

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

HARDWICK SMITH JOHNSON,
CHARLOTTE WARD THOMPSON,
MARJORIE FLINN YOST,
BARBARA HUMES,

Individual Contestees-Respondents Below, Petitioners,



v.

Case No. 19-1018

NANCY SINGLETON CASE and
DEBORAH A. MCGEE,

Individual Contestors-Petitioners Below, Respondents.

PETITIONERS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL APPENDIX

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Counsel for Petitioners

Petitioners move for leave to file a two-page supplemental appendix. *See* W. Va. R. App. P. 7(g). Good cause supports this modest request.

First, the two documents contained in the proposed Supplemental Appendix, attached hereto as an exhibit, are necessary and relevant to issues raised by Respondents in their response brief, including a cross-assignment of error. The first document is a copy of the official Board of Canvassers Certification of Results from the 2019 Harpers Ferry Municipal Election. The second document is a copy of municipal record provided to the undersigned in response to a FOIA request that demonstrates Leah Howell’s decision, prior to the election, to withdraw her candidacy.

Second, the two documents are public records that are subject to judicial notice, as they are not subject to reasonable dispute. *See* W. Va. R. Evid. 201(b); *see Zak v. Chelsea Therapeutics Int’l, Ltd.*, 780 F.3d 597, 607 (4th Cir. 2015) (under Federal Rule of Evidence 201(b), “courts at any stage of a proceeding may judicially notice a fact that is not subject to reasonable dispute, provided that the fact . . . can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned”) (cleaned up). Indeed, the two documents here only serve to confirm undisputed facts—1) the current, certified vote tallies, and 2) Howell’s express decision to disavow pursuing a position on the Harpers Ferry Town Council even before the election.

Accordingly, the motion for leave to file the proposed Supplemental Appendix should be granted and the Supplemental Appendix deemed filed.

Respectfully submitted,

**HARDWICK SMITH JOHNSON,
CHARLOTTE WARD THOMPSON,
MARJORIE FLINN YOST, and
BARBARA HUMES,**
each in their individual capacities as Individual
Contestees-Respondents Below, Petitioners,

By counsel:



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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2020, a true and correct copy of the foregoing was served by US Mail and email on the following parties:

Gregory A. Bailey, Esq.
J. Daniel Kirkland, Esq.
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gbailey@arnoldandbailey.com

Euphemia Kallas, Esq.
Corporation of Harpers Ferry
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A handwritten signature in black ink, appearing to read 'RD', with a horizontal line extending to the right from the end of the signature.

Ryan McCune Donovan (WVSB #11660)

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SUPPLEMENTAL APPENDIX

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Johnson, Charlotte Ward Thompson,
Marjorie Flinn Yost, and Barbara Humes*

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1. Board of Canvassers Certification of Results Supp App - 001
2. Email Requesting Candidate Statements Supp App - 002

**Board of Canvassers Certification of Results
2019 Harpers Ferry Municipal Elections**

The Board of Canvassers of the Corporation of Harpers Ferry, having carefully and impartially examined the returns of the election held in this municipality on the 11th day of June, 2019, and having observed a recount of the accepted ballots cast for Town Council member candidates, do hereby certify that in said municipality,

for the office of Town Council member,

Debbie McGee received 81 votes;
Christian Pechuekonis received 84 votes;
Nancy Singleton Case received 82 votes;
Midge Flinn Yost received 81 votes;
Barbara Humes received 91 votes;
Leah Howell received 15 votes;
Jay Premack received 87 votes;
Hardy Johnson received 85 votes, and
Charlotte Thompson received 84 votes.

This certification is effective at 8:33 p.m. on the 28th day of June, 2019, as motioned, seconded, and approved by the Harpers Ferry Board of Canvassers, unless a petition for a recount is received by the Recorder before the stated time.

Kevin Carden, Recorder

Wayne Bishop

Barbara Humes

Hardwick S. Johnson, Jr.

Charlotte Thompson

Ed Wheelless

Midge Flinn Yost

Kevin Carden
~~Wayne Bishop~~
Barbara Humes
Hardwick S. Johnson, Jr.
Charlotte Thompson
Midge Flinn Yost

Rachel VanMetre

From: Leah Howell <lghowell0918@gmail.com>
Sent: Thursday, May 9, 2019 12:13 PM
To: Rachel VanMetre
Subject: Re: Candidate Statements for May Newsletter

I will not be running.

Thank You

Leah Howell

Sent from my iPhone

On May 9, 2019, at 10:35 AM, Rachel VanMetre <rvanmetre@harpersferrywv.us> wrote:

Good morning,

This email is being sent to all candidates for the upcoming Municipal Election – please respond **no later than Wednesday, May 15**, with a brief statement (3-4 sentences) about why you are running for Town Council, Recorder, or Mayor. Please also include a picture to accompany your statement. It is important that you provide your statement as soon as possible, as this is the last newsletter that will be distributed before the election.

Thank you,

Rachel VanMetre
Town Clerk
Corporation of Harpers Ferry
PO Box 217
Harpers Ferry WV, 25425
304-535-2206
rvanmetre@harpersferrywv.us

CONFIDENTIALITY NOTICE: This email and any attachments are confidential and may be protected by legal privilege. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or use of this email or any attachments is prohibited. If you have received this email in error, please notify me immediately by telephone and delete this email from your device.

CERTIFICATION

I hereby certify that the contents of this Supplemental Appendix are true and accurate copies of what they purport to be to the best of my knowledge, information, and belief.

A handwritten signature in black ink, appearing to read 'RD', with a horizontal line extending to the right from the end of the signature.

Ryan M. Donovan (WVSB #11660)