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C. CASEY FORBES, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

No. 26-362, *State of West Virginia ex rel. Department of Human Services v. Honorable Bridget Cohee*

TRUMP, Justice, concurring:

I concur with the majority in this case to grant the DHS's requested writ of prohibition. The Respondent Judge's order of June 4, 2026, violates the separation of powers required by Article V § 1 of the West Virginia Constitution[1] by ordering that the DHS "file a [child abuse and neglect] Petition as a result of its investigation into the allegations set forth in the written referral on or before 14 days from entry of this Order." I write separately to explain that Respondent Judge's order is but one step further down a road of unconstitutionality on which the judiciary has been traveling for some time.

The majority distinguishes the order in this case from Syllabus Point 5 of *In re Randy H.,* 220 W. Va. 122, 640 S.E.2d 185 (2006):

> To facilitate the prompt, fair and thorough resolution of abuse and neglect actions, if, in the course of a child abuse and/or neglect proceeding, a circuit court discerns from the evidence or allegations presented that reasonable cause exists to believe that additional abuse or neglect has occurred or is

[1] Article V, § 1 of the Constitution of West Virginia provides as follows:

> The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the Legislature.

> imminent which is not encompassed by the allegations contained in the Department of Health and Human Resource's petition, then pursuant to Rule 19 of the *Rules of Procedure for Child Abuse and Neglect Proceedings* [1997] "the circuit court has the inherent authority to compel the Department to amend its petition to encompass the evidence or allegations.

The majority has correctly observed that the facts of the case before us differ from those in *Randy H.* (where an abuse and neglect petition was already pending before the circuit court). However, in my opinion, more is required here than merely distinguishing the present case from *Randy H*. This is so because the holding in *Randy H*. violates Article V § 1 of the West Virginia Constitution just as surely as the Respondent Judge's order in the case now before us.

Indeed, if one sought to draft language that absolutely and completely stands in conflict with the separation of powers required by Article V of our constitution, one would be hard pressed to craft anything more suited to that task than the final clause of Syllabus Point 5 from *Randy H*.:

> [T]he circuit court has the inherent authority to compel the Department to amend its petition to encompass the evidence or allegations."

The West Virginia Constitution confers no such power upon the judiciary. Rather, Article V, § 1 of the West Virginia Constitution strictly forbids it. *See* Syl. Pt. 1, *State ex rel. Barker v. Manchin*, 167 W. Va. 155, 155–56, 279 S.E.2d 622, 624 (1981) ("Article V, section 1 of the Constitution of West Virginia which prohibits any one department of our state government from exercising the powers of the others, is not merely a suggestion; it is part of the fundamental law of our State and, as such, it must be strictly construed and

closely followed."). What shall we see next? If a circuit court judge thinks an indictment should be written differently, shall the court be empowered to order the prosecuting attorney to add counts to it, or to order the prosecuting attorney to delete counts from it?

*Randy H.* is but another instance, among many, where, in response to a request, this Court has obliged with an unwarranted intrusion into the responsibilities and authority of one of our coordinate branches of the government of West Virginia.

Accordingly, while I concur with the majority to grant a writ of prohibition to DHS in this case, I would go further and overrule Syllabus Point 5 of *Randy H.*, and all other cases that have held similarly that the judiciary may usurp what is clearly the authority of the executive branch of this government.

For the above reasons, I respectfully concur.