

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

**STATE OF WEST VIRGINIA,
ex rel. KRISTINE AYERS,**

Petitioner,

v.

**Civil Action No. _____
Judge:**

**KRIS WARNER, in his official
capacity, as SECRETARY OF
STATE OF WEST VIRGINIA,
and MARC HARMAN,**

Respondents.

**PETITIONER'S
WRIT OF MANDAMUS
Expedited Relief Requested**

**KRISTINE AYERS,
PETITIONER**

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QUESTION PRESENTED

Whether the West Virginia Constitution’s residency requirements obligate the Secretary of State¹ to exclude from the ballot a candidate for the West Virginia Senate District 14 who does not meet the district’s residency requirements.

STATEMENT OF THE CASE

Petitioner, Kristine Ayers, invokes this Court’s original jurisdiction under W. Va. Code § 53-1-2 and respectfully requests this Court order Respondent Secretary of State to withdraw the certification of Respondent Harman’s candidacy for West Virginia Senate District 14. *See* W. Va. Const. art.VI, § 12.

West Virginia Senate District 14 includes Preston County, Tucker County, Grant County, Hardy County, Mineral County, and part of Taylor County. The current incumbents are Senate President Randy Smith and Senator Jay Taylor. President Smith, from Preston County, was first elected to represent District 14 in 2016 and was re-elected in 2024. Senator Taylor, from Taylor County, was first elected to represent District 14 in 2022 and is running for re-election in the upcoming 2026 election cycle.

¹ Petitioner believes that W. Va. Code, § 3-1A-6(a) authorizes the Secretary of State, as chief election official, to issue orders to all election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks—who are required to abide by any orders that may be issued. As such, a writ directed at the Secretary of State is sufficient to provide the relief required by this Petition. This was the same procedure used successfully in *State ex rel. Boley v. Tennant*, 228 W. Va. 812, 818, 724 S.E.2d 783, 789 (2012); *State ex rel. Hagerman v. Warner*, Civil Action No. 18-P-398 (Kanawha Cty. Cir. Ct. Nov. 2, 2018); *State ex rel. Stine v. Warner, et al.*, Civil Action No. 22-P-151 (Kanawha Cty. Cir. Ct May 4, 2022).

Petitioner is registered to vote and resides in West Virginia Senate District 14. Petitioner voted in the 2022 and 2024 primary and general elections in Senate District 14. And Petitioner intends to vote in the upcoming primary election on May 12, 2026, and in the general election on November 3, 2026, in Senate District 14. Accordingly, Petitioner files this writ to protect the integrity of West Virginia's elections and to preserve the fundamental fairness of the primary election process for West Virginia Senate District 14.

On or about October 6, 2025, Respondent Harman changed his voter registration. Prior to that date, and going back several years, Respondent Harman was registered to vote in Kanawha County, WV. However, on or about October 6, 2025, Respondent Harman registered to vote in Grant County, WV. To change his voter registration, Respondent Harman identified his residential address as 15 Grant Street, Apt. 3, Petersburg, WV 26847.

But Kanawha County Tax Records tell a different story. For tax year 2025, Respondent Harman lived at 837 Lower Chester Road, Charleston, WV 25302, and he claimed a homestead exemption for that residence. "The Homestead Exemption is a tax relief measure that provides for a reduction in the real property assessment of those who qualify."² It "exempts the first \$20,000 in value for those . . . who own[] a homestead that is used and occupied exclusively for their own residential purposes."³ "A 'Homestead' is a single family residential house" and a taxpayer is

² <https://kanawhacountyassessor.com/homestead-exemption> (last visited April 21, 2026).

³ *Id.*

“only entitled to one exemption[.]”⁴ A person may have multiple residences but only one Homestead.

Respondent Harman’s Kanawha County residence, not his Grant County residence, is his Homestead. This point is further supported by Carteret County, North Carolina property records, where Respondent Harman’s vacation home is located. Tax bills for that property, identify Respondent Harman’s mailing address as 837 Lower Chester Road, Charleston, WV 25302. That Respondent Harman’s property tax records conflict with his voter registration status calls into question where Respondent Harman is truly domiciled.

SUMMARY OF ARGUMENT

“No person shall be a senator or delegate who has not for one year next preceding his election, been a resident within the district or county from which he is elected; and if a senator or delegate remove from the district or county for which he was elected, his seat shall be thereby vacated.” W. Va. Const., art. VI, § 12. Because Respondent Harman does not meet the constitutionally imposed residency requirements, he is ineligible to hold that office, and Respondent Secretary of State should withdraw the Candidate’s Certificate of Acceptance or otherwise remedy the ineligible candidate’s appearance on the ballot.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner requests that this Court enter an expedited briefing schedule and contends that oral argument is not necessary as the West Virginia Supreme Court of

⁴ *Id.*

Appeals has authoritatively decided the dispositive issues here and the facts are well-enough developed for this Court to rule. Should, however, this Court want additional fact development, a limited evidentiary hearing may be appropriate.

ARGUMENT

For voters in West Virginia Senate District 14, and in furtherance of free and fair elections, it is essential that only candidates eligible to hold the office they seek appear on the ballot. If not already set or certified, ballots should be corrected in all forms possible, and if ballots cannot be corrected, Respondent Harman should be declared ineligible to receive votes. This Court should issue Petitioner's writ and order Respondent Secretary of State to withdraw Respondent Harman's Candidate's Certificate of Acceptance and order other mitigating relief.

I. Respondent Harman fails to satisfy the State Constitution's residency requirement to be an elected member of the State Senate.

"No person shall be a senator or delegate who has not for one year next preceding his election, been a resident within the district or county from which he is elected; and if a senator or delegate remove from the district or county for which he was elected, his seat shall be thereby vacated." W. Va. Const., art. VI, § 12; *see State ex rel. Stine*, Civil Action No. 22-P-151 (granting a writ of mandamus and ordering the Secretary of State to declare Respondent candidate ineligible to run for office).

The Supreme Court of Appeals of West Virginia has made clear the State Constitution's one-year residency requirement serves a compelling state interest and does not violate the constitutional rights of candidates or voters. *Martin v. Jones*, 186

W. Va. 684, 685, 414 S.E.2d 445, 446 (1992) (citing *White v. Manchin*, 173 W. Va. 526, 318 S.E.2d 470 (1984)). While “[t]he party alleging a change of domicile has the burden of proof[,]” when “physical residency is a condition for election, the residency requirement must be strictly construed.” *State v. Stalnaker*, 186 W. Va. 233, 236, 412 S.E.2d 231, 234 (1991).

In West Virginia, “the term ‘residence’ is synonymous with the term ‘domicile’ for election law purposes.” Syl. Pt. 7, *White v. Manchin*, 173 W. Va. 526, 318 S.E.2d 470. “A [person] may live in several different places but he [or she] can have only one domicile. Domicile is a place a person intends to retain as a permanent residence and go back to ultimately after moving away.” Syl. Pt. 2, *Shaw v. Shaw*, 155 W. Va. 712, 187 S.E.2d 124 (1972). “The important facts in determining the domicile of a person who has more than one residence are the physical character of each, the time spent and the things done in each place, and whether or not there is an intention to return to the original domicile.” Syl. Pt. 4, *Id.*

Here, Respondent Harman’s cannot satisfy the residency requirements to be elected to the West Virginia Senate representing District 14 in the 2026 election. The timeline speaks for itself:

- a. Until October 2025, and for years prior, Respondent Harman was registered to vote in Kanawha County, West Virginia.
- b. For tax year 2025, Respondent Harman claimed the Homestead exemption for his Kanawha County residence.

- c. Respondent Harman’s Kanawha County residence is a single-family home with three bedrooms and three bathrooms.
- d. In October 2025, Respondent Harman changed his voter registration status to reflect a new residential address in Grant County, WV.
- e. Respondent Harman’s Grant County address is a small apartment in Petersburg, WV with a rent of \$500 per month.⁵
- f. Respondent Harman’s North Carolina residence lists his Kanawha County Residence as his mailing address.

This Court should grant Petitioner’s writ.

II. Petitioner’s writ of mandamus is an appropriate challenge to Respondent Harman’s unlawful candidacy.

Prior candidate-eligibility cases decided by the West Virginia Supreme Court of Appeals support the use of a writ of mandamus to challenge a candidacy for elected office. *See State ex rel. West Virginia Citizen Action Group v. Tomblin*, 227 W. Va. 687, 692, 715 S.E.2d 36, 41 (2011); Syl. pt. 5, in part, *State ex rel. Maloney v. McCartney*, 159 W. Va. 513, 223 S.E.2d 607 (1976) (“In West Virginia a special form of mandamus exists to test the eligibility to office of a candidate in either a primary or general election.”).

“Because there is an important public policy interest in determining the qualifications of candidates in advance of an election, this Court does not hold an election mandamus proceeding to the same degree of procedural rigor as an ordinary mandamus case.” Syl. pt. 2, *State ex rel. Bromelow v. Daniel*, 163 W. Va. 532, 258

⁵ <https://www.garyamichael.com/grant-street-apartments.html> (last visited, April 21, 2026).

S.E.2d 119 (1979); Syl. pt. 3, *State ex rel. Carenbauer v. Hechler*, 208 W. Va. 584, 585, 542 S.E.2d 405, 406 (2000). This relaxed standard was first adopted as a mechanism to preserve the right to vote or run for political office and has since expanded to include prohibiting someone else from running for office. *Compare* Syl. Pt. 3, *State ex rel. Sowards v. County Comm'n of Lincoln Co.*, 196 W. Va. 739, 474 S.E.2d 919 (1996); *State ex rel. Sandy v. Johnson*, 212 W. Va. 343, 348, 571 S.E.2d 333, 338 (2002); *with Carenbauer*, 208 W. Va. at 588, 542 S.E.2d at 409 (“requir[ing] some method of averting a void or voidable election” and recognizing that “some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery. . .”) (citing *State ex rel. Maloney v. McCartney*, 159 W. Va. 513, 527, 223 S.E.2d 607, 616 (1976)).

Pursuant to *White v. Manchin*, Petitioner has joined the Secretary of State and Harman as original party respondents to avoid any delay to receive a motion to intervene. 173 W. Va. at 534, 318 S.E.2d at 478. Because, when a candidate for elected office is ineligible, a writ of mandamus lies against the Secretary of State. Syl. pt. 2, *State ex rel. Boley v. Tennant*, 228 W. Va. 812, 724 S.E.2d 783 (2012). Circuit courts have, in the past, granted the relief requested here, even after voting had begun. *State ex rel. Hagerman*, Case No. 18-P-398 (Kan. Co. Cir. Ct., J. Webster, Nov. 2, 2018). Voters head to the ballot box for early voting starting on April 29, 2026. This Court should grant Petitioner’s writ on an expedited basis.

CONCLUSION

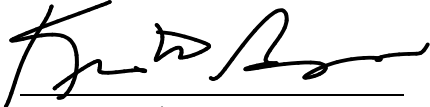
For the reasons set forth above, Petitioner respectfully requests that this Court grant a rule to show cause, enter an expedited briefing schedule, and after due consideration, grant Petitioner a writ of mandamus.

Respectfully submitted,
Kristine Ayers
By counsel

/s/ Anthony J. Majestro
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VERIFICATION OF PETITION

Pursuant to W. Va. Code § 53-1-3, Petitioner Kristine Ayers verifies that the filing of this Writ of Mandamus is true, accurate, and complete to the best of her knowledge.



Kristine Ayers

Date