

COVER SHEET

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Kanawha County Circuit Clerk
Cathy S. Gatson

GENERAL INFORMATION

IN THE CIRCUIT COURT OF KANAWHA COUNTY WEST VIRGINIA
WEST VIRGINIA CITIZEN ACTION GROUP v. GOVERNOR PATRICK MORRISEY

First Plaintiff: ☐ Business ☐ Individual ☐ Government ☒ Other
First Defendant: ☐ Business ☐ Individual ☐ Government ☒ Other
Judge: Richard D. Lindsay

COMPLAINT INFORMATION

Case Type: Civil **Complaint Type:** Other

Origin: ☒ Initial Filing ☐ Appeal from Municipal Court ☐ Appeal from Magistrate Court

Jury Trial Requested: ☐ Yes ☒ No **Case will be ready for trial by:** _____

Mediation Requested: ☐ Yes ☒ No

Substantial Hardship Requested: ☐ Yes ☒ No

☐ Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Interpreter or other auxiliary aid for the hearing impaired
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Other: _____

☐ I am proceeding without an attorney

☒ I have an attorney: Aubrey Sparks, PO BOX 3952 , CHARLESTON, WV 25339

SERVED PARTIES

Name: GOVERNOR PATRICK MORRISEY
Address: Office of the Governor 1900 Kanawha Blvd. E, Charleston WV 25035
Days to Answer: 30 **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

Name: MAJ. GEN. JAMES SEWARD
Address: WV Army National Guard State Capitol 1900 Kanawha Blvd. E, Charleston WV 25035
Days to Answer: 30 **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

Name: Office of the Adjutant General
Address: WV Army National Guard State Capitol 1900 Kanawha Blvd. E, Charleston WV 25035
Days to Answer: 30 **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

Name: Department of Military Affairs
Address: 1900 Kanawha Blvd E Rm B122, Charleston WV 25305
Days to Answer: 30 **Type of Service:** Circuit Clerk - Certified Mail - Including Copy Fee

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

WEST VIRGINIA CITIZEN ACTION GROUP,

Plaintiff,

V.

Civil Action No.

**GOVERNOR PATRICK MORRISEY, and
MAJ. GEN. JAMES SEWARD, OFFICE
OF THE ADJUTANT GENERAL, WEST
VIRGINIA MILITARY AUTHORITY,**

Defendants.

COMPLAINT

As our state's foundational document affirms, "Free government and the blessings of liberty can be preserved to any people only by a firm adherence to justice, moderation, temperance, frugality and virtue, and by a frequent recurrence to fundamental principles." W. Va. Const. Art. III § 20.

This action challenges an unprecedented and unlawful deployment of West Virginia National Guard forces beyond our state's borders—not to defend against invasion, not to respond to natural disaster, not to assist a sister state's emergency request—but to serve as political props in a manufactured crisis. Governor Patrick Morrisey has exceeded his constitutional and statutory authority by ordering West Virginia service members to abandon their families, jobs, and communities to police the streets of our nation's capital, where violent crime has reached its lowest level in thirty years.

West Virginia law is clear: The Governor may deploy the National Guard outside our borders only for specific, enumerated purposes—none of which exist here. The Governor cannot transform our citizen-soldiers into a roving police force available at the whim of federal officials who bypass proper legal channels. This *ultra vires* deployment must be enjoined, and the rule of

law restored. Plaintiff respectfully requests that this Court enjoin the Governor's unlawful directive.

Parties, Venue, and Jurisdiction

1. Plaintiff West Virginia Citizen Action Group [hereinafter "CAG"] is a nonprofit advocacy organization founded in 1974 to promote citizen participation in public decision making and to support a stronger democratic process. CAG is a 501(c)(4) organization registered in the State of West Virginia, and headquartered in Charleston, West Virginia.

2. Defendant Patrick Morrissey is named in his official capacity as the Governor of West Virginia, and the constitutionally-appointed Commander-in-Chief of West Virginia's military forces.

3. Defendant Major General James Seward is named in his official capacity as Adjutant General of the West Virginia National Guard and the Head of the West Virginia Military Authority.

4. Jurisdiction is properly before this Court pursuant to the Uniform Declaratory Judgements Act, codified at W. Va. Code § 55-13-1 *et seq.*

5. Venue in this Court is appropriate pursuant to W. Va. Code § 14-2-2.

Statement of Fact

6. On February 19, 2025, President Donald Trump indicated a desire to "take over" Washington, D.C., saying "I think that we should run it strong, run it with law and order, make it absolutely, flawlessly beautiful." Paul Schwartzman et al., *Trump Touts D.C. Takeover, Raising Alarms in the Capital City*, Wash. Post, Feb. 20, 2025. He went on to say there's, "too much crime, too much graffiti, too many tents on the lawns. There's magnificent lawns, and there's tents. It's a sad thing, homeless people all over the place. We've got to take care of the homeless. But we can't

have that in Washington, D.C. ...You can't have tents all over your beautiful, your once-magnificent plazas, lawns and all... Just can't do it." *Id.*

7. This statement was made notwithstanding the recent announcement by the United States Department of Justice, through the Office of the United States Attorney for the District of Columbia, that the incidence of violent crime in Washington, D.C. had reached its lowest level in thirty years. U.S. Dep't of Justice, U.S. Att'y's Office for the District of Columbia, Violent Crime in D.C. Hits 30-Year Low (Jan. 3, 2025), <https://www.justice.gov/usao-dc/pr/violent-crime-dc-hits-30-year-low>.

8. On August 11, 2025, President Trump declared it "Liberation Day in D.C.," vowed to "take our capital back," and invoked Section 740 of the D.C. Home Rule Act to declare a public safety emergency, thereby expanding federal authority and asserting broader executive control over the District's local governance and operations.

9. President Trump additionally released a memorandum titled "Restoring Law and Order in the District of Columbia" that stated in relevant part, "Pursuant to my authority under the Constitution and laws of the United States and the District of Columbia, I direct the Secretary of Defense to mobilize the District of Columbia National Guard and order members to active service, in such numbers as he deems necessary, to address the epidemic of crime in our Nation's capital. The mobilization and duration of duty shall remain in effect until I determine that conditions of law and order have been restored in the District of Columbia. Further, I direct the Secretary of Defense to coordinate with State Governors and authorize the orders of any additional members of the National Guard to active service, as he deems necessary and appropriate, to augment this mission." Memorandum for the Secretary of Defense, *Restoring Law and Order in the District of Columbia* (Aug. 11, 2025).

10. No request for West Virginia Guard assistance was made by Washington D.C. officials. D.C. Mayor Muriel Bowser stated, “[t]his doesn’t make sense. You know it doesn’t make sense” and made clear that the participation of Guardsmen from States, like West Virginia, has not been desired or requested by her administration. Brittany Shammass & Alex Horton, *As More National Guard Units Deploy to D.C., Local Officials Question the Need*, Wash. Post (Aug. 18, 2025).

11. On August 16, 2025, West Virginia Governor Patrick Morrisey announced that three hundred to four hundred members of the West Virginia National Guard would be deployed to Washington D.C., “to support the President’s initiative to restore cleanliness and safety to Washington, D.C.” Press Release, Governor Patrick Morrisey, *West Virginia National Guard to Support President Trump’s Initiative to Make D.C. Safe and Beautiful* (Aug. 16, 2025), available at <https://governor.wv.gov/article/west-virginia-national-guard-support-president-trumps-initiative-make-dc-safe-and-beautiful>. While details of the action were scarce, Morrisey identified that the Guard would be “[u]nder the command of West Virginia Adjutant General Maj. Gen. Jim Seward” and that “the mission will be funded at the federal level.” *Id.*

Statement of Law

12. The Supreme Court has established that “the National Guard includes ‘two overlapping but distinct organizations’—the National Guards of the various States and the National Guard of the United States. All who enlist in a State’s National Guard must simultaneously enlist in the National Guard of the United States, which is ‘a reserve component[] of the armed forces.’ While federal funding supports state Guard units, “, ‘*the Governor remains in charge of the National Guard in each State* except when the Guard is called into active federal service.’” *Abbott v. Biden*, 70 F.4th 817, 821–22 (5th Cir. 2023) (emphasis added) (internal citations omitted).

13. The Constitution establishes that while the President of the United States is Commander in Chief of the United States Armed Forces and the National Guard of the United States in active duty, “he's Commander in Chief of the *State* Guards only at *limited* times. Specifically, the President becomes “Commander in Chief ... of the Militia of the several States, when called into the actual Service of the United States.” U.S. Const. art. II, § 2, cl. 1. *Abbott v. Biden*, 70 F.4th 817, 821–22 (5th Cir. 2023).

14. When not federally activated, state National Guard units remain “under the command of the state Governor and the State Adjutant General, who is appointed by the Governor. *Ass'n of Civilian Technicians, Inc. v. United States*, 603 F.3d 989, 993 (D.C. Cir. 2010) (internal citations omitted). When acting at the command of the Governor and adjutant general, the Guard is bound by state law.

15. While it is true generally that, “[t]he governor shall be commander-in-chief of the military forces of the state, (except when they shall be called into the service of the United States) and may call out the same to execute the laws, suppress insurrection and repel invasion,” W. Va. Const. Art. XII § 12, this provision does not create an unchecked power. The Governor's authority over the National Guard is not absolute; it exists only to the extent conferred by constitutional and statutory provisions. West Virginia law expressly acknowledges this limitation: “[t]he duty of maintaining and governing the military forces of the State not in the service of the United States rests upon the State, subject to constitutional authority.” W. Va. Code § 15-1-6(a).

16. The Supreme Court has established that “[w]hat are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions.” *Duncan v. Kahanamoku*, 327 U.S. 304, 322 (1946) (referencing *Mays v. Brown*, 71 W.

Va. 519 (1912)); *See also Games-Neely v. Sanders*, 212 W. Va. 710 (2002) (striking down a portion of the state National Guard statute for exceeding federal constitutional bounds).

17. When the West Virginia National Guard is deployed outside the State, the circumstances that permit the Governor to issue such an order are specifically enumerated: “The Governor may order the organized militia or any part thereof to serve outside the borders of the state and of the United States in order to perform military duty and to participate in parades, review, conferences, encampments, maneuvers, and other training, to participate in military competitions and to attend service schools.” W. Va. Code § 15-1-4(b). The statute is explicit: deployment beyond state borders is permitted only for enumerated military and training functions.

18. The statutory framework distinguishes three types of Guard service: (1) “service of the United States,” meaning active military duty under federal authority (W. Va. Code § 15-1-1(g)); (2) the “service of the State,” meaning active military duty in non-training status under orders from the Governor (W. Va. Code § 15-1-1(e)); or (3) “State Duty,” meaning training or other state-interest assignments (W. Va. Code § 15-1-1(f)).

19. “Service of the United States” and “service of the State” both require the performance of military duty, while “State Duty” does not. Because W. Va. Code § 15-1-4(b) only authorizes out-of-state deployment in connection with military duty or enumerated ceremonial/training functions, Guardsmen can only be sent outside West Virginia while under the command of the Governor while in the “service of the State.”

20. The Governor has no unilateral authority to call the Guard into federal service. By statute, “[w]hen the organized militia, or any part thereof, is called for active service of the United States under the Constitution and laws of the United States, the Governor shall order the same to

service.” W. Va. Code § 15-1-5. The Governor responds to a federal call but cannot independently place Guardsmen into federal service.

21. Accordingly, any order by the Governor to deploy the Guard to Washington, D.C. must rest on “service of the State.” He lacks authority to create “service of the United States” absent a federal directive, and he cannot lawfully deploy Guardsmen outside West Virginia on “State Duty.”

22. The Governor’s authority to call the West Virginia National Guard into state service is subject to strict statutory limitations. West Virginia Code § 15-1D-1 authorizes such action only “[i]n event of war, insurrection, rebellion, invasion, tumult, riot, mob or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state or the United States, or in case of the imminent danger of the occurrence of any of said events, or in event of public disaster or emergency.”

23. The West Virginia Supreme Court of Appeals has previously held that “[i]t is a principle universally recognized, that laws have no extraterritorial force. Their authority is limited to the territorial jurisdiction of the State or country that enacts them, so far as their right or power of enforcement or claim to obedience is concerned.” Syl. Pt. 4, *Stevens v. Brown*, 20 W. Va. 450, 450 (1882). This same principle was revisited, unchanged one hundred years later in *State ex rel. Haught v. Donnahoe*, in which the Court stated, “It is fundamental that both federal and state power is limited to its constitutional framework. The organic law embodied within each state constitution runs with the territorial jurisdiction of the state... Statutes and constitutions “are to be construed and considered as relating to people and institutions within the state ... as intraterritorial and not extraterritorial.” 174 W. Va. 27, 32, 321 S.E.2d 677, 682 (1984).

24. There is ample law supporting this axiomatic principle: West Virginia's Constitution and laws are to be read as referring exclusively to intraterritorial matters. *See e.g., Ferguson v. Townsend*, 111 W. Va. 432, 162 S.E. 490, 491 (1932) ("The Constitution and laws are to promote the general welfare of the people of this state, their tranquility and prosperity, and have no extraterritorial purposes or effect."); *Mountain Valley Pipeline, LLC v. McCurdy*, 238 W. Va. 200, 212, 793 S.E.2d 850, 862 (2016) ("A state's power exists only within its territorial limits for the use and benefit of the people within the state." citing *Clark v. Gulf Power Co.*, 198 So.2d 368, 371 (Fla. Dist. Ct. App. 1967)).

25. Stemming from this principle, the West Virginia Supreme Court of Appeals has explicitly recognized that territorial limits exist with respect to state agencies. *See Matter of Breedlove*, 186 W. Va. 279, 282, 412 S.E.2d 473, 476 (1991) (acknowledging that state agencies have boundaries of territorial jurisdiction) and *See* Syl. Pt. 2, *State ex rel. West Virginia v. Gustke*, 205 W.Va. 72, 516 S.E.2d 283 (1999).

26. "The West Virginia Army National Guard... is an agency of the State of West Virginia..." *Moorhead v. W. Virginia Army Nat'l Guard*, 248 W. Va. 592, 596, 889 S.E.2d 314, 318 (Ct. App. 2023), *aff'd*, 915 S.E.2d 378 (W. Va. 2025). "Administrative agencies and their executive officers are creatures of statute and delegates of the Legislature. Their power is dependent upon statutes, so that they must find within the statute warrant for the exercise of any authority which they claim. They have no general or common-law powers but only such as have been conferred upon them by law expressly or by implication." Syl. Pt. 2, *Mountaineer Disposal Serv., Inc. v. Dyer*, 156 W.Va. 766, 197 S.E.2d 111 (1973).

27. With respect to the West Virginia Guard, authorization for out of state conduct while under the State's direction and employ is codified in the Emergency Management Assistance

Compact [hereinafter “EMAC”], W. Va. Code § 15-5-22. EMAC provides the exclusive mechanism for interstate National Guard assistance.

28. EMAC permits assistance, and the mobilization of the National Guard, only for requests for assistance made by the authorized representative of the State (“including the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions”). *Id.* (“The provisions of this agreement shall *only apply* to requests for assistance made by and to authorized representatives.”)(emphasis added).

29. No request for West Virginia Guard assistance was made by Washington D.C. officials. D.C. Mayor Muriel Bowser stated, “[t]his doesn’t make sense. You know it doesn’t make sense” and made clear that the participation of Guardsmen from States, like West Virginia, has not been desired or requested by her administration. Brittany Shammass & Alex Horton, *As More National Guard Units Deploy to D.C., Local Officials Question the Need*, Wash. Post (Aug. 18, 2025).

30. The Defendants’ use of the West Virginia Guard did not arise from an EMAC request from Washington D.C. Instead, the Governor stated that the deployment occurred “at the request of the Trump administration”—confirming that such an act falls squarely outside the authorization of West Virginia law, as codified in EMAC. W. Va. Code § 15-5-22. (“The provisions of this agreement shall *only apply* to requests for assistance made by and to authorized representatives.”).

31. Even assuming *arguendo* that none of these well-established legal principles applied to the present case, the plain terms of W. Va. Code § 15-1D-1 describe a limited set of circumstances in which the Governor is authorized to call the West Virginia Guard to service of the State, none of which are present in either West Virginia or extraterritorially in Washington D.C.

32. The West Virginia Supreme Court of Appeals, “has consistently held that a statute which provides for a thing to be done in a particular manner or by a prescribed person or tribunal implies that it shall not be done otherwise or by a difference person or tribunal; and the maxim *expressio unius est exclusio alterius*, the express mention of one thing implies the exclusion of another, applies to such statute.” *State ex rel. Battle v. Hereford*, 148 W. Va. 97, 103–04, 133 S.E.2d 86, 90 (1963).

33. The particular circumstances in which the Governor is granted authority to call the West Virginia Guard into service of the State are limited to an, “event of war, insurrection, rebellion, invasion, tumult, riot, mob or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state or the United States, or in case of the imminent danger of the occurrence of any of said events, or in event of public disaster or emergency.” W. Va. Code § 15-1D-1. Each of these conditions enumerated in § 15-1D-1 carries a specific statutory or judicially recognized meaning, and collectively they define the exclusive circumstances in which the Guard may be activated in state service.

34. With respect to authorization pursuant to the *war, insurrection, rebellion, and invasion* provision, the West Virginia Supreme Court of Appeals has established that statutes triggered by “war, insurrection or public danger” require that West Virginia be engaged in “actual war.” *Ex parte Lavinder*, 88 W. Va 713, 718, 108 S.E. 428, 431 (1921). Not only must the United States be engaged in actual war or invasion, but that conflict must impact West Virginia sufficiently for emergency military powers to be legally authorized by statute. The Court emphasized that emergency powers cannot be invoked based on “theoretical or technical war,” but only when there

are “actual military or naval operations” that create an emergency justifying such extraordinary governmental powers. *Id.*

35. West Virginia is not engaged in actual war. There are no military operations within West Virginia’s borders, no invasion of the state, and no circumstances that would trigger the wartime emergency powers contemplated by W. Va. Code § 15-1D-1. The *Lavinder* Court noted that even during World War I, “not a foot of [U.S.] territory was subjected to martial law on the ground of the existence of the state of war... because there was no actual warfare in this country.” *Id.* at 719.

36. West Virginia Code also defines “riot” and “mob” with particular specificity: “Any collection of individuals, five or more in number, assembled for the unlawful purpose of offering violence to the person or property of anyone supposed to have been guilty of a violation of the law, or for the purpose of exercising correctional or regulative powers over any person or persons by violence, and without lawful authority, shall be regarded and designated as a “mob” or “riotous assemblage.”” W. Va. Code § 61-6-12. Such groups are also referred to as “tumultuous” assemblages, language that is further adopted in the relevant code W. Va. Code § 15-1D-1.

37. This portion of West Virginia Code, entitled “Mobs and Lynchings,” was enacted for the particular and specific purpose of limiting extra-judicial punishments and lynchings that characterized West Virginia during the early twentieth century, arising from both racial tensions and labor unrest in the state’s coal mining industry. See Rachel E. Konhaus, “*I Thought Things Would Be Different There*”: Lynching and the Black Community in Southern West Virginia, 1880-1933, in WEST VIRGINIA HISTORY READER (2017).

38. This narrow statutory meaning of “mob” and “riot” has been consistently applied by the West Virginia Supreme Court of Appeals for decades. The statute identifies other illegal

assemblies more broadly which do not constitute a mob or riot, namely “routs” and “unlawful assemblages,” W. Va. Code § 61-6-1, neither of which appears in W. Va. Code § 15-1D-1, demonstrating the Legislature’s deliberate choice of specific terminology.

39. The next potential basis of authority is a circumstance wherein a “body of men act[] together by force with intent to commit a felony.” Pursuant to state law, and the previously described authority establishing that statutes are to be read to provide exclusively intraterritorial reach, the plain language of this provision refers specifically to West Virginia state felonies. West Virginia law defines a felony as offenses “punishable by confinement in the penitentiary,” with penitentiary referring to “institutions provided by the state.” W. Va. Code § 61-11-1. When the Legislature intends to include federal crimes, it does so explicitly, as demonstrated in § 15-1D-1’s separate reference to violations of “the laws of this state or the United States.” The absence of such federal language in the felony provision indicates legislative intent to limit this trigger to West Virginia state felonies which are, definitionally, not being committed outside the State of West Virginia.

40. The Governor is permitted to call the Guard into service of the State when a “body of men act[] together... by force and violence to break and resist the laws of this state or the United States.” W. Va. Code § 15-1D-1. While this provision includes both state and federal law, the territorial limitations inherent in the Governor's authority still apply. The phrase "break and resist" requires active defiance of law within West Virginia's borders where the Governor has authority to enforce such laws. This statutory scheme demonstrates that even when federal law is included, the triggering conduct must occur within circumstances where West Virginia has authority to act—namely, within the state's territorial boundaries where such resistance would threaten West Virginia's civil order and require state military response.

41. Finally, the Governor is permitted to call the Guard to duty “in [the] event of public disaster or emergency.” W. Va. Code § 15-1D-1. Each of these terms is defined within this same Chapter, at W. Va. Code § 15-5-2. State law defines “disaster” as, “the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or terrorist or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation or other public calamity requiring emergency action.” W. Va. Code § 15-5-2(5).

42. However, the definition of “state of emergency explicitly ties emergency conditions to West Virginia’s territorial jurisdiction, defining it as “the duly proclaimed existence of conditions of disaster or other serious threat to the health or safety of persons and property within *West Virginia, or a specific geographic area thereof*, including, but not limited to, an attack upon the state or the United States, a natural or man-made disaster of major proportions, a pandemic, or other large-scale threat beyond the capacity of local control.” W. Va. Code § 15-5-2(16) (emphasis added). The phrase “within West Virginia” establishes a clear geographic limitation that restricts emergency and disaster deployment authority to conditions affecting the state’s territory.

43. The constitutional authority of the Governor to command the military forces of the State is not a panacea for all unlawful uses of military authority. *See Duncan v. Kahanamoku*, 327 U.S. 304, 322 (1946) (referencing *Mays v. Brown*, 71 W. Va. 519 (1912)); *See also Games-Neely v. Sanders*, 212 W. Va. 710 (2002). West Virginia Constitution Article XII, Section 12 confers upon the Governor the ability to “call out the [military forces of the state] to execute the laws, suppress insurrection and repel invasion.” This constitutional grant of authority is inherently limited to

circumstances where West Virginia has sovereign authority to act—namely, within its territorial boundaries and for the protection of West Virginia’s interests.

44. An act is *ultra vires* when “the action taken was beyond the power or authority given to the actor.” *State v. Chase Securities, Inc.*, 188 W.Va. 356, 358 n.3, 424 S.E.2d 591, 593 n.3 (1992) (internal citations omitted).

45. “A state or one of its political subdivisions is not bound by the legally unauthorized acts of its officers and all persons must take note of the legal limitations upon their power and authority.” Syl. Pt. 3, *Darlington v. Mangum*, 192 W. Va. 112, 113, 450 S.E.2d 809, 810 (1994) (internal citations omitted). When an act is *ultra vires* it is “therefore, void and of no effect.” *W. Virginia Pub. Emps. Ins. Bd. v. Blue Cross Hosp. Serv. Inc.*, 174 W. Va. 605, 609, 328 S.E.2d 356, 360 (1985). “[U]nlawful or *ultra vires* promises are nonbinding when made by public officials, their predecessors or subordinates, when functioning in their governmental capacity.” *Bd. of Educ. of Cnty. of Wyoming v. Dawson*, 249 W. Va. 211, 217, 895 S.E.2d 66, 72 (2023) citing *Parker v. Summers Cnty. Bd. of Educ.*, 185 W. Va. 313, 317, 406 S.E.2d 744, 748 (1991).

46. The Adjutant General’s authority and obligations are established in W. Va. Code § 15-1A-1 *et seq.* That statute establishes that, “[t]he adjutant general's department shall be a part of the executive branch of the government charged with the organization, administration, operation and training, supply and discipline of the military forces of the State. The adjutant general shall be the executive head of the adjutant general's department, and shall employ such clerical force and assistants as may be required for the fulfillment of his duties.” *Id.*

47. In reviewing the authority of the Adjutant General particularly, the West Virginia Supreme Court of Appeals recently held that, “[t]he Authority is constrained to exercise its authority consistently with the intention expressed by the Legislature in the enabling statute.

Moreover, as this Court recently acknowledged, [a]n administrative agency is but a creature of statute and has no greater authority than [that] conferred under the governing statutes. *Archibald v. Off. of Adjutant Gen., W. Virginia Mil. Auth.*, No. 24-ICA-211, 2025 WL 895219, at *2 (W. Va. Ct. App. Mar. 24, 2025) (internal citations omitted). This principle applies equally to the Governor’s deployment of the National Guard forces, which must remain within the bounds of statutory and constitutional authority.

CLAIM ONE

Declaratory Judgment Pursuant to W. Va. Code § 55-13-1 et seq.

48. Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

49. The West Virginia Uniform Declaratory Judgments Act provides that courts “shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.” W. Va. Code § 55-13-1.

50. A justiciable controversy exists between the parties regarding the scope and limits of Defendants’ authority to deploy West Virginia National Guard forces outside the state’s territorial boundaries and the lawfulness of such deployment to Washington, D.C.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- A. Issue a declaratory judgment that Defendants’ deployment of West Virginia National Guard forces to Washington, D.C. exceeds their statutory and constitutional authority and is therefore unlawful and *ultra vires*;
- B. Issue permanent injunctive relief enjoining Defendant Governor Morrissey from ordering deployment of West Virginia National Guard forces outside the state’s

territorial jurisdiction absent compliance with applicable statutory requirements;

- C. Issue permanent injunctive relief enjoining Defendants Adjutant General and West Virginia Military Authority from implementing or complying with any unlawful directives regarding extra-territorial deployment of state military forces;
- D. Find that an injunction bond is neither necessary nor appropriate in the present matter;
- E. Award Plaintiff reasonable attorneys' fees and costs pursuant to applicable law; and
- F. Grant any such other and further relief as this Court deems just and proper.

**Respectfully Submitted,
WEST VIRGINIA CITIZEN ACTION GROUP,
By counsel.**

/s/ Aubrey Sparks

Aubrey Sparks (WV Bar # 13469)

Robb Livingood (WV Bar # 11974)

American Civil Liberties Union of West Virginia

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Counsel for Plaintiff

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
WEST VIRGINIA CITIZEN ACTION GROUP,

Plaintiff,

V.

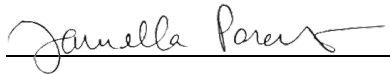
Civil Action No.

GOVERNOR PATRICK MORRISEY, and
MAJ. GEN. JAMES SEWARD, OFFICE
OF THE ADJUTANT GENERAL, WEST
VIRGINIA MILITARY AUTHORITY,

Defendants.

VERIFICATION

I, Daniella Parent, Executive Director of **WEST VIRGINIA CITIZEN ACTION GROUP**, Plaintiff in the above-captioned matter, being duly sworn, state and affirm that the facts and allegations contained therein are true, except so far as they are therein stated to be on information or belief, and, insofar as they are therein stated to be on the basis of information or belief. I believe them to be true.

A handwritten signature in cursive script, appearing to read "Daniella Parent", is written over a horizontal line.

Daniella Parent
on behalf of WEST VIRGINIA CITIZEN ACTION GROUP
August 21, 2025