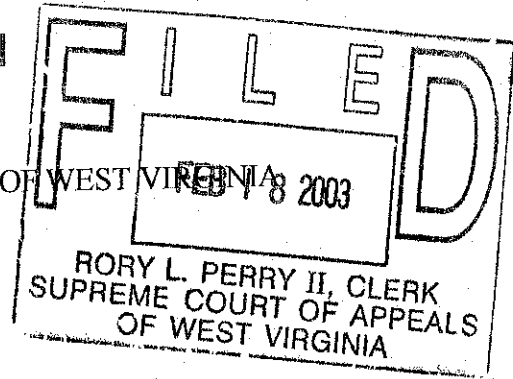


**BRIEF FILED
WITH MOTION**

No. _____

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



STATE OF WEST VIRGINIA *ex rel.*
WEST VIRGINIA CITIZEN ACTION
GROUP, an incorporated association
of State citizens and taxpayers,

Petitioner,

v.

WEST VIRGINIA ECONOMIC
DEVELOPMENT GRANT COMMITTEE;
CITY OF WHEELING (including
its Urban Renewal Authority),
a municipal corporation; and
WVOC ASSOCIATES, L.P., a private
partnership and corporation,

Respondents.

**MOTION TO FILE
AMICUS CURIAE BRIEF
AND STATEMENT OF INTEREST**

By counsel, the American Civil Liberties Union of West Virginia (ACLU of WV) moves this Court for permission to file the accompanying *amicus curiae* brief in support of petitioner's appeal on the issue of whether the device in West Virginia Code 29-22-18a(d)(3) that provides for the appointment of members of the West Virginia Economic Development Grants Committee to be made from lists submitted by the President of the State Senate and the Speaker of the House of Delegates. *Amicus* maintains that such an arrangement violates separation of powers principles in

the West Virginia Constitution.

In support of its motion, *amicus* states that it is a statewide organization whose members have joined together to help protect civil liberties in West Virginia and in the nation and to guard against excessive accumulations of governmental power. Further, *amicus* and its members believe strict adherence to separation of powers is critical to achieving those ends. "Liberty is always at stake when one or more of the branches seek to transgress the separation of powers. Separation of powers was designed to implement a fundamental insight: concentration of power in the hands of a single branch is a threat to liberty." *Clinton v. New York*, 524 U.S. 417, 450 (1998) (Kennedy, J., concurring).

The ACLU of WV believes that a legislative intrusion into the appointment of members of executive committees violates the salient principles of separation of powers and that, in particular, permitting legislators to control a majority of the membership on a Committee assigned to distribute over \$200 million in public funds would set a dangerous and unwise precedent.

For the foregoing reasons, ACLU of WV seeks permission to file its brief.

Robert M. Bastress
Robert M. Bastress (ID # 263)
P.O. Box 1295
Morgantown, W. Va. 26507-1295
(304) 293-5308

Counsel for *Amicus Curiae*
American Civil Liberties Union
of West Virginia

CERTIFICATE OF SERVICE

I have mailed a copy of the foregoing motion to file brief *amicus curiae* to petitioner's counsel, Larry Harless, and to respondent's counsel as follows: Katherine A. Schultz, Senior Deputy Attorney General, State Capitol, Bldg. 1, Room W435, Charleston, W.Va. 25305; Rosemary Humway Warmuth, City Bldg., Legal Dept., 1500 Chapline St., Wheeling, W.Va. 26003; Denise Klug, 1233 Main St., Suite 2001, Wheeling, W.Va. 26003; and Joanna I. Tabit, Steptoe & Johnson, P.O. Box 1588, Charleston, W.Va. 25326-1588, this 18th day of February, 2003.

Robert M. Pastress