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WV LOTTERY

OFFICIAL NOTICE OF CIVIL ACTION  
UNDER THE WEST VIRGINIA CODE §55-17-1, ET SEQ.

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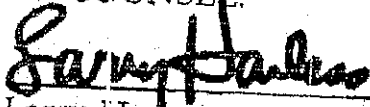
TO:  West Virginia Lottery Commission  
John Musgrave, Director

Darryl V. McGraw, Jr.  
Attorney General of West Virginia

Please take official notice under the West Virginia Code §55-17-1,  
et seq., that the attached civil action shall be brought in the Circuit Court  
of Kanawha County after thirty (30) days of the date of this Notice.

Date of Notice: August 1, 2003.

BY COUNSEL:



Larry Harless  
Rt. 2 Box 186-C  
Cottageville, WV 25238  
(304) 372-6878 or  
(773) 769-4642

GREENBRIER COUNTY  
COALITION AGAINST  
GAMBLING EXPANSION,  
CABELL COUNTY COALITION  
AGAINST GAMBLING  
EXPANSION, PLAINTIFFS

## IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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

PLAINTIFFS,

Civil Action No. \_\_\_\_\_

v.

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

DEFENDANTS

## COMPLAINT

The plaintiffs state and allege as follows:

A. Jurisdiction, Venue, and Parties

1. The jurisdiction of this Court is invoked by the W. Va. Const. Art. VIII, Sec. 3; the W. Va. Code sec. 55-13-1, et seq. and the W. Va. Rules of Civil Procedure, Rule 65.
2. Venue is laid in this Court by the W. Va. Code sec. 14-2-2.
3. Plaintiff Greenbrier County Coalition Against Gambling Expansion is an unincorporated association composed of citizens, taxpayers, voters and residents of the State of West Virginia and Greenbrier County, West Virginia. Its members are too numerous to be properly or conveniently joined as individual plaintiffs. It sues by and through its members, Mark Jenkins and Paula McLaughlin who shall adequately represent the Coalition as a class. There are common questions of law and fact, and the legal and equitable relief

sought is common to the class. Individual actions by class members would risk varying adjudications which could impose inconsistent or conflicting legal duties upon the defendants.

4. Plaintiff Cabell County Coalition Against Gambling Expansion is an unincorporated association composed of citizens, taxpayers, voters and residents of West Virginia and Cabell County, West Virginia. It sues by and through its member, Brian Trippett. The class allegations of Paragraph 3 above are hereby reincorporated and alleged by reference.
5. Defendant West Virginia Lottery Commission is a public agency of the State of West Virginia created by the W. Va. Code sec. 29-22-4, and charged under the W. Va. Code sec. 29-22-2 "to implement a state-operated lottery."
6. defendant John Musgrave is the Director of the Commission and by the W. Va. Code sec. 29-22-2 "holds broad authority to administer the (lottery) system," and by the W. Va. Code sec. 29-22-3(b) is charged "to provide the management and administration necessary to direct the State Lottery office" which is located in Charleston, Kanawha County, West Virginia.

#### B. FACTS AND ALLEGATIONS

7. The State of West Virginia by the West Virginia Lottery Commission and its director has been and presently is under color of the W. VA. Code sec. 29-22-1, et seq.; 29-22A-1, et seq.; and 29-22B-1, et seq. illegally conducting video poker, video blackjack and similar gambling games statewide.

COUNT I(Illegal Concealment by State of Gambling Odds, Probabilities and House  
Share of Monies Wagered)

8. The West Virginia Code sec. 29-22B-403(5) mandates "that the director shall require the mandatory posting by limited video lottery retailers of the rules of play and the odds or house percentage on each video lottery game."
9. The Commission and the Director have been and are violating this statutory mandate by not requiring such postings.
10. The W. Va. Code sec. 29-22B-907(1) mandates that "(all) information required by this section must be displayed under glass or another transparent substance: (1) the rules of play for each game shall be displayed on the video lottery terminal face or screen..."
11. The Commission and Director have been and are violating the W. Va. Code sec. 29-22B-907(1) by not requiring such displays.
12. The W. Va. Code sec. 29-22A-6(a)(12) mandates that "the rules of play for each game shall be displayed on the video lottery terminal face or screen... All information ... shall be displayed under glass or another transparent substance."
13. The Commission and Director have been and are violating the W. Va. Code sec. 29-22A-6(a)(12) by not requiring such displays.
14. The W. Va. Code sec. 29-22B-910 (1) mandates that "(v)ideo lottery games shall pay out no less than eighty percent and no more than ninety-five percent

of the amount wagered. The theoretical payout percentage shall be determined using standard methods of probability theory."

15. By not disclosing these facts to such gamblers the Commission and the Director are violating the W. Va. Code sec. 29-22B-403(5) and the W. Va. Const., Art. VI sec. 36.
16. The W. Va. Code sec. 29-22A-6(c)(1) mandates that "(v)ideo lottery games shall pay out no less than eighty percent or no more than ninety-five percent of the amount wagered. The theoretical payout shall be determined using standard methods of probability theory."
17. By not disclosing these facts to such gamblers the Commission and the Director are violating the W. Va. Code sec. 29-22A-6(a)(12) and the W. Va. Const. Art. VI sec. 36.

## COUNT II

### (Illegal Sale of Alcohol at State's Gambling Places)

18. Should these so-called "video lotteries" be deemed owned, operated, controlled and regulated by the State as required by the W. Va. Const. Art. VI sec. 36, the retail establishments at which such gambling occurs are "public places" where alcohol may not be sold and consumed under the W. Va. Const. Art. VI sec. 46.
19. The W. Va. Code sec. 29-22B-328, by requiring that these "video machines be placed only where alcohol is sold and consumed, is in violation of the W. Va.

Const. Art. VI sec. 36 and 46, which disallows the sale and drinking of alcohol at places where these gambling games are played.

### COUNT III

#### (Illegal Denials of Treatment for Persons with State Induced or Worsened Gambling Addictions)

20. The W. Va. Code sec. 29-22B-907(4) mandates that the Commission and Director shall require all "video" gambling retailers to post "a label prominently displaying information on how to locate and contact persons or organizations available for help, assistance or treatment of persons who may have a gambling addiction, together with the telephone number 1-800-GAMBLER." The Commission and the Director have been and violating this statutory mandate by refusing to comply with it.
21. The W. Va. Code sec. 29B-22-1112, under the heading "Reduction of gambling," mandates that "each video lottery retailer shall conspicuously post in the restricted access adult-only facility and disseminate the telephone numbers of state approved providers of problem gambling information, treatment and referral support services and further conspicuously post the following: "CAUTION Gambling and playing this machine can be hazardous to your health, your finances and your future." The Commission and the Director have been and are violating this statutory mandate by refusing to comply with it.

### COUNT IV

#### (Illegal State Advertising and Promotion of Gambling)

22. The W. Va. Code sec. 29-22B-404 mandates that "neither the commission nor the director may conduct video lottery advertising or promotional activities to promote or advertise limited video lottery..."
23. The Commission and the Director have been and are engaging in such advertising and promotional activities to entice and induce persons to gamble, or gamble more, in regard to the gambling enterprises conducted under the W. Va. Code sec. 29-22-1, et seq.; and 29-22A-1, et seq.; and 29-22B-1, et seq., and are therefore in violation of the W. Va. Code sec. 29-22B-404.

#### COUNT V

##### (State-Rigged "Video" Card Deck)

24. In regard to the declared "payout percentage... determined using standard methods of probability theory" under the W. Va. Code sec. 29-22B-910 (a), the fact is that these "video" poker, blackjack and similar machines are "rigged" contrary to "standard methods of probability theory" to ensure that over time almost all players lose their money.
25. The Commission and Director have been and are violating the W. Va. Code sec. 29-22B-910(1) and the W. Va. Const., Art. VI, sec.36.

#### COUNT VI

##### ("Public Good," Honesty," "Public Health and Welfare")

26. The W. Va. Code sec. 29-22A-10(b) provides that "the Commission shall establish procedures to ensure the ...honesty and integrity of the

lottery... system." The Commission and the Director have been and are violating this statutory mandate by refusing to comply with it.

27. The W. Va. Code sec. 29-22A-9(a)(2) and 29-22B-701(2) require the Commission and the Director to "(c)onduct all video lottery activities and functions in a manner which does not pose a threat to the public health, safety or welfare of the citizens of this state..." The Commission and Director have been and are violating these statutory mandates by refusing to comply with them.
28. The W. Va. Code sec. 29-22-9(a) mandates that "the lottery shall be operated... consonant with the public good." The Commission and the Director have been and are violating this statutory mandate by refusing to comply with it.

#### COUNT VII

##### (Video Gambling Is Not a Lottery)

29. These so-called "video lotteries" under the W. Va. Code sec. 29-22A-1, et seq. and 29-22B-1, et seq., are not lotteries and have no relation to a lottery under the W. Va. Const. Art. VI, sec. 36, and are thus barred by this constitutional prohibition.
30. None of the "video" gambling games conducted under the W. Va. Code sec. 29-22A-1, et seq., and 29-22B-1, et seq. are owned, operated, controlled and regulated by the State of West Virginia within the meaning of the W. Va.

Const. Art. VI, sec. 36, and are therefore unconstitutional and are prohibited on this ground alone.

### COUNT VIII

#### (Criminal Violations)

31. The W. Va. Code sec. 29-22-27, 29-22A-16(h) and 29-22B-1713 provide that all of the statutory violations described in Paragraphs 7 through 25 above are statutory crimes, with such criminal violations and enterprises comprising common law crimes as well.

### COUNT IX

#### (Human and Economic Harms)

32. The W. Va. Const., art. III, sec. 1 and sec. 3, respectively extend to the State's citizens "the inherent rights to the means of happiness (prosperity) and safety (security)," and "the greatest possible degree of happiness and safety." The State's sponsorship of these "video" gambling games violates these constitutional guarantees because they result only in statewide human "illth" rather than human "wellth", and depress the State economy by siphoning off wealth from productive, viable activities which would help the State's people and economy.

### COUNT X

#### (These Gambling Enterprises are a Statewide Public Nuisance)

33. The foregoing "video" gambling enterprises, in view of the constitutional, statutory and common law violations described and alleged in paragraphs 7 through 32 above, are a statewide public nuisance.

(Alternative Mandamus Allegations)

34. The defendants have clear legal duties to conform their conduct to the legal requirements alleged in Paragraph 7 through 32 above, and the plaintiffs and their members have clear legal rights for them to do so.

35. The plaintiffs and their members have no adequate or equally expeditious and convenient legal remedy to redress the foregoing legal violations of the defendants.

36. The award of the requested writ of mandamus would be in the public interest as shown in Paragraphs 7 through 32 above.

(Preliminary Injunction Allegations)

37. The plaintiffs and their members have a reasonable if not highly probable likelihood of prevailing on the merits of their claims.

38. They have no adequate legal remedy to redress the legal violations of the defendants.

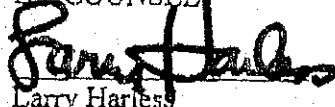
39. The plaintiffs and their members have been, are and shall be incurring great and irreparable harms in the absence of preliminary injunctive relief as shown by Paragraphs 7 through 32 above. Any harm which could result to the defendants from the granting of preliminary injunctive relief would be minor compared to the great and irreparable harms presently and to be incurred by the plaintiffs and their members in the absence of preliminary injunctive relief.

40. The granting of preliminary injunctive relief would be in the public interest as shown by Paragraphs 7 through 32 above.

C. PRAYER FOR RELIEF

WHEREFORE, the plaintiffs pray that this Court:

1. Preliminarily restrain and enjoin the illegal operation of these "video" gambling enterprises as a public nuisance and otherwise.
2. Permanently order or mandate the defendant Commission and Director to cease and desist from conducting any further "video" gambling operations under color of the W. Va. Code sec. 29-22A-1, et seq. and 29-22B-1, et seq., and to fully comply with all legal requirements of any legally permissible lotteries.
3. Order the defendants to pay the attorney fees, costs and expenses associated with this petition.

BY COUNSEL  
  
 Larry Harless  
 Rt. 2 Box 186C  
 Cottageville, WV 25239  
 Telephone: (304) 372-6878 or  
 (773) 769-4642

GREENBRIER COUNTY  
 COALITION AGAINST  
 GAMBLING EXPANSION,  
et al.  
 PLAINTIFFS

STATE OF WEST VIRGINIA  
EXECUTIVE DEPARTMENT  
CHARLESTON  
EXECUTIVE ORDER NO. 19-03

By the Governor

WHEREAS, the West Virginia Supreme Court of Appeals ("the Court") held in *State of West Virginia ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee*, \_\_ W. Va. \_\_, 580 S.E.2d 869, that the West Virginia Economic Development Grant Committee ("the Grant Committee") was unconstitutionally constituted in violation of the Separation of Powers provision found in Article Five, Section One of the West Virginia Constitution, and that the West Virginia Legislature ("the Legislature") improperly delegated its powers to legislate to the Grant Committee in violation of Article Six, Section One of the West Virginia Constitution; and

WHEREAS, in that same decision, the Court upheld the use of State excess lottery fund proceeds to pay debt service on revenue bonds issued by the West Virginia Economic Development Authority to fund grants providing public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects, and infrastructure which promote economic development in the State; and

WHEREAS, on July 1, 2003, the Legislature enacted Senate Bill No. 2007 readdressing the legal flaws found by the Court in *State of West Virginia ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee*; and

WHEREAS, on July 9, 2003, the Grant Committee was reconstituted in accordance with the provisions of Enrolled Senate Bill No. 2007; and

WHEREAS, on July 16, July 28, August 14, and August 20, 2003, the Grant Committee met and diligently and deliberatively reviewed, discussed and acted upon more than 190 applications and amended applications for grants; and

WHEREAS, on August 4, 2003, the Grant Committee held a hearing in Charleston for the purpose of receiving public comments on the applications and amended applications before the Committee; and

WHEREAS, the applications and amended applications requested grants that aggregated more than one billion dollars; and

WHEREAS, in determining which projects to certify, the Grant Committee has taken into consideration the selection criteria set forth in Enrolled Senate Bill No. 2007; and

WHEREAS, the Grant Committee has found each project certified to be in the public interest and that the grant will be used for a public purpose, as required by Enrolled Senate Bill No. 2007; and

WHEREAS, the Grant Committee, by resolution dated August 20, 2003, certified 49 projects to receive grants aggregating \$225,855,802. A copy of the resolution and list of the certified projects is attached hereto as Exhibit A.

NOW THEREFORE I, BOB WISE, Governor of the State of West Virginia, pursuant to the authority vested in me as the Chief Executive Officer of this State and the laws of West Virginia, do hereby ORDER that the West Virginia Economic Development Authority issue the revenue bonds authorized in W.Va. Code § 29-22-18a, to fund grants for the project certified by the West Virginia Economic Development Grant Committee.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.

DONE at the Capitol in the City of Charleston, State of West Virginia, this the twenty-first day of August, in the year of our Lord, Two Thousand Three, and in the One Hundred and Forty-First Year of the State.



*Bob Wise*  
GOVERNOR

By the Governor

*Joe Manchin III*  
SECRETARY OF STATE

# EXHIBIT A

## WEST VIRGINIA ECONOMIC DEVELOPMENT GRANT COMMITTEE

Bob Wise  
Governor

Post Office Box 963  
Charleston, West Virginia 25324-0963  
(304) 558-0211

Brian M. Kastick  
Chairman

William H. Baker, Vice-Chairman

Mark Prince

Mallie J. Combs

F. Scott Rotruck

David G. Hofstetter

David G. Satterfield

Alex Macia (Governor's Designee)

### Resolution No. 03-1

Bernard P. Twigg

### Resolution Urging Governor Wise to Direct the West Virginia Economic Development Authority to Issue the Revenue Bonds Funding Grants for the Projects Certified Today

**WHEREAS**, on May 16, 2003, the West Virginia Supreme Court of Appeals decided *State of West Virginia ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee*, \_\_ W. Va. \_\_, 580 S.E.2d 869, by holding that the Grant Committee was unconstitutionally constituted in violation of the separation of powers provision found in article five, section one of the West Virginia Constitution, and that the Legislature wrongfully delegated its powers to legislate to the Grant Committee in violation of article six, section one of the West Virginia Constitution.

**WHEREAS**, in that same decision the Court upheld using State excess lottery fund proceeds to pay debt service on revenue bonds issued by the West Virginia Economic Development Authority to fund grants providing public financial support for constructing, equipping, improving and maintaining economic development projects, capital improvement projects and infrastructure which promote economic development in this State.

**WHEREAS**, on July 1, 2003, the West Virginia Legislature enacted Senate Bill No. 2007 addressing problems found by the Court in *State of West Virginia ex rel. West Virginia Citizens Action Group v. West Virginia Economic Development Grant Committee*.

**WHEREAS**, on July 9, 2003, Governor Bob Wise appointed the citizen members of the Grant Committee in accordance with the provisions of Enrolled Senate Bill No. 2007.

**WHEREAS**, on July 16<sup>th</sup> and 28<sup>th</sup> and on August 14<sup>th</sup> and 20<sup>th</sup>, all of this year, the Grant Committee met and diligently and deliberatively reviewed, discussed and acted upon more than 190 applications and amended applications for grants.

**WHEREAS**, on August 4, 2003, the Grant Committee held a public hearing at the State Capitol for purposes of receiving comments on the applications and amended applications before the Committee, which could be made at that time or provided to the Committee in writing within ten days after the public hearing.

WHEREAS, the applications and amended applications requested grants that aggregated more than one billion dollars.

WHEREAS, the net proceeds from the sale of revenue bonds authorized in W. Va. Code § 29-22-18a(d) is reasonably estimated to be \$220 million.

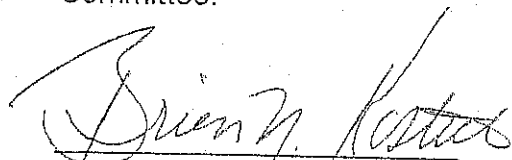
WHEREAS, in determining which projects to certify, the Grant Committee has taken into consideration the criteria set forth in Enrolled Senate Bill No. 2007.

WHEREAS, the Grant Committee has found each project certified to be in the public interest and that the grant will be used for a public purpose, as required by Enrolled Senate Bill No. 2007.

WHEREAS, the Grant Committee, on August 20, 2003, certified 49 projects to receive grants aggregating \$ 225,855,802 million.

RESOLVED, that the Economic Development Grant Committee respectfully calls upon his excellency, Governor Bob Wise, and asks that he direct the West Virginia Economic Development Authority to issue the revenue bonds authorized in W. Va. Code § 29-22-18a, to fund grants for the project certified by the Committee.

Adopted this 20<sup>th</sup> day of August, 2003, by the Economic Development Grant Committee.

  
Brian M. Kastick, Chairman

West Virginia Economic Development Grant Committee  
 GRANTS AWARDED by County 8/20/02

Number	Applicant	Co-Applicant	County	Description	Amount to be Considered	Grant Awarded	ID #
1	Barbour County Development Authority	none	Barbour	Beilington Industrial Park	650,000	650,000	35
2	Berkeley County Roundhouse Authority	City of Martinsburg	Berkeley	Downtown Redevelopment	6,812,304	2,750,000	32
3	Eastern WV Regional Airport Authority	none	Berkeley	Airport Terminal	1,266,000	1,266,000	23
5	Marshall University Research Corporation	None	Cabell	Biotechnology Development Center	13,500,000	12,500,000	26
6	Our Jobs, Our Children, Our Future, Inc.	SOGEFI	Cabell	New business	990,000	990,000	179
7	Tri-State Transit Authority	Metropolitan Partners	Cabell	Pullman Square	11,188,000	10,600,000	8
8	Fayette County Commission	Fayette Transition Team	Fayette	Business/Industrial Site	2,000,000	2,000,000	157
9	Greenbrier Theater Company	none	Greenbrier	Greenbrier Valley Theater	1,349,566	250,000	52
10	Hampshire County Development Authority	none	Hampshire	Hotel, Conference, and Wellness Center	5,400,000	5,400,000	27
11	Hardy County Rural Development Authority	Hardy County Commission	Hardy	Land Purchase by local government	1,000,000	1,000,000	124
12	Town of Moorefield	none	Hardy	Waste Water Treatment Plant	5,000,000	5,000,000	50
13	City of Bridgeport	Genesis Partners	Harrison	Charles Pointe	11,481,396	6,000,000	25
14	City of Clarksburg	Municipal Building Commission/Parking Authority	Harrison	Development Projects in Downtown Clarksburg	10,000,000	4,358,500	38
15	Jefferson County Board of Education	none	Jefferson	New High School	6,000,000	6,000,000	46
16	Center for the Arts and Sciences of WV	none	Kanawha	The Clay Center	8,000,000	3,000,000	76
17	Chemical Alliance Zone	Dow Chemical Corp.	Kanawha	Creation of a Biotechnology Incubator	1,500,000	1,500,000	83

West Virginia Economic Development Grant Committee  
GRANTS AWARDED by County - 8/20/03

Number	Applicant	Co-Applicant	County	Description	Amount to be Considered	Grant Awarded	ID #
18	City of Charleston	none	Kanawha	Baseball Park	12,000,000	12,000,000	1
19	Kanawha County Commission	Business and Industrial Development Corporation	Kanawha	Expansion of jobs & businesses, recruitment of new businesses & local capacity building	758,000	133,000	79
20	Lewis County Economic Development Authority	McCabe-Henley-Durbin	Lewis	Stonewall Jackson Resort	5,400,000	3,500,000	129
21	West Virginia University	none	Lewis	New State Fire Academy at Jackson's Mill	2,000,000	2,000,000	71
22	WV DHHR	Man Area Healthcare, Inc.	Logan	Hospital	1,000,000	1,000,000	138
23	WV Division of Natural Resources	none	Logan	Lodge and Rec Center	10,000,000	10,000,000	43
24	City of Fairmont	none	Marion	Parking Garage	3,777,700	2,000,000	57
25	Region VI	WV High Tech Consortium	Marion	I-79 Technology Park Project	19,000,000	14,750,000	16
26	Marshall County Commission	None	Marshall	Improvements & New Construction to Grand Vue Park	4,706,010	2,160,000	113
27	City of Point Pleasant	Mason County Commission	Mason	Point Pleasant Riverfront Park	1,200,000	1,200,000	36
28	McDowell County Economic Development Authority	McDowell County Commission/Region I PDC	McDowell	McDowell County Correctional Facility	10,500,000	5,200,000	59
29	Concord College	none	Mercer	Southern WV Technology Center	2,000,000	2,000,000	37
30	City of Bluefield	None	Mercer	Updates to Baseball Stadium	250,000	250,000	175

West Virginia Economic Development Grant Committee  
 GRANTS AWARDED By County - 8/20/03

Number	Applicant	Co-Applicant	County	Description	Amount to be Considered	Grant Awarded	ID #
31	Mingo County Redevelopment Authority	None	Mingo	Expansion of the Mingo County Wood Products Industrial Park	3,503,675	4,500,000	88
32	Blanchette Rockefeller Neurosciences Institute, Inc.	West Virginia University	Monongalia	Medical Research Facility	10,000,000	10,000,000	91
33	City of Morgantown	Platinum Properties	Monongalia	Public Theater and Marina	26,870,000	13,900,000	28
34	City of Morgantown	The Square at Falling Run, LLC	Monongalia	Downtown Development Reclaimed	10,000,000	5,000,000	34
35	Monongalia County Schools Foundation	Monongalia County Commission/ Monongalia County Development Authority	Monongalia	Surface Mine Development at Chaplin Hill	1,300,000	1,200,000	14
36	National Biometric Security Project	none	Monongalia	Development of Biometric Technology	2,500,000	2,300,000	116
37	Ohio County Commission	None	Ohio	Industrial Park Development	49,000,000	35,000,000	182
38	Wheeling Park Commission	None	Ohio	Lodge Expansion	2,500,000	2,500,000	164
39	Advantage Valley Partners, LLC	None	Putnam	Business Park	3,228,302	3,228,302	92
40	Putnam County Development Authority	none	Putnam	Putnam Business Park New	1,570,000	1,570,000	30
41	Putnam County Development Authority	Putnam County Commission	Putnam	Construction & Renovation at WV Steel Poca Facility	300,000	300,000	104
42	Putnam County Development Authority	None	Putnam	Construction of Steel Building for New Business	100,000	100,000	105
43	City of Beckley	YMCA/Raleigh County Airport Authority/Pinecrest Development Corp.	Raleigh	X-Quad Commerce Center	7,000,000	12,000,000	131

West Virginia Economic Development Grant Committee  
 GRANTS AWARDED by County 8/20/03

Number	Applicant	Co-Applicant	County	Description	Amount to be Considered	Grant Awarded	ID #
44	Randolph County Development Authority	Seneca Realty Co.	Randolph	Tourism Developments	2,000,000	1,500,000	40
45	Tri-Cities Power Authority	Cities of Hinton, White Sulphur Springs, Philippi, Mancor Industries	Summers	Hydroelectric generating facility at Bluestone Dam	2,500,000	2,500,000	136
46	Tucker County Commission	City of Thomas/ Parsons Revitalization Org./ Tucker County Dev. Auth/Tucker County E-911/ Five Rivers Library	Tucker	Industrial Park/Enhanced 911/ Five Rivers Library/Parsons Commerce Center/ Thomas Revitalization	6,206,000	500,000	188
47	City of Parkersburg	US Army Corps of Engineers	Wood	Riverfront Park	5,000,000	3,000,000	29
48	Mid-Ohio Valley Regional Council	Polymer Alliance Zone	Wood	Electronic Recycling Center Lodge Expansion	7,140,000	4,300,000	6
49	WV Division of Natural Resources Parks & Recreation	None	Wyoming	for Twin Falls Resort State Park	4,800,000	3,000,000	39
<b>TOTAL</b>					<b>304,246,953</b>	<b>225,855,802</b>	

# WEST VIRGINIA ECONOMIC DEVELOPMENT GRANT COMMITTEE

Bob Wise  
Governor

Post Office Box 963  
Charleston, West Virginia 25324-0963  
(304) 558-0211

Brian M. Kastick  
Chairman

William H. Baker, Vice-Chairman

Mark Prince

Mallie J. Combs

F. Scott Retruck

David G. Hofstetter

David G. Satterfield

Alex Macia (Governor's Designee)

Resolution No. 03-1

Bernard P. Twigg

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WHEREAS, the applications and amended applications requested grants that aggregated more than one billion dollars.

WHEREAS, the net proceeds from the sale of revenue bonds authorized in W. Va. Code § 29-22-18a(d) is reasonably estimated to be \$220 million.

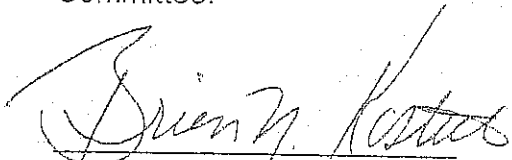
WHEREAS, in determining which projects to certify, the Grant Committee has taken into consideration the criteria set forth in Enrolled Senate Bill No. 2007.

WHEREAS, the Grant Committee has found each project certified to be in the public interest and that the grant will be used for a public purpose, as required by Enrolled Senate Bill No. 2007.

WHEREAS, the Grant Committee, on August 20, 2003, certified 49 projects to receive grants aggregating \$ 225,855,802 million.

RESOLVED, that the Economic Development Grant Committee respectfully calls upon his excellency, Governor Bob Wise, and asks that he direct the West Virginia Economic Development Authority to issue the revenue bonds authorized in W. Va. Code § 29-22-18a, to fund grants for the project certified by the Committee.

Adopted this 20<sup>th</sup> day of August, 2003, by the Economic Development Grant Committee.

  
Brian M. Kastick, Chairman

West Virginia Economic Development Grant Committee  
 GRANTS AWARDED by County: 8/20/03

Number	Applicant	Co-Applicant	County	Description	Amount to be Considered	Grant Awarded	ID #
1	Barbour County Development Authority	none	Barbour	Belington Industrial Park	650,000	650,000	35
2	Berkeley County Roundhouse Authority	City of Martinsburg	Berkeley	Downtown Redevelopment	6,812,304	2,750,000	32
3	Eastern WV Regional Airport Authority	none	Berkeley	Airport Terminal	1,266,000	1,266,000	23
5	Marshall University Research Corporation	None	Cabell	Biotechnology Development Center	13,500,000	12,500,000	26
6	Our Jobs, Our Children, Our Future, Inc.	SOGEFI	Cabell	New business	990,000	990,000	179
7	Tri-State Transit Authority	Metropolitan Partners	Cabell	Pullman Square	11,188,000	10,600,000	8
8	Fayette County Commission	Fayette Transition Team	Fayette	Business/Industrial Site	2,000,000	2,000,000	157
9	Greenbrier Theater Company	none	Greenbrier	Greenbrier Valley Theater Hotel,	1,349,566	250,000	52
10	Hampshire County Development Authority	none	Hampshire	Conference, and Wellness Center	5,400,000	5,400,000	27
11	Hardy County Rural Development Authority	Hardy County Commission	Hardy	Land Purchase by local government	1,000,000	1,000,000	124
12	Town of Moorefield	none	Hardy	Waste Water Treatment Plant	5,000,000	5,000,000	50
13	City of Bridgeport	Genesis Partners	Harrison	Charles Pointe	11,481,396	6,000,000	25
14	City of Clarksburg	Municipal Building Commission/Parking Authority	Harrison	Development Projects in Downtown Clarksburg	10,000,000	4,358,500	38
15	Jefferson County Board of Education	none	Jefferson	New High School	6,000,000	6,000,000	46
16	Center for the Arts and Sciences of WV	none	Kanawha	The Clay Center	8,000,000	3,000,000	76
17	Chemical Alliance Zone	Dow Chemical Corp.	Kanawha	Creation of a Biotechnology Incubator	1,500,000	1,500,000	83

West Virginia Economic Development Grant Committee  
 GRANTS AWARDED by County 8/20/03

Number	Applicant	Co-Applicant	County	Description	Amount to be Considered	Grant Awarded	ID #
18	City of Charleston	none	Kanawha	Baseball Park	12,000,000	12,000,000	1
19	Kanawha County Commission	Business and Industrial Development Corporation	Kanawha	Expansion of jobs & recruitment of new businesses & local capacity building	758,000	133,000	79
20	Lewis County Economic Development Authority	McCabe-Henley-Durbin	Lewis	Stonewall Jackson Resort	5,400,000	3,500,000	129
21	West Virginia University	none	Lewis	New State Fire Academy at Jackson's Mill	2,000,000	2,000,000	71
22	WV DHHR	Man Area Healthcare, Inc.	Logan	Hospital	1,000,000	1,000,000	138
23	WV Division of Natural Resources	none	Logan	Lodge and Rec Center	10,000,000	10,000,000	43
24	City of Fairmont	none	Marion	Parking Garage	3,777,700	2,000,000	57
25	Region VI	WV High Tech Consortium	Marion	I-79 Technology Park Project	19,000,000	14,750,000	16
26	Marshall County Commission	None	Marshall	Improvements & New Construction to Grand Vue Park	4,706,010	2,160,000	113
27	City of Point Pleasant	Mason County Commission	Mason	Point Pleasant Riverfront Park	1,200,000	1,200,000	36
28	McDowell County Economic Development Authority	McDowell County Commission/Region I PDC	McDowell	McDowell County Correctional Facility	10,500,000	5,200,000	59
29	Concord College	none	Mercer	Southern WV Technology Center	2,000,000	2,000,000	37
30	City of Bluefield	None	Mercer	Updates to Baseball Stadium	250,000	250,000	175

West Virginia Economic Development Grant Committee  
GRANTS AWARDED by County - 8/20/03

Number	Applicant	Co-Applicant	County	Description	Amount to be Considered	Grant Awarded	ID #
31	Mingo County Redevelopment Authority	None	Mingo	Expansion of the Mingo County Wood Products Industrial Park	3,503,675	4,500,000	88
32	Blanchette Rockefeller Neurosciences Institute, Inc.	West Virginia University	Monongalia	Medical Research Facility	10,000,000	10,000,000	91
33	City of Morgantown	Platinum Properties	Monongalia	Public Theater and Marina	26,870,000	13,900,000	28
34	City of Morgantown	The Square at Falling Run, LLC	Monongalia	Downtown Development Reclaimed	10,000,000	5,000,000	34
35	Monongalia County Schools Foundation	Monongalia County Commission/ Monongalia County Development Authority	Monongalia	Surface Mine Development at Chaplin Hill	1,300,000	1,200,000	14
36	National Biometric Security Project	none	Monongalia	Development of Biometric Technology	2,500,000	2,300,000	116
37	Ohio County Commission	None	Ohio	Industrial Park Development	49,000,000	35,000,000	182
38	Wheeling Park Commission	None	Ohio	Lodge Expansion	2,500,000	2,500,000	164
39	Advantage Valley Partners, LLC	None	Putnam	Business Park	3,228,302	3,228,302	92
40	Putnam County Development Authority	none	Putnam	Putnam Business Park New	1,570,000	1,570,000	30
41	Putnam County Development Authority	Putnam County Commission	Putnam	Construction & Renovation at WV Steel Poca Facility	300,000	300,000	104
42	Putnam County Development Authority	None	Putnam	Construction of Steel Building for New Business	100,000	100,000	105
43	City of Beckley	YMCA/Raleigh County Airport Authority/Pinecrest Development Corp.	Raleigh	X-Quad Commerce Center	7,000,000	12,000,000	131

West Virginia Economic Development Grant Committee  
GRANTS AWARDED by County 8/20/03

Number	Applicant	Co-Applicant	County	Description	Amount to be Considered	Grant Awarded	ID #
44	Randolph County Development Authority	Seneca Realty Co.	Randolph	Tourism Developments	2,000,000	1,500,000	40
45	Tri-Cities Power Authority	Cities of Hinton, White Sulphur Springs, Philippi, Mancor Industries	Summers	Hydroelectric generating facility at Bluestone Dam	2,500,000	2,500,000	136
46	Tucker County Commission	City of Thomas/Parsons Revitalization Org./Tucker County Dev. Auth/Tucker County E-911/Five Rivers Library	Tucker	Industrial Park/Enhanced 911/Five Rivers Library/Parsons Commerce Center/Thomas Revitalization	6,206,000	500,000	188
47	City of Parkersburg	US Army Corps of Engineers	Wood	Riverfront Park	5,000,000	3,000,000	29
48	Mid-Ohio Valley Regional Council	Polymer Alliance Zone	Wood	Electronic Recycling Center	7,140,000	4,300,000	6
49	WV Division of Natural Resources Parks & Recreation	None	Wyoming	Lodge Expansion for Twin Falls Resort State Park	4,800,000	3,000,000	39
<b>TOTAL</b>					<b>304,246,953</b>	<b>225,855,802</b>	

GENERAL ELECTION, NOVEMBER 6, 1984

AMENDMENTS

TITABLE TAXATION  
EXEMPTION...  
Against

- 1,096
- 1,627
- 1,459
- 3,308
- 4,536
- 6,789
- 6,448
- 1,653
- 1,483
- 1,556
- 1,582
- 1,099
- 926
- 3,301
- 2,534
- 1,288
- 1,669
- 556
- 9,147
- 2,969

195,172

30%

CONSTITUTIONAL AMENDMENTS

AMENDMENT NUMBER 1 WEST VIRGINIA STATE LOTTERY AMENDMENT  
SUMMARY: "To amend the State Constitution to permit the Legislature to pass laws authorizing state operated and controlled lotteries."

FOR THE AMENDMENT

211 →

AGAINST THE AMENDMENT

212 →

AMENDMENT NUMBER 2 QUALIFIED VETERANS  
HOUSING BONDS AMENDMENT

SUMMARY: "To authorize the Legislature to issue and sell general obligation bonds of the State for the funding of a program to provide financing for owner occupied residences for qualified veterans, which bonds shall not be sold or issued so as to obligate the State for the payments of aggregate annual debt service on such bonds, other than debt service which has been refunded, which exceeds thirty-five million dollars, and to establish a separate fund for such purposes and providing for the levy of taxes sufficient to pay such bonds to the extent that amounts in such fund are insufficient therefor."

FOR THE AMENDMENT

218 →

AGAINST THE AMENDMENT

219 →

AMENDMENT NUMBER 3 VOLUNTARY CONTEMPLATION,  
MEDITATION OR PRAYER IN SCHOOL AMENDMENT

SUMMARY: "To require public schools to set aside a time for students who wish to use their voluntary contemplation, meditation or prayer rights."

FOR THE AMENDMENT

224 →

AGAINST THE AMENDMENT

225 →

DOCKET NO. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL.  
ITS CITIES OF CHARLESTON AND  
HUNTINGTON AND ITS COUNTIES  
OF OHIO AND KANAWHA, WEST VIRGINIA,

Petitioners,

v.

WEST VIRGINIA ECONOMIC  
DEVELOPMENT AUTHORITY,  
a public corporation,

Respondent.

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APPENDIX

PETITION OF STATE OF WEST VIRGINIA EX REL. ITS CITIES  
OF CHARLESTON AND HUNTINGTON AND ITS COUNTIES OF OHIO  
AND KANAWHA, WEST VIRGINIA, FOR RELIEF BY WRIT OF  
MANDAMUS FROM THE AUGUST 21, 2003 REFUSAL BY THE  
WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY TO  
HONOR ITS NON-DISCRETIONARY DUTY TO ISSUE REVENUE  
BONDS PURSUANT TO EXECUTIVE ORDER 19-03

AND

MEMORANDUM OF LAW AND CITATION  
OF RELEVANT AUTHORITIES IN SUPPORT OF  
PETITION FOR A WRIT OF MANDAMUS

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APPENDIX

- A. Notice of Intent to Sue with attached Complaint dated August 1, 2003
- B. Executive Order No. 19-03, dated August 21, 2003
- C. Report of the Economic Grant Committee, dated August 20, 2003
- D. Ballot from the General Election, November 6, 1984

DOCKET NO. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

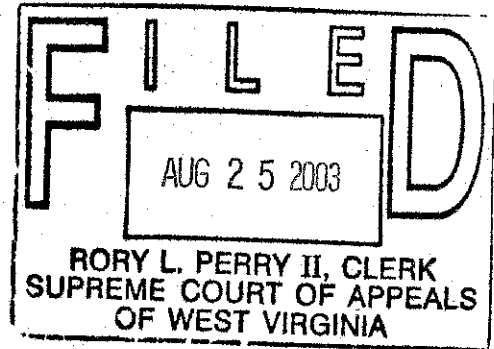
STATE OF WEST VIRGINIA EX REL.  
ITS CITIES OF CHARLESTON AND  
HUNTINGTON AND ITS COUNTIES  
OF OHIO AND KANAWHA, WEST VIRGINIA,

Petitioners,

v.

WEST VIRGINIA ECONOMIC  
DEVELOPMENT AUTHORITY,  
a public corporation,

Respondent.



**MEMORANDUM LISTING THOSE PERSONS AND/OR ENTITIES UPON  
WHOM THE RULE TO SHOW CAUSE SHOULD BE SERVED, IF GRANTED**

The Petitioners, State of West Virginia ex rel. its Cities of Charleston and Huntington and its Counties of Ohio and Kanawha, West Virginia, in support of their "Petition of State of West Virginia Ex Rel. its Cities of Charleston and Huntington and its Counties of Ohio and Kanawha, West Virginia, for Relief by Writ of Mandamus from the August 21, 2003 Refusal by the West Virginia Economic Development Authority to Honor its Non-Discretionary Duty to Issue Revenue Bonds Pursuant to Executive Order 19-03" and, pursuant to Rule 14(a) of the West Virginia Rules of Appellate Procedure, submit this list of names and addresses of persons and/or entities upon whom the Rule to Show Cause should be served, if granted:

West Virginia Economic Development Authority  
Capitol Complex, Bldg. 6, Room 553  
1900 Kanawha Boulevard East  
Charleston, WV 25305

Darrell V. McGraw, Jr.  
West Virginia Attorney General  
Capitol Complex, Room 26E  
900 Kanawha Boulevard East  
Charleston, WV 25305

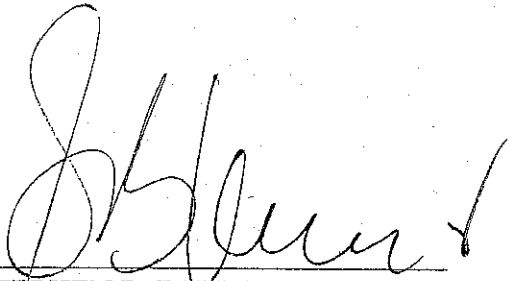
**COUNSEL FOR PETITIONERS:**

Stephen B. Farmer, Esquire  
FARMER, CLINE & ARNOLD, PLLC  
Post Office Box 3842  
Charleston, WV 25338-3842

STATE OF WEST VIRGINIA EX REL.  
ITS CITIES OF CHARLESTON AND  
HUNTINGTON AND ITS COUNTIES OF  
OHIO AND KANAWHA, WEST VIRGINIA,

Petitioners,

By Counsel:



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

DOCKET NO. \_\_\_\_\_

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA EX REL.  
ITS CITIES OF CHARLESTON AND  
HUNTINGTON AND ITS COUNTIES  
OF OHIO AND KANAWHA, WEST VIRGINIA,

Petitioners,

v.

WEST VIRGINIA ECONOMIC  
DEVELOPMENT AUTHORITY,  
a public corporation,

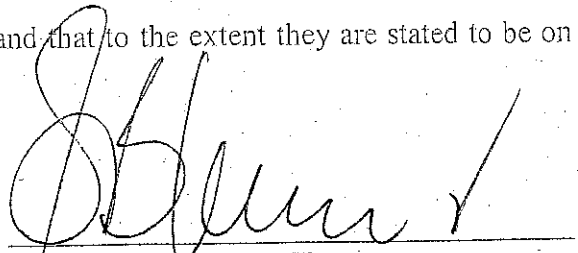
Respondent.

VERIFICATION

STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, to-wit:


The undersigned, Stephen B. Farmer, being first duly sworn, states that he has read the foregoing "Petition of State of West Virginia Ex Rel. its Cities of Charleston and Huntington and its Counties of Ohio and Kanawha, West Virginia, for Relief by Writ of Mandamus from the August 21, 2003 Refusal by the West Virginia Economic Development Authority to Honor its Non-Discretionary Duty to Issue Revenue Bonds Pursuant to Executive Order 19-03," the "Memorandum of Law and Citation of Relevant Authorities in Support of Petition for A Writ of Mandamus," and "Petitioners' Motion for Expedited Consideration Due to Exigent Circumstances" and that the factual representations contained therein are true, except insofar as

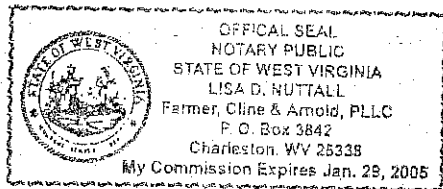
they are stated to be upon information and belief, and that to the extent they are stated to be on information and belief, he believes them to be true.

  
STEPHEN B. FARMER

Taken, subscribed and sworn to before me this 25th day of August, 2003.

My commission expires January 29, 2005.

  
NOTARY PUBLIC



CERTIFICATE OF SERVICE

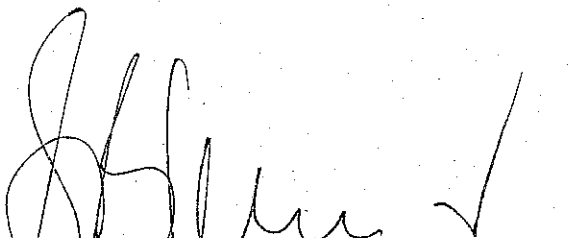
I, Stephen B. Farmer, do hereby certify that I have served the foregoing

1. Petition of State of West Virginia Ex Rel. its Cities of Charleston and Huntington and its Counties of Ohio and Kanawha, West Virginia, for Relief by Writ of Mandamus from the August 21, 2003 Refusal by the West Virginia Economic Development Authority to Honor its Non-Discretionary Duty to Issue Revenue Bonds Pursuant to Executive Order 19-03;
2. Memorandum of Law and Citation of Relevant Authorities in Support of Petition for a Writ of Mandamus;
3. Appendix;
4. Memorandum Listing Those Persons and/or Entities Upon Whom the Rule to Show Cause Should be Served, if Granted;
5. Verification; and
6. Petitioners' Motion for Expedited Consideration Due to Exigent Circumstances.

upon the following as reflected in the certificate of service by hand delivering true copies thereof this 25<sup>th</sup> day of August, 2003, addressed as follows:

West Virginia Economic Development Authority  
Capitol Complex, Bldg. 6, Room 553  
1900 Kanawha Boulevard East  
Charleston, WV 25305

Darrell V. McGraw, Jr.  
West Virginia Attorney General  
1900 Kanawha Boulevard East  
Room 26E  
Charleston, WV 25305

  
\_\_\_\_\_  
STEPHEN B. FARMER