

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. _____

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**STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,**

Petitioner,

v.

**THE HONORABLE C. RICHARD WILSON,
Judge, Second Judicial Circuit, Circuit
Court of Tyler County, and JEREMY
MICHAEL WEEKLEY,**

Respondents.

PETITION FOR A WRIT OF PROHIBITION

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INTRODUCTION

Respondent Jeremy Michael Weekley urged the Circuit Court of Tyler County to disqualify the county's assistant prosecuting attorney from Respondent Weekley's criminal prosecution so, he said, his counsel could call the assistant prosecuting attorney to testify about the interview of a witness in relation to the victim's credibility. Recognizing the futility of such an endeavor—and further recognizing that neither the assistant prosecuting attorney nor the elected prosecuting attorney had done anything untoward in this case—the court reached specific findings of fact rendering disqualification improper. The court, in fact, crafted a conclusion of law expressly denying Respondent Weekley's motion to disqualify the assistant prosecuting attorney on the specific grounds presented in his motion. The court nevertheless found its own shaky ground on which to tie the hands of the assistant prosecuting attorney, as well as those of his elected boss.

In a conclusion at odds with the court's findings of fact that preceded it, the court disqualified the entire prosecuting attorney's office "to moot any argument that the State has withheld possible exculpatory evidence . . . and to ensure the fair and efficient administration of justice in this criminal prosecution." But the circuit court's order of disqualification accomplishes the opposite; the fair administration of justice in this case requires that the electorate's chosen, qualified prosecutor be allowed to fulfill his constitutional duty. The circuit court's order to the contrary is so flagrant that it deprives the State of its right to prosecute the case in the manner prescribed by law and, in turn, deprives the State of a valid conviction under the guidance of the electorate's chosen prosecutor.

QUESTION PRESENTED

Does a circuit court's flagrant disqualification of a prosecuting attorney, after the court explicitly finds no basis for disqualification, deprive the State of its right to prosecute the case such that the circuit court's abuse of its legitimate powers warrants extraordinary relief by this Court?

STATEMENT OF THE CASE

In February 2025, a Tyler County grand jury indicted Respondent Weekley on one count of first-degree sexual assault (W. Va. Code § 61-8B-3(a)(2)); two counts of sexual abuse by a custodian or person in a position of trust to a child (W. Va. Code § 61-8D-5(a)); and one count of first-degree sexual abuse (W. Va. Code § 61-8B-7(a)(1)).¹ Pet'r's App 22-25. Each count charged a crime against a minor child. Pet'r's App. 22-25. The first two counts are relevant to this petition. The first alleged that Respondent Weekley committed first-degree sexual assault against minor victim A.R.M. (birth date August 26, 2006) on an unspecified date in February 2018. Pet'r's App. 22. The second alleged that Respondent Weekley committed sexual abuse by a custodian or person in a position of trust against A.R.M., also on an unspecified date in February 2018. Pet'r's App. 23.

Trial began on January 13, 2026. Pet'r's App. 27. After taking the testimony of two other witnesses, the State called A.R.M., now nineteen years old, to testify about Respondent Weekley's assault and abuse of her. Pet'r's App. 85. She testified that, on February 24, 2018, Respondent Weekley (then her mother's boyfriend) took off her pants and underwear, then put his penis in her vagina and "thrust[] about three times." Pet'r's App. 87-88.

When defense counsel cross-examined A.R.M., he asked about her prior statements concerning Respondent Weekley's assault and abuse: "[W]ould [you] agree with me that in all of those statements that you gave you never once gave the exact date that this occurred, did you?" Pet'r's App. 94. A.R.M. responded, "No." Pet'r's App. 94. Counsel then asked whether A.R.M. ever told the assistant prosecuting attorney the date that she was abused and assaulted, and A.R.M.

¹ The third count of this indictment, charging first-degree sexual abuse against minor victim D.R., was dismissed on the State's motion by order entered on September 2, 2025. Pet'r's App. 26.

replied that she had not. Pet'r's App. 95. On further questioning, A.R.M. explained that she was able to identify the precise date when testifying because she "looked back through [her] camera roll" and found a picture with a friend she had visited on the date of the assault. Pet'r's App. 95. Under further cross-examination, A.R.M. elaborated that she made this discovery in 2024, and her mother informed the assistant prosecuting attorney of the precise date of the assault and abuse around that time. Pet'r's App. 87-88.

Upon eliciting A.R.M.'s testimony pinpointing the date of her assault, Respondent Weekley's counsel moved the court for the dismissal of Counts One and Two of the indictment, on the ground that the State failed to earlier provide the precise date of the charged crime. Pet'r's App. 98-99. Respondent Weekley's counsel accused the assistant prosecuting attorney of prosecutorial misconduct. Pet'r's App. 100. The assistant prosecuting attorney responded that when A.R.M.'s mother "told [him] about this specific date that they had identified [he] asked [the mother] to provide [him] with a written statement." Pet'r's App. 108. That statement, he informed the court, was provided to Respondent Weekley's counsel, and the statement "references that the defendant and [A.R.M.] were in bed together on the morning of February 24th."² Pet'r's App. 108-

² Counsel read the mother's entire statement into the record:

On the evening of February 24th I attended a WVU basketball game with Jeremy Michael Weekley. My daughter had spent the night at his house with me and I had to leave her there and go to work that morning. She was in bed and Mr. Weekley was sleeping on the couch when I left. On the way home from Morgantown Mr. Weekley told me that he moved to the bed with [A.R.M] after I had left. He stated she rolled over onto his arm and was riding his arm in her sleep. I asked him what he did and he said nothing, he just left his arm under her and waited for her to stop. Then he told me not to ask her about it.

Pet'r's App. 110-111. Though the adequacy of the disclosure is not at issue in this petition, Petitioner notes that the circuit court found that "[t]he statement did include context that could assist the [d]efendant's recollection, including their destination and the purpose of their trip, and (continued...)

09. The State opposed dismissal of Counts One and Two, Pet'r's App. 108, and suggested if the court were inclined to grant some form of relief, it should be a declaration of a mistrial, Pet'r's App. 115. The court ultimately agreed that the State's actions were not egregious and dismissal was not warranted, but the declaration of a mistrial would "allow the respective sides to return to their [respective] camps." Pet'r's App. 121. The court declared a mistrial and dismissed the jury. Pet'r's App. 126.

Respondent Weekley renewed his motion to dismiss. Pet'r's App. 186. The court conducted a hearing on the motion. Pet'r's App. 128-144. Respondent Weekley represented that after learning that A.R.M. believed the date of her assault was February 24, 2018, he attempted to obtain bank records to support an alibi defense, but the records were no longer available. Pet'r's App. 130-131. Because the late disclosure obstructed his alibi defense (notwithstanding that he had known all along that the State charged the offense occurred in February 2018), dismissal was appropriate, Respondent Weekley reasoned. Pet'r's App. 131. His counsel represented that A.R.M.'s trial testimony reflected that she told the assistant prosecuting attorney in 2024 about the precise date of the abuse, though the assistant prosecuting attorney told the court he was not aware of the date until May 2025, when A.R.M.'s mother provided her statement. Pet'r's App. 132-133. The court denied the renewed motion to dismiss. Pet'r's App. 137-138. Respondent Weekley then requested that the court instruct the jury "that the [S]tate had this information and didn't provide it in a timely basis." Pet'r's App. 138. The court declined, and Respondent Weekley argued that the assistant prosecuting attorney, then, was a witness on the issue of A.R.M.'s

details on the day's earlier events and their nature that could lead a rational person to conclude that the statement related to the charged offenses." Pet'r's App. 4. The State provided the statement to defense counsel around May 2025. Pet'r's App. 4. Respondent Weekley was thus informed of the assault date more than six months before his trial.

credibility. Pet'r's App. 138. The State argued—and the court agreed—that credibility was a matter for cross-examination. Pet'r's App. 139. The court declined to find that the prosecuting attorney's office engaged in disqualifying behavior. Pet'r's App. 139.

On April 6, 2026, Respondent Weekley filed a motion to disqualify the assistant prosecuting attorney. Pet'r's App. 10-11. The motion stated simply that the assistant prosecuting attorney could “provide testimony regarding the credibility of the alleged victim, A.M., concerning her testimony as to her reporting to [the assistant prosecuting attorney] the specific date the offenses contained in counts one and two of the indictment.” Pet'r's App. 10. The State filed a detailed response four days later in opposition to the motion. Pet'r's App. 13-21. Respondent Weekley, it argued, was attempting to offer inadmissible evidence. Pet'r's App. 13. It explained that the date that the assistant prosecuting attorney became aware of the date of the assault was immaterial. Pet'r's App. 15. The State asked the court to exclude the assistant prosecuting attorney's testimony. Pet'r's App. 21.

The court conducted a hearing on Respondent Weekley's motion but took no evidence.³ Pet'r's App. 145-168. About ten days later, the court entered a comprehensive order addressing both the State's motion in limine to exclude the assistant prosecuting attorney's testimony and Respondent Weekley's motion to disqualify the assistant prosecuting attorney. Pet'r's App. 1-9. The court easily found that “any testimony from [the assistant prosecuting attorney] is not relevant to the jury's determination of the weight to give A.R.M.'s testimony.” Pet'r's App. 7. It explained that A.R.M. had no personal knowledge of the date disclosure, which was made by her mother.

³ During this hearing, the prosecuting attorney expressed his opinion that it would be unfair to the State if he were expected to litigate a case in which his assistant prosecuting attorney gave testimony. Pet'r's App. 158. This statement was not a concession that disqualification was appropriate in any event.

Pet'r's App. 7. "When the prosecutor's office learned of the specific date is of no consequence to the ultimate issue," the court clarified. Pet'r's App. 7. The court specifically wrote that the anticipated testimony of the assistant prosecuting attorney "relates to irrelevant and immaterial issues" and "permitting examination of a prosecutor on the credibility of an alleged victim, for which he or she has advocated, would be profoundly unfair." Pet'r's App. 8. Moreover, the court pointedly found that "[t]here is no evidence to suggest that the Tyler County Prosecutor's Office withheld the disclosure from the defendant," Pet'r's App. 7, or "that the specific date was known to the [p]rosecutor" before meeting with A.R.M.'s mother. Pet'r's App. 8.

The court also easily found that Respondent Weekley did not demonstrate justification under syllabus point 3 of *Smithson v. U.S. Fidelity & Guar. Co.*, 186 W. Va. 195, 411 S.E.2d 850 (W. Va. 1991) to disqualify a lawyer in a legal proceeding when an opposing party desires to call him as a witness. Pet'r's App. 5-6. Because the assistant prosecuting attorney was not a necessary witness on a material issue in dispute, the court denied the motion to disqualify him on that ground. Pet'r's App. 8.

In an inexplicable course reversal, however—and directly contrary to the explicit findings that the prosecuting attorney and the assistant prosecuting attorney had clean hands—the court expressed a desire "to moot any future argument that the State has withheld possible exculpatory evidence from the [d]efendant[.]" Pet'r's App. 8. To this end (and for no other apparent reason or purpose), the circuit court disqualified the entire Tyler County Prosecuting Attorney's Office from further prosecution in this case. Pet'r's App. 8. But even in doing so, the circuit court made sure "to impress upon the parties that there is no evidence to suggest the Tyler County Prosecutor's Office acted improperly related to the specific date disclosure or has failed to provide or disclose any evidence the [d]efendant is entitled to for his defense." Pet'r's App. 8. Instead, "[t]he

appointment of a special prosecutor is *a preemptive action only* to assist in the timely prosecution of this case by eliminating the filing of future motions that are merely repackaged motions *already ruled on by the [c]ourt.*” Pet’r’s App. 8-9 (emphasis added).

SUMMARY OF ARGUMENT

Removing an elected prosecutor from his post, even temporarily, requires a clear and convincing showing of the prosecutor’s failure to fulfill his official responsibilities or, at least, that there is some legitimate basis for disqualification. Without consideration of this requirement, the circuit court inexplicably disqualified the Tyler County Prosecuting Attorney’s Office from Respondent Weekley’s criminal prosecution after explicitly finding that there was no cause for disqualification. This is a flagrant abuse of the court’s legitimate powers. The circuit court’s decision prevents the prosecuting attorney from fulfilling his constitutional obligations and deprives the State of its right to prosecute a case under West Virginia’s constitutional and statutory framework.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument in this matter is unnecessary because it is apparent that extraordinary relief is merited, and the Court may grant the petition without hearing further from the parties. W. Va. R. App. P. 16(j). Because this Court has expressly permitted extraordinary relief when the State is threatened with irremediable prejudice, and because the error addressed herein is governed by settled law, West Virginia Rule of Appellate Procedure Rule 19 argument is appropriate, should the Court desire oral argument. This case is appropriate for resolution through a memorandum decision.

STANDARD OF REVIEW

This Court allows the State to seek a writ of prohibition when a lower court “exceed[s] or act[s] outside of its jurisdiction.” Syl. pt. 3, *State ex rel. State v. Gwaltney* (“*Gwaltney II*”), 250

W. Va. 695, 908 S.E.2d 192 (W. Va. 2024) (citation omitted); syl. pt. 1, *State ex rel. State v. Gwaltney* (“*Gwaltney I*”), 249 W. Va. 706, 901 S.E.2d 70 (W. Va. 2024) (citation omitted). “Where the State claims that the trial court abused its legitimate powers, the State must demonstrate that the court’s action was so flagrant that it was deprived of its right to prosecute the case or deprived of a valid conviction.” Syl. pt. 3, *Gwaltney II*, 250 W. Va. 695, 908 S.E.2d 192 (citation omitted); syl. pt. 1, *Gwaltney I*, 249 W. Va. 706, 901 S.E.2d 70 (citation omitted).

ARGUMENT

The courts have no legitimate power to baselessly expel counsel. An elected prosecutor can be discharged from the legal obligation to perform the duties of his elected office “only by a clear and convincing showing of his failure to fulfill his official responsibilities.” *State ex rel. Preissler v. Dostert*, 163 W. Va. 719, 731, 260 S.E.2d 279, 286 (W. Va. 1979). Anything short of such a showing offends the separation of the powers of the judicial and executive branches.

The circuit court set out a thorough and comprehensive order describing the compelling reasons that the Tyler County Prosecuting Attorney’s Office should not be disqualified in this case, and then incongruously disqualified the entire prosecuting attorney’s office.⁴ The unsupported, whole cloth exclusion of the people’s chosen prosecutor is so flagrant that it deprives the State of the right to prosecute Respondent Weekley’s criminal charges and obtain a valid conviction in the manner required by West Virginia law. See syl. pt. 3, *Gwaltney II*, 250 W. Va. 695, 908 S.E.2d 192.

A. The circuit court’s factual findings and *Smithson* analysis demonstrate that the court found no basis for disqualifying the prosecuting attorney.

⁴ The circuit court’s order is sufficiently comprehensive to meet the requirement of syllabus point 6 of *State ex rel. Allstate Ins. Co. v. Gaughan*, 203 W. Va. 358, 508 S.E.2d 75 (W. Va. 1998) requiring a party seeking a writ to request “findings of fact and conclusions of law that support and form the basis of its decision.” After receiving the detailed order, the State informed the court that it would seek a writ of prohibition from this Court.

The circuit court's *Smithson* analysis correctly concludes that Respondent Weekley does not meet the test for disqualification of an attorney based on the opposing party's desire to call him as a witness. Pet'r's App. 5; *see also Smithson*, 186 W. Va 195, 411 S.E.2d 850. Under *Smithson*, a party desiring to secure disqualification and call opposing counsel as a witness must show "that the attorney will give evidence material to the determination of the issues being litigated[, that] the evidence cannot be obtained elsewhere[, and that] the testimony is prejudicial or may be potentially prejudicial to the testifying attorney's client." *Id.* at syl. pt. 3. The assistant prosecuting attorney would not offer evidence on a material issue, the evidence that Petitioner wished to offer through the assistant prosecuting attorney could be obtained elsewhere, and there is no potential for prejudice to Respondent Weekley. Pet'r's App. 5.

Regarding the *Smithson* analysis, the circuit court reached the only possible factual conclusion about the prosecutor's actions, because Respondent Weekley attempted to make the assistant prosecuting attorney a witness concerning information he obtained while interviewing a witness in case preparation. The interviewing of witnesses is a prosecutorial function, *see Launi v. Hampshire Cnty. Prosecuting Attorney's Off.*, 249 W. Va. 262, 271, 895 S.E.2d 117, 126 (W. Va. 2023), and the assistant prosecuting attorney was working exclusively in his official capacity when the mother informed him of the date of Respondent Weekley's assault of A.R.M. The circuit court was correct in this regard, and the court's factual findings on the assistant prosecuting attorney's actions must direct the outcome. But those factual findings demand a very different conclusion than the one reached by the circuit court.

The assistant prosecuting attorney had no material information to offer and there is no scenario under which he should have been disqualified to act as a witness. And viewing the factual findings in the circuit court's order, it is apparent that there is no other reason on which the court

could have based the disqualification. “Prosecutorial disqualification can be divided into two major categories. The first is where the prosecutor has had some attorney-client relationship with the parties involved whereby he obtained privileged information that may be adverse to the defendant’s interest in regard to the pending criminal charges.” *State v. Keenan*, 213 W. Va. 557, 563, 584 S.E.2d 191, 197 (W. Va. 2003) (citation omitted). No evidence suggests that the Tyler County Prosecuting Attorney’s Office had an attorney-client relationship with any party involved in this case, and no evidence suggests that the prosecuting attorney’s office is in possession of any privileged information that may be adverse to Respondent Weekley’s interest. “A second category” supporting prosecutorial disqualification “is where the prosecutor has some direct personal interest arising from animosity, a financial interest, kinship, or close friendship such that his objectivity and impartiality are called into question.” *Id.* Respondent Weekley did not plead either of these disqualification categories, and neither apply. The court’s factual findings, consequently, do not support prosecutorial disqualification under any scenario.

The circuit court ignored the facts and the law in favor of a prophylactic disqualification of the entire prosecutor’s office—a disqualification it apparently effected only so that Respondent Weekley would not “repackage” motions already addressed by the court. This constitutes a “grave measure” that the court took “where the circumstances [did not] demand.” *See State of W. Virginia ex rel., State of W. Virginia, v. The Honorable Lora Dyer, Judge, Cir. Ct. of Jackson Cnty., W. Virginia, & Jesse Wood*, No. 25-582, 2026 WL 1399609, at *6 (W. Va. Supreme Court, May 19, 2026) (memorandum decision) (C.J. Bunn, concurring). Insofar as the court found that there would be no impropriety in the prosecuting attorney’s continued prosecution but nevertheless disqualified the prosecuting attorney’s office in a manner “unmoored from a legitimate factual basis,” the court approached the inquiry too lightly and potentially implicated the appearance of

bias—possibly the very appearance the court wanted to avoid. *See id.* at *7; *see* Pet’r’s App. 8. The circuit court’s own order shows that it “disqualifie[d] [the] prosecutor summarily and with levity” and, thus, “assail[ed] the separation of powers and offend[ed] due process.” *See Wood*, 2026 WL 1399609, at *6. This action was well outside the lower court’s legitimate powers and, so, a writ should lie.

B. There are weighty constitutional concerns requiring a court to approach a motion for disqualification of a prosecuting attorney with far greater care than the circuit court did here.

Chief Justice Bunn recently emphasized the gravity with which the inquiry of prosecutorial disqualification should be undertaken, owing to the underlying constitutional concerns. “The office of the prosecuting attorney is a public office created by the Constitution, and whose duties emanate from it.” *Id.* at *7 (citing *Preissler*, 163 W. Va. at 730, 260 S.E.2d at 286). “Those duties of the prosecuting attorney are owed to the public, and more specifically, to his or her county electorate, to whom the prosecuting attorney acts as a fiduciary and for whom he or she must perform the duties of office ‘honestly, faithfully and to the best of his [or her] ability.’” *Wood*, 2026 WL 1399609, *7. Because “the office is a public trust created in the interest of and for the benefit of the people, and it imposes upon the officer who assumes it certain duties for the public good,” *id.*, this Court has held that “[t]he prosecuting attorney is a constitutional officer who exercises the sovereign power of the State at the will of the people and he is at all times answerable to them.” *Id.* (citing syl. pt. 2, *Preissler*, 163 W. Va. 719, 260 S.E.2d 279). And the duties for which the elected prosecuting attorney is answerable are mandatory: He “*shall attend to the criminal business of the state in the county in which he or she is elected* and qualified” and he “*shall institute and prosecute* all necessary and proper proceedings against” offenders when presented with information concerning criminal violations in his county. *Wood*, 2026 WL

1399609, at *7 (emphasis in original) (citing West Virginia Code § 7-4-1(a)). The prosecuting attorney has an immutable duty that the circuit court failed to recognize.

Chief Justice Bunn explained the import of these considerations, while expounding *Preissler*. “As the prosecutor is bound by law to execute the duties of the office, a circuit court’s conclusion that the prosecutor is incapable of doing so may not be reached without abiding appropriate process.” *Wood*, 2026 WL 1399609, at *7 (citing *Preissler*, 163 W. Va. at 731, 260 S.E.2d at 286 (“These procedures for permanent removal from office clearly provide for a full hearing and presentation of evidence, not only in recognition of the prosecutor’s due process rights, but also in contemplation of the responsibilities imposed on the prosecutor by the Constitution.”)); *see also* W. Va. Const. art. 4 § 6 and art. 9 § 4; West Virginia Code §§ 6-6-7, 11-1-5, 61-5-28.

These constitutional concerns yield the key principle that requires extraordinary relief in this case: “[A] circuit court cannot discharge a prosecutor—even temporarily—from the obligations of his or her office unless upon ‘a clear and convincing showing of his failure to fulfill his official responsibilities.’” *Wood*, 2026 WL 1399609, at *7 (citing *Preissler*, 163 W. Va. at 731, 260 S.E.2d at 286). Not only are the circuit court’s findings of fact in this case devoid of a clear and convincing showing of the prosecuting attorney’s failure to fulfill his official responsibilities, but they are also replete with support for the prosecuting attorney’s continued authority over this prosecution. The court’s findings, essentially, show that the prosecuting attorney was performing the duties of his office with integrity; there was not a single factor militating in favor of disqualification of the assistant prosecuting attorney, the prosecuting attorney, or the office of the prosecuting attorney. Having plainly recognized this, the court was bound to respect the duties of the constitutional office and, in flagrantly disregarding the responsibility of the elected prosecutor to fulfill those duties, it exceeded its legitimate powers.

C. All factors set forth in syllabus point 4 of *State ex rel. Hoover v. Berger* support the issuance of a writ of prohibition to prevent the circuit court from acting in a way that exceeds its legitimate powers.

Because the circuit court's actions certainly exceed its legitimate powers, the Court will consider five general guidelines to determine whether to issue a writ of prohibition to stop the groundless discharge of the elected prosecutor. See syl. pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (W. Va. 1996). First, it will consider "whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief." *Id.* The State has no other means to seek relief; the State has no appeal rights in this criminal prosecution, and once the elected prosecutor is removed, there is no recourse. The State has been deprived of the right to prosecute this case in the manner prescribed by the Constitution (that is, through the elected county prosecutor), and a writ provides the only possible course correction.

Second, the Court will consider "whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal." *Id.* If the Court does not issue a rule to show cause and grant the writ, an offensive disregard for state constitutional directives will deny the electorate of its right of chosen representation.

Third, the Court will consider "whether the lower tribunal's order is clearly erroneous as a matter of law." *Id.* This consideration should be given the most weight in the Court's examination. *Id.* The order of disqualification is clearly erroneous; "a circuit court cannot discharge a prosecutor . . . from the obligations of his or her office unless upon 'a clear and convincing showing of his failure to fulfill his official responsibilities.'" *Wood*, 2026 WL 1399609, at *7 (citing *Preissler*, 163 W. Va. at 731, 260 S.E.2d at 286). There is undeniably no such showing in this case. The circuit court's error strikes the sanctity of checks and balances by allowing the judicial branch to control the operation of the executive branch.

The Court’s final considerations are “whether the lower tribunal’s order is an oft repeated error or manifests persistent disregard for either procedural or substantive law” and “whether the lower tribunal’s order raises new and important problems or issues of law of first impression.” Syl. pt. 4, *Hoover*, 199 W. Va. 12, 483 S.E.2d 12. It has been barely a week since the Court issued its decision in *Wood*. While perhaps not a “new . . . problem,” the cavalier disqualification of elected prosecutors—particularly to address a concern outside the elected prosecuting attorney’s control—is a repeated error presenting important constitutional considerations.

“[T]he prosecutor’s due process rights, but also [the] contemplation of the responsibilities imposed on the prosecutor by the Constitution,” require that a motion for disqualification be approached with great care and consideration. *Wood*, 2026 WL 1399609, at *7 (citing *Preissler*, 163 W. Va. at 731, 260 S.E.2d at 286). But it appears that the magnitude of disqualification is not appreciated. By its own statement in its conclusions of law, the circuit court entered its order of disqualification so that Respondent Weekley would not again raise the issue. See Pet’r’s App. 8. This is an insufficient reason that cedes judicial power and also opens a path subject to duplicitous manipulation. The circuit court issued a clear and cogent ruling that the parties are obligated to abide by. The threat that an aggrieved party *may* resist the finality of the court’s order should not serve to curtail the rights of an innocent actor. The State enjoys a constitutional right to representation by the electorate’s chosen prosecuting attorney, and the court’s order, even if well-intentioned, flagrantly deprives the State of that right. Only extraordinary relief from this Court can cure the lower court’s error.

CONCLUSION

The Court should issue a rule to show cause and enter an order prohibiting the Circuit Court of Tyler County from enforcing its order disqualifying the elected prosecuting attorney and his office from fulfilling the prosecutor’s constitutional duties in this case.

Respectfully submitted,
THE STATE OF WEST VIRGINIA

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Counsel for Petitioner

VERIFICATION

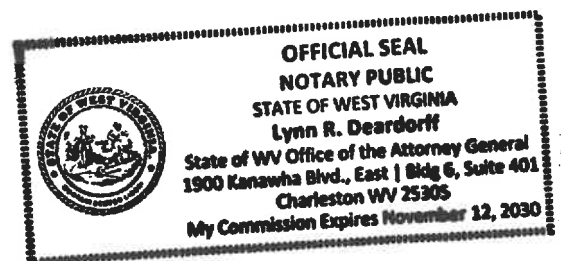
State of West Virginia, Kanawha County, to-wit:

I, Michele Duncan Bishop, Senior Assistant Attorney General and counsel for the Petitioner named in the foregoing Petition for a Writ of Prohibition, being duly sworn, state that the facts and allegations contained in the Petition are true, except insofar as they are stated to be on information, and that, insofar as they are stated to be on information, I believe them to be true.


Michele Duncan Bishop

Taken, sworn to, and subscribed before me this 27th day of May, 2026.





IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. _____

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,

Petitioner,

v.

THE HONORABLE C. RICHARD WILSON,
Judge, Second Judicial Circuit, Circuit
Court of Tyler County, and JEREMY
MICHAEL WEEKLEY,

Respondents.

CERTIFICATE OF SERVICE

I, Michele Duncan Bishop, do hereby certify that on the 27th day of May, 2026, I served a true and accurate copy of the foregoing **Petition for a Writ of Prohibition** upon the below-listed individual via the West Virginia Supreme Court of Appeals E-filing System pursuant to Rule 38A of the West Virginia Rules of Appellate Procedure.

George J. Cosenza, Esq.
1130 Market Street
Parkersburg, WV 26101
Counsel for Respondent Weekley

And via first-class mail, postage prepaid, addressed as follows, to the Respondent Judge:

Judge C. Richard Wilson
Marshall County Courthouse
600 Seventh Street
Moundsville, WV 26041



Michele Duncan Bishop
Senior Assistant Attorney General