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IN THE WEST VIRGINIA SENATE

***IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST  
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN***

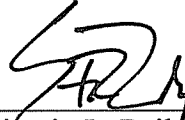
Honorable Paul T. Farrell  
Acting Justice of the  
Supreme Court of Appeals of West Virginia  
Presiding Officer

**CHIEF JUSTICE WORKMAN'S MOTION TO DISMISS ON GROUNDS STATED IN  
PETITION FOR WRIT OF MANDAMUS**

Respondent Chief Justice Margaret L. Workman ("Respondent") has petitioned the Supreme Court of Appeals of West Virginia for a writ of mandamus with respect to the instant impeachment proceeding (the "Petition"). *See* Exhibit A. The Petition explains numerous infirmities in the impeachment proceeding, including violations of the constitutional separation of powers, precedent on the appointment of senior status judges, the right to due process, and procedural requirements for impeachment in the House of Delegates. Respondent respectfully requests the dismissal of the Articles of Impeachment against her for the reasons stated in the Petition, which is included with this motion and incorporated by reference herein.

CHIEF JUSTICE MARGARET WORKMAN

By Counsel:



Benjamin L. Bailey (WVSB #200)

[bbailey@baileyglasser.com](mailto:bbailey@baileyglasser.com)

Steven R. Ruby (WVSB #10752)

[sruby@baileyglasser.com](mailto:sruby@baileyglasser.com)

Raymond S. Franks II (WVSB #6523)

[rfranks@baileyglasser.com](mailto:rfranks@baileyglasser.com)

Holly J. Wilson (WVSB #13060)

[hwilson@baileyglasser.com](mailto:hwilson@baileyglasser.com)

BAILEY & GLASSER LLP

209 Capitol Street

Charleston, WV 25301

T: 304-345-6555

F: 304-342-1110

*Counsel for Respondent*

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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CASE NO. \_\_\_\_\_

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State of West Virginia *ex rel.* Margaret L. Workman, Petitioner,

v.

Mitch Carmichael, as President of the Senate; Donna J. Boley, as President Pro Tempore of the Senate; Ryan Ferns, as Senate Majority Leader; Lee Cassis, Clerk of the Senate; and the West Virginia Senate, Respondents.

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PETITION FOR A WRIT OF MANDAMUS

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Marc E. Williams (WV Bar No. 4062)  
Melissa Foster Bird (WV Bar No. 6588)  
Thomas M. Hancock (WV Bar No. 10597)  
Christopher D. Smith (WV Bar No. 13050)  
**NELSON MULLINS RILEY & SCARBOROUGH LLP**  
949 Third Avenue, Suite 200  
Huntington, WV 25701  
Telephone: (304) 526-3500  
Facsimile: (304) 526-3599  
Email: marc.williams@nelsonmullins.com  
Email: melissa.fosterbird@nelsonmullins.com  
Email: tom.hancock@nelsonmullins.com  
Email: chris.smith@nelsonmullins.com

**Counsel for Petitioner**



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## INTRODUCTION

On August 13, 2018, the West Virginia House of Delegates (“the House”) broke the law. On that day, the House adopted numerous Articles of Impeachment (“Articles”) setting the Petitioner to stand trial before the West Virginia Senate (“the Senate”). What nefarious deeds of the Petitioner served as the basis for these Articles? The Petitioner had the audacity to fulfill her constitutional mandate of ensuring that West Virginia courts efficiently serve West Virginia citizens by appointing senior status judges to fill judicial vacancies. She had the audacity to exercise her constitutional authority to pass and utilize a budget for the State’s judicial branch. In short, she had the audacity to perform the duties and exercise the powers mandated to her by the West Virginia Constitution. Despite the clear edicts of the West Virginia Constitution, the House overstepped the bounds of its constitutionally-apportioned power and initiated proceedings to punish the Petitioner for exercising the powers explicitly provided to the judicial branch by the West Virginia Constitution. This cannot stand. This Court must order the Senate to halt proceedings that undermine the separation of powers principles enshrined in the West Virginia Constitution.

Not only, however, do the House’s Articles violate the separation of powers principles by seeking to punish the Petitioner for performing duties explicitly reserved for the judicial branch, the House’s procedures in promulgating those Articles are equally repugnant to the West Virginia Constitution. The House’s purported basis for Article XIV—that the Petitioner’s conduct violated Canon I and II of the West Virginia Code of Judicial Conduct—is a matter reserved solely for the judicial branch. Put simply, the judicial branch alone has the power to regulate the conduct of judges. Article XIV usurps that power, attempting to shift the

interpretation and enforcement of the Judicial Canons of Conduct to the Legislature. Again, this is anathema to the separation of powers principles embodied in the West Virginia Constitution.

Perhaps more troubling than the House's abject failure to respect the separation of powers, however, is the House's failure to afford the Petitioner the due process every West Virginia citizen is due. Because the Petitioner is a lifelong public servant, the impeachment proceedings threaten the very pension that she has worked her whole career to attain. Therefore, the Articles enacted by the Senate must afford the Petitioner due process; indeed, this Court recognized that "the realization and protection of public employees' pension property rights is a constitutional obligation of the State." *Dadisman v. Moore*, 181 W. Va. 779, 791-92, 384 S.E.2d 816, 828 (1988), *holding modified by Benedict v. Polan*, 186 W. Va. 452, 413 S.E.2d 107 (1991) (emphasis added). In adopting their Articles, however, the House utterly failed to afford the Petitioner the due process she must be afforded under the West Virginia Constitution. Not only do the Articles provide the Petitioner absolutely no notice of the case the Legislature intends to bring against her, the Articles were promulgated in direct, knowing contravention of the procedures the House created to govern the adoption of the Impeachment resolution.

Furthermore, the plain language of the resolutions and the analysis of a noted parliamentarian agree that the House of Delegates never adopted the necessary language to proceed with impeachment. Accordingly, because the House violated the edicts of separation of powers and due process enshrined in the West Virginia Constitution and never adopted the effectuating resolution, the Petitioner requests that this Court grant her Petition for Mandamus and order the Senate to halt impeachment proceedings premised on unconstitutional Articles of Impeachment. Petitioner further requests that this Court stay the Senate's proceedings until it can rule on the Constitutional deficiencies in the House's Articles.



## RELIEF REQUESTED

Certainly, the Legislature possesses the sole power of impeachment under the West Virginia Constitution. W. VA. CONST. art. IV, § 9 (“the Impeachment Clause”). However, even the sweeping authority granted to the Legislature through the Impeachment Clause is limited by the requirement that impeachment proceedings comply with the law. *Nixon v. United States*, 506 U.S. 224, 237–38, 113 S. Ct. 732, 740, 122 L. Ed. 2d 1 (1993) (holding that, although some impeachment issues are a political question, “courts possess power to review either legislative or executive action that transgresses identifiable textual limits.”). This Petition for a Writ of Mandamus seeks expedited relief in the form of an order staying the impeachment proceedings until these constitutional issues are resolved, and further ordering the Senate to perform its nondiscretionary duty under the Constitution to halt the impeachment proceedings because they are premised on unconstitutional articles.

## QUESTIONS PRESENTED

### The Articles of Impeachment Violate the Doctrine of Separation of Powers

1. The West Virginia Constitution provides that “[t]he legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others.” *See* W. VA. CONST. art. V, § 1. It also grants the Judicial Branch plenary power to create and use its budget and to regulate ethical conduct and actions of judicial officers. *Id.* at art. VI, § 51; art. VIII, §§ 1, 3. In the Articles of Impeachment, the Legislature seeks to impeach members of the Supreme Court of Appeals of West Virginia for exercising its plenary authority in expending its budget. Moreover, many of the Legislature’s Articles of Impeachment are premised on alleged violations of the Judicial Canons of Conduct—a system of rules created and enforced solely by the Judicial Branch using its plenary power to

regulate the conduct of judicial officers. Do the Articles of Impeachment violate the doctrine of separation of powers?

**The Articles of Impeachment Violate West Virginia Constitutional Precedent Regarding the Appointment of Senior Status Judges**

2. Under the West Virginia Constitution, the Judicial Branch is given power to create and maintain an efficient judiciary. *See* W. VA. CONST. art. VIII, §§ 3, 8. It is fundamental that the courts are to be open to all people and must provide a remedy of due course of law to those who have suffered injuries. W. VA. CONST. art. III, § 17. To do so, the Judicial Branch is empowered to obtain the resources necessary to maintain the judicial system. *See, e.g., State ex rel. Lambert v. Stephens*, 200 W. Va. 802, 811, 490 S.E.2d 891, 900 (1997). In some of the Articles of Impeachment, the Legislature seeks to impeach members of the Supreme Court of Appeals for appointing Senior Status Judges to fulfill the Court's constitutional obligation to maintain open courts. Is West Virginia Code § 51-9-10 unconstitutional to the extent it is inconsistent with the open courts provision and other provisions of the West Virginia Constitution?

**The Articles of Impeachment Violate the Petitioner's Due Process Rights**

3. Article III, Section 10 of the West Virginia Constitution provides that individuals must be provided with due process of law. This Court recognized that individuals must be afforded substantial due process when their state pension rights are at issue. *Dadisman v. Moore*, 181 W. Va. 779, 791-92, 384 S.E.2d 816, 828 (1988). Impeachment proceedings place an individual's pension rights at issue. *In re Watkins*, 233 W. Va. 170, 175, 757 S.E.2d 594, 599 (2013). Article of Impeachment XIV treats the Justices collectively, and does not provide notice of the enumerated acts to which each Justice is charged. Furthermore, per House Resolution 201, the Legislature created a procedure designed to guarantee the fairness of the process, then

ignored those fairness guarantees. For example, the House stated forthcoming Articles of Impeachment would contain findings of fact. The Articles of Impeachment actually adopted by the House did not contain any Findings of Fact as required by House Resolution 201. Does Article of Impeachment XIV violate the Petitioner's due process rights because the House failed to follow procedures it created to ensure the fairness of the impeachment proceedings and the impeachment proceedings implicate the Petitioner's pension?

**The Resolution Authorizing the Articles of Impeachment Was Never Adopted, Rendering the Articles of Impeachment Null and Void**

4: Under the West Virginia Constitution, the Senate may only proceed with an impeachment trial after the House impeaches a public official. See W. VA. CONST. art. IV, § 9. Here, certain Articles of Impeachment were adopted, but no resolution was adopted authorizing impeachment. Nor was a resolution adopted exhibiting the articles to the Senate as required by House Resolution 201. Does the West Virginia House of Delegates' failure to adopt the enabling Resolution render the Articles of Impeachment null and void and, standing alone, meaningless?

**STATEMENT OF THE CASE**

**Factual Background**

The Petitioner, Margaret L. Workman, was appointed to the Circuit Court of Kanawha County on November 16, 1981 by Governor John D. Rockefeller, IV. She ran for the remainder of the unexpired term in 1982 and a full term in 1984. In 1988, she was elected to the Supreme Court of Appeals of West Virginia, serving a full term until 2000. After a brief return to private practice, she ran again for the Court in 2008, and was again elected to a twelve year term. Thus, she has served in the state judiciary for almost thirty years.

The West Virginia Constitution requires that “[t]here shall be at least one judge for each circuit court and as many more as may be necessary to transact the business of such court.” W. VA. CONST. art. VIII, § 5. The Supreme Court of Appeals is tasked with administering the courts and must keep the court system open to the people. In fulfillment of that duty, when exigent circumstances arise, the Chief Justice has appointed senior status judges in order to preserve the fundamental right of the people to open courts, pursuant to the mandate in the West Virginia Constitution.

In numerous instances, the Chief Justice found it necessary to appoint senior status judges to serve at the circuit court level as a result of protracted illnesses, judicial suspensions, or other extraordinary circumstances. The Governor sometimes does not appoint judges to fill vacancies, requiring the Chief Justice to appoint a senior status judge to keep the Courts open.

For example, in 2017, the Supreme Court of Appeals suspended a newly elected circuit judge of Nicholas County for two years because of violations of the code of judicial ethics in certain campaign advertisements. *In re Callaghan*, 238 W. Va. 495, 503, 796 S.E.2d 604, 612, *cert. denied sub. nom., Callaghan v. W. Virginia Judicial Investigation Comm'n*, 138 S. Ct. 211, 199 L. Ed. 2d 118 (2017). Because the newly elected Judge was suspended for two years, and because Nicholas County is a single judge judicial circuit, an extraordinary need for temporary judicial services arose in order to provide the people of Nicholas County with court services and to avoid the unconstitutional denial of access to the speedy administration of justice. The Chief Justice appointed senior status judge James J. Rowe to serve as the temporary circuit judge of Nicholas County. Judge Rowe travels from his home in Lewisburg each day to perform this service. Judge Rowe serves the people of Nicholas County effectively, attending to the cases on the circuit court’s docket. Using one senior status judge, rather than parading multiple judges

through the courthouse, allows for the efficient and consistent adjudication of the matters pending in Nicholas County.

At that time, the Supreme Court of Appeals' then-Chief Justice Allen Loughry issued an administrative order, stating that "the chief justice has authority to determine in certain exigent circumstances that a senior judicial officer may continue in an appointment beyond the limitations set forth in W. VA. CODE § 51-9-10, to avoid the interruption in statewide continuity of judicial services." *See* App. 043-044. The Chief Justice recognized that continuity in the sitting circuit judge was vital to maintaining the efficient and fair administration of justice and meeting the Court's constitutional obligation to keep the Courts open.

Furthermore, this Court can take judicial notice of the fact that continuity of a sitting circuit judge is vital to fair and full operation of the courts. W. VA. R. EVID. 201. This is especially true for child abuse and neglect cases or complex civil litigation, just two examples of many where shuttling in different judges every few weeks would destroy the continuity necessary for a full and fair adjudication of the matter. Continuity is vital to the adjudication of certain matters. The case load of a sitting circuit judge cannot be managed by committee.

Additionally, this Court can take judicial notice that the supply of available senior status judges is not unlimited. Without going into detail about any individual senior status judge, there are numerous reasons why some senior status judges may not be available for, or want to take,<sup>1</sup> lengthy appointments far from home. Many of West Virginia's senior status judges have significant health issues. Some have informed the Supreme Court of Appeals that they can no longer take appointments due to their health. Some wish to be listed as senior status judges, but have expressed a lack of interest in accepting appointments. At least one is going blind, another

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<sup>1</sup> Senior Status Judges, as retired, are not required to accept an appointment and may decline an appointment for any reason.

is a resident of a nursing home, and some are physically unable to travel. Others do work for the executive branch, precluding their appointment. Even among those that are healthy, some have personal commitments, like wintering in warmer climates, or other travel plans, which prevent them from accepting longer appointments. Often, these personal issues, whether health related or otherwise, are what led to the judge to retire in the first place.<sup>2</sup>

In addressing this issue, the House of Delegates did not consider how difficult it is to fill an appointment with a senior status judge in a rural part of West Virginia for six months, a year, or two years. As a result, the Supreme Court of Appeals' constitutional duty to maintain open courts is not as simple as counting the number of senior status judges and counting the number of days that they are available for appointment. It is far more complex, mandating a case by case analysis. The Court's Administrative Order recognized as much. *See App. 043–044*. Indeed, the then-Chief Justice recognized that, to the extent West Virginia Code conflicted with the Court's constitutional authority, the constitutional authority takes precedence.

#### Procedural Background

On August 7, 2018, the House Judiciary Committee considered recommendation of a resolution to the House of Delegates containing language adopting Articles of Impeachment and stating that the Articles be exhibited to the Senate. App. 001 to 014. That resolution was never adopted. On August 13, 2018, after a motion to divide the question, the West Virginia House of Delegates voted on numerous individual Articles of Impeachment against the Justices of the Supreme Court of Appeals of West Virginia. *See App. 015–026*. Those articles did not contain any language stating that any Justice should be impeached, and contained no language stating

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<sup>2</sup> The Court can take judicial notice of these facts pursuant to Rule 201 of the West Virginia Rules of Evidence. If any of these facts are disputed, Petitioner can provide supporting affidavits establishing these facts.

that the Articles should be exhibited to the Senate. *Id.* Despite those infirmities, the individual Articles, but not the full language of the resolution, were adopted on the same day. *Id.*

The Petitioner is implicated in three of the Articles. First, Article IV seeks to impeach the Petitioner for paying senior status judges in excess of a statutory limit set by Legislature despite the fact that those senior status judges were needed to maintain the efficient functioning of the West Virginia judiciary. *Id.* at 018. Next, Article VI largely echoes Article IV. *Id.* at 020. Finally, Article XIV lumps all of the Justices together and charges them with a bevy of conduct that the House purported violated Canons I and II of the West Virginia Code of Judicial Conduct. *Id.* at 025–026.

After the House adopted the Articles, they moved to the Senate. On August 20, 2018, Senate Resolution 203 was adopted, setting forth duties and adopting rules of procedure to apply to the impeachment proceedings. *See* App. 027–039. A Pre-Trial Conference occurred on Tuesday, September 11, 2018. *See* App. 029. The trials are set to begin on October 1, 2018, and the Petitioner’s trial is set for October 15, 2018. Given the pendency of those proceedings, Petitioner requests that this Court stay them until it resolves the issues raised in this Petition.

### **JURISDICTION AND STANDING**

“Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.” Syl. Pt. 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W.Va. 207, 151 S.E.2d 102 (1966). “This Court’s original jurisdiction in mandamus proceedings derives from Art. VIII, § 3, of the Constitution of West Virginia. Its jurisdiction is also recognized in Rule 14 of the West Virginia Rules of Appellate Procedure and W. Va. Code § 53–1–2 (1933).” *State ex rel. Potter v. Office of Disciplinary Counsel*, 226 W.Va. 1, 4, 697 S.E.2d 37, 40 (2010). Writs of mandamus have been used to nullify and prevent the

commission of an unlawful and unconstitutional act by the Legislature. *See, e.g., State ex rel. Bagley v. Blankenship*, 161 W. Va. 630, 650–51, 246 S.E.2d 99, 110 (1978).

Before this Court may properly issue a writ of mandamus, three elements must coexist: (1) the existence of a clear right in the petitioner to the relief sought; (2) the existence of a legal duty on the part of the respondent to do the thing the petitioner seeks to compel; and (3) the absence of another adequate remedy at law. Syl. Pt. 3, *Cooper v. Gwinn*, 171 W.Va. 245, 298 S.E.2d 781 (1981).

The first element, existence of a clear legal right to the relief sought, is generally a question of standing. Thus, where the individual has a special interest in that she is part of the class that is being affected by the action, then she ordinarily is found to have a clear legal right. *Walls v. Miller*, 162 W.Va. 563, 251 S.E.2d 491 (1978). Moreover, where the right sought to be enforced is a public one in that it is based upon a general statute or affects the public at large, the mandamus proceeding can be brought by any citizen, taxpayer, or voter. *Smith v. W. Va. State Bd. of Educ.*, 170 W. Va. 593, 596, 295 S.E.2d 680, 683 (1982), citing *State ex rel. Brotherton v. Moore*, 159 W.Va. 934, 230 S.E.2d 638 (1976); *State ex rel. W. Va. Lodge, Fraternal Order of Police v. City of Charleston*, 133 W.Va. 420, 56 S.E.2d 763 (1949); *Prichard v. DeVan*, 114 W.Va. 509, 172 S.E. 711 (1934); *State ex rel. Matheny v. Cty. Court of Wyoming Cty.*, 47 W.Va. 672, 35 S.E. 959 (1900).

The Petitioner is a citizen, taxpayer, and voter in the State of West Virginia. The Petitioner is granted under the West Virginia Constitution a right to open courts, a right to an elected judiciary, and a right to a legislative branch that follows the law. The Petitioner unequivocally has a special interest in these proceedings, as the Petitioner is an individual named in the Articles of Impeachment. The Petitioner's position as Chief Justice of the Supreme Court



of Appeals of West Virginia, her livelihood, and her judicial pension, earned through a lifetime of public service, are all at risk.

In regard to the second element, the legal duties of Respondents, the members of the West Virginia Legislature took an oath of office to uphold the Constitution of the State of West Virginia. *See, e.g.*, W. VA. CONST. art. VI, § 16 (setting forth the oath of senators and delegates). Further, the Clerk of the Senate has certain legal duties prescribed by statute and Senate Resolutions. Whether a legal duty exists on the part of the Respondents to follow the Constitution, the Legislature's own resolutions, and the law will be discussed in more detail herein.

The third element is also met. "While it is true that mandamus is not available where another specific and adequate remedy exists, if such other remedy is not equally as beneficial, convenient, and effective, mandamus will lie." *Cooper, supra*, at Syl. Pt. 4, 298 S.E.2d 781. There is no question that no other adequate remedy is available, other than a Writ of Mandamus, to request an Order holding that the Legislature must follow the law and their constitutional duties. None of the issues herein can be resolved by the impeachment proceedings alone. Even a ruling by the Presiding Officer of the impeachment proceedings can be overruled by a majority vote of the Senators present. App. 36. A Writ of Mandamus is the most beneficial, convenient, and effective method to obtain a ruling on the issues described herein. No other remedy exists.

### SUMMARY OF ARGUMENT

In making the law, the Legislature is also charged with following the law. However, the Legislature's impeachment efforts run afoul of the edicts of the West Virginia Constitution.

First, the Legislature's impeachment efforts violate the separation of powers principles enshrined in the West Virginia Constitution. Specifically, Articles IV, VI, and XIV of the

Articles of Impeachment infringe on the Judicial Branch's sole power to control its budget. Additionally, the Articles of Impeachment repeatedly violate the separation of powers principles by alleging Justices violated the Judicial Canons of Conduct which regulate judicial conduct, an obligation solely within the province of the Judicial Branch. Therefore, the above-referenced Articles must be stricken as unlawful, and the Senate's impeachment proceedings based on those unlawful Articles must be halted.

Further, the Legislature seeks to impeach the Petitioner for complying with her constitutional duty to ensure that West Virginia Courts remain open and accessible for all West Virginians. The Supreme Court of Appeals of West Virginia has fulfilled this duty, at times, by appointing senior status judges. However, the Articles of Impeachment concerning the appointment of senior status judges cite to an inapplicable statute which, if applied as the Legislature directs, would be unconstitutional on its face because it is inconsistent with the Court's constitutional duties. Not only do these Articles seek to impeach the Justices for complying with their constitutional duties—these Articles are also entirely baseless under established West Virginia case law. Therefore, they must be stricken, and the Senate's impeachment proceedings based on those unlawful Articles must be halted.

Moreover, the Legislature's impeachment efforts run afoul of sacrosanct principles of due process. Due process is implicated here, as the Petitioner's rights to her livelihood and pension are at issue. The Petitioner's right to due process is violated because the Petitioner has not been afforded adequate notice of the charges against her. Specifically, under Article XIV, several justices are charged collectively for a series of acts that are attributable to some but not all of them. Accordingly, the Legislature failed to comport with due process because it failed to provide the Petitioner with notice of the charges against her.

Finally, the House never adopted the operative, effectuating language regarding the Articles of Impeachment. That language was present in the original resolution drafted by the House Judiciary Committee, but not in the Articles of Impeachment ultimately adopted. This procedural flaw renders the articles null and void.

In sum, the Senate is charged with complying with the Constitution when conducting impeachment proceedings. If it proceeds on the Articles brought by the House against the Petitioner, it fails to abide by the Constitution because the Articles are constitutionally deficient. Therefore, the instant proceedings must be halted.

#### STATEMENT REGARDING ORAL ARGUMENT

Oral Argument is necessary, expedited relief is requested, and the Court's decisional process would be significantly aided by oral argument. Full oral argument pursuant to Rule 20 is appropriate, because this Petition presents issues of first impression before the Supreme Court of Appeals of West Virginia, issues of fundamental public importance related to the function of government, and issues of constitutional interpretation. Therefore, the Petitioner respectfully requests Rule 20 oral argument.

#### ARGUMENT

- I. The Articles of Impeachment violate the principles of separation of powers enshrined within the West Virginia Constitution by usurping powers explicitly reserved for the Judicial Branch.**

West Virginia's Constitution, like that of the United States and its forty nine sister states, provides for a system of separate and co-equal branches of government. Under Article V, § 1 of the West Virginia Constitution, "The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time,

except that justices of the peace shall be eligible to the Legislature.” Based on that provision, the Supreme Court of Appeals of West Virginia has long held that “[t]he legislative, executive and judicial departments of the government must be kept separate and distinct, and each in its legitimate sphere must be protected.” *State v. Buchanan*, 24 W. Va. 362, 1884 WL 2784 (1884). This edict is strictly enforced, “Article V, section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed.” Syl. Pt. 1, *State ex rel. Barker v. Manchin*, 167 W.Va. 155, 279 S.E.2d 622 (1981). To that end, the Court has determined, “Legislative enactments which are not compatible with those prescribed by the judiciary or with its goals are unconstitutional violations of the separation of powers.” *State ex rel. Quelch v. Daugherty*, 172 W. Va. 422, 424, 306 S.E.2d 233, 235 (1983). Accordingly, when one branch of government oversteps the bounds of its constitutionally-granted power, the overreach “practically compels courts, when called upon, to thwart any unlawful actions of one branch of government which impair the constitutional responsibilities and functions of a coequal branch.” *State ex rel. Brotherton v. Blankenship*, 158 W. Va. 390, 402, 214 S.E.2d 467, 477 (1975).

For example, the Supreme Court of Appeals of West Virginia struck legislation that limited its ability to control the process and standards for the admission to practice law. *See State ex rel. Quelch*, 172 W. Va. 422, 306 S.E.2d 233 (1983). In *Quelch*, the Legislature passed a bill that eliminated the “diploma privilege” allowing graduates of the West Virginia University College of Law to practice in West Virginia without taking the bar exam. *Id.* However, under Article VIII, Sections 1 and 3 of the West Virginia Constitution, the Judicial Branch has plenary power to regulate admission to the practice of law. *Id.* at 423. Because the Judicial Branch is

constitutionally vested with the power to control admission to the practice of law, this Court determined, “[a]ny legislatively-enacted provision regarding bar admissions that conflicts with or is repugnant to a Supreme Court rule must fall.” *Id.* at 424. Therefore, the Court struck the law because it determined that, under separation of powers principles, the law constituted “an unconstitutional usurpation of this Court’s exclusive authority to regulate admission to the practice of law in this State.” *Id.* at 425.

Similarly, the Legislature’s impeachment efforts run afoul of the Separation of Powers principles enshrined in the West Virginia Constitution in two ways. First, the Legislature’s efforts<sup>3</sup> are an attempt to use punitive measures to police the Judiciary’s budget. This is impermissible where the West Virginia Constitution grants the Judiciary the sole power to create and use its budget. Second, many of the Legislature’s impeachment articles are premised on alleged violations of the Canons of Judicial Conduct (particularly Article XIV); however, the Judicial branch—not the Legislative branch—is imbued with plenary power to regulate judicial conduct. The Legislature may not usurp the Judiciary’s role and judge otherwise legal judicial conduct where that function falls squarely within the powers and obligations of the Judicial Branch. The Petitioner will explain each of the Legislature’s usurpations in turn.

**a. The Articles of Impeachment violate the West Virginia Constitution by exerting Legislative control over the Judicial Branch’s exclusive budget powers.**

The West Virginia Constitution provides the Judicial Branch the sole power to control its budget. The Judicial Branch is charged with creating and enforcing its own budget. *See* W.VA. CONST. art. VIII, § 3 (“The court shall appoint an administrative director to serve at its pleasure at a salary to be fixed by the court. The administrative director shall, under the direction of the

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<sup>3</sup> Certainly, some of the Articles of Impeachment against Justice Loughry involve using public resources for private gain, have nothing to do with legitimate budgetary decisions, and the Petitioner is not arguing that those Articles of Impeachment are unconstitutional under the budget provisions.

chief justice, prepare and submit a budget for the court.”). The West Virginia Constitution limits other branches of government from controlling the Judicial Branch’s budget. Under Article VI, § 51, Provision 5, “The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or decreasing any item therein: Provided, That no item relating to the judiciary shall be decreased.”

The Supreme Court of Appeals of West Virginia has interpreted this provision broadly, holding, “The judiciary department has the inherent power to determine what funds are necessary for its efficient and effective operation” and “Article VI, Section 51 of the West Virginia Constitution, when read in its entirety, shows a clear intent on the part of the framers thereof and the people who adopted it to preclude both the Legislature and the Governor from altering the budget of the judiciary department as submitted by that department to the Auditor.” Syl. Pts. 1 & 3, *State ex rel. Bagley v. Blankenship*, 161 W. Va. 630, 630, 246 S.E.2d 99, 101 (1978); *see also State ex rel. Brotherton v. Blankenship*, 157 W. Va. 100, 116, 207 S.E.2d 421, 431 (1973) (finding that Article 6, § 51 of the West Virginia Constitution evinces a clear intent to preclude both the Legislature and the Governor from altering the budget of the Judicial Branch). This interpretation makes sense—the plain intent of Article VI, § 51, Provision 5 is to “insulate[] the judiciary from political retaliation by preventing the governor and legislature from reducing the judiciary's budget submissions.” *State ex rel. Frazier v. Meadows*, 193 W. Va. 20, 26, 454 S.E.2d 65, 71 (1994).

Despite the Judicial Branch’s broad power to control its budget, the Legislature, through the impeachment trial, is attempting—in direct contravention of its constitutionally-limited powers—to infringe upon the Judicial Branch’s constitutional power to control its budget. Importantly, the Articles related to the Judicial Branch’s use of its budget do not allege that the

Justices failed to comply with their budget as provided to them.<sup>4</sup> Rather, those Articles criticize how duly procured budgetary funds are used. In essence, the impeachment seeks to alter the Judicial Branch's budget by punishing Justices for using duly procured funds after the fact.

In so doing, the Legislature oversteps the bounds of its constitutionally-defined role. It is undisputed the judicial branch has plenary constitutional authority to control its budget, and there is further no dispute that the expenditures that serve as the basis for the Petitioner's impeachment fall squarely within the Court's plenary power to control its budget. Basically, the Legislature is attempting to punish the Petitioner for using her unquestionable legal and constitutional authority to promulgate and use the judicial budget. This is impermissible. If the Legislature seeks a greater role in controlling the Judicial Branch's budget, the proper method of gaining that control is through a constitutional amendment<sup>5</sup>—not punitive measures intended to coerce the Judiciary from using its duly enacted budget. Accordingly, because the Legislature is attempting to use punitive measures in an attempt to police the Judicial Branch's budget, the Legislature is overstepping its constitutionally-defined role.<sup>6</sup> Therefore, the Petitioner seeks an Order staying

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<sup>4</sup> As discussed below, Articles IV, VI and XIV accuse the Justices of misusing funds to pay senior status judges, however, established West Virginia case law shows that the Supreme Court of Appeals may use Administrative Orders to procure payment to ensure that the West Virginia courts run properly—and that those Administrative Orders trump legislation to the contrary. *See infra*, at Argument section II.

<sup>5</sup> Indeed, Amendment Question 2, a provision aimed at re-distributing the Judicial Branch's power to control its Budget, is on the ballot for consideration in the upcoming general election.

<sup>6</sup> In addition to violating Article V, Section 1 of the West Virginia Constitution, the Articles of Impeachment violate Article VI, Section 51, Provision 13: Per that Provision, "In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the constitution, the provisions of this section shall prevail." W. Va. Const. art. VI, § 51. Importantly, Article 6, Section 51 gives the Judiciary broad power to control its budget, prohibiting the Legislature from altering the Judiciary's budgetary items.

Here, the Legislature is attempting to impeach with the authority vested in it by Article IV, Section 9, which states, "Any officer of the state may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor." Although this provision is not facially inconsistent with Article VI, Section 51, Provision 13, the Legislature's application of Article IV, Section 9 renders it in opposition to Article VI, Section 51. Article VI, Section 51 gives the Judiciary broad power to control their budget; however, the Legislature seeks to rein in that broad power using Article IV, Section 9 to punish the Court for using duly procured budgetary funds. Simply put, the Legislature is attempting to use Article IV, Section 9 to punitively narrow the Judiciary's ability to control its budget, an act which is elsewhere prohibited. If the Legislature seeks the ability to exert greater control over the Judiciary's budget, constitutional reform—not punitive impeachment hearings—is the

and ultimately halting the Senate's impeachment proceedings premised on the unconstitutional Articles of Impeachment.

**b. The Articles of Impeachment violate the West Virginia Constitution by appropriating the Judicial Branch's exclusive power to regulate judicial conduct.**

The Supreme Court of Appeals of West Virginia has plenary authority to promulgate rules governing judicial conduct, and the rules it adopts have the force and effect of a statute. *See* W.VA. CONST., art. VIII, §§ 3 and 8. Additionally, when a rule adopted by the Court conflicts with another statute or law, the rule supersedes the conflicting statute or law. *See* W.VA. CONST., art. VIII, § 8. The Court has "general supervisory control over all intermediate appellate courts, circuit courts and magistrate courts," and "[t]he chief justice shall be the administrative head of all the courts." *See* W.VA. CONST. art. VIII, § 3. Accordingly, the Court also has the authority to "use its inherent rule-making power" to "prescribe, adopt, promulgate, and amend rules prescribing a judicial code of ethics, and a code of regulations and standards of conduct and performances for justices, judges and magistrates, along with sanctions and penalties for any violation thereof." *See* W.VA. CONST. art. VIII, § 8.

Under this constitutional authority, the Court can:

Censure or temporarily suspend any justice, judge or magistrate having the judicial power of the State, including one of its own members, for any violation of any such code of ethics, code of regulations and standards, or to retire any such justice, judge or magistrate who is eligible for retirement under the West Virginia judges' retirement system (or any successor or substituted retirement system for justices, judges, and magistrates of this State) and who, because of advancing years and attendant physical or mental incapacity, should not, in the opinion of the Supreme Court of Appeals, continue to serve as a justice, judge or magistrate.

*Id.*

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proper way to exert that control. Because the impeachment clause creates an inconsistency with the budget clause, the budget clause must prevail. W. Va. Const. art. VI, § 51. Therefore, the Legislature's use of Article IV, Section 9 is unconstitutional because it runs afoul of Article VI, Section 51, Provision 13.



As a result, the investigations of any perceived or complained of violations of the provisions of the West Virginia Code of Judicial Conduct, including violations of Canons I and II, remain the exclusive province of the Judicial Branch. The Judicial Investigation Commission is the only governmental entity in West Virginia vested with power to investigate violations of the West Virginia Code of Judicial Conduct.

This structure aligns perfectly with the West Virginia Constitution. “The judicial power of the state shall be vested solely in a supreme court of appeals.” *See* W. VA. CONST. art. VIII, § 1. Specifically, with respect to discipline for violations of the West Virginia Code of Judicial Conduct, “[t]he Supreme Court of Appeals will make an independent evaluation of the record and recommendations of the Judicial [Hearing] Board in disciplinary proceedings.” Syl. Pt. 1, *W. Va. Judicial Inquiry Comm’n v. Dostert*, 165 W. Va. 233, 271 S.E.2d 427 (1980); Syl. Pt., *In re Hey*, 193 W.Va. 572, 457 S.E.2d 509 (1995); *In re Callaghan*, 238 W.Va. 495, 796 S.E.2d 604 (2017). “This Court is the final arbiter of legal ethics problems and must make the ultimate decisions about public reprimands, suspensions or annulments of attorneys’ licenses to practice law.” Syl. Pt. 3, *Comm. on Legal Ethics v. Blair*, 174 W. Va. 494, 327 S.E.2d 671 (1984), *cert denied*, 470 U.S. 1028, 105 S.Ct. 139 (1985). Further, “[t]he West Virginia Constitution confers on the West Virginia Supreme Court of Appeals, both expressly and by necessary implication, the power to protect the integrity of the judicial branch of government and the duty to regulate the political activities of all judicial officers.” Syl. Pt. 6, *State ex rel. Carenbauer v. Hechler*, 208 W.Va. 584, 542 S.E.2d 405 (2000)

Article of Impeachment XIV states that: “The failure by the Justices, individually and collectively, to carry out these necessary and proper administrative activities constitute a violation of the provision of Canon I and Canon II of the West Virginia Code of Judicial

Conduct.” App. 026. Canon I states that “*A Judge shall uphold and promote the Independence, Integrity, and Impartiality of the Judiciary, and shall avoid Impropriety and the Appearance of Impropriety.*” Canon II states that “*A Judge shall perform the Duties of Judicial Office Impartially, Competently, and Diligently.*”

The Legislature has neither the authority to attempt to interpret, enforce, or construe the Canons of Judicial Conduct, nor the authority to revisit rulings interpreting those Canons. Any impeachment proceeding which relies upon an interpretation by the Legislature of the Canons of Judicial Conduct is unconstitutional because the judicial branch—not the Legislature—is vested with the sole authority to regulate judicial conduct under the West Virginia Constitution. Therefore, this Court should stay the impeachment proceedings in the pendency of its ruling and issue a mandamus requiring the Senate to halt the impeachment proceedings because they are premised on unconstitutional Articles.

**II. The Articles of Impeachment violate West Virginia Constitutional precedent regarding the appointment of senior status judges.**

The State Constitution requires the Supreme Court of Appeals to keep the courts open and provide access to all. Specifically, West Virginia Constitution, Article III, Section 17 states:

The courts of this state shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay.

The State Constitution also establishes that individuals have the right to trial by jury in certain actions. *See, e.g.*, W. VA. CONST. art. III, §§ 13–14. “The right of access to our courts is one of the basic and fundamental principles of jurisprudence in West Virginia.” *Mathena v. Haines*, 219 W. Va. 417, 422, 633 S.E.2d 771, 776 (2006) (recognizing access to courts as a fundamental constitutional right).

In furtherance of the right of access to the courts, the Judicial Reorganization Amendment established a procedure for utilizing senior status judges for temporary assignment:

A retired justice or judge may, with his permission and with the approval of the supreme court of appeals, be recalled by the chief justice of the supreme court of appeals for temporary assignment as a justice of the supreme court of appeals, or judge of an intermediate appellate court, a circuit court or a magistrate court.

W. VA. CONST. art. VIII, § 8. The Judiciary also has inherent power to obtain necessary resources and defend constitutional interests. *See, e.g., State ex rel. Lambert v. Stephens*, 200 W. Va. 802, 811, 490 S.E.2d 891, 900 (1997). "Prior to the adoption of the *Judicial Reorganization Amendment*, there may have been some question as to this Court's supervisory powers over lower courts. *See Fahey v. Brennan*, 136 W. Va. 666, 68 S.E.2d 1 (1951). It is now quite clear under the *Judicial Reorganization Amendment* that considerable supervisory powers have been conferred upon this Court." *Stern Bros. v. McClure*, 160 W.Va. 567, 573, 236 S.E.2d 222, 226 (1977).

The Supreme Court of Appeals has relied upon its constitutional authority to supervise lower courts and recall senior status judges for temporary assignments from time to time, often in cases of exigent circumstances. When a judge is absent from performing his or her duties for a significant length of time, but his or her position is not vacant, the Governor is prevented from appointing a replacement for such judge. *See App. 043-044*. For example, judges can be absent from the bench for protracted health problems, suspensions due to ethical violations, or other extraordinary circumstances. The appointment by the Chief Justice of the Supreme Court of Appeals of senior status judges to serve in such circumstances is therefore permissible under its explicit and inherent powers.

West Virginia Code § 51-9-10 does not prohibit the Chief Justice from appointing a senior status judge to fill a vacancy on a temporary basis in the face of exigent circumstances.

That statute purports to prohibit paying senior status judges more than a sitting judge's salary. *See, e.g.*, W. VA. CODE § 51-9-10.<sup>7</sup> Generally, that code section states that per diem payments and retirement payments to a senior status judge appointed from a panel "as needed and feasible toward the objective of reducing caseloads and providing speedier trials" cannot exceed the salary<sup>8</sup> for a sitting circuit judge. Constitutional provisions, however, cannot be superseded by a statutory provision of the legislature, such as W. VA. CODE § 51-9-10.<sup>9</sup>

Moreover, there is substantial authority supporting the position that the Supreme Court of Appeals can establish rules that take precedence over statutes. The Constitution states that "The court shall have power to promulgate rules for all cases and proceedings, civil and criminal, for all of the courts of the state relating to writs, warrants, process, practice and procedure, which shall have the force and effect of law." W. VA. CONST. art. VIII, § 3; see also *id.* art. VIII, § 8 (noting the Supreme Court's "inherent rule-making power" and granting it authority to adopt ethical rules and rules of conduct for judges). Furthermore, the Judicial Reorganization

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<sup>7</sup> W. Va. CODE § 51-9-10, entitled "Services of senior judges" states:

The West Virginia Supreme Court of Appeals is authorized and empowered to create a panel of senior judges to utilize the talent and experience of former circuit court judges and supreme court justices of this state. The Supreme Court of Appeals shall promulgate rules providing for said judges and justices to be assigned duties as needed and as feasible toward the objective of reducing caseloads and providing speedier trials to litigants throughout the state: Provided, That reasonable payment shall be made to said judges and justices on a per diem basis: Provided, however, That the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge, and allowances shall also be made for necessary expenses as provided for special judges under articles two and nine of this chapter.

<sup>8</sup> W. Va. CODE § 51-2-13, entitled "Salaries of judges of circuit courts," states that "beginning July 1, 2011, the annual salary of a circuit court judge shall be \$126,000."

<sup>9</sup> In the House of Delegates, during the debate on the Articles of Impeachment, the suggestion was raised that Senior Status judges simply work for free after reaching the maximum salary under § 51-9-10. Of course, any judge placed in such a situation could continue to work for free, or could simply inform the Supreme Court of Appeals they are no longer interested in continuing on that appointment and aren't interested in any more appointments until the following year. As contract employees, the Supreme Court of Appeals of West Virginia would have no authority to compel the Senior Status Judges to work for free, and indeed, as the Court knows, a senior status judge can refuse an appointment for any reason. The absurd nature of the House's proposed solution demonstrates that these Articles of Impeachment were adopted without any consideration of the obligations imposed on the judiciary by the West Virginia Constitution.

Amendment expressly granted the Supreme Court of Appeals of West Virginia the “power to promulgate administrative rules.” *Stern Bros. v. McClure*, 160 W. Va. 567, 573, 236 S.E.2d 222, 226 (1977). Article VIII, Section 8 of the Judicial Reorganization Amendment recognized the inherent rulemaking power which this Court previously used to adopt judicial rules and gave such rules “the force and effect of statutory law” by amending Article VIII, Section 8 of the West Virginia Constitution to read:

When rules herein authorized are prescribed, adopted and promulgated, they shall supersede all laws and parts of laws in conflict therewith, and such laws shall be and become of no further force or effect to the extent of such conflict.

*Id.* (citing W. VA. CONST. art. VIII, § 8); *see also* Syl. Pt. 2, *Bennett v. Warner*, 179 W. Va. 742, 743, 372 S.E.2d 920, 921 (1988) (“Under article eight, section three of our Constitution, the Supreme Court of Appeals shall have the power to promulgate rules for all of the courts of the State related to process, practice, and procedure, which shall have the force and effect of law.”); *State v. Davis*, 178 W. Va. 87, 91, 357 S.E.2d 769, 772 (1987) (overturned on other grounds); *State ex rel. Kenamond v. Warmuth*, 179 W. Va. 230, 232, 366 S.E.2d 738, 740 (1988); *Teter v. Old Colony Co.*, 190 W. Va. 711, 724–25, 441 S.E.2d 728, 741–42 (1994); *Williams v. Cummings*, 191 W. Va. 370, 372, 445 S.E.2d 757, 759 (1994).

The Supreme Court of Appeals “has not hesitated to invalidate a statute that conflicts with our inherent rule-making authority.” *State Farm Fire & Cas. Co. v. Prinz*, 231 W. Va. 96, 105, 743 S.E.2d 907, 916 (2013) (noting “this Court’s longstanding position that the legislative branch of government cannot abridge the rule-making power of this Court”). In *Stern Brothers*, the Court held that:

The administrative rule promulgated by the Supreme Court of Appeals of West Virginia, setting out a procedure for the temporary assignment of a circuit judge in the event of a disqualification of a particular circuit judge, operates to supersede the existing statutory provisions found in W. Va. Code, 51-2-9 and -10

and W. Va. Code, 56-9-2, insofar as such provisions relate to the selection of special judges and to the assignment of a case to another circuit judge when a particular circuit judge is disqualified.

Syl. Pt. 2, 160 W. Va. 567, 567, 236 S.E.2d 222, 223 (1977).

On May 19, 2017, pursuant to its rule-making authority, then-Chief Justice Loughry issued an administrative order, which stated that the constitutional administrative authority of the Court to keep the courts of the state open trumps W. VA. CODE § 51-9-10 “in certain exigent situations involving protracted illness, lengthy suspensions due to ethical violations, or other extraordinary circumstances...,” and that “the chief justice has authority to determine in certain exigent circumstances that a senior judicial officer may continue in an appointment beyond the limitations set forth in W. VA. CODE § 51-9-10, to avoid the interruption in statewide continuity of judicial services.” *See* App. 043–044. To the extent a possible conflict existed between § 51-9-10 and the Judicial Reorganization Amendment, this Administrative Order superseded the statute, eliminating that possibility.

This Administrative Order arose in part from Judge Callaghan of Nicholas County’s suspension from the practice of law due to violations of the code of judicial ethics in relation to certain campaign advertisements he ran against his political opponent. Because the newly elected Judge was suspended for two years, and no other judge sits in that circuit, an extraordinary need for temporary judicial services arose in order to provide the people of Nicholas County with court services and to avoid the unconstitutional denial of access to the speedy administration of justice.<sup>10</sup>

Although the Administrative Order does not explicitly reference and overrule § 51-9-10, it does state that where that statute comes into conflict with the Court’s inherent duties under the

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<sup>10</sup> Litigants would not be served by sending a different senior status judge every week, and there was no such surplus of senior status judges to send. Judge Rowe commutes several hours a day for this appointment.

Constitution; the Administrative Order and the Constitution take precedence over the statute. Furthermore, the statement in the Administrative Order must be applied retroactively, as it addresses “matters that are regulated exclusively by this Court pursuant to the Rule-Making Clause, Article VIII, § 3 of the West Virginia Constitution.” *Richmond v. Levin*, 219 W. Va. 512, 514, 637 S.E.2d 610, 612 (2006). Therefore, the Administrative Order of the Supreme Court of Appeals of West Virginia, Article VIII, § 3, and Article VIII, § 8 of the West Virginia Constitution, supersedes W. VA. CODE §51-9-10. *See* App. 043–044.

Moreover, the Legislature’s proclamation in W. VA. CODE § 51-9-10 cannot limit the constitutional authority of the Supreme Court of Appeals set forth in the *Judicial Reorganization Amendment*. A judge appointed based on exigent circumstances is not simply providing daily stand-in duties to reduce caseloads and provide speedier trials, which are the two reasons listed in W. VA. CODE § 51-9-10. Instead, such a judge is temporarily assigned to deal with “exigent circumstances” that left a court without a judge, but did not constitute a vacancy which the governor could fill. *Id.* Because these judges were appointed under a different authority altogether—the Supreme Court of Appeals of West Virginia’s administrative rules and inherent duty and constitutional authority to keep the Courts open, which supersede the West Virginia Code, and which cannot be limited by an act of the Legislature absent a constitutional amendment—these senior status judges’ salaries are not governed by W. VA. CODE § 51-9-10.

As a result, the Articles of Impeachment relying on that section of the Code are unconstitutional because they infringe upon the Chief Justice’s stated authority under the *Judicial Reorganization Amendment*, to promulgate rules and administer the Judiciary branch pursuant to West Virginia Constitution Article VIII, § 3.

Therefore, this Court should stay the proceedings in the pendency of its ruling and issue a mandamus requiring the Senate to halt the impeachment proceedings because they are premised on unconstitutional Articles of Impeachment.

**III. The Articles of Impeachment violate the Petitioner's constitutional right to due process.**

Finally, the Articles of Impeachment violate the Petitioner's constitutional right to due process. Although the West Virginia Constitution vests in the Legislature the "sole power of impeachment," the Legislature may not wantonly use that power in a manner that violates the due process the Petitioner is due under Article III, Section 10 of the West Virginia Constitution. *See, e.g., Fraley v. Civil Serv. Comm'n*, 177 W. Va. 729, 733, 356 S.E.2d 483, 487 (1987) ("The Legislature 'may not constitutionally authorize the deprivation of such [a property] interest, once conferred, without appropriate procedural safeguards.'"). Here, they seek not only to remove the Petitioner from her duly elected office, but to take her livelihood. More specifically, because impeachment implicates the Petitioner's vested right in a state pension,<sup>11</sup> the Legislature must afford the Petitioner due process during the impeachment process. *See In re Watkins*, 233 W. Va. 170, 175, 757 S.E.2d 594, 599 (2013) ("[A] state official who is impeached forfeits all rights to a state pension."); *Dadisman v. Moore*, 181 W. Va. 779, 791–92, 384 S.E.2d 816, 828 (1988), *holding modified by Benedict v. Polan*, 186 W. Va. 452, 413 S.E.2d 107 (1991) ("[T]he realization and protection of public employees' pension property rights is a constitutional obligation of the State. The State cannot divest the plan participants of their rights except by due process."). Here, the Legislature failed to afford the Petitioner notice of the claims asserted against her; therefore, the Legislature's actions fail to meet the requirements of due process.

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<sup>11</sup> Any doubt that the Senate is seeking to take Petitioner's pension was removed at the Pre-Trial Conference on September 11, 2018. At that conference, the Senate heard debate on a resolution to dismiss the impeachment against Justice Robin Jean Davis. One of the arguments raised in opposition to that resolution was that, even though Justice Davis had resigned, she still was eligible to receive a pension, and thus must be impeached.



Moreover, even if the Legislature did provide some modicum of notice to the Petitioner, that notice falls well short of process she is due under the United States and West Virginia Constitution. The Petitioner will detail each of these failures in turn.

- a. **The Senate's impeachment proceedings fail to afford the Petitioner adequate due process because she received no specific notice of the charges asserted against her.**

Although due process is a fluid concept, it is universally accepted that due process requires proper notice and a meaningful opportunity to be heard. *Fraleley*, 177 W. Va. at 732, 356 S.E.2d at 486 (stating that the essential requirements of due process are "notice and an opportunity to respond"). Notice encompasses more than merely providing the Petitioner acknowledgement of the proceedings against her—courts have routinely held that notice is insufficient where it fails to provide individuals of the basis of the charges asserted against them. See *Bd. of Educ. of Cty. of Mercer v. Wirt*, 192 W. Va. 568, 576, 453 S.E.2d 402, 410 (1994) (determining that an individual did not receive notice adequate for due process where he was not "provided adequate written notice of the charges against him and an explanation of the evidence prior to the Board of Education's meeting"); *Fraleley*, 177 W. Va. at 732, 356 S.E.2d at 486 (determining that due process in the civil employment context required "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story prior to termination" (citation omitted)). For example, in *Wirt*, this Court determined that a party did not receive adequate notice where an individual was provided written notice that failed to describe the basis for charges leveled against the defendant. *Wirt*, 192 W. Va. at 576, 453 S.E.2d at 410. Specifically, the Court noted that "without sufficient notice of the charges against him, his opportunity to address the Board was meaningless." *Id.*

Similarly, the Articles at issue in this case afford the Petitioner insufficient notice of the charges against her and severely hinder her defense of her case. Specifically, in the Articles, the House took a catch-all, shotgun approach in Article of Impeachment XIV. That Article lists every Justice, and lists numerous allegations, without specifying which Justice is accused of which of the allegations. App. 025–26. This is a significant and clear violation of the notice requirements of due process, which require an individual be apprised of the charges against him or her, and be given adequate notice of the offense charged and for which he or she is to be tried. *Rabe v. Washington*, 405 U.S. 313, S.Ct. 993 (1972) (other citations omitted). Instead of placing the Justices on specific notice, Article XIV refers to the Justices “individually and collectively” refers to behavior “including, but without limitation” and accuses the Justices of failing to do “one or more of the following,” noticeably violating due process and making it completely impossible for an accused Justice to determine what portion of Article XIV he or she is accused of. Absent notice of the foregoing, there is no due process for the accused. *See, e.g., Wirt*, 192 W. Va. at 576, 453 S.E.2d at 410. (determining that an individual’s ability to appear before a board was meaningless where that individual was not afforded notice of the charges against him and the basis for those charges, and accordingly, the individual was not afforded the notice he was due under the due process guarantee).

In addition to leaving it completely unclear which Justice is being charged with which allegation, Article XIV fails to realize that absent a majority of three of the five justices, no policies can be adopted at the Supreme Court of Appeals of West Virginia. Therefore, even if the Petitioner had drafted and proposed a policy that would have prevented the allegedly improper conduct, she would have needed a majority to adopt such a policy. Absent an allegation of individual conduct, the Articles lack due process. *See United States v. Thomas*, 367

F.3d 194, 187 (4th Cir. 2004) (dismissal for failure to state an offense). The Senate Rules, enacted through Senate Resolution 203 (App. 027, *et. seq.*) require separate trials, though this Article treats the five Justices as if they were one and the same. Put simply, the Petitioner is being forced to defend herself against a charge that lumps her together with the other Justices and utterly fails to describe the basis for her impeachment. This utterly fails to meet due process notice requirements.

**b. The Senate's impeachment proceedings pose a substantial risk of erroneously depriving the Petitioner of her pension rights because the House knowingly ignored the procedures it adopted to govern the impeachment process when attempting to adopt its flawed Articles of Impeachment.**

Even assuming, however, that Article XIV provided the Petitioner some miniscule amount of notice of the charges leveled against her, the Articles nevertheless fail to afford the Petitioner sufficient due process. This Court determined, “[t]he extent of due process protection affordable for a property interest requires consideration of three distinct factors: first, the private interests that will be affected by the official action; second, the risk of an erroneous deprivation of a property interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” Syl. Pt. 5, *Waite v. Civil Service Comm'n*, 161 W.Va. 154, 241 S.E.2d 164 (1977). In this case, the Court must consider the due process that must be afforded the Petitioner to ensure the protection of her property interest in her pension. Therefore, as shown above, the first factor weighs conclusively in favor of the Petitioner because “the realization and protection of public employees' pension property rights is a *constitutional obligation of the State.*” *Dadisman*, 181 W. Va. at 791–92, 384 S.E.2d at 828 (emphasis added).

Furthermore, the second factor weighs in favor of the Petitioner—the Resolutions at issue in this case pose an immensely high risk of erroneously depriving the Petitioner of her due process right to her pension. To fully understand the risk that the House’s conduct posed to the Petitioner’s property rights, it is crucial to understand the Resolution at issue. HR 201 empowered the House Committee on the Judiciary to investigate allegations of impeachable offenses against the Justices of the Supreme Court of Appeals of West Virginia. *See* App. 040–042. HR 201 set forth five duties of the Judiciary Committee:

- (1) To investigate, or cause to be investigated, any allegations or charges related to the maladministration, corruption, incompetency, gross immorality, or high crimes or misdemeanors committed by any Justice of the West Virginia Supreme Court of Appeals;
- (2) To meet during the adjournment of the House of Delegates and to hold a hearing or hearings thereon if deemed necessary in the course of its investigation;
- (3) To make findings of fact based upon such investigation and hearing(s);
- (4) To report to the House of Delegates its findings of facts and any recommendations consistent with those findings of fact which the Committee may deem proper; and
- (5) If the recommendation of the Committee be to impeach any or all of the five members of the West Virginia Supreme Court of Appeals, then to present to the House of Delegates a proposed resolution of impeachment and proposed articles of impeachment;

App. 040 (House Resolution 201 (2018)). Furthermore, the Judiciary Committee, through HR 201 goes on to characterize these five items as “its duties pursuant to this resolution.” *Id.* The Judiciary Committee refers to this list as “its duties.” *Id.* It is uncontroverted that duties (3) and (4) the House imposed on itself (making findings of fact and reporting them to the House) were never fulfilled.

Instead, the House Judiciary Committee presented recommended articles of impeachment without ever issuing the aforesaid report to the Legislature, and without ever making any findings of fact as referenced in HR 201. The Articles of Impeachment consist solely of accusations without any findings of fact, and contain no report to the House regarding those findings. Despite the binding nature of HR 201, it was not followed here, and therefore the Articles of Impeachment recommended to the House violate the House Judiciary Committee's own resolution regarding the impeachment process. Courts examining whether or not a government body must follow its own rules and regulations, even if it has the authority to change them, have uniformly held they must. *Vitarelli v. Seaton*, 359 U.S. 535 (1959); *Service v. Dulles*, 354 U.S. 363 (1957); *U.S. ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *State ex rel. Wilson v. Truby*, 167 W. Va. 179, 281 S.E.2d 231 (1981); *Accardi v. Bd. of Educ.*, Syl. Pt. 1, 163 W. Va. 1, 254 S.E.2d 561 (1979). The House's failure to follow its procedures poses a severe risk to the Petitioner's property rights because she was not afforded the Due Process that the House resolved to provide her.

Troublingly, the Judiciary Committee's failure to fulfill the duties it placed on itself was not an oversight. This issue was raised repeatedly during the impeachment proceedings when it could have been corrected, but the Judiciary Committee intentionally chose not to correct the deficiency. The House Judiciary Committee was made aware of this deficiency during the impeachment proceedings by various members of the Legislature:

MINORITY VICE CHAIR FLUHARTY: Thank you, Mr. Chairman. Counsel, I was going through these Articles. Where are the findings of fact?

MR. CASTO: Well, there -- there are no findings of fact there. The Committee --

MINORITY VICE CHAIR FLUHARTY: Where?

MR. CASTO: I said, sir, there are no findings of fact.

MINORITY VICE CHAIR FLUHARTY: There are no findings of fact? All right. Have you read House Resolution 201?

MR. CASTO: I have, sir, but I have not read it today.

MINORITY VICE CHAIR FLUHARTY: Well, do you know that we're required to have findings of fact?

MR. CASTO: I think, sir, that my understanding is - based upon the Manchin Articles - that the term "findings of fact" which was used at the same time, that the profferment of these Articles is indeed equivalent to a finding of fact. The -- but that, again, is your interpretation, sir.

MINORITY VICE CHAIR FLUHARTY: So based upon the clear wording of House Resolution 201, it says we're "To make findings of fact based upon such investigations and hearings;" and "To report to the Legislature its findings of facts and any recommendations consistent with those findings of facts which the Committee may deem proper." I mean, you're -- you're aware how this works in the legal system. You draft separate findings of fact. I'm just wondering why we haven't done that.

MR. CASTO: Because, sir, that is not the manner in which impeachment is done.

MINORITY VICE CHAIR FLUHARTY: Well, the findings of fact in House Resolution 201 are referenced separate from proposed Articles of Impeachment. Am I wrong in that observation?

MR. CASTO: I don't believe that you're wrong in that.

App. 046-047 (Tr. of Impeachment Hearing 2013:3 to 2014:19). Furthermore, members of the House Judiciary Committee pointed out to the committee chair that failing to follow HR 201 could mean that the House's actions would be deemed invalid:

MINORITY CHAIR FLEISCHAUER: Thank you, Mr. -- thank you, Mr. Chairman. I think the gentleman has raised a valid point. If we look at the Resolution that empowers this Committee to act,

it -- it says that we are to make findings of fact based upon such investigation and hearing and to report to the House of Delegates its findings of fact and any recommendations consistent with those findings, of which the Committee may deem proper.

And normally -- I know a lot of people say in here, "We're not lawyers," but many of us are, and I think it's Rule 52 that requires Courts to make findings of fact and also that their recommendations for any Resolution has to be consistent with those findings of fact.

And I'm just a little concerned that **if we don't have findings of fact that there could be some flaw that could mean that the final Resolution by the House would be deemed to be not valid.**

And I don't think it would be that hard to make findings of facts, but I think that would be consistent with the -- with the Resolution, and I think that's what authorizes us to act at all, is the Resolution.

So I think we -- if there -- there would be some wisdom in trying to track the language of the Resolution, and it would be consistent with any other proceeding that we have in West Virginia that when there are requirements of findings of fact and -- in this case, it's not conclusions of law, but it's recommendations -- that we should follow that.

App. 048-049 (Tr. of Impeachment Hearing 2016:10 to 2017:16)(emphasis added). Just as Minority Chair Fleischauer stated, absent findings of fact, and absent reporting of the findings of fact to the House as a whole the Judiciary Committee has not followed its own procedures as set forth in HR 201. This is anathema to due process. The West Virginia State Constitution affords individuals due process where their property rights are at issue, and in lieu of providing the Petitioner her due process, the Legislature repeatedly and blatantly turned a blind eye to the obligations it imposed on itself. Therefore, the second factor of the due process test—the risk of erroneous deprivation—overwhelmingly weighs in favor of the Petitioner based on the procedural flaws present in the House's processes.

Finally, the third due process factor, the government's interest and burdens, weighs in favor of the Petitioner. It is not unduly burdensome to require the body tasked with making the laws to follow the procedures it creates to govern its conduct. It is absurd to suggest that requiring the Legislature to follow the very rules it created is unduly burdensome. Indeed, as the body tasked with creating laws, it must be held to the procedures that it creates to govern its conduct. Accordingly, because the Petitioner was not afforded the due process she must be afforded under the West Virginia Constitution, this Court must stay the proceedings in the pendency of its decision in this case and ultimately order the Senate to halt the impeachment proceedings.

**IV. The House never voted on the resolution authorizing the Articles of Impeachment, and therefore the trial is illegitimate and unconstitutional.**

The West Virginia House of Delegates is a deliberative body fashioned after the United States House of Representatives, and therefore, bases its procedures and House Rules upon parliamentary practice. See House Rule 135. The power to make its rules of procedure is given to the House under Sec. 24, Art. VI of the West Virginia Constitution W. VA. CONST. art. VI, § 24. On June 26, 2018, the House, pursuant to the Proclamation of the Governor, convened in Extraordinary Session and adopted HR 201, which set forth rules and procedures for the impeachment proceeding at bar. See App. 040-042.

Among other things, HR 201 Resolved as follows:

(5) If the recommendation of the Committee be to impeach any or all of the five members of the West Virginia Supreme Court of Appeals [sic], then to present to the House of Delegates a proposed resolution of impeachment and proposed articles of impeachment";... and Further Resolved that if the Committee recommends that any or all of the Justices be impeached, that the House of Delegates adopt a resolution of impeachment and formal articles of impeachment as prepared by the Committee ...



App. 40.

Following the adoption of HR 201 on June 26, 2018, the Committee proceeded to investigate, issue summonses and subpoenas, call witnesses and take testimony. At the conclusion of their investigation and pursuant to HR 201, the Committee prepared HR 202 for presentation to the full body. However, the Committee never voted to send the resolution to the floor of the House for a vote. On August 13, 2018, Delegate Shott introduced in the House HR 202, which recommended impeachment of Petitioner and Justices Loughry, Davis and Walker, contained fourteen Articles of Impeachment, and stated that the same be exhibited to the Senate. Journal of the House of Delegates (2018) pages 1964-1971; see also App. 1-14.

Next, the Journal of the House, at page 1971, reflects the following action: "At the respective requests [sic] of Delegate Cowles, and by unanimous consent, the report of the Committee on the Judiciary preparing [sic] Articles of Impeachment and the resolution effectuating the same were taken up for immediate consideration." Importantly, this language confirms that the resolution "effectuates" the Articles of Impeachment. *Id.* at 1971.

What happened next is the genesis of the fatal omission by the House. "Delegate Cowles asked and obtained unanimous consent that the question be divided and that each Article be voted upon separately." Journal of the House (2018) at 1971. A division of the question is permitted by House Rule 44, which states in part as follows:

Any member may move for a division of any question other than passage of a bill before the vote thereon is taken, if it comprehend propositions in substance so distinct that, one being taken away, a substantive proposition will remain for the decision of the House, but the member moving for the division of a question shall state in what manner he proposes it shall be divided...

House Rule 44:

Delegate Cowles' motion was proper; he moved for a division of the question and stated the manner in which he proposed it be divided (by Article). Then, the House proceeded to take up each Article of Impeachment as divided by the House. When the deliberations were concluded on each of the fourteen articles, an additional article (XV) was moved for adoption from the floor but was rejected by the House. At that point, individual Articles I through X and XIV had been adopted. Various other matters were attended to, but the House failed to take up the Resolution that had been divided from the Articles of Impeachment.

Comparing the proposed language from the House Judiciary Committee's suggested resolution, with the actually adopted portions demonstrates the lack of language authorizing action by the Senate. See App. 001-026. The proposed Judiciary Committee version of the resolution states

THAT, pursuant to the authority granted to the House of Delegates in Section 9, Article IV of the Constitution of the State of West Virginia, that Chief Justice Margaret Workman, Justice Allen Loughry, Justice Robin Davis, and Justice Elizabeth Walker, Justices of the Supreme Court of Appeals of West Virginia, be impeached 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 that said **Articles of Impeachment, being fourteen in number, be and are hereby adopted** by the House of Delegates, and that the **same shall be exhibited to the Senate** in the following words and figures, to wit:

App. 1. (emphasis added).

The version actually adopted by the House is totally devoid of this vital language. See, e.g., App. 015-026. The language bolded in the quote above was never voted on by the House of Delegates. Absent the language actually authorizing the impeachment, there can be no

proceedings in the Senate as the Senate is without authority to move forward without this language.

Indeed, local news media reported on this issue. See App. 051-054. A Charleston Gazette-Mail article reported that the House of Delegates told the news media the following:

While the question of adopting House Resolution 202 has been divided to allow Delegates to adopt each article individually, the House will still have to come back and vote to adopt House Resolution 202 in its entirety once Delegates have voted on each article and the amendments to them.

So while the House is considering each individual article of impeachment right now, the resolution formally containing all the articles of impeachment will not be adopted and sent to the Senate until the final vote on the resolution in its totality.

*Id.* The House clearly (and correctly) explained the process to the news media, stating that the requisite final vote on the entire resolution would be held later. *Id.*

But, the Gazette Article went on to state that the House Spokesman reversed course, stating that no such vote would take place. *Id.* In fact, that is what happened, and the House has never actually adopted any resolution adopting impeachment, making their process fatally defective.

According to the Journal of the House, by unanimous consent the report of the Committee on the Judiciary containing the Articles of Impeachment and the resolution effectuating the same were taken up for immediate consideration. Effectuate means to bring to pass, carry into effect, cause to happen, put in force. That is precisely what the full resolution does for the Articles of Impeachment – carries them into effect, puts them in force. Without the resolution, exhibiting the articles to the Senate is like sending over amendments to a bill but not the bill. There is no starting point. The Articles of Impeachment, standing alone, are just pieces of paper without any statement of the resolve of the House or even that the House voted to

impeach. Further, the House's own rules contained in HR 201 require, in two separate places, the passage of a resolution *and* articles of impeachment. Once the question was divided pursuant to House Rule 44, the resolution portion was left behind, only the individual Articles were adopted and the Senate therefore has no authority to conduct a trial.

In support of this analysis, noted former House parliamentarian Gregory M. Gray has opined that the House never adopted the operative, necessary, vital language to move forward with the impeachment. See App. 055-057. Mr. Gray, a renowned expert in the parliamentary rules applicable to the West Virginia House of Delegates, concurs with the obvious conclusion to be drawn from the language of the adopted resolutions: the House never voted on the necessary language. Furthermore, Mr. Gray opines that HR 202 was never properly before the House for consideration, and that none of the subsequent resolutions adopted by the House cured any of these deficiencies. All of these defects render the Articles without force.

Without any enabling, effectuating language, without any clause actually enacting the impeachment and resolving to provide it to the Senate in an adopted resolution, the current proceedings in the Senate are fatally flawed because the Senate is proceeding without the authority necessary for it to conduct the impeachment proceedings. W. VA. CONST. art. IV, § 9. For these reasons, Petitioner prays that the Articles of Impeachment be declared null and void, the Senate ordered to proceed no further, and the impeachment proceedings stayed in the pendency of this Court's ruling.

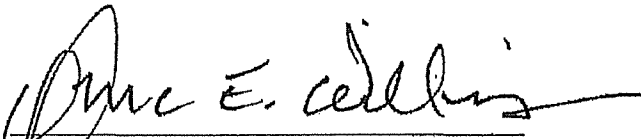
### CONCLUSION

This writ is not intended to *provoke* a constitutional crisis; it is intended to *prevent* one. Our Constitution assigns to the Legislature the sole power to impeach and convict public officials, including Justices of this Court. Indeed, the Legislature's power to impeach is an

essential check and balance on executive and judicial power. At the Pre-Trial Conference before the Senate, several legislators referenced the public's lack of trust in the judiciary as a result of the spending reported in the news media. Similarly, to have trust in the impeachment process, the public needs the Legislature to follow the law. The impeachment provision of the Constitution is simply but one component of our constitutional structure, which establishes three separate and equal branches of government and empowers the judicial branch to ensure the rule of law. Each branch of our constitutional government must respect the balance our Founders wrought in order to preserve our collective liberty for the benefit of the people of West Virginia. Each branch must conform its conduct to our Constitution. Otherwise, West Virginia does not have a government of laws, but only one of individuals.

Accordingly, because the House's Articles of Impeachment clearly violate the West Virginia Constitution, the Petitioner requests that this Court stay the impeachment proceedings in the pendency of its decision and ultimately issue a mandamus halting the Senate's impeachment proceedings based on the unconstitutional Articles.

**MARGARET L. WORKMAN**  
By Counsel



Marc E. Williams, Esquire (WVSBN 4062)  
Melissa Foster Bird, Esquire (WVSBN 6588)  
Thomas M. Hancock, Esquire (WVSBN 10597)  
Christopher D. Smith, Esquire (WVSBN 13050)  
NELSON MULLINS RILEY &  
SCARBOROUGH LLP  
949 Third Ave., Suite 200  
Huntington, WV 25701  
Phone: (304) 526-3500  
Fax: (304) 526-3541  
*Counsel for Petitioner*

VERIFICATION

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, to-wit:

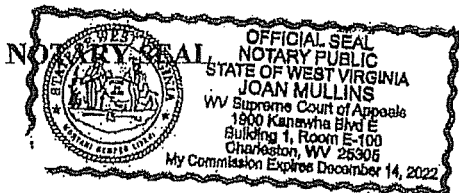
I, Margaret L. Workman after being first duly sworn, depose and say that the facts contained in the foregoing *Petition for a Writ of Mandamus* are true, except insofar as they are therein stated to be upon information and belief, and that as they are therein stated to be upon information and belief, I believe them to be true.

Margaret L. Workman  
Chief Justice Margaret L. Workman

Taken, subscribed and sworn to before me, the undersigned Notary Public, this 20  
day of September, 2018.

My commission expires December 14, 2022.

Joan Mullins  
NOTARY PUBLIC



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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CASE NO. \_\_\_\_\_

---

State of West Virginia *ex rel.* Margaret L. Workman, Petitioner,

v.

Mitch Carmichael, as President of the Senate; Donna J. Boley, as President Pro Tempore of the Senate; Ryan Ferns, as Senate Majority Leader; Lee Cassis, Clerk of the Senate; and the West Virginia Senate, Respondents.

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that he served the foregoing *Petition for Writ of Mandamus*, and two *Motions for Disqualification* upon the following individuals via U.S.

Mail on the 21<sup>st</sup> day of September, 2018 to:

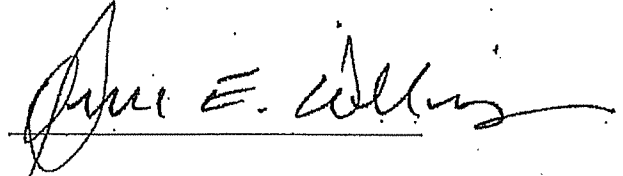
Mitch Carmichael, as President of the Senate  
Room 227M, Building 1  
State Capitol Complex  
Charleston, WV 25305

Donna J. Boley, as President Pro Tempore of the Senate  
Room 206W, Building 1  
State Capitol Complex  
Charleston, WV 25305

Ryan Ferns, as Senate Majority Leader  
Room 227M, Building 1  
State Capitol Complex  
Charleston, WV 25305

Lee Cassis, Clerk of the Senate  
Room 211M, Bldg. 1  
State Capitol Complex  
Charleston, WV 25305

West Virginia Senate  
c/o Patrick Morrisey  
Office of the WV Attorney General  
State Capitol Complex  
Bldg. 1, Room B-26  
Charleston, WV 25305

A handwritten signature in black ink, appearing to read "James E. Allen", is written over a horizontal line. A long, thin diagonal line extends from the bottom of the signature down towards the left side of the page.



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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APPENDIX

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Marc E. Williams (WV Bar No. 4062)  
Melissa Foster Bird (WV Bar No. 6588)  
Thomas M. Hancock (WV Bar No. 10597)  
Christopher D. Smith (WV Bar No. 13050)  
**NELSON MULLINS RILEY & SCARBOROUGH LLP**  
949 Third Avenue, Suite 200  
Huntington, WV 25701  
Telephone: (304) 526-3500  
Facsimile: (304) 526-3599  
Email: marc.williams@nelsonmullins.com  
Email: melissa.fosterbird@nelsonmullins.com  
Email: tom.hancock@nelsonmullins.com  
Email: chris.smith@nelsonmullins.com

**Counsel for Petitioner**

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ARTICLES OF IMPEACHMENT FOR THE  
JUSTICES OF THE SUPREME COURT OF APPEALS  
OF WEST VIRGINIA

1        *Resolved by the House of Delegates:*

2        BE IT RESOLVED, That, pursuant to the authority granted by the House of Delegates of  
3        West Virginia to the House Committee on the Judiciary in House Resolution 201, dated June 26;  
4        2018, the Committee on the Judiciary recommends to the House of Delegates of West Virginia:

5        THAT, pursuant to the authority granted to the House of Delegates in Section 9, Article IV  
6        of the Constitution of the State of West Virginia, that Chief Justice Margaret Workman, Justice  
7        Allen Loughry, Justice Robin Davis, and Justice Elizabeth Walker, Justices of the Supreme Court  
8        of Appeals of West Virginia, be impeached for maladministration, corruption, incompetency,  
9        neglect of duty, and certain high crimes and misdemeanors committed in their capacity and by  
10        virtue of their offices as Justices of the Supreme Court of Appeals of West Virginia, and that said  
11        Articles of Impeachment, being fourteen in number, be and are hereby adopted by the House of  
12        Delegates, and that the same shall be exhibited to the Senate in the following words and figures,  
13        to wit:

14        ARTICLES exhibited by the House of Delegates of the State of West Virginia in the name of  
15        themselves and all of the people of the State of West Virginia against:

16        Margaret Workman, who was at the general election held in November 2008, duly  
17        elected to the office of Justice of the Supreme Court of Appeals of West Virginia

**As Adopted by Judiciary Committee, Aug. 7**  
*(Articles may be renumbered, but content will not change.)*

1 and on the 29<sup>th</sup> day of December 2008, after having duly qualified as a Justice by  
2 taking the required oath to support the Constitution of the United States and the  
3 Constitution of the State of West Virginia and faithfully discharge the duties of that  
4 office to the best of her skill and judgment, entered upon the discharge of the duties  
5 thereof; and on the 16<sup>th</sup> day of February 2018, was elevated to the position of Chief  
6 Justice and entered upon the discharge of the duties thereof; and

7 Allen Loughry, who was at the general election held in November 2012, duly  
8 elected to the office of Justice of the Supreme Court of Appeals of West Virginia  
9 and on the 14<sup>th</sup> day of December 2012, after having duly qualified as a Justice by  
10 taking the required oath to support the Constitution of the United States and the  
11 Constitution of the State of West Virginia and faithfully discharge the duties of that  
12 office to the best of her skill and judgment, entered upon the discharge of the duties  
13 thereof; and

14 Robin Davis, who was at the general election held in November 2012 duly elected  
15 to the office of Justice of the Supreme Court of Appeals of West Virginia and on  
16 the 13<sup>th</sup> day of January 2013, after having duly qualified as a Justice by taking the  
17 required oath to support the Constitution of the United States and the Constitution  
18 of the State of West Virginia and faithfully discharge the duties of that office to the  
19 best of her skill and judgment, entered upon the discharge of the duties thereof;  
20 and

21 Elizabeth Walker, who was at the general election held in November 2016 duly  
22 elected to the office of Justice of the Supreme Court of Appeals of West Virginia  
23 and on the 5<sup>th</sup> day of December 2016, after having duly qualified as a Justice by

**As Adopted by Judiciary Committee, Aug. 7**  
*(Articles may be renumbered, but content will not change.)*

1 taking the required oath to support the Constitution of the United States and the  
2 Constitution of the State of West Virginia and faithfully discharge the duties of that  
3 office to the best of her skill and judgment, entered upon the discharge of the duties  
4 thereof; and

5 In maintenance and support of their impeachment against them Margaret  
6 Workman, Allen Loughry, Robin Davis, and Elizabeth Walker for  
7 maladministration, corruption, incompetency, neglect of duty, and certain high  
8 crimes and misdemeanors.

**Article I**

9 That the said Chief Justice Margaret Workman, and Justice Robin Davis, being at all times  
10 relevant Justices of the Supreme Court of Appeals of West Virginia, and at various relevant times  
11 individually each Chief Justice of the Supreme Court of Appeals of West Virginia unmindful of the  
12 duties of their high offices, and contrary to the oaths taken by them to support the Constitution of  
13 the State of West Virginia and faithfully discharge the duties of their offices as such Justices, while  
14 in the exercise of the functions of the office of Justices, in violation of their oaths of office, then  
15 and there, with regard to the discharge of the duties of their offices, commencing in or about 2012,  
16 did knowingly and intentionally act, and each subsequently oversee in their capacity as Chief  
17 Justice, and did in that capacity as Chief Justice severally sign and approve the contracts  
18 necessary to facilitate, at each such relevant time, to overpay certain Senior Status Judges in  
19 violation of the statutory limited maximum salary for such Judges, which overpayment is a  
20 violation of the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10, and, in violation of  
21 an Administrative Order of the Supreme Court of Appeals, in potential violation of the provisions  
22 of W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to enable or  
23 assist any person to obtain money to which he was not entitled, and in potential violation of the

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1 provisions of W.Va. Code §5-10-45, relating to the crime of fraud against the West Virginia Public  
2 Employees Retirement System, and, in potential violation of the provisions set forth in W.Va. Code  
3 §61-3-24, relating to the crime of obtaining money, property and services by false pretenses, and,  
4 all of the above are in violation of the provisions of Canon I and Canon II of the West Virginia  
5 Code of Judicial Conduct.

**Article II**

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

22 A) To prepare and adopt sufficient and effective travel policies prior to October of 2016,  
23 and failed thereafter to properly effectuate such policy by exempting the Justices from

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- 1           said policies, and subjected subordinates and employees to a greater burden than the  
2           Justices;
- 3           B) To report taxable fringe benefits, such as car use and regular lunches, on Federal W-  
4           2s, despite full knowledge of the Internal Revenue Service Regulations, and further  
5           subjected subordinates and employees to a greater burden than the Justices, in this  
6           regard, and upon notification of such violation, failed to speedily comply with requests  
7           to make such reporting consistent with applicable law;
- 8           C) To provide proper supervision, control, and auditing of the use of state purchasing  
9           cards leading to multiple violations of state statutes and policies regulating the proper  
10          use of such cards, including failing to obtain proper prior approval for large purchases;
- 11          D) To prepare and adopt sufficient and effective home office policies which would govern  
12          the Justices' home computer use, and which led to a lack of oversight which  
13          encouraged the conversion of property;
- 14          E) To provide effective supervision and control over record keeping with respect to the  
15          use of state automobiles, which has already resulted in an executed information upon  
16          one former Justice and the indictment of another Justice.
- 17          F) To provide effective supervision and control over inventories of state property owned  
18          by the Court and subordinate courts, which led directly to the undetected absence of  
19          valuable state property, including, but not limited to, a state-owned desk and a state-  
20          owned computer;
- 21          G) To provide effective supervision and control over purchasing procedures which directly  
22          lead to inadequate cost containment methods, including the rebidding of the  
23          purchases of goods and services utilizing a system of large unsupervised change  
24          orders, all of which encouraged waste of taxpayer funds.

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

**Article III**

4 That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of  
5 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to  
6 support the Constitution of the State of West Virginia and faithfully discharge the duties of his  
7 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of  
8 his oath of office, then and there, with regard to the discharge of the duties of his office, did on or  
9 about June 20, 2013, cause a certain desk, of a type colloquially known as a "Cass Gilbert" desk,  
10 to be transported from the State Capitol to his home, and did maintain possession of such desk  
11 in his home, where it remained throughout his term as Justice for approximately four and one-half  
12 years, in violation of the provisions of W.Va. Code §29-1-7 (b), prohibiting the removal of original  
13 furnishings of the state capitol from the premises; further, the expenditure of state funds to  
14 transport the desk to his home, and refusal to return the desk to the state, constitute the use of  
15 state resources and property for personal gain in violation of the provisions of W.Va. Code §6B-  
16 2-5, the provisions of the West Virginia State Ethics Act, and constitute a violation of the provisions  
17 of Canon I of the West Virginia Code of Judicial Conduct.

**Article IV**

18 That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of  
19 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to  
20 support the Constitution of the State of West Virginia and faithfully discharge the duties of his  
21 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of  
22 his oath of office, then and there, with regard to the discharge of the duties of his office, did



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1 beginning in or about December 2012, intentionally acquired and used state government  
2 computer equipment and hardware for predominately personal use—including a computer not  
3 intended to be connected to the court's network, utilized state resources to install computer  
4 access services at his home for predominately personal use, and utilized state resources to  
5 provide maintenance and repair of computer services for his residence resulting from  
6 predominately personal use; all of which acts constitute the use of state resources and property  
7 for personal gain in violation of the provisions of W.Va. Code §6B-2-5, the provisions of the West  
8 Virginia State Ethics Act, and constitute a violation of the provisions of Canon I of the West Virginia  
9 Code of Judicial Conduct.

**Article V**

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

**As Adopted by Judiciary Committee, Aug. 7**  
*(Articles may be renumbered, but content will not change.)*

**Article VI**

1           That the said Justice Allen Loughry, being at all times relevant a Justice of the Supreme  
2 Court of Appeals of West Virginia, and at that relevant time Individually Chief Justice of the  
3 Supreme Court of Appeals of West Virginia, unmindful of the duties of his high offices, and  
4 contrary to the oaths taken by him to support the Constitution of the State of West Virginia and  
5 faithfully discharge the duties of his office as such Justices, while in the exercise of the functions  
6 of the office of Justice, in violation of his oath of office, then and there, with regard to the discharge  
7 of the duties of his office, did on or about May 19, 2017, did in his capacity as Chief Justice, draft  
8 an Administrative Order of the Supreme Court of Appeals, bearing his signature, authorizing the  
9 Supreme Court of Appeals to overpay certain Senior Status Judges in violation of the statutorily  
10 limited maximum salary for such Judges, which overpayment is a violation of the provisions of  
11 W.Va. Code §51-2-13 and W.Va. Code §51-9-10; his authorization of such overpayments was a  
12 violation of the clear statutory law of the state of West Virginia, as set forth in those relevant Code  
13 sections, and, was an act in potential violation of the provisions set forth in W.Va. Code §61-3-  
14 22, relating to the crime of falsification of accounts with intent to enable or assist any person to  
15 obtain money to which he was not entitled, and in potential violation of the provisions of W.Va.  
16 Code §5-10-45, relating to the crime of fraud against the West Virginia Public Employees  
17 Retirement System, and, in potential violation of the provisions set forth in W.Va. Code §61-3-24,  
18 relating to the crime of obtaining money, property and services by false pretenses, and all of the  
19 above are in violation of the provisions of Canon I and Canon II of the West Virginia Code of  
20 Judicial Conduct.

**Article VII**

21           That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of  
22 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to  
23 support the Constitution of the State of West Virginia and faithfully discharge the duties of his

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*(Articles may be renumbered, but content will not change.)*

1 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of  
2 his oath of office; then and there, with regard to the discharge of the duties of his office, did waste  
3 state funds with little or no concern for the costs to be borne by the tax payer for unnecessary and  
4 lavish spending in the renovation and remodeling of his personal office, to the sum of  
5 approximately \$363,000, which sum included the purchase of a \$31,924 couch, a \$33,750 floor,  
6 and other such wasteful expenditure not necessary for the administration of justice and the  
7 execution of the duties of the Court, which represents a waste of state funds.

**Article VIII**

8 That the said Justice Elizabeth Walker, being a Justice of the Supreme Court of Appeals  
9 of West Virginia, unmindful of the duties of her high office, and contrary to the oaths taken by her  
10 to support the Constitution of the State of West Virginia and faithfully discharge the duties of her  
11 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of  
12 her oath of office, then and there, with regard to the discharge of the duties of her office, did waste  
13 state funds with little or no concern for the costs to be borne by the tax payer for unnecessary and  
14 lavish spending in the renovation and remodeling of her personal office, which had been largely  
15 remodeled less than seven years prior, to the sum of approximately \$131,000, which sum  
16 included, but is not limited to, the purchase of approximately \$27,000 in items listed as office  
17 furnishings and wallpaper, and other such wasteful expenditure not necessary for the  
18 administration of justice and the execution of the duties of the Court, which represents a waste of  
19 state funds.

**Article IX**

20 That the said Justice Robln Davis, being a Justice of the Supreme Court of Appeals of  
21 West Virginia, unmindful of the duties of her high office, and contrary to the oaths taken by her to  
22 support the Constitution of the State of West Virginia and faithfully discharge the duties of her

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1 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of  
2 her oath of office, then and there, with regard to the discharge of the duties of her office, did waste  
3 state funds with little or no concern for the costs to be borne by the tax payer for unnecessary and  
4 lavish spending in the renovation and remodeling of her personal office, to the sum of  
5 approximately \$500,000, which sum included, but is not limited to, the purchase of an oval rug  
6 that cost approximately \$20,500, a desk chair that cost approximately \$8,000 and over \$23,000  
7 in design services, and other such wasteful expenditure not necessary for the administration of  
8 justice and the execution of the duties of the Court, which represents a waste of state funds.

**Article X**

9 That the said Justice Robin Davis, being at all times relevant a Justice of the Supreme  
10 Court of Appeals of West Virginia, and at certain relevant times individually Chief Justice of the  
11 Supreme Court of Appeals of West Virginia, unmindful of the duties of her high offices, and  
12 contrary to the oaths taken by her to support the Constitution of the State of West Virginia and  
13 faithfully discharge the duties of his office as such Justice, while in the exercise of the functions  
14 of the office of Justice, in violation of her oath of office, then and there, with regard to the discharge  
15 of the duties of her office, did in the year 2014, did in her capacity as Chief Justice, sign certain  
16 Forms WV 48, to retain and compensate certain Senior Status Judges the execution of which  
17 forms allowed the Supreme Court of Appeals to overpay those certain Senior Status Judges in  
18 violation of the statutorily limited maximum salary for such Judges, which overpayment is a  
19 violation of the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10; her authorization  
20 of such overpayments was a violation of the clear statutory law of the state of West Virginia, as  
21 set forth in those relevant Code sections, and, was an act in potential violation of the provisions  
22 set forth in W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to  
23 enable or assist any person to obtain money to which he was not entitled, and in potential violation  
24 of the provisions of W.Va. Code §5-10-45, relating to the crime of fraud against the West Virginia

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1 Public Employees Retirement System, and, in potential violation of the provisions set forth in  
2 W.Va. Code §61-3-24, relating to the crime of obtaining money, property and services by false  
3 pretenses, and all of the above are in violation of the provisions of Canon I and Canon II of the  
4 West Virginia Code of Judicial Conduct.

**Article XI**

5 That the said Chief Justice Margaret Workman, being a Justice of the Supreme Court of  
6 Appeals of West Virginia, unmindful of the duties of her high office, and contrary to the oaths  
7 taken by her to support the Constitution of the State of West Virginia and faithfully discharge the  
8 duties of her office as such Justice, while in the exercise of the functions of the office of Justice,  
9 in violation of her oath of office, then and there, with regard to the discharge of the duties of her  
10 office, did waste state funds with little or no concern for the costs to be borne by the tax payer for  
11 unnecessary and lavish spending in the renovation and remodeling of her personal office, to the  
12 sum of approximately \$111,000, which sum included, but is not limited to, the purchase of wide  
13 plank cherry flooring, and other such wasteful expenditure not necessary for the administration of  
14 justice and the execution of the duties of the Court, which represents a waste of state funds.

**Article XII**

15 That the said Justice Margaret Workman, being at all times relevant a Justice of the  
16 Supreme Court of Appeals of West Virginia, and at certain relevant times individually Chief Justice  
17 of the Supreme Court of Appeals of West Virginia, unmindful of the duties of her high offices, and  
18 contrary to the oaths taken by her to support the Constitution of the State of West Virginia and  
19 faithfully discharge the duties of his office as such Justice, while in the exercise of the functions  
20 of the office of Justice, in violation of her oath of office, then and there, with regard to the discharge  
21 of the duties of her office, did in the year 2015, did in her capacity as Chief Justice, sign certain  
22 Forms WV 48, to retain and compensate certain Senior Status Judges the execution of which

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1 forms allowed the Supreme Court of Appeals to overpay those certain Senior Status Judges in  
2 violation of the statutorily limited maximum salary for such Judges, which overpayment is a  
3 violation of the provisions of W.Va. Code §51-2-13 and W.Va. Code §51-9-10; her authorization  
4 of such overpayments was a violation of the clear statutory law of the state of West Virginia, as  
5 set forth in those relevant Code sections, and, was an act in potential violation of the provisions  
6 set forth in W.Va. Code §61-3-22, relating to the crime of falsification of accounts with intent to  
7 enable or assist any person to obtain money to which he was not entitled; and in potential violation  
8 of the provisions of W.Va. Code §5-10-45, relating to the crime of fraud against the West Virginia  
9 Public Employees Retirement System, and, in potential violation of the provisions set forth in  
10 W.Va. Code §61-3-24, relating to the crime of obtaining money, property and services by false  
11 pretenses, and all of the above are in violation of the provisions of Canon I and Canon II of the  
12 West Virginia Code of Judicial Conduct.

**Article XIII**

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

**As Adopted by Judiciary Committee, Aug. 7**  
*(Articles may be renumbered, but content will not change.)*

**Article XIV**

1           That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of  
2 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to  
3 support the Constitution of the State of West Virginia and faithfully discharge the duties of his  
4 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of  
5 his oath of office, then and there, with regard to the discharge of the duties of his office, direct that  
6 personal pictures and items be placed in customized picture frames and be paid for by state  
7 monies, and these items were subsequently removed from his state office and converted to his  
8 personal use and benefit, which acts constitute the use of state resources and property for  
9 personal gain in violation of the provisions of W.Va. Code §6B-2-5.

10           WHEREFORE, the said Chief Justice Margaret Workman, Justice Allen Loughry, Justice  
11 Robin Davis, and Justice Elizabeth Walker, Justices of the Supreme Court of Appeals of West  
12 Virginia, failed to discharge the duties of their offices, and were and are guilty of maladministration,  
13 corruption, incompetency, neglect of duty, and certain high crimes and misdemeanors.

14           And the House of Delegates of West Virginia, saving to themselves the liberty and rights  
15 of exhibiting at any time hereafter any further Articles of Impeachment against the said Chief  
16 Justice Margaret Workman, Justice Allen Loughry, Justice Robin Davis, and Justice Elizabeth  
17 Walker, Justices of the Supreme Court of Appeals of West Virginia, individually and collectively,  
18 as aforesaid, and also of replying to their answers which they may make unto the Articles herein  
19 proffered against them, and of offering proof to any all of the Articles herein contained, and every  
20 part thereof; and to all an every other Article, accusation, or impeachment, which shall be  
21 exhibited by the said House of Delegates as the case may require, do demand that the said Chief  
22 Justice Margaret Workman, Justice Allen Loughry, Justice Robin Davis, and Justice Elizabeth  
23 Walker, Justices of the Supreme Court of Appeals of West Virginia, individually and collectively,

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1 as aforesaid, may be put to answer the of maladministration, corruption, incompetency, neglect  
2 of duty, and certain high crimes and misdemeanors herein charged against them, and that such  
3 proceedings, examinations, trials, and judgments, may be thereupon had, given and taken, as  
4 may be agreeable to the Constitution and the laws of the State of West Virginia, and as justice  
5 may require.

6 We, John Overington, Speaker Pro Tempore of the House of Delegates of West Virginia,  
7 and Stephen J. Harrison, Clerk thereof, do certify that the above and foregoing Articles of  
8 Impeachment proffered by said House of Delegates against Chief Justice Margaret Workman,  
9 Justice Allen Loughry, Justice Robin Davis, and Justice Elizabeth Walker, Justices of the  
10 Supreme Court of Appeals of West Virginia, Individually and collectively, as aforesaid, were  
11 adopted by the House of Delegates on the ---- day of -----2018.

12 In Testimony Whereof, we have signed our names hereunto, this the ---- day of -----  
13 2018.



## Article I

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

## Article II

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

## Article III

1           That the said Justice Allen Loughry, being a Justice of the Supreme Court of Appeals of  
2 West Virginia, unmindful of the duties of his high office, and contrary to the oaths taken by him to  
3 support the Constitution of the State of West Virginia and faithfully discharge the duties of his  
4 office as such Justice, while in the exercise of the functions of the office of Justice, in violation of  
5 his oath of office, then and there, with regard to the discharge of the duties of his office, did on or  
6 about June 20, 2013, cause a certain desk, of a type colloquially known as a "Cass Gilbert" desk,  
7 to be transported from the State Capitol to his home, and did maintain possession of such desk  
8 in his home, where it remained throughout his term as Justice for approximately four and one-half  
9 years, in violation of the provisions of W.Va. Code §29-1-7 (b), prohibiting the removal of original  
10 furnishings of the state capitol from the premises; further, the expenditure of state funds to  
11 transport the desk to his home, and refusal to return the desk to the state, constitute the use of  
12 state resources and property for personal gain in violation of the provisions of W.Va. Code §6B-  
13 2-5, the provisions of the West Virginia State Ethics Act, and constitute a violation of the provisions  
14 of Canon 1 of the West Virginia Code of Judicial Conduct.

## Article IV

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

## Article V

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

## Article VI

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

## Article VII

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

## Article VIII

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



## Article IX

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

## Article X

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

## Article XIV

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

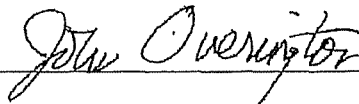
- 17           A) To prepare and adopt sufficient and effective travel policies prior to October of 2016,  
18           and failed thereafter to properly effectuate such policy by excepting the Justices from  
19           said policies, and subjected subordinates and employees to a greater burden than the  
20           Justices;
- 21           B) To report taxable fringe benefits, such as car use and regular lunches, on Federal W-  
22           2s, despite full knowledge of the Internal Revenue Service Regulations, and further  
23           subjected subordinates and employees to a greater burden than the Justices, in this  
24           regard, and upon notification of such violation, failed to speedily comply with requests  
25           to make such reporting consistent with applicable law;
- 26           C) To provide proper supervision, control, and auditing of the use of state purchasing  
27           cards leading to multiple violations of state statutes and policies regulating the proper  
28           use of such cards, including failing to obtain proper prior approval for large purchases;
- 29           D) To prepare and adopt sufficient and effective home office policies which would govern  
30           the Justices' home computer use, and which led to a lack of oversight which  
31           encouraged the conversion of property;

- 32 E) To provide effective supervision and control over record keeping with respect to the  
33 use of state automobiles, which has already resulted in an executed information upon  
34 one former Justice and the indictment of another Justice.
- 35 F) To provide effective supervision and control over inventories of state property owned  
36 by the Court and subordinate courts, which led directly to the undetected absence of  
37 valuable state property, including, but not limited to, a state-owned desk and a state-  
38 owned computer;
- 39 G) To provide effective supervision and control over purchasing procedures which directly  
40 led to inadequate cost containment methods, including the rebidding of the purchases  
41 of goods and services utilizing a system of large unsupervised change orders, all of  
42 which encouraged waste of taxpayer funds.

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

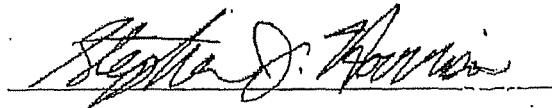
We, John Overington, Speaker Pro Tempore of the House of Delegates of West Virginia,  
and Stephen J. Harrison, Clerk thereof, do certify that the above and foregoing Articles of  
Impeachment against Justices of the Supreme Court of Appeals of West Virginia, were adopted  
by the House of Delegates on the Thirteenth day of August, 2018.

In Testimony Whereof, we have signed our names hereunto this Fourteenth day of August,  
2018.



John Overington,

Speaker Pro Tempore of the House of Delegates.



Stephen J. Harrison,

Clerk of the House of Delegates

# SENATE RESOLUTION 203

(By Senator Trump)

[Introduced August 20, 2018 ]

1 Adopting rules of the Senate while sitting as a court of impeachment.

2 *Resolved by the Senate:*

3 That the following rules be adopted to govern the proceedings of the Senate while sitting  
4 as a court of impeachment during the Eighty-Third Legislature:

5 **RULES OF THE WEST VIRGINIA SENATE**  
6 **WHILE SITTING AS A COURT OF IMPEACHMENT**  
7 **DURING THE EIGHTY-THIRD LEGISLATURE**

8 **1. Definitions**

9 (a) "Articles of Impeachment" or "Articles" means one or more charges adopted by the  
10 House of Delegates against a public official and communicated to the Senate to initiate a trial of  
11 impeachment pursuant to Article IV, Section 9 of the Constitution of West Virginia.

12 (b) "Board of Managers" or "Managers" means a group of members of the House of  
13 Delegates authorized by that body to serve as prosecutors before the Senate in a trial of  
14 impeachment.

15 (c) "Conference of Senators" means a private meeting of the Court of Impeachment,  
16 including an executive session authorized by W. Va. Code §6-9A-4.

17 (d) "Counsel" means a member of the Board of Managers or an attorney, licensed to  
18 practice law in this state, representing the Board of Managers or a Respondent in a trial of  
19 impeachment.

20 (e) "Court of Impeachment" or "Court" means all Senators participating in a trial of  
21 impeachment.

1 (f) "Parties" means the Board of Managers and its counsel and the Respondent and his or  
2 her counsel.

3 (g) "Presiding Officer" means the Chief Justice of the West Virginia Supreme Court of  
4 Appeals or other Justice, pursuant to the provisions of Article IV, Section 9 or Article VIII, Section  
5 8 of the Constitution of West Virginia.

6 (h) "Respondent" means a person against whom the House of Delegates has adopted and  
7 communicated Articles of Impeachment to the Senate.

8 (i) "Trial" means the trial of impeachment.

9 (j) "Two thirds of the Senators elected" means at least 23 Senators.

## 10 2. Pre-Trial Proceedings

11 (a) Whenever the Senate receives notice from the House of Delegates that Managers  
12 have been appointed by the House of Delegates to prosecute a trial of impeachment against a  
13 person or persons and are directed to carry Articles of Impeachment to the Senate, the Clerk of  
14 the Senate shall immediately inform the House of Delegates that the Senate is ready to receive  
15 the Managers for the reporting of such Articles.

16 (b) When the Board of Managers for the House of Delegates is introduced at the bar of  
17 the Senate and signifies that the Managers are ready to communicate Articles of Impeachment,  
18 the President of the Senate shall direct the Sergeant at Arms to make the following proclamation:  
19 "All persons are commanded to keep silence, on pain of imprisonment, while the House of  
20 Delegates is reporting to the Senate Articles of Impeachment"; after which the Board of Managers  
21 shall report the Articles. Thereupon, the President of the Senate shall inform the Managers that  
22 the Senate will notify the House of Delegates of the date and time on which the Senate will  
23 proceed to consider the Articles.

24 (c) Upon the reporting of Articles of Impeachment to the Senate, the Senate shall adjourn  
25 until a date and time directed by the President of the Senate when the Senate will proceed to  
26 consider the Articles and shall notify the House of Delegates and the Supreme Court of Appeals

1 of the same. Before proceeding to consider evidence, the Clerk shall administer the oaths  
2 provided in these Rules to the Presiding Officer; to the members of the Senate then present; and  
3 to any other members of the Senate as they shall appear.

4 (d) If the Board of Managers reports Articles of Impeachment against more than one  
5 person, the Senate shall conduct a separate trial of each Respondent individually as required by  
6 Rule 19 of these Rules.

7 **3. Pre-Trial Conference**

8 The Presiding Officer shall hold a pre-trial conference with the parties in the presence of  
9 the Court to stipulate to facts and exhibits and address procedural issues.

10 **4. Clerk of the Court of Impeachment; Duties**

11 The Clerk of the Senate, or his or her designee, shall serve as the Clerk of the Court of  
12 Impeachment, administer all oaths, keep the Journal of the Court of Impeachment, and perform  
13 all other duties usually performed by the clerk of a court of record in this state. The Clerk of the  
14 Senate may designate other Senate personnel to assist in carrying out the Clerk's duties. The  
15 Clerk shall promulgate all forms necessary to carry out the requirements of these Rules.

16 **5. Marshal of the Court of Impeachment; Duties**

17 The Sergeant at Arms of the Senate, or other person designated by the President of the  
18 Senate, shall serve as the Marshal of the Court of Impeachment. The Marshal of the Court of  
19 Impeachment shall keep order in accordance with these Rules under the direction of the Presiding  
20 Officer.

21 **6. Trial to be Recorded in Journal of the Court of Impeachment**

22 (a) All trial proceedings, not including transcripts of the trial and copies of documentary  
23 evidence required to be appended to the bound Journal of the Court of Impeachment by section  
24 (c) of this Rule, shall be recorded in the Journal of the Court of Impeachment. The Journal of the  
25 Court of Impeachment shall be read, corrected, and approved the succeeding day. It shall be

1 published under the supervision of the Clerk and made available to the members without undue  
2 delay.

3 (b) After the Journal of the Court of Impeachment has been approved and fully marked for  
4 corrections, the Journal of the Court of Impeachment so corrected shall be bound in the Journal  
5 of the Senate. The bound volume shall, in addition to the imprint required by Rule 49 of the Rules  
6 of the Senate, 2017, reflect the inclusion of the official Journal of the Court of Impeachment.

7 (c) When available, transcripts of the trial and copies of any documentary evidence  
8 presented therein shall be printed and bound as an appendix to the Journal of the Court of  
9 Impeachment.

#### 10 **7. Site of Trial**

11 The trial shall be held in the Senate Chamber of the West Virginia State Capitol Complex.  
12 All necessary preparations in the Senate Chamber shall be made under the direction of the  
13 President of the Senate.

#### 14 **8. Floor Privileges**

15 Only the following persons may enter the floor of the Senate Chamber during the trial:  
16 Members of the Court of Impeachment; designated personnel of the Court of Impeachment; the  
17 parties; the Presiding Officer; a law clerk of the Presiding Officer; witnesses and their counsel  
18 while testifying; and authorized media, who shall be located in an area of the chamber designated  
19 by the Clerk.

#### 20 **9. Representation of Parties**

21 The House of Delegates shall be represented by its Board of Managers and its counsel.  
22 The Respondent may appear in person or by counsel.

#### 23 **10. Method of Address**

24 Senators shall address the Presiding Officer as "Madam (or Mr.) Chief Justice" or "Madam  
25 (or Mr.) Justice".

#### 26 **11. Oaths**



1 (a) The following oath, or affirmation, shall be taken and subscribed by the Presiding  
2 Officer: "Do you solemnly swear [or affirm] that you will support the Constitution of the United  
3 States and the Constitution of the State of West Virginia and that you will faithfully discharge the  
4 duties of Presiding Officer of the Court of Impeachment in all matters that come before this Court  
5 to the best of your skill and judgment?"

6 (b) The following oath, or affirmation, shall be taken and subscribed by every Senator  
7 before sitting as a Court of Impeachment: "Do each of you solemnly swear [or affirm] that you will  
8 do justice according to law and evidence while sitting as a Court of Impeachment?"

9 (c) The following oath, or affirmation, shall be taken and subscribed by every witness  
10 before providing testimony: "Do you solemnly swear [or affirm] that the testimony you shall give  
11 shall be the truth, the whole truth, and nothing but the truth?"

## 12 **12. Service of Process**

13 (a) The Respondent shall be served with a summons for the appearance of the  
14 Respondent or his or her counsel before the Court of Impeachment and provided with a copy of  
15 the Articles of Impeachment and a copy of these Rules. The summons shall be signed by the  
16 Clerk of the Court of Impeachment, bear the Seal of the Senate, identify the nature of proceedings  
17 and the parties, and be directed to the Respondent. It shall also state the date and time at which  
18 the Respondent shall appear to answer the Articles of Impeachment and notify the Respondent  
19 that if he or she fails to appear without good cause, the allegations contained in the Articles of  
20 Impeachment shall be uncontested and that the Senate shall proceed to vote on whether to  
21 sustain such Articles pursuant to Rule 15 of these Rules.

22 (b) The notice required by this Rule shall be served on the Respondent in the manner  
23 required by Rule 4 of the West Virginia Rules of Civil Procedure. All process shall be served by  
24 the Sergeant at Arms of the Senate, unless otherwise ordered by the President of the Senate. A  
25 copy of the summons to the Respondent, upon its issuance, along with a copy of the Articles of  
26 Impeachment and a copy of these Rules, shall be provided by the Clerk of the Court of

1 Impeachment to the Clerk of the West Virginia House of Delegates. Upon service of the same  
2 upon the Respondent, a copy of the return of service shall be provided by the Clerk of the Court  
3 of Impeachment to the Clerk of the West Virginia House of Delegates.

4 **13. Dismissal of Articles Upon Resignation of Respondent; Termination of Trial**

5 (a) Any Senator may move to dismiss the Articles of Impeachment against a Respondent  
6 if at any time before the presentation of evidence commences in his or her trial of impeachment  
7 the Respondent has resigned or retired from his or her public office. Upon motion of any Senator  
8 to dismiss the Articles pursuant to this Rule, all Senators not excused shall vote on the question  
9 of whether to dismiss the Articles against the Respondent. If a majority of Senators elected vote  
10 to dismiss the Articles against the Respondent, a judgment of dismissal shall be pronounced and  
11 entered upon the Journal of the Court of Impeachment or the Journal of the Senate, whichever is  
12 convened at the time such vote is taken.

13 (b) A vote pursuant to this Rule shall be taken by yeas and nays.

14 (c) Upon dismissal of the Articles of Impeachment against a Respondent pursuant to this  
15 Rule, all pre-trial and trial proceedings regarding said Respondent shall immediately cease.

16 (d) If the House of Delegates adopts and communicates Articles of Impeachment that  
17 name more than one Respondent in one or more of the Articles, a dismissal pursuant to this Rule  
18 shall not dismiss the articles as to any Respondent who has not resigned or retired.

19 **14. Commencement of Trial; Answer to Articles of Impeachment**

20 At the time and date fixed and upon proof of service of the summons directed to the  
21 Respondent, the Respondent shall be called to answer the Articles of Impeachment. If the  
22 Respondent appears in person or by counsel, the appearance shall be recorded. If the  
23 Respondent does not appear, either personally or by counsel, then the failure of the Respondent  
24 to appear shall be recorded. While the Court of Impeachment is in session, the business of the  
25 Senate shall be suspended except as otherwise ordered by the President of the Senate.

26 **15. Failure of Respondent to Appear and Contest**

1 (a) If the Respondent fails to appear personally or by counsel without good cause at the  
2 time and date specified in the notice required by Rule 12 of these Rules, the allegations contained  
3 in the Articles of Impeachment shall be uncontested.

4 (b) If the allegations contained in the Articles of Impeachment are determined to be  
5 uncontested under section (a) of this Rule, the Presiding Officer shall then call upon the Board of  
6 Managers to deliver a summary of the evidence of the allegations contained in such Articles.

7 (c) After the summary of evidence delivered by the Managers, the Court of Impeachment  
8 shall vote on the question of whether to sustain one or more of the Articles of Impeachment in  
9 accordance with the requirements of Rule 31 of these Rules.

10 **16. Entry of Plea or Pleas; Procedures Based on Plea or Pleas**

11 If the Respondent appears and pleads not guilty to each article, the trial shall proceed. If  
12 the Respondent appears and pleads guilty to one or more articles, the Court of Impeachment  
13 shall immediately vote on the question of whether to sustain the Articles of Impeachment to which  
14 a plea of guilty has been entered in accordance with the requirements of Rule 31 of these Rules.

15 **17. Subpoenas**

16 A subpoena shall be issued by the Clerk of the Court of Impeachment for a witness on  
17 application of a party.

18 **18. Procedure in a Contested Matter**

19 (a) After preliminary motions are heard and decided, the Board of Managers or its counsel  
20 may make an opening statement. Following the opening statement by the Managers, the  
21 Respondent or his or her counsel may then make an opening statement.

22 (b) The trial shall be a daily special order of business following the Third Order of Business  
23 of the Senate, unless otherwise ordered by the President of the Senate. When the hour shall  
24 arrive for the special order of business, the President of the Senate shall so announce. The  
25 Presiding Officer shall cause proclamation to be made, and the business of the trial shall proceed.  
26 The trial may be recessed or adjourned and continued from day to day, or to specific dates and

1 times, by majority vote of the Senators present and voting. The adjournment of the trial shall not  
2 operate as an adjournment of the Senate, but upon such adjournment, the Senate shall resume.

3 (c) After the presentation of all evidence to the Court of Impeachment, the Board of  
4 Managers shall present a closing argument, after which the Respondent shall present a closing  
5 argument. Following the Respondent's closing argument, the Board of Managers may offer a  
6 rebuttal.

7 (d) The Board of Managers shall have the burden of proof as to all factual allegations. The  
8 Presiding Officer shall direct the order of the presentation of evidence.

9 **19. Separate Trials of Multiple Respondents; Order of Trials**

10 (a) If the House of Delegates communicates Articles of Impeachment against more than  
11 one Respondent, the Senate shall schedule and conduct a separate trial of each Respondent.

12 (b) The Presiding Officer, in consultation with the parties, shall determine the order in  
13 which multiple Respondents shall be tried.

14 **20. Witnesses**

15 (a) All witnesses shall be examined by the party producing them and shall be subject to  
16 cross-examination by the opposing party. Only one designee of each party may examine each  
17 witness. The Presiding Officer may permit redirect examination and recross-examination.

18 (b) After completion of questioning by the parties, any Senator desiring to question a  
19 witness shall reduce his or her question to writing and present it to the Presiding Officer who shall  
20 pose the question to the witness without indicating the name of the Senator presenting the  
21 question. If objection to a Senator's question is raised by a party, the objection shall be decided  
22 in the manner provided in Rule 23 of these Rules.

23 (c) It shall not be in order for any Senator to directly question a witness.

24 **21. Discovery Procedures**

1 (a) Within five days after service upon the Respondent of the Articles of Impeachment, the  
2 Respondent may request, and the Board of Managers shall disclose to the Respondent and make  
3 available for inspection, copy, or photograph, the following:

4 (1) Any written or recorded statement of the Respondent in the Managers' possession  
5 which the Managers intend to introduce into evidence in their case-in-chief during the trial;

6 (2) Any books, papers, documents, data, photographs, tangible objects, buildings or  
7 places, or copies of portions of such items in the Managers' possession that the Managers intend  
8 to use in their case-in-chief as to one or more Articles of Impeachment;

9 (3) A list of the persons the Board of Managers intends to call as witnesses in its case-in-  
10 chief during the trial; and

11 (4) A written summary of any expert testimony the Managers intend to use during their  
12 case-in-chief. Any summary provided must describe the witness' opinions, the bases and reasons  
13 for the opinions, and the witness's qualifications.

14 (b) The Board of Managers shall make its response to the Respondent's written requests  
15 within 10 days of service of the requests.

16 (c) If the Respondent makes a request pursuant to this Rule, he or she shall be required  
17 to provide the same information to the Managers, reciprocally, within 10 days following his or her  
18 request.

19 (d) A copy of all requests pursuant to this section shall be provided to the Clerk. The parties  
20 shall provide to the Clerk, in a format or in formats directed by the Clerk, copies of all items  
21 disclosed pursuant to this Rule.

22 (e) The Clerk may require parties to number or Bates stamp any trial exhibits or other  
23 information provided to the Clerk. The Clerk may hold a meeting with the parties to organize trial  
24 exhibits.

25 **22. Court Reporters; Transcripts**

1 (a) All proceedings shall be reported by an official court reporter or certified court reporter:  
2 *Provided*, That if the services of an official court reporter or certified court reporter are unavailable  
3 on one or more days of the trial, the proceedings shall be digitally recorded and copies of the  
4 recording made available to the parties.

5 (b) Upon request of a party, the Presiding Officer, or any Senator, the Clerk shall provide  
6 a copy of the transcript of any portion of the trial, when such transcripts are available.

7 **23. Motions, Objections, and Procedural Questions**

8 (a) All motions, objections, and procedural questions made by the parties shall be  
9 addressed to the Presiding Officer, who shall decide the motion, objection, or procedural question:  
10 *Provided*, That a vote to overturn the Presiding Officer's decision on any motion, objection, or  
11 procedural question shall be taken, without debate, on the demand of any Senator sustained by  
12 one tenth of the Senators present, and an affirmative vote of a majority of the Senators present  
13 and voting shall overturn the Presiding Officer's decision on the motion, objection, or procedural  
14 question.

15 (b) On the demand of any Senator or at the direction of the Presiding Officer, the movant  
16 shall reduce the motion to writing.

17 **24. Qualification to Sit as Court of Impeachment**

18 Every Senator is qualified to participate on the Court of Impeachment, unless he or she  
19 has been excused pursuant to Rule 43 of the Rules of the Senate, 2017.

20 **25. Members as Witnesses**

21 The parties may not call as witnesses, nor subpoena the personal records of, the  
22 Senators, members of the Board of Managers, personnel of the Court of Impeachment, the  
23 Presiding Officer, or counsel for the parties.

24 **26. Attendance of Members**

25 Every Senator is required to attend the trial unless he or she has been granted a leave of  
26 absence, pursuant to Rule 50 of the Rules of the Senate, 2017, or has been excused from voting

1 on the Articles, pursuant to Rule 43 of the Rules of the Senate, 2017. Any Senator who has been  
2 granted a leave of absence shall be provided an opportunity to review the exhibits, video or audio  
3 recordings, and transcripts for the date or dates he or she is absent and may participate in the  
4 vote on verdict and judgment as provided in Rule 31 of these Rules.

5 **27. Notetaking**

6 Senators may take notes during the trial and such notes are not subject to the provisions  
7 of W. Va. Code §29B-1-1 *et seq.*

8 **28. Applicability of Rules of the Senate**

9 Except as otherwise provided herein, the Rules of the Senate shall apply to proceedings  
10 of the trial and the President of the Senate retains the authority to invoke such rules.

11 **29. Applicability of Rules of Evidence**

12 When not in conflict with these Rules or the Rules of the Senate, the Presiding Officer  
13 shall rule on the admissibility of evidence in accordance with West Virginia Rules of Evidence:  
14 *Provided*, That a vote to overturn the Presiding Officer's ruling on the admissibility of evidence  
15 shall be taken, without debate, on demand of any Senator sustained by one tenth of the members  
16 present, and an affirmative vote of the majority of Senators present shall overturn the ruling.

17 **30. Instruction**

18 At any time, the Presiding Officer may, *sua sponte*, or on motion of a party or upon request  
19 of a Senator, instruct the Senators on procedural or legal matters.

20 **31. Verdict and Judgment**

21 (a) After closing arguments, the Court may enter into a Conference of Senators for  
22 deliberation. After conclusion of said conference and return to open proceedings, or pursuant to  
23 Rule 15 or Rule 16 of these Rules, all Senators not excused shall vote on the question of whether  
24 to sustain one or more Articles of Impeachment: *Provided*, That any vote of the Senators on the  
25 question of whether or not to sustain an Article of Impeachment shall decide only that Article, and

1 no single vote of the Senate shall sustain more than one Article of Impeachment. The Presiding  
2 Officer shall have no vote in the verdict or judgment of the Court of Impeachment.

3 (b) If two thirds of the Senators elected vote to sustain one or more Articles of  
4 Impeachment, a judgment of conviction and removal from office shall be pronounced and entered  
5 upon the Journal of the Court of Impeachment. If the Respondent is acquitted of any Article of  
6 Impeachment, a judgment of acquittal as to such Article or Articles shall be pronounced and  
7 entered upon the Journal.

8 (c) If two thirds of the Senators elected vote to sustain one or more Article of Impeachment,  
9 a vote shall then be taken on the question of whether the Respondent shall also be disqualified  
10 to hold any office of honor, trust, or profit under the state. If two thirds of the Senators elected  
11 vote to disqualify, a judgment of disqualification to hold any office of honor, trust, or profit under  
12 the state shall be pronounced and entered upon the Journal of the Court of Impeachment.

13 (d) Each vote pursuant to this Rule shall be taken by yeas and nays.

14 (e) A copy of all judgments entered shall be deposited in the office of the Secretary of  
15 State.

### 16 **32. Conference of Senators**

17 (a) On motion of any Senator and by a vote of the majority of the members present and  
18 voting, there shall be an immediate Conference of Senators. No Senator or any other person may  
19 photograph, record, or broadcast a Conference of Senators. Any motion made pursuant to this  
20 Rule shall be nondebatabable.

21 (b) The President of the Senate, or his or her designee, shall preside over a Conference  
22 of Senators and the Rules of the Senate shall apply during said conference except as otherwise  
23 provided herein.

### 24 **33. Contempt; Powers of Presiding Officer**

25 The following powers shall be exercised by the Presiding Officer:

26 (1) The power to compel the attendance of witnesses subpoenaed by the parties;



- 1 (2) The power to enforce obedience to the Court's orders;
- 2 (3) The power to preserve order;
- 3 (4) The power to punish contempt of the Court's authority; and
- 4 (5) The power to make all orders that may be necessary and that are not inconsistent with
- 5 these Rules or the laws of this state.

6 **34. Prohibited Conduct; Sanctions**

7 The Court of Impeachment shall have the power to provide for its own safety and the  
8 undisturbed transaction of its business, as provided in Article VI, Section 26 of the Constitution of  
9 West Virginia.

HOUSE RESOLUTION 201

(By Delegate Overington)

[Introduced June 26, 2018.]

Relating to empowering the House Committee on the Judiciary to investigate allegations of impeachable offenses against the Chief Justice and Justices of the West Virginia Supreme Court of Appeals.

Whereas, The West Virginia Supreme Court of Appeals is composed of one Chief Justice and four Justices. Those positions are currently occupied by the Honorable Chief Justice Margaret L. Workman, the Honorable Justice Robin Jean Davis, the Honorable Justice Allen H. Loughry II, the Honorable Justice Menis E. Ketchum II, and the Honorable Justice Elizabeth D. Walker; and

Whereas, On or about April 16, 2018, a Legislative Audit Report regarding the Supreme Court of Appeals of West Virginia was issued. The initial focus of the report concerned the use of state vehicles and other employer-provided benefits that may have not been treated properly for state and federal tax purposes. The issues discussed in the report raise serious questions about the administration of the Court and the conduct of the Justices; and

Whereas, On or about May 20, 2018, a Legislative Audit Report - Report 2 - regarding the Supreme Court of Appeals of West Virginia was issued. This report focused on the use of state vehicles and purchases of gift cards. The issues discussed in the report raise serious questions about the administration of the Court and the conduct of the Justices; and

Whereas, On June 6, 2018, the West Virginia Judicial Investigation Commission ("Commission") filed a Formal Statement of Charges against Justice Allen H. Loughry II alleging that probable cause exists to formally charge him with violations of the Code of Judicial Conduct. The Formal Statement of Charges contains thirty-two charges against Justice Loughry that raises serious questions about the administration of the Court and the conduct of Justice Loughry;

Whereas, On June 19, 2018, Justice Loughry was indicted in the United States District Court for the Southern District of West Virginia. The indictment contains twenty-two counts against Justice Loughry that raise serious questions about the administration of the Court and the conduct of Justice Loughry; and

Whereas, The Court's actions and/or inactions have raised concerns that require further consideration and investigation by this body. Some or all of the five members of the Court may be guilty of maladministration, corruption, incompetency, gross immorality, or high crimes or misdemeanors, and may be unfit to serve as Chief Justice or as Justices of the West Virginia Supreme Court of Appeals; therefore, be it

Resolved by the House of Delegates:

That the House Committee on the Judiciary be, and it is by this resolution, empowered:

- (1) To investigate, or cause to be investigated, any allegations or charges related to the maladministration, corruption, incompetency, gross immorality, or high crimes or misdemeanors committed by any Justice of the West Virginia Supreme Court of Appeals;
- (2) To meet during the adjournment of the House and to hold a hearing or hearings thereon if deemed necessary in the course of its investigation;
- (3) To make findings of fact based upon such investigation and hearing(s);
- (4) To report to the House of Delegates its findings of facts and any recommendations consistent with those findings of fact which the Committee may deem proper; and
- (5) If the recommendation of the Committee be to impeach any or all of the five members of the West Virginia Supreme Court of Appeals, then to present to the House of Delegates a proposed resolution of impeachment and proposed articles of impeachment; and, be it

Further Resolved, That in carrying out its duties pursuant to this resolution, the House Committee on the Judiciary is authorized:

- (1) To examine witnesses, to send for persons, papers, documents, and other physical or electronic evidence, to order the attendance of any witness(es) or the production of any paper, document, and any other physical or electronic evidence along with any witness(es) necessary to supervise, maintain, or explain that evidence, and to exercise all other powers described under the provisions of §4-1-5 of the Code of West Virginia;
- (2) To issue summonses and subpoenas, including subpoenas duces tecum, and to enforce obedience to its summonses and subpoenas in accordance with the provisions of §4-1-5 of the Code of West Virginia or by invoking the aid of the courts of this state;
- (3) To determine whether all or any portion of any meeting(s) or hearing(s) should be held in executive session, pursuant to the provisions of the House Rules; and, be it

Further Resolved, That in carrying out his duties pursuant to this resolution, the Chairman of the House Committee on the Judiciary is authorized:

- (1) To establish or define rules of procedure for the conduct of any meeting(s) or hearing(s) held pursuant to this resolution;
- (2) To issue summonses and subpoenas to accomplish the purpose of this Resolution;

(3) To employ, with the prior approval of the Speaker of the House or the Speaker Pro Tempore of the House, a court reporter or stenographer and such other professional or clerical employees as may be reasonably required;

(4) To designate any subcommittee(s) of the House Committee on the Judiciary to assist the Chairman or Committee in performing their duties pursuant to this resolution; and

(5) To determine the time and place of any meeting(s) or hearing(s) of the Committee and its designated subcommittee(s); and, be it

Further Resolved, That the House Committee on the Judiciary during its inquiry may entertain such procedural and dispositive motions as may be made in the case of any other bill or resolution referred to that Committee, or, in making its recommendations, if any, pursuant to this resolution, may include:

(1) A recommendation that the any or all of the five members of the West Virginia Supreme Court of Appeals not be impeached; or

(2) A recommendation that any or all of the five members of the West Virginia Supreme Court of Appeals be impeached for maladministration, corruption, incompetence, gross immorality, neglect of duty, and/or high crimes or misdemeanors, as set forth in Section 9, Article IV of the West Virginia Constitution; that those members subject to impeachment be removed from office and be thereafter disqualified from holding any office of public trust, honor, or profit in this State; that the House of Delegates adopt a resolution of impeachment and formal articles of impeachment as prepared by the Committee; and that the House of Delegates deliver the same to the Senate in accordance with the procedures of the House of Delegates, for consideration by the Senate according to law; and/or

(3) A recommendation of proposed legislation to correct any perceived statutory or constitutional deficiencies found by the Committee.

## SUPREME COURT OF APPEALS OF WEST VIRGINIA

RE: PAYMENT OF SENIOR JUDICIAL OFFICERS WHO PERFORM  
ESSENTIAL SERVICES

Pursuant to Article VIII, § 3 of the West Virginia Constitution, the Supreme Court has general supervisory control over all courts in the state, and the chief justice "shall be the administrative head of all the courts." This administrative authority includes the ability to assign judges for temporary service, including retired judges and magistrates. See W. Va. Const. Article VIII, § 8. It is constitutionally required that the "courts of this State shall be open . . . and justice shall be administered without sale, denial or delay." W. Va. Const. Art. III, § 17. Accordingly, it is paramount that the chief justice has the ongoing ability to assign judges for temporary service in such a manner that there is no interruption in essential services to the litigants of this state.

Although the Governor has the authority to fill a judicial vacancy, W. Va. Const. Art. VIII, § 7, this authority does not apply to instances in which a judicial officer may be absent from duty due to a protracted illness, or because of a suspension due to ethical violations. In these circumstances the chief justice exercises the constitutional authority to assign judges for temporary service, including retired judges. This authority is recognized in W. Va. Code § 51-9-10, which further provides that "reasonable payment shall be made to such judges . . . on a per diem basis. Provided, however, That the per diem and retirement compensation of a senior judge shall not exceed the salary of a sitting judge." In the vast majority of instances, the statutory proviso does not interfere with providing essential services. However, in certain exigent situations involving protracted illness, lengthy suspensions due to ethical violations, or other extraordinary

circumstances, it is impossible to assure statewide continuity of judicial services without exceeding the payment limitation imposed by the statutory proviso.

Accordingly, in light of the administrative authority vested in the chief justice, it is hereby ORDERED that the chief justice has authority to determine in certain exigent circumstances that a senior judicial officer may continue in an appointment beyond the limitations set forth in W. Va. Code § 51-9-10, to avoid the interruption in statewide continuity of judicial services.

ENTERED: May 19, 2017

  
ALLEN H. LOUGHRY II  
Chief Justice

Attest:   
GARY L. JOHNSON  
Administrative Director

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IN THE WEST VIRGINIA LEGISLATURE  
HOUSE OF DELEGATES  
JUDICIARY COMMITTEE

\* \* \* \* \*

IN RE:  
House Judiciary Committee Proceeding  
Regarding the Impeachment of West Virginia  
Supreme Court Justices Pursuant to  
House Resolution 201 Passed During the  
Second Extended Session of 2018.

\* \* \* \* \*

VOLUME VIII

Hearing held on August 7, 2018, before the House  
Judiciary Committee of the West Virginia Legislature.

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1 CHAIRMAN SHOTT: Are there questions?  
2 Delegate Fluharty.

3 MINORITY VICE CHAIR FLUHARTY: Thank  
4 you, Mr. Chairman.

5 Counsel, I was going through these  
6 Articles. Where are the findings of fact?

7 MR. CASTO: Well, there -- there are no  
8 findings of fact there. The Committee --

9 MINORITY VICE CHAIR FLUHARTY: Where?

10 MR. CASTO: I said, sir, there are no  
11 findings of fact.

12 MINORITY VICE CHAIR FLUHARTY: There  
13 are no findings of fact?

14 All right. Have you read House  
15 Resolution 201?

16 MR. CASTO: I have, sir, but I have not  
17 read it today.

18 MINORITY VICE CHAIR FLUHARTY: Well, do  
19 you know that we're required to have findings of fact?

20 MR. CASTO: I think, sir, that my  
21 understanding is - based upon the Manchin Articles -  
22 that the term "findings of fact" which was used at the  
23 same time, that the profferment of these Articles is  
24 indeed equivalent to a finding of fact. The -- but



1 that, again, is your interpretation, sir.

2 MINORITY VICE CHAIR FLUHARTY: So based  
3 upon the clear wording of House Resolution 201, it says  
4 we're "To make findings of fact based upon such  
5 investigations and hearings;" and "To report to the  
6 House of Delegates its findings of facts and any  
7 recommendations consistent with those findings of facts  
8 which the Committee may deem proper."

9 I mean, you're -- you're aware how this  
10 works in the legal system. You draft separate findings  
11 of fact. I'm just wondering why we haven't done that.

12 MR. CASTO: Because, sir, that is not  
13 the manner in which impeachment is done.

14 MINORITY VICE CHAIR FLUHARTY: Well,  
15 the findings of fact in House Resolution 201 are  
16 referenced separate from proposed Articles of  
17 Impeachment. Am I wrong in that observation?

18 MR. CASTO: I don't believe that you're  
19 wrong in that.

20 MINORITY VICE CHAIR FLUHARTY: Okay.  
21 So my question is: Why are there not separate findings  
22 of fact? Could -- maybe the Chairman could enlighten  
23 us.

24 CHAIRMAN SHOTT: Yeah, the finding of

1                   MINORITY VICE CHAIR FLUHARTY:  Would  
2 you agree with me we are to follow House Resolution  
3 201?

4                   CHAIRMAN SHOTT:  I believe we are  
5 following House Resolution 201.

6                   MINORITY VICE CHAIR FLUHARTY:  That's  
7 all I have.

8                   CHAIRMAN SHOTT:  Further questions?  
9 Pardon.  Delegate Fleischauer.

10                   MINORITY CHAIR FLEISCHAUER:  Thank you,  
11 Mr. -- thank you, Mr. Chairman.  I think the gentleman  
12 has raised a valid point.  If we look at the Resolution  
13 that empowers this Committee to act, it -- it says that  
14 we are to make findings of fact based upon such  
15 investigation and hearing and to report to the House of  
16 Delegates its findings of fact and any recommendations  
17 consistent with those findings, of which the Committee  
18 may deem proper.

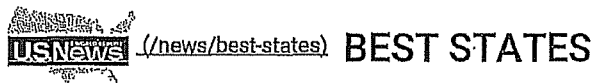
19                   And normally -- I know a lot of people  
20 say in here, "We're not lawyers," but many of us are,  
21 and I think it's Rule 52 that requires Courts to make  
22 findings of fact and also that their recommendations  
23 for any Resolution has to be consistent with those  
24 findings of fact.

1                   And I'm just a little concerned that if  
2 we don't have findings of fact that there could be some  
3 flaw that could mean that the final Resolution by the  
4 House would be deemed to be not valid.

5                   And I don't think it would be that hard  
6 to make findings of facts, but I think that would be  
7 consistent with the -- with the Resolution, and I think  
8 that's what authorizes us to act at all, is the  
9 Resolution.

10                   So I think we -- if there -- there  
11 would be some wisdom in trying to track the language of  
12 the Resolution, and it would be consistent with any  
13 other proceeding that we have in West Virginia that  
14 when there are requirements of findings of fact and --  
15 in this case, it's not conclusions of law, but it's  
16 recommendations -- that we should follow that.

17                   CHAIRMAN SHOTT: And to the -- to the  
18 gentlelady, I appreciate your expression of concern,  
19 but I also note that the proposed Articles that were  
20 circulated with the press release did not contain any  
21 findings of fact, so it seems a little bit disingenuous  
22 at this point that Articles that were proposed by the  
23 minority party now apparently are considered  
24 insufficient because it did not include findings of.



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## Panel Clears 3 West Virginia Justices in Ethics Cases

The West Virginia Judicial Investigation Commission says it has closed ethics investigations involving three state Supreme Court justices without disciplinary action.

July 23, 2018, at 5:23 p.m.

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**AP**

CHARLESTON, W.Va. (AP) -- The West Virginia ([/news/best-states/virginia](#)) Judicial Investigation Commission says it has closed ethics investigations involving three state Supreme Court justices without disciplinary action.

The commission issued letters Monday to Justices Robin Jean Davis and Beth Walker and Chief Justice Margaret L. Workman closing all outstanding complaints against them.

The commission said in a news release that the complaints filed by the Judicial Disciplinary Counsel alleged the justices violated the Code of Judicial Conduct by using state funds to pay for lunches for themselves, their administrative assistants and court security officers while they were discussing cases and administrative matters in conference.

But the commission found the lunches made the court more efficient.

The commission investigated allegations against Justice Allen Loughry and filed a 32-count statement of charges against him on June 6.

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[https://www.wvgazette.com/news/politics/amid-proceedings-wv-house-never-voted-on-impeachment-resolution/article\\_c93b2a9c-4ef0-5bf6-bbd7-9e8697dcbab0.html](https://www.wvgazette.com/news/politics/amid-proceedings-wv-house-never-voted-on-impeachment-resolution/article_c93b2a9c-4ef0-5bf6-bbd7-9e8697dcbab0.html)

## Amid proceedings, WV House never voted on impeachment resolution

By Phil Kabler Staff writer Aug 21, 2018

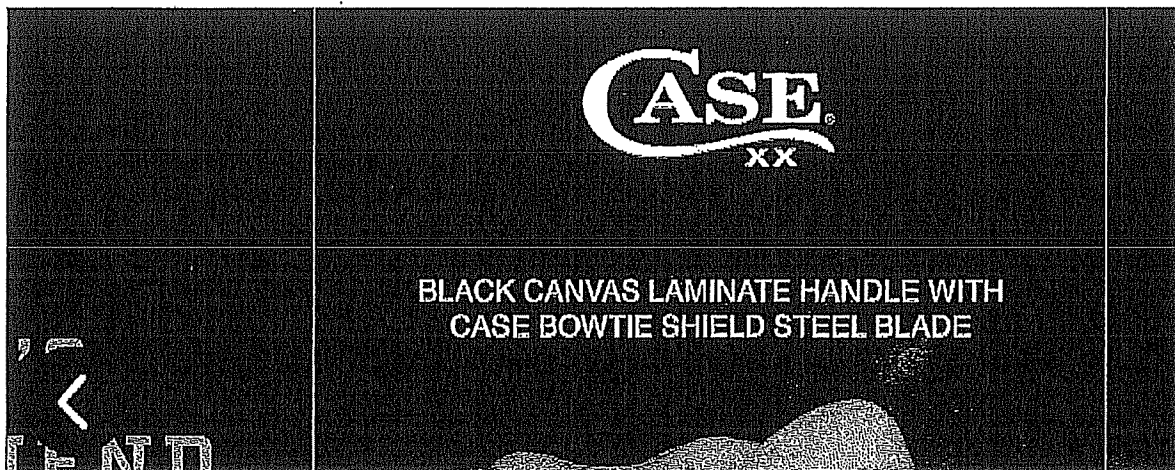
As the House of Delegates and Senate move forward with impeachment proceedings against Supreme Court justices, some observers believe one important element is missing: The House Judiciary Committee and the full House have never voted to adopt the House resolution authorizing the articles of impeachment (HR 202).

"They're in deep doo-doo, just to be quite honest about it," said Greg Gray, former longtime House clerk and parliamentarian, known nationally for his expertise on parliamentary procedure.

"If they didn't vote on the resolution, but simply voted on the articles of impeachment, they have got a problem on their hands," Gray said.

He believes it's as if the House voted on amendments to a bill, but never voted to pass the bill itself, and sent the Senate the series of amendments rather than the actual legislation.

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According to the Legislature's website, the current status of the impeachment resolution is that it is still in House Judiciary with the designation of DP, which refers to the pending recommendation that the resolution "do pass."

Gray said failure to vote on the impeachment resolution violates precedent set in the 1989 impeachment of then-Treasurer A. James Manchin, as well as the rules for the impeachment proceedings that the House adopted on June 26 at the start of the impeachment process.

"My position is that the process is defective," Gray said. "The House has fallen short of addressing the formal question, which is the resolution adopting impeachment."

Current House Clerk Steve Harrison said he believes the House acted properly, since members voted on each individual article of impeachment.

"Impeachment has been done in different ways in the history of the state," Harrison said. "The House divided the articles and voted on them individually, and the articles which we adopted is what was presented to the Senate."

However, Gray noted that in the 1989 impeachment, House Judiciary members and the full House also voted individually on each article of impeachment, through a process known as seriatim consideration, and then voted to formally adopt the impeachment resolution.

"The proper procedure is to vote each motion of impeachment up or down, and then you vote on the total package," he said. "The current precedent we're following is 1989."

Harrison argued that the House was relying on records of impeachment proceedings from 1875, when

the House did not use a formal impeachment resolution.

The failure to vote on the resolution also is at odds with the resolution the House adopted on June 26 setting ground rules for the impeachment hearings (HR 201).

Those rules state that if House Judiciary recommends impeachment of any or all justices, it is to "present to the House of Delegates a proposed resolution of impeachment and articles of Impeachment," and that if the full House adopts the impeachment resolution, the House is to deliver the resolution to the Senate "for consideration by the Senate according to the law."

During the floor session that spanned nearly 14 hours on Aug. 13 into Aug. 14, there was confusion about whether the full House would vote on the impeachment resolution.

At about 6:30 p.m. on Aug. 13, House spokesman Jared Hunt sent an email to media covering the proceedings, stating:

"While the question of adopting House Resolution 202 has been divided to allow Delegates to adopt each article individually, the House will still have to come back and vote to adopt House Resolution 202 in its entirety once Delegates have voted on each article and the amendments to them.

"So while the House is considering each individual article of impeachment right now, the resolution formally containing all the articles of impeachment will not be adopted and sent to the Senate until the final vote on the resolution in its totality "(after each individual article has been either adopted or rejected)."

However, after the House reconvened about 9:15 p.m. from a dinner break recess, Hunt sent a second email advising:

"After further discussion and research on parliamentary procedures, it has been determined that it is not necessary to come back and vote to adopt House Resolution 202 in totality. The division of the original question before the House – which was to adopt House Resolution 202 – into separate consideration of the individual articles within that resolution, and the separate votes on each part, is all that is required. So there will be no overall vote on House Resolution 202 at the conclusion of consideration of the individual articles and amendments. Apologies for the confusion."

Hunt said Tuesday that House leaders, with the exception of then-Speaker Tim Armstead, along with Harrison, staff attorneys and the House parliamentarian signed off on the decision, prior to his issuing the 9:15 p.m. email. Armstead on Tuesday resigned from the House, officially announcing his candidacy to run for a vacated seat on the state Supreme Court.

Sources close to the House indicate that the initial omission occurred on Aug. 7, when after a long day of debating and voting on articles of impeachment, the House Judiciary Committee adjourned without voting on the impeachment resolution.

That would have put the full House in the posture on Aug. 13-14 of having to take another recess in order to call a Judiciary Committee meeting to allow a committee vote to advance the resolution to the full House.

House Judiciary Chairman John Shott, R-Mercer, did not immediately respond to requests for comment, and Hunt said he had not heard of that being an issue in the House decision to not vote on the resolution.

Gray, who was not retained as House clerk when Republicans took control of the House in 2015, said if there was doubt about the need to vote on the resolution, the House should have erred on the side of caution.

"One of the mantras we follow in interpreting parliamentary law is that surpluses are always OK," he said. "It's better to vote twice on one issue than to not have a vote on it at all."

Reach Phil Kabler at [philk@wvgazette.com](mailto:philk@wvgazette.com), 304-348-1220 or follow @PhilKabler on Twitter.

**Phil Kabler**

Statehouse Reporter



AFFIDAVIT

STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO-WIT:

Gregory M. Gray, being first duly sworn, deposes and says that:

- I am a retired Clerk of the House and Parliamentarian of the West Virginia House of Delegates.
- I was first employed by the Clerk of the House of Delegates in January 1973 when I served for five years as the understudy to then-House Parliamentarian Oshel Parsons, who served the House for 51 years, from 1927 until his death in 1978.
- I was appointed Parliamentarian and Assistant Clerk of the House of Delegates on February 15, 1978.
- I was initially elected by the House of Delegates as its Clerk on January 10, 1996 and was reelected at the beginning of each new Legislature until retirement.
- I continued to serve as both Clerk and Parliamentarian of the House of Delegates until I retired on December 31, 2014, with forty-two years of service to the West Virginia House of Delegates.
- While serving as House Clerk and Parliamentarian, I served as President of the American Society of Legislative Clerks and Secretaries ("ASLCS"), and under the auspices of the ASLCS served as Vice Chair of Mason's Manual Revision Commission to revise and update Mason's Manual, a parliamentary procedure manual used by State Legislatures throughout the United States as parliamentary authority.
- Under the auspices of the United States Department of State, I served as a parliamentary advisor to the African countries Burkina Faso and Benin to assist them in

rewriting procedural rules, developing constitutional changes, and revamping the structures of their parliaments.

- The opinions on parliamentary procedure that I am offering through this affidavit are made to a reasonable degree of certainty in my field of expertise based on the information available to me, my training, and expertise.

- The West Virginia House of Delegates uses Resolutions to express its will or to issue directives, to communicate with the Senate and other branches of government; these documents are an important part of the legislative process. The House speaks through its Resolutions.

- The recent impeachment proceedings in the West Virginia House of Delegates were procedurally flawed.

- The impeachment proceedings are fatally flawed due to the failure of the Committee on the Judiciary to vote to report House Resolution 202 to the full House of Delegates, so that House Resolution 202 was never properly before the House for consideration. Technically, the resolution is still in possession of the House Committee on the Judiciary.

- When the full House of Delegates improperly received House Resolution 202, it divided House Resolution 202 into component parts by considering and voting separately on each Article of Impeachment.

- Such a division requires that each of the component parts be able to stand alone, but the separated Articles did not contain all of the effectuating language from House Resolution 202.

- The House of Delegates failed to consider all the remaining critical language of the resolution, including the operative language of House Resolution 202 directing impeachment.

- Because of this, the House of Delegates never properly voted to impeach the justices of the Supreme Court of Appeals of West Virginia.

- I have also examined House Resolution 205 in detail. The sole purpose of House Resolution 205 is to appoint Managers on behalf of the House of Delegates and direct them to appear before the Senate and inform the Senate what the House has done, and to perform other duties relative to the impeachment process.

- House Resolution 205 is a procedural housekeeping resolution, and as such its contents are directive only.

- House Resolution 205 does not, either directly or indirectly, declare impeachment by the House of Delegates.

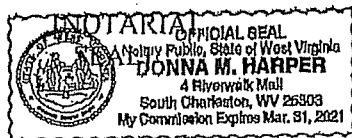
AND FURTHER, THIS AFFIANT SAITH NAUGHT.

Dated this 20<sup>th</sup> day of September, 2018.

  
\_\_\_\_\_  
Gregory M. Gray

Taken, subscribed and sworn to before me, a Notary Public, in and for the aforesaid County and State, this 20<sup>th</sup> day of September, 2018.

My commission expires: March 31, 2021



  
\_\_\_\_\_  
Notary Public

**IN THE WEST VIRGINIA SENATE**

***IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST  
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN***

Honorable Paul T. Farrell  
Acting Justice of the  
Supreme Court of Appeals of West Virginia  
Presiding Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of September, 2018, a true and correct copy of the foregoing **CHIEF JUSTICE WORKMAN'S MOTION TO DISMISS ON GROUNDS STATED IN PETITION FOR WRIT OF MANDAMUS** was served by electronic mail and by depositing a true copy thereof in the United States mail, first class, postage prepaid, in envelopes upon the following:

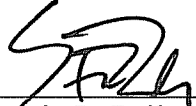
Honorable John Shott  
Room 418M, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Honorable Ray Hollen  
Room 224E, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Honorable Andrew Byrd  
Room 151R, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Honorable Rodney Miller  
Room 150R, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

Honorable Geoff Foster  
Room 214E, Bldg. 1  
1900 Kanawha Blvd. E.  
Charleston, WV 25305

  
\_\_\_\_\_  
Benjamin L. Bailey (WVSB #200)  
Steven R. Ruby (WVSB #10752)