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WINBORNE V. VIRGINIA LOTTERY

III. ASSIGNMENTS OF ERROR

1. The trial Court erred in denying Petitioners' Motion for Partial Summary Judgment, granting Respondents' Motion for Partial Summary Judgment and entering final Judgment on behalf of Respondents because it incorrectly held that "the Virginia Lottery does not offer a program, service or activity within the meaning of the ADA or the VDA." Tr. 4 April 2008 Hr'g at 3-4.

The trial Court's ruling was incorrect because under the ADA, VDA and relevant case law, anything a state agency does is a "program, service or activity" of that entity. Therefore, under the ADA and VDA, Respondents must ensure that Petitioners can access Lottery tickets sold by their Lottery retailers.

2. The trial Court erred in denying Petitioners' Motion for Partial Summary Judgment, granting Respondents' Motion for Partial Summary Judgment and entering final Judgment on behalf of Respondents because it incorrectly held that the fact that "the Virginia Lottery Commission does not provide funds to the retailers that will allow them to comply with the ADA" was determinative of the Motions and compelled it to grant Respondents' Motion. Tr. 4 April 2008 Hr'g at 4.

The trial Court's ruling was incorrect because under the VDA and ADA, Respondents have an obligation to ensure that Petitioners can access Lottery tickets sold at their Lottery retailers whether or not they "provide funds to the retailers."

3. The trial Court erred in denying Petitioners' Motion for Partial Summary Judgment, granting Respondents' Motion for Partial Summary Judgment and entering final Judgment on behalf of Respondents because it incorrectly held that "the Lottery Commission is not charged by law with the operation, maintenance and operation [*sic*] of the [Lottery] system...." Tr. 4 April 2008 Hr'g at 4-5.

The trial Court's ruling was incorrect because Virginia and federal law establishes that Respondents are legally responsible for operating the Lottery system and ensuring that Petitioners are able to access Lottery tickets sold at their Lottery retailers.

As a result, the trial Court's reliance on *Bacon v. City of Richmond* was in error because the *Bacon* Court held that a public entity "charged by law" to operate a system "can be punished or enjoined" if it operates in a way that violates the ADA, as Respondents did in this case.

4. The trial Court erred in denying Petitioners' Motion for Partial

Summary Judgment, granting Respondents' Motion for Partial Summary Judgment and entering final Judgment on behalf of Respondents because it incorrectly held that Lottery retailers, and not the Respondents, are legally responsible for ensuring that Petitioners can access Lottery tickets. Tr. 4 April 2008 Hr'g at 4-5.

The trial Court's ruling was incorrect because Virginia and federal law establishes that Respondents have a legal obligation to operate the Lottery system and ensure that Petitioners are able to access tickets sold at their Lottery retailers.

As a result, the trial Court's reliance on *Bacon v. City of Richmond* was in error because the *Bacon* Court held that a public entity "charged by law" to operate a system "can be punished or enjoined" if it operates in a way that violates the ADA, as Respondents did in this case. Additionally, under *Bacon,* a public entity cannot escape liability "by dividing operational control and funding authority" as Respondents did in this case.