

WV Supreme Court Hears Hampshire County Case

On Tuesday, October 7th, [2008] the West Virginia Supreme Court of Appeals heard oral arguments in the lawsuit that Hampshire County citizens filed against the West Virginia Legislature in August 2005.

The suit, *Committee to Reform Hampshire County Government v. Richard Thompson, Speaker of the West Virginia House of Delegates, and Earl Tomblin, President of the West Virginia Senate*, was filed in response to the Legislature's failure, in both the 2004 and 2005 regular sessions, to pass legislation setting up a referendum allowing county voters to vote on proposals to change the form of the county government. The original proposal was initiated by a petition signed by ten percent of the county's voters and submitted to the Legislature in 2003.

The petition process for changing local government is authorized by Article IX, Section 13 of the West Virginia Constitution. The failure of the Legislature to pass the referendum bill is the first instance in West Virginia history that any Legislature has failed to comply with its constitutional mandate when presented with a petition from a county's voters.

In its consideration of the case, the WV Supreme Court was responding to an appeal from the legislators, who have lost three times at the circuit court level. In the most recent litigation, in 2007, Kanawha County Circuit Court Judge Paul Zakaib rejected the Legislature's attempt to use a Hampshire County Commission resolution to withdraw the petition to dismiss the case. Zakaib ruled that the commission's resolution had no legal weight whatsoever, and refused to admit it as evidence in the case. The Legislature's appeal to the Supreme Court did not mention the commission's resolution.

The Legislature's arguments to the Supreme Court were presented by Joe Altizer, counsel to the House Judiciary Committee, and Rita Pauley, counsel to the Senate President.

Mr. Altizer's argument focused on West Virginia's 1872 Constitutional Convention, which enacted Article IX, Section 13 in its current form. He contended that records of the Convention's deliberations show that the authors of that provision were "southern Democrats," who wanted to change the form of county government from the New England "township" model set up by Yankee sympathizers at the 1863 Constitutional Convention, when West Virginia seceded from Virginia. They wished to go back to the colonial-era model of the three-person "county court" based on British law. He told the Court that the provision had been included as a concession to those who opposed the change, but that the provision's framers had intended for the Legislature to oversee the process.

Ms. Pauley's presentation focused on "ambiguities" in Section 13's language, which she argued leave the question of whether the Legislature has a "mandate" to pass a referendum bill up to the discretion of the Legislature. Both attorneys contended that the WV Supreme Court had erred in its 1981 *Taylor County Commission v. Spencer*

decision, which clearly states that the Legislature is required to set up a county referendum when presented with a legitimate petition.

The citizens' attorney, WVU constitutional law professor Robert Bastress, made the 1981 Spencer decision the centerpiece of his presentation, as he had in his legal briefs since the case was first filed. In his argument to the Court, he quoted the unambiguous language of that decision: "In effect, the Legislature is obliged by the constitution to vindicate the desires and designs of the voters of the county. This it is constitutionally required to do and beyond this it cannot act."

Most of the questions from the bench came from Justice Brett Benjamin, the Court's newest member, who has been assigned to write the opinion in the case. He raised issues with both sides' arguments. Other questions came from Justice Larry Starcher, who will retire from the Court in January. His questions seemed sympathetic to the plaintiffs' argument. The other three justices were silent, until Chief Justice Elliott Maynard brought the presentation to its conclusion.

A decision in the case is expected in December 2008.

Submitted by the Committee to Reform Hampshire County Government.

Briefs in the case are available online at
<http://www.historichampshire.org/petition/petition.htm>