

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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.

JOINT *AMICI CURIAE* BRIEF IN SUPPORT OF
PETITION FOR WRIT OF MANDAMUS

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**IDENTITY OF AMICI CURIAE, THEIR INTERESTS
IN THE CASE, AND THE SOURCE OF THEIR AUTHORITY TO FILE¹**

The West Virginia Association of School Administrators (“WVASA”) and its members serve to support current and aspiring public school administrators in West Virginia at the state and county levels with public education legislation development and public education advocacy, along with professional networking and professional development opportunities throughout the State. The WVASA conducts monthly meetings, with professional development opportunities offered throughout the year. WVASA membership is open to all public-school administrators, active and retired, at the state and county levels.

The West Virginia School Board Association (“WVSBA”) is an association for elected school board members in West Virginia dedicated to, among other goals, achieving and preserving the principles of effective school board governance through lay control of public education. The WVSBA is committed to working as a nonpartisan Association, studying and seeking to attain effective and constructive school board membership, and the advancing and bettering of education generally.

The WVASA and the WVSBA are both interested and engaged in maintaining a high-quality public education system in West Virginia. The issues presented in Petitioners’ Petition for Writ of Mandamus are at the heart of these *amici*’s interests. Both the WVASA and WVSBA support and strive to achieve a high-quality, apolitical education system delivered through data-driven, pedagogically-sound principles arrived at through quality stakeholder engagement from key individuals who work in and know the education system. WVASA and WVSBA members are

¹ This brief has been drafted by counsel for two *amici curiae*, without the input of either party to this action. This brief has not been authored in whole or in part by counsel for either Petitioners or Respondent, and no party or counsel for any party made a monetary contribution specifically intended to fund the preparation or submission of the brief. *See* W. Va. R. App. P. 30(e)(5).

public school administrators and school board members, largely at the county level, whose engagement with the education system depends on the guidance and directives of the State Board of Education. Further, the organizational structure of the local education system² mimics the nature of the State BOE—emphasizing the importance of apolitical board appointments.

The WVASA and WVSBA have provided notice to Petitioners and Respondent of their intent to file this brief pursuant to West Virginia Rule of Appellate Procedure 30(b). Both Petitioners and Respondent consented to the filing of this brief.

ARGUMENT

This is not a case of factual dispute, and the parties’ contentions present a purely legal issue. The West Virginia Legislature has attempted to usurp the supremacy of the West Virginia Constitution, previously confirmed by this Court, through the enactment of House Bill 2755. The Bill amends Chapter 29A, Article 3B of the West Virginia Code to unconstitutionally expand the Legislature’s authority over West Virginia’s public education system. This is not the Legislature’s first attempt at expanding and exerting its power over the State Board of Education (“State BOE”). Rather, as the Petitioners have outlined, twice previously the Legislature attempted to implement this expansion through Constitutional amendment, acknowledging the State BOE’s authority resides in the West Virginia Constitution. However, after two unsuccessful attempts to constitutionally amend, and after this Court previously deemed a statutory expansion attempt unconstitutional, the Legislature has again attempted to sidestep the Constitution. Notably, all previous attempts by the Legislature to expand its power over the State Board of Education have failed. Its most recent attempt must fail, too.

² Although county boards of education are elected, they are non-partisan.

Petitioners and other *amici curiae* have done an excellent job outlining the history of educational reform in West Virginia and identifying key events that led to the current state of our West Virginia public school system. For that reason, this brief does not attempt a comprehensive history or review of the applicable law. Rather, this brief focuses on two primary points: First, House Bill 2755 is unconstitutional because the West Virginia Constitution clearly grants the State BOE the powers of general supervision, and this constitutional grant is the supreme law of the land. Second, the State BOE effectively supervises and capably directs the State's public education system. County superintendents, boards of education, and administrators all rely on the State BOE as the education expert to quickly and effectively implement policies to govern both the day-to-day and systemic operations.

I. The West Virginia Constitution unequivocally grants the State Board of Education supervisory and related rulemaking authority.

The language of the West Virginia Constitution controls this dispute. The West Virginia Constitution is afforded supremacy over contrary legislatively-enacted statutes. The Constitution can only be amended through a codified process. An entire article of the West Virginia Code is dedicated to this very public, very deliberate, very clear process. The Legislature's attempt to circumvent its own laws to amend the Constitution through the enactment of House Bill 2755 must fail as a matter of law.

A. The West Virginia Constitution is the supreme law of our State.

"A constitution is the fundamental law of the state, in opposition to which any other law must be inoperative and void." 4C M.J. Constitutional Law § 2. A constitution is a clear declaration of rights and a delegation of governmental powers. *Id.* Indeed, the West Virginia Constitution is granted great weight:

The Constitution of this State is the supreme law of West Virginia; it is subject only to the Constitution of the United States and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made, under the authority of the United States, all of which constitute the supreme law of the land. *United States Constitution*, Article VI, Clause 2. The Constitution of West Virginia is **binding upon all the departments of government of this State, all its officers, all its agencies, all its citizens, and all persons whomsoever within its jurisdiction. The three branches of our government, **the legislative**, the executive, and the judiciary, alike **derive their existence from it**; and **all of them must exercise their power and authority under the Constitution** solely and strictly in accordance with the will of the sovereign, the people of West Virginia, as expressed in that basic law. It is the solemn duty of this Court, its creature, to obey and give full force and effect to all its terms and provisions.**

Harbert v. County Court, 129 W. Va. 54, 62, 39 S.E.2d 177, 184 (1946) (emphasis added).

To confirm, the Constitution outweighs the Legislature's acts; when a legislatively-enacted statute is confronted with Constitutional limitations, "legislative action is fruitless." *Id.* at 67 ("If there be conflict between constitutional inhibition and legislative enactment, the courts must adhere to the former and disregard the latter. Both cannot be law. The Constitution must stand; such enactment cannot.").

Article XII of the West Virginia Constitution establishes the framework for our State's education system. The Legislature is tasked with funding a thorough and efficient system of free schools in Section 1, and the power of "general supervision of the free schools" is granted to "the West Virginia board of education." W. Va. Const. art. XII, § 2. The Constitution also vests great power in the State Superintendent: "[t]he West Virginia board of education shall in the manner prescribed by law, select the state superintendent of free schools who shall serve at its will and pleasure. [S]he shall be the chief school officer of the State and shall have such powers and shall perform such duties as may be prescribed by law." *Id.*

This Court previously had reason to interpret the meaning and scope of the power of "general supervision" granted by the Constitution. Indeed, as outlined by the Petitioners and other

amici, the *Hechler* Court previously determined that the Legislature’s attempt to take back the State BOE’s constitutionally-granted power could not succeed. *See* Syl. Pt. 2, *West Va. Bd. of Educ. v. Hechler*, 180 W. Va. 451, 376 S.E.2d 839 (1988) (“Rule-making by the State Board of Education is within the meaning of ‘general supervision’ of state schools pursuant to Art. XII, § 2 of the West Virginia Constitution, and any statutory provision that interferes with such rule-making is unconstitutional.”).³ To be clear, the precise regulation that Respondent refused to publish in the State Register is the precise regulation that was at issue in the *Hechler* decision. In August 1988, the State BOE adopted a rule entitled “West Virginia Minimum Requirements for Design and Equipment of School Buses.” *Id.* at 453. The State BOE then submitted the rule to the Secretary of State for placement in the State Register; the Secretary of State refused and the State BOE filed a writ of mandamus seeking guidance from the Court. *Id.*

Here, the facts are the same. House Bill 2755 attempts to create law that would require the State BOE to submit its proposed rules to the Legislature for approval. Since its enactment, the State BOE promulgated a rule governing the design and equipment of school buses.⁴ The State BOE then submitted its rule to Respondent, who refused to publish the rule in the State Register. As a result, there is nothing new for this Court to consider. The issues presented in the Petitioners’ Writ of Mandamus have already been definitively determined. There is no reasonable justification to change the precedent established by *Hechler*—particularly when the rule of law is under such fire. *See, e.g., When the Rule of Law Is Under Attack, We Must Stand Together*, IAALS (last visited Nov. 9, 2025), <https://iaals.du.edu/blog/when-rule-law-under-attack-we-must-stand-together>.

³ In *Hechler*, the issue for the Court to consider was whether the Legislature could require the State BOE to submit its promulgated rules to the Legislature for review. *Id.* at 452-453. Again, this is the precise dispute at issue here.

⁴ This is important because the *Hechler* Court acknowledged that a rule governing the design and operation of school buses is “clearly within the purview of ‘general supervision’ of state schools pursuant to Art. XII, § 2 of the West Virginia Constitution.” *Hechler*, 180 W. Va. at 454.

B. The Legislature cannot amend the Constitution by statute alone.

During the debate over and consideration of House Bill 2755, at least one Legislator acknowledged that a Constitutional amendment would be the proper mode by which to expand the Legislature's authority over the State BOE. *See Commentary: The Legislature Overstepped on HB 2755 Ignoring Will of the People*, MetroNews (Apr. 14, 2025), <https://wvmetronews.com/2025/04/14/commentary-the-legislature-overstepped-on-hb-2755-ignoring-will-of-the-people/>. The Legislature ignored this suggestion. Significantly, however, the Legislature alone cannot amend the Constitution:

A constitution is the fundamental law by which all people of the state are governed. It is the very genesis of government. Unlike ordinary legislation, a constitution is enacted by the people themselves in their sovereign capacity and is therefore the paramount law. This basic organic law can be altered or rewritten only in the manner provided for therein.

4C M.J. Constitutional Law § 6.

Indeed, individual Legislators have recognized that the Legislature cannot, on its own, amend the Constitution. Amy Grady—a State Senator from Mason County, the Senate Education Chair, and a teacher with a B.A. in Elementary Education—addressed House Bill 2755 this way:

I was in favor of that constitutional amendment when it was on the ballot. The voters voted that down. The reason they voted it down are their reasons. So I am against this bill for that reason. I feel like it circumvents the process of which we put it in front of the voters, and I think it sends the wrong message. It tells the voters that “Hey, we think you got it wrong, and we want to do it our way.” So I’m not in favor of the bill for that reason.

Power over State Education Policies Is Up for Passage Vote in State Senate, MetroNews (Mar. 25, 2025), <https://wvmetronews.com/2025/03/25/power-over-state-education-policies-is-up-for-passage-vote-in-state-senate/>. Delegate Larry Kump also recognized this: “I can’t vote for it because the people [of] West Virginia already talked about it and rejected the constitutional amendment. So I can’t go against the people.” *Lawmakers Pass Bill Asserting Power over State*

Education Policies, Even Though Citizens Rejected Amendment, MetroNews (Apr. 12, 2025), <https://wvmetronews.com/2025/04/12/lawmakers-pass-bill-asserting-power-over-state-education-policies-even-though-citizens-rejected-amendment/>. Delegate Joe Parsons felt the same. *Id.* (“I remind each of you that 50 of the 55 counties voted against this issue in 2022.”).

This Court has summarized the requirements for any amendment of the West Virginia Constitution to be effective: “(1) the fully recorded concurrence of two-thirds of the members in each house;” (2) “the submission of the proposed amendment to the people;” (3) “the amendment’s ratification by a majority of those voting in a statewide referendum;” (4) “the fulfillment of the legislative duty to inform the people about the proposed amendment through at least substantial compliance with the directives of Section 2 of Article XIV of the West Virginia Constitution and in a manner sufficient to permit the voters to make up their minds;” and (5) “an absence of evidence that the State’s voter education mislead or confused the voters if not in strict compliance with Article XIV.” Syl. Pt. 4, *State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 470 S.E.2d 162 (1996).

It is undisputed that the Legislature enacted House Bill 2755 without amending the West Virginia Constitution. Therefore, the Legislature is still bound by the meaning and scope of the power of “general supervision” granted to the State BOE by the Constitution. As outlined by Petitioners, the Legislature has recognized the Constitution’s limitations on the Legislature’s ability to oversee or control the State BOE through its previous attempts to amend the Constitution. Indeed, both the 1989 and the 2022 proposed Constitutional amendments that attempted to shift the supervision of schools from the State BOE to the Legislature decisively failed.

The West Virginia Constitution vests the power of general supervision of the free schools of this State in the State Board of Education. This is clear based on the language of the Constitution, has been construed by this Court, and has been affirmed by the voters of this State. In violation of

the separation of powers, the Legislature has attempted to rewrite this Court’s decision in *Hechler*. House Bill 2755 cannot stand.

II. Legislative whims do not belong in a free public education system.

In addition to vesting authority in the State BOE, the Constitution also set guardrails to ensure the apolitical nature of the State BOE. For example, the Constitution establishes that “[n]o more than five members of the board shall belong to the same political party.” W. Va. Const. art. XII, § 2. Even in establishing school districts, the Constitution provides that “the school board of any district shall be elected by the voters of the responsive district without reference to political party affiliation.” W. Va. Const. art. XII, § 6. The Strayer Report cited by Petitioners and other *amici* confirms education should be, and indeed ours was, removed from partisan politics.

However, it is reasonably clear that in enacting House Bill 2755, it was the primary intention of the Legislature to increase its supervision of and involvement in the public school system of this State. Indeed, the newly amended West Virginia Code § 29A-3B-9(a) permits the Legislature to “review and approv[e], amend[], or reject[]” any rules or policies promulgated by the State BOE either “in whole or in part.” W. Va. Code § 29A-3B-9(a) (2025). This amendment is not only an expansion of the prior version of that Code section, but a complete rewrite—and a rewrite that goes against the Constitution, this Court, and the people of this State. The Legislature fails to contemplate any restriction on its ability to usurp the State BOE. Even the Supreme Court of the United States has recognized a state legislature’s inability to interfere with certain rights of educators. *See generally Meyer v. Nebraska*, 262 U.S. 390 (1923) (determining a Nebraska statute that represented the legislature’s attempt to limit a teacher’s ability to teach was unconstitutional).

This Court and the Legislature have previously recognized the important role of the State and county boards of education. *See Pauley v. Kelly*, 162 W. Va. 672, 717, 255 S.E.2d 859, 883

(1979) (“Certainly, the State Superintendent of Schools, as well as the Lincoln County Superintendent of Schools, should have direct input in this area. These constitutional officers are trained professionals who are required to implement the policies of the State Board of Education and the County Board of Education. . . .”). For example, the Court previously recognized the State BOE’s ability to promulgate a rule setting minimum standards for students to participation in nonacademic extracurricular activities because it was an exercise of its power of “general supervision” over the State’s education system. *Bailey v. Truby*, 174 W. Va. 8, 321 S.E.2d 302 (1984). Other cases have also confirmed the State BOE’s general supervisory powers over school closures, consolidation plans, and local facilities plans, in addition to extra-curricular activities. *See Board of Educ. v. West Va. Bd. of Educ.*, 184 W. Va. 1, 399 S.E.2d 31 (1990); *West Va. Bd. of Educ. v. Board of Educ.*, 239 W. Va. 705, 806 S.E.2d 136 (2017).

The core of the Strayer Report remains true today. Education should be removed from partisan politics. With the rulemaking authority solely in the hands of the State BOE, it is ensured that West Virginia’s county school systems benefit from expertise-driven policy, dedicated educational focus, the convention and input of qualified expert stakeholders, and consistency and continuity. Specifically, with the rulemaking authority vested in the State BOE, the board’s sole purpose is education, allowing it to dedicate its attention to the specific needs of the school system without constraints or limitations caused by other legislative responsibilities. Further, the State BOE is positioned to, and does, bring together experts and stakeholders from diverse groups of educators, parents, county superintendents, county board of education members, and other interested parties to find common ground and develop solutions for education-specific challenges. Finally, the State BOE can and does provide a more stable and consistent approach to education

policy over time, rather than subjecting a statewide system to the frequent changes that are likely to occur with legislative sessions and elections.

This is demonstrated in the State BOE’s formal rulemaking process. *See* W. Va. Code R. § 126-3A-1.1 (citing the State BOE’s “supervisory authority as set forth in Article XII, Section 2 of the Constitution of West Virginia”). Specifically, the State BOE is empowered to develop and promulgate rules, colloquially known as policies. During this process, the State BOE engages with subject matter experts, including, for example, bus drivers, nurses, teachers of specific content areas, and school safety practitioners. To illustrate, the State BOE ensures through this process that math teachers are developing the math standards and science teachers develop the science standards. This input by subject matter experts is an instrumental part of the policy-development process—which would shift if the Legislature could turn pedagogical decisions into philosophical declarations without the input of crucial stakeholders. Under current processes, the rules are presented at a publicly-noticed State BOE meeting, placed on public comment and review for at least 30 days, and concurrently provided to the Legislative Oversight Commissioner of Education Accountability (“LOCEA”). Importantly, comments can be made by anyone, including legislators, educators, parents, and other interested parties. Proposed rules are also sent to county boards of education and published on various media platforms. W. Va. Code R. § 126-3A-3.4. The State BOE and appropriate West Virginia Department of Education staff review and respond individually to all comments received on a proposed rule prior to final consideration during yet another public meeting of the State BOE. The State BOE considers the comments and determines whether to revise or reconsider any portion of the proposed rule based on others’ input. *Id.* at 3.5. The final rule is then sent to the Secretary of State to be published in the State Register.

Local county boards of education and school administrators and leadership depend on the expertise-driven and consistent rules promulgated by the State BOE. The school district's governing entity, namely a county board of education, and its "county superintendent" rely upon the State BOE's supervision and governing rules to enact local policies that effect and carry out the statewide equitable directives, ensuring a level playing field of education access regardless of geography. They are likewise dependent upon the Legislature (for funding, for example). In terms of rulemaking, it has been clear and consistent since the *Hechler* decision that the State BOE can, on its own, promulgate rules for the county boards to implement. This singular authority allows for quick, efficient, and effective policy change as needed to address the needs of our public education system.

This also allows the county superintendents to perform their job functions as prescribed by West Virginia Code § 18-4-10. *See* W. Va. Code § 18-4-10(1) ("The county superintendent shall: (1) Act as the chief executive officer of the county board as may be delineated in his or her contract or other written agreement with the county board, and, under the direction of the state board, execute all its education policies. . . ."). Similarly, the county boards of education are subject to and guided by the rules of the State BOE. W. Va. Code § 18-5-13 (describing the authority of the county boards as first "[s]ubject to the provisions of this chapter and the rules of the state board"). To confirm, State BOE rules guide, determine, and prompt county education decision-making in this State. The State BOE directs the functioning of the county boards. For example, when the State BOE issues state-wide standards, it is the job of the county to carry out those standards. Imposing legislative whims into the rulemaking process would upend the current process⁵ and remove constitutionally-granted authority from the hands of education experts.

⁵ County superintendents and boards have been operating under the current system for decades. To insert a new party to which counties are accountable would, of course, uproot the system and cause significant delays and disruption.

In sum, these *amici* urge this Court to grant the Petitioners' Writ of Mandamus. The voice of the people of West Virginia matters. Just as county board of education members are elected, and as county board levy and bond calls are subject to voter approval, the voters of this State had an opportunity in 2022 to amend the Constitution—but the amendment did not succeed.

As stated by the West Virginia Constitution,

Government is instituted for the common benefit, protection and security of the people, nation or community. Of all its various forms that is the best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration . . .

W. Va. Const. art. III, § 3.

CONCLUSION

The West Virginia Association of School Administrators and the West Virginia School Board Association submit this Joint Brief as *amici curiae* in support of Petitioners the West Virginia Board of Education and Michele Blatt's Petition for Writ of Mandamus to compel the Secretary of State to publish Petitioners rules in the State Register.

RESPECTFULLY SUBMITTED,

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

Respondent.

CERTIFICATE OF SERVICE

I, Lauren E. Motes, do hereby certify that I have served a copy of the foregoing **Joint *Amici Curiae* Brief in Support of Petition for Writ of Mandamus** on November 13, 2025, by using the Court's e-filing system which will provide notice to the following counsel of record:

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