

STATE OF WEST VIRGINIA

At the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on January 5, 2011, the following order was made and entered in vacation:

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 Tennant, Secretary of State of West Virginia, Respondents

--AND--

State of West Virginia ex rel. Thornton Cooper, Petitioner

vs.) 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

On a former day, to-wit, November 19, 2010, came the petitioner, West Virginia Citizen Action Group, by Kathryn Reed Bayless, Bayless Law Firm, its attorney, and presented to the Court its petition seeking a writ of mandamus against the respondents, Earl Ray Tomblin, Richard Thompson and Natalie Tennant, in their official capacities, as therein set forth.

On a former day, to-wit, December 2, 2010, came the petitioner, Thornton Cooper, pro se, and presented to the Court his petition seeking a writ of mandamus to be directed against the respondents, as therein set forth. On the same day, the above-captioned matters were consolidated for briefing, consideration and decision, on the Court's own motion.

Thereafter, on December 13, 2010, came the Christian Patriotic Front, by H. John Rogers, its attorney, and presented to the Court its motion in writing for leave to file an amicus curiae brief.

Thereafter, on December 15, 2010, came the West Virginia Education Association, by James M. Haviland, its attorney, and presented to the Court its motion for leave to file an amicus curiae brief, and attached the same thereto. On the same day, came Charles McElwee, pro se, and presented to the Court his motion for leave to file an amicus curiae brief, and attached the same thereto.

Upon consideration whereof, the Court does hereby grant the motions for leave to file amicus curiae briefs of the West Virginia Education Association and Charles McElwee, and said briefs are hereby ordered filed. The motion of the Christian Patriotic Front is hereby refused, insofar as the motion did not comply with Revised Rule 30(c).

Also on December 15, 2010, came Kenneth Perdue, President of the West Virginia AFL-CIO, by Thomas P. Maroney, Maroney, Williams, Weaver & Pancake, PLLC, his attorney, and presented to the Court his motion in writing for leave to intervene in the above-captioned matters, for the reasons set forth therein, and attached a brief supporting said motion. Upon consideration whereof, the Court does hereby grant said motion to intervene and it is hereby ordered that Kenneth Perdue, President of the West Virginia AFL-CIO, has leave to participate in this matter as a party petitioner.

Thereafter, on December 27, 2010, came the respondent, Richard Thompson, Speaker of the West Virginia House of Delegates, by Anthony J. Majestro, Powell &

Majestro, his attorney, and presented to the Court his written response to the petition for writ of mandamus, and attached an appendix thereto.

On the same day, came the respondent, Natalie E. Tennant, Secretary of State, by Silas B. Taylor, Senior Deputy Attorney General, and presented to the Court her written response thereto.

On the same day, came the respondent, Earl Ray Tomblin, by Thomas V. Flaherty, Tammy R. Harvey and Caleb P. Knight, Flaherty Sensabaugh & Bonasso PLLC, his attorney, and presented to the Court his written response thereto.

Finally, on the same day, came Glen B. Gainer, III, West Virginia State Auditor, by Lisa A. Hopkins, his attorney, and properly presented to the Court his amicus curiae brief pursuant to Revised Rule 30(a).

Upon consideration whereof, the Court is of opinion that a rule to show cause should be, and it hereby is, issued returnable before this Court, upon the papers previously submitted, for oral argument at 2:00 o'clock p.m. on Tuesday, January 11, 2011, pursuant to Rule 20 Revised Rules of Appellate Procedure.

Justice Davis disqualified. Judge Miller sitting by temporary assignment.

Service of an attested copy of this order upon the respondents aforesaid shall have the same effect as the service of a formal writ.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court





SUPREME COURT OF APPEALS

OFFICE OF THE CLERK

STATE CAPITOL, ROOM E-317
1900 KANAWHA BOULEVARD, EAST
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CLERK OF COURT
RORY L. PERRY II

DEPUTY CLERK
EDYTHE NASH GAISER

TO: Counsel of Record
From: Rory L. Perry II, Clerk
Date: January 5, 2011
Re: January 11, 2011 Argument Docket

[Handwritten signature]

NOTICE OF ARGUMENT
under Rule 20 of the Revised Rules of Appellate Procedure

The Court has selected your case for argument under Rule 20 of the Revised Rules of Appellate Procedure. Your case has been set for the Court's Argument Docket on Tuesday, January 11, 2011 at 2 o'clock p.m.

Enclosed is a copy of the Argument Docket containing the time your argument is scheduled along with other pertinent information. Please review this and promptly inform the Clerk of any changes to the listings of counsel of record by contacting Cassandra Wine, Assistant Clerk, at (304) 340-2327.

Any party who has not filed a brief in this matter, may not present oral argument. Amicus curiae will not participate in argument. The petitioners and intervenor shall be entitled to open and close the argument, and may reserve time for rebuttal.

If you have a disability and will need a reasonable accommodation to participate in argument, please contact the Clerk's office as soon as possible so that arrangements may be made. Because cell phones, pagers, and other equipment are not permitted in the Courtroom, you will be required to leave such equipment in the Court Marshal's office while attending court proceedings. In order to avoid delay, please leave such equipment elsewhere.

Please refer to Rule 20 of the Revised Rules of Appellate Procedure for any further direction regarding your case. The Revised Rules of Appellate Procedure are available at http://www.state.wv.us/wvsca/rules/appellate-revisions.html.

Please be present and in the courtroom prior to your scheduled time. The argument times listed on the docket are approximate.

**SUPREME COURT OF APPEALS OF WEST VIRGINIA**

January 2011 Regular Term

Argument Docket

**Tuesday, January 11, 2011**

**Rule 20 Argument**

2:00 p.m.     SER Citizen Action Group v. Earl Ray Tomblin, President of the West Virginia Senate, et al., No. 101494  
and  
SER Thornton Cooper v. Earl Ray Tomblin, President of the West Virginia Senate, et al., No. 10-4004  
Justice Davis disqualified. Judge Miller sitting by temporary assignment.

Petitioner, Citizen Action Group (15 min.)	Kathryn Reed Bayless
Petitioner, Thornton Cooper (15 min.)	Pro Se
Intervenor, Kenneth Perdue (15 min.)	Thomas P. Maroney
Respondent, Richard Thompson (15 min.)	Anthony J. Majestro
Respondent, Natalie E. Tennant (15 min.)	Silas B. Taylor
Respondent, Earl Ray Tomblin (40 min.)	Thomas V. Flaherty

(The Petitioners and Intervenor may reserve time for rebuttal. A party is not obliged to use all of the argument time allotted, and the Court may terminate the argument whenever in its judgment further argument is unnecessary.)

**ARGUMENT TIMES ARE APPROXIMATE**