

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

2006 Mar 3

SUPERIOR COURT DIVISION

COUNTY OF WAKE

05 CVS 17197

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

Plaintiffs,

WILLIS WILLIAMS; NORTH CAROLINA FAIR SHARE; and NORTH CAROLINA COMMON SENSE FOUNDATION,

Plaintiff-Intervenors,

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,

Defendants.

ANSWER OF DEFENDANTS TO PLAINTIFF-INTERVENORS' COMPLAINT AND PETITION FOR DECLARATORY JUDGMENT [ANSW]

NOW COME all the defendants to this action, by and through their undersigned counsel, and answer plaintiff-intervenors' complaint and petition for declaratory judgment (hereafter "plaintiff-intervenors' complaint") as follows:

INTRODUCTION

1. As to the allegations of paragraph 1 of the plaintiff-intervenors' complaint, it is admitted that plaintiffs brought this action pursuant to the North Carolina Declaratory Judgment Act and N.C.G.S. § 1-253 with the intent to challenge the constitutionality of the enacted legislation that resulted from House Bill 1023, as amended by Section 31.1 of the enacted legislation resulting from Senate Bill 622, and that this enacted legislation may be referred to as the "Lottery Act." It is further admitted that the title of House Bill 1023, as amended in section 31.1 of Senate Bill 622, reads as set out in paragraph 1. It is denied that a certified copy of the ratified bill of House Bill 1023 was attached to any copy of the plaintiff-intervenors' complaint served on defendants. It is admitted that plaintiffs brought this action to seek a judgment finding the Lottery Act null, void and unenforceable on the grounds that its passage did not satisfy requirements of the North Carolina Constitution, but it is specifically denied that passage of the Lottery Act in any way failed to comply with any or all applicable constitutional requirements. It is further specifically denied that the Lottery Act is in any way unconstitutional or invalid. Any remaining allegations of paragraph 1 of the plaintiff-intervenors' complaint are denied.

2. As to the allegations of paragraph 2 of plaintiff-intervenors' complaint, it is specifically denied that the actions of the legislature or any defendant in passing the Lottery Act in any way violate Article II, Section 23 of the North Carolina Constitution or any other constitutional provision. It is further specifically denied that any of the defendants (other than the State of North Carolina) actually passed, or had the authority to pass, the Lottery Act or any other legislation. It is further specifically denied that the actions of any defendants in attempting to implement the Lottery Act violate Article II, Section 23 of the North Carolina Constitution or any other constitutional

provision, and it is still further denied that any actions of any defendants could violate Article II, Section 23 of the North Carolina Constitution. It is further admitted that the allegations of paragraph 2 of the plaintiff-intervenors' complaint attempt to paraphrase Article II, Section 23 of the North Carolina Constitution; the Constitution speaks for itself, and to the extent the paraphrasing is inconsistent or conflicts with Article II, Section 23, those allegations are denied.

3. As to the allegations of paragraph 3 of the plaintiff-intervenors' complaint, it is specifically denied that the actions of the legislature or any defendant in passing the Lottery Act in any way violate Article V, Section 7 of the North Carolina Constitution or any other constitutional provision, and it is still further denied that any actions of the legislature or any defendant in enacting legislation could violate Article V, Section 7 of the North Carolina Constitution. It is further specifically denied that any of the defendants (other than the State of North Carolina) actually passed, or had the authority to pass, the Lottery Act or any other legislation. It is further specifically denied that the actions of any defendants in attempting to implement the Lottery Act violate Article V, Section 7 of the North Carolina Constitution or any other constitutional provision. It is further admitted that the allegations of paragraph 3 of the plaintiff-intervenors' complaint attempt to paraphrase Article V, Section 7 of the North Carolina Constitution; the Constitution speaks for itself, and to the extent the paraphrasing is inconsistent or conflicts with Article V, Section 7, those allegations are denied.

PARTIES

(Plaintiffs)

4. It is denied that plaintiff-intervenor Willis Williams has at relevant times paid income tax to the State of North Carolina. It is admitted on information and belief that plaintiff Williams

is a citizen and resident of Martin County, North Carolina. Defendants are without sufficient knowledge or information to form a belief about the truth of the remaining allegations of paragraph 4, and they are accordingly denied.

5. It is admitted that plaintiff-intervenor North Carolina Fair Share is a non-profit corporation organized under the laws of the State of North Carolina. On information and belief, it is admitted that the principal location of plaintiff-intervenor North Carolina Fair Share is in Wake County, North Carolina. Defendants are without sufficient knowledge or information to form a belief about the truth of the remaining allegations of paragraph 5, and they are accordingly denied.

6. It is admitted that plaintiff-intervenor North Carolina Common Sense Foundation is a non-profit corporation organized under the laws of the State of North Carolina. On information and belief, it is admitted that the principal location of North Carolina Common Sense Foundation is in Wake County, North Carolina. Defendants are without sufficient knowledge or information to form a belief about the truth of the remaining allegations of paragraph 6, and they are accordingly denied.

(Defendants)

7. It is admitted that defendant State of North Carolina is a general purpose state government which is capable of being sued, and which is being sued. It is admitted that plaintiffs and plaintiff-intervenors brought this suit against the State because the General Assembly enacted the Lottery Act. It is further admitted that plaintiffs brought this suit, and plaintiff-intervenors intervened, on the assumption that the Lottery Act was enacted in violation of the North Carolina Constitution. It is further admitted that plaintiff-intervenors intervened on the assumption that the Lottery Act has been and will be implemented unconstitutionally. It is specifically denied that the

Lottery Act was enacted in violation of the North Carolina Constitution. It is also specifically denied that the past, current or future implementation of the Lottery Act has been, is, or will be unconstitutional. It is further denied that the State of North Carolina is a proper defendant for purposes of this action.

8. As to the allegations of paragraph 8, it is denied that the defendant members of the North Carolina State Lottery Commission are charged with establishing the lottery laws of the State of North Carolina. It is admitted that the Lottery Commission is charged with establishing and overseeing the operation of the Lottery. The remaining allegations of paragraph 8 are admitted.

9. As to the allegations of paragraph 9, it is admitted that the North Carolina Lottery Commission is an agency of the State of North Carolina with its headquarters in Wake County and that it is charged with establishing and overseeing the operation of the Lottery in North Carolina. It is denied that the Lottery Commission is a revenue-raising agency within the meaning of Article II, Section 23 of the Constitution of North Carolina, and it is further denied that the Lottery Commission is charged with establishing the lottery laws of the State of North Carolina.

10. The allegations of paragraph 10 are admitted except for any implication that defendant Shaheen is a proper defendant to this lawsuit, which is denied.

11. The allegations of paragraph 11 are admitted except for any implication that defendant Easley or defendant Moore is a proper defendant to this lawsuit, which is denied.

JURISDICTION AND VENUE

12. As to the allegations of paragraph 12, it is denied that the Court has jurisdiction over this action because the plaintiffs and plaintiff-intervenors lack standing to bring the action and further because the action is barred by sovereign immunity, and plaintiffs and plaintiff-intervenors

have made no allegation of waiver of sovereign immunity. It is further denied that N.C.G.S. § 7A-245(1), (3), and (4) are jurisdictional provisions. Except as denied, the allegations of paragraph 12 are admitted.

13. The allegations of paragraph 13 are denied.
14. The allegations of paragraph 14 are admitted.

FACTUAL BACKGROUND

Legislative History

15. The allegations of paragraph 15 are admitted, except that it is denied that a copy of House Bill 1023 (Committee Substitute) was attached to any copy of the plaintiff-intervenors' complaint served on defendants.

16. The allegations of paragraph 16 are admitted.

17. The allegations of paragraph 17 are admitted, except that it is denied that a copy of the House Journal for April 6, 2005, was attached to any copy of the plaintiff-intervenors' complaint served on defendants.

18. The allegations of paragraph 18 are admitted.

19. The allegations of paragraph 19 are admitted.

20. The allegations of paragraph 20 are admitted, except that it is denied that a copy of section 31.1 of Senate Bill 622 was attached to any copy of the plaintiff-intervenors' complaint served on defendants. It is specifically further admitted that Senate Bill 622 was read on three separate or several days in the House and three separate or several days in the Senate, and that the yeas and nays on the second and third readings were recorded in the respective Journals, as reflected in the attached certified copies of the ratified Senate Bill 622 and the relevant Journal entries, plus

an Information History for Senate Bill 622. See Exhibits A-H attached hereto and incorporated herein by reference.

21. As to the allegations of paragraph 21, it is admitted that, on August 26, 2005, members of the Senate were notified by the office of the President Pro Tempore that the Senate would be in session on August 30, 2005, to consider eligible legislation, and any contrary or inconsistent implication from plaintiff-intervenors' allegation that "members of the Senate were *supposedly* notified" (emphasis added) is denied. The remaining allegations of paragraph 21 are admitted.

22. The allegations of paragraph 22 are admitted.

23. The allegations of paragraph 23 are admitted, except that it is denied that a copy of the Senate Journal from August 30, 2005, was attached to any copy of the plaintiff-intervenors' complaint served on defendants.

24. The allegations of paragraph 24 are admitted.

25. The allegations of paragraph 25 are admitted, except that it is denied that any Exhibit A or any other exhibit was attached to any copy of the plaintiff-intervenors' complaint served on defendants.

Provisions of the Lottery Act

26. As to the allegations of paragraph 26, it is admitted that N.C.G.S. § 18C-102, as enacted, provides: "The General Assembly declares that the purpose of this Chapter is to establish a State-operated lottery to generate funds for the public purposes described in this Chapter." It is further admitted that that language is contained in Article 1 of Chapter 18C of the General Statutes, as set out in House Bill 1023 and amended by section 31.1 of Senate Bill 622. It is also further

admitted that the public purposes described in Chapter 18C are related to public education. Any remaining or contrary allegations in paragraph 26 are denied, and it is affirmatively alleged that the enacted legislation is the best and controlling source of what that legislation states.

27. As to the allegations of paragraph 27, it is admitted that N.C.G.S. § 18C-110, as enacted, provides that the North Carolina State Lottery Commission “shall be an independent, self-supporting, and revenue-raising agency of the State.” It is further admitted that that language is contained in Article 2 of Chapter 18C of the General Statutes, as set out in House Bill 1023. It is also admitted that House Bill 1023 was amended by section 31.1 of Senate Bill 622, but it is denied that Senate Bill 622 specifically amended § 18C-110, or the language set out herein, as contained in House Bill 1023. Any remaining or contrary allegations in paragraph 27 are denied, and it is affirmatively alleged that the enacted legislation is the best and controlling source of what that legislation states.

28. As to the allegations of paragraph 28, it is admitted that N.C.G.S. § 18C-160, as enacted, creates the North Carolina State Lottery Fund as an enterprise fund within the State treasury. It is further admitted that that provision is contained in Article 7 of Chapter 18C of the General Statutes, as set out in House Bill 1023. It is also admitted that House Bill 1023 was amended by section 31.1 of Senate Bill 622, but it is denied that Senate Bill 622 specifically amended § 18C-160, as contained in House Bill 1023. It is denied that § 18C-160 or any other provision of Chapter 18C specifies that the “purpose” of the Lottery Fund or its creation or its location in the State treasury was “to generate revenue to be used for the educational welfare of all North Carolina citizens and residents.” It is admitted that N.C.G.S. § 18C-160 provides that the “Lottery Fund is appropriated to the Commission and may be expended without further action of the General Assembly for the

purposes of operating the Commission and the lottery games.” It is further admitted that, pursuant to N.C.G.S. §§ 18C-162 and 18C-164, the net revenues remaining in the Lottery Fund after payment of expenses and obligations, or at least thirty-five percent (35%) of the total revenues received in the Lottery Fund, shall be transferred to the Education Lottery Fund in the State treasury and distributed for specified educational purposes. Any remaining or contrary allegations in paragraph 28 are denied, and it is affirmatively alleged that the enacted legislation is the best and controlling source of what that legislation states.

29. As to the allegations of paragraph 29, N.C.G.S. § 18C-161 specifies the revenues to be deposited in the North Carolina State Lottery Fund as “[a]ll proceeds from the sale of lottery tickets or shares,” “funds for initial start-up costs provided by the State, “[a]ll other funds credited or appropriated to the Commission from any source,” and “[i]nterest earned by the North Carolina State Lottery Fund.” It is also admitted that House Bill 1023 was amended by section 31.1 of Senate Bill 622, but it is denied that Senate Bill 622 specifically amended § 18C-161, as contained in House Bill 1023. The statutory provision is the best evidence of its terms, and any contrary or inconsistent allegations in paragraph 29 are denied.

30. The allegations of paragraph 30 are admitted.

31. As to the allegations of paragraph 31, it is admitted that N.C.G.S. § 18C-164 directs that the net revenues of the Lottery Fund shall be transferred to the Education Lottery Fund, to be created in the State treasury. It is further admitted that N.C.G.S. § 18C-164(b) directs that the Lottery Commission transfer five percent (5%) of the net revenue from the prior year to the Education Lottery Reserve Fund, to be created in the State treasury, and that funds may be transferred by the Governor from the Education Lottery Reserve Fund pursuant to N.C.G.S. § 18C-

164(e) in amounts sufficient to equal the appropriation by the General Assembly. It is further admitted that, pursuant to § 18C-164(b), money in the Education Lottery Reserve Fund may be appropriated only as provided in § 18C-164(e). It is further admitted that N.C.G.S. § 18C-164(c) directs the Lottery Commission to distribute the remaining net revenues of the Education Lottery Fund as follows: fifty percent (50%) to support reduction of class sizes in early grades and to support academic prekindergarten programs for at-risk, four-year-olds, forty percent (40%) to the Public School Building Capital Fund in accordance with N.C.G.S. § 115C-546.2, and ten percent (10%) to the State Educational Assistance Authority to fund college and university scholarships in accordance with Article 35A of Chapter 115C of the General Statutes. It is further admitted that N.C.G.S. § 18C-164, as enacted, was part of House Bill 1023, as amended by section 31.1 of Senate Bill 622. The statutory provisions are the best evidence of their terms, and any contrary or inconsistent allegations in paragraph 34 are denied.

32. As to the allegations of paragraph 32, it is admitted that N.C.G.S. § 18C-164(d), as enacted, specifies that “[o]f the sums transferred under [§ 18C-164(c)], the General Assembly shall appropriate the funds annually based upon estimates of lottery and revenue to the Education Lottery Fund provided by the Office of State Budget and Management and the Fiscal Research Division of the North Carolina General Assembly.” It is further admitted that under § 18C-164(c), transfers of funds from the Education Lottery Fund for purposes of reducing class sizes and supporting academic prekindergarten programs, to the Public School Building Capital Fund in accordance with N.C.G.S. § 115C-546.2, and to the State Educational Assistance Authority in accordance with Article 35A of Chapter 115C of the General Statutes, are all subject to appropriation pursuant to N.C.G.S. § 18C-164(d). It is denied that N.C.G.S. § 18C-164(d) addresses appropriations or disbursements from the

Public School Building Capital Fund or the State Educational Assistance Authority. It is further denied that N.C.G.S. § 18C-164(d) addresses the goal of providing enhanced educational opportunities so that all students in the public schools can achieve their full potential except to the extent that directing that appropriations be made for the relevant funds may be viewed as producing the effect that the funds “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.” It is further admitted that N.C.G.S. § 18C-164 as enacted, was part of House Bill 1023, as amended by section 31.1 of Senate Bill 622. The statutory provisions are the best evidence of their terms, and any contrary or inconsistent allegations in paragraph 32 are denied.

33. As to the allegations of paragraph 33, the allegations are admitted except that the winnings for which State income tax must be deducted are those reportable under section 3406 of the Internal Revenue Code and except that Section 10.2(a) of HB 1023 as amended by section 31.1 of SB 622 is contained only in Senate Bill 622 and is not contained in House Bill 1023. Any contrary or inconsistent allegations in paragraph 33 are denied.

34. As to the allegations of paragraph 34, it is admitted that Section 10.3 of HB 1023 as amended by Section 31.1 of SB 622 rewrites N.C.G.S. § 105-134 to make specific that the income tax imposed by Part 2 of Chapter 105 of the North Carolina General Statutes applies to income derived by nonresident individuals from gambling activities in this State. To the extent paragraph 34 suggests otherwise, it is denied that Section 10.3 of HB 1023 as amended by section 31.1 of SB 622 is contained in HB 1023 or contained anywhere other than in Senate Bill 622. Any contrary or inconsistent allegations in paragraph 34 are denied.

35. The allegations of paragraph 35 are admitted except that it is denied that Section 15 of HB 1023 as amended by section 31.1 of SB 622 is contained in Senate Bill 622 or anywhere other than in HB 1023.

36. As to the allegations of paragraph 36, it is admitted that N.C.G.S. § 18C-110, as enacted, creates the North Carolina State Lottery Commission. It is further admitted that N.C.G.S. § 18C-111, as enacted, specifies the membership of the Lottery Commission and that paragraph 36 accurately quotes from § 18C-110. It is further admitted that §§ 18C-110 and 18C-111 are both in Article 2 of Chapter 18C. It is also admitted that House Bill 1023 was amended by section 31.1 of Senate Bill 622, but it is denied that Senate Bill 622 specifically amended § 18C-110, as contained in House Bill 1023. It is admitted that Senate Bill 622 specifically amended N.C.G.S. § 18C-111, as contained in House Bill 1023. Any remaining and contrary or inconsistent allegations in paragraph 36 are denied.

Relevant Constitutional Provisions

37. The allegations of paragraph 37 are admitted.

38. The allegations of paragraph 38 are admitted.

39. The allegations of paragraph 39 are admitted.

40. Defendants are without sufficient knowledge or information to form an opinion about what plaintiff-intervenors and their members may intend or do in the future, and the allegations of paragraph 40 are therefore denied.

41. As to the allegations of paragraph 41, it is denied that plaintiffs or their counsel made any demand on any of the defendants to institute proceedings to recover moneys spent by the North Carolina Lottery Commission, and it is further denied that any plaintiff or plaintiffs' counsel made

any demand on any defendant to institute proceedings of any kind in connection with the Lottery. It is admitted that plaintiffs' counsel wrote letters to defendants Sanders, Moore, and Cooper requesting that the lottery not be established, that no funds be expended in furthering the same, including funds for employment of an executive director. It is further admitted that defendants Sanders, Moore, and Cooper have not responded to these letters and have not instituted proceedings to recover funds expended by the North Carolina Lottery Commission. It is denied that the defendants have refused to institute proceedings or that any refusal or lack of response by defendant Cooper was wilful, negligent, or in dereliction of his duty. It is further denied that the allegations of paragraph 41 in any way established standing or any other basis for plaintiff-intervenors to bring this lawsuit. If not otherwise contrary or inconsistent, any remaining allegations in paragraph 41 are admitted.

COUNT ONE

42. Defendants incorporate by reference and fully re-state herein the contents of the foregoing paragraphs 1 through 41.

43. The allegations of paragraph 43 are denied.

44. The allegations of paragraph 44 are denied.

45. As to the allegations of paragraph 45, it is admitted that House Bill 1023 (Committee Substitute) passed the Senate on a second and third reading, each conducted on the same day, August 30, 2005. It is further admitted that House Bill 1023 (Committee Substitute) passed the Senate on the second reading by electronic vote and on the third reading by voice vote. It is denied that House Bill 1023 (Committee Substitute) improperly passed the Senate or that it was enacted in any way in violation of Article II, Section 23 or that Article II, Section 23 is applicable to House Bill 1023

(Committee Substitute). It is denied that Senate Bill 622 was not read on three separate days in each house, and it is denied that the yeas and nays for the second and third readings were not recorded in the House and Senate Journals for Senate Bill 622, and it is further denied that Chapter 18C of the North Carolina General Statutes was enacted in any manner in violation of the North Carolina Constitution.

46. As to the allegations of paragraph 46, it is admitted that House Bill 1023 (Committee Substitute) passed the House on a second and third reading, each conducted on the same day, August 6, 2005. It is further admitted that House Bill 1023 (Committee Substitute) passed the House on the second reading by electronic vote and on the third reading by voice vote. It is denied that House Bill 1023 (Committee Substitute) improperly passed the House or that it was enacted in any way in violation of Article II, Section 23 or that Article II, Section 23 is applicable to House Bill 1023 (Committee Substitute). It is denied that Senate Bill 622 was not read on three separate days in each house, and it is denied that the yeas and nays for the second and third readings were not recorded in the House and Senate Journals for Senate Bill 622, and it is further denied that Chapter 18C of the North Carolina General Statutes was enacted in any manner in violation of the North Carolina Constitution.

47. The allegations of paragraph 47 are denied.

48. The allegations of paragraph 48 are denied.

COUNT TWO

49. Defendants incorporate by reference and fully re-state herein the contents of the foregoing paragraphs 1 through 48.

50. The allegations of paragraph 50 are denied.

51. The allegations of paragraph 51 are denied.

52. As to the allegations of paragraph 52, it is admitted that House Bill 1023 (Committee Substitute) passed the Senate on a second and third reading, each conducted on the same day, August 30, 2005. It is further admitted that House Bill 1023 (Committee Substitute) passed the Senate on the second reading by electronic vote and on the third reading by voice vote. It is denied that House Bill 1023 (Committee Substitute) improperly passed the Senate or that it was enacted in any way in violation of Article II, Section 23 or that Article II, Section 23 is applicable to House Bill 1023 (Committee Substitute). It is denied that Senate Bill 622 was not read on three separate days in each house, and it is denied that the yeas and nays for the second and third readings were not recorded in the House and Senate Journals for Senate Bill 622, and it is further denied that Chapter 18C of the North Carolina General Statutes was enacted in any manner in violation of the North Carolina Constitution.

53. As to the allegations of paragraph 53, it is admitted that House Bill 1023 (Committee Substitute) passed the House on a second and third reading, each conducted on the same day, August 6, 2005. It is further admitted that House Bill 1023 (Committee Substitute) passed the House on the second reading by electronic vote and on the third reading by voice vote. It is denied that House Bill 1023 (Committee Substitute) improperly passed the House or that it was enacted in any way in violation of Article II, Section 23 or that Article II, Section 23 is applicable to House Bill 1023 (Committee Substitute). It is denied that Senate Bill 622 was not read on three separate days in each house, and it is denied that the yeas and nays for the second and third readings were not recorded in the House and Senate Journals for Senate Bill 622, and it is further denied that Chapter 18C of the

North Carolina General Statutes was enacted in any manner in violation of the North Carolina Constitution.

54. The allegations of paragraph 54 are denied.

55. The allegations of paragraph 55 are denied.

COUNT THREE

56. Defendants incorporate by reference and fully re-state herein the contents of the foregoing paragraphs 1 through 55.

56. [sic] The allegations of the second paragraph 56 of the plaintiff-intervenors' complaint are denied.

57. The allegations of paragraph 57 are denied.

58. As to the allegations of paragraph 58, it is admitted that House Bill 1023 (Committee Substitute) passed the Senate on a second and third reading, each conducted on the same day, August 30, 2005. It is further admitted that House Bill 1023 (Committee Substitute) passed the Senate on the second reading by electronic vote and on the third reading by voice vote. It is denied that House Bill 1023 (Committee Substitute) improperly passed the Senate or that it was enacted in any way in violation of Article II, Section 23 or that Article II, Section 23 is applicable to House Bill 1023 (Committee Substitute). It is denied that Senate Bill 622 was not read on three separate days in each house, and it is denied that the yeas and nays for the second and third readings were not recorded in the House and Senate Journals for Senate Bill 622, and it is further denied that Chapter 18C of the North Carolina General Statutes was enacted in any manner in violation of the North Carolina Constitution.

59. As to the allegations of paragraph 59, it is admitted that House Bill 1023 (Committee Substitute) passed the House on a second and third reading, each conducted on the same day, August 6, 2005. It is further admitted that House Bill 1023 (Committee Substitute) passed the House on the second reading by electronic vote and on the third reading by voice vote. It is denied that House Bill 1023 (Committee Substitute) improperly passed the House or that it was enacted in any way in violation of Article II, Section 23 or that Article II, Section 23 is applicable to House Bill 1023 (Committee Substitute). It is denied that Senate Bill 622 was not read on three separate days in each house, and it is denied that the yeas and nays for the second and third readings were not recorded in the House and Senate Journals for Senate Bill 622, and it is further denied that Chapter 18C of the North Carolina General Statutes was enacted in any manner in violation of the North Carolina Constitution.

60. The allegations of paragraph 60 are denied.

61. The allegations of paragraph 61 are denied.

COUNT FOUR

62. Count Four of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 62 is required.

63. Count Four of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 63 is required.

64. Count Four of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 64 is required.

65. Count Four of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 65 is required.

66. Count Four of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 66 is required.

67. Count Four of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 67 is required.

68. Count Four of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 68 is required.

COUNT FIVE

69. Count Five of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 69 is required.

70. Count Five of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 70 is required.

71. Count Five of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 71 is required.

72. Count Five of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 72 is required.

73. Count Five of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 73 is required.

74. Count Five of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 74 is required.

75. Count Five of the plaintiff-intervenors' complaint has already been dismissed by the Court, and no responsive pleading to paragraph 75 is required.

COUNT SIX

76. Defendants incorporate by reference and fully re-state herein the contents of the foregoing paragraphs 1 through 75.

77. The allegations of paragraph 77 are denied.

78. The allegations of paragraph 78 are denied.

79. The allegations of paragraph 79 are denied, and it is specifically denied that House Bill 1023 as amended by section 31.1 of Senate Bill 622 purports to authorize the drawing of money from the State treasury without an appropriation by law, and it is further denied that Chapter 18C of the North Carolina General Statutes provides in any manner for the loan, expenditure, or drawing of money from the State treasury in violation of the North Carolina Constitution.

DEFENDANTS' FURTHER ANSWERS AND DEFENSES

In further answer and defense to plaintiffs-intervenors' complaint, defendants raise the following defenses:

1. Plaintiff-intervenors lack standing to bring this action, and accordingly the court lacks jurisdiction to consider the action and plaintiff-intervenors have failed to allege a claim upon which relief may be granted.
2. Plaintiff-intervenor Williams lacks standing to bring this action as a taxpayer because he has not paid income tax to the State of North Carolina in the relevant period.
3. Plaintiff-intervenors North Carolina Fair Share and North Carolina Common Sense Foundation lack standing to bring this action because they do not pay State income taxes since, by their own allegations, they are non-profit corporations, and they have made no allegations which would establish any other type of standing for them to pursue this action.

4. This action is barred by sovereign immunity, and plaintiff-intervenors have failed to allege any waiver or exception to sovereign immunity. Accordingly, the court lacks jurisdiction over the action and/or the court lacks personal jurisdiction over the defendants.

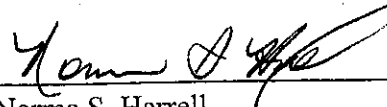
5. Plaintiff-intervenors are guilty of laches in not commencing this action within a reasonable time. Plaintiff-intervenors delayed in commencing this action to defendants' prejudice, in that plaintiff-intervenors waited several months from the passage of the legislation at issue to bring this action; plaintiff-intervenors knew the moment the legislation was enacted that it had not been read on separate days; and prior to the commencement of this action defendants, in reliance upon and as required by the legislation, had altered their economic, legal, and planning positions, establishing the Lottery Commission and employing an Executive Director, among other things, as set out in the affidavit of Thomas Shaheen, a copy of which is attached hereto as Exhibit I and incorporated herein by reference, the original sworn affidavit having been filed and served in this action on February 8, 2006.

6. Plaintiff-intervenors have failed to state a claim upon which relief may be granted, and their action fails as a matter of law on all counts.

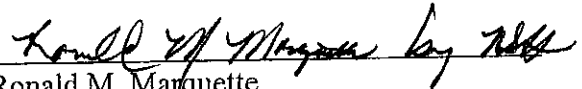
WHEREFORE, defendants urge the court to deny plaintiff-intervenors all the relief they seek, to enter judgment for defendants on all claims, and to tax the costs of these proceedings to plaintiff-intervenors.

Respectfully submitted, this the 3d day of March, 2006.

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