

STATE OF WEST VIRGINIA

At a Regular Term of the Supreme Court of Appeals, continued and held at Charleston, Kanawha County, on October 6, 2022, the following order was made and entered:

SCA EFiled: Oct 06 2022
03:35PM EDT
Transaction ID 68223368

State of West Virginia,
Petitioner

and

Katie Switzer and
Jennifer Compton,
Petitioners

vs.) No. 22-616

Travis Beaver,
Wendy Peters,
David L. Roach, State Superintendent of Schools, and
L. Paul Hardesty, President of the West Virginia Board of Education,
Respondents

ORDER

By order entered on August 18, 2022, this Court obtained jurisdiction of this appeal from the Intermediate Court of Appeals of West Virginia under West Virginia Code § 51-11-4(b)(1) and Rule 1 of the Rules of Appellate Procedure. This appeal stems from a final order of the Circuit Court of Kanawha County (Case Nos. 22-P-24 and 22-P-26) entered on July 22, 2022. Briefing and consideration were expedited, and oral argument was scheduled for October 4, 2022.

On September 6, 2022, the petitioners Katie Switzer and Jennifer Compton, by counsel Michael A. Kawash and Jonathon C. Stanley, Robinson & McElwee PLLC, and Joshua A. House, Joseph Gay, and Jeff Rowes, Institute for Justice, filed a petitioners' brief. On the same day, the petitioner State of West Virginia, by counsel Lindsay S. See, Solicitor General, Michael R.

Williams, Senior Deputy Solicitor General, and Caleb A. Seckman, Assistant Solicitor General, filed a petitioner's brief and appendix record.

On September 23, 2022, the respondents Travis Beaver and Wendy Peters, by counsel Tamerlin J. Godley, Timothy D. Reynolds, Philip M. Hwang, Kiaura Clark, Zoe Lo, and Benjamin S. Gilberg, Paul Hastings LLP, John H. Tinney, Jr., Hendrickson & Long, PLLC, and Jessica Levin and Wendy Lecker, Education Law Center, filed a respondents' brief. On the same day, the respondents David L. Roach, State Superintendent of Schools, and L. Paul Hardesty, President of the West Virginia Board of Education, by counsel Michael W. Taylor, Kelly C. Morgan, and Harrison M. Cyrus, Bailey & Wyant, PLLC, filed a respondents' brief.

On September 30, 2022, the petitioners, by counsel, filed reply briefs. Oral argument was held on October 4, 2022, and the case was submitted for consideration.

Acting without undue delay given the nature of the constitutional matters at issue and the need to resolve the appeal in an expedited manner, the Court issues its decision by this order with a detailed opinion to follow. Chief Justice Hutchison and Justice Wooton would not enter a decision by order.

After careful consideration of all filings,¹ the record on appeal, and the oral arguments presented by the parties, the Court is of the opinion to, and does, dissolve the injunctive relief and reverse the order of the Circuit Court of Kanawha County entered on July 22, 2022.

¹The Court acknowledges the contribution of the following amici curiae who have filed briefs: Mark E. Brennan, Bishop of the Diocese of Wheeling-Charleston, by counsel Matthew R. Bowles and Sandra Henson Kinney, Lewis Glasser, PLLC; Goldwater Institute, by counsel Mark A. Sadd, Lewis Glasser, PLLC; Cardinal Institute for West Virginia Policy, Inc., and Catholic Education Partners Foundation, by counsel Mark A. Sadd, Lewis Glasser, PLLC; EdChoice, Inc., and Foundation for Excellence in Education, by counsel Leslie Davis Hiner, EdChoice, David Powers, Powers Compliance, PLLC, and Danielle Waltz, Jackson Kelly PLLC; yes. every kid. Foundation and Americans for Prosperity Foundation, by counsel Elbert Lin and Erica N. Peterson, Hunton Andrews Kurth LLP; Council of Parent Attorneys and Advocates, Disability

Service of an attested copy of this order upon all parties shall constitute sufficient notice of its contents.

A True Copy

Attest: /s/ Edythe Nash Gaiser
Clerk of Court



Rights of West Virginia and National Disability Rights Network, by counsel Michael J. Folio, Disability Rights of West Virginia, and Selene Almazan Altobelli; the Arc of West Virginia, Astrive Advocacy, Inc., Mountain State Justice, Inc., West Virginia Center for Budget and Policy, and West Virginia Statewide Independent Living Council, by counsel Blaire Malkin, Bren Pomponio, and Lydia C. Milnes, Mountain State Justice, Inc.; Pastors for Children, the National Education Association, the West Virginia Education Association, the American Federation of Teachers, AFT-West Virginia, the Network for Public Education, the Southern Education Foundation, the National Center for Youth Law, and the Intercultural Development Research Association, by counsel Lonnie C. Simmons, DiPiero Simmons McGinley & Bastress, PLLC; Constitution and Education Law Scholars, by counsel Joshua E. Weishart; and the West Virginia Christian Education Association, by counsel Zachary A. Viglianco, Gordon L. Mowen, II, and Ryan A. Nash, Orndorff Mowen PLLC, and Alison M. Kilmartin, Alliance Defending Freedom.