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

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**Stafford Glenn Poff,  
Sheria Maynard,  
Travis Williamson,  
Chris Booton,  
Sean Johnson,  
Chester Maynard,  
James Ward,  
Paul Baker,  
Aaron Farley,  
Wade R. Wellman, and  
Nathan Triplett,  
Plaintiffs Below, Petitioners,**

**vs.**

**Wayne County Commission,  
Defendant Below, Respondent.**

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**BRIEF OF THE PETITIONERS SHERIA MAYNARD, STAFFORD GLEN POFF AND  
CHESTER MAYNARD**

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Chester Maynard

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## **STATEMENT OF THE CASE**

### **a. Procedural History**

On March 12, 2019, Stafford Glen Poff filed a complaint (C.A. No. 19-C-31) against the Wayne County Commission alleging claims of Unjust Enrichment, Quantum Meruit, Violation of Statute, Wage Payment and Collection Act, Declaratory Judgment and Breach of Contract. (JA-Vol. 1, p. 7). On April 9, 2019 Sheria Maynard filed her complaint (C.A. No. 19-C-56) against the Wayne County Commission and alleged, in addition to the aforementioned Poff claims, the claims of Negligence, Detrimental Reliance, Outrageous and Intentional Conduct, False and Misleading Statements and Breach of Good Faith and Fair Dealing. (JA-Vol.3, p.204). Also, on April 9, 2019 the Plaintiff Chester Maynard filed a complaint (C.A. No. 19-C-57) along with six (6) other Deputy Sheriffs alleging the same claims of Complainant Poff. (JA-Vol.7, p.1029). There were two (2) other complaints (C.A. No. 19-C-60 and 19-C-61) filed against the Wayne County Commission alleging the same or similar claims. (JA-Vol.9, p.1104) and (JA-Vol.10, p. 1255).

In the action below, the Plaintiff Sheria Maynard was represented by the undersigned. Initially, the remaining Plaintiffs were represented by Attorney Richard Weston, then Attorney Sara Chapman became counsel for all of the Plaintiffs except Sheria Maynard. On March 1, 2024, the Circuit Court entered an Order granting Sara Chapman's Motion to Withdraw as Counsel. After Attorney Chapman's withdrawal as counsel, the undersigned also became counsel for Plaintiffs Stafford Glen Poff and Chester Maynard on March 28, 2024.

In the action below, the Defendant Commission sought to dismiss the Plaintiffs (Maynard, Wellman and Triplett) claims pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. After brief submissions and oral argument, the Court denied the Defendant's Motion to Dismiss. (JA-Vol. 4, p.325). The parties resolved the Plaintiffs' claim of Violation of Statute and the Wage and Payment Claim; therefore, an Agreed Order of Voluntary Partial Dismissal was entered. (JA-Vol. 7, p.1020).

The issues now before this Honorable Court and presented for certification are as follows:

**Certified Questions**

1. Whether Defendant's former written policy and practice of paying ninety percent (90%) of healthcare insurance premiums for deputy sheriffs who work 20-24 year and retire at the age of 50 created a vested right to retiree health insurance benefits for Plaintiffs.

\_\_\_\_\_ Yes

  X   No

2. Whether Plaintiffs may proceed with claims sounding in detrimental reliance, false and misleading statements, unjust enrichment, quantum meruit and breach of contract to enforce Defendant's former written policy and practice of paying a percentage of healthcare insurance premiums for deputy sheriffs who work 20-24 years and retire at the age of 50.

  X   Yes

\_\_\_\_\_ No

The appellate standard of review of questions of law answered and certified by a circuit court is *de novo*. Syl. Pt. 1, *Martino v. Barrett*, 215 W.Va. 123, 595 S.E.2d 65 (2004)

### **b. Statement of Facts By The Circuit Court**

Defendant Wayne County Commission had created a written policy and practice providing that Wayne County deputy sheriffs could retire at age 50 and receive health care coverage, with ninety percent (90%) of the premium costs paid by Defendant after they worked for Defendant for 20 to 24 years. Defendant paid one hundred percent (100%) of the premium cost for deputies who retired at the age of 50 after working 25 years and ninety percent (90%) of the premium cost for deputies who retired at the age of 50 after working 20-24 years. These consolidated matters arose after Defendant amended that practice in April 2017. After April 2017, Defendant raised the eligible age to receive retiree healthcare benefits from 50 to 60 and reduced the premium cost to be paid by the Defendant to fifty percent (50%) for deputies who retired after 15-25 years.

Pending before this Court are motions for summary judgment in *Poff v. Wayne County Commission*, Civil Action No. 19-C-31 and *Maynard v. Wayne County Commission*, Civil Action No. 19-C-56. Defendant argues, among other things, that health insurance benefits are not "vested benefits" because they are funded on a year-to-year basis, from a budget that is likewise funded annually to cover expenses that occur over the course of a

single fiscal year. Defendant's consultant advised as to the increasing cost of retiree health insurance in the future, and Defendant realized that it was no longer able to afford to pay for this benefit. Defendant further asserts that retiree health insurance benefits cannot "vest" for Plaintiffs because they have not contributed anything into a plan funding such benefits.

Contrarily, the Plaintiffs assert that they worked for several years and they detrimentally relied on the Defendant's written policy and forewent higher paying job opportunities and pay raises so that they could retire at age 50 after twenty (20) years of service and receive ninety percent (90%) of their healthcare insurance premiums paid by the Defendant. For instance, Plaintiff Sheria Maynard retired in August 2021 at age 55 with 19 years of service.

Plaintiffs in *Williamson, et al. v. Wayne County Commission*, Civil Action No. 19-C-57, intervened in *Maynard* at the summary judgment stage and filed response and surreply memoranda. The *Poff*, *Maynard*, *Williamson*, *Wellman*, and *Triplett* Plaintiffs claim that the 2011 written policy and practice gave them a vested right to unchanged retiree health insurance benefits and that they are entitled to retire at age 50 and receive Defendant-paid retiree healthcare insurance premiums. Plaintiffs further argue that they detrimentally relied on the Defendant's written policy.

Plaintiffs assert that they have a vested right to these benefits because they accepted "an artificially low wage" and forewent pay raises and other deputy job

opportunities in other jurisdictions that paid more "due to the benefit of health care benefits starting at the retirement age of fifty years old."

After considering the written pleadings and oral arguments, the Court finds that these issues present a matter of first impression in West Virginia and that there is no clear controlling West Virginia precedent to guide its decision. Accordingly, the Court is certifying these questions of law to the Supreme Court of Appeals of West Virginia. This Court acknowledges that the Supreme Court of Appeals of West Virginia may reformulate all or any part of these questions.

### **c. SUMMARY OF ARGUMENT**

This action arises out of a breach of contract wherein the Plaintiffs detrimentally relied upon the Defendant's written and verbal policy to pay ninety percent (90%) of their health insurance premiums upon retirement at age 50 if they worked for twenty (20) years as deputy sheriffs. After the Plaintiffs Sheria Maynard, Stafford Glen Poff and Chester Maynard worked almost two decades, the Defendant, unilaterally and without any compensation, changed the policy whereby the Plaintiffs would not receive the same benefits and would have to work longer to get even half of their retiree health insurance premiums paid.

The Defendant has been unjustly enriched by their actions and have failed to pay the deferred compensation as promised both in writing and verbally. Plaintiff's claims of negligence, detrimental reliance, unjust enrichment, vested rights, breach of contract, false

and misleading statements, and quantum meruit and are based on the Defendant's promise to pay set forth in the written policy. The Defendant Commission cannot hide behind the cloak of any immunity since they knew they violated the statute and failed to perform their promises.

### **STATEMENT REGARDING ORAL ARGUMENT**

Petitioners respectfully submit that no oral argument pursuant to *Rule 18 (a) (4), W. Va. R. App. P.*, is necessary.

### **ARGUMENT**

#### **1. THE PLAINTIFFS DETRIMENTALLY RELIED UPON THE DEFENDANT'S WRITTEN PROMISE AND VERBAL PROMISE TO PAY RETIREES HEALTH INSURANCE BENEFITS AFTER 20 YEARS OF SERVICE AT AGE 50**

The Plaintiff, Sheria Maynard, was employed by the Wayne County Commission as a Deputy Sherriff on or about August 26, 1998. At the time of Plaintiff's hiring, the Wayne County Commission's written retiree health benefit plan provided that they would pay ninety percent (90%) of the retiree's health insurance premiums at age 50 after 20 to 24 years of service. **At the time of her hiring or immediately thereafter, the Plaintiff obtained the defendant's policy providing her retirement health benefits that included the payment of ninety percent (90%) of her health insurance premium upon retirement after 20 to 24 years of service.** The Plaintiff testified that the Wayne County Commission established this policy by conducting a formal meeting, voting on the policy and reducing the promise to writing. The Plaintiff received a written copy of this policy throughout her tenure as an

employee of the Wayne County Commission. The following sworn testimony was given by

Sheria Maynard in this case:

Q. And for employees who work from 20 to 24 years of service, they would get 90 percent of that premium paid by the Wayne County Commission; is that correct?

A. Yes.

Q. All right. And what type of premium are we talking about? Are we talking about health insurance premium?

A. Yes, health insurance.

Q. **All right. And it's my understanding that you got a copy of the written policy a year or so after you began your employment as a deputy of the Wayne County Commission; is that correct?**

A. Yes.

Q. And did that policy, the copy that you got -- when did you start work again as a deputy for the Wayne County Commission?

A. August of '98.

Q. **And after you got this policy, did you read that policy, and did you rely upon that policy --**

A. Yes.

Q. -- In staying at work with the Wayne County Commission?

A. Yes.

Q. Okay. And did you also, ma'am, keep a copy of this policy with you that had been established by the Wayne County Commission?

A. Yes.



**Q. Did you consider that a contract that they had established with you as an employee and a deputy with the sheriff's department of Wayne County?**

**A. Yes.  
(JA-Vol. 5, p.556)**

The Plaintiff, Stafford Glen Poff, was initially hired at the Wayne County Sheriff's Department on January 13, 2002. Mr. Poff has a Bachelor's Degree from Marshall University. According to his sworn deposition testimony, he was gainfully employed in a private sector job at Columbia Paint where he worked as a Manager over the Huntington and Charleston stores. He earned over Forty Thousand Dollars (\$40,000.00) a year with annual bonuses and a 401K retirement plan.

The only reason Mr. Poff left his employment at Columbia Paint was due to the promises of the Wayne County Commission and the Wayne County Sheriff regarding their health insurance package and the ability to retire at age 50.

**Q. Is there a reason you decided to leave Columbia?**

**A. I wanted to be able to retire at age 50. I really saw the benefit of a government retirement. It paled in comparison -- private sector paled in comparison to government retirements, the benefit package.**

**Q. So how old are you now, Mr. Poff?**

**A. I'm 52.**

**Q. And what's your date of birth?**

A. July 5th, 1968.  
(JA Vol. 11, p.1436)

The Plaintiff Chester Maynard became employed as a Deputy Sheriff on November 8, 1999. He also relied on the Defendant's retiree health insurance plan:

Chet Maynard, a Deputy with the Wayne County Sheriff's Department testified that he was promised that his health care would be covered upon the completion of twenty-five years of service. Mr. Maynard testified that Stafford Poff was in charge of the Deputy Sheriff's Association when the issue of low salary was raised with the County Commission. Mr. Maynard testified that he had attended meetings where Mr. Poff raised the issue of low salaries in the 2010 time frame. Mr. Maynard testified that the acting commissioners reminded the Deputies of the retirement health insurance benefit and retiring at the age of 50 during these negotiations for higher pay.

(JA-Vol. 7, p.920)

Due to his inability to retire at age 50, Plaintiff Chester Maynard will work until November, 2024 at age 60 to receive his promised retiree health benefit.

The Wayne County Commission promised in writing via the "Wayne County Commission Retiree Health" and verbally to the Plaintiffs (Sheria Maynard for 19 years, Chester Maynard for 18 years and Stafford Glen Poff for 15 years) that if they remained employed as Wayne County Deputy Sheriffs for twenty (20) years and retired at age Fifty (50) the Commission would pay ninety percent (90%) of their health insurance premiums. Their policy states as follows:

## **Wayne County Commission Retiree Health**

Eligibility: Member must be actively employed and enrolled in the Wayne County Commission group health coverage.

Service years: The total number of years the employee has paid into the PERS. Wayne County Commission will count any entity service years in which you paid into the Public Employee Retirement System.

....

Class II: Sworn Officers/ Deputy Sheriffs

Normal retirement age:

Age 60 with 5 years of service under PERS (excluding military service).

Age 50, if age plus years of service equals or exceeds 70 (exceeding military service).

Early retirement (reduced pension): age 50 with 10 years of service.

Benefit duration: Lifetime

....

Retiree coverage:

....

Portion of the premium that Wayne County Commission will pay:

Depends upon the years of service accumulated under the Public Employees Retirement System.

5-9 years service = 25%

10-14 years service = 50%

15-19 years service = 75%

20-24 years service = 90%

25+ years service = 100%

(JA-Vol. 7, p. 961)

Then, in July, 2011, the Defendant modified the health retirement benefit policy as to individual hires after July 1, 2011: the **modification did not alter or modify the Plaintiffs retiree health benefits:**

## **Wayne County Commission Retiree Health**

Eligibility: Member must be actively employed and enrolled in the Wayne County Commission group health coverage.

Service years: The total number of years the employee has paid into the PERS. Wayne County Commission will count any entity service years in which you paid into the Public Employee Retirement System.

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Normal retirement age

Age 60 with 5 years of service under PERS (excluding military service).

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Early retirement (reduced pension): age 50 with 10 years of service.

Benefit duration: Lifetime

....

Retiree coverage:

....

Portion of the premium that Wayne County Commission will pay depends upon the years of service accumulated under the Public Employees Retirement System:

5-9 years service = 25%

10-14 years service = 50%

15-19 years service = 75%

20-24 years service = 90%

25+ years service = 100%

Employees hired after July 1, 2011:

Not eligible for retiree health insurance.

Wayne County Commission will put \$1,000 per year into a health account to be used at retirement. At retirement, money can be used for any qualified medical, dental, or vision expense, including premiums. The Internal Revenue Service denies qualified medical care expenses within IRS Section 213(d).

On the eve of fulfilling their end of the bargain which was to remain employed for 20 to 24 years to receive the benefit, the Defendant modified their retirement health insurance policy.

### ***Wayne County Commission Retiree Health Program***

*The Wayne County Commission has no contractual obligation to offer or provide retiree health benefits. The Wayne Commission reserves the right to make changes or completely cancel the retiree health program at any time.*

*Following is the complete description of the amended Retiree Health Program. No previous description or wording is to be considered.*

*Eligibility:*

*Only full-time employees hired prior to July 1, 2011 are eligible. No benefits of any kind will be offered for employees hired after July 1, 2011.*

....

*Employee must be age 60 or older to receive retiree health benefits.*

*Service years:*

*The total number of years the employee has paid into the Public Employee Retirement System. The Wayne County Commission will count any entity service years in which you paid into the PERS.*

....

*What the Wayne County Commission will pay:*

<i>Years of Service</i>	<i>Wayne County Commission pays</i>
<i>15-25 years</i>	<i>50%</i>
<i>25+ years</i>	<i>100%</i>

(JA-Vol. 4, p.415 )

The written policy was detrimentally relied upon by the Plaintiffs Sheria Maynard, Stafford Glen Poff and Chester Maynard for almost two (2) decades as they remained employed as Deputy Sheriffs.

- q. So when Sheriff Pennington discussed salary and benefits with you, did he promise to you that you would have health insurance at age 50 if you retired?
- a. He agreed to it. That was the benefit package that was presented to me.  
(JA-Vol. 11 p.1449) (Deputy Poff's Testimony)

'Detrimentially Alter' means the governing body cannot reduce existing benefits like medical coverage without just compensation. *Booth v. Sims*, 193 W.Va. 323, 456 S.E.2d 167 (1995)

Unfortunately, **the state troopers, secretaries, school service personnel, teachers, highway workers, maintenance employees, assistant prosecuting attorney and other ordinary state and local workers are not sophisticated politicians who expect their government to lie to them.** When, therefore, today's legislature and today's governor make those workers promises, those workers believe the promises and organize their lives in the expectation that their government and their employer will treat them honorably. In these circumstances, the rules cannot be changed after employee's have substantially relied to their detriment. The cynosure, them of an employee's W. Va. Const. art, III, § 4 contract right to a pension is not the employee's or even the government's contribution to the fund; rather, it is the government's promise to pay. (Booth at 184) (emphasis supplied).

A governmental body can change their employee benefits, but any alterations must have a prospective effect, and cannot adversely affect the contractual rights of existing employees who have relied upon the agreement to their detriment *Adams v. Ireland*, 207 W.Va. 197, 528 S.E.2d 197 (1999).

*Booth v. Sims*, 193 W.Va. 323, 456 S.E.2d 167 (1995) held that the determinative factor is “whether the employee may be said to have substantially relied to their detriment” on the statute. Adams, p. 203

Changes may be made in pension systems with regards to new employees who have not yet joined the system and who have *not* yet relied to their detriment on government promises of future benefits. Furthermore, changes can be made with regard to employees with so few years of service that they cannot be said to have relied to their detriment. Line drawing in this latter regard must be made on a case-by-case basis, **but after ten years of state service detrimental reliance is presumed.**

Syl. pt. 15, *Booth v. Sims*, *supra*

Pursuant to the *Booth* decision, the Plaintiffs have exceeded the requisite number of years of service to presume detrimental reliance (Sheria Maynard – 19 years, Chester Maynard – 18 years and Stafford Glen Poff – 15 years).

In *Hatfield v. Health Management Associates of West Virginia*, 223 W.Va. 259, 672 S.E.2d 395 (2008), the Court discussed establishing a detrimental reliance claim in an employment setting. To establish detrimental reliance in the employment context, this Court held the following:

Equitable estoppel cannot arise merely because of action taken by one on a misleading statement made by another. In addition thereto, it must appear that the one who made the statement intended or reasonably should have expected that the statement would be acted upon by the one claiming the benefit of estoppel, and that he, without fault himself, did act upon it to his prejudice.

Syllabus Point 4, *Barnett v. Wolfolk*, 149 W.Va. 246, 140 S.E.2d 466 (1965)

The Plaintiff *Hatfield* had received a written offer of employment and had acknowledged in writing that she was considered an at will employee. She was terminated after four (4) days of employment and filed an action against the employer that included detrimental reliance. The *Hatfield* decision stated that there was no clear and convincing evidence that the employer made an express promise that "would be relied and/or acted upon by an employee, and...that the appellant through no fault of her own, reasonably relied upon the promise." *Hatfield*, 223 W.Va. 259, 266, 672 S.E.2d 395, 402 (2008).

In this matter, the clear and convincing evidence is as follows:

- 1) That the Wayne County Commission agreed in writing and verbally for almost twenty (20) years, that if the Deputy Sheriffs worked for 20 to 24 years that upon their retirement at age 50, the Wayne County Commission would pay ninety percent (90%) of their health insurance premiums.
- 2) That the Plaintiff, Sheria Maynard, through no fault of her own, relied on that written promise for nineteen (19) years with the expectation of retiring after 20 years of service;
- 3) That the Plaintiff, Chester Maynard, through no fault of his own, relied on that written promise for eighteen (18) years with the expectation of retiring after 20 years of service;
- 4) That the Plaintiff, Stafford Glen Poff, through no fault of his own, relied on that written promise for fifteen (15) years with the expectation of retiring after 20 years of service;
- 5) That the Wayne County Commission changed the written policy without any fault of the Plaintiffs to the detriment of the Plaintiffs.

The Plaintiffs gave sworn testimony that their reliance on the Commission's promise was the basis for their continued employment as Deputy Sheriffs. As a matter of fact, Plaintiff



Poff testified that the retiree health benefit was the incentive and reason he applied for the job as a deputy sheriff:

- a. Sure. Like I spoke earlier, **I took the job because of -- to be able to retire of age 50 and because of the benefits.** From day one, from the time that I was hired under Sheriff David Pennington, Chief Deputy Todd Elliott – that was a part of it. **My pay was cut almost in half.** I was actually told by the sheriff that he almost didn't hire me because that was a sticking point with him, just because he didn't think that I would stick with it because of the sacrifice in pay.

So basically, not only do I enjoy the work, of course it was something I'd always wanted to do. But I'd always planned on being able to retire to where I could enjoy life. And that was part of why I did it. As a part of retirement. You know, it's a common discussion now that it's hard to retire because you basically have to get a second job to pay for your medical insurance. That was something that I didn't worry about because I knew it was always going to be there when I retired. It was something I always counted on.  
(JA-Vol. 11., pgs. 1440-1441)

It was also the reason he stayed as a Deputy Sheriff:

- a. And I think it was 2011 we'd hired Josh Williamson. And that's when – right before he got hired, **they had sent out a letter basically saying anybody hired after 2011 no longer receives this benefit.** They would actually put a thousand dollars a year into an account, and then you would have that upon retirement. So when they did that – at that time, there was like 14 of us. **At that point, I still counted on it.** I knew it was going to be there because I felt like we were all grandfathered in. So it was never even in my wildest dreams that that would not be there when I retired.  
(JA-Vol. 11, pgs. 1441-1442)

Another Deputy Sheriff also gave a sworn statement regarding his reliance on the promised benefits: Sean Johnson asserts that he was promised certain retiree health benefits

as an incentive to work for the Wayne County Commission as a deputy sheriff at lower wages in 1999 and the written policy remained in effect until 2017. (JA-Vol.6, pgs. 844-845).

All seven (7) of the Plaintiff in Civil Action 19-C-57 below articulated how the Defendant Commission repeatedly asserted that the retiree health insurance benefits was the reason why pay increases were not given. (JA-Vol.7, pgs. 919-923).

**2. THE DEFENDANT HAS BEEN UNJUSTLY ENRICHED BY PLAINTIFFS WORKING AT LOWER WAGES FOR ALMOST TWO DECADES RELYING ON THE WRITTEN PROMISE OF RETIREE HEALTH INSURANCE BENEFITS BY THE WAYNE COUNTY COMMISSION**

The Defendant Wayne County Commission has been unjustly enriched by the services provided by the Plaintiffs. As Deputy Sheriffs, the Plaintiffs provided a necessary service to the Wayne County community. The *Booth v. Sims*, 193 W.Va. 323, 456 S.E.2d 167 (1995) decision, recognized that "(L)aw enforcement is dangerous. Injuries and loss of life are inherent in the occupation." *Booth*, at 338, 456 S.E.2d at 182 (1995). Moreover, the Plaintiffs were paid at a rate lower than they should have been paid for their services. Unjust enrichment is not a type of contract but is a fictional obligation "imposed by law to do justice even though it is clear that no promise was ever made or intended." John D. Calamari & Joseph M. Perillo, *The Law of Contracts* §1-12(2d ed. 1977); see *Tipper v. Great Lakes Chem. Co.*, 281 So. 2d 10, 13 (Fla. 1973).

Defendant argued that the 1924 case of *Shonk Land Co. v. Joachum*, 96 W.Va. 708, 123 S.E.444(1924) is instructive in this matter: *Shonk* discusses terms of an implied contract. Unjust enrichment does not require a contract.

The Plaintiffs Sheria Maynard, Chester Maynard and Stafford Glen Poff worked for Nineteen (19), Eighteen (18), and Fifteen (15) years respectfully at an artificially low salary in exchange for the Defendant's promise to pay their health insurance premiums at ninety (90%) upon retirement after 20 years of service. Deputy Poff testified as follows:

...How that would always come up was, **every time we would go to them for pay, we were always basically reminded about our benefits package** – this is why you get paid less than other places is because of what your benefit package is.

(JA-Vol.11, p.1475) (Testimony of Deputy Poff)

Noteworthy is the fact that when pay was brought up in commission meetings, the Deputy Sheriffs were sent to the side because they were told “they weren’t allowed to talk about pay in public. We trusted that. We went to the side...” (JA-Vol.11, p.1473) (Testimony of Deputy Sheriff Poff). Deputy Sheriff Poff was the President of the Wayne County Deputy Sheriff’s Association for years.

Former Wayne County Commissioner Dave Pennington testified that while a Cabell County Sheriff, from 1969 – 2000, wages were higher in Cabell County for deputies working during the same time frame that Plaintiffs were working as deputies in Wayne County. (JA-Vol.5, p.565).

### **3. A CONTRACT EXISTED BETWEEN THE PARTIES**

A contract may be created between parties by written or oral language or by conduct. See *Costanzo Coal Mine. Co. v. Weirton Steel Co.*, 150 F.2d. 929 (4<sup>th</sup> Cir.), cert. denied, 326

U.S.765, 66 S.Ct. 147, 90 L.Ed. 4610 (1945); *White v. National Steel Corporation*, 742 F.Supp. 312 (N.D. W.Va. 1989), *Affirmed in part and reversed in part by White v. National Steel Corp.*, 938 F.2d 474, (4<sup>th</sup> Cir. 1991), *Writ of certiorari denied by National Steel Corp. v. White*, 502 U.S. 974, No. 91-527, (Nov. 18, 1991); *Restatement, Second, Contracts* § 4 comment a; 1 S. Williston, *A Treatise on the Law of Contracts* §3 (3<sup>rd</sup> ed. 1957 & Supp. 1992).

In *Darlington v. Mangum*, 192 W.Va. 112, 450 S.E.2d 809 (1994) the West Virginia Supreme Court specifically stated,

Plaintiffs made no claim that they had a **binding contract** or that **they had been promised any particular level of compensation for their entire working lives**. Thus, **this case is distinguishable from cases involving public employee pensions where a particular pension is promised based upon a certain number of years of service and the employee performs part or all of his or her bargain**. *Darlington*, at p. 813. (Emphasis supplied)

In 2014 the Court recognized a public employer's right to modify a contract in *Boggess v. City of Charleston*, 234 W.Va. 366, 371, 765 S.E.2d 255, 266 (W.Va. 2014) wherein the Court held as follows:

Based upon this Court's comprehensive analysis of the issues presented in this case, we hold that **in the absence of a contractual obligation providing otherwise**, a public employer is permitted to unilaterally modify a longstanding policy affecting the rights of employees where notice is provided to such employees **and where the modification of policy does not retroactively impair previously earned and vested rights...**

Herein, Plaintiffs argue that there was a modification to a longstanding policy that substantially impaired their earned rights to retirement health insurance benefits.

In *Citynet, LLC v. Toney*, 772 S.E.2d 36, 41, 235 W.Va. 79, 84 (2015), the employer had a written plan that provided monetary incentives for employees. A few years after receiving notice that he was vested in the plan, Mr. Toney, the employee, quit his employment and requested his monetary balance in the plan. The employer Citynet refused. Moreover, the employer argued that the written plan was not a contract but a discretionary bonus incentive. The Circuit Court ruled that it was a contract and this ruling was affirmed.

The concept of unilateral contract, where one party makes a promissory offer and the other accepts by performing an act rather than by making a return promise, has ... been recognized: "That an acceptance may be effected by silence accompanied by an act of the offeree which constitutes a performance of that requested by the offeror is well established. *First National Bank [of Gallipolis] v. Marietta manufacturing Co.*, 151 W.Va. 636, 641-42, 153 S.E.2d 175, 176 (1967). *Cook v. Heck's, Inc.*, 176 W.Va. 368, 373, 342 S.E.2d 453, 458-59 (1986)

In making its ruling, the Supreme Court relied upon its holding in *Cook v. Heck's, Inc.*, 176 W.Va. 368, 373, 342 S.E.2d 453, 458-59 (1986):

...An employer's written promise to its employees constitutes an offer for a unilateral contract that can be accepted by an employee continuing to work while under no obligation to do so. *Citynet, LLC v. Toney*, 772 S.E.2d 36, 41, 235 W.Va. 79, 84 (2015).

The *Citynet* decision further explained the "consideration" concept:

[c]onsideration is ... an essential element of a contract. *First National Bank [of Gallipolis] v. Marietta Manufacturing Co.*, *supra*, 151 W.Va. at 642, 153 S.E.2d at 177; *North American Royal Coal Co. v. Mountaineer Developers, Inc.*, 161 W.Va. 37, 39, 239 S.E.2d 673, 675 (1977). Consideration has been defined as "some right interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by

another." 17 Am. Jur. 2d, Contracts, Section 85. A benefit to the promisor or a detriment to the promise is sufficient consideration for a contract 17 Am. Jur. 2d, Contracts, Section 96. *First National Bank [of Gallipolis] v. Marietta Manufacturing Co.*, *supra*, 151 W.Va. at 642, 153 S.E.2d at 177. *Cook*, 176 W.Va. at 373, 342 S.E.2d at 458-59.

The Plaintiffs continued employment was sufficient consideration to make the Commission's promise binding and enforceable. An essential element of a contract is consideration.

Consideration has been defined as 'some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility given, suffered or undertaken by another.' 17 Am.Jur.2d Contracts, Section 85. A benefit to the promisor or a detriment to the promise is sufficient consideration for a contract.

17 Am.Jur.2d, Contract, Section 96.

Clearly, the Wayne County Commission reaped the benefits of retaining the Plaintiffs as Deputy Sheriffs. The *Citynet* decision reiterated a treatise to explain the significance of consideration:

The...unilateral contract analysis is applicable to the employer's promise to pay a bonus...to an employee in case the latter continues to serve for a stated period. It is now recognized that these are not pure gratuities but compensation for services rendered. The employer's promise is not enforceable when made, but the employee can accept the offer by continuing to serve as requested, even though the employee makes no promise. There is no mutuality of obligation, but there is consideration in the form of service rendered. The employee's one consideration, rendition of services, supports all of the employer's promises, to pay...the bonus. Indeed, although the bonus is not fully earned until the service has continued for the full time, after a substantial part of the

service has been rendered the offer of the bonus cannot be withdrawn without a breach of contract.

*Citynet*, 235 W.Va. 79 at 86, 722 S.E.2d 36 at 43 citing 2 Joseph M. Perillo and Helen Hadjiyannakis Berder, *Corbin on Contracts* §6.2, at 214 (rev. ed. omitted).

Although the *Citynet* matter involved a private-sector case, "the basic tenets of employment law are applicable in both settings". (Private and public). *Boggess v. City of Charleston*, 234 W.Va. 366, 374, 765 S.E.2d 255, 264 (2014)

In a response to the Defendant's Motion To Dismiss below, the *Booth v. Sims*, 193 W.Va. 323, 456 S.E.2d 167 (1995) decision was applied to the facts in this case:

When the **[Wayne County Commission]** legislature structures the **[deputy's]** state troopers' **[compensation]** pension system to allow for retirement before age fifty, the **[Commission]** legislature encourages suitable candidates to forego other employment opportunities today for real pension benefits tomorrow. In practical terms, the **[County's]** State's promise results in the recruitment of many **[deputies]** state troopers, who, although they may not attain the rank of Captain, may nevertheless complete twenty years' service and receive substantial retirement payments **[healthcare benefits]**. The **[county's]** State's employment system for **[deputies]** state troopers, then, not only results in a smooth recruitment of **[deputies]** troopers, but also resembles the compensation system of the armed forces of the United States. Employees join the ranks early, complete their service during their most productive years, and then leave the system. By providing **[healthcare]** pensions, the **[County]** State clearly entices troopers to remain in the government's employ, and it is the enticement that is at the heart of employees' constitutionally protected contract right after substantial reliance not to have their own **[healthcare]** pension plan detrimentally altered.

If the State **(or its political subdivisions)** promise to defer salary benefits until a person's retirement from State **(or local)** employment, and then promises to pay those deferred salary

benefits in the form of **[healthcare]** a pension, the State **(or its political subdivisions)** cannot eliminate this expectancy without just compensation once an employee has substantially relied to his or her detriment. To permit otherwise would be tantamount to allowing the State **(or its subdivisions)** to steal a car an employee might have purchased had he or she not been required to allow part of the wage fund to be diverted to pension funding. The difference between **[lifetime healthcare]** a pension and the car lies only in whether the employee may enjoy the benefit today or must wait until tomorrow. Thus, when a public employee has devoted substantial service to the **[county]** state that translates into substantial detrimental reliance, the **[Wayne County Commission]** State must provide just compensation for any **[healthcare]** pension expectancy it eliminates.

*Id.* at 339. [Wording and Emphasis Added]  
(JA-Vol. 7, p.1158)

It is noteworthy that the Defendant has already agreed that there was a contract between the Wayne County Commission and the Deputy Sheriffs: "that, at best, her (Sheria Maynard) employment with the Commission was under an implied contract of employment." (JA-Vol.4, p.517).

The Defendant has also asserted that if there is an alleged contract, it is void because it would be violative of W.Va. Code §11-8-26 (Unlawful expenditures by local fiscal body) (JA-Vol.4, p.509); however, that code section is tempered by numerous provisions that allow for a local fiscal body to adjust and/or pay their debt. See W.Va. Code §11-8-23 (Statement of Fiscal Body when levies not sufficient to meet requirements of existing contractual indebtedness). Moreover, there has not been a scintilla of evidence that the costs of ninety



percent (90%) of the Plaintiffs' health insurance premiums would have been "in excess of the funds available for current expenses."

**a. THE LOWER COURT ERRED WHEN IT ANSWERED THAT THE DEPUTY SHERIFFS DID NOT HAVE A VESTED RIGHT TO RETIREE HEALTH BENEFITS**

A written policy to provide retiree health benefits can be a vested right. The Court has explained the term "vesting" in *Booth v. Sims*, 193 W.Va. 232, 337, 456 S.E. 167, 181 (W.Va. 1995)

What we are concerned with today is not the technical concept of "vesting," but rather the condition under which public employees have a property right not to have their pension system detrimentally altered that is protected under the contract clauses because of substantial detrimental reliance on the existing pension system.

It is the Plaintiffs position that their reliance for almost twenty years on a legitimate and earned deferred compensation (payment of retiree health insurance premiums) rises to a level of constitutionally protected property rights. Syl. pt. 18, *Booth v. Sims*, 193 W.Va. 323, 328, 456 S.E.2d 167, 172 (1995). The *Booth* decision purposefully discussed its holding of a public employee's constitutional protected contract rights based on a promise to pay:

"to set the law in clear and unambiguous terms concerning the pension rights of thousands of West Virginia public employees who have given their lives to government service and now rely for their future health, welfare and security upon the promise made to them by their fellow citizens..."

*Booth*, 193 W.Va. at 329, 456 S.E.2d at 174 (1995)

The contractual right protected by the W.Va. Constitution Art. III, §4 is the "government's promise to pay." (*Id.*, Syl. pt.12)

Thus, our constitutional provision against the State's impairment of obligations of contract, W.Va. Const. art. III, § 4, means only that the government must keep its promises; art. III, § 4 does not mean or even imply that the government must make promises in the first place.

*Booth*, 193 W.Va. at 340, 456 S.E.2d at 184 (1995)

The Plaintiffs Sheria Maynard, Stafford Glen Poff and Chester Maynard were hired as deputy sheriffs and as such, the Plaintiffs are civil service employees. As stated in *Waite v. Civil Service Commission*, 161 W.Va. 154, 241 S.E.2d 164 (W.Va. 1977) in Syllabus Point 4, "a state civil service classified employee has a property interest arising out of the statutory entitlement to continued uninterrupted employment. More specifically to the present case, the Court in *Waite* stated,

A "property interest" includes not only the traditional notions of real and personal property, but also extends to those benefits to which an individual may be deemed to have a legitimate claim of entitlement under existing rules of **understandings**. Syl. Pt. 15, *Dadisman v. Moore*, 181 W.Va. 779, 384 S.E.2d 816 (1988) Syl. Pt. 3, *Waite v. Civil Service Commission*, 161 W.Va. 154, 241 S.E.2d 164 (1977).

In *Waite*, the Court noted that "...the more valuable the right sought to be deprived the more safeguards will be interposed." *Waite, Id.* at 162, 241 S.E.2d at 169. The Court outlined the determinative factors to be considered:

“...generally requires consideration of three distinct factors; first, the private interests that will be affected by the official action; second, the risk of an erroneous deprivation of a (a property) interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

*Id.* at Quoting *Matthew v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.E.2d 18, 33 (1976)

The property interest herein is in essence deferred compensation in the form of retiree health insurance benefits. The Plaintiffs' property interests have been substantially affected by the actions of the Wayne County Commission. Plaintiffs Sheria Maynard and Stafford Glen Poff have had to pay medical bills and insurance premiums since their retirement. The Plaintiff Chester Maynard has been forced to continue to work. Second, there were no procedures employed by the Wayne County Commission to maintain the benefits that the Plaintiffs were entitled to receive. Third, the Defendant Commission's fiscal and administrative burden is minimal considering that the Plaintiffs account for a smaller number of Deputy Sheriffs versus the entire Deputy Sherriff's Department. *Booth*, recognized that “it is a recurrent problem of government that today's elected officials curry favor with constituents by promising benefits that must be delivered by tomorrow's elected officials.” *Booth v. Sims*, 193 W.Va. at 339, 456 S.E.2d at 183 (1995).

*Id.* at 183, 339.

**b. THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING HAS CLEARLY BEEN BREACHED**

The Plaintiffs are alleging that the Defendant violated implied the covenant of good faith and fair dealing in carrying out the terms of the contract to provide retiree health insurance benefits. The Plaintiffs are not alleging a common law stand alone cause of action. In *Evans v. United Bank, Inc.* 235 W. Va. 619, 775 S.E.2d 500 (2015) the West Virginia Supreme Court states,

(The West Virginia Supreme Court of Appeals has declined to recognize an independent claim for a breach of the common law duty of good faith, and has instead held that such a claim sounds in breach of contract.") (Internal citations omitted); see also *Wittenberg v. Wells Fargo Bank, N.A.*, 852 F. Supp.2d 731, 750 (N.D.W.Va. 2012) ("West Virginia does not recognize a stand-alone cause of action for failure to exercise contractual discretion in good faith. As such, **a claim for breach of the implied covenant of good faith and fair dealing can only survive if the borrower pleads an express breach of contract claim.**")

West Virginia law "implies a covenant of good faith and fair dealing in every contract for purposes of evaluating a party's performance of that contract." *Stand Energy Corp. v. Columbus Gas Transmission*, 373 F. Supp. 2d 631, 644 (S.D.W.Va. 2005) (quoting *Hoffmaster v. Guiffrida*, 630 F. Supp. 1289, 1291 (S.D.W.Va.1986).

**4. THE PLAINTIFFS MAY PURSUE A CLAIM OF QUANTUM MERUIT TO ENFORCE THE DEFENDANT'S WRITTEN POLICY AND PRACTICE OF PAYING RETIREE HEALTH CARE BENEFITS FOR DEPUTY SHERIFFS WHO WORK 20-24 YEARS AND RETIRE AT THE AGE OF 50**

West Virginia Jurisprudence expressly allows quantum meruit recovery for contracts implied in law based on the equitable doctrine that one will not be allowed to profit or enrich oneself unjustly at the expense of another. See *Copley v. Mingo County Bd. of Educ.*, FN 17, 195 W.Va. 480, 466 S.E.2d 139 (1995).

Under principle of quantum meruit, if benefits have been received and retained under such circumstances that it would be inequitable and unconscionable to permit party receiving them to avoid payment therefore, law requires party receiving and retaining benefits to pay their reasonable value.

*Id.*, FN 17

The Defendant knowingly received the benefit of the Plaintiffs' services. It would be inconceivable to permit Defendant to avoid full compensation to the Plaintiffs for the reasonable value of the services that were to be provided.

**5. THE PLAINTIFFS HAVE A VIABLE CLAIM OF FALSE AND MISLEADING STATEMENTS**

The essential elements in an action for fraud are: (1) that the act claimed to be fraudulent was the act of the defendant or induced by the defendant; (2) that it was material and false; (3) that plaintiff relied upon it and was justified under the circumstances in relying upon it; and (4) that plaintiff was damaged because he/she relied upon it. See *Bowen v. Allied Warehousing Services*, 229 W. Va. 523, 729 S.E.2d 845 (2012); *Lengyel v. Lint*, 176 W. Va. 272, 280 S.E.2d 66 (1981).

The Plaintiffs claim of false and misleading statements is based on the Wayne County Commission's failure to honor their written and verbal policy to pay ninety percent (90%) of the Deputy sheriffs' health insurance premium upon retirement after twenty (20) years of service. The Plaintiffs believed and relied on these statements for almost two (2) decades.

Sheriff Deputy Maynard testified as follows:

Q. Okay. You say in your answer – you say at the time of your hiring or sometime thereafter that you were promised a benefit package, which included the payment of 90 percent of your health insurance premium upon your retirement after 20 to 24 years of service. Does that sound familiar to you?

A. Yes.

Q. And it is in response to the question that was asked of you to identify each and every false and misleading statement that you allege was made by the commission as alleged in paragraph 24 of your complaint.

And so you go on to say that the rate of pay was low in your job as a deputy sheriff in Wayne County, but you continued your employment primarily due to the health insurance benefit that you would receive after retirement; was that correct?

A. Yes

The Plaintiffs have been damaged by relying on the Commission's representation: they have either had to pay medical bills, obtain health insurance elsewhere and pay one hundred percent (100%) or less of insurance premiums. Clearly, it has been a financial and emotional burden.

6. **W. Va. Code §7-5-20 ALLOWS COUNTIES FLEXIBILITY IN CHOOSING HEALTH PLANS**

West Virginia Code §7-5-20 (Group insurance programs authorized) allowed the Wayne County Commission to adopt and implement a policy wherein they agreed to pay 90% of health insurance premiums after 20 years of service by a deputy sheriff. That code section states in pertinent parts as follows:

Every county through its **county court shall have plenary power and authority to** negotiate for, **secure** and adopt for the officers and regular employees thereof, other than provisional, temporary, emergency and intermittent employees, who are in officer or employee status with such county on and after the effective date of this section, a policy or policies of group insurance written by a carrier or carriers chartered under the laws of any state and duly licensed to do business in this State and covering life; **health**; hospital care; surgical or medical diagnosis, care and treatment; drugs and medicines; remedial care; other medical supplies and services; or any other combination of these; **and any other policy or policies of group insurance which in the discretion of the county court bear a reasonable relationship to the foregoing coverages.** W.Va. Code §7-5-20

One of the Defendant's positions below was that the Commission cannot be held liable because they interpret W.Va. Code §7-5-20 to mandatorily require retirees to pay 100% of their health insurance premiums (JA-Vol. 4, p. 499). In essence, the Defendant submits that they violated W. Va. Code §7-5-20:

*The Commission had no authority to provide any other plan for retiree health insurance.*  
(JA-499)

*...the Commission recently concluded that it never had the discretion in the first place to implement a plan in which it paid any*

*portion of the premiums for healthcare benefits for any employee after retirement.*  
(JA-Vol. 4, p. 500)

The Defendant has argued that *Darlington v. Mangum*, 192 W.Va. 112, 450 S.E.2d 809 (1994) supports its position that this Court should rule as a matter of law that the Wayne County Commission acted illegally in promising to pay 90% of the health insurance premium after 20 years of service as a deputy sheriff (JA-497). The Defendant intentionally chose to ignore footnote 6 of the *Darlington* opinion which states as follows:

Plaintiffs made no claim that they had a **binding contract** or that **they had been promised any particular level of compensation for their entire working lives**. Thus, **this case is distinguishable from cases involving public employee pensions where a particular pension is promised based upon a certain number of years of service and the employee performs part or all of his or her bargain**. Here the employee receives monthly health insurance and a monthly salary, and there is no express or implied contract of long-term employment. *Darlington vs. Mangum*, 192 W.Va. 112, 450 S.E.2d 809 (1994). (Emphasis supplied)

The Defendant argued that *Darlington vs. Mangum*, 192 W.Va. 112, 450 S.E.2d 809 (1994) is applicable since the court decided, in part, that the Commission therein could require deputy sheriffs to pay a portion of their monthly premium pursuant to W.Va. Code §7-5-20; however, the Plaintiffs' case is distinguishable since **the *Darlington* Court decision specifically noted that the case was distinguishable from cases involving claims of breach of contract or detrimental reliance.**



Moreover, *Darlington, supra* is readily distinguishable in that the *Darlington* Plaintiffs were present employees who were claiming a violation of West Virginia Code §7-14-17(a) which is a disciplinary statute addressing removal, suspension or reduction in rank or pay. Those issues are certainly not relevant to the present case.

Finally, W.Va. Code §7-5-20 does not state that the employee **must** pay. Conversely, the statute says that the Commission can purchase “**any other policy or policies of group insurance**”. The statute merely gives the employee the option to pay and it does not limit the County Commission’s authority to pay a portion of health insurance premium if they had chosen a policy for same. West Virginia Code §7-5-20 addressed group health plans. It is void of any restrictions that prevent the Commission from providing deferred compensation in the form of an individual health policy at retirement.

## **7. THE DEFENDANT IS NOT ENTITLED TO ABSOLUTE AND QUALIFIED IMMUNITY**

The Wayne County Commission is not immune from the disputed healthcare retiree benefit claims. It has been historically recognized in West Virginia that political subdivisions, including county commissions, are not entitled to common law immunity protection such as absolute or qualified immunity.

“A litigant may pierce the shield of qualified immunity by showing that a government official has violated a clearly established statutory or constitutional right.” *Maston v. Wagner*, 36 W.Va. 488, 501 (2015). The Wayne County Commission asserts that it is immune from any claims made by the plaintiffs related to the provision of healthcare benefits. The

Commission asserts two distinct immunities: absolute immunity and qualified immunity. The Commission does not assert immunity under West Virginia Code §29-12A-1 et. seq., known as the Governmental Tort Claims and Insurance Reform Act.

The Governmental Tort Claims and Insurance Reform Act sets forth instances wherein a political subdivision can be held liable for its actions. "A political subdivision means any county commission." W.Va. Code §29-12A-3(c). Pursuant to W.Va. Code §29-12A-4, the Wayne County Commission can be held liable for damages for governmental and proprietary functions.

§29-12A-4. Governmental and proprietary functions of political subdivisions; liability for damages.

.....

(c) Subject to sections five and six of this article, a political subdivision is liable in damages in a civil action for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

.....

(2) Political subdivisions are liable for injury, death, or loss to persons or property caused by the negligent performance of acts by their employees while acting within the scope of employment.

In *Nida v. Zarc Intern., Inc.* 93 F. Supp. 2d 725 (S.D. W.Va. 2000), the Court held that a local government may be liable if its officers or employees act negligently in carrying out their policy. Hence, the question to be answered: was the Wayne County Commission negligent in providing a written offer to the Deputy Sheriffs with specific retiree health insurance benefits if they worked so many years? The answer is yes.

In the recent case of *Billiter v. Jones*, No. 3:19-Cr-0288, 2020 WL 5646901 (S.D. W.Va. Sep. 22, 2020), the Court addressed the immunity of the Mason County Commission regarding an employment decision made by the Circuit Clerk. Therein, the elected Republican Circuit Clerk-Jones fired a Democratic deputy clerk-Billiter and suggested that the firing was because the deputy clerk's mother had been the preceding (Democratic) Circuit Clerk. The new Republican Circuit Clerk also hired three new (Republican) deputy clerks. The fired deputy clerk (Billiter) filed a lawsuit against the Commission alleging violations of the W.Va. Human Rights Act and the Constitution.

Judge Chambers ruled that the Commission was not entitled to qualified immunity.

If the law was clearly established, the immunity defense ordinarily should fail, since a reasonably competent public official should know the law governing his conduct. Nevertheless, if the official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standards, the defense should be sustained.

*Billiter* citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) wherein the Court held:

Qualified immunity shields government actors from liability "insofar as their conduct does not violate a clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *Pearson v. Callahan*, 555 U.S. 223, 231 (2009). Essentially, the doctrine provides protection for governmental officials when they make decisions or take actions in "gray areas." *Brickey v. Hall*, 828 F.3d 298, 303 (4<sup>th</sup> Cir. 2016) (citing *Occupy Columbia v. Haley*, 738 F.3d 302, 307 (4<sup>th</sup> Cir. 2014)). It provides "breathing room to make reasonable but mistaken judgements." *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011)

The *Billiter* opinion discusses whether the government official should have known their action violated a clearly established statutory or constitutional right. The Court ruled that this answer was yes and the Mason County Commission was not immune.

The commissioners herein knew or should have known as supported by their testimony that their actions violated the Plaintiffs' rights. Wayne County Commissioners Adkins and Pennington testified that they were aware of their governmental and proprietary duties with regards to the retiree health insurance benefits. Commissioner Pennington testified he knew his duties:

- Q. Do you know whether the county commission is permitted to bind the county with financial obligations that extend beyond the fiscal year?
- A. We – as a county Commission, we cannot bind the county outside of one fiscal year as a time.
- Q. Do you know whether if the county commission is obligated to obtain those GASB reports that you referenced?
- A. Yes. It was required. It was required that we obtain those reports and try to sustain our budgets, sustain county.

(JA-Vol.6, p.859)

Commissioner Pennington also testified that he was aware of his duties:

- Q. Now, with regard to various policies that are set by the commission, if those policies involve funding from the county commission, is it necessary to reassess them?

- A. They have to be reassessed each year. That's by law. Make sure that we have the funds to approve the policy.

(JA-Vol.6, p.861)

The Wayne County Commission has failed to offer any evidence that the cost of the retiree health insurance premium exceeded available funds.

On or about April 10, 2017 the Defendant issued a letter prefacing the amended retiree health plan with "The Wayne County Commission reserves the right to make changes or completely cancel the retiree health program at any time." (JA-Vol.5, p.560). From Sheria Maynard's date of hire in 1998 until the May, 2017 effective amendment date, the County Commission had never reserved the right to make changes and had never represented a lack of contractual obligation to provide benefits.

In essence, the Defendant is hiding behind the immunity argument and W.Va. Code §7-5-20 to excuse their performance in engaging in tendering written offers that at that time they were made were, according to the Defendant, a knowing violation of the statute. The Defendant's actions constitute NEGLIGENCE. Defendant has conceded that they violated the statute, W.Va. Code §7-5-20: "The Commission had no authority to provide any other plan for retiree health insurance." (JA-Vol.4, p.499) Assuming *arguendo* that qualified immunity did apply to the Commission, the Court still should conclude that it is not immune. The plaintiffs have a constitutional right to their property interest and the Complaint sets forth conduct by the Wayne County Commission that could be characterized as negligent, reckless,

fraudulent, malicious, or oppressive. Qualified immunity is not synonymous with absolute immunity. “[I]mmunities must be assessed on a case-by-case basis in light of the governmental entities and/or officials named and the nature of the actions and allegations giving rise to the claim.” *W. Virginia Dep’t of Health and Human Res. v. Payne*, 231 W.Va. 563, 571, 746 S.E. 2d 554, 562 (2013); see *Parkulo v. W. Virginia Bd. of Prob. & Parole*, 199 W.Va. 161, 483 S.E.2d 507 (1996) (“The existence of the State’s immunity [] must be determined on a case-by-case basis.”). “[Q]ualified immunity...is not an impenetrable shield that requires toleration of all manner of constitutional and statutory violations by public officials.” *Hutchison v. City of Huntington*, 198 W.Va. 139, 148, 479 S.E.2d 6459, 658 (1996).

### **CONCLUSION**

Wherefore, the Petitioners respectfully request the Court to determine that the Defendant’s written policy and practice of paying ninety percent (90%) of healthcare insurance premiums for deputy sheriffs who work 20-24 years and retire at the age of 50 created a vested right to retiree health insurance benefits. Additionally, the Petitioners respectfully request the Court to determine that the Plaintiffs may proceed with claims based on negligence, detrimental reliance, false and misleading statements, unjust enrichment, quantum meruit and breach of contract to enforce Defendant’s written policy and practice of paying ninety percent (90%) of healthcare insurance premiums for deputy sheriffs who work 20-24 years and retire at the age of 50.

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s/Dwight J. Staples

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