

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

JOHN A. CLINE

Petitioner,

v.

Civil Action No.
Judge

DAVID C. TABB, individually;

THE JEFFERSON COUNTY BOARD OF
BALLOT COMMISSIONERS;

JACQUELINE C. SHADLE, in her official
capacity as Jefferson County Clerk
and Chair of the Jefferson County
Board of Ballot Commissioners;

GARY DUNGAN, in his official capacity as a
member of the Jefferson County Board of
Ballot Commissioners; and

JIM McGEE, in his official capacity as a
member of the Jefferson County Board of
Ballot Commissioners,

Respondents.

**VERIFIED PETITION CHALLENGING QUALIFICATIONS OF COUNTY
COMMISSION CANDIDATE AND PETITION FOR ANCILLARY WRIT OF
MANDAMUS**

Petitioner John A. Cline (“Cline”), by counsel, Bowles Rice LLP, petitions this Court pursuant to West Virginia Code § 7-1-15 for an expedited determination that Respondent David C. Tabb (“Tabb”) is not legally qualified to appear on the November 3, 2026 general-election ballot as a candidate for the Jefferson County Commission from the Harpers Ferry Magisterial District. Petitioner further requests, if the Court determines that Tabb is not qualified, an ancillary writ directing the Jefferson County ballot officials to implement that determination. In support, Petitioner states as follows:

1. This proceeding concerns an objective and consequential inconsistency in Tabb’s sworn candidacy filings. In 2024, Tabb identified 107 Tabb Lane, Harpers Ferry, West Virginia, as his legal residence and identified the Charles Town Magisterial District as his district of residence. In 2026, Tabb again identified 107 Tabb Lane as his legal residence but identified the Harpers Ferry Magisterial District as his district of residence.

2. West Virginia law requires a candidate for county commission to reside in the magisterial district from which the candidate seeks election by the last day for filing a certificate of announcement. W. Va. Code § 7-1-1b(b)(1). The certificate must state under oath the candidate's magisterial district and specific residence address. W. Va. Code § 3-5-7(d)(4)-(5), (f).

3. The State Election Commission (“SEC”) conducted an evidentiary hearing concerning Tabb on August 10, 2026. Its August 11, 2026 Order found, among other things, that Tabb’s legal residence at 107 Tabb Lane was undisputed; no evidence suggested that the magisterial-district boundaries changed between 2024 and 2026; and it was factually and legally impossible for that address’s magisterial district to have changed from Charles Town in 2024 to Harpers Ferry in 2026 absent contrary evidence or records.

4. The Commission nevertheless dismissed the disqualification requests without prejudice on grounds that West Virginia Code § 7-1-15 supplies the sole and exclusive pre-election procedure for challenging a county commission candidate's qualifications and vests jurisdiction in this Court.

5. Petitioner therefore invokes the exclusive procedure identified by the Commission.

PARTIES

6. Petitioner John Cline is a resident of Jefferson County, West Virginia, and is a “person” authorized to contest Tabb’s qualifications under West Virginia Code § 7-1-15(a)(1).

7. Respondent David C. Tabb is a resident of Jefferson County, West Virginia, and is the certified Mountain Party candidate for the Jefferson County Commission seat associated with the Harpers Ferry Magisterial District in the November 3, 2026 general election.

8. Respondent Jefferson County Board of Ballot Commissioners is the county body charged with duties relating to the preparation and administration of election ballots. See W. Va. Code § 3-1-19.

9. Respondent Jacqueline C. Shadle is the Jefferson County Clerk and serves as chair of the Jefferson County Board of Ballot Commissioners. She is a party to this civil action only in her official capacity.

10. Respondents Gary Dungan and Jim McGee are the other members of the Jefferson County Board of Ballot Commissioners. They are parties to this civil action only in their official capacities.

JURISDICTION AND VENUE

11. This Court has original and exclusive jurisdiction under West Virginia Code § 7-1-15(a)(3) because Tabb seeks election to the Jefferson County Commission.

12. Venue lies in Jefferson County because West Virginia Code § 7-1-15(a)(3) requires the petition to be filed in the circuit court of the county in which the challenged candidate seeks office.

13. West Virginia Code § 7-1-15(f) further declares that its procedure is the “sole and only manner” in which the qualifications of a county commission candidate may be challenged before election.

14. The Commission’s August 11, 2026 Order confirms that it lacks subject-matter jurisdiction over this county-commission qualification dispute and dismissed the requests before

it without prejudice to proceedings in the proper tribunal. A copy of the Order is attached hereto as Exhibit 1.

FACTS

15. The primary election was held on May 12, 2026, and the general election is scheduled for November 3, 2026.

16. On January 29, 2026, Tabb filed a sworn and notarized Certificate of Announcement with the Jefferson County Clerk seeking election to the Jefferson County Commission. A copy of the Certificate of Announcement is attached hereto as Exhibit 2.

17. Tabb's 2026 Certificate identifies his legal residence as 107 Tabb Lane, Harpers Ferry, West Virginia 25425, and identifies his magisterial district as Harpers Ferry. *Id.*

18. In 2024, Tabb filed a sworn and notarized Certificate of Announcement seeking election to the Jefferson County Commission. That Certificate likewise identifies his legal residence as 107 Tabb Lane, but identifies his magisterial district as Charles Town. A certified copy of the 2024 Certificate is attached hereto as Exhibit 3.

19. The address appearing on the two Certificates is the same. Tabb's legal residence at that address was undisputed during the August 10 Commission proceeding.

20. The available precinct information identifies Precinct 4 as part of the Charles Town Magisterial District. A copy of the precinct list is attached hereto as Exhibit 4.

21. As indicated by David Tabb's 2024 Certificate of Announcement, Tabb's legal residence is in the Charles Town Magisterial District. Reference the exhibit with this.

22. No evidence presented to the Commission suggested that the relevant magisterial-district boundaries changed between Tabb's 2024 and 2026 filings.

23. On July 31, 2026, Gary Dungan submitted a written request asking the SEC to disqualify Tabb under West Virginia Code § 3-5-19(a)(4). A copy of Dungan's Request and exhibits is attached hereto as Exhibit 5.

24. The Commission scheduled an evidentiary hearing for August 7, 2026 and provided Tabb notice and a copy of Dungan's request.

25. At the request of Tabb's counsel, the Commission continued the hearing to August 10, 2026 to allow additional time to review Dungan's exhibits and prepare a defense.

26. On August 10, the Commission received testimony and evidence and heard argument. Tabb appeared through counsel and contested the request.

27. The Commission found that Tabb's legal residence at 107 Tabb Lane was undisputed, that no evidence suggested a boundary change between 2024 and 2026, and that one of the two sworn Certificates necessarily contained an incorrect district designation.

28. The Commission did not adjudicate Tabb's qualifications. It concluded that West Virginia Code § 7-1-15 is the specific and exclusive pre-election remedy for challenges to county commission candidates and that the Commission lacked subject-matter jurisdiction.

29. On August 11, 2026, the Commission dismissed Dungan's request and the West Virginia Republican Party's substantially similar request without prejudice.

30. Cline first learned that 107 Tabb Lane might not be located within the Harpers Ferry Magisterial District on or about August 27, 2026, when reading a news story in The Journal about the SEC dismissal without prejudice and comments from the Secretary of State that indicated that the address was still in question and not ruled upon by the SEC.

31. Petitioner commenced this proceeding promptly after the Commission identified this Court as the exclusive tribunal.

COUNT I
Challenge to Candidate Qualifications

32. Petitioner incorporates by reference and re-alleges all paragraphs of this Petition as if fully set forth herein.

33. West Virginia Code § 7-1-15 authorizes any person to file a verified petition specifically stating the grounds for challenging a certified county commission candidate's qualifications.

34. West Virginia Code § 7-1-1b(b)(1) required Tabb to be a resident of the magisterial district from which he sought election no later than January 31, 2026, the last day for filing a certificate of announcement for the 2026 primary election. See W. Va. Code § 3-5-7(c).

35. Tabb sought election from the Harpers Ferry Magisterial District.

36. On the filing deadline, Tabb resided at 107 Tabb Lane. The Precinct List attached hereto as Exhibits 4 and 5 establish that the address was located in the Charles Town Magisterial District, not the Harpers Ferry Magisterial District.

37. Tabb therefore did not satisfy the statutory residency qualification and is not legally qualified to appear on the general-election ballot for the county commission seat he seeks.

38. Petitioner bears the burden of proving disqualification by a preponderance of the evidence on the record as a whole and request the expedited bench hearing required by West Virginia Code § 7-1-15(b)-(d).

39. West Virginia Code § 7-1-15(a)(2) permits a later filing upon a finding that the petitioner was unable to discover the grounds for challenging the candidate's qualifications before that date despite reasonable diligence.

40. Once the material factual basis became reasonably ascertainable, Petitioner acted without avoidable delay.

41. Dungan submitted a written request to the Commission, produced supporting exhibits, appeared and presented evidence, and obtained a jurisdictional ruling after a contested and continued hearing.

42. The Commission's dismissal without prejudice did not reject the merits of the challenge. It clarified that West Virginia Code § 7-1-15, rather than § 3-5-19(a)(4), supplies the exclusive remedy for this office.

43. Tabb had notice of the specific allegations and exhibits no later than July 31, appeared through counsel, obtained additional preparation time, and litigated the jurisdictional and factual issues at the August 10 hearing. Allowing this Petition therefore creates no unfair surprise.

44. Petitioner's continuous pursuit of relief after discovery, his prompt resort to the tribunal identified by the Commission, the Commission's dismissal without prejudice, and the public interest in preventing an unqualified candidacy all support the exercise of the authority expressly granted by West Virginia Code § 7-1-15(a)(2).

COUNT II

Ancillary Writ of Mandamus to Implement Court's Qualification Determination

45. Petitioner incorporates by reference and re-alleges all paragraphs of this Petition as if fully set forth herein.

46. A writ of mandamus is available when the petitioner possesses a clear legal right to the relief sought, the respondent owes a legal duty to perform the requested act, and no other adequate remedy exists. Syl. pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969).

47. Petitioner possesses a clear right to an accurate election ballot, and Respondents owe a non-discretionary, ministerial duty to ensure that only legally qualified candidates are presented to voters.

48. Upon determination of disqualification, Petitioner requests a writ directing the Board, its chair, and its members to omit or remove Tabb's name and take any other ministerial steps necessary to implement the Court's judgment.

49. The November 3, 2026 general election and imminent ballot-preparation deadlines require consideration sooner than the statute's outer limits. Petitioner therefore requests an emergency status conference, an accelerated response, immediate limited discovery if necessary, and the earliest available evidentiary hearing.

50. Petitioner further requests immediate preservation and production of the certified candidacy filings, voter-registration and precinct-assignment records, certified magisterial-district maps, ballot-production schedules, and the recording or transcript of the Commission hearing.

PRAYER FOR RELIEF

WHEREFORE, Petitioner John A. Cline respectfully requests the following relief:

- a. set an emergency status conference and expedited evidentiary hearing; find that 107 Tabb Lane was located in the Charles Town Magisterial District on January 31, 2026;
- b. find that Tabb was not a resident of the Harpers Ferry Magisterial District by the statutory qualification date;
- c. declare that Tabb is not legally qualified to appear on the November 3, 2026 general-election ballot as a candidate for the Jefferson County Commission from the Harpers Ferry Magisterial District;
- d. direct the Jefferson County Board of Ballot Commissioners, its chair, and its members to omit or remove Tabb's name from the ballot and take all ministerial steps necessary to implement the Court's judgment;

- e. order preservation and expedited production of the election records necessary to adjudicate this proceeding; and
- f. grant such other relief as the Court deems just and proper.

JOHN A. CLINE,

By Counsel

/s/ J. Mark Adkins

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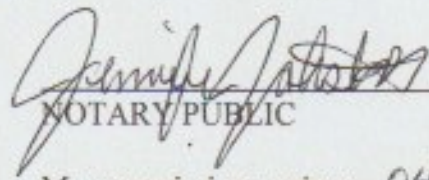
VERIFICATION OF JOHN A. CLINE

I, John A. Cline, after being duly sworn, state that I have read the foregoing Verified Petition; that the allegations concerning my own knowledge, discovery, investigation, and conduct are true and correct based upon my personal knowledge; and that the remaining factual allegations are true and correct to the best of my knowledge, information, and belief after reasonable inquiry.


John A. Cline

The foregoing VERIFICATION was taken, subscribed, and sworn to before the undersigned Notary Public in his or her jurisdiction on the 31st day of August, 2026, by John A. Cline.




NOTARY PUBLIC
My commission expires: 04/08/31