

# OFFICE OF THE ATTORNEY GENERAL

## BUDGET PRESENTATION

TO THE SENATE COMMITTEE ON FINANCE  
THE SENATE OF WEST VIRGINIA  
JANUARY 16, 2023

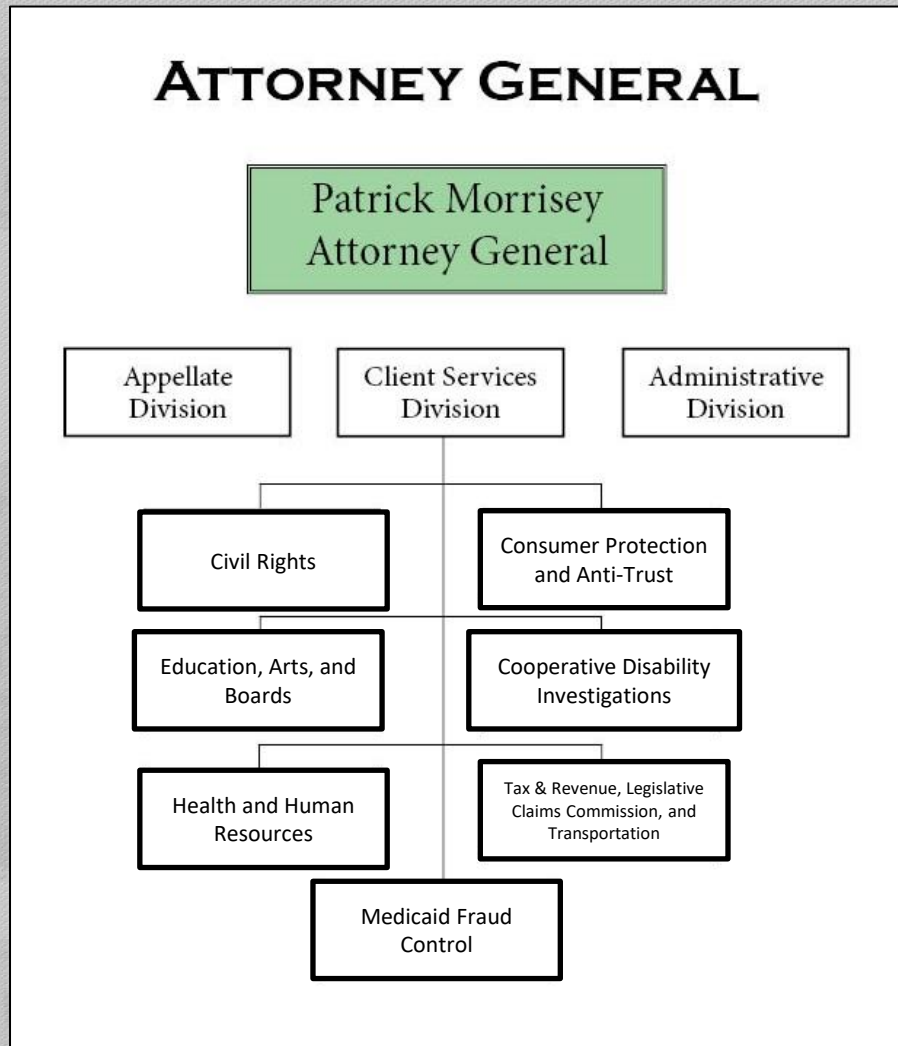
ATTORNEY GENERAL PATRICK MORRISEY

# OFFICE OF ATTORNEY GENERAL OVERVIEW

- CHIEF LEGAL OFFICER FOR THE STATE OF WEST VIRGINIA
- RESPONSIBLE FOR PROVIDING LEGAL COUNSEL TO THE STATE, ITS OFFICERS, AGENCIES AND BOARDS
- ENFORCES THE LAWS OF WEST VIRGINIA AS THEY RELATE TO CONSUMER PROTECTION, CIVIL RIGHTS & OTHER IMPORTANT AREAS
- REPRESENTS THE STATE IN ALL STATE CRIMINAL APPEALS & HABEAS CORPUS PROCEEDINGS

# OFFICE STRUCTURE

- ADMINISTRATIVE DIVISION
- APPELLATE DIVISION
- CLIENT SERVICES DIVISION



# BUDGET SAVINGS FROM THE OFFICE OF THE ATTORNEY GENERAL

- SUBSTANTIAL REVENUE PROVIDED TO THE STATE:
  - FACILITATED THE RETURN OF APPROXIMATELY \$57 MILLION IN UNENCUMBERED MONIES OVER THE LAST NINE YEARS
  - RETURN OF OVER \$1.92 MILLION FROM THE ANTI-TRUST ACCOUNT SINCE FY14

# BUDGET SAVINGS — OUTSIDE COUNSEL POLICY

- SAVINGS THROUGH REDUCED ATTORNEY COSTS
  - OVER \$37 MILLION IN SAVINGS AS A RESULT OF THE OFFICE'S OUTSIDE COUNSEL POLICY
  - ANY REDUCTION IN OUR STAFF WILL ADD TO COST THROUGH GREATER RELIANCE ON OUTSIDE COUNSEL
  - OUTSIDE COUNSEL RATES ARE 3X GREATER THAN HOURLY RATE TO HANDLE A MATTER IN-HOUSE

# COOPERATIVE DISABILITY INVESTIGATIONS

- PARTNERSHIP WITH THE SOCIAL SECURITY ADMINISTRATION
- INVESTIGATES SUSPICIOUS OR QUESTIONABLE DISABILITY CLAIMS, BENEFICIARIES, CLAIMANTS, AND ANY THIRD PARTY WHO FACILITATES FRAUD
- PARTNERSHIP ESTABLISHED IN DECEMBER 2015, MAKING IT A FIRST-OF-ITS-KIND UNIT FOR THE STATE OF WEST VIRGINIA
- THE PROGRAM HAS EXCEEDED \$34 MILLION IN DISABILITY FRAUD SAVINGS SINCE INCEPTION OF THE OFFICE'S SOCIAL SECURITY DISABILITY FRAUD PARTNERSHIP

# FIGHTING MEDICAID FRAUD

- SINCE TRANSITIONING TO THE ATTORNEY GENERAL'S OFFICE IN OCTOBER 2019, THE MFCU HAS REFERRED 40 MATTERS TO COUNTY PROSECUTORS FOR CRIMINAL CHARGES
- DURING THAT TIME, THE MFCU HAS SECURED 37 INDICTMENTS AND ARREST WARRANTS, AS WELL AS 34 CRIMINAL CONVICTIONS
- DURING THAT TIME, THE MFCU HAS SETTLED 38 CIVIL MATTERS
- THE MFCU'S INVESTIGATIONS HAVE SECURED MORE THAN \$74,000,000 IN RECOVERIES FOR WV'S MEDICAID PROGRAM AND OTHER FEDERAL HEALTH CARE PROGRAMS OVER THE PAST 3 YEARS

# FIGHTING MEDICAID FRAUD

- THE UNIT HAS MORE THAN DOUBLED THE AVERAGE NUMBER OF NEW REFERRALS IT RECEIVES ANNUALLY, FROM 274 UNDER DHHR TO 682 UNDER THE A.G.
- THE UNIT HAS MORE THAN TRIPLED ITS AVERAGE AMOUNT OF TOTAL RECOVERIES PER YEAR FROM ≈\$9.1 M UNDER DHHR TO ≈\$24.8M UNDER THE A.G.
- THE UNIT HAS ALMOST TRIPLED ITS AVERAGE NUMBER OF TOTAL CRIMINAL CONVICTIONS PER YEAR FROM 4.33 UNDER DHHR TO 11.67 UNDER THE A.G.
- THE UNIT HAS MORE THAN DOUBLED THE AVERAGE NUMBER OF NEW CASES IT OPENS ANNUALLY, FROM 47 UNDER DHHR TO 114.33 UNDER THE A.G.



# STATE MATTERS

- *WEST VIRGINIA V. BEAVER*
  - PREVAILED IN DEFENSE OF HOPE SCHOLARSHIP ACT, DISSOLVING INJUNCTION TO ENSURE THAT ALL ELIGIBLE CHILDREN RECEIVE PROMISED BENEFITS
- *BRUNETT V. BLAIR*
  - OBTAINED STAY OF CIRCUIT COURT ORDER BLOCKING CHARTER SCHOOL LAW— ALLOWING CHARTER SCHOOLS TO START CLASSES AS SCHEDULED FOR THE 2022-2023 SCHOOL YEAR WHILE THE CASE PROCEEDS.

# STATE MATTERS

## ■ TOURISM

- REPRESENTING THE STATE REGARDING THE CONSTITUTIONALITY OF A TOURISM LAW IMPORTANT TO COMPLETING THE HILL TOP HOTEL PROJECT IN HARPERS FERRY
- \$ 150 MILLION PROJECT WITH POTENTIAL TO BOOST THE STATE'S ECONOMY

# STATE MATTERS

- *KING V. WV HOUSE OF DELEGATES, ET AL.*
  - SUCCESSFULLY DEMONSTRATED THAT THE HOUSE GOVERNMENT ORGANIZATION COMMITTEE'S MARCH 23, 2021 MEETING DID NOT VIOLATE THE OPEN GOVERNMENTAL PROCEEDINGS ACT
- CARES ACT
  - CONVINCED THE SUPREME COURT TO AFFIRM A KANAWHA COUNTY CIRCUIT COURT RULING THAT THE STATE WAS LEGALLY EMPOWERED TO TERMINATE ITS PARTICIPATION IN CERTAIN CARES ACT PROGRAMS

# OPIOIDS – LITIGATION

- ACHIEVED THE HIGHEST PER CAPITA SETTLEMENTS IN THE NATION
- FORGED AGREEMENT WITH ALL 55 COUNTIES AND VIRTUALLY ALL POLITICAL SUBDIVISIONS REGARDING SETTLEMENTS

# OPIOIDS – FENTANYL

- IN 2022:
  - LEAD A COALITION OF 16 ATTORNEYS GENERAL THE DEPARTMENT OF STATE TO PRIORITIZE DIPLOMATIC EFFORTS TO GET MEXICO AND CHINA TO ADDRESS THE FENTANYL CRISIS
  - WROTE TO THE U.S. ATTORNEY GENERAL URGING THE JUSTICE DEPARTMENT TO INCREASE FENTANYL PROSECUTIONS AND TO SEEK STATUTORY MANDATORY MINIMUMS FOR DRUG DEALING THAT LEADS TO DEATH
  - JOINED A MULTISTATE EFFORT SEEKING TO CLASSIFY FENTANYL AS A “WEAPON OF MASS DESTRUCTION”
  - WROTE TO SEVEN MAJOR SOCIAL MEDIA COMPANIES SEEKING INFORMATION ON HOW THEY ARE POLICING

# ANTITRUST LITIGATION

THE OFFICE HAS TAKEN ON HIGH-TECH COMPANIES THAT ARE MONOPOLIZING CERTAIN SECTORS OF THE ECONOMY. CASES WERE FILED AT THE END OF 2020.

- FILED AN ACTION WITH 25 STATES, ONE TERRITORY AND THE U.S. DEPARTMENT OF JUSTICE (WHICH INCLUDES ANOTHER 14 STATES) AGAINST GOOGLE, LLC REGARDING ITS MONOPOLIZATION OVER SEARCH AND SEARCH ADVERTISING. SET FOR TRIAL IN THE FALL OF 2023
- FILED AN ACTION WITH 37 STATES AND THE DISTRICT OF COLUMBIA AGAINST GOOGLE, LLC AND ITS RELATED COMPANIES REGARDING ITS MONOPOLIZATION OF APP DISTRIBUTION ON MOBILE DEVICES RUNNING THE ANDROID OPERATING SYSTEM AND ITS MONOPOLIZATION OF PAYMENT SERVICES FOR DIGITAL PURCHASES MADE BY CONSUMERS WITHIN MOBILE APPLICATIONS. THIS MATTER WILL LIKELY BE TRIED LATER THIS YEAR

# ANTITRUST LITIGATION

- APPEALING AN ACTION FILED AGAINST FACEBOOK FOR ITS MONOPOLIZATION OF PERSONAL SOCIAL NETWORKING SERVICES. A COMPANION SUIT BROUGHT BY THE FEDERAL TRADE COMMISSION IN THE SAME COURT WON A MOTION TO DISMISS AGAINST ITS AMENDED COMPLAINT. THE STATES EXPECT THE U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA TO REVERSE THE TRIAL COURT AND ALLOW THE STATES TO LITIGATE ALONG WITH THE FTC

# FEDERAL MATTERS

- ***WEST VIRGINIA V. EPA***
  - SECURED LANDMARK VICTORY AGAINST EPA AND ITS OVERREACHING INTERPRETATION OF THE CLEAN AIR ACT (CAA)
- ***SACKETT V. EPA***
  - LED A 26-STATE AMICUS BRIEF CHALLENGING THE NINTH CIRCUIT'S RULING ON THE DEFINITION OF "WATERS OF THE UNITED STATES"; A RULING FROM SCOTUS IS EXPECTED SOON



# FEDERAL MATTERS

- *B.P.J v. WV STATE Bd. Of EDUC. ET AL.*
  - SECURED SUMMARY JUDGMENT AT FEDERAL DISTRICT COURT IN DEFENSE OF SAVE WOMEN'S SPORTS ACT OF 2021 (H.B. 3293). COURT DISSOLVED PRELIMINARY INJUNCTION PREVIOUSLY GRANTED TO B.P.J. AND AGREED WITH THE STATE THAT THE NEW LAW WAS CONSTITUTIONAL AND FURTHERED THE PURPOSES OF TITLE IX

# FEDERAL MATTERS

- **LEGISLATIVE PRIVILEGE (*B.P.J v. WVSBOE*)**
  - SUCCESSFULLY REBUFFED EFFORTS BY ACTIVISTS IN FEDERAL LITIGATION TO SUBPOENA COPIES OF EMAILS AND OTHER DOCUMENTS PROTECTED BY THE LEGISLATIVE PRIVILEGE.

# FEDERAL MATTERS

## ■ OPPOSING EPA OVERREACH

- LED A 23-STATE COALITION URGING EPA TO RECONSIDER ITS STANDARDS OF PERFORMANCE FOR METHANE GAS SOURCES; COMMENTING ON A SUPPLEMENTAL RULE THIS YEAR

## ■ SEEKING SPENDING CLAUSE CLARITY

- LED A 13-STATE COALITION CHALLENGING VAGUE FEDERAL CONDITIONS PLACED ON RECEIPT OF COVID RELIEF FUNDS; ARGUED AND AWAITING A DECISION FROM THE 11TH CIRCUIT

# FEDERAL MATTERS

- **FIGHTING FIREARM OVERREGULATION**
  - JOINED A 22-STATE COALITION URGING ATF TO RECONSIDER ITS PROPOSED RULE REGARDING PISTOL STABILIZING-BRACE REGULATIONS

# FEDERAL MATTERS

- **OPPOSING ENVIRONMENTAL, SOCIAL, AND GOVERNANCE (ESG) EXPANSION**
  - LED COMMENTS ON BEHALF OF MULTIPLE 20+ STATE COALITIONS OPPOSING PROPOSED EXPANSIONS OF SEC'S AUTHORITY OVER ENVIRONMENTAL ISSUES
  - LED A 20-STATE COALITION OPPOSING CFTC'S EXPANSION OF JURISDICTION OVER ESG ISSUES
  - LED A 21-STATE COALITION ARGUING THAT FDIC'S "PRINCIPLES" FOR CLIMATE-RELATED FINANCIAL RISK WERE LEGALLY DEFECTIVE

# BUDGET COMPARISON

Expenditure	WVOASIS Appropriation	FY 2019 Base Budget	FY 2020 Base Budget	FY 2021 Base Budget	FY 2022 Base Budget	FY 2023 Base Budget	FY 2024 Agency Request
Personal Services	00100	\$ 2,537,784.00	\$ 2,818,788.00	\$ 2,818,788.00	\$ 2,818,788.00	\$ 3,114,386.00	\$ 3,114,386.00
Repairs and Alterations	06400	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Equipment	07000	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00	\$ 1,000.00
Unclassified	09900	\$ 24,428.00	\$ 24,428.00	\$ 24,428.00	\$ 24,428.00	\$ 24,428.00	\$ 24,428.00
Current Expenses	13000	\$ 762,097.00	\$ 762,097.00	\$ 762,097.00	\$ 687,795.00	\$ 687,795.00	\$ 687,795.00
Criminal Convictions and Habeas Corpus Appeals	26000	\$ 923,582.00	\$ 946,078.00	\$ 946,078.00	\$ 946,078.00	\$ 970,283.00	\$ 970,283.00
Better Government Bureau	74000	\$ 275,194.00	\$ 279,412.00	\$ 279,412.00	\$ 279,412.00	\$ 283,648.00	\$ 283,648.00
BRIM Premium	91300	\$ 120,654.00	\$ 120,654.00	\$ 120,654.00	\$ 120,654.00	\$ 120,654.00	\$ 120,654.00
<b>Total</b>		<b>\$ 4,645,739.00</b>	<b>\$ 4,953,457.00</b>	<b>\$ 4,953,457.00</b>	<b>\$ 4,879,155.00</b>	<b>\$ 5,203,194.00</b>	<b>\$ 5,203,194.00</b>

# PROPOSED BUDGET CHANGES

THE ONLY PROPOSED CHANGES ARE FOR THE 25% MATCH RELATED TO THE INCREASE IN OUR MEDICAID FRAUD CONTROL UNIT (MFCU) FEDERAL GRANT.

- GRANT INCREASED FROM \$2.703M FY22 TO \$2.939M FY23
- IMPROVEMENT REQUEST WAS SUBMITTED TO ACCOMMODATE GRANT INCREASE
- IMPROVEMENT REQUEST TOTALED \$ 191,063 AS FOLLOWS:
  - 75% FEDERAL SHARE - \$ 143,298
  - 25% STATE SHARE - \$ 47,765

# RESPONSES TO SPECIFIC INQUIRES COMMITTEE ON FINANCE

- PAST FIVE YEARS APPROPRIATIONS-
  - FY19-\$4,645,739 (STATEWIDE PAY RAISE INCREASE)
  - FY20-\$4,953,457 (STATEWIDE PAY RAISE INCREASE)
  - FY21-\$4,953,457
  - FY22-\$4,879,155 (SENATE REQUESTED DECREASE)
  - FY23- \$5,203,194 (STATEWIDE PAY RAISE INCREASE)



# ADDITIONAL INFORMATION

- OUR AGENCY DID NOT RECEIVE ANY CARES ACT OR ARPA FUNDING
- OF THE ACTIVE 191 FTE'S IN OUR AGENCY, 171 ARE CURRENTLY FILLED, OR 90%. WE CONTINUE TO RECRUIT AND RETAIN THE BEST TALENT POSSIBLE. OUR OLDEST VACANT POSITION WAS LAST OCCUPIED IN MAY OF 2022.
- WE CONTINUE TO OBSERVE FINANCE COMMITTEE HEARINGS, BUT ARE CURRENTLY UNAWARE OF PROPOSED LEGISLATION IMPACTING THE ATTORNEY GENERAL'S OFFICE

# CURRENT LEVEL IMPACT STATEMENT

THE OFFICE OF THE ATTORNEY GENERAL BELIEVES IT CAN MAINTAIN CURRENT OPERATIONS IN FY24 WITH THE 100% CURRENT-LEVEL FUNDING. IT IS IMPORTANT TO NOTE THAT THIS OFFICE CONTINUES TO BE EXTREMELY BUSY DEFENDING THE GOVERNOR, THE LEGISLATURE, VARIOUS CONSTITUTIONAL OFFICERS AND STATUTES THAT WERE PASSED DURING PRIOR LEGISLATIVE SESSIONS. AS THE VOLUME OF CASES CONTINUES TO INCREASE, IT MAY RESULT IN A REQUEST FOR ADDITIONAL FUNDING TO HIRE PERSONNEL IN THE FUTURE. IN LIGHT OF GENERAL REVENUE REDUCTIONS IN PREVIOUS YEARS, WE CANNOT SUSTAIN ANY ADDITIONAL GENERAL REVENUE REDUCTIONS. INDEED, WE BELIEVE ANY CUTS INSTITUTED WILL COST THE STATE MORE IN RESOURCES BECAUSE WE WILL NEED TO RELY MORE HEAVILY ON OUTSIDE COUNSEL TO PERFORM FUNCTIONS THAT PREVIOUSLY COULD BE HANDLED BY OUR OFFICE.

THE OFFICE OF THE ATTORNEY GENERAL'S SPECIAL REVENUE FUNDING CONTINUES TO SUPPLEMENT OUR GENERAL REVENUE FUNDING. NEVERTHELESS, THE OFFICE HAS RETURNED OVER \$57 MILLION SINCE JANUARY 2013 WHILE ATTEMPTING TO MAINTAIN AN ACCOUNT BALANCE SUFFICIENT TO PROPERLY PURSUE OUR CONSUMER PROTECTION AND ANTI-TRUST MISSION. MOREOVER, THE OFFICE HAS SEEN REDUCTIONS TO ITS GENERAL REVENUE APPROPRIATION BUDGET IN PREVIOUS YEARS.

IN SUM, THE OFFICE CONTINUES TO MAINTAIN AGENCY OPERATIONS AT THE 100% CURRENT-LEVEL FUNDING. HOWEVER, THE OFFICE IS MINDFUL THAT ANY DEVIATION BELOW THE CURRENT FUNDING LEVELS WOULD GREATLY INCREASE THE NEED FOR ADDITIONAL STATE APPROPRIATIONS TO THE GENERAL FUND, PARTICULARLY PERSONAL SERVICES. WHILE THERE ARE SUBSTANTIAL RESOURCES IN CERTAIN SPECIAL REVENUE ACCOUNTS, THESE FUNDS ARE TYPICALLY ENCUMBERED BY COURT ORDER FOR SPECIFIC PURPOSES.

# FUTURE FINANCIAL ISSUES

ONE OF THE BIGGEST FINANCIAL ISSUES FACING THE OFFICE OF THE ATTORNEY GENERAL REMAINS THE PERENNIAL UNCERTAINTY ASSOCIATED WITH SPECIAL REVENUE ACCOUNTS AND THE OFFICE'S REQUIRED DEPENDENCE ON SUCH FUNDS, AS WELL AS THE LARGE NUMBER OF LAWSUITS FILED AGAINST THE STATE. THESE SUITS INCLUDE THOSE BROUGHT AGAINST THE GOVERNOR, THE LEGISLATURE, CONSTITUTIONAL OFFICERS, AND ATTACKS ON RECENTLY PASSED STATUTES. THE NEED TO STAFF THESE CASES MEANS IT IS IMPERATIVE TO AVOID CUTS TO THE PERSONAL SERVICES APPROPRIATION LINE ITEM.

THE OFFICE OF THE ATTORNEY GENERAL MUST GENERATE MILLIONS OF DOLLARS ANNUALLY FOR ITS SPECIAL REVENUE ACCOUNTS IN ORDER TO ENSURE THE SUFFICIENT OPERATION OF THE CONSUMER PROTECTION DIVISION. FAILURE TO MEET SUCH SPECIAL REVENUE REQUIREMENTS OVER AN EXTENDED PERIOD OF TIME WOULD QUICKLY EXHAUST ANY RESERVES THE OFFICE NOW HAS AND RESULT IN A FORCED DISMANTLING OF MANY OF THE CONSUMER PROTECTION SERVICES THE OFFICE CURRENTLY PROVIDES. BY CONTINUING TO RELY ON THIS FUNDING MODEL, THE STATE IS SIGNIFICANTLY INCREASING ITS BUDGETARY RISK AND THE PROBABILITY THAT ADDITIONAL APPROPRIATION REQUESTS WOULD NEED TO BE MADE.

SINCE THE INCEPTION OF THE CURRENT ADMINISTRATION, THE OFFICE HAS RETURNED MORE THAN \$57 MILLION TO THE STATE'S GENERAL FUND IN CASH AND SAVINGS. HOWEVER, SIGNIFICANT DEPLETION OF SPECIAL REVENUE ACCOUNTS AND GENERAL REVENUE FUNDS COULD EXPOSE THE STATE TO GREATER RISK AS ESSENTIAL SERVICES BECOME MORE DIFFICULT.

# FY2024 BUDGET HEARING



OFFICE OF THE ATTORNEY GENERAL