



J. Zak Ritchie  
zritchie@hfdrlaw.com  
P.O. Box 3983  
Charleston, WV 25339  
(681) 265-3802 *office*  
(304) 982-8056 *fax*

September 7, 2018

Via email

The Hon. Lee Cassis  
Clerk of the West Virginia Senate  
Room 211M, Bldg. 1  
State Capitol Complex  
1900 Kanawha Blvd. E.  
Charleston, WV 25305  
lee.cassis@wvsenate.gov

Re: *In the Matter of Impeachment Proceedings Against Respondent Justice Elizabeth Walker*

Dear Mr. Clerk:

Pursuant to Rule 23 of the *Rules of the West Virginia Senate While Sitting as a Court of Impeachment During the Eighty-Third Legislature*, enclosed for filing in the above-referenced matter are “Justice Walker’s Motion to Dismiss Article XIV” and “Justice Walker’s Motion in Limine to Preclude Evidence of Unimpeached Conduct.”

Do not hesitate to contact me if you have any questions.

Sincerely,



J. Zak Ritchie

*Counsel for the Hon. Elizabeth D. Walker, Justice of the Supreme Court of Appeals of West Virginia*

cc: Justice Paul T. Farrell (via email)  
Counsel of Record (via email)

**IN THE WEST VIRGINIA SENATE  
SECOND EXTRAORDINARY SESSION  
2018**

*In the Matter of Impeachment Proceedings  
Against Respondent Justice Elizabeth D. Walker*

APPLICATION TO JUSTICE PAUL T. FARRELL, PRESIDING OFFICER:

**JUSTICE WALKER'S MOTION TO DISMISS ARTICLE XIV**

Justice Beth Walker moves to dismiss Article XIV in order to bring these proceedings against her to an efficient and appropriate conclusion. Although the House of Delegates affirmatively rejected the only article specifically alleging that Justice Walker committed impeachable conduct, Justice Walker has accepted responsibility and expressed remorse for her personal spending decisions and pledged to support legislative oversight efforts.

But the House did not stop there. It also adopted Article XIV, a “catch-all” that purports to hold Justice Walker responsible for *institutional* policies that—as a lone Justice with a single vote—she never had the authority to make. Not only that, but several of the alleged policy failures in Article XIV arose years before Justice Walker took the bench. In short, there is not a single allegation in Article XIV against Justice Walker individually—only generalized allegations against the Court as a collective body. Removal cannot rest on such allegations as a matter of logic or law. This motion should be granted.

## BACKGROUND

Justice Walker took office in January 2017, little over a year and a half ago. In that time, Justice Walker never served as Chief Justice or was vested with any other authority as an individual Justice to impose policies on the Court or her colleagues.

The final article of impeachment adopted by the House of Delegates in House Resolution 202 is Article XIV, which is the only article that attempts to place blame on each Justice *individually* for conduct by the Court *collectively*. Unlike all other articles approved by the House, Article XIV makes no individualized allegations against specific Justices.

## ARGUMENT

Rule 23(a) provides that motions may be made “by the parties” and “shall be addressed to the Presiding Officer, who shall decide the motion.” The Presiding Officer’s decision on a motion is final unless “overturn[ed]” by a majority vote of the Senators present following a demand of any Senator sustained by one tenth of the Senators present. Rule 23(a). The vote to overturn the Presiding Officer’s decision on “any motion” will be taken “without debate.” *Id.*

### **Article XIV fails to state a removable offense against Justice Walker individually.**

Nowhere in the text of Article XIV does the House of Delegates allege individualized conduct against Justice Walker—much less any conduct amounting to a removable offense. *See United States v. Thomas*, 367 F.3d 194, 187 (4th Cir. 2004) (dismissal for failure to state an offense).

*First*, logic and law dictate that Justice Walker cannot be tried and held responsible as an individual Justice for alleged offenses that could have only been committed collectively by the Court (by majority vote) or by the Chief Justice, the only single Justice with authority to make administrative decisions that can bind the Court. There is no dispute that Justice Walker never served as Chief Justice and was never otherwise imbued with the special administrative powers of that office. And there is no dispute that Justice Walker holds only a single vote. Justice Walker could no more establish or change policies to bind her colleagues with a single vote than she could decide an appeal by herself alone.

Under the relevant standard set out in Article IV, Section 9 of the West Virginia Constitution, there can be no “maladministration” where an *individual* Justice has no authority to “administer” the Court in the first place. Accordingly, Article XIV fails to state a removable offense against Justice Walker individually.

*Second*, the structure of Article XIV is inconsistent with Rule 19, which requires separate trials for each Respondent—a rule informed by the precedent of the Senate and basic notions of fundamental fairness. Justice Walker is entitled to a separate trial on Article XIV, meaning that her culpability under the article must depend on her actions alone. The decision to sweep-up every then-sitting Justice in the dragnet of Article XIV comes with a cost: the individual Respondents will be unable to adequately prepare a defense against allegations that are cast only against “the Court” as a collective whole—decisions that no single Justice, apart from a Chief Justice, can fairly be made to answer for.

After all, it is conceivable that one Justice could be convicted of Article XIV as written based only on actions by a majority of *other* Justices or the Chief Justice—even if the one Justice was against the majority’s decision-making. Just as no single Senator can fairly be held responsible for actions taken by the body as a whole, the allegations of Article XIV cannot support a fair trial of individual Justices in any respect that is consistent with Rule 19 or due process. Article XIV is therefore logically and legally flawed and should be dismissed.

### CONCLUSION

For the foregoing reasons, Justice Walker moves the Presiding Officer to dismiss Article XIV.

Dated: September 7, 2018

Respectfully submitted,

**Hon. Elizabeth D. Walker**

By Counsel

  
A. Zak Ritchie (WVSB # 11705)  
Michael B. Hissam (WVSC #11526)  
Ryan McCune Donovan (WVSB # 11660)  
HISSAM FORMAN DONOVAN RITCHIE PLLC  
P.O. Box 3983  
Charleston, WV 25339  
(681) 265-3802 *office*  
(304) 982-8056 *fax*  
zritchie@hfdrlaw.com  
rdonovan@hfdrlaw.com  
mhissam@hfdrlaw.com

**IN THE WEST VIRGINIA SENATE  
SECOND EXTRAORDINARY SESSION  
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*In the Matter of Impeachment Proceedings  
Against Respondent Justice Elizabeth Walker*

APPLICATION TO JUSTICE PAUL T. FARRELL, PRESIDING OFFICER:

**JUSTICE WALKER'S MOTION IN LIMINE  
TO PRECLUDE EVIDENCE OF UNIMPEACHED CONDUCT**

Justice Walker cannot be removed by the Senate for conduct that the House of Delegates expressly concluded did not rise to the level of impeachment. Accordingly, evidence related to renovations of Justice Walker's personal office should be inadmissible in these proceedings.

Under our Constitution, the Senate tries impeachments, but the House of Delegates has the sole authority to determine impeachable conduct. W.V. Const. art. IV § 9. The House expresses its determinations by voting on Articles of Impeachment. If an Article is adopted, then the Senate must decide whether to remove the officer based on the conduct described in the Article. If an Article is rejected, then the Senate has no authority to remove the officer based on the content therein.

During days of hearings in the Judiciary Committee and hours of debate on the floor, the House carefully considered the allegations against Justice Walker in Article XII, H.R. 202, concerning the renovation of her chambers. At the end of that deliberate process, Article XII was defeated by a vote of 51 to 44. In other words, the House concluded that the renovation of Justice Walker's chambers did *not* amount to impeachable conduct.

The lone Article pending against Justice Walker—Article XIV—concerns the Justices’ alleged collective failure to carry out certain administrative responsibilities. The preamble to Article XIV does contain a reference to alleged “unnecessary and lavish spending,” and includes, as an example, a non-specific reference to “remodel[ing] state offices.” But this generalized language—making no specific allegation against Justice Walker individually—cannot be read to override the House’s express rejection of the spending allegations against Justice Walker in Article XII.

As a result, any attempt to introduce specific evidence related to spending on Justice Walker’s chambers would not only be highly prejudicial but would exceed the legitimate Constitutional scope of these proceedings. The motion should be granted.

Dated: September 7, 2018

Respectfully submitted,

**Hon. Elizabeth D. Walker**

By Counsel



J. Zak Ritchie (WVSB # 11705)

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[mhissam@hfdrlaw.com](mailto:mhissam@hfdrlaw.com)