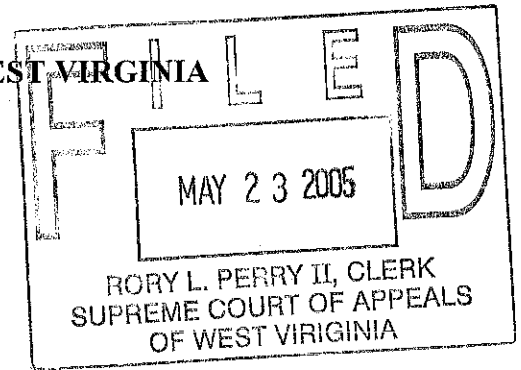


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CHARLESTON



MARY ANN PODELCO,

Petitioner,

v.

IN MANDAMUS
ORIGINAL JURISDICTION
No. 31793

EARL RAY TOMBLIN, President of
the Senate; ROBERT S. KISS, Speaker
of the House of Delegates; and Office of
the Governor of the State of West
Virginia,

Respondents.

**PETITIONER'S SUMMARY RESPONSE
TO RESPONDENTS' MOTION TO DISMISS**

The Respondents have requested that this Court reconsider its earlier Order and dismiss the above-styled action against the Legislative leadership for failure to follow the constitutionally mandated appropriation process as guaranteed through Art. VI, Sec. 51 and Art. V, Sec. 1 of the West Virginia Constitution. The Petitioner submits that it is not only within this Court's powers but its duty under Art. V, Sec. 1 of the State Constitution to safeguard for the citizens of this State the constitutionally mandated appropriation process, and that the motion should therefore be denied.

The Respondents in their Motion and Memorandum first recount a portion of the holdings of this Court in Common Cause v. Tomblin, 186 W. Va. 537, 413 S.E.2d 358 (1991) and State

ex rel League of Women Voters v. Tomblin, 209 W. Va. 565, 550 S.E.2d 355 (2001), wherein this Court in response to Petition of citizens and members of the Legislature exercised its constitutional duty to resolve issues raised about the appropriation process. Secondly, the Legislature argues that the “power of the Legislative branch is plenary and it exceeds its constitutional authority only when it violates restrictions upon it imposed by the Constitution of this State” (Resp. Motion at 2; Memo. at 7). The Petitioner takes no issue with these statements of the law, but points out that the question of exceeding authority is precisely what is presented here.

Petitioner submits, however, that the conclusory statements of the Legislature that this Court has no authority to resolve issues arising out of the propriety of the Legislature’s methods in the exercise of the appropriation process is not correct. The Legislature asserts:

In summation, there is no lawful authority of this Court to either direct the processes by which the Legislature must fashion the Budget Digest or to require the submission of those processes to judicial review.

(Resp. Mot. at 3).

The point is, however, that also practically speaking, the Court is not empowered by the Constitution to enter, observe and record discussions and deliberations had in the offices of the members of the Legislature about matters related to the formulation of the Budget Bill, and ultimately the formulation of the Budget Digest, any more than the members of the Legislature are empowered to enter, observe and record discussions had in the offices of the members of this Court about matters related to the administration of justice. Ultimately, that is the power this Court has suggested it has in Common Cause, State ex rel. League of Women Voters and this case. If this Court now declares that such power exists, certainly the legislative branch enjoys a like power with respect to the judiciary.


(Resp. Mem. at 10-11). The Respondents’ assertion that the Court is attempting to “enter, observe and record discussions and deliberations” of private meetings involving Legislative members is not accurate and misses the issue. The issue is simply that under Art. V, Sec. 1 of the

Constitution, it is this Court's duty to sit in review of judicially raised questions of the proper exercise of authority of the other two co-equal branches of the government - the Legislative and the Executive.

The following are significant constitutional questions to be resolved by this Court: The constitutional appropriation process is being circumvented by the distribution of public monies outside the constitutionally mandated appropriation process (1) by direction through the Budget Digest to the detriment of the general populous and the Legislature as a whole, and/or (2) by the direction of expenditures from the Governor's contingency fund by one or two members through general appropriations to the Governor's office in derogation of the constitutionally mandated appropriation process and the prerogative of the Executive to administer appropriated money.

WHEREFORE, the Petitioner prays that the Motion of the Respondents be denied.

**STATE OF WEST VIRGINIA, ex rel.
MARY ANN PODELCO,
By Counsel.**



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CERTIFICATE OF SERVICE

I, Daniel F. Hedges, counsel for the Petitioner, do hereby certify that I have served a true and exact copy of the foregoing **PETITIONER'S SUMMARY RESPONSE TO RESPONDENTS' MOTION TO DISMISS** upon counsel of record as listed below, as noted, addressed as follows:

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Dated this 23rd day of May, 2005.



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