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THIRD DAY

Tuesday, August 14, 2018

THIRD DAY

[MR. SPEAKER PRO TEMPORE, MR. OVERINGTON, IN THE CHAIR]

The House of Delegates met at 12:15 a.m., and was called to order by the Honorable John Overington, Speaker Pro Tempore.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The reading of the Journal of Monday, August 13, 2018, being the first order of business, such reading, on motion of Delegate Graves, and by unanimous consent, was postponed one day.

At the request of Delegate Cowles, and in the absence of objection, the House proceeded to further consideration of the Articles of Impeachment.

Delegate Folk moved to add a new Article fifteen to read as follows:

“Article XV

That the said Justice Elizabeth Walker, being a Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of her high office, and contrary to the oaths taken by her to support the Constitution of the State of West Virginia and faithfully discharge the duties of her office as such Justice, while in the exercise of the functions of the office of Justice, in violation of her oath of office, then and there, with regard to the discharge of the duties of her office, did waste state funds with little or no concern for the costs to be borne by the tax payer for unnecessary and lavish spending in that she hired outside counsel to craft a legal opinion of the Court, in the case styled Quicken Loans, Inc. v. Walters, 801 S.E.2d 509, 239 W. Va. 494 (2017), and for which competent assistance in the form of personal clerks was provided to facilitate the execution of the same; such action constitutes a wasteful expenditure not necessary for the administration of justice and the execution of the duties of the Court, which represents a waste of state funds.”

Mr. Speaker, Mr. Armstead, arose from his seat to inquire whether the ruling yesterday regarding his request to be excused from voting applied to this and other questions relating to impeachment.

The Speaker Pro Tempore replied that any impact on Mr. Armstead would be as a member of a class of persons possibly to be affected and refused to excuse him from voting.

On the adoption of the proposed Article XV, Delegate Folk demanded the yeas and nays, which demand was sustained.

The yeas and nays having been demanded, they were taken (**Roll No. 618**), and there were-- yeas 26, nays 70, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Adkins, Boggs, Campbell, Criss, Dean, Folk, Foster, Hanshaw, Hollen, Howell, Linville, Malcolm, Marcum, Maynard, McGeehan, R. Miller, Moore, Overington, Paynter, Pushkin, Pyles, Rodighiero, Sobonya, Summers, Ward and Wilson.

Absent and Not Voting: Deem, Miley, Phillips and Storch.

So, a majority of the members present and voting not having voted in the affirmative, the proposed Article XV was rejected.

Consideration of the Articles of Impeachment having been concluded, the adopted articles were as follows:

Article I

That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Justice, while in the exercise of the functions of the office of Justice, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, did waste state funds with little or no concern for the costs to be borne by the tax payer for unnecessary and lavish spending in the renovation and remodeling of his personal office, to the sum of approximately \$363,000, which sum included the purchase of a \$31,924 couch, a \$33,750 floor with medallion, and other such wasteful expenditure not necessary for the administration of justice and the execution of the duties of the Court, which represents a waste of state funds.

Article II

That the said Justice Robin Davis, being a Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of her high office, and contrary to the oaths taken by her to support the Constitution of the State of West Virginia and faithfully discharge the duties of her office as such Justice, while in the exercise of the functions of the office of Justice, in violation of her oath of office, then and there, with regard to the discharge of the duties of her office, did waste state funds with little or no concern for the costs to be borne by the tax payer for unnecessary and lavish spending in the renovation and remodeling of her personal office, to the sum of approximately \$500,000, which sum included, but is not limited to, the purchase of an oval rug that cost approximately \$20,500, a desk chair that cost approximately \$8,000 and over \$23,000 in design services, and other such wasteful expenditure not necessary for the administration of justice and the execution of the duties of the Court, which represents a waste of state funds.

Article III

That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Justice, while in the exercise of the functions of the office of Justice, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, did on or about June 20, 2013, cause a certain desk, of a type colloquially known as a "Cass Gilbert" desk, to be transported from the State Capitol to his home, and did maintain possession of such desk in his home, where it remained throughout his term as Justice for approximately four and one-half years, in violation of the provisions of W.Va. Code §29-1-7 (b), prohibiting the removal of original furnishings of the state capitol from the premises; further, the expenditure of state funds to transport the desk to his home, and refusal to return the desk to the state, constitute the use of state resources and property for personal gain in violation of the provisions of W.Va. Code §6B-2-5, the provisions of the West Virginia State Ethics Act, and constitute a violation of the provisions of Canon I of the West Virginia Code of Judicial Conduct.

Article IV

That the said Chief Justice Margaret Workman, and Justice Robin Davis, being at all times relevant Justices of the Supreme Court of Appeals of West Virginia, and at various relevant times individually each Chief Justice of the Supreme Court of Appeals of West Virginia unmindful of the duties of their high offices, and contrary to the oaths taken by them to support the Constitution of the State of West Virginia and faithfully discharge the duties of their offices as such Justices, while in the exercise of the functions of the office of Justices, in violation of their oaths of office, then and there, with regard to the discharge of the duties of their offices, commencing in or about 2012, did knowingly and intentionally act, and each subsequently oversee in their capacity as Chief Justice, and did in that capacity as Chief Justice severally sign and approve the contracts necessary to facilitate, at each such relevant time, to overpay certain Senior Status Judges in violation of the statutory limited maximum salary for such Judges, which overpayment is a violation of Article VIII, §7 of the West Virginia Constitution, stating that Judges “shall receive the salaries fixed by law” and the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10, and, in violation of an Administrative Order of the Supreme Court of Appeals, in potential violation of the provisions of W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to enable or assist any person to obtain money to which he was not entitled, and, in potential violation of the provisions set forth in W.Va. Code §61-3-24, relating to the crime of obtaining money, property and services by false pretenses, and, all of the above are in violation of the provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct.

Article V

That the said Justice Robin Davis, being at all times relevant a Justice of the Supreme Court of Appeals of West Virginia, and at certain relevant times individually Chief Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of her high offices, and contrary to the oaths taken by her to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Justice, while in the exercise of the functions of the office of Justice, in violation of her oath of office, then and there, with regard to the discharge of the duties of her office, did in the year 2014, did in her capacity as Chief Justice, sign certain Forms WV 48, to retain and compensate certain Senior Status Judges the execution of which forms allowed the Supreme Court of Appeals to overpay those certain Senior Status Judges in violation of Article VIII, § 7 of the West Virginia Constitution, stating that Judges “shall receive the salaries fixed by law” and the statutorily limited maximum salary for such Judges, which overpayment is a violation of the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10; her authorization of such overpayments was a violation of the clear statutory law of the state of West Virginia, as set forth in those relevant Code sections, and, was an act in potential violation of the provisions set forth in W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to enable or assist any person to obtain money to which he was not entitled, and, in potential violation of the provisions set forth in W.Va. Code §61-3-24, relating to the crime of obtaining money, property and services by false pretenses, and all of the above are in violation of the provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct.

Article VI

That the said Justice Margaret Workman, being at all times relevant a Justice of the Supreme Court of Appeals of West Virginia, and at certain relevant times individually Chief Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of her high offices, and contrary to the oaths taken by her to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Justice, while in the exercise of the functions of the office of Justice, in violation of her oath of office, then and there, with regard to the discharge of the duties of her office, did in the year 2015, did in her capacity as Chief Justice, sign certain Forms WV 48, to retain and compensate certain Senior Status Judges the execution of which forms allowed the Supreme Court of Appeals to overpay those certain Senior Status Judges in violation of the statutorily limited maximum salary for such Judges, which overpayment is a violation of Article VIII, § 7 of the West Virginia Constitution, stating that Judges “shall receive the salaries fixed by law” and the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10; her authorization of such overpayments was a violation of the clear statutory law of the state of West Virginia, as set forth in those relevant Code sections, and, was an act in potential violation of the provisions set forth in W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to enable or assist any person to obtain money to which he was not entitled, and, in potential violation of the provisions set forth in W.Va. Code §61-3-24, relating to the crime of obtaining money, property and services by false pretenses, and all of the above are in violation of the provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct.

Article VII

That the said Justice Allen Loughry, being at all times relevant a Justice of the Supreme Court of Appeals of West Virginia, and at that relevant time individually Chief Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of his high offices, and contrary to the oaths taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Justices, while in the exercise of the functions of the office of Justice, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, did on or about May 19, 2017, did in his capacity as Chief Justice, draft an Administrative Order of the Supreme Court of Appeals, bearing his signature, authorizing the Supreme Court of Appeals to overpay certain Senior Status Judges in violation of the statutorily limited maximum salary for such Judges, which overpayment is a violation of Article VIII, § 7 of the West Virginia Constitution, stating that Judges “shall receive the salaries fixed by law” and the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10; his authorization of such overpayments was a violation of the clear statutory law of the state of West Virginia, as set forth in those relevant Code sections, and, was an act in potential violation of the provisions set forth in W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to enable or assist any person to obtain money to which he was not entitled, and, in potential violation of the provisions set forth in W.Va. Code §61-3-24, relating to the crime of obtaining money, property and services by false pretenses, and all of the above are in violation of the provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct.

Article VIII

That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Justice, while in the exercise of the functions of the office of Justice, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, did beginning in or about December 2012, and continuing thereafter for a period of years, intentionally acquire and use state government vehicles for personal use; including, but not limited to, using a state vehicle and gasoline purchased utilizing a state issued fuel purchase card to travel to the Greenbrier on one or more occasions for book signings and sales, which such acts enriched his family and which acts constitute the use of state resources and property for personal gain in violation of the provisions of W.Va. Code §6B-2-5, the provisions of the West Virginia State Ethics Act, and constitute a violation of the provisions of Canon I of the West Virginia Code of Judicial Conduct.

Article IX

That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Justice, while in the exercise of the functions of the office of Justice, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, did beginning in or about December 2012, intentionally acquired and used state government computer equipment and hardware for predominately personal use—including a computer not intended to be connected to the court's network, utilized state resources to install computer access services at his home for predominately personal use, and utilized state resources to provide maintenance and repair of computer services for his residence resulting from predominately personal use; all of which acts constitute the use of state resources and property for personal gain in violation of the provisions of W.Va. Code §6B-2-5, the provisions of the West Virginia State Ethics Act, and constitute a violation of the provisions of Canon I of the West Virginia Code of Judicial Conduct.

Article X

That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to support the Constitution of the State of West Virginia and faithfully discharge the duties of his office as such Justice, while in the exercise of the functions of the office of Justice, in violation of his oath of office, then and there, with regard to the discharge of the duties of his office, made statements while under oath before the West Virginia House of Delegates Finance Committee, with deliberate intent to deceive, regarding renovations and purchases for his office, asserting that he had no knowledge and involvement in these renovations, where evidence presented clearly demonstrated his in-depth knowledge and participation in those renovations, and, his intentional efforts to deceive members of the Legislature about his participation and knowledge of these acts, while under oath.

Article XIV

That the said Chief Justice Margaret Workman, Justice Allen Loughry, Justice Robin Davis, and Justice Elizabeth Walker, being at all times relevant Justices of the Supreme Court of Appeals of West Virginia, unmindful of the duties of their high offices, and contrary to the oaths taken by them to support the Constitution of the State of West Virginia and faithfully discharge the duties of their offices as such Justices, while in the exercise of the functions of the office of Justices, in violation of their oaths of office, then and there, with regard to the discharge of the duties of their offices, did, in the absence of any policy to prevent or control expenditure, waste state funds with little or no concern for the costs to be borne by the tax payers for unnecessary and lavish spending for various purposes including, but without limitation, to certain examples, such as: to remodel state offices, for large increases in travel budgets—including unaccountable personal use of state vehicles, for unneeded computers for home use, for regular lunches from restaurants, and for framing of personal items and other such wasteful expenditure not necessary for the administration of justice and the execution of the duties of the Court; and, did fail to provide or prepare reasonable and proper supervisory oversight of the operations of the Court and the subordinate courts by failing to carry out one or more of the following necessary and proper administrative activities:

- A) To prepare and adopt sufficient and effective travel policies prior to October of 2016, and failed thereafter to properly effectuate such policy by excepting the Justices from said policies, and subjected subordinates and employees to a greater burden than the Justices;
- B) To report taxable fringe benefits, such as car use and regular lunches, on Federal W-2s, despite full knowledge of the Internal Revenue Service Regulations, and further subjected subordinates and employees to a greater burden than the Justices, in this regard, and upon notification of such violation, failed to speedily comply with requests to make such reporting consistent with applicable law;
- C) To provide proper supervision, control, and auditing of the use of state purchasing cards leading to multiple violations of state statutes and policies regulating the proper use of such cards, including failing to obtain proper prior approval for large purchases;
- D) To prepare and adopt sufficient and effective home office policies which would govern the Justices' home computer use, and which led to a lack of oversight which encouraged the conversion of property;
- E) To provide effective supervision and control over record keeping with respect to the use of state automobiles, which has already resulted in an executed information upon one former Justice and the indictment of another Justice.
- F) To provide effective supervision and control over inventories of state property owned by the Court and subordinate courts, which led directly to the undetected absence of valuable state property, including, but not limited to, a state-owned desk and a state-owned computer;
- G) To provide effective supervision and control over purchasing procedures which directly led to inadequate cost containment methods, including the rebidding of the purchases of goods and services utilizing a system of large unsupervised change orders, all of which encouraged waste of taxpayer funds.

The failure by the Justices, individually and collectively, to carry out these necessary and proper administrative activities constitute a violation of the provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct.

Resolutions Introduced

Resolutions were introduced, pursuant to House Rule 109, as follows:

Delegates Sponaugle, Barrett, Bates, Boggs, Brewer, Byrd, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hartman, Hicks, Hornbuckle, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Maynard, Moye, Pethtel, Pushkin, Pyles, Rodighiero, Rowe and Williams offered the following resolution, which was read by its title as follows:

H. R. 203 - "Recommending the public reprimand and censure of Supreme Court Justice Allen Loughry, II, Supreme Court Justice Robin Davis, Supreme Court Justice Margaret Workman, and Supreme Court Justice Elizabeth Walker."

Whereas, Supreme Court Justice Allen Loughry, II, unmindful of his duties of his high office, and concurrent with other Justices of the Supreme Court, has exhibited a pattern and practice of wasteful spending on his personal office at the state Capitol, undertaking renovations that were unnecessary and lavish, with a total cost in excess of \$363,000, to personalize the office to his personal tastes, including a \$31,924 couch and a \$33,750 customized floor; further, these renovations were undertaken without consideration to the fact that all state officers are tenants of their offices, not owners thereof, and although it is appropriate to update and modernize these spaces when needed, the citizens of this state expect reasonableness and frugality with the use of government funds; further, that the costs of these renovations, during difficult financial times in our great state, when so many citizens are struggling to earn a living, showed a true loss of perspective of his role as a steward of government resources and the Supreme Court, and his spending was wasteful, excessive, and outrageous, and although not unlawful, exhibited extremely poor judgement; and

Whereas, Supreme Court Justice Robin Davis, unmindful of her duties of her high office, and concurrent with other Justices of the Supreme Court, has exhibited a pattern and practice of wasteful spending on her personal office at the state Capitol, undertaking renovations that were unnecessary and lavish, with a total cost in excess of \$500,000, to personalize the office to her personal tastes, inconsistent with the historical design and dignity of our beautiful state Capitol; further, these renovations were undertaken without consideration to the fact that all state officers are tenants of their offices, not owners thereof, and although it is appropriate to update and modernize these spaces when needed, the citizens of this state expect reasonableness and frugality with the use of government funds; further, that the costs of these renovations, during difficult financial times in our great state, when so many citizens are struggling to earn a living, showed a true loss of perspective of her role as a steward of government resources and the Supreme Court, and her spending was wasteful, excessive, and although not unlawful, exhibited extremely poor judgement; and

Whereas, Supreme Court Justice Margaret Workman, unmindful of her duties of her high office, and concurrent with other Justices of the Supreme Court, has exhibited a pattern and practice of wasteful spending on her personal office at the state Capitol, undertaking renovations that were unnecessary and lavish, with a total cost in excess of \$111,000; further, these renovations were undertaken without consideration to the fact that all state officers are tenants of their offices, not owners thereof, and although it is appropriate to update and modernize these spaces when needed, the citizens of this state expect reasonableness and frugality with the use of government funds; further, that the costs of these renovations, during difficult financial times in our great state, when so many citizens are struggling to earn a living, showed a true loss of perspective of her role as a steward of government resources and the Supreme Court, and her spending was wasteful, excessive, and although not unlawful, exhibited extremely poor judgement; and

Whereas, Supreme Court Justice Elizabeth Walker, unmindful of her duties of her high office, and concurrent with other Justices of the Supreme Court, has exhibited a pattern and practice of wasteful spending on her personal office at the state Capitol, undertaking renovations that were unnecessary and lavish, with a total cost in excess of \$131,000; further, these renovations were undertaken without consideration to the fact that all state officers are tenants of their offices, not owners thereof, and although it is appropriate to update and modernize these spaces when needed, the citizens of this state expect reasonableness and frugality with the use of government funds; further, that the costs of these renovations, during difficult financial times in our great state, when so many citizens are struggling to earn a living, showed a true loss of perspective of her role as a steward of government resources and the Supreme Court, and her spending was wasteful, excessive, and although not unlawful, exhibited extremely poor judgement; and

Whereas, Justice Allen Loughry, II, Justice Robin Davis, Justice Margaret Workman, and Justice Elizabeth Walker, being at all times relevant Justices of the Supreme Court of Appeals of West Virginia, unmindful of the duties of their high offices, and contrary to the oaths taken by them to support the Constitution of the State of West Virginia and faithfully discharge the duties of their offices as such Justices, while in the exercise of the functions of the office of Justices, in violation of their oaths of office, then and there, with regard to the discharge of the duties of their offices, did, in the absence of any policy to prevent or control expenditure, waste state funds with little or no concern for the costs to be borne by the tax payers for unnecessary and lavish spending for various purposes including, but without limitation, to certain examples, such as: to remodel state offices, for large increases in travel budgets—including unaccountable personal use of state vehicles, for unneeded computers for home use, for regular lunches from restaurants, for framing of personal items, and other such wasteful expenditures not necessary for the administration of justice and the execution of the duties of the Court; and, did fail to provide or prepare reasonable and proper supervisory oversight of the operations of the Court and the subordinate courts by failing to carry out one or more of the following necessary and proper administrative activities:

A) To prepare and adopt sufficient and effective travel policies prior to October of 2016, and failed thereafter to properly effectuate such policy by excepting the Justices from said policies, and subjected subordinates and employees to a greater burden than the Justices;

B) To report taxable fringe benefits, such as car use and regular lunches, on Federal W- 2 forms, despite full knowledge of the Internal Revenue Service Regulations, and further subjected subordinates and employees to a greater burden than the Justices in this regard, and upon notification of such violation, failed to speedily comply with requests to make such reporting consistent with applicable law;

C) To provide proper supervision, control, and auditing of the use of state purchasing cards leading to multiple violations of state statutes and policies regulating the proper use of such cards, including failing to obtain proper prior approval for large purchases;

D) To prepare and adopt sufficient and effective home office policies which would govern the Justices' home computer use, and which led to a lack of oversight, which encouraged the conversion of property;

E) To provide effective supervision and control over record keeping with respect to the use of state automobiles, which has already resulted in an executed information upon one former Justice and the indictment of another Justice;

F) To provide effective supervision and control over inventories of state property owned by the Court and subordinate courts, which led directly to the undetected absence of valuable state property, including, but not limited to, a state-owned desk and a state-owned computer; and

G) To provide effective supervision and control over purchasing procedures which directly lead to inadequate cost containment methods, including the rebidding of the purchases of goods and services utilizing a system of large unsupervised change orders, all of which encouraged waste of taxpayer funds.

Whereas, The failure by the Justices, individually and collectively, to carry out these necessary and proper administrative activities constitute a violation of the provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct; therefore, be it

Resolved by the House of Delegates:

That Supreme Court Justice Allen Loughry, II, Supreme Court Justice Robin Davis, Supreme Court Justice Margaret Workman, and Supreme Court Justice Elizabeth Walker be hereby publicly reprimanded and censured for and because of this aforementioned conduct; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Supreme Court Justice Allen Loughry, II, Supreme Court Justice Robin Davis, Supreme Court Justice Margaret Workman, and Supreme Court Justice Elizabeth Walker.

At the request of Delegate Cowles, and by unanimous consent, reference of the resolution (H. R. 203) to a committee was dispensed with, and it was taken up for immediate consideration.

The question now being on the adoption of the resolution, Delegate Sponaugle demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 619**), and there were--yeas 95, nays 1, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Fast.

Absent and Not Voting: Deem, Miley, Phillips and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution (H. R. 203) adopted.

Delegate Folk offered the following resolution, which was read by its title and referred to the Committee on the Judiciary:

H. R. 204 - "Recommending the public reprimand and censure of Menis Ketchum and Brent Benjamin, former Justices of the Supreme Court of Appeals of the State of West Virginia."

WHEREAS, On the twenty-sixth of June, two thousand eighteen, House Resolution 201 was presented to the House of Delegates, authorizing the investigation of the Justices of the Supreme Court of Appeals of the State of West Virginia; and

WHEREAS, when that resolution was adopted by the House of Delegates it empowered the Committee on the Judiciary to, among other things, "report to the House of Delegates its findings of facts and any recommendations which the Committee on the Judiciary may deem proper" respecting the matters raised in the said House Resolution; and

WHEREAS, During the course of its proceedings pursuant to said House Resolution 201, the Committee on the Judiciary heard testimony and reviewed documentary evidence concerning the official conduct of Justices of the Supreme Court of Appeals of the State of West Virginia, including the official conduct of Menis Ketchum and Brent Benjamin, former Justices of that Court; and

WHEREAS, The Committee on the Judiciary has concluded its proceedings with respect to the said House Resolution 201 and, in addition to other recommendations otherwise dealt with, has submitted its findings and recommendation; and

WHEREAS, as a result of the aforementioned proceedings, the Committee has heard testimony and reviewed documentary evidence presented that the aforesaid Menis Ketchum and Brent Benjamin, former Justices of that Court; were at various relevant times individually each Chief Justice of the Supreme Court of Appeals of West Virginia, and unmindful of the duties of their high offices, and contrary to the oaths taken by them to support the Constitution of the State of West Virginia and faithfully discharge the duties of their offices as such Justices, while in the exercise of the functions of the office of Justices, in violation of their oaths of office, then and there, with regard to the discharge of the duties of their offices, commencing in or about 2012, did knowingly and intentionally act, and each subsequently oversee in their capacity as Chief Justice, and did in that capacity as Chief Justice severally sign and approve the contracts necessary to facilitate, at each such relevant time, to overpay certain Senior Status Judges in violation of the statutory limited maximum salary for such Judges, which overpayment is a violation of the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10, and, in violation of an Administrative Order of the Supreme Court of Appeals, in potential violation of the provisions of W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to enable or assist any person to obtain money to which he was not entitled, and in potential violation of the provisions of W.Va. Code §5-10-45, relating to the crime of fraud against the West Virginia Public Employees Retirement System, and, in potential violation of the provisions set forth in W.Va. Code §61-3-24, relating to the crime of obtaining money, property and services by false pretenses, and, all of the above are in violation of the provisions of Canon I and Canon II of the West Virginia Code of Judicial Conduct; and

WHEREAS, The House of Delegates is of the opinion that the said Menis Ketchum and Brent Benjamin, former Justices of the Supreme Court of Appeals of West Virginia should be publicly reprimanded and censured for and because of their aforementioned conduct; therefore, be it

Resolved by the House of Delegates:

That Menis Ketchum and Brent Benjamin, former Justices of the Supreme Court of Appeals of West Virginia are hereby publicly reprimanded and censured for and because of this aforementioned conduct; and, be it

Further resolved, That the Clerk of the House of Delegates be and he is hereby directed to forward a copy of this resolution to the said Menis Ketchum and Brent Benjamin, former Justices of the Supreme Court of Appeals of West Virginia.

Delegate Cowles offered the following resolution, which was read by its title as follows:

H. R. 205 - "Providing for the appointment of a committee of five on the part of the House of Delegates to go before the Senate to impeach Robin Davis, Allen Loughry, Elizabeth Walker and Margaret Workman, Justices of the Supreme Court of the State of West Virginia, for maladministration, incompetence, corruption, neglect of duty, and high crimes and misdemeanors, and, as managers on the part of the House of Delegates, to deliver to the Senate articles of

impeachment, and to conduct the impeachment against Justices Davis, Loughry, Walker, and Workman.”

Whereas, Pursuant to the authority granted to the House of Delegates in Section 9, Article IV of the Constitution of the State of West Virginia, the House of Delegates has adopted 11 Articles of Impeachment against the various justices of the Supreme Court of Appeals of West Virginia, including Chief Justice Margaret Workman, Justice Allen Loughry, Justice Robin Davis, and Justice Elizabeth Walker, for maladministration, corruption, incompetency, neglect of duty, and certain high crimes and misdemeanors committed in their capacity and by virtue of their offices as Justices of the Supreme Court of Appeals of West Virginia; and

Whereas, The House of Delegates, saving to themselves the liberty and rights of exhibiting at any time hereafter any further Articles of Impeachment against the said Chief Justice Workman, Justice Allen Loughry, Justice Robin Davis and Justice Elizabeth Walker, Justices of the Supreme Court of Appeals of West Virginia, individually and collectively, as aforesaid, and also of replying to their answers which they may make unto the Articles herein proffered against them, and of offering proof to any and all of the Articles of Impeachment, and every part thereof, and to all and every other Article, accusation, or impeachment, which shall be exhibited by the said House of Delegates as the case may require, do demand that the said Chief Justice Margaret Workman, Justice Allen Loughry, Justice Robin Davis, and Justice Elizabeth Walker, Justices of the Supreme Court of Appeals of West Virginia, individually and collectively, as aforesaid, may be put to answer the maladministration, corruption, incompetency, neglect of duty, and certain high crimes and misdemeanors charged against them, and that such proceedings, examinations, trials and judgments, may be thereupon had, given and taken, as may be agreeable to the Constitution and the laws of the State of West Virginia, as justice may require; therefore, be it

Resolved by the House of Delegates:

That, a committee of five members of the House of Delegates be appointed by the Speaker Pro Tempore, and that such committee be and is hereby directed to go before the Senate, and deliver to the Clerk of the Senate a message whereby the said committee, in the name of the House of Delegates and the people of the State of West Virginia, impeaches Robin Davis, Allen Loughry, Elizabeth Walker, and Margaret Workman, Justices of the West Virginia Supreme Court of Appeals, for maladministration, incompetence, corruption, neglect of duty, and high crimes and misdemeanors in their office, and acquaint the Senate that the House of Delegates will exhibit particular articles of impeachment against them, Robin Davis, Allen Loughry, Elizabeth Walker, and Margaret Workman, the said Justices of the West Virginia Supreme Court of Appeals, as aforesaid, and make good the same, and that said committee demand that the Senate cause to be served upon the said Robin Davis, Allen Loughry, Elizabeth Walker, and Margaret Workman a true copy of the articles of impeachment and take order for the appearance of the said Robin Davis, Allen Loughry, Elizabeth Walker and Margaret Workman to answer to said impeachment; and, be it

Further Resolved, That said committee of five members of the House of Delegates be and is hereby directed to act as managers on part of the House of Delegates to carry and deliver to the Clerk of the Senate the said articles of impeachment; and, be it

Further Resolved, That said committee of five, as managers, be and is hereby directed to conduct the impeachment against the said Robin Davis, Allen Loughry, Elizabeth Walker, and Margaret Workman, Justices of the West Virginia Supreme Court of Appeals, before the Senate, in accordance with procedural rules adopted by the Senate, with all necessary assistance as may be required and provided by employees of the House or Senate and by such professional, clerical and stenographic assistants as may be engaged by the House or Senate for such purposes.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (H. R. 205) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

Bills Introduced

A bill was introduced, pursuant to House Rule 92, and referred as follows:

By Delegates Fluharty, Brewer, E. Evans, Ferro, Hartman, Iaquinta, Longstreth, Lynch, Miller, Sponaugle, and Williams:

H. B. 201 - "A Bill to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, relating to providing for a special election for State Supreme Court Justice when a vacancy has occurred as the result of impeachment; and providing that any member of the legislature is prohibited from running for vacated seat"; to the Committee on the Judiciary.

Delegate Sponaugle asked unanimous consent that the House rules be suspended and the bill be taken up for immediate consideration and read a first time.

Delegate Cowles moved that the motion be tabled.

Mr. Speaker, Mr. Armstead requested to be excused from voting under the provisions of House Rule 49.

The Speaker Pro Temp replied that any impact on the Delegate would be as a member of a class of persons possibly to be affected by the amendment and refused to excuse the Delegate from voting.

On the motion to table, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 620**), and there were--yeas 60, nays 35, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Boggs, Brewer, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hartman, Hicks, Hornbuckle, Iaquinta, Isner, Longstreth, Lovejoy, Lynch, Marcum, R. Miller, Moye, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Thompson and Williams.

Absent and Not Voting: Deem, Love, Miley, Phillips and Storch.

So, a majority of the members present and voting having voted in the affirmative, the motion by Delegate Sponaugle was tabled.

Leaves of Absence

At the request of Delegate Cowles, and by unanimous consent, leaves of absence for the day were granted Delegates Deem, Miley, Phillips and Storch.

Miscellaneous Business

Pursuant to House Rule 132, unanimous consent was requested and obtained to print all remarks of Members on August 13 and August 14, 2018 in the Appendix to the Journal.

Pursuant to S. C. R. 201, at 1:43 a.m., the House of Delegates adjourned until called back into session by the Speaker Pro Tempore.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

**WEST VIRGINIA
HOUSE OF DELEGATES**

WEDNESDAY, AUGUST 29, 2018

HOUSE CONVENES AT 9:00 A.M.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470