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September 23, 2010

Cathy S. Gatson, Clerk  
Kanawha County Circuit Clerk  
Kanawha County Judicial Annex  
111 Court Street  
Charleston, West Virginia 25301

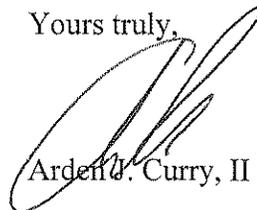
RE: *The Republican State Executive Committee of West Virginia v.  
Natalie E. Tennant, Secretary of State of West Virginia*  
Civil Action No. 10-C-1676

Dear Ms. Gatson:

Enclosed for filing in the above-referenced matter, please find the original "*Memorandum of Natalie E. Tennant, Secretary of State, In Opposition of the Complaint of the Republican State Executive Committee of West Virginia Seeking Injunctive Relief*". A copy of the same has been served upon counsel of record.

Thank you for your assistance in this matter.

Yours truly,



Arden J. Curry, II

AJC,II/hdf

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THE REPUBLICAN STATE EXECUTIVE  
COMMITTEE OF WEST VIRGINIA,

Plaintiff,

v.

CIVIL ACTION NO. 10-C-1676  
JUDGE JENNIFER BAILEY

NATALIE E. TENNANT,  
Secretary of State of West Virginia,

Defendant.

**MEMORANDUM OF NATALIE E. TENNANT, SECRETARY OF STATE,  
IN OPPOSITION OF THE COMPLAINT OF THE REPUBLICAN STATE  
EXECUTIVE COMMITTEE OF WEST VIRGINIA SEEKING INJUNCTIVE RELIEF**

**Statement of Fact**

Robert C. Byrd, the longest serving member of Congress in its history, died on June 28, 2010. In the wake of his death arose the issue of what process West Virginia would institute to fill his Unexpired Term as a United States Senator. On July 19, 2010, the West Virginia Legislature passed and placed into law West Virginia Code §3-10-4a establishing a “Special Senate Vacancy Election” with a “Special Primary Election” to be held on August 28, 2010, and a “Special General Election” to be held “concurrent with the General Election of November 2, 2010”. (Exhibit 1)

Elections in the State of West Virginia are governed by the provisions of West Virginia Code §3-1-1 et seq. In adopting West Virginia Code §3-10-4a, our Legislature specifically noted that the election procedure to fill the vacant seat for the office of United States Senator that existed due to the death of Robert C. Byrd would be a “special election”. That Bill also provided that the provisions of Chapter 3 “shall apply” to the special election to the extent it was

consistent with our state's statutory election law provisions. By its very terms, the provisions of Chapter 3 of the West Virginia Code "apply to every general, primary, and special election" which is conducted in West Virginia. (West Virginia Code §3-1-2) Lest there be any doubt, our Legislature provided in West Virginia Code §3-1-2 that the terms "any election" or "all elections" shall include every general, primary, or special election held in this state.

The "Special Primary Election" provided for in West Virginia Code §3-10-4a was uneventfully held. The West Virginia Secretary of State, in conformance with her statutory duties, then began preparation of the ballot to be used on November 2, 2010, which was to include the "Special General Election" for the position of United States Senator as well as the normal general election scheduled for November 2, 2010. That ballot preparation was done pursuant to the provisions of West Virginia Code §3-6-2. Attached as Exhibit 2 is a copy of the official ballot that is to be used in Kanawha County, West Virginia. While ballots will differ from voting district to voting district based upon the candidates in the general election, all of the ballots have in common the following four features. First, each ballot contains a section entitled "Instructions to Voter" which describes to the voter how the ballot must be marked. Next, there is a block to be filled in if a voter elects to cast a "straight party ticket" in conformity with the provisions of West Virginia Code §3-6-2, §3-4A-9, §3-4A-9a, §3-4a-9b, and §3-6-5. Next, the ballot sets forth a separate, distinct, and conspicuously labeled section for the special election for the United States Senator Unexpired Term. The ballot separately provides as follows:

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**SPECIAL ELECTION**

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**FOR U.S. SENATOR  
UNEXPIRED TERM  
(Vote For ONE)**

<input type="radio"/>	<b>JOHN R. RAESE</b> Morgantown	<b>REP</b> Monongalia Co.
<input type="radio"/>	<b>JOE MANCHIN III</b> Fairmont	<b>DEM</b> Marion Co.
<input type="radio"/>	<b>JEFF BECKER</b> Inwood	<b>CON</b> Berkeley Co.
<input type="radio"/>	<b>JESSE JOHNSON</b> Pinch	<b>MTN</b> Kanawha Co.
<input type="radio"/>	Write-in	

The remainder of the ballot contains the other general election categories, including but not limited to a provision to vote for the United States House of Representatives, Justice of the Supreme Court of Appeals Unexpired Term, State Senator, House of Delegates, and depending upon the jurisdiction in which the vote is to occur, voting blocks for Circuit Judges, County Clerks, Circuit Clerks, County Commissioner, and other matters to be voted upon at the general election.

The Republican State Executive Committee of West Virginia has now filed a Complaint with this Court taking exception to the form of the ballot to be used. It essentially complains that (a) a completely separate and independent ballot should be used for the special election for the United States Senator Unexpired Term and (b) because the ballot allows voters to enter a straight party ticket vote that would apply to both the “special” and “general” elections, it violates West

Virginia law. The Republican State Executive Committee of West Virginia bases its entire argument on subsection (d) of West Virginia Code §3-10-4a, which provides that:

Any special election, which is held under the provisions of this section and occurs concurrently with a general election, shall be a separate election from the general election. (Emphasis added.)

As will be set forth herein, the ballot prepared by the West Virginia Secretary of State is in full and complete compliance with the provisions of West Virginia Code §3-1-1 et seq., including West Virginia Code §3-10-4a, which requires this Court to find that the Complaint and Request for Injunctive Relief is without merit.<sup>1</sup>

**The Use of a Single Ballot that Covers Both the Special Election for United States Senator Unexpired Term and the General Election is in Conformity with West Virginia Code §3-1-1 et seq, Including West Virginia Code §3-10-4a**

Distilled to its essence, the Republican State Executive Committee of West Virginia argues that because West Virginia Code §3-10-4a sets forth in subsection (d) that “any special election, which is held under the provisions of this section and occurs concurrently with a general election, shall be a separate election from the general election”, it requires the voters of the State of West Virginia be presented with two separate and distinct ballots on November 2, 2010. The West Virginia Secretary of States agrees that the “special election” for the United States Senator Unexpired Term is a “separate election” but that that does not mean that a separate ballot must be used.

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<sup>1</sup> The Secretary of State finds it ironic that on September 1, 2010, Mike Stuart, Chairman of the West Virginia Republican Party, was quoted by the *Charleston Daily Mail* when asked questions about this very ballot where he declared that “I don’t think it is a huge issue. I don’t think it’s fair to ask the taxpayers to print two different sets of ballots, particularly given the state of the economy”. Now, in a complete about face, the Republican State Executive Committee of West Virginia has taken the exact opposite position. With all due respect, the Secretary of State believes that the change in position has everything to do with political expediency and nothing to do with whether the ballot fairly provides the voters of the State of West Virginia with the opportunity to select the candidates they desire.

The provision in West Virginia Code §3-10-4a(d) which provides that the “special election” for the United States Senator Unexpired Term “shall be a separate election from the general election” did nothing more than to confirm the long-standing West Virginia case history and statutory language that has always provided that any primary, general, special, or even local election constitutes a “separate election”. Long-standing West Virginia case law has held that vacancy elections, such as that being held for the United States Senator Unexpired Term, are separate from the general election on which ballot they appear. *McCoy v. Fisher*, 136 W.Va. 447 (1951) and *Burley v. Miller*, 155 W.Va. 681 (1972). Moreover, the fact that a “special election”, as is contemplated in West Virginia Code §3-10-4a, is legally a “separate election” was long ago codified into West Virginia law under West Virginia Code §3-8-1a which states as follows:

(11) “Election” means any primary, general, or special election conducted under the provisions of this Code or under the chapter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special, or local election constitutes a separate election... (Emphasis added.)

The provision in West Virginia Code §3-10-4a(d) that provides that “any special election, which is held under the provisions of this section and occurs concurrently with a general election, shall be a separate election from the general election” merely restated the already well-established West Virginia case law and statutory provision (West Virginia Code §3-8-1a) that the “special election” to fill Senator Byrd’s Unexpired Term was a separate election. However, nowhere in West Virginia Code §3-10-4a is there any requirement or suggestion that the special election and general election must be presented on separate ballots.<sup>2</sup>

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<sup>2</sup> The provision in West Virginia Code §3-10-4a that provides that the special election for United States Senator “constitutes a separate election” was not placed into the Bill’s language because of any desire or belief that its insertion would require a separate and distinct ballot for that office or that it would eliminate straight party ticket voting as is required under West Virginia law. Instead, even though it was clear under West Virginia law that the special election constituted a “separate election” as is set forth in West Virginia Code §3-8-1a, there was a concern that if Shelley Moore Capito, or for that matter any other candidate who was already on the general election ballot, wanted to run for the United States Senator Unexpired Term they might be precluded from doing so pursuant to the

If the West Virginia Legislature had desired, in drafting West Virginia Code §3-10-4a, it could have inserted a requirement into the legislation that the special election for United States Senator Unexpired Term must be on a “separate ballot”. It elected not to do so. When the Legislature enacts legislation, it is presumed to know its prior enactments. *Stamper v. Kanawha County Board of Education*, 445 S.E.2d 238 (W.Va. 1994). Courts presume that when the Legislature drafts and passes statutes it does so with full knowledge of existing laws. *In re Petition of Robert A. Parsons*, 624 S.E.2d 790 (W.Va. 2005). A statute should be so read and applied as to make it accord with the spirit, purposes, and objects of the general system of law of which is intended to form a part; it being presumed that the legislators who drafted and passed it were familiar with all existing law, applicable to the subject matter, whether constitutional, statutory, or common, and intended the statute to harmonize completely with the same and aid in the effectuation of the general purpose and design thereof. *Newark Insurance Company v. Brown*, 624 S.E.2d 783 (W.Va. 2005); *West Virginia Department of Highways v. Arbogast*, 201 S.E.2d 492 (W.Va. 1973); and *Shell v. Bechtold*, 338 S.E.2d 393 (W.Va. 1985).

In drafting West Virginia Code §3-10-4a, the West Virginia Legislature was on notice that the provisions of Chapter 3 (§3-1-2) of the West Virginia Code “shall apply to every general, primary, and special election in which candidates are nominated or elected or in which voters pass upon any public questions submitted to them” (Emphasis added.) The Legislature was likewise on notice that the use of a single ballot, which contains both a “special election” and a “general election” is consistent with the manner in which the West Virginia Secretary of

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provisions of West Virginia Code §3-5-7, which holds in subsection (h) that “a person may not be a candidate for more than one office or office division at any election”. The Legislature placed the “separate election” language into West Virginia Code §3-10-4a to assure that there would be no question under West Virginia law that any person who was already running for an office in the general election could legally run for the United States Senator Unexpired Term at the same time if they wanted to. It literally had nothing to do with separate ballots or the elimination of straight party ticket voting.

State's Office, regardless of who has held that position, has historically addressed these types of elections for decades. Though legally constituting "separate elections", all of the West Virginia Secretaries of State in recent history have combined, on a single ballot, both "special elections" and "general elections" when those elections are scheduled to occur concurrently with a general election. These have included virtually every type of "special election" imaginable involving races at the state, county, and local levels. In fact, though not complained about by the Republic State Executive Committee of West Virginia, the Secretary of State is aware of three "special elections" other than the "special election" for the United States Senator Unexpired Term that are found on the very ballot at issue in this litigation. Statewide, there is a "special election" to fill the Unexpired Term for Justice of the Supreme Court of Appeals which arose as the result of the death of Justice Joe Albright, in the Tenth District there is a special election to fill the Unexpired Term for State Senator which arose as a result of the death of Donald T. Caruth, as well as a special election relating to the Huntington Park Board in Cabell County, West Virginia.

In addition, when it drafted West Virginia Code §3-10-4a, the Legislature was charged with knowledge as to how the Office of the West Virginia Secretary of State had previously dealt with a special election for an Unexpired United States Senate Seat. In 1958, Matthew M. Neely died while serving as a United States Senator for the State of West Virginia. Governor Cecil H. Underwood, pursuant to the provisions of West Virginia Code §3-10-4 (which provided for a "special election" in the event there was a vacancy in West Virginia's congressional representation), issued a proclamation calling for a special election to fill the seat vacated in the United States Senate by the death of Matthew M. Neely. (Exhibit 3) On the ballot that was presented to and used by West Virginia voters, both the special election for Senator Neely's Unexpired Term and the general election were placed on a single integrated ballot. That ballot

likewise allowed West Virginia voters to vote a straight party ticket, which straight party ticket vote counted for the special election to fill the Unexpired Senate Term as well as the other general election races on the ballot. (Exhibit 4)

Finally, when it drafted West Virginia Code §3-10-4a, the Legislature was charged with knowledge of the prior statutes that it had adopted, including West Virginia Code §11-8-17, which specifically deals with levy elections. In adopting that Code Section, the Legislature changed the general manner in which all ballots are normally prepared, requiring that in levy elections “separate ballots” must be used. Consequently, the Legislature was on notice, by its prior enactments, that if it intended that a special election, or for that matter any other election, be placed on a “separate ballot”, it was necessary to insert that specific language into the Bill, which the Legislature elected not to do when it adopted West Virginia Code §3-10-4a.<sup>3</sup>

The West Virginia Secretary of State is the Chief Elections Officer. In that position, the Secretary of State is charged with the obligation of interpreting the election laws in the State of West Virginia as well as being given the specific mandate of being the official who shall design and provide ballots “for any statewide special election”. West Virginia Code §3-1-21(b)(1). The Secretary of State does not have the luxury to bow to the prevailing political winds, like the Republican State Executive Committee of West Virginia can. Instead, the Secretary of State

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<sup>3</sup> On March 14, 1956, the West Virginia Attorney General’s Office was asked to render an opinion regarding Chapter 11, Article 8, Section 17 dealing with levy elections and the requirement contained therein that levy elections be found on a “separate ballot”. The inquiry came about because the prosecuting attorney wanted to know whether it was legal to have the levy election placed on the same voting machine, which placed both the levy and the general election on the same machine/ballot. The West Virginia Attorney General opined that the requirement of a “separate ballot” for levy elections was satisfied if the vote for the levy was placed on the same voting machine as the general election so long as it was separated and distinguished from the names of candidates and other questions presented on the ballot. Consequently, even if the Legislature had decided in West Virginia Code §3-10-4a to require a “separate ballot” (which it did not do), it would still be appropriate under the Attorney General’s opinion to have both the special election and the general election on the same ballot so long as the special election was separated and distinguished on the ballot form from that of the general election. The ballot that is the subject matter of this litigation clearly separates and distinguishes the special election for the Unexpired Senate Term from the other general election categories. (46 W.Va. Op. Atty. Gen. 401 (1956))

must interpret the election laws and prepare a ballot that complies with the election code, precedent, and case law. She did exactly that.

Our Supreme Court has repeatedly stated that “A statute intended by the lawmaking body to become effective as part of a general system of law, relating to other subjects, must be construed as to operate in harmony with such system, and to not contravene or infringe upon it”. *West Virginia Department of Highways v. Arbogast*, 201 S.E.2d 492 (W.Va. 1973). In adopting West Virginia Code §3-10-4a, the Legislature specifically provided, in subsection (2), that the provisions of Chapter 3 dealing with elections in the State of West Virginia shall apply to the special election that the Bill provided for to the extent those provisions are consistent with the provisions of West Virginia Code §3-10-4a. In construing West Virginia Code §3-10-4a, and assuring that it remained to the extent possible in harmony with West Virginia’s other election laws, the Secretary of State prepared the ballot that is an issue in this litigation. Our West Virginia Supreme Court has held that “a construction given a statute by the officers charged with the duty of executing it ought not to be discarded without cognizant reason”. To the extent that there is any doubt in a statute, “the contemporaneous construction placed thereon by the officers of government charged with its execution is entitled to great weight, and it will not be disregarded or overthrown” unless the construction adopted by the governmental official is clearly erroneous. *State ex rel. Daily Gazette Company v. County Court*, 70 S.E.2d 260 (W.Va. 1952); *Daniel v. Simms*, 49 W.Va. 554 (1901); *Brandon v. Board of Control*, 84 W.Va. 417 (1914); and *Wheeling Fire Insurance Company v. Board*, 111 W.Va. 161 (1931). Taking into consideration all of these factors, it is clear that the West Virginia Secretary of State has appropriately applied West Virginia law in preparing the ballot at issue and that as the

governmental official charged with both the execution and enforcement of West Virginia election laws, her construction of the statutes is entitled to great weight.

The position taken by the West Virginia Secretary of State that both the special election and general election, though by law “separate elections”, may be placed on the same ballot is consistent with the manner in which special elections have occurred in the State of West Virginia in the past, including a special election to fill a vacancy for the Seat of United States Senator. It is also consistent with the manner in which other states have developed their ballots for use in elections for Unexpired United States Senatorial Seats. The Secretary of State has been able to find eight separate states that have conducted United States Senate Unexpired Special Term Elections which were held in conjunction with the date of a general election. In each instance (Kansas 1996, Georgia 2000, Missouri 2002, Wyoming 2008, Mississippi 2008, Illinois 2010, Delaware 2010, and New York 2010) the voters of each of those separate states were presented with a single ballot that included a special election for the United States Senate Unexpired Term in conjunction with the state’s general election.

In presenting the “special election” for United States Senator Unexpired Term, along with the other general election categories on a single ballot, the Secretary of State has kept in mind that a fundamental principle in American society is that elections must be held in a manner that fosters and encourages participation from all citizens in a fair manner. The Secretary of State likewise has taken into consideration that in preparing the ballot it must be done so in a manner that does not result in voter confusion, which would cost the State of West Virginia in terms of voter participation, election accuracy, and fairness. The ballot involved in this matter clearly and distinctly separates the special election for United States Senator Unexpired Term from the other portions of the ballot so that voters will clearly know that there is a “special

election” for that office. Without a doubt, the “special election” for United States Senator Unexpired Term is a “separate election”, but the mere fact that it is “separate election” does not mandate or require the use of “separate ballots”. If the West Virginia Legislature had wanted to place a requirement that would change long-standing election precedent, it could have done so by inserting a provision into the Bill that “separate ballots” had to be used. It did not do so, and that requirement does not exist as a matter of law.

**The Ballot Design that Provides an Option at the Beginning of the Ballot  
for the Voter to Enter a Straight Party Ticket Vote that Will Count in Both the  
Special Election for the Position of United States Senator as well as the  
General Election is in Full Compliance with West Virginia Law**

The Republican State Executive Committee of West Virginia asserts that the ballot that is the subject matter of this litigation violates West Virginia law because it provides an option for the voter to enter a straight party ticket vote that will count in both the special election for the position of United States Senator as well as the general election. Contrary to the assertions made by the Republican State Executive Committee, the design of the ballot format in this matter is in complete compliance with West Virginia law, and in fact West Virginia law specifically requires this type of format.

When the Legislature passed West Virginia Code §3-10-4a, it inserted language stating that the provisions of this chapter (Chapter 3 dealing with elections in the State of West Virginia) shall apply to the special election for the office of United States Senator, to the extent that the provisions of Chapter 3 are consistent with West Virginia Code §3-10-4a. In other words, any requirements under Chapter 3 dealing with elections, including special elections, would still be applicable to the Unexpired Senator Special Election provided for under West Virginia Code §3-

10-4a<sup>4</sup>. Nowhere in §3-10-4a did the West Virginia Legislature address the issue of straight party ticket voting, and as a result the West Virginia Secretary of State, in designing the ballot, was required to comply with existing law regarding straight party ticket voting mandated under Chapter 3.

West Virginia Code §3-1-2 provides in pertinent part as follows:

Unless restricted by the context, the provisions of this Chapter shall apply to every general, primary, and special election in which candidates are nominated or elected or in which voters pass upon any public questions submitted to them... (Emphasis added.)

As a result, the provisions of West Virginia Code Chapter 3 are applicable in all respects to the “special election” which is being held for the office of United States Senator, except for the limited exceptions noted in the previous footnote. So let us now turn to what Chapter 3 requires in regards to straight party ticket voting because the issue of straight party ticket voting and the format that ballots must comply with in order to permit such voting are extensively addressed in Chapter 3 of the West Virginia Code.

To begin with, West Virginia Code §3-6-5 dealing with “Rules and Procedures in Election Other Than Primaries” starts out with the following provision:

The provisions of Article 1 of this Chapter relating to elections generally shall govern and control arrangements and election officials for the conduct of elections under this Article.<sup>5</sup> The following rules and procedures shall govern the voting for candidates in general and special elections:

(a) If the voter desires to vote a straight ticket, or in other words, for each and every candidate from one party for whatever office nominated, the voter shall either:

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<sup>4</sup> West Virginia Code §3-10-4a did contain some provisions which were not “consistent” with Chapter 3 because the Special Primary Election was going to necessitate an expedited filing schedule, early voting schedule, and the incurring of costs the Legislature did not want to pass on to counties. It did not contain any language, let alone inconsistent language, on the issue of straight party ticket voting, which is statutorily required in our state.

<sup>5</sup> The term “elections” includes, in its statutory definition, the procedure whereby voters of the state or any subdivision thereof elect persons to fill public offices, or elect members of a constitutional convention, or vote on public questions, including “every general, primary, or special election held in this state”. West Virginia Code §3-1-2.

- (1) mark the position designated for a straight ticket in the manner appropriate to the voting system; or
- (2) mark the voting position for each and every candidate of the chosen party in the manner appropriate to the voting system. (Emphasis added.)

Clearly, the provisions of West Virginia Code §3-6-5, as they relate to a straight party vote, apply to both “general” and “special” elections. This is pursuant to both the express language found in West Virginia Code §3-6-5 as well as the definition of the word “election” found in West Virginia Code §3-1-2. West Virginia Code §3-6-5 specifically provides that the voter must be presented a ballot where they can vote a straight ticket “for each and every candidate for one party for whatever office nominated” by marking a single box. West Virginia Code §3-6-5 does not provide for anything other than one single mechanism to vote a straight party ticket on a ballot, and by the express terms of that Code Section the straight party ticket vote shall be for “each and every candidate for one party for whatever office nominated”. Since West Virginia Code §3-6-5 mandates the option for straight party ticket voting through a single mechanism, that procedure clearly includes both candidates for “special” as well as “general” elections. That is exactly what the ballot involved in this litigation does.

To add further emphasis to this requirement, the West Virginia Legislature, in West Virginia Code §3-4A-9, developed certain minimum requirements that all electronic voting systems in the State of West Virginia must follow. Among other things, all electronic voting systems must do the following:

It permits each voter at any election other than primary elections by one mark or punch to vote a straight party ticket, as provided in Section 5, Article 6 of this Chapter. (Emphasis added.)<sup>6</sup>

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<sup>6</sup> Again, the term “any election” is specifically defined in West Virginia Code §3-1-2 to “include every general, primary, or special election held in this state”.

This is completely consistent with the provisions of West Virginia Code §3-6-5 (which is applicable to both general and special elections) and as a result, the Secretary of State was required, on the ballot involved in the current litigation, to provide for straight party ticket voting where, “by one mark or punch”, a voter is permitted to vote a straight party ticket for all candidates on the ballot.

Finally, the ballot involved in this matter, which allows for a single mechanism to vote a straight party ticket on the ballot, which will be applicable to the “special” and “general” election categories, is in compliance with West Virginia Code §3-6-2. That Code Section requires that the ballot contain instructions that allow the voter, through a single act, to vote a straight party ticket. The option to vote a straight party ticket, just like with the ballot in question, is required on the ballot form to precede any of the categories of candidates running for office.

The design of the ballot which allows a straight party ticket vote to count for both the special and general election is consistent with the manner in which ballots have historically been prepared in West Virginia by the Office of the Secretary of State, regardless of who held that position, in all instances where both special elections and general election categories are on the same ballot. It is likewise consistent with the design of the ballot that was used in 1958, when a special election was conducted to fill the office for an unexpired term of United States Senator for the State of West Virginia. The Legislature, in adopting West Virginia Code §3-10-4a was charged with knowledge that (a) straight party ticket voting is required under West Virginia law (West Virginia Code §3-6-2, §3-4a-9, §3-4a-9a, §3-4a-9b, and §3-6-5), (b) the Office of the Secretary of State, regardless of who has held that position, has historically provided for straight party ticket voting that will apply to both “special election” and “general election” categories when those elections occur on the same date, and (c) this same exact type of procedure was used

in West Virginia previously to fill an unexpired United States Senator's seat during a special election that occurred in conjunction with a general election. The Legislature was likewise charged with knowledge of West Virginia's longstanding law that statutes should be read and applied as to make them accord with the spirit, purpose, and objects of the general system of law of which they are intended to be a part of, and it is presumed that the Legislature intends a new statute, in such a circumstance, to harmonize completely with other existing law. If the West Virginia Legislature, in adopting West Virginia Code §3-10-4a had desired to abolish straight party ticket voting, it could have done so. Instead, the Legislature took no action that would change West Virginia's longstanding requirements that the voters be presented with a ballot that allows the option to vote a straight party ticket by "one mark or punch to vote a straight party ticket".

The West Virginia Secretary of State has been able to find only one case wherein a similar challenge to straight party voting, in a "special election", occurred. In the case of *Petition to Set Aside Special Election in 32<sup>nd</sup> Senatorial District*, 1959 WL 5038 (Pa.Com.Pl.), the Pennsylvania courts were faced with a "special election" for the office of Senator in the General Assembly for the 32<sup>nd</sup> Senatorial District of Pennsylvania. That special election was to occur at the same time as the general election. The ballot given to voters allowed the voter to vote a straight party ticket, through a single mechanism, that counted for both the special election and the other candidates on the general election. Pennsylvania law, almost exactly like West Virginia law, provided that voting machines had to be arranged so as to "permit each voter...to vote a straight political party ticket in one operation and, in one operation, to vote for all candidates of one political party..." The losing party contended that because he was involved in a "special election", he was entitled to have the ballot for that position segregated and set apart

from all other offices being voted upon at the general election and that the voters should not be able to vote a straight party ticket, through a single operation, that would be applicable to both the “special election” and “general election”. The Pennsylvania court found that there was “no legal merit” in the petitioner’s contention that the straight party ticket voting should not count for the special election as well as the general election because Pennsylvania law, just like West Virginia law, provided that ballots must allow the voter to vote a straight party ticket, “in one operation”, “for all the candidates of one political party for every office to be voted for”. Because Pennsylvania law provided for straight party ticket voting in this manner (which is virtually identical to West Virginia law), the court concluded that neither the court nor the board of elections had any authority to direct otherwise.

With all due respect to the Republican State Executive Committee of West Virginia, it appears that its position in this litigation is nothing less than an expression of its contempt for West Virginia law requiring straight party ticket voting and an attempt to have the Court abolish that voter option when our Legislature has refused to do so. Whether straight party ticket voting should still continue in West Virginia may well be something that is subject to debate, but the Republican State Executive Committee of West Virginia’s attack on the merits of the straight party ticket voting system is something that only the Legislature can address and is not the legitimate subject matter of the present proceedings.

**To Believe that West Virginia Code §3-10-4a Somehow Contemplated that a Totally Separate Ballot for the Special Election for United States Senator Unexpired Term Must be Used Would Constitute a Preposterous Interpretation of the Law**

A cursory review of the ramifications that would result if two totally separate ballots were required for both the special and general elections clearly shows it would constitute a preposterous interpretation of the law. Just a few examples are as follows:

1. Because all “special” elections are by law “separate” elections, (*McCoy v. Fisher*, 136 W.Va. 447 (1951); *Burley v. Miller*, 155 W.Va. 681 (1972); and West Virginia Code §3-8-1a(11)), if the position asserted by the Republican State Executive Committee of West Virginia were adopted, any time a special election coincided with a general election, voters would have to be presented with multiple separate ballots because each of the elections would be “separate elections”. If that interpretation is adopted by this Court and taken to its logical conclusion, the voters of this state in the current litigation would have to be presented with a minimum of three separate ballots (a separate special election ballot for United States Senator Unexpired Term, a separate special election ballot for Justice of the West Virginia Supreme Court Unexpired Term, and a separate general election ballot). In other districts, such as where Don Caruth’s Senate seat is in play and in Cabell County, the voters would have to receive a minimum of four separate ballots. In other election years, the number of separate ballots that may be needed depending on the races and issues presented might be significantly higher. Without doubt, using two separate ballots on the same day, let alone four or more, would create the risk of unnecessary confusion on behalf of voters and local poll workers. Never before in the history of the State of West Virginia have voters been asked to vote two separate times, on two separate ballots, on the same day. All separate elections, including vacancy elections, special elections (including the 1958 Special Senate Election), referenda, non-partisan, and municipal elections, have all been incorporated onto the same ballot, even though as a matter of law each constitutes a “separate election”.

2. Even a cursory analysis of the potential confusion and logistical ability to conduct the election in the manner urged by the Republican State Executive Committee of West Virginia shows why the Secretary of State has acted appropriately in using a single unified ballot that

contains both the “special elections and “general election” and why adopting the plaintiff’s position would be preposterous. If separate ballots are required, in machine counties, the machines cannot be programmed to handle two separate ballots on the same machine so separate machines would be needed for each election. The time necessary to vote would be dramatically increased causing delays and the risk that voters may elect not to vote instead of standing around waiting. This would likewise necessitate the need for an additional 1,889 HAVA compliant machines, if they could even be found, in order to comply with federal law. Counting Boards would have to obtain two separate readings from the machines for two separate elections. Provisional ballots would have to be treated separately. Canvases would have to be treated separately. Absentee ballots would have to be mailed or delivered separately for each election. Separate polling book signatures and entries would have to be made for each election. There would have to be two sets of totally separate ballots for early voting; there would have to be two sets of absentee requests for ballot applications; and newly developed training for poll workers and election officials would have to be provided so that they could be properly trained on an election system that has never been used in this state before. Of equally great importance is the fact that the use of the voting procedure urged by the Republican State Executive Committee of West Virginia would increase the difficulty of maintaining ballot control and increase the possibility of voter fraud. (See Exhibit 5)

3. Assuming that the logistical and training problems set forth above could be met, and assuming that the software programming for West Virginia’s electronic balloting system could be altered to accommodate separate ballots, the cost of instituting such a procedure would be astronomical. Attached as Exhibit 5 is an affidavit executed by the Secretary of State’s Office which outlines the additional costs that would be involved if two separate ballots were

necessitated. Those costs range from approximately \$1,998,000 to possibly as much as \$3,198,000. Importantly, for the Court's consideration, these are not costs that would have to be incurred because the ballot would now have to be changed, but instead the affidavit sets forth the additional costs that would have been required if a two separate ballots procedure had been initially adopted in the first place. Certainly, the West Virginia Legislature, when taking into consideration the finances and resources of the state, along with our local economy, never intended to and did not pass a law which it contemplated would require the state to spend \$1,998,000 to \$3,198,000 more than if both the special and general elections were placed on the same ballot.<sup>7</sup>

4. Finally, the Court must consider how ordering that two separate ballots be used in this election would impact the West Virginia citizens who are serving our state in the military. Very simply, the granting of an injunction in this matter raises the specter that the citizens of our state serving in the military overseas, who are right now defending our right to vote, will be disenfranchised from the voting process because ballots may be unable to be sent to them within the timeframes required under the Uniform and Overseas Absentee Voting Act, 42 U.S.C. Sec. 1973FF. Absentee ballots had to be mailed to overseas voters on September 18, 2010, as required by federal law. An order from this Court requiring two separate ballots could well result in all of our military personnel overseas being disenfranchised from the voting process. The Secretary of State notes that an after-the-fact application for a federal exemption to the mailing deadlines can be applied for by the state when delay is called for by legal action.

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<sup>7</sup> To add further emphasis to this point, the Legislature at the time it passed West Virginia Code §3-10-4a only allocated a total of three million dollars to conduct both the primary and general elections. When you consider the fact that to have two separate ballots would result in additional costs which almost equal or exceed what was allocated for both the primary and general elections in the first place, it is clear that the Legislature in adopting West Virginia Code §3-10-4a never intended to pass a Bill which required "separate ballots". If it had intended to do so, it would have been required to allocate astronomically more funds than it did.

Theoretically, the state could mail out new overseas ballots by October 6, 2010, if a federal exemption is granted, which is totally unknown. However, the Department of Defense reports that it takes an average of 45 days for a ballot to be mailed overseas, voted upon, and returned. Consequently, even if an exemption was granted, many military personnel may well be denied their ability to vote because multiple ballots would have to be sent and there is a great risk that the wrong ballot might be returned or, if the correct ballot is returned, done so in an untimely manner.

### Conclusion

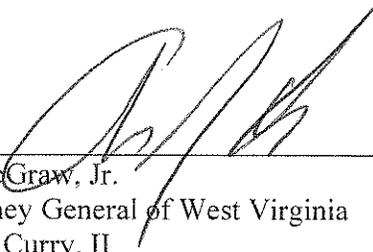
In determining whether the Secretary of State properly complied with West Virginia law in preparing the ballot that is at issue in this litigation, after taking into account that “a construction given a statute by the officers charged with the duty of executing it ought not to be discarded without cognizant reason” and that “the contemporaneous construction placed thereon by the officers of government charged with its [a statute’s] execution is entitled to great weight”, there are a number of factors the Court must consider in rendering its decision. Taking into consideration (1) that longstanding West Virginia case and statutory law has always held that all “special elections” have constituted “separate election” under the law even when they are combined on a single ballot with other general election candidates, (2) that in adopting West Virginia Code §3-10-4a the Legislature specifically inserted language stating that Chapter 3 of the West Virginia Code shall apply to the special election, (3) long standing West Virginia law requires that West Virginia Code §3-10-4a be construed in a manner so as to be in harmony with our election laws contained in Chapter 3, (4) that the Legislature in adopting West Virginia Code §3-10-4a was charged with knowledge that West Virginia Secretaries of State have always combined, on a single ballot, both “special elections” and “general elections” when those

elections are scheduled to occur concurrently with a general election, (5) that the Legislature in adopting West Virginia Code §3-10-4a was charged with knowledge that on the only other occasion where a special election has been held in this state to fill the unexpired term of a United States Senator that “special election” was placed on the same ballot with the other general election candidates, and the ballot likewise allowed voters to vote a straight party ticket, which straight party ticket vote counted for the special election to fill the unexpired Senate term as well as other general election races, (6) that the Legislature in adopting West Virginia Code §3-10-4a was charged with knowledge that in other legislation where it believed it was appropriate to require a separate ballot (levy elections under West Virginia Code §11-8-17) the Legislature placed a specific provision in the Bill that for such elections “separate ballots” must be used, (7) that the Legislature in adopting West Virginia Code §3-10-4a elected to not place any language in the Bill requiring that “separate ballots” be used, (8) that Chapter 3 requires the option for voters to vote a straight party ticket by placing one mark or punch to vote a straight party ticket, (9) that the Legislature in adopting West Virginia Code §3-10-4a was charged with knowledge of the straight party ticket voting requirements under West Virginia law and elected to not address straight party ticket voting at all in its Bill, and (10) that use of multiple ballots would raise significant potential confusion by voters and poll workers, affect the logistical ability to conduct the election, involve of dollars of additional costs, and may potentially impact the State of West Virginia’s ability to comply with the Uniform and Overseas Absentee Voting Act, 42 U.S.C. Section 1973FF - ONLY ONE INESCAPABLE CONCLUSION CAN BE DRAWN. The Legislature did not provide for and never intended West Virginia Code §3-10-4a to require separate ballots or change in any manner the method in which voters are permitted to vote a straight party ticket in West Virginia. For the reasons set forth herein, Natalie E. Tennant, West

Virginia Secretary of State, moves the Court for an Order denying the request for injunctive relief sought by the Republican State Executive Committee of West Virginia and requests that its Complaint be dismissed with prejudice.

**Natalie E. Tennant,  
Secretary of State of West Virginia,**

**By Counsel**



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Darrell V. McGraw, Jr.  
Attorney General of West Virginia  
By: Arden J. Curry, II  
Special Assistant Attorney General  
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P.O. Box 2786  
Charleston, West Virginia 25330-2786  
(304) 342-6000 Phone  
(304) 342-6007 Fax  
*Counsel for Defendant*

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

THE REPUBLICAN STATE EXECUTIVE  
COMMITTEE OF WEST VIRGINIA,

Plaintiff,

v.

CIVIL ACTION NO. 10-C-1676  
JUDGE JENNIFER BAILEY

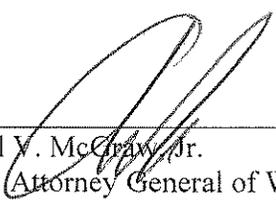
NATALIE E. TENNANT,  
Secretary of State of West Virginia,

Defendant.

CERTIFICATE OF SERVICE

I, Arden J. Curry II, counsel for defendant, do hereby certify that service of the foregoing *Memorandum of Natalie E. Tennant, Secretary of State, in Opposition of the Complaint of the Republican State Executive Committee of West Virginia Seeking Injunctive Relief* was made upon counsel of record this the 23<sup>rd</sup> day of September 2010, by delivering a true copy thereof via U.S. Mail, postage prepaid, to the following address, and by delivering the same via electronic mail:

Robert Ryan, Esquire  
Setliff, Turner & Holland, P.C.  
517 Ninth Street, 2<sup>nd</sup> Floor  
Huntington, West Virginia 25701  
rryan@sthlawyers.com

  
\_\_\_\_\_  
Darrell V. McGraw, Jr.  
Attorney General of West Virginia  
By: Arden J. Curry, II  
Special Assistant Attorney General  
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P.O. Box 2786  
Charleston, West Virginia 25330-2786

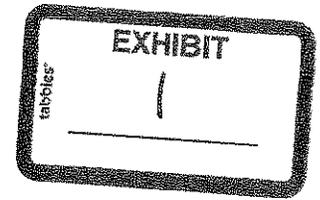
(304) 342-6000 Phone  
(304) 342-6007 Fax  
*Counsel for Defendant*

W. Va. Code, § 3-10-4a

West's Annotated Code of West Virginia Currentness  
Chapter 3. Elections

Article 10. Filling Vacancies

§ 3-10-4a. Special Senate vacancy election



(a) Notwithstanding the provisions of section three of this article establishing processes for the appointment and election to fill a vacancy in the office of United States Senator, for purposes of filling the vacant seat in the office of United States Senator existing on July 1, 2010, a special election shall be held to fill the unexpired term concurrent with the general election of November 2, 2010. A special primary election shall be held to nominate party candidates for the November election.

(b) For the special primary election required to be held prior to the November 2, 2010 election by operation of this section upon its enactment during the second extraordinary session of the Legislature, 2010, the Governor shall immediately issue a proclamation calling for a special primary election and general election. The special general election shall be held on November 2, 2010. The following provisions apply to these special elections:

(1) The proclamation for the special election shall be published prior to the special election as a Class II-0 legal advertisement in accordance with article three, chapter fifty-nine of this code and the publication area for the publication is each county of the state. The notice shall be filed with the Secretary of State who shall immediately transmit the document to the clerk of the county commission of each county. The clerk of the county commission of each county shall cause the document to be published within the county in accordance with this section.

(2) The provisions of this chapter shall apply to this special primary election to the extent that those provisions are consistent with the provisions of this section. Statutory time deadlines relating to availability of absentee ballots, certification, canvassing and related election procedures that cannot be met in a timely fashion, for the purpose of this special election, are modified as follows:

(A) The special primary election is to be held August 28, 2010;

(B) A notarized declaration of candidacy and filing fee shall be filed and received in hand by the Secretary of State by 5:00 p.m. on the fourth calendar day following the proclamation of the special primary election. The declaration of candidacy may be filed in person, by United States mail, electronic means or any other means authorized by the Secretary of State;

(C) Early-in-person voting shall be conducted during regular business hours beginning on Friday, August 20, 2010 and continuing through close of business Wednesday, August 25, 2010. In addition, early-in-person voting shall be conducted from 9:00 a.m. to 5:00 p.m. on Saturday, August 21, 2010. No satellite polling locations will be utilized for the August 28, 2010 special primary election;

(D) The Secretary of State may issue emergency administrative orders to undertake other ministerial actions that are otherwise authorized pursuant to this code when necessary to assure the preservation of the voting rights of the citizens of this state and avoid fraudulent voting and election activities and otherwise assure the orderly and efficient conduct of the election: *Provided, that such emergency administrative orders may not contravene the provisions of this section;*

(E) The compensation of election officers, cost of printing ballots and all other reasonable and necessary expenses in holding and making the return of the special election to fill a vacancy in the office of United States Senator are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county commissions and county commissions of the various counties as agents of the state. All expenses of the special election are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which

the county commissions shall certify all expenses of these special elections to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the State Treasurer and shall mail the warrants directly to the vendors of the special election services, supplies and facilities;

(F) For petition in lieu of payment of filing fees, a candidate seeking nomination for the vacant seat in the U.S. Senate may utilize the process set forth in section eight-a, article five of this chapter: *Provided*, That the minimum number of signatures required is one thousand seven hundred and forty;

(G) Drawing for ballot position will take place at the Secretary of State's office 24 hours after the end of the filing period. For each major political party on the ballot, a single drawing by lot shall determine the candidate ballot position for ballots statewide. This drawing shall be witnessed by four clerks of the county commission chosen by the West Virginia Association of County Clerks, with no more than two clerks representing a single political party;

(H) The clerks of the county commission shall submit the list of persons who worked in the May 11, 2010 primary election to the county commission for appointment as election officials;

(I) Election officials shall be appointed by Tuesday, August 3, 2010;

(J) The clerks of the county commission shall provide notice to all election officials of the fact of their appointment by Wednesday, August 4, 2010. Included with the notice shall be a response notice form for the appointed person to return indicating if he or she agrees to serve in the specified capacity in the August 28, 2010 special primary election;

(K) The position of any election official notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve by Tuesday, August 10, 2010 is considered vacant and the clerk of the county commission shall proceed to fill the vacancies;

(L) Election officials shall be trained by Thursday, August 19, 2010: *Provided*, That election officials who attended training for the May 11, 2010 primary election are exempt from additional training for the August 28, 2010 special primary election;

(M) A registered voter who has not reached eighteen years of age may vote in the August 28, 2010 special primary election: *Provided*, That the voter will attain eighteen years of age at the time of the special general election;

(N) When paper or optical scan ballots are the primary voting method used at any county, the total number of regular official ballots printed shall equal at a minimum fifty percent of the number of registered voters eligible to vote that ballot;

(O) When paper ballots are used in conjunction with a direct recording electronic voting system, the total number of regular official ballots printed shall equal at a minimum thirty percent of the registered voters eligible to vote that ballot;

(P) For counties in which two or more qualified newspapers publish a daily newspaper, the clerk of the county commission shall publish at least once each sample official August 28, 2010 primary ballot, on the last day on which a newspaper is published immediately preceding the August 28, 2010 special primary election, as a Class I-0 legal advertisement in the two qualified daily newspapers of different political parties within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of West Virginia Code;

(Q) For counties having no more than one daily newspaper or having one or more qualified newspapers which publish weekly, the clerk of the county commission shall publish each sample official August 28, 2010 primary ballot, on the last day in which a newspaper is published immediately preceding the August 28, 2010 special primary election, as a Class I-0 legal advertisement in the

qualified daily newspaper within the county having the largest circulation in compliance with the provisions of article three, chapter fifty-nine of West Virginia Code;

(R) Counties shall not be required to separately publish a certified list of candidates;

(S) If only one notice of a sample ballot is published, it shall include a statement notifying voters that this is the sole publication of the sample ballot;

(T) Before voting machines are used, the clerks of the county commission shall have the ballots, vote recording devices, and electronic poll books inspected, and automatic tabulating equipment tested to ascertain that it will accurately count the votes cast. A single notice of the place and time of the inspection and testing shall be published, no less than three days in advance, as a class I-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of West Virginia Code. The publication area is the county involved;

(U) Applications for absentee ballots shall be accepted from the date of proclamation, other than from voters eligible to vote under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act who may apply for an absentee ballot for all elections within a calendar year as early as the first day of January of an election year;

(V) Regularly scheduled locations of polling places shall not be changed, except for emergency situations as provided for in § 3-1-7(e) and (f): *Provided*, That if multiple precincts voted in one polling location for the May 11, 2010 regularly scheduled primary election, such precincts may be consolidated into a single precinct. Locations for consolidated precincts shall provide internet access, insofar as possible, for the sole purpose of utilizing the Statewide Voter Registration System (SVRS) as an electronic poll book; and

(W) Persons having no party affiliation may nominate candidates for the U. S. Senate vacancy under the procedures set forth in sections twenty-three and twenty-four, article five of this chapter: *Provided*, That the number of signatures required to be submitted shall be equal to not less than one-quarter of one percent of the entire vote cast at the last preceding general election for any statewide congressional or presidential candidate. Notwithstanding the provisions of sections twenty-three and twenty-four of article three of this section, the signatures, notarized declaration of candidacy, and filing fee must be submitted no later than August 23, 2010.

(c) The Secretary of State, shall by January 10, 2011, report to the Joint Committee of Government and Finance findings regarding of the operation of the special elections undertaken pursuant to subsection (b) of this section. This report shall provide analysis of: direct and indirect costs to the state associated with the conduct of the election; benefits and disadvantages of conducting an election on a Saturday; the impact of compressed time periods on efficient election administration; and whether this election process impacted early voting and participation by military and overseas voters.

(d) Any special election, which is held under the provisions of this section and occurs concurrently with a general election, shall be a separate election from the general election.

(e) Upon the election and qualification of a United States Senator by the United States Senate following the November 2, 2010 election, the provisions of this section will expire.

CREDIT(S)

Acts 2010, 2nd Ex. Sess., c. 11, eff. July 19, 2010.

W. Va. Code, § 3-10-4a, WV ST § 3-10-4a

Current with Laws of the 2010 Second Extraordinary Session

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**OFFICIAL BALLOT INSTRUCTIONS TO VOTER**

1. To vote you must darken the oval (●) completely next to the candidate or issue of your choice.

**STRAIGHT TICKET VOTERS:**  
 "IF YOU MARKED A STRAIGHT TICKET: When you mark any individual candidate in a different party, that vote will override your straight party vote for that office. When you mark any individual candidate in a different party for an office where more than one will be elected, YOU MUST MARK EACH OF YOUR CHOICES FOR THAT OFFICE because your straight ticket vote will not be counted for that office."

**STRAIGHT PARTY TICKET**

(Vote For Not More Than ONE Party)

- REPUBLICAN PARTY** 
- DEMOCRATIC PARTY** 
- CONSTITUTION PARTY**
- MOUNTAIN PARTY** 

**SPECIAL ELECTION**

**FOR U.S. SENATOR UNEXPIRED TERM (Vote For ONE)**

- JOHN R. RAESE** REP. Morgantown Monongalia Co.
- JOE MANCHIN III** DEM. Fairmont Marion Co.
- JEFF BECKER** CON. Inwood Berkeley Co.
- JESSE JOHNSON** MTN. Pinch Kanawha Co.
- Write-in

**NATIONAL TICKET**

**FOR U.S. HOUSE OF REPRESENTATIVES**  
 2nd Congressional District (Vote For ONE)

- SHELLEY MOORE CAPITO** REP. Charleston Kanawha Co.
- VIRGINIA LYNCH GRAF** DEM. Charles Town Jefferson Co.
- PHIL HUDOK** CON. Huttonsville Randolph Co.
- NO CANDIDATE(S) NOMINATED MTN
- Write-in

**STATE TICKET**

**FOR JUSTICE OF THE SUPREME COURT OF APPEALS UNEXPIRED TERM (Vote For ONE)**

- JOHN YODER** REP. Harpers Ferry Jefferson Co.
- THOMAS E. McHUGH** DEM. Charleston Kanawha Co.
- NO CANDIDATE(S) NOMINATED MTN
- Write-in

**FOR STATE SENATOR**  
 8th Senatorial District (Vote For ONE)

- BOB DRE** REP. Clendenin
- ERIK WELLS** DEM. Charleston
- NO CANDIDATE(S) NOMINATED MTN
- Write-in

**FOR STATE SENATOR**  
 17th Senatorial District (Vote For ONE)

- CHARLES MINIMAH** REP. Charleston
- BROOKS MCCABE** DEM. Charleston
- DAVID S. HALL** MTN. Pinch
- Write-in

**STATE TICKET**

**FOR MEMBER OF HOUSE OF DELEGATES**  
 30th Delegate District (Vote For Not More Than SEVEN)

If you marked a straight ticket and you mark any candidate in a different party for this office, you must mark all your choices for this office because your straight ticket vote will not be counted for this office.

- BRIAN F. HICKS** REP. Charleston
- FRED JOSEPH** REP. Charleston
- DANIEL "Rick" BARNETT** REP. St. Albans
- MIKE HALL** REP. So. Charleston
- ERIC NELSON** REP. Charleston
- STEVE SWEENEY** REP. So. Charleston
- JIM STRAWN** REP. Charleston
- MARK HUNT** DEM. Charleston
- NANCY GUTHRIE** DEM. Charleston
- DOUG SKAFF, JR.** DEM. So. Charleston
- SHARON SPENCER** DEM. Charleston
- DANNY WELLS** DEM. Charleston
- BONNIE BROWN** DEM. So. Charleston
- BARBARA "Bobbie" HATFIELD** DEM. So. Charleston
- NO CANDIDATE(S) NOMINATED MTN
- Write-in
- Write-in
- Write-in

**VOTE BOTH SIDES**

**EXHIBIT**  
 2

STATE OF WEST VIRGINIA  
EXECUTIVE DEPARTMENT

CHARLESTON

A PROCLAMATION

By the Governor

To the Commissioners of Election in all the counties of the State of West Virginia,  
G R E E T I N G S:

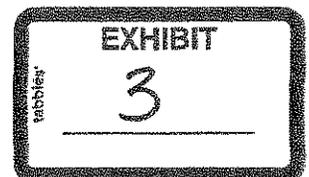
I, CECIL H. UNDERWOOD, Governor of the State of West Virginia, by virtue of Section 4, Article 10, Chapter 3, Official Code of West Virginia, relating to a vacancy in the office of United States Senator, do hereby order that an election be held throughout all the counties of the State of West Virginia, at the next general election to be held therein, on the fourth day of November, in the year of Our Lord, 1958, to fill the vacancy in the office of United States Senator for the residue of the term caused by the death of the Honorable Matthew M. Neely, which vacancy was filled by executive appointment of the Honorable John D. Hoblitzell, Jr., of Wood County, to serve until the successor of the said Matthew M. Neely should be duly elected and qualified, as provided by law.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State to be affixed.

Done at the Capitol in the City of Charleston, State of West Virginia, this the third day of July, in the year of Our Lord, One Thousand Nine Hundred and Fifty-eight, and in the Ninety-sixth year of the State.

(G.S.)

-----oOb-----



To vote a "Straight Party Ticket" in one operation, turn the large "Straight Ticket Lever" at the top of your party choice

To vote a "Split Ticket"—you MUST FIRST vote your Straight Ticket, THEN SPLIT for any office you desire; OR you can vote individual Candidates for each Office in which ever Party Column they appear.

Your final choice of Candidates must be left with  marks, like this



**General Election**  
NOVEMBER 4, 1958



**REPUBLICAN**

**General Election**  
NOVEMBER 4, 1958



**DEMOCRATIC**

<b>NATIONAL</b> For United States Senator (FULL TERM)	CHAPMAN REVERCOMB Charleston, W. Va.	<input type="checkbox"/>
For United States Senator (UNEXPIRED TERM)	JOHN D. HOBLITZELL, JR. Ravenwood, W. Va.	<input type="checkbox"/>
For Congressman Sixth Congressional District	F. O'DAIR DUFF Charleston, W. Va.	<input type="checkbox"/>
<b>STATE</b> For Secretary of State (UNEXPIRED TERM)	HELEN (MRS. RUSH D.) HOLT Weston, W. Va.	<input type="checkbox"/>
For Judge of the Supreme Court of Appeals (UNEXPIRED 6 YEAR TERM)	MAN DeBEERY Harrisville, W. Va.	<input type="checkbox"/>
For Judge of the Supreme Court of Appeals (UNEXPIRED 2 YEAR TERM)	ROBERT T. DONLEY Morganston, W. Va.	<input type="checkbox"/>
For State Senator (8th Senatorial District)	ELIZABETH V. HALLAHAN Charleston, W. Va.	<input type="checkbox"/>
<b>COUNTY</b> For Judge of Intermediate Court	DEBBY S. POPPENBARGER Charleston, W. Va.	<input type="checkbox"/>
For Clerk of the Circuit Court (UNEXPIRED TERM)	J. M. (MAC) STUBBLEFIELD Charleston, W. Va.	<input type="checkbox"/>
For County Commissioner	PAUL W. "POP" WORKMAN Clewiston, W. Va.	<input type="checkbox"/>
	HARRY E. BAHR, JR. Charleston, W. Va.	<input type="checkbox"/>
	JAMES A. "JIM" BORNHAM Charleston, W. Va.	<input type="checkbox"/>
	CLEFFORD E. BRYAN St. Albans, W. Va.	<input type="checkbox"/>
	HOMER W. CALDWELL Charleston, W. Va.	<input type="checkbox"/>
	WALTER W. CARBY Charleston, W. Va.	<input type="checkbox"/>
	MRS. FREDA P. CAVENDISH So. Charleston, W. Va.	<input type="checkbox"/>
	JOHN N. CHARNOCK, JR. Charleston, W. Va.	<input type="checkbox"/>
	MRS. HATTIE E. CLARK Charleston, W. Va.	<input type="checkbox"/>
	STANLEY E. DEUTSCH Charleston, W. Va.	<input type="checkbox"/>
	ROBERT QUINCE JONES Charleston, W. Va.	<input type="checkbox"/>
	CLAUDE LACY Charleston, W. Va.	<input type="checkbox"/>
<b>JEFFERSON DISTRICT</b> Constable (UNEXPIRED TERM)	FORREST E. THOMAS St. Albans, W. Va.	<input type="checkbox"/>
<b>MALDEN DISTRICT</b> Justice of the Peace (UNEXPIRED TERM)	B. H. WOOD St. Albans, W. Va.	<input type="checkbox"/>
<b>POCA DISTRICT</b> Justice of the Peace (UNEXPIRED TERM)	L. A. KRIVINE Bellevue, W. Va.	<input type="checkbox"/>
Constable (UNEXPIRED TERM)	OTIS A. VANDINE Statenville, W. Va.	<input type="checkbox"/>
<b>UNION DISTRICT</b>	CLARK BURDETTE Statenville, W. Va.	<input type="checkbox"/>

ROBERT C. BYRD Spartanburg, W. Va.	<input type="checkbox"/>
JENNINGS RANDOLPH Elkins, W. Va.	<input type="checkbox"/>
JOHN M. SLARK, JR. Charleston, W. Va.	<input type="checkbox"/>
JOE P. BLUMHART Dand Pleasant, W. Va.	<input type="checkbox"/>
THORNTON G. BERRY, JR. Welch, W. Va.	<input type="checkbox"/>
BARLAN M. CALHOUN Martinsburg, W. Va.	<input type="checkbox"/>
J. HOBBS DAVIS Charleston, W. Va.	<input type="checkbox"/>
WILLIAM J. THOMPSON St. Albans, W. Va.	<input type="checkbox"/>
LEWIS A. BATTUCKER Charleston, W. Va.	<input type="checkbox"/>
A. CARL CAREY Elkview, W. Va.	<input type="checkbox"/>
HORSTON R. ARBOY Charleston, W. Va.	<input type="checkbox"/>
EDDORA C. ANDREWS Charleston, W. Va.	<input type="checkbox"/>
JESSE S. BARNETT Charleston, W. Va.	<input type="checkbox"/>
PAT O'CARD, JR. Charleston, W. Va.	<input type="checkbox"/>
IVOR F. BOJANSKY Charleston, W. Va.	<input type="checkbox"/>
B. EARL DRAWLEY Queen Shands, W. Va.	<input type="checkbox"/>
W. T. BROTHERTON, JR. Charleston, W. Va.	<input type="checkbox"/>
GEORGE C. BURNETTE, JR. So. Charleston, W. Va.	<input type="checkbox"/>
W. E. (NED) CHILTON Charleston, W. Va.	<input type="checkbox"/>
JOHN LANN EDWARDS Charleston, W. Va.	<input type="checkbox"/>
EDWARD D. KNIGHT, JR. Charleston, W. Va.	<input type="checkbox"/>
SIDNEY BARNER Spring Hill, W. Va.	<input type="checkbox"/>
WILLIAM A. HALLARD St. Albans, W. Va.	<input type="checkbox"/>
LETICIA L. BARTON Charleston, W. Va.	<input type="checkbox"/>
NO CANDIDATE	<input type="checkbox"/>
NO CANDIDATE	<input type="checkbox"/>

**Cancer Unit Nixes Test of Krebiozen**

NEW YORK—The American Cancer Society Friday turned down a proposal to test the worth of krebiozen in the treatment of cancer patients.

The society's board of directors turned down the proposal by the Krebiozen Research Foundation on three basic points:

1. The plan does not provide for the trial to be conducted by an independent group of clinical investigators recognized as top objective and competent by the scientific community at large.
2. It does not permit an opportunity to determine whether physicians generally can obtain the same results where it proceeds for the administration of the drug by the proponents of krebiozen only. Krebiozen, derived from horse serum, has been primarily promoted as a treatment for cancer.
3. It provides no checked standards for measuring or determining the results of the tests.

The American Medical Association in October, 1957, reported that krebiozen showed an objective or subjective improvement in 100 per cent of patients after initial treatment.

The Krebiozen Research Foundation of Chicago proposed that the American Cancer Society conduct a special trial, and specified that immunologic representatives have as equal part in the test procedure.

The proposal called for a joint committee consisting of five physicians and three laymen. The society would select two physicians and immunologists and three lay physicians would choose a fifth.

The society and immunologists would select one lay representative and one physician representative.



**Eudora Andrews**  
Democratic Candidate for  
**HOUSE**  
of  
**DELEGATES**  
Kanawha County  
Political Advertisement

VOTE FOR  
**J.M. (MAC) STUBBLEFIELD**

Republican for  
**CIRCUIT CLERK**  
Kanawha County

- Progressive
- Experienced
- Capable
- For 12 Years  
A City Councilman of Charleston

J. M. STUBBLEFIELD  
Pol. Adv. Paid by Candidate

Your Vote Will Be Appreciated By  
**PAUL W. "POP" WORKMAN**

Republican for  
**COUNTY COMMISSIONER**  
Kanawha County

Workman favors  
A County-wide Program

**EXHIBIT**  
4  
WORKMAN

**NATIONAL** For United States Senator (FULL TERM)

For United States Senator (UNEXPIRED TERM)

For Congressman Sixth Congressional District

**STATE** For Secretary of State (UNEXPIRED TERM)

For Judge of the Supreme Court of Appeals (UNEXPIRED 6 YEAR TERM)

For Judge of the Supreme Court of Appeals (UNEXPIRED 2 YEAR TERM)

For State Senator (8th Senatorial District)

**COUNTY** For Judge of Intermediate Court

For Clerk of the Circuit Court (UNEXPIRED TERM)

For County Commissioner

**REPUBLICAN**

CHAPMAN BEVERCOMB  
Charleston, W. Va.

JOHN D. HOBLITZEL, JR.  
Ravenswood, W. Va.

F. O'DAIR DUFF  
Charleston, W. Va.

HELEN (MRS. RUSH D.) HOLT  
Weston, W. Va.

MAX DeBERRY  
Harrisville, W. Va.

ROBERT T. DONLEY  
Morgantown, W. Va.

ELIZABETH J. HALLANAN  
Charleston, W. Va.

PERRY S. POPFENBARGER  
Charleston, W. Va.

J. M. (MAC) STUBBLEFIELD  
Charleston, W. Va.

PAUL W. "POP" WORKMAN  
Clendenin, W. Va.

HARRY E. EARL, JR.  
Charleston, W. Va.

JAMES A. "JIM" BOWHAM  
Charleston, W. Va.

CLIFFORD E. BRYAN  
St. Albans, W. Va.

HOMER W. CALDWELL  
Charleston, W. Va.

WALTER W. CAREY  
Charleston, W. Va.

MRS. FRED A. CAVEZNOISH  
So. Charleston, W. Va.

JOHN M. CHARNOCK, JR.  
Charleston, W. Va.

MRS. HATTIE E. CLARK  
Charleston, W. Va.

STANLEY E. DEUTSCH  
Charleston, W. Va.

ROBERT QUINCE JONES  
Charleston, W. Va.

CLAUDE LACY  
Charleston, W. Va.

POLEST E. THOMAS  
St. Albans, W. Va.

B. H. WOOD  
St. Albans, W. Va.

L. A. ERVINE  
Telle, W. Va.

OTIS A. CANNING  
Risposville, W. Va.

CLED BURDETTE  
Sikesville, W. Va.

DENNIS E. GARNES  
Dunbar, W. Va.

T. W. (TED) WOOTEN  
So. Charleston, W. Va.

**DEMOCRATIC**

ROBERT C. BYRD  
Sophia, W. Va.

JENNINGS RANDOLPH  
Elkins, W. Va.

JOHN M. BLACK, JR.  
Charleston, W. Va.

JOE F. RUDDETT  
Point Pleasant, R. Va.

THORNTON G. BERRY, JR.  
Welch, W. Va.

HARLAN H. CALHOUN  
Moundsfield, W. Va.

J. HONOR DAVIS  
Charleston, W. Va.

WILLIAM J. THOMPSON  
St. Albans, R. Va.

LEWIS A. HATCHER  
Charleston, W. Va.

A. CARL CAREY  
Hewitt, W. Va.

HOUGHTON H. ABBOT  
Charleston, W. Va.

EUDORA C. ANDREWS  
Charleston, W. Va.

JESSE S. BARBER  
Charleston, W. Va.

PAT BOARD, JR.  
Charleston, W. Va.

IVOR F. BOJANSKY  
Charleston, W. Va.

D. EARL BRANLEY  
Queen Shoals, R. Va.

W. T. BROTHERTON, JR.  
Charleston, W. Va.

GEORGE C. BURNETTE, JR.  
So. Charleston, W. Va.

W. F. (RED) CHELTON  
Charleston, W. Va.

JOHN LYN LASHORE  
Charleston, W. Va.

EDWARD D. KNIGHT, JR.  
Charleston, W. Va.

SIDNEY BARBER  
Spring Hill, W. Va.

WILLIAM A. BALLARD  
St. Albans, W. Va.

FLETCHER L. GANTON  
Charleston, W. Va.

NO CANDIDATE

NO CANDIDATE

JOHN H. STEVENS  
Dunbar, W. Va.

RAYMOND WHITLOCK  
Okeet, W. Va.

For  
House  
of  
Delegates

**JEFFERSON DISTRICT**  
Constable  
(UNEXPIRED TERM)

**MALDEN DISTRICT**  
Justice of the Peace  
(UNEXPIRED TERM)

**POCA DISTRICT**  
Justice of the Peace  
(UNEXPIRED TERM)

Constable  
(UNEXPIRED TERM)

**UNION DISTRICT**  
Constable  
(UNEXPIRED TERM)

**WASHINGTON DISTRICT**  
Constable  
(UNEXPIRED TERM)

BALLOT ON "AMENDMENT TO EXEMPT BANK DEPOSITS AND MONEY FROM TAXATION"

FOR

AGAINST

BALLOT ON "STATE SUPERINTENDENT OF FREE SCHOOLS AMENDMENT"

FOR

AGAINST

BALLOT ON "BETTER SCHOOLS AMENDMENT"

FOR

AGAINST

BALLOT ON "CORPORATION STOCK VOTING AMENDMENT"

FOR

AGAINST

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO-WIT:

I, Lewis A. Hatcher, Clerk of the Circuit Court and Ex Officio Chairman of the Ballot Commissioners of Kanawha County, West Virginia, do hereby certify that the foregoing is a facsimile of the ballot labels inserted in the voting machines to be used for the election to be held on nominations for office to be held by the voters of any subdivision, less than a County.

Given under my hand and the seal of this Court this 23rd day of October, 1958.

LEWIS A. HATCHER,  
CLERK CIRCUIT COURT AND EX OFFICIO  
CHAIRMAN OF THE BALLOT COMMISSIONERS  
OF KANAWHA COUNTY, WEST VIRGINIA

It provides no standard for measuring or defining the results of the tests.

THE AMERICAN Medical Assn. in October, 1958, reported that Keshiram showed no objective or subjective improvement in 100 cases of patients after "control" treatment.

The Keshiram Research Foundation of Chicago proposed that the American Cancer Society conduct a special test, but accredited foundation representatives have an equal part in the test procedures.

The proposal called for a joint committee consisting of five physicians and three lawyers. The society would select two physicians, and foundation two, and these four physicians would choose a fifth.

The society and foundation



**Eudora Andrews**  
Democratic Candidate  
for  
**HOUSE**  
of  
**DELEGATES**  
Kanawha County

VOTE FOR

**J.M. (MAC) STUBBLEFIELD**

Republican  
for  
**CIRCUIT CLERK**  
Kanawha County

- Progressive
- Experienced
- Capable
- For 12 Years  
A City Councilman  
of Charleston

**J. M. STUBBLEFIELD**  
Pub. Ad. Paid by Candidate

Your Vote Will Be Appreciated By

**PAUL W. "POP" WORKMAN**

Republican for  
**COUNTY**  
**COMMISSIONER**  
Kanawha County

Workman Favors  
A County-wide Program  
of Recreation, Parks,  
Pools, Picnic Areas

**PAUL "POP" WORKMAN**  
Paid for by the Candidate

For A Better West Virginia, Vote For

Elizabeth V. **HALLANAN**  
(Betty)

Republican  
for  
**STATE**  
**SENATE**  
(Kanawha County)

Record of Public Service

- House of Delegates
- Member, State Board of Education
- Asst. Commissioner of Institutions
- Attorney

Your Vote for Betty Hallanan  
Is A Vote For

- Better Schools
- Better Roads
- Improvements At State Institutions

Pub. Ad. Paid for by Candidate for State Senators for District  
Mrs. William H. (Pop) Hallanan

AFFIDAVIT of  
Natalie E. Tennant, West Virginia Secretary of State

State of WEST VIRGINIA,  
County of KANAWHA

The undersigned, Natalie E. Tennant, West Virginia Secretary of State, after first being duly sworn, does attest and affirm the following:

1. In determining the ballot design and other election administration issues, I was guided by three goals: (1) to follow statutory requirement and case law precedent; (2) to make the election as much like all other elections as possible in order to avoid voter confusion and discouragement; and (3) to save costs while accomplishing the first two goals.
2. My estimate for the additional costs, had I determined to go with two separate elections, is summarized in Attachment A.
3. The Legislature, in HB 202 and HB 216, appropriated only \$3 million total for both the primary and general election.
4. Two separate general elections with separate ballots would have incurred an enormous fiscal cost for the state. A large cost would have been the additional ballot design, programming and printing. For the special primary of August 28, programming and printing costs were over \$700,000 (counties have not submitted invoices for reimbursement). Programmers have indicated that separate elections would require two programs and two separate sets of machines. It does not necessarily follow that the cost would have doubled. Therefore, I have estimated that a second election would have cost as much as an additional \$700,000.
5. Since separate machines for each election would have been required, each precinct would have had to devote half of its machines to each election. This would have doubled the length of lines and voting times.

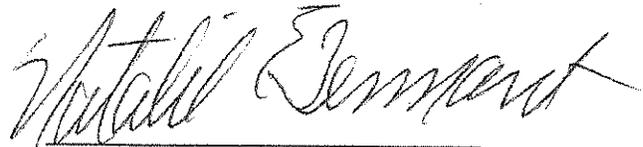


That would have had the effect of discouraging voters from voting. Theoretically, county commissions could have rented additional machines, if extra machines could be found, but I anticipated that commissioners would have tried to conduct the election with the existing equipment.

6. Federal law requires that each precinct have a Help America Vote Act (HAVA) compliant machine or system for impaired voters. Since each machine must be separately dedicated, 1889 additional machines/systems would have to be located for this function. Otherwise, the State would be in violation of a federal mandate. I have been informed that the additional HAVA machines, if they could be found, would have a rental cost of \$1.2 million.
7. When, prior to the special session, I had to evaluate how it would be possible to meet the federal deadlines for overseas and military ballots, I briefly considered the possibility of conducting a paper ballot election for the unexpired term. However, I quickly determined that the HAVA compliant machines would still be required (at a rental cost of about \$1.2 million) and that separate ballot printing and programming costs (estimated at \$700,000) would still be incurred. Furthermore, administrative difficulties of ballot voting, tracking, and counting separately from the general election would have been enormous. Voter and election worker confusion would have created uncertainty at the precincts and counting centers. Thus, a separate paper ballot would have still required the expenditure of nearly an additional two million dollars over the design selected and would have produced chaos.
8. More administration difficulties would have been encountered by counties with OpticalScan ballots. Separate sets of ballot boxes would be required at the polling places. When counting the ballots at the central count center, the M650 high-speed scanner would have to be programmed for one election and the ballots tabulated. After everything is counted for one election the system would have to be cleared and reprogrammed to tabulate the second election. In the two counties where M100 precinct scanners are used, at each precinct one ballot would be scanned through the machine and one deposited into a ballot box for processing at the central counting center.
9. Election workers pay may have possibly been doubled. Election officials are paid up to \$175 per election with no maximum per day. If such argument prevailed, the state would have incurred a cost of an additional \$1.2 million based upon a \$125/worker estimated for 1889 precincts with five workers per precinct.
10. Additional poll book records would have needed to be prepared and maintained for two separate elections.

11. Board of Canvassers would have had to hold two separate canvasses, with two separate published public notices. Canvassers would have had to resolve twice as many challenged ballots.
12. Separate applications for absentee ballots and separate mailings and returns of absentee ballots would have been required by two elections. Using an estimate of \$2.27 mailing cost per absentee ballot, 18,000 absentee requests yields an additional cost of approximately \$40,000. That figure does not include the personnel time involved in handling, tracking, and counting all the additional ballots.
13. Separate counting boards would have had to be obtained, trained, and paid for in those counties that use counting boards.
14. Two sample ballots and two candidate lists would have to be published and paid for by the state at an estimated expense of an additional \$55,000.
15. Finally, the cost in terms of voter confusion and discouragement cannot be assigned a fiscal number. Voters would be required to cast two separate votes on the same day or when voting absentee or early. But the votes would be cast upon different ballots or machines, unlike any election that I have been able to find. Long lines, delays, confusion, and separate machines, all suggested an administrative nightmare that I was determined to avoid, if at all possible.

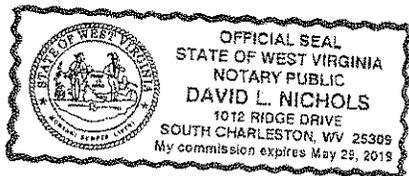
And further the affiant sayeth not.



Natalie E. Tennant  
West Virginia Secretary of State

SWORN TO AND SUBSCRIBED before me this 22 day of September,

2010




Notary Public in and for the State of  
My Commission

Expires: May 29, 2019

Attachment A.

	Required	Possible
Programming and Printing	700,000	
HAVA Compliant Machines	1,200,000	
Separate Poll Books		
Additional Personnel	1,000	
Extra Poll Worker Pay		1,200,000
Separate Canvass Notice	1,000	
Separate Sample Ballot & Candidate List	55,000	
Separate Absentee Mailings	40,000	
Separate Machine Testing Notice	1,000	
totals	1,998,000	3,198,000