

No. 31540     State of West Virginia ex rel. Cities of Charleston and Huntington and its Counties of Ohio and Kanawha, West Virginia v. West Virginia Economic Development Authority, a public corporation

and

No. 31541     State of West Virginia ex rel. Rev. Jim Lewis and John Cooney v. West Virginia Economic Development Grant Committee; West Virginia Economic Development Authority; City of Charleston; Kanawha County Commission; City of Huntington; and Ohio County Commission

and

No. 31564     Greenbrier County Coalition Against Gambling Expansion and Cabell County Coalition Against Gambling Expansion, unincorporated associations v. West Virginia Lottery Commission and John Musgrave, its Director

West Virginia Racing Association, Intervenor

**FILED**

**October 17, 2003**

**RORY L. PERRY II, CLERK**

**SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

Starcher, C.J., concurring and lamenting:

I have two opinions about this case — a professional opinion, and a personal opinion. I will first summarize these two opinions, and then discuss them separately.

Professionally, I think that the Legislature, which has overwhelmingly and repeatedly voted to establish a massive, statewide, government-operated gambling system in West Virginia — and to finance a significant piece of our public budget from that system — has the legal right to do so under our *Constitution*.

Personally, I question whether it is right or wise for my government to set up and operate this massive, statewide, government-operated gambling system — and to use,

in managing this system, thousands of privately-managed sites that are impossible to supervise and monitor; and to also use thousands of gambling devices that are known to be especially dangerous and addictive; and then to make it next to impossible for future generations to cancel, revamp, or restrict this system, because of the legal obligation to pay off bonds that are based on gambling revenues.

### *A Professional Opinion*

Professionally, as a lawyer and justice whose job is to apply legal principles that have evolved over many years, I concur with the majority opinion's conclusion that the language of our 1984 constitutional "Lottery Amendment" gave the Legislature the authority to set up and operate the massive, statewide, government-operated gambling system that is challenged in the instant case.

The legal issue before this Court is not whether the voters in 1984 had "video poker-type" machines in their conscious minds when they approved of state-run lotteries. Rather, the issue is whether the language that the voters approved created enough constitutional "elbow room" to allow the Legislature to create the current system. As the majority opinion demonstrates — it does.

### *A Personal Opinion*

To repeat: the Legislature has decided to have massive, statewide,

government-operated gambling, in thousands of privately-managed locations in West Virginia — and to fund a good bit of the State’s budget with the revenues from this gambling enterprise.

Regardless of one’s ultimate position on the wisdom of this course, it is beyond dispute that West Virginia, as a result of this decision by the Legislature, does now and will in the future increasingly suffer a substantial amount of tragic harm and injury to individuals, families, businesses, and communities.

Under the system created by the Legislature, we can expect to have between twenty to forty (closer to forty) *thousand* West Virginia adults, and about five *thousand* West Virginia teenagers — at any given time — who are problem or pathological gamblers.

The effects of these thousands of West Virginians’ severe gambling problems — on their families, jobs, schools, communities, and households — will directly and negatively affect several hundred thousand other West Virginians: family members, employers, etc. Many personal bankruptcies will originate in gambling problems, as will many incidents of crime, suicide, divorce, and domestic violence. Less than five percent of West Virginians with gambling problems will seek help; of those, perhaps half will be able to recover significantly.<sup>1</sup>

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<sup>1</sup>These conservative figures come from a number of national and state studies. The *Louisville Courier-Journal* did a series in December of 2002 that brings together some of the most compelling facts. See [www.courier-journal.com](http://www.courier-journal.com). There seems to be a consensus that the State of Oregon, which has also hitched its public budget to gambling revenues, is a leader in measuring and offering treatment to problem gamblers. A well-documented report on problem and pathological gambling in Oregon, published by the Oregon

This, in rough summary, is the tragic human cost (in numbers) that our Legislature has decided our State will pay, to get the benefits of widespread, state-operated, “convenience” gambling.

Each of these tragic numbers, of course, has a human face.

When I think about the “instant lottery ticket” system that the Legislature has created in every community in our State, the first image that comes to my mind is the memory of two poorly-dressed women whom I recently saw, as they were sitting in a beat-up car, outside a convenience store.

The women were feverishly scratching the surfaces of their lottery tickets to see if they had a winning number. When they were done, they headed inside to buy some more tickets.

This, I thought, is how we are financing our senior citizens’ centers — on the backs of these low-income people’s wishful imagination that they might miraculously escape their materially impoverished existence by “hitting it big.”

I thought of the Bible verse — “insofar as you do it to the least of these, you do it to me.” What would Jesus think of balancing the State’s budget on the dollars of these poor women?

And when I think about the thousands of “video slot machines” that are spread

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Department of Human Services, is titled “Gambling Treatment Programs: Evaluation Update 2002,” and can be found at [http://www.dhs.state.or.us/addiction/publications/gambling/2002ann summ .pdf](http://www.dhs.state.or.us/addiction/publications/gambling/2002annsumm.pdf).

across the state, I think of a middle-class family I know where a wonderful parent became addicted to video machine gambling — the “crack cocaine of gambling” — and in a few months, lost tens of thousands of dollars. (The speed and ease of play of video slots rapidly accelerates the addiction process for vulnerable individuals.)

This, I thought, is how a building in some politician’s home town will be financed — on the back of a family’s crisis of addiction and suffering.

I do not want to be misunderstood. In no way do I condemn gambling *per se*. People should be able to gamble legally, it seems to me — but only if we devise and put in place a system that contains effective, proven structural checks and safeguards that will minimize the terrible problems and harms associated with legalized gambling.

It appears to me, however, that the system that the Legislature has created — massive, statewide, convenience gambling — is pretty much the exact opposite of a sound approach.

In West Virginia — instead of conducting gambling in a limited number of publicly managed and overseen sites, where the problems of addictive, compulsive, pathological, and excessive gambling can be avoided, identified, and responded to — the Legislature has proliferated the most fiscally regressive and psychologically dangerous gambling devices, like instant lottery and video slot machines — in thousands of decentralized, privately managed sites, where *all of the financial incentives are to maximize revenue, and to ignore problem and pathological gambling.*

Furthermore, the Legislature does not even allow gamblers to have the best chance of success, or at least to prolong their entertainment as they lose their money. Instead, the Legislature sets high odds against gamblers (much higher than Las Vegas). Then, the massive gambling revenues, well above the costs of doing business, are treated as a “cash cow” for our government, which becomes dependent upon these revenues. *The Legislature is even issuing bonds that must be paid from money taken from our State’s children decades from now, when they become gamblers.*<sup>2</sup> Talk about a credit-card government!

To me, this is a dismal situation. For these reasons, I personally question the wisdom of the course that the Legislature has chosen.

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<sup>2</sup>I recognize that the gambling system that the Legislature has created, and the money that this system collects from gamblers (both problem and non-problem), provide jobs for many people. This fact, made much of in the briefs in this case, is not rocket science. Money coming out of gamblers’ pockets is obviously going into other peoples’ pockets, directly and indirectly — where else would it go?

I also recognize that the members of the Legislature are strongly motivated by the goal of creating and supporting jobs — jobs for people who work in connection with gambling operations, and jobs for people who work for government, too.

But I don’t think that the human and social costs of the current system have been weighed against these job-related benefits. I question whether there will *ever* be a fair appreciation and weighing of the true costs of massive, statewide, convenience gambling. Rather, I foresee that dependence on gambling for state revenues will blind our leaders, who seem to be ever fearful of raising revenues by general taxation and fees, from recognizing and evaluating the human and social cost of the system they have created to obtain money from gamblers. And of course, a portion of the massive revenues that are also going in the pockets of the private gambling operators who manage the system the Legislature has set up will inevitably return to influence the political process -- in ways that I frankly would rather not think about.

### *Conclusion*

If I disagreed professionally with the legal conclusion and result reached by the majority opinion, I would write a dissent. However, my disagreement, as noted, is based on my deeply-felt but essentially personal misgivings about the Legislative decisions that we are reviewing.

Accordingly, I have written not a dissent — but a lament.