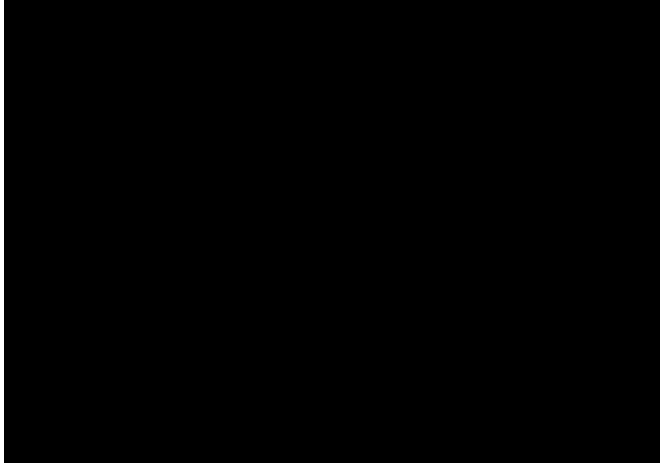


West Virginia high court hears arguments on Senate vacancy

Jonathan Mattise, Associated Press Updated 2:24 pm, Tuesday, January 19, 2016



CHARLESTON, W.Va. (AP) — **Democrats** believe it reflects the will of the voters to fill a Senate swing seat with a member of their party, while Republicans think state law clearly requires a GOP replacement, attorneys for the parties told state Supreme Court justices Tuesday.

After Tuesday's oral arguments, lawmakers await a high court decision that will dictate if Republicans will maintain a majority needed to pass a right-to-work bill and other contentious agenda items.

Attorneys for the **Democratic Party**, Democratic Gov. **Earl Ray Tomblin**, and **Republican Party** and GOP Attorney General **Patrick Morrisey** appeared at Tuesday's hearing over the void left by former Sen. **Daniel Hall**.

Hall, R-Wyoming, was elected a Democrat in 2012 and turned Republican after the 2014 elections, establishing an 18-16 GOP majority. Hall recently resigned for a job with the **National Rifle Association**.

A Democratic appointment would create a 17-17 Senate deadlock, and tie votes kill bills. Still, Senate Majority Leader **Mitch Carmichael** said Tuesday the GOP leadership planned to run its agenda regardless of the court decision.

"We think these are tough issues that we need to show the people of West Virginia

who's for them and who's against them," said Carmichael, R-Jackson.

Supreme Court justices peppered all parties with criticisms Tuesday.

Justice **Robin Davis** told the Republican counsel she didn't believe the GOP's interpretation met constitutional requirements in a previous U.S. Supreme Court case. She asked Democratic attorneys why they didn't focus more on those constitutional issues.

Justice **Margaret Workman** didn't agree with Democratic lawyers that the statute about replacing vacancies is ambiguous.

And **Justice Allen Loughry** asked each of the parties if they would comply with the court's decision. Senate President **Bill Cole**, R-Mercer, for one, has not yet committed to follow the court's order if the ruling calls for a Democratic replacement.

Democratic attorneys said state law is unclear about replacing someone who flipped parties, and a Democratic appointment reflects the choice last made by voters.

Republican counsel said the statute is clear and voters trusted Hall's judgment in the best interest, including in switching parties.

The court has barred an appointment until it rules. Justice **Brent Benjamin** recused himself.

The 60-day legislative session began Jan. 13.

If the ruling favor Democrats, Senate Minority Leader **Jeff Kessler**, D-Marshall, said his party would align against right to work, the repeal of the state prevailing wage and the introduction of charter schools.

If the ruling is favorable for Republicans, the GOP could overturn possible Tomblin policy vetoes with a simple majority.

Cole and Kessler are both running for governor.