

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

State of West Virginia ex rel. Cities of
Charleston and Huntington and its
Counties of Ohio and Kanawha, West
Virginia, Petitioners

vs.)

West Virginia Economic Development
Authority, a public corporation, Respondent

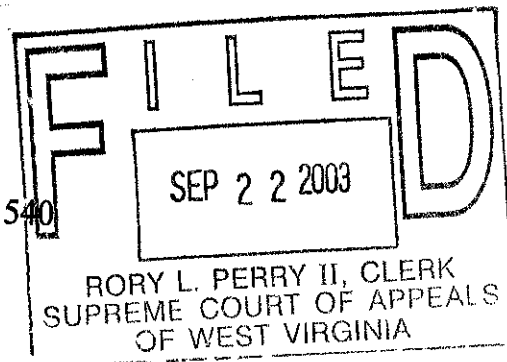
AND

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

vs.)

West Virginia Economic Development
Grant Committee; West Virginia Economic
Development Authority; City of Charleston;
Kanawha County Commission; City of
Huntington; and Ohio County Commission,
Respondents

No. 31540



No. 31541

**JOINT MOTION OF
THE WEST VIRGINIA BUSINESS ROUNDTABLE,
THE WEST VIRGINIA BUSINESS AND INDUSTRY COUNCIL, AND
THE WEST VIRGINIA HOSPITALITY AND TRAVEL ASSOCIATION, INC.
FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE**

The West Virginia Business Roundtable ("Roundtable") is a non-profit, non-stock trade association comprised of the State's leading business, education and economic development Chief Executive Officers. It presently has 94 members who are listed on Exhibit A hereto. The total employment of the member's businesses constituting the

Roundtable exceeds 95,000. It is dedicated to advocating public policies that improve the State's economy. It is actively engaged with the State's policymakers, economic development officials, and business and labor organizations to improve the State's economic competitiveness.

The West Virginia Business and Industry Council ("BIC") is a non-profit voluntary organization of business and industry trade associations, local chambers of commerce, and associated member companies which collectively embraces a majority segment of business and industry in West Virginia. BIC's membership list is attached as Exhibit B. The total employment represented by its members and the members of their respective associations exceeds 100,000. BIC advocates economic development programs to enhance the investment and job creation climate in the state.

The West Virginia Hospitality and Travel Association, Inc. ("WVHTA") is a non-profit, non-stock trade association comprised of West Virginia businesses involved in the tourism and hospitality industry. The WVHTA was created through the consolidation of the West Virginia Hotel & Motel Association, West Virginia Restaurant Association, West Virginia Travel Industry Association and West Virginia Convention & Visitor's Bureau Association. The WVHTA has evolved into the "voice" for the West Virginia businesses & organizations involved in the hospitality and travel industry. The total employment in the West Virginia tourism industry exceeds 100,000.

The three movants in this pleading will hereafter be referred to jointly as "the Business and Tourism Groups".

The Business and Tourism Groups will be directly and substantially impacted by the outcome of the two consolidated petitions for writ of mandamus now pending before this Court. The Business and Tourism Groups are directly concerned with the impact on state and local government services should video lottery not continue to be a viable West Virginia Lottery Commission product.

The budget for fiscal year 2003 includes 443 million dollars from lottery programs. Of this amount, 33 million dollars comes from the traditional lottery games and approximately 410 million dollars comes from video lottery. For fiscal year 2003, video lottery is providing: almost 19 million dollars for the state Division of Tourism; 8 million dollars for the Department of Natural Resources; 40 million dollars for the Department of Education for general purposes; 4 million dollars for the Education and Arts Department; 5.9 million dollars for Culture and History; 9.6 million dollars to the Library Commission, 4 million dollars to The Educational Broadcasting Authority; 55 million dollars to senior citizens programs; over 50 million dollars to the Higher Education Policy Commission for the state's Universities; 10 million dollars for Promise Scholarships; and 40 million dollars to the Infrastructure Council for water and sewer development. The School Building Authority will receive 38 million dollars from the lottery. A transfer of 65 million dollars to the general

revenue fund is used to fund teacher and state employee raises, and 55 million dollars was transferred into the general revenue fund for general purposes.

In addition, 10 million dollars generated annually from video lottery is used to retire the existing bonded indebtedness for the first round of economic development grant projects, and 19 million dollars is to be used to fund the current economic development grant projects. The Business and Tourism Groups strongly believe that the economic development grant projects are essential to stimulate the growth of the state's economy. Without these projects, the fate of our economy will be severely jeopardized.

It is also significant that the 400 million dollars budgeted from video lottery can not be made up from traditional tax sources. Our state income tax is virtually a flat tax without deductions and at a high rate. Our corporate net income tax is one of the highest in the country. Our franchise and severance taxes are high when compared with other states. Our 6% sales tax is also high relative to neighboring states. In short, there is no feasible replacement for video lottery revenues, and without video lottery, the funds required to support this fiscal year's governmental operations would simply not be available, with catastrophic results to the state's already weak economy.

Further, the travel and tourism industry is a significant and growing contributor to the economic well being of the citizens of this State. The travel and tourism industry is especially critical to the economy of West Virginia because it draws economic resources into West Virginia from outside the State of West Virginia.

WVHTA members represent many of the attractions, restaurants, hotels, suppliers, services providers and employers which contribute 4.86 billion dollars to West Virginia's economy annually. Total employment in the tourism industry is over 105,000 with individual member's employment ranging from small shops of two to four employees to resort destinations with over fifteen hundred employees. Without counting direct video lottery revenues, the tourism industry produces other tax revenues of over 187 million dollars annually.

Since its inception, the video lottery cooperative tourism grant program has directly supported the state's tourism industry by providing over 64 million dollars in tourism development grants which, when matched with funds from tourism partners, has resulted in a total of 129 million dollars in promotional expenditures. In fiscal 2003, this program resulted in over 42 million dollars in marketing and advertising spending which contributed to bringing over 22 million visitors to our state. These promotional activities have resulted in a continuous growth in visitors per year to West Virginia (1999 - 19.8 million visitors, 2000 - 21.2 million visitors and 2001 - 22 million visitors). Direct spending by tourists in West Virginia has reached 3.1 billion dollars annually, with a total economic impact of 4.86 billion dollars.

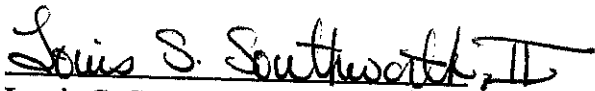
The Business and Tourism Groups may be seriously impacted by this Court's decisions in these consolidated cases. Accordingly, the Business and Tourism Groups pray

that this Court grant leave for the Business and Tourism Groups to file an amicus curiae brief in this matter.

Respectfully submitted,

THE WEST VIRGINIA HOSPITALITY
AND TRAVEL ASSOCIATION, INC.;
THE WEST VIRGINIA BUSINESS
ROUNDTABLE; AND THE WEST
VIRGINIA BUSINESS AND INDUSTRY
COUNCIL;

By Counsel



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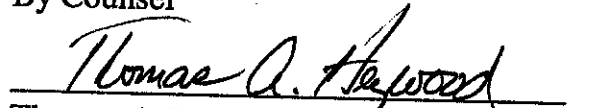

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EXHIBIT A TO MOTION

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The State Journal

Dr. Dan Angel
President
Marshall University

Paul E. Arbogast
Senior Advisor
Ernst & Young LLP

Edson R. Arneault
President and CEO
Mountaineer Race Track & Gaming Resort

Linda B. Arnold
Chairman & CEO
The Arnold Agency

Phyllis Arnold
President and COO
BB&T - West Virginia

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MAMSI Health Plans

Kenneth H. Berberich
Area President
The Huntington National Bank

Dr. Dan Bradley
President
Fairmont State College

William T. Bright
Chairman and CEO
Bright Enterprises

Dr. Neil S. Bucklew
WVU College of Bus. & Econ.

Gat Caperton
President and CEO
Tom Seely Furniture

The Hon. Gaston Caperton
President
Caperton Group

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West Virginia State College

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President and CEO
Camden-Clark Memorial Hospital

T. Randolph Cox, Jr.
Spilman, Thomas & Battle, PLLC

Mark E. Dempsey
President
American Electric Power WV

Stephen P. Dexter
President and CEO
Thomas Memorial Hospital

Steve Doty
President
Peerless Block & Brick Company

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President and CEO
WVHTC Foundation

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City Holding Company

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Bombardier/WV Aerospace

Troy Jonas J. Thomas Jones
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WV United Health System

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The Ohio Valley Bank

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Chief Executive Officer
Saint Francis Hospital

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President and CEO
Centra Bank

Nancy Pat H. Lewis-Smith
President
Lewis Automotive Group

Ed H. Maier
President
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Brent A. Marsteller
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Brooks F. McCabe
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McCabe-Henley-Durbin LP

Jon W. McKinney
Plant Manager
Flexsys

Albert A. Michaels
Executive Director
Partners in Health Network, Inc.

Mike Morris
Community President - North District
The Huntington National Bank

J. Holmes Morrison
Chairman and CEO
BB&T - West Virginia

Danny L. O'Dell
Senior Vice President
CDI Engineering Group, Inc.

Robert C. Orndorff
Manager, Government Affairs
Hope Gas, Inc.

Raymond P. Park
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Eugene Pawlowski
President
Bluefield Regional Medical Center

A. Michael Perry
Retired Chairman
Bank One West Virginia, N.A.

Parry G. Petroplus
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Platinum Properties LLC

Mark S. Prince
Region President - West Virginia
Bank One, West Virginia, N.A.

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Chairman, CEO and President
Mylan Laboratories, Inc.

David Ramsey
President and CEO
Charleston Area Medical Center Health System,

Marshall Reynolds
President
Chapman Printing Company

Lacy I. Rice, Jr.
Bowles Rice McDavid Graff & Love, PLLC

Edward L. Robinson, P.E.
President
E.L. Robinson Engineering Co.

Sam Ross
Chairman and CEO
SBR, Inc.

Charles E. Ryan
Chief Executive Officer
Charles Ryan Associates, Inc.

R. Robert Samples
President
RMS Research

Michael G. Sellards
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Saint Mary's Hospital

Richard J. Shearer
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U.S. Silica Company

Dr. Mark Simpson
Managing Partner
Westmoreland Dental Associates

Robert R. Simpson, Jr.
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Simpson & Osborne, A.C.

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William G. Williams, Jr.
President
Syscan Corporation

R. W. Wilkinson
President
Hugh I. Shott, Jr. Foundation

(Revised 8/20/03)

EXHIBIT B TO MOTION

WEST VIRGINIA BUSINESS & INDUSTRY COUNCIL 9/10/03

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Becky McClure


CERTIFICATE OF SERVICE

I, Wendel B. Turner, as counsel, hereby certify that I served the foregoing JOINT MOTION OF THE WEST VIRGINIA BUSINESS ROUNDTABLE, THE WEST VIRGINIA BUSINESS AND INDUSTRY COUNCIL, AND THE WEST VIRGINIA HOSPITALITY AND TRAVEL ASSOCIATION, INC., FOR LEAVE TO PARTICIPATE AS AMICUS CURIAE upon the following Respondents by mailing a true copy thereof to them by United States Mail, First Class, postage prepaid, on this the 22nd day of September, 2003, addressed as follows:

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Darrell McGraw, Jr.
West Virginia Attorney General
State Capitol, Room E-26
Charleston, WV 25305


Wendel B. Turner