

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**Brent D. Benjamin, candidate for the
Supreme Court of Appeals of West Virginia**

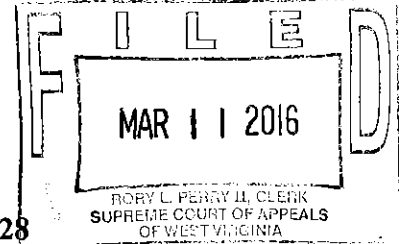
Petitioner,

vs.

**Elizabeth D. Walker, candidate for the
Supreme Court of Appeals of West Virginia;
West Virginia Secretary of State Natalie Tennant;
West Virginia State Election Commission members
Gary A. Collias and Vincent P. Cardi,**

Respondents.

No. 16-0228



**(On Appeal from the Circuit Court
of Kanawha County 16-AA-17)**

**Petitioner Justice Brent D. Benjamin's Application for a Stay
of the Circuit Court's March 4, 2016 Order**

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Counsel for Petitioner Justice Brent D. Benjamin

Petitioner Justice Brent Benjamin files this Application pursuant to West Virginia Rule of Appellate Procedure 28(b) to stay the Circuit Court's March 4, 2016 Order reversing the decision of the State Election Commission certifying Justice Benjamin for public financing. Petitioner makes this Application because the Circuit Court has indicated that that it will take actions for which jurisdiction is lacking. For instance, the Circuit Court directed Justice Benjamin earlier today to enter into certain stipulations regarding the public financing issue. Given the rapidly approaching date of the argument and the Supreme Court's anticipated expedited resolution of the dispute, as well as Justice Benjamin's representation that will make no further expenditures, a stay of the Circuit Court's Order is appropriate.

Factual Background

Respondent Beth Walker and Petitioner Justice Benjamin are among the candidates in the 2016 election for a single seat on the West Virginia Supreme Court of Appeals. On February 10, 2016, the State Election Commission certified Justice Benjamin to receive funding from the Public Campaign Financing Program. On February 16, 2016, Beth Walker filed this lawsuit claiming that the SEC's decision certifying Benjamin was incorrect and violated her constitutional rights. Justice Benjamin filed a response on February 25, 2016, arguing that the SEC's certification decision was correct and that, furthermore, Beth Walker has not been harmed and lacks standing to sue. Following a hearing on February 26, 2016, the Circuit Court issued an Order reversing the SEC's certification on March 4, 2016.

Justice Benjamin filed an Application for a Stay of the March 4, 2016 Order with the Circuit Court on March 7, 2016. Justice Benjamin filed his Notice of Appeal with the Supreme Court of Appeals on March 8, 2016. The following day, the Supreme Court set the case for argument on March 23, 2016, with expedited briefing due from all parties on March 17, 2016.

In light of this Court's Order setting the case for hearing in two weeks and expediting briefing, Justice Benjamin withdrew the application for a stay on March 10, 2016.

That same day, the Circuit Court held a telephonic hearing regarding the withdrawn motion and further directed the parties to attend another status conference today at 8:15 am. During today's conference, the Circuit Court directed the parties to enter into stipulations regarding the Public Campaign Financing funds and set another status conference for Monday, March 14, at 12:45 pm. The stipulations are due Monday morning.

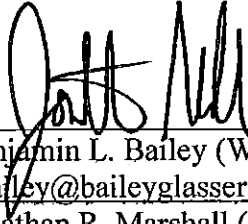
Argument

Justice Benjamin files this Application pursuant to West Virginia Rule of Appellate Procedure 28(b), requesting that this Court stay the proceedings in the Circuit Court. A stay is appropriate and necessary. Under Rule 28(a) a circuit court may either grant a stay or deny it. Rule 28(c) provides that a circuit court may require that a bond be posted in civil cases, not administrative appeals. Aside from the limited relief provided under Rule 28, the Circuit Court does not presently have jurisdiction over this case as Justice Benjamin's appeal is pending before this Court. W. Va. Code § 29A-6-1; *Fenton v. Miller*, 182 W. Va. 731, 735, 391 S.E.2d 744, 748 (1990). Accordingly, because the Circuit Court lacks jurisdiction to require the Petitioner to file stipulations and also because this Court will be hearing argument on the appeal in less than two weeks, the Petitioner respectfully requests that a stay be entered.

A stay is also warranted because the case involves the interpretation of a new statute for which there is little precedent. It involves issues of first impression that are sharply contested by both parties. Meanwhile, Justice Benjamin and his campaign have suspended all spending from the Public Campaign Financing Funds while the appeal of the Circuit Court's order is pending. The Benjamin campaign has further agreed not to obligate itself to any additional expenses from the Public Campaign Financing Funds until the appeal has been resolved.

For all these reasons, Justice Benjamin respectfully requests that this Court enter a stay in the proceedings before the Circuit Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ben Bailey', is written over a horizontal line.

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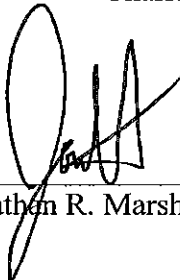
Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Petitioner Justice Brent D. Benjamin's Application for a Stay of the Circuit Court's March 4, 2016 Order** was served upon Counsel, via US Mail as set forth below, this 11th day of March 2016:

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