The Governor's Mansion is a House, Not a Home: Requiring Executives To Live at the Seat of Government

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THE GOVERNOR’S MANSION IS A HOUSE, NOT A HOME: REQUIRING EXECUTIVES TO LIVE AT THE SEAT OF GOVERNMENT

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I. INTRODUCTION

When you think of the office of the President of the United States, one of your first thoughts or visuals is likely the White House. After all, since the construction of the White House, every President has lived and worked at 1600 Pennsylvania Avenue.1 Indeed, the White House is a central symbol in American culture and history. But did you know the President is not required to live there?2 While every President has chosen to reside in the historic home, it is not a job requirement. However, this is not the case for states that have executive residency requirements. Several states, including West Virginia, require their

2  See John Donovan, Does the U.S. President Have To Live in the White House?, HOWSTUFFWORKS (July 5, 2016), https://people.howstuffworks.com/does-the-us-president-have-live-the-white-house.htm.
governors and other executive officers to live in their seats of government. While this may not force a governor to live in an official state house, it likely means there is a large historic mansion earmarked for such a purpose. With varying housing preferences among governors and the growing need for other resources in states, are executive mansions still needed in the 21st century?

In Part II, this Note will explore the current litigation in the West Virginia court system regarding what it means for a governor to “reside.”3 Further, Part III includes a 50-state survey discussing the different requirements and practices utilized throughout the United States for gubernatorial residency, specifically focusing on the use of governors’ mansions.4 Finally, Part IV will provide an update on the residency lawsuit, discuss the political impact of this lawsuit, and then compare the different state practices regarding residency and official homes to make recommendations for West Virginia to update its current use of the Executive Mansion.5

II. BACKGROUND

Article VII of the West Virginia Constitution requires the Governor and executive department6 to “reside at the seat of government during their terms of office.”7 Therefore, these elected officials are supposed to live in Charleston, West Virginia, while serving their four-year terms. Elected officials living where they work is not an uncommon precedent and is practiced (albeit not required) in all levels of government from a town mayor to the President of the United States. Large and historic governors’ mansions throughout the country signify the tradition of executive residency requirements.8 However, this political norm is changing because while some governors are required to live in the seats of government, others may choose to commute from their homes to work.9

The issue of whether an executive officer is required to reside in the seat of government has made its way to the West Virginia courts. Governor Jim Justice does not live in the West Virginia Executive Mansion, located on the Capitol grounds, or elsewhere in Charleston, West Virginia.10 He resides in

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3 See infra Part II.
4 See infra Part III.
5 See infra Part IV.
6 The West Virginia executive department consists of the Governor, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, and the Attorney General. See W. VA. CONST. art. VII, § 1.
7 Id.
9 See infra Part III.
Lewisburg, West Virginia, where his family owns the Greenbrier Resort. Under this living situation, the Governor travels 112 miles to work at the Capitol—leaving the West Virginia Executive Mansion primarily empty.

The Governor’s choice to live in Lewisburg, West Virginia, and commute to Charleston is a source of contention with some West Virginia legislators. Specifically, Isaac Sponaugle, the West Virginia House of Delegates Assistant Minority Whip, representing Pendleton County, has sued the Governor three times regarding his residency. The first two lawsuits were dismissed. Delegate Sponaugle first filed suit in the Kanawha County Circuit Court (the county where Charleston is located), but the case was dismissed because Sponaugle failed to meet procedural filing requirements. Second, Sponaugle filed a writ with the West Virginia Supreme Court of Appeals, but the Court denied the writ.

Third, Sponaugle filed a petition for Writ of Mandamus with the Kanawha County Circuit Court in December 2018, and the lawsuit successfully progressed through the court system. A Writ of Mandamus orders a government official to perform a specified duty. Here, Sponaugle sought to find out whether the Governor is required to reside in Charleston during his term. And pending the answer to that question, the Writ of Mandamus could compel the Governor to live in the “seat of government.” In July 2019, Judge Charles King denied Governor Justice’s Motion to Dismiss because Judge King found that Sponaugle’s claims were “sufficiently pled and could provide theories under which relief could be granted.”

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15 Associated Press, supra note 13.
17 Id.
18 See Mandamus, BLACK’S LAW DICTIONARY (11th ed. 2019).
19 Asbury, supra note 16.
20 Id.
Originally, the circuit court ordered the Governor to comply with a discovery order and answer Sponaugle’s Petition for Writ of Mandamus.\(^\text{21}\) Through discovery, Sponaugle sought information regarding how many nights the Governor spent in the Governor’s Mansion since January 2017, how much personal property the Governor has in the Governor’s Mansion, how the Governor stays informed on Governor’s Office matters when he is not there, and how much work the Governor has done while away from the Governor’s Office.\(^\text{22}\) However, in August 2019, the court conducted a hearing on two motions by the Governor and stayed discovery in the case.\(^\text{23}\) The Governor’s motions asked the Kanawha County Circuit Court to certify several questions to the Supreme Court of Appeals of West Virginia or provide further explanation as to why the court denied the Governor’s Motion to Dismiss.\(^\text{24}\) The Governor’s Motion asked the circuit court to stay proceedings until the West Virginia Supreme Court provided answers to five questions.\(^\text{25}\) The questions aimed to determine if a Writ of Mandamus could be used to legally enforce a governor to reside in the seat of government and to determine the state constitution’s definition and parameters of “reside.”\(^\text{26}\)

In the alternative, the Governor moved for the circuit court to provide the findings of fact and conclusions of law used when denying the Motion to Dismiss.\(^\text{27}\) The Governor filed this motion because he intended to file a Writ of Prohibition on the court’s ruling, if the Motion to Certify Questions was denied.\(^\text{28}\) As of August 23, 2019, the court granted the Motion to Stay the Case until one of two paths were pursued: certified questions by the supreme court or further justification by the circuit court.\(^\text{29}\)

\(^{21}\) Id.

\(^{22}\) Brad McElhinny, Judge Denies Motion To Dismiss Governor Justice’s Residency Case, METRO NEWS (July 17, 2019) [hereinafter McElhinny, Judge Denies Motion], http://wvmetronews.com/2019/07/17/judge-denies-motion-to-dismiss-governor-justices-residency-case/.

\(^{23}\) Ashbury, supra note 16.


\(^{26}\) Id.

\(^{27}\) Id.

\(^{28}\) Id.

\(^{29}\) Ashbury, supra note 16.
As the case progressed, Delegate Sponaugle’s chief argument was that the Governor’s action violated the West Virginia Constitution because he was not fulfilling the duties of the State’s Chief Executive. Sponaugle stated the issues facing West Virginia require the Governor’s full attention and that the problems cannot be solved if the Governor is not present in Charleston, West Virginia. In an interview, Sponaugle said, “The state is just loaded with all types of problems that are not getting corrected and are actually getting worse. . . His lack of interest and absenteeism are one of the main reasons why that is occurring.” The lawsuit claims the Governor “has not spent more than a handful of nights” in the West Virginia Executive Mansion during his first two years in office. Critics of the Governor are concerned the Governor will miss important policy discussions and be absent during critical events because he does not live in the seat of government.

On the other hand, Governor Justice does not believe it is necessary to live in Charleston to work as the Governor. With advancements in technology and transportation, the Governor argues his full time presence in Charleston is not as necessary as it would have been for the Governor in 1872. Ultimately, the Governor took the position that he can complete his responsibilities just as well by traveling through the State as he could from the Governor’s Office. The Governor’s Office reported that within his first two years of office, the Governor put over 140,000 miles on his vehicle meeting with leaders and citizens throughout West Virginia. Further, the Governor pays for his transportation and meals for the State Troopers who are required to travel with him.

The Governor filed the certified questions to determine a definition for “reside” and how often the Governor would need to sleep in Charleston to meet the constitutional expectation. The Governor and his attorneys believe the term “reside” needs to be defined before it can be enforced. In the motions, the Governor’s attorneys stated that the West Virginia Supreme Court must

31 Id.
35 Robertson, *supra* note 33.
36 McElhinny, *Judge Denies Motion*, *supra* note 22.
37 Id.
38 Asbury, *supra* note 16.
determine how much time is required to “reside” and a “precise, universal definition” does not exist. The Governor argued that “reside” means “physical presence” and the standard is met because the Governor is “physically in the capital several days a week.”

III. EXECUTIVE RESIDENCY REQUIREMENTS: A 50 STATE SURVEY

West Virginia is not the only state that constitutionally requires governors to reside at the seat of government. Approximately 12 other states require the governor to maintain a home in the state’s capital. Further, six states require the governor and other executive officers to maintain their offices within the seat of government, rather than fully reside within the capital. This leaves approximately 30 states without a constitutional residency requirement.

Interestingly, Kentucky does not require the Governor to reside within the seat of government, but statutorily provides the governor with the use of the governor’s mansion, free of rent. Similarly, Nevada statutorily mandates the Governor to keep his or her office and reside at the seat of government, but does not include it within its constitution. And, rather than require the governor to reside within the state capital, the Utah Constitution only requires the governor to reside within Utah while in office.

However, many governors choose to live in the seat of government or the governor’s mansion, even without a constitutional or statutory mandate. In

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39 Motion To Certify Questions, supra note 25.
40 Robertson, supra note 33.
41 The following state constitutions state the governor shall reside at the seat of government: ALA. CONST. art. V, § 118; ARIZ. CONST. art. V, § 1; ILL. CONST. art. V, § 1; MD. CONST. art. II, § 21; MONT. CONST. art. VI, § 1; N.M. CONST. art. V, § 1; N.C. CONST. art. III, § 5; N.D. CONST. art. V, § 1; S.C. CONST. art. IV, § 20; TEX. CONST. art. IV, § 13; VA. CONST. art. V, § 4; WASH. CONST. art. III, § 24; W. VA. CONST. art. VII, § 1.
42 The following states constitutionally mandate the governor and other executive officers shall have their office at the seat of government: ARK. CONST. art. VI, § 1; IDAHO CONST. art. IV, § 1; MICH. CONST. art. V, § 9; MO. CONST. art. IV, § 20; NEB. CONST. art. IV, § 1; OKLA. CONST. art. VI, § 1.
43 The following states do not constitutionally require the governor to reside or hold office at the seat of government: ALASKA CONST.; COLO. CONST.; CAL. CONST.; CONN. CONST.; DEL. CONST.; FLA. CONST.; GA. CONST.; HAW. CONST.; IND. CONST.; IOWA CONST.; KAN. CONST.; KY. CONST.; LA. CONST.; ME. CONST.; MASS. CONST.; MINN. CONST.; MISS. CONST.; N.H. CONST.; N.Y. CONST.; NEV. CONST.; OHIO CONST.; OR. CONST.; PA. CONST.; R.I. CONST.; S.D. CONST.; TENN. CONST.; UTAH CONST.; VT. CONST.; WIS. CONST.; WYO. CONST.
44 See KY. REV. STAT. ANN. § 11.020 (West 2020). “The Governor shall have the use of the mansion and the furniture therein and premises, free of rent, but the purchase of furniture for the mansion shall be upon the recommendation of the secretary of the Finance and Administration Cabinet and in accordance with KRS Chapter 42.” Id.
45 NEV. REV. STAT. ANN. § 223.040 (West 2020).
46 UTAH CONST. art. VII, § 1.
fact, at least 45 of the 50 states have official executive residences. And among those states with mansions, governors traditionally live in the official residences. However, governors who do not live in the residences often cite practical reasons for choosing to forego the gubernatorial perk. Thus, a constitutional problem would only exist in the select states that specify that the governor “shall reside” in the seat of government.

Part III evaluates four types of situations that arise regarding executive residency requirements and the use of governors’ mansions. First, Section III.A discusses states following the status quo, i.e., states constitutionally requiring the governor to reside in the seat of government and governors meeting that expectation through residing in the governor’s mansion. Second, Section III.B then discusses governors who are not constitutionally required to reside in the executive residence but do so anyway because of tradition or convenience. Third, Section III.C then transitions to governors who do not live in a governor’s mansion and are not required to do so. And, lastly, Section III.D concludes by discussing instances in history where, like West Virginia, governors were mandated to reside in the seat of government but resided elsewhere.

A. States Following the Status Quo: Home Sweet Governor’s Mansion

Among the 13 states constitutionally requiring governors to reside in the seat of government, several states represent how society traditionally pictured executive residency. In these instances, the governors reside in a governor’s mansion throughout their terms in office, just like their predecessors and successors. The residency provisions in the South Carolina, Texas, and Virginia Constitutions are representative of the 13 states requiring residency and emphasize the elements of “reside,” “seat of government,” and “Capital of the State.”

The South Carolina Constitution states that the Governor “shall reside in the Capital of the State,” giving exception to cases of epidemics, natural disasters, or war emergencies. The pertinent section of the constitution emphasizes that the Governor is to reside where the General Assembly sessions

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49 See infra Section III.A.

50 See infra Section III.B.

51 See infra Section III.C.

52 See infra Section III.D.

53 S.C. CONST. art. IV, § 20.
are held, while in session.\textsuperscript{54} This signifies the purpose that the governor is meant to be present during legislative matters. The current South Carolina Governor, Henry McMaster, resides in the mansion.\textsuperscript{55} All South Carolina Governors have lived in the official residence, except for three who opted to live in private residences still within Columbia, the state capital.\textsuperscript{56}

Under the “Residence of Governor” section in its constitution, Texas requires “[d]uring the session of the Legislature[,] the Governor shall reside where its sessions are held, and at all other times at the seat of Government.”\textsuperscript{57} As such, the Texas Governor’s Mansion is the “fourth oldest continuously occupied governor’s residence” and currently houses Governor Greg Abbott, his family, and their pets.\textsuperscript{58} As the oldest governor’s mansion west of the Mississippi River, residency is ingrained in Texas’s state history and tradition.\textsuperscript{59} Thus, when the mansion was significantly damaged by an arsonist in June 2008, the mansion was able to be fully restored through the support of Texas legislators and citizens.\textsuperscript{60} The work of repairing the mansion enabled current and future first families to reside in the mansion.\textsuperscript{61}

Virginia is another prime example of governors utilizing the official residency to fulfill the constitutional requirement. Article V, section four of the Virginia Constitution states in part that “[t]he Governor shall reside at the seat of government.”\textsuperscript{62} Virginia’s Executive Mansion is the country’s oldest executive residence in existence still being used for the original purpose of housing Virginia’s governor and first family.\textsuperscript{63} Governor Ralph Northam and his wife currently reside in the Richmond mansion and are its 56th residents.\textsuperscript{64} In conclusion, among the 45 states with a governor’s mansion, there is little issue when the political norm is mandated and subsequently followed.

B. Pursuing the Housing Perk: Governors Opting for the Mansion

As you can likely imagine, many governors do not need their arms twisted to live in their respective governor’s mansion. Just like a typical person looking for a house, large square footage and a short commute to work are great features. These are just a few of the perks of living in a governor’s mansion. Not to mention governors often live in the house rent free or have subsidized expenses. This alone explains why many governors who are not required to live in their seats of government still opt for the official residences. Between states only requiring governors to have offices in the seat of government and those with no constitutional residency provision, almost half of the states’ governors still choose to live in the governor’s mansion. The following examples represent four trends within governors who voluntarily reside in governor’s mansions: (1) full-time residences, (2) part-time residences, (3) governors required to have offices in the seat of government, and (4) governors with additional legal considerations.

First, many governors voluntarily move into their states’ governors’ mansions full-time following their inaugurations, including the governors from Mississippi, Oklahoma, and Minnesota. Despite having no residency requirement, Mississippi has the nation’s second oldest continuously occupied governor’s mansion. Governor Phil Bryant and his wife currently reside in the Mississippi Governor’s Mansion and recently wrote a book about the mansion, discussing memories and paying tribute to the mansion’s former residents and public servants. Like Mississippi, the Minnesota Governor’s Mansion has continuously housed governors without any constitutional mandate. The Minnesota Governor’s Residence was established in 1966 and has housed all 11 governors since then. The current Minnesota Governor, Tim Waltz, has lived in the residence since 2019. Similarly, South Dakota Governor Kristi Noem also lives full time in the States Governor’s Residence. South Dakota received

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65 See e.g., KY. REV. STAT. ANN. § 11.020 (West 2020).
66 See N.Y. CONST. art. IV, § 3.
70 Id.
a new Governor’s Mansion in 2005 with a private residence for the Governor and new facilities to host public gubernatorial events.\(^\text{72}\)

While governors may not choose to live full-time in the official residences, some governors choose to stay in the mansion, close to work, during the weekdays. This is the case for the current Governors of Ohio and Tennessee. The Ohio Governor, Mike DeWine, currently lives in the Governor’s Mansion in Columbus, Monday through Friday.\(^\text{73}\) He and his wife then spend weekends at their home in Cedarville, Ohio.\(^\text{74}\) The Tennessee Governor follows a similar schedule. Governor Bill Lee moved into the Tennessee Governor’s Mansion shortly after his inauguration. He too stays in the mansion during the week and then returns to his family farm in rural Franklin, Tennessee.\(^\text{75}\)

Third, governors may choose to live in the official residence when they are only required to maintain their offices in the seats of government. This is the case for the current Governors of Missouri, Michigan, and Oklahoma. The Missouri Constitution states that the executive and administrative officials “shall establish their principal offices . . . at the City of Jefferson.”\(^\text{76}\) While not required, every Missouri Governor has lived in the mansion for some part of his or her term since its establishment in 1871.\(^\text{77}\) This tradition may partially exist because a previous version of the Missouri Constitution did require the Governor to “reside at the seat of government.”\(^\text{78}\) The current Missouri Governor, Mike Parson, lived in the Governor’s Mansion until September 2019.\(^\text{79}\)

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\(^\text{74}\) Id.


\(^\text{76}\) MO. CONST. art. IV, § 20.


\(^\text{78}\) MO. CONST. art. 5, § 1 (1875) (“The Executive Department shall consist of a Governor, Lieutenant-Governor, Secretary of State, State Auditor, State Treasurer, Attorney General and Superintendent of Public Schools, all of whom, except the Lieutenant-Governor, shall reside at the Seat of Government during their term of office, and keep the public records, books and papers there, and shall perform such duties as may be prescribed by law.”).

Missouri First Lady had to temporarily move out while the mansion underwent major renovations.\textsuperscript{80} During the five-month, $3.8 million renovation, they temporarily resided on the Missouri National Guard Base.\textsuperscript{81}

Like Missouri, the Michigan and Oklahoma Governors chose to live in the mansion. Unlike the previous Michigan Governor who did not live in the Governor’s Mansion, the current Governor, Gretchen Whitmer, resides in the Governor’s Mansion in Lansing.\textsuperscript{82} Michigan has two official residences even though the Governor is not required to live in either house.\textsuperscript{83} In addition to the mansion in Lansing, the State has a summer residence on Mackinac Island.\textsuperscript{84} Similarly, Oklahoma Governor Kevin Stitt also voluntarily lives in the Governor’s Mansion with his wife and six children.\textsuperscript{85} And following tradition, every Oklahoma first family has lived in the Governor’s Mansion since its establishment in 1928.\textsuperscript{86}

Beyond the workplace proximity and free rent, some governors are motivated to live in the mansion by additional factors. For example, the Kansas Constitution does not contain a residency requirement. However, ownership of the Governor’s Mansion, Cedar Crest, is conditional on it being occupied.\textsuperscript{87} The Cedar Crest residence was donated on the condition that it would serve as the official residence of the Kansas Governor.\textsuperscript{88} Therefore, if the Governor does not “maintain a residence” at Cedar Crest, the State would lose the mansion and it would become property of Washburn University.\textsuperscript{89} Thus, Kansas Governor Laura Kelly chose to move into Cedar Crest when she took office.\textsuperscript{90} In conclusion, there are multiple ways governors can choose to occupy the official residencies when they are not constitutionally required.

\textsuperscript{80} Id.
\textsuperscript{81} Id.
\textsuperscript{84} Id.
\textsuperscript{86} Id.
\textsuperscript{87} Weixel, supra note 47.
\textsuperscript{88} Id.
\textsuperscript{89} Id.
\textsuperscript{90} Hannah Brandt, Governor-Elect Kelly Moves to Cedar Crest, KSNT (Jan. 9, 2019, 10:40 PM), https://www.ksnt.com/news/governor-elect-kelly-moves-to-cedar-crest/.
C. Governors Not Moving and You Can’t Make Them

Where the governor lives is a non-issue in states that are constitutionally silent on the matter. Just as governors are able to opt into the housing perk, governors are equally able to forego official housing when there is not a mandate. Governors can determine where they live based on personal matters such as school districts and family needs. For example, a married couple may prefer a smaller home compared to a family of five who would need a larger space. Furthermore, it is not unreasonable to expect some governors would prefer a quiet home over a mansion, which hosts events and tourist groups. Governors can consider these preferences when the state allows. Ohio, Massachusetts, Vermont, New York, and New Jersey are representative of states that do not require governors to live or work in the seat of government. Furthermore, these states offer insight on how a governor’s mansion can be utilized when it is not primarily used for housing.

Ohio’s Executive Residence has housed 11 governors. However, article III of the Ohio Constitution, covering the Executive branch, does not require the Governor to reside in the seat of government. As such, the Governor’s Mansion has, at times, been an empty home of the People. For instance, Former Governor John Kasich chose to live in his own home in Westerville, Ohio. During his term, the Governor’s Mansion was still used for parties and administration events. And his wife, First Lady Karen Kasich, utilized the residence to showcase artwork by Ohioan artists.

Similarly, many New Hampshire first families have not lived in the official residence, Bridges House, in the state capital. A former governor donated Bridges House in the late 1960’s with the intention of it serving as the official residence. However, Bridges House only has two bedrooms and would not be able to fit larger first families. As such, Governors who have chosen to live there full time tended to have grown children who did not live at home.

91 See supra note 43 and accompanying text.
93 Id.
94 Borchardt, supra note 73.
95 Id.
96 Id.
98 Id.
99 Id.
100 Weixel, supra note 47.
Therefore, governors with families can choose to live elsewhere because there is not a residency requirement.\textsuperscript{101} For example, Governor Christopher Sununu lives in Newfields, New Hampshire, with his wife and three children, approximately 45 minutes from Concord.\textsuperscript{102}

Furthermore, a state cannot make a governor live in a governor’s mansion when one does not exist. Massachusetts and Vermont are among the five states without an official residence.\textsuperscript{103} Massachusetts used to call the Shirley-Eustis House the official governor’s residence.\textsuperscript{104} However, the residence only ever housed two governors and has been unoccupied since 1911.\textsuperscript{105} Now, Massachusetts’ governors may reside where they wish, such as the current Governor, Charlie Baker, who lives in Swampscott, Massachusetts, rather than Boston.\textsuperscript{106} Similarly, Vermont has never had a Governor’s Mansion and there is not a push for one.\textsuperscript{107} By not having a mansion, the State can save money on upkeep and similar expenses that fall on taxpayers.\textsuperscript{108} Therefore, Governor Phil Scott lives in Berlin, a short drive from the state capital, Montpelier.\textsuperscript{109}

While New York’s Constitution does not require the Governor to reside in the seat of government, article IV, section three mandates the Governor “shall be provided for his or her use a suitable and furnished executive residence.”\textsuperscript{110} However, a large portion of New York’s governors did not take the state up on its offer, with 28 of 50 governors disfavoring the 40-room mansion.\textsuperscript{111} Governor Andrew Cuomo lives in the New York City suburbs with his girlfriend and children rather than the Governor’s Mansion—the mansion he lived in during the


\textsuperscript{103} Arizona, Idaho, Massachusetts, Rhode Island, and Vermont do not have an official home for the sitting governor and the first family. \textit{See Residences of the American Governors}, supra note 8.

\textsuperscript{104} Weixel, supra note 47.

\textsuperscript{105} Id.


\textsuperscript{107} Weixel, supra note 47.

\textsuperscript{108} Id.


\textsuperscript{110} N.Y. CONST. art. IV, § 3.

1980’s when his father was Governor. Some governors are concerned about privacy, such as Governor Cuomo’s predecessor David Paterson, who stated, “It’s unlike home because you feel like you’re on display.”

New Jersey’s official residence, Drumthwacket, has not been a full time residence since 2004. Drumthwacket is located in Princeton, while the capital of New Jersey is Trenton. As such, Former Governor Christopher Christie commuted to Trenton from his home in Menham, New Jersey. And Governor Phil Murphy chose to live in Monmouth County instead of at Drumthwacket. Like other unoccupied governor’s mansions, Drumthwacket is used for official events and receptions. First Lady Tammy Murphy is interested in renovating the residence “to be used more frequently to host guests for dinners and events, [to] open it up for rotating art exhibits, [and to] leverage it as an educational resource.”

D. Rogue Commuting Chief Executives

In the following section, this Note will discuss the few instances most analogous to the current residency situation in West Virginia. There are not many instances in which a governor who is mandated—constitutionally or by other state law—to reside in the seat of government refused to do so. An evaluation of the 50 states shows that many governors can meet the mandate by splitting their time between the state capitals and their preferred homes. Discussed below are situations where governors acted in direct contradiction to their states’ executive residency requirements. As further explained, in some situations, a governor may not follow the mandate for personal issues, unexpected emergencies, or evolving case law as seen in Nevada, Washington, and Maryland. But first, this Section will discuss the residency requirement of Illinois and its Former Governor Rod

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113 Id.
115 Id.
116 Id.
119 Id.
Blagojevich—the most analogous situation to the residency situation in West Virginia.

Similarly to West Virginia, Illinois constitutionally requires its executive officers to reside at the seat of government during their terms of office.120 The Illinois Executive Mansion is located in Springfield and is the third oldest continuously occupied governor’s mansion in the country.121 However, the capital, Springfield, competes with Chicago for the governor’s residency and attention.122 Current Governor J.B. Pritzker commutes between Chicago and Springfield because his children go to school in Chicago.123 Before he was elected, he confirmed he would comply with the Illinois Constitution and live in the Governor’s Mansion in Springfield.124 However, he also stated to the press, “I’ll be doing a lot of commuting, my wife will also be doing a lot of commuting—even my children will be doing a little commuting.”125 Splitting time between the two major cities appears to be a common practice in Illinois, as Chicago is also important to Illinois. Former Governor Jim Edgar is considered the last full-time resident of the Governor’s Mansion, leaving office in 1999.126 Thus, for the last 20 years, Illinois Governors who at least split their time in Springfield have been considered compliant with the state constitution.

While Governor Pritzker and many of his predecessors split time between the two cities, Former Governor Rod Blagojevich considered only Chicago home while he was in office.127 Blagojevich often went between Chicago and Springfield each day, rarely spending the night in the Governor’s Mansion.128 Blagojevich was criticized for his lacking presence in the capital.129 Specifically, Blagojevich flew back and forth between Chicago and Springfield every day for two weeks during state budget negotiations.130 The daily flights

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120 ILL. CONST. art. V, § 1.
124 Id.
125 Id.
126 Tareen & O’Connor, supra note 122.
129 Id.
130 Associated Press, supra note 127.
reportedly cost taxpayers approximately $6,000 a day to travel the 150 miles back and forth.\textsuperscript{131} During the 2007 Illinois Legislative Session, a three-month period, records showed that Blagojevich spent only five nights in Springfield.\textsuperscript{132} Further, Blagojevich was physically in Chicago for approximately 200 hours within the same span.\textsuperscript{133} Blagojevich’s time in office concluded when he was arrested for multiple charges of racketeering and conspiracy—including “selling” President Obama’s vacated senate seat.\textsuperscript{134} In January 2009, the Illinois House voted to impeach Blagojevich 114–1, and the senate unanimously voted to remove him from office.\textsuperscript{135}

Leaving aside the separate legal or criminal issues, Blagojevich’s residency situation bears the most factual similarities to the current case in West Virginia with Governor Jim Justice. Beyond Illinois, there does not appear to be significant instances of Governors refusing to live in the seat of government when constitutionally required. However, there are instances where states have addressed the residency requirement due to other laws, emergencies, or evolving case law.

For instance, Nevada does not constitutionally require its Governor to reside in the seat of government; rather the Governor is statutorily mandated to live in the State’s capital.\textsuperscript{136} The current Nevada Governor, Steve Sisolak, lives in the Governor’s Mansion with his wife.\textsuperscript{137} However, the Nevada Governor’s Mansion and the statutory mandate garnered attention in 2008 when Former Governor Jim Gibbons divorced his wife. The couple lived in the Governor’s Mansion when they filed for separation.\textsuperscript{138} During the process, Gibbons temporarily moved out of the Governor’s Mansion and returned to his Reno private residence.\textsuperscript{139} Thus, Gibbons technically violated the statute by not living

\begin{footnotesize}
\textsuperscript{131} Tareen & O’Connor, \textit{supra} note 122.
\textsuperscript{132} Schoenburg, \textit{supra} note 128.
\textsuperscript{133} \textit{Id.} For reference, assuming there were 30 days in each of the three months evaluated, this would be a total of 2,160 hours possibly spent in Springfield. Two-hundred hours equates to just over 9\% of former governor Blagojevich’s time spent in the seat of government during the three-month period.
\textsuperscript{135} \textit{Id.}
\textsuperscript{136} NEV. REV. STAT. § 223.040 (West 2020).
\textsuperscript{139} \textit{Id.}
\end{footnotesize}
in Carson City.\textsuperscript{140} Matters were temporarily made more complicated because the Former Nevada First Lady refused to move out.\textsuperscript{141} While Gibbons did violate the statute, the matter was eventually resolved when the divorce was finalized and Gibbons moved back into the Governor’s Mansion.\textsuperscript{142} Similarly, Washington State requires the Governor and other members of its executive branch to reside at the seat of government.\textsuperscript{143} Current Washington Governor Jay Inslee lives in the Olympia mansion with his wife.\textsuperscript{144} While the Governor’s Mansion is currently occupied, extenuating circumstances caused a past first family to move out of the mansion. In 1997, Former Washington Governor Gary Locke had to move his family out due to a bat infestation.\textsuperscript{145} He and his family were then vaccinated for rabies due to fear of bat bites.\textsuperscript{146} While the family temporarily moved out of the Governor’s Mansion, the Governor still complied with the Constitution by staying in a nearby private residence.\textsuperscript{147} Article II, section 21 of the Maryland Constitution also states the Governor “shall reside at the seat of government.”\textsuperscript{148} The Government House in Annapolis boasts that it has been the home of Maryland Governors for 150 years.\textsuperscript{149} This is currently the case as Governor Lawrence J. Hogan, Jr. lives in the Governor’s Mansion with his family.\textsuperscript{150} However, this political norm was not always followed.\textsuperscript{151} For example, Parris N. Glendening served as the Governor


\textsuperscript{141} \textit{Id}.


\textsuperscript{143} WASH. CONST. art. III, § 24.


\textsuperscript{146} \textit{Id}.

\textsuperscript{147} \textit{Id}.

\textsuperscript{148} M.D. CONST. art. II, § 21.


\textsuperscript{150} \textit{Id}.

of Maryland from 1995 to 2003\textsuperscript{152} and did not live in the Government House or in Annapolis.\textsuperscript{153} Rather, the two-term Governor chose to commute from his home in University Park, Maryland.\textsuperscript{154} The Governor opted to drive 45 minutes to-and-from work rather than live in the Governor’s Mansion because he and his wife wanted their teenage son to complete high school without transferring.\textsuperscript{155}

While Maryland’s residency requirement is seemingly identical to that of West Virginia’s, Maryland case law allows for this deviation in residency. In \textit{Gallagher v. Board of Supervisors of Elections},\textsuperscript{156} the Maryland Supreme Court determined that

\begin{quote}
\textit{after a consideration of the context and the purpose of the constitutional provision in which it is contained, that the official residence at the seat of government required by the Constitution is that the City of Annapolis shall be the governor’s temporary actual place of abode during his incumbency in that office, but that he is not compelled to give up his legal residence, unless he should so desire.}\textsuperscript{157}
\end{quote}

Therefore, this 1958 decision has been interpreted to allow “modern-day governors to live where they want.”\textsuperscript{158} The court reasoned the provision was created when travel took much more time and that living in Annapolis was not necessarily mandatory to promote the “efficient operation of government.”\textsuperscript{159} Thus, in Maryland, the Governor can opt out of the Governor’s Mansion without penalty, even though many do chose to reside at the Government House.

\section*{IV. Analysis}

As shown in Part III\textsuperscript{160} and emphasized in Section III.D,\textsuperscript{161} the constitutional quandary presented for West Virginia is unique. There are few instances where a sitting governor did not comply with a constitutionally mandated residency requirement. Generally, living near where one works is a practical or logical duty of one’s job. However, even if a governor chooses to

\begin{itemize}
\item \textsuperscript{153} Hirsh, \textit{supra} note 151.
\item \textsuperscript{154} \textit{Id.}
\item \textsuperscript{155} \textit{Id.}
\item \textsuperscript{156} 148 A.2d 390 (Md. 1959).
\item \textsuperscript{157} \textit{Id.} at 397.
\item \textsuperscript{158} Hirsh, \textit{supra} note 151.
\item \textsuperscript{159} \textit{Id.}
\item \textsuperscript{160} See \textit{supra} Part III.
\item \textsuperscript{161} See \textit{supra} Section III.D.
\end{itemize}
live elsewhere, it is usually not a violation of the state’s constitution. However, this appears to be the case in West Virginia. Following simple statutory interpretation, the West Virginia Constitution states that the Governor and the remaining executive officers “shall reside” in Charleston.\textsuperscript{162} Governor Jim Justice calls Lewisburg, West Virginia, his home. So, what does this mean and why do we care? Furthermore, is there a solution or a remedy that would benefit West Virginia?

The following sections analyze and provide suggestions for moving forward. First, Section IV.A provides an update on the litigation facing Governor Jim Justice and the decision of the West Virginia Supreme Court.\textsuperscript{163} Second, Section IV.B highlights the possible outcomes and remedies that could be sought through the legal system.\textsuperscript{164} Third, Section IV.C highlights the political implications and non-legal impact of such litigation during an election year.\textsuperscript{165} Fourth, Section IV.D provides possible solutions observed from other states’ practices including (1) part-time residency, (2) amending the State Constitution to require only the office to be in the seat of government, and (3) no longer requiring residency and using the Governor’s Mansion for other purposes.\textsuperscript{166}

\textbf{A. Legal Update: What Is Residency?}

On October 21, 2019, Kanawha County Circuit Court Judge King denied Governor Justice’s Motion to Send Certified Questions to the West Virginia Supreme Court of Appeals.\textsuperscript{167} However, the Court granted the Governor’s Motion to Stay Further Proceedings until further orders by the Circuit Court or the West Virginia Supreme Court of Appeals.\textsuperscript{168} Judge King also issued a separate order supporting his denial of Governor Justice’s initial Motion to Dismiss.\textsuperscript{169} The judge reasoned the question of whether the duty to reside was discretionary or non-discretionary was premature, and the court required more factual development to answer the question.\textsuperscript{170} Therefore, in December 2019, Governor Justice filed a Writ of Prohibition with the West Virginia Supreme Court.

\textsuperscript{162} W. VA. CONST. art. VII, § 1.

\textsuperscript{163} See infra Section IV.A.

\textsuperscript{164} See infra Section IV.B.

\textsuperscript{165} See infra Section IV.C.

\textsuperscript{166} See infra Section IV.D.


\textsuperscript{169} Id. at 4.

\textsuperscript{170} Id. at 5.
Court of Appeals arguing the Kanawha County Circuit Court did not have jurisdiction or the legitimate power to decide Delegate Sponaugle’s Writ of Mandamus. Chiefly, the Governor argued the definition of “reside” qualifies as a political question that cannot be answered by the judicial branch. Further, he contended a mandamus is not an appropriate remedy because the courts cannot “prescribe the manner in which executive officers shall act” and a mandamus should not be used “to compel a general course of conduct to be performed over a long period of time, as opposed to a discrete act.”

On October 14, 2020, the West Virginia Supreme Court of Appeals heard oral arguments on this matter by Sponaugle and Governor Justice’s counsel, George Terwilliger. The questioning focused on “whether the governor has discretion in carrying out his constitutional duties, whether intervention by the courts would be political[,] and the definition of the word ‘reside.’”

During the argument, Acting Justice Bridget Cohee brought up State ex rel. Thomas v. Wysong, in which the Court determined it was a constitutional violation for an executive officer to not reside in the seat of government. Governor Justice’s attorney maintained that this was a political issue that invoked separation of powers concerns if the court was required to monitor the governor’s schedule. Furthermore, Sponaugle reiterated that the court is not being asked to micromanage, but rather is being “asked to put him in compliance of his constitutional duty” and to provide the remedy that puts the governor in compliance. On November 20, 2020, the West Virginia Supreme Court of Appeals ruled that the courts do have the authority to compel the Governor to comply with the residency requirement. Accordingly, the lawsuit returned to the Kanawha Circuit Court to determine if and how “residency” is satisfied.

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172 Petition for Writ of Prohibition, supra note 168, at 5.

173 Id. at 6–7.


175 Id.

176 Id.

177 Id.

178 Id.


180 Id.
However, this does not end the discussion as to the impact of this lawsuit and how West Virginia can change the requirement or utilize the Governor’s Mansion.

B. A Remedy for Rogue Residency

We want our elected officials to uphold the duties prescribed to their offices. However, when citizens feel an elected official is not meeting the mark, what can they do? Practically speaking, when we are not satisfied with a politician, we tell them at the voting booths as discussed below in Section IV.C.\textsuperscript{181} But what happens in the meantime? Is it reasonable to expect frustrated citizens to wait an entire term of office and sit by while they believe mandatory duties are being neglected? In West Virginia, there are two possible remedies when an elected official does not comply with an official mandatory duty: (1) a Writ of Mandamus and (2) impeachment by the West Virginia Legislature.

Delegate Sponaugle chose to pursue an extraordinary remedy, a Writ of Mandamus, in the Kanawha County Circuit Court.\textsuperscript{182} A Writ of Mandamus provides the courts the ability to “require the discharge by a public officer of a nondiscretionary duty.”\textsuperscript{183} Therefore, through a Writ of Mandamus, a judge can compel an elected official to complete the duties of his or her office. In West Virginia, a party must show three elements to support his claim: “(1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.”\textsuperscript{184} In his complaint, Delegate Sponaugle argued that these elements are met and the Court can require Governor Justice to reside in Charleston, West Virginia. First, Sponaugle lives and pays taxes in Pendleton County, West Virginia.\textsuperscript{185} As such, he claims the right to file a mandamus proceeding with the courts.\textsuperscript{186} Second, the Governor has a legal duty under the West Virginia Constitution to reside at the seat of

\begin{footnotesize}
\begin{itemize}
\item[181] See infra Section IV.C.
\item[185] Petition for Writ of Mandamus, supra note 182, at 7.
\item[186] \textit{Id.} (first citing Syl. Pt. 1, State \textit{ex rel.} Brotherton v. Moore, 230 S.E.2d 638 (W. Va. 1976); then State \textit{ex rel.} Brotherton v. Blankenship, S.2d 467 (W. Va. 1975); and then Delardas v. County Court, 186 S.E.2d 847 (W. Va. 1972)).
\end{itemize}
\end{footnotesize}
government—Charleston, West Virginia. In support of this claim, Sponaugle cited *Slack v. Jacob*, a West Virginia case which states “the Constitution of the State unequivocally requires that [the governor] shall reside at the seat of government during his term of office, and keep there the public records of his office.” Third, he contended that this is the only means for making Governor Justice comply with the state constitution.

If the court finds Sponaugle meets these three elements, it is left with the problem of monitoring the Governor and defining how much time the Governor would need to spend in Charleston, West Virginia. This explains why Governor Justice’s counsel sought to have the West Virginia Supreme Court define the term “reside.” However, the presiding judge denied the motion and the case continued in Circuit Court.

Even though it took three tries to survive dismissal, this approach, while still an extraordinary remedy, appears to have better odds than the legislative alternative. As a member of the West Virginia House of Delegates, Sponaugle presumably could have supported an impeachment movement against Governor Justice. Article IV, section nine of the West Virginia Constitution states,

> Any officer of the state may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The House of Delegates shall have the sole power of impeachment. The Senate shall have the sole power to try impeachments, and no person shall be convicted without the concurrence of two thirds of the members elected thereto. When sitting as a court of impeachment, the president of the supreme court of appeals, or, if from any cause it be improper for him to act, then any other judge of that court, to be designated by it, shall preside; and the senators shall be on oath or affirmation, to do justice according to law and evidence. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold any office of honor, trust or profit, under the state; but the party convicted shall be liable to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the Legislature, for the trial of impeachments.

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188 8 W. Va. 612 (1875).
189 Petition for Writ of Mandamus, supra note 182, at 11 (citing *Slack*, 8 W. Va. at 657).
190 Id. at 9.
191 McElhinny, *Judge Denies Motion*, supra note 22.
192 Id.
193 W. VA. CONST. art. IV, § 9.
Just as Sponaugle argued in his Complaint that the Governor’s residency in Charleston is a nondiscretionary mandatory duty, the same logic could apply here. Under this constitutional provision, it could be argued that Governor Justice’s refusal to live in the seat of the government qualifies as a “neglect of duty.” However, politics at play likely make this approach less successful. First, there are currently 41 Democrats, 58 Republicans, and 1 independent in the West Virginia House of Delegates.\textsuperscript{194} While there have been complaints of Governor Justice’s absenteeism from both parties, it is unlikely that articles of impeachment could make it through the Republican majority.

However, even if the House of Delegates did choose to impeach Governor Justice for failing to live in Charleston, West Virginia, the odds of conviction in the West Virginia Senate are just as low. The State Senate is comprised of 14 Democrats and 20 Republicans.\textsuperscript{195} Thus, 23 senators would have to vote in favor of conviction. This could not be done on party lines alone because at least nine Republicans would have to vote in favor of conviction, assuming the Democrat vote was unanimous, which often is not the case in West Virginia politics.\textsuperscript{196} The Legislature is inherently political, and while the judiciary is meant to be above partisan concerns, it is reasonable for Sponaugle to try to find an alternative to going through the impeachment process. Thus, seeking a Writ of Mandamus through the court is the better response to Governor Justice’s residency dispute.

\textbf{C. True Damages: An Election Year}

Regardless of the outcome in the Kanawha County Circuit Court or the West Virginia Supreme Court, the residency lawsuit has already made an impact on West Virginia and the 2020 election. First, as of the end of 2019, Governor Justice’s outside legal counsel has cost the State over $45,000.\textsuperscript{197} The legal fees are paid by the government through the Governor’s Civil Contingent Fund.\textsuperscript{198}

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\textsuperscript{196} For perspective on the shift in West Virginia political views and the change in party allegiances, see Don Gonyea, West Virginia Tells the Story of America’s Shifting Political Climate, NPR (Oct. 24, 2015, 8:41 AM), https://www.npr.org/sections/itsallpolitics/2015/10/24/451336317/west-virginia-tells-the-story-of-americas-shifting-political-climate.
\textsuperscript{198} Id.
\end{footnotes}
For comparison, the median family income in West Virginia is $44,921.\textsuperscript{199} And, Governor Justice’s legal costs are only going to increase as the litigation continues and the parties file additional motions to the courts. This point is not a criticism toward Sponaugle for filing the lawsuit. Rather, it is an acknowledgement of Governor Justice’s choice to fight this state-funded lawsuit instead of moving to Charleston.

Just as money has gone to the lawsuit, so has time. Governor Justice and his team have devoted time to the lawsuit—time that could arguably be used to address the problems facing West Virginia. A lawsuit does not only equate to court time. Rather, it involves planning and strategizing and, most importantly, shifts the conversation. Information about this lawsuit can even be found on the official Office of the Governor website.\textsuperscript{200} Further, many news articles about the Governor somehow reference the residency lawsuit or other litigation involving him.\textsuperscript{201} In the absence of this lawsuit, perhaps the conversation, both in the media and among those working for Governor Justice, could better address the serious issues plaguing West Virginia. To name a few: the opioid crisis,\textsuperscript{202} the aging and declining population,\textsuperscript{203} the economy,\textsuperscript{204} the foster care system,\textsuperscript{205} and access to basic needs like food and water.\textsuperscript{206} This is not to discount the people, 

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{199} Quick Facts West Virginia, U.S. Census Bureau, https://www.census.gov/quickfacts/fact/table/WV/INC110218\#INC110218 (last visited Sept. 26, 2020).
\item \textsuperscript{201} See, e.g., Ken Ward Jr., Welcome to the Greenbrier, the Governor-Owned Luxury Resort Filled with Conflicts of Interest, PROPUBLICA (Aug. 15, 2019, 5:00 AM), https://www.propublica.org/article/west-virginia-greenbrier-governor-jim-justice-little-trump.
\item \textsuperscript{202} See, e.g., Hoppy Kercheval, Paper Provides Shocking Numbers on the Opioid Crisis, METRO NEWS (July 19, 2019, 12:29 AM), http://wvmetronews.com/2019/07/19/paper-provides-shocking-numbers-on-the-opioid-crisis/.
\item \textsuperscript{205} “In West Virginia, another state hit hard by opioid addiction, the number of children in foster care increased to more than 7,100 in fiscal year 2018, up nearly 74% from 2010, according to AFCARS data. During that same time, adoptions from foster care more than doubled, up 111% to 1,400.” Teresa Wiltz, Foster Care Adoptions Reach Record High, PEW (Jan. 7, 2020), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/01/07/foster-care-adoptions-reach-record-high.
\end{enumerate}
\end{footnotesize}
governmental departments, and other organizations working on these important matters. The point is to say that there may be other issues where Governor Justice could spend his time and energy.

However, the 2020 State election was likely the greatest indicator of the residency lawsuits’ impact. Governor Justice’s term as the 36th Governor of West Virginia ends in January 2021. Governor Justice’s residency was a talking point among Democratic and Republican gubernatorial candidates. Governor Justice announced his candidacy for re-election January 7, 2019—having completed just half his term at that time. As of early 2020, there were six additional Republicans facing Governor Justice in the primary election. In comparison, Governor Justice’s former opponent, Bill Cole, ran unopposed in the Republican primary in 2016. There were also five Democrats running in the Democratic primary with the hopes of beating Governor Justice. Republicans and Democrats alike referenced Governor Justice’s absenteeism and residency lawsuits in their platform or campaign announcements. For instance, Democrat Ron Stollings said Governor Justice should spend more time at the State Capitol and that he would, if he were to be elected Governor. Stollings further added that “[he] would be here, to be in that mansion, to be able to build

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208 “There’s a lot of work to do,” Justice said. “So the guy that came to you and thought really in his mind that he wouldn’t run again, today — I’m going to stand up to say this — today, I’m announcing officially, right now, my candidacy to run to be re-elected as your governor in 2020.” Jake Zuckerman, Gov. Jim Justice Announces Re-election Bid, CHARLESTON GAZETTE-MAIL (Jan. 7, 2019), https://www.wvgazettemail.com/news/politics/gov-jim-justice-announces-re-election-bid/article_4b57a994-974e-5935-adc2-3e9ee3a66142.html.

209 The following Republican candidates ran for Governor of West Virginia and filed for the primary election: Jim Justice (Incumbent); Shelby Fitzhugh; Michael Folk; Brooke Lunsford; Charles Sheedy; Doug Six; and H. Woody Thrasher. West Virginia Gubernatorial Election (June 9 Republican Primary), BALLOTpedia, https://ballotpedia.org/West_Virginia_gubernatorial_election,_2020_(June_9_Republican_primary) (last visited Sept. 27, 2020).


211 The following Democratic candidates ran for Governor of West Virginia and filed for the primary election: Douglas Hughes; Jody Murphy; Ben Salango; Stephen Smith; and Ron Stollings. West Virginia Gubernatorial Election (June Democratic Primary), BALLOTpedia https://ballotpedia.org/West_Virginia_gubernatorial_election,_2020_(June_9_Democratic_primary) (last visited Sept. 27, 2020).

relationships and to learn from people.”

Similarly, Democrat Ben Salango, who won the Democratic primary, commented at his campaign kick-off event, “We need a governor we can be proud of, not someone who is constantly buried in controversy, lawsuits and ethical scandals. . . . Somebody who actually wants the job, rather than the title.”

This is more than party-line criticisms; Republican candidates also had opinions on Governor Justice disregarding the residency requirement. For instance, Republican candidate Woody Thrasher made a point to say he would live in Charleston, West Virginia, if elected. WV News quoted the candidate, “We need a full-time governor who isn’t worried about re-election, but is worried about what’s best for the residents of West Virginia and our future. . . . I don’t believe the current governor is doing that.” Thus, throughout the election, voters were reminded of the residency lawsuit, and Governor Justice continued to defend himself to the public, not just in the courtroom.

Delegate Sponaugle also faced some political impact by pursuing litigation against the Governor. Sponaugle announced in December of 2019 that he intended to run for West Virginia Attorney General. Sponaugle had to separate his criticism of Governor Justice from his motivation in seeking the executive office, which included how the opioid epidemic has been handled from a legal standpoint. During his announcement, Sponaugle expressed, “[my candidacy and the lawsuit] are not related . . . . [I] was hoping nine months ago the residency issue would have been taken care of. That’s just a grind in court that you end up getting into.”

Delegate Sponaugle lost the Democratic primary in a very tight Attorney General race, less than 200 votes, to Sam Petsonk. As such, the May and November elections provided an opportunity to show the impacts of Sponaugle’s efforts and how West Virginian feels about the
Governor’s residency. Governor Justice’s recent re-election for a second term may indicate that executive residency is not a major concern for the majority of voters, and perhaps should not be constitutionally required.221

D. Moving Forward: Solutions and Alternatives

As evident from the 50-state survey,222 West Virginia is in a unique position with little precedent to guide the West Virginia Supreme Court of Appeals in its evaluation of the state constitution’s residency requirement. There are few to zero instances where a governor has simply ignored the constitution and refused to reside in the state capital when mandated. However, while case law may not be useful in this discussion, West Virginia can still look to other states to determine how it should move forward. The following section discusses three possible alternatives for how West Virginia can interpret or amend its position regarding the constitutional residency requirement: (1) satisfying the requirement through part-time residency in Charleston, West Virginia; (2) amending the State Constitution to clarify West Virginia’s priorities in 2020 and beyond; and (3) repurposing the West Virginia Executive Mansion and no longer maintaining a permanent residence for the State Governor.

1. Part-time Residency

As discussed above in Section III.B,223 several governors opt to live throughout the week in their respective state capitals, either in official residencies or other homes. This option enables the governors to be present during legislative sessions and available for official work and any possible problems their states may face. As discussed, this approach has worked for governors, including Ohio Governor Mike DeWine and Tennessee Governor Bill Lee. This approach enables governors to meet their responsibilities, while also maintaining personal or family preferences. Thus, governors with families or close connections to their hometowns can maintain a presence in both locations.

If the West Virginia Supreme Court of Appeals interprets part-time residency to fulfill the residency requirement, Governor Justice and future governors would be able to split time between Charleston, West Virginia, and their town of choice. This approach would give parameters to governors, while recognizing that governors also have personal and family matters outside of Charleston, West Virginia. In the case of Governor Justice, he would be able to maintain his connections to Lewisburg, West Virginia, including his home,
family, and community involvement while also reassuring the court, legislature, and citizens that he is present at the capitol and making strides on the issues facing the State. Therefore, the Governor would be able to both coach the Greenbrier East Girls’ Basketball Team and stay informed on the daily happenings in Charleston, West Virginia.

However, this approach would require Governor Justice to greatly increase his presence in Charleston, West Virginia. Rather than occasionally using the Executive Mansion, the Governor would need to spend the majority of weekdays both working and living in the seat of government. Thus, this approach would very much alter the Governor’s current practices but would still afford him more flexibility than expecting him to always reside within Charleston.

2. Constitutional Amendment

West Virginia could also consider amending the State Constitution and removing the “reside in the seat of government” language from article VII, section one. Rather than requiring the West Virginia Supreme Court to decide, this option would leave the decision making to the state legislature and the citizens of West Virginia. If such a constitutional amendment was pursued, the amendment would have to receive a two-thirds majority vote in the West Virginia House of Delegates and in the West Virginia Senate. If both chambers are able to reach a majority on the same amendment, it is then up to the West Virginia voters to ratify the amendment. This approach would leave no doubt as to how the State’s citizens feel regarding their Governor’s residency. Some may feel a residency requirement is necessary and should be enforced to prevent any chance of absenteeism. Others may find that a residency requirement is no longer necessary in the age of technology and quick travel.

The West Virginia Constitution was ratified in 1861; the ability to get to the capitol when needed was much more difficult by horseback than by car. Furthermore, West Virginia would not be the first to not require its Governor to live at the seat of government. As discussed previously, approximately 30 states are silent regarding executive residency requirements and do not mandate where their governors live. Therefore, it is reasonable to consider removing this qualification from the West Virginia Constitution. Even more so, this particular avenue would allow for both the Legislature and the citizenry to decide. Rather than the West Virginia Supreme Court defining “reside,” this

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224 About Jim, supra note 11.
225 W. VA. CONST. art. XIV, § 2.
226 Id.
227 Supra Sections III.B, III.C.
228 Supra Part III.
approach would ultimately determine the people’s view on whether where the Governor sleeps is an actual priority.

Furthermore, this approach would not eliminate the possibility of future governors from living in the Executive Mansion or in Charleston, West Virginia. The Governor can still choose to pursue the housing perk without a constitutional mandate. This is the case for over 20 state governors who currently choose to reside in Governor’s mansions for convenience or to uphold political norms passed down from their predecessors.229 Similarly, this option just provides another choice for those who have reason to live elsewhere, including family or business needs.230 However, the key difference would be that Governor Justice would be able to continue living in Lewisburg, West Virginia, without violating the state constitution.

It is important to note that if the voters decide not to ratify the amendment, it would remain a requirement for those in the executive branch to reside in Charleston, West Virginia. In this instance, it would still provide clarity and show that the voters value a present Governor. Furthermore, sending this to a vote would leave no question moving forward; the Governor would be required and expected to live in the seat of government. And, if another member of West Virginia’s executive branch disregarded the constitutional provision, the West Virginia Supreme Court would be within its power to issue a Writ of Mandamus.231 Thus, the West Virginia Legislature should consider if it wants to affirm or amend article VII of the state constitution and then allow the citizens to determine if residency is a priority.

3. Alternative Mansion Use

If West Virginia, either through the courts or through a constitutional amendment, decides the Governor’s home address is not a priority any longer, the State should consider repurposing the Executive Mansion. Under West Virginia law, the Executive Mansion is already required to be used for functions and events.232 Traditionally, this has been implemented through hosting state and private events, as well as offering public tours of the Executive Mansion’s lower level.233 With this aim in mind, the Executive Mansion went through extensive

229 Supra Section III.B.
230 Supra Section III.C.
231 See W. VA. CODE ANN. § 53-1-5 (West 2020).
232 See id. § 5A-5-3(a). “The state rooms of the mansion shall be used for official state government functions and entertainment: Provided, That tours of the state rooms of the mansion shall be permitted, and the mansion director shall assist in the scheduling of said tours and prescribe rules and regulations governing same.” Id.
233 Id.
renovations in 2006. The renovations cost approximately $3 million and included a new banquet hall. The banquet hall was expected to be able to host events for over 300 people. The second floor residence also got updates in the master bedroom, bathroom, and sitting room. However, considering the amount of money that has been put in to the Executive Mansion, it is reasonable that it should be utilized in some greater manner—whether that be as a full-time residence, an event space, or a museum.

During a June 2018 press conference, Governor Justice claimed the Executive Mansion was being utilized in ways it had possibly never been before. Because the Governor opted to live in Lewisburg, West Virginia, the mansion could be used as a profit source. In his absence, the Governor claimed the mansion was “really busy, really, really busy,” being used for receptions, luncheons, dinners, and tours. However, it was reported that during the first half of 2018, the Governor’s mansion was only used for seven private events. These events included various luncheons and receptions for individuals or groups including the West Virginia Music Hall of Fame, the Marshall University Men’s Basketball Coach, United Telecommunications and Energy Coalition, and the Charleston Pilot Club. Governor Justice adopted this new policy as a way of making money for the State and justifying his choice to not live in the mansion. However, given that the Executive Mansion remains empty, it could host more events than what was scheduled in this specific six-month period.

One way the State could improve on this policy and better use the Executive Mansion would be to expand the number and types of events hosted in the space. The current policy allows for “state agencies, non-profit organizations, and public-sector organizations and associations” to use the

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234 Phil Kabler, Mansion Upgrade Costs Top $3 Million Furnishings Not Included in Figure, CHARLESTON GAZETTE, July 12, 2006, at P1A.
235 Phil Kabler, Addition to Mansion Proposed Banquet Hall Would Have Room To Host up to 335 Guests, CHARLESTON GAZETTE, Apr. 19, 2006, at P1A.
236 Id.
237 Id., supra note 234.
238 This Note was written before the COVID-19 pandemic. As such, recommendations to increase use of the Executive Mansion for events and tours should be read with that context and remain useful alternatives following the pandemic.
240 Id.
241 Id.
242 Id.
243 Id.

https://researchrepository.wvu.edu/wvlr/vol123/iss2/10
space. However, the guidelines state the Executive Mansion cannot be used for other social events, such as weddings, wedding receptions, wedding or baby showers, birthday parties, or fundraisers. If the Executive Mansion becomes only a symbolic official residence, this policy should be expanded to allow these types of events. This approach would bring in additional revenue, but also allow West Virginian’s to utilize the beautiful location. West Virginia would not be the first state to allow these kinds of events at the Governor’s Mansion. For example, the Lace House within the South Carolina Governor’s Mansion Complex allows weddings, corporate events, and other private celebrations. Similarly, North Carolina allows the Executive Mansion to be used as an “elegant event location” and meeting space because it is the “people’s house.” This trend is catching on as the Colorado Governor decided to open up its Governor’s Mansion, the Cheesman-Boettcher Mansion, for weddings in 2020. Previously, only family and friends of the Governor could get married at the mansion. West Virginia should follow in these states’ footsteps and expand the events hosted at the Executive Mansion. The West Virginia Mansion Director can learn from the other states and create guidelines and policies from their best practices. These can also be adapted to align with the mansion’s availability, limitations, and overall mission. Therefore, the Governor’s Mansion should be utilized as an event space if it is not going to serve as the Governor’s actual residence.

In addition, the mansion can increase public tours and serve as a state museum. Under Section 5A-5-3 of the West Virginia Code, the State offers public tours of the lower state rooms within the mansion. However, the current offerings are limited in both availability and what is actually shown on the tour. Typically, tours are only offered on Thursdays and Fridays, in the morning between 9:00 a.m.–11:30 a.m. Furthermore, reservations are required because the tour offerings are so limited. And again, these tours only include the public

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245 Id.
249 Id.
250 See W. VA. CODE ANN. §5A-5-3 (West 2020).
252 Id.
state rooms on the lower level, likely including the state dining room, the ballroom, and the library. 253 If no one is going to live in the mansion, the tour offerings should be expanded and include more of the mansion. If no one is going to use the upper levels, why not allow citizens and tourists to tour? The tour could expand to include some of the bedrooms on the second and third floors. 254 Even if future governors chose to live in the Executive Mansion, the Governor’s private quarters could just be excluded from the tour, and the rest of the upper levels could still be shown. 255 Several states offer more mansion tours than West Virginia. 256 For instance, the Missouri Governor’s Mansion typically offered tours every Tuesday, Wednesday, and Thursday from 9:00 a.m.–12:00 p.m. and 1:00 p.m.–3:00 p.m. during most months. 257 The tours are offered by volunteer docents, and reservations are only required for groups of ten or more. 258 It is worth repeating that the Missouri Governor is only required to maintain his office in the capital but also chooses to reside in the Missouri Governor’s mansion. 259 West Virginia should therefore expand its tour offerings and consider including more of the mansion on the tour.

The West Virginia Department of Arts, Culture, and History could also consider using portions of the Executive Mansion as a West Virginia cultural museum. This could involve permanent and rotating exhibits in the mansion, highlighting West Virginia artists, important moments in history, and famous West Virginians. The West Virginia Department of Arts, Culture, and History already provides these types of exhibits at other locations, including the Cultural Center and West Virginia Independence Hall. 260 This would just provide another location for highlighting the art, culture, and history within the State. Furthermore, adding exhibits would also offer another component to the mansion tours. For example, as previously discussed, the New Jersey Governor does not live in the official residence, Drumthwacket; 261 rather the mansion’s foundation

254 Id.
255 Id.
257 Missouri Governor’s Mansion Tours, supra note 256.
258 Id.
259 Supra Section III.A.
261 Supra Section III.C.
“curates exhibits in the residence that showcase New Jersey related historic and contemporary visual art and thematic shows.”\textsuperscript{262} Some of Drumthwacket’s past exhibits have included “Inspire: Everyday People Changing New Jersey,” “Eureka! Innovation and Invention in New Jersey,” and “Lincoln & Olden: The President & Governor.”\textsuperscript{263} Increasing the Executive Mansion’s use as a museum would provide visitors with a greater appreciation for West Virginia culture and also incentivize visitors to choose the Executive Mansion as a tourist destination.

V. CONCLUSION

In conclusion, this Note discussed the current executive residency quandary before the West Virginia courts. This Note then sought to determine the necessity of executive residency requirements by conducting a 50-state survey and, for the first time, finding several trends within constitutional residency requirements. In short, this Note provides insight on the political impact of the residency lawsuit and offers guidance for moving forward. Because the Court decided the Governor can be compelled, Governor Justice and his successors will soon have guidance on how to meet the residency requirement. While alternative mansion use will likely have to wait until the end of the COVID-19 pandemic, the recommendations remain true. West Virginia is a state with proud culture, tradition, and history. However, as discussed, there are problems in the Mountain State. Legislatively letting go of some traditions, such as executive residency, could enable West Virginia to focus its attention on matters affecting its citizens. Perhaps, Governor Justice’s recent re-election indicates that residency is not a priority to voters, or at minimum, is not a deal-breaker. Furthermore, the Executive Mansion stands as a figure of West Virginia history and should be used to its greatest potential. Whether or not the Governor’s Mansion is a house or a home, it can be better utilized by increasing its access to West Virginia citizens.

Ashley Faulkner*

\textsuperscript{262} Events and Exhibits, DRUMTHWACKET FOUND., https://drumthwacket.org/visit/events-current-exhibit/ (last visited Oct. 9, 2020).

\textsuperscript{263} Exhibits Archive, DRUMTHWACKET FOUND., https://drumthwacket.org/visit/exhibits-archive/ (last visited Oct. 9, 2020).

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