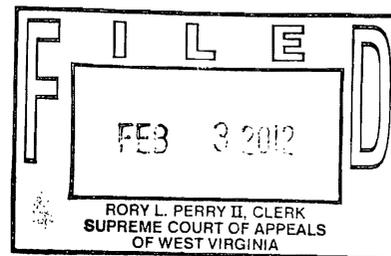


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Case Nos. 11-1224 and 11-1486



KANAWHA COUNTY PUBLIC LIBRARY
BOARD, a public corporation; WEST VIRGINIA
BOARD OF EDUCATION, a public corporation;
and DR. JOREA MARPLE, in her official capacity
as Superintendent of Schools of the States of West
Virginia; Defendants Below,

Petitioners,

v.

Appeals from Final Orders of the
Circuit Court of Kanawha County
(08-C-2020)

BOARD OF EDUCATION OF THE COUNTY OF
KANAWHA, a public corporation, Plaintiff Below,

Respondent.

BRIEF *AMICUS CURIAE*
OF THE WEST VIRGINIA LIBRARY ASSOCIATION
IN SUPPORT OF DEFENDANTS AND PETITIONERS, WEST VIRGINIA BOARD OF
EDUCATION; DR. JOREA MARPLE; AND THE KANAWHA COUNTY PUBLIC
LIBRARY BOARD, AND URGING REVERSAL OF THE DECISION BELOW

Benjamin L. Bailey, Esq. (WVSB #200)
Bailey & Glasser, LLP
209 Capitol Street
Charleston, WV 25301
(304) 345-6555
(304) 342-1110 (*facsimile*)
Counsel for West Virginia Library Association

TABLE OF CONTENTS

I. INTRODUCTION AND STATEMENT OF INTEREST.....	1
II. SHOULD THE TRIAL COURT’S JUDGMENT BE UPHELD AND THE KANAWHA COUNTY PUBLIC LIBRARY LOSE THE SUBJECT FUNDING, LIBRARY SERVICE THROUGHOUT WEST VIRGINIA WOULD BE SEVERELY HARMED.....	3
a. The Kanawha County Public Library Provides Materials and Librarian Assistance to All West Virginians.....	4
b. The KCPL Provides Vital Access to Computers and the Internet to Any West Virginian Visiting the Library.	7
c. Children’s Services are a Major Focus of the KCPL.....	10
d. If the Kanawha County Public Library Loses the Subject Funding, It Will be Unable to Sponsor the West Virginia Book Festival and Other Programs Vital to the State-wide Community.....	11
III. CONCLUSION.....	12

TABLE OF AUTHORITIES

Case

MacDonald v. City Hosp., Inc 2

Statute

W. Va. Code § 18-9A-111, 13

Rule

Rule 30(a) of the Rules of Appellate Procedure..... 1

Constitutional Provision

Art. II, Sec. 1, WVLA CONSTITUTION 1

I. INTRODUCTION AND STATEMENT OF INTEREST¹

“If it is right that schools should be maintained by the whole community for the well-being of the whole, it is right also that libraries should be so maintained.”

-- Andrew Carnegie, 1904

In granting summary judgment below, the trial court declined to permit or consider any discovery whatsoever. (A0025-27) Accordingly, the West Virginia Library Association (“WVLA”) submits this Brief *Amicus Curiae* to augment this Court’s understanding of how its decision could detrimentally impact library users throughout the State. The WVLA joins the Defendants-Petitioners in urging the Court to reverse the trial court’s judgment below and find that both the Library Special Act and W. Va. Code § 18-9A-11 are constitutional. In the alternative, the WVLA suggests that the case be remanded so that the parties can pursue discovery and the trial court have the benefit of evidence – such as the public records described herein regarding the benefits and purposes of the state’s libraries – in fashioning its decision.

The WVLA is an organization established in 1914 to promote library service and librarianship in West Virginia.² The WVLA submits this Brief in furtherance of those purposes, as an affirmance in this case would result in a devastating blow to library service and librarianship in the State. The WVLA is not a party authorized under Rule 30(a) of the Rules of Appellate Procedure to file an *amicus curiae* brief without either consent of parties or leave of Court. Accordingly, the WVLA filed the required motion for leave to file this Proposed Brief, and that motion was granted by the Court on January 26, 2012.

¹ Pursuant to the requirement of Rule 30(e)(5) of the Rules of Appellate Procedure, the undersigned counsel for Amicus WVLA, Benjamin Bailey of Bailey & Glasser LLP as well as other assisting attorneys at Bailey & Glasser LLP, were the sole authors of this Brief and made no monetary contribution to fund the preparation or submission of the brief. The undersigned counsel further states that no other person made any such monetary contribution.

² Art. II, Sec. 1, WVLA CONSTITUTION, adopted Nov. 3, 1956, amended 2010, *available at* <http://wvla.org/>.

The WVLA entirely supports the Petitioners' position on appeal, that the Library Special Act and W. Va. Code § 18-9A-11 are valid. The WVLA also submits that the trial court should not have applied strict scrutiny below, and provides this Brief to aid the Court's analysis regardless of which constitutional standard is applied. Should the Court determine, as the WVLA would advocate, that rational basis review is appropriate because only an economic right is at issue, the information below would more than support the constitutionality of the laws. *See* Syl. Pt. 4, *MacDonald v. City Hosp., Inc.*, 715 S.E.2d 405 (2011) (“[w]here economic rights are concerned,” the Court will “look to see whether the classification is a rational one based on social, economic, historic or geographic factors, whether it bears a reasonable relationship to a proper governmental purpose, and whether all persons within the class are treated equally. Where such classification is rational and bears the requisite reasonable relationship, the statute does not violate Section 10 of Article III of the West Virginia Constitution, which is our equal protection clause.”). Specifically, the Special Act is rational because requiring the Board of Education to fund the Kanawha County Public Library bears a reasonable relationship to a proper governmental and legitimate school purpose: promoting and supporting the library as a state interest.

Alternatively, should this Court apply strict scrutiny, which would be incorrect as the Board of Education does not *itself* have a fundamental right to education such that strict scrutiny review is warranted, the information within this Brief supports a finding that this purpose is in fact a compelling state interest in requiring the Board to provide this funding, for the good of all West Virginians. *See id.* at 416, fn. 15 (“Strict scrutiny is only utilized when a classification involves a fundamental, constitutional right.”).

**II. SHOULD THE TRIAL COURT’S JUDGMENT BE UPHOLD AND THE
KANAWHA COUNTY PUBLIC LIBRARY LOSE THE SUBJECT FUNDING,
LIBRARY SERVICE THROUGHOUT WEST VIRGINIA WOULD BE
SEVERELY HARMED.**

“The richest person in the world - in fact all the riches in the world - couldn't provide you with anything like the endless, incredible loot available at your local library.”

-- Malcolm Forbes

In March 2011, researchers at the Center for Business and Economic Research of Marshall University completed a report titled, “Economic Impacts and Valuation Associated with the Construction and Operation of New and Renovated Kanawha County Public Library Facilities” (“CBER Report”).³⁴ The purpose of the CBER Report was to demonstrate the value of library service and the potential impact of improved library services to the community. The CBER Report concluded that the benefit of services offered by KCPL – which include materials, downloadables, programs, and other services – is over \$14 million a year. Given that KCPL’s total annual operating expenditures are just under \$6.4 million per year, the public benefit-cost ratio of the KCPL is an impressive \$2.24.⁵ The CBER Report, as well as the West Virginia Library Commission’s 2010 Statistical Report (“WVLC Report”) provide a crucial perspective on the KCPL’s state-wide impacts and how the loss of services would affect the entire state.⁶

The WVLA’s concern in this case is with the potential effects of this Court’s ruling on the entire West Virginia library community. To that end, this Brief focuses largely on the services KCPL provides to those beyond Kanawha County. Yet the WVLA’s position cannot be

³ The CBER Report is available at http://kanawhalibrary.org/pdfs/kcpl_final.pdf

⁴ The CBER Report is a public document that was paid for in large part using federal funds administered by the West Virginia Library Commission, and it is on file at the Commission. For these reasons, it is admissible without authentication under W.V.R.E., Rule 901(b)(7).

⁵ CBER Report at 22.

⁶ The WVLC Report is also a public document on file with the Commission, and is consequently admissible without authentication under W.V.R.E., Rule 901(b)(7).

fully expressed within those confines, as the potential loss to Kanawha County *alone* would be a striking blow to the state due to the sheer size of the population this library directly serves. The 2010 U.S. Census revealed that the population of Kanawha County is 193,063, representing just over 10% of West Virginia's population of 1.85 million.⁷ Simply put: anything that affects over 10% of West Virginians by definition has a significant impact on West Virginia. Accordingly, the WVLA presents limited information regarding the impact on the KCPL local community as well.

a. The Kanawha County Public Library Provides Materials and Librarian Assistance to All West Virginians.

KCPL is the largest public library system in West Virginia, with a Mobile Library and ten locations throughout Kanawha County.⁸ The library has nearly 90,000 card holders, and maintains a policy that anyone of any age who lives, works, or attends school in West Virginia is eligible for a KCPL library card.⁹ Thus, while the majority of KCPL patrons are from Kanawha and Putnam Counties, residents from all 55 West Virginia counties are eligible to hold KCPL library cards, and are in fact represented in the cardholder database.¹⁰ Accordingly, should KCPL be deprived of the significant portion of its funding at stake in this appeal, the impact would be felt by library patrons state-wide.

KCPL has the largest materials collection of any public library in the state, at 571,177 items, and in fact is second only to West Virginia University.¹¹ In the 2010 fiscal year, KCPL

⁷ U.S. Census Bureau 2010 County QuickFacts, available at <http://quickfacts.census.gov/qfd/states/54/54039.html>

⁸ CBER Report at 33.

⁹ *Id.*; see also KCPL webpage describing library card application procedure, available at <http://kanawhalibrary.org/catalog/apply.html>

¹⁰ CBER Report at 33.

¹¹ WVLC Report at 14, 43.

circulated nearly 1.2 million materials.¹² In the same year, nearly 7.9 million items circulated throughout all West Virginia libraries.¹³ As such, KCPL is responsible for the circulation of approximately 15% of library materials state-wide.

Similarly, in the 2010 fiscal year, patrons made over 855,000 visits to KCPL.¹⁴ With West Virginia libraries state-wide receiving just over 6.2 million visits in that year¹⁵, KCPL attracts approximately 14% of West Virginia library visitors. The CBER Report provides further evidentiary support for the fact that KCPL serves visitors from all over West Virginia. During the two week survey period for the CBER study, respondents to the survey – which was distributed at KCPL branches and through the KCPL website – indicated they were from Kanawha County as well as all surrounding counties including Raleigh, Fayette, Boone, Lincoln, Cabell, Putnam, Mason, Jackson, Roane and Clay.¹⁶ In addition, librarians at KCPL answer reference questions via telephone or the library website’s interactive chat feature from anywhere in the world. Finally, KCPL’s materials are available both to West Virginians who physically visit one of its ten branches, as well as through West Virginia’s interlibrary loan system.

In addition to being a crucial provider of these physical materials, KCPL is a member of a nine library consortium, West Virginia Digital Entertainment Library Initiative (“WVDeli”), which provides patrons with digital downloads of audiobooks, e-books, videos, and music. Like those in public libraries nationwide, the WVDeli consortium materials can be downloaded to patrons’ Kindle Books, Nooks, and other desktop, laptop, and mobile devices, thus providing these West Virginians with access to the latest form of accessible information and entertainment.

¹² *Id.* at 20.

¹³ *Id.* at 23.

¹⁴ *Id.* at 20.

¹⁵ *Id.* at 21.

¹⁶ CBER Report at 49.

Interest in these materials is only expected to increase.¹⁷ Each consortium member is required to spend a minimum of \$10,000 per year on digital materials.¹⁸ In Fiscal Year 2010, KCPL far exceeded its required share of the burden, spending a total of \$30,045 on these materials.¹⁹ In that same year, there were 22,585 uses of the Consortium, only 8,083 of them from KCPL patrons.²⁰ The members of the WVDeli consortium, which include the Ohio County Public Library and the Morgantown Public Library System, are geographically diverse and would all be affected were KCPL unable to contribute to this extent.²¹

Two other library systems would be in direct and immediate jeopardy were KCPL to be deprived of so much of its funding. First, KCPL serves West Virginians beyond the county's border in its role as a service center and consultant for the Nitro Public Library.²² KCPL provides Nitro's automated system, catalog, Internet access, telecommunications, electronic information sources, and access to WVDeli, as well as support for staff education, and technical and accounting services.²³ Second, KCPL supports the County's school libraries in a similar fashion in that it hosts 43 school library catalogs on its server.

Finally, librarianship itself would suffer in West Virginia were KCPL put in a position where it would have to severely cut its staff. KCPL has the most librarians who have earned a Master's degree in library or information science.²⁴ Only 37 of West Virginia's public libraries

¹⁷ See Julie Bosman, *Kindle Connects to Library E-Books*, N.Y. TIMES, Sept. 21, 2011, at C1 (quoting publishing analysts).

¹⁸ CBER Report at 38.

¹⁹ *Id.*

²⁰ *Id.* at 39.

²¹ See "WVDeli - Participating Libraries," available at <http://wvdeli.lib.overdrive.com/E5E2A17C-2EF3-4AED-80A4-1F9086283862/10/537/en/Libraries.htm>

²² WVLC Report at 10; CBER Report at 36.

²³ CBER Report at 36.

²⁴ WVLC Report at 26-27.

have even a single degreed librarian on staff; by contrast, KCPL has 21 degreed librarians.²⁵ KCPL takes its leadership role in this regard to heart, and its degreed librarians are active resources for those librarians without this specialized training. For example, KCPL librarians frequently serve as WVLA officers and present programs and continuing education courses at WVLA conferences. There is no graduate program in library or information science in West Virginia, making professional librarians a rare breed in the state. However, the emergence of on-line graduate programs, such as the MLS program offered at the University of South Carolina, has made pursuing this degree a more viable option for West Virginians interested in this career path. At this important moment in educating West Virginia's librarians, a drastic funding cut is not the answer.

b. The KCPL Provides Vital Access to Computers and the Internet to Any West Virginian Visiting the Library.

*"Libraries serve as 'first responders' for the increasing numbers of people in need of technology training and online resources for employment, continuing education and access to online government services. With free access to high-speed Internet and expert assistance to aid those working with technology resources, **libraries serve as a 'toll-free' bridge over the digital divide.**"*

-- American Library Association, *Public Library Funding & Technology Access Study 2010-2011, Executive Summary* (published in americanlibrariesmagazine.org, Summer 2011) (emphasis added).

"I'd be happy if I could think that the role of the library was sustained and even enhanced in the age of the computer."

-- Bill Gates

The term "digital divide" refers to the fact that 32 percent of Americans, often those with lower incomes and education levels, racial minorities or residents in rural areas, lack broadband

²⁵ *Id.*

internet access in their homes.²⁶ In West Virginia, only 59.1% of households have broadband internet access, and another 6.0 % have dial-up internet access only.²⁷ The digital divide remains a significant force driving service in American public libraries:

For millions of people, their local public library is the only place to get connected. Use of computers and the Internet at libraries is at an all-time high. People come to do research for school and work, find jobs, get government information, and keep in touch.

-- Bill & Melinda Gates Foundation, *United States Libraries*, available at

<http://www.gatesfoundation.org/libraries/Pages/united-states-libraries.aspx>. A recent

Department of Commerce Report on broadband access confirms this observation, noting that the most recent data suggests that public libraries were one of the popular alternatives for Internet access among those with no home broadband Internet access service. The study found that 20% of those without broadband access at home relied on public libraries to provide that service.²⁸

Echoing this finding, a recent study by the American Library Association (“ALA”) reports that U.S. public libraries “continue to provide vital public access to computers and the Internet, so critical to millions of people negatively affected by the economic downturn.”²⁹ Chief among the uses of the internet terminals are job-seeking tools, as “[o]ngoing high unemployment continues to drive people to the library to access job resources.”³⁰

²⁶ U.S. Dep’t of Commerce, *Exploring the Digital Nation: Computer & Internet Use at Home*, vi (Nov. 2011) (“Digital Nation Report”), available at <http://www.ntia.doc.gov/report/2011/exploring-digital-nation-computer-and-internet-use-home> (also noting that, “[f]or example, home broadband adoption and computer use stood at only 16 percent and 27 percent, respectively, among rural households headed by a Black householder without a high school diploma”).

²⁷ *Id.* at 50.

²⁸ *Id.* at vi, 39.

²⁹ ALA *Executive Summary*, *supra*.

³⁰ *Id.*

Doing its part to respond to this need, the KCPL has 164 patron internet terminals available to anyone visiting its libraries, and also offers free WiFi to anyone within range of the library.³¹ KCPL is far and away the biggest provider of such services among the state's libraries; the next largest library in West Virginia, Cabell County, offers only 72 such terminals.³² After checking out materials, utilizing a computer was the most common reason responders to the CBER Report gave for visiting the library.³³ Consistent with this finding, the West Virginia Library Commission reports that the needs discussed by the federal report and the ALA are the concerns of West Virginians as well. For example, Nancy Moore, Director of Five Rivers Public Library located at Parsons in Tucker County, explained that her patrons "are very appreciative of the service here at the library. Some families cannot afford a home computer; therefore, they use the computers here at the library for homework, resumes, e-mail, travel directions, purchases online, eBay...etc. At times there are whole families that come to the library to use the computers."³⁴ In order to ensure that the computers and internet access are as useful as possible, KCPL also offers a wide range of computer classes and online tutoring services to assist users in accessing and using these materials.³⁵

KCPL's many internet terminals also serve as portals to the library's website and numerous online databases, available free of charge to anyone with a KCPL library card. The library's website, *Kanawhalibrary.org*, allows users to search the online catalog, place holds on materials, and learn about library programming and many other library services. The 66 research databases to which KCPL subscribes cover a wide range of topics, including genealogy,

³¹ WVLC Report at 24; *see also* Kanawhalibrary.org

³² *Id.*

³³ CBER Report at 48.

³⁴ WVLC Annual Report at 17, *available at*

www.librarycommission.wv.gov/publications/Annual%20Reports/2010%20WVLC%20Annual%20Report.pdf

³⁵ *Id.* at 30.

medicine, history, business, and literature.³⁶ In 2010, the KCPL website delivered nearly 1.3 million pages.³⁷ KCPL expended \$143,532 on e-materials in 2010: another figure that would be slashed were the trial court's judgment affirmed here.

c. Children's Services are a Major Focus of the KCPL.

"At the moment that we persuade a child, any child, to cross that threshold, that magic threshold into a library, we change their lives forever, for the better."

-- President (then Senator) Barack Obama

KCPL is deeply committed to serving the community's children through its materials, services, and programming. In Fiscal Year 2010, KCPL circulated 214,462 children's books, at an estimated value of \$2,292,598.78 to patrons.³⁸ In that same year, KCPL offered 648 children's programs, 203 young adult programs, and 305 family programs; combined attendance for these events totaled nearly 23,000.³⁹ The programs, which are available free to anyone, ranged from nutrition and exercise education, to playgroups and storytimes for younger children, to craft programs, theater events, "Shakespeare for kids," and West Virginia education programs.⁴⁰ Homework help is available to children seven afternoons a week through the library's website.⁴¹

Another way that KCPL serves children is through its support of local educators. The library's Teacher Collection program allows teachers, daycare providers and homeschoolers to request that KCPL librarians select materials on any given topic or theme for a teacher's

³⁶ CBER Report at 33; *see also* full list of databases at http://kanawhalibrary.org/research/index.html#eref_biography.

³⁷ *Id.* at 38.

³⁸ CBER Report at 19.

³⁹ CBER Report at 28.

⁴⁰ CBER Report at 28-29.

⁴¹ *See* http://kanawhalibrary.org/kids_library/

classroom use.⁴² Educators need only call the library with a request, and the Children’s librarians will create a unique collection for them.⁴³ KCPL provides a similar service to preschool teachers and daycare providers through its storytime kit collection.⁴⁴

Many studies have shown that children are at risk of losing reading skills during the summer break, and that children living in poverty are particularly at risk.⁴⁵ When children are let out of school for the summer, the KCPL continues to educate through its own Summer Reading program, an enormous initiative that would be in serious jeopardy were the library to lose the subject funding. The KCPL children’s department adopts a different theme for the program each summer, and through a variety of events and materials designed to encourage reading, aims to keep children engaged in learning throughout the summer months.⁴⁶ KCPL’s summer reading program serves as a model for other libraries around the state; for example, in 2011 other West Virginia libraries learned of the success of certain KCPL summer reading events and adopted those same programs.

d. If the Kanawha County Public Library Loses the Subject Funding, It Will be Unable to Sponsor the West Virginia Book Festival and Other Programs Vital to the State-wide Community.

The buzz of anticipation for an approaching speaker, the lively conversation between creator and consumer, the sifting through countless texts for that single title – these are the sights and sounds of the annual West Virginia Book Festival.

-- Andy Smith, *Big on Books: Readers celebrate the written word for more than a decade at the West Virginia Book Festival*, WV LIVING MAGAZINE, Fall 2011.

⁴² See <http://kanawhalibrary.org/childrens/teacher.html>

⁴³ *Id.*

⁴⁴ See <http://kanawhalibrary.org/childrens/daycare.html>

⁴⁵ See ALA: Library Summer Reading Programs, available at <http://www.ala.org/tools/libfactsheets/alalibraryfactsheet17>; see also Wisc. Dep’t of Public Instruction, “Why Public Library Summer Reading Programs are Important,” available at <http://dpi.wi.gov/pld/pdf/slp-points.pdf>

⁴⁶ See KCPL Summer Reading page, available at <http://kanawhalibrary.org/summerreading/kids/index.html>, stating that “Kanawha County Public Library takes a leadership role in keeping children reading by providing excellent resources and quality programming all summer long.”

The KCPL is a charter presenter of the annual West Virginia Book Festival, a two-day event promoting books and authors.⁴⁷ The Festival brings authors from across the nation to Charleston, and presents meet-the-author events, book vendors, a used book sale, workshops and panel discussions. The event also offers “Word Play,” a special hands-on section just for children. It is truly a state-wide event; the 2010 Book Festival attracted 7000 to 9000 attendees from at least 28 West Virginia counties as well as 10 other states.⁴⁸ Unfortunately, a dramatic cut to KCPL’s budget would certainly mean the withdrawal of its sponsorship of the Festival.

Another unique KCPL contribution to the West Virginia community is its housing of materials from the Foundation Center, the “leading source of information about philanthropy worldwide” and owner of the most comprehensive database of national and international grants.⁴⁹ KCPL is one of only eight West Virginia Foundation Center “Cooperating Collections”.⁵⁰ This and hundreds of other unique programs and services beyond those already mentioned above – from providing materials to adult literacy students, to partnering with local health clinics to provide health information, to serving the homebound – are at risk should the judgment below be upheld.

III. CONCLUSION

Libraries, and specifically the KCPL, serve a multitude of purposes. The public library is the community’s knowledge and information repository, and the largest free source of books and other media. KCPL patrons extolled the benefits the library provides in their CBER survey comments, calling the library “an outstanding resource for our community” and “vital to

⁴⁷ CBER Report at 31; *see also* wvbookfestival.org.

⁴⁸ *Id.*

⁴⁹ *See* Foundation Center: About Us, at www.foundationcenter.org/about/

⁵⁰ *See* Map of Cooperating Collections, at <http://grantspace.org/Find-Us>

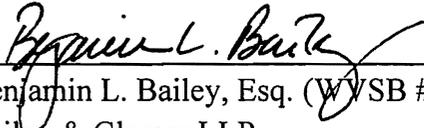
education”.⁵¹ These benefits enrich the entire state in numerous ways. Anyone is welcome to use KCPL’s many internet terminals and attend KCPL’s enriching programs, free of charge. KCPL allows any West Virginian to obtain a KCPL library card and borrow its materials. Through its generous sponsorship of the WVDeli system, KCPL provides users in several other libraries with online access to e-books and other digital materials. The unique needs of children and young adults are addressed through the library’s excellent youth collection and comprehensive programming schedule. KCPL’s sponsorship of the West Virginia Book Festival and housing of the Foundation Center materials further promote literacy and philanthropy for all of West Virginia.

In these ways and countless more, the entire state is served by the Kanawha County Public Library. All the services it provides further the “legitimate school purpose[s]” contemplated by the legislature. (W. Va. Code § 18-9A-11(f)) For these reasons, the WVLA respectfully urges the Court to reverse the judgment of the trial court and find that the Library Special Act and W. Va. Code § 18-9A-11 are valid and constitutional. In the alternative, the WVLA asks that the case be remanded so that the trial court may hear evidence, such as that cited within this Brief, about the impact on West Virginia citizens should the statutes be struck down.

Respectfully submitted,

**The West Virginia Library Association,
by Counsel**

⁵¹ CBER Report at 75.



Benjamin L. Bailey, Esq. (WVSB #200)

Bailey & Glasser LLP

209 Capitol Street

Charleston, West Virginia 25301

(304) 345-6555

(304) 342-1110 *facsimile*

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

KANAWHA COUNTY PUBLIC LIBRARY
BOARD, a public corporation; WEST VIRGINIA
BOARD OF EDUCATION, a public corporation;
and DR. JOREA MARPLE, in her official capacity
as Superintendent of Schools of the States of West
Virginia; Defendants Below,

Petitioners,

v.

Nos. 11-1224 & 11-1486

BOARD OF EDUCATION OF THE COUNTY OF
KANAWHA, a public corporation, Plaintiff Below,

Respondent.

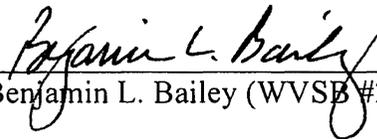
CERTIFICATE OF SERVICE

I, Benjamin L. Bailey, counsel for Amicus Curiae, West Virginia Library Association, do certify that on February 3, 2012, I served the foregoing Brief *Amicus Curiae* via hand delivery and/or U.S. Mail a true copy thereof as follows:

Barbara H. Allen, Esq.
Office of the Attorney General
State Capitol, Room E-26
Charleston, West Virginia 25305

Albert F. Sebok, Esq.
Jonathan L. Anderson, Esq.
Jackson & Kelly PLLC
P. O. Box 553
Charleston, West Virginia 25322

Christopher J. Winton, Esq.
Ray Winton & Kelly PLLC
109 Capitol Street, Suite 700
Charleston, West Virginia 25301


Benjamin L. Bailey (WVSB #200)