

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**DOCKET NO. 21-0051**

**STATE OF WEST VIRGINIA ex rel.  
JEFF MAYNARD, Chair of the WAYNE  
COUNTY REPUBLICAN EXECUTIVE  
COMMITTEE,**

**Petitioner,**

**v.**

**JAMES C. JUSTICE, II, GOVERNOR  
OF WEST VIRGINIA,**

**Respondent,**

**and**

**The WEST VIRGINIA REPUBLICAN  
PARTY, INC.,**

**Intervenor-Respondent.**



**AMICUS CURIAE BRIEF**

**Amicus Curiae,**

**Jason Stephens,  
By Counsel,**

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### **Statutes, Ordinances**

West Virginia Code § 6-9A-3

West Virginia Code § 6-9A-2

## **I. INTRODUCTION**

The resignation of Derrick Evans from his seat in the West Virginia Legislature has now culminated in this dispute on who will replace him as a delegate. The Petitioner, Jeff Maynard, Chair of the Wayne County Republican Executive Committee ("WCREC"), claims only the WCREC holds the authority to suggest a replacement for Evans. Respondent Governor James C. Justice and Intervenor-Respondent the West Virginia Republican Party, Inc., contend only the State's Republican Party has the power to nominate the replacement. In making its decision on whether the state or local Republican party may properly propose names to fill a vacant delegate seat, your Amicus Curiae respectfully submits that neither the Petitioner or Intervenor-Respondent has followed our State's Open Meetings Act in suggesting replacements for Evans. Neither the WCREC or the West Virginia Republican Party had members from either Wayne County or West Virginia on the committee that proposed the replacement for Evans. And, as such, the same militates against adopting either party's proposed list of candidates.

## **II. IDENTITY OF THE AMICUS CURIAE**

Mr. Jason Stephens is a Wayne County resident who ran as Republican candidate for the West Virginia House of Delegates for the 19<sup>th</sup> District last year. Mr. Stephens prevailed in the Republican primary; however, Mr. Stephens finished third in the general election behind Mr. Evans and a democratic candidate. The Petitioner did not propose Mr. Stephens on the list provided, nor did they have an open process to solicit or select members.

The Proposed Intervenor-Respondent proposed a list that was incomplete as there was an insufficient number of selectors. Neither the Petitioner or the Intervenor-Respondent proposed Mr. Stephens on the lists provided to Governor Justice. As a previous candidate who actually sought Mr. Evans' seat, Mr. Stephens has an interest in the outcome of this matter, and having his name

suggested as a viable replacement for the 19<sup>th</sup> District delegate seat. On February 8, 2021, this Court granted Mr. Stephens leave to file his brief as Amicus Curiae pursuant to Rule 30 of its Rules of Appellate Procedure.

### III. ARGUMENT

**Neither the West Virginia Republican Party nor the WCREC has provided a proper list of candidates because both failed to comply with our State's Open Meetings Act.**

The parties presently before the Court dispute whether a county Republican executive committee or the state Republican executive committee has ultimate authority to propose a candidate to the Governor to fill a vacate delegate seat. In making their arguments, however, the aforementioned parties have not acknowledged that in proposing candidates, they did not comply with our State's Open Meetings Act.

West Virginia Code § 6-9A-3 provides that except as exempted by W.Va. Code § 6-9A, all meetings of any governing body shall be open to the public. In his petition seeking to intervene and/or join as an *amicus curiae*, Mr. Stephens has alleged that none of the candidates proposed by either the WCRER or the State's Republican Party followed after an open meeting with the public. See, Motion of Jason Stephens at ¶6. Rather, as alleged by Mr. Stephens, Petitioner Maynard intentionally and knowingly circumvented the Open Meetings process even after advice to seek counsel about the same. *Id.* at ¶7.

West Virginia Code § 6-9A-2 states, "'Governing body' means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature." The Open Meetings Act further defines "meeting"

as “the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means.” W.Va. Code § 6-9A-2(5).

In this case, neither of the parties before this Court have suggested that they complied with the Open Meetings Act. The failure to allow the public a voice in the political process denies not only Mr. Stephens, but every voting West Virginian a chance to participate in the political process.

In addition, Mr. Stephens has alleged that at least two persons on the respective committees were not eligible to select replacement delegates and were deemed ineligible by the West Virginia GOP, therefore, a legal quorum did not exist for which the committee could select candidate replacements.

#### **PRAYER**

Mr. Stephens requests that previous meetings be negated and the Governor appoint a candidate outside of the illegal meetings. These parties had 15 days to do this and did not legally complete their requirements.

WHEREFORE, Mr. Stephens respectfully requests that the Court order that the parties Comply with our State's Open Meetings Act, and, further, that any member of such committee allowed to suggest candidates to fill Evans' vacancy be residents from our State.

**Respectfully submitted,**

**Amicus Curiae,**

**Jason Stephens,  
By Counsel,**



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**Respondents.**

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**CERTIFICATE OF SERVICE**

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I, Hoyt E. Glazer, counsel for Proposed Intervenor, certify that on this 8<sup>th</sup> Day of February 2021, I served a true copy of the foregoing "Amicus Brief" to the West Virginia Supreme Court of Appeals, and served the same upon the parties by electronic mail and by U.S. Mail, postage-prepaid, first class, addressed as follows:

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