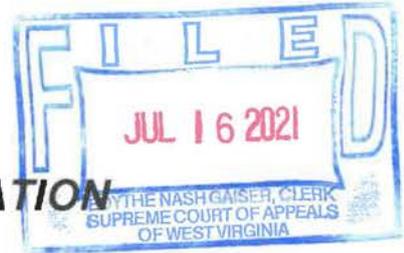


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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

APPEAL NO.: 21-0181

FILE COPY

WEST VIRGINIA STATE FIRE MARSHAL'S OFFICE,
Defendants Below, Petitioners,

v.

TAMMY S. WRATCHFORD and MICHAEL W. WRATCHFORD,
Plaintiffs Below, Respondents,

APPEAL FROM THE CIRCUIT COURT OF HARDY COUNTY, WEST VIRGINIA
CIVIL ACTION NO: CC-16-2018-C-3
JUDGE H. CHARLES CARL, III

BRIEF OF RESPONDENTS IN OPPOSITION TO THE WEST VIRGINIA STATE FIRE
MARSHAL
and
RESPONDENTS' CROSS PETITION

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DATED: JULY 14, 2021

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I. ASSIGNMENTS OF ERROR

The West Virginia State Fire Marshal's Office claims error by the Circuit Court in denying Motions for Summary Judgment of the West Virginia State Fire Marshal's Office, hereinafter "the Fire Marshal's Office" or "the Petitioner", based on qualified immunity for liability from the Wratcford's' claims made within their Amended Complaint filed July 5, 2018. The three Assignments of Error made by the Fire Marshal's Office are based upon the issues of qualified immunity related to employees of the West Virginia State Fire Marshal's Office and its failure to properly train, supervise, or oversee what are considered "discretionary acts" during the Wratcford house fire investigation and in bringing criminal charges. The Fire Marshal's Office also claims qualified immunity for all conduct by any of its employees based upon claims that the conduct complained of was beyond the scope of their employment with the West Virginia State Fire Marshal's Office.

The Respondents, Tammy S. Wratcford and Michael W. Wratcford, hereinafter "Respondents" or "the Wratcford's" oppose these claims of error based upon the foundational and historical facts that underlie the claims for qualified immunity, the nature of the acts, the circumstances of the acts, and the purpose of the acts as they relate to the conduct of each employee and the failure of the Fire Marshal's Office to properly train, supervise, and oversee the conduct of its employees and officials based on clearly established statutory laws and constitutional rights or laws, policies, procedures, and protocol of which a reasonable person similarly situated would have known or are otherwise fraudulent, malicious, or oppressive, acting within the scope of his employment.

II. STATEMENT OF THE CASE

The legal response and opposition of the Wratcford's to the Assignments of Error brought by the Fire Marshal's Office can be summed up as a complete lack of integrity and lack of impartiality without regard to policies, procedures, and the statutory law in effect designed to

prevent the abuses of power by State authority and abuses by the Fire Marshal's Office against the Wratchfords.

Maston v. Wagner, 236 W.Va. 488, 781 S.E. 2d 936 (2015) states at Syl. Pt. 5:

5. "To the extent that governmental acts or omissions which give rise to a cause of action fall within the category of discretionary functions, a reviewing court must determine whether the Plaintiff has demonstrated that such acts or omissions are in violation of clearly established statutory or constitutional rights or laws of which a reasonable person would have known or are otherwise fraudulent, malicious, or oppressive in accordance with *State v. Chase Securities, Inc.*, 188 W.Va. 356, 424 S.E. 2d 591 (1992). In absence of such a showing, both the State and its officials or employees charged with such acts or omissions are immune from liability." Syl. Pt. 11, *West Virginia Regional Jail and Correctional Facility Authority v. A.B.*, 234 W.Va. 492, 766 S.E. 2d 751 (2014).

Maston goes on to find that the subjective motivation of a police officer is immaterial in assessing the conduct which violates the rights of the individual. The question is whether the officer's actions are "objectively reasonable" in light of the facts and circumstances confronting the officer, without regard to his or her underlying intent or motivation in violating statutory law or constitutional rights of the individual and the information possessed by the officer at the time of the wrongful conduct. *Maston*, 236 W.Va. 488 at 501, 781 S.E. 2d 936 at 949.

The Assignments of Error by the Fire Marshal's Office necessarily include not only Ronald C. "Mackey" Ayersman hereinafter "Ayersman" but also his superior officers at the Fire Marshal's Office, George Harms and the Fire Marshal himself, Kenneth Tyree, Jr. *Maston* holds "if the Plaintiff can identify a violation of an established constitutional right or law with respect to an agency's training, supervision, or retention policies, then the agency is not entitled to qualified immunity". *Maston v. Wagner*, 236 W.Va. 488, at 508, 781 S.E. 2d 936 at 956 (2015). In the case *sub judice*, as in *Maston*, the claims raised by the Wratchfords in their Amended Complaint below allege that the Fire Marshal's Office failed to properly train, supervise and oversee the actions of its employees and officials and that the violations by its officers not only violated statutory law and constitutional rights of the Respondents, but also that the Fire

Marshal's Office failed to enforce its policies, protocol and procedures to prevent the conduct complained of within the Plaintiffs' Amended Complaint below.

West Virginia Regional Jail and Correctional Facility Authority v. A.B., 234 W.Va. 492, at 509-510, 766 S.E. 2d 751, at 768-769 (2014) defines the issues upon which "scope of employment" may be determined by the Court or by the jury. Ordinarily, the determination whether an employee has acted within the scope of employment presents a question of fact; it becomes a question of law, however, when "the facts are undisputed and no conflicting inferences are possible." *Id.* "An act specifically or impliedly directed by the master, or any conduct which is an *ordinary and natural incident or result of that act*, is within the scope of the employment." *Id.* "Scope of Employment" is a relative term and requires consideration of surrounding circumstances including the character of the employment, the nature of the wrongful deed, the time and place of its commission, and the *purpose* of the act." (Emphasis added). *Id.* The "purpose" of the act is of critical importance. *Id.* A servant is within the scope of employment if the conduct is (1) of the kind he is employed to perform; (2) occurs within the authorized time and space limits; (3) it is actuated, at least in part, by a purpose to serve the master; and (4) if force is used, the use of force is not unexpected by the master, in this case the aggressive and conflicted nature of the investigation and the very abusive interrogation of Mrs. Wratford. *Id.* An employer may be liable for the conduct of an employee, even if the specific conduct is unauthorized or contrary to expressed orders, so long as the employee is acting within his general authority and for the benefit of the employer. *Id.*

Anstey v. Ballard, 237 W.Va. 411, at 423, 787 S.E. 2d 864, at 876 (2016) holds that the Courts of West Virginia have not accepted NFPA 921 as either a compulsory or mandatory standard to be followed in fire investigations in the State of West Virginia. The Court goes on to state in *Anstey v. Ballard*, *supra*, that NFPA 921 was described in terms of constituting "guidelines". *Id.* This Court has held that the procedures set forth within NFPA 921 are not compulsory, however hold that if NFPA 921 is represented as having been the basis of the

investigation, deviations from those procedures, although not necessarily wrong or inferior, need to be justified. *Id.* In this case, Ayersman and the Fire Marshals' Office claim that NFPA 921 are the guidelines followed in their fire investigation. JA 00480. The private employer of Ayersman below, Fire & Safety Investigation Consulting Services, LLC, hereinafter "FSI" also claims to follow the guidelines set forth in NFPA 921. JA 00428. Respondents demonstrate herein that neither Ayersman nor any of the experts upon which the Petitioner relies complied with or followed the guidelines of NFPA 921. The Fire Marshal's Office and its employees violated statutory law and the constitutional rights of the Respondents through conflicts of interest of Ayersman and the failure of the Fire Marshal's Office to provide oversight, supervision, and adherence to mandated policies and statutory law.

Within the Order of the Circuit Court denying the Motion for Summary Judgment of the West Virginia State Fire Marshal entered February 9, 2021, at paragraph 22, the Circuit Court accurately found it undisputed that the West Virginia State Marshal's Office is a State agency. The Court accurately found the acts and the omissions complained of by the Plaintiffs arose as a result of an investigation of the fire at the Wrotchford home and the lack of supervision, oversight and training by the Fire Marshal's Office during that investigation and during the prosecution of Mrs. Wrotchford. The Circuit Court also accurately found that training, supervision and oversight by the Fire Marshal's Office, including employee retention, fall within the category discretionary governmental functions. The Circuit Court erred in its findings at paragraph 24 of the Order of February 9, 2021, that violations of the West Virginia Ethics Act cannot defeat the qualified immunity defense. The Plaintiffs have clearly shown that the underlying basis for the violations of procedures, policies, investigation protocol, civil rights, constitutional protections, and statutory law by the employees and officials at the West Virginia State Fire Marshal's Office are directly based upon the dual employment allowed by the West Virginia State Fire Marshal's Office in violation of West Virginia Code § 6B-2-5(e). The Circuit Court below erred in its findings that the purpose of the actions of Ayersman below in his

involvement with the personal property tax issue and Division of Motor Vehicles employment of Tammy Wratchford did not constitute tortious interference with employment of Tammy Wratchford. There was no justification for Ayersman and the Fire Marshal's Office to use the employment of Tammy Wratchford as a weapon to force and coerce a plea in a criminal case, however, the West Virginia State Fire Marshal's Office clearly condones those tactics as well the abusive and oppressive conduct during an interrogation.

The Fire Marshal's Office had actual knowledge of the private employment of Ayersman with FSI since 2010 based on the written notice of secondary employment filed by Ayersman in January, 2010, (JA01121-1126); upon the Narrative Report of Ayersman in his criminal investigation CD (JA 00306); upon his official CV in his investigation file CD (SA 113); and upon the professional profile of Ayersman on social media as a West Virginia Assistant State Fire Marshal. JA 01130-1137. The professional profile of George Harms, superior of Ayersman at the Fire Marshal's Office demonstrates on public media that George Harms was employed by the Defendant below, FSI from 2010-2013, during the same time that Ayersman began his first four years with FSI. The letter of October 11, 2017, from Assistant Attorney General Andrew Herrick to Kenneth Tyree, Jr., West Virginia State Fire Marshal, demonstrates the knowledge of the Fire Marshal's Office of the acts of Ayersman complained of by the Plaintiffs, and misrepresentations by the Fire Marshal of those known actions of Ayersman during his investigation of the Wratchford fire. JA 01127-1129.

The Order of the Circuit Court of February 9, 2021, was based on review of "the entire record". Because appellate review of an entry of summary judgment is plenary, this Court, like the circuit court, must view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor. *Asaad v. Res-Care, Inc.*, 197 W.Va. 684, 478 S.E. 2d 357 (1996); *Cabell County Commission v. Whitt*, 242 W.Va. 382, 836 S.E. 2d 33 (2019) at fn 7.

1. PROCEDURAL BACKGROUND

On July 5, 2018, the Respondents, Plaintiffs below, filed a comprehensive Amended Complaint which included detailed and particular factual allegations against the Defendants below, including the West Virginia State Fire Marshal and Ronald C. "Mackey" Ayersman, individually and as an Assistant State Fire Marshal, which is incorporated herein by reference. The original Complaint filed by Respondents, Plaintiffs below, on February 13, 2018, made allegations against Ronald C. Ayersman as a Defendant, individually, and as an employee of the Defendants, Fire & Safety Investigation Consulting Services, LLC, and Christopher Brent Harris (hereinafter "Harris"), working for the Erie Insurance Company (hereinafter "Erie") in a fire investigation, without making allegations involving the public employment of Ayersman with the West Virginia State Fire Marshal's Office. SA 1-36. Ayersman filed a Motion to Dismiss the original Complaint on March 12, 2018, claiming that all actions which he took during the investigation into the fire of February 20, 2017, were subject to qualified immunity "because Ayersman is a state official who was working in his official capacity". SA 69-70. The memorandum of Ayersman filed in support of his Motion to Dismiss the original Complaint of the Plaintiffs below claimed that Ayersman was employed with the Fire Marshal's Office and was acting within his official capacity as an employee of a government agency. SA 82-88. The Plaintiffs filed their response to Ayersman's Motion to Dismiss on March 19, 2018, demonstrating his complicit acts with Erie, FSI, and the other Defendants. SA 97-217. Those filings are incorporated herein by reference.¹

At the end of discovery, the Fire Marshal's Office and Ayersman filed Motions for Summary Judgment claiming qualified immunity. Plaintiffs filed their Preliminary Response to the Motions for Summary Judgment of the Defendants on March 2, 2020, together with exhibits which included the contents of the criminal investigation file CD prepared by Ayersman in the

¹ Petitioners refused to include these documents in a Joint Appendix although the Respondents offered to pay the costs pursuant to Rule 7 (f). SA 547-549.

underlying criminal case against the Respondent, Tammy S. Wratchford; depositions taken of various witnesses; the Examinations under Oath (hereinafter "EUO") taken of the Wratchfords by the Erie Insurance Company; depositions and reports of experts; as well as numerous documents exchanged during discovery upon which the Plaintiffs rely in support of claims against the Petitioners herein and others. On March 5, 2020, Plaintiffs filed specific responses to the Motions for Summary Judgment of the Fire Marshal's Office and Ayersman, together with supporting exhibits. These filings by the Plaintiffs are incorporated herein by reference and were considered by the Court for purposes of the Summary Judgment motions below.

On October 14, 2020, Plaintiffs filed with the Circuit Court below Plaintiffs' Motion to Expand Designation of "Qualified Person" in Relief of Agreed Protective Order, hereinafter "Motion to Expand" (SA 240-244) together with exhibits (SA 245-511) which included detailed statements of the Plaintiff below, Tammy Sue Wratchford (SA 245-270); the Dismissal Order of the First Ethics Complaint (SA 271-272), phone records (SA 278-290), and text records of Ayersman and Harris (SA 293-296); as well as exhibits demonstrating violations of not only the Ethics Act, West Virginia Code §6B-1-2, et seq., but also violations of policies and procedures of the Fire Marshal's Office; violations of regulations of the Division of Personnel of the State of West Virginia; statutory violations; and violations of due process and civil rights of the Plaintiffs below. These filings show that the Fire Marshal's Office knew of and condoned unlawful and abusive actions by Ayersman during the fire investigation and criminal prosecution.

An Order was entered by the Circuit Court below granting in part the Motion to Expand on November 12, 2020. SA 00512-515. Each of the documents considered by the Court in Plaintiffs' Motion to Expand are incorporated herein by reference insofar as those documents were considered by the Court prior to entry of the Summary Judgment Orders upon which Petitioners' appeal is based. The sworn statements and EUO depositions of the Plaintiffs below are of particular importance insofar as the claims of qualified immunity by the Petitioners must be considered in light of the foundational and historical facts presented to the Court below.

Hutchison v. City of Huntington, 198 W.Va. 139, 479 S.E. 2d 649 (1996). The Second Ethics Complaint filed against Ayersman by Tammy Wrotchford was also dismissed. Findings of the Ethics Commission are irrelevant to review by this Court. There is no judicial review available from a negative finding and dismissal of a complaint by the Ethics Commission within the Ethics Act, West Virginia Code § 6B-1-2, et seq.

The Fire Marshal's Office and Ayersman claim qualified immunity based upon discretionary acts of Ayersman acting within the scope of his duties, authority and employment working within his official capacity as an Assistant State Fire Marshal. The Fire Marshal's Office and Ayersman claim that the investigation of Ayersman was "thorough and complete" and that his findings and conclusions giving rise to his actions against the Plaintiffs were reasonable and based upon the facts and circumstances which he found during his "official" investigation. Significantly, there is absolutely no objective evidence of arson or "incendiary origin" of the fire which occurred at the home of the Plaintiffs on February 20, 2017. Further, there is no objective evidence of "attempted arson" charged in the Criminal Complaint of June 16, 2017.

2. FACTUAL BACKGROUND-AYERSMAN'S INVESTIGATION CONTRADICTIONS

Every documented or recorded statement and every deposition by the Plaintiffs below is consistent in denying arson or "incendiary origin" and in denying any "attempt" at arson or efforts of burning their residence. There were two separate laboratory examinations of material taken from the fire with each concluding "no evidence of ignitable liquid". JA 00669-670. The conclusions reached by Ayersman and the Fire Marshal's Office against the Plaintiffs are **NOT** consistent with the guidelines set forth within NFPA 921 claimed to be followed by Ayersman, the Fire Marshal's Office, and their expert witnesses below. JA 00769-779. The documented statement taken from the Plaintiff below, Tammy Sue Wrotchford, prior to the polygraph examination on March 9, 2017, states that leaving the candle burn in her home prior to the fire was an "accident". JA 00768. Retired officer Pansch, who performed the polygraph examination, stated during his deposition that he has no recollection of a confession from Tammy Wrotchford

of any attempt to start a fire in her home, and that he thought he “stepped out” of the interrogation room. JA 00576-580. Ayersman admits as an undisputed fact that there is no confession or admission by Tammy Sue Wrotchford of incendiary origin of the fire which took place on February 20, 2017. JA 00311. Ayersman found no evidence that Michael Wrotchford had any responsibility for the fire at the Wrotchford home. The recorded statement taken by Ayersman during the interrogation following the polygraph examination on March 9, 2017, is objectively without value other than to demonstrate how beaten down Tammy Wrotchford was by the interrogation tactics of Ayersman. JA 00330 and JA 00632-639. The candle had nothing to do with the fire which occurred on February 20, 2017. The polygraph taken by Mrs. Wrotchford on March 9, 2017, and the results of the polygraph are inadmissible and without evidentiary value.² The polygraph issues were considered by the Circuit Court on Plaintiffs’ objection filed July 31, 2019. SA 550-563.

The underlying facts demonstrate that a Yankee candle which was located on an end table in the Wrotchford home in a glass container and inside a protective metal decorative container on the same table that a small plastic Christmas tree was situate. JA 00640. Ayersman acknowledged within an email to Lucas See dated April 19, 2017, that there was no evidence of damage or other corroborating evidence of a fire to show an intent to set a fire with that candle and that tree (JA 1203) which is supported by photos taken by Ayersman following the fire. JA 00640. Mrs. Wrotchford has consistently stated that she simply forgot to blow out the candle and there was no fire or damage. SA 233-239 and JA 00768.

The evidence contained within the Ayersman investigation CD demonstrates that both of the Plaintiffs and the son of Mrs. Wrotchford, Anthony, left the residence early in the morning on February 20, 2017, before the house fire was found that afternoon. The deposition of Tammy Wrotchford demonstrates that her son, Anthony Mills, was the last person in the home the

² *State v. Tyler*, 236 W.Va. 152, 778 S.E. 2d 601 (2015); *State v. Frazier*, 162 W.Va. 602, 252 S.E. 2d 39 (1979). SA 552.

morning of February 20, 2017, by going back into the home with his tablet. SA 233-239. This was confirmed by the deposition of Anthony Mills. There was no objective evidence found by either the fire department personnel nor by the Defendants and their experts of any delay device or incendiary cause of the fire. It is an undisputed fact that Tammy Wratford left the home the morning of February 20, 2017, at approximately 7:40 a.m.; she took her son, Anthony, to school; she went directly from the school to Martinsburg, West Virginia, to take a fire truck pump operators test; she went grocery shopping in Winchester, Virginia; and she did not return home until after 3:00 p.m. when she found the fire in the home which was reported to her husband and to 911. SA 233-239 and SA 533-534. Each of the Defendants and their experts have ignored and discounted the evidence of the wiring located under the floor and under the steps which burned as a cause of the fire.³

Ayersman claims in his Brief (p.10) that the Fire Marshal's Office reviewed the investigation file of Ayersman prior to criminal charges being brought against Mrs. Wratford in the Hardy County Magistrate Court. Based thereon, the Fire Marshal's Office is imputed with knowledge of all information contained within the Ayersman investigation file. This information includes the complete lack of objective evidence of any inculpatory act on the part of Mrs. Wratford to commit arson, attempt to commit arson, or perform any act to create an incendiary origin for the fire which occurred on February 20, 2017, at her home. The Fire Marshal's Office had full knowledge that there is no objective evidence of any admission or confession on the part of Tammy Wratford during or following the polygraph examination which took place on March 9, 2017. The photographs and the report of Ayersman clearly demonstrate the exculpatory wiring proving electrical shorting in the area of the fire which occurred in the Plaintiffs' home on February 20, 2017. JA 00641-00647. The investigation CD of Ayersman clearly shows disclosure of confidential information gained by Ayersman during the

³ Erie Claims Management System File page 88, 2/23/2017 (SA 137); page 66, 2/27/2017(SA 139); page 51, 3/6/2017(SA 148); page 25, 03/09/2017 (SA 148); Ayersman Narrative Report page 13 (JA 00671-675)

criminal investigation of Mrs. Wrotchford to third parties employed or retained by the Erie Insurance Company and that Ayersman allowed persons retained by the Erie Insurance Company to remove evidence from the Wrotchford home in violation of police protocol. JA 00690-691; JA 01012-01017. The Fire Marshal's Office had full knowledge and condoned Ayersman working jointly with Harris, Erie and Bert N. Davis (hereinafter "Davis") exchanging information which was prohibited by the investigation protocols of the Fire Marshal's Office. JA 01127-1129, 00946. To the contrary, the State claims that the protocols and written procedures of the Fire Marshal's Office are "government secrets" in an objection by Certificate of Service below dated March 9, 2018, denying discovery to Plaintiffs below. SA 63-68. Ayersman's official CV demonstrates very limited official training in criminal investigation procedures. Retired West Virginia State Police Captain Steven Dawson discussed these limitations of Ayersman and the Fire Marshal's Office within his report, supported by documents attached as exhibits, (JA 00676-691) all of which was before the Court during the consideration of the Court of the Motions for Summary Judgment of the Fire Marshal's Office and Ayersman.

Lucas See exercised his lawful discretion presenting evidence to the Grand Jury on February 6, 2018. JA 581-616. Lucas See found false and misleading information within the Criminal Complaint filed by Ayersman with the Magistrate Court of Hardy County, West Virginia, on June 16, 2017. JA 00590, 00598-599. Lucas See was also concerned about obvious conflicts of interest of Ayersman. JA 00584-585, 00591-593, 00604-605. These clear conflicts of interest were confirmed by Plaintiffs' Criminal Investigation expert, Steven R. Dawson. JA 00676-763 and JA 00962-994. Lucas See presented fair and accurate information to the Hardy County Grand Jury on February 6, 2017. JA 00602. The Circuit Court considered motions of both, the Petitioner, Ayersman, and the Respondents, Wrotchford, below on issues related to Lucas See, Prosecuting Attorney; evidence presented to the Grand Jury; and the duties and responsibilities of the State. The Grand Jury found "NOT A True Bill" (SA 529-532) after

considering the evidence presented. The criminal charges filed by Ayersman against Tammy Wratchford were dismissed for lack of probable cause found by the Grand Jury.

3. THE CRIMINAL COMPLAINT-CONTRADICTIONS

Contrary to the information sworn to by Ayersman in the Criminal Complaint, (SA 200-201) the Ayersman investigation CD and supporting evidence shows contradicting information: The chief of the Moorefield Volunteer Fire Department, hereinafter "MVFD", Doug Mongold, inspected the home of the Wratchford's following the fire of February 20, 2017, and identified the electrical wiring as the probable cause of the fire at the Wratchford home. JA 00307-308 and JA 00532-544. The report of MVFD determined the fire was "unintentional" in origin. JA 00657. There is no objective evidence that Tammy Wratchford at any time "admitted that she attempted to burn the house". There is no objective evidence of a recorded statement made by Tammy Wratchford at any time of a "specific intent to burn the house and collect the insurance". Kevin Pansch's hand recorded worksheet noted from Mrs. Wratchford that leaving the candle burn was "an accident" (JA 00768), and retired Sergeant Kevin Pansch testified under oath in a deposition that he has no independent recollection of any admission made by Tammy Wratchford of wrongful conduct related to a fire or attempted fire prior to, during or following the polygraph examination which took place on March 9, 2017. JA 00576-580. There is no objective or recorded evidence that Mrs. Wratchford at any time told anyone that she was "the last one in the residence" as alleged within the Criminal Complaint. The Summit Bank loan statement shows the mortgage on the marital home had been completely caught up and made current by the Wratchfords on March 15, 2017, (SA 176-187) prior to the filing of the Criminal Complaint on June 16, 2017. The emails between Tina Martin, the loan officer at Summit Bank, and Tammy Wratchford during late December, 2016, through early February, 2017, confirm that the Wratchfords intended to catch the loan up before any foreclosure. JA 01064-1067; SA 537-545. Ayersman knew that the foreclosure proceedings had never been commenced on the Wratchford home mortgage by the Summit Bank. Ayersman did not subpoena information from

Summit Bank until May 23, 2017, and clearly did not communicate with Summit Bank until long after the mortgage had been brought current on March 15, 2017. JA 00939-940; SA- 536.

Ayersman then, and as Petitioner now, tries to confuse issues with the Wratchford finances which do not support the allegations in the Criminal Complaint. There is no supporting evidence to demonstrate that Mrs. Wratchford received any notice from Summit Bank “the week or two prior to the fire” that their house was in foreclosure. That claim was disproven during testimony before the Magistrate Court in the Preliminary Hearing when Ayersman testified falsely under oath in a felony proceeding claiming that notice. JA 00786-787. The Ayersman investigation CD also proves false the claims by Ayersman within the Criminal Complaint “the week prior (to the fire), the bank checking balance was approx. 26 cents”. JA 00339-342. The Summit Bank records in the possession of the Fire Marshal’s Office at the time the Criminal Complaint was drafted and filed on June 16, 2017, clearly demonstrated the revolving nature of that account with biweekly credits and debits leaving a recurring monthly balance of \$0.26. SA 154-158. The bank records contained within the Ayersman investigation CD clearly demonstrate four separate checking accounts of the Wratchfords in two separate banks which had a total of over \$1,500.00 the day prior to the fire of February 20, 2017, and as much as \$2,000.00 during the week prior to the fire. SA 154-199. The bank records of Respondents during the timeframe claimed by Petitioner of notice of foreclosure contradict the claims of Ayersman in the Criminal Complaint, (JA 01064-1067), as does the EUO transcript of Tammy Wratchford. JA 01062-1063. The Fire Marshal’s Office is represented to have reviewed all the evidence in the possession of Ayersman before criminal charges were filed. Based thereon, the Fire Marshal’s Office condoned the false and misleading statements of Ayersman in the Criminal Complaint, the false testimony of Ayersman in the Preliminary hearing, and unsupported testimony by Paul Alloway before the Hardy County Grand Jury.

Electron microscope testing undertaken at the request of Plaintiffs’ experts confirms electrical activity under the stairway which included an arcing pattern and arcing history on the

wires immediately under the stairs at the corner of the kitchen floor joists and within the immediate area of the major burn patterns under the kitchen floor and under the stairs in the Wratchford home.⁴ JA 00790-932. No scientific or microscopic testing was undertaken of the wiring by Ayersman, the Fire Marshal's Office, or by any other Defendant below prior to the Criminal Complaint being filed against the Plaintiff below, Tammy Wratchford, on June 16, 2017. All of this is reminiscent of the very public Jason Lively botched investigation by the Fire Marshal's Office in McDowell County.

4. THE PRELIMINARY HEARING-CONTRADICTIONS

The transcript of the Preliminary Hearing of Mrs. Wratchford on June 26, 2017, demonstrates multiple statements by Ayersman contradicted by evidence and actual documents thereby rendering them false. At page 4, (JA 00781) Ayersman claims to have eliminated all electrical causes for the fire at the Plaintiffs' home. At page 5, (JA 00782) Ayersman claims that Mrs. Wratchford received notices in the beginning of February, 2017, from Summit Bank that foreclosure procedures had already been started at that time. At page 6, (JA 00783) Ayersman claims that Mrs. Wratchford attempted to burn her home a week and a half before the fire of February 20, 2017, and he claimed specific statements from Mrs. Wratchford that she had placed a candle underneath a little tree in the living room with the intent to burn the house down because of financial strain and that the Wratchfords were in the process of losing their house. At page 8, (JA 00785) Ayersman claims that Mrs. Wratchford "indicated that the reason she was deceptive and lying to us was that she had tried to burn the house down a week and a half before." At pages 14-15, (JA 00786-787) Ayersman was forced to retract his testimony that the letter from the Summit Bank to William H. Bean dated February 13, 2017, (JA 00337) provided a basis for his claims of "notice of foreclosure the week or two prior to the fire". At page 18, (JA

⁴ MSES Fire Inspection Report, January 30, 2018, page 18, Preliminary Report Supporting Documents 3/4/2020 @ 11:13 a.m. (JA 00810) MSES Supplemental Fire Inspection Report, November 18, 2019, page 12, Preliminary Report Supporting Documents 3/2/2020 @ 5:42 p.m. (JA 00868)

00788) Ayersman admitted that he had in his possession the checking account bank information for the multiple checking accounts of the Plaintiffs before he filed the Criminal Complaint on June 16, 2017. At page 24, (JA 00789) Ayersman claimed that Mrs. Wrotchford made specific statements of placing the candle underneath the tree in manner to try to catch the tree on fire so that the house would burn down because of the financial problems the Plaintiffs were in, and Ayersman further claimed that Mrs. Wrotchford admitted these statements in a recorded statement. The documents and evidence prove that each and every one of these claims made by Ayersman were false. At the very least, each of these statements by Ayersman against Mrs. Wrotchford during the Preliminary Hearing are genuine issues of material disputed fact which underlie the claims of qualified immunity of Ayersman condoned by and in furtherance of the employment of Ayersman with the West Virginia State Fire Marshal's Office. Practically, Ayersman is proven to have committed criminal offenses of false swearing and perjury as part of his "official investigation", condoned by the Fire Marshal's Office. If the Fire Marshal's Office actually reviewed the Ayersman investigation file prior to the Criminal Complaint being filed, and if the Fire Marshal's office approved the filing of the criminal charges as written, then the Fire Marshal's Office aided and abetted Ayersman in committing false swearing and perjury and supported the false narrative with the testimony of Assistant Fire Marshal, Paul Alloway, before the Grand Jury contradicting exculpatory evidence.

At page 7 of the transcript of the Preliminary Hearing (JA 00784) of Mrs. Wrotchford which took place on June 26, 2017, Ayersman acknowledged the lack of evidence found on or near the steps in the Wrotchford home to support his theory of incendiary origin. Ayersman claimed that the fire originated on the top of the steps from the kitchen down to the laundry room. Beginning at the bottom of page 7 of the Preliminary Hearing transcript and continuing on the top of page 8, (JA 00785) Ayersman testified to the following:

... There was very little that was actually involved or damaged except for the top of the steps. We found no evidence of any other items on the steps. Because the fire was concentrated on top of the steps which it's very difficult to burn the top of

the steps. You just have to basically place something there to assist it. You can put a blow torch and lay it on the top of the steps and it's just not going to flare up and burn for hours like that. And basically there is nothing (sic) left of it. The steps were completely consumed basically or more less (sic) consumed. The drywall most of it on the sides at floor level were still intact. The fireman had to actually pull that. So it just burned, isolated on top of those steps at that time. JA 00784-785.

The photographs taken by Ayersman on February 24, 2017, during his joint inspection with Phillip Jones, hereinafter "Jones", of the Erie Insurance Company, prove false the claims of the fire "isolated on top of the steps". The primary burn patterns demonstrated by the Ayersman photographs and by photographs attached to the reports of experts for both, the Plaintiffs below and the Defendants below, demonstrate the most significant fire damage occurred under the steps and under the kitchen floor where the shorted wiring was located and removed by Davis with Jones of Erie, Ayersman, Harris, during their inspections on March 3, 2017. JA 00641-647.⁵ If the wiring was excluded as a cause of the fire, then why would Ayersman have allowed Bert Davis to remove the wiring from the Wratford house during the joint inspection of Erie and Ayersman on March 3, 2017? (JA 01014). MSES Consultants concluded that the root cause of the fire was the shorted out wiring from the furnace circuit which was stapled to the floor joists under the kitchen floor and to the stringer under the stairs inside the drywall and which had been removed by Erie Insurance investigators with the participation of Ayersman.⁶ JA 00790-932. Joseph Lofton, the first in fire attack for the MVFD described the fire within a statement dated February 28, 2017, which is part of the Ayersman Investigation CD, as coming from underneath the floor of the kitchen with flames "right under the first floor". JA 00933. Joe Lofton also testified during his deposition that the fire which he observed upon entry was underneath the floor of kitchen where the steps from the laundry room level attach to the kitchen floor, and he described the fire as coming out from underneath the steps. JA 00549, 552-557, 562-563,

⁵ Ayersman photos- Investigation CD- 1741, 1757, 1758, 1759, 1760, 1781, 1788 or Preliminary Response Supporting Documents filed 3/3/2020 @ 9:03:50, page 90; and 3/3/2020 @ 10:11:10 pages 8, 9, 10, 11, 38 and 39 (JA 00641-00647)

⁶ Fire Inspection Report Root Cause Analysis, MSES, January 30, 2018, page 18; Supplemental Fire Inspection Report, MSES, November 18, 2019, page 12. (JA 00810, JA 00868)

567-571. Ayersman noted in his Narrative Report, undated, that he had interviewed Joe Lofton as part of his investigation. JA 00674. Based thereon, Ayersman was fully aware of evidence contradicting his claimed theories and those of his private bosses, Harris and Jones/Erie, of the fire "isolated" on top of the steps. The Fire Marshal's Office reviewed this evidence in the Ayersman investigation file before the Criminal Complaints were filed.

5. AYERSMAN USED HIS STATE AUTHORITY WITH KNOWLEDGE OF THE PETITIONER

Ayersman recorded a telephone conversation between himself and the Respondent, Mike Wratchford, which took place on February 23, 2017. A transcript was made of that telephone conversation from the Ayersman investigation CD and provided to the Court together with Plaintiffs' Preliminary Response to Motions for Summary Judgment. At page 2, lines 12-17, Ayersman made an unsolicited and voluntary statement acknowledging that he "told" his superior, at the Fire Marshal's Office, George Harms, to give to him, Ayersman, the Wratchford fire investigation on February 23, 2017. JA 01118-1119. This statement is corroborated by the numerous communications between Harris and Ayersman (JA 01097-1098; 01087-1095) prior to the fire being reported to the Arson Hotline by Harris for Erie on February 23, 2017, at 4:46 p.m.⁷ JA 01096. The evidence clearly demonstrates that Ayersman was using the authority of his employment with the West Virginia State Fire Marshal's Office to simultaneously benefit both of his employers with full knowledge and complicity of the Fire Marshal's Office, including George Harms who was employed by FSI from 2010-2013.⁸ The 911 Incident Log from Hardy County (JA-00665-668) shows the request by Assistant Fire Marshal Ayersman was printed at 4:02 p.m. before the Arson Hotline report at 4:46 p.m. JA 01096. Ayersman violated policy 10008 of the Fire Marshal. JA00455. The 911 incident log is part of the Ayersman investigation file. Therefore the Fire Marshal's Office had knowledge of that violation before June 16, 2017.

⁷ Arson Hotline Report/Ayersman Criminal Investigations CD/Steven Dawson Report/Response below(JA 1096)

⁸ Public Media LinkedIn, shows the employment and experience history of George Harms with FSI from 2010-2013.

The conduct and authority of Ayersman during the Wrotchford fire investigation falls within the "scope of employment" defined within *West Virginia Regional Jail and Correctional Authority v. A. B.*, supra. It was the lack of supervision, oversight, and training by the Fire Marshal's Office during that investigation that allowed the abuses by Ayersman to occur against the interests of the Respondents. Each and every action undertaken by Ayersman was the kind and nature that he is employed to perform; occurred within the authorized time and space limits of his investigation; was actuated, at least in part, with the purpose to serve the interests of the West Virginia State Fire Marshal's Office, and even the abusive and accusatory interrogation of Mrs. Wrotchford was clearly a part of his authority and recognized duties by the Fire Marshal's Office. The Fire Marshal's Office, George Harms, and Kenneth Tyree, were clearly aware of the contents of the investigation file of Ayersman yet found no deviation from his authorized conduct. There was no act undertaken by Ayersman during his investigation or during his criminal prosecution of Mrs. Wrotchford that generated any rebuke or disciplinary measure by the Fire Marshal's Office. Each and every action of Ayersman during his investigation and prosecution of Mrs. Wrotchford has been condoned and approved by the Fire Marshal's Office. If there was any specific conduct by Ayersman which was unauthorized or contrary to any expressed orders, expressed policies, or expressed protocols, there has been no remedial action taken by the Fire Marshal's Office. Based thereon, Ayersman was acting within his general authority and for the benefit of the Fire Marshal's Office throughout his investigation and prosecution of Mrs. Wrotchford as complained of in the Amended Complaint.

The Fire Marshal's assignments of error ignore Ayersman's dual employment, conflicts of interest, violations of statutory law, violations of the constitutional rights of the Plaintiffs, and demonstrate clearly the disputes in genuine issues of material facts and clear disputes in the foundational and historical facts that underlie the claimed qualified immunity described herein and in the pleadings before the Circuit Court, all condoned by the Fire Marshal's Office.

There is no objective evidence to support the criminal charges brought by Ayersman and the Fire Marshal's Office against Mrs. Wratchford. The clear reason for the aggression by Ayersman against Tammy Wratchford was to destroy her life as he threatened during his interrogation without regard for his duties as a public officer, all condoned by his superiors at the West Virginia State Fire Marshal's Office. This is their *modus operandi*.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The facts and evidence presented in Respondents' briefs and in the record on are sufficient to fully support the Denial of Summary Judgment by the Circuit Court below and the decisional process in this Court would not be aided by oral argument. Therefore oral argument is not necessary pursuant to the criteria in Rule 18(a), however, Respondents agree that a memorandum decision is not appropriate in this case. The dual employment and conflicts of interest do appear novel and Respondents' Cross-Petition must be ruled on.

V. ARGUMENT

A. STANDARD OF REVIEW

This matter is before the Court for review of the Circuit Court's decision to deny the Fire Marshal's Motion for Summary Judgment and the Cross Petition of Plaintiffs below. "A circuit court's entry of summary judgment is reviewed *de novo*." Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E. 2d 755 (1994). This Court has previously held that "in reviewing summary judgment, this Court will apply the same test that the circuit court should have used initially, and must determine whether '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'." *Zirkle v. Winkler*, 214 W.Va. 19, 21, 585 S.E. 2d 19, 21 (2003) (quoting Syl. Pt. 3, *Aetna Casualty & Surety Co. v. Federal Insurance Co. of New York*, 148 W.Va. 160, 133 S.E. 2d 770 (1963)). The Circuit Court cited the legal basis for its review for purposes of summary judgment. The Court considered the Pleadings and Exhibits filed in the entire Circuit Court record without oral argument. The entire Circuit Court record must be open for review.

B. RESPONSES TO SPECIFIC ASSIGNMENTS OF ERROR

1. Response to Assignment of Error No. 1: The Fire Marshal's Office is not entitled to qualified immunity for issues related to training, supervision and oversight of officials and employees at the West Virginia State Fire Marshal's Office in conducting an investigation and/or in the prosecution of a purported criminal offense for discretionary functions, acts, or omissions that are in violation of clearly established or constitutional rights or law or of which a reasonable person have known or are otherwise fraudulent, malicious, or oppressive in accordance with *State v. Chase Securities, Inc.*, 188 W.Va. 356, 424 S.E. 2d 591(1992). Syl. Pt. 5, *Maston v. Wagner*, supra. The subjective motivations of a police officer are irrelevant. Syl. Pt. 6, Id.

2. Response to Assignment of Error No. 2: Based upon the foregoing, Assignment of Error Number 2 by the Fire Marshal's Office, "discretionary acts", is necessarily incorporated within the discussion of Assignment of Error Number 1.

At paragraph 22 of the Order of the Circuit Court denying the Motion for Summary Judgment of the West Virginia State Fire Marshal, the Court found as follows:

22. Here, the Court finds it is undisputed that the West Virginia State Fire Marshal's Office is a State agency. The Court further finds that the acts or omissions of the WVSFMO are discretionary. "Broad categories of training, supervision, and employee retention... easily fall within the category of discretionary governmental functions" to which the immunity applies. A.B., 234 W.Va. @ 514, 766 S. E. 2d at 773 (internal quotation marks omitted).

The Fire Marshal's Office throws in the term "negligent" as modifying the claims of the Wratcfords against the Fire Marshal's Office for failing to properly train, supervise and oversee the conduct of Ayersman and its employees during the investigation of the Wratcford fire and the prosecution of Mrs. Wratcford. As Respondents demonstrate herein, modifying the required supervision, training or oversight by the Fire Marshal's Office with the term "negligent" is immaterial. *Maston*, supra. The critical underlying issue in this matter is the failure of the Fire Marshal's Office to require Ayersman and the other employees at the West Virginia State Fire Marshal's Office to comply with known policies, procedures, protocol, and the statutory requirements of independent integrity and obligations to the public in avoiding conflicts of interests and in complying with statutory law to avoid the abuses of the constitutional rights of the Respondents, Plaintiffs below, as described in the underlying foundation and historical facts of this case. JA 00946.

Respondents, Plaintiffs below, particularly and specifically raised numerous bona fide disputes as to foundational and historical facts that underlie the immunity determination and which require these violations of the statutory and constitutional rights of the Plaintiffs to go to the jury. *Hutchison v. City of Huntington*, 198 W.Va. 139, 479 S.E. 2d 649 (1996); *West Virginia Regional Jail and Correctional Facility Authority v. A.B.*, 234 W.Va. 492, 766 S.E. 2d 751 (2014); *Maston v. Wagner*, 236 W.Va. 488, 781 S.E. 2d 936 (2015). There are genuine issues of fact as to which master Ayersman was serving given the virtually identical character of his employment with each, the nature of his wrongful acts and omissions, and the time and place of the commission of each act or omission when it occurred. *Griffith v. George Transfer and Rigging, Inc.*, 157 W.Va. 316, 201 S.E. 2d 281 (1973), also cited in *West Virginia Division of Natural Resources v. Dawson*, 242 W.Va. 176, 932 S.E. 2d 102 (2019).

It is not the subjective belief, motive, or intent or even “negligence” of the public officer that is determinative in considering qualified immunity. *State v. Chase Securities, Inc.*, 188 W.Va. 356, 424 S.E. 2d 591 (1997); *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982). The question to determine entitlement to qualified immunity, in the absence of fraudulent, malicious, or otherwise oppressive acts of a public official, centers on whether an objectively reasonable official, situated similarly to the Defendant, could have believed that his conduct did not violate the Plaintiffs’ statutory or constitutional rights in light of clearly established law and the information possessed by the Defendant at the time of commission of the wrongful conduct. *City of Saint Albans v. Botkins*, 228 W.Va. 393, 719 S.E. 2d 863 (2011). The case *sub judice* is complicated by the dual employment of Ayersman which compromised his integrity. Ayersman clearly cannot avoid issues of negligence if found acting for FSI and Erie. “Negligence” also is not an element of the consideration of how or why Ayersman violated statutory or constitutional laws protecting the Plaintiffs in the course of his public employment. Ayersman was required to follow personnel policies, police protocol, and statutory and constitutional protections in place designed to protect the citizens of West Virginia (JA 01069-

1084), which are designed to prevent the violations described in Plaintiffs' pleadings, statements, depositions, and as found by Plaintiffs' expert, Steven Dawson, a retired executive officer with the West Virginia State Police and a person with great integrity and experience as an executive and practicing law enforcement officer. Claims of why Ayersman violated policies, procedure, statutes or constitutional protections or his subjective beliefs will not release Ayersman or the Fire Marshal's Office from liability and damages if the jury finds that Ayersman was acting within the authority of his State employment and that the actions were condoned, accepted, directed, or otherwise considered a part of his authority and duties or expected as a part of his public employment by his superiors at the West Virginia State Fire Marshal's Office. *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982); *Chase Securities, Inc., v. The West Virginia State Board of Investments*, 188 W.Va. 356, 424 S.E. 2d 591 (1992).

The secondary employment of Ayersman is critical in his investigation by his close association and communications with Erie and Harris and his reliance on initial information they generated rather than his own independent investigation. Jones of Erie and Ayersman in his dual capacity met the Wrotchfords at the fire scene on February 24, 2017, armed with wrong credit reports and wrong background checks of the Wrotchfords. JA 01017. The Plaintiffs, Tammy and Mike Wrotchford gave Jones and Ayersman correct identity and bank information on February 24, 2017, and each were immediately called "liar" by Jones.¹⁰ JA 00121. Bank mortgage documents were provided with payment and balance information during the joint meeting with Jones and Ayersman on February 24, 2017. SA 141.¹¹ Ayersman "walked Jones through the scene" on February 24, 2017, as noted in the email of Ayersman to Erie after that inspection. JA 01013.¹² Because of the undue influence and initial conclusions which Ayersman

¹⁰ Amended Complaint paragraphs 69-70; (JA 00121)Response of Plaintiffs to Motions for Summary Judgment of the Erie Insurance Company page 4

¹¹ Ayersman CD, Bank Mortgage Statements; (SA 141)Plaintiffs' Preliminary Response to Motions for Summary Judgment. (SA 512-530)There are additional records in evidence not specifically noticed in this appeal.

¹² Steven Dawson Exhibit 20; CMSF page 66, Ayersman CD (JA 00701)

received from his private employer and best friend, Harris (JA 01120), and because of his private working relationship with Erie (JA 01117), Ayersman ignored the objective facts presented at the Wrotchford home from the outset; ignored his duties to the public of impartiality and integrity (JA 01069-1084); and embarked on his misguided reign of terror against Tammy Wrotchford. The Fire Marshal's Office was clearly aware of the conflict from the disclosure of Secondary Employment (JA 01121-1125) and from the official CV of Ayersman in the investigation file (SA 113), yet did nothing to prevent these violations. Failure of the Fire Marshal's Office to enforce state policies and statutory mandates is critical in this case.

Harris and Ayersman had numerous phone (JA 00693-700) and text communications (JA 01097-1106) before Ayersman was appointed by his State superiors to begin his "official investigation".¹³ JA 00676-00678; 01012; 01085-01086; 00079-88; 01097-01098. The Erie Claim Management System File, hereinafter "CMSF", shows Erie, Harris, and Ayersman were working together from February 20, 2017, the very day of the fire. JA 01085-1086.¹⁴ Harris gave Ayersman Harris' conclusions of an "incendiary" start of this fire on February 23, 2017 while Harris was still at the Wrotchford home. JA 1091; SA 137.¹⁵ Rather than beginning his investigation independently with required unbiased integrity of a public officer, Ayersman's first impression was poisoned by his association with Harris and Erie. George Harms was clearly aware of the contacts between Ayersman and Harris before Ayersman was assigned the fire investigation for the Wrotchford fire and George Harms, as a previous employee of Harris and FSI, was fully aware of the relationship of Harris and Ayersman.

¹³ Dawson Report pages 3-5, Exhibits 2 and 12; (JA 00676-678; JA 692-700) phone records and text records in Preliminary Response of Plaintiffs to Motions for Summary Judgment; Response of Plaintiffs to Ayersman's Motion for Summary Judgment (SA 278-290)

¹⁴ February 20, 2017, email from Chad Tuttoilmondo to FSI/Harris copied to Ayersman-attached to Motion to Expand, Exhibit 113B (SA 276)

¹⁵ Harris Report of 3/15/17 page 7; (JA 00300) Erie CMSF p. 87-88, (SA 146-147) Ayersman Narrative Report page 2, (JA 00671); phone records of Harris attached to Motion to Expand, Exhibit 114 (SA 278-290)

a. Violations of the Ethics Act, West Virginia Code § 6B-1-2, et seq., including West Virginia Code § 6B-2-5(e), can defeat the qualified immunity defense of the Petitioner.

These issues have been fully argued by the Plaintiffs below within the Response of Plaintiffs to Motion for Summary Judgment of Ronald C. Ayersman filed March 5, 2020, and these issues were raised by the Plaintiffs factually within Plaintiffs' Amended Complaint (JA 1-42) at paragraphs 7, 44, 79, 88, 98, 106, 107, 128, 131, 132, 134, 135, and 136. Ayersman filed a Request for Determination regarding secondary employment identifying his secondary employer as "Fire Safety Investigations"¹⁸ and citing the nature of the business as "private origin and cause" in the "investigation of fires outside the State of West Virginia" filed January 30, 2010 with the West Virginia State Fire Marshal's Office. JA 00282-284. A copy of that Request for Determination was obtained by Plaintiffs from the Ethic's Commission together with a letter dated October 16, 2017, copies of which are attached to Plaintiffs' Preliminary Response to Motions for Summary Judgment below. JA 01121-1126; SA 300-305. Ayersman is admittedly a "public employee" with the West Virginia State Fire Marshal's Office, a governmental agency with the State of West Virginia. This Court has held that a public employee owes an undivided duty of loyalty to the public whom he serves and is not permitted to place himself in a situation that will subject him to conflicting duties or expose him to the temptation of acting in any manner other than in the best interest of the public. *Graf v. Frame*, 177 W.Va. 282, 352 S.E. 2d 31 (1986). This Court has held that the policy of law mandated by the Ethics Act is to prevent a public officer from placing himself in a situation where his private interest conflicts with his public duty, and to keep him so far from temptation as to insure the exercise of unselfish public interests. *Id.* The statutory provisions under Chapter 6B of the West Virginia Code are not simply instructional for the public employee or the public agency. The Ethics Act is clearly designed by the legislature to protect the public and to insure the integrity and impartiality of public employees and public officials to protect the basic constitutional rights of the citizens of

¹⁸ There is no public record of a business with this name in West Virginia as claimed by Ayersman.

the State of West Virginia. JA 01069-1084; *Graf v. Frame*, supra. The Ethics Commission dismissal of Plaintiffs' Ethics Complaints is not dispositive. Those dismissals cannot be appealed and are irrelevant to these proceedings.

The seminal case of *Harlow v. Fitzgerald*, 457 U.S. 800, 102 S. Ct. 2727, 73 L. Ed. 2d 396 (1982) broadly states that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known". West Virginia has followed this mandate in numerous cases previously cited within Respondents' Brief. *Chase Securities, Inc., v. West Virginia Board of Investments*, supra; *Clark v. Dunn*, supra; *Hutchison v. City of Huntington*, supra; *City of Saint Albans v. Botkins*, supra; *West Virginia Regional Jail and Correctional Facility Authority v. A.B.*, supra; *Maston v. Wagoner*, supra; *West Virginia State Police v. Hughes*, supra; *West Virginia Department of Health and Human Resources v. Payne*, supra; *West Virginia Division of Natural Resources v. Dawson*, supra. There is no exception contained within any law of the State of West Virginia to support the ruling of the Circuit Court. The West Virginia Ethics Act is clearly designed to protect the citizens of West Virginia from conflicts of interests and actions such as those which are described by the Plaintiffs against the Defendants, Ayersman and the West Virginia State Fire Marshal's Office in Plaintiffs' Amended Complaint below. JA 01069-1084.

b. There is no exception in West Virginia Law which allows a qualified immunity defense to a state agency or a state employee based upon the claim that a constitutional right must "specifically apply to the Plaintiffs".

The Constitution of the State of West Virginia and the Constitution of the United States of America are written for **ALL** citizens. The legislature describes the purpose of the Ethics Act of the State of West Virginia within West Virginia Code § 6B-1-29(a) finding that "the holding of a public office or public employment is a public trust. Independence and impartiality of public officials and public employees are essential for the maintenance of the confidence of our citizens in the operation of a democratic government." West Virginia Code § 6B-1-2(b) states

the “purpose” of Chapter 6B of the West Virginia Code is “to maintain confidence in the integrity and impartiality of the governmental process in the State of West Virginia and its political subdivisions ...; to define and establish minimum ethical standards for ... public employees; to eliminate actual conflicts of interests; ... and to provide administrative and criminal penalties for specific ethical violations...”. West Virginia Code § 6B-1-2(d) is a declaration by the legislature “that high moral and ethical standards among public officials and public employees are essential to the conduct of free government...”. West Virginia Code §6B-2-5 sets forth the specific ethical standards for elected officials and public employees. West Virginia Code § 6B-2-10 makes violations of specific provisions of West Virginia Code § 6B-2-5 criminal with criminal penalties. The preamble by the legislature in West Virginia Code § 6B-1-2 taken together with *Graf v. Frame*, supra, are clearly designed to protect the citizens of the State of West Virginia from conflicts of interest and to maintain statutory and constitutional protections for the citizens of the State of West Virginia from unscrupulous and unlawful actions by public employees. Your Respondents are citizens of the State of West Virginia, and based thereon, each of these protections “specifically apply to the Plaintiffs” below as statutory and constitutional protections known to Ayersman and to the Fire Marshal’s Office. These are basic civil rights.

c. The Plaintiffs below clearly articulated evidence of statutory and constitutional issues violated by Ayersman, including fraudulent, malicious, and oppressive acts, as a part of his employment.

The Plaintiffs reiterate the requirements of the Ethics Act as well as the protections of the Plaintiffs under Article 3, Section 10, of the Constitution of the State of West Virginia. The Plaintiffs are constitutionally protected from abuse of process by public employees and Plaintiffs are protected from criminal violations which affect the Plaintiffs by actions and omissions of a public employee in his official public capacity and authority and by the agency he serves. Respondents have raised issues of false swearing (West Virginia Code §61-5-2) and perjury (West Virginia Code §61-5-1) supported by particular facts and documents which demonstrate statutory violations by Ayersman against your Respondents which were condoned by the State

Fire Marshal's Office. The direct superior of Ayersman, George Harms, is a past employee of Harris and FSI. George Harms was complicit in the actions of Ayersman against your Plaintiffs as the superior state employee of Ayersman. The Fire Marshal himself, Tyree, gave false information to the Ethics Commission to protect the unlawful actions of Ayersman demonstrated within the letter from Andrew Herrick dated October 11, 2017. JA 01024-1026; SA 273-275. The letter of David E. Gilbert, Assistant Attorney General, dated March 9, 2018,(SA 63-68) and Rule 45 Objection to a Subpoena issued on behalf of the Plaintiffs below demonstrate the hypocrisy of the Fire Marshal's Office in claiming that the protocols, rules, guidelines, and directive of the State Fire Marshal's Office are somehow "privileged as government secrets" (SA 67) yet Assistant Fire Marshal Ayersman spills his guts on not only every fact he obtains through his investigation, but also every conclusion he makes based on those facts to his private employers, FSI and the Erie Insurance Company. Phillip Jones, the investigator in charge for the Erie Insurance Company was present and participated in each of the inspections undertaken by Ayersman at the Wratford home. JA 01013-1014. At page 66 of the Erie Claims Management System File, (CMSF) (JA 01013) Phillip Jones acknowledged that on February 24, 2017, Ayersman "walked me through the scene of this fire" with conclusions by Ayersman to Jones. Ayersman acknowledged by email dated February 27, 2017, (JA 01017) attached to Plaintiffs' Response to Motion for Summary Judgment of the Fire Marshal below, Exhibit 3, "I briefed Phil on my findings from the other day." referring to the inspection of February 24, 2017. Clearly, Ayersman was subservient to Jones, representative of his Erie master, by allowing Jones to be present in each inspection to oversee the performance of his retained experts, including the employee of FSI, Ayersman, acting in his "official capacity" as an Assistant West Virginia State Fire Marshal. The cited documents from Erie have been reviewed by Ayersman's superiors at the Fire Marshal's Office. Therefore the Fire Marshal's Office had notice of these actions as well as the conflicting employment of Ayersman. Ayersman is guilty as sin of violations of the Ethics Act, and Ayersman's superiors at the West Virginia State Fire

Marshal's Office condoned each and every action by Ayersman in those violations. The reason is clear. George Harms, the direct superior of Ayersman was also an employee of FSI and Harris, and the Fire Marshal, Tyree, condoned and covered up the interactions of Ayersman with his private employer during the official investigation of the Wrotchford fire as demonstrated within the letter of Herrick dated October 11, 2017. JA 01024-1026. Ayersman and the Fire Marshal's Office knowingly abused the legal and constitutional rights of the Respondents.

3. Response to Assignment No. 3: The Fire Marshal's Office is not entitled to qualified immunity based upon claims that the conduct of its employees were beyond the scope of the employee's employment.

Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate "clearly established" statutory or constitutional rights of which a reasonable person would have known. *West Virginia Department of Health and Human Resources v. Payne*, 231 W.Va. 563, 746 S.E. 2d 554 (2013). Once the Plaintiff identifies a clearly established right or law which has been violated by the acts or omissions of the State, its agencies, officials, or employees, or can otherwise identify fraudulent, malicious, or oppressive acts committed by such official or employee the Court must determine whether such acts or omissions were within the scope of the public official or employee's duties, authority and/or employment. *Maston v. Wagner*, 236 W.Va. 488, 781 S.E. 2d 936 (2015). To the extent that such official or employee is determined to have been acting outside the scope of his duties, authority, and/or employment, the state and/or its agencies are immune from vicarious liability, but the public employee or official is not entitled to immunity. *State v. Chase Securities, Inc.*, 188 W.Va. 356, 424 S.E. 2d 591(1992). If the public official or employee was acting within the scope of his duties, authority, and/or employment, the State and/or its agencies may be held liable for such acts or omissions under the doctrine of *Respondeat Superior* along with the public official or employee. *West Virginia Regional Jail and Correctional Facility Authority v. A.B.*, 234 W.Va. 492, 766 S.E. 2d 751 (2014), Syl. Pt. 12; *Maston v. Wagoner*, 236 W. Va. 488, 781 S.E. 2d 936 (2015), Syl. Pt. 4 and 5. The ultimate

determination of whether qualified or statutory immunity bars a civil action is one for the Court to determine. Therefore, unless there is a bona fide dispute as to the foundational or historical facts that underline the immunity determination, the ultimate questions of statutory or qualified authority are ripe for summary disposition. *Hutchison v. City of Huntington*, 198 W.Va. 139, 479 S.E. 2d 649 (1996) Syl. Pt. 1. Because of the extensive foundational and historical facts which are in dispute in this case, the ultimate questions of statutory or qualified immunity are with the jury, not the court, on each of the acts and omissions claimed by the Plaintiffs against the Fire Marshal's Office and Ayersman which violate clearly established statutory laws or constitutional rights of which a reasonable person would have known, or are otherwise fraudulent, malicious, or oppressive. *State v. Chase Securities, Inc.*, supra. The character of Ayersman's employment with the Fire Marshal's Office; the conduct of Ayersman and his superiors during his "official investigation"; the type of conduct authorized by Ayersman's superiors; the nature of his wrongful acts and omissions; the time and place of the commission of each act or omission in the processes of his "official capacity"; and critically, the purpose of the acts, are relevant in determining factually whether Ayersman was exercising his "official" authority and operations of his "state employment", condoned by the Fire Marshal's Office as a state agency, during his dual employment with FSI and Erie. *West Virginia Regional Jail and Correctional Facility v. A.B.*, supra; *Griffith v. George Transfer and Rigging, Inc.*, supra. Ayersman and the Fire Marshal's Office created this situation with full knowledge of conflicts of interest. Both, Ayersman and the Fire Marshal's Office, are responsible to the Wratichfords on each claim made.

Because of his lack of integrity and lack of objective individual thought required of an unbiased state official, Ayersman refused to accept the objective evidence as it presented during his inspections and his "investigation". The "burning smell" is indicative of shorted wiring. JA 00810. The shorted wiring was found under the kitchen floor and under the steps where there was major fire damage. JA 00810. An independent engineering firm, MSES, inspected the fire area and wiring, performed microscopic testing, and proved the root cause origin of the fire

discovered under the kitchen floor and under the steps as electrical. JA 00790-932.¹⁹ There were no appliances, no electrical devices, and no objects discovered by anyone during this entire process on or in the area of the steps which could have caused the fire. JA 00573. Two separate independent laboratory reports came back negative for ignitable liquids in the area of the fire. JA 00669-670) All of the residents of the Wrotchford household were gone all day. There is no objective evidence of the cause of the fire if not the shorted wiring. Two separate independent SEM (Scanning Electron Microscopy) laboratories performed microscopic inspections of the wiring removed from under the steps (JA 00888-932) and proved the historical and current electrical shorts and arcing contradicting the claims of Harris of “no electrical activity” in the area of the fire and contradicting the reports of Ayersman, Harris and Davis.²⁰ All of the Defendants below completely disregarded exculpatory evidence. The Fire Marshal’s Office knowingly allowed this to happen.

With the pressure placed on Ayersman by his private employers, Harris and Erie to justify their mistakes, and with the Fire Marshal’s Office review of his investigation file, Ayersman tried to prove that one of the Wrotchfords started the fire but with NO objective evidence. Ayersman used his state authority to order a polygraph examination; performed an abusive interrogation, used his association with the State Police to threaten, coerce, and pressure Tammy Wrotchford by threatening her employment; and used his official authority to cause the arrest of Tammy Wrotchford using false and misleading allegations procured by Harris, Jones and Davis, all hired by Erie, and relied upon in a Criminal Complaint. JA 00344-355; SA 200-201.²¹ Whatever his subjective beliefs or intent, Ayersman used his official capacity to perform his official duties to advance the purposes of the West Virginia State Fire Marshal’s Office, to destroy the Wrotchfords without regard to his required integrity and

¹⁹ MSES Fire Inspection Report of January 30, 2018, (JA 00790-853) and Supplemental Fire Inspection Report of November 18, 2019. (JA 00854-932)

²⁰ MSES Supplemental Fire Inspection Report of November 18, 2019; Appendix C. (JA 00887-00932)

²¹ Criminal Complaint- Ayersman CD (JA 00344-355; SA 200-201)

obligations as a public State officer, with the complicity of his State superiors who Ayersman claims reviewed his investigation file, and who also lacked independent integrity and the impartiality required of them by WV Code § 6B-1-2, et seq. George Harms was a past employee of FSI and Harris, and the Fire Marshal has actual notice through the official CVs and public media.

The initial findings of arson and incendiary cause of the fire at the home of the Plaintiffs below which occurred on February 20, 2017, by Harris, Ayersman, Jones of Erie, and Davis were discredited by objective testing and engineering review and by the claimed guidelines allegedly followed by Ayersman and the Fire Marshal's Office under NFPA 921. JA 00790-932. Prior to the determination of "arson" and "incendiary cause" of the fire at the Plaintiffs home, there was no objective scientific testing and no objective microscopic analysis of the cause of the fire. The Great Lakes Analytical Lab Report and the West Virginia State Police Lab Report findings of no ignitable liquid identified had not been received. There was no scientific or engineering electrical wiring analysis such as that undertaken by MSES of Fairmont, West Virginia, prior to a finding of arson and incendiary cause. There was no microscopic analysis of the wiring such as that undertaken by IMR Test Labs of Lansing, New York, and by R. J. Lee Group of Monroeville, Pennsylvania, prior to the Defendants below excluding "electrical activity" and an electrical cause of the fire. The reports from the Moorefield Volunteer Fire Department personnel were ignored or discredited. Ayersman, Harris, Jones and Davis refused to reevaluate their initial findings in light of objective evidence and NFPA 921 which prove their theories of arson or "incendiary origin" wrong. The Fire Marshal's Office failed to provide supervision and oversight to prevent this miscarriage of justice. The same thing happened to Jason Lively in McDowell County in 2005 by Robert Bailey, then a West Virginia Assistant Fire Marshal, now the chief deputy for the State Fire Marshal's Office. The Fire Marshal's Office has repeated its mistakes.

The reports of Ayersman, Harris, Davis, and each of the experts of the Defendants below claim that the processes and procedures of their investigations giving rise to their reports were based upon NFPA 921. JA 00480; JA00294. NFPA 921 has never been accepted by the Courts of West Virginia as anything more than guidelines, however, deviations from the standards or procedures of NFPA 921, when claimed to be followed by the investigative authority, must be justified. *Anstey v. Ballard*, 237 W.Va. 411, 787 S.E. 2d 864 (2016).

Ayersman and each of the Defendants below claim that they eliminated the electrical wiring and all other accidental causes of the fire within each of their reports and within the Erie Claims Management System File, specifically at pages 88, 66, 51, and 25. SA 137,139, 144 and 148. Based upon the elimination of electrical cause or other accidental cause, Ayersman and each of the other Defendants below, including imputedly, the Fire Marshal's Office, ruled the fire intentionally set, incendiary in origin, or "arson" without any objective evidence and in direct conflict with scientific analysis. Ayersman and his henchmen did not follow their own "bible", NFPA 921. JA 00769-779. The Fire Marshal's Office allowed this to happen with complete lack of oversight.

NFPA 921, 19.6.5, prohibits determination of the origin source of a fire based upon elimination of other suspected ignition sources as "negative corpus" inconsistent with required scientific methods and inappropriate under that guideline. Specifically, NFPA 921, 19.6.5.1 mandates that where all other hypothesized causes have been eliminated, and where there are no other objective facts or supporting evidence to conclude a cause, a finding of "undetermined" should be made. JA 00779.

NFPA 921, 14.4.3, mandates that all interviews, regardless of their type, should be documented by tape recording or by taking written notes during the interview, with a preference of visual taping and written signed statements. JA 00776.

NFPA 921, 12.3.5, mandates procedures to prevent spoliation of evidence and notice to all interested parties of any movement, change, or destruction of evidence, and further

mandates responsibility for preservation of evidence. JA 00772. 12.3.5.5 is specific as to documentation required prior to alteration of the fire scene and required notice to all interested parties prior to any destructive disassembly of any potential ignition sources. JA00773.

NFPA 921, 9.11.9, et seq., identifies overdriven or misdriven staples as a known and recognized source of faulting and electrical cause of heat created by short circuiting of electrical conductors causing fire. JA 00769-770.

NFPA 921, 17.5.6, et seq., mandates procedures for verification of all electrical sources of power and collection of evidence. 17.5.6.1 is specific in mandating methods and procedures of collecting wiring and electrical components as evidence requiring thorough documented, photographed, and diagramed processes before and during such collection. JA 00777-778.

In the case *sub judice*, evidence was collected, changed, removed and lost with no notice to the Plaintiffs below. The interrogation by Ayersman was not recorded as required, and included only a small portion at the end of a coercive, abusive, and accusatory interrogation without any recording which would have identified and shown the civil rights violations, threats, and oppressive conduct of Ayersman during that interrogation toward the Plaintiff, Tammy Wratchford.²² JA 00579-580. The misdriven staple identified by MSES and shown in photographs taken by Harris and Ayersman was lost or discarded by Ayersman, Davis, Harris, and Jones, on March 3, 2017. JA 00802; 00872. There was no diagram of the wiring, documentation was incomplete, and photographs of the evidence prior to and during removal is incomplete. JA 00866-874. The objective evidence, scientific testing, and analysis undertaken and directed by experts of Plaintiffs indisputedly requires a finding of electrical activity at the source of and at the origin of the fire. *Id.* Finally, based upon a complete lack of objective or scientific evidence of incendiary origin, cause, source or ignition of the fire at the Wratchford home, there can be no finding of arson or incendiary cause using the methodology and

²² Kevin Pansch acknowledges that the post polygraph interrogation was accusatory but that Ayersman was not observed going "out of line" to the point of "choking" Mrs. Wratchford. Pasch deposition of September 25, 2019, pages 79-80, JA 579-580.

procedures asserted by Ayersman and the other Defendants below with NFPA 921. JA 00779. If we accept for a moment that Mrs. Wrotchford is innocent, mother of 4, medical first responder, with no history of police or criminal involvement, her treatment by Mr. Ayersman and his cronies must have been truly terrifying and demoralizing. Ayersman pushed her to the point of attempting suicide. She spent five days in Winchester Medical Center with follow-up by Kelly Riggleman, P.A. The Fire Marshal's Office allowed and encouraged the abusive conduct by Ayersman as common practice and procedure. The conduct of Ayersman was intentionally calculated to cause emotional and mental distress, condoned by the Fire Marshal's Office.

VI. CONCLUSION

All of this brings us back to the conflicts of interest of Ayersman and the failure of the Fire Marshal's Office to oversee its employees to avoid conflicting loyalty, conflicting duties, and abuse by Ayersman as a public officer and public employee. This Court has held in *Graf v. Frame*, 177, W.Va. 282, 352 S.E. 2d 31 (1986) as follows:

... This Court has stated the proposition in this manner: "A public officer is in a position of a fiduciary and he is under an obligation to serve the public with highest fidelity and undivided loyalty.... The public officer is bound to act primarily for the benefit of the public..." *State ex rel. Preissler v. Dostert*, 163 W.Va. 719, 730, 260 S.E. 2d 279, 286 (1979). Similarly, "the duty of a public officer to fulfil the obligations of his office should take precedence over all other matters." *Kemp v. Boyd*, 166 W.Va. 471, 477, 275 S.E. 2d 297, 302 (1981). A person's status as a public officer forbids him from placing himself in a situation where his private interest conflicts with his public duty. His good faith is of no moment because it is the policy of the law to keep him so far from temptation as to ensure the exercise of unselfish public interests. This policy is not limited to a single category of public officer but applies to all public officials.

This is why there are criminal investigation protocols, official training, oversight, and statutory law prohibiting the actions of Ayersman to maintain private employment with Harris, FSI and Erie while investigating the Wrotchford fire of February 20, 2017, in Moorefield, West Virginia; when the home is insured by a homeowner's policy through the Erie Insurance Company; when the fire is reported to the Fire Marshal's Office by Harris, who owns FSI and is the private employer of Ayersman; and when Harris and FSI have been retained by the Erie Insurance

Company to investigate the fire. The Fire Marshal's Office did nothing to protect the Plaintiffs and others similarly situated in West Virginia from the biased and prejudiced investigation of Ayersman and the undue influence on Ayersman from Harris, Jones and Davis, all employed by the Erie Insurance Company, condoned by George Harms, Kenneth Tyree, Jr., and Paul Alloway.

This case is about a complete lack of integrity and lack of impartiality. Ayersman was like a child without adult supervision defiling an innocent animal. When Ayersman could not get his desired result, he was willing to go to any extreme to accomplish his purpose using the unlimited power of his State employment. The Fire Marshal's Office allowed Ayersman and his associate thugs to violate laws and abuse civil rights. Ayersman was an out of control cop with unlimited power given by State authority. The Fire Marshal's Office must be brought to terms and reorganized to prevent this type of abuse. The Petitioners are hiding and concealing the abuses by the West Virginia State Fire Marshal's Office with unnecessary protective orders. The violations by Ayersman and the State Fire Marshal's Office of statutory law and constitutional protections, policies, procedures, and required supervision must be made public and must be reigned in to protect the public, including the Respondents.

WHEREFORE, the relief requested by the Petitioner should be denied, and the relief requested by Respondents in their Cross-Petition should be granted.

RESPONDENTS' CROSS PETITION

I. ASSIGNMENTS OF ERROR

1. The Circuit Court was clearly wrong at paragraph 23 of the Order of February 9, 2021. There is no legal support and no legal precedent that the Ethic's Act cannot defeat the qualified immunity defense; or that the statutory and constitutional rights violated must be a right that specifically applies to the Plaintiffs; and the Plaintiffs clearly **have** articulated a number of statutory and constitutional issues violated by Ayersman, clearly known to him.

2. The Circuit Court erred in dismissing Plaintiffs' claims of tortious interference against Ayersman at paragraphs 63-67 of the Order of February 9, 2021. The actions of Ayersman complained of by the Respondents within this response and within Plaintiffs' Amended Complaint below and Response to Motion for Summary Judgment of Ayersman amount to abuse of process, violations of constitutional Due Process, and violations of constitutional property rights under Article 3, Section 10, of the Constitution of the State of West Virginia. Ayersman used his public employment to falsely claim criminal and felony offenses against the Respondent, Tammy Wratchford; Ayersman made false claims of fraud in the vehicle renewal by the Respondent, Tammy Wratchford; and Ayersman used his official public employment to contact the West Virginia State Police with the intent to coerce a prospective plea with false narratives and threats of arrest to the West Virginia Division of Motor Vehicles (hereinafter "WVDMV") within the scope of his official employment and authority to purposefully injure and damage the Respondents and to coerce a plea by oppressive and abusive conduct, including having Tammy Wratchford terminated from her state employment with the WVDMV.

II. ARGUMENT

1. There Is No Legal Precedent and No Legal Support for the Conclusions of the Circuit Court at Paragraph 23 of the Order of February 9, 2021 "...Violations of the Ethics Act Cannot Defeat the Qualified Immunity Defense, Because the Statutory or Constitutional Right That Was Violated Must Be A Right That Specifically Applies to the Plaintiffs...."

Respondents repeat the argument related to paragraph 23 made in this Brief under this same heading, paragraphs a, b, and c, pages 25-29.

2. The Circuit Court Erred in Dismissing Plaintiffs' Claims for Tortious Interference in the Employment of the Respondent, Tammy Wratchford, Upon the Abuse of Process and Violations of Constitutional Rights of the Respondents by Ayersman

In the event the Court had not dismissed the tortious interference claim of the Plaintiffs below, the tortious inference claim would be included within the Notice and Petition for Appeal filed on behalf of Ayersman and the Fire Marshal's Office with this Court for qualified immunity. The Circuit Court erroneously found in paragraph 64 of the Order granting summary judgment to

Virginia Division of Motor Vehicles even though there was no evidence of any felony; there was no evidence that she had filled out any form falsely or fraudulently to obtain her vehicle registration; and the clear purpose of the "DMV issue" was to coerce a confession in the arson case with threats of criminal prosecution in the "DMV case" to pressure the Respondent, Tammy Wratchford, by having her employment terminated to further break her down. SA 476-477; JA 1203. The issue is not whether she paid her taxes or not. The issue is not whether she obtained her vehicle renewal without paying the taxes. The issue is the abuse of process and the pressure that Ayersman placed on Tammy Wratchford to force a confession and to force her to enter a plea to arson. Steven Dawson discussed these violations of rights in his report. JA 681-683, 687, 690-691. Ayersman and Erie did not count on Mrs. Wratchford being able to mount a serious defense.

III. CONCLUSION

WHEREFORE, the Court erred in the entirety of paragraph 23 of the Order of February 9, 2021. The Court also erred in dismissing Plaintiffs' claims for tortious interference against Ayersman stated within paragraphs 63-67 of the Order of February 9, 2021. Respondents request this Court to reverse and overrule the Circuit Court on these issues and allow these issues to go to the jury.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

APPEAL NO.: 21-0181

**WEST VIRGINIA STATE FIRE MARSHAL'S OFFICE,
*Defendants Below, Petitioners,***

v.

**TAMMY S. WRATCHFORD and MICHAEL W. WRATCHFORD,
*Plaintiffs Below, Respondents,***

**APPEAL FROM THE CIRCUIT COURT OF HARDY COUNTY, WEST VIRGINIA
CIVIL ACTION NO: CC-16-2018-3
JUDGE H. CHARLES CARL, III**

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July, 2021, I served the foregoing "*Brief of Respondents in Opposition to the West Virginia State Fire Marshal*" on the following counsel of record via email and regular U.S. Mail to the following:

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