IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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No. 25-371

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,

Petitioner,

v.

THE HONORABLE JAMES YOUNG,
Judge of the Circuit Court of Wayne County,
sitting by special assignment in Cabell County,
JAN HITE KING, and KIMBERLY MAYNARD,

Respondents.

BRIEF OF RESPONDENT JAN HITE KING

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II. Whether a writ of prohibition should issue to reverse the dismissal with prejudice of a misdemeanor indictment returned more than three years after the alleged offenses were supposedly committed, and where such dismissal with prejudice is consistent with the clear statute of limitation set forth in W. Va. Code § 61-11-9?

STATEMENT OF THE CASE

It took more than three years and three different county prosecuting attorneys before an indictment could be obtained in this case in April 2025 for supposed misdemeanor offenses that are alleged to have occurred in February 2022. The elected prosecutor of Mason County, Seth S. Gaskins, signed the indictment as Special Prosecuting Attorney for Cabell County and appeared at the hearing on the motion to dismiss the indictment, however, there are no court orders or other public records which show that Mr. Gaskins was properly appointed as the Special Prosector in this case pursuant to W. Va. Code § 7-4-6(d)(1). The lack of an order appointing Mr. Gaskins calls into question his ability to represent the State of West Virginia at the April 25, 2025 hearing. [Resp. King App. Rec. at pp. 000001 to 000003.] Further, it would appear that if Mr. Gaskins was not properly appointed as Special Prosecutor, then the State lacks standing to bring this writ of prohibition because it did not properly appear at the April 25, 2025 hearing on the motions to dismiss.

Beyond that issue, in asking this Court for a writ of prohibition to prevent the Honorable James H. Young, Jr. from following well-settled law, Petitioner failed to include all of the filings at the lower-court level that guided Judge Young in his decision. Namely, Petitioner did not include Respondent Jan Hite King's (hereinafter "Mrs. King") *Reply to the State of West Virginia's Answer to Defendant's Motion to Dismiss the Indictment* that was filed well in advance of the hearing on the motion to dismiss. [Resp. King App. Rec. at pp. 000004 to 000014.] That reply set forth the analytical framework for the Court's decision on statutory construction warranting dismissal of the indictment.

Moreover, the Attorney General's Office, as counsel for Petitioner State of West Virginia *vis-à-vis* Attorney Seth Gaskins and as separate *amicus curiae* counsel for Secretary of State Kris Warner, fails to acknowledge that the West Virginia Secretary of State's office completed its investigation and requested then-Cabell County Prosecuting Attorney and now-Cabell County Circuit Court Judge Sean "Corky" Hammers to consider prosecuting Mrs. King and fellow respondent Kimberly Maynard on August 25, 2022. [Resp. King App. at pp. 000015 to 000018.] Now-Judge Hammers correctly did not pursue prosecution against Mrs. King or fellow respondent Kimberly Maynard. This lone fact stands in opposition to the entirety of the *amicus curiae* argument with respect to the permissible and necessary length of investigations in election matters to ensure "thoroughness." The Attorney General's office cannot have it both ways- either the investigation was complete and sufficiently thorough on August 25, 2022, or the Secretary of State's office requested prosecution

before an investigation was actually completed. Either way, the August 25, 2022 letter from Deputy Secretary of State and General Counsel Donald M. Kersey, III to then-Prosecuting Attorney Hammers undermines each of the arguments set forth by the Attorney General's office in both the instant petition for writ of prohibition and the *amicus curiae* brief filed on behalf of the Secretary of State.

In that August 25, 2022 letter from Deputy Secretary of State and General Counsel Kersey to then-Prosecuting Attorney Hammers requesting a referral for prosecution of Mrs. King and Kimberly Maynard, Deputy Secretary Kersey recounted certain factual history that outlined multiple issues and inconsistencies with the Cabell County magisterial maps at the time Mrs. King filed her Certificate of Announcement to run for Cabell County Commission. [*Id*. at 000015 to 000018.] Quite simply, as Deputy Secretary Kersey acknowledged, which maps were the correct magisterial maps in February 2022 was unclear.

And as the Secretary of State's office asked through Deputy Secretary Kersey's letter in August 2022: "The question pertinent to the criminal matter is whether King and Maynard 'knowingly' provided false information on their second-filed Certificates." [*Id.* at p. 000015.] As Deputy Secretary Kersey himself acknowledged on August 25, 2022, the "claim [was] refutable" for Mrs. King- far below the criminal standard of beyond a reasonable doubt required for a conviction. [*Id.*]

Regardless, now-Judge Hammers correctly did not prosecute Mrs. King and Kimberly Maynard, and at some point this matter was referred to former-Wayne

County Prosecuting Attorney Matthew Deerfield. Prosecuting Attorney Deerfield, like now-Judge Hammers, also did not prosecute Mrs. King or Kimberly Maynard.

The matter eventually landed on the desk of Attorney Seth Gaskins, who is currently the elected prosecutor in Mason County. There are no court orders which establish that Mr. Gaskins was properly appointed as the Special Prosecutor in this matter, and the West Virginia Prosecuting Attorneys Institute does not possess any information that shows a request for Attorney Gaskins to be named as the Special Prosecutor in this case. [Resp. King App. Rec. at pp. 000001 to 000003.]

Regardless, Mr. Gaskins, as the third elected prosecutor to review the case and in contrast to Prosecutor Hammers and Prosecutor Deerfield before him, decided to present the matter to a Cabell County grand jury 20 months after the Secretary of State's office completed its investigation and Deputy Secretary Kersey requested a referral for prosecution (and more than 38 months after the supposed misdemeanor offenses were alleged to have been committed). While the investigation that was completed in August 2022 was finalized by Kimberly S. Mason, Director of Investigations for the West Virginia Secretary of State's Office, the grand jury heard the testimony of Robert Hanson in April 2025. [Pet. App. Rec. at 000002.] The grand jury ultimately returned a true bill from Mr. Hanson's testimony and the presentation by Mr. Gaskins.

Mrs. King became aware of the indictment obtained by Attorney Gaskins and, through counsel, requested that Mr. Gaskins dismiss the indictment as fatally flawed

because of the expired statute of limitation.[1] When Mr. Gaskins declined to dismiss the indictment, Mrs. King proactively scheduled an initial appearance in front of Judge Young to challenge the indictment.

The motion to dismiss the indictment was ultimately heard on April 25, 2025. At the outset of the hearing, Mr. Gaskins provided sealed envelopes containing the State's discovery[2] to counsel for Mrs. King and Ms. Maynard, and requested reciprocal discovery from Mrs. King and Ms. Maynard, despite neither of them requesting discovery prior to arraignment. [Pet. App. Rec. at 000020 to 000022.] Mr. Gaskins withdrew the request for reciprocal discovery following brief discussion about his request being contrary to the West Virginia Rules of Criminal Procedure. [*Id.*]

The hearing then continued on the motions to dismiss. Judge Young did not request a recitation of the arguments set forth in either Mrs. King's or Ms. Maynard's motions. Rather, the Court launched immediately into questioning about the specific statute of limitation for misdemeanors in W. Va. Code § 61-11-9 and how that provision of the Code effected the general statute of limitation for election-related offenses in W. Va. Code § 3-9-24. [Pet. App. Rec. at 000023, Lines 3-24.] Mr. Gaskins provided his statutory analysis, which the Court ultimately rejected, but not before Mr. Gaskins conceded that the statute of limitation was already expired for Count

[1] At the time the request to dismiss the indictment was made, Mrs. King was not aware that Mr. Gaskins was not appointed as Special Prosector.

[2] The documents Mr. Gaskins provided at the hearing on the motion to dismiss included the August 25, 2022 letter from Deputy Secretary Kersey that Mrs. King includes in her Respondent's Appendix.

Five of the indictment. [Pet. App. Rec. at 000031, Lines 17-21 ("I agree, your Honor. I think you have to read it as it relates to Chapter 61, and if Chapter 61 conspiracy is alleged, I would concede that the statute has ran on that.").]

The argument initially set forth by the State at the hearing was that W. Va. Code § 3-9-24 "carv[ed] out an expressed exception to [the misdemeanor statute of limitation in election] cases." [Pet. App. Rec. at 000028, Lines 20-22.] However, upon direct questioning by Judge Young, Mr. Gaskins correctly conceded that W. Va. Code § 3-9-24 did not really "carve out" an exception. He also argued that W. Va. Code § 3-9-24 was vague. [Pet. App. Rec. at 000029, Lines 16 to 24, to 000030, Lines 1 to 21.]

On rebuttal argument, Mrs. King set forth that W. Va Code § 61-11-9 controls, but that if W. Va. Code §3-9-24 was to be considered because of vagueness, then statutory construction required the Court to follow the expressed legislative intent of W. Va. Code § 61-11-9 as the last enacted statute. [Pet. App. Rec. at 000031, Lines 22-24, to 000032, Lines 1-21.]. **Moreover, as Mrs. King's counsel pointed out at the hearing, the Secretary of State's own election manual set forth that the statute of limitation for misdemeanors under Chapter 3 was one year**.[3] [Pet.

[3] Both Petitioner's counsel and *amicus curiae* counsel reference the newest version of the "Manual for Election Officials of West Virginia" that is compiled and published by the West Virginia Secretary of State. The previous version of the manual, as cited in Mrs. King's motion to dismiss at pages 3-4 [Pet. App. Rec. at 000005-000006] and as an image of appears in her *Reply to the State of West Virginia's Answer to Defendant's Motion to Dismiss the Indictment* at page 6 [Resp. King App. at p. 000010], acknowledged that the Secretary of State's office believed that the applicable statute of limitation for misdemeanors to be one year pursuant to W. Va. Code § 61-11-9. The Secretary of State revised its published manual in May 2025 after Judge

App. Rec. at 000032, Lines 22-24, to 000033, Lines 1-4.] Judge Young ultimately determined that W. Va. Code § 3-9-24 is vague and statutory construction required the application of W. Va. Code § 61-11-9. [Pet. App. Rec. at 000033, Lines 11-24, to 000034, Lines 1-13.] Accordingly, the indictment is barred by the one-year statute of limitation for misdemeanor offenses.

The Court directed Mrs. King's counsel to prepare a proposed order and to submit it once it was agreed upon by the State. That was done and Judge Young entered the agreed order on May 1, 2025. More than 30 days later the State of West Virginia filed its application for a writ with this Court.

SUMMARY OF ARGUMENT

Where an attorney was not properly appointed as a Special Prosecutor pursuant to W. Va. Code § 7-4-6(d)(1), the State does not have standing to file a writ of prohibition in this case because it did not properly appear at the hearing on the motion to dismiss. The State of West Virginia may only appear in criminal matters by and through duly elected or appointed prosecutors. W. Va. Code § 7-4-1; *see also* W. Va. Code § 7-4-6(d)(1). In essence, by not appearing through the elected prosecutor or a properly appointed Special Prosecutor, the State has waived any argument in opposition to a motion to dismiss an indictment. Moreover, the indictment itself is presumed defective because it was not signed by the elected prosecutor or a Special Prosecutor. Without an order of appointment, the attorney who presented the case

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Young entered his order dismissing the indictment. While the previous manual has disappeared from the internet since Judge Young entered his order to dismiss the indictment in this case, a full copy is attached in Mrs. King's Respondent's Appendix.

to the grand jury is thus acting as a private citizen and private citizens do not have a right to present a case to the grand jury without first applying to the circuit court. *Dreyfuse In re Application to Present Complaint to Grand Jury*, 243 W. Va. 190, 198, 842 S.E.2d 743, 751 (2020) ("We therefore hold that a private citizen's right under West Virginia Constitution art. III, § 17 to present a complaint to the grand jury upon application to the circuit court is subject to reasonable limitations to protect our judicial system from abuse.").

Even so, the State fails to meet the criteria for a writ of prohibition in this case because the Hon. James H. Young, Jr. reached the correct decision in dismissing with prejudice the indictment for being beyond the applicable statute of limitation. Both the well-settled statutory and case law mandated dismissal because of the expired statute of limitation for misdemeanor offenses. This Court has been consistently clear that the statute of limitation for misdemeanor offenses in West Virginia is one year pursuant to W. Va. Code § 61-11-9. *See State v. Leonard*, 209 W. Va. 98, 101, 543 S.E.2d 655, 658 (2000) ("Our legislature created a specific statute of limitation for misdemeanors."). The indictment in this case was defective because it was sought and returned in April 2025, more than three years after the alleged crimes supposedly occurred in February 2022. Dismissal was Judge Young's only option.

Even if W. Va. Code § 3-9-24 could be construed as applying equally to both misdemeanor and felony offenses by imposing a five-year statute of limitation, statutory construction mandates the application of W. Va. Code § 61-11-9. This is because W. Va. Code § 3-9-24 was adopted 23 years prior to specific statute of

limitation set forth in W. Va. Code § 61-11-9. As the statute enacted last in time, W. Va. Code § 61-11-9 controls.

Accordingly, the writ of prohibition should be denied as being without basis under the laws of the State of West Virginia.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Respondent Jan Hite King requests oral argument in this case. Such argument is proper under both Rule 19 and Rule 20 of the West Virginia Rules of Appellate Procedure because the State of West Virginia challenges well-settled law and the issues presented are issues of great public importance. Oral argument would aid the Court in consideration of the questions presented.

ARGUMENT

I. THE STATE LACKS STANDING TO CHALLENGE THE DISMISSAL OF THE INDICTMENT BECAUSE ATTORNEY GASKINS WAS NOT APPOINTED AS SPECIAL PROSECUTOR IN THIS MATTER AND WAS ACTING AS A PRIVATE CITIZEN.

The criminal prosecution in this matter appears to begin with the return of an indictment signed by Attorney Gaskins on April 7, 2025. [Resp. King App. at p. 000001] Importantly, there are no orders appointing Attorney Gaskins, the elected prosecutor of Mason County, as the Cabell County Special Prosecutor in this matter. [Resp. King App. at pp. 000001 to 000003] In West Virginia, elected prosecuting attorneys are geographically bound by the territorial limits of the county in which they are elected. W. Va. Code § 7-4-1(a) ("The prosecuting attorney shall attend to the criminal business of the state in the county in which he or she is elected and qualified and when the prosecuting attorney has information of the violation of any

penal law committed within the county[.]"). When a special prosecuting attorney is required, the West Virginia Prosecuting Attorneys Institute is statutorily authorized to work to appoint a special prosecutor, but only "upon the request of a circuit court judge of that county and upon the approval of the executive counsel." W. Va. Code § 7-4-6-(d)(1); *see also* W. Va. Code § 7-7-8 ("If, in any case, the prosecuting attorney and his assistants are unable to act, or if in the opinion of the court it would be improper for him or his assistants to act, the court shall appoint some competent practicing attorney to act in that case." (emphasis added)). Absent an order appointing them as a Special Prosecutor, an elected prosecutor of a neighboring county has no greater right to make a presentation to the grand jury than a private citizen. Generally, a special prosecutor outside of the office of the elected county prosecutor requires the approval of a circuit court judge. *See e.g. State ex rel. Morrisey v. W. Virginia Off. of Disciplinary Couns.*, 234 W. Va. 238, 252, 764 S.E.2d 769, 783 (2014). That does not appear to have occurred in this case.

The fact that Attorney Gaskins was not appointed as Special Prosecutor in this matter raises two important questions. First, if Attorney Gaskins was not acting as Special Prosecutor when he made a presentation to the grand jury, then is the indictment procedurally proper? And second, if Attorney Gaskins was not appointed as Cabell County Special Prosecuting Attorney, then did the State of West Virginia properly appear at the April 25, 2025 hearing on the motions to dismiss? The answer to both questions is no.

As to the first question, if Attorney Gaskins was not properly appointed as Special Prosecutor, then the indictment is facially defective because Gaskins was, in reality, acting as a private citizen and not with the true authority of the State.[4] "[H]istorically the grand jury serves a dual function: it is intended to operate both as a sword, investigating cases to bring to trial persons accused on just grounds, and as a shield, protecting citizens against unfounded malicious or frivolous prosecutions." *State ex rel. Miller v. Smith*, 168 W. Va. 745, 751, 285 S.E.2d 500, 504 (1981). "[A] private citizen's right under West Virginia Constitution art. III, § 17 to present a complaint to the grand jury **upon application to the circuit court** is subject to reasonable limitations to protect our judicial system from abuse." *Dreyfuse In re Application to Present Complaint to Grand Jury*, 243 W. Va. 190, 198, 842 S.E.2d 743, 751 (2020) (emphasis added). It does not appear that Attorney Gaskins ever made application to the circuit court to present to the Cabell County grand jury.

Without applying to and being granted the authority to present to the Cabell County grand jury, Attorney Gaskins violated the procedural protections outlined by this Court in *Blair v. Maynard*, 174 W. Va. 247, 324 S.E.2d 391 (1984), *State ex rel. R.L. v. Bedell*, 192 W. Va. 435, 452 S.E.2d 893 (1994), *Dreyfuse*, *supra*. Accordingly, this Court should find the indictment procedurally defective and deny the State's request for a writ on that ground.

[4] While Gaskins did not act with the explicit authority of the State, he held himself out as acting under color of law through the use of his elected office as Mason County Prosecuting Attorney.

Additionally, as to the second question, if Attorney Gaskins was improperly operating as a private citizen and not as an appointed Special Prosecutor on April 25, 2025, then the State of West Virginia did not truly appear at the hearing on the motions to dismiss the indictment. As such, the effect is that the State of West Virginia did not oppose the motions to dismiss, and the State does not have standing to request a writ of prohibition now. "Generally speaking, the prosecutor has exclusive authority to prosecute criminal offenses at the trial level in the name of the state." *State ex rel. Morrisey v. W. Virginia Off. of Disciplinary Couns.*, 234 W. Va. 238, 257, 764 S.E.2d 769, 788 (2014) (quoting Franklin D. Cleckley and Louis J. Palmer, Jr., *Introduction to the West Virginia Criminal Justice System and Its Laws* 229 (1994)). The State waived any argument in opposition to the motions to dismiss by not properly appearing at the April 25, 2025 hearing and, as such, the State does not have authority now to request a writ.

"Standing, of course, may be raised at any time by a party or *sua sponte* by the Court." *Id.*, 234 W. Va. at 244, 764 S.E.2d at 775 (2014) (citing and quoting *State ex rel. Abraham Linc Corp. v. Bedell,* 216 W.Va. 99, 111, 602 S.E.2d 542, 554 (2004) (Davis, J., concurring) ("The decisions of this Court and other jurisdictions have pointed out that an appellate court has the inherent authority and duty to *sua sponte* address the issue of standing, even when the parties have failed to raise the issue at the trial court level or during a proceeding before the appellate court.")). Should the Attorney General's office argue, either as counsel for Petitioner or as *amicus curiae* counsel, that the Secretary of State has the authority to prosecute election crimes

through whatever attorney it deems appropriate or necessary, then the Attorney General's office would be advocating for a common-law right of prosecution that this Court already struck down in *Morrisey*. *Id.* at 253–57, 784–88 (2014) (Attorney General was stripped of common law prosecutorial authority by art. VIII, § 13 of the West Virginia Constitution and W. Va. Code § 7-4-1).

The State of West Virginia is not injured by dismissal of the procedurally defective and time-barred indictment. "This Court has held that a petition for a writ of prohibition 'may be maintained by any person *injuriously affected* by the action which he seeks to prevent[.]'" *Id.* (emphasis in original) (citing and quoting *State ex rel. Gordon Mem'l Hosp. v. W. Va. State Bd. of Exam'rs for Registered Nurses*, 136 W. Va. 88, 105, 66 S.E.2d 1, 11 (1951)). The State of West Virginia does not meet the definition of a party who is "injuriously affected" in this case. *See State ex rel. W. Virginia Dep't of Health & Hum. Res. v. Salango*, No. 20-0784, 2021 WL 2229055, at *5 (W. Va. June 2, 2021) (request for writ of prohibition denied).

> As a general rule any person who will be affected or injured by the proceeding which he seeks to prohibit is entitled to apply for a writ of prohibition; but a person who has no interest in such proceeding and whose rights will not be affected or injured by it can not [sic] do so.

Id. (citing and quoting Syl. Pt. 6, *State ex rel. Linger v. Cty. Ct. of Upshur Cty.*, 150 W. Va. 207, 144 S.E.2d 689 (1965)). Moreover:

> [s]tanding does not refer simply to a party's capacity to appear in court. Rather, standing is gauged by the specific common-law, statutory or constitutional claims that a party presents. Typically, . . . the standing inquiry requires careful judicial examination . . . to ascertain whether the particular plaintiff is entitled to an adjudication *of the particular claims asserted.*

Findley v. State Farm Mut. Auto. Ins. Co., 213 W. Va. 80, 94–95, 576 S.E.2d 807, 821–22 (2002) (alterations in original) (internal quotation marks omitted) (quoting *Int'l Primate Prot. League v. Admins. of Tulane Educ. Fund,* 500 U.S. 72, 77 (1991)).

Here, the State of West Virginia failed to appear at the hearing on the motions to dismiss because Attorney Gaskins was not appointed by a circuit court judge as Cabell County Special Prosecutor in this matter. Thus, the State of West Virginia, by not appearing at the hearing below, does not have standing to now request a writ of prohibition against Judge Young. Not only did the State of West Virginia fail to appear at the grand jury or Mrs. King's initial appearance, but the statute of limitation was already expired at the time Attorney Gaskins sought prosecution. Accordingly, Petitioner's request for a writ should be denied.

II. ALTERNATIVELY, IF THE COURT DETERMINES THAT THE STATE HAS STANDING TO REQUEST A WRIT, THEN THE STATE CANNOT MEET ALL FIVE *HOOVER* FACTORS BECAUSE THE THIRD, FOURTH, AND FIFTH *HOOVER* FACTORS ALL WEIGH IN FAVOR OF MRS. KING.

On balance, the *Hoover* factors weigh against the issuance of a writ of prohibition in this case. Mrs. King will concede, *arguendo*, that the first and second factors weigh in favor of the State. Clearly the State has no other relief available because it had no right of appeal when it did not appear in the underlying case. *See also* Syl. Pt. 1, *State v. Jones*, 178 W. Va. 627, 363 S.E.2d 513 (1987).

The third, fourth, and fifth factors, however, weigh in favor of Mrs. King. Respondent will address the fourth and fifth factors before addressing the third and

most-heavily weighted factor: whether the lower tribunal's order is clearly erroneous as a matter of law.

With respect to the fourth factor, Judge Young's correct decision to dismiss the indictment cannot be deemed "an oft repeated error of law." Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 14–15, 483 S.E.2d 12, 14–15 (1996). As Petitioner's own brief points out, "[Petitioner] cannot maintain that the Respondent Judge is often repeating" the legal error alleged by the State in this action. [Pet. Br. at p. 16.] As such, it would be factually impossible for Petitioner to allege that Judge Young's action represents an often-repeated error. Likewise, Petitioner cannot argue that Judge Young's action constitutes a "persistent disregard" for the law. Persistence requires more than a single, correct act. Therefore, the fourth factor weighs in favor of Mrs. King.

The fifth factor also weighs in favor of Mrs. King. Judge Young's decision does not create a new problem or an issue of first impression. The opposite is actually true- the principle of *leges posteriores priores contrarias abrogant* has long been the law in this state. "As a general rule of statutory construction, if several statutory provisions cannot be harmonized, controlling effect must be given to the last enactment of the Legislature." Syl. Pt. 2, *Stamper by Stamper v. Kanawha Cty. Bd. of Educ.*, 191 W. Va. 297, 298, 445 S.E.2d 238, 239 (1994) (quoting Syl. Pt. 2, *State ex rel. Department of Health and Human Resources, etc. v. West Virginia Public Employees Retirement System*, 183 W. Va. 39, 393 S.E.2d 677 (1990)); *State ex rel. Pinson v. Varney*, 142 W. Va. 105, 109, 96 S.E.2d 72, 74 (1956). "When faced with

two conflicting enactments, this Court and courts generally follow the black-letter principle that 'effect should always be given to the latest . . . expression of the legislative will . . . .'" *Wiley v. Toppings*, 210 W. Va. 173, 175, 556 S.E.2d 818, 820 (2001) (citing and quoting *Joseph Speidel Grocery Co. v. Warder*, 56 W.Va. 602, 608, 49 S.E. 534, 536 (1904)). Because the updated version of W. Va. Code § 61-11-9 was enacted 24 years after the last version of W. Va. Code § 3-9-24 was adopted by the Legislature, Judge Young was correct to apply W. Va. Code § 61-11-9. [Pet. App. Rec. at 000015 ("Because W. Va. Code § 61-11-9 is the latest reflection of legislative will with respect to statutes of limitation in misdemeanor cases, it must control here.").] Judge Young's decision is consistent with well-settled law.

Finally, as to the third *Hoover* factor, Judge Young's decision is not clearly erroneous. His decision is clearly correct. The legislative intent behind W. Va. Code § 61-11-9 was to harmonize misdemeanor statutes of limitation across the West Virginia Code, and the language of W. Va. Code § 61-11-9 is patently clear. "**A prosecution for a misdemeanor shall be commenced within one year after the offense was committed**." W. Va. Code § 61-11-9 (emphasis added). "The date of the finding of the indictment was the commencement of the prosecution[.]" *State v. Bfasley*, 21 W. Va. 777, 781 (W. Va. 1883) (citation omitted). Accordingly, as is the case here, the law requires that a misdemeanor indictment be dismissed when the indictment was returned more than one year after the alleged crime. Judge Young's decision was correct and the third *Hoover* factor weighs in favor of Mrs. King.

Because the fourth, fifth, and, most importantly, third *Hoover* factors weigh in favor of Mrs. King, Petitioner's request for a writ of prohibition should be denied.

III. W. VA. CODE § 61-11-9 IS THE SPECIFIC STATUTE OF LIMITATION APPLICABLE TO MISDEMEANOR CRIMINAL ACTIONS IN THE STATE OF WEST VIRGINIA AND W. VA. CODE § 3-9-24 IS NOT RENDERED MEANINGLESS.

"Our legislature created a ***specific statute of limitation*** **for misdemeanors**." *State v. Leonard*, 209 W. Va. 98, 101, 543 S.E.2d 655, 658 (2000) (emphasis added). "A prosecution for a misdemeanor shall be commenced within one year after the offense was committed." W. Va. Code § 61-11-9. Numerous cases discuss § 61-11-9 and the applicable one-year statute of limitation for misdemeanor offenses. *See State v. Leonard, supra.*; *see e.g. State v. Boyd*, 209 W. Va. 90 n.1, 543 S.E.2d 647 (2000).

In comparison, § 3-9-24 is titled as "Limitations on prosecutions" and sets forth that "No person shall be prosecuted for **any** crime or offense under any provision of this chapter, unless upon an indictment found and presentment made within five years after the date of the commission of the crime or offense." W. Va. Code § 3-9-24 (emphasis added). In fact, § 3-9-24 sets forth a five-year limitation for **all** alleged crimes under Chapter 3, and its earlier enactment in 1978 predates the Legislature's move towards specific uniformity for misdemeanor prosecutions in 2002. The Legislature's decision to establish a specific one-year rule for all misdemeanors in § 61-11-9 demonstrates a clear intent to abrogate older, non-uniform statute of limitation provisions like § 3-9-24.

The clear intent of the Legislature in enacting W. Va. Code § 61-11-9 was to standardize the limitation period for misdemeanors by providing a uniform rule for misdemeanor prosecutions in West Virginia. Further, § 61-11-9, as well as 2002 H.B. 4044, is devoid of any evidence of legislative intent to preserve the possible applicability of § 3-9-24 to misdemeanors. *See* H.B. 4044, 2002 Leg. 77th Sess. (W. Va. 2002) (effective Mar. 9, 2002). In fact, when § 61-11-9 was amended in 2002, it specifically removed language stating, ". . . except that a prosecution for petit larceny may be commenced within three years after the commission of the offense[.]" W. Va. Code § 61-11-9 (2001). The legislative intent is clear following the 2002 amendment - misdemeanor offenses are to have a uniform one-year statute of limitation in West Virginia. Even the Secretary of State's own *Manual for Election Officials*, revised in January 2024 but changed after Judge Young entered his order in May 2025, acknowledges that misdemeanors under Chapter 3 have a one-year statute of limitation, while Chapter 3 felonies have a five-year statute of limitations. [Resp. King App. Rec. at p. 000131.]

When the Legislature enacted § 61-11-9 in 2002, it must be presumed that the Legislature was also aware of then-existing statutes of limitation throughout the West Virginia Code like § 3-9-24. "'The Legislature, when it enacts legislation, is presumed to know its prior enactments.'" Syl. Pt. 1, *Stamper by Stamper v. Kanawha Cty. Bd. of Educ.*, 191 W. Va. 297, 298, 445 S.E.2d 238, 239 (1994) (citing and quoting Syl. Pt. 12, *Vest v. Cobb*, 138 W. Va. 660, 76 S.E.2d 885 (1953); Syl. Pt. 5, *Pullano v. City of Bluefield*, 176 W. Va. 198, 342 S.E.2d 164 (1986)).

Yet, when § 61-11-9 was last enacted in 2002, the Legislature did not take any steps to preserve the applicability of § 3-9-24 to misdemeanors (even assuming, *arguendo*, that the original intent was for § 3-9-24 to apply equally to felonies and misdemeanors). The lack of preservation for § 3-9-24's possible applicability to misdemeanors is consistent with the intent to harmonize misdemeanor statutes of limitation under the 2002 law.

If the intent of § 3-9-24 was for that statute to apply equally to both felonies and misdemeanors, had the Legislature wished to retain a five-year period for misdemeanors under Chapter 3 of the Code, the Legislature could have either a) explicitly exempted Chapter 3 offenses from the application of the one-year statute of limitation in § 61-11-9 in 2002 or b) amended and reenacted § 3-9-24 in 2002 (or at any point in the last 23 years) to reaffirm its applicability to Chapter 3 misdemeanors. By not doing either of those things, and by not taking any other steps to maintain the possible application of § 3-9-24 to misdemeanors, the plain language of § 61-11-9 must be given effect here.

Unlike § 61-11-9, § 3-9-24 is clearly a general statute of limitation because it does not distinguish between misdemeanor offenses and felonies. This Court has repeatedly held that specific statutes are given precedence over general statutes relating to the same subject matter and that specific statutory language takes precedence over more general statutory provisions. *See Stepp v. Cottrell*, 246 W. Va. 588, 594, 874 S.E.2d 700, 706 (2022). As reiterated in *Stepp*:

> This Court, in the context of statutory interpretation, has recognized that specific statutes control over general statutes:

> This Court has previously held, "The general rule of statutory construction requires that a specific statute be given precedence over a general statute relating to the same subject matter[.]" Syllabus Point 1, in part, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984). *Accord Tillis v. Wright*, 217 W. Va. 722, 728, 619 S.E.2d 235, 241 (2005) ("[S]pecific statutory language generally takes precedence over more general statutory provisions."); *Bowers v. Wurzburg*, 205 W. Va. 450, 462, 519 S.E.2d 148, 160 (1999) ("Typically, when two statutes govern a particular scenario, one being specific and one being general, the specific provision prevails." (Citations omitted)); *Daily Gazette Co., Inc. v. Caryl*, 181 W. Va. 42, 45, 380 S.E.2d 209, 212 (1989) ("The rules of statutory construction require that a specific statute will control over a general statute[.]" (Citations omitted)).
>
> *Robinson v. City of Bluefield*, 234 W. Va. 209, 214, 764 S.E.2d 740, 745 (2014)

Id.

Judge Young's analysis was that the vagueness of W. Va. Code § 3-9-24 required application of W. Va. Code § 61-11-9 in this case. He followed the appropriate steps of statutory construction in reaching that conclusion. "As a general rule of statutory construction, if several statutory provisions cannot be harmonized, controlling effect must be given to the last enactment of the Legislature." Syl. Pt. 2, *Stamper by Stamper v. Kanawha Cty. Bd. of Educ.*, 191 W. Va. 297, 298, 445 S.E.2d 238, 239 (1994) (quoting Syl. Pt. 2, *State ex rel. Department of Health and Human Resources, etc. v. West Virginia Public Employees Retirement System*, 183 W. Va. 39, 393 S.E.2d 677 (1990)); *State ex rel. Pinson v. Varney*, 142 W. Va. 105, 109, 96 S.E.2d 72, 74 (1956). "When faced with two conflicting enactments, this Court and courts generally follow the black-letter principle that 'effect should always be given to the

latest . . . expression of the legislative will . . . .'" *Wiley v. Toppings*, 210 W. Va. 173, 175, 556 S.E.2d 818, 820 (2001) (citing and quoting *Joseph Speidel Grocery Co. v. Warder*, 56 W.Va. 602, 608, 49 S.E. 534, 536 (1904)).

Here, § 61-11-9, was last signed into law 24 years after § 3-9-24, and therefore carries the weight of being the legislature's latest word on the statute of limitations for alleged misdemeanors brought under Chapter 3. As set forth above, § 61-11-9 was last amended and enacted in 2002. In comparison, § 3-9-24 was enacted pursuant to H.B. 396 during the 1978 legislative session.

There has been no further legislative action on § 3-9-24 since 1978 and there appears to be only one case, *In re Mendez*, 192 W. Va. 57, 450 S.E.2d 646 (1994), that makes mention of § 3-9-24. Even then, *Mendez* relegated § 3-9-24 to a footnote. *See In re Mendez*, 192 W. Va. 57 n.2, 450 S.E.2d 646 (1994) ("Notwithstanding the provision of section twenty-four [§ 3-9-24], article nine of this chapter, a criminal prosecution or civil action for violation of this article shall be commenced within five years after the violation occurred.").

Again, § 61-11-9 controls this case and the indictment must therefore be dismissed as being well beyond the statute of limitation. Doing so is consistent with well-settled law and contrary to the specious assertion of Petitioner, W. Va. Code § 3-9-24 is not rendered meaningless by proper application of the law with respect to statutory construction. W. Va. Code § 3-9-24 clearly applies to alleged felony offenses. Petitioner's request for a writ of prohibition should be denied.

IV. THE *AMICUS CURIAE* ARGUMENT REGARDING THE NEED FOR SUFFICIENT TIME TO CONDUCT AN INVESTIGATION IS UNMOORED FROM THE REALITY OF WHAT OCCURRED IN THIS CASE.

The Attorney General's office, appearing as *amicus curiae*, devotes considerable attention to an ostensibly noble argument about the necessity of "thorough investigation" to "safeguard the integrity of elections and protect public trust." [Am. Br. at pp. 4-8.] This rhetoric, while superficially compelling, represents a fundamental mischaracterization of both the factual circumstances presented in this case and the proper relationship between investigative thoroughness and statutory compliance. Upon careful examination of the actual timeline and prosecutorial conduct involved, the Attorney General's argument not only rings hollow but reveals an attempt to circumvent the choice of two other prosecutors to not act against Mrs. King and Ms. Maynard, as well as an attempt to circumvent clear statutory limitations through extraordinary judicial relief.

The Attorney General's theoretical framework regarding investigative needs would be more persuasive if it bore any resemblance to the actual facts of this case. Mrs. King and Ms. Maynard were alleged to have knowingly violated state law on February 3, 2022, when they filed their candidate announcements containing allegedly false residency information. The purported complexity requiring extended investigation time is belied by the straightforward nature of the alleged violations: simple residency misrepresentations when there were conflicting magisterial maps and instructions from county officials. This was not a case requiring sophisticated

forensic analysis, complex financial investigations, or extensive witness coordination that might justify prolonged investigative timelines.

More significantly, the actual investigative timeline completely undermines the Attorney General's argument about the necessity for extended investigation periods. Kimberly S. Mason, Director of Investigations for the West Virginia Secretary of State's Office, completed her investigation of this matter by August 25, 2022—a mere six months after the alleged violations occurred. [Resp. King App. at p. 000015 to 000018.] This reality demonstrates not only that a thorough investigation was entirely feasible within the statutory limitation period of one year, but that it was actually accomplished well within that timeframe. The investigation was completed with over five months remaining within the one-year statute of limitations, providing ample opportunity for prosecutorial review and action. Tellingly, at least two prosecutors passed on the Secretary of State's request for prosecution before Attorney Gaskins took up the mantle and charged forward without being appointed as Special Prosecutor.

Despite having a completed investigation file by August 2022, and despite having more than adequate time remaining within the statutory period, no prosecutor who initially reviewed the case found sufficient merit to pursue prosecution. This prosecutorial reluctance persisted for over two years beyond the expiration of the misdemeanor statute of limitations, during which time the merits of the case did not improve, nor did any new evidence emerge that would strengthen the prosecution's position.

It was only when Attorney Gaskins, operating from Mason County, decided to venture beyond his normal jurisdictional bounds that any prosecutor showed interest in pursuing these stale charges—a decision made more than two years after the statute of limitations had expired. This pattern suggests not a careful, methodical approach to election integrity, but rather prosecutorial shopping until a willing participant could be found to pursue time-barred charges without proper authority by legal appointment to act. Such conduct fundamentally undermines the very integrity that the Attorney General claims to champion.

The Attorney General's invocation of election integrity as justification for circumventing statutory limitations represents a particularly troubling form of circular reasoning. The argument essentially posits that because election-related offenses are important, normal procedural protections should be relaxed to accommodate agency desire over prosecutorial reality of a given case. This approach turns the concept of integrity on its head: rather than ensuring that important cases receive prompt and professional attention within established legal frameworks, it suggests that importance justifies abandoning those frameworks when they prove inconvenient or contrary to a preferred narrative.

Moreover, the Attorney General's position fails to acknowledge that statutes of limitations themselves serve important integrity functions within our legal system. These provisions ensure timely prosecution when evidence is fresh and witnesses' memories are reliable, prevent the indefinite threat of prosecution from hanging over individuals, and provide certainty and finality that allows citizens to plan their lives

accordingly. Undermining these protections in the name of prosecutorial convenience does not enhance integrity—it erodes the foundational principles that make our legal system worthy of public trust.

The fundamental principle that should guide this Court's analysis was articulated decades ago: "If there is one principle firmly embedded in our jurisprudence, it is that the processes of the courts must be maintained to the highest point of integrity, and free from abuse. Unless that principle is rigidly maintained, courts of justice will become the subject of suspicion, and one of the bulwarks of our governmental system will be thereby undermined." *Hunter v. Beckley Newspapers Corp*., 129 W. Va. 302, 306-07, 40 S.E.2d 332, 335 (1946).

Legitimate and timely prosecutions conducted within established statutory frameworks exemplify this principle of integrity. By contrast, the request for extraordinary judicial intervention to salvage prosecutions that failed due to the weakness of a case admitted by a Deputy Secretary are precisely the type of abuse that undermines public confidence in our judicial system. When a private citizen who also happens to be the elected prosecutor of a neighboring county chooses to act beyond statutorily prescribed timeframes despite lacking the authority to do so, the appropriate remedy is not judicial accommodation of their failure, but rather adherence to the limitations that the legislature has established to ensure orderly and timely administration of justice.

The Attorney General's attempt to transform the zealous acts of a private citizen into a virtue requiring extraordinary judicial relief fundamentally

misconstrues both the facts of this case and the proper role of our courts in maintaining systemic integrity. Rather than safeguarding election integrity, granting the requested writ would signal that statutory limitations are merely suggestions to be discarded when an agency is unable to obtain prosecution through at least two prosecutors—a precedent that would ultimately undermine the very rule of law that makes democratic elections possible.

V. AN INCORRECT PROSECUTORIAL PRACTICE DOES NOT SUPPLANT THE CLEAR MANDATE OF LEGISLATURE EXPRESSED IN THE WEST VIRGINIA CODE.

In seeking this Court's grant of a writ of prohibition, the Secretary of State's Office relies heavily upon its own purported practice of prosecuting alleged election-related offenses beyond the clear statutory limitation period established in W. Va. Code § 61-11-9. [Am. Br. at pp. 8-10.] In advancing this position, the Secretary invokes the doctrine of practical construction, suggesting that its agency interpretation and enforcement practices should override plain statutory text. This argument fundamentally misapprehends both the proper scope of the practical construction doctrine and the hierarchical relationship between clear statutory language and administrative practice.

The foundational principle governing the application of practical construction is well-established: "[T]he doctrine of contemporaneous or practical construction is resorted to only where the language used in the instrument is doubtful, ambiguous, or uncertain." *State ex rel. Wayne v. Sims*, 141 W. Va. 302, 314, 90 S.E.2d 288, 295

(1955). This limitation is not merely procedural but reflects the fundamental constitutional principle that courts, not administrative agencies, bear the ultimate responsibility for interpreting statutory meaning. Where legislative intent is clear from the statutory text, no amount of contrary agency practice can overcome that clarity.

The practical construction doctrine serves a narrow and specific purpose: to resolve genuine ambiguity in statutory language through reference to consistent, long-standing administrative interpretation. However, this doctrine operates within strict parameters that the Secretary's argument fails to satisfy. First, the statutory language must be genuinely ambiguous—not merely inconvenient to the agency's preferred interpretation. W. Va. Code § 61-11-9 contains no such ambiguity; its one-year limitation period for misdemeanor prosecutions is expressed in clear, unequivocal terms that admit of no reasonable alternative reading. This Court has upheld that unequivocal rule in numerous cases.

Second, even where practical construction might theoretically apply, the agency interpretation must be reasonable and consistent with the overall statutory scheme and legislative intent. An agency cannot bootstrap its authority through repeated violations of clear statutory limitations, nor can it create ambiguity where none exists simply by asserting an inconsistent interpretation. To permit such an approach would effectively allow administrative agencies to nullify legislative enactments through the simple expedient of ignoring them—a result that would fundamentally undermine the separation of powers and the rule of law.

Third, courts must consider whether the agency possessed the legal authority to make the interpretation it claims to have adopted. The practical construction doctrine does not grant agencies *carte blanche* to rewrite statutes; rather, it recognizes limited circumstances where genuine ambiguity requires resort to administrative expertise. Where an agency lacks authority to extend statutory limitation periods—as is clearly the case here—its practice of doing so cannot serve as the foundation for a practical construction argument.

Moreover, the Secretary's reliance on practical construction is particularly inappropriate in the criminal law context, where the due process principles of fair notice and the rule of lenity require that ambiguities be resolved in favor of defendants, not the prosecution. Allowing prosecutorial agencies to extend limitation periods through mere practice would create precisely the type of arbitrary enforcement that statutes of limitations are designed to prevent *and would wholly undermine the rule of law*. What the Secretary's Office suggests here should not "be adopted [because] it is manifestly wrong." *State ex rel. Ballard v. Vest*, 136 W. Va. 80, 87-88, 65 S.E.2d 649, 653 (1951).

The doctrine of practical construction, properly understood, serves to clarify legislative intent where that intent is genuinely unclear from the statutory text. It does not, however, permit state agencies to override clear statutory mandates through contrary practice, regardless of how long-standing or consistent that practice may be. Where the legislature has spoken clearly, as it has in W. Va. Code § 61-11-9, agency practice must yield to statutory command, not the reverse.

VI. THE SECRETARY OF STATE'S ELECTION MANUAL WAS NOT "OUTDATED" AT THE TIME ARGUMENTS OCCURRED BEFORE JUDGE YOUNG.

The Secretary of State's dismissive characterization of its own manual as merely an "outdated version" represents a fundamentally disingenuous attempt to escape the consequences of its own published guidance, and this revisionist approach completely undermines the very foundation of its practical construction argument. [Am. Br. at 11.] Further, this characterization reveals several fatal flaws in the Attorney General' position that warrant careful examination.

First, the actual sequence of events exposes the post-hoc nature of the Secretary of State's current position. The version of the manual that the Secretary now attempts to discredit as "outdated" was, in fact, the official guidance document that the Secretary of State's office held out to the world as representing the correct interpretation of West Virginia election law at all relevant times leading up to and during this litigation. This was not some dusty, forgotten document that had been superseded by more current guidance; rather, it was the Secretary's authoritative statement of legal interpretation that remained in effect until the politically inconvenient moment when Judge Young issued his order dismissing the indictment with prejudice for exceeding the one-year statute of limitations.

The timing of the manual's revision is particularly damning to the Secretary's credibility. The manual was not updated as part of any routine review process, legislative change, or evolving understanding of the law. Instead, it was altered only after Judge Young's ruling (in the same month no less), and that ruling applied exactly the same one-year statute of limitations that the Secretary's own manual had

expressly stated should apply to misdemeanor election offenses. [Resp. King App. Rec. at p. 000131.] This sequence strongly suggests that the manual revision was undertaken not to correct any genuine error or reflect new legal developments, but rather to eliminate inconvenient evidence that contradicted the Secretary's newly adopted litigation position.

Second, the Secretary of State's characterization of its own guidance as "outdated" fundamentally contradicts and undermines its invocation of the practical construction doctrine. The practical construction doctrine is premised on the notion that consistent, long-standing administrative interpretation can help clarify ambiguous statutory language. However, the doctrine requires that the agency interpretation be genuine, consistent, and reflective of the agency's actual understanding of the law—not a litigation-driven revision designed to support a particular court case.

By dismissing its own published manual as "outdated," the Secretary effectively concedes that its written guidance did not reflect its true interpretive position. This admission devastates any claim to consistent administrative practice. An agency cannot simultaneously argue that its longstanding practice should be given deference under the practical construction doctrine while simultaneously disavowing its own written guidance as obsolete or incorrect. If the Secretary's practice truly differed from its published guidance, then either the practice was inconsistent with the agency's stated position (undermining any claim of consistent

interpretation) or the published guidance was deliberately misleading (raising serious questions about the agency's good faith).

Third, the Secretary's approach reflects a troubling disregard for the reliance interests of the regulated community. Government agencies have an obligation to provide clear, consistent guidance to those subject to their regulatory authority. Attorneys, election officials, candidates, and other members of the public are entitled to rely on official agency guidance when making decisions about legal compliance. When the Secretary of State published its manual stating that misdemeanor election offenses were subject to a one-year statute of limitations, it created reasonable expectations among the regulated community.

The Secretary's post-hoc revision of this guidance, undertaken only after receiving an adverse court ruling, sends a deeply problematic message about the reliability of government guidance. If agencies can simply revise their published interpretations whenever those interpretations prove legally inconvenient, then such guidance becomes meaningless as a source of legal certainty. This approach undermines the rule of law and the predictability that citizens are entitled to expect from their government.

Fourth, the Secretary's position reveals the arbitrary and result-oriented nature of its current interpretation. If the Secretary truly believed that its manual contained an error regarding the applicable statute of limitations, one would expect that error to have been corrected through the normal administrative process of periodic review and revision. Instead, the timing of the revision—occurring only after

Judge Young's adverse ruling—suggests that the change was motivated not by any genuine belief that the original guidance was incorrect, but rather by a desire to eliminate evidence that contradicted the Secretary's litigation strategy.

Moreover, the Secretary's willingness to characterize its own official guidance as "outdated" raises serious questions about its current credibility. If the Secretary's interpretation of its own regulatory authority was so fundamentally flawed that its official manual required revision, why should this Court give any deference to the Secretary's current interpretation? The Secretary cannot have it both ways: it cannot claim interpretive authority sufficient to warrant judicial deference while simultaneously acknowledging that its exercise of that authority was so deficient as to require post-litigation correction.

Finally, the Secretary's approach fundamentally misunderstands the nature of the practical construction doctrine. That doctrine is not a tool for agencies to escape the consequences of their published positions by claiming that their true practice differed from their stated guidance. Rather, it recognizes that consistent, transparent administrative interpretation can help resolve genuine statutory ambiguity. Here, the Secretary's own manual resolved any purported ambiguity by clearly stating that misdemeanor election offenses were subject to a one-year statute of limitations. The Secretary cannot now claim the benefit of a contrary practice while disavowing the written guidance that is contemporaneous with that practice.

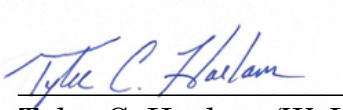
The Secretary of State's attempt to distance itself from its own published guidance not only fails to support its practical construction argument, but it

completely destroys that argument by revealing the inconsistent, post-hoc, and result-oriented nature of the agency's current position. An agency that dismisses its own official guidance as "outdated" when that guidance proves legally inconvenient has forfeited any claim to interpretive deference based on consistent administrative practice.

CONCLUSION

Respondent Jan Hite King respectfully requests that this Honorable Court DENY the State of West Virginia's request for a writ of prohibition and allow the dismissal with prejudice to stand.

JAN HITE KING,
By Counsel



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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 25-371

STATE OF WEST VIRGINIA *ex rel.*
STATE OF WEST VIRGINIA,

Petitioner,

v.

THE HONORABLE JAMES YOUNG,
Judge of the Circuit Court of Wayne County,
sitting by special assignment in Cabell County,
JAN HITE KING, and KIMBERLY MAYNARD,

Respondents.

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 7th day of July, 2025, I served a true and accurate copy of the foregoing ***Brief of Respondent Jan Hite King*** upon the below-listed individuals via the West Virginia Supreme Court of Appeals E-filing System pursuant to W. Va. R. App. P. 38A and electronic mail.

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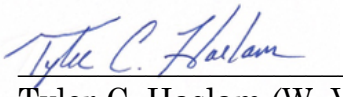

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