

No. 30316—*Carol Gallant and Jim Whipple v. County Commission of Jefferson County, West Virginia*

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January 6, 2003

RORY L. PERRY II, CLERK
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OF WEST VIRGINIA

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RORY L. PERRY II, CLERK
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McGraw, Justice, concurring:

I agree with the majority that this dispute over the Jefferson County Jail should be resolved under the old statute. I also agree that the change made by the Legislature in the statute is not in excess of the Legislature's authority. However, I write separately to express my concern that the Legislature may have, unintentionally, gutted the historic preservation statute, at least where county commissions are involved. The applicable statute states that:

The purposes and duties of the historic preservation section are to locate, survey, investigate, register, identify, preserve, protect, restore and recommend to the commissioner for acquisition historic, architectural, archaeological and cultural sites, structures and objects worthy of preservation

W. Va. Code § 29-1-8 (2001).

Our state efforts toward historic preservation are based largely upon the National Historic Preservation Act of 1966. Both programs exist because of a recognition that our historic structures and sites have a value to the public that can be hard to measure, in spite of the fact that it is often more expensive or difficult to preserve properties of historical significance than it is to ignore or destroy them. In this case, as is common in such struggles, those who favor historic preservation need all the help they can get. Here we see the efforts

of a small, dedicated group of people with scant resources who are making an effort to preserve important sites and buildings. They are pitted against a powerful foe, in this case the county government, with paid staff and plenty of money for legal help. *See, American Tower Corp. v. Common Council of City of Beckley*, 210 W. Va. 345, 557 S.E.2d 752 (2001), McGraw, J., dissenting.

If that weren't enough, now the preservationists are faced with the overwhelming power of the Legislature. The great and unintentional mischief this change in the statute threatens is a potential attack on the historic courthouses in every county in this state. I do not fault the county commission for looking for a solution to its space problem - that is part of its duty to operate an effective government for its citizens. However, the amicus brief supplied by The Courthouse Facilities Improvement Authority demonstrates nicely the potential dangers faced by all our historic courthouses.

The Legislature has empowered the authority to review the needs for the courthouse in every county. But now that power is apparently unchecked by any need to consider the historic impact of any changes it might make to our historic buildings. Surely the Legislature did not intend to put in jeopardy each and every Courthouse in this state. In many of our counties, the Courthouse is one of the finest structures in the county. In spite of sometimes limited resources, remote locations, or other obstacles, our ancestors managed to construct numerous fine examples of many styles of architecture, including Greek Revival, Beaux Arts, Art Moderne, Neo-Classical Revival, Colonial Revival, Art Deco, and Romanesque

Revival. These buildings reflect an ancient tradition of making public buildings the architectural center of the community, a tradition strengthened in this state by Thomas Jefferson, who based many of his designs for public buildings on Roman and Greek structures.

No doubt it would have been cheaper and easier for our ancestors to build simple buildings bereft of ornamentation or landscaping. It is lucky for us they did not; it is incumbent upon us to insure that future generations may still appreciate the beauty and history of these many fine structures. As one scholar has commented:

Efforts to preserve the heritage of West Virginia are increasing as a whole. However, individual battles continue to be waged in communities everyday. Like the former National Bank of West Virginia building in downtown Morgantown, historic buildings continue to be lost needlessly.

Megan M. Carpenter, *Preserving a Place for the Past in Our Future: A Survey of Historic Preservation in West Virginia*, 100 W. Va. L. Rev. 423, 466 (1997). Because I fear that the changes made to the statute may put our historic public buildings at risk, I must respectfully concur to the majority opinion.