

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

State of West Virginia ex rel. West Virginia Secondary
Schools Activities Commission,

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Petitioner,

vs.)

No. 24-654

The Honorable John D. Beane, Jr.,
Judge of the Circuit Court of Wood County,
and The Board of Education For Wood County,
(Underlying case Wood County Civil Action 2024-P-275)

Respondents.

**RESPONDENT'S RESPONSE TO PETITION
FOR WRIT OF PROHIBITION**

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QUESTION PRESENTED

Petitioner presents the following three questions:

- I. Did the Circuit Court of Wood County, West Virginia exceed its legitimate power and, therefore, commit error when it found that a Circuit Court may set aside the manner which had been used all season to classify schools playing football and which the Board of Directors and Review Board promulgated;
- II. Did the Circuit Court of Wood County, West Virginia exceed its legitimate power and, therefore, commit error when it issued a preliminary injunction in this matter changing the football playoff calculations in light of the applicable law and facts; and
- III. Is a Writ of Prohibition appropriate in light of the facts and circumstances of this case?

Respondent respectfully urges this court to find that a Writ of Prohibition is not appropriate in this case because the Circuit Court of Wood County did not exceed its legitimate power when it granted the injunctive relief at issue in this case by ruling that Petitioner exceeded its constitutional or statutory authority or otherwise acted in an arbitrary or capricious manner.

STATEMENT OF THE CASE

Respondent largely does not dispute the “Statement of The Case” submitted by Petitioner. Respondent does object to, and does dispute, Petitioner’s various editorial comments and argument/advocacy with respect to factual matters of procedure which gives rise to this proceeding. For example, on page 8 of its Verified Petition for Writ of Prohibition, when referring to the point rating system at issue in this case, Petitioner suggested that “...member schools relied [on the point rating system] in determining if they would be in the season ending playoffs and in what seeding they would be.” Although the various member schools to which Petitioner refer may have had a hopeful expectation of making the playoffs based upon Petitioner’s inappropriate conduct, those member schools had no “reliance” interest as the term

“reliance” is meant in the legal sense. Not meaning to dismiss in any way the disappointment experienced by the student athletes who will not make the playoffs, an expectation based upon something that should not have been awarded, as disappointing as it may be, cannot be used as a basis for not doing the right thing.

STATEMENT OF ADDITIONAL FACTS

By Petitioner’s own rule established at some point in 2023, summer football practice for the 2024 football season began on August 5, 2024, and the first games in the football season were set to begin August 26, 2024. *WV CSR 127-3-23.2.a., Resp. Appdx. 112.*

When establishing their respective schedules each of Respondent’s three high schools entered into contracts with other schools to play the scheduled game. These contracts were each on a form prepared by and provided to each of the schools by Petitioner. *WV CSR §127-3-13.1* (“All interscholastic contest contracts shall be prepared in duplicate on forms furnished by the WVSSAC,”). *See Petitioner’s Mandatory Form Contract, Resp. Appdx. 127.* Often, these contracts are 2-year contracts representing a so-called “home-home” series. These contracts are in place long before the football season begins, *Wood County Order, Beane J. ¶17, Pet. App. 118*, and by the start of the football season a team’s schedule is set and it is virtually impossible at that time to find other opponents to play. *Wood County Order, Beane J. ¶18, Pet. App. 119.*

It is a substantial advantage for a team to play as many other teams as possible within their own classification or a higher classification, and a substantial hardship is bestowed upon a team if a team which had scheduled an opponent within its own classification or a higher classification has the classification of an opponent lowered just before the season begins. *Wood County Order, Beane J. ¶19, Pet. App. 119.* Again, it was virtually impossible for Respondent’s three high schools to schedule new opponents within their own classification (particularly when

teams have been pulled out of a higher classification and placed in a lower classification) at such a late date in such close proximity to the beginning of the football season. *Wood County Order, Beane J. ¶19, Pet. App. 119.*

Five of Williamstown High School's scheduled opponents were moved down in classification. *Wood County Order, Beane J. ¶28, Pet. App. 121.* Williamstown High School will lose base points due to St. Mary's High School, Tyler Consolidated High School, Ritchie County High School, and Doddridge County High School all dropping in class from AA to A. Williamstown will also lose base points from beating Frankfort High School because Frankfort High School dropped AAA to AA. Williamstown will also lose points with any Frankfort High School win. *Wood County Order, Beane J. ¶24, Pet. App. 121.* This has impacted Williamstown High School's state ranking and diminishes the likelihood of securing a high enough ranking to host the same number of home playoff games it otherwise may have hosted.

Parkersburg High School, classified AAAA classification, and which beat St. Albans High School, Capital High School, and South Charleston High School, will lose base points due to St. Albans High School, Capital High School, and South Charleston High School each dropping in class from AAAA to AAA. Parkersburg High School will also lose points attributed to each win St. Albans High School, Capital High School, and South Charleston High School have. *Wood County Order, Beane J. ¶29, Pet. App. 122.* This impacted Parkersburg High School's state ranking and diminishes the likelihood of securing a high enough ranking to host the same number of playoff games it otherwise may have hosted.

Parkersburg South High School, which was classified as AAAA, will lose base points due to John Marshall High School dropping in class from AAAA to AAA. It will also lose points

attributed to each win John Marshall High School has. *Wood County Order, Beane J. ¶31, Pet. App. 122.*

Hosting home playoff games is crucial for community engagement and school spirit, student-athlete experience, and the loss of this opportunity would cause significant financial harm to the school and community through decreased revenue, and increased travel expenses. Financial losses would include the athletic booster organization losing money from lost concession sales, raffles, merchandise sales and other fund-raising activities conducted at each home game. *Wood County Order, Beane J. ¶28, Pet. App. 121-122; Wood County Order, Beane J. ¶30, Pet. App. 122.*

Each of Respondent's three high schools are in a situation where they faced opponents who have had their classification lowered, but yet must compete for playoff rankings with other schools which have not had their schedule similarly diluted. Applying Petitioner's point rating system in a situation such as this results in various schools being treated differently. *Wood County Order, Beane J. ¶32, Pet. App. 122.*

Each of Respondent's three high schools sought administrative relief with Petitioner, but each has been denied.¹ Respondent thereafter sought injunctive relief because there was no longer time for the administrative proceedings to play out before irreparable harm would be done to Respondent's three high schools. *Wood County Order, Beane J. ¶33, Pet. App. 122.*

At the time that each of Respondent's three high schools learned about the downward reclassification of various opponents on their respective football schedules in late-August 2024,

¹ On October 7, 2024, each of Respondent's three high schools sought administrative relief from Petitioner. Resp. Appdx. 129–134. Each were denied relief by way of letter dated October 25, 2024. Resp. Appdx. 135–140. Although not a matter of record in these proceedings, Williamstown High School sought to appeal this denial to the Board of Review, but were given a hearing date on November 19, 2024; which is after the start of the high school football playoffs. Given the 30 day time limit for Petitioner's Board of Review to render a decision as set forth in WV CSR 127-1-13.c.4, a decision may not have been rendered by the Board of Review until December 20, 2024; long after the high school football playoffs were completed.

it was impossible for them to alter their respective schedules which had long been in place. Moreover, they were advised by legal counsel (not the undersigned) that because the harm to them was not known, no remedy was available to them through either judicial or administrative action at that time. Each sought administrative relief when the harm to them began to become known. And, given this context, the Circuit Court of Wood County specifically found that Respondent's actions with respect availing itself of the administrative process was not unreasonable. *Wood County Order, Beane J. ¶34, Pet. App. 123.*

The first round of the high school football playoffs would have begin before an administrative appeal could be heard, and the circuit court found that waiting for any such administrative remedies may prejudice a subsequent judicial challenge. Any administrative remedy at that point would be inadequate because the respective rankings of the various participants in the state football playoffs cannot be retroactively changed after the playoffs begin. *Wood County Order, Beane J. ¶36, Pet. App. 123.* The circuit court further found that Petitioner is biased or has otherwise predetermined the issues before it, *Wood County Order, Beane J. ¶37, Pet. App. 123*, and that pursuing further administrative remedies would be futile. *Wood County Order, Beane J. ¶38, Pet. App. 123.*

The Circuit Court of Wood County further found that irreparable injury will be caused to Respondent's three high schools because the injury, which is great and permanent, would not be capable of being corrected through later administrative review, *Wood County Order, Beane J. ¶39, Pet. App. 123*, and that administrative remedies in this case are not required because an overriding public interest calls for a prompt judicial decision. *Wood County Order, Beane J. ¶39, Pet. App. 124.*

Jurisdiction & Venue

Petitioner is not a state agency and therefore cannot demand that suits against it be brought in the Circuit Court of Kanawha County. *Wood County Order, Beane J. ¶9, Pet. App. 115*. Petitioner's principal office is located in Wood County, and Petitioner is transacting business with the Wood County Board of Education in Wood County, West Virginia. *Wood County Order, Beane J. ¶ 10, Pet. App. 115*. Further, the issues in this case involve, in part, the delegation by the Wood County Board of Education of the statutory mandate created by West Virginia Code §18-2-25. Some interscholastic athletic events at issue in this matter have occurred, are scheduled to occur in, and will occur in Wood County, West Virginia. *Wood County Order, Beane J. ¶11, Pet. App. 115*. Further, the cause of action arose, in part, pursuant to the delegation by the Petitioner of the statutory mandate created by West Virginia Code § 18-2-25. *Wood County Order, Beane J. ¶12, Pet. App. 115*, and Petitioner's actions are directed to and impact Williamstown High School, Parkersburg High School and Parkersburg South High School and other residents and student athletes who reside in Wood County, West Virginia. *Wood County Order, Beane J. ¶13, Pet. App. 116*.

SUMMARY OF ARGUMENT

Petitioner exceeded its constitutional and statutory authority or otherwise acted in an arbitrary and capricious manner by failing to follow its own rules and by not having a proper review procedure relating to the classification of schools. with whom it plays games. Petitioner's rules require that the schools use a form contract prepared by Petitioner and provided to the schools by petitioner. This contract expressly states that Petitioner's rules are a part of the contract, and that the only way to alter the contract is by mutual agreement of the two schools which are parties to the contract, with approval from Petitioner's Board of Directors. Petitioner's rules are a part of

the contract from the moment the contract is signed, These rules provide for a points ranking system; points ranking system is a part of the contract from the moment the contract is signed. Petitioner's rules, which again are a part of the contract from the moment the contract is signed, provide that a schools classification shall remain the same throughout the duration of the contract. As early as 2023 Petitioner's rules set the date for the beginning practice and for the day of the first football game, and the contracts to play football games were entered into by Respondent's three high schools long before the various reclassifications which occurred in August 2024. Respondent's three high schools justifiably relied on these rules and contract terms when they made out their football schedules for 2024 and built their schedules so as to maximize the points rating system. Petitioner's August 2024 reclassifications eviscerated material terms of these contract, thereby violating the contract clause set forth in both, the West Virginia Constitution and the United States Constitution. In so doing, Petitioner exceeded its constitutional and statutory grant of authority, and otherwise acted in an arbitrary and capricious manner.

Petitioner also exceeded its constitutional and statutory grant of authority, and otherwise acted in an arbitrary and capricious manner in that its reclassification rule did not have a proper review procedure. Not only was the predicate for the purported review procedure ill-defined because no definition was provided in the review procedure for the phrase "fails to accomplish the purpose for which it was intended," but no reasonable time limit was placed on the review procedure; the initial reclassification under the new rule occurred in December 2023, but Petitioner did not grant for waivers until as late as August 16, 2024; ten days before the start of the 2024 football season, long after contracts for scheduling had been in place, and at a time when it was impossible for Respondent's three high schools to opponents in their class or above.

Petitioner further exceeded its constitutional and statutory grant of authority, and otherwise acted in an arbitrary and capricious manner in it choose not to conduct a survey of its member schools prior to any change in the structure of the 2024 football season after the reclassification decisions were announced in August 2024.

A writ of prohibition is a “drastic remedy” granted only in extraordinary situations, reserved for really extraordinary causes. Petitioner has a “heavy burden” to establish a right to a writ of prohibition, and Petitioner must clearly demonstrate an absence of the circuit court’s jurisdiction in the underlying matter. A writ of prohibition is inappropriate where the trial court’s jurisdiction to act turns on a contested question of fact, and Petitioner has a “heavy burden” to show that the circuit court’s factual findings are clearly wrong. The Circuit Court of Wood County did not abuse its vast discretion in this matter, and Petitioner’s request for a writ of prohibition should be denied.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The court’s November 15, 2024, Scheduling Order suggests that there will be no oral arguments in this case. If that is not the case, oral arguments are supported by Appellate Rule 18(a) and by Appellate Rule 19(a)(1).

STANDARD OF REVIEW

Review of Circuit Court’s Order

A circuit court’s discretion to grant or refuse or to modify, continue, or dissolve a temporary or a permanent injunction, is reviewed on a clear showing of an abuse of such discretion. *Weaver v. Ritchie*, 197 W.Va. 690, 693, 478 S.E.2d 363, 366 (1996); *G Corp, Inc. v. MackJo, Inc.*, 195 W.Va. 752, 466 S.E.2d 820 (1995).

The factual findings are reviewed under a clearly erroneous standard. *Weaver v. Ritchie*, 197 W.Va. at 693, 478 S.E.2d at 366. *Burgess v. Porterfield*, 196 W.Va. 178, 469 S.E.2d 114 (1996).

The circuit court's decision that it has subject-matter jurisdiction is reviewed *de novo*. *State ex rel. Orlofske v. City of Wheeling*, 212 W. Va. 538, 542, 575 S.E.2d 148, 152 (2002)

Injunctive Relief Before This Court

This Court has original jurisdiction in prohibition proceedings pursuant to Art. VIII, §3, of The Constitution of West Virginia. That jurisdiction is recognized in Rule 16 of the West Virginia Rules of Appellate Procedure and by W. Va. Code § 51-1-3 and W. Va. Code § 53-1-2. A writ of prohibition will lie when a court exceeds, abuses, or acts without jurisdiction.” *State v. Lewis*, 188 W. Va. 85, 91, 422 S.E.2d 807, 813 (1992), *superseded by statute on other grounds as recognized in State v. Butler*, 239 W. Va. 168, 179 n.27, 799 S.E.2d 718, 729 n.27 (2017).

A writ of prohibition is “a drastic remedy,” and should be granted only in extraordinary situations. *Health Mgmt., Inc. v. Lindell*, 207 W.Va. 68, 72, 528 S.E.2d 762, 766 (1999). “Prohibition ... is an extraordinary remedy, the issuance of which is usually ‘reserved for really extraordinary causes.’ ” *State ex rel. Davidson v. Hoke*, 207 W. Va. 332, 335, 532 S.E.2d 50, 53 (2000)(quoting *State ex rel. Suriano v. Gaughan*, 198 W.Va. 339, 345, 480 S.E.2d 548, 554 (1996).

A party seeking a writ of prohibition carries a heavy burden. *State ex rel. Webb v. McCarty*, 208 W. Va. 549, 552, 542 S.E.2d 63, 66 (2000).

ARGUMENT

Exhaustion of Administrative Remedies Was Not Required

Exhaustion of administrative remedies is not required when the available administrative remedy is inadequate. *Strum v. Board of Education of Kanawha County*, 223 W.Va. 277, 672

W.Va. 676 syllabus point 3 (2008); *Wiggins v. Eastern Associated Coal Corp.*, 178 W.Va. 63, 357 S.E.2d 745, syllabus point 2 (1987). Nor is it required when seeking administrative remedies is either duplicative or futile. *Strum v. Board of Education of Kanawha County*, 223 W.Va., 672 W.Va. at syl. pt. 4; *Wiggins v. Eastern Associated Coal Corp.*, 178 W.Va., 357 S.E.2d at syl. pt. 6.

Exhaustion of administrative remedies was not required in this instance because that the first round of the playoffs began before an administrative appeal could be heard, and resort to those remedies would prejudice a subsequent judicial challenge. Further, the respective rankings of the various participants in the state football playoffs cannot be retroactively changed after the playoffs begin. In addition, was found to be biased or to have otherwise predetermined the issues before it, and that pursuing further administrative remedies at that point would have been futile. Irreparable harm would have been caused to each of Respondent's three high schools which would not be capable of being corrected through later administrative review. In addition, an overriding public interest called for a prompt judicial decision. Petitioner has made no showing that the findings and conclusions made by the Circuit Court of Wood County were clearly wrong, or that the court clearly abused its discretion in finding and concluding that exhaustion of administrative remedies in this case was not necessary. Petitioner's argument in this regard should be rejected.

The Circuit Court Did Not Exceed Its Lawful Jurisdiction

"A writ of prohibition 'lies as a matter of right whenever the inferior court (a) has [no] jurisdiction or (b) has jurisdiction but exceeds its legitimate powers.'" *State ex rel. Farber v. Mazzone*, 213 W.Va. 661, 664, 584 S.E.2d 517, 520 (2003) [quoting *State ex rel. Valley Distributors, Inc. v. Oakley*, 153 W.Va. 94, 99, 168 S.E.2d 532, 535 (1969)].

In reviewing a writ of prohibition, the Court must observe that the burden of proof is on the petitioner to demonstrate *clearly* an absence of jurisdiction: “To obtain relief in prohibition on the ground that a tribunal is acting outside of its jurisdiction, the petitioner must clearly demonstrate that it lacks authority to adjudicate a particular matter before it.” *Health Mgmt., Inc. v. Lindell*, 207 W.Va. 68, 72, 528 S.E.2d 762, 766 (1999). *See also* Syl. pt. 1, in part, *Fahey v. Brennan*, 136 W.Va. 666, 68 S.E.2d 1 (1951) (“A writ of prohibition does not lie in the absence of a clear showing that a trial court is without jurisdiction to hear and determine a proceeding...”); *Fisher v. Bouchelle*, 134 W.Va. 333, 335, 61 S.E.2d 305, 306 (1950) (“[T]he writ will not be awarded in cases where it does not clearly appear that the petitioner is entitled thereto.”); Syl., *Vineyard v. O’Brien*, 100 W.Va. 163, 130 S.E. 111 (1925) (“The writ of prohibition will issue only in clear cases, where the inferior tribunal is proceeding without, or in excess of, jurisdiction”); Syl. pt 3, in part, *Buskirk v. Judge of Circuit Court*, 7 W.Va. 91 (1873) (“Prohibition can only be interposed in a clear case of excess of jurisdiction on the part of some inferior judicial tribunal.”).

Moreover, “prohibition relief is inappropriate where jurisdiction turns upon contested issues of fact... [P]rohibition is confined to situations where the existence of jurisdiction revolves around questions of law.” *Id.* (citing *Lewis v. Fisher*, 114 W.Va. 151, 171 S.E. 106 (1933)). The Court has emphasized further:

The right of the trial court to determine the existence or nonexistence of facts that give rise to its own jurisdiction will not be interfered with by any other court, and the sole remedy is by appeal or writ of error... *If* [a finding of jurisdiction] *rests upon a determination of fact, prohibition will not lie.*

114 W.Va. at 154, 171 S.E. at 107 (emphasis added). *See also* *State ex rel. Zirk v. Muntzing*, 146 W.Va. 878, 894, 122 S.E.2d 851, 860 (1961) (“[W]here... the jurisdiction of the circuit court depends upon disputed questions of fact, that court has the right to determine its own jurisdiction from the facts before it, and prohibition will not be granted to prevent it from doing so.”); Syl. pt.

1, *Downs v. Lazzelle*, 102 W.Va. 663, 136 S.E. 195 (1926) (“Prohibition will not lie against an inferior court or a judge thereof to deprive it or him of the right to pass upon the extrinsic facts determinative of jurisdiction.”); *Stewart v. State Road Comm’n of West Virginia*, 117 W.Va. 352, 185 S.E. 567 (1936), *overruled on other grounds*. Contrary to Petitioner’s assertion, the relevant facts are highly disputed, and resolution of the present issues turns primarily on determination of fact. Should this Court determine that further development of the underlying facts is necessary, it may remand this matter to the Circuit court for discovery proceedings.

This case is not, as Petitioner advocates, a case where the trial court undertook a so-called “applied challenge” to a WVSSAC rule. Instead, this case involves a situation where the Petitioner exceeded its constitutional or statutory grant of authority or otherwise engaged in arbitrary or capricious conduct. In the latter instance, the enforcement of a WVSSAC rule is subject to challenge when the rule or the WVSSAC’s actions upon that rule exceeds the constitutional or statutory grant of authority given to the Commission or when the WVSSAC’s action is arbitrary or capricious. *Hamilton v. W. Va. Secondary Sch. Activities Comm’n*, 182 W. Va. 158, 386 S.E.2d 656 (1989).

Petitioner advocates that the ruling from the Circuit Court of Wood County “effectively prevents WVSSAC from providing a fair playing field to all its student athletes and remaining member schools.” *Petition pg. 13*. Despite the fact that this case has nothing to do with the rules affecting the “playing field,” Petitioner’s conduct at issue in this case is anything but fair. Petitioner’s reclassification of 22 schools beginning on August 12, 2024,² exceed Petitioner’s constitutional and statutory grant of authority and was otherwise arbitrary and capricious for several reasons.

² A 23rd school, Doddridge County High School, was reclassified was reclassified by way of judicial injunction issued on August 19, 2024. See *Wood County Order*, Beane J. ¶23, *Pet. App. 120*.

It is undisputed that various contracts associated with the scheduling of football games were entered into by Williamstown High School, Parkersburg High School, and Parkersburg South High School and their respective opponents prior to passage of Petitioner's new reclassification rule. Of particular importance, the contracts entered by each of Wood County's three high schools and their respective opponents were each on a form prepared by and provided to each of the schools by Petitioner. *WV CSR §127-3-13.1* ("All interscholastic contest contracts shall be prepared in duplicate on forms furnished by the WVSSAC,"). *See Petitioner's form contract, Resp. Appdx. 127.*

The form contract prepared by and provided to the schools by Petitioner expressly states: "The rules of the West Virginia Secondary School Activities Commission are a part of this contract." ¶2 of *Petitioner's Form Contract, Resp. Appdx. 127*. These rules provide for a "point rating system," *WV CSR 127-3-23.8*, which is therefore part of the contract as well. And, as a matter of general contract law, the point rating system becomes a fixed part of the contract at the time that the contract is signed. The WVSSAC's "Football Rating Plan" requires that each school at a minimum play 6 games against opponents in or above their own classification. And, importantly, "[w]hen a contract is signed with a school, the classification of that school will be used when determining the 6-game requirement for the length of the contract." *SSAC Football Playoff Manual, pg. 6, Resp. Appdx. 114*. Although Petitioner waived the 6-game requirement for the 2024-2025 school year, that does not change the fact that for the purposes of the "point rating system" the classification of the school at the time of signing the contract will be used during the length of the contract. To do otherwise would constitute arbitrary and capricious conduct and would also exceed Petitioner's constitutional and statutory authority.

The form contract prepared by and provided to the schools by Petitioner also expressly states: "This contract may be altered only by mutual agreement of the contracting schools and by approval by the Board of Directors." ¶6 of *Petitioner's Form Contract, Resp. Appdx. 127*. This term of the contract, which again was prepared by and provided to the schools by Petitioner, is the only way to alter game scheduling contracts. By not utilizing the "point rating system" that was in effect at the time the various contracts were signed, Petitioner is altering these contracts in contravention of its own rules and in contravention of law. This too exceeds its constitutional and statutory authority and amounts to arbitrary and capricious conduct.

Another of Petitioner's rules, WV CSR127-1-13.5.c..1A, requires that Petitioner's Board of Review "shall reverse, vacate, or modify the order or decision of the Board of Directors if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decisions, or orders are in are in violation of constitutional or statutory provisions...." Petitioner's rules also requires that Petitioner's Review Board shall reverse, vacate, or modify an order of the Board of Directors which is "in excess of statutory authority" of the Commission. Petitioner's August 2024 reclassification of 22 schools effectively eviscerated the primary purpose of the game scheduling contracts; namely, to maximize the opportunity to earn rating points by scheduling opponents in or above your classification. Petitioner's efforts to impose this new rule and resulting breach of contract exceeds the statutory authority granted to Petitioner. This is also arbitrary and capricious conduct. The Circuit Court of Wood County was not only within its purview to enter the order it did, but it was also correct to compel Petitioner to apply the point rating system which had been fixed in the various contracts at the time they entered into the respective contract. It must not be forgotten that the Wood County Circuit Court did not change or create anything, the

court merely ordered Petitioner to use the “point rating system” Petitioner otherwise would have used had the August 2024 reclassifications not occurred.

In addition to exceeding its statutory authority or otherwise taking action which was arbitrary or capricious as just described, Petitioner also exceeded its constitutional authority. Article 3, Section 4 of the West Virginia Constitution provides that “....No bill of attainder, *ex post facto* law, or law impairing the obligation of a contract, shall be passed.” Article 1, Section 10, clause 1, of the United States Constitution similarly provides that “No state shall.....pass any *ex post facto* Law, or Law impairing the Obligation of Contract...” Violation of the contract clause occurs when a law enacted after a contract has been entered into substantially impaired one’s contractual rights, and when there is no significant and legitimate public purpose behind the new law. *Shell v. Metropolitan Life Insurance Company*, 181 W.Va. 16, 20, 380 S.E.2nd 183, 187 (1989). It is undisputed that the three Wood County schools entered into their game scheduling contracts prior to Petitioner’s August 2024 reclassifications. It is likewise not disputed that each Wood County high school lost points it otherwise would have been awarded toward their respective state rankings when Petitioner allowed numerous opponents to drop in class.³ Wood County’s three high schools each specifically and purposefully entered into the contracts at issue in this case because they wanted to schedule opponents which were at an equal or greater classification. There is no significant and legitimate public purpose behind

³ Williamstown High School has a AA classification. It will lose base points due to St. Mary’s High School, Tyler Consolidated High School, and Ritchie County High School dropping in class from AA to A. It will also lose base points from beating Frankfort High School due to Frankfort High School being dropped in class from AAA to AA, and will also lose bonus points as a result of games won by Frankfort High School. Parkersburg High School has a AAAA classification. It will lose points due to St. Albans High School, Capital High School, and South Charleston High School each dropping in class from AAAA to AAA. It will also lose points attributed to each win St. Albans High School, Capital High School, and South Charleston High School have. Parkersburg South High School has a AAAA classification. It will lose base points due to John Marshall High School dropping in class from AAAA to AAA. It will also lose points attributed to each win John Marshall High School has.

Petitioner's evisceration of those vested contract interest; *Petitioner* particularly when Petitioner applied its ruling only to football, not to any other sport. Importantly, Petitioner's Board of Review directed Petitioner to "conduct further investigations and deliberations on the entire classification models scores and proper classification for all school for all sports for 2024-2027 and football for 2025-2027."⁴ *Board of Review Order, August 12, 2024, pg. 4, Petitioner Appendix 135-138*. Given the various *caveats* and limitations set forth in the August 12, 2024, Order from Petitioner's Board of Review, it cannot be credibly argued that there is a significant and legitimate public purpose for Petitioner nullifying the essential purpose of the various game scheduling contracts entered into by the three Wood County high schools and their respective opponents.

The Circuit Court of Wood County noted a shortcoming in the Petitioner's argument regarding Petitioner's assertion that purported safety concerns justified its actions. *Wood County Circuit Court Order, November 9, 2024, Conclusions of Law ¶ 12*. The Circuit Court of Wood County correctly questioned how safety is promoted in situations where a smaller AAAA school is reclassified to AAA, but that former AAAA school is then called upon to play a game against a smaller AAA school. Do the same safety concerns also apply in that situation too? Such flawed reasoning supports Respondent's argument that there is no significant and legitimate public purpose for Petitioner nullifying the essential purpose of the various game scheduling contracts Respondent had entered into, and that Petitioner's conduct exceeds its constitutional and statutory authority and was otherwise arbitrary and capricious.

⁴ Footnote 1 of the Board of Review's Order states: "This decision is based solely on the competitive balance issue. However, the BOR notes that the scoring methodology on location and economics leads to illogical results and the BOD should investigate those inconsistencies and seek some more logical results." *Order, WVSSAC Board of Review dated August 12, 2024, pg. 4, Pet. App. 135*.

The Circuit Court of Wood County also found that Petitioner’s reclassification rule, WV CSR 127-3-10 *et sequitur*, exceeds the constitutional and statutory authority granted to Petitioner and that it also leads to arbitrary and capricious results due to the fact that the phrase “when it determines the rule fails to accomplish the purpose for which it was intended” contained in WV CSR 127-3-10.7 is without sufficient definition and therefore is both vague and overbroad. Although Petitioner’s Board of Review found that “the purpose of the classification rule is to provide for a competitive balance among and within the four classes,” *Board of Review Order, August 12, 2024, pg. 4, Petitioner Appendix*, the Circuit Court of Wood County found that such a purpose for Petitioner’s new classification rule was not expressly set forth in Petitioner’s rule, and that any supposition as to what was “the intended purpose of the rule” is speculation. The Circuit Court of Wood County’s reasoning is bolstered by the fact that Petitioner’s Board of Review concedes that “the scoring methodology on location and economics leads to illogical results and the BOD should investigate those inconsistencies and seek some more logical results.” *Board of Review Order dated August 12, 2024, pg. 4, Petitioner Appendix 135*. The Circuit Court of Wood County was correct when it concluded that there is no proper review procedure regarding the classification rules set forth in WV CSR 127-3-10 *et. sequitur*, and that Petitioner’s new reclassification rule exceeds the statutory grant of authority given to Petitioner by W.Va. Code § 18-2-25(b)(“The rules of the West Virginia Secondary Schools Activities Commission **shall** contain a provision for a **proper** review procedure...” (Emphasis supplied).

Moreover, WV CSR 127 CSR 3-10.4 of Petitioner’s rules provide that: “The Board of Directors may structure the WVSSAC. tournament series in each sport by classification (AAAA-AAA-AA-A). Each sport will be structured according to the level of interest and accommodation for tournament alignment. *The WVSSAC will conduct a survey of the membership prior to any*

change of structure of any given sport.” (Emphasis supplied). There is no mention anywhere in the record that Petitioner conducted a “survey of the membership prior to any change of structure of any given sport” [football in this instance] prior to the August 12, 2024 reclassifications as required by Petitioner’s rules. Twenty-three changes in classifications out of one-hundred-eleven football playing schools (21%) is not an isolated waiver or an otherwise significant change. Petitioner choose not to conduct a survey of the membership prior to any change of structure of football given such a large and meaningful change in the sport’s structure. As a result, Petitioner’s August 2024 reclassification of 22 schools exceeded its grant of statutory authority and constituted arbitrary and capricious conduct for this reason as well.

CONCLUSION

A writ of prohibition is a “drastic remedy,” and Petitioner has a “heavy burden.” Where the trial court’s jurisdiction to act turns on a contested question of fact, and it must clearly shown that the circuit court’s factual findings are clearly wrong. The Circuit Court did not abuse its vast discretion in this matter, and Petitioner’s request for a writ of prohibition should be denied.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I, Patrick E. McFarland, counsel for the Board of Education for Wood County, certifies that on November 18, 2024, I served the foregoing Response to Petition for Writ of Prohibition, *via* first class U.S. mail, postage prepaid, and via email transmission, upon the following counsel of record. The same was also served through the court's e-filing system:

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