IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 25-851

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SAM BRUNETT, ROBERT McCLOUD, and JACLYN SANCHEZ,

Respondents-Plaintiffs,

v.

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,

Petitioners-Defendants,

and

WEST VIRGINIA ACADEMY; EASTERN PANHANDLE PREPARATORY ACADEMY; WORKFORCE INITIATIVE FOR NURSES ACADEMY; and CLARKSBURG CLASSICAL ACADEMY,

Petitioners-Intervenors.

BRIEF OF PETITIONERS

STEPTOE & JOHNSON PLLC

Dallas F. Kratzer III (WV Bar # 12350)
41 South High Street, Suite 2200
Columbus, OH 43215
(614) 458-9827
dallas.kratzer@steptoe-johnson.com

Counsel for Petitioners, Intervenor-Defendants Below

JOHN B. McCUSKEY
ATTORNEY GENERAL

Michael R. Williams (WV Bar # 14148)
Solicitor General
Mattie F. Shuler (WV Bar #14480)
Assistant Solicitor General
State Capitol Complex
1900 Kanawha Boulevard, East
Building 1, Room W-435
Charleston, West Virginia 25305
(304) 558-2021
mwilliams@wvago.gov
mshuler@wvago.gov

Counsel for Petitioners, Defendants Below

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ASSIGNMENTS OF ERROR

I. The circuit court erred by permitting claims to proceed against the Governor, Senate President, and House Speaker, as Respondents lacked standing to pursue those claims. These elected officials do not authorize public charter schools, and any order against them cannot redress Respondents' alleged injury.

II. The circuit court erred by denying the Senate President and House Speaker their legislative immunity and holding West Virginia Code § 55-17-3a(b) facially unconstitutional.

III. The circuit court erred in concluding that PCSB-authorized public charter schools are "independent free school district[s], or organization[s]" within the meaning of Article XII, Section 10 of the West Virginia Constitution. Public charter schools are neither "independent" nor created "out of" existing school district territory.

IV. The circuit court erred in mistakenly blending injunctive and mandamus relief, impermissibly directing legislative responses, and inappropriately exceeding its geographic jurisdiction.

INTRODUCTION

Seven public charter schools serve thousands of West Virginia students today. The schools came to be after the West Virginia Professional Charter School Board ("PCSB") lawfully authorized them under a statute that the Legislature—exercising its near plenary authority over public schools—passed, debated, and refined over several years. The schools then opened their doors, hired teachers, enrolled students, and became part of the communities they serve. These schools have since offered important opportunities for school choice. And they've already produced positive results; the first of those schools, for instance, was named the first finalist in West Virginia for the "Pulitzer Prize of education." Jim Bissett, *Star Pupil: W. Va. Academy Gets*

A Visit From the Yass Prize, Which Awarded It $500K in December, DOMINION POST (Feb. 2, 2024, 7:22 pm), https://tinyurl.com/3m6778s3.

But success stories like that were almost prevented from happening. Four years ago, the Circuit Court of Kanawha County preliminarily enjoined the Governor and others from enforcing the charter school law. Citing a provision of the West Virginia Constitution aimed at "independent free school districts" that no longer exist, the court called for pre-approval elections for every public charter school that intended to operate. This Court responded by unanimously dissolving that injunction, and the schools stayed open. *See Blair v. Brunett*, 248 W. Va. 495, 503-04, 889 S.E.2d 68, 76-77 (2023).

Somehow, though, here we are again. On remand from this Court, the same circuit court entered a sweeping permanent injunction ordering the West Virginia Professional Charter School Board to stop authorizing new charter schools. And it made plain that it expected both the Governor and the Legislature to do more—even though this Court had held that Respondents lacked standing to seek injunctive relief against the Governor. Legislative immunity, standing considerations, and longstanding precedent addressing Article XII, Section 10 were no barrier to the circuit court's misguided relief.

Like the preliminary injunction that came before it, this "stage one" permanent injunction rests on multiple jurisdictional errors. On standing, the circuit court ignored *Blair*'s holding that an injunction against the Governor cannot reach the PCSB, refused to apply the same logic to the Senate President and House Speaker, and shielded its own prior findings from challenge by misapplying the law-of-the-case doctrine to a now-dissolved preliminary injunction. On legislative immunity, the court struck down West Virginia Code § 55-17-3a(b) as facially

unconstitutional, even though constitutional challenges to legislation are properly directed at the executive officer who enforces the law, not the legislators who enacted it.

Beyond misapplying key jurisdictional principles, the circuit court also misapplied constitutional text. The court held that PCSB-authorized public charter schools are "independent free school … organization[s]" under Article XII, Section 10 of the West Virginia Constitution. But that holding stretches Section 10 beyond recognition. The provision was ratified in 1872 for one purpose: to prevent the Legislature from carving territory out of existing school districts and imposing new tax burdens without voter consent. This Court confirmed as much in *Herold v. McQueen*, 71 W. Va. 43, 75 S.E. 313 (1912), and *Casto v. Upshur County High School Board*, 94 W. Va. 513, 119 S.E. 470 (1923). Public charter schools take no territory from any district and impose no taxes. What's more, they are not independent, as they operate under comprehensive state oversight, exist only because a separate state agency authorized them, and can be closed by that same agency for failures to perform. So, Section 10 has no place here.

The circuit court compounded its jurisdictional and constitutional errors with procedural ones. It blended prohibitory injunctive relief with affirmative mandamus commands in a multi-stage remedial framework that dictates how the Legislature must respond. And it purports to reach public charter schools operating in counties across West Virginia despite the Kanawha County Circuit Court's limited territorial jurisdiction.

The Court should vacate the injunction and remand with instructions to dismiss.

STATEMENT OF THE CASE

I. The Constitution Gives The Legislature Oversight Over Public Education.

The West Virginia Constitution vests the Legislature with broad authority over public schools. Article XII commits public education to the Legislature. Section 1 commands that the "Legislature shall provide, by general law, for a thorough and efficient system of free schools."

W. VA. CONST. art. XII, § 1. Section 12 likewise directs the Legislature to "foster and encourage, moral, intellectual, scientific and agricultural improvement" and to provide for "such institutions of learning as the best interests of general education in the state may demand." *Id.* § 12.

One of the few narrow constitutional constraints on the Legislature's power is Article XII, Section 10, the provision at issue here. That section provides: "No independent free school district, or organization shall hereafter be created, except with the consent of the school district or districts out of which the same is to be created, expressed by a majority of the voters voting on the question." W. VA. CONST. art. XII, § 10. But this provision's history shows that it was included in the 1872 Constitution to govern efforts to reshape existing school districts. It was not meant to limit new public schools that operate parallel to current district lines.

During the post-Civil War era, West Virginia's public schools were administered by local townships, the precursors to magisterial districts. CHARLES H. AMBLER, A HISTORY OF EDUCATION IN WEST VIRGINIA 139 (1951). Each district typically "embraced . . . the boundaries of one township." *Kuhn v. Bd. of Educ. of Wellsburg*, 4 W. Va. 499, 510 (1871).

In this early era, the Legislature also created school districts independent of the township districts by passing special acts that carved out new school districts from the geographic territory of one or more existing township districts. *Casto*, 94 W. Va. at 517, 119 S.E. at 471. Typically, the Legislature placed these independent districts in "populous centers" of the State, ROBERT M. BASTRESS JR., THE WEST VIRGINIA STATE CONSTITUTION 334 (2d. ed. 2016), where students otherwise could not "receive instruction to the degree desired under the ordinary district system," *Casto*, 94 W. Va. at 516, 119 S.E. at 471. These districts were "independent of the general system in the length of the school term, employment of teachers, branches taught and to what extent, [and] internal management generally." *Id.* Often, independent districts would also levy higher taxes on

the property within their borders. *Kuhn*, 4 W. Va. at 500. But under the State's original Constitution, the voters in the existing township district did not need to approve the Legislature's decision to create an independent district.

The problems with these independent school districts came to a head in the late 1860s. In 1868, the Legislature passed a special act creating "the school district of Wellsburg" by "annex[ing]" the territory of the Wellsburg Township and parts of two other adjacent townships. *Kuhn*, 4 W. Va. at 500. In an 1871 lawsuit challenging tax levies that the new independent school district imposed, this Court affirmed the district's taxing power and held that the Legislature had "exclusive power to create independent school districts, without the assent of the citizens residing therein." Syl. pt. 2, *Kuhn*, 4 W. Va. 499.

The people responded the following year by ratifying Section 10 "to nullify" *Kuhn*. BASTRESS, *supra*, at 333. The 1872 Constitution preserved all existing school districts, township and independent, and authorized the Legislature to make future changes to those district lines with the local voters' consent. *See* W. VA. CONST. art. XII, § 6 (1872). When it came to new "independent free school district[s], or organization[s]," the Legislature had to get "the consent of the" voters in a "school district or districts out of which the same is to be created." W. VA. CONST. art. XII, § 10. The purpose of this language was to prevent the Legislature from unilaterally "removing part of [the] territory" of an existing school district to make a new independent district. BASTRESS, *supra*, at 333.

In the decades that followed Section 10's ratification, the Legislature continued to restructure the State's school system. And by the early twentieth century, West Virginia's school governance had grown unwieldy, with approximately 340 magisterial districts and 50 independent districts spread across the State.

Thus, in 1933, the Legislature enacted the County Unit Plan, abolishing all those districts and replacing them with 55 county-based school systems. *See Leonhart v. Bd. of Educ. of Charleston Indep. Sch. Dist.*, 114 W. Va. 9, 170 S.E. 418 (1933); *see also* W. VA. CODE § 18-1-3 (1933). This Court upheld the County Unit Plan as a valid exercise of the Legislature's "almost plenary" power over public education. *Leonhart*, 114 W. Va. at 14, 170 S.E. at 420. The elimination of every independent school district in the State confirmed Section 10's limited, historically specific scope and demonstrated the Legislature's broad authority to reorganize public education as it sees fit.

II. The Legislature Enacts HB 2012.

In line with its broad constitutional mandates under Article XII, Sections 1 and 12, the Legislature enacted West Virginia's first public charter school statute in 2019. *See* W. VA. CODE § 18-5G-1, *et seq.* (eff. June 24, 2019). That first statute designated county boards of education as the primary "authorizers" of public charter schools. *Id.* § 18-5G-2(2); *see also id.* § 18-5G-6 (explaining the application and authorization process for charter schools). The Legislature intended that this system would "empower new, innovative, and more flexible ways of educating" West Virginia's children, *id.* § 18-5G-1(b), and "[p]rovide expanded opportunities *within* the public school[]" system "for parents to choose among the school curricula, specialized academic or technical themes, and methods of instruction that best serve the interests or needs of their child," *id.* § 18-5G-1(b)(4) (emphasis added). But county school boards blocked any efforts to launch charter schools. *See generally, e.g.*, *State ex rel. W. Va. Acad., LTD v. W. Va. Dep't of Educ.*, No. 21-0097, 2021 WL 2435876, at *2 (W. Va. June 15, 2021) (memorandum decision) (describing two county school boards' refusal to authorize charter schools).

Thus, in 2021, the Legislature enacted House Bill 2012 ("HB 2012"), which created the PCSB as an additional authorizer. *See* W. VA. CODE § 18-5G-15(a). The PCSB is a distinct state

agency of five members who are appointed by the Governor with the advice and consent of the Senate. *Id.* § 18-5G-15(b). It exercises independent statutory authority to approve or reject public charter school applications, and the Governor holds no veto power over those decisions. *Id.* § 18-5G-6. It "report[s] directly to" the State Board of Education, *id.* § 18-5G-15(a), and it is subject to the State Board's "general supervision" over the "standards for student performance," *id.*; *see id.* § 18-2E-5.

West Virginia's public charter schools are public institutions. *See* W. VA. CODE § 18-5G-1(c) ("[P]ublic charter schools . . . are public schools and are part of the state's public education system."). They must be non-profit, secular, and non-discriminatory. *Id.* § 18-5G-3(a). They must enroll any student who would otherwise attend a non-charter public school, and they cannot charge tuition. *Id.* § 18-5G-3(a)(8), (b)(6). They must provide the "same minimum number of" instructional days and meet the "same student assessment requirements" as non-charter public schools. *Id.* § 18-5G-3(c)(5), (6). They have no power to levy taxes. *Id.* § 18-5G-3(b)(2). They must meet state academic standards and comply with state and federal law. *Id.* § 18-5G-3(a)(1). Their "roles, powers, responsibilities, operational duties, accountability, and performance expectations" are governed by state law and their charter contracts with state authorizers. *Id.* § 18-5G-2(4). And if they fail, they face consequences from the State—including closure. *Id.* § 18-5G-10.

County boards of education maintain authority to "establish attendance zones within" their counties to "designate" the *non-charter* schools students must "attend." W. VA. CODE § 18-5-16(a). A public charter school's recruitment area "does not negate" those established "attendance" areas. *Id.* § 18-5G-11(a)(4). Nor does it create a requirement that "any student residing in the" recruitment area attend the public charter school. *Id.* § 18-5G-11(a)(3). In other words, public

charter schools do not change any existing school district lines; they provide another option *within* the county system.

Today, seven public charter schools authorized by the PCSB serve thousands of students across the Mountain State. Five brick-and-mortar public charter schools—West Virginia Academy, Eastern Panhandle Preparatory Academy, Workforce Initiative for Nurses Academy, Clarksburg Classical Academy, and Wisdom Academy—provide in-person instruction, while two additional virtual public charter schools serve students statewide. *Authorized Charter Schools*, W. VA. PROF. CHARTER SCH. BD., https://tinyurl.com/m6t4rhmd (last visited Apr. 1, 2026).

III. The Circuit Court Enjoins Enforcement Of HB 2012.

Respondents—apparent opponents of public charter schools—filed suit against the Governor, Senate President, and House Speaker in Kanawha County Circuit Court in September 2021. JA013-JA029. Respondents alleged that PCSB-authorized public charter schools are unconstitutional and sought three forms of relief: (1) a writ of mandamus ordering a county voter referendum before any public charter school could be authorized, (2) an injunction preventing the operation of any PCSB-authorized public charter school absent such a vote, and (3) a declaration that HB 2012 violates Article XII, Section 10 of the West Virginia Constitution. *Id*. They did not sue the PCSB.

In January 2022, the circuit court issued a preliminary injunction against the Governor—requiring him to order the PCSB (on threat of removal) to stop authorizing public charter schools—and denied the State officials' motions to dismiss. JA193.

IV. This Court Vacates The Injunction.

In 2023, after first staying the circuit court's preliminary injunction, this Court unanimously dissolved that injunction for lack of standing because the Governor "does not have the ability to authorize public charter schools." *Blair*, 248 W. Va. at 501, 889 S.E.2d at 74. That

power belongs to the PCSB instead. This Court similarly explained that the PCSB cannot be bound by injunctive relief issued against the Governor because "[t]he PCSB does not act on behalf of [the] Governor" and "did not acquire its authority to authorize charter schools from [the] Governor." *Id.* at 503 n.12, 889 S.E.2d at 76 n.12.

This Court further found the circuit court's similar treatment of the Senate President and House Speaker "concerning," highlighting how the court had "not identif[ied] the specific conduct" those officials could be ordered to adjust. *Blair*, 248 W. Va. at 500 n.9, 889 S.E.2d at 73 n.9. The Court declined to reverse the denial of the other State officials' motions to dismiss, however, because it concluded that the sole issue before it was the preliminary injunction against the Governor. *Id.* at 498 n.4, 889 S.E.2d at 71 n.4.

V. The Circuit Court Enjoins Enforcement Of HB 2012 Again.

On remand, Respondents amended their complaint, adding the PCSB as a defendant while again naming all three State officials despite this Court's rulings and warnings in *Blair*. JA245. They once more sought declaratory, injunctive, and mandamus relief. *Id*. Because the requested relief would have required the closure of then-operating public charter schools, the four brick-and-mortar schools in existence at the time—West Virginia Academy, Eastern Panhandle Preparatory Academy, Workforce Initiative for Nurses Academy, and Clarksburg Classical Academy—intervened. JA411, JA607.

Petitioners moved to dismiss. JA313, JA345, JA414. The State officials pointed to this Court's holding in *Blair* and sought dismissal because they still lacked authority to authorize public charter schools. Any order against them could not redress Respondents' injury. JA321-JA327. The Senate President and House Speaker also raised legislative immunity as a separate, independent bar to suit under both Article VI, Section 17 of the Constitution and West Virginia Code § 55-17-3a(b). JA328-JA330. The PCSB and the intervening public charter schools

separately moved to dismiss because, among other things, Section 10 has no application to public charter schools. JA359-JA364, JA417-JA424. Charter schools would cause harm to thousands of West Virginia students currently attending them. JA530-532.

The circuit court held a permanent injunction hearing on November 1, 2024. JA632. Three witnesses testified. Dr. James Paul, the PCSB's Executive Director at that time, described the PCSB's application, oversight, and renewal processes, including the statutory requirements that charter school applicants must satisfy before authorization, the annual reporting and independent audit obligations charter schools must meet, and the PCSB's authority to close a school that fails to perform. JA649–JA706. Dr. Paul also testified about enrollment across all charter schools (about 3,500 students), the loss of roughly $12 million in federal grant funding and $700,000 in Yass Prize money that closure would entail, and the innovative educational programs the schools provide—including the Workforce Initiative for Nurses Academy's partnership with Bridge Valley Community and Technical College to prepare students for nursing and advanced manufacturing careers. JA670–JA676. Sarah White, a senior at WIN Academy, testified about how she's pursued a nursing career through WIN Academy's dual-enrollment program, describing the college-level coursework she would not have received at a traditional public school and the disruption closure would cause to her senior year and career plans. JA722–JA730. Jodi Dalton, the Student Success Manager at West Virginia Academy, testified about the school's direct-instruction method, its leveled learning approach that allows students to advance or receive additional support based on individual performance, and the administrative burden of student transfers in the event of closure. JA733–JA767.

Over a year after the hearing, the circuit court issued a permanent injunction and denied all motions to dismiss. JA946.

On standing, the court held that by adding the PCSB, Respondents cured the jurisdictional defects *Blair* identified. The court also retained the State officials on the theory that they have a "general" constitutional duty to ensure compliance with the Constitution. JA977. The court further noted how the Legislature has an affirmative constitutional duty to maintain free and efficient schools under Article XII, Section 1, evidently presuming that creating charter schools could somehow violate that duty. JA973. It concluded that it could "order the Legislature to legislate." JA979. It likewise held that the Governor had the power to direct a special election, JA980, directly contravening this Court's conclusion that the Governor "is not statutorily authorized" to call such an election (and thus had no ability to act), *Blair*, 248 W. Va. at 503, 889 S.E.2d at 76. And the court invoked the law-of-the-case doctrine, reproducing wholesale the factual findings and legal conclusions from its 2022 preliminary injunction order—the order this Court reversed for lack of jurisdiction—and declaring them binding on Petitioners. JA946-JA947.

The circuit court also held West Virginia Code § 55-17-3a(b)—the legislative immunity statute—facially unconstitutional. JA982. It did not address the independent constitutional ground for the House Speaker and Senate President's immunity under Article VI, Section 17. *Id*.

On the merits, the court held that "[t]here is no question that" PCSB-authorized public charter schools are "independent" organizations created "out of" existing school districts within the meaning of Section 10. JA957. It thus permanently enjoined the PCSB from authorizing any new public charter school unless and until a majority vote of county voters is obtained. JA983. The injunction purports to reach public charter schools across the entire State, far beyond the Kanawha County Circuit Court's territorial limits. It also ominously warned that further relief could issue if "the permanent injunction [did not] result in corrective legislative or executive actions consistent with th[e] Order." *Id*.

VI. This Court Stays The Injunction.

In late January 2026, this Court stayed the circuit court's injunction, permitting public charter schools to remain open and authorizations to continue during this appeal.

SUMMARY OF THE ARGUMENT

I. Ignoring this Court's decision in *Blair v. Brunett* does not make it go away. What was true then remains true now: Respondents lack standing to sue the Governor, Senate President, and House Speaker because none of those officials authorize public charter schools, and no order against them could stop the PCSB from doing so. Adding the PCSB as a co-defendant does not cure those defects because the individual state officials neither caused nor can redress Respondents' alleged injury. The circuit court's theory that declaratory relief demands a more relaxed standing analysis lacks support. It would effectively eliminate the causation and redressability elements of standing whenever a litigant labels its claim "declaratory." Mandamus likewise fails. Section 10 imposes no affirmative, nondiscretionary duty on the Governor or legislators to conduct a special election.

II. Legislative immunity independently compels dismissal of the Senate President and House Speaker. Article VI, Section 17 guarantees that legislators cannot be questioned in any other place for any speech or debate in either house. And a lawsuit seeking to invalidate legislation and implicitly demanding that legislators introduce remedial bills is exactly what legislative immunity forecloses. West Virginia Code § 55-17-3a(b) codifies this principle. The circuit court's ruling that the statute is facially unconstitutional is wrong.

III. Respondents cannot meet their heavy burden to overcome the presumption of constitutionality that PCSB-authorized public charter schools enjoy. Section 10 was ratified in 1872 to prevent the Legislature from taking geographic territory away from existing school districts and imposing new tax burdens without voter consent. Public charter schools take no

territory from any existing district and impose no new taxes. District boundaries remain exactly as they were, and taxes remain the same. Public charter schools are not "independent" in the sense Section 10 addresses, either. They operate under comprehensive state oversight, remain subject to the same academic standards as other traditional public schools, and can be closed by the state if they fail. This Court's decisions in *Herold* and *Casto* confirm Section 10's territorial and fiscal focus. Because public charter schools trigger neither concern, Section 10 does not apply.

IV. The injunction is procedurally defective, too. It improperly blends prohibitory injunctive relief with affirmative mandamus commands, directing the Legislature to provide a specific remedial mechanism rather than simply declaring what the Constitution forbids. And it exceeds the circuit court's territorial jurisdiction by purporting to close schools in counties across West Virginia. This Court should reverse the circuit court's permanent injunction and remand with instructions to dismiss.

STATEMENT ON ORAL ARGUMENT AND DECISION

Petitioners request oral argument. This case presents constitutional questions of first impression regarding Article XII, Section 10's application to public charter schools, together with controlling questions about legislative immunity and the application of this Court's standing decision in *Blair v. Brunett*. These issues affect the continued operation of public charter schools serving thousands of West Virginia students, and oral argument would materially assist the Court in resolving them. *See* W. VA. R. APP. P. 20.

STANDARD OF REVIEW

This Court will dissolve a permanent injunction on "a clear showing of abuse of discretion." Syl. pt. 1, *Chapman v. Catron*, 220 W. Va. 393, 647 S.E.2d 829 (2007) (cleaned up). But every dispositive issue in this appeal—standing, legislative immunity, constitutional interpretation of Article XII, Section 10, and the propriety of the injunction's remedial

framework—presents a pure question of law reviewed de novo. Questions of law are reviewed de novo. Syl. pt. 3, *State v. Vance*, 207 W. Va. 640, 535 S.E.2d 484 (2000). The Court reviews a declaratory judgment de novo. *Orville Young, LLC v. Bonacci*, 246 W. Va. 26, 31, 866 S.E.2d 91, 96 (2021). Standing presents a jurisdictional question subject to de novo review. *Morrisey v. W. Va. AFL-CIO*, 239 W. Va. 633, 637, 804 S.E.2d 883, 887 (2017). Constitutional interpretation is likewise de novo. *Burgess v. Porterfield*, 196 W. Va. 178, 469 S.E.2d 114 (1996).

ARGUMENT

The circuit court greenlit expansive claims against two separate branches of government, declared two different laws facially unconstitutional, entered sweeping and novel relief against multiple parties (with little regard for the separation of powers), and misapprehended the scope of its own geographic and institutional authority. For any or all these reasons, the Court should vacate the injunction.

I. Respondents do not have standing to sue the Governor, Senate President, and House Speaker.

Respondents still cannot sue the State officials. Standing is a jurisdictional prerequisite, and "any decree made by a court lacking jurisdiction is void." *State ex rel. TermNet Merch. Servs., Inc. v. Jordan*, 217 W. Va. 696, 700, 619 S.E.2d 209, 213 (2005); *see also* syl. pt. 7, *State ex rel. St. Clair v. Howard*, 244 W. Va. 679, 856 S.E.2d 638 (2021) (When a party lacks standing, the circuit court must dismiss the case rather than take "further action." (cleaned up)). Respondents must demonstrate standing "separately for each form of relief sought" against each defendant. *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000). They cannot do so here. In *Blair v. Brunett*, this Court resolved the causation and redressability questions as to the Governor, and by extension the legislative officials. Adding the PCSB as a party on remand did nothing to cure those defects. Respondents likewise fail to satisfy the

heightened standing requirements for mandamus relief. And the circuit court compounded these errors by improperly invoking the law-of-the-case doctrine to insulate its dissolved 2022 findings from challenge.

A. *Blair v. Brunett* settled the standing question.

Blair already decided the standing question, and the answer has not changed. This Court held that Respondents could not satisfy the causation or redressability elements of standing as to the Governor; it likewise said the Senate President and House Speaker were likely not proper defendants for similar reasons. Syl. pt. 5, *Findley v. State Farm Mut. Auto. Ins. Co.*, 213 W. Va. 80, 576 S.E.2d 807 (2002) (requiring injury-in-fact, causation, and redressability); *State ex rel. W. Va. Univ. Hosps.-E., Inc. v. Hammer*, 246 W. Va. 122, 132, 866 S.E.2d 187, 197 (2021) ("[A]ll three elements must be present.").

The Governor lacks charter-authorization power; by this point, that's not in dispute. The statute said as much already. Under the plain text, the Governor "does not have the ability to authorize public charter schools." *Blair*, 248 W. Va. at 498, 889 S.E.2d at 71. Rather, the PCSB exercises that power independently, and the Governor holds no veto over its decisions. *See* W. VA. CODE § 18-5G-6. Because the Governor can neither authorize nor reject a public charter school application from being authorized, neither causation nor redressability can be satisfied. As this Court put it, the circuit court's original injunction impermissibly "require[d] a party ([the] Governor []) to order a nonparty (the PCSB) to cease performing a function." *Blair*, 248 W. Va. at 503-04, 889 S.E.2d at 76-77. That reality has not changed. The Governor still cannot authorize public charter schools, still cannot direct the PCSB's decisions, and still cannot redress Respondents' alleged injury.

The circuit court presumed that the Governor could call a special election, even though *Blair* said otherwise. 248 W. Va. at 502-03, 889 S.E.2d at 75-76. In support, it invoked one line

from *Casto*: "[T]he constitutional mandate would be carried out, and the act would be declared unconstitutional." 94 W. Va. at 517, 119 S.E. at 472. But *Casto* never said that ordering officials to hold an election is the "constitutional mandate" for a Section 10 violation. Nor could such power be implied from context: The plaintiffs in that case sought injunctive relief to stop a new county board from purchasing school property and collecting taxes. *Id.* at 514, 119 S.E. at 470. So *Casto* does not support the circuit court's leap from that limited preventive relief to the power to order the Governor to order an election. *See also Bd. of Educ. of Flatwoods Dist. v. Berry*, 62 W. Va. 433, 439, 59 S.E. 169, 171 (1907) (describing how special election under Section 10 was called by circuit court, but circuit court appointed officers to conduct it); *Rader v. Bd. of Educ. of Beaver Dist.*, 57 W. Va. 220, 223, 50 S.E. 240, 241 (1905) ("The election [required under Section 10] was required to be superintended, conducted, and the result thereof ascertained and declared, by the officers appointed for that purpose by the [independent school district] board.").

That disconnect might explain why, before now, none of the plaintiffs in Article XII, Section 10 cases sought affirmative relief on an election theory. They pursued straightforward injunctions to stop officials from taking specific action to enforce laws they thought violated the Constitution. *See Leonhart*, 114 W. Va. 9, 170 S.E. 418 (suit to enjoin school district from surrendering property to newly created county board); *Herold*, 71 W. Va. at 44, 75 S.E. at 314 (1912) (suit to enjoin sheriff from collecting taxes for new school); *see also Berry*, 62 W. Va. at 439, 59 S.E. at 171 (arguing election irregularities meant school board could not take contested land). And even looking outside the Article XII context, the circuit court's cases fared no better. In one, the constitutional convention passed an ordinance making it "the duty of the governor … to issue his writ … providing for a special election" to fill certain vacancies. *Hawver v. Seldenridge*, 2 W. Va. 274, 279, 1867). Another involved West Virginia Code § 3-10-2(b), which

requires the acting governor to "issue a proclamation [fixing the] time for a [] statewide election" for the next governor. *State ex rel. W. Va. Citizen Action Grp. v. Tomblin*, 227 W. Va. 687, 697, 715 S.E.2d 36, 46 (2011). Neither of these cases supports the notion that courts can craft similar "election-calling" mechanisms all on their own.

Blair's logic closed the door on claims against Senate President and House Speaker as well. *Blair* rejected any agent-principal theory, holding that the PCSB "does not act on behalf of [the] Governor" and "did not acquire its authority to authorize charter schools from [the] Governor." 248 W. Va. at 503 n.12, 889 S.E.2d at 76 n.12. If the Governor—who at least appoints PCSB members—lacks the requisite connection to public charter school authorization, then the Senate President and House Speaker necessarily do, too. They play no role whatsoever in the PCSB's authorization decisions. *Blair* signaled as much, finding the circuit court's failure to identify any specific basis for keeping the Senate President and House Speaker in the case "concerning." *Id.* at 500 n.9, 889 S.E.2d at 73 n.9. The circuit court ignored that warning and kept them in anyway—without identifying any new basis that *Blair* had not already considered and rejected.

B. Adding the PCSB as a defendant did not cure Respondents' standing defects.

Adding the PCSB to this lawsuit on remand did nothing to establish standing against the Governor, Senate President, or House Speaker. The standing analysis runs defendant by defendant, not case by case. *Laidlaw*, 528 U.S. at 185. The PCSB's presence in the lawsuit cannot supply the causal connection and redressability that *Blair* found lacking as to the State officials.

The circuit court's reasoning to the contrary impermissibly conflates standing as to the PCSB with standing as to the State officials. The court concluded that adding the PCSB cured the earlier defects because it can now enter an order against the actual authorizer. But the Governor still cannot authorize or de-authorize public charter schools. The Senate President and House Speaker still have no "implementation" "role." S*tate ex rel. W. Va. Citizens Action Grp. v. W. Va.*

Econ. Dev. Grant Comm., 213 W. Va. 255, 264, 580 S.E.2d 869, 878 (2003). The PCSB's presence does not transform the State officials into parties whose conduct caused—or can redress—Respondents' alleged injury.

Here again, the circuit court's contrary conclusions are re-runs of rejected arguments from *Blair*. The theory that the State officials have a general constitutional duty to ensure executive agencies comply with the Constitution is foreclosed by *Blair*. As this Court explained: "[T]he mere fact that a governor is under a general duty to enforce state laws does not make him a proper defendant in every action attacking the constitutionality of a state statute." *Blair*, 248 W. Va. at 502, 889 S.E.2d at 75 (quoting *Disability Rights S.C. v. McMaster*, 24 F.4th 893, 901 (4th Cir. 2022)). If general constitutional duties supplied standing, every state official would be a proper defendant in every constitutional challenge. This Court rejected that result. *Id.* The agency-principal theory likewise fails for the same reasons *Blair* identified. The PCSB's authority derives from statute, not from the Governor. *See* W. VA. CODE § 18-5G-15(a). The Governor cannot direct the PCSB's decisions or veto its approvals. *See id.* § 18-5G-6. As *Blair* held: "The PCSB does not act on behalf of [the] Governor." 248 W. Va. at 503 n.12, 889 S.E.2d at 76 n.12.

Declaratory relief does not provide an escape from these standing requirements. The circuit court suggested that Respondents have standing for a declaration under a more permissive standard because a declaration merely "clarifies" the law. But standing requirements apply with equal force to declaratory judgment actions. *Findley*, 213 W. Va. at 94, 576 S.E.2d at 821. Redressability requires concrete, likely relief—not the hope that a judicial declaration will inspire compliance. Syl. pt. 2, *Martinsburg v. Berkeley Cnty. Council*, 241 W. Va. 385, 825 S.E.2d 332 (2019). The State officials have no authority to comply or not comply with any declaration about public charter schools. They cannot close public charter schools, compel elections, or amend statutes unilaterally.

A declaration against them would be an advisory opinion—which courts lack jurisdiction to render. *See State ex. rel. Perdue v. McCuskey*, 242 W. Va. 474, 480, 836 S.E.2d 441, 447 (2019). And though the circuit court assumed the requisite link by citing the Legislature's power under Article XII, Section 1, that choice was an odd one. Respondents are not alleging any violation of the provision, and nothing in that law gives the Legislature some hidden power of authorization or election-calling.

The circuit court's best authority merely confirms that declaratory relief is no golden ticket for Respondents. The circuit court thought it important that this Court entertained—but rejected—a declaratory-judgment claim against the Speaker in *Committee to Reform Hampshire County Government v. Thompson*, 223 W. Va. 346, 348, 674 S.E.2d 207, 209 (2008). But the Court said nothing about standing there. And "[t]his Court, like many others including the United States Supreme Court, adheres to the well-settled premise that the exercise of jurisdiction in a case is not precedent for the existence of jurisdiction." *Kanawha Cnty. Pub. Libr. Bd. v. Bd. of Educ. of Cnty. of Kanawha*, 231 W. Va. 386, 396, 745 S.E.2d 424, 434 (2013) (cleaned up). The circuit court's reliance on *Common Cause of West Virginia v. Tomblin*, 186 W. Va. 537, 413 S.E.2d 358 (1991), fares no better. That case did not address standing. It suggested who, among multiple possible defendants, should be named once standing is established. It is not grant of standing where none otherwise exists. *Blair* recognized as much by finding the circuit court's retention of the Senate President and House Speaker "concerning" even though *Common Cause* was on the books.

C. Respondents lack standing for mandamus relief, too.

Mandamus imposes an even higher standing threshold than injunctive or declaratory relief, and Respondents cannot satisfy it. A petitioner must demonstrate "a clear legal right to the relief sought" and a corresponding "[clear] legal duty" on the respondent to perform a specific, nondiscretionary act. Syl. pt. 3, *State ex rel. Justice v. King*, 244 W. Va. 225, 227, 852 S.E.2d 292,

294 (2020) (cleaned up). The duty must be "so plain" "that no element of discretion is left as to the precise mode of its performance." *Id.* at syl. pt. 5 (cleaned up). And as this Court recently reaffirmed, "injunctive relief stops or prevents performance of an act, it does not direct that an act be performed." *State ex rel. Adkins v. Bailey*, 251 W. Va. 586, 592 n.10, 915 S.E.2d 364, 370 n.10 (2025) (cleaned up).

Section 10 creates no nondiscretionary duty on any State official because the provision is proscriptive, not prescriptive. It commands only what the Legislature may not do—create an independent school district out of an existing one without voter consent. It does not command the Governor to call a special election, the Senate President to introduce legislation, or the House Speaker to schedule a remedial bill. If the Act were deemed unconstitutional, the Legislature might respond by requiring a voter referendum, by requiring county board authorization rather than PCSB authorization, or by any other constitutionally permissible approach. Those are discretionary policy choices, and courts cannot issue mandamus to compel a specific policy choice. *See King*, 244 W. Va. at 235, 852 S.E.2d at 302.

Mandamus relief against the Senate President and House Speaker is unavailable because legislators cannot be compelled by writ to introduce, vote for, or refrain from enacting legislation. *Kanawha Cnty.*, 231 W. Va. at 403 n.22, 745 S.E.2d at 441 n.22. Courts cannot "make or supervise legislation," *Lucas v. Fairbanks Cap. Corp.*, 217 W. Va. 479, 489, 618 S.E.2d 488, 498 (2005), or "decide what the law ought to be," *Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 223, 530 S.E.2d 676, 696 (1999). A command to "rewrite a … law to conform it to constitutional requirements" would "constitute a serious invasion of the legislative domain." *United States v. Stevens*, 559 U.S. 460, 481 (2010) (cleaned up); *see also W. Va. Educ. Ass'n v. Legislature of State of W. Va.*, 179 W. Va. 381, 383, 369 S.E.2d 454, 456 (1988) (refusing relief as a matter of comity).

D. The circuit court improperly invoked the law-of-the-case doctrine.

The circuit court compounded its jurisdictional errors by treating its dissolved 2022 preliminary injunction as binding law of the case. JA946-JA947. This choice was error for at least three different reasons.

First, a dissolved order entered without jurisdiction cannot generate law-of-the-case preclusion. This Court dissolved the 2022 preliminary injunction for lack of standing. *Blair*, 248 W. Va. at 504, 889 S.E.2d at 77. That's a jurisdictional defect, and any decree entered without jurisdiction is "void." *In re Z.H.*, 245 W. Va. 456, 463, 859 S.E.2d 399, 406 (2021) (cleaned up). So, there was no valid "case" from which law-of-the-case preclusion could arise.

Second, the PCSB and the intervening public charter schools—who were not parties to the 2022 proceedings—cannot be bound by those findings, anyway. *Blair* itself rejected the argument that the 2022 injunction could "bind the PCSB" as a nonparty. 248 W. Va. at 503 n.12, 889 S.E.2d at 76 n.12. And a prior judgment may "resolve[] issues as among [parties], but it does not conclude the rights of strangers to those proceedings." *Richards v. Jefferson Cnty.*, 517 U.S. 793, 798 (1996) (cleaned up).

Third, preliminary injunction findings never constitute law of the case at the merits stage, even among the original parties. "[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding" on the merits. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981). A preliminary injunction decision "is just that: preliminary." *Ctr. for Bio. Diversity v. Salazar*, 706 F.3d 1085, 1090 (9th Cir. 2013).

Ultimately, the law-of-the-case doctrine operates with full rigor "only between appellate and lower courts," barring reconsideration of issues decided by this Court on appeal, not issues decided by a circuit court in an earlier interlocutory order. *Keen v. Coleman*, No. 21-0144, 2022 WL 1744509, at *4 (W. Va. May 31, 2022) (memorandum decision); *Hatfield v. Painter*, 222 W.

Va. 622, 632, 671 S.E.2d 453, 463 (2008). The only binding "law of the case" from the first appeal is *Blair*'s holding on standing, which the circuit court ignored.

II. Legislative immunity bars suit against the Senate President and House Speaker.

Even if Respondents could establish standing against the Senate President and House Speaker, legislative immunity independently requires their dismissal. The Constitution and a validly enacted statute both point in the same direction: legislators may not be hauled into court for the act of passing legislation. Article VI, Section 17 of the West Virginia Constitution, the Speech or Debate Clause, protects legislators from being "questioned in any other place" for their legislative acts. And West Virginia Code § 55-17-3a(b) reinforces that protection by directing constitutional challenges to the executive officer who implements the law, not the legislators who enacted it. The circuit court rejected both protections. It was wrong on each count.

A. Article VI, Section 17 gives legislators absolute immunity.

Article VI, Section 17 of the West Virginia Constitution shields legislators from suit for enacting legislation. The provision states that members of the Legislature "shall not be questioned in any other place" for "any speech or debate in either house." W. VA. CONST. art. VI, § 17. This provision mirrors the federal Speech or Debate Clause and codifies the common law of legislative immunity. Its purpose is to "protect the integrity of the legislative process by insuring the independence of individual legislators." *United States v. Brewster*, 408 U.S. 501, 507 (1972).

This lawsuit is precisely the kind of judicial questioning of legislative acts that Article VI, Section 17 was designed to prohibit. Respondents have named the Senate President and House Speaker as defendants for one reason: they voted for and enacted HB 2012. The suit seeks to invalidate that legislation and, through the injunction's remedial framework, implicitly demands that they introduce and pass corrective legislation more to Respondents' liking. Voting for a bill, shepherding it through the legislative process, and enacting it into law are quintessentially

legislative acts. Dragging the Senate President and House Speaker into court to answer for those acts is the definition of being "questioned in any other place" for any speech or "debate." W. VA. CONST. art. VI, § 17.

Workman v. Carmichael does not hold otherwise. This Court recognized in *Workman*, 241 W. Va. 105, 819 S.E.2d 251 (2018), that it might issue an extraordinary writ against the Legislature when a mandatory, nondiscretionary constitutional duty is being violated. But *Workman* involved an imminent impeachment proceeding that allegedly violated mandatory constitutional procedures—a far cry from an ordinary constitutional challenge to enacted legislation. The distinction matters. *Workman* addressed whether a court could intervene to halt an ongoing legislative *process* that the Court perceived as unconstitutional before it ran its course; this case asks whether legislators can be sued for the *substance* of a law they already passed. Those questions are fundamentally different. *Workman* did not establish a general license to sue legislators for their legislative judgments, nor did it disturb the foundational principle that legislative immunity protects the independence of the legislative process from judicial intrusion. And this Court's power to issue extraordinary writs directly against the Legislature is a different question from whether a circuit court may assert supervisory authority over legislative action—a circuit court is not on the same footing as this Court. Beyond that, *Workman* did not involve a constitutional provision as silent on remedial mechanism as Section 10.

What's more, *Workman*'s extraordinary circumstances imply that it should apply in only rare instances—if any—beyond the impeachment context. *Workman* rejected persuasive authority from the U.S. Supreme Court and state high courts that supported much more limited remedies in contexts where separation-of-powers concerns are strong. *See, e.g.*, 241 W. Va. at 120 & 122, 819 S.E.2d at 266 & 268. And it departed from this Court's prior precedent limiting remedies "by

mandamus, prohibition, contempt or otherwise" against the proceedings of a co-equal branch. Syl. pt. 3, *State ex rel. Holmes v. Clawges*, 226 W. Va. 479, 702 S.E.2d 611 (2010). So the circuit court too eagerly extended it.

B. West Virginia Code § 55-17-3a(b) is constitutional.

Section 55-17-3a(b) codifies the common-sense principle that constitutional challenges should be directed against the officer who implements the law, not the legislators who enacted it. That provision directs constitutional challenges to legislation against the executive officer charged with implementing the challenged law, avoiding the continuous distraction that would otherwise result if legislators were to be sued on every law they pass. And the logic of the statute mirrors this Court's own standing decisions: the party properly named in a constitutional challenge is the official charged with administration and enforcement. *See Farley v. Graney*, 146 W. Va. 22, 24, 119 S.E.2d 833, 835 (1960). Yet the circuit court raced to declare this statute unconstitutional because it worried the Legislature *might* someday try to directly authorize a charter school.

In concluding that Section 55-17-3a(b) is facially unconstitutional, the circuit court fundamentally misunderstood the statute's operation. The court reasoned that the statute improperly limited the circuit court's jurisdiction. But the statute does not eliminate judicial review of HB 2012, it merely directs that review to the proper parties. With the PCSB and the intervening public charter schools now in this case, a potential plaintiff has no shortage of proper defendants against whom a constitutional challenge can be adjudicated. The statute simply provides that the enacting legislators need not be among them. Thus, the statute does not close the courthouse doors—so it does not impede due process or create separation of powers problems. Were it otherwise, *any* immunity would be unconstitutional, as immunity always limits relief. Yet the Court has never taken such an approach. *See, e.g., Randall v. Fairmont City Police Dep't*, 186

W. Va. 336, 339, 412 S.E.2d 737, 740 (1991) (upholding the constitutionality of the West Virginia Governmental Tort Claims and Insurance Reform Act).

Historical practice confirms the statute's logic. Courts decide the constitutionality of legislation all the time without the legislators who passed it being present. The Senate President and House Speaker were not parties in *Kuhn*, *Herold*, *Casto*, or *Leonhart*—the very cases most relevant to this dispute. For that matter, legislators are rarely named in constitutional challenges to education statutes generally. *E.g.*, *Kanawha Cnty.*, 231 W. Va. 386, 745 S.E.2d 424 (suit against State BOE challenging library funding in school aid formula); *Bd. of Educ. of Cnty. Kanawha v. W. Va. Bd. of Educ.*, 219 W. Va. 801, 639 S.E.2d 893 (2006) (same); *State ex rel. Bd. of Educ., Kanawha Cnty. v. Rockefeller*, 167 W.Va. 72, 281 S.E.2d 131 (1981) (suit against the Governor seeking to compel restoration of a 2% cut in school aid expenditures); *State ex rel. Bd. of Educ. for Cnty. Randolph v. Bailey*, 192 W. Va. 534, 453 S.E.2d 368 (1994) (suit against Treasurer, Auditor, and various education officials challenging teacher salary statute); *State ex rel. Bd. of Educ. for Grant Cnty. v. Manchin*, 179 W. Va. 235, 366 SE.2d 743 (1988) (same). Their absence did not prevent judicial review. It did not impair the courts' ability to reach the merits. And it did not deprive any party of any right. The notion that legislators must be named as defendants for a court to assess the constitutionality of their enactments has no support in West Virginia law or practice.

The statute can and should be read to preserve its constitutionality. Syl. pt. 1, *State ex rel. Appalachian Power Co. v. Gainer*, 149 W. Va. 740, 143 S.E.2d 351 (1965). Section 55-17-3a(b) is readily harmonized with *Workman* by applying in the ordinary constitutional challenge context—which this case presents—while preserving the narrow *Workman* exception for those rare circumstances where a perceived mandatory constitutional duty is being violated by the

Legislature itself. An ordinary facial challenge to an enacted statute is not that rare circumstance—certainly not one premised on speculation about some future possibility.

Lastly, the legislative-immunity statute does not create an *ex post facto* problem. "[A] fundamental principle of ex post facto law is that it only applies to criminal proceedings, not civil." *Richmond v. Levin*, 219 W. Va. 512, 516, 637 S.E.2d 610, 614 (2006) (cleaned up). Nor does the statute disturb "vested rights." Respondents had no vested right to sue members of their Legislature—about charter schools or otherwise—before the immunity statute passed. *See, e.g.*, *Sawicki v. K/S Stavanger Prince*, 802 So. 2d 598, 604 (La. 2021) (describing how a "vested right" is akin to a property interest). So the Legislature could appropriately decide to curtail the legislative obstruction created by serial lawsuits from dissatisfied constituents. *See, e.g.*, *Ark. Dep't of Hum. Servs. Div. of Econ. & Med. Servs. v. Walters*, 866 S.W.2d 823, 826 (Ark. 1993) (surveying authority about "vested rights" and explaining that such challenges are unsuccessful if the relevant state law shows "some regard to the general welfare and public policy" (cleaned up)).

III. PCSB-authorized public charter schools do not violate Article XII, Section 10.

Even setting aside the dispositive standing and immunity arguments, Respondents' constitutional claim fails on its merits. Respondents face the heavy presumption that legislative enactments are constitutional and must prove the Act's invalidity "beyond reasonable doubt." Syl. pt. 1, *Gainer*, 149 W. Va. 740, 143 S.E.2d 351. They cannot overcome that barrier. Section 10 was ratified in 1872 to address a specific historical problem: the Legislature's unilateral carving of school district territory and imposition of new tax burdens without voter consent. Public charter schools implicate neither concern. They are not "independent" free school districts or organizations within the meaning of Section 10, and they are not created "out of" any existing school district. Either ground compels reversal.

A. Charter schools are not "carved out" of existing districts or empowered to tax.

To understand why Section 10 does not apply to public charter schools, one must understand the problem it was designed to solve. After all, constitutional provisions must be applied "to give effect to the intent of the people in adopting [them]." Syl. pt. 3, *Diamond v. Parkersburg-Aetna Corp.*, 146 W. Va. 543, 122 S.E.2d 436 (1961). Further, the West Virginia Constitution is "a restriction of power rather than a grant thereof," and "the legislature has the authority to enact any measure not inhibited thereby." Syl. pt. 1, *Foster v. Cooper*, 155 W. Va. 619, 186 S.E.2d 837 (1972). Thus, in any challenge to a legislative enactment, the inquiry begins with a threshold question: "Where is the provision" that forbids the Legislature from acting? *State v. King*, 64 W. Va. 546, 605, 63 S.E. 468, 493 (1908). Respondents point to Section 10. But Section 10 was ratified to address a narrow, historically specific problem. Not to impose a restraint on educational innovation.

Section 10's origins are well documented. In 1868, the Legislature passed a statute creating a new "school district of Wellsburg" by annexing the territory of the Wellsburg Township and parts of two adjacent townships. *Kuhn*, 4 W. Va. at 500. The newly established district imposed taxes and levies on residents to fund its schools. *Id.* at 499. In other words, these districts were "always authorized by special act[s]" of the Legislature that "carve[d]" territory "*out of*" one or more of the previously existing township districts and gave it instead to the newly "created" independent district. *Casto*, 94 W. Va. at 516, 119 S.E. at 471-72 (emphasis added); *Kuhn*, 4 W. Va. at 499-500 (considering special act that "establish[ed] the school district of Wellsburg" by "annex[ing]" "several square miles of the townships of Buffalo and Cross Creek"). When challenged, this Court upheld the Legislature's action because no constitutional restriction then prohibited it. Syl. pt. 2, *Kuhn*, 4 W. Va. 499. Contrary to what the circuit court believed, *Kuhn* did not involve overlapping districts; *Kuhn* instead concerned a new district that "annexed"—or carved out—portions of

preexisting districts. *Id.* at 500; *see also, e.g.*, *Springer v. Bd. of Educ. of Ohio Cnty.*, 117 W. Va. 413, 417, 185 S.E. 692, 693 (1936) (describing how, because of operation of independent school districts covering most of Ohio County, "it was only within a fringe of the county that the public school affairs were under the supervision of the county superintendent of schools").

The people responded the following year by ratifying Section 10, which now prohibits the creation of any "independent free school district, or organization" without "the consent of the school district or districts out of which the same is to be created, expressed by a majority of the voters voting on the question." W. VA. CONST. art. XII, § 10. Section 10 was adopted "to nullify" *Kuhn*. BASTRESS, *supra*, at 333.

This Court confirmed Section 10's narrow focus in *Herold v. McQueen*, 71 W. Va. 43, 75 S.E. 313 (1912). There, the Legislature created a county high school governed by a separate board rather than the county district board of education. This Court rejected the argument that such a school was an "independent" district or organization under Section 10, holding that the school "could have [been] established" by the Legislature "without submitting the question to a vote of the people at all" because it did not carve territory out of any existing school district. *Id.* at 49-50, 75 S.E. at 315-16. The new school did not violate Article XII, section 10 principally because "the integrity of the different districts remains intact," "the several boards of education thereof have the same territorial jurisdiction," and the existing districts had "the same amount of property on which to lay their levy to raise revenue to run the schools." *Id.* at 50, 75 S.E. at 316. The Court stated the governing rule broadly: "[The Legislature] is not prohibited from augmenting, and making more efficient, the general system of free schools, by the establishment of special high schools and graded schools in any locality where it may think it wise to do so." *Id.* at 50, 75 S.E. at 316-17; *see also State v. Beaver,* 248 W. Va. 177, 193, 887 S.E.2d 610, 626 (2022) (quoting and reaffirming

this rule). The circuit court recognized that "there was no carving out from the existing school districts" in *Herold*, JA958; 71 W. Va. at 50, 75 S.E. at 316, but thought that expressly addressed point somehow irrelevant.

Casto v. Upshur County High School Board reached the same result under materially identical facts. 94 W. Va. 513, 119 S.E. 470 (1923). The Legislature created a new high school in Upshur County governed by a separate board of trustees—not by the county board of education. This Court sustained the school because "[t]he territories of the school districts are left intact, and the boards thereof are functioning as before. Nothing is carved out of them or any of them." *Id.* at 517, 119 S.E. at 471-72. And the Court defined the "independence" that triggers Section 10 in specific terms: independence "of the general system" in "the length of the school term, employment of teachers, branches taught and to what extent, internal management generally, and taxation." *Id.* at 516, 119 S.E. at 471.

When considering *Casto*, however, the circuit court dismissed the case's observations about Section 10 "independence" and dismissed the "carving out" language as just "inartful[]" shorthand for any instance in which Section 10 does not apply. That was wrong, as the Court gives weight to longstanding interpretations decided close to a constitutional provision's enactment, even if a litigant doesn't appreciate the reasoning behind them. *See Charleston Transit Co. v. Condry*, 140 W. Va. 651, 658, 86 S.E.2d 391, 396 (1955) (relying on "contemporaneous construction or interpretation" undisturbed "for ten years or more by the people and the courts").

The problems Section 10 targeted are not present in this case. "Independent" school districts of the earlier era were a specific, well-understood legal concept. They operated separately from the county-based system, with their own elected boards, *see, e.g.*, *Eakle v. Bd. of Educ. of Indep. Sch. Dist. of Henry*, 97 W. Va. 434, 441-42, 125 S.E. 165, 168 (1924), their own distinct

territorial jurisdiction, *see, e.g., Spedden v. Bd. of Educ. of Indep. Sch. Dist. of Fairmont*, 74 W. Va. 181, 187, 81 S.E. 724, 726 (1914), and—critically—their own taxing authority, *see, e.g., Clemans v. Bd. of Educ. of Indep. Sch. Dist. of Wheeling*, 68 W. Va. 298, 299, 69 S.E. 808, 809 (1910). They were creatures of the Legislature that could be created by carving territory out of existing school districts and imposing new tax obligations on residents without their consent. Those were the dangers the people voted to prohibit: the Legislature's unilateral annexation of existing district territory and the imposition of new tax burdens.

In contrast, public charter schools under HB 2012 are not "created" "out of" existing school districts' territory. They annex no territory. Rather, they operate in a defined "recruitment area" that may encompass multiple counties, W. VA. CODE § 18-5G-11(a)(4), within which the school must "actively recruit students." W. VA. CODE R. § 126-79-9.2.c.2. Students who live in a public charter school's recruitment area cannot be "require[d]" "to enroll in a public charter school." W. VA. CODE § 18-5G-11(a)(3). Nor is any of the territory of the county districts where a public charter school operates "annexed" to that charter school. *Kuhn*, 4 W. Va. at 500. Indeed, rather than compromising "[t]he integrity of the different districts," *Herold*, 71 W. Va. at 50, 75 S.E. at 316, HB 2012 protects county districts' territorial boundaries by prohibiting a public charter school's recruitment area from "negat[ing] any overlapping attendance area[s]" that the county board of education sets "for noncharter public schools," W. VA. CODE § 18-5G-11(a)(4). In other words, HB 2012 does not compromise the integrity of the different districts because their boundaries remain in place. The Act simply provides a choice for students.

So just as in *Herold* and *Casto*, Article XII, section 10 does not apply. *See also Marquis v. Thompson*, 109 W. Va. 504, 505, 155 S.E. 462, 463 (1930) (describing "board of education of the district out of which the independent district is in part *carved*"); *Simms v. Sawyers*, 85 W. Va.

245, 245, 101 S.E. 467, 468 (1919) (referring to election "at which all of the voters of the district out of which this independent [school] district is carved have the right to vote"); *State v. Bd. of Educ., Sch. Dist. of Parkersburg*, 68 W. Va. 40, 42, 69 S.E. 378, 378 (1910) ("Independent school districts … are carved out of the general districts.").

The circuit court's attempt to redefine "out of which" as merely identifying which voters must consent—rather than describing the territorial creation of a new district from an existing one—renders the phrase surplusage. If "out of which" merely identifies a voting population, it adds nothing that the reference to "school district or districts" does not already supply. This Court's longstanding interpretation—that Section 10 addresses the carving of actual geographical territory—gives meaning to every word of the provision. *See Comm. to Reform Hampshire Cnty. Gov.*, 223 W. Va. at 353, 674 S.E.2d at 214 (courts must give "effect" to the "entirety" of a constitutional provision).

The Legislature's subsequent abolition of all independent school districts in 1933 further confirms Section 10's limited, historically specific scope. The County Unit Plan eliminated approximately 340 magisterial districts and 50 independent districts, replacing them with 55 county-based school systems. *See Leonhart*, 114 W. Va. 9, 170 S.E. 418. This Court upheld that sweeping reorganization as a valid exercise of the Legislature's "almost plenary" power over public education. *Id.* at 14, 170 S.E. at 420. By using the phrase "out of," "the power to create in section 1 carries with it the power to *destroy*" existing districts "and re-create" new, independent ones. *Id.* at 15, 170 S.E. at 421 (emphasis added).

With every independent school district in the State abolished, Section 10's voter-consent requirement was rendered dormant—not because the provision was repealed, but because the category of entities it regulates no longer existed. The circuit court thought it had the power to

rewrite Section 10 to better address our "twenty-first century school system" and reinvigorate the constitutional provision after the 1933 reform. JA961. In doing so, the circuit court improperly rewrote Section 10 instead of interpreting "the Constitution and the laws of this State as they exist." *State v. Smith*, 243 W. Va. 470, 478, 844 S.E.2d 711, 719 (2020) (cleaned up). "A constitutional provision which is clear and unambiguous cannot be changed or made uncertain by a statute subsequently enacted." Syl. pt. 3, *State ex rel. Dewey Portland Cement Co. v. O'Brien*, 142 W. Va. 451, 96 S.E.2d 171 (1956); *see also Chesapeake & O.R. Co. v. Miller*, 19 W. Va. 408, 418 (1882) ("[T]he meaning of the Constitution is fixed, when it is adopted; and it is not different at any subsequent time, when a court has occasion to pass upon it.").

B. Public charter schools are not "independent" under Section 10.

Under the standard this Court articulated in *Casto*, "independence" for purposes of Section 10 means independence "of the general system" across multiple dimensions: "the length of the school term, employment of teachers, branches taught and to what extent, internal management generally, and taxation." 94 W. Va. at 516, 119 S.E. at 471. In other words, "[a] casual inspection of the laws authorizing and creating independent school districts, defining their purposes and powers, impel the conclusion that such districts are independent in reality as well as in name." *Marquis*, 109 W. Va. at 507, 155 S.E. at 464.

PCSB-authorized public charter schools are independent in none of these ways. The Act declares, in clear terms, that public charter schools "are public schools and are part of the state's education system." W. VA. CODE § 18-5G-1(c). A public charter school may even be a "program within a public school." *Id.* § 18-5G-2(12). Public charter schools must meet the same educational performance standards required of all other public schools. *Id.* § 18-5G-3(a)(1). They must provide the same minimum number of instructional days or an equivalent amount of instructional time per year and meet the same student assessment requirements as non-charter public schools.

Id. § 18-5G-3(c)(5), (6); *see also id.* § 5-10C-3(6). Teachers remain subject to state employment requirements and may participate in state retirement plans. *Id.* § 18-5G-3(b)(3). Public charter schools must be tax-exempt non-profit, secular, and non-discriminatory, and they must enroll any student who would otherwise attend a non-charter public school without charging tuition. *Id.* § 18-5G-3(a), (b)(6). Their "roles, powers, responsibilities, operational duties, accountability, and performance expectations" are governed by state law, which are incorporated into their statute-defined charter contracts with state authorizers. *Id.* § 18-5G-2(4). And if they fail, the State can close them. *Id.* § 18-5G-13; *see also id.* § 18-5G-9. Conditions like these show the Legislature did not treat public charter schools separate from the county-based public school system. "Courts should presume that a legislature says in a statute what it means and means in a statute what it says." *Keener v. Irby*, 245 W. Va. 777, 785, 865 S.E.2d 519, 527 (2021) (cleaned up).

The hearing testimony confirmed the Act's design in practice. Then-PCSB Executive Director Dr. James Paul testified that the PCSB reviews charter school applications against at least 25 statutory requirements, conducts a local public forum in the proposed school's community, prepares a detailed application analysis, and must act within 90 days of receiving the application. JA651–JA658. After authorization, charter schools enter contracts that set specific academic benchmarks and operational requirements. JA660–JA661. They submit annual reports to the PCSB documenting progress on charter goals, student and teacher enrollment trends, and financial position. JA664. They also undergo independent annual audits, the results of which are provided to the state auditor, the authorizer, and the state superintendent of schools. JA664. The PCSB investigates complaints and monitors compliance—functions that no "independent" school district of the nineteenth century was subject to. JA690–JA692. These facts are not the hallmarks of an entity operating "independent of the general system." *Casto*, 94 W. Va. at 516, 119 S.E. at 471.

Most significantly, public charter schools have no power to levy taxes and are funded by the state—not the counties—which distinguishes them from the independent school districts that Section 10 was designed to constrain. W. VA. CODE § 18-5G-3(b)(2); *accord Armstrong v. Cumberland Acad.*, 549 F. Supp. 3d 543, 546 (E.D. Tex. 2021) (distinguishing charter schools from independent school districts because they do not "tax and receive local tax revenues"). Nor are any county property taxes allocated to fund charter schools; they receive money by the "per pupil total basic foundation allowance" in the State aid formula that "follow[s] [each] student" when they enroll in a public charter school. W. VA. CODE § 18-5G-5(a). And even after HB 2012, county school boards—even those within a public charter school's recruitment area—can levy the same taxes as before for "the general current expenses of schools," *id.* § 11-8-6c(3) (1961), on "each class of taxable property within" the county, *id.* § 11-8-16(4) (2022).

Public charter schools are also unlike the independent school districts that prompted Section 10's adoption in other meaningful ways. While those independent school districts were totally self-governed and free from oversight, public charter schools exist at the pleasure of a state authorizer and operate under contracts that restrict their authority and must comply with statutory requirements. *See* W. VA. CODE § 18-5G-9. Even more, the authorizer has the power to revoke a charter contract for health and safety reasons, misappropriation of funds, financial mismanagement, or "if there are dire and chronic academic deficiencies," among other reasons. *See* W. VA. CODE § 18-5G-10(h). A school that exists only because a state agency authorized it, and that can be closed by that same agency, is not an "organization" in the sense Section 10 contemplates.

Article XII, Section 2 vests "[t]he general supervision of the free schools of the State" in the Board of Education. W. VA. CONST. art. XII, § 2. Public charter schools remain subject to that

general supervision. They must meet the same state academic standards and the "same student assessment requirements applicable to non-charter public schools in this state." W. VA. CODE § 18-5G-3(c)(6); *see also* W. VA. CODE § 18-5G-3(a)(1). The Act also gives the Board of Education the final say over the authorizer's decisions—a power that, if anything, expands rather than diminishes the Board's supervisory role. *See id.* § 18-5G-13. The circuit court's suggestion that PCSB authorization bypasses the Board of Education confuses the Board's general supervisory authority with the specific power to authorize individual schools—two distinct functions that the Legislature is constitutionally empowered to allocate as it sees fit. And note how the state Board—which has never been shy about protecting its authority—has not itself suggested that the charter-school system defeats its general supervisory powers.

Nor is county-school-board supervision the beginning and end of the question, as the circuit court supposed. Neither of the boards in Casto nor Herold were county boards. *See Casto*, 94 W. Va. at 514-15, 119 S.E. at 471; *Herold*, 71 W. Va. at 46, 75 S.E. at 314. Yet this Court did not find that either one was the sort of "independent" entity that Section 10 governs. Here again, the circuit court dismissed these decisions as relics of an earlier time. But "[m]ere disagreement" with a prior case "is not a sufficient reason to deviate from a judicial policy promoting certainty, stability and uniformity in the law." *Dailey v. Bechtel Corp.*, 157 W. Va. 1023, 1029, 207 S.E.2d 169, 173 (1974). Similarly, an "ordinary" understanding of the word "independent" is no reason to upset the Legislature's judgment, either, as "independent free school district" is a technical term that "will be presumed to have been used in a technical sense and will ordinarily be given [its] strict meaning." *Wooddell v. Dailey*, 160 W. Va. 65, 68-69, 230 S.E.2d 466, 469 (1976).

C. The circuit court's ruling was a policy judgment.

The circuit court's analysis was also wrong from the start because it asked the wrong question. The question in any challenge to a legislative enactment is not whether the statute might

fall within a constitutional restriction. It is whether the constitutional restriction plainly, palpably, and beyond reasonable doubt prohibits what the Legislature has done. *See Gainer*, 149 W. Va. 740, 143 S.E.2d 351. And courts must not "defy[] legislative will on mere implication" but only when a statute "is plainly, palpably, contra the Constitution." *King*, 64 W. Va. at 606, 63 S.E. at 493. Instead of identifying a clear constitutional prohibition, the circuit court reasoned backward from the premise that public charter schools should require voter consent and then stretched Section 10's text to reach them.

That approach led the circuit court to read words into Section 10 that the people did not put there. Section 10 prohibits "independent" school districts and organizations; it says nothing about schools that are part of the general system but authorized by a state board rather than a county board. The circuit court effectively rewrote the provision to read: "no school may operate outside direct county board control without a countywide vote." But Section 10's text does not address—let alone plainly prohibit—public schools that remain within the general system of public education under state oversight and subject to the state's general supervision. It is an "imperative" not to "arbitrarily [] read into" a constitutional provision "that which it does not say." *State v. Butler*, 239 W. Va. 168, 178, 799 S.E.2d 718, 728 (2017) (cleaned up). Because the "negation of legislative power must appear beyond reasonable doubt," syl. pt. 1, *Gainer*, 149 W. Va. 740, 143 S.E.2d 351, the circuit court's reading fails.

The circuit court's reading also cannot be squared with the broader structure of Article XII. Section 1 directs the Legislature to provide "a thorough and efficient system of free schools." W. VA. CONST. art. XII, § 1. Section 12 further commands the Legislature to "foster and encourage, moral, intellectual, scientific and agricultural improvement" and to organize "such institutions of learning as the best interests of general education in the state may demand." W. VA. CONST. art.

XII, § 12. These are affirmative mandates for educational innovation. The circuit court's interpretation of Section 10—that no educational institution may operate unless administered by county school boards or approved by a county-by-county referendum—would hobble the Legislature's ability to fulfill those mandates. If possible, each provision of the Constitution should be given effect, and no provision should be read to render another a dead letter. Syl. pt. 2, *Diamond*, 146 W. Va. 543, 122 S.E.2d 436 ("[I]f possible, effect should be given to every part and to every word of a constitutional provision.").

Rather than undermining these mandates, the public charter school legislation furthers them. The Act was designed to "empower new, innovative, and more flexible ways of educating all children within the public school system." W. VA. CODE § 18-5G-1(b). Public charter schools provide additional public educational options within the State's system of free schools—precisely the kind of innovation that Article XII, Section 12's directive to "foster and encourage" educational improvement contemplates. And the Act does not affect the Legislature's "absolute and mandatory duty" to provide for public schools. *State ex rel. Brotherton v. Blankenship*, 157 W. Va. 100, 125, 207 S.E.2d 421, 436 (1973). Nothing in the Act relieves the Legislature of its obligation to maintain a thorough and efficient system of free schools; it simply creates additional public schools within that system.

The practical consequences of the circuit court's interpretation confirm that it cannot be correct. Under the circuit court's reasoning, any public educational program or institution that operates apart from county school boards would require a countywide voter referendum before it could open. Yet the Legislature has for decades established specialized educational programs, magnet schools, regional education service agencies, and other innovative structures without county-by-county referenda—and no court has suggested that Section 10 required otherwise. *See*,

e.g., W. VA. CODE § 18-5B-5(b) (2009) (repealed 2025) (allowing non-charter schools "exceptions to county and state board rules, policies and interpretations" in the School Innovation Zone Act); *id.* § 18-5B-10 (2013) (repealed 2025) (granting certain statutory exceptions to listed schools); *id.* § 18-5A-3a (waiving certain statutory requirements for listed non-charter schools on recommendation of local improvement councils).

This Court has consistently confirmed that the Legislature is "not prohibited from augmenting, and making more efficient, the general system of free schools, by the establishment of special" schools in any locality where it thinks wise. *Herold*, 71 W. Va. at 50, 75 S.E. at 315-16. And as this Court recently reaffirmed, "[t]his Court does not sit as a superlegislature, commissioned to pass upon the political, social, economic or scientific merits of statutes pertaining to proper subjects of legislation." *Beaver*, 248 W. Va. at 191, 887 S.E.2d at 624 (quoting syl. pt. 2, *Huffman v. Goals Coal Co.*, 223 W. Va. 724, 679 S.E.2d 323 (2009)). The circuit court's order reflects disagreement with the Legislature's policy judgment, not a faithful application of Section 10's text. Because Section 10 does not plainly, palpably, or beyond reasonable doubt prohibit public charter schools that remain part of the State's education system, the presumption of constitutionality controls, and the circuit court's order must be reversed.

IV. The permanent injunction is procedurally defective.

Even if the circuit court were correct on standing, immunity, and the merits, the permanent injunction would still have to be reversed because of multiple procedural defects. The injunction improperly blends prohibitory injunctive relief with affirmative mandamus commands, dictating a specific remedial mechanism rather than declaring the constitutional boundary and allowing the Legislature to respond. It exceeds the Kanawha County Circuit Court's territorial jurisdiction by purporting to close schools in counties across West Virginia. Both defects call for reversal.

A. The injunction improperly dictates a legislative remedy.

This Court has drawn a clear and well-established line between injunctive relief and mandamus. Injunctive relief "stops or prevents performance of an act"; mandamus "direct[s] that an act be performed." *Adkins*, 251 W. Va. at 593 n.10, 915 S.E.2d at 371 n.10; *Blair*, 248 W. Va. at 503, 889 S.E.2d at 76. The circuit court's injunction erases that distinction. It does not merely prohibit the authorization of charter schools. It affirmatively declares that no charter school should operate "unless and until" a countywide voter referendum is conducted, and a majority of voters approve. That declaration amounts to an affirmative mandate specifying the precise mechanism the Legislature must adopt, especially considering the circuit court's express expectation that "legislative" action would follow. JA983.

The injunction's defect runs deeper than mislabeling. When a court finds that a statute violates the Constitution, the proper course is to declare the constitutional violation and leave the Legislature free to decide how to respond. That approach is a basic requirement of separation of powers. As this Court has explained, even where a constitutional violation has been found in the education context, the judiciary must defer to the Legislature on the remedy—refusing to direct specific remedies in favor of extending the "mutual deference accorded to equals" because the "law presumes the Legislature to know its duty." *W. Va. Educ. Ass'n*, 179 W. Va. at 383, 369 S.E.2d at 456. The circuit court did the opposite. Rather than simply declaring the constitutional boundary, it prescribed the specific fix: multiple referenda. A court may declare what the Constitution forbids; it may not select the Legislature's remedy for it.

B. The circuit court exceeded its territorial jurisdiction.

The circuit court claimed its territorial reach was limited to the PCSB—a Kanawha County entity—and that its order therefore did not exceed the circuit court's jurisdiction. That reasoning conflates jurisdiction over a party with jurisdiction to issue relief affecting parties and conduct

outside the court's territory. The injunction's operative effect is not limited to the PCSB's Kanawha County operations. Rather, it ultimately purports to prohibit public charter schools in Jefferson, Monongalia, Harrison, and other counties from operating—schools that are not parties to this action. Even a "limited" injunction against the PCSB is jurisdictionally void to the extent it directly threatens the operations of non-party schools in other circuits, because those schools have a due process right to be heard before a court with jurisdiction over them. *See Meadows v. Hey*, 184 W. Va. 75, 80, 399 S.E.2d 657, 662 (1990). Listing one Kanawha County entity as a defendant does not give the Kanawha County Circuit Court unlimited jurisdiction to close schools statewide.

No exception to this territorial limitation applies here. An exception exists where "injunctive relief is merely ancillary to the primary claim." *Kessel v. Leavitt*, 204 W. Va. 95, 150, 511 S.E.2d 720, 775 (1998). But the injunction here is not ancillary to some other primary claim—it *is* the primary and exclusive relief. Several of the public charter schools the injunction purports to close are located outside Kanawha County and are not parties to this action. The circuit court has "no authority" to "issue a statewide injunction affecting 'acts'" of those schools "occurring in other circuits." *Meadows*, 184 W. Va. at 77, 399 S.E.2d at 659. The injunction's statewide reach is jurisdictionally void as to every school operating outside Kanawha County.

Taken together, these procedural defects confirm what the jurisdictional, immunity, and merits arguments independently establish: the circuit court's permanent injunction cannot stand. The injunction usurps the Legislature's remedial prerogative, reaches beyond the court's territorial authority, and applies the law in an internally inconsistent manner. This Court should reverse.

CONCLUSION

West Virginia's public charter schools are constitutional. The Court should vacate the permanent injunction and remand with instructions to dismiss.

Respectfully submitted,

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,

By Counsel,

JOHN B. McCUSKEY
ATTORNEY GENERAL

/s/ Michael R. Williams
Michael R. Williams (WV Bar # 14148)
Solicitor General
Mattie F. Shuler (WV Bar # 14480)
Assistant Solicitor General
State Capitol Complex
1900 Kanawha Boulevard, East
Building 1, Room W-435
Charleston, West Virginia 25305
(304) 558-2021
mwilliams@wvago.gov
mshuler@wvago.gov

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

By Counsel,

STEPTOE & JOHNSON PLLC

/s/ Dallas F. Kratzer III
Dallas F. Kratzer III (WV Bar # 12350)
41 South High Street, Suite 2200
Columbus, OH 43215
(614) 458-9827
dallas.kratzer@steptoe-johnson.com

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 25-851

SAM BRUNETT, ROBERT McCLOUD, and JACLYN SANCHEZ,

Respondents-Plaintiffs,

v.

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,

Petitioners-Defendants,

and

WEST VIRGINIA ACADEMY; EASTERN PANHANDLE PREPARATORY ACADEMY; WORKFORCE INITIATIVE FOR NURSES ACADEMY; and CLARKSBURG CLASSICAL ACADEMY,

Petitioners-Intervenors.

CERTIFICATE OF SERVICE

I, Michael R. Williams, do hereby certify that the foregoing ***"Petitioners' Opening Brief"*** was served on all counsel of record by File & Serve Xpress this 3rd day of April 2026.

/s/ Michael R. Williams
Michael R. Williams