

Plaintiffs, by and through undersigned counsel, file this Complaint and Petition for Declaratory Judgment.

Plaintiffs, complaining of the defendants, allege and say:

INTRODUCTION

1. This action is brought pursuant to the Uniform Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 to challenge the constitutionality of North Carolina’s HB 1023, as ultimately amended by section 31.1 of SB 622, titled “AN ACT TO ESTABLISH A STATE LOTTERY TO GENERATE FUNDS TO FURTHER THE GOAL OF PROVIDING ENHANCED EDUCATIONAL OPPORTUNITIES SO THAT ALL STUDENTS IN THE PUBLIC SCHOOLS CAN ACHIEVE THEIR FULL POTENTIAL, TO SUPPORT SCHOOL CONSTRUCTION, TO FUND COLLEGE AND UNIVERSITY SCHOLARSHIPS, AND TO MAKE CONFORMING CHANGES TO THE GENERAL STATUTES” (“the Lottery Act”) and to seek a judgment finding null, void and unenforceable the same on the grounds that passage of the same did not satisfy requirements of the North Carolina Constitution. (A copy of HB 1023 as amended by section 31.1 of SB 622 is attached hereto as Exhibit A and fully incorporated herein.)

2. The action by the legislature in passing the Lottery Act and the action by certain defendants in subsequently attempting to implement the Lottery Act violate Article II, Section 23 of the North Carolina Constitution. Article II, Section 23 requires that any law to raise money on the credit of the State or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State be read and passed three several

readings each of which shall be on three separate days; and that the yeas and nays of each vote be entered on the journal of each house of the General Assembly.

3. The action by the legislature in passing the Lottery Act and the action by certain defendants in subsequently attempting to implement the Lottery Act also violate Article V, Section 7 of the North Carolina Constitution which prohibits the drawing of money from the State treasury except in consequence of appropriations made by law.

PARTIES

(Plaintiffs)

Pursuant to the Uniform Declaratory Judgment Act, the following individuals are petitioning for a declaration as to the unconstitutionality of the legislation at issue and for the purposes of this action are denominated as “Plaintiffs”:

4. Plaintiff Charles Heatherly individually is a citizen and resident of Wake County, North Carolina, and at all times complained of, has paid income tax to the State.

5. Plaintiff Thomas Spampinato individually is a citizen and resident of Wake County, North Carolina. In the past, he has paid income taxes, and at all times complained of, has filed income tax returns with the State and paid taxes, other than income taxes, to the State. Plaintiff Spampinato is a compulsive gambler who gambled for 22 years of his life resulting in devastating financial and emotional consequences for himself and his family. He founded Gamblers Anonymous in North Carolina in 1988 and has served as a national trustee for Gamblers Anonymous.

6. W. Edward Goodall, Jr., individually is a citizen and resident of Union County, North Carolina, and at all times complained of, has paid income tax to the State. At all times complained of, Plaintiff Goodall has been a member of the North Carolina Senate representing the 35th District.

7. Plaintiff Paul Stam individually is a citizen and resident of Wake County, North Carolina, and at all times complained of, has paid income tax to the State. At all times complained of, Plaintiff Stam has been a member of the North Carolina House of Representatives representing the 37th District.

8. Plaintiff Wake County Taxpayers Association (“Taxpayers Association”) is a non-profit corporation headquartered in Wake County, North Carolina. The Taxpayers Association is a volunteer organization the purpose of which is to monitor the use of taxes, to initiate action to reduce excessive taxation, to eliminate wasteful spending, to encourage the wise and common sense use of taxes at all levels of government, and to monitor revenue bills in the General Assembly.

9. The North Carolina Family Policy Council (“NCFPC”) is nonpartisan, non-profit corporation duly chartered in North Carolina and operating in Raleigh, Wake County, North Carolina for the purposes of conducting research and education dedicated to the preservation of the family and traditional family values. As a statewide organization focusing on public policy, it monitors much of the activity of state government and engages in lobbying in the General Assembly. The NCFPC is exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is a charitable or religious corporation, as defined in Chapter 55A of the North Carolina General Statutes. The NCFPC was actively engaged in lobbying against the Lottery Act, and by virtue of the acts hereinafter complained of, was deprived of the right to lobby members of the General Assembly after the second readings of HB 1023.

(Defendants)

Pursuant to N.C. Gen. Stat. § 1-260, the following are joined as parties who have an interest which would be affected by the declaration sought, and are for purposes of this action denominated as “Defendants”:

10. Defendant State of North Carolina is a general purpose state government which is capable of being sued, and which is being sued, for enacting (through the General Assembly) legislation in violation of the North Carolina State Constitution, i.e., the Lottery Act.

11. Defendants Charles A. Sanders, Bryan E. Beatty, Linda Carlisle, Robert A. Farris, Jr., John R. McArthur, Jim Woodward, and Robert W. Appleton are each citizens and residents of the State of North Carolina; each is a current member of the North Carolina State Lottery Commission and is sued in his or her official capacity as a member of the North Carolina State Lottery Commission which is charged with establishing and administering the lottery laws of the State of North Carolina. The Defendants listed in Paragraph numbered 11 of this Complaint are hereinafter referred to as the “Lottery Commission Defendants.”

12. Defendant North Carolina Lottery Commission (“the Lottery Commission”) is a revenue-raising agency of the State of North Carolina with its headquarters in Wake County and is charged with establishing and administering the lottery laws of the State of North Carolina.

13. Upon information and belief, Defendant Thomas N. Shaheen is a citizen and resident of the State of North Carolina and is sued in his official capacity as Executive Director of the North Carolina Education Lottery.

14. Defendant Michael F. Easley and Defendant Richard H. Moore are each sued in their official capacity as the Governor and the State Treasurer, respectively, of the State of North Carolina.

JURISDICTION AND VENUE

15. This action is brought pursuant to N.C. Gen. Stat. § 1-253, the Uniform Declaratory Judgment Act, for the purpose of determining the constitutionality of certain actions of the State of North Carolina. This Court has jurisdiction over the subject matter of this action pursuant to N.C. Gen. Stat. § 1-253, the Uniform Declaratory Judgment Act.

16. This Court has jurisdiction over the parties pursuant to N.C. Gen. Stat. § 1-75.4.

17. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-82.

FACTUAL BACKGROUND

Legislative History

18. Upon information and belief, HB 1023 was filed in the House of Representatives on March 30, 2005, was read for the first time and referred to the House Select Committee on the Lottery the following day. On April 6, 2005, HB 1023 (Committee Substitute) was placed on the calendar for that day for immediate consideration. (A copy of HB 1023 (Committee Substitute) is attached hereto as Exhibit B and is fully incorporated by reference).

19. Upon information and belief, HB 1023 (Committee Substitute) was called for a second reading and vote on April 6, 2005. The bill passed its second reading, by electronic vote, 62-58. The yeas and nays of the vote on the second reading were recorded in the House Journal. One representative (Representative Harrison) asked permission to change her vote from “aye” to “no.” Permission was granted, and the final adjusted vote was 61-59.

20. Upon information and belief, on the same day, April 6, 2005, immediately after the vote on the second reading, HB 1023 (Committee Substitute) passed on a purported third reading by voice vote, as reflected in the House of Representatives Journal for that day. (A copy of the House Journal for April 6, 2005, is attached hereto as Exhibit C and fully incorporated by reference). The yeas and nays were not recorded in the House Journal.

21. Upon information and belief, on April 6, 2005, after purportedly passing HB 1023 (Committee Substitute) on a vote following a third reading, the House sent HB 1023 (Committee Substitute) to the Senate.

22. Purportedly having passed the House, HB 1023 (Committee Substitute) was received by the Senate on April 7, 2005, was read for the first time and was referred to the Committee on Rules and Operations of the Senate that same day.

23. Upon information and belief, SB 622 (the "Budget Bill") was passed in the Senate on May 5, 2005. The Budget Bill contained provisions at section 31.1 which related to a State Lottery. The House passed the Budget Bill on June 16, 2005, without the Lottery provisions in the bill. However, after being sent to Conference Committee, SB 622 emerged with the Lottery provisions of section 31.1 included. These provisions were dependant for enactment upon the passage of HB 1023 (Committee Substitute) and would amend HB 1023 (Committee Substitute) if it (HB 1023 (Committee Substitute)) became law. SB 622 passed in the House on August 10, 2005, and in the Senate on August 11, 2005, and was signed into law by the Governor on August 13, 2005. (A copy of section 31.1 of SB 622 is attached hereto as Exhibit D and fully incorporated by reference.)

24. Upon information and belief, on August 24, 2005, after approximately 20 hours of debate, Marc Basnight as Senate President Pro Tempore announced that the Senate had concluded its business for the session, would not be taking any additional votes, and would return the following week to take up a resolution for adjournment. Two days later on August 26, 2005, members of the Senate were supposedly notified that the Senate would be in session on August 30, 2005, to consider any eligible legislation.

25. Upon information and belief, on August 30, 2005, the Committee on Rules and Operations of the Senate reported HB 1023 (Committee Substitute) favorably to the Senate and it was placed on the calendar for that day.

26. Upon information and belief, HB 1023 (Committee Substitute) was passed by the North Carolina Senate on a purported second reading on August 30, 2005 by electronic vote. The yeas and nays of the vote on the second reading were recorded in the Senate Journal. The vote after the second reading in the Senate was tied at 24 yeas and 24 nays, and a tie breaking “yea” vote was cast by Lieutenant Governor Beverly Perdue, presiding in her official capacity. (A copy of the Senate Journal from August 30, 2005 is attached hereto as Exhibit E and fully incorporated by reference).

27. Upon information and belief, on August 30, 2005, the same day as the second reading and vote, HB 1023 (Committee Substitute) passed by voice vote after a purported third reading. The yeas and nays of the vote on third reading were not recorded in the Senate Journal.

28. HB 1023 (Committee Substitute) having purportedly passed the House and Senate and been signed by the presiding officers of each, and by the Governor became law on August 31, 2005 (See Exhibit A), and HB 1023 (Committee Substitute) was thus amended by section 31.1 of SB 622 and the final manifestation of the Lottery Act (Ex. A) was complete.

Provisions of the Lottery Act

29. Article 1 of HB 1023 as amended by section 31.1 of SB 622 states that the purpose of the bill is “to establish a State-operated lottery to generate funds for the public purposes” described in the bill, i.e., public education.

30. Article 2 of HB 1023 as amended by section 31.1 of SB 622 creates a Lottery Commission which “shall be an independent, self-supporting, revenue-raising agency of the State.”

31. Article 7 of HB 1023 as amended by section 31.1 of SB 622 created an enterprise fund within the State treasury, to be known as the North Carolina State Lottery Fund, the purpose

of which is to generate revenue to be used for the educational welfare of all North Carolina citizens and residents.

32. The North Carolina State Lottery Fund will be the repository for all proceeds from the sale of lottery tickets, public funds for initial start-up costs provided by the State, all other funds credited or appropriated to the Lottery Commission, and interest earned by the North Carolina State Lottery Fund.

33. HB 1023 as amended by section 31.1 of SB 622 directs the Lottery Commission, to the extent practicable, to allocate revenues from the sale of lottery tickets in the following manner:

- a. At least fifty percent of the total annual revenues for prizes;
- b. At least thirty-five percent of the total annual revenues to be transferred to the Education Lottery Fund as directed by §18C-164 of HB 1023;
- c. No more than eight percent of the total annual revenues for payment of expenses of the lottery; and
- d. No more than seven percent of the total annual revenues for compensation paid to lottery game retailers.

34. HB 1023 as amended by section 31.1 of SB 622 directs the Lottery Commission to distribute the net revenue of the North Carolina State Lottery Fund annually as follows:

- a. Five percent shall be transferred to the Education Lottery Reserve Fund to be used for purposes of conforming the General Assembly's appropriation of net revenue (which is based on estimates) to the actual net revenues for any given year.

- b. Fifty percent of the remaining net revenues shall be transferred to the Education Lottery Fund to support reduction of class size in early grades of public schools;
- c. Forty percent of the remaining net revenues shall be transferred to the Public School Building Capital Fund created in Article 38A of Chapter 115C of the General Statutes and appropriated for expenditure in accordance with that Article;
- d. Ten percent of the remaining net revenues shall be transferred to the State Educational Assistance Authority and appropriated to fund scholarships pursuant to Article 35A of Chapter 115C of the General Statutes; and

35. Pursuant to §18C-164(d) of HB 1023 as amended by section 31.1 of SB 622, the Education Lottery Fund, the Public School Building Capital Fund, the State Educational Assistance Authority shall be subject to appropriation by the General Assembly and shall be used to further the goal of providing enhanced educational opportunities so that all students in the public schools can achieve their full potential.

36. Section 10.2(a) of HB 1023 as amended by section 31.1 of SB 622 directs the Lottery Commission to deduct and withhold state income taxes from the payment of winnings that are reportable to the Internal Revenue Service. The amount of taxes to be withheld is seven percent of the winnings.

37. Section 10.3 of HB 1023 as amended by section 31.1 of SB 622 rewrites in part N.C. Gen. Stat. § 105-134 to impose a tax on every nonresident of North Carolina who derives income from gambling activities in the State, including the lottery.

38. Section 15 of HB 1023 as amended by section 31.1 of SB 622 directs the State Treasurer to lend to the North Carolina State Lottery Commission, at a rate of interest comparable to short-term rates in the private capital market and with repayment terms satisfactory to both parties, sufficient State funds to cover initial operating expenses of the Lottery Commission, except that the total amount of borrowed funds shall not exceed \$10 million. The borrowed funds are to be deposited in the North Carolina State Lottery Fund and are to be available for expenditure as set forth in the Lottery Act without further action by the General Assembly.

39. Article 2 of HB 1023 as amended by section 31.1 of SB 622 provides for the establishment of a Lottery Commission to establish and oversee the operation of a State lottery and specifies that the Lottery Commission shall consist of “nine members, five of whom shall be appointed by the Governor, two of whom shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, and two of whom shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.”

Relevant Constitutional Provisions

40. Article II, Section 23, of the North Carolina State Constitution states:

Section 23

Revenue bills. No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house

respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

41. Article V, Section 7, of the North Carolina State Constitution states in pertinent part:

Section 7

Drawing public money.

(1) *State treasury*. No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

Letters to State Officials

42. In anticipation of litigation, undersigned counsel hand delivered a letter dated November 17, 2005 to Defendant Charles A. Sanders demanding that the Lottery Commission refrain from proceeding with the establishment of a state lottery or expending funds in furtherance of the same, including, but not limited to, contracting for the employment of an executive director or other employees. (See Exhibit F attached hereto and incorporated by reference).

43. In anticipation of litigation, undersigned counsel hand delivered a letter dated November 17, 2005, addressed to Attorney General Roy Cooper, to Susan R. Lundberg, Assistant Attorney General, demanding that the State refrain from proceeding with the establishment of a state lottery or expending funds in furtherance of the same, including, but not limited to, contracting for the employment of an executive director or other employees. (See Exhibit G attached hereto and incorporated by reference).

44. In anticipation of litigation, undersigned counsel caused to be hand delivered a letter dated November 17, 2005 addressed to Defendant Moore demanding that the State refrain from

proceeding with the establishment of a state lottery or expending funds in furtherance of the same, including, but not limited to, contracting for the employment of an executive director or other employees. (See Exhibit H attached hereto and incorporated by reference).

45. Upon information and belief, as of the date of the filing of this lawsuit, neither the Lottery Commission Defendants nor other Defendants have refrained from establishing a state lottery or expending funds in furtherance of the same. The Defendants' refusal to act was and continues to be wrongful.

46. Upon information and belief, on or about December 5, 2005, Defendant Shaheen began work as Executive Director of the North Carolina Education Lottery.

COUNT ONE

(The Lottery Act Unconstitutionally Raises Money on the Credit of the State for the Payment of Lottery Winnings)

47. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 46.

48. By means of creating a lottery which, upon information and belief, will sell lottery tickets, the winnings for which will be paid by the State, the State intends to raise money on the credit of the State.

49. Plaintiffs allege or believe that the process by which Defendants enacted a state lottery in North Carolina violates Article II, Section 23 of North Carolina Constitution for the following reasons:

50. HB 1023 (Committee Substitute) improperly passed the Senate in that:

(a) HB 1023 (Committee Substitute) passed the Senate on a second and a third reading each having been conducted on the same day, August 30, 2005, in violation of

the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to raise money on the credit of the State be enacted unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the Senate on the second reading by electronic vote and third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to raise money on the credit of the State be recorded in the journal of the House and of the Senate.

51. HB 1023 (Committee Substitute) improperly passed the House in that:

(a) HB 1023 (Committee Substitute) passed the House on a second and a third reading each having been conducted on the same day, April 6, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to raise money on the credit of the State be enacted unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the House on the second reading by electronic vote and on the third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to raise money on the credit of the State be recorded in the journal of the House and of the Senate.

COUNT TWO

(The Lottery Act Unconstitutionally Pledges the Faith of the State for the Payment of a Debt)

52. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 51.

53. By means of creating a lottery which, upon information and belief, will sell lottery tickets, the winnings for which will be paid by the State, the State intends to pledge the faith of the State directly or indirectly for the payment of the debt to be owed to the holder of a winning lottery ticket and for other contractual obligations.

54. Plaintiffs allege or believe that the process by which Defendants enacted a state lottery in North Carolina violates Article II, Section 23 of North Carolina Constitution for the following reasons:

55. HB 1023 (Committee Substitute) improperly passed the Senate in that:

(a) HB 1023 (Committee Substitute) passed the Senate on a second and a third reading each having been conducted on the same day, August 30, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to pledge the faith of the state directly or indirectly for the payment of any debt be enacted unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the Senate on the second reading by electronic vote and on the third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to pledge the faith of the State directly or

indirectly for the payment of any debt be recorded in the journal of the House and of the Senate.

56. HB 1023 (Committee Substitute) improperly passed the House in that:

(a) HB 1023 (Committee Substitute) passed the House on a second and a third reading each having been conducted on the same day, April 6, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to pledge the faith of the State directly or indirectly for the payment of any debt be enacted unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the House on the second reading by electronic vote and third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to pledge the faith of the State directly or indirectly for the payment of any debt be recorded in the journal of the House and of the Senate.

COUNT THREE

(The Lottery Act Unconstitutionally Creates an Implicit Tax)

57. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 56.

58. By means of creating a lottery for the express purpose of raising revenue, in that approximately 35% of the gross revenues from the sale of lottery tickets would be paid to the State as “net revenues” for purposes of funding education, and 15% of gross revenues from the

sale of lottery tickets would be paid for the operation of by the State of the lottery, the State has created an implicit tax upon the people of the State.

59. Plaintiffs allege or believe that the process by which Defendants enacted a state lottery in North Carolina violates Article II, Section 23 of the North Carolina Constitution for the following reasons:

60. HB 1023 (Committee Substitute) improperly passed the Senate in that:

(a) HB 1023 (Committee Substitute) passed the Senate on a second and a third reading each having been conducted on the same day, August 30, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to impose a tax upon the people be enacted unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the Senate on the second reading by electronic vote and on the third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to impose a tax upon the people be recorded in the journal of the House and of the Senate.

61. HB 1023 (Committee Substitute) improperly passed the House in that:

(a) HB 1023 (Committee Substitute) passed the House on a second and a third reading each having been conducted on the same day, April 6, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to impose a tax upon the people be enacted unless the bill for the purpose shall have

been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the House on the second reading by electronic vote and on the third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to impose a tax upon the people be recorded in the journal of the House and of the Senate.

COUNT FOUR

(The Lottery Act Unconstitutionally Creates an Express Tax on Residents)

62. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 61.

63. By means of directing the Lottery Commission to deduct and withhold state income taxes, in the amount of seven percent of the winnings, from the payment of winnings that are reportable to the Internal Revenue Service, the State has created an express tax upon the people of the State.

64. Plaintiffs allege or believe that the process by which Defendants enacted a state lottery in North Carolina violates Article II, Section 23 of North Carolina Constitution for the following reasons:

65. HB 1023 (Committee Substitute) improperly passed the Senate in that:

(a) HB 1023 (Committee Substitute) passed the Senate on a second and a third reading each having been conducted on the same day, August 30, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to impose a tax upon the people be enacted unless the bill for the purpose shall have

been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the Senate on the second reading by electronic vote and on the third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to impose a tax upon the people be recorded in the journal of the House and of the Senate.

66. HB 1023 (Committee Substitute) improperly passed the House in that:

(a) HB 1023 (Committee Substitute) passed the House on a second and a third reading each having been conducted on the same day, April 6, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to impose a tax upon the people be enacted unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the House on the second reading by electronic vote and on the third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to impose a tax upon the people be recorded in the journal of the House and of the Senate.

COUNT FIVE

(The Lottery Act Unconstitutionally Creates an Express Tax on Nonresidents Who Receive Income in North Carolina by Winning a Lottery Prize)

67. Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 66.

68. By means of creating a tax on lottery winnings to be paid to nonresidents by amending N.C. Gen. Stat. § 105-134, the State has created an express tax on nonresidents who receive income in North Carolina by winning a lottery prize.

69. Plaintiffs allege or believe that the process by which Defendants enacted a state lottery in North Carolina violates Article II, Section 23 of North Carolina Constitution for the following reasons:

70. HB 1023 (Committee Substitute) improperly passed the Senate in that:

(a) HB 1023 (Committee Substitute) passed the Senate on a second and a third reading each having been conducted on the same day, August 30, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to impose a tax upon the people be enacted unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) as passed the Senate on the second reading by electronic vote and on the third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to impose a tax upon the people be recorded in the journal of the House and of the Senate.

71. HB 1023 (Committee Substitute) improperly passed the House in that:

(a) HB 1023 (Committee Substitute) passed the House on a second and a third reading each having been conducted on the same day, April 6, 2005, in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that no law to impose a tax upon the people be enacted unless the bill for the purpose

shall have been read three several times in each house of the General Assembly and passed three several readings, which readings must be on three different days; and

(b) HB 1023 (Committee Substitute) passed the House on the second reading by electronic vote and on the third reading by voice vote in violation of the requirement, codified at Article II, Section 23 of the North Carolina Constitution, that the yeas and nays on the second and third readings of a bill to impose a tax upon the people be recorded in the journal of the House and of the Senate.

COUNT SIX

(The Lottery Act Unconstitutionally Draws Money from the State Treasury without an Appropriation Made by Law)

72 Plaintiffs incorporate by reference and reallege fully herein the contents of the foregoing paragraphs 1 through 71.

73. By means of lending money from the State Treasury to the North Carolina Lottery Commission and requiring repayment of the same, the State intends to draw money from the State treasury.

73. Plaintiffs allege or believe that the process by which Defendants enacted a state lottery in North Carolina violates Article V, Section 7 of North Carolina Constitution for the following reasons:

74. HB 1023 as amended by section 31.1 of SB 622 purported to authorize the drawing of money from the State treasury without an appropriation by law, in violation of the prohibition, codified at Article V, Section 7 of the North Carolina Constitution, against drawing money from the State treasury but in consequence of appropriation made by law.

Respectfully Submitted,

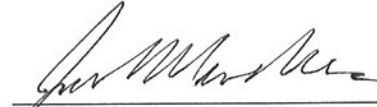
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Wake County Taxpayers Association; and the North
Carolina Family Policy Council