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IN THE WEST VIRGINIA SENATE

***IN THE MATTER OF IMPEACHMENT PROCEEDINGS AGAINST  
RESPONDENT CHIEF JUSTICE MARGARET WORKMAN***

Honorable Paul T. Farrell  
Acting Justice of the  
Supreme Court of Appeals of West Virginia  
Presiding Officer

**CHIEF JUSTICE WORKMAN'S MOTION TO DISMISS ARTICLE XIV  
AS BARRED BY PRINCIPLES OF AGENCY**

Respondent Chief Justice Margaret Workman, by counsel, respectfully moves the Presiding Officer for a ruling that Article XIV be dismissed as barred by well-established agency principles. That is, insofar as the article purports to charge Respondent with “maladministration,” it improperly seeks to hold her vicariously liable for the acts and omissions constitutionally allocated to the discretion of the Administrative Director of the Supreme Court of Appeals, without alleging that she caused the acts or omissions by inadequately supervising or controlling the person appointed to that position.

The constitution provides that “[t]he court shall appoint an administrative director to serve at its pleasure at a salary to be fixed by the court.” W. VA. CONST. art. VIII, § 3. The administrative director is expressly charged with the duty to “prepare and submit a budget for the court,” *id.*, but it may fairly be presumed that the position implicitly entails additional duties, including most of those referenced in Article XIV: supervising renovations and remodeling of Court facilities; approving capital expenditures; managing the Court’s access to its allotment of State vehicles; and overseeing the implementation and distribution of the Court’s technology assets. To the extent that there may have been waste of State funds or other substantive deficiencies associated with the

administration of the identified duties, the fault must be deemed to lie with the administrative director.

Absent any allegation (and there is none) that Respondent caused the administrative director to engage in such waste or to deficiently perform the duties and responsibilities of the job, she cannot be found guilty of Article XIV as a matter of law. Indeed, the uncontroverted evidence is that the administrative director resisted all legitimate attempts by Respondent at supervision and control. *See, e.g.*, Transcript of House Judiciary Committee Proceeding Regarding the Impeachment of West Virginia Supreme Court Justices (“Tr.”) at 1691-92, 1772-75 (documenting administrative director’s outright refusal to implement Respondent’s directive to develop P-card policies).

In West Virginia, the managing State entity is civilly immune for official misconduct undertaken by an employee outside the scope of his duties or employment. *See W. Va. Reg’l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 506, 766 S.E.2d 751, 765 (2014) (“Such conduct is notable for being driven by personal motives which in no way benefit the State or the public, nor is it reasonably incident to the official or agent’s duties.”). If the Administrative Director failed to do the very job for which he was in good faith appointed, then that failure was, *a fortiori*, manifestly outside the scope of the employment for which he was appointed. It follows that if the Court as a body would be immune from civil liability to one injured by reason of the Administrative Director’s *ultra vires* acts or omissions, an individual justice would likewise not be susceptible to the more drastic remedy of removal from office following impeachment. *See Robinson v. Pack*, 223 W. Va. 828, 837, 679 S.E.2d 660, 669 (2009) (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), for the proposition that “a supervising police officer may not be held liable for the wrongful actions of his or her subordinate officers in connection with an alleged civil rights

violation because a supervising police officer is only liable for his or her own conduct and not that of his/her subordinates”).

WHEREFORE, Respondent respectfully requests that the Presiding Officer grant this motion and rule that Article XIV be dismissed as foreclosed by agency principles insulating supervisors of governmental employees who engage in misconduct beyond the scope of their official responsibilities.

CHIEF JUSTICE MARGARET WORKMAN

By Counsel:



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**CERTIFICATE OF SERVICE**

I hereby certify that on this 21st day of September, 2018, a true and correct copy of the foregoing **CHIEF JUSTICE WORKMAN'S MOTION TO DISMISS ARTICLE XIV AS BARRED BY PRINCIPLES OF AGENCY** was served by electronic mail and by depositing a true copy thereof in the United States mail, first class, postage prepaid, in envelopes upon the following:

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