

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 25-851

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WEST VIRGINIA PROFESSIONAL
CHARTER SCHOOL BOARD, RANDY SMITH,
PRESIDENT OF THE WEST VIRGINIA SENATE,
ROGER HANSHAW, SPEAKER OF THE WEST
VIRGINIA HOUSE OF DELEGATES, AND PATRICK
MORRISEY, GOVERNOR OF WEST VIRGINIA,

Defendants Below, Petitioners,

and

EASTERN PANHANDLE PREPARATORY ACADEMY,
WORKFORCE INITIATIVE WEST VIRGINIA,
WEST VIRGINIA ACADEMY, AND CLARKSBURG
CLASSICAL ACADEMY,

Intervenor-Defendants Below, Petitioners,

v.

SAM BRUNETT, ROBERT MCCLOUD, AND
JACLYN SANCHEZ,

Plaintiffs Below, Respondents.

RESPONSE TO MOTION TO STAY

Jeffrey G. Blaydes (WVSB # 6473)
Blaydes Law, PLLC
2442 Kanawha Blvd., E.
Charleston, WV 25311
(304) 342-3650
(304) 342-3650 (fax)
wvjustice@aol.com

Bren J. Pomponio (WVSB # 7774)
Mountain State Justice, Inc.
1217 Quarrier Street
Charleston, WV 23501
(304) 344-3144
(304) 344-3145 (fax)
bren@msjlaw.org

Joshua E. Weishart (WVSB # 12639)
(510) 295-8837
Joshua.Weishart@gmail.com

Lydia C. Milnes (WVSB # 10598)
Mountain State Justice, Inc.
1029 University Ave., Suite 101
Morgantown, WV 26505
(304) 326-0188
(304) 326-0189 (fax)
lydia@msjlaw.org

I. INTRODUCTION

The Motion to Stay jointly filed by the Defendants and the Intervenors below fails on procedural and substantive grounds. First, the Motion to Stay is procedurally improper because Petitioners to this appeal failed to comply with Rule 28 of the *West Virginia Rules of Appellate Procedure*. Substantively, the circuit court's carefully crafted limited relief, along with a self-imposed stay, is sufficient to preserve the status quo while Petitioners exercise their rights to appeal. Accordingly, and as is more fully set forth below, the Motion to Stay should be denied.

II. ARGUMENT

A. **Petitioners Failed to Comply with West Virginia Rules of Appellate Procedure, Rule 28(b).**

Motions for stays pending appeal in civil cases are governed by Rule 28(b) of the *West Virginia Rules of Appellate Procedure*:

(b) Motion for stay of lower tribunal's order pending appeal. If the lower tribunal should refuse to grant a stay, or if the relief afforded is not acceptable, the applicant may, move the appellate court with jurisdiction over the appeal, for a stay. The motion for stay shall show the reasons assigned by the lower tribunal for denying a stay or other relief, and further show the reasons for the relief requested and the grounds for the appeal. If the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements. Such parts of the record that are relevant shall be filed with the motion. Any party may file a response to a motion for stay within ten days of the filing of the motion for stay.

W. Va. R.A.P. 28(b). Petitioners here, Intervenors and Respondents below, jointly filed a Motion to Stay in the circuit court on December 4, 2025. Respondents to this appeal, Petitioners-Plaintiffs below, filed their Response to the Motion to Stay on December 23, 2025. The circuit court has not had the opportunity to rule on the Motion to Stay Petitioners filed in the lower tribunal. Therefore, the Motion to Stay filed in this Court fails to include "the reasons assigned by the lower tribunal for denying a stay or other relief." *Id.*

Rule 28(b) clearly contemplates that the circuit court first pass on motions to stay pending appeal. Indeed, here the circuit court granted the oral motion of Petitioners to stay its prospective judgment. Petitioners are now requesting that the circuit court extend its self-imposed stay pending

appeal indefinitely. Because Petitioners cannot demonstrate that the circuit court refused their request for an extended stay, and because Petitioners fail to identify any reason the circuit court denied their extended stay, the Motion for Stay should be denied.

B. Petitioners Cannot Demonstrate They Are Entitled to an Extension of the Circuit Court’s Stay Pending Appeal.

The circuit court already imposed a sixty-day stay of the judgment pending appeal. *See* Order Granting Perm. Inj., Denying Motions to Dismiss, and Granting Motion to Stay Pending Appellate Review (“Order Granting Perm. Inj.”) at 39 (Dec. 3, 2025). Additionally, it is notable that the circuit court’s Order only enjoins the West Virginia Professional Charter School Board (“PCSB”) from authorizing any new charter schools absent a vote of the people consistent with article twelve, section ten of the *West Virginia Constitution*. To be clear, this limited injunction does not directly impact the Intervenor, the President of the Senate, the Speaker of the House of Delegates or the Governor.

On November 12, 2025, the PCSB voted on an application for a new charter school to operate in Charleston submitted by Phalen Leadership Academies (“PLA”). On information and belief, the application was approved. Given the timing of the circuit court’s Order Granting a Permanent Injunction and Granting Motion to Stay, the PLA application is also not impacted by the Court’s Order. Accordingly, the pending Motion to Stay seeks for this Court to stay the circuit court’s limited injunction and permit the PCSB to continue to authorize new charter schools, without a vote of the people, while it pursues this appeal. However, the Intervenor and Defendants below cannot sustain their burden to impose an additional indefinite stay of the Court’s limited injunction.

First, because the Intervenor, the Legislative Defendants and the Governor are not impacted by the circuit court’s permanent injunction, their interests in the stay should not be considered. They are not harmed by an injunction against the PCSB. Moreover, their merits arguments are wholly irrelevant regarding a limited injunction enjoining the PCSB from authorizing new charter schools without a vote of the people. Petitioners here argue they suffer harm in light of the circuit court’s invitation for Respondents here to move for additional relief against the Legislative Defendants. Mot.

to Stay at 15. However, such harm is wholly speculative because at the expiration of the sixty-day stay, this appeal will deprive the circuit court of jurisdiction to enter further injunctive or mandamus relief. *See* Syl. Pt. 3, *Fenton v. Miller*, 182 W. Va. 731, 732, 391 S.E.2d 744, 745 (1990) (“Once this Court takes jurisdiction of a matter pending before a circuit court, the circuit court is without jurisdiction to enter further orders in the matter except by specific leave of this Court.”).

Second, the PCSB is unable to establish it is likely to prevail on the merits. The PCSB recycles the same flawed construction of the West Virginia Constitution the circuit court rejected in its Order Granting Permanent Injunction. Petitioners suggest that this Court has already signified that they will prevail on the merits in its previous opinion vacating the circuit court’s preliminary injunction. *See* Mot. to Stay at 5. However, in that opinion, this Court never reached the merits and reversed on standing grounds as to the Governor only. *See Blair v. Brunett*, 248 W. Va. 495, 504, 889 S.E.2d 68, 77 (2023) (“Because Respondents do not have standing for the injunctive relief at issue against Governor Justice, we reverse the circuit court's order and dissolve the preliminary injunction.”); *id.*, 248 W. Va. at 498 n.4, 889 S.E.2d at 71, n.4.

Third, the circuit court correctly concluded the balance of hardships weighs in favor of the Petitioners-Plaintiffs below. *See* Order Granting Perm. Inj. at 22 ¶ 78. The PCSB points to no new argument that shifts the balances of hardship to the PCSB if it were not permitted to authorize new charter schools after sixty days. The Intervenors and Legislative Defendants likewise are not impacted by the limited injunction, especially in light of this appeal, which deprives the circuit court of further jurisdiction while the appeal is pending. Therefore, the Intervenors and Legislative Defendants cannot demonstrate any harm that would justify an extension of the circuit court’s stay.

III. CONCLUSION

The circuit court already granted Petitioners’ Motion to Stay pending appeal. The Motion to Stay filed in this Court is premature because the Motion fails to identify any reasons for the circuit court’s refusal to provide an extension of the sixty-day stay. *See* W. Va. R.A.P. 28(b). Moreover, the

Motion to Stay provides no reasons in fact or law why the stay should be extended indefinitely in order to provide the PCSB with the continued ability to authorize new charter schools without a vote of the people, in further violation of article 12, section ten of the *West Virginia Constitution*. The Motion to Stay should accordingly be denied.

**Respectfully submitted,
SAM BRUNETT,
ROBERT McCLOUD,
and
JACLYN SANCHEZ
By counsel,**

Joshua E. Weishart (WVSB # 12639)
(510) 295-8837
Joshua.Weishart@gmail.com
Counsel for Petitioners

/s/ Bren J. Pomponio
Bren J. Pomponio (WVSB # 7774)
Mountain State Justice, Inc.
1217 Quarrier Street
Charleston, WV 23501
(304) 344-3144
(304) 344-3145 (fax)
bren@msjlaw.org
Counsel for Petitioners

Jeffrey G. Blaydes (WVSB # 6473)
Blaydes Law, PLLC
2442 Kanawha Blvd., E.
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(304) 342-3650 (fax)
wvjustice@aol.com
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Lydia C. Milnes (WVSB # 10598)
Mountain State Justice, Inc.
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Morgantown, WV 26505
(304) 326-0188
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CERTIFICARE OF SERVICE

I, Bren J. Pomponio, counsel for Respondents, Plaintiffs-Petitioners below, hereby certify that the foregoing “**RESPONSE TO MOTION TO STAY,**” was served on all counsel of record this 29th day of December 2025, by filing the same with the Court’s File & Servexpress system, which will generate electronic service on the following:

Michael R. Williams (WV Bar # 14148)

Michael.R.Williams@wvago.gov

*Counsel for Petitioners West Virginia Professional Charter School Board, Randy Smith, Roger
Hanshaw and Patrick Morrissey*

Dallas F. Kratzer III (WVSB # 12350)

dallas.kratzer@steptoe-johnson.com

*Counsel for Intervenor Eastern Panhandle Preparatory Academy, Workforce Initiative For Nurses
Academy and West Virginia Academy*

/s/ Bren J. Pomponio
Bren J. Pomponio (WVSB # 7774)
Mountain State Justice, Inc.