

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

Petitioner,

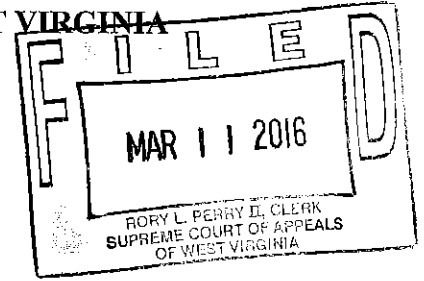
vs.

**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)**



**JOINT APPENDIX OF RELEVANT DOCUMENTS
VOLUME II of II**

CONTAINS CONFIDENTIAL MATERIALS

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Counsel for Petitioner Justice Brent D. Benjamin

JOINT APPENDIX OF RELEVANT DOCUMENTS

The undersigned parties hereby certify that the contents of the appendix are true and accurate copies of items contained in the record of the lower tribunal; and that the petitioner has conferred in good faith with all parties to the appeal in order to determine the contents of the appendix.



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Counsel for Petitioner Justice Brent D. Benjamin

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State of West Virginia Campaign Financial Statement (Long Form) in Relation to the 2016 Election Year

Candidate or Committee Name Brent D. Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non Partisan		Treasurer's Mailing Address (Street, Route, or P.O. Box) 8 Barrington Drive	
Office Sought (for Candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code Wheeling, WV 26003	Daytime Phone # 304-242-0414
Election Cycle Reporting Period:		Check if Applicable:	
<input checked="" type="checkbox"/> Qualifying Report for Sep 1, 2015 to Sep 30, 2015		<input type="checkbox"/> Amended Report You must also check box of appropriate reporting period	
Non-Election Cycle Reporting Period:		<input type="checkbox"/> Final Report Zero balance required. PAC must also file Form F-6 Dissolution	
<input type="checkbox"/> Annual Report 2015 Calendar Year Due last Saturday in March or within 6 days thereafter			

REPORT TOTALS

Fill in totals at the completion of the report.

RECEIPTS OF FUNDS:	Totals for this Period	CASH BALANCE SUMMARY	
Contributions	\$0.00	Beginning Balance (ending balance from previous report)	\$0.00
Monetary Contributions from all Fund-Raising Events	+ \$0.00	Total Monetary Contributions	+ \$0.00
Receipt of a Transfer of Excess Funds	+ \$0.00	Total Other Income	+ \$0.00
Total Monetary Contributions:	= \$0.00	Subtotal:	a. = \$0.00
In-Kind Contributions	+ \$0.00		
Total Contributions:	= \$0.00		
Other Income	\$0.00	Total Expenditures Paid	\$0.00
Loans Received	+ \$0.00	Total Disbursements of Excess Funds	+ \$0.00
Total Other Income:	= \$0.00	Repayment of Loans	+

JA001640

OUTSTANDING LOANS & DEBTS:			\$0.00
Unpaid Bills	\$0.00		
Outstanding Loans	+ \$0.00		
Total Debts:	= \$0.00		
TOTAL CONTRIBUTIONS ELECTION YEAR-TO-DATE (Add total contributions from all reports)			
\$0.00			
		Subtotal:	b. = \$0.00
		Ending Balance: (Subtotal a. - Subtotal b.)	= \$0.00
		<i>*Note: Report cannot be submitted with a negative balance.</i>	
TOTAL EXPENDITURES ELECTION YEAR-TO-DATE (Add total expenditures from all reports)			
\$0.00			

CONTRIBUTIONS \$250.00 OR LESS

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
	Subtotal of contributions of \$250.00 or less	\$0.00

CONTRIBUTIONS MORE THAN \$250.00

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
	Subtotal of all contributions of more than \$250.00	\$0.00
	Subtotal of all contributions of \$250 or less	\$0.00
	Total Contributions:	\$0.00

FUND-RAISING EVENTS

All monetary contributions received at a fundraiser must be reported in the Event Summary below.

If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund. The only exception to this rule may apply to political party executive committees. (WV Code 3-8-5a).

OTHER INCOME: INTEREST, REFUNDS, MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount
		Total Other Income:	\$0.00

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Value
		Total In-Kind Contributions:	\$0.00

JA001641

LOANS

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

"Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may not receive any money or any other thing of value toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed."

The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable. Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case. Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. **These loans must be executed in writing. Caution: Candidates may not carry outstanding loans from one campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.**

HOW TO REPORT LOANS

- Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below.
 - loans(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. **Any loan that was repaid in previous reporting periods does not need to be listed.**
 - new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)
- Attach a copy of the loan agreement for each loan received during the reporting period.**

LOANS (CONTINUED)

Bank Loans: List name & address or financial institution Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan	Column A Balance of previous loan at end of period	Column B Amount of new loan received during period		Column C Repayments during period		Column D Balance outstanding at end of period
	Amount	Date	Amount	Date	Amount	Amount
		Loans Received		Repayment of Loans		Outstanding Loans
		0		0		0

ITEMIZED EXPENDITURES

Date	Name of Person or Vendor And Address	Purpose	Amount
		Total Expenditures:	\$0.00

RECEIPT OF A TRANSFER OF EXCESS FUNDS

Date	Candidate Committee Name and Year	Amount
		JA001642

Total Receipts of Transfer of Excess Funds:			\$0.00
DISBURSEMENT OF EXCESS FUNDS			
Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
		Total Disbursement of Excess Funds:	\$0.00
UNPAID BILLS			
Date	Group or Firm Affiliation	Purpose	Amount
		Total Unpaid Bills:	\$0.00
Submitted: Oct 1, 2015 at 5:19:56 PM			

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State of West Virginia Campaign Financial Statement (Long Form) in Relation to the 2016 Election Year

Candidate or Committee Name Brent D. Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non Partisan		Treasurer's Mailing Address (Street, Route, or P.O. Box) 8 Barrington Drive	
Office Sought (for Candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code Wheeling, WV 26003	Daytime Phone # 304-242-0414
Election Cycle Reporting Period:		Check if Applicable:	
Qualifying Report for Oct 1, 2015 to Oct 31, 2015		<input type="checkbox"/> Amended Report You must also check box of appropriate reporting period	
Non-Election Cycle Reporting Period:		<input type="checkbox"/> Final Report Zero balance required. PAC must also file Form F-6 Dissolution	
<input type="checkbox"/> Annual Report 2015 Calendar Year Due last Saturday in March or within 6 days thereafter			

REPORT TOTALS

Fill in totals at the completion of the report.

RECEIPTS OF FUNDS:	Totals for this Period	CASH BALANCE SUMMARY	
Contributions	\$570.00	Beginning Balance (ending balance from previous report)	\$0.00
Monetary Contributions from all Fund-Raising Events	+ \$790.00	Total Monetary Contributions	+ \$1,360.00
Receipt of a Transfer of Excess Funds	+ \$0.00	Total Other Income	+ \$0.00
Total Monetary Contributions:	= \$1,360.00	Subtotal: a	= \$1,360.00
In-Kind Contributions	+ \$0.00		
Total Contributions:	= \$1,360.00		
		Total Expenditures Paid	\$4.23
Other Income	\$0.00	Total Disbursements of Excess Funds	+ \$0.00
Loans Received	+ \$0.00	Repayment of Loans	+ \$0.00
Total Other Income:	= \$0.00	Subtotal: b	= \$4.23

JA001644

OUTSTANDING LOANS & DEBTS:		Ending Balance:	=
Unpaid Bills	\$0.00	(Subtotal a. - Subtotal b.)	\$1,355.77
Outstanding Loans	+ \$0.00	<i>*Note: Report cannot be submitted with a negative balance.</i>	
Total Debts:	= \$0.00		
TOTAL CONTRIBUTIONS ELECTION YEAR-TO-DATE (Add total contributions from all reports)		TOTAL EXPENDITURES ELECTION YEAR-TO-DATE (Add total expenditures from all reports)	
\$1,360.00		\$4.23	

CONTRIBUTIONS \$250.00 OR LESS

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
Oct 4, 2015	Catherine Delligatti	\$25.00
Oct 4, 2015	Jane G Charnock	\$100.00
Oct 4, 2015	Darrell Shull	\$100.00
Oct 15, 2015	Carol L Shull	\$100.00
Oct 24, 2015	John McGlec	\$20.00
Oct 24, 2015	Teresa L Shinn	\$25.00
Oct 24, 2015	Patricia Lawson	\$100.00
Oct 24, 2015	Deborah Yost VanDervort	\$100.00
	Subtotal of contributions of \$250.00 or less	\$570.00

CONTRIBUTIONS MORE THAN \$250.00

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
	Subtotal of all contributions of more than \$250.00	\$0.00
	Subtotal of all contributions of \$250 or less	\$570.00
	Total Contributions:	\$570.00

FUND-RAISING EVENTS

All monetary contributions received at a fundraiser must be reported in the Event Summary below.

If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund. The only exception to this rule may apply to political party executive committees. (WV Code 3-8-5a).

WHEELING 1 EVENT SUMMARY			
Date of Event:	Oct 28, 2015	Total Monetary Contributions:	\$790.00
Type of Event:	Meet and Greet	Total Expenditures:	- \$0.00
Name of Place Held:	Undo's	NET RECEIPTS:	= \$790.00
Address of Place Held:	2153 National Rd Wheeling, WV, 26003,	Total In-Kind Contributions Related to the Fundraiser	\$0.00

JA001645

\$250 OR LESS			MORE THAN \$250		
DATE	FULL NAME	AMOUNT	DATE		AMOUNT
Oct 28, 2015	Matthew Chapman	\$10.00		Event contributions of \$250 or more:	\$0.00
Oct 28, 2015	Alex Coyan	\$10.00		Event contributions of less than \$250:	\$790.00
Oct 28, 2015	Morgan McKee	\$10.00		Total Contributions:	\$790.00
Oct 28, 2015	Laura Wakim Chapman	\$10.00			
Oct 28, 2015	Dolph Santorine	\$50.00			
Oct 28, 2015	Robert J Fitzsimmons	\$100.00			
Oct 28, 2015	Robert P Fitzsimmons	\$100.00			
Oct 28, 2015	Don Nickerson	\$100.00			
Oct 28, 2015	Donald M Kresen	\$100.00			
Oct 28, 2015	Brent E Wear	\$100.00			
Oct 28, 2015	Justin J Wiater	\$100.00			
Oct 28, 2015	Clayton J Fitzsimmons	\$100.00			
	Subtotal of event contributions of less than \$250.00	\$790.00			

OTHER INCOME: INTEREST, REFUNDS, MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount
		Total Other Income:	\$0.00

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Value
		Total In-Kind Contributions:	\$0.00

LOANS

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

"Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may not receive any money or any other thing of value toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed."

The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable. Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case. Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. **These loans must be executed in writing. Caution: Candidates may not carry outstanding loans from one**

JA001646

campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.

HOW TO REPORT LOANS

1. Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below.
 - a. loans(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. **Any loan that was repaid in previous reporting periods does not need to be listed.**
 - b. new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)
2. **Attach a copy of the loan agreement for each loan received during the reporting period.**

LOANS (CONTINUED)

Bank Loans: List name & address or financial institution Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan	Column A Balance of previous loan at end of period	Column B Amount of new loan received during period		Column C Repayments during period		Column D Balance outstanding at end of period
	Amount	Date	Amount	Date	Amount	Amount
		Loans Received		Repayment of Loans		Outstanding Loans
		0		0		0

ITEMIZED EXPENDITURES

Date	Name of Person or Vendor And Address	Purpose	Amount
Oct 4, 2015	PayPal	Credit Card Transaction Fee	\$1.03
Oct 4, 2015	PayPal 2221 North First Street San Jose, CA, 95131,	Credit Card Transaction Fee	\$3.20
		Total Expenditures:	\$4.23

RECEIPT OF A TRANSFER OF EXCESS FUNDS

Date	Candidate Committee Name and Year	Amount
	Total Receipts of Transfer of Excess Funds:	\$0.00

DISBURSEMENT OF EXCESS FUNDS

Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
		Total Disbursement of Excess Funds:	\$0.00

UNPAID BILLS

Date	Group or Firm Affiliation	Purpose	Amount
		Total Unpaid Bills:	\$0.00

JA001647

State of West Virginia Campaign Financial Statement (Long Form) in Relation to the 2016 Election Year

Candidate or Committee Name Brent D. Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non Partisan		Treasurer's Mailing Address (Street, Route, or P.O. Box) 8 Barrington Drive	
Office Sought (for Candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code Wheeling, WV 26003	Daytime Phone # 304-242-0414

Election Cycle Reporting Period:	Check if Applicable:
Qualifying Report for Nov 1, 2015 to Nov 30, 2015	<input type="checkbox"/> Amended Report You must also check box of appropriate reporting period
Non-Election Cycle Reporting Period:	<input type="checkbox"/> Final Report Zero balance required. PAC must also file Form F-6 Dissolution
<input type="checkbox"/> Annual Report 2015 Calendar Year Due last Saturday in March or within 6 days thereafter	

REPORT TOTALS

Fill in totals at the completion of the report.

RECEIPTS OF FUNDS:	Totals for this Period	CASH BALANCE SUMMARY
Contributions	\$1,299.00	Beginning Balance (ending balance from previous report) \$1,355.77
Monetary Contributions from all Fund-Raising Events	+ \$0.00	Total Monetary Contributions + \$1,299.00
Receipt of a Transfer of Excess Funds	+ \$0.00	Total Other Income + \$0.00
Total Monetary Contributions:	= \$1,299.00	Subtotal: a. = \$2,654.77
In-Kind Contributions	+ \$0.00	
Total Contributions:	= \$1,299.00	
Other Income	\$0.00	Total Expenditures Paid \$652.29
Loans Received	+ \$0.00	Total Disbursements of Excess Funds + \$0.00
Total Other Income:	= \$0.00	Repayment of Loans + \$0.00
		Subtotal: b. = \$652.29

JA001649

OUTSTANDING LOANS & DEBTS:	
Unpaid Bills	\$740.87
Outstanding Loans	+ \$0.00
Total Debts:	= \$740.87
TOTAL CONTRIBUTIONS ELECTION YEAR-TO-DATE (Add total contributions from all reports)	
\$2,659.00	

Ending Balance: (Subtotal a. - Subtotal b.)	= \$2,002.48
<i>*Note: Report cannot be submitted with a negative balance.</i>	
TOTAL EXPENDITURES ELECTION YEAR-TO-DATE (Add total expenditures from all reports)	
\$656.52	

CONTRIBUTIONS \$250.00 OR LESS

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
Nov 1, 2015	Kim Becker	\$1.00
Nov 1, 2015	J. F. Sampson	\$1.00
Nov 1, 2015	Pat Sampson	\$5.00
Nov 1, 2015	Sara S. Sampson	\$5.00
Nov 2, 2015	Rodney Morrison	\$50.00
Nov 3, 2015	Robert Kiblinger Sr.	\$1.00
Nov 3, 2015	Orville J. Canaday	\$1.00
Nov 3, 2015	Susan Kiblinger	\$4.00
Nov 3, 2015	Cindy Ferrald	\$100.00
Nov 4, 2015	Mechelle Redden	\$2.00
Nov 4, 2015	John P. Fernald	\$100.00
Nov 5, 2015	Myrna E. Fone	\$50.00
Nov 6, 2015	Michael E Caryl	\$100.00
Nov 6, 2015	James K Ruland	\$100.00
Nov 10, 2015	Jennifer Stump	\$1.00
Nov 13, 2015	Kenneth W Apple	\$25.00
Nov 13, 2015	Mike Chapman	\$100.00
Nov 13, 2015	Karen Bailey	\$100.00
Nov 14, 2015	Wayne Davis	\$1.00
Nov 16, 2015	Shereba Hunter	\$5.00
Nov 17, 2015	Royce Caldwell	\$1.00
Nov 17, 2015	Douglas Toliver	\$1.00
Nov 19, 2015	Margerat Falvo	\$1.00
Nov 19, 2015	Richard D. Blenko	\$1.00
Nov 19, 2015	Michelle McPeak	\$1.00
Nov 19, 2015	Dennis Meorer	\$1.00
Nov 19, 2015	Susann S. Apgar	\$1.00
Nov 19, 2015	Ricky Cleary	\$1.00
Nov 19, 2015	Doris L. Quesenberry	\$1.00
Nov 19, 2015	Carol Franklin	\$1.00
Nov 19, 2015	Judith F. Lucas	\$1.00
Nov 19, 2015	Michelle Ransom	\$1.00
Nov 19, 2015	Lydia Morgan	\$1.00
Nov 19, 2015	Jami Stafford	\$1.00
Nov 19, 2015	Lindsey Morgan	\$1.00
Nov 19, 2015	Brenda Quesenberry	\$1.00

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Nov 19, 2015	Travis Day	\$1.00
Nov 19, 2015	Martha A. Blenko	\$1.00
Nov 19, 2015	Joanna Day	\$1.00
Nov 19, 2015	Carolyn Bagby	\$1.00
Nov 19, 2015	Donald Day	\$1.00
Nov 19, 2015	Kathleen O'Hanlon	\$1.00
Nov 19, 2015	Wanda Day	\$1.00
Nov 19, 2015	Jennifer Kiblinger	\$1.00
Nov 19, 2015	Terry L. Sanders	\$1.00
Nov 19, 2015	Bob Kiblinger	\$1.00
Nov 19, 2015	David Revell	\$1.00
Nov 19, 2015	James Becker	\$2.00
Nov 19, 2015	Charlotte Poole	\$2.00
Nov 19, 2015	Rosa L. Meadows	\$3.00
Nov 19, 2015	Barbara E. Clinton	\$3.00
Nov 19, 2015	Bailee Hinxman	\$5.00
Nov 19, 2015	Deborah Goodson	\$5.00
Nov 19, 2015	Mary D. Wicks	\$5.00
Nov 19, 2015	Julie Williams	\$5.00
Nov 19, 2015	Eileen Tice	\$5.00
Nov 19, 2015	Joyce M. Hill	\$5.00
Nov 19, 2015	Eleanor K. Locklear	\$5.00
Nov 19, 2015	Mary E. Gossett	\$5.00
Nov 19, 2015	Lula Belle Legg	\$10.00
Nov 19, 2015	Rhonda K. Scarbro	\$10.00
Nov 19, 2015	Robert S. Wright	\$10.00
Nov 19, 2015	Inge H. Danford	\$20.00
Nov 19, 2015	Mary R. Bowyer	\$100.00
Nov 19, 2015	Nancy Canterbury	\$100.00
Nov 21, 2015	Quentin Lyons	\$10.00
Nov 21, 2015	Melissa Lyons	\$10.00
Nov 24, 2015	Michelle Marinacci	\$100.00
Nov 30, 2015	Anne B. Charnock	\$100.00
	Subtotal of contributions of \$250.00 or less	\$1,299.00

CONTRIBUTIONS MORE THAN \$250.00

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
	Subtotal of all contributions of more than \$250.00	\$0.00
	Subtotal of all contributions of \$250 or less	\$1,299.00
	Total Contributions:	\$1,299.00

FUND-RAISING EVENTS

All monetary contributions received at a fundraiser must be reported in the Event Summary below.

If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund. The only exception to this rule may apply to political party executive committees. (WV Code 3-8-5a).

JA001651

WHEELING 1 EVENT SUMMARY

Date of Event:	Oct 28, 2015	Total Monetary Contributions:	\$790.00
Type of Event:	Meet and Greet	Total Expenditures:	- \$253.09
Name of Place Held:	Undo's	NET RECEIPTS:	= \$536.91
Address of Place Held:	2153 National Rd Wheeling, WV, 26003,	Total In-Kind Contributions Related to the Fundraiser	\$0.00

\$250 OR LESS

MORE THAN \$250

DATE	FULL NAME	AMOUNT	DATE		AMOUNT
	Subtotal of event contributions of less than \$250.00	\$0.00		Event contributions of \$250 or more:	\$0.00
				Event contributions of less than \$250:	\$0.00
				Total Contributions:	\$790.00

OTHER INCOME: INTEREST, REFUNDS,
MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount
		Total Other Income:	\$0.00

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Value
		Total In-Kind Contributions:	\$0.00

LOANS

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

"Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may not receive any money or any other thing of value toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed."

The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable. Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case. Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. **These loans must be executed in writing. Caution: Candidates may not carry outstanding loans from one campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.**

JA001652

HOW TO REPORT LOANS

- Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below.
 - loans(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. **Any loan that was repaid in previous reporting periods does not need to be listed.**
 - new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)
- Attach a copy of the loan agreement for each loan received during the reporting period.

LOANS (CONTINUED)

Bank Loans: List name & address or financial institution Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan	Column A Balance of previous loan at end of period	Column B Amount of new loan received during period	Column C Repayments during period	Column D Balance outstanding at end of period
	Amount	Date Amount	Date Amount	Amount
		Loans Received	Repayment of Loans	Outstanding Loans
		0	0	0

ITEMIZED EXPENDITURES

Date	Name of Person or Vendor And Address	Purpose	Amount
Nov 19, 2015	Berkeley Marketing Group	Communications	\$399.20
Nov 19, 2015	Undo's 2153 National Rd Wheeling, WV, 26003,	Food	\$253.09
		Total Expenditures:	\$652.29

RECEIPT OF A TRANSFER OF EXCESS FUNDS

Date	Candidate Committee Name and Year	Amount
	Total Receipts of Transfer of Excess Funds:	\$0.00

DISBURSEMENT OF EXCESS FUNDS

Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
		Total Disbursement of Excess Funds:	\$0.00

UNPAID BILLS

Date	Group or Firm Affiliation	Purpose	Amount
Nov 11, 2015	Advocacy Center LLC 484 Williamsport Pike #120 Martinsburg, WV, 25404,	Communications	\$740.87
		Total Unpaid Bills:	\$740.87

JA001653

State of West Virginia Campaign Financial Statement (Long Form) in Relation to the 2016 Election Year

Candidate or Committee Name Brent D. Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non Partisan		Treasurer's Mailing Address (Street, Route, or P.O. Box) 8 Barrington Drive	
Office Sought (for Candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code Wheeling, WV 26003	Daytime Phone # 304-242-0414
Election Cycle Reporting Period:		Check if Applicable:	
Qualifying Report for Dec 1, 2015 to Dec 31, 2015		<input type="checkbox"/> Amended Report You must also check box of appropriate reporting period	
Non-Election Cycle Reporting Period:		<input type="checkbox"/> Final Report Zero balance required. PAC must also file Form F-6 Dissolution	
<input type="checkbox"/> Annual Report 2016 Calendar Year Due last Saturday in March or within 6 days thereafter			

REPORT TOTALS

Fill in totals at the completion of the report.

RECEIPTS OF FUNDS:	Totals for this Period	CASH BALANCE SUMMARY	
Contributions	\$2,097.00	Beginning Balance (ending balance from previous report)	\$2,002.48
Monetary Contributions from all Fund-Raising Events	+ \$1,948.00	Total Monetary Contributions	+ \$4,045.00
Receipt of a Transfer of Excess Funds	+ \$0.00	Total Other Income	+ \$0.00
Total Monetary Contributions	= \$4,045.00	Subtotal: a.	= \$6,047.48
In-Kind Contributions	+ \$0.00		
Total Contributions	= \$4,045.00		
Other Income	\$0.00	Total Expenditures Paid	\$751.50
Loans Received	+ \$0.00	Total Disbursements of Excess Funds	+ \$0.00
Total Other Income	= \$0.00	Repayment of Loans	+ \$0.00
		Subtotal: b.	= \$751.50

JA001655

OUTSTANDING LOANS & DEBTS:		Ending Balance:	
Unpaid Bills	\$0.00	(Subtotal a. - Subtotal b.)	\$5,295.98
Outstanding Loans	+ \$0.00	<i>*Note: Report cannot be submitted with a negative balance.</i>	
Total Debts:	= \$0.00		
TOTAL CONTRIBUTIONS ELECTION YEAR-TO-DATE (Add total contributions from all reports)		TOTAL EXPENDITURES ELECTION YEAR-TO-DATE (Add total expenditures from all reports)	
\$6,704.00		\$1,408.02	

CONTRIBUTIONS \$250.00 OR LESS

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
Dec 1, 2015	Robin Capehart	\$100.00
Dec 2, 2015	Mary Harrington	\$25.00
Dec 4, 2015	Kristen Stolipher	\$50.00
Dec 4, 2015	Melissa Knott	\$60.00
Dec 4, 2015	Rosalind Chapman	\$100.00
Dec 6, 2015	Chris Petersen	\$1.00
Dec 8, 2015	Sherri Pennington	\$5.00
Dec 9, 2015	Josephine Vesey Ruland	\$25.00
Dec 9, 2015	Eric Bell	\$100.00
Dec 10, 2015	William Salisbury	\$1.00
Dec 10, 2015	Thomas Miller	\$1.00
Dec 10, 2015	Cheryl Miller	\$1.00
Dec 10, 2015	Kathy Brosius	\$1.00
Dec 10, 2015	Stephanie Dotson	\$2.00
Dec 10, 2015	Linda Farren	\$2.00
Dec 10, 2015	Marsha Snyder	\$2.00
Dec 10, 2015	Gary Esker	\$2.00
Dec 10, 2015	John A. Farley	\$3.00
Dec 10, 2015	Angela M. Angel	\$5.00
Dec 10, 2015	Rhonda Adkins	\$5.00
Dec 10, 2015	Michael A. Angel	\$5.00
Dec 10, 2015	Lee Jones	\$5.00
Dec 10, 2015	Cathy Medley	\$5.00
Dec 10, 2015	Sabrina D. Chewning	\$10.00
Dec 10, 2015	Makisha Chewning	\$10.00
Dec 10, 2015	Judy Reed	\$15.00
Dec 10, 2015	Joe E. Cooke	\$20.00
Dec 10, 2015	Donal P. Shafer	\$100.00
Dec 10, 2015	Arthur E. Dingess	\$100.00
Dec 10, 2015	Delores Jean Davis	\$100.00
Dec 10, 2015	Billy Wesley Dingess	\$100.00
Dec 10, 2015	Carol J. Shafer	\$100.00
Dec 16, 2015	Delby B. Pool	\$100.00
Dec 16, 2015	Gregory Gellner	\$100.00
Dec 17, 2015	Donald Forsht	\$1.00
Dec 17, 2015	Bob Adams	\$5.00

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Dec 18, 2015	Bob McGlone	\$5.00
Dec 18, 2015	Rachel McGlone	\$5.00
Dec 18, 2015	Jeff Parker	\$5.00
Dec 18, 2015	Heather Parker	\$5.00
Dec 18, 2015	Susan K. McGlone	\$5.00
Dec 18, 2015	Leslie A. Spears	\$10.00
Dec 18, 2015	Erin L. Shaver	\$20.00
Dec 18, 2015	Paige Cruz	\$25.00
Dec 18, 2015	Martin Farrell	\$50.00
Dec 18, 2015	Bernard S. Vallejos	\$50.00
Dec 18, 2015	Michael J. Farrell	\$50.00
Dec 18, 2015	Erik Legg	\$50.00
Dec 18, 2015	Melissa D. Wellman	\$50.00
Dec 18, 2015	Steven K. Wellman	\$50.00
Dec 18, 2015	Cybthia Legg	\$50.00
Dec 18, 2015	Andrea Vallejos	\$50.00
Dec 18, 2015	Thomas E. Scarr	\$50.00
Dec 18, 2015	Jim Cagle	\$100.00
Dec 18, 2015	Todd M. Williams	\$100.00
Dec 22, 2015	Kenneth Reed	\$100.00
Subtotal of contributions of \$250.00 or less		\$2,097.00

CONTRIBUTIONS MORE THAN \$250.00

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
	Subtotal of all contributions of more than \$250.00	\$0.00
	Subtotal of all contributions of \$250 or less	\$2,097.00
	Total Contributions:	\$2,097.00

FUND-RAISING EVENTS

All monetary contributions received at a fundraiser must be reported in the Event Summary below.

If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund. The only exception to this rule may apply to political party executive committees. (WV Code 3-8-5a).

CHARLESTON 1 EVENT SUMMARY					
Date of Event:	Dec 14, 2015	Total Monetary Contributions:	\$530.00		
Type of Event:	Meet and Greet	Total Expenditures:	- \$0.00		
Name of Place Held:	Little India Restaurant	NET RECEIPTS:	= \$530.00		
Address of Place Held:	1604 Washington St E Charleston, WV, 25311,	Total In-Kind Contributions Related to the Fundraiser	\$0.00		
\$250 OR LESS			MORE THAN \$250		
DATE	FULL NAME	AMOUNT	DATE		AMOUNT
Dec 14, 2015	Shane Snyder	\$5.00		Event contributions of \$250 or more:	\$0.00

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Dec 14, 2015	Kelly Sowerds	\$5.00	Event contributions of less than \$250:	\$530.00
Dec 14, 2015	Sarah Anderson	\$20.00	Total Contributions:	\$530.00
Dec 14, 2015	David B. McMahon	\$50.00		
Dec 14, 2015	Lendsay Gardner	\$50.00		
Dec 14, 2015	Gary R. Bucci	\$100.00		
Dec 14, 2015	Mark Alan Atkinson	\$100.00		
Dec 14, 2015	Harry Deitzler	\$100.00		
Dec 15, 2015	Timothy C. Bailey	\$100.00		
	Subtotal of event contributions of less than \$250.00	\$530.00		

BRIDGEPORT 1 EVENT SUMMARY

Date of Event:	Dec 15, 2015	Total Monetary Contributions:	\$600.00
Type of Event:	Meet and Greet	Total Expenditures:	- \$0.00
Name of Place Held:	Bridgeport Conference Center	NET RECEIPTS:	= \$600.00
Address of Place Held:	300 Conference Center Way Bridgeport, WV, 26330,	Total In-Kind Contributions Related to the Fundraiser	\$0.00

\$250 OR LESS

MORE THAN \$250

DATE	FULL NAME	AMOUNT	DATE	AMOUNT
Dec 15, 2015	Cynthia J.T. Loomis	\$50.00	Event contributions of \$250 or more:	\$0.00
Dec 15, 2015	Sally Romano	\$50.00	Event contributions of less than \$250:	\$600.00
Dec 15, 2015	James R. Christie	\$100.00	Total Contributions:	\$600.00
Dec 15, 2015	David J. Romano	\$100.00		
Dec 15, 2015	Rachel E. Romano	\$100.00		
Dec 15, 2015	Roger W. McIntyre	\$100.00		
Dec 15, 2015	Amy M. Smith	\$100.00		
	Subtotal of event contributions of less than \$250.00	\$600.00		

SHEPHERDSTOWN 1 EVENT SUMMARY

Date of Event:	Dec 17, 2015	Total Monetary Contributions:	\$818.00
Type of Event:	Meet and Greet	Total Expenditures:	- \$0.00
Name of Place Held:	The Station at Shepherdstown	NET RECEIPTS:	= \$818.00
Address of Place Held:	Shepherdstown, WV,	Total In-Kind Contributions Related to the Fundraiser	\$0.00

\$250 OR LESS

MORE THAN \$250

DATE	FULL NAME	AMOUNT	DATE	AMOUNT
Dec 17, 2015	Patricia Rucker	\$1.00	Event contributions of \$250 or more:	\$0.00
Dec 17, 2015	Kelly A. Beck	\$1.00	Event contributions of less than \$250:	\$818.00
Dec 17, 2015	Ambrose Rucker	\$1.00	Total Contributions:	\$818.00
Dec 17, 2015	Desiree Rose	\$5.00		
Dec 17, 2015	C. L. Riviello	\$10.00		
Dec 17, 2015	Matthew Harvey	\$100.00		
Dec 17, 2015	Floyd M. Sayre	\$100.00		
Dec 17, 2015	Larry Faircloth	\$100.00		

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Dec 17, 2015	Laura V. Faircloth	\$100.00
Dec 17, 2015	Gary W. Kelley	\$100.00
Dec 17, 2015	Michael Riviello	\$100.00
Dec 17, 2015	Barry P. Beck	\$100.00
Dec 17, 2015	Paul Taylor	\$100.00
	Subtotal of event contributions of less than \$250.00	\$818.00

OTHER INCOME: INTEREST, REFUNDS, MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount
		Total Other Income:	\$0.00

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Value
		Total In-Kind Contributions:	\$0.00

LOANS

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

"Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may not receive any money or any other thing of value toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed."

The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable. Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case. Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. **These loans must be executed in writing. Caution: Candidates may not carry outstanding loans from one campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.**

HOW TO REPORT LOANS

- Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below.
 - loans(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. **Any loan that was repaid in previous reporting periods does not need to be listed.**
 - new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)
- Attach a copy of the loan agreement for each loan received during the reporting period.**

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LOANS (CONTINUED)

Bank Loans: List name & address or financial institution Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan	Column A Balance of previous loan at end of period	Column B Amount of new loan received during period		Column C Repayments during period		Column D Balance outstanding at end of period
	Amount	Date	Amount	Date	Amount	Amount
		Loans Received		Repayment of Loans		Outstanding Loans
		0		0		0

ITEMIZED EXPENDITURES

Date	Name of Person or Vendor And Address	Purpose	Amount
Dec 1, 2015	PayPal	Credit Card Fee	\$3.20
Dec 2, 2015	PayPal	Credit Card Fee	\$1.03
Dec 9, 2015	PayPal	Credit Card Fee	\$3.20
Dec 22, 2015	PayPal	Credit Card Fee	\$3.20
Dec 28, 2015	Advocacy Center LLC 484 Williamsport Pike #120 Martinsburg, WV, 25404,	Communications	\$740.87
		Total Expenditures:	\$751.50

RECEIPT OF A TRANSFER OF EXCESS FUNDS

Date	Candidate Committee Name and Year	Amount
	Total Receipts of Transfer of Excess Funds:	\$0.00

DISBURSEMENT OF EXCESS FUNDS

Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
		Total Disbursement of Excess Funds:	\$0.00

UNPAID BILLS

Date	Group or Firm Affiliation	Purpose	Amount
		Total Unpaid Bills:	\$0.00

Submitted: Jan 1, 2016 at 5:27:48 PM

JA001660

State of West Virginia Campaign Financial Statement (Long Form) in Relation to the 2016 Election Year

Candidate or Committee Name Brent D. Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non Partisan		Treasurer's Mailing Address (Street, Route, or P.O. Box) 8 Barrington Drive	
Office Sought (for Candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code Wheeling, WV 26003	Daytime Phone # 304-242-0414

Election Cycle Reporting Period:	Check if Applicable:
Qualifying Report for Dec 1, 2015 to Dec 31, 2015	<input checked="checked" type="checkbox"/> Amended Report You must also check box of appropriate reporting period
Non-Election Cycle Reporting Period:	<input type="checkbox"/> Final Report Zero balance required. PAC must also file Form F-6 Dissolution
<input type="checkbox"/> Annual Report 2016 Calendar Year Due last Saturday in March or within 6 days thereafter	

REPORT TOTALS

Fill in totals at the completion of the report.

RECEIPTS OF FUNDS:	Totals for this Period	CASH BALANCE SUMMARY
Contributions	\$2,107.00	Beginning Balance (ending balance from previous report) \$2,002.48
Monetary Contributions from all Fund-Raising Events	+ \$1,948.00	Total Monetary Contributions + \$4,055.00
Receipt of a Transfer of Excess Funds	+ \$0.00	Total Other Income + \$0.00
Total Monetary Contributions:	= \$4,055.00	Subtotal: a. = \$6,057.48
In-Kind Contributions	+ \$0.00	
Total Contributions:	= \$4,055.00	
Other Income	\$0.00	Total Expenditures Paid \$751.50
Loans Received	+ \$0.00	Total Disbursements of Excess Funds + \$0.00
Total Other Income:	= \$0.00	Repayment of Loans + \$0.00
		Subtotal: b. = \$751.50

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OUTSTANDING LOANS & DEBTS:	
Unpaid Bills	\$0.00
Outstanding Loans	+ \$0.00
Total Debts:	= \$0.00
TOTAL CONTRIBUTIONS ELECTION YEAR-TO-DATE (Add total contributions from all reports)	
\$6,714.00	

Ending Balance: (Subtotal a. - Subtotal b.)	= \$5,305.98
<i>*Note: Report cannot be submitted with a negative balance.</i>	
TOTAL EXPENDITURES ELECTION YEAR-TO-DATE (Add total expenditures from all reports)	
\$1,408.02	

CONTRIBUTIONS \$250.00 OR LESS

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
Dec 1, 2015	Robin Capehart	\$100.00
Dec 2, 2015	Mary Harrington	\$25.00
Dec 4, 2015	Kristen Stolipher	\$50.00
Dec 4, 2015	Melissa Knott	\$60.00
Dec 4, 2015	Rosalind Chapman	\$100.00
Dec 6, 2015	Chris Petersen	\$1.00
Dec 8, 2015	Sherri Pennington	\$5.00
Dec 9, 2015	Josephine Vesey Ruland	\$25.00
Dec 9, 2015	Eric Bell	\$100.00
Dec 10, 2015	William Salisbury	\$1.00
Dec 10, 2015	Thomas Miller	\$1.00
Dec 10, 2015	Kathy Brosius	\$1.00
Dec 10, 2015	Cheryl Miller	\$1.00
Dec 10, 2015	Marsha Snyder	\$2.00
Dec 10, 2015	Stephanie Dotson	\$2.00
Dec 10, 2015	Gary Esker	\$2.00
Dec 10, 2015	Linda Farren	\$2.00
Dec 10, 2015	John A. Farley	\$3.00
Dec 10, 2015	Angela M. Angel	\$5.00
Dec 10, 2015	Michael A. Angel	\$5.00
Dec 10, 2015	Rhonda Adkins	\$5.00
Dec 10, 2015	Cathy Medley	\$5.00
Dec 10, 2015	Lee Jones	\$5.00
Dec 10, 2015	Sabrina D. Chewning	\$10.00
Dec 10, 2015	Rick D. Chewning	\$10.00
Dec 10, 2015	Makisha Chewning	\$10.00
Dec 10, 2015	Judy Reed	\$15.00
Dec 10, 2015	Joe E. Cooke	\$20.00
Dec 10, 2015	Delores Jean Davis	\$100.00
Dec 10, 2015	Arthur E. Dingess	\$100.00
Dec 10, 2015	Donal P. Shafer	\$100.00
Dec 10, 2015	Billy Wesley Dingess	\$100.00
Dec 10, 2015	Carol J. Shafer	\$100.00
Dec 16, 2015	Delby B. Pool	\$100.00
Dec 16, 2015	Gregory Gellner	\$100.00
Dec 17, 2015	Donald Forsht	\$1.00

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Dec 17, 2015	Bob Adams	\$5.00
Dec 18, 2015	Bob McGlone	\$5.00
Dec 18, 2015	Susan K. McGlone	\$5.00
Dec 18, 2015	Heather Parker	\$5.00
Dec 18, 2015	Jeff Parker	\$5.00
Dec 18, 2015	Rachel McGlone	\$5.00
Dec 18, 2015	Leslie A. Spears	\$10.00
Dec 18, 2015	Erin L. Shaver	\$20.00
Dec 18, 2015	Paige Cruz	\$25.00
Dec 18, 2015	Bernard S. Vallejos	\$50.00
Dec 18, 2015	Thomas E. Scarr	\$50.00
Dec 18, 2015	Andrea Vallejos	\$50.00
Dec 18, 2015	Cybthia Legg	\$50.00
Dec 18, 2015	Erik Legg	\$50.00
Dec 18, 2015	Melissa D. Wellman	\$50.00
Dec 18, 2015	Martin Farrell	\$50.00
Dec 18, 2015	Michael J. Farrell	\$50.00
Dec 18, 2015	Steven K. Wellman	\$50.00
Dec 18, 2015	Jim Cagle	\$100.00
Dec 18, 2015	Todd M. Williams	\$100.00
Dec 22, 2015	Kenneth Reed	\$100.00
Subtotal of contributions of \$250.00 or less		\$2,107.00

CONTRIBUTIONS MORE THAN \$250.00

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
	Subtotal of all contributions of more than \$250.00	\$0.00
	Subtotal of all contributions of \$250 or less	\$2,107.00
	Total Contributions:	\$2,107.00

FUND-RAISING EVENTS

All monetary contributions received at a fundraiser must be reported in the Event Summary below.

If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund. The only exception to this rule may apply to political party executive committees. (WV Code 3-8-5a).

CHARLESTON 1 EVENT SUMMARY					
Date of Event:	Dec 14, 2015	Total Monetary Contributions:	\$530.00		
Type of Event:	Meet and Greet	Total Expenditures:	- \$0.00		
Name of Place Held:	Little India Restaurant	NET RECEIPTS:	= \$530.00		
Address of Place Held:	1604 Washington St E Charleston, WV, 25311,	Total In-Kind Contributions Related to the Fundraiser	\$0.00		
\$250 OR LESS			MORE THAN \$250		
DATE	FULL NAME	AMOUNT	DATE		AMOUNT

JA001663

Dec 14, 2015	Kelly Sowerds	\$5.00	Event contributions of \$250 or more: \$0.00 Event contributions of less than \$250: \$530.00 Total Contributions: \$530.00
Dec 14, 2015	Shane Snyder	\$5.00	
Dec 14, 2015	Sarah Anderson	\$20.00	
Dec 14, 2015	Lendsay Gardner	\$50.00	
Dec 14, 2015	David B. McMahon	\$50.00	
Dec 14, 2015	Harry Deitzler	\$100.00	
Dec 14, 2015	Gary R. Bucci	\$100.00	
Dec 14, 2015	Mark Alan Atkinson	\$100.00	
Dec 15, 2015	Timothy C. Bailey	\$100.00	
	Subtotal of event contributions of less than \$250.00	\$530.00	

BRIDGEPORT 1 EVENT SUMMARY

Date of Event:	Dec 15, 2015	Total Monetary Contributions:	\$600.00
Type of Event:	Meet and Greet	Total Expenditures:	- \$0.00
Name of Place Held:	Bridgeport Conference Center	NET RECEIPTS:	= \$600.00
Address of Place Held:	300 Conference Center Way Bridgeport, WV, 26330,	Total In-Kind Contributions Related to the Fundraiser	\$0.00

\$250 OR LESS

DATE	FULL NAME	AMOUNT
Dec 15, 2015	Cynthia J.T. Loomis	\$50.00
Dec 15, 2015	Sally Romano	\$50.00
Dec 15, 2015	David J. Romano	\$100.00
Dec 15, 2015	Rachel E. Romano	\$100.00
Dec 15, 2015	Roger W. McIntyre	\$100.00
Dec 15, 2015	Amy M. Smith	\$100.00
Dec 15, 2015	James R. Christie	\$100.00
	Subtotal of event contributions of less than \$250.00	\$600.00

MORE THAN \$250

DATE	AMOUNT
	Event contributions of \$250 or more: \$0.00
	Event contributions of less than \$250: \$600.00
	Total Contributions: \$600.00

SHEPHERDSTOWN 1 EVENT SUMMARY

Date of Event:	Dec 17, 2015	Total Monetary Contributions:	\$818.00
Type of Event:	Meet and Greet	Total Expenditures:	- \$0.00
Name of Place Held:	The Station at Shepherdstown	NET RECEIPTS:	= \$818.00
Address of Place Held:	Shepherdstown, WV,	Total In-Kind Contributions Related to the Fundraiser	\$0.00

\$250 OR LESS

DATE	FULL NAME	AMOUNT
Dec 17, 2015	Patricia Rucker	\$1.00
Dec 17, 2015	Ambrose Rucker	\$1.00
Dec 17, 2015	Kelly A. Beck	\$1.00
Dec 17, 2015	Desiree Rose	\$5.00
Dec 17, 2015	C. L. Riviello	\$10.00
Dec 17, 2015	Floyd M. Sayre	\$100.00
Dec 17, 2015	Larry Faircloth	\$100.00

MORE THAN \$250

DATE	AMOUNT
	Event contributions of \$250 or more: \$0.00
	Event contributions of less than \$250: \$818.00
	Total Contributions: \$818.00

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Dec 17, 2015	Gary W. Kelley	\$100.00
Dec 17, 2015	Paul Taylor	\$100.00
Dec 17, 2015	Barry P. Beck	\$100.00
Dec 17, 2015	Michael Riviello	\$100.00
Dec 17, 2015	Laura V. Faircloth	\$100.00
Dec 17, 2015	Matthew Harvey	\$100.00
	Subtotal of event contributions of less than \$250.00	\$818.00

OTHER INCOME: INTEREST, REFUNDS, MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount
		Total Other Income:	\$0.00

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Value
		Total In-Kind Contributions:	\$0.00

LOANS

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

"Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may not receive any money or any other thing of value toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed."

The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable. Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case. Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. **These loans must be executed in writing. Caution: Candidates may not carry outstanding loans from one campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.**

HOW TO REPORT LOANS

1. Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below.
 - a. loans(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. **Any loan that was repaid in previous reporting periods does not need to be listed.**
 - b. new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)

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2. Attach a copy of the loan agreement for each loan received during the reporting period.

LOANS (CONTINUED)

Bank Loans: List name & address or financial institution Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan	Column A Balance of previous loan at end of period	Column B Amount of new loan received during period		Column C Repayments during period		Column D Balance outstanding at end of period
	Amount	Date	Amount	Date	Amount	Amount
		Loans Received		Repayment of Loans		Outstanding Loans
		0		0		0

ITEMIZED EXPENDITURES

Date	Name of Person or Vendor And Address	Purpose	Amount
Dec 1, 2015	PayPal	Credit Card Fee	\$3.20
Dec 2, 2015	PayPal	Credit Card Fee	\$1.03
Dec 9, 2015	PayPal	Credit Card Fee	\$3.20
Dec 22, 2015	PayPal	Credit Card Fee	\$3.20
Dec 28, 2015	Advocacy Center LLC 484 Williamsport Pike #120 Martinsburg, WV, 25404,	Communications	\$740.87
		Total Expenditures:	\$751.50

RECEIPT OF A TRANSFER OF EXCESS FUNDS

Date	Candidate Committee Name and Year	Amount
	Total Receipts of Transfer of Excess Funds:	\$0.00

DISBURSEMENT OF EXCESS FUNDS

Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
		Total Disbursement of Excess Funds:	\$0.00

UNPAID BILLS

Date	Group or Firm Affiliation	Purpose	Amount
		Total Unpaid Bills:	\$0.00

Submitted: Jan 31, 2016 at 5:06:57 PM

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State of West Virginia Campaign Financial Statement (Long Form) in Relation to the 2016 Election Year

Candidate or Committee Name Brent D. Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non Partisan		Treasurer's Mailing Address (Street, Route, or P.O. Box) 8 Barrington Drive	
Office Sought (for Candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code Wheeling, WV 26003	Daytime Phone # 304-242-0414, ⑤
Election Cycle Reporting Period:		Check if Applicable:	
Qualifying Report for Jan 1, 2016 to Jan 31, 2016		<input type="checkbox"/> Amended Report You must also check box of appropriate reporting period	
Non-Election Cycle Reporting Period:		<input type="checkbox"/> Final Report Zero balance required. PAC must also file Form F-6 Dissolution	
<input type="checkbox"/> Annual Report 2016 Calendar Year Due last Saturday in March or within 6 days thereafter			

REPORT TOTALS

Fill in totals at the completion of the report.

RECEIPTS OF FUNDS:	Totals for this Period	CASH BALANCE SUMMARY
Contributions	\$33,212.00	Beginning Balance (ending balance from previous report) \$5,305.98
Monetary Contributions from all Fund-Raising Events	+ \$1,585.00	Total Monetary Contributions + \$34,797.00
Receipt of a Transfer of Excess Funds	+ \$0.00	Total Other Income + \$0.00
Total Monetary Contributions	= \$34,797.00	Subtotal: a. = \$40,102.98
In-Kind Contributions	+ \$0.00	
Total Contributions:	= \$34,797.00	
Other Income	\$0.00	Total Expenditures Paid \$4,341.41
Loans Received	+ \$0.00	Total Disbursements of Excess Funds + \$0.00
Total Other Income:	= \$0.00	Repayment of Loans + \$0.00
		Subtotal: b. = \$4,341.41

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OUTSTANDING LOANS & DEBTS:			
Unpaid Bills	\$0.00	Ending Balance:	=
Outstanding Loans	+ \$0.00	(Subtotal a. - Subtotal b.)	\$35,761.57
Total Debts:	= \$0.00	<i>*Note: Report cannot be submitted with a negative balance.</i>	
TOTAL CONTRIBUTIONS ELECTION YEAR-TO-DATE (Add total contributions from all reports)		TOTAL EXPENDITURES ELECTION YEAR-TO-DATE (Add total expenditures from all reports)	
\$41,511.00		\$5,749.43	

CONTRIBUTIONS \$250.00 OR LESS

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
Jan 2, 2016	Lee Hall	\$100.00
Jan 6, 2016	Robert W. Van Dervort	\$5.00
Jan 10, 2016	Rosalind Welsh	\$20.00
Jan 11, 2016	Hugh La Penotiere	\$1.00
Jan 11, 2016	Raymond Joseph Funkhouser III	\$1.00
Jan 11, 2016	Edna H. Casdorph	\$1.00
Jan 11, 2016	Tom Newcomer	\$1.00
Jan 11, 2016	Terry E. Courtwright	\$1.00
Jan 11, 2016	Don Sorenson	\$2.00
Jan 11, 2016	Daphne Feliu	\$5.00
Jan 11, 2016	Barbara L. Christie	\$5.00
Jan 11, 2016	Michelle Young	\$10.00
Jan 11, 2016	Andrea Bequette	\$20.00
Jan 11, 2016	Thaddeus A. Bequette	\$20.00
Jan 11, 2016	Mark Games	\$100.00
Jan 11, 2016	Ed Nolan	\$100.00
Jan 11, 2016	Lewis B. Mullins	\$100.00
Jan 12, 2016	Mark W. Kelley	\$100.00
Jan 12, 2016	W. Kent Carper	\$100.00
Jan 13, 2016	James J. Matzureff	\$100.00
Jan 14, 2016	LuAnn Searls	\$20.00
Jan 14, 2016	Tanya R. Thomas	\$20.00
Jan 14, 2016	Mary Swartz	\$25.00
Jan 14, 2016	Mark Swartz	\$100.00
Jan 14, 2016	Donald B. Carter Jr.	\$100.00
Jan 14, 2016	Lee Javins II	\$100.00
Jan 14, 2016	Anna Mae Kuhayda	\$100.00
Jan 14, 2016	Hugo Andreini	\$100.00
Jan 14, 2016	Michael Prascik	\$100.00
Jan 14, 2016	Mary Ann Kinder	\$100.00
Jan 14, 2016	David Lunsford	\$100.00
Jan 14, 2016	Tracey Kinder	\$100.00
Jan 15, 2016	Brigette Tester	\$1.00
Jan 15, 2016	Ray Bruning	\$1.00
Jan 16, 2016	Darla A. Mushet	\$5.00
Jan 19, 2016	Richard A. Pill	\$90.00

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Jan 20, 2016	Terri Bower	\$20.00
Jan 20, 2016	Kimberly R. Javins	\$20.00
Jan 20, 2016	Jeanne S. Dedo	\$50.00
Jan 20, 2016	David D. Pill	\$90.00
Jan 20, 2016	Scott S. Segal	\$100.00
Jan 20, 2016	Samuel A. Hrko	\$100.00
Jan 20, 2016	James Smallridge	\$100.00
Jan 20, 2016	James G. Bordas Jr.	\$100.00
Jan 20, 2016	Kathy Blass	\$100.00
Jan 20, 2016	Bobby Lipscomb	\$100.00
Jan 20, 2016	Geoffrey C. Brown	\$100.00
Jan 20, 2016	Shannon J. Hrko	\$100.00
Jan 20, 2016	Hilary Regan	\$100.00
Jan 21, 2016	Jodi Cunningham	\$15.00
Jan 21, 2016	James B. Stoneking	\$20.00
Jan 21, 2016	Jeremy M. McGraw	\$50.00
Jan 25, 2016	Rhonda Schillace	\$25.00
Jan 25, 2016	Gregory Schillace	\$25.00
Jan 25, 2016	Kevin Robinson	\$100.00
Jan 26, 2016	Nelson Robinson	\$100.00
Jan 26, 2016	Joyce Robinson	\$100.00
Jan 26, 2016	Tony Majestro	\$100.00
Jan 26, 2016	Andrew Robinson	\$100.00
Jan 26, 2016	James Peterson	\$100.00
Jan 26, 2016	Prudence Majestro	\$100.00
Jan 26, 2016	Anthony Majestro	\$100.00
Jan 27, 2016	Kristi Cline-White	\$100.00
Jan 27, 2016	Kristi Cline-White	\$100.00
Jan 27, 2016	Honey Powe	\$100.00
Jan 27, 2016	Stephen Adkins	\$100.00
Jan 27, 2016	Leonard Frenkil	\$100.00
Jan 27, 2016	William Schwartz	\$100.00
Jan 27, 2016	Richard Otten	\$100.00
Jan 27, 2016	Patrick Felton	\$100.00
Jan 27, 2016	Michael Walker	\$100.00
Jan 27, 2016	Jane Peak	\$100.00
Jan 27, 2016	Sarah Castle	\$100.00
Jan 27, 2016	James Akers	\$100.00
Jan 27, 2016	Connie Stone	\$100.00
Jan 27, 2016	Honey Powe	\$100.00
Jan 27, 2016	Talbot Powell	\$100.00
Jan 27, 2016	Marianne Forbes	\$100.00
Jan 27, 2016	Sandra Adkins	\$100.00
Jan 27, 2016	Jane Peak	\$100.00
Jan 27, 2016	James Shaffer	\$100.00
Jan 27, 2016	Sarah Castle	\$100.00
Jan 27, 2016	Talbot Powell	\$100.00
Jan 27, 2016	Richard Otten	\$100.00
Jan 28, 2016	Hanna Petersen	\$5.00
Jan 28, 2016	Robert E. Barrat	\$20.00
Jan 28, 2016	Ashley A. Pill	\$40.00

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WV Campaign Finance

Jan 28, 2016	Sandra Harrah	\$50.00
Jan 28, 2016	Aaron Harrah	\$50.00
Jan 28, 2016	Aaron Harrah	\$50.00
Jan 28, 2016	Sandra Harrah	\$50.00
Jan 28, 2016	Amanda E. Steiner	\$50.00
Jan 28, 2016	Thelma J. Pill	\$60.00
Jan 28, 2016	Allan Karlin	\$100.00
Jan 28, 2016	Sandra H. Kinney	\$100.00
Jan 28, 2016	Benjamin L. Bailey	\$100.00
Jan 28, 2016	Jason P. Shafer	\$100.00
Jan 28, 2016	Rodney A. Smith	\$100.00
Jan 28, 2016	Allan Karlin	\$100.00
Jan 29, 2016	Alan Lestini	\$1.00
Jan 29, 2016	Jay O'Diell	\$5.00
Jan 29, 2016	Kay Knollinger	\$5.00
Jan 29, 2016	Michael C. Sheridan	\$10.00
Jan 29, 2016	Kellen Leef	\$10.00
Jan 29, 2016	A Nease Markins	\$10.00
Jan 29, 2016	David Langford	\$25.00
Jan 29, 2016	Kimberly Dillard	\$25.00
Jan 29, 2016	David Langford	\$25.00
Jan 29, 2016	Debbie F. Payne	\$50.00
Jan 29, 2016	Keith Morgan	\$100.00
Jan 29, 2016	David Hammer	\$100.00
Jan 29, 2016	Paige Flanigan	\$100.00
Jan 29, 2016	Cheryl Simpson	\$100.00
Jan 29, 2016	Matthew Berthold	\$100.00
Jan 29, 2016	John Skinner	\$100.00
Jan 29, 2016	Andrew Skinner	\$100.00
Jan 29, 2016	David Pollard	\$100.00
Jan 29, 2016	Ralph Young	\$100.00
Jan 29, 2016	J Timothy Dipiero	\$100.00
Jan 29, 2016	Philip L Casingal	\$100.00
Jan 29, 2016	Douglas Spencer	\$100.00
Jan 29, 2016	Connie Westfall	\$100.00
Jan 29, 2016	Sheletta Thomas	\$100.00
Jan 29, 2016	Lynnett S. Simon	\$100.00
Jan 29, 2016	Lauren J. Booth	\$100.00
Jan 29, 2016	Kevin Burgess	\$100.00
Jan 29, 2016	Amanda Benjamin	\$100.00
Jan 29, 2016	Sydney Whittington	\$100.00
Jan 29, 2016	Thomas Boggs	\$100.00
Jan 29, 2016	Tom Peyton	\$100.00
Jan 29, 2016	Hobert Westfall	\$100.00
Jan 29, 2016	Jonathan Mani	\$100.00
Jan 29, 2016	Sean McGinley	\$100.00
Jan 29, 2016	Herbert Westfall	\$100.00
Jan 29, 2016	Anne Forbes Reed	\$100.00
Jan 29, 2016	Kevin Pearl	\$100.00
Jan 29, 2016	Mark Colantonio	\$100.00
Jan 29, 2016	Danielle Varrat	\$100.00

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Jan 29, 2016	Paul Davis	\$100.00
Jan 29, 2016	Andrew Byrd	\$100.00
Jan 29, 2016	C. Michael Bee	\$100.00
Jan 29, 2016	Jennifer Lacy	\$100.00
Jan 29, 2016	Brandley Layne	\$100.00
Jan 29, 2016	Erica Lord	\$100.00
Jan 29, 2016	Penny L Bice	\$100.00
Jan 29, 2016	Kathy Skinner	\$100.00
Jan 29, 2016	Dennis P. Brady	\$100.00
Jan 29, 2016	Jacob Robinson	\$100.00
Jan 29, 2016	Damon Ellis	\$100.00
Jan 29, 2016	Benjamin Sheridan	\$100.00
Jan 29, 2016	Lawrence Schultz	\$100.00
Jan 29, 2016	Charles Webb	\$100.00
Jan 29, 2016	Amy New	\$100.00
Jan 29, 2016	Lynn Pollard	\$100.00
Jan 29, 2016	Lindsay Jackfert Griffith	\$100.00
Jan 29, 2016	Lonnie Simmons	\$100.00
Jan 29, 2016	Elizabeth Duffield	\$100.00
Jan 29, 2016	Anthony Salvatore	\$100.00
Jan 29, 2016	Josh Chandler	\$100.00
Jan 29, 2016	Sarah McDaniel	\$100.00
Jan 29, 2016	Kathe Deitzler	\$100.00
Jan 29, 2016	Ronald Walters	\$100.00
Jan 29, 2016	Beth Clark	\$100.00
Jan 29, 2016	Joshua Barrett	\$100.00
Jan 29, 2016	David Johnston	\$100.00
Jan 29, 2016	Robert Bastress	\$100.00
Jan 29, 2016	Carl A. Frankovitch	\$100.00
Jan 29, 2016	Jonathan R. Marshall	\$100.00
Jan 29, 2016	Christopher Turak	\$100.00
Jan 29, 2016	Chris Walters	\$100.00
Jan 29, 2016	William C. Forbes	\$100.00
Jan 29, 2016	Tara Chandler	\$100.00
Jan 29, 2016	Derrick Lefler	\$100.00
Jan 29, 2016	Stephen Skinner	\$100.00
Jan 29, 2016	Boyd Warner	\$100.00
Jan 29, 2016	Eric Frankovitch	\$100.00
Jan 29, 2016	Steve New	\$100.00
Jan 29, 2016	Lori Gillispie	\$100.00
Jan 29, 2016	Mark Farrell	\$100.00
Jan 29, 2016	Larry Duffield	\$100.00
Jan 29, 2016	William Jesse Forbes	\$100.00
Jan 29, 2016	Shawn Gillispie	\$100.00
Jan 29, 2016	Mark Moreland	\$100.00
Jan 29, 2016	Steven R. Broadwater Jr.	\$100.00
Jan 29, 2016	Leona Boggs	\$100.00
Jan 29, 2016	Adriana Love Marshall	\$100.00
Jan 29, 2016	Ben Salango	\$100.00
Jan 29, 2016	Tony O'Diell	\$100.00
Jan 29, 2016	William Kiefer	\$100.00

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Jan 29, 2016	Charles Bailey	\$100.00
Jan 29, 2016	Karla Rae	\$100.00
Jan 29, 2016	Lee Kayser	\$100.00
Jan 29, 2016	Shelia Miller	\$100.00
Jan 29, 2016	Tera Salango	\$100.00
Jan 29, 2016	Tammy Bowles Raines	\$100.00
Jan 29, 2016	Jeanne Warner	\$100.00
Jan 29, 2016	Carl N. Frankovitch	\$100.00
Jan 29, 2016	Chad Lovejoy	\$100.00
Jan 29, 2016	D. Adrian Hoosier II	\$100.00
Jan 29, 2016	Cathy Young	\$100.00
Jan 29, 2016	Eric B. Snyder	\$100.00
Jan 29, 2016	Laura Davis	\$100.00
Jan 29, 2016	R. Edison Hill	\$100.00
Jan 29, 2016	Truman Griffith	\$100.00
Jan 29, 2016	Connie Westfall	\$100.00
Jan 29, 2016	Tony L. Clackler II	\$100.00
Jan 29, 2016	Robert Taylor	\$100.00
Jan 29, 2016	Ellen Clarke Forbes	\$100.00
Jan 29, 2016	Mitchell Klein	\$100.00
Jan 29, 2016	Mark Garren	\$100.00
Jan 29, 2016	Christopher Miller	\$100.00
Jan 29, 2016	Lesli R. Forbes	\$100.00
Jan 30, 2016	Charles Robert Peavler	\$1.00
Jan 30, 2016	Anna Maria Peavler	\$1.00
Jan 30, 2016	ruth sperow	\$1.00
Jan 30, 2016	bruce sperow	\$1.00
Jan 30, 2016	Sarah Corley	\$1.00
Jan 30, 2016	Lara Ann Peavler	\$1.00
Jan 30, 2016	JP Corley	\$1.00
Jan 30, 2016	Lauren Wilkes	\$5.00
Jan 30, 2016	Donald Shoemaker	\$5.00
Jan 30, 2016	Katie Rose	\$5.00
Jan 30, 2016	Christian Rose	\$5.00
Jan 30, 2016	Donna Smeltzer	\$5.00
Jan 30, 2016	Kenneth Trenary	\$10.00
Jan 30, 2016	Jayla Walker	\$10.00
Jan 30, 2016	Deborah Walker	\$25.00
Jan 30, 2016	Emmett Pepper	\$25.00
Jan 30, 2016	Mary Bowers	\$25.00
Jan 30, 2016	Lorraine Nickerson	\$25.00
Jan 30, 2016	Lacey Santorine	\$50.00
Jan 30, 2016	Trae Santorine	\$50.00
Jan 30, 2016	Laura Pollard	\$50.00
Jan 30, 2016	Steven Wolfe	\$50.00
Jan 30, 2016	Saun Capehart	\$50.00
Jan 30, 2016	Julie Archer	\$50.00
Jan 30, 2016	Lora Kaye Santorine	\$50.00
Jan 30, 2016	Matthew Martin	\$50.00
Jan 30, 2016	rick modesitt	\$50.00
Jan 30, 2016	Aaron Amore	\$100.00

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Jan 30, 2016	Timothy Manchin	\$100.00
Jan 30, 2016	Jodie Walker	\$100.00
Jan 30, 2016	DMichael Burke	\$100.00
Jan 30, 2016	Brent Benjamin	\$100.00
Jan 30, 2016	Adam McCoy	\$100.00
Jan 30, 2016	Mildred Karlin	\$100.00
Jan 30, 2016	Cynthia Barrett	\$100.00
Jan 30, 2016	Patricia Marshall	\$100.00
Jan 30, 2016	Carl J. Roncaglione	\$100.00
Jan 30, 2016	Gloria A. Saunders	\$100.00
Jan 30, 2016	John Goodall	\$100.00
Jan 30, 2016	Joshua McGrew	\$100.00
Jan 30, 2016	john saunders	\$100.00
Jan 30, 2016	Derek Adkins	\$100.00
Jan 30, 2016	Janet Keating	\$100.00
Jan 30, 2016	Ron Zavolta	\$100.00
Jan 30, 2016	Deborah DeMoss	\$100.00
Jan 30, 2016	Samuel Madia	\$100.00
Jan 30, 2016	Chris Janelle	\$100.00
Jan 30, 2016	Bernard Layne	\$100.00
Jan 30, 2016	Harri Joseph	\$100.00
Jan 30, 2016	Jeffrey Kessler	\$100.00
Jan 30, 2016	Antoinette M. Bee	\$100.00
Jan 30, 2016	Stacie Boggs	\$100.00
Jan 30, 2016	Kayleen Fitzsimmons	\$100.00
Jan 30, 2016	Ryan Stewart	\$100.00
Jan 30, 2016	Amanda Taylor	\$100.00
Jan 30, 2016	Paul Stroebel	\$100.00
Jan 30, 2016	Paul D. Ellis	\$100.00
Jan 30, 2016	Rhonda W. Depasquale	\$100.00
Jan 30, 2016	Kristin Wear	\$100.00
Jan 30, 2016	William Tiano	\$100.00
Jan 30, 2016	James K. Kendall	\$100.00
Jan 30, 2016	Brian Prim	\$100.00
Jan 30, 2016	John Skaggs	\$100.00
Jan 30, 2016	Chris Hood	\$100.00
Jan 30, 2016	Jordan Laird	\$100.00
Jan 30, 2016	J. Zachary Zatezalo	\$100.00
Jan 30, 2016	Lisa Lambert	\$100.00
Jan 30, 2016	Ronnie Wentz	\$100.00
Jan 30, 2016	Jennifer Goodall	\$100.00
Jan 30, 2016	Leslie Ann James	\$100.00
Jan 30, 2016	Robert Harless	\$100.00
Jan 30, 2016	April Workman	\$100.00
Jan 30, 2016	Patrick Maroney	\$100.00
Jan 30, 2016	Kelly Wiseman	\$100.00
Jan 30, 2016	Sondra Andrews	\$100.00
Jan 30, 2016	Virginia Carper	\$100.00
Jan 30, 2016	Sara Lovejoy	\$100.00
Jan 30, 2016	Joel Baker	\$100.00
Jan 30, 2016	Emily A Mead	\$100.00

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Jan 30, 2016	Robert Fannin	\$100.00
Jan 30, 2016	Sharon Byrd	\$100.00
Jan 30, 2016	Sean Farrell	\$100.00
Jan 30, 2016	Evan Benjamin	\$100.00
Jan 30, 2016	Melissa Turner	\$100.00
Jan 30, 2016	David Workman	\$100.00
Jan 30, 2016	Benjamin Adams	\$100.00
Jan 30, 2016	Scott Andrews	\$100.00
Jan 30, 2016	Kelly Griffith	\$100.00
Jan 30, 2016	Josh Pearson	\$100.00
Jan 30, 2016	Richard Forren	\$100.00
Jan 30, 2016	Mary Lynn Harless	\$100.00
Jan 30, 2016	Michael Callaghan	\$100.00
Jan 30, 2016	Cheri Callaghan	\$100.00
Jan 30, 2016	Georgia Griffith	\$100.00
Jan 30, 2016	Ryan Buck	\$100.00
Jan 30, 2016	James McQueen	\$100.00
Jan 30, 2016	Melissa Downs	\$100.00
Jan 30, 2016	Amanda Greere	\$100.00
Jan 30, 2016	Bernard Bossio	\$100.00
Jan 30, 2016	Paula Moore	\$100.00
Jan 30, 2016	Daniel Mead	\$100.00
Jan 30, 2016	John Hunter	\$100.00
Jan 30, 2016	Frank Hartman	\$100.00
Jan 30, 2016	Erika Bailey	\$100.00
Jan 30, 2016	Mitzi Rick	\$100.00
Jan 30, 2016	Cynthia Harman	\$100.00
Jan 30, 2016	Paul Farrell	\$100.00
Jan 30, 2016	Sarah K Shaffer	\$100.00
Jan 30, 2016	ROBIN HARLOW	\$100.00
Jan 30, 2016	Douglas Miley	\$100.00
Jan 30, 2016	Patrick Farrell	\$100.00
Jan 30, 2016	Oliver Davis Segal	\$100.00
Jan 30, 2016	JEFFREY HARLOW	\$100.00
Jan 30, 2016	Kathryn Farrell	\$100.00
Jan 30, 2016	Lisa Spencer	\$100.00
Jan 30, 2016	Stephen Shell	\$100.00
Jan 30, 2016	Tim Miley	\$100.00
Jan 30, 2016	Guy Panrell	\$100.00
Jan 30, 2016	Taylor Downs	\$100.00
Jan 30, 2016	Kenneth Bannon	\$100.00
Jan 30, 2016	Jill Nolan	\$100.00
Jan 30, 2016	Greg Hewitt	\$100.00
Jan 30, 2016	Amanda Rowe	\$100.00
Jan 30, 2016	Jed Nolan	\$100.00
Jan 30, 2016	Jordin Wilcher	\$100.00
Jan 30, 2016	Barrie Ann Adkins	\$100.00
Jan 30, 2016	Scott Windom	\$100.00
Jan 30, 2016	Clint Young	\$100.00
Jan 30, 2016	Sandra Marinacci	\$100.00
Jan 30, 2016	Leo Cremeans	\$100.00

JA001674

Jan 30, 2016	Susan Miley	\$100.00
Jan 30, 2016	April Ferrebee	\$100.00
Jan 30, 2016	Stanley Bailey	\$100.00
Jan 30, 2016	Marilyn Monahan	\$100.00
Jan 30, 2016	Alex Shook	\$100.00
Jan 30, 2016	william frame	\$100.00
Jan 30, 2016	Todd Wiseman	\$100.00
Jan 30, 2016	Rhonda Jacobs	\$100.00
Jan 30, 2016	Rita Pelfrey	\$100.00
Jan 30, 2016	Patrick Jacobs	\$100.00
Jan 30, 2016	Naoma Bailey	\$100.00
Jan 30, 2016	Stuart Calwell	\$100.00
Jan 30, 2016	David J. Depasquale	\$100.00
Jan 30, 2016	Jennifer Shell	\$100.00
Jan 30, 2016	Patricia Garren	\$100.00
Jan 30, 2016	Edwin Pancake	\$100.00
Jan 30, 2016	Susan Skinner	\$100.00
Jan 30, 2016	Fred Mohr	\$100.00
Jan 30, 2016	Jonathan M. Harless	\$100.00
Jan 30, 2016	Lenard Panrell	\$100.00
Jan 30, 2016	Beth White	\$100.00
Jan 30, 2016	Carletta Fannin	\$100.00
Jan 30, 2016	Philip Shell	\$100.00
Jan 30, 2016	Rodney Snyder	\$100.00
Jan 30, 2016	Katherine Burress	\$100.00
Jan 30, 2016	Sarah J. Kendall	\$100.00
Jan 30, 2016	Jeffrey Gustafson	\$100.00
Jan 30, 2016	Barbara Fish	\$100.00
Jan 30, 2016	Justin Marcum	\$100.00
Jan 30, 2016	Jonathan O'Dell	\$100.00
Jan 30, 2016	Heidi Miley	\$100.00
Jan 30, 2016	Richard Monahan	\$100.00
Jan 30, 2016	paul perfater	\$100.00
Jan 30, 2016	Amy Schmitt	\$100.00
Jan 30, 2016	Rita L. Casingal	\$100.00
Jan 30, 2016	Robert Kuenzel	\$100.00
Jan 30, 2016	William Summers	\$100.00
Jan 30, 2016	John Barrett	\$100.00
Jan 30, 2016	Ralph Troisi	\$100.00
Jan 30, 2016	Joseph Ferretti	\$100.00
Jan 30, 2016	Robert Fish	\$100.00
Jan 30, 2016	John Pelfrey	\$100.00
Jan 30, 2016	Jonathan Turak	\$100.00
Jan 30, 2016	David Marshall	\$100.00
Jan 30, 2016	charle stevens	\$100.00
Jan 30, 2016	Theresa Kuenzel	\$100.00
Jan 30, 2016	Juliet Terry	\$100.00
Jan 30, 2016	Jacqueline Farrell	\$100.00
Subtotal of contributions of \$250.00 or less		\$33,212.00

JA001675

CONTRIBUTIONS MORE THAN \$250.00

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
	Subtotal of all contributions of more than \$250.00	\$0.00
	Subtotal of all contributions of \$250 or less	\$33,212.00
	Total Contributions:	\$33,212.00

FUND-RAISING EVENTS

All monetary contributions received at a fundraiser must be reported in the Event Summary below.

If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund. The only exception to this rule may apply to political party executive committees. (WV Code 3-8-5a).

WHEELING 2 EVENT SUMMARY

Date of Event:	Jan 14, 2016	Total Monetary Contributions:	\$1,585.00
Type of Event:	Meet and Greet	Total Expenditures:	- \$399.20
Name of Place Held:	Undo's	NET RECEIPTS:	= \$1,185.80
Address of Place Held:	2153 National Rd Wheeling, WV, 26003,	Total In-Kind Contributions Related to the Fundraiser	\$0.00

\$250 OR LESS

MORE THAN \$250

DATE	FULL NAME	AMOUNT	DATE		AMOUNT
Jan 14, 2016	Earl L. Forman II Esq.	\$20.00		Event contributions of \$250 or more:	\$0.00
Jan 14, 2016	Dorothy C. Robinson	\$25.00		Event contributions of less than \$250:	\$1,585.00
Jan 14, 2016	Mike Hooper	\$50.00		Total Contributions:	\$1,585.00
Jan 14, 2016	Alex Coogan	\$90.00			
Jan 14, 2016	Phillip T. Glyptis	\$100.00			
Jan 14, 2016	Brent Robinson	\$100.00			
Jan 14, 2016	Holly Planinsic	\$100.00			
Jan 14, 2016	Charlene M. Hartley	\$100.00			
Jan 14, 2016	Marc J. Chernenko	\$100.00			
Jan 14, 2016	R. Dean Hartley	\$100.00			
Jan 14, 2016	David A. Jividen	\$100.00			
Jan 14, 2016	Thomas F. Burgoyne	\$100.00			
Jan 14, 2016	Scott S. Blass	\$100.00			
Jan 14, 2016	James R. Lee	\$100.00			
Jan 14, 2016	Teresa Toriseva	\$100.00			
Jan 14, 2016	James G. Squibb Jr.	\$100.00			
Jan 14, 2016	Larry Blalock	\$100.00			
Jan 14, 2016	David P. Robinson	\$100.00			
	Subtotal of event contributions of less than \$250.00	\$1,585.00			

JA001676

OTHER INCOME: INTEREST, REFUNDS, MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount
		Total Other Income:	\$0.00

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Value
		Total In-Kind Contributions:	\$0.00

LOANS

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

"Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may not receive any money or anything of value toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed."

The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable. Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case. Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. **These loans must be executed in writing. Caution: Candidates may not carry outstanding loans from one campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.**

HOW TO REPORT LOANS

1. Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below.
 - a. loans(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. **Any loan that was repaid in previous reporting periods does not need to be listed.**
 - b. new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)
2. **Attach a copy of the loan agreement for each loan received during the reporting period.**

LOANS (CONTINUED)

Bank Loans: List name & address or financial institution Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan	Column A Balance of previous loan at end of period	Column B Amount of new loan received during period	Column C Repayments during period	Column D Balance outstanding at end of period

JA001677

Amount	Date	Amount	Date	Amount	Amount
		Loans Received	Repayment of Loans	Outstanding Loans	
		0	0	0	

ITEMIZED EXPENDITURES

Date	Name of Person or Vendor And Address	Purpose	Amount
Jan 11, 2016	PayPal	Credit Card Fees	\$6.50
Jan 14, 2016	Advocacy Center LLC	Communications & Printing	\$1,066.52
Jan 14, 2016	PayPal	Credit Card Fees	\$19.20
Jan 14, 2016	WV SOS State Capitol Charleston, WV,	Filing Fees	\$1,360.00
Jan 15, 2016	RSQP Print & Design 92 16th St Wheeling, WV, 26003,	Printing	\$568.40
Jan 18, 2016	Undo's	Catering	\$399.20
Jan 20, 2016	PayPal	Credit Card Fees	\$6.40
Jan 25, 2016	PayPal	Credit Card	\$5.26
Jan 26, 2016	PayPal	Credit Card Fees	\$25.60
Jan 27, 2016	PayPal	Credit Card Fees	\$44.80
Jan 28, 2016	PayPal	Credit Card Fees	\$6.70
Jan 29, 2016	PayPal	Credit Card Fees	\$244.28
Jan 30, 2016	Facebook 1 Hacker Way Menlo Park, CA,	Online Advertising	\$75.84
Jan 30, 2016	PayPal	Credit Card Fees	\$475.37
Jan 31, 2016	Facebook	Online Advertising	\$37.34
		Total Expenditures:	\$4,341.41

RECEIPT OF A TRANSFER OF EXCESS FUNDS

Date	Candidate Committee Name and Year	Amount
	Total Receipts of Transfer of Excess Funds:	\$0.00

DISBURSEMENT OF EXCESS FUNDS

Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
		Total Disbursement of Excess Funds:	\$0.00

UNPAID BILLS

Date	Group or Firm Affiliation	Purpose	Amount
		Total Unpaid Bills:	\$0.00

Submitted: Feb 1, 2016 at 11:38:45 PM

JA001678

**State of West Virginia Campaign Financial Statement
(Long Form) in Relation to the 2016 Election Year
For Nonpartisan Offices**

Candidate or Committee Name Committee to Re-elect Justice Brent Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non Partisan		Treasurer's Mailing Address (Street, Route or P.O. Box) 8 Barrington Dr.	
Office Sought (for candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code 28003 Wheeling, WV	Daytime Phone # 302 242-0414

Election Cycle Reporting Period (check one):

☒ **Exploratory Summary Report**
☐ **General-First Report** Due March 26 - April 1, 2016
☐ **Pre-General Report** Due April 25 - 29, 2016
☐ **Post-General Report** Due May 23 - June 21, 2016

Check If Applicable:
☐ **Amended Report** You must also check box of appropriate reporting period
☐ **Final Report** Zero balance required. PAC must also file Form F-6 Dissolution

Non-Election Cycle Reporting Period:
☐ **Annual Report Due in _____ Calendar Year**
 Due last Saturday in March or within 6 days thereafter

REPORT TOTALS

Fill in totals at the completion of the report.

RECEIPTS OF FUNDS:

Totals for this Period

Contributions (Page 3)	\$2,550.00
Monetary Contributions from all Fund-Raising Events (Page 4)	+ 7,400.00
Receipt of a Transfer of Excess Funds (Page 8)	+ 0.00
Total Monetary Contributions:	= \$9,950.00
In-Kind Contributions (Page 5)	+ 0.00
Total Contributions:	= \$9,950.00

Other Income (Page 5)	0.00
Loans Received (Page 6)	+ 0.00
Total Other Income:	= \$0.00

OUTSTANDING LOANS & DEBTS:

Unpaid Bills (Page 9)	0.00
Outstanding Loans (Page 6)	+ 0.00
Total Debts:	= \$0.00

**TOTAL CONTRIBUTIONS
ELECTION YEAR-TO-DATE**
(Add total contributions from all reports)

\$9,950.00

CASH BALANCE SUMMARY

Beginning Balance (ending balance from previous report)	0.00
Total Monetary Contributions	+ 9,950.00
Total Other Income	+ 0.00
Subtotal:	= \$9,950.00

Total Expenditures (Page 7)	\$8,942.90
Total Disbursements of Excess Funds (Page 8)	+ 0.00
Repayment of Loans (Page 6)	+ 0.00
Subtotal:	= \$8,942.90

Ending Balance:
 (Subtotal a. - Subtotal b.) = \$1,007.10
"Cannot be negative balance"

**TOTAL EXPENDITURES
ELECTION YEAR-TO-DATE**
(Add total expenditures from all reports)

\$8,942.90

Official Form F-7

Issued by the WV State Election Commission

Revised 12/15

RECEIVED
 FEB - 8 2016
 BY: _____

JA001680

**Contributors of
\$250 or Less**

☐ Check if additional pages
have been attached.

DATE	CONTRIBUTOR'S FULL NAME OR COMMITTEE'S NAME	AMOUNT
3/3/15	Brent D. Benjamin	\$100.00
7/22/15	Henry Altmeyer	\$200.00
7/21/15	James C. Gardill	\$200.00
7/22/15	Jodie K. Robinson Gardill	\$50.00
Subtotal of contributors of \$250 or less:		\$550.00

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OF THIS PAGE AS YOU NEED

Contributors of More than \$250			<input type="checkbox"/> Check if additional pages have been attached.
DATE	INDIVIDUAL CONTRIBUTOR OR COMMITTEE'S NAME	AMOUNT	
5/20/15	Full Name: Denny Jones Address: (residential and mailing if they are different) 998 Loudon Hts. Rd., Charleston WV 25314 Contributor's job: (individual contributor only) Mayor Where contributor works: (individual contributor only) City of Charleston WV Affiliation: (political committee only)	\$1,000.00	
6/22/15	Full Name: David H. McKinley Address: (residential and mailing if they are different) 10 Kenwood Dr., Wheeling WV 26003 Contributor's job: (individual contributor only) Financial Consultant Where contributor works: (individual contributor only) Self Employed Affiliation: (political committee only)	\$1,000.00	
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)		
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)		
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)		
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)		
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)		
Subtotal of all contributors of more than \$250		\$2,000.00	
Subtotal of all contributors of \$250 or less (From page 2)		+ 550.00	
Total Contributions:		= \$2,550.00	

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED

☒ Check if additional pages have been attached.

All monetary contributions received at a fundraiser must be reported in the Event Summary below. If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund.

The only exception to this rule may apply to political party executive committees. (WV Code §3-8-5a)

Date of Event	4/20/2015	Total Monetary Contributions: Total Expenditures: (Itemized on page 7) NET RECEIPTS: Total In-Kind Contributions related to the Fund-raiser: (Itemized on page 5)	
Type of Event	Meet and greet		\$2,800.00
Name of Place Held	River City Restaurant		- \$695.79
Address of Place Held	1400 Main St. Wheeling WV 26003		= \$2,104.21
			0.00

Contributors of more than \$250

Date	Full Name	Amount	Date		Amount
4/27/16	John A. Mcardle	\$200.00	4/28/15	Full Name: R. Dean Hartley Address: (residential and mailing if they are different) 4 Highland Park, Wheeling WV 26003 Contributor's job: (Individual only) Attorney Where contributor works: (Individual only) Self Affiliation: (Political committee only)	\$1,000.00
4/27/15	Jeanette Laura Chapman	50.00			
4/27/15	Adolph W. Sanlorine Jr.	150.00			
4/29/15	Patrick S. Casey	200.00		Full Name: Address: (residential and mailing if they are different)	
4/29/15	Sandra M. Chapman	200.00		Contributor's Job: (Individual only)	
4/20/15	Carl N. Frankovitch	200.00		Where contributor works: (Individual only) Affiliation: (Political committee only)	
4/20/15	George J. Anetakis	200.00		Full Name: Address: (residential and mailing if they are different)	
4/20/15	M. Eric Frankovitch	200.00		Contributor's job: (individual only)	
4/20/15	Mark A. Colantonio	200.00		Where contributor works: (individual only) Affiliation: (Political committee only)	
4/20/15	Carl A. Frankovitch	200.00		Full Name: Address: (residential and mailing if they are different)	
				Contributor's Job: (Individual only)	
				Where contributor works: (Individual only)	
				Affiliation: (Political committee only)	
				Full Name:	
				Address: (residential and mailing if they are different)	
				Contributor's Job: (Individual only)	
				Where contributor works: (Individual only)	
				Affiliation: (Political committee only)	
Subtotal of contributors of more than \$250:					\$1,000.00
Subtotal of contributors of \$250 or less:		\$1,800.00		Subtotal of contributors of \$250 or less :	+ 1,800.00
				Total Contributions:	2,800.00

MAKE COPIES OF THIS PAGE TO LIST ADDITIONAL CONTRIBUTORS

MAKE COPIES OF THIS PAGE TO LIST ADDITIONAL CONTRIBUTIONS. ATTACH ADDITIONAL PAGES TO REPORT.

☒ Check if additional pages have been attached.

All monetary contributions received at a fundraiser must be reported in the Event Summary below. If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund.

The only exception to this rule may apply to political party executive committees. (W V Code §3-8-5a)

EVENT SUMMARY

Date of Event	4/20/15	Total Monetary Contributions:	\$1,800.00
Type of Event	Meet and Greet	Total Expenditures: (Itemized on page 7)	- 0.00
Name of Place Held	Private Residence	NET RECEIPTS:	= \$1,800.00
Address of Place Held	210 N Georgia Ave. Martinsburg WV 25401	Total in-Kind Contributions related to the Fund-raiser: (Itemized on page 5)	0.00

Contributors of \$250 or less

Contributors of more than \$250

Date	Full Name	Amount	Date	Full Name: Address: (residential and mailing if they are different)	Amount
4/20/15	David A DeJarnett	\$100.00	4/20/15	Floyd M. Sayre 203 E Martin St, Martinsburg WV 25401 Contributor's job: (Individual only) Attorney Where contributor works: (Individual only) Bowles Rice Affiliation: (Political committee only)	\$500.00
4/20/15	Michael E. Caryl	250.00			
4/20/15	Robert A. McMillian	250.00			
4/20/15	Catherine A. Delligatti	50.00		Full Name: Address: (residential and mailing if they are different)	
4/20/15	Charles S. Trump IV	250.00		Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
4/20/15	Gary W. Kelley	200.00		Full Name: Address: (residential and mailing if they are different)	
				Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
				Full Name: Address: (residential and mailing if they are different)	
				Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
				Full Name: Address: (residential and mailing if they are different)	
				Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
				Subtotal of contributors of more than \$250:	\$500.00
				Subtotal of contributors of \$250 or less :	+ 1,100.00
				Total Contributions:	\$1,600.00

Subtotal of contributors of \$250 or less: **\$1,100.00**

MAKE COPIES OF THIS PAGE TO LIST ADDITIONAL CONTRIBUTIONS. ATTACH ADDITIONAL PAGES TO REPORT.

☐ Check if additional pages have been attached.

All monetary contributions received at a fundraiser must be reported in the Event Summary below.
If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund.

The only exception to this rule may apply to political party executive committees. (W V Code §3-8-5a)

EVENT SUMMARY

Date of Event	4/29/2015	Total Monetary Contributions: Total Expenditures: (Itemized on page 7)	\$3,000.00
Type of Event	Meet & Greet		- 1,081.28
Name of Place Held	Private Residence		= \$1,918.72
Address of Place Held	Bougeumont Dr., Charleston WV 25314		0.00
		NET RECEIPTS: Total In-Kind Contributions related to the Fund-raiser: (Itemized on page 5)	

Contributors of \$250 or less			Contributors of more than \$250						
Date	Full Name	Amount	Date		Amount				
4/29/15	Juliet A Terry	\$50.00	4/29/15	Full Name: Virginia L. King Address: (residential and mailing if they are different) 748 Myrtle Rd., Charleston WV 25314 Contributor's job: (Individual only) Owner Where contributor works: (Individual only) Kanawha Stone Affiliation: (Political committee only)	\$1,000.00				
4/29/15	West Virginians for Coal	200.00		4/29/15	Full Name: Arthur L. King Address: (residential and mailing if they are different) 748 Myrtle Rd., Charleston WV 25314 Contributor's job: (Individual only) Owner Where contributor works: (Individual only) Kanawha Stone Affiliation: (Political committee only)	1,000.00			
4/29/15	Phillip A. Reale	250.00	4/17/15		Full Name: First Energy Political Action Commtee Address: (residential and mailing if they are different) 76 South Main St., Akron OH 44308 Contributor's job: (Individual only) Where contributor works: (Individual only) FirstEnergy - ID C00140855 Affiliation: (Political committee only)	500.00			
					Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)				
						Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)			
							Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)		
								Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
Subtotal of contributors of \$250 or less:		\$500.00	Subtotal of contributors of more than \$250:		\$2,500.00				
			Subtotal of contributors of \$250 or less:		+ 500.00				
			Total Contributions:		\$3,000.00				

MAKE COPIES OF THIS PAGE TO LIST ADDITIONAL

MAKE COPIES OF THIS PAGE TO LIST ADDITIONAL
CONTRIBUTIONS. ATTACH ADDITIONAL PAGES TO REPORT.

OTHER INCOME: INTEREST, REFUNDS, MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount

Total Other Income:

☐ Check if additional pages
have been attached.

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Value

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OF THIS PAGE AS YOU NEED.

Total In-Kind Contributions:

LOANS

☐ Check if additional pages have been attached.

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

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The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable.

Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case.

Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. These loans must be executed in writing. **Caution: Candidates may not carry outstanding loans from one campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.**

How to report loans

1. Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below:
 - a. loan(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. Any loan that was repaid in previous reporting periods does not need to be listed.
 - b. new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)
2. Attach a copy of the loan agreement for each loan received during the reporting period.

LOANS

(A copy of the loan agreement for each loan secured during this filing period must accompany this report)

Bank Loans: List name & address of financial institution. Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan.	Column A Balance of previous loan at end of period Amount	Column B Amount of new loan received during period Date Amount	Column C Repayments during period Date Amount	Column D Balance outstanding at end of period Amount
1.				
2.				
3.				
4.				
5.				
		Loans Received	Repayment of Loans	Outstanding Loans
Totals:				

ITEMIZED EXPENDITURES
(Itemize 3rd party expenditures/ reimbursements)

☐ Check if additional pages have been attached.

Date	Name of Person or Vendor and Address	Purpose	Amount
4/25/15	Steven Cohen, 80 14th St, Wheeling WV	26003 Consulting	\$704.01
4/28/15	Joe Boczek, 425 Industrial Ave, Star City 26505	Meal expense	54.89
5/8/15	Steven Cohen, Wheeling WV 26003	Postage Expenses	58.06
4/29/15	Julie Terry, 1003 Valley Rd., Charleston 25302	Event Expenses	164.48
5/6/15	Julie Terry, 1003 Valley Rd., Charleston WV 25302	Consulting	550.00
4/27/15	River City, 1400 Main St., Wheeling WV 26003	Catering	695.79
5/29/15	Meticulous, 1034 Bridge Rd., Charleston WV 25314	Catering	916.80
5/6/15	L & K Marketing, 425 Industrial Ave, Star City WV 26505	Pins	3,657.18
6/26/15	Steven Cohen, Wheeling WV 26003	Consulting	1,214.36
8/4/15	Steven Cohen, Wheeling WV 26003	Consulting	927.33

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OF THIS PAGE AS YOU NEED.

Total Expenditures: **\$8,942.80**

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JA001688

Receipt of a Transfer of Excess Funds

☐ Check if additional pages have been attached.

Date	Candidate Committee Name and Year	Amount
Total Receipts of Transfers of Excess Funds:		

Disbursements of Excess Funds

Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
Total Disbursements of Excess Funds:			

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED.

UNPAID BILLS

☐ Check if additional pages have been attached.

Date	Owed to Whom	Affiliated with what Company or Group	Purpose	Amount

Total Unpaid Bills:

OATH OR AFFIRMATION

I, Donald A. Nickerson, Jr., swear or affirm that the attached statement is true and correct, to the best of my knowledge, for all financial transactions occurring within the period covered by this statement, as required by West Virginia Code §3-8-5a.

Donald A. Nickerson, Jr. Treasurer

Signature of Candidate, Financial Agent or Treasurer

Date February 8, 20 16

Office Use Only

Received By: _____

State of West Virginia Campaign Financial Statement (Short Form) in Relation to the 2016 Election Year For Nonpartisan Offices

IF YOUR ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES," YOU CANNOT USE THIS FORM.
YOU MUST USE THE LONG FORM (FORM F-7) TO FILE YOUR CAMPAIGN FINANCE REPORT.

1. Has your committee received any loans?
2. Has your committee held any fundraisers?
3. Has your committee received any miscellaneous receipts, such as refunds or checking account interest?
4. Does your committee have any unpaid bills?
5. Have you or anyone else given an in-kind contribution to your campaign?
6. Has your committee given or received a transfer of excess campaign funds?

Candidate or Committee Name Committee to Re-elect Justice Brent Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non-Partisan		Treasurer's Mailing Address (Street, Route or P.O. Box) 8 Barrington Drive	
Office Sought (for candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code Wheeling WV 26003	Daytime Phone # 304 242-0414

Reporting Period (check one): ☒ Exploratory Report for Sept. 1 - 30, 2015

☐ General-First Report
Due March 26 - April 1, 2016

☐ Pre-General Report
Due April 25 - 29, 2016

☐ Post-General Report
Due May 25 - June 21, 2016

☐ Annual Report Due in
Calendar Year
Due last Saturday in March or
within 6 days thereafter

☐ Amended Report
You must also check box of appropriate
reporting period

☐ Final Report (zero balance required)
PACs must also file Statement
of Dissolution (Form F-6)

REPORT TOTALS

(Fill in totals after you have completed page 2)

CASH BALANCE SUMMARY

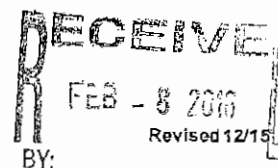
Beginning Balance (ending balance from previous report) 1.	1.	\$1,007.10	
Total Contributions (from Page 2) 2.	2.	+ \$0.00	
Subtotal (lines 1+2) 3.	3.	= \$1,007.10	
Total Expenditures (from Page 2) 4.	4.	- \$0.00	
Ending Balance (lines 3-4)		= \$1,007.10	
<i>*Cannot have a negative ending balance</i>			

**TOTAL CONTRIBUTIONS
ELECTION YEAR-TO-DATE
(Add line 2 from all reports)**

\$9,950.00

**TOTAL EXPENDITURES
ELECTION YEAR-TO-DATE
(Add line 4 from all reports)**

\$8,942.90



CONTRIBUTORS OF:

\$250 or Less

More than \$250

Date	Full Name	Amount	Date	Full Name: Address: Contributor's job: (Individual) Where contributor works: (Individual) Affiliation: (Political committee)	Amount

Total Contributions:
(add both columns)

ITEMIZED EXPENDITURES (Itemize 3rd party expenditures/reimbursements)

Date	Full name, residence address (if person); business address (if firm)	Purpose	Amount

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED.

Total Expenditures:

OATH OR AFFIRMATION

I, Donald A. Nickerson, Jr., swear or affirm that the attached statement is true and correct, to the best of my knowledge, of all financial transactions occurring within the period covered by this statement, as required by West Virginia Code §3-8-5a.

Donald A. Nickerson, Jr., Treasurer

Signature of Candidate, Agent, or Treasurer

Date February 8, 2016

Office Use Only

Received By: _____

State of West Virginia Campaign Financial Statement (Long Form) in Relation to the 2016 Election Year For Nonpartisan Offices

RECEIVED
FEB - 2016

Candidate or Committee Name Committee to Re-elect Justice Brent Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non Partisan		Treasurer's Mailing Address (Street, Route or P.O. Box) 8 Barrington Dr.	
Office Sought (for candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code 26003 Wheeling, WV	Daytime Phone # 302 242-0414

Election Cycle Reporting Period (check one): <input checked="" type="checkbox"/> Exploratory Summary Report <input type="checkbox"/> General-First Report Due March 26 - April 1, 2016 <input type="checkbox"/> Pre-General Report Due April 25 - 29, 2016 <input type="checkbox"/> Post-General Report Due May 23 - June 21, 2016			Check if Applicable: <input checked="" type="checkbox"/> Amended Report You must also check box of appropriate reporting period <input type="checkbox"/> Final Report Zero balance required. PAC must also file Form F-6 Dissolution
Non-Election Cycle Reporting Period: <input type="checkbox"/> Annual Report Due In _____ Calendar Year Due last Saturday in March or within 6 days thereafter			

REPORT TOTALS

Fill in totals at the completion of the report.

RECEIPTS OF FUNDS:

Totals for this Period

Contributions (Page 3)	\$2,550.00
Monetary Contributions from all Fund-Raising Events (Page 4)	+ 6,700.00
Receipt of a Transfer of Excess Funds (Page 8)	+ 0.00
Total Monetary Contributions:	= \$9,250.00
In-Kind Contributions (Page 5)	+ 0.00
Total Contributions:	= \$9,250.00

Other Income (Page 5)	0.00
Loans Received (Page 6)	+ 0.00
Total Other Income:	= \$0.00

OUTSTANDING LOANS & DEBTS:

Unpaid Bills (Page 9)	0.00
Outstanding Loans (Page 6)	+ 0.00
Total Debts:	= \$0.00

CASH BALANCE SUMMARY

Beginning Balance (ending balance from previous report)	0.00
Total Monetary Contributions	+ 9,250.00
Total Other Income	+ 0.00
Subtotal: a.	= \$9,250.00

Total Expenditures (Page 7)	\$8,942.90
Total Disbursements of Excess Funds (Page 8)	+ 0.00
Repayment of Loans (Page 6)	+ 0.00
Subtotal: b.	= \$8,942.90

Ending Balance: (Subtotal a. - Subtotal b.)	= \$307.10
<small>*Cannot be negative balance</small>	

**TOTAL CONTRIBUTIONS
ELECTION YEAR-TO-DATE**
(Add total contributions from all reports)

\$9,250.00

**TOTAL EXPENDITURES
ELECTION YEAR-TO-DATE**
(Add total expenditures from all reports)

\$8,942.90

☐ Check if additional pages have been attached.

MAKE AS MANY COPIES OF THIS PAGE AS YOU NEED	Subtotal of contributors of \$250 or less:	\$550.00
---	--	----------

Contributors of More than \$250

☐ Check if additional pages
have been attached.

DATE	INDIVIDUAL CONTRIBUTOR OR COMMITTEE'S NAME	AMOUNT
5/20/15	Full Name: Danny Jones Address: (residential and mailing if they are different) 998 Loudon Hts. Rd., Charleston WV 25314 Contributor's job: (individual contributor only) Mayor Where contributor works: (individual contributor only) City of Charleston WV Affiliation: (political committee only)	\$1,000.00
6/22/15	Full Name: David. H. McKinley Address: (residential and mailing if they are different) 10 Kenwood Dr., Wheeling WV 6003 Contributor's job: (individual contributor only) Financial Consultant Where contributor works: (individual contributor only) Self Employed Affiliation: (political committee only)	\$1,000.00
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)	
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)	
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)	
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (individual contributor only) Where contributor works: (individual contributor only) Affiliation: (political committee only)	

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED

Subtotal of all contributors of more than \$250
Subtotal of all contributors of \$250 or less (From page 2)

Total Contributions:

\$2,000.00
+ 550.00
= \$2,550.00
JA001695

☒ Check if additional pages have been attached.

The only exception to this rule may apply to political party executive committees. (W V Code §3-8-5a)

Date of Event	4/20/2015	Total Monetary Contributions:	\$2,800.00
Type of Event	Meet and greet	Total Expenditures: (Itemized on page 7)	- \$695.79
Name of Place Held	River City Restaurant	NETRECEIPTS:	= \$2,104.21
Address of Place Held	1400 Main St. Wheeling WV 26003	Total In-Kind Contributions related to the Fund-raiser: (Itemized on page 5)	0.00

Date	Full Name	Amount	Date	Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	Amount
4/27/15	John A. Mcardle	\$200.00	4/28/15	R. Dean Hartley 4 Highland Park, Wheeling WV 26003 2001 Main St #600, Wheeling WV 26003 Attorney Self Affiliation: (Political committee only)	\$1,000.00
4/27/15	Jeannette Laura Chapman	50.00			
4/27/15	Adolph W. Santorine Jr.	150.00			
4/29/15	Patrick S. Casey	200.00		Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
4/29/15	Sandra M. Chapman	200.00			
4/20/15	Carl N. Frankovitch	200.00			
4/20/15	George J. Anelakis	200.00		Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
4/20/15	M. Eric Frankovitch	200.00			
4/20/15	Mark A. Colantonio	200.00			
4/20/15	Carl A. Frankovitch	200.00		Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
				Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
Subtotal of contributors of \$250 or less:		\$1,600.00	Subtotal of contributors of more than \$250:		\$1,000.00
			Subtotal of contributors of \$250 or less:		+ 1,800.00
			Total Contributions:		2,800.00

4

JA001696

FUND-RAISINGEVENTS

☒ Check if additional pages have been attached.

All monetary contributions received at a fundraiser must be reported in the Event Summary below. If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund.

The only exception to this rule may apply to political party executive committees. (W V Code §3-8-5a)

EVENT SUMMARY

EVENT SUMMARY	
Date of Event	4/20/15
Type of Event	Meet and Greet
Name of Place Held	Private Residence
Address of Place Held	210 N Georgia Ave. Martinsburg WV 25401
Total Monetary Contributions:	\$1,800.00
Total Expenditures: (Itemized on page 7)	- 0.00
NET RECEIPTS:	= \$1,800.00
Total In-Kind Contributions related to the Fund-raiser: (Itemized on page 5)	0.00

Contributors of \$250 or less

Contributors of more than \$250

Contributors of \$250 or less			Contributors of more than \$250		
Date	Full Name	Amount	Date	Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	Amount
4/20/15	David A DeJarnett	\$100.00	4/20/15	Floyd M. Sayre 203 E Martin St, Martinsburg WV 25401 Attorney Bowles Rice	\$500.00
4/20/15	Michael E. Caryl	250.00			
4/20/15	Robert A. McMillan	250.00			
4/20/15	Catherine A. Delligatti	50.00			
4/20/15	Charles S. Trump IV	250.00			
4/20/15	Gary W. Kelley	200.00			
Subtotal of contributors of \$250 or less:		\$1,100.00	Subtotal of contributors of more than \$250:		\$500.00
			Subtotal of contributors of \$250 or less:		+ 1,100.00
			Total Contributions:		\$1,600.00

MAKE COPIES OF THIS PAGE TO LIST ADDITIONAL CONTRIBUTIONS. ATTACH ADDITIONAL PAGES TO REPORT.

FUND-RAISING EVENTS

☐ Check if additional pages have been attached.

All monetary contributions received at a fundraiser must be reported in the Event Summary below.
If contributor's name and amount are not listed, the contribution must be turned over to the West Virginia General Revenue Fund.

The only exception to this rule may apply to political party executive committees. (W V Code §3-8-5a)

EVENT SUMMARY

EVENT SUMMARY	
Date of Event	4/29/2015
Type of Event	Meet & Greet
Name of Place Held	Private Residence
Address of Place Held	Bougemont Dr., Charleston WV 25314
Contributors of \$250 or less	
Total Monetary Contributions:	\$3,000.00
Total Expenditures: (Itemized on page 7)	- 1,081.28
NET RECEIPTS:	= \$1,918.72
Total In-Kind Contributions related to the Fund-raiser: (Itemized on page 5)	0.00

Contributors of \$250 or less

[illegible]

Contributors of more than \$250

Date		Amount
4/29/15	Full Name: Virginia L. King Address: (residential and mailing if they are different) 748 Myrtle Rd., Charleston WV 25314 Contributor's job: (Individual only) Owner Where contributor works: (Individual only) Kanawha Stone Affiliation: (Political committee only)	\$1,000.00
4/29/15	Full Name: Arthur L. King Address: (residential and mailing if they are different) 748 Myrtle Rd., Charleston WV 25314 Contributor's job: (Individual only) Owner Where contributor works: (Individual only) Kanawha Stone Affiliation: (Political committee only)	1,000.00
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
	Full Name: Address: (residential and mailing if they are different) Contributor's job: (Individual only) Where contributor works: (Individual only) Affiliation: (Political committee only)	
Subtotal of contributors of more than \$250:		\$2,000.00
Subtotal of contributors of \$250 or less :		+ 300.00
Total Contributions:		\$2,300.00

MAKE COPIES OF THIS PAGE TO LIST ADDITIONAL CONTRIBUTIONS. ATTACH ADDITIONAL PAGES TO REPORT.

OTHER INCOME: INTEREST, REFUNDS, MISCELLANEOUS RECEIPTS

Date	Source of Income	Type of Receipt	Amount

Total Other Income:

☐ Check if additional pages
have been attached.

IN-KIND CONTRIBUTIONS

Date	Name and Contributor Information	Description of Contribution	Value

Total In-Kind Contributions:

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED.

LOANS

☐ Check if additional pages have been attached.

West Virginia Code: §3-8-5f. Loans to candidates, organizations or persons for election purposes.

"Every candidate, financial agent, person or association of persons or organization advocating or opposing the nomination or election of any candidate or the passage or defeat of any issue or item to be voted upon may not receive any money or any other thing of value toward election expenses except from the candidate, his or her spouse or a lending institution. All loans shall be evidenced by a written agreement executed by the lender, whether the candidate, his or her spouse, or the lending institution. Such agreement shall state the date and amount of the loan, the terms, including interest and repayment schedule, and a description of the collateral, if any, and the full names and addresses of all parties to the agreement. A copy of the agreement shall be filed with the financial statement next required after the loan is executed."

The loan agreement must include all items asked for in the statute. (See above.) The loan agreement does not have to follow a certain format; generally, if all the required information is listed, any format is acceptable.

Candidates or political committees that take out a loan for the campaign through a bank or other commercial lending institution must include a copy of the loan agreement executed with that bank or institution. Candidates should not take out loans which are partially for personal use and partially for the campaign. It is almost impossible to keep reporting straight in this case.

Any money a candidate contributes to his or her campaign committee with the hope of repayment must be treated as a loan and reported in this section. When a candidate determines that no further repayment can be expected, the loan can be reported as repaid in this section by entering the amount left to repay in the repayments column and reporting the same amount as a contribution from the candidate on Page 2. **These loans must be executed in writing. Caution: Candidates may not carry outstanding loans from one campaign to the next. Each campaign is separate. Funds from a current campaign cannot be used to repay a loan from a previous campaign.**

How to report loans

1. Each loan for your campaign should be listed on a separate line. (Each time you loan money to the campaign or get a loan, it is considered to be a separate loan.) Include the following information on the form below:

- loan(s) from prior reporting periods and the balance of each loan (Col. A.) If a payment was made on the loan, list that in Col. C. **Any loan that was repaid in previous reporting periods does not need to be listed.**
- new loans, the amount (Col. B), any repayments (Col. C), and the balance (Col. D.)

Attach a copy of the loan agreement for each loan received during the reporting period.

LOANS

(A copy of the loan agreement for each loan secured during this filing period must accompany this report)

Bank Loans: List name & address of financial institution Candidate or Candidate's Spouse Loans: List name, residence and mailing address of person(s) making or cosigning loan	Column A Balance of previous loan at end of period	Column B Amount of new loan received during period		Column C Repayments during period		Column D Balance outstanding at end of period
	Amount	Date	Amount	Date	Amount	Amount
1.						
2.						
3.						
4.						
5.						
Totals:		Loans Received		Repayment of Loans		Outstanding Loans

ITEMIZED EXPENDITURES
(Itemize 3rd party expenditures/ reimbursements)

☐ Check if additional pages have been attached.

Date	Name of Person or Vendor and Address	Purpose	Amount
4/25/15	Steven Cohen, 80 14th St, Wheeling WV	26003 Consulting	\$704.01
4/28/15	Joe Boczek, 425 Industrial Ave, Star City 26505	Meal expense	54.89
5/8/15	Steven Cohen, Wheeling WV 26003	Postage Expenses	58.06
4/29/15	Julie Terry, 1003 Valley Rd., Charleston 25302	Event Expenses	164.48
5/6/15	Julie Terry, 1003 Valley Rd., Charleston WV 25302	Consulting	550.00
4/27/15	River City, 1400 Main St., Wheeling WV 26003	Catering	695.79
5/29/15	Meticulous, 1034 Bridge Rd., Charleston WV 25314	Catering	916.80
5/6/15	L & K Marketing, 425 Industrial Ave, Star City WV 26505	Pins	3,657.18
6/26/15	Steven Cohen, Wheeling WV 26003	Consulting	1,214.36
8/4/15	Steven Cohen, Wheeling WV 26003	Consulting	927.33

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED.

Total Expenditures: \$8,942.90

Receipt of a Transfer of Excess Funds

☐ Check if additional pages have been attached.

Date	Candidate Committee Name and Year	Amount
Total Receipts of Transfers of Excess Funds:		

Disbursements of Excess Funds

Date	Name of candidate committee and election year disbursing excess funds	Purpose of Disbursement	Amount
Total Disbursements of Excess Funds:			

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED.

UNPAID BILLS

☐ Check if additional pages have been attached.

Date	Owed to Whom	Affiliated with what Company or Group	Purpose	Amount

Total Unpaid Bills:

OATH OR AFFIRMATION

I, Donald A. Nickerson, Jr., swear or affirm that the attached statement is true and correct, to the best of my knowledge, for all financial transactions occurring within the period covered by this statement, as required by West Virginia Code §3-8-5a.

Donald A. Nickerson, Jr., Treasurer

Signature of Candidate, Financial Agent or Treasurer

Date February 9, 20 16

Office Use Only

Received By: _____

State of West Virginia Campaign Financial Statement (Short Form) in Relation to the 2016 Election Year For Nonpartisan Offices

RECEIVED
FEB - 9 2016

IF YOUR ANSWER TO ANY OF THE FOLLOWING QUESTIONS IS "YES," YOU CANNOT USE THIS FORM.
YOU MUST USE THE LONG FORM (FORM F-7) TO FILE YOUR CAMPAIGN FINANCE REPORT.

1. Has your committee received any loans?
2. Has your committee held any fundraisers?
3. Has your committee received any miscellaneous receipts, such as refunds or checking account interest?
4. Does your committee have any unpaid bills?
5. Have you or anyone else given an in-kind contribution to your campaign?
6. Has your committee given or received a transfer of excess campaign funds?

Candidate or Committee Name Committee to Re-elect Justice Brent Benjamin		Candidate or Committee's Treasurer Donald A. Nickerson, Jr.	
Political Party (for candidates) Non-Partisan		Treasurer's Mailing Address (Street, Route or P.O. Box) 8 Barrington Drive	
Office Sought (for candidates) Justice of the Supreme Court of Appeals	District/Division State	City, State, Zip Code Wheeling WV 26003	Daytime Phone # 304 242-0414

Reporting Period (check one): ☒ Exploratory Report for Sept. 1 - 30, 2015

☐ **General-First Report**
Due March 26 - April 1, 2016

☐ **Pre-General Report**
Due April 25 - 29, 2016

☐ **Post-General Report**
Due May 25 - June 21, 2016

☐ **Annual Report Due in
Calendar Year**
Due last Saturday in March or
within 6 days thereafter

☒ **Amended Report**
You must also check box of appropriate
reporting period

☐ **Final Report (zero balance required)**
PACs must also file Statement
of Dissolution (Form F-6)

REPORT TOTALS

(Fill in totals after you have completed page 2)

CASH BALANCE SUMMARY

Beginning Balance (ending balance from previous report) 1.		\$307.10	
Total Contributions (from Page 2) 2.	+	\$0.00	
Subtotal (lines 1+2) 3.	=	\$307.10	
Total Expenditures (from Page 2) 4.	-	\$0.00	
Ending Balance (lines 3-4)	=	\$307.10	
<i>*Cannot have a negative ending balance</i>			

**TOTAL CONTRIBUTIONS
ELECTION YEAR-TO-DATE**
(Add line 2 from all reports)

\$9,250.00

**TOTAL EXPENDITURES
ELECTION YEAR-TO-DATE**
(Add line 4 from all reports)

\$8,942.90



Joint Appendix pages 1706 to 1738 have been omitted from online materials in order to avoid the unnecessary distribution of personal identifiers such as addresses. See Rule 40(e) of the Rules of Appellate Procedure.

VERIFICATION and SAMPLING RESULTS

BENJAMIN

2/5/15

TIM LEACH

CONTRIBUTIONS APPROVED: 526

1 ST DISTRICT:	117	22.2%
2 ND DISTRICT	246	46.8%
3 RD DISTRICT	163	31.0%
10% VR Check:	-12	(-\$609)

VERIFICATION and SAMPLING RESULTS

BENJAMIN

2/8/15

TIM LEACH

CONTRIBUTIONS (less duplicates)	573
(less successful challenges):	-13
(Verification and sampling results):	<u>-18</u>
Total	542

1 ST DISTRICT:	24.4%
2 ND DISTRICT:	44.5%
3 RD DISTRICT	31.1%

AMOUNTS:	\$ 38,658.00
----------	--------------

STATE OF WEST VIRGINIA
STATE ELECTION COMMISSION
PUBLIC CAMPAIGN FINANCE CHALLENGE

COMMISSION MEMBERS:

GARY A. COLLIAS, Chairman
SECRETARY OF STATE, NATALIE TENNANT
VINCE CARDI

February 10, 2016

10:05 AM

OFFICE OF THE SECRETARY OF STATE

1900 Kanawha Boulevard, East

Charleston, West Virginia

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Certified Court Reporter
and Notary Public

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JA001741

A P P E A R A N C E S

ON BEHALF OF THE BRENT BENJAMIN CAMPAIGN:

ANN B. CHARNOCK, ESQUIRE
MARYL SATTLER, ESQUIRE
Charnock & Charnock
523 Peoples Building
P.O. Box 207
Charleston, West Virginia 25321

ON BEHALF OF THE BETH WALKER CAMPAIGN:

JOE REIDY
KENT GATES
P.O. Box 18092
Morgantown, West Virginia 26507

ON BEHALF OF THE SECRETARY OF STATE:

TIMOTHY G. LEACH, ESQUIRE
ASHLEY SUMMITT, ESQUIRE
Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

MAUREEN LEWIS

I N D E X

	<u>Page</u>
Meeting opened by Mr. Collias.	4

<u>Exhibits</u>	<u>Marked</u>
Exhibit No. 1.	20
Exhibit No. 2.	38
Exhibit No. 3.	43

Reporter's certificate, 45

P R O C E E D I N G S

MR. COLLIAS: Let's call the meeting to order. First we need to establish a quorum. Secretary Tennant, are you there?

SEC. TENNANT: Yes, sir.

MR. COLLIAS: Vince Cardi, are you there?

MR. CARDI: Yes, sir.

MR. COLLIAS: And Gary Collias is here. So that's three, that's a quorum. Mr. Downs, I assume, is continuing to disqualify himself. So what matters do we have today to take up, Mr. Lynch -- or, Mr. Leach?

MR. LEACH: We were in the process of evaluating the candidacy for certification under 3-12-10 of the West Virginia Code of the State Election Commission on Friday, is when we were last in meeting or in session. The State Election commission shall determine whether or not candidate and/or the candidate's committee has met five specific requirements. Just a second. We have some outside noise and we're going to shut a door.

MR. COLLIAS: Was that Code Section 10?

MR. LEACH: 3-12-10. There's five determinations that have to be made by the State Election Commission. Number one, has the candidate

1 signed and filed, or the campaign signed and filed a
2 declaration of intent as required by Section 7? By the
3 way, I'll preface the rest of my remarks by saying we
4 got through the first four of these on Friday and hit a
5 stumbling block on number five.

6 So number one, has the candidate signed and
7 filed a declaration of intent? Yes. September 11,
8 2015. Number two, has the candidate obtained the
9 required the required number, which is five hundred
10 minimum, and amount, which is thirty-five thousand
11 dollars minimum, of qualifying contributions as required
12 by Section 9 of this article? Yes, the answer was
13 Friday and remains so today.

14 Number three, has the candidate complied with
15 the contribution restrictions of this article? As of
16 this moment, yes, that is correct, they have. Number
17 four, is the candidate eligible, as provided by Section
18 9, Article 5 of this chapter, which is Chapter 3, to
19 appear on the primary and general ballot? I explained
20 that Friday. That is a candidate must have filed, paid
21 the filing fee and filed a certificate of announcement
22 as a candidate during the filing period from January
23 13th this year till January 30th? And the answer is yes
24 for this campaign.

1 And then we got to number five. Has the
2 candidate met all other requirements of this article?
3 Well, as of Friday I was prepared to advise the SEC yes,
4 but then an issue came up and we were made aware that
5 there were some reports that had not been filed,
6 particularly reports of exploratory contributions. Not
7 qualifying contributions, but exploratory contributions.

8 The campaign at that point in time asked for
9 an exemption under the electronic filing from the State
10 Election Commission. The Commission discussed the
11 matter and then voted to grant the exemption and then
12 postponed consideration of question number five until
13 the meeting scheduled for today, which we're now
14 involved in. So the answer to number five is maybe.
15 And I don't mean to be flip about it.

16 To me as an attorney, I see an issue that
17 might be raised and the SEC ought to make a finding or a
18 determination about, and that is the reports have now
19 been filed and have been filed by today's meeting. The
20 question is, are the reports now timely under the
21 exemption granted to the statute.

22 The reports were due -- and the Commission
23 members will recall long, lengthy discussions and
24 arguments last week. The reports are due at the

1 beginning or the first of the month after the receipt is
2 received, but there's that 3-12-13 paragraph C, as in
3 cat, what I would call like safety net of paragraphs one
4 and two, one applying to exploratory contributions and
5 two applying to qualifying contributions, which allows
6 for the filing by the second business day after the
7 close of the exploratory -- or the qualifying period.
8 So for reference to us, that's February 2nd, of any
9 receipts not previously submitted.

10 And so it was, talking about exploratory
11 issues, the SEC determined that that catchall, safety
12 net, whatever you want to call it, applied and that the
13 receipts were timely. The --

14 MR. CARDI: Excuse me.

15 MR. LEACH: Yes.

16 MR. CARDI: This is Vince Cardi. Tim, do
17 you mean for qualifying contributions?

18 MR. LEACH: Yes. Paragraph C, paragraph --
19 sub-paragraph two of paragraph C talks about
20 exploratory. And we were dealing with that section,
21 sub-section on last week. But --

22 MR. CARDI: -- qualifying. C-1 is
23 exploratory.

24 MR. LEACH: C-1 is exploratory. C-2 is

1 what you dealt with last week because it was qualifying
2 we were talking about at that time.

3 MR. CARDI: Okay. That's what I wanted to
4 make clear.

5 MR. LEACH: But the language appears to be
6 identical to me, between one and two. One just
7 references exploratory and one references qualifying.
8 So I think under the arguments you adopted last week,
9 the same arguments would apply and prevail for this.

10 So the reports were due at the latest February
11 2. The campaign has presented to the State Election
12 Commission a request for an exemption from filing --
13 they could not file on February 2. They asked for an
14 exemption. An exemption was granted on Friday. The
15 question still in the air is whether or not that
16 exemption by being granted, also extended the time
17 period to file from February 2 until some reasonable
18 amount of time required by the SEC after the exemption
19 from electronic filing was granted.

20 And that's the issue that has to be decided in
21 order for the SEC to determine that number five, the
22 candidate has met all other requirements of this
23 article. That is the only issue or possible requirement
24 of the article which has not been met, and it depends on

1 the ruling of the SEC.

2 MR. COLLIAS: Can I ask a question, Tim?
3 Didn't we on Friday discuss that when Ann Charnock said
4 that she couldn't represent to us -- at that time we
5 were planning on having a meeting on Monday morning at
6 10:00, and Ann indicated that she couldn't promise that
7 they could have paper copies of these documents that
8 should have been filed electronically to us before 10:00
9 AM Monday. And in that context, didn't we all discuss
10 and agree, although there may not have been a motion,
11 that very well, that she would have before this meeting
12 today? I mean didn't we have that conversation?

13 MR. LEACH: That's my recollection of what
14 happened, yes, sir.

15 MR. COLLIAS: Okay. I'm sorry. Would you
16 like to speak?

17 MR. GATES: On the hardship exemption
18 itself, I was wondering if the Commission was willing to
19 provide a factual basis for the hardship exemption that
20 was granted to the Benjamin campaign to file their
21 reports as much as four months later from the time that
22 they were due filed?

23 MR. COLLIAS: Wasn't that explained at the
24 meeting, that the computer software didn't match up and

1 they couldn't?

2 MR. LEACH: I thought we explained that,
3 but I'll offer the explanation again. There's a -- our
4 online electronic filing program is designed for what I
5 call regular candidates, and you have certain campaign
6 finance reports, which are required to be filed
7 electronically by certain deadlines. And then the
8 report at the top shows there's three due before the
9 primary and three -- associated with the primary and
10 three with the general, and so you have a box to check.

11 Well, the problem is, when we set up the
12 exploratory period for public finance, that's not on any
13 of those boxes or anything. So we had to set up a
14 separate sign-in process to get to forms that we created
15 for exploratory and qualifying receipts and reports.
16 And the problem is the rollover of the money collected
17 before you became a declared candidate converts into an
18 exploratory, but once you become a declared candidate,
19 you're no longer able under the current setup of the
20 system to get into the exploratory in interim.

21 So that's the best I can explain it. And I
22 can confirm, I've checked with staff, that as of
23 February 2nd and as of February 5th, Friday, they were
24 unable to access that required entry portal or entry

1 form.

2 MR. COLLIAS: When was that due? Because he
3 indicated that was due three or four months ago. When
4 was --

5 MR. LEACH: Well, you have the -- some of
6 these receipts that we received Monday, some of these
7 exploratory contributions, I believe without looking at
8 them, I remember some going back to maybe April. The
9 law says that you have to file it at the beginning of
10 the month after receipt. So some reports may have been
11 due as early as May, so we're back to the 3-12-13(c)1
12 exception to the monthly report requirements.

13 MS. CHARNOCK: May I speak on behalf -- this
14 is Ann Charnock on behalf of the Benjamin campaign. But
15 in April the candidate was not seeking public financing.

16 MR. LEACH: Yes. We don't know when the
17 candidate started seeking public financing, because the
18 law does not require the candidate to tell anybody when
19 he's seeking public financing. All it requires him to
20 do is notice when he's going to seek -- file a
21 declaration. Once he files the required declaration,
22 which this candidate did on September 11, then it
23 becomes electronically impossible to back up those pre-
24 September 11 contributions and put them into the system

1 electronically.

2 MR. GATES: So could I repeat the second
3 part of my question, which was the exemption was
4 granted, and the report is now four months late,
5 correct?

6 MR. LEACH: Under one interpretation of the
7 statute, the one adopted by the SEC last week, the
8 report is four days late, because February 2nd becomes
9 the deadline, the catchall, safety net for the reports
10 that were required but not previously submitted.

11 MR. GATES: Not the first required date for
12 the Benjamin campaign to have filed.

13 MR. COLLIAS: Well, I think --

14 MR. LEACH: The first one was due October
15 1st.

16 MR. COLLIAS: I think what he's saying is the
17 reports could have been filed much earlier, as you
18 indicated, but because of the provisions of 3-12-13 sub-
19 section C-2, which indicates -- it says --

20 MR. LEACH: Excuse me. C-1 for
21 exploratory.

22 MR. COLLIAS: Yeah. Okay. C-1 and C-2, it
23 talks about any receipts not previously submitted. I
24 think what Tim is saying is, is that indicates or

1 suggests that when you file by the final filing date,
2 which is February 2nd, you are allowed to catch up on
3 anything that you hadn't previously filed. And if
4 that's the right interpretation, then those reports that
5 could have been filed months earlier are still not late
6 as long as they're filed by February 2nd. It depends on
7 the interpretation of the statute. I mean your point's
8 well taken and I consider it a legitimate point and a
9 legitimate argument, but so is the other.

10 MR. GATES: So then my next question is
11 when did -- this is Kent Gates again with the Walker
12 campaign. When did the Commission first learn of the
13 Benjamin campaign's inability to file electronically?

14 MR. LEACH: I was informed Wednesday last
15 week.

16 MR. GATES: And then --

17 MS. CHARNOCK: May I respond to that?

18 MR. LEACH: If you have --

19 MR. COLLIAS: Sure.

20 MS. CHARNOCK: We have emails from employees
21 at the Secretary of State's office dated October 1st,
22 acknowledging.

23 MR. LEACH: All I can speak is what I have
24 knowledge of, which I presented to the SEC.

1 MR. COLLIAS: If you have a document you'd
2 like to make part of the record, we can have it attached
3 as an exhibit to the transcript today. We can do that
4 later. It doesn't have to be done at this moment.

5 MR. GATES: This is Kent Gates again.

6 MS. CHARNOCK: The answer to the question, the
7 response is the Benjamin campaign was in contact with
8 the Secretary of State's office on October 2nd is an
9 email I have acknowledging that it wasn't functional,
10 trying to submit electronically.

11 MR. LEACH: Because by October 2nd you were
12 already a qualifying candidate and no longer -- it was
13 no longer accessible to you.

14 MS. CHARNOCK: I'm just telling you we
15 couldn't -- in response to the fact that it's four
16 months late, no, it's -- we didn't have any way to file
17 it. It didn't start out as an exploratory candidate. I
18 mean the statute is clearly not written for what the
19 facts are, and that's a candidate who started out with
20 no intention of seeking public financing.

21 MR. LEACH: Had the right, had to set up a
22 pre-candidacy committee --

23 MS. CHARNOCK: And did that.

24 MR. LEACH: Had the right to collect

1 contributions of an unlimited amount without receipts.

2 MS. CHARNOCK: And did that.

3 MR. LEACH: And did that. And then on
4 September the 11th those monies became exploratory, and
5 the statute requires no filing by the candidate but
6 merely says it applies to a participating candidate.
7 The definition of a participating candidate is someone
8 who intends. So we don't have any formal statement of
9 intent until September 11.

10 MS. CHARNOCK: If it's inside the candidate's
11 own brain that I intend to do that, he's the only -- or
12 she's the only one that knows it, and it's an extremely,
13 painfully obscure statute, is how I would categorize it.

14 MR. COLLIAS: Go ahead. You had something
15 further to say.

16 MR. GATES: Could we, I'll just state that
17 again on the record, could we get copies of whatever's
18 entered today as well as the emails?

19 MR. LEACH: Certainly.

20 MR. GATES: And then --

21 MR. LEACH: Are you going to introduce
22 that?

23 MS. CHARNOCK: I mean if you want me to. I
24 would assume that I just --

1 MR. LEACH: All right. We can recess and I
2 can go look for the emails.

3 MS. CHARNOCK: Here's --

4 MR. LEACH: I mean if there's confidential
5 information --

6 MS. CHARNOCK: That's what I'm trying to --

7 MR. LEACH: Yeah, I understand.

8 MR. COLLIAS: Do you want to do that? Do you
9 think -- I mean if you want that in and you want to just
10 offer the emails and we'll let Tim go see if he can find
11 them and print them out. Do you have the dates you can
12 provide to him?

13 MR. LEACH: If you don't want to put the
14 details of the email in, if you'll just give me the name
15 of the person and the date, I can go and confirm that we
16 received a discussion of this issue and were made aware
17 of the issue.

18 MR. GATES: This is Kent Gates with the
19 Walker campaign. She's obviously brought this into the
20 discussion. I think it is evidence here, and we should
21 have access to it to see it for whatever interest
22 further.

23 MR. COLLIAS: We talked about an email that
24 was sent by you to Tim Leach.

1 MS. CHARNOCK: These are emails between Mr.
2 Shull, who you all met last week, and there's an
3 MKinder? Kinder. There's a Lisa Blake. Just some
4 emails going back and forth as to the reporting
5 requirement.

6 MR. COLLIAS: Are those people with the
7 Secretary of State's office?

8 MR. LEACH: Yes, in our elections division.

9 MR. COLLIAS: Well, I mean it seems to me
10 that when you email something to the Secretary of
11 State's office that you're not -- I don't know why --

12 MR. GATES: This is Kent Gates from the
13 Walker campaign. We can FOIA it but it's going to take
14 longer. She's the one that brought it up as evidence in
15 this hearing. I think we should have the right to see
16 it as part of the discussion.

17 (WHEREUPON, a discussion was
18 held off the record.)

19 MR. COLLIAS: Are you suggesting that some of
20 the information might be confidential in spite of the
21 fact she emailed the information to the Secretary of
22 State's office?

23 MR. LEACH: Government correspondence is
24 subject to FOIAs, of course, but there are exceptions to

1 certain information. I don't know what's in there. So
2 if we got a FOIA request, do it the hard way.

3 MR. GATES: Which is thirty days to get it
4 back.

5 MR. COLLIAS: Well --

6 MR. LEACH: Well, no. It's five days to
7 respond, but I don't want to go down that road. I
8 understand.

9 MR. GATES: They're the ones that brought
10 it up, not me.

11 MS. CHARNOCK: Well, in response to your
12 question or to your contention that these aren't timely
13 filed, and the question of when did we notify the
14 Secretary of State's office. Mr. Leach said he learned
15 last week. Our contention is the Secretary of State's
16 office was made aware in early October that this didn't
17 work. We were provided information on how to proceed.

18 MR. GATES: Which is what we're asking for
19 a copy of.

20 MS. CHARNOCK: I don't have any copies of
21 those. This is a series of emails between Darrell
22 Shull, Lisa Blake. There's some other names on that.
23 There is -- Missi Kinder. I mean I would offer these
24 only because it shows that on October 1st there was an

1 email exchange.

2 MR. COLLIAS: Okay. So you're willing to
3 offer that as an exhibit at the hearing today?

4 MS. CHARNOCK: Yes, if that is necessary.

5 MR. COLLIAS: Well, that's up to you, but if
6 you're going to do that, then I mean they're obviously
7 entitled to take a look at it.

8 MS. CHARNOCK: Absolutely, they are. I would
9 have preferred to -- and, well, that's fine. The
10 alternative is to ask Ms. Kinder and Ms. Blake to come
11 in and let me ask them a couple of questions.

12 MR. COLLIAS: Well, I don't think there's any
13 problem, from my point of view, any problem with
14 offering the copies of the emails you have in your hand,
15 but if you're not going to do that because you think
16 they contain some sort of confidential information, then
17 we have to proceed some other way.

18 MR. GATES; I still --

19 MR. COLLIAS: Hold on. I understand. We'll
20 have copies made. Make us three or four copies.

21 SEC. TENNANT: Gary, could I ask a question
22 real quick?

23 MR. COLLIAS: Yes.

24 SEC. TENNANT: This is Natalie Tennant. Can I

1 ask for a recess real quick?

2 MR. COLLIAS: Yes. How long? Five minutes,
3 ten minutes?

4 SEC. TENNANT: Yes. Could I have a recess of
5 five minutes, please? I move that we recess for five
6 minutes.

7 MR. COLLIAS: Okay. We'll recess for five
8 minutes. That's good. It will work out. Okay. From
9 right now. Okay.

10 (WHEREUPON, a brief recess
11 was taken.)

12 MR. COLLIAS: Let's start up again here.
13 I've received a copy of these emails, which will be
14 attached to the transcript of today's hearing as Exhibit
15 1.

16 (WHEREUPON, Exhibit No. 1 was marked
17 for identification and is attached
18 hereto.)

19 MR. COLLIAS: Okay. What further comments or
20 discussion do we have?

21 MS. CHARNOCK: The point of the emails was to
22 establish a timeframe of when the Benjamin campaign was
23 making inquiries about what to when and when to file,
24 and that was in response to the Walker campaign's

1 objection -- I don't know if objection -- contention
2 that anything that was filed within the last couple of
3 days is late. Is that summary accurate? I offer those
4 just to show when the conversations were taking place
5 several months ago.

6 MR. GATES: My next question is, I mean
7 that -- this is Kent Gates for the Walker campaign.
8 That brings out the point that the Benjamin campaign
9 should have known that the exploratory contributions
10 should have been filed in October, October 2nd when they
11 were notified by the Secretary of State's office and
12 there was a problem.

13 MS. CHARNOCK: And I'll refer you to an email
14 that said all -- and the question was in reference --
15 look at, Lisa did inform you correctly during the
16 qualifying period -- this is on page two towards the
17 bottom of the page. -- during the qualifying period,
18 which is September 2015 through January 2016, only the
19 monthly qualifying contributions and expenditures are
20 reported.

21 Next paragraph, all transactions that occurred
22 before that time period would be filed on the general
23 first report, which is due March 26th to April 1, 2016,
24 which is two months from now. I mean that's the whole

1 contention that when you don't start out seeking public
2 financing and you change midstream that the statute
3 doesn't contemplate. But our contention is we've filed
4 every report that is required to be file and we have
5 been asked to file. Those are in.

6 MR. GATES: And so -- this Kent Gates with
7 the Walker campaign. I want to go back just one second
8 and address that. I want to ask again when the
9 Elections Commission was first notified that there was a
10 hardship, that the Benjamin campaign was having a
11 problem filing these reports electronically.

12 MR. COLLIAS: Well, the Commission itself,
13 its members, couldn't possibly have been informed any
14 earlier than last Wednesday; is that right?

15 MR. LEACH: When the Benjamin campaign
16 requested the exemption.

17 MR. GATES: And specifically, Mr. Leach,
18 that's when you first became aware of it, correct?

19 MR. LEACH: As personally, yes, speaking
20 for myself.

21 MR. GATES: And I would just note that the
22 Exhibit 1 that was just entered into the record that has
23 email exchanges with the Benjamin campaign and the
24 Secretary of State's office includes Mr. Leach on the

1 emails and exchanges, so you would have known as of
2 October the 1st that there was an issue on the filing.

3 MR. LEACH: Well, I'm listed as a chain
4 recipient. I can't -- I have no recollection, but other
5 than that, I'm on this list.

6 MR. GATES: So you were aware October 1st
7 that there was an issue with the filing.

8 MR. COLLIAS: Well, I think he said he
9 wasn't, he doesn't recall being aware, but he obviously
10 had notice. I think this documents that he had notice
11 of it, but whether or not he actually subjectively was
12 aware of it is another matter. Am I answering for you?

13 MR. LEACH: That's how I would have tried
14 to answer it.

15 MR. GATES: And then my -- this is Kent
16 Gates with the Walker campaign again. If the Benjamin
17 campaign and the solicitor for the Elections Commission
18 both knew on October the 2nd that there was a problem
19 with the filing of the reports, then I don't think that
20 the hardship exemption that was voted on on Friday
21 actually applies in this case.

22 MR. COLLIAS: Well, we've already granted the
23 exemption.

24 MR. GATES: But I don't think it applies.

1 MR. COLLIAS: Oh, okay. I understand. You
2 disagree with the Commission's decision of last week,
3 but the question for us today is the timeliness issue,
4 is whether or not implicit in our ruling of last week
5 was an extension until today to file the necessary
6 documents in a non-electronic format. And my
7 understanding is that they have been filed, they meet
8 all the requirements. The only issue is whether or not
9 we're going to consider them timely. I mean does
10 everyone agree that that's the issue?

11 MR. GATES: And the timeliness is based on
12 the fact that both the solicitor for the Elections
13 Commission and the Benjamin campaign knew on October the
14 2nd that they were not going to be able to file them
15 electronically on February the 2nd at the point that
16 they were due and, therefore, they weren't timely.

17 MR. COLLIAS: Okay. I think the case turns,
18 though, on the language that at one of our previous
19 meetings Vince Cardi pointed out in 3-12-13 where it
20 talks about the reporting for both qualifying
21 contributions and exploratory contributions being due,
22 but also provides for the filing of any receipts not
23 previously submitted. I mean am I understanding that
24 right?

1 MR. LEACH: It's my understanding that
2 that's what the SEC determined last week when we were
3 dealing with the discussion on the timeliness of certain
4 exploratory receipts. Today we're dealing with the
5 timeliness of -- I'm sorry, I misspoke. Last week we
6 were discussing the timeliness of qualifying
7 contributions and receipts and reporting. Paragraph two
8 of that subsection. Today you're discussing
9 exploratory, your paragraph one of that subsection,
10 which is the same language. So the SEC has considered
11 arguments, ruled one way, and I suppose you could
12 consider further arguments and rule a different way
13 today.

14 MR. GATES: This is Kent Gates from the
15 Walker campaign. I mean part of the reason why there
16 should be reconsideration is the new evidence presented
17 to the Commission showing that the Benjamin campaign
18 knew on October the 1st or 2nd time period that there
19 was going to be a problem filing in a timely manner
20 chose not to address it until the crisis moment in
21 February and the solicitor for the Election Commission
22 knew also.

23 MR. COLLIAS: Yeah. Okay. But the argument
24 against that is that the language in 3-12-13 subsection

1 C is a saving clause that says that you can still file
2 those documents not filed, not previously filed. I mean
3 that's the argument against that. But, nevertheless, is
4 there any other discussion or -- well, go ahead.

5 SEC. TENNANT: Gary, if I could just say, in
6 addition, in addition, you know, the emails as everyone
7 has read indicate the qualifying, that we were talking
8 about, the email was talking about qualifying
9 contributions. But then you covered the point for
10 exploratory contributions with 3-12-13, so you're making
11 your point. There are two different distinctions here.
12 Yes, there was an email exchange from October, but it's
13 addressing qualifying, and yes, we're talking about
14 exploratory, but it's covered under 3-12-13, and so as
15 you point out, Gary, there are interpretations and that
16 is the interpretation that we took last week, was 3-12-
17 13.

18 MR. COLLIAS: Yeah. Just speaking for -- I'm
19 going to give you an opportunity to put any other
20 statement or argument on the record, but just speaking
21 for myself, I believe last week when we agreed to give
22 the exemption to the electronic filing, that obviously
23 we were extending by doing that, we intended and meant
24 to extend the time, because otherwise it would have been

1 absurd to let them file something not electronically and
2 give an exemption when they were already out of time to
3 file it at all would have been meaningless. It would
4 have been a vain act.

5 And then afterwards we had the discussion with
6 Ann Charnock about when she'd be able to get the paper
7 copies to us. So to me the extension of time was
8 implicit. But nevertheless, it wasn't explicitly
9 granted, so as I see it, the issue today is just whether
10 or not we're going to explicitly extend the time so that
11 the filings that we received this week are deemed
12 timely. Now, what other statement or argument do you
13 want to make?

14 MR. GATES: This is Kent Gates for the
15 Walker campaign. I just want to repeat that there is
16 new evidence before the Commission that probably would
17 have changed that vote on Friday. And then, you know,
18 furthermore doesn't the hardship exemption only apply to
19 the form of filing electronic or hard copy but does not
20 provide any relief for the timing of the filing?

21 MR. COLLIAS: I think that that's right, but
22 what I'm saying --

23 MR. GATES: The timing is still February
24 2nd.

1 MR. COLLIAS: Until and unless we extend it
2 and deem the documents filed timely.

3 MR. GATES: But the hardship, the hardship
4 is for the form of filing that the Benjamin would have
5 had to make, whether it be electronic or hard copy and
6 not on the actual timing of it. It was still due
7 February 2nd. They could have filed a hard copy on
8 February 2nd.

9 MR. COLLIAS: Well --

10 MS. CHARNOCK: We couldn't have filed a hard
11 copy on February 2nd, because we didn't have an
12 exemption to. All the reportings under this act have to
13 be filed electronically. That's the issue.

14 MR. GATES: This is Kent Gates with the
15 Walker campaign. They did --

16 MS. CHARNOCK: And --

17 MR. GATES: -- have in this email exchange,
18 they did go ahead proactively when they were having
19 trouble in October and file their first qualifying
20 report be it email, hard copy because they couldn't file
21 it electronically, so they could have done the same
22 thing with the February 2nd deadline.

23 MR. COLLIAS: Okay. Natalie, yes?

24 SEC. TENNANT: Well, my only thing is there's

1 really no new evidence, because that's what we have said
2 was the difference between qualifying and exploratory,
3 and as I said again under 3-12-13, that with the
4 extension and Ann Charnock makes the point that -- and I
5 guess maybe perhaps they should have filed on the 2nd
6 but they filed on the 3rd asking, mentioning the
7 extension. And so, you know, it's the rule and we see
8 what the Chair is saying about what the SEC is able to
9 decide on.

10 MR. COLLIAS: Well, I think it might be new
11 evidence. I just don't know that it changes anything.
12 It doesn't change my view.

13 SEC. TENNANT: That's a point, too. I mean I
14 see your point in that, too, Gary.

15 SEC. TENNANT: I mean it's something new that
16 we didn't have. It just doesn't change my analysis of
17 the situation. Is there anything else that you want to
18 say?

19 SEC. TENNANT: No.

20 MR. GATES: Well, I would just make the
21 point that the application for certification is
22 inaccurate from the Benjamin campaign because the
23 reports were not filed in a timely manner and he had in
24 fact not completed all the requirements of the article.

1 MR. COLLIAS: All right. And I think that he
2 hadn't completed all the requirements of the article in
3 a timely manner. I agree with that as a statement of
4 fact, and that presents us with the question today of
5 whether or not to extend the time and deem them filed
6 timely. Basically, give an exemption to the timeliness
7 of the filing based on all the history that we've talked
8 about endlessly. Do I have a motion on whether or not
9 to deem the filings by the Benjamin campaign as having
10 been made in a timely manner?

11 MR. CARDI: I'll so move. Vince Cardi.

12 MR. COLLIAS: Do I have a second?

13 SEC. TENNANT: Well, the way you said it, in a
14 timely manner or they're extending it, the SEC is
15 extending it?

16 MR. COLLIAS: Yes. Extending it so that as
17 they were actually filed, they will be deemed to have
18 been filed in a timely manner. We will deem them
19 timely.

20 SEC. TENNANT: Okay. I understand what you're
21 saying now.

22 MR. COLLIAS: Do you second that motion?

23 MR. CARDI: Did you second it, Natalie?

24 SEC. TENNANT: Yeah. He made the motion, I'll

1 second it.

2 MR. COLLIAS: Okay. Is there any further
3 discussion?

4 MR. CARDI: This is Vince Cardi. I just
5 want to say we granted an exemption from electronic
6 filing last Friday because of some glitch in the
7 Secretary of State's software ability to accept the
8 reports electronically. We granted it on Friday. It
9 seemed only fair to us on Friday to give further
10 reasonable time to submit the filings in paper form. We
11 determined at our meeting to act on the certification
12 should be held on Wednesday, February 10th, to handle
13 any other issues that came up. So we set today,
14 February 10th as a deadline to filing the paper records.
15 They've been filed, so I think they've been filed
16 timely, and so I think we should go ahead and vote on
17 this and then we'll vote on the certification.

18 MR. COLLIAS: Is there any further
19 discussion? Go ahead. The Walker campaign wants to say
20 something else.

21 MR. GATES: I still don't have a thorough
22 explanation on the one question that I asked, and I'd
23 just like that on for the record. Doesn't the hardship
24 exemption only apply to the form of filing, whether it

1 be paper or electronic, and not to the relief of timing
2 itself like on Friday?

3 MR. COLLIAS: If you're talking about the
4 exemption of last week, yes.

5 MR. GATES: So it does not go to the
6 timing?

7 MR. COLLIAS: Right. That's what we're
8 dealing with today. Does everybody agree with that?

9 MR. CARDI: Well --

10 SEC. TENNANT: Yes.

11 MR. CARDI: -- last Friday we said since
12 we're granting the exemption, we will give them until
13 next Wednesday to file the paper form. So in a way we
14 made that decision to move the deadline of the forms
15 until Wednesday, today. So --

16 MR. COLLIAS: I agree with that.

17 MR. CARDI: I'm not taking the position
18 that granting the exemption did not address the question
19 of the time limitation. I think it implicitly did.

20 MR. COLLIAS: I agree that it did implicitly
21 do that, but nevertheless, we didn't formally make that
22 motion, which I think is what the Walker campaign is
23 pointing out and asking. But nevertheless, is there
24 anything --

1 MR. CARDI: And that's the motion we have
2 before us now.

3 MR. COLLIAS: Yeah. The motion is now
4 whether or not to now at this moment formally to deem
5 them as having been filed in a timely manner. So is
6 there any further discussion? All in favor vote aye.

7 MR. CARDI: Aye.

8 SEC. TENNANT: Aye.

9 MR. COLLIAS: Aye. The vote's unanimous.
10 Now, that brings us to the next question, whether or not
11 to certify the Benjamin campaign. Tim, is there any
12 other discussion on that or --

13 MR. LEACH: No. That's the only -- as I
14 said in the preliminary remarks, that's the only issue
15 left up in the air. All of the other requirements of
16 the five sections have been met or five findings of the
17 SEC have been met.

18 MR. COLLIAS: Well, given our rulings thus
19 far, assuming for the sake of argument them to be
20 correct, is there any reason now not to certify the
21 Benjamin campaign that you can think of?

22 MR. LEACH: Not that I'm aware of.

23 MR. COLLIAS: Okay. Now I'll ask the Walker
24 campaign. I know you disagree with some of the

1 decisions we've made up to this point, but given those
2 decisions, can you think of any other reason that the
3 Benjamin campaign shouldn't be certified?

4 MR. GATES: I actually have one request.
5 This morning the Walker -- this is Kent Gates with the
6 Walker campaign. This morning the Walker campaign sent
7 to Ashley Summitt at the Secretary of State's office a
8 letter from Thomas Ryan, our attorney, and I would like
9 that to be printed out at this time and presented as
10 part of the record of these proceedings.

11 MS. SUMMITT: It was an email?

12 MR. GATES: Yes. Uh-huh.

13 MR. COLLIAS: Yeah, that's fine. Can you get
14 that?

15 SEC. TENNANT: Can you read it? Can you read
16 it?

17 MR. COLLIAS: Yeah. Well, we don't have a
18 copy of it yet. We'll have to get a copy and we'll look
19 at it.

20 (WHEREUPON, a discussion was
21 held off the record.)

22 MR. COLLIAS: Okay, Vince, we got this
23 letter. The letter appears to be about six pages long,
24 so what we're going to do is, we're going to send you

1 and Natalie a copy of it.

2 MR. CARDI: Okay.

3 (WHEREUPON, a discussion was

4 held off the record.)

5 MR. COLLIAS: Vince, do you have that letter?

6 MR. CARDI: Yes.

7 MR. COLLIAS: Okay. Vince and Natalie, are

8 you all reading the letter?

9 SEC. TENNANT: Yes.

10 MR. CARDI: Yes.

11 MR. COLLIAS: When each of you is done,

12 please let me know.

13 MR. CARDI: I'm done.

14 SEC. TENNANT: No.

15 MR. COLLIAS: All right. Both of you done?

16 MR. CARDI: Yes.

17 SEC. TENNANT: I'm almost finished.

18 MR. COLLIAS: Okay.

19 (WHEREUPON, a discussion was

20 held off the record.)

21 SEC. TENNANT: Okay, I'm finished. I guess my

22 first question, though, is this was not presented at the

23 beginning of the meeting?

24 MR. COLLIAS: Well, it does show on the cc at

1 the end, he copied in Timothy Leach and Ashley Summitt,
2 but let me ask --

3 MR. GATES: This is Kent Gates from the
4 Walker campaign. Mr. Ryan did email the members of the
5 Commission and Ann Charnock for the Benjamin campaign
6 this morning and she said she sent it to you as well.
7 So they should have been aware of -- you all were made
8 aware of the letter prior to the actual start of this
9 meeting.

10 MR. COLLIAS: Were you all aware of it?

11 MR. GATES: Mr. Ryan notified you. I don't
12 know whether -- I mean I can't speak to whether you got
13 them or not, but he did tell me he sent them.

14 MR. COLLIAS: You all need to speak out loud.
15 Did either of you get this before the meeting?

16 MS. SUMMITT: No.

17 MR. LEACH: I don't know if I got it,
18 because I have a stack of email I haven't opened.

19 MR. COLLIAS: But you didn't see it before
20 the meeting?

21 MS. SUMMITT: No.

22 MR. LEACH: No, I haven't seen it.

23 MR. COLLIAS: Okay.

24 MS. SUMMITT: I wouldn't have known it was

1 there except this --

2 MS. CHARNOCK: And as far as Ann Charnock
3 receiving it, I left my office at 8:40 this morning and
4 it wasn't there at that time.

5 MR. COLLIAS: Okay. And then it wasn't
6 presented to us until you heard it presented to us here
7 at the meeting, Natalie, so does that answer your
8 question?

9 SEC. TENNANT: Yes. Yeah, I mean even if he
10 emailed it to us, it could have been presented in the
11 many different discussions and questions that were
12 presented early on. I just thought it might have been
13 presented even before some of these discussions.

14 MR. COLLIAS: Well, I mean it seems to me
15 that it essentially makes the same argument that I think
16 was competently made by the representative of the Walker
17 campaign. Sometimes when you make a legal argument all
18 you can ask is that the judge or whoever understands
19 your argument, and I think that I understood your
20 argument. Would you like to have this made an exhibit
21 to the --

22 MR. GATES: Yes, absolutely.

23 MR. COLLIAS: Is there any objection to that?
24 Do you have any objection to that, Ann?

1 MS. CHARNOCK: No.

2 MR. COLLIAS: Okay. Well, then, we'll have
3 this letter from Mr. Ryan, dated February 10, 2016, to
4 The Honorable Natalie Tennant and to me and to Vince
5 Cardi made a Exhibit 2 to the hearing today.

6 (WHEREUPON, Exhibit No. 2 was marked
7 identification and is attached
8 hereto.)

9 MR. COLLIAS: With that said, I'm not sure
10 where we left off. Is there any other discussion about
11 the whole issue of certifying the Benjamin campaign? Go
12 ahead.

13 MR. GATES: This is Kent Gates with the
14 Walker campaign. I just want to revisit and put on the
15 record again it is our contention and I think accurately
16 there's no statutory authority for extending the time of
17 filing.

18 MR. COLLIAS: What's your response to that,
19 Mr. Leach?

20 MR. LEACH: We've already voted on it. I
21 mean I understand that's their position.

22 MR. COLLIAS: No, I understand, but I mean --
23 am I right that -- I mean -- well, let me just ask you.

24 MR. LEACH: Of course you're right, you

1 were voting with the majority.

2 MR. COLLIAS: Well, that's not what I meant.
3 What's your response to his argument that there's no
4 statutory authority for extending the time?

5 MR. LEACH: I think he made that argument
6 before you voted and he's making it again after you
7 voted.

8 MR. COLLIAS: Okay. Well, I think we
9 understand that and that's in the record, and so that's
10 preserved and I understand your point. And we've just
11 acted today to extend that time, and we have the
12 authority to do that, we believe, or if we don't have
13 the authority to do it, we've still done it. With that
14 said, do I have a motion to certify the Benjamin
15 campaign?

16 MR. LEACH: If I may interject, it's your
17 pleasure, Mr. Chairman, but it's a request before you.
18 We can't rule on a request. So as I explained last
19 week, parliamentary procedures may not be required and
20 you can just call the question and frame the question as
21 to vote yes or vote no and not have to go through the
22 motion.

23 MR. COLLIAS: Well, I'd prefer to --

24 MR. LEACH: It's your --

1 MR. COLLIAS: Yeah, I prefer just to use the
2 parliamentary procedure. Do I have a motion to certify
3 the Benjamin campaign?

4 MR. CARDI: This is Vince Cardi. I'll so
5 move. This is consistent with everything we've done in
6 the meetings over the last eight days.

7 MR. COLLIAS: Do I have a second?

8 SEC. TENNANT: Yeah, I'll second that so we
9 can vote.

10 MR. COLLIAS: Okay. All in favor vote aye.

11 MR. CARDI: Aye.

12 SEC. TENNANT: Aye.

13 MR. COLLIAS: Aye. The vote's unanimous, so
14 the Brent Benjamin campaign is certified, and we
15 understand all of your objections. I think they've been
16 ably made and they're preserved. Is there any other
17 matter we need to take up today? Go ahead. Please
18 speak.

19 MR. GATES: Kent Gates with the Walker
20 campaign again. On Friday the solution was reached by
21 the State Election Commission and the Secretary of State
22 reported at the February 5th meeting that the Benjamin
23 campaign had five hundred and twelve qualifying
24 contributions and it otherwise satisfied the criteria.

1 We are asking if you could provide by today or tomorrow
2 the list of qualifying contributions, specifically the
3 seventy-one that were rejected, by the Secretary of
4 State's office so we have those for our records.

5 MR. COLLIAS: Is that a problem providing
6 those?

7 MR. LEACH: We've got a lot of spreadsheets
8 and things --

9 MR. GATES: We'll take the whole list.

10 MR. LEACH: We'll comply.

11 MR. COLLIAS: Okay. By the end of the
12 business day tomorrow?

13 MR. LEACH: Yes. Today's what? Wednesday.
14 Yes.

15 MR. COLLIAS: Okay.

16 MR. GATES: Thank you.

17 MS. CHARNOCK: May I read a statement on
18 behalf of the Benjamin campaign?

19 MR. COLLIAS: Sure.

20 MS. CHARNOCK: This is Ann Charnock reading a
21 statement to the State Election Commission from Justice
22 Brent Benjamin, dated today.

23 "Today's meeting of this Commission was the
24 fourth in the past several days to focus on certifying

1 candidates for the Public Campaign Finance program. Two
2 days last week were dedicated to addressing 516
3 challenges to individual donors making small-dollar
4 contributions to my campaign committee.

5 "In creating the Public Campaign Finance
6 program, the legislature recognized that increasingly
7 expensive judicial elections funded by high-dollar
8 interests have created a concern among voters that such
9 interests have too much influence in our judicial
10 system. The Public Campaign Finance program not only
11 enhances public confidence in the fairness and
12 impartiality of our courts, it also ensures that the
13 West Virginian who is able to give just a single dollar
14 knows that his or her participation in the selection
15 process is just as important as the \$1,000 given by a
16 politically-connected insider, special interest or out-
17 of-state group.

18 "Here we have seen a direct challenge by one
19 opposing candidate to nine out of ten West Virginians
20 who simply wished to participate in this program and
21 show support for my campaign. In rejecting nearly every
22 such challenge, this Commission signaled to every West
23 Virginia voter that their voice matters.

24 "I wish to express my personal appreciation

1 for the professional and courteous treatment the
2 Commission, the Secretary, counsel, and staff have shown
3 my campaign team during this long process.

4 "By your labors you have shown West Virginians
5 that our system for determining eligibility for public
6 campaign financing is transparent, fact-based and
7 thorough. On behalf of myself, my campaign team, and
8 those for whom the Public Campaign Finance program was
9 created, thank you for the diligence you have applied to
10 this process."

11 Thank you very much, and I will hand this
12 document to the court reporter for her records.

13 MR. COLLIAS: We'll also make that an
14 exhibit, Exhibit 3.

15 (WHEREUPON, Exhibit No. 3 was marked
16 for identification and is attached
17 hereto.)

18 MR. COLLIAS: Yes, the Walker campaign.

19 MR. GATES: The Walker campaign would
20 request a copy of that letter.

21 MR. COLLIAS: Sure. Of course.

22 MR. GATES: Thank you.

23 MR. COLLIAS: Is there any other matter we
24 need to take up? In that case, do I have a motion that

1 we adjourn?

2 SEC. TENNANT: So moved.

3 MR. CARDI: So moved.

4 MR. COLLIAS: Okay. Well, since both moved,
5 I'll take one or the other of them as a second. All in
6 favor vote aye.

7 MR. CARDI: Aye.

8 SEC. TENNANT: Aye.

9 MR. COLLIAS: Aye. The vote's unanimous.

10 These proceedings are closed.

11

12 (WHEREUPON, the hearing was
13 adjourned at 11:43 AM.)
14

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF PUTNAM, To-wit:

I, Penny L. Kerns, Certified Court Reporter,
do hereby certify that the foregoing is a correct
verbatim record of the proceedings had at the time and
place set forth herein.

I certify that the attached transcript meets
the requirements set forth within Article 27, Chapter 47
of the West Virginia Code.

Given under my hand this 12th day of
February, 2016.

Penny L. Kerns, CCR
Notary Public

My commission expires May 13, 2018.

Darrell Shull <dcshull@gmail.com>
To: Donald Nickerson <dnickerson@bowlesrice.com>
Cc: James Shaffer <jshafferwv@gmail.com>

Fri, Oct 2, 2015 at 10:17 AM

Will do.

Darrell

On Oct 2, 2015, at 9:07 AM, Donald Nickerson <dnickerson@bowlesrice.com> wrote:

Darrell,

Thanks for handling this so well in my absence. Can you please rough out the report each month with your data and let me review?

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Thursday, October 01, 2015 1:32 PM
To: Lisa Blake; mkinder@wvsos.com
Cc: Donald Nickerson; Timothy Leach
Subject: Re: Emailing - F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf

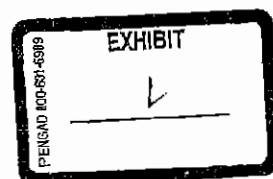
Thank you for providing the form. Since the online system is not yet available, I have attached the completed report in order to comply with today's filing deadline. As soon as I hear from you that the online system is operational I will re-file for September.

Thank you,

Darrell Shull

On Thu, Oct 1, 2015 at 1:14 PM, Lisa Blake <LBlake@wvsos.com> wrote:

Lisa Blake
Elections Division
West Virginia Secretary of State Natalie E. Tennant
1900 Kanawha Blvd. East
Building 1, Suite 157 K
Charleston WV, 25305




JA001786

Phone: 304-558-6000

Fax: 304-558-8386

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	Donald A. Nickerson, Jr.
	dnickerson@bowlesrice.com
	1217 Chapline Street Wheeling, WV 26003 (304) 230-1803
	Bio vCard

CONFIDENTIAL AND PRIVILEGED: This e-mail is confidential and privileged, and intended only for the review and use of the addressee(s). If you have received this e-mail in error, please notify the sender at (304) 230-1803 or by e-mail at dnickerson@bowlesrice.com. Thank you.

Missi Kinder <MKinder@wvsos.com>
To: Darrell Shull <dcshull@gmail.com>
Cc: Donald Nickerson <dnickerson@bowlesrice.com>

Fri, Oct 2, 2015 at 2:32 PM

Good Afternoon, Mr. Shull –

Thank you for submitting Justice Benjamin's report electronically. I was excited when I saw that you were able to file it yesterday evening. I also want to thank you for your patience while we worked out the snarls with the qualifying period portion of our campaign finance reporting system. We implemented the system during the 2014 election, but with Justice of the Supreme Court not being on the ballot last year, we haven't used this feature until now.

Lisa did inform you correctly. During the qualifying period, which is September 2015 through January 2016, only the monthly qualifying contributions and expenditures are reported.

All transactions that occurred before that time period would be filed on the General-First report which is due March 26-April 1, 2016.

Don't forget that copies of each qualifying period receipt must be submitted to our office monthly. These can be either scanned and uploaded into the campaign finance reporting system, or copies can be brought in to our office.

Please feel free to contact me at any time if you have any questions or need more information.

Have a good weekend.

Missi K.

Missi Kinder
Campaign Finance Specialist
West Virginia Secretary of State's Office
1900 Kanawha Blvd. East
Building 1, Suite 157-K
Charleston, WV 25305

Phone: (304) 558-6000

Fax: (304) 558-8386

www.wvsos.com

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Thursday, October 01, 2015 5:25 PM
To: Missi Kinder <MKinder@wvsos.com>
Cc: Lisa Blake <LBlake@wvsos.com>; Donald Nickerson <dnickerson@bowlesrice.com>
Subject: Re: Emailing - F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf

Thank you. Per Lisa's instructions I have reported the beginning balance as \$0.00, even though the campaign has a positive bank balance due to receipts during the exploratory period prior to September 1. Lisa directed that the first monthly report for qualifying contributions begins with a zero balance and then accrues as qualifying contributions are received. She also directed that the exploratory contributions and expenditures incurred prior to

2/2/2016

Gmail - Emailing - F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf

September will be reported in the January report. Please advise if this is incorrect.

I have submitted the report electronically on behalf of Mr. Nickerson (who is traveling today).

Thank you for your assistance.

Darrell Shull

On Thu, Oct 1, 2015 at 4:20 PM, Missi Kinder <MKinder@wvsos.com> wrote:

Good Afternoon, Mr. Shull –

I received your email containing Brent Benjamin's Qualifying Period Report for the month of September. The Justice of the Supreme Court portion of our online reporting system is now working properly. If you get a chance this evening, please login to your account and submit the September report electronically.

To submit this report electronically, you would simply click the **"Review and Submit"** button to the right of the report titled "Supreme Court – September – SC09". This will bring up the body of the actual report. Please scroll down to the bottom of the report and click the **"Submit Report"** button.

Please feel free to contact me if you have any questions or need more information.

Have a good day.

Missi Kinder

Missi Kinder

Campaign Finance Specialist

West Virginia Secretary of State's Office

1900 Kanawha Blvd. East

2/2/2015

Gmail - Emailing - F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf

Building 1, Suite 157-K

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Phone: (304) 558-6000

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From: Darrell Shull [mailto:dcshull@gmail.com]

Sent: Thursday, October 01, 2015 1:32 PM

To: Lisa Blake <LBlake@wvsos.com>; Missi Kinder <MKinder@wvsos.com>

Cc: Donald Nickerson <dnickerson@bowlesrice.com>; Timothy Leach <TLeach@wvsos.com>

Subject: Re: Emailing - F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf

Thank you for providing the form. Since the online system is not yet available, I have attached the completed report in order to comply with today's filing deadline. As soon as I hear from you that the online system is operational I will re-file for September.

Thank you,

Darrell Shull

On Thu, Oct 1, 2015 at 1:14 PM, Lisa Blake <LBlake@wvsos.com> wrote:

Lisa Blake

Elections Division

West Virginia Secretary of State Natalie E. Tennant

1900 Kanawha Blvd. East

Building 1, Suite 157 K

Charleston WV, 25305

K&L GATES

February 10, 2016

Thomas C. Ryan
P: 412-355-8335
F: 412-355-6501
thomas.ryan@klgates.com

VIA E-MAIL & HAND DELIVERY

The Honorable Natalie E. Tennant
Secretary of State for the State of West Virginia
Ex-Officio Member of the West Virginia State
Election Commission
ntennant@wvsos.com

Gary A. Collias, Esq.
Chairman
West Virginia State Election Commission
gacollias@frontier.com

Vincent P. Cardi, Esq.
Member
West Virginia State Election Commission
vincent.cardi@mail.wvu.edu

Re: Application for Certification Submitted by Brent D. Benjamin, Esq.

Dear Commissioners:

K&L Gates LLP represents Ms. Elizabeth D. Walker, a non-partisan candidate for a seat as Justice on the West Virginia Supreme Court of Appeals (the "Supreme Court") in the election scheduled to occur on May 10, 2016. I understand that the West Virginia State Election Commission ("SEC") intends to convene a meeting at 10 a.m. today, February 10, 2016, to consider whether candidate current Supreme Court Justice Brent D. Benjamin should be certified as a "participating candidate" pursuant to W. Va. Code § 3-10(b), thereby qualifying him to receive taxpayer monies from the West Virginia Supreme Court of Appeals Public Campaign Financing Program (the "Program") to fund his campaign.

I intended to appear in person and, if permitted by this body, address a number of the issues outlined below. I cannot, however, appear at the hearing because of a personal scheduling conflict. As an alternative, I ask you that you accept this letter and take these matters under consideration as part of your deliberations on this very important issue. Based on the fatal deficiencies and applicable law discussed briefly below, I believe that is abundantly clear that Justice Benjamin has failed to meet the applicable statutory and regulatory obligations necessary to receive approximately \$500,000 in state monies. Accordingly, I urge this Commission to deny Justice Benjamin's Application for Certification.

Before outlining the most critical issues warranting disqualification, a survey of the applicable law is warranted.



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JA001791

K&L GATES

February 10, 2016

Page 2

The Program and its requirements are codified in Chapter 3, Article 12 of the West Virginia Code ("Article 12"). Pursuant to W. Va. Code §3-1A-6, the Secretary of State is tasked, after consultation with the Commission, to make, amend and rescind such orders and to promulgate legislative rules, as may be necessary to standardize and make effective the provisions of Chapter 3. *Rogers v. Hechler*, 348 S.E.2d 299, 304 (W. Va. 1986). With respect to the Program, the Secretary, after consultation with the Commission, promulgated W. Va. Code of State Regulation ("CSR") 146-5 *et seq.* to govern the implementation and administration of the Program (the "Series 146-5"). Following authorization by the West Virginia Legislature that became effective on May 1, 2014, the rules set forth in Series 146-5 carry the full force and effect of law. *State ex rel. Barker v. Manchin*, 279 S.E.2d 622, 631 (W. Va. 1981) ("Once the executive officer or agency has made and adopted valid rules and regulations pursuant to the grant of the legislative powers, they take on the force of statutory law.").

Before their considering the import of the law, a review of the relevant facts is warranted.

Prior to filing his "Declaration of Intent" on September 11, 2015, Justice Benjamin was entitled to seek "exploratory contributions" "to examine his [] chance of election and to qualify for public financing for public financing." W. Va. Code § 3-12-3(5). During that "exploratory period," Justice Benjamin was subject to certain contribution restrictions and required to file a report at the beginning of each month that included "all exploratory contributions, expenditures and obligations along with all receipts for contributions received during the prior month." *Id.* at § 3-12-8(d). Indeed, W. Va. Code CSR § 146-5-3.6.e states "[r]eceipts, expenditures, and obligations *shall* be reported to the Secretary at the beginning of each month." (emphasis added). Further, "During the exploratory and qualifying periods, a participating candidate or his or her financial must submit, on the first of each month, a report of all exploratory and qualifying contributions along with their receipts and an accounting of all expenditures and obligations received during the immediately preceding month." CSR § 146-5-11.3.

West Virginia Code § 3-12-8(d) also provides that, "Such reports shall be filed electronically; *Provided*, That a committee may apply for an exemption in case of hardship pursuant to [W. Va. Code § 3-8-5b(c)]." The same hardship exemption excusing electronically filing (*but neither the timing nor the deadline*) is also present in CSR 126-5-3.6.e.2 and 11.3.b.

Prior to September 11, 2015, Justice Benjamin failed to report any exploratory contributions, as was required by Article 12 and Series 146-5.

Thereafter, Justice Benjamin entered the "qualifying period" and collected "qualifying contributions," subject to certain parameters set forth in W. Va. Code § 3-12-9 and W. Va. CSR § 146-5-5 *et seq.* Further, during this "qualifying period," Justice Benjamin was required to file reports at the "beginning of each month." That "report all qualifying contributions, expenditures, and obligations along with all receipts for contributions received during the prior month." W. Va. Code § 3-12-9(f). That section further states, "Such reports shall be filed electronically:

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February 10, 2016

Page 3

Provided: that a committee may apply for an exemption in case of hardship pursuant to [W. Va. Code § 3-8-5b(c)].”¹

After September 11, 2015, Justice Benjamin apparently filed the following “qualifying period” reports electronically, according to the Secretary of State’s website:

- October 1, 2015 report showing zero dollars collected in qualifying contributions;
- November 1, 2015 report showing \$1,360 collected in qualifying contributions;
- December 1, 2015 report showing \$1,299 collected in qualifying contributions (\$2,659 in total contributions this election cycle);
- January 1, 2016 report showing \$4,045 collected in qualifying contributions (\$6,704 in total contributions this election cycle);
- January 31, 2016 report as an amended December 2015 report showing \$4,055 collected in qualifying contributions (\$6714 in total contributions); and
- February 1, 2016 report showing \$34,797 collected in qualifying contributions (\$41,511 in total contributions this election cycle).²

Within two business days, in this case Tuesday, February 2, 2016, Article 12 and Series 146-5 required Justice Benjamin to file a sworn “Application for Certification” attesting that he had satisfied the following conditions set forth in W. Va. Code § 3-12-10(b):

- He had signed a Declaration of Intent;
- He had obtained the requisite number and amount of qualifying contributions;
- He had complied with the contribution restrictions of Article 12;
- He is eligible to appear on the nonpartisan judicial election ballot; and
- He had met all of the other requirements of Article 12.

On that same date, CSR 146-5-11.4 provides that, “By two business days after the close of the qualifying period [February 2, 2016], a participating candidate must report to the Secretary on appropriate forms a summary of:

11.4.a. All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions; and

¹ W. Va. Code § 3-8-5b(c) provides, “Committees required to report electronically may apply to the State Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.”

² Notably, the January 2016 report reflects a flood of monies, more than half—\$10,466 on January 29 and \$15,702 on January 30 respectively, that poured into the Supreme Court race at the eleventh hour of the January 30 qualifying period.

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February 10, 2016

Page 4

11.4.b. All qualifying contributions received and funds expended or obligated during the qualifying period together with copies of any receipts not previously submitted for qualifying contributions.

It is my understanding that Justice Benjamin's Application for Certification was received untimely. Although the record is unclear, it appears that the official document relied upon by the SEC is date-time stamped as received by the Secretary of State after state government business hours at 5:07 p.m. on February 2, 2016.³

It is also my understanding that Justice Benjamin's Application for Certification proved to be inaccurate as he did not in fact comply with all the requirements of Article 12. That is, it is my understanding that sometime on or around February 5, 2016, it was revealed that Justice Benjamin had raised substantial sums of exploratory contributions, yet failed to comply with the Article and file the appropriate reports.

Upon learning of this fatal defect to Justice Benjamin's certification, it is my understanding that Justice Benjamin's representative requested a hardship exemption from the electronic filing requirement in order to retroactively file and claim previously unreported campaign contributions. It is my understanding that the SEC granted that request based on the hardship exemption noted above. Justice Benjamin's representative requested until February 10, 2016 for an opportunity to file the out-of-time reports.

Justice Benjamin apparently has submitted the following documents signed by his campaign treasurer and dated February 8, 2016:

- One "Exploratory Summary Report" showing for the first time that he had raised \$9,950 before he filed his Declaration of Intent, including three organized fundraising events;
- Receipts that reflect the name of each contributor identified in the Exploratory Summary Report, which are dated the date of the contribution reflected in that report, but it is not clear that any of those receipts were actually given to the contributor; and
- A series of purported monthly "exploratory reports" for September through January.

³ It is also my understanding that Ms. Walker lodged a number of challenges to Justice Benjamin's qualifying contributions pursuant to W. Va. Code § 3-12-10(g) and CSR 146-5-7, which were the subject of a February 3, 2016 hearing. Based on a voice vote following certain representations made by the Secretary of State's office at a subsequent February 5, 2016 hearing, it is further my understanding that the SEC granted a number of Ms. Walker's challenges, but ultimately determined that Justice Benjamin had collected a sufficient number and amount of qualifying contributions. Accordingly, I understand that issue has been decided, and I do not intend to address it again at this procedural stage, noting that Ms. Walker reserves all rights in this regard.

K&L GATES

February 10, 2016
Page 5

Based on these facts and applicable law, I urge this Commission to enforce the law as written and deny Justice Benjamin's Application for Certification.

First, you must follow well-settled precedent that requires the strict enforcement of the State's campaign laws. See *Brady v. Hechler*, 346 S.E.2d 546, 547–48 (W. Va. 1986) (“[i]t is generally and almost universally held that statutory provisions in election statutes, requiring that a certificate or application of nomination be filed with a specified officer within a stipulated period of time, are mandatory.”); Syl. pt. 3, *State ex rel. Baker v. Bailey*, 163 S.E.2d 873 (W. Va. 1968) (“[w]here a statute provides for a thing to be done in a particular manner or by a prescribed person or tribunal it is implied that it shall not be done otherwise or by a different person or tribunal.”); *State ex rel. Vernet v. Wells*, 87 W. Va. 275 (1920) (striking candidates from local non-partisan ballots who had not filed certificates of nominations in time). Understandably, strict adherence to established deadlines is paramount to maintaining public trust in the integrity of the electoral process. *Brady*, 346 S.E.2d at 550 (“[o]therwise, the actions of the Secretary of State in that regard would be subject to constant allegations of arbitrariness or favoritism.”).

Under this rubric, the Commission must recognize and enforce strict adherence with the Article and the law. The facts in this matter are indisputable: Justice Benjamin raised exploratory contributions as early as April 2015 and was obligated under the statute to file those exploratory contributions on his May 1st report, along with all subsequent exploratory contributions the first of every month thereafter. The introduction of discretion, particularly in a decision that involves injecting a half-million dollars of taxpayer money into a political race, is a dangerous road—a road this Commission should not and cannot begin down. The impetus of the entire Program was to restore public trust in the judicial election process, yet you are faced with a decision in which a candidate is seeking the public's money despite failing to follow a clear, easy and prescriptive process specifically designed to fulfill those objectives. Giving Justice Benjamin a “pass” does not further those objectives. Indeed, a vote in favor of certification may unavoidably accomplish just the opposite.

I understand that the only justification for which Justice Benjamin offered for his failure to comply with the law is a “glitch” in the Secretary of State's website that prevented him from filing his exploratory reports electronically. I understand that the SEC granted Justice Benjamin a “hardship exemption” as a result of this issue and provided him until February 10, 2016 to file those reports. By any measure, this decision is unsustainable under any standard, arbitrary, capricious, or otherwise.

This exemption relates to the *form*, not the *timing* of a filing. It was clearly limited to circumstances in which a candidate wants to file a hard copy, rather than an electronic copy. That exemption does not allow for that candidate to wholly ignore filing deadlines. The facts here show that Justice Benjamin should have filed his first exploratory report as early as May 1, 2015. Viewing the facts in the light most favorably to Mr. Benjamin, the record is void of any evidence, let alone interference in an ability to file electronically, to attempt to file an exploratory report before February 8, 2016. This means the Commission is granting Justice Benjamin an *eight-month grace period*, because he learned on February 2, 2016 that he was

K&L GATES

February 10, 2016

Page 6

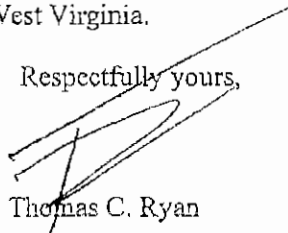
unable to file an exploratory report electronically. To interpret the "hardship exemption" as giving Justice Benjamin the right to wholly ignore the framework of the "exploratory period" and file his reports out of time undermines the credibility of the statutory scheme and this Commission's future ability to enforce its obligations.

Justice Benjamin simply did not follow the campaign law. The West Virginia Supreme Court has spoken unequivocally that campaign laws must be strictly enforced. I urge you to deny Justice Benjamin's certification.

This letter is not intended to be exhaustive; the record underlying Justice Benjamin's Application for Certification is fraught with many more errors. In that regard, Ms. Walker does not waive, and hereby expressly preserves, any objection or right of appeal to the SEC's certification of Justice Benjamin, should the Commission decide in the unfortunate circumstance to proceed with certifying Justice Benjamin.

Although I cannot attend in person, I stand ready to make myself available should the Commission have any questions generally, or the questions raised by this letter. Thank you very much for your attention in this matter. Ms. Walker looks forward to a just resolution of this critically important issue to the citizens of West Virginia.

Respectfully yours,

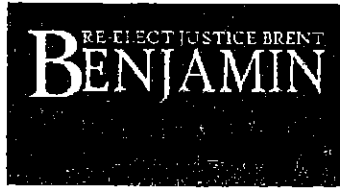


Thomas C. Ryan

TCR/teh
Enclosures

cc: Elizabeth D. Walker, Esq.
Timothy Leach, Esq. (via tleaseh@wvsos.com)
Ashley Summit, Esq. (via asummit@wvsos.com)

JA001796



Statement to the State Election Commission from Justice Brent Benjamin
February 10, 2016

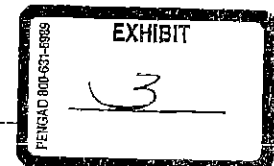
"Today's meeting of this commission was the fourth in the past several days to focus on certifying candidates for the Public Campaign Finance program. Two days last week were dedicated to addressing 516 challenges to individual donors making small-dollar contributions to my campaign committee.

"In creating the Public Campaign Finance program, the Legislature recognized that increasingly expensive judicial elections funded by high-dollar interests have created a concern among voters that such interests have too much influence in our judicial system. The Public Campaign Finance program not only enhances public confidence in the fairness and impartiality of our courts, it also ensures that the West Virginian who is able to give just a single dollar knows that his or her participation in the selection process is just as important as the \$1,000 given by a politically-connected insider, special interest or out-of-state group.

"Here, we have seen a direct challenge by one opposing candidate to 9 out of 10 West Virginians who simply wished to participate in this program and show support for my campaign. In rejecting nearly every such challenge, this commission signaled to every West Virginia voter that their voice matters.

"I wish to express my personal appreciation for the professional and courteous treatment the commission, the Secretary, counsel, and staff have shown my campaign team during this long process.

"By your labors you have shown West Virginians that our system for determining eligibility for public campaign financing is transparent, fact-based, and thorough. On behalf of myself, my campaign team, and those for whom the Public Campaign Finance program was created, thank you for the diligence you have applied to this process."



COMMITTEE TO RE-ELECT JUSTICE BRENT BENJAMIN
DON NICKERSON, TREASURER

☒ 484 WILLIAMSPORT PIKE #120, MARTINSBURG WV 25404

☐ PO BOX 6311, WHEELING WV 26003

THIS DOCUMENT IS THE PROPERTY OF THE COMMITTEE TO RE-ELECT JUSTICE BRENT BENJAMIN. NOT BE LOANED OR REPRODUCED WITHOUT PERMISSION.

JA001797

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February 10, 2016

Page 6

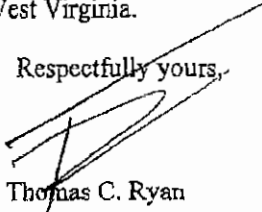
unable to file an exploratory report electronically. To interpret the "hardship exemption" as giving Justice Benjamin the right to wholly ignore the framework of the "exploratory period" and file his reports out of time undermines the credibility of the statutory scheme and this Commission's future ability to enforce its obligations.

Justice Benjamin simply did not follow the campaign law. The West Virginia Supreme Court has spoken unequivocally that campaign laws must be strictly enforced. I urge you to deny Justice Benjamin's certification.

This letter is not intended to be exhaustive; the record underlying Justice Benjamin's Application for Certification is fraught with many more errors. In that regard, Ms. Walker does not waive, and hereby expressly preserves, any objection or right of appeal to the SEC's certification of Justice Benjamin, should the Commission decide in the unfortunate circumstance to proceed with certifying Justice Benjamin.

Although I cannot attend in person, I stand ready to make myself available should the Commission have any questions generally, or the questions raised by this letter. Thank you very much for your attention in this matter. Ms. Walker looks forward to a just resolution of this critically important issue to the citizens of West Virginia.

Respectfully yours,



Thomas C. Ryan

TCR/teh
Enclosures

cc: Elizabeth D. Walker, Esq.
Timothy Leach, Esq. (via tleaseh@wvsos.com)
Ashley Summit, Esq. (via asummit@wvsos.com)

JA001798



Natalie E. Tennant
Secretary of State
State of West Virginia

Office of the Secretary of State
Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, West Virginia 25305

Telephone: (304) 558-6000
Toll Free: 1-866-SOS-VOTE
Fax: (304) 558-0900
www.wvsos.com

February 10, 2016

To Whom It May Concern:

On February 10, 2015, the State Election Commission met and took action to certify that Brent Deane Benjamin, a candidate for Justice of the West Virginia Supreme Court of Appeals has met the requirements as set forth in WV Code §3-12-9 to receive public funds from the West Virginia Public Campaign Financing Fund.

Under WV Code §3-12-11, the State Election Commission will issue a check in the amount of \$483,489.00 to be payable to Committee to Re-Elect Justice Brent Benjamin at the following address:

Committee to Re-Elect Justice Brent Benjamin
Donald A. Nickerson, Treasurer
484 Williamsport Pike
Martinsburg, WV 25404-5707

If you need further information, please contact Layna Valentine Brown, Elections Director in the West Virginia Secretary of State's Office at 304-588-6000, or by email at lbrown@wvsos.com

Sincerely,

A handwritten signature in black ink that reads "Natalie E. Tennant". The signature is stylized with a large, flowing "N" and "T".

Natalie E. Tennant
West Virginia Secretary of State

JA001799

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

**Respondent Justice Brent Benjamin's
Opposition to Beth Walker's Application for a Stay**

Beth Walker's Application for a Stay must fail for three reasons. First, the application is moot because the SEC has already enforced its order and disbursed the public financing funds. Second, the Campaign to Re-Elect Justice Benjamin—the entity that received the funds—is not named in this case, and even it had been, the order Walker requests would be an unconstitutional prior restraint on political speech. Third, Walker has not established that she is entitled to either a stay or an injunction.

At the outset, Walker's Application for a Stay should be denied as moot. Walker filed her request under Rule 3 of the Rules of Procedure for Administrative Appeals, which permits any person to request a stay "of the enforcement of a state agency final order or decision." In this case, the State has already enforced the SEC's order and distributed the public campaign financing funds, as it is required to do by statute. There is simply nothing left for the Court to stay. And if what Walker seeks is a preliminary injunction against the Campaign to Re-Elect

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Justice Benjamin, she has not named the campaign in this suit, has not filed the proper motion, and has not given security as required by the West Virginia Rules of Civil Procedure. W. Va. R. Civ. P. 65(c).

But even if Walker had sought a preliminary injunction and given the required security, the order Walker requests would be an unconstitutional prior restraint on political speech. It is beyond dispute that campaign spending is political speech. *See generally, e.g., Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2009); *Buckley v. Valeo*, 424 U.S. 1 (1976); *State ex. rel. Loughry v. Tennant*, 229 W. Va. 630, 732 S.E.2d 507 (2012). An order preventing a candidate from spending his campaign funds would be an unconstitutional prior restraint, the most serious type of infringement of free speech rights. *See Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) (“[P]rior restraints on speech . . . are the most serious and the least tolerable infringement on First Amendment rights”); Syl. Pt. 1, *State ex rel. Register-Herald v. Canterbury*, 192 W. Va. 18, 449 S.E.2d 272 (1994) (“Any prior restraint on expression comes to this Court with a heavy presumption against its constitutional validity.”) Such an order would violate the rights of the candidate, his campaign, and the voters who contributed to his certification for public financing.

Finally, even if the Constitution permitted such an order, which it does not, Walker has not established that it is warranted. A party seeking a preliminary injunction bears the burden of proving that she is likely to succeed on the merits and the balance of harms weighs in her favor. “Under the balance of hardship test the [] court must consider, in ‘flexible interplay,’ the following four factors in determining whether to issue a preliminary injunction: (1) the likelihood of irreparable harm to the plaintiff without injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff’s likelihood of success on the merits; and (4) the public interest.” *Hart v. NCAA*, 209 W. Va. 543, 547-48, 550 S.E.2d 79, 83-84 (2001) (quoting

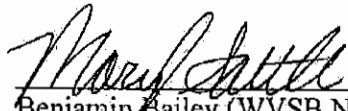
Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n, 183 W. Va. 15, 24, 393 S.E.2d 653, 662 (1990)).

Walker has made no showing of likelihood to succeed on the merits—nor could she. The SEC held four hearings devoted largely to carefully considering Walker's litany of complaints. As will be explained more fully in substantive briefing and at the hearing on the Petition, Walker's objections to Benjamin's certification are meritless. Because she is unlikely to succeed on the merits, she is not entitled to a preliminary injunction.

Finally, the balance of harms and the public interest clearly weigh in favor of permitting the Benjamin campaign to proceed while this case is pending. The order Walker requests would interfere with the Benjamin campaign at a critical time in the election cycle. Meanwhile, Walker has nothing to lose if her Application for a Stay is denied. Walker claims that Benjamin's participation will impair her own ability to compete in the election—but that reality is not the result of any error by the SEC. Rather, it is the very nature of a contested election. Walker has no legal right or interest in eliminating or silencing her opponents, as she seeks to do here. The public interest favors permitting all candidates to speak freely and conduct their campaigns to educate voters in advance of the election.

Beth Walker is entitled to neither a stay of the SEC's ruling nor an injunction that would silence the Campaign to Re-Elect Justice Benjamin. Her Application for a Stay should be denied.

JUSTICE BRENT D. BENJAMIN
By Counsel.



Benjamin Bailey (WVSB No. 200)

Jonathan R. Marshall (WVSB #10580)

Maryl C. Sattler (WVSB #11733)

Bailey & Glasser, LLP

209 Capitol Street

Charleston, West Virginia 25301

Telephone: (304) 345-6555

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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

2016 FEB 24 PM 3:53

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and **VINCENT P.**
CARDI, members of the West Virginia
State Election Commission; and **BRENT**
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

CERTIFICATE OF SERVICE

Counsel for Respondent, Justice Brent D. Benjamin, does hereby certify that the foregoing "*Respondent Justice Brent Benjamin's Opposition to Beth Walker's Application for a Stay*" was served this 24th day of February, 2016, by sending a true exact by United States mail, postage pre-paid, to the following:

Thomas C. Ryan (WVSB #9883)
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500
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Thomas.ryan@klgates.com


Maryl C. Sattler

JA001804

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

NATALIE E. TENNANT, ex-officio,
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Respondent Justice Brent D. Benjamin's
Response to Beth Walker's Petition for Judicial Review

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The purpose of the Public Campaign Financing Program is three-fold: (1) to ensure the impartiality and integrity of the judiciary; (2) to increase the public confidence in the courts; and (3) to protect the Constitutional rights of voters and candidates from increasingly large amounts of money being spent to influence the outcome of elections. W. Va. Code § 3-12-2. Despite these important purposes, Beth Walker chose not to participate in the Program, which would prevent her from accepting large contributions from big-pocket donors. That is her right. Using the courts to interfere with another candidate's participation is not.

Walker has already abused the process of the State Election Commission, filing over 500 last-minute challenges to Benjamin's certification that required the SEC to devote two days of hearings solely to considering her complaints. Walker did not attend these hearings, and failed to submit any supporting evidence – despite the SEC's explicit direction that she do so. At best, the vast majority of Walker's challenges were devoid of evidence.¹ At worst, they proved completely false.²

The Committee to Re-Elect Justice Benjamin has complied with all requirements of the Public Campaign Financing Program. After devoting four separate hearings to considering his qualifications, the State Election Commission properly certified Justice Benjamin to participate in the Program. Walker was not adversely affected by that decision and therefore lacks standing to bring this lawsuit. Furthermore, even if Benjamin *had* failed to comply with certain reporting requirements (which he did not), the remedy under the statute is a discretionary civil penalty, not

¹ See Ex. F, Feb. 4 Tr. at 86:19-88:23 (rejecting challenges as devoid of evidence).

² For example, the Walker campaign contended that Deloris Jean Davis, who provided a qualifying contribution to the Benjamin campaign, was not a registered voter. In fact, Ms. Davis is a registered voter, as proven by a certified copy of her voter registration card from the Kanawha County Courthouse. (Ex. F, Feb. 4. Tr. at 25:1-7.)

disqualification. *See* W. Va. Code § 3-12-16(d). Walker's Petition lacks merit and should be denied.

Standard of Review

This case is before the Court on an administrative appeal under West Virginia Code § 29A-5 et seq. and Rule 2 of the West Virginia Rules of Procedure for Administrative Appeals.

In such an appeal, the Circuit Court is to reverse, vacate, or modify the agency's decision if:

[T]he substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions or order are: (1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Syl. Pt. 2, *Shepherdstown Volunteer Fire Dept. v. State ex rel. State of West Virginia Human Rights Comm'n*, 172 W.Va. 627, 309 S.E.2d 342 (1983).

I. Beth Walker's substantial rights have not been prejudiced and she lacks standing to bring this case.

At the outset, Walker's Petition should be denied because her "substantial rights" have not been prejudiced by the SEC's decision to certify Justice Benjamin for the Public Campaign Financing Program. *Id.* at Syl. Pt. 2. Walker claims that Benjamin's participation in the Program will violate her Constitutional rights by making it more difficult for her to compete in the election. But the mere fact that Benjamin's campaign will make it more difficult for Walker to compete is not evidence of harm. It simply is the nature of a contested election. Walker has no legally protected interest in eliminating the competition from this election by silencing her opponents. Her substantial rights were not prejudiced by the SEC's decision below, and she is therefore not entitled to relief in this Court. *See Shepherdstown Volunteer Fire Dept.*, 172 W. Va. 627 at Syl. Pt. 2 (1983).

Even if Walker *had* suffered any harm, the harm she claims is not the result of any action by the SEC. Instead, her complaints go to the heart of the Public Campaign Financing Program. While Walker may disagree with the Program, it was created for important legislative purposes and has been upheld by the West Virginia Supreme Court of Appeals. *See* W. Va. Code § 3-12-2 (legislative purpose); *State of W. Va. ex rel. Loughry v. Tennant*, 229 W. Va. 630, 732 S.E.2d 507 (2012) (explaining that the portions of the Public Campaign Financing Program applicable here are “constitutionally sound”). If Walker dislikes the Public Campaign Financing Program, she must take that issue up with the West Virginia legislature. This Court is not a proper forum for her political grievances.

Because Beth Walker did not suffer any concrete, particularized harm as a result of the SEC’s certification decision, she is not a person “adversely affected” by the SEC’s decision and she lacks standing to bring suit. *See* W. Va. Code § 3-12-10(i); Syl. Pt. 2, *Doering v. City of Ronceverte*, 228 W. Va. 147 (2011) (to establish standing, a plaintiff must show he or she has suffered an “injury-in-fact” that is “concrete and particularized”). This case should therefore be dismissed for lack of jurisdiction. *See Men & Women Against Discrimination v. Family Protection Servs. Bd.*, 229 W. Va. 55, 60, 725 S.E.2d 756, 761 (2011) (“Standing is a jurisdictional requirement that cannot be waived.”) (internal quotation marks omitted).

II. The State Election Commission properly concluded that the Committee to Re-Elect Justice Benjamin had met all requirements to qualify for public financing.

A. Application for Certification

First, Walker claims that Benjamin’s Application for Certification was untimely because it is time-stamped 5:09 p.m. on February 2nd. Walker agrees that February 2nd was the appropriate filing date, but claims that the application should have been filed nine minutes earlier, by 5:00 p.m. Walker is wrong on both the law and the facts.

First, there is no requirement – either in the statute or its regulations – that the application be filed by 5:00 p.m. The statute itself merely provides that that “To be certified, a participating candidate shall apply to the State Election Commission for public campaign financing from the fund and file a sworn statement that he or she has complied and will comply with all requirements of this article throughout the applicable campaign.” W. Va. Code § 3-12-9. The deadline for the application is found in the regulations adopted by the SEC, which provide for the Application to be filed “no later than two business days after the close of the qualifying period.” W. Va. C.S.R. § 146-5-6. There is no question that Justice Benjamin’s application, which was filed on February 2nd, was filed within two days of the close of the qualifying period. (Ex. Q, Date-Stamped Application.) Neither the statute nor the regulations require an Application to be filed by any particular time of day.

But even if such a timing requirement existed, the Application was submitted to the Secretary of State at 4:55 p.m. on February 2nd. (Ex. PP, Feb. 2 Submission.) As was explained on the record at the SEC hearing on February 5, the later time stamp reflects the time that Tim Leach opened the email, rather than the time it was submitted to the Secretary of State. (Ex. G, Feb. 5 Tr. at 27.) Mr. Leach – like most people – does not open all emails immediately upon receipt.

Finally, Walker claims that the facts surrounding the filing of the Application are “uncertain” because when asked, a Secretary of State employee allegedly told an unnamed Walker representative that the Application had not been filed as of 9:00 p.m. on February 2nd. (Pet. at 10 n.4.) But even if that claim were correct, it is irrelevant here. Secretary of State attorney Tim Leach – who apparently was the Secretary of State employee Walker referenced –

has explained that if he made such a statement, it was a simple mistake. (Ex. G, Feb. 5 Tr. at 26-29.)

Benjamin's Application was filed on February 2nd, within two business days of the close of the qualifying period. And the email to Mr. Leach conclusively establishes that the Application was filed at 4:55 p.m., not 5:09 p.m. as Walker contends. There is simply no question that the Application was timely.

B. Exploratory Reports

A participating candidate³ in the Public Campaign Financing Program is required to submit monthly reports of all exploratory and qualifying contributions "received during the immediately preceding month." W. Va. Code § 3-12-13(b). Justice Benjamin has complied with this section, filing reports of his qualifying contributions within two business days of the beginning of the following month.

1. *Monthly Exploratory Reports*

Walker nonetheless criticizes Justice Benjamin for allegedly failing to file periodic exploratory reports. But Justice Benjamin did not become a participating candidate until September 2015, the same month that he filed his Declaration of Intent. Prior to becoming a participating candidate, he was not required to file monthly exploratory reports. *Id.* (noting that only a "participating candidate" is required to file reports and that those reports relate only to contributions "received during the immediately preceding month"). After becoming a participating candidate in September 2015, Benjamin received only qualifying contributions and had no exploratory contributions to report. He was therefore not required to file a report of his

³ A "participating candidate" as "a candidate who is seeking election to the Supreme Court of Appeals and is attempting to be certified in accordance with section ten of this article to receive public campaign financing from the fund." W. Va. Code § 3-12-3(11).

exploratory contributions under § 3-12-13(b). This interpretation was shared and confirmed by the West Virginia Secretary of State's Office. (*See* Ex. LL, Oct. 2015 Emails at 3-4.)

2. Final Exploratory Report

In addition to the monthly reporting requirements, the statute provides that “No later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report . . . (1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions.” W. Va. Code § 3-12-13(c)(1). Walker further contends that Benjamin failed to file his final exploratory report by the February 2nd deadline, and that the SEC lacked the authority to grant him a one-week extension of time.

All reports filed under the West Virginia Public Campaign Financing Act must be filed electronically with the Secretary of State; there is no paper filing option unless the candidate obtains a hardship exemption from the SEC. *See* W. Va. Code § 3-12-8(d). Justice Benjamin attempted to file his exploratory report electronically, but the filing system would not permit him to do so. (Ex. G, Feb. 5 Tr. at 6-8, 14, 16-17 (confirming that the Secretary of State's online filing system will not accept Benjamin's exploratory reports). The Secretary of State's office has confirmed that its system was not set up to permit a candidate like Justice Benjamin – who became a participating candidate later in the process – to file exploratory reports. (*Id.*) It was therefore physically impossible for the Benjamin campaign to file electronic exploratory reports.

The Benjamin campaign accordingly asked the SEC for a hardship exemption to permit it to file the exploratory reports in paper form. The SEC granted the exemption, and gave the campaign until February 10, 2016, to do so. (Ex. G, Tr. at 12-14.) This decision was correct in light of the circumstances, and did not exceed the SEC's authority. The statute explicitly gives

the SEC the authority to grant a hardship exemption to the filing requirement. W. Va. Code § 3-12-8(d) (“a committee may apply for an exemption in case of hardship. . .”) And even if Walker were correct that this provision applies only to the form of the filing, not the timing, the SEC properly concluded that an extension of time was necessary under the circumstances of the hardship exemption because electronic filing was unavailable on the deadline. *See Walker v. W. Va. Ethics Comm’n*, 201 W. Va. 108, 121, 492 S.E.2d 167, 180 (1991) (noting that there are “certain circumstances in which an agency may perform a function that is implied, but not specifically permitted, by statute”; an agency’s authority includes “such other powers as are necessary or reasonably incident to the powers granted.”) (quoting *Walter v. Ritchie*, 156 W. Va. 98, 108, 191 S.E.2d 275, 281 (1972)).

Furthermore, it is a basic principle of law that when a party is prevented from doing something on the deadline due to extreme circumstances outside his control, the deadline may be deemed equitably tolled. *See McKibben v. Eastern Hospitality Mgmt.*, 288 F. Supp.2d 723 (N.D. W. Va. 2003) (equity required that a complaint be deemed timely filed when the plaintiff was prevented from filing due to extreme inclement weather that closed the courthouse). As the court in *McKibben* noted, the West Virginia Supreme Court has held that it is “the duty of a court to disregard a statutory construction, though apparently warranted by the literal sense of the words in a statute, when such construction would lead to injustice and absurdity.” *Id.* (quoting Syl. Pt. 2, *Chevy Chase Bank v. McCamant*, 204 W. Va. 295, 512 S.E.2d 217 (1998)). In this case, the Benjamin campaign was prevented from filing its exploratory reports by the deadline due to a glitch in the Secretary of State’s electronic filing system. The SEC therefore was correct in granting him an exemption to permit him additional time to file.

Finally, even if the SEC had not granted the Benjamin campaign an extension, the proper remedy would not be to exclude the Benjamin campaign from participating in public financing. The purpose of the statute establishing the Public Campaign Financing Program is to facilitate public financing – not to prevent a candidate’s participation. Nowhere in the statute does it indicate that its requirements are to be strictly construed, or that a candidate who has filed a single report one week after a deadline due to circumstances outside his control should be excluded. Such an interpretation is inconsistent with the important legislative purposes driving the Public Campaign Financing Program. *See* W. Va. Code § 3-12-2. Instead, the statute grants the SEC the authority to determine whether a candidate who has violated the statute should be decertified. W. Va. Code § 3-12-10(h) (“A candidate’s certification . . . *may* be revoked by the State Election Commission, if the candidate violates this article.”) (emphasis added). Thus, it is within the SEC’s discretion to determine whether a candidate’s non-compliance is severe enough to warrant decertification.

Walker’s claim that any late filing throughout the election process should exclude a candidate is unsupported by the law. Walker points to cases where a candidate missed a filing deadline to appear on the ballot⁴ – a situation much different than the one here, where the candidate appropriately filed to run, and even timely filed his application for public financing, but simply filed one financial report a week late in paper form at the direction of the State Election Commission due to a glitch in the Secretary of State’s electronic filing system. (*See* Pet.

⁴ For example, in *Brady v. Hechler*, the challenged candidate failed to timely file a certificate declaration himself a candidate in the election. 176 W. Va. 570, 346 S.E.2d 546, 548 (1986). The Court in *Brady* explained that generally “statutory provisions in election statutes, requiring a certificate or application of nomination to be filed with a specified officer within a specific period of time, are mandatory.” *Id.* Similarly, *State ex rel. Vernet v. Wells* dealt with candidates who had not filed certificates of nomination as required. 87 W. Va. 275 (1920). In this case, no one has alleged that Benjamin failed to file a certificate or application of nomination.

at 14.) And contrary to Walker's claims, not all failures to strictly comply with statutory requirements lead to disqualification. Instead, the statute expressly provides that the SEC has the discretion to impose a civil penalty of \$100 per day for any candidate who violates any reporting requirement. W. Va. Code § 3-12-16(d).

Walker's hyper-technical interpretation of the statute and regulations is remarkable given that she failed to abide by the applicable deadline for the bulk of her objections. Specifically, the SEC's regulations require that any challenge forms must be "filed with, and received by, the Secretary within two business days after the close of the qualifying period or the filing of a candidate's Application For Certification, whichever is earlier." W. Va. C.S.R. § 146-5-7.3. Yet Walker filed 365 challenge forms on February 3, 2016 – more than two business days after the close of the qualifying period. The SEC considered her objections nonetheless. (Ex. F, Feb. 4 Tr. at 12:2-13:2.)

C. Qualifying Contributions

Finally, the SEC correctly concluded that Benjamin had obtained the required number of qualifying contributions. (Ex. G, Feb. 5 Tr. at 22-23; Ex. KK, Feb. 10 Tr. at 5:8-13 (finding that the Benjamin campaign had submitted 512 qualifying contributions)). Walker claims that she is appealing the SEC's decision "in its determination that Benjamin presented a sufficient number of compliant exploratory contributions and qualifying contributions," but provides no explanation for her appeal, instead claiming that she will later supplement the Petition and the record with her arguments. (Pet. at 18.) Because Walker has provided no legal or factual basis for this claim, it should be dismissed outright.

Even if Walker had provided a basis for her appeal of this decision, she waived her objections to Benjamin's qualifying contributions by failing to properly raise them below.

Walker filed over 500 challenges to Benjamin's contributions. After spending an entire day considering the first 154 challenges that Walker filed, the SEC learned that she had filed 365 additional challenges. The SEC then informed Walker that while it would consider her new challenges at another hearing the following day, the Secretary of State's office would not be conducting an investigation to find evidence of the challenges. Instead, Walker would be required to bring evidence to support her challenges to the hearing. Walker representative Joe Reidy acknowledged that they received this information from the Secretary of State and understood it, but nonetheless failed to bring any support or evidence for their challenges. *See* Ex. F, Feb. 4 Tr. at 22:6-7 ("I was told yesterday that I had to bring evidence to back up my challenges today.")

Sec. Tennant: Do you have evidence for any of these?

Mr. Reidy: Only what was submitted.

Sec. Tennant: Which is just the challenge page that was submitted?

Mr. Reidy: Yes.

Sec. Tennant: Okay. So all we have are challenge pages with no evidence, with nothing to back up the challenges.

(Ex. F, Feb. 4 Tr. at 46:13-21.)

Mr. Cardi: Okay. And does [Walker representative] Joe [Reidy] agree with David that it was made clear to him last night that if they wanted to base their objection on the content of the receipt, they had to bring the receipt and not depend upon the Commission staff to produce that?

Mr. Reidy: Yes, sir.

(Ex. F, Feb. 4 Tr. at 78:17-22.)

Furthermore, when asked to provide the basis for their objections, the Walker campaign could not do so:

Mr. Cardi: Okay. And what about this document, what about it that showed no signature? Why was the electronic signature on that not a signature or was it just not a signature at all? I mean what was defective about it?

Mr. Reidy: I don't have a comment on that.

(Ex. F, Feb. 4 Tr. at 69:9-14.)

By failing to bring any evidence to support her challenges – even after being explicitly informed by the SEC and Secretary of State's office that she must do so – Walker waived her right to object to Benjamin's qualifying contributions.

Conclusion

The Committee to Re-Elect Justice Benjamin complied with all requirements of the West Virginia Public Campaign Financing Program, and the SEC properly certified Justice Benjamin to participate in the Program. Beth Walker's litany of hyper-technicalities aimed at preventing Benjamin from moving forward with his campaign should be rejected. The SEC's decision was correct and should be upheld.

JUSTICE BRENT D. BENJAMIN
By Counsel.



Benjamin Bailey (WVSB No. 200)
Jonathan R. Marshall (WVSB No. 10580)
Mary C. Sattler (WVSB No. 11733)
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555
Facsimile: (304) 342-1110

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

CERTIFICATE OF SERVICE

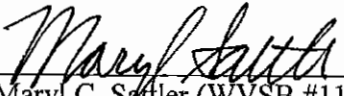
Maryl C. Sattler, Counsel for Respondent, Justice Brent D. Benjamin, hereby certifies that the foregoing "Respondent Justice Brent D. Benjamin's Opposition to Beth Walker's Petition for Judicial Review" was served this 25th day of February 2016, by sending a true exact copy via facsimile, to the following:

Thomas C. Ryan (WVSB #9883)
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500
Fax: (412) 355-6501

James R. Leslie, Esq.
Jonathan T. Osborne, Esq. (WVSB #11760)
Office of the West Virginia Attorney General
State Capitol
Building 1, Rm. E-26
Charleston, WV 25305
Tel: (681) 313-4554
Fax: (304) 558-0140

FILED
2016 FEB 25 PM 3:04
CATHY S. SATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

JA001818


Mary C. Sattler (WVSB #11733)

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

Respondent's Cross-Designation of Record

In addition to the record submitted by Petitioner and the State Election Commission,
Respondent Justice Brent D. Benjamin designates the following document as part of the record
in this case:

Exhibit PP: February 2, 2016 Email from Darrell Shull to Timothy Leach, Missi
Kinder and Donald Nickerson submitting Justice Benjamin's sworn
statement as to eligibility to participate in the public campaign finance
program.

JUSTICE BRENT D. BENJAMIN
By Counsel.

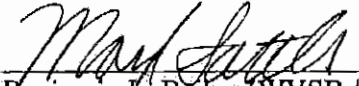

Benjamin L. Bailey (WVSB #200)
Jonathan R. Marshall (WVSB #10580)
Maryl C. Sattler (WVSB #11733)
Bailey & Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301
Telephone: (304) 345-6555
Facsimile: (304) 342-1110

Exhibit PP

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Tuesday, February 02, 2016 4:55 PM
To: Timothy Leach; Missi Kinder
Cc: Donald Nickerson
Subject: Certification Statement from Justice Brent Benjamin
Attachments: BrentBenjaminCertification.pdf

Attached is a PDF of Justice Benjamin's sworn statement as to eligibility to participate in the public campaign finance program. Please advise if you have any difficulty receiving or if there are additional actions required for us to file these documents. Thank you.

BRENT D. BENJAMIN
1807 HUBER RD.
CHARLESTON, WV 25314

February 2, 2016

The Honorable Natalie E. Tennant
State Capitol, Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Secretary Tennant:

Pursuant to W.Va. Code § 3-12-10, please allow this letter to serve as my SWORN STATEMENT AND APPLICATION FOR CERTIFICATION TO RECEIVE PUBLIC FINANCING under the West Virginia Supreme Court of Appeals Public Campaign Financing Program for the 2016 election cycle.

My campaign has complied with and will continue to comply with all requirements set forth in the W.Va. Code throughout the applicable campaign.

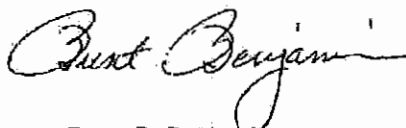
I have signed and filed a declaration of intent as required by W.Va. Code § 3-12-7.

My campaign has obtained the required number and amount of qualifying contributions as required by W. Va. Code § 3-12-9. My campaign has collected 583 qualifying contributions for a total of \$41,511.00, which exceeds the requirements by 83 qualifying contributions and \$6,511.00. The minimum requirement that ten percent of the total qualifying contributions be collected from each congressional district has been met and exceeded by my campaign.

I have complied with the contribution restrictions of W.Va. Code § 3-12-1 through § 3-12-16, and am therefore eligible, as provided in W.Va. Code § 3-5-9, to appear on the election ballot.

I have met all other requirements of the W.Va. Code that pertain to this program.

Sincerely,



Brent D. Benjamin

VERIFICATION:

JA001823

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, TO-WIT

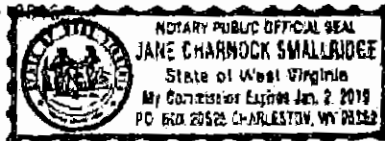
I, Brent D. Benjamin, after being duly sworn, say that the representations and assertions stated in this SWORN STATEMENT AND APPLICATION FOR CERTIFICATION TO RECEIVE PUBLIC FINANCING are true and correct to the best of my knowledge.

Brent D. Benjamin

Brent D. Benjamin

This verification was sworn to or affirmed to before me on the 2nd day of

February



Jane Charnock Smallridge (Commissioned)
by Smallridge
Notary Public

My Commission Expires 1/2/19

FILED

2016 FEB 25 PM 3:05
CLERK OF COURT
KANAWHA COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and **VINCENT P.**
CARDI, members of the West Virginia
State Election Commission; and **BRENT**
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

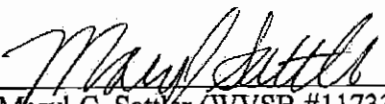
CERTIFICATE OF SERVICE

Maryl C. Sattler, Counsel for Respondent, Justice Brent D. Benjamin, hereby certifies
that the foregoing "**Respondent Cross-Designation of Record**" was served this 25th day of
February 2016, by sending a true exact copy via facsimile, to the following:

Thomas C. Ryan (WVSB #9883)
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500
Fax: (412) 355-6501
Thomas.ryan@klgates.com

James R. Leslie
Jonathan T. Osborne
Office of the West Virginia Attorney General
State Capitol
Building 1, Rm. E-26
Charleston, WV 25305
Tel: (681) 313-4554
Fax: (304) 558-0140

JA001825


Maryl C. Sattler (WVSB #11733)

K&L GATES

K&L GATES LLP
K&L GATES CENTER
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613
T +1 412 355 6500 F +1 412 355 6501 klgates.com

February 25, 2016

Thomas Ryan
thomas.ryan@klgates.com

T 412-355-8335
F 412-355-6501

VIA FACSIMILE (304 357 0473)

The Honorable Cathy S. Gatson
Circuit Clerk
Circuit Court of Kanawha County
111 Court Street
Charleston, WV 25301

Re: Walker v. Tennant, Civil Action No. 16-AA-13 (Judge Kaufman)

Dear Ms. Gatson:


Kindly please file the enclosed documents in the above-referenced matter:

- *Petitioner's Supplement to Respondent State Election Commission Certification and Designation of Record Pursuant to Rule 4;*
- *Exhibit PP; and*
- *Exhibit QQ; and*
- Certificate of Service.

This filing has been divided into two documents because of the 20-page facsimile filing limitation.

By copy of this letter, I am contemporaneously providing a courtesy copy to Judge Kaufman's chambers and all counsel of record. Thank you very much for your attention in this matter. Please contact me with any questions.

Respectfully yours,



Thomas C. Ryan

cc: The Honorable Tod Kaufman, Circuit Court of Kanawha County (via email)
Maryl C. Sattler, Esq. (via email msattler@baileyglasser.com)
Jonathan T. Osborne, Esq. (via email jonathan.t.osborne@wvago.gov)

TCR/teh
Enclosures

JA001827
klgates.com

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

NATALIE E. TENNANT, *ex-officio*,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

No. 16-AA-17
(Judge Kaufman)

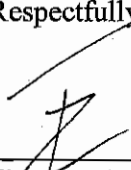
**PETITIONER'S SUPPLEMENT TO RESPONDENT
STATE ELECTION COMMISSION CERTIFICATION
AND DESIGNATION OF RECORD PURSUANT TO RULE 4**

Pursuant to Rule 4(a) of the West Virginia Procedure for Administrative Appeals,
Petitioner supplements the following documents to be considered as part of the record for the
administrative appeal set forth in the *Petition of Elizabeth D. Walker for Judicial Review of the
February 5, 2016 Decision of the West Virginia State Election Commission Certifying William R.
Benjamin Pursuant to W. Va. Code §3-12-10*, which are documents that were provided by the
Secretary of State's office in response to a Freedom of Information Act Request on February 18,
2016:

Exhibit PP: Timothy Leach E-mails with the Benjamin Campaign (September 3, 2015 -
February 8, 2016)

Exhibit QQ: Timothy Leach E-mails with the State Election Commission (January 27,
2016 - February 2, 2016)

Respectfully submitted,



Thomas C. Ryan (WVSB #9883)
K&L Gates LLP
K&L Gates Center
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500
Fax: (412) 355-6501
thomas.ryan@klgates.com

Attorney for Petitioner

Certificate of Service


I, Thomas C. Ryan, certify that I caused to be served by electronic mail and first class mail a copy of the *Petitioner's Supplement to Respondent State Election Commission Certification and Designation of Record Pursuant to Rule 4* upon counsel for the following Respondents, on February 25, 2016:

*J. Robert Leslie, Esq.
Jonathan T. Osborne, Esq.
Office of the West Virginia Attorney General
1900 Kanawha Boulevard
Bldg. 1, Room E-26
Charleston, WV 25305*

*Maryl Sattler
Bailey Glasser LLP
209 Capitol Street
Charleston, WV 25301*

Counsel for Respondents the Honorable Natalie E. Tennant, Vincent P. Cardi, Esq., Gary A. Collias, and the Honorable Brent D. Benjamin, Esq.

Counsel for Respondent the Honorable Brent D. Benjamin, Esq.



Thomas C. Ryan
W.V. Bar #9883

EXHIBIT PP,

part 1

Timothy Leach

From: Timothy Leach
Sent: Thursday, September 03, 2015 11:51 AM
To: 'dcshull@gmail.com'
Subject: Declaration of Intent
Attachments: F-16 Declaration of Intent.pdf

Mr. Shull:

Attached is the 2015 approved Declaration of Intent.

We are using bound receipt books for contributions. There are 200 receipts (4 to the page) in each book. They are available for pick-up here or we can mail them to you. Let us know how many you will need.

Sincerely,

Tim Leach
Assistant Counsel

Tim Leach
emails &
attachments

West Virginia State Election Commission

Building 1, Suite 157-K
1900 Kanawha Blvd. E.
Charleston, West Virginia 25305
304-556-6000
elections@wvsos.com

Gary Collias, Chair
Taylor Downs, Member
Vincent Card, Member
Natalie E. Tennant, *ex officio*
Vacancy

West Virginia Supreme Court of Appeals Public Campaign Financing Program

Declaration of Intent to Participate

I, _____, a candidate for the office of Justice of the West Virginia Supreme Court of Appeals, do hereby DECLARE MY INTENT to participate in the West Virginia Supreme Court of Appeals Public Campaign Financing Program as provided by WV Code §3-12-1, *et seq.*

By signing this declaration, under penalty for false swearing as provided by WV Code §3-9-3(b), I hereby attest that:

- ✓ I am qualified to be placed on the ballot;
- ✓ If elected, I am eligible to hold the office sought; and
- ✓ I have complied with, and will continue to comply with, all requirements of the public financing law including restrictions on contributions and expenditures.

Signature of Candidate

Date

This declaration must be filed before receiving any qualifying contributions.

For Office Use

Received:

Timothy Leach

From: Darrell Shull <deshull@gmail.com>
Sent: Thursday, September 03, 2015 12:09 PM
To: Timothy Leach
Subject: Re: Declaration of Intent

Thank you.

Darrell

On Sep 3, 2015, at 11:51 AM, Timothy Leach <TLeach@wvsos.com> wrote:

Mr. Shull:

Attached is the 2015 approved Declaration of Intent.

We are using bound receipt books for contributions. There are 200 receipts (4 to the page) in each book. They are available for pick-up here or we can mail them to you. Let us know how many you will need.

Sincerely,

Tim Leach
Assistant Counsel

<F-16 Declaration of Intent.pdf>

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Thursday, October 01, 2015 1:32 PM
To: Lisa Blake; Missi Kinder
Cc: Donald Nickerson; Timothy Leach
Subject: Re: Emailing - F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf
Attachments: F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf

Thank you for providing the form. Since the online system is not yet available, I have attached the completed report in order to comply with today's filing deadline. As soon as I hear from you that the online system is operational I will re-file for September.

Thank you,

Darrell Shull

On Thu, Oct 1, 2015 at 1:14 PM, Lisa Blake <LBlake@wvsos.com> wrote:

Lisa Blake

Elections Division

West Virginia Secretary of State Natalie E. Tennant

1900 Kanawha Blvd. East

Building 1, Suite 157 K

Charleston WV, 25305

Phone: [304-558-6000](tel:304-558-6000)

Fax: [304-558-8386](tel:304-558-8386)

www.wvsos.com

WV Supreme Court of Appeals Public Campaign Financing

Monthly Report for September 2015

(month)

Candidate or Committee Name Brent D. Benjamin	Treasurer Donald A. Nickerson, Jr.				
Political Party -	Treasurer's Mailing Address (Street, Route or P.O. Box) 8 Barrington Drive				
<div style="background-color: black; width: 100%; height: 20px;"></div>	<table style="width: 100%;"> <tr> <td style="width: 60%;">City, State, Zip Code</td> <td style="width: 40%;">Daytime Phone #</td> </tr> <tr> <td>Wheeling, WV 26003</td> <td>304-242-0414</td> </tr> </table>	City, State, Zip Code	Daytime Phone #	Wheeling, WV 26003	304-242-0414
City, State, Zip Code	Daytime Phone #				
Wheeling, WV 26003	304-242-0414				

(check one):

☐ Exploratory Period Report

☐ Amended Report

☒ Qualifying Period Report

REPORT TOTALS

CASH BALANCE SUMMARY

Beginning Balance <small>(ending balance from previous report) (separate totals for Exploratory and Qualifying Periods)</small>	1.	<div style="text-align: right; font-size: 1.2em;">\$0.00</div>
Total Contributions <small>(from Page 2)</small>	2.	<div style="text-align: right; font-size: 1.2em;">+ \$0.00</div>
Subtotal <small>(lines 1+2)</small>	3.	<div style="text-align: right; font-size: 1.2em;">= \$0.00</div>
Expenditures and Obligations <small>(from Page 2)</small>	4.	<div style="text-align: right; font-size: 1.2em;">- \$0.00</div>
Ending Balance <small>(lines 3-4)</small>		<div style="text-align: right; font-size: 1.2em;">= \$0.00</div>
<i>*Cannot have a negative ending balance</i>		

**TOTAL EXPLORATORY
CONTRIBUTIONS TO DATE**

0

**TOTAL EXPENDITURES
AND OBLIGATIONS TO DATE**

0

EXPENDITURES AND OBLIGATIONS

Date	Full name, residence address (if personal); business address (if a firm)	Purpose	Amount
Total Expenditures and Obligations:			

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED.

OATH OR AFFIRMATION

I, Submitted via Email, swear or affirm that the attached statement is true and correct, to the best of my knowledge, of all financial transactions occurring within the period covered by this statement, as required by West Virginia Code §3-12-8(d).

Date 10/1, 2015 _____ Signature of Treasurer

Office Use Only
Received By: _____

Timothy Leach

From: Timothy Leach
Sent: Monday, November 02, 2015 1:58 PM
To: 'Darrell Shull'
Subject: RE: Brief time to meet this afternoon?

Sure. See you then.

-----Original Message-----

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Monday, November 02, 2015 12:22 PM
To: Timothy Leach <TLeach@wvsos.com>
Subject: Brief time to meet this afternoon?

Good afternoon. I am in Charleston today, and if you have time I'd like to meet briefly to confirm that our methods for collecting and receipting qualified contributions is adequate.

Would you be available at approximately 2:30 today?

Darrell

Timothy Leach

From: Timothy Leach
Sent: Tuesday, February 02, 2016 4:33 PM
To: 'Darrell Shull'
Subject: Challenges to 150+ Contributions

Darrell:

We received today challenges to over 150 of your contributions. Most of the objections involve the electronic collection.

A meeting is tentatively set for the SEC at 10:30 am tomorrow (Wednesday), provided we can get a quorum.

Please let me know to whom to send a copy of the objections.

Tim

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Tuesday, February 02, 2016 4:41 PM
To: Timothy Leach
Subject: Re: Challenges to 150+ Contributions

Thank you Tim. Please be aware that we continue to gather physical signatures to append to the electronic signatures filed in your office Monday.

Is the SEC meeting premature since we have not yet filed the certification statement?

On Tue, Feb 2, 2016 at 4:33 PM, Timothy Leach <TLeach@wvsos.com> wrote:

Darrell:

We received today challenges to over 150 of your contributions. Most of the objections involve the electronic collection.

A meeting is tentatively set for the SEC at 10:30 am tomorrow (Wednesday), provided we can get a quorum.

Please let me know to whom to send a copy of the objections.

Tim

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Tuesday, February 02, 2016 4:42 PM
To: Timothy Leach
Subject: Re: Challenges to 150+ Contributions

Objections should be sent to me. Electronic at dcshull@gmail.com, via mail delivery to 822 Showers Lane, Martinsburg WV 25403

On Tue, Feb 2, 2016 at 4:40 PM, Darrell Shull <dcshull@gmail.com> wrote:

Thank you Tim. Please be aware that we continue to gather physical signatures to append to the electronic signatures filed in your office Monday.

Is the SEC meeting premature since we have not yet filed the certification statement?

On Tue, Feb 2, 2016 at 4:33 PM, Timothy Leach <TLeach@wvsos.com> wrote:

Darrell:

We received today challenges to over 150 of your contributions. Most of the objections involve the electronic collection.

A meeting is tentatively set for the SEC at 10:30 am tomorrow (Wednesday), provided we can get a quorum.

Please let me know to whom to send a copy of the objections.

Tim

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Tuesday, February 02, 2016 4:55 PM
To: Timothy Leach; Missi Kinder
Cc: Donald Nickerson
Subject: Certification Statement from Justice Brent Benjamin
Attachments: BrentBenjaminCertification.pdf

Attached is a PDF of Justice Benjamin's sworn statement as to eligibility to participate in the public campaign finance program. Please advise if you have any difficulty receiving or if there are additional actions required for us to file these documents. Thank you.

BRENT D. BENJAMIN
1807 HUBER RD.
CHARLESTON, WV 25314

February 2, 2016

The Honorable Natalie E. Tennant
State Capitol, Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305

Dear Secretary Tennant:

Pursuant to W.Va. Code § 3-12-10, please allow this letter to serve as my SWORN STATEMENT AND APPLICATION FOR CERTIFICATION TO RECEIVE PUBLIC FINANCING under the West Virginia Supreme Court of Appeals Public Campaign Financing Program for the 2016 election cycle.

My campaign has complied with and will continue to comply with all requirements set forth in the W.Va. Code throughout the applicable campaign.

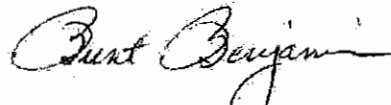
I have signed and filed a declaration of intent as required by W.Va. Code § 3-12-7.

My campaign has obtained the required number and amount of qualifying contributions as required by W. Va. Code § 3-12-9. My campaign has collected 583 qualifying contributions for a total of \$41,511.00, which exceeds the requirements by 83 qualifying contributions and \$6,511.00. The minimum requirement that ten percent of the total qualifying contributions be collected from each congressional district has been met and exceeded by my campaign.

I have complied with the contribution restrictions of W.Va. Code § 3-12-1 through § 3-12-16, and am therefore eligible, as provided in W.Va. Code § 3-5-9, to appear on the election ballot.

I have met all other requirements of the W.Va. Code that pertain to this program.

Sincerely,



Brent D. Benjamin


VERIFICATION:

JA001843

STATE OF WEST VIRGINIA

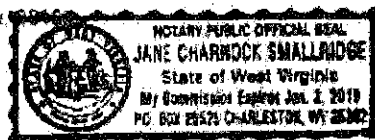
COUNTY OF KANAWHA, TO-WIT

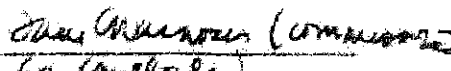
I, Brent D. Benjamin, after being duly sworn, say that the representations and assertions stated in this SWORN STATEMENT AND APPLICATION FOR CERTIFICATION TO RECEIVE PUBLIC FINANCING are true and correct to the best of my knowledge.


Brent D. Benjamin

This verification was sworn to or affirmed to before me on the 2nd day of

February




Jane Charnock Smallridge
Notary Public

My Commission Expires: 1/2/19

EXHIBIT PP,

part 2

Timothy Leach

From: Timothy Leach
Sent: Tuesday, February 02, 2016 5:00 PM
To: 'Darrell Shull'
Subject: RE: Challenges to 150+ Contributions
Attachments: Walker Challenge to Benjamin.pdf

Attached is the two-page generalized objection.

We also have over 150 specific contribution challenges. We are putting together a package of those objections and attaching the associated receipts. Will send that once prepared.

Tim

From: Darrell Shull (mailto:dcshull@gmail.com)
Sent: Tuesday, February 02, 2016 4:42 PM
To: Timothy Leach <TLeach@wvsos.com>
Subject: Re: Challenges to 150+ Contributions

Objections should be sent to me, Electronic at dcshull@gmail.com, via mail delivery to 822 Showers Lane, Martinsburg WV 25403

On Tue, Feb 2, 2016 at 4:40 PM, Darrell Shull <dcshull@gmail.com> wrote:

Thank you Tim. Please be aware that we continue to gather physical signatures to append to the electronic signatures filed in your office Monday.

Is the SEC meeting premature since we have not yet filed the certification statement?

On Tue, Feb 2, 2016 at 4:33 PM, Timothy Leach <TLeach@wvsos.com> wrote:

Darrell:

We received today challenges to over 150 of your contributions. Most of the objections involve the electronic collection.

A meeting is tentatively set for the SEC at 10:30 am tomorrow (Wednesday), provided we can get a quorum.

Please let me know to whom to send a copy of the objections.

Tim

Timothy Leach

From: Timothy Leach
Sent: Tuesday, February 02, 2016 5:07 PM
To: 'Darrell Shull'
Subject: RE: Challenges to 150+ Contributions

Code requires the SEC to rule on any challenged receipt by the end of the next business day.

Tim

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Tuesday, February 02, 2016 4:41 PM
To: Timothy Leach <TLeach@wvsos.com>
Subject: Re: Challenges to 150+ Contributions

Thank you Tim. Please be aware that we continue to gather physical signatures to append to the electronic signatures filed in your office Monday.

Is the SEC meeting premature since we have not yet filed the certification statement?

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We received today challenges to over 150 of your contributions. Most of the objections involve the electronic collection.

A meeting is tentatively set for the SEC at 10:30 am tomorrow (Wednesday), provided we can get a quorum.

Please let me know to whom to send a copy of the objections.

Tim

Timothy Leach

From: Timothy Leach
Sent: Tuesday, February 02, 2016 6:19 PM
To: 'Darrell Shull'
Subject: RE: Certification Statement from Justice Brent Benjamin

Does the candidate wish to certify that he has met all requirements of the code before obtaining the confirmation signatures?

Tim

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Tuesday, February 02, 2016 4:55 PM
To: Timothy Leach <TLeach@wvsos.com>; Missi Kinder <MKinder@wvsos.com>
Cc: Donald Nickerson <dnickerson@bowlesrice.com>
Subject: Certification Statement from Justice Brent Benjamin

Attached is a PDF of Justice Benjamin's sworn statement as to eligibility to participate in the public campaign finance program. Please advise if you have any difficulty receiving or if there are additional actions required for us to file these documents. Thank you.

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Tuesday, February 02, 2016 6:22 PM
To: Timothy Leach
Subject: Re: Certification Statement from Justice Brent Benjamin

Please stand by - I am speaking with legal counsel now.

On Tue, Feb 2, 2016 at 6:18 PM, Timothy Leach <TLeach@wvsos.com> wrote:

Does the candidate wish to certify that he has met all requirements of the code before obtaining the confirmation signatures?

Tim

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Tuesday, February 02, 2016 4:55 PM
To: Timothy Leach <TLeach@wvsos.com>; Missi Kinder <MKinder@wvsos.com>
Cc: Donald Nickerson <dnickerson@bowlesrice.com>
Subject: Certification Statement from Justice Brent Benjamin

Attached is a PDF of Justice Benjamin's sworn statement as to eligibility to participate in the public campaign finance program. Please advise if you have any difficulty receiving or if there are additional actions required for us to file these documents. Thank you.

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Friday, February 05, 2016 10:55 AM
To: Timothy Leach
Subject: Re: Certification Meeting Today at 2:30

Done.

Darrell

On Feb 5, 2016, at 10:43 AM, Timothy Leach <TLeach@wvsos.com> wrote:

Can you notify Ann? I am trying to find a phone number.

We are going to take up the requests for certification by both candidates in an open meeting at 2:30 today.

Tim Leach

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Friday, February 05, 2016 12:10 PM
To: Timothy Leach
Cc: Anne B. Charnock
Subject: Request to SEC

Good afternoon. Please convey the following to the Secretary and the Commission. Thank you.

West Virginia State Election Commission
c/o West Virginia Secretary of State's Office
Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

RE: Brent D Benjamin Campaign

Dear Secretary Tennant and Members of the State Elections Commission:

Please accept this letter as the request of the Brent D. Benjamin Campaign to be granted a hardship exemption, as outlined in West Virginia Code §3-8-5b (c) and 146CSR5-11.3.2, to allow for the filing of a campaign finance report that cannot be filed electronically. Specifically, the current system which accepts electronic filings will not accept a filing containing a prior balance nor does it provide for filing a final report of exploratory period contributions and expenditures. Please advise if additional information is required. Thank you for your consideration of this request.

Yours very truly,
Darrell Shull

Timothy Leach

From: Timothy Leach
Sent: Monday, February 08, 2016 12:12 PM
To: 'Darrell Shull'
Cc: Anne B. Charnock
Subject: RE: Request to SEC

We really need to see the filing before the SEC meeting. The exemption is from electronic filing. You are not exempt from filing at all or filing untimely.

The SEC has no authority to certify after Wednesday.

When may we expect the filing?

Thanks,
Tim

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Friday, February 05, 2016 12:10 PM
To: Timothy Leach <TLeach@wvsos.com>
Cc: Anne B. Charnock <annecharnock@usa.net>
Subject: Request to SEC

Good afternoon. Please convey the following to the Secretary and the Commission. Thank you.

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c/o West Virginia Secretary of State's Office
Bldg. 1, Suite 157-K
1900 Kanawha Blvd. East
Charleston, WV 25305-0770

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Please advise if additional information is required. Thank you for your consideration of this request.

Yours very truly,
Darrell Shull

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Monday, February 08, 2016 12:22 PM
To: Timothy Leach
Cc: Anne B. Charnock
Subject: Re: Request to SEC

I am on my way to Wheeling right now to meet with our treasurer and get his signature on the paper reports. I expect to scan and send via email early tomorrow morning, I will then drive to Charleston and deliver the physically signed reports tomorrow afternoon.

Darrell

On Feb 8, 2016, at 12:12 PM, Timothy Leach <TLeach@wvsos.com> wrote:

We really need to see the filing before the SEC meeting. The exemption is from electronic filing. You are not exempt from filing at all or filing untimely.

The SEC has no authority to certify after Wednesday.

When may we expect the filing?

Thanks,
Tim

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Friday, February 05, 2016 12:10 PM
To: Timothy Leach <TLeach@wvsos.com>
Cc: Anne B. Charnock <annecharnock@usa.net>
Subject: Request to SEC

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c/o West Virginia Secretary of State's Office
Bldg. 1, Suite 157-K
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the current system which accepts electronic filings will not accept a filing containing a prior balance nor does it provide for filing a final report of exploratory period contributions and expenditures.

Please advise if additional information is required. Thank you for your consideration of this request.

Yours very truly,
Darrell Shull

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Monday, February 08, 2016 7:16 PM
To: Timothy Leach; Justin Williams; Anne B. Charnock
Subject: Exploratory Reports Email 1 of 3
Attachments: benjamin_summary.pdf

Attached is the Exploratory Summary statement for Justice Benjamin. I will be filing hard copies as soon as I can get to Charleston tomorrow morning.

EXHIBIT QQ

Timothy Leach

From: Timothy Leach
Sent: Wednesday, January 27, 2016 2:40 PM
To: 'gacollias@colliaslaw.com'; Natalie E. Tennant; Vincent.Cardi@mail.wvu.edu; 'tdowns@manchinijurylaw.com'
Cc: Layna Brown; Missi Kinder
Subject: Alert: SEC meetings required next week

Chairman, Secretary and Members:

Two Supreme Court candidates seeking to qualify for public financing funds are approaching the deadline for obtaining qualifying contributions. The deadline for qualifying is Saturday, January 30.

After receiving the necessary contributions, a candidate must file a Request for Certification. The SEC must act upon the certification request within three working days after notice from the Secretary of the filing. We anticipate receiving the request(s) on Monday, February 1, which means the SEC must meet no later than Thursday (Feb.4) or Friday (Feb.5) of next week.

We may require an earlier meeting before the certification meeting. Unlike in 2012, there may be challenges to the validity of some of the contributions. A challenge must be ruled upon by the SEC the next business day after filing the challenge. Certification is then delayed until six business days of receipt of notice in case of pending challenges. Final filing of receipts is not due until "the first of the month" and the challenger will need some time to review the receipts. Therefore, a "challenge" meeting may be required as early as Tuesday (Feb.2).

Please check your emails regularly beginning this weekend and respond as quickly as possible to our request for your availability.

Thanks,
Tim Leach

Timothy Leach

From: Timothy Leach
Sent: Tuesday, February 09, 2016 11:11 AM
To: 'gacollias@colliaslaw.com'; vincent.cardi@mail.wvu.edu; Natalie E. Tennant
Subject: Amended Exploratory Receipts
Attachments: Benjamin Receipts Amended.pdf

The Benjamin campaign just submitted amended receipts supply the missing address/employment info for four \$250 exploratory contributions.

The info is still missing on the actual report, but the receipts now have the corrected info. The campaign needs a signature from their treasurer to file any amended sworn report. They are trying to accomplish that before tomorrow's meeting.

Tim

Timothy Leach

From: Timothy Leach
Sent: Tuesday, February 09, 2016 9:41 AM
To: 'gacollias@colliaslaw.com'; vincent.cardi@mail.wvu.edu; Natalie E. Tennant
Cc: Layna Brown; David Nichols; Justin Williams; Missi Kinder; Elizabeth Summitt
Subject: Benjamin Late Reports Filed
Attachments: benjamin 1.pdf; benjamin 2.pdf; benjamin 3.pdf

The attached reports were emailed to me between 7:16 and 7:23 pm last night – Monday, February 8.

Benjamin 1 file is the final report of all activities
Benjamin 2 file is the monthly reports of all activities
Benjamin 3 file is the receipts

I will send you a memo summarizing the issues presented.

Tim

Timothy Leach

From: Timothy Leach
Sent: Tuesday, February 02, 2016 4:07 PM
To: 'gaçollias@colliaslaw.com'; vincent.cardi@mail.wvu.edu;
'tdowns@manchininjurylaw.com'
Cc: Missi Kinder; Layna Brown; Elizabeth Summitt
Subject: Emergency SEC Meeting Tomorrow

Gentlemen:

We have received over 150 challenges to qualifying contributions today. Code requires the SEC to rule on the objection within 24 hours.

A meeting is proposed from 10:30 am until 2:00 pm tomorrow.

Please indicate your intention to attend/participate. We will send you copies of the objections and the contribution receipts.

The candidate who is challenging the contributions has asked Mr. Downs to recuse himself.

Tim

Timothy Leach

From: Timothy Leach
Sent: Friday, February 05, 2016 8:41 AM
To: 'gacollias@colliaslaw.com'; vincent.cardi@mail.wvu.edu;
'tdowns@manchinjurylaw.com'; Natalie E. Tennant
Subject: Copy of General Challenge of All Benjamin Contribution Letters
Attachments: Walker Challenge Benjamin 2-2.pdf; Walker Challenge Benjamin 2-3.pdf

FYI:

Attached are copies of the two letters by which the Walker campaign attempted a non-specific, general, challenge to almost all of the Benjamin contributions. These are similar in nature to the two letters objecting to the Wooten contributions which I sent you earlier.

(Note: I mislabeled the two letters challenging Wooten. They should have been labeled Walker Challenge Wooten)

Tim

Timothy Leach

From: Timothy Leach
Sent: Tuesday, February 02, 2016 5:21 PM
To: 'Vincent Cardi'
Subject: RE: Emergency SEC Meeting Tomorrow

Thank you, professor. Yes, the meeting will be continuous but we will try to lump together all contributions which share a common objection basis so that you can approve or disapprove the group.

Tim

From: Vincent Cardi [mailto:Vincent.Cardi@mail.wvu.edu]
Sent: Tuesday, February 02, 2016 5:19 PM
To: Timothy Leach <TLeach@wvsos.com>; 'gacollias@colliaslaw.com' <gacollias@colliaslaw.com>; 'tdowns@manchininjurylaw.com' <tdowns@manchininjurylaw.com>
Cc: Missi Kinder <MKinder@wvsos.com>; Layna Brown <LBrown@wvsos.com>; Elizabeth Summitt <EASummitt@wvsos.com>
Subject: RE: Emergency SEC Meeting Tomorrow

Tim,

I can attend. Is it scheduled to meet continuously from 10:30 until 2 unless we finish early?

Vince Cardi

From: Timothy Leach [mailto:TLeach@wvsos.com]
Sent: Tuesday, February 02, 2016 4:07 PM
To: 'gacollias@colliaslaw.com' <gacollias@colliaslaw.com>; Vincent Cardi <Vincent.Cardi@mail.wvu.edu>; 'tdowns@manchininjurylaw.com' <tdowns@manchininjurylaw.com>
Cc: Missi Kinder <MKinder@wvsos.com>; Layna Brown <LBrown@wvsos.com>; Elizabeth Summitt <EASummitt@wvsos.com>
Subject: Emergency SEC Meeting Tomorrow

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The candidate who is challenging the contributions has asked Mr. Downs to recuse himself.

Tim

Natalie L. Wandling
Certified Court Reporter
Judge Kaufman's Court Reporter
112 Dominic Drive
Scott Depot, WV 25560
(304) 357-0466

TO: Alyssa w/Bailey&Glasser
(304) 414-6001

Date: 3-8-16

Transcript of 2-26-16.
16-AA-17.

Elizabeth Walker v. Justice Benjamin, et al.
120 pages @ 7.70 (expedited) per page.

Amount Due \$924.00

JA001863

IN THE CIRCUIT COURT OF KANAWHA COUNTY

WEST VIRGINIA

ELIZABETH D. WALKER, candidate)
for the Supreme Court of Appeals)
of West Virginia,)

PETITIONER,)

-vs-

Civil#16-AA-17

NATALIE E. TENNANT, ex-officio,)
GARY A. COLLIAS, and VINCENT P.)
CARDI, members of the West Virginia)
State Election Commission; and)
BRENT D. BENJAMIN, candidate for)
the Supreme Court of Appeals of)
West Virginia,)

RESPONDENTS.)

Proceedings held in the above-styled matter before
the Honorable Tod J. Kaufman, on the 26th day of
February, 2016, in the Kanawha County Judicial Building,
Charleston, West Virginia.

NATALIE WANDLING
Certified Court Reporter
112 Dominic Drive
Scott Depot, WV 25560
(304) 357-0466

APPEARANCES

For the Petitioner:

THOMAS C. RYAN, ESQUIRE
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222

For the Respondent Brent Benjamin:

JONATHAN R. MARSHALL, ESQUIRE
MARYL C. SATTler, ESQUIRE
Bailey Glasser, LLP
209 Capitol Street
Charleston, West Virginia 25301

For the Attorney General:

JAMES R. LESLIE, ESQUIRE
Office of the WV Attorney General
State Capitol.
Building 1, Room E-26
Charleston, West Virginia 25305

TIMOTHY LEACH, ESQUIRE
West Virginia Secretary of State's Office
1900 Kanawha Blvd. E. Bldg 1, 157-K
Charleston, WV 25305

Also Present:

Justice Brent Benjamin

P R O C E E D I N G S

THE COURT: There were some documents that came in today or yesterday that were faxed by one of the firms.

First let me ask all of you -- first, welcome. If you will state your names and the clients you represent, the record will be complete on that.

MR. RYAN: Good afternoon, Your Honor.

Thomas C. Ryan on behalf of the Petitioner Elizabeth D. Walker.

MR. MARSHALL: Jonathan Marshall and Maryl Sattler on behalf of Respondent Justice Benjamin.

MS. SATTLER: Maryl Sattler, Your Honor.

MR. LESLIE: Your Honor, Bob Leslie, Senior Deputy Attorney General.

And with me I also have Tim Leach from the Secretary of State's Office, who is being appointed to serve as a Special Assistant Attorney General in this matter.

THE COURT: Thank you.

Justice Benjamin, and you should be

1 acknowledged as being present.

2 And is your client not here?

3 MR. RYAN: No, Your Honor, she hasn't made
4 it.

5 THE COURT: As I was saying, there were
6 some letters -- some documents from your firm
7 K & L Gates that came into the Clerk's Office
8 and they were faxed in yesterday. And I have
9 those here.

10 I just want to ask you if counsel received
11 a copy of those and have those?

12 MR. RYAN: Yes, Your Honor.

13 I served all counsel of record by e-mail
14 yesterday. It was more than 20 pages so I
15 couldn't send it by fax. I came in last
16 night. I arrived at the Clerk's Office 8:30
17 and filed a hard copy. They were provided
18 copies yesterday.

19 THE COURT: All right. I just wanted to
20 make sure that they have those and put those
21 in the file so that my primary duty in my
22 making the best record I can make will be
23 available for review.

24 We are a process of review in America.

1 That's a good thing. And the rule of law does
2 control. And we're not a society of men and
3 women in a political environment, but we are
4 one of the rule of law. And we are living in
5 a democracy where every vote counts and where
6 freedom of speech is important. And we are
7 living in a democracy where the policies are
8 made by the Legislature and the Supreme Court.

9 So I don't have any illusions that my
10 ruling in this case will make policy,
11 necessarily. Certainly as is made by the two
12 other superior branches of government in that
13 regard.

14 This case is significant because it
15 involves the heart of our process, but by
16 which we in West Virginia select our supreme
17 court justices and it will be a case of first
18 impression for the Supreme Court.

19 So we can proceed.

20 The only other thing that I wanted to
21 mention before we started was that in the --
22 in the time frame order, which I tried to put
23 out in the letter to counsel, it is an
24 expeditious time frame.

1 As they say in the Legislature, you know,
2 a bill can die if you love it to death. This
3 case isn't going to be loved to death in the
4 lower court.

5 And more over, I realize the importance
6 that it is an election year and the importance
7 that money and public input into this process
8 has.

9 Actually, as I am going through this, I
10 found many instructive things in both briefs
11 as I have studied these.

12 And I might call on Mr. Marshall just to
13 help me because there was one -- the start of
14 one of your briefs that you filed put the
15 three principal points of this Act, which is
16 the subject of this matter at heart.

17 If you could state that for the record
18 then I can thank you.

19 MR. MARSHALL: Judge, I --

20 THE COURT: One, two, and three.

21 MR. MARSHALL: Let me make sure that I
22 have the right brief.

23 THE COURT: Right at the beginning.

24 MR. MARSHALL: Oh, sure. I see what you

1 mean, Your Honor.

2 The purpose of the Public Campaign
3 Financing Program is three-fold: it's to
4 ensure the impartiality and the integrity of
5 the judiciary; two, to increase the public
6 confidence in the courts; and three, to
7 protect the Constitutional rights of voters
8 and candidates from increasingly large amounts
9 of money being spent to influence the outcome
10 of elections.

11 THE COURT: All right. Thank you.

12 That seems to be a good principal that we
13 all I'm sure can agree on to begin.

14 Actually, now I see it. I have this
15 highlighted in different parts as I have tried
16 to absorb the tremendous work and effort to
17 put this -- to put this case in the legal
18 framework that it now presents itself.

19 So, then since, Mr. Ryan, your side is the
20 moving side in this case, you may begin as I
21 outlined in my letter.

22 MR. RYAN: Certainly, Your Honor. Thank
23 you.

24 Once again, my name is Thomas Ryan on

1 behalf of Petitioner Beth Walker.

2 We do appreciate the Court's willingness
3 to under take this matter on such an
4 expeditious matter.

5 I think that everyone does agree that it
6 is of great significance and should be decided
7 as soon as possible.

8 The reason we're here, Your Honor, what we
9 need you to do, and the question that we have
10 been asked, really we're asking you to answer
11 is, do the deadlines and the requirements of
12 the State's Public Campaign Financing Law
13 matter?

14 That's the question that's before this
15 court, because as outlined in our petition,
16 and it is clear from the record that's been
17 presented in this case, Justice Benjamin
18 failed to meet those standards in three very
19 specific ways. And that's what brings us here
20 before today and we will talk about those in
21 detail.

22 The three fatal flaws to his application
23 for certification to receive \$500,000 in state
24 monies really rest on his complete disregard

1 for the exploratory contribution and the
2 exploratory period.

3 The second deals with his failure to
4 obtain a sufficient number of qualified
5 contributions. And we are getting more
6 information as this goes on, but I have got
7 some very clear points for this court to
8 consider that address that issue.

9 Three, finally, was his application for
10 certification timely and accurate at the time
11 that it was filed.

12 I think that the facts in this case and
13 the record establish that none of those are
14 true.

15 Therefore, he hasn't qualified to receive
16 the Public Campaign Financing as set forth in
17 the statute.

18 For the three reasons that Mr. Marshall
19 acknowledged in his brief and this court did,
20 Ms. Walker agrees, it is important for this
21 court to reverse the decision of the State
22 Election Commission finding that Mr. Benjamin
23 was -- Justice Benjamin was qualified to
24 receive the State Financing Funding, to ensure

1 the integrity of the process, to ensure that
2 the public has confidence in this approach.
3 Particularly, since the State has taken the
4 extraordinary step to provide the Public
5 Campaign Financing.

6 A decision in this matter that would allow
7 this record to stand and certify Justice
8 Benjamin based on the facts in this particular
9 case will do just the opposite.

10 The other failure really is the State
11 Election Commission and its own right. It had
12 an obligation to enforce its own laws and its
13 own regulations. And in fact in this case the
14 black letter law that is set forth in the
15 Code, and we will go through it step by step
16 very briefly in more detail during argument,
17 make it clear that this is a prescribed
18 process.

19 You read the statute you have to follow --
20 you have to comply in certain ways to qualify
21 for this money. It didn't happen here. It
22 just frankly didn't happen.

23 We will make the arguments and what not,
24 but the facts show Justice Benjamin simply did

1 not follow those procedures. And that
2 warrants reversal in its own accord for the
3 State Election Commission failing to follow
4 its own process.

5 Real quick, process. Two steps. Starting
6 on January 2015 of the year before the
7 election, culminating on what is called the
8 end of the qualifying period. This particular
9 election cycle is January 30th, Saturday.
10 Last Saturday in January.

11 THE COURT: Of '16?

12 MR. RYAN: I am sorry? 2016, yes.

13 THE COURT: Going from 1-15-15 to
14 1-31-16.

15 MR. RYAN: Thirteen month period.
16 Correct.

17 THE COURT: Go on.

18 MR. RYAN: The first step is called the
19 exploratory period. What I like to call
20 testing the waters.

21 A candidate is free to raise some
22 contributions subject to limitations that are
23 set forth in the statute.

24 And during that period they have to file

1 what's called exploratory report, beginning of
2 every month. It says it in the statute. No
3 doubt about it.

4 They can raise some money and then they
5 ultimately must decide, do they want to take
6 the next step and seek the State Public
7 Financing and file what's called a Declaration
8 of Intent to Participate. And that triggers
9 you from the exploratory period and get
10 transferred into the qualifying period. And
11 at that point you have to get what's called
12 qualifying contributions.

13 And those contributions for all of the
14 reasons that are set forth in the statute, the
15 public policy behind this, have very strict
16 prescribed requirements. It is set forth in
17 the statute. It is basically a check list of
18 everything every contribution must have.

19 The gist of it is the candidate that is
20 seeking this money has to get at least 35,000,
21 no more than 50,000 of contributions from at
22 least 500 registered voters in the State of
23 West Virginia, not to exceed a \$100.
24 Demonstrate by ability.

1 It certainly makes sense before the -- for
2 the West Virginia Legislature to enact such a
3 statute to ensure that the candidate is in
4 fact viable before allocating a half a million
5 dollars to allow them to run for State Supreme
6 Court.

7 But the process is intended to be
8 completely transparent so everybody knows when
9 the candidate is getting this money and who it
10 is coming from.

11 The monthly reporting requirements that
12 exist in the exploratory exist in the
13 qualifying period. That way the Secretary of
14 State can continue to monitor this process and
15 ultimately make sure that this person has in
16 fact qualified.

17 The entire process culminates in the
18 signature of a sworn application for
19 certification, Your Honor. That is a sworn
20 statement by a participating candidate that's
21 to the State Election Commission that says I
22 have complied with every single requirement of
23 this statute, and therefore, I am telling you
24 I am qualified to receive -- we will use the

1 half million dollars of state money to run for
2 office.

3 It is important to remember that the
4 Legislature intended that to be a sworn
5 statement.

6 THE COURT: Where does that money come
7 from?

8 MR. RYAN: From the State. From the
9 Public Campaigning Financing Fund.

10 THE COURT: Which is a fund set up by the
11 Legislature?

12 MR. RYAN: Yes, sir.

13 THE COURT: Where does that money come
14 from?

15 MR. RYAN: The initial statute has an
16 enactment of some different sources, it is
17 ultimately state money.

18 It can -- I think it was intended to be
19 funded by some refunds from elections that
20 don't necessarily pan out and what not, but it
21 is state money. Ultimately these are monies
22 under the State Fund is state money.

23 This sworn statement is the representation
24 of a participating candidate that they are

1 entitled to receive this money. And it has
2 five very, very specific requirements.

3 There is no right to this money. It is
4 important to remember that. There is no
5 entitlement to this money.

6 The State of West Virginia has made the
7 decision to get involved in public financing.
8 But in order to assure the integrity, the
9 process must be beyond approach. And frankly
10 the record in this case is not, for the
11 reasons we outlined.

12 And we will get into more detail in our
13 discussion.

14 But Justice Benjamin did not -- did not
15 even bother to partake in the exploratory
16 period or file any of the reports until after
17 the fact. Until Ms. Walker pointed out to the
18 State Election Commission and Justice Benjamin
19 that he hadn't complied with the statute in
20 any respect.

21 So they tried after the fact request for a
22 hardship exemption, which I'll discuss in
23 detail and show you is completely inapplicable
24 to this case.

1 He failed to follow the basic requirements
2 of the qualifying contributions. And the one
3 most important, Judge, we will talk about in
4 great detail, is the requirement that
5 everybody that gives their \$100 in whatever
6 form provides a signature on that particular
7 document to memorialize it. But also to give
8 the Secretary of State a signature that they
9 can go and check and make sure they're a
10 voter, a registered voter. Otherwise, there
11 is not necessarily a way to authenticate.

12 And third is really this application for
13 certification. We will get into the details
14 of when it was filed and what was filed.

15 But we're really in two situations, either
16 filed inaccurate when it was filed or it was
17 filed untimely. Regardless, it had to be
18 filed within the two business days of the end
19 of the qualifying period. The statute is firm
20 on that. The statute is clear on that.

21 Justice McHugh over 30 years ago made it
22 very clear in the West Virginia law that
23 deadlines and election related cases matter.
24 And this case in the application of the

1 deadlines that are set forth in the Campaign
2 Financing Law must be enforced in similar
3 fashion.

4 THE COURT: What was the name of that
5 case?

6 MR. RYAN: Brady v. Hechler, Your Honor.

7 That was a situation where a person filed
8 a certificate for nomination one day late and
9 they're off the ballot.

10 We're talking about a case here where an
11 individual wants to be on the ballot with
12 \$500,000 of state money. In my view that that
13 involves even stricter scrutiny to the
14 deadlines. We're talking about allocating
15 state monies to a particular candidate. I
16 believe that case is controlling in this
17 venue.

18 Why does all of this matter?

19 For the reasons that the Judge recognized
20 at the beginning of this hearing, the Court,
21 Petitioner Walker firmly agrees we must ensure
22 integrity in this process. We don't have it
23 here.

24 We must instill the public confidence. We

1 must ensure that there is a fair playing
2 field, because we are talking about a forum, a
3 venue, an arena where constitutional rights
4 are at play.

5 Ms. Walker has the constitutional right to
6 exercise her free speech.

7 We've learned our lessons along the way
8 when the State tries to impinge on someone's
9 exercise of those free speech. They enjoy the
10 strictest of scrutiny for all of the reasons
11 set forth in the Constitution.

12 THE COURT: I just want to back up a
13 little bit on that Brady versus Hechler. You
14 meant to say persuasive, didn't you, instead
15 of controlling because Mr. Marshall's client
16 distinguishes that case by saying one was a
17 filing deadline case and this is a application
18 for, what, the public money for public
19 financing. Correct?

20 They didn't even have public financing
21 back when Ken Hechler was Secretary of State.

22 So my point was that this is a case of
23 first impression. It might be persuasive in
24 that you may be taking it out of the election

1 Code section of the book, but the point of it
2 is, is it's distinguishable, at best, with a
3 candidate's filing. Correct?

4 MR. RYAN: Certainly, Your Honor.

5 I will acknowledge that that case involved
6 an election filing deadline.

7 THE COURT: This involves papers that are
8 filed for disclosure purposes.

9 MR. RYAN: No, Your Honor.

10 I would argue that this case involves
11 papers which is a sworn statement allowing a
12 particular candidate to receive \$500,000 of
13 state money. This isn't simply he filed a
14 form late, and those kind of things.

15 It deals with the State's involvement in
16 the electoral process, which is to me, again,
17 if the Court is inclined to --

18 THE COURT: The whole purpose of it is
19 disclosure, is it not?

20 The whole purpose is to make this process
21 transparent so that there can be checks and
22 balances through the public for the public's
23 money that's spent in campaigns.

24 MR. RYAN: Certainly.

1 THE COURT: That's what this is all about.

2 Correct?

3 MR. RYAN: Yes, Your Honor.

4 THE COURT: I mean, I don't mean to be
5 putting words in your mouth, but I want to
6 just try to put it into the context of the
7 case of Brady versus Hechler, which seems to
8 be an interesting case. It certainly does go
9 to the deadlines of candidacies.

10 MR. RYAN: You are right, Your Honor.

11 THE COURT: That's a pretty strong
12 admonition to candidates, they get their
13 papers for candidacy in on time or they are
14 not eligible to run.

15 MR. RYAN: And I think the same -- it is
16 our position the same admonition should be
17 applied in this case because we're not only
18 talking about getting your name on the ballot,
19 we're talking about getting your name on the
20 ballot with \$500,000.

21 This isn't simply a case of filing a
22 campaign finance report a couple days late.
23 This is a case where we're not putting a name
24 on a ballot and the State is providing funds.

1 The lesson from Justice McHugh and Hechler, I
2 believe, should be applied in this particular
3 case as well.

4 And we would argue the if the Court is
5 inclined to --

6 THE COURT: I didn't mean to throw you
7 off. I just wanted to get that on the
8 record.

9 MR. RYAN: Sure.

10 THE COURT: Because I know that case is
11 going to be considered.

12 MR. RYAN: Certainly.

13 Your Honor, with that, we would ask --
14 outline my case, we will talk in more detail.
15 We want to stay on the schedule.

16 THE COURT: All right.

17 MR. RYAN: We would ask that the Court
18 reverse the SEC's decision and otherwise grant
19 the stay as requested under the applicable
20 procedure rule.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 Mr. Marshall.

24 MR. MARSHALL: Thank you, Your Honor.

1 Before discussing the actual challenges
2 that have been made by the Walker Campaign, I
3 want to talk about some of the practicalities
4 first.

5 And that is the Walker Campaign says that
6 the remedy for any type of violation, of any
7 type of disclosure mandated in the Election
8 Code is disqualification. Your Honor, as you
9 pointed out, that's not necessarily the case.

10 The Code actually specifically speaks to
11 remedies. Unlike the situations you had in
12 the Brady case that was just mentioned.

13 First, the SEC has discretion under the
14 statute to disqualify or not based upon a type
15 of violation. The statute reads, "A
16 candidate's certification and receipt of
17 Public Campaign Financing may be revoked by
18 the State Election Commission if the candidate
19 violates this Article."

20 Secondly, the remedy, there is a specific
21 remedy for violations of a statute as it
22 pertains to financial disclosures. And that
23 remedy is civil in nature. It's a \$100 civil
24 penalty.

1 THE COURT: But it may be revoked under
2 circumstances of what?

3 MR. MARSHALL: It doesn't say in the
4 Statute, but in the discretion of the SEC. It
5 is literally a one line sentence.

6 THE COURT: And that's what they're
7 hanging their hat on?

8 MR. MARSHALL: I don't know what they're
9 hanging their hat on, they don't cite it.

10 THE COURT: Is that your -- is that your
11 authority for the remedy you seek?

12 MR. RYAN: No, Your Honor.

13 I mean, I don't mean to make Mr.
14 Marshall's argument. But he is citing a
15 statute for the SEC's continuing jurisdiction
16 over Justice Benjamin. So if he were to take
17 Political Action Committee money two weeks
18 from now, the SEC would learn of it, they can
19 revoke their certification.

20 THE COURT: Your position is they can
21 revoke, what, at this point?

22 Are you saying that --

23 MR. RYAN: We're asking for reversal of
24 the certification itself.

1 THE COURT: Just the reversal of the
2 certification?

3 MR. RYAN: Yes.

4 THE COURT: That's just of the opportunity
5 to access those funds?

6 MR. RYAN: Yes.

7 THE COURT: And your position is what?

8 MR. MARSHALL: It is discretionary with
9 the SEC. I mean it is not an automatic
10 disqualification feature.

11 THE COURT: Okay. So they have that
12 discretion?

13 MR. MARSHALL: Exactly.

14 This is -- the statute is full of
15 discretion. And it is discretionary even for
16 these financial reports to assess a penalty or
17 not. That's not inconsistent with general
18 election law.

19 THE COURT: It is not -- okay.

20 There is not any real precedent for
21 this.

22 MR. MARSHALL: There isn't.

23 THE COURT: I mean --

24 MR. MARSHALL: There is not.

1 That's a really important point because
2 this is a pilot program. This is a pilot
3 program. We have new regulations. A
4 relatively new statute.

5 We have technical issues at the Secretary
6 of State's Office as it pertains to electronic
7 filing and some things that we're going to
8 discuss a little bit later. This is a pilot
9 program.

10 And I believe that the statute was written
11 in such a way as to give the SEC some
12 discretion because this is an evolving
13 process. This is an evolving process. And --

14 THE COURT: What about that electronic
15 filing?

16 MR. MARSHALL: Unfortunately, it was not
17 set up to accept some of the reports that
18 Justice Benjamin tried to make, which resulted
19 in his request for a hardship exemption on one
20 of the occasions.

21 And in part, and we can talk about this a
22 little bit later, but it rose because of the
23 way he started out. I mean a candidate does
24 not have to start out seeking public

1 financing. Justice Benjamin did not do that
2 initially. Decided later on in the process,
3 which is a little bit odd, a little bit
4 different, to go ahead and --

5 THE COURT: Go on.

6 MR. MARSHALL: -- request --

7 THE COURT: Let's just take one -- take
8 the -- go on.

9 MR. MARSHALL: Okay.

10 THE COURT: The --

11 MR. MARSHALL: So, for instance, Your
12 Honor, the -- what we're calling the summary
13 financial report, which is the report that you
14 -- that gets filed at the very end of the
15 process. He -- Justice Benjamin was not able
16 to file that. I mean the Secretary of State's
17 Office was not able to receive that
18 electronically, it is in the record.

19 THE COURT: So since you are trying to
20 make my understanding a little easier. Let's
21 just say that -- let me just go to number
22 three, which is in your statement of the
23 three-fold purposes of the Public Campaign
24 Financing Program, where you say, "To protect

1 the Constitutional rights of voters and
 2 candidates from increasingly large amounts of
 3 money being spent to influence the outcome of
 4 elections." So let me just take that purpose
 5 and say that that's allottery purpose. That
 6 the Constitutional rights of voters and
 7 candidates from increasingly large amounts of
 8 money being spent to influence the outcome of
 9 elections. That a half million dollars is a
 10 lot of money. It is a lot of money by the
 11 standards of a state election for the State
 12 decides of West Virginians a lot money for a
 13 lot of things. But in this case it is to --
 14 it is maybe I'll just throw out a word
 15 "balance", to use my own word to protect the
 16 Constitutional rights.

17 The Secretary of State is in that position
 18 as the head of the Election Commission.
 19 Right?

20 MR. MARSHALL: Yes, Your Honor.

21 THE COURT: To safeguard that right.

22 MR. MARSHALL: Yes, Your Honor.

23 THE COURT: And the electronics system
 24 isn't set up. Whose fault is that to receive

1 that?

2 So with that in mind, the Secretary of
3 State is chairman of that body of Election
4 Commission that grants the hardship because of
5 the duty of her job being unable to be
6 fulfilled.

7 So let me go to number three and just talk
8 about that in terms of the Constitutional
9 rights of voters from increasingly large
10 amounts of money.

11 So now we have the large amounts of money
12 in the court now with questions raised by that
13 process below. Questions that are coming in
14 in the briefs. And the Constitutional rights
15 of the voters and candidates from these large
16 amounts of money, which the public purpose is
17 to respect that large amounts of money, I
18 guess, can be spent and that the right of
19 voters.

20 So that is what actually brings you to
21 this hardship exception through the briefs.

22 Is that discretionary call that the
23 Secretary of State used on the very problem
24 created by the lack of ability to communicate

1 any other way than your candidate did.

2 Correct?

3 MR. MARSHALL: Correct.

4 THE COURT: I mean I am just going to
5 assume.

6 MR. MARSHALL: Yes.

7 THE COURT: I'm not going to assume that
8 it was right, wrong, or on time at this point,
9 but just that that's what happened, that can
10 be stipulated, that can be reviewed.

11 MR. MARSHALL: Yes, Your Honor.

12 THE COURT: But that's not an easy thing
13 to review on first impression.

14 MR. MARSHALL: No, Your Honor.

15 THE COURT: Except to make a record on it.

16 I mean that sure is not the fault of
17 Justice Benjamin, or Ms. Walker, or anybody,
18 or the taxpayers, to pick up this piece on
19 that exception, except to say the exception
20 was granted by that very tribunal.

21 MR. MARSHALL: Yes, Your Honor.

22 THE COURT: And they take strong exception
23 to that.

24 MR. MARSHALL: They do, Your Honor.

1 THE COURT: So I didn't mean to drive into
2 that now, but I keep going back to the issues
3 that you all have raised in your brief, which
4 I think are very instructive as to what the
5 issues are.

6 So let me just let you finish your ten
7 minutes because I know you have a much better
8 organized approach to your position that can
9 be reviewed than I do.

10 I wanted to just get that out because the
11 role that that Election Commission played was
12 indispensably intertwined in the record that
13 was made here.

14 MR. MARSHALL: That's right.

15 THE COURT: In fact almost totally except
16 for supplements and things that you all have
17 received in the limited discovery you've been
18 able to do on this basis.

19 MR. MARSHALL: Right.

20 THE COURT: All right. You may go on.

21 MR. MARSHALL: Your Honor, I think it is
22 important to note that the SEC spent four days
23 working through these issues. Working through
24 all of these issues. Four days. And spending

1 those four days they considered all of the
2 challenges, all of the issues that were raised
3 by the Walker Campaign.

4 They -- and of course as the Court knows,
5 I mean we're looking at abuse of discretion
6 standard. That's what we're looking at in
7 terms of these determination.

8 So really, you know, at the end of this
9 process, of course, the SEC decided to certify
10 Justice Benjamin for these public funds.
11 Really that's not surprising though.

12 The objections themselves mostly based
13 upon highly technical issues. And from our
14 perspective, of course, are factually and
15 legally unsupported.

16 To illustrate, the Walker Campaign takes
17 issue with the application that was filed.
18 The Walker Campaign says that that application
19 was filed at 5:09 P.M., and that it was late
20 because of that. It should have been filed by
21 five o'clock.

22 Your Honor, we actually have evidence in
23 the record it was filed at 4:55. But even
24 setting that aside, there is nothing in this

1 statute that says that that application being
2 filed at 5:09 results in disqualification,
3 which is what they're asking for. Which is
4 what they're asking for.

5 THE COURT: Well, I think that, you know,
6 I am not going to make rulings on the bench on
7 this matter, but I think you made a good point
8 on that.

9 I mean, I am not going to make a -- but
10 you were down here at 8 o'clock the other
11 night with something, and that's a lot longer
12 than this courthouse is open. And so I really
13 don't even see that as being a problem. I'm
14 not trying to read any discretion in it, but
15 because that's not -- that just says at the
16 end of the business day.

17 And from my understanding of the custom
18 and practice, the Secretary of State's Office
19 has tried to be, and is flexible, about trying
20 to keep the office open for business during
21 hours that may be expanded upon for purposes
22 of the public having an opportunity to file
23 things in elections. That's my observation.

24 My observation is that it is open later,

1 it is open earlier, it is just trying to
2 accommodate the short period of time and to
3 encourage candidates to avail themselves of
4 the office when they can. But I read that and
5 I thought you made a point on that.

6 So, go on.

7 MR. MARSHALL: Your Honor, Walker -- the
8 Walker Campaign's other challenges really fair
9 no better, especially as it pertain to these
10 financial reports.

11 We will show that the Benjamin Campaign
12 filed reports when obligated to do so.

13 There is no dispute in this record that
14 the Benjamin Campaign has disclosed every
15 single penny that he has received. There is
16 no dispute in this. They may challenge about
17 the timing of those reports, but there is no
18 dispute he has disclosed the money he has
19 received.

20 THE COURT: Do you all agree with that?

21 You are not suggesting he is hiding money?

22 MR. RYAN: No, Your Honor.

23 THE COURT: Okay. So it is just the
24 timing of it, and the method, and the amount

1 of information, or something.

2 MR. RYAN: Yes, Your Honor.

3 It is failure to follow the -- I don't
4 mean to interrupt him. But, yes, Your Honor,
5 we have no information to believe that there
6 are other monies that Justice Benjamin --

7 THE COURT: I think that everybody
8 appreciates the importance of it, is what the
9 intent of the law is. So, but I just -- so
10 that that could be made known public. It is
11 not to shed any aspersions that someone is
12 hiding something. It is just the formality of
13 the law and whether or not that was met or
14 not.

15 MR. MARSHALL: Yes, Your Honor.

16 THE COURT: So, go on.

17 MR. MARSHALL: And Your Honor, the
18 conclusions that the SEC reached in this case
19 that Justice Benjamin was in fact qualified is
20 of course supported by the law in the record.

21 And further, I believe that the conclusion
22 is in -- is consistent with those three goals
23 that we articulated at the very beginning of
24 this hearing, which is to ensure essential --

1 essentially, fairness and openness.

2 And, you know, in other words, the purpose
3 of the statute, I believe it is important to
4 focus on this, is not to create procedural
5 pitfalls. It is not to create procedural
6 pitfalls just for the hope of trying to
7 disqualify someone.

8 The purpose is to create transparency and
9 openness, and also a mechanism in order to try
10 to make these judicial elections a little bit
11 more fair.

12 And the statute should be read in that
13 light.

14 THE COURT: That's -- but you have to
15 distinguish that position, in my opinion, as
16 Mr. Ryan does, that that Hechler case, Brady
17 versus Hechler, absolutely says that that
18 filing date is a jurisdictional date.

19 My question is, is there anything in any
20 of these regs that indicates that the dates
21 and the deadlines are procedural?

22 MR. MARSHALL: Your Honor, absolutely.
23 They are not jurisdictional. They are
24 procedural deadlines because, and if you want

1 --

2 THE COURT: You think that these are
3 procedural deadlines?

4 MR. MARSHALL: I believe they are
5 procedural deadlines.

6 THE COURT: Is there any case law out
7 there --

8 MR. MARSHALL: No cases.

9 THE COURT: -- that says that these
10 election deadlines are procedural?

11 MR. MARSHALL: The reason that I believe
12 that they are procedural is at the very
13 beginning of my outline, the statutory support
14 says that the SEC may in its discretion either
15 --

16 THE COURT: You know you advise a lot of
17 clients on these things.

18 MR. MARSHALL: I do.

19 THE COURT: And when we're talking about
20 appeals --

21 MR. MARSHALL: Sure.

22 THE COURT: -- to administrative agencies.
23 Talking about statute of limitations.

24 MR. MARSHALL: Absolutely.

1 THE COURT: We're talking about periods of
2 review.

3 MR. MARSHALL: Yes.

4 THE COURT: Those are pretty well worn
5 distinctions in all regards.

6 MR. MARSHALL: They are.

7 THE COURT: And so that's all I am asking
8 for.

9 MR. MARSHALL: Right.

10 THE COURT: Is there any case indicating
11 the guidelines on this public financing, not
12 guidelines, but the authority of law that this
13 Secretary promulgates are procedural?

14 MR. MARSHALL: There are no cases, but
15 there is I believe statutory authority for the
16 reasons that I had previously indicated.

17 THE COURT: Okay.

18 MR. MARSHALL: And in fact, there are, of
19 course, are cases in dealing with other
20 statutes, for instance, the Human Rights Act
21 that have held that procedural type statute of
22 limitations issues are procedural in nature
23 and can be tolled equitably depending upon the
24 circumstance.

1 Really, if you look at the Brady case and
 2 the line of authority that it cites, just
 3 really deals with these filing deadlines that
 4 the court has been very, very strictly
 5 construed to be jurisdictional in nature.
 6 This is your deadline to get on the ballot.
 7 We need to have some finality with who is
 8 going to be on the ballot. This obviously is
 9 different than that.

10 But, you know, at the end of the day --

11 THE COURT: You know, I heard one of your
 12 partners argue one time about the 18 year old
 13 right to vote. And it had to do with
 14 something like a disabled individual playing
 15 basketball in West Virginia. I remember him
 16 arguing that the one thing when it is 18 years
 17 old applies to everybody. It doesn't say
 18 anything about disability or anything, but
 19 there are certain acts and things that just
 20 apply across the board.

21 And obviously in that Brady case they made
 22 that apply across the board in candidacy
 23 deadlines. And came down and said what, you
 24 know, people might have known or might have

1 argued about.

2 MR. MARSHALL: Sure.

3 THE COURT: But it made it clear to me
4 some of those distinctions.

5 Well, you are welcome to keep talking,
6 except that you have your -- you have a full
7 period of time to take up where Mr. Ryan left
8 off. And I have interjected myself and
9 probably thrown you off.

10 MR. MARSHALL: Judge, actually I was going
11 to sit down. I was going to defer to my -- if
12 it pleased the Court, I was going to defer to
13 the co-respondent to offer his peace.

14 MR. RYAN: Your Honor, I will proceed as
15 the Court likes. If the dialogue is very
16 informative for the Court, if you want to
17 interject questions and go back and forth, I'm
18 certainly willing --

19 THE COURT: I just find Mr. Marshall a
20 good source because he has had, you know,
21 experience with these things. I just wanted
22 to get my information out on the record which
23 is why I started with it. I have a pile here,
24 I could get enough to make everything I can

1 imagine.

2 Mr. Leslie.

3 MR. LESLIE: Thank you, Your Honor.

4 Bob Leslie on behalf of the Secretary of
5 State and State Athletic Commission, but the
6 State Election Commission.

7 I think it is clear that the body of the
8 statute itself addresses the SEC with
9 discretion, has been addressed earlier.

10 Clearly, the language, the plain language
11 of the statute provides a "may", not a "shall"
12 when it comes to the certification of a
13 candidate.

14 The SEC's possessed with various options
15 to factor in appropriate remedies given to
16 certain circumstances that are presented to
17 her. And it is able because of the wording of
18 that particular statute to reserve the most
19 pecuniary or the most offensive facts in this
20 particular matter.

21 THE COURT: What was the last thing you
22 said?

23 MR. LESLIE: That the SEC I believe is
24 available to reserve its most pecuniary remedy

1 to have these certification of a candidate for
2 the most offensive facts in this particular
3 case.

4 I don't believe, especially given the fact
5 this is a new pilot program that everyone is
6 trying to figure out, that this particular
7 matter rises to that level.

8 As has been stated by Justice Benjamin's
9 attorney, and I believe at least at this point
10 in time, acquiesced to by Ms. Walker's
11 attorney, this isn't as though Justice
12 Benjamin is hiding money.

13 In this particular incident, the SEC came
14 in utilizing this remedial statute and decided
15 to support the public policy by allowing this
16 pilot program to proceed forward. And --

17 THE COURT: What do you mean by that now?

18 MR. LESLIE: I mean that if you look at
19 what the purpose of the statute is, which is
20 to essentially --

21 THE COURT: You're not saying that the
22 purpose is to give out the money, are you?

23 MR. LESLIE: The purpose of the statute is
24 to take the politics of money out of the

1 judicial race and allow for voters to have --
2 to have the ability to consider candidates
3 regardless of financial wherewithal, that
4 candidates with support can get on the ballot
5 with an appropriated opportunity for election.

6 But in this particular instance, as you
7 look through this pilot program and the fact
8 that it is new and there are difficulties, one
9 of the things that I think will be developed
10 --

11 THE COURT: What is it that you think that
12 they're supposed to be doing with this
13 program?

14 You summed it up.

15 What is it that the Secretary's role is in
16 this program, in your opinion?

17 MR. LESLIE: Well, the Secretary's role in
18 this opinion is to serve as a member of the
19 State Election Commission.

20 THE COURT: She clearly had a
21 responsibility to set up electronic filing.
22 Right?

23 MR. LESLIE: That would be correct.

24 THE COURT: That would be number one if

1 you were going to receive the deadlines, which
2 everybody says are deadlines.

3 MR. LESLIE: As to this particular statute
4 she serves on the SEC.

5 THE COURT: She is on that committee that
6 oversees it. Right?

7 MR. LESLIE: That's correct.

8 THE COURT: She is the Chair of it?

9 MR. LESLIE: Correct.

10 THE COURT: Okay. As the Chair of it,
11 what do you see her --

12 MR. LESLIE: She is not the Chair of the
13 Committee, she is merely a member.

14 THE COURT: I thought she was the Chair.

15 Who is the Chair of that committee?

16 Oh, Collias. Okay. Yeah.

17 I just noticed that all of the e-mails and
18 everything were going through that office so,
19 yeah, she is on that.

20 MR. LESLIE: She does serve on the
21 Committee, but she is not the Chair.

22 THE COURT: Does she not preside in the
23 hearings or --

24 MR. LESLIE: She had an active role in the

1 hearings. And depending on, because you have
2 to have a certain quorum, these things are
3 done very quickly, she did have a very active
4 role in several of the hearings.

5 THE COURT: What were you going to say?

6 MR. RYAN: Your Honor, I am sorry.

7 Mr. Leach can clarify, the first day of the
8 hearing, Mr. Collias and Professor Cardi were
9 on the phone, and Secretary Tennant was in
10 person, so I think that they treated her like
11 the Chairman that day. You may have seen that
12 in the record.

13 THE COURT: I saw it in the transcript.

14 MR. RYAN: Yeah, the transcript.

15 THE COURT: Which was long.

16 MR. RYAN: That's why Mr. Leach, he's
17 confirming that was --

18 THE COURT: That's when those issues were
19 first discussed and they were flushed out.

20 MR. RYAN: Yes.

21 THE COURT: It was very helpful. And she
22 did a very good job. And it was a very good
23 record.

24 That I can say because I was interested in

1 that record that was made and that was her
2 role.

3 MR. LESLIE: Yes, sir.

4 THE COURT: So I don't mean to put you on
5 the spot because I am not trying to make you
6 give a definition of what it was that she did
7 or didn't do, but my point was that that
8 commission is indispensably intertwined in
9 carrying out the legislative mandate of the
10 public funding of elections if somebody
11 qualifies.

12 MR. LESLIE: That would be correct.

13 THE COURT: That should speak for itself.

14 So, go on. I apologize. You go on.

15 MR. LESLIE: Well, essentially, with those
16 limited points, because I know we're going to
17 develop the record further over the rest of
18 the afternoon or a bit longer, I would go
19 ahead and concede the floor.

20 I did want to let you know we believe that
21 the State Athletic Commission and Natalie
22 Tennant --

23 THE COURT: I confused you because I threw
24 in that basketball case that has nothing to do

1 with this case and you have been doing a lot
2 better when I am not doing that.

3 So the record ought to reflect that you
4 know exactly that that is the State Election
5 Commission. And I appreciate your remarks.

6 MR. LESLIE: Thank you again, sir.

7 THE COURT: So while you are on your feet,
8 could you introduce the man behind you again?

9 MR. LESLIE: I'm sorry. This is Tim
10 Leach.

11 THE COURT: You did.

12 And just tell me, tell the record who you
13 are, because I saw your name all through the
14 the record and the e-mails.

15 MR. LEACH: Your Honor, I serve as
16 Assistant Counsel for the Secretary of State
17 Tennant.

18 In that function I am sort of a de facto
19 advisor to the State Election Commission
20 because my boss is a member of the Commission.

21 THE COURT: Okay. Did you say something
22 about a deputy attorney general?

23 MR. LESLIE: Oh, in this particular matter
24 to assist me and appear in court, we are

1 appointing -- we have appointed Mr. Leach to
2 serve as a special assistant attorney general.

3 THE COURT: Okay.

4 MR. LESLIE: So that he has the ability to
5 appear in court on the record on behalf of his
6 client.

7 THE COURT: Thank you very much.

8 MR. RYAN: Your Honor, if I may, I have
9 got some placards that I would like to use and
10 would like to work from the podium, if that's
11 all right with you.

12 THE COURT: On your time.

13 MR. RYAN: Okay. Thank you, Your Honor.

14 I think it is important the first step now
15 that we've laid out the issues, we're really
16 talking about three significant failures.

17 I think the Court is right, are they
18 jurisdictional or are they procedural?

19 I think that it was Mr. Marshall used the
20 term "the need for finality". That's exactly
21 right. That's why the statute prescribes the
22 time periods is to provide that finality.

23 Let me make sure, just the record is long
24 and arduous, and I tried to sum up the

1 relevant time frames for the Court to move
2 through this very quickly.

3 THE COURT: Let me just label that as your
4 Exhibit A in this and then go on.

5 MR. RYAN: Certainly, Your Honor.

6 THE COURT: Go on.

7 MR. RYAN: Justice Benjamin files
8 pre-candidacy papers in February and began
9 raising money.

10 THE COURT: Pull that up a little bit.
11 Go on.

12 MR. RYAN: Okay. He began raising through
13 February, March, April, May. For the purposes
14 of the Statute, the way it is written, those
15 are exploratory funds. So at the beginning of
16 the first of the following month he was
17 required to file a exploratory report.
18 Nothing is filed along this path.

19 MR. MARSHALL: Your Honor, I don't mean to
20 interrupt, I can't see that. I don't think I
21 have ever -- I don't think this was disclosed
22 to us. I would just like to look at it.

23 THE COURT: Do you have a little piece of
24 paper of that?

1 MR. RYAN: I do not have a smaller one.
2 They were just dates. If they're going to
3 object to the dates I can --

4 THE COURT: Just why -- off-the-record.

5 (An off-the-record discussion was then
6 held.)

7 THE COURT: So you have two different
8 lines on that certification, one line says
9 "exploratory", I can see. The other line are
10 just different deadlines.

11 What's the significance of the two sides?

12 MR. RYAN: Your Honor, these are the
13 filing deadlines.

14 THE COURT: On the left hand side?

15 MR. RYAN: Yes, Your Honor.

16 The hearing dates and just establishing
17 the chronology for the Court, and obviously,
18 for everyone.

19 And then these are -- this shows when
20 funds were raised, this shows the Declaration
21 of Intent, when the filing were made.

22 THE COURT: But at some point the issues
23 in this case become intertwined because the
24 two reporting requirements coalesce or

1 parallel each other. Correct?

2 For the different committees when he
3 becomes a candidate for public money.

4 MR. RYAN: Yeah, that's a good point.
5 Let's go directly to that.

6 THE COURT: I mean, can I pick that up off
7 the chart if that's a question that the Court
8 has about the timing that you make in your
9 brief about when the Candidate Benjamin is
10 supposed to file certain things, but he
11 didn't, and their position that, you know,
12 they either didn't have to or it was subsumed
13 by another filing?

14 MR. RYAN: Sure. That's -- we will move
15 around the date right here. Around the
16 September 11th.

17 So we have Justice Benjamin filed his
18 pre-candidacy papers and he starts raising
19 money through the course of Spring, Summer of
20 2015. He does not file any reports.

21 He's taken the position that I did not
22 intend to be a participating candidate at the
23 time that I was raising those monies. So,
24 therefore, I had no obligation to file this

1 report in May, June, July, or August,
2 September 1.

3 The statute doesn't make that distinction.
4 Justice Benjamin's people at the meetings, the
5 SEC meetings, made that distinction.

6 That doesn't matter because once you file
7 that Declaration of Intent to Participate, the
8 statute provides that you have to file your
9 exploratory report and report all of your
10 previous contributions as exploratory report.

11 That didn't happen in September 11th of
12 2015, when Justice Benjamin filed his
13 Declaration of Intent. These monies went
14 completely unreported. That's provided by the
15 statute.

16 So given the benefit of the doubt, if
17 Justice Benjamin wants to take the position
18 that I raised this money with a different
19 intent in mind, which frankly, no -- everyone
20 at this point, anyone could at this point, if
21 this is a pilot program and we're setting
22 precedent, anybody can raise money for the
23 entire 13 month period and wait until the end
24 to file their Declaration of Intent and change

1 their mind and drop into the pilot program.

2 THE COURT: Say that -- go through that
3 again.

4 MR. RYAN: The exploratory contribution
5 period is important. Justice Benjamin's
6 position is, I didn't have to make any reports
7 until I filed my Declaration of Intent.

8 THE COURT: The exploratory period being
9 you're just --

10 MR. RYAN: Testing the waters, raising
11 money, getting contributions. There is
12 limitations.

13 THE COURT: Right.

14 MR. RYAN: It has to be from individuals
15 and so much money.

16 THE COURT: So their position is that they
17 didn't have to file any of those?

18 MR. RYAN: Right.

19 Let's think about how that would apply --

20 THE COURT: You mean none?

21 MR. RYAN: None.

22 THE COURT: When were they due?

23 Just in a monthly --

24 MR. RYAN: They are due once you file

1 this, you have to file the exploratory --

2 THE COURT: You have those other dates on
3 there, you have February, March, April.

4 MR. RYAN: If the statute doesn't -- there
5 are two arguments here. The statute doesn't
6 provide for this notion of I changed my mind,
7 I raised money, at the time I didn't want to
8 --

9 THE COURT: Were there requisite filing
10 periods on those exploratory candidacy that
11 were missed, filings?

12 MR. RYAN: Yeah. None of these were
13 filed. Nothing was filed.

14 So he raised money in April of 2000 --
15 April 2015, he had a small fundraiser. May 1,
16 he should have filed a report of exploratory
17 contributions.

18 THE COURT: May 1?

19 Okay. I can see this.

20 So your left hand side of the chart is
21 what you all state is when the reporting
22 deadlines occurred.

23 MR. RYAN: Right.

24 THE COURT: So nothing went in?

1 MR. RYAN: No. Nothing is filed.

2 THE COURT: Until the 9-11-15?

3 MR. RYAN: No. No exploratory report is
4 filed.

5 THE COURT: Okay.

6 MR. RYAN: That's when taking him --
7 taking their argument at its best on its face,
8 I didn't have the intent at the time that I
9 raised this money.

10 THE COURT: It was just raised at the
11 Election Commission?

12 MR. RYAN: Yes, Your Honor.

13 THE COURT: What was the --

14 MR. RYAN: Their argument was that the
15 facts are, and I will show you why --

16 THE COURT: Just what's the record show?

17 MR. RYAN: The record shows that --

18 THE COURT: That you all raised the
19 concern that --

20 MR. RYAN: That --

21 THE COURT: -- the April, May, June, July,
22 August, September reporting deadlines were not
23 complied with.

24 MR. RYAN: Petitioner Walker in her letter

1 of February 2nd, pointed this out to everybody
2 that Justice Benjamin had not filed any
3 exploratory reports.

4 At that point not until February 5,
5 formally the Justice Benjamin Campaign asked
6 for a hardship exemption for the electronic
7 filing issue.

8 Now let's focus on that because that was
9 of the Court's concern earlier.

10 THE COURT: You mean of this year?

11 MR. RYAN: Yes. We're talking --

12 THE COURT: Well, you are going way down
13 the line. I am just trying to get the history
14 to his September 11th, Declaration of Intent
15 to Participate.

16 MR. RYAN: Correct.

17 THE COURT: That's when they say that
18 another set of rules applies in terms of the
19 candidate or all to the candidate's ability to
20 the candidate's responsibility to file?

21 MR. RYAN: Correct. Yeah. You are right.

22 So that when he files that Declaration of
23 Intent he is in the qualifying period.

24 THE COURT: So what does that do, is there

1 an argument between the two sides as to what
2 that qualifying period does to the other
3 deadlines?

4 MR. RYAN: Their argument is that the --
5 that Justice Benjamin, the electronic system
6 would not allow them to file their exploratory
7 reports so that's why they did not file in
8 September 11, 2015.

9 THE COURT: So those are all things that
10 happened after September. That's when those
11 arguments came in.

12 MR. RYAN: Right.

13 THE COURT: But it didn't have anything to
14 do with the ones before.

15 MR. RYAN: Right. Right.

16 Their argument is Justice Benjamin did not
17 have the intent to participate in the pilot
18 program.

19 THE COURT: I see.

20 MR. RYAN: He didn't file those particular
21 forms.

22 THE COURT: But those pre-candidacy
23 things, those exploratory things, don't have
24 anything to do with the access to the Public

1 Financing, do they?

2 MR. RYAN: Sure.

3 THE COURT: What I mean is everyone has to
4 file those?

5 MR. RYAN: The pre-candidacy form?

6 THE COURT: Right.

7 MR. RYAN: Correct.

8 THE COURT: That was just something that
9 wasn't done?

10 MR. RYAN: No. No, he filed a
11 pre-candidacy form up here.

12 THE COURT: The reporting on it, the April
13 1, May 1, June 1, were they all filed by that
14 -- by the Benjamin Campaign?

15 MR. RYAN: No, Your Honor. They were not
16 filed.

17 THE COURT: Why isn't that a problem, or
18 was it a problem?

19 MR. RYAN: It is our position that it was,
20 it was a problem.

21 THE COURT: What did the Secretary say
22 about -- the Commission say about that?

23 MR. RYAN: The issue did not come up until
24 he filed a Declaration of Intent.

1 THE COURT: Okay.

2 MR. RYAN: Their position in the record,
3 the Justice Benjamin Campaign produced an
4 e-mail, which they indicate states that they
5 were unable to file electronically so they
6 were going to file later.

7 The problem is that doesn't stop them from
8 filing the form, the electronic issue. They
9 can mail the form. They could have --

10 THE COURT: That's the -- that's the
11 challenge that the abuse of the discretion of
12 the Secretary and that hardship thing?

13 MR. RYAN: Yeah.

14 The hardship doesn't -- they don't even
15 ask for the hardship until February 5. So
16 we're talking about five months after the
17 filing obligation.

18 THE COURT: Well, the record is complete
19 on that.

20 MR. RYAN: Right.

21 The one issue that is left out of it and
22 produced in the documents we received in the
23 response of the Freedom of Information Act and
24 were part of the supplemental production

1 today, is back on October 1, so you have
2 Justice Benjamin files September 11,
3 Declaration, he's now in the qualifying
4 period, so he is obligated to now file
5 qualifying reports on the first of the next
6 month for all of the contributions that he
7 received.

8 He had the form, his campaign staff, and
9 it is in the production that we supplemented
10 we received from the Secretary of State's
11 Office, they had the form October 1, 2015.

12 Mr. Shull who works for the Justice
13 Benjamin Campaign sent a copy of the form
14 electronically via e-mail. They could have
15 submitted the form and submitted the actual
16 one that the Secretary of State's Office had
17 provided them via e-mail for the qualifying
18 period. They just completely ignore the
19 exploratory period.

20 Now, if we think about this is a pilot
21 program and we want to do this right, if we
22 allow someone to completely ignore the
23 exploratory period and claim that the reason
24 sort of after the fact is the online system

1 didn't work, everybody could ignore the
2 exploratory period and say, "I changed my mind
3 and I forgot this because I'm going to file it
4 by the end." They had the form.

5 I mean it clearly -- it is in the
6 production. There is a exploratory period and
7 qualifying period, check a box. And they were
8 able to e-mail that to the Secretary of
9 State's Office for filing, but they simply
10 chose not to file any of these, which
11 eviscerates the entire exploratory period if
12 there is no filing obligation, there is no
13 reporting obligation, then what's the point?

14 Half the statute becomes rendered
15 completely meaningless. That's an important
16 fact when we look at the timeline.

17 We'll talk about some other issues that
18 Justice Benjamin, Mr. Marshall wants to
19 overlook, because, you know, frankly, it shows
20 a complete -- they want to fall back on this
21 hardship exemption because they missed the
22 deadline. They frankly just ignored half of
23 the statute.

24 Now, Your Honor, moving through the

1 qualifying period. I have got the black marks
2 here that requires you to file your qualifying
3 contribution report and any other exploratory
4 funds that may have come in on the first at
5 the beginning of the month is what the statute
6 says and file these forms all of the way
7 through January showing a little bit of money,
8 but he is nowhere clear -- close to the
9 \$35,000 that's required.

10 And literally, and it is on the campaign
11 finance reports, literally on the 29th and the
12 30th, so that Friday and Saturday, at the 11th
13 hour, the close of the qualifying period, and
14 this is why I will say that undoubtedly that
15 Justice Benjamin recognized the jurisdictional
16 nature of these deadlines, there is a flood of
17 money, 25,000 of the 35,000 that was used to
18 qualify him came in on the last two days.

19 THE COURT: Well, there is some people
20 working on that probably. Well, I mean, just
21 because of the deadlines.

22 MR. RYAN: That's because the deadlines
23 matter. That's my point.

24 That's exactly to say now that they're

1 procedural is completely inconsistent with
2 their own conduct along the way.

3 So February --

4 THE COURT: How long did it take them to
5 raise that much money?

6 MR. RYAN: Really over two days, 29th and
7 30th.

8 We can -- the list is in the record. And
9 it is everyone we know.

10 THE COURT: They called this method the
11 way to keep the money out of it?

12 MR. RYAN: Yes, Your Honor.

13 You know, if we want to look at the people
14 that donated, it's everybody that contributed
15 to all of these races.

16 THE COURT: I am not going to get into
17 that.

18 MR. RYAN: It comes in on the 11th hour to
19 the Secretary of State's Office and the State
20 Election Commission.

21 February 1, Mr. Justice Benjamin provides
22 the contributions and the receipts. So the
23 Secretary of State's Office is literally
24 dumped with these 500 receipts and

1 contributions, which are very prescriptive.

2 The requirements for these qualifying
3 contributions are clear and unequivocal.

4 This is small, I appreciate it. This is a
5 talking point.

6 You have to be --

7 THE COURT: This is West Virginia Code
8 3-12-9, I am going to label that B.

9 MR. RYAN: Sure.

10 THE COURT: Put it in there just to make
11 the record on it.

12 All right. Go on.

13 MR. RYAN: Thank you, Your Honor.

14 Anybody over \$25 dollars makes a
15 qualifying contribution you have to have their
16 signature, printed name, street address, zip
17 code, telephone number, occupation, name of
18 employer. Less than that you don't have to
19 have the signature and name. You have to have
20 a statement that's clear and unequivocal what
21 it has to provide and provide a copy signed by
22 both the collector and the contributor.

23 It is -- it is clear what all of these
24 have to provide.

1 And the issue, really, whatever those two
2 or three day hearing was, half of them didn't
3 have some of this information.

4 So, literally, on February 1, at 4:47,
5 they're time stamped in there. There is one
6 set that came in and Petitioner Walker files
7 her challenges on the morning of February 2nd.

8 The flood that came in at the end, the
9 25,000, she gets the morning of February 2nd
10 and tries to sort through all of the
11 objections and challenges that should be posed
12 to all of these.

13 And this gets to the -- we're now moving
14 to the chronological to the application
15 certification. This issue of the 4:55 e-mail.

16 You know, as noted earlier by Mr.
17 Marshall, the record reflects that Petitioner
18 Walker received conflicting information about
19 when this application was received. You know,
20 it was initially told her it wasn't received
21 on the 2nd as of 9 o'clock. She was told the
22 next morning that it had not yet been
23 received.

24 And I think I understand the issue now

1 that I got the supplemental production is what
2 happened, Your Honor, this is an e-mail dated
3 February 2nd at 6:22 p.m., which is a follow
4 on string that Justice Benjamin's Campaign did
5 not produce in support of their position,
6 which comes from the 4:55 electronics
7 transmittal of their application for
8 certification.

9 THE COURT: Now in that packet that came
10 in today, what is that, in packet one or part
11 two?

12 MR. RYAN: I think it is in -- I can give
13 you my copy for easy reference.

14 THE COURT: Is that an extra one?

15 MR. RYAN: Yes.

16 THE COURT: Let me label that as Exhibit
17 C. That's when -- all right. That will be
18 Exhibit C. And they have a copy of that.

19 That's from Darrell Shull. Who is Darrell
20 Shull?

21 MR. RYAN: I don't know if he's the
22 technical campaign manager.

23 MR. MARSHALL: He's the campaign
24 manager.

1 THE COURT: All right. To Timothy Leach.

2 Okay.

3 MR. RYAN: So the 4:55 e-mail is what they
4 reply upon to show that the 5:09 stamped copy.

5 THE COURT: So this is from the campaign
6 manager to Secretary of State.

7 All right.

8 MR. RYAN: They rely upon the 4:55 e-mail
9 to show the 5:09 stamp. And that's what the
10 Secretary, Madam Secretary took to the State
11 Election Commission to verify that Justice
12 Benjamin application been filed on time..

13 When you read up, what had happened was
14 Mr. Leach had recognized, or someone had
15 recognized, that the contributions that came
16 flooding in at the end, hundreds of them did
17 not have actual signatures that's required by
18 the Statute.

19 And so apparently there must have been a
20 scramble or something, so he asked the
21 question to Mr. Shull, "Does the candidate
22 wish to certify that he has met all of the
23 requirements of the Code before obtaining the
24 confirmation signatures?"

1 THE COURT: Who asked that?

2 MR. RYAN: Mr. Leach.

3 THE COURT: The lawyer.

4 MR. RYAN: The lawyer.

5 THE COURT: For the Election Commission?

6 MR. RYAN: Yes.

7 THE COURT: And he asked the Campaign
8 Chairman that?

9 MR. RYAN: Yes.

10 THE COURT: What did it say?

11 MR. RYAN: "Please stand by. I am
12 speaking with legal counsel now."

13 To me that is not -- and I think that
14 anyone can read into this e-mail contractually
15 --

16 THE COURT: Well, it speaks for itself.

17 MR. RYAN: Certainly.

18 THE COURT: I mean, that -- I'll put that
19 in there.

20 But your position is?

21 MR. RYAN: The position is he clearly
22 revoked if he actually submitted his
23 application because he recognized that there
24 was a problem. So it isn't timely. Whenever

1 it was actually received, the facts in this
2 case we can't say for certain that the 5:09
3 P.M. document, which the Secretary introduced
4 at the hearing as the filing is accurate
5 because it is clear that Mr. Shull on his
6 behalf, Justice Benjamin's behalf, told Mr.
7 Leach to stand down. "Please stand by."
8 Clearly not submitting an application, a sworn
9 statement.

10 And that leaves us with really two
11 realities. He didn't submit it on time
12 because he clearly made it known that he did
13 not want that to count. Or two, he didn't
14 meet all of the requirements by the deadline.

15 I am going to -- this is another exhibit.
16 This is the statute, Code section for WV Code
17 3-12-10.

18 So they were stuck because they -- because
19 Justice Benjamin's Campaign waited until the
20 last minute. We're talking about 13 months to
21 raise and deposit this money and these
22 contribution receipts, and they wait until the
23 literally the 11th hour, 4:55 on the two day
24 period after the end of the qualifying period.

1 They're stuck.

2 They realize that he has filed a
3 Declaration of Intent, nobody objects to that.
4 But the required number of qualifying
5 contributions he does not have because there
6 is not signatures on them. He has to have
7 that by the end of the qualifying period.

8 If the deadlines don't matter, Your Honor,
9 they would have gone ahead and filed it. They
10 knew there was a problem. These -- he's
11 complied with the contribution restrictions of
12 the Article.

13 Your Honor, the facts in this case are
14 indisputable, Justice Benjamin had received
15 campaign funds from two political action
16 committees. And frankly, he did not even
17 return those until a Petitioner Walker's
18 Campaign called them on it. And he actually
19 returned those.

20 He hadn't complied with these restrictions
21 at the time he filed that --

22 THE COURT: Two political action
23 committees?

24 MR. RYAN: Yes.

1 During this period somewhere in one of
2 these fundraisers --

3 THE COURT: What were they?

4 MR. RYAN: One was Friends of Coal.

5 THE COURT: Friends of Coal?

6 MR. RYAN: Yeah, I believe it is.

7 Mary1, if you have it out.

8 Do you have the names of them?

9 MS. SATTLER: Well, I have the exhibit
10 that shows that the monies was returned.

11 MR. RYAN: What's that?

12 MS. SATTLER: It is II, I believe.

13 MR. RYAN: Your Honor, it was First Energy
14 Political Action Committee and donated for
15 \$500 on April 17. And the West Virginians for
16 Coal, \$200 on April 29.

17 THE COURT: That all went back?

18 MR. RYAN: Way back.

19 THE COURT: What I mean, it was returned?

20 MR. RYAN: Yeah.

21 THE COURT: There wasn't any problem with
22 that?

23 MR. RYAN: At the --

24 THE COURT: I mean he returned that

1 money.

2 MR. RYAN: After he was called upon it at
3 the time recognizing that he hadn't complied
4 with the statute.

5 So the application for certification that
6 was filed was not accurate. The sworn
7 statement that he provided to the Election
8 Commission, he hadn't complied with all of the
9 statute. That's why these deadlines matter.
10 That's why these reporting obligations are
11 important, so when we get to this point these
12 issues are all worked out.

13 THE COURT: Do you have that document?

14 MR. RYAN: Sure.

15 What was the number on the --

16 MS. SATTLER: Exhibit II.

17 THE COURT: Just give it to the Clerk to
18 mark it as D.

19 MR. RYAN: And finally, has met all other
20 obligations or requirements of this Article.

21 The exploratory reporting requirements are
22 clear. And they're part of Chapter 3 Article
23 12. They hadn't been met.

24 So if we accept the 4:55 e-mail, which

1 became the 5:09 stamped application for
 2 certification, he still doesn't meet the
 3 statute because if that's when he filed it,
 4 none of these are true. We are not -- the
 5 three most important ones are not in fact
 6 accurate. He did not comply with the statute.

7 If we give them time to remedy and a
 8 hardship exemption for the late filing, which
 9 he could have filed months, months in advance,
 10 he still can't meet the requirements.

11 Let's move on to the reason that the
 12 hardship exemption was granted was Professor
 13 Cardi, the member of the State Election
 14 Commission, he read the reporting requirement
 15 to have a catchall. That's what I will call
 16 the Savings Provision..

17 I put up a poster which will be 3-12-13.

18 THE COURT: Will be F then.

19 You have got to mark these things and
 20 whittle them down so they can be, you know,
 21 conformed to paper so somebody can look at
 22 them besides me.

23 MR. RYAN: Certainly.

24 THE COURT: I mean you can't put these in

1 and they can note objections to whatever, you
2 know, substance they want. But just so the
3 record knows what you are talking about.

4 So, go on.

5 MR. RYAN: Certainly, Your Honor. I'll be
6 happy to supplement first thing Monday.

7 So everyone recognized that the
8 exploratory contributions were late and they
9 recognized that some of the qualifying
10 contributions came in late.

11 Professor Cardi of the Election Committee
12 said, well, (c)(1) allows what essentially
13 catchall and allows a candidate to file a
14 final report that provides for any copies of
15 any receipts not previously submitted for
16 exploratory contributions.

17 Well, really, so you have got a February
18 2nd, two days after the qualifying period,
19 you've got a catchall, you didn't file
20 something early you can file it then.

21 The problem of the argument is that they
22 read this part out of the statute, Your Honor.
23 The reporting requirement of 3-12-13 require
24 the participating candidates and certified

1 candidate shall comply with this section in
2 addition to any other reporting
3 requirements.

4 THE COURT: That's where you get into all
5 of those April, May, June, July, August and
6 September?

7 MR. RYAN: Yeah.

8 And take their argument at its best,
9 September, he should have filed.

10 THE COURT: Right when the intent to
11 participate came in?

12 MR. RYAN: Yes.

13 THE COURT: The 9-11 date?

14 MR. RYAN: Yes, Your Honor.

15 This is legal error by the State Election
16 Commission in their analysis of the decision
17 to certify the candidate.

18 THE COURT: Law school professor.

19 MR. RYAN: Yes, Your Honor.

20 THE COURT: I mean --

21 MR. RYAN: To his benefit they were on the
22 phone and he was reading statute.

23 THE COURT: I am just saying that's who
24 you mean when you are talking about

1 professor.

2 MR. RYAN: Indeed. Yes.

3 So, final issue, really, we have talked
4 about the problems with the application of
5 certification. We talked about the problems
6 of the exploratory report.

7 THE COURT: You're going to have to --

8 MR. RYAN: I'm getting to my last point.

9 THE COURT: You've got about five minutes
10 to get to it.

11 MR. RYAN: Thank you.

12 The qualifying contributions. So we had
13 some come in before February 1st. Ms. Walker
14 filed objections, challenges to those on
15 February 2. The flood, the \$25,000 came in,
16 they're time stamped into the Secretary of
17 State's Office at 4:47 on February 1. She
18 gets them on February 2nd. She files her
19 challenges on February 3rd.

20 Your Honor, there are hundreds. I think
21 that the number is 128, it depends. But it is
22 well in excess of a hundred where there is no
23 signature.

24 Going back to that point, there is no

1 signature on those. The State Election
2 Commission --

3 THE COURT: Who is supposed to sign those,
4 the chairman, or the candidate, or who?

5 MR. RYAN: The contributor.

6 THE COURT: The contributor?

7 MR. RYAN: Yeah. The collector and the
8 contributor.

9 THE COURT: Each individual donation?

10 MR. RYAN: The argument by the Justice
11 Benjamin Campaign --

12 THE COURT: Is it written in there?

13 MR. RYAN: Yeah.

14 THE COURT: Okay.

15 MR. RYAN: Yeah. It is 3-12-9(b)(2) for
16 contribution.

17 THE COURT: Twenty-five or more.

18 MR. RYAN: Contributor signature.

19 THE COURT: And --

20 MR. RYAN: Their argument was --

21 THE COURT: Were those challenged in the
22 State Election Commission?

23 MR. RYAN: Yeah.

24 One -- the first day there was a serious

1 challenge. And to use Chairman Collias in
2 discussing those said, "I mean it is taking
3 this literally. I think there needs to be a
4 signature from the contributor and there is
5 not a signature from the contributor, case
6 closed. The whole subject wouldn't have been
7 a matter of one minute discussion to me." Was
8 his take on these electronic signatures.

9 Justice Benjamin Campaign argument that
10 they had a transactional I.D. number that was
11 put in by Paypal or some electronic service.
12 But the rebuttal argument that the Commission
13 I think rightly made was --

14 THE COURT: Paypal?

15 MR. RYAN: Yes.

16 THE COURT: They were using Paypal?

17 MR. RYAN: Yeah. I believe that was
18 one.

19 THE COURT: That was their interpretation
20 that that was the contributor signature?

21 MR. RYAN: Yes.

22 But the argument and the rebuttal, I think
23 it is a very good point because we're talking
24 about election law is the signature's

1 important to verify against the voter I.D.
2 card, you can't do that with these
3 transactional's.

4 So they entertain Ms. Walker's con --
5 challenge to the contributions on --

6 THE COURT: How about through Paypal?

7 I mean, can they go back through Paypal
8 and verify the signature?

9 MR. RYAN: There is a lot of discussion
10 about whether you can do that or not or
11 whether you could actually find that person.

12 I think that the point that ultimate --

13 THE COURT: The whole thing is time is of
14 the essence of all of these things.

15 This case is time of the essence, the
16 distribution of funds is time of the essence,
17 the lack of distribution of funds is time of
18 the essence, the candidacy.

19 There is only, what, a hundred and some
20 days between --

21 MR. RYAN: Right.

22 THE COURT: -- January 31 and the time we
23 select a supreme court justice in May.

24 MR. RYAN: You are absolutely right, Your

1 Honor. It's whether the deadlines matter.

2 There are thirteen months in this
3 potential qualifying period. Justice Benjamin
4 waited until the very last day, literally the
5 very last day to flood in his money.

6 The last point is, so Ms. Walker gets
7 these 365 contributions that come in on the
8 last day, she files an objection pointing out
9 the deficiencies, she included the signature
10 issue.

11 The Election Commission refused to hear
12 her challenge because she filled out the form
13 that they had provided, but they claim,
14 Secretary Tennant claimed that her
15 representative was told that he needed to
16 bring an actual copy of the contribution.
17 That the Secretary of State's Office and State
18 Election Commission have.

19 So they refused to hear any of her
20 objections, her challenges to those
21 contributions that came in on January 29 and
22 30, many of which, and I think they're Exhibit
23 R, or Exhibit U, a hundred, over a hundred
24 have no signature on it.

1 So we're now in a situation where we have
2 a certified candidate for State Supreme Court
3 and they've authorized the \$500,000. And did
4 not even entertain the challenge to the
5 contributions which did not have a signature.

6 I will point out, Your Honor, that it is
7 not Petitioner Walker's obligation to ensure
8 that Justice Benjamin complied with the
9 statute.

10 The Code section, and I don't want to get
11 another billboard out, we have got enough,
12 says that the Secretary of State has to make
13 this analysis and representations to the State
14 Election Commission. She tried to essentially
15 shift all of her duty to a challenger. And
16 that's not -- that's, frankly, not Petitioner
17 Walker's job. That's the Secretary of State's
18 job. And --

19 THE COURT: To investigate it?

20 MR. RYAN: Right.

21 They have to review the forms
22 independently. And that wasn't done in this
23 particular case for the signature issue.

24 THE COURT: But they're the ones that

1 accepted the electronic -- the Paypal.

2 MR. RYAN: Yes.

3 THE COURT: And then put the burden on the
4 challenger?

5 MR. RYAN: Yes, Your Honor.

6 THE COURT: To verify it?

7 MR. RYAN: Yes. That's exactly what
8 happened here.

9 That's just, you know, -- you know, from a
10 due process standpoint, that just can't be the
11 case. That the Secretary of State's Office
12 can simply stand back and rely upon a
13 petitioner to file a challenge. It is not how
14 the processes work. It was not intended to be
15 an adversarial. She recognizes a problem, she
16 can file a challenge.

17 We're here in part because of a lot of
18 these issues --

19 THE COURT: Well, you know, I raised this
20 before Mr. Special Attorney General. I mean I
21 raised it before about the Secretary of
22 State's indispensable intertwined position in
23 administering this, this public financing,
24 getting it through, and the obligation of the

1 office to set up and do it.

2 So you have two things, one as being
3 essentially a judge of the facts on the
4 Election Commission on whether it was done
5 fairly and legally, and another having the job
6 to do it. And that's the peculiar position
7 that your client has been in through out this.
8 And so therein lies the record, for better or
9 for worse. That is, that type of call was
10 made by the Secretary on the filing and the
11 signatures.

12 MR. LESLIE: Your Honor, if I may, and I
13 don't mean to interrupt. I will say this,
14 that the statute itself allows for the payment
15 of funds electronically. And the --

16 THE COURT: What about the signature?

17 MR. LESLIE: It doesn't define what a
18 signature is.

19 THE COURT: The Secretary made that call
20 -- I mean the Commission made that call that
21 those qualified as being signed.

22 MR. LESLIE: Because there is an
23 individually identifiable tracking or routing
24 number on those payments, and so it is -- you

1 do have an ability to make a determination as
2 to where they come from.

3 THE COURT: But that was by the Secretary
4 put on the challenger.

5 MR. LESLIE: Yes.

6 THE COURT: To make that determination.

7 And so the bottom of it is for all of the
8 purposes that we read into the Act, that
9 bottom line ability to make that challenge is
10 left up to the challenger in a situation where
11 the Secretary has made a discretionary call
12 that that type of filing is -- no question
13 that it is more cumbersome to do that. I mean
14 as opposed to going in to getting the
15 documents signed. But the record will speak.

16 I mean there is no question about what was
17 done.

18 MR. RYAN: Your Honor, yeah.

19 THE COURT: Everything can be stipulated
20 to.

21 MR. RYAN: Certainly.

22 I think that the Commission --

23 THE COURT: Public can hear it.

24 MR. RYAN: Certainly.

1 The Commission's discomfort with this
2 electronic signature approach was clear. I
3 think that Chairman Collias, and I was quoting
4 him, did not think that that worked.

5 The point is nobody even passed on this.
6 They didn't allow Petitioner Walker's
7 challenge to stand because she filed her
8 challenge on February 3rd, after receiving 365
9 contribution receipts, most of which don't
10 have a signature, the day before.

11 You know, frankly, you think of the
12 purpose, the signature has to be required.
13 And if we're talking about transparency and
14 we're talking about ensuring these are
15 registered voters in West Virginia, you have
16 to have a signature to do that.

17 I have got other points to make --

18 THE COURT: I think the State Legislature
19 passed a law requiring more I.D. for voter
20 registration.

21 I think that the House of Delegates just
22 passed that this week requiring an additional
23 aspect of identification to prove to voter's
24 registration that somebody is eligible to

1 vote. I could be wrong.

2 But there is no doubt that the question of
3 authenticity is on everybody's mind. However
4 that is satisfied, whether you walk into the
5 precinct with nothing in your pocket or you
6 walk in with six I.D.'s.

7 The question of authenticity, whether it
8 is Paypal or signatures, is on everybody's
9 mind.

10 MR. RYAN: That question wasn't answered
11 last week at the State Election Commission.
12 They didn't even pass on the challenges made
13 to the 365 contributions that came in on the
14 last hours. Nobody has made any decisions on
15 those.

16 I have other points to make but I've taken
17 up enough time.

18 THE COURT: Let Mr. Marshall make his and
19 then we have got to move on.

20 We will just put the record in.

21 MR. MARSHALL: For the sake of immediacy,
22 I am going to talk about these qualifying
23 contributions first.

24 THE COURT: Leave that up here so he can

1 use those, please. Just on that statute.

2 MR. MARSHALL: That's fine. Thank you.

3 THE COURT: 3-12-9.

4 MR. MARSHALL: Right.

5 So the statute requires that Justice
6 Benjamin raise more than 500 contributions of
7 not more than one, but not -- I am sorry not
8 less than one, but not more than \$100. He did
9 that.

10 He supplied that information to the
11 Secretary of State. It was supplied to the
12 Walker Campaign.

13 The Walker Campaign filed hundreds upon
14 hundreds upon hundreds of challenges.

15 These challenge forms, Your Honor, they're
16 written in the record, have all sorts of
17 different challenges, not just signatures.

18 They challenged that people were -- were
19 not on the voter registration rules. For
20 instance, they challenged Tim Miley. They
21 challenged a contribution from Justice Davis'
22 mother. That they were not on the -- they
23 were not registered voters.

24 It was literally just a -- if you want to

1 think about --

2 THE COURT: They challenged whether
3 Justice Davis was a registered voter?

4 MR. MARSHALL: Her mother.

5 THE COURT: Her mother. Okay.

6 MR. MARSHALL: It was literally, if you
7 could just think about, put this in the
8 context of a trial, but a shotgun approach,
9 where you are just throwing out every single
10 challenge that you can possibly think of.

11 THE COURT: When did this come in, what
12 was the date of these challenges?

13 The thing ended on what date to get the
14 money for the public funds?

15 MR. MARSHALL: I believe the challenges
16 came in on the 3rd and the 4th, and several
17 other days after that.

18 THE COURT: When did they come in?

19 MR. RYAN: Your Honor, Ms. Walker filed a
20 group, I think it is a 154, on February 2nd.

21 THE COURT: Okay.

22 MR. RYAN: Those were to the contribution
23 that had been made prior to that 29th, 30th
24 weekend.

1 The contribution forms for that 29th, 30th
2 weekend weren't available to her until
3 February 2nd.

4 THE COURT: Okay. I mean I think that the
5 point is that there were a whole lot of
6 challenges with a whole lot of different
7 challenges coming in at a very short period of
8 time right around the beginning of February.

9 MR. MARSHALL: There were. I agree with
10 that.

11 THE COURT: And it was probably
12 overwhelming.

13 I mean, what -- I don't know overwhelming.
14 I mean it was a lot of information and a lot
15 of challenges for anybody to digest whether
16 they researched it or not, whether it was on
17 Paypal or not. It was just a lot of
18 challenges because of the nature of the small
19 contribution required by the Act.

20 MR. MARSHALL: Here is the process, Your
21 Honor. There is actually a two process in
22 terms of dealing with these challenges.

23 Number one, somebody can challenge them.
24 And you can say, look, you know, the person

1 can come and challenge them and say these do
2 not meet the statutory definition.

3 The second step is the -- actually the
4 Secretary of State goes through and there is a
5 sampling process where they review the
6 contributions to determine if in fact the
7 requirements were met.

8 The Walker Campaign was told, look, the
9 Secretary of State is not going to do your job
10 and carry your water on all of your
11 objections. There were a lot of them, tons of
12 them.

13 Imagine if someone to come to the Court
14 and say these are my objections, I would like
15 you to supply the evidence and also supply the
16 argument for why my objections should be
17 sustained.

18 In fact, there was I think a pretty
19 pertinent exchange in the record about this
20 very issue. Secretary Tennant asked the
21 representative of the Walker Campaign about
22 these challenges, "Do you have any evidence of
23 these?" And Mr. Reidy said, "Only what was
24 submitted." And --

1 THE COURT: I read that.

2 MR. MARSHALL: Secretary --

3 THE COURT: I mean I read that whole
4 colloquy. That should be in the record.

5 MR. MARSHALL: It is in the record.

6 THE COURT: What is your point about that?

7 MR. MARSHALL: My point is that they had
8 the opportunity to support to supply evidence.

9 THE COURT: You feel that they waived
10 that?

11 MR. MARSHALL: They waived the argument by
12 not supporting -- the SEC was there, everybody
13 was in the room ready to hear their evidence
14 and hear their argument about why these
15 contributions --

16 THE COURT: I mean, so -- I don't know
17 that they -- I don't see how you can dispute
18 that record.

19 MR. MARSHALL: No.

20 THE COURT: The point is though that
21 whoever had that responsibility, whether it
22 was the Secretary taking the Paypal things or
23 the Walker Campaign developing the challenges,
24 it was that practical aspect of this was very

1 difficult because of the voluminous nature of
2 it to produce evidence and have evidence,
3 which, again, goes to the difficulty that the
4 Secretary of State and the Commission faced in
5 that short period of time with the involvement
6 of both of the Election Commission and the
7 Secretary of State's Office in this, what has
8 become a million dollar public financing
9 process for this one Supreme Court race.

10 MR. MARSHALL: Right.

11 THE COURT: So, you know.

12 I mean, which is almost ironic for a
13 statute to be set up to try to limit the
14 amount of money and all your constitution
15 arguments and the taxpayers through this
16 process putting a million dollars into one
17 Supreme Court seat.

18 Notwithstanding that irony, I can
19 appreciate what you said.

20 So the record shows that they didn't make
21 any more objections than what they did.

22 MR. MARSHALL: The fact that they did not.

23 And right now there is not anything in the
24 record to indicate -- I don't know if you were

1 listening to counsel, but at some point he
2 said there were more than two hundred or
3 hundreds of these that didn't have signatures.
4 At another point he said maybe there were a
5 hundred.

6 There is nothing in the record because
7 nobody made that record, they did not make
8 that record as to exactly what is what in
9 terms of what they believe are not qualifying
10 contributions and what are not, or what are.

11 And so the point is, Your Honor, that they
12 had the opportunity to raise all of these
13 issues, the SEC was there, they didn't.
14 That's pretty fatal to this type of argument.

15 Additionally, there is also a practical
16 consideration. Had they been able to
17 successfully challenge certain contributions,
18 the Benjamin Campaign under the statute, and
19 consistent with the remedial nature of it,
20 could have gone out and collected additional
21 contributions in order to fix those that had
22 -- that had some type of issue.

23 Again, the idea here is not to create
24 these pitfalls, but to make sure that the

1 process is open, transparent. And if somebody
2 qualifies to go ahead and make sure that they
3 have -- that they receive the funding that
4 they are entitled to.

5 So that's the contribution issue. And I
6 started there because that's where we left
7 off.

8 But in terms of the other issues that were
9 raised, we have already addressed the
10 application. I don't think that there really
11 is much more that needs to be said about that.
12 It was filed on time. The SEC found that it
13 was filed on time.

14 The only other thing that the Walker
15 Campaign has really focused on are these -- I
16 am going to borrow his board, if that's okay.
17 Are these reports.

18 You have -- and it was a little bit
19 confusing to me just listening to it, but
20 there are essentially two types of monthly
21 reports.

22 You have a monthly -- you have a
23 exploratory report or a monthly qualifying
24 report, depending upon where you are in the

1 process.

2 The Walker Campaign claims that Justice
3 Benjamin was obligated to make these what are
4 called exploratory reports during this period
5 of time.

6 THE COURT: Do you take exception to that?

7 MR. MARSHALL: We do indeed.

8 The reason for that is you do not have to
9 start out in the pilot program. You can just
10 be a traditional candidate and raise money.
11 There is nothing that prohibits you from doing
12 that.

13 THE COURT: But if you -- okay. Got
14 you.

15 MR. MARSHALL: So there was some
16 implication that maybe you could try to gain
17 this system and say, well, I am not
18 participating and just wait until the very end
19 of the process. I mean --

20 THE COURT: Their position is that the
21 campaign didn't file any of those reports from
22 April to September.

23 MR. MARSHALL: During this period of time
24 there was no need to file them because he

1 wasn't -- he wasn't intending on participating
2 in the program.

3 THE COURT: Doesn't that apply to all
4 candidates?

5 MR. MARSHALL: No.

6 THE COURT: Just those participating?

7 MR. MARSHALL: Just those participating.

8 THE COURT: Is that your position?

9 MR. RYAN: Your Honor, the statute doesn't
10 say that. They made the argument on the
11 record, it doesn't say that you can opt in and
12 out. The result is illogical.

13 THE COURT: But I am just asking you where
14 -- so your position is -- let me ask, your
15 position is that doesn't apply to someone
16 that's in the Public Financing Program?

17 MR. MARSHALL: The Walker Campaign didn't
18 file any of these reports because she was --
19 she is not participating.

20 THE COURT: In what?

21 MR. MARSHALL: In this pilot program.

22 The only reason you have to file the
23 reports is if you are participating in the
24 pilot program.

1 THE COURT: Doesn't every candidate file
2 those?

3 Doesn't everybody?

4 No candidate, just those?

5 MR. MARSHALL: Yes.

6 THE COURT: So that statute that says
7 report deadlines, where does it say who
8 participates in that?

9 MR. MARSHALL: It is in the definitions.

10 THE COURT: Your partner has that.

11 MR. MARSHALL: The only person that has to
12 file exploratory --

13 THE COURT: Can I see the statute just on
14 that?

15 MR. MARSHALL: Yes, Your Honor.

16 THE COURT: Just on that reporting
17 deadline.

18 MR. MARSHALL: That's it.

19 THE COURT: Which one?

20 MR. MARSHALL: Right here, reporting
21 requirements.

22 THE COURT: Reporting requirements.

23 MR. MARSHALL: The first two.

24 THE COURT: Their position is that the

1 participating candidates in this, in this
2 filing deadlines are those on the Public
3 Campaign Financing Program.

4 Where does counsel for Ms. Walker get any
5 different than that?

6 It is right under the section that says,
7 "Public -- Public Campaign Financing Pilot
8 Program". And then it says under that,
9 "Reporting Requirement".

10 MR. RYAN: Certainly, Your Honor.

11 The point is --

12 THE COURT: I mean how do you extend that
13 to someone that's not in that program?

14 MR. RYAN: There is no mechanism to
15 formally declare yourself in the program.

16 Everybody could make this decision, I
17 didn't -- no one would have to participate in
18 the exploratory program until they file the
19 Declaration of Intent.

20 THE COURT: Nobody would what?

21 MR. RYAN: Nobody would have to file
22 anything.

23 THE COURT: That's what he is saying.

24 MR. RYAN: Right.

1 So, therefore, you would have to
2 essentially void the entire exploratory
3 period.

4 THE COURT: It doesn't say that they have
5 to file it. If they are not in the program.

6 MR. RYAN: That's why I circled September
7 11.

8 Even if he didn't have to file, April,
9 May, June, he had to file them as of October 1
10 and recover all of the exploratory.

11 THE COURT: Well, I mean, that -- because
12 the affidavit or the certification from
13 Justice Benjamin came in right around, what,
14 September 11th?

15 MR. RYAN: Yes.

16 THE COURT: So their position is it was
17 September 11 -- the October -- just the
18 October one. Right?

19 MR. RYAN: In October, again, if we want
20 to accept the argument that you don't --

21 THE COURT: By September and October?

22 MR. RYAN: By October 1, he would have to
23 file a exploratory report claiming all of this
24 money that was collected. That didn't happen.

1 THE COURT: September and October?

2 MR. RYAN: Yes.

3 THE COURT: Right. That's what -- that's
4 your point. You are going to make that --
5 yeah, I mean, I don't see where that would
6 apply that they would need to do all of those
7 things, except September and October.

8 MR. RYAN: If we want to accept the notion
9 that he can change his mind --

10 THE COURT: I mean I am not making the law
11 up here on the bench, but I'm trying to see if
12 it says Supreme Court of Appeals Public
13 Financing Program by your interpretation,
14 everybody that didn't go in that program, that
15 ever thought about going into that program,
16 would have to file.

17 And this section of the Code says, "Public
18 running for the Supreme Court Public Campaign
19 Financing Pilot Program".

20 So my point is since that is the title of
21 the Code section under elections, and you have
22 got people running for everything from
23 surveyor to president on the ballot, I don't
24 think that anybody from surveyor to president

1 would consider themselves controlled by a
2 section of the Code that says, "Supreme Court
3 of Appeals Public Campaign Finance Pilot
4 Program". But, that's why I asked you at the
5 beginning of your argument at some point in --
6 at some point those responsibilities of a
7 candidate who is not participating in the
8 program, and that responsibility of a
9 candidate for Supreme Court who is
10 participating in the program, mesh. And they
11 look like they do on September 11th when the
12 Justice files his intent to go into that
13 program. And then it triggers all of the
14 reporting requirements.

15 MR. RYAN: Including a report that would
16 reflect all of the monies that had been filed
17 before.

18 THE COURT: I mean I would say that. So I
19 read the briefs. They disagree with that.

20 But, I mean, you know, but those Acts say
21 what they say and they're interpreted
22 according to how they are, you know,
23 interpreted.

24 But, go on.

1 At least I am on the same chart and I'm
2 looking at the same thing.

3 So why don't you describe why you feel
4 that September and October report, October and
5 November, really, on the left hand deadlines,
6 on those general reporting deadlines,
7 shouldn't disclose to the public all of the
8 money that has been raised previously.

9 MR. MARSHALL: Sure.

10 THE COURT: Since one seeks to participate
11 in that public financing process.

12 MR. MARSHALL: Sure.

13 It is just the statute says it.

14 It says, the statute, the applicable
15 statute, we have it right there. I believe it
16 is 3-12-13. It says, "During the exploratory
17 and qualifying periods, a participating
18 candidate or his or her financial agent shall
19 submit on the first of each month a report of
20 all exploratory and qualifying contributions,
21 along with their receipts and an accounting of
22 all the obligations received during the
23 immediately proceeding month."

24 And so there is nothing that says --

1 they're trying to read this into the statute,
2 that says, okay, well, here you didn't have
3 any intent to participate, now you have -- you
4 want to go into the program, now you have got
5 go back and --

6 THE COURT: Get it all.

7 MR. MARSHALL: Get it all.

8 Now, as a practical matter, Justice
9 Benjamin did do that. He did that. He filed
10 a final report, a summary report, which
11 captured all of this. And during this entire
12 period of time, this period of time, he is
13 doing reports. The reports that he has to do,
14 which are these qualifying contribution
15 reports.

16 So he is disclosing all -- every penny
17 that he has raised.

18 The fact of the matter is, talk about --
19 the Walker Campaign keeps on talking about the
20 statutes, but the statute says -- what the
21 statute says is, "You have to report what you
22 raise in the month prior in raising
23 exploratory contributions in the month prior."
24 There is nothing to report.

1 So the Benjamin Campaign, in fact, did
2 comply with all of these reporting
3 obligations.

4 Let's move on to the last issue we haven't
5 addressed, which is the -- what I call the
6 kind of final report or the summary
7 exploratory report. The thing that is filed
8 down here that reports essentially everything
9 that was received.

10 Now the argument here is that the Benjamin
11 Campaign should have filed that on the 2nd and
12 that the Walker Campaign -- I am sorry. And
13 that SEC did not have the discretion to grant
14 him a hardship exemption.

15 The Court is aware that, and I don't think
16 that it is disputed in the record, that the
17 electronic filing system was not set up in
18 such a way as to allow him to file that
19 report.

20 THE COURT: Which report was that?

21 MR. MARSHALL: This is his final report.

22 THE COURT: Final report dated, when was
23 this?

24 MR. MARSHALL: It was filed on the 9th, I

1 believe.

2 THE COURT: Of?

3 MR. MARSHALL: February.

4 THE COURT: Okay.

5 MR. MARSHALL: And the argument here is
6 that, they make, is that, well, the hardship
7 exemption only allows you to extend or to
8 change the manner. It doesn't give you any
9 type of discretion to alter the time.

10 Now, the statute itself allows the SEC in
11 its discretion to grant an exemption.

12 THE COURT: How much time was it past the
13 --

14 MR. MARSHALL: They gave him until the
15 10th to get the report in, he filed it on the
16 9th.

17 THE COURT: The 9th. So your point was
18 that -- your point was that -- their point was
19 there wasn't discretion to give him the time?

20 MR. MARSHALL: Right.

21 THE COURT: But the method in which the
22 filing took place.

23 MR. MARSHALL: That's right.

24 What you have to do is look back at the

1 law.

2 The law is, this is West Virginia, there
3 is authority on this, cited in our brief, that
4 agencies have the powers that are necessary to
5 effectuate the intent of the statute.

6 This is Walker, strangely enough, Walker
7 decision, which is cited in our brief, Walker
8 v. West Virginia Ethics Commission. But the
9 quote is, "Certain circumstances in which an
10 agency may perform a function that is implied,
11 but not specifically permitted by statute."

12 And it essentially is recognition that
13 there are these circumstances out there where
14 -- I mean, it just doesn't make any sense, you
15 give them -- yeah, you can file it this way,
16 but we're not set up, you don't give them
17 enough time to file it.

18 I mean there are implied, if you want to
19 think about it, there are implied ability for
20 the SEC to, of course, to give extension of
21 time to give the statute meaning.

22 If you just grant someone a hardship
23 exception on the manner of filing --

24 THE COURT: You're not really helping them

1 on their hardship.

2 MR. MARSHALL: Exactly. The statute is
3 irrelevant.

4 THE COURT: Let me just ask you about
5 that.

6 Why do you think that the Commission would
7 have a discretion to do that?

8 Why wouldn't the Commission if they had
9 the discretion to grant -- I mean, if somebody
10 believes that, that that computer situation
11 was just an inadvertent technological problem
12 that was out of everybody's control, and that
13 as a result of that they're going to give
14 somebody the benefit of filing alternatively,
15 even though the statute requires electronic
16 filing. Somebody believes that. Circuit
17 judge believes it, supreme court believes it,
18 public believes it. Then why wouldn't that
19 discretion apply to extending the deadline, as
20 Mr. Marshall says, to allow that hardship if
21 that is the -- if that's the decision to
22 include the ability to file in paper or
23 otherwise to comply with the process that
24 takes longer than shorter?

1 MR. RYAN: Certainly, Your Honor.

2 Well, first off, that's not the facts in
3 this case.

4 Justice Benjamin's own exhibit from the
5 hearing shows as early as October they knew of
6 this problem with the filing. So we're not
7 talking about an extension.

8 THE COURT: Okay. You can argue that in
9 your ending, but just on the discretionary
10 error or not that the Commission made.

11 His position is there wasn't any error in
12 the discretion because it was a hardship.

13 The hardship was caused by an inadvertent
14 computer problem on a first time program that
15 was out of everybody's control. Couldn't get
16 the best computer person in the world to get
17 in there and fix it. The other campaign made
18 alternative ways to file it early, and
19 therefore, it was an abuse of discretion for
20 the Commission to extend the time on the
21 filing for this alternative methodology.

22 MR. RYAN: Your Honor, we don't dispute,
23 again, our argument is that hardship exemption
24 does not apply.

1 It was officially applied for by e-mail on
2 February 5, that's a Friday, to be filed
3 before the February 10th -- excuse me,
4 February 10th meeting.

5 Certainly, understand it to implicitly has
6 to accept the fact that physically filing the
7 form, and they filed by the 8th.

8 So, if in fact the hardship exemption
9 should have applied, which it didn't, the fact
10 that they granted it on February 5, and the
11 reports were filed on February, we're not
12 quibbling about this weekend in order to
13 physically file the form. We're claiming it
14 wasn't a matter of simply the electronic form
15 by the time it became an issue in February 5.
16 But this -- the fact that it took over the
17 weekend, that they didn't physically turn
18 around and file the form on February 5, we're
19 not -- that's not part of our argument.

20 THE COURT: What is?

21 MR. RYAN: That the hardship, the
22 electronic issue was known. They could
23 forgive it, but the form still has to be filed
24 timely.

1 And I guess he was Chairman Collias --

2 THE COURT: I see what you are saying.

3 MR. RYAN: He actually said, "We don't
4 even know if we have authority to do it, but
5 we just did it." They deemed it timely.

6 The records that produce the exhibit to
7 the transcript by Justice Benjamin's Campaign
8 show that by October they knew of this
9 electronic issue. Everybody had been alerted
10 to it.

11 Now I already pointed out a document
12 showed that they submitted one by e-mail and
13 they just didn't do it. They didn't bother to
14 follow with the others. But, so we're not
15 talking about an exemption from February 5 to
16 February 8, we're talking about the hardship
17 exemption, the application of hardship
18 exemption from mid-October, at best, to
19 February 5. And that's not in the statute.
20 That's just not there. It is for the
21 electronic filing. It is not for a form of
22 exemption.

23 THE COURT: All right. Let Mr. Marshall
24 get back on this because he has got more time.

1 Go on.

2 MR. MARSHALL: Well, Your Honor, I am
3 going to be wrapping up here very shortly.

4 THE COURT: Go right to it.

5 MR. MARSHALL: The couple final points I
6 would like to make before I pass the floor is
7 that it is, like I said at the very beginning
8 of all of this, what we're dealing with here,
9 we're fighting about financial reports.

10 Under the statute, the SEC has the
11 discretion or not to assess a civil penalty.

12 Justice Benjamin, his campaign, complied
13 with these financial reporting obligations.
14 There is no question that all of the reports
15 and all of the monies have been disclosed. No
16 question about that.

17 THE COURT: Do you know where the monies
18 come from exactly, this public financing?

19 MR. MARSHALL: The --

20 THE COURT: No, the public financing.

21 MR. MARSHALL: I do know actually. I can
22 get you the statute real quickly.

23 There is a series of sources. I can pass
24 it to Your Honor.

1 (The document was then handed to the
2 Court.)

3 THE COURT: So, I mean, what is the
4 Purchasing Card Administration Fund, just a
5 fund?

6 MR. MARSHALL: (Nodded head.)

7 THE COURT: Purchasing Card Administration
8 Fund. That's where it comes from?

9 MR. MARSHALL: (Nodded head.)

10 THE COURT: Okay. Thank you very much.
11 Go on.

12 MR. MARSHALL: The Walker Campaign
13 obviously argues that it is disqualification,
14 that's just not the law here.

15 And for other violations it is not instant
16 disqualification. There is a lot of
17 discretion in the statute because there is a
18 lot of reporting obligations.

19 The Walker Campaign has not made one
20 financial report, nobody knows how much money
21 she has raised or how much money she has
22 spent. That's just the nature of the duality
23 of this system. But the Benjamin Campaign
24 has, has made these reports.

1 Not only that, Benjamin Campaign has met
2 that definition raised, as found by the SEC,
3 500 qualifying contributions. And there is no
4 record, unfortunately, that was made below to
5 rebut that. And it is a difficult position to
6 be in sitting as appellate judge, essentially,
7 which is no record. And that was the Walker
8 Campaign, they should have made a record, they
9 didn't.

10 THE COURT: What about the Walker Campaign
11 disclosures?

12 He says you all never filed any forms.

13 MR. RYAN: You're right, Your Honor, she's
14 not a participating candidate. For the
15 reasons that --

16 THE COURT: When is the form due, March
17 1st?

18 MR. RYAN: I think it's the last Saturday
19 of March. I think March 25th.

20 THE COURT: Last Saturday in March?

21 MR. RYAN: I believe so.

22 MR. MARSHALL: Even if a record had been
23 made --

24 THE COURT: I won't call either of you for

1 advice, but just curious.

2 All right. Do you want to close?

3 MR. MARSHALL: I was going to pass.

4 THE COURT: Please.

5 And then, you know, we've gone on for a
6 couple hours. That's great.

7 MR. LESLIE: I'm assuming based upon your
8 question that what your intent would be is for
9 a summation at this point in time.

10 THE COURT: I think that would be good.

11 And then --

12 MR. LESLIE: What I could easily do is
13 allow Mr. Ryan to go ahead and deliver his
14 summation and Justice Benjamin's camp to do
15 the same and deliver mine. But I don't think
16 -- I think that the Benjamin's counsel,
17 Justice Benjamin's counsel has done a fine job
18 of presenting the issues that appear,
19 especially when you go back through and see
20 that, you know, reporting requirements,
21 although that was a high point, and wanted to
22 point that out, once that became a
23 participating candidate, reports seem to have
24 been filed.

1 THE COURT: Thank you very much. I
2 appreciate your participation.

3 And the participation of Special Attorney
4 General to add some context to the record.

5 All right. You can wrap it up.

6 MR. RYAN: Certainly.

7 A couple of points on the discretion,
8 that's not in the statute.

9 The discretion that Mr. Marshall cited to
10 you deals with the revocation. The
11 qualification or certification is a
12 ministerial act. Any participating candidate
13 shall meet all of those requirements, Your
14 Honor. It doesn't allow for discretion.

15 And that's really the point of the Brady
16 v. Hechler in that line of cases, because once
17 we introduce discretion into this area of
18 campaign finance, it is going to be open to
19 all sorts of challenges down the road. We
20 cannot get the pilot program started off in
21 this matter.

22 We address the issue the Petitioner Walker
23 has with the exemptions in their application
24 here. You can't use an electronic exemption

1 to give a four month extension.

2 Mr. Marshall made a point about what are
3 we fighting about, these are not financial
4 reports. We're talking about a half million
5 dollars into a judicial race. That's simply
6 more than a financial report.

7 We're talking about following the rules
8 that were clearly prescribed by the
9 Legislature in this matter.

10 I want to address briefly a couple
11 arguments made in the briefs filed by Justice
12 Benjamin.

13 The standing argument, Petitioner Walker
14 is a candidate for Supreme Court. I don't
15 know how anyone that is now facing \$500,000 of
16 monies that she believes were improperly
17 certified to another candidate doesn't have
18 standing to bring this challenge.

19 The timely filing of the application, I
20 think we addressed that. It's not even clear
21 from the best of the record, when the
22 application was filed, but we do know that it
23 was filed when they said it was filed, it was
24 inaccurate at the time.

1 The exploratory arguments we talked about.

2 And finally, the waiver argument, Your
3 Honor. You know, Exhibit -- I think it is --
4 I think it is U or R. Actually, it is U, it
5 is four inches thick. Petitioner Walker
6 filled out all the petition contribution
7 challenge forms. She marked specific reasons
8 to challenge each of the contributions that
9 flooded in on the last two days of the
10 qualifying period.

11 The only reason that the State Election
12 Commission didn't hear any of those challenges
13 is because she didn't print out the piece of
14 paper that they had in their possession.

15 We certainly don't want to get a standard
16 now where we are going to preclude a
17 challenger if we're going to depend on them in
18 this process to have to provide the State
19 Election Commission documents, which are in
20 the Secretary of State's control. It simply
21 can't be that way. That's all sorts of due
22 process problems.

23 They have a form, she filled it out. It
24 wasn't a blanket objection, she literally

1 picked the reasons and wrote it in there.

2 So the fact that they want to rely upon
3 that waiver argument is just of no moment.

4 Finally, Your Honor, we're talking about a
5 serious pilot program, we're talking about
6 very serious issues, and very much appreciate
7 the Court taking so much time to indulge us.

8 This can't be horseshoes or hand grenades,
9 Your Honor, this has to be done right and has
10 to be done by the rules. This will set the
11 standard how this program is potentially
12 rolled outgoing forward.

13 We can't give Justice Benjamin an A for
14 effort, he has to follow the rules as
15 everybody else. And he has to comply with the
16 statute.

17 It can't be lost that he waited until the
18 very last minute to file all of these
19 contributions and the receipts. He was the
20 one with all of the problems. He had thirteen
21 months to make this process work, and it could
22 have worked if he didn't wait until the very
23 last minute. Do not give him a pass because
24 it will set the precedent for allowing others

1 excuses down the road.

2 The discretion that Mr. Marshall is
3 talking about is a dangerous, dangerous road
4 when we're talking about campaign
5 contributions and campaign financing. It's a
6 road we don't want to go down. We should
7 start the path off right out of the gates.

8 Thank you, Your Honor.

9 THE COURT: All right. Let me see, if I
10 can, counsel up here at the bench.

11 (A bench conference was then held
12 off-the-record.)

13 THE COURT: All right. Thank you.

14 What I said to counsel basically up at the
15 bench, and I said it in a letter that's been
16 made a part of the court file, is that counsel
17 will label all of the exhibits and come in
18 Monday.

19 They will deliver to the Court on Monday
20 at noon proposed findings of fact and
21 conclusions.

22 And I will take the responsibility with
23 the Clerk's Office to see that all of this is
24 part of the record.

1 And within the next couple of days after
2 that I will get out a ruling.

3 I'll review it and try to make sure that
4 it is consistent with the record and then
5 notify counsel that it is out.

6 Thank you very much.

7 MR. RYAN: Thank you, Your Honor.
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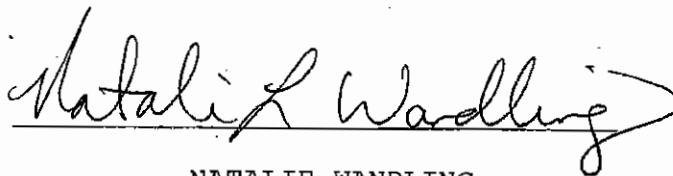
STATE OF WEST VIRGINIA

COUNTY OF KANAWHA, to-wit:

I, Natalie Wandling, a Certified Court Reporter and
a Notary Public within and for the County and State
aforesaid, duly commissioned and qualified, do hereby
certify that the foregoing proceedings were duly taken by
me and before me at the time and the place and for the
purpose specified in the caption hereof.

I do further certify that the said proceedings were
taken by me in shorthand and thereafter reduced to
computer-aided transcription.

IN WITNESS WHEREOF, I have hereunto subscribed my
name this 8th day of March, 2016.

A handwritten signature in cursive script, reading "Natalie Wandling", written over a horizontal line.

NATALIE WANDLING
CERTIFIED COURT REPORTER

but added on 2/29

EXHIBITS

Received for
reim
to ad
work

A Benjamin's Attempted Certificate
B WVa Code 3-12-9 Qualifying Contribution
C Email from Darrell Shull to Timothy Leach
D WVa Code 3-12-10 Certification of Candidates
E Committee to Re-elect Justice Brent Benjamin
F WVa Code 3-12-13 Reporting Requirements
G Email: Darrell Shull to Lisa Blalock
H WV Supreme Court of Appeals Public Financing Monthly Reports for Sept

Case #

16-AA-17

Elizabeth D. Walker

v.

Natalie E Tennant, et al

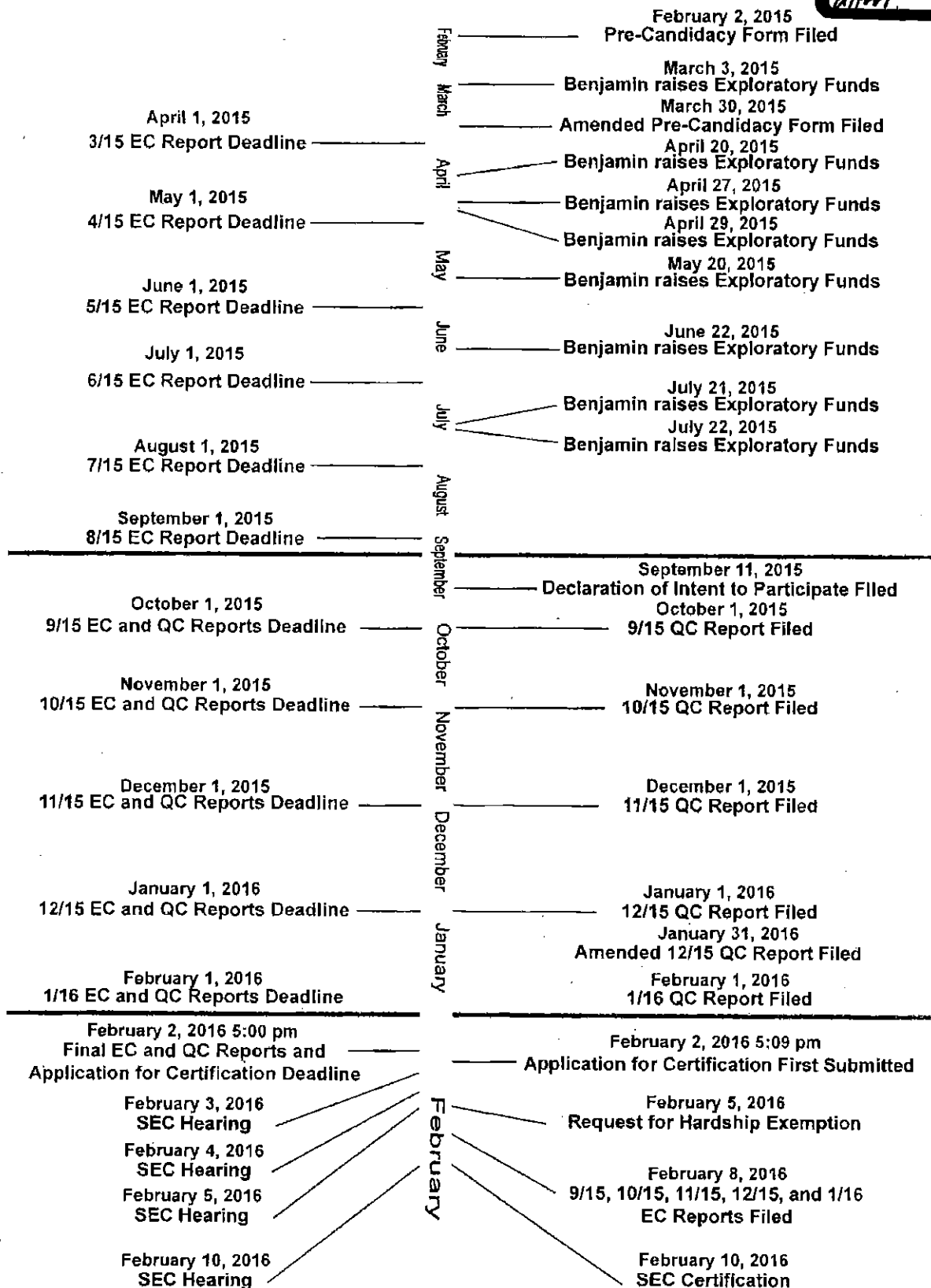
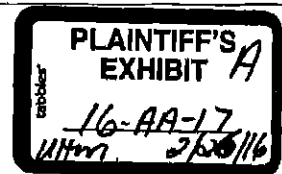
Hearing Date: 2/26/16

Trial Date: _____

25

JA001985

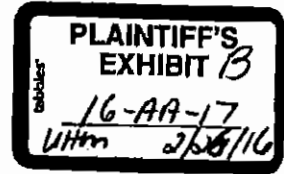
BENJAMIN'S ATTEMPT AT CERTIFICATION



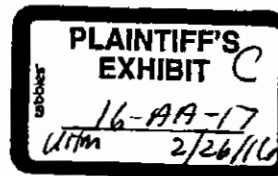
JA001987

W. Va. Code §3-12-9. Qualifying contributions.

- (a) A participating candidate or his or her candidate's committee may not accept more than one qualifying contribution from a single individual. A qualifying contribution may not be less than \$1 nor more than \$100. To be considered as a proper qualifying contribution, the qualifying contribution must be made by a registered West Virginia voter. A participating candidate shall collect qualifying contributions which in the aggregate are not less than \$35,000 nor more than \$50,000. Qualifying contributions in excess of \$50,000 shall be sent to the State Election Commission for deposit in the fund.
- (b) Each qualifying contribution shall be acknowledged by a written receipt that includes:
- (1) The printed name of the participating candidate on whose behalf the contribution is made and the signature of the person who collected the contribution for the candidate or his or her candidate's committee;
 - (2) For qualifying contributions of \$25 or more, the contributor's signature, printed name, street address, zip code, telephone number, occupation and name of employer; and for qualifying contributions of less than \$25, the contributor's signature, printed name, street address and zip code;
 - (3) A statement above the contributor's signature that:
 - (A) The contributor understands the purpose of the contribution is to assist the participating candidate in obtaining public campaign financing;
 - (B) The contribution was made without coercion;
 - (C) The contributor has not been reimbursed, received or promised anything of value for making the contribution; and
 - (4) One copy of the receipt shall be given to the contributor, one copy shall be retained by the candidate and one copy shall be sent by the candidate to the Secretary of State. A contribution which is not acknowledged by a written receipt in the form required by this subsection is not a qualifying contribution.
- (c) During the qualifying period, a participating candidate or his or her candidate's committee must obtain at least five hundred qualifying contributions from registered West Virginia voters. A minimum of ten percent of the total number of qualifying contributions received by the candidate must be from each of the state's congressional districts.



JA001989



Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Tuesday, February 02, 2016 6:22 PM
To: Timothy Leach
Subject: Re: Certification Statement from Justice Brent Benjamin

Please stand by - I am speaking with legal counsel now.

On Tue, Feb 2, 2016 at 6:18 PM, Timothy Leach <TLeach@wvsos.com> wrote:

Does the candidate wish to certify that he has met all requirements of the code before obtaining the confirmation signatures?

Tim

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Tuesday, February 02, 2016 4:55 PM
To: Timothy Leach <TLeach@wvsos.com>; Missi Kinder <MKinder@wvsos.com>
Cc: Donald Nickerson <dnickerson@bowlesrice.com>
Subject: Certification Statement from Justice Brent Benjamin

Attached is a PDF of Justice Benjamin's sworn statement as to eligibility to participate in the public campaign finance program. Please advise if you have any difficulty receiving or if there are additional actions required for us to file these documents. Thank you.

JA001991



Committee to Re-elect Justice Brent Benjamin
Contribution Receipt

Date: 4/17/15

Amount: \$ 500.00

Received From: FIRST ENERGY POLITICAL ACTION COMMITTEE

Residence Address: 76 SOUTH MAIN ST

City, State & Zip: AKRON OH 44308

Mailing Address
(if different): ID: C021408055

City, State & Zip:

Occupation:

Employer:

Any amount contributed counts against the \$1,000 limit on contributions to any candidate for a primary election.

REPAID TO SENATOR 2-9-16

Committee to Re-elect Justice Brent Benjamin
Contribution Receipt

Date: 4/29/15

Amount: \$ 200.00

Received From: WEST VIRGINIA FOR COAL

Residence Address:

City, State & Zip:

Mailing Address
(if different):

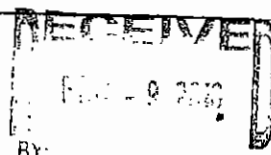
City, State & Zip:

Occupation:

Employer:

Any amount contributed counts against the \$1,000 limit on contributions to any candidate for a primary election.

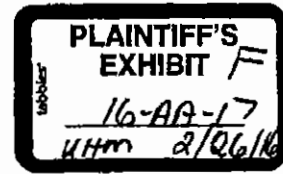
REPAID TO SENATOR 2-9-16

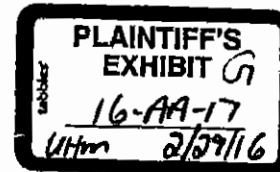


JA001993

W. Va. Code §3-12-13. Reporting requirements.

- (a) Participating candidates and certified candidates shall comply with this section in addition to any other reporting required by this chapter....
- (c) No later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Secretary of State on appropriate forms a summary of:
 - (1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions; and
 - (2) All qualifying contributions received and funds expended or obligated during the qualifying period together with copies of any receipts not previously submitted for qualifying contributions.





Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Thursday, October 01, 2015 1:32 PM
To: Lisa Blake; Missi Kinder
Cc: Donald Nickerson; Timothy Leach
Subject: Re: Emailing - F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf
Attachments: F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf

Thank you for providing the form. Since the online system is not yet available, I have attached the completed report in order to comply with today's filing deadline. As soon as I hear from you that the online system is operational I will re-file for September.

Thank you,

Darrell Shull

On Thu, Oct 1, 2015 at 1:14 PM, Lisa Blake <LBlake@wvsos.com> wrote:

Lisa Blake

Elections Division

West Virginia Secretary of State Natalie E. Tennant

1900 Kanawha Blvd. East

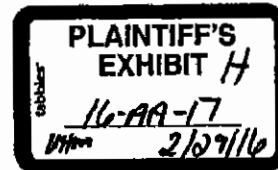
Building I, Suite 157 K

Charleston WV, 25305

Phone: [304-558-6000](tel:304-558-6000)

Fax: [304-558-8386](tel:304-558-8386)

www.wvsos.com



WV Supreme Court of Appeals Public Campaign Financing
Monthly Report for September 2015
(month)

Candidate or Committee Name Brent D. Benjamin	Treasurer Donald A. Nickerson, Jr.
Political Party -	Treasurer's Mailing Address (Street, Route or P.O. Box) 8 Barrington Drive
	City, State, Zip Code Wheeling, WV 26003
	Daytime Phone # 304-242-0414

(check one):

☐ Exploratory Period Report

☐ Amended Report

☒ Qualifying Period Report

REPORT TOTALS

CASH BALANCE SUMMARY

Beginning Balance (ending balance from previous report) 1. (Separate totals for Exploratory and Qualifying Periods)		\$0.00
Total Contributions (from Page 2) 2.	+	\$0.00
Subtotal (lines 1+2) 3.	=	\$0.00
Expenditures and Obligations (from Page 2) 4.	-	\$0.00
Ending Balance (lines 3-4)	=	\$0.00
<i>*Cannot have a negative ending balance</i>		

**TOTAL EXPLORATORY
CONTRIBUTIONS TO DATE**

0

**TOTAL EXPENDITURES
AND OBLIGATIONS TO DATE**

0

EXPENDITURES AND OBLIGATIONS

Date	Full name, residence address (if person); business address (if a firm)	Purpose	Amount
Total Expenditures and Obligations:			

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED.

OATH OR AFFIRMATION

I, Submitted via Email

swear or affirm that the attached statement is true and correct, to the best of my knowledge, of all financial transactions occurring within the period covered by this statement, as required by West Virginia Code §3-12-8(d).

Signature of Treasurer

Date 10/1, 2015

Office Use Only

Received By: _____



K&L GATES LLP
K&L GATES CENTER
210 SIXTH AVENUE
PITTSBURGH, PA 15222-2613
T +1 412 355 6500 F +1 412 355 6501 klgates.com

February 29, 2016

Thomas Ryan
thomas.ryan@klgates.com

T 412-355-8335
F 412-355-6501

VIA HAND DELIVERY

The Honorable Cathy S. Gatson
Circuit Clerk
Circuit Court of Kanawha County
111 Court Street
Charleston, WV 25301

Re: Walker v. Tennant, Civil Action No. 16-AA-13 (Judge Kaufman)

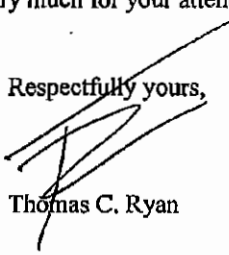
Dear Ms. Gatson:

Kindly please file the enclosed documents in the above-referenced matter:

- *Petitioner's Proposed Findings of Fact and Conclusions of Law;*
- *February 26, 2016 Hearing Exhibits A - F;* and
- Certificate of Service.

By copy of this letter, I am contemporaneously providing a courtesy copy to Judge Kaufman's chambers and all counsel of record. Thank you very much for your attention in this matter. Please contact me with any questions.

Respectfully yours,


Thomas C. Ryan

cc: The Honorable Tod Kaufman, Circuit Court of Kanawha County (via email)
Maryl C. Sattler, Esq. (via email msattler@bailevglasser.com)
Jonathan T. Osborne, Esq. (via email jonathan.t.osborne@wvago.gov)

TCR/teh
Enclosures

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JA002001

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

NATALIE E. TENNANT, *ex-officio*,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

No. 16-AA-17
(Judge Kaufman)

**PETITIONER ELIZABETH D. WALKER'S
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Petitioner, Elizabeth D. Walker ("Walker"), a candidate for the Supreme Court of Appeals of West Virginia (the "Supreme Court"), by and through her undersigned counsel, K&L Gates LLP, hereby submits these Proposed Findings of Fact and Conclusions of Law in connection with her *Petition for Judicial Review of the February 10, 2016 Decision of The West Virginia State Election Commission Certifying Brent D. Benjamin Pursuant to W. Va. Code §3-12-10 and Application for Stay*.

I. PROPOSED FINDINGS OF FACT

1. Among others, Walker and Benjamin are candidates for a single seat on the West Virginia Supreme Court of Appeals (the "Supreme Court"), currently held by Benjamin, the election for which is scheduled for May 10, 2016.

2. On February 18, 2015, Benjamin filed a pre-candidacy form with the Secretary of State, through which he declared his intent seek re-election to the Supreme Court. Petitioner's Designation of Record ("Petitioner's Record") at Exhibit ("Ex.") A.

3. On March 30, 2015, Benjamin filed an amended pre-candidacy form with the Secretary of State, through which he changed his political party to "non-partisan" and enrolled in electronic report filing with the Secretary of State. Petitioner's Record at Ex. B.

A. The Exploratory Period

4. Benjamin's "exploratory period" for the election began on February 18, 2015.

5. Benjamin raised exploratory contributions, as that term is defined in W. Va. Code § 3-12-1(4), on March 3, April 20, 27, 29, May 20, June 22 and July 21 and 22, 2015.

6. On September 11, 2015, Benjamin filed his Declaration of Intent to Participate, pursuant to which Benjamin declared his intent to participate in the West Virginia Supreme

Court of Appeals Public Campaign Financing Program. Respondent State Election Commission Certification and Designation of Record Pursuant to Rule 4 ("SEC Record") at Ex. P.

7. Accordingly, pursuant to W. Va. Code § 3-12-7, Benjamin's exploratory period ended on September 11, 2015 when he filed his Declaration of Intent to Participate.

8. Benjamin did not file any exploratory reports or receipts for contributions, as required by W. Va. Code § 3-12-8(d), with respect to the exploratory contributions he raised on March 3, April 20, 27, 29, May 20, June 22 and July 21 and 22, 2015 until February 8, 2016. Petitioner's Record at Ex. H.

9. Benjamin asserts that the reason that he did not file any reports or receipts reflecting collection of exploratory contributions until February 8, 2016 is because the electronic filing system established by the Secretary of State was unequipped to receive said reports.

10. On October 1, 2015, Benjamin was provided an electronic form from the Secretary of State's office entitled "WV Supreme Court of Appeals Public Campaign Financing Monthly Report for _____(month)" ("WV Supreme Court of Appeals PCF Monthly Report"). Petitioner's Supplement to Respondent State Election Commission Certification and Designation of Record Pursuant to Rule 4 ("Petitioner's Supplement") at Ex. PP (also marked as Ex. C during the February 26, 2016 hearing ("Circuit Court Hearing")).

11. The WV Supreme Court of Appeals PCF Monthly Report was drafted by the Secretary of State in such a way that it could be used to submit either exploratory contributions or qualifying contributions. *Id.*

B. The Qualifying Period

12. Benjamin's "qualifying period" for the election began on September 11, 2015 and ended on January 30, 2016.

13. On October 1, 2015, Benjamin submitted a report of "qualifying contributions," as that term is defined in W. Va. Code § 3-12-1(13), that were collected by his campaign during the period commencing on September 11, 2015 and ending on September 30, 2015 ("the September QC Report"). SEC Record at Ex W.

14. Benjamin initially filed the September QC Report by email while the Secretary of State's office updated the online filing system. Circuit Court Hearing at Ex. C.

15. The September QC Report reflected zero dollars in qualifying contributions. *Id.*

16. On November 1, 2015, Benjamin submitted a report online of qualifying contributions collected by his campaign during the period commencing on October 1, 2015 and ending on October 31, 2015 (the "October QC Report". SEC Record at Ex. X.

17. The October QC Report reflected the receipt of \$1,360 of qualifying contributions from 20 contributors. *Id.*

18. On December 1, 2015, Benjamin submitted a report online of qualifying contributions collected by his campaign during the period commencing on November 1, 2015 and ending on November 30, 2015 (the "November QC Report"). SEC Record at Ex. Y.

19. The November QC Report reflected the receipt of \$1,299 of qualifying contributions from 69 contributors, for a total of \$2,659 in qualifying contributions. *Id.*

20. On January 1, 2016, Benjamin submitted a report online of qualifying contributions collected by his campaign during the period commencing on December 1, 2015 and ending on December 31, 2015 (the "December QC Report"). SEC Record at Ex. Z.

21. The December QC Report reflected the receipt of \$4,045 of qualifying contributions from 85 contributors, for a total of \$6,704 in qualifying contributions. *Id.*

22. On January 31, 2016, Benjamin submitted an amended report online of qualifying contributions collected by his campaign during the period commencing on December 1, 2015 and ending on December 31, 2015 (the "Amended December QC Report"). SEC Record at Ex. AA.

23. The only difference between the Amended December QC Report and the December QC Report is an additional \$10 qualifying contribution, raising the total amount of qualifying contributions collected to \$6,714. *Id.*

24. On February 1, 2016, Benjamin submitted a report online of qualifying contributions collected by his campaign during the period commencing on January 1, 2016 and ending on January 31, 2016 (the "January QC Report"). SEC Record at Ex. BB.

25. The January QC Report reflected the receipt of \$34,797 of qualifying contributions from a total of 409 contributors, for a total of \$41,511 in qualifying contributions. *Id.*

26. Of those amounts, 113 contributors provided \$10,466 on Friday, January 29 and 178 provided \$15,702 on January 30, the last day of the "qualifying period."

27. At least 192 of the qualifying contributions submitted with the January QC Report were made online and did not contain a handwritten signature.

28. In total, Benjamin submitted 583 contributions, totaling \$41,511, which he sought to be considered "qualifying contributions."

C: **Benjamin's Application for Certification**

29. The statutory deadline for Benjamin to submit his Application for Certification was February 2, 2016.

30. Benjamin's campaign manager, Darrell Shull, submitted an Application for Certification sworn by Benjamin via email at 4:55 p.m. on February 2, 2016. Circuit Court Hearing Ex. E, SEC Record Ex. Q, and Petitioner's Supplement at Ex. PP.

31. The Application for Certification attached to the 4:55 p.m. email was time-stamped at 5:09 p.m. on February 2, 2016.

32. Benjamin's sworn Application for Certification stated that his "campaign has complied with and will continue to comply with all requirements set forth in the W. Va. Code throughout the applicable campaign." SEC Record Ex. Q.

33. Benjamin's sworn Application for Certification further stated that he had "complied with the contribution restrictions of W. Va. Code § 3-12-1 through § 3-12-16...." *Id.*

34. At 6:18 p.m. on February 2, 2016, Timothy Leach, Solicitor to the West Virginia State Election Commission, responded to Mr. Shull, asking, "Does the candidate wish to certify that he has met all requirements of the code before obtaining the confirmation signatures?" Circuit Court Hearing Ex. E.

35. Mr. Shull responded at 6:22 p.m., to "Please stand by - I am speaking with legal counsel now." *Id.*

36. The Secretary of State presented Benjamin's sworn Application for Certification that was time-stamped at 5:09 p.m. to the SEC as the official copy. *See* SEC Record at Ex. E.

C. Walker's Challenges

37. On February 2, 2016, Walker challenged 154 of the contributions Benjamin sought to be considered "qualifying contributions" pursuant to W. Va. Code § 3-12-10(g), which encompassed certain qualifying contributions Benjamin had received prior to January 2016. SEC Record at Ex. R.

38. Walker included with her challenge a separate “Qualifying Contribution Challenge Form” that had been provided by the Secretary of State for each challenged qualifying contribution identifying the specific alleged deficiency, including receipts of certain qualifying contributions that were made online but did not have a handwritten signature. *Id.* at Ex. T.

39. Walker also stated that, “West Virginia Code § 3-12-8 requires that all exploratory contributions be reported. [Benjamin] has not reported any exploratory contributions. However, upon information and belief, at least three fundraising events for the benefit of the Candidate were held during the Exploratory Period.” *Id.* at Ex. R.

40. On February 1, 2016 at 4:47 p.m., Benjamin filed the receipts supporting the qualifying contributions reported on the January QC Report. *Id.* at V.

41. Walker was provided a copy of those receipts by the Secretary of State’s office on February 2, 2016.

42. On February 3, 2016, Walker challenged 365 contributions that she was provided on February 2nd, including receipts of certain contributions that were made online but did not have a handwritten signature. *Id.* at Ex. S.

43. Walker included with her challenge a separate “Qualifying Contribution Challenge Form” for each challenged qualifying contribution identifying the specific alleged deficiency, including her challenge to those receipts of certain qualifying contributions that were made online but did not have a handwritten signature. *Id.* at Ex. U.

D. The SEC Hearings Regarding Walker’s Challenges To Benjamin’s Failure To Obtain Accompanying Physical Signatures For Electronic Qualifying Contributions

44. On February 3, 2016, the SEC convened to review the 154 challenges filed by Walker on February 2nd. SEC Record at Ex. E.

45. Among others, Walker challenged the electronic qualifying contributions of Delligati, Harrington, Reed, J. Charnock and Bell because the receipt did not contain a handwritten signature. *Id.* at Exs. T and E (202:1-281:21).

46. The SEC voted to sustain Walker's challenge because the qualifying contributions received electronically did not have a handwritten signature, as prescribed by W. Va. Code § 3-12-9(b)(2). *Id.* at Ex. E (202:1-281:21)

47. On February 4, 2016, the SEC convened to review the 365 challenges brought by Walker on February 3rd in response to the receipts submitted by Benjamin on February 1st and received by Walker on February 2nd.

48. Among the 365 challenged, at least 192 of those contributions were electronic qualifying contributions that did not contain a handwritten signature, the same issue the SEC decided the day before was a fatal defect. SEC Record at Exs S. U and V.

49. The SEC refused to entertain the merits of any of Walker's 365 challenges because the Secretary of State had decided on the evening of February 3rd that Walker was required to include a copy of the receipt for the respective challenged contribution, along with Secretary of State's "Qualifying Contribution Challenge Form" that provided the specific basis for each challenge. SEC Record at Ex. F (39:20-40:3; 83:9-16; 88:14-23; 302:24-303:10).

50. Those same receipts at issue were at all times in the custody, control and possession of the Secretary of State.

51. The SEC voted to reconsider its decision to sustain the challenge to the qualifying contributions of Delligati, Harrington, Reed, J. Charnock, and Bell only because Benjamin apparently had obtained and submitted a physical signature for each of these contributors before the end of the qualifying period, which was February 2nd. *Id.* at (117:23-118:6).

52. Those physical signatures, however, were apparently not made part of the record in this matter.

53. The record contains no evidence that Benjamin submitted handwritten signatures with the receipts for the 192 qualifying contributions reported on February 1st before February 2nd, the end of the qualifying period.

54. On February 5, 2016, the Secretary of State's office represented to the SEC that 512 of the 583 contributions that Benjamin sought to be considered "qualifying contributions" satisfied the statutory requirements of W. Va. Code §3-12-9. SEC Record at Ex. G (22-23).

55. By deduction, the Secretary of State's representative's representation to the SEC had to include the 192 qualifying contributions received online that did not contain a handwritten signature.

E. The SEC's Consideration of Benjamin's Hardship Exemption Request To File Exploratory Reports

56. As of February 2, 2016, the end of the "qualifying period," Benjamin failed to file any report conveying any exploratory contributions or receipts.

57. On February 5, 2016, Benjamin's representative requested an exemption from the electronic filing requirement. SEC Record at Ex. G (5-21); Ex PP (February 5, 2016 email from Mr. Shull to Mr. Leach sent at 12:10 p.m.).

58. The SEC granted the hardship exemption allowing Benjamin until February 10, 2016 to file the exploratory reports. *Id.*

59. On February 8, 2016, Benjamin filed an exploratory period summary report showing that he had raised \$9,950 during the exploratory period, including \$200 from West Virginians for Coal on April 29, 2015 and \$500 from the First Energy Political Action

Committee on April 17, 2015 (*Id.* at Ex. CC); monthly exploratory reports for September (*Id.* at Ex. DD); and exploratory contribution receipts (Ex. GG).

60. On February 9, 2016, Benjamin filed an amended exploratory period summary report (Ex. EE); amended monthly reports (Ex. FF); amended exploratory contribution receipts (Ex. HH); and documentation indicating that Benjamin returned the exploratory contributions he had retained from the two political action committees (Ex. II).

61. On February 10, 2016, the SEC convened to consider Benjamin's Application for Certification. Ex. KK.

62. Benjamin's representative offered SEC Record Ex. LL in support of the request for the application of the hardship exemption to the filing of the exploratory period paperwork.

63. Walker's representative offered SEC Record Ex. MM in support of her opposition to the application of the hardship exemption to the filing of the exploratory period paperwork.

64. The SEC voted to deem the exploratory summary report, the monthly exploratory period reports and the exploratory contributions receipts filed timely. SEC Record at Ex. KK (30-33).

F. Benjamin's Certification and Walker's Appeal

65. On February 10, 2016, the SEC voted to certify Benjamin pursuant to W. Va. Code §3-12-10(b) to receive public campaign financing funds. SEC Record at KK (40).

66. The Secretary of State immediately thereafter notified the Auditor and Treasurer that the SEC had authorized the disbursement of funds. Record at Ex. OO.

67. On February 16, 2016, Walker filed her *Petition for Judicial Review of the February 10, 2016 Decision of The West Virginia State Election Commission Certifying Brent D.*

Benjamin Pursuant to W. Va. Code § 3-12-10 (the "Petition") and Application for Stay (the "Application for Stay").

68. Through the Petition, Walker appeals the SEC's February 10, 2016 decision certifying Benjamin pursuant to W. Va. Code § 3-12-10 on grounds that Benjamin:

- (i) failed to timely file reports and receipts for exploratory contributions pursuant to W. Va. Code § 3-12-8(d) and was not entitled to a hardship exemption extending the strict deadline set forth in the statute to file those reports and receipts;
- (ii) failed to timely file an Application for Certification pursuant to W. Va. Code § 3-12-10(a) and CSR 146-5-6.1; and
- (iii) failed to meet the threshold five hundred qualifying contributions for certification pursuant to W. Va. Code § 3-12-9(c).

69. As part of her Application for Stay, Walker sought an order preventing Benjamin from expending the state campaign finance funds until her Petition could be decided on the merits.

70. Benjamin filed a response in opposition to the Application for Stay on February 24, 2016.

71. Benjamin filed a response in opposition to the Petition on February 25, 2016.

72. On February 26, 2016, the Circuit Court held a hearing on Walker's Petition.

II. PROPOSED CONCLUSIONS OF LAW

A. Standard of Review

73. The SEC's decision constitutes a "final administrative determination." *See* W. Va. Code § 3-12-10(i).

74. The Court applies the following standard of review to appeals of final administrative determinations by an agency or commission:

The circuit court shall reverse, vacate or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions or order are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedures; or
- (4) Affected by other error of law; or
- (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Shepherdstown Volunteer Fire Dep't v. State ex rel. State of W. Virginia Human Rights Comm'n, 172 W. Va. 627, 636, 309 S.E.2d 342, 351 (1983) (citing W. Va. Code § 29A-5-4(g)).

B. The Program

75. In 2010, the West Virginia Legislature enacted the West Virginia Supreme Court of Appeals Public Financing Program (the "Program"), pursuant to which candidates running for Justice of the Supreme Court may receive and utilize public monies to finance their campaigns.

76. The purpose of Program is to (1) ensure the impartiality and integrity of the judiciary; (2) strengthen the public confidence in the courts; and (3) protect the Constitutional rights of voters and candidates from increasingly large amounts of money being spent to influence the outcome of elections. W. Va. Code § 3-12-2.

77. The Program and its requirements are codified in Chapter 3, Article 12 of the West Virginia Code, and the Legislature has also enacted legislative rules -- West Virginia Code of State Rule ("CSR") 146-5, *et seq.* -- to administer it.

78. Legislative rules have the force and effect of law and must be enforced as written. *See, e.g., Swiger v. UGI/AmeriGas, Inc.*, 216 W. Va. 756, 763, 613 S.E.2d 904, 911 (2005) (“[A] regulation that is proposed by an agency and approved by the Legislature is a ‘legislative rule’ as defined by the State Administrative Procedures Act, W. Va. Code, 29A-1-2(d) [1982], and *such a legislative rule has the force and effect of law.*”) (emphasis added) (quoting *Smith v. West Virginia Human Rights Comm’n*, 216 W.Va. 2, 602 S.E.2d 445 (2004)).

79. Further, “[a]n administrative board must abide by its own rules and the legislative mandates.” *Tasker v. Mohn*, 165 W. Va. 55, 65, 267 S.E.2d 183, 189 (1980) (citing *Trimboli v. Board of Education of Wayne County, W.Va.*, 163 W. Va. 1, 254 S.E.2d 561 (W. Va. 1979)); *see also State ex rel. Barker v. Manchin*, 167 W. Va. 155, 169, 279 S.E.2d 622, 631 (1981) (“When the Legislature delegates its rule-making power to an agency of the Executive Department..., it vests the Executive Department with the mandatory duty to promulgate and to enforce rules and regulations. Once the executive officer or agency has made and adopted valid rules and regulations pursuant to the grant of the legislative powers, they take on the force of statutory law.”).

80. “[A] properly promulgated legislative rule [] can be ignored only if the agency has exceeded its constitutional or statutory authority or is arbitrary or capricious.” *Appalachian Power Co. v. State Tax Dep’t.*, 195 W.Va. 573, 466 S.E.2d 424 (1995).

81. Thus, together, the statute and the rules set forth the requirements that a candidate must satisfy in order to receiving to be certified by the SEC as eligible to receive public campaign financing under the Program.

82. For the reasons set forth below, I find that the SEC erred in determining that Benjamin satisfied the requisite criteria to qualify for Program financing and, therefore, reverse the SEC's February 10, 2016 decision.

1. **Benjamin Did Not Satisfy the Requirements Relating to Filing Reports for Exploratory Contributions Pursuant to W. Va. Code § 3-12-8(d)**

a. **Benjamin Failed to Timely File Reports and Receipts for Exploratory Contributions**

83. The statute establishes an exploratory period "during which a participating candidate may raise and spend exploratory contributions to examine his or her chances of election and to qualify for public campaign financing" under Article 12. *See* W. Va. Code § 3-12-3(5).

84. "The exploratory period begins on January 1 the year before the election in which the candidate may run for Justice of the Supreme Court of Appeals and ends on the last Saturday in January of the election year." *See id.*

85. An individual candidate's filing of his or her Declaration of Intent to Participate marks the end of the exploratory period. *See* W. Va. Code § 3-12-3(4) (defining "exploratory contribution" as "a contribution of no more than \$1,000 made by an individual adult, including a participating candidate and members of his or her immediate family, during the exploratory period *but prior to filing the declaration of intent.*") (emphasis added).

86. Pursuant to W. Va. Code § 3-12-8(d), "[a]t the beginning of each month a participating or certified candidate or his or her financial agent shall report all exploratory contributions, expenditures and obligations along with all receipts for contributions received during the prior month to the Secretary of State. Such reports shall be filed electronically."

87. Pursuant to W. Va. Code § 3-12-13(c), “[n]o later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Secretary of State on appropriate forms a summary of... (1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions.” *See also* CSR § 146-5-11.4.

88. A candidate may not be certified if s/he does not comply with these reporting obligations. *See* W. Va. Code § 3-12-10(b)(5).

89. I find that Benjamin’s “exploratory period” for the election began on no later than February 18, 2015 and ended on September 11, 2015, when he signed his Declaration of Intent to Participate. *See* W. Va. Code §§ 3-12-3(4), (5).

90. As such, from February 18, 2015 through and until September 11, 2015, Benjamin was entitled to seek “exploratory contributions” “to examine his [] chance of election and to qualify for public financing for public financing” and was required to electronically file with the Secretary of State reports of those contributions including underlying receipts on a monthly basis. *See* W. Va. Code §§ 3-12-3(5), 3-12-8(d); *see also* CSR 146-5-11.3.

91. I find that Benjamin did in fact receive exploratory contributions during the exploratory period on March 3, April 20, 27, 29, May 20, June 22, July 21 and July 22, 2015, but failed to file any exploratory period monthly reports at the beginning of the month following receipt of such contribution.

92. Accordingly, I find that Benjamin failed to comply with the deadlines set forth in W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3 because he did not timely file reports of exploratory contributions until February 8, 2016.

93. Alternatively, Benjamin asserts that he did not file the exploratory reports and receipts contemporaneously because, at the time he received those contributions before September 11, 2015, he did not intend to seek funds from the Program and, therefore, was not a “participating candidate.” See SEC Record at Ex. G.

94. Accepting that explanation as true, Benjamin was clearly obligated to file an exploratory period report no later than October 1, 2015, the beginning of the month following his September 11, 2015 Declaration of Intent to Participate, an unequivocal statement of his intent to receive public campaign financing.

95. Under West Virginia Supreme Court precedent, this Court must strictly enforce the reporting deadlines set forth in W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3. See, e.g., *Brady v. Hechler*, 176 W. Va. 570, 571-72, 346 S.E.2d 546, 547-48 (1986) (granting mandamus relief directing the Secretary of State to strike a candidate from the ballot whose certificate of candidacy for nomination was one day late and explaining that, “[i]t is generally and almost universally held that statutory provisions in election statutes, requiring that a certificate or application of nomination be filed with a specified officer within a stipulated period of time, are mandatory.”); Styl. Pt. 3, *State ex rel. Baker v. Bailey*, 152 W. Va. 400, 163 S.E.2d 873 (1968) (“[w]here a statute provides for a thing to be done in a particular manner or by a prescribed person or tribunal it is implied that it shall not be done otherwise or by a different person or tribunal.”); *State ex rel. Vernet v. Wells*, 87 W.Va. 275 (1920) (striking candidates from local non-partisan ballots who had not filed certificates of nominations in time); see also *Helton v. Reed*, 219 W. Va. 557, 561, 638 S.E.2d 160, 164 (2006) (explaining tax deadlines must be strictly enforced); *State ex rel. Clark v. Blue Cross Blue Shield of W. Virginia, Inc.*, 195 W. Va. 537, 542, 466 S.E.2d 388, 393 (1995) (“[S]trict compliance with all filing requirements is

the rule in insurance insolvency cases.”). *Humble Oil & Refining Company v. Lane*, 152 W.Va. 578, 165 S.E.2d 379 (1969) (internal quotations omitted) (“[S]tatutes of limitations are favored in the law and cannot be avoided unless the party seeking to do so brings himself strictly within some exception. It has been widely held that such exceptions are strictly construed and are not enlarged by the courts upon considerations of apparent hardship.”).

96. Strict adherence to deadlines related to political campaigning activity is paramount because, “[o]therwise, the actions of the Secretary of State in that regard would be subject to constant allegations of arbitrariness or favoritism.” *Brady*, 176 W. Va. at 574, 346 S.E.2d at 550.

97. At the latest, once Benjamin became a “participating candidate” on September 11, 2015, he was required to file an exploratory report no later than October 1, 2015; otherwise, the entire statutory scheme surrounding the exploratory contribution period would be rendered meaningless, and each part of a statute must be given effect. *Feroletto Steel Co. v. Oughton*, 230 W. Va. 5, 9, 736 S.E.2d 5, 9 (2012).

98. To be certified under Article 12, a candidate must have “met all other requirements of [Article 12],” including the reporting requirements set forth in W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3. *See* W. Va. Code § 3-12-10(b)(5).

99. Because Benjamin did not meet the reporting requirements set forth in W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3, the SEC’s certification of Benjamin was erroneous and must be reversed.

b. Benjamin Was Not Entitled to a Hardship Exemption

100. Alternatively to his argument that he had no duty to file exploratory period reports and receipts no later than October 1, 2015, Benjamin also asserts that he was physically unable to

submit such reports and receipts because the Secretary of State's online campaign finance reporting system was not equipped to accept the exploratory period reports because he had initial registered as a "non-participating candidate." See SEC Record at Exs. G, KK.

101. Accordingly, on February 5, 2015, Benjamin requested a "hardship exemption" from the electronic filing obligation.

102. West Virginia Code § 3-12-8(d) provides as follows:

(d) At the beginning of each month a participating or certified candidate or his or her financial agent shall report all exploratory contributions, expenditures and obligations along with all receipts for contributions received during the prior month to the Secretary of State. Such reports shall be filed electronically: *Provided*, That a committee may apply for an exemption in case of hardship pursuant to subsection (c) of section five-b, article eight of this chapter. If the candidate decides not to run for office all unspent or unobligated exploratory contributions shall be sent to the State Election Commission for deposit in the fund. If the candidate decides to run for office as a nonparticipating candidate the unspent or unobligated exploratory contributions shall be used in accordance with articles eight and twelve of this chapter.

103. In reviewing this statutory provision, the Court is guided by the basic rules of statutory construction. See *Martin v. Hamblet*, 230 W. Va. 183, 187, 737 S.E.2d 80, 84 (2012).

104. "The primary rule of statutory construction is to ascertain and give effect to the intention of the Legislature." *Id.* at 186 and at 82.

105. "A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect." *Id.* (citations omitted). "In other words, where the language of a statutory provision is plain, its terms should be applied as written and not construed." *Id.* (citations and internal quotations omitted); *State v. General Daniel Morgan Post No. 548, V.F.W.*, 144 W.Va. 137, 145 107 S.E.2d 353, 358-59 (1959) ("When a statute is clear and unambiguous and the legislative intent is plain,

the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.”).

106. The Court finds that W. Va. Code § 3-12-8(d) clearly and unambiguously applies to the *form* or *manner* in which a candidate files his/her receipts (*i.e.*, electronically or otherwise) and does not affect the *timing* of that filing.

107. As a result, the hardship exemption would only apply had the issue with the electronic filing become known on February 5, 2015.

108. The facts, however, clearly show that Benjamin and the Secretary of State’s office knew of the electronic-filing issue early as October 1, 2015. *See* Circuit Court Hearing Ex. C.

109. Moreover, the facts in this case show that Benjamin had an electronic copy of the Secretary of State’s West Virginia Supreme Court of Appeals PCF Monthly Report as early as October 1, 2015. *See id.*

110. Indeed, Benjamin used that form to file his initial qualifying contribution report, with no objection from the Secretary of State. *Id.*

111. I find that Benjamin could have used the same very form to timely file his exploratory period report as early as October 1, 2015, but failed to do so.

112. Accordingly, Benjamin’s failure to file the exploratory monthly reports was not attributable to an electronic “glitch,” rather neglect to which the hardship exemption does not apply.

113. Accordingly, the hardship exemption did not apply and the SEC erred in granting Benjamin a hardship exemption extending the deadline for Benjamin to file his statutorily-required exploratory reports.

114. The SEC also relied upon what was described as a “catch-all” provision of W. Va. Code § 3-12-13(c) to extend the filing deadline for his exploratory period report from October 1, 2015 to the end of the qualifying period, in this case February 2, 2015. *See* SEC Record at Ex. G.

115. I also find that the SEC’s reliance on Section 13(c) to deem the late-filed exploratory monthly reports timely was erroneous.

116. W. Va. Code §3-12-13(c) provides as follows,

(c) No later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Secretary of State on appropriate forms a summary of:

(1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions; and

(2) All qualifying contributions received and funds expended or obligated during the qualifying period together with copies of any receipts not previously submitted for qualifying contributions.

117. The precursor section of W. Va. Code §3-12-13, specifically section (a), provides that “[p]articipating candidates and certified candidates shall comply with this section *in addition to any other reporting required by this chapter.*” (emphasis added).

118. “[A]ny other reporting required by this chapter” includes the reporting required by Section 3-12-8(d).

119. W. Va. Code §3-12-13(c), therefore, applies only to the candidates filing of a *final* report and does not affect, displace or otherwise impact the candidate’s obligation to file monthly reports as required by the statute, including reports of exploratory contributions pursuant to Section 3-12-8(d).

120. The final reporting requirements of Section 13(c) cannot be read to eliminate Benjamin's independent reporting requirements of Section 3-12-8(d).

121. "A cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute." *Feroletto Steel Co. v. Oughton*, 230 W. Va. 5, 9, 736 S.E.2d 5, 9 (2012).

122. Applying W. Va. Code § 3-12-13(c) as permitting candidates to file exploratory reports outside of the deadline established by W. Va. Code § 3-12-8(d) would render W. Va. Code § 3-12-8(d) meaningless.

123. Because Benjamin failed to comply with W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3, and was not entitled to a hardship exemption to belatedly file those reports, the SEC's decision to certify him was erroneous.

2. Benjamin Did Not Satisfy the Requirements Relating to Qualifying Contributions

124. The statute creates a qualifying period "during which participating candidates may raise and spend qualifying contributions in order to receive public campaign financing." See W. Va. Code § 3-12-1(14).

125. Prior to the end of the qualifying period and prior to collecting any qualifying contributions, a candidate seeking to receive public campaign financing must file with the SEC a Declaration of Intent to Participate, attesting, under penalty for false swearing as provided by W. Va. Code § 3-9-3(b), that s/he (i) is qualified to be placed on the ballot; (ii) if elected, is eligible to hold the office sought; and (iii) has complied with, and will continue to comply with, all requirements of the public financing law including restrictions on contributions and expenditures. See W. Va. Code § 3-12-7; see also W. Va. CSR 146-5-4.

126. Any contributions accepted thereafter are deemed "qualifying contributions" and are subject to the following limitations:

- (i) A candidate may not accept more than one qualifying contribution from a single individual;
- (ii) A qualifying contribution may not be less than \$1 nor more than \$100;
- (iii) The contributions must be made by at least 500 registered voters;
- (iv) At least 10% of the total number of voters contributing must be registered to vote in each Congressional District; and
- (v) The participating candidate must collect at least \$35,000 but not more than \$50,000 in qualifying contributions.

See W. Va. Code § 3-12-9(a); see also CSR 146-5-5.1.

127. Each qualifying contribution must be accompanied by a receipt, on forms provided by the SEC, which include the following:

- (i) Printed name of the candidate;
- (ii) The signature of the person who collection the contribution;
- (iii) The contributor's printed name, signature, street address and zip code;
- (iv) The amount of the contribution;
- (v) The date of the contribution;
- (vi) The Congressional District in which the contributor is registered to vote;
- (vii) If contribution is \$25 or more, the contributor's phone number, occupation and name of employer;
- (viii) A statement above the contributor's signature confirming the contributor understands the purpose of the contribution is to assist the participating candidate in obtaining public campaign finance funds, the contribution was made without coercion, and the contributor has not been reimbursed, received or promised anything of value for making the contribution.

See W. Va. Code § 3-12-9(b); see also CSR 146-5-5.4.

128. Benjamin's qualifying period began on September 11, 2015 and ended on January 30, 2016. *See* W. Va. Code § 3-12-3(14).

129. During the qualifying period, Benjamin was entitled to collect "qualifying contributions," subject to certain parameters set forth in W. Va. Code §3-12-9 and CSR 146-5-5 *et seq.* and was also required to electronically file monthly reports of such contributions with the Secretary of State. *See* W. Va. Code §3-12-9(f).

130. The Secretary of State's office represented to the SEC that Benjamin 512 of the 583 contributions submitted by Benjamin during the qualifying period satisfied the statutory requirements. *See* SEC Record at Ex. G (22-23).

131. I find that Benjamin submitted receipts for at least 192 contributions on February 1st for contributions that were submitted electronically and did not have a handwritten signature, as is required by W. Va. Code § 3-12-9(b)(iii). *See* SEC Record at Ex. V.

132. The SEC had determined during its February 3, 2015 meeting (the previous day) that qualifying contributions submitted electronically without an accompanying handwritten signature were insufficient. *See* SEC Record at Ex. E (202:1-281:21)

133. Without these 192 contributions, I find that Benjamin does not have the requisite 500 qualifying contributions which he was statutorily required to obtain pursuant to W. Va. Code § 3-12-9(a) before the end of the qualifying period, February 2, 2016.

134. To be certified under Article 12, a candidate must timely file an Application for Certification and have "obtained the required number and amount of qualifying contributions as required by section nine of [Article 12]." *See* W. Va. Code § 3-12-10(b)(2).

135. Because Benjamin did not obtain the required number of qualifying contributions as required by W. Va. Code § 3-12-9(a), the SEC's certification of Benjamin was erroneous and must be reversed.

3. **The SEC's Refusal To Hear Walker's Challenges To Benjamin's February 1 Qualifying Contribution Receipts Was In Error.**

136. Walker received copies from the Secretary of State's office of receipts of qualifying contributions on the last day of the qualifying period, February 2, 2016, that had been filed by Benjamin late on February 1.

137. Walker filed challenges to 365 of those receipts on February 3rd, including challenges to 192 of those qualifying contributions that were received by Benjamin electronically, but did not contain a handwritten signature.

138. Walker included a "Qualifying Contribution Challenge Form" prescribed by the Secretary of State specifying the basis for each challenge. *See* SEC Record at Ex. U.

139. On the evening of February 3, 2016, the Secretary of State unilaterally decided that Walker was also required to provide "evidence," which was a copy of the actual receipt for each challenged contribution. *See* SEC Record at Ex. F.

140. Those same receipts, however, were in the custody, control and possession of the Secretary of State. *Id.*

141. Because Walker did not also provide the SEC a copy of each receipt that was challenged, the SEC refused to entertain the merits of any of the challenges she brought on February 2nd.

142. I find this act arbitrary and capricious and grounds for reversal.

143. First, the Secretary of State cannot abdicate her statutory obligation under W. Va. Code § 3-12-10(b) to review and verify that Benjamin's qualifying contributions satisfy the statutory requirements set forth in W. Va. Code § 3-12-9.

144. Here, the SEC had ruled the day before that qualifying contributions received electronically must still be accompanied by a handwritten signature.

145. The Secretary of State knew or should have known that at least 192 of the qualifying contributions submitted by Benjamin on February 1st that were subject to Walker's February 3rd challenges contained this fatal flaw.

146. Yet, the Secretary of State obviously failed to verify this fact with Benjamin's February 1 receipt submission and represented that Benjamin had indeed obtained the requisite number of qualifying contributions.

147. Second, neither the statute nor the regulations require a challenger to bring forth additional evidence in order for the SEC to consider the challenge.

148. W. Va. Code § 3-12-10(g) provides that "[a]ny person may challenge the validity of any contribution listed by a participating candidate by filing a written challenge with the State Election Commission setting forth any reason why the contribution should not be accepted as a qualifying contribution."

149. I find Walker's submission of the Qualifying Contribution Challenge Form complied with the statute.

150. W. Va. CSR §146-5-7.3 provides that "[t]he challenger *should* attach any evidence, affidavits, or notarized statements to the form." (emphasis added).

151. The Secretary of State erroneously interpreted CSR §146-5-7.3 as a mandatory obligation for Walker to not only file a written challenge, which she did, but also provide the

SEC a copy of the underlying challenged receipt, a document that was in the SEC's custody, control and possession.

152. I find the Secretary of State's attempt to shift this burden to Walker the night before the hearing arbitrary and capricious.

153. The SEC's decision to not entertain the merits of Walker's February 3rd challenges is not and cannot be supported by the facts in this case.

154. This is particularly true considering that at least 192 of the qualifying contributions challenged by Walker should not have counted under the SEC's own interpretation of W. Va. Code §3-12-9, had the merits been considered.

155. Accordingly, I find the SEC's decision not to entertain the merits of Walker's February 3rd challenges because she did not include a copy of the underlying challenge receipt with the actual challenge form to be clearly wrong in view of the reliable, probative and substantial evidence on the whole record.

4. Benjamin Did Not Satisfy the Requirements Relating to Filing an Application for Certification Pursuant to W. Va. CSR 146-5-6.1

156. W. Va. Code §3-12-10(a) requires that a participating candidate apply to the SEC for public campaign financing and file a sworn statement, known as an Application for Certification, that s/he has complied and will comply with the Program's requirements throughout the applicable campaign. *See* W. Va. Code § 3-12-10(a); *see also* CSR 146-5-6.1.

157. The Application for Certification must state that the candidate:

- (i) Has signed and filed a declaration of intent as required by section seven of this article;
- (ii) Has obtained the required number and amount of qualifying contributions as required by section nine of this article;
- (iii) Has complied with the contribution restrictions of this article;

- (iv) Is eligible, as provided in section nine, article five of this chapter, to appear on the nonpartisan judicial election ballot; and
- (v) Has met all other requirements of this article.

See id.

158. The candidate must file the Application for Certification with the SEC within two business days after the close of the qualifying period. *See* CSR 146-5-6.1.

159. As discussed above, Benjamin did not meet “all other requirements of [Article 12].”

160. Specifically, I find Benjamin failed to file exploratory reports as required under W. Va. Code §§ 3-12-3(5) and 3-12-8(d)

161. I find that the hardship exemption did not relieve Benjamin of his obligation to file those reports as early as October 1, 2015.

162. I find that Benjamin failed to obtain the required number of qualifying contributions because at least 192 of the 512 of the qualifying contributions that the Secretary of State’s office represented to the SEC were electronic contributions that did not contain a handwritten signature, a requirement that the SEC had already ruled during its February 3rd meeting was required.

163. I find that Benjamin had solicited and received exploratory contributions from two political action committees in violation of Article 12 and had not returned said contributions at the time he provided a sworn statement to the SEC attesting he had complied with all of Article 12’s requirements.

164. As a result, Benjamin’s sworn Application for Certification was invalid and, therefore, the SEC’s certification of Benjamin was erroneous and must be reversed.

4. **The SEC's Decision to Certify Benjamin Violates Walker's Constitutional Rights**

165. Finally, and in addition to the above, the SEC's certification of Benjamin was erroneous and must be reversed because it directly violated Walker's constitutional rights to free speech and substantive due process under the First and Fourteenth Amendments of the United States Constitution. *See* U.S. Const. amend. I, amend XIV, § 1

166. Substantive due process protects a citizen from arbitrary government action which infringes upon her fundamental rights. *See United States v. Salerno*, 481 U.S. 739, 746 (1987); *Rochin v. California*, 342 U.S. 165, 172 (1952) and *Palko v. Connecticut*, 302 U.S. 319, 325–326 (1937)); *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 779 (1978) (explaining that substantive due process applies to the fundamental right to free speech); *State ex rel. Loughry v. Tennant*, 229 W. Va. 630, 732 S.E.2d 507 (2012) (explaining that campaign expenditures in judicial elections warrant constitutional protections as a form of free speech and government involvement in this area warrants the strictest of scrutiny).

167. The SEC, as a “creature” of the state of West Virginia, is a state actor within the meaning of the Fourteenth Amendment and is held to that Amendment's standards. *See* U.S. Const. amend. XIV, § 1; *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). The First Amendment right to freedom of speech also extends to the states. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

168. The First Amendment's “fullest and most urgent application [is] to speech uttered during a campaign for political office.” *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010) (internal citations omitted).

169. By certifying Benjamin, notwithstanding his failure to meet the clear and unambiguous statutory requirements and deadlines, including the SEC's decision to entertain the

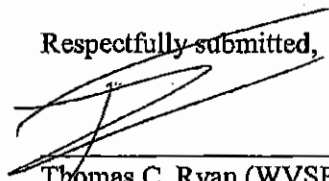
merits of Walker's February 3 challenges for the reasons set forth above, the SEC's decision caused public campaign monies to be improperly injected in to the campaign for Supreme Court justice thereby improperly affecting and hamstringing Walker's ability to compete for votes.

170. The SEC's decision, in this regard violated Walker's constitutional rights to free speech and substantive due process.

171. For the foregoing reasons, the SEC's decision to certify Benjamin as eligible to receive public campaign financing from the Program is hereby reversed.

Dated: February 29, 2016

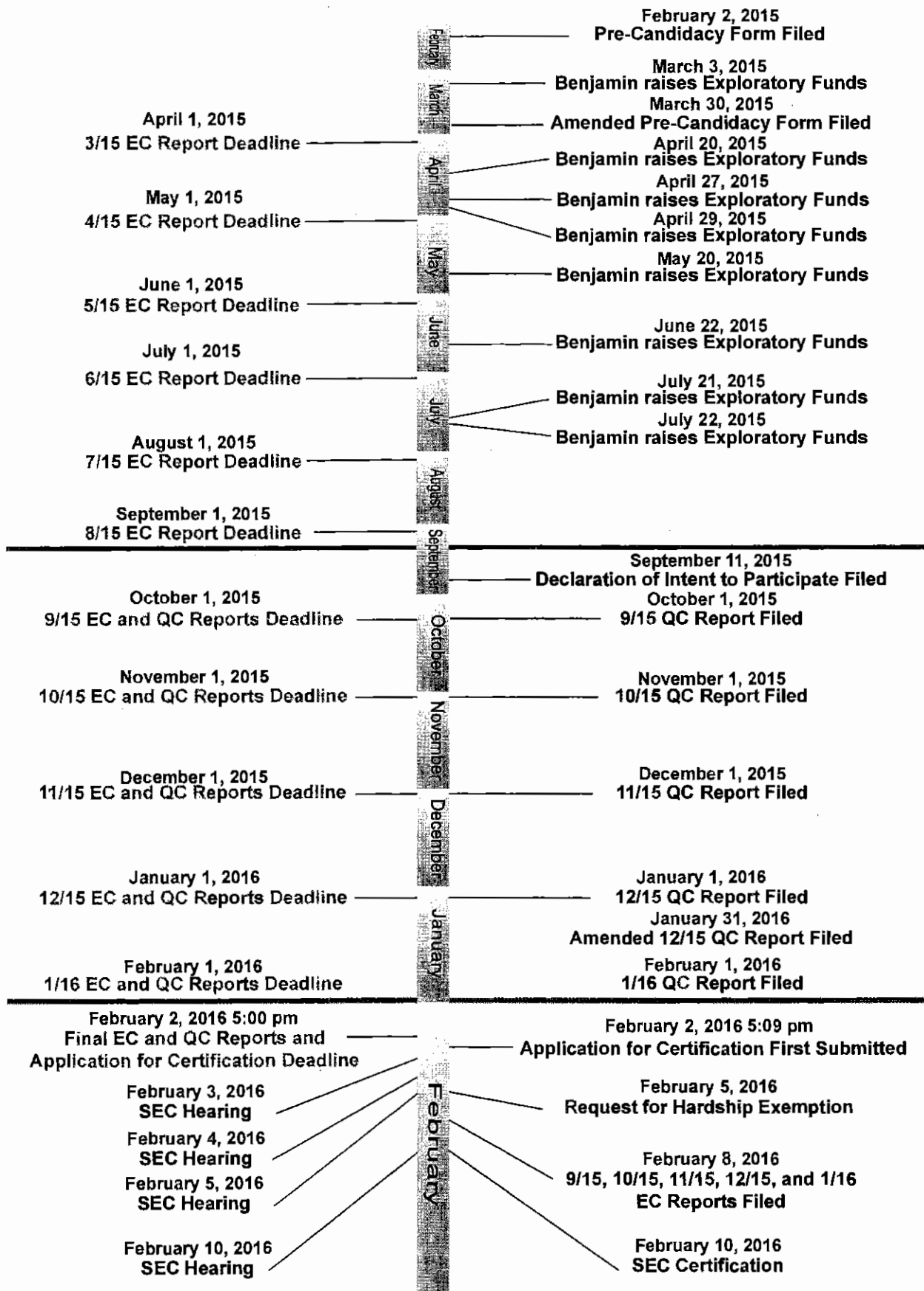
Respectfully submitted,



Thomas C. Ryan (WVSB #9883)
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500

A

BENJAMIN'S ATTEMPT AT CERTIFICATION



JA002032

B

W. Va. Code §3-12-9. Qualifying contributions.

(a) A participating candidate or his or her candidate's committee may not accept more than one qualifying contribution from a single individual. A qualifying contribution may not be less than \$1 nor more than \$100. To be considered as a proper qualifying contribution, the qualifying contribution must be made by a registered West Virginia voter. A participating candidate shall collect qualifying contributions which in the aggregate are not less than \$35,000 nor more than \$50,000. Qualifying contributions in excess of \$50,000 shall be sent to the State Election Commission for deposit in the fund.

(b) Each qualifying contribution shall be acknowledged by a written receipt that includes:

- (1) The printed name of the participating candidate on whose behalf the contribution is made and the signature of the person who collected the contribution for the candidate or his or her candidate's committee;
- (2) For qualifying contributions of \$25 or more, the contributor's signature, printed name, street address, zip code, telephone number, occupation and name of employer; and for qualifying contributions of less than \$25, the contributor's signature, printed name, street address and zip code;
- (3) A statement above the contributor's signature that:
 - (A) The contributor understands the purpose of the contribution is to assist the participating candidate in obtaining public campaign financing;
 - (B) The contribution was made without coercion;
 - (C) The contributor has not been reimbursed, received or promised anything of value for making the contribution; and
- (4) One copy of the receipt shall be given to the contributor, one copy shall be retained by the candidate and one copy shall be sent by the candidate to the Secretary of State. A contribution which is not acknowledged by a written receipt in the form required by this subsection is not a qualifying contribution.

(c) During the qualifying period, a participating candidate or his or her candidate's committee must obtain at least five hundred qualifying contributions from registered West Virginia voters. A minimum of ten percent of the total number of qualifying contributions received by the candidate must be from each of the state's congressional districts.

C

C

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Thursday, October 01, 2015 1:32 PM
To: Lisa Blake; Missi Kinder
Cc: Donald Nickerson; Timothy Leach
Subject: Re: Emailing - F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf
Attachments: F15 - WV Supreme Court of Appeals PCF Monthly Report.pdf

Thank you for providing the form. Since the online system is not yet available, I have attached the completed report in order to comply with today's filing deadline. As soon as I hear from you that the online system is operational I will re-file for September.

Thank you,

Darrell Shull

On Thu, Oct 1, 2015 at 1:14 PM, Lisa Blake <LBlake@wvsos.com> wrote:

Lisa Blake

Elections Division

West Virginia Secretary of State Natalie E. Tennant

1900 Kanawha Blvd. East

Building I, Suite 157 K

Charleston WV, 25305

Phone: 304-558-6000

Fax: 304-558-8386

www.wvsos.com

WV Supreme Court of Appeals Public Campaign Financing
Monthly Report for September 2015
(month)

Candidate or Committee Name: Brent D. Benjamin	Treasurer Donald A. Nickerson, Jr.
Political Party: -	Treasurer's Mailing Address (Street, Route or P.O. Box) 8 Barrington Drive
	City, State, Zip Code Daytime Phone # Wheeling, WV 26003 304-242-0414

(check one):

☐ Exploratory Period Report

☐ Amended Report

☒ Qualifying Period Report

REPORT TOTALS

CASH BALANCE SUMMARY

Beginning Balance (ending balance from previous report) (separate totals for Exploratory and Qualifying Periods)	1.	\$0.00
Total Contributions (from Page 2)	2.	+ \$0.00
Subtotal (lines 1+2)	3.	= \$0.00
Expenditures and Obligations (from Page 2)	4.	- \$0.00
Ending Balance (lines 3-4)		= \$0.00
<i>*Cannot have a negative ending balance</i>		

**TOTAL EXPLORATORY
CONTRIBUTIONS TO DATE**

0

**TOTAL EXPENDITURES
AND OBLIGATIONS TO DATE**

0

EXPENDITURES AND OBLIGATIONS

Date	Full name, residence address (if personal); business address (if a firm)	Purpose	Amount
Total Expenditures and Obligations:			

MAKE AS MANY COPIES
OF THIS PAGE AS YOU NEED.

OATH OR AFFIRMATION

I, Submitted via Email, swear or affirm that the attached statement is true and correct, to the best of my knowledge, of all financial transactions occurring within the period covered by this statement, as required by West Virginia Code §3-12-8(d).

Date 10/1, 2015 Signature of Treasurer _____

Office Use Only
Received By: _____

D

W. Va. Code §3-12-10. Certification of candidates.

(a) To be certified, a participating candidate shall apply to the State Election Commission for public campaign financing from the fund and file a sworn statement that he or she has complied and will comply with all requirements of this article throughout the applicable campaign.

(b) Upon receipt of a notice from the Secretary of State that a participating candidate has received the required number and amount of qualifying contributions, the State Election Commission shall determine whether the candidate or candidate's committee:

- (1) Has signed and filed a declaration of intent as required by section seven of this article;
- (2) Has obtained the required number and amount of qualifying contributions as required by section nine of this article;
- (3) Has complied with the contribution restrictions of this article;
- (4) Is eligible, as provided in section nine, article five of this chapter, to appear on the nonpartisan judicial election ballot; and
- (5) Has met all other requirements of this article.

E

E

Timothy Leach

From: Darrell Shull <dcshull@gmail.com>
Sent: Tuesday, February 02, 2016 6:22 PM
To: Timothy Leach
Subject: Re: Certification Statement from Justice Brent Benjamin

Please stand by - I am speaking with legal counsel now.

On Tue, Feb 2, 2016 at 6:18 PM, Timothy Leach <TLeach@wvsos.com> wrote:

Does the candidate wish to certify that he has met all requirements of the code before obtaining the confirmation signatures?

Tim

From: Darrell Shull [mailto:dcshull@gmail.com]
Sent: Tuesday, February 02, 2016 4:55 PM
To: Timothy Leach <TLeach@wvsos.com>; Missi Kinder <MKinder@wvsos.com>
Cc: Donald Nickerson <dnickerson@bowlesrice.com>
Subject: Certification Statement from Justice Brent Benjamin

Attached is a PDF of Justice Benjamin's sworn statement as to eligibility to participate in the public campaign finance program. Please advise if you have any difficulty receiving or if there are additional actions required for us to file these documents. Thank you.

F

W. Va. Code §3-12-13. Reporting requirements.

- (a) Participating candidates and certified candidates shall comply with this section in addition to any other reporting required by this chapter....
- (c) No later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Secretary of State on appropriate forms a summary of:
 - (1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions; and
 - (2) All qualifying contributions received and funds expended or obligated during the qualifying period together with copies of any receipts not previously submitted for qualifying contributions.

Certificate of Service

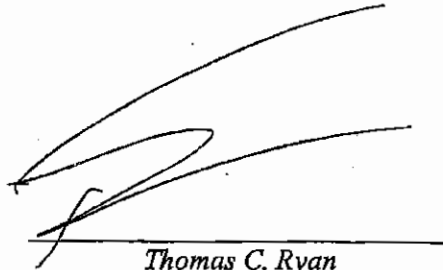
I, Thomas C. Ryan, certify that I caused to be served by electronic mail and first class mail a copy of the *Petitioner's Proposed Findings of Fact and Conclusions of Law and February 26, 2016 Hearing Exhibits A - F* upon counsel for the following Respondents, on February 29, 2016:

*J. Robert Leslie, Esq.
Jonathan T. Osborne, Esq.
Office of the West Virginia Attorney General
1900 Kanawha Boulevard
Bldg. 1, Room E-26
Charleston, WV 25305*

*Jonathan Marshall, Esq.
Maryl Sattler, Esq.
Bailey Glasser LLP
209 Capitol Street
Charleston, WV 25301*

Counsel for Respondents the Honorable Natalie E. Tennant, Vincent P. Cardi, Esq., Gary A. Collias, and the Honorable Brent D. Benjamin, Esq.

Counsel for Respondent the Honorable Brent D. Benjamin, Esq.

A handwritten signature in black ink, appearing to be 'T. Ryan', is written over a horizontal line.

*Thomas C. Ryan
W.V. Bar #9883*

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

ORDER AFFIRMING DECISION OF THE STATE ELECTION COMMISSION

As spending by candidates and independent parties increases, so does the perception that contributors and interested third parties hold too much influence over the judicial process.

W. Va. Code § 3-12-2(8).

The Public Campaign Financing Program was established for three important legislative purposes: (1) to ensure the impartiality and integrity of the judiciary; (2) to increase the public confidence in the courts; and (3) to protect the Constitutional rights of voters and candidates from increasingly large amounts of money being raised and spent from private donors who wish to influence the outcome of elections. W. Va. Code § 3-12-2(1)-(10). The statute itself is a remedial Act, adopted to counteract the belief that special interest groups can gain favor with the Court by making large contributions to judicial campaigns.

Candidates who participate in the Program must agree to reject large donations and eschew funding from out-of-state groups. The candidate instead gathers 500 small contributions

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CLERK OF COURT
KANAWHA COUNTY CIRCUIT COURT

from individual West Virginia voters. Each qualifying contribution can be as little as \$1.00; no more than \$100 can be accepted from one donor. Candidates who meet these requirements receive a set amount of money from the Fund to conduct their campaigns – thereby ensuring that a West Virginian who can give only \$1.00 may participate in the judicial selection process on the same level as wealthy political insiders and special interest groups. It is with these purposes in mind that the Court addresses the present dispute.

PROCEDURAL HISTORY

This matter is before the Court on Beth Walker's Petition for Judicial Review of the State Election Commission's Decision certifying Justice Brent D. Benjamin to participate in the Public Campaign Financing Program.

On February 10, 2016, the State Election Commission certified Justice Brent D. Benjamin to receive funding from the Public Campaign Financing Program. On February 16, 2016, Beth Walker filed this lawsuit. She claims that the SEC's decision certifying Justice 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.

The Court has considered the written submissions of Petitioner and Respondent Benjamin and held a hearing on February 26, 2016. For the reasons set forth below, the SEC's decision in this matter is **AFFIRMED** and this administrative appeal is hereby **DENIED**.

STANDARD OF REVIEW

This case is before the Court on an administrative appeal under West Virginia Code § 29A-5 et seq. and Rule 2 of the West Virginia Rules of Procedure for Administrative Appeals. In such an appeal, the Circuit Court is to reverse, vacate, or modify the agency's decision if:

[T]he substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions or order are: (1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Syl. Pt. 2, *Shepherdstown Volunteer Fire Dept. v. State ex rel. State of West Virginia Human Rights Comm'n*, 172 W.Va. 627, 628, 309 S.E.2d 342, 343 (1983); *see also* W. Va. Code §29A-5-4 (same). “The ‘clearly wrong’ and the ‘arbitrary and capricious’ standards of review are deferential ones which presume an agency’s actions are valid as long as the decision is supported by substantial evidence or by a rational basis.” Syl. Pt. 3, *Curry v. W. Va. Consol. Pub. Ret. Bd.*, 236 W. Va. 188, 778 S.E.2d 637, 638 (2015).

“A reviewing court must evaluate the record of an administrative agency’s proceeding to determine whether there is evidence on the record as a whole to support the agency’s decision. The evaluation is conducted pursuant to the administrative body’s findings of fact, regardless of whether the court would have reached a different conclusion on the same set of facts.” Syl. Pt. 1, *Walker v. W. Va. Ethics Comm’n*, 201 W. Va. 108, 109, 492 S.E.2d 167, 168-69 (1997).

This Court will only consider those issues properly raised by written brief in this proceeding. *See* W. Va. Code § 29A-5-4(e).

FINDINGS OF FACT

1. Respondent Justice Brent D. Benjamin and Petitioner Beth Walker are among the candidates in the 2016 election for a single seat on the West Virginia Supreme Court of Appeals.
2. Justice Benjamin began his campaign as a regular candidate seeking re-election to the West Virginia Supreme Court of Appeals.

3. From January 2015 until September 2015, the Committee to Re-Elect Justice Benjamin received \$9,950 in pre-candidacy contributions. (Ex. CC, Exploratory Summary Report.)

4. Seven hundred dollars of these contributions were rejected and returned by the Committee to Re-Elect Justice Benjamin. (Ex. HH, Receipts; Ex. II, Documentation of Return; Ex. EE, Am. Monthly Exploratory Report.)

5. Until September 2015, Justice Benjamin did not intend to participate in the Public Campaign Financing Program.

6. In early September 2015, Justice Benjamin decided to enter the Public Campaign Financing Program and became a participating candidate under the statute. On September 11, 2015, Justice Benjamin filed a Declaration of Intent publicly announcing his intent to participate in the Program. (Ex. P, Declaration of Intent.)

7. From September 2015 through January 2016, The Committee to Re-Elect Justice Benjamin ("Benjamin campaign") collected qualifying contributions.

8. On October 1, 2015, the Benjamin campaign filed a monthly financial report reflecting that it had not received any qualifying contributions during the month of September. (Ex. W, Sept. Activity Report.)

9. Justice Benjamin did not receive any exploratory contributions in September 2015. (*Id.*)

10. On November 1, 2015, the Benjamin campaign filed a monthly financial report reflecting that it had received \$1,360 in qualifying contributions during the month of October. (Ex., Oct. Activity Report.)

11. Justice Benjamin did not receive any exploratory contributions in October 2015.

(*Id.*)

12. On December 1, 2015, the Benjamin campaign filed a monthly financial report reflecting \$1,299 in qualifying contributions received during the month of November.

13. Justice Benjamin did not receive any exploratory contributions in November 2015. (*Id.*)

14. On January 1, 2016, the Benjamin campaign filed a monthly financial report reflecting \$4,045 in qualifying contributions received during the month of December 2015. (Ex. Z, Dec. Activity Report.) On January 31, 2016, the Benjamin campaign filed an amended financial report reflecting \$4,055 in qualifying contributions received during the month of December 2015. (Ex. AA, Amended Dec. Activity Report.)

15. Justice Benjamin did not receive any exploratory contributions in December 2015. (*Id.*)

16. On February 1, 2016, the Benjamin campaign filed a monthly financial report reflecting a total of \$34,797 in qualifying contributions received during the month of January 2016. (Ex. BB, Jan. Activity Report.)

17. Justice Benjamin did not receive any exploratory contributions in January 2016.

18. The Benjamin campaign was unable to file its Summary Exploratory Financial Report because of a problem with the Secretary of State's electronic filing system. (Ex. G, Feb. 5 Tr. at 6-14.)

19. The Secretary of State's Office confirmed on the record at the SEC proceeding that Justice Benjamin was (and remains) unable to file exploratory financial reports on the

electronic filing system. (Ex. G, Feb. 5 Tr. at 6-8, 14, 16-17 (testimony confirming that the Secretary of State's online filing system will not accept Benjamin's exploratory reports)).

20. At 4:55 p.m. on February 2, 2016, Justice Benjamin filed his Application and sworn statement stating that he had and would continue to comply with the requirements of the Public Campaign Financing Program. (Ex. PP¹, 4:55 p.m. Email from Darrell Shull.)

21. That same day, Beth Walker filed 154 objections to Benjamin's qualifying contributions. (Ex. T, Challenge Forms.)

22. On February 3, the State Election Commission convened a special emergency meeting to consider Beth Walker's challenges. The SEC spent seven hours considering Walker's objections. (Ex. E, Feb. 3 Tr.)

23. Walker did not submit any evidence to support her challenges. (*Id.*)

24. That same day, the SEC learned that, while the seven-hour meeting was taking place, Walker (who did not personally attend) had filed an additional 365 objections to Benjamin's qualifying contributions.

25. The Secretary of State's Office contacted the Walker campaign and notified it that it would not be conducting research to support Walker's objections. The Walker campaign was notified that if it wanted to pursue the 365 challenges, it needed to bring the proper support to the SEC meeting. The Walker campaign confirmed on the record that it had received these instructions and understood them.² (Ex. F, Feb. 4 Tr. at 22:67, 46:13-21, 69:9-14, 78:17-22.)

¹ Petitioner and Respondent both filed supplemental appendices on February 25, 2016. These appendices both contain an exhibit labeled "PP." The document referenced here is Respondent Benjamin's Exhibit PP.

² For example, the Walker campaign's representative stated on the record: "I was told yesterday that I had to bring evidence to back up my challenges today." (Ex. F, Feb. 4 Tr. at 22:6-7; *see also id.* at 78:17-22.)

26. On February 4, 2016, the SEC held another special emergency meeting to consider Walker's 365 additional objections. (Ex. F, Feb. 4 Tr.)

27. The SEC noted on the record that Walker's 365 objections had been filed after the February 2, 2016 deadline but determined that it would consider them nonetheless. (Ex. F, Feb. 4 Tr. at 12:2-13:2.)

28. Walker did not submit any evidence in favor of her objections. (Ex. F, Feb. 4 Tr. at 22:6-7, 46:13-21, 69:9-14, 78:17-22.)

29. The Walker campaign was given an opportunity at the SEC meeting to provide evidence or articulate a basis for the objections, but it declined to do so. (*Id.* at 46:13-21, 69:9-14, 86:13-87:1.) Instead, the Walker campaign stated that it intended to rely solely on the challenge forms it had previously submitted to the SEC.³

30. The SEC considered and rejected Walker's 365 objections for lack of evidence. (Ex. F, Feb. 4 Tr. at 86:19-88:23.)

31. On February 5, 2016, the SEC held a meeting at which it considered Justice Benjamin's request for a hardship exemption to file his Summary Exploratory Financial Report in paper form. The SEC granted his request, and gave the campaign until February 10, 2016, to do so. (Ex. G, Feb. 5 Tr. at 12-14.)

32. On February 8, 2016, the Benjamin campaign filed a Summary Exploratory Financial Report. (Ex. CC.) The report inadvertently included \$700 in exploratory contributions that had been rejected and returned by the Benjamin campaign. (Ex. HH, Receipts; Ex. II, Documentation of Return.)

³ For example, when asked to provide an explanation for a specific objection, the Walker campaign stated: "I don't have a comment on that." (Ex. F, Feb. 4 Tr. at 69:9-14.) When asked again if they had any evidence to support their objections, the campaign responded "Only what was submitted." (Ex. F, Feb. 4 Tr. at 46:13-21.)

33. On February 9, 2016, the Benjamin campaign filed an Amended Exploratory Financial Report to remove the \$700 in exploratory contributions that had been returned. (Ex. EE; *see also* Ex. HH-II.)

34. On February 10, 2016, the SEC held a public meeting to consider Justice Benjamin's request for certification for public financing. At the meeting, the SEC determined that Justice Benjamin had met all of the Program's requirements and voted unanimously that he should be certified. (Ex. KK, Feb. 10 Tr. at 40:1-15); *see also* W. Va. Code § 3-12-10(b).

CONCLUSIONS OF LAW

35. In this appeal, Walker raises four primary issues concerning the SEC's certification decision. The Court will consider each in turn.

Monthly Exploratory Financial Reports

36. First, Walker argues that the Benjamin campaign failed to file monthly reports of its exploratory contributions.

37. A "participating candidate" in the Public Campaign Financing Program is required to submit monthly reports of all exploratory and qualifying contributions "received during the immediately preceding month." W. Va. Code 3-12-13(b).

38. The statute defines "participating candidate" as a candidate who is "seeking election to the Supreme Court of Appeals and is attempting to be certified in accordance with section ten of this article to receive public campaign financing from the fund." W. Va. Code § 3-12-3(11).

39. As noted above, the Court finds that Justice Benjamin became a "participating candidate" in September 2015.

40. Prior to September 2015, Justice Benjamin was not a “participating candidate.” He was therefore not required to file monthly financial reports until October 2015. W. Va. Code 3-12-13.

41. After Justice Benjamin filed his Declaration of Intent on September 11, 2015, all contributions he received were qualifying contributions under W. Va. Code § 3-12-13. The Court therefore finds that from September 2015 to February 2016, the Benjamin campaign had no exploratory contributions to report.

42. The Court therefore concludes that the State Election Commission’s finding that Justice Benjamin had filed all required monthly reports was not arbitrary, capricious, or an abuse of discretion.

Application for Certification

43. Next, Beth Walker argues that Justice Benjamin’s Application for certification was untimely because it was time-stamped at 5:09 p.m. on February 2. Walker believes that the Application should have been filed by 5:00 p.m.

44. The SEC concluded that the Application was timely and appropriate filed. (Ex. KK, Feb. 10 Tr. at 4-5, 40:1-14.)

45. Based on evidence submitted, this Court finds that the Application was filed with the Secretary of State at 4:55 p.m. on February 2nd. (Ex. PP⁴, 4:55 p.m. Email from Darrell Shull.)

46. Furthermore, the Court concludes that even if the Application had been filed at 5:09 p.m., it would have been timely. The SEC’s regulations merely require the Application to be filed “no later than two business days after the close of the qualifying period.” W. Va. C.S.R. § 146-5-6. There is no question that Justice Benjamin’s Application, filed February 2, was filed

⁴ Respondent Benjamin’s Exhibit PP.

within two business days of the close of the qualifying period. Nothing in the statute or regulations requires an Application to be filed by any particular time on that day.

47. Walker further contends that the Application was not accurate at the time it was filed.

48. A candidate applying for public financing must file "a sworn statement that he or she has complied and will comply with all requirements of this article throughout the applicable campaign." W. Va. Code § 3-12-10(a).

49. At the time that he filed his sworn statement, Justice Benjamin promised that he had and would comply with all requirements of this article throughout his campaign. The State Election Commission determined that this statement was accurate when made, and the Court finds no evidence in the record to suggest that it was not or that the SEC's finding in this regard was arbitrary and capricious.

50. For these reasons, the Court concludes that the SEC correctly found that Justice Benjamin's Application was timely and accurate. The SEC's decision was not arbitrary, capricious, or an abuse of discretion, and is therefore AFFIRMED.

Qualifying Contributions

51. Next, Walker appeals the SEC's decision "in its determination that Benjamin presented a sufficient number of compliant exploratory contributions and qualifying contributions." (Pet. at 18.) Walker's Petition provides no explanation for her appeal, instead claiming that she will later supplement the Petition and the record with her arguments. (Pet. at 18.) To date, she has not done so.

52. The SEC determined that the Benjamin campaign met the qualifying contribution requirement by presenting 512 qualifying contributions. (Ex. G, Feb. 5 Tr. at 22-23; Ex. KK, Feb. 10 Tr. at 4-5, 40:1-14.)

53. Because Walker has not properly raised this issue, the Court will not consider it. *See* W. Va. Code § 29A-5-4(e) (“Appeals taken on questions of law, fact or both, shall be heard upon assignments of error filed in the cause or set out in the brief of the appellant. ***Errors not argued by brief may be disregarded . . .***”) (emphasis added).

54. At this time, the Court has no information before it to consider Walker’s specific objections to Benjamin’s qualifying contributions. Walker has not identified which objections she wishes to appeal, nor has she identified the alleged errors in the SEC’s denial of her objections. (*See* Pet. at 18.)

55. At the hearing on her Petition, Walker suggested that the Court should consider the objections contained in the challenge forms that the Secretary of State provided as part of the Appendix in this case. Even if the Court wished to wade through over 500 challenge forms, it could not do so because Walker has provided no evidence or specific argument in favor of her challenges — either here or before the State Election Commission. (Ex. F, Feb. 4 Tr. at 22:67, 46:13-21, 69:9-14, 78:17-22.) Even if this Court were in the position of considering Walker’s objections for the first time, the challenge forms themselves do not contain enough evidence for the Court to consider their merit. The Court can only conclude that Walker’s argument regarding Benjamin’s qualifying contributions has been waived.

56. The SEC determined that Justice Benjamin had submitted at least 512 qualifying contributions totaling \$36,174. The SEC further found that 22 percent of those contributions were in district one, 46.8 percent were in district two, and 31 percent in district three. (Ex. G, Feb. 5 Tr. at 22-24.) The SEC further concluded that all of the 512 qualifying contributions were receipted “with all necessary information and statements.” (Ex. G, Feb. 5 Tr. at 24.) These

findings are supported by the record and meet the statutory requirements of W. Va. Code § 3-12-9.

57. The Court therefore concludes that the State Election Commission's finding that Justice Benjamin obtained the requisite number of qualifying contributions was not arbitrary, capricious, or an abuse of discretion.

Summary Exploratory Financial Report

58. Walker further contends that Justice Benjamin failed to file his Summary Exploratory Financial report by the February 2, 2015 deadline, and that the SEC lacked the authority to grant him a one-week extension of time.

59. The Public Campaign Financing Program statute provides that "No later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report . . . (1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions." W. Va. Code § 3-12-13(c)(1).

60. All reports filed under the West Virginia Public Campaign Financing Act must be filed electronically with the Secretary of State; there is no paper filing option unless the candidate obtains a hardship exemption from the SEC. W. Va. Code §3-12-13.

61. Justice Benjamin attempted to file his exploratory report electronically, but was unable to do so due to a glitch in the Secretary of State's electronic filing system. The Secretary of State's Office has confirmed that a glitch in the system prevented the Benjamin campaign from filing exploratory reports. (Ex. G, Feb. 5 Tr. at 6-8, 14, 16-17 (testimony confirming that the Secretary of State's online filing system will not accept Justice Benjamin's exploratory reports)).

62. The Benjamin campaign accordingly asked the SEC for a hardship exemption to permit it to file the exploratory reports in paper form. The SEC granted the exemption, and gave the campaign until February 10, 2015, to file a paper report.

63. This Court finds that the Benjamin campaign was prevented from filing its exploratory reports by the deadline due to a glitch in the Secretary of State's electronic filing system. (Ex. G, Feb. 5 Tr. at 6-8, 14, 16-17.)

64. The Court further concludes that the SEC's decision to grant the hardship exemption was not arbitrary, capricious, or an abuse of discretion, and that, in doing so, the SEC did not act in excess of its statutory authority or jurisdiction.

65. The SEC has explicit authority to grant a hardship exemption to the electronic filing requirement. W. Va. Code § 3-12-8(d). In this case, the SEC properly concluded that an extension of time was necessary under the circumstances of the hardship exemption because electronic filing was unavailable on the deadline. The Court concludes that the SEC's actions were within its statutory authority.

66. Further, the Court concludes that the SEC has implied authority to grant an extension of time for a paper filing made subject to a hardship exemption. *See Walker v. W. Va. Ethics Comm'n*, 201 W. Va. 108, 121, 492 S.E.2d 167, 180 (1991) (noting that there are "certain circumstances in which an agency may perform a function that is implied, but not specifically permitted, by statute"; an agency's authority includes "'such other powers as are necessarily or reasonably incident to the powers granted.'") (quoting *Walter v. Ritchie*, 156 W. Va. 98, 108, 191 S.E.2d 275, 281 (1972)).

67. Moreover, the Court concludes that the deadline for filing the report was equitably tolled by the glitch in the electronic filing system. When a party is prevented from

doing something on the deadline due to extreme circumstances outside his control, the deadline may be deemed equitably tolled. *See McKibben v. Eastern Hospitality Mgmt.*, 288 F. Supp.2d 723 (N.D. W. Va. 2003) (equity required that a complaint be deemed timely filed when the plaintiff was prevented from filing due to extreme inclement weather that closed the courthouse). As the court in *McKibben* noted, the West Virginia Supreme Court has held that it is “the duty of a court to disregard a statutory construction, though apparently warranted by the literal sense of the words in a statute, when such construction would lead to injustice and absurdity.” *Id.* (quoting Syl. Pt. 2, *Chevy Chase Bank v. McCamant*, 204 W. Va. 295, 512 S.E.2d 217 (1998)).

68. In this case, the Benjamin campaign was prevented from filing its exploratory reports by the deadline due to a glitch in the Secretary of State’s electronic filing system. This circumstance was outside Justice Benjamin’s control. The SEC did not exceed its authority or abuse its discretion by granting him an exemption to permit him additional time to file a paper copy of this financial report.

Remedy

69. Beth Walker contends that any late filing of any financial report results in automatic disqualification from the Public Campaign Financing Program. This Court disagrees.

70. Instead, the Court concludes that even if the SEC’s extension of time were deemed ineffective, the SEC still would not have abused its discretion by certifying Justice Benjamin to receive funds from the Public Campaign Financing Program.

71. The Act establishing the Public Campaign Financing Program is a remedial statute adopted for important legislative purposes. *See* W. Va. Code § 3-12-2(2)-(10) (explaining legislative purpose).

72. “Where an act is clearly remedial in nature, we must construe the statute liberally so as to furnish and accomplish all the purposes intended.” *See Barr v. NCB Mgmt. Servs. Inc.*, 227 W. Va. 507, 513, 711 S.E.2d 577, 583 (2011) (quotation marks and citations omitted).

73. At the time the SEC certified Justice Benjamin, he had met all requirements of the statute and regulations, including the financial reporting requirements.

74. The statute does not indicate that filing a single financial report a week after the deadline requires that a candidate be disqualified from certification. Such an interpretation would be inconsistent with the remedial purpose of the statute. *See Barr*, 711 S.E.2d at 583.

75. Walker relies on cases dealing with where a candidate missed a filing deadline to appear on the ballot⁵ – a situation much different than the one here, where the candidate appropriately filed to run, and even timely filed his application for public financing, but simply filed one financial report a week late in paper form at the direction of the State Election Commission due to a glitch in the Secretary of State’s electronic filing system.

76. In such cases, the public interest requires the Secretary of State to determine with finality what candidates will appear on the ballot. In this case, there was no question that Justice Benjamin was running for re-election or that he was seeking public financing. Instead, the document at issue is a simple financial report that was filed several days late due to an electronic

⁵ For example, in *Brady v. Hechler*, the challenged candidate failed to timely file a certificate declaring himself a candidate in the election. 176 W. Va. 570, 346 S.E.2d 546, 548 (1986). The Court in *Brady* explained that generally “statutory provisions in election statutes, requiring that a certificate or application of nomination to be filed with a specified officer within a specific period of time, are mandatory.” *Id.* Similarly, *State ex rel. Vernet v. Wells* dealt with candidates who had not filed certificates of nomination as required. 87 W. Va. 275 (1920). In this case, no one has alleged that Benjamin failed to file a certificate or application of nomination. Walker’s interpretation is also inconsistent with W. Va. Code § 3-8-7. *See id.*; *see also* W. Va. C.S.R. § 153-51-1, 2 (providing for notice to a candidate who has not filed any required campaign finance statement before the candidate is disqualified from the general election).

system issue outside the Benjamin campaign's control. The Court therefore concludes that *Brady* and *Vernet* are distinguishable from this case.

77. Moreover, the plain language of the statute in this case makes clear that not all errors result in automatic disqualification. Instead, the statute expressly provides that the SEC has the discretion to impose a civil penalty of \$100 per day for any candidate who violates any reporting requirement. W. Va. Code § 3-12-16(d). The statute further grants the SEC the discretion to disqualify any candidate who violates the statute from participating in the Public Campaign Financing Program. W. Va. Code § 3-12-10(h) ("A candidate's certification . . . *may* be revoked by the State Election Commission, if the candidate violates this article.") (emphasis added).

78. The Court therefore concludes that the remedy for filing a single late financial report is not automatic disqualification.

79. The Court further concludes that in light of the remedial purpose of the statute, the filing deadlines at issue here are procedural rather than jurisdictional. *See Indep. Fire Co. No. 1 v. W. Va. Human Rights Comm'n*, 180 W. Va. 406, 408-10, 376 S.E.2d 612, 614-16 (1988).

80. Under the circumstances presented in this case, the SEC did not abuse its discretion by certifying Justice Benjamin under the Public Campaign Financing Program.

ORDER

For the reasons set forth above and those stated on the record at the February 26, 2016 hearing, the Court hereby **ORDERS** that the State Election Commission's February 10, 2016 Decision is **AFFIRMED**. Beth Walker's Petition for Judicial Review of the February 10, 2016 Decision of the West Virginia State Election Commission Certifying Brent D. Benjamin


Pursuant to W. Va. Code § 3-12-10 is **DENIED**. Beth Walker's Application for a Stay is hereby **DENIED as moot**.

The Clerk of the Court is hereby directed to send a certified copy of this Order to counsel of record.

ENTERED:

HON. TOD KAUFMAN

Prepared and Presented By:


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FILED

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,**

Petitioner,

v.

**Civil Action No.: 16-AA-17
Judge Tod Kaufman**

**NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,**


Respondents.

CERTIFICATE OF SERVICE

Counsel for Respondent, Justice Brent D. Benjamin, does hereby certify that the foregoing proposed Order Affirming Decision of the State Election Commission was served this 29th day of February 2016, by sending a true exact via facsimile, to the following:

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Maryl C. Sattler

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod J. Kaufman

NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
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Virginia,

Respondents.

ORDER IN THE APPEAL OF

ELIZABETH D. WALKER v. STATE ELECTION COMMISSION

As spending by candidates and independent parties increases, so does the perception that contributors and interested third parties hold too much influence over the judicial process.

W. Va. Code § 3-12-2(8).

The Public Campaign Financing Program (hereinafter the "Financing Program") was established for three important legislative purposes: (1) to ensure the fairness of democratic elections in this state; (2) to protect the Constitutional rights of voters and candidates from the detrimental effects of increasingly large amounts of money being raised and spent to influence the outcome of elections; (3) to protect the impartiality and integrity of the judiciary; and (4) to strengthen public confidence in the judiciary. W. Va. Code § 3-12-2(1)-(10)¹. The statute itself

¹ The West Virginia Supreme Court of Appeals Public Financing Program In 2010, the West Virginia Legislature enacted the West Virginia Supreme Court of Appeals Public Financing Program (the "Program"). The Program and its requirements are codified in Chapter 3, Article 12 of the West Virginia Code, and the Legislature has also enacted legislative rules -- West Virginia Code of State Rule ("CSR") 146-5, *et seq.* -- to administer it.

seeks to balance the expensive playing field, where any lawyer running for West Virginia Supreme Court of Appeals can have a chance to fairly compete in our elective method of selecting judges.

Candidates who participate in the Public Campaign Financing Program must agree to reject large donations and eschew funding from out-of-state groups. To access the public money, the candidate must gather 500 small contributions from individual West Virginia voters. Each qualifying contribution can be as little as \$1.00; no more than \$100 can be accepted from one donor. Candidates who meet these requirements receive a set amount of money from the public Fund to conduct their campaigns – thereby ensuring that citizens who *contribute* get a bargain for their buck with the public money obtained, and the candidate can forego having to spend their own money or raising money from contributions, thereby creating a playing field that heretofore favored the rich, the entrenched (incumbents who can campaign *while in office* for years) or those who have the ability to raise large sums of money.

PROCEDURAL HISTORY

This matter is before the Court on Elizabeth Walker's (the challenger's) Petition for Judicial Review of the State Election Commission's Decision certifying Justice Brent D. Benjamin to participate in the Public Campaign Financing Program. Ms. Walker is a candidate for election to the West Virginia Supreme Court of Appeals. One seat is on the ballot to be filled by the election scheduled for May 10, 2016.

On February 10, 2016, the State Election Commission certified Justice Benjamin to receive funding from the Public Campaign Financing Program. On February 16, 2016 Elizabeth Walker filed this lawsuit claiming that the SEC's decision certifying Justice Benjamin was erroneous, an abuse of the State Election Commission's authority, contrary to the statute, and

violative of certain constitutional rights she may be accorded as an opposing candidate by virtue of the discretion used by the SEC to release these public monies. Justice Benjamin filed a response on February 25, 2016, arguing that the SEC's certification decision was correct and that, Beth Walker lacked the standing to sue.

The Court has considered the written submissions of Petitioner and Respondent Benjamin and held a hearing on February 26, 2016 which lasted for several hours. The Court compliments both lead counsel at the trial level, Jonathan Marshall, Esq. of Bailey and Glasser for Justice Benjamin, and Thomas Ryan, Esq. of K. ad L. Gates for Elizabeth Walker. Both did an able job orally and in briefs for their clients' cause. Further, it should be noted that Justice Benjamin attended the hearing in the Circuit Court and his appearance as a client was appreciated and noted.

THE ISSUE OF STANDING

The State's involvement in this campaign, through both process and the substantive release of funds has dramatically altered the balance of the playing field. In order to establish standing, the legality of the SEC customs depends considerably upon whether Ms. Walker herself is an object of the forgone action itself. There can be little question that the SEC's release of funds has or will cause her financial injury (or votes) and that a judgement in her favor will redress it. (Her candidacy's involvement in this very challenge at the SEC level before the funds were released substantiated her causal connection between the injury and the SEC's conduct complained of. Therefore, Ms. Walker is **HELD** to have standing to bring this suit².

² Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992).

STANDARD OF REVIEW

This case is before the Court on an administrative appeal under West Virginia Code § 29A-5 et seq. and Rule 2 of the West Virginia Rules of Procedure for Administrative Appeals. In such an appeal, the Circuit Court is to reverse, vacate, or modify the agency's decision if:

[T]he substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions or order are: (1) In violation of constitutional or statutory provisions; or (2) In excess of the statutory authority or jurisdiction of the agency; or (3) Made upon unlawful procedures; or (4) Affected by other error of law; or (5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion³.

This Court will only consider those issues properly raised by written brief in this proceeding. *See* W. Va. Code § 29A-5-4(e), the record below and the demonstrative charts used at the hearing connected with the briefs, arguments and previously addressed evidence.

FINDINGS OF FACT

1. Respondent Justice Brent D. Benjamin and Petitioner Elizabeth Walker are among the candidates in the 2016 election for a single seat on the West Virginia Supreme Court of Appeals scheduled state-wide for May 10, 2016.

³ Syl. Pt. 2, *Shepherdstown Volunteer Fire Dept. v. State ex rel. State of West Virginia Human Rights Comm'n*, 172 W. Va. 627, 628, 309 S.E.2d 342, 343 (1983); *see also* W. Va. Code §29A-5-4 (same). "The 'clearly wrong' and the 'arbitrary and capricious' standards of review are deferential ones which presume an agency's actions are valid as long as the decision is supported by substantial evidence or by a rational basis." Syl. Pt. 3, *Curry v. W. Va. Consol. Pub. Ret. Bd.*, 236 W. Va. 188, 778 S.E.2d 637, 638 (2015).

"A reviewing court must evaluate the record of an administrative agency's proceeding to determine whether there is evidence on the record as a whole to support the agency's decision. The evaluation is conducted pursuant to the administrative body's findings of fact, regardless of whether the court would have reached a different conclusion on the same set of facts." Syl. Pt. 1, *Walker v. W. Va. Ethics Comm'n*, 201 W. Va. 108, 109, 492 S.E.2d 167, 168-69 (1997).

2. At the time Justice Benjamin began his campaign, he was as a regular candidate seeking re-election to the West Virginia Supreme Court of Appeals, meaning that he was eligible to raise any of the amount of money he was able to.

3. On February 18, 2015, Justice Benjamin filed a pre-candidacy form with the Secretary of State, through which he declared his intent seek re-election to the Supreme Court. Petitioner's Designation of Record ("Petitioner's Record") at Exhibit ("Ex.") A.

4. On March 30, 2015, Justice Benjamin filed an amended pre-candidacy form with the Secretary of State, through which he changed his political party to "non-partisan" and enrolled in electronic report filing with the Secretary of State. Petitioner's Record at Ex. B.

5. Justice Benjamin's "exploratory period" for the election began on February 18, 2015.

6. From January 2015 until September 2015, the Committee to Re-Elect Justice Benjamin received \$9,950 in pre-candidacy contributions. (Ex. CC, Exploratory Summary Report.)

7. Justice Benjamin raised exploratory contributions, as that term is defined in W. Va. Code § 3-12-1(4), on March 3, April 20, 27, 29, May 20, June 22 and July 21 and 22, 2015.

8. On September 11, 2015, Justice Benjamin filed a Declaration of Intent publicly announcing his intent to participate in the West Virginia Supreme Court of Appeals Public Campaign Financing Program, and became a participating candidate under the statute. (Ex. P, Declaration of Intent.)

9. Accordingly, pursuant to W. Va. Code § 3-12-7, Benjamin's exploratory period ended on September 11, 2015 when he filed his Declaration of Intent to Participate.

10. From September 2015 through January 2016, The Committee to Re-Elect Justice Benjamin ("Benjamin campaign") collected qualifying contributions.

11. Justice Benjamin's campaign did not file any exploratory reports or receipts for contributions, as required by W. Va. Code § 3-12-8 (d), with respect to the exploratory contributions he raised on March 3, April 20, 27, 29, May 30, June 22 and July 21 and 22, 2015 until February 8, 2016. Petitioner's Record at Ex. H.

12. Justice Benjamin and/or his campaign asserts that the reason that he did not file any reports or receipts reflecting collection of exploratory contributions until February 8, 2016 is because the electronic filing system established by the Secretary of State was unequipped to receive said reports.

13. On October 1, 2015, Justice Benjamin was provided an electronic form from the Secretary of State's office entitled "WV Supreme Court of Appeals Public Campaign Financing Monthly Report for _____ (month)."⁴

14. The WV Supreme Court of Appeals PCF Monthly Report was drafted by the Secretary of State in such a way that it could be used to submit either exploratory contributions or qualifying contributions. *Id.*

15. Justice Benjamin's "qualifying period" for the election began on September 11, 2015 and ended on January 30, 2016.

16. On October 1, 2015, Justice Benjamin or his campaign submitted a report of "qualifying contributions," as that term is defined in W. Va. Code § 3-12-1(13), that were

⁴ ("WV Supreme court of Appeals PCF Monthly Report"). Petitioner's Supplement to Respondent State Election Commission Certification and Designation of Record Pursuant to Rule 4 ("Petitioner's Supplement") at Ex. PP (also marked as Ex. C during the February 26, 2016 hearing ("Circuit Court Hearing")).

collected by his campaign during the period commencing on September 11, 2015 and ending on September 30, 2015 ("the September QC Report").⁵

17. Justice Benjamin initially filed the September QC Report by email while the Secretary of State's office updated the online filing system. Circuit Court Hearing at Ex. C.

18. The September QC Report reflected zero dollars in qualifying contributions. *Id.*

19. On November 1, 2015, Benjamin submitted a report online of qualifying contributions collected by his campaign during the period commencing on October 1, 2015 and ending on October 31, 2015 (the "October QC Report").⁶

20. The October QC Report reflected the receipt of \$1,360 of qualifying contributions from 20 contributors. *Id.*

21. On December 1, 2015, Benjamin submitted a report online of qualifying contributions collected by his campaign during the period commencing on November 1, 2015 and ending on November 30, 2015 (the "November QC Report").⁷

22. The November QC Report reflected the receipt of \$1,299 of qualifying contributions from 69 contributors, for a total of \$2,659 in qualifying contributions. *Id.*

23. On January 1, 2016, Benjamin submitted a report online of qualifying contributions collected by his campaign during the period commencing on December 1, 2015 and ending on December 31, 2015 (the "December QC Report").⁸

24. The December QC Report reflected the receipt of \$4,045 of qualifying contributions from 85 contributors, for a total of \$6,704 in qualifying contributions. *Id.*

⁵ SEC Record at Ex. W.

⁶ SEC Record at Ex. X.

⁷ SEC Record at Ex. Y.

⁸ SEC Record at Ex. Z.

25. On January 31, 2016, Benjamin submitted an amended report online of qualifying contributions collected by his campaign during the period commencing on December 1, 2015 and ending on December 31, 2015 (the "Amended December QC Report")⁹.

26. The only difference between the Amended December QC Report and the December QC Report is an additional \$10 qualifying contribution, raising the total amount of qualifying contributions collected to \$6,714. *Id.*

27. On February 1, 2016, Benjamin submitted a report online of qualifying contributions collected by his campaign during the period commencing on January 1, 2016 and ending on January 31, 2016 (the "January QC Report")¹⁰.

28. The January QC Report reflected the receipt of \$34,797 of qualifying contributions from a total of 409 contributors, for a total of \$41,511 in qualifying contributions. *Id.*

29. Of those amounts, 113 contributors provided \$10,466 on Friday, January 29 and 178 provided \$15,702 on January 30, the last day of the "qualifying period."

30. At least 192 of the qualifying contributions submitted with the January QC Report were made online *and did not contain a handwritten signature. The handwritten signatures are needed to investigate and verify credibility of the donor and is required by Statute.*

31. In total, Justice Benjamin submitted 583 contributions, totaling \$41,511, which he sought to be considered "qualifying contributions."

32. The statutory deadline for Benjamin to submit his Application for Certification was February 2, 2016.

⁹ SEC Record at Ex. AA.

¹⁰ SEC Record at Ex. BB.

33. Justice Benjamin's campaign manager, Darrell Shull, submitted an Application for Certification sworn by Justice Benjamin via email at 4:55 p.m. on February 2, 2016. Circuit Court Hearing Ex. E, SEC Record Ex. Q, and Petitioner's Supplement at Ex. PP.

34. The Application for Certification attached to the 4:55 p.m. email was time-stamped at 5:09 p.m. on February 2, 2016.

35. Justice Benjamin's sworn Application for Certification stated that his "campaign has complied with and will continue to comply with all requirements set forth in the W. Va. Code throughout the applicable campaign." SEC Record Ex. Q.

36. Justice Benjamin's sworn Application for Certification further stated that he had "complied with the contribution restrictions of W. Va. Code § 3-12-1 through § 3-12-16..." *Id.*

37. At 6:18 p.m. on February 2, 2016, Timothy Leach, Solicitor to the West Virginia State Election Commission, responded to Mr. Shull, asking, "Does the candidate wish to certify that he has met all requirements of the code before obtaining the confirmation signatures?" Circuit Court Hearing Ex. E.

38. Mr. Shull responded at 6:22 p.m., to "Please stand by - I am speaking with legal counsel now." *Id.*

39. The Secretary of State presented Justice Benjamin's sworn Application for Certification that was time-stamped at 5:09 p.m. to the SEC as the official copy. *See* SEC Record at Ex. E.¹¹

40. On February 2, 2016, Ms. Walker challenged 154 of the contributions Justice Benjamin sought to be considered "qualifying contributions" pursuant to W. Va. Code § 3-12-

¹¹ The Court ruled from the bench and on the trial court record and so FINDS that the Secretary of State and the SEC had discretion within the custom and practice and option of extending office hours at election time in the Secretary of State's Office to accept E-mail stamped at 5:09 P.M. on February 2, 2016 under the facts of this case.

10(g), which encompassed certain qualifying contributions Benjamin had received prior to January 2016. SEC Record at Ex. R.

41. Ms. Walker included with her challenge a separate "Qualifying Contribution Challenge Form" that had been provided by the Secretary of State for each challenged qualifying contribution identifying the specific alleged deficiency, including receipts of certain qualifying contributions that were made online but did not have a handwritten signature. *Id.* at Ex. T.

42. Ms. Walker also stated that, "West Virginia Code § 3-12-8 requires that all exploratory contributions be reported. [Benjamin] has not reported any exploratory contributions. However, upon information and belief, at least three fundraising events for the benefit of the Candidate were held during the Exploratory Period." *Id.* at Ex. R.

43. On February 1, 2016 at 4:47 p.m., Benjamin filed the receipts supporting the qualifying contributions reported on the January QC Report. *Id.* at V.

44. Ms. Walker was provided a copy of those receipts by the Secretary of State's office on February 2, 2016.

45. On February 3, 2016, Ms. Walker challenged 365 contributions that she was provided on February 2nd, including receipts of certain contributions that were made online but did not have a handwritten signature. *Id.* at Ex. S.

46. Ms. Walker included with her challenge a separate "Qualifying Contribution Challenge Form" for each challenged qualifying contribution identifying the specific alleged deficiency, including her challenge to those receipts of certain qualifying contributions that were made online but did not have a handwritten signature. *Id.* at Ex. U.

47. On February 3, 2016, the SEC convened to review the 154 challenges filed by Walker on February 2nd. SEC Record at Ex. E.

48. Among others, Ms. Walker challenged the electronic qualifying contributions of Delligati, Harrington, Reed, J. Charnock and Bell because the receipt did not contain a handwritten signature. *Id.* at Exs. T and E (202:1-281:21).

49. **The SEC voted to sustain Ms. Walker's challenge because the qualifying contributions received electronically did not have a handwritten signature, as prescribed by W. Va. Code § 3-12-9(b)(2). *Id.* at Ex. E (202:1-281:21)**

50. On February 4, 2016, the SEC convened to review the 365 challenges brought by Ms. Walker on February 3rd in response to the receipts submitted by Justice Benjamin on February 1st and received by Ms. Walker on February 2nd.

51. **Among the 365 challenged, at least 192 of those contributions were electronic qualifying contributions that did not contain a handwritten signature, the same issue the SEC decided the day before was a fatal defect. SEC Record at Exs S. U and V.**

52. **The validity of handwritten signatures of the donors is an essential, non-discretion part of this Program. It goes to the heart of accountability, integrity and confidence in this election Funding Program. W. Va. Code § 3-12-2**

53. The SEC refused to entertain the merits of any of Walker's 365 challenges because the Secretary of State had decided on the evening of February 3rd that Walker was required to include a copy of the receipt for the respective challenged contribution, along with Secretary of State's "Qualifying Contribution Challenge Form" that provided the specific basis for each challenge. SEC Record at Ex. F (39:20-40:3; 83:9-16; 88:14-23; 302:24-303:10).

54. Those same receipts at issue were at all times in the custody, control and possession of the Secretary of State.

55. The SEC voted to reconsider its decision to sustain the challenge to the qualifying contributions of Delligati, Harrington, Reed, J. Charnock, and Bell as the Justice Benjamin had obtained and submitted a physical signature for each of these contributors before the end of the qualifying period, which was February 2nd. *Id.* at (117:23-118:6).

56. Those physical signatures, however, were apparently not made part of the record in this matter.

57. The record contains no evidence that Benjamin submitted handwritten signatures with the receipts for the 192 qualifying contributions reported on February 1st before February 2nd, the end of the qualifying period.

58. On February 5, 2016, the Secretary of State's office represented to the SEC that 512 of the 583 contributions that Benjamin sought to be considered "qualifying contributions" satisfied the statutory requirements of W. Va. Code §3-12-9. SEC Record at Ex. G (22-23).

59. By deduction, the Secretary of State's representative's representation to the SEC had to include the 192 qualifying contributions received online that did not contain a handwritten signature.

60. As of February 2, 2016, the end of the "qualifying period," Justice Benjamin's campaign failed to file any report conveying any exploratory contributions or receipts.

61. On February 5, 2016, Justice Benjamin's representative requested an exemption from the electronic filing requirement. SEC Record at Ex. G (5-21); Ex PP (February 5, 2016 email from Mr. Shull to Mr. Leach sent at 12:10 p.m.).

62. The SEC granted the hardship exemption allowing Benjamin until February 10, 2016 to file the exploratory reports. *Id.*

63. On February 8, 2016, Benjamin filed an exploratory period summary report showing that he had raised \$9,950 during the exploratory period, including \$200 from West Virginians for Coal on April 29, 2015 and \$500 from the First Energy Political Action Committee on April 17, 2015 (*Id.* at Ex. CC); monthly exploratory reports for September (*Id.* at Ex. DD); and exploratory contribution receipts (Ex. GG).

64. On February 9, 2016, Benjamin filed an amended exploratory period summary report (Ex. EE); amended monthly reports (Ex. FF); amended exploratory contribution receipts (Ex. HH); and documentation indicating that Benjamin returned the exploratory contributions he had retained from the two political action committees (Ex. II).

65. On February 10, 2016, the SEC convened to consider Justice Benjamin's Application for Certification. Ex. KK.

66. Justice Benjamin's representative offered SEC Record Ex. LL in support of the request for the application of the hardship exemption to the filing of the exploratory period paperwork.

67. Ms. Walker's representative offered SEC Record Ex. MM in support of her opposition to the application of the hardship exemption to the filing of the exploratory period paperwork.

68. **The SEC voted to deem the exploratory summary report, the monthly exploratory period reports and the exploratory contributions receipts filed timely. SEC Record at Ex. KK (30-33).**

69. On February 10, 2016, the SEC voted to certify Benjamin pursuant to W. Va. Code §3-12-10(b) to receive public campaign financing funds. SEC Record at KK (40).

70. The Secretary of State immediately thereafter notified the Auditor and Treasurer that the SEC had authorized the disbursement of the public funds. Record at Ex. OO.

This Review Petition

1. On February 16, 2016, Ms. Walker filed her *Petition for Judicial Review of the February 10, 2016 Decision of The West Virginia State Election Commission Certifying Brent D. Benjamin Pursuant to W. Va. Code § 3-12-10* (the "Petition") and *Application for Stay* (the "Application for Stay").

2. Through the Petition, Ms. Walker appeals the SEC's February 10, 2016 decision certifying Benjamin pursuant to W. Va. Code § 3-12-10 on grounds that Benjamin:

- (i) failed to timely file reports and receipts for exploratory contributions pursuant to W. Va. Code § 3-12-8(d) and was not entitled to a hardship exemption extending the strict deadline set forth in the statute to file those reports and receipts;
- (ii) failed to timely file an Application for Certification pursuant to W. Va. Code § 3-12-10(a) and CSR 146-5-6.1; and
- (iii) failed to meet the threshold five hundred qualifying contributions for certification pursuant to W. Va. Code § 3-12-9(c).

3. As part of her Application for Stay, Ms. Walker sought an order preventing Benjamin from expending the state campaign finance funds until her Petition could be decided on the merits.

4. Justice Benjamin filed a response in opposition to the Application for Stay on February 24, 2016.

5. Justice Benjamin filed a response in opposition to the Petition on February 25, 2016.

6. On February 26, 2016, the Circuit Court held a hearing, lasting three hours more or less, on Ms. Walker's Petition. All counsel was present and appeared at the hearing.

Conclusions of Law

1. **Legislative rules have the force and effect of law and must be enforced as written.** *See, e.g., Swiger v. UGI/AmeriGas, Inc.*, 216 W. Va. 756, 763, 613 S.E.2d 904, 911 (2005) (“[A] regulation that is proposed by an agency and approved by the Legislature is a ‘legislative rule’ as defined by the State Administrative Procedures Act, W. Va. Code, 29A-1-2(d) [1982], and *such a legislative rule has the force and effect of law.*”) (emphasis added) (quoting *Smith v. West Virginia Human Rights Comm’n*, 216 W.Va. 2, 602 S.E.2d 445 (2004)).

2. **Further, “[a]n administrative board must abide by its own rules and the legislative mandates.”**¹²

¹² *Tasker v. Mohn*, 165 W. Va. 55, 65, 267 S.E.2d 183, 189 (1980) (citing *Trimboli v. Board of Education of Wayne County, W.Va.*, 163 W. Va. 1, 254 S.E.2d 561 (W. Va. 1979)); *see also State ex rel. Barker v. Manchin*, 167 W. Va. 155, 169, 279 S.E.2d 622, 631 (1981) (“When the Legislature delegates its rule-making power to an agency of the Executive Department..., it vests the Executive Department with the mandatory duty to promulgate and to enforce rules and regulations. Once the executive officer or agency has made and adopted valid rules and regulations pursuant to the grant of the legislative powers, they take on the force of statutory law.”).

3. “[A] properly promulgated legislative rule [] can be ignored only if the agency has exceeded its constitutional or statutory authority or is arbitrary or capricious.” *Appalachian Power Co. v. State Tax Dep’t.*, 195 W.Va. 573, 466 S.E.2d 424 (1995).

4. Thus, together, *the statute and the rules set forth the requirements that a candidate must satisfy in order to be certified by the SEC as eligible to receive public campaign financing under the Program.*

5. The statute establishes an exploratory period “during which a participating candidate may raise and spend exploratory contributions to examine his or her chances of election and to qualify for public campaign financing” under Article 12. *See* W. Va. Code § 3-12-3(5).

6. “The exploratory period begins on January 1 the year before the election in which the candidate may run for Justice of the Supreme Court of Appeals and ends on the last Saturday in January of the election year.” *See id.*

7. An individual candidate’s filing of his or her Declaration of Intent to Participate marks the end of the exploratory period. *See* W. Va. Code § 3-12-3(4) (defining “exploratory contribution” as “a contribution of no more than \$1,000 made by an individual adult, including a participating candidate and members of his or her immediate family, during the exploratory period *but prior to filing the declaration of intent.*”) (emphasis added).

8. Pursuant to W. Va. Code § 3-12-8(d), “[a]t the beginning of each month a participating or certified candidate or his or her financial agent shall report all exploratory contributions, expenditures and obligations along with all receipts for contributions received during the prior month to the Secretary of State. Such reports shall be filed electronically.”

9. Pursuant to W. Va. Code § 3-12-13(c), “[n]o later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Secretary of State on appropriate forms a summary of... (1) All exploratory contributions received and funds expended or obligated during the exploratory period together with copies of any receipts not previously submitted for exploratory contributions.” *See also* CSR § 146-5-11.4.

10. **A candidate may not be certified if s/he does not comply with these reporting obligations.** *See* W. Va. Code § 3-12-10(b)(5).

11. Justice Benjamin’s “exploratory period” for the election began on no later than February 18, 2015 and ended on September 11, 2015, when his honor signed his Declaration of Intent to Participate. *See* W. Va. Code §§ 3-12-3(4), (5).

12. As such, from February 18, 2015 through and until September 11, 2015, Justice Benjamin was entitled to seek “exploratory contributions” “to examine his [] chance of election and to qualify for public financing for public financing” and was required to electronically file with the Secretary of State reports of those contributions including underlying receipts on a monthly basis. *See* W. Va. Code §§ 3-12-3(5), 3-12-8(d); *see also* CSR 146-5-11.3.

13. Justice Benjamin did in fact receive exploratory contributions during the exploratory period on March 3, April 20, 27, 29, May 20, June 22, July 21 and July 22, 2015, but failed to file any exploratory period monthly reports at the beginning of the month following receipt of such contribution.

14. The Justice or his campaign failed to comply with the deadlines set forth in W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3 because the Justice and/or his campaign did not timely file reports of exploratory contributions until February 8, 2016.

15. The Justice was obligated to file an exploratory period report no later than October 1, 2015, the beginning of the month following his September 11, 2015 Declaration of Intent to Participate, an unequivocal statement of his intent to receive public campaign financing.

16. Under West Virginia Supreme Court precedent, this Court must strictly enforce the reporting deadlines set forth in W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3.¹³

17. Strict adherence to deadlines related to political campaigning activity is paramount because, “[o]therwise, the actions of the Secretary of State in that regard would be subject to constant allegations of arbitrariness or favoritism.” *Brady*, 176 W. Va. at 574, 346 S.E.2d at 550. Nothing could be so political as running for public office and the method by which and from what sources campaigns are funded.

18. At the latest, once Benjamin became a “participating candidate” on September 11, 2015, he was required to file an exploratory report no later than October 1, 2015; otherwise, the entire statutory scheme surrounding the exploratory contribution period would be rendered meaningless, and each part of a statute must be given effect. *Feroletto Steel Co. v. Oughton*, 230 W. Va. 5, 9, 736 S.E.2d 5, 9 (2012).

¹³ See, e.g., *Brady v. Hechler*, 176 W. Va. 570, 571-72, 346 S.E.2d 546, 547-48 (1986) (granting mandamus relief directing the Secretary of State to strike a candidate from the ballot whose certificate of candidacy for nomination was one day late and explaining that, “[i]t is generally and almost universally held that statutory provisions in election statutes, requiring that a certificate or application of nomination be filed with a specified officer within a stipulated period of time, are mandatory.”); *Styl. Pt. 3, State ex rel. Baker v. Bailey*, 152 W. Va. 400, 163 S.E.2d 873 (1968) (“[w]here a statute provides for a thing to be done in a particular manner or by a prescribed person or tribunal it is implied that it shall not be done otherwise or by a different person or tribunal.”); *State ex rel. Vernet v. Wells*, 87 W. Va. 275 (1920) (striking candidates from local non-partisan ballots who had not filed certificates of nominations in time); see also *Helton v. Reed*, 219 W. Va. 557, 561, 638 S.E.2d 160, 164 (2006) (explaining tax deadlines must be strictly enforced); *State ex rel. Clark v. Blue Cross Blue Shield of W. Virginia, Inc.*, 195 W. Va. 537, 542, 466 S.E.2d 388, 393 (1995) (“[S]trict compliance with all filing requirements is the rule in insurance insolvency cases.”). *Humble Oil & Refining Company v. Lane*, 152 W. Va. 578, 165 S.E.2d 379 (1969) (internal quotations omitted) (“[S]tatutes of limitations are favored in the law and cannot be avoided unless the party seeking to do so brings himself strictly within some exception. It has been widely held that such exceptions are strictly construed and are not enlarged by the courts upon considerations of apparent hardship.”).

19. To be certified under Article 12, a candidate must have “met all other requirements of [Article 12],” including the reporting requirements set forth in W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3. *See* W. Va. Code § 3-12-10(b)(5).

20. Because Justice Benjamin did not meet the reporting requirements set forth in W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3, the SEC’s certification was clearly erroneous and is hereby be **REVERSED** by this Court.

a. The Hardship Exemption

21. Counsel for Justice Benjamin and his campaign asserts that the Justice or his campaign were *physically unable* to submit such reports and receipts because the Secretary of State’s online campaign finance reporting system was not equipped to accept the exploratory period reports because he had initial registered as a “non-participating candidate.” *See* SEC Record at Exs. G, KK.

22. Accordingly, on February 5, 2015, Justice Benjamin requested a “hardship exemption” from the electronic filing obligation.

23. West Virginia Code § 3-12-8(d) provides as follows:

(d) *At the beginning of each month a participating or certified candidate or his or her financial agent shall report all exploratory contributions, expenditures and obligations along with all receipts for contributions received during the prior month to the Secretary of State. Such reports shall be filed electronically: Provided, That a committee may apply for an exemption in case of hardship pursuant to subsection (c) of section five-b, article eight of this chapter. If the candidate decides not to run for office all unspent or unobligated exploratory contributions shall be sent to the State Election Commission for deposit in the fund. If the candidate decides to run for office as a nonparticipating candidate the unspent or unobligated exploratory contributions shall be used in accordance with articles eight and twelve of this chapter.*

24. In reviewing this statutory provision, the Court is guided by the basic rules of statutory construction¹⁴.

25. "The primary rule of statutory construction is to ascertain and give effect to the intention of the Legislature."¹⁵

26. "A statutory provision which is clear and unambiguous and plainly expresses the legislative intent will not be interpreted by the courts but will be given full force and effect."¹⁶

27. The Court finds that W. Va. Code § 3-12-8(d) clearly and unambiguously applies to the *form* or *manner* in which a candidate files his/her receipts (*i.e.*, electronically or otherwise) and does not affect the *timing* of that filing.

28. As a result, the hardship exemption would only apply had the issue with the electronic filing become known on February 5, 2015.

29. The facts, however, clearly show that Justice Benjamin and the Secretary of State's office knew of the electronic-filing issue early as October 1, 2015. *See* Circuit Court Hearing Ex. C.

30. Moreover, the facts in this case show that Justice Benjamin had an electronic copy of the Secretary of State's West Virginia Supreme Court of Appeals PCF Monthly Report as early as October 1, 2015. *See id.*

¹⁴ *See Martin v. Hamblet*, 230 W. Va. 183, 187, 737 S.E.2d 80, 84 (2012).

¹⁵ *Id.* at 186 and at 82.

¹⁶ *Id.* (citations omitted). "In other words, where the language of a statutory provision is plain, its terms should be applied as written and not construed." *Id.* (citations and internal quotations omitted); *State v. General Daniel Morgan Post No. 548, V.F.W.*, 144 W.Va. 137, 145 107 S.E.2d 353, 358-59 (1959) ("When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.").

31. Indeed, Benjamin used that form to file his initial qualifying contribution report, with no objection from the Secretary of State. *Id.*

32. There was nothing at all preventing Justice Benjamin or his campaign to use the same very form to timely file the exploratory period report as early as October 1, 2015, but failed to do so, as required by law.

33. **Justice Benjamin's failure to file the exploratory monthly reports was not attributable to an electronic "glitch," rather neglect to which the hardship exemption does not apply.**

34. Accordingly, the hardship exemption did not apply and the SEC was clearly erroneous in granting Justice Benjamin a hardship exemption extending the deadline for Benjamin to file his statutorily-required exploratory reports, with no precedent, regulations or statute allowing same.

35. The SEC also relied upon what was described as a "catch-all" provision of W. Va. Code § 3-12-13(c) to extend the filing deadline for his exploratory period report from October 1, 2015 to the end of the qualifying period, in this case February 2, 2015. *See* SEC Record at Ex. G.

36. The SEC's reliance on Section 13(c) to deem the late-filed exploratory monthly reports timely was clearly erroneous as a matter of law.

37. W. Va. Code §3-12-13(c) provides as follows,

(c) No later than two business days after the close of the qualifying period, a participating candidate or his or her financial agent shall report to the Secretary of State on appropriate forms a summary of:

(1) All exploratory contributions received and funds expended or obligated during the exploratory period together with

copies of any receipts not previously submitted for exploratory contributions; and

(2) All qualifying contributions received and funds expended or obligated during the qualifying period together with copies of any receipts not previously submitted for qualifying contributions.

38. The precursor section of W. Va. Code §3-12-13, specifically section (a), provides that “[p]articipating candidates and certified candidates shall comply with this section *in addition to any other reporting required by this chapter.*” (emphasis added).

39. “[A]ny other reporting required by this chapter” includes the reporting required by Section 3-12-8(d).

40. W. Va. Code §3-12-13(c), therefore, applies only to the candidates filing of a *final* report and does not affect, displace or otherwise impact the candidate’s obligation to file monthly reports as required by the statute, including reports of exploratory contributions pursuant to Section 3-12-8(d).

41. The final reporting requirements of Section 13(c) cannot be read to eliminate the independent reporting requirements of Section 3-12-8(d).

42. “A cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute.” *Feroletto Steel Co. v. Oughton*, 230 W. Va. 5, 9, 736 S.E.2d 5, 9 (2012).

43. Applying W. Va. Code § 3-12-13(c) as permitting candidates to file exploratory reports outside of the deadline established by W. Va. Code § 3-12-8(d) would undermine the letter and intent of W. Va. Code § 3-12-8(d).

44. The failure of the Justice Benjamin campaign to comply with W. Va. Code §§ 3-12-3(5), 3-12-8(d) and CSR 146-5-11.3, and was not entitled to a hardship exemption to

belatedly file those reports, the SEC's decision to certify him was clearly erroneous as a matter of face and law.

45. **The requirements relating to qualifying contributions must be satisfied.**

46. The statute creates a qualifying period "during which participating candidates may raise and spend qualifying contributions in order to receive public campaign financing."

See W. Va. Code § 3-12-1(14).

47. Any contributions accepted thereafter are deemed "qualifying contributions" and are subject to the following limitations:

- (i) A candidate may not accept more than one qualifying contribution from a single individual;
- (ii) A qualifying contribution may not be less than \$1 nor more than \$100;
- (iii) The contributions must be made by at least 500 registered voters;
- (iv) At least 10% of the total number of voters contributing must be registered to vote in each Congressional District; and
- (v) The participating candidate must collect at least \$35,000 but not more than \$50,000 in qualifying contributions.

See W. Va. Code § 3-12-9(a); *see also* CSR 146-5-5.1.

48. Each qualifying contribution must be accompanied by a receipt, on forms provided by the SEC, which include the following:

- (i) Printed name of the candidate;
- (ii) The signature of the person who collection the contribution;
- (iii) The contributor's printed name, signature, street address and zip code;
- (iv) The amount of the contribution;
- (v) The date of the contribution;
- (vi) The Congressional District in which the contributor is registered to vote;

- (vii) If contribution is \$25 or more, the contributor's phone number, occupation and name of employer;
- (viii) A statement above the contributor's signature confirming the contributor understands the purpose of the contribution is to assist the participating candidate in obtaining public campaign finance funds, the contribution was made without coercion, and the contributor has not been reimbursed, received or promised anything of value for making the contribution.

See W. Va. Code § 3-12-9(b); see also CSR 146-5-5.4.

49. Justice Benjamin's qualifying period began on September 11, 2015 and ended on January 30, 2016. *See W. Va. Code § 3-12-3(14).*

50. During the qualifying period, Justice Benjamin was entitled to collect "qualifying contributions," subject to certain parameters set forth in W. Va. Code §3-12-9 and CSR 146-5-5 et seq. and was also required to electronically file monthly reports of such contributions with the Secretary of State. *See W. Va. Code §3-12-9(f).*

51. The Secretary of State's office represented to the SEC that Justice Benjamin 512 of the 583 contributions submitted by Justice Benjamin during the qualifying period satisfied the statutory requirements. *See SEC Record at Ex. G (22-23).*

52. Justice Benjamin submitted receipts for at least 192 contributions on February 1st for contributions that were submitted electronically and did not have a handwritten signature, as is required by W. Va. Code § 3-12-9(b)(iii). *See SEC Record at Ex. V.*

53. The SEC had determined during its February 3, 2015 meeting (the previous day) that qualifying contributions submitted electronically without an accompanying handwritten signature were insufficient. *See SEC Record at Ex. E (202:1-281:21)*

54. Without these 192 contributions, Justice Benjamin would not have the requisite 500 qualifying contributions which he was statutorily required to obtain pursuant to W. Va. Code § 3-12-9(a) before the end of the qualifying period, February 2, 2016.

55. To be certified under Article 12, a candidate must timely file an Application for Certification and have “obtained the required number and amount of qualifying contributions as required by section nine of [Article 12].” See W. Va. Code § 3-12-10(b)(2).

56. Because Justice Benjamin did not obtain the required number of qualifying contributions as required by W. Va. Code § 3-12-9(a), the SEC’s certification of Benjamin was clearly erroneous and is hereby **REVERSED**.

57. Ms. Walker received copies from the Secretary of State’s office of receipts of qualifying contributions on the last day of the qualifying period, February 2, 2016, that had been filed by Benjamin late on February 1.

58. Ms. Walker filed challenges to 365 of those receipts on February 3rd, including challenges to 192 of those qualifying contributions that were received by Benjamin electronically, but did not contain a handwritten signature.

59. Ms. Walker included a “Qualifying Contribution Challenge Form” prescribed by the Secretary of State specifying the basis for each challenge. See SEC Record at Ex. U.

60. On the evening of February 3, 2016, the Secretary of State unilaterally decided that Walker was also required to provide “evidence,” which was a copy of the actual receipt for each challenged contribution. See SEC Record at Ex. F.

61. Those same receipts, however, were in the custody, control and possession of the Secretary of State. Id¹⁷.

62. Because Ms. Walker did not also provide the SEC a copy of each receipt that was challenged, the SEC refused to entertain the merits of any of the challenges she brought on February 2nd.

63. This act of the SEC was and clearly erroneous and therefore is hereby
REVERSED.

64. The Secretary of State has a statutory obligation under W. Va. Code § 3-12-10(b) to review and verify that Benjamin's qualifying contributions are legitimate and that they satisfy the statutory requirements set forth in W. Va. Code § 3-12-9.

65. The SEC had ruled the day before that qualifying contributions received electronically must still be accompanied by a handwritten signature.

66. W. Va. Code § 3-12-10(g) provides that "[a]ny person may challenge the validity of any contribution listed by a participating candidate by filing a written challenge with the State Election Commission setting forth any reason why the contribution should not be accepted as a qualifying contribution."

67. Ms. Walker's submission of the Qualifying Contribution Challenge Form complied with the statute.

68. W. Va. CSR §146-5-7.3 provides that "[t]he challenger should attach any evidence, affidavits, or notarized statements to the form." (emphasis added).

¹⁷ The Secretary of State was indispensably intertwined in the executive branch actions in carrying out the requirements of Code 43. The Secretary also was indispensably intertwined in the SEC hearings and challenges to the election laws procedures.

69. The Secretary of State's interpretation of CSR §146-5-7.3 as a mandatory obligation for Ms. Walker to not only file a written challenge, (which she did) but also to provide the SEC a copy of the underlying challenged receipt, a document that was in the SEC's custody, control and possession, was clearly erroneous as a matter of law.

70. The Secretary of State's attempt to shift this burden to Ms. Walker's campaign the night before the hearing was an unfair shifting or placing of responsibility. At the very least, the matter is not spoken to in any previous practice or the statute or rules in place for Finance Program challenges.

71. The SEC's decision to not entertain the merits of Ms. Walker's February 3rd challenges is not and cannot be supported by the facts in this case.

72. This is particularly true considering that at least 192 of the qualifying contributions challenged by Ms. Walker should not have counted under the SEC's own interpretation of W. Va. Code §3-12-9, had the merits been considered.

RULING

1. Justice Benjamin and/or his campaign did not satisfy the requirements relating to filing an application for certification pursuant to W. Va. CSR 146-5-6.1

2. The Application for Certification must state that the candidate:

- (i) Has signed and filed a declaration of intent as required by section seven of this article;
- (ii) Has obtained the required number and amount of qualifying contributions as required by section nine of this article;
- (iii) Has complied with the contribution restrictions of this article;

- (iv) Is eligible, as provided in section nine, article five of this chapter, to appear on the nonpartisan judicial election ballot; and
- (v) Has met all other requirements of this article.

See *id.*

3. As discussed above, Justice Benjamin or his campaign did not meet “all other requirements of [Article 12].”

4. Justice Benjamin failed to file exploratory reports as required under W. Va. Code §§ 3-12-3(5) and 3-12-8(d)

5. The hardship exemption did not relieve Justice Benjamin of his obligation to file those reports as early as October 1, 2015.

6. Justice Benjamin failed to obtain the required number of qualifying contributions because at least 192 of the 512 of the qualifying contributions that the Secretary of State’s office represented to the SEC were electronic contributions that did not contain a handwritten signature, a requirement that the SEC had already ruled during its February 3rd meeting was required.

7. The SEC’s certification of Justice Benjamin was clearly erroneous and must be **REVERSED** because it directly violated Walker’s constitutional rights to free speech and substantive due process under the First and Fourteenth Amendments of the United States Constitution. See U.S. Const. amend. I, amend XIV, § 1¹⁸

¹⁸Substantive due process protects a citizen from arbitrary government action which infringes upon her fundamental rights. See *United States v. Salerno*, 481 U.S. 739, 746 (1987); *Rochin v. California*, 342 U.S. 165, 172 (1952) and *Palko v. Connecticut*, 302 U.S. 319, 325–326 (1937)); *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 779 (1978) (explaining that substantive due process applies to the fundamental right to free speech); *State ex rel. Loughry v. Tennant*, 229 W. Va. 630, 732 S.E.2d 507 (2012) (explaining that campaign expenditures in judicial elections warrant constitutional protections as a form of free speech and government involvement in this area warrants the strictest of scrutiny).

8. The SEC, as a “creature” of the state of West Virginia, is a state actor within the meaning of the Fourteenth Amendment and is held to that Amendment’s standards¹⁹.

9. The First Amendment’s “fullest and most urgent application [is] to speech uttered during a campaign for political office.”²⁰

10. By certifying Justice Benjamin, notwithstanding his failure to meet the clear and unambiguous statutory requirements and deadlines, including the SEC’s decision to entertain the merits of Ms. Walker’s February 3 challenges for the reasons set forth above, the SEC’s decision caused public campaign monies to be improperly injected in to the campaign for Supreme Court.

11. For all of the foregoing reasons, the SEC’s decision to certify Benjamin as eligible to receive public campaign financing from the Program is hereby **REVERSED**.

Conclusory Ruling

The SEC’s certification has prejudiced the substantial rights of Ms. Walker because the administrative findings, conclusions, decisions and order are: (1) in violation of constitutional and statutory provisions; (2) and in excess of the statutory authority; (3) were made upon unlawful procedures; (4) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; and (5) are characterized by abuse of discretion or clearly unwarranted exercise of discretion. For these reasons, this case is **REVERSED**.

A complete record has been made below and in this Court and, along with all exhibits is prepared for immediate review and all objections and exceptions to this Order and hereby preserved.

¹⁹ See U.S. Const. amend. XIV, § 1; *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943). The First Amendment right to freedom of speech also extends to the states. *Gitlow v. New York*, 268 U.S. 652, 666 (1925).

²⁰ *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 339 (2010) (internal citations omitted).

The Clerk of this Court is ORDERED to send certified copies of this ORDER to all
counsel of record.

Jonathan R. Marshall (WV Bar #10580)
Benjamin Bailey (WVSB No. 200)
Maryl C. Sattler (WVSB #11733)
Counsel for Respondent Justice Benjamin
BAILEY GLASSER, LLP
209 Capital Street
Charleston, West Virginia 25301

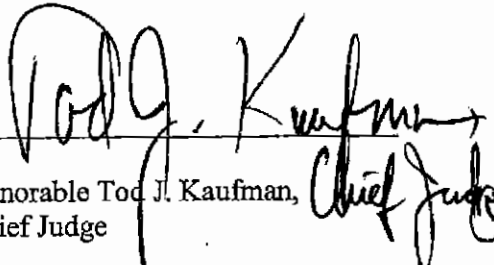
Thomas C. Ryan (WVSB #9883)
Counsel for Petitioner Walker
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, Pennsylvania 15222

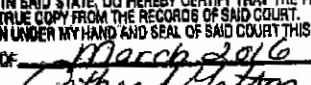
James R. Leslie, Esq.
Jonathan T. Osborne, Esq.
Office of the West Virginia Attorney General
State Capitol
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Charleston, West Virginia 25305

Timothy Leach, Esq.
West Virginia Secretary of State's Office
1900 Kanawha Blvd E. Bldg 1, 157-K
Charleston, West Virginia 25305

Richard L. Gottlieb (WV Bar # 1447)
Spencer D. Elliott (WV Bar # 8064)
Counsel for Elections Committee
Lewis Glasser Casey & Rollins, PLLC
300 Summers Street, Suite 700
PO Box 1746
Charleston, West Virginia 25326

ENTER this ORDER this 4th day of March, 2016.


Honorable Todd J. Kaufman,
Chief Judge

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 4th
DAY OF March 2016
 CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
JA002095 *ultra*

BAILEY GLASSER LLP

209 Capitol Street
Charleston, WV 25301
Tel: 304.345.6555
Toll Free: 877.852.0342
Fax: 304.342.1110

March 7, 2016

Cathy Gaston, Clerk
Circuit Court of Kanawha County
111 Court Street
Charleston, WV 25301

Re: Elizabeth D. Walker v. Natalie E. Tennant, et, al.
Civil Action No. 16-AA-17

Dear Ms. Gaston:

Please find enclosed, for filing in the above-referenced matter, the original of Application for a Stay of March 4, 2016 Order.

Should you have any questions, please feel free to contact me.

Sincerely,



Alisa Montgomery
Paralegal

/ajm

Enclosures

cc: Honorable Tod Kaufman
Thomas C. Ryan, Esq.
James R. Leslie, Esq./Jonathan T. Osborne, Esq.

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

NATALIE E. TENNANT, ex-officio,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

Application for a Stay of March 4, 2016 Order

Pursuant to Rule 28(a) of the West Virginia Rules of Appellate Procedure, Respondent Justice Brent Benjamin requests that the Court stay its March 4, 2016 Order reversing the decision of the State Election Commission.

Rule 28(a) provides: "Any person desiring to present an appeal under Rule 5 may make an application for a stay of proceedings to the circuit court in which the judgment or order desired to be appealed was entered. . . ." W. Va. R. App. P. 28(a).

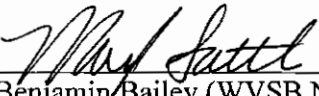
This case involves the interpretation of a new statute for which there is little precedent. It involves issues of first impression that are sharply contested by both parties. The Benjamin campaign maintains that the State Election Commission did not abuse its discretion in certifying Justice Benjamin for public financing. Justice Benjamin will therefore be filing an immediate appeal to the Supreme Court of Appeals of West Virginia, seeking to have the State Election Commission's decision in this case reinstated.

FILED
2016 MAR -7 PM 3:27
CATHY S. BARNES
KANAWHA COUNTY CIRCUIT COURT

Due to the time-sensitive nature of the issues in this case and potential financial ramifications, Justice Benjamin intends to seek an expedited briefing and hearing schedule to resolve the appeal as quickly as possible.

For these reasons, Justice Benjamin asks the Court to stay its March 4, 2016 Order reversing the decision of the State Election Commission until the appeal has been resolved. A proposed order is attached to this motion.

Justice Brent D. Benjamin
By counsel.


Benjamin Bailey (WVSB No. 200)
Jonathan R. Marshall (WV Bar #10580)
Maryl C. Sattler (WVSB #11733)
BAILEY GLASSER, LLP
209 Capital Street
Charleston, WV 25301
T: (304) 340-2295
F: (304) 342-1110

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
the Supreme Court of Appeals of West
Virginia,

Petitioner,

v.

Civil Action No.: 16-AA-17
Judge Tod Kaufman

NATALIE E. TENNANT, ex-officio,
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Respondents.

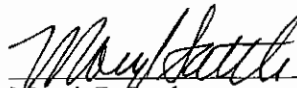
CERTIFICATE OF SERVICE

Counsel for Respondent Justice Brent D. Benjamin does hereby certify that the foregoing proposed Application for a Stay of March 4, 2016 Order was served this 7th day of March 2016, by sending a true exact copy via facsimile and mail, to the following:

Thomas C. Ryan (WVSB #9883)
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500
Fax: (412) 355-6501

James R. Leslie, Esq.
Jonathan T. Osborne, Esq.
Office of the West Virginia Attorney General
State Capitol
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Charleston, WV 25305
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Fax: (304) 558-0140

Richard L. Gottlieb, Esq.
Spencer D. Elliott, Esq.
Lewis Glasser Casey & Rollins, PLLC
300 Summer Street, Suite 700
P.O. Box 1746
Charleston, WV 25326
Tel: (304) 345-2000
Fax: (304) 343-7999



Mary C. Battler

K&L GATES

March 9, 2016

Thomas C. Ryan
Thomas.ryan@kigates.com
T 412-355-8335

Via Facsimile (304-357-0473)

The Honorable Cathy S. Gatson
Circuit Clerk
Circuit Court of Kanawha County
111 Court Street
Charleston, WV 25301

Re: **Walker v. Tennant, Civil Action No. 16-AA-17 (Judge Kaufmann)**

Dear Ms. Gatson:

Kindly please file the enclosed documents in the above-references matter:

- Petitioner Elizabeth D. Walker's Response in Opposition to Respondent Brent D. Benjamin's Application For a Stay of March 4, 2016 Order; and
- [Proposed] Order Regarding Respondent Benjamin's Application for Stay of March 4, 2016 Order.

By copy of this letter, I am contemporaneously providing a courtesy copy to Judge Kaufman's chambers and all counsel of record. Thank you very much for your attention in this matter. Please contact me with any questions.

Respectfully yours,

Thomas C. Ryan

TCR/teh
Enclosures

cc: The Honorable Tod Kaufman, Circuit Court of Kanawha County (via email)
Maryl C. Sattler, Esq. (via email msattler@bailevglasser.com)
Jonathan T. Osborne, Esq. (via email jonathan.t.osborne@wvago.gov)

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for)	
the Supreme Court of Appeals of West)	
Virginia,)	
)	
Petitioner,)	
)	
v.)	
)	No. 16-AA-17
NATALIE E. TENNANT, <i>ex-officio</i> ,)	(Judge Kaufman)
GARY A. COLLIAS, and VINCENT P.)	
CARDI, members of the West Virginia)	
State Election Commission; and BRENT)	
D. BENJAMIN, candidate for the)	
Supreme Court of Appeals of West)	
Virginia,)	
)	
Respondents.)	
)	

**PETITIONER ELIZABETH D. WALKER'S RESPONSE
IN OPPOSITION TO RESPONDENT BRENT D. BENJAMIN'S
APPLICATION FOR A STAY OF MARCH 4, 2016 ORDER**

On March 4, 2016, this Court issued its Order in the *Appeal of Elizabeth D. Walker v. State Election Commission* (the "Order") in which it correctly reversed the West Virginia State Election Commission's (the "SEC") clearly erroneous decision to certify Respondent Benjamin to receive \$483,489.00 in state monies for public campaign financing. Despite this clear ruling, Benjamin now seeks a stay from the Order pending appeal ("Application"), effectively allowing him to retain and continue to spend this nearly half-million dollars for campaign purposes. Benjamin's Application should be denied, or alternatively, if he intends to pursue an appeal, Benjamin should either be ordered to post a bond with the Court in the full amount of \$483,489.00 or otherwise be enjoined from spending the money and be required to provide an accounting to the Court.

As a threshold matter, Benjamin is not entitled to a stay under Rule 28(a) of the West Virginia Rules of Appellate Procedure; rather, the Court should exercise its vested discretion and deny the Application on the merits. There is no reason, compelling or otherwise, why the Court should grant the requested stay and Benjamin cites none in his Application. To the contrary, and as the Court's Order correctly reflects, this case implicates the fairness of democratic elections in West Virginia, the Constitutional rights of voters and candidates, and the impartiality and integrity of and public confidence in the judiciary. To stay the Court's Order would jeopardize and wholly ignore those interests as it would enable Benjamin to retain and presumably spend (or continue to spend) the public campaign monies to which this Court has already determined he is not entitled, effectively rendering the Court's Order a nullity. Benjamin should be ordered to comply with the Order and return the public campaign monies that he has received to the SEC.

Alternatively, if the Court is inclined to grant Benjamin's request for a stay of its Order, Benjamin should be required to provide a bond in the full amount of the public campaign financing that he received, that is, \$483,489.00. Pursuant to Rule 28(c) of the West Virginia Rules of Appellate Procedure, a stay of a circuit court decision may be conditioned upon posting bond or "other appropriate security . . . in such amount and upon such conditions as the court granting the stay feels is proper for the protection of the adverse party." *See* W. Va. R. App. P. 28(c). Rule 28(c) further provides that, "[f]ailure to execute such bond may be grounds for the dismissal of the appeal." *Id.*; *see also Kessel v. Leavitt*, 204 W. Va. 95, 116-17, 511 S.E.2d 720, 741-42 (1998) ("[W]e hold that when a party appeals a lower court's ruling to the Supreme Court of Appeals of West Virginia and he/she is required to post an appeal bond, his/her failure to post such bond will result in the dismissal of that party's appeal and the consequent affirmance, as to that party, of the lower court's ruling."). Mindful that the nearly half-million dollars in

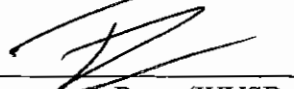
Benjamin's possession is taxpayer money, the Court's exercise of its discretion to require a bond is entirely appropriate, thus ensuring those monies are ultimately recoverable once the Order is affirmed.

Finally, *at a minimum*, if the Court is inclined to grant the stay, Benjamin should be enjoined from spending or otherwise encumbering the monies he has received to ensure that the State will be able to recover said funds once the Order is affirmed. Again, Benjamin's Application effectively would allow him to spend the public campaign finance monies thus rendering the Order a nullity, and ultimately provides this Court no assurance that those monies will be collectible once the Order is affirmed. To effectuate this alternative relief, if the Court is so inclined, Benjamin should be further ordered to provide an accounting of the state monies to provide appropriate assurances to this Court that Benjamin has complied with the Order.

A proposed order addressing each of the alternative relief set forth above is attached.

Dated: March 9, 2016

Respectfully submitted,



Thomas C. Ryan (WVSB #9883)
K&L Gates LLP
210 Sixth Avenue
Pittsburgh, PA 15222
Tel: (412) 355-6500

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

ELIZABETH D. WALKER, candidate for
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v.

NATALIE E. TENNANT, *ex-officio*,
GARY A. COLLIAS, and VINCENT P.
CARDI, members of the West Virginia
State Election Commission; and BRENT
D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
Virginia,

Respondents.

No. 16-AA-17
(Judge Kaufman)

**[PROPOSED] ORDER REGARDING RESPONDENT BENJAMIN'S APPLICATION
FOR STAY OF MARCH 4, 2016 ORDER**

AND NOW, this _____ day of March 2016, in consideration of Respondent Benjamin's
Application for Stay of March 4, 2016 Order and the response filed by Petitioner Walker, it is
HEREBY ORDERED that:

___ The Application for Stay is DENIED and Respondent Benjamin is FURTHER
ORDERED to return the sum of \$483,489.00 to the West Virginia State Election
Commission immediately.

___ The Application for Stay is GRANTED and Respondent Benjamin is FURTHER
ORDERED to post a bond pursuant to Rule 28 of West Virginia Appellate
Procedure in Circuit Court of Kanawha County in the sum of \$483,489.00
immediately.

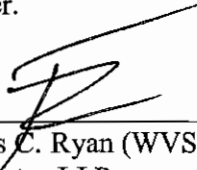
___ The Application for Stay is GRANTED and Respondent Benjamin is FURTHER
ENJOINED from spending any of the sum received from the West Virginia

Public Financing Program Fund, in the sum of \$483,489.00, until further order of this Court, and is FURTHER ORDERED to provide this Court an accounting of any expenditures of said funds to date within three (3) days of the effective date of this Order and every ten (10) days thereafter until final disposition of any appeal of the Court's March 4, 2016 Order.

Entered this _____ day of March, 2016

TOD J. KAUFMAN, JUDGE

This proposed Order was submitted by counsel for Petitioner.



Thomas C. Ryan (WVSB #9883)
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K&L Gates Center
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thomas.ryan@klgates.com

Attorney for Petitioner

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**ELIZABETH D. WALKER, candidate for
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**Civil Action No.: 16-AA-17
Judge Tod Kaufman**

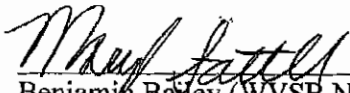
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CARDI, members of the West Virginia
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D. BENJAMIN, candidate for the
Supreme Court of Appeals of West
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Respondents.

NOTICE OF WITHDRAWAL

On March 9, 2016, the West Virginia Supreme Court of Appeals entered an Order placing the appeal of this case on an expedited briefing scheduling and setting oral argument for March 23, 2016. In light of that Order, Respondent Justice Brent D. Benjamin hereby withdraws his Application for a Stay.

Justice Brent D. Benjamin
By counsel.


Benjamin Bailey (WVSB No. 200)
Jonathan R. Marshall (WVSB No. 10580)
Maryl C. Sattler (WVSB No. 11733)
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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**ELIZABETH D. WALKER, candidate for
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**Civil Action No.: 16-AA-17
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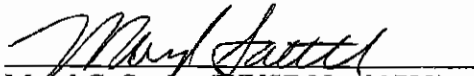
Respondents.

CERTIFICATE OF SERVICE

Counsel for Respondent, Justice Brent D. Benjamin, does hereby certify that the foregoing Notice of Withdrawal was served this March 10, 2016, by sending a true exact via facsimile, to the following:

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300 Summers Street, Suite 700
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Mary C. Sattler (WVSB No. 11733)