

CIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No.

Plaintiff(s)

Judge:

State of West Virginia, et al
Ben Anderson, Chair of the
Greenbrier County Republican

Plaintiff's Phone:

vs. Executive Committee

Days to

Type of Service

Defendant(s)

Answer N/A

See C.O.S.

Mar Colburn, Secretary of State of the
Name

Defendant's Phone:

State of West Virginia and Harry

Street Address

"Lee" Forbes

City, State, Zip Code

II. TYPE OF CASE:

- General Civil, Mass Litigation, Asbestos, FELA Asbestos, Other, Habeas Corpus/Other Extraordinary Writ, Adoption, Administrative Agency Appeal, Civil Appeal from Magistrate Court, Miscellaneous Civil Petition, Mental Hygiene, Guardianship, Medical Malpractice

III. JURY DEMAND: Yes No CASE WILL BE READY FOR TRIAL BY (Month/Year): /

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS?

IF YES, PLEASE SPECIFY:

Yes No

- Wheelchair accessible hearing room and other facilities, Reader or other auxiliary aid for the visually impaired, Interpreter or other auxiliary aid for the deaf and hard of hearing, Spokesperson or other auxiliary aid for the speech impaired, Foreign language interpreter-specify language, Other

Attorney Name: John H Bryan
Firm: John H Bryan, Attorney at Law
Address: 411 Main Street, PO Box 3166 Union
Telephone: WV 24983 304-772-4999

Representing:
Plaintiff Defendant
Cross-Defendant Cross-Complainant
3rd-Party Plaintiff 3rd-Party Defendant

Proceeding Without an Attorney

Original and copies of complaint enclosed/attached.

Dated: 10 / 14 / 2022

Signature:

[Handwritten Signature]

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel
BEN ANDERSON, Chair of the
GREENBRIER COUNTY REPUBLICAN
EXECUTIVE COMMITTEE,

Petitioner,

v.

Civil Action No. _____
Honorable Judge _____

MAC WARNER,
SECRETARY OF STATE OF THE
STATE OF WEST VIRGINIA, and
HARRY "LEE" FORBES,

Respondents.

EMERGENCY PETITION FOR WRIT OF MANDAMUS

QUESTION PRESENTED

This petition presents the question of whether the residency requirements of the West Virginia Constitution compels the Secretary of State to exclude from the ballot a candidate for election to West Virginia Senatorial District 10 who resides in the same county as as a incumbent senator in the same senatorial district.

STATEMENT OF THE CASE

This petition presents the question of whether Article VI, Section 4 of the West Virginia Constitution, as well as W. Va. Code W. Va. Code, § 1-2-1(e) and (e)(1) [2021] compels the Secretary of State to exclude from the ballot, Harry "Lee" Forbes, a candidate for election to West Virginia Senatorial District 10 who resides in the same county as Senator Jack David

Woodrum, a current incumbent senator for the 10th senatorial district, who also resides in Summers County, West Virginia.

In filing for office, candidate Harry “Lee” Forbes listed his address as 736 Holly Ridge Road, Forest Hill, West Virginia, an address located in Summers County, within Senate District 10. **Exhibit #1.** Furthermore, in so registering as a candidate, Mr. Forbes submitted a signed verification that he was eligible as a candidate for Senate District 10. However, Summers County is also the county of residence of sitting senator, Jack David Woodrum, who is a sitting senator in District 10. **Exhibit #2.** Senator Woodrum’s seat is not currently up for election. Harry “Lee” Forbes is therefore ineligible to serve, even if elected, as there would already be a senator residing in that county.

Despite Mr. Forbes’ ineligibility being clear, the West Virginia Secretary of State does not have the administrative powers to remove Mr. Forbes from the ballot, in the absence of the relief requested herein. Petitioner, Chair of the Greenbrier County Republican Executive Committee, as well as a voter residing in senatorial district 10, is entitled to that relief, which is the relief sought herein.

SUMMARY OF ARGUMENT

Article VI, Section 4 of the Constitution of West Virginia , provides that...

[f]or the election of senators, the state shall be divided into twelve senatorial districts, which number shall not be diminished, but may be increased as hereinafter provided. Every district shall elect two senators, but, where the district is composed of more than one county, both shall not be chosen from the same county. The districts shall be compact, formed of contiguous territory, bounded by county lines, and, as nearly as practicable, equal in population, to be ascertained by the census of the United States. After every such census, the Legislature shall alter the senatorial districts, so far as may be necessary to make them conform to the foregoing provision.

Section 4's residency requirement for multi-county senatorial districts is also found in subsection (e) of Section 1 of the Senate Redistricting Act of 2021 (which was enacted following the 2020 census as required by Section 4), and states that...

(e) The West Virginia Constitution further provides, in section four, article VI thereof, that where a senatorial district is composed of more than one county, both senators for such district shall not be chosen from the same county, a residency dispersal provision which is clear with respect to senatorial districts which follow county lines, as required by such Constitution, but which is not clear in application with respect to senatorial districts which cross county lines. However, in an effort to adhere as closely as possible to the West Virginia Constitution in this regard, the following additional provisions, in furtherance of the rationale of such residency dispersal provision and to give meaning and effect thereto, are hereby established:

(1) With respect to a senatorial district which is composed of one or more whole counties and one or more parts of another county or counties, no more than one senator shall be chosen from the same county or part of a county to represent such senatorial district;

W. Va. Code, § 1-2-1(e) and (e)(1) [2021].

Additionally, W.Va. Code, § 1-2-1(f), states that “no person may file a certificate of candidacy for election from a senatorial district ... if he or she resides in the same county and the same such senatorial district wherein also resides an incumbent senator[.]” However, the facts are clear that Harry “Lee” Forbes filed his certificate of candidacy for election for a senatorial district in which an incumbent senator also resides. **Exhibit #1.**

The Supreme Court has consistently recognized that mandamus to the Secretary of State is appropriate to strike an ineligible candidate from the ballot prior to the election. Syl. pt. 3, State ex rel. Carenbauer v. Hechler, 208 W. Va. 584, 585, 542 S.E.2d 405, 406 (2000); State ex rel. Maloney v. McCartney, 159 W. Va. 513, 527, 223 S.E.2d 607, 616 (1976); White v. Manchin, 173 W. Va. 526, 532-534, 318 S.E.2d 470, 476-478 (1984); *see also* State ex rel. Boley v. Tennant, 228 W.Va. 812, 724 S.E.2d 783 (W. Va. 2012).

For these reasons, this Court should grant the writ and order the Secretary of State to withdraw his certification of Harry “Lee” Forbes’s candidacy for the West Virginia Senate, and further order that the Secretary direct the county clerks and ballot commissioners for the respective counties not to include Forbes on all applicable election ballots, and further order the Secretary of State to direct all election officials, county commissioners, clerks of county commissioners, clerks of circuit courts, boards of ballot commissioners, election commissioners, and poll clerks associated with the administration of the primary elections to disregard and refrain from tallying, tabulating, certifying, or returning any vote cast, absentee, write-in, or otherwise, for Forbes.

Finally, absentee voting has already begun and early voting for the election is quickly nearing, making this an emergency situation. The Secretary of State should be ordered to direct the respective county clerks to post a sign at all polling places that Respondent Forbes is ineligible as a candidate for senatorial district 10. Additionally, absentee voters should be re-sent a new corrected absentee ballot. If this is not done, many voters will lose their vote in this election by voting for an ineligible candidate.

STATEMENT REGARDING BRIEFING,
ORAL ARGUMENT AND DECISION

Petitioner requests that this Court forthwith enter an expedited briefing schedule. Absentee voting started on September 23, 2022. Early voting starts on October 26, 2022. The election is on November 8, 2022.

Petitioner believes that the dispositive issues raised by this case have been authoritatively decided by the West Virginia Supreme Court and that the facts and legal arguments can be

adequately presented in the briefs. Consequently, especially given the short time available, oral argument is not necessary.

Given the timeframe involved, however, Petitioner respectfully suggests that it may be appropriate for the Court to enter a summary order and follow in due course with the memorandum decision or other opinion explaining the decision.

ARGUMENT

I. FORBES IS NOT ELIGIBLE FOR ELECTION TO SENATE DISTRICT 10 BECAUSE HE DOES NOT MEET THE RESIDENCE REQUIREMENTS OF THE WEST VIRGINIA CONSTITUTION and W. VA. CODE.

The plain reading of Article VI, Section 4 of the Constitution of West Virginia and W. Va. Code, § 1–2–1(e) and (e)(1) demonstrate that Respondent Forbes is, according to his own certification, ineligible as a candidate for senatorial district 10. Petitioner contacted the general counsel for the West Virginia Secretary of State prior to the instant filing and confirmed that there doesn't appear to be any dispute regarding Mr. Forbes's ineligibility. As noted above, Respondent Forbes has already certified that he is a resident of Forest Hill, Summers County, West Virginia. *See Exhibit #1*. The facts are also clear that incumbent Senator Jack David Woodrum is a resident of Hinton, Summers County, West Virginia. *See Exhibit #2*.

The Supreme Court has previously held that the residence requirements contained in Article VI, Section 4 of the Constitution of West Virginia do not violate the Equal Protection Clause of the U.S. Constitution, among other protections:

We find that the residency requirements contained in Article VI, Section 4 of the Constitution of West Virginia do not violate the Equal Protection Clause of the Constitution of the United States. We further find that the residency requirements contained in the Senate Redistricting Act of 2011, W.Va.Code § 1–2–1 et seq. , do not

violate the freedoms of speech and association guaranteed under Sections 7 and 16 of Article III of the Constitution of West Virginia , the equal protection principles of Section 10 of Article III of the Constitution of West Virginia , or the right of political participation guaranteed under Section 1 of Article IV of the Constitution of West Virginia .

State ex rel. Boley v. Tennant, 228 W.Va. 812, 724 S.E.2d 783 (W. Va. 2012).

II. IT IS APPROPRIATE TO CHALLENGE RESPONDENT'S CANDIDACY VIA A WRIT OF MANDAMUS

The Supreme Court's precedent supports the use of a writ of mandamus to challenge the candidacy of a person seeking elected office.

In West Virginia a special form of mandamus exists to test the eligibility to office of a candidate in either a primary or general election. The proper party respondent in such special action in mandamus is the Secretary of State of the State of West Virginia in the case of an office to be filled by the voters of more than one county or the clerk of the circuit court in the case of an office to be filled by the voters of one county, and this action in mandamus, being a special creation of the evolving common law, is ripe for prosecution immediately upon a candidate's filing of his certificate of candidacy.

Syllabus Point 5, State ex rel. Maloney v. McCartney, 159 W.Va. 513, 223 S.E.2d 607, 616 (1976), appeal dismissed sub nom. Moore v. McCartney, 425 U.S. 946, 96 S.Ct. 1689, 48 L.Ed.2d 190 (1976). We explained in Maloney the need for "some method of averting a void or voidable election" and that "some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery." Maloney, 159 W.Va. at 527, 223 S.E.2d at 616.

State ex rel. Boley v. Tennant, 228 W.Va. 812, 724 S.E.2d 783 (W. Va. 2012).

"Mandamus lies to require the discharge by a public officer of a *nondiscretionary* duty."

SyI. Pt. 3, State ex rel. Greenbrier County Airport Authority v. Hanna, 151 W.Va 479, 153 S.E.2d 284 (1967); SyI. Pt. 1, State ex rel. West Virginia Housing Development Fund v. Copenhagen, 153 W.Va. 636, 171 S.E.2d 545 (1969). SyI. Pt. 1, State ex rel. Williams v. Department of Mil.

Aff, 212 W.Va. 407, 573 S.E.2d 1 (2002). It is well-established that a writ of mandamus requires three elements:

(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.

Syl. Pt. 1, State ex rel. McGraw v. West Virginia Ethics Comm'n, 200 W.Va. 723, 490 S.E.2d 812 (1997).

Petitioner is the duly elected Chair of the Greenbrier County Republican Executive Committee and is also a voter in West Virginia senatorial district 10. Whether a petitioner has a clear legal right, “is generally a question of standing. Thus, where the [petitioner] has a special interest in the sense that he is part of the class that is being affected by the action then he ordinarily is found to have a clear legal right.” State ex rel. Billy Ray C. v. Skaff, 438 S.E.2d 837, 850 (W. Va. 1993).

It is clear that Petitioner is entitled to the writ. When a candidate for elected office is ineligible, a writ of mandamus lies against the Secretary of State.¹ (White v. Manchin, 173 W. Va. at 547, 318 S.E.2d at 491 (granting writ of mandamus commanding Secretary of State to withdraw his certification of candidacy of respondents deemed ineligible to run for the West Virginia Senate and further directing Secretary of State to direct all election officials, county commissioners, clerks of county commissions, and poll clerks associated with the

¹ Petitioner has not joined the county clerks or county ballot commissioners as parties. This decision was made in order to expedite this case and save the clerks and commissioners the cost and expense of filing a response to this Petition where they are nominal parties. Petitioner believes that W. Va. Code § 3-1A-6(a) authorizes the Secretary of State, as chief election official, to issue orders to all election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks who are required to abide by any orders that may be issued. As such, a writ directed at the Secretary of State is sufficient to provide the relief required by this Petition. This was the same procedure used successfully in State ex rel. Boley v. Tennant, 228 W.Va. 812, 724 S.E.2d 783 (W. Va. 2012)..

administration of the primary elections to disregard and refrain from tallying, tabulating, certifying, or returning any vote cast, absentee, write-in, or otherwise, for senate candidates deemed ineligible.).

The Court has not hesitated to grant the requested relief even where early voting has begun. SER Hagerman v. Warner, et al., “Order Regarding Candidate Eligibility in WV House of Delegates District 39”, Case No. 18-P-398 (Kan. Co. Circ. Ct., J. Webster, Nov. 2, 2018) at **Exhibit #3**; *see also* SER Stine v Warner. et al., “Order Granting Emergency Writ of Mandamus”, Case No. 22-P-151 (Kan. Co. Circ. Ct., J. L. Bloom, May 4, 2022) at **Exhibit #4**. In this case, early voting has not yet begun and Petitioner believes there exists adequate time to obtain the requested relief.

CONCLUSION

For the reasons noted herein, Petitioner prays that this Court grant a rule to show cause, enter an expedited briefing schedule, and after due consideration, grant Petitioner a writ of mandamus, and if appropriate, do so via summary order. Petitioner believes that the writ should (1) direct the Respondent Secretary of State to withdraw his certification of candidacy of Respondent Forbes declaring him ineligible to run for the West Virginia Senate District 10; (2) further direct the Secretary of State to, pursuant to his authority granted by W. Va. Code § 3-1A-6(a), direct the respective county clerks and ballot commissioners for the Respondent Counties to strike, omit, or otherwise remove the name of Respondent Forbes from the official ballots to be used in the 2022 general election; (3) further direct the Secretary of State, pursuant to W. Va. Code § 3-1A-6(a), to direct all election officials, county commissioners, election commissioners, and poll clerks associated with the administration of the primary elections to

disregard and refrain from tallying, tabulating, certifying, or returning any vote cast, absentee, write-in, or otherwise, for Respondent Forbes, and (4) further direct the Secretary of State to direct the respective county clerks to post a sign at all polling places stating the Respondent Forbes is ineligible as a candidate for Senate District 10.

BEN ANDERSON, Chair of the
GREENBRIER COUNTY REPUBLICAN
EXECUTIVE COMMITTEE,
By Counsel,



John H. Bryan (WV Bar No. 10259)
JOHN H. BRYAN, ATTORNEY AT LAW
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P.O. Box 366
Union, WV 24983
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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel
BEN ANDERSON, Chair of the
GREENBRIER COUNTY REPUBLICAN
EXECUTIVE COMMITTEE,

Petitioner,

v.

Civil Action No. _____
Honorable Judge _____

MAC WARNER,
SECRETARY OF STATE OF THE
STATE OF WEST VIRGINIA, and
HARRY "LEE" FORBES,

Respondents.

VERIFICATION OF PETITION

Pursuant to W. Va. Code § 53-1-3, Petitioner verifies that (1) he has read the Petition and that to the best of his knowledge, information and belief formed after reasonable inquiry, that 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; and (2) 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.

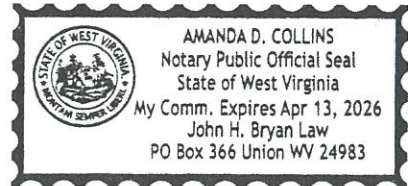
Ben Anderson
Ben Anderson

STATE OF WEST VIRGINIA,
COUNTY OF MONROE,

Taken, sworn to, and subscribed before me on this 14th day of October, 2022.

My commission expires: *April 13, 2026*

Amanda D. Collins
NOTARY PUBLIC



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA, ex rel
BEN ANDERSON, Chair of the
GREENBRIER COUNTY REPUBLICAN
EXECUTIVE COMMITTEE,

Petitioner,

v.

Civil Action No. _____
Honorable Judge _____

MAC WARNER,
SECRETARY OF STATE OF THE
STATE OF WEST VIRGINIA, and
HARRY "LEE" FORBES,

Respondents.

CERTIFICATE OF SERVICE

I, John H. Bryan, counsel for Petitioner, do certify that on October 14, 2022, I have served the Emergency Petition for Writ of Mandamus as set forth below. The Court's Rule to Show Cause should be served on these same parties at the addresses set forth below.

The Honorable Mac Warner
West Virginia Secretary of State
State Capitol Building, Room 157-K, Building 1
1900 Kanawha Boulevard, East
Charleston, WV 25305
Fax: (304) 558-0900
(Via Facsimile)

The Honorable Patrick J. Morrissey
West Virginia Attorney General
State Capitol Building, Room E-26, Building 1
1900 Kanawha Boulevard, East
Charleston, WV 25305
Fax: (304) 558-0140
(Via Facsimile)

Harry "Lee" Forbes
736 Holly Ridge Road
Forest Hill, WV 24935
(via U.S. Mail)



John H. Bryan (WV Bar No. 10259)
JOHN H. BRYAN, ATTORNEY AT LAW
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Union, WV 24983
jhb@johnbryanlaw.com
(304) 772-4999
Fax: (304) 772-4998

Exhibit 1

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Elections

[Online Data Services Help](#)

Elections

Candidate Detail

2022 State Senate						
Name	Party	County	City/State	Mailing Address	Campaign Phone/E-Mail	Filing Date
Harry "Lee" Forbes	Independent	Summers <i>District/Circuit</i> 10	Forest Hill, WV	<i>Mailing Address</i> 736 Holly Ridge Rd. Forest Hill WV 24935	304-661-4723 forbescopperworks@yahoo.com	7/28/2022

View	Type Of Report	Report Name
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If you have any questions or concerns about the data on these pages, please contact the WV SOS Elections department at 304-558-6000 or via e-mail to elections@wvsos.com.

Friday, October 14, 2022 — 1:17 PM

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Exhibit 2

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Elections

Online Data Services Help

Elections

Candidate Detail

2020 State Senate						
Name	Party	County	City/State	Mailing Address	Campaign Phone/E-Mail	Filing Date
JACK DAVID WOODRUM	Republican	Summers <i>District/Circuit 10</i>	Hinton, WV	<i>Mailing Address</i> PO BOX 1496 HINTON WV 25951	304-660-9241 jackdavid@woodrumforwv.com	1/14/2020

View	Type Of Report	Report Name
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Friday, October 14, 2022 — 1:43 PM

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Exhibit 3

FILED

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2018 NOV -2 PM 4:59

STATE OF WEST VIRGINIA EX REL.
MARION SHANNON HAGERMAN,
Petitioner,

CATHY S. GATSON, CLERK *llc*
KANAWHA COUNTY CIRCUIT COURT

v.

Civil Action No. 18-P-398
Honorable Carrie L. Webster

MAC WARNER, WEST VIRGINIA
SECRETARY OF STATE, JESSE JOHNSON,
and VERA McCORMICK, CLERK OF
KANAWHA COUNTY, WEST VIRGINIA,
Respondents.

ORDER REGARDING CANDIDATE ELIGIBILITY IN WV HOUSE OF DELEGATES
DISTRICT 39

On October 31, 2018, came the parties, by their respective counsel, for a hearing regarding Petitioner Marion Shannon Hagerman's Emergency Petition for Writ of Mandamus. The issue presented in the Petition, in pertinent part, is whether the West Virginia Secretary of State, a constitutional officer and chief elections officer for the State of West Virginia, can be compelled to remove from the election ballot a candidate for the West Virginia House of Delegates in District 39, namely Jesse Johnson, where *Article XI, Section 12 of the West Virginia Constitution* provides that a delegate shall reside within the district from which he is elected one year preceding his election, and where all evidence indicates that said candidate has not resided in District 39 for one year preceding the election.¹

Upon review of the filings, the evidence submitted, including the sworn testimony of Jesse Johnson, the Respondent herein, and the arguments of the parties, and for reasons stated on the record, the Court finds and concludes as follows:

1. Jesse Johnson is the putative nominee of the Mountain Party for the West Virginia House of Delegates in District 39 for the 2018 General Election.

¹ Petitioner is seeking relief on remand from a WVSCA Order dated October 24, 2018, where the matter was remanded to circuit court for development of the record. The undersigned was assigned to the case on October 30, 2018.

2. Mr. Johnson presently resides at 4 Lakeshore Drive, Cross Lanes, West Virginia, which is within the geographic boundaries of the 39th District. However, Mr. Johnson has resided at this address only since May of 2018, at the earliest. Prior to that date, Mr. Johnson resided outside the 39th District, at an address that he asserts was within the legislative boundaries of District 39 in or around 2010. This finding is undisputed and was also established by the documents submitted by the Petitioner, Respondent Johnson, and Johnson's testimony under oath.
3. Mr. Johnson testified that he filed his nomination and candidacy papers for District 39 at the Secretary of State's office on the last day he could file for office. His nomination papers, prepared by the Secretary of the Mountain Party, listed his previous address in Elkview, West Virginia. He was subsequently informed by the staff that his Elkview address was no longer in the 39th District. Mr. Johnson testified he then informed staff that he currently resided at 4 Lakeshore Drive, Cross Lanes, WV, and asked if he could amend his certificate of candidacy form. Mr. Johnson also testified that a staff attorney for the Secretary of State's office showed him the constitutional provision contained in the state's constitution that requires senators and delegates to reside in the district from which he or she is elected for a year prior thereto. See W. Va. Const., Art. VI, § 12. Notwithstanding this exchange between Mr. Johnson and the Secretary of State's attorney, Mr. Johnson filed his candidacy papers in District 39, using his Lakeshore address as his residence. Mr. Johnson testified that the Secretary of State's office accepted his candidacy documents and did not question his eligibility notwithstanding his presentation of two different forms with two different addresses in two different delegate districts.
4. On August 31, 2018, the Secretary of State received an "Elections Complaint Form," alleging that Mr. Johnson was not eligible to run in the 39th District because he did not meet the one year residency requirements.

5. On or about September 6, 2018, the Secretary of State responded to that complainant stating, "the allegations may warrant a criminal investigation, which may be impeded or endangered by the administrative procedures contained in" the rules it cited.
6. Thereafter, an appeal of the Secretary of States' failure to act was made to the WVSCA, where it was dismissed and remanded to circuit court for the [evidentiary] development of a record.
7. Although the Secretary of State did not present any witnesses or offer any evidence at the hearing, other than documents that were filed in response to the petition, its attorney stated that the Secretary of State informed Mr. Johnson of the complaint [presumably in writing] and gave him ten days to file a response. The Secretary of State maintains it is not permitted to disclose any document pertaining to the [criminal] investigation; and further contends that the Secretary of State is not authorized to remove an otherwise ineligible candidate from the ballot, and therefore cannot be compelled to remove a candidate from the ballot because it is without authority to do so, and that the proper party to compel is the Kanawha County Clerk's office. The Secretary of State admits it has jurisdiction over the complaint that was filed, and it is undisputed that the statute mandates that legislative candidates must file their candidacy papers with the Secretary of State.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The parties agree that the threshold question the Court must decide is whether Mr. Johnson meets the residency requirements set forth in the West Virginia Constitution:

"No person shall be a senator or delegate who has not for one year next preceding his election, been a resident within the district or county from which he is elected; and if a senator or delegate remove from the district or county for which he was elected, his seat shall be thereby vacated." W. Va. Const., Art. VI, § 12.
2. Based on Mr. Johnson's testimony, and the documents presented by the Petitioner in his petition, the Court finds that Mr. Johnson has not resided within the 39th District for one

(1) year next preceding the 2018 General Election, and CONCLUDES that he is therefore ineligible to be a candidate for the House of Delegates from that district.

3. The second question concerns what the proper remedy is given that Mr. Johnson is already on the ballot along with three other candidates in District 39 and early voting has already commenced, with over 1,000 ballots reportedly cast in District 39 at the time of the hearing. Thus, the Court finds that it is not feasible to remove Mr. Johnson's name from the ballot. However, because Mr. Johnson is ineligible to be a candidate, an equitable remedy is necessary to ensure that voters of the district are aware that Mr. Johnson is ineligible to hold the office of Delegate for the 39th District.
4. Accordingly, it is hereby ORDERED that no votes cast for Mr. Johnson for the House of Delegates in District 39 shall be counted. However, ballots on which a vote for Mr. Johnson was cast shall not be affected as it pertains to votes cast for any other office.
5. Further, it is hereby ORDERED that a notice shall be prominently posted at all voting precincts wherein Mr. Johnson's name will appear on the ballot, which shall read as follows:

BY ORDER OF THE CIRCUIT COURT OF KANAWHA COUNTY

MOUNTAIN PARTY NOMINEE JESSE JOHNSON IS NOT AN
ELIGIBLE CANDIDATE FOR THE OFFICE OF HOUSE OF
DELEGATES IN DISTRICT 39 IN THE 2018 GENERAL ELECTION.
VOTES CAST FOR JESSE JOHNSON IN THIS ELECTION WILL NOT
BE COUNTED.

6. It should be noted that Respondent Mac Warner, West Virginia Secretary of State, contests his status as a proper party to this litigation. The hearing on October 31, 2018, did not address or include any arguments on this issue. Accordingly, this Order does not reach a decision on this question.
7. The Court, by and through this Order, hereby admonishes the Secretary of State for its inaction. Whether it is a proper party or not, it is inconceivable to the Court that this clear cut issue of candidate ineligibility was not timely addressed, when it could and should have

been, and as a result, potentially thousands of voters in District 39 will be disenfranchised from voting for this office or whose votes will not be counted., The Court does intend to address this inexcusably failure at a later date.

8. The Court notes the objections of the parties to any adverse rulings contained herein.

The Clerk of the Court shall distribute a certified copy of this Order to all counsel and parties of record.

IT IS SO ORDERED.

Carrie L. Webster 11/2/18

The Hon. Carrie L. Webster
Thirteenth Judicial Circuit
Circuit Court of Kanawha County

(Note: Draft Order submitted by attorney below was substantially revised by the Court).

Charles R. Bailey (WV Bar #0202)
Marc J. Slotnick (WV Bar #5956)
Adam K. Strider (WV Bar #12483)
BAILEY & WYANT, PLLC
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
(304) 345-4222

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT,
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS
DAY OF November 2018
Clerk
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Exhibit 4

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
ex rel. ALICIA STINE,
Petitioner,

2022-05-03 PM 3:17

COURT REPORTER
KANAWHA COUNTY CIRCUIT COURT

v.

Civil Action No. 22-P-151
Judge Louis H. Bloom

MAC WARNER, SECRETARY OF STATE
OF THE STATE OF WEST VIRGINIA, and
ANDREA KIESSLING,
Respondents.

ORDER GRANTING EMERGENCY WRIT OF MANDAMUS

On April 29, 2022, the Petitioner, the State of West Virginia ex rel. Alicia Stine, filed an Emergency Petition for Writ of Mandamus, by counsel Anthony J. Majestro. The Petition argues that the Respondent, Andrea Kiessling, is ineligible to be a candidate in State Senatorial District 8. The Petition seeks various orders against the Respondent Secretary of State, Mac Warner, regarding Ms. Kiessling's ineligibility for the State Senate Office in District 8. On April 29, 2022, the Court entered an Order for Respondents to Show Cause, setting this action for an evidentiary hearing via Microsoft Teams on May 3, 2022, at 9:30 a.m. On May 3, 2022, came the Petitioner by counsel, Anthony J. Majestro, the Respondent Marc Warner, West Virginia Secretary of State by counsel, David Pogue, and the Respondent Andrea Kiessling by counsel, Marc Williams, and presented evidence on the Petitioner's Emergency Petition for a Writ of Mandamus.

The Court, having considered the Petition and the evidence presented at hearing, and considering the exigent circumstances that this ruling affects the May 10, 2022, primary election that is currently in early voting, makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

Petitioner Alicia Stine is a registered voter residing in Kanawha County within West Virginia Senatorial District 8 and intends to vote in the Republican primary. Respondent Andrea Kiessling is a Republican Party candidate for the District 8 Senate Seat. District 8 contains portions of Kanawha, Putnam, Jackson, Roane and Clay Counties.

In filing for office, Ms. Kiessling listed her address as 97 Batten Run, Spencer, West Virginia 25276 (the “Spencer address”), an address within District 8. Petitioner’s Exhibit #1.

In 2012, Ms. Kiessling resided in Kanawha County, West Virginia. That year she moved to Charlotte, North Carolina. **Hrg. Transcr. 4:4-5 (May 3, 2022)**. Ms. Kiessling testified that she had no intention to return to her residence in Kanawha County at the time she left. **Hrg. Transcr. 14:15-23, 21:13-15**. Ms. Kiessling’s husband’s family resided in North Carolina.

Upon moving to Charlotte, North Carolina, Ms. Kiessling registered to vote in North Carolina. Ms. Kiessling is currently registered to vote in North Carolina and, as of 2022, the North Carolina State Board of Elections Mecklenburg County, North Carolina, voter registration information indicates that Ms. Kiessling is an “ACTIVE” registered voter in that county and that state. Petitioner’s Exhibit #2. The “ACTIVE” Mecklenburg County, North Carolina voter registration information from the North Carolina State Board of Elections evidences that Ms. Kiessling’s address is 728 Wingrave Drive, Charlotte, North Carolina 28270. *Id.* North Carolina State Board of Elections voting history records show that Ms. Kiessling has voted in the general election in Mecklenburg County, North Carolina in 2012, 2014, 2016, 2018 and 2020. *Id.* Ms. Kiessling testified that she understood that she could only vote in North Carolina if she were a resident of North Carolina. **Hrg. Transcr. 12:14-17, 4:12-21**.

Upon moving to North Carolina, Ms. Kiessling purchased real property, a townhouse, in Charlotte, North Carolina. Ms. Kiessling continues to own that property located at 1336 Queens Road, Charlotte, North Carolina 28207 and has and continues to pay real property taxes on that property in North Carolina. **Hrg. Transcr. 9:17-24, 17:17-20, 25:18 through 26:3.**

Ms. Kiessling resided in the Charlotte townhouse until 2017. **Hrg. Transcr. 10:1-4.** She then moved to rental property in Charlotte because her family had outgrown the townhouse; Ms. Kiessling lived with her family in the rental property until the summer of 2019. **Hrg. Transcr. 15:18 through 17:13.**

From 2012 to 2019, Ms. Kiessling's motor vehicles were registered in North Carolina. **Hrg. Transcr. 8:2-5.** From 2012 to 2021, Ms. Kiessling possessed a North Carolina driver's license. **Hrg. Transcr. 8:15-17.**

From 2012 to 2019, Ms. Kiessling paid North Carolina property tax and income tax. **Hrg. Transcr. 8:24 through 9:5, 9:17-24.** Also, during this same time period, her federal tax returns listed North Carolina as her residence address. **Hrg. Transcr. 9:6-16.**

From 2012 through at least 2019 Ms. Kiessling owned and operated businesses in North Carolina. **Hrg. Transcr. 4:22 through 5:9, 6:9-20.** She testified one of the reasons she chose Charlotte was due to its convenient airport. **Hrg. Transcr. 24:15-20.**

In an April 8, 2019, Facebook post by Ms. Kiessling, she stated to a friend (who was hoping that she was moving "north") that she was still in "CLT", indicating her Charlotte, North Carolina location and requested that the friend come visit her there. Petitioner's Exhibit #13.

Ms. Kiessling testified that in the Summer of 2019 she bought a house in Minnesota and moved to Minnesota due to her husband taking a new job there. **Hrg. Transcr. 10:23 through**

11:8, 11:14-20, 27:1-12. She testified that she returned to Charlotte from Minnesota to vote. **Hrg. Transcr. 27: 24 through 28:4.**

Ms. Kiessling testified that she sold the house that she had purchased in Minnesota in the Summer of 2020. **Hrg. Transcr. 11:18-20.**

Ms. Kiessling testified that she has had a West Virginia driver's license since August 2021. **Hrg. Transcr. 8:9-11.** Ms. Kiessling testified that in the last two years, she filed state income tax returns in West Virginia. **Hrg. Transcr. 8:24 through 9:1.**

Ms. Kiessling testified that she split time equally between West Virginia and North Carolina from 2012 to the beginning of the COVID-19 pandemic. **Hrg. Transcr. 10:5 through 11:13.** When she stayed in West Virginia, her husband did not accompany her. **Hrg. Transcr. 28:23 through 29:4.** Until Ms. Kiessling and her husband purchased their current residence, she stayed with her parents in Spencer when she came to West Virginia. **Hrg. Transcr. 18:1-7, 28:23 through 29:1, 32:3-9.** Her family furniture was not moved to West Virginia until the purchase of her current residence. **Hrg. Transcr. 34:23 through 35:4.**

Ms. Kiessling testified that she moved to West Virginia due to the pandemic. **Hrg. Transcr. 18:1-4.** However, in an October 9, 2020, Facebook post, which Ms. Kiessling confirmed was from her Facebook account, Ms. Kiessling stated that, "My family will be spending the next few months in Spencer". Petitioner's Exhibit #14. In that same Facebook post string in response to Ms. Kiessling's friend Kolby Lynne's question, "You're coming home?", Ms. Kiessling stated, "We just sold our house and spending some time in WV while we look for another – so not sure how long we'll be here." *Id.* This statement contradicts Ms. Kiessling's testimony at the hearing that in October 2020 it was her intent to remain in West Virginia.

The Court **FINDS** that from 2012 through – at the earliest – 2019, Ms. Kiessling was a resident of and had her domicile in Charlotte, North Carolina. The Court credits the undisputed objective evidence listed above over her aspirational testimony that she always intended to return to West Virginia. The Court notes that Ms. Kiessling was a credible witness who presented honest testimony with a forthcoming and candid demeanor. None of these findings are intended to cast doubt on Ms. Kiessling’s credibility as a witness.

CONCLUSIONS OF LAW

At the outset, the Court notes that the State Supreme Court has specified how time should be calculated in determining a primary candidate’s domicile. The Supreme Court explained,

In construing West Virginia Constitution art. VIII, § 23, now West Virginia Constitution art. IX, § 10, governing the election of county commissioners, this Court held in the single Syllabus Point of *Fansler v. Rightmire*: “The word ‘election,’ as used in section 23, article 8, Constitution of West Virginia, has reference to general elections—the final choice of the entire electorate—and not to the selection of candidates in a primary.” As noted by the Court in *Fansler*, “Candidates at the time of the adoption of our present Constitution were chosen by party conventions. A primary was not contemplated.” Likewise, the word “election,” as used in West Virginia Constitution art. VI, § 12, refers to general elections and not to the selection of candidates in a primary. Therefore, in order to meet the durational residency requirement found in this constitutional provision, the respondent candidates must have established domicile in the senatorial district and the county which they respectively seek to represent one year prior to the impending November general election.

White v. Manchin, 173 W. Va. 526, 542, 318 S.E.2d 470, 486-87 (1984) (internal citations omitted). The Court notes that the State Supreme Court was considering the one-year district residency rule. However, this Court finds that the same logic applies to the five-year West Virginia citizenship rule, as both are constitutional provisions relating to the same subject matter. The Court thus concludes that the State Supreme Court’s holding regarding the calculation of time in *White v. Manchin* shall apply to the five-year calculation performed herein. Accordingly, despite

Petitioner's argument to the contrary, Ms. Kiessling's domicile will be measured according to the general election set to occur on November 8, 2022, not from the May 10, 2022, primary election.

Article 4, sec. 4 of the West Virginia Constitution provides that any person "elected or appointed to any state, county or municipal office. . . must have been citizens of the state for five years next preceding their election or appointment." This Court emphasizes the importance of the term "next preceding," as candidates are required to be citizens of West Virginia for the five years "next preceding," or immediately before, their elections. This is in contrast to a provision that would permit candidates to have simply been West Virginia citizens for five years throughout their lives, not necessarily the five years prior to the election.

The Supreme Court of Appeals of West Virginia has upheld the constitutionality of this requirement:

Compelling state interests are served by article IV, section 4 of the West Virginia Constitution, which provides that a candidate for senator must be a citizen of the State for five years next preceding the election, and therefore, that constitutional provision does not violate a candidate's rights to equal protection.

Syl. pt. 1, *State ex rel. Harden v. Hechler*, 187 W.Va. 670, 421 S.E.2d 53 (1992).

The requisites of West Virginia citizenship are contained in article 2, section 3, of the West Virginia Constitution which grants citizenship to "[a]ll persons residing in this state." In the context of the determination of residency for the purpose of elections, the Supreme Court has equated residence with domicile: "[i]n West Virginia, the term 'residence' is synonymous with the term 'domicile' for election law purposes." Syllabus Point 7, *White v. Manchin*, 173 W.Va. 526, 318 S.E.2d 470 (1984).

"A [person] may live in several different places but he [or she] can have only one domicile. Domicile is a place a person intends to retain as a permanent residence and go back to ultimately after moving away." Syllabus Point 2, *Shaw v. Shaw*, 155 W.Va. 712, 187 S.E.2d 124 (1972).

However, as the Court noted in *White*, intention alone is insufficient: “Residence is thus made up of fact and intention, the fact of abode and the intention of remaining, and is a combination of acts and intention. Neither bodily presence nor intention alone will suffice to create a residence. There must be a combination and concurrence of these elements and when they occur, a residence is created.” *White*, 173 W. Va. at 538, 318 S.E.2d at 482 (internal quotations omitted).

Finally, “[t]he important facts in determining the domicile of a person who has more than one residence are the physical character of each, the time spent and the things done in each place, and whether or not there is an intention to return to the original domicile.” Syllabus Point 4, *Shaw v. Shaw*, 155 W.Va. 712, 187 S.E.2d 124 (1972).

In making the determination, the Court must be guided by objective evidence: “Intent to change domicile, which requires an intent not to return to the old domicile, is to be inferred from facts and circumstances, not from self-serving representations.” *White*, 173 W. Va. at 542, 318 S.E.2d at 486; *State v. Stalaker*, 186 W. Va. 233, 236, 412 S.E.2d 231, 234 (1991). The party alleging a change of domicile has the burden of proof. *State v. Stalaker, supra*.

The Court **CONCLUDES** that Petitioner has met her burden of establishing that Ms. Kiessling established a domicile in North Carolina in 2012 when she moved there from Kanawha County. She purchased a residence and a business, registered as a North Carolina voter, voted several times in North Carolina elections from 2012 through 2020, obtained a driver’s license, registered her vehicles, and paid taxes in North Carolina.

These acts are sufficient to establish domicile in North Carolina. In *Harden*, the Supreme Court found the following facts sufficient to find a candidate for senate was not a West Virginia resident:

The evidence presented to this Court, some of which was presented at oral argument and was not disputed by Mr. Russell, is that Mr. Russell did not pay income tax in

this State during the years of 1987 and 1988. He did not register to vote in West Virginia until October 17, 1989. Mr. Russell did not have a West Virginia driver's license until November of 1989, and his 1987 Dodge automobile was titled and registered in the District of Columbia until November of 1989. Finally, he did not purchase a home in this State until August of 1989.

Harden, 187 W. Va. 670, 67, 421 S.E. 2d 53, 56. Here, Ms. Kiessling clearly mirrors each of these facts found by the State Supreme Court to be highly persuasive, if not dispositive, in *Harden*. Ms. Kiessling has not paid income tax in West Virginia for the five years next preceding the November 2022 election. She was not registered to vote in West Virginia for these five years, as she voted in North Carolina as recently as November 2020. Ms. Kiessling obtained a West Virginia driver's license in August 2021, clearly later than five years prior to the election. Her automobiles were registered and titled in North Carolina as recently as 2019. Finally, Ms. Kiessling did not purchase a home in West Virginia until 2021.

The Court **CONCLUDES**, pursuant to *State ex rel. Harden v. Hechler*, that the totality of the circumstances indicates that Ms. Kiessling has not been domiciled in West Virginia for five years next preceding the November 2022 general election. The Court expresses no opinion regarding an exact time when Ms. Kiessling's West Virginia domicile began after leaving North Carolina, but it cannot be disputed that her West Virginia domicile has not been established for the requisite five years prior to the November 2022 general election.

In making this conclusion, the Court finds it significant that prior to 2021, Ms. Kiessling did not have a residence of her own in West Virginia. Even if the Court credits her testimony about the amount of time she spent in West Virginia, the Court finds it unlikely that a self-sufficient, married person with children who owned her own businesses considered her parents' West Virginia home to be her domicile. The State Supreme Court has rejected similar subjective

testimony. *White, supra* (rejecting room where candidate slept as domicile when candidate had a fully furnished apartment outside the district).

The Court is particularly troubled by the fact that Ms. Kiessling claims domicile in West Virginia having voted in a North Carolina election as recently as 2020. Under North Carolina law, voting requires that a person register to vote in the place where “the person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning.” N.C. Gen. Stat. Ann. § 163-57(1). While at the hearing Ms. Kiessling denied that she met this test, the Court finds that the act of voting in North Carolina constitutes an admission by her that she had a fixed habitation in North Carolina where she had an intention of returning.

Moreover, the Court finds persuasive the fact that while residing outside North Carolina, Ms. Kiessling voted in North Carolina elections. The Court notes that the focus here is determining when Ms. Kiessling was domiciled in West Virginia. Ms. Kiessling’s voting in North Carolina clearly evidences a belief that North Carolina was her fixed domicile. Ms. Kiessling may have voted in North Carolina while residing in North Carolina out of convenience. However, it cannot be said that voting in North Carolina elections while residing elsewhere is convenient in any respect. If the physical locus of her voting was determined by where she was located and thus where she could most easily vote, Ms. Kiessling would have registered to vote in Minnesota when she purchased a home there. However, Ms. Kiessling did not, instead remaining registered to vote in North Carolina. The Court finds this to reflect a clear belief that although Ms. Kiessling may have resided elsewhere, she continued to consider North Carolina to be her domicile and the proper state in which she should vote as a citizen thereof.

In *Sutton v. Sutton*, 128 W.Va. at 296–97, 36 S.E.2d at 612, the Court rejected a contention similar to Ms. Kiessling’s, that economic, cultural, and civic ties with a particular community are sufficient to establish domicile, stating:

A man may remove from his place of residence and establish a domicile or residence elsewhere, and still own property, have important business or financial connections, leave his investments undisturbed, and even plan for his own burial, in a community in which he lived for a long period of time, without continuing to be a resident of the locality which he has left with the intention of staying away indefinitely.

Here the objective evidence establishes that Ms. Kiessling left West Virginia in 2012 with her husband and established a new domicile in North Carolina. As late as 2020, there is evidence that she had no intent to return to West Virginia. While she may now have established a domicile in West Virginia, the Court concludes, based on her actions, that she was domiciled in North Carolina through at least 2019. Consequently, she is ineligible as a candidate for the West Virginia Senate because she fails to meet the five-year residency requirement of Art. 4, sec. 4 of the West Virginia Constitution.

“In West Virginia a special form of mandamus exists to test the eligibility to office of a candidate in either a primary or general election.” Syl. pt. 5, in part, *State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 223 S.E.2d 607 (1976). Thus, “[b]ecause there is an important public policy interest in determining the qualifications of candidates in advance of an election, this Court does not hold an election mandamus proceeding to the same degree of procedural rigor as an ordinary mandamus case.” Syl. pt. 2, *State ex rel. Bromelow v. Daniel*, 163 W.Va. 532, 258 S.E.2d 119 (1979); syl. pt. 3, *State ex rel. Carenbauer v. Hechler*, 208 W.Va. 584, 585, 542 S.E.2d 405, 406 (2000). This relaxed standard was first adopted in the context of cases where the petitioner sought to preserve the right to vote or to run for political office, *see, e.g., syl. pt. 3, State ex rel. Sowards v. County Comm’n of Lincoln Co.*, 196 W.Va. 739, 474 S.E.2d 919 (1996); *State ex rel.*

Sandy v. Johnson, 212 W.Va. 343, 348, 571 S.E.2d 333, 338 (2002), and has been expanded to cases seeking to prohibit a candidate from running:

While we countenanced easing the standard for issuing extraordinary relief in the context of “preserving” the right to run for political office in *Sowards*, the issues raised in this case, although aimed at prohibiting a candidacy, suggest similar exigencies which require immediate, rather than deferred, resolution. Moreover, as we explained in *Bromelow*, “[t]he principal purpose of the liberalized election mandamus proceeding is to provide an expeditious pre-election hearing to resolve eligibility of candidates, so that voters can exercise their fundamental rights as to all eligible candidates.” *Id.* at 536, 258 S.E.2d at 122; *see also State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 527, 223 S.E.2d 607, 616 (1976) (stating that “intelligent and meaningful exercise of the franchise requires some method of averting a void or voidable election” and recognizing that “some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery....”).

State ex rel. Carenbauer v. Hechler, 208 W.Va. at 588, 542 S.E.2d at 409. As the West Virginia Supreme Court has recognized, prompt resolution of candidate eligibility disputes furthers important public policies:

A consistent line of decisions of this Court during the last fifteen years clearly recognizes that the intelligent and meaningful exercise of the franchise requires some method of averting a void or voidable election. Consequently this Court has recognized that some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery.

State ex rel. Maloney v. McCartney, 159 W.Va. at 526-27, 223 S.E.2d at 616; *see also White v. Manchin*, 173 W.Va. at 532-534, 318 S.E.2d at 476-478 (1984).

The Supreme Court has consistently recognized that mandamus to the Secretary of State is appropriate to strike an ineligible candidate from the ballot prior to the election. Syl. pt. 3, *State ex rel. Carenbauer v. Hechler*, 208 W.Va. 584, 585, 542 S.E.2d 405, 406 (2000); *State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 527, 223 S.E.2d 607, 616 (1976); *White v. Manchin*, 173 W.Va. 526, 532-534, 318 S.E.2d 470, 476-478 (1984).

W. Va. Code, § 3-1A-6(a) authorizes the Secretary of State, as chief election official, to issue orders to all election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks who are required to abide by any orders that may be issued. As such, a writ directed at the Secretary of State is sufficient to provide the relief required by this Petition. This was the same procedure used successfully in *State ex rel. Boley v. Tennant*, 228 W. Va. 812, 818, 724 S.E.2d 783, 789 (2012).

DECISION

The Court **CONCLUDES** that Petitioner has established that Respondent Andrea Kiessling has not been a resident of the State of West Virginia for the five years next preceding the November 2022 general election. The Court hereby **GRANTS** the Petition to Issue a Writ of Mandamus and **ORDERS** the following:

(1) the Respondent Secretary of State is **ORDERED** to withdraw his certification of candidacy of Respondent Andrea Kiessling declaring her ineligible to run for the West Virginia Senate District 8;

(2) the Secretary of State is **ORDERED**, pursuant to W. Va. Code, § 3-1A-6(a), to direct all election officials, county commissioners, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners, and poll clerks associated with the administration of the primary elections to disregard and refrain from tallying, tabulating, certifying, or returning any vote cast, absentee, write-in, or otherwise, for Respondent Andrea Kiessling, and

(3) the Secretary of State is **ORDERED** to direct the county clerks in Kanawha, Putnam, Jackson, Roane and Clay counties to post a sign at all polling places stating that the Respondent Andrea Kiessling is ineligible as a candidate for Senate District 8. In his Post-Hearing

Memorandum, Respondent Secretary of State Mac Warner noted, “[t]he Secretary suggests that any such sign be posted on the polling place door, or possibly the check-in table where voters sign the poll book and receive their ballot.” Pursuant to the Secretary of State’s suggestion, the Court **ORDERS** that all signs be posted on the polling place door.

The objections and exceptions of the parties to the rulings of the Court made herein are hereby noted and preserved. There being nothing further, the Court **ORDERS** that this action be **STRICKEN** from the docket of this Court. The Court further **DIRECTS** the Clerk of this Court to provide a certified copy of this Order to all counsel of record.

ENTERED: May 4, 2022



Honorable Louis H. “Duke” Bloom
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 04
DAY OF May, 2022
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA