

## STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on the 1<sup>st</sup> day of December, 2004, the following order was made and entered:

State of West Virginia ex rel.  
Mary Ann Podelco,  
Petitioner

vs.) No. 31793

Earl Ray Tomblin, President of the Senate; Robert S. Kiss, Speaker of the House of Delegates; and Office of the Governor of the State of West Virginia; Richard Alker, Executive Director of The West Virginia Ethics Commission; Glenn Gainer, the Auditor of the State of West Virginia; John Perdue, Treasurer of the State of West Virginia; Gregory Gray, Clerk of the West Virginia House of Delegates; and Darrell Holmes, Clerk of the West Virginia Senate, Respondents

On a former day, to-wit, May 17, 2004, came the petitioner, Mary Ann Podelco, by Daniel F. Hedges, her attorney, and presented to the Court her petition for a writ of mandamus to be directed against Earl Ray Tomblin, President of the Senate; Robert S. Kiss, Speaker of the House of Delegates; the Office of the Governor of the State of West Virginia; and Richard Alker, Executive Director of The West Virginia Ethics Commission.

Upon consideration whereof, the Court, on June 29, 2004, did issue a rule directed against the respondents, and received the written responses of the respondents; and thereafter, on November 9, 2004, this Court heard oral argument on the petition. Upon consideration whereof, the Court is of the opinion to transfer the rule to show cause previously issued by this Court to the Circuit Court of Kanawha County for further

proceedings as set forth herein.

First, the Auditor and Treasurer of the State of West Virginia, and the Clerks of the West Virginia House of Delegates and the West Virginia Senate are hereby made additional respondents in this case.

Second, the rule to show cause is hereby returnable to the Circuit Court of Kanawha County for random assignment to a judge of that circuit, and said judge is directed to conduct such proceedings and take evidence as is necessary to develop a complete record and make recommended findings of fact and conclusions of law on the issue of whether the requirements of Syllabus Points 5 and 6 of *State ex rel. The League of Women Voters of W. Va. v. Tomblin*, 209 W. Va. 565, 550 S.E.2d 355 (2001) have been fully met and complied with since the issuance of that opinion, and on the circumstances of and reasons for any non-compliance.

Third, this Court requests that the recommended findings and conclusions be transmitted to this Court by March 1, 2005, or as soon thereafter as possible, to be further reviewed by this Court; provided that, this Court recognizes the provisions of *W. Va. Code*, 4-1-17 [1997], and also that these provisions may be waived.

Fourth, the approval or adoption of the Budget Digest for the Fiscal Year 2006 (July 1, 2005 to June 30, 2006) be, and hereby is, stayed, pending the receipt of the findings and conclusions from the circuit court and further order of this Court.

Fifth, the circuit court may add such additional parties or dismiss any unnecessary parties as the circuit court may deem proper.

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

A True Copy

Attest: \_\_\_\_\_  
Clerk, Supreme Court of Appeals