NO. _____

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

FILED
SEP 16 2003
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

GREENBRIER COUNTY COALITION AGAINST GAMBLING EXPANSION; and CABELL COUNTY COALITION AGAINST GAMBLING EXPANSION, unincorporated associations,

PETITIONERS,

vs. **ORIGINAL JURISDICTION**

WEST VIRGINIA LOTTERY COMMISSION; and ITS DIRECTOR, JOHN MUSGRAVE,

RESPONDENTS.

MOTION FOR TAKING EVIDENCE

The petitioners hereby move for the taking of evidence prior to the submission of ths case upon the following grounds:

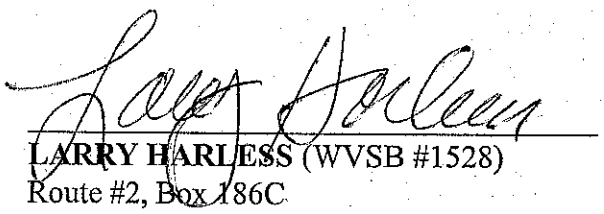
1. The issues of the respondents' compliance with the various requirements of the *W. Va. Code* §§ 29-22A-1, *et seq.*, and 29-22B-1, *et seq.*, and the *W. Va. Constitution* in this matter are largely factual in nature, and such evidence is essential to effect and protect petitioners' rights to due process of law.

2. By such cases as *Boner v. Kan. Co. Bd. of Ed.*, 475 S.E.2d 176 (W. Va. 1996), such evidence may expeditiously be taken under this Court's Rule 14, or by direct referral to a Circuit Judge. *WVCAG v. W. Va. Econ. Dev. Grant Comm.*, 580 S.E.2d 869 (W. Va. 2003).

3. The petitioners respectfully submit that the omission or restriction of such evidence in this matter would violate their rights to due process of law under the *W. Va. Const.*, Art. III, § 10, and the *U. S. Const.*, Amend. 14. *See, e.g.*, *SER Hoover v. Smith*, 482 S.E.2d 124 (W. Va. 1996), and *Hannah v. Larche*, 363 U.S. 420, 442 (1960).

Respectfully submitted,

GREENBRIER COUNTY COALITION AGAINST GAMBLING EXPANSION; and CABELL COUNTY COALITION AGAINST GAMBLING EXPANSION, unincorporated associations,



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CERTIFICATE OF SERVICE

I hereby certify that this Petition for Writ of Mandamus, accompanying Brief, and Motion For Taking Evidence was served by first-class mail on September 16, 2003, upon the following:

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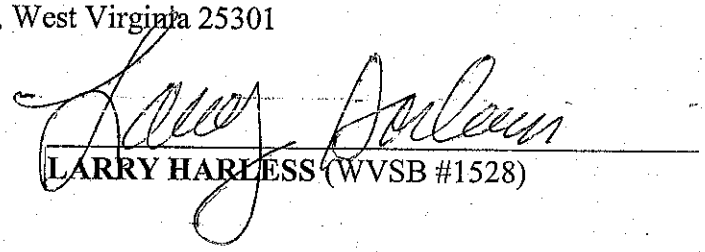

LARRY HARLESS (WVSB #1528)