

**TO THE RESPONDENTS:**

You are hereby notified to file an Answer to the enclosed Petition in the Nature of a Complaint Seeking Declaratory Judgment and Injunctive Relief within fourteen (14) days of the service hereof, pursuant to Pa.R.A.P. 123(b).

Respectfully Submitted,

s/ \_\_\_\_\_  
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Dated: December 10, 2004

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**PETITION IN THE NATURE OF A COMPLAINT  
SEEKING DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

**I. INTRODUCTION**

1. This is an action for declaratory relief asking that Act 2004-71 (the “Casino Slot Machine Act” or “Act”) be declared unconstitutional and for injunctive relief to stop implementation of a facially unconstitutional statute that will have profound negative effects on the citizens and taxpayers of the Commonwealth of Pennsylvania.

2. Act 2004-71 legalizes slot machine gambling and the creation of slot machine gambling casinos throughout the Commonwealth of Pennsylvania rendering Pennsylvania a gambling Mecca with the second largest number of state-sanctioned casino slot machines available in the United States of America, exceeded only by the state of Nevada.

3. The social, economic and regulatory problems generated by the legalization of casino slot machine gambling have been authoritatively analyzed and documented in numerous law review articles. We have attached hereto a particularly well documented article from Volume 27 of the Southern Illinois University Law Journal, entitled “The Failure to Regulate the Gambling Industry Effectively: Incentives for Perpetual Non-Compliance” and would quote merely the introduction as laying the foundation for the societal harm that the legislative procedures used in this case have potentially visited upon the citizens of the Commonwealth through the unconstitutional enactment of this statute:

The United States has periodically experimented with legalized gambling activities. In each historical “wave,” the social costs related to gambling became both apparent and overwhelming, consistently leading to the criminalization of all gambling activities. Historically, policymakers rediscovered that the social costs of gambling were enormous, and experts concluded that applying those costs “to the adult population of the United States [in 1994] implie[d] losses equal to . . . an additional Hurricane Andrew, the most costly disaster in American history, *every year.*” Yet legalized gambling had no significant social or economic benefits, as it “involves simply

sterile transfers of money or goods between individuals, creating no new money or goods. Although it creates no output, gambling does nevertheless absorb time and resources. When pursued beyond the limits of recreation, . . . gambling subtracts from the national income.”

In addition to these enormous social costs, gambling in the United States remained extremely difficult, if not impossible, to regulate effectively. This situation was essentially due to two factors. First, the regulatory scheme in place in many states provided a larger incentive for gambling operators to skirt the law than to comply with it. As legalized organized gambling spread throughout the United States during the 1990's, gambling operators often preferred to pay a fine when caught violating regulations rather than simply complying with them on a regular basis. Second, the gambling industry formed powerful lobbies as soon as it was established in a given state, making large political contributions and compromising any significant opposition. These efforts created a climate of corrupt decision-making that influenced legislators to weaken the regulatory scheme then in place and to refuse to address gambling issues in a manner consistent with the public interest. Each of these factors was driven by the large, almost unlimited supply of cash generated by gambling operations and available to finance the interests of the gambling industry. As long as these factors remained unchanged, effective regulation of the gambling industry was a practical failure. Economic history had demonstrated that legalized gambling activities corrupted government decision-making and destabilized the strategic economic base. (Footnotes omitted)

(Exhibit “1”, attached hereto.)

4. There is also clear authority that the legalization of gambling results in a substantial increase in those addicted to gambling leading to additional bankruptcies and an increase in crime and a concomitant adverse impact upon society generally and family life in particular. Some commentators have gone so far as to opine that gambling presents societal costs comparable to or even greater than the illegal drug problem. See *Statement of John Warren Kindt, University of Illinois, to the National Gambling Impact Study Commission, “U.S. and International Concerns Over the Socio-economic Cost of Legalized Gambling: Greater Than the Illegal Drug Problem,” Chicago, Illinois, May 21, 1998.* (Exhibit “2”) Clearly, there is a substantial body of evidence that

merits serious consideration by any legislature contemplating the legalization of gambling particularly when such legalization is on a scale that it would elevate gambling to industry status and make it one of the largest economic activities within the Commonwealth of Pennsylvania. See also, John Warren Kindt, *The Transfer of Consumer Dollars to Legalized Gambling: Should a Negative Socio-Economic "Crime Multiplier" be included in Gambling Cost/Benefit Analysis?*, 2003 Mich.St.DCL L.Rev. 281

5. 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 Casino Slot Machine Act was adopted 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. Likewise, members of the general public, caught unaware of the scope and nature of the Casino Slot Machine Act in question, were deprived of their opportunity to meaningfully participate. In particular, as will be outlined, this piece of legislation was commenced as a "stealth bill," one page in length which, by both title and text, dealt specifically and 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 and at the last legislative second this legislation became a 145-page bill creating, regulating and taxing a casino slot machine industry in Pennsylvania. See original HB

2330, Printer's No. 3251 (Exhibit "3") and compare to amended HB 2330, Printer's No. 4272 (Exhibit "5").

6. The bill that eventually became Act 2004-71 was first introduced on February 3, 2004 and 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 Fourth of July, 2004 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 bill. See History of House Bill 2330 (Exhibit "4"). 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 had to be changed from three lines (which were totally stricken and never incorporated in the new title) to over thirteen lines of closely worded text dealing with various and sundry matters and new purposes including the creation of an entity named the Pennsylvania Gaming Control Board, the issuance of gambling licenses creating a variety of slot machine casinos, the generation and distribution of taxes and revenues from said licenses, the creation of numerous funds in the Treasurer's office including the Pennsylvania Horse Race Development Fund, the Gambling and Economic Development and Tourism Fund, and the Property Tax Relief Fund as well as a Compulsive and Problem Gambling Treatment Fund. The amended bill also contains numerous new purposes including a chapter covering administration and enforcement and various miscellaneous provisions including several which provide for exclusive jurisdiction in the Pennsylvania Supreme Court over the issuance of licenses (§1204) and constitutional challenges to the bill (§1904). We have provided with this Petition the two bills in question the original proposed bill (Exhibit "3") and the amended passed bill (Exhibit "5") as well as a 17-page summary of the bill which was posted on the Department of Revenue's website after passage. (Exhibit "6") The difference in content and

sheer volume between the original and amended bill is striking and when the materials are juxtapositioned it totally belies any argument that the purpose and subject of the bill were not totally and irrefutably changed.

7. Accordingly, the original bill in a time frame that figuratively represents a legislative millisecond (the Fourth of July weekend) was transmogrified from an innocuous assignment of duties and responsibilities to the Pennsylvania State Police, to the totally unprecedented massive legalization of casino slot machine gambling and the concomitant conversion of the Commonwealth of Pennsylvania to the second largest gambling Mecca in the country.

8. Furthermore, we believe that the right to relief in this case is clear and unequivocal because very similar issues to the ones raised *sub judice* were decided by this Court in November of 2003 in the case of *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 838 A.2d 566 (2003) striking down an act reorganizing the governance of the Pennsylvania Convention Center. This case gave clear direction, guidance and warning to the General Assembly on proper constitutional legislative procedure – all of which has obviously been obstinately rejected.

## **II. THE PETITIONERS**

9. The following member of the Pennsylvania Senate is a Petitioner in this suit and has standing as a taxpayer and because the specific powers unique to his function under the Constitution have been diminished and interfered with through the unconstitutional legislative processes outlined and used in this case.

a. Senator Gibson E. Armstrong, elected Senator from the 13<sup>th</sup> Senatorial District in Lancaster and York Counties.

10. The following members of the Pennsylvania House of Representatives are Petitioners in this suit and have standing as taxpayers and because the specific powers unique to their function

under the Constitution have been diminished and interfered with through the unconstitutional legislative processes outlined and used in this case.

a. Representative Paul I. Clymer, elected Representative from the 145<sup>th</sup> Legislative District located in Bucks County.

b. Representative Gregory S. Vitali, elected representative from the 166<sup>th</sup> Legislative District located in Delaware County.

c. Representative Gibson C. Armstrong, elected Representative from the 100<sup>th</sup> Legislative District located in Lancaster County.

d. Representative Jerry A. Stern, elected Representative from the 80<sup>th</sup> Legislative District located in Blair County.

11. The following organizations are Petitioners and have standing because their members are taxpayers within the Commonwealth of Pennsylvania and will be directly and substantially impacted in their quality of life and without their intervention the statute complained of would go unchallenged because it primarily benefits those having an interest in instituting gambling within the Commonwealth of Pennsylvania who are not inclined to challenge the legislature's action. Accordingly, redress from other channels is unavailable and no other group of persons has come forward which are better situated to assert such a claim and judicial relief is appropriate and necessary.

a. Pennsylvanians Against Gambling Expansion Fund, Inc., ("PAGE Fund") is a non-profit organization based in Harrisburg that has been incorporated since 1995. The purpose and function of PAGE Fund is to advocate against the expansion of legalized gambling in Pennsylvania. PAGE Fund is associated with a larger coalition of individuals and organizations called Pennsylvanians Against Gambling Expansion (PAGE) which has collected nearly 40,000 signatures on petitions stating opposition to the expansion of gambling. Both PAGE and PAGE

Fund have actively and successfully opposed the introduction of casino-style gambling in Pennsylvania for a decade. PAGE Fund and the families it represents rely on the Constitutional enactment of legislation in order to be informed about and assess bills before they become law. As a result of the unconstitutional enactment of the gambling bill, PAGE Fund was harmed by its inability to assess the gambling bill in time to inform and educate public officials and citizens about its contents and implications for families or to participate in the legislative process.

b. Pennsylvania Family Institute (PFI) is a non-profit corporation based in Harrisburg that has been incorporated since 1989. PFI represents more than 35,000 Pennsylvania families and its purpose is to research, educate and inform citizens about policies and legislation that impact the family. One primary function of PFI is to inform the individuals it represents about issues that are before the Pennsylvania legislature and to encourage Pennsylvanians to take appropriate action to protect Pennsylvania's families. For more than ten years, PFI has actively educated citizens about the impact of casino-style gambling on families and culture, as well as providing resources to the media and to public officials about gambling and its potential impact on Pennsylvania's families. PFI and the families it represents rely on the Constitutional enactment of legislation in order to be informed about and assess bills before they become law. As a result of the unconstitutional enactment of the gambling bill, PFI was harmed by its inability to assess the gambling bill in time to inform and educate public officials and citizens about the contents and impact to families of HB 2330 or to participate in the legislative process.

c. The League of Women Voters of Pennsylvania is an incorporated association that in its statement of position on the citizen's right to know/citizen participation has stated its position that democratic government depends upon the informed and active participation of its citizen at all levels of government. The League was incorporated in November of 1923 as the League of Women Voters of Pennsylvania for the purpose of promoting political responsibility

through informed and active participation of citizens in government. The League of Women Voters of Pennsylvania represents 2,200 members in 40 local Leagues throughout the Commonwealth. In order to fulfill its objective of strengthening our democratic form of government, the League of Women Voters of Pennsylvania relies on the constitutional enactment of legislation so as to promptly inform its members and the general public about pending legislation and to formulate appropriate positions on such legislation.

d. The Keystone Christian Education Association (KCEA) is an educational non-profit organization based in Harrisburg, PA, that began in 1974, and was incorporated in August of 1977. KCEA serves approximately 500 churches, which either sponsor or encourage attendance at Pennsylvania Christian schools, eighty of which schools are actively affiliated with this organization.

With the passage of the Act, casino/slot gambling establishments could be located adjacent to or in the immediate vicinity of churches, schools, or other similar institutions serving children, youth, and society. This goes against the established pattern in the Commonwealth of prohibiting certain types of behavior around locations where churches and schools are found. These include establishing “drug-free zones” and setting distance requirements for establishments serving liquor. One of KCEA’s affiliates, the Ben Salem Baptist Church, is a church with children and youth ministries, including a Christian Day school, which shares two property lines with an existing horse race track. This race track is scheduled to be allowed to place one or more gambling facilities on this site and will automatically be granted a liquor license under §1521 of the Act. In addition, KCEA’s member churches would have to contend with the social problems generally associated with these establishments. These general problems would be exacerbated by the lack of forethought in this current legislation for deterrence of crime and other social problems. The church leadership

has been informed that the slot machine casino for this track will be built contiguous to the existing church and school.

e. The Commonwealth Foundation is a 501c(3) non-profit organization based in Harrisburg that has been incorporated since 1988. The Commonwealth Foundation has more than 200 members who are Pennsylvania residents with interest in Pennsylvania's economic issues. The Commonwealth Foundation is a public policy research and education institute that analyzes and assesses legislation and public policies with particular concern for their economic impact on the Commonwealth. The Commonwealth Foundation's members rely on the Constitutional enactment of legislation in order to be informed about and assess bills before they become law. The members of The Commonwealth Foundation were harmed by their inability to analyze or assess HB 2330 or to participate in the legislative process because of the unconstitutional enactment of this gambling bill.

f. A United Methodist Witness in Pennsylvania is a statewide 501c(4) non-profit organization based in Harrisburg that has been incorporated since 1991. A United Methodist Witness in Pennsylvania is governed by a Board of Directors comprised of bishops, clergy and laity and consists of 150 members who are Pennsylvania residents and attendees or members at United Methodist churches. The members of the Board represent the four Annual Conferences of the United Methodist Church in Pennsylvania. The organization's function is to inform their members and advocate for social justice by informing church members and government official about concerns and issues that affect the church. It relies on the constitutional enactment of legislation in order to be informed about and assess bills before they become law. As a result of the unconstitutional enactment of the gambling bill, A United Methodist Witness in Pennsylvania was harmed by its inability to assess the gambling bill in time to inform and educate its members about its contents and its implication for families of HB 2330 or to participate in the legislative process

of this bill. The members of this organization also face harm as a result of the increased number of gambling addicted individuals and their families who request financial help from their parishes.

g. No Dice, Inc. is a Pennsylvania non-profit corporation based in Pittsburgh established in the 1990's to oppose the legalization of additional forms of gambling in Pennsylvania and to protect Pittsburgh neighborhoods from the establishment of casinos. The process of passing the Act that permits introduction of slot machines in Pennsylvania deprived No Dice, Inc., of the opportunity to fulfill its mission because there was limited opportunity to review the provisions of the bill before the General Assembly acted on it, much less to comment on it, and because the legislature provided no opportunity for hearings on the bill before its passage.

12. The following member of the Lancaster County Board of Commissioners is a Petitioner in this suit and has standing as a taxpayer and because of his governmental position and will be directly and substantially impacted in his and his community quality of life and, without his intervention, the statute complained of would go unchallenged because it primarily benefits those having an interest in instituting gambling within the Commonwealth of Pennsylvania and who are not inclined to challenge the legislature's action. Accordingly, redress from other channels is unavailable and no other group of persons has come forward which are better situated to assert such a claim and judicial relief is appropriate and necessary.

a. Dick Shellenberger, elected Commissioner of the County of Lancaster.

13. The following individuals are Petitioners and have standing as taxpayers, who have direct pecuniary and substantial interest in their quality of life and without their intervention the statute complained of would go unchallenged because it primarily benefits those having an interest in instituting gambling within the Commonwealth of Pennsylvania who are not inclined to challenge the legislature's action.

a. The Reverend Dr. Thomas E. Richards, Jr. is an individual Lutheran pastor of St. Paul Lutheran church in Tannersville. His parish is in close proximity to the proposed gambling casino at the Mt. Airy property and the Pocono Racetrack where slot machines are proposed. The St. Paul Lutheran church provides a meeting place for Alcoholics Anonymous groups four times weekly. Reverend Richards' doctoral research focused on the issue of gambling addiction and its impact on the church community and he has been active in both studying and aiding parishioners and community members with regard to the gambling issue. He anticipates significant harm as a result of the proposed gambling expansion in Monroe County and an increased dependence on his church and personal resources as a result of this gambling legislation.

b. Mark Kovscek is an individual and land owner in the 2,800-resident borough of Brownsville, Pennsylvania. Mr. Kovscek and his wife own a business that buys and restores Brownsville townhouses and commercial buildings in an effort to prevent the further destruction and decay of the historic buildings in this "turn-of-the-century" town. Mr. Kovscek and his wife are residents of Brownsville and also own eight townhouses, one commercial building and one piece of land. In 2004, Preservation Pennsylvania (a Harrisburg-based non-profit organization directed by Susan K. Shearer) listed Brownsville, Pennsylvania as one of the Commonwealth's ten most endangered historic towns; it is, however, a proposed site for at least one gambling facility. The likely impact of the gambling legislation on Mr. Kovscek's business and properties is personal and economic: the residence he owns may soon be in proximity to a gambling district, causing the properties to lose both economic and historic value.

c. Christ G. Lapp is an individual and restaurant owner in Lancaster, Pennsylvania. Mr. Lapp's restaurant is located in an area of the Commonwealth which is a likely site of a licensed gambling facility. The location and operation of a gambling facility in the area where Mr. Lapp's restaurant is located will serve to funnel restaurant trade to the gambling facility

and away from his restaurant and other local businesses, causing him to suffer significant injuries, including direct and substantial pecuniary loss. Mr. Lapp is the father of Dale Lapp, Esquire, deceased, a former attorney in Lancaster County who, in January, 2003, committed suicide as a result of gambling debts that he incurred at gambling facilities in Atlantic City, New Jersey.

d. Lois J. Romberger is an individual and owner of property subject to school district and other property taxes in the Central Dauphin School District in Dauphin County, Pennsylvania. Central Dauphin School District is one of the school districts in Pennsylvania that opted into the provisions of Act 50 of 1998 (53 Pa.C.S. §8701 *et seq.*) allowing school district taxes to be capped by increases in the worker's annual weekly wage. In addition, the Central Dauphin School District, by referendum in 2003, attempted to be relieved from the provisions of Act 50's cap through voter referendum that was defeated by over an 85% margin. With the passage of Act 2004-71 and Act 2004-72, the School Board of the Central Dauphin School District raised the local earned income tax in order to meet eligibility requirements for slot machine revenues. Therefore, the Central Dauphin School District was able to be relieved of the cap notwithstanding the implementation and the failed referendum directly because of the expectation of Act 2004-71 generating future gambling revenues. Accordingly, the tax cap was effectively removed in the Central Dauphin School District and there is the potential for the removal in all other school districts that opted into Act 50 of 1998. Accordingly, Lois J. Romberger, and all other citizens residing in school districts opting into Act 50 of 1998 have had a direct pecuniary exposure and loss proximately caused by Act 2004-71.

e. C. Douglas Rothgaber is an individual and a resident of East Hanover Township, Dauphin County, Pennsylvania who is a taxpayer and property owner. His property is in close proximity to a horse racing track that is the site of a planned casino slots operation. Also, as a taxpayer of East Hanover Township, he will be directly impacted by the additional expenses

incurred by East Hanover Township and, in turn, the taxpayers residing in East Hanover Township, for the delivery of municipal services which will be increased and strained as a result of casino slots operation and for which the Act does not provide sufficient revenues to offset.

### **III. THE RESPONDENTS**

14. Respondent, Edward G. Rendell is the Governor of the Commonwealth of Pennsylvania who signed the Casino Slot Machine Act and appoints three members of the Pennsylvania Gaming Control Board, one being designated chairman, §1201(B).

15. Respondent, Robert C. Jubelirer is the President *Pro Tempore* of the Senate of the Commonwealth of Pennsylvania which passed the Casino Slot Machine Act and he appoints one member of the Pennsylvania Gaming Control Board under the Act, §1201(B).

16. Respondent, John M. Perzel is the Speaker of the House of Representatives of the Commonwealth of Pennsylvania which passed the Casino Slot Machine Act and he appoints one member of the Pennsylvania Gaming Control Board, §1201(B).

17. Respondent, Robert J. Mellow is the Minority Leader of the Senate of the Commonwealth of Pennsylvania which passed the Casino Slot Machine Act and he appoints one member of the Pennsylvania Gaming Control Board, §1201(B).

18. Respondent, H. William DeWeese is the Minority Leader of the House of Representatives of the Commonwealth of Pennsylvania which passed the Casino Slot Machine Act and he appoints one member of the Pennsylvania Gaming Control Board, §1201(B).

19. Respondent, Pennsylvania Gaming Control Board is a Board established under the bill called upon to be reviewed in this action having delegated to it in a general grant all powers and authority necessary to carry out the objections of the Act (§1202(A)) as well as eighteen specific powers (§1202(b)) The Board is presently scheduled to have its first meeting on December 14, 2004.

### **IV. JURISDICTION**

20. This Honorable Court has jurisdiction over this action pursuant to 42 Pa.C.S. §502 (Purdon’s 2004) and Section 1904 of the Casino Slot Machine Act which provides that “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 matter, define facts or to expedite a final judgment in connection with such a challenge or request for declaratory relief.”

## **V. SUPPORTING STATEMENT OF FACTS**

21. The Casino Slot Machine Act was originally introduced as House Bill 2330 entitled “An Act Providing for the Duties of the Pennsylvania State Police Regarding Criminal History Background Reports for Persons Participating in Harness or Horse Racing” and consisted of a one page, proposed Act dealing solely and exclusively with the Pennsylvania State Police providing support to the State Harness and Horse Racing Commission regarding criminal history checks and identification verification via fingerprints. (HB2330, Printers No. 3251, Exhibit “3”). This bill made its way through five considerations in the House and Senate virtually unchanged until it was amended on third consideration in the Senate on July 1, 2004. The progress of this bill may be traced through the available House and Senate Legislative Journals (hereinafter “HLJ” and “SLJ,” respectively) as follows:

a. On February 3, 2004, the bill was introduced and referred to the Judiciary Committee. (HLJ No. 6, p. 61) (Exhibit “7”)

b. On March 16, 2004, HB2330 received its first consideration in the House and was laid on the table. (HLJ No. 12, p. 232)<sup>1</sup> (Exhibit “8”)

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<sup>1</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

c. On March 17, 2004, the HB2330 was called up and given second consideration and recommitted to the Appropriations Committee. (HLJ No. 13, p. 263) (Exhibit “9”)

d. On March 22, 2004, HB2330 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) (Exhibit “10”)

e. On March 22, 2004, HB2330 was referred to the Law and Justice Committee in the Senate.<sup>2</sup>

f. On March 23, 2004, HB2330 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) (Exhibit “11”)

g. On March 29, 2004, HB2330 received its second consideration by the Senate. (SLJ No. 20, p. 1552) (Exhibit “12”)

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) (Exhibit “13”)

i. On May 18, 2004, HB2330 was reported out of the Committee on Law and Justice in the Senate. (SLJ No. 32, p. 1712) (Exhibit “14”)

j. On June 28, 2004, HB2330 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) (Exhibit “15”)

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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>2</sup> This is reflected on the History of HB 2330 (Exhibit “4”) and should be reflected in SLJ No. 17 but our search reveals that it is not found therein.

k. The next day, June 29, 2004, HB2330 was again reported out of the Law and Justice Committee in the Senate. (SLJ No. 43, p. 1893) (Exhibit “16”)

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, six chapters, 83 sections and 412 lettered and numbered subsections legalizing and creating casino slot machine gambling in Pennsylvania. HB2330 was given a new Printer No. 4272. (SLJ No. 45, p. 1922) (Exhibit “17”)

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) (Exhibit “17”)

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) (Exhibit “17”)

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, HB2330 was referred to the House Rules Committee. (HLJ No. 49, p. 1482) (Exhibit “18”)

q. On Saturday, July 3, 2004, HB2330 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. Accordingly, the House had no opportunity to amend the bill other than in the Rules

Committee.<sup>3</sup> (While this action was taken on legislative day July 3, 2004, in reality it occurred in the early morning hours of the July 4, 2004 holiday as is reflected in the video recording of this session.)

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.

**COUNT I**  
**ARTICLE III, SECTION 1**  
**(CHANGE OF PURPOSE)**

22. Petitioners incorporate by reference paragraphs 1 through 21, and their subparts, above as if fully set forth herein.

23. The Pennsylvania Constitution, Article III, Section 1, entitled “Passage of Laws” states:

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. (Emphasis supplied.)

24. This first Section of Article III of the Pennsylvania Constitution is intended to strengthen the numerous requirements of Article III of the Pennsylvania Constitution that require adequate notice be given to legislators and to the public as to the contents and purpose of bills that the legislators are considering. Without such protections, legislators or members of the public who believe that a bill dealt with a particular subject and purpose in prior readings could be deceived, misled or misinformed by a change in the underlying subject through the amendment process.

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<sup>3</sup> The House Legislative Journal for July 3, 2004 has not been prepared as of the date of this filing and this fact is from Pennsylvania Bill Tracking Statement (Exhibit “4”). Under the House Rules, the bill passed by the Senate and sent over to the House could only be amended in the Rules Committee unless the House Rules were suspended by a vote of two-thirds of the House members. See House Rules 30 and 77.

25. As described above, the version of HB2330 that existed prior to the bill's third consideration in the Senate on July 1, 2004, (Exhibit "3", Printer's No. 3251) consisted of one page which clearly and unmistakably set forth in its title that its purpose was "providing for the duties of the Pennsylvania State Police regarding criminal history background reports for persons participating in harness and horse racing."

26. The original bill was an innocuous and uncontroversial bill aimed at providing background check resources to the Commissions charged with regulating the horse racing industry. The amended bill (Exhibit "5") totally changed the purpose of the original bill and legalized casino slot machine gambling in the Commonwealth of Pennsylvania, rendering the Commonwealth of Pennsylvania second only to the state of Nevada for the number of legalized slot machines. This amended bill represented a quantum change from the previous legal, social and economic acceptance of gambling in the Commonwealth of Pennsylvania and required that the legislators voting on this bill be fully informed of its impact and consequences.<sup>4</sup>

27. The 145-page amendment on final reading in the Senate represents such a complete change in the original legislation that it cannot be justified or characterized as being other than a total and complete change in the original purpose of the legislation. The new amendment is clearly a fundamental change in Pennsylvania law establishing the legalization of casino slot machine gambling, the creation of a Pennsylvania Gaming Control Board, the creation of various casino slot machine licenses (divided amongst various racetracks and other identified groups throughout the Commonwealth), the creation of a revenue stream estimated at over a billion dollars and the concomitant dividing of that revenue stream amongst various and sundry newly created funds having numerous purposes running the gambit from horse racing development to economic development

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<sup>4</sup> Previously slot machine possession and use was a criminal offense. 18 P.C.S.A. §5513. See also, *Commonwealth v. Kratsas*, 564 Pa. 36, 764 A.2d 20 (2001).

and tourism, property tax relief and even creating a compulsive and problem gambling treatment fund. These fundamental changes in HB2330 violated the mandatory provisions of Article III, Section 1 of the Constitution forbidding just such a last minute change in a bill's original purpose.

28. In addition, the original purpose is dramatically changed in that tremendous powers are delegated to the newly created Gaming Control Board including, but not limited to, being relieved of the salary and procedure provisions of the Administrative Code of 1929 (P.L. 177, No. 175) (§1202(A)); not being classified as an executive or independent agency under the Commonwealth Attorneys Act (P.L. 950, No. 164) (§1202(A)); the creation of a "poison pill" provision that requires hundreds of millions of dollars in fees to be returned if the Board's powers are altered by the General Assembly (§1209(F)); the delegation to the Board of the right to preempt all state and local zoning rules and regulations in order to create and locate casinos (§1506); and providing that, when the Board approves a casino slot machine licensee, they shall be automatically be granted a bonus liquor license "absent good cause shown" to the Pennsylvania Liquor Control Board (§1521). These are all additional purposes which cannot fairly be described as being contained in, or even alluded to, in the original bill.<sup>5</sup>

29. The constitutional violation of Article III, Section 1 in changing the bill's original purpose was accompanied by the following actions which would cause the legislators and the public to overlook the many nuances arising from the hundreds of subsections of the bill and not realize the practical effect and impact of what was really being voted on:

a. The striking of the entire original bill and the sudden addition of 145 pages of amendments at the very last minute before this bill was passed by the Senate and immediately referred to the House to be voted on without chance of amendment;

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<sup>5</sup> There also appears to be substantial delegation of legislative authority in that "the Board shall have such other powers and authority necessary to carry out its duties." (§1202(2))

b. The unconstitutional inclusion of multiple subjects having no relation to each other which were added at the last minute;

c. The fact that the bill contained no printing of the text of the various statutes that were being repealed;

d. The fact that when the bill was considered on three separate occasions by the House, and on two separate occasions by the Senate, the 145-pages of last minute additions were not contained in the bill or even alluded to or available to the legislators; and

e. The fact that this bill was pushed through both houses of the legislature over the Fourth of July holiday weekend, to wit, being amended and immediately passed on third consideration on Thursday, July 1, 2004, being referred to the House Rules Committee and being reported out the next day on Friday, July 2, 2004, and being concurred in by the House and signed in the House on the next day Saturday, July 3, 2004, being signed in the Senate on Sunday, July 4, 2004; and being signed by the Governor on Monday, July 5, 2004 making it almost a certainty that many legislators did not have an adequate opportunity to read the amended bill no less comprehend its many nuances.

30. As a result of the violation of Article III, Section 1, neither the General Assembly nor the public had adequate notice of the contents of the amended HB2330 nor did the General Assembly have an adequate opportunity to vote with circumspection on one of the most dramatic and important pieces of legislation ever to come before the General Assembly. See, *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 574-586, 838 A.2d 566, 586-593 (2003).

31. As a result of the violation of Article III, Section 1, Petitioners were harmed in that they did not have adequate notice of the contents of HB2330 and were deprived of the opportunity to meaningfully participate in the legislative process.

32. The harm to Petitioners is irreparable in that the Casino Slot Machine Act will be fully implemented shortly and will have disastrous consequences for the Commonwealth of Pennsylvania's economy.

**COUNT II**  
**VIOLATION OF ARTICLE III, SECTION 3 OF THE CONSTITUTION**  
**(FORM OF BILL – SINGLE SUBJECT)**

33. Petitioners incorporate by reference paragraphs 1 through 32, and their subparts, above as though fully set forth herein.

34. The final version of HB2330 violated the mandatory provision of Article III, Section 3 of the Constitution requiring that “No bill shall be passed containing more than one subject.”<sup>6</sup>

35. The bill in question contains a large number of disparate subjects. For example, it creates the Pennsylvania Gaming Control Board (§1201); provides a detailed licensing scheme for slot machines (§1301); provides for the taxation of casino slot machine gambling and provides for the raising and distribution of revenues (§1403); 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 (§1405-1409); creates a Compulsive and Problem Gambling Program (§1509); partially repeals various long-standing criminal laws (§1903); gives the Gaming Control Board authority over zoning decisions (§1506); mandates the issuance of liquor licenses to slot machine gambling casinos (§1521); creates a new criminal and civil investigative bureau (§1517(a)); provides for the additional allocation of money

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<sup>6</sup> Article III, Section 3 of the Pennsylvania Constitution entitled “Form of Bills” provides:

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. (Emphasis supplied.)

and resources to the Pennsylvania State Police (§1517(c)(13)); creates numerous criminal offenses and penalties (§1518); exempts the Gaming Control Board and its employees from Administrative Code and the Commonwealth Attorneys Act (§1202); and even vests original and exclusive jurisdiction in the Supreme Court of Pennsylvania in several areas (§§1204, 1904).

36. The range of subject matters is further illustrated by the fact that the bill has gone from one dealing with the Pennsylvania State Police performing criminal history background investigations on persons participating in the harness and horse racing industry to creating an entirely new gambling industry by legalizing casino slot machine gambling casinos and making Pennsylvania the second largest state insofar as the number of authorized slot machines (61,000), second only to Nevada.

37. The above represents only a partial list of the subjects covered by the bill as shown by the 6 chapters, 83 sections and 412 lettered and numbered subsections contained therein which run the gambit from the legalization of slot machine gambling to the ultimate division of revenues and their use to create various funds involving various and sundry purposes from race horse development to tourism and economic development and a compulsive and problem gambling program.

38. As a result of the unconstitutional form in which HB2330 was amended and presented to the General Assembly, Legislators were required to digest, consider and debate matters that were not a component of a single subject but reflected entirely different policy considerations – a bill that appears to have been crafted so as to be susceptible to the constitutionally forbidden practice of logrolling, i.e., the practice of embracing in one bill several distinct matters, none of which could singularly attain 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.

39. As a result of the violation of Article III, Section 3, neither the General Assembly nor the public had notice of the contents of HB2330 nor did the General Assembly have an opportunity to vote with circumspection. See, *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 574-586, 838 A.2d 566, 586-593 (2003).

40. As a result of the violation of Article III, Section 3, Petitioners were harmed in that they did not have notice of the contents of HB2330 and were deprived of the opportunity to participate meaningfully in the legislative process.

41. The harm to Petitioners is irreparable in that the Casino Slot Machine Act is having, and will continue to have, disastrous consequences to Pennsylvania and its economy.

**COUNT III**  
**VIOLATION OF ARTICLE III, SECTION 3 OF THE CONSTITUTION**  
**(FORM OF BILL – TITLE)**

42. Petitioners incorporate by reference paragraphs 1 through 41, and their subparts, above as if fully set forth herein.

43. The final version of HB2330 violated the second mandatory provision of Article III, Section 3 of the Constitution requiring that “no bill shall be passed containing more than one subject which shall clearly be expressed in its title” (Emphasis supplied)

44. Article III, Section 3 of the Constitution provides twin mandatory protections in providing that there be only one subject and that the subject be clearly expressed in the title of the bill and both provisions are intended to put legislators and the public on notice of what the subject is, so that legislation is not passed by oversight, stealth or deception.

45. The title of the final version of HB2330 fails to comply with the requirements for a title that “clearly expresses” its subject.

46. The bill initially introduced into the House and which passed through five constitutionally-required considerations under Article III, Section 4, was originally entitled “An Act Providing for the Duties of the Pennsylvania State Police Regarding Criminal History Background Reports for Persons Participating in Harness and Horse Racing.” This was an innocuous piece of legislative housekeeping which merely provided that the State Police, upon request, would provide background investigations on those individuals selected by the horse and harness racing commissions and approved for employment at race tracks.

47. The last minute amendment completely changed the title of the bill as well as its purpose in an attempt to reflect the new subjects of the bill. The new title provided as follows:

An Act

~~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.

48. Amazingly, the interplay between Article III, Section 1, forbidding the change of original purpose of a bill, and Article III, Section 3, requiring that a bill contain only a single subject “which shall be clearly expressed in its title,” clearly shows that the General Assembly itself felt the need to totally strike out the original (single) subject stated in the title and to completely change the title ultimately leaving the original subject out and, further, conclusively shows the violation of the change of purpose and subject provisions of the Constitution alleged in the previous Counts.

49. In addition, the main purpose of the amended bill (which was to legalize slot machine gambling within the Commonwealth of Pennsylvania) is nowhere even referred to in the title and throughout the title vague terms are used, such as “authorizing certain race track and other gaming,” “establishing and providing for the powers and duties of the Pennsylvania Gaming Control Board” and “conferring powers and imposing duties on various departments, offices, boards and the Pennsylvania State Police.” The title, as a whole, is totally uninformative of the very significant changes in Pennsylvania law, including repeal of criminal statutes, creation of various revenue streams, allocation of those revenues, granting the Supreme Court jurisdiction over the final orders

of the gaming board (§1204); selling the Commonwealth’s right to state gaming receipts to an authority and granting the authority the right to issue bonds (§1202(16)); creating a new investigative bureau (§1202(17)); providing access to Department of Revenue tax information (§1206(h)); regulating the payout for slot machines at a minimum of 85% (§1207(10)); requiring casinos to provide office space for the Board as a condition of licensure (§1207(13)); setting up the fee schedule for slot machines, suppliers and manufacturers (§1208(1)); creating a fifty million dollar slot machine license fee from each casino venue (over \$500 million); creating a “poison pill” provision requiring the fee to be returned in the event that the statute is amended or the composition the Board altered (§1209(f)(1-6)); and providing for a 34% tax on slot machines that will generate huge amounts of revenue (§1403(B)) – among numerous other subjects covered in the amended bill but not alluded to in the bill’s title as constitutionally required.

50. As such, HB2330 is constitutionally infirm as violating the mandatory requirement of the Constitution for the passage of legislation.

51. As a result of the violation of Article III, Section 3, neither the General Assembly nor the public had notice of the contents of HB2330 nor did the General Assembly have an opportunity to vote in a meaningful and informed fashion and with circumspection. See, *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 574-586, 838 A.2d 566, 586-593 (2003).

52. As a result of the Violation of Article III, Section 3, the Petitioners were harmed in that they and other members of the public did not have notice of the contents of HB2330 and were deprived of the opportunity to meaningfully participate in the legislative process.

53. The harm to Petitioners is irreparable in that the Casino Slot Machine Act will be implemented shortly and will have disastrous consequences to Pennsylvania and its economy.

**COUNT IV**  
**ARTICLE III, SECTION 4**  
**(THREE READINGS)**

54. Petitioners incorporate by reference paragraphs 1 through 53, and their subparts, above as if fully set forth herein.

55. Article III, Section 4 of the Pennsylvania Constitution, entitled “Consideration of Bills,” states:

Every bill shall be considered on three different days in each House. All amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill and before the final vote is taken, upon written request addressed to the presiding officer of either House by at least twenty-five percent of the members elected to that House, any bill shall be read at length in that House. No bill shall become a law, unless on its final passage the vote is taken by yeas and nays, the names of the persons voting for and against it are entered on the journal, and a majority of the members elected to each House is recorded thereon as voting in its favor.<sup>7</sup> (emphasis supplied.)

56. This requirement that members of the legislature have three days to consider each bill is another of the protections in the Pennsylvania Constitution to ensure that legislators and the public have adequate notice of pending legislation and that legislators can vote with circumspection.

57. As described above, the version of HB2330 that was considered in each house was completely different than the bill that was totally amended and changed upon third consideration in the Senate and immediately sent to the House for final passage on concurrence. It received literally 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 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 in the Senate amendments.

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<sup>7</sup> Attempts have been made to find out whether the bill was “printed” as constitutionally required but the relevant documents are contained in the Calendar Room and the House Parliamentarian takes the position that materials that are in that room are “privileged and work product.”

58. Because the form of HB2330 as considered and adopted was so fundamentally different from the form of the bill that the House and Senate had previously considered on five readings, it was effectively a different bill in every sense of the term. Thus, the form of the bill that was considered on the last day was not, in fact, considered on three separate occasions by each house and, therefore, the process when considered as a whole violated Article III, Section 4 of the Constitution.

59. As a result of the violation of Article III, Section 4, neither the General Assembly nor the public had notice of the contents of HB2330; nor did the General Assembly have the opportunity to vote with circumspection on a matter of the highest importance to the citizens of the Commonwealth. See, *City of Philadelphia v. Commonwealth*, 575 Pa. 542, 574-586, 838 A.2d 566, 586-593 (2003).

60. As a result of the violation of Article III, Section 4, Petitioners were harmed in that they did have notice of the contents of HB2330 and were deprived of the opportunity to meaningfully participate in the legislative process.

61. The harm to Petitioners and other citizens of the Commonwealth is irreparable in that the Casino Slot Machine Act will be fully implemented shortly and will have disastrous consequences for Pennsylvania's economy.

**COUNT V**  
**ARTICLE III, SECTION 6**  
**(AMENDMENT AND REPEAL)**

62. Petitioners incorporate by reference paragraphs 1 through 61, and their subparts, above as if fully set forth herein.

63. The Constitution of Pennsylvania in Article III, Section 6, "Revival and Amendment of Laws," states:

No law shall be revived, amended, or the provisions thereof extended to conferred, by reference to its title only, but so much thereof as is revived, amended, extended or conferred shall be re-enacted and published at length.

64. This mandatory provision again is intended to provide legislators and the public with adequate notice of the bills under consideration. When the purpose of a bill is to amend or repeal a section of a law, the bill must contain the text of the section to be amended or repealed. This Constitutional provision is further enforced by 1 Pa.C.S. §1104, which contains a similar provision and the requirements for the adoption of statutory provisions.

65. HB2330 purports to amend or repeal statutes, but fails to contain the text of those statutes.

66. The Casino Slot Machine Act itself talks about two direct repeals, one being to the Liquor Code, Section 493(29) of the Act of April 12, 1951 (P.L. 90, No. 21) and the other being to the Crimes Code, Section 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.” See §1903 of the Casino Slot Machine Act. Given the breadth of this Act, there could be innumerable laws impacted running the gambit from the Revenue Code to the Eminent Domain statutes of the Commonwealth that will have been repealed making this statute one that will have to be checked and referred to repeatedly to determine whether it conflicts with any other law in the Commonwealth. Such a general repeal in and of itself is unconstitutional.

67. This failure to make a minimal attempt to print the repealed sections as required violates the mandatory provisions of Article III, Section 6, and 1 Pa.C.S. §1104.

68. This violation of Article III, Section 6, compounds the other violations of the Constitution alleged in this Petition. At every turn, the process used to pass HB2330 thwarted the letter and spirit of the Constitution’s consistent command in Article III to give notice to the

legislators and to the public of the nature of the people's business and to enable the purpose and subjects of proposed legislation to be dealt with in a coherent, deliberative and circumspect manner.

69. As a result of the violation of Article III, Section 6, neither the General Assembly nor the public had notice of the contents of HB2330; nor did the General Assembly have the opportunity to vote with circumspection.

70. As a result of the violation of Article III, Section 6, Petitioners were harmed in that they did not have notice of the contents of HB2330 and were deprived of the opportunity to participate in the legislative process.

71. The harm to Petitioners is irreparable in that the Casino Slot Machine Act will be implemented shortly and will have disastrous consequences for Pennsylvania's economy.

**COUNT VI**  
**ARTICLE III, SECTION 10**

72. Petitioners incorporate by reference paragraphs 1 through 71, and their subparts, above as if fully set forth herein.

73. The Constitution of Pennsylvania in Article III, Section 10, entitled "Revenue Bills" states:

All bills for raising revenue shall originate in the House of Representatives but the Senate may propose amendments as in other bills.

74. This requirement of the Pennsylvania Constitution was not met. When this bill originated in the House, as outlined above, it was nothing more than an innocuous provision authorizing the Pennsylvania State Police to perform background investigations upon request. It never became a revenue bill until it was amended on its fifth and last legislative reading in the Senate by Amendment #A3055 consisting of 145 pages, 6 chapters, 83 sections and 412 lettered and numbered subsections, many of which clearly deal with raising revenue for the Commonwealth of

Pennsylvania. (See Chapter 14 of the bill captioned “Revenues” §§1401-1409 and its subparts describing in detail how the revenues raised by this bill will be divided up and specifically referring to the numerous other Sections of the bill that deal with the raising of revenues.)

75. Because this bill was completely changed in the Senate and became a revenue bill for the first time through the Senate amendments, it does not meet the requirement of Article III, Section 10 of the Pennsylvania Constitution that “all bills for raising revenue shall originate in the House of Representatives.”

76. As a result of the violation of Article III, Section 10, neither the General Assembly nor the public had notice of the contents of HB2330, nor did the General Assembly have the opportunity to vote with circumspection on a matter of the highest importance to the citizens of the Commonwealth.

77. As a result of the violation of Article III, Section 10, Petitioners were harmed in that they did not have notice of the contents of HB2330 and were deprived of the opportunity to meaningfully participate in the legislative process.

78. The harm to Petitioners and other citizens of the Commonwealth is irreparable in that the Casino Slot Machine Act will be fully implemented shortly and will have disastrous consequences for Pennsylvania’s economy.

**COUNT VII**  
**ARTICLE II, SECTION 1**  
**(UNCONSTITUTIONAL DELEGATION OF POWERS)**

79. Petitioners incorporate by reference paragraphs 1 through 78, and their subparts, above as if fully set forth herein.

80. The Constitution of Pennsylvania, in Article II, Section 1, entitled “Legislative Power”, states:

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

81. This provision is intended to prevent the improper delegation of legislative authority and power to boards, commissions, administrative tribunals and the like.

82. 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 non-delegation 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).

83. While the General Assembly may confer certain authority and discretion to boards, commissions or administrative tribunals in connection with the execution of the law, such authority and discretion may not be conferred by the General Assembly without prescribing standards, policies and guidelines which will guide and restrain the exercise of the delegated power and authority to be exercised by the board, commission or administrative tribunal. In the absence of such standards, policies or limitations, a board, commission or administrative tribunal to which

power and authority are granted would be have unfettered and unlimited power and authority subject to its whim or caprice.

84. In delegating any power and authority to a board, commission or administrative tribunal, the General Assembly must prescribe definite, reasonable and lawful standards to guide, limit and govern the power and authority of the board, commission or administrative tribunal.

85. Article II, Section 1, ensures that the power and activity of a board, commission or administrative tribunal are not boundless and that the legislative grant of the power to act to any board, commission or administrative tribunal is not vague.

86. HB2330 purports to preempt the applicability of local and state zoning and land use laws, ordinances, rules or regulations in connection with the siting and operation of gambling facilities under the Act.

87. 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.

88. 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 the issuance of slot machine licenses and the location of the licensed gambling facilities.

89. 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 siting and operations of licensed gambling facilities.

90. As provided by HB2330, the Gaming Board would have unlimited and unfettered power in approving the location and operation of licensed gambling facilities without regard to the local and state zoning and land use laws 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.

91. This violation of Article II, Section 1, essentially exempts the entire gambling industry from compliance with the zoning and land use laws of Pennsylvania.

92. Reference to the Pennsylvania Municipalities’ Planning Code 53 P.S. §10101 *et seq.* (Purdon’s 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. Indeed, the municipalities are granted the power by the General Assembly and must adhere to the extensive statutory framework in exercising those powers.

93. The General Assembly purports to grant to the Gaming Board the same police powers for deciding what are essentially land use matters in connection with gambling facilities without requiring the Board's adherence to any of the rules and standards which Pennsylvania municipalities are mandated to follow by the MPC.

94. In the guise of the exercise of police power, the Act, as enacted, actually will allow the Board to give preferential treatment to gambling businesses and interests in the location and operation of their enterprises.

95. 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.

96. 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.

97. The delegation of the power and authority to the Board by the General Assembly can and will be used as a device to give preferential treatment and unfair business advantage to gambling businesses and interests in the Commonwealth of Pennsylvania.

98. In violating Article II, Section 1, the General Assembly has improperly granted land use and zoning authority and power to the Board without clear, definite, reasonable and lawful standards, policies and limitations in order to protect against unfettered Board action.

99. In violating Article II, Section 1, the General Assembly has delegated to a board, administrative body, i.e. the Gaming Board, 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.

100. In violating Article II, Section 1, the General Assembly has unconstitutionally empowered the Gaming Board to act like a super-zoning board or authority with unlimited and unfettered discretion.

101. As a result of the violation of Article II, Section 1, Petitioners are harmed in that they are deprived of the reasonable, appropriate and lawful exercise of comprehensive zoning and land use laws within their communities in connection with the operation and siting of licensed gambling facilities under HB2330.

102. The harm to Petitioners is substantial in that the Casino/Slot Machine Act will be implemented shortly and will have disastrous consequences to Pennsylvania's economy including but not limited to, the negative impact on local municipalities and their citizenry due to the displacement of comprehensive zoning and land use laws in favor of unfettered and unlimited zoning and land use power of the Gaming Board.

#### **INJUNCTIVE AND DECLARATORY RELIEF**

103. Injunctive relief is appropriate because the Act is unconstitutional, the harm to Petitioners is irreparable and Petitioners do not have a remedy at law.

104. Injunctive relief is necessary because, unless implementation of the Casino Slot Machine Act is stayed and Respondents are enjoined from taking actions in accordance with Act 2004-71, the many other disparate affected individuals and entities will have already taken the required actions, causing grave harm to the welfare of the citizens of the Commonwealth of Pennsylvania. Undoing such actions will be profoundly disruptive, particularly given the many areas in which Act 2004-71 purports to legislate.

105. Moreover, if the General Assembly is permitted to proceed without constraints, especially in the face of such an egregious violation of Articles II and III of the Pennsylvania Constitution as exists in the present case, the legislative process will cease to be open and

deliberative and, instead, will be carried on in secret, immune from the input of those, such as the Petitioners in this case, who, along with other citizens of the Commonwealth of Pennsylvania, are directly affected.

**WHEREFORE**, Petitioners respectfully request that this Honorable Court:

1. Declare HB2330, Act 2004-71, to have been enacted unconstitutionally and therefore null and void;
2. Enjoin any further meeting of the Pennsylvania Gaming Control Board; and
3. Order that all other implementation of Act 2004-71 is stayed in its entirety, and prohibit each of the Respondents from implementing Act 2004-71.

Respectfully Submitted,

s/ \_\_\_\_\_  
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(717) 299-5115 - fax

Dated: December 10, 2004

Counsel for Petitioners

**VERIFICATION**

I, Stephen Michael Geer, hereby verify that the facts set forth in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that this verification is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 12/10/04

  
Stephen Michael Geer

## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Motion to Expedite a Final Judgment in Connection with a Request for a Declaratory Judgment upon the persons and in the manner indicated below which service satisfies the requirements of Pa. R.A.P. 121:

### Personal Service via Hand Delivery

Gerald J. Pappert  
Attorney General of Pennsylvania  
Executive Offices  
Strawberry Square  
Harrisburg, PA 17120

Robert J. Mellow  
Minority Leader of the Pennsylvania Senate  
Senate Box 203022  
Main Capitol Building, Rm. 535  
Harrisburg, PA 17120-3022

Edward G. Rendell  
Governor of the Commonwealth of  
Pennsylvania  
225 Main Capitol Building  
Harrisburg, Pennsylvania 17120

H. William DeWeese  
Minority Leader of the Pennsylvania House  
of Representatives  
Room 423 Main Capitol Bldg.  
Harrisburg, PA 17120-2020

Robert C. Jubelirer  
President *Pro Tem* of the Pennsylvania  
Senate  
Senate Box 203030  
Capitol Building Rm 292  
Harrisburg, PA 17120-3030

Thomas A. Decker  
Pennsylvania Gaming Control Board  
c/o Pennsylvania Department of Revenue  
Strawberry Square  
Harrisburg, PA 17128-1100

John M. Perzel  
Speaker of the Pennsylvania House of  
Representatives  
Main Capitol Building  
Room 139  
Harrisburg, PA 17120-2020

### Service via Certified Mail, Return Receipt Requested:

Chairman  
Pennsylvania Gaming Control Board  
1900 Market St.  
Philadelphia, PA 19103

s/ \_\_\_\_\_  
James J. West

Dated: December 10, 2004