

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Case No. _____

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.

PETITION FOR WRIT OF MANDAMUS

Benjamin L. Bailey, Esq. (WVSB #200)
Christopher D. Smith (WVSB #13050)
BAILEY & GLASSER LLP
209 Capitol Street
Charleston, WV 25301
T: (304) 345-6555
F: (304) 342-1110
bbailey@baileyglasser.com
csmith@baileyglasser.com

Denali S. Hedrick (WVSB #14066)
BAILEY & GLASSER LLP
94 Long Street, Suite 200
Westover, WV 26501
Telephone: (304) 345-6555
Facsimile: (304) 342-1110
dhedrick@baileyglasser.com

Counsel for Petitioners

TABLE OF CONTENTS

QUESTION PRESENTED.....	1
STATEMENT OF THE CASE.....	2
A. Introduction.....	2
B. The West Virginia Constitution empowers the Board to supervise West Virginia’s public school system.	3
C. This Court recognizes that the Board’s Constitutional power of general supervision includes the power to enact rules and regulations related to public education.	8
D. The Legislature attempts to usurp the Board’s Constitutional power of general supervision in 1988, and this Court intervenes with the <i>Hechler</i> decision.....	11
E. West Virginia voters reaffirm the Board’s power of general supervision—twice.	13
F. The Legislature attempts to usurp the Board’s Constitutional power again through House Bill 2755, and the Respondent Secretary of State enforces the Legislature’s unconstitutional law.	14
SUMMARY OF ARGUMENT	16
STATEMENT REGARDING ORAL ARGUMENT AND DECISION	17
ARGUMENT.....	17
A. A Writ Of Mandamus Is The Proper Mechanism To Afford The Board Relief.....	17
B. The Laws Enacted By House Bill 2755 Violate Article XII, § 2, Of The West Virginia Constitution.....	18
1. First, <i>Hechler</i> is still binding precedent, and it necessitates that this Court deem the laws enacted by House Bill 2755 unconstitutional.	19
2. Second, this Court has foreclosed any argument that the Board’s rulemaking authority is constrained by Article XII, § 2’s “prescribed by law” provision.....	22
3. Finally, voters have repeatedly reaffirmed the Board’s power of general supervision, and the laws enacted by House Bill 2755 run counter to the will of the electorate. .	25
CONCLUSION.....	26
CERTIFICATE OF SERVICE	27

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.</i> , 151 W.Va. 207, 151 S.E.2d 102 (1966).....	17
<i>Bailey v. Truby</i> , 174 W. Va. 8, 321 S.E.2d 302 (1984).....	10, 11
<i>Board of Education of Kanawha County v. West Virginia Board of Education</i> , 399 S.E.2d 31 (W. Va. 1990).....	19, 20
<i>State ex rel. Brotherton v. Blankenship</i> , 157 W.Va. 100, 207 S.E.2d 421 (1973).....	21
<i>State ex rel. Cooper v. Caperton</i> , 196 W. Va. 208, 470 S.E.2d 162 (1996).....	25, 26
<i>Detch v. Bd. of Ed. of Greenbrier Cnty.</i> , 145 W. Va. 722, 117 S.E.2d 138 (1960).....	8, 9
<i>Jenkins v. City of Elkins</i> , 230 W. Va. 335, 738 S.E.2d 1 (2012).....	19
<i>State ex rel. Lambert by Lambert v. W. Virginia State Bd. of Educ.</i> , 447 S.E.2d 901 (W. Va. 1994).....	20
<i>State ex rel. Maloney v. McCartney</i> , 159 W. Va. 513, 223 S.E.2d 607 (1976).....	25
<i>State ex rel. Miller v. Board of Education</i> , 212 Kan. 482, 511 P.2d 705 (1973).....	10, 11
<i>State ex rel. Potter v. Office of Disciplinary Couns. of State</i> , 226 W.Va. 1, 697 S.E.2d 37 (2010).....	17
<i>Powers v. State</i> , 318 P.3d 300 (Wyo. 2014).....	24
<i>State ex rel. Smith v. Kelly</i> , 149 W. Va. 381, 141 S.E.2d 142 (1965).....	25
<i>State v. Beaver</i> , 248 W. Va. 177, 887 S.E.2d 610 (2022).....	22

<i>W. Virginia Bd. of Educ. v. Bd. of Educ. of the Cnty. of Nicholas</i> , 239 W. Va. 705, 806 S.E.2d 136 (2017).....	20, 22, 23, 24
<i>State ex rel. W. Virginia Bd. of Educ. v. Gainer</i> , 192 W. Va. 417, 452 S.E.2d 733 (1994).....	19
<i>West Virginia Board of Education v. Hechler</i> , 180 W. Va. 451, 376 S.E.2d 839 (1988).....	<i>passim</i>

Statutes

1964 W. Va. Acts c. 1	9
1982 W. Va. Acts c. 121	9
1986 W. Va. Acts c. 97	9
W. Va. Code § 18-2-5(a).....	7
W.Va.Code § 29A–3A–12 and –13 [1988]	12
W. Va. Code §§ 29A-3B-1, 29A-3B-8, 29A-3B-9, 29A-3B-10, and 29A-3B-11	14
W. Va. Code § 29A-3B-9	15, 18
W. Va. Code § 55-7-13	15

Other Authorities

Derek W. Black, <i>The Constitutional Compromise to Guarantee Education</i> , 70 Stanford Law Review, 735, 812–13 (2018).....	8
Editorial, <i>Amendments, Levy Deserve Approval</i> , The Raleigh Register, Nov. 3, 1958.....	8
Holmes, Darrell E., Senate Clerk, <i>West Virginia Blue Book</i>	14
Helen Holt, Secretary of State, <i>Amendment Would Change Superintendent Selection</i> , Beckley Post Herald, September 17, 1958.....	8
Myers, J. Howard., Senate Clerk, <i>West Virginia Blue Book</i>	5, 7
Nancy Mathis, <i>West Virginia Votes To Keep Independent State Board, Superintendent</i>	13
R. Virgil Rohrbaugh, State Supt. of Schools, <i>Schools Chief Amendment</i> , Charleston Daily Mail, Nov. 1, 1958.....	8

W. Va. Const. art. X, § 2 (1863)	3
W. Va. Const. art. XII, § 1 (1872)	3, 13, 22
W. Va. Const. art. XIV, § 2	25
60 W. Va. L. Rev. 303, 305–06 (1958).....	7

QUESTION PRESENTED

Article XII, § 2, of the West Virginia Constitution gives the West Virginia Board of Education the power of “general supervision” over West Virginia’s public schools. That power includes the power to enact rules and regulations governing public education. Under the doctrine of separation of powers, other branches of West Virginia’s government cannot curtail the Board’s constitutionally-derived power of general supervision.

The Legislature attempted to do just that in 1988. That year, the Legislature passed a law requiring the West Virginia Board of Education to submit its rules and regulations to the Legislature for approval prior to enactment. In *West Virginia Board of Education v. Hechler*, 180 W. Va. 451, 376 S.E.2d 839 (1988), this Court held that law was unconstitutional and issued a syllabus point stating “any statutory provision that interferes with [the Board’s] rule-making is unconstitutional.” *Id.* at Syl. Pt. 2.

Twice, in 1989 and 2022, in another attempt to curtail the West Virginia Board of Education’s authority, the Legislature attempted to amend the Constitution to give the Legislature oversight over the Board’s rulemaking power. Both times, West Virginia voters rejected the proposed amendments.

In 2025, the Legislature passed House Bill 2755, which created laws that require the West Virginia Board of Education to submit its rules and regulations to the Legislature for approval prior to enactment. Those laws are effectively the same laws this Court struck as unconstitutional in *Hechler*.

The question presented is: Do the laws enacted by House Bill 2755 violate the West Virginia Constitution and this Court’s binding precedent in *Hechler*?

STATEMENT OF THE CASE

A. Introduction

What is old is new again. In 1958, West Virginia voters amended the West Virginia Constitution to add Article XII, § 2, which created the West Virginia Board of Education (the Board) as an independent constitutional body. Article XII, § 2, empowers the Board with “general supervision” over the West Virginia public school system, including the power to enact rules and regulations governing the operation of the public school system. In 1988, the Legislature tried to usurp the Board’s Constitutional rulemaking authority and passed a law requiring the Board to submit its rules and regulations to the Legislature for approval prior to enactment. This Court rejected the Legislature’s power grab, declared the law unconstitutional, and held, “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.” Syl. Pt. 2, *W. Virginia Bd. of Educ. v. Hechler*, 180 W. Va. 451, 452, 376 S.E.2d 839, 839 (1988).

The Legislature now attempts the very same Constitutional coup this Court thwarted nearly forty years ago in *Hechler*. During the 2025 Legislative Session, the Legislature passed House Bill 2755. That Bill amends the West Virginia Code to require the Board to submit rules and regulations to the Legislature for approval prior to enactment—exactly like the law this Court declared unconstitutional in *Hechler*. That law is as unconstitutional today as it was forty years ago, and this Court should declare this iteration unconstitutional again. After all, the Legislature cannot render unconstitutional laws constitutional by merely passing them again after this Court strikes them down.

Not only is the law enacted by House Bill 2755 unconstitutional, but it also defies the will of the voters. Twice, in 1989 and in 2022, the Legislature asked the voters to amend the

Constitution to give the Legislature the control contemplated by House Bill 2755. Twice, the voters said, “No,” and voted down the proposed Constitutional amendments. But the Legislature disregarded voters’ choice—just as it disregarded this Court’s precedent—and passed House Bill 2755 regardless. That disregard should not stand. The Board asks this Court to grant its petition for writ of mandamus, declare the laws enacted by House Bill 2755 unconstitutional, and require the Secretary of State to allow to be filed the Board’s duly enacted school bus design and equipment rule without the unconstitutional Legislative approval House Bill 2755 mandates.

B. The West Virginia Constitution empowers the Board to supervise West Virginia’s public school system.

Since it was ratified in 1863, the West Virginia Constitution required the Legislature to “provide” a “thorough and efficient system of free schools.” W. Va. Const. art. X, § 2 (1863) at A.R.0017. Under the original iteration of the West Virginia Constitution, the Legislature was charged with passing “law[s] 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.” *Id.* at art. X, § 3. The Superintendent of Education’s “powers” and “duties” were not independent of the Legislature; instead, those “powers” and “duties” were “prescribed” by the Legislature under the State’s original Constitution. *Id.* And the Superintendent of Education was not appointed; instead, that office was a partisan, elected position. *Id.*

In 1872, following the Civil War, the West Virginia Constitution was amended. The amended Constitution limited the Legislature to “provid[ing], by general law, for a thorough and efficient system of free schools.” W. Va. Const. art. XII, § 1 (1872) at A.R.0361. The State Superintendent’s powers expanded under the amended Constitution, and the Superintendent was granted the power of “general supervision of free schools” independent of any Legislative prescription of power. *Id.* at art. XII, § 2 (1872). The power of “general supervision” conferred to

the Superintendent (and, later, the Board) has long been understood to “insulate[] the constitutional executive officer from the Legislature and withdr[a]w from the Legislature the power to enact any statute inconsistent with the authority of ‘general supervision’ of free schools conferred in 1872.” 51 Op. Att’y Gen 852, 865 (June 9, 1966) at A.R.0376. Consistent with that, “the Legislature has no authority to take any of the powers of ‘general supervision of the free schools’” and no authority to “enlarge the powers of any other State agency over the State’s ‘free schools.’” *Id.*

In 1945, the Legislature passed Senate Concurrent Resolution No. 6 to form an interim committee and a citizen advisory committee to study the education system in the State; to issue a study report to the Legislature and the Governor; and to make recommendations for proposed legislation to address any problems identified by the study. *See* 1945 Concurrent Res. No. 6 at A.R.0380-82. The interim committee contracted with George Strayer, Professor Emeritus of Education at Columbia University, to conduct a review of West Virginia’s education system and issue a report. *See, e.g.,* Strayer Report at A.R.0383-0559. Professor Strayer assembled experts from all over the country to assist him with his duties. *Id.*

Professor Strayer ultimately concluded that education should be removed from partisan politics. *Id.* The Strayer report recommended the Constitution be amended in three ways to achieve that end: 1) make the State Superintendent’s position a professional one, removed from partisan political election and appointed by the West Virginia Board of Education; 2) make the West Virginia Board of Education a gubernatorially-appointed constitutional body with nine-year terms; and 3) provide that Board members could only be removed upon written charges for significant misconduct. *Id.* at A.R.0397-400. Moreover, in commenting on the need for long, nine-year terms for Board members, Strayer stated that nine-year terms for Board members were important because

[s]uch an arrangement would provide for relatively long and over-lapping terms, and for continuity in the development of educational policies. It would tend as well

to secure the highest type of service on the Board. Under such an arrangement no governor would have the certainty of appointing a majority of the members of the Board. In the states in which this type of provision prevails, governors have commonly appointed able citizens for this most important public service.

Id. at A.R.0400.

Consistent with the Strayer Report's recommendations, in 1946, the Legislature passed House Bill 6, which put to the ballot a Constitutional amendment that made the position of State Superintendent an appointed position and shifted the State Superintendent's public education general supervisory power to a State Board of Education. *See* 1946 Extraordinary Session House Bill 6 at A.R.0560-65. Under the proposed Constitutional amendment, the Governor, with the advice and consent of the Senate, would select an independent Board of Education. *Id.* The voters rejected that amendment. *See* Myers, J. Howard., Senate Clerk, *West Virginia Blue Book*, Jarrett Printing Company, 327 (1947) at A.R.0566-67.

In 1955, the Legislature passed a Resolution to create the Commission on Education to work with two legislative committees to study the public school system and make a report to the Legislature. *See* 1955 Senate Concurrent Resolution No. 3 and 1956 House Concurrent Resolution 13 at A.R.0568-71. The George Peabody College for Teachers in Nashville, Tennessee (now part of Vanderbilt University), was retained to assist with the study and the report. *See, e.g., West Virginia Public Schools: A Survey Report* (1956) at A.R. 0572-718.

The Peabody report, completed in 1956, offered guidance on public school governance. Although the report differed somewhat from the Strayer report regarding the manner in which State Board of Education members should be selected,¹ it concluded that the "State Board of Education should be the only state policy and regulatory body for public [education] . . . and its

¹ The Peabody report recommended that Board members be made up of a combination of gubernatorially appointed members and members elected on a nonpartisan ballot.

rules and regulations should have the full force and effect of law.” *Id.* at A.R.0597. The report called for a Constitutional amendment making the State Superintendent an appointed, not elected, position and establishing the Board as a Constitutional body. *Id.* at A.R.0595.

In commenting on the manner in which public education has historically been governed in the United States, the report stated:

By law most of the states have to a large degree decentralized the control and management of schools, and have reserved to the state education agency the functions of professional leadership and consultative services, the setting of minimum standards, and the establishment of broad educational policies and general rules and regulation.

. . . Some states follow the practice of enacting into law a great many minute details regarding the program of education. Most of the legislatures have very wisely delegated some of their own power to properly constituted state education agencies whose policies, rules and regulations are given the full force and effect of law.

The most extensively accept pattern for an effective and successful state education agency is composed of three parts: (1) a policy-making regulatory lay board of education broadly representative of the general public; (2) a chief state school officers who is a professional educational administrator and who serves as the executive officer of the board to which he is accountable for the execution of policies; and (3) a department of education composed of competent professional and clerical assistants organized under the direction of the chief state school officer and working under his supervision to provide the educational leadership services needed.

. . . The people, through their state legislatures, have in effect established a form of representative government for schools, both in delegating to an appropriate state education agency the power to determine state education policies, to fix minimum standards, and to provide professional leadership and technical consultative services, and in decentralizing the actual control and management of schools. The lay board of education is the device through which this has been done at local, county, and state levels of educational administration.

Id. at A.R.0592.

Thereafter, in 1957, the Legislature passed Senate Bill 252, which put another proposed Constitutional amendment on the ballot seeking to implement many of the objectives identified in the Peabody and Strayer reports. *See* 1957 Senate Bill 252 at A.R.0720-26; Stanley E. Dadisman,

Four Proposed Amendments to the West Virginia Constitution 60 W. Va. L. Rev. 303, 305–06 (1958) (proposed amendment to Article XII, § 2, of the Constitution was designed to implement recommendations in Peabody and Strayer reports) at A.R.0730-31. The proposed Constitutional amendment created the West Virginia Board of Education, stating, “The general supervision of the free schools of the State shall be vested in the West Virginia board of education which shall perform such duties as may be prescribed by law.” *Id.* The proposed Constitutional amendment also provided that Board members would be gubernatorially appointed, with nine-year staggered terms. *Id.* It also removed the State Superintendent from the ranks of partisan elected office and made the position Board-appointed. *Id.* The amendment was placed on the ballot in 1958, and West Virginians voted in favor of the amendment. Myers, J. Howard., Senate Clerk, *West Virginia Blue Book*, Jarrett Printing Company, 327 (1947) at A.R.0737-38. It was ratified on November 4, 1958.²

In enacting this governance structure for public education in West Virginia, the people of this State joined a long line of states that have enacted similar structures for the underlying reasons discussed in the Strayer and Peabody reports:

The . . . practice of constitutionalizing state superintendents and boards of education was a deliberate and substantive act. First, like mandating school funding and specifying that funding’s permanent sources, creating statewide supervisory bodies is another means of separating education policy from regular politics. Education decisions can be made on a statewide, rather than local, basis, and without first moving through the normal legislative process. Second and equally important, those powers vested in superintendents or boards by the state constitution could not be taken away, altered, or constrained by ordinary legislation. Together, these two

² Under the “duties as may be prescribed by law” clause, the Legislature remains free to aid the Board’s rulemaking authority by prescribing general duties to aid the direction of the Board’s rulemaking. For example, the Legislature can direct the Board to make rules related to specific education objectives. *See* W. Va. Code § 18-2-5(a) (directing the Board to make rules governing, among other things, “school attendance”); *Hechler*, 180 W. Va. at 455, 376 S.E.2d at 843 (differentiating statutes that “aid” the Board in its rulemaking functions, like W. Va. Code § 18-2-5(a), from statutes that unconstitutionally “pose an interference with the Board’s rule-making power, and consequently, the Board’s general supervisory functions.”).

advances guaranteed that certain education decisions would always be made at the state level and would not be entirely subject to the whims of legislatures. In state court litigation, this guarantee has served to strike down legislation that would have undermined public education and invaded those state officers' provinces.

Derek W. Black, *The Constitutional Compromise to Guarantee Education*, 70 Stanford Law Review, 735, 812–13 (2018) (commenting upon state constitutional efforts to insulate public education from politics) at A.R.0816-817.³

C. This Court recognizes that the Board's Constitutional power of general supervision includes the power to enact rules and regulations related to public education.

Since the 1958 Constitutional amendment was passed, the Board has used its power of general supervision over West Virginia's public schools to independently promulgate rules governing the public school system without legislative approval. In fact, the Board immediately used its rulemaking power the year that the Constitutional amendment passed. Shortly after the 1958 amendment, the Board enacted a rule (later amended in 1959) that required children to be six years old by November 1 of a school year or they would not be allowed to enroll until the following year. *Detch v. Bd. of Ed. of Greenbrier Cnty.*, 145 W. Va. 722, 723, 117 S.E.2d 138, 139 (1960).

In 1960, this Court affirmed that the Board's Constitutional power of general supervision empowered it to enact rules and regulations governing public schools. That year, a student was denied enrollment because she turned six after the November 1 cut-off for the school year, and the

³ Contemporaneous reports from 1958 show that West Virginia's Constitutional amendment was designed to insulate governance of education from partisan politics. See Helen Holt, Secretary of State, *Amendment Would Change Superintendent Selection*, Beckley Post Herald, September 17, 1958 at A.R.0842 (making the State Superintendent appointed, not elected, would enable the implementation of "long range programs" and allow those programs to come to fruition without the "interference of running for reelection every four years"); Editorial, *Amendments, Levy Deserve Approval*, The Raleigh Register, Nov. 3, 1958 at A.R.0843 (a vote for the Constitutional Amendment is "a vote to remove politics from West Virginia education"); R. Virgil Rohrbaugh, State Supt. of Schools, *Schools Chief Amendment*, Charleston Daily Mail, Nov. 1, 1958 at A.R.0844 (voting for the amendment will allow continuity in education planning and programs and avoid political turnover every four years).

child's parent pursued a writ in this Court claiming that a statute the Legislature passed allowed her child to be enrolled regardless of when the child turned six. *Id.* The statute stated that schools were open for "youths between the ages of six and twenty-one." *Id.*, 145 W. Va. at 724, 117 S.E.2d at 140. However, the State Board took the position that its rule was necessary because the enrollment of students who reach the age of six after the commencement of the school year and at any time during a school term was disruptive to the operation of first grade classrooms in the public schools. *Id.*, 145 W. Va. at 728, 117 S.E.2d at 142. In upholding the Board's authority to promulgate the rule and determining that the rule did not conflict with the statute, this Court said:

It is not contended, of course, that The West Virginia Board of Education can be denied its constitutional powers of "general supervision of the free schools", or that any legislative enactment attempts to do so. Neither is it contended that The West Virginia Board of Education has no power to promulgate reasonable rules for the "general supervision" of the free schools, and no contention is made that the language of the rule adopted is of doubtful meaning or is ambiguous. The question involved, therefore, is narrowed to whether the rule complained of is in conflict with the pertinent statutory provision, Code, 18-5-15, as amended, providing that the schools of the State shall be open "to youths between the ages of six and twenty-one for the full school term."

Id., 145 W. Va. at 725, 117 S.E.2d at 140.

This Court is not the only body that recognized the Board's independent rulemaking authority after the passage of the Constitutional amendment. When the Legislature passed the first iteration of the Legislative rulemaking provisions of the West Virginia Administrative Procedures Act (APA) in February 1964—less than six years after the 1958 amendment—the Board was expressly exempted from its requirements. *See* 1964 W. Va. Acts c. 1. And the next two times that the APA was amended in 1982 and 1986, the Board's express exemption remained intact. *See* 1982 W. Va. Acts c. 121; 1986 W. Va. Acts c. 97.

Over twenty years after promulgating the age cut-off rule at issue in *Detch*, another rule the Board promulgated was contested in this Court. In 1983, the Board promulgated a rule that

required public school students to maintain a 2.0 or “C” grade point average to participate in extracurricular activities. The Wood County Board of Education filed a writ, sought to undo the Board’s Rule, and argued that the Board did not have the authority to promulgate the rule because a statute the Legislature enacted committed the regulation of extracurricular activities in schools to county boards of education. This Court framed the question presented as “whether the academic eligibility rule promulgated by the State Board of Education is invalidated by the legislative grant of the control, supervision, and regulation of extracurricular activities to county boards of education under West Virginia Code § 18-2-25.” *Bailey v. Truby*, 174 W. Va. 8, 14, 321 S.E.2d 302, 308 (1984). This Court determined Article XII, § 2, of the West Virginia Constitution empowered the Board to enact the academic eligibility rule.

To reach that holding, this Court adopted the reasoning of *State ex rel. Miller v. Board of Education*, 212 Kan. 482, 511 P.2d 705 (1973), in which the Kansas Supreme Court addressed a substantially similar question involving the “general supervision” education clause in the Kansas constitution. *Id. Miller* specifically involved a dispute between the Kansas State Board of Education and a local school board over the validity of certain regulations enacted by the state school board. *Id.* The local school board argued that the Kansas State Board of Education could only exercise its powers of general supervision in manners directed by the legislature through statute. *Id.* at 212 Kan. at 486, 511 P.2d at 709. The Kansas Supreme Court rejected that argument and held that the regulations in question were a valid exercise of the state board of education’s “general supervision” of the public school system under the Kansas Constitution. *Id.* Further, the Kansas Court held that the Kansas State Board of Education’s authority under Kansas’s constitutional “general supervision” clause was “self-executing” and “could not be thwarted by legislative failure” to enact enabling legislation. *Id.*

This Court found the Kansas Supreme Court’s holding in *Miller* persuasive and held in *Bailey v. Truby* that the West Virginia Board of Education’s authority to adopt the academic eligibility rule arose from its self-executing general supervisory authority under West Virginia’s Constitution. *Bailey*, 174 W. Va. at 16, 321 S.E.2d at 311. Therefore, even if the Legislature intended to interfere with the Board’s power of general supervision by vesting power in this regard with county boards of education, the Legislature’s efforts “must fail to the extent that it interferes with the State Board of Education’s exercise of general supervision over our state’s educational system.” *Id.* At bottom, this Court affirmed both the Board’s Constitutional power to make rules and the Legislature’s lack of authority to interfere with that power.

D. The Legislature attempts to usurp the Board’s Constitutional power of general supervision in 1988, and this Court intervenes with the *Hechler* decision.

Despite this Court’s longstanding recognition that the West Virginia Constitution empowers the Board to enact rules and regulations related to public education, the Legislature tried to seize that power. In June 1988, the Legislature passed a law that attempted to leash the Board’s power of general supervision over West Virginia public schools. Specifically, it amended the APA to require the Board to “submit its approved legislative rules to [a legislative] oversight commission for review.” *W. Virginia Bd. of Educ. v. Hechler*, 180 W. Va. 451, 452–53, 376 S.E.2d 839, 840–41 (1988). The legislative oversight committee would then “recommend that the legislature either promulgate the rule in whole or in part, or recommend that the rule be withdrawn.” *Hechler*, 180 W. Va. at 452–53, 376 S.E.2d at 840–41. Unless and until the legislative oversight committee acted on a rule submitted by the Board, the Board was “prohibited from taking any action on the rule. . . .” *Id.*

After the amended APA went into effect in 1988, the Board attempted to promulgate a rule governing the design and equipment of school buses by sending that rule to the Secretary of State

for publication in the West Virginia State Register. *Id.* The Secretary of State refused to publish the rule (and thereby render it effective) because the Board did not submit the rule to the Legislature prior to sending it to the Secretary of State for publication, as the amended APA required. *Id.* The Board then sought a petition for writ of mandamus from this Court, arguing that the amended APA encroached upon the Board's power of general supervision over the public school system because "general supervisory provision implies rule-making power, and by enacting W.Va. Code, 29A-3A-12 and -13 [1988], the legislature has effectively diminished article XII, § 2 of the State Constitution." *Id.*, 180 W. Va. at 453, 376 S.E.2d at 841. Or put another way, the Board argued that the Legislature infringed on the Board's power of general supervision by making the Board's ability to pass rules and regulations contingent on Legislative control and approval.

This Court agreed with the Board and issued a writ of mandamus that both declared the amended APA unconstitutional and compelled the Secretary of State to "file rules approved by the State Board of Education in the state register" without the Legislature's approval. *Id.*, 180 W. Va. at 456, 376 S.E.2d at 844. To reach that holding, this Court first reiterated its precedent stating, "[A]ny 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 180 W. Va. at 454, 376 S.E.2d at 842 (quoting *Bailey*, 174 W. Va. 8, 321 S.E.2d 302). It then held that "Rules proposed by the Board . . . are integral to the day-to-day operation of schools." *Id.* Therefore, "[a]n attempt to impede [the Board's rulemaking] process is not consistent with the general supervisory powers conferred upon the Board by art. XII, § 2 of the State Constitution." *Id.*

In rendering its decision, this Court noted, "'General 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.* at 180 W. Va. at 455, 376 S.E.2d at 842. The constitutional power of general supervision separates the Board from other agencies—as this Court explained, “unlike most other administrative agencies which are constituents of the executive branch, the Board enjoys a special standing because such a constitutional provision exists.” *Id.* at 180 W. Va. at 455, 376 S.E.2d at 842–43. The Court then described the extent of the Board’s Constitutional powers, stating, “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.* It also described the extent of the Legislature’s powers as it related to public education, holding, “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.* Because the APA amendment invaded the Board’s rulemaking process, this Court determined that it interfered with the Board’s Constitutional power of general supervision and struck it down as unconstitutional. *Id.*

E. West Virginia voters reaffirm the Board’s power of general supervision—twice.

After *Hechler*, West Virginia voters were twice given the opportunity to limit the Board’s power of general supervision over public schools. Twice, voters reaffirmed the Board’s Constitutional power of general supervision. In 1989, one year after *Hechler*, Governor Gaston Caperton spearheaded the charge to do away with the Board as an independent Constitutional body. See Nancy Mathis, *West Virginia Votes To Keep Independent State Board, Superintendent*, Education Week, Sept. 20, 1989 at A.R.0845-47. In March 1989, within *three months* of the *Hechler* decision, the Legislature passed House Joint Resolution 21. 1989 House Joint Resolution 21 at A.R.0850-52. Resolution 21 placed a Constitutional amendment on the ballot that proposed

amending Article XII, § 2, to echo the 1863 West Virginia Constitution, stating, “The supervision of the free schools of the State shall be vested in such department within the executive branch of state government as shall be prescribed by law, which department shall have such powers and perform such duties as shall be prescribed by law.” *Id.* Put simply, under the proposed amendment, West Virginia public schools would be governed by a legislatively created entity that had only those “powers” “prescribed” to it by law. That proposed amendment was voted down, by a margin of 220,286 to 29,776. *See* Holmes, Darrell E., Senate Clerk, *West Virginia Blue Book*, Jarrett Printing Company, 531 (1989) at A.R.0855.

In 2022, the Legislature tried again. It passed House Joint Resolution 102, which again tried to cabin the Board’s power of general supervision. Resolution 102 placed a Constitutional amendment on the ballot that amended Article XII, § 2, to state, “Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies which 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.” 2022 House Joint Resolution 102 at A.R.0856. Again, the voters refused to curtail the Board’s power of general supervision, and the proposed amendment failed by a margin of 275,683 to 200,791. *See* A.R.0860.

F. The Legislature attempts to usurp the Board’s Constitutional power again through House Bill 2755, and the Respondent Secretary of State enforces the Legislature’s unconstitutional law.

This history brings us to the instant conflict—and provides an easy answer to the question presented. During the 2025 Legislative session, the Legislature passed House Bill 2755, which amended the APA. The final version of House Bill 2755 amended West Virginia Code §§ 29A-3B-1, 29A-3B-8, 29A-3B-9, 29A-3B-10, and 29A-3B-11. *See* House Bill 2755 (Final Committee Substitute) at A.R.0866-76. House Bill 2755 effectively re-codified the law this Court struck down

in *Hechler* and purported to enact a statute that mirrors the language of the 2022 Constitutional amendment West Virginia voters rejected, stating, among other things, that,

Under its supervisory duties, the West Virginia Board of Education may promulgate rules or policies, and any new rule so promulgated 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, and pursuant to this section.

W. Va. Code § 29A-3B-9. House Bill 2755 was passed on April 12, 2025, and became law without the Governor's signature. The law became effective on July 11, 2025.

On July 14, 2025, the Board voted to file State Board Policy 4334 (Policy 4334), a rule governing the design and equipment of school buses, at the Secretary of State's office. July 14, 2025, Board Minutes at A.R.0877-78. The Board submitted Policy 4334 to the Secretary of State's Office for publication that same day, with an effective date thirty days later. *Id.* The Secretary of State's Office refused to publish Policy 4334, stating,

Newly promulgated legislative rules must be submitted to the Legislature through the Legislative Oversight Commission on Education Accountability for approval as set forth in W. Va. Code 29A-3B-9 before taking effect, in accordance with HB2755 passed during the 2025 Legislative session and effective on July 11, 2025.

July 14, 2025, Email at A.R.0879. House Bill 2755 has the effect the Legislature intended, in that it effectively curtails the Board's Constitutional rulemaking powers.

Prior to submitting Policy 4334, counsel for the Board met with counsel for the Secretary of State's Office to discuss how to proceed regarding the laws House Bill 2755 enacts. *See* July 7, 2025 Letter at A.R.0880-81. On July 7, 2025, the Board sent the Secretary of State's office a letter, indicating that the Board intended to file suit to protect its Constitutional authority if the Secretary of State's office did not allow the Board's rules to be filed. *Id.* That letter included the thirty-day notice under West Virginia Code § 55-7-13. *Id.* On July 14, 2025, the Secretary of State's counsel

wrote to the Board's counsel and indicated that the Secretary of State's office would follow the laws enacted by House Bill 2755 because the Secretary of State could not determine the constitutionality of those laws. July 14, 2025 Letter at A.R.0882-83. The Board now files this Petition for Writ of Mandamus.

SUMMARY OF ARGUMENT

It is said that history repeats itself. This case is a clear-cut example of that adage. Article XII, § 2, of the West Virginia Constitution empowers the Board with "general supervision" over West Virginia's public school system. The Board's Constitutional power of "general supervision" includes the power to enact rules and regulations governing public schools. In 1988, the Legislature passed a law requiring the Board to submit its rules and regulations to the Legislature for approval prior to passage. Under identical circumstances, this Court ruled that law was unconstitutional and held that "any statutory provision that interferes with [the Board's] rule-making is unconstitutional." Syl. Pt. 2, *Hechler*, 180 W. Va. at 452, 376 S.E.2d at 839.

Now, in 2025, the Legislature passed House Bill 2755, which enacted several laws that similarly require the Board to submit its rules and regulations to the Legislature for approval prior to passage. This case presents identical facts as in *Hechler*, down to the Respondent refusing to file the Board's very same rule regarding school bus equipment and design. House Bill 2755 is just as unconstitutional as its 1988 predecessor, and the laws it enacted unconstitutionally interfere with Board's power of general supervision. Not only is House Bill 2755 unconstitutional under *Hechler*, but it also disregards the will of West Virginia voters. The Legislature twice proposed amendments to the West Virginia Constitution that would transfer the Board's rulemaking authority to the Legislature. Twice, those amendments failed at the ballot box.

Because the laws enacted by House Bill 2755 are both unconstitutional and undermine the will of West Virginia's electorate, this Court should issue a writ of mandamus, direct the Secretary

of State to publish the Board's rules without the legislative leash contemplated by House Bill 2755, and declare the laws enacted by House Bill 2755 unconstitutional.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary in this case. This case involves the straightforward application of this Court's precedent in *W. Virginia Bd. of Educ. v. Hechler*, 180 W. Va. 451, 376 S.E.2d 839 (1988). To the extent this Court is interested in oral argument, it should hear Rule 19 oral argument because this case involves "assignments of error in the application of settled law."

ARGUMENT

A. A Writ Of Mandamus Is The Proper Mechanism To Afford The Board Relief.

"Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies." Syl. Pt. 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W.Va. 207, 151 S.E.2d 102 (1966). "This Court's original jurisdiction in mandamus proceedings derives from Art. VIII, § 3, of the Constitution of West Virginia. Its jurisdiction is also recognized in Rule [16] of the West Virginia Rules of Appellate Procedure and W.Va. Code§ 53-1-2 (1933)." *State ex rel. Potter v. Office of Disciplinary Couns. of State*, 226 W.Va. 1, 4, 697 S.E.2d 37, 40 (2010). This Court issues writs of mandamus to nullify and prevent unconstitutional acts that state agencies perform pursuant to statute. *Hechler*, 180 W. Va. at 456, 376 S.E.2d at 844 ("[M]andamus may be used to attack the constitutionality or validity of a statute or ordinance.").

In fact, this Court has already determined that a writ of mandamus is the proper remedy whenever the Secretary of State's office refuses to publish the Board's rules because of a statute. *Id.* In *Hechler*, this Court issued a writ of mandamus both compelling the Secretary of State to publish the Board's rules in the state register and striking the version of the APA that precluded the Secretary of State from doing so as unconstitutional. *Id.*

History has repeated itself, and this Court should issue a writ of mandamus in this case compelling the Secretary of State to publish the Board’s rules and declaring the laws enacted by House Bill 2755 unconstitutional—exactly as it did nearly forty years ago.

B. The Laws Enacted By House Bill 2755 Violate Article XII, § 2, Of The West Virginia Constitution.

In 1988, the Legislature amended the APA to require the Board to submit rules and regulations regarding West Virginia’s public education system to the Legislature for approval prior to passage. In a Syllabus Point, this Court unequivocally held that “[r]ule-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.” Syl. Pt. 2, *W. Virginia Bd. of Educ. v. Hechler*, 180 W. Va. 451, 452, 376 S.E.2d 839, 839 (1988). Consistent with that, it struck the 1988 APA amendment as unconstitutional. Now, in 2025, the Legislature amended the APA to require the Board to submit rules and regulations regarding West Virginia’s public education system to the Legislature for approval prior to passage—effectively the same unlawful statute this Court struck down in *Hechler*. See W. Va. Code § 29A-3B-9. Nothing has changed to necessitate a different result now than this Court rendered in *Hechler*—indeed, the facts of this case are identical to those in *Hechler*, down to the Secretary of State refusing to file the Board’s same rule regarding school bus design and equipment.

This Court should follow the course it charted in *Hechler* and declare the laws enacted by House Bill 2755 unconstitutional for at least three reasons. First, this Court has revisited and reaffirmed its decision in *Hechler* multiple times, and the doctrine of stare decisis requires this Court to adhere to its reasoning. Second, this Court has thoroughly analyzed the “prescribed by law” provision in Article XII, § 2, and it foreclosed any argument that this provision supports the

unconstitutional transfer of power the Legislature sought to accomplish through House Bill 2755. Finally, House Bill 2755 flagrantly subverts the will of the people of West Virginia, who have reiterated multiple times, including in 2022, that they do not want the Board’s rulemaking authority subjected to the Legislature’s control.

1. First, *Hechler* is still binding precedent, and it necessitates that this Court deem the laws enacted by House Bill 2755 unconstitutional.

“[T]he doctrine of *stare decisis* requires this Court to follow its prior opinions.” *Jenkins v. City of Elkins*, 230 W. Va. 335, 340, 738 S.E.2d 1, 6 (2012) (citation omitted). Departure from precedent is warranted only where there is “evidence of changing conditions or serious judicial error in interpretation.” *Id.* at 230 W. Va. at 341, 738 S.E.2d at 7.

Neither of the conditions required to depart from precedent are present here. *Hechler* remains the “preeminent case” regarding “the Constitution’s grant of general supervisory authority to the State Board.” *State ex rel. W. Virginia Bd. of Educ. v. Gainer*, 192 W. Va. 417, 418–19, 452 S.E.2d 733, 734–35 (1994).⁴ For example, the Court revisited *Hechler* in *Board of Education of Kanawha County v. West Virginia Board of Education*, 399 S.E.2d 31 (W. Va. 1990). There, the Kanawha County Board of Education decided to close a middle school, but the Board vetoed the proposal. *Id.* at 32. Several entities sued the Board to enforce the closing, and the circuit court ordered the school’s closure. *Id.* In the circuit court’s view, the Legislature had enacted a statutory scheme that vested “exclusive authority to close” schools with the county board of education, and “the State Board had no constitutional or legislative authority to disapprove or overrule such decisions.” *Id.*

⁴ Even before *Hechler* was decided, the Attorney General opined that “the Legislature has no authority to take any of the powers of ‘general supervision of the free schools’” and no authority to “enlarge the powers of any other State agency over the State’s ‘free schools.’” 51 Op. Att’y Gen 852, 865 (June 9, 1966) at A.R.0376.

On appeal, this Court applied the principles from *Hechler* and found that a statutory scheme that limited the Board’s power to close schools would infringe upon the Board’s general supervisory authority under Article XII, § 2. *Id.* at 33–35. More specifically, the Court held that “[t]he closing or consolidation of county schools is a matter within the purview of the State Board’s general supervisory powers” and thus, “in furtherance of its mandatory duty to provide a thorough and efficient system of schools, . . . the State Board does have the authority to review and to approve or disapprove a county board’s school closure or consolidation plan.” *Id.* at 35.

In every case in which this Court has considered the principles it announced in *Hechler*, it has reaffirmed them, including as recently as 2017. *See, e.g., W. Virginia Bd. of Educ. v. Bd. of Educ. of the Cnty. of Nicholas*, 239 W. Va. 705, 716–17, 806 S.E.2d 136, 147–48 (2017) (hereinafter *Nicholas*); *State ex rel. Lambert by Lambert v. W. Virginia State Bd. of Educ.*, 447 S.E.2d 901 (W. Va. 1994) (reaffirming *Hechler*’s holding that the Board has a “constitutional duty to generally supervise the schools without any interference from the Legislature” and upholding a statute regarding student athletics that required Board approval for any subsequently promulgated regulations); *Board of Educ. of Cnty. of Kanawha v. W. Virginia Bd. of Educ.*, 399 S.E.2d 31 (W. Va. 1990) (citing *Hechler* and *Bailey* favorably for the proposition that “the State Board is empowered to take whatever steps are necessary to fulfill its obligation to achieve ‘the constitutionally mandated educational goals of quality and equality. . . .’”).

This Court has recognized, repeatedly, that *Hechler* remains binding and that the Board’s power of general supervision—and attendant rulemaking power—are “impervious to legislative impairment.” *Nicholas*, 239 W. Va. at 715, 806 S.E.2d at 146. Here, the Legislature did far more than “impair” the Board’s rulemaking power with House Bill 2755. That law, exactly like the law this Court declared unconstitutional in *Hechler*, wrests from the Board its rulemaking power and

effectively places it with the Legislature. History is repeating itself. The Legislature enacted the same unlawful statute this Court struck down in *Hechler*. This Court should simply apply its binding precedent and strike that law down again.

There is no reason for this Court to reconsider *Hechler*, as the decision is strongly rooted both in textualism *and* originalism. On the textual front, *Hechler*'s rationale remains as solid today as it did in 1988. The phrase "general supervision" in Article XII, § 2, *must* include rule-making authority. It is hard to imagine how one could supervise anything without being able to craft the rules that govern it. And, as *Hechler* recognizes, it is equally hard to exercise the power of supervising something if the power of supervision is leashed by a legislative veto. Therefore, the text of Article XII, § 2, demands *Hechler*'s result: "[A]ny statutory provision that interferes with such rule-making is unconstitutional." *Hechler*, 180 W. Va. at 455, 376 S.E.2d at 843.

Hechler also makes good sense in the originalist context. The decision furthers the goals of Article XII, § 2's drafters and the electorate that voted for the current version of that provision. *State ex rel. Brotherton v. Blankenship*, 157 W.Va. 100, 108, 207 S.E.2d 421, 427 (1973) ("The fundamental principle in constitutional construction is that effect must be given to the intent of the Framers of such organic law and of the people who ratified and adopted it."). This Court adhered to Article XII, § 2's objectively identifiable meaning and purpose. One need look no further than the contemporaneous historical sources and legislative reports cited above to see that the provision was intended to insulate the Board from the political whims of the Legislature. *See supra* at 4–7. Indeed, the Legislature-commissioned expert reports and recommendations that led to the Constitutional amendment being placed on the ballot expressly recommended removing public education governance from the realm of partisan politics. *Id.*

Hechler therefore not only interpreted the text of Article XII, § 2, correctly, but it also gave effect to the thoughtful process that led the Legislature to recommend, and voters to adopt, the Constitutional amendment establishing Article XII, § 2, as it exists today. The laws House Bill 2755 enacts are not merely anathema to *Hechler*—they also run counter to the text of Article XII, § 2, and undermine its goal of removing public education from partisan politics. After all, the Board is no longer insulated from partisan politics if its rulemaking powers are bound by the inherently political body that is the Legislature.

Accordingly, the Board asks this Court to hold, consistent with its prior decision in *Hechler*, that “any statutory provision that interferes with such rule-making is unconstitutional,” declare the laws House Bill 2755 enacts unconstitutional, and compel the Secretary of State to publish the Board’s rules in the State Register. 180 W. Va. at 452, 376 S.E.2d at 839.

2. Second, this Court has foreclosed any argument that the Board’s rulemaking authority is constrained by Article XII, § 2’s “prescribed by law” provision.

The Supreme Court reaffirmed *Hechler* most recently—and most zealously—in *West Virginia Board of Education v. Board of Education of the County of Nicholas*. There, this Court expressly determined that the “duties as may be prescribed by law” provision of Article XII, § 2, did not allow the Legislature to invade the Board’s Constitutional purview.⁵ In that case, the Nicholas County Board of Education decided to consolidate several schools and submitted a consolidation plan to the State Board, which the State Board rejected. *Nicholas*, 806 S.E.2d at 140–41. The Nicholas County Board sued the State Board to force it to approve the closure plan. *Id.* at 141.

⁵ Nor does Article XII, § 1 give the Legislature the power to curtail the Board’s rulemaking power. That section simply requires the Legislature to develop a public education system and fund it. *See State v. Beaver*, 248 W. Va. 177, 193, 887 S.E.2d 610, 626 (2022) (“[T]he ‘free schools’ clause requires the Legislature to provide a thorough and efficient system of free schools. . . .”).

The circuit court sided with the Nicholas County Board. In its view, “the WVBOE d[id] not have unfettered discretion to simply substitute its judgment for that of a local county school board.” *Id.* at 142 (internal quotation marks omitted). Instead, the circuit court held that “the WVBOE’s only role relative to consolidation is to determine whether the county boards are following the requirements of and/or supervising compliance with the [existing statutory scheme].” *Id.* (internal quotation marks omitted). According to the circuit court, this was proper because the Legislature could “temper the WVBOE’s constitutional charge” through Article XII, § 2’s “duties as may be prescribed by law” clause, and the Legislature had vested exclusive authority on school consolidation decision-making with county boards of education. *Id.* at 143–44. Specifically, Article XII, § 2, states that “[t]he general supervision of the free schools of the State shall be vested in the West Virginia board of education which shall perform such duties as may be prescribed by law,” and the circuit court took the “duties as may be prescribed by law” language to mean that the Legislature could constrain or temper the Board’s Constitutional grant of authority. *Id.*

On appeal, this Court “renounce[d] the lower court’s deeply misguided construction of the WVBOE’s constitutional grant of authority.” *Id.* at 144. The Court again reiterated that “the WVBOE’s constitutional supervisory powers are both broad and impervious to legislative impairment.” *Id.* at 146. Any legislation touching on public education, the Court explained, “must be in harmony with and not in derogation of the” Board’s general supervisory powers. *Id.* at 145 (quoting *Bailey*, 321 S.E.2d at 310); *see also id.* at 144–45 (“[T]his Court has unequivocally held that legislative action that impedes the general supervisory powers of the WVBOE is patently unconstitutional.”). In so holding, this Court rejected the argument that the “duties as may be prescribed by law” clause permitted to Legislature to invade the Board’s powers of general

supervision. Specifically, it quoted *Powers v. State*, 318 P.3d 300, 308 (Wyo. 2014) for the proposition 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.*

As a result, this Court concluded in *Nicholas* that the Legislature could not “‘impede’ the WVBOE’s supervisory power” by relegating it “to act as a mere compliance officer.” *Id.* at 145, 147 (quoting *Hechler*, 376 S.E.2d at 842–43). Article XII, § 2, vested the Board with final say over school consolidations, and the Legislature could not, by statute, alter that constitutional grant. *Id.* And, to reaffirm its prior cases, the Court once again expressed its “veneration of the extensive sweep of the WVBOE’s constitutional supervisory authority” and again held that “the State Board is empowered to take *whatever steps are necessary* to fulfill its obligation to achieve ‘the constitutionally mandated educational goals of quality and equality.’” *Id.* at 146 (emphasis in original) (quoting *Kanawha Cnty. Bd.*, 399 S.E.2d at 35).

Therefore, there is no defense for the unconstitutional House Bill 2755 to be found in the “duties as may be prescribed by law” provision of Article XII, § 2. This language is notably different from the language previously proposed in unsuccessful Constitutional amendments that attempted to curtail the Board’s authority, demonstrating that the Legislature recognizes that the language of Article XII, § 2 as it exists does not empower the Legislature to statutorily restrict the Board’s exercise of its powers. See A.R.0851 (proposed amendment provided that the proposed “Board” equivalent would only “**have such powers** and perform such duties as shall be prescribed by law”) (emphasis added); A.R.0856 (proposed amendment changed rulemaking process to the language of House Bill 2755, such that the Board may “promulgate rules or policies which 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”). For these reasons, the Board’s requested writ should issue.

3. Finally, voters have repeatedly reaffirmed the Board’s power of general supervision, and the laws enacted by House Bill 2755 run counter to the will of the electorate.

“[I]n the making of and in the amendment of Constitutions, the people are sovereign and supreme.” *State ex rel. Smith v. Kelly*, 149 W. Va. 381, 394, 141 S.E.2d 142, 150 (1965). Even though the electorate makes and amends the West Virginia Constitution, the Legislature cast aside the will of West Virginia voters when they passed the laws enacted by House Bill 2755.

Article XIV, § 2, of the West Virginia Constitution creates a rigorous Constitutional amendment process. Under that section, two-thirds of both houses of the Legislature must approve placing a Constitutional amendment on the ballot, and the majority of voters must approve the Constitutional amendment after it has been repeatedly published in a newspaper in every county. *See* W. Va. Const. art. XIV, § 2. This rigorous process, which entails the “endorsement of a legislative supermajority and the support of a majority of those voting in a statewide referendum,” ensures “that constitutional amendments reflect a true and broad based political consensus. . . .” *State ex rel. Cooper v. Caperton*, 196 W. Va. 208, 220, 470 S.E.2d 162, 174 (1996).⁶

Again, recognizing that the supervisory ends it seeks to accomplish require amendment of West Virginia’s Constitution, the Legislature has twice given West Virginia voters the opportunity to curtail the Board’s rulemaking power announced in *Hechler* via Constitutional amendment. Twice, those voters rejected proposed amendments limiting the Board’s rulemaking power. The “broad based political consensus” necessary to change the constitutional principles announced in

⁶ In matters of interpretation, this Court starts from the commonsense proposition that voters know what they voted for at the ballot box. After all, “a Constitution should be applied by the courts according to the common understanding and everyday requirements of life, since the people who voted for it must have so understood it.” *State ex rel. Maloney v. McCartney*, 159 W. Va. 513, 523, 223 S.E.2d 607, 614 (1976).

Hechler does not exist, and the Court must reject the Legislature's attempts to thwart the will of West Virginia voters through House Bill 2755. Holding otherwise runs counter to the "true expression of the people's will." *Caperton*, 196 W. Va. at 218, 470 S.E.2d at 172.

CONCLUSION

For the foregoing reasons, this Court should 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.

Respectfully Submitted,

/s/ Christopher D. Smith
Benjamin L. Bailey (WVSB #200)
Christopher D. Smith (WVSB #13050)
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 (WVSB #14066)
BAILEY & GLASSER LLP
94 Long Street, Suite 200
Westover, WV 26501
Telephone: (304) 345-6555
Facsimile: (304) 342-1110
dhedrick@baileyglasser.com

*Counsel for Petitioners West Virginia Board of
Education and Michele Blatt, in her official
capacity as State Superintendent of Schools*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 3rd, 2025, a copy of the foregoing ***Petition for Writ of Mandamus*** using the Court's E-Filing system and certified mail on the following:

Kris Warner, Secretary of State
1900 Kanawha Boulevard, East
Building 1, Suite-157K
Charleston, WV 25305

John McCuskey, West Virginia Attorney General
1900 Kanawha Boulevard, East
Building 1, Room E-26
Charleston, WV 25305

/s/ Christopher D. Smith
Christopher D. Smith (WVSB #13050)

VERIFICATION

I, Michele L. Blatt, State Superintendent of Schools, being first duly sworn, state that I have read the foregoing Petition for Writ of Mandamus and that the representations contained therein are true and correct.

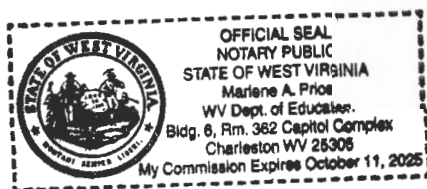
Michele L. Blatt

Michele L. Blatt

State Superintendent of Schools

Taken, subscribed, and sworn to before me this 2nd day of October, 2025

My Commission expires: October 11, 2025



Mariene A. Prior
Notary Public