

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA**

**JOSHUA A. HESS and  
MARISA JACKSON,**

**Plaintiffs/Petitioners,**

**v.**

**No.** \_\_\_\_\_

**WEST VIRGINIA DEPARTMENT OF HEALTH,  
WEST VIRGINIA BUREAU FOR PUBLIC HEALTH,  
JUSTIN DAVIS, Interim Commissioner for Public Health,  
ARVIN SINGH, West Virginia Department of Health  
Cabinet Secretary,**

**Defendants/Respondents.**

**VERIFIED COMPLAINT AND PETITION FOR WRIT OF MANDAMUS  
AND INJUNCTIVE RELIEF**

**INTRODUCTION**

West Virginia parents have been caught in a web of unconstitutional and unlawful executive overreach, impacting the rights that the constitution holds most dear – their children’s education and safety. This action arises from Defendants choosing to unlawfully disregard their nondiscretionary duties and instead adopt a patently unconstitutional reading of state law, so absurd that it defies all reasonable explanation and threatens to unwrite all of West Virginia law on executive whim.

Plaintiffs/Petitioners seek immediate injunctive relief from this Court to address the imminent harm their families face if this unlawful action is not stopped, and a mandamus order compelling compliance with Respondents’ mandatory, nondiscretionary duties. The urgency of this matter cannot be overstated. The Defendants have approved hundreds of non-medical exemptions and school begins imminently across West Virginia.

## **PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff/Petitioner Dr. Joshua A. Hess is a West Virginia resident, taxpayer, and father of an immunocompromised child. He is also a pediatric hematologist and oncologist practicing at Marshall Health's Cabel Huntington Hospital. He provides regular care to immunocompromised children, who, along with his child, are significantly and directly impacted by negative health consequences arising from any loosening or weakening of community immunization standards.

2. Plaintiff/Petitioner Marisa Jackson is a West Virginia resident, taxpayer, and mother. Petitioner Jackson has a school-age child who is particularly susceptible to illness as a result of decreased community use of immunizations. Petitioner Jackson successfully advocated in the State Legislature against the addition of non-medical exemptions to West Virginia's compulsory immunization law, which Respondents now disregard.

3. Both Plaintiffs/Petitioners have children enrolled in West Virginia public schools. Their ability to safely send their children to school is directly threatened by Defendants' unauthorized expansion of exemptions to compulsory vaccination requirements.

4. Defendant/Respondent West Virginia Department of Health is a state administrative agency responsible for overseeing and administering public health programs, services, and regulatory functions to protect and promote the health and well-being of West Virginia residents.

5. Defendant/Respondent West Virginia Bureau for Public Health is a division within the West Virginia Department of Health charged with implementing public health policies and enforcing health regulations, including the policies and regulations concerning immunizations.

6. Defendant/Respondent Justin Davis is the Interim Commissioner for Public Health, who is directed by state law to issue exemptions to compulsory immunization requirements in accordance with W. Va. Code § 16-3-1 *et seq.*

7. Defendant/Respondent Dr. Arvin Singh is the Cabinet Secretary tasked with overseeing the functions of the West Virginia Department of Health.

8. This Court has jurisdiction over this matter and venue is proper pursuant to W. Va. Code § 53-1-2.

9. Petitioners seek injunctive relief and face immediate and irreparable harm if such relief is delayed. They are therefore not required to provide a pre-suit notice to the Respondents pursuant to W. Va. Code § 55-17-3(a)(1).

### **PROCEDURAL HISTORY**

10. A case alleging similar claims was filed by the same parties on June 4, 2025, in the Circuit Court of Kanawha County, West Virginia, and was ultimately dismissed for failure to provide pre-suit notice as required by W. Va. Code § 55-17-3.

11. The court's finding that such notice was required was based entirely on the pleadings' failure to adequately articulate a claim for injunctive relief, rather than any substantive deficiency in the underlying constitutional claims or a determination that irreparable harm would not result from delay. The case was dismissed without prejudice.

12. This action is now ripe for re-filing with pleadings that cure the procedural deficiencies identified by the court. The underlying constitutional violations that prompted the original litigation remain unaddressed and continue to cause ongoing harm. Additionally, Plaintiffs/Petitioners have gained substantial insight into the unconstitutional manner in which

Defendants/Respondents are interpreting and applying the relevant statutory provisions, strengthening both the factual foundation and legal theories supporting this renewed challenge.

## **STATEMENT OF FACTS**

### **West Virginia's Historical Vaccine Requirements**

13. West Virginia is among the states with the strongest compulsory immunization laws in the Nation. This has been the case since the earliest days of West Virginia history.

14. West Virginia law first provided for vaccine mandates in 1872, nine years after West Virginia achieved statehood. The initial 1872 law concerning vaccines gave county Boards of Education the authority to compel student vaccination.

15. In 1905, the West Virginia Legislature passed its first statewide compulsory vaccine law. That initial statewide vaccine requirement provided for medical exemptions but did not provide for religious or philosophical exemptions.

16. West Virginia's vaccine law was amended in 1937, providing a penalty for parents who did not comply with statutory requirements.

17. The language of West Virginia's vaccine law was updated in 1967 to require "a certificate from a reputable physician showing that a successful immunization...is impossible or improper" when a parent does not comply with vaccine requirements.

18. Between 1998 and 2025 over sixty bills were introduced in the Legislature to amend the vaccination law, many seeking to add non-medical exemptions. In 2024 one such bill passed the Legislature but was vetoed by then-Governor Jim Justice. No bill aiming to create non-medical exemptions to immunizations has been signed into law during West Virginia's history as a state.

## Current Legal Framework

19. West Virginia's present law regarding vaccination of children is codified at W. Va. Code § 16-3-1 *et seq.* and further interpreted at 64 W. Va. C.S.R. § 64-95-1 *et seq.* West Virginia law establishes, in relevant part:

(b) Except as hereinafter provided, a child entering school or a state-regulated child care center in this state must be immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough.

(c) No child or person may be admitted or received in any of the schools of the state or a state-regulated child care center until he or she has been immunized against chickenpox, hepatitis-b, measles, meningitis, mumps, diphtheria, polio, rubella, tetanus and whooping cough or produces a certificate from the commissioner granting the child or person an exemption from the compulsory immunizations requirements of this section.

W. Va. Code § 16-3-4(b)-(c).

(h) The commissioner is authorized to grant, renew, condition, deny, suspend, or revoke exemptions to the compulsory immunizations requirements of this section, on a statewide basis, upon sufficient medical evidence that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

(1) A request for an exemption to the compulsory immunization requirements of this section must be accompanied by the certification of a licensed physician stating that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

W. Va. Code § 16-3-4(h)(1).

20. The requirements of West Virginia Code § 16-3-1 *et seq.* are further expanded on in the accompanying regulations, which “applies to all children enrolled in public, private, or parochial school in this state, or a state-regulated child care center.” 64 W. Va. C.S.R. § 95-1.6 (2025).

21. To be eligible for a medical exemption, there must be “sufficient medical evidence that an immunization is contraindicated or there exists a specific precaution to a particular vaccine.” 64 W. Va. C.S.R. § 95-16 (2025).

22. State regulations establish a process to determine eligibility for a vaccine exemption. 64 W. Va. C.S.R. § 95-17 (2025). To determine eligibility, the physician requesting the exemption must provide information on “the specific vaccine or vaccines for which an exemption is requested,” “an explanation of the medical contraindication or precaution relied upon to make the request,” and “certification by the physician that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine. This certification must be supported by medical signs and laboratory findings...” 64 W. Va. C.S.R. § 95-17.1(g), (h), (j) (2025).

### **Executive Order 7-25 and Implementation**

23. On January 14, 2025, Governor Patrick Morrisey signed Executive Order No. 7-25, titled “Allowing religious exemptions for school vaccines.”

24. Executive Order No. 7-25 demanded that the State take three actions in support of Morrisey’s proposal, requiring,

The Commissioner of the Bureau for Public Health and the State Health Officer... [must] Establish a process for objections to compulsory school immunization from persons who desire to send their children to a state school or state-regulated child care center but object on religious or conscientious grounds to one or more vaccine [sic] required by the compulsory immunization law; ... For purposes of this process, a writing signed by the objector shall be sufficient proof to establish the objection.

When – as directed by the Equal Protection for Religion Act of 2023, W. Va. Code § 35-1A-1 (2023) – the compulsory immunizations requirements [sic] violate a religious and moral objection, the Commissioner of the Bureau for Public Health, the State Health Officer, and all officials and employees of the State under their authority shall – consistent with the Equal Protection for Religion Act of 2023, W.

Va. Code § 35-1A-1 (2023) – take no action to enforce the compulsory school immunization requirements against the particular objector or his or her child.

By February 1, 2025, the Bureau for Public Health and the State Health Officer shall... [s]ubmit a plan the Office of the Governor [sic], including a proposal for any necessary legislation and rules, to enable and facilitate a statewide exemption to the compulsory school immunization in Chapter 16, Article 3, Section 4 of the West Virginia Code for objections based on religions and moral beliefs; and... Report to the Office of the Governor on the number of people who have filed written objections to the compulsory school immunization requirements.

25. Following the issuance of this Executive Order, the West Virginia Legislature convened on the first day of legislative session, February 12, 2025. The following day, Senate Bill 460 was introduced--a bill which would have permitted non-medical exemptions to the state vaccine requirement.

26. The non-medical exemption bill passed the State Senate on February 21, 2025. However, the bill was rejected by the State House on March 24, 2025, and did not become law.

27. On May 2, 2025, the West Virginia State Superintendent of Schools, Michele Blatt, issued a memorandum to all county superintendents, titled “Guidance on Required Immunizations for School Entry,” addressing the impact of Governor Morrissey’s Executive Order and the Legislature’s decision not to permit non-medical exemptions.

28. In this memo, Superintendent Blatt explained:

Moving forward, to ensure our counties are being consistent, I am recommending our school systems use the guidance below:

- Any student that has been enrolled with a letter from DOHS Immunization Office prior to May 1<sup>st</sup> be allowed to finish out this school year.
- Notify parents/guardians of students enrolled with DOHS letters that they will not be allowed to attend school in the Fall of 2025 without required immunizations.
- Ensure during Pre-K or Kindergarten registrations that parents/guardians understand West Virginia Code § 16-3-4 must be followed for the 2025-2026 school year.

29. Hours later, an email was sent by Superintendent Blatt to school officials stating,

At the Governor's request, I am rescinding the memo I sent earlier today regarding vaccine exemptions. We are working collaboratively with the Governor's office to issue clear guidance to counties on how to comply with Executive Order 7-25. The Governor's office has informed me that the West Virginia Department of Health will continue to review and grant religious exemptions to compulsory school vaccine requirements, and counties should honor those exemption requests that have been duly granted.

30. On May 9, 2025, Governor Morrissey released a letter providing guidance on implementing his Executive Order, stating in a relevant part:

while a statutory change to West Virginia's compulsory vaccine statute did not pass in the 2025 Regular Legislative Session, my Executive Order 7-25 still stands, and I have no intention of rescinding it. Parents and guardians of students may obtain an exemption by sending a signed letter to VaccineExemption@wv.gov, a dedicated email account the Bureau for Public Health established for receiving and processing these exemption requests. Your letter should include: Name and date of birth of student requesting religious exemption; Name of parent/guardian of student; Name of school parent/guardian intends to enroll student in; and Mailing address of parent/guardian of student.

... when a student receives a religious or philosophical exemption under Executive Order 7-25 – either during the 2024-2025 school year or going forward for future school years- that exemption should be honored by the school the child enrolls in, and he or she should be allowed to attend virtual and in-person classes without receiving the compulsory vaccines from which the student is exempt.

31. On information and belief, by last count in June 2025, more than 460 non-medical exemptions were approved by Defendants/Respondents since the Governor issued Executive Order 7-25.

32. Over the past decade prior to Executive Order 7-25, only 203 medical exemptions to W. Va. Code 16-3-4 were approved. As a result, the unlawful and invalid non-medical exemptions authorized by Defendants/Respondents outpaced a decade of lawful medical exemptions by more than 225% in only six months. On information and belief, since June 2025, the number of non-medical exemptions is likely to have continued to increase.



33. As Kanawha County Schools and other districts statewide commence the new school year, parents generally and Plaintiffs/Petitioners specifically need immediate clarity on their rights and available protections for their immunocompromised children attending public school.

## **STATEMENT OF LAW**

### **Mandamus Standard**

34. “Mandamus is a proper remedy to require the performance of a nondiscretionary duty by various governmental agencies or bodies.” *State ex rel. W. Virginia Parkways Auth. v. Barr*, 228 W. Va. 27, 716 S.E.2d 689, 693 (2011) (quoting Syl. Pt. 1, *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966)).

35. A writ of mandamus requires three elements coexist: (1) the existence of a clear right in the petitioner to the relief sought; (2) the existence of a legal duty on the part of the respondent to do the thing the petitioner seeks to compel; and (3) the absence of another adequate remedy at law. Syl. Pt. 1, *State ex rel. Sams v. Comm’r, W. Virginia Div. of Corr.*, 218 W. Va. 572, 625 S.E.2d 334 (2005) (quoting Syl. Pt. 3, *Cooper v. Gwinn*, 171 W. Va. 245, 298 S.E.2d 781 (1981)).

### **Statutory Duties and Executive Authority**

36. West Virginia law creates a non-discretionary obligation upon the Commissioner for the Bureau of Public Health to effectuate state law with regarding compulsory immunizations. The compulsory immunization statute contains multiple mandatory directives using the word “shall.” W. Va. Code § 16-3-4(a) provides that “the commissioner shall promptly provide parents of the newborn child with information on immunizations,” subsection (d) states that school personnel “shall report the names of all such persons to the commissioner,” and

subsection (e) declares that “[n]o person shall be allowed to enter school without at least one dose of each required vaccine.”

37. “It is well established that the word ‘shall,’ in the absence of language in the statute showing a contrary intent on the part of the Legislature, should be afforded a mandatory connotation.” *Nelson v. West Virginia Publ. Employees Ins. Bd.*, 171 W. Va. 445, 300 S.E.2d 86 (1982). The Legislature’s use of “shall” throughout W. Va. Code § 16-3-4 demonstrates clear legislative intent to create mandatory, nondiscretionary duties.

38. “A ministerial act or duty is one which is to be performed under a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, and without regard to or exercise of the judgment of the one doing it upon the propriety of the act’s being done.” *Marcum v. Ballot Commissioners*, 42 W. Va. 263, 26 S.E. 281 (1986). The Commissioner’s duty to grant exemptions only upon physician certification of medical contraindication or precaution constitutes such a ministerial act, requiring compliance with statutory mandates regardless of executive preference.

39. The grant of authority to the Commissioner is limited; he is only permitted to grant an exemption when the requirements of W. Va. Code § 16-3-4(h)(1) have been met and a physician has certified that the physical condition of the child is such that immunization is contraindicated or there exists a specific precaution to a particular vaccine.

40. While West Virginia law contemplates circumstances where the Commissioner may modify exemption standards, he is limited in when he may do so—only upon “sufficient medical evidence.” W. Va. Code § 16-3-4(h). Nothing in relevant statutory or case law permits the Commissioner to exceed the authority the Legislature has granted on any other basis, and certainly not merely because the Governor has requested disregard of statutory law.

41. The Supreme Court of Appeals of West Virginia issued a syllabus point directly addressing this issue: “A governor’s executive order which directs action on the part of the West Virginia Department of Corrections that is contrary to specific statutory mandates is invalid.” *State ex rel. Dodrill v. Scott*, 177 W. Va. 452, 454, 352 S.E.2d 741, 742 (1986).

42. No portion of the State’s Equal Protection for Religion Act, codified at W. Va. Code § 35-1A-1 (“EPRA”), permits the Governor to unilaterally suspend acts of the Legislature. *Cf* W. Va. Code § 35-1A-1(b)(1) (addressing remedies and not providing for unilateral suspension of nondiscretionary duties).

43. Petitioners have a clear legal right to have their elected officials enforce laws that protect their children from unnecessary disease.

44. Respondents have a clear legal duty to issue exemptions only within the narrow provisions provided for by the West Virginia Legislature.

45. There exists no other adequate remedy at law to compel Respondents to fulfill their non-discretionary duty to follow clear state law, W. Va. Code § 16-3-4, rather than issuing non-medical exemptions consistent with Executive Order 7-25 and contrary to state law.

46. Additionally no adequate remedy at law exists to enjoin Defendants from violating West Virginia’s clear state law in favor of the Governor’s Executive Order 7-25.

47. Plaintiffs will suffer irreparable harm if Defendants continue to authorize non-medical exemptions to W. Va. Code § 16-3-4.

48. A balance of the equities favors an injunction against Defendants to enjoin them from issuing non-medical exemptions to W. Va. Code § 16-3-4.

49. The public interest is served by enjoining Defendants from authorizing non-medical exemptions to W. Va. Code § 16-3-4.

50. Article V § 1 of the Constitution of West Virginia establishes that “[t]he legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature.”

51. “[T]he separation of these powers; the independence of one from the other; the requirement that one department shall not exercise or encroach upon the powers of the other two, is fundamental in our system of Government, State and Federal. Each acts, and is intended to act, as a check upon the others, and thus a balanced system is maintained. No theory of government has been more loudly acclaimed.” *State ex rel. W. Virginia Citizen Action Grp. v. Tomblin*, 227 W. Va. 687, 695, 715 S.E.2d 36, 44 (2011) (quoting *State v. Huber*, 129 W. Va. 198, 209, 40 S.E.2d 11, 18 (1946)).

52. “Where there is a direct and fundamental encroachment by one branch of government into the traditional powers of another branch of government, this violates the separation of powers doctrine contained in Section 1 of Article V of the West Virginia Constitution.” Syl. Pt. 2, *Appalachian Power Co. v. Public Serv. Comm'n of West Virginia*, 170 W. Va. 757, 296 S.E.2d 887 (1982). It has been held that when one branch of government “curtails” the constitutional power of another, such an act is unconstitutional. *State ex rel. McGraw v. Burton*, 212 W. Va. 23, 34, 569 S.E.2d 99, 110 (2002) (holding that Legislative creation of offices that conflict with Offices created by the Constitution was impermissible).

53. When defining the separation of powers, the “doctrine ensures that the three branches of government are distinct unto themselves and that they, exclusively, exercise the rights and responsibilities reserved unto them.” *Simpson v. W. Virginia Office of Ins. Com’r*, 223

W. Va. 495, 505, 678 S.E.2d 1, 11 (2009). Even one power’s “slight and seemingly innocuous” intrusion into the grant of authority of another, violates the separation of powers doctrine. *State ex rel. State Farm Mut. Auto. Ins. Co. v. Marks*, 230 W. Va. 517, 529, 741 S.E.2d 75, 87 (2012).

54. As currently interpreted and implemented by the Governor, the executive branch has total discretion over whether to award or deny exemptions, in violation of the standardless discretion protections of the West Virginia Constitution. The West Virginia Supreme Court has consistently held that governmental authority exercised through “unguided and unfettered personal discretion to permit or prohibit” actions constitutes invalid “standardless discretion.” *State ex rel. Berry v. McBride*, 218 W. Va. 579, 583, 625 S.E.2d 341, 345 (2005).

55. Plaintiffs are entitled to declaratory relief pursuant to W. Va. Code § 55-13-1.

## **CLAIMS FOR RELIEF**

### **CLAIM I**

#### *Violation of Article V § 1 of the West Virginia Constitution*

56. The preceding paragraphs are hereby incorporated by reference.

57. Article V § 1 of the Constitution of West Virginia establishes that “[t]he legislative, executive and judicial departments shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to the legislature.”

58. Defendants/Respondents are engaged in the enforcement of the Equal Protection for Religion Act, W. Va. Code § 35-1A-1, in a manner which blatantly violates the separation of powers by permitting the Executive branch to wholly disregard obligations created by the Legislature.

59. In enforcing the Equal Protection for Religion Act, W. Va. Code § 35-1A-1 in a plainly unconstitutional manner that supersedes the compulsory requirements of W. Va. Code 16-3-4, Defendants/Respondents have violated W. Va. Const. Article V § 1.

60. In violating clear constitutional rights of West Virginians, the State and the Defendants have acted vexatiously, wantonly, in bad faith, and for oppressive reasons.

CLAIM II  
*Violation of Article III § 10 – Standardless Discretion*

61. The preceding paragraphs are hereby incorporated by reference.

62. The Supreme Court of Appeals of West Virginia has consistently held that governmental authority exercised through “unguided and unfettered personal discretion to permit or prohibit” actions constitute invalid “standardless discretion.” *State ex rel. Berry v. McBride*, 218 W. Va. 579, 583, 625 S.E.2d 341, 345 (2005).

63. Plaintiffs/Respondents have constitutionally protected interests in protecting their children from viruses and diseases in the public schools when such viruses and diseases are preventable through compulsory vaccinations.

64. Defendants/Respondents are presently operating a system meant to determine which individuals are able to access a benefit, namely the right to a vaccine exemption. While Plaintiffs maintain that such a system is unconstitutional for the reasons described herein, its operation additionally violates state constitutional protections against standardless discretion and is therefore unlawful even if its operation was permissible under the Equal Protection for Religion Act, W. Va. Code § 35-1A-1.

65. Specifically, Defendants/Respondents are authorizing exemptions to W. Va. Code § 16-3-4 without any determination that compulsory vaccines burden applicants’ expression of their religion.

66. Defendants/Respondents seemingly authorize exemptions from W. Va. Code § 16-3-4 for philosophical reasons as instructed by Executive Order 7-25 but in violation of the compulsory vaccine statute and EPRA, W. Va. Code § 35-1A-1.

67. Defendants/Respondents are exercising such standardless discretion as alleged in violation of W. Va. Const. Art. III § 10.

68. In violating clear constitutional rights of West Virginians, the State and the Defendants have acted vexatiously, wantonly, in bad faith, and for oppressive reasons.

### CLAIM III *Violation of West Virginia Administrative Procedures Act*

69. The preceding paragraphs are hereby incorporated by reference.

70. The procedure implemented by Defendants/Respondents of granting non-medical exemptions to W. Va. Code § 16-3-4 interferes with or impairs or threatens to interfere with or impair, the legal rights and/or privileges of the Plaintiffs/Petitioners.

71. The procedure implemented by Defendants/Respondents of granting non-medical exemptions to W. Va. Code § 16-3-4 pursuant to Executive Order 7-25 is a Rule as that term is defined in the West Virginia Administrative Procedures Act, W. Va. Code § 29A-1-2(j).

72. The grant of non-medical exemptions to W. Va. Code § 16-3-4 by Defendants/Respondents as alleged violates state constitutional provisions, exceeds the statutory authority or jurisdiction of the Defendants/Respondents, was adopted without compliance with statutory rule-making procedures, and/or is arbitrary or capricious.

73. In granting non-medical exemptions to W. Va. Code § 16-3-4 as alleged, *i.e.*, in a manner that violates the state constitution and state law, Defendants/Respondents exceeded their authority pursuant to W. Va. Code §§ 29A-4-2(b) and 29A-7-1.

74. In violating clear constitutional rights of West Virginians, the State and the Defendants have acted vexatiously, wantonly, in bad faith, and for oppressive reasons.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Petitioners respectfully request this court issue the following relief:

- (a) Issue a Rule to Show Cause why the relief requested in this Petition should not be granted;
- (b) Issue a Writ of Mandamus directing the Respondents to implement a procedure for authorizing only medical exemptions as provided by W. Va. Code § 16-3-1 *et seq.* notwithstanding Executive Order 7-25;
- (c) Enjoin the Defendants from issuing any future non-medical exemptions to W. Va. Code § 16-3-4;
- (d) Declare (i) the current policy and practice of Defendants/Respondents of authorizing non-medical exemptions to W. Va. Code § 16-3-4 is invalid pursuant to W. Va. Code § 29A-4-2(b); (ii) all prior authorizations by Defendants/Respondents of any non-medical exemptions to W. Va. Code § 16-3-4 pursuant to Executive Order 7-25 are and were at all relevant times invalid ; (iii) that W. Va. Code § 16-3-4 creates a non-discretionary duty on the part of the Defendants to issue only medically-related exemptions within the structure created by the law; (iv) Defendants/Respondents enforcement of EPRA, W. Va. Code § 35-1A-1, in the context of authorizing non-medical exemptions to W. Va. Code § 16-3-4 in the manner implemented by Defendants/Respondents is unconstitutional, unlawful, and invalid.
- (e) Award Petitioners reasonable attorney's fees and costs in bringing this action; and



(f) All other relief the Court deems equitable and just.

**Respectfully submitted,**

**JOSHUA A. HESS and  
MARISA JACKSON**

*By and through counsel:*

/s/ Aubrey Sparks

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