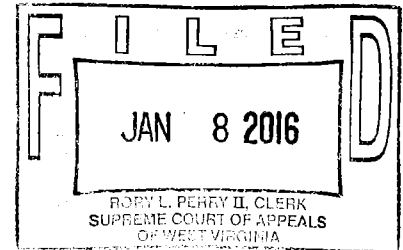


IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA
No. 16-0013



STATE OF WEST VIRGINIA
ex rel. BELINDA BIAFORE, in her capacity as
Chair of the West Virginia State Democratic
Executive Committee, and STEPHEN DAVIS,
LINDA KLOPP, DAVID THOMPSON, LINDA
PHILLIPS, STEPHEN EVANS, and PATRICIA BLEVINS,
each individually, and in their capacity as the
members of the West Virginia Democratic
Executive Committee for the Ninth Senatorial District,

Petitioners,

v.

EARL RAY TOMBLIN, in his capacity as
Governor of the State of West Virginia, and
BEVERLY R. LUND, JUSTIN M. ARVON,
SUE "WAOMI" CLINE, TONY PAYNTER, JOHN DOE,
and JANE DOE, in their in their capacity as the
members of the West Virginia Republican
Executive Committee for the Ninth Senatorial District,

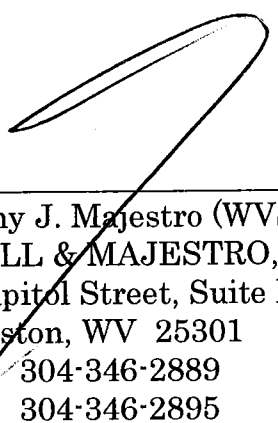
Respondents.

APPENDIX TO
EMERGENCY PETITION FOR A WRIT OF MANDAMUS

Anthony J. Majestro (WVSB 5165)
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CERTIFICATE OF ACCURACY OF APPENDIX CONTENTS

I, Anthony J. Majestro, Counsel for Petitioners, do this 8th day of January, 2016, hereby certify, pursuant to the provisions of Rule 7(c)(2) and Rule 16(3) of the Revised Rules of Appellate Procedure, that the contents of this Appendix are, to the best of my knowledge and belief, accurate copies of the items that I have described in the TABLE OF CONTENTS OF THIS APPENDIX and EMERGENCY PETITION FOR A WRIT OF MANDAMUS to which this Appendix is appended.



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BALLOTPEDIA

*The Encyclopedia of American

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Daniel Hall (West Virginia Senator)

Daniel J. Hall (b. July 26, 1974) is a former Republican member of the West Virginia State Senate, representing District 9 from 2012 to 2016. He served as Majority Whip from 2015 to his resignation on January 4, 2016.^[1]

Hall was due to resign on January 3, 2016, in order to become the state liaison of the National Rifle Association.^[2] However, he later stated that he would remain in office pending clarification on the selection of his successor.^[3] On the morning of January 4, Hall informed Senate leadership that he would resign effective that day.^[4]

Hall switched his party affiliation from Democratic to Republican on November 5, 2014. His party change broke the split majority in the chamber caused by the 2014 election and gave the Republicans a majority.^[5] Because of the party switch, it was not immediately clear which party would be responsible for suggesting possible appointees to Gov. Earl Ray Tomblin (D) following Hall's resignation.^[3]

Hall served in the West Virginia House of Delegates, representing District 22 from 2008 to 2012. He ran as a Republican candidate in 2006.

Biography

Hall attended Southern West Virginia Community and Technical College. He went on to receive his B.A. in secondary education from Marshall University in 1997.

Hall was a teacher for Raleigh County Board of Education from 1997 to 1999. He then worked as a Claims Handler for State Farm Insurance from 1999 to 2005. He has also worked as a claims handler for Nationwide Insurance and as an insurance investigator.^[6]

Committee assignments

2015 legislative session

Contents

- 1 Biography
- 2 Committee assignments
 - 2.1 2015 legislative session
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 - 2.3 2011-2012
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- 3 Issues
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- 10 External links
- 11 References

Daniel Hall



West Virginia State Senate District 9

Former member

Tenure

December 1, 2012 - January 4, 2016

Party Republican

Leadership

Majority Whip, West Virginia State Senate

2015-2016

Prior offices

West Virginia House of Delegates District 22

2009-2012

Education

High school Liberty High School

Bachelor's Marshall University, 1997

Personal

Date of birth July 26, 1974

Place of birth Beckley, West Virginia

Profession Claims Handler,

At the beginning of the 2015 legislative session, Hall served on the following committees:

West Virginia Committee Assignments, 2015 [hide]
• Agriculture and Rural Development, Chair
• Banking and Insurance
• Economic Development
• Education
• Energy, Industry and Mining
• Judiciary
• Labor, Chair

Nationwide

Insurance

Religion

Missionary Baptist

Websites

Campaign website

(<http://www.danielhallwv.com/>)



Is this your profile?
Verify your resume with
CandidateVerification.

2013-2014

At the beginning of the 2013 legislative session, Hall served on the following committees:

West Virginia Committee Assignments, 2013 [show]
--

2011-2012

In the 2011-2012 legislative session, Hall served on these committees:

West Virginia Committee Assignments, 2011 [show]
--

2009-2010

In the 2009-2010 legislative session, Hall served on these committees:

West Virginia Committee Assignments, 2009 [show]
--

Issues

Campaign themes

2012

Hall's website highlighted the following campaign themes:

Support for Our Strong Coal Industries

- Excerpt: "We must diligently work to ensure that our rules and regulations regarding coal production protect our men and women miners by ensuring them stable employment in the safest possible conditions. West Virginia coal has given our country a great domestic resource for energy, and we must continue to lead the nation in this technology."

Volunteer Fire Departments

- Excerpt: "The paid departments have pensions, yet the volunteer departments do not. Providing a pension will not only compensate those who have provided this invaluable service, but also attract and retain new volunteers, ensuring that small towns and communities across our state are protected."

Support for Our Public Teachers

- Excerpt: "Only by working together can a child truly reach his or her potential. When drafting or reviewing education legislation, we must ensure that teachers are given the proper resources and realistic expectations for success, and look for opportunities that put a child's educational experience back into the hands of both the teacher and the parents."

Sponsored legislation

Bills Sponsored By: Daniel Hall**Permitting school nurses to possess and administer opioid antagonists**

The purpose of this bill is to allow school nurses to possess and administer opioid antagonists at school.

2/16/2015: To Health and Human Resources then Judiciary

Recognizing Whitesville, a Turn This Town Around community

Recognizing Whitesville, a Turn This Town Around community

2/23/2015: Immediate consideration

Transferring private investigative and security services from Secretary...

Transferring private investigative and security services from Secretary of State to State Police

2/26/2015: Motion

Elections**2012**

See also: West Virginia State Senate elections, 2012

Hall ran in the 2012 election for West Virginia State Senate, District 9. Hall defeated incumbent Richard Browning in the March 8 primary election and defeated Epp E. Cline in the general election, which took place on November 6, 2012.^{[7][8][9]}

West Virginia State Senate, District 9, General Election, 2012 [hide]				
Party		Candidate	Vote %	Votes
	Democratic	✓ Daniel Hall	53.6%	18,004
	Republican	Epp Cline	46.4%	15,595
Total Votes				33,599
West Virginia State Senate, District 9 Democratic Primary, 2012 [show]				

2010

See also: West Virginia House of Delegates elections, 2010

Hall was elected to the West Virginia House of Delegates District 22. He was one of three candidates running for the two District 22 positions on the ballot in the November 2, 2010, general election. His opponents in the general election were Republican Shawn R. Spears and Democratic incumbent Linda Goode Phillips. The two top vote-getters were elected.^{[10][11]}

West Virginia House of Delegates, District 22 General Election (2010)		
Candidates	Votes	Percent
✓ Linda Goode Phillips (D)	4,357	40.04%
✓ Daniel Hall (D)	3,713	34.12%
Shawn Spears (R)	2,812	25.84%

West Virginia State Senate, District 22 Democratic Primary (2010)		
Candidates	Votes	Percent
✓ Linda Goode Phillips (D)	2,377	48.09%

✓ Daniel Jackson Hall (D)

1,957

39.59%

2008

See also: West Virginia House of Delegates elections, 2008

In 2008, Hall was elected to the West Virginia House of Delegates, District 22. Hall (D) finished with 5,887 votes and Linda Lee Phillips (D) finished with 6,824 votes.^[12]

West Virginia House District 22	
Candidates	Votes
✓ Linda Lee Phillips (D)	6,824
✓ Daniel Hall (D)	5,887

Campaign donors

Comprehensive donor information for Hall is available dating back to 2006. Based on available campaign finance records, Hall raised a total of **\$199,771** during that time period. This information was last updated on July 25, 2013.^{[13][14]}

Daniel Hall's Campaign Contribution History [hide]			
Year	Office	Result	Contributions
2012	West Virginia State Senate, District 9	✓	\$144,432
2010	West Virginia State House, District 22	✓	\$26,470
2008	West Virginia State House, District 22	✓	\$24,949
2006	West Virginia State House, District 27	✗	\$3,920
Grand Total Raised			\$199,771

2012

Hall won election to the West Virginia State Senate in 2012. During that election cycle, Hall raised a total of **\$144,432**.

West Virginia State Senate 2012 election - Campaign Contributions [show]

2010

Hall won re-election to the West Virginia House of Delegates in 2010. During that election cycle, Hall raised a total of **\$26,470**.

West Virginia House of Delegates 2010 election - Campaign Contributions [show]

2008

Hall won election to the West Virginia House of Delegates in 2008. During that election cycle, Hall raised a total of **\$24,949**.

West Virginia House of Delegates 2008 election - Campaign Contributions [show]

2006

Hall lost the election for the West Virginia House of Delegates in 2006. During that election cycle, Hall raised a total of

\$3,920.

West Virginia House of Delegates 2006 election - Campaign Contributions [10/07]

Scorecards

See also: State legislative scorecards and State legislative scorecards in West Virginia

Legislative scorecards are used to evaluate elected public officials based on voting record. Some scorecards are created by political advocacy groups with a focus on specific issues; others are developed by newspapers and are broad in scope. Scorecards are meant to be used as a tool for voters to have a quick picture of whether their views align with a particular legislator's record.

Because scorecards can be specific to particular issues or general to a state's legislative term, each report should be considered on its own merits. Each entity that publishes these reports uses different methodologies and definitions for the terms used.

An overview for scorecards in all 50 states can be found on this page. To contribute to the list of West Virginia scorecards, email suggestions to scorecards@ballotpedia.org (<mailto:scorecards@ballotpedia.org>).

Please see our writing guidelines if you would like to add results from an individual scorecard to this legislator's profile.

2015

In 2015, the West Virginia State Legislature was in session from January 14 through March 14.^[15]

- West Virginians for Life: House (<http://wvforlife.org/wp-content/uploads/2015/06/2015-House-Voting-Records-Final.pdf>) (2013-2015) and Senate (<http://wvforlife.org/wp-content/uploads/2015/06/2015-Senate-Voting-Records-Final.pdf>) (2010-2015)

Legislators are scored on their votes against abortion.

- West Virginia Citizens Against Lawsuit Abuse (http://media.wix.com/ugd/843986_726f3037d984425cb995cd3ec3b73163.pdf)

Legislators are scored on their votes on lawsuit-related legislation.

2014

In 2014, the West Virginia State Legislature was in session from January 8 through March 10.

- Regenerate WV (<http://regeneratwv.org/wp-content/uploads/2014/07/RegenerateScorecard1.pdf>) - House only

Legislators are scored on their votes for or against Regenerate WV's position.

- West Virginia Citizens Against Lawsuit Abuse (http://media.wix.com/ugd/843986_df3cc87b8252422cb6f7101789f855e8.pdf)

Legislators are scored on their votes on lawsuit-related legislation.

- West Virginia Sierra Club (<http://web.archive.org/web/20141126062329/https://westvirginia2.sierraclub.org/content/wv-sierra-clubs-scorecard-identifies-heroes-and-zeroes>)

Legislators are scored on their votes on the Water Resources Protection Act and its amendments.

- American Conservative Union (<http://acuratings.conservative.org/state-rating/2014-west-virginia-state-legislative-ratings/>)

Legislators are scored on their votes on key conservative issues.

Recent news

This section displays the most recent stories in a Google news search for the terms '**Daniel Hall**' 'West Virginia' Senate.

Some of the stories below may not be relevant to this page due to the nature of Google's news

BP Know more information about this profile? Submit a bio

search engine.

Daniel Hall (West Virginia Senator) - Google News Feed (<http://google.com/search?hl=en&gl=us&tbm=nws&q=%22Daniel+Hall%22+%22West+Virginia%22+Senate&um=18>)

- New US dietary guidelines limit sugar, rethink cholesterol - CNN
- US, world stock markets slide as panic in China spreads - Washington Post
- Paris police kill man armed with meat cleaver on Charlie Hebdo anniversary - Reuters
- Powerball Drawing: Clues From Previous Lottery Winners - ABC News
- NYC Settles Lawsuits Over Muslim Surveillance by Police - ABC News
- NOAA Says 2015 Was Second Hottest Year On Record In US - Huffington Post
- Libya's Peace Efforts in Tatters After Deadliest Bomb Kills 50 - Bloomberg
- Syrians starving to death in besieged rebel-held town, medical charity says - Washington Post
- 10 months later, hints of justice emerge for unarmed veteran Anthony Hill ... - New York Daily News
- Gun control in America: How we got here - CNN

See also

- West Virginia State Legislature
- West Virginia State Senate
- West Virginia Senate Committees
- West Virginia Joint Committees
- West Virginia state legislative districts

External links

- Official campaign website (<http://www.danielhallwv.com/>)
- Profile from Open States (<http://openstates.org/wv/legislators/WVL000072/daniel-hall/>)
- Biography from Project Vote Smart (http://votesmart.org/bio.php?can_id=59598)
- Legislative profile from Project Vote Smart (http://votesmart.org/summary.php?can_id=59598)
- Daniel Hall on Facebook (<http://www.facebook.com/pages/Delegate-Daniel-Hall/203522093023966>)
- Campaign Contributions: 2012 (<http://www.followthemoney.org/database/StateGlance/candidate.phtml?c=144277>), 2011 (<http://www.followthemoney.org/database/StateGlance/candidate.phtml?c=118889>), 2008 (<http://www.followthemoney.org/database/StateGlance/candidate.phtml?c=99756>), 2006 (<http://www.followthemoney.org/database/StateGlance/candidate.phtml?c=82037>)

BP Suggest a link

References

1. *West Virginia Legislature*, "Members of the Senate," accessed January 24, 2015 (<http://www.legis.state.wv.us/senate1/roster.cfm>)
2. *Bluefield Daily Telegraph*, "Senator resigns for NRA job," December 30, 2016 (http://www.bdtonline.com/news/senator-resigns-for-nra-job/article_a55a800a-ae9e-11e5-a596-07a33ec4c236.html)
3. *Associated Press*, "W.Va. senator won't resign until replacement process clear," December 30, 2015 (<http://www.newsandsentinel.com/page/content.detail/id/1008617/W-Va--senator-won-t-resign-until-replacement-process-clear.html>)
4. *WV MetroNews*, "Dems, GOP spar over Senator's replacement," January 4, 2016 (<http://wvmetronews.com/2016/01/04/dems-gop-spar-over-senators-replacement/>)
5. *wchstv.com*, "BREAKING: State Senator Switches Party Giving GOP Control," November 6, 2014 (<http://www.wchstv.com/news/features/eyewitness-news/stories/State-Senator-Switches-Party-Giving-GOP-Control-55730.shtml>)

Political offices		
Preceded by Richard Browning (D)	West Virginia State Senate District 9 2012–2016	Succeeded by TBA
Preceded by -	West Virginia House of Representatives District 22 2008–2012	Succeeded by Michel G. Moffatt (R)

Categories: Republican Party | West Virginia | Former member, West Virginia House of Delegates | Former member, West Virginia State Senate | House of Representatives candidate, 2010 | 2010 candidate | 2010 incumbent | 2010 winner | 2012 challenger | State Senate candidate, 2012 | 2012 primary (winner) | 2012 general election (winner) | State House incumbent retired, 2012 | State House running for State Senate, 2012

The Senate of West Virginia
Charleston



SENATOR DANIEL J. HALL
SENATE MAJORITY WHIP
9th SENATORIAL DISTRICT

STATE CAPITOL, ROOM 216-W
304-357-7807

January 3, 2016

President of the Senate
William P. Cole III
Room 229M, Building 1
State Capitol Complex
Charleston, WV 25305

Dear President Cole,

This letter is to inform you of my resignation from the West Virginia State Senate as Senator from the 9th District. My last day being January 3, 2016.

It has been my honor to serve with you while working for the citizens of the great state of West Virginia.

Warmest Regards,

A handwritten signature in black ink, appearing to read "Daniel J. Hall". The signature is stylized with a large, looped "D" and "H".

Daniel J. Hall
Senator-(R)Wyoming
9th District

Turn about -- again

Posted: Tuesday, January 5, 2016 3:00 am

Well, that was a quick turn about. Again.

Last Tuesday, State Sen. Daniel J. Hall, R-Wyoming, announced that he was resigning his Senate seat to take a new job – state liaison with the National Rifle Association. He seemed ready – even eager – to go and become a lobbyist. Of course, he was making the move with “mixed emotions,” but said he was also “excited about helping the NRA continue to advance Second Amendment rights for not just West Virginians, but for all Americans.”

All people need a career or cause they feel passionate about. Sometimes people are extraordinarily lucky and find both in the same job. Sen. Hall seemed to have found his. Good for him, we thought.

But hold your horses. A day later, the senator had changed his mind. Smacking of political gamesmanship, Hall said that he would stay on in the Senate unless Gov. Earl Ray Tomblin appointed a Republican to fill his seat. (So, yes. Hall was issuing an ultimatum to the governor.) Hall seemed to think he knew what Gov. Tomblin would do, too. “They’ll put a Democrat in there and that would be horrible,” Hall said, momentarily forgetting, perhaps, that the citizens of Wyoming Country put him “in there” to serve – as a Democrat. Not just once. But three times – twice to the House, once to the Senate. Perhaps Sen. Hall forgot that the only time he ran for the House as a Republican he was defeated.


Honestly, it sounded to us as if somebody in Charleston yanked his reins and laid out the political calculus of a divided Senate — which stood at 18 Republicans, 16 Democrats. If Hall were replaced by a Democrat, the Senate would be split evenly. If he were to be replaced by a Republican, the Senate would stay under Republican control. So, Sen. Hall pulls up and essentially tells the governor what to do. He was laying down rules of the road. The governor was having none of it.

Now on Monday, Hall says he will go ahead and resign – without attempting to hold anyone hostage. Turns out the NRA pushed him to make a decision. So much for standing on principle.

It’s not like Sen. Hall had never changed his mind. After being elected to the Senate as a Democrat, he switched parties midterm, giving control of the Senate to the Republicans for the first time in 80 years. That’s a lot of history. Wyoming County, too, has its own history, one mostly resting with the election of Democratic candidates of late. But the Republicans dangled the position of majority whip and two chairs of two committees, so Sen. Hall bolted.

In the end, we wish Sen. Hall the very best in his new line of work. Maybe he just wasn’t cut out for politics — no matter a mastery of playing the game. All citizens should demand and expect some

degree of fidelity. No politician should feel bigger than the body they serve or the people he or she represents. Elected politicians are public servants — of, by and for the people. Their business is the public's business. They are not elected to jiggle the system to their own benefit. It's cheap and tawdry — and we expect more from our elected representatives.

 URL: <http://www.wvgazettemail.com/news/20160104/hall-quits-wv-senate-justices-likely-to-rule-on-replacement>

Hall quits WV Senate; justices likely to rule on replacement

By Phil Kabler



Daniel Hall

After wavering last week, Sen. Daniel Hall, R-Wyoming, has followed through on his announcement that he would resign his West Virginia Senate seat to take a job as a state liaison with the National Rifle Association.

Hall submitted his letter of resignation, dated Sunday, to the Senate president, governor and secretary of state on Monday, likely setting up a scenario where the state Supreme Court will be asked to rule on which political party has authority to submit nominees to the governor for his replacement.

“That’s the question the Court will have to determine,” Senate Clerk Clark Barnes said Monday.

As of Monday afternoon, Republicans and Democrats were proceeding with plans for their respective executive committees in the 9th Senatorial District to select nominees for Hall’s replacement.

Hall was elected from the 9th District in 2012 as a Democrat, but he changed his party affiliation to Republican after the November 2014 elections, breaking a 17-17 deadlock and giving Republicans control of the Senate for the first time in 83 years.

Hall was rewarded with the title of majority whip and with appointments as chairman of the Agriculture and Labor committees.

Under state law, when a senator resigns in office, members of the political party executive committee for that district are to submit three nominees to the governor to appoint a replacement.

The state code (3-10-5) pertaining to legislative vacancies alternately states that the executive committee is to be from the “party of the person holding the office,” but also that the party executive committee is to be “of the senatorial district in which the vacating senator resided at the time of his or her election or appointment.”

Hall was elected to the Senate in November 2012 as a Democrat, defeating Republican Epp E. Cline by an 18,502 to 15,970-vote margin.

Initially, following debate over which party should submit nominees, Hall said he would remain in the Senate until the issue of his replacement was resolved, to avoid “putting the Senate into chaos” with another 17-17 tie.

However, on Monday, Hall submitted a three-sentence letter informing officials of his resignation, effective Sunday, and declaring that it has been an honor to serve.

The Governor’s Office, which has said Gov. Earl Ray Tomblin has no role in the matter until there is

an actual vacancy, said Monday that it will not comment on Hall's resignation until nominees to fill the vacancy are submitted.

"Any action necessitated by the governor would not occur until after names for the vacancy are submitted, and there will be no announcement regarding potential action until that time," Tomblin spokesman Chris Stadelman said Monday.

Meanwhile, state Democratic Party Chairwoman Belinda Biafore issued a statement saying that 9th Senatorial District Democrats are proceeding with the process of selecting three nominees.

"As Democrats, our first priority is always the people of West Virginia, and this seat is their seat," Biafore said. "We are taking the appropriate steps to ensure that the members of the Senatorial Executive Committee of the 9th District have what they need to complete the process to fill their seat."

The party chairwoman added, "When hardworking West Virginians of the 9th District voted, they voted for a Democrat. I believe when Senator Hall changed parties for his own personal motivations, he turned his back on the voting process and the voters. With his resignation, our intentions are the same as they were then, to protect the integrity of the voter and the voting process."

Likewise, state Republican Party Chairman Conrad Lucas said Monday the GOP's 9th Senatorial District Executive Committee also will proceed to submit three nominees to the governor.

"We plan to follow the law and party rules, and submit three names to the governor, despite any shenanigans the Democratic Party is interested in pulling," he said.

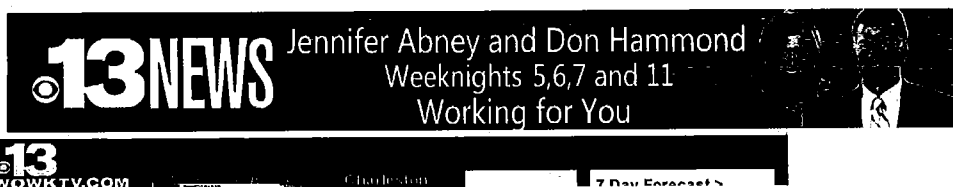
Lucas said he believes state law is clear that Hall must be replaced by a Republican, since he was serving as a Republican at the time of his resignation.

"If the governor chooses to follow the law, he will appoint a Republican, but that remains to be seen," Lucas said.

Under the law, a senatorial district executive committee has 15 days after a vacancy occurs to submit three nominees to the governor, who then has five days to appoint the replacement.

Hall's resignation 10 days before the start of the 2016 regular session of the Legislature, on Jan. 13, poses a tight timeline, particularly with the likelihood of a legal challenge to determine which party is legally authorized to submit nominees.

Reach Phil Kabler at philk@wvgazettemail.com, 304 348-1220 or follow @PhilKabler on Twitter.



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UPDATE: WV Sen. Daniel Hall to delay resignation for NRA position

Posted: Dec 29, 2015 3:00 PM EST

Updated: Dec 31, 2015 2:13 PM EST

By Rusty Marks [CONNECT](#)

UPDATE, 11:15 Dec. 30, 2015:

Sen. Daniel Hall, R-Wyoming, announced Dec. 30 he would be delaying his resignation from the WV Senate. Hall said while he believes state code is clear as to how his replacement would be selected, he will wait until any legal questions have clear resolution.

Hall was elected in 2012 as a Democrat, and after the November 2014 election that gave the West Virginia Republican Party a majority in the House of Delegates and gains in the WV Senate, Hall switched his party affiliation to Republican, which gave the WVGOP the majority in the WV Senate as well.

Original story, 3 p.m. Dec. 29, 2015:

Sen. Daniel J. Hall, R-Wyoming, is resigning from the WV Legislature to accept a job as a state liaison with the National Rifle Association, according to a news release from the WV Senate.

Hall's resignation is effective Jan. 3, 2016. In his new position, he will be responsible for several states.

Hall serves as Senate Majority Whip and is chairman of the labor committee and agriculture and rural development committee. He was elected to the Senate in 2012. Hall, first elected to the WV Senate in 2012 as a Democrat, switched his affiliation to Republican on Nov. 5, 2014 after historic Republican gains in both the WV House and WV Senate. His party switch gave the WVGOP the majority in the Senate for the 2015 legislative session.

"The last eight years I've spent serving the citizens of southern West Virginia have been eight of the best years of my life," Hall said. "It's with mixed emotions that I leave to take this job, but I am excited about helping the NRA continue to advance Second Amendment rights for not just West Virginians, but for all Americans."

Hall served two terms in the House of Delegates before being elected to the state Senate. He graduated from Liberty High School in Raleigh County and from Marshall University.

Senate President Bill Cole, R-Mercer, praised Hall's service in a prepared statement.

"While I hate to see Daniel go, I'm very excited for this new and exciting opportunity for him, and I know he will be a wonderful representative for the NRA," Cole said.

worldnow



WOWK 13 News at 11:30 PM
WOWK 13 News at 11:30 PM

Hall confirms resignation, creating appointment quandary

By PAMELA PRITT for the Daily Telegraph | Posted: Tuesday, January 5, 2016 4:40 am

CHARLESTON — Daniel Hall confirmed Monday morning that he has resigned from the State Senate to take a lobbyist position with the National Rifle Association.

Hall, who was elected as a Democrat to the Senate in 2012 to represent Wyoming, Raleigh and McDowell counties, switched parties in 2014 in the “red tide” that swept the state and caused a tie in the Senate membership. Hall’s flip gave the majority to the Republicans for the first time in 80 years.

That switch now puts Gov. Earl Ray Tomblin in the quandary of appointing a Republican, which one section of the State Code states, or a Democrat, which another section seems to require.

A portion of the state code says that a list of potential replacements should come from “the party executive committee of the party with which the person holding the office immediately preceding the vacancy was affiliated,” would mean a Republican.

However, later in the code, it says “the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment,” means his replacement could be a Democrat.

Sen. Majority Leader Mitch Carmichael, R-Jackson, said he believes the code is clear and that Tomblin should appoint a Republican.

Carmichael said although Hall’s resignation means the margin is razor thin, the GOP can still accomplish what it wants to do this session.

“We can continue to operate,” Carmichael said, noting that he believes whichever party the governor



Daniel Hall

Daniel Hall confirmed Monday morning that he has resigned from the State Senate to take a lobbyist position with the National Rifle Association.

chooses, a lawsuit will be forthcoming. "We can operate on a 17-16 margin."

Carmichael would not say which member of the Senate will be tapped to replace Hall as Majority Whip. Hall was also the chair of the Agriculture and Rural Development and Labor committees.

"It was a great career move for him," Carmichael said of Hall. Carmichael said the NRA pushed Hall to make a decision because "they don't employ legislators."

Tomblin Communications Director Chris Stadelman said the governor will make a decision when he receives names in nomination.

"Any action necessitated by the governor would not occur until after names for the vacancy are submitted, and there will be no announcement regarding potential action until that time," Stadelman said in an email.

...

Not surprisingly, both parties plan to place names in nomination for the seat.

Wyoming County Republican Executive Committee Chair Epp Cline — whom Hall defeated in the Senatorial race in 2012 — said he already has two people who are interested in the job.

Cline said he would take the nomination if the committee chooses him. Also, he said Col. Jack Finchen, a retired Marine, has expressed interest in the seat.

On the other side of the fence, Democrat Executive Committee chair David Thompson said the committee which will meet to select names has some vacancies, which will be taken care of this week.

Thompson said in spite of those vacancies, three names will be placed in nomination for Tomblin's selection by Jan. 13, the first day of the 2016 legislative session.

One of those, he said would likely be Mike Goode, the Wyoming County Clerk and an announced candidate for the seat.

...

Both Cline and Thompson reacted to Hall's mid-term departure, and Hall's history of changing parties.

Hall was elected to the House of Delegates in 2008 and 2010 as a Democrat, and then to his Senate seat in 2012. Hall lost a race for the House of Delegates in 2006 when he ran as a Republican.

Cline said he was glad Hall returned to the Republican Party in 2014, and also happy for the former senator for landing a new job.

"I thought it was a good idea for him to change and save the gridlock," Cline said. "He's very pro-

gun, so I wasn't surprised to see him (take the job)."

He also said he isn't hearing anything negative about Hall's departure.

"I think people understand he got a good job offer," Cline said.

But Thompson said that's not what he's hearing.

He said if Tomblin appoints a Republican to the seat, the Wyoming County voters will have lost everything they voted for in 2012 — "neither the man nor the party for which they voted."

Whoever the replacement is, Thompson said he or she would have no connection to that 2012 ballot unless that person belongs to the Democrat Party.

"That's contrary to the democratic process," Thompson said. "When you vote for a party, you're voting for a certain approach to government and to legislation. There are distinctions between the parties."

Goode, as county clerk, said the county typically votes Democratic. Election records show that, with the exception of the U.S. presidential elections in 2008 and 2012 and the West Virginia Third Congressional District in 2014. Wyoming County also currently has a Republican circuit clerk.

"I think it's embarrassing," he said of Hall's announcement that he'd resign and then his eventual equivocation. "There's a lot of confusion and a lot of drama."

Wyoming County residents are "waiting to see what happens next," he said.

Goode has been County Clerk since 1980.

Hall was not available for further comment Monday.



State of West Virginia
Office of the Attorney General

Patrick Morrissey
Attorney General

January 5, 2016

(304) 558-2021
Fax (304) 558-0140

The Honorable William P. Cole III
President of the Senate
Building 1, Room 229M
1900 Kanawha Boulevard, East
Charleston, WV 25305

Dear President Cole:

You have asked for an Opinion of the Attorney General regarding the filling of a vacancy created by the resignation of a State Senator who was elected as a member of one political party but was affiliated with another political party at the time of his or her resignation. This Opinion is being issued pursuant to West Virginia Code § 5-3-1, which provides that the Attorney General shall "render to the president of the Senate and/or the speaker of the House of Delegates a written opinion or advice upon any questions submitted to the attorney general by them or either of them whenever he or she is requested in writing so to do." To the extent this Opinion relies on facts, it is based solely upon the factual assertions set forth in your correspondence with the Attorney General's Office.

In your letter, you suggest that West Virginia law designates the political party of the State Senator at the time of resignation as the state party responsible for submitting a list of potential replacements to the Governor. You point to West Virginia Code § 3-10-5, which is entitled "Vacancies in the State Legislature." In particular, you note that subsection (a) states that the "party executive committee of the party with which the person holding office immediately preceding the vacancy was affiliated" would be responsible for submitting a list of three potential replacements to the Governor. Based on this language, you believe that the responsible political party is the one to which the State Senator belonged at the time of his or her resignation.

Your letter raises the following legal question:

Which political party is responsible for submitting a list of potential replacements to the Governor to fill a vacancy created by the resignation of a State Senator who was elected to office as a member of one political party but was affiliated with another political party at the time of his or her resignation?

As you note, the relevant statutory provision is West Virginia Code § 3-10-5. In its entirety, the provision reads:

(a) Any vacancy in the office of State Senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted *by the party executive committee of the party with which the person holding the office immediately preceding the vacancy was affiliated*. The list of qualified persons to fill the vacancy shall be submitted to the Governor within fifteen days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of *the same political party as the person vacating the office*.

(b) In the case of a member of the House of Delegates, the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a State Senator, *the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment*. The appointment to fill a vacancy in the State Senate is for the unexpired term, unless section one of this article requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in section one of this article.

W. Va. Code § 3-10-5 (emphases added). We are aware of no cases of the West Virginia Supreme Court of Appeals that have interpreted this statutory provision. The provision is mentioned in several previous Attorney General Opinions, but none of those addresses the question you pose. *See* 2013 WL 1287948 (Jan. 13, 2013); 63 W. Va. Op. Att’y Gen. No. 19 (Nov. 6, 1989); 53 W. Va. Op. Att’y Gen. 93 (Sept. 12, 1968).

Our first task is to “determine whether the language at issue is ambiguous.” *Bd. of Trustees of Firemen’s Pension & Relief Fund of City of Fairmont v. City of Fairmont*, 215 W. Va. 366, 370, 599 S.E.2d 789, 793 (2004); *see also State ex rel. Hall v. Schlaegel*, 202 W. Va. 93, 96, 502 S.E.2d 190, 193 (1998) (“As with all issues of statutory construction, we must first determine whether the language at issue presents any ambiguity.”). That is true where a statutory provision “is susceptible of two *reasonable* constructions.” *Firemen’s Pension & Relief Fund*, 215 W. Va. at 370, 599 S.E.2d at 793 (emphasis added); *Lawson v. Cnty. Comm’n of Mercer Cnty.*, 199 W. Va. 77, 81, 483 S.E.2d 77, 81 (1996) (finding ambiguity where a “statute can be read by reasonable persons to have different meanings”). Thus, “[m]ere informality in phraseology or clumsiness of expression does not make it ambiguous, if the language imports one meaning or intention with reasonable certainty.” *Jessee v. Aycoth*, 202

W. Va. 215, 218, 503 S.E.2d 528, 531 (1998) (quoting Syl. Pt. 13, *State v. Harden*, 62 W. Va. 313, 58 S.E. 715 (1907)). Similarly, “[t]he fact that parties disagree about the meaning of a statute does not itself create ambiguity or obscure meaning.” *T. Weston, Inc. v. Mineral Cnty.*, 219 W. Va. 564, 568, 638 S.E.2d 167, 171 (2006) (citation omitted); see also *State v. Chapman*, No. 13-0111, 2013 WL 5676630, at *4 (W. Va. Oct. 18, 2013) (“[a] statute is not ambiguous simply because different interpretations are conceivable” (internal quotations omitted)).

With respect to the question you ask, we do not find the statute to be ambiguous, as we believe “the language imports one meaning or intention with reasonable certainty.” *Jessee*, 202 W. Va. at 218, 503 S.E.2d at 531. Heeding the instruction of our Supreme Court of Appeals to read statutory language “in context,” *In re Estate of Lewis*, 217 W. Va. 48, 53, 614 S.E.2d 695, 700 (2005), and not to focus on “any single part, provision, section, sentence, phrase or word,” Syl. Pt. 5, *Fruehauf Corp. v. Huntington Moving & Storage Co.*, 159 W. Va. 14, 217 S.E.2d 907 (1975), our conclusion is informed by three sentences in the statute. *First*, “[a]ny vacancy in the office of State Senator . . . shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the party with which the person holding the office immediately preceding the vacancy was affiliated.” W. Va. Code § 3-10-5(a) (emphasis added). *Second*, “[i]f the list is not submitted to the Governor within the fifteen-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party as the person vacating the office.” *Id.* (emphasis added). *Third*, “the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment.” *Id.* § 3-10-5(c) (emphasis added). As explained in detail below, these three sentences together convey “with reasonable certainty” that the political party responsible for the list of potential replacements is the one to which the State Senator belonged at the time of his or her resignation. *Jessee*, 202 W. Va. at 218, 503 S.E.2d at 531.

Standing alone, the first sentence is arguably ambiguous. That sentence in subsection (a) states that the list of potential replacements is to come from the party executive committee “of the party” with which “the person holding the office immediately preceding the vacancy was affiliated.” W. Va. Code § 3-10-5(a). We believe this language suggests that the appropriate political party should be determined by identifying the party affiliation of the vacating senator at the time “immediately preceding the vacancy.” Without more context, however, we recognize that the phrase “was affiliated” might be understood one of two ways: to refer to the senator’s party affiliation at the time of election or appointment, or to the senator’s party affiliation at the time of the vacancy.

But the second sentence—which follows later in subsection (a)—makes clear that the Legislature intended for a vacated Senate seat to remain of the same political party that it was at the time of the vacancy. When a list of potential replacements is not timely submitted to the Governor by the responsible political party, the Governor is restricted to appointing a person “of the same political party as the person vacating the office.” *Id.* By using the word “vacating”—a present participle—the statute refers unambiguously to the political party of the person at the time of vacancy. See Merriam Webster Online, *Present Participle*, <http://www.merriam->

webster.com/dictionary/present%20participle (last visited Jan. 4, 2016) (defining “present participle” as “a participle that typically expresses present action in relation to the time expressed by the finite verb in its clause”). For example, if an announcer referred to “the hat worn by the person hitting the ball,” the announcer would clearly be referring to the hat worn by the person in the act of hitting the ball, not to the hat worn by that person months or years earlier. This sentence thus plainly limits the Governor, in the absence of a timely-submitted list of potential replacements, to appointing a replacement from the political party with which the previous senator was affiliated at the time of the vacancy. It would make no sense for a different rule to apply to determining the political party responsible for submitting the list of potential replacements.

Were there any remaining doubt, the third sentence provides yet more context confirming the Legislature’s intent for a replacement senator to come from the political party with which the vacating senator was affiliated at the time of the vacancy. In contrast to the first sentence, this sentence from subsection (c) addresses not the *identity* of the responsible political party but the *location* of the specific party executive committee responsible for the list, and it expressly qualifies that location as “the senatorial district” in which the vacating senator resided at “the time of his or her election or appointment.” W. Va. Code § 3-10-5(c).¹ This sentence shows that the Legislature knew how to (and did) specify “the time of . . . election or appointment” when it saw fit to do so. *Id.* The Legislature specifically did not include that same qualifier when referring to the vacating senator’s party affiliation in subsection (a), and our Supreme Court of Appeals has made clear that “we are obliged not to add to statutes something the Legislature purposely omitted.” *Banker v. Banker*, 196 W. Va. 535, 546–47, 474 S.E.2d 465, 476–77 (1996).

In sum, reading the statute in its entirety, as we must, we find that the statute can only be reasonably understood to refer to a vacating senator’s party affiliation at the time of the vacancy. The statute is therefore unambiguous as to the question you pose, and “it should be applied as written.” *State ex rel. Corp. of Charles Town v. Sanders*, 224 W. Va. 630, 633, 687 S.E.2d 568, 571 (2009).

¹ This geographical qualifier on the appropriate party committee has come into play previously in circumstances where there has been redistricting since an election or appointment. When current Agriculture Commissioner Helmick resigned his seat in the State Senate, it was undisputed under subsection (a) that the Democratic party would submit the list of potential replacements, but it was subsection (c) that dictated which county committees of the Democratic party would participate in compiling the list. Though there had been redistricting since then-Senator Helmick took office, the plain terms of subsection (c) required that the potential replacements be selected from the old senatorial district from which Helmick had been elected. Marla Pisciotta, WV Senate awaits Helmick’s replacement, *State Journal* (Jan. 4, 2013, 5:10 PM), <http://www.statejournal.com/story/20507029/wv-senate-awaits-helmicks-replacement> (last updated Feb. 3, 2013, 5:10 PM). Subsection (c) might also be relevant were a senator to resign after having moved out of his or her district.

Our conclusion is bolstered by a review of the statutory history. Prior to an amendment in 2010, West Virginia Code § 3-10-5 consisted only of a single paragraph first enacted in 1963. Ch. 64, Acts of the Legislature, 1963, at 377. In pertinent part, it read:

Any vacancy in the office of State Senator or member of the House of Delegates shall be filled by appointment by the Governor, in each instance from a list of three legally qualified persons submitted by the party executive committee of the delegate district in the case of a member of the House of Delegates, and by the party executive committee of the state senatorial district in the case of a state senator, of the party with which the person holding the office immediately preceding the vacancy was affiliated, and of the county or state senatorial district, respectively, in which he resided at the time of his election or appointment.

W. Va. Code § 3-10-5 (1963). Like today's version of the statute, the pre-2010 version provided that the list of potential replacements was to be submitted by the party executive committee "of the party with which the person holding the office immediately preceding the vacancy was affiliated," and "of the . . . state senatorial district . . . in which [that person] resided at the time of his election or appointment." Though the pre-2010 statute included a reference to "the time of . . . election or appointment," that reference did not qualify the party affiliation language. In 2010, the Legislature essentially broke this paragraph into the three subsections that exist today, but did not change the substance. See Ch. 78, Acts of the Legislature, 2010, at 950.² This statutory history confirms that the Legislature has knowingly chosen not to tie the replacement candidate to the former senator's party affiliation at the time of his or her election or appointment.

We also find support in a review of the laws of other States, which shows that our State's law is very different from those that have been construed to require vacancies to be filled by the party at the time of election or appointment. Some States have laws that expressly provide that the party at the time of election fills a vacancy.³ In other States, where courts have read that requirement into their states' laws, the laws have been truly ambiguous, referring without any

² An electronic version is available at: http://www.legis.state.wv.us/Bill_Status/bills_history.cfm?INPUT=557&year=2010&sessiontype=RS.

³ See, e.g., Nev. Const. art. IV, § 12 ("In case of the death or resignation of any member of the legislature, either senator or assemblyman, the county commissioners of the county from which such member was elected shall appoint a person *of the same political party as the party which elected such senator or assemblyman* to fill such vacancy" (emphasis added)); Md. Const. art. III, § 13 ("the Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, within thirty days after the occurrence of the vacancy, by the Central Committee of the political party, if any, with which the Delegate or Senator, so vacating, *had been affiliated, at the time of the last election or appointment of the vacating Senator or Delegate*" (emphasis added)); N.J. Const. art. IV, § 4, ¶ 1 ("the vacancy shall be filled within 35 days by the members of the county committee *of the political party of which the incumbent was the nominee* from the municipalities or districts or units thereof which comprise the legislative district" (emphasis added)); Ind. Code § 3-13-5-1(b) ("A vacancy in a legislative office that was last held by a person *elected or selected as a candidate of a political party* described by IC 3-8-4-10 shall be filled by the state committee of the political party." (emphasis added)).

other context or elaboration to “the party” or “the political party” of the previous official.⁴ In contrast, our statute expressly references “the time of . . . election or appointment” but does not apply that qualifier to the vacating official’s party affiliation, and also provides ample other context that makes clear that the party at the time of the vacancy fills the vacancy.

Sincerely,



Patrick Morrisey
Attorney General

Elbert Lin
Solicitor General

Erica N. Peterson
Assistant Attorney General

⁴ See *Richards v. Bd. of Cnty. Comm'rs of Sweetwater Cnty.*, 6 P.3d 1251 (Wyo. 2000) (interpreting statute that referred simply to “the political party to which the member whose office is vacant belonged”); *Wilson v. Sebelius*, 72 P.3d 553 (Kan. 2003) (interpreting statute that referred only to “the party”).



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January 4, 2016

The vacancies in the 9th Senatorial District have been filled and are as follows:

Raleigh County:

Stephen Davis (Male)

Linda Klopp (Female)

Wyoming County

David Thompson (Male)

Linda Phillips (Female)

McDowell County

Stephen Evans (Male)

Patricia Blevins (Female)

**The meeting of the 9th Senatorial District will take place Monday, J
January 11, 2016 at 4:00 pm at the Wyoming County Courthouse Lobby in
Pineville, WV**



Details for the Ninth Senatorial District GOP Replacement

BACKGROUND:

West Virginia State Senator Daniel Hall (R-Wyoming) announced his resignation earlier this week. The Senate District 9 Republican Committee convened and has announced the process for filling this vacancy. As per state law, the committee must submit three eligible Republicans to the Governor who will then select the replacement from those names.

PROCESS:

Interested individuals must submit a resume and cover letter to the West Virginia Republican Party. Resumes must be received by Noon on Monday January 11, 2016. The information should be sent via e-mail to jordan.burgess@wvgop.org, regular mail to P.O. Box 2711, Charleston WV 25305 or send faxes to 304-768-6083.

Individuals will be contacted to schedule interview times on the afternoon of Monday, January 11, 2016.

Interviews will be conducted on Tuesday, January 12, 2016 in Beckley, WV at the Raleigh County Public Library. (221 North Kanawha Street, Beckley, WV 25801) beginning at 9am.

QUALIFICATIONS:

Individuals must meet all normal qualifications to serve in the State Senate as described in Article 6 of the West Virginia Constitution and West Virginia Code §1-2-1. Qualified individuals must reside in either Wyoming County or the portion of McDowell County within the Ninth Senatorial District, specifically Precincts 23, 26 and 40.

QUESTIONS:

For more information, please contact Jordan Burgess at the West Virginia Republican Party by calling 304-768-0493 in Charleston.

###

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Watchdog.org

West Virginia right-to-work bill coming in January

Posted By [Jason Hart](#) On December 1, 2015 @ 10:21 am



PLANNING FOR 2016: West Virginia Senate President Bill Cole expects a right-to-work bill to be introduced early in the state's legislative session, which begins Jan. 13

West Virginia Senate President Bill Cole expects state lawmakers to vote on a right-to-work bill early in the upcoming legislative session.

Saying he'd like to "beat Kentucky to the punch" by making West Virginia the 26th state in which workers can choose whether to pay labor unions, Cole told Watchdog.org right-to-work will be introduced "very early in the session."

"We have a one-vote majority in the Senate. I have 18 out of 34, and we have 18 committed 'Yes' votes to pass right-to-work, so we'll be the lead body on it," Cole said.

Cole said it "may be a tougher lift" in the West Virginia House of Delegates, where his fellow Republicans hold 64 of 100 seats. House Speaker Tim Armstead has expressed support ^[1] for right-to-work.

The West Virginia Legislature's 60-day session is scheduled to begin Jan. 13, and union bosses

have already begun a marketing campaign against right-to-work.

West Virginia AFL-CIO leaders claim right-to-work would lower workers' pay and benefits and lead to more workplace deaths. The union coalition did not respond to a request for comment.

Cole is unconvinced by the unions' arguments. "To me, this isn't union vs. anti-union. They'll frame it that way; I don't. This is about the right to choose," he said.

RELATED: West Virginia union bosses panicking over right-to-work [2]

Cole pointed to West Virginia's high unemployment rate, low labor force participation, low average wages and shrinking construction industry as signs that forced unionization isn't helping the state's workers.

"What could we possibly be protecting other than the status quo, which is not working for us in this state?" Cole asked. "I don't quite know what the unions are protecting other than union leadership's standard and style of living."

A study by the West Virginia University Bureau of Business & Economic Research [3] projected right-to-work would "substantially boost overall employment and output growth in the long-run."

"It's time to make some bold steps and bold moves — and of course, it sounds bold but I just think it's common sense," Cole said. "We need to do something differently if we want a different result."

Cole — who serves as lieutenant governor — is running in the 2016 race to replace term-limited Democrat Gov. Earl Ray Tomblin, and he sees right-to-work as part of the foundation for his potential governorship.

"In West Virginia we better set the stage for an economic turnaround," Cole said. "Part of that is legal reforms, part of that is regulatory reforms, part of that is right-to-work."

"A year from now I want to be in a position to go out and knock on doors around this country and say to Fortune 500 companies, 'Listen, you need to move to West Virginia, you need to make an investment here, look at what we did,'" he explained.

Tomblin would likely veto right-to-work if it's approved by state lawmakers. But the West Virginia Legislature could override a veto with simple majority votes in both houses.

"The governor has five days when we put it on his desk," Cole said. "If he vetoes it, we can take it right back up."

A potential veto factors heavily into Cole's desire to see right-to-work passed quickly. "If we do it late in the session he can just wait until we're gone and veto it and it's done for a year, so we'll take it up early," Cole told Watchdog.org.

Article printed from Watchdog.org: <http://watchdog.org>

URL to article: <http://watchdog.org/249331/wv-right-to-work-january/>

URLs in this post:

[1] has expressed support:

http://www.legis.state.wv.us/News_Release/newsrelease_RecordView1.cfm?RecordID=810&type=

[2] West Virginia union bosses panicking over right-to-work: <http://watchdog.org/248271/wv-unions-right-to-work/>

[3] study by the West Virginia University Bureau of Business & Economic Research: http://www.legis.state.wv.us/News_release/documents/Right_to_Work_FINAL.PDF

West Virginia Record

Cole, Armstead receive national legal reform award

Chris Dickerson

Oct. 27, 2015, 1:30 pm

WASHINGTON – West Virginia Senate President Bill Cole and House of Delegates Speaker Tim Armstead have been given an award for their contributions to reforming the state's civil justice system.

Cole and Armstead received the 2015 State Legislative Achievement Award at the U.S. Chamber Institute for Legal Reform's (ILR) 16th Annual Legal Reform Summit on Oct. 27.

"Senate President Cole and Speaker Armstead demonstrated principled leadership and were the architects of legal reform in a state that some considered a lost cause," ILR President Lisa A. Rickard said. "We are optimistic that the historic reforms of 2015 are just the start for West Virginia.

"Every bill passed with bipartisan support, which means leaders here in Washington might have something they can learn from the leaders in West Virginia."

Earlier this year, West Virginia enacted numerous landmark legal reform laws. Included were laws to properly allocate fault to all parties in a lawsuit, safeguards against runaway jury awards, and transparency laws to discourage "double dip" asbestos claims in the tort system and against asbestos bankruptcy trusts. The bills were passed with bipartisan support and signed by Gov. Earl Tomblin.

<http://wvrecord.com/stories/510645235-cole-armstead-receive-national-legal-reform-award>

"Honestly, it's a little humbling to be recognized that quickly on a national stage after one session for the legal reforms we took care of for the state," Cole said Tuesday. "Tim and I might be the ones listed for this award, but we take our hats off to the Legislature. We all worked hard on these bills, and they passed with bipartisan support to move our state forward.

"The fact is we just brought so many of those laws back to center, back to average, back to what states around us have."

Armstead agreed.

"We have a good team, and we all rolled up our sleeves and went to work," he said. "We knew this was an area holding our state back. Our chief goal is to put people back to work, and this is an area that has a true impact on how many jobs are in our state ... more than what most people realize."

Cole reiterated that.

"While the average citizen might not understand what we may have done, here is one way to illustrate the value of it," he said. "A major insurance provider (Progressive), specifically because of the legal reforms we enacted, already have lowered their auto insurance rates by 11 percent. Those rates roughly were double in West Virginia what they were just across the border in Virginia.

"That's a clear win for policyholders, and I am confident that will extend to other types of insurances and to other carriers. These are the types of reforms that will serve to benefit all West Virginians. We are hopeful it encourages existing businesses here to prosper and grow and that it brings other businesses to the state."

Cole said he expects more legal reforms to be introduced in the upcoming session.

<http://wvrecord.com/stories/510645235-cole-armstead-receive-national-legal-reform-award>

“We are looking at a number of different things,” he said. “As always, the test is whether an idea can move West Virginia forward. If it does, we’ll take a look at it.

“And, an intermediate court of appeals is high on the list. We are studying that, and we want to make sure we get it right.”

Armstead agreed.

“We are asking companies and people to invest in our state,” he said. “They need to know that if they do have to go to court that it’s going to be a fair courtroom and the rules applied will be fair. But also, they need to know that if they disagree with the verdict, they have the right to a fair appeal. That will provide a great deal of comfort to people looking to invest in the state.

“The biggest thing we need to do is give fair access to the courts. We did a lot in this past session to make sure those rules are fair and to make sure all parties have access to the courts.”

The Annual Legal Reform Awards honor individuals and organizations whose outstanding work has contributed to reforming America’s civil justice system.

The U.S. Chamber ILR owns The West Virginia Record.

<http://wyrecord.com/stories/510645235-cole-armstead-receive-national-legal-reform-award>

CANVAS OF SIMILAR STATE ELECTION LAWS (WHERE VACANCY FILLED BY APPOINTMENT RATHER THAN SPECIAL ELECTION)

STATE	STATUTE	RELEVANT LANGUAGE	ON-POINT INTERPRETIVE CASE LAW
Colorado	C.R.S.A. Const. Art. 5, § 2(3)	"Any vacancy occurring in either house by death, resignation, or otherwise shall be filled in the manner prescribed by law. The person appointed to fill the vacancy shall be a member of the same political party, if any, as the person whose termination of membership in the general assembly created the vacancy"	
DC	DC ST § 1-204.01 (Formerly cited as DC ST 1981 § 1-221)	"In the event of a vacancy in the Council of a member elected at large, other than a vacancy in the Office of Chairman, who is affiliated with a political party, the central committee of such political party shall appoint a person to fill such vacancy"	
Hawaii	HRS § 17-3	"by selecting a person from a list of three prospective appointees submitted by the same political party as the prior incumbent. The appointee shall be at the time of appointment, and for at least six months immediately prior to the appointment, a member of the political party."	

Idaho	I.C. § 59-904A	<p>"In the event of a vacancy in the house of representatives or senate of the state of Idaho, such vacancy shall be filled as herein provided. The legislative district committee of the same political party, if any, of the former member whose seat is vacant shall submit, within fifteen (15) days, a list of three (3) nominations to the governor... The legislative district committee of the same political party, if any, of the former member, shall select a person who possesses the constitutional qualifications to fill the vacant office to which he is nominated, and who is affiliated with the same political party, if any, as the former member whose seat is vacant."</p>	<p>Kluk v. Lang, 125 Ill.2d 306, 328-9, 531 N.E.2d 790, 800 (1988)</p>
Illinois	<p>III. Const. Art. 4, Sec. 2(d)</p> <p>and</p> <p>10 ILCS 5/25-6 (Formerly cited as IL ST CH 46 ¶ 25-6)</p>	<p>"An appointee to fill a vacancy shall be a member of the same political party as the person he succeeds"</p> <p>and</p> <p>"When a vacancy occurs in the office of State Senator or Representative in the General Assembly, the vacancy shall be filled within 30 days by appointment of the legislative or representative committee of that legislative or representative district of the political party of which the incumbent was a candidate at the time of his election. The appointee shall be a member of the same political party as the person he succeeds was at the time of his election, and shall be otherwise eligible to serve as a member of the General Assembly."</p>	

Indiana	IC 3-13-5-0.1	<p>"(a) This chapter applies only to a vacancy in a legislative office that was last held by a person elected or selected as a candidate of a major political party of the state.</p> <p>(b) A vacancy in a legislative office that was last held by a person elected or selected as a candidate of a political party described by IC 3-8-4-10 shall be filled by the state committee of the political party."</p>	
Kansas	K.S.A. 25-3902	<p>"is provided by law to be held to elect a person to be appointed to fill a vacancy in a district office, the county chairperson designated in subsection (b) or (c), within 21 days of receipt of notice that a vacancy has occurred or will occur, shall call and convene a convention of all committeemen and committeewomen of the party of the precincts in such district for the purpose of electing a person to be appointed by the governor to fill the vacancy."</p>	<p><i>Wilson v. Sebelius</i>- 276 Kan. 87, Syl. Pt. 5 and 96, 72 P.3d 553, 559 (2003)- "(2) the statutory phrase "of the party" in K.S.A. 25-3902 is construed to mean the political party to which the officeholder belonged at the time of the preceding general election for that office." and "In our view, public policy comports with common sense and logic, i.e., that the will of the electorate at the preceding election controls which party fills the vacancy. Here, absent the relatively rare change in party affiliation, that would have occurred. It seems reasonable and logical to conclude that the legislature did not intend that the outcome be different simply because the individual officeholder changed party affiliation while in office. We construe the statutory phrase, "of the party" in K.S.A. 25-3902 to mean the political party to which the officeholder belonged at the time of the preceding election for that office. In so doing, the mandate of the preceding election is protected and continued until the next general election. Such construction is consistent with the election process."</p>

Maryland	MD Const. Art. III, Sec. 13	<p>"by the Central Committee of the political party, if any, with which the Delegate or Senator, so vacating, had been affiliated, at the time of the last election or appointment of the vacating Senator or Delegate"</p>	
Montana	M.C.A. 5-2-402 and M.C.A. 5-2-403	<p>"The appointment process to fill a vacant legislative seat under this section is as follows: (a) Within 7 days of being notified of a vacancy as described in 2-16-501, the secretary of state shall notify the board of county commissioners and the state party that is responsible for notifying the county central committee of the county where the vacating legislator is a resident, if the legislative seat is within one county, or the boards of county commissioners and the corresponding county central committees if the legislative seat is in a multicounty district. If the legislator is an independent or belongs to a party for which there is no county central committee, the notification of county commissioners suffices." and "Whenever an appointee's predecessor served as a member of a political party, the appointee named under 5-2-402 must be a member of the same political party"</p>	

North Dakota	NDCC 16.1-13-10	"If a vacancy in the office of a member of the legislative assembly occurs. . . the chairman of the legislative management shall notify the district committee of the political party that the former member represented in the district in which the vacancy exists."	
Ohio	OH Const Art. II, Sec. 11	"who are affiliated with the same political party as the person last elected by the electors to the seat which has become vacant."	
Oregon	O.R.S. 171.051 and O.R.S. 236.100	"a member of the same political party for at least 180 days before the date on which the vacancy occurred. The political affiliation of a person appointed under subsection (1) of this section shall be determined under ORS 236.100." and "no person shall be eligible for such appointment unless the person is affiliated, as determined by the appropriate entry on the person's official election registration card with the same political party: (a) As that by which the elected predecessor in the office was designated on the election ballot, if the name of the predecessor was printed on the election ballot. (b) As that by which the elected predecessor in the office was designated on the elector registration card of the predecessor on the date of the election at which the predecessor was elected"	
Utah	U.C.A. 1953 § 20A-1-503	"the governor shall fill the vacancy by immediately appointing the person whose name was submitted by the party liaison of the same political party as the prior representative."	

Washington	RCWA Const. Art. 2, § 15	<p>“Such vacancies as may occur in either house of the legislature or in any partisan county elective office shall be filled by appointment by the county legislative authority of the county in which the vacancy occurs: Provided, That the person appointed to fill the vacancy must be from the same legislative district, county, or county commissioner or council district and the same political party as the legislator or partisan county elective officer whose office has been vacated, and shall be one of three persons who shall be nominated by the county central committee of that party”</p>	
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Wyoming	W.S.1977 § 18-3-524 and	<p>"Within twenty (20) days after the office of any county commissioner becomes vacant the remaining members of the board shall declare a vacancy to exist and immediately give notice of the vacancy in writing to the chairman of the county central committee of the political party which the member whose office is vacant represented at the time of his election under W.S. 22-6-120(a)(vii), or at the time of his appointment if not elected to office."</p> <p>and</p> <p>"If a vacancy occurs in the office of United States senator or in any state office other than the office of justice of the supreme court and the office of district court judge, the governor shall immediately notify in writing the chairman of the state central committee of the political party which the last incumbent represented at the time of his election under W.S. 22-6-120(a)(vii), or at the time of his appointment if not elected to office"</p>	<p><i>Richards v. Bd. of Co. Commrs. of Sweetwater Co.</i>, 6 P.3d 1251, 1253 (2001)- "However, when looking "to the mischief the act was intended to cure," we find it more reasonable that, when the legislature fails to provide for a certain situation, the legislature enacts the law assuming the situation that occurs in the majority of instances. Changing party affiliation after being elected is a relatively rare and infrequent occurrence. Therefore, in the majority of instances, a county commissioner leaving office is still affiliated with the political party which supported him in the last election.</p> <p>In addition, we acknowledge that a county commissioner with a major party affiliation is often supported, financially and otherwise, by the political party he has pledged his allegiance to in preparation for his election bid. It would be contrary to public policy to allow an individual to frustrate the assumption of the political party which supported him that a person from that political party would hold that office until the next election. Therefore, considering the "public policy of the state," we hold that the statute calls for the board of county commissioners to notify the central committee of the party to which the former member belonged at the time of the last election."</p>
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Puerto Rico	16 L.P.R.A. § 3206 and 3207 (Alternatively called Articles 5.006 and 5.007 respectively)(Repealed)	<p>Article 5.006 states "When a vacancy occurs in the office of a senator or representative elected as an independent candidate for a district, or when a vacancy occurs in the office of a senator or representative for a district, nominated by a party before the fifteen (15) months immediately preceding the date of the following general election, the Governor, with the advice of the [Commonwealth Election] Commission shall, within the thirty (30) days following the date on which the vacancy occurred, call a by-election in such district which shall be held no later than ninety (90) days after the date of the call, and the person elected in such by-election shall hold the office until the term of his predecessor has expired....</p> <p>If within sixty (60) days following the date such vacancy arises, the party to which the legislator of the vacant office belonged has not presented a candidate to fill such office, . . ." (emphasis added)</p>	<p><i>Rodriguez v. Popular Democratic Party</i>, 457 U.S. 1, 12-13, 102 S.Ct. 2194, 2201-2 (1982)- "Puerto Rico's appointment mechanism is not rendered constitutionally defective by virtue of the fact that the interim appointment power is given to the political party with which the previous incumbent was affiliated. . . . The Puerto Rico Legislature could reasonably conclude that appointment by the previous incumbent's political party would more fairly reflect the will of the voters than appointment by the Governor or some other elected official. The Supreme Court of Puerto Rico held that party appointment was a legitimate mechanism serving to protect the mandate of the preceding election and to preserve the "legislative balance" until the next general election is held. . . . It was thus not unreasonable for the Puerto Rico Legislature, in establishing an appointment system for filling legislative vacancies, to make provision for continuity of party representation. Cf. <i>Kaelin v. Warden</i>, 334 F.Supp. 602, 607-608 (ED Pa. 1971) (three-judge District Court)."</p>
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IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. _____

STATE OF WEST VIRGINIA

ex rel. BELINDA BIAFORE, in her capacity as
Chair of the West Virginia State Democratic
Executive Committee, and STEPHEN DAVIS,
LINDA KLOPP, DAVID THOMPSON, LINDA
PHILLIPS, STEPHEN EVANS, and PATRICIA BLEVINS,
each individually, and in their capacity as the
members of the West Virginia Democratic
Executive Committee for the Ninth Senatorial District,

Petitioners,

v.

EARL RAY TOMBLIN, in his capacity as
Governor of the State of West Virginia, and
BEVERLY R. LUND, JUSTIN M. ARVON,
SUE "WAOMI" CLINE, TONY PAYNTER, JOHN DOE,
and JANE DOE, in their in their capacity as the
members of the West Virginia Republican
Executive Committee for the Ninth Senatorial District,

Respondents.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the attached **"APPENDIX TO EMERGENCY PETITION FOR A WRIT OF MANDAMUS"** was served upon the persons listed below by mailing a true copy thereof as required by Rule 37, Revised Rules of Appellate Procedure, on this 8th day of January 2016:

Via Hand Delivery

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