

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

AT CHARLESTON

NOS. 31540 and 31541

**STATE OF WEST VIRGINIA, *ex rel.*
REV. JIM LEWIS AND JOHN COONEY,**

Petitioners,

v.

**WEST VIRGINIA ECONOMIC
DEVELOPMENT GRANT AUTHORITY,
a public corporation,**

Respondent.

And

**STATE OF WEST VIRGINIA, *ex rel.*
SER ITS CITIES OF CHARLESTON AND
HUNTINGTON AND ITS COUNTIES OF
OHIO AND KANAWHA, WV**

Petitioners,

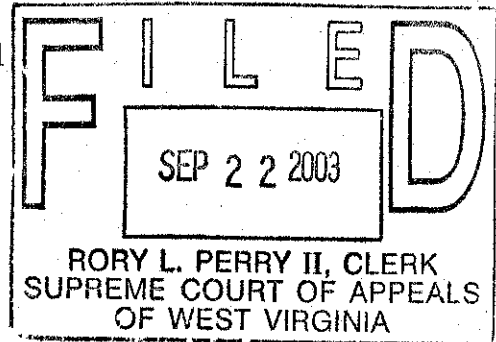
v.

**WEST VIRGINIA ECONOMIC DEVELOPMENT
AUTHORITY, a public corporation,**

Respondent,

WEST VIRGINIA RACING ASSOCIATION,

Applicant.



**WEST VIRGINIA RACING ASSOCIATION'S
APPLICATION TO INTERVENE**

The applicant, West Virginia Racing Association, pursuant to Rule 22 of the *West Virginia Rules of Appellate Procedure*, hereby applies to intervene in the above-styled action. In support of its application, Applicant states as follows:

1. The West Virginia Racing Association comprises four pari-mutuel racing facilities, each of which is licensed by both the West Virginia Racing Commission, pursuant to *W. Va. Code* §§ 19-23-1 to 19-23-30, and the West Virginia Lottery Commission, pursuant to *W. Va. Code* §§ 29-22A-1 to 29-22A-19. The four members of the West Virginia Racing Association are Mountaineer Park, whose racetrack is located near Chester, West Virginia; PNGI Charles Town Gaming, LLC, whose racetrack is located in Charles Town, West Virginia; Wheeling Island Gaming, LLC, whose racetrack is located in Wheeling, West Virginia; and Racing Corp. of West Virginia, whose racetrack is located in Cross Lanes, West Virginia. These four members are pari-mutuel racing facilities, as that term is defined in the Racetrack Video Lottery Act (the "Act"), *W. Va. Code* § 29-22A-3(t), and provide, among other things, video-lottery entertainment to out-of-state tourists and West Virginians, as provided by the Act.
2. There are three presenting Petitions for Writ of Mandamus pending before this Honorable Court, styled as follows:
 1. State of West Virginia ex rel. Its Cities of Charleston and Huntington and Its Counties of Ohio and Kanawha, West Virginia v. West Virginia Economic

Development Authority, No. 31541 (W. Va. filed Aug. 25, 2003);

2. State of West Virginia ex rel. Rev. Jim Lewis and John Cooney v. West Virginia Economic Development Grant Committee, et al., No. 31541 (W. Va. filed Sept. 9, 2003); and
3. Greenbrier County Coalition Against Gambling Expansion and Cabell County Coalition Against Gambling Expansion v. West Virginia Lottery Commission and Its Director, John Musgrave, No. 32055 (W. Va. filed Sept. 16, 2003).

3. Although neither the Applicant nor any of its members was named as a petitioner or respondent in any of the aforementioned petitions for writ of mandamus, Applicant submits it should be permitted to intervene pursuant to Rule 22 of the *West Virginia Rules of Appellate Procedure*, which provides as follows:

Upon timely application, anyone shall be permitted to intervene in an original jurisdiction proceeding pending in this Court or in a case pending before this Court on a direct appeal from an administrative agency, but only when (1) a statute of this State confers an unconditional right to intervene; or when (2) the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by judgment in the action. Intervention may be permitted in other cases in the discretion of the Supreme Court.

W. Va. R. App. 22.

4. In 1994, the West Virginia Legislature enacted the Racetrack Video Lottery Act, *W. Va. Code* §§ 29-22A-1 to 29-22A-19, to permit these pari-mutuel racing facilities to offer video lottery at their racetracks.
5. In its Legislative findings and declarations, *W. Va. Code* § 29-22A-2, the West Virginia Legislature pronounced that these pari-mutuel racing facilities

provide a valuable tourism resource for this state and provide significant economic benefits to the citizens of this state through the provision of jobs and the generation of state revenues; that this valuable tourism resource is threatened because of a general decline in the racing industry and because

of increasing competition from racing facilities and lottery products offered by neighboring states; and that the survival of West Virginia's pari-mutuel racing industry is in jeopardy unless modern lottery games are authorized at the racetracks.

W.Va. Code § 29-22A-2(e).

6. Because of the value of these pari-mutuel racing facilities to the State of West Virginia and its citizens, the West Virginia Legislature enacted the Racetrack Video Lottery Act for the benefit and protection of these facilities, and the West Virginia Racing Association members therefore assert a statutory right to intervene because these petitions address the constitutionality of the Racetrack Video Lottery Act, which, if ruled unconstitutional, would abrogate the protection and benefits granted to these pari-mutuel facilities by the Act. *W.Va.R.App. 22(1)*.
7. Alternatively, the West Virginia Racing Association members assert a right to intervene under subsection (2) of Rule 22 of the *West Virginia Rules of Appellate Procedure*. None of the parties named in these actions have as direct an interest in the Racetrack Video Lottery Act as the members of the West Virginia Racing Association have. West Virginia racetrack video lottery games owned and operated by the State of West Virginia have played an essential role in the sustained growth of the racing industry since the inception of the Act in 1994. As recognized by the West Virginia Legislature, and as shown in Applicant's chart below, West Virginia's pari-mutuel racing industry is a valuable resource of and benefit to the State of West Virginia and its citizens:

Vendor	Direct Employment as of 7/1/2003	Indirect Employment Associated with Racetracks	Capital Investments in Physical Plant Facilities Since 7/1/1994	Current Annual Tax Revenue to State Governments (ending 6/30/03)	Current Annual Tax Revenue to Local Governments (ending 6/30/03)
Mountaineer Park, Inc.	1,713	3,640	\$193 million	\$82 million	\$4.8 million
Charles Town Races	1,178	900	\$175 million	\$100 million	\$4.7 million
Wheeling Island Gaming	1,044	100	\$170 million	\$48 million	\$2.9 million
Racing Corp.	692	100	\$65 million	\$21 million	\$1.2 million
Total	4,627	4,740	\$603 million	\$251 million	\$13.6 million

As the chart indicates, Applicant, its members, and the West Virginia citizens directly and indirectly employed by the pari-mutuel racing facilities, have a real and substantial economic interest in the issues before this Court. Thus, the West Virginia Racing Association's direct interest in the continued viability of racetrack video lottery cannot be questioned. A challenge to the legality of the industry puts that valuable resource in jeopardy, and a ruling that the Act is unconstitutional, in contravention of the Legislature's specific finding, would almost certainly sound the death knell for these racing facilities, which in turn would spell the elimination of jobs for most, if not all, of their 4627 employees, at least 90% of whom are citizens of West Virginia.

8. In the alternative, should the Court determine Applicant is not entitled to intervene as of right, Applicant respectfully requests it be permitted to intervene in the discretion of this

Court. *W.Va.R.App P. 22.*

For the foregoing reasons, Applicant respectfully requests this honorable Court grant its application to intervene in the above-styled actions.

Respectfully submitted,
**THE WEST VIRGINIA RACING
ASSOCIATION**
By counsel,

Rudy DiTrapano by son

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CERTIFICATE OF SERVICE

I, Sean P. McGinley, Esquire and the law firm of DiTrapano, Barrett & DiPiero, PLLC do hereby certify that I have served a true and exact copy of the foregoing **Application to Intervene** on this **22nd day of September, 2003**, via first class mail, postage prepaid and mailed to the following:

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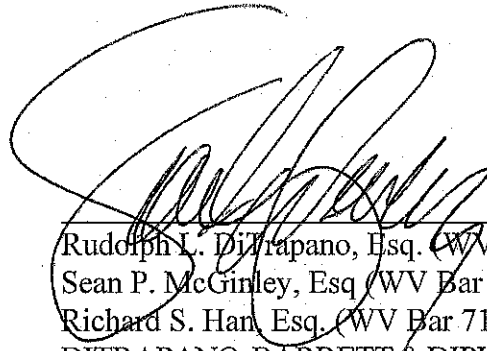
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