

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 24-

**STATE OF WEST VIRGINIA, ex rel.
WEST VIRGINIA SECONDARY SCHOOL ACTIVITIES COMMISSION,**

Respondent Below, Petitioner

v.

**THE HONORABLE ANITA HAROLD ASHLEY,
JUDGE OF THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA,
POINT PLEASANT JUNIOR SENIOR HIGH SCHOOL,
AND FREDERICK W. HUNT, AS PARENT AND NEXT FRIEND
OF REECE J. L. HUNT, A MINOR,
Petitioners Below, Respondents.**

Civil Action No. CC-26-2024-P-70

VERIFIED PETITION FOR WRIT OF PROHIBITION

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Your petitioner, West Virginia Secondary School Activities Commission (hereinafter “Petitioner” or “WVSSAC”), appearing specially, by counsel, Stephen F. Gandee, Jeffrey A. Kimble, and Lindsay M. Stollings, hereby respectfully petitions this Court for a Writ of Prohibition directed to The Honorable Anita Harold Ashley, Judge of the Circuit Court of Mason County, West Virginia, prohibiting enforcement of the Order Granting Emergency Injunctive Relief (“Order”) entered by the said Court on November 11, 2024 and specifying the “play-in” games ordered therein. This injunction prevents the Petitioner from applying/using its Rule 127-3-10.7, which classifies its various member schools using a methodology determined by WVSSAC Board of Control (the “Board of Control”), WVSSAC Board of Directors (the “Board of Directors”), and the West Virginia State Board of Education Review Board (the “Review Board”). W. Va. Code R. § 127-3-10.7. Each had a part in determining the classification for football for the 2024 season.

The subject injunction requires Petitioner to 1) delay the WVSSAC Class AAA playoff by one week, 2) cause two (2) “play-in” games to be played on November 15, 2024, a) between Point Pleasant Junior Senior High School and St. Albans High School and b) between Hampshire High School and Capital High School, and 3) cause the winners of the two (2) “play-in” games to then advance to the AAA playoff.

Presently also pending before this Court is WVSSAC’s Verified Petition for Writ of Prohibition against the Honorable John D. Beane, Judge of the Circuit Court of Wood County West Virginia and Wood County Board of Education, whereby the WVSSAC seeks to overturn an injunction issued by the Circuit Court of Wood County on November 9, 2024. Pursuant to that Order, the WVSSAC was forced to change and then announced the manner in which it computed which teams would participate in the Class AAA West Virginia State Football

playoffs and who they would play. The WVSSAC, in compliance with that order, recalculated the playoff participants resulting in Class AAA schools Point Pleasant Junior Senior High School and Hampshire High School being eliminated after having previously qualified under the original calculation procedure. Also eliminated were Class AA Westside High School and Class A Tolsia High School. Westside High School, Tolsia High School and Hampshire High School have in addition to Point Pleasant Junior Senior High School now seek injunctive relief in their respective counties. App. 61-95, 96-108, and 109-116.

In response to this recalculation, which was solely a result of the Wood County Order, the Mason County Circuit Court found that the “WVSSAC’s actions in removing Point Pleasant Junior Senior High School (as required by the recalculation imposed by the Wood County Order) from the AAA playoffs is arbitrary and capricious.” In an apparent effort to remedy what the Mason County Circuit Court ruled was an arbitrary and capricious result, it entered the subject Order, requiring the “play-in” round to be played between the two (2) teams who were eliminated by the recalculation, Point Pleasant Junior Senior and Hampshire, and the two (2) teams who were added by the recalculation from the Wood County Order, St. Albans and Capital. In short, the two (2) teams who qualified under the WVSSAC rule but were disqualified by the Wood County ruling, would play the two (2) new teams who qualified only under the Wood County recalculation process and the winners of those two (2) games would then advance to the eventual playoff.

By fashioning what it deemed to be a remedy of the arbitrary and capricious process it determined originated in the Wood County Order and imposing it upon the WVSSAC and its member schools, the Circuit Court of Mason County also overstepped its legitimate powers.

I. QUESTIONS PRESENTED

- I. Did the Circuit Court of Mason County, West Virginia exceed its legitimate power and, therefore, commit error when it effectively modified the Wood County Order by imposing upon the WVSSAC the additional requirement of a play-in round for Class AAA?
- II. Did the Circuit Court of Mason County, West Virginia exceed its legitimate power and, therefore, commit error when it issued a preliminary injunction in this matter maintaining the calculation protocols of the Wood County Order, which it found to be arbitrary and capricious, ignoring the legitimately adopted season-long playoff calculations of the WVSSAC, and imposing a play-in requirement?
- III. Is a Writ of Prohibition appropriate in light of the facts and circumstances of this case?

II. STATEMENT OF THE CASE

The West Virginia Secondary School Activities Commission's Verified Petition for Writ of Prohibition arises from the "Order Granting Injunctive Relief" (the "Order") entered by the Circuit Court of Mason County, West Virginia on November 11, 2024. App. 37.

The initial Petition for Emergency Injunctive Relief (the "Petition") filed by Point Pleasant Junior Senior High School was filed in the Circuit Court of Mason County, West Virginia on November 11, 2024, at 2:32 p.m. App. 1. No hearing was held in the matter. At 5:41 p.m., approximately three (3) hours after the filing of the Petition, the Circuit Court of

Mason County, West Virginia issued its Order Granting Emergency Injunctive Relief which set forth that the Respondent below, WVSSAC, was enjoined from moving forward with the AAA State playoff, delaying the AAA playoff by one (1) week, causing games to be played on November 15, 2024, between Point Pleasant Junior Senior High School and St. Albans High School and between Hampshire High School and Capital High School, and mandating that the winners of those two (2) “play-in” games then move on to play in the Class AAA playoffs.

The Order presupposes that WVSSAC will incorporate the complete reclassification as required by the Wood County Order which would require the WVSSAC to change the calculation system for the football playoffs after all eleven (11) weeks of regular season play and one (1) week before the scheduled start of the playoffs and therefore eliminating Point Pleasant Junior Senior High School. Accordingly, it leaves in place the system which it found to be “arbitrary and capricious” and effectively modifies that order, only to reintroduce two (2) of the schools the Wood County Order would exclude. As a result, it leaves in place the arbitrary and capricious effects of the Wood County Order, particularly with respect to any schools participating in a classification other than AAA.

The Wood County Order having already been made the subject of a petition in this Court, whereby the WVSSAC is seeking a writ of prohibition to overturn said Order, the WVSSAC is sympathetic to the Mason County Circuit Court’s perspective regarding the Wood County Order. However, the Mason County Order merely extends the Wood County injunction to include a play-in round for the teams affected in Class AAA. By so doing, the Mason County Circuit Court committed the same error as the Wood County Circuit Court. It overstepped its

jurisdiction and, in an effort to mitigate the effect of the Wood County Order by giving the two (2) teams excluded in Class AAA an opportunity to play back into the playoff, it too usurped the legitimate and proper role of the WVSSAC in promulgating and instituting its rules.

III. SUMMARY OF ARGUMENT

The law in West Virginia is well settled regarding the authority of a Circuit Court to overturn the decisions of the WVSSAC when it applies its rules and regulations, including its administrative boards. In this matter, the Circuit Court of Mason County, West Virginia overstepped its jurisdiction and substituted its own decisions for that of the WVSSAC and its Board of Directors and the West Virginia Department of Education Board of Review by ordering that the WVSSAC delay the AAA playoff and conduct a “play-in” game for the four AAA teams whose qualification to play in the playoff had been directly affected by the Wood County Order. The Mason County Circuit Court thus compounded and added to the arbitrary and capricious ruling of the Wood County Circuit Court by further interfering with the WVSSAC’s properly promulgated rules.

The Circuit Court of Mason County, West Virginia in issuing its injunction further ignored and failed to properly balance the damages that will result to the Petitioner’s member schools by playing unnecessary games as the litigation of this matter is pursued and, therefore, the public by changing the tournament structure for football for the 2024 season at the 11th hour. Such ruling by the Circuit Court effectively prevents the WVSSAC from providing a fair playing field to all its student athletes and remaining member schools, and enforcing the rules promulgated by the member schools as allowed by law. The Mason County Order simply left the errant Wood County Order in place and further usurped the proper role of the WVSSAC

in order to attempt to affect a limited and targeted remedy for the most affected Class AAA schools, one of which lies within its jurisdiction.

IV. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The Petitioner does not request oral argument in this case. The WVSSAC submits that the facts and legal arguments to determine the issues brought before this Court by the Writ of Prohibition are adequately presented in the briefs and records submitted herein and the law is well settled. However, should the Court desire oral argument, the WVSSAC would be pleased to present.

V. ARGUMENT

A. Relief in prohibition is appropriate.

Pursuant to West Virginia Code, “[t]he 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. “The Supreme Court of Appeals shall have original jurisdiction in cases of habeas corpus, mandamus and prohibition.” W. Va. Code § 51-1-3.

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.

State ex rel. State v. Wilson, 239 W. Va. 802, 805, 806 S.E.2d 458, 461 (2017) (internal quotation omitted) (quoting Syl. Pt. 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996)).

(1) The WVSSAC has no other adequate means, such as direct appeal, to obtain the desired relief.

The decision of the Circuit Court of Mason County to grant a preliminary injunction is effectively a final decision on the issues by way of its impact in the present matters and any final hearing or appeal will be moot prior to the end of the 2024 football season. Further there is urgency in this review as the Court mandates games be played that otherwise would not under either the WVSSAC application or the injunction by the Wood County Circuit Court. The Petitioner simply seeks to enforce its member school rules, which requires that it classify football playing schools based on their existing classification as that classification was given to it by the Review Board. Before discovery and a final hearing and/or appeal, the Circuit Court of Mason County, West Virginia has substituted its own opinions for that of the WVSSAC and its Review Board and the Circuit Court of Mason County has exacerbated the Wood County Order by requiring a postponement and a “play-in” round in Class AAA. By the time this matter could conceivably be litigated, the 2024 football playoffs would have concluded.

(2) The WVSSAC member schools will be damaged or prejudiced in a way that is not correctable on appeal.

The WVSSAC member schools will be damaged or prejudiced in a way that is not correctable on appeal. As stated directly above, the football season will be completed before a final determination by the Circuit Court of Mason County, West Virginia can be obtained, and an appeal thereof could possibly be had. Moreover, participation by schools in the state football tournament not granted a right to compete in the same using WVSSAC's classification methodology, or the Wood County Order's methodology, cannot be undone.

There are legitimate injuries to WVSSAC member schools and their players, who have relied upon the ratings each week, losing the opportunity to participate in post season competition, and they will be forever deprived of that opportunity. For example, the Board of Education of the County of Wyoming (the "Wyoming County Board") has filed a Petition for Injunctive Relief in the Circuit Court of Wyoming County seeking an order to enjoin the WVSSAC from moving forward with the AA football playoffs as mandated by the Wood County Order. App. 61-95. In its Petition, the Wyoming County Board complains that the Wood County Order "fundamentally altered the calculations used to determine which teams would make the playoffs, retroactively changing the ranking and excluding Westside High from postseason competition." App. 62. Further, "(a)n injunction filed on behalf of 3 of those 112 member schools on the eve of the playoff's beginning disrupted the entire process by which playoff teams are selected." App. 68. Importantly, the Mason County Order would leave the effect of the Wood County Order in place and then expound upon it by requiring a "play-in" round.

- (3) The Circuit Court of Mason County, West Virginia's order exceeds its legitimate powers and is clearly erroneous as a matter of law.**

The Mason County Order exceeded its legitimate powers and is clearly erroneous as a matter of law. The act by the Circuit Court here is an often-repeated error and manifests persistent disregard to the WVSSAC’s discretion in administering its rules and regulations. Succinctly put, nothing in West Virginia jurisprudence “supports the . . . premise that courts are permitted to second guess the manner in which the [WV]SSAC applies its rules.” *State ex rel. W. Va. Secondary Sch. Activities Comm’n v. Webster*, 228 W. Va. 75, 80, 717 S.E.2d 859, 864 (2011).

The Supreme Court of Appeals of West Virginia first heard and determined the legitimate powers of the Circuit Courts of West Virginia when presented with actions from student/athletes challenging the authority of the WVSSAC and its member schools to promulgate and administer rules for athletic competition among themselves in 1968. At that time, it held: “[a]s a general rule, courts should not interfere with the internal affairs of school activities commissions or associations.” *State ex rel. W. Va. Secondary Sch. Activities Comm’n v. Oakley*, 152 W. Va. 533, 164 S.E.2d 775 (1968).

Later, this Court noted that “[u]nder the law that has been developed since *Oakley* and *Hamilton*, a [WVSSAC] rule is subject to challenge, like all properly promulgated legislative rules, on grounds that it exceeds constitutional or statutory authority and for being arbitrary or capricious.” *Mayo v. W. Va. Secondary Sch. Activities Comm’n*, 223 W. Va. at 95 n. 17, 672 S.E.2d at 231 n. 107 (2008) (citing *Oakley*, 152 W. Va. 533, 164 S.E.2d 775 and *Hamilton v. W. Va. Secondary Sch. Activities Comm’n*, 182 W. Va. 158, 160, 386 S.E.2d 656, 658 (1989)).

However, this is not to be confused with the mistaken premise that a trial court may question the manner in which a WVSSAC rule is applied. This mistake was initially made

by the Circuit Court of Wood County, and has been expanded upon by Mason County, in a manner that is similar to that made in *Webster. State ex rel. W. Va. Secondary Sch. Activity Comm'n v. Webster*, 228 W. Va. 75, 717 S.E.2d 859 (2011). This Court explained in *Webster*, “[c]ritically, the trial court's conclusion—that courts are entitled to examine the [WV]SSAC’s application of its rules—does not follow from our recognition in *Mayo* of the three grounds for challenging a properly promulgated legislative rule. Nothing in the jurisprudence of this Court supports the trial court’s foundational premise that courts are permitted to second guess the manner in which the SSAC applies its rules.” *Id.*, 228 W. Va. at 80, 717 S.E.2d at 864.

Further, as later stated by this Court, it is the “general rule” that “courts should not interfere with the internal affairs of school activities commissions or associations.” Syl. Pt. 3, *State ex rel. W. Va. Secondary Sch. Activities Comm'n v. Hummel*, 234 W. Va. 731, 769 S.E.2d 881 (2015) (quoting Syl. Pt. 2, *Oakley*, 152 W.Va. 533, 164 S.E.2d 775). Accordingly, this court has “made clear that *if* the [WVSSAC] does not exceed its constitutional or statutory authority, circuit courts must stay out of the [WVSSAC’s] internal affairs.” *Id.* at 736, 886.

In *Hummel*, the Court noted its previous holdings when it reiterated that “there is no fundamental or constitutional right to participate in nonacademic extracurricular activities in the ‘liberty’ or ‘property’ interest sense for purposes of due process analysis.” *Id.* Such holding was consistent with a prior holding in 1984, when this Court stated “[b]ecause participation in interscholastic athletics or other nonacademic extracurricular activities does not rise to the level of a constitutionally protected ‘property’ or ‘liberty’ interest, the appellant does not meet the threshold requirement under *Clarke, supra*, and therefore is not entitled to any procedural due process protections.” *Bailey v. Truby*, 174 W. Va. 8, 21, 321 S.E.2d 302, 315-16 (1984) (citing

Clarke v. W. Va. Bd. of Regents, 166 W. Va. 702, 709, 279 S.E.2d 169, 175

(1981)). Accordingly, the Circuit Court of Mason County, West Virginia exceeded its legitimate authority by substituting its judgment for that of the WVSSAC and its review boards and changing the playoff protocols at the end of the regular season.

(4) The Circuit Court of Mason County, West Virginia’s Order is an often repeated error or manifests persistent disregard for either procedural or substantive law.

The WVSSAC has recently experienced an onslaught of efforts by member schools including as a result of the Wood County injunction to disregard and circumvent the rulings of the WVSSAC, their own organization, with the aid of the Circuit Courts of West Virginia. Accordingly, this Court heard and ruled in *W. Va. Secondary Sch. Activities Comm’n v. J.G.*, that the Circuit Court of Logan County exceeded its authority when it found that it could enjoin the WVSSAC from applying its own rules prior to a student receiving an administrative appeal. *W. Va. Secondary Sch. Activities Comm’n v. J.G.*, No. 21-0836, 2023 W. Va. LEXIS 391 (Oct. 18, 2023). Additionally, *State ex rel. W. Va. Secondary Sch. Activities Comm’n v. Cuomo* and *State ex rel. W. Va. Secondary Sch. Activities Comm’n v. Sweeney* which involve decisions made by WVSSAC and its review boards have yielded similar holdings. *State ex rel. W. Va. Secondary Sch. Activities Comm’n v. Cuomo*, 247 W. Va. 324, 880 S.E.2d 46 (2022) and *State ex rel. W. Va. Secondary Sch. Activities Comm’n v. Sweeney*, No. 22-0268, 2022 W. Va. LEXIS 698 (Nov. 17, 2022).

This Court reaffirmed its prior holdings regarding the legitimate powers of the Circuit Court and granted such relief similarly as requested herein determining the injunction as issued exceeded the Circuit Court’s legitimate powers in each matter. Accordingly, the inability

of the WVSSAC to reasonably enforce its rules will be permanently damaged if the subject injunction is allowed to stand. The public result of the WVSSAC being thwarted in its efforts to enforce its rules is presently on statewide display as confusion abounds due to individual ad hoc rulings of some Circuit Courts.

(5) Whether the Circuit Court’s Order raises new and important issues of law of first impression.

The law with regard to the legitimate powers of Circuit Courts in this matter involving the WVSSAC is well settled.

B. The issuance of an injunction by the Circuit Court of Mason County, West Virginia leaving in place the Wood County Order’s and requiring an additional “play-in” game prior to the start of the playoff improperly applied facts to the existing law.

It is clear from a reading of the petition and the subject Order that the only reason the underlying petition was filed, and the only reason the Mason County Circuit Court granted the subject injunction, was that the WVSSAC, in complying with the Wood County Order, caused Point Pleasant Junior Senior High School to be excluded from the playoff, where it had been included in the playoff under the properly promulgated WVSSAC rule. In other words, though the WVSSAC is the subject of the petition and the subject Order, the real cause for objection lies with the Wood County Order.

The WVSSAC agrees that the Wood County Order is improper and has filed a petition with this Court seeking a writ to prohibit the enforcement of the Wood County Order. In that petition, the WVSSAC has explained why the Wood County Order failed to properly apply the facts to existing law. Because the Mason County Order did not reverse the Wood County Order or otherwise reinstate or reinstitute the WVSSAC’s protocol for selecting the playoff

contenders but, instead, contemplates or presupposes that the Wood County Order and the recalculated playoff structure it mandates will remain in place, the analysis of why the Wood County Order is improper applies here. For all the reasons already expressed in the WVSSAC's companion petition against the Wood County Order, it should not remain in place. If it does not remain in place, the basis for the Mason County Order disappears because both of the Class AAA schools who were excluded would be permitted a "play-in" game pursuant to that order, would instantly be returned to the playoff without the need for a "play-in" game. Accordingly, there is no irreparable harm, in fact, no harm at all, to the petitioner below if this Court grants the WVSSAC's respective writs. The playoff picture will return to what it was prior to the Wood County Order ordered recalculation, and Point Pleasant will return to the playoff without the need for the "play-in" game contemplated by the Mason County Order.

In contrast, the WVSSAC is substantially harmed by the Mason County Order, which usurps the proper functions of the WVSSAC. A Circuit Court only has the authority to review a WVSSAC rule on the grounds that it "exceeds constitutional or statutory authority and for being arbitrary or capricious." *Mayo*, 223 W. Va. 95 n. 17, 672 S.E.2d 231 n. 17. A Circuit Court does not have the authority to review WVSSAC's application of rules. In the instant matter the WVSSAC acted pursuant to direction by the Review Board and applied its Football Playoff Manual and football ratings plan. The general rule is that "the trial courts of this state have no business invading the legislative grant of authority given to the SSAC with regard to interscholastic sports." *State v. Webster*, 717 S.E.2d 859, 867 (W. Va. 2011). The WVSSAC and its member schools have a substantial interest in establishing and implementing their own agreed upon rules to govern their activities. Moreover, the ad hoc, piecemeal interference by Circuit Courts can, and here has, caused damage to the statewide system and all the other

participants in palpable and obvious ways. The playoff has been postponed. Many students do not know whether they will play and, if so, when or where, or whom they will play. A long-established system that has worked relatively well for a very long time has been cast into a state of confusion.

C. The Circuit Court of Mason County does not have jurisdiction to affect the rights of the other affected schools.

The Mason County Order requires the WVSSAC to cause “play-in” games to be played by St. Albans, Hampshire and Capital, none of which are located in Mason County. In *Meadows on Behalf of Professional Employees of West Virginia Educ. Ass’n v. Hey*, the Supreme Court of Appeals held in Syllabus Point 2:

“Under W. Va. Code § 53-5-3 (1981), the circuit court of one county does not have the authority to enjoin the actions of citizens occurring in other counties, except where the judge of the other county is interested in the proceeding and unable to act.” 184 W. Va. 75, 99 S.E.2d 657 (1990).

Accordingly, an Order of the Circuit Court of Mason County, West Virginia with regard to the requiring that games be played where the participating teams are not within Mason County is contrary to its statutory grant of authority to a Circuit Court under W. Va. Code § 53-5-3, and is contrary to the Supreme Court of Appeals of West Virginia in its holding in *Meadows on Behalf of Professional Employees of West Virginia Educ. Ass’n v. Hey*.

VI. CONCLUSION

WHEREFORE, your Petitioner, showing that the Circuit Court of Mason County, West Virginia erred in issuing a preliminary injunction in the matter below, prays that this writ be filed; that, given the impending 2024 West Virginia Football playoff series, the Order

Granting Emergency Injunctive Relief with regard to football be vacated and dissolved and that a rule do issue, directed to the Respondents, requiring them to show cause, if any they can, why a preemptory Writ of Prohibition should not issue against them prohibiting the additional requirements of the Order Granting Emergency Injunctive Relief and allowing the 2024 West Virginia Football Playoffs to proceed under the classification system as used the entire season; that this matter be set down for hearing in this Honorable Court, if necessary, as the parties might be reasonably accommodated; and for such other relief as to this Honorable Court deems appropriate and just, and as the nature of the case may require.

Dated this 14th day of November, 2024.

Respectfully submitted,

**WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION**

By Counsel
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CERTIFICATE OF SERVICE

I, Stephen F. Gandee, counsel for petitioner, West Virginia Secondary School Activities Commission, do hereby certify that on this 14th day of November, 2024, a true and correct copy of the foregoing Verified Petition for Writ of Prohibition was served upon the following counsel of record via File & ServeXpress:

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