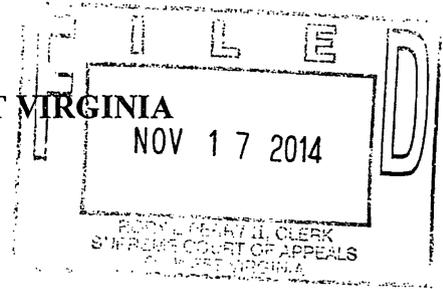


**BRIEF FILED
WITH MOTION
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

Docket No. 13-1084



**CONSTELLIUM ROLLED PRODUCTS RAVENSWOOD,
LLC, a Delaware corporation, and MELVIN LAGER**

Defendants-Below, Petitioners

v.

SHARON GRIFFITH and LOU ANN WALL,

Plaintiffs-Below, Respondents.

Honorable Thomas C. Evans, III, Judge
Circuit Court of Jackson County
Civil Action No. 11-C-26

**BRIEF OF THE *AMICUS CURIAE*
WEST VIRGINIA CHAMBER OF COMMERCE
IN SUPPORT OF PETITIONERS**

**W. Henry Jernigan, Jr. (WV State Bar No. 1887)
Jill Cranston Rice (WV State Bar No. 7421)
Andrew T. Kirkner (WV State Bar No. 12349)
DINSMORE & SHOHL, LLP
900 Lee Street, Suite 600
Charleston, WV 25301
Telephone: (304) 357-0901
Facsimile: (304) 357-0919
E-mail: henry.jernigan@dinsmore.com
E-mail: jill.rice@dinsmore.com**

***Counsel for WEST VIRGINIA CHAMBER OF
COMMERCE Amicus Curiae***

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	3, 4
I. INTRODUCTION	5
II. STATEMENT OF INTEREST.....	5
III. RELEVANT BACKGROUND	7
IV. ARGUMENT.....	9
V. CONCLUSION.....	13

TABLE OF AUTHORITIES

West Virginia Cases

<i>Barefoot v. Sundale Nursing Home</i> , 193 W. Va. 475, 482–483, 457 S.E.2d 152, 159–160 (1995).....	9
<i>Conaway v. Eastern Associated Coal Corp.</i> , 178 W. Va. 164, 358 S.E.2d 423 (1986).....	9
<i>Constellium Rolled Prods. Ravenswood, LLC v. Griffith</i> , 2014 LEXIS 1089 (W. Va. 2014)	<i>passim</i>
<i>Fairmont Specialty Services v. West Virginia Human Rights Commission</i> , 206 W. Va. 86, 103, 522 S.E.2d 180, 197 (1999)(dissent by Justice Davis).....	4
<i>Findley v. State Farm Mut. Auto. Ins. Co.</i> , 213 W. Va. 80, 576 S.E.2d 807 (2002).....	5
<i>Frame v. JPMorgan Chase</i> , 2013 LEXIS 758 (W. Va. 2013).....	9
<i>Hanlon v. Chambers</i> , 195 W. Va. 99, 464 S.E.2d 741 (1995).....	9
<i>Hicks v. Jones</i> , 217 W. Va. 107, 617 S.E.2d 457 (2005).....	5
<i>In re Flood Litigation</i> , 216 W. Va. 534, 607 S.E.2d 863 (2004).....	5
<i>Kessell v. Monongalia County General Hospital Co.</i> , 220 W. Va. 602, 648 S.E.2d 366 (2007).....	5
<i>Lehman v. United Bank, Inc.</i> , 228 W. Va. 202, 719 S.E.2d 370 (2011).....	5
<i>MacDonald v. City Hosp., Inc.</i> , 227 W. Va. 707, 715 S.E.2d 405 (2011).....	5
<i>Mayer v. Frobe</i> , Syl. Pt. 4, 40 W. Va. 246, 22 S.E. 58 (1895).....	12
<i>Repass v. Workers’ Compensation Division</i> , 212 W. Va. 86, 569 S.E.2d 162 (2002).....	5
<i>Roberts v. Consolidation Coal Co.</i> , 208 W. Va. 218, 539 S.E.2d 478 (2000).....	5

TABLE OF AUTHORITIES (cont.)

West Virginia Cases (cont.)

<i>State ex rel. Chemtall, Inc. v. Madden</i> , 221 W. Va. 415, 655 S.E.2d 161 (2007).....	5
<i>Stone v. St. Joseph’s Hospital of Parkersburg</i> , 208 W. Va. 91, 538 S.E.2d 389 (2000).....	5
<i>Verba v. Ghaphery</i> , 210 W. Va. 30, 552 S.E.2d 406 (2001).....	5
<i>Wampler Foods, Inc. v. Workers’ Compensation Division</i> , 216 W. Va. 129, 602 S.E.2d 805 (2004).....	5
<i>West Va. University v. Decker</i> , 191 W. Va. 567, 447 S.E.2d 259 (1994).....	9
<i>Willis v. Wal-Mart Stores, Inc.</i> , 202 W.Va. 413, 416, 504 S.E.2d 648. 651 (WV 1998).....	10
<i>Young v. Bellofram Corp.</i> , 227 W. Va. 53, 705 S.E.2d 560 (2010).....	5

Federal Cases

<i>Freeman v. Dal-Tile Corp.</i> , 930 F. Supp. 2d 611, 629 (E.D. N.C. 2013).....	10
<i>Harris v. Forklift Systems, Inc.</i> , 510 U.S. 17 (1993).....	10
<i>Jensen v. Potter</i> , 435 F.3d 444, 449 (3d Cir. 2006)(quoting <i>Oncale</i> , 523 U.S. at 80–81).....	10,11
<i>Kolstad v. American Dental Ass’n</i> , 527 U.S. 526, 534 (1999).....	12
<i>Oncale v. Sundowner Offshore Services, Inc.</i> , 523 U.S. 75 (1998).....	10
<i>Pucino v. Verizon Communications</i> , 618 F.3d 112 (2d Cir, 2010).....	10
<i>Trinidad v. New York City Dep’t of Corrections</i> , 423 F.Supp. 2d 151 (S.D.NY. 2006).....	10

I. INTRODUCTION

This case, if the majority opinion is not revised, will have a significant, adverse impact on West Virginia's businesses, workforce, and, more generally, its economy and citizens. For that reason, the West Virginia Chamber of Commerce ("Chamber") files this brief as *amicus curiae* in support of Petitioners Constellium Rolled Products Ravenswood, LLC, and Melvin Lager (collectively "Constellium").¹ The Court's 3-2 Memorandum Decision² affirming the circuit court's judgment, including the \$500,000 punitive damages award, is not only unsupported by the evidence, but it also is contrary to established employment law and, if allowed to stand, will impose an impossible burden on West Virginia employers. This burden will deter business, again leaving few to wonder why it is so difficult to attract new employers to this State. See *Fairmont Specialty Services v. West Virginia Human Rights Commission*, 206 W. Va. 86, 103, 522 S.E.2d 180, 197 (1999)(dissent by Justice Davis).

II. STATEMENT OF INTEREST

The West Virginia Chamber of Commerce represents 1,842 businesses based or with operations in West Virginia. These businesses employ more than half of West Virginia's workforce and, collectively, constitute a major portion of the engine that drives our State's economy. In order to facilitate the continued operation and expansion of these businesses and to attract new businesses to relocate to our State, the Chamber consistently advocates for public

¹ Pursuant to Rule 30(b) of the Rules of Appellate Procedure, on November 13, 2014, the Chamber provided notice to all parties of its intention to file an *amicus curiae* brief. The Chamber further recognizes that this is not within the 5 day period required to serve this notice before filing this brief and respectfully requests the Court's and the parties' leave, pursuant to its Motion for Leave to File Amicus Brief, in that the Chamber learned only recently of Petitioner's intent to seek reconsideration of its decision and had to call a meeting of its Civil Justice Committee and seek approval of the Chamber Board of Directors, both before serving the notice. Moreover, the undersigned counsel authored this brief in its entirety. Neither party nor their respective counsel contributed to or made a monetary contribution specifically intended to fund the preparation or submission of this brief. This disclosure is made pursuant to Rule 30(e)(5).

² *Constellium Rolled Prods. Ravenswood, LLC v. Griffith*, 2014 LEXIS 1089 (W. Va. 2014), cited herein as "Op."

policies that improve West Virginia's economic environment, a task that is ever more critical given the challenges the State and its people currently face.

In furtherance of these efforts, the Chamber has long recognized that a legal system that is predictable in its outcomes and functions within the mainstream of American jurisprudence is critical. Without it, businesses in West Virginia are deprived of the stable judicial climate upon which other businesses operating in our sister states can and do rely. The absence of such a judicial climate serves to discourage the growth of existing businesses within and the relocation of new businesses into West Virginia. Thus, where the Chamber perceives that a case pending before this Court threatens the twin goals of predictability in outcomes and ensuring our jurisprudence falls with the mainstream, it seeks leave to file "friend of the court" briefs highlighting the significance of that fact.³

This case presents such a situation. The effects of the Court's Memorandum Decision on employment and punitive damages law in our state will, if not reconsidered, chill business expansion, economic growth, and the increased employment in West Virginia that that brings. For that reason, the Chamber urges the Court to reconsider its decision in this matter.

III. RELEVANT BACKGROUND

The Chamber supports the Petition for Rehearing of Constellium Rolled Products Ravenswood, LLC. for three primary reasons: First, the Memorandum Decision is inconsistent with established law relating to the West Virginia Human Rights Act, W. Va. Code § 2-11-1 *et seq.*: second, it interjects unnecessary uncertainty for employers doing business in West Virginia:

³ See *Lehman v. United Bank, Inc.*, 228 W. Va. 202, 719 S.E.2d 370 (2011); *MacDonald v. City Hosp., Inc.*, 227 W. Va. 707, 715 S.E.2d 405 (2011); *Young v. Bellofram Corp.*, 227 W. Va. 53, 705 S.E.2d 560 (2010); *State ex rel. Chemtall, Inc. v. Madden*, 221 W. Va. 415, 655 S.E.2d 161 (2007); *Kessell v. Monongalia County General Hospital Co.*, 220 W. Va. 602, 648 S.E.2d 366 (2007); *Hicks v. Jones*, 217 W. Va. 107, 617 S.E.2d 457 (2005); *In re Flood Litigation*, 216 W. Va. 534, 607 S.E.2d 863 (2004); *Wampler Foods, Inc. v. Workers' Compensation Division*, 216 W. Va. 129, 602 S.E.2d 805 (2004); *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002); *Repass v. Workers' Compensation Division*, 212 W. Va. 86, 569 S.E.2d 162 (2002); *Verba v. Ghaphery*, 210 W. Va. 30, 552 S.E.2d 406 (2001); *Roberts v. Consolidation Coal Co.*, 208 W. Va. 218, 539 S.E.2d 478 (2000); *Stone v. St. Joseph's Hospital of Parkersburg*, 208 W. Va. 91, 538 S.E.2d 389 (2000).

and third, it places West Virginia outside the mainstream of American jurisprudence with respect to the law governing employment relations and punitive damages.

Constellium's motion requests reconsideration of the Court's 3-2 decision affirming a judgment entered against Constellium and in favor of Respondents, Sharon Griffith and Lou Ann Wall ("Respondents") in the Circuit Court of Jackson County. That judgment was based on findings that Constellium had created a hostile work environment and awarded each Respondent \$250,000 in compensatory and \$250,000 in punitive damages. The claims leading to that judgment were predicated upon three comment cards placed in a company suggestion box by an anonymous employee that were redacted and then posted on the company bulletin board with a response by the new installed plant manager. Op. at 2.

The suggestion box was instituted in an effort to further communications and cooperation between labor and management and, in turn, "save" a long-struggling business and the jobs created by it. Op. at fn. 3. The original comment cards referenced the Respondents by name and, in the course of complaining about their work ethic, included unnecessary and inappropriate derogatory, gender-related language. Op. at 2-3. Consistent with the company's practice, the derogatory language and the names of the individual Respondents were redacted prior to their posting and the plant manager's response to the comment cards was appended. *Id.* Unfortunately, the redactions were insufficient to prevent those familiar with the plant operations from identifying the Respondents. *Id.*

That said, there is no evidence that the deficiencies in those redactions were done maliciously or with any intent on the part of Constellium or its management to discriminate against, embarrass, or otherwise harass the Respondents. There is likewise no evidence to suggest that the redacted language was materially different in nature from similarly inappropriate language used by other plant employees, including Respondents, to describe male employees.

Finally, there was no evidence that other comment cards were redacted or otherwise treated in a manner different from the comment cards at issue. Op. at 10.

In essence, the facts demonstrate a level of coarseness in the language employed by both male and female workers at the plant, including the Respondents themselves. That coarseness, however inappropriate and unacceptable, does not rise to the level necessary to establish the type of workplace hostility required to sustain Respondents' claims. To conclude otherwise ignores well-established law here and elsewhere. To go further and conclude, as the Majority in this case does, that the conduct in question was so egregious as to warrant the imposition of punitive damages, places this decision well outside the mainstream of American jurisprudence.

IV. ARGUMENT

A. The Memorandum Decision turns the West Virginia Human Rights Act on its head and imposes an impossible burden on employers doing business here.

The Memorandum Decision affirms the finding that Constellium exposed Respondents to a hostile work environment under the West Virginia Human Rights Act, W. Va. Code, 5-11-1, *et seq.* To do so, the Majority was required to find that Constellium's conduct "was based on the sex of the [Respondents]." That, in turn, required the Majority to find that: (1) "There is a difference in using a bad word as an expletive and in using profanity as a name or description of a coworker"; and (2) "The language used in the comment cards was gender-biased." Based on this, it concluded that it was reasonable to interpret the reference in the posted comment cards to the only two female employees in a seventeen person work group as "lazy asses" and "bitches" as evidence of gender discrimination." Op. at 5. Established law does not support this conclusion. That law is quite clear. The "conduct" at issue must be directed at the *gender*, not the conduct. As the two dissenting justices aptly pointed out, that was simply not the case here.

These claims were brought pursuant to the West Virginia Human Rights Act, W. Va. Code, 5-11-1, *et seq.* and, therefore, are "governed by the same analytical framework and

structures developed under Title VII, at least where our statute's language does not direct otherwise." *Frame v. JPMorgan Chase*, 2013 LEXIS 758, n.2 (W. Va. 2013); see also, *West Va. University v. Decker*, 191 W. Va. 567, 447 S.E.2d 259 (1994); *Conaway v. Eastern Associated Coal Corp.*, 178 W. Va. 164, 358 S.E.2d 423 (1986); *Barefoot v. Sundale Nursing Home*, 193 W. Va. 475, 482–483, 457 S.E.2d 152, 159–160 (1995). This means both federal and state decisions addressing claims such as those involved here lend themselves to similar rather than disparate outcomes. That, in turn, ensures that employers in West Virginia are subject to the same standards in state court as they would be in federal court or the courts of our sister states.

Respectfully, the Majority's Decision eviscerates that assurance. It reaches a conclusion that is inconsistent with not just established principles of West Virginia law but also those of federal law and the law of other states. In so doing, it thwarts the ability of West Virginia employers and would-be employers to rely on established precedent and places West Virginia outside the mainstream of jurisprudence in this important area of the law. Specifically, it upends the long-recognized principle that in order to establish a claim of a hostile or abusive work environment arising out of sexual based conduct, a plaintiff-employee must prove that the subject conduct was, among other things, "*based on the sex of the plaintiff and imputable on some factual basis to the employer.*" Syl. pt. 5, *Hanlon v. Chambers*, 195 W. Va. 99, 464 S.E.2d 741 (1995) (emphasis added).

Coarse, even profane and vulgar language, as offensive as it may be, is not sufficient, standing alone, to sustain such a claim. *Frame*, 2013 LEXIS 758. Indeed, the United States Supreme Court itself made clear in *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998) that, even where the words directed at an individual have sexual content or connotations, that fact alone will not sustain a workplace sexual harassment claim. The critical element

required is proof that “members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed.” *Id.* at 80. Simply put, the state and federal anti-discrimination laws in this area are not and were never intended to be a general civility code for the American workplace. *Jensen v. Potter*, 435 F.3d 444, 449 (3d Cir. 2006)(quoting *Oncale*, 523 U.S. at 80–81). Thus, in cases where a plaintiff was referred to as a “b***h,” a “f**king b***h” or worse, courts have consistently held that that alone is insufficient to meet the standards required under Title VII federally⁴ or the Human Rights Act at the state level.⁵

In this case, was the language on the original comment card ill-advised? Clearly! Was that language coarse, vulgar and offensive? Absolutely! Were the efforts to redact those comments as well as the identity of those referenced on the comment card insufficient? Regrettably, yes! With all of that said, however, none of that gives rise to a cause of action under our discrimination laws. Here, the comments were directed at the work ethic of the Respondents. The substance of the comments supports this (e.g., relates to overtime, “not fair to company,” “don’t need to be here especially on overtime”; smoking and sitting; “will be here on Sunday on double time”) Op. at 2-3. The testimony of the author of the comment cards further supports that conclusion. In his words, he was “trying to get management’s attention on the overtime abuse at the plant” and employed the offending language to do so. [App. 1034]. Moreover, the CEO’s responses to the comment cards evidences his understanding that the complaints being lodged were directed at the Respondents’ work ethic, not their gender (e.g., “need everyone to be fully engaged and productive” and “best use of time”). Op. at 2-3. Finally,

⁴ See, e.g., *Harris v. Forklift Systems, Inc.*, 510 U.S. 17 (1993); *Pucino v. Verizon Communications*, 618 F.3d 112 (2d Cir. 2010); *Freeman v. Dal-Tile Corp.*, 930 F. Supp. 2d 611, 629 (E.D. N.C. 2013); *Trinidad v. New York City Dep’t of Corrections*, 423 F.Supp. 2d 151 (S.D.N.Y. 2006)

⁵ See, e.g., *Willis v. Wal-Mart Stores, Inc.*, 202 W.Va. 413, 416, 504 S.E.2d 648, 651 (WV 1998)

it appears that this and other equally coarse language was not uncommon within the plant among the employees, including the Respondents. Op. at 10.

Again, our anti-discrimination laws do not impose a duty on an employer to ensure the general civility of the workplace. *Jensen* at 449. To conclude otherwise, as the majority opinion effectively does, imposes on West Virginia employers the obligation to police their workforces and eliminate profanity and other similar socially unacceptable language as well as anything that might be deemed verbal harassment by and between members of the employee workforce. That is an impossible task required of employers nowhere else.

While we all would prefer a more polite, less coarse and more civil society, forcing employers to ensure such a society within their workplaces is neither the purpose of the Human Rights Act nor is it, in reality, achievable within the framework of the Act. Attempting to achieve that end within that framework will serve no practical purpose and lead to the unintended consequence of discouraging business expansion here in West Virginia.

B. The Award of Punitive Damages is Not Supported by the Evidence.

Equally distressing from the Chamber's perspective is the Majority's decision to affirm the imposition of punitive damages. In support of its position, the Majority characterizes the publication of the redacted comment cards "with identifiable and derogatory information" as an intentional act. In so doing, it conflates what are, in reality, two acts. The first is the act of redacting the offensive language and names of the target of the complaints being made from the comment cards. The second is the act of publishing those redacted cards themselves. Were the cards in their redacted form intentionally published? No one appears to have ever disputed that. Were the redactions made with the intent that the identities of the Respondents and the derogatory language be easily identifiable? No one appears to have ever so claimed.

In West Virginia, it has been settled law for almost 120 years that, “[i]n actions of tort, where gross fraud, malice, oppression, or wanton, willful, or reckless conduct or criminal indifference to civil obligations affecting the rights of others appear, or where legislative enactment authorizes it, the jury may assess exemplary, punitive, or vindictive damages; these terms being synonymous.” *Mayer v. Frobe*, Syl. Pt. 4, 40 W. Va. 246, 22 S.E. 58 (1895). Here, there is no evidence that Constellium acted fraudulently, maliciously, oppressively or with wanton or criminal indifference to its civil obligation in a manner that affected the rights of others.

It made a mistake – it failed to edit three comment cards in such a manner that adequately obscured the identity of the Respondents and the substance of the derogatory language contained on those cards. Such a mistake cannot constitute the type of intentional conduct contemplated by our punitive damage law. A fact pattern such as this would be held up in our circuit courts all over the state to establish that this type of analogous error – here, an administrative assistant’s mere oversight in failing to redact pronouns or letters of a word and a CEO’s well-intentioned effort to respond to comments and improve the labor-management relationship at its struggling manufacturing plant – warrants punitive damages. Clearly, when the United States Supreme Court said in *Kolstad v. American Dental Ass’n*, 527 U.S. 526, 534 (1999), that “malice and reckless indifference to the federally protected rights of an aggrieved individual” are required before the imposition of punitive damages in a federal discrimination case, it did not mean this. The \$250,000 punitive damage award on these facts is ripe for abuse in our state.

In reaching the opposite conclusion, the Majority points to the fact that Respondents testified that they were shunned by their fellow employees as a consequence of the posting of the redacted cards. Op. at 5. There is, however, nothing suggesting that this was ever brought to the attention of Constellium. The Majority also supports its decision to affirm the punitive damage

award on the fact that the author of the comment card was not counseled or disciplined for his use of inappropriate language on the comment card:

Once the author confessed, he was not disciplined in any manner. The gender-based language in the comment cards imposes upon Constellium a duty to investigate and take effective action to correct the problem. . . . Thus, the relationship of the harm likely to occur from posting such comments cards, and the harm that actually occurred according to the respondents' evidence, support punitive damages.

Op. at 7-8 (citation omitted).

This flies in the face of the collective bargaining agreement at Constellium, however. It prevented it from dealing directly with the employees at issue – either the commenter or the Respondents – outside the union. The imposition of punitive damages here places the employer in yet another untenable position – violate federal law on the one hand, or be subject to punitive damages by West Virginia courts on the other. Thus, it follows that punitive damages cannot rest, even in part, on the failure of Constellium to discipline its employee when federal law prohibited it from doing so. It clearly did, warranting rehearing and reversal.

IV. CONCLUSION

The Chamber shares the entire Court's revulsion at the type of language contained in the unredacted comment cards involved here. That type of language reflects a coarseness in our society that is all too common, if no less lamentable. The Chamber also understands the high threshold required for rehearing as well as for disturbing a jury verdict. However, where a trial court mistakenly submits a matter to a jury for decision despite the absence of critical evidence necessary for a complaining party to meet its burden, or when a jury misapprehends the law applicable to the facts presented to it, regardless of how offensive the conduct at issue may be, it is incumbent upon this Court to correct those errors lest they become enshrined into our law. Likewise, where the Court itself overlooks established law and erroneously issues an opinion that

takes West Virginia out of the mainstream of American jurisprudence, it is critical that it correct that error. The Chamber respectfully submits that this has occurred here.

Affirmation of a million dollar judgment in this case will send a chilling message to employers and would-be employers in West Virginia. It will cause them to question to what extent they are required to impose rules of civility within their workplaces, how those rules are to be enforced, and what the consequences may be if those rules or their enforcement is deemed to be deficient. It will also cause them to consider, as has happened all too often in the past, whether they can avoid this burden and potential financial exposure by simply moving from one side of the West Virginia border to the other.

Employers are often accused of crying “wolf” whenever a decision is handed down that is adverse to their perceived interests. The Chamber respectfully submits that such accusations are often exaggerated as evidenced by our current economic landscape. Well-intended decisions have too often had unintended consequences that have, over time, operated to impede West Virginia’s economic growth and the employment prospects of its citizens. The Majority decision in this case is such a decision. Accordingly, the Chamber urges the Court to rehear this case and reverse its earlier opinion.

Respectfully Submitted,

***AMICUS CURIAE WEST VIRGINIA
CHAMBER OF COMMERCE***

BY DINSMORE & SHOHL LLP



W. Henry Jernigan, Jr. (WV State Bar No. 1887)

Jill Cranston Rice (WV State Bar No. 7421)

900 Lee Street, Suite 600

Charleston, WV 25301

Telephone: (304) 357-0901

Facsimile: (304) 357-0919

E-mail: henry.jernigan@dinsmore.com

E-mail: jill.rice@dinsmore.com

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NO. 13-1084

CONSTELLIUM ROLLED PRODUCTS RAVENSWOOD,
LLC, a Delaware corporation, and MELVIN LAGER

Defendants-Below, Petitioners

v.

SHARON GRIFFITH and LOU ANN WALL,

Plaintiffs-Below, Respondents.

From the Circuit Court of Jackson County, West Virginia
Civil Action No. 11-C-26

CERTIFICATE OF SERVICE

I, Jill C. Rice, hereby certify that on this 17th day of November, 2014, a true and accurate copy of the foregoing Brief of the Amicus Curiae West Virginia Chamber of Commerce in Support of Petitioners was sent via U.S. Mail, postage prepaid, to all counsel, addressed as follows:

Walt Auvil
Rusen & Auvil, PLLC
1208 Market Street
Parkersburg, WV 26101

Ancil Ramey
Christopher Slaughter
Steptoe & Johnson
1000 Fifth Avenue, Suite 250
P.O. Box 2195
Huntington, WV 25722



Jill Cranston Rice (WV State Bar No. 7421)