IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 24-163

LOGAN COUNTY BOARD OF EDUCATION,

Petitioner,

v.

ELIZABETH VESTAL,

Respondent,

PETITIONER'S REPLY BRIEF

PREPARED BY:

Counsel for Petitioner Logan County Board of Education

DUANE J. RUGGIER II (WV STATE BAR # 7787)
EVAN S. OLDS (WV STATE BAR # 12311)
901 Quarrier Street
Charleston, West Virginia 25301
(304) 344-0100 – Telephone
(304) 342-1545 – Facsimile

DATED: September 24, 2024

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Secondary Sources

I. STATEMENT OF THE CASE

Respondent's entire Statement of the Case section contains no citation to the Appendix. Under the Rules of Appellate Procedure, a Statement of the Case section must be "[s]upported by appropriate and specific references to the appendix or designated record." W. Va. R. App. P. 10(c)(4).

A. RESPONDENT'S ALLEGATIONS

Respondent Plaintiff's recitation of her *Amended Complaint* allegations is superfluous as Petitioner's argument takes the allegations as true. Pet'r Br. at 5 (Standard of Review).

Later in Respondent's Factual Background section, Respondent lodges allegations not asserted below. Specifically, Respondent's *Amended Complaint* does not allege that the "behavior of Defendant Willard was so ubiquitous that no reasonable school administrator could have failed to miss his behavior." *But see* Resp. Br. at page 3 (third unnumbered paragraph). "[A] party who has not raised a particular issue or defense below may not raise it for the first time on appeal." *State v. Costello*, 245 W. Va. 19, 26, 857 S.E.2d 51, 58 (2021). In deciding a motion to dismiss, the Court can only consider the complaint's allegations.

Moreover, Respondent's new allegation is contrary to her *Amended Complaint*. In her *Amended Complaint*, Respondent Plaintiff explains the great lengths Defendant Willard went to conceal his alleged conduct, including calling her into his office, going behind a cabin at night, telling her not to tell anyone, following her to a soundproof storage room, making sure there were no meetings scheduled after her meetings with him, closing and blocking the door behind him, hiding between trees, exposing himself under a blanket in the back of the bus, touching her under the water in a hot tub, and entering her room at night. App. 31, Am. Compl. ¶¶ 12, 15, 19, 25, 36, 38, 39, 55, 70, 82, 90, 99, 106, 119–121, 122–123, 135. Absent from the *Amended Complaint* is

any allegation that any Board employee was aware of or saw any of these instances. Respondent cannot now rely on a new, contradictory allegation not raised below.

B. PROCEDURAL HISTORY

The following pertinent portions of Respondent Plaintiff's Procedural History section contradict the Appendix: Petitioner filed a *Motion* seeking a venue change or dismissal on October 24, 2022—not October 27. *See* App. 68.

Regarding ¶¶ 9–11, Petitioner was not required to seek "leave of Court" to file Petitioner's subsequent motion. Petitioner filed the admittedly mistitled "Motion to Dismiss Claim for Punitive Damages" on November 14, 2022—not November 17. *See* App. 86. Here, Respondent continues her campaign to convert an inconsequential clerical error below into a reason to ignore the merit of and deny Petitioner's dispositive motions. The title of the Motion did not change the relief sought; and the relief sought includes all the issues raised in this appeal/petition. Petitioner corrected the error on November 17, 2022—not November 21. *See* App. 122. That Petitioner mistitled and then corrected its motion is no reason to ignore/deny the numerous grounds warranting dismissal of Respondent's claims against Petitioner. The arguments in the Memorandum of Law accompanying both motions were not submitted in error and did not change. Again, in other words, despite the mistitled motion, the arguments underlying it were intended and maintained.

Petitioner filed a *Renewed Motion to Dismiss or Transfer Venue* on December 1, 2022. *See* App. 139. Petitioner filed the *Renewed Motion* because Respondent Plaintiff never responded to the October 24, 2022, *Motion. See* App. 140. Thereafter, on December 5, 2022, Respondent filed the *Motion for Leave to File Her Response.* App. 125.

Regarding ¶ 15, Petitioner filed its *Reply* on December 21, 2022—not December 27. *See*

App. 170, 175.

On February 6, 2024, the Logan County Circuit Court denied Petitioner's November 17, 2022, *Motion to Dismiss* and Petitioner's November 14, 2022, *Memorandum of Law* in support, by entry of "Plaintiff's Proposed Order Denying Defendant Logan County West Virginia Board of Education's Motions to Dismiss." App. 401–409.

Regarding Respondent's footnote 4, the Appellate Rules require no service or notice by mail, fax, or email. As explained in previous filings in this matter (No. 24-163), electronic filing is mandatory, and every e-filed document is automatically e-served. W. Va. R. App. P. 38A(c) and 38A(q).

II. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Please see Petitioner's *Brief* at § IV.

III. STANDARD OF REVIEW

Please see Petitioner's *Brief* at § V.

IV. ARGUMENT

A. The Circuit Court Clearly Erred When It Concluded That Petitioner Failed To Timely Raise Immunity And Unconstitutionality Of The Savings Statute Because, Under West Virginia Law, Petitioner Could Have Raised These Issues At Trial Or On Appeal, Respectively.

i. The Circuit Court's Findings And Conclusions Were Clearly Erroneous In Mischaracterizing The Procedural History And Were Clearly Erroneous Because The Rules Of Civil Procedure Expressly Allowed Petitioner To Raise The Defense Of Failure To State A Claim

Respondent does not contest that the Circuit Court's briefing orders placed no limit on the timing or frequency of dispositive motions. Respondent does not contest that the Circuit Court mischaracterized the number of motions before it, stating incorrectly that there were three.

Petitioner filed two motions—not four per the Respondent and not three per the Circuit Court. Both of Petitioner's motions are allowed under the Rules of Civil Procedure. First, Petitioner moved to dismiss or transfer venue on October 24, 2022. When Respondent did not respond thereby leaving nothing to reply to, Petitioner renewed the motion to highlight to the Circuit Court that the motion remained unopposed. App. 63, 140. Second, Petitioner moved to dismiss on numerous grounds including immunity and statute of limitations; realizing the motion that accompanied the memorandum was mistitled "Motion to Dismiss Punitive Damages," Petitioner amended the motion. App. 84–120. The amended motion was based on the same, unchanged memorandum of law that accompanied the mistitled motion.

Respondent Plaintiff argues that Petitioner's immunity, statute of limitations, and constitutional arguments were available to Petitioner when Petitioner filed its October 24 motion arguing improper venue. As a preliminary matter, Respondent's argument that Petitioner failed to raise immunity is incorrect; Petitioner's October 24 *Motion* raised the applicable statutory immunity framework, W. Va. Code § 29-12A-1 *et seq.* App. 63–64. Nonetheless, Petitioner was not required to raise immunity, statute of limitations, or constitutional arguments in its first motion. Respondent ignores the controlling language of Rule 12:

> **(g) Consolidation of Defenses in Motion.** A party who makes a motion under this rule **may join with it** any other motions herein provided for and then available to the party. If a party makes a motion under this rule **but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion**, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in **subdivision (h)(2)** hereof on any of the grounds there stated.

W. Va. R. Civ. P. 12(g) (emphasis added). Consolidation or joinder of motions is permissive. Only the motions specified in Rule 12 require consolidation. Of note, Rule 12 does not mention

immunity, statutes of limitation, or constitutional arguments. Therefore, Petitioner was not required to raise these defenses/arguments in its initial motion.

Moreover, Rule 12(g) is refined by Rule 12(h)(1), which states:

> (1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in subdivision (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

Rule 12(h)(1) lists the types of defenses that are waived under 12(g) if not joined/consolidated in an initial motion. Those include, the "defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service." W. Va. R. Civ. P. 12(h)(1). Failure to state a claim, immunity, constitutional defenses, or statutes of limitation are not listed as waived. Respondent's argument has no merit; these defenses are not waived by failure to raise them in an initial motion. Conversely, Respondent's argument might have merit if Petitioner failed to first raise improper venue. But under Rule 12(h)(1), Respondent was correct in first raising improper venue.

Respondent's argument is further disproven under Rule 12(h)(2):

> (2) A defense of **failure to state a claim upon which relief can be granted**, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

W. Va. R. Civ. P. 12(h)(2). Block-quoted above, Rule 12(g) expressly recognizes Rule 12(h)(2). Under Rule 12(h)(2), Petitioner did not waive its Rule 12(b)(6) defense. Under Rule 12(h)(2), Petitioner could raise its 12(b)(6) grounds for dismissal in any pleadings permitted under Rule 7(a). Rule 7(a) allows a party to answer a complaint. W. Va. R. Civ. P. 7. And Rule12(b) allows a

party to raise the failure to state a claim defense in a motion in lieu of an answer. Under Rule 12(b),

> **(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, **except that the following defenses may at the option of the pleader be made by motion**: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. **A motion making any of these defenses shall be made before pleading if a further pleading is permitted.** No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

W. Va. R. Civ. P. 12(b) (emphasis added). Petitioner raised its Rule 12(b) defenses by motion in lieu of an answer before filing any pleading. The failure-to-state-a-claim defense was properly before the Circuit Court, and the Circuit Court clearly erred in failing to rule on the merits of the motion.

Practically speaking, it makes little sense to raise immunity, a constitutional argument, and statute of limitations arguments in the same motion arguing improper venue because the judge that decides the improper venue issue may not be the same judge that decides the immunity or statute of limitations issues once venue is transferred. The logic of Rule 12 requires improper venue be raised first to ensure that the correct court presides over and decides the case. The logic and philosophy of Rule 12 "militates against placing parties in procedural straitjackets by requiring

them to possibly forego valid defenses by hurried and premature pleading." Louis J. Palmer, Jr., Robin Jean Davis, and Franklin D. Cleckley, Handbook on West Virginia Rules of Civil Procedure § 12(a) at 316 (4th ed. 2012). The Circuit Court and Respondent misconstrue the Rules to disallow timely raised defenses. The Respondent's arguments lack merit, and the Circuit Court clearly erred.

ii. THE CIRCUIT COURT CLEARLY ERRED BECAUSE PETITIONER COULD RAISE IMMUNITY AND CONSTITUTIONAL DEPRIVATION OF RIGHTS AS LATE AS TRIAL OR APPEAL

Not only does Respondent ignore language of Rule 12, but also, Respondent has no rebuttal to longstanding case law that allows immunity, constitutional defenses, statutes of limitation to be raised much later than in a motion to dismiss.

Under West Virginia law,

> qualified immunity can be pled at various stages in a case. As one court noted, qualified immunity is a question of law that may be generally asserted (1) on a pretrial motion to dismiss under Rule 12(b)(6) for failure to state a claim; (2) as an affirmative defense in the request for judgment on the pleadings pursuant to Rule 12(c); (3) on a summary judgment motion pursuant to Rule 56(e); or (4) at trial.

W. Virginia Bd. of Educ. v. Marple, 236 W. Va. 654, 668, 783 S.E.2d 75, 89 (2015) (quotation marks and citation omitted).

> "Where an affirmative defense such as qualified immunity" "is raised in the trial court in a manner that does not result in unfair surprise ... technical failure to comply precisely ... [with the Rules of Civil Procedure] is not fatal." *Holland v. Cardiff Coal Co.*, 991 F.Supp. 508, 515 (S.D.W.Va.1997) (quoting *Allied Chem. Corp. v. Mackay*, 695 F.2d 854, 855–56 (5th Cir.1983)). The defense of qualified immunity "is not waived if the defendant 'raised the issue at a pragmatically sufficient time, and [the plaintiff] was not prejudiced in its ability to respond.'

Id. (internal citation omitted). Petitioner could have waited much longer to raise immunity, but did

not. Petitioner cited the immunity statutes in its initial October 24 motion and moved the court for dismissal on immunity less than one month later, before any scheduling order was entered or discovery conducted. Neither the Circuit Court nor the Respondent has identified any prejudice. Nor could they identify any prejudice because, Petitioner raised immunity at least thirteen days, and at most thirty-four days, after the *Complaint* was served.

Similarly, as stated by this Supreme Court, "we have repeatedly held that the unconstitutionality of a law need not be specially pleaded and may be raised for the first time in this court." *Almond v. Day*, 197 Va. 419, 430, 89 S.E.2d 851, 858–59 (1955). Petitioner Board timely raised its argument in a motion to dismiss that application of the savings statute to the Petitioner Board violates the Board's due process rights and is thus unconstitutional as applied. The Circuit Court clearly erred.

Moreover, Defendant could have waited long after raising statute of limitations as an affirmative defense in an answer to move to dismiss on statute of limitations grounds. App. 243, 390–391. Under West Virginia law,

> a defendant who asserts the statute of limitations as an affirmative defense does not waive that defense by not immediately filing a motion to dismiss on that basis. Rather, the defense is preserved through trial. To be clear, we now hold that a defendant who asserts the statute of limitations as an affirmative defense in the answer to a complaint as required by Rule 8(c) of the West Virginia Rules of Civil Procedure does not subsequently waive that defense by engaging in discovery and participating in the litigation.

Coffield v. Robinson, 245 W. Va. 55, 61–62, 857 S.E.2d 395, 401–02 (2021). Defendant could have waited until trial to pursue the limitations defense. Defendant raised the statute of limitations timely.

Petitioner could have waited until trial to litigate its immunity and statute of limitations argument; Petitioner could have waited until this appeal to raise its constitutional arguments.

Petitioner filed its *Motion to Dismiss* timely. Respondent's arguments lack sense and merit, and the Circuit Court was clearly erroneous.

iii. FILING AN ANSWER AFTER MOVING TO DISMISS DOES NOT RENDER THE MOTION TO DISMISS MOOT

Defendant moved to dismiss on Rule 12(b) grounds on October 24, 2022, and November 14, 2022. App. 62, 88, 117. Out an abundance of caution, Defendant filed its *Answer* on February 28, 2023. Under Rule 12(b), "[a] motion making any of these defenses shall be made before pleading." Petitioner moved to dismiss on Rule 12(b) grounds before filing its *Answer*. *Compare* App. 65, App. 117 *with* App. 268. Respondent's mootness argument is nonsensical. Nothing in Rule 12 prevents a party from filing an answer to preserve its interests in the event a motion to dismiss is denied. Nothing in West Virginia law prevents a party from filing an answer before a motion to dismiss is ruled on. Of note, conversely, Rule 12(c) plainly provides that an answer be filed prior to moving to dismiss for judgment on the pleadings, which is the same standard as Rule 12(b)(6).[1] In sum, Respondent's argument is not supported by Rule 12 or common sense.

The Rules are intended to "secure the just, speedy, and inexpensive determination of every action." W. Va. R. Civ. P. 1. The arguments by the Circuit Court and Respondent result in inefficient, cumbersome, and unjust results. For example, Respondent's arguments, as adopted by the Circuit Court, would have Petitioner wait until a motion is denied, and risk missing the answer

[1] *le v. C.J. Hughes Const. Co.*, 226 W. Va. 581, 589, 703 S.E.2d 552, 560 (2010) ("a Rule 12(c) dismissal is analogous to a dismissal under Rule 12(b)(6), because in each instance, dismissal is only appropriate 'if it is clear that no relief could be granted under any set of facts that could be proven consistent with the allegations contained within the pleadings.'"); *Shaffer v. Charleston Area Med. Ctr., Inc.*, 199 W. Va. 428, 433, 485 S.E.2d 12, 17 (1997) ("the procedural mechanisms attendant to a Rule 12(b)(6) and 12(c) motion are the same."); Syllabus Point 2, *Copley v. Mingo County Bd. of Educ.*, 195 W.Va. 480, 466 S.E.2d 139 (1995); Syl. pt. 1, *Burch v. Nedpower Mount Storm, LLC*, 220 W. Va. 443, 446, 647 S.E.2d 879, 882 (2007) ("A motion for judgment on the pleadings presents a challenge to the legal effect of given facts rather than on proof of the facts themselves. In this respect it is essentially a delayed motion to dismiss. The West Virginia Rules of Civil Procedure approach the motion essentially as a motion to dismiss for failure to state a claim in that the motion will not be granted except when it is apparent that the deficiency could not be cured by an amendment.")

deadline, before filing an answer. Respondent's arguments would require all possible dispositive grounds raised in one motion contrary to the spirit and letter of the Rules of Civil Procedure and longstanding West Virginia law. Respondent's arguments would have this Court remand the matter just so Petitioner could raise the same defenses as late as trial, when statutes of limitation and immunity exist to prevent litigation of claims, or as late as a second appeal, when constitutional arguments may be raised. Respondent's arguments would have this Court and any Court ignore the numerous, salient grounds for dismissal applicable to this Petitioner Defendant. Taking Respondent's clearly erroneous arguments to their natural conclusions, the arguments must fail because: "the rules are designed to expedite and simplify the determination of civil actions and to obviate the necessity of dismissing or reversing actions for mere technical defects or irregularities[.]" *Sorsby v. Turner*, 201 W. Va. 571, 575, 499 S.E.2d 300, 304 (1997). The rationale of the Circuit Court and Respondent are not supported by the logic or letter of the Rules. The Circuit Court clearly erred.

B. THE CIRCUIT COURT CLEARLY ERRED WHEN IT FAILED TO RULE ON PETITIONER'S IMMUNITY, AND ITS FAILURE TO RULE ON PETITIONER'S IMMUNITY IS A DENIAL OF SAID IMMUNITY, WHICH IS IMMEDIATELY REVIEWABLE IN THIS HONORABLE COURT.

Respondent fails to rebut that:

> "a refusal to rule on a claim of immunity, like the explicit denial of a claim of immunity, is also immediately appealable under the collateral order doctrine." . . . "[L]ike an explicit denial of a claim of absolute or qualified immunity, the refusal to rule on a claim of immunity until trial is 'effectively unreviewable on appeal from a final judgment.' *Mitchell* [*v. Forsyth*], 472 U.S. [511, 526-27], 105 S. Ct. [2806, 2816, 86 L. Ed. 2d 411 (1985)]."
>
> . . .
>
> Because an objective of qualified immunity is to save specific individuals and agencies from suit and, when appropriate, from pre-trial discovery and litigation, deferring a ruling on qualified immunity acts as an effective denial of such protections.

W. Virginia State Police, Dep't of Mil. Affs. & Pub. Safety v. J.H. by & through L.D., 244 W. Va.

720, 729, 730–31, 856 S.E.2d 679, 688, 689–90 (2021) (quoting *Helton v. Clements*, 787 F.2d 1016 (5th Cir. 1986). A circuit court's denial of a motion to dismiss that is predicated on immunity is an interlocutory ruling which is subject to immediate appeal under the collateral order doctrine. *See id.* at syl. pt. 3 (quoting syl. pt. 1, *West Virginia Board of Education v. Marple*, 236 W. Va. 654, 783 S.E.2d 75 (2015)); Syl. Pt. 5, *State ex rel. Grant Cnty. Comm'n v. Nelson*, 244 W. Va. 649, 856 S.E.2d 608 (2021).

Rather than address the controlling case law, Respondent distracts with *Kanawha Cnty. Bd. of Educ. v. S. D. by & through J. D.*, 249 W. Va. 401, 895 S.E.2d 485 (2023). In *S.D.*, the parties did not raise immunity in the motion for summary judgment that the circuit court decided. "Nowhere in the motion for summary judgment or supporting memorandum of law are any of the statutory immunity provisions of the Tort Claims Act referenced or identified as grounds for relief." *Id.* at 488. "[N]owhere in petitioners' motion or supporting memorandum of law did they argue that they were entitled to summary judgment on the basis of immunity." *Id.* at 490. The Court in *S.D.* iterated that

> 3. "Under Rule 12 of the West Virginia Rules of Civil Procedure, a circuit court's **denial of a motion to dismiss a complaint that is predicated on the statutory immunity** conferred by the Governmental Tort Claims and Insurance Reform Act **is an interlocutory ruling that is subject to immediate appeal** under the 'collateral order' doctrine." Syl. Pt. 5, *State ex rel. Grant Cnty. Comm'n v. Nelson*, 244 W. Va. 649, 856 S.E.2d 608 (2021).

Syl. pt. 3, *Kanawha Cnty. Bd. of Educ. v. S. D. by & through J. D.*, 249 W. Va. 401, 895 S.E.2d 485 (2023) (emphasis added). The Court in *S.D.* reasoned that, because the underlying motion for summary judgment did not raise immunity, the motion was not predicated on statutory immunity, and thus the denial of the motion was not immediately appealable. Consequently, the order denying the same did not mention immunity either. *Id.*

Importantly, the decision in *S.D.* did not turn on whether the order denying the motion decided an immunity question, nor could it turn on that issue; as discussed, under West Virginia law, a deferral or refusal to rule on immunity is a denial of immunity and thus appealable. Rather, the decision in *S.D.* hinged on the fact that the defendant did not raise immunity in circuit court. Because the motion was not predicated on immunity, the court neither denied nor refused to rule on immunity. Therefore, the denial was not appealable.

The filings before this Court starkly differ. Petitioner's November 14, 2022, *Motion to Dismiss* raised immunity. App. 88. Even Petitioner's October 24, 2022, *Motion* that was granted cited immunity under the West Virginia Governmental Tort Claims and Insurance Reform Act, W. Va. Code § 29-12A-1 et seq. (Tort Claims Act). App. 63–64. Defendant maintained its immunity arguments in its replies. App. 171, 336. Petitioner Defendant's *Motion to Dismiss* was predicated on immunity. Respondent's reliance on *S.D.* is misplaced. The *S.D.* decision's contrast with the filings before this Court highlight that immunity is properly raised and before the Court. The Logan County Circuit Court denied Petitioner's immunity when it refused and failed to rule on it. The Circuit Court was clearly erroneous. This Honorable Court should find that immunity applies and order that the Circuit Court dismiss the matter with prejudice.

C. THE CIRCUIT COURT CLEARLY ERRED IN DENYING PETITIONER'S IMMUNITY BECAUSE THE TORT CLAIMS ACT PROHIBITS CLAIMS BASED ON INTENTIONAL AND/OR MALICIOUS CONDUCT AND PROHIBITS CLAIMS BASED ON ACTS PERFORMED OUTSIDE THE SCOPE OF EMPLOYMENT.

i. THE TORT CLAIMS ACT APPLIES AND THE CIRCUIT COURT CLEARLY ERRED WHEN IT FAILED TO RULE ON PETITIONER'S IMMUNITY

Petitioner does not dispute that sovereign immunity, common law qualified immunity, and statutory immunity apply to different governmental entities and their officers/employees. *See* Resp. Br. 19. To be clear, Petitioner does not argue that the Board is entitled to sovereign immunity

or common law qualified immunity; for immunity, the Petitioner only invokes the Tort Claims Act.

Respondent refers to the above-stated arguments (§§ A.ii, B) that rely on longstanding, broadly applied, and basic immunity principles and that address the timing of raising immunity. This Court has applied the same principles regardless of type of immunity. *Compare* Syl. Pt. 5, *State ex rel. Grant Cnty. Comm'n v. Nelson*, 244 W. Va. 649, 856 S.E.2d 608 (2021) (holding denial of statutory immunity is immediately appealable) *with* Syl. pt. 1, *West Virginia Board of Education v. Marple*, 236 W. Va. 654, 783 S.E.2d 75 (2015) (holding denial of common law qualified immunity immediately appealable.). Likewise,

> [A] circuit court's denial of a motion to dismiss that is predicated on qualified immunity is an interlocutory ruling which is subject to immediate appeal under the 'collateral order' doctrine." Likewise, when the issue relates to sovereign immunity, it is well-settled that "the denial of a substantial claim of absolute immunity is an order appealable before final judgment[.]

W. Virginia Lottery v. A-1 Amusement, Inc., 240 W. Va. 89, 94, 807 S.E.2d 760, 765 (2017). In *Hutchison*, this Court applied the same heightened pleading standard to qualified and statutory immunity, stating, "Public officials and local government units should be entitled to qualified immunity from suit under § 1983, or statutory immunity under W. Va.Code, 29–12A–5(a), unless it is shown by specific allegations that the immunity does not apply." *Hutchison v. City of Huntington*, 198 W. Va. 139, 147–48, 479 S.E.2d 649, 657–58 (1996). Likewise,

> The ultimate determination of whether qualified or statutory immunity bars a civil action is one of law for the court to determine. Therefore, unless there is a bona fide dispute as to the foundational or historical facts that underlie the immunity determination, the ultimate questions of statutory or qualified immunity are ripe for summary disposition.

Syl. Pt. 1, *Hutchison v. City of Huntington*, 198 W.Va. 139, 479 S.E.2d 649 (1996). The need for

expedited resolution of immunity issues uniformly underlie West Virginia's immunities. The Circuit Court here denied Petitioner's statutory immunity when the Circuit Court failed or refused to rule on Petitioner's immunity. The Circuit Court was clearly erroneous.

ii. PETITIONER CAN ONLY BE LIABLE FOR THE NEGLIGENCE OF AN EMPLOYEE PERFORMED WITHIN THE SCOPE OF EMPLOYMENT AND RESPONDENT MUST PLEAD SOME FACTS SHOWING THAT AN EMPLOYEE WAS NEGLIGENT

Respondent correctly points out that under the Tort Claims Act, Petitioner can only be liable for negligence of an employee(s) carried out within the scope of the employee's employment. Resp. Br. 21; W. Va. Code §§ 29-12A-4(c)(2), 29-12A-4(c)(4). Under the Tort Claims Act, "'[e]mployee' means an officer, agent, employee, or servant, whether compensated or not, whether full-time or not, who is authorized to act and is **acting within the scope of his or her employment for a political subdivision**." W. Va. Code § 29-12A-3(a) (emphasis added). As explored more *infra*, the Board cannot be liable for Defendant Willard's acts performed outside the scope his employment, and sexual assault does not fall within the scope of his employment.

Respondent argues that *Doe v. Logan County Board of Education* requires remand. The difference in Respondent's pleadings and the pleadings in *Doe* are consequential. In *Doe*, "the Complaint expressly assert[ed] that other 'educators' observed inappropriate interactions between teacher and student but failed to act. *Doe v. Logan Cnty. Bd. of Educ.*, 242 W. Va. 45, 50, 829 S.E.2d 45, 50 (2019). Because the *Doe* plaintiff so pled, the Court in *Doe* found sufficient facts to support plaintiff's negligent claims. The pleadings before the instant Court contain no such allegations. Respondent Plaintiff's *Amended Complaint* contains no allegation that anyone observed inappropriate interactions. Rather, the *Amended Complaint* alleges that Defendant Willard went to great lengths to conceal his conduct by calling her into his office, going behind a

cabin at night, telling her not to tell anyone, following her to a soundproof storage room, making sure there were no meetings scheduled after her meetings with him, closing and blocking the door behind him, hiding between trees, exposing himself under a blanket in the back of the bus, touching her under the water in a hot tub, and entering her room at night. App. 31, Am. Compl. ¶¶ 12, 15, 19, 25, 36, 38, 39, 55, 70, 82, 90, 99, 106, 119–121, 122–123, 135. Absent from the *Amended Complaint* is any allegation that any Board employee was aware of or saw any of these instances. Thus, *Doe* is not instructive, and the differences between this case and *Doe* emphasize why Respondent has failed to state a negligence claim.

Respondent further mischaracterizes *Doe*. Contrary to Plaintiff's *Response Brief* at page 22, the plaintiff in *Doe* did not "only name[] the school board as a defendant." *See Doe v. Logan Cnty. Bd. of Educ.*, 242 W. Va. 45, 47, 829 S.E.2d 45, 47 (2019)("Jane Doe's suit names both Cain [the employee] and the Board as defendants." (brackets added)).[2] Contrary to Plaintiff's *Response* at page 23, the Supreme Court cited Rule 9(b) *and then* explained that, under *Hutchison v. City of Huntington*, heightened pleading applies to actions involving immunity. *Id.* at 49 (citing *Hutchison v. City of Huntington*, 198 W. Va. 139, 148, 479 S.E.2d 649, 658 (1996)). For a similar reason, Plaintiff' *Respondent's Brief* at page 26, relying on *State ex rel. McGraw v. Scott Runyan Pontiac-Buick, Inc.*, 194 W. Va. 770, 461 S.E.2d 516 (1995), is misplaced; there was no immunity at issue in *McGraw*.

In this section of her *Brief*, Respondent also cites *C.C. v. Harrison Cnty. Bd. Of Educ.*, discussed more *infra*. Resp. Br. 23. In *C.C.*, Justice Armstead noted that the plaintiff in *C.C.* never sought to amend her pleadings to satisfy the heightened pleading standard. *C.C. v. Harrison Cnty.*

[2] Respondent made this same argument below—that no employee was named as a defendant in *Doe*—and Petitioner pointed out that the argument is plainly disproved by *Doe*. App. 246. Petitioner does not know why Respondent is making the same plainly wrong argument again.

Bd. of Educ., 245 W. Va. 594, 614, 859 S.E.2d 762, 782 (2021) ("while the Respondents request to conduct additional discovery, the Respondents were not seeking to amend their pleading"). Thus, Justice Armstead concurred that the circuit court's dismissal of certain negligence claims was appropriate. As noted above, Respondent Plaintiff has not moved to further amend her complaint to add the new allegations contained in her *Response*. Also, Respondent Plaintiff has not moved to further amend her complaint to satisfy the heightened pleading standard. Thus, the reasons against dismissal in *Doe* are not present here.

Lastly, in response to Argument § C in Petitioner's *Brief*, Respondent's *Brief* does not contest that the Tort Claims Act prohibits claims based on intentional and/or malicious conduct and prohibits claims based on acts performed outside the scope of employment. The Board cannot be liable for Defendant Willard's intentional, malicious actions performed outside the scope of his employment.

D. THE CIRCUIT COURT CLEARLY ERRED IN DENYING PETITIONER'S IMMUNITY BECAUSE RESPONDENT FAILED TO PLEAD ANY NEGLIGENCE CLAIM SPECIFIED IN THE TORT CLAIMS ACT

In *C.C.*, this Court clarified that a plaintiff can sustain a negligent hiring claim against a board of education only if plaintiff pleads some facts regarding the Board's initial decision to hire Defendant Willard or any irregularities attendant to his hiring. *C.C. v. Harrison Cnty. Bd. of Educ.*, 245 W. Va. 594, 605, 859 S.E.2d 762, 773 (2021) (affirming dismissal of negligent hiring claim for failing to allege any facts regarding the initial hire of a school board's employee). Respondent Plaintiff has pled no facts showing any irregularity, but only conclusions that there could be facts via investigation, about the hiring of Defendant Willard. Respondent cannot support a negligent hiring claim by simply reciting the legal elements. Respondent Plaintiff must plead facts to support the elements of negligent hiring. Respondent pleads no facts that the Petitioner should have known

at or during Defendant Willard's hiring.

In *C.C.*, this Court has recognized that "West Virginia does not recognize a claim for negligent training or supervision without an underlying claim for employee negligence." *C.C. v. Harrison Cnty. Bd. of Educ.*, 245 W. Va. 594, 606, 859 S.E.2d 762, 774 (2021). In other words, "the claim of negligent supervision must rest upon a showing **that the employer failed to properly supervise its employee and, as a result, the employee committed a negligent act** which proximately caused the appellant's injury." *Id.* (citing *Taylor v. Cabell Huntington Hosp., Inc.*, 208 W. Va. 128, 538 S.E.2d 719 (2000) (per curiam)) (brackets and ellipses omitted) (emphasis added). Respondent Plaintiff does not plead that Defendant Willard committed any negligent act; Respondent pleads that Defendant Willard committed intentional, criminal acts. Under West Virginia law, a supervisor cannot negligently supervise an intentional, criminal act. *See Frank Bjorn Xavier Held, Plaintiff, v. Monongalia Emergency Medical Services, Inc. et al Defendants*, No. 1:23-CV-59, 2024 WL 4217219, at *4 (N.D.W. Va. Sept. 17, 2024) ("When the alleged wrongful conduct by the employee is intentional, as opposed to negligent, it cannot form the basis of a negligent supervision claim against the employer. The same rule applies to a claim for negligent training.") (citing *C.C. v. Harrison Cnty. Bd. Of Educ.*); *Pajak v. Under Armour, Inc.*, No. 1:19-CV-160, 2023 WL 2726430, at *13 (N.D.W. Va. Mar. 30, 2023). As *C.C.* clarifies, the underlying act must be negligent. Respondent's *Amended Complaint* does not plead any fact showing that Defendant Willard acted negligently. Respondent's negligent supervision and training claims are not sufficiently stated, and the Circuit Court clearly erred by not finding the same.

In *C.C.*, the Court iterated what is required to plead a negligent retention claim. West Virginia law requires that Respondent plead facts sufficient to show that the employer could

reasonably foresee the risk caused by retaining an unfit person. *C.C. v. Harrison Cnty. Bd. of Educ.*, 245 W. Va. 594, 608, 859 S.E.2d 762, 776 (2021); *McCormick v. W. Va. Dep't of Pub. Safety*, 202 W. Va. 189, 193, 503 S.E.2d 502, 506 (1998) (per curiam). Respondent pleads no facts that the Petitioner Board had any knowledge whatsoever that Defendant Willard was sexually abusing or assaulting Respondent. Rather, Respondent pleads facts showing the lengths Defendant Willard went to conceal the alleged illegal conduct. Again, absent from the *Amended Complaint* is any allegation that any Board employee was aware of or saw any instance of Defendant Willard abusing or assaulting Respondent Plaintiff. The Circuit Court clearly erred for not finding and concluding the same.

Respondent Plaintiff previously failed to respond to Petitioner's argument seeking dismissal of Respondent's negligence per se claim. Respondent therefore waived any rebuttal that the negligence per se claim should be dismissed. *See Klein v. McCullough*, 245 W. Va. 284, 291, 858 S.E.2d 909, 916 (2021) (refusing to consider argument not presented below). Similarly here, Respondent does not actually rebut the arguments presented in Petitioner's *Brief* for dismissal of the negligence per se claim. Pet'r Br. 20–21. The negligence per se claim cannot be maintained against the Petitioner Board.

E. THE CIRCUIT COURT CLEARLY ERRED BECAUSE THE PETITIONER IS ENTITLED TO IMMUNITY FROM THE CLAIMS PROVIDED FOR IN THE SAVINGS STATUTE

Plaintiff does not dispute that she turned 18 years old by October 2004. The saving statute in effect at the time of Defendant Willard's alleged crimes required that Plaintiff file her claims two years after Plaintiff's claims accrued—by approximately October 2006.[3] Plaintiff admits that

[3] *See* W. Va. Code § 55-2-15 (2006), App. 111. Upon further review of the legislative history of this savings statute, it appears the statute went unchanged from 1882 to 2016. In 2016, the statute was amended to allow sexual assault/abuse victims to file suit within four years after turning 18. In 2020, it was amended again to allow 18 years after turning 18.

amendments to said savings statute W. Va. Code § 55-2-15 were not in effect until June 2020. For injuries occurring post-age-of-majority, Respondent Plaintiff had two years to file suit. Respondent alleges that Defendant Willard's last alleged sexual assault occurred in Summer 2005. App. 15–17, ¶¶ 127–149. Respondent therefore had until Summer 2007 (at some date certain) to file suit.

Respondent argues that the current tolling statute applies.[4] The current amendments became effective June 1, 2020—over a decade after Respondent's claims expired under the tolling statute in effect when the injuries occurred. W. Va. Code § 55-2-15 (2020). Even if the June 1, 2020, amendments to W. Va. Code § 55-2-15 applied, Petitioner cannot be liable for any claim that would trigger the tolling statute because Petitioner can only be liable for negligence claims resulting from negligent employees. In this regard, Petitioner somewhat agrees with Respondent. *See* Resp. Br. 28 ("under the Tort Claims Act, the Petitioner is responsible for the negligent acts or omissions that both it made and is liable for the negligent act or omissions that its employees, including any negligent teacher or administrator."). Of course, Petitioner can only act through its employees. However, Respondent is clearly wrong in her next sentence: Petitioner *cannot* be liable for intentional, criminal actions of Defendant Willard. Respondent cites to zero West Virginia law for Respondent's argument. Longstanding West Virginia law provides "**intentional and malicious acts are included in the general grant of immunity in W.Va. Code, 29-12A-4(b)(1)**. Only claims of negligence specified in W. Va. Code, 29-12A-4(c) can survive immunity from liability under the general grant of immunity in W. Va. Code, 29-12A-4(b)(1)." *Zirkle v. Elkins Rd. Pub. Serv. Dist.*, 221 W. Va. 409, 414, 655 S.E.2d 155, 160 (2007) (emphasis added). "An action for a willful injury is not supported by a finding that the injury was the result of gross

[4] Respondent misstates that Petitioner argues for application of W. Va. Code § 55-2-15(b) (2020). Resp. Br. 28. Petitioner merely block-quoted the entire statute for the convenience of the Court. Pet'r Br. 23.

negligence." *Turk v. Norfolk & W. Ry. Co.*, 75 W.Va. 623, 624, 84 S.E. 569, 570 (1915). "[A] mere allegation of negligence does not turn an intentional tort into negligent conduct." *Weigle v. Pifer*, 139 F. Supp. 3d 760, 780 (S.D.W. Va. 2015). An employer cannot negligently supervise an intentional act just like the Board cannot be liable for intentional acts of its employees under the Tort Claims Act.

Likewise, the Tort Claims Act does not allow any liability for "aiding, abetting, or concealing." Again, "[t]he standard for liability set forth in W. Va. Code § 29-12A-4(c) is, by its plain terms, a negligence standard." *Wheeling Park Comm'n v. Dattoli*, 237 W. Va. 275, 281, 787 S.E.2d 546, 552 (2016). Respondent seems to argue that the Petitioner Board itself might be the "perpetrator" of the assault. Resp. Br. 29. Respondent pleads no facts that the Board itself perpetrated the assault. Again, the Board can only be liable for the negligence of its employees, and Respondent pleads that Defendant Willard assaulted and abused her. Because Defendant Willard's actions were intentional and not negligent, the Board cannot be liable. Because Defendant Willard's actions were outside the scope his employment—an argument that Respondent does not rebut[5]—his actions cannot be imputed to the Petitioner Board. *See* Pet'r Br. 16–17.

For the first time in this litigation, Plaintiff cites the 6th Circuit case *Snyder-Hill v. Ohio State University*. *Snyder-Hill* is not instructive because it did not involve immunity or any tolling statute. By Respondent Plaintiff's description of the case alone, the facts are distinguishable: Unlike in *Snyder-Hill*, here, Respondent does not allege that she did not know she was injured until some publication or investigation; rather Respondent Plaintiff relies solely on a tolling statute.

[5] Respondent does not rebut the heavy weight of authority showing that sexual abuse/assault is not in the scope of employment. Pet'r Br. fn. 8.

Unlike in *Snyder-Hill*, here, there is no allegation that any "other abuse occurred in front of other students and other adults." Resp. Br. 29. Unlike in *Snyder-Hill*, here, Respondent does not allege anywhere in her *Amended Complaint* that the Board "knew of the abuse, facilitated the abuse, and covered up" the abuse. Resp. Br. 30. Respondent cannot now rely on allegations not in her *Amended Complaint*. *Snyder-Hill* is completely inapposite because Respondent's pleadings allege no knowledge, facilitation, or cover-up of Defendant Willard's actions. Rather, again, Respondent alleges that Defendant Willard undertook great effort to conceal his intentional wrongdoing.

As a matter of law, Petitioner cannot be liable for a claim that would trigger the tolling statute because Petitioner can only be liable for the negligence of its employees. Aiding, abetting, and concealing are not negligent acts; perpetrating sexual assault or sexual abuse is not a negligent act. As a matter of law, the tolling statute cannot apply to the Petitioner Board. "Once the defendant shows that the plaintiff has not filed his or her complaint within the applicable statute of limitations, the plaintiff has the burden of showing an exception to the statute." *Worley v. Beckley Mech., Inc.*, 220 W. Va. 633, 639, 648 S.E.2d 620, 626 (2007). Respondent Plaintiff has not met her burden in showing that any exception, including the tolling statute, applies. Respondent's claims are barred by the two year statute of limitations. W. Va. Code §§ 55-2-12, 29-12A-6.

F. Whether The Circuit Court Was Clearly Erroneous, Exceeded Its Jurisdiction, Exceeded Its Legitimate Powers, And Stripped The Petitioner Board Of Its Vested Property Right In Repose, Thereby Violating Its Due Process Rights, When It Failed To Find That The Savings Statute Is Unconstitutional As Applied To The Petitioner.

Respondent Plaintiff relies on *Campbell v. Holt* as the "commanding case" that allows legislatures to pass retroactive legislation reviving expired claims. *Campbell* is not commanding or sweeping. In *William Danzer & Co. v. Gulf & S.I.R. Co.*, the United State Supreme Court explained that *Campbell*'s holding was limited to actions on contracts for the recovery of money.

William Danzer & Co. v. Gulf & S.I.R. Co., 268 U.S. 633, 636 (1925). The Court explained that *Campbell*'s holding was inapposite to claims such as the federal employers' liability act or even causes of action for wrongful death. The United States Supreme Court held in *William Danzer* that because the plaintiff's claim expired by the time the statute was enacted extending the limitations period, the statute extending the period was unconstitutional. *Id.* at 637. Under *William Danzer*, retroactive enlargement of an expired limitations period violates due process.

The United States Supreme Court similarly reasoned in *Davis v. Mills* that *Campbell* is limited to actions involving "title to chattels." *Davis v. Mills*, 194 U.S. 451, 457 (1904). Respondent Plaintiff's reliance on *Campbell* is misplaced for the same reason Respondent's reliance on *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304 (1945), is misplaced: both involve real property. In *Davis*, the Court so distinguished *Campbell*, recognized a limitations period as a substantive right, and so enforced it. *Davis*, 194 U.S. at 457. Under *Davis* and *Williams Danzer*, the subject savings statute is unconstitutional.

For the first time in this litigation, Respondent relies on *Doe v. Hartford Roman Catholic Diocesan Corp.* In *Doe v. Hartford Roman Catholic*, the Supreme Court of Connecticut acknowledged that Connecticut law did not recognize a vested interest or vested right in an expired statute of limitations. *Doe v. Hartford Roman Cath. Diocesan Corp.*, 317 Conn. 357, 404, 119 A.3d 462, 495 (2015) ("under *Roberts v. Caton*, 224 Conn. 483, 619 A.2d 844 (1993), [there is] 'no vested or substantive rights are at stake in revival of expired claims'").[6] As discussed in Petitioner's *Brief* and *infra*, West Virginia law has recognized a vested right in an expired statute

[6] The Court considered case law from across the Country, and distinguished Connecticut from other States on the basis that Connecticut had never recognized a vested right in repose upon expiration of a limitations period. Here, however, this West Virginia Supreme Court recognized in *Lester* that, once a statute of limitation expires, a vested right in repose is created.

of limitations. Citing to *Pnakovich v. SWCC*, 163 W.Va. 583, 589–91, 259 S.E.2d 127 (1979), the Court in *Doe v. Hartford* incorrectly stated that West Virginia, "without limitation" allows "the retroactive expansion of the statute of limitations." *Id.* at 428, 509. The *Pnakovich* decision did not so hold and does not so represent. In *Pnakovich*, this Court simply found that a statute allowing twenty weeks of workmen's compensation benefits was retroactive. Hence, this Petitioner did not rely on it; it is inapplicable.

The Court in *Pnakovich* cited a case with pivotal language—*Lester v. State Workmen's Comp. Com'r*, 161 W. Va. 299, 242 S.E.2d 443 (1978). The Court in *Lester* recognized that in the workmen's compensation context an employer has no vested right once a time period within which claims for occupational pneumonoconiosis can be filed expires. Indeed, prior to the filing of the claim, the employer has already paid into the workmen's compensation fund per statute; the employee is paid from the fund. *See id.* at fn. 14. Importantly, the *Lester* Court nonetheless recognized that under West Virginia jurisprudence: "[i]t is clear that a person has no vested right in the running of a statute of limitations **unless it has completely run and barred the action**." *Id.* at 315, 452 (emphasis added). This comports with longstanding West Virginia law. *Jones v. Lemon*, 26 W. Va. 629, 629 (1885) ("for it is the settled law that when the statute has once begun to run no subsequent event will interrupt it"); *Mynes v. Mynes*, 47 W. Va. 681, 35 S.E. 935, 941 (1900) ("As a general rule, when the statute of limitations is once in motion, nothing can interrupt it."). Nor does Respondent address *Goldstein*, where this Court again made clear that, "[w]hile '[t]he Legislature's unmatched powers allow it to sweep away settled expectations suddenly,' it may not 'retroactively change statutes so as to sweep away vested property rights.'" *Goldstein v. Peacemaker Properties*, LLC, 241 W. Va. 720, 729–30, 828 S.E.2d 276, 285–86 (2019) (citing *Gribben v. Kirk*, 197 W. Va. 20, 26, 475 S.E.2d 20, 26 (1996)).

Respondent identifies no binding, applicable law to answer or rebut longstanding West Virginia law. Nor does Respondent rebut the weight of authority from across the Country where Courts have found statutes that sweep away vested interests in expired statutes of limitations unconstitutional.[7]

Here, Respondent's claims expired, at the latest, in 2007. For fifteen years, Respondent's claims against the Petitioner have been barred, and they are barred now.

"This Court has repeatedly held that a statute may be constitutional on its face but may be applied in an unconstitutional manner." *State ex rel. Haden v. Calco Awning & Window Corp.*, 153 W. Va. 524, 530, 170 S.E.2d 362, 366 (1969). Here, the savings statute violates substantive due process by stripping the Petitioner Board of a vested statute of limitations defense, forcing the Board to litigate a claim or personal action otherwise prohibited by the Tort Claims Act and progeny, applying a tolling statute that cannot and should not apply to the Board under the Tort Claims Act, and otherwise forcing the Board to defend against a claim approaching two-decades old.

G. Petitioner Is Entitled To A Writ Of Prohibition And The Relief Sought; Respondent Has Failed To Show Otherwise

Respondent's curt disagreement with Petitioner's arguments does not render a writ of prohibition, or the relief sought, improper. Petitioner fails to rebut the *Hoover* factors that Petitioner laid out and explained in Petitioner's *Brief*. Respondent argues on page forty in her *Brief* that there is no issue of first impression here. However, on page ten of her *Brief*, Respondent states, "this case involves issues of first impression and involves issues of fundamental public

[7] Petitioner takes issue Respondent's argument in footnote 15 of Respondent's Brief that the Virginia Supreme Court overturned *Starnes v. Cayouette*, 244 Va. 202, 419 S.E.2d 669 (1992) in *Kerns v. Wells Fargo Bank. N.A.*, 296 Va. 146, 818 S.E.2d 779 (2018). *Kerns* makes no mention of overturning *Starnes*.

importance." Respondent's contradictory statements advance no argument in her favor, and in any event do not rebut the *Hoover* factors. Relief in prohibition is proper and supported.

V. CONCLUSION

Please see Petitioner's *Brief* at § VII.

/s/ Duane J. Ruggier II
Duane J. Ruggier II (WVSB # 7787)
Evan S. Olds (WVSB # 12311)

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC
JamesMark Building
901 Quarrier Street
Charleston, WV 25301
Telephone: (304) 344-0100
Facsimile: (304) 345-1545
Counsel for Petitioner, Logan County Board of Education

CERTIFICATE OF SERVICE

The undersigned, counsel of record, does hereby certify that I served this **PETITIONER'S REPLY BRIEF** on this 24th day of September, 2024, via *File & ServeXpress*:

Teresa C. Toriseva, Esq.
Joshua D. Miller, Esq.
Michael A. Kuhn, Esq.
TORISEVA LAW
1446 National Road
Wheeling, WV 26003
justice@torisevalaw.com
Counsel for Respondent

Jennifer E. Tully, Esq.
Bailey and Wyant PLLC
Post Office Box 3710
Charleston, WV 25337
jtully@baileywyant.com
Counsel for Brandon Willard

Honorable Kelly Codispoti
Logan County Courthouse
300 Stratton Street
Logan, WV 25601

/s/ Duane J. Ruggier II
Duane J. Ruggier II (WVSB # 7787)
Evan S. Olds (WVSB # 12311)

PULLIN, FOWLER, FLANAGAN, BROWN & POE, PLLC
JamesMark Building
901 Quarrier Street
Charleston, WV 25301
Telephone: (304) 344-0100
Facsimile: (304) 345-1545
E-Mail: druggier@pffwv.com; eolds@pffwv.com
Counsel for Petitioner, Logan County Board of Education