

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

\_\_\_\_\_  
**No. 21-0559**  
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**JAMES C. JUSTICE II, GOVERNOR OF  
THE STATE OF WEST VIRGINIA**

**Respondent Below,  
Petitioner**

**v.**

**WEST VIRGINIA AFL-CIO, ET AL.**

**Petitioners Below,  
Respondents.**

**BRIEF OF AMICUS CURIAE FROM WEST VIRGINIA DEPUTY SHERIFFS'  
ASSOCIATION IN SUPPORT OF RESPONDENTS**



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TABLE OF CONTENTS

Table of Authorities ..... ii

Statement of Interest of Amicus Curiae ..... 2

Argument ..... 3

    A. The uncontroverted factual record leads to the only logical conclusion:  
    Respondents will suffer irreparable harm should House Bill 2009 become effective.  
    ..... 3

    B. This Court should affirm the lower court’s granting of the preliminary injunction  
    and maintain the status quo while the case proceeds to discovery and the permanent  
    injunction/declaratory judgment stage of the proceedings.. ..... 3

Conclusion ..... 4

**TABLE OF AUTHORITIES**

**Case Law**

Division of Justice and Community Services v. Fairmont State University, 242 W. Va. 489, 836 S.E.2d 456 (2019) ..... 2

State ex rel. West Virginia Deputy Sheriffs' Association v. Sims, 204 W. Va. 442, 513 S.E.2d 669 (1998) ..... 2

**Miscellaneous**

Paycheck Protection Act ..... 1

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**I. INTRODUCTION**

The West Virginia Deputy Sheriffs' Association (WVDSA) hereby files this Brief in Support of Respondents, West Virginia AFL-CIO, et al.<sup>1</sup> On March 19, 2021, the West Virginia Legislature passed House Bill 2009, commonly referred to as the "Paycheck Protection Act" (PPA). Respondents challenged the PPA and sought a preliminary injunction before it took effect. Respondents assert that the PPA violates Equal Protection, the Contracts Clause, and their constitutional rights of freedom of speech and association all arising under the West Virginia Constitution.

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<sup>1</sup> Pursuant to Rule 30(e)(5), this Brief was drafted by counsel and no party's counsel authored this brief in whole or in part.

By Amended Order on June 16, 2021, the Circuit Court of Kanawha County ruled in favor of Respondents. Specifically, the lower court issued a preliminary injunction against the enforcement of House Bill 2009 and directed that a scheduling order be established on the remaining relief requested in the case (request for a permanent injunction and declaratory judgment). Petitioner then appealed to this Court. The WVDSA supports Respondents in seeking to affirm the lower court's ruling.

## II. STATEMENT OF INTEREST OF AMICUS CURIAE

The WVDSA was formed in 1972 and represents 1081 active deputy sheriffs and over 400 retired deputy sheriffs throughout West Virginia. The WVDSA has advocated on behalf of deputy sheriffs before this Court. Most notably, in State ex rel. West Virginia Deputy Sheriffs' Association v. Sims, 204 W.Va. 442, 513 S.E.2d 669 (1998), the WVDSA successfully sought a writ of mandamus from this Court compelling the Consolidated Public Retirement Board to transfer assets from the Public Employees Retirement System to the new Deputy Sheriffs' Retirement Fund. The WVDSA also filed an amicus brief with this Court in Division of Justice and Community Services v. Fairmont State University, 242 W.Va. 489, 836 S.E.2d 456 (2019). Finally, the WVDSA has supported litigation before this Court brought by various subordinate DSAs throughout West Virginia.

The WVDSA has a compelling interest in this case because numerous active deputy sheriffs throughout West Virginia have historically had their WVDSA and local DSA dues deducted from their paychecks. Some of these arrangements with various counties have been in place for decades and were voluntarily entered into between local DSAs and county commissions. Quite frankly, these voluntary agreements are a convenience to deputy sheriffs and their local associations and do not

cost any participating county any more public funds than the myriad of voluntary deductions coming out of the paychecks of other county employees.

### III. ARGUMENT

- A. The uncontroverted factual record leads to the only logical conclusion: Respondents will suffer irreparable harm should House Bill 2009 become effective.**

Respondents presented the testimony of 3 compelling witnesses describing the devastating affect that House Bill 2009 would have on various public unions and their members. Further, the witness testimony established that paycheck dues deductions do not add additional cost to public employers who already make a variety of voluntary deductions not prohibited by House Bill 2009. Respondents also presented 6 affidavits from employees, a teacher, a State Trooper, and union staff demonstrating the harm public employees and public unions would suffer under House Bill 2009.

In contrast, Petitioner did not present a single witness, affidavit, or even a proffer in support of his position. It is safe to presume that if Petitioner had a single solitary witness or affidavit in support of his position he would have presented such evidence to the lower court to consider. The WVDSA suggests that the absence of any evidence, or even a proffer, on the irreparable harm issue should be fatal to Petitioner's case.

- B. This Court should affirm the lower court's granting of the preliminary injunction and maintain the status quo while this case proceeds to discovery and the permanent injunction/declaratory judgment stage of the proceedings.**

Since 1972 the WVDSA has been protecting the rights of deputy sheriffs, protecting the

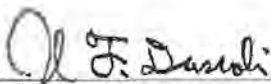
citizens of West Virginia, and, most importantly, defending the West Virginia and United States Constitutions. Paycheck dues deduction has been the most important source of funding for the WVDSA and local DSAs for nearly 50 years. Deputy sheriffs, who put their lives on the line and protect the West Virginia public 24 hours a day/ 7 days a week/ 365 days a year, deserve to have a properly funded WVDSA. At the very least, deputy sheriffs in West Virginia deserve to have the ability to keep having their WVDSA and local DSA dues voluntarily deducted from their paychecks until this case is fully and finally decided. We owe them that much.

#### IV. CONCLUSION

Based upon the foregoing, the WVDSA respectfully moves this Court to grant leave to file this Brief with the Court. Moreover, the WVDSA requests that this Court rule in favor of Respondents, uphold the lower court's ruling granting the preliminary injunction, and allow this matter to properly procedurally proceed to discovery and the permanent injunction/declaratory judgment stage of the proceedings.

Finally, the WVDSA appreciate this Court allowing it the opportunity to serve as Amicus Curiae on this important issue.

West Virginia Deputy Sheriffs'  
Association,  
By counsel



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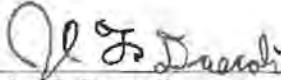
**CERTIFICATE OF SERVICE**

I, John F. Dascoli, do hereby certify that I have served a copy of the foregoing BRIEF OF AMICUS CURIAE FROM WEST VIRGINIA DEPUTY SHERIFFS' ASSOCIATION IN SUPPORT OF RESPONDENTS, by placing a true copy, postage prepaid, in the United States mail, on this 20<sup>th</sup> day of September, 2021, upon the following:

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