

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. _____

SCA EFiled: Sep 06 2024
03:38PM EDT
Transaction ID 74253567

STATE OF WEST VIRGINIA EX REL.
SCOTT A. ADKINS, in his official capacity as
Acting Commissioner of WORKFORCE WEST
VIRGINIA and WORKFORCE WEST
VIRGINIA,
Defendants/Respondents Below,
Petitioners,

v.

HONORABLE JENNIFER BAILEY, Judge of the
Circuit Court of Kanawha County, West Virginia,
and
DEBORAH BEHELER BALDWIN, DENNIS R. CHAMBERS,
LINDA WARNER, ASHLEAH MURPHY, KELLY HARDY,
and BRITTANY GANDEE,
on their behalf and on behalf of all others similarly situated,

Plaintiffs/Petitioners, Below,
Respondents.

VERIFIED PETITION FOR WRIT OF PROHIBITION

Action Pending in the Circuit Court of Kanawha County
Civil Action No. 23-C-1049

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QUESTIONS PRESENTED

This petition presents the following questions for review:

1. Whether Respondents' failure to exhaust administrative remedies deprived the Circuit Court of Kanawha County of subject matter jurisdiction.
2. Whether circuit court committed clear legal error and exceeded its legitimate powers when it determined that West Virginia Code § 21A-10-8 prohibits WorkForce West Virginia from administratively determining if an overpayment was made due to a claimant's nondisclosure or misrepresentation, that West Virginia Code § 21A-10-8 requires WorkForce West Virginia to file a civil action to determine if an overpayment was made by nondisclosure, misrepresentation, or fraud, and that the initiation of an administrative proceeding for overpayment determination is a *de facto* concession that West Virginia Code § 21A-10-21 and that statute's two-year statute of limitations applies to the collection of the alleged overpayment.
3. Whether the circuit court committed clear legal error and exceeded its legitimate powers when it granted a writ of mandamus because Respondents lack a clear legal right to the relief sought, because there is no legal duty on the part of WorkForce to do what the circuit court has ordered, and because the administrative process is another adequate remedy.
4. Whether the circuit court committed clear legal error and exceeded its legitimate powers by finding that any attempt by WorkForce West Virginia to determine if an overpayment was caused by nondisclosure, misrepresentation, or fraud in an administrative proceeding violates Article III, Section 10 of the West Virginia Constitution.
5. Whether the circuit court committed clear legal error and exceeded its legitimate powers by issuing a writ of mandamus and an injunction prohibiting WorkForce West Virginia and Acting Commissioner Scott A. Adkins from engaging in administrative hearings related to alleged overpayments based on an overpayment determination or deputy's decision dated more than two years following payment of the benefits at issue.
6. Whether the circuit court committed clear legal error and exceeded its legitimate powers when it ordered WorkForce West Virginia to assemble data, thereby requiring a party to create documents for discovery.

STATEMENT OF THE CASE

I. Introduction

Respondents' Amended Complaint arises from administrative determinations that they received overpayments of unemployment benefits. Respondents challenged the lawfulness of

Petitioners' ability to administratively adjudicate and to recoup overpayments of benefits. West Virginia has two collection/recoupment statutes. West Virginia Code § 21A-10-21 allows for recoupment of unemployment moneys paid in error. It has a two-year statute of limitations. West Virginia Code § 21A-10-8 applies in instances of benefits overpaid by reason of misrepresentation or nondisclosure. It has a five-year statute of limitations. But these statutory provisions are only applicable *after* an overpayment determination is made through the administrative process.

The legislatively created unemployment compensation claim procedure grants WorkForce West Virginia, the deputies who initially render decisions on claims, the administrative law judges who hear appeals from the deputies' decisions, and the Board of Review ("BOR") the authority to determine whether a claimant received an overpayment and the cause of the overpayment. West Virginia Code § 21A-6-1 provides the eligibility qualification criteria for claimants, and specifically provides that "[a]n unemployed individual shall be eligible to receive benefits only if the commissioner finds" the claimant has met the qualifications. W. Va. Code § 21A-6-1. West Virginia Code § 21A-6-11 provides for payment of benefits for partial unemployment "upon a claim therefor filed within such time and in such manner as the commissioner may by regulation prescribe[.]" W. Va. Code § 21A-6-11. To make benefits eligibility determinations, the Legislature provided the Commissioner with the power to "appoint deputies to investigate all claims, and to hear and initially determine all claims for benefits" W. Va. Code § 21A-7-3. The deputy is required to "determine whether or not such claim is valid, and, if valid, shall determine: (1) The week with respect to which benefits will commence; (2) The amount of benefit; (3) The maximum duration of benefits." W. Va. Code § 21A-7-4(d). The Commissioner has prescribed regulations governing the appeals process for unemployment benefits. Those "procedural rules shall govern

the conduct of hearings in contested unemployment compensation claims before the Board of Review and its subordinate tribunals.” W. Va. Code St. R. § 84-1-1.1. The rules provide,

The purpose of the hearing process shall be to receive and consider, as expeditiously and as fairly as possible, evidence and information relevant to **the determination of the rights of the parties** and to provide a review of the Deputy’s decisions and determinations with regard to the granting or denial of any award, or the entry of any Order, or the **granting or denial of any modification or change with respect to former findings**. Orders or awards are made pursuant to the West Virginia Unemployment Compensation Law, W. Va. Code, §21A-1-1 et seq., as amended.

W. Va. Code St. R. § 84-1-2.2 (emphasis added). “If the **final decision** in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, the amount of benefits paid are considered overpaid.” W. Va. Code § 21A-7-11(c) (emphasis added).

Thus, the administrative process is in place to determine whether claimants meet the eligibility criteria, whether a claim is valid, when benefits will commence, how much the benefits are, and the duration of benefits. The administrative process is also in place to determine the rights of the parties and to modify or change benefits determinations if necessary. The administrative process determines whether an overpayment has occurred and the reason for the overpayment. That is the process Respondents are challenging. They are challenging whether their overpayments should be considered to have occurred by error or by nondisclosure or misrepresentation. That challenge must occur within the administrative process.

Collection or recoupment occurs only *after* the overpayment determination is made and based upon the reason for the overpayment. Respondents and the circuit court conflate the administrative determination process with the collection process, and that conflation is the cause of the circuit court’s clear legal errors and rulings that exceed the circuit court’s legitimate powers. Respondents asked the circuit court to exercise concurrent jurisdiction over a lawful administrative appeals process and to supplant that process with civil litigation. Respondents also sought relief

well outside their own claims, asking the circuit court to invalidate the administrative process in significant part, which the circuit court ordered.

As a result, the circuit court has entered a mandamus order requiring Petitioners to comply with the circuit court's interpretation of West Virginia law. Because the circuit court's interpretation is incorrect, the order requires Petitioners to violate the statutes and legislative rules governing unemployment compensation benefits. The circuit court's orders effectively halt the administrative adjudication of overpayments and the collection of adjudicated overpayments and require Petitioners to violate federal law. *See* Bipartisan Budget Act of 2013, 42 U.S.C. §§ 503(g) (requiring States to collect overpayments) and (m) (requiring States to collect overpayments through Treasury Offset Program if not collected after one year) (citing 26 U.S.C. § 6402(f)); *see also* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 2103, 126 Stat. 156, 161 (2012) (amending 26 U.S.C. § 3304(a)(4)(D) and 42 U.S.C. § 503(g)(1) to require, rather than permit, collection of overpayments and amending 42 U.S.C. § 503(g)(3) to require collection of overpayments of federal additional compensation); CARES Act, 15 U.S.C. § 9023(f) (2020) (requiring determination and collection of overpayments for Federal Pandemic Unemployment Compensation); Federal Unemployment Tax Act, 26 U.S.C. § 3302(c)(3) (disallowing employer tax credit if State or State agency has not entered into agreement with Secretary of Labor or has not fulfilled agreement with Secretary of Labor).

Petitioners WorkForce West Virginia and Acting Commissioner Scott A. Adkins (collectively referred to as "WorkForce") seek a writ of prohibition to prevent the circuit court from enforcing three orders. First, WorkForce seeks a writ of prohibition preventing the circuit court from enforcing its order denying WorkForce's Motion to Dismiss and finding that Respondents were not required to exhaust their administrative remedies. WorkForce further seeks

to prevent the circuit court from enforcing its order finding that, pursuant to West Virginia Code § 21A-10-8, WorkForce is prohibited from administratively determining if an overpayment was made due to a claimant's nondisclosure or misrepresentation. WorkForce further seeks to prevent the circuit court from enforcing its order finding that, pursuant to West Virginia Code § 21A-10-8, WorkForce is required to file a civil action to determine if an overpayment was made by nondisclosure, misrepresentation, or fraud. WorkForce also seeks to prevent the circuit court from enforcing its order finding that the initiation of an administrative proceeding for overpayment determination is a *de facto* concession that West Virginia Code § 21A-10-21 and that statute's two-year statute of limitations applies to the collection of the alleged overpayment. WorkForce further seeks to prevent the circuit court from enforcing its order finding that any attempt by WorkForce West Virginia to determine if an overpayment was caused by nondisclosure, misrepresentation, or fraud in an administrative proceeding violates Article III, Section 10 of the West Virginia Constitution.

Second, WorkForce seeks a writ of prohibition preventing the circuit court from enforcing its order granting Respondent's Petition for Mandamus and for Injunctive Relief, which prohibits WorkForce from engaging in administrative hearings related to alleged overpayments based on an overpayment determination or deputy's decision dated more than two years following payment of the benefits at issue. WorkForce further seeks to prevent the circuit court from requiring WorkForce to assemble data, thereby requiring a party to create documents for discovery.

Third, WorkForce seeks a writ of prohibition preventing the circuit court from enforcing its order granting Respondent's Motion for Leave to Amend because the circuit court lacked subject matter jurisdiction to take any action other than to dismiss the case from its docket.

II. Amended Complaint

A. Deborah Beheler Baldwin

Deborah Baldwin filed suit on November 27, 2023.¹ Baldwin alleges that, in March of 2020, she was employed at Alliance Oncology in Charleston, West Virginia. Appx.000187. During the COVID-19 pandemic, Baldwin was allegedly placed on part-time employment and told to file a claim for unemployment benefits. Appx.000187. Baldwin filed unemployment compensation claims for the weeks ending April 11, 2020, April 18, 2020, and May 9, 2020. Appx.000215-000220. For each claim, Baldwin completed a claim certification. Appx.000215-000220. For the week ending April 11, 2020, Baldwin was asked the question, “Did you work during the week, including self employment?” Appx.000220. Baldwin responded, “No.” Appx.000220. Baldwin was asked the same question for the week ending April 18, 2020, and she also responded, “No.” Appx.000216. Baldwin was asked the same question for the week ending May 9, 2020, and Baldwin responded, “Yes,” which then prompted her to respond to additional questions and to provide her total earnings for the week, which she reported to be “\$451.20.” Appx.000218.

Based upon Baldwin’s express representations in the claim certifications, she was paid unemployment compensation benefits for each of those three weeks, totaling \$2,680. Appx.000214. On July 26, 2023, Baldwin received a Notice to Claimant from WorkForce, requesting that she contact the Crossmatch Unit by July 31, 2023, and notifying her that “[f]ailure to do so could result in a decision being made with the available information which could result in an overpayment.” Appx.000208. On August 2, 2023, Baldwin received a second Notice to Claimant, requesting that she contact the Crossmatch Unit by August 7, 2023, and providing the same notification regarding a potential overpayment determination. Appx.000209. On August 9,

¹ As discussed herein, the administrative process was ongoing when Baldwin initially filed suit. The Board of Review issued its decision on December 12, 2023. Baldwin and Chambers’ Amended Complaint was filed on or about January 12, 2024, as a matter of course prior to a responsive pleading being filed, pursuant to Rule 15(a) of the West Virginia Rules of Civil Procedure.

2023, WorkForce determined that Baldwin was overpaid \$2,054, stating, “[a]n overpayment determination has been made on your unemployment compensation claim that you have received benefits payments to which you were not entitled due to the reason checked below: ... Earnings, pensions, social security benefits, or other incomes were not deducted.” Appx.000210. The Overpayment Determination was mailed to Baldwin and provided her with an explanation of her appeal rights. Appx.000210. Baldwin appealed the Overpayment Determination. Appx.000189.

On September 26, 2023, Baldwin’s appeal was heard by ALJ Carl Hostler, and, on October 11, 2023, ALJ Hostler issued a decision determining that “the claimant received an overpayment, but WorkForce West Virginia is time barred from collecting it.” Appx.000490-000492. WorkForce appealed the ALJ’s decision to the BOR. On December 12, 2023, the BOR determined that the ALJ had applied the wrong Code section. Appx.000225-000228.

In making the determination, ALJ Hostler applied West Virginia Code § 21A-10-21, which provides a two-year limitation for the agency to recover benefits paid to a claimant by reason of error, irrespective of the nature of said error. Appx.000491. It was the decision of the BOR that ALJ Hostler had applied the incorrect statute for benefits paid to the claimant for weeks ending April 11, 2020, and April 18, 2020. Because claimant answered ‘no’ when asked about wages when the correct answer was ‘yes,’ the Board concluded that the payment of benefits to the claimant was the result of claimant’s misrepresentation – Baldwin worked and had earnings for the weeks in question. Baldwin denied working and denied earning wages. In sum, the BOR found that the facts before the ALJ showed that Baldwin worked and received wages the weeks ending April 11, 2020, and April 18, 2020, and Baldwin failed to disclose that information on her weekly claim certifications. Appx.000226. The BOR ruled that the applicable statute of limitations for recoupment of overpayments arising from misrepresentation for the weeks ending April 11, 2020,

and April 18, 2020, is five years and “that WorkForce West Virginia is not prohibited from pursuing an overpayment for those weeks.” Appx.000226.

On the other hand, through the administrative appeals process, one portion of Baldwin’s disputed payments was clarified and resolved to Baldwin’s favor. The BOR determined that the overpayment made for the week ending May 9, 2020, was time-barred from recoupment. The BOR determined that Baldwin reported on her weekly claim certification that she did work and earned \$451.20, although she actually earned \$457.97, a difference of \$6.77. Appx.000226. Because Baldwin disclosed that she worked and disclosed wages, the BOR determined that the misreported amount of wages was an error governed by West Virginia Code § 21A-10-21 rather than a misrepresentation or nondisclosure governed by West Virginia Code § 21A-10-8. Appx.000226. Therefore, the BOR ruled that the ALJ “did not err in determining that WorkForce West Virginia was barred from recovering the overpayment for the week ending May 9, 2020.” Appx.000226. The BOR’s decision includes information and instructions regarding when, where, and how to file an appeal of its decision to the Intermediate Court of Appeals of West Virginia (“ICA”). Appx.000227-000228. Baldwin had 30 days from the date of mailing of the decision, December 26, 2023, to file an appeal to the ICA. Appx.000228. Baldwin appealed the BOR’s decision on January 26, 2024. Judicial review of the BOR’s decision is ongoing. *See* 24-ICA-39.

B. Dennis Chambers

Dennis Chambers alleges that, in 2020, due to the pandemic, his hourly work at the Charleston Coliseum and Convention Center was reduced, and he was advised to file a claim with WorkForce for unemployment compensation benefits, which he did in April 2020. Appx.000196. Chambers alleges that he received unemployment benefits for approximately five months, in May, June, July, August, and September 2020. Appx.000196. Chambers alleges that he was not

contacted further by WorkForce until January 19, 2023, when he received a letter stating he had received an overpayment of \$4,106.00. Appx.000196. Chambers alleges that this was the first time he heard of an overpayment. Appx.000197. Chambers repaid the overpayment to WorkForce on January 25, 2023. Appx.000197.

Despite his claims to the contrary, Chambers received several correspondences from WorkForce prior to the January 19, 2023, letter. On April 5, 2020, Chambers completed a claim certification and provided an email address at which he could be reached, which was confirmed and verified. Appx.000493-000494. On April 26, 2020, Chambers filed for Pandemic Unemployment Assistance (“PUA”) and again provided and confirmed his email address. Appx.000498. When asked for a preferred notification method, Chambers selected “Email.” Appx.000498. Chambers certified that he would inform the Unemployment Compensation service center and United States Postal Service immediately of a change in contact information, even if he were not filing for benefits at that time. Appx.000501. Then, on July 8, 2020, WorkForce sent Chambers an email with an Issue Identity Verification notice, which stated, “You recently filed a claim on the West Virginia’s Pandemic Unemployment Assistance Portal. In order to process your future payments we need to verify your identity. Please provide a digital copy or picture of your valid government identification document ...” and provided Chambers with a list of valid forms of identification and a link to upload a copy. Appx.000502. On November 1, 2020, Chambers received another email requesting the same information. Appx.000504.

On December 7, 2020, WorkForce emailed Chambers a Pandemic Unemployment Assistance Deputy’s Decision, notifying him that he had been disqualified from receiving PUA benefits for one or more of the following reasons: “The Division was unable to authenticate your identity; Your claim was identified as being filed from a location outside of the United States;

Your claim was identified as being associated with suspicious activity related to PUA claim filing.” Appx.000506. The PUA Deputy’s Decision provided Chambers with instructions and options for filing an appeal, which he chose not to pursue. Appx.000506-000507. On December 8, 2020, WorkForce emailed to Chambers two Notices of Determination informing him of the overpayment determination for two types of unemployment benefits and providing him with instructions and options for filing an appeal, which Chambers chose not to pursue. Appx.000509-000512.

C. Additional Plaintiffs

By order dated August 28, 2024, the circuit court deemed filed Respondents’ Second Amended Complaint, which now includes claims on behalf of Linda Warner, Ashleah Murphy, Kelly Hardy, and Brittany Gandee. It is undisputed and is demonstrated by the express terms of and exhibits to the Second Amended Complaint that the newest Plaintiffs have been adjudged as receiving overpayments and have failed to achieve administrative exhaustion.

III. Circuit Court’s Orders

A. Order Denying Motion to Dismiss

The circuit court determined exhaustion of administrative remedies was not required. The circuit court held that “exhaustion of remedies is not necessary to determine whether Defendants have repeatedly pursued *W. Va. Code* § 21A-10-21 collections under Defendants’ administrative adjudication process for alleged overpayments occurring more than two (2) years prior.” Appx.000047. Supplanting this Court’s long-standing legal precedent in the name of judicial economy, the circuit court ruled that “requiring exhaustion of remedies for likely thousands of citizens affected by the allegations in Plaintiffs’ Amended Complaint regarding Defendants’ collections exceeding the § 21A-10-21 time bar would be duplicative and futile, while a court of general jurisdiction may engage in fact finding and make determinations on whether to order

extraordinary relief and other remedies.” Appx.000047. Despite clear legal precedent to the contrary, the circuit court also ruled that the “exhaustion of remedies is unnecessary because Mandamus and other extraordinary remedies are not options in Defendants’ administrative adjudication process, and Plaintiff has pled sufficient irreparable harm if ordered to expend individual resources exhausting all remedies; Defendants’ § 21A-10-21 collections in excess of the two-year time bar, by contrast, may be addressed in single orders by a court of general jurisdiction.” Appx.000048. The circuit court’s decision was based upon its belief that “no administrative remedy is provided by law.” Appx.000048.

Beyond determining it had subject matter jurisdiction, the circuit court determined that West Virginia Code § 21A-10-21 bars WorkForce from collecting benefits paid in error after two years have passed. Appx.000031. The circuit court also determined that West Virginia Code § 21A-10-8 requires WorkForce to institute a civil action in a trial court both to pursue collections and for “adjudications for overpayments based on nondisclosure, misrepresentation, or fraud[,]” thereby prohibiting WorkForce from determining if an overpayment was caused by nondisclosure, misrepresentation, or fraud “in its administrative adjudication process[.]” Appx.000039. Based on its interpretation of the statute, the circuit court held that *any* “collections initiated by an Overpayment Determination or deputy decision with an offer for claimants to file an administrative appeal are, by definition, § 21A-10-21 ‘error’ proceedings with a two-year time bar[,]” and WorkForce advising claimants of their ability to appeal constitutes a “*de facto* conce[ssion] that the two-year time bar applies[.]” Appx.000042.

Based upon its finding that all administrative appeals of overpayment determinations fall under West Virginia Code § 21A-10-21, the circuit court further determined that “any attempt by Defendants to invoke longer time bars set forth in *W. Va. Code* § 21A-10-8 in an existing *W. Va.*

Code § 21A-10-21 administrative proceeding is in contravention of Article 3, Section 10, of the West Virginia Constitution.” Appx.000044.

B. Order Granting Writ of Mandamus²

As a result of its statutory misinterpretation and conflation of the administrative overpayment determination process with the collection process, the circuit court granted Respondents’ petition for mandamus and injunctive relief, ordering WorkForce as follows:

- A. Comply with their mandatory, non-discretionary duty requiring that any collections of alleged overpayments resulting from error be undertaken no later than two (2) years following Respondents’ payment of the benefits at issue;
- B. Comply with their mandatory, non-discretionary duty requiring that any collections of alleged overpayments resulting from error be pursued only under an Overpayment Determination or deputy decision issued and mailed no later than two (2) years following Respondents’ payment of the benefits at issue;
- C. Comply with their mandatory, non-discretionary duty requiring that any overpayment collections or adjudications undertaken in any process offering or involving an administrative hearing or administrative adjudication process be pursued only as benefit payments by reason of error pursuant to *W Va. Code* § 21A-10-21.
- D. Suspend all collections of alleged overpayments resulting from error, or sought by WorkForce in any process offering or involving an administrative hearing, based on an Overpayment Determination or deputy decision dated more than two (2) years following Respondents’ payment of the benefits at issue;
- E. Preserve all data and documents regarding unemployment claims initiated since March 1, 2020; and
- F. Assemble all data regarding all claimants from whom WorkForce has engaged in collections based on a WorkForce Overpayment Determination or deputy decision dated more than two (2) years following payment, regarding any payments made from March 1, 2020, through March 1, 2022, for review under the Court’s direction at a later date.

² The circuit court’s order is titled “Order Granting Writ of Mandamus”; however, the circuit court also granted injunctive relief to Respondents. Appx.000701-000706. The requirement that WorkForce comply with items D through F in the order is injunctive relief, not mandamus, because those items are not mandatory, non-discretionary duties. While the circuit court’s order uses the language of ‘mandamus,’ the relief is clearly injunctive (e.g., right to act “suspended”).

Appx.000022-000023. To conclude that this relief is proper, the circuit court found the existence of a clear right in Respondents to the relief sought, the existence of a legal duty on the part of WorkForce, and the absence of another adequate remedy at law. Appx.000018-000020. The circuit court again found that exhaustion of administrative remedies was not required because the administrative process cannot award mandamus relief. Appx.000020-000022. Many of the circuit court's factual and legal findings are based upon allegations made by individuals who, until the circuit court granted leave to amend the same day, were not parties to the civil action. Appx.000001-000023.

C. Order Granting Leave to Amend

By order dated August 28, 2024, the circuit court deemed filed Respondents' Second Amended Complaint, which now includes claims on behalf of Linda Warner, Ashleah Murphy, Kelly Hardy, and Brittany Gandee. Appx.000054-000057.

SUMMARY OF ARGUMENT

Baldwin and Chambers failed to exhaust their administrative remedies prior to filing suit in circuit court. This failure deprived the circuit court of subject matter jurisdiction. Because the circuit court lacked subject matter jurisdiction, each of its orders is void *ab initio*. In West Virginia, “[t]he general rule is that where an administrative remedy is provided by statute or by rules and regulations having the force and effect of law, relief must be sought from an administrative body, and such remedy must be exhausted before the courts will act.” Syl. Pt. 2, *Bank of Wheeling v. Morris Plan Bank & Trust Co.*, 155 W. Va. 245, 183 S.E.2d 692 (1971); *see also State ex rel. Devono v. Wilmoth*, 889 S.E.2d 736, 743 (W. Va. 2023) (same); Syl. Pt. 10, in part, *State ex rel. Miller v. Reed*, 203 W. Va. 673, 510 S.E.2d 507 (1998) (same); Syl. Pt. 1, *Cowie v. Roberts*, 173 W. Va. 64, 312 S.E.2d 35 (1984) (same). “The rule of exhausting administrative remedies before

actions in courts are instituted is applicable, even though the administrative agency cannot award damages if the matter is within the jurisdiction of the agency.” Syl. Pt. 3, *id.*; *see also State ex rel. Smith v. Thornsbury*, 214 W. Va. 228, 588 S.E.2d 217 (2003). The doctrine of exhaustion of administrative remedies

provides that when the legislature provides for an administrative agency to regulate some particular field of endeavor, the courts are without jurisdiction to grant relief to any litigant complaining of any act done or omitted to have been done if such act or omitted act is within the rules and regulations of the administrative agency involved until such time as the complaining party has exhausted such remedies before the administrative body.

Thornsbury, 214 W. Va. at 233, 588 S.E.2d at 222 (quoting *Bank of Wheeling*, 155 W. Va. at 249, 183 S.E.2d at 693). *See also State ex rel. Gooden v. Bonar*, 155 W. Va. 202, 210, 183 S.E.2d 697, 702 (1971) (citations omitted). It is clear from the relevant statutes and from the legislative rules set out further here that the Legislature has provided WorkForce sole authority to regulate the particular field of unemployment compensation benefits. As a result, the courts are without jurisdiction to grant relief to any litigant complaining of any act done by WorkForce or Commissioner Adkins within the authority of WorkForce until such time as the complaining party has exhausted such remedies before the administrative body. It is undisputed that Plaintiffs have not exhausted the administrative remedies expressly available to them – mandated for them – by West Virginia law. Nonetheless, the circuit court denied WorkForce’s motion to dismiss. The circuit court not only acknowledged and then disregarded the failure to exhaust administrative remedies and lack of subject matter jurisdiction, but also granted Respondents the extraordinary remedy of mandamus.

Regarding the non-jurisdictional issues, the circuit court’s orders misinterpret the entirety of Chapter 21A, which sets forth the administrative procedures for unemployment compensation benefits, and specifically misinterpret West Virginia Code §§ 21A-10-8 and 21. The circuit court

conflated the administrative *determination* process with the *collection* process, finding that a “nondisclosure or misrepresentation” determination under West Virginia Code § 21A-10-8 must occur through a civil action and cannot be made through the administrative process. Based upon this misunderstanding, the circuit court granted Baldwin and Chambers injunctive relief requiring WorkForce to “[s]uspend all collections of alleged overpayments resulting from error, or sought by WorkForce in any process offering or involving an administrative hearing, based on an Overpayment Determination or deputy decision dated more than two (2) years following [WorkForce’s] payment of the benefits at issue[.]” Appx.000023. A plain reading of the applicable statutes demonstrates that the circuit court’s injunction and subsequent findings result in WorkForce being prohibited from carrying out its mandatory duty under both state and federal law to determine whether overpayments exist and, if not time-barred, to collect overpayments.

Next, the circuit court committed clear legal error when it determined that WorkForce’s efforts to collect overpayments based on deputy decisions made more than two years after the payments were not aligned with the purpose of Chapter 21A of the West Virginia Code and violated Article III, Section 10 of the West Virginia Constitution. Baldwin was given notice and multiple opportunities to be heard, including an opportunity ongoing before the ICA. Chambers was also provided ample opportunities to avoid an overpayment, including notices and appeal rights, but chose not to exercise them. The circuit court’s clear legal errors now mandate that WorkForce reduce its procedural safeguards for claimants, requiring it to pre-judge overpayments and pursue civil suits, despite lacking the statutory authority to do so.

Finally, the circuit court’s mandamus order directs WorkForce to “assemble all data regarding all claimants from whom WorkForce has engaged in collections based on a WorkForce Overpayment Determination or deputy decision dated more than two years following payment, for

review under the Court’s direction at a later date.” It is unclear what “assemble” entails. Regardless, the circuit court lacks the authority to compel a party to create new documents for discovery. Prohibition is warranted because the circuit court has exceeded its authority by requiring WorkForce to create documents for discovery purposes.

In summary, the three orders issued by the circuit court contain several clear legal errors. Foremost among these errors is the circuit court’s lack of subject matter jurisdiction to issue any of the orders subject to this original jurisdiction matter. Respondents’ failure to exhaust administrative remedies deprives the circuit court of subject matter jurisdiction, leaving the only appropriate action for the circuit court to be the dismissal of the case from its docket.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument under Rule 20 of the West Virginia Rules of Appellate Procedure is warranted in this case due to the fundamental public importance of the issues involved.

ARGUMENT

I. Standard of Review

This Court’s original jurisdiction is recognized in Rule 16 of the West Virginia Rules of Appellate Procedure. A writ of prohibition is proper whenever an inferior court does not have jurisdiction or has jurisdiction but exceeds its legitimate powers. *State ex rel. Farber v. Mazzone*, 213 W. Va. 661, 664, 584 S.E.2d 517, 520 (2003).

WorkForce seeks a writ of prohibition because the circuit court acted without jurisdiction. Because the circuit court acted without jurisdiction, all three of the orders at issue are void *ab initio*. WorkForce also seeks a writ of prohibition because the circuit court committed clear legal error and exceeded its legitimate powers when it found (1) that, pursuant to West Virginia Code § 21A-10-8, WorkForce is prohibited from administratively determining if an overpayment was

made due to a claimant's nondisclosure or misrepresentation; (2) that, pursuant to West Virginia Code § 21A-10-8, WorkForce is required to file a civil action to determine if an overpayment was made by nondisclosure, misrepresentation, or fraud; (3) that the initiation of an administrative proceeding for overpayment determination is a *de facto* concession that West Virginia Code § 21A-10-21 and that statute's two-year statute of limitations applies to the collection of the overpayment; (4) that Respondents are entitled to mandamus and injunctive relief; (5) that any attempt by WorkForce to determine if an overpayment was caused by nondisclosure, misrepresentation, or fraud in an administrative proceeding violates Article III, Section 10 of the West Virginia Constitution; (6) that WorkForce is prohibited from engaging in administrative hearings related to alleged overpayments based on an overpayment determination or deputy's decision dated more than two years following payment of the benefits at issue; and (7) that WorkForce is required to assemble data, thereby requiring it to create documents for discovery.

In such instances, this Court has established the following standard of review for issuing a writ of prohibition:

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996); *see also* Syl. Pt. 2, *State ex rel. West Virginia Nat'l Auto Ins. Co. v. Bedell*, 223 W. Va. 222, 672 S.E.2d 358 (2008);

Syl. Pt. 1, *State ex rel. Blake v. Hatcher*, 218 W. Va. 407, 624 S.E.2d 844 (2005); Syl. Pt. 1, *State ex rel. Cosenza v. Hill*, 216 W. Va. 482, 607 S.E.2d 811 (2004).

Regarding the non-jurisdictional issues raised, the first two factors unquestionably are present here. WorkForce has no other means of direct appeal, and, thus, if forced to defend this matter through trial, WorkForce will suffer prejudice because the circuit court lacks subject matter jurisdiction and because the circuit court is prohibiting WorkForce from carrying out its duties under statutory law and under federal law. The third and most important factor – that the lower tribunal’s order is clearly erroneous as a matter of law – also exists here. The circuit court’s orders misinterpret the entirety of Chapter 21A, which sets forth the administrative procedures for unemployment compensation benefits, and specifically misinterpret West Virginia Code §§ 21A-10-8 and 21. As a result of compounding clear errors of law, the circuit court has judicially estopped the statutorily created administrative process for overpayment determinations.

II. Discussion

A. Plaintiffs’ failure to exhaust administrative remedies deprived the Circuit Court of Kanawha County of subject matter jurisdiction.

It is axiomatic under West Virginia law that a plaintiff must exhaust administrative remedies *before* instituting a civil action. *See* Syl. Pt. 3, *Bank of Wheeling v. Morris Plan Bank & Trust Co.*, 155 W. Va. 245, 183 S.E.2d 692 (1971) (“The rule of exhausting administrative remedies before actions in courts are instituted is applicable, even though the administrative agency cannot award damages if the matter is within the jurisdiction of the agency.”) (emphasis added); *see also State ex rel. Smith v. Thornsbury*, 214 W. Va. 228, 233, 588 S.E.2d 217, 222 (2003) (“Since concurrent jurisdiction regarding challenges to decisions involving these matters is not statutorily prescribed, when the lower court acted it did so without jurisdiction of the subject matter, which renders the order void.”). “The general rule in this Court with regard to the

exhaustion of administrative remedies provides ‘that where an administrative remedy is provided by statute or by rules and regulations having the force and effect of law, relief must be sought from the administrative body, and such remedy must be exhausted before the courts will act.’” *Sturm v. Bd. of Educ.*, 223 W. Va. 277, 282, 672 S.E.2d 606, 611 (2008) (quoting Syl. Pt. 1, *Daurelle v. Traders Fed. Sav. & Loan Assn.*, 143 W. Va. 674, 104 S.E.2d 320 (1958). See also *State ex rel. Fields v. McBride*, 216 W. Va. 623, 609 S.E.2d 884 (2004) (same); *State ex rel. Miller v. Reed*, 203 W. Va. 673, 510 S.E.2d 507 (1998) (same); *Hechler v. Casey*, 175 W. Va. 434, 333 S.E.2d 799 (1985) (same); *McGrady v. Callaghan*, 161 W. Va. 180, 244 S.E.2d 793 (1978) (same). The doctrine of exhaustion of administrative remedies,

provides that when the legislature provides for an administrative agency to regulate some particular field of endeavor, the courts are without jurisdiction to grant relief to any litigant complaining of any act done or omitted to have been done if such act or omitted act is within the rules and regulations of the administrative agency involved until such time as the complaining party has exhausted such remedies before the administrative body.

Thornsbury, 214 W. Va. at 233, 588 S.E.2d at 222 (quoting *Bank of Wheeling*, 155 W. Va. at 249, 183 S.E.2d at 693). Courts have recognized that this rule serves several useful functions including:

“(1) permitting the exercise of agency discretion and expertise on issues requiring these characteristics; (2) allowing the full development of technical issues and a factual record prior to court review; (3) preventing deliberate disregard and circumvention of agency procedures established by Congress [or the Legislature]; and (4) avoiding unnecessary judicial decision by giving the agency the first opportunity to correct any error.”

Sturm, 223 W. Va. at 282, 672 S.E.2d at 611 (quoting *Doe v. Alfred*, 906 F. Supp. 1092, 1097 (S.D.W. Va. 1995) (quoting *Association for Commun. Living v. Romer*, 992 F.2d 1040, 1044 (10th Cir. 1993))).

Here, the actions of WorkForce by which Respondents claim they were harmed are governed by West Virginia Code § 21A-6-1, *et seq.*, West Virginia Code § 21A-7-1, *et seq.*, and

West Virginia Code of State Rules § 84-1-1, *et seq.* West Virginia Code § 21A-6-1 provides the eligibility qualification criteria for claimants, and specifically provides that “[a]n unemployed individual shall be eligible to receive benefits **only** if the commissioner finds” the claimant has met the qualifications. W. Va. Code § 21A-6-1 (emphasis added). West Virginia Code § 21A-6-11 provides for payment of benefits for partial unemployment “upon a claim therefor filed within such time and in such manner **as the commissioner may by regulation prescribe[.]**” W. Va. Code § 21A-6-11 (emphasis added). To make benefits eligibility determinations, the Legislature provided the Commissioner with the power to “appoint deputies to investigate all claims, and to hear and initially determine all claims for benefits” W. Va. Code § 21A-7-3. The deputy is required to “determine whether or not such claim is valid, and, if valid, shall determine: (1) The week with respect to which benefits will commence; (2) The amount of benefit; (3) The maximum duration of benefits.” W. Va. Code § 21A-7-4(d). The Commissioner has prescribed regulations governing the appeals process for unemployment benefits. Those “procedural rules shall govern the conduct of hearings in contested unemployment compensation claims before the Board of Review and its subordinate tribunals.” W. Va. Code St. R. § 84-1-1.1. The rules provide,

The purpose of the hearing process shall be to receive and consider, as expeditiously and as fairly as possible, evidence and information relevant to the determination of the rights of the parties and to provide a review of the Deputy’s decisions and determinations with regard to the granting or denial of any award, or the entry of any Order, or the granting or denial of any modification or change with respect to former findings.

W. Va. Code St. R. § 84-1-2.2. The Legislature made its intent clear: “A person claiming an interest under the provisions of this article shall exhaust his remedies before the board before seeking judicial review.” W. Va. Code § 21A-7-19.

Thus, it is clear from the relevant statutes and from the legislative rules that the Legislature has provided WorkForce sole authority to regulate the particular field of unemployment

compensation benefits. As a result, the courts are without jurisdiction to grant relief to any litigant complaining of any act done by WorkForce or Commissioner Adkins within the authority of WorkForce until such time as the complaining party has exhausted such remedies before the administrative body.³ Baldwin and Chambers have not exhausted their administrative remedies.

Baldwin availed herself of the administrative process, but she filed suit prior to exhausting her administrative remedies. While her administrative determination was pending before the BOR, she filed suit. The BOR's determination is currently under judicial review. Baldwin's appeal to the ICA (24-ICA-39) is determining the exact issues that the Amended Complaint placed before the circuit court. Specifically, Baldwin is litigating simultaneously in both the ICA and the circuit court whether the overpayments of unemployment compensation that she requested and received are subject to the two-year statute of limitations in West Virginia Code § 21A-10-21 or the five-year statute of limitations in West Virginia Code § 21A-10-8. Appx.000226. WorkForce moved for dismissal because Baldwin failed to exhaust her administrative remedies prior to instituting the instant action and because the circuit court lacks concurrent jurisdiction over administrative matters, depriving the circuit court of subject matter jurisdiction. Appx.000465. Chambers never availed himself of the administrative process at all. *See* Appx.000506 (notifying Chambers, *inter alia*, of his appeal rights). Despite acknowledging the failure of administrative exhaustion, the circuit court failed to dismiss the subject claims.

³ It should be noted that the Legislature removed from the circuit courts' jurisdiction the power of judicial review of administrative agency determinations. Effective June 30, 2021, the West Virginia Appellate Reorganization Act created the Intermediate Court of Appeals of West Virginia. *See* W. Va. Code §§ 51-11-1, *et seq.* By statute, the Legislature endowed the Intermediate Court of Appeals with appellate jurisdiction over, *inter alia*, "[f]inal judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code[.]" W. Va. Code § 51-11-4(b)(4).

Baldwin and Chambers do not argue that they exhausted their administrative remedies. Rather, they argued, and the circuit court found, that the futility exception to exhaustion was applicable on the grounds that their administrative remedies are duplicative and that the administrative process cannot award mandamus. Appx.000046-000048. The circuit court found that requiring claimants to undergo the administrative process “would be duplicative and futile, while a court of general jurisdiction may engage in fact finding and make determinations on whether to order extraordinary relief and other remedies.” Appx.000047. The circuit court’s order denying WorkForce’s motion to dismiss lacks any further explanation of its “duplicative” finding.

To be clear, this Court has recognized exceptions to the general rule requiring exhaustion. *See* Syl. Pt. 2, *Wiggins v. Eastern Associated Coal Corp.*, 178 W. Va. 63, 357 S.E.2d 745 (1987) (“Where the available administrative remedy is inadequate, this Court recognizes an exception to the general rule that where a new right is created by statute, the remedy can be only that which the statute prescribes.”); Syl. Pt. 6, *id.* (“This Court will not require the exhaustion of administrative remedies where such remedies are duplicative or the effort to obtain them futile.”); *see also* Syl. Pt. 1, *State ex rel. Bd. of Educ. v. Casey*, 176 W. Va. 733, 349 S.E.2d 436 (1986) (“The doctrine of exhaustion of administrative remedies is inapplicable where resort to available procedures would be an exercise in futility.”). “The burden of proving an exception to the exhaustion requirement rests on the party seeking to avoid the mandate.” *Sturm*, 223 W. Va. at 282, 672 S.E.2d at 611 (quoting *Doe*, 906 F. Supp. at 1097) (footnote and citation omitted). Baldwin and Chambers did not meet their burden.

The “duplicative” exception is narrow. In *Wiggins*, this Court considered “whether the appellant should be barred from pursuing his common law remedies because he did not exhaust his administrative remedies under West Virginia Code § 22A-1A-20.” *Wiggins*, 178 W. Va. at 66,

357 S.E.2d at 748. This Court found that exhaustion pursuant to the state statute was not required “because the appellant successfully pursued the nearly identical administrative remedies available under the federal mine safety statute.” *Id.* Thus, this Court found that exhaustion would be futile because “[t]he appellant could not have been granted any additional relief under the parallel West Virginia statute because ‘double recovery of damages is not permitted; the law does not permit a double satisfaction for a single injury.’” *Id.* (quoting Syl. Pt. 7, *Harless v. First Nat’l Bank*, 169 W. Va. 673, 289 S.E.2d 692 (1982)).

Here, Baldwin and Chambers do not claim that they have exhausted administrative remedies under a parallel federal or state statute. Instead, they claim, and the circuit court found, that West Virginia’s administrative procedures for unemployment compensation benefits are duplicative of filing suit, the very action prohibited by the exhaustion doctrine and by statute. The circuit court’s finding that the administrative process is “duplicative” subverts the unambiguous statutory language of West Virginia Code § 21A-7-19, which provides, “A person claiming an interest under the provisions of this article shall exhaust his remedies before the board before seeking judicial review.” W. Va. Code § 21A-7-19. The Legislature has enacted an administrative process designed specifically to make the determinations at issue. The circuit court has judicially created a duplicative process not contemplated by law and has declared that the long-standing statutorily created process is the one that must yield. This does not satisfy Baldwin and Chambers’ burden.

Baldwin and Chambers have not satisfied their burden as to the futility exception, either. While this Court has not provided a test for the determination of when exhaustion of administrative remedies is futile, federal courts have provided guidance, and decisions from this Court are instructive. In *Villarreal v. Masters*, No. 1:15-cv-11467, 2016 U.S. Dist. LEXIS 190848 (S.D.W.

Va. Aug. 5, 2016), the United States District Court for the Southern District of West Virginia reiterated the Fourth Circuit’s holding that a litigant’s conclusory statement that the administrative process would be unsuccessful is not sufficient to establish futility:

Exhaustion may be excused under certain circumstances, such as by a showing of futility or irreparable injury. It is clear, however, that exhaustion should not be excused simply because an inmate anticipates that he will be unsuccessful in the exhaustion process. *See Thetford Properties IV Ltd. Partnership v. U.S. Dep’t of Housing & Urban Dev.*, 907 F.2d 445 (4th Cir. 1990) (“Absent a clear showing that an administrative agency has taken a hard and fast position that makes an adverse ruling a certainty, a litigant’s prognostication that he is likely to fail before an agency is not a sufficient reason to excuse the lack of exhaustion.”); *Dagley v. Johns*, 2012 U.S. Dist. LEXIS 92145, 2012 WL 2589996, *2 (E.D.N.C. July 3, 2012) (“[A] petitioner’s conclusory prediction of failure is not sufficient to excuse his lack of administrative exhaustion.”); *Wright v. Warden*, 2010 U.S. Dist. LEXIS 28575, 2010 WL 1258181, * 1 (D. Md. Mar. 24, 2010) (slip copy) (finding that “[e]xhaustion of administrative remedies is not rendered futile simply because an inmate anticipates he will be unsuccessful in his administrative appeals before the 12-month pre-release mark”); *Willis v. Warden*, 2010 U.S. Dist. LEXIS 26234, 2010 WL 1137570 (D. Md. March 19, 2010) (“Allowing a petitioner to avoid the administrative process based on a mere conclusory assertion ‘would allow the futility exception to swallow the exhaustion.’”).

Villarreal at *10 – 11. Similarly, this Court has held that “[t]he rule of exhausting administrative remedies before actions in courts are instituted is applicable, even though the administrative agency cannot award damages, if the matter is within the jurisdiction of the agency.” *Bank of Wheeling*, 155 W. Va. at 249, 183 S.E.2d at 695. Thus, this Court has held that exhaustion of administrative remedies is not futile even in cases in which the relief sought by the plaintiff was not available before the administrative agency.

In *Kincell v. Superintendent of Marion County Sch.*, 201 W. Va. 640, 499 S.E.2d 862 (1997) (per curiam), the plaintiffs sought injunctive relief requiring the Marion County Board of Education to compensate them in connection with changes made to the school year calendar after snow days caused the school board to re-designate a records/school closing day as a continuing education day, which the plaintiffs contended caused them to complete records/closing day work

on their own time. *Id.* at 641-42, 499 S.E.2d at 863-64. This Court did not reach the merits of the case because the plaintiffs “clearly failed to exhaust their administrative remedies and accordingly, the circuit court correctly ruled that it was without jurisdiction to entertain further proceedings in this matter.” *Id.* at 642, 499 S.E.2d at 864. The Court found that the plaintiffs “had at their disposal [] grievance procedures ..., which provide an administrative forum for claims by employees” *Id.* Thus, while recognizing the futility exception, the Court held, “we do not find that exception to be applicable under the facts of this case. Here, the administrative procedures available to Appellants are capable of fully resolving what amounts to nothing more than a compensation dispute. As we stated in *Hechler v. Casey*, 175 W. Va. 434, 333 S.E.2d 799 (1985), ‘injunctive relief, is inappropriate when there is an adequate remedy at law.’” *Id.* (quoting *Hechler*, 175 W. Va. at 440, 333 S.E.2d at 805).

Here, the futility exception is likewise inapplicable for several reasons. First, like in *Kincell*, the administrative procedures available to Baldwin, Chambers, and the newly added Plaintiffs are capable of fully resolving their claims. Respondents sought extraordinary relief that amounts to an injunction from the circuit court prohibiting WorkForce from recouping overpaid unemployment benefits. The administrative process that Baldwin is currently utilizing and that Chambers has failed to utilize was created solely for the purpose of determining the eligibility for, payment of, and rights regarding unemployment benefits. Thus, because the administrative process can provide Respondents with the relief they seek and because unemployment benefits are within the authority of WorkForce, exhaustion is not futile. The circuit court’s contrary finding is clear legal error, and the circuit court lacks subject matter jurisdiction, requiring dismissal.

In further end-run of the administrative processes set by law expressly for persons such as Baldwin and Chambers, the circuit court held,

exhaustion of remedies is unnecessary because Mandamus and other extraordinary remedies are not options in Respondents' administrative adjudication process, and Petitioners and the public would be irreparably harmed if ordered to expend individualized resources exhausting all remedies[.]

Appx.000022. But this Court has held that the exhaustion requirement also applies to mandamus actions. *See State ex rel. Gooden v. Bonar*, 155 W. Va. 202, 210, 183 S.E.2d 697, 702 (1971) (“Mandamus is available only when all administrative remedies have been exhausted and when there is no other available adequate remedy.”) (citations omitted); *see also Mounts v. Chafin*, 186 W. Va. 156, 160, 411 S.E.2d 481, 485 (1991) (same); *Hechler v. Casey*, 175 W. Va. 434, 441, 333 S.E.2d 799, 806 (1985) (quoting *Cowie v. Roberts*, 173 W. Va. 64, 67, 312 S.E.2d 35, 38 (1984) (“[T]he existence of an administrative appeal is as important in determining the appropriateness of extraordinary remedies, such as prohibition[,], mandamus [and injunctive relief], as is the existence of an alternative avenue of judicial relief.”); *Hechler*, 175 W. Va. at 441, 333 S.E.2d at 806 (“We referred, for example, to *McGrady v. Callaghan*, 161 W. Va. 180, 186-87, 244 S.E.2d 793, 796-97 (1978), in which this Court held that mandamus would not lie when there was a failure to pursue available and adequate administrative remedies (an administrative hearing as well as appeal to the courts).”). Despite this Court’s clear inclusion of mandamus relief within the exhaustion requirement, the circuit court found that Baldwin and Chambers’ request for extraordinary remedies to be an exception. The circuit court’s clear legal error resulted in a finding of subject matter jurisdiction where it does not exist.

As WorkForce has recounted repeatedly, Baldwin and Chambers’ remedy is and was the administrative process and appeal – all of which has been in process and is in process for Baldwin. The administrative process is working, right now, exactly as it is intended. Baldwin disagrees with the BOR’s determination and, by law, is entitled to have that decision reviewed by the ICA. If she succeeds, then no collection will occur. That is exactly why, in West Virginia, “[t]he general rule

is that where an administrative remedy is provided by statute or by rules and regulations having the force and effect of law, relief must be sought from an administrative body, and such remedy must be exhausted before the courts will act.” Syl. Pt. 2, *Bank of Wheeling*, 155 W. Va. 245, 183 S.E.2d 692. With the exception of Baldwin, the remaining Plaintiffs failed to act as claimants, allowed their administrative options to lapse, and sought relief from the circuit court to correct their errors.

For all of the reasons set forth herein, the circuit court lacks subject matter jurisdiction and should have taken no action other than to dismiss this case from its docket. WorkForce seeks that relief now – dismissal based upon the lack of subject matter jurisdiction.

- B. The circuit court committed clear legal error and exceeded its legitimate powers when it determined that West Virginia Code § 21A-10-8 prohibits WorkForce West Virginia from administratively determining if an overpayment was made due to a claimant’s nondisclosure or misrepresentation, that West Virginia Code § 21A-10-8 requires WorkForce West Virginia to file a civil action to determine if an overpayment was made by nondisclosure, misrepresentation, or fraud, and that the initiation of an administrative proceeding for overpayment determination is a *de facto* concession that West Virginia Code § 21A-10-21 and that statute’s two-year statute of limitations applies to the collection of the alleged overpayment.**

The circuit court misinterpreted two statutes and conflated the administrative determination process with the collection process, finding that a “nondisclosure or misrepresentation” determination under West Virginia Code § 21A-10-8 must occur through a civil action and cannot be made through the administrative process. The effect of this clear legal error cannot be understated. The circuit court has granted Baldwin and Chambers injunctive relief requiring WorkForce to “[s]uspend all collections of alleged overpayments resulting from error, or sought by WorkForce in any process offering or involving an administrative hearing, based on an Overpayment Determination or deputy decision dated more than two (2) years following

[WorkForce's] payment of the benefits at issue[.]” Appx.000023. Combine that injunction with the finding that, “since § 21A-10-8 proceedings for non-disclosure, misrepresentation, or fraud cannot be brought in administrative proceedings, any collections initiated by an Overpayment Determination with an offer for claimants to file an administrative appeal are, by definition, § 21A-10-21 ‘error’ proceedings with a two-year time bar[.]” and with the finding that “WorkForce *de facto* concedes that the two-year time bar applies in all administrative proceedings by citing to § 21A-10-21 in hearing submissions when claimants appeal Overpayment Determinations.” Appx.000016. A plain reading of the applicable statutes demonstrates that the circuit court’s injunction and findings result in WorkForce being prohibited from carrying out its mandatory duty under both state and federal law to determine whether overpayments exist and, if not time-barred, to collect overpayments.

West Virginia Code § 21A-10-21 applies to overpayments determined to have been made by reason of “error”:

A person who, **by reason of error**, irrespective of the nature of said error, has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past due payment: Provided, That such collection or deduction of benefits shall be barred after the expiration of two years.

W. Va. Code § 21A-10-21 (emphasis added). West Virginia Code § 21A-10-8, on the other hand, applies to overpayments determined to have been made by reason of “nondisclosure or misrepresentation”:

A person who, **by reason of nondisclosure or misrepresentation, either by himself or another (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent)**, has received a sum as a benefit under this chapter, shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received. Collection shall be made in the same manner as collection of past-due payments against employers as set forth in section sixteen [§ 21A-5-16] of article

five of this chapter, which specifically includes the institution of civil action and collection procedures thereon enumerated in said section: Provided, That such collection or deduction of benefits shall be barred after the expiration of five years, except for known or fraudulent nondisclosure or misrepresentation which shall be barred after the expiration of ten years, from the date of the filing of the claim in connection with which such nondisclosure or misrepresentation occurred.

W. Va. Code § 21A-10-8 (emphasis added). Both of these statutes presuppose that an administrative determination has already been made and fully adjudicated. This presupposition is made clear by Article 7 of Chapter 21A of the West Virginia Code, which outlines the claim procedure for unemployment compensation benefits. “If the **final decision** in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, the amount of benefits paid are considered overpaid.” W. Va. Code § 21A-7-11(c) (emphasis added). Thus, if a final decision determines that an overpayment was made and that the overpayment was by reason of error, then West Virginia Code § 21A-10-21 applies to the *collection* of the overpayment. Conversely, if a final decision determines that an overpayment was made by reason of nondisclosure or misrepresentation, then West Virginia Code § 21A-10-8 applies to the *collection* of the overpayment. Collection or recoupment occurs only *after* the overpayment determination is made and based upon the reason for the overpayment. The circuit court’s conflation of the administrative process with the collection process resulted in several errors.

First, the circuit court found that West Virginia Code § 21A-10-8 requires WorkForce to institute a civil action in a trial court both to pursue collections and for “adjudications for overpayments based on nondisclosure, misrepresentation, or fraud[,]” thereby prohibiting WorkForce from determining if an overpayment was caused by nondisclosure, misrepresentation, or fraud “in its administrative adjudication process[.]” Appx.000042-000043. But West Virginia Code § 21A-10-8 does not include a determination process; it presupposes that the administrative process is complete. It provides that, if a final decision has determined that an overpayment is by

reason of nondisclosure or misrepresentation, then the claimant “shall either have such sum deducted from a future benefit payable to him or shall repay to the commissioner the amount which he has received.” W. Va. Code § 21A-10-8. It also provides, subject to a five-year statute of limitations, that “[c]ollection shall be made in the same manner as collection of past-due payments against employers as set forth in section sixteen [§ 21A-5-16] of article five of this chapter, which specifically includes the institution of civil action **and** collection procedures thereon enumerated in said section[.]” W. Va. Code § 21A-10-8 (emphasis added).

Collection is mandatory, but the commissioner’s filing of a civil action is always discretionary. *See* W. Va. Code § 21A-7-11(c)(1) (“The commissioner **shall recover** such amount by civil action **or** in any manner provided in this code for the collection of past-due payment”) (emphasis added); *see also* W. Va. Code § 21A-10-8 (“Collection **shall be made** in the same manner as collection of past-due payments against employers as set forth in section sixteen [§ 21A-5-16] of article five of this chapter, which specifically includes the institution of civil action **and** collection procedures thereon enumerated in said section[.]”) (emphasis added); W. Va. Code § 21A-5-16(a) (stating “[t]he commissioner in the name of the State **may** commence a civil action...” and providing six other collection methods, including all available remedies under West Virginia Code § 38-1-1, *et seq.*). Importantly, no statute states that the Commissioner is required to file a civil action to determine whether an overpayment occurred or by what reason an overpayment occurred. A civil action is simply one of the methods statutorily afforded to the Commissioner to *collect* an overpayment *after* a final decision. Therefore, the circuit court committed clear legal error when it determined that West Virginia Code § 21A-10-8 requires WorkForce to institute a civil action in a trial court both to pursue collections and for “adjudications for overpayments based on nondisclosure, misrepresentation, or fraud[.]” thereby

prohibiting WorkForce from determining if an overpayment was caused by nondisclosure, misrepresentation, or fraud “in its administrative adjudication process.”

Second, based on its misinterpretation of the statute, the circuit court held that *any* “collections initiated by an Overpayment Determination or deputy decision with an offer for claimants to file an administrative appeal are, by definition, § 21A-10-21 ‘error’ proceedings with a two-year time bar[,]” and WorkForce advising claimants of their ability to appeal constitutes a “*de facto* conce[ssion] that the two-year time bar applies[.]” Appx.000042. Because it found that West Virginia Code § 21A-10-8 requires the institution of a civil action for the administrative determination of an overpayment for nondisclosure or misrepresentation, the circuit court concluded that any initiation of an administrative process must mean that WorkForce concedes that an overpayment is by reason of error and collection of the overpayment is governed by West Virginia Code § 21A-10-21. This is clear legal error.

WorkForce is required to provide appellate administrative review of its deputies’ decisions and of its ALJ’s decisions and to provide judicial review of the BOR’s decisions. W. Va. Code §§ 21A-7-3, 8, 10, and 17. The statutorily created claim procedure does not state that WorkForce waives findings by providing due process. Rather, the claim procedure ensures that WorkForce provides due process to all claimants and employers regardless of the allegation. Providing administrative appeals is not a concession; it’s the law. The circuit court’s contrary finding is a clear legal error.

The end result of the circuit court’s clear legal error is a mandamus order that requires WorkForce to violate its statutory duties, enjoining it from its legal mandate. The circuit court’s mandamus order commands WorkForce to “comply with their mandatory, non-discretionary dut[ies]” to not collect overpayments resulting from error after two years, to only collect

overpayments resulting from error within two years, and to only use the administrative process for overpayment determinations by reason of error. Appx.000022. As discussed herein, those are not WorkForce’s mandatory duties, and the circuit court’s mandate to “comply with the law” as interpreted by the circuit court requires WorkForce to abandon the administrative process and to file lawsuits for administrative determinations.

This “Court has recognized that mandamus will not lie to compel performance of an illegal or unlawful act.” *Hattman v. Darnton*, 201 W. Va. 371, 374, 497 S.E.2d 348, 351 (1997) (citing *Mounts v. Chafin*, 186 W. Va. 156, 411 S.E.2d 481 (1991), and *State ex rel. Damron v. Ferrell*, 149 W. Va. 773, 143 S.E.2d 469 (1965)). The circuit court’s mandamus order does exactly that. WorkForce has a statutory obligation to provide the administrative appeal process to all claimants, regardless of the reason for the overpayment because the administrative appeal process determines the reason for the overpayment. Federal law also requires WorkForce to engage in this process and to recoup overpayments. 42 U.S.C. §§ 503(g) and (m); 26 U.S.C. § 3304; 15 U.S.C. § 9023(f). The circuit court’s mandamus order requires WorkForce to pre-judge alleged overpayments and to file civil suits, outside the administrative procedures, if it has pre-judged an overpayment to be by reason of nondisclosure, misrepresentation, or fraud. “[T]he purpose of mandamus is to compel one to perform a legal duty imposed by law ... such duty must be one which he is capable of performing. Mandamus will not be granted where compliance with the mandate of the writ is impossible.” *State ex rel. W. Va. Dep’t of Health & Human Res. v. Bloom*, 247 W. Va. 433, 443, 880 S.E.2d 899, 909 (2022) (quoting *State ex rel. Bd. of Educ. of Kanawha Cnty. v. Johnson*, 156 W. Va. 39, 43, 190 S.E.2d 483, 486 (1972)) (citations omitted). WorkForce has no statutory authority to file civil suits to determine if overpayments occurred and/or the reason for overpayments. Thus, the circuit court’s clear legal errors result in mandating unlawful and

impossible acts by WorkForce and abandonment of statutory duties. *See, e.g.*, W. Va. Code § 21A-7-11(c)(1) (“The commissioner ***shall*** recover such amount by civil action or in any manner provided in this code for the collection of past-due payment and shall withhold, in whole or in part, as determined by the commissioner, any future benefits payable to the individual and credit the amount against the overpayment until it is repaid in full.”) (emphasis added).

Therefore, to the extent this Court considers the non-jurisdictional issues raised in this Petition, WorkForce seeks a writ of prohibition preventing the circuit court from enforcing its order finding that, pursuant to West Virginia Code § 21A-10-8, WorkForce is prohibited from administratively determining if an overpayment was made due to a claimant’s nondisclosure or misrepresentation. WorkForce further seeks to prevent the circuit court from enforcing its order finding that, pursuant to West Virginia Code § 21A-10-8, WorkForce is required to file a civil action to determine if an overpayment was made by nondisclosure, misrepresentation, or fraud. WorkForce also seeks to prevent the circuit court from enforcing its order finding that the initiation of an administrative proceeding for overpayment determination is a *de facto* concession that West Virginia Code § 21A-10-21 and that statute’s two-year statute of limitations applies to the collection of the alleged overpayment. Because the circuit court’s issuance of mandamus relies upon these findings, WorkForce seeks dismissal of Respondents’ claims asserted under West Virginia Code § 21A-10-21.

C. The circuit court committed clear legal error and exceeded its legitimate powers when it granted a writ of mandamus because Respondents lack a clear legal right to the relief sought, because there is no legal duty on the part of WorkForce to do what the circuit court has ordered, and because the administrative process is another adequate remedy.

The circuit court granted Respondents’ petition for writ of mandamus; however, as a matter of law, the mandamus factors were not satisfied. As this Court has repeatedly held,

“A writ of mandamus will not issue unless three elements co-exist (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy.” Syllabus Point 1, *State ex rel. Billy Ray C. v. Skaff*, 190 W. Va. 504, 438 S.E.2d 847 (1993); Syllabus Point 2, *State ex rel. Kucera v. City of Wheeling*, 153 W.Va. 538, 170 S.E.2d 367 (1969).” Syllabus point 2, *Staten v. Dean*, 195 W.Va. 57, 464 S.E.2d 576 (1995). Syl. pt. 2, *Ewing v. Board of Educ. of Summers County*, 202 W. Va. 228, 503 S.E.2d 541 (1998).

Fluharty v. Riley, No. 11-0737, 2013 W. Va. LEXIS 1396, at *5-6, 2013 WL 6220343 (W. Va. Nov. 26, 2013) (Mem.D.). *See also* Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996); *see also* Syl. Pt. 2, *State ex rel. West Virginia Nat’l Auto Ins. Co. v. Bedell*, 223 W. Va. 222, 672 S.E.2d 358 (2008); Syl. Pt. 1, *State ex rel. Blake v. Hatcher*, 218 W. Va. 407, 624 S.E.2d 844 (2005); Syl. Pt. 1, *State ex rel. Cosenza v. Hill*, 216 W. Va. 482, 607 S.E.2d 811 (2004).

As discussed in Section A, above, the circuit court lacked subject matter jurisdiction to proceed; thus, Respondents lacked a clear legal right to the mandamus relief. As discussed in Section B, above, Respondents lacked a clear legal right to an order prohibiting WorkForce from administratively determining if an overpayment was made due to a claimant’s nondisclosure or misrepresentation, to an order requiring WorkForce to file a civil action to determine if an overpayment was made by nondisclosure, misrepresentation, or fraud, and to an order finding that the initiation of an administrative proceeding for overpayment determination is a *de facto* concession that West Virginia Code § 21A-10-21 and that statute’s two-year statute of limitations applies to the collection of the alleged overpayment. As further discussed in Section B, above, the circuit court committed clear legal errors in finding a duty on the part of WorkForce to cease administrative determinations of overpayments due to a claimant’s nondisclosure or misrepresentation and to file civil actions to determine if an overpayment was made by nondisclosure, misrepresentation, or fraud. To the contrary, WorkForce is compelled by West Virginia and federal law to do just as it has been doing. Only by and through administrative

investigation and fact-finding can WorkForce determine whether the overpayment is by reason of error, misrepresentation, nondisclosure, or fraud.

The third factor to be considered is whether the party seeking the writ has another adequate remedy to obtain the desired relief. Baldwin is currently seeking the same ultimate relief from the ICA on a direct appeal from the BOR's administrative decision. *See* 24-ICA-39. A direct appeal from the administrative decision of the BOR is the statutory means for judicial review and is an adequate remedy. If Baldwin succeeds in her appeal before the ICA, then WorkForce will be time-barred from collecting her overpayments. The same was true for Chambers – or any of the four recently added persons. Had he availed himself of the administrative process, he would have also been able to appeal any adverse decision to the ICA and, ultimately, to this Court. Not only is the administrative process an adequate remedy, but it is also statutorily required. *See* W. Va. Code § 21A-7-19 (“A person claiming an interest under the provisions of this article shall exhaust his remedies before the board before seeking judicial review.”). Thus, Respondents have and/or had other adequate means to obtain the desired relief, and the circuit court improperly, and without jurisdiction, proceeded to award extraordinary remedies. WorkForce seeks a writ of prohibition preventing the circuit court from enforcing its mandamus order in its entirety.

D. The circuit court committed clear legal error and exceeded its legitimate powers by finding that any attempt by WorkForce West Virginia to determine if an overpayment was caused by nondisclosure, misrepresentation, or fraud in an administrative proceeding violates Article III, Section 10 of the West Virginia Constitution.

This Court has long held that “[d]ue process of law requires that a court assuming to determine the rights of parties shall have jurisdiction; that such parties shall have notice; and that they be given a reasonable opportunity to be heard before any adjudication is made.” *State v. Blevins*, 131 W. Va. 350, 361, 48 S.E.2d 174, 182 (1948). “It is settled by the decisions of this

Court that due process of law may be afforded administratively as well as judicially and that lawful administrative process is due process equally with lawful judicial process.” *State ex rel. Gooden v. Bonar*, 155 W. Va. 202, 208-209, 183 S.E.2d 697, 701 (1971) (citations omitted). Thus, the administrative process provides due process so long as the parties have notice and an opportunity to be heard. Baldwin received notice and an opportunity to be heard on three occasions, and she is currently exercising an additional opportunity to be heard before the ICA. Baldwin does not allege that she was deprived of any process, and, instead, she specifically pleads that the process occurred and provides evidence of the process.

Chambers was provided with the two opportunities to provide documentation to avoid an overpayment (Appx.000502-000505), was provided with a Deputy’s Decision and appeal rights (Appx.000506-000508), and was provided with two Notices of Determination (Appx.000509-000512), which again notified him of his appeal rights. He did not exercise his right to due process.

The circuit court concluded that “the means employed by [WorkForce] in seeking collection of alleged overpayments based on error, based on deputy decisions dated more than two (2) years following the payments at issue, is not rationally related to the purpose of Chapter 21A of the West Virginia Code, is inconsistent with such purpose, and violates Article 3, Section 10 of the West Virginia Constitution.” Appx.000043. WorkForce’s “means” include providing Baldwin notice and an opportunity to be heard prior to an overpayment determination (Appx.000208-000209), providing her notice of and an opportunity to appeal the overpayment determination (Appx.000210), providing Baldwin notice of and a hearing for her appeal of the deputy’s decision (Appx.000212-000214), providing Baldwin the ALJ’s decision (Ex. 1), providing Baldwin notice of WorkForce’s appeal of the ALJ decision (Appx.000225-000228), providing her notice of the BOR hearing, providing her with the BOR’s decision (Appx.000225-000228), and providing her

an opportunity to appeal the BOR's decision to the ICA (Appx.000225-000228). The "means" employed by WorkForce is the exact procedure set forth in statute and legislative rule. *See* W. Va. Code § 21A-7-4 (providing for deputy's determination); W. Va. Code § 21A-7-8 (providing for eight-day appeal window for appeal from deputy's decision); W. Va. Code § 21A-7-9 (providing for eight-day appeal window for appeal from ALJ's decision); W. Va. Code § 21A-7-10 (providing for review of ALJ's decision by BOR with eight-days notice to parties); W. Va. Code St. R. § 84-1-3 (providing procedures and ten-day notice for appeals to ALJ from deputy's decision); W. Va. Code St. R. § 84-1-5 (providing general hearing procedures and policies); W. Va. Code St. R. § 84-1-6 (providing procedures and eight-day notice for appeals to BOR from ALJ's decision).

The circuit court's clear legal errors that prohibit this process require WorkForce to provide *less* process to claimants. By the circuit court's mandamus order, WorkForce is now required to pre-judge a claimant's overpayment and to file a civil suit, despite WorkForce lacking statutory authority to do so. Thus, the circuit court's finding that WorkForce following the exact procedure outlined in statute and legislative rule runs afoul of Article III, Section 10 of the West Virginia Constitution is a clear legal error, and WorkForce seeks a writ of prohibition preventing the circuit court from enforcing its order and dismissing Baldwin and Chambers' due process claims.

- E. The circuit court committed clear legal error and exceeded its legitimate powers by issuing a writ of mandamus and an injunction prohibiting WorkForce West Virginia and Acting Commissioner Scott A. Adkins from engaging in administrative hearings related to alleged overpayments based on an overpayment determination or deputy's decision dated more than two years following payment of the benefits at issue.**

The circuit court's mandamus order requires WorkForce to "[s]uspend all collections of alleged overpayments resulting from error, or sought by WorkForce in any process offering or involving an administrative hearing, based on an Overpayment Determination or deputy decision

dated more than two (2) years following Respondents' payment of the benefits at issue[.]” Appx.000023. Again, WorkForce does not pre-judge overpayment determinations. The administrative process determines if an overpayment occurred and the reason for the overpayment. There is no statute of limitations on the initiation of the administrative process, only on collection, and, as discussed herein, state and federal law mandate the overpayment determination process. The suspension of that process for any decision dated more than two years after WorkForce's payment of benefits prohibits WorkForce from complying with its statutory obligation to collect overpayments due to misrepresentation, nondisclosure, or fraud, despite the five-year and ten-year statutes of limitations applicable to those overpayments.

Consider Baldwin's administrative process. The ALJ determined that Baldwin received overpayments for the weeks ending April 11, 2020, April 18, 2020, and May 9, 2020, but that the overpayments could not be collected because they were by reason of error and had occurred more than two years prior to the determination. *See* Appx.000117. The Board of Review reversed, in part, and affirmed, in part. The Board of Review determined that Baldwin's overpayments for the weeks ending April 11, 2020, and April 18, 2020, were by reason of nondisclosure or misrepresentation and, thus, could be collected within five years of the overpayments. On the other hand, the Board of Review determined that the overpayment for the week ending May 9, 2020, was by reason of error and, thus, could not be collected because the two-year statute of limitations had expired. Because Baldwin's overpayments occurred more than two years prior to the overpayment determination, those determinations cannot occur under the application of the circuit court's mandamus order. And, although WorkForce is statutorily obligated to collect on the overpayments that were by reason of nondisclosure or misrepresentation, WorkForce cannot even begin the administrative process to arrive at a determination.

Due to the clear legal errors discussed at length in Section B, above, the circuit court has essentially judicially repealed the administrative process contained in Chapter 21A of the West Virginia Code and the statutory provisions requiring WorkForce to collect overpayments for misrepresentation, nondisclosure, and fraud. Therefore, WorkForce seeks a writ of prohibition preventing the circuit court from enforcing its mandamus order.

F. The circuit court committed clear legal error and exceeded its legitimate powers when it ordered WorkForce West Virginia to assemble data, thereby requiring a party to create documents for discovery.

The circuit court's mandamus order includes a mandate that WorkForce "[a]ssemble all data regarding all claimants from whom WorkForce has engaged in collections based on a WorkForce Overpayment Determination or deputy decision dated more than two (2) years following payment, regarding any payments made from March 1, 2020, through March 1, 2022, for review under the Court's direction at a later date." Appx.000023. While it is unclear what "assemble" requires of WorkForce, it is clear that the circuit court lacks authority to require a party to create documents for the purpose of discovery. *See Scantibodies Lab., Inc. v. Church & Dwight Co.*, No. 14-cv-2275, 2016 U.S. Dist. LEXIS 154396 *68-69 (S.D.N.Y. Nov. 4, 2016) ("[T]his Court notes that a party has no obligation to create new documents in discovery.") (citing *R.F.M.A.S., Inc. v. So*, 271 F.R.D. 13, 44 (S.D.N.Y. 2010); *see also Condry v. Buckeye S.S. Co.*, 4 F.R.D. 310, 1945 U.S. Dist. LEXIS 1372 (W.D. Pa. 1945) ("But until this existence is established so that the documents asked for can be identified and this materiality established, there can be no order to produce under Rule 34."); *Alexander v. FBI*, 194 F.R.D. 305, 2000 U.S. Dist. LEXIS 8867 (D.D.C. 2000) ("Rule 34 only requires a party to produce documents that are already in existence."); *Harris v. Advance Am. Cash Advance Ctrs.*, 288 F.R.D. 170, 2012 U.S. Dist. LEXIS

173081 (S.D. Ohio 2012) (“Defendant is not required to create documents in response to plaintiff’s requests for discovery.”).

The circuit court’s requirement that WorkForce “assemble” data is a requirement that WorkForce create documents. The circuit court’s order does not contain any explanation for this requirement. Therefore, WorkForce seeks a writ of prohibition preventing the circuit court from enforcing its order.

CONCLUSION

Petitioners request that this Court stay further proceedings in the Circuit Court of Kanawha County, West Virginia, issue a rule to show cause as to why a Writ of Prohibition should not be granted, schedule this action for Rule 20 argument, enter an order granting the Writ of Prohibition, and direct the Circuit Court to grant Petitioners’ Motion to Dismiss.

/s/ Roberta F. Green

Roberta F. Green, Esquire (WVSB #6598)

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VERIFICATION PURSUANT TO WEST VIRGINIA CODE 53-1-3

STATE OF WEST VIRGINIA,

COUNTY OF KANAWHA, TO-WIT:

I, Roberta F. Green/Caleb B. David, counsel for Scott A. Adkins, Acting Commissioner, WorkForce West Virginia and for WorkForce West Virginia, hereby certify that, to the best of my knowledge and belief, the contents of the Verified Petition for Writ of Prohibition are true and accurate to the best of my knowledge.



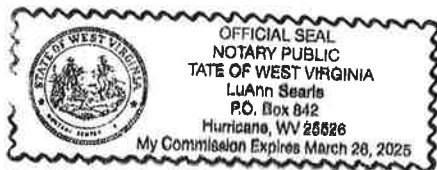
Roberta F. Green (WV State Bar #6598)
Caleb B. David (WV State Bar #12732)

Taken, subscribed and sworn to before me this the 6th day of September, 2024.

My commission expires: *March 26, 2025*


Notary Public

[NOTARY SEAL]



IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
No. _____

STATE OF WEST VIRGINIA EX REL.
SCOTT A. ADKINS, in his official capacity as
Acting Commissioner of WORKFORCE WEST
VIRGINIA and WORKFORCE WEST
VIRGINIA,
 Defendants/Respondents Below,
 Petitioners,

v.

HONORABLE JENNIFER BAILEY, Judge of the
Circuit Court of Kanawha County, West Virginia,
and
DEBORAH BEHELER BALDWIN, DENNIS R. CHAMBERS,
LINDA WARNER, ASHLEAH MURPHY, KELLY HARDY,
and BRITTANY GANDEE,
on their behalf and on behalf of all others similarly situated,
 Plaintiffs/Petitioners, Below,
 Respondents.

CERTIFICATE OF SERVICE

I, Roberta F. Green/Caleb B. David, counsel for Petitioners, hereby certify that I have served a true and accurate copy of the foregoing “Verified Petition for Writ of Prohibition” upon the parties whom a rule to show cause should be served by filing with the Court’s efilings system, on this day, September 6, 2024, as follows:

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Hon. Jennifer F. Bailey, Circuit Judge
Thirteenth Judicial Circuit
Circuit Court of Kanawha County
Kanawha County Judicial Building
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