

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

**WEST VIRGINIA DIVISION
OF CORRECTIONS AND
REHABILITATION,**

Defendant Below, Petitioner,
v.

**THE HONORABLE DAVID J. HARDY,
Judge, Circuit Court of Kanawha County, and
GREGORY PYLES, ADMINISTRATOR
OF THE ESTATE OF JACQUELINE V. PYES,**

Plaintiff Below, Respondents.

PETITION FOR WRIT OF PROHIBITION

**From the Circuit Court of Kanawha County,
Case No. 22-C-475**

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QUESTION PRESENTED

1. Whether the circuit court committed clear legal error and exceeded its legitimate powers when it found that a common law cause of action for “deliberate indifference” exists under West Virginia law.

STATEMENT OF THE CASE

A. Introduction

This case arises from allegations that Jacqueline V. Pyles did not receive appropriate medical and/or mental health care while an inmate at North Central Regional Jail (“NCRJ”), a facility operated by the West Virginia Division of Corrections and Rehabilitation (“WVDCR”) on October 13, 2021, which resulted in her death. Appx.003-006. According to the Complaint, WVDCR employees had actual and constructive knowledge of Ms. Pyles’s mental health condition from their “regular interactions” with her and from her records which “clearly documented” her condition. Appx.013. Respondent asserts that despite this knowledge, WVDCR employees acted with “deliberate indifference” to Ms. Pyles’s medical needs. *Id.* It is further asserted that Ms. Pyles was found in her cell hanging by her neck on October 18th, 2021, and that she was subsequently pronounced dead. Appx.008. Respondent Gregory Pyles, individually and as the Administrator of the Estate of Jacqueline V. Pyles, filed suit against Petitioner WVDCR and PrimeCare Medical of West Virginia, Inc. WVDCR is the only remaining defendant in this matter.

Seemingly aimed at sidestepping state and federal precedent Respondent asserts a novel cause of action – “deliberate indifference in violation of clearly established West Virginia law” – in Count III of the Complaint. Appx. 012-013. The WVDCR filed a Motion to Dismiss seeking dismissal of, *inter alia*, this purported deliberate indifference cause of action, on the grounds that no such cause of action for money damages for the common law tort of “deliberate indifference in

violation of clearly established West Virginia law” exists under West Virginia common law.

Following briefing, the circuit court entered a slightly modified Order submitted by Respondent Pyles denying Petitioner’s Motion to Dismiss. The circuit court’s Order states that “the Petitioner has consistently asserted that the *Complaint* does not include constitutional claims but rather asserts a cause of action for deliberate indifference, which entails violations of clearly established laws, including, but not limited to, the West Virginia Constitution. Respondent included a recitation to the West Virginia Constitution in order to address any qualified immunity claim by the Defendant, not as a constitutional violation claim. states that West Virginia common law recognizes civil claims for “deliberate indifference” under state law.” Appx. 026. The Order goes on to declare that “West Virginia common law recognizes civil claims for “deliberate indifference” under state law.” *Id.* This conclusion is inconsistent with this Court’s precedent which recognizes “deliberate indifference to the serious medical needs of prisoners” as proscribed by Article III, Section 5 of the West Virginia Constitution, for which money damages are *not* an available form of relief. Syl. pt 4, *Nobles v. Duncil*, 202 W.Va. 523, 505 S.E.2d 442 (1998); *Fields v. Mellinger*, 244 W.Va. 126, 131-132, 851 S.E.2d 789, 794-795 (W. Va. 2020). The circuit court’s Order misconstrues and misapplies this Court’s established precedent and, as a result, permits Respondent to proceed on a common law tort theory that is inconsistent with West Virginia law.

It is unclear why Respondent chose to attempt to assert his claims in this unusual manner given that a claim for money damages may be sought pursuant to 42 U.S.C. § 1983 for deliberate indifference to a serious medical need in violation of the Eighth or Fourteenth Amendment to the United States Constitution. However, Respondent is expressly employing a strategy which disavows any claim under federal law. Further, he has various pending negligence claims against WVDCR. Appx. 014-016. Whatever the reason for this chosen strategy, there is neither a legal nor a practical

basis for creating an entirely new common law tort that would duplicate existing federal law, and this Court has certainly not done so.

While this is a novel approach taken by Respondent, it is not a novel approach taken by his counsel. In addition to this matter, Petitioner is aware of multiple other orders recently entered in the circuit court of Kanawha County similarly allowing claims of “deliberate indifference” to proceed as common law torts seeking money damages. “Order Denying Defendant West Virginia Division of Corrections and Rehabilitation’s Motion to Dismiss Petitioner’s Complaint and Motion to Certify” in *Ted A. Topeka, Sr. v. Wexford Health Sources, Inc., et al.*, Kanawha County Civil Action No. 24-C-1138 (entered May 5, 2025); “Order Denying Defendant West Virginia Division of Corrections and Rehabilitation’s Motion to Dismiss Petitioner’s Complaint” in *Mary F. Myers, Administratrix of the Estate of Ronald M. Myers v. Wexford Health Sources, Inc., et al.*, Kanawha County Civil Action 2024-C-842 (entered March 19, 2025). Claims of “deliberate indifference” under West Virginia law have been asserted in several additional pending matters, and while written Orders have not been entered, Petitioner has received verbal orders from various benches in the circuit court of Kanawha County, West Virginia denying similar Motions to Dismiss based upon the same reasoning as articulated in this Petition¹. A decision by this Court is needed to provide clarification on this important issue, and to achieve consistent application of West Virginia law. Petitioner seeks a Writ of Prohibition in this Court to clarify that “deliberate indifference” is not a stand-alone common law tort in West Virginia, and any such claim must be dismissed as a matter of law.

¹ See *Bircher v. WVDCR, et al.*, Civil Action No. 23-C-320, pending before Judge Carrie Webster; *Griffin v. WVDCR, et al.*, Civil Action No. 23-C-605, pending before Judge Stephanie Abraham; *Bettis v. WVDCR, et al.*, Civil Action No. 23-C-462, pending before Judge Jennifer F. Bailey; and *Goss v. WVDCR, et al.*, Civil Action No. 23-C-709, pending before Judge David J. Hardy.

B. Procedural Background

Respondent's Second Amended Complaint alleges claims against WVDCR for (1) deliberate indifference in violation of clearly established West Virginia Law; (2) negligence; and (3) negligent training. Appx.012-016. Respondent's Second Amended Complaint specifically states that "[it] only causes of action which are based on West Virginia law." Further, Respondent's Second Amended Complaint "expressly disclaim[s]" any federal law-based claims and any reliance upon 42 U.S.C. §1983. Appx. 002.

Petitioner filed a Motion to Dismiss Respondent's Count III claim for deliberate indifference in violation of the West Virginia Constitution, specifically Article III, Sections 5 and 10. Appx. 012-013. Article III, Section 5 of the West Virginia Constitution prohibits the infliction of cruel and unusual punishment. W. Va. Const. Art. III, § 5. Article III, Section 10 of the West Virginia Constitution provides that "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers." W. Va. Const. Art. III, § 10. Petitioner moved for dismissal on the grounds that Respondent is solely seeking monetary damages and there is no cause of action for monetary damages which arises under Article III, Section 5 of the West Virginia Constitution.

Respondent incorrectly asserts that his claims for "deliberate indifference" is based not upon a violation of the West Virginia Constitution or pursuant to 42 U.S.C. §1983, but rather upon long-established state common law. Petitioner disagrees and along with the Motion to Dismiss also filed a Motion for Certified Question because this question is not appropriate for appeal under Rule 54(b) of the West Virginia Rules of Civil Procedure and this question has never been directly examined by this Court. However, the circuit court denied the Motion to Certify and the Motion to Dismiss finding that "a cause of action under West Virginia law for deliberate indifference has been clearly

recognized by the West Virginia Supreme Court of Appeals.” Appx. 021-032.

Petitioner now seeks guidance and extraordinary relief from this Honorable Court regarding the alleged common law cause of action for money damages pursuant to a claim of “deliberate indifference to a clearly established law.”

C. Complaint Allegations

According to Petitioner’s Complaint, Jacqueline V. Pyles was incarcerated at North Central Regional Jail (“NCRJ”) on October 13, 2021. Appx. 003. Petitioner’s claims arise from allegations that Ms. Pyles did not receive appropriate medical and/or mental health care at NCRJ. See *Id.* Petitioner asserts WVDCR employees had actual and constructive knowledge of Ms. Pyles’s mental health condition from their “regular interactions” with her and from her records which “clearly documented” her condition. Appx. 013. Petitioner asserts that despite this knowledge, WVDCR employees acted with “deliberate indifference” to Ms. Pyles’s medical needs. *Id.* Petitioner asserts Ms. Pyles was found in her cell hanging by her neck on October 18th, 2021, and that she was subsequently pronounced dead. Appx. 008. Petitioner asserts Ms. Pyles death certificate lists her cause of death as “Hanging.” *Id.* Petitioner asserts WVDCR’s deliberate indifference to Ms. Pyles’s medical needs was the direct and proximate cause of her death. Appx. 013. In Count III of Petitioner’s Complaint, titled “Deliberate Indifference in Violation of Clearly Established West Virginia Law – West Virginia Division of Corrections and Rehabilitation,” Petitioner asserts the WVDCR “clearly violated” the West Virginia Constitution, specifically Article III, Sections 5 and 10 by “failing to properly monitor and provide adequate medical care for Ms. Pyles.” Appx. 013.

D. Circuit Court Order

On May 8, 2025, the circuit court entered an Order denying Petitioner’s Motion to Dismiss finding there was no basis of fact or law to support the same. Appx. 022. However, the Order

incorrectly finds that “deliberate indifference” is a stand-alone common law claim in West Virginia.

The Order incorrectly states that 42 U.S.C. §1983 is not the “exclusive legal mechanism for bringing a ‘deliberate indifference’ claim”, instead finding that this Court recognized such a claim in Syllabus Point 4 of *Nobles v. Duncil* 202 W.Va. 523, 5050 S.E.2d 442 (1998). Appx. 026. However, the Order fails to acknowledge that *Nobles* reaffirms the established principle that deliberate indifference to serious medical needs of prisoners constitutes a violation of the Eighth Amendment, as recognized in prior cases such as *Estelle v. Gamble* 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976) and *Norris v. Detrick* 918 F. Supp. 977, 984 (N.D. W.Va. 1996), *aff’d*, 108 F.3d 1373 (4th Cir. 1997).

The Order goes on to say that “the holding” in *Nobles* has been “subsequently recognized” by this Court as “set[ting] the standard for deliberate indifference” Appx. 027. However the circuit court failed to recognize that *Hodgson v. W.Va. Div. of Corr.*, No. 16-0495, 2017 W.Va. Lexis 274 arises from a 42 U.S.C. §1983 claim; in the matter of *Taylor v. Hill*, 2014 W.Va. Lexis 1243 this Court did not directly address whether a common law claim existed for deliberate indifference, instead it recognized a petitioner’s explanation “that he made such allegations so that he could meet the “deliberate indifference” standard that is required to be satisfied when an inmate alleges that a prison official has violated constitutional minimum standards with regard to the inmate's safety and well-being”; and in the matter of *Williams v. McBride* 2014 W.Va. Lexis 939 this Court “note[d] that we have previously established a standard for judging whether a health care provider's actions constitute deliberate indifference to a prison inmate's serious medical need” but did not address whether or not a common law claim for deliberate indifference existed.

The Order goes on to cite additional cases purporting to support a common law cause of action for deliberate indifference in West Virginia, however those cases either arose from alleged

violations of an Eighth Amendment and specifically discuss deliberate intent as it related to federal law. The Court also discusses the matter of *West Virginia Division of Corrections and Rehabilitation v. Iacovone*, No. 23-ICA 148 (W.Va. ICA July 15, 2024) as support that the West Virginia Intermediate Court of Appeals (“ICA”) recognized a cause of action for deliberate indifference, however this is wholly inaccurate. Appx. 029. The existence of such a cause of action was not raised before the ICA. Instead, the WVDCR appealed other issues, none of which squarely placed before the ICA whether a state cause of action for deliberate indifference existed. Nothing is cited to support the notion that the circuit court or the ICA squarely considered whether such a cause of action existed, and there is no citation to any such ruling.

The Order continues with quotes from various cases ranging from this Court, the Fourth Circuit Court of Appeals, and even the United States Supreme Court, however the Order fails to tie any of those quotations to a relevant discussion regarding the actual existence of a common law cause of action recognized in West Virginia for deliberate indifference. The circuit court’s Order is clearly erroneous and it is imperative that this Court examine this matter. The Petitioner is entitled to the extraordinary relief requested of prohibiting the circuit court from permitting a common law cause of action for deliberate indifference.

SUMMARY OF ARGUMENT

The circuit court committed clear error and exceeded its legitimate authority when it found that an independent cause of action for money damages for "deliberate indifference" exists under West Virginia common law. "Deliberate indifference" is not a stand-alone claim in any context.² It

² Petitioner requested the circuit court issue a certified question in an effort to get clarity regarding this issue. However, the circuit court denied the Motion finding it was unnecessary in light of the holdings by this Court and the ICA that deliberate indifference is a valid cause of action in West Virginia, separate and apart from a federal cause of action under 42 U.S.C. §1983. Appx. 021-032. The circuit court entered an Order making specific findings of fact and conclusions of law in accordance with *State ex rel. ERx, LLC v. Cramer*, 247 W. Va. 739, 743, 885 S.E.2d 870 (2023). Therefore, the circuit court's Order is ripe for extraordinary review because the factors set forth in Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996) are satisfied.

is a term of art that has been developed by federal jurisprudence in connection with claims for violation of the Eighth and Fourteenth Amendments to the United States Constitution, as well as other claims under federal statutory law. Deliberate indifference to a medical need of a pretrial detainee is actionable under the Fourteenth Amendment to the United States Constitution. *Short v. Harman*, 87 F.4th 593, 611 (4th Cir. 2023). An individual whose federal civil rights have been violated may seek money damages because the United States Congress has expressly provided for such relief. As explained more fully below, there is no West Virginia statutory analog. Rather, the exclusive vehicle for seeking money damages for violation of federal civil rights, such as deliberate indifference to a serious medical need, is 42 U.S.C. § 1983. Respondent in this matter expressly disclaimed any federal claims under 42 U.S.C. § 1983 and chose not to seek such relief. Appx.002.

Like the United States Constitution, Article III, Section 5 of the Constitution of West Virginia contains various individual rights and protections, including a prohibition of infliction of cruel and unusual punishment. As this Court stated in Syl. Pt. 4, *Nobles v. Duncil*, 202 W.Va. 523, 505 S.E.2d 442 (1998), "[d]eliberate indifference to the serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain which is proscribed by the prohibition on cruel and unusual punishment in the Federal and State Constitutions." *Id.* *Nobles* specifically concerned the contours of a final order following a **writ of mandamus** issued by this Court related to conditions at Huttonsville Correctional Center. *Id.*, 202 W.Va. at 527, 505 S.E.2d at 446 (emphasis added). Here, Respondent does not seek the extraordinary remedy of mandamus but, instead, seeks money damages. This distinction is critically important to the analysis.

Unlike the United States Constitution, which is complemented by 42 U.S.C. §1983, providing a private cause of action for monetary relief, the Constitution of West Virginia has no corresponding statutory analog which provides for monetary relief for constitutional violations. The

West Virginia Legislature has simply not enacted corresponding legislation, and it would be inappropriate for this Court to usurp that legislative authority to create such a cause of action. In *Fields v. Mellinger*, 244 W. Va. 126, 131-132, 851 S.E.2d 789, 794-795 (2020), this Court confirmed there is no cause of action for monetary damages under Section 5 of Article III.

This should be the end of any inquiry with respect to a claim for "deliberate indifference" as asserted in Count III of the Complaint. However, the circuit court found that Respondent asserted a valid and plausible cause of action against WVDCR and there is no basis for dismissing his claim for deliberate indifference. Appx. 0026. The circuit court further adopted Respondent's statement that all references to the West Virginia Constitution were included in the Complaint for the sole purpose of rebutting the affirmative defense of qualified immunity. Appx. 026. This argument appears contrary to the language of Count III on its face. Appx. 012-013. Moreover, "deliberate indifference" is not a common law claim under West Virginia law. A tort claim for money damages cannot be maintained against the WVDCR for "deliberate indifference" because no such claim exists under West Virginia law. The circuit court committed clear error and exceeded its legitimate powers in denying Petitioner's Motion to Dismiss as to Count III.

STATEMENT REGARDING ORAL ARGUMENT

Oral argument in this matter will aid this Court in its decision process under Rule 20(a)(1) because this case involves a matter of first impression regarding whether there is a West Virginia common law claim of deliberate indifference. Oral argument will also aid this Court in its decision process under Rule 20(a)(2) because it involves issues of fundamental public importance in clarifying the viability of a novel common law claim of deliberate indifference against a State agency.

ARGUMENT

A. Standard of Review

This Court's original jurisdiction is recognized in Rule 16 of the West Virginia Rules of Appellate Procedure. A writ of prohibition is proper whenever an inferior court does not have jurisdiction or has jurisdiction but exceeds its legitimate powers. *State ex rel. Farber v. Mazzone*, 213 W. Va. 661, 664, 584 S.E.2d 517, 520 (2003). "The writ of prohibition shall lie as a matter of right in all cases of usurpation and abuse of power, when the inferior court has no jurisdiction of the subject-matter in controversy, or, having such jurisdiction, exceeds its legitimate powers." W. Va. Code § 53-1-1; see also syl. pt. 1, *Crawford v. Taylor*, 138 W. Va. 207, 75 S.E.2d 370 (1953). Syllabus point one, in pertinent part, of *Hinkle v. Black*, 164 W. Va. 112, 262 S.E.2d 744 (1979), *superseded by statute on other grounds as stated in State ex rel. Thornhill Group, Inc. v. King*, 233 W. Va. 564, 759 S.E.2d 795 (2014), held:

[T]his Court will use prohibition in this discretionary way to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance.

Petitioner seeks a writ of prohibition because the circuit court committed clear legal error and exceeded its legitimate powers when it found that West Virginia recognizes a common law cause of action for "deliberate indifference" that can be asserted against a State agency. Such a ruling is a substantial and clear-cut legal error that contravenes this Court's precedent and the separation of powers principle in the absence of legislative action.

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

In determining whether to entertain and issue the writ of prohibition for cases not

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

Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12,483 S.E.2d 12 (1996); *see also* Syl. Pt. 2, *State ex rel. West Virginia Nat'l Auto Ins. Co. v. Bedell*, 223 W. Va. 222,672 S.E.2d 358 (2008); Syl. Pt. 1, *State ex rel. Blake v. Hatcher*, 218 W. Va. 407,624 S.E.2d 844 (2005); Syl. Pt. 1, *State ex rel. Cosenza v. Hill*, 216 W. Va. 482, 607 S.E.2d 811 (2004); Syl. Pt. 2, *State ex rel. Isferding v. Canady*, 199 W. Va. 209,483 S.E.2d 555 (1997).

All five factors are unquestionably present here. First, Petitioner has no other means of direct appeal. Second, if forced to defend this matter through trial, Petitioner will be forced to defend against a cause of action that does not exist; the parties will needlessly expend significant resources, time, and expense; and the Court's judicial resources will be wasted. These wasteful burdens can be avoided only by the instant writ and will not be correctable on appeal after a trial. Moreover, State defendants are entitled to evaluate the applicability of various immunities, including qualified immunity. This novel common law cause of action of "deliberate indifference to a clearly established law" improperly nullifies qualified immunity as evidenced by its name alone. This is grossly prejudicial to Petitioner.

The third and most important factor - that the lower tribunal's order is clearly erroneous as a matter of law - also exists here. "In determining the third factor, the existence of clear error as a

matter of law, we will employ a de nova standard of review, as in matters in which purely legal issues are at issue." *State ex rel. Gessler v. Mazzone*, 212 W. Va. 368, 372, 572 S.E.2d 891, 895 (2002); *State ex rel. Maxxim Shared Servs., LLC v. McGraw*, 242 W. Va. 346,350, 835 S.E.2d 590, 594 (2019) (granting a writ of prohibition when the circuit court "exceeded its legitimate powers and was clearly erroneous" when it attempted to expand the scope of the common law cause of action for negligent infliction of emotional distress.). The circuit court's Order improperly expands West Virginia common law to include a novel cause of action entitled "deliberate indifference to a clearly established law" never adopted by this Court. This Court recently reiterated that "[W]e have made it clear that the language utilized in our syllabus points, rather than our dicta, is controlling. As we have repeatedly stated, ' ... [new points of law ... will be articulated through syllabus points as required by our state constitution.'" *Camden Clark Mem Hosp. Corp. v. Marietta Area Healthcare, Inc.*, 2025 W. Va. LEXIS 175, *15, fn 8, 2025 LX23376 (W. Va. May 14, 2025) (quoting *State ex rel. Vanderra Res., LLC v. Hummel*, 242 W. Va. 35, 42- 43, 829 S.E.2d 35, 42-43 (2019) (citations omitted)). This Court has never adopted a common law cause of action for "deliberate indifference" for money damages. Thus, the Order is clearly erroneous in concluding this cause of action in common law exists and therefore exceeded its . legitimate powers by usurping this Court's authority. Fourth, the circuit court's ruling has become an oft repeated error of late and manifests a disregard for this Court's substantive precedential law as can be seen in multiple cases currently pending in the circuit court of Kanawha County which assert this novel common law cause of action of "deliberate indifference," including *Pyles v. WVDCR, et al.*, Civil Action No. 22-C-475 (Hardy); *Bircher v. WVDCR, et al.*, Civil Action No. 23-C-320 (Webster); *Bettis v. WVDCR, et al.*, Civil Action No. 23-C-462 (Bailey); *Griffin v. PrimeCare Medical of West Virginia, Inc., et al.*, Civil Action No. 23-C-605 (Abraham); *Goss v. WVDCR, et al.*, Civil Action No. 23-C-709 (Hardy); *Stump v. Wexford et*

al., Civil Action No. 24-C-837 (Bailey); *Thomas v. WVDCR, et al.*, Civil Action No. 24-C-1123 (Webster); and *Topeka v. WVDCR, et al.*, Civil Action No. 24-C-1138 (Abraham). Orders have been entered in *Pyles* and *Topeka* allowing a common law claim of "deliberate indifference" to proceed. Collectively, tremendous resources are being devoted to litigating this issue which could be resolved by this Court in the instant matter by issuing the requested writ of prohibition. This issue should be resolved prior to the parties engaging in discovery and the remainder of the proceedings below, to prevent an onerous and wasteful use of judicial resources as well as the WVDCR's resources.

Finally, the circuit court's Order raises new and important legal issues of first impression because this Court has not expressly adopted a common law cause of action for "deliberate indifference."

B. Discussion

1. The Circuit Court Committed Clear Legal Error And Exceeded The Scope Of Its Authority When It Found That A Common Law Claim of "Deliberate Indifference" for Money Damages Is a Viable Cause of Action in West Virginia.

The circuit court committed clear error in recognizing a claim for deliberate indifference in West Virginia, as such a claim is not a recognized, nor viable claim. It is well established that the legal term "deliberate indifference" refers to the standard for a federal cause of action arising out of 42 U.S.C.S. § 1983. *Estelle v. Gamble*, 429 U.S. 97, 105, 97 S. Ct. 285, 291 (1976) As the Fourth Circuit has explained, in order:

[t]o prevail on an Eighth Amendment claim of inadequate medical care, an inmate must allege acts or omissions sufficiently harmful to constitute deliberate indifference to a serious medical need. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 50 L.Ed.2d 251 (1976). First, he must objectively show that the deprivation suffered or injury inflicted was "sufficiently serious." *Farmer v. Brennan*, 511 U.S. 825, 834, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). A sufficiently serious medical need is one that requires medical treatment. *Brice v. Virginia Beach Corr. Cntr.*, 58 F.3d 101, 104 (4th Cir. 1995). Then, the inmate must show that the defendant acted with deliberate indifference to his serious medical need. *Farmer*, 511 U.S. at 834, 114 S.Ct. 1970.

("[D]eliberate indifference to a prisoner's serious illness or injury states a cause of action under § 1983."); *Farmer v. Brennan*, 511 U.S. 825, 841, 114 S. Ct. 1970, 1981 (1994) ("[D]eliberate indifference serves under the Eighth Amendment to ensure that only inflictions of punishment carry liability."); *Short v. Hartman*, 87 F.4th 593, 606 (4th Cir. 2023) ("The Supreme Court first recognized a **claim for deliberate indifference** to a prisoner's serious medical needs in *Estelle v. Gamble*—an Eighth Amendment case. . . .") (emphasis added); ("Deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.") *Norris v. Detrick*, 918 F. Supp. 977, 984 (N.D. W.Va. 1996), *aff'd*, 108 F.3d 1373 (4th Cir. 1997). As discussed, specifically, the United States Supreme Court in *Farmer* explained that deliberate indifference describes a state of mind which would violate an individual's constitutional rights under the Cruel and Unusual Punishments Clause. Deliberate indifference was not identified as an independent cause of action, but rather, a description of an element of a federal cause of action for violation of rights under the United States Constitution.

Respondent has not implicated § 1983 or federal law of any kind, which is the only avenue for seeking money damages for violations of civil rights, such as deliberate indifference to a serious medical need. There is no such avenue available in West Virginia under common law. Interestingly, Respondent as specifically disavowed any cause of action based upon federal law, including 42 U.S.C. § 1983. Appx. 002. Instead, Respondent in Count III of his Complaint, asserts the WVDCR "clearly violated" the West Virginia Constitution, specifically Article III, Sections 5 and 10. Appx. 013. This Court has previously stated that:

The complaint alleges violations of "*Article III, Sections 1, 5, 10, and 14 of the West Virginia Constitution* which incorporates the constitutional rights guaranteed to plaintiff under the *First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the*

United States Constitution." As presented, the "constitutional tort" claim would be a civil rights action under the provisions of 42 U.S.C. § 1983 (1996).

City of Saint Albans v. Botkins, 228 W. Va. 393, 396 n.8, 719 S.E.2d 863, 866 (2011). That is a cause of action Respondent specifically has elected not to pursue.

Respondent solely seeks monetary damages. Appx. 016-017. However, it is well established that there is no cause of action for monetary damages which arises under Article III, Section 5 of the West Virginia Constitution. *Fields v. Mellinger*, 244 W. Va. 126, 132, 851 S.E.2d 789, 795 (2020) (disagreeing with Plaintiff's assertion that an implied cause of action for monetary damages existed under Article III, Section 5 of the West Virginia Constitution); *Hager v. Robinson*, Civil Action No. 2:03-0094, 2005 U.S. Dist. LEXIS 49455, at *30 (S.D. W. Va. Feb. 1, 2005) ("The court finds [Plaintiff] has no independent claim for monetary damages under Article III, § 5 of the Constitution of West Virginia."); *McMillion-Tolliver v. Kowalski*, No. 2:13-cv-29533, 2014 U.S. Dist. LEXIS 44365, at *6 (S.D. W. Va. Apr. 1, 2014) (dismissing plaintiff's claims for monetary damages under Article III of the of the West Virginia Constitution because such claims had no basis in West Virginia common or statutory law); *Murray v. Matheney*, No. 2:13-cv-15798, 2017 U.S. Dist. LEXIS 177670, at *22 (S.D. W. Va. Oct. 26, 2017) ("[P]laintiff alleges that the defendants violated his rights secured by Article III, Section 5, of the West Virginia Constitution . . . Insofar as the plaintiff seeks monetary damages under the West Virginia Constitution . . . the court **FINDS** that summary judgement is warranted."). Therefore, Respondent has no valid claim for monetary damages under Article III, Section 5 of the West Virginia Constitution.

Regarding Article III, Section 10 of the West Virginia Constitution, this Court has applied the West Virginia Constitution's substantive due process provision the same rules the United States Supreme Court applies to the Federal Constitution's substantive due process provision. *Stepp v.*

Cottrell, 246 W. Va. 588, 596, 874 S.E.2d 700, 708 (2022). The *Stepp* Court explained that a claim for monetary damages under Article III, Section 10 had been recognized only under “a very unique set of facts” involving procedural due process hurdles. *Id.* at 704. Such is not the case here. Here, like in *Stepp*, Respondent has invoked the more specific Article III, Section 5, which prohibits cruel and unusual punishment. Therefore, Respondent has no valid claim for monetary damages under Article III, Section 10 of the West Virginia Constitution.

Because there are no claims for monetary damages under Article III, Section 5 of the West Virginia Constitution and because “deliberate indifference” is the standard for a federal cause of action arising out of 42 U.S.C.S. § 1983, there are no valid claims present in Count III of Respondent’s Complaint. As a result, Respondent then pivoted from the allegation in the Complaint and argued that he had “included a recitation to the West Virginia Constitution in order to address any qualified immunity claim by the Defendant, not as a constitutional violation claim” which the circuit court then parroted in its Order. Appx. 026.

Respondent argues that West Virginia recognizes a common law civil claim for “deliberate indifference” under state law, citing to the case of *Nobles v. Duncil*, 202 W.Va. 523, 5050 S.E.2d 442 (1998). This argument is an incorrect statement of the holding in that case. *Nobles* does not create a new common law claim of deliberate indifference in West Virginia. Instead, it reaffirms the established principle that deliberate indifference to serious medical needs of prisoners constitutes a violation of the Eighth Amendment, as recognized in prior cases such as *Estelle v. Gamble* and *Norris v. Detrick*.

The plaintiffs in *Nobles* were seeking *equitable relief*, not monetary damages, regarding certain conditions at Huttonsville Correctional Center, this is an important distinction. While *Nobles* reinforces the application of providing medical care, it does not establish a common law claim in

West Virginia. The Court in *Nobles* clearly found that “deliberate indifference” is a claim that is tied to the Eighth Amendment:

"Deliberate indifference to serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain proscribed by the Eighth Amendment." *Norris v. Detrick*, 918 F. Supp. 977, 984 (N.D. W.Va. 1996), *aff'd*, 108 F.3d 1373 (4th Cir. 1997) (citation omitted). "To establish that a health care provider's actions constitute deliberate indifference to a serious medical need, the treatment, or lack thereof, must be so grossly incompetent, inadequate, or excessive as to shock the conscience or to be intolerable to fundamental fairness." *Id.*, citing *Miltier v. Beorn*, 896 F.2d 848, 851 (4th Cir. 1990). "Deliberate indifference may be demonstrated by either actual intent or reckless disregard." *Miltier*, 896 F.2d at 851 (citation omitted). As noted by the appellees, a prison's systemic deficiencies may rise to the level of a constitutional deprivation.

Nobles v. Duncil, 202 W.Va. 523, 5050 S.E.2d 442 (1998).

While the circuit court Order states that “the holding” in *Nobles* has been “subsequently recognized” by this Court as “set[ting] the standard for deliberate indifference” this is simply incorrect. Appx. 027. As discussed *supra*, *Hodgson v. W.Va. Div. of Corr.*, No. 16-0495, 2017 W.Va. Lexis 274 arises from a 42 U.S.C. §1983 claim filed by Hodgson against the West Virginia Division of Corrections (DOC) and its employees, alleging deliberate indifference to his serious medical needs during incarceration at Huttonsville Correctional Center in 2008. Hodgson conceded he was kept segregated, monitored via surveillance, and checked every fifteen minutes during delusional episodes. As a result, the Hodgson Court stated:

in light of petitioner's concession having evidentiary support in the record, we find that a reasonable DOC employee at Huttonsville would not have known that his or her conduct was "so grossly incompetent, inadequate, or excessive as to shock the conscience or be intolerable to fundamental fairness," which is the standard petitioner would have to meet ***to prove a constitutional violation***. See Syl. Pts. 4 & 5, *Nobles*, 202 W.Va. at 525-26, 505 S.E.2d at 444-45.

Hodgson v. W. Va. Div. of Corr., 2017 W. Va. LEXIS 274, *11 (emphasis added).

In the matter of *Taylor v. Hill*, 2014 W.Va. Lexis 1243, Taylor, an inmate, filed a civil action

against George M. Hill, superintendent of West Virginia Correctional Industries (WVCI), for injuries sustained in a workplace accident at Mt. Olive Correctional Complex in July 2011. Taylor alleged negligence in safety training and staffing, seeking compensatory and punitive damages. This Court did not directly address whether a common law claim existed for deliberate indifference, instead it recognized a petitioner's explanation "that he made such allegations so that he could meet the "deliberate indifference" standard that is required to be satisfied when an inmate alleges that a prison official has **violated constitutional minimum standards** with regard to the inmate's safety and well-being". *Taylor v. Hill*, 2014 W. Va. LEXIS 1243 (emphasis added).

In the matter of *Williams v. McBride* 2014 W.Va. Lexis 939, Williams, an inmate at McDowell County Correctional Center, filed a motion for preliminary injunction against Jim Rubenstein (Commissioner, Division of Corrections) and other officials responsible for his custody and care. Williams alleged failure to provide prescribed medications for thyroid dysfunction in a continuous and reliable manner. this Court "note[d] that we have previously established a standard for judging whether a health care provider's actions constitute deliberate indifference to a prison inmate's serious medical need" but did not address whether or not a common law claim for deliberate indifference existed. *Williams v. McBride*, 2014 W. Va. LEXIS 939.

What is clear in each of these three cases, all decided **after** *Nobles* is that none of them establish deliberate indifference as a common law cause of action. Instead, it is clear that this Court finds deliberate indifference to be a description of a state of mind necessary for proving certain claims under federal law constitutional claims.

The circuit court also relied upon *Ballard v. Delgado*, 241 W. Va. 495 and *Crawford v. McDonald*, 2023 W. Va. LEXIS 85 as clearly recognizing a cause of action under West Virginia law for deliberate indifference. However, to say this Court "recognized" such a cause of action in these

matters is a misnomer. Both of these matters called for the Court to examine the claim of deliberate indifference as an alleged violation of the Petitioners' Eighth Amendment right under 42 U.S.C. §1983. The issue before this Court in both cases was simply one of qualified immunity, which was examined pursuant to federal law. The question of whether there is a common law claim of "deliberate indifference" was not before this Court and therefore made no finding one way or the other.

The circuit court also relied upon the matter of *West Virginia Division of Corrections and Rehabilitation v. Iacovone*, No. 23-ICA 148 (W.Va. ICA July 15, 2024) finding that the WVICA acknowledged such a claim. It is not accurate to say that the ICA "recognized" such a cause of action, because the existence of such a cause of action was not raised before the ICA. Instead, the WVDCR appealed other issues, none of which squarely placed before the ICA whether a state cause of action for deliberate indifference existed. Nothing is cited to support the notion that the circuit court or the ICA squarely considered whether such a cause of action existed, and there is no citation to any such ruling. Thus, it provides no support that "deliberate indifference" exists as a state law claim.

Additionally, the circuit court relied upon *State ex rel. W. Va. Div. of Corr. & Rehab. v. Ferguson*, 248 W. Va. 471, 476, which arose from a Writ of Prohibition in which WVDCR argued that the Complaint asserted claims sounding in medical professional liability under the MPLA that could not be brought against [WV]DCR since it was not a health care provider under the MPLA. Interestingly, the *Ferguson* case never mentions the *Nobles* matter at all. In fact, the only mention of deliberate indifference was simply in a footnote:

The Complaint raises a Fourteenth Amendment constitutional deliberate indifference claim. DCR correctly notes that such a claim can only be brought against a "person" under 42 U.S.C. § 1983 and that, as a state agency, it is not a

"person" subject to a suit for damages under that section. *See, e.g., Strickler v. Waters*, 989 F.2d 1375, 1388 (4th Cir. 1993) ("[N]either the Commonwealth of Virginia nor its Department of Corrections is a proper party to a section 1983 suit[.]"); *Green v. Rubenstein*, 644 F. Supp.2d 723, 738 (S.D.W. Va. 2009) ("The State and its agencies such as the Division of Corrections are not 'persons' amenable to suit under Section 1983 for damages."). Ms. McComas agrees and in her prohibition response states that she is only suing the "John Doe" individual defendants, and not DCR, for deliberate indifference.

Thus, this case does not provide any support for this novel assertion that “deliberate indifference” exists as a state law claim.

Respondent argued and the circuit court adopted and acknowledged in its Order that deliberate indifference is a valid legal claim recognized in many contexts other than claims under 42 U.S.C. §1983 or the Eight Amendment. Appx. 028. Each example relied upon by the circuit court utilizes deliberate indifference as an element of proving some other, underlying cause of action. For example, the circuit court points to several federal cases for the proposition that “deliberate indifference is a valid legal claim recognized in many contexts other than claims under 42 U.S.C. §1983.” However, the cases make it clear that “deliberate indifference” is not itself a cause of action. In the instance of the Americans with Disabilities Act, the cause of action is statutory. *Koon v. North Carolina*, 50 F.4th 398, 404 (4th Cir. 2022). Deliberate indifference operates only as a standard for proving a state of mind that is part of the elements of a claim under the ADA. *Id.* It is not a stand-alone claim. The circuit court's Order incorrectly relies upon *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007), “[d]eliberate indifference, or reckless indifference is the essence of recklessness at common law.”. A search of *Safeco Ins. Co. of Am.* reveals that the opinion does not utilize the phrase "deliberate indifference," so this case should not have been relevant to the decision, and the circuit court's reliance here is unexplained. However, the *Safeco* case utilizes the term "reckless" and is an example that the cause of action at issue is a statutory claim under the FCRA,

and the term "reckless" describes the manner in which a particular statutory violation can be proved.

Similarly, the circuit court cited to *Doe v Charlotte Mecklenburg Bd. of Educ.*, which revolved around Jane Doe's allegation that she was kidnapped and sexually assaulted by another student near the school. She claims the Charlotte Mecklenburg Board of Education (CMS) violated Title IX through deliberate indifference to student-perpetrated sexual harassment. *Doe v Charlotte Mecklenburg Bd. of Educ.*, 2023 U.S. Dist. LEXIS 13204, **3-5 (W.D.N.C. Jan. 25, 2023). Deliberate indifference in this context is merely a standard adopted for the state of mind necessary to prove a necessary element of a Title IX action. *Id.* The circuit court did not analogize these matters to the case before it to articulate how any of these matters created a common law cause of action in West Virginia for deliberate indifference. The reason why is simply- these cases do not create a common law claim of deliberate indifference and in fact support the position of WVDCR that such a claim does not exist in that manner.

On a fundamental level, federal courts do not create or establish West Virginia common law. Any reliance on federal courts defining the contours of causes of action based upon federal law, whether constitutional or statutory, does not establish the existence of West Virginia common law.

The circuit court Order additionally found that "[d]eliberate indifference, in the form of recklessness, is included in the West Virginia Governmental Tort Claims and Insurance Reform Act, *W Va. Code 29-12A-1, et seq.*, which is a clearly established law prohibiting such acts." Appx. 030. Any discussion of the Governmental Tort Claims and Insurance Reform Act, *W. Va. Code § 29-12A-1, et seq.*, is irrelevant to the determination of the existence of a claim for deliberate indifference under state common law. Statutory sources of law are, by definition, distinct from common law. Additionally, by its own terms, the Governmental Tort Claims and Insurance Reform Act does not apply to the WVDCR, which is a state agency. *See W. Va. Code § 29-12A-3(e)* (defining "State" as

not including political subdivisions). Moreover, repetition of the phrase "clearly established law" demonstrates further confusion and an attempt to conflate "clearly established law" in the context of qualified immunity analysis with the distinct concept of deliberate indifference. The fact that the Governmental Tort Claims and Insurance Reform Act may mention negligence or other legal terms or phrases has no bearing on whether West Virginia recognizes a separate common law claim of "deliberate indifference."

Simply put, a state law claim for "deliberate indifference" seeking money damages cannot be maintained against a defendant because no such claim exists under West Virginia law. Any claim for money damages for "deliberate indifference" related to civil rights violations must be brought pursuant to 42 U.S.C. § 1983, not under state law. Therefore, the circuit court committed clear legal error in denying the WVDCR's Motion to Dismiss as to Count III of Respondent's Complaint.

2. There Is No Basis to Recognize A Common Law Tort Claim For "Deliberate Indifference" And Several Reasons Caution Against Such Recognition.

A new common law cause of action should not be created lightly, without full consideration of the implications. Here, the effect of recognizing a common law cause of action for "deliberate indifference" under West Virginia law is inconsistent with this Court's precedent. Further, it effectively circumvents decades of federal jurisprudence that has shaped deliberate indifference claims as they exist under federal law. It will most certainly lead to a rise in litigation to explore the contours and limits of such a cause of action and the effect of various legal defenses.

For example, in recognizing a claim for "deliberate indifference" under West Virginia common law, the circuit court provided no justification for concluding that such a claim is viable against a State agency, as opposed to an individual. This runs contrary to federal law surrounding deliberate indifference. Claims alleging deliberate indifference asserted pursuant to 42 U.S.C. § 1983

must be asserted against a person alleged to have violated an individual's rights and cannot be asserted against a State agency. There is logic to this, because deliberate indifference refers to a state of mind, something that does not exist in the context of a State agency. In order to state a claim for damages under 42 U.S.C. § 1983, an aggrieved party must sufficiently allege that she was injured by "the deprivation of any [of her] rights, privileges, or immunities secured by the [United States] Constitution and laws" by a "person" acting "under color of state law." See 42 U.S.C. § 1983; *Monell v. Department of Social Services*, 436 U.S. 658,691 (1978). Claims under 42 U.S.C. § 1983 are specifically directed at "persons." 42 U.S.C. § 1983; *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 60 (1989). Both the United States Supreme Court and the Fourth Circuit Court of Appeals have found that "[N]either a State nor its officials acting in their official capacities are 'persons' under § 1983." *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71 (1989); *Preval v. Reno*, 203 F.3d 821 (4th Cir. 2000) (unpublished). The WVDCR is not a "person" under 42 U.S.C. § 1983, and, therefore, it is not subject to suit under that statute. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71, 109 S. Ct. 2304, 2312, 105 L. Ed. 2d 45, 58 (1989). Instead, such claims must be asserted, if at all, against the individual allegedly violating plaintiffs rights. The circuit court has provided no analysis supporting its decision to allow a claim that is based upon a mental state to be asserted against a State agency, as opposed to a person.

Similarly, under federal law, "[g]overnment officials may not be held liable for the unconstitutional conduct of their subordinates under a theory of *respondeat superior*." *Ashcroft v. Iqbal*, 556 U.S. 662,676 (2009), citing *Monell v. Dept. of Social Servs.*, 436 U.S. 658,691 (1978). By creating a common law tort for "deliberate indifference" and allowing it to proceed against a State agency, the circuit court has, without any analysis or acknowledgment, imported the concept of vicarious liability into this new claim without any delineation regarding for whom the WVDCR is

potentially liable.

Furthermore, the defense of qualified immunity can be asserted in response to federal claims for violation of the Eighth and Fourteenth Amendments to the United States Constitution. The circuit Court's Order recognizing the common law tort of "deliberate indifference" is silent with respect to the defense of qualified immunity and appears to completely invalidate the defense of qualified immunity by the very definition of this new cause of action for "deliberate indifference to a clearly established law."

One of the most compelling reasons not to create a new common law cause of action for "deliberate indifference" is that it is completely unnecessary. Violations of civil rights are redressable under federal law and certain existing common law torts if the facts warrant (i.e., negligence, battery, etc.). Count III of Respondent's Complaint aspires to assert what amounts to a federal constitutional claim, based upon federal jurisprudence, using the elements of a federal constitutional claim, disguised as a state common law claim. In recognizing a novel common law claim never adopted by this Court, the circuit court has permitted Respondent to circumvent the body of federal case law that governs claims asserting deliberate indifference to a serious medical need in the context of the U.S. Constitution and avoid valid defenses typically available to the State and its officials. The circuit court has not only recognized a new common law cause of action out of whole cloth, but has also expanded the concept of deliberate indifference beyond the parameters that have been crafted by federal jurisprudence.

Deliberate indifference is a mental state that must be shown before an individual can be held liable for an Eighth or Fourteenth Amendment violation under the United States Constitution. *W. Va. Div. of Corrs. & Rehab. v. Robbins*, 248 W.Va. 515, 525, 889 S.E.2d 88, 98 (2023). In *Robbins*, the *cause of action* was a violation of the Eighth or Fourteenth Amendment of the United States

Constitution, for which money damages are made expressly available through the statutory vehicle of 42 U.S.C. § 1983. Deliberate indifference is *an element to be proved* as part of that cause of action. The *Robbins* case did not find, nor does it even suggest, that "deliberate indifference" is a cause of action under West Virginia law. To the contrary, the Plaintiff in *Robbins* expressly made claims alleging deliberate indifference pursuant to 42 U.S.C. § 1983 based upon alleged violations of the Eighth Amendment to the United States Constitution. *Id.*, 248 W. Va. at 521. This Court in *Robbins* referred to deliberate indifference only in the context of those Eighth Amendment claims:

[A]n inmate may establish that a prison official violated the inmate's Eighth Amendment rights by failing in his duty of protection if the inmate demonstrates that (1) he was "incarcerated under conditions posing a substantial risk of serious harm," an objective component; and (2) the allegedly culpable prison official had a "sufficiently culpable state of mind," a subjective component. An inmate satisfies the latter, subjective component by showing that a prison official acted (or failed to act) with the mental state of "deliberate indifference."

Id., 248 W. Va. at 525, quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). Far from being a stand-alone claim, "deliberate indifference" refers to the mental state required to establish the subjective component of an Eighth Amendment claim pursuant to federal law interpreting the Eighth Amendment. It is an element of a federal civil rights claim under 42 U.S.C. § 1983. It has not been, nor should it be, recognized as a cause of action under West Virginia law.

CONCLUSION

The WVDCR asks this Court to issue a writ of prohibition because this case presents a matter of first impression, specifically, whether West Virginia law permits a common law tort for "deliberate indifference." The WVDCR asks this Court to intervene and find that the lower court permitting a common law tort for "deliberate indifference" against the WVDCR is clear error.

Finally, the lower court committed clear error by failing to dismiss Plaintiff's common law tort claim for money damages for "deliberate indifference." The WVDCR also requests that this

Honorable Court issue a rule to show cause and stay proceedings in the underlying action pending the outcome of this Petition.

For all of the reasons set forth herein, the WVDCR petitions this Honorable Court to enter an order granting the writ of prohibition, prohibiting the circuit court from recognizing a cause of action for deliberate indifference as a common law tort claim as alleged in Count III of the Complaint. Petitioner requests any additional relief this Court deems just.

Respectfully submitted,

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

**WEST VIRGINIA DIVISION
OF CORRECTIONS AND
REHABILITATION,**

Defendant Below, Petitioner,
v.

**THE HONORABLE DAVID J. HARDY,
Judge, Circuit Court of Kanawha County, and
GREGORY PYLES, ADMINISTRATOR
OF THE ESTATE OF JACQUELINE V. PYLES,**

Plaintiff Below, Respondents.

CERTIFICATE OF SERVICE

I, the undersigned, counsel for Petitioner West Virginia Division of Corrections and Rehabilitation do hereby certify that on the 12th day of June 2025, I electronically filed the foregoing ***“Petition for Writ of Prohibition”*** with the Clerk of the Court using the electronic filing system which will send notification of such filing to the following participants:

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The Honorable David J. Hardy
Circuit Court of Kanawha County
Kanawha County Judicial Building
111 Court Street
Charleston, WV 25301
Presiding Judge

/s/ Jennifer E. Tully

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