

**FILED**  
**December 1, 2005**

released at 10:00 a.m.  
RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

Benjamin, Justice, concurring:

While I concur in the ultimate result reached by the majority of this Court, I write separately to note that I would not have ordered an election to be held without first giving the qualified voters of the City of Charleston the opportunity to fulfill the statutory election trigger. As noted by the majority, W. Va. Code § 8-13-13 (1971), provides that an election may be held to ratify or reject a duly published and enacted ordinance *if* thirty percent of the municipality's qualified voters sign a petition protesting the enactment of such ordinance within fifteen days after the last publication date of such ordinance as a Class II legal advertisement.<sup>1</sup> By simply ordering an election to be held, this Court has ignored this statutory election trigger and required the City to incur the expense of holding a special election to ratify or reject the subject ordinance absent the petition of thirty percent of the City's qualified voters. Instead of simply ordering an election to be held, I would have given the qualified voters of the City of Charleston up to thirty days<sup>2</sup> from receipt of this Court's

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<sup>1</sup> Mr. Cooper is not a citizen of the City of Charleston and, therefore, cannot be a qualified voter of the City of Charleston. W. Va. Code § 8-13-13 speaks only to the ability of "qualified voters" of the municipality to challenge an ordinance and require an election. Therefore, he likely does not have standing to submit a petition with the requisite thirty percent of qualified voters signatures and cannot sign such a petition.

<sup>2</sup> Pursuant to W. Va. Code §59-3-2 (a) (2002) a Class II legal advertisement is required to be published once a week for two consecutive weeks. As W. Va. Code § 8-13-13 provides for 15 days from the last publication date for the filing of the petition containing the requisite signatures, a thirty day window for the gathering of signatures and filing of the

decision to fulfil this statutory requirement. If they were able to gather the requisite signatures, the City of Charleston would be required to hold an election to ratify or reject the ordinance. Otherwise, the City and its citizens should be spared the expense of a special election.

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petition is actually more than required by statute.