

IN THE  
CIRCUIT COURT OF KANAWHA COUNTY  
STATE OF WEST VIRGINIA

THE COMMITTEE TO REFORM HAMPSHIRE  
COUNTY GOVERNMENT, MICHAEL HASTY,  
VERA ANDERSON, ROBERT SHILLING,  
FRANK WHITACRE, KAY DAVIS, ROBERT  
WALKER, SHIRLEY CARNAHAN, and  
MARVIN HOTT,

Plaintiffs,

VS.

CIVIL ACTION NO. 05-C-1910

The HONORABLE ROBERT KISS, Speaker of the  
West Virginia House of Delegates, and the  
HONORABLE EARL RAY TOMBLIN, President  
of the West Virginia Senate,

Defendants.

**FINDINGS OF FACTS,  
CONCLUSIONS OF LAW, AND  
FINAL ORDER GRANTING DECLARATORY JUDGMENT**

FINDINGS OF FACTS

1. The Committee to Reform Hampshire County Government (“the Committee”) is an association of citizens who support better government in Hampshire County and has sought to use the procedure in Article IX, § 13 of the West Virginia Constitution to alter and reform the government of Hampshire County.

2. Plaintiffs Michael Hasty, Vera Anderson, Robert Shilling, Frank Whitacre, Kay Davis, Robert Walker, Shirley Carnahan, and Marvin Hott are citizens and residents of Hampshire County, are affiliated with the Committee, and support the Committee's goals.

3. In 2003, plaintiffs and others circulated a petition, pursuant to Article IX, § 13, to alter and reform the Hampshire County government; a copy of the petition is attached to the complaint in this action as Exhibit 1.

4. The petition proposed the creation of a county tribunal "made up of one member from each Hampshire county voting district" with each member elected by "only the registered voters" in his or her respective district; members were to serve staggered six-year terms, receive no salary other than \$250 for each tribunal meeting attended, and appoint a county administrator "to carry out the day-to-day business of the county."

5. Plaintiffs succeeded in gathering signed endorsements of the proposal from more than ten percent of Hampshire County's registered voters .

6. On March 21, 2003, plaintiffs presented their petition and signatures to the Hampshire County Commission, who thereupon requested the Legislature to enact enabling legislation to permit the citizens of Hampshire County to vote on the proposal and, if it is approved by a majority of those voting, to implement the change.

7. During the 2004 legislative session, the Senate passed an enabling bill, S.B. 727, that, if enacted, would have put the question of reforming Hampshire County government to the citizens of that county. The bill accompanied the complaint as Exhibit 2.

8. S.B. 727 and a corresponding House Bill, H.B. 4396, were introduced in the House of Delegates during the 2004 session, but the House did not pass either bill. H.B. 4396 is attached to the complaint as Exhibit 3.

9. During the 2005 legislative session, H.B. 3291 was submitted to implement the request of the Hampshire County Commission but was not enacted by the Legislature; the bill is attached to the complaint as Exhibit 4.

10. The Legislature did not enact the enabling legislation during the 2006 legislative session.

11. The legislative failure to enact a law was the result, at least in part, of a concern about the constitutionality of electing tribunal members by only the vote of a member's district rather than by county-wide election.

12. If the enabling legislation is passed, as required by Article IX, § 13, public funds will need to be invested in conducting a referendum of Hampshire County voters on the proposed reform.

13. If a referendum is conducted, if the Hampshire County voters approve the proposed reform, and if the reform's method of electing tribunal members is thereafter declared to be unconstitutional, public funds will have been spent for naught.

#### CONCLUSIONS OF LAW

1. Article IX, § 13 of the West Virginia Constitution provides that “[w]henver a county commission shall receive a petition signed by ten percent of the registered voters of such county requesting the reformation, alteration or modification of such county commission, it shall be the mandatory duty of such county commission to request the Legislature, at its next regular session thereafter, to enact an act reforming, altering or modifying such county commission and establishing in lieu there of another tribunal for the transaction of the business required to be performed by such county commission, such act to take effect upon the assent of the voters of such county[.]”

2. The Legislature has a mandatory duty to enact the enabling legislation that will permit Hampshire County citizens to vote on the proposed alternative form of government. West Virginia Constitution, Article VI, §§ 39 and 39a and Article IX, § 13; *Taylor County Commission v. Spencer*, 169 W.Va. 37, 285 S.E.2d 656 (1981).

3. A county may alter its county commission by creating a tribunal whose members are elected only by the voters within each member's district. West Virginia Constitution, Article VI,

§ 39a and Article IX, § 13; *Taylor County Commission v. Spencer*, 169 W.Va. 37, 285 S.E.2d 656 (1981).

4. The Legislature's duty under article ix, § 13 to honor a county's request for a referendum on county government reform does not expire with the end of the legislative term. West Virginia Constitution, Article IX, § 13; *Crain v. Bordenkircher*, 193 W. Va. 362, 456 S.E.2d 206 (1995); *Taylor County Commission v. Spencer*, 169 W.Va. 37, 285 S.E.2d 656 (1981); *Pauley v. Kelly*, 162 W.Va. 672, 718, 255 S.E.2d 859, 883 (1979).

5. Article III, § 3 and Article IX, § 13 of the West Virginia Constitution guarantee to the citizens of each county the right to alter and reform their mode of county governance into any democratically-elected form.

#### FINAL ORDER GRANTING DECLARATORY JUDGMENT

Based on the foregoing findings and conclusions, the Court hereby ORDERS that the plaintiffs are entitled to a declaratory judgment stating:

A. The defendants have a constitutional duty to process enabling legislation permitting Hampshire County voters to vote on the proposed reform of the government of Hampshire County;

B. The proposed reform of the government of Hampshire County, including the creation of a tribunal of members elected from and by each of the County's election districts, would be constitutionally valid if and when it is approved by the voters of Hampshire County.

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Honorable Paul Zakaib, Jr.  
Judge, Kanawha Circuit Court