



West Virginia E-Filing Notice

CC-20-2025-P-253

Judge: Kenneth Ballard

To: Aubrey Sparks
ASparks@Acluwv.org

NOTICE OF FILING

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

Re: Marisa Jackson

CC-20-2025-P-253

The following complaint was FILED on 5/23/2025 11:54:40 AM

Notice Date: 5/23/2025 11:54:40 AM

Cathy S. Gatson
CLERK OF THE CIRCUIT COURT
Kanawha County
P.O. Box 2351
CHARLESTON, WV 25301

(304) 357-0440

COVER SHEET

E-FILED | 5/23/2025 11:54 AM
CC-20-2025-P-253
Kanawha County Circuit Clerk
Cathy S. Gatson

GENERAL INFORMATION

IN THE CIRCUIT COURT OF KANAWHA COUNTY WEST VIRGINIA

Re: Marisa Jackson

First Plaintiff:

☐ Business ☒ Individual
☐ Government ☐ Other

First Defendant:

☐ Business ☐ Individual
☐ Government ☐ Other

Judge:

Kenneth Ballard

COMPLAINT INFORMATION

Case Type: Miscellaneous Proceedings

Complaint Type: Other - Civil

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

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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

Petitioners,

v.

**Judge:
Docket 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,**

Respondents.

PETITION FOR WRIT OF MANDAMUS

The question before this Court is simple: Can the West Virginia Governor, through Executive Order, override a clear and mandatory directive created by state statute and, in so doing, relieve state actors of nondiscretionary duties assigned to them through state code? To that, West Virginia Courts have a clear and decisive answer: No, he may not. For that reason, Petitioners file this action respectfully requesting this Court compel Respondents to engage in their nondiscretionary duties as it relates to granting and denying exemptions to the state's compulsory immunization statute.

PARTIES, JURISDICTION, AND VENUE

1. (a) 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, that Respondents now disregard.

(b) 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. 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.

3. 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.

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

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

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

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

STATEMENT OF FACTS

10. 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.

11. 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.

12. 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.

13. West Virginia's vaccine law was amended in 1937, providing a penalty for parents who did not comply with the requirements established by statute.

14. 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 the vaccine requirements.

17. Between 1998 and 2025 over sixty bills were introduced in the Legislature to amend the vaccination law, many of which sought 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.

18. 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,

"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." *W. Va. Code § 16-3-4(b)*

"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(c)*

“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.” *W. Va. Code § 16-3-4(h)*

“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)*

19. 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).

20. 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).

21. State regulations establish a process to determine eligibility for a vaccine exemption in 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).

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

23. The Executive Order of Patrick Morrisey demanded that the State take three actions in support of Morrisey’s proposal. The Executive Order required,

The Commissioner of the Bureau for Public Health and the State Health Officer... [must] Establish a process for objects 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.

24. Following this Executive Order from Governor Morrisey, the West Virginia Legislature convened on the first day of legislative session, February 12, 2025. The following day, February 13, Senate Bill 460 was introduced, a bill which would have permitted non-medical exemptions to the state vaccine requirement.

25. The non-medical exemption bill passed the State Senate on February 21, 2015. However, the bill was rejected by the State House on March 24, 2025, and the bill did not become law.

26. 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.” This memo addressed the impact of Governor Morrissey’s Executive Order and the Legislature’s decision not to permit non-medical exemptions.

27. In this memo, Superintendent Blatt explained that:

[m]oving forward, to ensure our continues are being consistent, I am recommending our school systems use the guidance below: Any student that has been enrolled with a letter DOHS Immunization Office prior to May 1st 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.

28. 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.

29. Thereafter on May 9, 2025, Governor Morrissey released a letter providing guidance on how he would like his Executive Order to be implemented. The guidance from that letter stated, in 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.

STATEMENT OF LAW

30. “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)).

31. 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)).

32. As described above, West Virginia law creates a non-discretionary obligation placed upon the Commissioner for the Bureau of Public Health to effectuate state law with respect to compulsory immunizations.

33. The grant of authority to the Commissioner or his designees is a limited one; 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.

34. West Virginia law contemplates a circumstance where the Commissioner may need to exceed this power and provides for that process as well, stating “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.” W. Va. Code § 16-3-4(h).

35. Therefore, while the Commissioner may be permitted to change the standards concerning exemptions, he is similarly limited in when he may do so – only upon “sufficient medical evidence.”

36. Nothing in relevant statutory or case law permits the Commissioner to exceed the authority that the Legislature has granted him on another basis, and certainly not merely because the Governor has requested that he disregard the rule of law.

38. The Supreme Court of Appeals of West Virginia issued a syllabus point directly addressing the heart of this issue, holding that when an Executive Order of the Governor conflicts with a nondiscretionary duty created by state statute, that the state statute must prevail. Syl. Pt. 1, *State ex rel. Dodrill v. Scott*, 177 W. Va. 452, 454, 352 S.E.2d 741, 742 (1986) (“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.”)

39. Similarly, no portion of the State’s Religious Freedom Restoration Act, codified at W. Va. Code § 5-11-C-1 *et seq.* permits the Governor to unilaterally suspend acts of the Legislature. *Cf* W. Va. Code § 5-11C-4 (addressing remedies, and not providing for unilateral suspension of nondiscretionary duties).

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

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

42. There exists no other adequate remedy at law as Respondents are continuing to wantonly violate clear state law at the request of the Governor.

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 Respondent to fully comply with W. Va. Code § 16-3-1 *et seq.* notwithstanding Executive Order 7-25 and bar Respondent from awarding any exemptions that conflict with the statute;
- (c) A Declaration finding that the Respondents' policy of permitting exemptions to requirements that are contrary to W. Va. Code § 16-3-1 *et seq.* are unlawful and invalid;
- (d) Award Petitioners reasonable attorney's fees and costs in bringing this action; and
- (e) All other relief the Court deems equitable and just.

Respectfully submitted,

MARISA JACKSON and
JOSHUA A. HESS

By and through counsel,

/s/ Aubrey Sparks
Aubrey Sparks (WV Bar # 13469)
Robb Livingood (WV Bar # 11974)
American Civil Liberties Union of West Virginia
606 Virginia Street East

Charleston, WV 25301
Phone: (304) 712-4640
Asparks@acluwv.org
Counsel for Petitioners

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Counsel for Petitioners

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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

Petitioner,

v.

Judge:

Docket 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,**

Respondents.

PETITION FOR ORDER TO SHOW CAUSE

COMES NOW the Petitioners and hereby respectfully requests this Court issue an Order to Show Cause against Respondents in the above-captioned case for failure to comply with a clear legal duty as described in Petitioners' *Petition for Writ of Mandamus*. In support thereof, Petitioners request as follows:

Incorporating the pending *Petition for Writ of Mandamus* by reference, Petitioners respectfully request that this Court require Respondents to appear and show cause pursuant to W. Va. Code § 53-1-1.

WHEREFORE, the Petitioners respectfully request that this Court:

- (1) Issue a Rule to Show Cause against Respondents
- (2) Require Respondents to appear and provide a valid explanation for non-compliance with a clearly established legal duty; and
- (3) Grant any further relief deemed appropriate by the Court.

Respectfully submitted,

MARISA JACKSON and
JOSHUA A. HESS

By and through counsel,

/s/ Aubrey Sparks

Aubrey Sparks (WV Bar # 13469)

Robb Livingood (WV Bar # 11974)

American Civil Liberties Union of West Virginia

606 Virginia Street East

Charleston, WV 25301

Phone: (304) 712-4640

Asparks@acluwv.org

Counsel for Petitioners

Bren J. Pomponio (WV Bar # 7774)

Mountain State Justice, Inc.

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Charleston, WV 25301

(304) 344-5564

(304) 344-3145 (fax)

bren@msjlaw.org

Counsel for Petitioners

IN THE CIRCUIT COURT OF KANAWHACIVIL CASE INFORMATION STATEMENT
(Civil Cases Other than Domestic Relations)

I. CASE STYLE:

Case No. _____

Plaintiff(s)

Judge: _____

Marisa JacksonJoshua A. HessPlaintiff's Phone: 304-202-3435

vs.

Defendant(s)

Days to
Answer

Type of Service

West Virginia Department of Health30Service by Clerk

Name

One Davis Sq. Suite 100 EastDefendant's Phone: 304-558-4972

Street Address

Charleston, West Virginia 25301

City, State, Zip Code

II. TYPE OF CASE:

- | | |
|--|--|
| <input checked="" type="checkbox"/> General Civil | <input type="checkbox"/> Adoption |
| <input type="checkbox"/> Mass Litigation [As defined in T.C.R. 26.04(a)] | <input type="checkbox"/> Administrative Agency Appeal |
| <input type="checkbox"/> Asbestos | <input type="checkbox"/> Civil Appeal from Magistrate Court |
| <input type="checkbox"/> FELA Asbestos | <input type="checkbox"/> Miscellaneous Civil Petition Mental |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Hygiene |
| <input type="checkbox"/> Habeas Corpus/Other Extraordinary Writ | <input type="checkbox"/> Guardianship |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Medical Malpractice |

III. JURY DEMAND: ☐ Yes ☒ No CASE WILL BE READY FOR TRIAL BY (Month/Year): 12 / 2025IV. DO YOU OR ANY
OF YOUR CLIENTS
OR WITNESSES
IN THIS CASE
REQUIRE SPECIAL
ACCOMMODATIONS?

IF YES, PLEASE SPECIFY:

☐ Yes ☒ No

- ☐ Wheelchair accessible hearing room and other facilities
- ☐ Reader or other auxiliary aid for the visually impaired
- ☐ Interpreter or other auxiliary aid for the deaf and hard of hearing
- ☐ Spokesperson or other auxiliary aid for the speech impaired
- ☐ Foreign language interpreter-specify language: _____
- ☐ Other: _____

Attorney Name: Aubrey Sparks

Representing:

Firm: American Civil Liberties Union of West Virginia Foundation☒ Plaintiff ☐ DefendantAddress: 606 Virginia Street East Charleston, WV 25301☐ Cross-Defendant ☐ Cross-Complainant

Telephone: _____

☐ 3rd-Party Plaintiff ☐ 3rd-Party Defendant☐ Proceeding Without an Attorney

Original and _____ copies of complaint enclosed/attached.

Dated: ____ / ____ / ____

Signature: _____

Plaintiff: Marisa Jackson , et al Case Number: _____

vs. _____

Defendant: West Virginia Department of Health , et al _____

**CIVIL CASE INFORMATION STATEMENT
DEFENDANT(S) CONTINUATION PAGE**

Arvin Singh, Cabinet Secretary Defendant's Phone: 304-558-4972
Defendant's Name _____

One Davis Square, Suite 100 East Days to Answer: 30
Street Address _____

Charleston, WV 25301 Type of Service: Service by Clerk
City, State, Zip Code _____

West Virginia Bureau for Public Health Defendant's Phone: 304-558-2971
Defendant's Name _____

350 Capitol Street Room 702 Days to Answer: 30
Street Address _____

Charleston, WV 25301 Type of Service: Service by Clerk
City, State, Zip Code _____

Justin Davis, Interim Commissioner Defendant's Phone: 304-558-2971
Defendant's Name _____

350 Capitol Street Room 702 Days to Answer: 30
Street Address _____

Charleston WV 25301 Type of Service: Service by Clerk
City, State, Zip Code _____

Defendant's Name _____ Defendant's Phone: _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

Defendant's Name _____ Defendant's Phone: _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

Defendant's Name _____ Defendant's Phone: _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____

Defendant's Name _____ Defendant's Phone: _____

Days to Answer: _____

Street Address _____

Type of Service: _____

City, State, Zip Code _____
