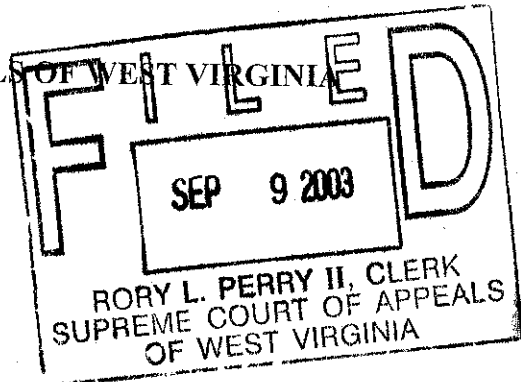


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



State of West Virginia, ex rel.  
its cities of Charleston and  
Huntington and its counties  
of Ohio and Kanawha, West Virginia

Petitioners,

Docket Number 03-1847

v.

West Virginia Economic  
Development Authority,  
a public corporation,

Respondent,

**Motion of the Affiliated Construction Trades Foundation, a division of the West Virginia State Building and Construction Trades ACT, AFL-CIO to Intervene or in the Alternative For Leave of This Court to File a Brief as Amicus Curiae**

The Affiliated Construction Trades Foundation a division of the West Virginia State Building and Construction Trades ACT, AFL-CIO, (ACT) by and through its counsel, pursuant to Rules 19 and 22 of the West Virginia Rules of Appellate Procedure, respectfully files this *Motion of the Affiliated Construction Trades Foundation a division of the West Virginia State Building and Construction Trades ACT, AFL-CIO to Intervene or in the Alternative For Leave of This Court to File a Brief as an Amicus Curiae*, and in support thereof states as follows:

1. ACT is a labor organization that represents thousands of construction workers who are citizens of West Virginia, many of whom are seeking employment at the various construction projects at issue in this matter.
2. On or about August 25, 2003 the Petitioners filed a *Motion for Expedited Consideration Due to Exigent Circumstances*, and a *Petition of the State of West*

*Virginia, ex, rel., its Cities of Charleston and Huntington and its Counties of Ohio and Kanawha, West Virginia for Relief by Writ of Mandamus from the August 21, 2003 Refusal by the West Virginia Economic Development Authority to Honor its Non-Discretionary Duty to Issue Revenue Bonds Pursuant to Executive Order 19-03.*

3. Rule 22 of the West Virginia Rules of Appellate Procedure provides, in relevant part, that "anyone shall be permitted to intervene in an original jurisdiction proceeding before this Court....only when... (2) the representation of the applicant's interest by the existing parties is or may be inadequate and the applicant is or may be bound by judgment in this action. Intervention may be permitted in other cases in the discretion of the Supreme Court."
4. Rule 19 of the West Virginia Rules of Appellate Procedure provides, in relevant part, that a "brief of an amicus curiae may be filed by leave of the Court granted on motion" and shall "identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable."
5. In their *Petition* the public entities present to this Court the issues of whether three Acts of the Legislature are Constitutional on their face. (the Racetrack Video Lottery Act, W. Va. Code section 29-22A-1 *et seq*; the Limited Video Lottery Act, W. Va. Code section 29-22B-1, *et seq*.; and the State Excess Revenue Fund, W. Va. Code section 29-22-18a(d)). In this regard they request relief in a ruling that the Acts at issue are constitutional and that this Court issue a Writ of Mandamus ordering the Respondent to issue the revenue bonds "as directed by the Governor forthwith."
6. In *Petitioners' Motion for Expedited Consideration Due to Exigent Circumstances*, the public entities request this Court to enter an expedited Scheduling

Order because unless the funding for the certified projects is provided prior to December 3, 2003 the Petitioners "will lose the economic benefit(s) of the projects and suffer irreparable harm."

7. As this Court is aware, the Acts at issue form the funding basis for the projects certified by the West Virginia Economic Development Grant Committee on August 20, 2003. Based on information and belief, without such funding it is unlikely that the forty-nine certified economic projects will be undertaken in that the bonds at issue will not be marketable.

8.. This Court has recognized the importance of certainty in the investment community regarding the marketing of bonds for public authorities, (see *Alsop v. McCartney*, 159 W.Va. 829, 834 - 35, 228 S.E.2d 278, 281 (1976), *State ex rel. City of Charleston v. Coghill*, 156 W.Va. 877, 207 S.E.2d 113 (1973)).

9. Based on information and belief, ACT and its members have a direct interest in the outcome of both the *Petition* and the *Motion* in that thousands of its members have worked on construction of projects similar to the projects certified by the Grant Committee and will lose the opportunity for employment should the Acts in question be declared unconstitutional. ACT and its members will then be bound by the outcome of these matters.

10. Based on information and belief, the interests of ACT and its members while similar to the Petitioners - both are interested in the economic development - the interests of ACT are broader than those represented by the Petitioners in that ACT has an interest in all of the certified projects. In addition ACT can bring a perspective to these matters that may not be adequately represented by the Petitioners - the interest of the working

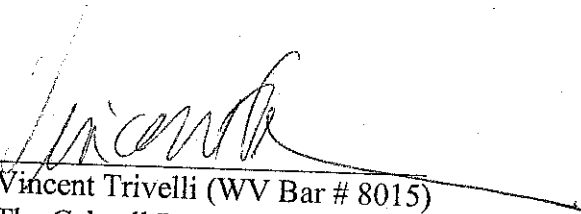
men and women of this State who are seeking employment and who risk being denied employment at certified projects.

Therefore, ACT respectfully urges this Court to issue a "Rule to Show Cause" in this matter and to Grant the *Petitioners' Motion for Expedited Consideration*. ACT further urges this Court to use its discretion to *Grant ACT's Motion to Intervene* pursuant to Rule 22 of the West Virginia Rules of Appellate Procedure. In the alternative to Granting ACT's *Motion to Intervene*, ACT urges this Court to Grant its *Motion For Leave of this Court File a Brief as an Amicus Curiae*.

Respectfully submitted this 9<sup>h</sup> day of September, 2003.

The Affiliated Construction Trades Foundation, a  
division of the West Virginia State Building and  
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