

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

DOCKET No. 20-0295

**LISA WILKINSON, HEATHER MORRIS,
KATHRYN A. BRADLEY, PAMELA
STUMPF, and LULA V. DICKERSON,**



Plaintiffs Below / Petitioners,

v.

**WEST VIRGINIA STATE OFFICE OF
THE GOVERNOR and JIM JUSTICE,
In his official capacity as Governor,
WEST VIRGINIA STATE AUDITOR'S
OFFICE and JOHN B. MCCUSKEY,
in his official capacity as State Auditor,
WEST VIRGINIA STATE TREASURER'S
OFFICE and JOHN PERDUE, in his
Official capacity as State Treasurer,
WEST VIRGINIA OFFICE OF SECRETARY
OF STATE and Mac Warner in his official
Capacity as Secretary of State,
WEST VIRGINIA OFFICE OF THE
ATTORNEY GENERAL and Patrick Morrissey,
In his official capacity as Attorney General,
WEST VIRGINIA SUPREME COURT OF
APPEALS and Chief Justice Elizabeth D.
Walker, in her official capacity as Chief
Justice,**

**Appeal from a final order of the
Circuit Court of Kanawha County
(18-C-549)**

Defendants Below / Respondents.

PETITIONERS' OPENING BRIEF

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Comes now the Petitioners', Lisa Wilkinson, Heather Morris, Kathryn A. Bradley, Pamela Stumpf, and Lula V. Dickerson, through their counsel, J. Michael Ranson and Cynthia M. Ranson of Ranson Law Offices, PLLC, G. Patrick Jacobs of Jacobs Law Office, Teresa C. Toriseva and Joshua D. Miller of Toriseva Law and Robert McCoid of McCoid Law Offices, PLLC, under Rule 10 of the West Virginia Rules of Appellate Procedure and presents their brief to support their Petition for Appeal from the Order of the Kanawha County Circuit Court granting Defendants Joint Motion for Summary Judgment Motion and dismissing plaintiffs' action and striking it from the docket on February 10, 2020.

ASSIGNMENTS OF ERROR

1. The Circuit Court erred in not allowing discovery on the amount of arrearage now owed to State Employees resulting after the changeover in the payment of employees from Bi-Monthly to Bi-Weekly paychecks.
2. The Circuit Court erred in finding that the plaintiffs were only in arrears for ten (10) days' pay when that finding opposed the facts most favorable to the plaintiffs and when the plaintiffs are actually fifteen (15) days in arrears.
3. The Circuit Court erred in ruling that the defendants could not violate Article III § 10 of the West Virginia Constitution because the court did not allow discovery on payment to elected officials.
4. The Circuit Court erred regarding the remaining claims of the plaintiffs because the Court incorrectly applied a ten (10) day arrearage when the arrearage is fifteen (15) days.

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Plaintiff, Lisa Wilkinson (hereinafter "Wilkinson") filed her original Complaint on April 23, 2018, alleging that because of the actions of the West Virginia State Auditor's Office, Auditor John B. McCuskey, the West Virginia State Treasurer's Office, Treasurer John

Perdue, and Kronos Inc., her pay was shortened by five workdays. Under the **West Virginia Code § 6-7-1** amendment in 2014, the State of West Virginia changed the payment of employees from bi-monthly to bi-weekly. Based upon previous amendments to **West Virginia Code § 6-7-1**, employees were paid one pay period in arrears. Since employees were paid bi-monthly, they were in arrears 10.8 days of pay. This meant that when an employee terminated employment with the State of West Virginia they would be owed one additional paycheck consisting of 10.8 days of pay. When the pay period was changed from bi-monthly to bi-weekly the number of workdays changed to 10 days. The arrearage being held by the State of West Virginia and the amount to be paid at the time of termination should have decreased by .8 days. Instead, it was Wilkinson's contention that in the year of her changeover she was shorted additional pay over her previous arrearage which created an overall effect of her being 15 days in arrears or 5 days over the amount allowed by **West Virginia Code § 6-7-1**. She sought to be paid for the five additional days removed from her wages as failure to pay wages would violate **W. Va. Code § 21-5-1** et seq. and **W. Va. Code §21-5-6**.

The original Complaint sought lost wages, lost benefits, compensatory damages, attorney fees, statutory damages, and class certification "for a class consisting of the group of salaried West Virginia state employees who had lost 5 days of pay in the year in which their paychecks went from Bi-Monthly to Bi-Weekly".

Plaintiff filed her First Amended Complaint on June 22, 2018, asserting the same claims and adding Dataview Consulting, LLC, and ISG as defendants. The plaintiff voluntarily agreed to the circuit court dismissing, without prejudice ISG, Kronos, Inc. and Dataview Consulting, LLC on June 3, 2019.

On June 3, 2019, the Court entered a Status Hearing Order allowing Plaintiff Wilkinson to file another amended complaint which added additional plaintiffs and all State Agencies once they had been given proper statutory notice.

The Plaintiff Wilkinson filed her Second Amended Complaint on June 13, 2019, adding the following Plaintiffs: Heather Morris (hereinafter "Morris"), Kathryn A. Bradley (hereinafter "Bradley"), Pamela Stumpf (hereinafter "Stumpf"), and Lula V. Dickerson (hereinafter "Dickerson"), all of whom lost an additional five days of pay; and adding the following Defendants: West Virginia State Office of the Governor, Governor Jim Justice, the West Virginia Office of Secretary of State, Secretary of State Mac Warner, the West Virginia Office of the Attorney General, Attorney General Patrick Morrissey, the West Virginia Supreme Court of Appeals, and Chief Justice Elizabeth D. Walker. Plaintiffs' Second Amended Complaint seeks relief in mandamus and alleges that Defendants violated **W. Va. § 21-5C-1** et seq.; **Art. X, § 4** ("no debt shall be contracted by this State"), and **Art. III, § 10** (equal protection), of the West Virginia Constitution. The named individuals were named in their official capacity for Mandamus. All State Agencies were added because of the potential for class certification. The Second Amended Complaint also sought lost wages, lost benefits, compensatory damages, attorney fees, statutory damages, liquidated damages, and class certification "for a class consisting of the group of salaried West Virginia state employees who had not been paid full wages for the year in which their paychecks went from Bi-Monthly to Bi-Weekly." Wilkinson worked on the Joint Commission on Government Finance; Bradley works for the West Virginia Department of Health and Human Resources; Morris, Stumpf, and Dickerson work for the West Virginia Supreme Court.

BACKGROUND

The paying of State Employees is controlled by **West Virginia Code § 6-7-1**.¹

A. 1997 AMENDMENT TO WEST VIRGINIA CODE § 6-7-1

In 1997, **West Virginia Code § 6-7-1** was amended and states that all employees **shall be paid twice a month**. The Defendants met the contractual obligations by taking the yearly contracted amount and dividing it by twenty-four (24) payments (commonly called “being paid bi-monthly”). Employees were paid basically by the 15th and 30th of each month.² This amendment and the amendment in 2002 also required that certain salaried employees hired be paid in arrears except for elected officials.³

B. LAG PAYROLL

If an employee fell into the group paid one pay cycle in arrears the first paycheck would be withheld or would “lag” one pay period (bi-monthly this is 10.8 days). If an employee started on the 1st of the month, they would not be paid on the 15th of the month. Instead, the employee would receive their first paycheck on the 30th of the month. However, the lag payment on the 30th of the month did not “catch the employee up” since the employee should have received two paychecks by the time of the 30th of the month payment arrived. Significantly, the employee does not recover the amount being withheld, if at all, until they terminate their employment at which point the final accounting pays the employee for the first paycheck withheld even if that payment is made is thirty (30) years later and upon the

¹ This includes elected officials. It appears that **West Virginia Code § 6-7-1** has been in place since the early 1900's at least.

² When an employer takes an employee's annual salary and divides it by any number so long as those payments are made, the employee will receive the full annual salary within the one year pay period.

conclusion of State Employment. In the first year of employment, the employee will be one paycheck short. In subsequent years, the employee will receive their full wages. In the first year, if an employee started on January 1, they would receive 23 paychecks (one paycheck short). In each subsequent year, they would receive 24 checks equal to their full annual salary. Factually, and for accounting, the first paycheck of each year is to pay for the pay period of the prior year and becomes irrelevant for the employee receiving their full annual salary.

C. 2014 AMENDMENT TO WEST VIRGINIA CODE § 6-7-1

West Virginia Code § 6-7-1 was amended in 2014. The new amendment stated that employees **shall be paid at least twice a month** and continued to allow the State to pay employees on pay cycle in arrear. Based upon the amendment The State of West Virginia decided to start paying its employees on a Bi-weekly basis. When the changeover was made from Bi-monthly to Bi-Weekly the State employees were already on pay cycle in arrears. Despite this fact in the year that the changover occurred the defendants withheld an additional one week of salary. This increased the arrearage or the amount due employees to 15 days of pay when the amount owed should have been reduced to 10 days.

The defendants taking of wages was done in "three waves". Wave One was for Fiscal Year 2014-2015; Wave Two was for Fiscal Year 2015-2016 and Wave Three was for Fiscal Year 2016-2017.⁴

⁴ Money was only taken from an employee in one of the three Waves. The defendants in the State Court action claim that the process of the 3 Waves were all the same but plaintiffs only have information as to the third wave and so only that Wave will be discussed in this Response.

**D. THIRD WAVE FISCAL YEAR 2016-2017, AFFECTING CALENDAR YEAR 2017
A/K/A "THE TAKING"**

West Virginia operates its budget on a Fiscal Year, i.e. July 1 of this year to June 30 of the next year. The monies to pay all employees are in the Fiscal Budget. If the defendants fail to pay their employees their full contracted salaries within the Fiscal year, then those unpaid wages become surplus for the defendants.

It is uncontested that the State of West Virginia changed its payroll program from Bi-monthly to Bi-weekly. The Bi-weekly program should not affect employees receiving their full annual salary. Employees are to be paid twenty-six (26) times a year instead of twenty-four (24) times a year.⁵

When the State of West Virginia explored changing its payroll program from bi-monthly to bi-weekly it discovered that if it took wages from the last week of the fiscal year 2016-2017 and then started the first payment every other week on the first Friday of the next fiscal year, the State could retain the shorted wages not paid to employees in the current fiscal year as surplus budget funds.

The "financial beauty" of the plan was in the next fiscal year 2017-2018 and subsequent years the State would make twenty-six (26) payments to equal to the annual salary, which allowed the State of West Virginia to retain the wages not paid from the Wave year in question until the employees affected by the one week of wage loss terminated their employment. Moreover, such an event could happen anytime, including thirty years into the future.

⁵ Since the plaintiffs do not have any discovery it is impossible to identify who put "the Plan" in place. Judge Evans would not allow discovery in the State case. For purposes of this brief, the inventors of "the taking" will simply be designated as the State of West Virginia.

The “taking” caused employee paychecks to be short by approximately one week in fiscal year 2016-2017, which then affected the calendar year 2017.⁶ Taking employee wages also affected elected officials, who actually approved the plan. The elected officials would lose one week of pay along with the employees. This problem was addressed by paying elected officials a “gap payment” to cover the loss, putting a system in place where elected officials would be paid in advance and paying the elected officials a one-week bonus check. This action violated **West Virginia Code § 12-3-13** which prohibits paying for services in advance. While the elected officials prospered in the Wave year, in subsequent years all elected officials were also paid the 5 days they were shorted in the calendar year in which they worked.

E. IMPLEMENTATION OF “THE TAKING” WAVE 3

Fiscal year 2016-2017 began with all Wave 3 employees being paid Bi-Monthly, including elected officials. The plaintiffs were treated the same in Wave 3. For this brief, **Stumpf** will be the example. If the method of payment was not changed, plaintiff Stumpf would have received her full annual salary of \$52,704.00 with the first payment being on July 15, 2016 and her last payment on June 30, 2017 as she had in prior years.⁷ She would receive her full pay the same day as elected officials. The fact that Stumpf had one paycheck withheld before fiscal year 2015-2016 did not affect her receiving her full yearly salary in fiscal year 2015-2016 or calendar years 2015 and 2016.

⁶ The employees would be short approximately one week in fiscal year 2016-2017 and calendar year 2017 but would go back to full annual wages in subsequent years.

⁷ All the plaintiffs were treated the same. Stumpf was hired in 2003. Her annual salary changed over the years but in order to be consistent, her salary of the affected year will be used as a constant.

1		Stumpf	Elected		Fiscal	Year 15-16
2		\$52,704.00	\$126,000.00			
3	Date	Amount	Amount	Date	Amount	Amount
4	15-Jul-15	\$2,196.00	\$5,250.00	15-Jan-16	\$2,196.00	\$5,250.00
5	29-Jul-15	\$2,196.00	\$5,250.00	29-Jan-16	\$2,196.00	\$5,250.00
6	16-Aug-15	\$2,196.00	\$5,250.00	12-Feb-16	\$2,196.00	\$5,250.00
7	31-Aug-15	\$2,196.00	\$5,250.00	29-Feb-16	\$2,196.00	\$5,250.00
8	15-Sep-15	\$2,196.00	\$5,250.00	16-Mar-16	\$2,196.00	\$5,250.00
9	30-Sep-15	\$2,196.00	\$5,250.00	31-Mar-16	\$2,196.00	\$5,250.00
10	14-Oct-15	\$2,196.00	\$5,250.00	15-Apr-16	\$2,196.00	\$5,250.00
11	31-Oct-15	\$2,196.00	\$5,250.00	29-Apr-16	\$2,196.00	\$5,250.00
12	15-Nov-15	\$2,196.00	\$5,250.00	16-May-16	\$2,196.00	\$5,250.00
13	30-Nov-15	\$2,196.00	\$5,250.00	31-May-16	\$2,196.00	\$5,250.00
14	16-Dec-15	\$2,196.00	\$5,250.00	15-Jun-16	\$2,196.00	\$5,250.00
15	30-Dec-15	\$2,196.00	\$5,250.00	30-Jun-16	\$2,196.00	\$5,250.00
16					\$52,704.00	\$126,000.00
17					\$0.00	\$0.00

Wave 3's changeover was for the fiscal year 2016-2017. It is understood that along with making payroll bi-weekly, the defendants wanted the payments to be on a Friday.⁸ The changeover is simple and requires no loss in Fiscal or Calendar Year wages or any advanced payments. The State of West Virginia could have made a bi-monthly payout until Friday, June 30, 2017 and then payments every other week beginning on July 14, 2017 continuing until Friday, December 29, 2017. This would have provided the employees with their full yearly payment for the fiscal year 2016-2017 and for the calendar year 2017.

		\$126,000.00	\$52,704.00		
Pay Date	Elected	Stumpf	Pay Date	Elected	Stumpf
16-Jan-17	\$5,250.00	\$2,196.00	14-Jul-17	\$4,846.15	\$2,027.08
31-Jan-17	\$5,250.00	\$2,196.00	28-Jul-17	\$4,846.15	\$2,027.08
14-Feb-17	\$5,250.00	\$2,196.00	11-Aug-17	\$4,846.15	\$2,027.08
28-Feb-17	\$5,250.00	\$2,196.00	25-Aug-17	\$4,846.15	\$2,027.08
16-Mar-17	\$5,250.00	\$2,196.00	8-Sep-17	\$4,846.15	\$2,027.08
31-Mar-17	\$5,250.00	\$2,196.00	22-Sep-17	\$4,846.15	\$2,027.08
15-Apr-17	\$5,250.00	\$2,196.00	6-Oct-17	\$4,846.15	\$2,027.08
30-Apr-17	\$5,250.00	\$2,196.00	20-Oct-17	\$4,846.15	\$2,027.08

⁸ It is understood that the defendants wanted the Bi-weekly payments to start on a Friday so that they paid every other Friday.

15-May-17	\$5,250.00	\$2,196.00	3-Nov-17	\$4,846.15	\$2,027.08
30-May-17	\$5,250.00	\$2,196.00	17-Nov-17	\$4,846.15	\$2,027.08
15-Jun-17	\$5,250.00	\$2,196.00	1-Dec-17	\$4,846.15	\$2,027.08
30-Jun-17	\$5,250.00	\$2,196.00	15-Dec-17	\$4,846.15	\$2,027.08
			29-Dec-17	\$4,846.15	\$2,027.08
			Total	\$126,000.00	\$52,704.00

However, the approach to pay employees would not provide the budget surplus for fiscal year 2016-2017 that the State of West Virginia sought to achieve as part of the bi-monthly / biweekly conversion. Instead, in fiscal year 2016-2017, the State of West Virginia manipulated the numbers to put "The Taking" into play. Below are the payments for fiscal year 2016-2017:

Annual		2016	Fiscal		Year 16-17
\$52,704.00		\$126,000.00	\$52,704.00		\$126,000.00
Date	Paycheck	Paycheck	Date Pay	Paycheck	Paycheck
15-Jul-16	\$2,196.00	\$5,250.00	15-Jan-17	\$2,196.00	\$5,250.00
29-Jul-16	\$2,196.00	\$5,250.00	29-Jan-17	\$2,196.00	\$5,250.00
16-Aug-16	\$2,196.00	\$5,250.00	12-Feb-17	\$2,196.00	\$5,250.00
31-Aug-16	\$2,196.00	\$5,250.00	28-Feb-17	\$2,196.00	\$5,250.00
15-Sep-16	\$2,196.00	\$5,250.00	16-Mar-17	\$2,196.00	\$5,250.00
30-Sep-16	\$2,196.00	\$5,250.00	31-Mar-17	\$2,196.00	\$5,250.00
14-Oct-16	\$2,196.00	\$5,250.00	15-Apr-17	\$2,196.00	\$5,250.00
31-Oct-16	\$2,196.00	\$5,250.00	29-Apr-17	\$2,196.00	\$5,250.00
15-Nov-16	\$2,196.00	\$5,250.00	15-May-17	\$2,196.00	\$5,250.00
30-Nov-16	\$2,196.00	\$5,250.00	31-May-17	\$1,790.58	\$5,250.00
16-Dec-16	\$2,196.00	\$5,250.00	9-Jun-17	\$2,027.08	\$4,846.15
30-Dec-16	\$2,196.00	\$5,250.00	23-Jun-17	\$2,027.08	\$4,846.15
	\$52,704.00	\$126,000.00		\$51,960.73	\$125,192.31
	\$0.00	\$0.00		-\$743.27	-\$807.69

Manipulating the payroll to have the last pay date fall on June 23, 2017 resulted in the elected official being shorted \$807.69 and Stumpf being shorted \$743.27 for fiscal year 2016-2017.⁹ **This is not in dispute.** The amount that Stumpf was shorted was in addition

⁹ For the State to achieve the desired result, not only did the State of West Virginia end the payroll before June 30, 2017, but it intentionally shorted all employees' contractual wages due on May 31, 2017. The last pay day was on June 28 and by this time the elected officials were already being paid one week in advance.

to the \$2,196.00 owed to Stumpf as part of her original arrearage. The State of West Virginia, in anticipation of "The Taking", paid the elected officials a "Gap Payment" of \$807.69 on March 30, 2017. As to Stumpf, the State simply retained the amount as surplus in the Treasury along with every other State employee. Beginning on July 7, 2017, the State of West Virginia made twenty-six (26) Bi-Weekly paychecks for fiscal year 2017-2018 so that in fiscal year 2017-2018 and subsequent annual years Stumpf was paid her full annual salary of \$52,704.00 but was not paid the \$743.27 due.

Since the 2016-2017 fiscal year was disrupted, it has the same effect on the Calendar Year making Stumpf's 2017 annual pay \$743.27 short. To date, this amount has not been paid and will not be paid until Stumpf terminates her employment and then will only be paid if the administration in the office when Stumpf terminates her employment honors the debt from the fiscal year 2016-2017. This amount is over and above the monies already withheld as part of retaining the "first" pay period.

F. DIRECT EVIDENCE OF NON-PAYMENT

The State of West Virginia intentionally underpaid wages by approximately one week in fiscal year 2016-2017. The manipulation of the internal auditing resulted in only a two-day shortage -- which did not meet that goal. To achieve the goal, the State simply underpaid state employee wages in their paycheck issued on May 30, 2017.¹⁰

On May 31, 2017, Stumpf was due a bi-monthly paycheck for work performed on May 1-May 15, 2017. The elected officials had been paid a bi-monthly paycheck for that period. Stumpf was due \$2,196.00. Instead of paying the wages due to Stumpf, she was

¹⁰ See **J.A. 349-362**. The affidavit of Sue Racer-Troy states that a payment was made on May 30, 2017 but the official record shows pay date through May 31, 2017 the actual due date.

only paid \$1,790.58 resulting in an underpayment of \$405.42.¹¹ Stumpf has never been paid this amount.

The State of West Virginia attempted to hide this underpayment by stating that the May 30, 2017 payment to Stumpf was for a period of May 1-May 12, as an excuse for why her paycheck was short. However, even using this time frame, the May 30, 2017 paycheck is short the wages due. Specifically, Stumpf worked ten (10) workdays between May 1-12 (May 1,2,3,4,5 and May 8,9,10,11,12). Stumpf was due \$2,027.08 for ten (10) days' work or the equivalent of a paycheck every other week in which one works ten (10) days. Significantly, even using the dates assigned to Stumpf, she was shorted \$236.20.

The Final Order Granting Summary Judgment for All Defendants as drafted by the Defendants and signed by Judge Evans admits that the May 31, 2017 paycheck was supposed to be a bi-monthly paycheck and that it was three (3) days short.

"Then the employees received their last semi-monthly paycheck on May 31, 2017, which covered earnings from May 1-12, 2017. This last pay period was short three days in order to match up with the new bi-weekly pay schedule; however, those days were included in the first bi-weekly pay period which was paid on June 9, 2017".¹²

The problem is that the three (3) day shortage in wages were not included in the June 9, 2017 payment. The Table presented by Sue Racer-Troy proves that on June 9, 2017, Stumpf was paid a "bi-weekly" check for \$2,027.08 which is her pay for wages for the ten days worked from May 13-26. The June 9 check **did not** make up the three-day shortage and it has never been paid.¹³

¹¹ The \$405.42 is a portion of the \$743.27 amount due and owing for 2017

¹² See J.A. 725-756, Evans Order granting summary judgment

¹³ See J.A. 349-353 and 361-362 Affidavit of Sue Racer-Troy

G. WAGES INDIVIDUALLY WITHHELD

Stumpf has not been paid the \$743.27 she is still owed from 2017. The Defendants attempted to show payment by physically taking money from wages earmarked for 2018 and applying them to 2017. This is shown through these Charts. In 2016, Stumpf received these payments in her pocket which paid her full annual salary. As with prior years, Stumpf did not take money for 2017 to pay herself for 2016 nor were any monies taken from 2016 to pay for 2015.

15-Jan-16	\$2,196.00	15-Apr-16	\$2,196.00	15-Jul-16	\$2,196.00	14-Oct-16	\$2,196.00
29-Jan-16	\$2,196.00	29-Apr-16	\$2,196.00	29-Jul-16	\$2,196.00	31-Oct-16	\$2,196.00
12-Feb-16	\$2,196.00	16-May-16	\$2,196.00	16-Aug-16	\$2,196.00	15-Nov-16	\$2,196.00
28-Feb-16	\$2,196.00	31-May-16	\$2,196.00	31-Aug-16	\$2,196.00	30-Nov-16	\$2,196.00
16-Mar-16	\$2,196.00	15-Jun-16	\$2,196.00	15-Sep-16	\$2,196.00	16-Dec-16	\$2,196.00
31-Mar-16	\$2,196.00	30-Jun-16	\$2,196.00	30-Sep-16	\$2,196.00	30-Dec-16	\$2,196.00
							\$52,704.00

In 2017, Stumpf was shorted \$743.27. This shortage has no relationship to her arrearage.

15-Jan-17	\$2,196.00	15-Apr-17	\$2,196.00	7-Jul-17	\$2,027.08	29-Sep-17	\$2,027.08
29-Jan-17	\$2,196.00	29-Apr-17	\$2,196.00	21-Jul-17	\$2,027.08	13-Oct-17	\$2,027.08
12-Feb-17	\$2,196.00	16-May-17	\$2,196.00	4-Aug-17	\$2,027.08	27-Oct-17	\$2,027.08
28-Feb-17	\$2,196.00	31-May-17	\$1,790.58	18-Aug-17	\$2,027.08	10-Nov-17	\$2,027.08
16-Mar-17	\$2,196.00	9-Jun-17	\$2,027.08	1-Sep-17	\$2,027.08	24-Nov-17	\$2,027.08
31-Mar-17	\$2,196.00	23-Jun-17	\$2,027.08	15-Sep-17	\$2,027.08	8-Dec-17	\$2,027.08
						22-Dec-17	\$2,027.08
							\$51,960.73

In 2018, Stumpf was back to receiving her full annual salary.

5-Jan-18	\$2,027.08	30-Mar-18	\$2,027.08	22-Jun-18	\$2,027.08	28-Sep-18	\$2,027.08
19-Jan-18	\$2,027.08	13-Apr-18	\$2,027.08	6-Jul-18	\$2,027.08	12-Oct-18	\$2,027.08
2-Feb-18	\$2,027.08	27-Apr-18	\$2,027.08	20-Jul-18	\$2,027.08	26-Oct-18	\$2,027.08
16-Feb-18	\$2,027.08	11-May-18	\$2,027.08	3-Aug-18	\$2,027.08	9-Nov-18	\$2,027.08
2-Mar-18	\$2,027.08	25-May-18	\$2,027.08	17-Aug-18	\$2,027.08	23-Nov-18	\$2,027.08
16-Mar-18	\$2,027.08	8-Jun-18	\$2,027.08	31-Aug-18	\$2,027.08	7-Dec-18	\$2,027.08
						14-Sep-18	\$2,027.08
							\$52,704.00

In 2018, Stumpf was only paid her annual salary of \$52,704.00. She was not paid the \$743.27 still due to her from 2017. The wages from 2017 have never been paid and will not be paid until Stumpf terminates her employment if the officials in charge during her termination will honor a debt from 2017. If Stumpf works to the end of 2030, she will still be owed the monies from 2017 and monies due and owing to pay off the arrearage placed on the internal bookkeeping.¹⁴ The amount potentially paid to her in 2030 is unknown because is impossible to know whether the administration will honor the 2017 debt.¹⁵

Moving forward to the logical conclusion, if Stumpf, 47 years old in 2017 works until 2040 or 23 more years and then retires on December 31, 2040, the State will give her the money it was contractually obligated to pay her in 2017, but only if the administration in power honors the 2017 debt. The affidavit of Sue Racer-Troy reveals that the Supreme Court underpaid wages in fiscal year 2016-2017 and calendar year 2017.¹⁶ The internal auditing of the Supreme Court simply tracks the monies due at termination.¹⁷ The accounting as shown does not give Stumpf the \$743.27 she is due to pay her bills.

This shortage will continue until Stumpf terminates her employment and then, only if the debt is honored.

1	Amount Owed from 2017	Annual Wages Due	Annual Wages Paid	31-Dec	Debt	Age
2	2017	\$52,704.00	\$51,960.73	Amount Still Owed	\$743.27	47
3	2018 \$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	48
4	2019 \$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	49

¹⁴ See **J.A. 544-546**, Affidavit of Dan Selby, Forensic Economist. Currently, the defendants now owe the state employees for 15 days. As a matter of law, Judge Evans inexplicably forgave 5 days of the wages that were not paid and allowed the State to retain those monies.

¹⁵ At the end of any year, Stumpf will be paid her full salary for that year regardless of the date of the last check. The Supreme Court will not owe anymore wages for that year. Even if the last paycheck paying her the full annual wage is on December 22 and she terminates on December 31 she is not entitled to extra pay for that year. She should be entitled to 15 days' pay to compensate her for what he was owed at that time but the Order written by the defendants and then signed by Judge Evans reduced all arrearages to 10 days in violation of the contractual agreement to pay all wages owed.

¹⁶ See **J.A. 349-362**, Affidavit of Sue Racer-Troy

¹⁷ This "accounting" can be changed at any time.

5	2020	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	50
6	2021	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	51
7	2022	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	52
8	2023	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	53
9	2024	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	54
10	2025	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	55
11	2026	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	56
12	2027	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	57
13	2028	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	58
14	2029	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	59
15	2030	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	60
16	2031	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	61
17	2032	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	62
18	2033	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	63
19	2034	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	64
20	2035	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	65
21	2036	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	66
22	2037	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	67
23	2038	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	68
24	2039	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	69
25	2040	\$743.27	\$52,704.00	\$52,704.00	Amount Still Owed	\$743.27	70

This pattern is the same for all employees.

SUMMARY OF THE ARGUMENT

The Circuit Court erred when in granting summary judgment filed on the pleadings it adopted the defendants' position on a disputed factual argument instead of accepting the facts most favorable to the Plaintiff. As a result, the Court granted summary judgment finding that after the State changed its payroll from bi-monthly to bi-weekly the State remained only 10 days in arrears instead of the 15 days asserted by the plaintiffs. This incorrect factual finding eliminated the plaintiffs' claims.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is necessary under the criteria set forth in Rule 18(a) as all parties have not waived oral arguments. The decisional process would be aided by oral

argument. In addition, as this case involves assignment of error in applying settled law, a claim of an unsustainable exercise of discretion where the law governing that discretion is settled; claims of insufficient evidence or a result against the weight of the evidence; case involving a narrow issue of law it should be scheduled as a Rule 19 argument.

STANDARD OF REVIEW

This Court has held that “a circuit court’s entry of summary judgment is reviewed *de novo*.” Saunders v. Tri-State Block Corp., 207 W.Va. 616, 619, 535 S.E.2d 215, 218 (W.Va.,2000) per curium (citing Syl. Pt. 1, Davis v. Foley, 193 W.Va. 595, 457 S.E.2d 532 (1995); Syl. Pt. 1, Painter v. Peavy, 192 W.Va. 189, 451 S.E.2d 755 (1994)). The Court has further stated in Syllabus Point 3 of Aetna Cas. & Sur. Company v. Fed. Ins. Co. of N.Y., 148 W.Va. 160, 133 S.E.2d 770 (1963) that “[a] motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law.” Id. Further, this Court held in syllabus point two of Williams v. Precision Coil, Inc., 194 W. Va. 52,459 S.E.2d 329 (1995), that

[s]ummary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.

194 W.Va. 52, 59-60, 459 S.E.2d 329, 336 - 337 (W.Va.1995)(citing Celotex Corp. v. Catrett, 477 U.S. 317 (1986)). This Court further held that even though a reviewing court must consider “underlying facts and all inferences” in the light most favorable to the nonmoving party, “the nonmoving party must nonetheless offer some ‘concrete evidence from which a reasonable ... [finder of fact] could return a verdict in ... [its] favor’ or other

'significant probative evidence tending to support the complaint.'" Id. (citing Anderson, 477 U.S. at 256, quoting First Nat'l Bank of Arizona v. Cities Serv. Co., 391 U.S. 253, 290 (1968)).

ARGUMENT

- I. The Circuit Court erred in not allowing discovery on the amount of arrearage now owed to State Employees resulting after the changeover in the payment of employees from Bi-Monthly to Bi-Weekly paychecks.

In the present case, the defendants moved for Summary Judgment on the pleadings. It is well established that summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law. A factual finding as to the amount of arrearage now owed the plaintiffs is critical. That State employees are paid one pay period in arrearage is in **West Virginia Code § 6-7-1**. When an employee terminates that employee could use this statute to recover the one pay period in arrearage if the future administration failed to catch up the employees pay. The defendants have produced no executive or legislative Order permitting the withholding of additional pay in the year of the "wave" or to increase the arrearage from 10 working days (one pay period) to 15 days. Absent the appropriate executive or legislative order or a judicial order State Employees have no recourse to recover the extra 5 days taken from their salary.¹⁸

The first claim of the plaintiffs in bringing this action is to have the Court find that the plaintiffs are owed for 15 days of arrearage. Such a finding would protect the future collection of those wages. The second issue is the timing as to when the State of West Virginia would have to pay for the 5-extra day of arrearage. The plaintiffs' position is that 5 days are owed

¹⁸ In fact, now Judge Evans has eliminated 5 days of pay by stating that as a matter of law the State of West Virginia only owes for 10 working days at time of termination.

as the State of West Virginia cannot hold more than one pay period or 10 days under **West Virginia Code § 6-7-1**. However, even if the Court found that the State of West Virginia could retain the 15 days of arrearage until the employee terminated their employment then at least the added arrearage would be legally due and owing.

As it relates to the plaintiffs' claims, the arrearage increased and they are owed for 15 days. The plaintiffs did not assert these claims without factual support. The plaintiffs presented evidence that their pay was shorted in 2017. The affidavits produced by the defendants confirmed that the plaintiffs pay was shorted in 2017. The affidavits produced by the defendants confirmed that at the end of 2018 the plaintiffs had not been paid for the 2017 shortage. The plaintiffs produced an Expert affidavit confirming they were owed for 15 days of arrearage or more than one pay period. Whether the plaintiffs are 15 or 10 days in arrears is a question of fact requiring discovery and the presentation of evidence to be properly ruled upon by the Court.

- II. The Circuit Court erred in finding that the plaintiffs were only in arrears for ten days pay when that finding opposed the facts most favorable to the plaintiffs and the facts that the plaintiffs are fifteen days in arrears.

On Page 17, the Evans' Order discusses the "second arrearage".¹⁹ Factually the Court's Order is not correct, and it references no uncontradicted evidence to support the findings. The Findings of the Order also show why the arrearage argument raised by the defendants does not address the Amended Complaint of the plaintiffs they were not paid their full wages in 2017 which are due and owing.

In Paragraph 37, the Court stated that "the arrearage is less under the new system than before". ***This is neither true nor is it supported by the evidence.*** The plaintiffs'

¹⁹ J.A. 741

arrearage as of January 1, 2017 was 10.8 days. The State admits that the plaintiffs were not paid their full wages in fiscal year 2016-2017 or calendar year 2017. This additional non-payment in 2017, along with the arrearage created during hire, increased the amount due to the state employee at time of separation.

The claim of the State is that while the plaintiffs were not paid their full wages in 2017, they have been paid if one considers that payments are in arrears. The plaintiffs' position is that the State cannot take wages earned in 2017 and then add it to the initial arrearage created at the time of employment.²⁰

Name	Year	Payment	Periods	Salary	Arrearage Owed
Bradley	2018	26	\$2,251.85	\$58,548.00	\$3,377.77
Dickerson	2018	26	\$1,532.77	\$43,100.00	\$2,299.15
Morris	2018	26	\$1,465.85	\$43,100.00	\$2,198.77
Stumpf	2018	26	\$2,027.08	\$43,100.00	\$3,040.62
Wilkinson	2018	26	\$1,778.35	\$43,100.00	\$2,667.53

This cause of action is about how much of an employee's wages can the State defer under **West Virginia Code § 6-7-1**. The defendants cannot deny that in 2018 the plaintiffs received 26 payments at the above rate every other week.²¹ If the plaintiffs left their employment on December 31, 2018 or the end of any year they would be owed, besides their full year salary, the arrearage shown. The arrearage shown is for fifteen (15) days worked. It is assumed that they would be paid that amount on the next pay day so the State could argue that they are still being paid within one pay cycle²² but that contention is irrelevant to the plaintiffs' claims. As the defendants noted, changing from bi-monthly to bi-weekly should cause the amount being owed being reduced from ten point eight (10.8) days

²⁰ Or at the time of the loan for pre-2002 employees.

²¹ Assuming no change in salary from 2017.

²² It is not known if the plaintiffs would be paid in one or two pay cycles. Wilkinson retired in 2018 and was paid \$2,667.53 for her 15 days of arrearage.

under bi-monthly to ten (10) days under bi-weekly. It should not have gone up to fifteen (15) days.

The Evans Order found that under the **West Virginia Code § 6-7-1 amendment**, how the State now paid employees was legal under West Virginia law because the State of West Virginia is only 10 days in arrears.²³ This is especially significant when one considers that the money taken in 2017 is not protected by any executive or judicial order that approved the additional taking of employee wages. This could be considered a one-time taking as argued by the defendants in State Court.²⁴

Judge Evans' Order not only fails to recognize that the State Employees are owed for 15 days of work, but he actual eliminates 5 days of pay due and owing to the State Employees. He does this taking with no evidence, without citing any findings to support his conclusion and absent any testimony. All in violation of well-established West Virginia law.

- III. The Circuit Court erred in ruling that the defendants could not violate Article III § 10 of the West Virginia Constitution because the Circuit Court did not permit discovery on payment to elected officials.

All employees are paid under **West Virginia Code § 6-7-1**. This means any pay schedule applies to all employees. The only difference is that the state agencies do not withhold the first payment from elected officials. This means that if an employee and an elected official start on January 1 of any year that at the end of the year the elected official would be paid their entire salary and the employee's salary would be minus one paycheck. So, if an elected official were making \$126,000.00, they would be paid \$126,000.00 while an employee making \$52,704.00 would only be paid \$50,508.00 (assuming bi-monthly and

²³ See **J.A. 544-546**, Affidavit of Dan Selby CPA which states, in fact, it takes two pay cycles to pay plaintiffs. Selby's testimony was unopposed. The State did not put forth any evidence to contradict Selby.

²⁴ See **J.A. 257-258**, Defendants argument that they were entitled to have the State Complaint dismissed based upon the statute of limitations.

that \$2,196 was withheld).²⁵

The next year is different. In the second year, either fiscal or calendar, the elected official and the state employee would be on the same level. Both employees would receive their full annual salary. The checks would be paid on the same day. If bi-monthly, then there would be twenty-four (24) checks and if bi-weekly twenty-six (26) checks. The internal bookkeeping of the state agency to “remember” that the employee is owed their first paycheck on the date of termination would be irrelevant to being paid in year two and subsequent years. The arrearage is an accounting function and differs from the annual salary due once arrearage is considered in the first calendar or fiscal year.

In fiscal year 2015-2016, the elected official was due a full yearly annual salary of \$126,000.00 and Stumpf was due her entire annual salary of \$52,704.00. They would be paid as follows.

1	Stumpf		Stumpf		Elected			
2			\$52,704.00		\$126,000.00			
3	Year	Date	Paycheck	Paycheck	Year	Date Pay	Paycheck	Paycheck
4	2015	15-Jul	\$2,196.00	\$5,250.00	2016	15-Jan	\$2,196.00	\$5,250.00
5	2015	29-Jul	\$2,196.00	\$5,250.00	2016	29-Jan	\$2,196.00	\$5,250.00
6	2015	16-Aug	\$2,196.00	\$5,250.00	2016	12-Feb	\$2,196.00	\$5,250.00
7	2015	31-Aug	\$2,196.00	\$5,250.00	2016	29-Feb	\$2,196.00	\$5,250.00
8	2015	15-Sep	\$2,196.00	\$5,250.00	2016	16-Mar	\$2,196.00	\$5,250.00
9	2015	30-Sep	\$2,196.00	\$5,250.00	2016	31-Mar	\$2,196.00	\$5,250.00
10	2015	14-Oct	\$2,196.00	\$5,250.00	2016	15-Apr	\$2,196.00	\$5,250.00
11	2015	31-Oct	\$2,196.00	\$5,250.00	2016	29-Apr	\$2,196.00	\$5,250.00
12	2015	15-Nov	\$2,196.00	\$5,250.00	2016	16-May	\$2,196.00	\$5,250.00
13	2015	30-Nov	\$2,196.00	\$5,250.00	2016	31-May	\$2,196.00	\$5,250.00
14	2015	16-Dec	\$2,196.00	\$5,250.00	2016	15-Jun	\$2,196.00	\$5,250.00
15	2015	30-Dec	\$2,196.00	\$5,250.00	2016	30-Jun	\$2,196.00	\$5,250.00
16			\$52,704.00		\$126,000.00			

²⁵ The contractual agreement to pay elected officials is set forth in **West Virginia Code § 6-7-2** except for Judges that are set forth in **West Virginia Code § 51-1-10a**.

Defendants state that as a matter of law elected officials must be paid annually. The plaintiffs and Stumpf agree with this legal proposition but dispute it is limited to elected officials. All employees must be paid their annual salary annually with the exclusion of the first year for state employees.

When fiscal year 2016-2017 began both were due their annual salaries. In 2016-2017, the State of West Virginia began Wave 3 which included the Supreme Court and all elected officials from the remaining state agencies. The change was supposed to take place for the 2017 calendar year. The state agencies and the Supreme Court could have paid everyone bi-monthly through June 30, 2017 and then start the bi-weekly ending the year on December 29, 2017. If this had been done, then all employees would receive their full annual pay for 2016-2017 and for calendar year 2017.

Instead, the State of West Virginia put in place a plan to underpay the affected state employees in fiscal year 2016-2017 so that the underpayment could be retained as a budget surplus. As of May 15, 2017, both the elected officials and the affected state employees had been paid on the same day bi-monthly. The pay schedule was as follows:

Stumpf		Elected			
\$52,704.00		\$126,000.00			
Date	Paycheck	Paycheck	Date Pay	Paycheck	Paycheck
15-Jul-16	\$2,196.00	\$5,250.00	15-Jan-17	\$2,196.00	\$5,250.00
29-Jul-16	\$2,196.00	\$5,250.00	29-Jan-17	\$2,196.00	\$5,250.00
16-Aug-16	\$2,196.00	\$5,250.00	12-Feb-17	\$2,196.00	\$5,250.00
31-Aug-16	\$2,196.00	\$5,250.00	2/29/2017	\$2,196.00	\$5,250.00
15-Sep-16	\$2,196.00	\$5,250.00	16-Mar-17	\$2,196.00	\$5,250.00
30-Sep-16	\$2,196.00	\$5,250.00	31-Mar-17	\$2,196.00	\$5,250.00
14-Oct-16	\$2,196.00	\$5,250.00	15-Apr-17	\$2,196.00	\$5,250.00
31-Oct-16	\$2,196.00	\$5,250.00	29-Apr-17	\$2,196.00	\$5,250.00
15-Nov-16	\$2,196.00	\$5,250.00	15-May-17	\$2,196.00	\$5,250.00
30-Nov-16	\$2,196.00	\$5,250.00		\$46,116.00	\$110,250.00
16-Dec-16	\$2,196.00	\$5,250.00			
30-Dec-16	\$2,196.00	\$5,250.00	Owed	\$6,588.00	\$15,750.00

At this point, the alteration of the pay schedule and the underpayment of wages began.

	Stumpf	Elected
Owed	\$6,588.00	\$15,750.00
31-May-17	\$1,790.58	\$5,250.00
9-Jun-17	\$2,027.08	\$4,846.15
23-Jun-17	\$2,027.08	\$4,846.15
Total	\$5,844.73	\$14,942.31
Owed	-\$743.27	-\$807.69

This alteration caused a shortage in pay. The State simply has retained the money owed to Stumpf while compensating the elected official for any shortage with a gap payment on March 30, 2017 equal to the anticipated shortage that the State was going to intentionally create.

In order not to short any of its employees or to violate the law by paying elected officials in advance all the State had to do was make three (3) more bi-monthly payments to finish out the fiscal year and then convert to bi-monthly payments of which they would have made 13 payments to finish out 2017.²⁶ This would result in full payment. However, the goal was to take wages from the state employees in violation of the contractual agreement to pay the state employees their earned annual salary.

In actuality, the elected officials were paid a "gap payment" and the state employees were simply not paid their wages.²⁷ In setting up the pay schedule, the State of West Virginia gave direction to the State Agencies to pay the remaining monies due in fiscal year 2016-2017 for both the elected officials and the affected state employees. But what was decided

²⁶ While Stumpf works for the Supreme Court, the Supreme Court was following the state plan. Judge Evans would not allow any evidence on how this "State Plan" was put into effect or even who authorized the plan.

²⁷ Defendant's argument that this scheme is justifiable brings to mind the passage in George Orwell's *Animal Farm* (1945) setting forth a provision in the animals' new constitution; "all animals are equal, but some animals are more equal than others."

was to protect the monies due the elected officials while taking away money from the affected state employees including Stumpf.

Judge Evans found that elected officials could have the gap payment because the State of West Virginia had to pay elected officials in the Calendar year in which they work. The problem with the Courts' logic is that State Officials (at least State Judges and Supreme Court Justices) are not paid all their salary within the calendar year for the days worked in that calendar year.

It is understood that on January 5, 2018, all elected officials were paid a check every other week. Since they worked only five days in January, one week of that pay was for work performed in December of 2017. They then received 25 checks for \$123,576.92

Date	Paycheck	Date	Paycheck
5-Jan-18	\$2,423.08	6-Jul-18	\$4,846.15
19-Jan-18	\$4,846.15	20-Jul-18	\$4,846.15
2-Feb-18	\$4,846.15	3-Aug-18	\$4,846.15
16-Feb-18	\$4,846.15	17-Aug-18	\$4,846.15
2-Mar-18	\$4,846.15	31-Aug-18	\$4,846.15
16-Mar-18	\$4,846.15	14-Sep-18	\$4,846.15
30-Mar-18	\$4,846.15	28-Sep-18	\$4,846.15
13-Apr-18	\$4,846.15	12-Oct-18	\$4,846.15
27-Apr-18	\$4,846.15	26-Oct-18	\$4,846.15
11-May-18	\$4,846.15	9-Nov-18	\$4,846.15
25-May-18	\$4,846.15	23-Nov-18	\$4,846.15
8-Jun-18	\$4,846.15	7-Dec-18	\$4,846.15
22-Jun-18	\$4,846.15	21-Dec-18	\$4,846.15
	\$123,576.92		\$123,576.92
	-\$2,423.08		-\$2,423.08

The actual way elected officials were treated will not be known until full discovery is completed. What is known is that the defendants' argument that elected officials could have a gap payment because they must be paid all they are owed for work in a calendar year in the calendar year is not supported by the evidence. The new payroll system created an

illegal wage arrearage on the yearly pay of Judges adds to the plaintiffs' contention that their pay was affected by 5 days. The State employees should be afforded the same protection as elected officials.

The circuit court committed error when it made a finding as to why the elected officials were treated differently when the argument made is not supported by the evidence and has not been developed due to the absence of discovery and testimony.

- IV. The Circuit Court erred regarding the remaining claims of the plaintiffs because the Court incorrectly applied a ten (10) day arrearage when the arrearage is fifteen (15) days.

Once the Circuit Court found as a matter of fact that the plaintiffs were only due 10 days in wages then the remaining claims would have no basis. The plaintiffs would not have a Wage Payment or Collection Claim, a complaint about a second arrearage, an equal Protection claim or a need for a Writ of Mandamus. If the defendants following the conversion for bi-monthly to bi-weekly reduced the arrearage to 10 days, then they would be in accord with West Virginia law. Conversely, if the conversion resulted in an arrearage of 15 days, a violation of the plaintiffs' rights occurs. The Court's factual finding that the defendants were 10 days in arrears on a Summary Judgment Motion based on the Pleadings is contrary to and ignores the facts most favorable to the plaintiffs. The Circuit Court's holding is inconsistent with the presented evidence, is erroneous and adversely affects the entire opinion.

CONCLUSION

The Plaintiffs request this Honorable Court to set aside the Order of Judge Evans.

RELIEF SOUGHT

The Plaintiffs requests this Honorable Court remand this case to the Circuit Court directing permissible discovery to occur along with a full development of evidence including testimony, if required, so that the Court will have a full factual development upon which a proper determination of the facts can then be performed in conjunction with the applicable law.

Signed: 

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Counsel of Record for Petitioners'

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2020, true and accurate copies of the foregoing ***Petitioners' Brief*** were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all other parties to this appeal as follows:

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