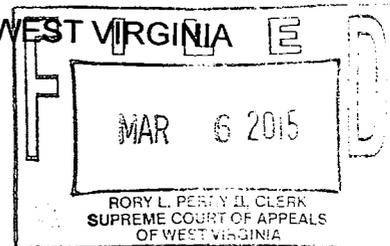


ARGUMENT  
DOCKET

IN THE SUPREME COURT OF APPEALS FOR THE STATE OF WEST VIRGINIA

AT CHARLESTON



**DAVID J. RIFFLE, Petitioner Below,**

**Petitioner,**

**and**

**No. : 14-0042**

**SHIRLEY I. RIFFLE (now MILLER), Respondent Below,**

**Respondent,**

**THE WEST VIRGINIA UNIVERSITY COLLEGE  
OF LAW CLINICAL LAW PROGRAM,  
*Amicus Curiae,***

**LEGAL AID OF WEST VIRGINIA and  
WEST VIRGINIA COALITION AGAINST DOMESTIC VIOLENCE,  
*Amicus Curiae.***

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**PETITIONER'S RESPONSE TO BRIEFS OF AMICAE CURIAE**

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## ARGUMENT

Historically and practically important, parties have been able to agree to mutual non-contact provisions (restraining orders) as a term of their final divorce settlement agreements in West Virginia without specific findings of fact of abuse by each party at least since the memory of the eldest living counsel. There are thousands of divorced individuals in this State with such provisions in Final Decrees of Divorce whose peace of mind will be destroyed by upholding the lower court's ruling. Sometimes, as any family law practitioner will attest, a no contact provision is such a "hold out" issue to a client that they may even want to sacrifice some small degree of equitable distribution to get it. It works like this: there has been emotional manipulation and pain for which there is no evidence because it has happened behind closed doors that no amount of grant money assistance will establish, and that no law provides a legal restraining order for without an agreement for the same. The one party may want to make a small (meaningless to them) property concession as part of the larger settlement in exchange for the peace of mind. Upholding the lower court ruling will sacrifice that option forever.

Legally importantly in that regard, countless thousands of those orders were entered prior to the existence of the domestic violence statutes. Upon what legal authority did the courts enter those orders? They were not entered upon any statutory authority, but upon the Constitutional right of parties to contract as West Virginia and American citizens, and not any optionally granted leave of any court or legislative body of any level of this Country. Competent parties in a divorce have a right to make an agreement, especially, as here, when they are represented by competent counsel, they testify that it is their agreement entered of their own free will and they believe it is in

their best interests, and a competent court determines the agreement to be fair. What other *possible* safeguard is necessary? If this is insufficient, then most of the legal proceedings in this State are deficient.

Respectfully, sincerely acknowledging the incredibly important work of the *Amicae*, being a graduate of the West Virginia University College of Law Clinical Law Program, doing a great deal of *pro bono* work routinely, and even having been the first male volunteer at what the undersigned counsel believes was the first domestic violence shelter in West Virginia, *Branches* in Huntington in the late 70's/ early 80's, it is difficult to understand the relevance of arguments made in those briefs. Just because the statutes and the grants and the programs *now* exist does not mean that the majority of divorcing litigants in this State (who are not victims of domestic violence) should not now be able to enter into agreed mutual non-contact/restraining orders makes no sense, and, *even if it does*, policy does not override a Constitutional right. We have no right to assume that litigants are somehow impaired, especially when they are represented by a lawyer, but even when they are not. We have no right to send every litigant to a social worker.

This Court recently acknowledged the fundamental right of parties to contract in arbitration clauses as a key issue in *State ex rel. Ocwen Loan Servicing, LLC v. Webster*, 232 W.Va. 341, 752 S.E.2d 372 (W.Va., 2013). Even though that was an arbitration case, and not a divorce case, there was a substantial similarity. This Court ruled that "Accordingly, we conclude that *retroactive application* of the Dodd-Frank Act to the arbitration *agreement at issue in this case would improperly impair the parties' fundamental right to contract. The circuit court's conclusion to the contrary was in error.*"

*Id. at 752 S.E.2d 386. (Emphasis added).* Similarly here, this petitioner's fundamental right to contract will have been impaired.

The consequences of departing from decades of tried and true established practice in the family courts of this State by upholding the lower court's ruling will result in dire consequences, not just to the peace of mind of parties already having agreed non-contact orders in place as aforementioned, nor merely to the thwarting of achieving negotiated agreements and the impact on the schedules of the family courts themselves in the petitioner's prior brief, but it will open up a right of divorced litigants who relied upon contracted for settlement agreements containing such agreed non-contact orders over the years who will be able to go back into court and set the whole settlement aside as a contract provision has been ruled illegal by the Court that they had given good and valuable consideration for.

There is no harm in continuing the existence of this practice of agreed mutual restraining orders by divorcing litigants, and no one can cite any. It is necessary because it is a different species of social interaction than the more rigorously difficult to establish domestic violence under those existing statutes – easier to get legally obviously, and therein lies the undersigned's confusion regarding the *Amicae's* positions. Why foreclose any degree of protection or peace of mind and future possible relief to conceivable victims or those in fear of becoming victims?

## CONCLUSION

Fairness, the Constitutional right to contract, the statutes, and the case law of this State all demand that the lower Court's decision be overturned such that the provisions

of the agreed mutual restraining order of the Agreed Final Decree of Divorce be ruled to have full legal effect.

Respectfully submitted,  
David J. Riffle, Petitioner Below,  
By Counsel,

A handwritten signature in cursive script, appearing to read "Jerry Blair", is written over a horizontal line.

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No. : 14-0042

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Respondent.

**CERTIFICATE OF SERVICE**

I, Jerry Blair, hereby certify that I have, on this 5th day of March, 2015, given notice of filing of the foregoing "Petitioner's Response To Briefs Of *Amicae Curiae*" and "Appendix" by mailing a true copy of the same by first class United States Mail to:

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