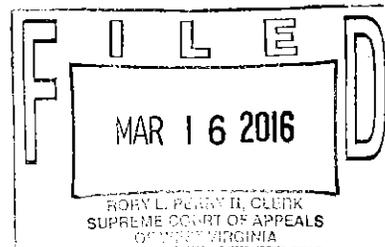


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 16-0226



WILLIAM R. WOOTON, candidate for)
the Supreme Court of Appeals of West)
Virginia,)

Petitioner,)

v.)

ELIZABETH D. WALKER, candidate for)
the Supreme Court of Appeals of West)
Virginia; West Virginia Secretary of State)
NATALIE E. TENNANT; West Virginia)
State Election Commission members)
GARY A. COLLIAS, and VINCENT P.)
CARDI; West Virginia State Auditor)
GLEN B. GAINER, III; and West)
Virginia State Treasurer JOHN D.)
PERDUE,)

Respondents.)

) On Certified Question from the Circuit
) Court of Kanawha County
) (Case No. 16-AA-13)

**RESPONDENT ELIZABETH D. WALKER'S APPLICATION
FOR STAY OF PETITIONER WOOTON'S EXPENDITURE
OF PUBLIC CAMPAIGN FINANCING FUNDS**

Submitted by:

K&L GATES LLP
Thomas C. Ryan (WVSB #9883)
210 Sixth Avenue
Pittsburgh, PA 15222
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Fax: (412) 355-6501
thomas.ryan@klgates.com

Counsel for Respondent Elizabeth D. Walker

APPLICATION FOR STAY

Pursuant to Rule 28(b), Respondent, Elizabeth D. Walker (“Walker”) files this Application for Stay prohibiting Petitioner William R. Wooton (“Wooton”) from spending, disbursing, encumbering, pledging or otherwise committing the \$475,000 he received in public campaign financing as a result of the February 5, 2016 decision by the West Virginia State Election Commission (“SEC”) to certify Wooton under W. Va. Code § 3-12-10(b), the very issue pending before this Court on a certified question from the Circuit Court of Kanawha County. In support thereof, Walker provides as follows:

1. On February 5, 2016, the SEC certified Wooton pursuant to W. Va. Code § 3-12-10(b), thereby qualifying him to receive public campaign financing.
2. As a result, under W. Va. Code § 3-12-11(a), Wooton received \$475,000 in state monies on or about February 8, 2016.
3. On February 9, 2016, Walker filed her *Petition for Judicial Review* (the “Petition”) petitioning the Court, pursuant to W. Va. Code § 29A-5 *et seq.* and Rule 2 of the West Virginia Rules of Procedure for Administrative Appeals, for review of the SEC’s February 5, 2016 decision certifying William Wooton pursuant to W. Va. Code § 3-12-10.
4. The same day, Walker filed an *Application for Stay* pursuant to Rule 3 of the Rules of Procedure for Administrative Appeals.
5. On February 12, 2016, Wooton filed a *Motion by Respondent William R. Wooton to Certify Question to the West Virginia Supreme Court of Appeals*.
6. On February 19, 2016, Walker filed a response joining in Wooton’s motion to certify a question.

7. On February 23, 2016, the parties entered finalized a letter-form agreement in which Wooton agreed not to spend, disburse, encumber, pledge or otherwise commit the \$475,000 during the pendency of this action, unless upon providing Walker three (3) days notice (the "Letter Agreement"). *See* Affidavit of Thomas C. Ryan ("Ryan Aff.") at Exhibit 1.

8. On March 7, 2016, the Circuit Court of Kanawha County certified the following question and answer to this Supreme Court:

Was the West Virginia State Election Commission's certification of Respondent Wooton for public financing of his candidacy for the West Virginia Supreme Court of Appeals under West Virginia Code §§ 3-12-1, *et seq.*, valid?

The Court answers the question as follows:

No. The West Virginia State Election Commission's certification of Respondent Wooton for public financing of his candidacy for the West Virginia Supreme Court of Appeals under West Virginia Code §§ 3-12-1, *et seq.*, was not valid.

9. On March 9, 2016, this Court entered an order under Rule 20 setting this matter for an expedited briefing and oral argument schedule.

10. Simultaneous briefs are to be filed on Thursday, March 17th, and oral argument is set for March 23rd at 10:00 a.m.

11. On March 14, 2016, Wooton advised Walker of his decision "to opt out of the agreement memorialized in your letter of February 23, 2016 restricting my ability to spend, disburse, encumber, pledge or otherwise commit any of the \$475,000 provided me pursuant to W.Va. Code 3-12-10." *See* Ryan Aff. at Ex. 2.

12. Accordingly, absent Court intervention, Wooton apparently intends to begin disposing of the funds at controversy in this action as early as Thursday, March 17th, per the three-day waiting period set forth in the Letter Agreement.

13. This matter is of unique significance to this Court, reflected in the unprecedented decision of the sitting Justices to recuse themselves and the due speed in which the presently-constituted Court has been willing to undertake this matter.

14. The election is not until May 10, 2016. Based on the expedited schedule, this entire controversy could be decided in less than two weeks.

15. Should Wooton prevail, he will not be harmed by staying his expenditure of the funds pending resolution of this certified question because he would still have adequate time to campaign.

16. On the other hand, Walker is a candidate for the West Virginia Supreme Court of Appeals who, along with the other candidates, will be irreparably harmed if Wooton spends the state monies campaigning, only for this Court to agree with the Circuit Court of Kanawha County that the SEC's certification was invalid. The campaign monies cannot be unspent, so to speak.

17. Walker has no alternative but to invoke this Court's jurisdiction under Rule 28(b) because the Circuit Court no longer has jurisdiction to hear this matter. *See* W. Va. Code § 58-5-2 ("Any question of law . . . may, in the discretion of the circuit court in which it arises, be certified by it to the supreme court of appeals for its decision, and further proceedings in the case stayed until such question shall have been decided and the decision thereof certified back.").

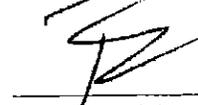
18. Without a stay, this Court, and the State Election Commission, has no assurance that the state monies will be recoverable if this Court concurs with the Circuit Court and invalidates the SEC's decision to certify Wooton.

19. Accordingly, pursuant to Rule 28(b), Walker, and the State Election Commission for that matter, cannot otherwise obtain acceptable relief without this Court's intervention because the state monies may be spent by the time this Court renders a decision.

Based on the foregoing, Walker respectfully requests that this Court grant the Application for Stay and enter an order prohibiting Wooton from spending, disbursing, encumbering, pledging or otherwise committing the \$475,000 until further order of this Court.

Dated: March 16, 2016

Respectfully submitted,



Thomas C. Ryan (WVSB #9883)
K&L Gates LLP
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Fax: (412) 355-6501
thomas.ryan@klgates.com

Counsel for Respondent Elizabeth D. Walker

Certificate of Service

I, Thomas C. Ryan, certify that I caused to be served via facsimile a copy of the Respondent Elizabeth D. Walker's Application for Stay of Petitioner Wooton's Expenditure of Public Campaign Financing Funds along with a courtesy copy via email upon counsel for the following Respondents, on March 16, 2016:

Robert M. Bastress, Jr.
Post Office Box 1295
Morgantown, WV 26507-1295
Fax: 304-293-6891
rmbastress@gmail.com

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Robert V. Berthold, Jr.
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Post Office Box 3508
Charleston, WV 25335
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Counsel for Respondents The Honorable Natalie E. Tennant, Vincent P. Cardi, Esq. and Gary A. Collias, Esq.

Thomas Patrick Maroney
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Counsel for Respondent William R. Wooton, Esq.



Thomas C. Ryan
W.V. Bar #9883

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 16-0226

WILLIAM R. WOOTON, candidate for the Supreme Court of Appeals of West Virginia,

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v.

Case No. 16-AA-13

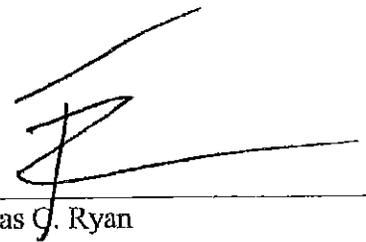
ELIZABETH D. WALKER, candidate for the Supreme Court of Appeals of West Virginia; West Virginia Secretary of State NATALIE E. TENNANT; West Virginia State Election Commission members GARY A. COLLIAS, and VINCENT P. CARDI; West Virginia State Auditor GLEN B. GAINER, III; and West Virginia State Treasurer JOHN D. PERDUE,

Respondents.

AFFIDAVIT OF THOMAS C. RYAN IN SUPPORT OF RESPONDENT ELIZABETH D. WALKER'S APPLICATION FOR STAY OF PETITIONER WOOTON'S EXPENDITURE OF PUBLIC CAMPAIGN FINANCING FUNDS

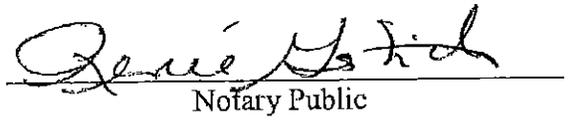
I, Thomas C. Ryan, being duly sworn, depose and state as follows:

- 1. I am counsel to Respondent Elizabeth D. Walker ("Walker"), candidate for the position of justice for the West Virginia Supreme Court of Appeals.
2. I submit this affidavit in support of Walker's Application for Stay of Petitioner Wooton's Expenditure of Public Campaign Financing Funds.
3. The document attached as Exhibit 1 dated February 23, 2016 is a true and correct copy of a letter I sent to counsel for Petitioner Wooton ("Letter Agreement").
4. The document attached as Exhibit 2 dated March 14, 2016 is a true and correct copy of an e-mail I received from Petitioner Wooton.



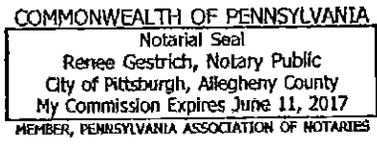
Thomas C. Ryan

Sworn and subscribed before me
this 16th day of March, 2016



Notary Public

My commission expires:





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February 23, 2016

Thomas Ryan
thomas.ryan@klgates.com

T 412-355-8335
F 412-355-6501

VIA EMAIL

Robert M. Bastress, Jr., Esq.
robert.bastress@mail.wvu.edu

Robert V. Berthold, Jr., Esq.
rvb@bertholdlaw.com

Re: Application for Stay filed in Walker v. Tennant, Civil Action No. 16-AA-13

Dear Gentlemen:

This letter is to memorialize our telephonic agreement entered into on February 18, 2016 in the above-referenced matter. Along with the *Petition of Elizabeth D. Walker for Judicial Review of the February 5, 2016 Decision of the West Virginia State Election Commission Certifying William R. Wooton Pursuant to W. Va. Code § 3-12-10* filed on February 9, 2016, Ms. Walker filed an Application for Stay pursuant to Rule 3 of the Rules of Procedure for Administrative Appeals. Respondent Wooton filed a response on February 12, 2016.

The parties have mutually agreed to the following:

- The parties have agreed to submit a certified question to the West Virginia Supreme Court;
- Ms. Walker will dismiss the Application for Stay without prejudice;
- Mr. Wooton agrees not to spend, disburse, encumber, pledge or otherwise commit any of the \$475,000 provided to him pursuant to W. Va. Code § 3-12-10 from the West Virginia Supreme Court of Appeals Public Campaign Financing Program pending final disposition of this matter; and
- Should Mr. Wooton decide to opt out of this agreement for any reason, counsel for Mr. Wooton shall provide counsel for Ms. Walker three (3) days electronic notice providing time for Ms. Walker to refile the Application of Stay.

Thank you very much for your attention in this matter. Please contact me with any questions.

Respectfully yours,

Thomas C. Ryan

From: [Bill Wooton](#)
To: [Ryan, Thomas C.](#)
Cc: [Robert Berthold Jr.; rmbastress@gmail.com: "Pat"](#)
Subject: Notice regarding agreement memorialized in letter dated February 23, 2016
Date: Monday, March 14, 2016 3:14:27 AM

Dear Mr. Ryan:

Please be advised that I have elected to opt out of the agreement memorialized in your letter of February 23, 2016 restricting my ability to spend, disburse, encumber, pledge or otherwise commit any of the \$475,000 provided me pursuant to W.Va. Code 3-12-10.

Respectfully,

William R. Wooton