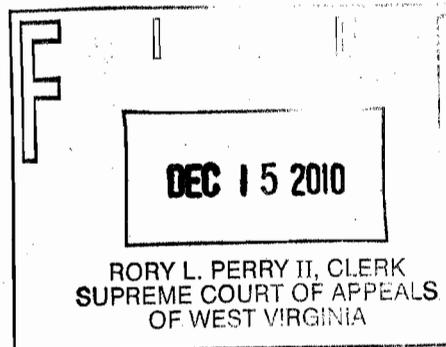


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Upon Original Jurisdiction

No. 10-1494 and No. 10-4004



State of West Virginia ex rel. Citizen Action Group, Petitioner

vs.) No. 101494

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

--AND--

State of West Virginia ex rel. Thornton Cooper, Petitioner

v.) No. 10-4004

Earl Ray Tomblin, Acting Governor of the State of West Virginia, And president of the West Virginia Senate, Richard Thompson, Speaker of the West Virginia House of Delegates, and Natalie Tennant, Secretary of State of West Virginia, Respondents

**PETITION TO INTERVENE OF KENNETH PERDUE,
AS PRESIDENT OF THE WEST VIRGINIA AFL-CIO**

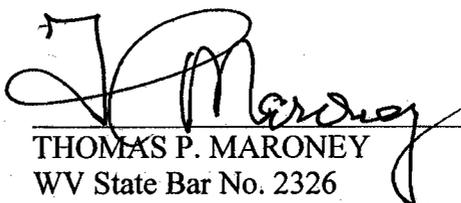
Kenneth Perdue, as President of the West Virginia AFL-CIO, petitions to become an intervener in the Petitions and relief requested by the West Virginia Citizens Action Group and Thornton Cooper (herein "CAG" and "Cooper"), and specifically request that this Court resolve the constitutional and statutory conflicts which have been created by the resignation of Joseph Manchin as Governor of the State of West Virginia, whereby Earl Ray Tomblin, an elected Senator for the Seventh Senatorial District of West Virginia and the duly elected President of the West Virginia State Senate, is to act as governor under Article VII, § 16, of the *West Virginia*

Constitution, until a special election is called and held under Article VII, § 16, and Chapter 3-1-1, etc., of the *Code of West Virginia*. Senator Tomblin, acting as Governor of the State of West Virginia, has indicated that he is not required to call for a special election until November 2012. [CAG Memorandum, P.3, Exhibit C.]

Pursuant to *Rev. R.A.P.* 16(d)(6), your petitioner respectfully requests oral argument under *Rev. R.A.P.* 20(a)(2)(3) since the issues presented involve the constitutionality and validity of statutes and are of fundamental importance to the public.

There being obvious constitutional issues presented by Senator Tomblin's position that he need not call for a special election until 2012, and the separation of powers clause, it is respectfully requested that this Court resolve these constitutional issues as set forth in the Petitions of CAG, Cooper, this intervener, respondents, and any other party who may request relief.

Respectfully submitted,



THOMAS P. MARONEY
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608 Virginia Street, East
Charleston, West Virginia 25301
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*Counsel for Kenneth Perdue, as President of
the West Virginia AFL-CIO*

**WEST VIRGINIA
AFL-CIO'S
APPENDIX
OF
EXHIBITS**

EXHIBIT A



West Virginia Legislature

2nd Session of the 79th Legislature

| | | | | | | | |
|--------|-------|-------|-------------|---------|-----------------|-------------|---------|
| Senate | House | Joint | Bill Status | WV Code | Audits/ Reports | Educational | Contact |
|--------|-------|-------|-------------|---------|-----------------|-------------|---------|

WEST VIRGINIA CODE

§10-2. Vacancy in office of governor.

...e of the death, conviction or impeachment, failure to qualify, resignation or other disability of the governor, the president of the Senate shall act as gov...
 ...he vacancy is filled or the disability removed; and if the president of the Senate, for any of the above-named causes, shall be or become incapab...
 ...rming the duties of governor, the same shall devolve upon the speaker of the House of Delegates; and in all other cases where there is no one to a...
 ...nor, one shall be chosen by the joint vote of the Legislature. Whenever a vacancy shall occur in the office of governor before the first three years of the...
 ...have expired, a new election for governor shall take place to fill the vacancy. If the vacancy shall occur more than thirty days next preceding a general elec...
 ...vacancy shall be filled at such election and the acting governor for the time being shall issue a proclamation accordingly, which shall be published prior to...
 ...on as a Class II-O legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for...
 ...ation shall be each county of the state. But if it shall occur less than thirty days next preceding such general election, and more than one year before...
 ...tion of the term, such acting governor shall issue a proclamation, fixing a time for a special election to fill such vacancy, which shall be publishe...
 ...before provided.

...e vacancy is to be filled at a general election and shall occur before the primary election to nominate candidates to...
 ...d for at such general election, candidates to fill the vacancy shall be nominated at such primary election in accorda...
 ...the time requirements and the provisions and procedures prescribed in article five of this chapter. When nominati...
 ...such vacancy cannot be so accomplished at such primary election, and in all cases wherein the vacancy is to be fi...
 ...special election, candidates to be voted for at such general or special elections shall be nominated by a st...
 ...ention to be called, convened and held under the resolutions, rules and regulations of the political party execu...
 ...mittees of the state. The laws prescribing the manner of calling, constituting and holding conventions to nomir...
 ...andidates for presidential electors shall, insofar as applicable, govern conventions to nominate candidates to fill...
 ...ncy in any office to be filled by the voters of the state as a whole, except that, in lieu of the magisterial dist...
 ...entions in the several counties, the county executive committee shall call and convene a county convention at...
 ...ty seat with delegates thereto apportioned to and representative of the several magisterial districts of the county...
 ...ded in section twenty-one of article five of this chapter. The county convention shall proceed to select the coun...
 ...cribed number of state convention delegates from the several magisterial districts thereof and the chairman...
 ...etary of the convention shall promptly certify the names and addresses of the persons so selected as delegates to...
 ...convention to the chairman of the state executive committee of the political party.

Code updated with legislation passed through the 2010 2nd Extraordinary Session

EXHIBIT B

**For brevities sake, Intervener West Virginia AFL-CIO, adopts all exhibits of
Petitioners CAG, Cooper, any other intervener not yet of record, and all respondents.**

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA TO-WIT:

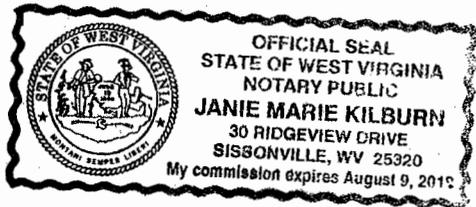
KENNETH PERDUE, AS PRESIDENT OF THE WEST VIRGINIA AFL-CIO,
Petitioner in the foregoing Petition to Intervene, after being by me first duly sworn, deposes and says that the facts and allegations therein contained are true, except as therein stated to be upon information and belief, and that as therein stated to be upon information and belief, he believes them to be true.

Kenneth M Perdue

**KENNETH PERDUE
PRESIDENT OF THE WEST VIRGINIA AFL-CIO**

Taken, subscribed and sworn to before me this 14th day of December 2010.

My Commission expires August 9, 2019.



Janie Marie Kilburn
NOTARY PUBLIC

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CERTIFICATE OF SERVICE

I, THOMAS P. MARONEY, General Counsel for the West Virginia AFL-CIO, do hereby certify that I served a true and accurate copy of the foregoing **PETITION TO INTERVENE OF KENNETH PERDUE, AS PRESIDENT OF THE WEST VIRGINIA AFL-CIO**, via the United States Postal Service, postage pre-paid, on the 15th day of December 2010, upon the following counsel of record:

Kathryn Reed Bayless, Esquire
Bayless Law Firm, PLLC
1607 West Main Street
Princeton, WV 24740
Counsel for West Virginia Citizen Action Group

Thornton Cooper, Esquire
3015 Ridgeview Drive
South Charleston, West Virginia 25303
Petitioner

The Honorable Earl Ray Tomblin
Governor of the State of West Virginia
State Capitol Building
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Respondent

Anthony J. Majestro, Esquire
Powell & Majestro PLLC
405 Capitol Street, Suite 1200
Charleston, West Virginia 25301
Counsel for The Honorable Richard Thompson

The Honorable Natalie E. Tennant
West Virginia Secretary of State
Room 157-K, Building 1
State Capitol Building
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305
Respondent

The Honorable Darrell V. McGraw
West Virginia Attorney General
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