

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA
CASE NO: 25-642**

**THE WEST VIRGINIA BOARD OF EDUCATION
and MICHELE BLATT, in her capacity as State
Superintendent of Schools,**

Petitioners,

v.

**KRIS WARNER, in his capacity as West Virginia
Secretary of State,**

Respondent.

**EDUCATION WEST VIRGINIA'S *AMICUS CURIAE* BRIEF
IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF MANDAMUS**

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Comes now, Education West Virginia (“EWV”), and submits this *amicus curiae* brief¹ in support of the Petitioners West Virginia Board of Education (Board) and Michele Blatt, in her capacity as State Superintendent of Schools.

STATEMENT OF IDENTITY OF *AMICUS CURIAE*, ITS INTEREST
IN THE CASE, AND THE SOURCE OF ITS AUTHORITY TO FILE

EWV is the largest advocacy organization for education professionals in West Virginia. It supports high-quality public schools in every community with the goal of serving the needs of every student in the public schools of West Virginia. EWV works to ensure that professional educators in West Virginia have the resources, support, and conditions required to provide a high-quality education for the students of West Virginia. EWV’s mission includes shaping positive education policy and reforms; elevating the teaching profession to benefit students; securing and improving educator benefits; and recapturing and sustaining the respect that professional educators deserve.

EWV is interested in this matter because their members - - public schools teachers, education support and service personnel, aspiring education and retired educators - - seek to preserve a rulemaking process that is consistent with Article XII, §2 of the West Virginia Constitution. This Court’s decision in *West Virginia Board of Education v. Hechler*, 376 S.E.2d 839 (1988); the will of the voters in West Virginia; and the best interests of public school students. Stated simply: EWV is interested in maintaining the current process for rulemaking that is free from politics and the whim or caprice of politicians from any party.

EWV submits the *amicus curiae* brief consistent with Rule 30 of the West Virginia Rules of Appellate Procedure. Moreover, EWV has sought and received consent to file the *amicus curiae*

¹On behalf of EWV, pursuant to Rule 30(3)(5) of the West Virginia Appellate Procedure, undersigned counsel have authored this brief in whole. Neither party nor their respective counsel contributed or made contribution specifically intended to fund the preparation of submission of this brief.

brief from Michael R. Williams; Office of the Attorney General and counsel for Respondent Secretary of State.

INTRODUCTION

*“State Constitutions provide structural firewalls that should ward off”
political overreach by any political party.*

In his April 14, 2024, law review article “The Education Power,” Professor Derek W. Black warns of the growing role of public education in “culture wars and partisan ideology.” He observes:

Over the last decade, public education has increasingly taken center stage in culture wars and partisan ideology. Not since *Brown v. Board of Education* has education policy been as polemic. The battles are so intense that like southern resistance to *Brown*, political actors are willing to overreach their legal authority and seize power from others. State constitutions provide structural firewalls that should ward off some of this behavior, but they are failing. Politics and expediency are, quite simply, overtaking poorly understood constitutional principles.

(Black, Derek W., *The Education Power*, Va. Law Rev., April 14, 2024)(footnotes omitted)

Professor Black is prescient as it relates to the instant action.

In its powerful Petition for Writ of Mandamus, Petitioners set forth a full and complete understanding of the constitutional principles that support the political independence of the Board with regard to its power to enact rules and regulations independent of political interference from any party. Petitioners describe:

- The 1945 Strayer Report, commissioned by the West Virginia Legislature, which urged this State to remove education from partisan politics by placing general supervisory power within the province of the Board;
- The 1955 Peabody Report also commissioned by the West Virginia Legislature, which recommended that a state board of education act as the *only* state policy and regulatory body for public education;
- The momentous passage by the voters of West Virginia of the 1958 amendment of the West Virginia Constitution granting the Board the exclusive power of “general

supervision” of public schools (*including rulemaking*) in order to act as a firewall between politics and public education; Article XII, §2 states in pertinent part

The general supervision of the free schools of the State shall be vested in the West Virginia board of education which shall perform such duties as may be prescribed by law.

- Various decisions from this Court upholding the constitutionally mandated independence of the Board with regard to the “general supervision” of public schools;
- The seminal decision of this Court in *West Virginia Board of Education v. Hechler*, 376 S.E.2d 839 (1988) – addressing the identical issue presented by the instant matter – in which this Court firmly placed rulemaking within the general supervision of the Board, stating:

“General supervision” is not an axiomatic blend of words designed to fill the pages of our State Constitution, but it is a meaningful concept to the governance of schools and education in this state. Decisions that pertain to education must be faced by those who possess expertise in the educational area. These issues are critical to the progress of schools in this state, and ultimately, the welfare of its citizens.

- Two proposed amendments to curtail the general supervision authority of the Board in 1989 and 2022 – both of which were emphatically rejected by the electorate of this State.

Now, the West Virginia Legislature has once again attempted to curtail the authority of the Board with regard to rulemaking and its authority under Article XII, § 2 with regard to “general supervision” of public schools. EWV embraces the position set forth by Petitioners *in toto*.

In support of Petitioners’ “Petition for Writ of Mandamus,” EWV now returns to the roots of the policy underlying Article XII, § 2 with regard to “general supervision” of public schools, as well as its current application by the Board by highlighting crucial portions of the Strayer and Peabody Reports, which served as the foundation for Article XII, § 2 and, ultimately the *Hechler* decision. EWV will also explore a significant example of the value of independent rulemaking by

Petitioner Board of Education, which are free from politicization; yet, include teachers, parents, and many other stakeholders in the rulemaking process.

ARGUMENT

I. Article XII, § 2 of the West Virginia Constitution, which granted supervision of public schools to Petitioners and, pursuant to *Hechler*, protected the ability of Petitioners to promulgate rules or policy without political interference, arose from the Strayer and Peabody reports which had the goal of providing equal opportunity to all students; supporting our democracy; and aiding in the transformation of students' lives through a thorough and efficient public education in West Virginia.

Since 1945 and the completion of the first of two legislative studies of public education in West Virginia, it has been an articulated public policy goal to maintain a firewall around West Virginia public education and to remove the politics of any party from the process.

In 1945, the West Virginia Legislature formed an interim committee and citizen advisory committee to study the education system in West Virginia and to issue a report with recommendations for proposed legislation. The interim committee engaged George Strayer of Columbia University to conduct the review. "A Digest of A Report of a Survey of Public Education in the State of West Virginia," or the "Strayer Report" was published in 1945. (A.R. 0383-0559)

The Strayer Report sought to remove politics from the public education process while placing the general supervision of schools with a state board of education. For example, the report indicates that the Governor should not appoint the State Superintendent of Schools, stating:

In making the recommendation for the selection of the State Superintendent by the State Board of Education, the survey staff has rejected the proposal that he be appointed by the Governor. In more than one state where this method of selecting the state superintendent has been followed, *the office has become the football of partisan politics. High professional competence and continuity in office and in educational policy, and not partisan availability should always determine the selection of this most important . . . leader.*

(A.R. 0399) (emphasis supplied)

Similarly, as it relates to the proposed terms of state board members, the Strayer report sought to keep politics out of the process. To this end, the Strayer Report recommended “long and overlapping terms, and for continuity in the development of educational policies.” The report goes on to state:

It would tend as well to secure the highest type of service on the Board. Under such arrangement no governor would have the certainty of appointing a majority of the members of the Board. In the states in which this type of provision prevails, governors have commonly appointed able citizens for this most important public service. The fact that there is no certainty of appointing a majority of the members of the Board makes it unlikely that any governor will make these appointments to pay political debts.

(A.R. 0400)

In 1956, the West Virginia Legislature retained the Division of Surveys and Field Services at the George Peabody College for Teachers (now Vanderbilt University) to assist with a study of the West Virginia public school system and report to the Legislature. The Peabody Report, or “West Virginia Public Schools: A Survey Report,” was completed in 1956 and provided guidance to the Legislature for “policies and practices for public education in West Virginia.” (See generally A.R. 572-718; 575)

The Peabody Report emphasizes, the importance of educational opportunity:

A free society rests upon two ideals – social democracy and equality of opportunity. The essential functions of free schools is to keep alive and make increasingly real America’s promise of social democracy and equality of opportunity The notion that one man is as good as another, depending upon his contribution to the general welfare – has validity or substance only to the extent that equality of opportunity is offered to all children and youth.

(A.R. 0583-0584)

The Peabody Report directly correlates the ideal of equal opportunity for all students with

the importance of public school teachers and, concludes that in order to to meet the promise of democracy, teachers are essential. The Peabody Report states:

Teachers are either critically important or they are nothing. What teachers do or fail to do in the classroom has a considerable bearing upon the extent to which the promise of equality of opportunity and social democracy, as developed by our forefathers, will either be strengthened or weakened. To make good the ideas of democracy, America needs teachers who possess moral strength, a sense of beauty of the spirit, the seeing eye, the watchful mind, and the inquiring mind. In order to progress toward the fulfillment of these ideals, America must have teachers who are free of conventional fears, free especially from the devastating fear of financial insecurity.

(A.R. 0590)

Finally, the Peabody Report states:

Public education is the institution in which democracy has the best chance of becoming conscious of itself. The means to this end are not sentimentality or emotion, but knowledge of the meaning and significance of living in a group. The school makes its contribution to this end as it sets intelligence free within the framework of democratic values. It follows that the classroom should be a place where children go, not merely to learn in the academic sense, but, also, to learn in the sense of carrying on a way of life. Here, then, is the true function of public education.

(A.R. 0590)

In order to reach the lofty and laudable goals set forth in the Peabody Report – in addition to focusing upon the central role of teachers in public education – the report specifically recommended that the Board “*should be the only state policy and regulatory board for public . . . education, and for all aspects of public education at lower than college levels . . . Its rules and regulations should have the full force and effect of law.*” (A.R. 0597)(emphasis supplied)

The Peabody Report further urged that the Board have lay members who represent the general public; a chief state school officer who is a professional educator and who executes the

policies of the Board; and a department of education composed of competent professionals who provide educational leadership services. (A.R. 0592)

A driving force behind the recommendations in this report was to *depoliticize* public education in West Virginia. Indeed, as it relates to longer and staggered terms for state school board members, the overriding goal was “to ensure continuity and freedom from undue influence from temporary and changing political whims[.]” (A.R. 0598)

By requiring the Board to submit rules and regulations to the Legislature prior to enactment, the apolitical nature of the Board – as required by the West Virginia Constitution – will be unquestionably violated. The plain language of Article XII, § 2 makes this clear and this Court’s decision in *Hechler* underscores this conclusion. Further, the *two votes* by the electorate of this State, in 1989 and 2022, respectively, demonstrate that the citizenry (overwhelmingly) oppose the recent action taken by this Legislature in this matter. As such, House Bill 2255 should be declared unconstitutional.

II. The methods espoused in the Strayer and Peabody reports are manifested in the manner by which public education rules or policies are currently promulgated with the inclusion of all appropriate stakeholders - - without politicization by any party that would arise from legislative review.

While it is clear that Article XII, § 2, depoliticizes the manner in which public schools are governed and, in particular, how rules and policy are promulgated, stakeholder (a veritable cross-section of our West Virginia communities) throughout the State are still an important part of the process of establishing “rigorous academic standards” in public schools. Indeed, their participation is required by Rule.

Policy 2510 states:

The West Virginia Board of Education (WVBE) is committed to establishing rigorous academic standards and providing high quality

programs in West Virginia public schools. The WVBE and West Virginia Department of Education (WVDE) collaborate with parents, educators, communities, business and industry, and higher education to fulfill this commitment. Counties, the schools, communities, students, and families of students shall cooperate to establish high expectations for student performance and become actively involved in the education process, thereby enabling students to succeed in the classroom and the workplace, lead healthy, rewarding, and productive lives, and participate responsibly in society.

(126 C.F.R. § 42-2.1; Policy 2510)

This is particularly true in the vital area of “content standards,” which comprise a large portion of the rules promulgated by the WVBE.

Content standards describe what students should know and be able to do in the core academic subjects at each grade level. Content standards contain benchmarks that identify the knowledge and skills that all students must achieve in a content area by the end of a grade level. They ensure that all students throughout the state are held to the same high expectations regardless of geography or socioeconomic status. Simply stated: content standards are the framework which defines what students are taught from year to year. They speak to the very essence of teaching and are fundamental to meeting the Article XII, § 1 mandate of providing a thorough and efficient public school system. Once a content standard is finalized – through the process discussed below – it is memorialized in a Rule pursuant to Petitioners’ authority to exercise “general supervision” of the public education process in West Virginia and promulgate rules - - as upheld in *Hechler* - - on behalf of the students of this State.

In West Virginia, every cycle (typically six years), content standards are reviewed by Petitioners. As part of the review, teams of educators are assembled² based upon their experience

²Content Standards are memorialized by Rule. For example, Rule 126 C.S.R § 44A-1 *et seq.*, address “West Virginia College and Career Readiness Standards for English Language Arts” and is also identified as Policy “2520.1A.”

with the subject matter in the classroom. The teams review current standards and take changes to the West Virginia Department of Education (WVDOE). Importantly, local public school teachers who best possess the skills and training to design learning standards are essential to drafting the proposed changes to content standards.

External stakeholders review proposed changes to a given rule governing a content standard. Typically, the external stakeholders will include county instructors who are leaders in the area of the particular subject matter; two county superintendents; two principals from elementary, middle and/or high school; state legislators; representatives from higher education; and teachers from every grade level. Additionally, two members of the Board will participate as well. Finally, parents are included as external stakeholders.

Once the external stakeholders meet and confer, a final copy of the proposed content standard is approved by the WVBE then filed with the Secretary of State and placed on public comment for thirty days. Any interested party may comment. Every comment must be considered and addressed in writing before it is adopted by the WVBE. The process is inclusive and collaborative, taking into account input from both education professionals and parents.

With content standards in place, the specific curricula for each county is then established locally. It should be noted: content standards are not curriculum as they do not outline the day-to-day lessons and activities teachers use; rather, they provide an end goal for instruction. Policy 2510 is entitled “Assuring the Quality of Education: Regulations for Education Programs.” It is promulgated as a Rule and addresses the local role in developing curricula. It states:

West Virginia content standards-focused curricula pursuant to this policy are developed and approved at the local level, to ensure

teaching methods and instructional design are utilized to assist students in achieving high levels of performance across all applicable adopted and approved content standards. Appropriate accountability measures guide educators to help students achieve high levels of performance.

126 C.S.R. § 42.2.4.

It is clear that the current process for rulemaking and development of content standards is free from politics and the whim or caprice of politicians from any party, as it should be. Importantly, the rule development process utilized by the Petitioners embeds and elevates the voices of classroom teachers – learned individuals who have dedicated their training and careers to understanding how children learn. Not only does the rule approval process set forth in House Bill 2755 fly in the face of decades of established constitutional law in West Virginia, it also diminishes the voice of the classroom teachers. Allowing the Legislature – an ever-changing body - to alter content standards at their whim after completion of the deliberate and informed process utilized by the Petitioners would cause the landscape of our classrooms to be in flux with every election cycle. As expressed in both the Strayer and Peabody reports, this is antithetical to a stable and effective system of education. The current process conforms with the Constitution while balancing the interests of local and State stakeholders. This process meets the requirements of Article XII, § 2; conforms with *Hechler*; is consistent with the will of the voters; and is designed to provide a thorough and efficient public school system for the children of West Virginia. It should remain undisturbed.

CONCLUSION

EWV submits this Amicus Brief in support of Petitioners' Petition for Writ of Mandamus while seeking to declare the law enacted by House Bill 2755 unconstitutional and compel the Secretary of State to publish Petitioner Board of Education's rules in the State Register.

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v.

**KRIS WARNER, in his capacity as West Virginia
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Respondent.

CERTIFICATE OF SERVICE

I, Jeffrey G. Blaydes, do hereby certify that I have served a copy of the foregoing EDUCATION WEST VIRGINIA MOTION FOR LEAVE TO FILE FOR LEAVE TO FILE AMICUS BRIEF IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF MANDAMUS and, EDUCATION WEST VIRGINIA'S *AMICUS CURIAE BRIEF* IN SUPPORT OF PETITIONERS' PETITION FOR WRIT OF MANDAMUS, by placing a true copy, postage prepaid, in the United States mail and by using the Court's E-Filing system, on this 24th day of October, 2025, upon the following:

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