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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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Docket No. 24-656

**STATE OF WEST VIRGINIA, EX REL. WEST VIRGINIA SECONDARY  
SCHOOLS ACTIVITIES COMMISSION, PETITIONER**

**v.)**

**THE HONORABLE ANITA HAROLD ASHLEY, JUDGE OF THE CIRCUIT  
COURT OF MASON COUNTY, POINT PLEASANT JUNIOR SENIOR HIGH  
SCHOOL, FREDERICK H., AS PARENT AND NEXT FRIEND OF R.H.,  
RESPONDENTS**

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RESPONSE TO PETITION FOR WRIT OF PROHIBITION

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## **STATEMENT OF THE CASE**

On August 30, 2024, the Point Pleasant Big Blacks football team took to the field at Ohio Valley Bank Track and Field in Point Pleasant, West Virginia, for its first game of the season. On that day, the sixty-five players on the team, including Senior R.H., and coaches began working towards one of their main goals—making the playoffs. As the season wore on, it had its ups and downs, unexpected losses, thrilling victories, unfortunate turnovers, amazing receptions, a game cancelled due to a hurricane, and, then, it culminated with a win at home on November 8, 2024, against a long-time rival that resulted in Point Pleasant Junior Senior High School making the playoffs. The coaching staff, including the head coach who had announced his pending retirement prior to the start of the season, the players, the parents, and the fans, cognizant of what had been accomplished in a season that had not always gone their way, celebrated this accomplishment. The sixty-five players left the field knowing that they would have at least one more game left to play, one more time to run onto the field together as a team, and, for the seniors, one more chance to play in front of their family, friends and classmates.

When the Big Blacks took to the field on August 30, 2024, they, like every other high school team in West Virginia, knew the classification system, as well as the accompanying point system, that was in place for the season and, as such, played the entire season with the knowledge of what would be required throughout the season to make the playoffs. Then, on November 9, 2024, after going to bed the night before knowing they would be in the playoffs, the Big Blacks learned that what they had accomplished on the field had been taken away from them by the West Virginia Secondary School Activities Commission (“WVSSAC”) when it chose to implement an Order entered by the Circuit Court of Wood County, West Virginia, that required the WVSSAC recalculate the standings for the playoffs, and announced the new playoff teams—which no longer included the Point Pleasant Junior Senior High School Big Blacks. In so doing, the WVSSAC

made no announcement or in any way indicated that it would be taking any action other than what it had already done—modify the playoff standings such that teams who had earned a playoff spot under the rules that had been in place since prior to the season starting were no longer in the playoffs and had been replaced by the WVSSAC with other teams.

Faced with the loss of their playoff spot and understanding that action had to be taken to right this wrong, William Cottrill, the Principal of Point Pleasant Junior Senior High School; James Higginbotham, the Athletic Director of said school; and F.H., the father of R. H., a minor, who is a senior at Point Pleasant Junior Senior High School and a player on the football team for said school, filed the subject “Petition for Emergency Injunctive Relief” on November 11, 2024, requesting that, in light of the arbitrary and capricious actions of the WVSSAC in recalculating the playoff standings and announcing the same, thereby eliminating Point Pleasant Junior Senior High School from their hard-earned playoff spot, the Circuit Court order that the WVSSAC facilitate play-in games for the two teams in AAA who were abruptly and wrongly eliminated from the playoffs. The Circuit Court of Mason County, West Virginia, subsequently entered an order granting that Petition, finding that

If this Petition is not granted, there will be immeasurable irreparable harm to the Petitioners, Point Pleasant Junior Senior High School Football Team, Senior [R.H.], and all football players, cheerleaders, band members, parents and community supporters, all of whom will be deprived of the opportunity to play in a state playoff game—that they had been assured of with a victory at their game played on November 8, 2024, under the rules that had been in effect the entire regular season.

App. p.42.

It is with regard to that Order that Petitioner seeks the subject writ.

## SUMMARY OF ARGUMENT

The Respondents herein agree with the WVSSAC that the “Order Granting Injunctive Relief” entered by the Circuit Court of Wood County, West Virginia, on November 9, 2024, should be overturned, vacated or otherwise found to be non-enforceable and the WVSSAC be permitted/required to return to the playoff rules/calculations that had been in place since August, 2024, which would thereby make the Petition herein moot.

However, in the event that relief is not granted, then the issuance of a writ is not appropriate in the present case as Petitioner fails to meet the burden placed on it in *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996), and the Circuit Court of Mason County, West Virginia’s Order should remain in place and the Petition filed herein should be denied.

## STATEMENT REGARDING ORAL ARGUMENT AND DECISION

The undersigned does not believe oral argument is necessary as the facts and legal arguments are adequately presented in the briefs and the decisional process would not be significantly aided by oral argument.

## ARGUMENT

- I. IF THIS COURT DECLINES TO ISSUE A WRIT REGARDING THE CIRCUIT COURT OF WOOD COUNTY, WEST VIRGINIA’S, “ORDER GRANTING INJUNCTIVE RELIEF” ENTERED ON NOVEMBER 9, 2024, THEN, LIKEWISE, A WRIT IS NOT APPROPRIATE FOR THE NOVEMBER 11, 2024, ORDER ENTERED BY THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA.**

Respondents filed their “Petition for Emergency Injunctive Relief” on November 11, 2024, in light of the arbitrary and capricious actions of the WVSSAC in recalculating the playoff standings and announcing the same as a result of the implementation of the “Order Granting Injunctive Relief” entered by the Circuit Court of Wood County, West Virginia on November 9, 2024, which actions thereby eliminated Point Pleasant Junior Senior High School from their hard-

earned playoff spot. As such, if this Court overturns, vacates or otherwise finds the subject Order from the Circuit Court of Wood County, West Virginia, to be non-enforceable and the playoff standings are therefore returned to as they were prior to the entry of the Order by the Circuit Court of Wood County, then the Order entered by the Circuit Court of Mason County, West Virginia, would be moot as the relief sought would no longer be feasible or necessary due to the two teams in AAA who were abruptly and wrongly eliminated from the playoffs being reinstated to said playoffs. However, if the Writ sought by the WVSSAC with regard to the subject Order entered by the Circuit Court of Wood County, West Virginia, is denied, then the Order that is the subject of this Petition should likewise remain in full force and effect and the play-in games ordered should commence posthaste.

## **II. THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA, DID NOT IMPROPERLY APPLY FACTS TO THE EXISTING LAW.**

Although the Petitioner herein alleges that the Circuit Court of Mason County, West Virginia, improperly applied facts to the existing law, its argument is clearly flawed on its face. The WVSSAC supports its position by alleging that “the Mason County Order did not reverse the Wood County Order”, however, this contention is clearly erroneous as the Circuit Court of Mason County, West Virginia, has no legal authority to “reverse” another Circuit Court’s orders and, in fact, the WVSSAC points to no such authority.

Further, to the extent the WVSSAC contends that the subject Order “usurps the proper functions of the WVSSAC”, it fails to recognize that Circuit Court of Mason County, West Virginia, found that the WVSSAC’s actions in removing Point Pleasant Junior Senior High School were “arbitrary and capricious”, and, as such, the Circuit Court has authority to set aside said actions. *Hamilton v. W.Va. Secondary Sch. Activities Comm’n*, 182 W.Va. 158, 386 S.Ed. 2d 656 (1989).

### **III. THE CIRCUIT COURT OF MASON COUNTY, WEST VIRGINIA, HAS JURISDICTION**

Although the Petitioner herein alleges that the Circuit Court of Mason County, West Virginia, has no jurisdiction over teams not within Mason County (Petition, p. 14), this argument is without merit as the Circuit Court of Mason County has jurisdiction over the WVSSAC (and Petitioner does not even argue otherwise), and, therefore, has jurisdiction to order the WVSSAC to facilitate the subject play-in games. Further, as the WVSSAC is by statute composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the state superintendent of schools that they have elected to delegate the control, supervision and regulation of their interscholastic athletic events and band activities of the students on the public secondary schools in their respective counties to said WVSSAC. (127 C.S.R. 141), and the WVSSAC may exercise the control, supervision and regulation of interscholastic athletic events of secondary schools. (W.Va. Code Section 18-2-25(b)). Since the WVSSAC unquestionably conducts business in Mason County, the Circuit Court of Mason County has jurisdiction over the WVSSAC and, as such, all of its members who have delegated their authority to said entity. Thus, contrary to Petitioner's argument, the Circuit Court of Mason County has jurisdiction over the WVSSAC and its members to order the WVSSAC facilitate the play-in games (and failure of the subject schools to participate would be treated as a forfeit).

### **CONCLUSION**

Based on the above, William Cottrill, Principal of Point Pleasant Junior Senior High School; James Higginbotham, the Athletic Director of said school; and F.H., the father of R. H., a minor, a senior football player at Point Pleasant Junior Senior High School respectfully request that, if this Court declines to issue a writ against the Circuit Court of Wood County, West Virginia, with regard to its Order of November 9, 2024, then the Petition filed herein be denied and the

Order entered by the Circuit Court of Mason County, West Virginia, on November 11, 2024,  
remain in full force and effect and the play-in games ordered therein be commenced posthaste.

**POINT PLEASANT JUNIOR SENIOR HIGH SCHOOL,  
BY PRINCIPAL WILLIAM COTTRILL AND ATHLETIC  
DIRECTOR JAMES HIGGINBOTHAM; AND  
FREDERICK H., AS PARENT AND NEXT FRIEND OF  
R.H.,  
RESPONDENTS**

**By Counsel,**

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Docket No. 24—656

Certificate of Service

I, Tanya Hunt Handley, do hereby certify that the foregoing **RESPONSE TO PETITION FOR WRIT OF PROHIBITION** was served on the following counsel via the mandatory E-Filing on November 17, 2024:

The Honorable Anita Harold Ashley  
Mason County Circuit Court  
200 Sixth Street  
Point Pleasant, WV 25550  
*Respondent Circuit Judge*

Stephen F. Gandee  
*ROBINSON & MCELWEE PLLC*  
*PO Box 128*  
*Clarksburg, WV 26302-0128*  
*Counsel for Petitioner*

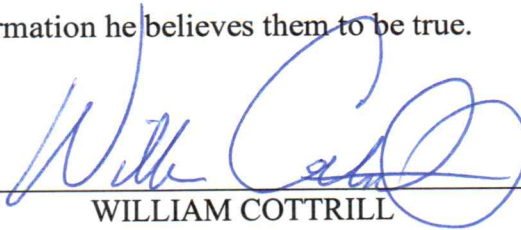
s/Tanya Hunt Handley \_\_\_\_\_  
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## VERIFICATION

STATE OF WEST VIRGINIA

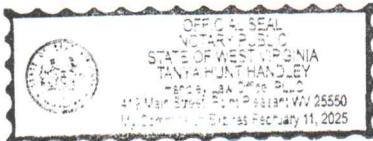
COUNTY OF MASON, to-wit:

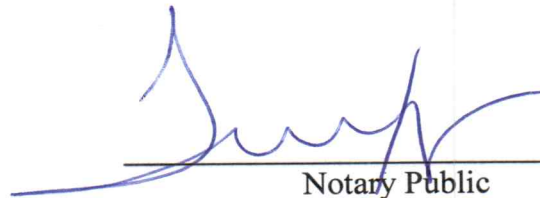
WILLIAM COTTRILL, as Principal of Point Pleasant Junior Senior High School, being first duly sworn, says that the facts and allegations contained in the foregoing document are true and correct, except such as are therein stated to be upon information and belief, and such as are therein stated to be upon information he believes them to be true.

  
WILLIAM COTTRILL

Taken subscribed and sworn before me this 17<sup>th</sup> day of November, 2024.

My Commission expires: Feb 11, 2025



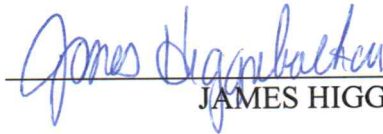
  
Notary Public

## VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF MASON, to-wit:

JAMES HIGGINBOTHAM, as Athletic Director of Point Pleasant Junior Senior High School, being first duly sworn, says that the facts and allegations contained in the foregoing document are true and correct, except such as are therein stated to be upon information and belief, and such as are therein stated to be upon information he believes them to be true.

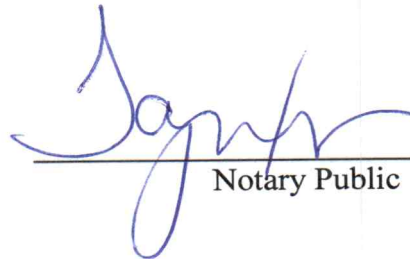


JAMES HIGGINBOTHAM

Taken subscribed and sworn before me this 17<sup>th</sup> day of November, 2024.

My Commission expires: Feb. 11, 2025





Notary Public

## VERIFICATION

STATE OF WEST VIRGINIA

COUNTY OF MASON, to-wit:

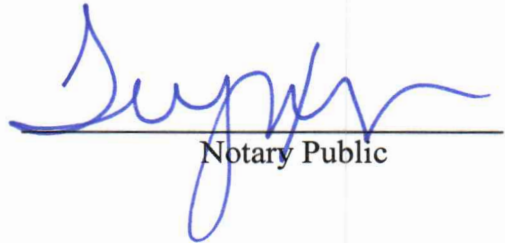
FREDERICK W. HUNT, being first duly sworn, says that the facts and allegations contained in the foregoing document are true and correct, except such as are therein stated to be upon information and belief, and such as are therein stated to be upon information he believes them to be true.



FREDERICK W. HUNT

Taken subscribed and sworn before me this 17<sup>th</sup> day of November, 2024.

My Commission expires: Feb. 11, 2025

  
Notary Public