

NO.

TENTH JUDICIAL DISTRICT

NORTH CAROLINA SUPREME COURT

CHARLES HEATHERLY; THOMAS)
SPAMPINATO; W. EDWARD)
GOODALL, JR.; PAUL STAM; WAKE)
COUNTY TAXPAYERS ASSOCIATION;)
and THE NORTH CAROLINA FAMILY)
POLICY COUNCIL)

Petitioner-Appellants,)

WILLIS WILLIAMS; and NORTH)
CAROLINA COMMON SENSE)
FOUNDATION,)

Petitioner-Intervenor-Appellants)

v.)

STATE OF NORTH CAROLINA;)
CHARLES A. SANDERS, BRYAN E.)
BEATTY, LINDA CARLISLE, ROBERT)
A. FARRIS, JR., JOHN R. MCARTHUR,)
JIM WOODWARD, and ROBERT W.)
APPLETON, Members of the North)
Carolina Lottery Commission, in their)
official capacity; NORTH CAROLINA)
LOTTERY COMMISSION; THOMAS N.)
SHAHEEN, Executive Director of the)
North Carolina Education Lottery, in his)
official capacity; MICHAEL F. EASLEY,)
Governor of the State of North Carolina, in)
his official capacity; RICHARD H.)
MOORE, Treasurer of the State of North)
Carolina, in his official capacity,)

Respondent-Appellees. _____

Wake County
05 CVS 17197

PETITION FOR DISCRETIONARY REVIEW
Under G.S. 7A-31(b) and Appellate Rule 15

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Petitioner-Appellants and Petitioner-Intervenor-Appellants (collectively “the Petitioners”) pursuant to the provisions of N.C.G.S. § 7A-31(b), Appellate Rule 15 and the Court’s supervisory jurisdiction under Article IV, § 12(1) of the North Carolina Constitution, respectfully petition this Honorable Court to certify for discretionary review, prior to determination by the North Carolina Court of Appeals, the instant appeal pending at the North Carolina Court of Appeals. The questions presented in this case relating to interpretation and application of Article II, § 23 of the North Carolina Constitution and interpretation of N.C.G.S. § 18C-101, et seq. (“the Lottery Act”) are questions that meet the criteria for this Court’s discretionary review. Each is a question of significant public interest, involves legal principles of major significance to the State’s jurisprudence and a delay in the final adjudication of these issues resulting from failure to certify them will cause substantial harm. N.C.G.S. § 7A-31(b)(1), (2) and (3).

The parties, predictably, have differing opinions as to each of these important questions presented. However, the People, the State, and the 100 counties of North Carolina need to have this dispute resolved with finality and in an expedited fashion.

I. NATURE AND STATUS OF CASE

On December 15, 2005, Petitioner-Appellants filed the instant lawsuit on behalf of four individual citizens of North Carolina and two non-profit, public policy corporations organized under the laws of and operating in North Carolina. Plaintiff-Appellants sought a declaratory judgment finding null, void and unenforceable N.C.G.S. § 18C-101, et seq., (“the Lottery Act”) on the grounds that passage of the same did not satisfy requirements of the Article II, § 23 and Article V, § 7 of the North Carolina Constitution. Plaintiff-Intervenors, one individual and two

non-profit, public policy corporations, moved for leave to intervene and submitted a proposed Intervening Complaint on December 21, 2005.

Respondents filed a Motion to Dismiss under Rules 12(b)(1), (2) and (6) on January 18, 2006, and Petitioner-Appellants filed a Motion for Preliminary Injunction on December 30, 2005. A hearing was held February 13, 2006, in which the trial court allowed Petitioner-Intervenors leave to intervene, denied Petitioner-Appellants' Motion for Preliminary Injunction and denied Respondents Motion to Dismiss under Rule 12(b)(1) and (2), holding that all plaintiffs and plaintiff-intervenors had standing and that the doctrine of sovereign immunity did not bar the instant lawsuit. The trial court dismissed Counts 4 and 5 of Complaint and Intervening Complaint pursuant to Rule 12(b)(6), but found that Counts 1, 2, 3 and 6 each stated valid claims upon which relief may be granted. Per the trial court's scheduling order, Respondents then filed answers to both the Complaint and Intervening Complaint.

On March 20, 2006, the trial court conducted a hearing on the merits. By Order dated March 21, 2006, the trial court entered judgment for the Defendants-Respondents on all claims. The court also reversed its prior standing decision as to the organizational/corporate Plaintiffs and organizational/corporate Plaintiff-Intervenors, finding that each lacked standing to bring this suit. The trial court assessed the costs of the matter to Plaintiffs and Plaintiff-Intervenors.

On March 29, 2006, Plaintiffs appealed. On April 4, 2006, Plaintiff-Intervenors Willis Williams and North Carolina Common Sense Foundation appealed. Defendants filed a cross appeal on April 10, 2006. The case was docketed in the North Carolina Court of Appeals on June 15, 2006.

II. REASONS WHY CERTIFICATION SHOULD OCCUR.

A. STATEMENT OF FACTS

1. Legislative History

The parties do not dispute the following facts: The Lottery Act was proposed in House Bill 1023 of the 2005 General Assembly. A Committee Substitute was given a favorable report in the House of Representatives on 6 April 2005, and it passed its second and third readings in the House on that day. The yeas and nays of the vote on the second reading were recorded in the House Journal; the yeas and nays of the vote on third readings were not so recorded. On 30 August 2005, the Senate considered the Committee Substitute of HB 1023, and it passed its second and third readings that day and the yeas and nays of all votes were not recorded in the Journals. Petitioners maintain that the failure to hold votes after second and third readings on separate days and the failure to record the yeas and nays in the journals violated Article II, § 23, and thus the Lottery Act was unconstitutionally adopted.

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.

2. Provisions of the Lottery Act

A review of the provisions of the Lottery Act, N.C.G.S. §18C-101, et seq., is essential to understanding how and why Petitioners maintain it is unconstitutional and to understanding the Petitioners assertions of the trial court's error. The Lottery Act states that its purpose is "to establish a State-operated lottery to *generate funds* for the public purposes" described in the bill,

i.e., public education. Relevant substantive provisions of the bill are as follows:

Allocation of Revenues from the Sale of Lottery Tickets (N.C.G.S. § 18C-162)

- The Lottery Act directs the Lottery Commission, to the extent practicable, to allocate revenues from the sale of lottery tickets in the following manner:
 - a. At least 50% of the total annual revenues for prizes;
 - b. At least 35% 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 8% of the total annual revenues for payment of expenses of the lottery; and
 - d. No more than 7% of the total annual revenues for compensation paid to lottery game retailers.

Allocation of Net Revenue (N.C. Gen. Stat. §18C-164)

- The Lottery Act directs the Lottery Commission to distribute the net revenue, as defined by § 18C-162, of the North Carolina State Lottery Fund annually as follows:
 - a. **5%** 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. the remaining net revenues shall be distributed as follows:
 - * **50%** shall be transferred to the Education Lottery Fund to support reduction of class size in early grades of public schools;
 - * **40%** 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;
 - * **10%** 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.

B. DISCUSSION OF WHY CERTIFICATION SHOULD ISSUE

1. Constitutional Framework

The key to determining the applicability of Article II, § 23 rests in the meaning of that

section and in its scope. As with many questions which shape the future, the answers lay in the past. When considering the meaning and scope of the State Constitution,

Inquiry must be had into the history of the questioned provision and its antecedents, the conditions that existed prior to its enactment, and the purposes sought to be accomplished by its promulgation.

Sneed v. Board of Education, 299 N.C. 609, 613, 264 S.E.2d 106, 110 (1980).

Standards of constitutional interpretation dictate that this Court hold the Lottery Act is legislation within the purview of Article II, § 23. “Issues concerning the proper construction of the Constitution of North Carolina are in the main governed by the same general principles which control in ascertaining the meaning of all written instruments.” Stephenson v. Bartlett, 355 N.C. 354, 370, 562 S.E.2d 377, 389 (2002); see also Martin v. Preston, 325 N.C. 438, 385 S.E.2d 732 (1989). The Stephenson Court later stated: “It is well established that in construing either the federal or state constitution, what is implied is as much part of the instrument as what is expressly stated.” Stephenson, 355 N.C. at 390.

The intent of the framers must be ascertained and given effect. See Maready v. City of Winston-Salem, 342 N.C. 708, 716, 467 S.E.2d 615, 620 (1996) (“It is the duty of this Court to ascertain and declare the intent of the framers of the Constitution and to reject any act in conflict therewith.”); Elliott v. Bd. of Equalization, 203 N.C. 749, 753, 166 S.E. 918, 921 (1932) (“Where the meaning of a constitutional provision is clearly expressed, it should be adopted; but, if doubtful, intention of those adopting the Constitution must be sought.”); see also Leandro v. State, 346 N.C. 336, 345, 488 S.E.2d 249, 253-54 (1997) (quoting Maready). Constitutional interpretation must be undertaken with a liberal view of the intent of the framers and the liberty and security of the people. See generally, State v. Harris, 216 N.C. 746, 764-65, 6 S.E.2d 854, 866 (1940) (“The Constitution should receive a liberal interpretation in favor of a citizen,

especially with respect to those provisions which are designed to safeguard the liberty and security of the citizen in regard to both person and property.” (emphasis added)) .

2. Failure to Comply with the Constitutionally Required Processes of Article II, § 23 Renders the Legislation a Nullity.

Noncompliance with the three readings on three days and journal recordation requirements of Article II, § 23 renders legislation subject to that constitutional provision null and void. Interpreting a predecessor provision of an earlier constitution, the North Carolina Supreme Court noted that “such laws are no laws” for the constitution provides “a clear declaration of the nullity of such legislation,” unless the three readings on three days and recordation requirements are satisfied. Bank v. Comm’rs of Oxford, 119 N.C. 214 (1896).

The issue is therefore whether the provisions of the Lottery Act “raise money on the credit of the State, or ... pledge the faith of the State directly or indirectly, for the payment of any debt, or ... impose any tax upon the people of the State.” As Petitioners argued below, the Lottery Act’s provisions create the basis for all three fiscal actions, and thus are subject to the requirements of Article II, § 23 of the North Carolina Constitution. Yet, because the Act was not enacted in accord with those express requirements, it is constitutionally invalid.

The Lottery Act creates a tax under Article II, § 23 of the North Carolina Constitution. Taxation is the power by which a sovereign “raises revenue to defray the necessary expenses of government.” Am. Jur. 2d, State and Location Taxation § 1. See also Houk v. Little River Drainage Dist., 239 U.S. 254, 264-266 (1915).

The Lottery Act is an attempt to raise revenue to defray the necessary governmental expenses of providing an adequate educational opportunity for all of North Carolina’s children, as mandated under Article I, § 15 and Article IX, § 2 of the North Carolina Constitution. See Rowan Co. Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 21, 418 S.E.2d 648 (1992).

Pursuant to N.C.G.S. §18C-162(a) (“Allocation of revenues”), the Lottery Act directs the Lottery Commission, to the extent practicable, to allocate at least 35% of the total annual revenues to be transferred to the Education Lottery Fund as directed by §18C-164 of HB 1023.

Although not labeled as such by the Respondent-Defendants, the “at least 35% of the total lottery revenue” listed in N.C.G.S. §18C-162(a)(2), and allocated to fund the educational expenses of our state government (as delineated in N.C.G.S. §18C-164), constitutes a tax under North Carolina law. The North Carolina Constitution does not itself define the term “tax.” However, North Carolina courts have noted the defining characteristics of a “tax” in a variety of contexts, including under Article II, § 23 of the state Constitution. In each case, the reviewing court has emphasized as deciding factors 1) the purpose of the statute, ie. raising revenue or some other purpose, such as regulation or establishment of a penalty, etc., and 2) the ultimate use of the funds, i.e. whether for a general government purpose or in some manner related to the item or service being charged or assessed.

North Carolina courts have also focused on the purpose of a statute when determining whether the statute is a tax measure. See Hart v. Commissioners, 192 N.C. 161, 164, 134 S.E.2d 403 (1926); N.C. Eastern Mun. Power Agency v. Wake County, 100 N.C. App. 693, 698, 398 S.E.2d 486, 490 (1990), cert. denied, 329 N.C. 270 (1991) (“Art. II, Section 23 focuses on the *purpose* of the statute...and not the *result* of the statute”). The courts in Hart and N.C. Mun. Power Agency both relied upon two decisions by the United States Supreme Court, recognizing that “revenue bills” or statutes are those which levy taxes: Twin City National Bank v. Nebeker, 167 U.S. 196, 42 L.Ed 134 (1897); and Millard v. Roberts, 202 U.S. 429, 50 L.Ed. 1090 (1906) (cases regarding the federal Origination Clause, Art. I, § 7 of the United States Constitution). The United States Supreme Court has also interpreted this general rule to mean that such tax

creating statutes are those that have as their purpose, the raising of “revenue to support Government generally....” United States v. Munoz-Flores, 495 U.S. 385, 399 (1990).

In State Farm Mutual Auto Ins. Co. v. Long, 129 N.C. App. 164 (1998), the North Carolina Court of Appeals adopted and applied Judge (now Justice) Breyer’s analysis in San Juan Cellular Telephone Co. v. Public Service Com’n of Puerto Rico, 967 F.2d 683 (1st Cir. 1992) to determine whether a particular assessment or charge was a “fee” or a “tax” under North Carolina law. In holding that a challenged charge was not a tax, the State Farm court adopted a three-part test as initially laid out in San Juan Cellular, considering "(1) the entity that imposes the assessment; (2) the parties upon whom the assessment is imposed; and (3) whether the assessment is expended for general public purposes, or used for the regulation or benefit of the parties upon whom the assessment is imposed." Id. at 168. When application of the first two State Farm factors does not determine whether or not a charge imposed falls within the defining characteristics of a classic tax, a court should focus on “the revenue’s ultimate use, asking whether it provides a general benefit to the public, of a sort often financed by a general tax, or whether it provides more narrow benefits to regulated companies or defrays the agency’s costs of regulation.” State Farm at 168 (citing San Juan Cellular at 685).

Applying the State Farm test here, it is clear that the assessment or charge imposed by N.C.G.S. §18C-162(a)(2) is a tax. Under the first State Farm factor, assessments or charges imposed by the legislature satisfy the classic definition of a “tax,” as opposed to charges imposed by a regulatory agency. Here, the North Carolina Legislature, rather than any administrative agency, is the entity that has imposed the Lottery Act’s assessment. Under the second factor, a charge imposed upon a broader range of a state’s residents is closer to a “tax,” while one imposed upon a narrow section of persons is closer to a “fee.” In the instant situation, the charges

imposed by N.C.G.S. §18C-162(a)(2) of the Lottery Act are assessed against a broad section of state residents: all those who purchase a lottery ticket or share every time a ticket is purchased.

Thus, considering the parties assessed, the Lottery Act is a classic “tax”

Finally, in the instant case, the class of beneficiaries likely to benefit from the allocation of the 35% of the lottery ticket proceeds under §18C-162(a)(2) and § 18C-164--students and their families throughout North Carolina--is very broad. Funding the educational needs of North Carolina’s children throughout the state is clearly providing “a general benefit to the public.”

Thus, under the State Farm/San Juan Cellular test, §18C-162(a)(2) is a tax for purposes of Article II, Sec. 23. The assessment of 35% of the lottery ticket purchase price was established by the state legislature, and the proceeds are allocated to fund the general educational needs of North Carolinians throughout the state.

Thus, under both North Carolina and United States Supreme Court precedent, the two central factors in this Court’s analysis regarding the nature of the charge imposed and allocated by §18C-162(a)(2) should be 1) the purpose of the statute creating the assessment, and 2). the ultimate use of the revenue raised. This is in accord with the North Carolina General Assembly’s own defining characteristics of a tax, as stated in N.C.G.S. § 105-1: 1) a statute which has as its purpose the raising of revenue and 2) the allocation of that revenue to provide for the necessary uses and purposes of the government and State of North Carolina.

In this Court’s determination of the legislature’s purpose in enacting the Lottery Act, it need look no further than the wording of the statute itself. “In matters of statutory construction the task of the Court is to determine the legislative intent, and the intent is ascertained in the first instance ‘from the plain words of the statute.’” North Carolina School Boards Ass’n v. Moore, 359 N.C. 474, 488, 614 S.E. 2d 504, 512 (2005)(citation omitted). Unlike the statutes reviewed

in Hart and N.C. Eastern Mun. Power Agency, the plain language of the Lottery Act shows that its *purpose* (and not merely its resulting effect) is to raise revenue to fund our State government's provision of a general public benefit.

The Respondent-Defendants have clearly not enacted the Lottery Act so persons can merely enjoy participating in a state sponsored game of chance, or for a regulatory reason, or some other non-revenue generating purpose. Raising revenue is not simply an unintended result or byproduct of the Lottery Act. Rather, the Lottery Act's primary, even sole, purpose is to raise revenue to fund the public educational needs throughout our state.

In sum, the assessment and allocation of the thirty-five percent (35%) of the lottery ticket purchase price pursuant to §18C-162(a)(2), as mandated by our legislature, has as its sole purpose the raising of revenue to fund a core government function wholly unrelated to the industry or activity from which the revenue is obtained; does not fund the costs of regulatory enforcement, and is in no way a "burden incident to" the privilege of purchasing a lottery ticket. Rather, the thirty-five percent (35%) of the ticket purchase price is to be assessed and allocated to fund a general public benefit: the educational needs of North Carolina's children throughout the state, thus it is an implicit tax. The minimum 35% of proceeds from each lottery ticket that is mandated to go to the State Education Fund is a tax upon North Carolina citizens and taxpayers who will purchase a lottery ticket.

C. GROUNDS FOR CERTIFICATION

As explained below, all three grounds set fourth in § 7A-31(b) for certification of a cause for review in the Supreme Court before a determination in the Court of Appeals apply in this case:

- (1) The cause involves a matter of significant public interest;
- (2) The cause involves legal principles of major significance to the jurisprudence of

- the State;
- (3) Delay in final adjudication is likely to result from failure to certify review and thereby cause substantial harm.

1. This Case Involves a Matter of Significant Public Interest.

This case presents matters of significant public interest for at least the following reasons:

First, there has been overwhelming public debate regarding the process in which the Lottery Act was enacted. Newspapers regularly feature articles and editorials about the lottery and its enactment. Related criminal probes have cast a shadow over key players on the lottery, including an indictment of a former member of the Lottery Commission, Kevin Geddings.

Second, whether or not the Lottery Act was unconstitutionally enacted and thus null and void, presents significant economic questions regarding the State's mandated funding of education in North Carolina under the State Constitution and Leandro v. State, 346 N.C. 336, 488 S.E.2d 249 (1997). As this Court articulated in Leandro:

We conclude that Article I, Section 15 and Article IX, Section 2 of the North Carolina Constitution combine to guarantee every child of this state an opportunity to receive a sound basic education in our public schools. For purposes of our Constitution, a "sound basic education" is one that will provide the student with at least: (1) sufficient ability to read, write, and speak the English language and a sufficient knowledge of fundamental mathematics and physical science to enable the student to function in a complex and rapidly changing society; (2) sufficient fundamental knowledge of geography, history, and basic economic and political systems to enable the student to make informed choices with regard to issues that affect the student personally or affect the student's community, state, and nation; (3) sufficient academic and vocational skills to enable the student to successfully engage in post-secondary education or vocational training; and (4) sufficient academic and vocational skills to enable the student to compete on an equal basis with others in further formal education or gainful employment in contemporary society.

Id. at 347 (citations omitted).

To help fund the "sound basic education" mandated by the North Carolina Constitution and expounded on by Leandro, the State has chosen to enact a lottery, the proceeds of which will

be directed to various education efforts. If the Lottery Act is declared invalid for failure to conform to the mandates of Article II, § 23, then the revenue stream of the lottery will be unavailable to those who must find a way for the State to provide an education to the children of this State. Conversely, should the Court find the Lottery Act valid, school boards and others may rely on the proceeds of the lottery. Lottery revenues are projected to be in the millions of dollars. While lottery revenues will be allocated to each county in the State and will amount to only a relatively small portion of each county's education budget, lottery revenues will hardly be an amount so insignificant as to not factor substantially into the long and short term planning of county commissions and school boards. However, until a final declaration of validity or invalidity is made, government agencies and the public will have to bide their time in a state of financial uncertainty which precludes responsible fiscal planning.

Third, the outcome of this appeal will determine funding measures for education programs and projects across the State. The judgment of the trial court raises highly significant North Carolina Constitutional issues of first impression that affect all citizens of North Carolina. The judgment affects present and future budgets of the State and all 100 counties and school boards thereof. Moreover, as the General Assembly gathers again to take up other bills and business, it and the public must have guidance as to what constitutes a revenue bill for purposes of Article II, § 23, and what does not. Until this Court provides that guidance, one is left to wonder what money raising measures could pass through the legislature in nonconformance with Article II, § 23 simply by being labeled something other than a "tax," or conversely, what measures not subject to Article II, § 23 will be stymied for fear of subsequent invalidation?

For the reasons detailed in the preceding section, Petitioners maintain that the Lottery Act is a revenue bill and thus subject to the requirements of Article II, § 23. It is uncontested that the

Lottery Act was not read and passed on separate days and that the yeas and nays of all votes were not recorded in the journals of the House and Senate. This case thus boils down to one question: is the Lottery Act a revenue bill? If the answer to that question is, as Petitioners argue, yes, then the Lottery Act is void and the State and local schools boards cannot rely on lottery revenue to help fund the education needs of the State unless the General Assembly decides to reconsider a new lottery bill in compliance with the Constitution as Petitioners have consistently said the General Assembly could do.

2. This Case Involves Legal Principles of Major Significance to State Jurisprudence.

This appeal presents the following legal issues of major significance to State jurisprudence:

A. Whether the Lottery Act imposes a tax upon the people of the State within the meaning of Art. II, § 23 of the North Carolina Constitution.

B. Whether the Lottery Act raises money on the credit of the State within the meaning of Art. II, § 23 of the North Carolina Constitution.

C. Whether the Lottery Act pledges the faith of the State directly or indirectly for the payment of a debt within the meaning of Art. II, § 23 of the North Carolina Constitution.

These issues present a case of first impression. This Court has not previously determined the applicable legal standards for a statute that creates a lottery in which a substantial part (more than 1/3) of the net revenues generated are to be used for a public purpose not related in any manner to the lottery itself. By addressing these issues, the Court will provide, for the first time, guidance to the General Assembly, the Executive Branch, and the public regarding the proper scope of all types of revenue bills as contemplated by Article II, § 23.

Having the Court of last resort hear this case first, without further delay of 12 to 18 months, obviates such unnecessary delay and ensures all branches of state and local governments

will have a full understanding of what the Constitution means and how those provisions should guide our legislators and the Executive Branch.

3. Delay in Final Adjudication is likely to Result From Failure to Certify Review and Thereby Cause Substantial Harm.

As a result of the trial court's judgment in favor of the Respondents and refusal to enjoin the further implementation of the Lottery Act, lottery tickets will continue to be purchased and prize money obligated to lucky winners. In addition, a new funding stream to be allocated to specific educational purposes throughout the State will occur creating a dependence on such funds by the recipients involved. Should certification for review by this Court not be granted, a delay in the final adjudication will occur which will cause substantial harm to the citizens and taxpayers of this state. Substantial economic dislocation and budgetary gaps will be created, requiring the termination of recipient projects and programs and/or the reallocation of funds for education that have since been moved to support other general government needs.

The Supreme Court of North Carolina should consider the instant appeal prior to a determination by the Court of Appeals. N.C.G.S. § 7A-31(b). Delay in a final judicial determination of the constitutional issues could very well cause substantial harm in the next legislative session or in the future when the State budget is reviewed. Additionally, a delay could cause substantial harm to counties and local school boards as they proceed with future planning with the expectation of receiving their respective portions of lottery revenue.

It is in the paramount interest of the parties and the State to have the ultimate questions in this case answered fully and finally. This controversy can be resolved efficiently and minimize any harm to the People, the State and the local governments of North Carolina if this Court grants this petition.

III. QUESTIONS PRESENTED FOR REVIEW.

In the event that the Court allows Petitioners' Petition for Discretionary Review,

Petitioners present the following questions for review:

1. Did the trial court err in finding that the organizational Petitioners and Petitioner-Intervenors lack standing to bring suit in this action?
2. Did the trial court err in finding that the Lottery Act is not a "revenue bill" within the intent and meaning of Article II, § 23, of the North Carolina Constitution, and therefore a law subject to the provisions of Article II, § 23, of the North Carolina Constitution?
3. Was the trial court's decision that the costs of this matter shall be taxed and borne by the Petitioners and Petitioner-Intervenors an abuse of the court's discretion?

IV. CONCLUSION

For the reasons stated above, the circumstances of this appeal fully satisfy the requirements of N.C.G.S. § 7A-31(b). Petitioners therefore respectfully request that this Court review the trial court's final judgment in this matter and determine the above cited important questions presented by this appeal.

Respectfully submitted this the ____ day of June, 2006.

Respectfully Submitted,

NORTH CAROLINA INSTITUTE FOR
CONSTITUTIONAL LAW
225 Hillsborough Street, Suite 280
Raleigh, NC 27619
Telephone: (919) 838-5313
Facsimile: (919) 838-5316

Robert F. Orr (N.C. Bar No. 6798)
Jeanette Doran Brooks (N.C. Bar No. 29127)

Counsel for Plaintiffs Charles Heatherly, Thomas Spampinato; W. Edward Goodall, Jr.; Paul Stam; Wake County Taxpayers Association; and the North Carolina Family Policy Council

NORTH CAROLINA JUSTICE CENTER
P.O. Box 28068
Raleigh, NC 27611
Telephone: (919) 856-2165
Facsimile: (919) 856-2175

BY: _____
Jack Holtzman
Attorney at Law
NC Bar # 13548

Counsel for Plaintiff-Intervenors Willis Williams
and the North Carolina Common Sense Foundation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Petition for Discretionary Review was served on all parties by facsimile transmission and by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

Norma S. Harrell, Special Deputy Attorney General
Ronald M. Marquette, Special Deputy Attorney General
114 W. Edenton Street
Raleigh, North Carolina 27602
Counsel for Defendants

This _____ day of June, 2006.

NORTH CAROLINA INSTITUTE FOR
CONSTITUTIONAL LAW
225 Hillsborough Street, Suite 280
Raleigh, NC 27619
Telephone: (919) 838-5313
Facsimile: (919) 838-5316

Robert F. Orr (N.C. Bar No. 6798)
Jeanette Doran Brooks (N.C. Bar No. 29127)

Counsel for Charles Heatherly, Thomas Spampinato; W. Edward Goodall, Jr.; Paul Stam; Wake County Taxpayers Association; and the North Carolina Family Policy Council