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September 28, 2018

Via Hand Delivery

The Honorable Lee Cassis
Clerk of the West Virginia Senate
1900 Kanawha Boulevard, East
Room M-211
State Capitol Complex
Charleston, WV 25305

Re: Matter of Impeachment Proceeding Against Respondent
Retired Justice Robin Davis

Dear Clerk Cassis:

Enclosed for filing in the referenced matter please find a Motion for Continuance of Retired Justice Robin Davis.

A copy has been provided to all parties as reflected on the Certificate of Service.

Please let me know if there are questions.

Very truly yours,

PAMELA C. DEEM

PCD:ddc
Enclosure

cc: Honorable Paul T. Farrell
Honorable John Shott
Honorable Andrew Byrd
Honorable Geoff Foster
Honorable Ray Hollen
Honorable Rodney Miller

IN THE WEST VIRGINIA SENATE
SITTING AS A COURT OF IMPEACHMENT

IN THE MATTER OF IMPEACHMENT PROCEEDINGS
AGAINST RESPONDENT RETIRED JUSTICE ROBIN DAVIS

Application to Acting Chief Justice Paul T. Farrell, Presiding Officer:

MOTION FOR CONTINUANCE OF RETIRED JUSTICE ROBIN DAVIS

Comes now Respondent Retired Justice Robin Davis, by counsel, pursuant to Senate Resolution 203 and respectfully moves the Presiding Officer for a continuance of her currently scheduled trial date of October 29, 2018, as well as a continuance of the current deadline of October 1, 2018, for her to file motions, provide reciprocal discovery including a witness list, make application for subpoenas and submit instructions.

As it currently stands, Retired Justice Davis's trial is scheduled to begin six business days before the November 6, 2018 election. The fact that the impeachment trial is scheduled immediately prior to the November election heightens the likelihood that politics, rather than the law, will influence the outcome of the trial. Stated differently, human nature being what it is, there is a great risk that Senators (who for purposes of this trial are serving as jurors) will be influenced by their own self-interest in being re-elected and allow those re-election considerations to enter into their decision on the outcome of the trial instead of making a decision solely on the merits and evidence presented. This is particularly so given that the trial starts just days before the election. Couple this with the extensive publicity the impeachment proceedings have received over the past months, Respondent Davis's right to a fair and impartial trial is seriously threatened. The trial should be continued to a date after the election to avoid the

risk that the election may have some effect on the resolution of her impeachment trial and to ensure that she is provided the fair and impartial trial to which she is entitled under both the U. S. and West Virginia Constitutions.

Furthermore, for the half of the Senate members who are on the November 6 ballot, the week of October 29 is a crucial week for campaigning. Requiring them to be present at Respondent Davis's impeachment trial would undoubtedly interfere with that campaigning and cause additional stress to the members in terms of dividing their time and attention. In addition, should any member seek a leave of absence under the Senate Rules for even one day, the absence of that member who is sitting as a juror during the impeachment proceedings, makes the trial even more unfair.

Finally, as this motion relates to the deadline for discovery and filing of other motions, the current date for Retired Justice Davis to file motions and provide reciprocal discovery is October 1, 2018. She requests that this deadline be extended pending resolution of Chief Justice Workman's pending motions to dismiss to be heard on October 15, 2018, as well as the Petition for Writ of Mandamus which is not yet scheduled to be heard but based on the briefing schedule will probably take place the second week of October.

WHEREFORE, for the reasons set forth above, Respondent respectfully requests that her impeachment trial be rescheduled to a date after the November 6, 2018 election and that the deadline for her to file motions, provide reciprocal discovery and a witness list, make application for issuance of subpoenas and submit instructions for the trial be extended to five days after the resolution of Chief Justice Workman's motions to dismiss and resolution of the Petition for Writ of Mandamus.

RETIRED JUSTICE ROBIN DAVIS

RESPONDENT

BY COUNSEL:



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CERTIFICATE OF SERVICE

I, PAMELA C. DEEM, one of counsel for Respondent, do hereby certify that the foregoing "*Motion for Continuance of Retired Justice Robin Davis*" has been served upon the following individuals this 28th day of September, 2018, by electronic mail and by depositing a true and exact copy thereof in the U. S. Mail, postage prepaid, as follows:

Honorable John Shott
Room 418M, Building One
State Capitol Complex
1900 Kanawha Boulevard, East
Charleston, WV 25305

Honorable Geoff Foster
Room 214E, Building One
State Capitol Complex
1900 Kanawha Boulevard, East
Charleston, WV 25305

Honorable Rodney Miller
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Honorable Andrew Byrd
Room 151R, Building One
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