

**BEFORE THE WEST VIRGINIA
STATE ELECTION COMMISSION**

**In Re: Request for Disqualification of David C. Tabb as a Candidate for Jefferson County
Commission Pursuant to W. Va. Code § 3-5-19(a)(4)**

ORDER

On August 10, 2026, came the Petitioner, Gary Dungan, pro se, and the Respondent, David C. Tabb, by counsel, Brad Wright, for a duly noticed meeting conducted by the West Virginia State Election Commission (“Commission”).

For the reasons set forth in the following Findings of Fact and Conclusions of Law, the Commission hereby **ORDERS** as follows:

Findings of Fact

1. On January 29, 2026, Respondent, David C. Tabb, filed a sworn, notarized Certificate of Announcement with the Jefferson County Clerk as the Mountain Party candidate for Jefferson County Commission, on which he provided that he is a current resident and legally qualified, registered voter of Jefferson County and the “Harpers Ferry” Magisterial District at address 107 Tabb Lane, Harpers Ferry, WV 25425.

2. On July 31, 2026, Petitioner, Gary Dungan, submitted a timely written request to the Commission seeking the disqualification of David C. Tabb as a candidate for Jefferson County Commission pursuant to W. Va. Code § 3-5-19(a)(4).

3. The Commission scheduled a public meeting for August 7, 2026, to hear evidence and determine whether the circumstances warranted the disqualification of the candidate. On July 31, 2026, Mr. Tabb received notice of the August 7, 2026, public meeting, along with a copy of the written request for disqualification. Mr. Tabb was notified of his right to appear, either

personally or through counsel, to present evidence, offer testimony, and respond to the allegations contained in the request.

4. On August 7, 2026, prior to the scheduled public meeting, David P. Cook, Jr., counsel for the Commission, received an electronic communication from Respondent's attorney, Brad Wright. Mr. Wright requested a continuance of the public meeting to allow Mr. Tabb additional time to review the exhibits submitted by the Petitioner and to prepare his defense.

5. Mr. Cook consulted with the Commission regarding the request for a continuance and the grounds supporting the request. The Commission granted the continuance and rescheduled the public meeting for August 10, 2026. Notice of the continuance was provided to both Mr. Dungan and Mr. Wright.

6. On August 7, 2026, Mr. Dungan forwarded copies of the exhibits he intended to introduce at the August 10, 2026, meeting. Copies of those exhibits were forwarded to Mr. Wright on the same date.

7. On August 10, 2026, the public meeting was conducted remotely through Microsoft Teams. The Commission received testimony and evidence and heard arguments from the parties.

8. Mr. Dungan testified that Mr. Tabb did not reside in the Harpers Ferry Magisterial District at the time he filed his sworn, notarized Certificate of Announcement on January 29, 2026.

9. Mr. Dungan alleged that, following the legislative and magisterial district redistricting process in the year 2021, Mr. Tabb's listed residence is located in the "Charles Town" Magisterial District.

10. In support of that claim, Mr. Dungan provided a copy of Mr. Tabb's sworn, notarized Certificate of Announcement from 2024, which Mr. Tabb filed to become a candidate

for Jefferson County Commission, “Charles Town” Magisterial District at address 107 Tabb Lane, Harpers Ferry, WV 25425. Mr. Tabb lost the 2024 election.

11. Mr. Dungan compared the two Certificates of Announcement from 2024 and 2026 and testified that the sworn, notarized forms filed by Mr. Tabb list the identical legal residence address at 107 Tabb Lane, Harpers Ferry, WV 25425, but different Magisterial Districts.

12. Mr. Dungan also presented various precinct maps that he alleged demonstrate that Mr. Tabb’s residence is located in the “Charles Town” Magisterial District. Mr. Dungan argued that the voting precincts depicted on those maps have not changed since the 2021 redistricting process.

13. Mr. Wright argued that he had only a short period of time between receipt of Mr. Dungan’s exhibits and the public meeting in which to prepare a defense. Mr. Wright further argued that the Commission does not have subject matter-jurisdiction under W. Va. Code § 3-5-19(a)(4) to remove Mr. Tabb from the general election ballot. Mr. Wright asserted that despite other laws governing candidate eligibility challenges, the sole and exclusive manner in which the qualifications of a candidate for county commission may be challenged is through the procedure set forth in W. Va. Code § 7-1-15.

14. The Commission questioned Mr. Wright regarding the factual allegation that Mr. Tabb did not reside in the “Harpers Ferry” Magisterial District at the time he filed his Certificate of Announcement. Mr. Wright argued that Mr. Tabb has been charged with a crime concerning information provided on his Certificate of Announcement, and that he must be cautious with his responses due to the pending criminal matter against Mr. Tabb. Mr. Wright then argued that the evidence presented by Mr. Dungan included only unofficial, online maps showing the Jefferson County Magisterial Districts and Mr. Tabb’s legal residence, but did not include a “certified” map

from the County Clerk. Mr. Wright did not dispute the accuracy of the unofficial, online maps provided by Mr. Dungan, only that he did not receive or have sufficient time to drive to the Jefferson County Courthouse to request a certified copy of the Magisterial District map for comparison.

15. After considering the factual evidence and arguments of the parties, the Commission entered executive session to receive advice from counsel and to deliberate.

16. On August 10, 2026, following the Commission's recess, the Commission received a timely, subsequent written request from the West Virginia Republican Party seeking the disqualification of David C. Tabb as a candidate for Jefferson County Commission pursuant to W. Va. Code § 3-5-19(a)(4). The factual evidence and legal arguments raised in that written request are substantially similar to those raised by Mr. Dungan. Accordingly, both written requests are ripe for consideration.

17. Upon consideration of the information provided and testimony of the parties, it is undisputed that Mr. Tabb's legal residence is located at 107 Tabb Lane, Harpers Ferry, WV 25425. The Commission finds that despite the lack of the submission of a physical, certified copy of the Jefferson County Magisterial Districts map, no evidence or testimony was presented to suggest that the Magisterial Districts changed between Mr. Tabb's Certificate of Announcement filings to become a candidate for County Commission in 2024 and 2026. Therefore, absent evidence or records showing otherwise, it is factually and legally impossible for Mr. Tabb's Magisterial District to have changed from "Charles Town" in 2024 to "Harpers Ferry" in 2026. If true, it follows that one of those sworn, notarized Certificates of Announcement contains a false statement and, if the 2026 Certificate contains false information, it would affect Mr. Tabb's eligibility to be a candidate or hold the office for the position sought.

Conclusions of Law

18. W. Va. Code § 3-5-19(a)(4) provides that, if a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than 78 days before the general election.

19. W. Va. Code § 3-5-19(a)(4) further provides that a candidate may be determined disqualified if a written request is made to the State Election Commission by an individual with information demonstrating a candidate's ineligibility. The request must be made no later than 84 days before the general election and must explain the grounds upon which the candidate is alleged to be ineligible to be placed on the general election ballot or ineligible to hold the office, if elected.

20. Under the above-referenced Code section, the Commission shall review the reasons for the request and, if the Commission finds that the circumstances warrant disqualification of the candidate, the Commission shall authorize the executive committee to appoint a nominee to fill the vacancy.

21. While various sections of W. Va. Code § 3-5-19 have been amended, most recently in 2024, the process by which the Commission reviews and adjudicates candidate disqualification challenges has not changed since 1991.

22. In 2009, the Legislature enacted W. Va. Code § 7-1-15, which provides a specific procedure for challenging the qualifications of a candidate for county commission. A person desiring to contest the qualifications of a candidate for the office of county commission at a general election shall file a verified petition with the circuit court of the county in which the candidate is seeking office. The circuit court shall set the matter for hearing, conduct a bench trial, and determine whether the candidate whose qualifications have been challenged is legally qualified to

have his or her name placed upon the ballot in question. Pursuant to W. Va. Code § 7-1-15(f), the procedure set forth above “shall be the sole and only manner” in which the qualifications of a candidate for county commission may be challenged prior to the time of his or her election.

23. “When faced with a choice between two statutes, one of which is couched in general terms and the other of which specifically speaks to the matter at hand, preference generally is accorded to the specific statute.” Newark Ins. Co. v. Brown, 218 W. Va. 346, 351, 624 S.E.2d 783, 788 (2005). “Typically, when two statutes govern a particular scenario, one being specific and one being general, the specific provision prevails.” Bowers v. Wurzburg, 205 W. Va. 450, 462, 519 S.E.2d 148, 160 (1999).

24. W. Va. Code § 3-5-19(a)(4) and W. Va. Code § 7-1-15 are not in conflict; rather, one speaks generally to the disqualification of a candidate by the Commission, while the other establishes a specific procedure governing challenges to the qualifications of a county commission candidate in the circuit court. It is well established that a specific statute prevails over a general statute unless it is readily apparent that the Legislature intended to repeal the specific statute by enacting the general one. Trumka v. Clerk of the Circuit Court of Mingo County, 175 W. Va. 371, 332 S.E.2d 826 (1985).

25. Because W. Va. Code § 7-1-15 provides a specific procedure for challenging the qualifications of a candidate for county commission, and because the Legislature expressly provided that such procedure “shall be the sole and only manner” in which those qualifications may be challenged, despite the clear inconsistency in the Magisterial Districts provided on Mr. Tabb’s sworn, notarized Certificates of Announcement at the same residence address, the Commission has no statutory jurisdiction or legal basis for employing the general candidate-

disqualification procedures set forth in W. Va. Code § 3-5-19(a)(4) with respect to the requests for disqualification of a candidate for county commission.

26. The Commission must have subject-matter jurisdiction to enter a valid and enforceable order adjudicating a candidate-disqualification claim. The Commission may dismiss a matter sua sponte for lack of subject-matter jurisdiction. Because the Legislature has provided that the circuit court has subject-matter jurisdiction over challenges to the qualifications of county commission candidates, the Commission lacks subject-matter jurisdiction over the particular matters presented here.

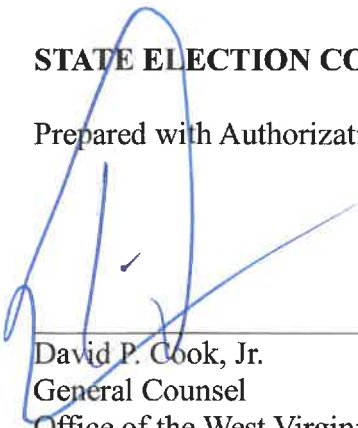
IT IS THEREFORE ORDERED that, based on the foregoing, the two requests for disqualification of David C. Tabb as a candidate for Jefferson County Commission pursuant to W. Va. Code § 3-5-19(a)(4), are hereby **DISMISSED WITHOUT PREJUDICE**.

The Commission **DIRECTS** counsel of record for the West Virginia State Election Commission to transmit a copy of this Order to counsel of record and to any unrepresented party.

ENTERED this 11th day of August, 2026.

STATE ELECTION COMMISSION

Prepared with Authorization by:



David P. Cook, Jr.
General Counsel
Office of the West Virginia Secretary of State