

IN THE SUPREME COURT OF PENNSYLVANIA

---

No. 229 MM 2004

---

Pennsylvanians Against Gambling Expansion Fund, Inc.; Pennsylvania Family Institute; The League of Women Voters of Pennsylvania; Gibson E. Armstrong, Senator of the 13<sup>th</sup> Senatorial District; Paul I. Clymer, Representative of the 145<sup>th</sup> Legislative District; Gregory S. Vitali, Representative of the 166<sup>th</sup> Legislative District; Gibson C. Armstrong, Representative of the 100<sup>th</sup> Legislative District; Jerry A. Stern, Representative of the 80<sup>th</sup> Legislative District; Dick Shellenberger, Lancaster County Commissioner; The Commonwealth Foundation; The Keystone Christian Education Association; A United Methodist Witness of Pennsylvania; No Dice, Inc.; The Reverend Dr. Thomas E. Richards, Jr., in his individual capacity; Mark Kovscek, in his individual capacity; Christ G. Lapp, in his individual capacity; Lois J. Romberger, in her individual capacity; and C. Douglas Rothgaber, in his individual capacity,  
Petitioners

v.

Commonwealth of Pennsylvania; Edward G. Rendell, in his official capacity as Governor of the Commonwealth of Pennsylvania; Robert C. Jubelirer, President *Pro Tempore* of the Senate of the Commonwealth of Pennsylvania; John M. Perzel, Speaker of the House of Representatives of the Commonwealth of Pennsylvania; Robert J. Mellow, Minority Leader of the Senate of the Commonwealth of Pennsylvania; H. William DeWeese, Minority Leader of the House of Representatives of the Commonwealth of Pennsylvania;  
The Pennsylvania Gaming Control Board,  
Respondents

---

**BRIEF IN SUPPORT OF PETITION SEEKING DECLARATORY  
JUDGMENT AND INJUNCTIVE RELIEF**

---

James J. West  
Supreme Court I.D. No.00331  
Robert R. Long, Jr.  
Supreme Court I.D. No.39302  
**WEST LONG LLC**  
105 North Front Street  
Suite 205  
Harrisburg, PA 17101  
(717) 233-5051  
(717) 234-7517 – fax  
*Attorneys for Petitioners*

Leonard G. Brown, III  
Supreme Court I.D. No. 83207  
Randall L. Wenger  
Supreme Court I.D. No. 86537  
**CLYMER & MUSSER, P.C.**  
23 N. Lime St.  
Lancaster, PA 17602  
(717) 299-7101  
(717) 299-5115 – fax  
*Attorneys for Petitioners*

**TABLE OF CONTENTS**

STATEMENT OF JURISDICTION..... 1

STATEMENT OF SCOPE OF STANDARD OF REVIEW..... 2

ORDER OR OTHER DETERMINATION IN QUESTION..... 3

STATEMENT OF QUESTIONS INVOLVED..... 4

STATEMENT OF THE CASE..... 5

    I.    PROCEDURAL HISTORY..... 5

    II.   STATEMENT OF FACTS..... 6

        A.   The Passage of H.B. 2330..... 6

        B.   Chronology of HB 2330 / October 2004-71 ..... 8

    III.  THE DEBATES ON HB 2330 ..... 11

    IV.  OTHER GAMBLING BILLS..... 21

SUMMARY OF ARGUMENT ..... 24

ARGUMENT ..... 26

    I.    ACT 2004-71 VIOLATES ARTICLE III, SECTIONS 1, 3, 4 AND 6 OF THE  
PENNSYLVANIA CONSTITUTION. .... 27

        A.   Background of Article III of the Pennsylvania Constitution. .... 27

        B.   Act 71 Violated the Single Subject and Clearly Expressed Title Requirements  
of Article III, §3 of the Pennsylvania Constitution. .... 29

        C.   Act 2004-71 Violates the Change of Purpose Prohibition of Article III, §1 of  
the Pennsylvania Constitution..... 37

        D.   Act 71 Violates Article III, §4 Because the Amended Version of the Bill  
Changed its Purpose and the New Bill was not Considered on Three Different Days  
in Each House. .... 45

        E.   Act 71 Violates Article III, §6 Because the Bill Fails to Reprint the Text of the  
Repealed Provision. .... 46

        F.   Act 71 Violates Article III, §10 Because it is a Revenue Bill that did not  
Originate in the House. .... 48

    II.  ACT 2004-71 VIOLATES ARTICLE II, SECTION 1 OF THE  
PENNSYLVANIA CONSTITUTION BECAUSE IT IMPROPERLY DELEGATES  
UNRESTRICTED LAND USE AND ZONING AUTHORITY AND POWER TO  
THE GAMING CONTROLBOARD WITHOUT PROVIDING CLEAR, DEFINITE,  
REASONABLE AND LAWFUL STANDARDS, POLICIES AND LIMITATIONS  
TO PROTECT AGAINST UNFETTERED BOARD ACTION ..... 49

        A.   The Non-Delegation Rule..... 51

        B.   The General Assembly Failed to Provide Adequate Standards to Guide and  
Restrain the Exercise of Delegated Administrative Function by the Gaming Control  
Board..... 57

CONCLUSION..... 68

## TABLE OF AUTHORITIES

### Cases

<u>Anderson v. Oakland County Clerk</u> , 353 N.W.2d 448, 455 (Mich. 1984).....	43
<u>Archbishop O'Hara's Appeal</u> , 389 Pa. 35, 131 A.2d 587 (1957).....	54
<u>Barklay v. Melton</u> , 5 S.W.3d 457 (Ark. 1999) .....	41, 44
<u>Belovsky v. Redevelopment Authority</u> , 357 Pa. 329, 54 A.2d 277 (1947) .....	54
<u>Billis v. State</u> , 800 P.2d 401, 429-30 (Wyo. 1990).....	43
<u>Black Hawk Consol. Mines Co. v. Gallegos</u> , 191 P.2d 996 (N.M. 1948) .....	42, 43, 44
<u>Blackwell v. State Ethics Commission</u> , 523 Pa. 347, 567 A.2d 630 (1989).....	54, 57
<u>Chartiers Valley Joint Schools v. Allegheny County Board of School Directors</u> , 418 Pa. 520, 211 A.2d 487 (1965).....	54
<u>City of Philadelphia v. Commonwealth</u> , 575 Pa. 542, 838 A.2d 566 (2003) .....	passim
<u>City of Wilkes-Barre v. Pennsylvania Public Utility Commission</u> , 164 Pa. Super. 210, 63 A.2d 452 (1949).....	47
<u>Cleaver v. Board of Adjustment</u> , 200 A.2d 408 (Pa. 1964).....	65
<u>Cleaver v. Board of Adjustment, Upper Darby Township Appeal</u> , 413 Pa. 583, 198 A.2d 538 (Pa.1964).....	67
<u>Common Cause of Pennsylvania v. Commonwealth</u> , 668 A.2d 190 (Pa. Cmwlth. 1995).....	45
<u>Commonwealth ex rel. Paulinski v. Issac</u> 483 Pa. 467, 397 A.2d 760 (1979).....	27
<u>Commonwealth ex rel., Margiotti v. Lawrence</u> , 326 Pa. 526, 193 A. 46 (1937).....	27
<u>Commonwealth v. Hallberg</u> , 374 Pa. 554, 97 A.2d 849 (1953) .....	46, 47
<u>Commonwealth of Pennsylvania Water and Power Resources Board v. Greenspring Company</u> , 394 Pa. 1, 145 A.2d 178 (1958) .....	55, 56, 58, 67
<u>Dauphin Deposit Trust Company v. Myers</u> , 388 Pa. 444, 130 A.2d 686 (1957).....	52
<u>Devereux Foundation, Inc., Zoning Case</u> , 351 Pa. 478, 41 A.2d 744 (1945).....	63
<u>DeWeese v. Weaver</u> , 824 A.2d 364 (Pa. Cmwlth. 2003) .....	35, 36, 37
<u>Executive Life Insurance Company v. Commonwealth</u> , 147 Pa. Cmwlth. 105, 606 A.2d 1282 (1992), aff'd, 533 Pa. 321, 623 A.2d 322 (1993).....	57
<u>Fumo v. Pa. Public Utility Com'n</u> , 719 A.2d 10 (Pa. Cmwlth. 1998).....	37, 45
<u>Gilligan v. Pennsylvania Horse Racing Commission</u> , 492 Pa. 92, 422 A.2d 487 (1980)	
<u>Gima v. Hudson Coal Co.</u> , 310 Pa. 480 (1933).....	54
<u>Re: Appeal of Realen Valley Forge Greenes Associates</u> , 576 Pa. 115, 838 A.2d 718 (2003).....	51
<u>In Re Marshall</u> , 363 Pa. 326, 69 A.2d 619 (1950).....	64, 66
<u>L.J.W. Realty Corp. v. City of Phila.</u> , 390 Pa. 197, 206 N. 8, 134 A.2d 878 (1957) .	30, 54
<u>Locke's Appeal</u> , 72 Pa. 491, 1873 Pa. LEXIS 34 (1873).....	51, 52
<u>Mallinger v. City of Pittsburgh</u> , 316 Pa. 257, 175 A. 525 (1934) .....	30
<u>Mikell v. School District of Philadelphia</u> , 58 A.2d 339, 359 Pa. 113 (1948).....	48
<u>Mt. Lebanon v. County Board of Elections</u> , 470 Pa. 317, 368 A.2d 648 (1977).....	54
<u>New York Central Securities Corporation v. United States, The Interstate Commerce Commission</u> , 287 U.S. 12, 24-25, 53 S.Ct. 45, 48, 77 L.Ed. 138 (1932) .....	60, 61
<u>Norton v. Glen</u> , 860 A.2d 48 (Pa. 2004).....	2

<a href="#">O'Neil v. Insurance Co., 166 a.72</a> .....	52
<a href="#">Panama Refining Co. v. Ryan, [293 U.S. 388 (1935)]</a> .....	
<a href="#">Pennsylvania Ass'n. of Retail Dealers v. Commonwealth, 123 Pa. Cmwlt. 533, 554 A.2d 998 (1989)</a> .....	37, 44
<a href="#">Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 67 L. Ed. 322, 43 S. Ct. 158 (1922)</a>	65
<a href="#">Pennsylvania State Lodge v. Commonwealth, 692 A.2d 609 (Pa. Cmwlt. 1997)</a> .....	29
<a href="#">People v. Brown, 485 P.2d 500 (Colo. 1971)</a> .....	41, 43
<a href="#">Rogers, 109 Pa. at 112, 1 A. at 346</a> .....	29
<a href="#">Root v. Erie Zoning Board of Appeals, 180 Pa. Super. 38, 118 A.2d 297 (1955)</a> .....	63
<a href="#">Schechter Poultry Corp. v. United States, 295 U.S. 495</a> .....	52
<a href="#">Schubach v. Silver, 461 Pa. 366, 336 A.2d 328, 336 (Pa. 1975)</a> .....	66
<a href="#">Singer v. Sheppard, 464 Pa. 387, 346 A.2d 897, 901 (1975)</a> .....	27
<a href="#">Smith v. Hansen, 386 P.2d 98 (Wyo. 1963)</a> .....	43, 44
<a href="#">State Board of Chiropractic Examiners v. Life Fellowship of Pennsylvania, 441 Pa. 293, 272 A.2d 478 (1971)</a> .....	50, 54
<a href="#">Tate Liquor License case, 196 Pa. Super. 193, 173 A.2d 657 (1961)</a> .....	59
<a href="#">Tosto v. Pennsylvania Nursing Home Loan Agency, 460 Pa. 1, 11, 331 A.2d 198, 202 (1975)</a> .....	54, 55
<a href="#">United Artists Theater Circuit, Inc. v. City of Philadelphia, Philadelphia Historical Commission, 528 Pa. 12, 595 A.2d 6 (Pa. 1991)</a> .....	65, 66
<a href="#">West Virginia Pulp &amp; Paper Co. v. Public Service Commission, 61 Pa. Super. 555 (1915)</a>	47
<a href="#">William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 212, 346 A.2d 269, 291 (1975)</a> .....	53, 54, 59, 61
<a href="#">Wings Field Preservation Assocs., L.P. v. Department of Transportation, 776 A.2d 311 (Pa. Cmwlt. 2001)</a> .....	57
<a href="#">Wichita Railroad &amp; Light Company v. Public Utilities Commission, 260 U.S. 48</a> .....	52

**Constitutional Provisions**

ALA. CONST. art. IV, §61 .....	40
ARK. CONST. art. V, 21.....	40
COLO. CONST. art. V, §17 .....	42
PA. CONST. art. II, §1 .....	passim
PA. CONST. art. III, §1 .....	4, 5, 6, 26, 36, 40
PA. CONST. art. III, §3 .....	4, 5, 6, 26, 28, 29
PA. CONST. art. III, §4.....	4, 5, 26
PA. CONST. art. III, §6.....	4, 5, 26
PA. CONST. art. III, §10.....	5, 26
N.M. CONST. art. IV, §15.....	42
WYO.CONST. art. III, §20.....	42

**Statutes**

18 U.S.C. §201(c)(1)(B). .....	28
§1102(11) of Act 1.....	passim

§1201 of Act 71 .....	passim
§1202(A), (B) of Act 71.....	passim
§1207 of Act 71.....	passim
§1521(C)(1) of Act 71.....	passim
4 Pa. C.S.A. §1904.....	1, 3
Crimes Code, Section 18 Pa. C.S. §5513(a) .....	47
Liquor Code, Section 493(29) of the Act of April 12, 1951 (P.L. 90.21) .....	47
47 P.S. §4-402.....	passim
47 P.S. §4-404.....	passim
53 P.S. §10101 .....	passim
53 P.S. § 10105 .....	passim
<a href="#">53 P.S. § 10604(5)</a> .....	passim

**Other Authorities**

<i>Advisory Opinion No. 331</i> , 582 So.2d 1115 (Ala. 1991).....	40
<i>Debates of the Pennsylvania Constitutional Convention 1872-731</i> , Page 492-93 .....	28
Millard H. Ruud, <i>No Law Shall Embrace More Than One Subject</i> , 42 MINN. L.REV. 389, 391 (1958).....	35
Williams, <i>State Constitutional Limits on Legislative Procedure</i> at p. 798.....	32
Branning, <u>Pennsylvania Constitutional Development</u> , 37 (1960) .....	28
Branning, <u>Pennsylvania Constitutional Development</u> , 68-69 (1960) .....	27
Charles W. Rubendall II, <i>The Constitution and the Consolidated Statutes</i> , 80 DICK. L.REV. 118, 120 (1975) .....	34
Gormley, <u>The Pennsylvania Constitution</u> , §3.6[b], p. 64 (2003).....	28
Branning, <u>Pennsylvania Constitutional Development</u> (1960) .....	28
Woodside, <u>Pennsylvania Constitutional Law</u> , 295 (1985).....	28

**Rules**

Rule 1532(B) of the Pennsylvania Rules of Appellate Procedure.....	6
--	---

## **STATEMENT OF JURISDICTION**

This Court has jurisdiction under 4 Pa. C.S.A. §1904 which provides as follows:

The Pennsylvania Supreme Court shall have exclusive jurisdiction to hear any challenge to or to render a declaratory judgment concerning the constitutionality of this part. The Supreme Court is authorized to take such action as it deems appropriate, consistent with the Supreme Court retaining jurisdiction over such a matter, to find facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief.

## **STATEMENT OF THE SCOPE AND STANDARD OF REVIEW**

The issue raised in this case is the constitutionality of a statute brought before this Court under a statutory grant of original jurisdiction. This presents a question of law over which this Court's review is *de novo* as to scope of review and the standard of review is plenary. See Norton v. Glen, 860 A.2d 48, 53 (Pa. 2004).

**ORDER OR OTHER DETERMINATION IN QUESTION**

No lower court has reviewed this matter and only the Supreme Court has original and exclusive jurisdiction over it pursuant to 4 Pa. C.S.A. §1904.

**STATEMENT OF QUESTIONS INVOLVED**

1. Whether Act 2004-71 violates Article III, Sections 1, 3, 4 and 6 of the Pennsylvania Constitution.

Suggested answer: Yes.

2. Whether Act 2004-71 violates Article II, Section 1 of the Pennsylvania Constitution.

Suggested answer: Yes.

## STATEMENT OF THE CASE

### I. PROCEDURAL HISTORY.

This is an action asking that Act 2004-71 (Act 71), The Pennsylvania Race Horse Development and Gaming Act, be declared unconstitutional and for injunctive relief to stop implementation of the Act brought by five members of the General Assembly, seven organizations, a Lancaster County Commissioner and five named individuals<sup>1</sup>. The action was filed on December 10, 2004, naming as respondents the Commonwealth of Pennsylvania, the relevant Commonwealth officials, and a new entity created by the challenged act, the Pennsylvania Gaming Control Board. The Petitioners allege that Act 71 is unconstitutional and was passed by the General Assembly in violation of Article III, Sections 1, 3, 4, 6 and 10 of the Pennsylvania Constitution and is an unconstitutional delegation of power to the Gaming Control Board because it empowers the Gaming Board to supersede all state and local zoning and land use laws within the Commonwealth in the placement of casino gaming establishments.

The Commonwealth and its named officials have all filed Preliminary Objections in the nature of demurrers, contending that none of the provisions of the Pennsylvania Constitution were violated in the passage of Act 71 and the Petitioners have answered (R.

---

<sup>1</sup> Petitioners have standing as legislators, Zempelli v. Daniels, 496 Pa. 247, 436 A.2d 1165 (1981), as public officials sworn to obey Pennsylvania's Constitution, Lawless v. Jubilirer, 789 A.2d 820 (Pa. Cmwlth.), aff'd 571 Pa. 79, 811 A.2d 974 (2002), as organizations best situated to assert a claim that would otherwise go unchallenged, League of Women Voters of Pennsylvania v. Commonwealth, 692 A.2d 263 (Pa. Cmwlth. 1997), as taxpayers facing an action that has otherwise gone unchallenged, Faden v. Philadelphia Housing Authority, 424 Pa. 273, 227 A.2d 619 (1967), and given the tremendous impact of this statute decriminalizing felonious conduct in order to raise revenue and its societal and moral implications and costs, the individual petitioners have varying interests, as outlined in the petition, which are substantial, direct and immediate, Hydropress v. Township of Upper Bethel, 575 Pa. 479, 836 A.2d 912 (2003).

75a – R. 206a). The Gaming Commission filed an answer to the Petition (R. 207a – R. 226a) and subsequently filed an application for summary relief pursuant to Rule 1532(B) of the Pennsylvania Rules of Appellate Procedure, raising the same issues as were raised in the other named Respondents’ Preliminary Objections. The Petitioners moved to expedite this matter within the original jurisdiction of the Supreme Court and the Respondents indicated agreement with the request for an expedited procedure by letters.

This Court granted expedition of the case on February 11, 2005, directed the Prothonotary to set up an expedited briefing schedule (February 25, 2005) and the case was subsequently listed for oral argument during the March 2005 session in Pittsburgh, Pennsylvania with oral argument “limited to the challenges based upon Article III, Section 1 and Article III, Section 3 of the Pennsylvania Constitution (R. 70a – R. 71a). Hence, this brief.

## **II. STATEMENT OF FACTS.**

### **A. The Passage of H.B. 2330.**

The bill that eventually became Act 71 was introduced as House Bill 2330 (HB 2330) on February 3, 2004 and its title reads “An Act Providing for the Duties of the Pennsylvania State Police Regarding Criminal History Background Reports for Persons Participating in Harness or Horse Racing.” The entire bill consisted of one (1) page dealing exclusively with the Pennsylvania State Police providing support to the State Harness and Horse Racing Commissions regarding criminal history checks and verification of fingerprints limited to applicants for licensure under the Race Horse

Industry Reform Act of 1981.<sup>2</sup> (H.B. 2330, Printer’s No. 3251, R. 315a.) This bill went through the constitutionally-required three considerations in the House and two considerations in the Senate totally unchanged when, on last consideration in the Senate on the Thursday before the 4<sup>th</sup> of July holiday weekend (July 1, 2004), the original title and bill were literally obliterated, a new title containing multiple additional purposes was given to the bill and a 145-page amendment replaced the entire original 1-page bill. See History of House Bill 2330 (R. 317a – R. 318a) and HB 2330 (R. 319a – R. 466a). The resulting amended bill contains 6 chapters, 83 sections, with 184 lettered subsections and 228 numbered subsections completely altering the purpose of the original bill, and even the title of the bill was changed from three lines (which were totally stricken and never incorporated in the new title [R. 319a]) to over thirteen lines of closely worded text. The amendment deals with various and sundry matters and purposes, including the creation of an entity named the Pennsylvania Gaming Control Board (R. 334a), the issuance of gambling licenses authorizing the creation a variety of slot machine casinos (R. 360a), the generation and distribution of taxes and revenues from said licenses (R. 403a), the creation of numerous funds in the Treasurer’s office, including the Gaming Fund (R. 406a), the Pennsylvania Horse Race Development Fund (R. 423a), the Gaming Economic Development and Tourism Fund (R. 427a), the Property Tax Relief Fund (R. 431a), the Compulsive and Problem Gambling Treatment Fund (R. 435a), as well as certain transfers to everything from the Volunteer Fire Company Grant Program (R. 430a) to the

---

<sup>2</sup> The 1-page HB 2330 only covers licensing under “Section 213” of the 1981 Horse Race Reform Act. This section is specifically limited to “Licenses for Commissioners, employees and participants at horse race meetings”. 4 P.S. 325.213.

Pittsburgh International Airport (R. 429a)<sup>3</sup>. The amended bill also contains so many numerous new purposes, they cannot be described here, but it should be mentioned that several provisions even provide new duties for the Pennsylvania Supreme Court over the issuance of licenses (R. 346a), promulgating rules concerning public official's financial interest (R. 439a) and deciding constitutional challenges to the bill (R. 463a). If the Court wishes to compare the original and amended bills in question, the original proposed bill (R. 315a) and the amended passed bill (R. 319a-R. 466a), as well as a 17-page summary of the bill which was posted on the Department of Revenue's website after passage (R. 467a-R. 483a) are in the reproduced record. The difference in content and sheer volume between the original and amended bill is striking.

#### **B. Chronology of HB 2330 / October 2004-71**

The following is a chronology of the bill's progression through the General Assembly:

---

<sup>3</sup> Obviously, there is not enough space in this brief to review, in its entirety, this 145-page act. We will review and comment upon the establishment of some of these funds because we believe these are multiple subjects in the statute, and the funds make numerous and sundry distributions to a rather eclectic group of entities. For example, the State Gaming Fund literally goes through the county and municipal code, making distributions to every class of county and then goes to the classifications of various cities, townships, boroughs, incorporated towns or any missed municipality unless it is a resort and makes various distributions of money in percentage form, depending on the category (size) of gaming facilities located therein. (406a-422a). Other interesting distributions come from the Gaming Economic Development and Tourism Fund, which provides large sums of money for debt service for the Pennsylvania Convention Center, the Pittsburgh International Airport, infrastructure of counties of the second class, urban redevelopment indebtedness for counties of the second class, indebtedness for a hotel or convention center in cities of the second class, urban redevelopment funds for second class counties, convention centers in second class cities, operating deficit of convention centers in second class cities, etc., etc. (428a-429a). These funds will be referenced in subsequent discussions concerning logrolling.

(a) On February 3, 2004, the bill was introduced and referred to the Judiciary Committee (HLJ No. 6, p. 61)(R. 486a).

(b) On March 16, 2004, HB 2330 received its first consideration in the House and was laid on the table (HLJ No. 12, p. 232)(R. 521a)<sup>4</sup>.

(c) On March 17, 2004, the HB 2330 was called up and given second consideration and recommitted to the Appropriations Committee (HLJ No. 13, p. 263)(R. 551a).

(d) On March 22, 2004, HB 2330 was re-reported from the Appropriations Committee and given third consideration and final passage by the House of Representatives (HLJ No. 14, pp. 283-285)(R. 570a-R. 572a).

(e) On March 22, 2004, HB 2330 was referred to the Law and Justice Committee in the Senate.<sup>5</sup>

(f) On March 23, 2004, HB 2330 was reported as committed out of the Committee on Law and Justice in the Senate and given its first consideration in the Senate (SLJ No. 18, pp. 1519, 1527)(R. 578a, R. 586a).

(g) On March 29, 2004, HB 2330 received its second consideration by the Senate (SLJ No. 20, p. 1552)(R. 600a).

---

<sup>4</sup> A bill being “laid on the table” is a term of art for a non-debatable motion or question that is tabled and which will remain there unless taken up before the close of the session. It is covered by House Rules 59 and 60 and by the Senate Rules under Rule XII dealing with motions at Sections 2, 3, 10 and 11.

<sup>5</sup> This is reflected on the History of HB 2330 (Exhibit “4” to the Petition) and should be reflected in SLJ No. 17, but our search reveals that it is not found therein.

(h) On May 10, 2004, the bill was passed over without objection and recommitted to the Committee on Law and Justice pursuant to Senate Rule 10 dealing with the order of business (SLJ No. 28, p. 1662)(R. 608a).

(i) On May 18, 2004, HB 2330 was reported out of the Committee on Law and Justice in the Senate (SLJ No. 32, p. 1712)(R. 615a).

(j) On June 28, 2004, HB 2330 was recommitted to the Committee on Law and Justice and passed over without objection pursuant to Senate Rule 10 dealing with the order of business (SLJ No. 42, p. 1865)(R. 635a).

(k) The next day, June 29, 2004, HB 2330 was again reported out of the Law and Justice Committee in the Senate (SLJ No. 43, p. 1893)(R. 662a).

(l) On July 1, 2004, the bill was presented to the Senate for third and final consideration and Senator Tomlinson offered Amendment No. A3055 which struck out the original bill, including its title and substituted in its place an “amendment” consisting of 145 pages, 6 chapters, 83 sections and 412 lettered and numbered subsections legalizing and creating casino slot machine gambling in Pennsylvania. HB 2330 was given a new Printer No. 4272 (SLJ No. 45, p. 1922)(R. 672a).

(m) After several unsuccessful attempts to further amend the bill in the Senate, the bill was passed and sent back to the House for either acceptance or rejection (SLJ No. 45, pp. 1922 through and including 1994)(R. 672a-R. 744a).

(n) The appropriate Senate Legislative Journal shows that the bill was in fact passed at approximately 2:00 a.m. on Friday, July 2, 2004 but that this was still

considered the July 1, 2004 legislative session for purposes of computing legislative days (SLJ No. 45, p. 1988), (remarks of Senator Jubelirer)(R. 738a).

(o) Having been amended, the bill now acquired a new Printer's Number and went from Printer's No. 3251 to Printer's No. 4272.

(p) On the same day it was passed in the Senate, i.e., July 2, 2004, HB 2330 was sent to the House with a Senate message and referred to the House Rules Committee (HLJ No. 49, p. 1482)(R. 799a).

(q) On Saturday, July 3, 2004, HB 2330 was reported out of the House Rules Committee, submitted to a vote in the House on a committed basis, passed and was signed in the House (HLJ No. 50, pp. 1511-1582)(R. 828a-R. 899a).

(r) On Sunday, July 4, 2004, the bill was signed in the Senate and placed in the hands of the Governor who signed the bill into law on Monday, July 5, 2004, Act 71 of 2004.

### **III. THE DEBATES ON HB 2330**

The proposed amendment to House Bill 2330 appears to have been made available to the General Assembly for the first time on Thursday, July 1, 2004 and the Senate added the 145-page amendment that evening at a late night session, which ran from 8:15 p.m. until sometime after 2:15 a.m. on the morning of July 2, 2004<sup>6</sup>. The remarks of Senator White on introducing a proposed amendment to the Senate

---

<sup>6</sup> The amendment was introduced at SLJ No. 45, p. 1922, R.672a at the beginning of the session at approximately 8:15 p.m. The Senate Journal shows adjournment at 11:59 p.m. (SLJ No. 45, p. 1999, R. 749a), but the debates show the Senate was in fact in session well into the morning of the next day, July 2, 2004. SLJ No. 45, p. 1990, R. 740a.

amendment requiring the Gaming Commission to be bound by the Governor's Code of Conduct set the tone for what was occurring:

“It was impossible for any of us who had amendments to draft those amendments until very, very late in the day. We either were to have received this final bill yesterday at 11:00, noon, 1:00, 2:00 and it went on until 9 o'clock at night. We received it today. This is the only opportunity we have to make this bill better, because it has been held very close to the vest by proponents. We have been absolutely denied any input, any opportunity to see it, and to say that we are just using a delaying tactic here, when some of these are legitimate improvements to make this bill better, is outrageous.” (Emphasis supplied.)(SLJ No. 45, p. 1962) (R. 712a).

This prompted the following response by Senator Fumo, one of the bill's sponsors:

“Senator FUMO. Madam President, if I may respond to the gentlewoman. This issue has been before this Senate before. We never saw this amendment when we passed our original bill, and if it was that important, I think that there would have been some discussion over the last 6 to 8 months. In addition, Madam President, the gentlewoman received a final version this morning at 9:30. I believe it was sent up, and prior to that, all the other versions that were issued yesterday and the day before and the day before that, never once did anything different in this section. So if she did in fact have the concern that she now expresses at this late hour, and I also know that if this goes in she is still not going to vote for it, but if she had that kind of concern she could have brought it to our attention rather than to come here at this late hour to attempt to subvert the bill and cry foul. There has not been a more transparent process in this General Assembly in years. And I regret that she sees it differently than I do, and I respect her opinion, but no one is trying to stifle her voice or her debate. It is just that we have a different point of view. I do not want to reference a regulation when I have a strong statute that supersedes it. I ask for a negative vote.

The PRESIDENT. The Chair recognizes the gentleman from Lebanon, Senator Brightbill.

Senator BRIGHTBILL. Would the gentleman stand for interrogation?

The PRESIDENT. Senator Fumo, will you stand for interrogation?

Senator FUMO. No.

Senator BRIGHTBILL. Madam President, I would point out that since we have gotten to the floor on this particular bill, there are proposed Democratic amendments that we have received, and amendments are coming up here in a fashion that one might term late. They have been part of the process for the entire period of time, they are showing up with amendments that are late, and yet they want to ask for negative votes simply because they have had this amendment for only 30 minutes.

Well, Madam President, this amendment is not particularly complex, it is a good government amendment, and I am going to suggest to the gentleman that he really ought to accept the amendment.” (SLJ No. 45, p. 1962, R. 712a).

Senator Armstrong confirmed the unfairness of the procedure being employed with the following remarks:

“Senator ARMSTRONG. Madam President, House Bill No. 2330 had to deal with the criminal history of persons involved in horseracing, that is what it was. We have now encompassed a 70-some page amendment, which is probably one of the most far-reaching bills we have ever had in Pennsylvania. It involves, hopefully, approximately \$3 billion worth of revenue. This has totally bypassed the normal legislative process. There has been no bill out there for us to look at until this morning. We finally saw a bill, although yesterday we had parts of it, but this morning we saw a final bill. There were no hearings, there has been no public involvement. The House of Representatives on the other side is totally shut out of the process because it will come back to them to concur or nonconcur. This involves last-minute deals. We have to rush this thing through because we have to get out of here for the 4<sup>th</sup> of July.

I move to table this bill and its amendments for further study, Madam President.” (Emphasis supplied.) (SLJ No. 45, p. 1953, R. 703a).

Senator Armstrong’s motion to table, along with approximately 25 proposed amendments, were defeated.<sup>7</sup> The only amendments to pass, other than the original 145-

---

<sup>7</sup> These defeated amendments included the following: A3195 – Public auction of licenses; A3156 – Financial reports from immediate family members; A3182 – Prohibiting gaming licenses from distributing free alcohol to patrons; A3211 – Applying Governor’s Code of Ethics to Gaming Commission; A3197 – Applying RICO statute to gaming violations; A3142 – Giving Attorney General jurisdiction to prosecute gaming violations; A3095 – Forbid convicted felons from being licensees; A3240 – Reimburse Pennsylvania residents’ legal costs for Indian Casino lawsuits; and

page amendment, were proposed by Senator Fumo and involved lowering the financial interest a public official could hold in a publicly traded licensee from 5% to 1% and providing for an affirmative action plan.

Immediately before the vote in the Senate, Senator Fumo submitted a prepared written statement for inclusion in the record clearly aimed at negating the impact of Article III cases such as City of Philadelphia v. Commonwealth, 575 Pa. 542, 838 A.2d 566 (2003), as follows:

“Madam President, I rise to speak about the inevitability of actions that will be taken by those who oppose the legalization of slot machines in the Commonwealth to benefit the State’s horseracing industry. Despite the fact that there is a majority of legislative votes in this Chamber for the bill that we are considering, those who do not succeed in their legislative opposition will predictably seek to fight this bill in court, specifically claiming that our consideration and passage today of the legislation somehow violated Article III of the Pennsylvania Constitution.

This is a specious argument. Knowing that Pennsylvania Court routinely takes judicial notice of the legislative journals of the Pennsylvania General Assembly, I would like to take this opportunity to state for the record several important facts that should be noted if such a legal challenge is advanced.

First, it cannot be accurately claimed that the members of the Pennsylvania General Assembly, and the general public were not put on notice that the Senate would consider and vote on legislation that would legalize slot machine operation as a means of generating revenue for the Commonwealth and to benefit the racehorse industry. For months, the newspapers in the State, national media, and financial community has reported that this legislative measure would be considered this week. In fact, every Member in this Chamber, and most news reporters were provided copies of the bill well in advance of today’s vote. This bill has been one of the most publicized legislative issues that has ever been considered in the General Assembly.

---

A3229 – Exclude licensees from economic development financing. They are found in SLJ No. 45, pp. 1953-1983 (703a-733a).

Secondly, at no time has this bill's original purpose changed. This bill was originally introduced to provide for a manner of regulating the Pennsylvania horseracing industry. This purpose has not changed. The amendment we offered furthers the regulation of the Pennsylvania horseracing industry and funds many of the horse development functions with a direct subsidy from the legalization of gaming operations throughout the Commonwealth. The original purpose has never changed. We have included the manner in which criminal background information is to be shared between the Pennsylvania State Police, the Horseracing Commission, the Harness Racing Commission and other State agencies. The core fundamental purpose of the legalization of slots is to support the existing racing industry, ensure its operational integrity, increase racing venues, provide stronger regulatory control, and to raise Pennsylvania's prominence as a horseracing venue in the country. Everyone who votes for this bill this evening fully understands this objective. There has never been any confusion as to what each and every Member is voting on this evening.

Thirdly, this bill embraces only one subject as expressed in its drafting as an amendment to Title 4 of the Pennsylvania Consolidated Statutes, in this case, the subject of amusements or more specifically, Pennsylvania horseracing. A new chapter to Title 4 has been added, entitled, the Pennsylvania Racehorse Development and Gaming Act, of which slot machine operations are the revenue engine through which Pennsylvania may enhance horseracing opportunities. Simply stated, though the media simplification of this issue is slot machines, the public policy purpose that carries throughout every provision of this Act is the development of the horseracing industry.

It is worthwhile noting that other bills, which may, in the minds of some, be constitutionally "safer" legislative vehicles were available. However, no one who opposed this measure or who claimed that they did not have enough time to consider it, requested that another vehicle or process be used to consider this issue. This was the chosen manner to consider this bill by those opposed and those who supported the passage of this bill. It was a decision of this legislative body, collectively.

This is a well-crafted legislative initiative that has been the subject of countless amendments, debates and meetings in the General Assembly. In various forms, this issue has been presented on numerous occasions to every elected Member of the legislature, and each have had ample opportunity to comment and offer their amendments for consideration. A legal challenge based on an Article III claim is without merit and represents a misrepresentation of the legislation process through which this issue has been considered." (SLJ No. 50, p. 1992, R. 742a).

The House debates also are enlightening. Since the House side of the General Assembly was voting on concurrence to a Senate amendment of a House Bill, the House rules forbid the House from considering “any proposed amendment to any amendment made by the Senate to a bill.” House Rule 30<sup>8</sup>. Accordingly, in order for the House to amend the statute in any respect, it was necessary to “suspend the rules” under House Rule 77 which requires “a vote of two-thirds of the members elected to the House by a roll call vote”, as opposed to a simple majority<sup>9</sup>. The relevant House session convened at 10:30 a.m. on Saturday, July 3, 2004 on a holiday weekend and was operating without pre-session reports or a House calendar, notwithstanding the requirements of Rule 30

---

<sup>8</sup> The complete text of House Rule 30 is as follows: “Bills Amended by the Senate – When a bill or joint resolution has been amended by the Senate and returned to the House for concurrence, it shall be referred automatically to the Committee on Rules immediately upon the reading of the message from the Senate by the Clerk. The Committee on Rules may amend any bill or resolution containing Senate amendments. When said bill or resolution has been favorably reported by the Committee on Rules, either as committed or as amended, said bill or resolution shall be placed on the calendar and copies thereof shall be placed on the desks of the members. When acting on bills or joint resolutions amended by the Senate, the amendments shall be read and the question put on the concurrence in the amendments. The House shall not consider any proposed amendment to any amendment made by the Senate to a bill or joint resolution, nor consider any amendment to any amendment made by the Committee on Rules. A majority vote of the members elected to the House taken by yeas and nays shall be required to concur in amendments made by the Senate, except for appropriations to charitable and educational institutions not under the absolute control of the Commonwealth, where a vote of two-thirds of all the members elected to the House shall be required to concur. (Constitution, Article III, Sections 5 and 30).” (Emphasis supplied.)

<sup>9</sup> The complete text of House Rule 77 is as follows: “Suspending and Changing Rules – Any rule of the House, which is not required by the Constitution, may be temporarily suspended at any time for a specific purpose only by a vote of two-thirds of the members elected to the House by a roll call vote. A motion to suspend the rules may not be laid on the table, postponed, committed or amended. The existing rules of the House shall not be changed, added to, modified or deleted except by written resolution and the same approved by a majority vote of the members elected to the House by a roll call vote. Except where such resolution originates with the Committee on Rules, no resolution proposing any change, addition, modification or deletion to existing House rules shall be considered until such resolution has been referred to the Committee on Rules, reported therefrom, printed, filed on the desk of each member and placed on the calendar. Any proposed change, addition, modification or deletion offered by a member on the floor of the House to such resolution shall be considered, in effect, a change, addition, modification or deletion to existing House rules and shall require for approval a majority vote of the members by a roll call vote.” (Emphasis supplied.)

(See FN 9, *supra*).<sup>10</sup> The rules were suspended by a two-thirds vote on approximately five occasions but all attempted amendments were rejected<sup>11</sup>. When an amendment was proposed to remove the Gaming Board’s ability to supersede municipal zoning requirements, the Majority Leader of the House indicated “there have been some unwritten rules or agreements that we are trying to abide by... I’m going to ask the members to vote against the suspension of rules” in obvious reference to some undisclosed agreement to cut off amendments by invoking the two-thirds vote requirement<sup>12</sup>. Five subsequent attempts to suspend the rules by a two-thirds majority were unsuccessful, other representatives wanting to amend the bill gave up trying, and the matter came before the House to vote on concurrence with the Senate amendment. Many members of the House expressed their feelings on this handling of the matter. A few examples will set the tone.

Representative Benninghoff stated:

“So whether you are for or against it, I have got to ask you to take one second to ask yourself, do you really believe in your heart that you have had the adequate time to look at these three major documents that are going to be before you today, maybe a little bit of tomorrow, less than 48 hours to do a major State budget of over \$22 billion, a property tax proposal which might as well have been written in invisible ink, and a gambling bill which, whether you want to admit it publicly or on this floor, will change Pennsylvania forever?

This really scares me and it ought to scare you, and any of those who are watching PCN (Pennsylvania Cable Network), it really ought to scare you. The public has not had input on this. They could not have seen the bill. They could not have had any input on it. There has been no open process which I have heard people advocate for every issue, whether it was medical or the Uniform Construction Code and some of the amendments that

---

<sup>10</sup> HLJ No. 50, pp. 487, 1495 and 1498, R. 804a, R. 812a, R. 815a.

<sup>11</sup> HLJ No. 50, pp. 1511-1540, R. 828a-R. 857a.

<sup>12</sup> HLJ No. 50, p. 1540, R. 857a.

people wanted to put in there. Can you honestly tell the constituents that you are going to ask to vote for you in 4 months that this has been an open process, that you have let them give the input on that? I do not think so. ...Give us time to properly review this, get public opinion, and make this bad bill a little better.” (Emphasis supplied.)(HLJ No. 50, p. 1542, R. 859a).

Representative Stern observed:

“For months and even years, the gambling interests have descended on Harrisburg with their special interest groups and high-powered lobbying machine and negotiated backroom deals that have produced this HB 2330.

While we have read in the newspapers who gets what cut and the percentages of the deal, one thing we know that is a certainty, and it is this: taxpayers lose. By promising a few hundred dollars in tax reduction and passing a bill that provides referendum, these slick negotiators have temporarily provided a few crumbs for the tax-reform-starved Pennsylvania property owner.

When we consider the revenue projections that proponents hope for, or guess they could be, in the best-case scenario of gambling losses for those who would venture into the slot parlors, we see a picture of uncertainty and falsehoods perpetrated on the citizens of this Commonwealth.

While certain campaign coffers will overflow with gambling interest money, carefully hidden and channeled through safe passageways, the ordinary taxpayer of Pennsylvania will continue to get hammered by State government and be asked to help pay for the social problems that will naturally follow. We know these problems will occur, just as the gambling industry knows they will occur, because they have acknowledged it in this bill.” (Emphasis supplied.) (HLJ No. 50, 1551, R. 868a).

Representative Marsico expressed why he could not support this gaming bill after voting for gambling legalization the previous year:

“I could support last year’s plan because it balanced the potential drawbacks of gambling with substantial benefits for the people of Dauphin County.

But I cannot support this plan. This plan was put together in the back rooms of this Capitol by just a few people and without any input from the vast majority of the membership – members who, by the way, represent the vast majority of the people of this Commonwealth and members who

represent those areas in which racetracks are located. I guess I should have known all along that this bill would come out stinking like garbage. This bill was literally shoved down our throats yesterday. We never had a chance to give input into the provisions of this bill.” (Emphasis supplied.) (HLJ No. 50, p. 1555, R. 872a).

One representative, Mr. Gabig, even raised the constitutional question briefed herein by parliamentary inquiry, thusly:

“I am going to raise a constitutional question, and I do not think I want to do it by motion because, again, I see a lot of my colleagues are studying – the other bills that are coming up tonight. But there is a piece of legislation, Article III, Section 1, that says, “No law shall be passed except by bill” – and this is a bill; I do not think it is very good – “and no bill shall be ... altered or amended on its passage through either House, as to change its original purpose,” and I think the original purpose of 2330 was to do background checks for certain people, and the purpose of what we have now is this big economic development and creating revenue, creating a system, a scheme, which is going to produce this revenue for these things, and so I think that violates that section of our Constitution. The original bill does not have the same purpose as what this is. It had nothing to do with that, so I think that was violated. But I think that was the problem with just throwing this thing together over on the other side and then bringing it over here and saying vote it up; take it or leave it; let us not improve it; let us not send it to a committee; let us not work on it and make it better and pass it in September or whenever. I think that is a problem.” (Emphasis supplied.) (HLJ No. 50, p. 1568, R. 885a).

Finally, Representative Benninghoff summed up the problem by the following:

“I do want to make a few comments regarding the one thing I find even more appalling than this bill. That is the process in which this bill was drafted, greased, and then raced down the tracks to final passage. No bipartisan committee deliberations, no public hearings, no impact study, and no real ability for the 203 members of the PA House of Representatives to add any amendments nor represent the voice and opinions of those whom they represent.

This bill is truly one of if not the biggest public policy change in PA history; a change that should not happen in such a cheap process, circumventing the system, at 1:30 a.m. This is not good public policy and surely not what or how the good people of PA want us to conduct the legislature.

I am truly saddened by both the process of how this bill was crafted behind closed doors and then “ramrodded” over the members of the General Assembly with little to no input.” (Emphasis supplied.)(HLJ No. 50, p. 1576, R. 893a).

Immediately before the vote in the House, Representative Veon submitted a written statement for inclusion in the record, clearly aimed at negating the impact of Article III cases such as City of Philadelphia v. Commonwealth, 575 Pa. 542, 838 A.2d 566 (2003), as follows:

“Mr. Speaker, I rise to make a prediction. Individuals who have an absolute public policy objection to this legislation but do not have the votes in this chamber to prevent its passage will take extraordinary steps to overturn the will of this body. This predicted legal fight has been threatened to take the form of a constitutional challenge to the manner in which the Pennsylvania General Assembly has considered this legislation – specifically, a claim that Article III of the Pennsylvania Constitution has been violated. As such, it is important that this record evidence several salient facts that underscore the disingenuous nature of this attack.

Fact: No one is confused, uninformed, or otherwise in the dark about the impact or provisions of this bill. Few other issues have been so thoroughly debated, discussed, analyzed, or considered in this chamber than this issue. For almost 2 years we have debated and voted on various forms of legislation that would legalize the operation of slot machines in the Commonwealth. The contents of this bill, in all of its various versions, have been publicly available on the Internet, reported to the media, and provided to the legislative offices in the Capitol for a week. The exact version of the bill which we are considering has been published, available, and provided to every legislative office since early afternoon on Thursday. Newspaper stories have reported on the varying aspects of the bill, and even the opponents staged a press conference on the Capitol steps to voice their objection to several provisions of the legislation, focusing on the most controversial aspects. Simply stated, there cannot be any serious claim that the vote we take on this bill is not done with circumspection or deliberation.

Second, some have complained that they have not been afforded the right to have an amendment they have drafted, considered and voted by this chamber. As they are well aware, this is a function of the rules of the House. They have the opportunity to request a suspension of the rules for the purpose of offering an amendment for consideration. Such a motion, under our procedure rules, would require the support of two-thirds of the

members elected to this body. The fact that they cannot muster the support for every amendment motion does not constitute a deprivation of any legal right. The rules and procedures of this legislative body are our exclusive prerogative and not subject to any judicial review. It is worthwhile noting that many of the motions made to offer amendments involve measures that were considered and rejected last year when this matter was considered.

Finally, there cannot be any confusion to the members here that this bill's original purpose – the regulation and development of the horse racing industry, specifically investigations into persons associated with horse racing – has not changed. In fact, it has been enhanced to include stronger regulatory authority and exchange of information from law enforcement agencies. It is beyond dispute that the bill's original purpose is still contained, verbatim, in the legislation. The bill has been reclassified in our Consolidated Statutes to place it, organizationally, with the Pennsylvania Race Horse Reform Act in Title 4 (Amusements) in an effort to more appropriately consolidate it with other related statutory matters.

The bill does not contain more than one subject. The new part in Title 4 that involves the legalization of slot machines, entitled the Pennsylvania Race Horse Development and Gaming Act, is intertwined with the development of horse racing, breeding, and the entire equine industry.

The operation of slot machines throughout the Commonwealth is an integral part of a revenue generation system that will serve many horse racing purposes. Simply put, with the revenue stream we create in this legislation, the future growth and survival of the horse racing industry would be placed into doubt. I recognize that slot operations, even at nontrack venues, is the focus of much controversy, but it does not follow that as presented in this bill, that they are two unrelated subjects in this single legislative initiative.

I conclude my remarks with the simple observation: Article III was never intended to permit those who lost in legislative votes to achieve their political victory in court. The actions that have been taken on this floor simply do not support this claim.” (HLJ No. 50, p. 1580, R. 897a-R. 898a).

#### **IV. OTHER GAMBLING BILLS**

Senator Fumo and Representative Veon placed prepared written statements into the record clearly aimed at negating the impact of this Court's holding in City of Philadelphia v. Commonwealth, *supra.*, and validating the actions of the bill on the basis

that “few other issues have been so thoroughly debated, discussed, analyzed or considered in this chamber than this issue.” (R. 897a – R. 898a). Accordingly, we reviewed the House and Senate records for Gambling Bills in the Pennsylvania Legislature that preceded HB 2330’s passage in July of 2004 and have prepared and placed a chart in the Reproduced Record for the convenience of the Court (R. 1911a – R. 1921a). This chart goes back to 1993 and attempts to briefly give a snapshot of the bills that involved gambling, gaming or slot machines<sup>13</sup>. The bills found deal with everything from video poker to riverboat gambling to public referendums on gambling. Most of the bills are short, consisting of a few pages and almost all died in their first committee.

The one bill that stands out as being more substantively related to HB 2330 is House Bill 623 of 2003 (HB 623). This bill was longer, went through both Houses for amendments, and eventually passed – but with the Senate ultimately removing all gambling provisions when the bill was successfully amended in the House and returned to the Senate for concurrence, leaving a bill covering only a criminal statute defining deceptive or fraudulent business practices without any gambling authorization. In addition, the procedural comparison shows that the Senate added the gambling amendments for HB 623 on June 25, 2003 and the House had until July 18, 2003 to review the statute and to prepare amendments<sup>14</sup>. Over 42 amendments were prepared and submitted for vote on HB 623.

---

<sup>13</sup> The bills are on line at the Pennsylvania Legislature’s website ([www.legis.state.pa.us](http://www.legis.state.pa.us)) and can be word searched to identify certain key words contained therein.

<sup>14</sup> The HLJ for July 18, 2003 shows over 42 amendments were proposed; some passing, some failing; some withdrawn (R. 1055a – R. 1181a).

We have prepared another chart, procedurally comparing the two bills (HB 2330 and HB 623) showing that on June 25, 2003, the Senate amended the bill on third consideration, adding the gambling provisions, the House concurred in the Senate amendments and added its own amendments, and the Senate then removed the gambling provisions and the bill because law as a deceptive business practices criminal statute (R. 1909a – R. 1910a).

We have also attempted to compare the provisions of the two bills, believing they are the two most closely related gambling bills<sup>15</sup>. The differences between the two bills are substantial and profound. First, the Senate amendment which became the law legalizing casino slot machine gambling is 45 pages longer than HB 623 in its most developed stage – a very significant difference. Moreover, even a cursory chapter-by-chapter analysis shows numerous differences, some of which could obviously be construed as opportunities for logrolling after HB 623 failed to pass the Senate as a gambling bill. For example, we would cite the following differences in the two bills which are by no means a complete list:

1. HB 2330 has many more provisions regarding licensing than does HB 623 (See R. 360a – R. 402a). For example, HB 2330 creates three different classes of slot machine parlors, while HB 623 does not (R. 1453a – 1480a).

2. HB 2330 authorizes fourteen facilities and HB 623 authorizes eleven (See R.371a and R.1460a).

---

<sup>15</sup> The comparison was between HB 2330 of 2004 with HB 623 of 2003, Printers No. 2471 – the amendments to Senate amendments.

3. HB 2330 inserts a provision regarding funding involving the Pittsburgh International Airport and also contains an annual transfers provision relating to \$.80 per acre for each municipality that makes payments under the “Forest Reserves Municipal Financial Relief Law” (R.429a, R.430a).

4. The powers and duties of the Gaming Board differ between the two bills. For example, HB 2330 provides for closed meetings, while HB 623 indicates the Gambling Control Board will be subject to the Sunshine Law. (R. 347a – R. 348a).

5. HB 2330 removes the southwest regional district which was put into HB 623 relating to Pittsburgh’s surrounding counties (R. 1512a – R. 1513a).

6. HB 2330 is silent on the issue of Native American gambling, but HB 623 specifically addresses the issue in Section 9218.2 (R.1508a – R. 1509a).

7. HB 2330 does not have a host municipality fee, but this provision was added to HB 623.

8. HB 2330 preempts local zoning, but HB 623 does not (R. 434a – R. 435a).

There are numerous other significant differences.

### **SUMMARY OF ARGUMENT**

The right to relief in this case is clear and unequivocal. The Constitution of the Commonwealth of Pennsylvania contains important provisions in Article III, Sections 1, 3, 4, 6 and 10 aimed at ensuring that legislation is considered and adopted in the open and in public, and that members of the General Assembly and others are put on reasonable

and adequate notice so that they may cast their vote in an informed, intelligent and circumspect manner. The process by which the statute legalizing casino slot machine gambling was adopted in Pennsylvania violated each of these provisions and is a prime example of the evils that these specific constitutional provisions seek to address. The members of the General Assembly voting on this Act could not and did not have an opportunity to consider and understand the scope and nature of the legislation they were adopting. The members of the House of Representatives were disenfranchised by a two-thirds majority requirement because the Senate's amendment to a house bill was in reality an entirely new bill with different purposes and subjects than the initial bill. Likewise, members of the general public, caught unaware of the scope and nature of the Act in question, were clearly deprived of their opportunity to meaningfully participate. In particular, this piece of legislation was a "stealth bill," one page in length, which by both title and text dealt exclusively with implementing an innocuous obligation for the Pennsylvania State Police to conduct background investigations and use certain identification procedures (fingerprinting) when requested to do so by the State Harness Racing Commission and/or the State Horse Racing Commission for license applicants under the Race Horse Industry Reform Act of 1981 and at the last legislative second, this legislation became a 145-page gaming bill creating, regulating, taxing and dividing the spoils of a casino slot machine industry in Pennsylvania. This is exactly the type of legislative shenanigans proscribed by Article III of the Pennsylvania Constitution.

Further, in passing Act 71, the Legislature violated Article II, Section 1 of the Pennsylvania Constitution since the Act preempts all state and local zoning and land use laws and the General Assembly failed to prescribe definite, reasonable and lawful land

use standards to guide, limit and govern the power of the Gaming Board in connection with the physical location siting and operations of licensed gambling facilities. Simply put, Act 71 gives the Board unfettered discretion to unilaterally designate or approve properties within municipalities as sites for slot machine casinos without regard for the zoning and land use laws of Pennsylvania.

## ARGUMENT

### **I. ACT 2004-71 VIOLATES ARTICLE III, SECTIONS 1, 3, 4 AND 6 OF THE PENNSYLVANIA CONSTITUTION.**

#### **A. Background of Article III of the Pennsylvania Constitution.**

“In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution.”  
– *Thomas Jefferson*.

The meaning of a constitutional provision should be considered in light of the evil intended to be remedied by its adoption. Singer v. Sheppard, 464 Pa. 387, 396, 346 A.2d 897, 901 (1975). Language must be construed in its popular, natural and ordinary meaning as understood by the framers and ratifying voters who adopted it. Commonwealth ex rel. Paulinski v. Issac 483 Pa. 467, 397 A.2d 760 (1979). The debates and other proceedings of the Constitutional Conventions are recognized as valuable aids in ascertaining the meaning and purpose of constitutional provisions. Commonwealth ex rel., Margiotti v. Lawrence, 326 Pa. 526, 193A 46 (1937).

It is clear beyond question that Article III of the Constitution of 1874 was aimed at correcting publicly-perceived evil practices in the enactment of legislation, particularly omnibus bills and logrolling. As one commentator on Pennsylvania’s Constitution observed concerning the procedures contained in Article III:

“... [A]nother method devised for purifying the legislative halls was the imposition of constitutional guarantees of regularity in procedure. Each restriction was designed to eliminate some alleged abuse in current procedure. Thus, the constitution provides that all laws must be passed in the form of a bill, that no bills may be considered on the floor until reported out of committee and printed, that all bills must have three readings at length on three separate days in each house, that no bill may

contain more than one subject, and that every bill must have a title which clearly expresses the purpose of the bill. All bills passed by either chamber must be signed by the presiding officer in the presence of the members of that house. These were adopted with little debate.” (Footnotes omitted.) Branning, Pennsylvania Constitutional Development, 68-69 (1960).

While the Article III procedures were subject to little debate, the debates do clearly show their purpose was to curb legislative abuses. What the debaters called an “iron-clad” oath of office was imposed requiring that legislators not only swear to support and defend Pennsylvania’s Constitution, but also that they specifically swear to “obey” it, and the Honorable Jeremiah Black, a former Chief Justice of the Pennsylvania Supreme Court<sup>16</sup> eloquently, but unsuccessfully, proposed to go even further than the reforms that passed and do away with the bribery “*quid pro quo*” requirement for legislators<sup>17</sup> and to require legislators to take an “*ex post facto*” oath that they had in fact obeyed the Pennsylvania Constitution so that they could be better dealt with if they lied.<sup>18</sup> Clearly, this convention was bent on legislative reform and Article III of the proposed Constitution was the primary instrument of this reform. Gormley, The Pennsylvania Constitution, §3.6[b], p. 64 (2003). Woodside, Pennsylvania Constitutional Law, 295 (1985); Branning, Pennsylvania Constitutional Development, 37 (1960).

---

<sup>16</sup> Justice Black had a distinguished career as Attorney General of the United States, Secretary of State under President Buchanan and reporter for the United States Supreme Court. See Branning, Pennsylvania Constitutional Development, at 60.

<sup>17</sup> This was done at the Federal level and legislators are subject to a criminal “gratuities” statute that does not require a “quid pro quo.” See 18 U.S.C. §201(c)(1)(B).

<sup>18</sup> Former Chief Justice Black argued that the Constitution should “make him (a member of the General Assembly) swear or affirm that he *has* obeyed the Constitution, that he has not ...knowingly done any other act in his official capacity interdicted by the fundamental law.” See Volume 2 of the *Debates of the Pennsylvania Constitutional Convention 1872-73*, Page 492-93.

**B. Act 71 Violated the Single Subject and Clearly Expressed Title Requirements of Article III, §3 of the Pennsylvania Constitution.**

Article III, §3 of the Pennsylvania Constitution prohibits the legislature from passing a bill that contains more than one subject and requires that subject to be clearly expressed in the bill's title, as follows:

No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.

In City of Philadelphia v. Commonwealth, 575 Pa. 542, 838 A.2d 566 (2003), this Court was faced with a situation such as the present one where the Petitioners alleged that the General Assembly extensively amended a statute (5 pages were expanded to 127 pages) on the eve of a holiday (Thanksgiving) and violated fundamental precepts set forth in Article III of the Constitution. Id. at 576. While the Petitioners in that case alleged violations of the exact same sections of Article III as are alleged in this case,<sup>19</sup> in holding that law unconstitutional the Court found it unnecessary to go any further than to consider Article III, §3 that requires amendments to be germane, holding as follows:

In practice, Section 3's dual requirements – clear expression and single subject – are interrelated, as they both act to proscribe inserting measures into bills without providing fair notice to the public and to legislators of the existence of the same. See Rogers, 109 Pa. at 112, 1 A. at 346 (striking down an act whose title appeared designed to prevent popular opposition to the bill by concealing its true effects); Pennsylvania State Lodge v. Commonwealth, 692 A.2d 609, 615 (Pa. Cmwlth. 1997) (relating that the purpose of Section 3 is to provide public notice of all

---

<sup>19</sup> Article III, §1 (original purpose) and §2 (single subject, clear title), §4 (three readings each house), §6 (amendment procedure).

proposed legislative enactments and to prevent the passage of “sneak” legislation). On the other hand, bills are frequently amended as they pass through the Legislature, and not all additions of new material are improper. Rather, the strictures of Article III, Section 3 are often satisfied where the provisions added during the legislative process assist in carrying out a bill’s main objective or are otherwise “germane” to the bill’s subject as reflected in its title. See L.J.W. Realty Corp. v. City of Phila., 390 Pa. 197, 206 N. 8, 134 A.2d 878, 883 n. 8 (1957); Mallinger v. City of Pittsburgh, 316 Pa. 257, 261, 175 A. 525, 526 (1934). Id., 575 Pa. at 575, 838 A.2d at 586-87.

In their moving papers, no respondent has seriously attempted to relate a single subject to the title of the original 1-page bill which dealt with background investigation for licenses issued under the Race Horse Industry Reform Act of 1981<sup>20</sup>. But one respondent does take the view in his preliminary objections that the subject matter of the bill was always the “Commonwealth’s Racehorse Industry”<sup>21</sup> and the newly created Gaming Commission takes the position in its answer that the single subject was the “Pennsylvania Horse Racing Industry development and other gaming”.<sup>22</sup> Even when so viewed, we submit that the germaneness test is simply not met, but at the threshold we submit that the title and subject of the 1-page bill must be referred to in determining the constitutional issue.

The title of the original 1-page bill was “An Act Providing for the Duties of the Pennsylvania State Police Regarding Criminal History Background Reports for Persons

---

<sup>20</sup> The Gaming Commission did state in Paragraph 6 of its Answer that the original purpose was to broaden regulations to protect the horse racing industry. Insofar as this may be construed as an argument that the original title and purpose have been fulfilled and are germane, notwithstanding the size and breadth of the amendment passed by the Senate, we would rely on the arguments in this section to rebut that contention (R. 211a).

<sup>21</sup> Senator Mellow’s Preliminary Objections at Paragraphs 14 and 15, R. 89a.

<sup>22</sup> Gaming Commission’s Answer at Paragraph 35, R. 216a. The other respondents, as of this writing, have not expressed an opinion in the pleadings as to the “single subject” of the legislation.

Participating in Harness and Horse Racing” and its text clearly limited to licenses issued under the 1981 Race Horse Industry Reform Act. This title was completely eliminated by the Senate amendment after five readings of the 1-page bill before the General Assembly. In its place was substituted a completely new title<sup>23</sup>, incorporating no part of the original title and creating a casino slot machine industry and a gaming commission having virtually nothing to do with criminal history reports for licensees applying under the 1981 Race Horse Industry Reform Act. We respectfully submit that this obliteration of the title and purpose of the 1-page act is fatal to the constitutionality of the amendment and removes any possibility that the amendment is germane to the purpose and subject of the 1-page act – the only act to progress through the constitutionally mandated process of Article III as constitutionally required. Under Article III, §§1 and 3, the change in titles, totally removing and replacing the purpose and subject of the title of the original 1-page bill conclusively shows that §1 and §3 of Article III forbidding amendments which change a bill’s purpose and deal with more than one subject have been violated.

Moreover, even if the title and subject can be completely replaced by an amendment creating a whole new title and adding multiple subjects, the amended statute in this case

---

<sup>23</sup> This new title provides as follows: ~~Providing for the duties of the Pennsylvania State Police regarding criminal history background reports for persons participating in harness or horse racing.~~ AMENDING TITLE 4 (AMUSEMENTS) OF THE PENNSYLVANIA CONSOLIDATED STATUTES, AUTHORIZING CERTAIN RACETRACK AND OTHER GAMING; PROVIDING FOR REGULATION OF GAMING LICENSEES, ESTABLISHING AND PROVIDING FOR THE POWERS AND DUTIES OF THE PENNSYLVANIA GAMING CONTROL BOARD; CONFERRING POWERS AND IMPOSING DUTIES ON THE DEPARTMENT OF REVENUE, THE DEPARTMENT OF HEALTH, THE OFFICE OF ATTORNEY GENERAL, THE PENNSYLVANIA STATE POLICE AND THE PENNSYLVANIA LIQUOR CONTROL BOARD; ESTABLISHING THE STATE GAMING FUND, THE PENNSYLVANIA RACE HORSE DEVELOPMENT FUND, THE PENNSYLVANIA GAMING ECONOMIC DEVELOPMENT AND TOURISM FUND, THE COMPULSIVE PROBLEM GAMBLING TREATMENT FUND AND THE PROPERTY TAX RELIEF FUND; PROVIDING FOR ENFORCEMENT; IMPOSING PENALTIES; MAKING APPROPRIATIONS; AND MAKING RELATED REPEALS. (R. 319a).

still does not meet the test of “clear expression and single subject” set forth in City of Philadelphia v. Commonwealth, *supra*.

As this Court pointed out in City of Philadelphia v. Commonwealth, *supra*. at 588, procedural limitations such as Article III, §3 were aimed at curbing perceived legislative abuses:

“One observer during that era noted that ‘[o]ne of the most marked features of all recent State constitutions is the distrust shown of the Legislature.’ Last-minute consideration of important measures, logrolling, mixing substantive provisions in omnibus bills, low visibility and hasty enactment of important, and sometimes corrupt, legislation, and the attachment of unrelated provisions to bills in the amendment process – to name a few of these abuses – led to the adoption of constitutional provisions restricting the legislative process. These constitutional provisions seek generally to require a more open and deliberative state legislative process, one that addresses the merits of legislative proposals in an orderly and rational manner.”

Williams, *State Constitutional Limits on Legislative Procedure* at p. 798.

Applying these precepts to the case *sub judice*, we find one of the most important and controversial bills ever before the General Assembly meets every above enumerated legislative abuse and is rife with potential logrolling, mixes substantive provisions (in the fashion of an omnibus bill) and has had unrelated provisions attached in the amendment process. Moreover, as in City of Philadelphia v. Commonwealth, *supra*., the existence of these multiple substantive provisions are hinted at in the act’s title in the vaguest of terms (“conferring powers and imposing duties” on a plethora of state agencies) again reminiscent of the amorphous language used in omnibus bills. Moreover, the procedural course this Senate amendment was directed through virtually assured that the House of Representatives would be disenfranchised insofar as amendments to the bill were concerned by requiring a two-thirds vote of all members to even consider amending or

adding to any of the Senate amendment's provisions. We submit that the evidence is clear that the General Assembly's ability to vote with circumspection was interfered with here by what can properly be classified as a massive affront to established constitutional procedures.

The two respondents who have attempted to place a subject on this omnibus bill have picked a broad subject from the bill's amended title, i.e., the "Commonwealth's Racehorse Industry<sup>24</sup>" and "Pennsylvania Horse Racing Industry Development and other gaming"<sup>25</sup>. Assuming *arguendo* that horserace industry and slot machine casinos can somehow be squeezed together, centaur-like, so as to be considered as one subject, what about the plethora of other subjects contained in the 145-page Senate amendment? The bill is made up of 6 chapters, 83 sections and 412 lettered and numbered subsections, virtually creating a gambling industry (some casinos involving race tracks, but others being freestanding or attached to resort areas). Also, the Senate amendment creates the Pennsylvania Gaming Control Board (R. 334a – R. 341a); provides a detailed licensing scheme for slot machines (R. 361a – R. 362a); provides for the taxation of casino slot machine gambling; provides for the raising and distribution of revenues (R. 406a – R. 422a); creates various funds dealing with different subjects, including the Pennsylvania Race Horse Development Fund, the Pennsylvania Gaming Economic Development and Tourism Fund and the Property Tax Relief Fund (R. 423a – R. 431a); creates a Compulsive and Problem Gambling Program (R. 435a – R. 438a); partially repeals various long-standing criminal laws (R. 463a); gives the Gaming Control Board authority to supersede all municipal zoning decisions (R. 434a – R. 435a); mandates the issuance of

---

<sup>24</sup> Senator Mellow's Preliminary Objections at Paragraph 14 and 15, R. 89a.

<sup>25</sup> Gaming Commission's Answer at Paragraph 35, R. 216a.

liquor licenses to slot machine gambling casinos (R. 458a – R. 460a); creates a new criminal and civil investigative bureau (R. 447a - R. 448); provides for the additional allocation of money and resources to the Pennsylvania State Police (R. 462a); creates numerous criminal offenses and penalties (R. 452a – R. 458a); exempts the Gaming Control Board and its employees from Administrative Code and the Commonwealth Attorneys Act (R. 341a – R. 346a); and even vests original and exclusive jurisdiction in the Supreme Court of Pennsylvania in a number of areas (R. 346a – R. 347a, R. 463a – R. 464a). It’s hard to imagine any other statute cutting horizontally across so many subjects.

In addition, the Senate amendment attempts to selectively do away with established sections of the Crimes Code, municipal zoning, the liquor control laws, simultaneously create a state Gaming Commission that is independent, autonomous and self-directing<sup>26</sup>, and create, tax and regulate an entire casino gambling industry and disperse the revenues to various funds it creates for property owners, horse owners, addicts, Tourism and Economic Development – again all under the single subject of Race Horse Development. We submit that this cannot and should not be done, but assuming *arguendo*, it could be done, how does this single subject also embrace the simultaneous funding of the Pennsylvania Convention Center in Philadelphia, the Pittsburgh International Airport, Pittsburgh’s Urban Redevelopment Authority, the Volunteer Fireman’s Fund, etc., etc., found in §1407 of the Act<sup>27</sup> (R. 427a. – R. 431a.) If these had

---

<sup>26</sup> The Gaming Commission is exempt from the Administrative Code of 1929 and the Commonwealth’s Attorney’s Act (§1202[A]).

<sup>27</sup> Interestingly, the history of HB 2330 was taken from a research service named “Lexis Nexis” (R. 318a) and they assign subjects to bills as a research aid. Of course, this Court is not bound by Lexis Nexis’ opinions, but the believed multi-subjects were contained in the bill assigning the following: “SUBJECT: RECREATION AND THE ARTS, TRAVEL AND TOURISM, BUSINESS AND CORPORATIONS, ECONOMIC DEVELOPMENT, Economic Development

all been separate subject, stand-alone bills viewed with circumspection by an uninhibited legislature, how many would have passed? Which brings up the discussion of omnibus bills and logrolling – the twin evils at which Article III, §3 is aimed.

Article III, §3’s ultimate purpose was set forth by this Court in City of Philadelphia v. Commonwealth, *supra.*, thusly:

Section 3’s restrictions serve a variety of ends. One is “to curb the practice of incorporating into one bill a variety of distinct and independent subjects of legislation and intentionally disguising the real purpose of the bill by a misleading title or by the comprehensive phrase ‘and for other purposes.’” Charles W. Rubendall II, *The Constitution and the Consolidated Statutes*, 80 DICK. L.REV. 118, 120 (1975). Such omnibus bills, as they were then known, permitted the passage of hidden legislation and allowed “logrolling” – that is, “embracing in one bill several distinct matters, none of which could singly obtain the assent of the legislature, and procuring its passage by combining the minorities who favored the individual matters to form a majority that would adopt them all.” *Id.* As a corollary, the single-subject requirement prevents the attachment of riders which could not become law on their own to popular bills that are certain to pass. See generally DeWeese v. Weaver, 824 A.2d 364, 369 (Pa. Cmwlth. 2003). Also, a bill addressing a single topic is more likely to obtain a considered review than one addressing many subjects. See *Id.* (citing Millard H. Ruud, *No Law Shall Embrace More Than One Subject*, 42 MINN. L.REV. 389, 391 (1958).

575 Pa. at 574, 838 A.2d at 586.

The indicia of an omnibus bill and logrolling are everywhere in this case. Legislators could easily have been enticed to vote for this bill to solve long-standing economic problems particular to their home area in violation of Article III, §3’s constitutional prohibition against procuring votes through such mechanisms. One statute

---

Funds/Loans/Grants, COMMUNICATION AND INFORMATION, ELECTRONIC AND BUSINESS EQUIPMENT, Video Games, REAL ESTATE AND CONSTRUCTION, PROPERTY TAXES, Property Tax credits, Exemptions, Deductions – Misc., GAMING, Casinos, Horseracing/Dogracing and Personnel, Gambling Devices, RECREATION-MISC, Admissions/Amusement/Gaming Fees, Taxes & Exemption, Travel and Tourism-Misc.

cannot create, tax, regulate and distribute the profits to identified funds and numerous and diverse special interest and still have only one subject under a Constitution drafted to prohibit omnibus bills and logrolling.

While all sections of this diverse and multifaceted bill are subject to logrolling Chapter 14 of Act 71 (R. 403a – R. 431a) with its distribution of funds is probably the best example of this potential harm. In Chapter 14, funds are distributed to a diverse group of beneficiaries. For example, §1407 of Chapter 14 covers distributions to the Pennsylvania Convention Center, the Pittsburgh International Airport, Pittsburgh Hotel and Convention Center, various indebtedness from urban redevelopment laws, etc., etc. (R 428a – R. 429a)<sup>28</sup>. The next section (§1408) makes transfers of money to the Volunteer Fire Company Grant Program, five million dollars for local law enforcement and each county that receives payments “under ... the Forest Reserves Municipal Financial Relief Law” (R. 430a). What do these distributions have to do with horse racing? It is obvious that the division of the slot machine spoils could have easily improperly influenced the act’s passage through a logrolling process, a practice that Article III, §3 is aimed at preventing. Likewise these revenue grants also represent additional “subjects” contained in this bill unrelated to the development of the “horse race industry”.

---

<sup>28</sup> The bill does not refer to Pittsburgh and Philadelphia but uses the second class, first class city nomenclature. Of course, the only first class city is Philadelphia and the only second class city is Pittsburgh.

**C. Act 2004-71 Violates the Change of Purpose Prohibition of Article III, §1 of the Pennsylvania Constitution.**

Article III, §1 of the Pennsylvania Constitution prohibits either House of the General Assembly from amending a bill so as to change its original purpose, as follows:

No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

We have not found a recent case in Pennsylvania where a bill was struck down based on a violation of Article III, §1 of the Pennsylvania Constitution, and most cases raise both Sections 1 and 3 of Article III and resolve the case on the basis of Section 3. See City of Philadelphia v. Commonwealth, *supra.*, DeWeese v. Weaver, 824 A.2d 364 (Pa. Cmwlth. 2003)<sup>29</sup>.

It is recognized in the cases that Article III, §1 is aimed at deterring confusion, misconduct and deception, but the cases focus on deception in the title of the bill and have gone so far as to imply that if the title is not deceptive in the bill's final form, no constitutional violation has occurred. See City of Philadelphia v. Commonwealth, *supra.* and Pennsylvania Ass'n. of Retail Dealers v. Commonwealth, 123 Pa. Cmwlth. 533, 554 A.2d 998 (1989), both deciding the issues on Article III, §3 grounds and not reaching the Article III, §1 issue. See also DeWeese v. Weaver, 371 Pa. Cmwlth. 824 A.2d 364 (2003) and Fumo v. Pennsylvania Public Utility Comm., 14 Pa. Cmwlth. \_\_\_\_\_, 719 A.2d 10 (1998) indicating that absent confusion and deception as to the content of a bill

---

<sup>29</sup> In Scudder v. Smith, 331 Pa. 165, 200 A. 601 (1938), this Court did hold that the purpose of the requirement that no law could be passed except by bill, and no bill shall be so altered or amended on its passage through either House as to change its original purpose was to put the members of the Assembly and others interested on notice by the title of the measure submitted so that they may vote on it with circumspection. Scudder did not involve a law, but rather a resolution.

(title), there is no clear violation of the Constitution. We respectfully submit that this is a case where the confusion and deception standard has clearly been met because of the totality of the circumstances surrounding the passage of this bill.

First, we respectfully submit that both titles attached to this bill are, in fact, deceptive in light of the bill's final scope and purpose. The first title deals only with the duties of the Pennsylvania State Police *vis a vis* persons participating in the harness and horse racing and the second title uses the amorphous generalities of the omnibus bill repeatedly "conferring powers and imposing duties" on a plethora of state agencies, but never defining or identifying these powers and duties. Moreover, we respectfully submit that the element of deception is also present in this case because of the manner and means by which this bill was hastily pushed through both the Houses of the General Assembly. The Senate amendment was first made available to the General Assembly on Thursday, July 1, 2004 and passed the Senate on the early morning of Friday, July 2, 2004. The House likewise passed the measure at the July 3<sup>rd</sup>, 2004 session, which occurred in the early morning hours of July 4, 2004. Moreover, the House was disenfranchised to the extent that virtually the entire bill could only be amended if the House rules were first suspended by a two-thirds majority vote of all members – a fact which resulted in the House being unable to amend this bill in any manner. Obviously, not only did the members of the General Assembly not have the opportunity to vote with circumspection, but it is questionable that the vast majority even had time during this busy, pre-holiday legislative session to read, no less fully understand, the Senate amendment being put before them.

Nor could it logically be argued, as the prepared statements read by the bill's sponsors attempted to do, that everyone knew about this gaming bill because it had been before the General Assembly the previous year. As set forth in the factual statement, *supra.*, this bill had been changed in numerous and sundry substantial ways after the Senate stripped the gambling provisions out of it after the House amended them. This was a new bill with different terms and conditions that should have been entitled to the same degree of circumspection that Article III provides all such bills. These prepared talismanic incantations that the legislature is not violating the constitutional precepts of Article III show consciousness of guilt and have an "Alice in Wonderland" quality about them when juxtapositioned against the irrefutable facts culled from the legislature's records<sup>30</sup>.

The amendment of this bill and disclosure to General Assembly members was only a few short hours before they were called upon to vote on the bill, given the other items on the legislative agenda, and the size and intricacy of the Senate amendment in question (virtually a whole new 145-page bill), the elements of confusion and deception are met. After all, the legislators were not given enough time to review and understand the intricacies and nuances of the bill and neither of the two titles of this bill adequately conveyed any of those nuances and intricacies under these circumstances. In the cases failing to apply Article III, §1, these elements of actual confusion and deception were simply not present. In this case, they clearly are present when the size, intricacy and

---

<sup>30</sup> In Lewis Carroll's "Alice in Wonderland", Alice has the following oft cited conversation with Humpty Dumpty: "When I use a word", Humpty Dumpty said, in a rather scornful tone, "it means just what I choose it to mean – neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master – that's all."

procedural history of this bill are juxtapositioned against the amount of time the legislators were given to study the issue and prepare themselves to vote with circumspection. We respectfully submit that the “ramrod” element of this bill provides the confusion and deception element found missing in the other cases.<sup>31</sup>

Moreover, under the facts in this case, the House of Representatives was literally disenfranchised to the extent that no amendments could be offered without a two-thirds majority vote as opposed to a simply majority vote. This added burden, which actually shut down the amendment process in the House, was the result of the Senate amendment which clearly changed the original purpose of HB 2330.

Given the lack of direct authority in Pennsylvania on Article III, §1, we would call the Court’s attention to the following cases in other jurisdictions having an identical provision barring one House from changing the purpose of a bill. We believe these cases support declaring the change of purpose *sub judice* unconstitutional.

Like Pennsylvania, Alabama has a constitutional provision mandating that no amendment to a bill can change its original purpose. See ALA. CONST. art. IV, §61. In fact, the relevant language, “no bill shall be so altered or amended on its final passage through either house as to change its original purpose”, *id.*, is identical to Article III, §1 of the Pennsylvania Constitution. The Alabama Supreme Court used this section on

---

<sup>31</sup> There is a contention that the issue of legalization of gambling had been around for a decade. We address that in the factual statements discussion of other proposed laws dealing with the gambling/gaming issue. Simply stated, nothing identical or even substantially close to this bill had been before the General Assembly that would have relieved them from having to review this bill with circumspection. Moreover, legalization of gambling is not the issue in this case. The issue is whether the General Assembly could have voted for this particular law with circumspection.

numerous occasions to find legislation unconstitutional and has only upheld legislation where, unlike the present matter, the amendment to a bill had the same purpose as the specific purpose of the original bill. For instance, in *Advisory Opinion No. 331*, 582 So.2d 1115 (Ala. 1991), the Alabama Supreme Court found unconstitutional legislation that originally provided funding, but as amended, also included provisions limiting how the funds could be used. The court reasoned that the limitations on what the funds could otherwise be spent changed the original purpose from a mere funding bill. See *Advisory Opinion No. 331*, 582 So.2d at 1117-18. In the present case, the 145-page slot machine bill was eventually passed, makes numerous radical changes to the original bill that dealt with fingerprinting at racetracks. Numerous substantive provisions were added, such as the legalization of slot machines, and the de-criminalization of gambling funding for airports and redevelopment, that the original purpose of the bill did not contemplate. In fact, the Senate amendment can rightly be classified as a whole new bill, totally subsuming the previous bill.

Arkansas also has an identically worded prohibition on amendments that change the original purpose of a bill. See ARK. CONST. art. 5, §21. In *Barklay v. Melton*, 5 S.W.3d 457 (Ark. 1999), the Arkansas Supreme Court struck down a law that was altered by amendment. The original bill dealt with tax credits. The bill was amended to strike out the original language, including the title, and thereafter provided for a tax surcharge. *Barklay*, 5 S.W.3d at 459. Instead of determining that both versions of the bill dealt with taxes, the Court determined that the original purpose, as established by the original title of the bill, was changed. “[T]his provision in our constitution prevents amendments to a bill which would not be germane to the subject of the legislation expressed in the original

title of the Act which it purports to amend.” Id. at 460. In the instant matter, the original title of the bill was completely struck so that it no longer dealt with fingerprinting or the duties of the Pennsylvania State Police. According to the Barklay analysis, the instant legislation should be struck as unconstitutional.

Colorado also has identical language to Article III, §1 of the Pennsylvania Constitution. See COLO. CONST. art. 5, §17. The Colorado Supreme Court explained in People v. Brown, 485 P.2d 500 (Colo. 1971), that the reason for this section of the constitution is “to prevent bills relating to one subject when introduced from afterwards being so amended as to relate to an entirely different subject.” Brown, 485 P.2d at 506. The bill at issue in Brown dealt with driving while intoxicated as evidenced by its original title. The original bill had provisions dealing with the definition of an offense. That was removed from the bill and a provision was added dealing with implied consent to be tested for intoxication. The court said this did not change the original purpose by dealing with an entirely different subject sine both dealt with driving while intoxicated. Indeed, the title remained nearly unchanged. See id. at 505-06. While the purpose in Brown remained the same, cracking down on driving while intoxicated, the purpose in the present matter changed precipitously. A bill that originally was meant to strengthen criminal protections by instituting fingerprinting at racetracks (as stated by its title), was later changed (including its title) to legalize new forms of gambling.

New Mexico also has an identical constitutional provision. See N.M. CONST. art. 4, §15. In Black Hawk Consol. Mines Co. v. Gallegos, 191 P.2d 996 (N.M. 1948), the New Mexico Supreme Court clarified that the section of the constitution was designed to “prohibit amendments not germane to subject of legislation expressed in the title of act

purported to be amended.” Black Hawk, 191 P.2d at 1005. The court, in analyzing an amendment to a bill, looked to original purpose statement and found it was identical in all material respects. Both versions of the bill had to do with taxation in mining. While the later bill had a larger scope, the purpose remained the same. See id. In the present matter, much more than scope changed. Instead, the purpose changed from fingerprinting for criminal purposes to decriminalizing gambling and allowing slot machine casinos to be set up.

Article III, §20 of the Wyoming Constitution also has identical language to Article III, §1 of the Pennsylvania Constitution. The Wyoming Supreme Court, in Billis v. State, 800 P.2d 401, 429-30 (Wyo. 1990) stated, “The purpose of this kind of constitutional provision is ‘to preclude last-minute, hasty legislation and to provide notice to the public of legislation under consideration irrespective of legislative merit.’” (Billis, 800 P.2d at 428 (quoting Anderson v. Oakland County Clerk, 353 N.W.2d 448, 455 (Mich. 1984))). The court clarified that it must look “to the title and the body of the original bill to determine its purpose and make a comparison of its purpose after amendment.” Id. at 429. An amendment, therefore, must be germane to original stated purpose, not merely germane to general subject matter. The Court upheld legislation where the purpose of both the original bill and the amended bill was “the establishment of procedures for the deferring and placing of a defendant on probation without the entry of an adjudication of guilt and the discharging of that defendant upon successful completion of that probation.” Id. at 430. In Smith v. Hansen, 386 P.2d 98 (Wyo. 1963), the Supreme Court of Wyoming found that legislation was amended in a way that changed the original purpose even though both versions of the bill dealt with the subject

of liquors. The later bill imposed an excise tax and required identification, purposes that were not included in the original bill. See Smith, 386 P.2d at 100. Here, the original purpose was changed because the decriminalization of gambling and provision of slot machines was not included in the original bill.

The above states all have provisions identical to that of Pennsylvania. They do not permit a bill to be amended in a way that changes the original purpose, even if the new purpose is contained within the new title. If Article III, §1 could be satisfied merely by amending the title to reflect the contents of the bill, this constitutional provision would be superfluous since Article III, §3 already contains the requirement that the subject of a bill be contained in the title. Instead, as other states with identical provisions have recognized, the original purpose requirement prohibits, quite simply, amendments that change the specific original purpose of the bill being amended. See Barklay, 5 S.W.3d at 460; *Advisory Opinion No. 331*, 582 So.2d at 1117-18; Billis, 800 P.2d at 428; Brown, 485 P.2d at 505-06; Smith, 386 P.2d at 100; Black Hawk, 191 P.2d at 1005.

What has occurred in this case is that an entirely new bill, masquerading as an amendment, was substituted for the original bill and ramrodded through both Houses of the General Assembly over a holiday weekend, with one House being significantly deprived of its opportunity to propose amendments to the new bill – a bill dealing with one of the most significant changes in Pennsylvania law ever passed by the legislature. This is exactly the type of scenario Article III, §1 was designed to eliminate and possibly represents the most egregious violation of the constitutional reforms which swept the country in the late 1800's that can be found in the reported cases.

**D. Act 71 Violates Article III, §4 Because the Amended Version of the Bill Changed its Purpose and the New Bill was not Considered on Three Different Days in Each House.**

Act 71 also violates Article III, §4 of the Pennsylvania Constitution which requires that “[e]very bill shall be considered on three different days in each House.” A bill that is read on three different days in each House and is then amended so as to change the original purpose of the bill must be re-reported to both Houses. See Common Cause of Pennsylvania v. Commonwealth, 668 A.2d 190 (Pa. Cmwlth. 1995), aff’d per curiam, Common Cause of Pennsylvania v. Commonwealth, 554 Pa. 512, 677 A.2d 1206 (1996)(bill providing appropriations to Public Utility Commission which was amended to become General Appropriations Act such as to change its purpose was passed without being considered three times in each House in violation of §4); Pennsylvania Ass’n of Retail Dealers, 123 Pa. Cmwlth. 533, 554 A.2d 998 (last minute amendment to bill originally dealing with farmers’ payment of estimated taxes to include provisions for consumer transactions under Installment Sales Act wholly changed bill without being considered three times by each House, violating §4).

A violation of Article III, §4 is normally directly tied to a violation of Article III, §1 which prohibits legislation encompassing more than one subject. See Fumo v. Pa. Public Utility Com’n, 719 A.2d 10 (Pa. Cmwlth. 1998). Accordingly, we rely on the earlier discussion concerning the bill’s original purpose being changed and the amended bill having more than a single subject, but rather numerous subjects which are not germane to one another.

Obviously, the version of HB 2330 that was considered in each house was completely different than the bill that resulted from the Senate amendment and was ultimately sent to the House for concurrence. The amended bill received all of its substance, subject matter and legislative importance after five of the six days of constitutionally required consideration had been completed. It was not until the Senate amendment on July 1, 2004 that the real bill took shape, and it was never given a single day of constitutionally required consideration in the House which merely concurred with the Senate's amendment. Moreover, the importance of the 3-reading rule is further established because this procedural posture of five readings and then sent to the House for concurrence dramatically changed the ability of the House of Representatives to amend the statute requiring that the rules of the House be suspended by at least a two-thirds vote of its member.

**E. Act 71 Violates Article III, §6 Because the Bill Fails to Reprint the Text of the Repealed Provision.**

Act 71 violates Article III, §6 of the Pennsylvania: “No law shall be revived, amended or the provisions thereof extended or conferred, by reference to its title only, but so much thereof as is revised, amended, extended or conferred shall be reenacted and published at length.” This Court has interpreted this mandatory provision to include repeals: when a bill *repeals* another law, that repealed law must be reprinted. See Commonwealth v. Hallberg, 374 Pa. 554, 559, 97 A.2d 849, 851 (1953) (“It would seem entirely clear from [§6] that, where the legislature intends to *eliminate* [a] section or part of a law, it is not enough merely to delete the publication of that section or part, but the entire section or part, including the section or part to be eliminated, must be *published at*

*length ... in other words, the intended abrogation must be affirmatively disclosed.”)*  
(emphasis added).

The purpose of Article III, §6 is to prevent “blind” amendments – that is, amendments which do not place a proposed act before the legislators in a form that will enable them to understand the proposed change:

to enable both the legislators themselves and all persons interested in the legislation to see exactly the changes made between the existing law and the reenactment, without the necessity of referring to the former for comparison, [citations omitted]; whereas, if the portion to be abrogated were simply deleted, it would be impossible to determine whether such deletion represented an actual legislative intention to abrogate such part of the law or was due to a mere error or oversight in the publication of the amendatory legislation.

Hallberg, 374 Pa. at 559, 97 A.2d at 851-52. See also West Virginia Pulp & Paper Co. v. Public Service Commission, 61 Pa. Super. 555 (1915); City of Wilkes-Barre v. Pennsylvania Public Utility Commission, 164 Pa. Super. 210, 216, 63 A.2d 452, 455 (1949) (“The two constitutional provisions [Article III, §6, together with Article III, §3], taken together, forbid blind amendments, that is, express amendments which do not place the proposed act before the legislators in a form that will enable them without reference to a prior act to understand clearly the change proposed to be made in the statutes of the state.”)

Act 71 specifically makes reference to two direct repeals, one being to the Liquor Code, Section 493(29) of the Act of April 12, 1951 (P.L. 90.21) and the other being to the Crimes Code, 18 Pa. C.S. §5513(a), and then does a general repeal stating that “all other acts and parts of acts are repealed insofar as they are inconsistent with this part.” (§1903 at 463[a]). We respectfully submit that insofar as the direct repeals are concerned, the

legislature was entitled to have those sections being repealed printed so that they could see exactly what the Senate amendment was doing. We believe that is the spirit of the constitutional amendment, and given the size and complexity of this particular amendment, there could be numerous laws impacted, running the gamut from the Revenue Code to the eminent domain statutes. Those laws that were specifically repealed by this statute or sections thereof should have been before the legislature prior to voting on passage. These were not repeals by implication but express repeals directly affecting identified statutory sections. See L.J.W. Realty Corp. v. City of Philadelphia, 390 Pa. 197, 134 A.2d 878 (1957).

**F. Act 71 Violates Article III, §10 Because It Is A Revenue Bill That Did Not Originate In The House.**

Article III, §10 of the Pennsylvania Constitution requires that “all bills for raising revenue shall originate in the House of Representatives . . . .” We are aware that it has been held that the requirement of this Section is procedural and directive, not substantive. See Mikell v. School District of Philadelphia, 359 Pa. 113, 58 A.2d 339 (1948). We believe that in this case, the spirit of the amendment has been offended by the way this bill was managed procedurally through the General Assembly. When the bill originated in the House, it was nothing more than an innocuous provision authorizing the Pennsylvania State Police to perform background investigations upon request. It never became a taxing and revenue raising bill until it was amended on its fifth and last legislative reading in the Senate by Amendment No. A3055, consisting of 145 pages, 6 chapters, 83 sections and 412 lettered and numbered subsections, many of which clearly

deal with imposing taxes and raising revenue for the Commonwealth of Pennsylvania (See Chapter 14 of the Bill captioned Revenues, §1401-1409) (R. 403a – R. 430a).

We are unaware of anything that has changed the holding in the Mikell case, but respectfully submit that when a bill raising revenue by applying a tax *de facto* originates in the Senate under circumstances outlined in the previous arguments, Article III, §10 lends additional support for striking down the statute as being unconstitutional.

**II. ACT 2004-71 VIOLATES ARTICLE II, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION BECAUSE IT IMPROPERLY DELEGATES UNRESTRICTED LAND USE AND ZONING AUTHORITY AND POWER TO THE GAMING CONTROL BOARD WITHOUT PROVIDING CLEAR, DEFINITE, REASONABLE AND LAWFUL STANDARDS, POLICIES AND LIMITATIONS TO PROTECT AGAINST UNFETTERED BOARD ACTION.**

Article II, Section 1 of the Pennsylvania Constitution prohibits the legislature from delegating legislative power and authority to boards, commissions, administrative tribunals, and the like. Article II, Section 1, entitled “Legislative Power,” states as follows:

The legislative power of this Commonwealth shall be vested in a General Assembly, which shall consist of a Senate and a House of Representatives.

Under the principle known as the Non-Delegation Rule, the General Assembly cannot delegate its power to make laws to any other branch of government, or to any other body or authority. This Court has held that, “while not specifically set forth in the Constitution, the nondelegation rule is a natural corollary to Article II, §1 since it requires that the basic policy choices involved in ‘legislative power’ actually be made by the Legislature

as constitutionally mandated.” State Board of Chiropractic Examiners v. Life Fellowship of Pennsylvania, 441 Pa. 293, 297, 272 A.2d 478, 481 (1971).

Act 71 preempts the applicability of local and state zoning and land use laws, ordinances, rules or regulations in the physical location and operation of gambling facilities. The Act provides, in pertinent part, as follows:

**Section 1506. Local land use preemption.**

The conduct of gaming as permitted under this part, including the physical location of any licensed facility, shall not be prohibited or otherwise regulated by any ordinance, home rule charter provision, resolution, rule or regulation of any political subdivision or any local or state instrumentality or authority that relates to zoning or land use to the extent that the licensed facility has been approved by the Board. The Board may, in its discretion, consider such local zoning ordinances when considering an application for a slot machine license. The Board shall provide the political subdivision, within which an applicant for a slot machine license has proposed to locate a licensed gaming facility, a 60-day comment period prior to the Board's final approval, condition or denial of approval of its application for a slot machine license. The political subdivision may make recommendations to the board for improvements to the applicant's proposed site plans that take into account the impact on the local community, including, but not limited to, land use and transportation impact. This section shall also apply to any proposed racetrack or licensed racetrack.

(R. 434a-435a).

In passing Act 71, the General Assembly failed to prescribe definite, reasonable and lawful land use standards to guide, limit and govern the power of the Gaming Board in connection with the physical location siting and operations of licensed gambling facilities. Section 1506 not only preempts the applicability of local and state land use and zoning law, but it also empowers the Board to exercise, within its sole discretion, the power and authority to approve and authorize the issuance of slot machine licenses and the location of the licensed gambling facilities. Simply put, Act 71 gives the Board

unfettered discretion to unilaterally designate or approve properties within municipalities as sites for slot machine casinos without regard for the zoning and land use laws of Pennsylvania. In other words, under Act 71, the Gaming Control Board is permitted to perform a legislative function in formulating and implementing its own land use policies.

**A. The Non-Delegation Rule.**

In 1873, in Locke's Appeal, 72 Pa. 491, 498, 1873 Pa. LEXIS 34 (1873), this Court addressed the extent to which the General Assembly could delegate authority to administrative officers, boards and commissions. The Court's decision became the foundation of later Supreme Court precedent regarding the delegation of power from the Legislature to the myriad boards and commissions created by it over the years. For example, in 1938, the Court noted the following:

The well recognized prohibition against the delegation of legislative power is a necessary outgrowth of the fundamental theory of the separation of governmental functions which permeates our State and Federal Constitutions alike. Article II, Section 1, of the Constitution of Pennsylvania provides: "The legislative power of this Commonwealth shall be vested in a General Assembly which shall consist of a Senate and a House of Representatives." Article I, Section 1, of the Constitution of the United States provides: "All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

It is safe to assume, therefore, that the type of delegation of power by a legislative body which is invalid under the one Constitution is also invalid under the other, and that reliance may be placed upon such decisions arising under the Constitution of the United States in construing the Constitution of Pennsylvania. The validity of these assumptions has in fact been recognized in the recent case of Gima v. Hudson Coal Co., 310 Pa. 480 [1933].

Legislative power in Pennsylvania is vested solely in the General Assembly. Regardless of exigencies which at times arise or of how trying our economic or social conditions become, the powers and duties imposed by the Constitution upon the legislative branch of our government remain

steadfast and neither the urgency of the necessity at hand nor the gravity of the situation allow the legislature to abdicate, transfer or delegate its authority or duty to another branch of the government. Our system of checks and balances in the government was wisely instituted by the framers of the Constitution for the protection of all the people of the Commonwealth and has proved an effective method to prevent unwise, hasty and imprudent legislation. So effective has been this system of government no attempt has been made to amend that part of the Constitution and it remains the fundamental law of this Commonwealth.

The legislature may, however, leave to administrative officers, boards and commissions, the duty to determine whether the facts exist to which the law is itself restricted. In all such occasions, nevertheless, the legislative body must surround such authority with definite standards, policies and limitations to which such administrative officers, boards or commissions, must strictly adhere and by which they are strictly governed. As said by Mr. Justice AGNEW, in [Locke's Appeal](#), 72 Pa. 491, 498, [1873]. "Then, the true distinction, I conceive, is this: The legislature cannot delegate its power to make a law; but it can make a law to delegate a power to determine some fact or state of things upon which the law makes, or intends to make, its own action depend."

\* \* \*

It is absolutely essential that limits be set on the power conferred on such tribunals and that the scope of their authorized action clearly appear. "In creating such an administrative agency the legislature, to prevent its being a pure delegation of legislative power, must enjoin upon it a certain course of procedure and certain rules of decision in the performance of its function. It is a wholesome and necessary principle that such an agency must pursue the procedure and rules enjoined and show a substantial compliance therewith to give validity to its action": [Wichita Railroad & Light Company v. Public Utilities Commission](#), 260 U.S. 48, 59. If the legislature fails, however, to prescribe with reasonable clarity the limits of the power delegated or if those limits are too broad its attempt to delegate is a nullity: [Schechter Poultry Corp. v. United States](#), 295 U.S. 495; [Panama Refining Co. v. Ryan](#), [293 U.S. 388 (1935)]; [O'Neil v. Insurance Co.](#), 166 Pa. 72.

In 1957, the Court reviewed language in a legislative act that granted power to the state Department of Banking to approve or disapprove bank mergers. In [Dauphin Deposit Trust Company v. Myers](#), 388 Pa. 444, 449-50, 130 A.2d 686, 688-89 (1957), the

Court analyzed the legislative language as follows, recognizing the prohibition against delegation of legislative power to an administrative body:

The language of subsection A "with the approval of the Department" is at first blush sufficiently broad to give the Department *the sole discretion, without any reasonable standards or indeed without any standards whatever*, to approve or disapprove a merger, the effect of which is to establish a branch in a contiguous County. Where the standard fixed by the Legislature is not arbitrary or unlimited, but is definite and reasonable, the delegation of power or discretion will be sustained as constitutional. In considering the standard, regard must be had to the purpose and scope of the Act, the subject matters covered therein, the duties prescribed and the broad or narrow powers granted, because those factors will often determine whether or not a sufficiently clear, definite and reasonable standard has been established. A grant of power to the Department of Banking to approve or disapprove a merger in its sole discretion, without any standards whatever, would be an illegal delegation of authority and would render subsection A unconstitutional . . . .

Id. (citations omitted).

In [William Penn Parking Garage, Inc. v. City of Pittsburgh](#), 464 Pa. 168, 212, 346 A.2d 269, 291 (1975), the Court upheld the delegation of authority guided by a standard that a particular tax was "excessive and unreasonable." It is important to note, however, that in reaching that decision this Court was persuaded by its reading of the entire act and its finding that the Act provided "considerable guidance" regarding the determination of whether a tax is excessive or unreasonable. The act in question established a limit on the aggregate amount of all taxes which could be imposed by a political subdivision. Another section of the act limited the rates that could be imposed as to certain types of taxes. The Court referenced that those specific sections were "exclusive measures" of the extent to which those taxes constituted an "excessive or unreasonable tax". Unlike the act at issue in the [William Penn Parking Garage](#) case, Act 71 provides no similar

“considerable guidance” to the Gaming Control Board in making its decisions as to where to locate slot machine casinos.

This Court reiterated the Non-Delegation Rule again in 1980, in the case of Gilligan v. Pennsylvania Horse Racing Commission, 492 Pa. 92, 422 A.2d 487 (1980), and nine years later in Blackwell v. State Ethics Commission, 523 Pa. 347, 567 A.2d 630 (1989), in which case the Court determined that the grant of power to the State Ethics Commission to extend its “life” beyond its sunset date was unconstitutional. The Court declared the extension null and void. There, the Court stated as follows:

The "legislative power" in its most pristine form is the power "to make, alter and repeal laws." In Re Marshall, 363 Pa. 326, 337, 69 A.2d 619 (1950); Mt. Lebanon v. County Board of Elections, 470 Pa. 317, 368 A.2d 648 (1977). It is *axiomatic* that the Legislature cannot constitutionally delegate the power to make law to any other branch of government or to any other body or authority. Gilligan v. Pennsylvania Horse Racing Commission, 492 Pa. 92, 95, 422 A.2d 487 (1980), citing State Board of Chiropractic Examiners v. Life Fellowship of Pennsylvania, 441 Pa. 293, 293, 297, 272 A.2d 478, 480 (1971); Archbishop O'Hara's Appeal, 389 Pa. 35, 131 A.2d 587 (1957). The legislature may, consistent with this constitutional axiom, delegate authority and discretion in connection with the execution and administration of a law; it may establish primary standards and impose upon others the duty to carry out the declared legislative policy in accordance with the general provisions of the enabling legislation. Belovsky v. Redevelopment Authority, 357 Pa. 329, 342, 54 A.2d 277, 284 (1947); Chartiers Valley Joint Schools v. Allegheny County Board of School Directors, 418 Pa. 520, 529, 211 A.2d 487 (1965).

While the General Assembly may, with adequate standards and guidelines, constitutionally delegate the power and authority to execute or administer a law, the prohibition against delegation of "legislative power" requires that the *basic policy choices* be made by the General Assembly. William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 212, 346 A.2d 269 (1975) (Opinion Announcing the Judgement of the Court); Tosto v. Pennsylvania Nursing Home Loan Agency, 460 Pa. 1, 11, 331 A.2d 198, 202 (1975).

523 Pa. at 359-60, 567 A.2d at 636-37.

Other decisions by this Court regarding the Non-Delegation Rule are instructive. In Tosto v. Pennsylvania Nursing Home Loan Agency, 460 Pa. 1, 331 A.2d 198 (1975), the law under review required that the agency’s policy decisions “must be directed to the effectuation of the legislature’s basic policy of assisting nursing homes that do not comply with the life safety code and are unable to achieve compliance through private sources of financing which assistance is to be given with prudence for protection of the loan fund” and further, because the legislature’s general policy provided specific definitions of statutory terms and “detailed guidelines for certain important agency decisions.” Id. at 8, 331 A.2d at 202-03. Further, the act at issue in Tosto provided “numerous procedural guidelines for protection against administrative arbitrariness and caprice. [ ] For example, the agency is required to establish criteria for use and determination of priority among applicants [ ] and eligibility for loan refinancing [ ] and to develop a standard form for loan applications. [ ] 460 Pa. at 12-13, 331 A.2d 203-04 (footnotes omitted). The Court noted in Tosto that “[t]he use of neutral, generally applicable criteria and forms is an important safeguard against the arbitrariness of ad hoc decision-making.” Id. at 13, 331 A.2d at 204. Act 71 provides no such criteria to protect against the Gaming Control Board’s arbitrary and ad hoc decision-making.

In Commonwealth of Pennsylvania Water and Power Resources Board v. Greenspring Company, 394 Pa. 1, 145 A.2d 178 (1958), this Court reviewed legislation known as the “Water Obstruction Act” to determine whether it conferred upon an administrative body, known as the Water and Power Resources Board, certain power and authority to grant or withhold its consent for a permit to construct a damn or water obstruction as an unlawful legislation of delegative power. In determining that the Water

and Power Resources Board was not the grantee of unconstitutionally delegated legislative power, this Court noted that the Board was not granted the power to “determine what the law should be, but simply to apply the law as enunciated by the legislative body to particular circumstances.” 394 Pa. at 10, 145 A.2d at 183.

The Board’s authority to act is not subject to its whim or caprice; it is circumscribed by a definite standard. Under this statute the Board must consider the construction of a new obstruction, the addition to or alteration of an existing obstruction and the maintenance of an existing obstruction from two points of view: (1) Does the proposed construction, alteration of or addition to an existing obstruction or the maintenance of an existing obstruction create a situation of involving a potentiality of danger either to life or property, and (2) Does the existing obstruction or will the existing obstruction change or divert the natural course of the stream or river? Such standards are neither vague or indefinite; they are definite yardsticks which the Board must utilize in evaluating each particular existing or proposed water obstruction. The existence of such standards precludes arbitrary action on the part of the Board and any refusal to issue a permit for the construction of a new, or the addition to or alteration of an existing, obstruction must bear a reasonable relation to the object of the legislative mandate. Legislative standards such as herein presented have been sustained as valid by this and other courts....

Id. (emphasis added). In concluding that there was no impermissible delegation of legislative power, this Court stated that “the Board, in the exercise of the regulatory power, is circumscribed by definite standards [ ] evident from the language of the statute in its entirety.” Id. at 12, 145 A.2d at 183 (footnote omitted).

So, in order to constitutionally delegate the power and authority to execute or administer a law, the General Assembly must provide adequate standards and guidelines so that the administrative body to which the power is delegated – here, the Gaming Control Board - has adequate and appropriate direction from the General Assembly in carrying out its duties. “To determine whether the General Assembly has established

adequate standards, this Court must look to the language of the statute, the underlying purpose of the statute and its reasonable effect. Executive Life Insurance Company v. Commonwealth, 147 Pa. Cmwlth. 105, 606 A.2d 1282 (1992), aff'd, 533 Pa. 321, 623 A.2d 322 (1993).” Wings Field Preservation Assocs., L.P. v. Department of Transportation, 776 A.2d 311, 321 (Pa. Cmwlth. 2001). Simply put, “[i]n setting forth standards for guidance, the General Assembly declares legislative policy. Blackwell v. State Ethics Commission, 523 Pa. 347, 567 A.2d 630 (1989). Thus, where the General Assembly fails to provide standards for guidance, the General Assembly has improperly delegated legislative power. Id.” Wings Field Preservation Assocs., L.P., 776 A.2d at 321 n.17 (Pa. Cmwlth. 2001).

**B. The General Assembly Failed To Provide Adequate Standards To Guide And Restrain The Exercise Of Delegated Administrative Function By The Gaming Control Board.**

The Gaming Control Board has exclusive and unfettered power in approving and authorizing the location and operation of licensed gambling facilities without regard to the local and state zoning and land use laws that have been enacted for the health, safety and welfare of the respective local community. While Section 1506 provides that the Gaming Board “may, in its discretion, consider such local zoning ordinances when considering an application for a slot machine license,” and, further, that the Board is required to provide a 60-day comment period prior to the Gaming Board’s final approval during which the local municipality may submit land use recommendations to the Board, the Board is not mandated to take any action based on the comment period or the local municipalities’ recommendation(s). Instead, the Gaming Board may pursue whichever course it wants to pursue within its unfettered discretion.

Looking to the language of Act 71, the Legislature provided no standards or guidance to restrain the Board's exercise of its administrative function of approving the location and operation of gambling facilities across the Commonwealth. Indeed, Act 71 is silent as to any standards bearing on the health, safety, welfare and morals of the community where a gambling facility is to be located and approved for operation. Any close review of the "letter" of Act 71 reveals that the Legislature utterly failed to provide any standards or guidelines for the exercise of the Board's discretion in acting as a super-zoning authority.

The General Assembly granted very broad powers to the Board. Section 1202 of the Act, entitled "General and Specific Powers" sets forth a general powers provision and then, in a separate subsection, enumerates eighteen specific powers. §1202 of Act 71(A), (B) (R. 341a-346a). The inclusion of such specific powers and details on a whole host of matters begs the question why the General Assembly did not expressly set forth any standards to guide the Board in deciding where to license and locate slot machine casinos. Indeed, the Legislature expressed its concerns for the health, safety, welfare and morals of residents of Pennsylvania communities and neighborhoods in connection with the sale of alcoholic beverages by imposing guidelines for assessing where liquor licenses would be issued. Certainly, the Legislature could appreciate the potential detrimental impact that a slot machine casino would have if located near schools, churches, playgrounds, parks or other gathering places in a community. Yet, no detailed standards were provided by the General Assembly and we submit that it was not by accident.

Unlike the administrative board in the Water and Power Resources Board case, the Gaming Control Board is not required to utilize "definite yardsticks" in evaluating

where to authorize the location of a gambling facility. 394 Pa. at 10, 145 A.2d at 183. There is absolutely no guidance akin to the standards collected in the *William Penn Parking Garage*, 464 Pa. at 212 (collecting cases). Act 71 does not reference any consideration of “safety” in the location of a gambling facility. Act 71 does not reference whether the location of a facility would be fit or unfit for human habitation or neighborhood well-being. Act 71 does not provide any benchmark for the adequacy and reasonableness of the location of a gambling facility. Act 71 makes no reference to the condition or the nature of the community which is targeted for the location of a gambling facility. Act 71, unlike the legislature standards enacted by the General Assembly and utilized by the Liquor Control Board as recognized in the Tate Liquor License case, 196 Pa.Super. 193, 173 A.2d 657 (1961), Act 71 provides no reference to whether the licensing and location of a gambling facility would be detrimental to the welfare, health, peace and morals of the inhabited neighborhood. Again, other than its legislative “suggestion” that it consider local zoning ordinances and local municipality land use recommendations, the Board is not required to consider any of that input.

The absence of any such standards or guidelines is especially striking when one compares the absence of those guidelines against the general powers afforded to the Board and the other detailed and specific obligations required of the Board by the legislature in the areas of the membership, appointments to, qualifications, restrictions, compensation and other administrative details set forth in §1201 of Act 71 (R. 334a-341a); the specific powers set forth in §1202 (R. 342a-346a); the details of the regulatory authority of the Board in §1207 of Act 71 (R. 349a-352a); the details regarding the theoretical payout percentage of slot machines under §1207 (10)(R. 351a); details

regarding that the Board requires each licensee to permit persons under 21 years of age from operating or using slot machines §1207(8)(R.350a); details requiring that each license application provide detailed site plans of its proposed licensed facilities for review and approval by the Board – not, unfortunately, for the purpose of determining whether the facility would detrimentally impact the health, safety, welfare and morals of a locality – but, instead, for the purpose of determining the “adequacy of the proposed security and surveillance measures inside and outside the facility” §1207 (11)(R. 351a); and details requiring licensees to provide on-site facilities for use by the Board at licensed facilities §1207(13)(R.351a). These are but a small sampling of numerous and very detailed standards and guidelines that have been legislatively mandated by the General Assembly. In contrast, the absence of any standards or guidelines regarding land use decisions is absolutely deafening.

While the Legislature stated in the “Legislative Intent” provisions of the Act that “[t]he public interest of the citizens of this Commonwealth and the social effect of gaming shall be taken into consideration in any decision or order made pursuant to this Part,” §1102(11) of Act 71 (R.323a), when read with the entire Act, the “public interest” language is, at best, vague and provides no real meaningful guidance in deciding where to locate slot machine casinos. We located a United States Supreme Court decision from 1932 in which the Court found that reference to the term “public interest” was a sufficient criterion to satisfy a valid delegation of authority from Congress to the Interstate Commerce Commission. New York Central Securities Corporation v. United States, The Interstate Commerce Commission, 287 U.S. 12, 24-25, 53 S.Ct. 45, 48, 77 L.Ed. 138 (1932). Nevertheless, the New York Central case is distinguishable from the instant

matter since in that case, the transportation statute under review provided adequate criteria to allow the Interstate Commerce Commission to perform its duties in connection with enhancement of public transportation, duties that the Commission had “constantly addressed.” In the case of Act 71, it does not set out any such definitive criteria concerning the land use considerations in authorizing the location of a slot machine casino. Moreover, unlike the Interstate Commerce Commission in the New York Central case, the Gaming Control Board is a new, statutorily-created creature that has just recently started business. This is not a matter in which the Gaming Control Board has been authorizing the location of slot machine casinos over some period of time.

As noted in William Penn Parking Garage, this Court is “not limited to the mere letter of the law, but must look to the underlying purpose of the statute and its reasonable effect.” Id. at 216, 346 A.2d at 293. The underlying purpose of Act 71 is to legalize and control a once-criminal activity: Slot machine gambling. While Act 71 provides for various enforcement and compliance mechanisms that give specific guidance to the Gaming Control Board in deciding who may sit on the Board, who may receive licenses, who may sell slot machines, who has enforcement authority, etc., it is strangely – we believe intentionally – silent as to the protection, via zoning and land use standards, of the health, safety, welfare and morality of communities where the slot machine casinos will be located. We do not believe that it is a coincidence that the General Assembly also included a provision in Act 71 that the issuance of liquor licenses to slot machine licensees “shall not be subject to: (I) the proximity provisions of Sections 402<sup>[32]</sup> and

---

<sup>32</sup> 47 P.S. §4-402 (2004).

404<sup>[33]</sup> of the Liquor Code”. §1521(C)(1) of Act 71 (R.459a). The proximity provisions, as noted *supra*; footnotes 33 and 34, provide concrete land use standards for the Liquor Control Board to follow in issuing certain retail liquor licenses. By this bit of draftsmanship, the Legislature revealed its goal of granting as much power as possible to the Gaming Control Board so that it would have exclusive authority over where and to whom slot machine licenses would be issued.

The reasonable effect of Act 71 is to empower the Gaming Control Board to act as a super-zoning board that is free of any legislative mandate protecting the health, safety and welfare of citizens residing in communities that will have gambling facilities imposed upon them by the Gaming Control Board. These citizens will be unable to petition any of their elected representatives for relief from a decision of the Gaming Control Board since those elected officials have been stripped of any authority to decide the propriety of locating a slots casino within their community.

---

<sup>33</sup> 47 P.S. §4-404 (2004). This section provides, in pertinent part, as follows: **Issuance of hotel, restaurant and club liquor licenses:**

Provided, however, That in the case of any new license or the transfer of any license to a new location the board may, in its discretion, grant or refuse such new license or transfer if such place proposed to be licensed is within three hundred feet of any church, hospital, charitable institution, school, or public playground, or if such new license or transfer is applied for a place which is within two hundred feet of any other premises which is licensed by the board: And provided further, That the board's authority to refuse to grant a license because of its proximity to a church, hospital, charitable institution, public playground or other licensed premises shall not be applicable to license applications submitted for public venues or performing arts facilities: And provided further, That the board shall refuse any application for a new license or the transfer of any license to a new location if, in the board's opinion, such new license or transfer would be detrimental to the welfare, health, peace and morals of the inhabitants of the neighborhood within a radius of five hundred feet of the place proposed to be licensed . . . .

(emphasis supplied).

In 1945, this Court recognized the application of the Non-Delegation Rule in a zoning and land use case. In upholding the lower court's decision in favor of enforcement of a zoning ordinance, this Court ruled against a board of adjustment's attempt to arbitrarily set aside zoning provisions and warned that "if such power [to authorize a zoning variance] were to be interpreted as a grant to the board of the right to amend or depart from the terms of the ordinance at its uncontrolled will and pleasure, it might well be challenged as being an unconstitutional delegation of legislative authority to a purely administrative tribunal." [Devereux Foundation, Inc., Zoning Case, 351 Pa. 478, 486, 41 A.2d 744, 747 \(1945\)](#).

Ten years later in [Root v. Erie Zoning Board of Appeals](#), 180 Pa. Super. 38, 42, 118 A.2d 297, 299-300 (1955), the Superior Court recognized the necessity of specific standards provided by zoning ordinances:

These standards are necessary in order to satisfy the constitutional requirement that the legislature may not delegate its power to make that the legislature may not delegate its power to make commission or board to determine some fact or state of things upon which the law makes, or intends to make, its own action depend. Where the legislature establishes primary standards and then delegates to an administrative body the power to determine some fact or state of things upon which it makes or intends to make its own action depend, it is the legislature which has legislated and not the administrative body.

Reference to the Pennsylvania Municipalities' Planning Code 53 P.S. §10101 *et seq.* (2004) alone reveals the extent to which the General Assembly has failed to provide any meaningful standards to guide and govern the Board's power. The Municipalities' Planning Code ("MPC") alone covers 17 articles and 178 statutory code sections setting forth substantive and procedural requirements for municipalities to follow in exercising the police power of zoning and land use regulation. The legislative intent of the MPC is to, *inter alia*, "protect and promote safety, health and morals; to accomplish coordinated

development” and “to provide for the general welfare by guiding and protecting amenity, convenience, future governmental, economic, practical, and social and cultural facilities, development and growth, as well as the improvement of governmental processes and functions.” 53 P.S. § 10105 (2004). To meet these and the other legislative policies, municipalities are granted the power by the General Assembly and must adhere to the extensive statutory framework in exercising those powers.

Zoning and land use laws are enacted pursuant to the legislature’s police powers to protect the public health, safety, morality and welfare of their citizens. Property rights can be constitutionally limited in order to protect and preserve the public welfare.

Property owners have a constitutionally protected right to enjoy their property. . . . That right, however, may be reasonably limited by zoning ordinances that are enacted by municipalities pursuant to their police power, *i.e.*, governmental action taken to protect or preserve the public health, safety, morality, and welfare. [Clever \[v. Board of Adjustment\], 200 A.2d \[408\] at 411-12 \[\(Pa. 1964\)\]](#) (“it is well settled that [the] Constitutionally ordained right of property is and must be subject and subordinated to the Supreme Power of Government--generally known as the Police Power--to regulate or prohibit an owner's use of his property”). Where there is a particular public health, safety, morality, or welfare interest in a community, the municipality may utilize zoning measures that are substantially related to the protection and preservation of such an interest.

In Re: Appeal of Realen Valley Forge Greenes Associates, 576 Pa. 115, 131, 838 A.2d 718, 727-28 (2003). The irony with Act 71 is that, while it purports to take into consideration the public interest, it exempts the Gaming Control Board from having to comply with the very laws that were enacted to protect and preserve the public interest.

Another irony is that, while a municipality derives its zoning power from the General Assembly by and through the Legislature’s statutory mandates and standards, the

Gaming Control Board that effectively usurps the municipality's power needs not abide by those legislative mandates.

The Township, as a municipal entity possessing only those powers expressly delegated by the Commonwealth, derives its zoning power from the Pennsylvania Municipalities Planning Code, the Act of July 31, 1968, P.L. 805, No. 247, as amended ("MPC"), [53 P.S. § 10101 et seq.](#) As is there mandated, the Township's zoning regulations must be designed "to accommodate reasonable overall community growth, including population and employment growth and opportunities for development of a variety of residential dwelling types and nonresidential uses." MPC § 604(5), [53 P.S. § 10604\(5\)](#). As regulations grounded in the delegated police power, zoning must accomplish "an average reciprocity of advantage" so-termed by Mr. Justice Holmes in [Pennsylvania Coal Co. v. Mahon](#), 260 U.S. 393, 415, 67 L. Ed. 322, 43 S. Ct. 158 (1922), by which "all property owners in a designated area are placed under the same restrictions, not only for the benefit of the municipality as a whole but also for the common benefit of one another." [United Artists Theater Circuit, Inc. v. City of Philadelphia, Philadelphia Historical Commission](#), 528 Pa. 12, 595 A.2d 6, 13 (Pa. 1991).

576 Pa. 115, 132-33, 838 A.2d 718, 728 (2003). Therefore, while Pennsylvania municipalities must regulate land use within the confines of the General Assembly's land use statutes, the Gaming Control Board does not.

Another zoning aberration has been created by the lack of any true land use standards or guidance for the Board to follow. The General Assembly has effectively sanctioned what amounts to the practice of "spot zoning" by the Gaming Control Board. "Spot zoning" has been described by this Court in [Cleaver v. Board of Adjustment, Upper Darby Township Appeal](#), 413 Pa. 583, 198 A.2d 538 (Pa. 1964),

as a singling out of one lot or a small area for different treatment from that accorded to similar surrounding land indistinguishable from it in character, for the economic benefit of the owner of that lot or to his economic detriment is invalid 'spot' zoning." Viewed more generally, "spot zoning . . . is an arbitrary exercise of police powers that is prohibited by our

Constitution." [United Artists' Theater Circuit, Inc. v. City of Philadelphia](#), 535 Pa. 370, 635 A.2d 612, 620 (Pa. 1993). While the size of the zoned tract is a relevant factor in a spot zoning challenge, "the most important factor in an analysis of a spot zoning question is whether the rezoned land is being treated unjustifiably different from similar surrounding land." [Schubach v. Silver](#), 461 Pa. 366, 336 A.2d 328, 336 (Pa. 1975).

576 Pa. 115, 133-34, 838 A.2d 718, 729 (2003). "Spot zoning is the antithesis of lawful zoning in this sense. In spot zoning, the legislative focus narrows to a single property and the costs and benefits to be balanced are those of particular property owners." *Id.* at 133, 838 A.2d at 729.

As Mr. Justice Saylor recognized in [Appeal of Realen Valley Forge Greener Associates](#), "[i]n performing the necessary judicial balancing, it is important to maintain the perspective that land use regulation is a traditional, legislative tool implemented in furtherance of broader public concerns -- compliance with non-arbitrary regulation is generally an accepted incident to land ownership and investment. 576 Pa. 115, 147, 838 A.2d 718, 737 (2003)(Saylor, J., dissenting).

This violation of Article II, Section 1, essentially exempts the entire gambling industry from compliance with the zoning and land use laws of Pennsylvania. The General Assembly's delegation of power to the Board to approve the ultimate location of gambling facilities serves to selectively insulate and deregulate the process for locating gambling facilities from the zoning and land use framework provided by state and local law. The General Assembly's delegation of such broad and unfettered powers and authority to the Board under Section 1506 bears no reasonable, rational or substantial relationship to the promotion of the health, safety, morals and general welfare of the public. The delegation of the power and authority to the Board by the General Assembly

is subject to being used as a device to give preferential treatment and unfair business advantage to gambling businesses and interests in the Commonwealth of Pennsylvania. By allowing the Gaming Control Board to ignore all state and local zoning and land use laws, including the Pennsylvania Municipalities Planning Code, the General Assembly has left the Board with no other legislative guidance or standards for it to follow to protect the interests of citizens in Pennsylvania.

Finally, the dangers of improper delegation of legislative powers was duly noted by Mr. Justice Bell 46 years ago.

Our constitutional form and system of government becomes a mirage when court's unwittingly sustain statutes which delegate to an administrative body unrestricted power to make rules and regulations which have the effect of law and which at their uncontrolled whim or discretion can whittle away or destroy the fundamental rights of liberty and of private property which are guaranteed by our federal and state constitutions. For over a century, it has been the proud boast of our nation that "ours is a government of laws and not of men" although in recent years, this boast often has a hollow ring. What is meant by a government of laws and not of men? A government of laws is easily understood. The laws are written and apply to everyone, irrespective of the wishes of any public official or administrative body which administers them. A government of men means that the present, temporary members of an administrative body (often aptly called bureaucrats) may make regulations at their whim or caprice which have the force and effect of law and which may be changed at will by themselves or their successors. The administrative bodies have so mushroomed in the last 20 years that their claim to jurisdiction and power have become so widespread and omnipotent, that the American people – beset by worries, doubts and fears caused by the kaleidoscopic changes in all phases of our life in this war-tormented world – seem unable to realize that our American system of government is being rapidly eroded and our constitutional liberties constantly curtailed.

394 Pa. at 18, 145 A.2d at 187 (Bell, J., dissenting).(emphasis added). Mr. Justice Bell's concerns are given practical weight today with the General Assembly having

unconstitutionally empowered the Gaming Control Board to act “at their whim or caprice.”

**CONCLUSION**

For all the reasons above, Petitioners respectfully request this Court to declare Act 71 unconstitutional, enjoin further implementation of the Act and order such further equitable relief as is necessary to restore the status quo.

Dated: February 25, 2005

Respectfully submitted,

Leonard G. Brown, III  
Supreme Court I.D. No. 83207  
Randall L. Wenger  
Supreme Court I.D. No. 86537

**CLYMER & MUSSER, P.C.**  
23 N. Lime St.  
Lancaster, PA 17602  
(717) 299-7101  
(717) 299-5115 – fax

---

James J. West  
Supreme Court I.D. No. 00331  
Robert R. Long, Jr.  
Supreme Court I.D. No. 39302

**WEST LONG LLC**  
105 North Front Street, Suite 205  
Harrisburg, PA 17101  
(717)233-5051  
(717)234-7517 - fax

*Attorneys for Petitioners*