

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket 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 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 capacity as the members of the West Virginia Republican Executive Committee for the Ninth Senatorial District,**

*Respondents.*

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**THE WEST VIRGINIA CHAMBER OF COMMERCE'S MOTION FOR LEAVE TO  
FILE BRIEF AS *AMICUS CURIAE* IN OPPOSITION TO PETITIONER'S  
EMERGENCY PETITION FOR A WRIT OF MANDAMUS**

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Pursuant to Rules 30(a) and (c) of the Rules of Appellate Procedure for the Supreme Court of Appeals of West Virginia, the West Virginia Chamber of Commerce (the "Chamber") respectfully moves for leave of this Court to file an *amicus curiae* brief in opposition to Petitioners', Belinda Biafore, *et al.* (collectively, "Petitioners"), Emergency Petition for a Writ of Mandamus. In short, the Chamber opposes Petitioners' Emergency Petition for a Writ of Mandamus because it asks this Court to interpret W. Va. Code § 3-10-5 in a way that conflicts with both the plain language of the Code and the clear intent of the Legislature.

The Chamber, in its position as a nonpartisan advocate for a vibrant business climate, has a significant interest in a stable and uniform rule of law where the plain meaning and application of statutory language is not impacted or influenced by partisan politics. In addition, not only will the Court's decision in this case impact businesses presently located in West Virginia, it also has the potential to impact those considering the Mountain State for future operations. Here, Petitioners ask this Court to interpret W. Va. Code § 3-10-5 in a manner that is inconsistent with both the plain language of the statute and the intent of the Legislature. Such an interpretation would create unpredictability in West Virginia's laws or, more pertinently, the interpretation of those laws, causing businesses to call into question the stability of our state as a place for business operations, now and in the future.

The relevant language of W. Va. Code § 3-10-5 is plain and unambiguous, and requires in the case at hand that the Governor choose the 9<sup>th</sup> Senate District replacement candidate from the list provided by the Republican Party's 9<sup>th</sup> Senate District Executive Committee. Because the statute is clear, however, the Court does not need to determine the Legislature's intent. Indeed, the language of W. Va. Code § 3-10-5 is not "susceptible of two or more constructions." Instead, W. Va. Code § 3-10-5 mandates that the Governor fill a vacancy in the office of State Senator from a list submitted by "the party with which the person holding the office immediately preceding the vacancy was affiliated."

Here, Senator Daniel Hall, the individual who held the 9<sup>th</sup> Senate District seat "immediately preceding the vacancy[,] " was affiliated with the Republican Party at the time of the vacancy. Although Senator Hall switched party affiliations from the Democratic Party to the Republican Party in 2014, his party switch did nothing to confuse the plain language of the statute. Former Senator Hall was "affiliated" with the Republican Party when he resigned from

the State Senate and, as such, the Governor is required to replace him from a list submitted by the Republican Party.

Even if this Court does find that the provisions of W. Va. Code § 3-10-5 are ambiguous, however, the Legislature clearly intended for a State Senate vacancy to be replaced by a member of the party with which the outgoing Senator was affiliated at the time of the vacancy. While Petitioners argue that the Legislature intended for the party affiliation at the time of the election to be the overriding concern in replacing a Senator, the voters of the 9<sup>th</sup> Senate District espoused their will when they elected Senator Hall, not a political party, to fill the 9<sup>th</sup> District seat. Further, the Legislature could have inserted the words “at the time of his or her election” as a modifier to the word “affiliated” or created a requirement for a special election to fill vacancies, but it chose not to do so and, thus, created a clear mechanism for filling the vacancy of an outgoing State Senator. As such, even if the Court finds that the language of W. Va. Code § 3-10-5 is ambiguous, it is clear that the Legislature intended for legislative replacements to come from the party with which the outgoing officeholder was affiliated.

For these reasons and those more-fully detailed in its brief, the Chamber respectfully urges this Court to grant its Motion to file its brief as *amicus curiae*.

Respectfully Submitted,

**WEST VIRGINIA CHAMBER OF COMMERCE**



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**CERTIFICATE OF SERVICE**

I, John Canfield, hereby certify that on this 12<sup>th</sup> day of January, 2016, a true and accurate copy of the foregoing **The West Virginia Chamber of Commerce's Motion for Leave to File Brief as *Amicus Curiae* in Opposition to Petitioner's Emergency Petition for a Writ of Mandamus** was sent as indicated below, to all counsel, addressed as follows:

***VIA HAND-DELIVERY***  
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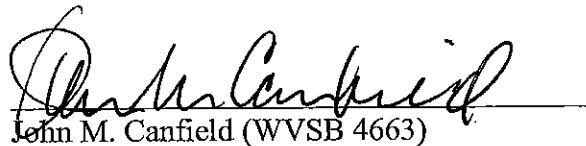
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A handwritten signature in black ink, appearing to read "John M. Canfield", is written over a horizontal line.

John M. Canfield (WVSB 4663)