

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,

v.

THE WEST VIRGINIA REPUBLICAN PARTY, INC.,

Intervenor.

**PETITIONER'S REPLY BRIEF TO THE RESPONSE BRIEF OF
THE WEST VIRGINIA REPUBLICAN PARTY, INC.**

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ARGUMENT

Respondent-Intervenor, The West Virginia Republican Party, Inc., acting through its State Executive Committee (hereinafter “State GOP”), argues an erroneous interpretation of W. Va. Code § 3-10-5, wherein they conflate the authority and functions of the Wayne County Republican Executive Committee (hereinafter “WCREC”) under State Code, as set forth in W. Va. Code § 3-1-9(c), *et seq.*, with the authority and functions of the State GOP executive committee. Both the WCREC and the State GOP executive committees are separate and independent political committees under § 3-1-9, *et seq.* The WCREC is not “subordinate” to the State GOP under State Code. The WCREC is not a “subcommittee” of the State GOP under State Code. Rather, it has independently elected officers, organizational structure and bylaws. The State GOP holds no authority to modify the operation, nor to modify the bylaws, of the WCREC so as to usurp their authority in the exercise of the WCREC’s statutory power in nominating candidates for legislative vacancies within Wayne County pursuant to § 3-10-5.

The State GOP, along with the Respondent Governor, supplemented the Appendix to include the January 21, 2021 so-called “District Committee Letter” which they unilaterally submitted to the Governor, arguing that the letter is “facially valid” and somehow superior to the January 12, 2021 letter, which was previously submitted to the Governor by the WCREC pursuant to the legislative vacancy provisions of § 3-10-5. Even assuming *arguendo*, that the January 21, letter could lawfully apply to rescind or supersede the original list of candidates submitted to the Governor, the January 21 letter is not facially valid. The document’s illegitimacy is demonstrated by the Affidavit of Jeff Maynard, the Chair of the WCREC, filed herewith in Petitioner’s Supplemental

Appendix.¹ Petitioner is also submitting a signed statement of the WCREC County Secretary Janie Moyer,² which corroborates the Petitioner's testimony.³

Rather than acting in accordance with the clear and unambiguous language of § 3-10-5, the actions of the State GOP demonstrate a brazen attempt to usurp the statutory authority and responsibility of the WCREC. If allowed to do so, such a precedent would disenfranchise the 18,000 or so voters in Delegate District 19, and would further allow the similar disenfranchisement of roughly 774,000 West Virginia voters residing in single-county legislative districts.

I. Political Committees under State Code

The Governor, the Attorney General and the State GOP are either intentionally, or mistakenly, operating under the premise that a county party executive committee in West Virginia is somehow a subcommittee and/or subservient to a state party executive committee. What's being lost in the mix is the indisputable fact that a county party executive committee, or even a delegate or senatorial district committee, is a separate committee from that of the state party executive committee. It's not a subcommittee of the state executive committee. Nor is a county or legislative committee subservient or "subordinate" to a state executive committee. The State Republican Executive Committee has its own bylaws, which it can amend, revise, or modify, so long as they do so within State Code. Likewise, the Wayne County Republican Executive Committee has its own bylaws, a copy of which area attached hereto in Petitioner's Supplemental

¹ Supp. App. at 1.

² Supp. App. at 7.

³ County Secretary Janie Moyer was traveling at the time when she was sought to provide her affidavit, and was unable to find a Notary Public to notarize her signature in time for utilization in this Reply Brief.

Appendix. A state political committee cannot modify a county committee's bylaws, or exercise outside control of the committee, just by virtue of being committees within the same political party. Similarly, a county committee likewise lacks the authority to modify a state committee's bylaws, or exercise its statutory powers.

The section of State Code which governs elections establishes and controls the existence and statutory powers of political party committees in West Virginia is W. Va Code §3-1-9, *et seq.*, which contains three subsections - (a), (b) and (c) - which respectively provides for three types of political party committees: (a) a state executive committee; (b) multi-county legislative district executive committees; and (c) county executive committees.

A. State Executive Committees

W. Va Code §3-1-9(a) provides for the election of State political party committee members, comprised of elected representatives chosen by voters out of each respective State senatorial district in the State. According to the statute, the State Committee forms from the 68 locally elected committee members from respective senatorial districts. This is comprised of four members per district, including the requirement of two men and two women. This body of 68 elected committee members then, pursuant to the statutory directions, convenes and appoints three additional members from the "state at large." Thus, by statute, the state committee membership body is comprised of 71 members.

W. Va Code §3-1-9(a) also provides that the state committee "may expand the voting membership of the committee." In accordance with this, the State Republican Executive Committee indeed expanded its voting membership to include elected officers and the Chair as voting members, as well as additional vice-chairs, and other

subgroups, such as the Federation of Republican Women. In 1985, the State GOP voted to expand the voting membership to include all 55 county chairs as voting members. This nearly doubled the size of the State GOP, and for the first time enabled the chairs of the county executive committees to vote. Pursuant to the State GOP's authority to expand its body of voting members, it voluntarily invited the county chairs for involvement in State GOP votes. The county executive committees did not cede their independent statutory powers or functions in exchange for, or in conjunction with, this expansion of the State GOP's voting membership. There was no modification to the WCREC bylaws in 1985, nor thereafter, to subordinate or delegate its statutory authorities to the State GOP just by virtue of its Chair being granted a vote in the state party's executive committee. In all, at present, the State GOP executive committee numbers roughly 130 voting members.

B. Multi-County Legislative District Executive Committees

W. Va Code §3-1-9(b) provides for the election of members of the various legislative districts, including executive committees for congressional districts, state senatorial districts and delegate districts. These are elected positions by the precinct voters of each political party, with one male and one female, *"if the county is situated in a multicounty state senatorial or delegate district."* The statute provides that the county party executive committee has the authority to fill vacancies to these committees. The statute also provides for a transition between fluctuations of committee members for multi-county legislative districts following redistricting changes which alters the number of applicable members:

When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county in a congressional

or multicounty senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multicounty district until the expiration of their terms: Provided, That the county executive committee of the political party shall determine which previously elected members will represent the county if the number of multicounty state senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of districts is increased.

Thus, even for multi-county legislative districts which have their own elected committees, such as congressional districts and multi-county senatorial and delegate districts, the sole authority of vacancy replacements is placed with the county executive committees.

C. County Executive Committees

W. Va Code §3-1-9(c) provides for the election and creation of county political executive committees. It provides for the precinct voters to elect either one, or two, male and female committee members, respectively, for each district, based on the number of districts existing in the county. W. Va Code §3-1-9(d)-(e) provides that the county commission of each county shall create the applicable committee districts within their boundaries, dependent on population and legislative districting:

(d) For the purpose of complying with the provisions of this section, the county commission shall create the executive committee districts. The districts shall not be fewer than the number of magisterial districts in the county, nor shall they exceed in number the following: Forty for counties having a population of one hundred thousand persons or more; thirty for counties having a population of fifty thousand to one hundred thousand; twenty for counties having a population of twenty thousand to fifty thousand; and the districts in counties having a population of less than twenty thousand persons shall be coextensive with the magisterial districts.

(e) The executive committee districts shall be as nearly equal in population as practicable and shall each be composed of compact, contiguous territory. The county commissions shall change the territorial boundaries of the districts as required by the increase or decrease in the population of the districts as determined by a decennial census. The changes must be made within two years following the census.

Committees created under §3-1-9(b) and (c) exist as separate and independent executive committees from the state party executive committee, with their own elected members chosen from the voters in their districts. W. Va Code §3-1-9(g) provides for each committee so designated to be created by the county commission, to operate independently of other political executive committees, with their own officers and organizational structure:

(g) As soon as possible after the certification of the election of the new executive committees, as herein provided, the newly elected executive committee shall convene an organizational meeting within their respective political divisions, on the call of the chair of the corresponding outgoing executive committee or by any member of the new executive committee in the event there is no corresponding outgoing executive committee. During the first meeting the new executive committee shall select a chair, a treasurer and a secretary and other officers as they may desire. Each of the officers shall, for their respective committees, perform the duties that usually appertain to his or her office. The organizational meeting may be conducted prior to July 1, but must occur after the certification of the election of the new executive committees. If the organizational meeting is conducted prior to July 1, the new committee shall serve out the remainder of the outgoing committee's term and is authorized to conduct official business. A current listing of all executive committees' members shall be filed with the Secretary of State by the end of July of each year. Vacancies in any executive committee shall be filled by the appropriate executive committee as provided in subsection (f) of this section no later than sixty days after the vacancy occurs. The chair of each executive committee shall submit an updated committee list to the Secretary of State within ten days of a change occurring. Executive committee membership lists shall include at least the member's name, full address, employer, telephone number and term information. An appointment to fill a vacancy does not take effect if the executive committee does not submit the updated list to the Secretary of State within the allotted time period. If the executive committee fails to submit the updated list within the allotted time period, it must make another appointment pursuant to the provisions of this section and resubmit the updated list in a timely manner. If a vacancy on an executive committee is not filled within the sixty-day period prescribed by this section, the chair of the appropriate executive committee, as provided in subsection (f) of this section, shall name someone to fill the vacancy....

Subsection (g) also provides for a separation between the appointment powers of a county executive committee chair and a state executive committee chair in filling vacancies for legislative districts within its borders:

If the chair of a county executive committee fails to fill a vacancy in a congressional district, state senatorial district or delegate district executive committee, and the failure to fill such vacancy prohibits said committee from conducting official business, the chair of the party's state executive committee shall fill such vacancy.

Clear and unambiguous State Code places the authority and responsibility of making nominations for legislative vacancies at the local level, only allowing a state executive committee to intervene where the local committee fails to act as required by law. Therefore, if a delegate in a multi-county district resigns, the executive committee of the said multi-county legislative district, pursuant to W. Va Code §3-1-9(b), is the applicable and empowered executive committee to convene its membership, who by virtue of §3-1-9(b) all reside in that district, to nominate three qualified candidates for the Governor's appointment.

If a delegate in a single-county district resigns, it's the county executive committee that meets, according to its bylaws and organizational structure, and convenes a vote of those of its members who reside within that vacant legislative district. To the extent that some members of the county executive committee may reside in a separate district, though still within the county, the vote which would take place is essentially a subcommittee of the county executive committee, in that only votes from the district members may lawfully count towards the vacancy nominations. Such is the composition of the Delegate District 19 committee members in Wayne County. There is no separate executive committee for Delegate District 19, since it resides wholly within Wayne County. Therefore, it falls not under W. Va Code §3-1-9(b), but rather, §3-1-9(c), as the entirety of District 19's elected committee membership are all members of the WCREC by virtue of §3-1-9(c).

There are currently 43 of 100 seats in the House of Delegates which reside wholly within a single county, each containing around 18,000 voters. They are as follows: 3rd Ohio, 8th Wood, 10th Wood, 12th Jackson, 15th Putnam, 18th Cabell, 19th Wayne, 23rd Boone, 29th Raleigh, 30th Raleigh, 35th Kanawha, 36th Kanawha, 37th Kanawha, 39th Kanawha, 40th Kanawha, 45th Upshur, 50th Marion, 51st Monongalia, 52nd Preston, 56th Mineral, 60th Berkeley, 62nd Berkeley, 63rd Berkeley 64th Berkeley, 65th Jefferson, 66th Jefferson, and the 67th Jefferson. There currently exists only one state senatorial district which resides wholly within one county: the 17th Kanawha. Combined, there are approximately 774,000 West Virginia voters who reside in single county legislative districts, such as Wayne County and the 19th Delegate District.

In October of 2018, there was a vacancy created in Delegate District 8, which resides wholly within Wood County. This vacancy was created by the death of Del. Frank Deem, a Republican. Within fifteen days thereafter, the Wood County Republican Executive Committee convened a meeting of its members residing in the 8th Delegate District. Through its then-Chair, Rob Cornelius, a letter on Wood County Republican Executive Committee letterhead, was submitted to Respondent Governor Justice, containing a list of three qualified candidates who were chosen by the committee members of the 8th District.⁴ The news media reported on the county executive committee's nominations, and the Governor subsequently made an appointment from the list contained in that letter, within five days of receiving it.⁵ The media also reported on the Governor's appointment, publishing a photograph of Governor Justice smiling

⁴ Supp. App. at 8.

⁵ Supp. App. at 9-10.

with his appointee.⁶ There was no reported, nor indicated, involvement in that process by the State GOP executive committee, or its officers. There was no apparent certification, nor signature, by the State GOP Chair. Nor was the letter which was submitted to the Governor written on State GOP letterhead. Nor was it sent from the State GOP headquarters. A copy of the letter is attached to the Petitioner's Supplemental Appendix.⁷ The process followed by both Wood County in 2018 and Wayne County in 2021, are consistent with the process followed by county executive committees in single-county districts where vacancies have occurred in the past.

In 2010, now Acting-Chair of the State GOP, Roman Stauffer, was the Chair of the Mercer County Republican Executive Committee. During his tenure as Chair that year, there were two separate vacancies in delegate districts which were wholly located within Mercer County. Reviewing emails and committee meeting minutes, and other related documents, from the nomination process performed by Mr. Stauffer at that time, indicate that he followed a nearly identical process to that of the WCREC in the matter *sub judice*. Attached hereto in the Petitioner's Supplemental Appendix, are 2010 emails from Roman Stauffer, as well as other documents from the Mercer County Republican Executive Committee, which were generated during the vacancy nomination processes at that time. These documents indicate that there was little, if any, involvement by the State GOP in those 2010 vacancy nominations chaired by Mr. Stauffer.⁸ Indeed, media reports at the time reported that, "The Mercer County Executive Committee submitted a

⁶ Supp. App. at 10.

⁷ Supp. App. at 8.

⁸ Supp. App. at 11-24.

letter Wednesday to the governor with the names of three nominees....”⁹ The article further reported, “Roman Stauffer, chairman of the committee, said he worked with Shott on rounding up ‘three strong candidates, just so we could have a strong delegate to be ready to take over and hit the ground running.’”¹⁰

The arguments presented by the State GOP in their brief pertain to alleged violations of their internal bylaws. The applicable bylaws addressed by the State GOP consist entirely of recent controversial amendments, enacted in the summer of 2020. These amendments overtly seek to usurp the authority, organization and operation of county committees, such as the WCREC. They also seek to modify W. Va. Code § 3-10-5 to insert themselves into the code section by virtue of intra-party “regulation.” In comparison, the Democratic Party of West Virginia executive committee bylaws contain no mention whatsoever of legislative vacancies. The obvious reason for this is the clear and unambiguous language of § 3-10-5, which places sole authority for legislative vacancy nominations at the local level.

II. State GOP Bylaws and Interference with the WCREC

The State GOP has engaged in an attempted power grab to give itself what is essentially a veto over the vote of the local committees, as well as the ability to micromanage and control the vacancy replacement process. They devoted an entire section of their bylaws to legislative vacancies, under a theory that county executive committees are subservient to the state committee, or a mere subcommittee:

Section 4. Vacancy in the State Legislature: Wherever else public or Party law requires the filling of an elected office by a Party Committee, the State

⁹ Supp. App. at 16.

¹⁰ Supp. App. at 16.

Senate Executive Committee or House of Delegate Executive Committee, whatever the case may be, shall fulfill their obligations in accordance with state law as provided in this rule....

(c) The State Party Chairman, or their designee, shall facilitate the process of conducting interviews and filling such office by whatever means necessary, which shall include but is not limited to, facilitating and conducting the interviews, calling special meetings of the District Vacancy Committee, and certifying the results of such committee meetings to the Governor. The State Chairman shall take care to see that each candidate nominated by the Republican Party for such office is constitutionally eligible.

(d) The State Chairman and State Party Staff shall, in consultation with the elected Chair of the District Vacancy Committee, prepare a list of questions that will be asked of candidates during their interview process. The State Chairman and State Party Staff shall ensure that there is adequate public notice of such vacancy and that there are at least Seventy-two (72) hours between the time that the notice is posted publicly and the time that the application period closes.

a. The nomination of such candidates for a vacancy shall occur in the following manner:

i. If there are three (3) candidates who have applied, the Vacancy Committee need not convene, unless called to do so by the State Chair, the District Vacancy Chair, or upon the application of forty percent (40%) of the members of the District Vacancy Committee. In such cases, should there be only three candidates, and the committee is not called, the State Chairman shall certify those three names to the Governor and shall provide a copy to the Secretary of State.

ii. If there are less than three (3) candidates, the Vacancy District Committee shall convene and endeavor to fill the remaining slots from a list of eligible registered Republicans who are constitutionally eligible to hold such office and are registered to vote in and reside in the District from which the vacancy arises.

iii. If there are more than three (3) candidates who apply for such office, interviews will be conducted in person at a location in the District, unless such district is within twenty-five (25) miles of the State Party Headquarters, at which point the interviews shall be conducted at State Party Headquarters. All interviews will be uniform and no candidate shall be asked different questions, questioned by individual committee members, or be given more or less time. Upon the conclusion of the interviews, the District Vacancy Committee shall deliberate and choose three candidates to submit to the Governor. The District Vacancy Committee shall vote by blank ballot and no name shall be placed on the list submitted to the Governor unless they receive a majority of votes cast. The members of the District Vacancy Committee shall vote for up to three

candidates on the first round of balloting. If any candidate receives a majority of votes cast, that candidate shall be nominated and their name shall be removed from the next round of voting. In succeeding rounds of balloting, the committee members shall only be allowed to vote for the number of slots left to nominate. In each succeeding round of balloting, the candidate receiving the fewest votes shall be eliminated for the next round of balloting, unless there are multiple candidates who receive the fewest amounts of votes. This process shall continue indefinitely until a slate of three (3) candidates is nominated.

iv. Upon the conclusion of the committee interviews and action, the State Chairman, District Vacancy Committee Chairman (or Vice Chair in the absence of the Chair), and District Vacancy Committee Secretary shall certify, by letter on State Party letterhead, the list of three (3) names for such vacancy. This letter shall be filed by the State Party Staff within twenty-four (24) hours of the letter being signed by all three officers. All letters and certification papers shall be filed with the Governor of West Virginia and the West Virginia Secretary of State.

v. In any case where there is no Senate Vacancy Committee or Delegate Vacancy Committee due to the district being wholly within one county, the County Chair shall appoint a subcommittee which shall act as the vacancy committee and the process of such committee be facilitated by the County Chair and State Chair. In such case, the names of the three (3) nominated candidates shall be certified by the County Chair, County Secretary, and State Chair (emphasis added).

Subsection (v) purports to create certain requirements and restrictions for county executive committees such as the WCREC, which is one of 43 single-county legislative delegate districts in the State. However, W. Va Code §3-10-5, gives no authority to the state political committees to interfere with the local committees in the legislative vacancy nomination process. Local political committee members are elected by party voters in the district precincts, pursuant to W. Va Code §3-1-9(b), *et seq.*, where voters elected the legislator who caused the vacancy. The vacant legislative seat represents the voice of those particular voters in the State Legislature, rather than the other 99 districts. By enacting §3-1-9, *et seq.*, the Legislature rightfully placed the authority over nominations for legislative vacancies in the hands of the elected party representatives of

the voters of the vacant district - not in the hands of the State executive committee or unelected party leaders.

The statutory provisions in §3-1-9, *et seq.*, apply equally to both the Republican Party and the Democrat Party. Out of the two, only the Republican state executive committee has attempted to alter the legislative vacancy process by amendment of their state executive committee bylaws. But it wasn't always so. Prior to the summer of 2020 meeting of the State GOP, the State Republican Executive Committee bylaws contained no mention of the State GOP having authority to interfere with or control the nomination of legislative vacancies.¹¹

The State GOP is a creation of W. Va. Code §3-1-9, *et seq.*, which delineates state committees and county or district committees as separate independent and self-governing executive committees with elected members from their districts. The State GOP has no legal foundation in State Code to "subordinate" local committees and local voters at the subjective whim of a state party official - who, like Acting Chair Stauffer, are unelected by the district voters.

Thus, post-summer of 2020, Republican voters in West Virginia have somehow found themselves disenfranchised, as compared to their Democrat counterparts. W. Va. Code §3-1-9 and §3-10-5 remains the same, but only the State GOP acted to usurp local committees and voters. Like the previous Republican state committee bylaws, the Democrat state committee bylaws contain no mention of state involvement with legislative vacancies.¹² The only provision contained in the Democrat's bylaws which

¹¹ <https://web.archive.org/web/20181029045551/http://wvgop.org/about/laws>

¹² <https://wvdemocrats.com/bylaws>

approaches something appearing as interference with local committees, is the following provision:

4. Vacancies: If a County Executive Committee fails to meet its obligation to fill a vacancy on the committee within 60 days of the vacancy occurring the State Chair may appoint a replacement.

However, this provision applies to vacancies on *committees* - not *legislative* seats.

There's good reason for state committee bylaws to be silent on the regulation of the legislative vacancy nomination process: §3-10-5 expressly empowers the county and district committees with that sole authority, to the exclusion of the state committees. Moreover, the state party executive committees can't regulate their way around the exclusion via amendment of their internal bylaws. State Code provides that the state committees may not utilize their bylaws to modify or violate existing state laws:

§3-1-11. Powers of state executive committee; central or subcommittees;

The state executive committee of each party may make such rules for the government of such party, not inconsistent with law, as may be deemed expedient; and it may also revoke, alter, or amend, in any manner not inconsistent with law, any present or future rules of such party. All acts of such state or other committees may be reviewable by the courts.

Any party executive committee may create and appoint subcommittees, campaign, or central committees, and delegate to them such powers and authority in the executive and administrative work of the committee as they shall deem advisable; but no power or authority shall be delegated to such subcommittee, campaign committee, or central committee, in contravention of any law of the state.

For the State GOP to give themselves what is essentially a veto over the legislative vacancy process, as well as the right to control the process of nominations for legislative vacancies, to the exclusion or subordination of the elected members of the local committees, is, at best, inconsistent with the law, and more appropriately characterized as an overt attempt at re-writing both W. Va. Code §3-1-9 and §3-10-5.

III. Judicial Interference in Intra-Party Disputes

The State GOP misconstrues the Petition as a request for the judiciary to “intervene in or second-guess, intra-party disputes or affairs,”¹³ citing State ex rel. Zagula v. Grossi, 149 W. Va. 11,19, 138 S.E.2d 356, 361 (1964) (“[I]t is a well settled principle that political committees have very broad powers in matters of party regulation, and the courts, respecting that power, seldom find basis of justification for interference therewith.”). Viewed more accurately, the Petition rather requests that Mandamus issue to force the Governor to comply with his non-discretionary legal duties under §3-10-5, instead of intervening in, second-guessing, and otherwise enabling the State GOP to meddle in the statutory affairs of the WCREC and its Delegate District 19 members. In lieu of following the simple gubernatorial mandate contained in the provisions of §3-10-5, which has already been found by this Court to be clear and unambiguous, Respondent Governor Justice instead coordinated with the State GOP in their attempts at subjecting the WCREC to the outrageous new state committee bylaw provisions on legislative vacancies.¹⁴

It is undisputed that the first list of three qualified candidates from the WCREC was received by the Governor on January 14, in an almost identical manner and procedure as the vacancy list he received in October of 2018 from the Wood County Committee.¹⁵ It is further undisputed that the Governor waited the entire length of the five day period without making an appointment from the list. There was no second list

¹³ See State GOP's Brief at 16.

¹⁴ See Affidavit of Jeff Maynard at Supp. App. 1.

¹⁵ See October 23, 2018 letter from WCREC at Supp. App. 8.

provided to the Governor until January 21, which was 7 days after the first list was received. Had the Governor followed the mandate contained in §3-10-5, a nomination would have been made from the first list. Only after the five day period had expired did the Governor's General Counsel and Chief of Staff, Brian Abraham, call the Petitioner, WCREC Chair, Jeff Maynard, on the telephone and advise him that the Governor did not utilize the list submitted by the WCREC based on the representations of State GOP Acting Chair Stauffer, that State GOP bylaws must be followed.¹⁶

Even assuming *arguendo*, that the WCREC could be unilaterally and forcibly subjected to State GOP bylaws interfering in WCREC's statutory authority over legislative vacancies, the Respondent Governor had no discretion to refuse to fill the vacant appointment based on the representations of Acting Chair Stauffer, or any other state party official. W. Va. Code §3-10-5 contains no requirement for state committee participation in, nor certification of, the list of nominees for presentment to the Governor. The appropriate course for the State GOP to pursue in their attempt at enforcing their bylaws on the WCREC would be direct legal challenge against the WCREC and/or the Governor. However, doing so would have placed the State GOP in their present circumstance of doing exactly that which they accuse the Petitioner of doing, which is asking the judiciary to interfere and resolve an intra-party dispute.

Bylaws are internal operating regulations, which under W. Va. Code §3-1-11 are void to the extent they are inconsistent with, or contravene, State Code. The disputed provisions are directly and materially inconsistent with, and proactively seek to undermine, the provisions of §3-10-5. The Petitioner herein only seeks the application of

¹⁶ See Affidavit of Jeff Maynard at Supp. App. 1.

§3-10-5, which creates a non-discretionary gubernatorial mandate to fill the Delegate District 19 vacancy with a candidate from the January 14, 2021 list. §3-10-5 does not provide the State GOP with a veto, nor any authority whatsoever, in participating or controlling legislative vacancy nominations.

Throughout the five day period following the Governor's receipt of the January 14, letter from the Petitioner, the Governor possessed no discretion for determination that the conveyance of nominated candidates was invalid. As the State GOP argues in discussing their subsequent letter, the WCREC letter was "facially valid."¹⁷ Whether State GOP bylaws were followed is irrelevant, as the WCREC has its own bylaws,¹⁸ which specifically provides for nominations for legislative vacancies in Delegate District 19:

Section I. Duties

The Executive Committee members shall:

...

7. Whenever a vacancy occurs in a Republican delegate's seat in the West Virginia Legislature, through death, resignation, or other cause, and the delegate district lies solely within Wayne County, choose three nominees to fill the vacancy and certify the names to the Governor within fifteen days after the vacancy occurs [WV Code '3-1-9; '3-10-5];¹⁹

Additionally, the WCREC bylaws provide that the Petitioner, as Chairman has the following duties and authorizations, among others:

1. Be the chief executive, responsible for the day-to-day management and administration of Executive Committee affairs, under the direction of the Executive Committee;

¹⁷ See State GOP Brief at 116.

¹⁸ Supp. App. at 25.

¹⁹ Supp. App. at 28.

2. Preside at meetings of the Executive Committee and cast the deciding vote in the event of an equal division....
3. Represent the Executive Committee at all times....
4. Schedule meetings of the Executive Committee in advance of legal deadlines to enable members to perform duties that are theirs to perform....
6. Perform duties required of county executive committees by the Code when specifically authorized to do so by the Executive Committee....
9. Nominate the members and designate the chairman of all standing subcommittees and special subcommittees as appropriate....²⁰

Thus, the Petitioner, as Chairman of the WCREC, has the authority and duty under the bylaws to act on behalf of the WCREC in performing the duties required of the WCREC under the State Code, including the conveyance of nominations pursuant to §3-10-5. The WCREC bylaws do not prohibit the Chairman from doing so, in the manner in which it was done, nor requiring the signature of the WCREC Secretary as a necessary component. The use of WCREC letterhead in conveyance of nominations to the Governor is consistent with, and authorized by, the WCREC bylaws, and is not inconsistent with W. Va. Code §3-10-5 - as past practices demonstrate.

In examining the WCREC bylaws, an additional problem surfaces related to the alleged validity of the January 21, letter from the State GOP. WCREC bylaws require in Section "G" that, "*A quorum at any regular or special meeting shall consist of three or more members of the body....*" and that, "*In the absence of a quorum, a meeting may continue, but no business can be transacted.*" There were four members of the subcommittee of Delegate District 19 members. All four participated in the deliberation and nominations contained in the January 14 letter from the Petitioner. However, at the

²⁰ Supp. App. at 30.

second meeting organized by the State GOP, only two members of the Delegate District 19 subcommittee were present. Being less than three, they could transact no business under the bylaws.

CONCLUSION

The West Virginia Governor is mandated by W. Va. Code § 3-10-5 to fill the vacant 19th Delegate District seat from among the three qualified candidates presented to him in the January 14, 2021 letter from the Petitioner and the Wayne County Republican Executive Committee. The Governor does not have the discretion to choose from a second and subsequent list of qualified candidates, which would usurp the statutory rights of the Wayne County Republican Executive Committee members of the 19th Delegate District, as well as their constituents. The first list was provided to the Governor within the fifteen day time period prescribed by W. Va. Code § 3-10-5 and the Governor is mandated to choose from it.

Despite the decision of the Governor to make an appointment from the list submitted to him on January 21, 2021, such appointment is invalid. Since the Delegate District 19 members provided their list of three qualified candidates to the Governor within fifteen days of the vacancy, no appointment of a third party can lawfully be made under § 3-10-5. Though an erroneous appointment was made, the appointment has not been seated and sworn into office by the Legislature. Therefore, an unlawful appointment of a third party cannot moot this Petition, nor the non-discretionary mandate under § 3-10-5 that a candidate from the January 14, 2021 list must be appointed by the Governor.

JEFF MAYNARD, Chairman of the
WAYNE COUNTY REPUBLICAN EXECUTIVE
COMMITTEE,
By Counsel,



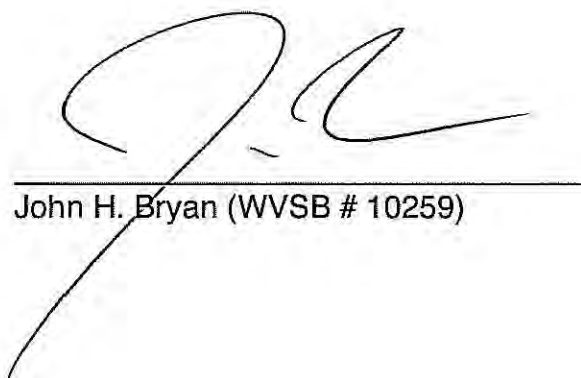
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 4, 2021, a copy of the **PETITIONER'S REPLY BRIEF TO THE RESPONSE BRIEF OF THE WEST VIRGINIA REPUBLICAN PARTY, INC.**, was served on the parties to this case by U.S. Mail and email as set forth below:

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