



West Virginia E-Filing Notice

CC-19-2026-C-189

Judge: Bridget Cohee

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NOTICE OF FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA
JOHN A. CLINE v. DAVID C. TABB
CC-19-2026-C-189

The following motion was FILED on 9/11/2026 11:37:48 AM

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IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

JOHN A. CLINE,

Petitioner,

v.

Civil Action No. CC-19-2026-C-189

**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.

**RESPONDENT DAVID C. TABB'S EMERGENCY MOTION TO STAY
ENFORCEMENT AND IMPLEMENTATION OF SEPTEMBER 10, 2026
ORDER PENDING APPEAL**

Respondent **David C. Tabb** ("Appellant"), by counsel, moves this Court on an emergency basis, pursuant to Rule 62(e) of the West Virginia Rules of Civil Procedure, Rule 28(a) of the West Virginia Rules of Appellate Procedure, and W. Va. Code § 7-1-15(e), to stay immediately the enforcement and implementation of the Court's September 10, 2026 Order Granting Petition and Finding David C. Tabb Is Not Qualified as a Candidate for the Harpers Ferry Magisterial District ("Order"). Immediate action is necessary because the Jefferson County Board of Ballot Commissioners ("Board") is scheduled to meet on **Tuesday, September 15, 2026, at 10:00 a.m.**, before expiration of Appellant's statutory five-day period to appeal. Without a stay, the Board may take actions

that irreversibly alter the ballot and practically abolish Appellant's statutory right to seek meaningful expedited appellate review.

Statutory and constitutional rights do not attach only to candidates who enjoy public favor. This Court, the Board, and counsel for every party remain obliged to preserve Appellant's five-day appeal under § 7-1-15(e) and a meaningful chance at appellate review, whether or not they agree with him or wish to see his name on the ballot.

I. BACKGROUND

1. The Court entered its Order on September 10, 2026. The Order determines that Appellant 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.
2. The Order directs the Board, its chair, and its members to omit Appellant's name from the ballot and take all ministerial steps necessary to implement the judgment.
3. The Board is the county body charged with duties relating to the preparation and administration of election ballots. See W. Va. Code § 3-1-19. It is scheduled to meet on September 15, 2026, at 10:00 a.m., before the statutory appeal period expires.
4. W. Va. Code § 7-1-15(e) grants a candidate five days after judgment to appeal. It further requires that the appeal be immediately docketed in the Supreme Court of Appeals of West Virginia and decided at the earliest possible date as a preference case.
5. Appellant intends to invoke that statutory appellate remedy. Even if the hearing transcript is obtained prior to the Board's scheduled meeting, the appeal cannot be fully adjudicated before that date. Appellant must therefore seek temporary relief now to prevent the merits and the appellate process from being overtaken by irreversible implementation.

II. THE COURT HAS AUTHORITY TO ENTER A SHORT STAY THAT PRESERVES APPELLATE REVIEW

6. Rule 62(e) authorizes this Court to stay execution of a judgment and any proceeding to enforce it for a reasonable period that will enable a party to present an appeal. Appellate Rule 28(a) likewise authorizes the circuit court to stay proceedings pending appeal and provides that the stay may remain effective during the time allowed by law to present an appeal and, after the appeal is perfected, pending final disposition unless modified by the appellate court.
7. The requested stay is narrow. Appellant does not ask the Court to reconsider its merits ruling in this motion. He asks the Court to preserve existing ballot conditions only long enough for him to exercise the expedited appeal expressly guaranteed by § 7-1-15(e) and for the Supreme Court of Appeals to consider emergency relief.

III. IMMEDIATE IMPLEMENTATION WOULD IRREPARABLY HARM APPELLANT AND NULLIFY HIS STATUTORY APPEAL

8. The Board's September 15 meeting creates an immediate risk of affirmative implementation: omitting Appellant's name, initiating or approving a new ballot proof, authorizing reprinting, altering electronic ballot programming, authorizing production or distribution, or taking another step that cannot realistically be undone after an appeal is filed. Once such action is taken, later appellate relief may be ineffective as a practical matter.
9. The Legislature did not grant Appellant an illusory appeal. Section 7-1-15(e) provides a defined five-day period to invoke expedited Supreme Court review. Immediate implementation before that period expires defeats the practical benefit of the statutory appeal, deprives the Supreme Court of a meaningful opportunity to preserve the status quo, and converts a legislatively guaranteed review mechanism

into a remedy available only after its subject matter has been altered beyond practical repair.

10. The resulting harm is immediate and irreparable: Appellant may lose ballot access and the ability to pursue candidacy; voters may lose the opportunity to cast a vote for their selected candidate; election officials may take actions that must later be corrected; and the public may face conflicting or revised ballot actions depending on the outcome of the appeal. A short stay avoids, not causes, these risks.
11. Due process under Article III, Section 10 of the West Virginia Constitution and the Fourteenth Amendment requires a meaningful, not merely nominal, opportunity to be heard and obtain review before a governmental deprivation is carried out irreversibly. *Simpson v. Stanton*, 119 W. Va. 235, 193 S.E. 64 (1937). West Virginia also recognizes candidacy as a fundamental constitutional right. *State ex rel. Billings v. City of Point Pleasant*, 194 W. Va. 301, 460 S.E.2d 436 (1995). A stay is necessary to protect these interests while Appellant timely seeks appellate review.

IV. APPELLANT HAS SUBSTANTIAL GROUNDS FOR APPEAL

12. Appellant presents substantial questions warranting preservation of the status quo. Appellant will contend, among other things, that the Court erred by permitting a petition filed more than eighty days after the statutory deadline without a sufficient showing that Petitioner himself could not have discovered the asserted grounds before the deadline despite reasonable diligence. Appellant further will contend that the Court relied upon undisclosed extra-record research in resolving that dispositive issue, without affording Appellant notice and an opportunity to challenge the factual material on which the Court relied. These issues, along with additional preserved assignments of error that cannot be fully developed until the expedited transcript and appendix record are available, present substantial grounds for appellate review.

13. A stay does not require this Court to resolve those issues now. It requires only that the Court prevent irreversible implementation before Appellant can invoke the expedited appellate review that the Legislature expressly provided in W. Va. Code § 7-1-15(e).

V. THE BALANCE OF HARDSHIPS AND PUBLIC INTEREST SUPPORT THE STAY

14. A temporary stay creates limited hardship. It preserves the status quo for the short period necessary to perfect the expedited appeal and permit the Supreme Court of Appeals to consider emergency relief. It does not resolve the merits, prevent the Board from preserving all relevant records and materials, or foreclose timely election administration directed by the reviewing court.
15. The alternative creates irreparable and potentially uncorrectable consequences. The Board may implement ballot removal before Appellant is able to avail himself of the full statutory appeal period. The resulting loss of ballot access and effective appellate review cannot be adequately remedied by monetary damages or by a later ruling issued after irreversible ballot action has occurred.
16. The public interest favors a brief stay. The Legislature created both an expedited qualification process and an expedited appeal process. Preserving the status quo honors both provisions, protects orderly election administration, promotes public confidence, and prevents implementation from outrunning judicial review. The ordinary factors supporting temporary injunctive relief, irreparable harm, the absence of an adequate remedy at law, probability of success, balance of harms, and public interest all support a stay. *See e.g., State ex rel. McGraw v. Imperial Mktg.*, 196 W. Va. 346, 352 n.8, 472 S.E.2d 792, 798 n.8 (1996).

VI. REQUEST FOR RELIEF

WHEREFORE, Appellant David C. Tabb respectfully requests that the Court enter an emergency order:

1. Staying enforcement and implementation of the September 10, 2026 Order pending Appellant's timely appeal and the disposition of any emergency motion for stay by the Supreme Court of Appeals of West Virginia;
2. Directing the Jefferson County Board of Ballot Commissioners, its chair, members, agents, employees, and all persons acting in concert with them to preserve the status quo and refrain from omitting Appellant's name from the ballot; approving, ordering, initiating, or conducting ballot revision, ballot reprinting, ballot programming changes, ballot production, ballot distribution, ballot transmission, ballot certification, or any other measure to implement the September 10, 2026 Order unless and until a court of competent jurisdiction lifts or modifies the stay;
3. Directing the Board to preserve all ballot proofs, proposed or revised ballots, programming records, vendor communications, meeting notices and agendas, minutes, recordings, emails, text messages, and other records relating to any contemplated implementation of the September 10, 2026 Order;
4. Directing that any Board meeting concerning implementation of the September 10, 2026 Order be publicly noticed and open to the public unless the Board identifies a specific, applicable statutory exception; and
5. Granting such other and further relief as this Court deems just and proper.

Respectfully submitted this 11th day of September, 2026.

DAVID C. TABB

By Counsel

/s/ Daniel M. Casto

Daniel M. Casto, Esquire (WVSB #11226)

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of September, 2026, I served a true and correct copy of the foregoing Respondent David C. Tabb's Emergency Motion to Stay Enforcement and Implementation of September 10, 2026 Order Pending Appeal through the Court's electronic filing system upon all counsel of record and upon all unrepresented parties entitled to notice.

/s/ Daniel M. Casto

Daniel M. Casto, Esquire