

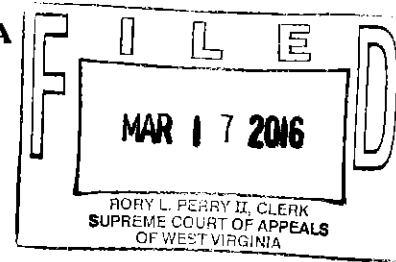
**IN THE
SUPREME COURT OF APPEALS OF WEST VIRGINIA**

WILLIAM R. WOOTON,

Petitioner,

v.

No. 16-0226
(Circuit Court of Kanawha County
Civil Action No. 16-AA-13)



ELIZABETH D. WALKER, NATALIE E. TENANT,
GARY A. COLLIAS, and VINCENT P. CARDI,
Members of the West Virginia State Election Commission;
GLEN B. GAINER, III, West Virginia State Auditor;
and JOHN D. PERDUE, West Virginia State Treasurer,

Respondents.

**PETITIONER WOOTON'S RESPONSE TO
RESPONDENT WALKER'S APPLICATION FOR A STAY**

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The Respondent Elizabeth Walker has requested a stay of execution against implementation of the decision of the State Election Commission ("SEC" or "Commission") to certify Petitioner William R. Wooton for funding, and to prevent Mr. Wooton from spending any campaign finance monies that are allocated. The Commission's decision was executed and the funds were allocated to Mr. Wooton before Ms. Walker filed her request for a stay. There is, therefore, no possibility of staying the Commission's order. The requested relief for a stay against Mr. Wooton must be rejected for several reasons.

First, a "stay" is an order that suspends implementation of a lower court or administrative order and runs against that court or agency. A stay is not a means for enjoining actions of the parties to a proceeding. If Ms. Walker wants to seek that kind of relief, she must file an independent action and a motion for a preliminary injunction pursuant to Rule 65(a) of the West Virginia Rules of Civil Procedure and post a bond pursuant to subsection (c) of that Rule.

Second, even if a stay from this Court was the proper procedure, there is no reason to grant the requested relief. There is simply no harm to *anyone* if Mr. Wooton began spending the public campaign finance money. He would undoubtedly use the money to educate the public about his candidacy. No one is injured by that. Ms. Walker certainly has no entitlement at stake; she is free to continue to promote her campaign in any lawful fashion. Nor is there any harm to the State. If this Court decides he was wrongly certified, Mr. Wooton's campaign may be ordered to repay the money.

Third, if a stay was the proper procedure and it was granted, such a ruling would cause considerable harm to Mr. Wooton because he would be seriously burdened in the exercise of his free speech rights to educate the public about his candidacy. The order would operate like a prior restraint, which may not be imposed except when necessary to accomplish an interest of the highest order. *E.g., Citizens Aware Regarding Education v. Calhoun County Publishing, Inc.* 185 W. Va. 168, 406 S.E.2d 65 (1991). As the United States Supreme Court has held, campaign funds and

campaign speech are inextricably bound; the state (including the courts) cannot restrict the former without affecting the latter. *E.g.*, *Buckley v. Valeo*, 424 U.S. 1 (1976).

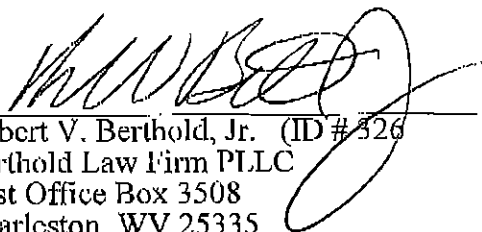
Fourth, the Public Campaign Finance Law in West Virginia Code § 3-12-12 prohibits petitioner from spending any private monies on the campaign – including his own money. If petitioner were to raise and spend, or spend his own money, during the time of the requested stay, he would violate the Public Campaign Finance Law and could be required to return all public monies received. Respondent Walker thus seeks through her request for a stay that petitioner be barred from spending any money in connection with the campaign for approximately a fourth of the remaining time until the election. Meanwhile, Walker and the other candidates would be free to spend monies in connection with their campaigns. The result of barring only the petitioner from spending monies while this case is pending would, at a minimum, be unfair and would also put at great peril petitioner's rights of free speech and his rights of candidacy. *See, e.g.*, U.S. Constitution, Amendments 1 & 14; W. Va. Constitution, Article III, §§ 7 & Article IV, §§ 1 & 4; *State ex rel. Billings v. City of Point Pleasant*, 194 W. Va. 301, 460 S.E.2d 436 (1995); *Sturm v. Henderson*, 175 W. Va. 319, 342 S.E.2d 287 (1986).

To grant the relief requested by Respondent Walker would create a harm that cannot be undone even if this Court affirms the decision of the State Elections Commission to certify petitioner's campaign. Petitioner cannot spend his own money, or raise and spend private money, without violating the Public Campaign Finance Law. Petitioner would be effectively banned from campaigning for more than a fourth of the remaining time until the election.

Fifth, Respondent Walker cannot establish a reasonable probability of success on the merits. *See* Brief for Petitioner William R. Wooton, filed with the Court on this day.

Finally, Respondent has proffered no security. If the Court deems a stay is appropriate, then it should, pursuant to W. Va. R.A.P. 28(c), require security in an amount sufficient to cover the campaign expenditures that petitioner would otherwise make at this critical juncture in the Supreme Court race.

Accordingly, Petitioner Wooton respectfully requests that this Court deny Respondent Walker's Application for Stay.



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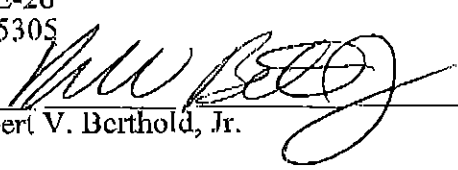
CERTIFICATE OF SERVICE

I, Robert V. Berthold, Jr., co-counsel for Petitioner herein, do hereby certify that I have served a copy of the foregoing *Petitioner Wooton's Response to Respondent Walker's Application for a Stay*, via e-mail, and by placing a true copy, postage prepaid, in the United States mail on this 17th day of March, 2016, upon the following:

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