



West Virginia E-Filing Notice

CC-19-2023-P-174

Judge: David Hammer

To: Matthew Harvey
mharvey@jcpawv.org

NOTICE OF FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA
State of West Virginia v. Jennifer Krouse
CC-19-2023-P-174

The following complaint was FILED on 11/13/2023 10:16:02 AM

Notice Date: 11/13/2023 10:16:02 AM

Tina Renner
CLERK OF THE CIRCUIT COURT
Jefferson County
PO Box 1234
CHARLES TOWN, WV 25414

(304) 728-3231
circuitclerk@jeffersoncountywv.org

COVER SHEET

E-FILED | 11/13/2023 10:16 AM
CC-19-2023-P-174
Jefferson County Circuit Clerk
Tina Renner

GENERAL INFORMATION

IN THE CIRCUIT COURT OF JEFFERSON COUNTY WEST VIRGINIA

State of West Virginia v. Jennifer Krouse

First Plaintiff: Business Individual Government Other

First Defendant: Business Individual Government Other

Judge: David Hammer

COMPLAINT INFORMATION

Case Type: Miscellaneous Proceedings

Complaint Type: Other - Civil

Origin: Initial Filing Appeal from Municipal Court Appeal from Magistrate Court

Jury Trial Requested: Yes No **Case will be ready for trial by:** _____

Mediation Requested: Yes No

Substantial Hardship Requested: Yes No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

I am proceeding without an attorney

I have an attorney: Matthew Harvey, P.O. Box 729, Charles Town, WV 25414

SERVED PARTIES

Name: Jennifer Krouse
Address: 102 Belmeade Way, Shepherdstown WV 25443
Days to Answer: 20 **Type of Service:** Sheriff - Including Copy Fee

Name: Tricia Jackson
Address: 189 Cool Glen Circle, Harpers Ferry WV 25425
Days to Answer: 20 **Type of Service:** Sheriff - Including Copy Fee

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

MATTHEW L. HARVEY,
Prosecuting Attorney of Jefferson County, West Virginia,

PETITIONER,

v.

CIVIL ACTION NO. 2023-P-_____

TRICIA JACKSON and
JENNIFER KROUSE,

RESPONDENTS.

**Petition for Removal of Tricia Jackson and Jennifer Krouse from Office
Pursuant to West Virginia Code 6-6-7 and Related Statutes**

COMES NOW the Petitioner, Matthew Harvey, the Prosecuting Attorney of Jefferson County, West Virginia, pursuant to West Virginia Code 6-6-7 and the Prosecutor's sworn duty to protect the County, uphold the rule of law, and hold all citizens, including elected officials, accountable for their unlawful actions.

Whereas, it has become apparent that Respondents, Jennifer Krouse and Tricia Jackson, have willfully failed or refused to perform their official duties as County Commissioners by:

- Willfully refusing their duty to attend Commission meetings pursuant to W. Va. Const. art. IX, § 9, W. Va. Code 7-1-2, and the County Commission's own January 21, 2021 decision to hold regular meetings on the first and third Thursdays of each month, it having been sixty-seven (67) days between September 7, 2023 (the last meeting Respondents attended) and the filing of this Petition;
- Willfully refusing to uphold their legal duty to appoint a replacement County Commissioner pursuant to both W. Va. Code § 3-10-7 and the written opinions Respondents received from the Secretary of State's office, in violation of W. Va. Code 3-9-23, which has resulted in a lack of representation for the Charles Town District on the Jefferson County Commission for at least one hundred and fifty (150) days;

- Willfully failing and refusing their duty to attend to County business to the detriment of County residents within the meaning of W. Va. Code § 61-5-28;
- Continuing to accept pay, in bad faith, while willfully refusing to attend to their official obligations, and other improper actions as set forth herein; *see State ex rel. Skinner v. Dostert*, 166 W. Va. 743, 751–52, 278 S.E.2d 624, 631 (1981) (“Simply said, if the [official] gets the check, he must do the job.”).

Whereas, West Virginia Code §61-5-28 and W. Va. 3-9-23 identify the serious, criminal nature of an elected official’s willful failure or refusal to perform his or her official duties; and

Whereas, the West Virginia Supreme Court of Appeals has held that a Commissioner’s “duty to prosecute his responsibilities as an elected officer [is] paramount to his other obligations. The duty of a public officer to fulfill the obligations of his office should take precedence over all other matters.”¹; and

Whereas, the West Virginia Supreme Court of Appeals has held that “One who accepts a public office . . . assumes the burdens and the obligations of the office as well as its benefits, subjects himself to all constitutional and legislative provisions relating to the office, and undertakes to perform all the duties imposed on its occupant; and while he remains in office he must perform all such duties. . . . Simply said, if the [official] gets the check, he must do the job.”²

Whereas, the Respondents issued a press release on November 7, 2023 (approximately sixty-one (61) days since the Respondents attended a Commission meeting) that made it clear they “... WILL NOT attend a meeting that has the Charles Town seat appointment on the agenda” This statement is a final refusal to attend any more meetings that have the appointment of the fifth commissioner on the agenda – an appointment which the Secretary of State’s office written communications have made clear is the Commission’s legal duty.

¹ *Kemp v. Boyd*, 166 W. Va. 471, 275 S.E.2d 297 (W. Va. 1981)

² *State ex rel. Skinner v. Dostert*, 166 W. Va. 743, 751–52, 278 S.E.2d 624, 631 (1981) (portions omitted, bracket emphasis inserted)

Therefore, the Respondents' actions leave the Prosecuting Attorney no course of action but to perform his duty to file this Petition to remove Jefferson County Commissioners Jennifer Krouse and Tricia Jackson from office for official misconduct, neglect of duty and/or incompetence pursuant to West Virginia Code 6-6-7 and related statutes, as alleged herein.

I. INTRODUCTION AND SUMMARY

The Respondents, Jennifer Krouse and Tricia Jackson, are members of the Jefferson County Commission and Respondents to this Petition. The Jefferson County Commission consists of five members. After one of the five commissioners resigned effective June 16, 2023, a preliminary vote was taken by the remaining four commissioners to select a replacement for the fifth commissioner. Each proposed replacement received only two votes, leaving the Commission at a stalemate.

The failure of any candidate to receive a majority vote triggers a mandatory process³ required by West Virginia Code §3-10-7 whereby the Jefferson County Republican Executive Committee (hereinafter "JCREC") puts forward a slate of three candidates. A process of elimination by existing members of the Commission would result in the remaining candidate becoming the replacement Commissioner.

³ The law places a **mandatory duty** upon the remaining Commissioner to fill any vacancy:

"Any vacancy in the office of county commissioner . . . commission **shall be filled by appointment by the county commission**. . . If a quorum of the county commission fails to make an appointment within 30 days, the county executive committee of the same political party with which the person holding the office preceding the vacancy was affiliated at the time the vacancy occurred, shall submit a list of three legally qualified persons to fill the vacancy. **Within 15 days from the date on which the list is received, the county commission shall appoint a candidate from the list** to fill the vacancy. If the county commission fails to make the appointment within the specified time, then **the county commissioner with the longest tenure shall eliminate one name from the submitted list**, followed by the county commissioner with the second-longest tenure then eliminating one name from the submitted list. The name remaining after those two names have been eliminated shall be deemed to be appointed by the county commission to fill the vacancy." W. Va. Code §3-10-7.

The Jefferson County Commission was scheduled to consider the three JCREC candidates at the August 17, 2023 Jefferson County Commission meeting. Instead of moving forward to select a fifth Commissioner, Respondent Krouse (backed by Respondent Jackson) wrongly claimed in the meeting that she had obtained an “ethics opinion” stating one of the candidates was “ineligible” and on that basis refused to proceed. Krouse had not raised this issue previously and declined to provide a copy of the claimed “ethics opinion.” Jackson confirmed that she had seen Krouse’s claimed “ethics opinion.”

Both Respondents disregarded advice from Counsel as to the potential candidate’s eligibility and adamantly refused to proceed with the selection of the fifth commissioner.

The Commission President thereupon attempted to proceed with the mandatory selection process. At this point Krouse and Jackson stood up and threatened to leave the meeting, intending to deprive the Commission of a quorum and prevent the lawful selection of a replacement Commissioner. This threat to leave and stop the meeting prevented the lawful mandatory selection of a replacement Commissioner and was made both individually and as part of a conspiracy between the Respondents to prevent the appointment of the new Commissioner.

A few days after the meeting, it was revealed that Respondent Krouse never had an official “ethics opinion” (only an informal email that did not definitively answer the question of eligibility). On September 7, 2023 an *actual* opinion from the West Virginia Ethics Commission was subsequently obtained by Mr. Lowry, the candidate that Respondent Krouse adamantly insisted was ineligible. The actual ethics opinion held that, contrary to the representations of Respondents Jackson and Krouse, Lowry could be lawfully selected as a Commissioner.

Even though Krouse’s claims that Lowry was ineligible have been proven to be wrong and wrongfully represented to the Commission, the Respondents have refused to attend any subsequent

meeting at which the issue of replacing the vacant Commissioner is on the agenda. Worse, since the September 7th meeting - and the revelation that the so called “ethics opinion” was a smokescreen - the Respondents have not even appeared at a meeting to try to work out the issues between them and the other two Commissioners. Instead, the Respondents have advanced a barrage of social media posts and press releases in an attempt to justify their actions and create their own appointment process apart from the checks and balances that exist in the law.

By refusing to attend meetings, the Respondents have willfully blocked the Commission from performing its mandatory statutory duty to appoint the fifth commissioner. The Respondents have publically stated their opposition to the slate of replacements put forward by the duly elected Jefferson County Republican Executive Committee.

Once the claim regarding the “ethics opinion” was exposed as wrong and wrongfully presented, the Respondents have continued to invent and evolve new ways to avoid their duty to appoint a new Commissioner including 1) insisting that the other remaining two Commissioners could not set a special meeting to consider the matter; 2) trying to claim that the procedure used by the Jefferson County Republican Executive Committee to name the three candidates was flawed and 3) now claiming that the Statute governing appointments of the new Commissioner is inapplicable to the current Commission.

In contrast to the ever evolving string of excuses that Respondents have invented to avoid appointing the fifth Commissioner, Respondent Krouse publicly revealed the real reason for the refusal to attend meetings or appoint the fifth commissioner on her Facebook account on September 30, 2023 (see attached “Jennifer Krouse – Jefferson County Commissioner” Facebook post as Exhibit 1) at 11:58 a.m. stating:

“Since Commissioner Jackson and I denied quorum at the September 21 Commission meeting...JCREC violated WV code and their own bylaws to pick a

slate of candidates with strong ties to progressive, green energy...the current leadership doesn't represent their Republican voters. . .by ignoring its base in favor of new-green-deal progressivism, the Republican leadership abdicated its right to pick a replacement on the Commission. I will use my political power to take that right back to the voters of Jefferson County...The Commission is fully capable of functioning until next November [2024] with only 4 members. In fact, doing so will save the taxpayers nearly \$50,000...I am willing to attend [commission] meetings again AS LONG AS THEIR AGENDA DOESN'T INCLUDE FILLING THE VACANCY ON THE COMMISSION. President Stolipher has refused to step down and he's made clear he alone controls the agenda. As such it will be entirely his decision whether the Commission meets going forward." [emphasis in the original]

The seeds of the Respondents' conspiracy to deny the quorum were revealed in an August 17, 2023 post made by Krouse to her "Jennifer Krouse – Jefferson County Commissioner" Facebook page (see attached Exhibit 2) where she said:

"I'd hoped three Republican Commissioners would have little trouble agreeing on a conservative candidate to fill the spot. When that didn't happen I counted on the Republican Executive Committee to select three actual conservatives for the Commission to review...It's a sad commentary that Republican Commissioners and elected representatives of the Republican Party are actively working to deny this seat to a true conservative. "

The Respondents, by their own admission, revealed the real reason that they have ignored the law requiring them to select a replacement Commissioner and failed to perform the duties of the office to which they were elected - **they do not agree with the perceived political leanings of the candidates selected by their fellow Republicans on the Executive Committee.** Moreover, the Respondents expressly stated they intend to "use political power to take that right back" because the duly elected JCREC "has abdicated their right to pick a replacement on the Commission."

Contrary to the Respondents' claims, the legal standard is **NOT** whether the Respondents like or dislike a replacement Commission candidate. The legal standard is NOT whether a particular candidate is more conservative or more moderate. **Instead, the law requires the**

Commission to select one of the three candidates that the JREC has nominated. That is the extent of the Commission’s discretion. The Commissioners are limited to the choice provided by law and cannot simply disregard the law to impose their own preference.

The replacement of a Commissioner is a **mandatory duty imposed by law.** The failure to attend meetings completely **deprives the voters of the Charles Town Magisterial District of their representative on the County Commission.**⁴

The Secretary of State’s Counsel advised the Commissioners that they have an affirmative duty to select the fifth commissioner. The Respondents have ignored this advice and continue to refuse to appear at County Commission meetings to discuss this issue.⁵

Moreover, the **Respondents’** conspiratorial, willful and intentional refusal to attend meetings has **deprived the Commission of a quorum and the ability to carry out the lawful business** of the County. Without a quorum the Commission has been unable to act and has failed to address crucial public business including, but not limited to: hiring and promoting of essential County employees (including jeopardizing the safety of County residents by failing to approve new 911 dispatchers), failure to approve contracts (including vital contracts to support and maintain the County 911 system), failure to approve a security contract for the County’s computer software that will likely result in the shutdown of all County external government email and data services and catastrophically disrupt critical aspects of law enforcement and the 911 system, failure to release bonds /letters of credit (resulting in potential monetary loss to citizens), failure to approve exonerations, failure to approve applications of grants in excess of \$175,000 (leading to the

⁴ The City of Charles Town sent a letter dated October 19, 2023 to the Commission imploring the Commission to install the fifth commissioner, to no avail (see letter attached as Exhibit 3).

⁵ Another example of the Respondents’ disregard of the law is a recent amendment to the Jefferson County Zoning Ordinance. The Respondents disregarded both W. Va. Code. § 8A-7-8 and Section 12.1, 2 of their own Zoning Ordinance that require legal findings, multiple public hearings, and published notices, all of which Respondents willfully ignored. Respondents simply “repealed” a portion of the ordinance without going through the required legal process, over Counsel’s advice.

irreparable loss of at least \$50,000 in grant funds to date, and placing an additional even larger grant in jeopardy), and other County business as further detailed below.

Preventing a replacement Commissioner by denying a quorum is Respondents' attempt to wrongfully increase their power by ignoring their legal duty – and an attempt to unlawfully extort the resignation of the Commission President, and push their own plan for the fifth commissioner, which is contrary to law. If the Respondents performed their legal duty and appointed the replacement Commissioner, they would lose their “political power” of denying a quorum because (if the replacement was appointed) the two Respondents could not prevent a quorum from being formed by the remaining members.

Said another way, appointment of a fifth commissioner would stop the Respondents from grasping power for themselves at the County's expense.

While the Respondents exhibit total disregard for the financial stability of the County, by willfully refusing to attend Commission meetings, they each continue to collect their salaries despite not attending to the official business to which they were elected. The amount of salaries paid to the Respondents since they have failed to appear at meetings is, upon information and belief, approximately \$3,800 per month plus health insurance costs. Said another way, they have each collected approximately \$7,875 (increasing by \$875 each week)⁶ without performing their duties to meet and handle the County's business. This constitutes unjust enrichment at the expense of the citizens they were elected to represent.

WHEREFORE pursuant to the Petitioner's duty to uphold the law and protect Jefferson County, to avoid further damage to the citizens and allow the citizens of Jefferson County to have a properly functioning County Commission, the Petitioner respectfully asserts the following

⁶ W. Va. Code §7-7-4 (Commissioners Class I \$45,535 annual salary).

charges that justify removing Respondents from office for acts which constitute official misconduct, neglect of duty and/or incompetence.

II. Jurisdiction and Venue

This Court has both jurisdiction and venue to review this Petition pursuant to W. Va. Code § 6-6-7 and related statutes, the matters alleged herein having arisen and/or occurred in Jefferson County, West Virginia.

III. Parties

The parties herein are:

Petitioner, Matthew Harvey, in his official capacity as Prosecuting Attorney for Jefferson County, West Virginia, having taken office on January 1, 2017, and

Respondent, Tricia Jackson, who was duly elected as Commissioner for Jefferson County, West Virginia and took office on January 1, 2021, and

Respondent, Jennifer Krouse, who was duly elected as Commissioner for Jefferson County, West Virginia and took office on January 1, 2023.

IV. Legal Authority for the Removal of the Respondent Commissioners

West Virginia Code § 6-6-7 and related statutes contain the procedure for removal of a Commissioner and state in relevant part:

- (a) Any person holding any county, school district or municipal office. . . except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct, neglect of duty, incompetence or for any of the causes or on any of the grounds provided by any other statute.

(b) Charges may be proffered:

(B) By the prosecuting attorney of the county;

(d) When removal is proffered by the prosecuting attorney, the charges shall be reduced to writing and the charges shall be served upon the circuit court in whose jurisdiction the officer serves, and the prosecuting attorney shall be responsible for the prosecution of the removal action.

West Virginia Code 6-6-1 states, in relevant part:

(a) The term “official misconduct”, as used in this article, means conviction of a felony during the officer's present term of office **or any willful unlawful behavior by a public officer in the course of his or her performance of the duties of the public office.**

(b) The term “neglect of duty”, as used in this article, means **the knowing refusal or willful failure of a public officer to perform an essential act or duty of the office required by law.**

(c) The term “incompetence”, as used in this article, may include the following acts or adjudications committed or arising during the challenged officer's term of office: **The waste or misappropriation of public funds** by any officer when the officer knew, or should have known, that such use of funds was inappropriate or inconsistent with the lawful duties of the office;

W. Va. Code § 6-6-1 (portions omitted)

The West Virginia Supreme Court of Appeals stated in *Kesling v. Moore*:

“By official misconduct is meant any unlawful behavior in relation to the duties of his office, willful in its character, by any officer entrusted in any manner with the administration of justice or the execution of the laws.” 23 Am. & Eng. Enc. Law, (2nd ed.), 442. “Any unlawful behavior by a public officer in relation to the duties of his office, willful in character.” Black's Law Dictionary, (2nd ed.), 849. “Misconduct in office means any unlawful misbehavior in regard to the duties of an office, willful in its character.” 3 Words & Phrases, (2nd Ser.), 405, citing *State v. Blair*, 71 Ohio St. 410 [73 N.E. 514]. See also, 40 C.J. 1221, and cases cited. **“The official doing of a wrongful act, or the official neglect to do an act which ought to have been done, will constitute the offense, although there was no corrupt or malicious motive.”** Mechem on Public Offices and Officers, § 458. **“There is a manifest distinction between a case of misconduct, resulting in loss of office only, and the charge of a legal crime, which requires proof of criminal intent before conviction, and punishment of the person or fine or imprisonment after conviction.** In the latter there must be a direct

charge of the criminal intent and criminal act. ‘Misconduct’ does not necessarily imply corruption or criminal intent. We think the legislature used the word in its more extended and liberal sense. This statute is not, strictly speaking, a penal statute, but rather remedial and protective.” *State v. Leach*, 60 Me. 58, 11 Am.Rep. 172

Kesling v. Moore, 102 W. Va. 251, 257–58, 135 S.E. 246, 248–49 (1926)

“[o]fficial misconduct warranting removal from public office need not arise from or involve the precise duties enjoined upon the office held; it is, rather, any unlawful behavior relevant to the duties of the office.”) *Wysong v. Walden*, 120 W. Va. 122, 125, 52 S.E.2d 392, 395 (1938); Syl. Pt. 4, *Evans v. Hutchinson*, 158 W. Va. 359, 214 S.E.2d 453 (1975)

George v. Godby, 174 W. Va. 313, 319, 325 S.E.2d 102, 108 (1984)

“[M]alfeasance is the doing of an act which an officer had no legal right to do at all and that when an officer, through ignorance, inattention, or malice, does that which he has no legal right to do at all, or acts without any authority whatsoever, or exceeds, ignores, or abuses his powers, he is guilty of malfeasance.” Citing *Daugherty v. Ellis*, 142 W. Va. 340, 358, 97 S.E.2d 33, 43 (1956)

The Court also said in *Daugherty v. Ellis* that “[t]o establish malfeasance in office it is not necessary to show a specific intent to defraud, or that the act is criminal or corrupt in character.”

George v. Godby, 174 W. Va. 313, 319, 325 S.E.2d 102, 108–09 (1984)

V. STATEMENT OF FACTS

1. The Jefferson County Commission consists of five members.
2. On January 1, 2021, Tricia Jackson took office as a Jefferson County Commissioner⁷
3. On January 1, 2023, Jennifer Krouse took office as a Jefferson County Commissioner.⁸

⁷ Upon information and belief, Respondent Jackson serves on the following Boards and Committees; Community Correction Committee – Day Report Center, Jefferson County Emergency Services Agency – JCESA / Fire & Rescue Association – JCFRA, Homeland Security/LEPC, Workforce Investment Act Liaison.

⁸ Upon information and belief, Respondent Krouse serves on the following Boards and Committees; Approval of Bills, Building Repair & Security Courthouse Committee, Jefferson County Emergency Services Agency – JCESA / Fire & Rescue Association – JCFRA, Historic Landmarks Commission – JCHLC and Jefferson County Parks and Recreation Commission.

4. The five Commissioners as of January 1, 2023 were Steve Stolipher, (Commission President) Jane Tabb, Tricia Jackson, Clare Ath, and Jennifer Krouse.
5. On May 26, 2023 Claire Ath tendered her resignation from the County Commission with an effective date of June 16, 2023. This left the County Commission with four members.
6. **Initial Issues with the Selection of a Replacement Commissioner:** During the June 1, 2023 Commission meeting the County Commission reviewed the Commissioner appointment procedures/requirements in W. Va. Code § 3-10-7 with Counsel. The Commission determined that resumes for interested candidates should be submitted to Deputy County Administrator Cindy Rezmer and County Administrator Makayla Zonfrilli by 5:00 p.m. Friday June 16th. Each Commissioner agreed to independently identify their proposed candidates and ordered a special meeting to be held on Friday, June 23, 2023 to discuss the candidates.
7. On June 23, 2023 the Commission interviewed the following applicants: Keith Lowery, Matthew McKinney, Michael Mood, Isabel Simon and Jack Hefestay. Once the interviews were completed, the following nominations were made:
 - a. Respondent Krouse offered her nomination for Isabel Simon. Mrs. Simon received two votes (Respondents Krouse and Jackson).
 - b. Commissioner Tabb offered her nomination for Matthew McKinney. Mr. McKinney received two votes (Commissioners Tabb and Stolipher).
8. With the vote resulting in a 2-2 tie, the matter was referred to the Jefferson County Republican Executive Committee to choose three candidates and present their choices to the Commission pursuant to W. Va. Code § 3-10-7(b) (2022).

9. The names of the three candidates proposed by the JCREC were published in the Agenda Packet for the August 17, 2023 meeting.
10. The four Commissioners appeared at the August 17, 2023 meeting to review the three candidates pursuant to W. Va. Code 3-10-7 and choose the new fifth Commissioner.
11. During the August 17, 2023 meeting, Krouse strenuously advocated that Mr. Lowry, one of the three candidates, was an ineligible candidate due to allegedly having a pecuniary interest based on his current position with the Jefferson County Ministries, an organization to which the County Commission contributes money. Krouse claimed that the three member list was invalid, because, according to Krouse, all three members must be valid as of the time they were selected by the JREC.
12. To make matters worse, Respondent Krouse wrongly claimed she had an “ethics opinion” from the Ethics Commission that stated Mr. Lowry was ineligible to serve as Commissioner. Working with Krouse, Respondent Jackson confirmed that she had seen the opinion.
13. Krouse did not provide the purported ethics opinion to the other Commissioners or legal counsel prior to the meeting and declined Counsel’s request to provide said opinion to the Commission and legal counsel for the County Commission during the meeting. Respondent Krouse adamantly continue to insist that the matter could not be cured and the nomination could not proceed.⁹

⁹ Legal counsel pointed out in the meeting that ethics opinions are often nuanced and have to be interpreted carefully and in reference to other opinions. Counsel informed the Commission that there were only two criteria for eligibility for the appointment of a new Commissioner, which were (1) that the new Commissioner be of the same political party as the person previously holding the office and that (2) at the time of the appointment has been a member of that political party for at least sixty (60) days prior. The JREC candidates seemed to meet both of the criteria and were therefore eligible. Counsel also suggested alternative solutions.

Respondent Krouse adamantly refused to accept Counsel’s advice presenting a possible solution and continued to claim the candidate was not eligible at the time his name was put forward by the JCREC. Respondent Krouse promised

14. When Commissioner Stolipher attempted to move forward with the August 17, 2023 meeting, Respondent Krouse stood up and moved to walk out, stating words to the effect that she would not participate in the Commissioner selection process.
15. Respondent Jackson stated that she concurred with Respondent Krouse's statements and would also leave the meeting if the Commission proceeded to a selection of a new fifth Commissioner. Because two of the four commissioners declared their immediate intent to leave the meeting if the selection process continued, the Commission was denied a quorum if it proceeded with the selection process.
16. Commissioner Stolipher proposed to reschedule the vote for the following Thursday, August 24, 2023 to provide the Commissioners and Counsel an opportunity to obtain the ethics opinion from Krouse and to review the ethics opinion.
17. The August 17, 2023 meeting thereupon proceeded with its regular business on the August 17, 2023 Agenda.
18. During the Commission meeting on August 17, 2023 at 8:09 p.m. Krouse posted to her "Jennifer Krouse – Jefferson County Commissioner" Facebook page (see attached Exhibit 2):

"Until now I haven't commented on the replacement process for the Charles Town Commission seat. I'd hoped three Republican Commissioners would have little trouble agreeing on a conservative candidate to fill the spot. When that didn't happen I counted on the Republican Executive Committee to select three actual conservatives for the Commission to review. Unfortunately, far too many of the elected "Republicans" in West Virginia seem to be either incompetent, self-interested, closeted liberals, or some combination thereof.

to send the "ethics opinion" to legal counsel after the meeting. Krouse never provided the purported "ethics opinion" to Counsel. When Respondents' purported "ethics opinion" was finally obtained by Counsel from another source, it was proven not to be an actual ethics opinion, but an email from someone employed by the Ethics Commission. The email generally indicated that there may or may not be an issue, and the matter would likely require further review and a formal opinion (see email from Kimberly Weber to Jackson and Krouse attached as Exhibit 4).

Not only did the JCREC fail to nominate three true conservatives, they failed to even do their basic duty under WV Code §3-10-7 and nominate “three legally qualified persons”. One of the three candidates they sent us is disqualified under WV §61-10-15 due to ethical considerations regarding his employment. As such, the selection process cannot legally proceed until the JCREC nominates another candidate for the position.

It’s a sad commentary that Republican Commissioners and elected representatives of the Republican Party are actively working to deny this seat to a true conservative. ...”

19. Mr. Lowry obtained his own ethics opinion on September 7, 2023 and provided it to the County Commission and legal counsel. This official ethics opinion provided to Mr. Lowry stated that in this case he is an eligible candidate and does not need to resign his position. He would of course, need to recuse himself from any voting on appropriations to Jefferson County Community Ministries (see Advisory Opinion 2023-12 attached as Exhibit 5).
20. **Failure to Select a Replacement Commissioner Continues:** The appointment of the County Commissioner was again placed on the September 21, 2023 Agenda. Neither Respondent Krouse nor Respondent Jackson attended, nor provided notice they were not attending. When Commissioner Stolipher directed the County Administrator to call the two Respondents to seek their attendance, they were not reachable by phone.
21. Respondent Krouse posted to her “Jennifer Krouse – Jefferson County Commissioner” Facebook page at 6:00 p.m. on September 21, 2023 (the start time of the meeting) that she would not be in attendance and that she and Commissioner Jackson were denying a quorum due to what they termed “abuse of authority” by Commissioner Stolipher (see attached Exhibit 6).

22. On September 21, 2023 at 6:01 p.m. Commissioner Jackson posted to her “Jackson for WV” Facebook page (see attached Exhibit 7) as follows:

****Statement regarding protest of September 21st Commission Meeting****

“Tonight, my colleague Commissioner Jennifer Krouse and I took the drastic step of not attending the scheduled County Commission meeting which denied the meeting a quorum...”

23. Commissioner Stolipher was forced to adjourn the meeting by lack of quorum and with the agreement of Commissioner Tabb rescheduled the meeting for September 28, 2023.

24. On September 27, 2023 at 1:58 p.m. Respondent Krouse posted to her “Jennifer Krouse – Jefferson County Commissioner” Facebook page (see attached Exhibit 8) that there would be no “Special Meeting” and that the meeting was improper because it was not approved by a majority of the extant Commissioners. Respondent Krouse posted:

“THERE WILL BE NO “SPECIAL MEETING”

Last week, Commissioner Jackson and I denied quorum for the scheduled Commission meeting. . . we called for Commissioner Stolipher . . . to step down as president of the County Commission. This is a relatively small ask...”

25. On September 27, 2023 at 2:00 p.m. Respondent Jackson posted to her “Jackson for WV” Facebook page (see attached Exhibit 9), as stated below, that she would be joining Respondent Krouse in denying a quorum and not attending the September 28, 2023 “Special Meeting.”

*****Statement regarding JCC 9/28/23 Special Session*****

“Last week, my Colleague Commissioner Krouse and I denied the Jefferson County Commission a quorum for its regular meeting on Thursday September 21st. Our decision to not attend the meeting was done in protest. . .the agenda for this [September 28, 2023] special session is the same as the one from last week. . .I will once again join Commissioner Krouse in protest and therefore not participate in a special session...”

26. On September 28, 2023 Commissioner Stolipher sent Krouse W. Va. Code §7-1-2, that shows that a special session only needs the concurrence of two Commissioners making the special meeting in conformance with state law (see email attached as Exhibit 10).
27. Respondent Krouse replied to Commissioner Stolipher that the code section he sent to her did not apply to the Jefferson County Commission because the Jefferson County Commission has five Commissioners (see email attached as Exhibit 11).
28. The appointment of the fifth County Commissioner was on the agenda for the September 28, 2023 Special Meeting. Both Respondents failed to attend and were not reachable by phone.
29. On September 30, 2023 at 11:58 a.m. Krouse posted to her “Jennifer Krouse – Jefferson County Commissioner” Facebook page (see attached Exhibit 1) that:
- “...it is time for the Commission to get back to business. As such, I’m willing to attend meetings again AS LONG AS THEIR AGENDA DOESN’T INCLUDE FILLING THE VACANCY ON THE COMMISSION. Commissioner Stolipher has refused to step down, and he’s made it clear that he alone controls the agenda. As such it will be entirely his decision whether The Commission meets going forward.”
30. On September 30, 2023 at 11:58 a.m., Respondent Krouse further posted to her “Jennifer Krouse –Jefferson County Commissioner” Facebook page (see attached Exhibit 1):
- “Since Commissioner Jackson and I denied quorum (sic) at the September 21 Commission meeting. . .JCREC violated WV code and their own bylaws to pick a slate of candidates with strong ties to progressive, green-energy. . .the current leadership doesn’t represent their Republican voters. . .by ignoring its base in favor of new-green-deal progressivism, the Republican leadership abdicated its right to pick a replacement on the Commission. I will use my political power to take that right back for the voters of Jefferson County. . .The Commission is fully capable of functioning until next November (2024) with only 4 members. In fact, doing so will save the taxpayers nearly \$50,000. . . .I’m willing to attend [commission] meetings again AS LONG AS THEIR AGENDA DOESN’T INCLUDE FILLING THE VACANCY ON THE COMMISSION. President Stolipher has refused to step down and he’s made clear he alone controls the agenda. As such it will be

entirely his decision whether the Commission meets going forward.”[emphasis in the original]

31. On October 2, 2023 at 8:53 a.m. Respondent Jackson posted to her “Jackson for WV”

Facebook page (see attached Exhibit 12):

“...Mr. Steve Pearson, owner of The Observer under the headline County Misses Deadline for \$50,000 Grant” writes that due to the lack of quorum at the special session, the county missed out on the opportunity for a \$50,000 grant. . . County Administrator, Makayla Zonfrilli emailed all the Commissioners early Thursday, September 28th requesting email approval to meet the deadline. . .both Commissioner Krouse and I responded with approval to proceed as evident (sic) in the emails provided below. . .Commissioners Tabb and Stolipher were derelict in their duty. They failed to act in a timely manner as Commissioner Krouse and I did...¹⁰

32. Although she skipped the 9:30 a.m. October 12, 2023 Commission meeting, Respondent

Jackson demonstrated her level of concern for her elected duties by posting on Facebook at 8:01 a.m. that October 12th was “arm day” at her gym location - which she apparently attended instead of attending to her duties at the Commission meeting that morning (see attached “Jackson for WV” Facebook post as Exhibit 13).

33. On October 19, 2023 the City of Charles Town wrote the Jefferson County Commission a

formal letter stating “...we, the Charles Town City Council, urge you to move forward with an appointment through the process laid out in West Virginia Code §3-10-7 lest further action needs to be taken to compel you to fulfill your official duties.” (see letter attached as Exhibit 3).

¹⁰ It should be noted that the “approval” of the application that Commissioners Jackson and Krouse attempted to make would have been a clear violation of the West Virginia Open Meetings Act, since it would have been a decision of the Commission outside of a meeting.

34. On October 31, 2023 at 10:25 a.m. Respondent Krouse posted to her “Jennifer Krouse – Jefferson County Commissioner” Facebook page (see attached Exhibit 14):

“There have been a lot of lies about Commissioner Jackson's and my refusal to attend the last 3 Commission Meetings. The truth is that, political considerations aside, we want to ensure that the Charles Town vacancy is filled LEGALLY.

Unfortunately, the law governing this matter (WV Code §3-10-7) doesn't say how to proceed given that we have two Commissioners with EQUAL tenure. The solution WE want is for the Commission to seek court guidance on how to proceed. Commissioner Stolipher seems to want to plow ahead illegally. We live in a society of laws. When the law is unclear you don't “wing it”, you seek clarification from a court.

That's why I have just sent the email below to Prosecutor Matt Harvey asking him to do his part to ensure that The Commission receives court guidance before we proceed. Mr. Harvey is up for re- election next year. As the chief law enforcement officer in Jefferson County, this is his opportunity to show voters that his commitment isn't to any one elected official or political establishment, but to the Rule of Law.”

Following that entry was a verbatim copy of the email she sent to Prosecutor Matt Harvey on October 31, 2023 (see attached herein as Exhibit 15) again asserting Respondents’ position that they will both attend the Commission meetings IF there is no agenda item about appointing the fifth commissioner.

35. The Counsel for the West Virginia Secretary of State has provided several emails detailing the Commission’s duty to meet and appoint a new commissioner (see attached Exhibits 16, 17 and 18).

36. As of the date of this filing, the Respondents have individually failed to attend each and every scheduled County Commission meeting since the September 7, 2023 meeting, and have also conspired together to fail to attend meetings and fail to appoint a new Commissioner.

37. Although Respondents have refused to attend Commission Meetings, they continue to attend outside seminars/meetings at the Jefferson County Commission's expense. One such example is the CCAWV meeting attended by both Respondents on October 29 – 30, 2023 (see attached Exhibit 19).
38. The Respondents issued a press release on November 7, 2023 (approximately sixty-one (61) days since the Respondents attended a Commission meeting) that made it clear they "... WILL NOT attend a meeting that has the Charles Town seat appointment on the agenda" (emphasis in original) until Respondents' made up "legal controversies" have been resolved (see attached Exhibit 20). This statement is a final refusal to attend any more meetings that have the appointment of the fifth commissioner on the agenda – an appointment which the communications from the Secretary of State's office have made clear is the Commission's legal duty.
39. On November 9, 2023, the County's IT Director and the County's GIS Coordinator advised all of the Commissioners and key County personnel that the Commission's failure to meet and renew a software contract for a program that protects the County's email and electronic infrastructure would result in imminent and catastrophic harm to the County. Respondent Jackson again emphasized both Respondents' position that they would not attend any meeting that included addressing the appointment of the fifth commissioner (see attached Exhibit 28).
40. As a result, there is no option but to seek the Respondents' removal.
41. Respondents' unlawful, willful and intentional refusal to attend meetings has deprived the Commission of a quorum and the ability to carry out the lawful business of the County.

Without a quorum the Commission has been unable to act and has failed to address (at least) the following public business:

- a. Endangering Public Safety by failure to approve the Motorola Solutions – Maintenance and Lifestyle Services Contract for Jefferson County Communications which places the entire Jefferson County 911 system in jeopardy (see JCC Agendas for October 5, 12 and 19, 2023 attached as Exhibits 21, 22 and 23 respectively),
- b. Inability to fill critical 911 dispatch positions which directly affects public safety (see JCC Agenda for October 19, 2023 attached as Exhibit 23),
- c. Failure to approve ongoing contracts for internet security which may require shutting down the County’s internet connections, disabling county email and data storage. This shut down would interrupt or stop portions of law enforcement services, the County’s 911/CAD service, the Prosecutor’s use of important criminal identification databases, the Prosecutor’s ability to conduct legal research and the Engineering Department’s permitting system, amongst others.
- d. Failure to approve two part time and one full time hire and the move/transfer of two existing part time employees to full time for Jefferson County Emergency Services (see JCC Agendas for October 5, 12 and 19, 2023 attached as Exhibits 21, 22 and 23 respectively),
- e. Failure to release Letters of Credit for the Engineering, Planning and Zoning Department totaling \$1,977,535 (see JCC Agendas for October 5, 12 and 19, 2023 attached as Exhibits 21, 22 and 23 respectively),
- f. Failure to approve accountings and Waivers of Final Settlement for the Jefferson County Clerk (Probate) (see JCC Agendas for October 5, 12 and 19, 2023 attached as Exhibits 21, 22 and 23 respectively)
- g. Failure to perform statutory duties relating to probate administration in W. Va. Code 7-1-3 and related statutes, preventing citizens from resolving pending estate matters,
- h. Failure to have a scheduled Special Hearing in the matter of William Judy, Administrator (Probate) (see JCC Agendas for October 5 and 12, 2023 attached as Exhibits 21 and 22 respectively),
- i. Failure to approve the contract for printing the Ambulance Fee delinquent accounts mailing for the County Administrator (see JCC Agendas for October 5, 12 and 19, 2023 attached as Exhibits 21, 22 and 23 respectively),
- j. Failure to review and handle routine exonerations from County Assessor in violation of W. Va. Codes 11-3-21 and 27 (see JCC Agendas dated September 21, 28, October 5, 12 and 19, 2023 attached as Exhibits 24, 25, 21, 22 and 23 respectively),
- k. Failure to consider and approve monthly bills and claims against the Commission which include:
 - i. health insurance premiums for all county employees;
 - ii. liability insurance premiums for all county structures and vehicles;
 - iii. payment of taxes withheld from employees pay checks in violation of federal and state law;

- iv. payment of lawfully required pension payments for PERS employees;
- v. payment of lawfully required pension payments for Deputies and EMS personnel;
- vi. payment of necessary drugs and supplies for Jefferson County Emergency Services;
- vii. payment of necessary expenses for equipment, training, fueling and other consumables for the Sheriff's Department;
- viii. payment of the monthly jail bill;
- ix. consideration of replacement of vehicles for the Sheriff and other county departments;
- x. payment of all other lawful financial claims against the County in violation of Statutes requiring prompt payment of all bills;
- xi. failure to approve County payroll placed the continued payment of the actual payroll in question as such expenditures are routinely approved on a bi-monthly basis and have not been approved since August, 2023;
- xii. Court ordered child support garnishment payments on behalf of employees.
- l. Failure to make a timely approval of the Court House Improvement grant, as a result of which the County lost a \$50,000 grant (see JCC Agendas for September 21, 2023 attached as Exhibit 24 and September 28, 2023 attached as Exhibit 25),
- m. Failure to pass a resolution required for the County to continue to receive a VOCA grant for the Prosecuting Attorney's office which supports Victim Advocates, valued at approximately \$148,000 placing said grant in jeopardy (see JCC Agenda for October 19, 2023 attached as Exhibit 23).
- n. Failure to approve any Constitutional Officer to hire new and replacement personnel leaving unfilled vacancies in various offices
- o. Inability to seek a replacement of the County Administrator who has given notice that she is resigning her position.
- p. Inability to seek a replacement of the Deputy County Administrator who has resigned her position.
- q. Failure to promote personnel in a timely manner leaving unfilled positions in various departments, including but not limited to, promoting an existing employee to the new position "Tyler Munis Administrator" (see JCC Agendas for September 21, 28, October 5 and 12, 2023 attached as Exhibits 24, 25, 21 and 22 respectively),
- r. As a result of the Respondents' on-going, lawless, willful and intentional refusal to attend meetings, and their conspiracy to refuse the same, the County risks losing further grants, faces an on-going inability to hire any employees is unable to approve major purchase orders and address any emergency which may occur as any new expenditure over \$5,000 requires approval by the Commission.

VI. The Respondents Should be Removed From Office Because Respondent’s Actions Amounted to Neglect of Duty, Official Misconduct, and/or Incompetence Within the Meaning of W. Va. Code § 6-6-7 and related statutes

The Respondents have neglected their duty as Commissioners by their “knowing refusal or willful failure ... to perform an essential act or duty of the office required by law” or been guilty of official misconduct by a “...willful unlawful behavior by a public officer in the course of his or her performance of the duties of the public office” pursuant to W. Va. Code § 6-6-1 (portions omitted).

The actions and/or omissions described herein, taken together or separately, justify removal of the Respondents from their offices as Jefferson County Commissioners.

A. The Respondents Should Be Removed From Office Because of Their Willful Refusal to Attend Meetings

Respondents have no right to absent themselves from their responsibilities. Instead, it is the Commissioners’ sworn duty to attend commission meetings and attend to County business. The Commissioners are paid for this service (or, in this case, are collecting a paycheck for their *lack* of service).

The Constitution of the State of West Virginia states in relevant part:

. . . there shall be in each county of the state a county commission, composed of three commissioners, and two of said commissioners shall be a quorum for the transaction of business. It shall hold four regular sessions in each year, **and at such times as may be fixed and entered of record by the said Commission...**

W. Va. Const. art. IX, § 9

In accord with the Article IX, § 9 Constitutional provision, the Jefferson County Commission voted on January 21, 2021 to schedule regular meetings on the first and third

Thursdays of each month.¹¹ This decision by the County Commission remains in effect. **It is therefore the Commissioners’ clear and undeniable duty to attend the regular meetings on the first and third Thursdays of each month.**

This decision to meet two times a month is binding on the Respondents. Respondent Jackson was present at the January 2021 meeting and voted in favor of the two meeting per month schedule and has followed the two meetings per month schedule since. Respondent Krouse also has followed the two meeting per month schedule since her installment in January of 2023 that is, they both followed the meeting schedule until they decided to conspire to stop attending so they could seize power from the other two commissioners.

The West Virginia Supreme Court of Appeals has held that elected officials “duty to prosecute his responsibilities as an elected officer [is] paramount to his other obligations. The duty of a public officer to fulfill the obligations of his office should take precedence over all other matters.” *Kemp v Boyd* 166 W. Va. 471, 275 S.E.2d 297 (W. Va. 1981).

The West Virginia Supreme Court of Appeals has also held that:

“One who accepts a public office . . . assumes the burdens and the obligations of the office as well as its benefits, subjects himself to all constitutional and legislative provisions relating to the office, and undertakes to perform all the duties imposed on its occupant; and while he remains in office he must perform all such duties. . . . Simply said, if the [official] gets the check, he must do the job.”

State ex rel. Skinner v. Dostert, 166 W. Va. 743, 751–52, 278 S.E.2d 624, 631 (1981)
(portions omitted, bracket emphasis inserted)

Although Respondents’ failure to attend meetings is a willful and intentional neglect of duty, the two Respondents’ own statements prove that the failure to attend meetings was part of

¹¹ See *Minutes* of Jefferson County Commission meeting of January 21, 2021 attached as Exhibit 26 (although the decision made some provision for virtual meeting in the aftermath of COVID the days of meetings remain unchanged).

their coordinated plan to deprive the Commission of a quorum - which was designed to wrongfully increase Respondents' power and prevent the appointment of a new commissioner.

The Respondents also deliberately disregarded written advice from the Secretary of State's Office that the law requires them to participate in the selection of a new commissioner, which removes all doubt that Respondents' actions are a willful and deliberate disregard of the law.

A willful failure or refusal to perform a public duty is a crime under W. Va. Code § 61-5-28.

Any person holding any office or appointment in this State, who shall willfully fail or refuse to perform any duty required of him by law, shall be guilty of a misdemeanor, and, upon conviction thereof, shall, if no other punishment be prescribed by law therefor, be fined not exceeding one hundred dollars.

W. Va. Code § 61-5-28

Failing to attend meetings alone is a failure or refusal to perform a duty required of them by law and, standing alone, meets the standard for removal.¹²

B. The Respondents Should Be Removed From Office Because of Their Neglect of Duty and Official Misconduct in Failing to Attend to Public Business

Respondents' actions, both individually and in conspiracy with one another, to not attend meetings and thereby deny a quorum to the remaining members of the Commission is in itself a crime that is a neglect of duty and official misconduct. However, the effects of Respondents' refusal to attend meetings goes far beyond simple missed attendance.

¹² Additionally, the Respondents have a duty to vote on issues at Commission meetings which they attend unless they have a conflict of interest. See W.Va. Code 7-1-5a.

As a result of the Respondents' on-going, unlawful, willful and intentional refusal to attend meetings, there can be no quorum. Without a quorum the Commission has been unable to act and has failed to address, at a minimum, the public business necessary to the operation of County Government as stated below and detailed in the statement of facts.

The Respondents have neglected their duty, engaged in misconduct and have committed criminal acts within the meaning of W. Va. Code § 61-5-28 by willfully failing or refusing to perform their duties in at least the following ways:

1. Endangering public safety by not hiring critical employees for the 911 Emergency Communications System (ECC). The inability to hire has created a crisis in the staffing of the County 9-1-1 center. Soon, the impact translates to not having the appropriate number of personnel in the 9-1-1 center that are able to answer 9-1-1 calls, dispatch the first responders, and help the citizens of the County in their time of need. The Emergency Communications Center may be forced to scale its job duties to responder agencies if the need arises. This likely will have an impact on public and responder safety.

- a. On two separate items, the ECC is requesting to hire one (1) experienced dispatcher and five (5) public safety dispatchers with varying levels of experience and non-experience
 - i. The ECC is authorized to staff twenty-one (21) total full-time personnel. This is seventeen (17) Dispatchers and four (4) Supervisors; as well as fill five (5) overfills to absorb any impact resignations have to schedule. Total staff authorization number is twenty-six (26) (this does not include management personnel).
 - ii. ECC currently has only eight (8) fully-trained dispatchers and four (4) supervisors for a total of twelve (12) dispatch trained persons; ECC has one (1) partially trained dispatcher.
 - iii. ECC hired eight (8) employees in 2023 but only one (1) of the eight (8) remains and is still in training. The seven (7) other individuals have left the agency by either voluntary resignation or probationary release from employment due to inability to perform/learn during training.

2. Endangering public safety by failing to execute contracts for the maintenance and repair of critical 911 ECC system equipment.

- a. The maintenance contract (valued at over \$625,000) is a six-year term contract that covers the emergency repair, system maintenance, and system upgrade for the MCC7500 direct-connect console equipment that the dispatcher uses to communicate with field responders. The previous agreement expired at the beginning of October 2023.
- b. This equipment is used for a mission-critical purpose, dispatching and alerting law enforcement, fire department, and EMS responders to emergency and non-emergency calls. The equipment at Jefferson ECC is directly connected to the Statewide Interoperable Radio Network and includes the console computers, routers, switches, controllers and gateways.

3. Failure to approve ongoing contracts for internet security which may require shutting down the County's internet connections, and disabling county email and data storage.

This shut down would create at least the following issues, amongst others:

- a. Without this coverage all of the county data networks are vulnerable to Ransomware and all other types of cyber-attacks, resulting in potential loss to all county data including backups, and theft of information.
- b. Until the contract issue can be corrected, in order to protect the county networks will likely necessitate the following:
 1. Suspend all internet access to all computers and servers in both county campuses data centers,
 2. Shut off all non-internal network access to our internal infrastructures, and
 3. Disable all Wi-Fi access.
- c. Some of the issues with the shutdown are:
 1. This would cause the 911 Center CAD (Computer Aided Dispatch) system to cease functioning,
 2. All mobile data units will be non-functional,
 3. No notifications to fire departments and EMS,
 4. The Sheriff's office would likely be crippled with no ability to control officer safety or keep/access any records on calls or create a call,
 5. Police agencies will not be able to utilize any type of reporting,
 6. This will impact schools, fire departments and other municipal public safety offices,
 7. This would cause email to be essentially non-functioning,
 8. This would cause the Engineering department to most likely stop issuing building permits, conducting inspections and all building related functions as they utilize a cloud service, and

9. The prosecuting attorney's office would most likely be unable to prosecute cases as they would not be able to research case law, post filings, review criminal records, etc.
10. The County's GIS System would be substantially impaired.

4. Failing to release development and construction bonds causing or threatening financial loss for citizens, and resulting in imminent lawsuits against the County. These include:

- a. October 5, 2013
 - George and Edna C. Enos – Anglers Ridge Subdivision \$7,108.00
 - Twin Oaks Subdivision, LLC – Morgan's Grove Market Early Grading Permit \$100,000.00
 - Beallair Homes, LLC – Beallair Subdivision, Phase 3, Commercial Lot 1 & Residue \$260.00
 - Bank of Charles Town – Old Route 340 Business Center \$140,199.00
- b. October 19, 2023
 - Lutman Land Development, LLC – Milton's Landing Subdivision, Lots 1-16, Lots 18-50 & SWM Lot 17 \$1,098,789.00
 - River Riders, Inc. – River Riders Snow Tubing Hill \$631,179.00

5. Endangering the Hilltop House Hotel project. The Hilltop House Hotel project is located in the municipality of Harpers Ferry. It is a \$140 million dollar tourism/economic development project.

- a. It appears that the developer will be submitting site plans and building permit applications by the end of December, 2023, for review and permitting purposes. This project was removed from the purview of Town of Harpers Ferry officials, by the State of West Virginia, and oversight assigned to the West Virginia Department of Economic Development (WVDED). The WVDED decided that Jefferson County's land development regulations and building code shall apply to this project.
- b. The WVDED contracted with the Jefferson County Commission to have the Department of Engineering, Planning & Zoning staff do all plan review, site plan inspections, building plans review and building code inspections, etc.
- c. The agreement between the West Virginia Department of Economic Development (WVDED) and the Jefferson County Commission expired on September 29, 2023. Therefore, the WVDED needs to extend the Agreement/Contract via Change Order #2. The contract amount is One-Hundred Thousand Dollars (\$100,000).

6. Failing to approve exonerations, which must be approved by the County Commission, and which “shall have precedence over all other business before the court” W. Va. Code § 11-3-27 and related statutes (referring to the County Court, now the County Commission). Failure to perform these duties may be a crime within the meaning of W. Va. Code § 11-3-21.

7. Failing to resolve serious matters in probate pursuant to their duties under W. Va. Code 7-1-3 and related statutes, including failure to approve accountings and Waivers of Final Settlement for the Jefferson County Clerk (see JCC Agendas for October 5, 12 and 19, 2023 attached as Exhibits 21, 22 and 23 respectively) and failure to have a scheduled Special Hearing in the matter of William Judy, Administrator (Probate) (see JCC Agendas for October 5 and 12, 2023 attached as Exhibits 21 and 22 respectively)

8. Causing financial loss to the county by losing or endangering grant money including:

- a. Failure to make a timely approval of the Court House Improvement grant, as a result of which the County lost a \$50,000 grant (see JCC Agendas for September 21, 2023 attached as Exhibit 24 and September 28, 2023 attached as Exhibit 25), and
- b. Failure to pass a resolution required for the County to continue to receive a VOCA grant for the Prosecuting Attorney’s office which supports Victim Advocates, valued at approximately \$148,000 placing said grant in jeopardy (see JCC Agenda for October 19, 2023 attached as Exhibit 23)

9. Failing to approve numerous financial matters causing the County’s financial controls to be severely compromised. These approvals include, at least, the following matters:

- a. Requisitions
 - October 5, 2023 \$63,524.50
 - October 19, 2023 \$67,605.80
 - November 2, 2023 \$14,562.00
- b. Accounts Payable
 - September 14, 2023 \$314,461.20
 - September 21, 2023 \$63,892.73
 - September 28, 2023 \$409,612.59
 - October 5, 2023 \$658,525.29

•	October 12, 2023	\$343,596.76
•	October 19, 2023	\$157,817.39
•	October 26, 2023	\$1,182,496.13
•	November 2, 2023	\$248,922.15
c.	Manual Checks	
•	September 15, 2023	\$376,129.68
•	September 22, 2023	\$116,295.73
•	September 29, 2023	\$181,850.42
•	October 6, 2023	\$177,839.03
•	October 13, 2023	\$28,730.02
•	October 20, 2023	\$149,412.58
•	October 27, 2023	\$58,660.75
•	November 3, 2023	\$2,504,961.00
d.	Payroll	
•	September 15, 2023	\$323,527.08
•	September 29, 2023	\$347,427.77
•	October 13, 2023	\$327,574.30
•	October 27, 2023	\$322,420.90

While these items have been paid, none have been approved by the Commission since September 7, 2023, because of Respondent's failure to attend meetings.

The Respondents knew or should have known that their deliberate failure or refusal to perform their duty to meet and conduct the public's business would result in these and other financial losses and danger to the public. These willful failures and refusals in and of themselves justify removal of the petitioners from office.

C. The Respondents Should Be Removed From Office Because of Their Failure to Appoint a New Commissioner

Respondents, both individually and in conspiracy with one another, failed to cooperate with the other two Commissioners to appoint a fifth commissioner. This is a crime W. Va. Code § 3-9-23.

Any person who shall commit any act made an offense by any provision of this chapter, for which no penalty or punishment is prescribed by any other provision contained therein, or **any person who shall fail to perform any**

duty prescribed therein which has not been specifically made an offense, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars, or, in the discretion of the court, be confined in jail for not more than one year.

W. Va. Code § 3-9-23 (emphasis added).

Commissioner Ath resigned on or about June 16, 2023 - approximately one hundred and fifty (150) days before the filing of this Petition – and yet the two Respondents have failed to act to appoint a new commissioner – even worse, they have cooperated and conspired to prevent the appointment.

W. Va. Code § 3-10-7 (2022) essentially states that the Commissioners have a duty to appoint a new commissioner, and, if they cannot agree, then the Jefferson County Republican Executive Committee provides the Commission with a list of three names, and the Commission selects one of the three names through a process of elimination.

As the facts above unquestionably show, the **Respondents have strongly asserted they will not attend any meeting where filling the vacancy on the Commission is on the agenda.** The Respondents openly post on social media that they will conspire to use their political power of failing to “grant a quorum” to the Commission to prevent the Commission from fulfilling its mandatory statutory duty to appoint a new commissioner.

The Respondents’ unlawful, willful and intentional refusal to perform their statutory duty to appoint a new commissioner expressly and intentionally thwarts the JCREC’s statutory duty to provide a list of three replacement candidates to the County Commission. Likewise, Respondents’ refusal to participate in the appointment stops the County Commission’s duty to select a replacement from the provided list of three candidates. Disregarding their duty, the Respondents claim Jefferson County is “fully capable of functioning with four commissioners.” Unfortunately,

the inability of the Commission to cooperate in selecting a fifth commissioner shows that Jefferson County cannot function with four commissioners.

The Respondents' refusal to appoint a new Commissioner unlawfully denies the citizens of Jefferson County full representation on the Commission – in fact, it denies the citizens of Charles Town any representation at all.

The Respondents have also wrongfully attempted to grasp political power by attempting to extort concessions by willfully conspiring to withhold a quorum from the Commission. If Jefferson County had five commissioners, then two Respondents could not prevent a quorum. Allowing the Commission to meet and appoint a replacement would drastically reduce the Respondent's ability to hold county government hostage for their personal empowerment.

Even worse, the Respondents have blatantly, purposely, lawlessly and willfully ignored the direct advice of the Secretary of State's office to proceed with the appointment process.¹³ Most important, **the October 20, 2023 email from the Secretary of State's counsel (exhibit 27) explains EXACTLY how the process can be accomplished under existing law. The Respondents never tried to follow this detailed process that was given to them by the Secretary of State's counsel.** The October 20, 2023 email removes any excuse the Respondents' have made that they could not follow the legal process.

The Respondents willfully refusing to perform their statutory duty keeps the Commission below its required membership and shifts power to the two commissioners themselves. This power grab denies the citizens of Jefferson County a functional government because without

¹³ See attached as Exhibit 16 an email dated October 6, 2023 from Assistant Prosecuting Attorney, Nathan Cochran to the Commissioners, forwarding to the Commissioners specific advice from the legal counsel of the Secretary of State, urging the Commission to appoint the fifth commissioner, and clearly informing that the Commission has a duty to appoint the fifth Commissioner (*see also* additional emails between legal counsel for the Secretary of State and Respondent Jackson dated October 17, 2023 at 4:31 p.m. [Exhibit 17], October 17, 2023 at 5:52 p.m. [Exhibit 18], and October 20, 2023 [Exhibit 27]).

meetings the County cannot lawfully take needed action, including those duties and responsibilities set forth above, and, in some cases, causing irreparable harm to the County.

Part of the Respondents' tactic has been to continually evolve and change the reason that they refuse to appoint the fifth Commissioner.

First, their reason was the mythical "ethics opinion" that the Respondents wrongly asserted prevented them from participating in the appointment – that is, until a real ethics opinion was obtained that proved them wrong, and showed their deliberate wrongful characterization of the so called "ethics opinion" to the Commission.

Later, the tactic became asserting - contrary to the statute - that the County commission could not hold a special session to deal with the County's business.

The Respondents also shifted to claiming that the JREC wrongfully selected the three names of the potential commission candidates. When the Secretary of State's office told the Respondent that the JREC's decision making process was none of their concern (see email dated October 17, 2023 at 4:31 p.m. attached as Exhibit 17), Respondents again switched their objection, this time claiming that the code section governing the appointment of the new Commissioner (W. Va. Code 3-10-7) cannot be lawfully followed under the circumstances of this case - which is directly contrary to the opinion given to Respondent Jackson by the Secretary of State's office (see email dated October 17, 2023 at 5:52 p.m. attached as Exhibit 18).

The Respondents' own statements clearly show that they disagree with the political posture of the JREC and some of the candidates proposed by the JREC. That philosophical disagreement is the real reason why the Respondents refuse to participate in the selection.

The shifting reasons the respondents have given for their refusal to appoint the new commissioner reveal that their legal reason for failing and refusing to appoint a fifth Commissioner

is no reason at all, but instead is merely a cover for their true reason - which is that they simply do not like the politics of some of the candidates presented by the JREC, and are willing to bend or break the legal requirements to get their way and stop the appointment.

Simply put, the Respondents are taking the position of “appoint who we want to appoint or we will take our ball and go home.”

Contrary to the Respondents’ claims, the legal standard is **NOT** whether the Respondents like or dislike a replacement Commission candidate. The legal standard is **NOT** whether a particular candidate is more conservative or more moderate. **Instead, the law requires the Commission to select one of the three candidates that the JREC has nominated. That is the extent of the Commission’s discretion.** The Respondents’ failure to abide by the JREC’s selection of candidates denies the JREC’s lawful function and distorts the political process. The Commissioners are limited to the choice provided by law and cannot simply disregard the law to impose their own preference.

Worse, since the September 7th meeting - and the revelation that the so called “ethics opinion” was a smokescreen - the Respondents have not even appeared at a meeting to try to work out the issues between them and the other two Commissioners. Instead, the Respondents have advanced a barrage of social media posts and press releases in an attempt to justify their actions and create their own appointment process apart from the checks and balances that exist in the law.

Said another way, the refusal to participate in the selection process is based on the Respondents’ personal preference as to who they want to install as the fifth Commissioner. What if (hypothetically) retiring Commissioner Ath had been a Democrat? And the Democratic Party had put forward a slate of three candidates, all of whom had political views with which the two commissioners disagreed? And in that case the two Respondents conspired to refuse to appoint a

new Commissioner for the same philosophical reasons they have espoused in this case? Would that be acceptable? Of course not, and it is just as unacceptable in this case for the Respondents to refuse to obey the law and reject the JREC candidates for philosophical reasons as it would be in the hypothetical case described above.

The Respondents have removed all doubt as to their position – if any existed – by their November 7, 2023 press release wherein they flatly state that “Commissioner Jackson and I WILL NOT attend a meeting that has the Charles Town seat appointment on the agenda” until Respondents’ so called “legal controversies” that they have conspired to construct have been resolved. This statement is a final, flat refusal to attend any more meetings that have the appointment of the fifth commissioner on the Agenda, and has created a Constitutional crisis.

Said another way, Respondents are demanding that Commissioners Stolipher and Tabb join Respondents in violating the law and that Stolipher and Tabb likewise disregard their duty to appoint a fifth commissioner as a condition for Respondents to return to their job. This demand – that the other Commissioners join the Respondents’ criminal violation of their duty – is a dereliction of duty in and of itself.

The Respondents’ actions leave the Petitioner – who has a sworn duty to protect the County and enforce the law - no course of action but to file a Petition for the Removal of the Respondents for official misconduct, neglect of duty and/or incompetence as alleged herein.

VII. The Circuit Court Should find that the Allegations Concerning the Respondent Commissioners, if proven by clear and convincing evidence, warrant the removal of the Respondent Commissioners from office

The Jefferson County Prosecuting Attorney submits that the aforementioned allegations, if proven by clear and convincing evidence, are sufficient to warrant the removal of the Respondent Commissioners from office.

Consequently, the Jefferson County Prosecuting Attorney prays that this Court find that this petition is sufficient under the standards for removal set forth herein to proceed to a hearing before a three-judge court, and forward a copy of the petition to the Supreme Court of Appeals pursuant to W. Va. Code 6-6-7(g).

Respectfully Submitted,
Office of the Prosecuting Attorney for Jefferson County, West Virginia,

/s/ Matthew L. Harvey
Prosecuting Attorney of Jefferson County West Virginia
West Virginia State Bar Number 9813
Jefferson County Prosecutor's Office
Post Office Box 729
Charles Town, West Virginia 25414
304-728-3318 Telephone
304-728-3353 Facsimile