

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel. CITIES OF CHARLESTON
AND HUNTINGTON AND ITS COUNTIES OF OHIO AND KANAWHA,

Petitioners,

v.

WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY,
a public corporation,

Respondent,

and

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

Petitioners,

v.

No. 31541

WEST VIRGINIA ECONOMIC DEVELOPMENT
GRANT COMMITTEE, et al.

Respondents.

and

GREENBRIER COALITION AGAINST GAMBLING EXPANSION, et al.

Petitioners,

v.

No. 31564

WEST VIRGINIA LOTTERY COMMISSION, et al.

Respondents,

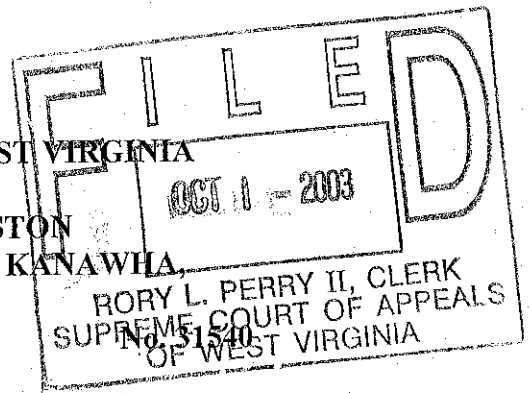
and

WEST VIRGINIA RACING ASSOCIATION,

Intervenor.

AMICUS CURIAE BRIEF OF SCHOOL BUILDING AUTHORITY
OF WEST VIRGINIA

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I.
INTRODUCTION AND STAKE OF
THE SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA
IN THESE PROCEEDINGS

The School Building Authority of West Virginia (the "SBA") files this amicus curiae brief in support of the constitutionality of racetrack video lottery established under the Racetrack Video Lottery Act, W.Va. Code §29-22A-1 et seq. ("racetrack video lottery" and the "Racetrack Video Lottery Act," respectively), and limited video lottery under the Limited Video Lottery Act, W.Va. Code §29-22B-1 et seq. ("limited video lottery" and the "Limited Video Lottery Act," respectively). The SBA was created in 1989 when the Legislature enacted W.Va. Code §18-9D-1 et seq. The SBA plays a key role in the State's efforts to secure and implement the fundamental constitutional right to a "thorough and efficient system of free schools" guaranteed by Article XII, §1 of the West Virginia Constitution, by providing construction funding and technical oversight for modern and efficient elementary and secondary school facilities throughout the State.

Under W.Va. Code §18-9D-6, the SBA carries out a "pay-as-you-go" school construction program for elementary and secondary schools. From the State Excess Lottery Revenue Fund created under W.Va. Code §29-22-18a, the Legislature has appropriated and the SBA has received and is expected to receive for this Pay-As-You-Go School Construction Program a total of **\$58,765,000** of excess racetrack video lottery proceeds and limited video lottery proceeds for Fiscal Years 2002, 2003 and 2004. As demonstrated in Exhibit A, the SBA historically has required significant amounts of local matching funds; and the local match has averaged another 57.3% of the SBA funding. Using that average local match of 57.3%, the SBA's \$58,765,000 of excess video lottery

funding at stake in this case would mean that **the total school construction funding at stake is much higher, i.e., approximately \$92,437,345.** This estimated \$92,437,345 of school construction projects thus is directly and significantly threatened in these proceedings.

A ruling that the Racetrack Video Lottery Act and Limited Video Lottery Act are unconstitutional, or that either of them is unconstitutional, would impair and thus materially and adversely affect the SBA Pay-As-You-Go School Construction Program. By the same token, the State's efforts to secure the fundamental constitutional right and guarantee of a "thorough and efficient system of free schools" under Article XII, §1 of the West Virginia Constitution likewise would be significantly impaired by any ruling that the Racetrack Video Lottery Act or the Limited Video Lottery Act is unconstitutional.

Finally, to the extent that the Racetrack Video Lottery Act or the Limited Video Lottery Act are major pieces of economic legislation aimed at addressing serious economic, social and financial problems in the state, extra deference to the Legislature is required under this Court's precedents. In this regard, it should be noted that a ruling that these statutes are unconstitutional would jeopardize approximately 1,478 on-site "prevailing wage" construction jobs, another approximately 1,571 off-site jobs in construction-related vendors and services, and approximately 2,495 spin-off jobs in the economy, as discussed below. These major job and economic impacts and the Court's enunciated standards of review compel a finding of constitutionality in this case.

II
SUMMARY OF ARGUMENT

- A. The SBA Adopts and Incorporates by Reference the Briefs, Affidavits and Legal Memoranda Filed by the West Virginia Lottery**
- B. When Determining Whether Legislation Violates One Constitutional Provision, A Finding of Constitutionality Is Required Where (1) the Legislation Does Not Plainly Violate That Provision, (2) the Legislation Helps Secure or Implement a Distinct and Fundamental Constitutional Right or Guarantee, and, (3) Striking Down the Legislation Would Significantly Impair the State's Efforts to Secure that Distinct Fundamental Constitutional Right or Guarantee**
- C. The Racetrack Video Lottery Act and the Limited Video Lottery Act Are Consistent With, and Do Not Plainly Violate, Article VI, §36 of the West Virginia Constitution**
- 1. Under This Court's Precedents for Defining a "Lottery", Racetrack Video Lottery and Limited Video Lottery Constitute "Lotteries" (and Thus Are "Lotteries" Within the Meaning of Article VI, §36 of the West Virginia Constitution) Because Each Has the Three Defining Features of a "Lottery", i.e., (1) a Prize, (2) the Element of Chance (Not Skill) With Odds In Favor of the Game Provider, and (3) Payment of Consideration for the Chance to Win the Prize**
 - 2. Changing the Technology for Delivering a Game Does Not Change the Fact that a Game Having These Three Defining Features Is "Lottery"**
 - 3. The Provisions of the Racetrack Video Lottery Act and the Limited Video Lottery Act Demonstrate that Racetrack Video Lottery and Limited Video Lottery Are Lotteries "Regulated, Controlled, Owned and Operated by the State of West Virginia" Within the Meaning of Article VI, §36 of the West Virginia Constitution**
- D. The SBA's Pay-As-You-Go School Construction Program Is a Key Part of the Legislature's Efforts to Secure and Implement Article XII, §1 of the West Virginia Constitution, and a Ruling that the Racetrack Video Lottery Act or the Limited Video Lottery Act is Unconstitutional Would Significantly Impair the State's Efforts to Implement Article XII, §1's Fundamental Constitutional Guarantee of a "Thorough and Efficient System of Free Schools"**

- E. Therefore, This Court Should Harmonize the Two Constitutional Provisions Implicated In this Case (Article VI, §36 and Article XII, §1), and Resolve Any Doubts in Favor of the Constitutionality of the Racetrack Video Lottery Act and Limited Video Lottery Act**
- F. This Court Should Give Extra Deference to the Legislature In Support of the Constitutionality of the Racetrack Video Lottery Act and the Limited Video Lottery Act Because Those Statutes Are Also Economic In Nature, and a Ruling That They Are Unconstitutional Would Have Serious Adverse Economic Consequences Because the SBA's Pay-As-You-Go School Construction Program Generates Significant Numbers of "Prevailing Wage" Construction Jobs and Related Jobs**

III ARGUMENT

- A. The SBA Adopts and Incorporates by Reference the Briefs, Affidavits and Legal Memoranda Filed by the West Virginia Lottery Commission in These Consolidated Proceedings, Including All Legal Arguments and Supporting Authorities Raised by the Lottery Commission.**

The SBA hereby adopts and incorporates herein by reference the briefs, affidavits, and legal memoranda filed by the West Virginia Lottery Commission (the "Lottery Commission") in these consolidated proceedings including the brief to be filed on September 29, 2003. The material adopted by SBA and incorporated herein by reference includes, without limitation, the Lottery Commission's statement of the case; its various discussions of the parties and the procedural and factual background of these proceedings; all evidentiary material it submitted; and all the legal and policy arguments and supporting authorities advanced in such briefs and memoranda.

This brief therefore will not address separately the other constitutional and legal issues addressed by the Lottery Commission, including, for example, the issues of whether the Racetrack Video Lottery Act or the Limited Video Lottery Act or any portion thereof impermissibly delegates legislative power or violates the constitutional separation

of powers doctrine as applied to certain board appointments. Based on the arguments and authorities cited by the Lottery Commission, the SBA believes that these other constitutional questions must be resolved in favor of the constitutionality of the Racetrack Video Lottery Act or the Limited Video Lottery Act.

B. When Determining Whether Legislation Violates One Constitutional Provision, A Finding of Constitutionality Is Required Where (1) the Legislation Does Not Plainly Violate That Provision, (2) the Legislation Also Helps Secure or Implement a Distinct and Fundamental Constitutional Right or Guarantee, and, (3) Striking Down the Legislation Would Significantly Impair the State's Efforts to Secure that Distinct Fundamental Constitutional Right or Guarantee

Questions or doubts about whether legislation violates one provision of the Constitution of West Virginia should be resolved in favor of constitutionality where (1) the legislation does not plainly violate that constitutional provision, (2) the legislation helps secure and implement a distinct and fundamental constitutional right or guarantee under a separate provision of the Constitution, and, (3) striking down the legislation would significantly impair the State's efforts to secure that distinct and fundamental constitutional right or guarantee. This principle is grounded in and follows from this Court's holdings on the rules for interpreting the Constitution of West Virginia to determine if a statute is constitutional.

In construing the Constitution, this Court has held that the general rules of statutory construction apply. Winkler v. State School Building Authority, 189 W.Va.748, 754, 434 S.E.2d 420 (1993). The Court also has held time and again that in construing the Constitution in test cases, it must exercise "due restraint" because of the constitutional doctrine of separation of powers and it must not strike down a statute unless its

unconstitutionality is clear "*beyond a reasonable doubt*". *Id.* (emphasis added); Syllabus Point 2, W. Va. Public Employees Retirement System v. Dodd, 183 W.Va. 544, 396 S.E.2d 725 (1990); Syllabus Point 1, State ex rel. Appalachian Power Co. v. Gainer, 149 W.Va. 740, 143 S.E.2d 351 (1965).

If a statute plainly violates one provision of the Constitution (that is, violates that provision "beyond a reasonable doubt"), then the fact that the statute also promotes or secures a distinct constitutional right or guarantee under a separate part of the State Constitution will not save it. That was a dictum enunciated in Winkler v. State School Building Authority, *supra*, 189 W.Va. at 753, 434 S.E.2d at 425. However, that dictum does not apply here. That is, for all the reasons advanced by the Lottery Commission, the best interpretation (and certainly a reasonable interpretation) of Article VI, §36 leads to the conclusion that the video lotteries under the Racetrack Video Lottery Act and the Limited Video Lottery Act indeed constitute "lotteries" that are "regulated, controlled, owned and operated by the State of West Virginia" as expressly authorized by Article VI, §36.

What, then, should this Court do in this case where the Racetrack Video Lottery Act or the Limited Video Lottery Act do not plainly violate one constitutional provision (Article VI, §36) and in fact help secure or implement a distinct and fundamental constitutional right or guarantee (a "thorough and efficient system of free schools") under another part of the West Virginia Constitution (Article X, §1)? Again, the Court's longstanding rules of statutory construction provide the answer.

Under established rules of statutory construction, this Court should construe different parts of the Constitution (namely, Article VI, §36 and Article XII, §1) so as to

“harmonize and reconcile” them. This Court has held and reasoned that it has a “duty” “where it is possible to do so, in the construction of statutes, to harmonize and reconcile laws, and to adopt that construction of a . . . provision which harmonizes and reconciles it with other . . . provisions”. Carvey v. W.Va. State Board of Educ., 206 W.Va. 720, 731, 527 S.E. 2d 831 (1999); and State ex rel. Pinson v. Varney, 142 W.Va. 105, 109-110, 96 S.E.2d 72, 75 (1956); cf., State v. Williams, 196 W.Va. 639, 474 S.E.2d 569 (1996).

Here, that means that this Court should consider the potential impairment of the State’s and SBA’s efforts to implement the fundamental constitutional guarantee of Article XII, §1 (whereby the State must provide a “thorough and efficient system of public schools”) if the Racetrack Video Lottery Act and Limited Video Lottery Act are deemed unconstitutional. It also means that this Court should try to interpret Article VI, §36 and Article XII, §1 so as to harmonize them and avoid impairing the SBA Pay-As-You-Go School Construction Program.

C. In this Case, the Racetrack Video Lottery Act and the Limited Video Lottery Act Are Consistent With, and Do Not Plainly Violate, the Key Terms and Provisions of Article VI, §36 of the State Constitution

- 1. Under This Court’s Precedents for Defining a “Lottery”, Racetrack Video Lottery and Limited Video Lottery Constitute “Lotteries” (and Thus Are “Lotteries” Within the Meaning of Article VI, §36 of the West Virginia Constitution) Because Each Has the Three Defining Features of a “Lottery”, i.e., (1) a Prize, (2) the Element of Chance (Not Skill) With Odds In Favor of the Game Provider, and (3) Payment of Consideration for the Chance to Win the Prize**

The SBA urges this Court to interpret the term “lotteries” in Article VI, §36 of the West Virginia Constitution to include racetrack and limited video lotteries, in accordance with the Court’s earlier case law definitions of “lottery.” In those prior decisions, this Court defined “lottery” as any game involving a potential prize, the

element of chance as opposed to skill with the odds stacked in favor of the game provider, and payment of consideration for the chance to win the potential prize. Syllabus Point 4, State v. Hudson, 128 W.Va. 655, 37 S.E.2d 553 (1946). This is the obvious and most logical reading of the term "lottery" as used in Article VI, §36. To the extent there is any debate whatsoever about the meaning of the term "lotteries" in this case, this Court should interpret the term in Article VI, §36 so as to harmonize it with the Legislature's efforts to secure and implement Article XII, §1, and accordingly should avoid an interpretation that would impair the SBA Pay-As-You-Go School Construction Program.

The SBA also urges this Court to find that the video lotteries operated under the Racetrack Video Lottery Act and Limited Video Lottery Act are lotteries "regulated, controlled, owned and operated by the State of West Virginia in the manner provided by general law" within the meaning of Article VI, §36 of the West Virginia Constitution. The arguments, affidavits and authorities cited by the Lottery Commission in its briefs and memoranda amply support these interpretations of Article VI, §36.

2. Changing the Technology for Delivering a Game Does Not Change the Fact that a Game Having These Three Defining Features Is "Lottery"

Music is still music, regardless of whether it is delivered on a 78 r.p.m. record album (the chief recording technology of the first half of the 20th century) a 33 1/3 r.p.m. record album (the recording medium of choice in most of the 1950's, 1960's and 1970's), 8-track tapes (very popular in the 1970's and 1980's but rarely seen or heard today), cassette tapes (which emerged in the 1960's but have faded in popularity in the last decade), compact discs (the recording technology of choice in the last 10 to 15 years), or

downloaded off the Internet by means of a computer or MP3 player (a new and increasingly popular technology for purchasing recorded music online). The same is true for "lottery."

Whether delivered by a scratch-off ticket, a powerball ticket generated by a computer at the convenience store, or a video terminal using computer technology, a "lottery" as defined under West Virginia case law is still a "lottery" within the meaning of Article VI, §36 of the West Virginia Constitution. The defining elements of a prize, chance (not skill) and consideration are all present here, as the Lottery Commission has pointed out in greater detail. Whether delivered by the old technology or the new, a game with these three elements is still a "lottery."

3. The Provisions of the Racetrack Video Lottery Act and the Limited Video Lottery Act Demonstrate that Racetrack Video Lottery and Limited Video Lottery Are Lotteries "Regulated, Controlled, Owned and Operated by the State of West Virginia" Within the Meaning of Article VI, §36 of the West Virginia Constitution

The SBA also urges this Court to find that under the Racetrack Video Lottery Act and Limited Video Lottery Act, racetrack video lottery and limited video lottery are lotteries "regulated, controlled, owned and operated by the State of West Virginia in the manner provided by general law" within the meaning of Article VI, §36 of the West Virginia Constitution. There is State ownership, operation, regulation and control of video lottery, as required by Article VI, §36 of the West Virginia Constitution, under a reasonable reading (indeed the most reasonable reading) of the Racetrack Video Lottery Act and Limited Video Lottery Act. In this regard, the arguments, affidavits and authorities cited by the Lottery Commission in its briefs and memoranda amply support this interpretation of Article VI, §36.

D. The SBA's Pay-As-You-Go School Construction Program Is a Key Part of the Legislature's Efforts to Secure and Implement Article XII, §1 of the West Virginia Constitution, and a Ruling that the Racetrack Video Lottery Act or the Limited Video Lottery Act is Unconstitutional Would Significantly Impair the State's Efforts to Implement Article XII, §1's Fundamental Constitutional Guarantee of a "Thorough and Efficient System of Free Schools"

Syllabus Point 3 of Pauley v. Kelly, 162 W.Va. 672, 255 S.E.2d 859 (1979) held that the "mandatory requirements of 'a thorough and efficient system of free schools' found in Article XII, Section 1 of the West Virginia Constitution, make education a fundamental, constitutional right in this State". The SBA plays a key role in the Legislature's efforts to secure this fundamental constitutional right for the citizens of West Virginia, by providing construction funding and technical oversight for modern and efficient elementary and secondary school facilities throughout the State.

The SBA and its school building and renovation programs have a direct and material financial stake in these mandamus proceedings because the Legislature in the three fiscal years since enactment of the Limited Video Lottery Act has appropriated significant amounts of limited video lottery proceeds to the SBA for its "pay-as-you-go" school building and renovation program under W.Va. Code § 18-9D-6 (the "SBA Pay-As-You-Go School Construction Program"). **The appropriations actually received in FY 2002 and FY 2003 together with the appropriation for FY 2004 total \$58,765,000.** Specifically, up to \$25,000,000 was appropriated for this purpose for FY 2002, of which **\$18,765,000** was received based on the actual limited video lottery proceeds realized in that fiscal year. Up to \$20,000,000 was appropriated and \$20,000,000 was actually received for this purpose for FY 2003. Up to \$20,000,000 was

appropriated and is expected to be received for the SBA Pay-As-You-Go School Construction Program for FY 2004.

It is important to note that the SBA nearly always requires county school boards to provide matching local funds whenever the SBA makes new school construction awards. For example, as Exhibit A hereto illustrates, in Fiscal Years 2000 (which began July 1, 2000) through 2004 (which ends June 30, 2004), the SBA thus far has awarded \$96,119,504 of new school construction grants in its Pay-As-You-Go School Construction Program and leveraged this amount another 57.3% with \$55,076,836 of local county matching funds. In other words, that 57.3% local match leveraged the \$96,119,504 of SBA funds to generate a total of \$151,196,340 of new school construction grants for those fiscal years (FY 2004 is ongoing). That construction affected thousands of students throughout the state. See the list of schools referenced in Exhibit A.

Using the same historical average local match of 57.3% of SBA funds, the \$58,765,000 of annual excess video lottery proceeds at stake in this proceeding would mean that an estimated approximately \$92,437,345 of new school construction is actually at stake in this proceeding. Again, that would quite dramatically affect the quality of school buildings for thousands of students throughout the State.

Therefore, a ruling that the Racetrack Video Lottery and Limited Video Lottery Acts are unconstitutional would significantly impair the SBA's and the State's efforts to implement and secure the fundamental constitutional right to a thorough and efficient system of free schools guaranteed by Article X, Section 1 of the West Virginia Constitution.

E. Therefore, This Court Should Harmonize the Two Constitutional Provisions Implicated In this Case (Article VI, §36 and Article XII, §1), and Resolve Any Doubts in Favor of the Constitutionality of the Racetrack Video Lottery Act and Limited Video Lottery Act

Here, video lottery as authorized under the Racetrack Video Lottery Act and Limited Video Lottery Act can reasonably be interpreted as creating a lottery owned, regulated, operated and controlled by the State within the meaning of Article VI, Section 36. Therefore, these statutes are consistent with and certainly do not plainly violate Article VI, Section 36. Further, such an interpretation of Article VI, Section 36 would avoid significant impairment of the State's and the SBA's efforts to implement the fundamental constitutional right guaranteed by Article X, Section 1 through the SBA Pay-As-You-Go School Construction Program. Finally, it would harmonize Article X, Section 1 and Article VI, Section 36 in a way that hurts neither part of the Constitution.

Under such circumstances, this Court should interpret Racetrack Video Lottery Act and Limited Video Lottery Act as indeed creating lotteries that are owned, regulated, operated and controlled by the State within the meaning of Article VI, Section 36 and thus as lotteries expressly permitted by Article VI, Section 36.

F. This Court Should Give Extra Deference to the Legislature In Support of the Constitutionality of the Racetrack Video Lottery Act and the Limited Video Lottery Act Because They Also Are Economic In Nature, and a Ruling That They Are Unconstitutional Would Have Serious Adverse Economic Consequences Because the SBA's Pay-As-You-Go School Construction Program Generates Significant Numbers of "Prevailing Wage" Construction Jobs and Related Jobs

There also are other adverse economic impacts to consider in this case. According to the U.S. Department of Labor, Bureau of Labor Statistics, and the Associated General Contractors of America, every \$1 Million of building construction

generates approximately 60 jobs, consisting of approximately 16 on-site construction jobs, 17 off-site jobs (material suppliers, etc.), and 27 indirect jobs (auto dealers, grocery and retail stores, etc.). Using these factors, the \$92,437,345 of school building construction at issue in this case would involve approximately 1,478 good-paying on-site construction jobs paying "prevailing wages"; another approximately 1,571 off-site jobs; and approximately 2,495 indirect jobs. That is a lot of jobs and would constitute a major economic impact at risk in these proceedings.

As argued in the Lottery Commission's briefs and memoranda and in the initial memorandum of petitioners in No. 31540 (which memorandum is incorporated by reference herein in this regard), the Racetrack Video Lottery Act and Limited Video Lottery Act are at least in part economic legislation. As such, these statutes are entitled to extra deference from this Court. This deference is strongly reinforced in this case because the SBA's funding that is threatened in these proceedings would generate not only significant amounts of new school construction but also a significant number of jobs and a major economic impact (approximately: 1,478 on-site construction jobs paying "prevailing wages", 1,571 off-site jobs and 2,495 additional resulting jobs).

These jobs and economic impacts are additional factors that support the interpretation of Article VI, Section 36 of the State Constitution urged here and by the Lottery Commission. For all these reasons, this Court should rule that the Racetrack Video Lottery Act and Limited Video Lottery Act are constitutional and within the meaning of Article VI, Section 36 of the West Virginia Constitution.


IV

CONCLUSION

For all the foregoing reasons, the SBA respectfully submits that the Racetrack Video Lottery Act and Limited Video Lottery Act, and the State Excess Video Lottery Fund, should be held to be constitutional.

Respectfully submitted,

SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA
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**EXHIBIT A
TO
AMICUS CURIAE BRIEF
OF
SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA**

**SCHOOL BUILDING AUTHORITY OF WEST VIRGINIA
NEW SCHOOL CONSTRUCTION GRANTS AWARDED
JULY 1, 2000 to JUNE 30, 2004**

		<u>SBA Funds</u>	<u>County Funds</u>	<u>Total Funding</u>
Barbour	Philip Barbour High School	8,785,412	9,994,391	18,779,803
Berkeley	Spring Mills Middle School	2,000,000	9,653,178	11,653,178
Berkeley	West Central Intermediate School	5,193,526	509,942	5,703,468
Doddridge	Doddridge County Elementary School	3,111,560	1,000,000	4,111,560
Doddridge	Doddridge County HIGH School	6,624,000	7,000,000	13,624,000
Hancock	Oak Glen Middle School	8,420,000	3,150,000	11,570,000
Lincoln	New High School	24,854,656	0	24,854,656
Logan	Man Central School	6,838,359	3,224,960	10,063,319
Marion	New Middle School	7,900,000	6,100,000	14,000,000
Mason	Central Ordinance Elementary School	4,126,681	1,597,994	5,724,675
Monongalia	Westwood Elementary School	5,095,360	1,999,600	7,094,960
Morgan	North Berkeley Elementary School	3,525,930	2,688,518	6,214,448
Wayne	Wayne Elementary School	3,894,020	1,000,000	4,894,020
Wyoming	Wyoming West High School	5,750,000	7,158,253	12,908,253
	Totals	<u>96,119,504</u>	<u>55,076,836</u>	<u>151,196,340</u>

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**STATE OF WEST VIRGINIA ex rel. CITIES OF CHARLESTON
AND HUNTINGTON AND ITS COUNTIES OF OHIO AND KANAWHA,
Petitioners,**

v.

No. 31540

**WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY,
a public corporation,**

Respondent,

and

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

Petitioners,

v.

No. 31541

**WEST VIRGINIA ECONOMIC DEVELOPMENT
GRANT COMMITTEE, et al.**

Respondents.

and

**GREENBRIER COALITION AGAINST GAMBLING EXPANSION, et al.
Petitioners,**

v.

No. 31564

WEST VIRGINIA LOTTERY COMMISSION, et al.

Respondents,

and

WEST VIRGINIA RACING ASSOCIATION,

Intervenor.

CERTIFICATE OF SERVICE

I, Roger D. Hunter, Neely & Hunter, counsel for the School Building Authority of West Virginia, do hereby certify that service of the foregoing "Amicus Curiae Brief of the School Building Authority of West Virginia" has been made by depositing a true copy of the same this 1st day of October in the United States Mail, postage prepaid, addressed to the following counsel at the following addresses:

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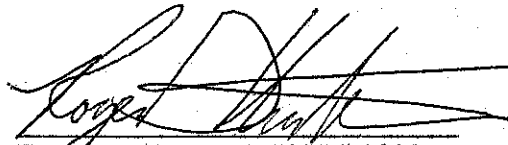
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