

**IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA
FOURTEENTH JUDICIAL CIRCUIT**

**MIRANDA GUZMAN, individually and on
Behalf of her minor child, AG., et al.,**

Plaintiffs

v.

**Civil Action No. CC-41-2025-C-230
Hon. Michael E. Froble**

**WEST VIRGINIA BOARD OF
EDUCATION, et al.,**

Defendants.

**DEFENDANTS' AND INTERVENOR'S RESPONSE TO EMERGENCY
MOTION TO TRANSFER AND CONSOLIDATE**

This Court should deny the West Virginia Bureau for Public Health, Justin Davis, and Arvin Singh's (the Bureau Defendants) Emergency Motion to Transfer and Consolidate because the Court does not have subject matter jurisdiction over the case they ask this Court to transfer and consolidate. In their Motion, the Bureau Defendants ask this Court to assume jurisdiction over a petition for writ of mandamus case, *Hess v. West Virginia Department of Health*, No. 25-C-969 filed in the Circuit Court of Kanawha County, West Virginia (the "Kanawha County case"). But jurisdiction for writs of mandamus is limited to "the circuit court of the county in which the record or proceeding is to which the writ relates." W. Va. Code § 53-1-2.

In the Kanawha County case, the plaintiffs seek a petition for writ of mandamus prohibiting the Bureau Defendants from issuing religious exemptions. But the Bureau Defendants all sit in Kanawha County. They issue the challenged religious exemptions from Kanawha County. The Executive Order that directs the Bureau Defendants to grant religious exemptions was issued from Kanawha County. Simply put, the government action that the plaintiffs in the Kanawha County case challenge is conducted from West Virginia's seat of government, Charleston, located in

Kanawha County. Therefore, the proceeding to which that writ relates is in Kanawha County, and West Virginia Code § 53-1-2 limits jurisdiction to the circuit court of Kanawha County.

Not only does this Court lack jurisdiction over the Kanawha County case, the cases do not “arise from the same transaction or occurrence” under West Virginia Rule of Civil Procedure 42(b). True, both cases share some facts, such as religious exemptions. But it is not enough that cases share common facts; instead, West Virginia Rule of Civil Procedure 42(b) requires cases to share “operative facts.” *State ex rel. Taylor v. Nibert*, 220 W. Va. 129, 134, 640 S.E.2d 192, 197 (2006). These two cases do not, and this Court should decline to transfer and consolidate them—particularly because it lacks subject matter jurisdiction over the Kanawha County case.

BACKGROUND

In this case, Plaintiffs filed suit and alleged that the Defendants’ decision to not recognize their religious exemptions violated the Equal Protection for Religion Act (EPRA). Nowhere in Plaintiffs’ Amended Complaint do they seek relief under Executive Order 7-25; instead, the Amended Complaint seeks relief only under EPRA. *See* Am. Compl. at 44–45.

By contrast, the plaintiffs in the Kanawha County case seek no relief under EPRA. Instead, those plaintiffs seek a petition for writ of mandamus barring conduct directed by Executive Order 7-25. Specifically, they seek mandamus relief prohibiting the West Virginia Bureau of Public Health, which is located at 350 Capitol Street, Charleston, WV 25301, from issuing religious exemptions pursuant to Executive Order 7-25. *See, e.g.,* Mot. Transfer, Ex. A at 16–17.

ARGUMENT

A. This Court lacks jurisdiction to transfer and consolidate the Kanawha County case with this case.

Courts cannot act where they lack jurisdiction. *State ex rel. Smith v. Thornsbury*, 214 W. Va. 228, 233, 588 S.E.2d 217, 222 (2003) (“[S]ubject-matter jurisdiction may not be waived or

conferred by consent and must exist as a matter of law for the court to act.”). And jurisdiction over petitions for writ of mandamus is proper only in “the circuit court of the county in which the record or proceeding is to which the writ relates.” W. Va. Code § 53-1-2. This jurisdictional limitation applies even if venue would otherwise be proper in another county. *See Holley v. Feagley*, 242 W. Va. 240, 244, 834 S.E.2d 536, 540 (2019) (determining that jurisdiction for a petition for writ of mandamus related to a driver’s license was proper only in Kanawha County because the petition “explicitly refer[s] to his driver’s license and other records maintained by the DMV in Kanawha County, and, as such, the records related to Mr. Feagley’s writ of prohibition are in Kanawha County.”).

In *Holley*, a motorist filed a petition for writ of prohibition in Monongalia County seeking to bar the Department of Motor Vehicles (DMV) from revoking his driver’s license. 242 W. Va. at 242, 834 S.E.2d at 538. The DMV, represented by the Attorney General’s office, asserted that jurisdiction over the proceeding was proper only in “Kanawha County because the DMV’s records relating to drivers’ licenses are maintained there.” *Id.*, 242 W. Va. at 243, 834 S.E.2d at 539. The circuit court proceeded regardless. *Id.* The Supreme Court of Appeals of West Virginia reversed the circuit court and determined that jurisdiction was appropriate only in Kanawha County because the DMV maintained the relevant driver’s license records there. *Id.*

This case is no different. The plaintiffs in the Kanawha County case appear to be challenging “records” and “proceedings” that occurred in Kanawha County. For example, the Executive Order that forms the basis of their claim emanated from the Governor’s office at 1900 Kanawha Boulevard East #1, Charleston, WV 25305. The Bureau Defendants issue their improper religious exemption decisions from their office at 350 Capitol Street, Charleston, WV 25301. The

Bureau Defendants likely maintain the religious exemption records at this address as well.¹ Because both the “proceedings” and “records” that form the basis of the claims of the plaintiffs in the Kanawha County case relate to Kanawha County, jurisdiction is proper only there under W. Va. Code § 53-1-2. Therefore, this court lacks subject matter jurisdiction to transfer and consolidate the Kanawha County case with this case.

B. The case the Bureau Defendants ask this Court to transfer and consolidate does not arise out of the same operative facts as this one.

West Virginia Rule of Civil Procedure 42(b) requires more than common facts to consolidate cases. Instead, when a court consolidates cases, those cases must be premised on “the same transaction or occurrence.” To determine whether two cases involve the same transaction or occurrence, courts must examine whether “the same operative facts serve as the basis of both claims or the aggregate core of facts upon which the claim rests activates additional legal rights otherwise dormant in the defendant.” *State ex rel. Taylor v. Nibert*, 220 W. Va. 129, 133, 640 S.E.2d 192, 196 (2006) (quoting *In re Lazar*, 237 F.3d 967, 979 (9th Cir. 2001)).

For example, in *Nibert*, the Supreme Court of Appeals of West Virginia determined that a series of lawsuits based on Nationwide insurance policies were not properly consolidated because they did not share the same aggregate of operative facts. *Id.*, 220 W. Va. at 133–34, 640 S.E.2d at 196–97. Even though each of the cases involved Nationwide insurance policies, the cases “pertained to separate policies of insurance issued at different times under varying circumstances, and involved different levels of coverage.” *Id.* Based on the disparate policies, the Court determined the claims did not share common operative facts because each instance of “uninsured or underinsured motorist coverage arose as a result of separate motor vehicle accidents involving

¹ To the extent the Bureau Defendants challenge this, jurisdictional discovery is appropriate before this Court takes any action.

an uninsured or underinsured motorist.” *Id.* The Court ultimately determined that consolidation was improper even though “common questions of law may arise regarding whether Nationwide made commercially reasonable offers of uninsured and underinsured motorists coverage to insureds such as the petitioner.” *Id.*

Here, the Bureau Defendants have not shown that this case and the Kanawha County case share operative facts. True, the Bureau Defendants point out that both cases involve religious exemptions. But the basis for the claims in each case—and the attendant operative facts—are very different. In this case, the Plaintiffs allege the Defendants violated EPRA by refusing to recognize a religious exemption to West Virginia Code § 16-3-4. The case hinges wholly on the interpretation of EPRA and West Virginia Code § 16-3-4 and whether West Virginia Code § 16-3-4 can survive strict scrutiny if EPRA applies.

The Kanawha County case, by contrast, examines whether Executive Order 7-25 is a valid exercise of executive power. True, Executive Order 7-25 purports to interpret EPRA; however, the operative facts in that case are whether the Governor’s actions in issuing Executive Order 7-25 violated the West Virginia Constitution or the West Virginia Administrative Procedures Act. While the interpretation of EPRA may be implicated by those claims, that is the very sort of common question of law that *Nibert* recognized is insufficient to create common operative facts sufficient to consolidate under West Virginia Rule of Civil Procedure 42(b). Accordingly, this Court should deny the Bureau Defendants’ Emergency Motion to Consolidate.

C. The Secretary for the West Virginia Department of Health Arvin Singh cannot be an amicus and a party in the same case.

Another issue relates to the dual roles of the Secretary for the West Virginia Department of Health, Arvin Singh, and the Attorney General that would be created by a transfer of the Kanawha County case to Raleigh County. The Attorney General filed a brief in this case on behalf of amici

curiae Governor Patrick Morrisey and the Secretary for the West Virginia Department of Health Arvin Singh. *See* Mot. for Leave to File Amicus Brief, July 21, 2025. The amici did not seek to file a brief as a matter of right, but subject to the “broad discretion of the court” presumably since amicus briefs are not addressed in the West Virginia Rules of Civil Procedure. *Id.* at 2. But if the Kanawha County case is transferred to this Court and consolidated with this action, the Attorney General will both represent parties to the action, the Bureau Defendants, and represent the amici curiae. Additionally, Secretary for the West Virginia Department of Health, Arvin Singh, would be both a party in the action and an amicus. This overlap is impermissible. *Cf. State ex rel. Discover Fin. Servs., Inc. v. Nibert*, 231 W. Va. 227, 230 n.5, 744 S.E.2d 625, 628 n.5 (2013) (collecting cases for the proposition that it is improper to consider arguments raised only by amici because amici are categorically not parties). If this Court grants the motion to transfer and consolidate, it should strike the amicus brief the Attorney General filed on July 21, 2025.

CONCLUSION

For the foregoing reasons, this Court should deny the Bureau Defendants’ Emergency Motion to Transfer and Consolidate.

Date: August 22, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel does hereby certify that a true and correct copy of the foregoing *Defendants' and Intervenor's Response to Emergency Motion to Transfer and Consolidate* has been served on all parties of records via this Court's electronic filing system on the 22nd day of August 2025.

/s/ Christopher D. Smith

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