

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. _____

SCA EFiled: Dec 11 2025
03:23PM EST
Transaction ID 77980018

WEST VIRGINIA BOARD OF EDUCATION; NANCY J. WHITE, *in her official capacity as President of the Board of Education*; VICTOR GABRIEL, F. SCOTT ROTRUCK, L. PAUL HARDESTY, ROBERT W. DUNLEVY, CHRISTOPHER STANSBURY, DEBORAH SULLIVAN, GREGORY WOOTEN, SARAH ARMSTRONG TUCKER, and CATHY JUSTICE, *all in their official capacities as members of the West Virginia Board of Education*; MICHELE BLATT, *in her official capacity as State Superintendent of Schools*; RALEIGH COUNTY BOARD OF EDUCATION; LARRY FORD, RICHARD SNUFFER, CHARLOTTE HUTCHENS, MARIE HAMRICK, and MARSHA SMITH, *all in their official capacities as members of the Raleigh County Board of Education*; and SERENA L. STARCHER, *in her official capacity as Superintendent, Raleigh County Board of Education*,

Defendants Below, Petitioners

AND

JANE DOE,

Intervenor-Defendant Below, Petitioner

v.

MIRANDA G., *individually and on behalf of her minor child A.G.* and CARLEY H., *individually and on behalf of her minor child E.G.*,

Plaintiff Below, Respondent.

Honorable Michael E. Froble, Judge
Circuit Court of Raleigh County
Civil Action No. CC-41-2025-C-230

Intermediate Court of Appeals
Case No. 25-ICA-476

PETITIONERS' UNOPPOSED MOTION FOR DIRECT REVIEW

Pursuant to West Virginia Code § 51-11-5 and West Virginia Rule of Appellate Procedure 29(f), the Petitioners move this Court to exercise direct review of their appeal of the Circuit Court of Raleigh County’s November 26, 2025, Findings of Fact, Conclusions of Law, and Order Granting Permanent Injunctive and Declaratory Relief (the “Order”). Petitioners are authorized to represent that Respondents agree and do not oppose the relief requested in this motion.

On December 8, 2025, Petitioners filed a timely notice of appeal of the Order to the West Virginia Intermediate Court of Appeals (“ICA”), as required under W. Va. Code § 51-11-4(b)(1).

See West Virginia State Board of Education v. Miranda G, Case No. 25-ICA-476. Petitioners’ fully briefed petition for a writ of prohibition from the Raleigh County Circuit Court’s grant of class certification is currently pending before this Court, and this Court entered a stay of enforcement of the Order and further proceedings in the circuit court pursuant to that action on December 2, 2025. *See* Case No. 25-740. Because this case presents questions of fundamental public importance, because the case is already the subject of proceedings pending before and previously acted upon by this Court, and because exigent circumstances warrant immediate resolution by the State’s highest court, Petitioners respectfully submit that direct review by this Court is justified and necessary.

ARGUMENT

West Virginia Code § 51-11-5 and Rule 29(f) permit this Court to directly review “appeals that involve fundamental public importance and where exigencies, in which time is of the essence, warrant direct review.” W. Va. R. App. P. 29(f); *see also* W. Va. Code § 51-11-5(b). Both criteria, public importance and time-sensitive exigency, are satisfied here.

First, this appeal involves matters of fundamental public importance. Petitioners challenge the circuit court’s determination that the Equal Protection for Religion Act (EPRA) overrides West

Virginia Code § 16-3-4 (the Vaccine Law). The Vaccine Law ensures that all children who are physically capable of being vaccinated in West Virginia's public school system are vaccinated. Petitioners, and hundreds of other individuals throughout West Virginia, seek to use EPRA to opt out of the Vaccine Law and attend public school without vaccination, threatening herd immunity threshold levels and potentially spreading preventable diseases¹ through West Virginia communities. The Permanent Injunction Order affects the State's longstanding approach to preventing outbreaks of measles, pertussis, and other diseases. That issue matters—especially now.

Measles is proliferating in nearby states.² Pertussis killed three children in Kentucky in the past year.³ Childhood vaccination rates continue to decrease.⁴ Through it all, West Virginia's Vaccine Law serves as a bulwark for public health, driving West Virginia to the highest kindergarten vaccination rate in the nation.⁵ Whether EPRA allows parties, like Respondents, to

¹ For example, in 2000, measles was declared “eliminated” in the United States. Declining vaccine rates have led to the disease re-emerging, and every single state bordering West Virginia has experienced a case of measles in 2025. *See, e.g., U.S. Measles Cases Hit Highest Level Since Declared Eliminated in 2000*, JOHNS HOPKINS BLOOMBERG SCHOOL OF PUB. HEALTH (Dec. 4, 2025), <https://publichealth.jhu.edu/ivac/2025/us-measles-cases-hit-highest-level-since-declared-eliminated-in-2000>. West Virginia has not experienced any cases of measles in 2025 and hasn't had an outbreak for decades. *See* Center for Disease Control, *Measles Cases and Outbreaks* (Dec. 10, 2025), <https://www.cdc.gov/measles/data-research/index.html> (noting increasing measles outbreaks amid decreasing childhood vaccination rates).

² *See* Erika Edwards, *South Carolina measles outbreak is ‘accelerating,’ driving hundreds into quarantine*, NBC NEWS (Dec. 10, 2025), <https://www.nbcnews.com/health/health-news/measles-south-carolina-quarantine-utah-arizona-us-rcna248435> (noting vaccination rates below herd immunity threshold in counties where outbreaks are occurring).

³ *See* Caroline Neal, *3rd Kentucky infant dies from whooping cough. What we know*, COURIER JOURNAL (Dec. 4, 2025), <https://www.courier-journal.com/story/news/local/2025/11/25/3rd-kentucky-infant-dies-from-whooping-cough-more-cases-expected/87463068007/>.

⁴ *See Across the U.S., Childhood Vaccination Rates Continue to Decline*, JOHNS HOPKINS BLOOMBERG SCHOOL OF PUB. HEALTH (Dec. 4, 2025), <https://publichealth.jhu.edu/ivac/2025/across-the-us-childhood-vaccination-rates-continue-to-decline>.

⁵ *See Coverage with Selected Vaccines and Exemption Rates among Children in Kindergarten—United States, 2023-2024 School Year 2023-24*, CENTERS FOR DISEASE CONTROL, <https://www.cdc.gov/mmwr/volumes/72/wr/mm7245a2.htm>.

opt out of the longstanding Vaccine Law is of paramount public importance to West Virginia’s population—especially its teachers and its children.

Second, time-sensitive exigencies warrant review of this matter now. The interplay between the Vaccine Law, one of West Virginia’s most essential public health statutes, and EPRA, a relatively new statute, has, for months, injected uncertainty into West Virginia’s public school system. The sooner this issue is resolved, the sooner West Virginia families and education officials will know whether the Vaccine Law’s protections remain in place or whether its protections are eroded by the opt outs Respondents contend EPRA creates. A swift ruling clarifying this issue restores normalcy to the public school system and clarifies what, exactly, is required to attend public school in West Virginia. This Court has already signaled the gravity of these issues by issuing a stay of the Order. Given these circumstances, ICA review would delay critical statewide clarification, whereas direct review will allow immediate, authoritative guidance.

Finally, judicial economy also supports direct review. This direct appeal from the Circuit Court’s final order is related to a pending appeal of the circuit court’s preliminary injunction, Case No. 25-528,⁶ and a pending petition for writ of prohibition pertaining to the circuit court’s certification of a class action, Case No. 25-740. All of these proceedings arise from the same case. Without direct review, the parties would petition and appeal interlocutory issues to the Supreme Court of Appeals while appealing from a final judgment to the Intermediate Court of Appeals. Petitioners submit this is not the best use of the parties’ or the appellate courts’ resources. The legal questions presented are of such statewide magnitude that intermediate review is neither efficient nor beneficial. As the State’s highest court, this Court is uniquely positioned to resolve the questions at the heart of this litigation.

⁶ Petitioners anticipate filing a Joint Agreement to Voluntarily Dismiss the preliminary injunction appeal.

Accordingly, Petitioners ask this Court to take direct review of their appeal of the Permanent Injunction Order, currently pending before the ICA and styled as *West Virginia State Board of Education v. Miranda G*, Case No. 25-ICA-476.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 11, 2025, a copy of the foregoing ***Petitioners' Unopposed Motion For Direct Review*** was served using the Court's E-Filing system on the following:

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