

No. 11-1690 – *State of West Virginia ex rel. The Affiliated Construction Trades Foundation, A Division of the West Virginia State Building and Construction Trades Council, AFL-CIO v. The Honorable James C. Stucky, Judge of the Circuit Court of Kanawha County; West Virginia Department of Transportation, Division of Highways; West Virginia Board of Education; Mingo County Redevelopment Authority; and Nicewonder Contracting, Inc.*

**FILED**

**July 19, 2012**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

Benjamin, J., concurring, in part, and dissenting, in part:

I concur with the majority opinion to the extent that it grants the writ of prohibition on the standing issue. The circuit court failed to give effect to the mandate of this Court in *Affiliated Construction Trades Foundation v. West Virginia Department of Transportation*, 227 W. Va. 653, 713 S.E.2d 809 (2011) (“*ACT I*”).

I dissent, in part, for the same reason that I dissented in *ACT I*. I do not believe that the doctrine of representative standing is a sound and legally justified doctrine. Nevertheless, *ACT I* is the controlling law in the instant case and the circuit court was legally bound to follow it on remand. The circuit court’s failure to do so constitutes substantial, clear cut legal error. Therefore, though I continue to disapprove of the doctrine of representative standing, *ACT I* is precedential unless and until it is overruled.