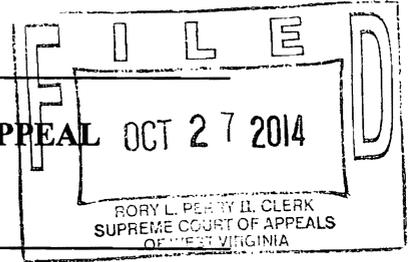


---

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS



At Charleston

NO. 14-1045

STATE OF WEST VIRGINIA, *ex rel.*,  
WEST VIRGINIA SECONDARY SCHOOL  
ACTIVITIES COMMISSION, DAVID COTTREL,  
President, MIKE ABROGAST, Vice President,  
GARY RAY, Executive Director, RICK JONES,  
DAN ERENRICH, EDDIE CAMPBELL, GREGORY  
PRUDICH, CRAIG LEE LOY, GREG WEBB,  
ROBERT DUNLEVEY and RONALD SPENCER,  
Members

Petitioners,

v.

THE HONORABLE DAVID W. HUMMEL, Judge of  
the Circuit Court of Marshall County, West Virginia, and  
PAMELA F., Individually and as parent and legal guardian of  
D.W., a minor

Respondents.

---

**RESPONSE OF RESPONDENTS, PAMELA F. AND D.W.,  
TO PETITION FOR WRIT OF PROHIBITION**

---

---

James G. Bordas, Jr., (WV Bar #409) Counsel of Record

[jim@bordaslaw.com](mailto:jim@bordaslaw.com)

Michelle Marinacci (WV Bar #7482)

[mmarinacci@bordaslaw.com](mailto:mmarinacci@bordaslaw.com)

BORDAS & BORDAS, PLLC

1358 National Road

Wheeling, WV 26003

(304) 242-8410

(304) 242-3936-fax

## **QUESTION PRESENTED**

Whether the Circuit Court of Marshall County, West Virginia, the Honorable David W. Hummel, Jr., acted without jurisdiction, exceeded its legitimate powers and clearly erred, as a matter of law, when it found that the West Virginia Secondary School Activities Commission's non-review of ejections rule, 127 W.Va. C.S.R. § 3-15.3 (2014), was arbitrary, capricious, invalid, unenforceable and an unreasonable exercise of the legislative grant of rule-making authority to the West Virginia Secondary School Activities Commission set forth in W.Va. Code §18-2-25 (1967) and enjoined and restrained the West Virginia Secondary School Activities Commission from enforcing its suspension of D.W. until further Order of the Circuit Court of Marshall County, West Virginia?

## **STATEMENT OF THE CASE**

On Friday, September 26, 2014, Respondent Pamela F. filed a Verified Complaint for Injunctive Relief and Temporary Restraining Order in the Circuit Court of Marshall County, West Virginia, seeking an Order prohibiting the West Virginia Secondary School Activities Commission [hereinafter "WVSSAC"] from enforcing its decision to impose discipline upon D.W., a senior at Cameron High School and a captain of the football team, by suspending him from participating in a September 26, 2014 football game and "Senior Night" activities until such time as the disciplinary action could be appealed in accordance with governing West Virginia law. [Petitioners' App. 1-11] Recognizing the importance of Senior Night activities in the lives of a high school athlete and his family and the likelihood that Respondents would prevail, the Circuit Court of Marshall County issued a Temporary Restraining Order permitting D.W. to participate in the September 26, 2014 football game and Senior Night activities and directed that the Temporary Restraining Order would expire under its own terms on October 2,

2014, six days later, unless a contrary order was subsequently issued by the Court. [Petitioners' App. 12-14]

On Monday, September 29, 2014, Pamela F. and D.W. filed their Protest and Petition for Appeal with the WVSSAC in accordance with W.Va. Code § 18-2-25 and the WVSSAC's own protest and appeal rules, 127 W.Va. C.S.R. § 6 *et seq* (2007).<sup>1</sup> [Petitioners' App. 27-39] That same day the WVSSAC filed its Motion to Dissolve Temporary Restraining Order.<sup>2</sup> [Petitioners' App. 15-19] A Response in Opposition to Motion to Dissolve Temporary Restraining Order was promptly filed demonstrating: (1) that the Protest and Appeal had been filed with the WVSSAC in accordance with WVSSAC Rules and (2) specifically challenging the validity of the WVSSAC's automatic suspension provisions (127 W.Va. C.S.R. § 4-3.7.c) and its non-review of ejections rule (127 W.Va. C.S.R. § 3-15.3) as violations of the express provisions of W. Va. Code §18-2-25 which mandates that "the WVSSAC's rules and regulations "contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter twenty-nine-a of [the West Virginia] Code." [Petitioners' App. 20-39] Petitioners argued the rules were arbitrary, capricious and unreasonable exercises of the WVSSAC's limited authority. [Petitioners' App. 21-23] Also on September 29, 2014, the Circuit Court of Marshall County notified the parties that a full evidentiary hearing would be held on October 2, 2014 at 11:00 a.m.

---

<sup>1</sup> Pamela F. and others had attempted to seek relief for D.W. directly from the WVSSAC repeatedly during the days preceding seeking relief from the Circuit Court of Marshall County and were repeatedly told there was the WVSSAC would not reconsider the discipline imposed and there was not method of appeal. The WVSSAC has yet to take action Respondents' September 29, 2014 Protest and Petition for Appeal in accordance with the requirements of 127 W.Va. C.S.R. § 6, *et. seq.* The WVSSAC rules governing protests and appeals permit a protest and appeal by any aggrieved party. 127 W.Va. C.S.R. § 6-5.

<sup>2</sup> The WVSSAC sent its Motion to Dissolve Temporary Restraining Order to the Circuit Court of Marshall County and Respondents' counsel on September 26, 2014, via U.S. Mail. [Petitioners App. 19]

The Circuit Court of Marshall County convened a hearing on October 2, 2014.<sup>3</sup> At the hearing, the Circuit Court of Marshall County heard extensive arguments by both parties regarding the enforcement of D.W.'s suspension.<sup>4</sup> Respondents presented specific arguments regarding the conflict between the WVSSAC's non-review of ejection rules, the express provisions of W.Va. Code §18-2-25 and other rules enacted by the WVSSAC. The WVSSAC chose not to respond to Respondents' statutory arguments, arguing instead that this Court's decisions in *Mayo v. West Virginia Secondary Schools Commission*, 223 W.Va. 88, 672 S.E.2d 224 (2008) and *State ex rel. WVSSAC v. Webster*, 228 W.Va. 75, 717 S.E.2d 859 (2011) were dispositive.<sup>5</sup> After entertaining the arguments of the parties, the Circuit Court recessed the hearing and retired to chambers to consider the parties' arguments, the authority cited by the parties and the authority revealed by the Court's own research. Upon resuming the hearing, the Circuit Court declared the rule providing for non-review of automatic ejections (127 W.Va. C.S.R. § 3-15.3) to be draconian, arbitrary, capricious and a violation of W. Va. Code §18-2-25. [Petitioners' App. 51]

The Circuit Court directed counsel for Pamela F. and D.W. to prepare a proposed order. Due to time constraints and to facilitate the Circuit Court's ability to modify the proposed order, the proposed order was presented to the Circuit Court and the WVSSAC in electronic format at 10:01

---

<sup>3</sup> On the morning of the hearing, the WVSSAC requested that the hearing begin earlier than the previously scheduled 11:00 start time and the Circuit Court of Marshall County accommodated that request.

<sup>4</sup> At the start of the October 2, 2014 hearing, the WVSSAC presented its "Response to Plaintiff's Motion to Dissolve the Temporary Restraining Order." Despite its title, the document argued that Plaintiff's "constitutional" challenge had previously been rejected in *Mayo v. West Virginia Secondary Schools Commission*, 223 W.Va. 88, 672 S.E.2d 224 (2008). This document also acknowledged the WVSSAC's receipt of the Protest and Petition for Appeal.

<sup>5</sup> After receiving the WVSSAC's Petition for Writ of Prohibition and noting that only the limited portion of the hearing transcript reflecting the Circuit Court's ultimate disposition was included in the Petitioners' Appendix, counsel for Respondents contacted the court reporter to inquire whether the full transcript was available to include within Respondents' Appendix. Unfortunately, the court reporter indicated that the only portion of the hearing the WVSSAC requested be transcribed was the portion of the hearing which occurred after the Circuit Court returned from chambers and announced its ruling. *See*, Petitioners' Appendix, pp. 46-51. As a result, the entire transcript was not available to include within Respondents' Appendix.

am on October 3, 2014. [Respondents' App. 17-31] A hard copy of the proposed order was also delivered to the Circuit Court for review and consideration. The Circuit Court's Order Granting Preliminary Injunction was entered the afternoon of October 3, 2014.<sup>6</sup> The entered Order Granting Preliminary Injunction, certified by the Circuit Clerk on October 3, 2014, is included in Respondents' Appendix at 1-16. On October 17, 2014, the WVSSAC filed its Petition for Writ of Prohibition with this Court.

### SUMMARY OF THE ARGUMENT

The Circuit of Marshall County did not exceed its legitimate powers and did not clearly err, as matter of law, when it applied established principles of statutory construction to find, as a matter of law, that the WVSSAC's non-review of ejections rule, 127 W.Va. C.S.R. § 3-15.3, was draconian, arbitrary, capricious, invalid, unenforceable and an unreasonable exercise of the limited legislative grant of rule-making authority afforded to the WVSSAC by W.Va. Code §18-2-25. In so finding, the Circuit Court of Marshall County did not contravene this Court's holdings in *Mayo v. West Virginia Secondary Schools Commission*, 223 W.Va. 88, 672 S.E.2d 224 (2008) and *State ex rel. WVSSAC v. Webster*, 228 W.Va. 75, 717 S.E.2d 859 (2011), as alleged by the WVSSAC. To the contrary, the Circuit Court correctly found that Respondents were neither presenting a constitutional challenge to the rules, the limited issue decided in *Mayo*, nor seeking

---

<sup>6</sup> The WVSSAC's statement on pages 5 and 10 of its Petition that "As of this date no Order has been submitted" is simply not supported by the record. The proposed order was simultaneously emailed to the Court and to the WVSSAC at 10:01 a.m. on October 3, 2014. [Respondents' App. 17] The Order Granting Preliminary Injunction was entered by the Circuit Court on October 3, 2014 and the Circuit Clerk was directed to provide certified copies to counsel of record. As evidenced by the certified copy of the Order Granting Preliminary Injunction included in Respondents' Appendix 1-16, the Circuit Clerk did provide certified copies to counsel of record on October 3, 2014. If the WVSSAC did not receive its certified copy and questioned whether an Order had been submitted or entered when it filed its Petition with this Court on October 17, 2014, a telephone call to the Circuit Clerk of Marshall County would have cleared up any misunderstanding the WVSSAC may have had.

judicial review of an official's in-game call, the issue presented in *Webster*. Rather, Respondents were presenting a limited challenge to the WVSSAC's rules themselves as being in conflict with the requirements of W.Va. Code § 18-2-25 and other WVSSAC rules because they did not provide a process for review of the discipline imposed as a result of an in-game ejection. This Court in *Webster* specifically acknowledged that a challenge to the rules themselves as being unreasonable, arbitrary, capricious or in excess of the WVSSAC's limited statutory authority had not been presented and, therefore, was not being addressed. *Webster*, 228 W.Va. at 84, 717 S.E.2d at 686. The Circuit Court made clear that it was not expressing an opinion regarding the propriety of the official's ejection call. [Petitioners' Appendix 47; Respondents' Appendix 8].

At issue before the Circuit Court of Marshall County was not the ejection call itself but, rather, the automatic, post-game discipline/punishment imposed without the statutorily required review process. There is a critical distinction between seeking to overturn the official's in-game call and seeking review of the propriety of the post-game disciplinary punishment imposed by the WVSSAC upon an individual student-athlete as the result of an in-game call. When D.W. was ejected during the first quarter of September 19, 2014 football game he received an immediate, non-reviewable punishment – he was prohibited from playing during the remainder of the game. What was at issue before the Circuit Court was whether that in-game call can legally have post-game consequences, *i.e.* a subsequent game suspension, without the statutorily mandated appeal process.

To be clear, the Circuit Court did not overturn the official's in-game ejection call and Respondents are not seeking to have the call reversed. Rather, Respondents seek only a review and determination of whether the conduct underlying the ejection call was so severe that it should have consequences which extend beyond the conclusion of the game, particularly in situations, such as that presently before the Court where there is video evidence that the conduct underlying the penalty

(an alleged kick to an opponent's helmet) did not occur. West Virginia law requires that when the WVSSAC seeks to impose disciplinary action upon a coach or student athlete which extends beyond the conclusion of an athletic contest, that a review and appeal process be afforded. The WVSSAC is blatantly violating West Virginia law by refusing to review the severity of the punishment imposed in light of the facts and circumstances of the alleged infraction. The Circuit Court's Order Granting Preliminary Injunction simply finds the WVSSAC's "rule" prohibiting review of discipline imposed as the result of an ejection to be unenforceable as contrary to the WVSSAC's enabling statute and enjoins the WVSSAC from enforcing its suspension of D.W. until such time as the statutorily mandated review process has been completed and all appeals exhausted.

W. Va. Code § 18-2-25 statutorily empowers the WVSSAC "to exercise the control, supervision and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it" by the various secondary schools throughout the State of West Virginia.

W. Va. Code § 18-2-25 provides, in pertinent part:

The West Virginia secondary school activities commission is hereby empowered to exercise the control, supervision and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. **The rules and regulations of the West Virginia secondary school activities commission shall contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter twenty-nine-a of this Code.**

W. Va. Code § 18-2-25 (emphasis added). The WVSSAC's automatic suspension rule, 127

W.Va. C.S.R. § 4-3.7.c provides, in pertinent part,

Any coach, student, or bench personnel ejected by an official will be suspended for the remainder of the game, match, meet or contest. They will also face suspension in additional contest(s); the suspension will be assessed based upon ten (10) percent of the allowed regular season contests . . .

Consistent with the appeal requirements of West Virginia Code §18-2-25, the WVSSAC rules codified at 127 W.Va. C.S.R. § 4-3.8 and 127 W.Va. C.S.R. § 4-3.10 mandate that discipline

imposed upon a student athlete which extends beyond the confines of the game in which the call is made be subject to an investigation by the WVSSAC, an adjudication of the propriety of the punishment and an appeal procedure. However, the WVSSAC rule which purports to exempt post-game suspensions arising from an ejection call, 127 W.Va. C.S.R. § 3-15.3, directly conflicts with the mandates of W.Va. Code § 18-2-25, 127 W.Va. C.S.R. § 4-3.8 and 127 W.Va. C.S.R. § 4-3.10. Accordingly, it is arbitrary, capricious, and an unreasonable exercise of a limited grant of statutory authority and, thus, is invalid. *Jones v. West Virginia State Board of Educ.*, 218 W.Va. 52, 60, 622 S.E.2d 289, 2974 (2005); Syl. pt. 3, *Appalachian Power Co. v. State Tax Dep't of West Virginia*, 195 W.Va. 573, 466 S.E.2d 424 (1995); Syl. Pt. 3, *Rowe v. Department of Corrections*, 170 W.Va. 230, 292 S.E.2d 650 (1982); see also, syl. pt. 3, *Ney v. State Workmen's Comp. Comm'r*, 171 W.Va. 13, 297 S.E.2d 212 (1982); *Anderson & Anderson Contractors, Inc. v. Latimer*, 162 W.Va. 803, 807–08, 257 S.E.2d 878, 881 (1979) (“Although an agency may have power to promulgate rules and regulations, the rules and regulations must be reasonable and conform to the laws enacted by the Legislature.” (citation omitted)).

The Circuit Court of Marshall County did not exceed its legitimate powers and did not clearly err as a matter of law in finding 127 W.Va. C.S.R. § 3-15.3, as applied, to be an arbitrary, capricious and unreasonable exercise of the WVSSAC's limited statutory authority. West Virginia law is clear. A Writ of Prohibition will “only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers.” Syl. pt. 2, *State ex rel. Peacher v. Sencindiver*, 160 W.Va. 314, 233 S.E.2d 425 (1977); syl. pt. 1, *State ex rel. York v. West Virginia Real Estate Appraiser Licensing and Certification Board*, -- W.Va. --, 760 S.E.2d 856 (2014). Further, a writ of prohibition will not issue in absence of a clear error, as a matter of law. See Syl. pt. 4, *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 483 S.E.2d 12 (1996). Finally,

a writ of prohibition will not issue where it is alleged that the circuit court exceeded its legitimate powers unless this Court finds “that the abuse of powers is so flagrant and violative of petitioner’s rights as to make a remedy by appeal inadequate.” Syl. pt. 2, *Woodall v. Laurita*, 156 W.Va. 707, 195 S.E.2d 717 (1973); syl. pt. 3, *SER York*. As these exacting standards are not met, a writ of prohibition should not issue against the Circuit Court of Marshall County, West Virginia and its October 3, 2014 Order Granting Temporary Injunction should remain in full force and effect.

### **STATEMENT REGARDING ORAL ARGUMENT AND DECISION**

Respondents do not request oral argument in this matter. The Circuit Court of Marshall County correctly applied well-established rules of statutory construction to find that the WVSSAC’s non-review of ejection calls rule, 127 W.Va. C.S.R. § 3-15.3, was draconian, arbitrary, capricious, invalid, unenforceable and an unreasonable exercise of the limited legislative grant of rule-making authority afforded to the WVSSAC by W.Va. Code §18-2-25. Accordingly, a writ of prohibition should not issue under the clear and established law of West Virginia.

### **ARGUMENT**

#### **I. Factual Background**

On September 19, 2014, D.W. was participating in a high school football game against Beallsville High School in Beallsville, Ohio as a member of the Cameron High School football game. [Respondent’s Appendix 2] D.W. is a senior captain of the Cameron High School football team who wears jersey #2. [Respondent’s Appendix 2] While Cameron High School is

a member of the WVSSAC, Beallsville High School is not. [Respondent's Appendix 2] During the first quarter of the game, an official called an unsportsmanlike conduct/personal foul on D.W. and ejected him from the remainder of the game. [Respondent's Appendix] The official believed that he had seen D.W. kick an opposing player in the helmet/facemask when getting off of the ground after a tackle. [Petitioners' Appendix 8] Video evidence of the play does not reveal any improper conduct by either player. [Petitioners' Appendix 2]

Upon receipt of a Special Report from the official, the WVSSAC invoked 127 W.Va. C.S.R. § 4-3.7.c and suspended D.W. from participating in Cameron High School's next regularly scheduled football game which was scheduled to be played on September 26, 2014 and was also "Senior Night", a night on which senior athletes and their families would be honored. [Petitioners' Appendix 3-4, 12-13; Respondent's Appendix 2-3] The WVSSAC refused the request of Pamela F, D.W.'s mother and others<sup>7</sup> that it review its decision to impose an additional one-game suspension on D.W. in light of the video evidence. Invoking 127 W.Va. C.S.R. § 3-15.3, the WVSSAC refused to reconsider the suspension. [Petitioners' Appendix 3-4; Respondent's Appendix 3] Faced with her family being prohibited from participating in Senior Night activities as a result of the suspension, on September 26, 2014, Pamela F. sought relief from the Circuit Court of Marshall County and requested that the WVSSAC be enjoined from enforcing its additional one-game suspension of D.W. until such time as a protest and appeal of the additional one-game suspension could be presented to the WVSSAC and resolved in

---

<sup>7</sup> Respondents must respectfully clarify the misstatement made by the WVSSAC on page 4 of its Petition that "Even though the incident complained of occurred on September 19<sup>th</sup>, and was reported on September 20<sup>th</sup> Respondent did not seek any relief until September 26, 2014[.]" Pamela F. and numerous others repeatedly called the WVSSAC seeking review of the suspension up to and through September 25, 2014 and were flatly rejected. Only after the WVSSAC had repeatedly refused to reconsider the punishment imposed in light of the video evidence did Pamela F. seek the intervention of the Circuit Court of Marshall County, on September 26, 2014, as a last resort.

accordance with the requirements of W. Va. Code § 18-2-25 and the legislative rules of the WVSSAC codified in Title 127 of the Code of State Regulations. [Petitioners' Appendix 1-11]

Finding Pamela F. had met her burden of showing irreparable harm if the suspension was enforced and D.W. was prohibited from participating in Senior Night activities that evening and that insufficient time to hear the WVSSAC on the issue prior to the incurrence of the irreparable harm, the Circuit Court of Marshall County issued a Temporary Restraining Order enjoining the WVSSAC from enforcing its suspension of D.W. until the matter could be heard more fully. [Petitioners' Appendix 12-14] On September 29, 2014, the next business day, Pamela F. invoked the WVSSAC's own protest and appeal rules and filed a Protest and Petition for Appeal before the WVSSAC seeking to challenge the post-game punishment imposed upon D.W. [Petitioners' Appendix 27-39] To date, the WVSSAC has taken no action on Pamela F.'s Protest and Petition for Appeal.

On October 2, 2014, the Circuit Court of Marshall County, West Virginia convened a full hearing on the issues raised in the Verified Complaint for Injunctive Relief and Temporary Restraining Order. At the start of the hearing, the Circuit Court informed the parties that, in addition to reviewing all of the briefs submitted by the parties, the Circuit Court had conducted its own research and was ready to consider the arguments of the parties and make a ruling.

At the hearing, Pamela F. presented specific arguments regarding how the WVSSAC's automatic suspension for ejection rule (127 W.Va. C.S.R. § 4-3.7.c) and its non-review of ejections rule (127 W.Va. C.S.R. § 3-15.3) violate the express provisions of W. Va. Code §18-2-25 and other WVSSAC rules. A hand-out was submitted to both the Court and the WVSSAC specifically setting forth the language of the conflicting rules. [Petitioners' Appendix 45] Additionally, Pamela F. argued that the WVSSAC's rule which purports to preclude review of

post-game discipline imposed as the result of an in-game ejection was unreasonable as applied by the WVSSAC. Pamela F. presented evidence that other states, particularly Florida, direct a review be permitted of the punishment imposed as the result of an ejection where there is video evidence to dispute the severity of the infraction as called in-game. [Petitioners' Appendix 35-39] The WVSSAC's response was limited to arguing that Florida was an aberration and *Mayo* and *Webster* conclusively dispose of the issues presented.<sup>8</sup> The WVSSAC did not respond to the statutory interpretation argument presented by Pamela F.

## II. *Mayo and Webster*

Neither *Mayo* nor *Webster* address whether the WVSSAC's automatic suspension for ejection and non-review of ejection rules constitute an abuse of the WVSSAC's rule-making authority. *But see*, Petition, p. 5 ("The SSAC rule in question . . . has been considered by this Court in *Mayo* . . . and *Webster*, and this Court has determined . . . that the rule is a reasonable exercise of the rulemaking authority vested in the SSAC"). *Mayo*'s discussion of the non-review rule was limited to reviewing the circuit court's *sua sponte* determination that the rule was unconstitutional and finding that there was no constitutionally protected interest at issue. *Mayo*, 223 W.Va. at 92-93, 672 S.E.2d at 228-29; *see also*, *Webster*, 228 W.Va. at 80, 717 S.W.2d at 684 (discussing limited holding of *Mayo*). *Mayo* did not discuss, in any manner, whether the rule constituted a valid exercise of the WVSSAC's statutory rule-making power. Indeed, this Court's sole mention of the WVSSAC's rule-making authority is found at footnote 15 wherein

---

<sup>8</sup> While a full fifty (50) state survey of high athletic governing bodies has not been completed, the partial survey that was completed reveals that Florida, Oregon, South Dakota, Texas and Virginia all provide a process to review the severity of discipline imposed upon a student athlete and/or coach as the result of an ejection. *See* Petitioners' Appendix 36-39 (Florida); Rule 7.0 <http://www.cifcs.org/governance/rules/football> (California); UIL § 1208(j)(1) <https://www.uiltexas.org/files/constitution/uil-ccr-section-1207-1210.pdf> (Texas); SAA, Ejection Report, 2014-15 Handbook, available at [http://www.osaa.org/governance/handbooks/osaa#\\_Toc393093179](http://www.osaa.org/governance/handbooks/osaa#_Toc393093179) (Oregon); SDHSAA – <http://www.sdhsaa.com/Portals/0/PDFs/Handbook/Athletics/15-Ejections.pdf> (South Dakota); Rule 27-11-6 <http://www.vhsl.org/doc/upload/pub-handbook-2014-153.pdf> (Virginia).

the Court discussed it holding in *Jones Mayo*, 223 W.Va. at 94, 672 S.E.2d at 230, n. 15. As Respondents have not presented a constitutional challenge and the Circuit Court expressly noted that it was not and had no intention of examining the constitutionality of 127 W.Va. C.S.R. § 3-15.3 and 127 W.Va. C.S.R. §4-3.7.c, *Mayo* is not dispositive. [Respondents' Appendix 7-8]

That neither *Mayo* nor *Webster* addressed whether the non-review of ejections rule as a valid exercise of the WVSSAC's rulemaking authority is made clear in *Webster* itself. While the WVSSAC attempts to take the Circuit Court to task for its reliance upon *Webster*, the WVSSAC omits the critical preceding sentence to the brief passage quoted on page 9 of the Petition. *See*, Petition, pp. 8-9. The entire passage from *Webster* cited and relied upon by the Circuit Court reads as follows:

Coincident with the legislative grant of authority to the SSAC to "exercise the control, supervision and regulation of all interscholastic athletic events," matters falling within the province of the SSAC's bailiwick are, as a rule, beyond the purview of court interference. W.Va. Code § 18-2-25; *see Oakley*, 152 W.Va. 533, 164 S.E.2d 775, syl. pt. 2. While **there are limited occasions where review is permitted, such as a well-founded challenge to a legislative rule promulgated by the SSAC**, this case clearly does not present a situation where court review was proper. **Critically, no one has suggested that the SSAC rules, which permit suspensions for unsportsmanlike conduct and striking an opponent, are an unreasonable exercise of the legislative grant of rulemaking authority to the SSAC.** *See* W. Va. Code § 18-2-25; *Hamilton*, 182 W.Va. at 161, 386 S.E.2d at 659. Unlike the scenario presented in *Hamilton*, where the rule under specific challenge was determined to be unreasonable when its effect was examined in light of its purpose, there was no claim in this case that the ejection or suspension rules were unreasonable, arbitrary, or capricious. **Because no allegation was ever asserted by the respondent players that the rules were an unreasonable exercise of the SSAC's authority, the trial court had no basis for injecting itself into this matter.** In the interest of avoiding prospective instances of improper judicial review of matters expressly reserved to the SSAC, we hold that decisions properly within the purview of the legislative grant of authority to the WVSSAC under West Virginia Code § 18-2-25, such as the application of WVSSAC Rules and the review of calls or rulings made by game officials, are not subject to judicial review.

23.

*Webster*, 228 W.Va. at 83-84, 717 S.E.2d at 867-68 (emphasis added); *see also* Respondents' Appendix 8-9. Any doubt that this Court was not addressing a rule-making challenge in *Webster* and that this Court specifically recognized that circuit courts have a role in examining the propriety of WVSSAC rules is erased by the following language which appears earlier in *Webster*:

While the trial court cited our decisions in *Hamilton v. WVSSAC*, 182 W.Va. 158, 386 S.E.2d 656 (1989), and *Mayo v. WVSSAC*, 223 W.Va. 88, 672 S.E.2d 224 (2008), as support for its intervention in the SSAC matter, the lower court overlooked significant language from both those decisions that specifically identifies the abuse of the SSAC's rule-making authority as the basis for court intervention into matters that otherwise operate without judicial review. *See Oakley*, 152 W.Va. at 538, 164 S.E.2d at 779 (recognizing that, as a rule, courts have no right of review with regard to SSAC decisions). **A careful reading of both *Hamilton* and *Mayo* reveals that the authority of a court to inject itself into an SSAC matter arises when that body exceeds its legitimate rule-making authority.**

*Id.* at 79, 717 S.E.2d at 863 (emphasis added) (footnote omitted). Indeed, *Webster* noted in footnote 31 that the rule the trial court focused upon in making its ruling "was not even a rule promulgated by the SSAC." *Id.* at 83, 717 S.E.2d at 867, n.31.

Although the WVSSAC appears to believe that it may act in violation of its limited statutory authority with immunity, *Webster* makes clear that the courts of this state have a role in determining whether rules enacted by the WVSSAC are within the limited grant of legislative authority conferred upon the WVSSAC. Thus, the Circuit Court's ruling at issue herein, that the non-review of ejections rule, "127 C.S.R. § 3-15.3, is arbitrary, capricious, invalid, unenforceable and an unreasonable exercise of the legislative grant of rulemaking authority to the WVSSAC set forth in W. Va. Code §18-2-25" is expressly within its authority to declare, as recognized in *Webster*. [Respondents' Appendix 15]

**III. The WVSSAC's non-review of ejections rule exceeds the limited legislative authority conferred upon the WVSSAC and is, thus, invalid and unenforceable as a matter of law**

The law governing the determination of whether a legislative rule complies with the statutory mandate are well established in West Virginia. “The primary object in construing a statute is to ascertain and give effect to the intent of the Legislature.” Syl. pt. 1, *Smith v. State Workmen’s Comp. Comm’r*, 159 W.Va. 108, 219 S.E.2d 361 (1975); *see also*, *Jones*, 218 W.Va. at 57, 622 S.E.2d at 294. “When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case it is the duty of the courts not to construe but to apply the statute.” Syl. pt. 5, *State v. General Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W.Va. 137, 107 S.E.2d 353 (1959); *see also*, *Jones*, 218 W.Va. at 57, 622 S.E.2d at 294. Further, “ ‘ “Where the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation.” Syl. Pt. 2, *Crockett v. Andrews*, 153 W.Va. 714, 172 S.E.2d 384 (1970).’ Syllabus Point 4, *Syncor International Corp. v. Palmer*, 208 W.Va. 658, 542 S.E.2d 479 (2001).” Syl. pt. 4, *Charter Communications VI, PLLC v. Community Antenna Serv., Inc.*, 211 W.Va. 71, 561 S.E.2d 793 (2002); *see also*, *Jones*, 218 W.Va. at 57, 622 S.E.2d at 294.

When power is delegated to an entity, such as the WVSSAC, by statute, the exercise of that power must be consistent with the legislative grant. “It is fundamental law that the Legislature may delegate to an administrative agency the power to make rules and regulations to implement the statute under which the agency functions. In exercising that power, however, an administrative agency may not issue a regulation which is inconsistent with, or which alters or limits its statutory authority.” Syl. Pt. 3, *Rowe*, 170 W.Va. 230, 292 S.E.2d 650; *see also*, syl. pt. 3, *Ney*, 171 W.Va. 13, 297 S.E.2d 212; *Jones*, 218 W.Va. at 60, 622 S.E.2d at 297. (“Although an agency may have power to promulgate rules and regulations, the rules and regulations must be reasonable and conform to the laws enacted by the Legislature.” *Anderson*, 162 W.Va. at 807–08, 257 S.E.2d at

881. This Court set forth the scope of judicial review applicable to legislative rules in syllabus point 3 of *Appalachian Power* wherein it held:

Judicial review of an agency's legislative rule and the construction of a statute that it administers involves two separate but interrelated questions, only the second of which furnishes an occasion for deference. In deciding whether an administrative agency's position should be sustained, a reviewing court applies the standards set out by the United States Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984). The court first must ask whether the Legislature has directly spoken to the precise question at issue. If the intention of the Legislature is clear, that is the end of the matter, and the agency's position only can be upheld if it conforms to the Legislature's intent. No deference is due the agency's interpretation at this stage.

Syl. pt. 3, *Appalachian Power*, 195 W.Va. 573, 466 S.E.2d 424. It is within these established guidelines that the WVSSAC rules at issue herein must be examined.

The WVSSAC authority is provided by W.Va. Code §18-2-25. W.Va. Code § 18-2-25 provides, in pertinent part:

The West Virginia secondary schools activities commission is hereby empowered to exercise the control, supervision and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. **The rules and regulations** of the West Virginia secondary school activities commission **shall contain a provision for a proper review procedure** and review board and be promulgated in accordance with the provisions of chapter twenty-nine-a of this Code.

W.Va. Code §18-2-25 (emphasis added). It is well established law in West Virginia that the use of the term "shall" in a statute is mandatory and leaves no discretion to act otherwise. Syl. pt. 2, *Terry v. Sencindiver*, 153 W.Va. 651, 171 S.E.2d 480 (1969) ("The word 'shall', in the absence of language in the statute showing a contrary intent on the part of the legislature, should be afforded a mandatory connotation." Moreover, in *Jones*, this Court recognized that W. Va. Code §18-2-25 plainly reflects legislative intent and mandate that the WVSSAC promulgate rules and regulations which contain a review procedure. *Jones*, 218 W.Va. at 62, 622 S.E.2d at 299. As this Court held in *Hamilton*, not only must the rules and regulations enacted by the WVSSAC be

reasonable, the WVSSAC must apply those rules reasonably. Syl. *Hamilton*, 182 W.Va. 158, 386 S.E.2d 656.

Consistent with this statutory mandate, the WVSSAC enacted 127 W.Va. C.S.R. § 4-3.8 and 127 W.Va. C.S.R. 4-3.10, imposing a requirement that an investigation be made into a claim that a student athlete and/or coach engaged in unsportsmanlike conduct, such as the basis of the call which resulted in D.W.'s ejection from the September 19, 2014 game, and that the disciplinary action imposed as a result of that investigation be subject to appeal in accordance with the provisions of 127 W.Va. C.S.R. § 6, *et seq.* Specifically, these legislative rules provide:

**4-3.8. Procedure.** Unsportsmanship action must be reported in detail to the WVSSAC. A copy of the complaint must also be filed with the principal of the school involved. Each principal involved shall report such information or answers to the report as they deem appropriate. **Upon receipt of all reports**, the Executive Director and/or the Board of Directors of the **WVSSAC shall investigate and adjudicate** such reports in accordance with the powers afforded in § 127-1-8.6 and 8.7 and § 127-1-12.2 and 12.3 of the Constitution. Penalties up to and including suspension of member schools may be made in accordance with § 127-4.

**4-3.10. Appeals.** **All cases involving disciplinary action against** member schools, **coaches, students**, team attendants, or officials **may be protested** in accordance with § 127-6.

127 W.Va. C.S.R. § 4-3.8 and 127 W.Va. C.S.R. 4-3.10 (emphasis added). Additionally, the express language of the ejection rule which the WVSSAC has applied to mandate an automatic suspension, indicates a level of discretion in the determination of the amount of any post-game disciplinary action to be imposed stating, in pertinent part, "Any coach, student, or bench personnel ejected by an official **will be suspended for the remainder of the game**, match, meet or contest. They will *also face* suspension in additional contest(s)." 127 W.Va. C.S.R. § 4-3.7.c.

These regulations, when read *in para materia*, demonstrate that where disciplinary action is to be imposed against a student athlete (or coach) which extends beyond the confines of the athletic

contest itself, the WVSSAC must conduct an investigation of the facts and circumstances of the alleged misconduct and impose only such additional post-game discipline as may be warranted by the facts and circumstances underlying the offense. Additionally, the results of that investigation and decision on disciplinary action are subject to further appeal. As such, mandate of W.Va. Code § 18-2-25 requiring a proper review procedure is fulfilled.

The WVSSAC, however, ignores both the legislative mandate for a review procedure and its *own rules* requiring an investigation, adjudication and appeal of disciplinary actions in the way it applies its non-review of ejections rule, 127 W.Va. C.S.R. § 3-15.3. 127 W.Va. C.S.R. § 3-15.3 provides:

The protest of a contest or ejection will not be allowed. Accordingly, the Board of Directors is not authorized to order contests to be replayed or ejections to be reconsidered.

The WVSSAC applies this rule to extend beyond review of the ejection call itself, but to also to the post-game discipline to be imposed as a result of the ejection. Similarly, the WVSSAC interprets and applies 127 W.Va. C.S.R. § 4-3.7.c to mandate an automatic future game suspension.

Legislature has directly spoken to the precise question at issue, *i.e.*, whether the WVSSAC must enact a proper review procedure for alleged rule violations. The legislative directive set forth in W. Va. Code §18-2-25 is clear, unambiguous and not subject to interpretation. Accordingly, the WVSSAC's interpretation and enforcement of 127 C.S.R. § 3-15.3 can be only upheld if it conforms to the Legislature's intent. No deference is due the WVSSAC's interpretation. *See*, syl. pt. 3, *Appalachian Power*.

The Circuit Court correctly found, as a matter of law, that the suspension of a student-athlete beyond the conclusion of a sports contest for unsportsmanlike conduct constitutes disciplinary action against the student-athlete. [Respondents' Appendix 13] The WVSSAC's interpretation of

127 W.Va. C.S.R. § 4-3.7.c to impose a mandatory additional game suspension permits a game official's call and penalty to go beyond the conclusion of the contest in which the official is presiding and beyond the conclusion of the official's duties related thereto and impact a student-athlete's ability to participate in future contests. As such, the Circuit Court correctly found that it constitutes disciplinary action against student-athlete, as a matter of law. [Respondents' Appendix 13]

In granting authority to the WVSSAC to adopt rules governing interscholastic sports activities and imposing punishment or discipline for violation of WVSSAC rules, the West Virginia Legislature mandated that a review procedure be implemented in accordance with Chapter 29A of the West Virginia Code. The legislative intent is clear, unambiguous and not subject to interpretation. The WVSSAC applies 127 C.S.R. § 4-3.7.c as a non-reviewable, automatic future disciplinary action. As such, it is an arbitrary and capricious rule which violates the express review mandates of W. Va. Code §18-2-25 and conflicts with the investigation requirement of 127 W.Va. C.S.R. §4-3.8 and the disciplinary action appeal requirement set forth in 127 W.Va. C.S.R. § 4-3.10. The WVSSAC's abuse of its limited legislative authority in this regard is further compounded when viewed in light of its application of 127 W.Va. C.S.R. § 3-15.3 to prohibit review of discipline imposed as a result of an ejection.

The prohibition against a protest of an ejection decision by a game official set forth in 127 W.Va. C.S.R. § 3-15.3 violates W.Va. Code § 18-2-25 because purports to immunize disciplinary action against a student-athlete for violation of WVSSAC rules from the review procedure mandated by W. Va. Code § 18-2-25. As review of the post-game discipline imposed as the result of an ejection call does not impact the contest in which the call was made, the WVSSAC's adamant refusal to conduct a post-game assessment of the conduct at issue to ascertain whether additional

post-game punishment is warranted by the behavior serves to further no legitimate purpose. Mistakes can be made in the heat of the moment during an athletic contest. Where video evidence exists which indicates either that the conduct upon which the ejection call was based either did not occur or was clearly non-intentional, an examination of the appropriate post-game discipline to impose would serve the legitimate purpose of having the punishment fit the crime without interfering with in-game decisions. As demonstrated by the review procedures implemented in Florida, Oregon, South Dakota, Texas and Virginia, *see* footnote 8, *supra*, review of the post-game disciplinary action imposed as the result of an ejection is feasible and does not impact the result of the contest in which the ejection call was made. Rather, such review serves the legitimate purpose of ensuring that the discipline imposed is warranted by the conduct at issue.

The Circuit Court of Marshall County correctly found that 127 C.S.R. § 3-15.3 which purports to prohibit the review of ejections which result in the automatic discipline of future games suspensions under 127 C.S.R. § 4-3.7.c, as applied by the WVSSAC constitutes an unreasonable exercise of the legislative grant of rulemaking authority to the WVSSAC set forth in W. Va. Code §18-2-25 and is arbitrary and capricious. [Respondents' Appendix 15] As applied by the WVSSAC to be non-reviewable, automatic future disciplinary action, 127 C.S.R. § 4-3.7.c is an arbitrary and capricious rule which violates the express review mandates of W. Va. Code §18-2-25 and conflicts with the disciplinary action appeal requirement set forth in 127 W.Va. C.S.R. § 4-3.10. WVSSAC rules, 127 C.S.R. § 3-15.3 and 127 C.S.R. § 4-3.7.c, violate the express provisions of West Virginia law. However, the Circuit Court of Marshall County exercised judicial restraint by declaring only 127 C.S.R. § 3-15.3 to be invalid and unenforceable as 127 C.S.R. § 4-3.7.c can be applied in a manner consistent with the mandates of W.Va. Code § 18-2-25 if it applied subject to the express provisions of 127 W.Va. C.S.R. §4-3.8 and 127 W.Va. C.S.R. § 4-3.10.

The Circuit Court of Marshall County, West Virginia could have likewise declared 127 C.S.R. § 4-3.7.c invalid and unenforceable as an unreasonable exercise of the WVSSAC's limited rulemaking authority in light of the manner in which the WVSSAC applies the rule. It did not, however, and limited its holding to finding, as a matter of law, that 127 C.S.R. § 4-3.7.c, as applied by the WVSSAC, is arbitrary and capricious and left the door open for the WVSSAC to continue to invoke 127 C.S.R. § 4-3.7.c so long as the WVSSAC also permits the protest and appeal of disciplinary action imposed pursuant to 127 C.S.R. § 4-3.7.c in accordance with W.Va. Code § 18-2-25, 127 W.Va. C.S.R. § 4-3.8 and 127 W.Va. C.S.R. 4-3.10.

**IV. The Circuit Court of Marshall County acted within its legitimate powers and did not clearly err, as a matter of law. Accordingly, a Writ of Prohibition should not issue.**

The Circuit Court of Marshall County did not exceed its legitimate powers and did not clearly err as a matter of law in finding 127 W.Va. C.S.R. § 3-15.3, as applied, to be an arbitrary, capricious and unreasonable exercise of the WVSSAC's limited statutory authority. Under established West Virginia law, Writ of Prohibition will "only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers." Syl. pt. 2, *SER Peacher*, 160 W.Va. 314, 233 S.E.2d 425; syl. pt. 1, *SER York*, -- W.Va. --, 760 S.E.2d 856. In order to find the Circuit Court of Marshall County exceeded its legitimate powers, this Court must find "that the abuse of powers is so flagrant and violative of petitioner's rights as to make a remedy by appeal inadequate." Syl. pt. 2, *Woodall*, 156 W.Va. 707, 195 S.E.2d 717; syl. pt. 3, *SER York*.

In syllabus point 4 of *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 483 S.E.2d 12 (1996), this Court explained the exacting standards which must be met for issuance of a Writ of Prohibition:

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower

tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. pt. 4, *SER Hoover*, 199 W.Va. 12, 483 S.E.2d 12. The instant Petition for Writ of Prohibition should be rejected because the WVSSAC has not met these exacting standards.

The WVSSAC's attempt to demonstrate that these standards have been met rest primarily upon its argument that *Mayo* and *Webster* conclusively dispose of the issues presented herein. As demonstrated above, *Mayo* and *Webster* do not address the statutory basis for the Circuit Court's rulings. Thus, as to the most critical factor, "the existence of clear error as a matter of law, the WVSSAC cannot meet its burden to demonstrate that the Circuit Court of Marshall County should be prohibited from enforcing its October 3, 2014 Order Granting Preliminary Injunction. *See*, syl. pt. 4, *SER Hoover*. As discussed at length above in Section III, 127 C.S.R. § 3-15.3 constitutes an unreasonable exercise of the WVSSAC's limited statutory rule-making authority. Therefore, the Circuit Court did not clearly err, as a matter of law, in declaring it invalid and unenforceable.

With respect to the remaining four factors to be considered under *SER Hoover*, the WVSSAC has likewise failed to meet its burden. As to the first factor, the WVSSAC's statement that it has no alternative means of relief prior to the end of the football season is of no moment. Petition, p. 10. The WVSSAC is statutorily required to provide a review and appeal procedure for

the imposition of discipline on student-athletes. It has failed to do so. The WVSSAC's violation of law is not limited to the current high school football season. Moreover, the WVSSAC itself delayed in seeking the relief it now argues it needs immediately. The Circuit Court's Order was entered and certified by the Circuit Clerk on October 3, 2014 and was provided to the WVSSAC prior to entry. [Respondents' Appendix 1-31] The WVSSAC's representation that its delay in seeking relief was the result of no order being entered is without a factual basis. Petition, p. 10.

As to the second factor which considers damage to the Petitioner, the WVSSAC's argument regarding the number of athletes its supervises has no relevance to the damage argument unless the WVSSAC is attempting to argue that it is ill equipped to perform the duties and responsibilities conferred upon it by the Legislature. The five States noted above which provide a procedure for the protest and appeal of discipline imposed as the result of an ejection supervise far more student athletes than the WVSSAC. *See, supra* at footnote 8.

As to the fourth factor, the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law, the WVSSAC's argument likewise fails. As to its notice argument, the Circuit Court correctly found it to be harmless error, a finding supported by the additional fact that Pamela F. and numerous others attempted to seek relief directly from the WVSSAC prior to turning to the Circuit Court of Marshall County on the day the suspension was to be enforced and were summarily rebuffed. With a mere hours before kick-off, there was simply no time to convene a hearing. The WVSSAC's reference to *Mayo* and *Webster* to argue the Circuit Court exhibited a persistent disregard for substantive law fails for the reasons previously discussed. Finally, the WVSSAC acknowledges that it cannot satisfy the fourth and fifth factors by admitting that the Circuit Court's Order does not constitute oft-repeated error or raises new and important issues of law. Petition, p. 11.

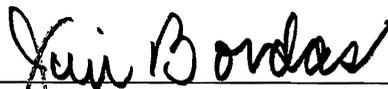
As the exacting standards for issuance of a Writ of Prohibition have not been met, the WVSSAC's Petition should be refused are not met, a Writ of Prohibition should not issue against the Circuit Court of Marshall County, West Virginia and its October 3, 2014 Order Granting Temporary Injunction should remain in full force and effect.

### CONCLUSION

The Circuit Court of Marshall County acted within its jurisdiction and legitimate powers when it declared, as a matter of law, that the WVSSAC's non-review of ejections rule, 127 W.Va. C.S.R. § 3-15.3 (2014), was arbitrary, capricious, invalid, unenforceable and an unreasonable exercise of the legislative grant of rule-making authority to the WVSSAC set forth in W.Va. Code §18-2-25. In making this finding, the Circuit Court correctly recognized that *Mayo* did not address this issue and *Webster* specifically acknowledged that this precise issue remained open and within the Circuit Court's authority to determent. Accordingly, the Circuit Court of Marshall County did not clearly err as a matter of law. Nor did it abuse its powers in a flagrant violation of the WVSSAC's rights. Because the WVSSAC has not met the exacting standards for issuance of a Writ of Prohibition, its Petition should be denied.

RESPECTFULLY SUBMITTED,

PAMELA F., individually and as parent and  
legal guardian of D.W.,



---

James G. Bordas, Jr., (WV Bar #409) Counsel of Record  
jim@bordaslaw.com

Michelle Marinacci (WV Bar #7482)  
mmarinacci@bordaslaw.com

BORDAS & BORDAS, PLLC

1358 National Road  
Wheeling, WV 26003

(304) 242-8410

(304) 242-3936-fax

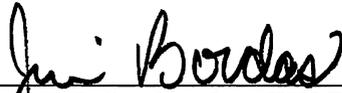
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Response of Respondents, Pamela F. and D.W., to Petition for Writ of Prohibition** was served upon the following by regular United States mail, postage prepaid, this 24<sup>th</sup> day of October, 2014:

William R. Wooton, Esq.  
The Wooton Law Firm  
210 Main Street  
Beckley, WV 25801

Hon. Judge David W. Hummel, Jr.  
Circuit Court of Marshall County  
600 Seventh Street  
Moundsville, WV 26041

PAMELA F., individually and as parent and  
legal guardian of D.W.,



---

James G. Bordas, Jr., (WV Bar #409) Counsel of Record  
jim@bordaslaw.com  
Michelle Marinacci (WV Bar #7482)  
mmarinacci@bordaslaw.com  
BORDAS & BORDAS, PLLC  
1358 National Road  
Wheeling, WV 26003  
(304) 242-8410  
(304) 242-3936-fax