

STATE OF WEST VIRGINIA EX REL. THE WEST VIRGINIA BOARD OF EDUCATION
AND MICHELE BLATT, IN HER CAPACITY AS STATE
SUPERINTENDENT OF SCHOOLS,
Petitioners

v.

KRIS WARNER, IN HIS CAPACITY AS WEST VIRGINIA SECRETARY OF STATE,
Respondent

**AMICUS CURIAE BRIEF SUBMITTED BY WEST VIRGINIA PARENT TEACHER
ASSOCIATION IN SUPPORT OF PETITIONERS STATE OF WEST VIRGINIA EX
REL. THE WEST VIRGINIA BOARD OF EDUCATION AND MICHELE BLATT, IN
HER CAPACITY AS STATE SUPERINTENDENT OF SCHOOLS**

Marc E. Williams (WV Bar No. 4062)
Shaina D. Massie (WV Bar No. 13018)
Anna J. Williams (WV Bar No. 14705)
NELSON MULLINS RILEY & SCARBOROUGH LLP
949 Third Avenue, Suite 200
Huntington, WV 25701
Phone: (304) 526-3500
Fax: (304) 526-3599
Email: marc.williams@nelsonmullins.com
Email: shaina.massie@nelsonmullins.com
Email: anna.williams@nelsonmullins.com

***Counsel for Amicus Curiae
West Virginia Parent Teacher Association***

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I. STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY¹

The West Virginia Parent Teacher Association (the “West Virginia PTA”) is part of the National Parent Teacher Association, a nonprofit organization that is dedicated to advancing the well-being of children, youth, and families. The West Virginia PTA is comprised of local groups totaling over 5,500 members throughout the State. The mission of the West Virginia PTA is to make every child’s potential a reality by engaging and empowering families and communities to advocate for all children. The West Virginia PTA submits this brief as *amicus curiae* based on its interest in preserving the independence of the West Virginia Board of Education (the “Board”). The West Virginia PTA believes the independence of the Board protects its children, supports its teachers, and ensures that local schools will remain strong, fair, and nonpartisan.

House Bill 2755 would place unconstitutional limits on the Board’s constitutional authority to oversee the State’s public schools and the Board’s ability to make educational decisions based on the best interests of students. The Board’s Writ of Mandamus asks this Court to determine whether House Bill 2755 violates the West Virginia Constitution and this Court’s binding precedent in *West Virginia Board of Education v. Hechler*, 180 W. Va. 451, 376 S.E.2d 839 (1988). The West Virginia PTA urges this Court to answer this question in the affirmative, grant the Board’s Petition for Writ of Mandamus, declare the laws enacted by House Bill 2755 unconstitutional, and compel the Secretary of State to publish the Board’s rules in the State Register.

¹ Pursuant to West Virginia Rule of Appellate Procedure 30(b), the parties have consented to amicus briefs, and the required notice has been provided. Pursuant to West Virginia Rule of Appellate Procedure 30(d), the West Virginia PTA submits this brief within a reasonable time of its knowledge of the Board’s petition. Pursuant to West Virginia Rule of Appellate Procedure 30(e)(5), this amicus brief was authored by counsel for the West Virginia PTA. No counsel for any party authored the brief in whole or in part, and no party or counsel made a monetary contribution intended to fund the preparation or submission of the brief.

II. ARGUMENT

House Bill 2755 presents a plethora of constitutional challenges defeated by clear commands of this Court and its interpretation of the West Virginia Constitution. To begin, the separation of powers doctrine bars the Legislature from impeding the Board's constitutional independence in defiance of this Court's established precedent in *Hechler*. Similarly, the Legislature cannot escape the fundamental restraints on its power—and constitutional interpretations of this Court—by aggrandizing statutory authority clearly indicative of a contrary result. To this end, the only way the Legislature can effectuate the change sought in House Bill 2755 is through the will of the voters—who have twice spoken out in opposition to the Legislature's efforts. As such, the invalidation of House Bill 2755 is the only proper course before this Court.

A. The Separation of Powers Precludes the Legislature from Writing *Hechler* out of Existence.

House Bill 2755 is a hornbook example of one branch of government treading upon the constitutionally derived powers of other branches, which is an outcome our system of checks and balances, as well as this Court's binding decisions, cannot abide. House Bill 2755 accurately observes that “pursuant to section one, article five of the West Virginia Constitution, there are only three branches of government.” A.R. at 869. The veracity of its recitations ends there. House Bill 2755 violates the separation of powers because it eviscerates the Board's constitutionally granted general supervision over the State's public schools by overtaking its rule-making authority. In addition, House Bill 2755 violates the separation of powers by purporting to reinterpret the West Virginia Constitution, a responsibility that rests solely with this Court and this Court alone. For these reasons, this Court should grant the Board's writ and declare House Bill 2755 unconstitutional.

1. The Legislature violated the separation of powers with respect to the Board.

In *West Virginia Board of Education v. Hechler*, 180 W. Va. 451, 376 S.E.2d 839 (1988), this Court held—unequivocally—that the West Virginia Constitution vests the Board with the exclusive authority to supervise and manage public education policy. Indeed, as this Court announced in a Syllabus Point: “Rule-making by the State Board of Education is within the meaning of ‘general supervision’ of state schools pursuant to art. XII, § 2 of the West Virginia Constitution, and any statutory provision that interferes with such rule-making is unconstitutional. Consequently, W. Va. Code, 29A-3A-12 and -13 [1988] are hereby declared to be unconstitutional.” *Id.* at Syl. Pt. 2 (alteration in original). This Court’s holding in *Hechler* was direct and categorical.²

In *Hechler*, this Court addressed a near *identical* set of facts to those presented in the Board’s writ. In June 1988, the Legislature amended the State Administrative Procedures Act, W. Va. Code, 29A-1-1 *et seq.*, by adding a new article establishing a “legislative oversight commission on education accountability” composed of various members of the House of Delegates and the Senate. *Id.* at 452, 376 S.E.2d at 840. Under the new statutory scheme, the Board was required to submit its approved rules to the legislative oversight commission for review, and the oversight commission would “recommend that the legislature either promulgate the rule in whole or in part, or recommend that the rule be withdrawn.” *Id.* at 452–53, 376 S.E.2d at 840. Two months later, the Board adopted a rule titled “West Virginia Minimum Requirements for Design and Equipment of School Buses,” which was set to take effect on October 22, 1988. *Id.* at 453, 376 S.E.2d at 840. When the Board filed this rule with the Secretary of State, he “refused to file

² This was not mere obiter dictum but rather bears the highest precedential value under or law. *See* Syl. Pt. 1, *State v. McKinley*, 234 W. Va. 143, 764 S.E.2d 303, 306 (2014) (“Signed opinions containing original syllabus points have the highest precedential value because the Court uses original syllabus points to announce new points of law or to change established patterns of practice by the Court.”).

the rule, basing his refusal on the Board's failure to comply with the newly enacted provisions of the Administrative Procedures Act." *Id.* The Board then petitioned this Court for a writ of mandamus compelling the Secretary of State to file rules approved by the Board in the state register and declaring the legislation amending the Administrative Procedures Act unconstitutional. *Id.*

This Court began its analysis by observing the "constitutionally preferred status of public education in West Virginia," *id.* at 453, 376 S.E.2d at 841, and further emphasized that decisions pertaining to "education must be faced by those who possess expertise in the educational area," *id.* at 455, 376 S.E.2d at 842. As this Court recognized, "[t]hese issues are critical to the progress of schools in this state, and, ultimately, the welfare of its citizens." *Id.* at 455, 376 S.E.2d at 842. With these principles in mind, this Court held that "'[g]eneral supervision' is not an axiomatic blend of words designed to fill the pages of our State Constitution, but it is a meaningful concept to the governance of schools and education in this state." *Id.* In so holding, this Court reaffirmed its prior position that "any statutory provision that interferes with the State Board of Education's 'general supervision of the free schools of the State' under article XII, § 2 of the West Virginia Constitution is void." *Id.* at 454, 376 S.E.2d at 842 (quoting *Bailey v. Truby*, 174 W. Va. 8, 18, 321 S.E.2d 302, 312 (1984)).

Having reestablished the exclusive purview of the Board's general supervisory powers, the Court had no difficulty in announcing "that rule-making by the State Board of Education is within the meaning of 'general supervision' of state schools pursuant to art. XII, § 2 of the West Virginia Constitution, and any statutory provision that interferes with such rule-making is unconstitutional." *Id.* at 455, 376 S.E.2d at 843. This Court further recognized that "Article XII, § 1 of the State Constitution, granting the legislature the authority to establish 'a thorough and efficient system of free schools,' does not entail the exclusive delegation of rule-making functions

that are part of the Board’s general supervisory powers pursuant to art. XII, § 2.” *Id.* Accordingly, the Court determined that any attempt to invade the Board’s general supervisory authority violated the separation of powers under Article V, § 1, which states: “The legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others[.]” *Id.* at 455–56, 376 S.E.2d at 843 (alteration in original).

Déjà vu translates from the French for “already seen,” and no one could blame this Court if it were struck by a strong sense of déjà vu in this case. The Court has “already seen” and addressed the exact same facts presented in the Board’s writ. Like its statutory precursor, House Bill 2755 draws the Board under the umbrella of the Administrative Procedures Act and requires the Board to submit its rules to the legislative oversight commission on education accountability, which can authorize promulgation of the proposed rule in whole or in part, recommend that the proposed rule be withdrawn, or reject the proposed rule outright. *See* A.R. at 870–72. Like his predecessor, Secretary of State Kris Warner’s office refused to publish a rule pertaining to the “West Virginia Minimum Requirements for Design and Equipment of School Buses” in light of the legislative changes. *See* A.R. at 879.

There can be no doubt that, under *Hechler*, House Bill 2755 is as void today as the Legislature’s identical misadventure in 1988. The Legislature’s constitutional power grab violated the separation of powers then, just as House Bill 2755 does now. *See Hechler*, 180 W. Va. 455–56, 376 S.E.2d at 843 (recognizing that any attempt to invade the Board’s general supervisory authority, including rulemaking, violates the separation of powers under Article V, § 1, which creates three separate and co-equal branches of government). For this reason alone, this Court should grant the Board’s writ and declare House Bill 2755 unconstitutional.

2. The Legislature violated the separation of powers with respect to this Court.

House Bill 2755 not only violates the separation of powers as it pertains to the constitutionally created Board—it also violates the separation of powers as it pertains to this Court. Granted, if the Legislature disagrees with this Court’s interpretation of a *statute*, the Legislature certainly is free to, and often does, resolve to change the law in light of this Court’s opinions. Compare *Leggett v. EQT Prod. Co.*, 239 W. Va. 264, 800 S.E.2d 850 (2017) (interpreting W. Va. Code § 22-6-8(e), otherwise known as the flat-rate statute, to permit “pro-rata deduction or allocation of all reasonable post-production expenses actually incurred by the lessee” from oil and gas royalties), with S.B. 360, 83d Legis., Reg. Sess. (W. Va. 2018) (amending W. Va. Code § 22-6-8(e) to provide for royalties “free from any deductions for post-production expenses”). Indeed, this Court often invites the Legislature to change the law where the Court cannot.³

But the Legislature’s power to change the law ends where the Constitution begins. See *Marbury v. Madison*, 5 U.S. 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”); see also *State ex rel. Bagley v. Blankenship*, 161 W. Va. 630, 643, 246 S.E.2d 99, 107 (1978) (“The Court is empowered to construe, interpret and apply provisions of the Constitution . . .”). As this Court has recognized, “the principle was long ago established that the determination of whether a legislative act was in conflict with a constitutional provision was *a question to be determined by the judicial branch of the*

³ See, e.g., *Romeo v. Antero Res. Corp.*, 917 S.E.2d 26, 35 (W. Va. 2025) (“[I]t is not within this Court’s remit to decide cases based on policy concerns; that is a task constitutionally delegated to the West Virginia Legislature.”); *Verba v. Ghaphery*, 210 W. Va. 30, 35, 552 S.E.2d 406, 411 (2001) (“It is beyond dispute that the legislature has the power to alter, amend, change, repudiate, or abrogate the common law.”); Syl. Pt. 4, *Cunningham v. Cnty. Ct. of Wood Cnty.*, 148 W. Va. 303, 303, 134 S.E.2d 725, 726 (1964) (“By reason of the provisions of Article VIII, Section 21 of the Constitution, and the provisions of Code, 1931, 2-1-1, this Court must leave to the legislature the function of determining whether to change or not to change the common law principle pertaining to the governmental immunity of county courts.”); see also, e.g., *Sosa v. Alvarez-Machain*, 542 U.S. 692, 727 (2004) (“[A] decision to create a private right of action is one better left to legislative judgment in the great majority of cases.”).

government.” *Kanawha Cnty. Pub. Libr. v. Cnty. Ct. of Kanawha Cnty.*, 143 W. Va. 385, 391, 102 S.E.2d 712, 716 (1958) (emphasis added).

This is no small undertaking. The separation of powers outlined in Article V, § 1 “prohibits any one department of our state government from exercising the powers of the others” and “is not merely a suggestion;” rather, “it is part of the fundamental law of our State and, as such, it must be strictly construed and closely followed.” *State ex rel. Barker v. Manchin*, 167 W. Va. 155, 167, 279 S.E.2d 622, 630 (1981).⁴ *See also State ex rel. Workman v. Carmichael*, 241 W. Va. 105, 117, 819 S.E.2d 251, 263 (2018) (“[W]hether a matter is exclusively committed by the constitution to another branch of government ‘is itself a delicate exercise in constitutional interpretation and is a responsibility of this Court as ultimate interpreter of the Constitution.’” (quoting *Baker v. Carr*, 369 U.S. 186, 211 (1962))).

As this Court recognized in *Hechler*, the Board “is granted general supervisory powers over state educational matters by the State **Constitution.**” 180 W. Va. at 455 n.7, 376 S.E.2d at 843 n.7 (emphasis in original). In other words, the Court “invalidat[ed] legislative provisions that interfere[d] with the Board’s exercise of general supervisory powers” to the extent those powers were granted by the Constitution. *See id.* (distinguishing *Chico Dairy Co. v. W. Va. Hum. Rts. Comm’n*, 181 W. Va. 238, 382 S.E.2d 75 (1988), where the administrative agency at issue derived its rulemaking authority from a statute). Only this Court can determine whether House Bill 2755 conflicts with Article XII, § 2. *See Kanawha Cnty. Pub. Libr.*, 143 W. Va. at 391, 102 S.E.2d at 716. And this Court answered that question in the affirmative in *Hechler*.

⁴ Article V is unique in the West Virginia Constitution such that our drafters felt the need to clearly and expressly delineate the concept of the separation of powers. By contrast, the separation of powers contained in the Federal Constitution arises only by implication. *Compare* W. Va. Const. art V, § 1, *with* U.S. Const. art. I, § 1; *id.* at art. II, § 1; *id.* at art. III, § 1. *See also The Federalist* No. 48 (James Madison) (“The accumulation of all powers, legislative, executive, and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, selfappointed, or elective, may justly be pronounced the very definition of tyranny. “); *id.* No. 47 (James Madison) (“[T]he preservation of liberty requires that the three great departments of power should be separate and distinct.”).

The Legislature may not like *Hechler*. It may disagree with *Hechler*. But it cannot abrogate *Hechler* through a subsequent statute that is substantially the same as the one struck down in *Hechler*.⁵ Because the Legislature lacks the power to interpret and apply the Constitution, this Court should grant the Board’s writ and declare House Bill 2755 unconstitutional.

B. The Legislature Lacks Authority to Derogate the Board’s Inherent Supervisory Powers.

Even if constitutional interpretation were not solely the purview of the judiciary, House Bill 2755’s findings and definitions section betrays the Legislature’s fundamental misunderstanding of well-settled law, which cannot be allowed to stand.

In pertinent part, House Bill 2755 observes that Article XII, § 2 transferred the existing power of “‘general supervision’ of free schools” from the previously-elected state superintendent to the Board, “which shall perform such duties as may be prescribed by law.” A.R. at 868. Despite this passing recognition, House Bill 2755 posits that the “Legislature shall provide” language contained in Article XII, § 1 “establish[es] the Legislature as the ultimate authority to approve, amend, or reject rules promulgated by the West Virginia Board of Education under section two, article twelve of the West Virginia Constitution.” A.R. at 868–69. Finally, House Bill 2755 further suggests that “the Legislature exercises authority over the West Virginia Board of Education pursuant to §18-2-5 of this code.” A.R. at 869.

These misguided assertions find no support in long-standing West Virginia law interpreting such language, in binding precedent from this Court directly on point, or in jurisprudence from other states that have examined similar issues. As discussed below, nothing in the text of Article XII or Section 18-2-5 provides the Legislature with any authority whatsoever to circumscribe the

⁵ In fact, as discussed below, the people—not the Legislature—possess the power to change the Constitution. See Section C, *infra*.

Board's general supervision over the public schools of this great State, which is why this Court should grant the Board's writ and declare House Bill 2755 unconstitutional.

1. Contrary to its assertion, the Legislature does not possess unfettered discretion to limit the Board's general supervisory duties.

As discussed above, the facts of the instant dispute around House Bill 2755 are identical to those presented in *Hechler*—down to the very rule regarding school bus design and equipment. *See* Section A, *supra*. But the Legislature's latest attempt to intrude upon the powers of a constitutional office is merely a new riff on a tired refrain. In *State ex rel. McGraw v. Burton*, 212 W. Va. 23, 569 S.E.2d 99 (2002), the West Virginia Attorney General asked this Court to, *inter alia*, “hold unconstitutional any statute that purports to authorize any executive agency, body, or similar instrumentality of the State to employ and use lawyers who are not employed or approved by the Attorney General” *Id.* at 27–28, 569 S.E.2d at 103–04. Although the Court held that the executive branch and related entities could, in some circumstances, “employ and use lawyers who are not employees of the Attorney General,” *see id.* at Syl. Pt. 5, *Burton* is notable for its extensive discussion of the inherent powers the Office of Attorney General possessed.

The Court began its discussion by examining Article VII, §1 of the West Virginia Constitution, which created various executive offices, including the Office of the Attorney General, as follows: “The executive department shall consist of a governor, secretary of state, auditor, treasurer, commissioner of agriculture and attorney general, who shall be, *ex officio*, reporter of the court of appeals They shall perform ***such duties as may be prescribed by law.***” *Burton*, 212 W. Va. at 29, 569 S.E.2d at 105 (emphasis in original).

Based on the “as prescribed by law” language and “lack of other specific constitutional language,” the *Burton* respondents argued that “the Legislature has essentially plenary and unfettered discretion to, through statutory action, delineate, limit, or even effectively eliminate the

Attorney General’s role in providing legal counsel and representation to State entities.” *Id.* (citing *Lawson v. Kanawha Cnty. Ct.*, 80 W. Va. 612, 618, 92 S.E. 786, 789 (1917)).⁶

This Court rejected that position, reasoning that, “[f]rom the time West Virginia’s Constitution was first adopted, there has been consistent legislative recognition of the Attorney General’s role as that of the State’s chief legal officer, having a central responsibility for providing legal counsel and services to the State and State entities.” *Id.* at 31, 569 S.E.2d at 107. Based on this longstanding recognition, the Court further observed that well-settled principles of constitutional construction provide that “[a] contemporaneous and long-standing legislative construction of a constitutional provision is entitled to significant weight,” and that, where “a practical construction which has been acquiesced in for a considerable period, considerations in favor of adhering to this [constitutional] construction sometimes present . . . a plausibility and force which is not easy to resist.” *Id.* (second and third alterations in original) (quoting *State ex rel. Bd. of Univ. v. City of Sherwood*, 489 N.W.2d 584, 587–88 (N.D. 1992)).

Relying on these authorities, this Court found as follows:

[T]here are certain core functions of the Office of Attorney General that are inherent in the office, of which the Office of Attorney General may not be deprived, and which may not be transferred to or set up in conflict with other offices. The suggestion by some of the respondents that the Legislature possesses unfettered discretion to define, delineate, and limit the duties of the Attorney General is wholly at odds with the historical and well-settled understanding of the constitutional role of the Attorney General.

⁶ In a dispute regarding the police and fiscal jurisdiction of county courts, *Lawson* generally observed that “[t]he phrases, ‘prescribed by law’ and ‘provided by law,’ when used in Constitutions, generally mean prescribed or provided by statutes,” but further stated that, “if the phrase in question means only statutory regulations, an inconsistent provision found elsewhere in the Constitution itself may limit the powers of [a governmental body] by necessary implication.” 92 S.E. at 789. In this regard, *Lawson* recognized that “[w]hat is expressly assigned to one department of government cannot belong to another, for implications never stand against express provisions, and general and indefinite terms covering numerous subjects must always yield to inconsistent, definite and specific clauses and expressions inexorably applicable to particular subjects that would otherwise fall within the meaning of the general terms.” *Id.* *Lawson* understood that the Legislature was no exception to this rule: “The Legislature is subject to limitations arising by necessary implication.” *Id.*

Id. at 31–32, 569 S.E.2d at 107–08.⁷

Burton is significant to this dispute for several reasons. Critically, *Burton* wholly rebuked the notion that the Legislature has “essentially plenary and unfettered discretion” to curtail the powers of a constitutional office through statutory action. *Id.* at 31–32, 569 S.E.2d at 107–08. Accordingly, *Burton* altogether belies the Legislature’s pronouncement in House Bill 2755 that it has “the ultimate authority to approve, amend, or reject rules promulgated by the West Virginia Board of Education under section two, article twelve of the West Virginia Constitution.” A.R. at 868–69.

Instead, *Burton* established that constitutional offices retain certain inherent powers, especially where, as here, there is a “contemporaneous and long-standing legislative construction of a constitutional provision” as it relates to such office. Patently, the Legislature itself has recognized the Board’s lone province over rulemaking as it pertains to the State’s public schools for more than thirty-five years. Had it thought otherwise, the Legislature would not have been forced to pass a joint resolution in 1989, on the heels of the *Hechler* decision, placing a constitutional amendment on the ballot to strip the Board of its independent, general supervisory powers. See A.R. at 850–52,

Finally, it is also worth contrasting the constitutional provision at issue in *Burton* with the constitutional provision at issue in this case. Specifically, Article VII, § 1 provides that “[t]he executive department shall consist of a governor, secretary of state, auditor, treasurer,

⁷ Previously, in *Manchin v. Browning*, 170 W. Va. 779, 296 S.E.2d 909 (1982), this Court concluded that the phrase “shall perform such duties as may be prescribed by law” operated to defeat the assertion that the Attorney General of West Virginia possesses common-law powers. *Id.* at 785, 296 S.E.2d at 915. Following *Burton*, the Court reversed course and overruled *Manchin*. See Syl. Pt. 3, *State ex rel. Discover Fin. Servs., Inc. v. Nibert*, 231 W. Va. 227, 744 S.E.2d 625 (2013) (“The Office of Attorney General retains inherent common law powers, when not expressly restricted or limited by statute. The extent of those powers is to be determined on a case-by-case basis. Insofar as the decision in *Manchin v. Browning*, 170 W. Va. 779, 296 S.E.2d 909 (1982), is inconsistent with this holding, it is expressly overruled.”).

commissioner of agriculture and attorney general” See *Burton*, 212 W. Va. at 29, 569 S.E.2d at 105. In creating those offices, the Constitution does not vest any powers or duties, which opens a lane for the Legislature to delineate the authority of those offices, to the extent such limitations do not infringe upon certain inherent powers. See *Nibert*, 231 W. Va. at 247, 744 S.E.2d at 627. By contrast, Article XII, § 1 vests the “general supervision of the free schools of the State” in the Board.⁸ Because Article XII, § 1 expressly delegates the “general supervision” of the State’s public schools in the Board, the Legislature cannot wrest such control from the Board by implication. See *Lawson*, 80 W. Va. at 618, 92 S.E. at 789 (“What is expressly assigned to one department of government cannot belong to another, for implications never stand against express provisions”). Because the Legislature does not possess unfettered discretion or implied authority to limit the Board’s general supervisory duties, this Court should grant the Board’s writ and declare House Bill 2755 unconstitutional.

2. This Court has reaffirmed that the “as prescribed by law” language in Article XII, §2 and that West Virginia Code § 18-2-5 do not restrict the Board’s unilateral rulemaking authority.

Beyond *Burton* and its progeny, this Court has issued various decisions that directly reject the notion that the “as prescribed by law” language in Article XII, § 2 or that West Virginia Code § 18-2-5 provide the Legislature any avenues to remove rulemaking authority from the Board. Most recently in *West Virginia Board of Education v. Board of Education of the County of Nicholas*, 239 W. Va. 705, 806 S.E.2d 136 (2017), this Court had the occasion to review a circuit court’s determination that the Board lacked the authority to overrule a county board’s

⁸ Not only does this language stand in stark contrast to the general creation of constitutional offices in Article VII, § 1, it demonstrates a significant departure from the State’s prior Constitution, which provided that the Legislature would set forth the duties of the General Superintendent: “Provision may be made by law for the election and prescribing the powers, duties and compensation of a General Superintendent of free schools for the State, whose term of office shall be the same as that of the Governor.” A.R. at 17.

consolidation plan. *Id.* at 708, 806 S.E.2d at 139. This Court unequivocally “renounce[d] the lower court’s deeply misguided construction of the WVBOE’s constitutional grant of authority inasmuch as it is wholly at odds with this Court’s precedent.” *Id.* at 713, 806 S.E.2d at 144.

Central to the Court’s decision was the “circuit court’s belief that the ‘as may be prescribed by law’ language of Article XII, section 2 renders the WVBOE powerless in absence of enabling legislation.” *Id.*⁹ However, as this Court observed, it “has unequivocally held that legislative action that impedes the general supervisory powers of the WVBOE is patently unconstitutional.” *Id.* at 713–14, 806 S.E.2d at 144–45. Thus, to the extent any questions remained regarding the import of the “as prescribed by law language” contained in Article XII, § 2, *County of Nicholas* firmly, if not finally, put such questions to bed. In passing House Bill 2755, the Legislature ignored such definitive pronouncements at its peril.

In addition, *County of Nicholas* and the long line of cases from which it derives further disprove the Legislature’s contention that it “exercises authority over the West Virginia Board of Education pursuant to [West Virginia Code] §18-2-5” A.R. at 869. Section 18-2-5 provides: “Subject to and in conformity with the Constitution and laws of this state, the State Board of Education shall exercise general supervision of the public schools of the state, and shall promulgate rules . . . for carrying into effect the laws and policies of the state relating to education.” W. Va. Code § 18-2-5(a). *County of Nicholas* reaffirmed the Court’s prior holdings that “general supervisory powers necessarily require rule-making to govern the day-to-day operation of schools and that the Legislature’s charge to provide a thorough and efficient system of free schools ‘does not entail the exclusive delegation of rule-making functions that are part of the Board’s general

⁹ Accepting the circuit court’s interpretation of “as may be prescribed by law” would have rendered “general supervision” as contained in Article XII, § 2 a nullity, a result general canons of construction abhor. *Cf. Syl. Pt. 3, Meadows v. Wal-Mart Stores, Inc.*, 207 W. Va. 203, 530 S.E.2d 676 (1999) (“A cardinal rule of statutory construction is that significance and effect must, if possible, be given to every section, clause, word or part of the statute.”).

supervisory powers[.]” 239 W. Va. at 714, 806 S.E.2d at 145 (alteration in original) (quoting *Hechler*, 180 W. Va. at 455, 376 S.E.2d at 844). Simply put, both *County of Nicholas* and *Hechler* recognize that Section 18-2-5 codifies the Board’s authority to make rules for effectuating the State’s education policies and laws. Neither case nor the text of Section 18-2-5 itself provides the Legislature any means to hijack that process. In the absence of such an ability, this Court should grant the Board’s writ and declare House Bill 2755 unconstitutional.

3. The majority of other states that have examined this issue agree.

County of Nicholas established West Virginia among the majority of states that have decided this issue. For example, in *Powers v. State*, 318 P.3d 300 (Wyo. 2014), the Supreme Court of Wyoming considered whether “‘as prescribed by law’ language in Article 4, Section 12 [of the Wyoming Constitution] provide[d] the legislature with unlimited discretion to ‘dictate’ the powers and duties of those constitutional offices.” *Id.* at 308.¹⁰ Like *Burton*, *Powers* rejected the notion that the legislature had unrestricted authority to alter the state superintendent’s powers. *Id.* at 308–12. In so holding, the *Powers* court observed that “[t]he majority of courts that have addressed similar language in their constitutions have concluded that the phrase ‘as prescribed by law’ does not permit the legislature to abolish or transfer, either directly or indirectly, the inherent powers of a constitutionally created office.” *Id.* at 308. Likewise, in *State ex rel. Miller v. Board of Education*, 511 P.2d 705 (Kan. 1973), the Kansas Supreme Court rejected an argument that the “as may be provided by law” language of the Kansas Constitution required enabling legislation to effectuate the general supervisory powers granted to its state board of education. *Id.* at Syl. Pt. 6.¹¹ Several

¹⁰ The constitutional provision at issue in *Powers* provided as follows: “The powers and duties of the secretary of state, of state auditor, treasurer and superintendent of public instruction shall be as prescribed by law.” *Id.* This is more akin to Article VII, § 1 of the West Virginia Constitution than it is Article XII, § 2 of the West Virginia Constitution.

¹¹ The constitutional provision at issue in *Miller* provided as follows: “The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law.” *Id.* at 484–85.

other cases generally have applied similar limitations to their legislatures' abilities to claw back core functions of a constitutional office.¹²

For nearly seventy years, general supervision over the State's public schools has been vested in the Board. W. Va. Const. art XII, § 2. Rulemaking is a core function of the Board's general supervisory powers. *See Cnty. of Nicholas*, 239 W. Va. at 714, 806 S.E.2d at 145; Syl. Pt. 2, *Hechler*, 180 W. Va. 451, 376 S.E.2d 839. As this Court and several other courts have recognized, the Legislature is not empowered to violate or intrude upon a core function of a constitutional office, which is precisely what House Bill 2755 aims to do. To remain in the majority on this issue, this Court should grant the Board's writ and declare House Bill 2755 unconstitutional.

C. Amendments to the Board's Supervisory Powers Belong to West Virginia Voters, Who Consistently Reject Politicization.

In addition to usurping the Board's constitutionally enshrined independence, House Bill 2755 expropriates voting rights guaranteed to West Virginia citizens by Article XIV, § 1. Under Article XIV, § 1, constitutional amendments cannot stand without majority ratification by both the

¹² *See, e.g., State ex rel. Mattson v. Kiedrowski*, 391 N.W.2d 777, 778–80 (Minn. 1986) (“Although the prescribed-by-law provision of Article V affords the legislature the power, in light of public health and welfare concerns, to modify the duties of the state executive officers, it does not authorize legislation . . . that strips such an office of all its independent core functions.”); *Thompson v. Legislative Audit Comm’n*, 448 P.2d 799, 801 (N.M. 1968) (“Of course the legislature cannot abolish a constitutional office nor deprive the office of a single prescribed constitutional duty. Nor can this be done by indirection, such as depriving him of all statutory duties, thereby leaving the office in name only, an empty shell.”); *Hudson v. Kelly*, 263 P.2d 362, 368 (Ariz. 1953) (addressing legislation that installed prior duties of the state's auditor in a newly created office and observing “the legislature should have known that it could not denude the office of its inherent powers and duties, even though they had been prescribed by statute, and leave the office as an empty shell” because “[s]uch attempts have uniformly been denounced by courts of last resort”); *Am. Legion Post No. 279 v. Barrett*, 20 N.E.2d 45, 51 (Ill. 1939) (“It is a rule frequently stated by this court, that the General Assembly may not take away from a constitutional officer the powers or duties given him by the constitution.”); *State v. Malcom*, 226 P. 1083, 1084 (Idaho 1924) (“When the Constitution devolves a duty upon one officer, the Legislature cannot substitute another.”); *State v. Black*, 74 So. 387, 388 (Ala. 1917) (recognizing that constitutional office cannot be destroyed nor an incumbent legislated out of it in the absence of express constitutional authority and that what may not be done directly cannot be accomplished by indirection); *Love v. Baehr*, 47 Cal. 364, 367–68 (1874) (recognizing that the legislature's power to dictate the duties of constitutional offices, including a Superintendent of Public Instruction, was limited by the definition of such offices).

Legislature and, most importantly, their constituents. *See* W. Va. Const. art. XIV, § 1 (requiring constitutional amendments be “passed by the affirmative vote of a majority of the members elected to each house of the Legislature” and then “a majority of the votes cast” by West Virginia voters).

West Virginia Code § 3-11-1 *et seq.* recognizes as much in its formal process for constitutional amendments. “Any amendment to the Constitution of the State may be proposed in either house of the Legislature by a joint resolution.” W. Va. Code § 3-11-1. Upon majority vote from each house of the Legislature, “the question of ratification or rejection of such amendment ***shall be submitted to the voters of the state.***” *Id.* (emphasis added). “[E]ach proposed amendment, with its title and summary of purpose” is “published as a Class I legal advertisement” to voters “at least three months before such election in some newspaper in every county in the state in which a newspaper is printed.” W. Va. Code § 3-11-3. “On the twenty-fifth day after the election is held, or as soon thereafter as practicable, the Secretary of State shall ascertain” the certified election results and publish them same “in two newspapers printed at the seat of government.” W. Va. Code § 3-11-6. Critically, an act or ordinance “shall have no validity whatever until . . . ratified” by “a majority of votes cast” by West Virginia citizens. W. Va. Const. art. XIV, § 1.

Here, the Legislature uses House Bill 2755 as an end-run around this constitutional amendment process to resurrect partisan measures—twice voted against by West Virginians—to politicize the State’s education policies. As previously discussed, House Bill 2755 contends that the Legislature retains “the ultimate authority to approve, amend, or reject rules promulgated by the West Virginia Board of Education” in pursuit of the Board’s general, supervisory powers. A.R. at 868–69. But West Virginia law is clear that “[r]ule-making by the State Board of Education is within the meaning of ‘general supervision’ of state schools” under Article XII, § 2 of the West Virginia Constitution, “and any statutory provision that interferes with such rule-making is

unconstitutional.” Syl. Pt. 2, *Hechler*, 180 W. Va. 451, 376 S.E.2d 839. Thus, even if the Legislature could alter the Board’s rulemaking authority, any such alteration would require the formal constitutional amendment process.

However, West Virginia voters have twice rejected the Legislature’s usurpation and politicization of our schools under that exact process. First, following this Court’s *Hechler* decision, the Legislature proposed House Joint Resolution 21, or the “Education Reorganization Amendment,” to West Virginia voters in 1989. The Education Reorganization Amendment purported “[t]o amend the state Constitution so as to eliminate the office of the state superintendent of free schools as a constitutional office and the West Virginia board of education as a constitutional board,” and instead place these responsibilities in a “department of state government[.]” A.R. at 852. Voters rejected the amendment 220,286 to 29,776. A.R. at 855.

The Legislature tried—and failed—again in 2022 under the so-called “Education Accountability Amendment.” A.R. at 860. The failed Education Accountability Amendment proposed exactly what House Bill 2755 now unilaterally directs—that, “[u]nder its supervisory duties, the West Virginia Board of Education may promulgate rules or policies,” but any such rules “shall be submitted to the Legislature for its review and approval, amendment or rejection, in whole or in part, in the manner prescribed by general law.” A.R. at 856. West Virginia voters rejected the Education Accountability Amendment by a margin of 275,683 to 200,791. A.R. at 860.

Consistently, the will of West Virginia voters recognized the dangers posed by subjecting the Board to partisan politics. In fact, even as West Virginians considered the very formation of the Board, it was understood that “[t]he quality of education in any county depends largely upon the freedom of the board of education from political pressures.” A.R. at 418. “Public education is the institution in which democracy has the best chance of becoming its conscious self.” A.R. at

590. “The school makes its contribution to this end as it sets intelligence free within the framework of democratic values.” *Id.* “It follows that the classroom should be a place where children go, not merely to learn in the academic sense but, also, to learn in the sense of carrying on a way a life.” *Id.* Although “no law will guarantee a board of education which is free from political pressure, nor will it guarantee a board whose members are able to withstand political pressures,” provisions safeguarding the Board’s independent decision-making serve only to further the essential public trust that is the public education system. A.R. at 419. As it now stands, House Bill 2755 erodes this public trust in defiance of Article XII, § 2 and Article XIV, § 1 of the West Virginia Constitution.

Moreover, as enforced, House Bill 2755 weakens the functionality of public education beyond respite. This Court has recognized that “[i]t is not uncommon for a state board of education to govern the day-to-day operations of schools.” *Hechler*, 180 W. Va. at 455, 376 S.E.2d at 842. “Decisions that pertain to education must be faced by those who possess expertise in the educational area,” as the broad range of issues within daily school operations are “critical to the progress of schools in this state, and ultimately, the welfare of its citizens.” *Id.* But under the framework of House Bill 2755, the Board’s day-to-day oversight must bow to the Legislature’s sixty-day timeframe. *See* W. Va. Const. art. VI, § 22 (“The regular session of the Legislature . . . shall . . . not exceed sixty calendar days . . .”).¹³ Likewise, rather than the nonpartisan, equally applied representation of the Board, smaller represented districts with needs submitted to the legislative process risk losing their voice to larger represented districts.¹⁴ Thus, House Bill 2755

¹³ This Court did not reach concerns that the Legislature meets only a third of the time school is in session in *Hechler* because its decision was based on constitutional, rather than statutory, grounds. 180 W. Va. at 455 n.7, 376 S.E.2d at 843 n.7. However, emergency filing procedures do little to aid the Board’s day-to-day oversight to the extent an “emergency” is limited to rules necessary “(1) [f]or the immediate preservation of the public peace, health, safety or welfare; (2) to comply with a time limitation established by this code or by a federal statute or regulation; or (3) to prevent substantial harm to the public interest.” W. Va. § 29A-3A-16(g).

¹⁴ By way of example, since 2022, the school systems in Grant and Tucker counties have been represented by a single member of the House of Delegates, whereas Kanawha county’s school systems have been represented by nine such

renders the Board “hamstrung in the exercise of its lawful authority to ensure that individual counties are both effectively serving its student population and operating in accord with the best interests of the State’s educational system as a whole.” *Cnty. of Nicholas*, 239 W. Va. at 722, 806 S.E.2d at 153 (Loughry, C. J., concurring).

Simply stated, the contrary system created by House Bill 2755 is the precise “impervious legislative impairment” cautioned against by this Court and prevented by the West Virginia Constitution. *Cnty. of Nicholas*, 239 W. Va. at 715, 806 S.E.2d at 146. Any effect given to House Bill 2755 represents a clear usurpation of the constitutional authority vested in the Board and in West Virginia voters. By overriding the Board’s capacity and rule-making expertise, the Legislature disregards the very voices its members are elected to serve, runs afoul of this Court’s clear precedent, and altogether undermines the integrity of public education. As such, this Court should grant the Board’s writ and declare House Bill 2755 unconstitutional.

III. CONCLUSION

For the foregoing reasons, amicus curiae, the West Virginia Parent Teacher Association, requests that this Court grant the Board’s Petition for Writ of Mandamus, declare the laws enacted by House Bill 2755 unconstitutional, and compel the Secretary of State to publish the Board’s rules in the State Register.

members. See *WV House Districts (2022 map)*, <https://wvlegislature.maps.arcgis.com/apps/mapviewer/index.html?webmap=fee45f9bc9064e6fb1f2b443f2ec7037>.

/s/ Marc E. Williams

Marc E. Williams (WV Bar No. 4062)
Shaina D. Massie (WV Bar No. 13018)
Anna J. Williams (WV Bar No. 14705)
NELSON MULLINS RILEY & SCARBOROUGH LLP
949 Third Avenue, Suite 200
Huntington, WV 25701
Phone: (304) 526-3500
Fax: (304) 526-3599
Email: marc.williams@nelsonmullins.com
Email: shaina.massie@nelsonmullins.com
Email: anna.williams@nelsonmullins.com

***Counsel for Amicus Curiae
West Virginia Parent Teacher Association***

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 31st, 2025, a copy of the foregoing *Amicus Curiae Brief Submitted by West Virginia Parent Teacher Association in Support of Petitioners State of West Virginia ex rel. the West Virginia Board of Education and Michele Blatt, in Her Capacity as State Superintendent of Schools* was served using the Court's E-Filing system and certified mail on the following:

Michael R. Williams
Office of the West Virginia Attorney
1900 Kanawha Boulevard, East
Building 1, Room E-26
Charleston, WV 25305
Telephone: (681) 313-4511
michael.r.williams@wvago.gov

Benjamin L. Bailey
Christopher D. Smith
Bailey & Glasser LLP
209 Capitol Street
Charleston, WV 25301
Telephone: (304) 345-6555
Facsimile: (304) 342-1110
bbailey@baileyglasser.com
csmith@baileyglasser.com

Denali S. Hedrick
Bailey & Glasser LLP
94 Long Street, Suite 200
Westover, WV 26501
Telephone: (304) 345-6555
Facsimile: (304) 342-1110
dhedrick@baileyglasser.com

/s/ Marc E. Williams

Marc E. Williams (WV Bar No. 4062)