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

**State of West Virginia ex rel.  
State of West Virginia,**

**Petitioner,**

**FILE COPY**

**vs.**

**// NO. 21-0401**

**The Honorable David W. Hummel, Jr.,  
Judge of the Circuit Court of Marshall  
County, and Michael Daniel Bowman,**

**Respondents.**

**The Honorable David W. Hummel, Jr., Judge of the Circuit Court  
of Marshall County's Summary Response to  
State of West Virginia's Emergency Petition for Writ of Prohibition**

**COMES NOW** The Honorable David W. Hummel, Jr., Judge of the Circuit Court of Marshall County, a nominal respondent herein, and files his Summary Response to Petitioner's *Writ of Prohibition*.

**Summary Position in Opposition to Writ Sought Herein**

The relief sought by Petitioner expressly calls for The Supreme Court of Appeals to immediately issue a writ of prohibition. It is this Respondent's position that such relief if not available and therefore should be summarily denied. Respectfully, this Respondent suggests that The Supreme Court of Appeals either decline to issue a rule to show cause or in the alternative issue a rule to show cause and allow the matter to proceed to a determination on the merits or lack thereof.

### **Introduction**

This Summary Response is filed on behalf of Respondent, The Honorable David W. Hummel, Jr., Judge of the Circuit Court of Marshall County, pursuant to Rule 16(h), W. Va. R. App. P. and this Court's Scheduling Order of June 15, 2021. Although a nominal party, the Respondent believes the gravity of the interests at issue cannot be overstated. The prosecutorial misconduct exhibited below is a direct attack on the integrity of the judicial and criminal justice system. If such prosecutorial misconduct is permitted to stand, each and every citizen's protection against hasty, malicious and oppressive persecution will be gravely in peril.

### **Statement of the Case**

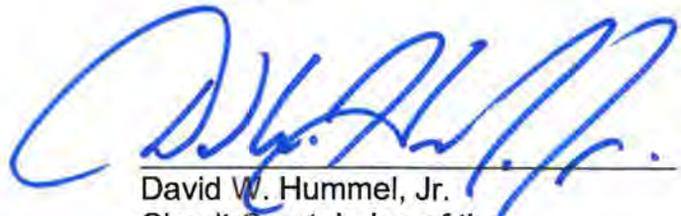
Respondent believes that the Order entered in the Circuit Court of Marshall County, West Virginia, which is the subject of Petitioner's *Writ of Prohibition*, fairly and accurately represents the facts and the law upon which The Supreme Court of Appeals may confidently rely.

### **Argument**

Plain and simple, the prosecuting attorney's misconduct and fundamental failings, as set forth throughout the Order at issue, rendered the Indictment and all charges thereunder void ab initio and nothing thereafter "cured" or otherwise rendered the Indictment lawful. As with the fruit of the poisonous tree, in order to maintain the integrity of the judicial and criminal justice system any and all effects and consequences which flowed from the void Indictment are likewise void and justice requires that same be remedied.

**WHEREFORE**, the relief sought by Petitioner herein should be summarily denied. Respectfully, this Respondent suggests that The Supreme Court of Appeals either decline to issue a rule to show cause or in the alternative issue a rule to show cause and allow the matter to proceed to a determination on the merits or lack thereof.

Respectfully submitted this Wednesday,  
June 30, 2021



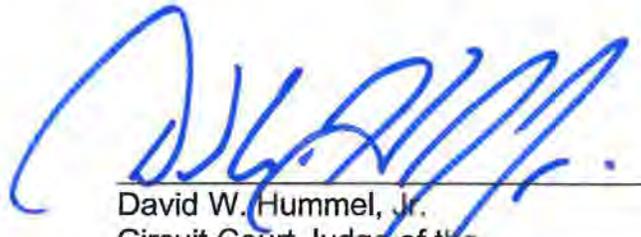
David W. Hummel, Jr.  
Circuit Court Judge of the  
Second Judicial Circuit  
600- 7<sup>th</sup> Street  
Moundsville, WV 26041  
(304) 845-3505

**CERTIFICATE OF SERVICE**

I, David W. Hummel, Jr., Judge of the Circuit Court of Marshall County, do hereby certify that the foregoing, **The Honorable David W. Hummel, Jr., Judge of the Circuit Court of Marshall County's Summary Response to State of West Virginia's Emergency Petition for Writ of Prohibition** was served upon the parties hereto by mailing a true and exact copy of the same this Wednesday, June 30, 2021, as follows:

Karen C. Villanueva-Matkovich  
Deputy Attorney General  
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