IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
No. 22-0185

JAYSON NICEWARNER, et al.,

Plaintiffs Below, Petitioner,

v.

CITY OF MORGANTOWN, A Municipal Corporation,

Defendant Below, Respondent.

BRIEF ON BEHALF OF *AMICUS CURIAE*, THE WEST VIRGINIA MUNICIPAL LEAGUE

Michael W. Taylor (WV Bar #11715)
Adam K. Strider (WV Bar #12483)
Bailey & Wyant, pllc
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
T: 304.345.4222
F: 304.343.3133
mtaylor@baileywyant.com
astrider@baileywyant.com
Counsel for West Virginia Municipal League

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

BRIEF ON BEHALF OF *AMICUS CURIAE*, THE WEST VIRGINIA MUNICIPAL LEAGUE

Through undersigned counsel[1], the West Virginia Municipal League hereby submits the following *Amicus Curiae* brief, in support of final clarification by this Court of the issue subject to this appeal, and in support of affirming the Order of the Circuit Court of Monongalia County granting summary judgment to Respondent City of Morgantown herein.

I. IDENTITY AND INTEREST OF AMICUS CURIAE

The West Virginia Municipal League ("the Municipal League") is a statewide, non-profit, nonpartisan association of cities, towns and villages established in 1968 to assist local governments in West Virginia and advance the interests of the citizens who reside within. The League achieves this directive through legislative advocacy, research, education and other services for municipal elected officials. The membership includes all 230 municipalities in West Virginia. By cooperating through the League, cities benefit from research, programs, and a united legislative voice that would be impossible to maintain individually.

The League takes particular interest in the order entered herein by the Hon. Philip J. Gaujot on February 9, 2022, granting summary judgment to the City of Morgantown, because the Municipal League's constituent municipalities have a direct interest in final and definitive guidance from this Court as to how holiday pay for firefighters should be handled in order to avoid future litigation. The League previously weighed in on this issue during the *Pullano v. Bluefield*, 176 W. Va. 198, 342 S.E.2d 164 (1986) litigation and advanced similar positions as advanced here. Further, requiring municipalities to pay firefighters for holidays in the manner urged by the Petitioner may have a damaging effect on public funds and the ability of municipalities to provide

[1] Pursuant to Rule 30(e)(5) *West Virginia Rules of Appellate Procedure*, counsel for the West Virginia Municipal League were the sole authors of this amicus brief and there were no other contributors in any fashion besides the West Virginia Municipal League.

consistent and quality public services to their residents. Thus, the purpose of this *Amicus Curiae* brief is to address the concerns and issues the League has with the appeal of Judge Gaujot's Order so that this Court may properly weigh the issues and interests involved and come to the correct and equitable conclusion.

II. ARGUMENT

A. The Municipal League urges this Court to issue an opinion which finally and definitively clarifies the manner in which municipalities must calculate firefighter holiday pay, as this important issue has remained contested since at least the 1980's and spurred continual damaging litigation.

This is not the first time this Court has addressed the questions raised by the Petitioner's Brief. The statute at issue, W. Va. Code § 8-15-10a, was first enacted by the Legislature in 1976, and at the time of its enactment stated, in relevant part, as follows:

> "From the effective date of this section [June 6, 1976], if any member of a paid fire department is required to work during a legal holiday as is specified in section one [s 2-2-1], article two, chapter two of this Code, or if a legal holiday falls on the member's regular scheduled day off, he shall be allowed equal time off at such time as may be approved by the chief executive office of the department under whom he serves, or in the alternative, shall be paid at a rate not less than one and one-half times his regular rate of pay."

W. Va. Code 8-15-10a [1976].

In response to certain questions received from the public following the enactment of this statute, the West Virginia Attorney General issued 57 W. Va. Op. Atty. Gen. 171 (W.V.A.G.) (attached as Exhibit 1) during the succeeding year. Questions 1 and 5 to which that Opinion responded bear directly on the matters at issue in this case. Those questions inquired as follows:

> 1. Does new Code 8-15-10a contemplate only an 8-hour workday so that a fireman who normally works a 24-hour shift from 7:00 a.m. to 7:00 a.m. shall be allowed time off or eight hours of time and a half (equivalent of 12 hours) of pay when his regularly scheduled day off occurs on a holiday?
>
> [...]

> 5. How many hours is a member of a fire or police department entitled to if he is given equal time off?

See *id.* at *2. In response, the Attorney General opined in summary as follows, appearing to resolve these questions:

> We are, therefore, of the opinion that when a regularly scheduled duty shift established according to the provisions of Code 8-15-10, or any part of such shift, falls on or within the 24-hour period of a legal holiday or on or within any day proclaimed or to be taken as a legal holiday by virtue of Code 2-2-1, each fireman working that shift or each off-duty fireman, on whose regularly scheduled day off the holiday has occurred, is entitled to be credited, as time off, with the number of off-duty hours equivalent to the number of duty hours worked by him (or which would have been worked by him in the case of an off-duty fireman) which fall within the 24-hour holiday period or, in lieu thereof, to receive pay at the rate of not less than one and one-half times his regular rate of pay for each such duty hour embraced within the 24-hour holiday period. As an example, if the legal holiday falls on a Sunday, the following Monday will be taken as the legal holiday (Code 2-2-1) and firemen working on a regularly scheduled duty shift commencing at 6:00 p.m. on Monday and ending at 6:00 p.m. on Tuesday will be entitled to 6 hours of credited time off, or, in lieu thereof, to not less than one and one-half their regular rate of pay for 6 hours, whereas those firemen whose shift had ended at 6:00 p.m. on that Monday (the day taken as the holiday) would be credited with 18 hours of time off, or, in lieu thereof, to not less than one and one-half times their regular rate of pay for 18 hours.

Id. at *3.[2] Thus, as early as 45 years prior to the Court's current consideration of this question, the Attorney General had opined that the hours to be accounted for in holiday compensation for municipal firefighters are the portion of the firefighter's shift which falls within the 24-hour window of the calendar day of a legal holiday.

However, the Attorney General's opinion was not the final word on this question. In the case of *Pullano v. Bluefield*, an identical question was raised before the Court. *See Pullano v. Bluefield*, 176 W. Va. 198, 342 S.E.2d 164 (1986). In this case, the Court was asked whether the city of Bluefield calculated the city's firefighter overtime pay correctly. *Id.* at 167. The city

[2] While this excerpt is in response to Question 1, the response to Question 5 references the response to Question 1, as it was also answered by that response.

calculated holiday pay pursuant to W. Va. Code § 8-15-10a from the 16-hour period a firefighter could work on any given day. *Id.* at 172. In other words, if the firefighters started their shift at 8:00 a.m., as do the firefighters in the present situation, then they would only be able to work a maximum of 16 hours on any given day. The Court found that this method of payment for firefighters pursuant to W. Va. Code § 8-15-10a was acceptable. *Id.*

In spite of compounding consistent opinions from this Court and the Attorney General on the manner in which this statute is to be interpreted when determining the number of hours to be considered in allocating holiday compensation to municipal firefighters, litigation on the issue has nonetheless continued. As highlighted in the Petitioner's Brief, repeated suits have been filed and settlements reached on an argument that appeared identical to that advanced by the plaintiffs in *Pullano*. The position taken by the Municipal League herein as *amicus curiae* is first and foremost on the side of finality. While the Municipal League is of the mind that *Pullano* should be considered to have finally decided the issue and should thus be adhered to as precedent, its greatest interest is in this Court issuing an order that settles this question with the finality that *Pullano* failed to achieve, and which municipalities may rely on going forward with the confidence that if they establish a holiday compensation scheme in accordance with that order, it will be legal and will not subject them to prolonged litigation.[3]

B. The Circuit Court correctly determined that holiday compensation, which may be provided in the form of pay premiums or compensatory time off under W. Va. Code § 8-15-10a, is not subject to the Wage Payment Collection Act, W. Va. Code

[3] As noted at length in the Appellant's Brief, numerous settlements have been reached between professional firefighters and their employing municipalities in the years between the enactment of the relevant statute and the instant proceeding. Those municipalities, their employees, and their constituents have a vested reliance interest in the finality and stability which they entered into these settlements to achieve. In addition, municipalities may have offered other agreements for a more advantageous holiday pay benefit. Therefore, the Municipal League respectfully requests that any Opinion issued by this Court permits pre-existing settlement arrangements or other arrangements to stand undisturbed, both retrospectively and prospectively.

§ 21-5-1, *et seq.*, under longstanding binding precedent. Such a conclusion is also in the public interest.

In the Order now on appeal, the Circuit Court reaffirmed the long-established precedent that municipalities may compensate firefighters for holidays with either matching compensatory time off, or a premium of one-and-one-half times their regular rate of pay. The language of the relevant statute is unmistakably clear that municipalities have this option, and that either choice is legally correct. This statute states as follows:

> [I]f any member of a paid fire department is required to work during a legal holiday as is specified in subsection (a), section one [§ 2-2-1], article two, chapter two of this code, or if a legal holiday falls on the member's regular scheduled day off, *he or she shall be allowed equal time off at such time as may be approved by the chief executive officer of the department under whom he or she serves* ***or, in the alternative****, shall be paid at a rate not less than one and one-half times his or her regular rate of pay[.]*

W. Va. Code 8-15-10a (Emphasis added). Both the Attorney General's 1977 Opinion and this Court's preceding binding precedent are unmistakable in their expression that whether to pay the premium or compensatory time off is within the sole discretion of the individual municipality. *See Pullano v. Bluefield*, 176 W. Va. 198, 205, 342 S.E.2d 164, 171 (1986); see also Exhibit 1, Attorney General's Opinion at *6.

This provision gives municipalities the option to tailor their holiday compensation scheme in a way that best accords with their individual fiscal and personnel needs, making them more able to perform the function for which they exist: to provide services to their constituents. One city may decide that the lesser cash wage liability afforded by providing compensatory time off is more desirable in order to pay for more robust municipal services. Another may decide that the predictability of paying the wage premium and thus lessening the potential for an unexpected expense in the event that a firefighter with a massive PTO balance resigns is more desirable. What

is important is that either be held proper, and that which to be employed is within the sole discretion of individual municipalities.

The Appellant does not appear to contest the propriety of Morgantown electing to compensate their firefighters for holidays in the form of compensatory time off in lieu of a wage premium. However, this was nonetheless an express holding by the Circuit Court below, and to the extent it is contested, the importance of this issue compels the Municipal League to weigh in in its favor.

This holding, that electing to compensate their firefighters for holidays in the form of compensatory time off in lieu of a wage premium is critical to understanding the Wage Payment and Collection Act ("WPCA") issue. The Circuit Court found that the Appellant's "claims are not subject to the WPCA[.]" *See* Order, ¶ 49. "[T]he WPCA itself 'does not create a right to compensation. Rather, it provides a statutory remedy when the employer breaches a contractual obligation to pay earned wages. The contract between the parties governs in determining whether specific wages are earned.'" *Adkins v. Am. Mine Research, Inc.*, 234 W. Va. 238, 332, 765 S.E.2d 217, 221 (2014) (quoting *Weldon v. Kraft, Inc.*, 896 F.2d 793, 801 (3d Cir. 1990)).

There are three reasons why Appellant's claims are not subject to the WPCA. First, the statutory holiday compensation scheme is not a "wage" under the WPCA. Second, the remedy for violations of the statutory holiday compensation is governed by *Pullano*, not the WPCA. Finally, public policy dictates that the remedial scheme of the WPCA should not be applicable to municipal firefighters alleging violations of the statutory holiday compensation scheme.

Looking first at whether the statutory holiday compensation scheme is wage, "wage" is defined under the WPCA as "compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation." W.Va.

Code § 21-5-1(c). Additionally, the term "wage" also includes "then accrued fringe benefits capable of calculation and payable directly to an employee: Provided, that nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article." *Id.*

Here, as discussed above, the statutory holiday compensation scheme is not "compensation for labor or services rendered," because it does not require Morgantown or any municipality to pay firefighters or the Appellant in this situation holiday pay. *See* Order, ¶ 45. As a result, Appellant does not seriously contend that the statutory holiday compensation scheme is a "wage" as it is traditionally understood or defined by the WPCA, but rather it is a "fringe benefit" that constitutes a "wage" under the WPCA. *See* W.Va. Code § 21-5-1(c). This argument equally fails.

In order for a "fringe benefit" to constitute a "wage" under the WPCA, the fringe benefit must have then accrued, is capable of calculation and payable directly to an employee. W.Va. Code § 21-5-1(c). These elements are determined by the terms of employment and not by the provisions of the WPCA. Syl. Pt. 5, in part, *Meadows v. Wal-Mart Stores, Inc.*, 207 W.Va. 203, 530 S.E.2d 676 (1999). In other words, the determination as to whether fringe benefits are payable is left up to the terms of the individual's employment.

Here, Appellant has not alleged any agreement, contract, document, and/or other arrangement, express or implied, that entitles them to their claim for holiday pay. *See* Order ¶ 44. Rather, the sole basis for the claim for holiday pay is the statutory holiday compensation scheme. In looking at whether a statute may confer a "fringe benefit" that constitutes a "wage" under the WPCA, the Supreme Court of Appeals of West Virginia previously found that "back pay damages paid pursuant to the [WARN Act] do not constitute wages" under the WPCA. *See Conrad v. Charles Town Races, Inc.*, 206 W. Va. 45, 50, 521 S.E.2d 537, 542 (1998). Specifically, in

Conrad, this Court found that "WARN Act payments are not compensation for services rendered but are damages designed to compensate employees for an employer's failure to provide the required sixty days' notice to closure. The WPCA, on the other hand, only applies to "wages," that is, "compensation for labor or services rendered." *Conrad*, 206 W.Va. at 50, 521 S.E.2d at 542. Ultimately, because the WARN Act statutory damage provision was not intended as a means of replacing lost wages, but rather to provide an incentive for employers to satisfy their obligations under the WARN Act, the WPCA does not apply to violations of the WARN Act. *Id.* at 49, 51.

Based upon the foregoing, the Circuit Court correctly found that the statutory holiday compensation scheme does not constitute a "wage" as defined by the WPCA.

In addition to the statutory analysis, Appellant's claims do not fall within the WPCA because the remedy for violations of the statutory holiday compensation scheme has been set forth in *Pullano*. The WPCA is a remedial statute; it does not create a right to compensation. *See Adkins v. Am. Mine Rsch., Inc.*, 234 W.Va. 328, 332, 765 S.E.2d 217, 221 (2014). However, the remedy for violations of the statutory holiday compensation scheme was announced in *Pullano*. Specifically, the remedy for a firefighter who was provided with insufficient time off is for the municipality to give the firefighter more time off. *See Pullano*, 176 W. Va. at 205, 342 S.E.2d at 171. As a result, *Pullano* creates the remedy for violations of the statutory holiday compensation scheme, not the WPCA.

Finally, permitting the statutory violation to be remedied under the WPCA, as opposed to the remedy set forth in *Pullano* creates bad public policy. Specifically, in *Pullano*, the Court **did not** say a firefighter would be allowed overtime pay if they did not receive sufficient time off. *Id.* Here, if this Court would accept Appellant's position that the WPCA applies, the remedy would be monetary in nature, as opposed to the granting of more time off, as outlined in *Pullano*. This

subverts the statutory scheme, a prior holding of the Court, and imposes a monetary obligation upon a municipality that it never agreed to or anticipated in its budgetary considerations.

As discussed above, the statutory holiday compensation scheme gives municipalities the option to tailor their holiday compensation scheme in a way that best accords with their individual fiscal and personnel needs, making them more able to provide services to their constituents. As it relates to fiscal planning for municipalities, this Court explained:

> Municipal financing is predicated on a pay-as-you-go principle. [citations omitted] The governing body must prepare a budget 'on a cash basis.' [statutory citation omitted] This entails a listing of proposed expenditures. By understating its expenses, the Board of Education was innocently reducing the amount of funds to be raised by taxation. This situation was aggravated because the underestimating occurred for ten years. To rectify the error would necessitate including in the current budget the full aggregate amount claimed. This could have the dual effect of causing some other service to be diminished . . . . and of imposing the complete tax burden on the existing taxpayer[s] for costs that should have been distributed over a ten-year period.
>
> . . . . Under these peculiar circumstances, wherein public entities are involved, petitioner and others situated like her should not be granted retroactive monetary relief.

Maynard v. Bd. of Educ., 178 W. Va. 53, 62, 357 S.E.2d 246, 255-56 (1987). Moreover, "[g]enerally, courts have been reluctant to award retroactive monetary relief to public employees who have filed actions after a lengthy delay, where to afford such relief would cause substantial prejudice to the public's fiscal affairs." *Id.* at 61, 255.

Here, the City of Morgantown, like many municipalities, crafted a budget in accordance with the statutory holiday compensation scheme wherein the direct monetary implication would be less as time off was granted in lieu of pay. To permit potential recovery under the WPCA would violate the public policy announced in *Maynard* and otherwise create fiscal insecurity for the municipalities. As a result, this Court should hold that claims brought regarding the statutory holiday compensation scheme are not subject to the WPCA.

C. The Circuit Court correctly concluded that firefighters are entitled to premium pay or compensatory time off for hours actually worked on a legal holiday, or which would have been worked in the case of a firefighter whose day off falls on a legal holiday, under the existing precedent of this Court.

Whether a firefighter is entitled to compensatory time off for an entire 24-hour shift which partially falls during the calendar day of a legal holiday, or for only those hours of his or her shift which fall during a legal holiday, is a question which has come before this Court before, and appears to have been definitively answered. However, litigation on this question has apparently continued in spite of that, as demonstrated by the settlements discussed in the Appellant's brief. To the extent that this remains an unresolved question, the Municipal League urges the Court to definitively resolve it herein, so that municipalities may hereafter confidently structure their holiday compensation schemes with a clear view of what is and is not statutorily compliant. While any definitive and final resolution of this question would be welcome, the Municipal League is of the opinion that the Circuit Court correctly resolved it, and that the Appellant has not raised a sufficient differentiation of the present case from that in *Pullano*.

In *Pullano*, this Court held a holiday pay structure which provided holiday compensation to firefighters for each hour they worked within the calendar day of a legal holiday to be statutorily compliant. *See Pullano*, 342 S.E.2d at 171. Bluefield provided holiday compensation for the actual hours the firefighters spent on-shift during the legal holiday and provided 16 hours of holiday compensation to firefighters whose regular day off fell on that holiday, as it represents the maximum number of hours which could fall in any single calendar day under their scheduling structure. *Id.* at 172.

This ruling followed a 1977 Attorney General's Opinion, referenced *supra*, which came to the identical conclusion. As addressed above, the Attorney General's Opinion stated as follows:

> We are, therefore, of the opinion that when a regularly scheduled duty shift established according to the provisions of Code 8-15-10, or any part of such shift, falls on or within the 24-hour period of a legal holiday or on or within any day proclaimed or to be taken as a legal holiday by virtue of Code 2-2-1, each fireman working that shift or each off-duty fireman, on whose regularly scheduled day off the holiday has occurred, is entitled to be credited, as time off, with the number of off-duty hours equivalent to the number of duty hours worked by him (or which would have been worked by him in the case of an off-duty fireman) which fall within the 24-hour holiday period or, in lieu thereof, to receive pay at the rate of not less than one and one-half times his regular rate of pay for each such duty hour embraced within the 24-hour holiday period.

Exhibit 1, Attorney General Opinion at *3. The Opinion goes on to provide a salient example directly allegorical to the facts of this matter:

> As an example, if the legal holiday falls on a Sunday, the following Monday will be taken as the legal holiday (Code 2-2-1) and firemen working on a regularly scheduled duty shift commencing at 6:00 p.m. on Monday and ending at 6:00 p.m. on Tuesday will be entitled to 6 hours of credited time off, or, in lieu thereof, to not less than one and one-half their regular rate of pay for 6 hours, whereas those firemen whose shift had ended at 6:00 p.m. on that Monday (the day taken as the holiday) would be credited with 18 hours of time off, or, in lieu thereof, to not less than one and one-half times their regular rate of pay for 18 hours.

Id. This example provided by the Attorney General as the correct way to apply the holiday compensation statute is step-by-step exactly the same as the one which the Circuit Court held to be statutorily compliant below, except that the Morgantown firefighters herein work 8am to 8am shifts, rather than 6pm to 6pm.

However, the Appellant has attempted to differentiate the Morgantown compensation structure from the Bluefield compensation structure in *Pullano*, and the example structure in the Attorney General Opinion, in one particular way. The Plaintiff contends that because Morgantown treats a single 24-hour shift which stretches over two calendar days as a "single day" for other payroll purposes, that they are bound to treat it as a single undivided 24 hour period of holiday compensation as well. This approach does not appear to comport with the statute for two primary reasons.

First, the statute expressly states that the days upon which holiday compensation must be paid are those specified as legal holidays under W. Va. Code 2-2-1(a). These holidays are expressed in terms of a single, identifiable calendar day. For instance, Martin Luther King, Jr.'s Birthday is a legal holiday specified to be the third Monday in January. See W. Va. Code 2-2-1(a)(2). This statute defines a legal holiday as a particular calendar day, not a shift beginning or ending on that calendar day. Adopting the Appellant's position would be contrary to that statute, because it would require that hours occurring on days which are not legal holidays be accounted for in holiday compensation.

Second, because the Morgantown firefighters' shifts straddle two calendar days, providing 24 hours of holiday compensation to any firefighter who works a shift which partially occurs on a legal holiday creates not a 24-hour period of holiday pay, but a 48-hour period. This is contrary to the language employed by the Attorney General's Opinion, which states that holiday compensation is required for hours worked within the "24-hour holiday period." Exhibit 1, Attorney General Opinion, *3. Take the example of Martin Luther King, Jr.'s Birthday used in the preceding paragraph. Adopting the Appellant's position would require that the firefighters who worked 8am Sunday until 8am Monday receive holiday pay for that entire period, as well as those who worked from 8am Monday to 8am Tuesday. This is not a "24-hour holiday period," as contemplated by the Attorney General's interpretation of the statute, because 48 different hours are being treated as holiday hours for a single purportedly 24-hour holiday.

The Appellant goes on to advance an apparent public policy argument that reaffirming *Pullano* as it applies to this case would be unjust, because municipal firefighters theoretically could choose for their 24 hour shifts to stretch from midnight-to-midnight, which would entitle them to 24 hours of holiday pay for shifts beginning and ending on a legal holiday under the *Pullano*

formulation.[4] They argue that it would be unjust because it would require the firefighters to choose a more burdensome shift structure in order to maximize their holiday compensation. On the contrary, this is patently just.

The self-evident public policy behind holiday compensation is that the State views it as a hardship to be away from one's family at work on holidays. Thus, the State observes that additional compensation should be provided to those covered employees who endure that hardship. The statute does not treat the night before or the morning after a holiday with the same reverence. It is true that a 24-hour shift which occurs entirely on the calendar day of a legal holiday would be more burdensome, because a midnight start time comports less with the traditional sleep habits of a modern human. However, the suggestion that firefighters should not have to endure a more burdensome shift in order to receive maximal holiday compensation is counterintuitive: greater compensation for enduring a greater hardship fits precisely with the public policy behind holiday compensation.

Accordingly, there does not appear to be sufficient differentiation between the present case and the Attorney General's Opinion and *Pullano* discussed herein in order for the result herein to not follow their lead. As *amicus curiae*, the West Virginia Municipal League therefore urges the Court to reaffirm its prior position expressed in *Pullano* that holiday compensation for municipal firefighters is required only for those hours of a shift which fall within the calendar day of a legal holiday.

[4] It should be noted that the Bluefield firefighters in *Pullano* also did not work midnight-to-midnight shifts, but theoretically could choose to. Thus, the theoretical possibility of maximizing holiday compensation by moving to a midnight-to-midnight shift does not appear to differentiate the facts of this matter from *Pullano*.

III. CONCLUSION

Considering the foregoing, the Municipal League respectfully requests that the issue regarding the statutory holiday pay scheme be fully and finally clarified for the benefit of the municipalities, as well as the firefighters. In so fully and finally clarifying the issue, the findings and conclusions by the Circuit Court should be affirmed, in full.

WHEREFORE, based on the foregoing, amicus curiae the West Virginia Municipal League urges the Court to adopt the positions advocated herein in its order on this matter, in order to better enable the Municipal League's member entities to serve the public.

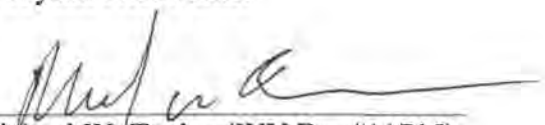
Michael W. Taylor (WV Bar #11715)
Adam K. Strider (WV Bar #12483)
Bailey & Wyant, pllc
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
T: 304.345.4222
F: 304.343.3133
mtaylor@baileywyant.com
astrider@baileywyant.com

CERTIFICATE OF SERVICE

The undersigned, counsel of record for West Virginia Municipal League, does hereby certify on this 25th day of July, 2022, that an original and ten copies of the foregoing "Brief on Behalf of *Amicus Curiae*, the West Virginia Municipal League" was filed with the Clerk of the West Virginia Supreme Court of Appeals and was served on the following:

Erin J. Webb
Ryan Simonton
Matthew D. Elshiaty
Kay Casto & Chaney, PLLC
150 Clay Street, Ste. 100
Morgantown , WV 26501
Attorney For: City of Morgantown

Teresa C. Toriseva
Joshua D. Miller
Michael A. Kuhn
Toriseva Law
1446 National Rd
Wheeling, WV 26003
Attorney For: Jayson Nicewarner



Michael W. Taylor (WV Bar #11715)
Adam K. Strider (WV Bar #12483)
Bailey & Wyant, pllc
500 Virginia Street, East, Suite 600
Post Office Box 3710
Charleston, West Virginia 25337-3710
T: 304.345.4222
F: 304.343.3133
mtaylor@baileywyant.com
astrider@baileywyant.com