No. 24-396

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA, *ex rel.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Petitioner,

v.

THE HONORABLE TERA L. SALANGO, *Judge of the Circuit Court of Kanawha County, West Virginia,* AND **SIERRA FEAZELL**,
Respondents.

RESPONDENT'S RESPONSE TO PETITIONER'S VERIFIED PETITION FOR WRIT OF PROHIBITION

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CERTIFICATE OF SERVICE

I Travis A. Griffith, Esq. counsel for Respondent, hereby certify that on September 12, 2024, that I have filed this ***"Respondent's Response to Petitioner's Verified Petition of Prohibition"*** with the Clerk via File & Serve Express system, and served copies of the same via hand delivery, addressed as follows:

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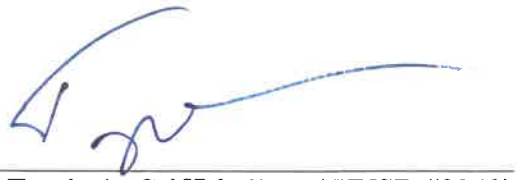

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III. INTRODUCTION

The Petition seeks an extraordinary remedy of defeating clear Legislative intent and to utilize a notice statute to block access to the courts of West Virginia. This matter presents an issue that can be easily resolved utilizing simple math and statutory construction to avoid an absurd result. The ruling from the Court below denying the Department of Health and Human Resources' ("Defendant" or "DHHR") Motion to Dismiss on April 30, 2024, clearly reviewed the entire statute in question and applied appropriate rules of statutory construction and common sense in making its' rulings. The reason for this Petition is an attempt at a perversion of a relatively new law, as it is stated in the statute, to limit the timing in which a person may sue a state entity more than the time allotted by statute. Specifically, the three questions presented by the DHHR in the Petition, which can straightforwardly be narrowed down to a single issue, address the 2022 changes to *W. Va. Code* § 55-17-3, which for the first time included *W. Va. Code* § 55-17-3(e) that provides for when a notice made to the state "expires" necessitating a new, second notice and providing fees to the state agency and the attorney general for a second notice.

Although arguments were made by the DHHR to the contrary to the Circuit Court, there is no dispute that the "Chief Office of the DHHR" received advanced notice of this matter via certified mail on August 16, 2023. Given the provisions of *W. Va. Code* § 55-17-3(a) that prior to instituting an action against the DHHR for the Respondent Judge to exercise jurisdiction over the entity, Plaintiff provided such notice and then was required to wait a minimum of thirty (30) days prior to instituting such action. Plaintiff Feazell complied with the statute and was not legally permitted to file suit prior to September 15, 2023, at which point Plaintiff Feazell's statutory notice was "effected." Thereafter, Plaintiff

Feazell instituted her action on December 7, 2023, within ninety (90) days of September 15, 2023.

As this Court has consistently found, "[a] writ of prohibition will not issue to prevent simple abuse of discretion by a trial court. It will only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers." Syl. Pt. 2, *State ex rel. Peacher v. Sencindiver*, 160 W.Va. 314, 233 S.E.2d 425 (1977) (*citing* W. Va. Code 53-1-1.) Both on the facts and the law, the Circuit Court's order is undoubtedly correct. Moreover, "[t]he writ of prohibition will issue only in *clear cases* where the inferior tribunal is proceeding without, or in excess of, jurisdiction." Syl., *State ex rel. Vineyard v. O'Brien*, 100 W. Va. 163, 130 S.E. 111 (1925) (emphasis added); *accord State ex rel. Maynard v. Bronson*, 167 W. Va. 35, 41, 277 S.E.2d 718, 722 (1981) ("The right to prohibition must clearly appear, for example, before the petitioner is entitled to such remedy."). This Petition falls far short of satisfying the demanding standards of "clearly erroneous as a matter of law" established by this Court in *State ex rel. Hoover v. Berger*, 199 W.Va. 12, 483 S.E.2d 12 (1996).

Although the DHHR attempts to complicate the matter in their Petition, this case is a rather simple matter of statutory construction and simple math. Moreover, this matter is also decided on important, clearly established public policy of this state for the resolution of cases and free access to the Courts.

For the reasons stated herein, this Petition must be summarily denied.

IV. ARGUMENT IN RESPONSE TO QUESTIONS PRESENTED

1. The circuit court acted appropriately and lawfully, finding that the ninety (90) day provisions of *W. Va. Code* § 55-17-3(e) begin to run when the Plaintiff is permitted file suit.

2. The circuit court acted appropriately and lawfully in ruling that Plaintiff Feazell filed her Complaint within ninety (90) days of when she was permitted to file suit pursuant to *W. Va. Code* §§ 55-17-3(a) and (e).

3. The circuit court has jurisdiction to preside over this case pursuant to *W. Va. Code* § 55-17-1, *et seq.*

V. STATEMENT OF THE CASE

This case arises from sexual harassment, retaliation, and *quid pro quo* sexual harassment inflicted on Respondent Sierra Feazell ("Respondent Feazell") by her manager, Brian Phillips ("Phillips") while working for the DHHR. *Appx. at 15.* Phillips consistently demanded sexual favors from the Plaintiff during her time at the DHHR, including demonstrating his authority by reminding her that he performed her reviews and would threaten employment reprisal for refusal to acquiesce. *Appx. at 16-18.* Phillips would verbally solicit Plaintiff requesting dates, sexual favors, and generally attempting to engage in a sexual relationship with the Respondent Feazell. *Appx. at 17.* In the office, Defendant Phillips would approach the Plaintiff from behind and rub her shoulders, touch the small of her back, rub against her rear-end, and whisper into her ear. *Id.* Phillips would attempt to hug the Plaintiff in the workplace and when approaching her from the rear would kiss her neck. Phillips would often comment to Plaintiff that he could "make her happy" with his large, uncircumcised penis. *Id.* Phillips consistently drove to Plaintiff's home offering her rides and/or meals to spend time with him.

From time to time, the DHHR would be required to take custody of the child or some adults needing services after business hours. *Id.* In after business hours situations the DHHR would then utilize state, tax-based funds to rent hotel rooms in Charleston for the service workers and the person/child in need until placement could be made the next day. Phillips arranged to schedule himself with Plaintiff on these evening shifts. While in the hotel room, Phillips would obtain an update on the transport of the person/child to determine how much time he had alone in the hotel

with Plaintiff. Phillips would continually touch and harass Plaintiff in the hotel room attempting to elicit sexual favors before the person/child arrived. *Appx. at 18.* Respondent Feazell continually combated Phillips' advances.

Phillips' conduct continued until Respondent Feazell made a formal grievance with the State of West Virginia which was substantiated in June of 2022 and resulted in Phillips' dismissal from the DHHR. *Id.* The DHHR hired Phillips without performing a sufficient background check. Phillips was formerly an employee of the Boone County Board of Education as a teacher. *Appx. at 19.* Phillips was terminated from Boone County Schools after substantiated claims of sexual harassment and sexual conduct were made by minor, female students. Philips sought reinstatement with back-pay from the West Virginia Public Employees Grievance Board. *Id.* On January 19, 2018, the West Virginia Public Employees Grievance Board issued a ruling finding in favor of the Boone County Board of Education and specifically finding that Defendant Phillips conduct was not "correctable" conduct. *Id.* After his termination from Boone County Schools, the DHHR hired Phillips as a manager who was placed in charge of minor children and at-risk adults, as well as Respondent Feazell. As a result of Phillips' conduct, Respondent Feazell resigned her position with the DHHR to take a job paying half as much and with far fewer benefits.

VI. RELEVANT PROCEDURAL HISTORY

Counsel for Defendant DHHR has brought this Petition seeking to manipulate the statutory intent of the pre-suit notice requirements of *W. Va. Code* § 55-17-1, *et seq.* for no other purpose than restrict access to courts and for personal financial gain. This matter was first filed under Civil Action No. 23-C-493 against the DHHR. *Appx. at 71.* However, a clerical issue in the pre-suit notice was pointed out by opposing counsel upon filing a Motion to Dismiss. *Id.* The pre-suit notice was not addressed to the "Chief Officer of the DHHR;" but, was inadvertently

addressed to Angie Ferris-Jacobs, the Director of Human Resources. In a show of good faith, Respondent Feazell voluntarily dismissed the original case pursuant to Rule 41(a) of the West Virginia Rules of Civil Procedure and began the process to file pre-suit notice and refile the action.[1] *Appx. at 60.*

On August 16, 2023, the first proper pre-suit notice was mailed to the "Chief Officer of the DHHR" and the Attorney General's office, as mandated by statute. *Appx. at 66.* Thereafter, pursuant to *W. Va. Code* § 55-17-3(a)(1), Respondent Feazell *cannot* file suit for at least thirty (30) days, which was Friday, September 15, 2023. Once the thirty (30) day pre-suit notice passes, the notice is effected and the procedural requirement of *W. Va. Code* § 55-17-3(a)(1) is met, allowing Plaintiff Feazell to file suit. At this point, pursuant to *W. Va. Code* § 55-17-3(e), Respondent Feazell had ninety (90) days to institute her action against the DHHR, which would be Thursday, December 14, 2023. *Appx. at 75* As the DHHR has conceded, Respondent Feazell filed her action on December 7, 2023 – which is clearly prior to December 14, 2023.

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[1] Although not referenced in Petition, in the Circuit Court, the DHHR argued that Respondent Feazell had not included the fees mandated pursuant to *W. Va. Code* § 55-17-3(e) as an additional argument *after* having conceded that the first notice was not properly served. Respondent Judge Salango specifically found the DHHR's arguments counterintuitive as their first argument was the original notice was not proper and, therefore, the August 16, 2023 pre-suit notice was the first actual pre-suit notice the DHHRE had received as follows:

> All counsel concedes that the first notice was addressed to the wrong person. The statute assumes that the first notice was properly served. This is not the case here. Defendants first asserted that the statute had not been complied with when this matter was first filed because the notice was sent to Angie Ferris-Jacobs, the director of Human Resources. Plaintiff identified her error, voluntarily dismissed without prejudice, and then addressed the second notice precisely as the statute is worded. So, there was no properly effected first notice which would trigger the second or subsequent notice clause.

Appx. at 6-7.

Next, the DHHR claims that the service was ineffective due to the filing of an Amended Complaint the next day. However, the DHHR, the Secretary of State, and the Attorney General were all served with the Amended Complaint. What the DHHR never argued in the Circuit Court (or bothered to ask) was that there was an error on the filed Complaint and a diligent Kanawha County Circuit Clerk, Michelle Dodd, contacted the Respondent Feazell's counsel's office suggesting the change by way of a quick Motion to Amend the Complaint and Amended Complaint pursuant to Rule 15(a) of the West Virginia Rules of Civil Procedure before the original complaint was sent out. Consequently, the brief, two-sentence argument prefaced by the DHHR is simply superfluous and incorrect - and not the basis of this Petition.

At this point, Respondent Feazell must point out that she offered to do a stipulation of dismissal with the DHHR to proceed with this matter; however, the DHHR's counsel wants this argument and Petition, as will be discussed in this brief. The underlying Circuit Court could have been spared these shenanigans, as could this Honorable Court; but that would make common sense, not convolute the issues and present a hurdle for future litigants. This lead the undersigned to state in a brief to the Circuit Court, in oral arguments to the Circuit Court, and to this Honorable Court that "[u]nfortunately, this matter before the Court presents one of the worst, frivolous, and largest waste of judicial resources the undersigned has witnessed in quite some time as a rather simple solution was presented to the [Petitioner]'s counsel by the undersigned which would not have wasted this court's time and resources." *Appx. at 70.* It was then, and it is now.

On January 8, 2024, the DHHR filed a Motion to Dismiss asserting numerous pre-suit notice theories including: 1) although addressed to the "Chief Officer of the DHHR" they

claim the wrong Suite number of the DHHR building was reference[2]; 2) the pre-suit notice was "stale" as they claimed more than ninety (90) days Respondent Feazell had to file her suit after pre-suit notice was effected had expired; and 3) that the pre-suit notice should have been accompanied by the fees established in *W. Va. Code* § 55-17-3(e) as this was a second pre-suit notice *after* arguing that there was no proper first notice[3]. *Appx. at 47.* The matter was

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[2] The Circuit Court was informed that **no** mail is **ever** delivered to One Davis Square, the DHHR building for confidentiality purposes. Instead, all One Davis Square Mail is placed in a bin at the United States Postal main building and each day, the same courier from the DHHR retrieves the mail for the entire building and distributes it. This unrefuted fact lead the Circuit Court to Rule as follows:

> As to the Defendant's first argument regarding the address of the pre-suit notice, the Court notes that the correspondence itself is addressed to the "Chief Officer of the DHHR" as the statute mandates. Plaintiff has claimed that the mail for the DHHR does not come to One Davis Square, the DHHR building, but is placed in a bin at the United States Post Office and a courier retrieves the mail each morning at 7:00 a.m. for the entire building. This claim has gone unrefuted by the Defendants leading the Court to **FIND** the Defendants have conceded this point. As the entire building's mail is placed in charge of one courier employed by the DHHR, the distinction between Suite 100 versus Suite 400 seems of little consequence when the mail is addressed to the "Chief Officer of the DHHR." While that person changes from time to time, the employees of the DHHR are clearly in a position to know who that is and the DHHR did receive the mail. This is unrefuted.

Appx. at 5

[3] Based on the DHHR's Own arguments, the Circuit Court ruled as follows:

> 11. Finally, with regard to the statutory fee over which Defendant argues, the specific language of the statute states, in part, "[i]f 90 days elapse after service of notice required by subsection (a) of this section has been effected and action has not been instituted, then the notice shall be considered to have expired, and before an action may be instituted, the complaining party or parties must provide new notice as required by subsection (a) of this section which shall be accompanied by a second or subsequent notice fee of $250 to the attorney general and by a second or subsequent notice fee of $250 to the chief officer of the governmental agency . . ."
>
> 12. All counsel concedes that the first notice was addressed to the wrong person. The statute assumes that the first notice was properly served. This is not the case here. Defendants first asserted that the statute had not been complied with when this matter was first filed because the notice was sent to Angie Ferris-Jacobs, the director of Human Resources. Plaintiff identified her error, voluntarily dismissed without prejudice, and then addressed the second notice precisely as the statute is worded. So, there was no properly effected first notice which would trigger the second or subsequent notice clause.

Appx. at 5-6.

briefed for the Court and a hearing was conducted on April 24, 2024. For matters of this proceeding, the DHHR has abandoned two of its arguments in favor of filing this Petition making a timing argument that simply does not follow the statute.

Petitioner DHHR suspiciously did not include that hearing transcript in their Appendix; because the arguments made during that hearing demonstrate how ridiculous the position the DHHR is taking and their attempt to pervert the law. *Supp. Appx. at 148.* During that argument, the issue of the "two dismissal rule" of Rule 41(a) of the *West Virgina Rules of Civil Procedure* was discussed and this led the undersigned counsel to quote Justice Cleckley's Litigation Handbook on West Virginia Rules of Civil Procedure and his use of *Murray v. Sevier*, which stated as follows:

> Where the purpose behind the "two dismissal" exception would not appear to be served by its literal application, and where that application's effect would be to close the courthouse doors to an otherwise proper litigant, a court should be most careful not to construe or apply the exception too broadly. "**The entire purpose of the rules was to strike from judges and litigants useless shackles of procedure to the end that a fair trial of the essential questions could be had.**" *Glaspell v. Davis,* 2 F.R.D. 301, 304 (D. Or. 1942).

145 F.R.D. 563, 567 (D. Kan. 1993); *see* Litigation Handbook on West Virginia Rules of Civil Procedure; 4th Ed., p. 997, n. 119. *Supp. Appx. at 153-54.* In this matter, this Petition seeks to place unnecessary, improper, and legally inaccurate shackles of procedure and prevent a fair trial on the merits for litigants. Indeed, it was pointed out to the Circuit Court that our system is specifically designed that anyone can present their case to a Court for redress of their concerns, and the Court took well the shackles that the DHHR was attempting to place on litigants in this matter. *Supp. Appx. at 155-56; 159-60.*

VII. SUMMARY OF ARGUMENT

Counsel for Defendant DHHR have brought this Petition seeking to manipulate the statutory intent of the pre-suit notice requirements of § 55-17-1, *et seq.* for no other purposes

than restrict access to courts and create impediments to cases being heard on the merits. DHHR argues that the Respondent Judge lacks jurisdiction over this case because Respondent Feazell did not properly provide pre-suit notice in compliance with *W. Va. Code* § 55-17-3(a) because her pre-suit notice had expired pursuant to *W. Va. Code* § 55-17-3(e). *W. Va. Code* § 55-17-3(e) provides as follows:

> (e) If 90 days elapse after service of notice required by subsection (a) of this section has been effected and action has not been instituted, then the notice shall be considered to have expired, and before an action may be instituted, the complaining party or parties must provide new notice as required by subsection (a) of this section which shall be accompanied by a second or subsequent notice fee of $250 to the attorney general and by a second or subsequent notice fee of $250 to the chief officer of the governmental agency: Provided, That no further tolling of any applicable statute of limitations shall occur during any second or subsequent notice.

This case is a matter of statutory construction, and the Legislature clearly intended for litigants to have ninety days to institute their action beginning with the effective date where they are statutorily permitted to file that action.

Generally, as to statutory construction, the Supreme Court of Appeals of West Virginia ("SCAWV") has held that "significance and effect must, if possible, be given to every section, clause, word or part of the statute." Syl. Pt. 1, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999). "It is a well-known rule of statutory construction that the Legislature is presumed to intend that every word used in a statute has a specific purpose and meaning." *State ex rel. Johnson v. Robinson*, 162 W. Va. 579, 582, 251 S.E.2d 505, 508 (1979). This Court has long reasoned that "[w]here the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation." Syl. Pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970).

With respect the pre-suit requirements of *W. Va. Code* § 55-17-3(e), under the rulings in *Johnson* and its' progeny, when the legislature stated that it wished for Respondent Feazell

to have ninety (90) days in which to file her suit, we must conclude that the Legislature intended Respondent Feazell to have ninety (90) days from when she could actually file suit. Pursuant to *W. Va. Code* § 55-17-3(a)(1), Respondent Feazell is required to give thirty (30) days advanced notice to the state agency and the attorney general *before* she may file suit. Thus, once the thirty (30) days has expired, the pre-suit notice is "effected" and Respondent Feazell may then actually file suit. The fact that the Legislature chose to say in *W. Va. Code* § 55-17-3(e) that after "[i]f 90 days elapse after service of notice required by subsection (a) of this section of this section has been **effected** and action has not been instituted, then the notice shall be considered to have expired . . .," it is clear that the Legislature intended people like Respondent Feazell to institute their actions within ninety (90) days from the date which they could actually file suit.

Here, there is clear evidence of what the Legislature intended when reviewing the history of actual law, *W. Va. Code* § 55-17-3(e), which originated in the House of Delegates under House Bill 4629. *Attached hereto as* ***Exhibit A***. In the original bill, the House of Representatives stated the purpose of the changes as follows:

> NOTE: The purpose of this bill is to require the Attorney General or the chief officer of the subject government agency to issue a response to the potential claimant within 60 days of receipt of the notice to file suit, to toll the statute of limitations during pre-suit negotiations for actions against the state, **afford a 90 day time to file suit absent pretrial negotiations**, dismiss claims absent suit filed within this 90 days, **and provide and effective date.**

See Exhibit A, page 3. (emphasis added). Throughout the proposed bill changes, the House of Representatives clearly, and repeatedly, made it clear that the ninety (90) day period does not being to run until a claimant is ***able*** to file suit after providing the pre-suit notice.

As a matter of public policy, the statute must be read to give it plain meaning and accomplish the overlying concept of open access to our courts. Moreover, the underlying public

policy of *W. Va. Code* § 55-17-3(e) in providing an effective date was intended to support the public policy of the State of the fast settlement of claims. It is a fundamental principle of our court system that the public should have free access to have their grievances heard in Court. The DHHR's reading of *W. Va. Code* § 55-17-3(e) defeats that public policy. "The right of access to our courts is one of the basic and fundamental principles of jurisprudence in West Virginia. We need look no further than our own State's Constitution for guidance. *West Virginia Constitution* art. III, § 17, states as follows:

> The courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay."

Mathena v. Haines, 219 W. Va. 417, 422, 633 S.E.2d 771, 776 (2006).

As this Court has consistently ruled for nearly 100 years, "[i]t is the duty of a court to construe a statute according to its true intent and give to it such construction as will uphold the law and further justice. It is also the duty of a court to disregard a construction, though apparently warranted by the literal sense of the words in a statute, when such construction would lead to injustice and absurdity." Syl. Pt. 2, *Conseco Finance Servicing Corp. v. Myers*, 211 W. Va. 631, 567 S.E.2d 641 (2002) (*quoting* . Syl. Pt. 2, *Click v. Click*, 98 W. Va. 419, 127 S.E. 194 (1925). Respectfully, the Legislature has demonstrated in numerous instances, as noted above, that the ninety days begins to run *after* the period wherein a claimant is prohibited to file suit.

Finally, there is clear intent on the part of the Legislature in introducing the changes enumerated in House Bill 4629 to provide for time for the State to resolve matter prior to, or early in litigation which supports another public policy established by the State of West Virginia. Beginning the timing of the effective date after the original thirty days wherein a litigant has noticed potential litigation and is precluded from filing suit ". . . furthers the strong

public policy favoring out-of-court resolution of disputes, which we stated in Syllabus Point 1, in part, of *Sanders v. Roselawn Memorial Gardens,* 152 W. Va. 91, 159 S.E.2d 784 (1968): 'The law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation[.]'" *See State ex rel. Vapor Corp. v. Narick,* 173 W. Va. 770, 320 S.E.2d 345 (1984); *Floyd v. Watson,* 163 W. Va. 65, 254 S.E.2d 687 (1979); *Janney v. Virginian Ry. Co.,* 119 W. Va. 249, 193 S.E. 187 (1937); *see also Bd. of Educ. v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 604, 390 S.E.2d 796, 803 (1990).

The original introduction of the Bill with resulted in *W. Va. Code* § 55-17-3(e) was an attempt by the Legislature to put an "effective date" in place and to provide time for pursuit negotiations for the State. *See Exhibit A, "Note."* It seems quite clear that the intention of *W. Va. Code* § 55-17-3(e) was to provide an "effective day" and to provide the State with time to negotiate claims prior to protracted litigation. The State of West Virginia, and the DHHR in particular, continually have issues with funding. Moreover, as the State is one of the largest employers in the entire State, sees a great deal of litigation. The early resolution of claims by the State in their thirty-day grace period of pre-suit notice would assist the government with management of claims and funds. In this matter, the DHHR is arguing that they get the benefit of thirty days wherein, after pre-suit notice is served pursuant to *W. Va. Code* § 55-17-3(a)(1), the Respondent cannot file suit, thus shortening the time that the Respondent may initiate her litigation to sixty days. The Legislature clearly provided in *W. Va. Code* § 55-17-3(e) "[i]f 90 days elapse after service of notice required by subsection (a) of this section of this section has been effected and action has not been instituted, then the notice shall be considered to have expired . . ." The DHHR's position is that when the

Legislature gave litigants ninety days *after* the provisions of *W. Va. Code* § 55-17-3(a) was effected, they meant something other than ninety days.

Pre-suit notice was provided pursuant to *W. Va. Code* § 55-17-3(a) on August 16, 2023. As Respondent Feazell was then precluded from filing suit for thirty days, she has an effective date of September 15, 2023. Ninety Days from September 15, 2023 is December 14, 2023. It is undisputed that Respondent Feazell filed her suit on December 7, 2023. Thus, she filed her suit within ninety days of the effective date, and she is in compliance with *W. Va. Code* § 55-17-1, *et seq.* Accordingly, the Respondent Judge has jurisdiction over this matter and a writ of prohibition is improper.

VIII. STATEMENT REGARDING ORAL ARGUMENT AND DECISIONS

The petition merits neither the issuance of a rule to show cause nor oral argument. If the Court issues a rule to show cause, the petition should be denied without oral argument and by memorandum decision.

IX. ARGUMENT

The Circuit Court ruled lawfully and correctly in determining that the pre-suit notice in this matter and the filing of the Complaint occurred as provided in West Virginia Code § 55-17-3(e) within ninety (90) days for service of the notice was **effective** as was intended by the Legislature.

A. Standard of Review

This Court has held that the standard of review applicable to a writ of prohibition is as follows:

> A writ of prohibition will not issue to prevent a simple abuse of discretion by a trial court. It will only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers.

> A writ of prohibition "lies as a matter of right whenever the inferior court (a) has no jurisdiction or (b) has jurisdiction but exceeds its legitimate powers and it matters not if the aggrieved party some other remedy adequate or inadequate.
>
> When a court is attempting to proceed in a cause without jurisdiction, prohibition will issue as a matter of right regardless of the existence of other remedies."

State ex rel. Farber v. Mazzone, 213 W. Va. 661, 664-65, 584 S.E.2d 517, 520-21 (2003) (internal citations and quotations omitted).

B. The Guidance of Statutory Interpretation and Legislative Intent Support a Finding that Respondent Feazell's Notice and Filing of Her Action Were Timely

In reviewing West Virginia Code § 55-17-3(e) utilizing the rules of statutory interpretation, it is clear that the Legislature intend a claimant, like Respondent Feazell, to have ninety (90) days from the date they can actually file suit to file an action.

Generally, as to statutory construction, the SCAWV has held that "significance and effect must, if possible, be given to every section, clause, word or part of the statute." Syl. Pt. 1, *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999). "It is a well-known rule of statutory construction that the Legislature is presumed to intend that every word used in a statute has a specific purpose and meaning." *State ex rel. Johnson v. Robinson*, 162 W. Va. 579, 582, 251 S.E.2d 505, 508 (1979). This Court has long reasoned that "[w]here the language of a statute is free from ambiguity, its plain meaning is to be accepted and applied without resort to interpretation." Syl. Pt. 2, *Crockett v. Andrews*, 153 W. Va. 714, 172 S.E.2d 384 (1970). The *Crockett* Court provided guidance on the meaning of ambiguity:

> [a]mbiguity is a term connoting doubtfulness, doubleness of meaning of indistinctness or uncertainty of an expression used in a written instrument. It has been declared that courts may not find ambiguity in statutory language which laymen are readily able to comprehend; nor is it permissible to create an obscurity or uncertainty in a statute by reading in an additional word or words. As stated in the early case of *McClain Adm'r v. Davis*, 37 W. Va. 330, 16 S.E. 629, 18 L.R.A. 634, 'Where the language is unambiguous, no ambiguity can be authorized by

> interpretation.' Plain language should be afforded its plain meaning. Rules of interpretation are resorted to for the purpose of resolving an ambiguity, not for the purpose of creating it.

Id. at 718-19, 387.

Moreover, "[t]he general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter where the two cannot be reconciled." Syllabus Point 1, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984); *State ex rel. Morrisey v. Diocese of Wheeling-Charleston*, 244 W. Va. 92, 93, 851 S.E.2d 755, 757 (2020). This Court has consistently ruled that "unless there is an irreconcilable conflict, statutes relating to the same subject matter "should be read and applied together" and construed "so as to give effect to each." Syl. Pts. 8 and 9, in part, *Barber v. Camden Clark Mem'l Hosp. Corp.*, 240 W.Va. 663, 815 S.E.2d 474 (2018); *see also Diocese of Wheeling-Charleston*, at 103, 766 (2020).

With respect the pre-suit requirements of *W. Va. Code* § 55-17-3(e), under the rulings in *Johnson* and its' progeny, when the legislature stated that it wished for Respondent Feazell to have ninety (90) days in which to file her suit, we must conclude that the Legislature intended Respondent Feazell to have ninety (90) days from when she could actually file suit. Pursuant to *W. Va. Code* § 55-17-3(a)(1), Respondent Feazell is required to give thirty (30) days advanced notice to the state agency and the attorney general *before* she may file suit. Thus, once the thirty (30) days has expired, the pre-suit notice is "effected" and Respondent Feazell may then actually file suit. Pursuant to Black's Law Dictionary, Sixth Edition, "effect" means as follows:

> *v.* To do; to produce; to make; to bring to pass; to execute; enforce; accomplish.
>
> *n.* That which is produced by an agent or cause; result; outcome; consequence. *State by Clark v. Wolkoff*, 250 Minn. 504, 85 N.W.2d 40, 410. The result which an instrument between parties will produce in their relative rights, or which a statute will

> produce upon the existing law, as discovered by the language used, the forms employed, or other materials construing it. The operation of law, of an agreement, or an act. The phrases "take effect," "be in force," "go into operation," etc., are used interchangeably.

So, in plain language, the fact that the Legislature chose to say in *W. Va. Code* § 55-17-3(e) that after "[i]f 90 days elapse after service of notice required by subsection (a) of this section of this section has been **effected** and action has not been instituted, then the notice shall be considered to have expired . . .," it is clear that the Legislature intended people like Respondent Feazell to institute their actions within ninety (90) days from the date which they could actually file suit. Under the argument made by the DHHR, Respondent Feazell would have only had sixty (60) days to institute her action as she would be robbed of the first thirty (30) under subsection (a). "When a statute is clear and unambiguous and the legislative intent is plain, the statute should not be interpreted by the courts, and in such case[,] it is the duty of the courts not to construe but to apply the statute." Syl. pt. 5, *State v. Gen. Daniel Morgan Post No. 548, Veterans of Foreign Wars*, 144 W. Va. 137, 107 S.E.2d 353 (1959). The DHHR's position in this matter is directly contrary to the rulings in *Crocket*, as it attempts to place ambiguity in the terms delineated by our Legislature that "[i]f 90 days elapse after service of notice required by subsection (a) of this section of this section has been **effected** and action has not been instituted, then the notice shall be considered to have expired . . ." Put simply, when the Legislature provide for ninety days in which to file suit, it is quite clear they meant ninety days from the date that suit could have been filed. The DHHR argues in their Petition otherwise, which does not follow with statutory construction, or common sense.

C. The Legislative History of West Virginia Code § 55-17-3(e) and Stated Purpose Support that Respondent Feazell's Notice and Filing of Her Action Were Timely

Here, there is clear evidence of what the Legislature intended when reviewing the history of actual law, *W. Va. Code* § 55-17-3(e), which originated in the House of Delegates under House Bill 4629. *Attached hereto as* ***Exhibit A***. In the original bill, the House of Representatives stated the purpose of the changes as follows:

> NOTE: The purpose of this bill is to require the Attorney General or the chief officer of the subject government agency to issue a response to the potential claimant within 60 days of receipt of the notice to file suit, to toll the statute of limitations during pre-suit negotiations for actions against the state, **afford a 90 day time to file suit absent pretrial negotiations**, dismiss claims absent suit filed within this 90 days, **and provide and effective date.**

See Exhibit A, page 3. (emphasis added). Throughout the proposed bill changes, the House of Representatives clearly, and repeatedly, made it clear that the ninety (90) day period does not being to run until a claimant is ***able*** to file suit after providing the pre-suit notice. For example, in the original Bill, there would have been a *W. Va. Code* § 55-17-3(e)(2) which was proposed to state as flows:

> 2) Should the State of West Virginia inform the potential claimant that it desires to enter into pre-suit negotiations, the applicable statute of limitations shall be tolled during the period of pre-suit negotiations, until such time as the State of West Virginia informs the claimant that it no longer will engage in pre-suit negotiations. Should the State of West Virginia provide such notice to the claimant after engaging in pre-suit negotiations. **the claimant shall then have 90 days in which to file suit in the matter.** regardless of the applicable statute of limitations.

See Exhibit A, p. 3. (emphasis added). Moreover, in the original Bill, there would have been a *W. Va. Code* § 55-17-3(e)(3) which was proposed to state as flows:

> (3) Should the State of West Virginia inform the potential claimant that it does not desire to enter into pre-suit negotiations**, the potential claimant shall be afforded 90 days in which to file suit.** regardless of the pre-suit negotiations, and regardless of the applicable statute of limitations.

Id. (emphasis added). In all, the purpose of the Bill was to "provide an effective date." That portion of the proposed Bill remains in *W. Va. Code* § 55-17-3(e) as it states "[i]f 90 days

elapse after service of notice required by subsection (a) of this section of this section has been **effected** and action has not been instituted, then the notice shall be considered to have expired . . ." Thus, the legislative history of what became *W. Va. Code* § 55-17-3(e) makes it clear that the intention was to create an "effective" day from which to file suit and the claimants, like Respondent Feazell, would have ninety (90) days from that "effective" day to file suit.

D. Public Policy Factors Dictate that Respondent Feazell's Notice and Filing of Her Action Were Timely

As a matter of public policy, the statute must be read to give it plain meaning and accomplish the overlying concept of open access to our courts. Moreover, the underlying public policy of *W. Va. Code* § 55-17-3(e) in providing an effective date was intended to support the public policy of the State of the fast settlement of claims.

1. A Finding that Respondent Feazell's Notice and Filing of Her Action Were Timely Supports Open Access to Courts

It is a fundamental principle of our court system that the public should have free access to have their grievances heard in Court. The DHHR's reading of *W. Va. Code* § 55-17-3(e) defeats that public policy. "The right of access to our courts is one of the basic and fundamental principles of jurisprudence in West Virginia. We need look no further than our own State's Constitution for guidance. *West Virginia Constitution* art. III, § 17, states as follows:

> The courts of this State shall be open, and every person, for an injury done to him, in his person, property or reputation, shall have remedy by due course of law; and justice shall be administered without sale, denial or delay."

Mathena v. Haines, 219 W. Va. 417, 422, 633 S.E.2d 771, 776 (2006).

As was argued during the hearing in the Circuit Court by the undersigned, "the rules are designed specifically so that if a *pro se* litigant wants to walk into our courthouse and file a case, they should be allowed to. If we're having this kind of nitpicking issues with this issue here,

imagine how much more difficulty a *pro se* litigant would have." The Court took this point and specifically inquired about the issue with the DHHR, to which the response was that the statute is "a checklist of what you do, who you send it to." Thereafter, the DHHR continued to argue that the Legislature said you have ninety days and somehow meant that included the thirty days in which you could not filed suit – the "effective" date.

As this Court has consistently ruled for nearly 100 years, "[i]t is the duty of a court to construe a statute according to its true intent, and give to it such construction as will uphold the law and further justice. **It is also the duty of a court to disregard a construction, though apparently warranted by the literal sense of the words in a statute, when such construction would lead to injustice and absurdity.**" Syl. Pt. 2, *Conseco Finance Servicing Corp. v. Myers*, 211 W. Va. 631, 567 S.E.2d 641 (2002) (*quoting* . Syl. Pt. 2, *Click v. Click*, 98 W. Va. 419, 127 S.E. 194 (1925). (emphasis added). Respectfully, the Legislature has demonstrated in numerous instances, as noted above, that the ninety days begins to run *after* the period wherein a claimant is prohibited to file suit. Moreover, there is an overriding policy to our laws and our Rules of Civil Procedure that impart traditional notions of fair play and substantial justice. The DHHR cannot argue that our Legislature intended to tell litigants that they had ninety days and at the same time intended to "pull the rug" out from under those litigants with the first thirty wherein they are prohibited from filing suit. To argue otherwise would defeat the clear public policy of the State to free access to the Courts and simply defy logic.

2. A Finding that Respondent Feazell's Notice and Filing of Her Action Were Timely Supports Out-of-court Resolution of Disputes

Moreover, there is clear intent on the part of the Legislature in introducing the changes enumerated in House Bill 4629 to provide for time for the State to resolve matter prior to, or early in litigation which supports another public policy established by the State of West

Virginia. Under the DHHR's acute reading of the statute, increased issues and litigation would be involved creating greater fees charged to the State.

Beginning the timing of the effective date after the original thirty days wherein a litigant has noticed potential litigation and is precluded from filing suit ". . . furthers the strong public policy favoring out-of-court resolution of disputes, which we stated in Syllabus Point 1, in part, of *Sanders v. Roselawn Memorial Gardens,* 152 W. Va. 91, 159 S.E.2d 784 (1968): 'The law favors and encourages the resolution of controversies by contracts of compromise and settlement rather than by litigation[.]'" *See State ex rel. Vapor Corp. v. Narick,* 173 W. Va. 770, 320 S.E.2d 345 (1984); *Floyd v. Watson,* 163 W. Va. 65, 254 S.E.2d 687 (1979); *Janney v. Virginian Ry. Co.,* 119 W. Va. 249, 193 S.E. 187 (1937); *see also Bd. of Educ. v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 604, 390 S.E.2d 796, 803 (1990).

As noted above, the original introduction of the Bill with resulted in *W. Va. Code* § 55-17-3(e) was an attempt by the Legislature to put an "effective date" in place and to provide time for pursuit negotiations for the State. *See Exhibit A, "Note," supra.* Indeed, in two separate sections of the proposed changes, the House wished to make the following additions:

> (e)(1) Upon receipt of a notice of intent to file suit by the State of West Virginia, or any government agency of the State of West Virginia, the Attorney General or the chief officer of the subject government agency shall issue a response to the potential claimant **within 60 days of receipt of the notice notifying the potential claimant of the State's intention to enter into pre-suit negotiations, or if the State declines to enter into pre-suit negotiations.**
>
> 2) **Should the State of West Virginia inform the potential claimant that it desires to enter into pre-suit negotiations, the applicable statute of limitations shall be tolled during the period of pre-suit negotiations, until such time as the State of West Virginia informs the claimant that it no longer will engage in pre-suit negotiations.** Should the State of West Virginia provide such notice to the claimant after engaging in pre-suit negotiations. the claimant shall then have 90 days in which to file suit in the matter. regardless of the applicable statute of limitations.
>
> (3) Should the State of West Virginia inform the potential claimant that it does not desire to enter into **pre-suit negotiations,** the potential claimant shall be afforded 90 days in

which to file suit. regardless of the pre-suit negotiations, and regardless of the applicable statute of limitations.

These additions showed a clear intention by the Legislature to add language which would promote the public policy of the state of early, out-of-court settlements of claims. We need not attempt to presume what the Legislature intended; the Bill makes their intentions obvious.

It seems quite clear that the intention of *W. Va. Code* § 55-17-3(e) was to provide an "effective day" and to provide the State with time to negotiate claims prior to protracted litigation. The State of West Virginia, and the DHHR in particular, continually have issues with funding. Moreover, as the State is one of the largest employers in the entire State, it sees a great deal of litigation. The early resolution of claims by the State in their thirty-day grace period of pre-suit notice would assist the government with management of claims and funds. Take for example another matter which was recently reviewed by the Court in *State ex rel. W. Va. Dep't of Health and Human Res. v. Salango*, 2021 W. Va. LEXIS 266 (June 2, 2021)[4]. *Supp. Appx. at* 202-07. In that matter, the same counsel in this matter[5] brought upon a Writ of Prohibition making arguments pursuant to the pre-suit requirements of *W. Va. Code* § 55-17-3(a)(1) arguing that the individual defendant, whom counsel did not represent, did not receive the thirty-day pre-suit notice. This Court remanded the matter, not deciding the issue due to the fact that the DHHR brought the Writ; but, did not represent the individual. However, once substitute counsel was appointed, mediation was scheduled. The matter concluded at mediation; however, prior to mediation the Board of Risk and Insurance Management was presented with a

[4] The matter was later brought up on appeal on the matter of compelling arbitration, which was remanded *in W. Va. Dep't of Health & Human Res. v. Denise*, 858 S.E.2d 866, 2021 W. Va. LEXIS 267, 2021 WL 2217488 (W. Va., June 2, 2021)

[5] Lead counsel in this matter was cocounsel in the *Denise* matter and was cocounsel in this matter until lead counsel was removed after a sanction Order including a referral to the Office of Disciplinary Counsel for litigation misconduct. *See Supp. Appx. at 185-200.*

Freedom of Information Act request for the total amount of attorney fees and litigation costs expended. That Freedom of Information Act request revealed the taxpayers of the State of West Virginia were charged $458,121.68[6] for the defense of a single employment case that did not proceed to trial. *Supp. Appx. at 209-10.*

This matter is not brought up to disparage counsel, as was argued in the Court below by the Petitioners. However, it does demonstrate the wisdom of giving the State the opportunity to settle matters before it faces litigation. This is the strong public policy of the State of West Virginia. Again, in this matter, the DHHR is arguing that they get the benefit of thirty days wherein, after pre-suit notice is served pursuant to *W. Va. Code* § 55-17-3(a)(1), the Respondent cannot file suit, thus shortening the time that the Respondent may initiate her litigation to sixty days. The Legislature clearly provided in *W. Va. Code* § 55-17-3(e) "[i]f 90 days elapse after service of notice required by subsection (a) of this section of this section has been effected and action has not been instituted, then the notice shall be considered to have expired . . ." The DHHR's position is that when the Legislature gave litigants ninety days *after* the provisions of *W. Va. Code* § 55-17-3(a) was effected, they meant something other than ninety days. Thus, as was stated in the Court below by Respondent Feazell, "[u]nfortunately, this matter before the Court presents one of the worst, frivolous, and largest waste of judicial resources the undersigned has witnessed in quite some time as a rather simple solution was presented to the

[6] As an example for the Circuit Court, Respondent Feazell argued that with those funds, the DHHR could have hired the following:

a. 14 Youth Residential Workers;
b. 10 CPS Associates, Adult Service Placement Workers, Child Welfare Placement Workers, Child Welfare Permanency Workers, Children's Home Case Managers, Centralized Intake Workers, or Senior HR Coordinators;
c. 10 CPS Workers, Youth Service Workers, APS Senior Workers Program Coordinators;
d. 9 CPS Senior Workers; or,
e. A mixture of the above and more.

[Petitioner]'s counsel by the undersigned which would not have wasted this court's time and resources." State time and resources could have been spared with a stipulation. However, the DHHR refused in order to proceed on a Writ of Prohibition arguing that when the Legislature provided ninety days from the "effective date" something else was intended. Thus, this matter runs contrary to the public policy of this state for the out-of-court resolution of matters.

E. The lower court has jurisdiction over the claims asserted against the DHHR because there is no dispute that Respondent Feazell filed suit within ninety (90) days of the effective date wherein she was statutorily permitted to file suit pursuant to W. Va. Code 55-17-1, *et seq.*

As more fully explained above, pre-suit notice was provided pursuant to *W. Va. Code* § 55-17-3(a) on August 16, 2023. As Respondent Feazell was then precluded from filing suit for thirty days, she has an effective date of September 15, 2023. Ninety Days from September 15, 2023 is December 14, 2023. It is undisputed that Respondent Feazell filed her suit on December 7, 2023. Thus, she filed her suit within ninety days of the effective date, and she is in compliance with *W. Va. Code* § 55-17-1, *et seq.* Accordingly, the Respondent Judge has jurisdiction over this matter and a writ of prohibition is improper.

X. CONCLUSION

In conclusion, Respondent Feazell has completely complied with the plain language of *W. Va. Code* 55-17-1, *et seq.* Given her effective date of September 15, 2023, when she filed suit on December 7, 2023, she was within the ninety days provided pursuant to *W. Va. Code* § 55-17-3(e) and her pre-suit notice had not expired. Therefore, pre-suit notice was properly provided such that Respondent Judge rightfully exercised jurisdiction over this case and a writ of prohibition from this Court is not appropriate. Accordingly, Respondent Feazell requests that the instant Petition be denied.

Respectfully submitted on this 12th day of September, 2024.

SIERRA FEAZELL,

By counsel:

/s/ Travis A. Griffith
Travis A. Griffith (WVSB #9343)
GRIFFITH LAW CENTER, PLLC

EXHIBIT A

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4629

BY DELEGATES STEELE, HANSHAW (MR. SPEAKER),

SUMMERS, ESPINOSA, ELLINGTON, HOUSEHOLDER,

FOSTER, D. JEFFRIES, BARRETT, MAYNOR, AND CRISS

[Introduced February 10, 2022; Referred to the

Committee on the Judiciary]

A BILL to amend and reenact§ 55-17-3 of the Code of West Virginia, 1931, as amended, relating to actions against the State of West Virginia, requiring the Attorney General or the chief officer of the subject government agency to issue a response to the potential claimant within 60 days of receipt of the notice to file suit, toll the statute of limitations during pre-suit negotiations for actions against the state, afford a 90 day time to file suit absent pretrial negotiations, dismiss claims absent suit filed within this 90 days, and provide an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS AGAINST THE STATE.

§55-17-3. Preliminary procedures; service on Attorney General; notice to the Legislature.

(a)(1) Notwithstanding any provision of law to the contrary, at least 30 days prior to the institution of an action against a government agency, the complaining party or parties must provide the chief officer of the government agency and the Attorney General written notice, by certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt, the chief officer of the government agency shall forthwith forward a copy of the notice to the President of the Senate and the Speaker of the House of Delegates. The provisions of this subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable harm would have occurred if the institution of the action was delayed by the provisions of this subsection.

(2) The written notice to the chief officer of the government agency and the Attorney General required by subdivision (1) of this subsection is considered to be provided on the date of mailing of the notice by certified mail, return receipt requested. If the written notice is provided to the chief officer of the government agency as required by subdivision (1) of this subsection, any applicable statute of limitations is tolled for 30 days from the date the notice is provided and, if received by the government agency as evidenced by the return receipt of the certified mail, for 30 days from the date of the returned receipt.

(3) A copy of any complaint filed in an action as defined in §55-17-2 of this code seotion two of this artiole shall be served on the Attorney General.

(b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary, in an action instituted against a government agency that seeks a judgment, as defined in seotion t\tfo of this artiole §55-17-2 of this code, the chief officer of the government agency which is named a party to the action shall, upon receipt of service, forthwith give written notice thereof, together with a copy of the complaint filed, to the President of the Senate and the Speaker of the House of Delegates.

(2) Upon request, the chief officer of the government agency shall furnish the President and Speaker with copies of pleadings filed and discovery produced in the proceeding and other documents, information and periodic reports relating to the proceeding as may be requested.

(3) The chief officer of a government agency who fails without good cause to comply with the provisions of this subsection is guilty of misfeasance. This subsection does not require a notice or report to the President and the Speaker that no action has been instituted or is pending against a governmental agency during a specified period.

(c) The requirements for notice and delivery of pleadings and other documents to the President of the Senate or Speaker of the House of Delegates pursuant to the provisions of this section do not constitute a waiver of any Constitutional immunity or protection that proscribes or limits actions, suits or proceedings against the Legislature or the State of West Virginia.

(d) The exercise of authority granted by the provisions of this section does not subject the Legislature or any member of the Legislature to any terms of a judgment.

(e)(1) Upon receipt of a notice of intent to file suit by the State of West Virginia, or any government agency of the State of West Virginia, the Attorney General or the chief officer of the subject government agency shall issue a response to the potential claimant within 60 days of receipt of the notice notifying the potential claimant of the State's intention to enter into pre-suit negotiations, or if the State declines to enter into pre-suit negotiations.

(2) Should the State of West Virginia inform the potential claimant that it desires to enter into pre-suit negotiations, the applicable statute of limitations shall be tolled during the period of pre-suit negotiations, until such time as the State of West Virginia informs the claimant that it no longer will engage in pre-suit negotiations. Should the State of West Virginia provide such notice to the claimant after engaging in pre-suit negotiations, the claimant shall then have 90 days in which to file suit in the matter, regardless of the applicable statute of limitations.

(3) Should the State of West Virginia inform the potential claimant that it does not desire to enter into pre-suit negotiations, the potential claimant shall be afforded 90 days in which to file suit, regardless of the pre-suit negotiations and regardless of the applicable statute of limitations.

(4) Any claim on which the potential claimant does not file suit within 90 days, as provided in subsections (2) and (3) of this section, shall be dismissed with prejudice by the trial court should a claim be filed after the expiration of the 90 day period.

(5) This article shall be effective retroactively from January 1, 2020, and applies to any cause of action accruing on or after that date. Any notice given since that date where the suit has not been filed shall be deemed null and void and a new notice shall be filed in accordance with the amendments to this section.

NOTE: The purpose of this bill is to require the Attorney General or the chief officer of the subject government agency to issue a response to the potential claimant within 60 days of receipt of the notice to file suit, to toll the statute of limitations during pre-suit negotiations for actions against the state, afford a 90 day time to file suit absent pretrial negotiations, dismiss claims absent suit filed within this 90 days, and provide an effective date.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

No. 24-396

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

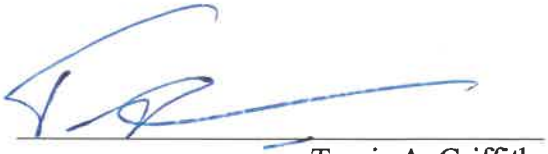
STATE OF WEST VIRGINIA, *ex rel.* WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
Petitioner,

v.

THE HONORABLE TERA L. SALANGO, *Judge of the Circuit Court of Kanawha County, West Virginia,* AND **SIERRA FEAZELL**,
Respondents.

VERIFICATION

I, Travis A. Griffith, being first duly sworn, state that I have read the forgoing ***"Respondent's Response to Petitioner's Verified Petition of Prohibition"***; that the factual representations contained therein are true, except so far as they are stated to be on information and belief; and that insofar as they are stated to be on the information and belief, I believe them to be true.



Travis A. Griffith,

Taken, subscribed, and sworn to before me this 19th day of September, 2024.

My Commission expires: July 26, 2028

Notary Public

OFFICIAL SEAL
NOTARY PUBLIC
STATE OF WEST VIRGINIA
Tara Adkins
Griffith Law Center PLLC
10 Hale Street, Suite 203
Charleston, WV 25301
My Commission Expires 07/26/2028