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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

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No. 25-587

_____

STATE OF WEST VIRGINIA EX REL. MIKE PUSHKIN, STEPHEN WILLINGHAM, AND THE WEST VIRGINIA DEMOCRATIC PARTY,
Petitioners,

V.

PATRICK MORRISEY, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF WEST VIRGINIA, AND ROGER HANSHAW, IN HIS OFFICIAL CAPACITY AS SPEAKER OF THE WEST VIRGINIA HOUSE OF DELEGATES,
Respondents.

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PETITION FOR WRIT OF MANDAMUS

WRIT DENIED

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Submitted: September 22, 2026
Filed: November 13, 2026

Robert M. Bastress, Jr., Esq.
Morgantown, West Virginia
Attorney for the Petitioners

John B. McCuskey, Esq.
Attorney General
Michael R. Williams, Esq.
Solicitor General
Charleston, West Virginia
Attorneys for the Respondents

CHIEF JUSTICE BUNN delivered the Opinion of the Court.

JUSTICE FLANIGAN, deeming himself disqualified, did not participate in the decision of this case.

SENIOR STATUS JUSTICE WALKER, sitting by temporary assignment.

JUSTICE WOOTON concurs and reserves the right to file a separate opinion.

JUSTICE TRUMP AND SENIOR STATUS JUSTICE WALKER concur and reserve the right to file separate opinions.

SYLLABUS BY THE COURT

1. "Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies." Syllabus Point 1, *State ex rel. Allstate Insurance Co. v. Union Public Service District*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

2. "A writ of mandamus will not issue unless three elements coexist—(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Syllabus Point 2, *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969).

3. "Standing is comprised of three elements: First, the party attempting to establish standing must have suffered an 'injury-in-fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court." Syllabus Point 5,

Findley v. State Farm Mutual Automobile Insurance Co., 213 W. Va. 80, 576 S.E.2d 807 (2002).

BUNN, Chief Justice:

This request for extraordinary mandamus relief invoking the Court's original jurisdiction originates from House Resolution 4 ("the resolution") adopted by the West Virginia House of Delegates on January 8, 2025. The resolution declared then Delegate-Elect Joseph A. de Soto's seat vacant due to Mr. de Soto's failure to qualify to serve as a member of the House of Delegates. Petitioners Mike Pushkin,[1] Stephen Willingham,[2] and the West Virginia Democratic Party (collectively "Petitioners") request that this Court compel Respondent Roger Hanshaw, Speaker of the West Virginia House of Delegates, to seat Mr. de Soto as the delegate from the 91st Delegate District, or in the alternative, compel Speaker Hanshaw to request nominations of three qualified persons to serve as the delegate for that district from the Berkeley County Democratic Committee. In addition, Petitioners ask this Court to compel Respondent Patrick Morrisey, Governor of the State of West Virginia, to select a successor delegate from the list of nominees submitted to him by the Berkeley County Democratic Committee. Respondents oppose the petition for a writ of mandamus for several reasons, including lack of standing. Because this Court is unable to redress the Petitioners' claimed injuries by granting their requested relief, we find that Petitioners lack standing. We, therefore, deny Petitioners' request for relief in mandamus.

[1] Petitioner Pushkin is also a delegate from the 54th Delegate District.

[2] Mr. Willingham is a resident and registered Democratic voter living in the 91st Delegate District in Berkeley County, West Virginia.

I.

FACTUAL AND PROCEDURAL HISTORY

Mr. de Soto won the 2024 Republican primary election for the 91st Delegate District of the House of Delegates.[3] In November 2024, Mr. de Soto also prevailed in the general election as a Republican, defeating a single opponent from the Constitution Party. On December 8, 2024, Mr. de Soto caucused with other Republican delegates and delegates-elect.[4] Respondents allege that during this caucus, certain individuals believed "that Mr. de Soto had embellished his life story" and that Mr. de Soto was interrogated about his background during the caucus. Two days later, on December 10, 2024, Mr. de Soto allegedly made violent threats against other delegates-elect and Speaker Hanshaw.[5]

On the next day, December 11, 2024, Mr. de Soto switched his political party affiliation to the Democratic Party. On that same day, one of the individuals who had allegedly received the threats reported the conduct to the West Virginia State Police. Based

[3] Mr. de Soto defeated incumbent Republican candidate Delegate Don Forsht and another opponent.

[4] By statute, Mr. de Soto's term began December 1, 2024. *See* W. Va. Code § 6-5-1.

[5] For example, Mr. de Soto allegedly sent an email to a delegate-elect stating, "I have only begun . . . and won't stop, I had a vision to destroy them from the angel of Moroni. . . . [T]hey can all go to hell[.] I will send them there as commanded." When Mr. de Soto was urged by text to stop making such statements, he allegedly replied, "I did say I am going to kill people[.] I said I am going [sic] what is necessary to put them from office."

upon that information, a magistrate in Berkeley County issued an arrest warrant for Mr. de Soto for "[m]aking terroristic threats."[6] Following his arrest, Mr. de Soto entered a bail agreement that included the requirement that he "have no direct or indirect physical or verbal contact with any Eastern Panhandle Delegate in [the] matter." Mr. de Soto also agreed not to "be within 1,000 ft. of any Eastern Panhandle Delegates or WV State Legislators" and that he would have "[n]o contact [with them] by any electronic media of any kind." Pursuant to the bail agreement, the magistrate ordered these restrictions to be "effective and enforceable immediately" and "regardless of whether" he posted bail. The magistrate further set bail at $300,000.00 cash; however, Mr. de Soto requested that the magistrate reduce his bail and place him on home confinement, which the magistrate court granted.

On January 8, 2025, the House of Delegates convened for one day to complete the oaths of office for several of the delegates-elect and to organize the House.[7] Mr. de Soto, absent from the proceedings and still subject to home confinement in Berkeley County, did not take the oath in the House of Delegates' Chamber. That same day, the House of Delegates adopted a resolution, which declared a vacancy in the 91st Delegate

[6] *See* W. Va. Code § 61-6-24.

[7] The record indicates that certain delegates-elect who could not attend this oath ceremony made alternate plans to complete the oath in the House of Delegates' Chamber before the start of the legislative session. Mr. de Soto did not make any alternative plans.

District in the House of Delegates based on Mr. de Soto's failure to take the oath of office in the House Chamber as required by the West Virginia Constitution.[8] The resolution provided that the delegates and delegates-elect took their oaths on January 8, 2025, or made other arrangements to do so; however, Mr. de Soto failed to appear to take the oath and "[wa]s not reasonably expected to do so at any point in the future[.]" Because Mr. de Soto was unable to take his oath of office, the House of Delegates concluded that Mr. de Soto had forfeited his seat. Although the resolution states that the vacancy was a result of Mr. de Soto's failure to take the oath, it also recites in detail Mr. de Soto's alleged criminal conduct. The resolution further noted that it was adopted by a majority[9] and directed Speaker Hanshaw to "transmit a letter to the Governor . . . and to the Republican Executive Committee of the County of Berkeley, Ninety-First Delegate District, of this definitive action by the House."[10]

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[8] *See* W. Va. Const. art. VI, § 16 (providing, in relevant part, that prior to "enter[ing] upon their duties," members of the Legislature "shall" take the oath of office in "the hall of the house to which the member is elected" and that "[a]ny member who shall refuse to take the oath herein prescribed, shall forfeit his seat").

[9] Respondents assert that some House Democrats opposed the resolution, believing that a motion to expel Mr. de Soto for his conduct was the more appropriate motion. Petitioners do not dispute this assertion.

[10] In addition, Respondents contend, and Petitioners do not dispute that Delegate Pushkin moved to amend the resolution "by striking out the word 'Republican' and inserting . . . the word 'Democratic' in the portion of the resolution that addresses which party's executive committee was to receive notice of the vacancy." However, Delegate Pushkin's proposed amendment failed, and the House of Delegates adopted the resolution in its original form.

Both the Republican and Democratic Executive Committees submitted a list of three candidates for consideration to fill Mr. de Soto's vacant seat. Specifically, the Berkeley County Democratic Party submitted a letter listing three individuals for consideration: David Michaels, Timothy Lee, and Stephen Willingham.[11] The West Virginia Republican Party submitted three nominations, including Ian Masters. Governor Morrisey ultimately appointed Delegate Masters, a Republican, who took the oath of office in the House of Delegates' Chamber in January 2025.

What followed was a series of flawed filings, resulting in a complicated procedural history that is relevant to our resolution of this case. On January 14, 2025, Delegate Pushkin and the Democratic Party filed a petition for a writ of mandamus asking this Court to require Respondents to seat Mr. de Soto or, in the alternative, to request the Berkeley County Democratic Executive Committee to submit three nominations of qualified persons to serve as delegate of the 91st Delegate District and to choose a successor delegate from among those three names. *State ex rel. Pushkin v. Morrisey*, No. 25-22 (W. Va. 2025) ("*Pushkin I*"). Three days later, Speaker Hanshaw invoked an automatic stay under West Virginia Code § 4-1-17[12] based on his service in the West

[11] Delegate Pushkin, who is also the State Democratic Party Chair, signed the letter.

[12] West Virginia Code § 4-1-17(a) provides as follows:

> In accordance with the constitutional separation of powers and principles of comity, it is the purpose of this section

Virginia Legislature through at least May 12, 2025, or later, if the legislative session were to be extended. Delegate Pushkin and the Democratic Party then filed, and later withdrew, a motion to amend the petition to remove Speaker Hanshaw as a party to the action and dissolve the stay, asserting that Speaker Hanshaw was not a necessary party (despite the petition specifically requesting this Court to compel Speaker Hanshaw to act). At no point in the proceedings did Delegate Pushkin and the Democratic Party file a motion to expedite this Court's consideration of *Pushkin I*.[13]

> to provide that members of the Legislature and certain designated legislative employees are not required to attend to matters pending before tribunals of the executive and judicial branches of government when the timing of those matters may present conflicts with the discharge of the public duties and responsibilities that are incumbent upon members or employees of the Legislature. During legislative sessions or meetings and for reasonable time periods before and after, the judicial and executive branches should refrain from requiring the personal presence and attention of a legislator or designated employee who is engaged in conducting the business of the Legislature.

[13] While Delegate Pushkin and the Democratic Party generally requested expedited relief in the conclusion section of its petition, they did not file a separate motion requesting expedited relief. The West Virginia Rules of Appellate Procedure require a party who is seeking expedited relief to file such a motion. *See* W. Va. R. App. P. 29(c) (stating, in relevant part, that a request for expedited relief of a matter pending before this Court "shall be separate and distinct from filings otherwise required" in the matter; that the motion "shall set forth in specific detail the reasons for the request"; and that the motion must be filed within two weeks from the order at issue, except for "extraordinary reasons"). *See also State ex rel. Prairie Island Indian Community v. Codispoti*, No. 26-140, ___ W. Va. ___, ___ S.E.2d. ___, 2026 WL 3151094, at *3 (W. Va. Oct. 21, 2026) (discussing this Court's grant of a motion to expedite following the filing of a separate motion to expedite); *In re Adoption of R.B.*, No. 24-310, 2025 WL 3284942, at *1 n.2 (W. Va. Nov. 25, 2025)

Meanwhile, on January 28, 2025, in an effort to circumvent the legislative stay invoked by Speaker Hanshaw, Delegate Pushkin and the Democratic Party, as well as Jill Michaels,[14] filed a second petition for a writ of mandamus requesting essentially the same relief as *Pushkin I*; however, this petition named Governor Morrisey as the only respondent. *State ex rel. Pushkin v. Morrisey*, No. 25-65 (W. Va. 2025) ("*Pushkin II*"). Once again, Delegate Pushkin and the Democratic Party did not file a motion to expedite this second matter. Governor Morrisey filed a response in opposition to the petition for a writ of mandamus, asserting numerous reasons why the petition should be denied. In particular, Governor Morrisey argued that this Court did not have jurisdiction over the extraordinary writ proceeding because Delegate Pushkin, the Democratic Party, and Ms. Michaels failed to provide the required pre-suit notice pursuant to West Virginia Code § 55-17-3(a)(1).[15] Delegate Pushkin and the Democratic Party, on the other hand, took the position that pre-suit notice was not required because their claims fell within an exception to the notice requirement for actions seeking injunctive relief where irreparable harm will

(memorandum decision) (refusing multiple motions to expedite after the filing of separate motions).

[14] Jill Michaels is a resident and registered voter living in the 91st Delegate District in Berkeley County, West Virginia, at the time of filing the petition for a writ of mandamus.

[15] With limited exceptions, West Virginia Code § 55-17-3(a)(1) requires at least thirty days' notice prior to instituting an action against a governmental agency. By statutory definition, "governmental agency" includes "a [C]onstitutional officer or other public official named as a defendant or respondent in his or her official capacity[.]" W. Va. Code § 55-17-2(2).

occur if the action is delayed. On March 13, 2025, "[a]cting without undue delay to resolve these issues, the matter was considered without oral argument[,]" and this Court, based upon the lack of statutorily required pre-suit notice, dismissed the writ of mandamus action by order for lack of jurisdiction.

On the next day, March 14, Delegate Pushkin and the Democratic Party submitted a letter to Respondents acknowledging that they had previously served the Respondents with a petition, however, they asserted that the purpose of the letter was to "ensure[] compliance with West Virginia Code § 55-17-3" and to provide notice that they would pursue this action thirty days following the lapse of the legislative stay in *Pushkin I*. The stay remained in effect until May 12, 2025. On July 7, 2025, following the expiration of the stay in *Pushkin I*, Respondents filed a response in opposition to the petition for a writ of mandamus, asserting various reasons why the petition should be denied, similar to the response in *Pushkin II*. Respondents argued that this Court did not have jurisdiction over the petition because Delegate Pushkin and the Democratic Party failed once again to timely provide the required pre-suit notice.

On July 14, 2025, Petitioners, seemingly in an attempt to correct the multiple pre-suit errors described above, submitted another letter providing notice to Respondents that after the expiration of thirty days, Petitioners would be filing another petition for a writ

of mandamus against Respondents seeking essentially the same relief as in *Pushkin I* and *Pushkin II*.

On September 12, 2025, Petitioners filed a third petition for a writ of mandamus against Respondents ("*Pushkin III*").[16] This third petition, before us now, presented the same issues and requested essentially the same relief set forth in *Pushkin I* and *Pushkin II*. Almost three months after filing this third petition to obtain extraordinary relief—and almost eleven months after their first petition seeking such relief—Petitioners filed a motion to expedite the matter, asserting that an expedited decision was necessary to

[16] Respondents also assert that Petitioners have yet again failed to follow pre-suit notice requirements because, while Petitioners have finally partially complied, by providing pre-suit written notice, Petitioners failed to submit a subsequent notice fee. The governmental pre-suit notice statute provides, in relevant part, that at least thirty days prior to instituting an action against a governmental agency, the complaining party must provide written notice "of the alleged claim and the relief desired." W. Va. Code § 55-17-3(a). However, this notice expires if ninety days elapse after service of this notice and the complaining party or parties have failed to institute an action. W. Va. Code § 55-17-3(e). If this initial notice expires, then prior to instituting an action, "the complaining party or parties must provide new notice . . . which shall be accompanied by a second or subsequent notice fee of $250 to the attorney general and by a second or subsequent notice fee of $250 to the chief officer of the governmental agency[.]" *Id*. This Court has held that compliance with the *notification provision* is jurisdictional: "Compliance with the pre-suit notification provisions set forth in W. Va. Code § 55-17-3(a) (2002) is a jurisdictional pre-requisite for filing an action against a State agency subject to the provisions of W. Va. Code § 55-17-1, *et seq*. (2002)." Syl. Pt. 3, *Motto v. CSX Transp., Inc.*, 220 W. Va. 412, 647 S.E.2d 848 (2007). Assuming, without deciding, that the subsequent notice is also jurisdictional, we need not decide this jurisdictional issue because, as discussed below, we deny the writ on other jurisdictional grounds—standing. *See Fortner v. Eischen*, 170 F.4th 655, 659 (8th Cir. 2026) (Courts "can address jurisdictional issues in any order we choose.") (quoting *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 4, (2023).

"ensure that the citizens of the 91st Delegate District will have lawful representation during the [next] legislative session." Respondents filed a response opposing expedited relief, arguing that the motion to expedite was untimely and that Petitioners had "extended this case (and its related ones) by filing procedurally deficient petitions. . . and by failing to diligently pursue their rights." On April 24, 2026, the Court denied the motion to expedite *Pushkin III*[17] and dismissed *Pushkin I* by order for lack of jurisdiction, given Petitioners' failure to timely provide pre-suit notice under West Virginia Code § 55-17-3(a)(1). Meanwhile, Respondents assert, and Petitioners do not dispute, that Mr. de Soto's criminal case has continued to progress.[18]

[17] Petitioners, in violation of this Court's Rules of Appellate Procedure, filed this motion to expedite well-outside two weeks from the time the House of Delegates adopted the resolution and failed to address in its motion any "extraordinary reasons" for such a late filing. *See* W. Va. R. App. P. 29(c). Furthermore, this motion to expedite was filed months—an entire legislative session—after Governor Morrisey had already appointed Delegate Masters. In a similar matter involving a respondent governor's appointment to fill a vacancy left by a resignation of a member of the House of Delegates, that petitioner filed a separate motion to expedite on the same day as the petition for mandamus relief, which this Court granted. *See State ex rel. Maynard v. Justice*, 245 W. Va. 179, 181, 858 S.E.2d 229, 231 (2021) (discussing the Court's grant of "expedited relief in order for a new delegate to be seated, if possible, prior to the commencement of the 2021 legislative session"). Unlike the petitioner in *Maynard*, Petitioners here failed to timely file a motion to expedite.

[18] However, the record does not contain any information as to the current status of Mr. de Soto's criminal proceedings.

II.

STANDARD FOR ISSUANCE OF WRIT

Petitioners seek a writ of mandamus. As this Court has held, "[m]andamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies." Syl. Pt. 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966). Furthermore, "[a] writ of mandamus will not issue unless three elements coexist—(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969). In addition, "[a]s jurisdictional issues are questions of law, our review is de novo." *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W. Va. 696, 700, 619 S.E.2d 209, 213 (2005).

III.

DISCUSSION

Petitioners ask the Court to address two questions in this extraordinary writ proceeding. First, Petitioners ask this Court to consider whether the House of Delegates can declare vacant the seat of "a duly elected, qualified, and ready-to-serve delegate" for reasons related to misconduct. Next, Petitioners question whether an individual has held

office for the purpose of West Virginia Code § 3-10-5(a),[19] if that individual was duly elected, to a term beginning on December 1st following the election,[20] but had not yet taken the constitutionally required oath of office. Respondents counter with various arguments, including the threshold issue that Petitioners lack standing for the relief that they seek. We agree with Respondents that Petitioners lack standing in this matter and decline to address any other issues raised by Petitioners.

Standing is a threshold determination. The Court has previously recognized that "Article VIII, Section 6 of the West Virginia Constitution establishes that there must be a justiciable case or controversy—a legal right claimed by one party and denied by another—in order for the circuit court to have subject matter jurisdiction." *State ex rel. Healthport Techs., LLC v. Stucky*, 239 W. Va. 239, 242, 800 S.E.2d 506, 509 (2017) (footnote omitted). This jurisdictional requirement means, in part, that "the party asserting a legal right must have standing to assert that right." *Id.*

In general, "standing is defined as '[a] party's right to make a legal claim or seek judicial enforcement of a duty or right.'" *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 94, 576 S.E.2d 807, 821 (2002) (quoting Black's Law Dictionary 1413 (7th

[19] West Virginia Code § 3-10-5(a) sets forth, in part, the procedure for the appointment of an individual when a vacancy arises in the House of Delegates.

[20] See *supra* note 4.

ed. 1999) (alteration in original)). This Court has set forth the elements of standing as follows:

> Standing is comprised of three elements: First, the party attempting to establish standing must have suffered an "injury-in-fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. *Third, it must be likely that the injury will be redressed through a favorable decision of the court*.

Syl. Pt. 5, *Findley*, 213 W. Va. 80, 576 S.E.2d 807 (emphasis added).[21]

[21] The Court acknowledges that because this matter involves a petition for a writ of mandamus, these standing issues are somewhat intertwined with the underlying merits. As this Court has said,

> The clear legal right to the relief sought is generally a question of standing. . . . The clear legal right of the petitioner to bring a writ of mandamus besides involving a standing issue is also entwined in the legal duty which the respondent is required to perform. This is the second element of our traditional test for the appropriateness of a writ of mandamus. There is a certain amount of legal sophistry in this area because if there were such a clear legal right on behalf of the petitioner to the relief sought and the countervailing legal duty on the respondent, the matter would be resolved without court intervention. In the usual case the matter at issue may be somewhat opaque until the court pronounces the clear legal right and duty.

Smith v. W. Va. State Bd. of Educ., 170 W. Va. 593, 596, 295 S.E.2d 680, 683 (1982).

In considering this standing inquiry, "all three elements must be present; thus, if one element is absent, there is no standing." *Blair v. Brunett*, 248 W. Va. 495, 501, 889 S.E.2d 68, 74 (2023) (quoting *State ex rel. W. Va. Univ. Hosps.-E., Inc. v. Hammer*, 246 W. Va. 122, 132, 866 S.E.2d 187, 197 (2021)). Petitioners carry the burden of establishing that they have standing, and they must demonstrate that they have standing for each form of relief they seek. *See Healthport*, 239 W. Va. at 243, 800 S.E.2d at 510; *State ex rel. W. Va. Univ. Hosp.*, 246 W. Va. at 131, 866 S.E.2d at 196.[22]

Our focus in this matter is on the third prong of the test to determine whether Petitioners have standing: redressability. "Standing's redressability element ensures that a court has the ability to order the relief sought, which must create a substantial likelihood of remedying the harms alleged." *Tucker v. State*, 394 P.3d 54, 67 (Idaho 2017). *See also Next League Exec. Bd. LLC v. Biden*, 758 F. Supp. 3d 1029, 1038 (D. Ariz. 2024) (recognizing that "if the federal court lacks the authority to issue relief that would redress a plaintiff's claimed injury, there is no redressability"). Furthermore, a "court's inability to redress the claimed injury may . . . manifest in various ways." *Gonzales v. Gorsuch*, 688 F.2d 1263, 1267 (9th Cir. 1982). As courts have explained,

[22] *See also Andrade v. NAACP of Austin*, 345 S.W.3d 1, 14 (Tex. 2011) ("[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought." (quoting *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008))); *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) ("[S]tanding is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek[.]").

> [t]he focus . . . is always upon the ability of the court to redress the injury suffered by the plaintiff; if the wrong parties are before the court, or if the requested relief would worsen the plaintiff's position, or if the court is unable to grant the relief that relates to the harm, the plaintiff lacks standing.

Id. *See also Shulman v. Kaplan*, 58 F.4th 404, 409 (9th Cir. 2023) ("As such, evaluating the issue of redressability requires an analysis of whether the court has the power to right or to prevent the claimed injury." (quotations and citation omitted)).

Here, Petitioners request that this Court compel Speaker Hanshaw to seat Mr. de Soto if he happens to appear at the House of Delegates' Chamber to take his oath of office. In the alternative, if Mr. de Soto does not appear, Petitioners request this Court require Speaker Hanshaw to request nominations from the Berkeley County Democratic Executive Committee and then ask that the Court order Governor Morrisey to select a successor from those nominees. We find that, under the circumstances of this case, this Court cannot order either Respondent to carry out these actions, and accordingly, the Petitioners' purported injury is not redressable.

A. Petitioners Lack Standing as to the Claims Against Speaker Hanshaw

As for the claims against Speaker Hanshaw, Petitioners have failed to direct this Court to any supporting authority that Speaker Hanshaw, himself, is able to seat Mr. de Soto or that he has a duty to request a list of nominations. Petitioners first request that this Court order Speaker Hanshaw to seat Mr. de Soto if he appears in the House of

Delegates' Chambers to take his oath of office. However, Petitioners filed *this* petition for a writ of mandamus months after Governor Morrisey appointed Delegate Masters.[23] In order to grant the relief sought—seating Mr. de Soto as a representative of the 91st Delegate District—Delegate Masters, who currently occupies that position, would have to be unseated. Petitioners failed to identify any authority or make any argument that Speaker Hanshaw, acting alone, has the ability to unseat Delegate Masters, and furthermore, Petitioners do not make any argument that the collective members of the House of Delegates (who are not parties to this proceeding) have the authority to unseat Delegate Masters under these circumstances.[24]

Moreover, even if Speaker Hanshaw had the authority to unseat Delegate Masters and declare a vacancy, Petitioners have yet another fatal issue—they have failed to include Mr. de Soto as a party to this mandamus proceeding. The relief Petitioners seek depends on the actions of a non-party—namely, Mr. de Soto appearing in the House of

[23] While we recognize that *Pushkin I* was filed a few days prior to Delegate Masters' appointment, Petitioners failed to move to expedite that matter or request an order requiring a stay of any legislative action by any individual appointed to fill the vacancy. *See Maynard*, 245 W. Va. at 181, 858 S.E.2d at 231 (2021) (noting that "[t]his Court, in its rule to show cause issued on January 28, 2021, stayed any and all legislative action by any person appointed to fill the vacancy in the Nineteenth Delegate District until final resolution of this matter").

[24] Significantly, a "majority of the members [of the House of Delegates] being present and voting concurring herein" voted on the resolution creating the vacancy. Speaker Hanshaw did not declare a vacancy himself, but instead the collective action of a majority of the House of Delegates declared the vacancy.

Delegates' Chamber ready and able to take his oath of office. Generally, when a purportedly injured party's "theory of redressability depends on the possible future actions of nonparties," it "cannot suffice to establish redressability." *Berrocal v. Att'y Gen. of United States*, 136 F.4th 1043, 1052 (11th Cir. 2025) (quotations and citation omitted). To establish standing, Petitioners must demonstrate that the Court's judgment would directly or indirectly redress the purported injury through its effect on the respondent, "not an absent third party" *Id*. (quotations and citation omitted).

This rationale comports with this Court's recent cases. In *Blair*, the respondents filed a lawsuit against the Governor, the House Speaker, and the Senate President in circuit court seeking a "writ of mandamus and declaratory relief, or, alternatively, injunctive relief . . . to prevent the creation of public charter schools without a majority vote of the citizens of the county or counties in which the charter schools would be located." 248 W. Va. at 497, 889 S.E.2d at 70. However, the respondents failed to include as a party the West Virginia Professional Charter School Board, which is the entity that approves or rejects charter school applications. *Id.* at 497, 503, 889 S.E.2d at 70, 76. Accordingly, this Court found that the respondents (plaintiffs below) failed to satisfy the redressability prong of the standing analysis because the Governor did not have authority

to "control the [Professional Charter School Board's] ability to approve or reject charter school applications." *Id.* at 503, 889 S.E.2d at 76.[25]

While Petitioners boldly assert in their petition that Mr. de Soto has the "willingness, desire, and qualifications to serve as a delegate[,]" they do not point to any support for this bald assertion. On the contrary, the record shows otherwise. Mr. de Soto voluntarily entered into a bail agreement that included a condition that he cannot be within a certain distance of the members of the House of Delegates. He also agreed to be placed on home confinement. By agreeing to these bail conditions that patently prevent him from appearing in the House Chamber to take the oath as required by the West Virginia Constitution, Mr. DeSoto demonstrated by implication that he is unwilling to assume the office to which he was elected in November 2024. Furthermore, nothing in the record

[25] We acknowledge that some courts have "expanded" this concept to an extent by "allowing a plaintiff to establish redressability by showing third parties will likely react to judicial relief in predictable ways that will likely redress the plaintiff's injury." *Georgia Advoc. Off. v. Georgia*, No. 1:17-CV-3999-MLB, 2025 WL 2979702, at *8 (N.D. Ga. Sept. 19, 2025) (citing *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 112 (2025)). This expansion is often utilized in the context of government regulated activity. *See, e.g.*, *Przybocki v. United States Dep't of Agric.*, 185 F.4th 891, 900 (9th Cir. 2026) ("The government is certainly correct that when the plaintiff is not [them]self the object of the government action or inaction [the plaintiff] challenges and the government is instead regulating third parties, standing is not precluded, but it is ordinarily substantially more difficult to establish. Plaintiffs generally must show that third parties will likely react to the government regulation (or judicial relief) in predictable ways that will likely cause (or redress) the plaintiff's injury. (quotations and citations omitted)). However, we decline to address the propriety of such an approach in West Virginia in the context of this case because Petitioners fail either way.

before us establishes that this circumstance has changed through the pendency of *Pushkin I*, *Pushkin II*, or *Pushkin III*, the petition currently before the Court.[26]

Respondents cannot force Mr. de Soto to appear to take the oath, and Petitioners have not demonstrated that Mr. de Soto is willing or able to take the oath, especially considering his ongoing criminal proceedings. Consequently, assuming that Petitioners have demonstrated an injury-in-fact, their own delay in properly bringing this proceeding—following a myriad of rejections for jurisdictional and procedural missteps—until after the vacancy had been filled, as well as their failure to include Mr. de Soto as a party or at least demonstrate that Mr. de Soto was able and willing to be seated, mean that Speaker Hanshaw cannot be compelled to provide the relief Petitioners seek from him. As such, Petitioners have not established the redressability prong of the mandatory standing inquiry.

[26] Moreover, this Court has held that "[m]andamus is the proper remedy to admit or restore to office a person who shows a clear legal right to an office and is wrongfully excluded from it." Syl. Pt. 1, *Hertzog v. Fox*, 141 W. Va. 849, 93 S.E.2d 239 (1956). However, in *Hertzog*, the petitioner seeking mandamus relief was, instead, the very person alleging that he was entitled to the office of councilman of the town of Worthington, West Virginia. 141 W. Va. at 851, 93 S.E.2d at 240-41. Here, Mr. de Soto did not institute his own mandamus action, lending further credence to the conclusion that he is either unwilling or unable to be seated.

Seemingly acknowledging that Mr. de Soto will not or cannot be seated, Petitioners request a second form of relief in the alternative—that this Court order Speaker Hanshaw to request nominations from the Berkeley County Democratic Executive Committee. However, as discussed above, while the Petitioners' multiple missteps in relation to their requests for extraordinary relief progressed, Governor Morrisey appointed Delegate Masters and he has been seated as the Delegate for the 91st Delegate District since January 24, 2025. Petitioners do not point to any authority indicating how Delegate Masters could be unseated. Because Petitioners failed to demonstrate how Speaker Hanshaw could unseat Delegate Masters, there is no vacancy and the Court cannot create a vacancy for Speaker Hanshaw to request a list of nominees.

Even if Speaker Hanshaw could unseat Delegate Masters and declare a vacancy, this Court could still not redress the alleged injury as requested by Petitioners. West Virginia Code § 3-10-5(a) provides that "[a]ny vacancy in the office of . . . member of the House of Delegates shall be filled by appointment by the Governor[.]" Furthermore, relevant to this proceeding, the Governor must make the appointment "from a list of three legally qualified persons" submitted by the appropriate party executive committee. *Id*. Consequently, even if there was a vacancy to be filled, no part of the statute requires or

even suggests that the Speaker has a duty to request this list of nominees.[27] *See generally id.* Accordingly, this is another form of relief that this Court cannot grant. Petitioners have, therefore, failed to establish standing relating to any of their requested relief as to Speaker Hanshaw.

B. Petitioners Lack Standing as to the Claims Against Governor Morrisey

There is, likewise, no standing for Petitioners' claim for relief against Governor Morrisey. Petitioners ask this Court to compel Governor Morrisey to choose a successor delegate from among a list of nominees submitted by the Berkeley County Democratic Executive Committee. As we have previously stated, Petitioners do not point to any authority indicating how Delegate Masters could be unseated and have further failed to establish standing regarding the alternative relief from Speaker Hanshaw. Because Petitioners are not entitled to the relief they seek from Speaker Hanshaw, the Court cannot create a vacancy for Governor Morrisey to appoint from either the previously submitted list, or a new list, of nominees. Therefore, there is no vacancy to which Governor Morrisey can appoint a nominee from a list submitted by the Berkeley County Democratic Executive Committee. Consequently, the Petitioners have failed to demonstrate that their claim is redressable.

[27] Furthermore, the Berkeley County Democratic Executive Committee already submitted a list of three nominations to Governor Morrisey, so there would be no need for Speaker Hanshaw to request a list.

Because Petitioners' alleged injury cannot be redressed by this Court, we conclude that Petitioners' have not satisfied the redressability prong of our standing test. Consequently, Petitioners are not entitled to the extraordinary relief they seek in the petition for a writ of mandamus.

IV.

CONCLUSION

For the foregoing reasons, Petitioners' requested writ of mandamus is denied.

Writ denied.