

STATE OF WEST VIRGINIA

At a regular term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on February 29, 2012, the following order was made and entered:

State of West Virginia ex rel.
Donna J. Boley, Petitioner

vs.) No. 12-0185

Natalie E. Tennant,
Secretary of State of the
State of West Virginia and
Frank Deem, Respondents

On a former day, to-wit, February 15, 2012, came the petitioner, Donna J. Boley, by Anthony J. Majestro, Powell & Majestro, PLLC, her counsel, and presented to the Court her petition praying that a writ of mandamus be issued against the respondents as set forth therein. Thereafter, on February 21, 2012, pursuant to the Court's scheduling order, came the respondent, Natalie Tennant, by Thomas W. Rodd, Assistant Attorney General, and presented to the Court her written response. On the same day came the respondent Frank Deem, by Benjamin L. Bailey and Jonathan S. Deem, Bailey & Glasser, his attorneys, and presented to the Court his written response.

Acting without undue delay because of the necessity to resolve the issues in an expedited manner, on February 27, 2012 the Court issued a rule to show cause returnable at 10:00 a.m. on February 29, 2012 at which time this matter was fully submitted upon the oral argument of the parties.

The Court has thoroughly reviewed the written arguments and exhibits filed in this matter, and has carefully considered the oral arguments of the parties. The Court is of the opinion that, based

upon the applicable legal authority, the writ of mandamus prayed for the petitioner should be, and hereby is, GRANTED.

The Court concludes on the basis of the uncontested facts of this case that the residency dispersal requirements set forth in Article VI, Section Four of the West Virginia Constitution and West Virginia Code § 1-2-1(e)(1) apply to the election of senators from the Third Senatorial District, and require that "no more than one senator shall be chosen from the same county or part of a county to represent such senatorial district." Because one of the incumbent senators in the Third Senatorial District is a resident of Wood County, the residency dispersal requirements do not permit another Wood County resident to be chosen in that district. Accordingly, the respondent Frank Deem — who is a resident of Wood County — is prohibited from becoming the second resident of Wood County to be nominated or elected as one of the senators from the Third Senatorial District.

Recognizing the significance of election issues to the State of West Virginia and its citizens and given the parties' request for accelerated consideration and resolution of the issues as they relate to the preparation of ballots in the upcoming primary election, the Court issues its decision through this order with an opinion to follow in due course.

It is hereby ORDERED that a writ of mandamus is hereby awarded commanding and directing the respondent Natalie A. Tennant, Secretary of State: (1) to withdraw the certification of candidacy of respondent Frank Deem; (2) to further command, pursuant to the authority set forth in West Virginia Code § 3-1A-6(a), the Ballot Commissioners of Pleasants, Roane, Wirt and Wood Counties to strike, omit, or otherwise remove the name of Frank Deem from the official ballots, ballot cards, or ballot labels, as the case may be, to be used in the primary election to be conducted on May 8, 2012, as candidate for the Republican Party nomination to the office of state senator from

the Third Senatorial District; and (3) to further command, pursuant to the authority set forth in West Virginia Code § 3-1A-6(a), all election officials, county commissioners, clerks of county commissioners, clerks of circuit courts, boards of ballot commissioners, election commissioners, and poll clerks associated with the administration of the primary election to be conducted on May 8, 2012 in the Third Senatorial District to disregard and refrain from tallying, tabulating, certifying, or returning any vote cast, absentee, write-in, or otherwise, for respondent Frank Deem.

The Clerk of the Court is directed to issue the mandate forthwith.

Service of a copy of this order upon all parties herein shall constitute sufficient notice of its contents.

A True Copy

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

