

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 31540

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

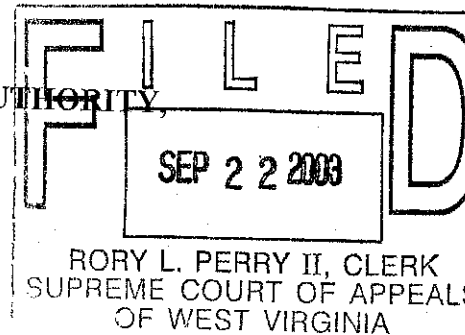
AND

No. 31541

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



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**MOTION OF THE WEST VIRGINIA  
AMUSEMENT AND LIMITED VIDEO LOTTERY OPERATORS ASSOCIATION, INC.  
FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE**

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The West Virginia Amusement and Limited Video Lottery Operators Association, Inc., (WVALVOA) by and through its counsel, Richard E. Boyle, Jr., pursuant to Rule 19 of the West Virginia Rules of Appellate Procedure, respectfully moves this Court for leave to file a brief as *Amicus Curiae* in the above captioned matter and in support thereof states as follows:

1. WVALVOA is an incorporated association that represents a majority of persons licensed as "operators" under the Limited Video Lottery Act codified in Article 22B, Chapter 29 of the West Virginia Code.
2. On August 25, 2003, the Cities of Charleston and Huntington and the Counties of Ohio and Kanawha filed a petition with this Court against the West Virginia Economic Development Authority (WVEDA) asking that the Limited Video Lottery Act be declared unconstitutional, as well as the Racetrack Video Lottery Act codified in Article 22A, Chapter 29 of the West Virginia Code, and the State Excess Revenue Fund, codified in Section 18a(d), Article 22, Chapter 29 of the Code.
3. On September 9, 2003, attorney Larry Harless, on behalf of Reverend Jim Lewis and John Cooney, filed a petition for a writ of mandamus against the WVEDA and others maintaining, among other things, that the Limited Video Lottery Act is unconstitutional, as well as the Racetrack Video Lottery Act and the State Excess Revenue Fund.
4. On September 10, 2003, this Honorable Court issued an Order consolidating the petitions described in paragraphs 3 and 4 above, and further ordering any motions to intervene, participate as amicus curiae or otherwise appeal to the Court regarding the issues arising in the petitions be filed on or before September 22, 2003.
5. On September 12, 2003, the West Virginia Lottery Commission filed an Application to Intervene, and attached an affidavit from Virgil T. Helton, the Deputy Director for Finance and Administration of the State Lottery Office and its Chief Financial Officer, asserting among other things that operations under the Limited Video Lottery Act provide significant revenues for the State of West Virginia and various programs, and that both operators and retailers under the Act would be severely impacted if limited video lottery were declared unconstitutional.

6. In addition to specifying the millions of dollars in revenue to the State from limited video lottery, Mr. Helton asserted that there are currently 34 licensed operators under the Limited Video Lottery Act, employing 238 people who would become unemployed if the Act is declared unconstitutional. Mr. Helton also asserted that there are currently 1,314 licensed retailers under the Act, employing 5,018 people, of which it is estimated that 70 percent, or more than 3,500 people, who would become unemployed if the Act is declared unconstitutional. Standing alone, these figures do not include the economic multiplier effect of each job lost on other jobs in the State or on its revenues, nor do they explicate the vast human misery that would ensue if the Act is declared unconstitutional.

7. On September 16, 2003, attorney Larry Harless filed yet another petition for a writ of mandamus with this Court, this time on behalf of the Greenbrier and Cabell County Coalitions Against Gambling Expansion, naming the West Virginia Lottery Commission as respondent, essentially to have the Limited Video Lottery Act declared unconstitutional, as well as the Racetrack Video Lottery Act.

8. More than a month earlier, Mr. Harless had filed a motion in Kanawha County Circuit Court stating that he intended to challenge the constitutionality of the Limited Video Lottery Act, as well as the Racetrack Video Lottery Act.

9. Following the filing of the above motion in Kanawha County Circuit Court and prior to the filing in this Court by the cities of Charleston and Huntington and the counties of Ohio and Kanawha to have the Limited Video Lottery Act and the Racetrack Video Lottery Act declared unconstitutional, Mr. Harless reportedly stated publicly that he intended to bring suit challenging only the Limited Video Lottery Act and would name only the manufacturers and the 34 operators licensed under that Act.

10. Mr. Harless' petitions to have the Limited Video Lottery Act declared unconstitutional strike at the very survival of operators represented by the WVALVOA.

11. Limited video lottery is regulated, controlled, owned and operated by the State of West Virginia in compliance with the provisions of Article VI, Section 36 of the West Virginia Constitution. Indeed, limited video lottery is by far the most tightly regulated and controlled form of lottery owned and operated by the State. Among other things, the Limited Video Lottery Act: (1) places a statutory limit of 9000 on the total number of terminals statewide; (2) requires all operators and retailers to be residents of the State; (3) restricts location of limited video lottery to adult settings, and prohibits minors from even seeing the terminals, and (4) prohibits any advertising or promotional activity.

12. Under the Limited Video Lottery Act, a retailer may either obtain its own terminals or enter into a relationship with an operator, which provides the terminals and divides a portion of the revenue not retained by the State with said retailer. In the great majority of instances, retailers have engaged in such relationships with operators rather than obtaining the terminals on their own, and therefore the well-being of most retailers is directly tied to that of the operators, as represented by the WVALVOA in the instant motion.

13. Rule 19 of the West Virginia Rules of Appellate Procedure provides in 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 state the reasons why a brief of an amicus curiae is desirable.

14. The interest of the WVALVOA and its members in these consolidated matters is profound and immediate. Determination of the constitutionality of the Limited Video Lottery Act is essential to the continued existence of the members of the WVALVOA, their employees, as well as the retailers and the retailers' employees with whom they are associated.

15. As a result of enactment of the Limited Video Lottery Act, operators have borrowed and expended many millions of dollars to participate in the State owned and operated system, and their affiliated retailers have done likewise.

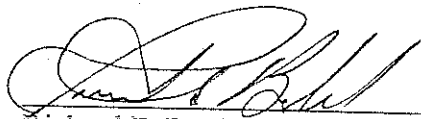
16. Although the interests represented by the Cities of Charleston and Huntington and the Counties of Ohio and Kanawha, as well as those of the West Virginia Lottery Commission – assuming that its Application to Intervene is accepted by this Court – are not inconsistent with those of the operators under the Limited Video Lottery Act, a brief by the WVAVLOA is desirable in order to set forth the specific perspective of the operators, without whose participation the Act could not function. The many benefits of the Act – including the significant revenues to the State and localities, the social programs that are underwritten, and the thousands of jobs provided -- would not exist but for the work and financial commitment of the operators represented in this motion by the WVAVLOA.

Therefore, the WVAVOLA respectfully urges this Court to Grant its *Motion for Leave to File a Brief as Amicus Curiae*.

Respectfully submitted this 22<sup>nd</sup> day of September, 2003.

The West Virginia Amusement and Video Lottery Operators  
Association, Inc.

By Counsel



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CERTIFICATE OF SERVICE


I, Richard E. Boyle, Jr., Esq., do hereby certify that on the 22<sup>nd</sup> day of September, 2003, I served the foregoing "Motion for Leave to File Brief as Amicus Curiae on behalf of the West Virginia Amusement and Limited Video Lottery Operators Association, Inc." upon all counsel of record by depositing a true copy thereof in the United States mail, postage prepaid, addressed as follows:

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