

In the Circuit Court of Jefferson County, West Virginia

JOHN A. CLINE,
Plaintiff,

v.

Case No. CC-19-2026-C-189
Judge Bridget Cohee

DAVID C. TABB,
THE JEFFERSON COUNTY BOARD
OF BALLOT COMMISSIONERS,
JACQUELINE C. SHADLE,
GARY DUNGAN,
JIM McGEE ET AL,
Defendants

**ORDER GRANTING PETITION AND FINDING DAVID C. TABB IS NOT QUALIFIED
AS A CANDIDATE FOR THE HARPERS FERRY MAGISTERIAL DISTRICT**

Petitioner John A. Cline petitioned the court pursuant to W. Va. Code 7-1-15 for an expedited determination that David C. 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 an Order directing the Jefferson County ballot officials to implement that determination.

The Court held a hearing on September 10, 2026, to hear evidence. The Respondent David C. Tabb failed to appear in person and appeared only by counsel. Counsel offered no meritorious objection to the disqualification based on residence. The sole issue presented on the part of Mr. Tabb was that the Petition was not timely.

The testimony and exhibits offered established by a preponderance of the evidence that the court permit the petition. The court finds that the petitioner was unable to discover the grounds for challenging the qualification of the candidate prior to the thirtieth day after the primary election despite the exercise of reasonable diligence based upon the sequela of events that occurred from the filing of the Candidate's Certificate of Announcement on January 29, 2026, to the filing of the Petition. These

efforts included attempts by the Senior Chief Deputy County Clerk to seek direction from the Secretary of State (“SOS”) and intercession by the candidate’s political party, as well as the efforts of the Republican Party’s Executive Committee member of the Board of Ballot Commissioners, attempts to seek advice from the SOS as to how to address the candidate’s disqualification. The SOS advised Mr. Dungan to request the Board of Ballot Commissioners meet to remove Mr. Tabb from the ballot, or to file a complaint to the State Elections Commission (“SEC”) challenging the qualifications of Mr. Tabb. Efforts also included the criminal action filed by the Jefferson County prosecuting attorney by Information in June 2026 for false swearing. This series of unsuccessful challenges would lead any reasonable voter to believe that the proper legal channels were being pursued to address the candidate’s refusal to correct the filing.

Upon reading a newspaper account of the decision of the State Election Commission that they did not have the authority to disqualify the candidate, the Petitioner acted quickly to pursue the petition pursuant to W. Va. Code 7-1-15. Thus, the court finds that the Petition shall move forward on the merits.

As to the objective challenge to the candidate’s qualifications, 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).

The preponderance of the evidence presented at the expedited hearing on September 10, 2026, shows Mr. 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 his Candidate's Certificate of Announcement for 2022 and 2024.

Contrary to his prior sworn submissions, in 2026, Mr. Tabb again identified 107 Tabb Lane as his legal residence but identified the Harpers Ferry Magisterial District as his district of residence. Specifically, the form states: "I am a current resident and legally qualified registered voter of the county of Jefferson, Magisterial District: Harpers Ferry." The form also states, "I swear and affirm that I am a candidate for this office in good faith, meet all constitutional and statutory qualifications to seek and hold the office sought, am eligible and qualified to hold this office, and that the information provided in this form is true." Mr. Tabb was not truthful on the 2026 form.

The Senior Chief Deputy County Clerk, Alice "Nikki" Painter, testified at the hearing that she addressed the misstatement with Mr. Tabb and showed him the district map in effect since 2021. The Deputy Clerk testified that she addressed Mr. Tabb that he lived in the Charles Town Magisterial District, as he had certified on his 2022 and 2024 filings. The Deputy Clerk testified that Mr. Tabb insisted that the Clerk still file his certificate of announcement with the misstatement regarding his magisterial district. The Deputy Clerk's testimony was uncontroverted by any other evidence. Mr. Tabb did not appear at the hearing or offer any testimony.

Upon Mr. Tabb's insistence that the Deputy Clerk file the false certificate, the Deputy Clerk sought advice from the SOS and was told she should file the false certificate. The Deputy Clerk also contacted the candidate's party chair to inform the chair of the false certificate. The chair asked the Deputy Clerk to email the certificate to the chair but took no further action.

On June 4, 2026, the prosecuting attorney of Jefferson County filed charges for false swearing by Information against Mr. Tabb.

On July 7, 2026, another candidate from the Harpers Ferry district brought the controversy to the attention of the Republican Party member of the Board of Ballot Examiners, Gary Dungan. Mr. Dungan sought guidance from the West Virginia Secretary of State. Two avenues of challenge were offered, a meeting of the Board of Ballot Commissioners to remove the candidate, or a filing of a complaint to the SEC.

The County Clerk declined to convene a meeting of the Board of Ballot Commissioners. Mr. Dungan drafted a complaint to the SEC. The complaint was heard at a hearing on August 10, 2026.

The SEC conducted an evidentiary hearing concerning the challenge to Mr. Tabb's qualifications 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.

The SEC 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. 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.

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

FINDINGS OF FACT

1. The primary election was held on May 12, 2026, and the general election is scheduled for November 3, 2026.
2. 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.
3. A copy of the Certificate of Announcement was admitted into evidence as Exhibit 3.
4. Mr. 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.
5. 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 was admitted into evidence as Exhibit 2.
6. The address appearing on the two Certificates is the same. Tabb's legal residence at that address was undisputed during the August 10, 2026, SEC

proceeding, nor was his legal residence disputed in the hearing held by this court on September 10, 2026.

7. The available precinct map and information presented by the deputy county clerk in testimony identifies Precinct 4 as part of the Charles Town Magisterial District.
8. As indicated by David Tabb's 2022 and 2024 Certificate of Announcement, Tabb's legal residence is in the Charles Town Magisterial District. Exhibits 1 & 2.
9. Mr. Tabb presented no evidence to suggest that the relevant magisterial district boundaries changed between Tabb's 2022, 2024 and 2026 filings.
10. 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 was offered into evidence.
11. The SEC held an evidentiary hearing originally scheduled for August 7, 2026, and provided Mr. Tabb notice and a copy of Dungan's request.
12. Mr. Tabb's counsel requested a continuance, and the hearing was held on August 10, 2026.
13. On August 10, the SEC received testimony and evidence and heard arguments. Tabb appeared through counsel and contested the request.
14. The SEC 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.
15. The SEC 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 SEC lacked subject-matter jurisdiction.

16. On August 11, 2026, the SEC dismissed Dungan's request and the West Virginia Republican Party's substantially similar request without prejudice.
17. The Petitioner, John A. 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.
18. Petitioner commenced this proceeding promptly after the Commission identified this Court as the exclusive tribunal by filing a Verified Petition on September 1, 2026.
19. Pursuant to 7-1-15(3)(b) this court set a hearing as soon as possible for a hearing on September 10, 2026.

Upon the receiving of the testimony of the County Clerk, Jacqueline Shadle, the Deputy County Clerk, Alice "Nikki" Painter, Gary Dungan, John A. Cline, and Pasha Majdi, reviewing all the exhibits offered into evidence and the relevant W. Va. Code and case law, the court FINDS by a preponderance of the evidence that:

CONCLUSION

1. David C. Tabb resides at 107 Tabb Lane, which is in the Charles Town Magisterial District on January 29, 2026, and so remains today;
2. Mr. Tabb was informed that his Candidate's Certificate of Announcement for the 2026 Election was erroneous. Regardless of the instruction of the Senior Chief Deputy Clerk, he insisted that she file the false certificate;
3. Subsequently, Mr. Tabb filed three additional campaign finance documents, under oath or affirmation, continuing to assert his district to be Harpers Ferry;
4. Mr. Tabb was not, and is not a resident of the Harpers Ferry Magisterial District;

5. Mr. 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;
6. The Jefferson County Board of Ballot Commissioners, its chair, and its members shall omit Mr. Tabb's name from the ballot and take all ministerial steps necessary to implement the Court's judgment; and
7. The Court further Orders the preservation and expedited production of the election records necessary to adjudicate this proceeding.

/s/ Bridget M. Cohee

Circuit Court Judge
28th Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.