

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
ex rel. ERIC TARR,

Petitioner,

v.

Civil Action No.

KRIS WARNER,
Secretary of State of the
State of West Virginia, and
STEPHANIE BUTCHER,

Respondents.

EMERGENCY VERIFIED PETITION FOR WRIT OF MANDAMUS

This Verified Petition for Writ of Mandamus is made pursuant to West Virginia Code § 53-1-1 *et seq.* and West Virginia Rule of Civil Procedure 71.2 to present to this Court the question of whether the residency dispersal requirements of the West Virginia Constitution compel the Secretary of State to exclude from the ballot a candidate for election to West Virginia Senatorial District 4 who is a resident of Mason County when District 4 is already represented by a resident of Mason County.

STATEMENT OF THE CASE

More specifically, this petition presents the question of whether Article VI, Section 4 of the West Virginia Constitution compels the Secretary of State to exclude from the ballot in the November 3, 2026, general election a candidate for election to West Virginia Senatorial District 4 who is a resident of Mason County when District 4, a multi-county district, is already represented by a resident of that same county.

Petitioner Eric Tarr is a registered voter residing in Putnam County within West Virginia Senatorial District 4 and intends to vote in the November 3rd general election. Petitioner contacted

Respondent Secretary of State and reported to the Secretary of State the facts known to Tarr regarding candidate Stephanie Butcher’s residency. Though Respondent Secretary of State has been informed of facts that render Butcher an ineligible candidate, no steps have been taken to remove Butcher from the ballot.

Respondent Stephanie Butcher (“Butcher”) is a Libertarian Party candidate for the District 4 Senate Seat. District 4 contains portions of Cabell, Jackson, and Putnam Counties and all of Mason County. *See* W. Va. Code § 1-2-1. In filing for office, Butcher listed her mailing address as 799 Burdette Addition, Point Pleasant, West Virginia, and her place of residence as Point Pleasant, West Virginia, Mason County. *See* Exhibit 1, Sec. of State Butcher Candidate Detail. Critically, District 4 is *already* represented by a Mason County resident, Amy Nicole Grady, who was elected in November 2024. *See* Exhibit 2, Sec. of State Grady Candidate Detail. Senator Grady’s term will not expire until the end of 2028. Senator Grady has a mailing address at 190 Fox Run Drive, Leon, West Virginia, which is located in Mason County. *Id.*

Therefore, it is beyond dispute, and the evidence is clear, that Respondent Butcher cannot serve as a senator for District 4 at the same time as Senator Grady because both identify their place of residence as Mason County. District 4 is comprised of all of Mason County and portions of Cabell, Jackson, and Putnam Counties and the West Virginia Constitution does not permit both Senators from a multi-county district to be residents of the same county.

STATEMENT REGARDING BRIEFING, ORAL ARGUMENT, AND DECISION

Petitioner requests that this Court enter an expedited briefing schedule. Voting will commence and the election is November 3, 2026, and every day that drags on, any voter who votes for Butcher will be voting for a candidate who is not eligible to take office.

Petitioner believes that the dispositive issues raised by this case have been authoritatively decided by the Supreme Court of Appeals, 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. Butcher is not eligible for election to Senate District 4 because she is a resident of Mason County, and her election would violate the West Virginia Constitution.

The residency dispersal requirements of the West Virginia Constitution for election as a senator are clear: “For 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.” W. Va. Const., art. VI, sec. 4.

The issues presented here are identical to those presented to the Supreme Court of Appeals in *State ex rel. Boley v. Tennant*, 228 W. Va. 812, 724 S.E.2d 783 (2012). There, the Court held that the constitutional residency requirements at issue were enforceable and did not violate other constitutional rights. *Id.* at Syl. Pt. 4. In *Boley*, the Secretary of State was ordered to remove a candidate’s name from all official ballots and to command all balloting officials to disregard the candidate’s name because of the candidate’s lack of residency eligibility. *Id.* at 818, 724 S.E.2d at 789. Just as here, the candidate was ineligible to serve because he and the then-sitting senator were residents of the same county in a multi-county district. *Id.* If the ineligible candidate were elected, he could not serve because both senators from that district would be from the same county.

Id. In reaching this holding, the Court rejected constitutional challenges to Section 4’s residency requirement, finding that in multi-county districts, both senators could not be from the same county.

In fact, it was improper for Respondent Butcher to file her certificate of candidacy in the first place. As the Supreme Court of Appeals noted, “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[.]’” *Id.* at 817, 724 S.E.2d at 788 (emphasis added). Respondent Butcher should have known that sitting Senator Grady is a resident of Mason County, and therefore the West Virginia Constitution does not permit Butcher to file for election or serve as a second senator from Mason County to represent District 4.

II. A writ of mandamus is the appropriate mechanism through which to challenge Butcher’s candidacy.

The Supreme Court of Appeals’ precedent supports the use of a writ of mandamus to challenge the candidacy of a person seeking elected office. The Court has explained that the purpose of mandamus is to enforce “an established right” and a “corresponding imperative duty created or imposed by law.” *State ex rel. Ball v. Cummings*, 208 W. Va. 393, 398, 540 S.E.2d 917, 922 (1999) (citation omitted). In determining the appropriateness of mandamus in a given case, our law is clear that

A writ of mandamus will not issue unless three elements coexist—
(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.

Syl. Pt. 2, *State ex rel. Kucera v. Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969); *State ex rel. W. Va. Citizen Action Group v. Tomblin*, 227 W. Va. 687, 692, 715 S.E.2d 36, 41 (2011) (same).

“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, *McCartney*, 159 W. Va. at 515, 223 S.E.2d at 610. 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, 533, 258 S.E.2d 119, 120 (1979); Syl. Pt. 3, *Hechler*, 208 W. Va. at 586, 542 S.E.2d at 407 (same). 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., State ex rel. Sowards v. County Comm’n*, 196 W. Va. 739, 742, 474 S.E.2d 919, 922 (1996); *Johnson*, 212 W. Va. at 348, 571 S.E.2d at 338. The standard has since 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*, “the 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....”).

Hechler, 208 W. Va. at 587–88, 542 S.E.2d at 408–09 (citations and quotations in original). As the Supreme Court of Appeals 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.

McCartney, 159 W. Va. at 526–27, 223 S.E.2d at 616; *see also Manchin*, 173 W. Va. at 533, 318 S.E.2d at 477. Consistent with the Court’s holding in *Manchin*, Petitioner has joined the Secretary of State and Butcher as original party respondents to avoid any delay in receiving a motion to intervene.¹

Based on established West Virginia law, Petitioner is entitled to the writ. When a candidate for elected office is ineligible, a writ of mandamus lies against the Secretary of State. *See Manchin*, 173 W. Va. at 547, 318 S.E.2d at 491 (granting writ of mandamus and commanding the Secretary of State to withdraw his certification of candidacy of respondents deemed ineligible to run for the West Virginia Senate and further directing 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 candidates deemed ineligible); *McCartney*, 159 W.

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, 818, 724 S.E.2d 783, 789 (2012).

Va. at 527–28, 223 S.E.2d at 616–17 (granting writ of mandamus against respondent Secretary of State).

Notably, this 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. Cir. Ct., J. Webster, Nov. 2, 2018) at Exhibit 3.

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. Petitioner believes that the writ should (1) direct the Respondent Secretary of State to withdraw his certification of candidacy of Respondent Butcher declaring her ineligible to run for the West Virginia Senate District 4; (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 District 4 Counties to strike, omit, or otherwise remove the name of Respondent Butcher from the official ballots to be used in the general election to be conducted in 2026; (3) further direct the Secretary of State, pursuant to W. Va. Code, § 3-1A-6(a), 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 Respondent Butcher, 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 Butcher is ineligible as a candidate for Senate District 4.

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

By Counsel

/s/ Gretchen M. Callas

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VERIFICATION

I verify under penalty of perjury under the laws of the State of West Virginia that the factual statements in this Petition are true and correct to the best of my knowledge.



Eric Tarr

[View Candidate Details](#)**Basic Info****STEPHANIE E BUTCHER**

Office :	STATE SENATE - DISTRICT 4
Office Type :	STATE RACE
Party :	LIBERTARIAN
County :	-
Residence :	POINT PLEASANT, WV MASON
Mailing Address :	799 BURDETTE ADDITION DR POINT PLEASANT, WV 25550
Phone No. :	(304) 747-0308
Campaign Email :	STEPHANIEBUTCHER@USA.COM
Filing Date :	06/01/2026
Candidate Phone No. :	(304) 747-0308
Campaign Website :	HTTPS://WWW.FACEBOOK.COM/PROFILE.PHP?ID=61589317123416

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Elections

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Elections

Candidate Detail

2024 State Senate						
Name	Party	County	City/State	Mailing Address	Campaign Phone/E-Mail	Filing Date
Amy Nichole Grady	Republican	Mason <i>District/Circuit</i> 4	Leon, WV	<i>Mailing Address</i> 190 Fox Run Drive Leon WV 25123	amynicholegradyforwvsenate@yahoo.com	1/8/2024

View	Type Of Report	Report Name
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Friday, October 9, 2026 — 2:30 PM

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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 *ll*
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 VI, 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.

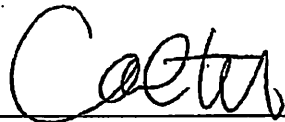
6. It should be noted that Respondent Mac Warner, West Virginia Secretary of State, contests his status as a proper party to this litigation. The hearing on October 31, 2018, did not address or include any arguments on this issue. Accordingly, this Order does not reach a decision on this question.
7. 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.

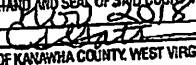
The Clerk of the Court shall distribute a certified copy of this Order to all counsel and parties of record.

IT IS SO ORDERED.

 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).

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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 2nd
DAY OF December 2018.  CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA