

IN THE CIRCUIT COURT OF MINGO COUNTY, WEST VIRGINIA

JAMES WILLIAMSON,)	
)	
Petitioner,)	
)	
v.)	Civil Action No.
)	
LARRY CROAFF, MINGO COUNTY)	
CLERK'S OFFICE,)	Judge:
)	
Respondents.)	
)	

PETITION FOR ISSUANCE OF WRIT OF MANDAMUS

It is a clear, unalienable right of eligible West Virginians to cast a ballot in a free and fair election. The West Virginia Supreme Court of Appeals has held that “the right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” *State ex rel. Billings v. City of Point Pleasant*, 194 W.Va. 301, 305 (W. Va. 1995). To exercise this right, West Virginians are entitled to vote on a ballot that accurately reflects the candidates and issues which they are tasked with deciding. This right to cast a ballot for the candidate of your choosing is not abrogated by your chosen candidate's likelihood of winning or the root cause of your unlawful disenfranchisement.

Nearly seven hundred Mingo County residents were denied their fundamental right to vote when they voted on an erroneous ballot, an error for which no adequate remedy was provided by Respondents. The present action is filed to compel Respondents to oversee a free and fair election, as is their constitutional duty, for West Virginia's 6th Senate District.

PARTIES AND JURISDICTION

1. Petitioner James Williamson is a 55-year-old lifelong resident of Mingo County. Mr. Williamson is a registered Democrat who voted early in Mingo County on an erroneous ballot.
2. Respondent Larry Croaff is the Clerk of Mingo County. In this role, Respondent Croaff oversees Mingo County Elections.
3. The Mingo County Clerk's Office, headed by Respondent Croaff, is responsible for the operation of elections in Mingo County. This office is located at 78 East Second Avenue, Room 232, Williamson, West Virginia 25661.
4. This Court has jurisdiction over this claim as "Jurisdiction of writs of mandamus... shall be in the circuit court of the county in which the record or proceeding is to which the writ relates. W. Va. Code § 53-1-2.

STATEMENT OF FACTS

5. The 2024 election is being held on November 5, 2024. West Virginia early voting operates from October 23 to November 2, 2024.
6. There are 16,824 registered voters in Mingo County as of April 2023. Of these voters, approximately six hundred and seventy-eight early voted during the period from October 23 to October 28, 2024.
7. For those six hundred and seventy-eight voters, they were provided a ballot that erroneously listed the Democratic candidate for West Virginia's 6th Senate District as Randy Fowler. The ballot should have identified Jeff Disibbio as the candidate in that race.
8. Accurate ballots were provided in Wayne, McDowell, and Mercer counties, and Mingo County corrected their ballots to accurately reflect the candidates in the West Virginia State Senate race after the mistake was identified by a vendor and corrected on October 28, 2024.

9. On information and belief, Respondents did not make an effort to contact affected voters individually to alert them that they had voted on an erroneous ballot.

10. Following the discovery of this error, Respondents told news media outlets that affected voters could come to the courthouse to file a provisional ballot if the error impacted their vote.

11. However, the Secretary of State clarified that this was not a potential solution. A representative for the Secretary of State stated that once a ballot is cast, it's anonymous. So, although there is a record of who cast erroneous ballots, there's no method by which a voter can "correct" a previously cast, in-person ballot.

12. It is unknown at this time whether any affected voters were permitted to cast provisional ballots, despite the fact that it would not be permissible, nor possible, for these ballots to be counted.

13. Respondents have since reported that the early votes cast on erroneous ballots will be counted when determining the outcome of the election. Votes cast for the Republican candidate, Craig Hart, will count towards his vote total in the election. Votes cast for the erroneously listed Democratic candidate, Randy Fowler, will not however count towards the vote total for the accurate candidate, Jeff Disibbio.

14. The Secretary of State acknowledged that there's not a traditional remedy at law to resolve this error with a representative saying to West Virginia Watch, "[t]here's no way to fix it when you vote in person because those ballots, once they go in the ballot box, they're anonymous. Your name's not on it."

15. This error denied six hundred seventy-eight Mingo County residents the opportunity to cast an accurate ballot, unlawfully infringing their right to vote. Additionally, any voters who cast a vote for the Democratic candidate were infringed by having their vote discarded without remedy.

16. This error also occurs within the context of additional ineptitude on behalf of Respondents. In May 2024, Respondents made errors in the primary election which led to nearly 200 Democrats erroneously voting in the Republican contest for West Virginia's 6th Senate District.

17. A representative for the Secretary of State agreed that this is concerning, stating “[t]hese are big deals that are affecting not just candidates’ ability to get a fair shake, but voters’ abilities to cast the ballot for someone who’s eligible and who’s supposed to be on the ballot. A huge deal.”

STATEMENT OF LAW

18. “Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.” *State ex rel. W. Virginia Parkways Auth. v. Barr*, 228 W. Va. 27, 716 S.E.2d 689, 693 (2011) (quoting Syl. Pt. 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966)).

19. A writ of mandamus requires three elements 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. 1, *State ex rel. Sams v. Comm’r, W. Virginia Div. of Corr.*, 218 W. Va. 572, 625 S.E.2d 334 (2005) (quoting Syl. Pt. 3, *Cooper v. Gwinn*, 171 W. Va. 245, 298 S.E.2d 781 (1981)).

20. Petitioner, and all West Virginians, have a clear right to cast their vote and have it accurately counted. *Reynolds v. Sims*, 377 U.S. 533 (1964); *State ex rel. Billings v. City of Point Pleasant*, 194 W.Va. 301, 305 (1995); *State ex rel. Biafore v. Tomblin*, 236 W. Va. 528, 547 (W. Va. 2016).

21. The Respondent has a clear legal duty to effectuate fair and free elections in accordance with our State Constitution and West Virginia code. W. Va. Const. art IV, § 1; W. Va. Code § 3-1-1 *et seq.*

22. There is no other adequate remedy at law, as West Virginia Code doesn't contemplate a clerk leaving a candidate off the ballot. A representative for the Secretary of State confirmed this position, stating, "[t]here's no way to fix it when you vote in person..."

CONCLUSION AND REQUEST FOR RELIEF

If election officials allow votes to be thrown out with a wave the hand, errors to go unremedied, and candidates to be excluded without cause or remedy, we will be left with a state that has failed in its most basic commitment to the democratic process. Now, more so than ever, state officials must vigorously protect our elections from malfeasance and error or risk the continued erosion of election integrity and public trust.

As a result, Petitioner respectfully requests that this Court issue a Writ of Mandamus compelling Respondents to conduct the election of a candidate for West Virginia's 6th Senate District in accordance with their clear and established legal duty.

Respectfully submitted,
Petitioner,
James Williamson,
By Counsel,

/s/ Aubrey Sparks
Aubrey Sparks (WV Bar # 13469)
Nicholas Ward (WV Bar # 13703)
American Civil Liberties Union of West Virginia
606 Virginia Street East
Charleston, WV 25339-3952
Phone: (304) 712-4640
Email: asparks@avluwv.org, nward@acluwv.org

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PETITION FOR ORDER TO SHOW-CAUSE

COMES NOW the Petitioner, and hereby respectfully requests this Court to issue a Rule to Show Cause against Mingo County Clerk Larry Croaff for failure to comply with a clear legal duty as described in Petitioner's Petition for Issuance of Writ of Mandamus. In support thereof, Petitioner requests as follows:

Incorporating the pending Petition for Issuance of Writ of Mandamus by reference, Petitioner respectfully requests that this Court require Clerk Croaff to appear and show cause pursuant to W. Va. Code §53-1-1 (2024).

WHEREFORE, the Petitioner respectfully requests that this Court:

- Issue a Rule to Show Cause against Clerk Croaff;
- Require Clerk Croaff to provide a valid explanation for non-compliance with a clearly established duty; and
- Grant any further relief deemed appropriate by the Court.

Respectfully submitted,
Plaintiff,
James Williamson,
By Counsel,

/s/ Aubrey Sparks
Aubrey Sparks (WV Bar # 13469)
Nicholas Ward (WV Bar # 13703)

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Charleston, WV 25339-3952
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Email: asparks@avluwv.org, nward@acluwv.org

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