



No. 11-1157

**IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

**JAMES MARTIN, IN HIS OFFICIAL CAPACITY AS DIRECTOR, OFFICE OF OIL AND GAS, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION; OFFICE OF OIL AND GAS, WEST VIRGINIA DEPARTMENT OF ENVIRONMENTAL PROTECTION; AND EQT PRODUCTION COMPANY,**

**Respondents Below/Petitioners,**

vs.

**Docket No. 11-1157**

**MATTHEW L. HAMBLET,**

**Petitioner Below/Respondent.**

**RESPONDENT MATTHEW L. HAMBLET'S RESPONSE TO AMICI CURIAE**

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## I. SUMMARY OF ARGUMENT IN RESPONSE TO WVONGA

WVONGA, in its amicus curiae brief, makes essentially three points: (1) the West Virginia Code does not provide the appeal rights at issue in this action; (2) appeal rights would be redundant of common law remedies for surface owners, and WVDEP has no authority to adjudicate common law property disputes; and (3) an appeal right for surface owners would be cumbersome for mineral operators and courts.

Respondent agrees with WVONGA that there exists no explicit statutory right in West Virginia for a surface owner to appeal the issuance of a well permit. However, that is not the Certified Question before this Court. WVONGA largely ignores *Lovejoy*, which held that there clearly exists a right of appeal for surface owners, and that failure to fully exercise that right will prejudice any subsequent challenges to WVDEP action.

Respondent also agrees with WVONGA that a surface owner's common law rights are not the province of WVDEP. A surface owner's rights vis-à-vis the mineral owners is a proper subject for judicial determination, and the right to appeal a WVDEP permit has no bearing on the respective estate owners' common law property rights. An appeal is not a common law action challenging the actions of an operator; it is a means to ensure the state meets its statutory obligation to protect public resources. The state's regulatory system administered by the WVDEP is a means of protecting public resources by, inter alia, ensuring safe and responsible mineral development. Surface owners are members of the public who will often feel the brunt of inadequate regulation. They are entitled, for Constitutional reasons at least, to challenge the state action that affects them so directly.

Finally, WVONGA suggests that an appeal right would open the floodgates upon the Circuit Courts and would have other terrible consequences. However, *Lovejoy* has been West

Virginia law for nearly ten years and these supposed consequences have not come to pass.

Further, coal interest owners already have an appeal right, and this has not proven unworkable or unreasonably cumbersome to oil and gas operators.

For these reasons, WVONGA's concerns are misplaced and this Court should uphold the rights already established by *Lovejoy* and *Snyder* and should answer the Certified Question in the affirmative.

## II. ARGUMENT IN RESPONSE TO WVONGA BRIEF

### a. Standard of Review

"The appellate standard of review of questions of law answered and certified by a circuit court is *de novo*." Syl. pt. 1, *Gallapoo v. Wal-Mart Stores, Inc.*, 197 W.Va. 172, 475 S.E.2d 172 (1996).

### b. WVONGA essentially ignores *Lovejoy* and thereby offers an analysis that is not available to surface owners and was not available to the Circuit Court of Doddridge County.

WVONGA urges that *Lovejoy* should be overruled. WVONGA Amicus Brief at 1. Beyond that, however, WVONGA pays the case very short shrift, even though the holding of *Lovejoy* is explicitly at the core of the Certified Question now before the Court.

The West Virginia Supreme Court in *State ex. Rel. Lovejoy v. Callaghan*, 576 S.E. 2d 246, at 249 (W.Va. 2002) expressly acknowledged a surface owner's "clear right to appeal the [Office of Oil and Gas's] decision to issue the working well permit" and describes the process which the Respondent in this matter has himself followed with due care and in a timely manner. The *Lovejoy* decision repeats a number of times that a landowner aggrieved by the issuance of a well permit has the right to appeal that decision. Indeed, the Court admonished the surface owners in *Lovejoy* and explicitly noted that failure to appeal was a fatal error on their part.

Respondent agrees with WVONGA that there is no statutory appeal right for surface owners in the West Virginia Code. The Certified Question, however, regards the holding of *Lovejoy*. WVONGA's explication of the West Virginia Code would be more appropriate if *Lovejoy* were not the law. Surface owners, however, are not at liberty to ignore *Lovejoy*. Neither is the Circuit Court of Doddridge County. The *Lovejoy* Court made clear that surface owners forego their appeal rights at their own peril. WVONGA's analysis, therefore, is largely beside the point.

- c. **In this context, common law remedies address the acts and omissions of private parties/mineral operators, while permit appeals address acts of the state; the two remedies are distinct and WVONGA's argument ignores the distinction.**

WVONGA argues for the overruling of *Lovejoy* by insisting that surface owners' only possible interest in the operation of gas wells on their property are common law interests. E.g., Amicus Brief at 11 (surface owner's "only personal rights in the matter is the manner in which the mineral owner exercises its right to use the surface"). WVONGA misunderstands: a common law action challenges the operator's actions and is determined by the common law; a permit appeal challenges the state's action and is determined by statutory and administrative law. The two are distinct. To see that WVONGA is mistaken, one need look no further than the statutory appeal right available to coal interest owners.

There is no dispute that coal interest owners possess a statutory appeal right pursuant to W.Va. Code §§ 22-6-40 and 22-6-41. These rights are in addition to those found in the common law. Coal interest owners did not relinquish any common law property rights upon the creation of administrative permit appeal rights. Nor was WVDEP asked to adjudicate common law claims beyond its authority and expertise. Rather, the state provided a measure of protection against the issuance of an unlawful or ill-advised permit. Likewise, *Lovejoy* has already made

clear that surface owners possess a similar right of appeal. There was no suggestion in *Lovejoy* that such an appeal right displaced common law rights or conferred authority over WVDEP to consider common law claims.

If an appeal right for surface owners is merely redundant of the common law, then that would be equally true for coal interest owners. Instead, however, the two are not redundant; they serve distinct purposes. Surface owners and coal interest owners possess all their rights at common law to protect their property from an infringement by a gas operator. Likewise, under the statutes and *Lovejoy*, surface owners and coal interest owners possess the right to appeal a WVDEP permit. The permit appeal cannot, of course, determine the scope of the severance deed, or what constitutes reasonably necessary use of the surface, and so on. That is the province of the common law. The permit appeal, for both coal interest owners and surface owners, challenges the state's action: whether the permit requires adequate erosion prevention measures, whether state waters are jeopardized by the proximity of drilling wastes, and so on. The permit appeal is a process for ensuring that the statutory and regulatory system is administered so as to protect those members of the public who are most vulnerable to lapses in regulation. WVONGA appears to conflate the two, or is under the impression that Respondent is conflating the two. On the contrary, Respondent understands the distinction and rejects the argument that the appeal of a WVDEP permit appeal is tantamount to a common law property action against a mineral operator.

*Snyder v. Callaghan*, 168 W.Va. 265, 284 S.E.2d 241 (W.V. 1981), is instructive. The *Snyder* Court recognized that the plaintiffs had important common law property rights as riparian owners. *Id.* at 271-72. The Court noted that such riparian owners could seek an injunction or damages against upstream riparian owners. *Id.* The Court also, however, held that because the

state action of issuing a required certification “affected” those common law rights, the plaintiffs were entitled to an appeal on constitutional grounds. *Id.* at 247-48. Thus, Snyder illustrates that an appeal of an administrative decision is not a displacement of common law rights. Rather, it is a distinct right that is triggered by state action that affects a constitutionally protected right. The Plaintiffs in *Snyder*, therefore, could exercise their rights to appeal the state certification.

Whether or not the Plaintiffs succeeded in the appeal of the state action is immaterial to their common law rights against the upper riparian owners. Just as in this case, the state action triggered constitutional due process requirements. That additional process is aimed at providing fair procedures, or due process, in instances of certain state actions; it does not resolve common law private party disputes.

A permit, such as an oil and gas permit, does not adjudicate common law property rights. Rather, a permit is a “negative pronouncement,” a determination that certain government-imposed requirements have been met. *FPL Farming Ltd. v. Environmental Processing Systems, L.C.*, 351 S.W.3d 306, 310 (Tex. 2011). A “permit simply means that the government’s concerns and interests, at the time, have been addressed; so, it, as a regulatory body, will not stop the applicant from proceeding under the conditions imposed, if any.” *Id.* at 311. The permit “merely removes the conservation laws and regulations as a bar to drilling the well, and leaves the permittee to his rights at common law.” *FPL Farming Ltd. v. Environmental Processing Systems, L.C.*, 351 S.W.3d 306, 311, (Tex. 2011). *See also Chesapeake & O. Ry. Co. v. Bailey Production Corp.*, 163 F. Supp. 666, 671 (D.W.Va. 1958) (recognizing common law claims are not displaced by state administrative permitting actions).

Again, as shown in *Snyder*, certain private property owners may be directly affected by the government regulation of third parties. That direct affect triggers due process requirements.



Here, Respondent has an acute interest in, for example, WVDEP's regulation of erosion and sediment control by permittees on Respondent's own property. Whether the permit is sufficiently protective of surface waters is also crucially important to the surface owner. WVONGA seeks to brush away appeal rights, asserting that injuries to the surface owners' rights are "always compensable in damages and common law remedies for any wrongful conduct." Amicus Brief at 11. Of course, that is equally true of the coal interest owners, as well as the downstream riparian rights holders in *Snyder*. WVONGA is missing the point. That a common law remedy may be available does not (1) eclipse mechanisms for preventing injury via state action in the first place or (2) relieve the state from constitutional due process requirements.

Thus, WVONGA has misconstrued Respondent's position and the law. Respondent does not "attempt[] to create a judicial roadblock" any more than a coal interest owner is creating a roadblock by exercising its statutory review rights.

**d. WVONGA's policy predictions are not borne out by the facts.**

WVONGA paints a dim picture of unwarranted delays to oil and gas development unless *Lovejoy* is overruled. However, no evidence is offered to support this prediction, even though *Lovejoy* has been West Virginia law for nearly a decade. Moreover, the rights are the same as those provided to coal interest owners, and WVONGA does not cite any unwarranted delays caused by the appeals of coal interest owners. The existence of appeal rights for coal interest owners disproves WVONGA's parade of horrors. WVONGA's predictions are overblown, and its concerns misplaced. Again, WVONGA's predictions are based on the premise that this case is "nothing more than a dispute over the reasonable exercise of property rights[]". Amicus Brief at 12. That is incorrect. It is a dispute about the processes available to citizens to challenge state action. *Lovejoy* held that an appeal right for surface owners is among the available processes.

WVONGA's brief confuses private property disputes with Constitutional government procedures. WVONGA employs this confusion to predict wasteful and cumbersome results. WVONGA is missing the point, and its predictions should be rejected.

**e. WVONGA ignores state and federal due process and equal protection requirements.**

Much as WVONGA ignores *Lovejoy*, WVONGA ignores the concept that due process is mandatory. The due process right applies fully to the ownership of real property, and to State permitting procedures such as those at issue in this case, as shown by *Snyder*. Without *Lovejoy*, which implicitly rests upon these basic constitutional rights, surface owners would be left with a summary deprivation of property rights that violates due process.

The West Virginia Constitution provides: "No person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers." W. Va. Const., Art. 3, § 10. The provision "requires procedural safeguards against State action which affects a liberty or property interest." *Waite v. Civil Serv. Comm'n*, 161 W.Va. 154, Syllabus Pt. 1, 241 S.E.2d 164 (1977). The clause does not create property interests, but protects property and liberty interests created by an independent source. *Hutchison v. City of Huntington*, 198 W.Va. 139, 154, 479 S.E.2d 649, 664 (1996). Protected property includes real property. *Waite*, 161 W.Va 154, Syllabus Pt. 3. West Virginia's issuance of required permits constitutes State action within the meaning of the due process clause. *Snyder v. Callaghan*, 168 W.Va. 265, 284 S.E.2d 241 (W.V. 1981). Post-permit remedies are irrelevant to the due process analysis as "[d]ue process must generally be given before the deprivation occurs unless a compelling public policy dictates otherwise." *Buskirk v. Civil Service Com'n of West Virginia*, 175 W.Va. 279, 284, 332 S.E.2d 579, 584 (W.Va. 1985). Due process requires that one aggrieved by a ruling have the

opportunity to protest the ruling. *Smith v. State Workmen's Compensation Com'r*, 159 W.Va. 108, 119, 219 S.E.2d 361, 367 (W.Va. 1975).

WVONGA's brief does not address these issues. Its analysis, therefore, is incomplete. Without assessing the minimum procedure that the state must provide under its constitution, one cannot assess whether *Lovejoy* should be overruled. WVONGA's plea that this Court overrule *Lovejoy* should be rejected. Instead, both *Snyder* and *Lovejoy* should be upheld and it should be made clear that the state's issuance of a gas well permit is state action that triggers the protection of constitutional due process.

### **III. SUMMARY OF ARGUMENT IN RESPONSE TO IOGA**

This section deals with Matthew L. Hamblet's response to the amicus curiae brief that was filed by the Independent Oil and Gas Association of West Virginia ("IOGA") on December 22, 2011 and received on December 23, 2011 and the arguments contained within which were not necessarily dealt with directly in the previous section. This filing by IOGA was received twenty-two days after Mathew L. Hamblet's thirty-day response period to Amicus Curiae briefs began to run per this Court's Order. IOGA's brief is therefore untimely, although this response attempts to keep this matter within the Court's original scheduling period. IOGA's brief also responds to Matthew L. Hamblet's original response as well as the West Virginia Surface Rights Organization's brief although the rules of Appellate Procedure clearly do not contemplate such response opportunity for those parties filing amicus curiae briefs.

IOGA, in its amicus curiae brief, makes essentially three arguments: (1) West Virginia statutes and case law do not grant Matthew L. Hamblet the right to judicial review of a well work permit; (2) the issuance of a well work permit does not infringe on the property rights of a

surface owner; and (3) the Constitution is not violated by the statutory scheme giving coal owners the right to appeal but not surface owners.

As stated previously, Respondent agrees that there exists no explicit statutory right in West Virginia for a surface owner to appeal the issuance of a well permit. However, that is not the Certified Question before this Court. *Lovejoy* held that there clearly exists a right of appeal for surface owners, and that failure to fully exercise that right will prejudice any subsequent challenges to WVDEP action.

IOGA relies heavily on an Oklahoma case, *Turley v. Flag-Redfern Oil Co.*, 1989 OK 144, 782 P.2d 130 (1989), to support a position that the denial of a permit hearing does not violate a surface owner's constitutional rights to due process and equal protection; however, that case dealt with the spacing of wells and not the protection of public resources and environmental concerns that were eminent in this case. It is likely that the Oklahoma Court would have found differently in a case such as Mr. Hamblet's.

Finally, IOGA claims that even if Respondent's property rights are determined by this Court to suffer infringement, the process afforded Respondent by existing statutes satisfies the Due Process Clause citing that "surface owners have notice, comment and other rights." These "rights" do very little to ensure that the regulation of the permitting process is conducted in a manner which protects not just the operations area from environmental damage but also the surface owner's other property and that of his neighbors. As IOGA states in its brief, "[t]here are over 55,000 wells active in West Virginia, with more permits filed everyday." IOGA Amicus Brief at 20. Never before has regulation and oversight been so important in safeguarding the rights of West Virginia's citizens to prevent the risk of deprivation of their protected interests.

For the foregoing reasons, in summary, the Respondent respectfully asks this Court to uphold the rights already established by *Lovejoy* and *Snyder* and answer the Certified Question in the affirmative.

#### **IV. ARGUMENT IN RESPONSE TO IOGA BRIEF**

##### **a. Standard of Review**

“The appellate standard of review of questions of law answered and certified by a circuit court is *de novo*.” Syl. pt. 1, *Gallapoo v. Wal-Mart Stores, Inc.*, 197 W.Va. 172, 475 S.E.2d 172 (1996).

##### **b. IOGA essentially disregards *Lovejoy*'s elucidation of the right to appeal.**

IOGA attempts to both distinguish *Lovejoy* and to claim that it is not precedent and should be disregarded. As more fully addressed in Respondent's original briefing and in the response to WVONGA, *Lovejoy* clearly acknowledged a right of surface owners to appeal the issuance of a well permit under judicial review. The result of *Lovejoy* is correct and should be upheld.

Furthermore, it is unnecessary to distinguish the *Lovejoy* case from the facts of this case simply because the underlying fact pattern in *Lovejoy* concerned a “consent and easement” provision. The *Lovejoy* opinion is applicable to the Respondent as the Court expressly acknowledged a surface owner's “clear right to appeal the [Office of Oil and Gas's] decision to issue the working well permit” and describes the process which the Respondent in this matter has himself followed with due care and in a timely manner. The *Lovejoy* decision repeats a number of times that a landowner aggrieved by the issuance of a well permit has the right to appeal that decision. Indeed, the Court admonished the surface owners in *Lovejoy* and explicitly noted that failure to appeal was a fatal error on their part. IOGA's analysis regarding the importance of the depth of the well, therefore, is largely beside the point.

**c. It is not necessary for the legislature to crystalize a Constitutional right to protect Respondent.**

IOPA claims that because the legislature has failed to enact legislation which grants a surface owner rights to a predetermination hearing or judicial review of the issuance of a well work permit, the Court should find that Matthew L. Hamblet does not have a right to challenge the permit that was issued. The right to judicial review on behalf of coal operators, coal owners, and lessees are specifically codified because their rights are not constitutionally protected.

IOPA's brief reads: "[i]n determining whether to hold a hearing on a particular challenge to a particular decision or action, a court cannot create substantive rights entitling certain people to a hearing. '[S]uch rights must exist either by statutory language creating an agency hearing, by an agency's rules and regulations, or by some constitutional command.'" citing *State ex rel. West Virginia Bd. Of Educ. v. Perry*, 189 W.Va. 662, 665, 434 S.E.2d 22, 25 (1993). By Constitutional command, there exists a right, through both the United States Constitution and the West Virginia Constitution, to have an evidentiary hearing on the issuance of a well work permit as violation of the spirit of the permit, i.e. protection of the environment and surrounds to mitigate the erosion or damage to the surface and other surrounds, is a grave risk which can not be curtailed by notice of drilling, commenting on the erosion control plan or after-the-fact, narrow, pecuniary surface damages.

Regarding *Snyder*, IOPA argues that it is not relevant because mineral owners possess an easement to extract minerals, and that such an easement is not at issue in *Snyder*. This is a misreading of the plain language of *Snyder*. In *Snyder*, the U.S. Army Corps of Engineers needed a certification from the state as an absolute prerequisite to commencing its project. The same is true of gas operators who need a WVDEP well work permit. In *Snyder*, the Court found that, because the certification was a prerequisite, its issuance directly affected the downstream

property owners' riparian rights. *Snyder* at 274-75. The same is true here: permit issuance directly affects surface owners' rights in, for example, their own riparian rights. In every pertinent respect, *Snyder* is controlling.

Under IOGA's view, a WVDEP permit "merely allows" an operator to exercise its mineral rights. This view is entirely at odds with WVDEP's actual authority. As the statutes make clear, WVDEP has an obligation to deny permits to operators whose wells would present hazards to persons, surface waters and topsoil. This is so regardless of the mineral rights at issue. An operator cannot proceed without the WVDEP's judgment that the well can be operated according to statutory (not common) law governing gas wells. IOGA's argument is that WVDEP's permitting authority is redundant of an operator's pre-existing common law rights. This is wrong. WVDEP has its own, independent obligations it must meet before it issues a well work permit. As shown in *Snyder*, when issuance of that permit directly affects another property owner, due process protections are triggered.

**d. A surface owner possesses a Constitutional right to judicial review that would be held up by the Supreme Court of Oklahoma under its analysis in the *Turley* case.**

IOGA relies, in part, on an Oklahoma case, *Turley v. Flag-Redfern Oil Co.*, 1989 OK 144, 782 P.2d 130 (1989), to support its position that the denial of a permit hearing does not violate a surface owner's constitutional rights to due process and equal protection as the extraction of the mineral estate does not infringe of property rights of the surface estate.

*Turley* is a thirty-two (32) year old case that is quite distinguishable from this case. The surface owner in the *Turley* case was appealing the non-public hearing of a spacing Order for the "80-acre drilling and spacing units for the production of oil to be established" underlying, in part, his surface. The Supreme Court of Oklahoma did find that surface owners such as Mr. Turley do

not have an interest in Oklahoma which entitles them to protest applications related to drilling and spacing units and that the exclusion of surface owners from those parties entitled to protest drilling and spacing applications did not violate equal protection rights.

It is not established in the Oklahoma Court's opinion what is involved in a spacing application, but it is likely that a spacing order (whether it was the prior 640-acres that was in place prior to the Court's subsequent order for 80-acre spacing units) has anything to do with the prevention of surface erosion, water contamination or any other environmental harm which could be suffered by the surface area used in operations as well as nearby land and waters. In *Turley*, the decision of spacing wells falls upon something called a "Corporation Commission" which was surely not established with the same goals and agenda as the West Virginia Department of Environmental Protection.

Mr. Turley asserted that he was an aggrieved party, with standing to Appeal pursuant to the legislative scheme, because the spacing Order "could result in an eightfold increase in the number of oil wells, roads and support facilities" located in the proposed drilling operations area. Based on this loose claim to a property right, the Supreme Court of Oklahoma found that Mr. Turley did not demonstrate that he was an aggrieved person to the Court's satisfaction by simply relying on the fact that he owned a surface estate within the proposed drilling operations area – which was to receive a greater possibility for the greater capacity of production with the newer spacing order.

The Court's opinion regarding whether surface owners in that situation had standing to appeal defined an aggrieved party as: "one whose pecuniary interest in the subject matter is directly and injuriously affected, or one whose right in priority is either established or divested by the decision from which the appeal is prosecuted." *Turley*, 782 P.2d 130, 135. The decision



went on further to say, “[t]o render a party aggrieved by the decision, its adverse effect must be direct, substantial, and immediate rather than contingent on some possible remote consequence or a mere possibility of an unknown future eventuality. In order to meet the status required for standing, a party must have a “personal stake” in the litigation because of an actual or threatened distinct injury which has a causal connection between the alleged wrong and the actions challenged.” Id.

The Oklahoma Court, using the same reasoning, would likely find that Matthew L. Hamblet would be an “aggrieved party” deserving of standing to appeal the issuance of a permit for a well that was being requested to be drilled exactly on his property and when, considering his comments below, contained worries and responses directly related to injuries that were either ongoing because of prior operations and likely to continue or were likely to be incurred based on failure to follow regulations for environmental controls and safeguards that had already been implemented but were ignored. Indeed, such injuries Mr. Hamblet complained of in his comments were “direct, substantial, and immediate rather than contingent on some possible remote consequence or a mere possibility of an unknown future eventuality.” Id.

**e. Environmental damages protected by the permitting process are greater than regular surface damages and pecuniary interests.**

IOPA also references the *Turley* case to support its position that compensation for surface damages is an adequate alternative statutory remedy to claimed due process violations. However, surface owner damages acts do not protect a surface owner from the ills that the permitting process was created to protect. The effect of a silted in stream, washing away a meadow, is not a contemplated damage under the Oil and Gas Production Compensation Act, West Virginia Code §22-7-1 et seq. Furthermore, compensation is often received well after the reclamation period has ended, per the statutory schemata, which can be several years after any

damages are suffered. Even more importantly, a damages claim only addresses damages by the private party operator. A permit challenge, on the other hand, is a means to ensure state action that is fundamentally fair. A damages claim cannot address whether the state is fairly assessing, for example, safety hazards and risks to water sources prior to the final permitting decision.

## V. CONCLUSION

A well work permit, if not carefully and properly regulated and overseen, jeopardizes or allows for an infringement on the property rights of a surface owner such as Respondent in this case. Accordingly, pursuant to the United States Constitution and the West Virginia Constitution, the Supreme Court should uphold the result of the opinion in the *Lovejoy* case and find that the Doddridge County Circuit Court was correct in allowing Matthew L. Hamblet's environmental protests against the issuance of a well work permit to be heard in evidentiary hearing.

Notice of permit application, the right to submit hand-written comments to the Office of Oil and Gas, and statutory rights to compensation years later simply do not constitute protection of Respondent's due process rights. The Court in *Lovejoy* clearly acknowledged a right of surface owners to appeal the issuance of a well permit under judicial review. The result of *Lovejoy* is correct and should be upheld.

Respectfully Submitted,

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**Docket No. 11-1157**

**MATTHEW L. HAMBLET,**

**Petitioner Below/Respondent.**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3rd day of January, 2012, true and accurate copies of the foregoing *RESPONDENT MATTHEW L. HAMBLET'S RESPONSE TO AMICI CURIAE* were deposited in the U.S. Mail contained in postage-paid envelope addressed to counsel for all parties to this appeal as follows:

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