

DOCKET NO. _____

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

Petitioners,

v.

WEST VIRGINIA ECONOMIC
DEVELOPMENT GRANT COMMITTEE,
et al.,

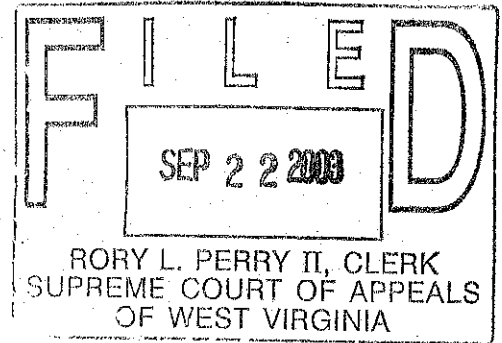
Respondents.

**RESPONSE OF RESPONDENTS CITY OF CHARLESTON, KANAWHA
COUNTY COMMISSION, CITY OF HUNTINGTON AND OHIO COUNTY
COMMISSION TO PETITIONERS' MOTION FOR TAKING EVIDENCE**

In response to Petitioners' Motion for Taking Evidence, these Respondents move that this Motion should be denied for the following grounds:

1. Discovery is unnecessary and will unduly delay these proceedings insofar as the pleadings, affidavits and exhibits submitted in this case do not raise a genuine issue of material fact which permit the taking of any discovery pursuant to Rule 14(e) of the Rules of Appellate Procedure.

2. In State of West Virginia ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee, 580 S.E.2d 869 (W.Va. 2003), this Court set forth the limited factual review which might be necessary as part of this challenge, which does not require any discovery:



We do note, however, that each of the projects, barring one, had a governmental partner, thereby underscoring the public purpose of such projects. In addition, we further perceive that the legislature's reposition of broad discretion in the committee for selecting the list of economic development projects deserving of public funding will meet with increased public acceptance and, therefore, a decreased incidents of challenge and consequent delays in implementing the projects, if the committee opts to make a full record of its proceedings and decisions for the purpose of evidencing that its actions are in accord with the public purpose objectives of the subject legislation and the enunciated legislative standards.

State ex rel. West Virginia Citizens Action Group at 893-94 (emphasis added).

3. The West Virginia Economic Development Grant Committee has made a full record of its proceedings and decisions in evaluating the projects, which record will be made available to this Court for its consideration as part of these Respondents' brief in response to the Petitioners' Petition for Writ of Mandamus.

4. No additional factual development is necessary to decide the legal issues presented by any of the matters consolidated by this Court.

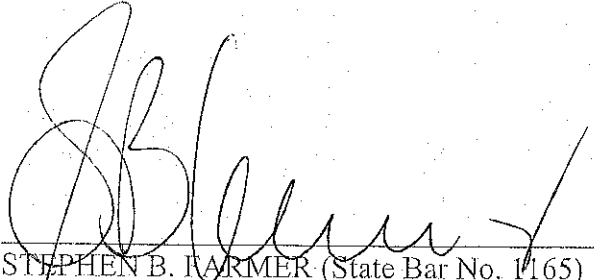
5. The permitting of discovery, as requested by Petitioners, would cause irreparable harm to these Respondents insofar as the attendant and inordinate delay in these proceedings will compromise the viability of the economic development projects at issue.

WHEREFORE, these Respondents, City of Charleston, Kanawha County Commission, City of Huntington and Ohio County Commission, move this Honorable Court for an Order denying Petitioners' Motion for Taking Evidence and proceeding with this matter in accordance with the Court's prior Order of September 10, 2003.

CITY OF CHARLESTON, KANAWHA
COUNTY COMMISSION, CITY OF
HUNTINGTON AND OHIO COUNTY
COMMISSION;

Respondents;

By Counsel:

A handwritten signature in black ink, appearing to read 'S. Farmer', written over a horizontal line.

STEPHEN B. FARMER (State Bar No. 1165)
FARMER, CLINE & ARNOLD, PLLC
Second Floor, 7 Players Club Drive
Post Office Box 3842
Charleston, West Virginia 25338
(304) 346-5990

CERTIFICATE OF SERVICE

I, Stephen B. Farmer, counsel for Respondents, City of Charleston, Kanawha County Commission, City of Huntington and Ohio County Commission, do hereby certify that I have this 22nd day of September, 2003, served the within **“RESPONSE OF RESPONDENTS CITY OF CHARLESTON, KANAWHA COUNTY COMMISSION, CITY OF HUNTINGTON AND OHIO COUNTY COMMISSION TO PETITIONERS’ MOTION FOR TAKING EVIDENCE”** upon counsel of record, by depositing same in the U.S. Mail, in envelope properly stamped and addressed as follows, to-wit:

Vincent Trivelli, Esq.
The Calwell Practice, PLLC
178 Chancery Row
Morgantown, WV 26505
Counsel for The Affiliated Construction Trades Foundation, a Division of West Virginia State Building and Construction Trades Council, AFL-CIO

Thomas P. Maroney, Esq.
608 Virginia Street, East
Charleston, WV 25301
General Counsel for the West Virginia Labor Federation, AFL-CIO

Silas B. Taylor
Senior Deputy Attorney General
State Capitol, Room 26E
Charleston, WV 25305
Counsel for West Virginia Economic Development Authority

Larry Harless, Esq.
Route 2, Box 186 C
Cottageville, WV 25239
Counsel for Greenbrier County Coalition Against Gambling Expansion; and Cabell County Coalition Against Gambling Expansion

Stuart Calwell, Esq.
The Calwell Practice, PLLC
405 Capitol Street, Suite 607
P. O. Box 113
Charleston, WV 25321
Counsel for The Affiliated Construction Trades Foundation, a Division of West Virginia State Building and Construction Trades Council, AFL-CIO

Thomas R. Goodwin, Esq.
Johnny M. Knisely II, Esq.
GOODWIN & GOODWIN LLP
300 Summers Street, Suite 1500
P. O. Box 2107
Charleston, WV 25328-2107
Counsel for The West Virginia Lottery Commission and John C. Musgrave

Barbara Allen, Senior Deputy Attorney General
Kathy Schultz, Assistant Attorney General
1900 Kanawha Boulevard East
Room 26E
Charleston, WV 25305
Counsel for West Virginia Economic Development Grant Committee


STEPHEN B. FARMER