(d)(6) applied rather than W.Va. Code §§ 3-5-23 and 24, by holding that Erik Wells was a registered Democrat and could not be nominated under W.Va. Code § 3-5-23 [App. pp. 98-105 - Circuit Court Final Order.]

3. The Court should reverse the lower court's decision since there is a definite conflict between W.Va. Code § 3-5-7(d) and W.Va. Code §§ 3-5-23 and 3-5-24 relating to ballot access by petitions of qualified voters seeking a candidate to be nominated and placed on the ballot. W. Va. Code §§ 3-5-23 and 24 are the controlling statutes for a candidate access where groups of citizens sign Nomination Certificates (Secretary of State Form P-3), indicating that they wish to have a particular person be a candidate and placed on the ballot. The Nomination Certificate signed by the voters may, but not required by § 3-5-23(d), designate a brief name of the party which the candidate represents. While Mr. Wells is a registered Democrat, this does not preclude him from being on the ballot if the Nomination Certificates indicate Independent.

The First and Fourteenth Amendments of the United States Constitution, and Article III, Sections 7, 16 and 17, and Article IV, Section 1 and 4, of the West Virginia Constitution, specifically must provide a feasible opportunity for ballot access requested by voters' petitions identifying a particular person they wish to be on the ballot. There is no sufficient state interest

in conditioning a ballot position as long as the state is free to assure itself that the candidate is a serious contender, truly independent, with a satisfactory level of community support. Here 900 Kanawha County voters signed Nomination Certificates, 400 more than required under W. Va. Code § 3-5-23(c), to place Mr. Wells' name on the ballot. The lower court erred by denying him ballot access.

II. STATEMENT OF THE CASE

1. In July, sixteen persons were issued Official Credentials pursuant to W. Va. Code § 3-5-23(d) to solicit signatures of duly registered voters of Kanawha County for Erik Wells' (a duly registered Democrat voter in Kanawha County, West Virginia) name to be placed on the November 8, 2016 general election ballot for the office of the County Clerk of Kanawha County as Independent. [App. p. 11 – Petitioner Below's Writ Exhibits 2A-P.]

2. Mr. Wells timely filed the Nomination Petitions¹ containing 1019 Signatures and filing fee with the office of the Clerk of the County Commission on July 18, 2016, and 900 of the signatures were found to be valid signatures. (Agreed fact at hearing.) [App. p. 34.] Of the 1019 signatures, 656 were Democrats, 135 were Republicans, 3 were Libertarians, 3 were Mountain Party, 137 were members of no party, and 13 were registered as Independent. [App. p. 99 - Circuit Court Final Order.] Duly registered voters may vote in the primary and sign Nominating Petitions. See W. Va. Code § 3-5-23(d).

3. Slightly over 500 signatures were required to place Mr. Wells on the ballot. (App. p. 99- Circuit Court Final Order]

¹ Nomination Certificates, Secretary of State Form P-3, under §§ 3-5-23 and 24, and Certificates of Announcement of Candidacy, Secretary of State Official Form C-1, under § 3-5-7, are two separate and distinct forms.

4. Vera McCormick, Clerk of the County Commission of Kanawha County, issued to Erik Wells a letter on July 28, 2016, that of the 1019 signatures, 900 were found to be acceptable and that he had exceeded the number to be placed on the ballot. [App. p. 34.]

5. Erik Wells presented his Candidate's Certificate of Announcement with the Clerk of the County Commission of Kanawha County on July 18, 2016, and it was accepted and duly recorded. Item nine was left blank. [App. p. 75.] The Certificate of Announcement does not require that it be filed or that item nine be designated under §§ 3-5-23 or 3-5-24. See State ex re. Browne v. Heckler, 197 W.Va. 612 (1996).

6. The Clerk of the County Commission of Kanawha County requested the West Virginia Secretary of State's advice on the following two questions relating to West Virginia Code §§ 3-5-23 and 3-5-24:

- (1) Whether individuals affiliated with a recognized party are eligible to sign a nominating petition; and
- (2) Whether a person registered with a recognized party can gain ballot access through this procedure.

While the Secretary of State did not render a legal opinion, the office informed the Clerk that the Prosecuting Attorney could make an inquiry through a writ of quo warranto under § 3-5-23. [App. p. 29.]

7. Charles Miller, Prosecuting Attorney for Kanawha County, at the request of Vera McCormick, Clerk of the County Court of Kanawha County, filed a Writ of Quo Warranto under § 3-5-23(e) challenging the petitions and seeking to have Mr. Wells denied access to the ballot. Vera McCormick is seeking re-election to the position and is currently unopposed. The Circuit Court on August 18, 2016, granted the Writ and denied Mr. Wells access to the ballot. [App. pp. 104-105 - Circuit Court Final Order.]

III. SUMMARY OF ARGUMENT

Mr. Wells' argument specifically focuses on citizens' vital rights to open ballot access which gives candidates and voters an opportunity to espouse various political and social viewpoints which are essential parts of the freedom of expression guaranteed by our federal and state constitutions, and the statutory and procedural requirements of W. Va. Code §§ 3-5-23, 3-5-24 and 3-5-7 under State ex rel. Browne v. Heckler, 197 W.Va. 612 (1996).

This Court has expressed in West Virginia Libertarian Party v. Manchin, 165 W. Va. 206 (1980), that ballot access by petition must follow the holding of the United States Supreme Court under the First and Fourteenth Amendments and the West Virginia Constitution requirements of freedom of expression, association and equal access.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner believes that oral argument should be heard under Rule 20 for the following reasons:

This case involves issues of fundamental public importance since there may be an additional number of cases with similar issues pending in the state concerning ballot access which, like this case, involves constitutional and potential conflicts between election statutes relating to ballot access.

V. ARGUMENT

Chapter 3-5-23 of the W. Va. Code provides that a citizen may become a candidate by filing a Nominating Certificate containing the signatures equal to or more than 1% of the votes cast for the office sought at the last general election.

§ 3-5-23(a)(c)(d) provide as follows:

“Certificate nominations; requirements and control; penalties.
(a) Groups of citizens having no party organization may nominate candidates who are not already candidates in the primary election for

public office otherwise than by conventions or primary elections. In that case, the candidate or candidates, jointly or severally, shall file a nomination certificate in accordance with the provisions of this section and the provisions of section twenty-four of this article.” [Emphasis added]

”(c) The certificate shall be personally signed by duly registered voters, in their own proper handwriting or by their marks duly witnessed, who must be residents within the county, district or other political division represented by the office sought wherein the canvass or solicitation is made by the person or persons duly authorized. The signatures need not all be on one certificate. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for the office in the state, district, county or other political division for which the nomination is to be made, but in no event shall the number be less than twenty-five. The number of signatures shall be equal to not less than one percent of the entire vote cast at the last preceding general election for any statewide, congressional or presidential candidate, but in no event shall the number be less than twenty-five. Where two or more nominations may be made for the same office, the total of the votes cast at the last preceding general election for the candidates receiving the highest number of votes on each ticket for the office shall constitute the entire vote. A signature on a certificate may not be counted unless it be that of a duly registered voter of the county, district or other political division represented by the office sought wherein the certificate was presented.” [Emphasis added.]

“(d) The certificates shall state the name and residence of each of the candidates; that he or she is legally qualified to hold the office; that the subscribers are legally qualified and duly registered as voters and desire to have the candidates placed on the ballot; and may designate, by not more than five words, a brief name of the party which the candidates represent and may adopt a device or emblem to be printed on the official ballot. All candidates nominated by the signing of the certificates shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter. [Emphasis added]

The Secretary of State shall prescribe the form and content of the nomination certificates to be used for soliciting signatures.”

The language in § 3-5-23(a) “Groups of citizens having no party organization” refers to those citizens who may be registered as a voter in a particular party, but not actively involved

with a political party, or no party at all, who may wish to nominate someone by petition. The statute does not use the term political party under W. Va. Code 3-1-8, but refers to groups of voting citizens having no active or affiliation with a principle or political organization. See Write-In Pritt Campaign v. Heckler, 191 W.Va. 677 (1994). Under W.Va. Code § 3-1-10, a political party can only act as a unit in a legally organized meeting to be valid or legal. 6B M.J. Elections § 26. State v. County Court, 147 W.Va. 63 (1962). “Groups of citizens having no party organization” is a generic term, which by definition, include those citizens who are duly registered voters. Here 137 are members of no party, 13 registered as Independent, and many of the 656 Democrats, 135 Republicans, 3 Libertarians, and 3 Mountain Party members who may not be actively involved with the party of their registration, but want to nominate a candidate for a particular office signed the Nomination Petitions. The 900 voting citizens here want Erik Wells to be a candidate for the office of the County Clerk of Kanawha County. Independent candidate under W. Va. Code 3-5-23 literally means that a qualified citizen of any or no party may elect not to run in a recognized party primary, but may elect to secure a position on the general election ballot by utilizing the ballot nominating certificate provisions of W. Va. Code §§ 3-5-23 and 3-5-24.

W. Va. Code §§ 3-5-23 and 3-5-24 do not require that the candidate file a Certificate of Candidacy under § 3-5-7, nor do the sections require the candidate to indicate what political party, if any, he or she is a member of, or to indicate what party, if any, he represents. The candidate is free to say nothing. The candidate under W. Va. Code § 3-5-23 may be a registered voter of any party, an Independent, or no party at all. The statute § 3-5-23 merely states that the candidate “may adopt, by not more than five words, a brief name of the party which the candidate represents.” [Emphasis added.] Here a large group of diversified citizens secured the

signatures of 1019 voters to place the name of Erik Wells on the November 8, 2016, ballot exercising their federal and state constitutional rights of freedom of expression. The Clerk certified that 900 names were valid Kanawha County voters. [App. p. 34.] W. Va. Code § 3-5-23(d) then becomes binding stating “All candidates nominated by the signing of the certificate shall have their names placed on the official ballot as candidates as if otherwise nominated under the provisions of this chapter.” [Emphasis added.]

A. CONSTITUTIONAL ISSUES

The West Virginia Supreme Court of Appeals in West Virginia Libertarian Party v. Manchin, 165 W.Va. 206, (1980), a ballot access case, held that it must apply the holdings of the United States Supreme Court in the field of ballot access cases under the First and Fourteenth Amendments of the United States Constitution, Lubin v. Panish, 415 U.S.709 (1974), Bullock v. Carter, 405 U.S. 134 (1972), Manchin, 165 W.Va. at 210-211. The Court in Manchin opined that Lubin and Bullock found “that open access to the ballot plays a vital role in giving an opportunity to candidates and voters who espouse various political and social viewpoints – an essential part of right of free expression guaranteed by the First Amendment.”

In Reynolds v. Sims, 377 U.S. 533, 555, 84 S. Ct. 1362, 1378, 12 L. Ed. 2d 506, 523 (1964), the Supreme Court held:

“...candidates' rights are necessarily tied to voters' rights. Clearly, ‘the right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on the right strike at the heart of representative democracy.’

Also see Bullock v. Carter, 405 U.S. 134, 143, 92 S. Ct. 849, 856, 31 L. Ed. 2d 92, 99 (1972), holding:

“A citizen's right to vote is not worth much if the law denies his or her candidate of choice the opportunity to run. ‘The rights of voters and the rights of candidates do not lend themselves to neat

separation; laws that affect candidates always have at least some theoretical, correlating effect on voters.” [Emphasis added]

A citizen can become an independent candidate under § 3-5-23 without giving up his or her party affiliation. As our Supreme Court of Appeals held in Manchin, citing the United States Supreme Court in Storer v. Brown, 415 U.S. 724 (1974), a person need not choose the political party route if he wants to appear on the ballot in the general election.

In Manchin, the Supreme Court of Appeals adopted the holding in Storer v. Brown:

“ “[T]he political party and the independent candidate approaches to political activity are entirely different and neither is a satisfactory substitute for the other. A new party organization contemplates a statewide, ongoing organization with distinctive political character. Its goal is typically to gain control of the machinery of state government by electing its candidates to public office. From the standpoint of a potential supporter, affiliation with the new party would mean giving up his ties with another party or sacrificing his own independent status, even though his possible interest in the new party centers around a particular candidate for a particular office. For the candidate himself, it would mean undertaking the serious responsibilities of qualified party status, under [state] law, such as the conduct of a primary, holding party conventions, and the promulgation of party platforms. But more fundamentally, the candidate, who is by definition an independent and desires to remain one, must now consider himself a party man, surrendering his independent status. Must he necessarily choose the political party route if he wants to appear on the ballot in the general election? We think not.” [415 U.S. at 745-46, 39 L. Ed. 2d at 732, 94 S.Ct. at 1286]. [Emphasis added]

In Lubin, the United States Supreme Court held:

“This legitimate state interest, however, must be achieved by a means that does not unfairly or unnecessarily burden either a minority party's or an individual candidate's equally important interest in the continued availability of political opportunity. The interests involved are not merely those of parties or individual candidates; the voters can assert their preferences only through candidates or parties or both and it is this broad interest that must be weighed in the balance. The right of a party or an individual to a place on a ballot is entitled to protection and is intertwined with the rights of voters.” Lubin at 716.

The Supreme Court of Appeals in Manchin also referred to Williams v. Rhodes, 393 U.S. 23 (1968), where the United State Supreme Court held:

“...the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively. Both of these rights, of course, rank among our most precious freedoms. We have repeatedly held that freedom of association is protected by the First Amendment. And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States. Similarly we have said with reference to the right to vote: ‘No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.’”

“‘The right to vote is heavily burdened if that vote may be cast only for one of two parties at a time when other parties are clamoring for a place on the ballot.’ Williams v. Rhodes, 393 U.S. 23, 31 (1968).”

In McCarthy v. Brown, 429 U.S. 1317 (1976), the Supreme Court citing Storer v. Brown, held that Senator Eugene McCarthy, after serving two terms in the U.S. Senate and five in the U.S. House of Representatives, and was an active candidate for the Democratic nomination for President in 1968, was seeking to have his name placed on the 1976 general election ballot in Texas for President as an Independent. The Supreme Court enjoined a Texas statute precluding an independent candidacy and ordered Eugene McCarthy’s name placed on the ballot citing the holdings of Storer v. Brown, Lubin v. Panish, and Williams v. Rhodes as a denial of ballot access. Most recently, Senator Bernard Sanders, who is a registered Independent in New Hampshire, appeared on the ballot in all fifty states, including West Virginia, as a Democrat candidate for President.

The Supreme Court of Appeals in Manchin, after carefully considering the holdings of the United States Supreme Court in Lubin, Bullock, Storer and Williams, held:

“We, therefore, hold that W. Va. Code, 3-5-23, violates the Equal Protection Clause of both the United States and the West Virginia Constitutions to the extent that it fails to extend to the independent candidate the same right to ballot access as that of the political party candidate.” Id. at 213-214. [Emphasis added]

The rule in Manchin specifically finds that under the First and Fourteenth Amendments of the United States Constitution and the West Virginia Constitution that W. Va. Code §§ 3-5-23 and 3-5-24 must provide ballot access so a citizen can run independently of a recognized political party.

The West Virginia Supreme Court of Appeals in George v. Commissioners, 79 W.Va. 213, held that a member of the Republican Party who was defeated in the primary could secure the requisite number of qualified voters' signatures and whose name was to be placed on the ballot as an independent candidate holding:

“As to the eligibility of a candidate for nomination by certificate, the statute requires no more than that he shall be legally qualified to hold the office. As to whether he may have been previously a candidate for nomination by another party, or may be a candidate of some party other than that named in the certificate, the statute is silent. The affidavit made by the candidate in question here, as a prerequisite to his unsuccessful candidacy in the primary election for the republican nomination, declaring his membership of that party, his affiliation with it and his intention to support it in the ensuing general election, is invoked against him; but it cannot be assumed that the legislature intended, in prescribing this requirement for purposes of the primary election, to preclude him from becoming a candidate of any other party in the general election. Nowhere in the statute is such purpose declared in terms or by necessary implication. Mere possibility or probability of legislative purpose is not enough to warrant an addition to its terms by way of interpretation or construction. Such addition can be made by way of implication only as a matter of necessity arising out of the terms used or a purpose made plainly and unmistakably manifest. The affidavit related to his status and intention at the time of the filing thereof and its statements may have been true. The statute denied him right of candidacy if he did not make it. He made it, therefore, to get his name on the ballot in that election, and the statute does not say it either gave, or took away,

any other right. To say it denies right to take a nomination by certificate would give it an effect not declared.”

The Supreme Court of Appeals in West Virginia Libertarian Party v. Manchin, 165 W.Va. 214, FN6, (1980), went on to note the case of George v. Board of Ballot Commissioners, stated that “Under the 1915 Acts of the Legislature, Chapter 26, Section 23, which was an earlier version of W. Va. Code, 3-5-23, independent candidates apparently had the right to ballot access through signature petitions.” Manchin at 215, FN6.

The Supreme Court of Appeals since Manchin has consistently held that the right to become a candidate for public office is a fundamental right, and in Garcelon v. Rutledge, 173 W.Va. 572, 318 S.E.2d 622 (1984), stated:

“This Court has frequently recognized that the right to become a candidate for public office is a fundamental right. *See* Marra v. Zink, 163 W.Va. 400, 256 S.E.2d 581, 584 (1979); Syl. pt. 1, State ex rel. Piccirillo v. City of Follansbee, 160 W. Va. 329, 233 S.E.2d 419 (1977); State ex rel. Maloney v. McCartney, 159 W.Va. 513, 223 S.E.2d 607, 611 (1976); State ex rel. Brewer v. Wilson, 151 W. Va. 113, 121, 150 S.E.2d 592, 597 (1966). One aspect of this fundamental right is its entitlement to protection under the concepts of freedom of expression and freedom of association inherent in our federal and state constitutions. *See* State ex rel. Piccirillo v. City of Follansbee, 160 W. Va. at 334, 233 S.E.2d at 423.”

In State ex rel. Browne v. Heckler, 197 W.Va. 612 (1996), this Court stated at FN1:

“...has repeatedly recognized that the right to run for political office is a fundamental right, see, e.g., State ex rel. Sowards v. County Comm'n of Lincoln Co., No. 23525 (W. Va. July 17, 1996), Sturm v. Henderson, 176 W. Va. 319, 342 S.E.2d 287 (1986), State ex rel. Piccirillo v. City of Follansbee, 160 W. Va. 329, 233 S.E.2d 419 (1977); that the right extends to third-parties and independent candidates seeking access to the general election ballot, see, e.g., West Virginia Libertarian Party v. Manchin, 165 W. Va. 206, 270 S.E.2d 634 (1980); and that substantial burdens on, or discrimination against, those who seek to invoke the right are unconstitutional unless the regulation in question is necessary to accomplish a compelling state interest, see, e.g., Sowards, supra, Sturm, supra. This right of candidacy is grounded in the voting and

public office provisions of W. VA. CONST. ART. IV, §§ 1 and 4, see, e.g., Marra v. Zink, 163 W. Va. 400, 256 S.E.2d 581 (1979), Piccirillo, supra; and in the political rights conferred by W. VA. CONST. ART. III, §§ 7 and 16, see, e.g., State ex rel. Billings v. City of Point Pleasant, 194 W. Va. 301, 460 S.E.2d 436 (1995). In addition, general principles of our fundamental rights/equal protection analysis under W. VA. CONST. art. III, § 10, apply in cases involving discrimination against particular candidates. Although petitioners mount substantial arguments in this case that their constitutional rights have been violated, we are spared of the necessity of addressing those claims because we reject the respondent's interpretation of the relevant statutes.

B. STATUTORY ISSUES

The lower court found that W. Va. Code § 3-5-23 did not apply, and proceeded to issue a Writ of Quo Warranto under § 3-5-23 while applying W. Va. Code § 3-5-7(d)(6) denying Mr. Wells ballot access which is clearly erroneous. Chapters §§ 3-5-23 and 24 refer to the Nominating Certificate Form P-3 not “a Certificate of Announcement Form C-1” under § 3-5-7, and clearly are not related to each other.

This Court in State ex rel. Browne v. Heckler, 197 W. Va. 612 (1996), has specifically addressed the issue if a candidate who is nominated by Nominating Certificate, Secretary of State Form P-3, under W. Va. Code § 3-5-23, holding that under W. Va. Code § 3-5-23, a candidate who qualifies for inclusion on the general election ballot by method other than primary election and who meets the August 1st deadline by filing a Nominating Certificate, is not required to file a Certificate under W. Va. Code § 3-5-7.

The Court in Browne then noted:

"...W. Va. Code § 3-5-7(a) (1991) provides, ‘The certificate of announcement shall be filed . . . not later than the first Saturday of February next preceding the primary election day’ and does not refer to the general election, to July 2, to August 1, or to any other date....”

“...The purposes of imposing deadlines for filing declarations of candidacy under W. Va. Code § 3-5-7 (1991) are to ensure the orderly administration of primary elections and to provide notice to the electorate of the identity of candidates seeking their party's nomination. Where nomination for candidates for inclusion on the general election ballot occurs through a mechanism other than primary election, however, the filing of a ‘declaration of candidacy’ would not serve the purposes of the statute.” Id. at 614.

The Respondent/Petitioner Below advanced the proposition that the Certificate of Announcement is incomplete, since item nine was left blank. While West Virginia Code § 3-5-7 authorizes the Secretary of State to create a form for the Certificate of Announcement, the form is not required under §§ 3-5-23 or 24. § 3-5-23 clearly states: “All candidates nominated by the signing of the certificates [of nomination] shall have their names placed on the official ballot as candidates, as if otherwise nominated under the provisions of this chapter.” [Emphasis added] Mr. Wells was not required under §§ 3-5-23 or 24 to file a Certificate of Announcement under § 3-5-7.

In the recent case of Wooten v. Walker, et al., No. 16-0226, decided April 19, 2016, this Court held that substantial compliance with procedural requirements with Chapter 3-12-3(12) was sufficient to allow the West Virginia Election Commission to certify a candidate’s name to be placed on the ballot for the Supreme Court of Appeals. In Wooten, the Court went on to hold:

“...It is well settled under this Court's precedents that ‘not all technical procedural violations merit relief where there is substantial compliance with *substantive* law....’ [Citations omitted.] This Court has even applied the principle of substantial compliance in cases involving procedural requirements set forth in the West Virginia Constitution. *E.g., State ex rel. Smith v. Kelly*, 149 W. Va. 381, 141 S.E.2d 142 (1965).”

Mr. Wells has fully complied with the substantive and procedural requirements of West Virginia Code §§ 3-5-23 and 3-5-24.

VI. CONCLUSION

The failure of the Circuit Court to consider or apply this Court's holdings that ballot access freedom of speech and expression are constitutionally protected under the First and Fourteenth Amendments of the United States Constitution, and Article III, Section 7 of the West Virginia Constitution, is clear error. These constitutional rights are found in rights of voter expression Chapter 3-5-23 and 3-5-24 by clearly allowing a candidate to be nominated by groups of citizens who cannot be denied by the application of Chapter 3-7-7.

The Circuit Court clearly erred by holding that W. Va. Code §§ 3-5-23 and 3-5-24 did not apply, and finding Mr. Wells disqualified under § 3-5-7 by not indicating in item nine he was a Democrat. The only requirement under § 3-5-23(d) is that the candidate "is a legally qualified to hold office" for the Clerk of the County Commission which Mr. Wells is.

Erik Wells respectfully requests that this Court find that he has met all of the requirements of W. Va. Code §§ 3-5-23 and 3-5-24, and that under the federal and West Virginia Constitutions the 900 voters of Kanawha County have exercised their rights of freedom of expression and can vote for a voice of their choice in Erik Wells, and this Court order that his name be placed on the November 8, 2016, for the office of the Clerk of the County Commission of Kanawha County.

Respectfully submitted,



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 16-0779

**ERIK PATRICK WELLS,
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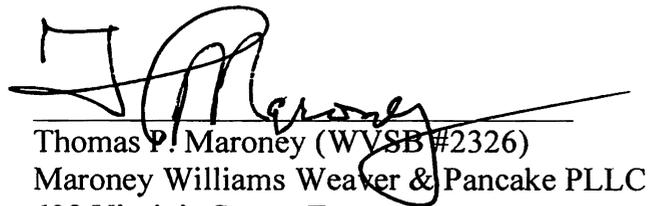
**STATE OF WEST VIRGINIA ex rel. CHARLES T. MILLER,
Prosecuting Attorney for Kanawha County,
Petitioner Below, Respondent**

CERTIFICATE OF SERVICE

I, Thomas P. Maroney, counsel for Petitioner herein, do hereby certify that I served a true and accurate copy of *BRIEF OF PETITIONER* upon counsel of record **via hand-delivery** on this the 23rd day of August 2016.

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