

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,

v.

West Virginia Economic Development  
Authority, a public corporation,  
Respondent,

AND

State of West Virginia ex rel. Rev. Jim  
Lewis and John Cooney, Petitioners,

v.

West Virginia Economic Development  
Grant Committee, et al., Respondents,

AND

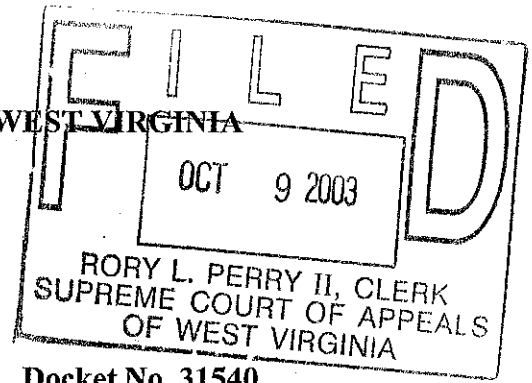
Greenbrier County Coalition Against  
Gambling Expansion and Cabell County  
Coalition Against Gambling Expansion,  
unincorporated associations, Petitioners,

v.

West Virginia Lottery Commission, et al.,  
Respondents,

and

West Virginia Racing Association, Intervenor.



Docket No. 31540

Docket No. 31541

Docket No. 31564

**RESPONSE OF THE  
WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY  
TO MOTION FOR DISMISSAL BY PETITIONERS**

In response to the Motion for Dismissal by Petitioners Reverend Jim Lewis and John Cooney and the Greenbrier and Cabell County Coalitions Against Gambling Expansion, Respondent West Virginia Economic Development Authority (“WVEDA”) moves the Court to deny this Motion for the following grounds:

1. As originally filed, the Petition for Mandamus in Docket No. 31540 cast the West Virginia Economic Development Authority in the role of “Devil’s advocate” to satisfy the adversarial necessities required by this Court’s decision in *State ex rel. Alsop v. McCartney*, 159 W. Va. 829, 228 S.E.2d 278 (1976).

2. By Order of this Court dated September 23, 2003, Docket No. 31540 was consolidated with Docket No. 31564 in which the Greenbrier and Cabell County Coalitions Against Gambling Expansion (collectively, the “Coalitions”) contested the constitutionality of the Racetrack Video Lottery Act and the Limited Video Lottery Act.

3. As the natural adversaries of the economic grant revenue bonds, the Coalitions provide the zealous advocacy necessary for a true case or controversy about the constitutionality of these statutes in the consolidated Petitions for Mandamus.

4. The dismissal of Docket No. 31540 would unfairly deny Petitioners Cities of Charleston and Huntington and the Counties of Ohio and Kanawha, West Virginia, and Respondent WVEDA the opportunity to address the constitutionality of the Racetrack Video Lottery Act and the Limited Video Lottery Act which directly affect their ongoing interests.

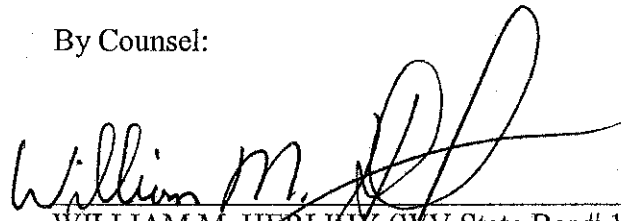
WHEREFORE, Respondent WVEDA respectfully requests this Court to deny the Motion for Dismissal by Petitioners.

Respectfully submitted,

**WEST VIRGINIA ECONOMIC  
DEVELOPMENT AUTHORITY,**

Respondent,

By Counsel:



WILLIAM M. HERLIHY (WV State Bar # 1688)  
SPECIAL ASSISTANT ATTORNEY GENERAL  
PAULA L. DURST (WV State Bar # 5805)  
MICHAEL B. STUART (WV State Bar # 9268)  
SPILMAN THOMAS & BATTLE, PLLC  
300 Kanawha Boulevard, East (Zip 25301)  
P.O. Box 273  
Charleston, WV 25321-0273  
(304) 340-3800

278607

**CERTIFICATE OF SERVICE**

I, WILLIAM M. HERLIHY, do hereby certify that I have served a true copy of the foregoing "Response of the West Virginia Economic Development Authority to Motion for Dismissal by Petitioners" upon all counsel of record in these consolidated cases by facsimile transmission and by depositing the same in the United States mail, with first-class postage prepaid, on this 9<sup>th</sup> day of October, 2003, addressed as follows:

Larry Harless, Esq.  
Route #2, Box 186C  
Cottageville, WV 25239  
Fax No. 304-372-7935

Stephen B. Farmer, Esq.  
Farmer, Cline & Arnold, PLLC  
P. O. Box 3842  
Charleston, WV 25338  
Fax No. 304-346-5980

Thomas R. Goodwin, Esq.  
Johnny M. Knisely, Esq.  
Goodwin & Goodwin, LLP  
P. O. Box 2107  
Charleston, WV 25328-2107  
Fax No. 304-344-9692

Rudolph L. DiTrapano, Esq.  
Sean P. McGinley, Esq.  
DiTrapano, Barrett & DiPiero, PLLC  
604 Virginia Street, East  
Charleston, WV 25301  
Fax No. 304-342-4605

Katherine A. Schultz  
Senior Deputy Attorney General  
Office of the Attorney General  
State Capitol, Room W-435  
Charleston, WV 25305  
Fax No. 304-558-2525

Thomas A. Heywood, Esq.  
Bowles, Rice, McDavid, Graff & Love  
P. O. Box 1386  
Charleston, WV 25325-1386  
Fax No. 304-347-1196

Roger D. Hunter, Esq.  
Neely & Hunter  
310 Summers Square  
159 Summers Street  
Charleston, WV 25301-2134  
Fax No. 304-343-6528

Thomas P. Maroney, Esq.  
608 Virginia Street, East  
Charleston, WV 25301  
Fax No. 304-346-3325

Wendel B. Turner, Esq.  
Louis S. Southworth, II, Esq.  
Jackson & Kelly  
P. O. Box 553  
Charleston, WV 25332  
Fax No. 304-340-1130

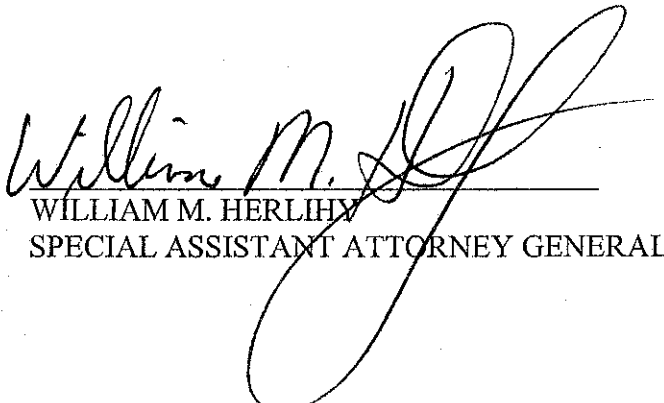
Richard E. Boyle, Jr., Esq.  
Kay, Casto & Chaney  
P. O. Box 2031  
Charleston, WV 25327  
Fax No. 304-345-8909

Stuart Calwell, Esq.  
Law Offices of Stuart Calwell  
P. O. Box 113  
Charleston, WV 25321-0113  
Fax No. 304-344-3684

Michael E. Caryl, Esq.  
Bowles, Rice, McDavid Graff & Love  
Post Office Drawer 1419  
Martinsburg, WV 25402-1419  
Fax No. 304-267-3822

Nancy E. Turdel, Esq.  
WV High Technology  
Consortium Foundation  
1000 Technology Drive, Suite 1000  
Fairmont, WV 26554  
Fax No. 304-366-2699

Vincent Trivelli, Esq.  
Law Office of Stuart Calwell  
178 Chancery Row  
Morgantown, WV 26505  
Fax No. 304-291-2240



WILLIAM M. HERLIHY  
SPECIAL ASSISTANT ATTORNEY GENERAL