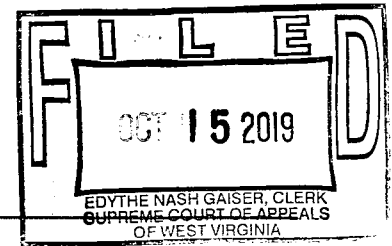FILE COPY

RECORD NO. 19-412

IN THE

SUPREME COURT OF APPEALS
OF WEST VIRGINIA

THE CITY OF CHARLES TOWN, WEST VIRGINIA, a municipal corporation, Plaintiff below,

Petitioner,

vs.

THE JEFFERSON COUNTY COMMISSION, a West Virginia public corporation, Defendant below,

Respondents.

ON APPEAL FROM THE CIRCUIT COURT OF JEFFERSON COUNTY
(CIVIL ACTION NO. 17-C-282)

REPLY BRIEF OF PETITIONER CITY OF CHARLES TOWN, WEST VIRGINIA

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I. ARGUMENT

A. **THE CIRCUIT COURT ERRED WHEN IT FOUND THAT THE WEST VIRGINIA LEGISLATIVE WHEN IT ENACTED W. VA. CODE § 8-6-4A(C)(2) GAVE THE COUNTY COMMISSION OF JEFFERSON COUNTY THE ABILITY TO PREVENT THE CITY OF CHARLES TOWN TO ANNEX PROPERTY WITHIN ITS URBAN GROWTH BOUNDARY.**

The Respondent appears to want to argue the case of the proposed annexation that it denied April 12, 2017. Though the Parties disagree as to the appropriateness of that decision, the Petitioner did not appeal that action and choose to file this declaratory action. Therefore, the re-litigation of that matter is irrelevant to the current case.

Instead of an appeal of a decision that the Petitioner felt was not support by the law, it choose to file a petition for declaratory judgment which is completely different and distinct proceeding and is properly used "for adjudicating the legal rights of parties to an existing controversy that involves the construction and application of a statute." *Id.* at 450, 926. But this treatment of a petition for declaratory judgment as a distinct action that may be sought during, on top of, or even after, pending litigation, is not a novel. The clear language of the Uniform Declaratory Judgments Act, which is required to be "liberally construed and administered" clearly states that judgments may be issued "whether or not further relief is or could be claimed." *See* W. VA. CODE §§ 55-13-1; 55-13-12. The Act further makes these judgments available to "[a]ny person . . . whose rights, status or other legal relations are affected by a statute . . ." without limitation as to that person's entanglement in current or related litigation. *See* W. VA. CODE § 55-13-2. Indeed, our Supreme Court has expressly stated that "the whole purpose of the Uniform Declaratory Judgments Act [citation omitted] is to enable courts to dispense quickly with legal questions *which arise in litigation.*" *Harrison v. Town of Eleanor*, 191 W. Va. 611, 615, 447 S.E.2d 546, 550 (1994) (emphasis added); *see also* Syl. Pt. 1, *Arthur v. County Court of Cabell County*, 153 W.Va. 60, 167 S.E.2d 558 (1969) ("A declaratory judgment action is a proper

procedure for an adjudication of the legal rights and duties of parties to an actual, existing controversy which involves the construction or application of a statute or of statutes.").

Although it is clear that the City is entitled to bring an action for declaratory judgment under the Act, the County argues that its petition should be treated as an appeal, and therefore barred, because the relief the City seeks is "to have this Court overturn the decision of the Commission denying the annexation petition." While this is not true—the City understands that the County Commission's decision denying its petition is final and only wants guidance and clarification on how future applications for annexation will be treated—even if this was the City's goal, it would not be fatal to its action for a declaratory judgment. Rule 57 of the West Virginia Rules of Civil Procedure explicitly states that the "existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate." Thus, the fact that an appeal is one avenue that the City could have used to attempt to reverse the County Commission's decision does not preclude it from also using a declaratory judgment to do the same. And to that end, our Supreme Court of Appeals has clearly recognized that declaratory judgments can be used to end a controversy. *See Dolan v. Hardman*, 126 W. Va. 480, 29 S.E.2d 8, 10 (1944) (noting that "[t]he enumeration of specific subjects of litigation in . . . the Act is not restrictive when declaratory relief will end a controversy 'or remove an uncertainty'").

The Respondent wants to retain a "Gatekeeper Function" where one does not exist. When a municipality were to annex without an election the County commission is required to perform ministerial function when it enters order reflecting change in boundaries after municipal authorities certify compliance with statutory procedures providing for the annexation. Powers delegated to county commission under statute providing for annexation by minor boundary adjustment are broader in scope and encompass more than performance of ministerial duty.

W. Va. Code §§ 8-6-2, W. Va. Code § 8-6-4, W. Va. Code § 8-6-5. *Matter of City of Morgantown*, 1976, 226 S.E.2d 900, 159 W. Va. 788.

The Respondent has the same ministerial duties when a municipally exercises annexation under W. Va. Code § 8-6-4a(c)(2).

> (2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of section four of this article if the provisions of section five [§ 8-6-5] of this article are followed, *except that agreement with the county commission is not required.* W. Va. Code § 8-6-4a(c)(2) (emphasis added)

II. CONCLUSION

The Circuit Court clearly erred by disregarding the plain and unambiguous language of the W. Va. Code § 8-6-4a and substituting its opinion the process of annexation. The statute contains no ambiguity and should have been applied by the Circuit Court as written or in the alternative the Court should have correctly set forth the duties and obligations of the parties under § 8-6-4a. The Circuit Court's judgment should therefore be reversed, with direction to enter declaratory judgment in favor of the City that:

a. The City of Charles Town has the right to annex property within its Urban Growth Boundary pursuant to W. Va. Code § 8-6-4a;

b. That once The City of Charles Town has determined that an annexation is a minor boundary adjustment that they can annex property within its Urban Growth Boundary pursuant to W. Va. Code § 8-6-4a(c)(2).

c. The City of Charles Town has determined that an annexation is a minor boundary adjustment and applies to the Jefferson County Commission pursuant to W. Va. Code § 8-6-4a(c)(2) they are required to file an application for annexation:

".... (the) application for annexation by minor boundary adjustment shall include, but not be limited to:

(1) The number of businesses located in and persons residing in the additional territory;

(2) An accurate map showing the metes and bounds of the additional territory;

(3) A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;

(4) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers;

(5) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation;

(6) A statement of how the proposed annexation will affect the municipality's finances and services; and

(7) A statement that the proposed annexation meets the requirements of this section."

d.   Upon receipt of the application of annexation, of The City of Charles Town. Jefferson County Commission pursuant to W. Va. Code § 8-6-5 shall determine that they application has been filed and that the application meets the threshold requirements for consideration as a minor boundary adjustment:

e.   Upon receipt of the application of annexation and a determination the application meets the threshold requirements, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on the proposal. Publication shall be as in the case of an order calling for an election, as set

forth in section two of this article. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.

f. Upon conclusion of the public hearing the County Commission is required pursuant to W. Va. Code § 8-6-4(a)(c)2 to enter an order approving the application for annexation.

Respectfully submitted,

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