

[J-80-2007]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CASINO FREE PHILADELPHIA, THE	:	No. 153 EM 2006
MULTI-COMMUNITY ALLIANCE,	:	
BARBARA DOWDALL, GEORJEAN	:	
BRINKLEY, NEIGHBORS ALLIED FOR	:	Petition for Review in the Nature of a
THE BEST RIVERFRONT, JOANNE AND	:	Complaint Seeking Declaratory Judgment
PAUL SHERMAN, EDWARD VERRALL,	:	and Injunctive Relief Pursuant to 4
NORTHERN LIBERTIES NEIGHBORS	:	Pa.C.S. § 1904
ASSOCIATION, DEBORAH RUDMAN,	:	
R&K STANDARD, INC. D/B/A	:	
STANDARD TAP AND MANPANTS, LLC	:	
D/B/A JOHNNY BRENDA'S TAVERN,	:	
	:	
	:	
Petitioners	:	
	:	
	:	
v.	:	
	:	
	:	
COMMONWEALTH OF PENNSYLVANIA,	:	
GOVERNOR EDWARD G. RENDELL	:	
AND THE PENNSYLVANIA GAMING	:	
CONTROL BOARD,	:	
	:	
	:	
Respondents	:	SUBMITTED: June 26, 2007

CONCURRING OPINION

MR. JUSTICE SAYLOR

DECIDED: November 21, 2007

I agree with the majority that Section 1102(10) of the Gaming Act, in and of itself, does not represent an unconstitutional delegation of legislative authority. I also agree that various challenges raised by Petitioners are outside the proper scope of the present proceeding invoking this Court's jurisdiction under Section 1904 of the Gaming Act, 4 Pa.C.S. §1904, which concerns constitutional challenges to provisions of that act. On the non-delegation question, however, my reasoning is as follows.

I regard the social effects of land development as a subset of the concerns of traditional zoning regulation. See e.g., 53 P.S. §10105 (reflecting the General Assembly’s purpose, in enacting a comprehensive Municipalities Planning Code governing, inter alia, comprehensive planning and zoning matters, to “protect and promote safety, health and morals”). Thus, I believe that Section 1102(10)’s “social effects” provision, see 4 Pa.C.S. §1102(10), functioned in tandem with the initial legislative scheme investing in the Gaming Control Board the power to supplant local zoning and land use regulations which would affect the location of casinos. However, in light of the decision in Pennsylvanians Against Gambling Expansion Fund v. Commonwealth, 583 Pa. 275, 877 A.2d 383 (2005) (“PAGE”), which deemed this delegation unconstitutional as conferred, see id. at 335, 877 A.2d at 419, the statute may no longer be read as overriding existing local regulation. In my view, a delegation of discretion to select casino locations subject to local zoning and land use regulation is far more reserved than delegation of power to select locations in spite of local regulation. Thus, I believe that the delegation issue assumes lesser significance in the post-PAGE landscape.