**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**



**SAM BRUNETT and ROBERT McCLOUD,**

**Petitioners/Plaintiffs,**

**v.**

**Civil Action Nos. 21-P-340**
**Honorable Jennifer F. Bailey**

**CRAIG BLAIR, in his Official Capacity as President of the West Virginia Senate, ROGER HANSHAW, in his Official Capacity as Speaker of the West Virginia House of Delegates, JIM JUSTICE, in his Official Capacity as Governor of West Virginia**

**Respondents/Defendants.**

## ORDER GRANTING MOTION FOR PRELIMINARY INJUNCTION AND DENYING MOTION TO DISMISS

Pending before this Court are Petitioners' Motion for Preliminary Injunction and Respondents' Motion to Dismiss. Based upon the Verified Complaint, Petitioners' affidavits, the parties' memoranda of law, and the oral arguments of counsel together with the affidavit and testimony of Robert M. Bastress, Jr., presented at hearing on December 14, 2021, as well as the entire record in this case, the Court **GRANTS** Petitioners' Motion for Preliminary Injunction and **DENIES** Respondents' Motion to Dismiss.

In support of its Order, the Court makes the following Findings of Fact and Conclusions of Law:

## I. FINDINGS OF FACT

### A. The Parties to this Action

1. On September 29, 2021, Petitioners Sam Brunett and Robert McCloud initiated this action challenging the constitutionality of provisions of H.B. 2012 relating to charter schools authorized by the West Virginia Professional Charter School Board (PCSB) and seeking mandamus and declaratory relief or, alternatively, injunctive relief as well as attorney's fees and costs.

2. Petitioner Brunett, a resident of Marion County, is the father of children enrolled in Marion County Schools and Harrison County Schools. Brunett, a public school teacher at Morgantown High School, wants the opportunity to vote on the creation of any charter schools PCSB may authorize in Marion County.

3. Petitioner McCloud, a resident of Kanawha County, is the father of a child enrolled in the Kanawha County Schools. McCloud, a public school teacher at Riverside High School, wants the opportunity to vote on the creation of any charter schools the PCSB may authorize in Kanawha County, including the proposed Nitro Preparatory Academy.

4. Respondent Craig Blair is the President of the West Virginia Senate, who was acting in such official capacity during the passage of H.B. 2012. H.B. 2012 requires the advice and consent of the Senate for the five voting members of the PCSB appointed by the Governor.

5. Respondent Roger Hanshaw is the Speaker of the West Virginia House of Delegates, who was acting in such official capacity during the passage of H.B. 2012.

6. Respondent Jim Justice is the Governor of the State of West Virginia, who, in his official capacity, signed into law H.B. 2012. H.B. 2012 authorizes Governor Justice to appoint five voting members of the PCSB. Members of PCSB are subject to removal by the Governor.

7. By this action, Petitioners seek compliance with article 12, section 10 of the West Virginia Constitution.

**B. Relevant History Relating to the Adoption of Article 12, Section 10**

8. Under the West Virginia Constitution of 1863, the Legislature had exclusive authority to create school districts, including "independent school districts," i.e., those created by special acts to operate independently of existing township districts. Those township districts would later evolve into so-called "magisterial school districts." Both types of districts, independent and magisterial, were considered part of the general system of public education.

9. The Legislature's authority to create independent school districts was challenged after it had created, by special act of 1868, an independent school district in Wellsburg, without the assent of the citizens of Brooke County. In *Kuhn v. Board of Education of Wellsburg*, the West Virginia Supreme Court rejected the challenge, reasoning that the Legislature had ample and exclusive authority to create the Wellsburg school district under two sections of the 1863 Constitution obligating the Legislature to (1) provide for a "thorough and efficient system of free schools" and (2) "foster" education through "such institutions of learning as the best interests of general education in the State may demand." 4 W. Va. 499 (1871).

10. Although those two provisions remained in the West Virginia Constitution of 1872 (now, as article 12, section 1 and article 12, section 12), another section was added—article 12, section 10—to nullify the decision rendered the prior year in *Kuhn*.

11. For the next sixty years, many school districts operated within the counties—at one point nearly 400 magisterial school districts and more than 50 independent districts. The operation of many school districts was characteristic of public education in late nineteenth and early twentieth century, still then dominated by small schools and small, independent districts.

12. The public education system changed in 1933 with the enactment of West Virginia Code § 18-1-1 which defines a "district" for purposes of the Code's chapter on public education as a "county school district" and a "board" as a "county board of education" and section 18-1-3 which further provides, "A school district shall include all the territory in one county." The effect of these statutes was to abolish the pre-existing magisterial and independent school districts and replace them with the 55 county school districts, governed by five-member boards.[1] That governance structure of the public education system has remained in effect until the enactment of the charter school law at issue in this action.

**C. The 2019 Charter School Law**

13. When it was first introduced in the 2019 regular session, education omnibus S.B. 451 defined a "Public charter school" by reference to its organizational independence: "a public corporate body, exercising public power through its governing board" as having "autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction," and as "independent of a county board."

14. Some senators objected to S.B. 451 on the ground that it allowed for the creation of independent school organizations without the consent of a majority of voters in the county in which the charter school would operate—in violation of article 12, section 10 of the West Virginia Constitution.

15. S.B. 451 would have also approved the creation of a "West Virginia Public Charter School Commission" as a charter school authorizer. The proposed Commission was to "report directly to and be responsible to the state board, separate from the Department of

[1] As recounted by noted West Virginia education historian, Charles Ambler, the move to county school districts was fairly revolutionary, seeking to advance both efficiency and equality goals. In the first year of the county unit law alone, the districts employed 940 fewer teachers and saved $4.56 million. The switch to county units and uniform taxation also reduced disparities within counties, especially in those counties with independent districts, which tended to be in wealthier, more populous regions than the magisterial districts.

Education," and "subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance."

16. A strike-and-insert version of S.B. 451 passed the Senate but did not advance in the House which adopted instead a motion to postpone indefinitely.

17. Governor Justice thereafter called a special legislative session on education matters.

18. The West Virginia Department of Education held a series of "public forums as part of a statewide listening tour," seeking input from the public and key stakeholders on issues raised by S.B. 451 in advance of the special session.

19. The West Virginia Department of Education thereafter released a report, "West Virginia's Voice," stating that "Most participants reported opposition to the creation of charter schools" and noting that "88% disagreed with creating charter schools," among the 690 who submitted comment cards.

20. The report recommended to "Place oversight/authorization responsibility with the West Virginia Board of Education and local boards of education."

21. As relevant here, H.B. 206, the charter school bill introduced during the 2019 special session, provided as follows:

- H.B. 206 specified that "All public charter schools established under this article are public schools and are part of the state's public education system."
- H.B. 206 defined "Public charter school" as "a public school or program within a public school [that] meets the general criteria, governance structure and statutory compliance requirements [contained in the statute]."
- H.B. 206 clarified that "The school district in which the public charter school

is located remains the local educational agency for all public charter schools authorized by the county board and the public charter school is a school within that local educational agency except that the public charter school is treated as a local educational agency for purposes of applying for competitive federal grants."

- H.B. 206 contained no provision authorizing the creation of a "West Virginia Public Charter School Commission." Instead, county boards of education were designated as the primary charter school authorizers with oversight authority over all authorized charter schools.[2]

22. H.B. 206 passed both the House and Senate and was signed into law by Governor Justice in June 2019.

**D. H.B. 2012**

23. National charter school groups publicly voiced displeasure with the 2019 charter school law, disapproving that it limited charter school authorizers primarily to county school boards.

24. Then-State "Superintendent Steven Paine said...that the National Alliance for Public Charter Schools [was] so displeased with West Virginia's law, they wouldn't provide assistance in designing the state's new charter school policy." "'They don't think it's going to work,' [Paine] said." "'They're used to dealing with private companies that try to make money off of charter schools,' Paine said. 'There are many diverse authorizers that are out there and they think the more the merrier.'"

[2] Under limited circumstances not present here, the State Board could also be designated a charter school authorizer at the request of a county school board or when the State Board has already intervened and limited the power of the county board. W. Va. Code § 18-5G-4(c).

25. On July 24, 2020, West Virginia Academy submitted the first and, at that time, the only application for a charter school to county boards of education—in that instance, to the boards of education for Monongalia County and Preston County. The Monongalia County Board of Education unanimously voted to deny that application on November 30, 2020.

26. Shortly thereafter, commenting on the upcoming 2021 regular legislative session, Senator Patricia Rucker emphasized the need to make changes to the 2019 charter school law, to "establish an authorizing body for approving [charter] schools." "Rucker noted she planned to push changes before the local boards' decisions," contending that "local education leaders will reject charter schools, as they perceive the institutions as competition to public institutions."

27. H.B. 2012 reversed provisions of the 2019 charter school law that previously subjected charter schools to the oversight of state and county boards of education. The relevant changes included the following:

- Striking language maintaining the county school district as the "local educational agency," H.B. 2012 provides instead that "Any public charter school authorized pursuant to this article shall be treated and act as its own local education agency for all purposes."
- H.B. 2012 strikes language that required the charter school contract to include "The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school."
- H.B. 2012 permits a charter school applicant to appeal the decision of a county board of education denying the application. It further permits such an appeal when a county board of education fails to renew a charter contract.
- H.B. 2012 establishes the "West Virginia Professional Charter School Board"

(PCSB) as a charter school authorizer. PCSB "shall report directly to and be responsible to the state board separate from the Department of Education," although it is subject to the State Board's supervision "solely for the purposes of accountability for meeting the standards for student performance."

- PCSB is appointed by the Governor; confirmed by the Senate; permitted to appoint an executive director and staff; authorized to create, renew, nonrenew, or revoke charter schools; entitled to civil liability immunity; afforded discretion to audit PCSB-authorized charter schools; and empowered to "take corrective actions or exercise sanctions" for charter school law violations.
- H.B. 2012 divests county boards of education of "management and control" over PCSB-authorized charter schools. Except on the issue of "student performance," H.B. 2012 also divests the State Board of general supervision over PCSB-authorized charter schools.

28. H.B. 2012 passed the House and Senate and was signed into law by Governor Justice on March 11, 2021.

**E. Newly Constituted, PCSB Has Begun Authorizing Charter Schools**

29. On July 2, 2021, Governor Justice appointed five individuals to PCSB. The Senate confirmed their appointments on October 20, 2021.

30. On November 10, 2021, PCSB approved three applications for brick-and-mortar charter schools: Nitro Preparatory Academy in Kanawha County, Panhandle Preparatory Academy in Jefferson County, and West Virginia Academy in Monongalia County.

31. On November 17, 2021, PCSB approved two applications for virtual charter schools: West Virginia Virtual Academy and Virtual Preparatory Academy of West Virginia.

PCSB authorized both virtual charter schools to operate statewide.

**F. Procedural History**

32. Prior to PCSB's authorization of five charter schools, Petitioners filed a Motion for Preliminary Injunction on November 2, 2021.

33. On November 29, 2021, Respondents filed a Response in Opposition to the Motion for Preliminary Injunction together with a Motion to Dismiss.

34. Petitioners and Respondents subsequently consented to a Motion for Leave to File Amicus Brief of Amicus of Amicus Curiae Mountain State Learning Solutions, Inc., and a Motion for Leave to File Amicus brief of Amicus Curiae National Coalition for Public School Options.

35. Petitioners' Motion for Preliminary Injunction was noticed for hearing on December 14, 2021. Because Petitioners' Reply in support of a preliminary injunction responded to Respondents' Motion to Dismiss, the Court also heard argument from counsel on the Motion to Dismiss.

36. During the December 14 hearing, the Respondents did not object to the admission of Petitioners' previously submitted affidavits. The Court heard testimony from Petitioners' fact witness, Professor Robert M. Bastress, Jr. regarding the relevant history of the adoption of article 12, section 10, recited herein. Professor Bastress was subject to cross examination by Respondents. The Court **FINDS** and **CONCLUDES** based upon its firsthand observations of the testimony of Professor Bastress, that his testimony is credible, persuasive and informative.

37. At the conclusion of the December 14 hearing, Respondents' counsel moved for the Court's consideration of the affidavit of Bryan Hoylman, which had been submitted as an exhibit to the Amicus Curiae Brief of Mountain State Learning Solutions, one of the two virtual

charter schools approved by PCSB. Respondents' counsel asserted that Mr. Hoylman's affidavit supported public interest arguments raised in Respondents' Response in Opposition to the Motion for Preliminary Injunction.

38. The Court permitted Petitioners five days to respond to Respondents' motion to admit Mr. Hoylman's affidavit. Petitioners filed an objection on December 16, 2021, noting their consent only to the filing of an amicus brief, not Mr. Hoylman's affidavit, based on representation of counsel for Mountain State Learning Solutions, Inc. that he would not "present oral argument or otherwise participate in the December 14 hearing." Petitioners further objected that affidavit would be inadmissible hearsay, would unfairly prejudice them as they had no opportunity to cross examine Mr. Hoylman during the December 14 hearing, and that it would be otherwise inappropriate for the Court to consider the affidavit over their objection as evidence in consideration of the pending motion for preliminary injunction.

39. On December 17, Respondents responded to Petitioners objection, reasserting the relevance of Mr. Hoylman's affidavit to Respondents' arguments concerning the public interest factor. Respondents further argued that facts shown by affidavit are proper on a motion for preliminary injunction, that the rules of evidence do not apply to preliminary injunction hearing (and thus the Court can consider hearsay evidence), that other courts have considered an affidavit of an amicus, and that counsel for Mountain State Learning Solutions, Inc. made no representation regarding the admission of Mr. Hoylman's affidavit.

40. On December 20, 2021, the Court announced its ruling, instructing the preparation of a proposed order. Respondents then moved to stay the preliminary injunction, pending an appeal. The Court, having considered Petitioners' objections thereto, denied Respondents' motion to stay the preliminary injunction.

## II. CONCLUSIONS OF LAW

### A. Respondents' Motion to Dismiss is Denied

41. "A motion under Rule 12(b)(6) tests the adequacy of the claims and the notice provided by the allegations in the pleading." *Mountaineer Fire & Rescue Equip., LLC v. City Nat'l Bank of W. Virginia*, 244 W. Va. 508, 520, 854 S.E.2d 870, 882 (2020). "When a Rule 12(b)(6) motion is made, the pleading party has no burden of proof. Rather, the burden is upon the moving party to prove that no legally cognizable claim for relief exists." *Id.*

42. "A circuit court weighing the sufficiency of a complaint should view the motion to dismiss with disfavor, should presume that all of the plaintiff's factual allegations are true, and should construe those facts and the inferences arising from those facts in the light most favorable to the plaintiff." *Gable v. Gable*, 245 W. Va. 213, 858 S.E.2d 838, 846 (2021). "[A] complaint, standing alone, states a claim on which relief may be granted whether or not some defense is potentially available to an opposing party." *Id.* at 847.

#### 1. The Verified Complaint Adequately States a Claim for Mandamus Relief

43. To state a claim for a writ of mandamus, petitioner must sufficiently allege "(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." *State ex rel. Justice v. King*, 244 W. Va. 225, 852 S.E.2d 292, 300 (2020). Petitioners have sufficiently alleged all three elements to withstand Respondents' Motion to Dismiss.

44. First, the Court **FINDS** and **CONCLUDES** the plain language of article 12, section 10 provides Petitioners a clear legal right to their requested relief: "No independent free school district, or organization shall hereafter be created, except with the consent of the school district or districts out of which the same is to be created, expressed by a majority of the voters

voting on the question."

45. Accordingly, the Supreme Court has recognized that, under section 10, the "people have a *right* to speak before an independent school district may be [created]." *Leonhart v. Bd. of Educ. of Charleston Indep. Sch. Dist.*, 114 W. Va. 9, 14, 170 S.E. 418, 420 (1933) (emphasis added).

46. Second, the Court **FINDS** and **CONCLUDES** the clear legal right to vote conferred by section 10 also entails an enforceable, affirmative duty against the state, as the Supreme Court explained in *Casto v. Upshur County High School Board*: "If we are dealing with an act creating an independent district [or school organization without the consent of county voters], the solution would be simple, the constitutional mandate would be carried out, and the act would be declared unconstitutional." 94 W. Va. 513, 517, 119 S.E. 470, 472 (1923). Declaratory relief would not suffice; section 10's "mandate," i.e., county vote, would have to be "carried out."

47. More recently, the Supreme Court has recognized that a similar, non-self-executing constitutional provision, which operates as both a limitation and affirmative duty, is enforceable on a writ of mandamus against Respondents, even though that provision does not explicitly direct any particular state entity or official. *See State ex rel. W. Va. Citizens Action Group v Tomblin*, 227 W. Va. 687, 696–97, 715 S.E.2d 36, 45–46. (2011) (granting mandamus in part against the Governor, Speaker of the House of Delegates and other government officials requiring a special election be called).

48. Third, the Court **FINDS** and **CONCLUDES** Petitioners have no other adequate remedy than the relief requested in this action.

**2. Petitioners Have Standing**

49. "Standing is comprised of three elements: First, the party attempting to establish standing must have suffered an 'injury-in-fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent and not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct forming the basis of the lawsuit. Third, it must be likely that the injury will be redressed through a favorable decision of the court." *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 94, 576 S.E.2d 807, 821 (2002).

50. The Court **FINDS** and **CONCLUDES** Petitioners have alleged injury-in-fact in that Petitioners have averred that H.B. 2012 permits the creation of independent school organizations in their respective counties without the consent of a majority of county voters thereby depriving Petitioners of their constitutional right to vote afforded to them by article 12, section 10.

51. Because PCSB has already authorized charter schools to operate in Petitioners' respective counties, the Court **FINDS** and **CONCLUDES** their injury-in-fact is concrete and particularized as well as actual or imminent as opposed to conjectural or hypothetical.

52. The Court rejects Respondents' contentions that Petitioners otherwise lack standing due to an absence of causation and redressability. At this stage, Petitioners have adequately alleged that this action for mandamus and declaratory relief or, alternatively, injunctive relief properly lies against Respondents.

53. The Court **FINDS** and **CONCLUDES** that as against the Senate President and House Speaker, the Supreme Court has instructed that "litigants should be careful to bring all cases involving the legislature against the presiding officers of the House and Senate." *Common*

*Cause of W. Virginia v. Tomblin*, 186 W. Va. 537, 539, 413 S.E.2d 358, 360 (1991).

54. This case involves the Legislature in that it challenges the constitutionality of H.B. 2012, which explicitly implicates the Legislature's affirmative obligations under article 12, section 1 to maintain a through and efficient system of free schools. *See* W. Va. Code § 18-5G-15 ("The mission of [PCSB] is to authorize high-quality public charter schools throughout the state that provide more options for students to attain a *thorough and efficient* education") (emphasis added). Therefore, as the Supreme Court has explained, because the Legislature's mandatory duties respecting public education are implicated, the House Speaker and Senate President are "essential" parties to this action. *See Pauley v. Kelly*, 162 W. Va. 672, 718, 255 S.E.2d 859, 883 (1979) (instructing trial court on remand to "require the suit to be amended to include the Speaker of the House of Delegates and the President of the Senate of West Virginia as defendants").

55. The Court **FINDS** and **CONCLUDES** Petitioners have sufficiently alleged a causal connection to their injury-in-fact and the conduct forming the basis of this suit, as Petitioners have alleged that the Legislature had been fairly warned, prior to the passage of H.B. 2012, that the act could run afoul of article 12, section 10.

56. The Court **FINDS** and **CONCLUDES** Petitioners have also sufficiently alleged that a decision of this Court could redress their asserted constitutional injuries. At minimum, Petitioners' requested declaratory relief could redress their constitutional injury because "[t]he law presumes the Legislature to know its duty" and "the Governor to know his duty" as to how to respond to an unconstitutional law. *W. Virginia Educ. Ass'n v. Legislature of State of W.Va.*, 179 W. Va. 381, 383, 369 S.E.2d 454, 456 (1988).

57. For purposes of the requested mandamus relief, the Court is unwilling at this

stage of the proceedings to exclude the possibility that it could, consistent with its authority and separation of powers, "issue an extraordinary writ against the Legislature when the law requires." *See State ex rel. Workman v. Carmichael*, 241 W. Va. 105, 121–22, 819 S.E.2d 251, 267–68 (2018) (citing *State ex rel. W. Virginia Citizen Action Grp. v. Tomblin*, 227 W. Va. 687, 715 S.E.2d 36 (2011); *State ex rel. League of Women Voters of W. Va. v. Tomblin*, 209 W. Va. 565, 578, 550 S.E.2d 355, 368 (2001); *State ex rel. Meadows v. Hechler*, 195 W. Va. 11, 19, 462 S.E.2d 586, 594 (1995)).

58. As against the Governor, the Court **FINDS** and **CONCLUDES** Petitioners have adequately alleged that the Governor, for much the same reasons as the Legislature, is a necessary party to this constitutional challenge. The Governor signed into law H.B. 2012 over the objections that it would violate section 10 and then nominated members of the PCSB to authorize charter schools without the consent of affected county voters. Petitioners have thus alleged the Governor's causal connection to the conduct forming the basis of this suit.

59. The Court **FINDS** and **CONCLUDES** the Governor is also vested with ample constitutional authority to redress the asserted constitutional injury. Again, the law presumes that the Governor will respond appropriately to any declaration that provisions of H.B. 2012 are unconstitutional. Under the constitutional mandate to "take care that the laws be faithfully executed," W. Va. Const. art. 7, § 5, it is the Governor who is in "the responsible role of insuring that all executive agencies comply fully." *Allen v. State, Hum. Rts. Comm'n*, 174 W. Va. 139, 162, 324 S.E.2d 99, 123 (1984). That entails, at minimum, careful observation of "the manner in which the different officers of the government exercise their proper functions and execute the laws committed to their charge, or their failure to perform such duties, and when they fail, if he has the power to remove them from office, in a proper case to remove them." *Shields v. Bennett*,

8 W. Va. 74, 75 (1874), *overruled in part on other grounds by Simms v. Sawyers*, 85 W. Va. 245, 101 S.E. 467 (1919).

60. "Moreover, the Governor, as chief executive officer, has the duty to faithfully expedite the will of the people as expressed in the Constitution." *Cooper v. Gwinn*, 171 W. Va. 245, 256, 298 S.E.2d 781, 792 (1981). Article 12, section 10 expresses the will of the people to vote before an independent school organization is created in the affected county.

61. The Court **FINDS** and **CONCLUDES** that at the very least, the Governor has the authority to remove appointed members of the PCSB for further implementing the charter schools it authorizes, without the consent of affected county voters. W. Va. Code § 18-5G-15 ("An appointed member of the Professional Charter School Board may be removed from office by the Governor . . . .").

62. The Supreme Court has also recognized that mandamus properly lies against the Governor to compel his compliance with a mandatory constitutional duty. *See, e.g., State ex rel. Justice*, 244 W. Va. 225, 852 S.E.2d at 300–01. Notably, in one case that compliance included issuing mandamus against the acting-governor, "in executing his duty as governor," compelling him "to issue a proclamation to fix a time for a[n].... election." *Cf. Tomblin*, 227 W.Va. at 697, 715 S.E.2d at 46. Therefore, this Court will not exclude the option of issuing a writ of mandamus against the Governor as the law so permits, following a trial on the merits.

63. Because Petitioners have sufficiently alleged and properly named the Governor, Senate President, and House Speaker as respondents and defendants for purposes of this constitutional challenge to H.B. 2012 seeking mandamus and declaratory relief, Respondents' Motion to Dismiss the claim against them is denied.

64. The Court further rejects Respondents' arguments that Petitioners lack standing to

state or maintain a claim for injunctive relief.

65. To be sure, this Court cannot enjoin specific legislative actions, but it can preliminarily enjoin the enforcement of an unconstitutional exercise of legislative power that will cause irreparable harm. *Cf. Perdue v. Ferguson*, 177 W. Va. 44, 47–49, 350 S.E.2d 555, 559–61 (1986); W. Va. Code § 53-5-4.

66. The House Speaker and Senate President are state officers subject to suit, *see* W. Va. Code § 14-2-2, and "[t]he Constitution of West Virginia is binding upon all the departments of government of this State, all its officers, all its agencies, all its citizens and all persons whomsoever within its jurisdiction." *Tomblin*, 227 W.Va. at 693–94, S.E.2d at 42–43 (quoting *Harbert v. County Court*, 129 W. Va. 54, 61–62, 39 S.E.2d 177, 184 (1946) (emphasis added)). This Court will therefore "presume the good faith" of the Legislature's presiding officers. *Price v. Sims*, 134 W. Va. 173, 189, 58 S.E.2d 657, 667 (1950).

67. The Court **FINDS** and **CONCLUDES** that the Court need not enjoin the Senate President and House Speaker to effectuate Petitioners' requested preliminary injunctive relief. However, this face does not require the dismissal of the House Speaker and Senate President from this action, which is sufficiently alleged against them for purposes of Petitioners' requested mandamus and declaratory relief.

68. The Court **FINDS** and **CONCLUDES** Petitioners' preliminary injunction request to temporarily halt the implementation of H.B. 2012 in the creation of PCSB-authorized charter schools is properly directed at the Governor as "the head of the Executive Department." *See State ex rel. Barker v. Manchin*, 167 W. Va. 155, 169, 279 S.E.2d 622, 631 (1981). As previously explained, the Governor has the constitutional duty and authority to ensure "all executive agencies comply" with the Constitution. *Allen*, 174 W. Va. at 162, 324 S.E.2d at 123.

The Governor is thus empowered to direct PCSB, under threat of removal, if necessary, to temporarily suspend the creation of PCSB-authorized charter schools to comply with the preliminary injunction.

69. "The provisions of the Constitution, the organic and fundamental law of the land," are equally binding on PCSB, particularly where, as here, the constitutional provision, article 12, section 10, is "mandatory in prescribing the exact and exclusive methods of performing the acts permitted or required." *See Simms*, 85 W. Va. 245, 101 S.E. 467.

70. In addition to the authority and binding force of the Constitution, the Court **FINDS** and **CONCLUDES** the West Virginia Rules of Civil Procedure extend the scope of the preliminary injunction to "parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them." W. Va. R. Civ. P. 65. The scope of preliminary injunction would therefore extend to PCSB as a state agency within the executive charge of the Governor.

71. Because the Governor can be enjoined to effectuate Petitioners' requested preliminary injunction—to temporarily halt further implementation of HB 2012 in the creation of PCSB-authorized charter schools—and PCSB would thus be bound by both the constitutional directive of the Governor and the scope of an injunction against the Governor as a state agency within his charge, the Court **FINDS** and **CONCLUDES** PCSB's participation as a named party to this action is unnecessary.

72. Petitioners also admit they are not challenging PCSB's legitimacy or its authority to *authorize* charter schools; they are challenging provisions of H.B. 2012 which allow for the *creation* of PCSB-authorized charter schools without the consent of affected county voters. In that regard, Petitioners question whether mandamus relief could be issued against PCSB since

the Legislature did not empower PCSB to order or administer referendums in affected counties where article 12, section 10 would require the consent of a majority of county voters before the creation of PCSB-authorized charter schools.

73. Therefore, because PCSB is not necessary to effectuate Petitioners' preliminary injunction request and is likely incapable of effectuating any mandamus relief that requires the county referendums contemplated by article 12, section 10, the Court will not require PCSB's participation as a named party at this time. Should facts or circumstances change that would necessitate PCSB's participation as a named party, the Court will entertain any procedurally proper request for leave to amend to add PCSB at that time.[3]

74. At bottom, Petitioners have sufficiently alleged Respondents' causal connections to, and ability to redress, the Petitioners' injury-in-fact. Petitioners have standing.

**3. A Decision on Attorney's Fees and Costs is Premature**

75. The Court **FINDS** and **CONCLUDES** Respondents' motion to dismiss Petitioners' prayer for attorney's fees and costs is premature. Petitioners have alleged facts that could entitle them to an award of reasonable attorney's fees and costs should they prevail on their claim for mandamus relief. But that decision is premature at this time.

**B. Petitioners' Motion for Preliminary Injunction is Granted**

76. This Court may issue a preliminary injunction upon a showing "of a reasonable likelihood of the presence of irreparable harm; the absence of any other appropriate remedy at law; and the necessity of a balancing of hardship test including: (1) the likelihood of irreparable harm to the plaintiff without the injunction; (2) the likelihood of harm to the defendant with an injunction; (3) the plaintiff's likelihood of success on the merits; and (4) the

[3] During hearing on this matter, Petitioners' counsel repeated an offer made initially in their Reply to seek leave to amend to include PCSB, should the Court be inclined to view PCSB as a necessary party. Petitioners contended that such an amendment would be in good faith and not unduly prejudice PCSB.

public interest." *Ne. Nat. Energy LLC v. Pachira Energy LLC*, 243 W. Va. 362, 366, 844 S.E.2d 133, 137 (2020).

77. Considering the "flexible interplay" between these four factors, *see Jefferson County Board of Education v. Jefferson County Education Association*, 183 W.Va. 15, 24, 393 S.E. 2d 653, 662 (1990), the Court **FINDS** and **CONCLUDES** Petitioners established the balance of the hardships weigh in favor of granting a preliminary injunction.

**1. Petitioners Have Demonstrated A Likelihood of Success on the Merits**

78. The Court **FINDS** and **CONCLUDES** Petitioners are likely to succeed on the merits because H.B. 2012 establishes PCSB-authorized charter schools as (i) independent school organizations, (ii) within existing school districts, (iii) without the consent of affected county voters, as required by article 12, section 10.

79. As a threshold matter, section 10 requires the consent of county voters before the creation of a "free" public school "organization" that is "independent." *Leonhart*, 114 W. Va. at 14, 170 S.E. at 420 (observing that "the word 'organization,' is modified by the words, 'independent free school.'"). The Court **FINDS** and **CONCLUDES** that threshold is easily crossed in the case of charter schools, which are statutorily defined as public schools, *see* W. Va. Code § 18-5G-1(c), which must achieve "Organizational capacity and infrastructure," *see id.* § 18-5G-6(a)(2)(A).

80. Beyond that threshold, section 10 requires a county voter referendum when two factors are met: (1) the proposed public school organization will operate within an existing school district ("out of which the same is to be created" clause of section 10) and (2) the proposed public school organization is "independent."

81. Two of the three decisions construing section 10 hinged solely on the first factor,

*i.e.*, whether the proposed public school organization would operate within an existing school district. That first factor carried more significance during those early decisions because, pre-1933, more than one school district could operate in each county.

82. In 1912, the Supreme Court of Appeals of West Virginia held that section 10 did not apply to the Legislature's creation of a high school in its own *separate* school district because it did not "create a school district out of any part of any [pre-existing] school district or districts" in Nicholas County. *Herold v. McQueen*, 71 W. Va. 43, 50, 75 S.E. 313, 316 (1912). The "district or districts *out of which the same is created*" clause of section 10 was therefore inapplicable. "The integrity of the different districts [rather remained] intact," the Court explained, such that "the several boards of education thereof have the same territorial jurisdiction, and the same amount of property on which to lay their levy to raise revenue to run the schools of their several districts that they had before the act was passed." *Id.*

83. Similarly, in 1923, the Court decided that the Legislature's creation of a second high school in Upshur County, supervised by its *own* board of education and superintendent, did not "infringe" section 10. *Casto v. Upshur Cty. High Sch. Bd.*, 94 W. Va. 513, 517, 119 S.E. 470, 471–72 (1923). Once again, the Court emphasized that the newly created high school was not being "carved out" of any existing school districts within Upshur County. *Id.*, 94 W. Va. at 517, 119 S.E. at 472. Rather, the Court observed, the existing school district with its "Buchannan high school" could "function as before," *e.g.*, "conduct its high school . . . lay levies therefor, and the taxable property therein is not affected by levy for the county high school." *Id.*, 94 W. Va. at 516, 119 S.E. at 471. Moreover, the new "Upshur County high school" would function as all other high schools as "a part of the general scheme of education . . . general throughout the state." *Id.*, 94 W. Va. at 517, 119 S.E. at 472.

84. That general scheme of education changed dramatically a decade later, in 1933, when the Legislature abolished all magisterial and independent school districts within each county and replaced them with the county school districts still in effect today.

85. The 1933 act itself provoked a challenge—the third and last decision construing section 10. *Leonhart*, 114 W. Va. at 10, 170 S.E. at 419. The question presented was whether the *abolition* of school districts, as opposed to their *creation*, triggered the constitutionally mandated consent of county voters. The Court held that the county voter referendum required by section 10 attached only "to the creation, and not the abolition, of an independent school district." *Id.* 114 W. Va. at 15, 170 S.E. at 421.

86. Accordingly, for the first time since section 10 was ratified in 1872, this action squarely presents the question on the creation of independent public school organizations within the current county school district scheme. On that question, the Court **FINDS** and **CONCLUDES** the first factor, *i.e.*, whether the proposed school organization will operate within an existing school district, is satisfied because there is now only one school district in each county.

87. The Court is unpersuaded by Respondents' contention that section 10 only applies "to limit the Legislature's authority to 'carve[]' an 'independent school district' 'out of' the geographic territory held by an existing school district." That construction is not supported by the actual language of section 10. *See State ex rel. Forbes v. Caperton*, 184 W. Va. 474, 479, 481 S.E.2d 780, 785 (1996) (recognizing constitutional interpretation must begin "with an examination of the actual language of the constitutional provision at issue").

88. The prepositional phrase "out of which" in section 10 does not operate as a separate prohibition on "carving out" from an existing school district some geographic territory

for the new independent school. Rather, section 10 plainly prohibits an "independent free school" being "created" without the "consent" of "a majority of voters." The phrase "out of which" is modifying "school district or districts" to indicate which voters must consent to the creation of independent free schools—i.e., only those voters in a school district or districts where an independent free school is to be created.

89. Respondents read the "carved out" language in *Casto* out of context. *Casto* uses the language "carved out," to describe a counterfactual—if the Legislature had created this second high school in a way that breached or overlapped with the jurisdiction or territory of an existing school district(s), then section 10 would require voter consent. But that did not happen in that case because, as the Court explained, "The territories of the school districts are left intact, and the boards thereof are functioning as before. Nothing is carved out of them or any of them." 94 W. Va. at 517, 119 S.E. at 472.

90. For the same reason in the earlier case *Herold*, the Legislature's creation of a high school as its own separate school district in Nicholas County did not trigger section 10 because it did not "create a school district out of any part of any [pre-existing] school district or districts" in Nicholas County. 71 W. Va. at 46, 75 S.E. at 316. The "district or districts out of which the same is created" clause of section 10 was therefore inapplicable.

91. Even if there were support for Respondents' misconstruction of section 10, it is a moot point: The reason that section 10 was inapplicable in *Casto* and in *Herold* is no longer of consequence because, again, in 1933 the Legislature abolished the system in which counties could have more than one school district and replaced it with the single county school districts. Thus, any new independent school organization created today will necessarily operate within an

existing county school district or districts.[4]

92. Hence, the Court **FINDS** and **CONCLUDES** the 1933 system change makes the second factor—*i.e.*, whether the proposed school organization will be independent—determinative in this case.

93. The Court rejects any contention that section 10 is no longer good law because independent school districts or organizations of pre-1933 have been abolished and thus this constitutional provision no longer has any application.

94. The Legislature cannot alter a constitutional provision by a statutory change; it must comply with the article 14 procedures for constitutional amendments. See *State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 220–21, 470 S.E.2d 162, 174–75 (1996).

95. This Court therefore will give full effect to the actual language of section 10, as required. *State ex rel. Smith v. Gore*, 150 W. Va. 71, 143 S.E.2d 791 (1965) ("Where a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed."); *State ex rel. Justice*, 244 W. Va. at 232, 852 S.E.2d at 299 (2020) (reiterating that court "may not add to, distort or ignore the plain mandates thereof. If a constitutional provision is clear in its terms, and the intention of the electorate is clearly embraced in the language of the provision itself, this Court must apply and not interpret the provision") (quoting *State ex rel. Discover Fin. Servs., Inc. v. Nibert*, 231 W. Va. 227, 243, 744 S.E.2d 625, 641 (2013)).

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[4] Respondents make much of the fact a PCSB-authorized charter school could have a "recruitment area" that encompass multiple counties. But "a primary recruitment area by a public charter school does not negate any overlapping attendance area or areas established by a county board or boards for noncharter public schools." W. Va. Code § 18-5G-11(a)(4). It is the attendance area, not the recruitment area, which therefore controls where a charter school is said to operate. Even if the recruitment area or attendance area overlaps with more than one county school district, section 10 anticipates that possibility, requiring then "the consent of the school district or *districts* out of which the same is to be created." W. Va. Const. art. 12, § 10 (emphasis added). Hence, the consent of the voters of both county school districts would be required.

96. Moreover, any suggestion that "independent school district [or organization]" no longer has any meaning post-1933 is directly contradicted by *Leonhart*, the section 10 case decided that same year, after the Legislature had abolished independent school districts. Had the 1933 statutory change made section 10 no longer applicable to the new county school district system, the Supreme Court of Appeals of West Virginia could have easily said so, in a relatively short opinion. Instead, the Court conducted a full analysis, taking section 10 to be good law yet applicable "to the creation" of independent school districts or organizations, "and not to the abolition." 114 W. Va. at 14, 170 S.E. at 421.

97. On the question of independence, the Court **FINDS** and **CONCLUDES** Petitioners have demonstrated, "beyond reasonable doubt," *State ex rel. Appalachian Power Co. v. Gainer*, 149 W. Va. 740, 143 S.E.2d 351 (1965), a likelihood of success in establishing that charter schools authorized by PCSB would be independent school organizations for purposes of section 10.

98. Independence is a defining feature of charter schools, as several state courts have recognized. *See generally* Preston C. Green, III, et al, *The Legal Status of Charter Schools in State Statutory Law*, 10 U. MASS. L. REV. 240 (2015) (collecting cases). The Court **FINDS** and **CONCLUDES** H.B. 2012 creates independent school organizations comprising of PCSB-authorized charter schools. The West Virginia law exempts charter schools "from all statutes and rules applicable to noncharter public schools," with few exceptions (*e.g.*, relating to federal law, immunizations, attendance, student assessments, reporting). W. Va. Code § 18-5G-3(c). Charter schools are therefore freed from regulations pertaining to governing, budgeting, staffing, and curriculum, despite being publicly funded.

99. The Court **FINDS** and **CONCLUDES** H.B. 2012 establishes PCSB to set up

charter school authorization and oversight independent of the county school boards. Most notably, H.B. 2012 (1) empowers an unelected board, the PCSB, as a charter school authorizer, (2) removes the oversight and supervisory powers of county school boards over PCSB-authorized charter schools within their districts, and (3) designates the charter school itself as the local education agency "for all purposes."[5]

100. By removing or restricting the county school board's authority and oversight of PCSB-authorized charter schools, H.B. 2012 also deprives the State Board of Education of its general supervisory authority over charter schools. PCSB and PCSB-authorized charter schools "are subject to the general supervision of the state board *solely for the purpose of accountability for meeting the standards for student performance* required of other public school students." W. Va. Code § 18-5G-15(a). *Id.* (emphasis added).[6] The Court **FINDS** and **CONCLUDES** that supervision over student performance alone is far from the general supervision constitutionally mandated by article 12, section 2. The State Board's supervisory powers extend to "*all facets of education* under the [education] provisions of...the West Virginia Code." *Pauley v. Bailey*, 174 W. Va. 167, 174, 324 S.E. 2d 128, 135 (1984) (emphasis added). Indeed, the Supreme Court of Appeals of West Virginia has repeatedly emphasized the "State Board is empowered to take *whatever steps are necessary* to fulfill its obligation to achieve 'the constitutionally mandated educational goals of quality and equality." *West Virginia Bd. of Educ. v. Bd. of Educ. of the Cty. of Nicholas*, 239 W. Va. 705, 715, 806 S.E.2d 136, 146 (2017) (citations omitted).

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[5] A local education agency means "a public board of education or other public authority legally constituted within a State for either *administrative control or direction of*, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an *administrative agency* for its public elementary schools or secondary schools." 20 U.S.C. § 1401(19)(A) (emphasis added).

[6] Apart from student performance, the State Board is permitted to oversee charter schools in rather limited, largely ministerial ways—*e.g.*, provide charter applicate forms, training programs, assist with grants and federal funding, meet reporting requirements. W. Va. Code § 18-5G-4(b).

101. The Court **FINDS** and **CONCLUDES** the PCSB is independent in other relevant respects: (1) PCSB members are appointed by the Governor and confirmed by the Senate; (2) PCSB is permitted to appoint an executive director and staff; (3) PSCB is empowered not only to authorize charter schools but also to renew, nonrenew, or revoke charter schools; (4) PCSB is entitled to civil liability immunity; (5) PCSB is afforded discretion to audit the charter schools it authorizes; and (6) PCSB is empowered to "take corrective actions or exercise sanctions" for charter school law violations.

102. Respondents' suggest, nevertheless, that PCSB-authorized charter schools are like innovation schools which also enjoy flexibility and exemptions from certain rules and policies that govern other public schools. *See* W. Va. Code §§ 18-5B-5(b); 18-5B-10; 18-5A-3a. But so-called innovation schools, though exempt from certain rules, are not independent: unlike PCSB charter schools, innovation schools are created and overseen by county and state school boards and superintendents. *See id.* § 18-5B-4(b). The hallmark of independence in this context is indeed being free from "the control and charge of the [county] board of education." *Cf. State ex rel. Nangle v. Bd. of Educ. of Dist. of W. Union*, 81 W. Va. 353, 355, 94 S.E. 500, 502 (1917). Being freed from the control and charge of county school boards is precisely what H.B. 2012 accomplishes through PCSB-authorized charter schools.

103. Accordingly, because H.B. 2012 approves the creation of PCSB-authorized charter schools —as independent free school organizations—without the consent of a majority of voters in the county or counties in which PCSB-authorized charter schools operate, the Court **FINDS** and **CONCLUDES** Petitioners likely will succeed on the merits of establishing a violation of article 12, section 10 of the West Virginia Constitution.

**2. Petitioners Have Shown A Likelihood of Irreparable Harm**

104. Respondents contend that charter school contracts must be executed by March 15, 2022, in order for charter schools to operate in the 2022-23 school year. W. Va. Code R. § 126-79-5.5e. The Court **FINDS** and **CONCLUDES** that without an injunction to temporarily halt this deadline and any other impending deadlines, the five charter schools PCSB has already authorized will be created, and Petitioners will have been deprived of their constitutionally guaranteed right to vote on their creation.

105. The Court **FINDS** and **CONCLUDES** such harm is irreparable. Any attempt to undo the creation of PCSB-authorized charter schools will prejudice the vote of affected county voters, will harm would-be charter school parents and children who, at that point, would have more reason to rely on their creation, and will frustrate would-be charter school operators, including school personnel, who would have expended time and resources to commence charter school operations.[7]

**3. Respondents Will Not Be Irreparably Harmed**

106. The Court **FINDS** and **CONCLUDES** Respondents can claim no legally cognizable harm to complying with article 12, section 10 of the West Virginia Constitution.

107. The Governor is under no duty to execute a statute that conflicts with the Constitution. *See* W. Va. Const. art. 4, § 5; W. Va. Const. art. 8, § 13.

108. Likewise, the interests of the Legislature purportedly served by H.B. 2012 are of no import, if its provisions are unconstitutional. The Supreme Court of Appeals of West Virginia has said as much in contemplating section 10's application: "The test of legislative power is constitutional restriction. What the people have not said in the organic law their representatives

[7] Therefore, even assuming the admissibility of Mr. Hoylman's affidavit, the Court concludes that greater overall harm will result from not issuing a preliminary injunction, including greater harm to would-be charter school operators.

shall not do, they may do.'" *Leonhart*, 114 W. Va. at 14, 170 S.E. at 420. This is true, notwithstanding the Legislature's authority and duties under article 12, section 1: "that body has the right to make change in the educational system as it may see fit, subject, of course, to constitutional limitations." *Id.* Section 10 is one of those limitations:

> "The framers of the Constitution ... thought it best to curb the Legislature in the creation of [independent school organizations or districts], unless the people immediately concerned should give their consent thereto. This was a limitation and therefore must be so construed so as not to divest the Legislature of the broad powers conferred upon it."

*Id.*, 114 W. Va. at 14-15, 170 S.E. at 420-21.

109. The Court **FINDS** and **CONCLUDES** that assuming *arguendo* Respondents could establish any harm occasioned by a delay in the creation of PCSB-authorized charter schools, such harm would not be irreparable.

**4. The Public Interest Favors a Preliminary Injunction**

110. Judicial enforcement of a constitutional provision meant to effectuate the will of the people serves the public interest. *See Casto*, 94 W. Va. at 517, 119 S.E. at 471 ("[T]he Constitution of 1872 (our present Constitution) incorporated section 10 of article 12, above quoted, which requires the sanction of *the people affected*.") (emphasis added); *cf. United Mine Workers of Am. Int'l Union by Trumka v. Parsons*, 172 W. Va. 386, 398, 305 S.E.2d 343, 354 (1983) ("[T]o operate in the "public interest" is analogous to the obligation imposed upon state government by the West Virginia Constitution to act 'for the common benefit, protection and security of the people.'").

111. The sovereign will of the people as reflected in the Constitution takes priority over any objectives of H.B. 2012, however laudable. "The provisions of the Constitution, the organic and fundamental law of the land, and stand upon a higher plane than statutes, and they

will as a rule be held mandatory in prescribing the exact and exclusive methods of performing the acts permitted or required." *Simms*, 85 W. Va. at 250, 101 S.E. at 467.

112. Respondents contend that students and parents who are interested in PCSB-authorized charter schools will be irreparably harmed by a preliminary injunction because it may delay their implementation. But the Court **FINDS** and **CONCLUDES** would-be charter school students cannot be said to be harmed by continuing to attend their traditional public schools instead, provided those public schools are thorough and efficient, that is constitutionally adequate and equitable, as article 12, section 1 requires. *See Pauley v. Kelly*, 162 W. Va. 672, 672, 255 S.E.2d 859, 861 (1979).

113. There is no right under the West Virginia Constitution to attend a publicly-subsidized school of one's choice. And any *statutory* right to attend a PCSB-authorized charter school conferred by the allegedly unconstitutional provisions of H.B. 2012, should they conflict, must yield to the *constitutional* right of affected county voters to decide whether those charter schools should be created in the first place.

114. The Court **FINDS** and **CONCLUDES** any inconvenience that would-be PCSB charter school parents and children might experience by a delay in their creation would not constitute *irreparable* harm, particularly if the alleged constitutional infirmity were cured.

115. The Court is also unconvinced that a delay is inevitable; Respondents are well-positioned to expeditiously address the constitutional defect alleged in this action.

**5. Petitioners Have No Other Adequate Remedy**

116. The Court **FINDS** and **CONCLUDES** Petitioners will be without recourse should PCSB-authorized charter schools be created and become operational, without the consent of county voters. The law affords Petitioners no other remedy to cure that constitutional violation,

other than this mandamus action and the corresponding requests for declaratory or injunctive relief.

For the foregoing reasons, the Court hereby denies Respondents' Motion to Dismiss and grants Petitioners' Motion for Preliminary Injunction. The Court further denies Respondents' Motion to Stay the Preliminary Injunction.

Wherefore, the Court hereby **ORDERS** as follows:

A. Petitioners have demonstrated, beyond reasonable doubt, a likelihood of success on the merits of their claim that provisions of House Bill 2012 relating to PCSB-authorized charter schools violate article 12, section 10 of the West Virginia Constitution as set forth in their Verified Complaint;

B. Petitioners have further demonstrated a reasonable likelihood of irreparable harm without a preliminary injunction and that the balance of the hardships and public interests weigh in favor of issuing a preliminary injunction; and

C. A preliminary injunction shall issue to **ENJOIN** the further enforcement of House Bill 2012 in the creation of PCSB-authorized charter schools by the Governor, the Governor's executive officers, agents, or employees, and any persons acting in concert or participation with them.

D. Petitioners' counsel shall contact the Court to establish a scheduling Order for further adjudication of this matter.

The objections of the Respondents are noted and preserved for the record. The Clerk is directed to send a certified copy of this Order to all counsel of record via electronic and U.S. mail.

ENTERED January 20, 2022

Jennifer F. Bailey
HONORABLE JENNIFER F. BAILEY
CIRCUIT JUDGE

**Prepared by:**

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STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT, THIS 20 DAY OF January, 2022
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA