IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 25-642

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel. 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.

PETITION FOR WRIT OF MANDAMUS

WRIT OF MANDAMUS GRANTED

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JUSTICE KIRKPATRICK delivered the Opinion of the Court.

JUSTICE FLANIGAN, deeming himself disqualified, did not participate in the decision of this case.

SENIOR STATUS JUSTICE ELIZABETH D. WALKER, sitting by temporary assignment.

JUSTICE TRUMP dissents and reserves the right to file a separate Opinion.

SYLLABUS BY THE COURT

1. "Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies." Syllabus Point 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist*., 151 W. Va. 207, 151 S.E.2d 102 (1966).

2. "An appellate court should not overrule a previous decision recently rendered without evidence of changing conditions or serious judicial error in interpretation sufficient to compel deviation from the basic policy of the doctrine of stare decisis, which is to promote certainty, stability, and uniformity in the law." Syllabus Point 2, *Dailey v. Bechtel Corp*., 157 W. Va. 1023, 207 S.E.2d 169 (1974).

3. "The provisions of Article XII, Section 1, *et seq.*, as well as Article X, Section 5 of the West Virginia Constitution, when construed in the light of our prior cases, gives a constitutionally preferred status to public education in this State." Syllabus Point 1, *State ex rel. The Board of Education v Rockefeller*, 167 W. Va. 72, 281 S.E.2d 131 (1981).

4. Rulemaking by the State Board of Education is within the meaning of "general supervision" of state schools pursuant to Article XII, Section 2 of the West Virginia Constitution, and any statutory provision that interferes with such rulemaking is

unconstitutional. Consequently, the laws enacted pursuant to HB 2755 are hereby declared to be unconstitutional.

5. "A writ of mandamus will not issue unless three elements coexist - (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Syllabus Point 2, *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969).

KIRKPATRICK, Justice:

The West Virginia Board of Education and Michele Blatt, the State Superintendent of Schools, (collectively "the Board") request that this Court grant it extraordinary relief pursuant to our original jurisdiction, and (1) declare certain laws enacted by the West Virginia Legislature in 2025 unconstitutional, and (2) compel the respondent, Kris Warner, Secretary of State, to accept the Board's rules for filing in the State Register.[1] We conclude that this Court has previously decided the issue presented in this case and held that a statute enacted by the Legislature that required the Board to submit its rules to the Legislature for review constituted an interference with the Board's rule-making power and was therefore unconstitutional. *See W. Va. Bd. of Educ. v. Hechler*, 180 W. Va. 451, 376 S.E.2d 839 (1988) ("*Hechler*"). Finding no reason to depart from our prior decision on this issue, we, therefore, grant the requested writ of mandamus.

I. Factual and Procedural Background

The dispute in this case is long-standing, and the interested entities are firmly entrenched in their respective positions. On the one hand, the Board seeks to continue

[1] This Court acknowledges and appreciates the contributions of the amici curiae. Separate briefs supporting the Board were filed by Education West Virginia; The League of Women Voters of West Virginia; The West Virginia Parent Teacher Association; The West Virginia Association of School Administrators and The West Virginia School Board Association; and Professor Derek W. Black and Education Law Center. The Cardinal Institute for West Virginia Public Policy, Inc. filed a separate brief in support of the respondent. We value amici participation and consider these briefs in conjunction with the parties' arguments.

promulgating rules without submitting them to the Legislature for approval prior to their enactment. On the other hand, the Legislature has long sought the authority to review those rules prior to enactment.

In 1958, the voters of this State passed a constitutional amendment that, among other things, vested the "general supervision of the free schools" of West Virginia in the Board. W. Va. Const. art. XII, § 2 (1958).[2] In 1988, the Legislature passed an

[2] In its current form, article XII, section 2 of the West Virginia Constitution states:

> 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. The board shall consist of nine members to be appointed by the governor, by and with the advice and consent of the senate, for overlapping terms of nine years, except that the original appointments shall be for terms of one, two, three, four, five, six, seven, eight, and nine years, respectively. No more than five members of the board shall belong to the same political party, and in addition to the general qualifications otherwise required by the Constitution, the legislature may require other specific qualifications for membership on the board. No member of the board may be removed from office by the governor except for official misconduct, incompetence, neglect of duty, or gross immorality, and then only in the manner prescribed by law for the removal by the governor of state elective officers.
>
> The 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. 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.

Continued . . .

omnibus educational reform package that the respondent characterizes as an aggressive attempt by the Legislature "to reassert itself over Board rulemaking[.]" The 1988 statutes (1) required the Board to "apply[] to the Legislature for permission" to promulgate non-emergency legislative rules. West Virginia Code § 29A-3A-10 (1988); (2) created a legislative oversight commission on education accountability to review all legislative rules of the Board and required the Board to submit its legislative rules to the commission for review. West Virginia Code §§ 29A-3A-11 and 29A-3A-12 (1988); (3) provided no recourse for the Board if the Legislature did not approve one of its proposed rules after submission. West Virginia Code § 29A-3A-13 (1988); and (4) permitted the Board to file emergency rules that could later be terminated by the Secretary of State in certain circumstances. West Virginia Code § 29A-3A-16 (1988). These amendments to the West Virginia Administrative Procedures Act, West Virginia Code §§ 29A-1-1 to 29A-7-4 resulted in litigation between the Board and the former Secretary of State, Ken Hechler. *See Hechler*, 180 W. Va. 451, 376 S.E.2d 839.

This Court's decision in *Hechler*, which is at the heart of this dispute, was described by Justice Cleckley as follows:

> [P]erhaps the preeminent case is *Hechler*, [] where the Legislature had attempted to give itself and its "oversight commission" an important role in the State Board's rulemaking

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> The state superintendent of free schools shall be a member of the board of public works as provided by subsection B, section fifty-one, article six of this Constitution.

> process. The statute in question in 1988 required the State Board to submit proposed legislative rules to the oversight commission that would then recommend either that the Legislature promulgate the rules in whole or in part or that the rule be withdrawn. If, however, the Legislature failed to take action on a rule submitted to it by the oversight commission, the State Board could take no action on the rule. Shortly after enacting the statute, the State Board adopted a rule setting forth minimum requirements for the design and equipment of school buses. The State Board refused to file the rule with the oversight commission, instead filing the rule directly with the Secretary of State, who refused to accept it. In the resulting mandamus action, this Court first acknowledged the constitutionally preferred status of public education and then held that rulemaking by the State Board is part of the "general supervision" of free schools and that any statutory provision that interferes with such rulemaking is unconstitutional.

State ex rel. W. Va. Bd. of Educ. v. Gainer, 192 W. Va. 417, 452 S.E.2d 733 (1994); *see Hechler*, 180 W. Va. at 451, 376 S.E.2d at 839, Syl. Pt. 2, in part ("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* . . . .").

One year after *Hechler* was decided, the voters were asked to approve a constitutional amendment that would have eliminated the constitutional office of the "state superintendent of free schools," W. Va. Const., Art. XII, § 2, and the constitutional Board of Education, *id.*, with the powers and duties of both being vested in an unnamed "department within the executive branch of state government as shall be prescribed by

law." 1989 W. Va. Acts 1620. This proposed constitutional amendment was roundly rejected.[3]

In 2022, another constitutional amendment shifting supervision over the public education in West Virginia from the Board to the Legislature was placed on the ballot. At that time, House Joint Resolution 102 proposed to add a sentence to Article XII, Section 2 that read: "Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies which shall be submitted to the Legislature for its review and approval, amendment, or rejection, in whole or in part, in the manner prescribed by general law." *Id.* This proposed constitutional amendment was also rejected.[4]

Undeterred by the voters' rejection of the constitutional amendment in 2022, the Legislature passed House Bill 2755 ("HB 2755") in 2025, which required the Board, among other things, to submit its rules to the Legislature for approval prior to enactment. HB 2755 amended the following code sections: West Virginia Code § 29A-3B-1 (findings and definitions); West Virginia Code §29A-3B-8 (adoption of rules); West Virginia Code § 29A-3B-9 (promulgation of rules, submission of rules to an oversight commission, and recommendations to the Legislature); West Virginia Code §29A-3B-10 (emergency

[3] The vote "for" the proposed amendment was 29,776, and the vote "against" the proposed amendment was 220,286.

[4] The vote "for" the proposed amendment was 200,791, and the vote "against the proposed amendment was 275,683.

legislative rules); and West Virginia Code § 29A-3B-11 (legislative review of procedural, interpretive, and existing legislative rules). HB 2755 became effective on July 11, 2025.

Four days before HB 2755 became effective, counsel for the Board sent a letter to the respondent asserting that the laws enacted by HB 2755 are "patently unconstitutional." In its letter, the Board informed the respondent that it "would not be bound" by HB 2755; the Board indicated that it would be meeting on July 14, 2025, and planned to vote on State Board Policy 4334 (West Virginia Design and Equipment Requirements for School Transportation Vehicles). If passed, the Board signaled its intent to electronically file Policy 4334 with the respondent's office for publication. Lastly, the Board informed the respondent of its plan to file suit if the respondent did not honor the Board's constitutional rulemaking authority.

On July 14, 2025, the Board submitted State Board Policy 4334 to the Secretary of State for publication in the West Virginia State Register.[5] The Board did not submit the rule to the Legislative Oversight Commission on Education Accountability for approval before submitting the rule to the Secretary of State's office as required by West Virginia Code § 29A-3B-9 (2025). The Secretary of State acknowledged the submission of the rule but announced that it would not accept it due to the Board's failure to comply with the new laws that had been enacted by HB 2755. On October 3, 2025, the Board filed its Petition for a Writ of Mandamus asking this Court to declare the laws enacted by HB

[5] Policy 4334 was effective thirty days from passage.

2755[6] unconstitutional and to compel the respondent to accept the Board's rules for filing in the State Register.

II. Standard for Mandamus Relief

The Board asks this Court to declare the laws enacted by HB 2755 during the 2025 legislative session unconstitutional and to compel the Secretary of State to accept its rules for filing in the State Register. The Board's requests clearly sound in mandamus. "[M]andamus may be used to attack the constitutionality or validity of a statue or ordinance." *W. Va. Citizens Action Grp, Inc. v. Daley*, 174 W. Va. 299, 302, 324 S.E.2d 713, 717 (1984). Further, "[m]andamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies." Syl. Pt. 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

III. Discussion

The Board sets forth several arguments to support its position that the laws enacted by HB 2755 are unconstitutional. Specifically, the Board argues that: (1) this Court's holding in *Hechler* requires us to find that the laws enacted by HB 2755 are unconstitutional; (2) this Court has foreclosed any argument that the "prescribed by law" provision of Article XII, Section 2 constrains the Board's rulemaking authority; and (3) the

[6] Again, these are West Virginia Code §§ 29A-3B-1, 29A-3B-8, 29A-3B-9, 29A-3B-10, and 29A-3B-11.

voters' rejection of the 1989 and 2022 proposed constitutional amendments to Article XII, Section 2 reaffirm the Board's power of general supervision.

We begin with *Hechler* and the doctrine of stare decisis. Almost thirty-eight years ago, this Court decided *Hechler*, wherein we held that "[r]ule-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." *Hechler*, 180 W. Va. at 455, 376 S.E.2d at 843, Syl. Pt. 2, in part. The Board argues that, under the doctrine of stare decisis, this Court must apply *Hechler* and so declare that the laws enacted by HB 2755 are unconstitutional. "[T]he doctrine of *stare decisis* requires this Court to follow its prior opinions." *Jenkins v. City of Elkins*, 230 W. Va. 335, 340, 738 S.E.2d 1, 6 (2012) (internal citation and quotation omitted). "*Stare decisis* is not a rule of law but is a matter of judicial policy. . . . It is a policy which promotes certainty, stability and uniformity in the law. It should be deviated from only when urgent reason requires deviation." *Woodrum v. Johnson*, 210 W. Va. 762, 766 n.8, 559 S.E.2d 908, 912 n.8 (2001) (citing *Dailey v. Bechtel Corp.*, 157 W. Va. 1023, 207 S.E.2d 169 (1974)).

The Board is correct that *Hechler* remains binding precedent. That circumstance, however, does not answer the dispositive question presently before the Court; that is, whether the *Hechler* Court addressed the issue that is now before us; and if so, should we depart from precedent?

"It is elementary that an opinion is not binding precedent on an issue it did not address." *Frazier v. Burcker*, 248 W. Va. 21, 27, 886 S.E.2d 356, 362 (2023) (internal citation and quotation omitted). Based upon that principle, the Board generally asserts that HB 2755 does the exact same thing as the statutes this Court struck down in *Hechler*—it requires the Board to submit its rules to the Legislature for approval prior to enactment. The respondent counters that *Hechler* is distinguishable from the facts of this case and should not be used to declare the laws enacted by HB 2755 unconstitutional. According to the respondent, the statutes ruled unconstitutional by *Hechler* were "critically different" than those enacted by the Legislature in 2025. For example, West Virginia Code § 29A-3B-9(b), which became effective on July 11, 2025, provides for a rule to "become effective as initially promulgated" by the Board if the Legislature does not review and approve or reject a rule within fifteen months as opposed to the 1988 statute, which prohibited the Board from taking any action if the Legislature failed to act on a rule. *See* W. Va. Code § 29A-3A-13 (1988). The respondent further argues that West Virginia Code § 29A-3B-10, which became effective on July 11, 2025, permits the Board to promulgate emergency rules as opposed to the 1988 statute, which prohibited the Board from promulgating emergency rules unless the Secretary of State agreed that one was necessary. *See* W. Va. Code § 29A-3A-16a (1988). According to the respondent, another distinguishing characteristic is that the 2025 statutes "pay deference to the [Board's] expansive rule-making authority" unlike the 1988 statutes. *See W. Va. Bd. of Educ. v. Bd. of Educ. of the Cnty. of Nicholas*, 239 W. Va. 705, 717, 806 S.E.2d 136, 148 (2017) ("*Nicholas*") (discussed below). We disagree.

We acknowledge that the laws enacted by HB 2755 do not mirror the 1988 statutes that this Court considered in *Hechler* in all respects. However, they clearly address the same issue—the rulemaking authority of the Board. Upon our review of the statutes enacted by HB 2755 and those at issue in *Hechler*, we see that the 2025 statutes depart from those we considered in *Hechler* but in inconsequential ways. Simply put, the distinct portions of the 2025 statutes touted by the respondent do not amount to differences that convince this Court that *Hechler* does not control our analysis.

We also disagree with the respondent's assertion that the 2025 statutes "pay deference to the [Board's] expansive rule-making authority." In *Nicholas*, the case cited by the respondent in support of this assertion, this Court examined the school consolidation statute and noted that it "acknowledge[d] and pa[id] deference to the [Board's] expansive rule making authority . . . ." *Id*. 239 W. Va. at 717, 806 S.E.2d at 148. However, the school consolidation statute in *Nicholas* did *not* require the Board to submit its rules and regulations to the Legislature for approval prior to enactment, the primary consequence of the 2025 statutes. Even the 2025 amendments to the findings and definitions contained in West Virginia Code § 29A-3B-1 are at odds with the respondent's assertion. *See* W. Va. Code § 29A-3B-1 (2025) (providing, in part, that our Constitution gives the "Legislature primacy of authority over education in the State" and it "establish[es] the Legislature as the ultimate authority to approve, amend, or reject rules promulgated by the [Board]"). Although the laws enacted by HB 2755 allow the Board to promulgate rules and policies, they clearly require new rules to be submitted to the Legislature for its review, which may

result in a rule being approved, amended, or rejected. This does not pay deference to the Board's expansive rule-making authority. The practical effect of the laws enacted pursuant to HB 2755 is the same as the statutes at issue in *Hechler*—the Board must submit its rules to the Legislature for approval prior to enactment.[7]

Having concluded that *Hechler* is binding precedent on this issue, we must now determine whether we should depart from this precedent. "We are mindful that the doctrine of stare decisis instructs us to be cautious in deciding whether to overrule precedent." *State ex rel. Discover Fin. Servs., Inc. v. Nibert*, 231 W. Va. 227, 248, 744 S.E.2d 625, 646 (2013). However, as this Court has previously stated, "[o]ur precedents, whether set forth in an opinion or a memorandum decision, are not sacrosanct and will be reversed where warranted by the law[.]" *In re T.O.*, 238 W. Va. 455, 465, 796 S.E.2d 564, 574 (2017). In this regard, we are guided by Syllabus Point 2 of *Dailey v. Bechtel Corp*. where we held that, "[a]n appellate court should not overrule a previous decision recently

[7] Because we find that the practical effect of HB 2755 is the same as the statutes at issue in *Hechler,* we reject the respondent's argument that we need not overrule *Hechler* to find the laws enacted by HB 2755 to be constitutional, but need only to distinguish that case. The main constitutional problem with HB 2755 is that it subjects every new Board rule to legislative review and approval, amendment, or rejection. This is the same mechanism the Court declared to be unconstitutional in *Hechler*. In *Hechler*, we did not find that only a complete prohibition on the Board's rulemaking authority was unconstitutional; instead, we held that *any* statutory provision that interferes with the Board's rulemaking is unconstitutional. Syl. Pt. 2, in part, *Hechler*. Because *Hechler* declared that *any* interference with the Board's rulemaking is unconstitutional, we reject the respondent's assertion that the laws enacted by HB 2755 are distinguishable from the statutes we considered in *Hechler*. Stated differently, our ruling in *Hechler* clearly applies to HB 2775 and we find that the only path for the laws enacted by HB 2755 to be declared constitutional would be for this Court to overrule *Hechler*.

rendered without evidence of changing conditions or serious judicial error in interpretation sufficient to compel deviation from the basic policy of the doctrine of stare decisis, which is to promote certainty, stability, and uniformity in the law." *Id.*, Syl. Pt. 2, 157 W. Va. 1023, 207 S.E.2d 169 (1974).

The Board argues that the decision in *Hechler* remains the "preeminent case" regarding the general supervisory authority of the Board, and departure from its holding is not warranted. The respondent argues that *Hechler* is "legally unsound."

In support of its argument that *Hechler* should be overruled, the respondent takes direct aim at our analysis in *Hechler* describing it as "not compelling" and "legally unsound." The respondent complains that *Hechler* did not adequately "engage with the language of the West Virginia Constitution" or cases that addressed "the prescribed by law" language found in Article XII, Section 2 of the Constitution, which provides, in part, that "[t]he 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." Further, the respondent argues that the reasoning in *Hechler* is not convincing because it relied on precent that focused its analysis on a Kansas case construing distinct constitutional language which was not applicable to the West Virginia constitutional language at issue in *Hechler*. *See Bailey v. Truby*, 174 W. Va. 8, 321 S.E.2d 302 (1984). Additionally, the respondent argues that *Hechler* failed to note changes in constitutional wording and provided little support for its conclusion that the Board's rulemaking is within its general supervisory powers found in Article XII, Section 2 of the Constitution. Due to

these alleged insufficiencies, the respondent asserts that *Hechler* is subject to being overruled because "a precedent-creating opinion that contains no extensive analysis of an important issue is more vulnerable to being overruled[.]" *Hammons v. W. Va. Off. Of Ins. Comm'r.*, 235 W. Va. 577, 594 775 S.E.2d 458, 475 (2015). We acknowledge the respondent's arguments but find no merit to them.

Hechler has not sat idle since 1988; it has been examined and cited by this Court multiple times in the intervening years, so we have had the opportunity to modify or overrule it before today, but we have not done so. In 1990, this Court cited *Hechler's* holding that "[r]ule-making by the [Board] 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[.]" *Bd. of Educ. of Cnty. of Kanawha v. W. Va. Bd. of Educ*., 184 W. Va. 1, 4, 399 S.E.2d 31, 34 (1990). As noted earlier, in 1994, this Court described *Hechler* as "perhaps the preeminent case" on this Court's decisions to "consistently affirm[] and appl[y] the Constitution's grant of general supervisory authority to the State Board." *Gainer*, 192 W. Va. at 418-19, 452 S.E.2d at 734-35 (internal citation omitted). In 2017, we noted that *Hechler* "elaborated on the sanctity of the constitutionally-granted general supervisory authority of the [Board]." *Nicholas*, 239 W. Va. at 713, 806 S.E.2d at 144.

Our review reveals that *Hechler* properly and correctly addressed the issue before this Court in 1988—the rulemaking authority of the Board. Contrary to the respondent's arguments, the analysis in *Hechler* engaged with our Constitution and relied

upon precedent. The discussion in *Hechler* begins by acknowledging a 1981 case that examined several constitutional sections, holding that public education in West Virginia enjoys a "constitutionally preferred status." Syl. Pt. 1, *State ex rel. Bd. of Educ. v Rockefeller*, 167 W. Va. 72, 281 S.E.2d 131 (1981) ("The provisions of Article XII, Section 1, *et seq.*, as well as Article X, Section 5 of the West Virginia Constitution, when construed in light of our prior cases, gives a constitutionally preferred status to public education."). *Hechler* acknowledged that Article XII, Section 1 of the Constitution provides, "[t]he legislature shall provide, by general law, for a thorough and efficient system of free schools." *Hechler*, 180 W. Va. at 453, 376 S.E.2d at 841. The discussion contains numerous references to Article XII, Section 2, and relies upon this Court's precedent regarding interference with the Board's general supervision of the free schools. *See Bailey* 174 W. Va. at 18, 321 S.E.2d at 312 ("[A]ny statutory provision that interferes with the State Board of Education's 'general supervision of the free schools of the State' under article XII, § 2 of the West Virginia Constitution is void.").

While we do not disagree with the respondent that "a precedent-creating opinion that contains no extensive analysis of an important issue is more vulnerable to being overruled[,]" that is not the case with *Hechler*.[8] Instead, we find that *Hechler* thoroughly addressed the rulemaking authority of the Board, provided ample support for

[8] *Hammons*, 235 W. Va. at 594, 775 S.E.2d at 475 (2015). We note that the use of this quote in *Hammons* was directed at "unpublished memorandum decisions issued in workers' compensation appeals," not a signed opinion that has been described as the "preeminent case" on the issue before the Court. *Id.*

its ultimate holding, and has been consistently relied upon by this Court in the nearly four decades since it was decided.

Having found no reason to deviate from the doctrine of stare decisis and overrule *Hechler*, we now reaffirm our holding in Hechler that "[r]ule-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* . . . . " *Hechler*, 180 W. Va. at 455, 376 S.E.2d at 843, Syl. Pt. 2, in part, and declare the laws enacted pursuant to HB 2755 to be unconstitutional. Accordingly, we hold that the rulemaking by the State Board of Education is within the meaning of "general supervision" of state schools pursuant to Article XII, Section 2 of the West Virginia Constitution, and any statutory provision that interferes with such rulemaking is unconstitutional. Consequently, the laws enacted pursuant to HB 2755 are hereby declared to be unconstitutional.

As we did in *Hechler*, we now address whether the Board is entitled to a writ of mandamus. "This Court has consistently held that mandamus may be used to attack the constitutionality or validity of a statute or ordinance." *W. Va. Citizens Action Grp., Inc. v. Daley*, 174 W. Va. 299, 302, 324 S.E.2d 713, 717 (1984). Given the Board's attack on the constitutionality of the laws enacted by HB 2755, mandamus is clearly the proper mechanism to seek relief. With respect to the request in this case, we have previously held that, "[m]andamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies." *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. at 207, 151 S.E.2d at 103, Syl. Pt. 1. Further, "[a] writ of

mandamus will not issue unless three elements coexist - (1) a clear legal right in the petitioner to the relief sought; (2) a legal duty on the part of respondent to do the thing which the petitioner seeks to compel; and (3) the absence of another adequate remedy." Syl. Pt. 2, *State ex rel. Kucera v. City of Wheeling*, 153 W. Va. 538, 170 S.E.2d 367 (1969).

With respect to Policy 4334—the policy the Board submitted to the respondent, which policy the respondent refused to publish and which act triggered this dispute—our conclusion that the statutes at issue are unconstitutional affords the Board the legal right to file Policy 4334 with the respondent for publication in the State Register. As for the second element, it is undisputed that the respondent has a nondiscretionary, ministerial duty to establish and maintain the State Register. *See* W. Va. Code § 29A-2-1 (1982) ("It is the nondiscretionary, nondelegable duty of the Secretary of State to establish and maintain the State Register hereby created, and offer copies for subscription and public distribution in accordance with the provisions of this article."). Finally, this Court finds no other adequate remedy available to the Board.

IV. Conclusion

For the foregoing reasons, we grant the requested writ of mandamus and declare the laws enacted pursuant to HB 2755[9] to be unconstitutional and compel the

[9] *See* the 2025 versions of West Virginia Code §§ 29A-3B-1, 29A-3B-8, 29A-3B-9, 29A-3B-10, and 29A-3B-11.

respondent to accept the Board's submission of Policy 4334 and then to publish Policy 4334 in the State Register.

Writ granted.