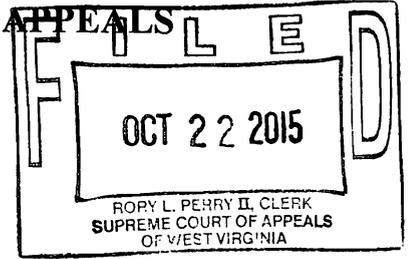


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

STATE OF WEST VIRGINIA ex rel.  
WEST VIRGINIA REGIONAL JAIL AND  
CORRECTIONAL FACILITY AUTHORITY,



Petitioner,

v.

CASE NO: 15-1021

COUNTY COMMISSION OF WEBSTER COUNTY,  
DANIEL B. DOTSON, President,  
JERRY F. HAMRICK, Vice President, and  
ANNA CARPENTER, Commissioner

Respondents.

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VERIFIED PETITION  
FOR WRIT OF MANDAMUS

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**IN THE WEST VIRGINIA SUPREME COURT OF APPEALS**

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**CASE NO: \_\_\_\_\_**

**COUNTY COMMISSION OF WEBSTER COUNTY,  
DANIEL B. DOTSON, President,  
JERRY F. HAMRICK, Vice President, and  
ANNA CARPENTER, Commissioner**

**Respondents.**

**VERIFIED PETITION FOR WRIT OF MANDAMUS**

**INTRODUCTION**

Comes Now Petitioner, West Virginia Regional Jail and Correctional Facility Authority (“Petitioner”), and files the within Verified Petition for Writ of Mandamus seeking the equitable relief of this Court in compelling an action by the above-captioned Respondents. Specifically, Petitioner seeks this extraordinary remedy as a direct result of Respondents’ failure to fulfill their obligation under W. Va. Code § 31-20-5, to pay for the care and upkeep of those persons incarcerated or jailed in the West Virginia Regional Jail System at the express direction of the authorities of Webster County, West Virginia.

**QUESTION PRESENTED**

Whether a county commission may fail to fulfill the statutory obligation imposed under W. Va. Code §§ 31-20-10 and 10a to pay for the *per diem* fees for the incarceration of inmates committed to the custody of the West Virginia Regional Jail and Correctional Facility

Authority by the county's magistrate and circuit courts?

**STATEMENT OF THE CASE**

This case involves the Respondents' failure to pay, or make arrangements to pay, the jail bill for detainees and inmates committed to the West Virginia Regional Jail system by the Circuit and Magistrate Courts of Webster County, West Virginia. Counties are obligated to pay such fees as mandated by W. Va. Code §§ 31-20-10 and 10a; *State ex rel. Reg'l Jail & Corr. Facility Auth. v. Cabell Count. Comm'n*, 222 W. Va. 1, 657 S. E. 2d 176, 207 W. Va. (2007).

As of this writing, Webster County has an outstanding jail bill in the approximate amount of \$1.31 million dollars, with \$1.17 million dollars being outstanding in excess of ninety days. (Appendix 1, Affidavit of Lori Lynch, Deputy Director of the West Virginia Regional Jail and Correctional Facility Authority) That amount continues to increase at an estimated amount of \$40,000 per month. (Id.)

Under W.Va. Code § 31-20-*et seq.*, Respondent is charged with certain mandatory obligations for those whom it commits to Petitioner's custody. *See* W. Va. Code §§ 31-20-10(h) ("When inmates are placed in a regional jail facility pursuant to subsection (g) of this section, the county shall pay into the Regional Jail and Correctional Facility Authority Fund a cost per day for each incarcerated inmate to be determined by the Regional Jail and Correctional Facility Authority."); W. Va. Code §§ 31-20-10a(c) ("The county is responsible for costs incurred by the Authority for housing and maintaining inmates in its facilities who have not been committed to the custody of the Commissioner of Corrections.").

While Petitioner is mindful of the ever-increasing financial difficulties facing counties throughout the State, Respondents' actions place an impermissible burden on Petitioner

to meet statutory mandates without Respondents' share of the necessary and mandatory funding. Respondents have not paid the amounts their county has owed since at least mid-2012, and the past-due debt is roughly equal to that of all the other counties combined. (App. 1) By contrast, neighboring Nicholas County, which once had the second-largest amount of unpaid inmate *per-diem* fees among the counties, and which was also burdened with well-documented budget struggles, has worked with Petitioner to shoulder its statutory mandate. When advised of its debt, Nicholas County promptly negotiated a payment plan with Petitioner. (App. 2, correspondence between WVRJA and Nicholas County Commission President) As a result, Nicholas County is on track to erase its past-due balance by the end of this year. (App. 1)

This illustrates Petitioner's willingness to work with fiscally restrained counties. But Petitioner cannot simply allow the flat refusal of a county to come to any accommodation to go unchecked after repeated attempts to work together with that county. To do so would place the entire Regional Jail and Correctional Facility system in jeopardy, and do a grave disservice to those counties that diligently find some way to pay - or at least make serious efforts at paying - their regional jail bills in the face of ever more stark financial conditions.

In hopes of reaching a similar outcome without need of litigation, Petitioner has engaged in monthly billing (App. 1), correspondence to Respondents seeking to resolve the balance (App. 3, correspondence to Webster County Commission President from WVRJA), and face-to-face discussions with members of the Webster County Commission and other Webster County Officials (App. 1). All of Petitioner's actions were to no avail. Respondents have made no progress to meaningfully work to resolve this mounting debt.

In July of this year, and as a direct result of an Interagency Agreement between the

State Tax Department and Petitioner, the Tax Commissioner began to withhold tax payments to delinquent counties, including Webster County, as a lawfully imposed offset pursuant to W. Va. Code § 14-1-37(h). (App. 4, Memorandum of Understanding between the Tax Commission and WVRJA)

It does not appear that the Respondents intend to take action on the demands of the Petitioner despite the clarity of the statutory, constitutional and common law duties imposed upon them. Having yielded no results from its endeavors to work with Respondents to resolve their debt, there remains no other adequate remedy at law or at equity for Petitioner but to file the instant Petition.

### **SUMMARY OF ARGUMENT**

This Court has already held that the statutory duties to pay for costs of incarceration of persons that the counties' magistrate and circuit Courts commit to Petitioner's custody are mandatory and subject to enforcement by this Court. *See*, W. Va. Code §§ 31-20-10 and 10a; *State ex rel. Reg'l Jail & Corr. Facility Auth. v. Cabell Count. Comm'n*, 222 W. Va. 1, 657 S. E. 2d 176, 207 W. Va. (2007). This Court has also determined that a Petition for a Writ of Mandamus is the proper remedy for Petitioner in this situation. Therefore, Petitioner respectfully prays this Court to award a Writ of Mandamus compelling Respondents to fully fund their obligation to Petitioner.

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

Because the dispositive issue in this case – a county's duty to make statutorily and mandated payments pursuant to W. Va. Code §§ 31-20-10 and 10a - has been authoritatively decided by this Court in *State ex rel. Regional Jail and Correctional Facility Authority v. County Commission of Cabell County*, 221 W.Va. 1, 657 S.E.2d 178 (2007), Petitioner does not request

oral argument. However, should the Court deem that oral argument is necessary in this case, Petitioner would request it be held pursuant to Rule 20 of the West Virginia Rules of Appellate Procedure, because, as this Court noted in *Cabell County*, the issue presented in this case is one of fundamental public importance. *Cabell County*, Syl. Pt. 2 (noting that the issue of counties paying their jail bills was a matter “having statewide impact and affecting the public interests [.]”). Petitioner believes issuance of a memorandum decision would be appropriate in this matter.

### ARGUMENT

A writ of mandamus will not issue unless three elements co-exist: (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy. Syl. Pt. 2, *S.E.R. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969); Syl. Pt. 10 *S.E.R. Marockie v. Wagoner*, 191 W.Va. 458, 446 S.E.2d 680 (1994); *S.E.R. Brown v. Corp. of Bolivar*, 217 W.Va. 72, 614 S.E.2d 719 (2005).

This Court has previously found that each of these elements exists where Petitioner seeks to compel a county to fulfil its statutory duty to pay its jail bill pursuant to W. Va. Code §§ 31-20-10 and 10a. *Cabell County*, 221 W.Va. 1, 657 S.E.2d 178. “[W]e conclude that the statutory provisions imposing mandatory payment obligations on the Commission for inmates housed in the regional jail is clearly subject to enforcement.” *Id.* 221 W.Va. at 40, 657 S.E.2d at 188 (granting Petitioner’s Petition for Writ of Mandamus compelling Cabell County to pay its regional jail bill).

Petitioner is mindful of the concerns that this Court expressed when previously confronted with this issue in *Cabell County*. Then, as now, counties face agonizing decisions

concerning how to spend ever-diminishing resources to cover their debts. Then, as now, counties find themselves “between a rock and a hard spot.” *Id.* 221 W.Va. at 43, 657 S.E.2d at 188. However, as Petitioner noted in its brief to this Court in the *Cabell County* case:

The West Virginia Regional Jail system exists for the public safety of the citizens of West Virginia. However, the system is only viable when all of the interested parties fulfill their obligations. The failure of even one county . . . to pay for the care and upkeep of its inmates can only result in either unacceptably higher levels of cost, lower levels of service, or the eventual collapse of a well thought out cost efficient system.

(App. 5, Appellate Brief of WVRJA filed in the *Cabell County* case)

Each county has always been responsible for the cost of incarcerating those whom it consigns to jail. The creation of the Regional Jail system was not a means to increase that burden. To the contrary, the West Virginia Legislature conceived of the Regional Jail system as a means to provide new modern jail facilities, which meet or exceed all state and federal minimum jail standards, without the counties having to bear the cost of construction or administration thereof.<sup>1</sup> However, just as they did before the creation of the Regional Jail system, the counties remain ultimately responsible for the care and upkeep of their inmates. W.Va. Code § 31-20-10(h).

Far from increasing these costs, being cognizant of the many demands on county dollars, Petitioner has striven since its inception to keep its *per diem* rate as low as reasonably possible. In fact, through strenuously pursuing costs saving measures, Petitioner has managed to

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<sup>1</sup> Construction of the ten existing regional jail facilities was financed by state bonds so as to avoid the imposition of an additional burden on the counties in updating a patchwork system of county jails that were, as this Court has noted, plagued by extreme age and deplorable conditions. *See Crain v. Bordenkircher*, 180 W.Va. 246, 376 S.E.2d 140 (1988).

actually *lower* the *per diem* rate since the Court last visited this issue in *Cabell County*. (App. 1).

Thus, Petitioner has diligently sought to ease the burden on the counties. As this Court noted in *Cabell County*, any further relief must come from the Legislature. And indeed, it may reasonably be anticipated that some relief will eventually come in the form of decreased incarceration rates attendant to the Legislature's passage of the Criminal Justice Reform Act in 2013, which emphasizes alternative sentencing. But for now, just as this Court noted in *Cabell County*:

Given this Court's duty to uphold the laws of this state which includes the enactments of our Legislature, [the Court is] . . . constrained to recognize the mandatory language directing that the counties 'shall pay' for the 'costs of operating the regional jail facilities of this state to maintain each inmate' as well as the statutory language that imposes responsibility on the counties for 'costs incurred by the Authority for housing and maintaining inmates in its facilities.'

*Cabell County*, 222 W.Va. at 40, 657 S.E.2d at 188 (citing W. Va. Code §§ 31-20-10(h) and 10a(c)). Therefore, just as it did with the Cabell County Commission, Petitioner respectfully requests that this Court award a Writ of Mandamus compelling Respondents to fully fund their obligation to Petitioner.

### **CONCLUSION**

**WHEREFORE**, Petitioner respectfully prays the following relief:

1. That the Petition be ORDERED filed and that this Court issue a Rule against Respondents to show just cause as to why the writ prayed for should not be awarded.
2. That, to the extent that the aforesaid duties and responsibilities of Respondents are deemed mandatory and nondiscretionary in nature, that a Writ of Mandamus be awarded

compelling Respondents to fully fund their obligations for the care and maintenance of their inmates, and, if the same is not apparent from the record, to reset the matter for due and mature consideration upon the issues presented herein, in accordance with the guiding statutory and substantive case law.

3. That this Court direct the Tax Commissioner to forward to Petitioner those funds he is currently holding as an off-set against Respondents' jail bill, and to order Petitioner, upon completion of such intergovernmental transaction, to demonstrate a credit of the amount applied against the arrearage of Respondents' jail bill.

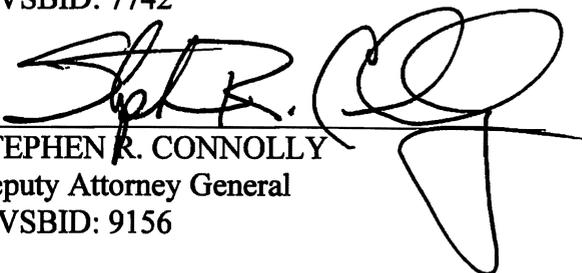
4. That Petitioner be granted any other general relief as may be deemed just and proper.

**WEST VIRGINIA REGIONAL JAIL AND  
CORRECTIONAL FACILITY AUTHORITY,**

**Petitioner,  
By Counsel,**



LEAH MACIA  
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West Virginia Regional Jail and Correctional  
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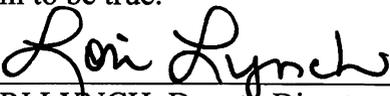
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Respondents.

VERIFICATION OF PLEADINGS

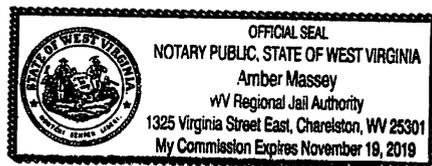
STATE OF WEST VIRGINIA,  
COUNTY OF KANAWHA, TO WIT:

This day before the undersigned authority came LORI LYNCH, Deputy Director of the WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY, the Petitioner named in the foregoing Petition for Writ of Mandamus, being first duly sworn upon oath, deposes and says that the facts and allegations contained therein are true, except as they are states to be upon information and belief, he believes them to be true.

  
LORI LYNCH, Deputy Director

Taken, sworn to and subscribed to before me the undersigned authority this the 22 day of October, 2015.

My Commission expires November 19, 2019



  
Notary Public or Official

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CERTIFICATE OF SERVICE

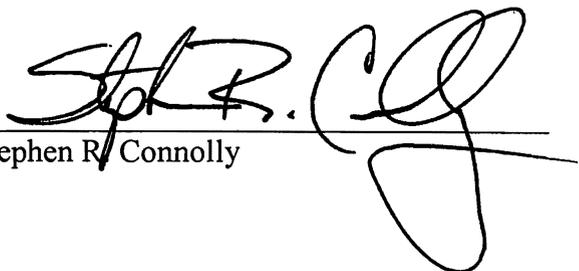
I, Stephen R. Connolly, Deputy Attorney General do hereby certify that on this 22<sup>nd</sup> day of October, 2015, I served the foregoing and hereto attached “**Verified Petition for Writ of Mandamus and Incorporated Memorandum of Law**” and “**Appendix**” upon the following by mailing a true copy thereof U.S. first class postage prepaid to the following addresses:

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