

Davis chastises fellow justices in Daniel Hall dissent

By David Gutman



When a majority of the West Virginia Supreme Court ruled that a Republican should fill a vacant state Senate seat, their interpretation of state law was unconstitutional, Justice Robin Davis wrote in a dissent filed Wednesday.

The court ruled 3-1 last week that the seat vacated by Democrat-turned-Republican Daniel Hall should be filled by a Republican because Hall was a Republican when he quit. Sue Cline, a Wyoming County Republican, was sworn in as a new senator on Monday.

Davis agreed with the court's reading of the law, which says the seat should be filled by the party of the person "immediately preceding" the vacancy, but said a closer reading of the law reveals inconsistencies which violate the

state constitution.

Just as she did in oral arguments, Davis chastised the lawyers for both the Democratic and Republican parties for focusing almost exclusively on state code, and not considering whether the code was constitutional.

"Like proverbial deer in the headlights," Davis wrote of the lawyers, they "have virtually frozen when faced with the full measure of the legal question presented by this case."

Davis also had harsh words for her fellow justices, Chief Justice Menis Ketchum and Justice Allen Loughry, who wrote concurring opinions suggesting that a finding separate from their own was perhaps evidence of political bias.

Loughry, in his concurring opinion, wrote that the Democrats' case was "a thinly veiled attempt to bait the members of this Court into a partisan solution."

Ketchum, in his concurrence, which was just one paragraph long, wrote that his vote "effectively eliminates any chance of my being re-elected."

Loughry is a Republican, as is Justice Brent Benjamin, who recused himself from the case. Ketchum, Davis and Justice Margaret Workman, who wrote the majority opinion are Democrats.

"When I disagree with a decision endorsed by the majority of this court, I do so because I interpret the law differently," Davis wrote. "I find it profoundly troubling that a commentary suggesting bias or impugning the integrity of a justice would ever have a place in a separate, concurring opinion."

Davis wrote that the majority's interpretation of the law violated two different sections of the West Virginia Constitution.

Hall was elected in 2012 as a Democrat, but switched parties the day after the 2014 elections, breaking

a 17-17 tie in the Senate and giving the Republicans a narrow majority.

Davis wrote that Hall has a constitutionally protected right to join whatever party he wants, but in appointing a replacement from a different party than the voters elected, state code disenfranchises the voters who elected a Democrat in 2012.

“This construction, dictated by the statute’s plain language, effectively silences the voters’ voice and cannot be reconciled with the voters’ constitutional right to select a representative of their choosing,” Davis wrote.

The majority’s interpretation of the law is also unconstitutional for another, more complex reason, Davis wrote.

One section of state code says that an open seat should be replaced by the party of the person “immediately preceding” the vacancy.

But, two sections lower, code says that the replacement should be chosen by the party executive committee from the district where the vacating senator lived “at the time of his or her election.”

The discrepancy: the first section instructs how to choose the party, while the second section instructs how to choose the geography.

The geography instruction is necessary, Davis writes, in case of redistricting — to make sure that every district is properly represented even if district boundary lines change between a senator’s election and his or her resignation.

If the Legislature says that a replacement senator should reflect the district’s geography at the time of election, Davis wrote, the voters’ choice of parties at the time of election should be recognized as well.

But that’s not what the statute says.

To interpret the code as it is written, Davis writes, “makes it internally inconsistent” and “in light of this incongruous and inconsistent result,” it “must be deemed unconstitutional.”

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