

No. _____

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

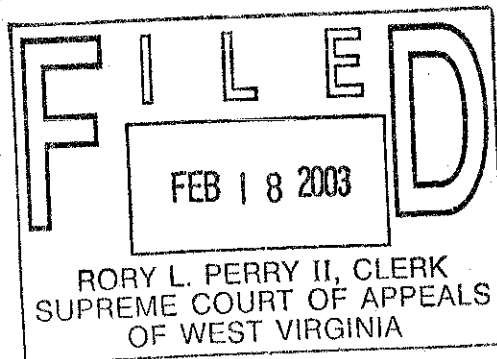
STATE OF WEST VIRGINIA EX REL.
WEST VIRGINIA CITIZEN ACTION GROUP,
an incorporated association of State citizens
and taxpayers,

Petitioner,

v.

WEST VIRGINIA ECONOMIC DEVELOPMENT
GRANT COMMITTEE; CITY OF WHEELING,
a municipal corporation; and
CENTURY EQUITIES - WHEELING
VICTORIAN OUTLET MALL, INC.
a private corporation,

Respondents.



MOTION TO FILE BRIEF AS *AMICUS CURIAE*

Now comes Marshall University Research Corporation; Our Jobs, Our Children, Our Future, Inc., d/b/a the Huntington Area Development Council; The Tri-State Transit Authority and Metropolitan Huntington, LLC; Advantage Valley Partners, LLC; Putnam County Development Authority; and, the Putnam County Commission (hereinafter collectively the "*Amici*") by counsel, pursuant to Rule 19, West Virginia Supreme Court Rules of Appellate Procedure, and requests leave to file a brief as *Amicus Curiae* in support of the Respondent, West Virginia Economic Development Grant Committee (hereinafter the "Grant Committee").¹ Your *Amici* are all either directly or indirectly recipients of funds from the Grant

¹ In accordance with Rule 19, the Putnam County Commission should be allowed as a matter of right to file a brief as *amicus*. It joins in this motion, however, as a co-applicant with the Putnam County Development Authority on a grant application at issue in this case.

Committee and therefor have an economic interest in this Court upholding the constitutionality of the enacting legislation challenged in this case. The *Amici* urge this Court to affirm the January 21, 2003, Order of the Circuit Court of Kanawha County by refusing to accept the Petition for Appeal filed herein. Should this Court accept the Petition for Appeal, your *Amici* respectfully urge this Court to approve the Grant Committee's motion to expedite the appeal in this matter, filed on February 7, 2003. In addition, should this Court accept the Petition for Appeal, your *Amici* seek leave to file a brief on the merits.

The Petitioners herein filed for a Writ of Prohibition and Mandamus challenging the formation and the practices of the Grant Committee under W. Va Code §29-22-18a. The Grant Committee considered and acted upon various applications to obtain grants authorized by the Legislature. On November 12, 2000, your *Amici's* grant applications were approved by the Grant Committee. The *Amici* have a vital interest in the timing and outcome of the Petition for Appeal that no party is able to adequately represent. Moreover, the *Amici* take great exception to the Petitioners' inaccurate and unsupported characterizations of these grants as "giveaways of public funds to private corporations" that will serve "no public purpose." The Petitioners baldly assert that these grants constitute almost all of the funds to be invested in these projects and that these projects will not create new employment or other tangible benefits. A brief summary of the identities of the *Amici* and their respective projects dramatically demonstrates the fallacy of the Petitioners' allegations.

The *Amicus*, **Marshall University Research Corporation**, submitted an application to build a biotechnology development center in part with grant proceeds. The biotechnology center will transform basic and applied science research into commercially viable products, processes and services. Forty-One other states have biotechnology centers based within research

universities, which have created the technology infrastructure necessary to attract private industry and jobs. Research in areas such as DNA manipulation and cell culture technology has spawned health care, agricultural and environmental businesses. For every public dollar spent on biotechnology centers, private enterprise has invested seven dollars. The Grant Committee has approved a grant in the amount of \$6,000,000 to help build the biotechnology center at Marshall University, which would be the first in West Virginia. This is only a small part of the overall \$80,000,000 pledged to this project through federal and private funds. The biotechnology center will create 110 sustainable, highly skilled and highly compensated jobs.

The *Amicus*, **Our Jobs, Our Children, Our Future, Inc., d/b/a Huntington Area Development Council** and SOGEFI, S.p.A., submitted an application to build a new plant in Wayne County for the manufacture of automobile parts and components. SOGEFI sells its products to Toyota and every other major automobile manufacturer. The Grant Committee has approved a grant of \$990,000. The grant supplements SOGEFI's approximately \$17,000,000 commitment to the plant. It is expected that this plant will create 148 new jobs, together with the construction jobs to build the plant. The new plant will promote West Virginia as a corridor for automobile manufacturing that will help assist future recruitment of automobile related industrial firms.

The *Amici*, **Tri-State Transit Authority and Metropolitan Huntington LLC**, submitted an application to build a major new urban redevelopment project called Pullman Square located in the heart of downtown Huntington. Metropolitan is a private company that specializes in development and redevelopment of mixed use real estate projects in urban markets. The principals have successfully completed several such projects, including a project along

Pittsburgh's waterfront that was formerly an abandoned steel mill and a project in Columbus' downtown area that had suffered economic neglect. The Tri-State Transit Authority ("TTA") is a public transit authority serving West Virginia's second-largest city, Huntington, and a surrounding metropolitan area that includes hundreds of thousands of residents.

The Grant Committee approved a grant in the amount of \$10,600,000 for the Pullman Square Project. This grant, however, will constitute only a percentage of the expected \$53,000,000 costs of this project, which will come from various public and private sources, including Metropolitan and a grant from the Federal Transit Administration to TTA in the amount of approximately \$26,000,000 (the "FTA Grant") The FTA Grant has already be awarded to TTA and will be used to pay for the development of public and transit-related portions of the project including parking structures and transit services that will serve the Pullman Square development and other downtown destinations. In fact, Metropolitan and TTA have already expended millions of dollars in necessary pre-development costs for the project. The \$10,600,000 awarded by the Grant Committee will be used to develop the public elements and infrastructure of the Pullman Square project. Also, it is expected that this project will create 620 to 705 construction jobs and ultimately 621 permanent jobs in retail, restaurants, offices, and entertainment businesses.

The *Amicus*, **Putnam County Development Authority**, has sponsored three separate applications that were awarded grants. One is for the construction of the Putnam Business Park, that will become the site of much needed property in Putnam County for manufacturing and distribution facilities. The Grant Committee has approved a grant in the amount of \$1,480,000. The Putnam County Development Authority has already invested \$3,300,000 in the site and has been in active discussions with several companies which are prepared to build manufacturing

plants, warehouses and distribution facilities. It is expected that this project could create in excess of several hundred full time jobs, along with the construction jobs created by the building of plants and facilities.

The second application filed by the Putnam County Development Authority is in conjunction with the *Amicus*, **Putnam County Commission** to build a new office facility for West Virginia Steel Company at the current West Virginia Steel fabrication plant in Poca, West Virginia. The Grant Committee approved a grant in the amount of \$300,000 for that project, which is less than half of the total construction costs. The grant application was submitted after West Virginia Steel Company's President announced that he was considering moving the headquarters to Bluefield, Virginia because Virginia had offered lucrative economic incentives. The grant should help retain the 38 jobs in West Virginia and create 20 more jobs within two years.

The third application filed by the Putnam County Development Authority is for the construction of a new building and rail spur for Green Metals, Inc, an international company which is an environmental leader in recycling of industrial scrap metal commodities. The Grant Committee approved a grant in the amount of \$100,000. This money will leverage \$2,400,000 for the initial investment in constructing the plant and rail spur. As with the SOGEFI plant, this will further promote the area as an automobile corridor and assist in recruitment to other automotive related industrial plants.

The *Amicus*, **Advantage Valley Partners, LLC**, which is a "public-private partnership" among Advantage Valley, Inc., the Cabell County Development Authority, the Regional Development Authority of Charleston-Kanawha County Metropolitan Region, the Mason County

Development Authority, the Wayne County Development Authority, Inc, and the Putnam County Development Authority, submitted an application to build a new business park for several office buildings in Putnam County on a forty-five acre site near Hurricane. The Grant Committee approved a grant in the amount of \$3,228,302 for the project. It is estimated that the entire project will require \$39,000,000 investment. Building the business park will create 100 construction jobs and approximately 600 full-time jobs.

The Circuit Court of Kanawha County issued a 64 page order containing detailed Findings of Fact and Conclusions of Law in upholding the constitutionality of the statute at issue and the actions of the Grant Committee. The *Amici* submit that this Order was clearly the product of reasoned decision making and is supported by the evidence introduced below. Thus, this Court should reject the Petition.

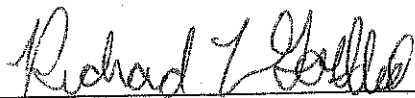
Should this Court accept the petition, however, the *Amici* strongly support the motion filed by the Grant Committee with this Court to expedite consideration of the Petition for Appeal. The Grant Committee's motion appended affidavits from five projects approved by the Grant Committee that would suffer prejudice if this Court did not provide for expeditious resolution of this matter. One of the *Amici*, the Putnam County Development Authority, submitted an affidavit (Exhibit 6 to the Motion) that amply demonstrates the prejudice caused by delay in this matter. Specifically, the affidavit reflected that continued delay will likely result in the loss of leveraging in excess of \$13,000,000 in private investment at the Putnam Business Park. Moreover, delay increases uncertainty and will most likely cause businesses to look to other sites to fill their industrial expansion needs. In addition, the Putnam County Development Authority is obligated to start repaying its loan in February 2003, that it procured to purchase the land. Further delay could jeopardize the entire project.

The *Amici's* other projects will suffer similar prejudice as a result of any continued delay in funding. In construction projects, any delay necessarily increases the cost. Other states, such as Virginia in connection with West Virginia Steel Company, stand ready to offer immediate incentives to secure a commitment. Plants related to the automobile industry, such as the SOFEGI plant in Wayne County or the Green Metal plant in Putnam County, are highly sought after by other states. In a highly competitive economic environment, further delay is the enemy of economic development.

WHEREFORE, the *Amici* respectfully request this Court grant leave for them to participate as *Amicus Curiae* under Rule 19. Moreover, should this Court accept the Petition for Appeal, your *Amici* request this Court to enter an Order expediting any consideration of the Appeal of the Circuit Court's January 21, 2003 Order and that the *Amici* be permitted to file a brief on the merits of the Petition for Appeal.

**MARSHALL UNIVERSITY RESEARCH CORPORATION;
OUR JOBS, OUR CHILDREN, OUR FUTURE, INC. d/b/a
THE HUNTINGTON AREA DEVELOPMENT COUNCIL;
TRI-STATE TRANSIT AUTHORITY AND
METROPOLITAN HUNTINGTON, LLC; ADVANTAGE
VALLEY PARTNERS, LLC; PUTNAM COUNTY
DEVELOPMENT AUTHORITY; AND, PUTNAM COUNTY
COMMISSION**
By Counsel

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 18, 2003, he served the foregoing **MOTION TO FILE BRIEF AS *AMICUS CURIAE*** upon the following by enclosing a true and accurate copy thereof in an envelope addressed to their last known address via the United States

Mail:

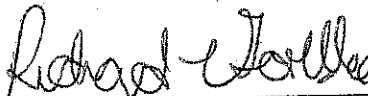
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