

West Virginia lower House impeaches entire state Supreme Court

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21 August 2018

The West Virginia Senate reconvened Monday to consider articles of impeachment against all four justices of the West Virginia Supreme Court of Appeals. Last week, the Republican-controlled House of Delegates approved 11 of 14 articles of impeachment by majority vote.

The effort to remove all members of the state supreme court is a transparently political drive to place under Republican control the last branch of state government controlled by the Democrats. The state's highest court had a 3-2 majority of justices elected as Democrats, until July 27, when Justice Menis Ketchum resigned. On August 14, hours after the impeachment vote, a second Democrat, Justice Robin Davis, announced her resignation.

Both resignations have the effect of depriving Republican Governor Jim Justice of the opportunity of naming a replacement. The state constitution provides that a vacancy created more than 84 days before a general election shall be filled by voters, not the governor. Davis resigned on the 85th day before the election, after 21 years on the high court.

Under proposed draft rules pending adoption in the Senate, each justice will get a separate trial followed by a closed-door vote of the Senate. A two-thirds vote to sustain one or more of the articles against the judge will result in a conviction and removal from office. A separate vote, also requiring a two-thirds majority, will determine if the convicted justice will be barred from ever holding public office in West Virginia again. The Republican Party has a majority of 22-12 in the State Senate, meaning that at least one Democrat must support removal of the justices to achieve a two-thirds majority.

Following a two-day special session which stretched into the early morning of Tuesday, August 14, the

House charged the justices with the impeachable offenses including maladministration, corruption, incompetency, neglect of duty, and other offenses, all in relation to abuse and misuse of state resources, including money, cars, computers, and furniture.

Republican chief justice Allan Loughry and Davis were impeached for their own spending, but similar charges against Republican Beth Walker and Democrat Beverly Workman were voted down, because their personal spending was much lower. However, the House nonetheless voted to impeach Walker and Workman for not restraining the spending of their fellow justices, a bizarre charge that only underscored the character of the whole operation as a right-wing political coup.

There is little doubt that several of the justices were guilty of lavish expenditure on their own offices, taking advantage of a provision in the state constitution under which the supreme court sets its own budget, not subject to review by the legislative or executive branches. The probe into alleged overspending was actually initiated by a Democratic state legislator, directed against Loughry, who is now on unpaid suspension following a 32-count statement of charges from the West Virginia Judicial Investigation Commission in June.

But the probe was effectively hijacked by the Republican majority in the state legislature, which seized on it as an opportunity to gain control of the judicial branch, following the decision last year by Governor Jim Justice, a billionaire coal boss elected as a Democrat, to switch to the Republican Party. Removing justices elected as Democrats for 12-year terms opened up the possibility of Justice appointing Republicans as their replacements, and thus placing the court under Republican control.

At her press conference announcing her resignation, Justice Davis lashed out at the Republican majority in the House of Delegates and accused them of plotting to stack the bench with conservative justices. “What we are witnessing is a disaster for the rule of law, the foundation for our state and, indeed, our own society,” Davis said. “For when a legislative body attempts to dismantle a separate branch of government, the immediate effects, as well as the precedent it sets for the future, can only be deemed disastrous.”

Since all the state supreme court justices are facing trials before the Senate, an outside jurist, Cabell County Judge Paul Farrell, a Democrat, was chosen by the court to preside over those trials.

The crisis began in November 2017 amid media reports about \$3.7 million in court facility renovations, including a \$32,000 couch and \$7,500 floor medallion in Justice Loughry’s office. At the same time, Loughry was found to have a state-owned couch, desk, and three computers in his home. The antique desk, designed by West Virginia Capitol architect Cass Gilbert, was one of five original to the court in 1932.

A legislative audit in June revealed that the Supreme Court had spent down a \$29 million general revenue fund in fiscal year 2012 to a little more than \$333,000 in 2016 on pay raises, new programs, rent for court offices, and office renovations. Testimony by former court administrator Steve Canterbury suggested that the spending spree was undertaken in the context of discussions of an upcoming constitutional amendment granting the state legislature more control over the judicial budget. In other words, the chief justice decided on a policy of “use it or lose it,” spending down the fund before the state legislator could take charge of it.

In February, the other four Supreme Court justices voted to remove Loughry as chief justice, a position they had chosen him to fill in April 2017 for the next four years. Justice Workman was chosen to replace him in the role. The move came after the justices discovered that Loughry concealed from them two federal subpoenas served on the court in December 2017 and February 2018.

On June 6, the court-appointed West Virginia Judicial Investigative Commission issued its 32-count judicial complaint against Loughry, charging him with violating the state’s Code of Judicial Conduct in relation to

misusing state-owned property and lying about it to lawmakers, the media, and the public. However, the state case was put on hold following a federal grand jury indictment handed down two weeks later. Loughry now faces 25 federal charges, including 17 counts of wire fraud, three counts of mail fraud, three counts of making false statements to federal investigators, one count of witness tampering, and one count of obstruction of justice. Loughry has pleaded not guilty to the charges and remains free on bail awaiting trial.



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