



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel. Margaret L.
Workman,

Petitioner,

v.

Mitch Carmichael, President of the West
Virginia Senate; Donna J. Boley, President Pro
Tempore of the West Virginia Senate; Ryan
Ferns, Majority Leader of the West Virginia
Senate; Lee Cassis, Clerk of the West Virginia
Senate; and the West Virginia Senate,

Respondents.

No. 18-0816

RESPONSE IN OPPOSITION TO PETITIONER'S REQUEST FOR STAY

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Majority Leader of the West Virginia Senate; Lee Cassis,
Clerk of the West Virginia Senate; and the West
Virginia Senate

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Mitch Carmichael, President of the West Virginia Senate; Donna J. Boley, President Pro Tempore of the West Virginia Senate; Ryan Ferns, Majority Leader of the West Virginia Senate; Lee Cassis, Clerk of the West Virginia Senate; and the West Virginia Senate (collectively the “West Virginia Senate” or “Respondents”) respectfully submit this response to this Court’s Order, issued on September 25, 2018, ordering the Respondents to file a response to Petitioner Margaret L. Workman’s (“Petitioner”) motion for a stay on or before September 27, 2018. *See* Order, September 21, 2018, attached as Exhibit A.¹

INTRODUCTION

This Court must deny Petitioner’s request for a stay because the Petition is an illegal and unconstitutional attempt to usurp authority that has been exclusively delegated to the West Virginia House of Delegates and West Virginia Senate by the *Constitution of West Virginia*. West Virginia’s model of government— like that of the United States of America and the other 49 states— is a tripartite republican system defined by two fundamental principles: separation of powers and checks and balances. Here, the Petition is an illegal and unconstitutional invitation to this Court to violate the separation of powers by usurping the power of impeachment, which has been exclusively delegated to the Legislature by the *Constitution of West Virginia*, by ordering the West Virginia Senate to suspend impeachment proceedings pending against Petitioner in the West Virginia Senate.² If this Court exercises jurisdiction over the Petition, it will provoke a constitutional crisis by effectively eliminating the Legislature’s only check over the courts.

¹ As noted below, it is important to note that Petitioner never actually filed a motion for a stay or briefed the elements that must be established to obtain a stay in her Petition. *See infra* § II.

² Petitioner’s impeachment trial is scheduled to begin on October 15, 2018. *See* Journal of the Senate Sitting for the Trial of the Various Justices of the Supreme Court of Appeals of the State of West Virginia, Upon Articles of Impeachment, Sept. 11, 2018, at 30, attached as Exhibit B.

In addition, even assuming this Court can consider the merits of a stay, it should refuse to grant a stay. It is axiomatic that a stay is an extraordinary remedy that should only be granted sparingly. In this case, this fundamental principle is even more important because Petitioner is asking this Court to prohibit the West Virginia Senate from exercising powers exclusively delegated to it by the *Constitution of West Virginia*. Despite the stakes presented by the Petition and the requested stay, however, Petitioner failed to file a separate motion seeking a stay. Moreover, she failed, in her Petition, to identify— or brief— the elements that are prerequisites to a stay.³ The reason is simple: Petitioner *cannot* establish the elements necessary to obtain a stay.

STANDARD OF REVIEW

When considering whether to stay underlying proceedings, appellate courts traditionally apply a legal standard that considers four factors. *See Nken v. Holder*, 556 U.S. 418, 434 (2009). The factors typically considered by appellate courts are:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits, (2) whether the applicant will be irreparably injured absent a stay, (3) whether issuance of the stay will substantially injure other parties interested in the proceeding, and (4) where the public interest lies.

Nken, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

As explained below, Petitioner’s request for a stay must be denied because this Court lacks jurisdiction over the Petition itself. Because this Court lacks jurisdiction over the Petition, it is inescapable that the Respondents will succeed on the merits. Nor can Petitioner establish that she will be irreparably harmed without a stay, given that the West Virginia Senate is exercising the authority

³ Rule 29 of the Rules of Appellate Procedure requires that any such motion, to stay or otherwise, shall “state with particularity the grounds on which it is based.”

expressly granted to it under the Impeachment Clause. With respect to the third and fourth elements, the issuance of a stay would provoke a constitutional crisis and harm the people of West Virginia by depriving the Legislature of powers exclusively delegated to it by the *Constitution of West Virginia*.

ARGUMENT

I. Petitioner’s motion to stay—and her Petition itself—is an unconstitutional invitation to this Court to usurp powers exclusively delegated to the Legislature and must be rejected under the Political Question, Separation of Powers, and Checks and Balances doctrines.

No court has ever intervened in an impeachment proceeding against a judicial officer that was currently pending before a legislative body serving as a constitutionally authorized court of impeachment. To the contrary, the United States Supreme Court and federal and state courts consistently hold that impeachment proceedings before a duly authorized legislative body are nonjusticiable. *See Nixon v. U.S.*, 506 U.S. 224, 238 (1993) (rejecting a federal judge’s procedural challenge to impeachment proceedings where the Senate had the sole discretion to choose such procedures); *Larsen v. Senate of Pennsylvania*, 166 Pa. Cmwlth. 472, 491 (1994) (refusing to enjoin ongoing impeachment proceedings against a former state supreme court justice because the issues raised were “within the exclusive power of the Senate ... and cannot be invaded by the courts”); *In re Judicial Conduct Committee*, 145 N.H. 108, 113 (2000) (finding specific issues raised by the New Hampshire Supreme Court’s Committee on Judicial Conduct to be nonjusticiable given the state house of representatives’ “extensive”... authority “to conduct impeachment proceedings without interference from the judicial branch”); *Mecham v. Gordon*, 156 Ariz. 297, 302 (1988) (refusing to usurp the Senate’s prerogative over pending impeachment proceedings because the separation of powers principle prohibits such intervention in the legislative process). Consequently, this Court should deny Petitioner’s request for a stay.

A. **The West Virginia Senate is the exclusive Court of Impeachment.**

One of the critical factors for determining whether a matter is nonjusticiable, or involves a political question, is whether “there is ‘a textually demonstrable constitutional commitment of the issue to a coordinate political department.’” *Nixon*, 506 U.S. at 228 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). As is the case with the United States Constitution, and most state constitutions, the issue of impeachment under the *Constitution of West Virginia* is textually and demonstrably committed to one political department—the West Virginia Legislature.

The Respondents’ authority over Petitioner’s impeachment proceedings is unquestionable and exclusive. Specifically, Article IV, Section 9 of the *Constitution of West Virginia* provides that:

Any officer of the State may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The House of Delegates shall have the *sole power of impeachment*. The Senate shall have the *sole power to try impeachments*...

W. VA. CONST. art. IV, § 9 (emphasis added). As such, Respondents respectfully note that this Court has no purview to issue a stay in the impeachment proceedings currently pending before the West Virginia Senate. This proposition is overwhelmingly supported by the weight of existing case law.

The United States Supreme Court definitively held in *Nixon v. U.S.* that review of the United States Senate’s impeachment trial of a federal district judge was not “a claim that may be resolved by the courts.” 506 U.S. at 226. The Court specifically noted that “[j]udicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the ‘important constitutional check’ placed on the Judiciary by the Framers.” *Id.* at 235 (internal quotations omitted). In concurring with the majority opinion, Justice Stevens wrote that

the Court's decision not to interfere with the impeachment proceedings in question was a "*wise policy of judicial restraint*," given the "central fact that the Framers decided to assign the impeachment power to the Legislative Branch." *Id.* at 238. (emphasis added).

The Commonwealth Court of Pennsylvania also refused to enjoin Senate impeachment proceedings against a former state supreme court justice in *Larsen* by finding that the issues raised were "within the exclusive power of the Senate to conduct impeachment trial proceedings *and cannot be invaded by the courts.*" 166 Pa. Cmwlth. at 491 (emphasis added). Importantly, the Court recognized a distinction between the significantly different justiciable characteristics of examining completed legislative action— such as an impeachment proceeding that had concluded— and the Court's potential involvement in a pending impeachment proceeding, which involves a unique and unprecedented attempt to "exercise a prior restraint" upon the Senate's exclusive authority to serve as a court of impeachment. *Id.* at 484-85. The Court's ruling was consistent with the Pennsylvania Supreme Court's previous holding in *Dauphin County Grand Jury Investigation Proceeding (No. 2)*, 332 Pa. 342, 2 A.2d 802 (1938), where the highest court in Pennsylvania vacated a trial court order because "the court had no power to engage in such a direct interference with the impeachment function of the legislature." *Larsen*, 166 Pa. Cmwlth. at 482.

Likewise, in *Mecham v. Gordon*, the Supreme Court of Arizona refused a request by the Governor to delay his impeachment trial before the State Senate. In doing so, the Court held that it had no jurisdiction to issue an injunction against the Arizona Senate, as the state's constitution clearly expressed "the intention that no other tribunal should have any jurisdiction" over such impeachment matters. *Mecham*, 156 Ariz. at 301 (quoting *Ritter v. United States*, 84 Ct. Cl. 293, 296 (1936), *cert. denied*, 300 U.S. 668 (1937)).

Finally, the Supreme Court of New Hampshire similarly ruled that the specific issues raised by its Committee on Judicial Conduct in an ongoing judicial impeachment proceeding were nonjusticiable. *See In re Judicial Conduct Committee*, 145 N.H. 108, 113 (2000). In declining to require the House Judiciary Committee to conduct its impeachment proceedings in a certain manner, the Supreme Court of New Hampshire determined that the impeachment of judges was “demonstrably committed to the legislative branch.” *Id.* at 112-13. The Court concluded that “[t]he constitutional authority ... to conduct impeachment proceedings *without interference from the judicial branch* is extensive ...” *Id.* at 113 (emphasis added).

By denying Petitioner’s request for a stay, this Court would be exercising proper judicial restraint in a manner that is consistent with the United States Supreme Court’s decision in *Nixon*, as well as the numerous other state court decisions refusing to delve into such political questions which have clearly been delegated to the legislative branch and the legislative branch alone. There is simply *no* precedent for permitting a court to interfere with the role exclusively granted to another branch of government. As such, Petitioner’s request for a stay should be denied.

B. Petitioner’s request for a stay is in violation of the Separation of Powers Clause.

One of the *Constitution of West Virginia’s* most fundamental provisions is the Separation of Powers Clause. Indeed, the separation of powers principle is a defining hallmark of a republican system of government and, as such, is an inviolate component of the Constitution of the United States and the constitutions of West Virginia’s sister states.⁴ The Separation of Powers Clause provides that:

⁴ *See also* U.S. CONST. art. IV, § 4 (providing that “[t]he United States shall guarantee to every State in this Union a Republican Form of Government.”).

The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the Legislature.

W. VA. CONST. art. V, § 1.

By requesting a stay of the impeachment proceedings currently pending before the West Virginia Senate, Petitioner seeks to short-circuit the constitutionally prescribed process for the removal of public officers. As the Supreme Court of Texas explained:

In the matter of impeachment the House acts somewhat in the capacity of a grand jury. It investigates, hears witnesses, and determines whether or not there is sufficient ground to justify the presentment of charges, and, if so, it adopts appropriate articles and prefers them before the Senate ... During the trial the Senate sits 'as a court of impeachment,' and at its conclusion renders a 'judgment.'... The Senate sitting in an impeachment trial is just as truly a court as is this court.

Ferguson v. Maddox, 114 Tex. 85, 94 (1924).

The West Virginia House of Delegates exercised its "sole power of impeachment" pursuant to Article IV, Section 9 of the *Constitution of West Virginia* by investigating charges of misconduct, hearing witnesses and ultimately approving articles of impeachment against Petitioner. Consequently, it is now the *sole* responsibility of the West Virginia Senate to try the impeachment of Petitioner. See W. VA. CONST. art. IV, § 9. It is the Senate's responsibility to weigh the evidence presented and ultimately render a judgment as the Court of Impeachment. The jurisdiction of the Senate, sitting as the Court of Impeachment, "is very limited, but such as it has is of the highest. *It is original, exclusive, and final. Within the scope of its constitutional authority, no one may gainsay its judgment.*" *Ferguson*, 114 Tex. at 94. (emphasis added). Petitioner's request to stay

proceedings in the Senate would effectively and improperly circumvent the constitutionally mandated impeachment process set forth in Article IV, Section 9. Petitioner fundamentally seeks to have this Court sit in judgment of the validity of actions taken by the House of Delegates and actions not yet taken by the West Virginia Senate. Such a proposition is constitutionally unacceptable.

As noted by Justice Farrell in his role of Presiding Officer in the Court of Impeachment, impeachment is “a uniquely legislative *and* political function. It is not Judicial.” *Mecham*, 156 Ariz. at 302.⁵ In debating where to vest the impeachment powers of our U.S. Constitution, the Framers:

rejected any proposal that the articles of impeachment adopted by the house of representatives *would be tried by the judicial branch of government* and deliberately selected the senate as the tribunal to try impeachment charges.

Mecham, 156 Ariz. at 301 (*citing* The Federalist, No. 65; *also citing* J. Madison, The Debates in The Federal Convention of 1787 Which Framed the Constitution of the United States of America 279, 429, 449, 472, 535, 537, 561 (International Ed. 1970) (most complete record of the genesis of the federal Constitution’s impeachment provisions) (emphasis added). Moreover, the U.S. Supreme Court made the very same point in the Nixon case. *See Nixon*, 506 U.S. at 233-34.

In our constitutional system of checks and balances, it is critical to note that “impeachment was designed to be the *only* check on the Judicial Branch by the Legislature.” *Nixon*, 506 U.S. at 235. This Court previously affirmed that, under the *Constitution of West Virginia*, “only the Legislature has the power to remove a ... judge from office, and it may do so only by impeachment.”

⁵ In denying Petitioner’s motion for a bill of particulars in the Court of Impeachment, Justice Farrell, acting as the Presiding Officer of the Court of Impeachment, noted that “a Bill of Particulars was a criminal type motion and this was not a criminal trial.” *See* Exhibit B at p. 32.

In re Watkins, 233 W. Va. 170, 174, 757 S.E.2d 594, 598 (2013). In reviewing the scope of judicial disciplinary proceedings, this Court further opined that “[t]he separation of powers doctrine implies that each branch of government has inherent power to ‘keep its own house in order,’ *absent a specific grant of power to another branch, such as the power to impeach.*” *Id.* at 177, 757 S.E.2d at 601. (quoting James Duke Cameron, “The Inherent Power of a State’s Highest Court to Discipline the Judiciary,” 54 *Chicago Kent L. Rev.* 45, 49 (1977)). Ultimately, the removal of public officers and, more specifically, judicial officers, is unquestionably delegated only to the West Virginia Legislature.

This Court has previously held that, under the Separation of Powers Clause set forth in Article V, Section 1 of the *Constitution of West Virginia*, “courts have no authority— by mandamus, prohibition, contempt or otherwise—to interfere with the proceedings of either house of the Legislature.” Syl. Pt. 3, *State ex rel. Holmes v. Clawges*, 226 W. Va. 479, 702 S.E.2d 611 (2010). In fact, the principle of separation of powers is so sacrosanct that this Court further warned, in *Holmes*, that “[o]ne branch of the government cannot encroach on the domain of another *without danger*. The safety of our institutions depends in no small degree on *a strict observance of this salutary rule.*” *See id.* at 485, 702 S.E.2d at 617 (quoting *Union Pac. R. Co. v. U.S.*, 99 U.S. 700, 718 (1878)) (emphasis added). For these reasons, Petitioner’s request for a stay of the impeachment proceedings currently pending in the West Virginia Senate is wholly inappropriate and unconstitutional. West Virginia’s Separation of Powers doctrine “is not merely a suggestion; it is part of the fundamental law of our State and, as such, *it must be strictly construed and closely followed.*” Syl. Pt. 1, *State ex rel. Barker v. Manchin*, 167 W. Va. 155, 279 S.E.2d 622 (1981) (emphasis added). By asking this Court to intervene in this matter, Petitioner ultimately seeks to violate the clearly delineated separation of powers established by both the United States and West Virginia constitutions. Such a proposition is both illogical and unlawful and should be summarily denied so as to avoid further harm to West Virginia’s constitutional framework.

Finally, it is also worth noting that many of the arguments proffered by Petitioner have been raised or are currently being raised before the West Virginia Senate sitting as the Court of Impeachment. For example, Petitioner alleges that the Legislature “failed to afford the Petitioner notice of the claims asserted against her.” *See* Pet. at 26. However, this argument was already raised by Petitioner in the Court of Impeachment and rejected by the Presiding Officer.⁶ Specifically, on September 10, 2018, Petitioner filed a “Motion for a Bill of Particulars” with the Court of Impeachment, in which she argued that the lack of a bill of particulars deprives her of sufficient information regarding the charges against her in violation of her due process rights. *See* Respondent’s Motion for a Bill of Particulars, attached as Exhibit C. Justice Farrell, acting as the Presiding Officer of the Court of Impeachment, denied Petitioner’s request, noting that “a Bill of Particulars was a criminal type motion and this was not a criminal trial.” *See* Exhibit B at p. 32.

Furthermore, on September 21, 2018, Counsel for Petitioner filed more than a dozen other motions with the West Virginia Senate, sitting as the duly recognized Court of Impeachment. *See* Letter to Senate Clerk, Sep. 21, 2018, attached as Exhibit D.⁷ Those include a variety of motions to dismiss, a motion for a more definite statement, a motion for a continuance and, perhaps, most

⁶ Under the *Constitution of West Virginia*, this Court should exercise judicial restraint and avoid deciding the issues raised in the Petition. As noted above, the Framers of the *Constitution of West Virginia* vested the power of impeachment in the Legislature. According to the U.S. Supreme Court in *Nixon*, “judicial review would be inconsistent with the Framers’ insistence that our system be one of checks and balances. In our constitutional system, impeachment was designed to be the *only* check on the Judicial Branch by the Legislature.” *Nixon*, 506 U.S. at 234-35 (emphasis in original). Moreover, the *Nixon* Court held that “[j]udicial involvement in impeachment proceedings, even if only for purposes of judicial review, is counterintuitive because it would eviscerate the ‘important constitutional check’ placed on the Judiciary by the Framers.” *Id.* at 235. Lastly, as Justice Neely wrote in dissent in *In re Dostert*, 174 W. Va. 258, 324 S.E.2d 402 (1984), “Nemo debet iudex in propria causa.” The same principle applies to any efforts by the judicial branch to review impeachment proceedings involving the judicial branch.

⁷ Coincidentally, Petitioner has sought to disqualify Justice Farrell from participating in the judgment of this matter while the very same motions are pending before him as the Presiding Officer of the Court of Impeachment. *See* Motion for Disqualification, attached as Exhibit E.

importantly, a “Motion to Dismiss on Grounds Stated in Petition for Writ of Mandamus.” *See* Motion to Dismiss – Grounds Stated in Petition for Writ of Mandamus, attached as Exhibit F. Because the issues raised by Petitioner are already before the West Virginia Senate, it would be inappropriate and premature for this Court to interject itself into the ongoing impeachment proceedings.⁸ Therefore, Petitioner’s request for a stay and her Petition, as a whole, should be denied.

II. Petitioner has failed to meet any cognizable standard for granting a stay.

It is axiomatic that a stay is an extraordinary remedy that should only be granted sparingly. *See, e.g., Heckler v. Turner*, 468 U.S. 1305 (1984) (Rehnquist, J., in chambers); *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315 (1983) (Blackmun, J., in chambers). The stay requested by Petitioner is even more extraordinary in that she asks this Court to halt the proceedings of a coordinate branch of government. Nevertheless, it is remarkable that Petitioner failed to file a separate motion seeking a stay and failed to brief the elements of stay relief in her Petition. Indeed, Rule 29 of the Rules of Appellate Procedure of this Court mandates that any motion, to stay or otherwise, shall “state with particularity the grounds on which it is based.” Petitioner’s failure to file a motion or argue the elements that are prerequisites to a stay should doom her request for a stay. Moreover, as noted below, Petitioner cannot satisfy the four elements that are necessary to obtain a stay.

⁸ Petitioner’s request is akin to asking a court to rule upon the validity of legislation that has only been considered by one chamber of the legislative branch. As Justice Starcher noted when this Court was asked to intervene in a constitutional dispute between the Legislature and the Governor, “this Court should not be interfering with the orderly operation of the Legislative and Executive branches of government by taking pre-emptive action with respect to potential legislation.” *See* Order, Sept. 9, 2005, attached as Exhibit G.

A. Petitioner cannot make a strong showing that she is likely to succeed on the merits of her Petition.

As noted above, the overwhelming weight of authority establishes that issues implicating impeachment are within the exclusive jurisdiction of the legislative branch and are nonjusticiable. Apart from justiciability, Petitioner's arguments are overwhelmingly based on the misguided notion that an impeachment trial is a criminal matter, and that the judicial standards developed in regard to criminal cases apply to her impeachment trial. Justice Farrell, acting as the Presiding Officer of the Court of Impeachment, has already rejected this notion. Moreover, the U.S. Supreme Court in *Nixon* established that impeachment is a political matter that is ill-suited and beyond the jurisdiction of the judicial branch.

B. Petitioner cannot show that she will be irreparably harmed absent a stay.

Nor has Petitioner shown that she will be irreparably harmed by the absence of the stay. Petitioner only generally cites the pendency of her impeachment trial in the West Virginia Senate, which is currently slated for October 15, 2018. As discussed in detail above, the issues raised by Petitioner in her Petition are currently pending before the West Virginia Senate sitting as the Court of Impeachment.⁹ As such, Petitioner's only harm, absent a stay, would be that the Senate, and not this Court, would adjudicate the claims she is raising.

C. Petitioner cannot show that issuance of a stay will not substantially injure the other parties to this matter, and the public interest does not support issuance of a stay.

Petitioner's failure on the first two factors alone suffices for denial of her request for a stay, as "the first two factors of the traditional standard are the most critical." *Nken*, 556 U.S. at 434.

⁹ In fact, Petitioner filed with the Senate a "Motion for Continuance," which is currently pending before the Court of Impeachment. See Chief Justice Workman's Motion for Continuance, attached as Exhibit H.

However, Petitioner fails on the remaining two factors as well. With respect to whether the issuance of a stay will substantially injure other parties interested in the proceeding, it is worth noting that Justice Beth Walker¹⁰ has respectfully requested that this Court *not issue a stay affecting her impeachment trial*. See Justice Walker's Response to Request for Stay, Sept. 26, 2018, attached as Exhibit I. With respect to the fourth and final factor, it is also in the public interest for this Court to deny Petitioner's request for a stay.

As explained in great detail herein, Petitioner's case raises serious constitutional questions regarding the separation of powers and checks and balances doctrines, and the request to have this Court stay proceedings currently before the West Virginia Senate sitting as a Court of Impeachment threatens to intrude upon the exclusive constitutional powers of the Senate "to try impeachments." W. VA. CONST. art. IV, § 9. In effect, Petitioner's request for a stay seeks to divest the Senate of its constitutional authority—and eliminate the only check it has with respect to the judicial branch—and threatens to provoke a constitutional crisis. See *Nixon*, 506 U.S. at 234-235 (nothing that impeachment is the legislature's only check with respect to the judicial branch). It is in the interest of the public, the Senate and this Court that such a crisis be avoided. Consequently, Petitioner's request for a stay should be denied.

CONCLUSION

For the foregoing reasons, Respondents Mitch Carmichael, President of the West Virginia Senate; Donna J. Boley, President Pro Tempore of the West Virginia Senate; Ryan Ferns, Majority Leader of the West Virginia Senate; Lee Cassis, Clerk of the West Virginia Senate; and the

¹⁰ Justice Walker is a party to the impeachment proceedings that are the subject of this case, and her trial is scheduled to begin before the West Virginia Senate sitting as the Court of Impeachment on October 1, 2018. See Exhibit B at 30.

West Virginia Senate respectfully request this Court deny Petitioner's request for a stay and avert a constitutional crisis.

Mitch Carmichael, President of the West Virginia Senate; Donna J. Boley, President Pro Tempore of the West Virginia Senate; Ryan Ferns, Majority Leader of the West Virginia Senate; Lee Cassis, Clerk of the West Virginia Senate; and the West Virginia Senate

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STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on September 25, 2018, the following order was made and entered:

State of West Virginia ex rel. Margaret L. Workman,
Petitioner

vs.) No. 18-0816

Mitch Carmichael, President of the West Virginia Senate;
Donna J. Boley, President Pro Tempore of the West Virginia Senate;
Ryan Ferns, Majority Leader of the West Virginia Senate;
Lee Cassis, Clerk of the West Virginia Senate;
and the West Virginia Senate,
Respondents

Order

On September 21, 2018, came the petitioner, Margaret L. Workman, by counsel Marc E. Williams, Melissa Foster Bird, Thomas M. Hancock, and Christopher D. Smith, and presented to the Court her petition praying for a writ of mandamus, together with a motion for stay, to be directed against the respondents, Mitch Carmichael, President of the West Virginia Senate; Donna J. Boley, President Pro Tempore of the West Virginia Senate; Ryan Ferns, Majority Leader of the West Virginia Senate; Lee Cassis, Clerk of the West Virginia Senate; and the West Virginia Senate, as therein set forth.

It is hereby ordered that the respondents file a response to the motion for stay on or before September 27, 2018, by 4:00 p.m.

Justice Allen H. Loughry II, suspended and therefore not participating. Justice Paul T. Farrell sitting by temporary assignment.

**EXHIBIT
A**

Chief Justice Margaret L. Workman, Justice Elizabeth D. Walker, and Justice Paul T. Farrell disqualified. Acting Chief Justice James A. Matish, Judge Ronald E. Wilson, Judge Louis H. Bloom, Judge Rudolph J. Murensky II, and Judge Jacob E. Reger sitting by temporary assignment.

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court



**JOURNAL
OF
THE SENATE
SITTING FOR THE TRIAL OF
THE VARIOUS JUSTICES OF THE
SUPREME COURT OF APPEALS OF THE
STATE OF WEST VIRGINIA,
UPON ARTICLES OF IMPEACHMENT**

TUESDAY, SEPTEMBER 11, 2018

**THE STATE OF WEST VIRGINIA
VS
THE VARIOUS JUSTICES OF THE
SUPREME COURT OF APPEALS OF THE STATE OF WEST VIRGINIA**

The Senate, sitting as a Court of Impeachment to consider proceedings against Robin Jean Davis, Retired Justice of the Supreme Court of Appeals of the State of West Virginia; Allen H. Loughry II, Justice of the Supreme Court of Appeals of the State of West Virginia; Elizabeth D. Walker, Justice of the Supreme Court of Appeals of the State of West Virginia; and Margaret L. Workman, Chief Justice of the Supreme Court of Appeals of the State of West Virginia.

Upon direction of the President of the Senate, the oath was administered to the Honorable Paul T. Farrell, Acting Chief Justice of the Supreme Court of Appeals of the State of West Virginia, by the Honorable Lee Cassis, Clerk of the West Virginia Senate.

The Acting Chief Justice of the Supreme Court of Appeals of the State of West Virginia assumed the chair and directed the Honorable Lee Cassis, Clerk of the West Virginia Senate, to administer the oath to the following members of the West Virginia Senate:

First Senatorial District: Ryan J. Ferns of the County of Ohio;

First Senatorial District: Ryan W. Weld of the County of Brooke;

Second Senatorial District: Michael J. Maroney of the County of Marshall;

**EXHIBIT
B**

Second Senatorial District: Charles H. Clements of the County of Wetzel;

Third Senatorial District: Donna J. Boley of the County of Pleasants;

Third Senatorial District: Michael T. Azinger of the County of Wood;

Fourth Senatorial District: Mitch Carmichael of the County of Jackson;

Fourth Senatorial District: Mark A. Drennan of the County of Putnam;

Fifth Senatorial District: Robert H. Plymale of the County of Wayne;

Fifth Senatorial District: Michael A. Woelfel of the County of Cabell;

Sixth Senatorial District: Mark R. Maynard of the County of Wayne;

Sixth Senatorial District: Chandler Swope of the County of Mercer;

Seventh Senatorial District: Ron Stollings of the County of Boone;

Seventh Senatorial District: Richard N. Ojeda II of the County of Logan;

Eighth Senatorial District: C. Edward Gaunch of the County of Kanawha;

Eighth Senatorial District: Glenn D. Jeffries of the County of Putnam;

Ninth Senatorial District: Sue Cline of the County of Wyoming;

Ninth Senatorial District: Lynne Carden Arvon of the County of Raleigh;

Tenth Senatorial District: Kenny Mann of the County of Monroe;

Tenth Senatorial District: Stephen Baldwin of the County of Greenbrier;

Eleventh Senatorial District: Robert Karnes of the County of Upshur;

Eleventh Senatorial District: Gregory L. Boso of the County of Nicholas;

Twelfth Senatorial District: Douglas E. Facemire of the County of Braxton;

Twelfth Senatorial District: Michael J. Romano of the County of Harrison;

Thirteenth Senatorial District: Roman W. Prezioso, Jr. of the County of Marion;

Thirteenth Senatorial District: Robert D. Beach of the County of Monongalia;

Fourteenth Senatorial District: Dave Sypolt of the County of Preston;

Fourteenth Senatorial District: Randy E. Smith of the County of Tucker;

Fifteenth Senatorial District: Craig Blair of the County of Berkeley;

Fifteenth Senatorial District: Charles S. Trump IV of the County of Morgan;

Sixteenth Senatorial District: John R. Unger II of the County of Berkeley;

Sixteenth Senatorial District: Patricia Puertas Rucker of the County of Jefferson;

Seventeenth Senatorial District: Corey Palumbo of the County of Kanawha;

Seventeenth Senatorial District: Tom Takubo of the County of Kanawha.

The Presiding Officer then announced that the oath having been administered to all the Senate members present, the Senate was now organized as a Court of Impeachment to consider proceedings against the various justices of the Supreme Court of Appeals of the State of West Virginia, and directed the Sergeant at Arms to make the following proclamation: All persons are commanded to keep silence, on pain of Imprisonment, while the Senate is sitting as a Court of Impeachment.

The Presiding Officer then announced that summonses had been issued against and served upon each of the Respondents; that returns of service were made for the same; and that the summonses and returns are available for review.

The Presiding Officer then directed the Sergeant at Arms to summon the Managers, attorneys, and respondents.

The Managers, appointed by the House of Delegates to conduct the trial of Impeachment of the various justices of the Supreme Court of Appeals of the State of West Virginia, to wit: Delegates Shott, Hollen, Byrd, and Miller (Delegate Foster, one of the said managers, being absent) entered the Senate Chamber and took the seats assigned them.

Brian Casto, Marsha Kaufmann, and Joe Altizer, counsel for the Managers of the House of Delegates, accompanied said Managers.

Respondent Allen H. Loughry II, Justice of the Supreme Court of Appeals of the State of West Virginia, and the respondents' counsel entered the Senate Chamber and took the seats assigned them.

The Presiding Officer recognized John H. Shott, Chair of the Managers appointed by the House of Delegates, for a presentation concerning an agreement between the Managers and Elizabeth D. Walker, Justice of the Supreme Court of Appeals of the State of West Virginia, and Margaret L. Workman, Chief Justice of the Supreme Court of Appeals of the State of West Virginia.

The Presiding Officer then recognized Andrew D. Byrd, one of the Managers appointed by the House of Delegates, to read the *Stipulation and Agreement of the Parties*.

IN THE WEST VIRGINIA SENATE

*IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENTS CHIEF JUSTICE MARGARET WORKMAN AND JUSTICE
ELIZABETH WALKER*

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

STIPULATION AND AGREEMENT OF PARTIES

Respondents Chief Justice Margaret L. Workman and Justice Elizabeth D. Walker (the "Respondents"), together with the Board of Managers of the West Virginia House of Delegates for the impeachment trials pending in the West Virginia Senate (the "Board of Managers"), jointly agree and stipulate as follows:

1. The Respondents acknowledge indefensible spending by the Supreme Court of Appeals of West Virginia (the "Court"), as well as the absence of Court policies and practices that likely would have prevented that indefensible spending.
2. The Respondents accept full responsibility for all spending on renovations to their personal offices over which they exercised or should have exercised spending oversight and approval.
3. The Respondents acknowledge the need for changed policies and practices to correct the failures identified in Article XIV of the Articles of Impeachment and rebuild public trust in the Court.
4. The Respondents have begun and will continue to implement reforms to improve the administration of the Court and prevent future inappropriate expenditures, and to ensure compliance with all applicable laws and regulations governing the conduct of the Court.


5. The Respondents and the Board of Managers therefore agree to:

a. Jointly recommend that the Senate adopt a resolution of censure with respect to the Respondents, which is included with this Stipulation and Agreement of Parties; and

b. Upon passage of such a resolution of censure, jointly move to dismiss the Articles of Impeachment with respect to the Respondents.

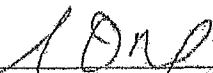
6. The Respondents and the Board of Managers further agree that if the Senate does not dismiss the Articles of Impeachment with respect to the Respondents, no part of this Stipulation and Agreement of Parties may be used in any trial of the Articles of Impeachment.

Agreed to by:



The Hon. John Shott
For: Board of Managers

Dated: 9/11/18




The Hon. Andrew D. Byrd
For: Board of Managers

Dated: 9/11/18



The Hon. Margaret L. Workman

Dated: 9/11/18



The Hon. Elizabeth D. Walker

Dated: 9/11/18

SENATE RESOLUTION _____

Publicly reprimanding and censuring Chief Justice Margaret L. Workman and Justice Elizabeth D. Walker of the Supreme Court of Appeals of West Virginia.

Whereas, Chief Justice Margaret Workman was named in Articles IV and VI of the Articles of Impeachment, which allege overpayment of senior status judges;

Whereas, Chief Justice Workman and Justice Walker were named in Article of Impeachment XIV, which alleges that the Justices of the Supreme Court of Appeals generally and collectively failed to provide or prepare policies and reasonable supervisory oversight of the operations of the Court and in the absence of such policies and oversight, wasted state funds on unnecessary renovations, travel, computers for home use, lunches, and the framing of personal items, and;

Whereas, the House of Delegates also adopted House Resolution 203 censuring all then-sitting Justices related to their conduct concerning, among other things, the spending on their personal offices;

Whereas, Chief Justice Workman and Justice Walker have accepted full responsibility for all spending on renovations to their personal offices over which they exercised or should've exercised spending oversight and approval;

Whereas, Chief Justice Workman and Justice Walker have previously and publicly acknowledged indefensible spending by the Court and the absence of appropriate policies and practices that likely would have prevented that indefensible spending;

Whereas, Chief Justice Workman and Justice Walker have publicly acknowledged the need for changed policies and practices to rebuild public trust in the Court;

Whereas, Chief Justice Workman and Justice Walker have begun and will continue to implement reforms to improve the administration of the Court and prevent future inappropriate expenditures and to ensure compliance with all applicable laws and regulations governing the conduct of the Court;

Whereas, Justice Walker has not served as Chief Justice over the Court or Judicial Branch in the time that she has served on the Supreme Court of Appeals;

Whereas, Chief Justice Workman and Justice Walker support increased legislative oversight, transparency, and accountability of the Supreme Court of Appeals;

Whereas, Chief Justice Workman and Justice Walker accept personal and institutional responsibility for the Court's failure to enact certain specific policies as described in Article XIV in the Articles of Impeachment; therefore, be it

Resolved by the Senate:

That Chief Justice Workman and Justice Walker be hereby publicly reprimanded and censured for and because of the aforementioned conduct; and be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Chief Justice Workman and Justice Walker.

Delegate Byrd then presented the *Stipulation and Agreement of the Parties* document to the Clerk of the Senate.

The Presiding Officer then recognized Ben Bailey, counsel for Margaret L. Workman, Chief Justice of the Supreme Court of Appeals of the State of West Virginia, to address the Court of Impeachment concerning the *Stipulation and Agreement of the Parties*.

The Presiding Officer then recognized Mike Hissam, counsel for Elizabeth D. Walker, Justice of the Supreme Court of Appeals of the State of West Virginia, to address the Court of Impeachment concerning the *Stipulation and Agreement of the Parties*.

On motion of Senator Ferns, at 10:54 a.m., the Court of Impeachment to consider proceedings against the various justices of the Supreme Court of Appeals of the State of West Virginia adjourned until 2:30 p.m. today.

The Rules of the West Virginia Senate While Sitting as a Court of Impeachment During the Eighty-Third Legislature and the Articles of Impeachment Against the Various Justices of the Supreme Court of Appeals of the State of West Virginia are as follows:

**RULES OF THE WEST VIRGINIA SENATE
WHILE SITTING AS A COURT OF IMPEACHMENT
DURING THE EIGHTY-THIRD LEGISLATURE**

1. Definitions

(a) "Articles of Impeachment" or "Articles" means one or more charges adopted by the House of Delegates against a public official and communicated to the Senate to initiate a trial of impeachment pursuant to Article IV, Section 9 of the Constitution of West Virginia.

(b) "Board of Managers" or "Managers" means a group of members of the House of Delegates authorized by that body to serve as prosecutors before the Senate in a trial of impeachment.

(c) "Conference of Senators" means a private meeting of the Court of Impeachment, including an executive session authorized by W. Va. Code §6-9A-4.

(d) "Counsel" means a member of the Board of Managers or an attorney, licensed to practice law in this state, representing the Board of Managers or a Respondent in a trial of impeachment.

(e) "Court of Impeachment" or "Court" means all Senators participating in a trial of impeachment.

(f) "Parties" means the Board of Managers and its counsel and the Respondent and his or her counsel.

(g) "Presiding Officer" means the Chief Justice of the West Virginia Supreme Court of Appeals or other Justice, pursuant to the provisions of Article IV, Section 9 or Article VIII, Section 8 of the Constitution of West Virginia.

(h) "Respondent" means a person against whom the House of Delegates has adopted and communicated Articles of Impeachment to the Senate.

(i) "Trial" means the trial of impeachment.

(j) "Two thirds of the Senators elected" means at least 23 Senators.

2. Pre-Trial Proceedings

(a) Whenever the Senate receives notice from the House of Delegates that Managers have been appointed by the House of Delegates to prosecute a trial of impeachment against a person or persons and are directed to carry Articles of Impeachment to the Senate, the Clerk of the Senate shall immediately inform the House of Delegates that the Senate is ready to receive the Managers for the reporting of such Articles.

(b) When the Board of Managers for the House of Delegates is introduced at the bar of the Senate and signifies that the Managers are ready to communicate Articles of Impeachment, the President of the Senate shall direct the Sergeant at Arms to make the following proclamation: "All persons are commanded to keep silence, on pain of imprisonment, while the House of Delegates is reporting to the Senate Articles of Impeachment"; after which the Board of Managers shall report the Articles. Thereupon, the President of the Senate shall inform the Managers that the Senate will notify the House of Delegates of the date and time on which the Senate will proceed to consider the Articles.

(c) Upon the reporting of Articles of Impeachment to the Senate, the Senate shall adjourn until a date and time directed by the President of the Senate when the Senate will proceed to consider the Articles and shall notify the House of Delegates and the Supreme Court of Appeals of the same. Before proceeding to consider evidence, the Clerk shall administer the oaths provided in these Rules to the Presiding Officer; to the members of the Senate then present; and to any other members of the Senate as they shall appear.

(d) If the Board of Managers reports Articles of Impeachment against more than one person, the Senate shall conduct a separate trial of each Respondent individually as required by Rule 19 of these Rules.

3. Pre-Trial Conference

The Presiding Officer shall hold a pre-trial conference with the parties in the presence of the Court to stipulate to facts and exhibits and address procedural issues.

4. Clerk of the Court of Impeachment; Duties

The Clerk of the Senate, or his or her designee, shall serve as the Clerk of the Court of Impeachment, administer all oaths, keep the Journal of the Court of Impeachment, and perform all other duties usually performed by the clerk of a court of record in this state. The Clerk of the Senate may designate other Senate personnel to assist in carrying out the Clerk's duties. The Clerk shall promulgate all forms necessary to carry out the requirements of these Rules.

5. Marshal of the Court of Impeachment; Duties

The Sergeant at Arms of the Senate, or other person designated by the President of the Senate, shall serve as the Marshal of the Court of Impeachment. The Marshal of the Court of Impeachment shall keep order in accordance with these Rules under the direction of the Presiding Officer.

6. Trial to be Recorded in Journal of the Court of Impeachment

(a) All trial proceedings, not including transcripts of the trial and copies of documentary evidence required to be appended to the bound Journal of the Court of Impeachment by section (c) of this Rule, shall be recorded in the Journal of the Court of Impeachment. The Journal of the Court of Impeachment shall be read, corrected, and approved the succeeding day. It shall be published under the supervision of the Clerk and made available to the members without undue delay.

(b) After the Journal of the Court of Impeachment has been approved and fully marked for corrections, the Journal of the Court of Impeachment so corrected shall be bound in the Journal of the Senate. The bound volume shall, in addition to the imprint required by Rule 49 of the Rules of the Senate, 2017, reflect the inclusion of the official Journal of the Court of Impeachment.

(c) When available, transcripts of the trial and copies of any documentary evidence presented therein shall be printed and bound as an appendix to the Journal of the Court of Impeachment.

7. Site of Trial

The trial shall be held in the Senate Chamber of the West Virginia State Capitol Complex. All necessary preparations in the Senate Chamber shall be made under the direction of the President of the Senate.

8. Floor Privileges

Only the following persons may enter the floor of the Senate Chamber during the trial: Members of the Court of Impeachment; designated personnel of the Court of Impeachment; the parties; the Presiding Officer; a law clerk of the Presiding Officer; witnesses and their counsel while testifying; and authorized media, who shall be located in an area of the chamber designated by the Clerk.

9. Representation of Parties

The House of Delegates shall be represented by its Board of Managers and its counsel. The Respondent may appear in person or by counsel.

10. Method of Address

Senators shall address the Presiding Officer as "Madam (or Mr.) Chief Justice" or "Madam (or Mr.) Justice".

11. Oaths

(a) The following oath, or affirmation, shall be taken and subscribed by the Presiding Officer: "Do you solemnly swear [or affirm] that you will support the Constitution of the United States and the Constitution of the State of West Virginia and that you will faithfully discharge the duties of

Presiding Officer of the Court of Impeachment in all matters that come before this Court to the best of your skill and judgment?"

(b) The following oath, or affirmation, shall be taken and subscribed by every Senator before sitting as a Court of Impeachment: "Do each of you solemnly swear [or affirm] that you will do justice according to law and evidence while sitting as a Court of Impeachment?"

(c) The following oath, or affirmation, shall be taken and subscribed by every witness before providing testimony: "Do you solemnly swear [or affirm] that the testimony you shall give shall be the truth, the whole truth, and nothing but the truth?"

12. Service of Process

(a) The Respondent shall be served with a summons for the appearance of the Respondent or his or her counsel before the Court of Impeachment and provided with a copy of the Articles of Impeachment and a copy of these Rules. The summons shall be signed by the Clerk of the Court of Impeachment, bear the Seal of the Senate, identify the nature of proceedings and the parties, and be directed to the Respondent. It shall also state the date and time at which the Respondent shall appear to answer the Articles of Impeachment and notify the Respondent that if he or she fails to appear without good cause, the allegations contained in the Articles of Impeachment shall be uncontested and that the Senate shall proceed to vote on whether to sustain such Articles pursuant to Rule 15 of these Rules.

(b) The notice required by this Rule shall be served on the Respondent in the manner required by Rule 4 of the West Virginia Rules of Civil Procedure. All process shall be served by the Sergeant at Arms of the Senate, unless otherwise ordered by the President of the Senate. A copy of the summons to the Respondent, upon its issuance, along with a copy of the Articles of Impeachment and a copy of these Rules, shall be provided by the Clerk of the Court of Impeachment to the Clerk of the West Virginia House of Delegates. Upon service of the same upon the Respondent, a copy of the return of service shall be provided by the Clerk of the Court of Impeachment to the Clerk of the West Virginia House of Delegates.

13. Dismissal of Articles Upon Resignation of Respondent; Termination of Trial

(a) Any Senator may move to dismiss the Articles of Impeachment against a Respondent if at any time before the presentation of evidence commences in his or her trial of impeachment the Respondent has resigned or retired from his or her public office. Upon motion of any Senator to dismiss the Articles pursuant to this Rule, all Senators not excused shall vote on the question of whether to dismiss the Articles against the Respondent. If a majority of Senators elected vote to dismiss the Articles against the Respondent, a judgment of dismissal shall be pronounced and entered upon the Journal of the Court of Impeachment or the Journal of the Senate, whichever is convened at the time such vote is taken.

(b) A vote pursuant to this Rule shall be taken by yeas and nays.

(c) Upon dismissal of the Articles of Impeachment against a Respondent pursuant to this Rule, all pre-trial and trial proceedings regarding said Respondent shall immediately cease.

(d) If the House of Delegates adopts and communicates Articles of Impeachment that name more than one Respondent in one or more of the Articles, a dismissal pursuant to this Rule shall not dismiss the articles as to any Respondent who has not resigned or retired.

14. Commencement of Trial; Answer to Articles of Impeachment

At the time and date fixed and upon proof of service of the summons directed to the Respondent, the Respondent shall be called to answer the Articles of Impeachment. If the Respondent appears in person or by counsel, the appearance shall be recorded. If the Respondent does not appear, either personally or by counsel, then the failure of the Respondent to appear shall be recorded. While the Court of Impeachment is in session, the business of the Senate shall be suspended except as otherwise ordered by the President of the Senate.

15. Failure of Respondent to Appear and Contest

(a) If the Respondent fails to appear personally or by counsel without good cause at the time and date specified in the notice required by Rule 12 of these Rules, the allegations contained in the Articles of Impeachment shall be uncontested.

(b) If the allegations contained in the Articles of Impeachment are determined to be uncontested under section (a) of this Rule, the Presiding Officer shall then call upon the Board of Managers to deliver a summary of the evidence of the allegations contained in such Articles.

(c) After the summary of evidence delivered by the Managers, the Court of Impeachment shall vote on the question of whether to sustain one or more of the Articles of Impeachment in accordance with the requirements of Rule 31 of these Rules.

16. Entry of Plea or Pleas; Procedures Based on Plea or Pleas

If the Respondent appears and pleads not guilty to each article, the trial shall proceed. If the Respondent appears and pleads guilty to one or more articles, the Court of Impeachment shall immediately vote on the question of whether to sustain the Articles of Impeachment to which a plea of guilty has been entered in accordance with the requirements of Rule 31 of these Rules.

17. Subpoenas

A subpoena shall be issued by the Clerk of the Court of Impeachment for a witness on application of a party.

18. Procedure in a Contested Matter

(a) After preliminary motions are heard and decided, the Board of Managers or its counsel may make an opening statement. Following the opening statement by the Managers, the Respondent or his or her counsel may then make an opening statement.

(b) The trial shall be a daily special order of business following the Third Order of Business of the Senate, unless otherwise ordered by the President of the Senate. When the hour shall arrive for the special order of business, the President of the Senate shall so announce. The Presiding Officer shall cause proclamation to be made, and the business of the trial shall proceed. The trial may be recessed or adjourned and continued from day to day, or to specific dates and times, by

majority vote of the Senators present and voting. The adjournment of the trial shall not operate as an adjournment of the Senate, but upon such adjournment, the Senate shall resume.

(c) After the presentation of all evidence to the Court of Impeachment, the Board of Managers shall present a closing argument, after which the Respondent shall present a closing argument. Following the Respondent's closing argument, the Board of Managers may offer a rebuttal.

(d) The Board of Managers shall have the burden of proof as to all factual allegations. The Presiding Officer shall direct the order of the presentation of evidence.

19. Separate Trials of Multiple Respondents; Order of Trials

(a) If the House of Delegates communicates Articles of Impeachment against more than one Respondent, the Senate shall schedule and conduct a separate trial of each Respondent.

(b) The Presiding Officer, in consultation with the parties, shall determine the order in which multiple Respondents shall be tried.

20. Witnesses

(a) All witnesses shall be examined by the party producing them and shall be subject to cross-examination by the opposing party. Only one designee of each party may examine each witness. The Presiding Officer may permit redirect examination and recross-examination.

(b) After completion of questioning by the parties, any Senator desiring to question a witness shall reduce his or her question to writing and present it to the Presiding Officer who shall pose the question to the witness without indicating the name of the Senator presenting the question. If objection to a Senator's question is raised by a party, the objection shall be decided in the manner provided in Rule 23 of these Rules.

(c) It shall not be in order for any Senator to directly question a witness.

21. Discovery Procedures

(a) Within five days after service upon the Respondent of the Articles of Impeachment, the Respondent may request, and the Board of Managers shall disclose to the Respondent and make available for inspection, copy, or photograph, the following:

(1) Any written or recorded statement of the Respondent in the Managers' possession which the Managers intend to introduce into evidence in their case-in-chief during the trial;

(2) Any books, papers, documents, data, photographs, tangible objects, buildings or places, or copies of portions of such items in the Managers' possession that the Managers intend to use in their case-in-chief as to one or more Articles of Impeachment;

(3) A list of the persons the Board of Managers intends to call as witnesses in its case-in-chief during the trial; and

(4) A written summary of any expert testimony the Managers intend to use during their case-in-chief. Any summary provided must describe the witness' opinions, the bases and reasons for the opinions, and the witness's qualifications.

(b) The Board of Managers shall make its response to the Respondent's written requests within 10 days of service of the requests.

(c) If the Respondent makes a request pursuant to this Rule, he or she shall be required to provide the same information to the Managers, reciprocally, within 10 days following his or her request.

(d) A copy of all requests pursuant to this section shall be provided to the Clerk. The parties shall provide to the Clerk, in a format or in formats directed by the Clerk, copies of all items disclosed pursuant to this Rule.

(e) The Clerk may require parties to number or Bates stamp any trial exhibits or other information provided to the Clerk. The Clerk may hold a meeting with the parties to organize trial exhibits.

22. Court Reporters; Transcripts

(a) All proceedings shall be reported by an official court reporter or certified court reporter: *Provided*, That if the services of an official court reporter or certified court reporter are unavailable on one or more days of the trial, the proceedings shall be digitally recorded and copies of the recording made available to the parties.

(b) Upon request of a party, the Presiding Officer, or any Senator, the Clerk shall provide a copy of the transcript of any portion of the trial, when such transcripts are available.

23. Motions, Objections, and Procedural Questions

(a) All motions, objections, and procedural questions made by the parties shall be addressed to the Presiding Officer, who shall decide the motion, objection, or procedural question: *Provided*, That a vote to overturn the Presiding Officer's decision on any motion, objection, or procedural question shall be taken, without debate, on the demand of any Senator sustained by one tenth of the Senators present, and an affirmative vote of a majority of the Senators present and voting shall overturn the Presiding Officer's decision on the motion, objection, or procedural question.

(b) On the demand of any Senator or at the direction of the Presiding Officer, the movant shall reduce the motion to writing.

24. Qualification to Sit as Court of Impeachment

Every Senator is qualified to participate on the Court of Impeachment, unless he or she has been excused pursuant to Rule 43 of the Rules of the Senate, 2017.

25. Members as Witnesses

The parties may not call as witnesses, nor subpoena the personal records of, the Senators, members of the Board of Managers, personnel of the Court of Impeachment, the Presiding Officer, or counsel for the parties.

26. Attendance of Members

Every Senator is required to attend the trial unless he or she has been granted a leave of absence, pursuant to Rule 50 of the Rules of the Senate, 2017, or has been excused from voting on the Articles, pursuant to Rule 43 of the Rules of the Senate, 2017. Any Senator who has been granted a leave of absence shall be provided an opportunity to review the exhibits, video or audio recordings, and transcripts for the date or dates he or she is absent and may participate in the vote on verdict and judgment as provided in Rule 31 of these Rules.

27. Notetaking

Senators may take notes during the trial and such notes are not subject to the provisions of W. Va. Code §29B-1-1 *et seq.*

28. Applicability of Rules of the Senate

Except as otherwise provided herein, the Rules of the Senate shall apply to proceedings of the trial and the President of the Senate retains the authority to invoke such rules.

29. Applicability of Rules of Evidence

When not in conflict with these Rules or the Rules of the Senate, the Presiding Officer shall rule on the admissibility of evidence in accordance with West Virginia Rules of Evidence: *Provided*, That a vote to overturn the Presiding Officer's ruling on the admissibility of evidence shall be taken, without debate, on demand of any Senator sustained by one tenth of the members present, and an affirmative vote of the majority of Senators present shall overturn the ruling.

30. Instruction

At any time, the Presiding Officer may, *sua sponte*, or on motion of a party or upon request of a Senator, instruct the Senators on procedural or legal matters.

31. Verdict and Judgment

(a) After closing arguments, the Court may enter into a Conference of Senators for deliberation. After conclusion of said conference and return to open proceedings, or pursuant to Rule 15 or Rule 16 of these Rules, all Senators not excused shall vote on the question of whether to sustain one or more Articles of Impeachment: *Provided*, That any vote of the Senators on the question of whether or not to sustain an Article of Impeachment shall decide only that Article, and no single vote of the Senate shall sustain more than one Article of Impeachment. The Presiding Officer shall have no vote in the verdict or judgment of the Court of Impeachment.

(b) If two thirds of the Senators elected vote to sustain one or more Articles of Impeachment, a judgment of conviction and removal from office shall be pronounced and entered upon the Journal of the Court of Impeachment. If the Respondent is acquitted of any Article of Impeachment, a judgment of acquittal as to such Article or Articles shall be pronounced and entered upon the Journal.

(c) If two thirds of the Senators elected vote to sustain one or more Article of Impeachment, a vote shall then be taken on the question of whether the Respondent shall also be disqualified to hold any office of honor, trust, or profit under the state. If two thirds of the Senators elected vote to disqualify, a judgment of disqualification to hold any office of honor, trust, or profit under the state shall be pronounced and entered upon the Journal of the Court of Impeachment.

(d) Each vote pursuant to this Rule shall be taken by yeas and nays.

(e) A copy of all judgments entered shall be deposited in the office of the Secretary of State.

32. Conference of Senators

(a) On motion of any Senator and by a vote of the majority of the members present and voting, there shall be an immediate Conference of Senators. No Senator or any other person may photograph, record, or broadcast a Conference of Senators. Any motion made pursuant to this Rule shall be nondebatable.

(b) The President of the Senate, or his or her designee, shall preside over a Conference of Senators and the Rules of the Senate shall apply during said conference except as otherwise provided herein.

33. Contempt; Powers of Presiding Officer

The following powers shall be exercised by the Presiding Officer:

- (1) The power to compel the attendance of witnesses subpoenaed by the parties;
- (2) The power to enforce obedience to the Court's orders;
- (3) The power to preserve order;
- (4) The power to punish contempt of the Court's authority; and
- (5) The power to make all orders that may be necessary and that are not inconsistent with these Rules or the laws of this state.

34. Prohibited Conduct; Sanctions

The Court of Impeachment shall have the power to provide for its own safety and the undisturbed transaction of its business, as provided in Article VI, Section 26 of the Constitution of West Virginia.

**ARTICLES OF IMPEACHMENT AGAINST THE
VARIOUS JUSTICES OF THE SUPREME COURT OF APPEALS
OF THE STATE OF WEST VIRGINIA**

Article I

1 That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of
2 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to
3 support the Constitution of the State of West Virginia and faithfully discharge the duties of his
4 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of
5 his oath of office, then and there, with regard to the discharge of the duties of his office, did waste
6 state funds with little or no concern for the costs to be borne by the tax payer for unnecessary and
7 lavish spending in the renovation and remodeling of his personal office, to the sum of
8 approximately \$363,000, which sum included the purchase of a \$31,924 couch, a \$33,750 floor
9 with medallion, and other such wasteful expenditure not necessary for the administration of justice
10 and the execution of the duties of the Court, which represents a waste of state funds.

Article II

1 That the said Justice Robin Davis, being a Justice of the Supreme Court of Appeals of
2 West Virginia, unmindful of the duties of her high office, and contrary to the oaths taken by her to
3 support the Constitution of the State of West Virginia and faithfully discharge the duties of her
4 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of
5 her oath of office, then and there, with regard to the discharge of the duties of her office, did waste
6 state funds with little or no concern for the costs to be borne by the tax payer for unnecessary and
7 lavish spending in the renovation and remodeling of her personal office, to the sum of
8 approximately \$500,000, which sum included, but is not limited to, the purchase of an oval rug
9 that cost approximately \$20,500, a desk chair that cost approximately \$8,000 and over \$23,000
10 in design services, and other such wasteful expenditure not necessary for the administration of
11 justice and the execution of the duties of the Court, which represents a waste of state funds.

Article III

1 That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of
2 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to
3 support the Constitution of the State of West Virginia and faithfully discharge the duties of his
4 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of
5 his oath of office, then and there, with regard to the discharge of the duties of his office, did on or
6 about June 20, 2013, cause a certain desk, of a type colloquially known as a "Cass Gilbert" desk,
7 to be transported from the State Capitol to his home, and did maintain possession of such desk
8 in his home, where it remained throughout his term as Justice for approximately four and one-half
9 years, in violation of the provisions of W.Va. Code §29-1-7(b), prohibiting the removal of original
10 furnishings of the state capitol from the premises; further, the expenditure of state funds to
11 transport the desk to his home, and refusal to return the desk to the state, constitute the use of
12 state resources and property for personal gain in violation of the provisions of W.Va. Code §6B-
13 2-5, the provisions of the West Virginia State Ethics Act, and constitute a violation of the provisions
14 of Canon I of the West Virginia Code of Judicial Conduct.

Article IV

1 That the said Chief Justice Margaret Workman, and Justice Robin Davis, being at all times
2 relevant Justices of the Supreme Court of Appeals of West Virginia, and at various relevant times
3 individually each Chief Justice of the Supreme Court of Appeals of West Virginia unmindful of the
4 duties of their high offices, and contrary to the oaths taken by them to support the Constitution of
5 the State of West Virginia and faithfully discharge the duties of their offices as such Justices, while
6 in the exercise of the functions of the office of Justices, in violation of their oaths of office, then
7 and there, with regard to the discharge of the duties of their offices, commencing in or about 2012,
8 did knowingly and intentionally act, and each subsequently oversee in their capacity as Chief
9 Justice, and did in that capacity as Chief Justice severally sign and approve the contracts
10 necessary to facilitate, at each such relevant time, to overpay certain Senior Status Judges in
11 violation of the statutory limited maximum salary for such Judges, which overpayment is a
12 violation of Article VII, §7 of the West Virginia Constitution, stating that Judges "shall receive the
13 salaries fixed by law" and the provisions of W.Va. Code §61-2-13 and W.Va. Code §61-9-10, and,
14 in violation of an Administrative Order of the Supreme Court of Appeals, in potential violation of
15 the provisions of W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent
16 to enable or assist any person to obtain money to which he was not entitled, and, in potential
17 violation of the provisions set forth in W.Va. Code §61-3-24, relating to the crime of obtaining
18 money, property and services by false pretenses, and, all of the above are in violation of the
19 provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct.

Article V

1 That the said Justice Robin Davis, being at all times relevant a Justice of the Supreme
2 Court of Appeals of West Virginia, and at certain relevant times individually Chief Justice of the
3 Supreme Court of Appeals of West Virginia, unmindful of the duties of her high offices, and
4 contrary to the oaths taken by her to support the Constitution of the State of West Virginia and
5 faithfully discharge the duties of his office as such Justice, while in the exercise of the functions
6 of the office of Justice, in violation of her oath of office, then and there, with regard to the discharge
7 of the duties of her office, did in the year 2014, did in her capacity as Chief Justice, sign certain
8 Forms WV 48, to retain and compensate certain Senior Status Judges the execution of which
9 forms allowed the Supreme Court of Appeals to overpay those certain Senior Status Judges in
10 violation of Article VIII, § 7 of the West Virginia Constitution, stating that Judges "shall receive the
11 salaries fixed by law" and the statutorily limited maximum salary for such Judges, which
12 overpayment is a violation of the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10;
13 her authorization of such overpayments was a violation of the clear statutory law of the state of
14 West Virginia, as set forth in those relevant Code sections, and, was an act in potential violation
15 of the provisions set forth in W.Va. Code §61-3-22, relating to the crime of falsification of accounts
16 with intent to enable or assist any person to obtain money to which he was not entitled, and, in
17 potential violation of the provisions set forth in W.Va. Code §61-3-24, relating to the crime of
18 obtaining money, property and services by false pretenses, and all of the above are in violation
19 of the provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct.

Article VI

1 That the said Justice Margaret Workman, being at all times relevant a Justice of the
2 Supreme Court of Appeals of West Virginia, and at certain relevant times individually Chief Justice
3 of the Supreme Court of Appeals of West Virginia, unmindful of the duties of her high offices, and
4 contrary to the oaths taken by her to support the Constitution of the State of West Virginia and
5 faithfully discharge the duties of his office as such Justice, while in the exercise of the functions
6 of the office of Justice, in violation of her oath of office, then and there, with regard to the discharge
7 of the duties of her office, did in the year 2015, did in her capacity as Chief Justice, sign certain
8 Forms WV 48, to retain and compensate certain Senior Status Judges the execution of which
9 forms allowed the Supreme Court of Appeals to overpay those certain Senior Status Judges in
10 violation of the statutorily limited maximum salary for such Judges, which overpayment is a
11 violation of Article VIII, §7 of the West Virginia Constitution, stating that Judges "shall receive the
12 salaries fixed by law" and the provisions of W.Va. Code §61-2-13 and W.Va. Code §51-9-10; her
13 authorization of such overpayments was a violation of the clear statutory law of the state of West
14 Virginia, as set forth in those relevant Code sections, and, was an act in potential violation of the
15 provisions set forth in W.Va. Code §61-3-22, relating to the crime of falsification of accounts with
16 intent to enable or assist any person to obtain money to which he was not entitled, and, in potential
17 violation of the provisions set forth in W.Va. Code §61-3-24, relating to the crime of obtaining
18 money, property and services by false pretenses, and all of the above are in violation of the
19 provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct.

Article VII

1 That the said Justice Allen Loughry, being at all times relevant a Justice of the Supreme
2 Court of Appeals of West Virginia, and at that relevant time individually Chief Justice of the
3 Supreme Court of Appeals of West Virginia, unmindful of the duties of his high offices, and
4 contrary to the oaths taken by him to support the Constitution of the State of West Virginia and
5 faithfully discharge the duties of his office as such Justices, while in the exercise of the functions
6 of the office of Justice, in violation of his oath of office, then and there, with regard to the discharge
7 of the duties of his office, did on or about May 19, 2017, did in his capacity as Chief Justice, draft
8 an Administrative Order of the Supreme Court of Appeals, bearing his signature, authorizing the
9 Supreme Court of Appeals to overpay certain Senior Status Judges in violation of the statutorily
10 limited maximum salary for such Judges, which overpayment is a violation of Article VIII, § 7 of
11 the West Virginia Constitution, stating that Judges "shall receive the salaries fixed by law" and
12 the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10; his authorization of such
13 overpayments was a violation of the clear statutory law of the state of West Virginia, as set forth
14 in those relevant Code sections, and, was an act in potential violation of the provisions set forth
15 in W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to enable or
16 assist any person to obtain money to which he was not entitled, and, in potential violation of the
17 provisions set forth in W.Va. Code §61-3-24, relating to the crime of obtaining money, property
18 and services by false pretenses, and all of the above are in violation of the provisions of Canon I
19 and Canon II of the West Virginia Code of Judicial Conduct.

Article VIII

1 That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of
2 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to
3 support the Constitution of the State of West Virginia and faithfully discharge the duties of his
4 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of
5 his oath of office, then and there, with regard to the discharge of the duties of his office, did
6 beginning in or about December 2012, and continuing thereafter for a period of years, intentionally
7 acquire and use state government vehicles for personal use; including, but not limited to, using
8 a state vehicle and gasoline purchased utilizing a state issued fuel purchase card to travel to the
9 Greenbrier on one or more occasions for book signings and sales, which such acts enriched his
10 family and which acts constitute the use of state resources and property for personal gain in
11 violation of the provisions of W.Va. Code §8B-2-5; the provisions of the West Virginia State Ethics
12 Act, and constitute a violation of the provisions of Canon 1 of the West Virginia Code of Judicial
13 Conduct.

Article IX

1 That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of
2 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to
3 support the Constitution of the State of West Virginia and faithfully discharge the duties of his
4 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of
5 his oath of office, then and there, with regard to the discharge of the duties of his office, did
6 beginning in or about December 2012, intentionally acquire and used state government
7 computer equipment and hardware for predominately personal use--including a computer not
8 intended to be connected to the court's network; utilized state resources to install computer
9 access services at his home for predominately personal use, and utilized state resources to
10 provide maintenance and repair of computer services for his residence resulting from
11 predominately personal use; all of which acts constitute the use of state resources and property
12 for personal gain in violation of the provisions of W.Va. Code §8B-2-5, the provisions of the West
13 Virginia State Ethics Act, and constitute a violation of the provisions of Canon I of the West Virginia
14 Code of Judicial Conduct.

Article X

1 That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of
2 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to
3 support the Constitution of the State of West Virginia and faithfully discharge the duties of his
4 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of
5 his oath of office, then and there, with regard to the discharge of the duties of his office, made
6 statements while under oath before the West Virginia House of Delegates Finance Committee,
7 with deliberate intent to deceive, regarding renovations and purchases for his office, asserting
8 that he had no knowledge and involvement in these renovations, where evidence presented
9 clearly demonstrated his in-depth knowledge and participation in these renovations, and his
10 intentional efforts to deceive members of the Legislature about his participation and knowledge
11 of these acts, while under oath.

Article XIV

1 That the said Chief Justice Margaret Workman, Justice Allen Loughry, Justice Robin
2 Davis, and Justice Elizabeth Walker, being at all times relevant Justices of the Supreme Court of
3 Appeals of West Virginia, unmindful of the duties of their high offices, and contrary to the oaths
4 taken by them to support the Constitution of the State of West Virginia and faithfully discharge the
5 duties of their offices as such Justices, while in the exercise of the functions of the office of
6 Justices, in violation of their oaths of office, then and there, with regard to the discharge of the
7 duties of their offices, did, in the absence of any policy to prevent or control expenditure, waste
8 state funds with little or no concern for the costs to be borne by the tax payers for unnecessary
9 and lavish spending for various purposes including, but without limitation, to certain examples,
10 such as: to remodel state offices, for large increases in travel budgets—including unaccountable
11 personal use of state vehicles, for unneeded computers for home use, for regular lunches from
12 restaurants, and for framing of personal items and other such wasteful expenditure not necessary
13 for the administration of justice and the execution of the duties of the Court; and; did fail to provide
14 or prepare reasonable and proper supervisory oversight of the operations of the Court and the
15 subordinate courts by falling to carry out one or more of the following necessary and proper
16 administrative activities;

17 A) To prepare and adopt sufficient and effective travel policies prior to October of 2016,
18 and failed thereafter to properly effectuate such policy by excepting the Justices from
19 said policies, and subjected subordinates and employees to a greater burden than the
20 Justices;

21 B) To report taxable fringe benefits, such as car use and regular lunches, on Federal W-
22 2s, despite full knowledge of the Internal Revenue Service Regulations, and further
23 subjected subordinates and employees to a greater burden than the Justices, in this
24 regard, and upon notification of such violation, failed to speedily comply with requests
25 to make such reporting consistent with applicable law;

26 C) To provide proper supervision, control, and auditing of the use of state purchasing
27 cards leading to multiple violations of state statutes and policies regulating the proper
28 use of such cards, including failing to obtain proper prior approval for large purchases;

29 D) To prepare and adopt sufficient and effective home office policies which would govern
30 the Justices' home computer use, and which led to a lack of oversight which
31 encouraged the conversion of property;

- 32 .E) To provide effective supervision and control over record keeping with respect to the
33 use of state automobiles, which has already resulted in an executed information upon
34 one former Justice and the indictment of another Justice.
- 35 .F) To provide effective supervision and control over inventories of state property owned
36 by the Court and subordinate courts, which led directly to the undetected absence of
37 valuable state property, including, but not limited to, a state-owned desk and a state-
38 owned computer;
- 39 .G) To provide effective supervision and control over purchasing procedures which directly
40 led to inadequate cost containment methods, including the rebidding of the purchases
41 of goods and services utilizing a system of large unsupervised change orders, all of
42 which encouraged waste of taxpayer funds.
- 43 The failure by the Justices, individually and collectively, to carry out these necessary and
44 proper administrative activities constitute a violation of the provisions of Canon I and Canon II of
45 the West Virginia Code of Judicial Conduct.

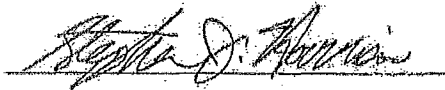
We, John Overington, Speaker Pro Tempore of the House of Delegates of West Virginia, and Stephen J. Harrison, Clerk thereof, do certify that the above and foregoing Articles of Impeachment against Justices of the Supreme Court of Appeals of West Virginia, were adopted by the House of Delegates on the Thirteenth day of August, 2018.

In Testimony Whereof, we have signed our names hereunto this Fourteenth day of August, 2018.



John Overington,

Speaker Pro Tempore of the House of Delegates



Stephen J. Harrison,

Clerk of the House of Delegates

The following letter from the Honorable Lee Cassis, Clerk of the West Virginia Senate, is inserted into the Journal of the Court of Impeachment:

The Senate of West Virginia
Charleston

September 11, 2018

The Honorable Mitch B. Carmichael
President of the Senate
And
The Honorable Members of the West Virginia Senate

Dear Mr. President and Members:

Pursuant to Rule 4 of the Rules of the Senate While Sitting as a Court of Impeachment, I have this day designated Kristin Canterbury, the Assistant Clerk of the Senate, to serve as Clerk of the Court of Impeachment in my absence. This designation will be filed in the Journal of the Senate and the Journal of the Court of Impeachment.

Sincerely,

Lee Cassis
Clerk of the Senate

The Senate, sitting as a Court of Impeachment to consider proceedings against Robin Jean Davis, Retired Justice of the Supreme Court of Appeals of the State of West Virginia; Allen H. Loughry II, Justice of the Supreme Court of Appeals of the State of West Virginia; Elizabeth D. Walker, Justice of the Supreme Court of Appeals of the State of West Virginia; and Margaret L. Workman, Chief Justice of the Supreme Court of Appeals of the State of West Virginia, met on Tuesday, September 11, 2018, at 2:57 p.m.

The Honorable Paul T. Farrell, Acting Chief Justice of the Supreme Court of Appeals of the State of West Virginia, assumed the chair and presided over the Court of Impeachment.

The Presiding Officer then directed the Sergeant at Arms to summon the Managers, attorneys, and respondents.

Without objection, the Journal of the Court of Impeachment to consider proceedings against the various justices of the Supreme Court of Appeals of the State of West Virginia was considered as having been read and approved.

The Managers, appointed by the House of Delegates to conduct the trial of Impeachment of the various justices of the Supreme Court of Appeals of the State of West Virginia, to wit: Delegates Shott, Hollen, Byrd, and Miller (Delegate Foster, one of the said managers, being absent) entered the Senate Chamber and took the seats assigned them.

Brian Casto, Marsha Kaufmann, and Joe Altizer, counsel for the Managers of the House of Delegates, accompanied said Managers.

Respondent Allen H. Loughry II, Justice of the Supreme Court of Appeals of the State of West Virginia, and the respondents' counsel entered the Senate Chamber and took the seats assigned them.

The Presiding Officer informed the Managers, attorneys, and Respondents that the Court of Impeachment had not adopted a resolution publicly reprimanding and censuring Chief Justice Margaret L. Workman and Justice Elizabeth D. Walker and that the trials would move forward.

The Presiding Officer then directed Mike Hissam, counsel for Elizabeth D. Walker, Justice of the Supreme Court of Appeals of the State of West Virginia, to approach the podium.

The Presiding Officer stated that Elizabeth D. Walker, Justice of the Supreme Court of Appeals of the State of West Virginia, was charged in Article XIV of the Articles of Impeachment and asked if Justice Walker admitted or denied the same. Mike Hissam, counsel for Justice Walker, responded that Justice Walker denied the charge.

The Presiding Officer then set the trial date for Justice Walker for Monday, October 1, 2018, at 9 a.m.

The Presiding Officer then directed Steven R. Ruby, counsel for Margaret L. Workman, Chief Justice of the Supreme Court of Appeals of the State of West Virginia, to approach the podium.

The Presiding Officer stated that Margaret L. Workman, Chief Justice of the Supreme Court of Appeals of the State of West Virginia, was charged in Articles IV, VI, and XIV of the Articles of Impeachment and asked if Chief Justice Workman admitted or denied the same. Steven R. Ruby, counsel for Chief Justice Workman, responded that Chief Justice Workman denied the charges.

The Presiding Officer then set the trial date for Chief Justice Workman for Monday, October 15, 2018. The Presiding Officer stated that pre-trial motions would be taken up at that time.

The Presiding Officer then directed Allen H. Loughry II, Justice of the Supreme Court of Appeals of the State of West Virginia, and John A. Carr, counsel to Justice Loughry, to approach the podium.

The Presiding Officer then asked Mike Hissam, counsel for Justice Walker, and Steven R. Ruby, counsel for Chief Justice Workman, if the Respondents formally waive the reading of the Articles of Impeachment. Mike Hissam, counsel for Justice Walker, and Steven R. Ruby, counsel for Chief Justice Workman, responded that Justice Walker and Chief Justice Workman waived the reading of the Articles.

The Presiding Officer then asked Justice Loughry if he formally waived the reading of the Articles of Impeachment. John A. Carr, counsel for Justice Loughry, responded that Justice Loughry waived the reading of the Articles.

The Presiding Officer stated that Allen H. Loughry II, Justice of the Supreme Court of Appeals of the State of West Virginia, was charged in Articles I, III, VII, VIII, IX, X, and XIV of the Articles of Impeachment and asked if Justice Loughry admitted or denied the same. Allen H. Loughry II responded that he denied the charges.

The Presiding Officer then set the trial date for Justice Loughry for Monday, November 12, 2018, at 9 a.m.

The Presiding Officer then directed the counsel for Robin Jean Davis, Retired Justice of the Supreme Court of Appeals of the State of West Virginia, to approach the podium.

The Presiding Officer stated a motion for *pro hac vice* admission of James M. Cole had been filed for James M. Cole to appear as counsel on behalf of Retired Justice Davis during the Court of Impeachment. The Presiding Officer then stated the motion was granted.

The Presiding Officer then asked James M. Cole, counsel for Retired Justice Davis, if the Respondent formally waives the reading of the Articles of Impeachment. James M. Cole, counsel for Retired Justice Davis, responded that Retired Justice Davis waived the reading of the Articles.

The Presiding Officer stated that Robin Jean Davis, Retired Justice of the Supreme Court of Appeals of the State of West Virginia, was charged in Articles II, IV, V, and XIV of the Articles of Impeachment and asked if Retired Justice Davis admitted or denied the same. James M. Cole, counsel for Retired Justice Davis, responded that Retired Justice Davis denied the charges.

The Presiding Officer then set the trial date for Retired Justice Davis for Monday, October 29, 2018.

James M. Cole, counsel for Retired Justice Davis, stated a motion for continuance for filing motions and reciprocal discovery had been filed, to which the House Managers did not oppose.

The Presiding Officer noted that Robin Jean Davis had retired from the office of Justice of the Supreme Court of Appeals of the State of West Virginia and there were provisions relating to this matter contained in the Rules of the West Virginia Senate While Sitting as a Court of Impeachment During the Eighty-Third Legislature and that the Constitution of West Virginia states, in part, that the removal from office is the only punishment in an impeachment [Art. IV, Sec. 9].

Senator Trump then moved that, pursuant to Rule 13 of the Rules of the West Virginia Senate While Sitting as a Court of Impeachment During the Eighty-Third Legislature, Articles II, IV, V, and XIV of the Articles of Impeachment adopted by the House of Delegates be dismissed in so far as they relate to Robin Jean Davis, Retired Justice of the Supreme Court of Appeals of West Virginia.

Following extended discussion,

The question being on the adoption of Senator Trump's aforesaid motion,

The roll being taken, the yeas were: Arvon, Baldwin, Boley, Drennan, Facemire, Gaunch, Jeffries, Palumbo, Plymale, Prezioso, Romano, Stollings, Swope, Trump, and Carmichael (Mr. President)—15.

The nays were: Azinger, Beach, Blair, Boso, Clements, Cline, Ferns, Karnes, Mann, Maroney, Maynard, Ojeda, Rucker, Smith, Sypolt, Takubo, Unger, Weld, and Woelfel—19.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the Presiding Officer declared Senator Trump's aforesaid motion had not prevailed.

Whereupon, the Presiding Officer stated the trial date for Retired Justice Davis would be Monday, October 29, 2018.

Steven R. Ruby, counsel for Margaret L. Workman, Chief Justice of the Supreme Court of Appeals of the State of West Virginia, stated a motion had been filed to set a trial date and a briefing schedule. He also stated a motion had been filed to set a Bill of Particulars.

John H. Shott, Chair of the Managers appointed by the House of Delegates, stated one of the dates in the proposed briefing schedule had already passed and the House Managers questioned the validity of certain motions under the Rules of the West Virginia Senate While Sitting as a Court of Impeachment During the Eighty-Third Legislature. Chairman Shott then stated the House Managers objected to Chief Justice Workman's motion for a Bill of Particulars.

The Presiding Officer stated a Bill of Particulars was a criminal type motion and this was not a criminal trial; therefore, the motion for a Bill of Particulars was denied.

The Presiding Officer recognized John H. Shott, Chair of the Managers appointed by the House of Delegates, to address the Court of Impeachment.

Following a point of inquiry to the Presiding Officer, with resultant response thereto,

At 3:29 p.m., the Court of Impeachment to consider proceedings against the various justices of the Supreme Court of Appeals of the State of West Virginia adjourned until Monday, October 1, 2018, at 9 a.m.

BAILEY GLASSER LLP

209 Capitol Street
Charleston, WV 25301
Tel: 304.345.6555
Toll Free: 877.852.0342
Fax: 304.342.1110

Benjamin L. Bailey
bbailey@baileyglasser.com

RECEIVED
CLERK OF THE SENATE
DATE: 9-10-18 TIME: 9:26 PM
By: LL

September 10, 2018

Via email

Lee Cassis
Senate Clerk
Room 211M, Bldg. 1
State Capitol Complex
Charleston, WV 25305

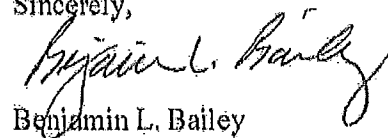
Re: *In re Matter of Impeachment Proceedings Against Respondent Chief Justice
Margaret Workman*

Dear Clerk Cassis:

Please find enclosed, for filing in the above referenced matter, Respondent's Motion for a Bill of Particulars.

A copy has been provided to all parties as indicated on the Certificate of Service.

Sincerely,



Benjamin L. Bailey

BLB/md
Enclosure

cc: Honorable Paul T. Farrell
Honorable Roger Hanshaw
Honorable Ray Hollen
Honorable John Shott
Honorable Rodney Miller
Honorable Andrew Byrd



IN THE WEST VIRGINIA SENATE

*IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN*

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

**RESPONDENT'S MOTION
FOR A BILL OF PARTICULARS**

Respondent Chief Justice Margaret Workman, by counsel, respectfully moves the Presiding Officer for a ruling that Article XIV, as presented to the Senate, is insufficient to permit Respondent to prepare an adequate defense unless and until the Board of Managers submits a bill of particulars explaining the charges. It is a fundamental tenet of due process that "the accused must be fully and plainly informed of the character and cause of the accusation. The Constitution so requires. . . . A bill of particulars is for the purpose of furnishing details omitted from the accusation or indictment, to which the defendant is entitled before trial." *State v. Erytn*, 238 W. Va. 77, 88, 792 S.E.2d 309, 320 (2016) (citation and internal quotation marks omitted); *see also* W. Va. R. Crim. P. 7(f) ("The court may direct the filing of a bill of particulars.").

Although the word nowhere appears within its text, Article XIV appears to charge Respondent — together with three other justices — with "maladministration," an impeachment ground listed, but not defined, in the State Constitution. *See* W. VA. CONST. Art. 4, § 9. The article alleges generally that the four justices "waste[d] state funds" in remodeling offices, coopting State-owned vehicles for personal use, installing "unneeded" computers in their residences, purchasing working lunches, and framing personal items. The article asserts that some of those expenditures could have been avoided had the Court timely adopted travel policies, individual tax-reporting

directives, and home computer policies. Funds spent in those and other categories could have been reduced, according to the article, by more exacting oversight of State purchasing cards and property inventories, by keeping better records of State vehicles, and by curtailing individual discretion with respect to purchases made by change order. The article charges that the alleged shortcomings in policy and administration constituted a failure by all the justices, "individually and collectively."

Respondent, however, is not on trial together with the other three justices impeached by the House of Delegates. If Respondent is declared guilty of Article XIV at the conclusion of her individual proceeding before the Senate, she alone will be subject to removal. Assuming, strictly *arguendo*, that Article XIV recites the essential elements of "maladministration," Respondent is yet entitled to know in advance of trial the specific acts or omissions the Board of Managers intends to prove, and the corresponding portions of the charge to which those acts or omissions are intended to relate. See *Fed'n Window Glass Co. v. Cameron Glass Co.*, 58 W. Va. 477, 52 S.E. 518, 520 (1905) ("The object of a bill of particulars is to specify the claim and prevent surprise on the trial." (citation omitted)); *cf.* syl. pt. 3, *State v. Baltimore & O. R. Co.*, 68 W. Va. 193, 69 S.E. 703 (1910) (trial court's refusal to require bill of particulars where rail company charged with obstructing public road — but indictment failed to specify offending train and crew — "is prejudicial, and may be cause for reversal").

It is likewise necessary for Respondent to be informed of the relevant timeframe underlying the charges and, depending on that temporal breadth, the theory of culpability. That is, does the Board of Managers seek to hold Respondent constitutionally responsible for administrative acts and omissions occurring when she was but a single voting justice of the Court, or is her potential exposure confined to the Court's alleged acts and omissions during her tenure as Chief Justice in

2015? If the latter, then is it the Board of Managers' position that Respondent's title and office of Chief Justice render her vicariously liable for actions taken by majority vote, regardless of how she voted? Those questions suggest distinctively different means of preparing Respondent's defense to Article XIV at trial, but trial is much too late for the answers to finally be revealed.

The risk of surprise and resultant prejudice is particularly palpable here. Without a particularized description of the charges and theories against her, Respondent will have an inordinately short time to prepare to defend herself against a multiplicity of allegations, many of which, confusingly, were refuted on their face by the evidence before the House. For example, it is undisputed that Respondent "requested to develop written policies for P-card usage" while she was Chief Justice, though those efforts were frustrated by the Administrative Director. *See* Transcript of House Judiciary Committee Proceeding Regarding the Impeachment of West Virginia Supreme Court Justices ("Tr.") at 1691-92, 1772-75. Similarly, Respondent as Chief Justice asked that an organizational chart be developed for the Court, *see id.* at 1764, repeatedly and forcefully requested the Administrative Director to pinpoint the source of the Court's "spend-down" of its reappropriated funds, *see id.* 348-49, 1227-28, and questioned the spending on renovations to the Court's leased space at City Center East, *see id.* 377-78. Respondent was exonerated of any wrongdoing with respect to the use of State vehicles, *see id.* 64, and the House expressly declined to impeach her for "unnecessary and lavish spending in the renovation and remodeling of her personal office." *Id.* 1953.

Plainly, many of the allegations set forth in Article XIV do not apply to Respondent. But if she is nonetheless constrained to expend valuable time and resources to defend against those dubious accusations of wrongdoing, her defense to the remainder of Article XIV — and, indeed, to both articles of which she stands accused — will inevitably and irretrievably be prejudiced. The

IN THE WEST VIRGINIA SENATE

***IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN***

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2018, a true and correct copy of the foregoing **RESPONDENT'S MOTION FOR A BILL OF PARTICULARS** was served by electronic mail and by depositing a true copy thereof in the United States mail, first class, postage prepaid, in envelopes upon the following:

Honorable Roger Hanshaw
Room 408M, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable Ray Hollen
Room 224E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable John Shott
Room 418M, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable Rodney Miller
Room 150R, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable Andrew Byrd
Room 151R, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305


BENJAMIN L. BAILEY

September 21, 2018

Lee Cassis
Senate Clerk
Room 211M, Bldg. 1
State Capitol Complex
Charleston, WV 25305Re: *In re Matter of Impeachment Proceedings Against Respondent Chief Justice
Margaret Workman*

Dear Clerk Cassis:

Please find enclosed, for filing in the above referenced matter, the following documents:

1. Joint Motion to Set Briefing Schedule
2. Chief Justice Workman's Motion to Dismiss Article IV and Article VI as Lacking Evidence of Knowledge or Intent
3. Chief Justice Workman's Motion to Dismiss Article IV and Article VI for Lack of Statutory Violation
4. Chief Justice Workman's Motion for More Definite Statement
5. Chief Justice Workman's Motion to Dismiss Article XIV as Unconstitutionally Vague
6. Chief Justice Workman's Motion to Dismiss Article XIV as Barred by Principles of Agency
7. Chief Justice Workman's Motion to Dismiss Article XIV(A)
8. Chief Justice Workman's Motion to Dismiss Article XIV(B)
9. Chief Justice Workman's Motion to Dismiss Article XIV(C)
10. Chief Justice Workman's Motion to Dismiss Article XIV(D)
11. Chief Justice Workman's Motion to Dismiss Article XIV(E)
12. Chief Justice Workman's Motion to Dismiss Article XIV(F)
13. Chief Justice Workman's Motion to Dismiss Article XIV(G)
14. Chief Justice Workman's Motion to Dismiss on Grounds Stated in Petition for Writ of Mandamus
15. Chief Justice Workman's Motion for Continuance

Copies have been provided to all parties as indicated on the Certificates of Service.

Should you have any questions please contact me.

Sincerely,



Steve R. Ruby

SRR/md
Enclosures

cc: Honorable Paul T. Farrell
Honorable John Shott
Honorable Andrew Byrd
Honorable Geoff Foster
Honorable Ray Hollen
Honorable Rodney Miller
Chief Justice Workman

IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA *ex rel.*
MARGARET L. WORKMAN,

Petitioner,

Civil Action No. _____

v.

MITCH CARMICHAEL, AS PRESIDENT
OF THE SENATE; DONNA J. BOLEY, AS
PRESIDENT PRO TEMPORE OF THE
SENATE; RYAN FERNS, AS SENATE
MAJORITY LEADER; LEE CASSIS,
CLERK OF THE SENATE; AND THE
WEST VIRGINIA SENATE,

Respondents.

MOTION FOR DISQUALIFICATION

TO THE HONORABLE JUSTICE
PAUL T. FARRELL:

NOW COMES the Petitioner, Chief Justice Margaret L. Workman, and respectfully moves Your Honor to recuse himself from participating in the judgment of this matter for the following reasons:

1. The Petitioner is filing a *Petition for a Writ of Mandamus* with the Supreme Court of Appeals of West Virginia concerning the impeachment proceedings before the West Virginia Legislature.
2. Rule 33 of the Rules of Appellate Procedure states: "Upon appearance in any case in this Court, counsel of record must inform the Clerk, by letter with a copy to the opposing parties, of any circumstance presented in the case in which a disqualifying interest of a Justice may arise under Canon 2, Rule 2.11" and that "A Justice shall disqualify himself or herself, upon proper

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motion or sua sponte, in accordance with the provisions of Canon 2, Rule 2.11 of the Code of Judicial Conduct or, when sua sponte, for any other reason the Justice deems appropriate.”

3. Rule 2.11 provides:

(A) A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality **might reasonably be questioned**, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

...

(5) The judge: . . . (d) previously presided as a judge over the matter in another court. (emphasis added)

4. Your Honor is presiding over the impeachment proceedings which are the subject of the Petitioner’s *Petition for a Writ of Mandamus*.

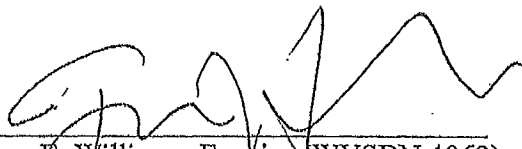
5. Further, Your Honor was appointed to his role as Justice of the Supreme Court of Appeals of West Virginia by the Petitioner on August 9, 2018. *See* Aug. 9, 2018, Administrative Order, *attached as* Exhibit A.

6. Appellate Rule 33 warrants recusal for the reasons listed in Judicial Canon 2.11 and for any other reason the Justice deems appropriate. The Petitioner respectfully requests that Your Honor exercise that discretion and recuse himself. The Petitioner believes that recusal is appropriate because Your Honor is also presiding over the impeachment proceedings before the West Virginia Senate. Further, Your Honor was appointed to his position on the Supreme Court of Appeals of West Virginia by the Petitioner. This, at a minimum, creates a concern about the appearance of partiality for the Petitioner. The Petitioner is entitled to have her *Petition for a Writ of Mandamus* considered free from any question of whether those who hear her case are impartial. The separation of the proceedings before the Senate and the proceedings in the Supreme Court of Appeals of West Virginia is of critical significance to preserve impartiality, both in actuality and

in appearance. This leads to the conclusion that Your Honor's impartiality might reasonably be questioned and respectfully warrants recusal.

WHEREFORE, the Petitioner respectfully moves Your Honor to recuse himself in this matter.

MARGARET L. WORKMAN
By Counsel



Marc E. Williams, Esquire (WVSN 4062)
Melissa Foster Bird, Esquire (WVSN 6588)
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Supreme Court of Appeals State of West Virginia

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Judge Paul T. Farrell, Jr., appointed to Supreme Court

For immediate release

CHARLESTON, W.Va. - Judge Paul T. Farrell will serve as a Supreme Court Justice during the suspension of Justice Allen Loughry, according to an order Chief Justice Margaret Workman filed late Thursday.

"Court employees have received many inquiries about whether the work of the Court will continue as scheduled in the term that begins Sept. 5. It will. The Court calendar is set and the docket will proceed as usual," Chief Justice Workman said.

"Supreme Court Justices are Constitutionally required to keep the Court open and will continue to fulfill their Constitutional duties," Chief Justice Workman further said.

Judge Farrell was appointed to the bench in the Sixth Judicial Circuit (Cabell County) by Governor Earl Ray Tomblin on February 14, 2011, and was elected in 2012.

Judge Farrell was born in Huntington. He graduated from Xavier University in 1971 and West Virginia University College of Law in 1978.

At the time of his appointment to the bench he had been practicing law at Farrell, Farrell, & Farrell, PLLC, for fifteen years. He also previously served as Assistant Attorney General for West Virginia (1978), Counsel for the West Virginia Senate President (1982-1989), Administrative Law Judge at the West Virginia Department of Employment Security (1988-1990), Hearing Examiner for the West Virginia Workers' Compensation Board (1985-1988), Adjunct Professor of Criminal Justice at Marshall University (1982-1985), Assistant Trust Officer at First Huntington National Bank (1978-1980), Assistant Cabell County Prosecutor (1982-1990), solo practitioner (1980-1990) and Assistant United States Attorney (1990-1995). Judge Farrell served in the U. S. Army from 1971-1973 as a First Lieutenant.

Judge Farrell is active in the Huntington community, having served as Little League president and coach, youth soccer coach, high school and college soccer referee, and as a volunteer at Hospice of Huntington and Habitat for Humanity.

He is married to Charlene M. Farrell and they have three sons and seven grandchildren.

##



ADMINISTRATIVE ORDER

SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: ASSIGNMENT OF THE HONORABLE PAUL T. FARRELL, JUDGE OF THE SIXTH JUDICIAL CIRCUIT, TO THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

WHEREAS, Menis E. Ketchum, former justice of the Supreme Court of Appeals of West Virginia resigned, effective July 28, 2018. The resignation of Menis E. Ketchum creates a vacancy on the Supreme Court of Appeals, and the notice of such vacancy was provided to the Governor of the State of West Virginia.

WHEREAS, by order entered on June 8, 2018, Allen H. Loughry II, Justice, was suspended without pay, and is prohibited from hearing any civil or criminal matter or performing any other judicial functions during the pendency of the judicial disciplinary proceedings against him. As a result of this suspension Chief Justice Margaret L. Workman deems it is necessary to assign a judge to provide assistance on the Supreme Court of Appeals during the suspension of Allen H. Loughry II.

IT IS THEREFORE ORDERED, that the Honorable Paul T. Farrell, Judge of the Sixth Judicial Circuit, be, and he is hereby temporarily assigned to the Supreme Court of Appeals of West Virginia under the provisions of article VIII, section 8 of the Constitution of West Virginia, with said assignment commencing on August 9, 2018 and continuing until the Chief Justice determines that the assistance is no longer necessary.

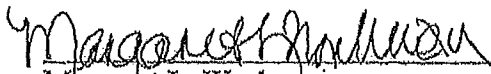
WHEREAS, Articles of Impeachment have been adopted by the House Judiciary


Committee to be presented to the House of Delegates. Pursuant to the provisions of article VIII, section 8 of the Constitution of West Virginia, and the Rule of Necessity, it is further ORDERED that if the Articles of Impeachment proceed to the Senate, the Honorable Paul T. Farrell, Judge of the Sixth Judicial Circuit be, and is hereby assigned to the Supreme Court of Appeals of West Virginia as the Acting Chief Justice for said impeachment proceedings.

It is further ORDERED that the Acting Chief Justice Paul T. Farrell appoint other justices to preside as needed.

IT IS FINALLY ORDERED, that the Clerk of the Supreme Court of Appeals of West Virginia record this Order in the Office of said Clerk and that proceedings be held in the manner provided by law.

ENTERED: August 9, 2018


Margaret L. Workman
Chief Justice

Attest: 
Edythe Nash Gaiser
Clerk of Court



RECEIVED
CLERK OF THE SENATE
DATE: 9-21-18 TIME: 4:34pm
By: l.c.

IN THE WEST VIRGINIA SENATE

**IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN**

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

**CHIEF JUSTICE WORKMAN'S MOTION TO DISMISS ON GROUNDS STATED IN
PETITION FOR WRIT OF MANDAMUS**

Respondent Chief Justice Margaret L. Workman ("Respondent") has petitioned the Supreme Court of Appeals of West Virginia for a writ of mandamus with respect to the instant impeachment proceeding (the "Petition"). See Exhibit A. The Petition explains numerous infirmities in the impeachment proceeding, including violations of the constitutional separation of powers, precedent on the appointment of senior status judges, the right to due process, and procedural requirements for impeachment in the House of Delegates. Respondent respectfully requests the dismissal of the Articles of Impeachment against her for the reasons stated in the Petition, which is included with this motion and incorporated by reference herein.

CHIEF JUSTICE MARGARET WORKMAN

By Counsel:



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Counsel for Respondent

EXHIBIT
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STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals continued and held at Charleston, Kanawha County on the 9th day of September, 2005, the following order was made and entered:

State of West Virginia ex rel.
Vic Sprouse, Individually
and in his capacity as West Virginia
Senate Minority Leader, Petitioner

vs.) No. 32854

Joseph A. Manchin, III, Governor of the State of West Virginia;
Earl Ray Tomblin, President of the West Virginia Senate;
Robert S. Kiss, Speaker of the West Virginia House of
Delegates, Respondents

On a former day, to-wit, September 9, 2005, came the petitioner, Vic Sprouse, by Martin J. Wright, Jr., his attorney, and presented to the Court his petition praying for a writ of mandamus to be directed against Joseph A. Manchin, Governor of the State of West Virginia; the Honorable Earl Ray Tomblin, President of the West Virginia Senate; and the Honorable Robert S. Kiss, Speaker of the West Virginia House of Delegates, and further praying that a stay issue, as therein set forth:

Upon consideration whereof, the Court is of the opinion that a rule to show cause should be awarded herein. It is therefore considered and ordered that a rule do issue,

EXHIBIT

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directed against the respondents and returnable before this Court at 9:00 o'clock a.m. on Monday, September 12, 2005, directing the said respondents to show cause, if any they can, why a writ of mandamus should not be awarded herein, as prayed for by the petitioner in his said petition.

It is further ordered that the effectiveness of the following language contained within item three of the Governor's Proclamation dated September 6, 2005, be, and hereby is, stayed until further order of this Court: "by an amount not to exceed one percent of the 'sales price' as defined in subdivision (35) subsection (b), section two, article fifteen-b, chapter eleven of the Code of West Virginia." Chief Justice Albright would refuse. Justice Starcher not voting.

It is finally ordered that the respondents file a written response to the Rule To Show Cause before 9:00 o'clock a.m. on Sunday, September 11, 2005. Said responses shall be delivered as electronic attachments to an e-mail message addressed to [roryperry@courtswv.org].

Chief Justice Albright does not wish to grant because in the first instance, this is a matter between the Executive and Legislative branches. No response has been filed by the Legislative branch nor has there been any action by them that would indicate their desire to deal with the contested subject of the Call or go beyond the limited language of the Call. Accordingly, this matter is absolutely premature. The Legislature, in its own right, has the ability to make a judgment as to what is constitutional and what is not. The Executive has the same right in its capacity. Our action is appropriate only when there is a dispute

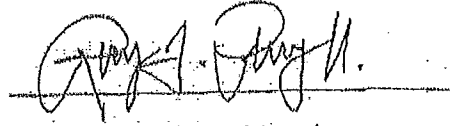
between those two branches. Our intrusion before there is action indicating there is a dispute is obviously premature. For example, one or both houses may elect not to even deal with the subject. On the other hand, a dispute might arise if the Legislature undertook to adopt a law that appeared to be beyond the language of the Call. As this Court has said in the past, the Legislature cannot delegate its power to a member or a committee. The Legislature speaks by the bills and resolutions it adopts. Consequently, until there is action, we have nothing upon which to adjudicate, and our respect for their equal constitutional standing dictates that we should not intrude before a dispute exists. Since the Legislature has taken no action contrary to the Call, no dispute exists, and this Court, by issuance of the rule, is about to enter upon the task of giving an advisory opinion.

Justice Starcher refuses to vote on Mr. Sprouse's petition at this time. First, it is absolutely premature. The Court has, in the past, consistently requested a response from an opposing litigant prior to taking any action in a matter such as that presented in this petition. Second, this Court should not be interfering with the orderly operation of the Legislative and Executive branches of government by taking preemptive action with respect to potential legislation. Our system of government provides that courts are to review legislation after it is passed, when requested, not guide the legislative process. Therefore, I would request a response by the Executive and the other respondents to the petition. Then, and only then, would I decide whether the Supreme Court should review the issues presented in Mr. Sprouse's petition.

Service of a copy of this order upon all parties herein shall constitute sufficient

notice of its contents.

A True Copy

A handwritten signature in black ink, appearing to read "A. J. Pugh", is written over a horizontal line.

Clerk, Supreme Court of Appeals

IN THE WEST VIRGINIA SENATE

*IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN*

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

CHIEF JUSTICE WORKMAN'S MOTION FOR CONTINUANCE

Respondent Chief Justice Margaret Workman, by counsel, respectfully moves the Presiding Officer to enter an order continuing the trial from its currently scheduled date until after the November 6, 2018 election. The scope and nature of the negative publicity which has attended every aspect of this case has created a prejudicial environment, especially in light of the upcoming election, which threatens Respondent's right to a fair and impartial impeachment trial.

It is a fundamental principle that "due process requires that the accused receive a trial by an impartial jury free from outside influences." *Sheppard v. Maxwell*, 384 U.S. 333, 362 (1966); see U.S. Const. amend. V; U.S. Const. amend. XIV; W. Va. Const. art. III, § 10. The United States Supreme Court has further explained that "[g]iven the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take *strong measures to ensure that the balance is never weighed against the accused.*" *Id.* (emphasis added). And "where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue the case until the threat abates." *Id.* at 363; accord *State ex rel. Tucker v. McBride*, No. 11-0593, 2012 WL 3194048, *10 (W. Va. Mar. 9, 2012) ("The alleviation of negative pretrial publicity constitutes one potential ground for the granting of a continuance.").

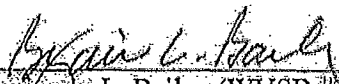
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In light of the publicity surrounding this case, the timing of Chief Justice Workman's could hardly be more prejudicial. Chief Justice Workman is set to go to trial on October 15. Her trial would conclude shortly before the November 6 election, in which half the Senate will be on the ballot. Although the Senators, sitting as a Court of Impeachment, will undoubtedly make every effort to separate their consideration of the impeachment case from the effect it might have on their reelection, there is simply too great a risk that electoral considerations will influence them.

WHEREFORE, Respondent respectfully requests that the Presiding Officer continue Respondent's trial until after the November 6, 2018 election.

CHIEF JUSTICE MARGARET WORKMAN

By Counsel:


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Counsel for Respondent

IN THE WEST VIRGINIA SENATE

**IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN**

Honorable Paul T. Farrell
Acting Justice of the
Supreme Court of Appeals of West Virginia
Presiding Officer

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2018, a true and correct copy of the foregoing **CHIEF JUSTICE WORKMAN'S MOTION FOR CONTINUANCE** was served by electronic mail and by depositing a true copy thereof in the United States mail, first class, postage prepaid, in envelopes upon the following:

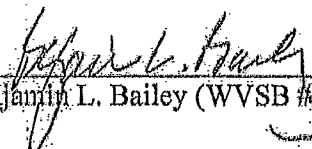
Honorable John Shott
Room 418M, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

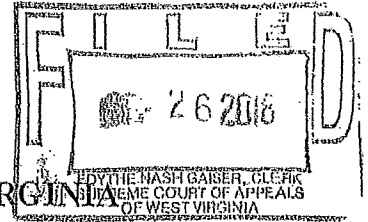
Honorable Ray Hollen
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Honorable Andrew Byrd
Room 151R, Bldg. 1
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Charleston, WV 25305

Honorable Rodney Miller
Room 150R, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305

Honorable Geoff Foster
Room 214E, Bldg. 1
1900 Kanawha Blvd. E.
Charleston, WV 25305


Benjamin L. Bailey (WVSB #200)



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 18-0816

State of West Virginia *ex rel.* MARGARET L. WORKMAN,

Petitioner,

v.

MITCH CARMICHAEL, President of the West Virginia Senate;
DONNA J. BOLEY, President Pro Tempore of the West Virginia Senate
RYAN FERNS, Majority Leader of the West Virginia Senate;
LEE CASSIS, Clerk of the West Virginia Senate; and the
WEST VIRGINIA SENATE,

Respondents.

JUSTICE WALKER'S RESPONSE TO REQUEST FOR STAY

Although Justice Elizabeth D. Walker is not a party to this case, she is a party to the impeachment proceedings that are the subject of this case. In that capacity, she submits this response to Chief Justice Workman's pending request for stay.

Justice Walker's impeachment trial is scheduled to begin before the West Virginia Senate on October 1, 2018, at 9:00 a.m. Justice Walker is ready, willing, and eager to present her case before the Senate. As a result, she respectfully requests that this Court not issue a stay affecting her trial.

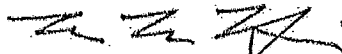
EXHIBIT

I

Respectfully submitted,

Hon. Elizabeth D. Walker

By Counsel



Michael B. Hissam (WVSB #11526)

J. Zak Ritchie (WVSB # 11705)

Ryan McCune Donovan (WVSB # 11660)

HISSAM FORMAN DONOVAN RITCHIE PLLC

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zritchie@hfdrlaw.com

rdonovan@hfdrlaw.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served today, September 26, 2018,

by electronic mail, U.S. Mail, or both on the following:

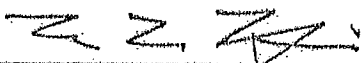
Marc. E. Williams
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Counsel for Petitioner

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Hon. Ryan Ferns
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Charleston, WV 25305

Hon. Donna J. Boley
Room 206W, Building 1
State Capitol Complex
Charleston, WV 25305

Lee Cassis
Room 211M, Building 1
State Capitol Complex
Charleston, WV 25305

West Virginia Senate c/o Patrick Morrissey
Office of the West Virginia Attorney General
Room 26E, Building 1
State Capitol Complex
Charleston, WV 25305



Michael B. Hissam (WVSB # 11526)

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



State of West Virginia ex rel. Margaret L.
Workman,

Petitioner,

v.

Mitch Carmichael, President of the West
Virginia Senate; Donna J. Boley, President
Pro Tempore of the West Virginia Senate;
Ryan Ferns, Majority Leader of the West
Virginia Senate; Lee Cassis, Clerk of the West
Virginia Senate; and the West Virginia
Senate,

Respondents.

No. 18-0816

MOTION FOR DISQUALIFICATION

TO THE HONORABLE JUSTICE
RONALD WILSON:

NOW COMES the Respondents, Mitch Carmichael, President of the West Virginia Senate; Donna J. Boley, President Pro Tempore of the West Virginia Senate; Ryan Ferns, Majority Leader of the West Virginia Senate; Lee Cassis, Clerk of the West Virginia Senate; and the West Virginia Senate (collectively the “West Virginia Senate” or “Respondents”), and respectfully move Your Honor to recuse himself from participating in any and all rulings in this matter for the following reasons:

1. Pursuant to Article IV, Section 9, of the West Virginia Constitution, Respondents are constitutionally designated as the Court of Impeachment for proceedings against Petitioner Margaret L. Workman (“Petitioner”).

2. Your Honor is also involved in the impeachment proceedings currently pending before the West Virginia Senate. Earlier this year, the Judicial Investigation Commission investigated ethics complaints regarding Petitioner's conduct, some of which are also the subject of the current Articles of Impeachment pending before the West Virginia Senate.

3. The Judicial Investigation Commission, with Your Honor serving as Commission Chair, broke from its traditional policy and took the "unusual step" of issuing a press release, stating that the Petitioner had been "cleared of wrongdoing." *See* Judicial Investigation Commission Press Release, attached as Exhibit A; *see also, e.g.*, WSAZ News Staff, 3 *W. Va. Supreme Court Justices Cleared of Ethics Complaints*, WSAZ NEWS CHANNEL, <https://www.wsaz.com/content/news/3-WVa-Supreme-Court-justices-cleared-of-ethics-complaints-488930021.html> (last updated July 23, 2018, 5:49 PM), attached as Exhibit B.

4. Since the Judicial Investigation Commission issued its press release, Your Honor has been subpoenaed to appear and testify in related impeachment proceedings involving Justice Beth Walker. *See* Witness List and Subpoena to the Honorable Ronald E. Wilson, Sept. 24, 2018, attached as Exhibit C.

5. At this time, it is unclear whether Your Honor will similarly be subpoenaed to appear and testify in the impeachment proceedings against Petitioner. However, Your Honor's role as Chairman of the Judicial Investigation Commission and requested appearance in related impeachment proceedings suggests that Your Honor may very well be a witness in the impeachment proceedings against Petitioner.

6. Rule 33 of the Rules of Appellate Procedure states that a Justice "shall disqualify himself or herself, upon proper motion or sua sponte, in accordance with the provisions of Canon

2, Rule 2.11, of the Code of Judicial Conduct or, when sua sponte, for any other reason the Justice deems appropriate.”

7. Rule 2.11(A) of the Code of Judicial Conduct provides that “a judge **shall** disqualify himself or herself in any proceeding in which the judge’s impartiality *might reasonably be questioned*, including but not limited to ... (5) The Judge: ... (c) was a material witness concerning a matter.”

8. Your Honor is listed as a potential material witness in impeachment proceedings related to Petitioner’s claims and has been served with a subpoena to appear and testify in those proceedings. Furthermore, Your Honor could also be a witness in the impeachment proceedings against Petitioner. Accordingly, we respectfully request that Your Honor recuse himself from this matter pursuant to the requirements of Appellate Rule 33 and Rule 2.11 of the Code of Judicial Conduct.

9. Beyond the requirements of Rule 2.11(A)(5)(c), Your Honor’s role as the Chairman of the Judicial Investigation Commission further suggests that disqualification is warranted in this case. In the role of Chairman, Your Honor has taken the “unusual step” of making a public statement regarding the merits of ethics charges against Petitioner, many of which are the subject of the pending impeachment proceedings. Notably, Your Honor’s role in both this matter and the matters of impeachment pending before the West Virginia Senate have already come into question in the media. See Brad McElhinny, *Judge named to hear Justice Workman’s case is also an impeachment witness*, WV METRONews, <http://wvmetronews.com/2018/09/26/judge-is-named-to-hear-justice-workmans-case-but-is-also-an-impeachment-witness/> (Sept. 26, 2018, 9:03 AM), attached as Exhibit D. This media attention and Your Honor’s previous public statements

regarding the alleged guilt or innocence of Petitioner raise concerns of unfair prejudice, or at least causes the appearance of partiality. As both judge and witness in the impeachment proceedings relating to this matter, Your Honor's impartiality might reasonably be questioned and further warrants recusal.

WHEREFORE, the Respondents respectfully move Your Honor to disqualify himself in this matter.

Mitch Carmichael, President of the West Virginia Senate; Donna J. Boley, President Pro Tempore of the West Virginia Senate; Ryan Ferns, Majority Leader of the West Virginia Senate; Lee Cassis, Clerk of the West Virginia Senate; and the West Virginia Senate

By Counsel



J. Mark Adkins (WVSB #7414)

Floyd E. Boone, Jr. (WVSB #8784)

Richard R. Heath, Jr. (WVSB #9067)

Lara Brandfass (WVSB #12962)

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel. Margaret L.
Workman,

Petitioner,

v.

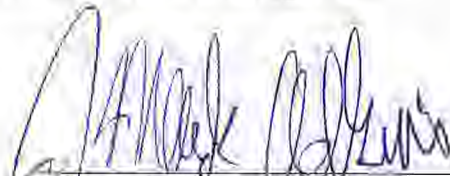
Mitch Carmichael, President of the West
Virginia Senate; Donna J. Boley, President
Pro Tempore of the West Virginia Senate;
Ryan Ferns, Majority Leader of the West
Virginia Senate; Lee Cassis, Clerk of the West
Virginia Senate; and the West Virginia
Senate,

Respondents.

No. 18-0816

VERIFIED CERTIFICATE OF COUNSEL

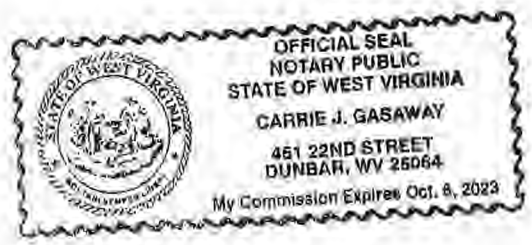
I, J. Mark Adkins, counsel for Mitch Carmichael, President of the West Virginia Senate; Donna J. Boley, President Pro Tempore of the West Virginia Senate; Ryan Ferns, Majority Leader of the West Virginia Senate; Lee Cassis, Clerk of the West Virginia Senate; and the West Virginia Senate, do hereby verify that I have read the Motion for Disqualification of the Honorable Ronald E. Wilson; that, to the best of my knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or good faith argument for the extension, modification or reversal of existing law; that there is evidence sufficient to support disqualification; and, that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.



J. Mark Adkins (WVSB # 7414)

Taken, subscribed and sworn to before me, the undersigned authority, on this 27th
day of September 2018.

My Commission expires: October 6, 2023



Carrie J Gasaway
Notary Public

Judicial Investigation Commission closes complaints against Justices Davis, Walker, and Workman

For immediate release

CHARLESTON, W.Va. – The West Virginia Judicial Investigation Commission (JIC) announced today it has investigated ethics complaints against three Supreme Court Justices and closed the cases without taking any disciplinary action.

Justices Robin Jean Davis and Beth Walker and Chief Justice Margaret L. Workman agreed to the release of letters to them from the JIC informing them of the JIC's conclusions.

The Complaints were opened against the Justices by Judicial Disciplinary Counsel earlier this year. This closes all outstanding complaints against them.

The JIC governs the ethical conduct of judges and is charged with determining whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct. The JIC is the same body that investigated allegations against Supreme Court Justice Allen Loughry and filed a 32-count statement of charges against him on June 6.

JIC policy is to not acknowledge the existence of complaints against judicial officers until probable cause has been found to issue a statement of charges or an admonishment. "We are taking the unusual step of making our findings public in these cases because Supreme Court Justices are the highest judicial officers in West Virginia. It is important for the public to know that allegations against them have been thoroughly investigated, and they have been cleared of wrongdoing," said Commission Chairman Ronald Wilson, a judge in the First Judicial Circuit (Brooke, Hancock, and Ohio Counties).

The three sitting Justices voluntarily agreed to be interviewed by the JIC.

The Judicial Disciplinary Counsel filed complaints against the three Justices alleging they violated Rules 1.1, 1.2, 1.3, 3.13 and 3.15 of the Code of Judicial Conduct because they used state funds to pay for lunches for themselves, their administrative assistants, and court security officers while they were discussing cases and administrative matters in conference.

The JIC found the lunches reduced the amount of time attorneys spent in court (and thus reduced legal fees) and allowed visiting judges to return to their circuits in time to do other work the same day. The working lunches made the court "run more efficiently and effectively on argument docket and administrative conference days," the letters say. The letters note that both the Internal Revenue Service and the West Virginia Ethics Commission consider paid working lunches an acceptable expense because they improve efficiency.

The letter to Justice Walker indicated that the lunch practice was longstanding when she joined the Court on January 1, 2017. "You had no involvement in the original decision to provide working lunches on argument and administrative conference days and you had no reason to challenge the practice at the time you took office because it was well-known and well-established practice," the letter to Justice Walker states.

The letters to the other Justices note that "Perhaps the only criticism that the JIC can make is that you failed to reduce the policy to writing – with well-established guidelines – for the purchase of the working lunches. By failing to do this, you unnecessarily opened the

**EXHIBIT
A**

door to unfair public criticism of an otherwise appropriate method for conducting the business of the Court."

Letters to Chief Justice Workman and Justice Davis indicate, in footnotes, that the Commission also investigated other allegations against them and found that they did not violate the Code of Judicial Conduct.

- Justice Davis' stops at a political rally in Parkersburg and a political event at the Raleigh County Armory while on Court business trips were "incidental to court business," the letter to Justice Davis said. "After a thorough review, the Commission believes that you did not violate the Code of Judicial Conduct since the primary purpose of the travel was for court business and the political events were ancillary, did not require additional travel, or expense payments."
- Justice Davis hosted parties at her homes in Charleston and Wyoming. "The fact that you paid for the majority of the costs for the dinners associated with the Circuit Court Conferences actually saved the state money," the letter to Justice Davis says. "The costs paid for by the Court associated with the 2011 and 2013 dinners are normal costs that would have been paid by the agency for a banquet that would have been held at the hotel or at some other location in the city. After a thorough review of this evidence, the Commission also finds that there is no probable cause to charge you any violation of the Code of Judicial Conduct."
- The Commission on Special Investigations reported to the JIC that Chief Justice Workman may have hired one or more people who worked on her 2008 judicial campaign as "ghost" employees. A ghost employee is someone who is put on the payroll but does not do any work. "Following a thorough investigation into this claim, the Judicial Investigation Commission finds there is no probable cause to charge you with a violation of the Code of Judicial Conduct."

Contact: Teresa A. Tarr, Chief Counsel
Judicial Investigation Commission
(304) 558-0169

3 W.Va. Supreme Court justices cleared of ethics complaints



By WSAZ News Staff | Posted: Mon 5:23 PM, Jul 23, 2018 | Updated: Mon 5:49 PM, Jul 23, 2018

CHARLESTON, W.Va. (WSAZ) -- A commission tasked with governing the ethical conduct of judges in West Virginia has cleared three justices without taking any disciplinary action.

The Judicial Investigation Commission (JIC) investigated ethics complaints against state Supreme Court Justices Robin Jean Davis and Beth Walker, as well as Chief Justice Margaret L. Workman.

"We are taking the unusual step of making our findings public in these cases because Supreme Court Justices are the highest judicial officers in West Virginia," said Commission Chairman Ronald Wilson, a judge in the First Judicial Circuit. "It is important for the public to know that allegations against them have been thoroughly investigated, and they have been cleared of wrongdoing."

It was the Judicial Disciplinary Counsel that opened the complaints earlier this year. The decision from the JIC closes the cases and all outstanding complaints against the justices.

The state Supreme Court established the JIC. Its purpose is to determine whether probable cause exists to formally charge a judge with a violation of the Code of Judicial Conduct. It is also the same organization that investigated allegations against Justice Allen Loughry and filed 32 formal charges against him on June 6.

The charges stem from \$363,000 worth of renovations to Loughry's office at the W.Va. State Capitol. A grand jury also indicted Loughry on more than 20 federal charges. You can read more about the investigation here.

The complaints alleged Davis, Walker and Workman used state funds to pay for lunches for themselves and other court employees while they discussed cases and administrative matters in conference.

**EXHIBIT
B**


However, the JIC determined those lunches made the court run more efficiently and effectively. It found those lunches actually reduced the amount of time attorneys spent in court, reducing legal fees, and "allowed visiting judges to return to their circuits in time to do other work the same day."

The investigation found the lunch practice was also "longstanding." In a letter to Justice Walker, the JIC stated, "You had no involvement in the original decision to provide working lunches on argument and administrative conference days and you had no reason to challenge the practice at the time you took office because it was well-known and well-established practice."

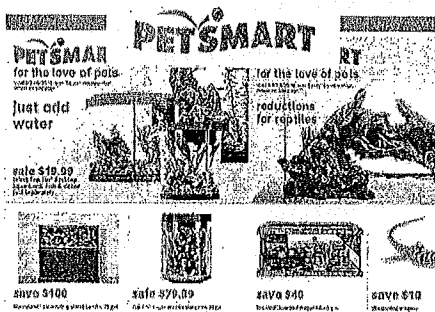
Letters to the other justices stated, "Perhaps the only criticism that the JIC can make is that you failed to reduce the policy to writing – with well-established guidelines – for the purchase of the working lunches. By failing to do this, you unnecessarily opened the door to unfair public criticism of an otherwise appropriate method for conducting the business of the Court."

The JIC also mentioned that both the IRS and the West Virginia Ethics Commission consider paid working lunches an acceptable expense because they improve efficiency.

The letters sent to the justices clearing them of wrongdoing are attached to this article under "related documents."

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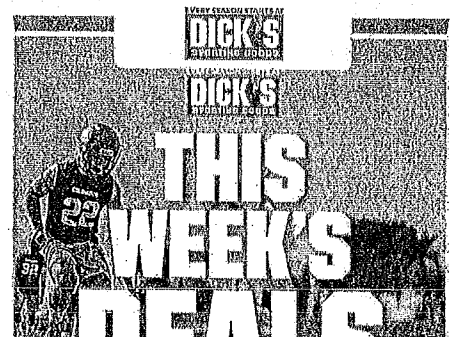
Infographic: Breakdown of the impeachment investigation into the W.Va. Supreme Court
UPDATE: Pretrial motions underway in federal case of suspended W.Va. SUPCO judge



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September 24, 2018

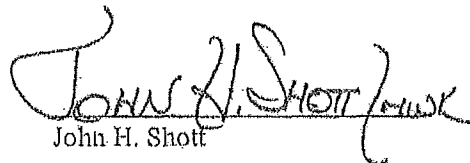
Lee Cassis
Clerk of the West Virginia Senate
1900 Kanawha Boulevard, East
Room M-211
State Capitol Complex
Charleston, WV 25305
Via Electronic Mail

Dear Mr. Clerk:

Pursuant to Senate Rule No. 17, please find the attached list on behalf of the Board of Managers.

Please call 304-340-3252 if you would have any questions.

Respectfully,


John H. Shott

**EXHIBIT
C**

1. Honorable Ronald E. Wilson
Hancock County Courthouse
102 Court Street
New Cumberland, WV 26047
Time of Appearance: October 1, 2018 at 1:00 p.m.

IN THE WEST VIRGINIA SENATE
SECOND EXTRAORDINARY SESSION

SUBPOENA

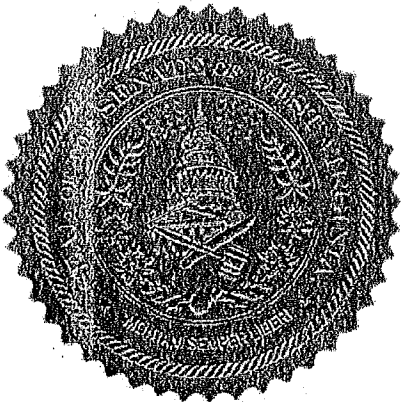
In the Matter of Impeachment Proceedings Against Respondent Justice Elizabeth Walker

To: Honorable Ronald E. Wilson
Hancock County Courthouse
102 Court Street
New Cumberland, WV 26047

YOU ARE HEREBY COMMANDED IN THE NAME OF THE STATE OF WEST VIRGINIA to appear and testify before the West Virginia Senate sitting as the Court of Impeachment on Monday, October 1, 2018, at 1:00 p.m., in the Senate Chamber of the West Virginia State Capitol.

Entered under the authority of the Rules of the West Virginia Senate While Sitting as a Court of Impeachment.

Requested by: House Managers
Building 1, Room 418
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305



9-24-18

DATE



LEE CASSIS
CLERK OF THE COURT OF IMPEACHMENT

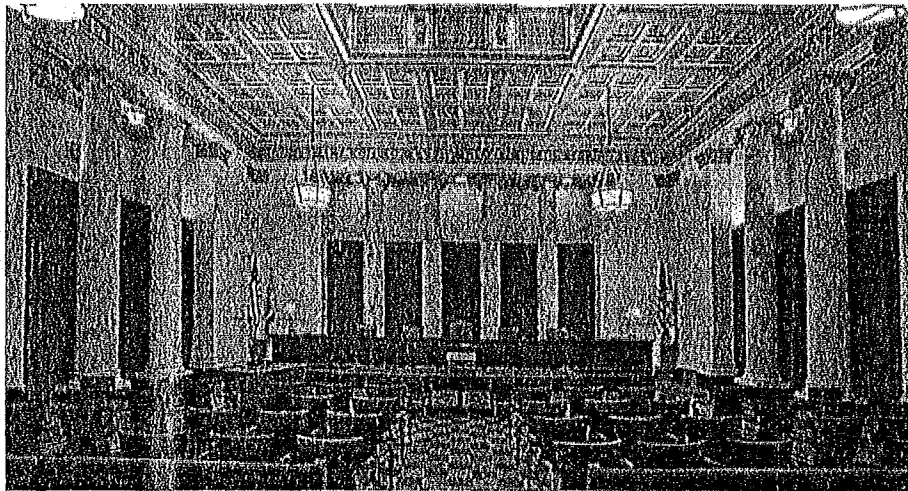
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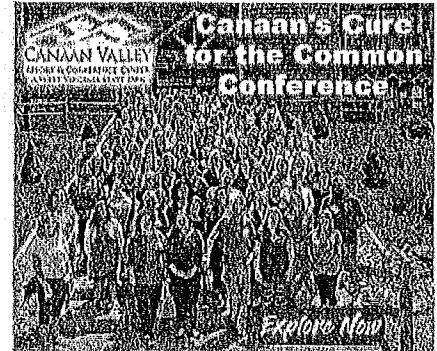
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Judge named to hear Justice Workman's case is also an impeachment witness



Courtesy of Thomey Llobetman



SHARE ARTICLE

By Brad McElhinny In News | September 26, 2018 at 9:03AM

EMAIL

CHARLESTON, W.Va. — Judge Ronald Wilson has a couple of roles in upcoming Supreme Court impeachment proceedings that may be at odds.

Tweet

Wilson, who serves on benches in the Northern Panhandle, was named this week to sit temporarily on the Supreme Court as it considers a petition by Chief Justice Margaret Workman to halt her impeachment trial.

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Assignment Order of Judges in 18 0816 (2)
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ADMINISTRATIVE ORDER
SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: Assignment of the HONORABLE RONALD E. WILSON, the HONORABLE I. LOUIS BLOOM, the HONORABLE RUDOLPH J. MURENSKY, II, and the HONORABLE JACOB E. REGER, to the Supreme Court of Appeals of West Virginia to serve as act justices in the proceeding styled STATE EX REL. MARGARET L. WORKMAN MITCH CARMICHAEL, PRESIDENT OF THE WEST VIRGINIA SENATE, ET AL Docket No. 18-0816

Acting Chief Justice James A. Matish, pursuant to the Court's September 21, 2018 Administrative Order, does hereby take the following judges to serve as Justices on the above:

LATEST NEWSCASTS News | Sports

WV MetroNews – Judge named to hear Justice Workman's case is also an impeachment witness

Administrative Order, does appoint the following judges to serve as justices on the above-captioned case:

1. Honorable Ronald K. Wilson, Judge of the First Judicial Circuit
2. Honorable Louis H. Bloom, Judge of the Thirteenth Judicial Circuit
3. Honorable Randolph J. Murensky, II, Judge of the Eighth Judicial Circuit
4. Honorable Jacob E. Roger, Judge of the Twenty-Sixth Judicial Circuit

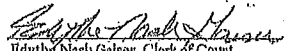
It is, therefore ORDERED, that Judges Wilson, Bloom, Murensky, and Roger, shall be, and they hereby are, temporarily assigned to the Supreme Court of Appeals of West Virginia, under the provisions of Article VIII, Sections 2 and 8 of the Constitution of West Virginia, for the purposes of consideration and deliberation of the above-captioned case; and

It is further ORDERED, that the Clerk of the Supreme Court of Appeals of West Virginia record this Order in the Office of the Clerk and that proceedings be held in the manner provided by law.

ENTERED: September 24, 2018



 JAMES K. MATISH
 Acting Chief Justice

Attest: 
 Edythe Nash Galsor, Clerk of Court

Contributed to DocumentCloud by Brad McElhinny of WV MetroNews • View document

But Wilson has also been named as a potential witness in the impeachment trial of Justice Beth Walker, which is to start Monday. Wilson's subpoena says he should appear at 1 p.m. Monday.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.

Wilson wasn't immediately available to answer questions about how he could square the two roles.

His role as a witness at that trial is likely due to yet another position he holds, as the lead judge on West Virginia's Judicial Investigation Commission.

That body has been a significant element of the ongoing impeachment proceedings already.



Ronald Wilson

The Judicial Investigation Commission in June **named** Justice Allen Loughry in 32 charges relating to his conduct on the Supreme Court. The charges were a major factor kicking off the impeachment in the Legislature.

Even more relevant to the Senate trials of justices Workman and Walker is the Judicial Investigation Commission's July **conclusion** that it had closed ethics complaint cases against those justices plus then-Justice Robin Davis, taking no action against them.

The commission was investigating complaints alleging the three justices used state funds to pay for lunches for themselves, their administrative assistants and court security officers while they were discussing cases and administrative matters in conference.

The commission said in letters to the justices that it found the lunches reduced the amount of time attorneys spent in court, reducing legal fees, and allowed visiting judges to return to their circuits in time to do other work the same day.

The commission, in a **press release**, said its policy is to not acknowledge the existence of complaints until probable cause has been found to issue a statement of charges or an admonishment.

"We are taking the unusual step of making our findings public in these cases," Wilson stated in that release "because Supreme Court justices are the highest judicial officers in West Virginia. It is important for the public to know that allegations against them have been thoroughly investigated, and they have been cleared of wrongdoing."

Workman on Friday filed a petition with the very Supreme Court that she serves on, challenging the legality of impeachment proceedings in the House of Delegates and requesting a stay of impeachment trial in the Senate.

Workman issued an order **disqualifying herself** from hearing her own petition for writ of mandamus.

The **judges** to hear her petition include Wilson, Judge Duke Bloom of Kanawha County, Judge Rudolph Murensky of McDowell County and Judge Jacob Reger of Upshur County.

Lawyers for the state Senate have been **asked to file** a response by Oct. 3. After that, the acting court could consider the case.

Delegates voted **to impeach** Workman along with the other

remaining members of the state Supreme Court on August 13 on allegations that they had overstepped their authority and committed acts of maladministration.

Workman is set for a trial in the Senate starting Oct. 15.

“When they issue that writ of mandamus, the first thing on my mind was the Supreme Court would probably issue what is called a stay order,” said Delegate Andrew Byrd, D-Kanawha, who is a lawyer and one of the impeachment managers from the House of Delegates.



Andrew Byrd

“If they issue a stay order, I don't know how quick they can get something turned around before her trial date.”

Workman's petition for writ of mandamus with the Supreme Court names Senate President Mitch Carmichael, Senate pro tempore Donna Boley, Senate Majority Leader Ryan Ferns, Senate Clerk Lee Cassis and the rest of the Senate.

Appearing today on “580 Live” on WCHS Radio, Carmichael, R-Jackson, said the case at its heart is about the Legislature's constitutional power of impeachment.



Mitch Carmichael

“Any clear-headed understanding of the constitution will result in one ruling on this, that this is in the Legislature's purview,” Carmichael said.

“We'll see how the rulings come down and we'll react accordingly.”



Brad McElhinny

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@BradMcElhinny

Brad McElhinny is the statewide correspondent for MetroNews. Brad is a Parkersburg native who spent more than 20 years at the Charleston Daily Mail. Contact him at brad.mcelhinny@wvmetronews.com or on Twitter @BradMcElhinny

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Rodger Cottrill

Birds of a feather stick together

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Olive Basham

No justice in these witch hunts. No WV justice or attorney should hear or decide these cases.

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Mike Ballburn

How about this headline:
Judge overseeing Impeachment case APPOINTED by Margaret Workman?

How is that ethical?

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Aaron Staats

While a version of the West Virginia Supreme Court will rule on this issue, it will ultimately be decided by the United States Supreme Court. Given the ramifications of the actions undertaken by a clearly partisan legislature, that is how it should be.

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SP McGinnis

The issue has already been decided. The case was the federal appeal by former Pennsylvania Supreme Court Justice Rolf Larsen back in the 1990's. It was decided that any state legislature has absolute legislative immunity when it comes to impeachment/removal. The "impeachment" power cannot be reviewed by any court - state or federal - since that power is granted exclusively to the Legislature and the only people who can review that action are the voters. The "ramifications" are completely irrelevant.

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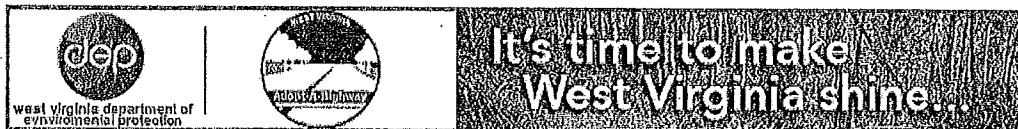


Aaron Staats

SP McGinnis Justice Workman's lawyers disagree with you, Perhaps it is because your analysis is wrong. Larsen was convicted of illegally obtaining prescription drugs and refused to step down while appealing his conviction. The PA Legislature impeached him, as they should have and PA voters subsequently changed their state constitution that "created a due process system for judges through a state Judicial Conduct Board, which independently investigates misconduct complaints, and a Court of Judicial Discipline, which independently determines a Pennsylvania judge's innocence or guilt." Of course, if you have a link to this alleged federal case that grants absolute immunity to one political body, I would love to read it as that goes against the very foundation of our co-equal branches of government that's been around since the 18th century.

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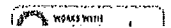
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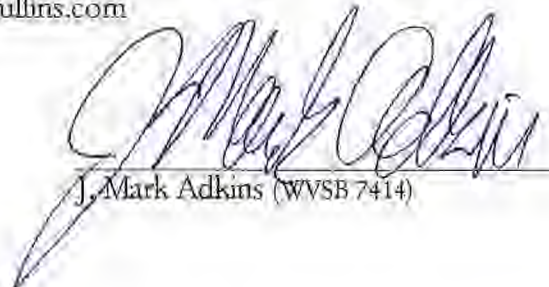


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CERTIFICATE OF SERVICE

I, J. Mark Adkins, counsel for Mitch Carmichael, President of the West Virginia Senate; Donna J. Boley, President Pro Tempore of the West Virginia Senate; Ryan Ferns, Majority Leader of the West Virginia Senate; Lee Cassis, Clerk of the West Virginia Senate; and the West Virginia Senate, do hereby certify that service of the foregoing RESPONSE IN OPPOSITION TO PETITIONER'S REQUEST FOR STAY and MOTION FOR DISQUALIFICATION has been made upon counsel of record by United States mail, postage pre-paid and via e-mail to the following on this 27th day of September, 2018:

Marc Williams, Esquire
Melissa Foster Bird, Esquire
Thomas M. Hancock, Esquire
Christopher D. Smith, Esquire
Nelson Mullins Riley & Scarborough, LLP
949 Third Avenue, Suite 200
Huntington, West Virginia 25701
Email: Marc.Williams@nelsonmullins.com



J. Mark Adkins (WVSB 7414)