

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**STATE OF WEST VIRGINIA  
ex rel. ALICIA STINE,  
Petitioner,**

**v.**

**Civil Action No. 22-P-151  
Judge Louis H. Bloom**

**MAC WARNER, SECRETARY OF STATE  
OF THE STATE OF WEST VIRGINIA, and  
ANDREA KIESSLING,  
Respondents.**

**ORDER GRANTING EMERGENCY WRIT OF MANDAMUS**

On April 29, 2022, the Petitioner, the State of West Virginia ex rel. Alicia Stine, filed an Emergency Petition for Writ of Mandamus, by counsel Anthony J. Majestro. The Petition argues that the Respondent, Andrea Kiessling, is ineligible to be a candidate in State Senatorial District 8. The Petition seeks various orders against the Respondent Secretary of State, Mac Warner, regarding Ms. Kiessling's ineligibility for the State Senate Office in District 8. On April 29, 2022, the Court entered an Order for Respondents to Show Cause, setting this action for an evidentiary hearing via Microsoft Teams on May 3, 2022, at 9:30 a.m. On May 3, 2022, came the Petitioner by counsel, Anthony J. Majestro, the Respondent Marc Warner, West Virginia Secretary of State by counsel, David Pogue, and the Respondent Andrea Kiessling by counsel, Marc Williams, and presented evidence on the Petitioner's Emergency Petition for a Writ of Mandamus.

The Court, having considered the Petition and the evidence presented at hearing, and considering the exigent circumstances that this ruling affects the May 10, 2022, primary election that is currently in early voting, makes the following findings of fact and conclusions of law.

## FINDINGS OF FACT

Petitioner Alicia Stine is a registered voter residing in Kanawha County within West Virginia Senatorial District 8 and intends to vote in the Republican primary. Respondent Andrea Kiessling is a Republican Party candidate for the District 8 Senate Seat. District 8 contains portions of Kanawha, Putnam, Jackson, Roane and Clay Counties.

In filing for office, Ms. Kiessling listed her address as 97 Batten Run, Spencer, West Virginia 25276 (the “Spencer address”), an address within District 8. Petitioner’s Exhibit #1.

In 2012, Ms. Kiessling resided in Kanawha County, West Virginia. That year she moved to Charlotte, North Carolina. **Hrg. Transcr. 4:4-5 (May 3, 2022)**. Ms. Kiessling testified that she had no intention to return to her residence in Kanawha County at the time she left. **Hrg. Transcr. 14:15-23, 21:13-15**. Ms. Kiessling’s husband’s family resided in North Carolina.

Upon moving to Charlotte, North Carolina, Ms. Kiessling registered to vote in North Carolina. Ms. Kiessling is currently registered to vote in North Carolina and, as of 2022, the North Carolina State Board of Elections Mecklenburg County, North Carolina, voter registration information indicates that Ms. Kiessling is an “ACTIVE” registered voter in that county and that state. Petitioner’s Exhibit #2. The “ACTIVE” Mecklenburg County, North Carolina voter registration information from the North Carolina State Board of Elections evidences that Ms. Kiessling’s address is 728 Wingrave Drive, Charlotte, North Carolina 28270. *Id.* North Carolina State Board of Elections voting history records show that Ms. Kiessling has voted in the general election in Mecklenburg County, North Carolina in 2012, 2014, 2016, 2018 and 2020. *Id.* Ms. Kiessling testified that she understood that she could only vote in North Carolina if she were a resident of North Carolina. **Hrg. Transcr. 12:14-17, 4:12-21**.

Upon moving to North Carolina, Ms. Kiessling purchased real property, a townhouse, in Charlotte, North Carolina. Ms. Kiessling continues to own that property located at 1336 Queens Road, Charlotte, North Carolina 28207 and has and continues to pay real property taxes on that property in North Carolina. **Hrg. Transcr. 9:17-24, 17:17-20, 25:18 through 26:3.**

Ms. Kiessling resided in the Charlotte townhouse until 2017. **Hrg. Transcr. 10:1-4.** She then moved to rental property in Charlotte because her family had outgrown the townhouse; Ms. Kiessling lived with her family in the rental property until the summer of 2019. **Hrg. Transcr. 15:18 through 17:13.**

From 2012 to 2019, Ms. Kiessling's motor vehicles were registered in North Carolina. **Hrg. Transcr. 8:2-5.** From 2012 to 2021, Ms. Kiessling possessed a North Carolina driver's license. **Hrg. Transcr. 8:15-17.**

From 2012 to 2019, Ms. Kiessling paid North Carolina property tax and income tax. **Hrg. Transcr. 8:24 through 9:5, 9:17-24.** Also, during this same time period, her federal tax returns listed North Carolina as her residence address. **Hrg. Transcr. 9:6-16.**

From 2012 through at least 2019 Ms. Kiessling owned and operated businesses in North Carolina. **Hrg. Transcr. 4:22 through 5:9, 6:9-20.** She testified one of the reasons she chose Charlotte was due to its convenient airport. **Hrg. Transcr. 24:15-20.**

In an April 8, 2019, Facebook post by Ms. Kiessling, she stated to a friend (who was hoping that she was moving "north") that she was still in "CLT", indicating her Charlotte, North Carolina location and requested that the friend come visit her there. Petitioner's Exhibit #13.

Ms. Kiessling testified that in the Summer of 2019 she bought a house in Minnesota and moved to Minnesota due to her husband taking a new job there. **Hrg. Transcr. 10:23 through**

11:8, 11:14-20, 27:1-12. She testified that she returned to Charlotte from Minnesota to vote. **Hrg. Transcr. 27: 24 through 28:4.**

Ms. Kiessling testified that she sold the house that she had purchased in Minnesota in the Summer of 2020. **Hrg. Transcr. 11:18-20.**

Ms. Kiessling testified that she has had a West Virginia driver's license since August 2021. **Hrg. Transcr. 8:9-11.** Ms. Kiessling testified that in the last two years, she filed state income tax returns in West Virginia. **Hrg. Transcr. 8:24 through 9:1.**

Ms. Kiessling testified that she split time equally between West Virginia and North Carolina from 2012 to the beginning of the COVID-19 pandemic. **Hrg. Transcr. 10:5 through 11:13.** When she stayed in West Virginia, her husband did not accompany her. **Hrg. Transcr. 28:23 through 29:4.** Until Ms. Kiessling and her husband purchased their current residence, she stayed with her parents in Spencer when she came to West Virginia. **Hrg. Transcr. 18:1-7, 28:23 through 29:1, 32:3-9.** Her family furniture was not moved to West Virginia until the purchase of her current residence. **Hrg. Transcr. 34:23 through 35:4.**

Ms. Kiessling testified that she moved to West Virginia due to the pandemic. **Hrg. Transcr. 18:1-4.** However, in an October 9, 2020, Facebook post, which Ms. Kiessling confirmed was from her Facebook account, Ms. Kiessling stated that, "My family will be spending the next few months in Spencer". Petitioner's Exhibit #14. In that same Facebook post string in response to Ms. Kiessling's friend Kolby Lynne's question, "You're coming home?", Ms. Kiessling stated, "We just sold our house and spending some time in WV while we look for another – so not sure how long we'll be here." *Id.* This statement contradicts Ms. Kiessling's testimony at the hearing that in October 2020 it was her intent to remain in West Virginia.

The Court **FINDS** that from 2012 through – at the earliest – 2019, Ms. Kiessling was a resident of and had her domicile in Charlotte, North Carolina. The Court credits the undisputed objective evidence listed above over her aspirational testimony that she always intended to return to West Virginia. The Court notes that Ms. Kiessling was a credible witness who presented honest testimony with a forthcoming and candid demeanor. None of these findings are intended to cast doubt on Ms. Kiessling’s credibility as a witness.

### **CONCLUSIONS OF LAW**

At the outset, the Court notes that the State Supreme Court has specified how time should be calculated in determining a primary candidate’s domicile. The Supreme Court explained,

In construing West Virginia Constitution art. VIII, § 23, now West Virginia Constitution art. IX, § 10, governing the election of county commissioners, this Court held in the single Syllabus Point of *Fansler v. Rightmire*: “The word ‘election,’ as used in section 23, article 8, Constitution of West Virginia, has reference to general elections—the final choice of the entire electorate—and not to the selection of candidates in a primary.” As noted by the Court in *Fansler*, “Candidates at the time of the adoption of our present Constitution were chosen by party conventions. A primary was not contemplated.” Likewise, the word “election,” as used in West Virginia Constitution art. VI, § 12, refers to general elections and not to the selection of candidates in a primary. Therefore, in order to meet the durational residency requirement found in this constitutional provision, the respondent candidates must have established domicile in the senatorial district and the county which they respectively seek to represent one year prior to the impending November general election.

*White v. Manchin*, 173 W. Va. 526, 542, 318 S.E.2d 470, 486-87 (1984) (internal citations omitted). The Court notes that the State Supreme Court was considering the one-year district residency rule. However, this Court finds that the same logic applies to the five-year West Virginia citizenship rule, as both are constitutional provisions relating to the same subject matter. The Court thus concludes that the State Supreme Court’s holding regarding the calculation of time in *White v. Manchin* shall apply to the five-year calculation performed herein. Accordingly, despite

Petitioner's argument to the contrary, Ms. Kiessling's domicile will be measured according to the general election set to occur on November 8, 2022, not from the May 10, 2022, primary election.

Article 4, sec. 4 of the West Virginia Constitution provides that any person "elected or appointed to any state, county or municipal office. . . must have been citizens of the state for five years next preceding their election or appointment." This Court emphasizes the importance of the term "next preceding," as candidates are required to be citizens of West Virginia for the five years "next preceding," or immediately before, their elections. This is in contrast to a provision that would permit candidates to have simply been West Virginia citizens for five years throughout their lives, not necessarily the five years prior to the election.

The Supreme Court of Appeals of West Virginia has upheld the constitutionality of this requirement:

Compelling state interests are served by article IV, section 4 of the West Virginia Constitution, which provides that a candidate for senator must be a citizen of the State for five years next preceding the election, and therefore, that constitutional provision does not violate a candidate's rights to equal protection.

Syl. pt. 1, *State ex rel. Harden v. Hechler*, 187 W.Va. 670, 421 S.E.2d 53 (1992).

The requisites of West Virginia citizenship are contained in article 2, section 3, of the West Virginia Constitution which grants citizenship to "[a]ll persons residing in this state." In the context of the determination of residency for the purpose of elections, the Supreme Court has equated residence with domicile: "[i]n West Virginia, the term 'residence' is synonymous with the term 'domicile' for election law purposes." Syllabus Point 7, *White v. Manchin*, 173 W.Va. 526, 318 S.E.2d 470 (1984).

"A [person] may live in several different places but he [or she] can have only one domicile. Domicile is a place a person intends to retain as a permanent residence and go back to ultimately after moving away." Syllabus Point 2, *Shaw v. Shaw*, 155 W.Va. 712, 187 S.E.2d 124 (1972).

However, as the Court noted in *White*, intention alone is insufficient: “Residence is thus made up of fact and intention, the fact of abode and the intention of remaining, and is a combination of acts and intention. Neither bodily presence nor intention alone will suffice to create a residence. There must be a combination and concurrence of these elements and when they occur, a residence is created.” *White*, 173 W. Va. at 538, 318 S.E.2d at 482 (internal quotations omitted).

Finally, “[t]he important facts in determining the domicile of a person who has more than one residence are the physical character of each, the time spent and the things done in each place, and whether or not there is an intention to return to the original domicile.” Syllabus Point 4, *Shaw v. Shaw*, 155 W.Va. 712, 187 S.E.2d 124 (1972).

In making the determination, the Court must be guided by objective evidence: “Intent to change domicile, which requires an intent not to return to the old domicile, is to be inferred from facts and circumstances, not from self-serving representations.” *White*, 173 W. Va. at 542, 318 S.E.2d at 486; *State v. Stalnaker*, 186 W. Va. 233, 236, 412 S.E.2d 231, 234 (1991). The party alleging a change of domicile has the burden of proof. *State v. Stalnaker, supra*.

The Court **CONCLUDES** that Petitioner has met her burden of establishing that Ms. Kiessling established a domicile in North Carolina in 2012 when she moved there from Kanawha County. She purchased a residence and a business, registered as a North Carolina voter, voted several times in North Carolina elections from 2012 through 2020, obtained a driver’s license, registered her vehicles, and paid taxes in North Carolina.

These acts are sufficient to establish domicile in North Carolina. In *Harden*, the Supreme Court found the following facts sufficient to find a candidate for senate was not a West Virginia resident:

The evidence presented to this Court, some of which was presented at oral argument and was not disputed by Mr. Russell, is that Mr. Russell did not pay income tax in

this State during the years of 1987 and 1988. He did not register to vote in West Virginia until October 17, 1989. Mr. Russell did not have a West Virginia driver's license until November of 1989, and his 1987 Dodge automobile was titled and registered in the District of Columbia until November of 1989. Finally, he did not purchase a home in this State until August of 1989.

*Harden*, 187 W. Va. 670, 67, 421 S.E. 2d 53, 56. Here, Ms. Kiessling clearly mirrors each of these facts found by the State Supreme Court to be highly persuasive, if not dispositive, in *Harden*. Ms. Kiessling has not paid income tax in West Virginia for the five years next preceding the November 2022 election. She was not registered to vote in West Virginia for these five years, as she voted in North Carolina as recently as November 2020. Ms. Kiessling obtained a West Virginia driver's license in August 2021, clearly later than five years prior to the election. Her automobiles were registered and titled in North Carolina as recently as 2019. Finally, Ms. Kiessling did not purchase a home in West Virginia until 2021.

The Court **CONCLUDES**, pursuant to *State ex rel. Harden v. Hechler*, that the totality of the circumstances indicates that Ms. Kiessling has not been domiciled in West Virginia for five years next preceding the November 2022 general election. The Court expresses no opinion regarding an exact time when Ms. Kiessling's West Virginia domicile began after leaving North Carolina, but it cannot be disputed that her West Virginia domicile has not been established for the requisite five years prior to the November 2022 general election.

In making this conclusion, the Court finds it significant that prior to 2021, Ms. Kiessling did not have a residence of her own in West Virginia. Even if the Court credits her testimony about the amount of time she spent in West Virginia, the Court finds it unlikely that a self-sufficient, married person with children who owned her own businesses considered her parents' West Virginia home to be her domicile. The State Supreme Court has rejected similar subjective



testimony. *White, supra* (rejecting room where candidate slept as domicile when candidate had a fully furnished apartment outside the district).

The Court is particularly troubled by the fact that Ms. Kiessling claims domicile in West Virginia having voted in a North Carolina election as recently as 2020. Under North Carolina law, voting requires that a person register to vote in the place where “the person's habitation is fixed, and to which, whenever that person is absent, that person has the intention of returning.” N.C. Gen. Stat. Ann. § 163-57(1). While at the hearing Ms. Kiessling denied that she met this test, the Court finds that the act of voting in North Carolina constitutes an admission by her that she had a fixed habitation in North Carolina where she had an intention of returning.

Moreover, the Court finds persuasive the fact that while residing outside North Carolina, Ms. Kiessling voted in North Carolina elections. The Court notes that the focus here is determining when Ms. Kiessling was domiciled in West Virginia. Ms. Kiessling’s voting in North Carolina clearly evidences a belief that North Carolina was her fixed domicile. Ms. Kiessling may have voted in North Carolina while residing in North Carolina out of convenience. However, it cannot be said that voting in North Carolina elections while residing elsewhere is convenient in any respect. If the physical locus of her voting was determined by where she was located and thus where she could most easily vote, Ms. Kiessling would have registered to vote in Minnesota when she purchased a home there. However, Ms. Kiessling did not, instead remaining registered to vote in North Carolina. The Court finds this to reflect a clear belief that although Ms. Kiessling may have resided elsewhere, she continued to consider North Carolina to be her domicile and the proper state in which she should vote as a citizen thereof.

In *Sutton v. Sutton*, 128 W.Va. at 296–97, 36 S.E.2d at 612, the Court rejected a contention similar to Ms. Kiessling’s, that economic, cultural, and civic ties with a particular community are sufficient to establish domicile, stating:

A man may remove from his place of residence and establish a domicile or residence elsewhere, and still own property, have important business or financial connections, leave his investments undisturbed, and even plan for his own burial, in a community in which he lived for a long period of time, without continuing to be a resident of the locality which he has left with the intention of staying away indefinitely.

Here the objective evidence establishes that Ms. Kiessling left West Virginia in 2012 with her husband and established a new domicile in North Carolina. As late as 2020, there is evidence that she had no intent to return to West Virginia. While she may now have established a domicile in West Virginia, the Court concludes, based on her actions, that she was domiciled in North Carolina through at least 2019. Consequently, she is ineligible as a candidate for the West Virginia Senate because she fails to meet the five-year residency requirement of Art. 4, sec. 4 of the West Virginia Constitution.

“In West Virginia a special form of mandamus exists to test the eligibility to office of a candidate in either a primary or general election.” Syl. pt. 5, in part, *State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 223 S.E.2d 607 (1976). Thus, “[b]ecause there is an important public policy interest in determining the qualifications of candidates in advance of an election, this Court does not hold an election mandamus proceeding to the same degree of procedural rigor as an ordinary mandamus case.” Syl. pt. 2, *State ex rel. Bromelow v. Daniel*, 163 W.Va. 532, 258 S.E.2d 119 (1979); syl. pt. 3, *State ex rel. Carenbauer v. Hechler*, 208 W.Va. 584, 585, 542 S.E.2d 405, 406 (2000). This relaxed standard was first adopted in the context of cases where the petitioner sought to preserve the right to vote or to run for political office, *see, e.g., syl. pt. 3, State ex rel. Sowards v. County Comm’n of Lincoln Co.*, 196 W.Va. 739, 474 S.E.2d 919 (1996); *State ex rel.*

*Sandy v. Johnson*, 212 W.Va. 343, 348, 571 S.E.2d 333, 338 (2002), and has been expanded to cases seeking to prohibit a candidate from running:

While we countenanced easing the standard for issuing extraordinary relief in the context of “preserving” the right to run for political office in *Sowards*, the issues raised in this case, although aimed at prohibiting a candidacy, suggest similar exigencies which require immediate, rather than deferred, resolution. Moreover, as we explained in *Bromelow*, “[t]he principal purpose of the liberalized election mandamus proceeding is to provide an expeditious pre-election hearing to resolve eligibility of candidates, so that voters can exercise their fundamental rights as to all eligible candidates.” *Id.* at 536, 258 S.E.2d at 122; *see also State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 527, 223 S.E.2d 607, 616 (1976) (stating that “intelligent and meaningful exercise of the franchise requires some method of averting a void or voidable election” and recognizing that “some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery....”).

*State ex rel. Carenbauer v. Hechler*, 208 W.Va. at 588, 542 S.E.2d at 409. As the West Virginia Supreme Court has recognized, prompt resolution of candidate eligibility disputes furthers important public policies:

A consistent line of decisions of this Court during the last fifteen years clearly recognizes that the intelligent and meaningful exercise of the franchise requires some method of averting a void or voidable election. Consequently this Court has recognized that some form of proceeding must be available by which interested parties may challenge in advance of a primary or general election the eligibility of questionable candidates in order to assure that elections will not become a mockery.

*State ex rel. Maloney v. McCartney*, 159 W.Va. at 526-27, 223 S.E.2d at 616; *see also White v. Manchin*, 173 W.Va. at 532-534, 318 S.E.2d at 476-478 (1984).

The Supreme Court has consistently recognized that mandamus to the Secretary of State is appropriate to strike an ineligible candidate from the ballot prior to the election. Syl. pt. 3, *State ex rel. Carenbauer v. Hechler*, 208 W.Va. 584, 585, 542 S.E.2d 405, 406 (2000); *State ex rel. Maloney v. McCartney*, 159 W.Va. 513, 527, 223 S.E.2d 607, 616 (1976); *White v. Manchin*, 173 W.Va. 526, 532-534, 318 S.E.2d 470, 476-478 (1984).

W. Va. Code, § 3-1A-6(a) authorizes the Secretary of State, as chief election official, to issue orders to all election officials, county commissions, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners and poll clerks who are required to abide by any orders that may be issued. As such, a writ directed at the Secretary of State is sufficient to provide the relief required by this Petition. This was the same procedure used successfully in *State ex rel. Boley v. Tennant*, 228 W. Va. 812, 818, 724 S.E.2d 783, 789 (2012).

### DECISION

The Court **CONCLUDES** that Petitioner has established that Respondent Andrea Kiessling has not been a resident of the State of West Virginia for the five years next preceding the November 2022 general election. The Court hereby **GRANTS** the Petition to Issue a Writ of Mandamus and **ORDERS** the following:

(1) the Respondent Secretary of State is **ORDERED** to withdraw his certification of candidacy of Respondent Andrea Kiessling declaring her ineligible to run for the West Virginia Senate District 8;

(2) the Secretary of State is **ORDERED**, pursuant to W. Va. Code, § 3-1A-6(a), to direct all election officials, county commissioners, clerks of county commissions, clerks of circuit courts, boards of ballot commissioners, election commissioners, and poll clerks associated with the administration of the primary elections to disregard and refrain from tallying, tabulating, certifying, or returning any vote cast, absentee, write-in, or otherwise, for Respondent Andrea Kiessling, and

(3) the Secretary of State is **ORDERED** to direct the county clerks in Kanawha, Putnam, Jackson, Roane and Clay counties to post a sign at all polling places stating that the Respondent Andrea Kiessling is ineligible as a candidate for Senate District 8. In his Post-Hearing

Memorandum, Respondent Secretary of State Mac Warner noted, “[t]he Secretary suggests that any such sign be posted on the polling place door, or possibly the check-in table where voters sign the poll book and receive their ballot.” Pursuant to the Secretary of State’s suggestion, the Court **ORDERS** that all signs be posted on the polling place door.

The objections and exceptions of the parties to the rulings of the Court made herein are hereby noted and preserved. There being nothing further, the Court **ORDERS** that this action be **STRICKEN** from the docket of this Court. The Court further **DIRECTS** the Clerk of this Court to provide a certified copy of this Order to all counsel of record.

ENTERED: May 4, 2022



Honorable Louis H. “Duke” Bloom  
Thirteenth Judicial Circuit

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 04  
DAY OF May, 2022  
Cathy S. Gatson CLERK  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA